

Real Property, Financial Services, & Title Insurance Update: Week Ending November 15, 2019

December 02, 2019

Real Property Update

- **Foreclosure / Notice:** Mail log sufficient evidence to establish mailing of notice to borrower of default and possibility of foreclosure – [Stacknik v. U.S. Bank, N.A.](#), No. 2D18-2156 (Fla. 2d DCA Nov. 15, 2019) (affirmed)
- **Takings:** Sections 11.066(3) and (4), which prohibit the courts from issuing execution on a money judgment entered against a state agency without appropriations by the legislature and governor, unconstitutionally interfere with right to full compensation under the Takings Clause – [Fla. Dep't of Agric. & Consumer Servs. v. Dolliver](#), No. 2D18-1393 (Fla. 2d DCA Nov. 13, 2019) (affirmed)
- **Partition / Attorneys' Fees:** Order that one party pay 100% of all fees and costs incurred in action for partition was improper because trial court failed to give reasons for deviating from statutory presumption that each party to partition pay in proportion to their respective interest in the property – [Vergne v. Glidewell](#), No. 4D19-444 (Fla. 4th DCA Nov. 13, 2019) (reversed and remanded)
- **Foreclosure / Attorneys' Fees:** Attorneys' fee provisions in mortgage were not broad enough to include recovery of attorneys' fees incurred litigating over fees – [Bayview Loan Servicing, LLC v. Cross](#), No. 5D18-2797 (Fla. 5th DCA Nov. 15, 2019) (affirmed in part, reversed in part, and remanded with directions)

Title Insurance Update

- No Cases of Interest to Report.

Financial Services Update

- **FDCPA / False-Name Exception:** Eleventh Circuit Court of Appeals joined the Second and Seventh Circuits and held that the false-name exception under the FDCPA “applies when the ‘least sophisticated consumer’ would believe a third party was involved in collecting a debt” – [Pinson v. JPMorgan Chase Bank, N.A.](#), No. 16-17107 (11th Cir. Nov. 12, 2019) (affirming in part and reversing in part dismissal of action)
- **FCRA / Failure to Investigate:** Plaintiff stated plausible claim under the FCRA that his creditor willfully failed to investigate the accuracy of the information it provided to the consumer reporting agency where the plaintiff alleged he disputed the purported false entry on his credit report to the CRA on three separate occasions, the CRA had a statutory duty to notify the creditor of the dispute, and the plaintiff alleged that the creditor failed to conduct an investigation after receiving notice of the dispute and failed to review all relevant information provided by the CRA – [Pinson v. JPMorgan Chase Bank, N.A.](#), No. 16-17107 (11th Cir. Nov. 12, 2019) (affirming in part and reversing in part dismissal of action)
- **FCRA / Section 1681b(f) & 1681q / “False Pretenses”:** Plaintiff stated plausible FCRA claim under Sections 1681b(f) and 1681q that the creditor willfully and unlawfully obtained his credit report for an improper purpose and under false pretenses where he alleged that the creditor disguised its true motivation and knowingly and willfully made false representations in order to obtain his credit report 20 times for use in litigation, notwithstanding that the FCRA does not include the use of credit reports in connection with litigation in its exhaustive list of permissible purposes for which a credit report may be obtained. In light of the issue and the creditor’s argument that it had a permissible purpose for obtaining the plaintiff’s credit report in that the plaintiff had a past due account with the creditor (and without deciding the issue since the case was at the dismissal stage), the Eleventh Circuit addressed for the first time the meaning of “false pretenses” under the FCRA and held that “intentionally obtaining a credit report under the guise of a permissible purpose while intending to use the report for an impermissible purpose can constitute false pretenses under Section 1681q” of the FCRA, which constitutes a crime under the statute – [Pinson v. JPMorgan Chase Bank, N.A.](#), No. 16-17107 (11th Cir. Nov. 12, 2019) (affirming in part and reversing in part dismissal of action)
- **Rosenthal Act:** Plaintiff adequately alleged plausible claim under the Rosenthal Act where she alleged that her mortgage loan servicer misrepresented the amount owed on her mortgage loan by including charges for unperformed property inspections in the mortgage loan account balance, and by charging the plaintiff a fee for a “hybrid valuation” performed in connection with a HAMP loan modification review and misrepresenting to the plaintiff that the fee was “routine and a required part of the HAMP modification process” when in actuality HAMP prohibits loan servicers from charging such fees – [Rhodeman v. Ocwen Loan Servicing, LLC](#), No. 5:18-cv-02363 (C.D. Cal. Nov. 12, 2019) (granting in part and denying in part motion to dismiss)

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