

Financial Services & Title Insurance Update: Week Ending October 11, 2019

October 11, 2019

Financial Services Update

- **Title Insurance Coverage:** where an accurate survey would have shown that seller had abandoned access and parking easement, which had been built upon by a neighbor, title insurer had no duty to defend buyer in quiet title action between buyer and neighbor - [Haley v. Hume](#), No. 77769-6-1 (Wash. Ct. App., Sept. 9, 2019) (affirming summary judgment)

Title Insurance Update

- **Student Loans:** lender was not barred from suing to recover student loan debt against borrower who had received Chapter 7 discharge by res judicata where lender had made no claim and sought no relief in bankruptcy proceedings and thus bankruptcy court was not presented with a question to decide regarding the subject student loan - [Nat'l Collegiate Student Loan Tr. 2007-3 v. De Leon](#), No. 3D18-1494 (Fla. 3d DCA Oct. 10, 2019) (reversing entry of summary judgment for borrower and remanding)
- **FDCPA / Loan Statements / Debt Collection Activity:** loan statements did not constitute debt collection activity because they were garden-variety TILA loan statements - [Piester v. Franklin Am. Mortg. Co.](#), No. 9:19-cv-80651 (S.D. Fla. Oct. 4, 2019) (dismissing with prejudice borrowers' FDCPA claims)
- **FDCPA:** debt collector violated the FDCPA when it sent collection notices for medical bills to individual who suffered workplace injury and was not liable for debt because his injuries were covered by workers' compensation insurance - [Malone v. Accounts Receivable Res., Inc.](#), No. 9:18-cv-81254 (S.D. Fla. Oct. 6, 2019) (granting plaintiff's motion for summary judgment and denying defendant's motion for summary judgment)

- **RESPA / Res Judicata:** borrowers' claims in a federal lawsuit for violations of consumer protection laws, misrepresentation, predatory mortgage servicing, and predatory lending were barred by res judicata because they arose out of foreclosure action in which all of the claims could have been raised - [Bell v. Deutsche Bank](#), No. 2:18-cv-01593 (E.D.N.Y. Sept. 30, 2019) (dismissing pro se complaint with leave to amend)
- **FDCPA:** consumer adequately alleged that the defendant debt collection company violated the FDCPA by failing to disclose identity as a debt collector in messages, continuing to call consumer after being informed she was represented by counsel, and communicating about her debt with a third party without consent. Individual defendant who is the managing member and operator of the company would also be held liable as a debt collector because he was personally involved in the collection of a debt - [Miller v. Hartfield Portfolio Grp. LLC](#), No. 1:14-cv-1060 (W.D.N.Y. Oct. 7, 2019) (granting motion for default judgment)

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