

Real Property, Financial Services, & Title Insurance Update: Week Ending August 14, 2020

August 14, 2020

Real Property Update

- **Foreclosure / Standing:** assignee of note was entitled to foreclosure for being in possession of original note indorse in blank, consistent with the copy attached to the complaint - [Deutsche Bank Nat'l Trust Co., as Trustee v. Harris](#), No. 4D19-2812 (Fla. 4th DCA Aug. 12, 2020) (reversed and remanded)
- **Foreclosure / Lost Note:** lender could not foreclose mortgage for failure to allege lost note claim in accordance with statute - [Residential Equities LLC v. Saint Catherine Holdings Corp.](#), No. 3D19-2516 (Fla. 3rd DCA Aug. 12, 2020) (affirmed in part, reversed in part, and remanded)

Financial Services Update

- **TCPA / Standing:** primary user of cell phone has standing to sue under the TCPA; not just the subscriber - [Vargas v. Vehicle Solutions Corp.](#), No. 8:19-cv-1109-T-60AAS (M.D. Fla. Aug. 7, 2020) (denying summary judgment)
- **TILA / Consumer Credit Transaction:** analysis of the purchase of parcel of land from which rental proceeds were obtained weighed against a consumer transaction and more towards a business transaction - [Acevedo v. The Loan Company of San Diego](#), No. 20-cv-1263-BAS-MSB (S.D. Cal. Aug. 10, 2020) (denying request for preliminary injunction after finding that the plaintiff was not likely to succeed on the merits of his claims)

- **FDCPA / Hatch Act & Garnishment:** FDCPA judgment could support garnishment proceedings in California as to federal employee even after employee moves to another state - [Farrell v. Boeing Employees Credit Union](#), No. 19-16130 (9th Cir. July 16, 2020) (affirming summary judgment in defendant's favor)
- **FDCPA / Actionable Claims:** a statement must be materially false or misleading to be actionable under the FDCPA - [Musante v. Forster & Garbus, L.L.P.](#), Nos. 19-cv-440 (SJF) (ARL) & 19-cv-1314 (SJF) (SIL) (E.D.N.Y. Aug. 12, 2020) (granting summary judgment in defendants' favor)
- **FCRA / Section 1681s-2(a) / No Private Right of Action:** there is no private right of action to enforce the requirements of 15 U.S.C. Section 1681s-2(a) - [Sprague v. Salisbury Bank & Trust Co.](#), No. 19-3241 (2d Cir. Aug. 10, 2020) (affirming dismissal with prejudice)
- **FDCPA / Contingent Collection Costs:** failure to disclose the contingent nature of the collection cost was deceptive - [Francis v. General Revenue Corp.](#), No. 18-cv-6955 (BMC) (E.D.N.Y. Aug. 10, 2020) (granting plaintiff summary judgment on FDCPA claim)

Title Insurance Update

- **Closing Agent Liability / Statute of Limitation:** purchaser's claim against attorney closing agent who examined title and missed the restriction prohibiting a multi-level building on the property was barred where buyer knew of the claim shortly after the closing but failed to bring an action until after the statute of limitation had run - [Pasha v. Eisele](#), No. 2018-CA-000865 (Ky. Ct. App. Aug. 7, 2020) (opinion affirming summary judgment)
- **Reservation of Rights / Equitable Estoppel:** purchaser's malpractice action against attorney hired to sue title insurer fared no better than its claim against the title insurer because there was no coverage based on equitable estoppel, as insurer's opinion that purchaser's claim could be covered subject to a reservation of rights was not a material fact or a material misrepresentation on which purchaser could have relied - [Pasha v. Eisele](#), No. 2018-CA-000865 (Ky. Ct. App. Aug. 7, 2020) (opinion affirming summary judgment)

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