

Real Property, Financial Services, & Title Insurance Update: Week Ending December 4, 2020

December 04, 2020

Real Property Update

- **Foreclosure / Verification:** Rule 1.115(e) of the Florida Rules of Civil Procedure cannot constrain or prohibit a plaintiff from delegating to its servicer-agent the authority to verify its foreclosure complaint, and trial court erred by dismissing complaint signed by servicer of mortgage loan - [U.S. Bank Nat'l Ass'n v. Forsyth](#), No. 5D20-1056 (Fla. 5th DCA Dec. 4, 2020) (reversed and remanded)
- **Foreclosure / Intervention / Due Process:** Trial court violated interested non-party's due process rights by failing to hold a hearing on his motion to intervene, as requested, prior to resetting the sale date - [Kachkar v. U.S. Bank Nat'l Ass'n](#), No. 3D19-1961 (Fla. 3d DCA Dec. 2, 2020)
- **Determination of Rent:** Trial court erred by awarding rent for the remainder of the time tenants remained in possession when there was no meeting of the minds (agreement) concerning that period - [Thomas v. Thomas](#), No. 2D19-3761 (Fla. 2d DCA Dec. 2, 2020) (reversed and remanded)

Financial Services Update

- **FCCPA / Automatic Withdrawals:** Consumer failed to state a cause of action under FCCPA based on credit union continuing to withdraw funds automatically from consumer's account after consumer advised he intended to file bankruptcy and withdrew his authorization to credit union to make such withdrawals - [Murph v. GTE Fed. Credit Union](#), No. 8:20-cv-00447 (M.D. Fla. Nov. 29, 2020) (granting dismissal without prejudice)

- **FDCPA / Standing:** Consumer did not have standing to pursue FDCPA claim against debt collector because consumer did not allege that the debt collector's letter was actually misleading to the consumer or actually caused any harm to him - [Wright v. AR Resources, Inc.](#), No. 8:20-cv-00985 (M.D. Fla. Dec. 1, 2020)
- **FDCPA / Standing:** A "bare allegation of confusion" by consumer who received a debt collection letter does not constitute an actual harm to consumer's concrete interest and is insufficient to confer Article III standing - [Adams v. Skagit Bonded Collectors, LLC](#), No. 20-35158 (9th Cir. Dec. 2, 2020) (vacating judgment on the pleadings and remanding with instructions to dismiss without prejudice)

Title Insurance Update

- **Statute of Limitations / Coverage:** Plaintiff's claim accrued under the title policy when First American denied plaintiff's predecessors' identical claim five years earlier, despite plaintiff's assertion that it did not incur an actual loss related to that claim until years later, barring plaintiff from bringing suit past the three-year statute of limitations - [PennyMac Holdings, LLC v. First Am. Title Ins. Co.](#), No. 2758 (Md. Ct. Spec. App. Nov. 30, 2020) (affirmed in part, reversed in part, and remanded)

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