

Real Property, Financial Services, & Title Insurance Update: Week Ending February 21, 2020

February 21, 2020

Real Property Update

- **HOA / Class Action:** It was appropriate for trial court to narrow class to current homeowners as to counts seeking declaratory and injunctive relief, as former homeowners have no interest in relief sought; however, the trial court erred by narrowing the class to include only current homeowners as to particular count of complaint seeking damages from developer as a result of its collection of club membership fees in violation of section 720.308, Florida Statutes, of the HOA Act during a time period in which both current and former homeowners would have been impacted - [Gundel v. AV Homes, Inc.](#), No. 2D18-3199 (Fla. 2d DCA Feb. 21, 2020) (affirmed in part, reversed in part, and remanded)
- **Ad Valorem Tax:** Statutory provision found to be invalid and unenforceable as it improperly limited the class of individuals eligible for ad valorem tax relief against the plain language of the constitutional amendment - [Dep't of Revenue v. Bell](#), No. 2D18-3134 (Fla. 2d DCA Feb. 19, 2020) (affirmed)
- **Foreclosure / Attorneys' Fees:** In two-count foreclosure action seeking both foreclosure and reformation of legal description with borrower prevailing on the reformation count, borrower failed to satisfy her burden to demonstrate that the counts were intertwined and, thus, the trial court abused its discretion in awarding the borrower all her fees and costs, including those attributed to the foreclosure claim - [Household Finance Corp. III v. Williams](#), No. 4D18-1570 (Fla. 4th DCA Feb. 19, 2020) (reversed and remanded)

- **Lis Pendens:** Evidentiary hearing is required on motion to discharge lis pendens when plaintiff's action, as here, is not founded on duly recorded instrument or a chapter 713 lien, but instead alleges a nexus to the affected real property - [Carollo v. Henderson](#), No. 5D19-2484 (Fla. 5th DCA Feb. 21, 2020) (certiorari granted; order quashed)

Financial Services Update

- **FDCPA:** "Vague and unsubstantiated deposition testimony" of consumer stating that he told debt collector to stop calling him was insufficient to overcome debt collector's evidence that the phone calls placed to consumer went either unanswered or were recorded and did not reflect consumer's request that debt collector stop calling - [Allen v. Credit Collection Servs., Inc.](#), No. 2:18-cv-00929 (E.D. Cal. Feb. 18, 2020) (granting summary judgment to debt collector on consumer's FDCPA claim)
- **FCRA / Inaccurate Reporting / Sufficiency of Allegations:** Consumer's failure to link Capital One debt to inaccurate reporting in his credit report warranted dismissal of consumer's FCRA claim - [White v. Portfolio Recovery Assocs. LLC](#), No. 4:19-cv-02743 (N.D. Cal. Feb. 18, 2020) (granting dismissal with prejudice)
- **TCPA / ATDS / Use of Clicker Agent:** Use of a clicker agent to initiate calls to consumers does not qualify as an automatic telephone dialing system under the TCPA - [Meier v. Allied Interstate, LLC](#), No. 3:18-cv-01562 (S.D. Cal. Feb. 19, 2020)

Title Insurance Update

- No cases of interest to report.

Related Practices

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