

Real Property, Financial Services, & Title Insurance Update: Week Ending January 31, 2020

February 12, 2020

Real Property Update

- **HOA / Contracts:** Trial court erred by entering a post-judgment enforcement order requiring the association to assign its riparian rights to plaintiff pursuant to an enforceable settlement agreement, as the order constituted a material change to the essential terms of the settlement agreement – [Four Ambassadors Master Ass’n, Inc., v. Vice City Marina, LLC](#), Nos. 3D18-2593, 3D19-102, 3D18-1294 & 3D18-1292 (Fla. 3d DCA Jan. 29, 2020) (affirmed in part and reversed in part)
- **Arbitration:** Arbitration provision found in licensing, consignment, and lease agreement was not waived because of financial default, as that very dispute is an arbitrable issue – [Yam Export & Import LLC v. Nicaragua Tobacco Imports, Inc.](#), No. 3D19-1083 (Fla. 3d DCA Jan. 29, 2020) (reversed and remanded, with instructions)
- **Listing Agreement:** Procuring cause doctrine cannot be inferentially incorporated to supersede the formalized intent of the parties to the written listing agreement – [Esslinger-Wooten-Maxwell, Inc. v. Lones Family Ltd. P’ship](#), Nos. 3D19-49, 3D19-135 (Fla. 3d DCA Jan. 29, 2020) (affirming summary judgment)\

Financial Services Update

- **TCPA / Standing:** Companies’ phone calls to individuals’ cell phones without individuals’ consent was sufficient to establish Article III injury and to give plaintiffs standing – [Glasser v. Hilton Grand Vacations Co.](#), Nos. 18-14499, 18-14586 (11th Cir. Jan. 27, 2020)

- **TCPA / Definition of ATDS:** Interpreting definition of ATDS and concluding that the clause “using a random or sequential number generator” modifies both verbs “to store” and “[to] produce” – [Glasser v. Hilton Grand Vacations Co.](#), Nos. 18-14499, 18-14586 (11th Cir. Jan. 27, 2020)
- **TCPA / ATDS:** Because companies’ phone systems did not use randomly or sequentially generated numbers and because one of the phone systems in one of the individual’s appeal required human intervention and thus was not an auto-dialer, the TCPA did not cover them – [Glasser v. Hilton Grand Vacations Co.](#), Nos. 18-14499, 18-14586 (11th Cir. Jan. 27, 2020)
- **TCPA / Willful Violation:** Agency’s use of recordings to contact individual 13 times after revocation of consent amounted to willful violation of TCPA – [Glasser v. Hilton Grand Vacations Co.](#), Nos. 18-14499, 18-14586 (11th Cir. Jan. 27, 2020)
- **FCRA / Statute of Limitations:** Each alleged failure to conduct a reasonable investigation in response to a dispute is a separate FCRA violation subject to its own statute of limitations – [Milgram v. Chase Bank USA, N.A.](#), No. 0:19-cv-60929 (S.D. Fla. Jan. 25, 2020)
- **FCRA / Preemption of FCCPA Credit Reporting Claims:** FCRA preempted FCCPA claims to the extent they were based on furnishing of information to credit reporting agencies – [Milgram v. Chase Bank USA, N.A.](#), No. 0:19-cv-60929 (S.D. Fla. Jan. 25, 2020)
- **FCRA / 1681s-2(a) / No Private Right of Action:** To the extent claims were premised on section 1681s-2(a)’s required duty to provide accurate information, dismissal was proper because there is no private right of action for purported violations of that subsection – [Milgram v. Chase Bank USA, N.A.](#), No. 0:19-cv-60929 (S.D. Fla. Jan. 25, 2020)
- **FCCPA / Sufficiency of Allegations:** Plaintiff failed to plausibly allege facts giving rise to the FCCPA claim where plaintiff (1) blankly stated that defendant “knew or had reason to know” that plaintiff did not owe a certain amount on a mortgage without providing detail as to how or why the defendant may have known this, and (2) provided sparse allegations regarding the alleged collection efforts – [Guerra v. Destiny Homes of Fla., Inc.](#), No. 8:19-cv-00985 (M.D. Fla. Jan. 28, 2020) (granting dismissal motion with leave to amend)

Title Insurance Update

- **Indemnification:** On summary judgment motion, title insurance underwriter failed to meet prima facie burden of showing settlement agent was at fault for injuries arising from its failure to ensure that mortgage was first lien mortgage by failing to verify satisfactions presented at closing were legitimate; although closing instructions stated insured lenders were to be in first lien position, they did not list what settlement agent was specifically required to do, if anything, to ensure this, and underwriter made no showing as to settlement agent’s duties to verify the fraudulent satisfactions – [Commonwealth Land Title Ins. Co. v. Sirianni](#), No. 154460/2019 (N.Y. Sup. Ct. Jan. 21, 2020) (order denying summary judgment)

Related Practices

Consumer Finance

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