

Real Property, Financial Services, & Title Insurance Update: Week Ending July 3, 2020

July 03, 2020

Real Property Update

- **Premises Liability / Summary Judgment:** Trial court erred by granting summary judgment in favor of developer where there was a disputed issue of material fact regarding whether an uncommon design or mode of construction created a hidden danger that a prudent invitee would not anticipate - [Echevarria v Lennar Homes, LLC](#), No. 3D19-1422 (Fla. 3d DCA July 1, 2020) (reversed and remanded)
- **Business Records Exception:** The proper predicate for admission of records into evidence under the business records exception to the hearsay rule can be laid by a qualified witness testifying to the foundational requirements set forth in section 90.803(6), using the language of the statute or a close approximation of it - [Jackson v. Household Fin. Corp. III](#), No. SC18-357 (Fla. July 2, 2020) (approving of Second District Court of Appeal's decision in [Jackson v. Household Fin. Corp. III](#), 236 So. 3d 1170 (Fla. 2d DCA 2018), and disapproving of Fourth District Court of Appeal's decision in [Maslak v. Wells Fargo Bank, N.A.](#), 190 So. 3d 656 (Fla. 4th DCA 2016))

Financial Services Update

- **FDCPA / Foreclosure:** FDCPA does not apply if only seeking to foreclose on property to enforce a security interest, without regard for any additional debt that may be owed - [Barnes v. Routh Crabtree Olsen, PC](#), No. 16-35418 (9th Cir. June 30, 2020) (affirming order granting motion to dismiss FDCPA claims)
- **FDCPA / "Debt Collector":** Failure to allege debt is in default at time obtained by servicer is fatal to FDCPA claim - [Cannioto v. Simon's Agency, Inc.](#), No. 6:19-cv-06686 (W.D.N.Y. June 30, 2020) (denying motion for reconsideration of order dismissing FDCPA claim)

- **FDCPA / Equitable Relief:** FDCPA does not provide individuals with equitable relief - [Cooper v. PHEAA](#), No. 19-13680 (11th Cir. June 30, 2020) (affirming order granting dismissal motion)
- **TCPA / Actionable Conduct:** Employment opportunities sent via text did not violate the TCPA - [Gerrard v. Acara Sols., Inc.](#), No. 1:18-cv-01041 (W.D.N.Y. June 30, 2020) (dismissing complaint with prejudice because amendment would be futile as text messages providing alert about employment opportunity are not "advertisements" or "telemarketing" under the TCPA's implementing regulations)
- **Dodd-Frank Wall Street Reform and Consumer Protection Act / CFPB:** CFPB's independent, single-director structure violates the separation of powers - [Seila Law LLC v. Consumer Fin. Prot. Bureau](#), No. 19-7 (U.S. June 29, 2020)
- **Colorado Consumer Protection Act / Applicability:** CCPA does not have extraterritorial application - [Thomas v. Klimpton Hotel & Rest. Grp., LLC](#), No. 3:19-cv-01860 (N.D. Cal. June 30, 2020) (dismissing CCPA claim because there were no allegations that a causal or legally cognizable relationship existed between Colorado and the harm alleged by plaintiff)
- **Pennsylvania UTPCPL / Applicability:** Pennsylvania Unfair Trade Practices and Consumer Protection Law does not apply to nonresidents for actions occurring outside Pennsylvania if defendant is not headquartered in Pennsylvania - [Thomas v. Klimpton Hotel & Rest. Grp., LLC](#), No. 3:19-cv-01860 (N.D. Cal. June 30, 2020) (dismissing UTPCPL claim because there were no allegations that a causal or legally cognizable relationship existed between Pennsylvania and the harm alleged by plaintiff)
- **NY GBL § 349 / Applicability:** New York General Business Law section 349 does not have extraterritorial application - [Thomas v. Klimpton Hotel & Rest. Grp., LLC](#), No. 3:19-cv-01860 (N.D. Cal. June 30, 2020) (dismissing claim under New York General Business Law section 349 because there were no allegations that a causal or legally cognizable relationship existed between New York and the harm alleged by plaintiff)
- **TDTPA / Applicability:** Texas Deceptive Trade Practices Act does not have extraterritorial application - [Thomas v. Klimpton Hotel & Rest. Grp., LLC](#), No. 3:19-cv-01860 (N.D. Cal. June 30, 2020) (dismissing TDTPA claims based on lack of a causal or legally cognizable relationship between location of the hotel and the harm alleged by plaintiff)
- **Maryland Consumer Protection Act / Applicability:** MCPA does not have extraterritorial application - [Thomas v. Klimpton Hotel & Rest. Grp., LLC](#), No. 3:19-cv-01860 (N.D. Cal. June 30, 2020) (dismissing MCPA claim because there were no allegations that a causal or legally cognizable relationship existed between location of the hotel and the harm alleged by plaintiff)

- **FDCPA / 1692e / False Representation:** Nothing improper with including "validation notice" with service of summons and complaint - [Vaccaro v. Chiari & Ilecki, LLP](#), No. 6:19-cv-06351 (W.D.N.Y. July 2, 2020) (finding no misstatement or ambiguity in the notice sent to plaintiff)
- **FDCPA / 1692e and 1692g / Ambiguity:** Debit and credit amounts listed on written notice create ambiguity - [Leitner v. Client Servs., Inc.](#), No. 1:20-cv-00700 (E.D.N.Y. June 26, 2020) (denying motion to dismiss because figures in written notice could confuse the least sophisticated consumer and, thus, constitute violations of FDCPA)

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