

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

July 31, 2020

Real Property Update

- **Foreclosure / Surviving Lien:** Lender's lien on mobile home survived foreclosure sale of property where mobile home was located; mobile home remained personal property outside scope of foreclosure – [ARK Real Estate Servs., Inc. v. 21st Mortg. Corp.](#), No. 4D20-122 (Fla. 4th DCA July 29, 2020) (affirming trial court's entry of judgment against purchaser on lender's claims of conversion and civil theft)
- **Lien Priority:** Under the clear and unambiguous plain language of Florida Statutes section 197.122(1), prior recorded mortgage was superior to the tax lien because the taxes were not assessed against the subject property as required under section 197.122(1) – [Kelly v. Green Tree Servicing, LLC](#), No. 4D19-1454 (Fla. 4th DCA July 29, 2020) (affirming judgment in favor of lender)
- **Foreclosure / Sanctions:** Trial court improperly entered default judgment as sanctions against borrower without making appropriate findings for sanctions under [Kozel v. Ostendorf](#), 629 So. 2d 817 (Fla. 1993) – [Ballard v. Bank of Am, N.A.](#), No. 2D19-1509 (Fla. 2d DCA July 29, 2020) (reversing default order and final judgment and remanding for trial court to reconsider default sanctions using the [Kozel](#) analysis with written findings of fact as to each factor)

Financial Services Update

- **FDCPA / Standing:** Plaintiff failed to allege a sufficient injury in fact to confer standing where harm was only confusion without any possible financial or legal consequences – [Cooper v. Atl. Credit & Fin. Inc.](#), No. 19-12177 (11th Cir. July 28, 2020) (vacating dismissal on the merits for failure to state a claim and remanding with instructions that district court dismiss the case for want of jurisdiction)

- **Bankruptcy / Standing:** Debtor in Chapter 7 bankruptcy lacked standing to assert claims for fraud or wrongful foreclosure because property remains in the estate while bankruptcy case remains open, unless it is explicitly abandoned – [In re Solano](#), Nos. CC-19-1258-GFS, CC-19-1259-GFS (B.A.P. 9th Cir. July 24, 2020) (affirming dismissal)
- **FCRA:** Borrower claimed that bank’s continued reporting of debt was misleading and inaccurate because the statute of limitations had run on the debt; claim was dismissed because dispute regarding whether debts had been discharged under statute of limitations is a legal one, not a factual inaccuracy in the reporting – [Holland v. Chase Bank USA, N.A.](#), No. 1:19-cv-00233 (S.D.N.Y. July 28, 2020) (dismissing FCRA claim)

Title Insurance Update

- No cases of interest to report.

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