

Real Property, Financial Services, & Title Insurance Update: Week Ending March 20, 2020

March 20, 2020

Real Property Update

- **Foreclosure / Surplus:** Purchaser of real property per an agreement for deed was not the record owner and could not claim foreclosure sale surplus – [Corey v. Neuffer](#), No. 2D19-1083 (Fla. 2d DCA Mar. 20, 2020) (reversed and remanded)
- **Statute of Limitations:** Four-year limitation period for a facial constitutional challenge of a county ordinance runs from the date the ordinance is adopted – [Manatee Cnty. v. Mandarin Dev., Inc.](#), No. 2D18-4053 (Fla. 2d DCA Mar. 18, 2020) (affirmed in part, reversed in part, and remanded)
- **Partition:** Summary judgment of partition was improper where movant failed to address co-tenant's defenses, which put at issue each owner's proportionate interest – [Lupo v. Lawson](#), No. 2D19-979 (Fla. 2d DCA Mar. 18, 2020) (reversed and remanded)
- **Foreclosure / Standing:** Lender proved standing at inception of foreclosure action and at trial by presenting original note with a blank endorsement, which was identical to the copy attached to the initial complaint – [U.S. Bank, N.A. v. Mink](#), No. 2D18-958 (Fla. 2d DCA Mar. 20, 2020) (reversed and remanded)

Financial Services Update

- **FDCPA:** Delinquent tax payments do not constitute "debt" under the FDCPA; therefore, attempts to collect such payments do not give rise to any liability under the statute – [Dressler v. Equifax, Inc.](#), No. 19-11366 (11th Cir. Mar. 16, 2020) (affirming in part and reversing in part dismissal of third amended complaint)

- **TCPA:** Plaintiff's allegations that he received multiple promotional text messages in a relatively short period of time, each containing the same basic content from defendants with whom he did not have a preexisting relationship, stated a plausible TCPA claim that an automatic telephone dialing system was used to send the unwanted messages; these allegations together with the alleged silent pause between the time he answered the phone calls and when he heard a voice on the other end also supported his TCPA claim that defendants used an automatic telephone dialing system to place a number of unwanted phone calls to him – [Schley v. One Planet Ops Inc.](#), No. 3:20-cv-00203 (N.D. Cal. Mar. 18, 2020) (denying in part and holding moot in part motion to dismiss)
- **TCPA:** Defendant's inclusion of a link to its app in the text message it sent confirming plaintiff's travel reservation did not violate the TCPA because no telemarketing was involved and because defendant was not advertising its app but rather was providing plaintiff with another means of managing his reservation – [Phan v. Agoda Co. Pte. Ltd.](#), No. 19-15015 (9th Cir. Mar. 17, 2020) (affirming summary judgment in defendant's favor)
- **TCPA / FDCPA:** Plaintiff's TCPA, FDCPA, and invasion of privacy claims were subject to arbitration where a valid, enforceable arbitration agreement existed between plaintiff and defendant, Credit One Bank, N.A., and it was immaterial that other parties were joined in the action as defendants – [Gonzales v. Credit One Bank, N.A.](#), No. 1:19-cv-00733 (E.D. Cal. Mar. 17, 2020) (granting motion to compel arbitration)

Title Insurance Update

- **Title Agent:** Title insurance companies and title insurance agents play different roles in real estate transactions. The title insurance company insures real property titles. The title insurance agent sells title insurance, collects the premiums, and issues or countersigns policies for the insurance company. This agent is usually a title and abstract company, which provides assorted services to its clients, such as selling title insurance, researching the title for that insurance, surveying the realty, and "closing" through escrow agents – [Wulchin Land, LLC v. Ellis](#), No. 13-18-00156 (Tex. App. Mar. 19, 2020) (memorandum opinion reversing summary judgment)
- **Title Commitment:** Title commitment comes before closing; the title policy is issued after closing. The commitment says that a title company is willing to issue title insurance under certain conditions and if the seller fixes certain problems. The policy provides coverage for the property. The title commitment lists any potential issues, exclusions, or exceptions. It alerts the buyer to issues that exist and could cause problems in the future. *It does not guarantee that there are no current issues or that none will arise in the future* – [Wulchin Land, LLC v. Ellis](#), No. 13-18-00156 (Tex. App. Mar. 19, 2020) (memorandum opinion reversing summary judgment)

- **RESPA:** Home buyers who filed putative class action against real estate brokerage and title company, alleging that a kickback scheme deprived them of impartial and fair competition between settlement services providers, failed to allege a concrete injury under RESPA, could not establish injury in fact, and lacked standing to sue – [Baehr v. Creig Northrop Team, P.C.](#), No. 19-1024 (4th Cir. Mar. 13, 2020) (vacating summary judgment and remanding with instructions to dismiss)
- **Damages:** The proper measure of damages pursuant to a loan policy of title insurance is limited to the actual losses suffered by the insured, and, thus, in a priority dispute, the insured lender is limited to the amount of proceeds it would have received from a foreclosure sale if the superior lien had not existed – [RCN Capital, LLC v. Chicago Title Ins. Co.](#), No. AC 42082 (Conn. App. Mar. 17, 2020) (opinion affirming judgment)
- **RICO:** Dismissal of RICO claim with prejudice because pro se plaintiff's amended complaint failed to plausibly allege any injury in fact that was not time-barred – [Parsaram v. Chicago Title Ins. Co.](#), No. 18-cv-02283 (E.D.N.Y. Mar. 13, 2020) (order adopting report and recommendation dismissing pro se plaintiff's case and RICO claims with prejudice)

Related Practices

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