

Real Property, Financial Services, & Title Insurance Update: Week Ending March 27, 2020

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Real Property Update

- **Foreclosure / Notice:** Bank's evidence was legally insufficient to prove that default notice was mailed where bank's only evidence was inadmissible hearsay to which the borrowers objected; bank's evidence consisted of testimony by the bank's witness who had no personal knowledge that the letter was mailed, bank did not establish its routine practice for mailing default letters, and the only record the bank introduced was a copy of the certified mail card - [Mace v. M&T Bank](#), No. 2D16-3381 (Fla. 2d DCA Mar. 25, 2020) (reversing and remanding foreclosure judgment with instruction for the trial court to enter an order of involuntary dismissal)
- **Foreclosure / Scope of Remand:** Under *Tracey v. Wells Fargo Bank, N.A.*, 246 So. 3d 1152 (Fla. 2d DCA 2019), an appellate court reviewing the sufficiency of the evidence after a nonjury trial may properly exclude inadmissible, objected-to evidence from its consideration; bank was not entitled to new trial - [Mace v. M&T Bank](#), No. 2D16-3381 (Fla. 2d DCA Mar. 25, 2020) (reversing and remanding foreclosure judgment with instruction for the trial court to enter an order of involuntary dismissal)
- **Foreclosure / Intervention:** Trial court erroneously permitted purchaser pendent lite to intervene in foreclosure action where certificate of title was issued to purchaser after foreclosure complaint and lis pendens were filed - [HSBC Bank USA v. Achinelli](#), No. 2D18-4848 (Fla. 2d DCA Mar. 25, 2020) (reversing order dismissing foreclosure action)

- **Foreclosure / Standing:** Trial court erred in granting dismissal of foreclosure action based on the date difference between the copy of the allonge attached to the complaint and the original; assignee/plaintiff only required to present evidence that allonge had been executed before foreclosure complaint was filed - [Elizon DB Transfer Agent, LLC v. Ivy Chase Apartments, Ltd.](#), No. 2D19-1853 (Fla. 2d DCA Mar. 25, 2020) (reversing and remanding for new trial)
- **Foreclosure:** Bank reasonably interpreted borrowers' cease-and-desist letter as indicia of unwillingness to commit to face-to-face meeting required under 24 C.F.R. § 203.604(b), vitiating the requirement to conduct the meeting before filing the foreclosure action - [Bank of America, N.A. v. Jones](#), No. 4D19-1164 (Fla. 4th DCA Mar. 25, 2020) (reversing and remanding involuntary dismissal of foreclosure action)

Financial Services Update

- **RESPA / FDCPA / FCCPA / TILA:** Borrowers stated viable claims for violations of RESPA, FDCPA, FCCPA, and TILA arising out of foreclosure action and servicer/owner's failure to provide requested information relating to a loan modification, failure to adequately respond to qualified written request, and provision of misleading statements directly to represented borrowers - [Roche v. Rushmore Loan Mgmt. Servs., LLC](#), No. 1:19-cv-24872 (S.D. Fla. Mar. 25, 2020) (denying defendants' motion to dismiss)
- **TCPA / Text Messages / Standing:** Plaintiff lacked sufficient injury in fact to have standing for TCPA claim when basis of claim was only five unauthorized text messages - [Eldridge v. Pet Supermarket Inc.](#), No. 1:18-cv-22531 (S.D. Fla. Mar. 10, 2020) (granting defendant's motion to dismiss)
- **FCRA / Employer Disclosure / Standing:** Employees lacked Article III standing to bring FCRA claim against employer for inadequately disclosing its intent to obtain consumer reports on them because they did not demonstrate that they were confused by the disclosure and would not have signed it had it contained a sufficiently clear disclosure - [Ruiz v. Shamrock Foods Co.](#), No. 18-56209 (9th Cir. Mar. 20, 2020) (affirming summary judgment for defendant in putative class action)
- **ECOA:** Plaintiff's ECOA claim, based upon denial of mortgage application based on race, was insufficient because plaintiff failed to demonstrate that she was qualified for the loan she sought - [Harrison v. Wells Fargo Bank](#), No. 3:18-cv-07824 (N.D. Cal. Mar. 20, 2020) (granting summary judgment for defendant)

- **FCRA / Employer Disclosure:** Employer may provide concise explanation of the phrase "that a consumer report may be obtained for employment purposes" without violating FCRA; right provided by FCRA to dispute inaccurate information in consumer report does not require opportunity to discuss reports directly with employer; FCRA requires that employer provide a description of right to dispute with CRA the completeness or accuracy of any information contained in consumer's file - [Walker v. Fred Meyer, Inc.](#), No. 18-35592 (9th Cir. Mar. 20, 2020) (affirming dismissal of pre-adverse action notice claim, reversing dismissal of other claims, and remanding)

Title Insurance Update

- **Continuation of Coverage:** Title insurance coverage is limited to the period from the effective date of the policy until the insured conveys away its interest in the land, unless, in the conveyance, the insured gives warranties to the grantee - [Security Title Guarantee Corp. of Baltimore v. 915 Decatur St. NW, LLC](#), No. 1:18-cv-01128 (D.D.C. Mar 23, 2020) (amended memorandum opinion granting in part and denying in part cross-motions for summary judgment)
- **Duty to Defend:** If the insured demonstrates that claims in an underlying lawsuit would result in losses or damages incurred by the insured during the time the insured owned the property, the continuation of coverage clause does not bar those claims, even if they are made after the insured conveys title to the property - [Security Title Guarantee Corp. of Baltimore v. 915 Decatur St. NW, LLC](#), No. 1:18-cv-1128 (D.D.C. Mar. 23, 2020) (amended memorandum opinion granting in part and denying in part cross-motions for summary judgment)
- **Duty to Defend:** Insured's claim based on trespass on title action against it arising from facts that occurred before the policy went into effect and as insured was acquiring title to the property are not covered and do not require the insurer to defend - [Security Title Guarantee Corp. of Baltimore v. 915 Decatur St. NW, LLC](#), No. 1:18-cv-01128 (D.D.C. Mar. 23, 2020) (amended memorandum opinion granting in part and denying in part cross-motions for summary judgment)
- **Continuation of Coverage:** A special warranty deed will not extend coverage after insured has deed property to third party because the only warranties given in such a deed would cover only defects attaching or created subsequent to the effective date of the policy - [Security Title Guarantee Corp. of Baltimore v. 915 Decatur St. NW, LLC](#), No. 1:18-cv-01128 (D.D.C. Mar. 23, 2020) (amended memorandum opinion granting in part and denying in part cross-motions for summary judgment)
- **Exclusion 3(a):** An allegation that the insured prepared a false deed and forged the signature on it is not covered, and the insurer has no duty to defend the insured as the claim was created or agreed to by the insured - [Security Title Guarantee Corp. of Baltimore v. 915 Decatur St. NW, LLC](#), No. 1:18-cv-01128 (D.D.C. Mar. 23, 2020) (amended memorandum opinion granting in part and denying in part cross-motions for summary judgment)

- **Definition of Insured:** Plaintiff who sues on a policy of title insurance and whose wife is identified as the insured in the policy that was issued before the property was deeded to him fails to state a cause of action against the title insurer where the policy attached to the complaint does not have a successor provision - [Angelo v. NVR, Inc.](#), No. 1:18-cv-00523 (D. Del. Mar. 24, 2020) (memorandum opinion granting motion to dismiss)

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