

Real Property, Financial Services, & Title Insurance Update: Week Ending March 6, 2020

March 06, 2020

Real Property Update

- **Foreclosure / Law of the Case:** Motion to vacate that attempted to re-litigate issues on standing that had been rejected on direct appeal was precluded by the law of the case doctrine – [Schwartz v. Bank of America, N.A.](#), No. 4D19-3942 (Fla. 4th DCA Mar. 4, 2020) (affirming denial of motion to vacate)

Financial Services Update

- **RESPA & FDCPA / Injunctive Relief:** Plaintiff's reliance on RESPA and the FDCPA to seek injunctive relief failed because violations of those statutes do not support request for injunctive relief – [Renfro v. Nationstar Mortg., LLC](#), No. 3:20-cv-00191 (M.D. Fla. Mar. 4, 2020)
- **TCPA / Direct & Vicarious Liability:** Plaintiff failed to plausibly plead that company is directly or vicariously liable for alleged violation of the TCPA when plaintiff received unsolicited text message on cellular phone with a hyperlink directing him to job board on company's website – [Rogers v. Postmates Inc.](#), No. 3:19-cv-05619 (N.D. Cal. Mar. 3, 2020) (granting dismissal motion with leave to amend)
- **RESPA / Sufficiency of Allegations:** Plaintiff failed to state a cause of action under RESPA because pleading did not allege any actual damages, nor clearly allege that plaintiff sent defendant a QWR – [Catherine v. Wells Fargo Bank N.A.](#), No. 2:19-cv-01487 (E.D. Cal. Mar. 3, 2020)

- **RESPA:** Plaintiff's complaint sufficiently alleged violations of RESPA's notice and procedure requirements when one count alleged that defendant violated the statute when it denied plaintiff's first loss mitigation application on the basis of excessive delinquency but without explanation as to why excessive delinquency should have any bearing on eligibility for a loss mitigation option, and another count alleged that defendant violated RESPA by not providing a 30-day notice as to the status of the plaintiff's second application, and the complaint contained sufficient factual matter to support a reasonable inference that defendant had not previously complied with RESPA for a complete loss mitigation application such that defendant would be exempt from further compliance with the statute – [St. Louis v. Selene Fin., LP](#), No. 1:18-cv-06182 (E.D.N.Y. Feb. 27, 2020)
- **FDCPA / False Name Exception:** Plaintiff failed to allege that defendant creditor became subject to the FDCPA under the false name exception when plaintiff made no allegation that he was confused by creditor's business name – [Scalabrini v. PMAB, LLC](#), No. 7:18-cv-11152 (S.D.N.Y. Mar. 3, 2020) (granting dismissal motion, in part)

Title Insurance Update

- **Title Commitment:** A title insurance policy supersedes the title commitment, and by issuing a policy, the insurer nullifies or waives any unfulfilled requirements – [Mazel v. Las Cruces Abstract & Title Co.](#), No. 14-cv-13729 (Bankr. D. N.M. Feb. 28, 2020) (opinion granting summary judgment)
- **Easements:** Storm and sewer pipes either came within the scope of exclusion for unrecorded easements, or exception for the plat, or constituted a trespass on the insured's property, but under any of these scenarios, the insured was not entitled to relief under the policy – [Harris v. Fidelity Nat'l Title Ins. Co.](#), No. 346156 (Mich. App. Ct. Feb. 27, 2020) (opinion affirming summary disposition)

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