

Real Property, Financial Services, & Title Insurance Update: Week Ending May 22, 2020

May 22, 2020

Real Property Update

- **Wrongful Foreclosure:** Borrower could not sustain wrongful foreclosure claim against lender where certificate of sale had been vacated and certificate of title was never issued – [Jallali v. Christiana Tr.](#), No. 4D19-2717 (Fla. 4th DCA May 20, 2020)
- **Broker Commission:** Business owner’s affidavit contesting authenticity of broker sale agreement created an issue of fact that precluded summary judgment in favor of broker – [Atallah v. Transworld Bus. Brokers of Fla., LLC](#), No. 4D18-3804 (Fla. 4th DCA May 20, 2020) (summary judgment reversed and remanded)

Financial Services Update

- **FDCPA / Standing:** Mischaracterization of plaintiff’s debt constitutes an injurious withholding of information that the FDCPA requires the debt collector to disclose to plaintiff – [Hill v. Resurgent Capital Servs., L.P.](#), No. 1:20-cv-20372 (S.D. Fla. May 20, 2020) (denying motion to dismiss)
- **FDCPA / Preemption:** Bankruptcy code does not preempt FDCPA where proof of claim allegedly mischaracterized the amount as principal – [Hill v. Resurgent Capital Servs., L.P.](#), No. 1:20-cv-20372 (S.D. Fla. May 20, 2020) (denying motion to dismiss)
- **FCRA / Standing:** Plaintiff lacks Article III standing where complaint fails to allege “consumer disclosure report actually harmed — or presented a material risk of harm to — his concrete interests” – [Hogue v. Silver State Schools Credit Union](#), No. 18-15204 (9th Cir. May 19, 2020) (affirming dismissal of complaint with instructions)

- **FDCPA / Sanctions / § 1692k(a)(3):** Sanctions recoverable under FDCPA per section 1692k(a)(3) where plaintiff's counsel "brings a case without its client's knowledge or involvement" – [Alcivar v. Enhanced Recovery Co.](#), No. 1:17-cv-02275 (E.D.N.Y. May 20, 2020)

Title Insurance Update

- **Notice:** Title insurer must demonstrate prejudice before a court can find insured is not entitled to reimbursement for fees as to an action for which notice was not given – [Fansler v. N. Am. Title Ins. Co.](#), No. N17C-09-015 (Del. Sup. Ct. May 18, 2020) (memorandum opinion denying title insurer's motion for summary judgment)
- **Access:** Issues as to whether insured's claim based on a lack of access was not covered because (i) access easement had never been challenged, (ii) the survey was incorrect, and (iii) insured had knowledge about the problem, require a complete factual record for the court to rule on summary judgment – [Fansler v. N. Am. Title Ins. Co.](#), No. N17C-09-015 (Del. Sup. Ct. May 18, 2020) (memorandum opinion denying title insurer's motion for summary judgment)

Related Practices

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