

Real Property, Financial Services, & Title Insurance Update: Week Ending November 13, 2020

November 13, 2020

Real Property Update

- **Foreclosure / Standing:** affirming payment order entered pursuant to section 702.10(2), Florida Statutes, against a subsequent purchaser in favor of US Bank as the application of the statute was not retroactive – [78D Team, LLC v. US Bank, N.A.](#), No. 3D19-1708 (Fla. 3d DCA Nov. 12, 2020)
- **Foreclosure Sale / Attempt to Vacate Sale:** purchaser did not demonstrate adequate grounds to vacate foreclosure sale where due diligence would have revealed a superior mortgage on the property and purchaser’s failure to investigate the status of the property before purchasing it at a foreclosure sale was attributable solely to purchaser – [Can Financial, LLC v. Niklewicz](#), No. 4D19-3668 (Fla. 4th DCA Nov. 12, 2020) (reversing trial court’s order vacating foreclosure sale)
- **Foreclosure / Deficiency:** trial court improperly relied on borrower’s unsworn statements and hearsay in the form of dollar amounts contained in 1099-A forms in entering final judgment in favor of borrower in action to recover deficiency judgment against him – [Dyck-O’Neal, Inc. v. Herman](#), No. 4D19-3311 (Fla. 4th DCA Nov. 12, 2020) (reversed and remanded)
- **Foreclosure / Lien / Fees:** condominium association failed to give proper notice of intent to record a second claim of lien under section 718.121(4), Florida Statutes, where prior notice given was for a lien that had been extinguished; association also failed to properly apply owner’s payments as they were received under section 718.116(3), Florida Statutes – [Rajabi v. Villas at Lakeside Cond. Ass’n, Inc.](#), No. 5D18-852 (Fla. 5th DCA Nov. 13, 2020) (reversing and remanding final judgment of foreclosure)

Financial Services Update

- **FCRA / Employment Background Checks:** plaintiff failed to state a claim under any of the FCRA provisions dealing with information and notices an employer is required to provide before taking an adverse action based on a consumer report because plaintiff's complaint lacked allegations that the information that actually lead to his termination was, in fact, a consumer report as that term is defined in the FCRA – [Rodriguez v. His House Children's Home](#), No. 20-21134-Civ-Scola (S.D. Fla. Nov. 5, 2020) (granting defendant's dismissal motion)
- **RESPA / Foreclosure:** complaint lacked factual allegations regarding plaintiff's submission of a loan modification application, which was fatal to RESPA claim – [Gray v. Capstone Fin.](#), No. 20-CV-0896 (GLS/CFH) (N.D.N.Y. Sept. 22, 2020) (recommending dismissal of RESPA claim)

Title Insurance Update

- **Class Action / Recording Overcharge:** plaintiffs failed to show the requisite commonality and predominance under Rule 23(a) and (b) as the action would likely give rise to numerous mini-trials to determine whether each closing agent breached the closing service letter by committing fraud or misapplication of funds and whether each class member was refunded or offered a refund – [Chassen v. Fidelity Nat'l Financial, Inc.](#), No. 09-cv-00291 (D.N.J. Nov. 10, 2020) (memorandum and order denying class certification)

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