

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

November 20, 2020

Real Property Update

- **Inverse Condemnation:** conditions placed by FDOT on the issuance of a drainage connection permit constituted a land use exaction requiring a factual determination as to whether the drainage improvements exacted by FDOT were roughly proportional to the project's drainage impacts – [Murphy Auto Group, Inc. v. Fla. Dep't of Transp.](#), No. 2D19-1236 (Fla. 2d DCA Nov. 20, 2020) (reversed and remanded)
- **Foreclosure / Redemption:** junior mortgagee who was not joined in foreclosure action retained the right of redemption, and the trial court correctly determined the amount of redemption as the amount it would have been required to pay if it had been joined in the 2012 foreclosure action and had elected to redeem promptly upon the filing of the first foreclosure – [MST Corp v. Caribe Ins. Agency Corp.](#), No. 3D19-2288 (Fla. 3d DCA Nov. 18, 2020) (affirmed)
- **Foreclosure / Discovery:** circuit court improperly struck responses to borrower's requests for admission and to summary judgment motion – [U.S. Bank Trust, N.A., as Trustee v. Petre](#), No. 4D19-2656 (Fla. 4th DCA Nov. 18, 2020) (reversed and remanded)
- **Foreclosure / Summary Judgment:** circuit court improperly granted summary judgment in favor of borrower where verified complaint and sworn certification together with a copy of the original promissory note created genuine issues of material fact, regardless of whether mortgagee timely responded to requests for admissions and summary judgment motion – [U.S. Bank Trust, N.A., as Trustee v. Petre](#), No. 4D19-2656 (Fla. 4th DCA Nov. 18, 2020) (reversed and remanded)

Financial Services Update

- **FCRA / Arbitration:** consumer's claims were arbitrable under 2014 terms of subscription service contract, but not pursuant to 2018 version's changed terms, as consumer's single visit to Experian's website in 2018, after the end of a business relationship, was not enough to bind parties to changed terms in the contract – [Stover v. Experian Holdings, Inc.](#), No. 19-55204 (9th Cir. Oct. 21, 2020) (affirmed)
- **FCRA:** inaccurate contact information in consumer's credit report could not give rise to liability under section 1681e(b) – [Cohen v. Equifax Info. Servs., LLC](#), No. 19-3063 (2d Cir. Sept. 10, 2020) (affirming summary judgment)
- **FCRA:** section 1681g(a) not violated by routing credit queries through CRA's legal team, nor would it be violated by refusing membership in a credit monitoring service – [Cohen v. Equifax Info. Servs., LLC](#), No. 19-3063 (2d Cir. Sept. 10, 2020) (affirming summary judgment)

Title Insurance Update

- **Claim Preclusion / Issue Preclusion:** insured's claims of breach of policy and bad faith against title insurance underwriter, arising from erroneous legal description in title commitment that was corrected in policy, barred by claim preclusion and issue preclusion where they arose from prior action in which insured's claim to property included in original commitment but excluded from policy was fully litigated and adjudicated against insured – [Cummings v. Stewart Title Guaranty Co.](#), No. 4:15-cv-00599-BLW (D. Id. Nov. 17, 2020) (granting summary judgment)
- **E&O Policy Exclusion / Theft of Escrow Funds:** title agent's E&O policy excluded losses due to theft of escrow funds accomplished by third party's fraudulent email spoofing scheme to divert return of lender's escrow funds after closing was postponed; rejecting insured's argument that exclusion only applied to intentional wrongful conduct of insured and not of third parties – [Authentic Title Servs., Inc. v. Greenwich Ins. Co.](#), No. 18-4131 (KSH) (CLW) (D. N.J. Nov. 17, 2020) (granting summary judgment)
- **Duty to Indemnify & Defend:** professional liability insurer's declaratory judgment action against title company, seeking declaration that insurer is not obligated to indemnify and defend title company in state court putative class action seeking reimbursement of closing fees paid by buyers in real estate transactions where sales contracts required sellers to pay such fees, premature as to indemnity declaration and therefore dismissed without prejudice pending outcome of state court action, but allowed to proceed as to insurer's duty to defend in the underlying state court action – [RLI Ins. Co. v. Baywalk Title Inc.](#), No. 8:20-cv-1143-MSS-AEP (M.D. Fla. Nov. 2, 2020) (partially dismissing complaint without prejudice)

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