

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

November 06, 2020

Real Property Update

- **Easement Appurtenant:** easement was presumptively appurtenant (held to run with the land) because (i) it was not terminable except by agreement executed by both parties with formalities of a deed, (ii) there was no evidence to show either party intended the right to be personal and terminable at the will of either party or upon the death of either party – [Devino v. 2436 E. Las Olas, LLC](#), No. 4D19-1931 (Fla. 4th DCA Nov. 4, 2020) (affirmed)
- **Foreclosure / Support for Amount of Damages:** award of costs and interest was stricken for lack of evidentiary support, but further proceedings were not required or appropriate because amount of damages was well-supported – [JB Investment Realty, LLC v. Deutsche Bank Nat’l Trust Co. Americas](#), as Trustee, No. 4D19-3380 (Fla. 4th DCA Nov. 4, 2020) (affirmed in part, reversed in part, and remanded)
- **Mechanics Lien:** contract could use the “last known address” of the owner to effect service of mechanics lien under statute, but summary judgment was improper because the “last known address” and whether the owner suffered prejudice for failing to receive notice of the claim of lien presented questions of fact – [Fettig’s Constr., Inc. v. Paradise Properties & Interiors LLC](#), No. 4D20-133 (Fla. 4th DCA Nov. 4, 2020) (granting petition with direction to quash partial final judgment)

Financial Services Update

- **FDCPA / Bona Fide Error Defense:** debt collector cannot invoke bona fide error defense by requiring creditor-clients to provide only accurate information – [Urbina v. National Business Factors Inc.](#), No. 19-16055 (9th Cir. Nov. 5, 2020)

- **FDCPA / Unauthorized Fee:** FDCPA precludes charges not expressly authorized by underlying agreement, including convenience fees for payments – [Lembeck v. Arvest Central Mortg. Co.](#), No. 20-cv-03277-VC (N.D. Cal. Nov. 3, 2020)
- **FDCPA / Disclosure:** a communication “overshadows or contradicts the validation notice if it would make the least sophisticated consumer uncertain as to her rights” – [Mizrachi v. Wilson, Elser, Moskowitz, Edelman & Dicker LLP](#), No. 20-91-cv (2d Cir. Nov. 5, 2020) (unpublished opinion) (quoting *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 134 (2d Cir. 2010)) (reversing dismissal)

Title Insurance Update

- **Loss / Expert Testimony:** title insurance company’s motion to exclude the testimony of insured’s expert on the ground that expert’s cost-basis methodology is not permitted by Section 7(a)(iii) of the policy, which allows only diminution in value methodology, is an improper challenge under Rule 702 and better suited for summary judgment – [Wells Fargo Bank, N.A. v. Stewart Title Guaranty Co.](#), No. 2:19-cv-00285 (D. Utah Nov. 3, 2020) (memorandum decision and order)
- **Covered Risks / Right to Drainage:** dispute with neighbor over design of insured’s property resulting in flooding of neighbor’s property not within the scope of title insurance policy’s covered risks – [Batstone v. Chicago Title Ins. Co.](#), No. RDB-20-00937 (D. Md. Nov. 2, 2020) (memorandum opinion granting motion for summary judgment)

Related Practices

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