

Real Property, Financial Services, & Title Insurance Update: Week Ending October 2, 2020

October 02, 2020

Real Property Update

- **Equitable Lien:** section 95.11(5)(b)'s one-year statute of limitation does not apply to a purchaser's funds (in excess of 10% of the purchase price), which were used to develop the condominium, as the purchaser provided funds-not "labor, services or materials" - [Gabriji, LLC v. Hollywood East, LLC](#), No. 4D19-3495 (Fla. 4th DCA September 30, 2020) (reversing dismissal and remanding for further proceedings).

Financial Services Update

- **FDCPA / Standing / Convenience Fees:** plaintiff could not establish standing for an FDCPA claim because he was not a party to the agreement creating the debt at the time he paid the convenience fees - [Bowen-Hay v. Ocwen Loan Servicing, LLC](#), No.: 8-20-cv-170-T-36CEH (M.D. Fla. Sept. 25, 2020) (dismissing complaint without prejudice)
- **FDCPA / Assignment of Debt:** triable issues of fact as to whether a reasonable person in plaintiff's position would believe that the assignee considered the debt to be in default or acted as if it were in default when it was assigned - [Denicolo v. The Hertz Corp.](#), No. 19-cv-00210-YGR (N.D. Cal. Sept. 30, 2020) (denying defendant summary judgment)
- **FDCPA / Debt Collection Letters:** second debt collection letter, which merely extended time period for debtor to dispute the debt beyond the initially noticed validation period, neither overshadowed or contradicted the validation period noticed in the first letter, nor was it inherently false or misleading - [Kurzdorfer v. Constar Fin'l Services, LLC](#), No. 19-cv-6430L (W.D.N.Y. Sept. 28, 2020) (dismissing complaint with prejudice)

Title Insurance Update

- **Statutory Bad Faith / Arbitration:** statutory bad faith claim arising from post-breach conduct against title insurer was not arbitrable despite otherwise enforceable arbitration provision in title insurance policy where binding precedent established that original jurisdiction for such claims is vested only in trial courts - [KEB Hana Bank USA, Nat'l Ass'n v. Fidelity Nat'l Title Ins. Co.](#), No. 207 EDA 2020 (Pa. Super. Sept. 29, 2020) (order denying title insurer's motion to compel arbitration affirmed)

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