

# Real Property, Financial Services, & Title Insurance Update: Week Ending September 11, 2020

September 11, 2020

## Real Property Update

- **Due Process / Notice:** due process rights violated in case involving claims for breach of contract for sale of property; party received insufficient notice of motion to amend complaint to add punitive damages and insufficient notice of trial under Florida Rule of Civil Procedure 1.440(c) - [Lemkco Fla., Inc. v. Golf Properties of Fla., LLC](#), No. 5D18-3928 (Fla. 5th DCA Sept. 11, 2020) (reversing order denying motion to set aside final judgment)
- **Community Redevelopment / § 163.380:** notice requirements for disposal of real property under Florida Statutes, section 163.380(3)(a) apply to property acquired by City prior to formation of the community redevelopment area within which the property is located - [Riverside Heights Dev., LLC v. City of Tampa](#), No. 2D19-918 (Fla. 2d DCA Sept. 11, 2020) (reversing declaratory judgment)

## Financial Services Update

- **FCRA / Legitimate Business Need / Verification of Identify:** Dish Network had legitimate business purpose in obtaining consumer report after identity thief fraudulently submitted plaintiff's personal information - [Domante v. Dish Networks, L.L.C.](#), No. 19-11100 (11th Cir. Sept. 9, 2020) (affirming entry of summary judgment)
- **TCPA / Vicarious Liability:** plaintiff sufficiently pleaded vicarious liability based on an agency relationship for TCPA liability - [Tehrani v. Joie de Vivre Hospitality, LLC](#), No. 19-cv-08168 (N.D. Cal. Sept. 9, 2020) (denying motion to dismiss)

- **TCPA / Text Messages / Personal Jurisdiction & Venue:** defendant did not meet burden of demonstrating that exercise of jurisdiction was unreasonable where it sent text messages to Plaintiff's California telephone number and plaintiff had provided her California address; however, transfer of venue to District of Nevada is proper because bulk of underlying events and witnesses are located in Nevada - [Jackson v. Euphoria Wellness, LLC](#), No. 3:20-cv-03297-CRB (N.D. Cal. Sept. 8, 2020) (denying motion to dismiss for lack of personal jurisdiction and granting motion to transfer venue)
- **TCPA / Arbitration:** where plaintiff started entering information on website but did not click the "see my results" button, parties did not form contract such that plaintiff would be subject to arbitration provision - [Hill v. Quicken Loans, Inc.](#), No. ED CV 19-0163 FMO (SPx) (C.D. Cal. Aug. 5, 2020) (denying motion to dismiss and motion to compel arbitration)
- **FDCPA / Section 1692e(5):** debt collector did not violate FDCPA by erroneously sending multiple debt collection communications to plaintiff (Wagner, Sr.) rather than actual debtor (Wagner, Jr.) - [Wagner v. Chiari & Ilecki, LLP](#), No. 19-758 (2d Cir. Sept. 4, 2020) (affirming in part and reversing in part summary judgment for debt collector)
- **FDCPA / Bona Fide Error Defense:** reasonably jury could find that debt collector's error was not bona fide and that it did not maintain procedures reasonably adapted to avoid its error - [Wagner v. Chiari & Ilecki, LLP](#), No. 19-758 (2d Cir. Sept. 4, 2020) (affirming in part and reversing in part summary judgment for debt collector)
- **FDCPA:** debt collectors are not required to quote FDCPA's precise language verbatim; notice was not confusing under least sophisticated consumer standard - [Chaperon v. Sontag & Hyman, PC](#), No. 19-4244 (2d Cir. Sept. 3, 2020) (affirming entry of summary judgment for debt collector)

## Title Insurance Update

- **Fraud / Guaranty:** guarantor's counterclaim of fraud against title insurer who is subrogated to the claims of insured lender failed because notwithstanding the alleged representations made by title insurer as to limited scope of guaranty, guarantor was afforded the opportunity to review the terms of the guaranty and the extent of its reach before he signed it and cannot establish justifiable reliance on the alleges representations - *Chicago Title Ins. Co. v. Brookwood Title Agency LLC*, No. 507480/18 (N.Y. Sup. Ct. Sept. 4, 2020) (decision and order granting motion to dismiss counterclaim)

# Related Practices

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