

Real Property, Financial Services, & Title Insurance Update: Week Ending September 25, 2020

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Real Property Update

No cases of interest this week.

Financial Services Update

- **FDCPA / Definition of "Debt":** a convenience fee is a separate charge for acceptance of payment that is not part of the underlying debt - [Garbutt v. Ocwen Loan Servicing, LLC.](#), No. 8:20-cv-136-T-36JSS (M.D. Fla. Sep. 22, 2020) (dismissing claim under the FDCPA because the convenience fee was not being sought for another and was not in default; thus, defendant was not a "debt collector")
- **TCPA / Fax / Standing:** time wasted reviewing a fax that was sent to email (and that did not occupy a fax line or utilize resources such as paper and toner/ink) did not amount to concrete injury - [Daisy, Inc. v. Mobile Mini, Inc.](#), No. 2:20-cv-17-FtM-38MRM (M.D. Fla. Sep. 24, 2020) (granting summary judgment in party and dismissing without prejudice for lack of standing)
- **FDCPA / Attempt to Collect a Debt:** letter containing the language "This is an attempt to collect a debt" constitutes a communication sent in connection with the collection of a debt - [Schwebel v. Resurgent Capital Services, L.P.](#), No. 19-CV-8821 (KMK) (S.D.N.Y. Sep. 23, 2020) (denying motion to dismiss)

Title Insurance Update

- **Fraud:** denying insured's motion for reconsideration of the order denying its motion for reconsideration of an order granting summary judgment based on the plain language of the title insurance policy exceptions and rejecting insured's theory of a scheme of constructive fraud - [Pandora Distribution, LLC v. Ottawa OH, LLC](#), No. 3:12-cv-2858 (N.D. Ohio Sept. 18, 2020) (memorandum opinion and order denying motion for reconsideration and warning of sanctions should additional motions for reconsideration be filed)
- **Mechanic's Liens / Relief from Judgment:** title insurer's motion to set aside judgment filed 6 years after judgment entered and more than a year after the mandate issued on its affiliated title insurance company's appeal was not filed within a reasonable time - [Commonwealth Land Title Ins. Co. v. Centerpoint Mechanic Lien Claims, LLC](#), No. 1 CA-CV-19-0521 (Az. App. Ct. Sept. 22, 2020) (memorandum decision affirming superior court's order denying motion to set aside judgment)
- **Defamation:** letter to seller of property asking him to indemnify title insurance company pursuant to deed as to a mortgage he had given while owner but which had not been satisfied of record did not constitute defamation where facts in letter were true - [Ezeiruaku v. Fidelity Nat'l Title Ins. Co.](#), No. 1:20-cv-00177 (D. N.J. Sept. 18, 2020) (opinion granting motion to dismiss with prejudice)
- **Escrow Agent / RICO:** where title insurer alleged to have held funds in escrow as part of a scheme to defraud lenders amounts to a securities fraud, it cannot serve as a predicate act for a RICO claim - [Ovation Finance Holdings 2, LLC v. Chicago Title Co.](#), No. 19cv2031-LAB (AHG) (S.D. Cal. Sept. 23, 2020) (order granting in part motion to dismiss)
- **Escrow Agent / Title Insurer:** conclusory allegations that title company and title insurer, separate entities with similar names, are the same and that they are "agents, alter egos, and instrumentalities of one another," based on their common ownership, sharing of same officers, and use of interconnected websites and coordinated operation, were insufficient - [Ovation Finance Holdings 2, LLC v. Chicago Title Co.](#), No. 19cv2031-LAB (AHG) (S.D. Cal. Sept. 23, 2020) (order granting in part motion to dismiss)

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