

Real Property, Financial Services, & Title Insurance Update: Week Ending August 13, 2021

August 13, 2021

Real Property Update

- **Summary Judgment / Refutation of Defenses:** Plaintiff creditor was not entitled to summary judgment for failure to factually refute all defenses raised by debtor – [OTI Fiber LLC v. CenterState Bank, N.A.](#), No. 2D20-1196 (Fla. 2d DCA Aug. 11, 2021) (reversed and remanded)
- **Foreclosure Dismissal / Res Judicata:** Agreed order granting borrower’s motion for involuntary dismissal, which reflected that “defendant shall go hence without delay” and did not state the intent of the court and parties that it be without prejudice, was final, conclusive, and could not be amended after one year of entry, resulting in res judicata effect that bars subsequent claim – [Castro v. Sun ’N Lake of Sebring Improvement Dist.](#), No. 2D20-1102 (Fla. 2d DCA Aug. 13, 2021) (affirmed, in part, reversed in part, remanded for taxation of costs)

Financial Services Update

- **FCRA / Sufficiency of Allegations:** Borrowers stated sufficient claim under FCRA that credit reporting was inaccurate when they believed they were enrolled in auto payments, despite servicer’s allegation that it sent them notice that their auto pay enrollment failed, which was outside four corners of complaint – [Abukhodeir v. Amerihome Mortg. Co.](#), No. 8:21-cv-00563 (M.D. Fla. Aug. 10, 2021) (denying furnisher’s motion to dismiss)
- **TCPA:** District court erred in dismissing TCPA claim for robocall to cellphone with prerecorded message on the basis that message was not advertising or telemarketing; any call to a cellphone using an ATDS or artificial or prerecorded voice requires prior express consent – [Loyhayem v. Fraser Fin. & Ins. Servs., Inc.](#), No. 20-56014 (9th Cir. Aug. 10, 2021) (reversing dismissal of complaint)

- **FCRA / Damages:** Consumer failed to demonstrate any actual damages showing that her credit score was affected by alleged FCRA violations, and thus claim failed for lack of actual damages – [Napoleon v. 5665 Sunrise Highway Corp.](#), No. 2:18-cv-05703 (E.D.N.Y. July 7, 2021) (granting defendant’s motion for summary judgment)

Title Insurance Update

- No cases to report.

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