

Real Property, Financial Services, & Title Insurance Update: Week Ending December 10, 2021

December 11, 2021

Real Property Update

- **UCC / Security Interests:** Eleventh Circuit certified to the Florida Supreme Court the following questions: (1) Is the "search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic," as provided for by Florida Statute section 679.5061(3), limited to or otherwise satisfied by the initial page of 20 names displayed to the user of the registry's search function? (2) If not, does that search consist of all names in the filing office's database, which the user can browse to using the command tabs displayed on the initial page? (3) If the search consists of all names in the filing office's database, are there any limitations on a user's obligation to review the names and, if so, what factors should courts consider when determining whether a user has satisfied those obligations? - [1944 Beach Boulevard, LLC v. Live Oak Banking Co.](#), No. 21-11742 (11th Cir. Dec. 10, 2021) (questions certified)
- **Bert Harris Act / Appraisals:** Trial court erred in concluding that the appraisals were invalid under section 70.001(4)(a) because (1) bona fide, valid appraisals need only to support the claim and demonstrate the loss in fair market value, which the appraisals in this case satisfied because they were prepared by a person qualified to provide an expert opinion as to fair market value; and (2) as a mere presuit requirement, appraisals must only demonstrate a loss in value tied to the government's action to put the government on notice and allow it to evaluate the claim, which the appraisals in this case satisfied by providing sufficient information - [Blue Water Holdings SRC, Inc. v. Santa Rosa Cnty.](#), No. 1D19-4387 (Fla. 1st DCA Dec. 8, 2021) (reversed and remanded)

- **Foreclosure/ Affirmative Defenses / TILA:** To determine whether a transaction is subject to TILA, which does not apply to commercial transactions, a court must examine the transaction as a whole and the purpose for which the credit was extended to determine whether the transaction was primarily consumer or commercial in nature - [Proino Breakfast Club, II, Inc. v. OGI Capital, Inc.](#), No. 2D20-2246 (Fla. 2d DCA Dec. 8, 2021) (reversed and remanded)
- **Foreclosure / Affirmative Defenses / TILA:** Mortgagee failed to refute the borrowers' TILA defense and their claims that the true nature of the loan was for consumer purposes - [Proino Breakfast Club, II, Inc. v. OGI Capital, Inc.](#), No. 2D20-2246 (Fla. 2d DCA Dec. 8, 2021) (reversed and remanded)

Financial Services Update

- **FDCPA / 1692c(a) / Revocation of Consent:** Plaintiff adequately alleged FDCPA claim under section 1692c(a) and that debt collector knew calls were inconvenient, even though plaintiff's revocation of consent occurred verbally during a phone call rather than in writing - [Nieves v. Preferred Collection & Mgmt. Servs., Inc.](#), No. 8:21-cv-01837 (M.D. Fla. Dec. 8, 2021) (denying dismissal motion)
- **FCCPA / 559.72(7) / Request to Cease Calls:** Plaintiff adequately alleged FCCPA claim under section 559.72(7) even though his alleged revocation of consent occurred verbally during a phone call rather than in writing - [Nieves v. Preferred Collection & Mgmt. Servs., Inc.](#), No. 8:21-cv-01837 (M.D. Fla. Dec. 8, 2021) (denying dismissal motion)
- **TCPA / Parties Liable Under Statute:** Plaintiff's complaint dismissed with prejudice because defendant school district was not a person within the meaning of the TCPA and thus is shielded from liability under the TCPA provisions - [Clark v. Buffalo City Sch. Dist.](#), No. 1:21-cv-00700 (W.D.N.Y. Oct. 28, 2021) (dismissing claim with prejudice)

Title Insurance Update

- **Equitable Subrogation:** Equitable subrogation in bank's favor was appropriate where bank (1) paid off a 2006 mortgage to protect its own interest; (2) did not act as a volunteer; (3) was not liable for the debt; and (4) paid off the entire remaining balance of the 2006 mortgage, and where (5) subrogation would not work any injustice on defendant - [Citizens Bank, N.A. v. Teehan](#), No. 21-P-150 (Mass. App. Ct. Dec. 8, 2021) (affirming summary judgment in favor of bank)
- **Homestead Law:** Deed was a void conveyance pursuant to Mississippi homestead law, where property was the homestead of two individuals but only one executed the deed - [Kelly v. Ocwen Loan Servicing LLC](#), No. 2020-CA-01217-SCT (Miss. Dec. 9, 2021) (affirming summary judgment in favor of loan servicer)

- **Statute of Limitations:** Negligence and slander-of-title claims stemming from the preparation and recording of three deeds were barred by the three-year and one-year statutes of limitation, respectively - [Kelly v. Ocwen Loan Servicing LLC](#), No. 2020-CA-01217-SCT (Miss. Dec. 9, 2021) (affirming dismissal of claims)
- **Settlement Agreement / Enforceability of Release of Insurer:** Although a valid and enforceable settlement agreement was reached between counsel via email, a global release, including of insurers, later included in the written draft agreement, was not an essential term of the agreement reached via email - [Hair v. Goldsberry](#), No. 21A-TP-1515 (Ind. Ct. App. Nov. 17, 2021) (reversing in part)

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