

Real Property, Financial Services, & Title Insurance Update: Week Ending January 29, 2021

January 29, 2021

Real Property Update

- **Foreclosure / Retrieval of Original Note & Mortgage:** Assignee and substituted plaintiff lender in dismissed foreclosure action was authorized to retrieve the original note and mortgage from the court's file - [MTGLQ Invs., L.P. v. Merrill](#), No. 1D19-2682 (Fla. 1st DCA Jan. 25, 2021) (reversed and remanded)

Financial Services Update

- **FDCPA & FCCPA / Indirect Liability / False Misrepresentations:** Defendant could not be held liable for alleged false representations that another entity made while acting on defendant's behalf because plaintiff had not presented any evidence to suggest that defendant was aware of, or had any control over, the display of the representations - [Rivas v. Midland Funding, LLC](#), No. 19-13383 (11th Cir. Jan 27, 2021) (affirming summary judgment)
- **FCRA / Willful Violation:** Defendant did not willfully violate the FCRA because, although defendant may have willfully chosen not to pursue particular lines of investigation, this did not show, as a matter of law, that defendant willfully disregarded its statutory duties to conduct a reasonable investigation - [Romero v. Monterey Fin. Servs., LLC](#), No. 3:19-cv-01781 (S.D. Cal. Jan. 27, 2021) (granting in part furnisher's summary judgment motion)
- **FDCPA / Debt Collection Letter:** Plaintiff could not establish its FDCPA claim that collection letter failed to properly identify creditor because the letter implicitly made clear who the current creditor was - [Chiofalo v. Forster & Garbus, LLP](#), No. 2:19-cv-00487 (E.D.N.Y. Jan. 25, 2021) (granting defendants' summary judgment motion)

Title Insurance Update

- **Fraudulent Joinder:** Plaintiff did not fraudulently join local title agent in hopes of defeating diversity jurisdiction where it is highly unlikely, but still possible, that a Nevada state court could find that plaintiff states a cause of action against the title agent - [U.S. Bank Tr. Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:20-cv-02068 (D. Nev. Jan. 22, 2021) (order granting motion to remand)
- **Motion to Remand / Snap Removal:** Title insurer's removal was improper because it occurred before any defendant had been served - [U.S. Bank Tr. Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:20-cv-02068 (D. Nev. Jan. 22, 2021) (order granting motion to remand)
- **Remand / Motion for Attorneys' Fees & Costs:** Insured was not entitled to attorneys' fees and costs pursuant to 28 U.S.C. § 1447(c) where defendant had an objectively reasonable basis for seeking removal because the Ninth Circuit has yet to rule on snap removal and there is persuasive authority supporting the tactic - [U.S. Bank Tr. Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:20-cv-02068 (D. Nev. Jan. 22, 2021) (order denying motion for attorneys' fees and costs)
- **Duty to Defend:** Title insurer did not have a duty to defend insureds against trespass claims excluded from coverage under the title policy - [Safeco Ins. Co. of Am. v. Fidelity Nat'l Title Ins. Co.](#), No. 3:19-cv-05902 (W.D. Wash. Jan. 26, 2021) (order denying plaintiff's motion for summary judgment and granting defendant's cross-motion for summary judgment)

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