

Real Property, Financial Services, & Title Insurance Update: Week Ending June 25, 2021

June 25, 2021

Real Property Update

- **Foreclosures / Conflict Between Note & Mortgage:** Mortgage must be read alongside note it secures, and note prevails in the event of a conflict – [WVMF Funding v. Palmero](#), No. SC19-1920 (Fla. June 24, 2021) (quashing Third DCA's decision)
- **Foreclosures / Conflict Between Note & Mortgage:** Although wife signed mortgage's signature block as a "borrower" along with husband, wife was not a "borrower" because note defined borrower only as the person who signed the note and only the husband signed the note – [WVMF Funding v. Palmero](#), No. SC19-1920 (Fla. June 24, 2021) (quashing Third DCA's decision)
- **Eviction / Motion to Determine Rent:** Trial court erred by entering final judgment without addressing motion to determine rent – [Axen v. POAH Cutler Manor, LLC](#), No. 3D21-0075 (Fla. 3d DCA June 23, 2021) (reversed and remanded)
- **Foreclosure / Attorneys' Fees:** Borrower entitled to attorneys' fees and costs based on Florida Supreme Court's holding in *Page v. Deutsche Bank Trust Co. Americas*, 308 So. 3d 953 (Fla. 2020) – [Ellis v. U.S. Bank Trust, N.A.](#), No. 4D17-2127 (Fla. 4th DCA June 23, 2017) (affirmed in part, reversed in part, and remanded with instructions)

Financial Services Update

- **FDCPA & FCCPA / Misrepresenting Debt as Collectible:** Debt collector did not violate the FDCPA and FCCPA when it represented that debt was collectible because, despite plaintiff cancelling account, membership contract did not allow plaintiff to cancel account before end of the 12-month term. Thus, plaintiff was required to make payments for 12 months – [Rafer v. Internal Credit Sys., Inc.](#), No. 8:19-cv-01312 (M.D. Fla. June 22, 2021) (granting in part debt collector’s summary judgment)
- **FCRA / Failure to Reasonably Investigate:** Plaintiff sufficiently alleged mortgage lender failed to conduct reasonable investigation after receiving notice of dispute regarding information sent to credit reporting agency – [Lara v. Experian Info. Sols., Inc.](#), No. 3:20-cv-02449 (S.D. Cal. June 24, 2021)
- **TCPA / Agency / Actual Authority:** Plaintiff failed to allege that principal exercised control over alleged agents – [Tuso v. Nat’l Health Agents, LLC](#), No. 2:20-cv-02130 (E.D. Cal. June 21, 2021) (granting in part dismissal motion)
- **TCPA / Agency / Apparent Authority:** By pleading facts only about the actions of agents (telemarketing companies), as opposed to those of principals (health plan provider and insurance products provider), plaintiff failed to state a claim based on apparent authority against principals – [Tuso v. Nat’l Health Agents, LLC](#), No. 2:20-cv-02130 (E.D. Cal. June 21, 2021) (granting in part dismissal motion)

Title Insurance Update

- No cases to report.

Related Practices

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