

Real Property, Financial Services, & Title Insurance Update: Week Ending October 15, 2021

October 15, 2021

Real Property Update

- **Eviction / Commercial Landlord-Tenant / Motion to Determine Rent:** Based on the plain language of section 83.232, Florida Statutes, the trial court is constrained at the rent determination hearing to consider only the limited defenses constituting “payment or satisfaction of the rent,” and defenses other than payment (such as the force majeure clause of lease) should be addressed later in the proceedings – [Soundbar, LLC v. BYM Commercial](#), No. 5D21-176 (Fla. 5th DCA Oct. 15, 2021) (affirming entry of final judgment for possession)

Financial Services Update

- **FDCPA / Statute of Limitations:** Putative class action alleging decadelong scheme to obtain default judgments against debtors by suing in the wrong jurisdiction was time-barred and not saved by either equitable tolling or a fraud-based discovery rule – [Sam v. Midland Credit Mgmt., Inc.](#), No. 1:15-cv-01029 (W.D.N.Y. Oct. 13, 2021) (granting motion to dismiss without prejudice)

Title Insurance Update

- **Duty to Defend:** Title insurer did not have a duty to defend insured in quiet title action against insured’s neighbor for encroachment where policy excepted coverage for any loss or damage arising out of claims for encroachments – [Watson v. Old Republic Nat’l Title Co.](#), No. 82233-1-I (Wash. Ct. App. Oct. 11, 2021) (affirming summary judgment in favor of title insurer)

- **Duty to Indemnify / Coverage:** Title insurer did not have a duty to indemnify plaintiff where plaintiff did not qualify as the insured's successor in interest under the policy – [Tithonus Partners II, LP v. Chicago Title Ins. Co.](#), No. 2:20-cv-00952 (W.D. Pa. Oct. 8, 2021) (affirming summary judgment in favor of title insurer)
- **Good Faith and Fair Dealing / Statute of Limitations:** Insured's claim that the title insurer breached the covenant of good faith and fair dealing was barred by the statute of limitations where the insured failed to bring his claim within two years of the title insurer rejecting the insured's policy claim – [Madhok v. Fidelity Nat'l Title Co.](#), No. A162163 (Cal. Ct. App. Oct. 12, 2021) (affirming title insurer's motion for judgment on the pleadings)
- **Duty to Indemnify:** Insured was unable to present damages evidence on lost wages, carrying costs, lost opportunity costs, and/or lost earnings in connection with insured's efforts to obtain an access easement to the insured property where the policy did not indemnify the insured for consequential damages – [Fansler v. N. Am. Title Ins. Co.](#), No. N17C-09-015 EMD (Del. Super. Ct. Oct. 12, 2021) (granting in part and denying in part title insurer's motion in limine)

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