

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

September 10, 2021

Real Property Update

- **Foreclosure / Fees and Costs:** Trial court erred by denying borrower attorneys' fees and costs following involuntary dismissal of foreclosure action based on Florida Supreme Court's holding in *Page v. Deutsche Bank Trust Co. Americas*, 308 So. 3d 953 (Fla. 2020), because (i) the parties were not strangers to the contract and (ii) the contract had a provision allowing the bank to recover attorneys' fees – [Torres v. Bank of N.Y.](#), No. 4D17-1625 (Fla. 4th DCA Sept. 8, 2021)
- **Summary Judgment:** Movant's failure to overcome well-pleaded affirmative defense precluded summary judgment – [Advanta IRA Servs., LLC v. FTE Props., LLC](#), No. 2D20-2704 (Fla. 2d DCA Sept. 10, 2021) (reversed and remanded)

Financial Services Update

- **FCRA:** Consumer need not adequately allege every element of defamation to establish standing under FCRA – [Ramones v. Experian Info. Sols., LLC](#), No. 0:19-cv-62949 (S.D. Fla. Sept. 4, 2021) (denying motion to dismiss)
- **FCRA:** No colorable argument that plaintiff's emotional distress was caused by defendants' failure to provide her an FCRA-compliant authorization and disclosure form, and therefore plaintiff did not have standing – [Rattler v. MH Sub I, LLC](#), No. 3:21-cv-01492 (N.D. Cal. Sept. 8, 2021) (granting motion to remand)

Title Insurance Update

- **Agent Liability:** Insurer's contract with policy issuing agent entitled insurer to settle underlying claim caused by agent's title search error "in its absolute discretion," and insurer did not need to inform agent of the claim or seek input regarding settlement; thus, agent could not assert counterclaim or defense in insurer's subsequent action for indemnification that insurer breached duty of good faith and fair dealing in settling underlying claim – [Fidelity Nat'l Title Ins. Co. v. Rockwell Abstract LLC](#), No. 652588/2021 (N.Y. Sup. Ct. Sept. 3, 2021) (dismissing counterclaim and defense)
- **Snap Removal:** Title insurer's "snap" removal before forum defendant served was proper under plain language of 28 U.S.C. § 1441, despite potential for gamesmanship, noting Congress better suited to amend statute – [Metlife Home Loans, LLC v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:20-cv-01798 (D. Nev. Sept. 8, 2021) (denying motion for remand)

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