

Real Property, Financial Services, & Title Insurance Update: Week Ending April 1, 2022

April 01, 2022

Real Property Update

- **Online Marketplace for Lodging / Arbitrability / Delegation to Arbitrator:** Company's terms of service incorporated by reference the AAA rules and clearly and unmistakably evidenced the parties' intent to empower an arbitrator, rather than a court, to resolve questions of arbitrability – [Airbnb, Inc. v. Doe](#), No. SC20-1167 (Fla. Mar. 31, 2022) (quashing Second District's decision and remanding)
- **Quitclaim Deed / Submerged Land / Dismissal:** Although the trial court properly dismissed appellees' claims and counterclaim seeking declaratory relief where the ownership interest in the submerged land had not been conveyed to appellants, the dismissal should have been without prejudice instead of with prejudice because adverse interests could arise among the parties if, for example, the quitclaim deed that failed to convey ownership is reformed – [Ginsberg-Klemmt v. Lawrence Pointe Condo. Ass'n Inc.](#), No. 2D20-3302 (Fla. 2d DCA Apr. 1, 2022) (affirmed in part, reversed in part, and remanded)
- **Foreclosure / Summary Judgment / Equitable Estoppel Defense:** While the appellee bank submitted affidavits and documentary evidence in support of its motion for summary judgment of foreclosure, those failed to factually refute appellant borrower's affirmative defense of equitable estoppel where borrower asserted that he made the payments called for under the modification agreement or as the bank's representatives indicated were required to keep the loan current, and the bank otherwise failed to establish that borrower's defense was legally insufficient – [Beezley v. Deutsche Bank Nat'l Tr. Co.](#), No. 2D20-590 (Fla. 2d DCA Mar. 30, 2022) (reversed and remanded)

- **Condominium Association / Settlement Agreement:** Trial court properly denied appellant owner's motion to enforce the settlement agreement against the appellee master condominium association where the plain language of the settlement agreement solely provided the association with access to the owner's unit and the right to make any repairs it deemed necessary and did not require the association to make inspections, remediation, and repairs deemed necessary by the owner alone – [Perrin v. De Soleil S. Beach Ass'n Inc.](#), No. 3D21-1207 (Fla. 3d DCA Mar. 30, 2022) (affirmed)
- **Condominium Association / Settlement Agreement / Jurisdiction:** Trial court correctly found that appellant owner's request that the court order repairs done based solely on the owner deeming the repairs necessary would result in exceeding the court's jurisdiction by enforcing non-terms of the settlement agreement between the owner and the appellee master condominium association – [Perrin v. De Soleil S. Beach Ass'n Inc.](#), No. 3D21-1207 (Fla. 3d DCA Mar. 30, 2022) (affirmed)
- **Foreclosure / Ex Parte Default:** Trial court erred in denying borrowers' motion to vacate clerk's default and the default foreclosure final judgment because bank was not authorized to seek an ex parte default but was instead required to serve borrowers' counsel with a notice of the application for default and seek such relief with the court where, given the nature and extent of the communications between the parties' counsel, the bank's counsel was aware that the borrowers were represented by counsel and that they intended through that counsel to assert matters in defense of the cause of action – [Cardona v. FirstBank Puerto Rico](#), No. 3D21-1746 (Fla. 3d DCA Mar. 30, 2022) (reverse and remand)
- **Real Estate Commission / Breach of Contract:** Trial court erred in setting aside the jury's verdict on appellant's claim of breach of contract for real estate commissions because appellant presented competent substantial evidence that supported the verdict by testifying as to his involvement in two lease renewals, including engaging in discussions about the renewals and the needs of the companies leasing the properties – [Chinnock v. Penn-Florida Realty Corp.](#), No. 4D20-2266 (Fla. 4th DCA Mar. 30, 2022) (affirmed in part, reversed in part, and remanded for further proceedings)
- **Foreclosure / HELOC / Assignment / Standing:** Circuit court erred in dismissing the appellant bank's complaint filed after appellee borrowers defaulted on a home equity line of credit for lack of standing to foreclose because the bank as trustee acquired the rights of the original holder through the trust, which was the assignee of the HELOC, and, thus, the bank had standing – [U.S. Bank Nat'l Ass'n v. Grob](#), No. 4D21-1456 (Fla. 4th DCA Mar. 30, 2022) (reversed and remanded)

- **Sale of Real Property / Oral Contract / County Court Jurisdiction:** County court erred in denying appellant's motion to vacate/set aside default judgments and denying his motion to vacate the judicial sale of his real property because the court lost monetary subject matter jurisdiction once appellee counterclaimed seeking to enforce an oral contract for the sale of the property and, thereby, seeking damages exceeding \$15,000 exclusive of costs and attorneys' fees – [Nguyen v. Nguyen](#), No. 5D21-574 (Fla. 5th DCA Apr. 1, 2022) (reversed and remanded)
- **Quiet Title / Default Without Notice of Motion:** Trial court erred in entering a default final judgment and a later amended default final judgment that quieted title to appellee in certain real property where appellee failed to notice its motion for default judgment or its amended motion for default judgment for hearing, resulting in the court entering the two judgments without a hearing – [Trainor v. BULU2, LLC](#), No. 5D21-2786 (Fla. 5th DCA Apr. 1, 2022) (reversed and remanded with directions)
- **Quiet Title / Attorneys' Fees:** Trial court erred in awarding attorneys' fees to appellee as part of the default final judgment and the later amended default final judgment that quieted title to appellee in certain real property because an award of attorneys' fees is not statutorily authorized in a quiet title action and there was no contractual basis for appellee to be awarded the attorneys' fees – [Trainor v. BULU2, LLC](#), No. 5D21-2786 (Fla. 5th DCA Apr. 1, 2022) (reversed and remanded with directions)

Financial Services Update

- **FCCPA / 559.72(9) / Knowledge:** Finding disputed issues of fact regarding creditor's knowledge of bankruptcy discharge and attorney representation precluded entry of summary judgment – [Medley v. Dish Network, LLC](#), No. 8:16-cv-02534 (M.D. Fla. Mar. 25, 2022) (denying cross-motions for summary judgment regarding sub-9 claim)
- **FCRA / Removal:** Complaint removed to federal court under FCRA did not present a federal question because it asserted only state law claims and FCRA is not a complete preemption statute – [Sylvester v. USAA Fed. Sav. Bank](#), No. 3:21-cv-01012 (M.D. Fla. Mar. 29, 2022) (remanding to state court for lack of subject matter jurisdiction)
- **FCRA / Standing:** Plaintiff had Article III standing, sufficiently alleging claims under FCRA relating to inaccurate credit report provided in connection with mortgage application to proceed with putative class action – [Fernandez v. Corelogic Credco, LLC](#), No. 3:20-cv-01262 (S.D. Cal. Mar. 25, 2022) (denying motion to dismiss and motion to strike class allegations)

- **TCPA / ATDS / Artificial or Prerecorded Voice:** Plaintiff's TCPA claim failed because program in question used a number generator to generate and select index numbers, not to generate numbers themselves; text messages could not be interpreted to use artificial or prerecorded voice – [Eggleston v. Reward Zone USA LLC](#), No. 2:20-cv-01027 (C.D. Cal. Jan. 28, 2022) (granting motion to dismiss)
- **FDCPA / Class Action / Commonality & Predominance:** Plaintiff failed to satisfy commonality and predominance requirements in putative class action for convenience fees in connection with mortgages because plaintiff failed to provide a likely method for determining whether class members were in default, whether their individual contracts authorized the fee, and whether class members had notice and cure provisions – [Lemp v. Seterus, Inc.](#), No. 2:18-cv-01313 (E.D. Cal. Mar. 29, 2022) (denying motion to certify class)
- **TCPA / Telemarketing Calls:** Plaintiff stated a claim under TCPA for telemarketing calls made to a number on the do-not-call registry with prerecorded messages and without prior written consent; treble damages claim survives because he sufficiently pleaded that defendant kept calling after he asked for calls to stop – [Rose v. New TSI Holdings, Inc.](#), No. 1:21-cv-05519 (S.D.N.Y. Mar. 28, 2022) (denying motion to dismiss)

Title Insurance Update

- **Snap Removal:** Title company could not remove insured's case against title insurer from state court to federal court on diversity jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and the insured had asserted potentially valid claims against a non-diverse defendant – [U.S. Bank, Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-01186 (D. Nev. Mar. 30, 2022) (order granting insured's motion to remand)
- **Snap Removal / Federal Question Jurisdiction:** Title company could not remove insured's case against title company from state court to federal court on diversity jurisdiction or federal question jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and no federal question jurisdiction existed – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00353 (D. Nev. Mar. 28, 2022) (order granting insured's motion to remand)
- **Snap Removal / Fraudulent Joinder:** Title company could not remove insured's case against title company from state court to federal court on diversity jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and the insured had asserted potentially valid claims against a non-diverse defendant – [HSBC Bank USA, Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-01300 (D. Nev. Mar. 30, 2022) (order granting insured's motion to remand)

- **Snap Removal / Fraudulent Joinder:** Title company could not remove insured's case against title company from state court to federal court on diversity jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and the insured had asserted potentially valid claims against a non-diverse defendant – [Wells Fargo Bank, N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00996 (D. Nev. Mar. 26, 2022) (order granting insured's motion to remand)
- **Snap Removal / Fraudulent Joinder:** Title company could not remove insured's case against title company from state court to federal court on diversity jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and the insured had asserted potentially valid claims against a non-diverse defendant – [Wells Fargo Bank Nat'l Ass'n v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00383 (D. Nev. Mar. 30, 2022) (order granting insured's motion to remand)
- **Snap Removal / Fraudulent Joinder:** Title company could not remove insured's case against title company from state court to federal court on diversity jurisdiction grounds where title company attempted to remove the case before the forum defendant had been served and the insured had asserted potentially valid claims against a non-diverse defendant – [HSBC Bank, USA, N.A. v. Fidelity Nat'l Title Grp., Inc.](#) No. 2:21-cv-00153 (D. Nev. Mar. 25, 2022) (order granting insured's motion to remand)

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