

Real Property, Financial Services, & Title Insurance Update: Week Ending February 18, 2022

February 19, 2022

Real Property Update

- **Foreclosure / Statute of Limitations:** Subsequent owner of property, which purchased property at homeowners association's junior lienholder foreclosure, took the property subject to successor mortgagee's ongoing rights, which were unaffected by prior bankruptcy surrender or discharge - [Terra Mar Prop. Mgmt., LLC v. Wilmington Sav. Fund Soc'y, FBS](#), No. 1D21-1484 (Fla. 1st DCA Feb. 16, 2022) (affirming final judgment of foreclosure)
- **Restrictive Covenant vs Easement:** Provision of a properly recorded agreement, originally entered into by owner's predecessor in interest and entity operating cellular communication tower on portion of owner's property, that required property owner to use its best efforts to prevent interference with entity's telecommunications signal was a restrictive covenant (not an easement), limiting what property owner could do with its property - [8425 Biscayne LLC v. Pinnacle Towers LLC](#), No. 3D21-0486 (Fla. 3d DCA Feb. 16, 2022) (rejecting owner's argument that "easement" was unreasonable and affirming summary judgment in favor of Pinnacle)
- **Harris Act / Prerequisites / Appraisal:** Owners of adjacent property failed to state a claim for compensation under the Harris Act; their appraisal was defective because it (1) impermissibly valued the two owners' parcels as if the parcels were one piece of property, owned by one owner, and (2) improperly valued the parcels before and after a 2015 ordinance, not after the 2018 ordinance that affected the parcels - [DHBH Atl. LLC v. City of Delray Beach](#), No. 4D21-852 (Fla. 4th DCA Feb. 16, 2022) (affirming dismissal with prejudice of complaint against city because owners did not timely meet the essential prerequisites to bring Harris Act claim)

- **Foreclosure / Constructive Service / Publication:** Mortgagee failed to conduct diligent search to locate mortgagor before serving him with process by publication where mortgagee was in communication with mortgagor when personal service had been attempted through when the affidavit in support of service by publication was filed but made no effort to advise mortgagor that it had filed suit against him or regarding service of process - [Santiago v. Wilmington Tr., Nat'l Ass'n](#), No. 5D20-2485 (Fla. 5th DCA Feb. 18, 2022) (reversing order denying mortgagor's motion and remanding with direction to vacate clerk's default, final judgment of foreclosure, and certificates of sale and title)

Financial Services Update

- **TCPA / Government Debt Collector Exemption:** Government debt exception of section 227(b)(1)(A)(iii) precluded liability for robocalls made during time following enactment of such language and entry of the final judgment by the district court in *Barr v. American Association of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020) - [Dressler v. Fla. Dep't of Educ.](#), No. 2:18-cv-00311 (M.D. Fla. Feb. 15, 2022)
- **FCRA / Investigation:** Evidence established that plaintiff's notice of dispute and the disputes reported to CRAs were reviewed and responded to within 30 days of receipt, that the furnisher conducted an investigation, and that the furnisher's investigation of the dispute identified by plaintiff in her correspondence was reasonable - [Dressler v. Fla. Dep't of Educ.](#), No. 2:18-cv-00311 (M.D. Fla. Feb. 15, 2022)
- **TCPA / Sufficiency of Pleading:** Allegations that there were attempts to bill plaintiff's credit card following unwanted, prerecorded solicitation calls to a number on the national do-not-call registry were sufficient to state a claim against defendant - [Pastore v. GT Mktg. Grp. USA, Inc.](#), No. 6:21-cv-01483 (M.D. Fla. Feb. 10, 2022) (denying dismissal motion)
- **FCRA / Standing:** A party suffers a constitutionally sufficient injury-in-fact when nonpublic information is disclosed to a third party based on that third party's failure to provide a statutorily required notice - [Admore v. Hospice of Palm Beach Cnty., Inc.](#), No. 9:21-cv-80047 (S.D. Fla. Dec. 13, 2021) (denying defendant's summary judgment motion)
- **FDUTPA / Recoverable Damages:** Consequential damages in the form of lost profits are not recoverable under FDUTPA; actual damages are measured according to the difference in market value of the product or service delivered and its market value in the condition in which it should have been delivered - [Plain Bay Sales, LLC v. Gallaher](#), No. 9:18-cv-80581 (S.D. Fla. Feb. 10, 2022)
- **TCPA / Standing:** Solicitations to business telephones that have been registered on the national do-not-call registry do not, by themselves, result in a cognizable privacy-related injury - [Miholich v. Senior Life Ins. Co.](#), No. 3:21-cv-01123 (S.D. Cal. Feb. 10, 2022)

- **FDCPA / Standing:** Receiving word from a third party that a debt collector asked about a consumer does not create injurious exposure for the person learning about that communication sufficient to confer statutory standing - [McKinley v. Everest Receivable Servs., Inc.](#), No. 1:19-cv-01289 (W.D.N.Y. Feb. 14, 2022)

Title Insurance Update

- **Personal Jurisdiction:** Texas court had personal jurisdiction over out-of-state defendants for title company's unjust enrichment claim where defendants engaged in conduct in Texas and had direct contact with the title company and other parties who participated in the sale of the subject property located in Texas - [Capital Title of Tex., LLC v. Shank](#), No. 13-21-00062-CV (Tex. App. Feb. 17, 2022) (reversing trial court's judgment in defendants' favor)
- **Coverage:** Title company had no duty to provide coverage for insureds' claim for a driveway encroachment where the title policy excluded coverage for such claims - [Pierot v. Chicago Title Ins. Co.](#), No. 2018-13287 (N.Y. App. Div. Feb. 16, 2022) (affirming summary judgment in title company's favor)

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