

Real Property, Financial Services, & Title Insurance Update: Week Ending February 25, 2022

February 26, 2022

Real Property Update

- **Foreclosure / Post-Judgment Allegations / Intrinsic Fraud:** Allegations of fraud asserted by borrower seeking to undo her stipulation to final judgment of foreclosure in prior action were intrinsic, rather than extrinsic, and thus the one-year bar under Florida Rule of Civil Procedure 1.540 applied to borrower's action - [Bank of Am., N.A. v. Rodriguez](#), No. 3D21-1557 (Fla. 3d DCA Feb. 23, 2022) (granting bank's petition for certiorari and quashing order denying dismissal motion)

Financial Services Update

- **FCCPA / Remand / Preemption:** Argument that TILA and Regulation Z preempt provision of FCCPA is insufficient basis for removal - [Hargrave v. Capital One Bank, N.A.](#), No. 8:20-cv-01231 (M.D. Fla. Jan. 7, 2021) (granting plaintiff's motion to remand)
- **TCPA / Standing:** Users of an online fax service do not endure the type of harm Congress intended to protect against under the TCPA and, therefore, lack standing - [Scoma Chiropractic, P.A. v. Mastercard Int'l, Inc.](#), No. 2:16-cv-00041 (M.D. Fla. Jan. 29, 2021) (recommending denial of amended motion for class certification)
- **TCPA / Application / Unconstitutionality:** Supreme Court's opinion in *Barr v. American Association of Political Consultants Inc.* did not render entire TCPA unconstitutional - [Johansen v. LoanDepot.com LLC](#), No. 8:20-cv-00919 (C.D. Cal. Jan. 31, 2021) (denying defendants' dismissal motion)

- **TCPA / Arbitrability:** Claim premised on unwanted text messages subject to arbitration provision contained within terms of service - [Regan v. Pinger, Inc.](#), No. 5:20-cv-02221 (N.D. Cal. Feb. 23, 2021) (granting defendant's motion to dismiss and compel arbitration)
- **TCPA / ATDS / Sufficiency of Pleading:** Allegations of two calls with a single pause after each call were insufficient to raise the assertion that defendants used an ATDS above a speculative level - [Hildre v. Heavy Hammer, Inc.](#), No. 3:20-cv-00236 (S.D. Cal. Feb. 25, 2021) (granting motion to dismiss)
- **FDCPA / Debt Collector:** Creditors and those that acquire debts not "in default" are not "debt collectors" under the FDCPA - [Avent v. Platinum Plus Auto Prot.](#), No. 1:19-cv-01494 (N.D.N.Y. Feb. 23, 2021) (dismissing plaintiff's FDCPA allegations)
- **FCRA / Actionable Conduct / Personal Jurisdiction:** Failure to investigate and remove disputed information does not "arise from" mailing of loan-related communications - [Mednik v. Specialized Loan Servicing, LLC](#), No. 1:20-cv-00427 (E.D.N.Y. Feb. 23, 2021)

Title Insurance Update

- **Stay of Discovery Pending Motion to Dismiss:** Stay of discovery was warranted where title insurer and its parent each filed motions to dismiss insured's claims of breach of title insurance contract, bad faith, deceptive trade practices, and violations of NRS 686A.310, and where each had high likelihood of success and would be dispositive of entire case; title insurer raised exception for post-policy matters where insured's alleged loss arose from HOA lien foreclosure filed seven years after policy issued – [Bank of N.Y. Mellon v. Stewart Info. Servs. Corp.](#), No. 2:21-cv-01492 (D. Nev. Jan. 11, 2022) (granting stay of discovery)

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