

Real Property, Financial Services, & Title Insurance Update: Week Ending July 15, 2022

July 15, 2022

Real Property Update

- **Restraint on Alienation:** Option clause in declaration, giving 814 Property a first option to purchase condominium unit, was an unreasonable restraint on alienation – [814 Prop. Holdings, LLC v. New Birth Baptist Church Cathedral of Faith Int'l, Inc.](#), No. 3D20-0233 (Fla. 3d DCA July 13, 2022) (affirmed)
- **Foreclosure / Collateral Estoppel:** Trial court correctly concluded that collateral estoppel barred re-litigation of issue whether lender complied with HUD regulations before initiating foreclosure because that same issue was previously litigated by the same parties and decided in prior case – [PHH Mortg. Corp. v. Schreiber](#), No. 5D21-1377 (Fla. 5th DCA July 15, 2022) (affirming summary judgment in borrowers' favor)

Financial Services Update

- **FACTA / Standing:** Plaintiff, who alleged that a receipt he received contained 10 digits of his credit card, suffered no economic, nor distinct or palpable injury, sufficient to establish standing, where there were no allegation that his credit card was used, lost, or stolen, and no evidence of any danger of plaintiff's credit card being used – [Southam v. Red Wing Shoe Co.](#), No. 4D21-3338 (Fla. 4th DCA July 13, 2022) (affirming dismissal)
- **TCPA / Standing:** Plaintiff did not have standing to bring TCPA claim because she did not plead she was the actual user of the phone number to which defendants sent the text messages nor the actual recipient of those messages; her son was – [Hall v. Smosh Dot Com, Inc.](#), No. 2:21-cv-01997 (E.D. Cal. July 12, 2022)

- **FCRA / Standing:** Plaintiff failed to demonstrate constitutional standing because he did not allege that defendant disseminated any inaccurate information, and his reduced credit score, alone, did not confer standing for Article III purposes – [Swainson v. LendingClub Corp.](#), No. 1:21-cv-05379 (S.D.N.Y. June 24, 2022)
- **FDCPA / CRAs:** Plaintiff failed to state an FDCPA claim because the FDCPA does not apply to credit reporting agencies and plaintiff had not plausibly alleged that defendant was a debt collector within the meaning of the FDCPA – [Swainson v. LendingClub Corp.](#), No. 1:21-cv-05379 (S.D.N.Y. June 24, 2022)
- **FDCPA / Standing:** Plaintiff did not show a concrete harm sufficient to establish Article III standing because he only alleged that he had spent time and money investigating the defendant’s letter and its consequences – [Steinmetz v. Allied Interstate, LLC](#), No. 1:21-cv-05059 (E.D.N.Y. July 13, 2022)

Title Insurance Update

- **Covered Risk 2(a) / Landmark Designation:** Insureds’ breach of contract and declaratory judgment claims against title insurer, based on alleged discovery that property had been designated as a landmark impeding plaintiffs’ plans to use and improve it, did not state causes of action because the landmark designation restricts the manner in which property can be used, it in no way impacts plaintiffs’ right to unencumbered ownership and possession of property – [Fawn Second Avenue LLC v. First Am. Title Ins. Co.](#), No. 1:21-cv-03715 (S.D.N.Y. July 11, 2022) (dismissing complaint)
- **Covered Risk 5 / Landmark Designation:** Insureds’ argument that they were entitled to coverage on account of property’s landmark designation under covered risk 5 of the policy, which insures against risks associated with the violation or enforcement of certain laws or governmental regulations that are recorded in the public records, failed because the property’s landmark designation was not recorded in the relevant public records as of the date of the policy – [Fawn Second Avenue LLC v. First Am. Title Ins. Co.](#), No. 1:21-cv-03715 (S.D.N.Y. July 11, 2022) (dismissing complaint)
- **Exclusions 1(a):** Even if unrecorded landmark designation of property were deemed a defect or encumbrance on title covered by policy, insureds still would not be entitled to indemnification because policy excluded coverage for the losses the insured sought to recover, as exclusion 1(a) applied to governmental regulations, including claims arising from a government’s exercise of its regulatory powers – [Fawn Second Avenue LLC v. First Am. Title Ins. Co.](#), No. 1:21-cv-03715 (S.D.N.Y. July 11, 2022) (dismissing complaint)

- **Negligence:** Because title report merged with policy upon the policy's issuance and title insurer owed no duty under policy to report the landmark status of the property, insureds' negligence claim failed – [Fawn Second Avenue LLC v. First Am. Title Ins. Co.](#), No. 1:21-cv-03715 (S.D.N.Y. July 11, 2022) (dismissing complaint)

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