

Real Property, Financial Services, & Title Insurance Update: Week Ending July 22, 2022

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Real Property Update

- **Foreclosure / Unclean Hands:** Trial court erred by applying the unclean hands doctrine to bar foreclosure because there was no support for the application of this doctrine where there was no competent, substantial evidence that the appellant bank ever engaged in condemnable conduct nor that the appellee borrowers ever relied on any purported misconduct to their detriment – [U.S. Bank Nat'l Ass'n v. Qadir](#), No. 1D21-1878 (Fla. 1st DCA July 20, 2022) (reversed and remanded)
- **Foreclosure / Final Judgment / Award:** Trial court entered a final judgment in favor of the appellant bank for the wrong amount because said amount was not supported by competent, substantial evidence where the bank proved the actual amount owed through testimony of a witness who authenticated the business records and confirmed their accuracy – [U.S. Bank Nat'l Ass'n v. Qadir](#), No. 1D21-1878 (Fla. 1st DCA July 20, 2022) (reversed and remanded)
- **HOA / ARC / Arbitration / Shared Access Drive:** Appellant homeowners were legally entitled to construct a shared access drive in the arbitrated location without obtaining a plat amendment where there was an agreement between the property owners and appellants' initial rejection of the arbitrated location did not obviate their entitlement to the drive where the homeowners association was not a party to the arbitration and the architectural review committee's ultimate authority over various aspects of the drive, including its location, would have made an action to enforce the arbitrated location against appellants' neighbors futile – [Barnett v. Hibiscus Homeowners Ass'n, Inc.](#), No. 1D21-2362 (Fla. 1st DCA July 20, 2022) (reversed)

- **HOA / ARC / Arbitration / Shared Access Drive:** Appellant homeowners were legally entitled to a shared access drive to their three lots where the subdivision's declaration and the shared access drive agreement did not permit the appellee homeowners association, through the architectural review committee, to refuse to approve any shared access drive – [Barnett v. Hibiscus Homeowners Ass'n, Inc.](#), No. 1D21-2362 (Fla. 1st DCA July 20, 2022) (reversed)
- **Foreclosure / Summary Judgment / Conclusory Affidavit:** Borrower's conclusory affidavit, which included a statement that the individual who signed the subject blank endorsement is a nationally known robo-signer who has allowed others to place a stamp of her signature on loan documents in other instances, in opposition to the bank's motion for summary judgment in the foreclosure action did not satisfy rule 1.510(c)(4)'s requirements because it failed to create a genuine issue of material fact as to the authenticity of that blank endorsement signature on the borrowers' promissory note – [Passariello v. Bank of N.Y. Mellon](#), No. 3D21-1674 (Fla. 3d DCA July 20, 2022) (affirmed)
- **Commercial Lease / Eviction / Property Address / Post-Judgment Pleading Amendment:** Trial court exceeded its jurisdiction in permitting respondent landlord to amend its complaint for eviction post-judgment to modify the address of the subject property where such ruling was not an ancillary matter and the trial court had not reserved its jurisdiction to rule on the specific issue of the property's address – [Mich Auto Sales Inc. v. 14004 NW 19th Ave., LLC](#), No. 3D22-0954 (Fla. 3d DCA July 20, 2022) (petition for writ of prohibition granted and order granting leave to amend quashed)

Financial Services Update

- **FDCPA / Proof of Ownership:** Debt collector violated the FDCPA in attempting to collect on a defaulted student loan without proof of ownership of the loan – [Lizarraga-Davis v. Transworld Sys. Inc.](#), No. 5:18-cv-04081 (N.D. Cal. July 15, 2022) (granting plaintiff's motion for summary judgment)
- **FCRA / Business Losses:** Defendant was entitled to summary judgment where plaintiff sought damages for business losses, which are not available damages under the FCRA – [In re Banner Bank](#), No. 8:20-cv-02304 (C.D. Cal. June 3, 2022) (granting partial summary judgment in defendant's favor)
- **FCRA / Standing:** Plaintiff lacked standing under the FCRA where plaintiff failed to alleged that he suffered any damages relating to the alleged dissemination of inaccurate information to third parties – [Spira v. Trans Union LLC](#), No. 7:21-cv-02367 (S.D.N.Y. July 19, 2022) (dismissing complaint without prejudice)

Title Insurance Update

- **Development Right / Latent and Intrinsic Defect:** Insured owner of condominium development — which, according to two prior cases, failed to properly extend the deadline to exercise development rights via amendments to declaration of condominium and failed to satisfy substantial completion requirements under condominium act in connection with creation of units (meaning they were now “common elements”) — brought suit against title insurer; with respect to one of the units, the appellate court rejected insured’s claims that title insurer issued title insurance to a development right that was void at the time title insurer insured title — i.e., that there was a latent and intrinsic defect in title – [IDC Props., Inc. v. Chicago Title Ins. Co.](#), No. 21-1757 (1st Cir. July 21, 2022) (affirming, in part, summary judgment in title insurer’s favor)
- **Damages From Insured’s Loss of Title:** Trial court erred in concluding that economic value of unit was zero because insured could not develop it; the question was what value, if any, inhered in the title in consequence of the right to construct building in the unit having been reserved in the condominium declaration, and to determine that, the court should not look to whether the right lawfully could have been exercised under condominium act, as the suit concerned insurance to title and (in light of an amended and restated declaration) the policy insured title to real property with the right that the condominium act rendered void according to two prior cases – [IDC Props., Inc. v. Chicago Title Ins. Co.](#), No. 21-1757 (1st Cir. July 21, 2022) (reversing, in part, summary judgment in title insurer’s favor)
- **Diminution in Value / Proper Time For Valuation:** Trial court did not abuse its discretion in excluding evidence of insured’s expert report that calculated the value of two units from the date of a court decision (which it argued was the date the title defect was fixed and determined with finality); as this was a case where liability was measured by diminution in the value of property caused by a defect in title, the expert report, according to trial court, should have valued the units for purposes of damages from the date of discovery of defect – [IDC Props., Inc. v. Chicago Title Ins. Co.](#), No. 21-1757 (1st Cir. July 21, 2022) (affirming trial court’s grant of title insurer’s motion in limine)
- **Diminution in Value / Proper Time for Valuation / Section 9(b):** Insured’s contention that section 9(b) of the policy’s “conditions and stipulations” — providing that in the event of any litigation the title insurer shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured — determines when the value of the property should be measured was wrong; that provision speaks to the date on which title insurer was responsible for paying compensation to insured under the policy, not the date from which the compensation should be measured – [IDC Props., Inc. v. Chicago Title Ins. Co.](#), No. 21-1757 (1st Cir. July 21, 2022) (affirming trial court’s grant of title insurer’s motion in limine)

- **Snap Removal:** Title insurer's snap removal of case to federal court before service on non-diverse defendant was an improper tactic; defendants were not permitted to remove action prior to their receipt of service – [Deutsche Bank Nat'l Tr. Co. v. Chicago Title Ins. Co.](#), No. 2:21-cv-01854 (D. Nev. July 18, 2022) (granting plaintiff's motion to remand)
- **Snap Removal:** Title insurers' snap removal of case to federal court before service on non-diverse defendants was an improper tactic; defendants were not permitted to remove action prior to their receipt of service – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00348 (D. Nev. July 18, 2022) (granting plaintiff's motion to remand)

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