

Real Property, Financial Services, & Title Insurance Update: Week Ending July 29, 2022

July 29, 2022

Real Property Update

- **Foreclosure / Standing:** Dismissal for lack of standing was improper where foreclosing lender proved standing by special indorsement on the note and related indorsement timing evidence – [Deutsche Bank Nat'l Tr. Co. v. Russell](#), No. 1D21-1552 (Fla. 1st DCA July 27, 2022) (reversed and remanded)
- **Lease Option to Purchase:** Summary judgment was proper where purchase option and right of first refusal terms defined in a lease agreement conclusively establish the effective periods of those terms had expired by the time attempts to execute right of first refusal – [Sternberg v. RP & NP Corp.](#), No. 3D21-2045 (Fla. 3d DCA July 27, 2022) (summary judgment affirmed)
- **Eviction / Depositing Rent Into Court Registry:** Trial court lacked discretion to stay final judgment of possession resulting from tenant's failure to pay rent during the pendency of the case – [Bimini Props., Inc. v. Puff or Sip Hookah Lounge & Liquor Store, LLC](#), Nos. 3D21-2350 & 3D21-2426 (Fla. 3d DCA July 27, 2022) (summary judgment affirmed)
- **Foreclosure / Homestead:** Trial court erred by refusing to foreclose equitable lien on homestead purchased with funds obtained by fraud – [Renda v. Price](#), No. 4D21-534 (Fla. 4th DCA July 27, 2022) (reversed and remanded)

Financial Services Update

- **Class Action / Standing / Class Members:** TCPA settlement class definition did not meet Article III standing requirements because definition included individuals who received a single text message (which is not sufficient to satisfy concrete injury requirement) – [Drazen v. Pinto](#), No. 21-10199 (11th Cir. July 27, 2022) (vacating class certification and settlement and remanding in order to give parties opportunity to redefine the class)
- **FDCPA / Scope of “Communication”:** Concluding that as long as a call relays information regarding a debt, it is a “communication,” regardless of whether it discloses or implies the existence of the debt – [Raze v. Everest Receivable Servs., Inc.](#), No. 1:19-cv-01094 (W.D.N.Y. July 22, 2022) (granting in part and denying in part debt collector’s summary judgment motion)
- **FDCPA / Third-Party Communication:** Leaving message with third party during a location-acquisition call after the third party declined to provide location information did not take the call outside of section 1692b’s safe harbor, nor did it violate any explicit or implicit prohibition of the FDCPA – [Raze v. Everest Receivable Servs., Inc.](#), No. 1:19-cv-01094 (W.D.N.Y. July 22, 2022) (granting in part and denying in part debt collector’s summary judgment motion)

Title Insurance Update

- **Breach of Warranty of Title:** Title insurer’s claim (as subrogee for its insured) for breach of warranty of title against seller after insurer paid to resolve its insured’s claim failed because of a mutual mistake of fact; the offer and acceptance prepared by title company’s representative showed that both seller’s and buyer’s respective officers expected the title work and deed would show all recorded easements, and neither expected that title company engaged by purchaser would fail to document any easements of record – [Commonwealth Land Title Ins. Co. v. JMG Invs., Inc.](#), No. 4:20-cv-01514 (E.D. Ark. July 26, 2022) (entering judgment against title insurance company and dismissing its cause of action)
- **Snap Removal:** Insured’s claims against title insurers could not be removed to federal court on diversity jurisdiction grounds where title insurers attempted to remove the case before the forum defendant had been served – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00399 (D. Nev. July 25, 2022) (granting motion to remand)
- **Snap Removal:** Insured’s claims against title insurers could not be removed to federal court on diversity jurisdiction grounds where title insurers attempted to remove the case before the forum defendant had been served – [Bank of Am., N.A. v. Fidelity Nat'l Title Grp., Inc.](#), No. 2:21-cv-00523 (D. Nev. July 25, 2022) (granting motion to remand)

Related Practices

[Real Property Litigation](#)

[Consumer Finance](#)

[Title Insurance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.