

Real Property, Financial Services, & Title Insurance Update: Week Ending July 8, 2022

July 08, 2022

Real Property Update

- **Foreclosure / Fee Judgment / Appellate Jurisdiction:** On the facts presented, appellate court had jurisdiction to address whether litigant who obtained the fee judgment against Nationstar was a proper party to the litigation, because issue was dispositive of entitlement to the award, which was foundational to the judgment – [Nationstar Mortg. LLC v. DeSouza](#), No. 1D21-2288 (Fla. 1st DCA July 6, 2022) (reversed)
- **Foreclosure / Fee Judgment / Intervention:** Individual who obtained fee judgment was not a proper party; under section 48.23(1)(b), Florida Statutes (2008), any person with an unrecorded interest in mortgaged real property was required to intervene in foreclosure suit within 20 days after the notice of lis pendens was filed, which individual failed to do – [Nationstar Mortg. LLC v. DeSouza](#), No. 1D21-2288 (Fla. 1st DCA July 6, 2022) (reversed)
- **Bylaw Amendment Procedures / Ultra Vires:** Trial court erred in concluding that club was authorized to redefine club membership requirement by amending its bylaws to require property owner to purchase a new club membership for additional condo unit, as no provision of declaration delegated to the club rulemaking authority on the scope of mandatory club membership; redefinition of membership requirement required amendment of the declaration, and bylaw amendment was, therefore, ultra vires – [Joy v. Oaks Club Corp.](#), No. 2D21-1159 (Fla. 2d DCA July 8, 2022) (reversed)

Financial Services Update

- **TCPA / Class Certification / Standing of Putative Class Members:** Although plaintiff had standing, whether other putative class members had standing, e.g., whether they received multiple phone calls or just one phone call was unclear, would require an individualized inquiry – [Barnes v. AllSup Emp't Servs., LLC](#), No. 1:21-cv-21121 (S.D. Fla. July 1, 2022) (denying motion for class certification because plaintiff failed to meet burden of satisfying Rule 23(b)(3) requirements)
- **TCPA / Class Certification / Standing of Putative Class Members:** While the court did not need to determine standing at class certification stage, it had to determine whether the issue of standing for putative class members would require individualized inquiries that would predominate over common issues in the case – [Barnes v. AllSup Emp't Servs., LLC](#), No. 1:21-cv-21121 (S.D. Fla. July 1, 2022) (denying motion for class certification because plaintiff failed to meet burden of satisfying Rule 23(b)(3) requirements)
- **TCPA / Consent:** By sending text messages to bank, individual expressly consented to receive reply text messages from bank, and each informative and reply text messages from bank fell within the scope of the individual's text message initiating contact and, therefore, the scope of individual's consent to contact – [Moskowitz v. Am. Sav. Bank, F.S.B.](#), No. 20-15024 (9th Cir. June 10, 2022) (affirming summary judgment in bank's favor)
- **FDCPA / Section 1692c(b) / Standing:** Alleged disclosure of plaintiff's medical debt to third party did not rise to the level of publicizing her private information, and the complaint did not allege that any person actually read plaintiff's information or that it was in any way provided to the public at large – [Glick v. CMRE Fin. Servs., Inc.](#), No. 7:21-cv-07456 (S.D.N.Y. July 6, 2022) (dismissing FDCPA claim for lack of standing)

Title Insurance Update

- **Indemnification:** Title insurer stated a valid cause of action for indemnification against title company and mortgagor after title insurer resolved a claim in foreclosure proceeding based on title company's failure to identify prior mortgage while conducting title search and mortgagor defaulted on that mortgage, resulting in the foreclosure proceedings – [Fidelity Nat'l Title Ins. Co. v. DaSilva](#), No. 156474/2020 (N.Y. Sup. Ct. July 6, 2022) (denying title company and mortgagor's motions to dismiss)
- **Duty to Defend:** Title insurer breached its duty to defend its insured before the date that its insured agreed to an adverse claim asserted against her relating to the property; however, 3(a) exclusion in the title policy applied to bar coverage for defense costs incurred after that date – [Sammy v. First Am. Title Ins. Co.](#), No. 2019-12720 (N.Y. Sup. Ct. May 18, 2022) (reversing in part denial of summary judgment and entering partial summary judgment in favor of insured)

- **Conversion:** Lower court properly denied title insurer's motion for summary judgment on conversion claim because title insurer failed to establish that the insured did not have legal ownership or an immediate superior right to the escrow funds, which were tendered to the title company as an agent of the title insurer, or that the title insurer did not exercise unauthorized dominion over those funds in failing to use them to pay off the existing mortgages encumbering the subject property – [Sammy v. First Am. Title Ins. Co.](#), No. 2019-12720 (N.Y. Sup. Ct. May 18, 2022) (affirming denial of title insurer's motion for summary judgment)

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