

Real Property, Financial Services, & Title Insurance Update: Week Ending June 17, 2022

June 17, 2022

Real Property Update

- **Foreclosure / Mobile Home:** 21st Mortgage's unperfected security interest in mobile home — which was a fixture to mortgaged real property — did not survive the real property's foreclosure by predecessor in interest; accordingly, trial court erred in ruling that 21st Mortgage had possessory interest in mobile home that was superior to Echo River's — [Echo River Sanctuary, LLC v. 21st Mortg. Corp.](#), No. 1D21-1940 (Fla. 1st DCA June 15, 2022) (reversed and remanded)
- **Foreclosure Sale:** Trial court did not abuse its discretion in overruling objections to foreclosure sale; trial court reasonably found that appellant did not prove grounds for relief and failed to show that the sale price was inadequate or that it was the result of a mistake, fraud, or other irregularity — [GGG Found. & Tr. LLC v. HMC Assets, LLC](#), No. 1D21-2879 (Fla. 1st DCA June 15, 2022) (affirmed)

Financial Services Update

- **RESPA / Sufficiency of Pleading / Actual Damages:** Plaintiff's claim failed to allege actual damages, either economic or noneconomic, flowing from the failure to respond to any qualified written requests — *Aniel v. PHH Mortg. Corp.*, No. 4:21-cv-06071 (N.D. Cal. June 1, 2022) (granting dismissal of RESPA count)
- **TCPA / Prior Express Consent:** Bank had prior express consent under TCPA to send responsive text messages to consumer, who initiated contact with the bank, precluding consumer's recovery under TCPA — [Moskowitz v. Am. Sav. Bank, F.S.B.](#), No. 20-15024 (9th Cir. June 10, 2022) (affirming summary judgment in bank's favor)

- **FCRA / Standing:** Plaintiff's conclusory allegations were insufficient to support standing to sue where only allegations were that plaintiff suffered an injury to his creditworthiness, increased difficulty obtaining credit, and embarrassment, humiliation, and other emotional injuries – [Gross v. TransUnion, LLC](#), No. 1:21-cv-01329 (E.D.N.Y. June 13, 2022) (granting plaintiff's motion to remand)

Title Insurance Update

- **Policy Coverage:** The fact that title insurer issued policy three years after its commitment did not affect title insurer's ability to assert coverage defenses, such as policy's easement exception, and because policy excepted coverage for the claims at issue, title insurer properly denied coverage – [Columb v. Cox](#), No. 2020AP1593 (Wis. Ct. App. June 7, 2022) (affirming summary judgment in favor of title insurer)
- **Personal Jurisdiction / Florida Statutes Section 48.193(1)(a)(1):** Court lacked personal jurisdiction over Texas-based title company in action brought against it by Florida-based title insurer, even though title insurer's agency agreement with title company required notices and communications to be sent to a Florida address and to a Florida attorney, because the claims arose not from those contacts, but from payments related to Texas property – [Fidelity Nat'l Title Ins. Co. v. N. Am. Title Co.](#), No. 1:22-cv-20840 (S.D. Fla. June 10, 2022) (granting title company's motion to dismiss without prejudice)
- **Personal Jurisdiction / Forum Selection / Florida Statutes Section 685.102:** Section 685.102, Florida Statutes, did not provide basis for establishing personal jurisdiction over Texas-based title company in action brought against it by Florida-based title insurer, where agency agreement provided for application of Florida law but did not say that title company agreed to submit to the jurisdiction of Florida courts (and instead only allowed title insurer to choose venue) – [Fid. Nat'l Title Ins. Co. v. N. Am. Title Co.](#), No. 22-cv-20840 (S.D. Fla. June 10, 2022) (granting title company's motion to dismiss without prejudice)

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