

Real Property, Financial Services, & Title Insurance Update: Week Ending March 18, 2022

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Real Property Update

- **Foreclosure / Surplus Funds:** Trial court erred in awarding surplus funds in association's lien foreclosure sale to first mortgagee, as the owner of record (the mortgagor) on the date of the filing of the lis pendens was entitled to such funds after payment of subordinate lienholders who have timely filed claims (which the first mortgagee was not), pursuant to section 45.032(2), Florida Statutes – [Goetz v. AGB Tampa LLC](#), No. 2D21-1561 (Fla. 2d DCA Mar. 18, 2022) (reversed and remanded)
- **Challenging Endorsements on Promissory Note / Entitlement to Discovery / Showing:** A borrower is not afforded the right to discovery on whether an endorsement is proper simply because the borrower challenges the endorsement by claiming it is a forgery; rather, entitlement to discovery requires an evidentiary showing to support that claim – [Bank of N.Y. Mellon v. Bontoux](#), No. 3D21-1869 (Fla. 3d DCA Mar. 16, 2022)

Financial Services Update

- **FCCPA / Fee Award:** Fee awards in FDCPA cases can be used as comparators when considering FCCPA fee requests – [McDonald v. Hunter Warfield, Inc.](#), No. 3:20-cv-00971 (M.D. Fla. Mar. 17, 2022)

- **TCPA / Class Certification:** Certification of stand-alone fax machine class was appropriate under rule 23(b)(3) because there were several common issues of fact and law. which could be determined classwide and predominate over individual issues, and a class action would be superior to other methods of adjudicating the controversy, and Mastercard’s reliance on “evidence” from other cases and attempts to re-litigate issues previously raised in support of reconsideration were insufficient – [Scoma Chiropractic, P.A. v. Dental Equities, LLC](#), No. 2:16-cv-00041 (M.D. Fla. Feb. 9, 2022) (denying motion for reconsideration)
- **FDCPA / Standing:** Plaintiff did not put forward evidence of mental or emotional harm or monetary and reputational harm and, thus, did not demonstrate any concrete injury sufficient to support standing – [Adler v. Penn Credit Corp.](#), No. 7:19-cv-07084 (S.D.N.Y. Mar. 11, 2022) (granting defendant’s summary judgment motion)

Title Insurance Update

- No cases of interest to report.

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