

Real Property, Financial Services, & Title Insurance Update: Week Ending March 4, 2022

March 05, 2022

Real Property Update

- **Fla. Const., Art. VII, Sec. 3(a) / Ad Valorem Tax Exemptions / Municipal or Public Purpose:** City was not entitled to ad valorem tax exemptions for its golf course and related facilities, despite owning said property, which was open to the public, because by allowing a private company to retain any profits generated by the company's management of the property, instead of only allowing the company to collect a management fee, the city did not use the property exclusively for a municipal or public purpose – [Brown v. City of Gulf Breeze](#), No. 1D19-4245 (Fla. 1st DCA Mar. 2, 2022) (reverse and remand)
- **Section 83.60(2) / Landlord-Tenant Law / Eviction:** Section 83.60(2), Florida Statutes, which is not discretionary, compels a tenant defending against an eviction to pay into the court registry either (i) the amount of rent alleged to be due or (ii) the amount of rent determined by the court, plus all rent that accrues during the case's pendency – [Huddleston v. Chaney St. Place, LLC](#), No. 1D21-163 (Fla. 1st DCA Mar. 2, 2022) (affirmed)
- **Liens / Voluntary Payment / Mootness:** Trial court's finding of mootness, which resulted in a denial of procedural due process, was erroneous because petitioner's payment of the lien on his property, in full, while petitioner's appeal of the lien was pending was involuntary, given the coercive effect of the lien and that relief could be granted to the petitioner in the form of a refund – [Sheckler v. Monroe Cnty., Fla.](#), No. 3D21-0464 (Fla. 3d DCA Mar. 2, 2022) (petition granted)

- **Land Use / Temporary Injunction / Mootness:** City's appeal of a temporary injunction that restrained the enforcement of a city ordinance, which rolled back the hours of alcohol sales from 5 a.m. to 2 a.m. for all businesses located within a certain district, was moot because the ordinance had expired by its own terms – [City of Miami Beach v. Cleveland Ocean, L.P.](#), No. 3D21-1345 (Fla. 3d DCA Mar. 2, 2022) (dismissed in part; affirmed in part)
- **Land Use / Temporary Injunction / Noise Limits / Estoppel:** There was competent, substantial evidence to support the temporary injunction restraining the enforcement of a city noise ordinance against appellee hotel because the hotel supported the likelihood of success on its theory of estoppel by demonstrating that it acted in reliance upon the decibel limit in the board order and its conditional use permits, along with the city's actions, in incurring extensive obligations and expenses, and those obligations and expenses would render it arguably inequitable or unjust to enforce the repeal – [City of Miami Beach v. Cleveland Ocean, L.P.](#), No. 3D21-1345 (Fla. 3d DCA Mar. 2, 2022) (dismissed in part; affirmed in part)

Financial Services Update

- **FCCPA / Section 559.72(7) & (9):** Plaintiff tenants failed to state claims against off-campus housing provider based upon refusal to release them from lease obligations after onset of COVID-19 because of the undisputed existence of valid lease agreements between the parties – [Longo v. Campus Advantage, Inc.](#), No. 8:20-cv-02651 (M.D. Fla. Mar. 1, 2022) (granting motion to dismiss)
- **TCPA / Corporate Officer Liability:** Plaintiff failed to plead sufficient facts to show that individual defendants were personally and directly involved in sending text messages at issue – [Bank v. Dorfman](#), No. 1:18-cv-06457 (E.D.N.Y. Dec. 21, 2021) (denying motion for default judgment)
- **FDCPA / Section 1692e & 1692g:** Plaintiff failed to state a claim based upon deceptive communication where debt collection letter included a payment of one cent he never made – [Lamm v. FMS, Inc.](#), No. 7:21-cv-02478 (S.D.N.Y. Feb. 28, 2022) (granting defendants' motion to dismiss)

Title Insurance Update

- **Termination of Contract:** Developers were entitled to terminate purchase agreement with sellers when title commitment provided exception for any title defects subsequent to the date of the policy (including, e.g., mortgage, tax, or judgment liens) because, pursuant to the purchase agreement, this exception “substantially and materially interfere[d] with [developers’] development of a hotel on the property” – [West Loop Hospitality, LLC v. Houston Galleria Lodging Assocs., LLC](#), No. 01-19-00885-CV (Tex. Ct. App. Mar. 3, 2022) (reversing trial court’s denial of developers’ motion for summary judgment)

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