

Real Property, Financial Services, & Title Insurance Update: Week Ending April 10, 2020

CONSUMER FINANCE | REAL PROPERTY LITIGATION | TITLE INSURANCE | APRIL 10, 2020

Real Property Update

- **Foreclosure / Dismissal:** Involuntary dismissal of foreclosure action for alleging default on same date alleged in a prior dismissed foreclosure action was improper where allegation included reference to continuing defaults - HMC Assets LLC v. Williams, No. 3D18-160 (Fla. 3d DCA Apr. 8, 2020) (reversed)
- **Foreclosure / Unclean Hands:** Mortgage lender was not a party to borrowers' divorce action and had no legal obligation to remove spouse from the note and mortgage, as contemplated in the divorce decree - MTGLQ Investors, L.P. v. Moore, No. 1D18-4146 (Fla. 1st DCA Apr. 9, 2020)
- **Foreclosure / Leave to Amend:** Denial of borrower's motion for leave to amend counterclaim prior to ruling on summary judgment was within the court's discretion where there were five years of pretrial motions and borrower made three separate and unsuccessful attempts to file a legally sufficient counterclaim - Moskovits v MTGLQ Investors, LP, No. 3D19-1779 (Fla. 3d DCA Apr. 8, 2020) (affirmed)

Financial Services Update

- **FDCPA / Debt Collector:** Failure to allege that debt was in default when acquired provides grounds for dismissal - Mekhail v. Galencare, Inc., No. 8:20-cv-00565 (M.D. Fla. Apr. 3, 2020) (granting dismissal motion)
- **FDCPA / Debt Validation:** Inclusion of the words "by the creditor" in the validation notice did not constitute a violation under the FDCPA - Lorenzo v. Durham & Durham, LLP, No. 2:20-cv-00109 (M.D. Fla. Apr. 6, 2020) (granting dismissal motion)
- **FDCPA / Improper Disclosure:** Consent to call number provided by debtor to creditor did not extend to third-party servicer - Russo v. POM Recoveries, Inc., No. 2:18-cv-05472 (E.D.N.Y. Apr. 8, 2020) (denying defendant's summary judgment motion)

Title Insurance Update

- **Insured:** Title insurance coverage is expressly and clearly limited to the insured; thus, a manager of the insured borrower is not a third-party beneficiary of the policy and is not entitled to coverage, even if he also happens to be a guarantor of the loan who has a "huge financial stake" in the deal - Mazel v. Las Cruces Abstract & Title Co., No. 1:18-ap-01057 (Bankr. N.M. Apr. 3, 2020) (opinion granting summary judgment)

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