



# Michael K. Winston

SHAREHOLDER

WEST PALM BEACH

**P** : 561.650.8039

**F** : 561.659.7368

CONNECT

[mwinston@carltonfields.com](mailto:mwinston@carltonfields.com)

[LinkedIn](#)

## Overview

Michael Winston, the Consumer Finance Industry Group chair, focuses on consumer finance litigation, including lender liability and loan servicing litigation, escalated residential foreclosures, and federal TILA, RESPA, FCRA, ECOA, FDCPA, and RICO claims, as well as their state law counterparts. Michael regularly serves as first chair for trials in both state and federal district court.

Michael holds a finance degree and has substantial *Fortune* 500 professional experience in accounting, business management, and systems technology. Michael's goal in litigation is to work with clients to map out strategic endgames and then effectively execute to achieve expedient, cost-effective results. To this end, Michael has effectively managed more than 2,000 alternative fee arrangement (AFA) cases for clients.

Michael also serves as appellate counsel for clients in state and federal courts in Florida and the Southeast. He has handled more than 500 appeals.

## Experience

### Trial and Appellate Decisions

- *Streicher v. U.S. Bank, N.A.*, No. 9:14-cv-80265, 2016 WL 1028359 (S.D. Fla. Mar. 15, 2016), *aff'd*, 666 F. App'x 844 (11th Cir. 2016). Entering summary judgment for defendants. Holding that a dismissal for lack of standing pursuant to Florida Rule of Civil Procedure 1.420(b) is not res judicata.
- *Rivera v. Wells Fargo Bank, N.A.*, 189 So. 3d 323 (Fla. 4th DCA 2016). Affirming judgment for plaintiff. Providing a first-impression analysis of application of Florida's Uniform Electronic Transactions Act to mortgage foreclosure claims.
- *Wells Fargo Bank, N.A. v. Gonzalez*, 186 So. 3d 1092 (Fla. 4th DCA 2016). Reversing judgment entered in favor of defendant. Holding that trial court violated plaintiff's due process rights by entering judgment on a claim that was not alleged.
- *Phan v. Deutsche Bank Nat'l Tr. Co.*, 198 So. 3d 744 (Fla. 2d DCA 2016). Affirming judgment for plaintiffs. Holding, as a matter of first impression, that

principles of constructive possession apply to claims brought under the Uniform Commercial Code.

- *Milce v. Wells Fargo Bank, N.A.*, 183 So. 3d 1256 (Fla. 4th DCA 2016). Affirming judgment for plaintiff. Holding, as a matter of first impression, that Florida Rule of Civil Procedure 1.420(d) requires the entry of a cost judgment before its stay provisions become effective.
- *Grave v. Wells Fargo Bank, N.A.*, No. 0:14-cv-60975, 2015 WL 5774337 (S.D. Fla. Sept. 9, 2015). Judgment entered in Wells Fargo's favor after trial before district court seeking punitive damages. District court concluded that borrower failed to establish that she had been advised to stop making payments to obtain a loan modification or that this claim presented a basis for awarding damages.
- *Market Tampa Invs., LLC, v. Stobaugh & U.S. Bank, N.A.*, 177 So. 3d 31 (Fla. 2d DCA 2015). Affirming lower court ruling that investor who purchased property after recording of lis pendens did not have the right to intervene in subsequent foreclosure case.
- *Vasilevskiy v. Wachovia Bank, N.A.*, 171 So. 3d 192 (Fla. 5th DCA 2015). Affirming judgment for lender. Holding that notice of intent to accelerate required by mortgage was sufficient even though it provided only 28 days to cure when claimed error was not a material breach of the mortgage.
- *Wachovia Mortg. Corp. v. Posti*, 166 So. 3d 944 (Fla. 4th DCA 2015). Reversing judgment for borrower entered after trial. Holding that trial court lacked jurisdiction to order lender/servicer to enter into a loan modification with the borrower.
- *Wells Fargo Bank, N.A. v. Michaels*, 166 So. 3d 226 (Fla. 5th DCA 2015). Reversing order dismissing foreclosure action where trial court failed to provide proper notice of trial. Holding order entered without notice is void.
- *Bank of Am., N.A. v. Asbury*, 165 So. 3d 808 (Fla. 2d DCA 2015). Reversing entry of summary judgment in favor of borrower where borrower failed to plead ground argued as basis for entry of summary judgment.
- *Roman v. Wells Fargo Bank*, 143 So. 3d 489 (Fla. 5th DCA 2014). Holding that notice of default was effective when mailed and there was nothing in the mortgage requiring a lender/servicer to prove receipt.
- *Whittaker v. Wells Fargo Bank, N.A.*, No. 6:12-cv-00098, 2014 WL 5426497 (M.D. Fla. Oct. 23, 2014). Entering summary judgment in favor of Wells Fargo on RESPA and TILA claims. Borrower alleged that Wells Fargo failed to timely respond to QWR and failed to properly apply a credit balance on the account.
- *Bloch v. Wells Fargo Home Mortg.*, 755 F. 3d 886 (11th Cir. 2014). Affirming summary judgment in favor of investor and servicer. Holding no private right of action under the Home Affordable Modification Program (HAMP) and that TPP offer letter cannot form the basis of a binding contract or create grounds for claiming promissory estoppel.
- *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924 (Fla. 2013). Affirming the lower appellate court on a certified question. Holding that an ordinance enacted by the city of Palm Bay (and more than 100 other local jurisdictions) was invalid as being in conflict with state statutory law.
- *Figueroa v. MERSCORP*, 477 F. App'x 558 (11th Cir. 2012). Affirming lower court dismissal of case based on *Rooker-Feldman* doctrine.
- *Brigliadora v. Wells Fargo Bank, N.A.*, 447 F. App'x 941 (11th Cir. 2011). Affirming lower court dismissal of complaint. Applying TILA provisions permitting reduction in available credit for home equity lines of credit.

- *Citron v. Wachovia Mortg. Corp.*, 922 F. Supp. 2d 1309 (M.D. Fla. 2013). Judgment entered in favor of Wachovia after trial before district court. District court rejected testimony of borrowers as not credible. District court also held that borrowers waived right of rescission under TILA. Entering judgment in favor of lender providing for foreclosure on property.
- *Foley v. Wells Fargo Bank, N.A.*, No. 0:11-cv-62314, 2012 WL 4829124 (S.D. Fla. 2012). Judgment entered in favor of Wells Fargo after trial before district court. District court held that Wells Fargo, as servicer, was not liable for claimed violation of TILA provision 15 U.S.C. § 1641(g), which requires notice of transfer of ownership of mortgage loans.
- *Holcomb v. Fed. Home Loan Mortg. Corp.*, No. 9:10-cv-81186, 2012 WL 718814 (S.D. Fla. 2012). Granting summary judgment in Freddie Mac's favor. Applying partial right of rescission provisions under TILA.
- *Wells Fargo Bank, N.A. v. Morcom*, 125 So. 3d 320 (Fla. 5th DCA 2013). Appellate court reversed lower court finding that Florida's Uniform Commercial Code required that an entity foreclosing a mortgage must be both the owner and holder of the mortgage and note. Holding that a holder may foreclose in its own right.
- *U.S. Bank, N.A. v. Marion*, 122 So. 3d 398 (Fla. 2d DCA 2013). Appellate court reversed lower court finding that verification of residential foreclosure complaint cannot be done by employee of mortgage loan servicer. Holding that nothing in the verification rule imposed the requirements demanded by the lower court.
- *Wells Fargo Bank, N.A. v. Stahler*, 115 So. 3d 1105 (Fla. 5th DCA 2013). Reversing lower court dismissal of case as a sanction. Holding that lower court erred in failing to conduct mandatory analysis before dismissing action.
- *Deutsche Bank Nat'l Tr. Co. v. Sela*, 110 So. 3d 537 (Fla. 4th DCA 2013). Reversing lower court dismissal of case as a sanction. Holding that lower court erred in failing to conduct mandatory analysis before dismissing action.
- *Velardo v. America's Servicing Co.*, 6:07-cv-01253 (M.D. Fla. Apr. 25, 2008), *aff'd*, 298 F. App'x 890 (11th Cir. 2008). Obtained judgment on the pleadings on RESPA and TILA claims based on *Rooker-Feldman* doctrine and statute of limitations.
- *Peart v. Wells Fargo Fin. Bank*, No. 0:08-cv-60793 (S.D. Fla. Nov. 10, 2008), *aff'd*, 345 F. App'x 384 (11th Cir. 2009). Obtained dismissal with prejudice of FCRA and state law tort claims brought by borrower. Affirmed on appeal.
- *Esque Real Estate Holdings, Inc. v. C.H. Consulting, Ltd.*, 940 So. 2d 1185 (Fla. 4th DCA 2006). Affirming final judgment of foreclosure and sale of property.
- *Merkle, M.D., P.A. v. Aetna Health, Inc.*, 940 So. 2d 1190 (Fla. 4th DCA 2006). Appellate court held that a private cause of action could be brought under Florida's emergency services statute.

### **Class Actions**

- *Kunzelmann v. Wells Fargo Bank, N.A.*, No. 9:11-cv-81373, 2013 WL 139913 (S.D. Fla. Jan. 10, 2013). District court denied certification of nationwide class of borrowers making claims relating to lender-placed hazard insurance. Matter was ultimately dismissed by the court for lack of CAFA jurisdiction after certification was denied.
- *Williams v. Wells Fargo Bank, N.A.*, 280 F.R.D. 665 (S.D. Fla. 2012). Although the district court certified the borrower's class for claims related to lender-placed insurance on property where the borrower had failed to secure insurance in compliance with the terms of the mortgage, the class was limited strictly to

Florida and included six carved out groups of potential plaintiffs, thereby dramatically limiting the scope of the claims. The matter ultimately settled.

- *Sayago v. Wells Fargo Bank, N.A.*, No. 8:11-cv-02009 (M.D. Fla. 2011). Pending putative class action seeking certification of nationwide class of borrowers asserting claims that lender/servicer imposed requirements for flood insurance coverage in excess of the amounts required by the mortgages. Settled.
- *Fladell v. Wells Fargo Bank, N.A.*, No. 0:13-cv-60721 (S.D. Fla. 2013). Pending putative class action seeking certification of a nationwide class of borrowers making claims relating to lender-placed hazard insurance. Settled.
- *Pereira v. PHH Mortg. Corp.*, No. 0:14-cv-20112 (S.D. Fla. 2014). Putative class action seeking certification of a class of borrowers who claim that their mortgage loan servicer imposed obligations on them to obtain release of insurance proceeds that were not permitted by the terms of their mortgages. Case dismissed.
- *Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905 (Fla. 2010). The Florida Supreme Court affirmed the dismissal of consolidated putative class actions against Merrill Lynch Credit Corp. and World Savings Bank for failure to state a cause of action. The plaintiffs alleged that the financial institutions improperly charged plaintiffs document preparation fees for services performed by clerical personnel during the plaintiffs' mortgage loan origination and that such activity constituted the unauthorized practice of law. The Florida Supreme Court affirmed the dismissal on the basis that the pleadings had to allege that it had already ruled that the actions complained of constituted the unauthorized practice of law, which plaintiffs had not done.
- *Rodriguez v. Choice Home Fin. LLC*, No. 2008-CA-16343 (Fla. Cir. Ct.). Represented lender in putative class action arising out of construction and sale of residential homes on site alleged to have been a former army test range. Judgment on the pleadings entered in favor of lender.
- *Love v. Blue Cross & Blue Shield Ass'n (In re Managed Care Litig.)*, No. 1:00-md-01334, 2009 WL 812257 (S.D. Fla. Mar. 26, 2009). Obtained dismissal with prejudice of putative class action by all physicians in the United States alleging violations of RICO by all Blue Cross Blue Shield licensees.
- *Solomon v. Blue Cross & Blue Shield Ass'n*, 574 F. Supp. 2d 1288 (S.D. Fla. 2008). Obtained dismissal with prejudice of putative class action by non-physicians alleging violations of RICO by all Blue Cross Blue Shield licensees.
- *Banner v. Wells Fargo Bank, N.A.*, No. 07-08015 (Fla. Cir. Ct.). Defense of putative class action alleging that mortgage lender violated Florida's Consumer Collection Practices Act.
- *Merkle, M.D., P.A. v. Aetna Health, Inc.*, No. 05-04454 (Fla. Cir. Ct.). Defense of putative class action by Florida physicians alleging violation of Florida's emergency medical services statute. Case settled.

## All Insights

05.20.2016 Foreclosure of Mortgage Securing Electronic Promissory Note  
Affirmed

---

04.26.2016 Borrowers Misuse RESPA Notice of Error Letter

---

04.13.2016	Split Florida Court Withdraws Beauvais Opinion to Hold that Dismissal Without Prejudice of Foreclosure Action Does Not Bar Second Action More than 5 years Later
04.12.2016	Florida's Third DCA Withdraws Opinion Impacting Mortgage Lenders
05.08.2015	Florida Court Recognizes Need To Show Prejudice To Establish Defense Of Failure Of Conditions Precedent Under Paragraph 22 Of The Mortgage
03.25.2015	Stripping of Unsecured Second Mortgages in Chapter 7 Bankruptcies in the Crosshairs
09.16.2014	Florida: Note and Mortgage Still Enforceable After Dismissal of Foreclosure Action
07.08.2014	Servicers Face New Requirements for Responding to Consumer Error Claims
03.31.2014	Unsettled Questions Remain Under the SCRA
09.01.2009	Tips from the Mortgage Meltdown Trenches – Produce the Note? ... Of Course We Can"
08.01.2009	Tips from the Mortgage Meltdown Trenches – Where is the Rent?
04.01.2009	The 'Alphabet Soup' of Lending Claims
03.01.2007	Safe Harbor and Sanctions under Rule 37
08.02.2004	Service on the Foreign Defendant Pursuant to FRCP 4

## Recognition

- Most Effective Lawyers Award, *Daily Business Review*
- AV Rated by Martindale-Hubbell

## Professional & Community Involvement

- American Bar Association
  - Section of Litigation
    - Business Torts and Unfair Competition Committee
    - Class Actions and Derivative Suits Committee

- Mortgage Bankers Association

## Speaking Engagements

- "Mortgage Fraud Litigation 360," 2011 ABA Section of Litigation Annual CLE Conference, Miami Beach, FL (April 13–16, 2011).
- "Recovering Losses in the Wake of the Mortgage Meltdown," ABA Annual Meeting (2009)
- "How to Dissect Mortgage Lending Claims," ABA Section of Litigation Annual Meeting (2009)
- "Implications and Analysis of the Mortgage Reform and Anti-Predatory Lending Act of 2007," Mortgage Lending Committee of the ABA Real Property, Trust, and Estate Law Section (October 29, 2007)

## Credentials

### EDUCATION

- Georgetown University Law Center (J.D., cum laude, 1994)
- Emory University (B.B.A., with distinction, 1987)

### BAR ADMISSIONS

- Florida
- New York

### LANGUAGES

- French
- German
- Latin

### COURT ADMISSIONS

- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- U.S. District Court, Northern District of Florida
- U.S. District Court, Southern District of Florida
- Florida State Courts

### CLERKSHIPS

- Hon. Barry J. Stone, Florida Fourth District Court of Appeal

## Background

- Staff Attorney to the Honorable Barry J. Stone, Florida Fourth District Court of Appeal (1995–1996)
- Law Clerk, Federal Deposit Insurance Corp., Washington, D.C. (1992)
- International Financial Analyst, EDS Corp. (1987–1988)
- International Financial Analyst, Ryder Systems (1989–1991)

## Areas of Focus

### PRACTICES

- Appellate & Trial Support
- Class Actions

### INDUSTRIES

- Banking, Commercial, and Consumer Finance

- Consumer Finance
  - Litigation and Trials
  - Real Property Litigation
- Real Estate