

Real Property, Financial Services, & Title Insurance Update: Week Ending July 1, 2022

July 01, 2022

Real Property Update

- **Sale Contract / Force Majeure:** Force majeure clause in parties' vacant land sale contract did not apply to matters, like a planned unit development application, which was within buyer's control – [Rockwell at Amelia Passage, LLC v. Williams](#), No. 1D21-2663 (Fla. 1st DCA June 29, 2022) (affirming summary judgment for sellers)
- **Foreclosure:** Plaintiff failed to present sufficient evidence of unpaid principal, the amount of interest, and other amounts due – [Ivy Chase Apartment Prop., LLC v. Ivy Chase Apartments, Ltd.](#), No. 2D21-436 (Fla. 2d DCA June 29, 2022) (reversed and remanded)
- **Condominium Declaration / Purchase Option / Enforceability:** Trial court properly entered summary judgment in favor of unit owner on the basis that the option clause in the declaration of condominium was an unreasonable restraint on alienation – [814 Prop. Holdings, LLC v. New Birth Baptist Church Cathedral of Faith Int'l, Inc.](#), No. 3D20-0233 (Fla. 3d DCA June 29, 2022) (affirming final summary judgment)
- **Foreclosure / Settlement Agreement:** By failing to pay negotiated amount six days before the scheduled sale date or surrender the property, borrower breached the settlement agreement and forfeited his right to redeem the property at the reduced prices – [Montalvo v. Deutsche Bank Nat'l Tr. Co.](#), No. 3D21-2233 (Fla. 3d DCA June 29, 2022) (affirmed)

Financial Services Update

- **FDCPA & TILA / Periodic Statements / Conflict:** There is no conflict between TILA and FDCPA and in fact they work together, with the former requiring servicers to send periodic statements and the latter requiring that those statements be fair and accurate when they contain language that would induce a debtor to pay; nothing in TILA says that a periodic statement cannot serve as a means of debt collection; when servicers use periodic statements to collect a debt, they can be held liable for any misleading or unconscionable representations made in those statements – [Lamirand v. Fay Servicing, LLC](#), No. 20-14286 (11th Cir. July 1, 2022) (reversing dismissal)
- **FDCPA & TILA / Periodic Statements:** Reaffirming its disagreement with district courts that have used CFPB bulletin to hold that periodic statements sent substantially in compliance with TILA and its implementing regulations fell outside the FDCPA's coverage – [Lamirand v. Fay Servicing, LLC](#), No. 20-14286 (11th Cir. July 1, 2022) (reversing dismissal)
- **FDCPA & TILA / Periodic Statements / Dual Purposes:** Dual purposes – notification and collection – can exist even when a periodic statement resembles the template provided by the CFPB – [Lamirand v. Fay Servicing, LLC](#), No. 20-14286 (11th Cir. July 1, 2022) (reversing dismissal)
- **FDCPA & TILA / Periodic Statements:** Period statements contained far more language than the model form from the CFPB – language that served to persuade debtors to pay, e.g., the payment coupon – making it plausible (at least) that statements aimed to do more than simply inform debtors of their debt – [Lamirand v. Fay Servicing, LLC](#), No. 20-14286 (11th Cir. July 1, 2022) (reversing dismissal)
- **Money Lent:** Plaintiff making claim for money lent must show money was delivered to defendant, the money was intended as a loan, and the loan has not been repaid – [CFLB Mgmt., LLC v. Mabipa Overseas, S.A.](#), No. 3D20-1714 (Fla. 3d DCA June 29, 2022) (affirmed)
- **Money Lent / Interest:** No error in trial court's award of agreed-upon interest amounts as part of plaintiffs' money lent claims where there was no dispute that money defendant received from plaintiffs was a loan and that the parties agreed to specific terms as part of that loan, including applicable simple and default interest rates as reflected in copies of promissory notes – [CFLB Mgmt., LLC v. Mabipa Overseas, S.A.](#), No. 3D20-1714 (Fla. 3d DCA June 29, 2022) (affirmed)
- **FCRA / Collateral Legal Dispute:** Plaintiff's FCRA claims against CRA subject to dismissal because they involved a collateral legal dispute with nonparty furnisher, which were contractual in nature because they hinged on the validity of plaintiff's agreement with furnisher and whether furnisher upheld its duties under that agreement – [Arniella v. TransUnion, LLC](#), No. 1:21-cv-23694 (S.D. Fla. June 2, 2022) (dismissing claims against CRA)

- **FDCPA / In Connection With Collection of Any Debt:** Although neither FDCPA nor Ninth Circuit have defined the phrase “in connection with the collection of any debt” under section 1692e, a generally accepted definition derived from other circuit courts of appeals is that “for communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor” – [Samano v. LVNV Funding, LLC](#), No. 1:21-cv-01692 (E.D. Cal. June 28, 2022) (granting dismissal motion)
- **FDCPA / In Connection With Collection of Any Debt / Credit Reporting:** Not every communication with a CRA about a debt is made “in connection with the collection of any debt” under 1692e as a matter of law; for example, there is a distinction between voluntary reporting of debts and reporting that is made in compliance with procedures required under the FCRA – [Samano v. LVNV Funding, LLC](#), No. 1:21-cv-01692 (E.D. Cal. June 28, 2022) (granting dismissal motion)
- **FDCPA / In Connection With Collection of Any Debt / Credit Reporting:** Plaintiff pleaded no facts from which a collection-related, as opposed to a compliance-related, motivation could be inferred; plaintiff merely alleged that defendant was falsely reporting his accounts as disputed to CRAs, which was insufficient – [Samano v. LVNV Funding, LLC](#), No. 1:21-cv-01692 (E.D. Cal. June 28, 2022) (granting dismissal motion)

Title Insurance Update

- **Exclusion 3(a):** Insured’s claim that it could not proceed with construction plans following purchase of property due to restrictive covenant limiting building height fell under exclusion 3(a), where insured was aware of the restriction and required that seller obtain a modification of the restriction before closing so as to enable insured to perform certain construction; as such, modification constituted a matter “created, suffered, assumed, or agreed to” by insured and losses allegedly incurred as a result not covered under title policy – [50 Clarkson Partners, LLC v. Old Republic Nat’l Title Ins. Co.](#), No. 2019-08595 (N.Y. App. Ct. June 29, 2022) (affirming dismissal of complaint)

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