

Real Property, Financial Services, & Title Insurance Update: Week Ending August 7, 2020

August 07, 2020

Real Property Update

- **Affirmative Defense / Waiver:** Homeowner unable to raise statute of limitations affirmative defense for the first time in motion for summary judgment – [Deer Brooke S. Homeowners Ass’n of Polk Cty., Inc. v. Battles](#), No. 2D19-1988 (Fla. 2d DCA Aug. 7, 2020) (reversed and remanded)
- **Usury:** An otherwise non-usurious loan does not become usurious merely because usurious interest is claimed or demanded under it – [World O World Corp. v. Patino](#), No. 3D20-0062 (Fla. 3d DCA Aug. 5, 2020) (reversed and remanded)
- **Novation:** Taking over the obligation of unpaid assessments amounts through deed does not create a novation of the contract between the parties – [C.V.P. Cmty. Ctr., Inc. v. McCormick 105, LLC](#), No. 4D19-1515 (Fla. 4th DCA Aug. 5, 2020) (reversed)

Financial Services Update

- **FCCPA / FDCPA:** Convenience fees assessed against borrower in connection with making payments to loan servicer are not considered a debt under the FCCPA or FDCPA, and the loan servicer is not considered a debt collector when collecting such fees – [Kelly v. Ocwen Loan Servicing, LLC](#), No. 3:20-cv-00050 (M.D. Fla. July 31, 2020) (dismissing action with prejudice)
- **FDCPA:** In a letter attempting to collect a debt, a statement that a debtor’s credit report may be negatively impacted if the debtor does not contact the debt collector does not confuse, mislead, or deceive the “least sophisticated consumer” such that the consumer will think he or she must pay the debt immediately or face adverse credit consequences before the 30-day statutory validation period expires pursuant to the FDCPA – [Wright v. AR Resources, Inc.](#), No. 8:20-cv-00985 (M.D. Fla. July 31, 2020)

Title Insurance Update

- **Rescission of Title Policy:** Title insurer granted leave to amend to add affirmative defenses and counterclaims against insured for fraudulent inducement and rescission of title policy based on discovery indicating principal of insured falsely held herself out to be the sole member of insured and may have obtained title policy on insured's behalf without authority – [53 Spencer Realty LLC v. Fidelity Nat'l Title Ins. Co.](#), No. 520249/16 (N.Y. Sup. Ct. Aug. 5, 2020) (granting leave to amend)

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