

Real Property, Financial Services, & Title Insurance Update: Week Ending February 14, 2020

February 19, 2020

Real Property Update

- **Foreclosure / Standing:** Where plaintiff was substituted in as a party plaintiff after original note was filed with the court, introduction of original note bearing blank indorsement into evidence at trial was sufficient to establish substituted plaintiff's standing – [Wilmington Sav. Fund Soc'y, FSB v. Stevens](#), No. 4D19-585 (Fla. 4th DCA Feb. 12, 2020) (reversing involuntary dismissal)
- **Foreclosure / Documentary Stamp:** Appellate record did not establish that the required documentary stamp and intangible taxes were not paid on portion of loan enforced by judgment; fundamental error does not permit appellant to raise issue for first time on appeal – [Schroeder v. MTGLQ Inv'rs., L.P.](#), No. 4D18-3177 (Fla. 4th DCA Feb. 12, 2020) (affirming foreclosure judgment)
- **Foreclosure / Lost Note:** Bank witness' testimony reestablished lost note in accordance with Florida Statutes section 673.3091; sufficient for witness to simply testify that he or she conducted search for lost note but could not locate it – [Wells Fargo Bank, N.A. v. Bricourt](#), No. 4D19-325 (Fla. 4th DCA Feb. 12, 2020) (reversed and remanded)
- **Quiet Title / Priority of Interests / Inquiry:** Disputed issue of material fact (whether lender inquired into occupant's interest when property was mortgaged) precluded lender's summary judgment on quiet title action – [Townsend v. C.T. Box](#), No. 4D18-3004 (Fla. 4th DCA Feb. 12, 2020) (reversing summary judgment)
- **Quiet Title / Lis Pendens / Intervention:** Lis pendens statute Florida Statutes section 48.23(1) did not require person in possession to intervene in separate foreclosure lawsuit because occupant was in possession of subject property – [Townsend v. C.T. Box](#), No. 4D18-3004 (Fla. 4th DCA Feb. 12, 2020) (reversing summary judgment)

- **Foreclosure / Summary Judgment:** Trial court denied borrower due process when it summarily dismissed borrower's amended counterclaim and granted lender's motion for summary judgment after improperly relying on evidence submitted by lender for first time after hearing on summary judgment and denying borrower opportunity to address new evidence – [Wardell v. Fifth Third Mortg. Co.](#), No. 5D18-2481 (Fla. 5th DCA Feb. 14, 2020) (reversing summary judgment)

Financial Services Update

- **FDUTPA:** Plaintiffs stated a plausible FDUTPA claim alleging that defendants engaged in unlawful vehicle valuation markups and a “systematic scheme” of charging fraudulent fees because although defendants' contractual authority to assess the disputed charges and fees was contained in a separate document, the separate document was only generally referenced in the parties' rental car agreement and plaintiffs were not provided the separate document or information regarding how they could access it until after they had signed the rental car agreement – [Calderon v. Sixt Rent A Car, LLC](#), No. 0:19-cv-62408 (S.D. Fla. Feb. 12, 2020) (denying motion to dismiss and motion to compel arbitration)
- **FDCPA:** Mortgage lender was not a debt collector under the FDCPA where it filed a foreclosure action seeking to collect its own debt, and the foreclosure complaint and summonses served on plaintiffs due to their interest in the mortgaged property as heirs to the borrower's estate did not constitute debt collection activity since neither document contained an implicit or explicit demand from plaintiffs for payment of the debt owed by the borrower – [Anderman v. JP Morgan Chase Bank, Nat'l Ass'n](#), No. 19-13734 (11th Cir. Feb. 11, 2020) (affirming dismissal of complaint)
- **FCRA:** Consumer reporting agency complied with its statutory obligations by notifying the creditor of the consumer's dispute of the information contained on his credit report, providing the creditor with all the information it received from the consumer and requesting that the creditor verify the debt; consumer reporting agency was not required to examine any bankruptcy court orders or other court documents to determine their legal implications on the consumer's debt – [Losch v. Nationstar Mortg. LLC.](#), No. 2:18-cv-00809 (M.D. Fla. Feb. 12, 2020) (denying plaintiff's motion for partial summary judgment and granting defendant's motion for summary judgment)

Title Insurance Update

- No cases of interest to report.

Related Practices

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