

Real Property, Financial Services, & Title Insurance Update: Week Ending February 5, 2021

February 05, 2021

Real Property Update

- **Foreclosure / Standing:** In moving for involuntary dismissal, borrowers were required to admit as true all of the facts in evidence, including representations made in assignments of mortgage; bank established standing when it introduced the original, blank-indorsed note into evidence at trial - [U.S. Bank Trust, N.A. v. Dick](#), No. 2D19-3998 (Fla. 2d DCA Feb. 5, 2021) (reversing trial court's order granting involuntary dismissal)

Financial Services Update

- **FCRA / Reporting Discounted Payoff:** Rejecting plaintiff's argument that credit report showing 120 days past due amount violated FCRA, where the report reflected that, as of March 8, 2018, the account (1) had a balance of \$0; (2) was last updated on March 7, 2016; (3) was closed on March 7, 2016; (4) was 120 days past due from October 2015 through March 2016; (5) was settled for less than the full balance; and (6) had no past due amount - [Hernandez v. Trans Union LLC](#), No. 3:19-cv-01987 (N.D. Fla. Dec. 10, 2020) (granting furnisher's summary judgment motion and CRA's motion for judgment on the pleadings)
- **FCRA / Sufficiency of Pleading:** Plaintiff failed to (1) allege that she informed a CRA of inaccurate information on her credit report; (2) identify the CRA to which the loan servicing company furnished the inaccurate information or allege that the CRA informed loan servicer of the inaccuracies; and (3) allege nonconclusory facts that loan servicer failed to conduct a reasonable investigation of inaccurate reporting - [DeHorney v. Ocwen Loan Servicing, LLC](#), No. 5:18-cv-02191 (C.D. Cal. Nov. 16, 2020) (granting dismissal motion)

Title Insurance Update

- **Right of Access / Coverage:** Title insurer did not owe duty to compensate insureds for lack of vehicular access to their property because the policy's lack of right of access provision only insured against legal access and did not equate to reasonable access - [Chicago Title Ins. Co. v. Jen](#), No. 2015 (Md. Ct. Spec. App. Jan. 28, 2021) (reversed and remanded)
- **Duty to Defend:** Title insurer had a duty to defend insureds in response to a counterclaim that potentially could have interfered with insureds' use of their own property despite the fact that insurer had already reviewed and denied insureds' request for legal fees in the original lawsuit - [Chicago Title Ins. Co. v. Jen](#), No. 2015 (Md. Ct. Spec. App. Jan. 28, 2021) (reversed and remanded)
- **Policy Issuance:** Factual questions regarding the issuance of a policy precluded judgment on the pleadings where insurer denied issuing a policy to plaintiff when it was statutorily obligated to do so, and plaintiff alleged that it paid title insurance premiums - [CoreVest Am. Fin. Lender LLC v. Stewart Title Guar. Co.](#), No. A20A1785 (Ga. Ct. App. Jan. 29, 2021) (reversed)
- **Indemnification:** Discrepancies between the complaint and its exhibits made it impossible to say, as a matter of law, that the insured was entitled to judgment on the pleadings on claims related to indemnification - [CoreVest Am. Fin. Lender LLC v. Stewart Title Guar. Co.](#), No. A20A1785 (Ga. Ct. App. Jan. 29, 2021) (reversed)
- **Negligent Misrepresentation:** Plaintiff's claims for negligent misrepresentation are sufficient to withstand a motion for judgment on the pleadings where plaintiff alleged that insurer represented it would issue a title insurance policy protecting plaintiff's interests, and plaintiff relied on those representations - [CoreVest Am. Fin. Lender LLC v. Stewart Title Guar. Co.](#), No. A20A1785 (Ga. Ct. App. Jan. 29, 2021) (reversed)

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