

# Real Property, Financial Services, & Title Insurance Update: Week Ending January 25, 2019

January 26, 2019

## Real Property Update

- **Trespass / Temporary Injunction:** temporary injunction order premised upon a physical trespass onto property, which did not specify actions that constitute trespass, did not enjoin use of airspace over the property - [WD 19790, LLC v. Trust](#), Nos. 3D17-1706, 3D16-2796 & 3D17-151 (Fla. 3d DCA Jan. 23, 2019) (affirmed, in part, reversed, in part)
- **Standing / Foreclosure:** where copy of note attached to foreclosure complaint matches note filed with the Court, the plaintiff is presumed to have had standing since the inception of the case, absent evidence to the contrary. [Deutsche Bank Trust Co. Americas, Trustee v. Harris](#), No. 4D17-3009 (Fla. 4th DCA January 23, 2019) (reversed and remanded)
- **Standing / Foreclosure:** note endorsed to trustee is sufficient to support standing of plaintiff trustee to foreclose, even if the trust is not identified - [Deutsche Bank Trust Co. Americas, Trustee v. Harris](#), No. 4D17-3009 (Fla. 4th DCA January 23, 2019) (reversed and remanded)
- **Foreclosure / Deficiency:** bank could not reestablish foreclosure judgment as a money judgment where the property foreclosed had not been sold, and no deficiency had been established - [Mercantil Bank, N.A. v Pazmino, et al.](#), Case No. 4D18-1168 (Fla. 4th DCA Jan. 23, 2019) (affirmed).
- **Foreclosure / Constructive Service:** order denying motion to quash constructive service was a nonfinal order and not appealable because it did not determine personal jurisdiction - [Byers v Bank of NY Mellon, et al.](#), Case No. 5D18-1131 (Fla. 5th DCA Jan. 25, 2019) (appeal dismissed)

## Financial Services Update

- **TCPA / ATDS & Vicarious Liability Allegations:** allegations in complaint were insufficient to support claim that Lyft used an ATDS to send text messages, but plaintiff did sufficiently plead vicarious liability against Lyft for text messages sent by an agent or vendor - [Bodie v. Lyft](#), No. 3:16-cv-02558 (S.D. Cal. Jan. 15, 2019) (granting in part and denying in part motion to dismiss)
- **TCPA / Faxes / Commercial Purpose:** plaintiffs plausibly stated a claim that defendants' unsolicited faxes were sent for the purpose of commercial advertisement in violation of the TCPA - [Lackawanna Chiropractic P.C. v. Tivity Health Support, LLC](#), No. 18-cv-649 (W.D.N.Y. Jan. 23, 2019) (denying motion to dismiss)
- **FDCPA / Debt Collection Notice:** debt collection notice violated FDCPA because it directed consumer to send disputes to the creditor rather than the debt collector - [Weissman v. Collecto, Inc.](#), No. 17-cv-4402 (E.D.N.Y. Jan. 17, 2019) (granting in part and denying in part defendant's motion for summary judgment and granting plaintiff's motion for class certification)

## Title Insurance Update

- **Negligent Misrepresentation:** under New Jersey law, title insurer's negligent misrepresentation claim against seller required proof that seller's statement was false when made, that statement was of fact, not opinion, and that the title insurer justifiably relied on the statement in issuing title insurance - [212 Marin Blvd., LLC, v. Chicago Title Ins. Co.](#), No. A-0774-17T2 (N.J. Super. Ct. App. Div. Jan. 23, 2019) (affirming dismissal with prejudice)

## Related Practices

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