

Real Property, Financial Services, & Title Insurance Update: Week Ending January 7, 2022

January 11, 2022

Real Property Update

- **Bankruptcy / Section 505(a)(2)(C) / Property Taxes:** Section 505(a)(2)(C) of the Bankruptcy Code precluded property owner from challenging allegedly improper property taxes in the course of its bankruptcy proceeding because the application of that section was only prospective and the property owner engaged in the relevant conduct regulated by the statute – its federal bankruptcy proceeding – after the statute’s effective date – [5200 Enters. Ltd. v. City of N.Y.](#), No. 20-13753 (11th Cir. Jan. 5, 2022) (affirmed and motion to certify question denied)
- **Bankruptcy / Section 505(a)(2)(C) / Right to Property:** Rejecting property owner’s argument that applying section 505(a)(2)(C) of the Bankruptcy Code would impair a preexisting “right to property” because the property owner offered no support for its assertion that the right to contest ad valorem tax assessments is “an offspring” of the general “right to property,” and even if such a right existed, section 505(a)(2)(C) would not “impair” it because the right expired when the property owner failed to contest its tax liability through the proper means – [5200 Enters. Ltd. v. City of N.Y.](#), No. 20-13753 (11th Cir. Jan. 5, 2022) (affirmed and motion to certify question denied)
- **Riparian Rights / Sovereign Submerged Land:** Trial court erred in finding that the boatlift seawall was the mean high-water line indicating the boundary between the private uplands and public submerged lands and that the property owner’s riparian rights of access to the South Fork of New River emanated from said boundary, because the state of Florida never held this submerged land in trust and said land could not be treated as being or having once been sovereign submerged land simply because it was artificially submerged – [Fla. Dep’t of Transp. v. Lauderdale Boat Yard, LLC](#), No. 4D20-1184 (Fla. 4th DCA Jan. 5, 2022) (reversed and remanded)

- **Riparian Rights / Implied Easement / Due Process / Remedy:** Trial court erred in declaring an implied easement of necessity over submerged land because the trial court violated due process by ordering an equitable remedy of an implied easement when such a remedy was never requested in the pleadings or litigated at trial by any party – [Fla. Dep’t of Transp. v. Lauderdale Boat Yard, LLC](#), No. 4D20-1184 (Fla. 4th DCA Jan. 5, 2022) (reversed and remanded)
- **Riparian Rights / Implied Easement / Due Process / Necessary Party:** Owner of property over which an implied easement of necessity may be imposed by a court is a necessary party to such proceeding where the rights of another land owner to use the servient tract will be adjudicated – [Fla. Dep’t of Transp. v. Lauderdale Boat Yard, LLC](#), No. 4D20-1184 (Fla. 4th DCA Jan. 5, 2022) (reversed and remanded)
- **Riparian Rights / Implied Easement / Due Process / Necessary Party:** Trial court erred in declaring an implied easement of necessity over submerged land because the trial court violated due process by imposing the implied easement over property ostensibly owned by an owner who was a necessary party to the case but who was never actually a party to the case and was not given a chance to be heard prior to the trial court issuing its judgment – [Fla. Dep’t of Transp. v. Lauderdale Boat Yard, LLC](#), No. 4D20-1184 (Fla. 4th DCA Jan. 5, 2022) (reversed and remanded)
- **Negligence / Fabre Defense / Developer:** Developer not allowed to be listed as a *Fabre* defendant on verdict form because 24 years elapsed from the time developer transferred the promenade easement to property owners association in 1992 and the time the accident occurred in 2016 – [J.L. Prop. Owners Ass’n, Inc. v. Schnurr](#), No. 4D19-3474 (Fla. 4th DCA Jan. 5, 2022) (affirmed in part, reversed in part, and remanded)
- **Foreclosure / Section 57.105(7) / Attorneys’ Fees:** Borrower entitled to prevailing party attorneys’ fees pursuant to section 57.105(7), Florida Statutes, even though borrower raised a lack of standing defense, following the lender’s voluntary dismissal of the underlying foreclosure action because borrower and lender were parties to a contract with a fee provision and the borrower prevailed in the action with respect to the contract – [Verde v. HSBC Bank USA, Nat’l Ass’n](#), No. 3D17-2171 (Fla. 3d DCA Jan. 5, 2022) (reversed and remanded)

Financial Services Update

- **TILA / Section 1611:** Criminal liability provision of TILA (section 1611) does not provide for a private right of action – [Owens v. Capital One Auto Fin.](#), No. 8:21-cv-00849 (M.D. Fla. Jan. 3, 2022)

- **FCRA / CRA Liability:** CRAs cannot be held liable when the accuracy at issue requires a legal determination as to the validity of the debt, but only when the information reported does not match the information furnished – [Sessa v. Linear Motors, LLC](#), No. 7:19-cv-09914 (S.D.N.Y. Dec. 20, 2021)
- **FCRA / CRA Liability:** CRA that reported information accurately with respect to what furnisher provided was not required to – and, indeed, could not – challenge the legal validity of the debt instrument as furnished by furnisher – [Sessa v. Linear Motors, LLC](#), No. 7:19-cv-09914 (S.D.N.Y. Dec. 20, 2021) (granting summary judgment in CRA’s favor)
- **TCPA / Unsolicited Fax Advertisement:** Unsolicited faxed invitation to participate in a market research survey for money did not constitute an “unsolicited advertisement” – [Bruce Katz, M.D., P.C. v. Focus Forward, LLC](#), No. 21-1224 (2d Cir. Jan. 6, 2022)
- **FDCPA / Pleading Requirements:** Failure to allege that loan servicer obtained account after default subjected FDCPA claims to dismissal – [DeSimone v. Select Portfolio Servicing, Inc.](#), No. 1:20-cv-03837 (E.D.N.Y. Jan. 4, 2022)

Title Insurance Update

No cases of interest to report.

Related Practices

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