

Real Property, Financial Services, & Title Insurance Update: Week Ending July 2, 2021

July 02, 2021

Real Property Update

- **Foreclosure / Attorneys' Fees:** Borrower eligible to recover attorneys' fees under express terms of section 57.105(7), Florida Statutes, despite non-recourse nature of note and mortgage – [Gartner v. Reverse Mortg. Sols., Inc.](#), No. 1D20-772 (Fla. 1st DCA June 30, 2020) (reversed and remanded)
- **Foreclosure / Attorneys' Fees:** Borrower entitled to attorneys' fees pursuant to section 57.105(7), Florida Statutes, where standing was proved by plaintiff at trial but not at inception of the lawsuit – [Ghent v. HSBC Mortg. Servs., Inc.](#), No. 4D17-2187 (Fla. 4th DCA June 30, 2017)
- **Lis Pendens / Duly Recorded Instrument:** Relief sought rested not on terms and provisions of recorded documents but rather the circumstances surrounding execution – [Petkovich v. Sandy Point Condo. Apartments Ass'n, Inc.](#), No. 3D20-1775 (Fla. 3d DCA June 30, 2021)

Financial Services Update

- **FDCPA / FCCPA:** Monthly statement that identified defendant as debt collector attempting to collect a debt, and referenced a late fee and total amount due, qualified as debt collection communication – [Culver v. PHH Mortg. Corp.](#), No. 6:20-cv-02292 (M.D. Fla. June 28, 2021) (denying in part motion to dismiss)
- **FCRA / Standing:** Consumers other than named plaintiff lacked standing to pursue FCRA claims for breach of obligation to provide complete credit files upon request – [TransUnion LLC v. Ramirez](#), No. 20-297 (U.S. June 25, 2021) (reversing judgment in favor of class)
- **FDCPA:** Collection notice did not violate FDCPA even though it stated interest “may be” accruing when interest was accruing – [Klein v. Forster & Garbus, LLP](#), No. 1:19-cv-06164 (E.D.N.Y. June 28, 2021) (granting defendant's motion for judgment on the pleadings)

Title Insurance Update

- **Breach of Contract:** Insured could not recover for its breach of contract claim because the insured did not suffer damages where the title insurer failed to include a lien on the closing settlement statement but the insured was otherwise obligated to pay off whatever amount was due on the property, which included the lien – [Rassi v. Buckeye Title Agency, Inc.](#), No. 28985 (Ohio Ct. App. June 25, 2021) (affirmed)
- **Contract Formation:** Contract for title services existed where the insured requested that the insurer perform title work and closing, the insurer indicated that it would perform the requested services, and the insured paid the insurer for its services – [Rassi v. Buckeye Title Agency, Inc.](#), No. 28985 (Ohio Ct. App. June 25, 2021) (reversed)

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