

Real Property, Financial Services, & Title Insurance Update: Week Ending July 31, 2020

July 31, 2020

Real Property Update

- Foreclosure / Surviving Lien: Lender's lien on mobile home survived foreclosure sale of property
 where mobile home was located; mobile home remained personal property outside scope of
 foreclosure <u>ARK Real Estate Servs., Inc. v. 21st Mortg. Corp.</u>, No. 4D20-122 (Fla. 4th DCA July 29,
 2020) (affirming trial court's entry of judgment against purchaser on lender's claims of conversion
 and civil theft)
- Lien Priority: Under the clear and unambiguous plain language of Florida Statutes section 197.122(1), prior recorded mortgage was superior to the tax lien because the taxes were not assessed against the subject property as required under section 197.122(1) – <u>Kelly v. Green Tree</u> <u>Servicing, LLC</u>, No. 4D19-1454 (Fla. 4th DCA July 29, 2020) (affirming judgment in favor of lender)
- Foreclosure / Sanctions: Trial court improperly entered default judgment as sanctions against borrower without making appropriate findings for sanctions under <u>Kozel v. Ostendorf</u>, 629 So. 2d 817 (Fla. 1993) <u>Ballard v. Bank of Am, N.A.</u>, No. 2D19-1509 (Fla. 2d DCA July 29, 2020) (reversing default order and final judgment and remanding for trial court to reconsider default sanctions using the <u>Kozel</u> analysis with written findings of fact as to each factor)

Financial Services Update

FDCPA / Standing: Plaintiff failed to allege a sufficient injury in fact to confer standing where
harm was only confusion without any possible financial or legal consequences – <u>Cooper v. Atl.</u>
<u>Credit & Fin. Inc.</u>, No. 19-12177 (11th Cir. July 28, 2020) (vacating dismissal on the merits for failure
to state a claim and remanding with instructions that district court dismiss the case for want of
jurisdiction)

- Bankruptcy / Standing: Debtor in Chapter 7 bankruptcy lacked standing to assert claims for fraud or wrongful foreclosure because property remains in the estate while bankruptcy case remains open, unless it is explicitly abandoned <u>In re Solano</u>, Nos. CC-19-1258-GFS, CC-19-1259-GFS (B.A.P. 9th Cir. July 24, 2020) (affirming dismissal)
- FCRA: Borrower claimed that bank's continued reporting of debt was misleading and inaccurate because the statute of limitations had run on the debt; claim was dismissed because dispute regarding whether debts had been discharged under statute of limitations is a legal one, not a factual inaccuracy in the reporting Holland v. Chase Bank USA, N.A., No. 1:19-cv-00233 (S.D.N.Y. July 28, 2020) (dismissing FCRA claim)

Title Insurance Update

• No cases of interest to report.

Related Practices

Consumer Finance
Real Property Litigation
Title Insurance

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.