

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

March 05, 2021

Real Property Update

- **Foreclosure / Conditions Precedent:** Lender failed to provide sufficient evidence showing default letter and notice of acceleration were mailed to borrower when it only attached copy of default letter and unauthenticated letter log to motion for summary judgment – [Parkin v. Eagle Home Mortg., LLC](#), No. 5D20-160 (Fla. 5th DCA Mar. 5, 2021) (reversing summary judgment as factual questions remained regarding compliance with conditions precedent)

Financial Services Update

- **FDCPA & FCCPA / Debt Collection:** No evidence existed that anyone, including defendant, had knowledge that plaintiff's debt was invalid and, despite plaintiff's contention that defendant's debt collection activity caused her emotional distress, loss of sleep, anxiety, embarrassment, and loss of reputation, defendant's communications did not "harass" plaintiff and were not obscene and/or profane as a matter of law – [Williams v. Internal Credit Sys., Inc.](#), No. 8:19-cv-01872 (M.D. Fla. Feb. 27, 2021) (granting summary judgment in defendant's favor)
- **FCRA / Failure to Prove Damages:** Mortgagor failed to prove damages on his claim that loan services violated FCRA by improperly deeming mortgagor's modified monthly escrow payment insufficient and making negative reports to credit reporting bureaus, thereby damaging mortgagor's credit rating; mortgagor failed to prove through admissible evidence that he was denied credit or that his costs of obtaining credit were increased because of allegedly incorrect information reported by loan servicer – [Ahmed v. Carrington Mortg. Servs., LLC](#), No. 2017-04122 (N.Y. App. Div. Dec. 9, 2020) (affirmed)

Title Insurance Update

- **Apparent Authority:** Title insurance underwriter established prima facie case that its canceled former agent lacked actual authority to issue policy following issuance of restraining order prohibiting canceled agent from holding itself out as an agent of underwriter, but triable issues of fact existed regarding whether title insurer agent had apparent authority to issue policy – [Schwartz v. WFG Nat'l Title Ins. Co.](#), No. 2018-13476 (N.Y. App. Div. Mar. 3, 2021) (reversing summary judgment)
- **Duty to Defend & Indemnify:** Title insurer had no duty to defend or indemnify insured against claims brought by adjoining property owner to whom insured had agreed to grant a water and sewer easement as part of the underlying purchase contract, since the easement was excluded under the policy as a matter created, allowed, or agreed to, or known to insured but not insurer at date of policy – [Dudek v. Commonwealth Land Title Ins. Co.](#), No. 2:19-cv-03237 (D.S.C. Mar. 2, 2021) (denying motion for reconsideration)
- **Arbitration:** Insureds' claims against title insurer arising from alleged mishandling of escrow account related to insureds' investment in tenant in common project fell within scope of arbitration provision in policy – [DiTucci v. Ashby](#), No. 2:19-cv-00277 (D. Utah Mar. 1, 2021) (staying litigation and compelling arbitration)

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