

Real Property, Financial Services, & Title Insurance Update: Week Ending May 29, 2020

May 29, 2020

Real Property Update

- **Mortgage / Parcel Description:** Because recorded mortgage sufficiently and unambiguously described subject property, purchasers had constructive notice that property was encumbered by the mortgage; trial court therefore erred by concluding that the purchasers were bona fide purchasers of the property without notice of the mortgage – [Deutsche Bank Nat'l Tr. Co. v. Cope](#), No. 2D18-3696 (Fla. 2d DCA May 29, 2020) (reversed and remanded)

Financial Services Update

- **FDCPA / Default / Sufficiency of Allegations:** Complaint stated a claim for violation of the FDCPA when it alleged that plaintiff was a consumer and defendant a debt collector; defendant repeatedly contacted plaintiff's employer and co-workers, and discussed the subject debt without plaintiff's consent; defendant knew plaintiff would be unavailable; and defendant threatened that a judgment would be entered against plaintiff, plaintiff's wages garnished, and/or that plaintiff would be arrested – [Saechao v. Prime Recovery LLC](#), No. 2:19-cv-01723 (E.D. Cal. May 25, 2020) (granting motion for default judgment)
- **FDCPA / Sufficiency of Allegations:** Defendant did not violate sections 1692e, 1692e(2), 1692e(10), 1692f, and 1692g because the debt collection letter did not threaten imminent or immediate litigation – [Rosenberg v. Client Servs., Inc.](#), No. 7:19-cv-06181 (S.D.N.Y. May 26, 2020) (granting dismissal motion)

Title Insurance Update

- **Equitable Subrogation:** Lenders remain entitled to equitable subrogation even when the constitutional defect in the loan documents is due to the lender's own negligence – [Zepeda v. Fed. Home Loan Mortg. Corp.](#), No. 18-20336 (5th Cir. May 27, 2020) (reversing and remanding for further proceedings)
- **Title Agent Liability:** Plaintiff states a cause of action against title agent for breach of fiduciary duty when it alleges a duty to investigate, failure to investigate, and resulting harm and for breach of contract based on at least some implied contract, but fails to state a cause of action pursuant to consumer protection statute for admittedly commercial transaction, for fraudulent misrepresentation, and for punitive damages – [Yudzon v. Sage Title Grp., LLC](#), No. 1:18-cv-02076 (D.D.C. May 22, 2020) (memorandum opinion on motion to dismiss)
- **Title Agent Liability:** Plaintiff states a cause of action for RICO and conspiracy based on allegations that agent acted as the title insurer for the majority of real estate transactions at issue, that it received payment from each transaction, participated in the transactions knowing they were irregular, and reassured plaintiff who was concerned about the irregular nature of the transactions, and knowingly transported money obtained by fraud in interstate commerce – [Compound Prop. Mgmt., LLC v. Build Realty, Inc.](#), No. 1:19-cv-00133 (S.D. Ohio May 26, 2020) (opinion and order on motions to dismiss)
- **Subrogation:** Title insurer subrogated to its insured purchaser for claim of breach of contract against seller who refused to pay for impact fee as required under purchase and sale agreement that was also removed as an exception to coverage under the title insurance policy – [First Am. Title Ins. Co. v. Commerce Assocs., LLC](#), No. 2:15-cv-00832 (D. Nev. June 8, 2020) (order granting partial summary judgment)
- **Stay Proceedings:** Court abused its discretion by staying plaintiff's lawsuit without holding a hearing on plaintiff's motion for preliminary injunction to keep neighbor from interfering with plaintiff's access to its property, pending plaintiff's resolution of its separate lawsuit against First American Title Insurance Co., plaintiff's title insurance company, for breach of contract, breach of the covenant of good faith and fair dealing, waiver, statutory bad faith, and negligence – [Flying T Ranch, LLC v. Catlin Ranch, LP.](#), No. DA 19-0504 (Mont. Apr. 28, 2020) (opinion remanding case to lift stay and hold hearing)

Related Practices

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