Real Property, Financial Services, & Title Insurance Update: Week Ending October 30, 2020

October 30, 2020

Real Property Update

No cases of interest this week.

Financial Services Update

- **TILA / Definition of Creditor**: entity that arranges for the extension of credit is not a "creditor" under TILA – Rosolen v. Home Performance Alliance, Inc., No. 19-cv-00024-JLB-NPM (M.D. Fla. Oct. 28, 2020)

- **FCRA / Inaccurate Information**: furnisher of information does not provide inaccurate or misleading information merely because it lists monthly payments the consumer owed before the furnisher accelerated the loan balance into a lump sum payment – Barrios v. Equifax Info. Servs., No. 19-cv-5009-PSG-JEM (C.D. Cal. Sept. 16, 2020)

- **FDCPA / Validation Language**: a consumer does not state a cause of action against a debt collector for violation of the FDCPA by alleging a written notice contained language suggesting that negative credit reporting consequences may occur if the debt is not paid if the written notice also includes the FDCPA's "mini-Miranda" warning and validation notice – Sabel v. Halsted Financial Servs., No. 20-CV-1216(CS) (S.D.N.Y Oct. 26, 2020) (granting dismissal with prejudice)

Title Insurance Update

- **Negligence / Duties of Closing Agent**: closing agent not negligent in failing to disclose to buyer that $1MM mortgage not released prior to closing where (1) parties did not instruct closing agent to obtain a release and did not provide any funds to pay off mortgage, (2) buyer knew, via imputed knowledge of one of its representatives in the transaction, that mortgage not being released; finding closing agent has no duty to disclose known facts, and (3) buyer's damages not proximately caused by closing agent's conduct; thus, neither closing agent nor underwriter liable to buyer for negligence – Mazel v. Las Cruces Abstract & Title Co., Adv. No. 18-01057-t (D. N.M. Bankr. Oct. 23, 2020) (granting summary judgment)

- **Policy Exclusion / Timeshare**: purchaser of timeshare interest who gave a power of attorney at the time of purchase to the board of directors of the timeshare association that allegedly transferred any and all powers of ownership could not state a cause of action against title insurer who issued a title policy to purchaser where complaint (1) failed to allege basis for title insurer's fiduciary duty to disclose effect of power of attorney, (2) failed to allege fraud by failing to allege any specific misrepresentations or omissions of title insurer with regard to coverage, (3) failed to allege bad faith because policy contained express exclusion from any matters arising from the power of attorney - Paulicelli v. First Am. Title Ins. Co., No. 654132/2018 (N.Y. Sup. Ct. Sept. 20, 2020) (granting motion to dismiss).

Related Practices

Real Property Litigation
Consumer Finance
Title Insurance