



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending April 19, 2013

By the Carlton Fields Real Property Litigation Practice Group

For more information about Carlton Fields' Real Property Litigation Practice Group, please visit us at:
[Real Property Litigation](#)

CONTENTS

Selection of Case Summaries

- I. Florida State Cases
- II. 11th Circuit Cases
- III. Title Insurance Cases
- IV. The Weekly Update Team

I. FLORIDA STATE CASES – SARA WITMEYER

- **Foreclosure/Setoff:** trial court erred in ordering bank to reduce principal balance due from borrower on commercial loan by amounts bank allegedly received from FDIC under shared loss agreement because that agreement required bank to remit any future “recoveries” from borrower to FDIC – [Branch Banking & Trust Co. v. Kraz, LLC](#), No. 2D12-3051 (Fla. 2d DCA Apr. 17, 2013) (affirming final judgment in part, reversing in part)
- **Foreclosure/Defaulted Party:** entry of default and final judgment of foreclosure after default did not bar defaulted party from seeking protective order in post-judgment enforcement proceedings on behalf of non-party or from raising issues that were not resolved by admitted allegations of complaint – [S.W. Fla. Paradise Prop., Inc. v. Segelke](#), No. 2D12-4539 (Fla. 2d DCA Apr. 17, 2013) (granting petition for writ of certiorari)
- **Foreclosure/Notice of Trial:** motion to vacate final judgment of foreclosure and ensuing sale and certificate of title should have been granted where defendant-mortgagors did not receive notice of non-jury trial which resulted in judgment and orders in question – [Mendoza v. Chase Home Fin., LLC](#), No. 3D12-1881 (Fla. 3d DCA Apr. 17, 2013) (on confession of error, vacating order denying motion to vacate final judgment)
- **Marketable Record Titles to Real Property Act (“MRTA”):** trial court properly entered final judgment granting injunction and writ of mandamus to compel homeowners association’s board of directors to take necessary steps to preserve declaration of restrictions governing property within association, because without such board action, restrictive covenants governing property would have begun to lapse and expire pursuant to MRTA – [Southfields of Palm Beach Polo & Country Club Homeowners Ass’n v. McCullough](#), Nos. 4D11-1130 & 4D11-4659 (Fla. 4th DCA Apr. 17, 2013) (affirming final judgment)
- **Foreclosure/Standing:** where bank did not submit affidavit establishing it held and was entitled to enforce note prior to filing foreclosure action, undated blank endorsement on note was insufficient to establish standing and negate borrowers’ affirmative defense of

lack of standing – [Cromarty v. Wells Fargo Bank, N.A.](#), No. 4D11-4435 (Fla. 4th DCA Apr. 17, 2013) (reversing final judgment of foreclosure) [Note: Carlton Fields represented Wells Fargo in this appeal but not in the underlying foreclosure action]

II. 11TH CIRCUIT CASES - LAUREN SEMBLER

- **Amount in Controversy:** in an action to quiet title, the amount in controversy was satisfied by the balance on the mortgage and the value of the property as determined by an appraisal – [Cuevas v. Suntrust Mortg., Inc.](#), No. 6:13-cv-00147-CEH-DAB (M.D.Fla. April 9, 2013) (order adopting magistrate judge's report and recommendations and denying plaintiff's motion to remand)

III. TITLE INSURANCE CASES - NONE

THE WEEKLY UPDATE TEAM



Dana Blunt
dblunt@carltonfields.com
813.229.4156
[bio](#)



Stefanie Lincoln
slincoln@carltonfields.com
813.229.4148
[bio](#)



Jin Liu
jliu@carltonfields.com
813.229.4209
[bio](#)



Brian B. Vavra
bvavra@carltonfields.com
813.229.4385
[bio](#)



Ilan Nieuchoicz
inieuchoicz@carltonfields.com
305.539.7381
[bio](#)



Lauren Sembler
lsembler@carltonfields.com
813.229.4384
[bio](#)



Chris Smart
csmart@carltonfields.com
813.229.4142
[bio](#)



Sara Witmeyer
switmeyer@carltonfields.com
813.229.4267
[bio](#)



Recent opinions of interest to real property litigators and practitioners is provided periodically by the Real Property Litigation Practice Group of Carlton Fields for the attorneys of the firm. Carlton Fields attorneys may pass these updates on to clients and friends of the firm. Any recipient of these updates outside the firm is reminded, however, that they are not intended as legal advice or as a substitute for legal consultation in a particular case or circumstance. Federal statutes require unsolicited e-mails in certain categories to be labeled as advertisements, and to offer the ability to "opt out." We doubt that this falls within those categories, but regulations have not been adopted, and the situation is ambiguous. If those laws do apply, they require the following disclosure: This communication is an advertisement. If you do not wish to receive such communications from Carlton Fields in the future, either reply to the e-mail address from which you received it, or e-mail optout@carltonfields.com, and we will not send them to you.

www.carltonfields.com

Atlanta • Miami • New York • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach

Copyright 2012 Carlton Fields, P.A.