



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending April 5, 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 – STEFANIE LINCOLN

- **Landlord-Tenant: reversal of a judgment of eviction is not, by itself, sufficient to sustain a claim of wrongful eviction** - [LK Group Holding Company v. Spurrier Investments, Inc.](#), No. 4D12-991 (Fla. 4th DCA Apr. 13, 2013) (affirming summary judgment)
- **Foreclosure: summary judgment improper where genuine issue of fact remains whether plaintiff complied with condition precedent of providing pre-suit notice required by mortgage** - [Forster v. Regent Bank](#), 4D12-1037 (Fla. 4th DCA Apr. 3, 2013) (reversing summary judgment)
- **Foreclosure: trial court erred in denying borrower's motion for leave to file counterclaim and granting lender's motion for summary judgment because lender failed to introduce proper evidence that counterclaim was futile or evidence sufficient to establish standing at the time of filing suit** - [Green v. JP Morgan Chase Bank](#), No. 5D12-870 (Fla. 5th DCA Apr. 5, 2013) (reversing final judgment of foreclosure)
- **Foreclosure: trial court erred in dismissing foreclosure complaint because verification was legally sufficient despite omitting signor's positional authority** - [US Bank, NA v. Wanio-Moore](#), No. 5D12-1746 (Fla. 5th DCA Apr. 5, 2013) (reversing dismissal without prejudice of foreclosure complaint)
- **Declaration: amendment of declaration by developer was an improper exercise of power to the extent it relieved developer of certain burdens; Fla. Stat. § 723.3086 applied to developer despite fact that declaration was recorded before statute was enacted** - [Flescher v. Oak Run Associates, Ltd.](#), Nos. 5D12-2575 and 5D12-3254 (Fla. 5th DCA Apr. 5, 2013) (affirming in part and reversing in part summary judgment)

II. 11TH CIRCUIT CASES - LAUREN SEMBLER

- **TILA: Fannie Mae, as assignee of subject mortgage, could not be held vicariously liable for loan servicer's violations of Section 1641 pursuant to the plain language of Sections 1641(a) and 1641(e)(1) - [Signori v. Fed. Nat'l Mortgage Assoc.](#), No. 9:12-cv-80662-RNS (S.D.Fla. March 27, 2013) (granting defendant's motion to dismiss)**

III. TITLE INSURANCE CASES - CHRIS SMART

- **Escrow Agent: wife, whose husband closed transactions based on a power of attorney, failed to prove that escrow agent had a fiduciary duty to her to stop transactions in light of injunction entered against husband in divorce proceedings – [Mortensen v. First American Title Co.](#), Case No. 2:11-CV-0063 (D. Idaho March 25, 2013) (granting summary judgment)**
- **Class Action: trial court's certification of class without findings of fact and conclusions of law was reversible error – [Fidelity National Title Ins. Co. v. Grosso](#), Case No. 4D12-2560 (Fla. 4th DCA April 3, 2012) (reversing class certification)**
- **RICO: title insurer and its independent agents were an “enterprise” separate and distinct from title insurer for purposes of alleging a “person” distinct from the “enterprise” under RICO – [Tracey v. First American Title Ins. Co.](#), Case No. 12-1329 (D. Md. March 28, 2013) (order denying motion to dismiss)**
- **Duty to Mitigate: insurer who paid insureds and took title to insured lots did not have a duty to deal with other lot owners to effect a joint sale of all of the lots, even though plaintiff, the insureds' seller, claimed the sale would have mitigated the insurer's damages – [Ticor Title Ins. Co. v. Mau](#), Case No. 12-0000382 (Hawai'i App. March 28, 2013) (affirming in part and reversing in part final judgment)**
- **Foreclosure: independent action to set aside foreclosure and sale of property is a collateral attack on judgment of foreclosure and may only be by motion to vacate judgment in foreclosure action; thus, independent action should have been dismissed – [Indymac Bank, F.S.B. v. Vincoli](#), Case No. 2221 (N.Y. App. April 3, 2013) (reversing order denying motion to dismiss)**
- **Bad Faith: an insurer's delay in tendering sale proceeds to seller, who was not offered closing protection coverage and was not an insured, did not rise to level of bad faith – [Horvath v. Lawyers Title Ins. Corp.](#), Case No. 2012-P-0068 (Ohio App. March 29, 2013) (affirming summary judgment)**

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
inieuchowicz@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.