



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending August 10, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

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## I. FLORIDA STATE CASES – ILAN NIEUCHOWICZ & DANA BLUNT

- **Quiet Title: four-year statute of limitations for fraudulent transfer claims did not bar quiet title action where complaint alleged deed was improperly executed and was not based on claim for fraud** – [Bistricher v. Palmer](#), Case No. 2D11-1350 (Fla. 2d DCA Aug. 10, 2012) (summary judgment reversed and remanded)
- **Condominium Associations: new owner of condominium association had right to assign post-loss insurance claims to owners of individual condominium units** – [Castellanos v. Citizens Property Ins. Corp.](#), Case No. 3D10-1497 (Fla. 3d DCA Aug. 8, 2012) (reversed as association has right to assign claims, affirmed as to class certification)
- **Temporary Injunction: after property owner obtained injunction in action seeking access over adjoining property which required adjoining landowner to remove barricades and allow road access, trial court erred in setting amount of injunction bond without holding evidentiary hearing** – [Florida Georgia Grove, LLP v. Collier County](#), Case No. 2D11-5636 (Fla. 2d DCA Aug. 10, 2012) (reversing and remanding to determine amount of bond)

## II. 11<sup>TH</sup> CIRCUIT CASES – JIN LIU

- **Defamation/Foreclosure: mistaken service of foreclosure complaint on tenant who leased property from borrower's affiliate which was not subject of foreclosure did not give rise to defamation claim because the foreclosure complaint did not contain false statement** -- [Stearns Bank v. Shiraz Investments, LLC](#), Case No. 8:12-cv-313-T-33TGW (M.D. Fla. July 31, 2012) (granting motion to dismiss)

### III. TITLE INSURANCE CASES – CHRIS SMART

- **Class Action:** 2nd Circuit affirms dismissal of putative class action that failed to state a plausible claim under RESPA 8(a) and (b) and because claim was precluded by the safe harbor provision under 8(c) – [Galiano v. Fidelity Nat'l Title Ins. Co.](#), Case No. 10-4941 (2nd Cir. July 3, 2012) (affirming dismissal)
- **Damages:** insured lender lacks standing to pursue damages where damage arises out of lost business and profits from its parent's failed merger and not from the insured lender's inability to table fund mortgage loans – [Walsh Secs., Inc. v. Cristo Prop. Management, LTD](#), Case No. 97-3496 (D.N.J. Aug. 10, 2012) (order granting motion for reconsideration)
- **Discovery:** discovery of litigation reserves sought in order to show defendant's state of mind or valuation of claims is not relevant to breach of contract claim – [Walsh Secs., Inc. v. Cristo Prop. Management, LTD](#), Case No. 97-3496 (D.N.J. July 24, 2012) (letter opinion and order denying motion to compel)
- **Equitable Subrogation:** in Michigan, a senior lender who pays off its own mortgage with the proceeds of subsequent mortgage loan is entitled to equitable subrogation over an intervening lien as long as there is no prejudice to the intervening lien holder – [Nat'l City Mtg. v. Mercantile Bank of Mich.](#), Case No. 304469 (Mich. App. July 31, 2012) (affirming summary judgment of equitable subrogation)

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