



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending July 13, 2012**

*By the Carlton Fields Real Property Litigation Practice Group*

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## I. FLORIDA STATE CASES – BRIAN VAVRA

- **E-Discovery:** seven of the Florida Rules of Civil Procedure have been amended to address **Electronically Stored Information (ESI)** – [This alert provides a brief overview and a reference chart summarizing the differences between the new Florida rules and the existing federal rules governing ESI.](#)
- **Foreclosure:** trial court erred by denying motion to set aside judicial sale despite failure to publish pre-sale notice; although section 45.031, Florida Statutes, may not be the exclusive procedure for setting a foreclosure sale, when court explicitly adopts a statutory framework, it must adhere to that statute's notice provisions – [Simonson v. Palm Beach Hotel Condo. Assoc., Inc.](#), Case No. 4D12-706 (Fla. 4th DCA July 11, 2012) (vacating foreclosure sale and resetting foreclosure sale in accordance with section 45.031)
- **Premises Liability:** genuine issue of material fact existed as jury could reasonably conclude that store had constructive notice of shopping basket over which patron had fallen and been injured because owner should have known of its existence due to frequency with which baskets were left in checkout area – [DeLeon v. Dollar Tree Stores, Inc.](#), Case No. 4D11-2425 (Fla. 4th DCA July 11, 2012) (reversing summary judgment)
- **Tax Deed:** stipulation requiring interest payments to party holding commercial property pursuant to tax deed was valid and enforceable, and even absent stipulation, holder of property was entitled to interest pursuant to section 197.602, Florida Statutes – [Surna Constr., Inc. v. Stephens](#), Case No. 5D11-973 (Fla. 5th DCA July 13, 2012) (final judgment affirmed in part, reversed in part, and remanded)

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

- **Quiet Title:** Quiet title complaint based on allegation that defendants had separated the note from the mortgage was not dismissed because complaint properly stated a claim for which relief may be granted and provided factual allegations to support a cloud on title existed – [Mattison v. Homecomings Financial, LLC](#), No. 8:11-cv-01336-EAK-TBM (M.D. Fla. July 3, 2012) (granting plaintiffs’ motion in opposition to defendants’ motion to dismiss, denying defendants’ motion to dismiss)
- **TILA:** Mortgagor’s TILA rescission claim against successor mortgagee who purchased the loan from the FDIC was dismissed because Subsection 1641(a) of TILA immunizes an involuntary assignee of a mortgage, such as the FDIC as receiver, and all subsequent assignees from liability – [Wane v. The Loan Corporation](#), No. 8:11-cv-2126-T-33AEP (M.D. Fla. July 3, 2012) (granting in part and denying in part plaintiff’s motion for reconsideration)
- **Loan Participation:** loan originating lender was entitled to summary judgment against participating lender on (1) breach of contract claim because participating lender failed to demonstrate originating lender’s willful misconduct or gross negligence which was required liability standards in participation agreement and (2) fraud or misrepresentation claim because participation agreement provided that participating lender was not relying upon originating lender’s representations and was conducting its own due diligence – [Sperry Associates Federal Credit Union v. Space Coast Credit Union](#), No. 6:10-cv-1259-Orl-36DAB (M.D. Fla. July 3, 2012) (granting defendant’s motion for summary judgment, dismissing plaintiff’s causes of action)

### III. TITLE INSURANCE CASES – CHRIS SMART

- **Condominiums:** if insured obtained title to condominium and some common area, even if it was not what the insured anticipated, insurer does not breach title insurance policy insuring fee simple title in condominium unit – [Donovan v. Flaming Palms Villas, LLC](#), Case No. 2:08-cv-01675 (D. Nev. July 9, 2012) (denying summary judgment)
- **Closing Agent:** it is not necessarily illegal or improper for a borrower to also be the closing agent for the transaction being closed – [Sperry Associates Federal Credit Union v. Space Coast Credit Union](#), Case No. 6:10-cv-1259 (M.D. Fla. July 3, 2012) (order dismissing causes and granting and denying summary judgment motions)

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