



# Real Property Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending July 6, 2012**

*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 Real Property Litigation Case Summaries

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

## I. FLORIDA STATE CASES – SARA WITMEYER

- **E-Discovery:** Florida Supreme Court adopted amendments to Florida Rules of Civil Procedure to address discovery of electronically stored information, including rules regarding pretrial procedure, complex litigation, general provisions governing discovery, interrogatories to parties, production of documents and things and entry upon land for inspection and other purposes, failure to make discovery and sanctions, and subpoena – [In Re: Amendments to Fla. R. Civ. P. – Electr. Discovery](#), No. SC11-1542 (Fla. July 5, 2012)
- **Service of Process:** service of process against principals of promissors should have been quashed when requirements of statute governing substitute service were not met and principals never waived defense of lack of personal jurisdiction – [McDaniel v. FirstBank P.R.](#), No. 2D11-1742 (Fla. 2d DCA July 6, 2012) (reversing order denying motion to quash)
- **Preservation of Error:** guarantor failed to preserve argument that order approving settlement agreement should have been set aside, when she never called up motion challenging that order for hearing and failed to move for rehearing of final judgment for damages entered against her – [Alvarez v. De Lage Landen Fin. Servs., Inc.](#), No. 4D10-3750 (Fla. 4th DCA July 5, 2012) (affirming final judgment)
- **Standing:** mortgagor could not raise issue of bank's standing to foreclose for first time months after final judgment in motion for relief brought pursuant to Florida Rule of Civil Procedure 1.540(b) – [Pacheco v. Indymac Fed. Bank, F.S.B.](#), No. 4D11-999 (Fla. 4th DCA July 5, 2012) (affirming denial of motion for relief from judgment)
- **TILA:** although the court may again grant summary judgment for lender in declaratory judgment action, finding that lender could condition release of its mortgage upon receipt of the loan proceeds after borrowers' rescission, the court erred by considering summary

judgment immediately after vacating its inadvertent previous dismissal for lack of prosecution, as borrowers believed the case had been dismissed and were not prepared to argue the motion – [Watts v. Beneficial Fla., Inc.](#), No. 4D10-5287 (Fla. 4th DCA July 5, 2012) (reversing order granting summary judgment)

## II. 11<sup>TH</sup> CIRCUIT CASES – LAUREN SEMBLER

- **Foreclosure:** condominium association was not entitled to foreclosure order where notice of foreclosure was partially based on unlawfully assessed amounts – [One Buckhead Loop Condominium Ass'n, Inc. v. Pew](#), No. 11-13340 (11th Cir. July 5, 2012) (affirming in part, reversing in part and remanding).
- **FCCPA:** where Bank did not act with "actual knowledge" of any impropriety, borrower could not sustain an action under Fla. Stat. 559.72 – [Bullard v. U.S. Bank, N.A.](#), No. 3:10cv434-MCR/CJK (N.D. Fla. June 30, 2012) (granting summary judgment).
- **Associations:** condominium unit owner could not sustain §1983 claim where ability of association to garnish rental payment under Fla. Stat. 718.116 was not a traditional exclusive public function and there was no indication that the state encouraged the association to use the remedies available under Fla. Stat. 718.116 – [Vilme v. Colonial Plaza Condominium, Inc.](#), No. 12-20538-Civ (S.D. Fla. June 29, 2012) (granting motion to dismiss)

## III. TITLE INSURANCE CASES – CHRIS SMART

- **Class Action:** putative class action complaint alleging kickbacks in violation of section 8(a) of RESPA, fails to state sufficient facts to support a plausible claim under *Iqbal* – [Galiano v. Fidelity Nat. Title Ins. Co.](#), Case No. 10-4941 (2nd Cir. July 3, 2012)(affirming order dismissing complaint)
- **Consumer Protection:** court denied motion to dismiss based on claim that property owners, who were victims of equity skimming scams and whose equity was used to purchase title insurance for the refinancing lender, were not “purchasers” under the state consumer protection act – [Duffy v. Lawyers Title Ins. Co.](#), Case No. 11-4503 (E.D. Penn. July 2, 2012) (denying motion for certification)

## THE WEEKLY UPDATE TEAM



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



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



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



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



Ilan Nieuchoicz  
[inieuchowicz@carltonfields.com](mailto:inieuchowicz@carltonfields.com)  
305.539.7381  
[bio](#)



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



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



Sara Witmeyer  
[switmeyer@carltonfields.com](mailto: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](mailto:optout@carltonfields.com), and we will not send them to you.

[www.carltonfields.com](http://www.carltonfields.com)

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

Copyright 2012 Carlton Fields, P.A.