



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending June 15, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES –SARA WITMEYER

- **Service of Process:** language of power of attorney that was specific to purchase of condominium did not authorize attorney to accept service on behalf of defendant in suit for breach of guaranty – [Him v. Firstbank Fla.](#), No. 5D10-3728 (Fla. 5th DCA June 15, 2012) (reversing order denying motion to quash service of process)
- **Foreclosure:** trial court abused its discretion by dismissing mortgage foreclosure action with prejudice based upon insufficient or premature defenses raised in motion to dismiss, which claimed that plaintiff 1) filed foreclosure complaint without attaching document required by circuit court's administrative order; 2) committed fraud upon court by pleading false allegations of its identify and existence; 3) filed action without standing; and 4) conducted trust business without complying with section 660.27, Florida Statutes – [Wells Fargo Bank, N.A. v. Reeves](#), No. 1D11-2923 (Fla. 1st DCA June 13, 2012) (reversing final order dismissing case with prejudice)
- **Landlord-Tenant:** landlord stated cause of action for tenant's removal and for recovery of past due rents where landlord 1) attached written lease to complaint and alleged how it formed basis of month-to-month tenancy; 2) attached letter to tenant advising that month-to-month tenancy was being terminated; and 3) alleged amount of then-due rent in its motion for deposit of rents into court's registry – [Good to Go Food Store, Inc. v. LRM Realty, LLP](#), No. 2D11-1917 (Fla. 2d DCA June 13, 2012) (affirming final judgment of possession)
- **Foreclosure:** mortgagor who transfers property to companies under his control after final judgments of foreclosure are entered, but before he files notice of appeal, lacks standing to appeal – [Beggi v. Ocean Bank](#), Nos. 3D11-1978 & 3D11-1977 (Fla. 3d DCA June 13, 2012) (dismissing appeals)
- **Foreclosure:** affidavit filed in support of motion for summary judgment of foreclosure

complied with requirements of business records exception to hearsay rule, where deposition testimony of affiant, a supervisor at bank's servicing agent, showed that she knew how data was produced – [Weisenberg v. Deutsche Bank Nat'l Trust Co.](#), No. 4D11-45 (Fla. 4th DCA June 13, 2012) (affirming denial of motion to strike affidavit and affirming final judgment of foreclosure)

- **Federal Fair Housing Act: property owner failed to prove case of disability discrimination under Federal Fair House Act against homeowners' association for its actions in trying to have his fiancée's dog removed pursuant to homeowners' declaration of covenants where he failed to establish that his fiancée was handicapped, that homeowners' association had knowledge of a handicap or that it refused to accommodate his fiancée after being given an opportunity to conduct a meaningful review following a request for accommodation – [Sun Harbor Homeowners' Ass'n, Inc. v. Bonura](#), No. 4D10-3038 (Fla. 4th DCA June 13, 2012) (reversing final judgment in favor of property owner)**

II. 11TH CIRCUIT CASES – NONE

III. TITLE INSURANCE CASES – CHRIS SMART

- **CPL: where lender's claims show multiple transactions were part of scheme whose common elements would trigger liability under CPLs, lender need not detail each aspect of the scheme with respect to each individual transaction to withstand insurer's motion for summary judgment – [Walsh Securities, Inc. v. Cristo Property Management, Ltd.](#), Case No. 97-3496 (D.N.J. April 17, 2012) (granting summary judgment in part and denying in part)**
- **CPL: closing agent's knowledge and participation in mortgage fraud scheme that deprives lender of bona fide borrower impacts the validity and enforceability of mortgage loans and gives rise to coverage under CPLs – [Walsh Securities, Inc. v. Cristo Property Management, Ltd.](#), Case No. 97-3496 (D.N.J. April 17, 2012) (granting summary judgment in part and denying in part)**
- **Exclusion 3(a): wholesale lender's claim under policy and CPL may be excluded under 3(a) where its correspondent lender originated the loans and participated in the mortgage fraud scheme unless wholesale lender is a holder in due course – [Walsh Securities, Inc. v. Cristo Property Management, Ltd.](#), Case No. 97-3496 (D.N.J. April 17, 2012) (granting summary judgment in part and denying in part)**
- **Equitable Subrogation: pending consumer collection practices act claims against lender do not affect or preclude lender's claim to equitable subrogation – [Hughes v. Abell](#), Case No. 09-0220 (D.D.C. June 7, 2012) (memorandum opinion granting claim for equitable subrogation)**
- **Damages: after insurer cured title, insured sought damages and court held insurer was entitled to summary judgment on punitive damages and emotional distress damages but found issues of material fact as to insured's failure to mitigate, entitlement to taxes, lost income, interest and other equitable relief damages – [Granelli v. Chicago Title Ins. Co.](#), Case No. 10-2582 (D.N.J. June 8, 2012) (granting summary judgment in part and denying in part)**

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