



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending February 1, 2013

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – SARA WITMEYER

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- **Foreclosure: court erred in entering final judgment of foreclosure pursuant to show cause mechanism of F.S. § 702.10(1) where defendant established cause in timely filed motion to dismiss** – [BarrNunn, LLC v. Talmer Bank & Trust](#), No. 2D12-446 (Fla. 2d DCA Feb. 1, 2013) (reversing final judgment of foreclosure)
- **Inverse Condemnation: landowner's claim for inverse condemnation failed ripeness test where landowner's plat application was not meaningful application to city, city commission's vote denying petition lacked requisite finality, and landowner failed to demonstrate that submission of additional application for plat design approval would have been futile** – [Alachua Land Investors, LLC v. City of Gainesville](#), No. 1D11-6579 (Fla. 1st DCA Jan. 31, 2013) (affirming final judgment in favor of city)

II. 11TH CIRCUIT CASES – LAUREN SEMBLER

- **TILA: despite section 1641(a)'s limitation of assignee liability to errors on the face of disclosure statements, an assignee of a consumer credit transaction secured by real estate can be liable for its servicer's nondisclosures that violate section 1641(f)(2)** - [St. Breux v. U.S. Bank National Ass'n](#), No. 12-61613-CIV-DIMITROULEAS/SNOW (S.D. Fla. Jan. 29, 2013) (denying defendant's motion for summary judgment)
- **TILA: new disclosures are not required when the new obligation is due to borrower's failure to fulfill a prior commitment to maintain insurance on the property and the lender provides insurance coverage at the borrower's expense** - [Gordon v. Chase Home Finance](#),

[LLC](#), No. 8:11-cv-20001-T-33EAJ (M.D. Fla. Jan. 23, 2013) (granting in part and denying in part defendant's motion for summary judgment)

- **Bank Statute of Frauds: borrower's claims of promissory estoppel and negligent misrepresentation were barred by the bank statute of frauds where there was no signed written agreement expressing consideration and setting forth the relevant terms and conditions of purported HAMP modification – [Bloch v. Wells Fargo Home Mortgage](#), No. 9:11-cv-80434-KLR (S.D. Fla. Jan 28, 2013) (granting defendants' motion for summary judgment) [Congratulations to Carlton Fields attorneys Michael Winston, Alana Zorrilla-Gaston, and Kristin Gore, who represented Wells Fargo in this action!]**
- **Promissory Estoppel: borrower could not sustain a claim for promissory estoppel where there were no terms to purported HAMP agreement with lender; borrower could not have reasonably relied on a representation that borrower was in the HAMP program and lender could not have reasonably expected the purported representation to induce reliance – [Bloch v. Wells Fargo Home Mortgage](#), No. 9:11-cv-80434-KLR (S.D. Fla. Jan 28, 2013) (granting defendants' motion for summary judgment) [Congratulations to Carlton Fields attorneys Michael Winston, Alana Zorrilla-Gaston, and Kristin Gore, who represented Wells Fargo in this action!]**

III. TITLE INSURANCE CASES - CHRIS SMART

- **Tort: under circumstances of this case, title insurance agent had a duty to exercise reasonable care in conducting a preliminary title search and transmitting the information to the customer in the form of a title insurance commitment but insurer is not vicariously liable for agent's actions based on exculpatory language in the policy – [100 Invest. LP v. Colombia Town Center Title Co.](#), Case No. 19 (Md. App. Jan. 29, 2013) (affirmed in part and reversed in part)**
- **Access: title insurance policy insures against lack of legally enforceable access even where owner has permissive access to property – [Cynergy LLC v. First American Title Ins. Co.](#), Case No. 12-10495 (11th Cir. Jan. 28, 2013) (affirming summary judgment)**
- **Exclusion 3(a): a lender's actual, subjective knowledge of lack of legal access is an "other matter" assumed by the lender within the meaning of exclusion 3(a) – [Cynergy LLC v. First American Title Ins. Co.](#), Case No. 12-10495 (11th Cir. Jan. 28, 2013) (affirming summary judgment)**
- **Subrogation: insured's allegation that insurer inappropriately collected on a restitution order based on its misrepresentations to state attorney's office where the insured's losses had not yet been fully paid stated cause of action – [Marchetti v. Chicago Title Ins. Co.](#), Case No. 12-cv-5985 (E.D. Ill. Jan. 28, 2013) (denying motion to dismiss) [this will be one to watch for those of you collecting on an insurer's subrogation rights while the insured's claim is still pending]**
- **EUO: insurer may not demand examination under oath unless the examination is material to the insurer's investigation of the insured's claim, even where the insurance policy expressly grants the insurer the right to take an examination under oath – [Staples v. Allstate Ins. Co.](#), Case No. 86413-6 (Wash. Jan. 24, 2013) (reversing summary judgment)**
- **EUO: an insured's authorization of insurer to access to its financial records and appearance for two unsworn statements may constitute substantial compliance with insurer's demand for EUO – [Staples v. Allstate Ins. Co.](#), Case No. 86413-6 (Wash. Jan. 24, 2013) (reversing summary judgment)**
- **EUO: insured's failure to cooperate by not submitting to an EUO does not automatically absolve insurer of liability unless insurer can also show prejudice – [Staples v. Allstate Ins. Co.](#), Case No. 86413-6 (Wash. Jan. 24, 2013) (reversing summary judgment)**

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