



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending February 22, 2013

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – STEFANIE LINCOLN

- **Landlord-Tenant: whether conditions precedent to lease commencement were met or waived was threshold evidentiary matter that should have been decided before court ordered prospective tenant to deposit monthly rent into court registry** - [RSG, LLC v. Lenet](#), No. 3D12-2652 (Fla. 3d DCA Feb. 20, 2013) (reversing order denying emergency motion to deposit monthly rent and entering final default judgment)

II. 11TH CIRCUIT CASES – JIN LIU

- **Fraud: borrower failed to state a fraudulent inducement claim because, among other reasons, the statements in borrower's affidavit were conclusory and unspecific and thus were inadequate to raise a genuine issue of material fact as to whether the property appraisal contained any misrepresentation** – [Levinson v. Preferred Home Mortgage Co.](#), No. 12-80300-CIV (S.D. Fla Feb. 13, 2013) (granting defendants' motion for summary judgment)
- **Fraud: borrower failed to specify any time frame during which the alleged fraud occurred, other than "after the origination of Plaintiff's loan," and therefore, failed to meet the heightened pleading requirements for fraud under Federal Rule of Civil Procedure 9(b)** – [Spence v. Bank of America, N.A.](#), No. 8:12-cv-2794-T-33TGW (M.D. Fla. Feb. 19, 2013) (granting defendants' motion to dismiss)
- **Sanctions: plaintiff's claims seeking to cancel valid mortgage on the basis that unrecorded assignments of such mortgage were ineffectual against a subsequent purchaser of the underlying property for value were both objectively frivolous and filed in bad faith, and thus subject to sanctions under F.S. § 57.105** – [Fidelity Land Trust Company, LLC v. Mortgage Electronic Registration Systems, Inc.](#), No. 6:12-cv-1678-Orl-31TBS (M.D. Fla. Feb. 11, 2013) (granting defendant's motion for sanctions)

III. TITLE INSURANCE CASES - NONE

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