



# Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending January 25, 2013**

*By the Carlton Fields Real Property Litigation Practice Group*

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## CONTENTS

Selection of Case Summaries

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

## I. FLORIDA STATE CASES – BRIAN VAVRA

- **Condominium Assessments:** under F.S. § 718.116, condominium association that took title to unit following foreclosure of lien for unpaid assessments was intervening owner who was jointly and severally liable for all unpaid assessments prior to purchase of unit by nonparty at subsequent foreclosure by first mortgagee and, thus, was not entitled to recover any past due assessments from purchaser – [Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.](#), No. 3D11-2545 (Fla. 3d DCA Jan. 23, 2013) (reversing summary judgment)
- **Judgment:** motion to vacate was not authorized by Fla. R. Civ. P. 1.530 or 1.540 because it was untimely for purposes of Rule 1.530 (authorizing motion to alter or amend within 10 days of judgment) and was not brought pursuant to one of the enumerated grounds of Rule 1.540 (authorizing relief from judgment); litigants conflate the approaches of Rules 1.530 and 1.540 at their own risk – [Balmoral Condominium Association, Inc. v. Grimaldi](#), No. 3D12-1037 (Fla. 3d DCA Jan. 23, 2013) (reversing trial court's order vacating summary judgment in favor of condominium association)

## II. 11TH CIRCUIT CASES – JIN LIU

- **Equitable Estoppel:** entities who were related to developer but were not signatory to lot purchase contracts may not invoke equitable estoppel to enforce forum-selection clause contained in those contracts because lot buyers did not rely on those contracts to assert their claims against those related entities and those claims did not involve interdependent and concerted misconduct by both the developer, who was signatory to those contracts, and those related entities -- [Bailey v. ERG Enterprises, LP](#), Case No. 11-11670 (11th Cir. Jan. 25, 2013) (reversing and remanding)

### III. TITLE INSURANCE CASES - CHRIS SMART

- **Exclusion 3(a): exclusion for matters created, suffered, assumed or agreed to does not apply equally to matters of record and unrecorded matters** – [JBGR LLC v. Chicago Title Ins. Co.](#), Case No. 35140-11 (N.Y. Sup. Jan. 17, 2013) (denying motion to dismiss)
- **Exclusion 3(a): exclusion for matters created, suffered, assumed or agreed does not require showing of fraud on the part of the insured** – [JBGR LLC v. Chicago Title Ins. Co.](#), Case No. 35140-11 (N.Y. Sup. Jan. 17, 2013) (denying motion to dismiss)
- **Exclusion 3(a): whether agent of insured was acting with knowledge of declaration he signed and caused to be recorded at the time the insured purchased the property several years later was a question of fact not properly determined on a motion to dismiss** – [JBGR LLC v. Chicago Title Ins. Co.](#), Case No. 35140-11 (N.Y. Sup. Jan. 17, 2013) (denying motion to dismiss)
- **Lender's Policy: plaintiff's allegation that its insured lien is subordinate to another lien constitutes loss or damage sufficient to survive a motion to dismiss and complaint need not allege that the insured has satisfied the prior lien, that the property has been sold, or that the borrower is in default** – [State Resources Corp. v. Security Union Title Ins. Co.](#), Case No. CIV-12-419 (E.D. Okla. Jan. 17, 2013) (denying motion to dismiss)

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