



# Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to  
Real Property Litigators and Practitioners

**Week Ending January 4, 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 - SARA WITMEYER

- **Escrow Deposit:** buyers who wrongfully repudiated contract for purchase of condominium unit should have been allowed to pursue claims against seller for violations of F.S. § 718.202, governing use and protection of escrow deposits, that arose prior to their repudiation – [Jackson v. Palms of Perdido, LLC](#), No. 1D11-6058 (Fla. 1st DCA Jan. 4, 2013) (affirming final summary judgment in part, reversing in part)
- **Foreclosure:** second mortgagee's interest in property not extinguished by final judgment of foreclosure; under F.S. § 45.0315, junior interests are not extinguished until issuance of certificate of sale and judgment tracked statutory language – [AG Grp. Invs., LLC v. All Realty Alliance Corp.](#), Nos. 3D11-2547; 3D11-2543 (Fla. 3d DCA Jan. 2, 2013) (reversing order granting final summary judgment against second mortgagee)
- **Associations:** fact issue as to whether parking garage owner's course of conduct in charging association for members' use of parking garage, in absence of formal written rule or regulation, was sufficient to establish a rule or regulation for "use fee" as contemplated by declaration – [Estoril, Inc. v. Mayfield Condo. Assoc.](#), No. 3D11-2927 (Fla. 3d DCA Jan. 2, 2013) (reversing order granting final summary judgment)
- **Forum Selection:** trial court erred in denying motions to dismiss in light of plain and unambiguous, mandatory forum selection clause in parties' agreement – [Espresso Disposition Corp. 1 v. Santana Sales & Mktg. Grp., Inc.](#), No. 3D12-1147 (Fla. 3d DCA Jan. 2, 2013) (on motion for rehearing, reversing denial of motions to dismiss)

## II. 11TH CIRCUIT CASES - LAUREN SEMBLER

- **Insurance:** claim for damages related to the supply and installation of defective Chinese drywall fell within pollution exclusions in insurance policies under Florida law - [Granite State Ins. Co. v. KB Home, Inc.](#), No. 12-10979 (11th Cir. Jan. 3, 2013) (affirming grant of partial

summary judgment for insurers)

### III. TITLE INSURANCE CASES - CHRIS SMART

- **Bankruptcy:** based on the qualifications of a sophisticated company in the business of conducting title searches, title insurer did not justifiably rely upon debtor's false affidavit where title insurer knew of facts requiring additional investigation which, if conducted, would have revealed a recorded deed of trust that debtor omitted from his affidavit – [In re Roberts-Dude](#), Case No. 11-26900 (S.D. Fla. Dec. 28, 2012) (memorandum opinion allowing unsecured claim)
- **Escrow Agent:** company serving as insurer for lender may have had independent duty to borrower if it was acting as escrow agent for purposes of disbursing borrower's loan proceeds – [Elsebaei v. Philip R. Seaver Title Co., Inc.](#), Case No. 2008-092207 (Mich. Ct. App. Dec. 27, 2012) (reversing denial of summary judgment)
- **Agency Agreement:** insurer's claim against agent under agency agreement was claim for indemnification, notwithstanding that agency agreement did not specify it was an indemnification agreement, and, as a result, statute of limitations began to run when agent refused to indemnify insurer, not when policy was issued – [Old Republic National Title Ins. Co. v. Panella, LLC](#), Case No. A12A1242 (Ga. Ct. App. Nov. 20, 2012) (reversing summary judgment)

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