



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending March 1, 2013

By the Carlton Fields Real Property Litigation Practice Group

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Selection of Case Summaries

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I. FLORIDA STATE CASES – BRIAN VAVRA

- **Foreclosure:** entry of final summary judgment of foreclosure was improper where purported assignee did not establish standing to foreclose or refute borrower's affirmative defense that assignee lack of standing; original note was not a "bearer instrument," was not endorsed in blank or otherwise assigned to assignee, and affidavits filed in support of motion for summary judgment did not attest to assignee's ownership of the note – [Lindsey v. Wells Fargo Bank, N.A.](#), No. 1D12-2406 (Fla. 1st DCA Feb. 27, 2013) (reversing final summary judgment of foreclosure)

II. 11TH CIRCUIT CASES - NONE

III. TITLE INSURANCE CASES - CHRIS SMART

- **Escrow Agent:** title insurer acting as sub-escrow agent may be liable to owner of escrow funds but only if owner alleges that title insurer breached the written closing instructions or was aware of fraud that gave rise to a duty to disclose – [Arei Colonnade 1, LLC v. Stewart Title Guaranty Co.](#), Case No. A131734 (Cal. App. Feb. 21, 2013) (affirming judgment of dismissal); [Wood River Capital Resources, LLC v. Stewart Title Guaranty Co.](#), Case No. A131736 (Cal. App. Feb. 21, 2013) (affirming judgment of dismissal)
- **Recoupment:** seller who fails to disclose existence of prior mortgage lien may be liable for fraudulent misrepresentation to title insurer despite seller's allegations that title insurer should have known seller was lying in his affidavit and that title insurer should have picked up the prior lien in its search of the public records – [Stewart Title Guaranty Co. v. Dude](#), Case No. 11-1374 (10th Cir. Feb. 26, 2013) (affirming judgment after trial)

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