



Real Property & Title Insurance Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending March 15, 2013

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – STEFANIE LINCOLN

- **Voluntary Dismissal:** trial court has jurisdiction to reinstate voluntarily dismissed action for fraud on the court only where the fraud resulted in plaintiff securing affirmative relief to the detriment of defendant and, upon obtaining that relief, plaintiff dismissed to prevent court from undoing improper relief - [Pino v. The Bank of New York](#), Case No. SC11-697, (Fla. Feb. 7, 2013) (revised Mar. 13, 2013, answering certified question of 4th DCA)
- **Waiver/Breach of Fiduciary Duty:** claim for breach of fiduciary duty, like any other claim, may be waived by actions or conduct warranting an inference that a known right has been relinquished - [Band v. Libby](#), No. 2D11-4942 (Fla. 2d DCA Mar. 13, 2013) (reversing order granting new trial on claim for breach of fiduciary duty)
- **Involuntary Dismissal:** trial court erred when it ordered an involuntary dismissal of the foreclosure action before the bank had rested its case - [Deutsche Bank Nat'l Trust Co. v. Santiago](#), No. 3D11-2805 (Fla. 3d DCA Mar. 13, 2013) (reversing dismissal)
- **Foreclosure:** trial court abused discretion, having vacated foreclosure sale upon settlement of the parties, in refusing to grant related relief approving dismissal, setting aside final judgment, and returning original loan documents - [Wells Fargo Bank, N.A. v. Giglio](#), No. 4D12-418 (Fla. 4th DCA Mar. 13, 2013) (reversing denial of motion to vacate)
- **Harris Act:** where ordinance creating generally applicable development standard, as opposed to readily determined standard, statute of limitations on Harris Act claim for compensation did not run until its impact was readily ascertainable upon denial of demolition applications - [Wendler v. City of St. Augustine](#), No. 5D12-2563 (Fla. 5th DCA Mar. 15, 2013) (reversing dismissal with prejudice)

II. 11TH CIRCUIT CASES - LAUREN SEMBLER

- **TILA: plaintiff could not recover damages for defendant's violation of § 1642(f)(2) where plaintiff did not suffer any meaningful deprivation of information concerning its mortgage loan** – [Guillaume v. Fed. Nat'l Mortg. Ass'n](#), No. 12-CV-80625 (S.D. Fla. Mar. 11, 2013) (granting defendants' motions to dismiss)
- **Transfer Tax: pursuant to federal statutes (12 U.S.C. §§ 1452(e), 1723a(c)(2), and 4617(j)(2)), defendants were exempt from paying real estate transfer taxes when transferring real estate to another party** – [Nicolai v. Fed. Hous. Fin. Agency](#), No. 8:12-cv-1335-T-33EAJ (M.D. Fla. Feb. 12, 2013) (order granting defendants' motion to dismiss with prejudice)

III. TITLE INSURANCE CASES - CHRIS SMART

- **Recoupment: where title insurer alleges it is subrogated to the rights of insured who suffered damages as a result of the notarization of a forged signature on a deed, title insurer need not show it or the insured detrimentally relied on the notary in order to recover** – [Chicago Title Ins. Co. v. LaPierre](#), Case No. 01523 (N.Y. App. March 13, 2013) (reversing judgment)
- **Recoupment: the amount of attorney's fees and costs owed by independent title insurance issuing agent under agency agreement are special damages that must be determined by a finder of fact** – [Commonwealth Land Title Ins. Co. v. Nevada Title Co.](#), Case No. 2:11-00380 (D. Nev. March 5, 2013) (denying motion to have court determine amount of attorney's fees)
- **Policy Interpretation: although title insurance policy is clear that liability terminates where insured voluntarily conveys title by quit claim deed, policy is ambiguous as to whether pre-existing claims for damages incurred prior to termination survive** – [First American Title ins. Co. v. Two Seventy Three Water Street, LLC](#), Case No. 8404123 (Conn. Super. Jan. 25, 2013) (denying motion to dismiss counterclaims) **[Note: copy of opinion not currently publically available]**

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