



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending November 16, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – SARA WITMEYER

- **Sovereign Immunity: non-final order denying Citizens' motion to dismiss insurance bad-faith action on grounds of sovereign immunity was not subject to interlocutory review by writ of prohibition or certiorari** – [Citizens Prop. Ins. Corp. v. San Perdido Ass'n](#), No. SC10-2433 (Fla. Nov. 15, 2012) (approving decision of district court of appeal denying certiorari review)
- **Temporary Injunction: county was entitled to temporary injunction against property owners and property lessees to require them to comply with provisions of ordinance while parties litigated constitutionality of ordinance** – [Manatee County v. 1187 Upper James of Fla., LLC](#), No. 2D12-1425 (Fla. 2d DCA Nov. 16, 2012) (reversing order denying motion for temporary injunction)
- **Standing: possession of note determines standing to foreclose, and holder of original note endorsed in blank has standing** – [Everhome Mortg. Co. v. Janssen](#), No. 2D11-4592 (Fla. 2d DCA Nov. 14, 2012) (reversing order vacating final judgment)
- **Voidability of Judgment: if plaintiff lacked standing when it filed suit, final judgment is voidable, not void, and may not be set aside under Florida Rule of Civil Procedure 1.540(b)(4)** – [Everhome Mortg. Co. v. Janssen](#), No. 2D11-4592 (Fla. 2d DCA Nov. 14, 2012) (reversing order vacating final judgment)
- **Mechanic's Lien: property owner who did not receive notice of claim from lienor was not entitled to summary judgment because fact question remained whether lienor was a "laborer" who fell within exception to statutory notice requirement** – [Barber v. Dahlia at Plantation Homeowners Ass'n](#), No. 4D11-3699 (Fla. 4th DCA Nov. 14, 2012) (reversing order of final summary judgment)

II. 11TH CIRCUIT CASES – JIN LIU

- **Quiet Title: borrower who sought to quiet title as to mortgage based on allegation that assignment of mortgage failed to comply with Pooling and Service Agreement lacked standing to challenge compliance with Pooling and Service Agreement** -- [Rhodes v. JP Morgan Chase Bank, N.A.](#), Case No. 12-80368-CIV (S.D. Fla. Nov. 6, 2012) (granting Defendant's Motion to Dismiss)

III. TITLE INSURANCE CASES - CHRIS SMART

- **Reformation:** insurer's counterclaim to reform policy and for declaratory judgment stated a claim based on allegation that insured lender's attorney agreed to subordinate insured mortgage lien to other liens – [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 11-23257 (S.D. Fla. Nov. 6, 2012) (order denying motion to dismiss or strike)
- **Failure to Mitigate:** insurer should have known of failure to mitigate damages defense at the time insured refused offer of defense and coverage under a reservation of rights and court may refuse to allow amendment for lack of diligence in such circumstances – [Regions Bank v. Commonwealth Land Title Ins. Co.](#), Case No. 11-23257 (S.D. Fla. Nov. 6, 2012) (order denying motion to plead additional defenses and granting motion to strike amended pleading)
- **Continuation of Coverage:** insured lender who transfers all of its interest in deed of trust and does not (i) retain an estate or interest in the land, (ii) hold an indebtedness secured by a purchase money mortgage, or (iii) have liability by reason of covenants of warranty is no longer insured under the policy – [Manufacturers & Traders Trust Co. v. Fidelity National Title Ins. Co.](#), Case No. 3:12-cv-00744 (D. Or. Nov. 4, 2012) (order granting summary judgment)

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