



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending November 2, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – BRIAN VAVRA

- **Quiet Title:** because lessee pledged interest on ground lease to bank as security for a mortgage, terms of ground lease may have triggered certain conditions precedent to lessor's quiet title action against bank – [Bank of New York Mellon v. P2D2, LLC](#), No. 2D11-3661 (Fla. 2d DCA Oct. 31, 2012) (reversed in part and affirmed in part)
- **Foreclosure:** language contained in assignment of mortgage could lead to two inferences, one of which would result in assignee lacking standing on date complaint was filed, and thus proof as to the meaning of the assignment's language was required – [Vidal v. Liquidation Properties, Inc.](#), No. 4D10-3358 (Fla. 4th DCA Oct. 31, 2012) (reversing on issue of standing and rejection of Truth in Lending affirmative defense, affirming on remaining issues)
- **Truth in Lending Act:** one-year statute of limitations for recoupment under TILA does not apply where recoupment and setoff are raised as an affirmative defense – [Vidal v. Liquidation Properties, Inc.](#), No. 4D10-3358 (Fla. 4th DCA Oct. 31, 2012) (reversing on issue of standing and rejection of Truth in Lending affirmative defense, affirming on remaining issues)
- **Attorneys' Fees:** trial court's order awarding fees under section 713.29, Florida Statutes, was premature where significant issues remained in the case; although court discharged claim of lien, additional claims for imposition of equitable lien and unjust enrichment remained pending – [GMPF Framing, LLC v. Villages at Lake Lily Associates, LLC](#), No 5D11-1701 (Fla. 5th DCA Nov. 2, 2012) (reversing award of attorneys' fees)

II. 11TH CIRCUIT CASES – JIN LIU

- **Pleading:** *pro se* plaintiff's second amended complaint properly dismissed with prejudice where failed to state sufficient facts to support any actionable claim despite court's detailed instructions on how to cure deficiencies on multiple occasions; *pro se* complaints, although construed more liberally, are subject to the same law and rules as

complaints drafted by counsel -- [Scarola v. Deutsche Bank National Trust Co.](#), No. 2:10-cv-677-FtM-29SPC (M.D. Fla. Oct. 29, 2012) (dismissing second amended complaint with prejudice)

III. TITLE INSURANCE CASES - CHRIS SMART

- **Coverage:** where insured contracted to purchase all land owned by seller in a particular county and seller had previously conveyed a disputed parcel such that the contract did not include the disputed parcel, insured did not have a claim under title insurance policy despite the fact that policy erroneously described the disputed parcel – [Knispel v. Transnation Title Ins. Co.](#), Case No. 223870 (Cal. App. Oct. 30, 2012) (reversing judgment)
- **Class Action:** plaintiffs alleging claims for money had and received, unjust enrichment, breach of implied contract, and violation of state statute based on alleged collection of excessive premiums were not parties to lender's policy and, thus, were not bound by arbitration provision – [Lang v. First American Title Ins. Co.](#), 2-CV-266S (W.D.N.Y. Oct. 22, 2012) (order denying motion to stay and compel arbitration)

THE WEEKLY UPDATE TEAM



Dana Blunt
dblunt@carltonfields.com
813.229.4156
[bio](#)



Stefanie Lincoln
slincoln@carltonfields.com
813.229.4148
[bio](#)



Jin Liu
jliu@carltonfields.com
813.229.4209
[bio](#)



Brian B. Vavra
bvavra@carltonfields.com
813.229.4385
[bio](#)



Ilan Nieuchoicz
inieuchoicz@carltonfields.com
305.539.7381
[bio](#)



Lauren Sembler
lsembler@carltonfields.com
813.229.4384
[bio](#)



Chris Smart
csmart@carltonfields.com
813.229.4142
[bio](#)



Sara Witmeyer
switmeyer@carltonfields.com
813.229.4267
[bio](#)



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