



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending September 14, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – SARA WITMEYER

- **Landlord Lien:** where plaintiff's complaint for conversion of restaurant fixtures and equipment specifically alleged that it was not a lessee, court erred in going beyond four corners of complaint on motion to dismiss by considering lease presented by landlord that named plaintiff as lessee and, therefore, dismissal of complaint on ground that landlord had a superior lien on the fixtures and equipment under Fla. Stat. § 83.08 was reversed – [Berdick v. Costilla](#), No. 2D12-140 (Fla. 2d DCA Sept. 14, 2012) (reversing final judgment dismissing complaint with prejudice)
- **Purchase-Sale Contract:** purchaser of condominium unit was not entitled to return of deposit from developer and rescission of contract based on theories of fraudulent inducement and mutual mistake when contract included specific provisions disclaiming oral representations and confining agreement and obligations of parties to those set forth in contract, enumerated condominium documents, and condominium brochures – [B & G Aventura, LLC v. G-Site Ltd. P'ship](#), No. 3D11-1562 (Fla. 3d DCA Sept. 12, 2012) (affirming final summary judgment)

II. 11TH CIRCUIT CASES – NONE

III. TITLE INSURANCE CASES - CHRIS SMART

- **Class Action:** defendant proved by preponderance of the evidence that \$5 million amount in controversy was satisfied where the amount claimed was discernable from the face of the Complaint – [Hartis v. Chicago Title Ins. Co.](#), Case No. 11-2552 (8th Cir. Sept. 12, 2012) (affirming district court's determination that amount in controversy exceeded CAFA amount in

controversy)

- **Exclusion 3(d):** where insured had access to insured property at the date of the policy pursuant to a temporary easement identified in the legal description of property, insured's claim for lack of access based on expiration of that easement was a matter properly excluded as attaching or created subsequent to the date of the policy – [Community Credit Union v. AmeriTitle & Abstract, Inc.](#), Case No. 2011AP2294 (Wis. App. Sept. 11, 2012) (affirming summary judgment)
- **Agent Liability:** agent not liable for eliminating title to mobile home on insured property where mobile home and septic system were installed without permits – [Gonzalez v. Pacific Northwest Title Co. of Spokane](#), Case No. 10-2-03894-3 (Wash. App. Sept. 9, 2012) (affirming summary judgment)

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