



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week ending April 13, 2012

By the Carlton Fields Real Property Litigation Practice Group

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[Real Property Litigation](#)

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I. FLORIDA STATE CASES – SARA WITMEYER

- **Escrow: escrow agent not entitled to summary judgment in suit alleging improper disbursement of escrow funds where no proof that escrow agent substantially complied with escrow agreement** – [AJH Prop. Invs. Ltd. v. SunTrust Bank](#), No. 3D11-962 (Fla. 3d DCA Apr. 11, 2012) (reversing final summary judgment)
- **Association Law: board of directors of property owners association governing RV resort could not impose fees on lot owners to lease their lots where neither declaration nor bylaws authorized a fee for leasing lots and only allowed board to adopt reasonable rules and regulations on leasing** – [Clark v. Bluewater Key RV Ownership Park](#), No. 3D11-884 (Fla. 3d DCA Apr. 11, 2012) (reversing in part, affirming in part judgment in favor of association)
- **Foreclosure: plaintiff who from the time it originally filed foreclosure suit alleged it was owner and holder of note, which was indorsed in blank and attached to complaint, had standing to foreclose even though it had no assignment of mortgage in hand at time of commencement, since “the mortgage necessarily and equitably follows the note”** – [U.S. Bank Nat'l Ass'n v. Knight](#), No. 4D10-5008 (Fla. 4th DCA Apr. 11, 2012) (reversing order granting motion to dismiss with prejudice)
- **Deficiency Judgment: correct formula for calculating deficiency judgment is total debt secured by foreclosure judgment minus fair market value of property as of date of foreclosure sale** – [Empire Devs. Group, LLC v. Liberty Bank](#), No. 2D11-1410 (Fla. 2d DCA Apr. 13, 2012) (reversing deficiency judgment)
- **Arbitration: trial court was not divested of jurisdiction to confirm arbitration award for defendant after plaintiff's voluntary dismissal of claim of lien action because (i) defendant's pending motion to confirm award on arbitration counterclaim acted as a counterclaim in the claim of lien action on which plaintiff's dismissal could have no effect, and (ii) allowing voluntary dismissal would result in “serious prejudice” to defendant, who had acquired substantial rights in the action by prevailing in arbitration** –

[Soares Da Costa Constr. v. Alta Mar Dev., LLC](#), No. 2D11-2164 (Fla. 2d DCA Apr. 13, 2012) (affirming final judgment)

- **Guaranties: lender entitled to obtain both foreclosure judgment and money judgment on guaranties in same suit, although guarantors entitled to a credit of the foreclosure sale proceeds against their money judgment** – [Fort Plantation Invs., LLC v. Ironstone Bank, FSB](#), No. 5D11-535 (Fla. 5th DCA Apr. 13, 2012) (affirming final summary judgment without prejudice for guarantors to seek set-off)

II. 11TH CIRCUIT CASES – NONE

III. TITLE INSURANCE CASES – NONE

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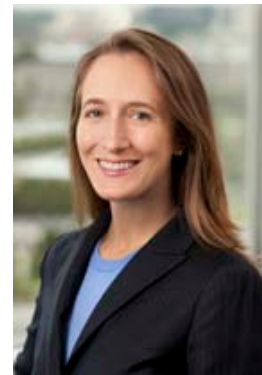
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