



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending April 27, 2012

By the Carlton Fields Real Property Litigation Practice Group

For more information about Carlton Fields' Real Property Litigation Practice Group, please visit us at:
[Real Property Litigation](#)

CONTENTS

Selection of Real Property Litigation Case Summaries

- I. Florida State Cases
- II. 11th Circuit Cases
- III. Title Insurance Cases
- IV. The Weekly Update Team

I. FLORIDA STATE CASES - ILAN NIEUCHOWICZ

- **Foreclosure: reservation of jurisdiction in foreclosure judgment to adjudicate count on promissory note was improper, since debt represented by note merged into the judgment, although plaintiff could separately pursue deficiency judgment and judgment on guaranties** – [Weston Orlando Parking, Inc. v Fairwinds Credit Union](#), Case No. 5D11-2260 (Fla. 5th DCA Apr. 27, 2012) (reversing in part summary judgment)
- **Promissory Notes: promissory notes were not enforceable at the time final judgment was entered because documentary stamp taxes had not been paid thereon; judgment should not have been entered until after payment of documentary stamp taxes** – [Marcial Solis, et al. v. Lacayo](#), Case No. 3D11-2210 (Apr. 25, 2012) (reversing final judgment)
- **Eminent Domain: contesting an order of taking is not a supplemental proceeding under section 73.092(2), Fla. Stat., for purposes of attorneys' fees; attorneys' fees for eminent domain action are recoverable as part of full compensation guaranteed by the Florida Constitution** – [Southwest Florida Water Management District v Shea](#), Case No. 2D11-1642 (Apr. 27, 2012) (affirming in part, reversing in part final order)
- **Foreclosure: trial court's sua sponte dismissal of foreclosure action as a sanction for plaintiff's failure to verify complaint in accordance with the rules of procedure was an abuse of discretion where the failure resulted from an honest mistake about whether verification was required and where plaintiff had been given no notice or opportunity to be heard** – [JP Morgan Chase v. Jurney](#), Case No. 2D10-2973 (Apr. 27, 2012) (reversing dismissal as sanction)

II. 11TH CIRCUIT CASES – NONE

III. TITLE INSURANCE CASES – CHRIS SMART

- **Duty to Defend:** state’s reservation, in its answer to insured’s suit to consolidate lots, of any interest in plaintiff’s property that may have escheated, triggered title insurer’s duty to defend – [Hart v. Tigor Title Ins. Co.](#), Case No. SCWC-29467 (Haw. Mar. 27, 2012) (reversing summary judgment on writ of certiorari)
- **Damages:** insured lender’s actual loss is the difference between the value of the property without the lien insured against and the value of the property subject to the lien and determination must await the foreclosure sale – [First Tennessee Bank, N.A. v. Lawyers Title Ins. Co.](#), Case No. 11 CV 01539 (N.D. Ill. Apr. 17, 2012) (granting motion to dismiss)

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](#)



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](#)



Recent opinions of interest to real property litigators and practitioners is provided periodically by the Real Property Litigation Practice Group of Carlton Fields for the attorneys of the firm. Carlton Fields attorneys may pass these updates on to clients and friends of the firm. Any recipient of these updates outside the firm is reminded, however, that they are not intended as legal advice or as a substitute for legal consultation in a particular case or circumstance. Federal statutes require unsolicited e-mails in certain categories to be labeled as advertisements, and to offer the ability to “opt out.” We doubt that this falls within those categories, but regulations have not been adopted, and the situation is ambiguous. If those laws do apply, they require the following disclosure: This communication is an advertisement. If you do not wish to receive such communications from Carlton Fields in the future, either reply to the e-mail address from which you received it, or e-mail optout@carltonfields.com, and we will not send them to you.

www.carltonfields.com

Atlanta • Miami • Orlando • St. Petersburg • Tallahassee • Tampa • West Palm Beach

