



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending May 18, 2012

By the Carlton Fields Real Property Litigation Practice Group

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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

- **Relief from Judgment:** it is an abuse of discretion for the trial court to deny a Rule 1.540(b) motion for relief from judgment that alleges facts to support excusable neglect and a meritorious defense, without first conducting a limited evidentiary hearing – [Acosta v Deutsche Bank National Trust Co.](#), Case No. 4D10-3835 (Fla. 4th DCA May 16, 2012) (reversing and remanding motion for relief from judgment for evidentiary hearing)
- **Foreclosure:** summary judgment in favor of defendant resulting from plaintiff's failure to attach correct mortgage to amended complaint was improper where plaintiff filed the original mortgage with the Court under notice of filing before judgment was entered – [Deutsche Bank National Trust Co. v. Taperi](#), Case No. 4D11-1582 (Fla. 4th DCA May 16, 2012) (reversing summary judgment)

II. 11TH CIRCUIT CASES – JIN LIU

- **Lien Stripping:** second priority lien on Chapter 7 debtor's home was an allowed but wholly unsecured claim under 506(a) when the senior lien exceeded the home's fair market value and an allowed but wholly unsecured claim was voidable under Section 506(d) – [In Re: McNeal](#), No. 1:10-cv-01612-TCB (11th Cir. May 11, 2012) (reversing and remanding district court's affirmation of bankruptcy court's denial of debtor's motion to strip off second priority lien)

III. TITLE INSURANCE CASES – CHRIS SMART

- **Duty to Cooperate:** insured that sues to quiet title one month after giving notice to insurer and names insurer in suit breaches the duty to cooperate under the policy – [All State Properties, LLC v. Old Republic National Title Ins. Co.](#), Case No. 2011-00810 (N.Y. App. May 18,

2012) (affirming motion for summary judgment)

- **Attorneys Fees: awarding \$300,000 as full amount of fees in class action settlement** – [Perez v. First American Title Ins. Co.](#), Case No. 08-01184 (D. Ariz. May 14, 2012) (granting unopposed motion for attorneys fees)
- **Recoupment: insurer who pays insured owner who purchased out of foreclosure sale due to failure of title is subrogated to insured and states cause of action for unjust enrichment against lender who improperly foreclosed on and sold the property** – [Fidelity National Title Ins. Co. v. J.P. Morgan Chase Bank N.A.](#), Case No. 3:12-CV-540 (N.D.N.Y. May 14, 2012) (order denying motion to dismiss)
- **Post-Policy Matters: insured claiming diminution in value to property due to interference with insured easement fails to state a cause of action where there is no allegation that easement was not valid and interference arose post-policy** – [Murphy v. Ticor Title Ins. Co.](#), Case No. A12A0219 (Ga. App. May 11, 2012) (affirming summary judgment)
- **Duty to Defend: in Illinois, where insurer has duty to defend one count, it has a duty to defend the entire action, irrespective of the limiting language of the policy** — [Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co.](#), Case No. 09-C-7063 (N.D. Ill. May 11, 2012) (granting motion for summary judgment in part, denying in part)

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