



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending May 4, 2012

By the Carlton Fields Real Property Litigation Practice Group

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I. FLORIDA STATE CASES – SARA WITMEYER

- **Construction Lien:** construction lienor was not entitled to final judgment foreclosing construction lien when property owners previously had paid arbitration award to lienor relating to same dispute – [Rhodes v. Newport Bldg. & Constr., Inc.](#), No. 2D10-3006 (Fla. 2d DCA May 4, 2012) (reversing final judgment of foreclosure)
- **Foreclosure:** circuit court improperly dismissed foreclosure action based on plaintiff's filing of one deficient summary judgment packet – [U.S. Bank Nat'l Ass'n v. Cowell](#), No. 3D11-239 (Fla. 3d DCA May 2, 2012) (reversing dismissal)
- **Foreclosure:** circuit court was required to vacate sale because of gross inadequacy of sale price, which resulted from lender's mistaken failure to attend sale – [Citimortgage, Inc. v. Synuria](#), No. 4D11-1912 (Fla. 4th DCA May 2, 2012) (reversing order denying motion to vacate sale)
- **Lease Agreement:** because provisions of termination of lease agreement and lease agreement, when read together, were open to more than one reasonable interpretation as to lessee's right of termination, summary judgment was not appropriate – [Philips Lake Worth, L.P. v. Bankatlantic](#), Nos. 4D11-1300 & 4D11-3015 (Fla. 4th DCA May 2, 2012) (reversing final summary judgment)

II. 11TH CIRCUIT CASES – NONE

III. TITLE INSURANCE CASES – CHRIS SMART

- **Burden of Proof:** insurer not entitled to relief from judgment where it filed the wrong memorandum of law and argued incorrectly under New Hampshire law that the insured had the burden of proving coverage rather than the insurer having the burden of proving lack of coverage – [Developer Finance Corp. v. Chicago Title Ins. Co.](#), Case No. 10-cv-462-LM

(D.N.H. April 25, 2012) (denying motion for relief from judgment)

- **Parent Liability: absent some allegation that supports piercing the corporate veil, it is not appropriate for insured to name insurer's parent in bad faith and unfair trade practices action** – [Hyjurick v. Commonwealth Land Title Ins. Co.](#), Case No. 3:11-cv-1282 (M.D. Pa. April 27, 2012) (granting motion to dismiss)
- **Colorado River Doctrine: insured's state declaratory judgment action and federal bad faith and unfair trade practices action were not parallel such as to warrant abstention under the Colorado River doctrine** – [Hyjurick v. Commonwealth Land Title Ins. Co.](#), Case No. 3:11-cv-1282 (M.D. Pa. April 27, 2012) (denying motion to abstain)

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