

Real Property and Business Litigation Report – Vol. IX, Issue 11

March 14, 2016

Cases of interest this week include:

Americold Realty Trust v. Conagra Foods, Inc., — S.Ct. —, 2016 WL 854159 (2016).

Unincorporated entities possess the same citizenship, for diversity purposes, of all their members.

Williams v. Victim Justice, P.C., — So. 3d —, 2016 WL 886563 (Fla. 2d DCA 2016).

A prejudgment “motion to preserve assets” is a motion for a preliminary injunction, and must meet all the requirements of a motion for a preliminary injunction.

Rautenberg v. Falz, Case No. 2D15-2938 (Fla. 2d DCA 2016).

A complaint seeking long arm jurisdiction for a tort, including a business tort, must allege a basis for jurisdiction by either tracking statutory language without supporting facts or alleging specific facts to show that the defendant’s actions fall within at least one of the subsections of Florida Statute section 48.193. If plaintiff meets this pleading requirement, the defendant then has the burden to file a legally sufficient affidavit or other sworn proof to contest the jurisdictional allegations. The affidavit need not contest the ultimate allegations of the complaint but only the jurisdictional allegations. If the affidavit contests the jurisdictional allegations, then the burden shifts back to plaintiff to prove by evidence (affidavit or other evidence) the acts occurred in Florida.

Houri v. Boaziz, Case No. 3D14-1836 (Fla. 3d DCA 2016).

While the relationship between joint venturers is dictated by fiduciary responsibilities, the relationship between members of limited liability companies is dictated by the statutory duties of good faith and fair dealing and those other requirements set forth by any operating agreements.

Federal Nat. Mortg. Ass’n v. Sanchez, — So. 3d —, 2016 WL 899861 (Fla. 4th DCA 2016).

A foreclosure conducted with an incorrect legal description requires the vacating of the foreclosure judgment and sale, and further requires putting the parties back into their “original status.” However, dismissal of the foreclosure lawsuit is not required.

Lopez v. JP Morgan Chase, N.A., — So. 3d —, 2016 WL 899873 (Fla. 4th DCA 2016).

The Fourth District adopts the “substantial compliance” test for conditions precedent.

Ortiz v. PNC Bank, N.A., — So. 3d —, 2016 WL 889347 (Fla. 4th DCA 2016).

The attachment of a copy of the note to a complaint does not conclusively and necessarily prove that

the lender had actual possession of the note at the time the complaint was filed, but establishes a rebuttable presumption sufficient to defeat a motion for involuntary dismissal.

Lane v. Cunniffe, — So. 3d —, 2016 WL 892358 (Fla. 4th DCA 2016).

In order to determine the homestead exemption to sale proceeds, a trial court must determine how much of the proceeds the seller intended, prior to and at the time of the sale, to reinvest in another homestead within a reasonable time and how much of the proceeds Seller had kept separate for that purpose.

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