

# Real Property and Business Litigation Report – Vol. IX, Issue 29

July 18, 2016

Cases of interest this week include:

**Collins Asset Group, LLC v. Property Asset Management, Inc., — So. 3d —, 2016 WL 3702926 (Fla. 1st DCA 2016).**

A Motion for Deficiency Judgment is not a foreclosure complaint so it does not need to comply with the complaint verification requirements of Florida Rule of Civil Procedure 1.115(e).

**Bank of America, N.A. v. Kipps Colony II Condominium Association, Inc., — So. 3d —, 2016 WL 3766582 (Fla. 2d DCA 2016).**

On rehearing, the Second District hold that a junior lienor cannot foreclose a superior lienor and a judgment purporting to do so is void under Florida Rule of Civil Procedure 1.540 (b) (5). Priority of real estate interests under Florida law is determined Florida Statutes sections 28.222(2) (which requires the Clerk of Court to record instruments and keep records of the recorded instrument), 695.11 (which states the sequence of recorded instruments shall determine priority), and 695.01 (which states that first in time is first in right). The community association could have foreclosed its claim of lien through a cross-claim as a result of its powers under Florida Statute section 718.116(6)(a).

**Sanabria v. Pennymac Mortgage Investment Trust Holdings I, LLC, — So. 3d —, 2016 WL 3767181 (Fla. 2d DCA 2016).**

The following affirmative defense is sufficient to meet the “specifically deny a signature” requirement of Florida Statute section 673.3081:

With regard to all counts of the Complaint, the Plaintiff’s claims are barred in whole or in part because the Defendants affirmatively question the veracity and authenticity of any possible endorsement made on any purported note or allonge the Plaintiff may produce pursuant to Fla. Stat. § 673.3081 (2011), assuming, without conceding, that such endorsement exists. Specifically, the Defendants question the veracity and authenticity of any possible endorsement because: (1) there is no mention in the Complaint as to who the endorser is; (2) there is no mention in the Complaint as to what authority the purported endorser may so endorse, (3) the indorsement wasn’t on the documents attached to the original complaint, and (4) the copy of the note attached to the complaint does not contain Defendant’s signature and is not the note signed by Defendant.

**Aluia v. Dyck-O’Neal, Inc., — So. 3d —, 2016 WL 3766717 (Fla. 2d DCA 2016).**

The venue provisions of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p

(FDCPA), do not apply to deficiency actions arising out of Florida mortgage foreclosures because a final judgment of foreclosure is not a “debt” but instead a judgment in rem or quasi in rem arising out of a foreclosure proceeding. As a result, a deficiency suit is not a “legal action on” a promissory note, “an obligation of a consumer to pay money,” nor a business dealing or consensual obligation and thus not subject to the FDCPA.

**Annex Industrial Park, LLC v. Corner Land, LLC, — So. 3d —, 2016 WL 3745534 (Fla. 3d DCA 2016).**

For purposes of temporary injunctions, “preserving the status quo” means preserving the situation that existed prior to the actions that precipitated the request for injunction.

**Medley Plaza, Inc. v. The Rama Fund, LLC, — So. 3d —, 2016 WL 3747134 (Fla. 3d DCA 2016).**

Florida Rule of Judicial Administration 2.514(b) does not extend the time for filing an appeal to thirty-five days from date of rendition.

**Wells Fargo Bank, N.A. v. Williamson, — So. 3d —, 2016 WL 3745477 (Fla. 4th DCA 2016).**

A borrower who knowingly signs loan documentation that is materially incorrect as to income cannot later claim that the lender conspired or forced the incorrect amounts and thus claim unclean hands on the part of the lender as a defense to enforcement of the loan documents.

**Miles v. Parrish, — So. 3d —, 2016 WL 3745490 (Fla. 4th DCA 2016).**

The sixty day non-claim time requirement within which to contest ad valorem assessments does not begin to run until the real property taxes are “certified for collection” under Florida Statute sections 193.122(2) and 194.171(2).

**Lucas Games, Inc. v. Morris AR Associates, LLC, — So. 3d —, 2016 WL 3745372 (Fla. 4th DCA 2016).**

An intervening change in law which renders the purpose of a lease illegal renders the lease unenforceable.

**Victory Christian World Ministries, Inc. v. MJP Distribution, LLC, — So. 3d —, 2016 WL 3745482 (Fla. 4th DCA 2016).**

The lack of mutuality of obligation on the part of the seller in the following contract clause is “cured” by the attempts of the seller to perform under the contract:

If Buyer fails to perform under this Contract, then, as Seller’s sole and exclusive remedy under this Contract, the Settlement Agent is hereby irrevocably immediately directed and instructed that the Initial Escrow Deposit and if delivered by Buyer, the Additional Escrow Deposit shall be forfeited and paid over to Seller as agreed liquidated damages in order to compensate Seller for the damages caused by such breach and not as a penalty.

In the event of Seller’s default under this Contract, Buyer’s sole remedies shall be to receive the return of Buyer’s Escrow Deposit(s), at which time the Contract shall cease and terminate and Seller and Buyer shall have no further obligations, liabilities or responsibilities to one another. Buyer shall not have any claim against Seller (nor shall Seller be liable) for damages (actual, special, punitive or otherwise) and hereby waives any such claims.

**Cruz v. Citimortgage, — So. 3d —, 2016 WL 3745488 (Fla. 4th DCA 2016).**

A party may serve another party with an “insurance summons,” i.e., an additional summons when a party is not sure the first summons was effective, in order to ensure that the trial court has acquired jurisdiction over that party.

**Dyck-O’Neal, Inc. v. Rojas, — So. 3d —, 2016 WL 3769012 (Fla. 5th DCA 2016).**

A plaintiff acquiring long-arm jurisdiction over a defendant to foreclose a mortgage maintains the long-arm jurisdiction over the defendant for deficiency purposes, even if a separate action for deficiency is filed under Florida Statute section 702.06.

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Manuel Farach