

# Real Property and Business Litigation Report – Vol. VIII, Issue 42

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Cases of interest this week include:

**Federal National Mortgage Association v. Legacy Parc Condominium Association, Inc., — So.3d —, 2015 WL 6023164 (Fla. 5th DCA 2015).**

A lender suing – post-judgment – to establish its entitlement to the “safe harbor” protections of Florida Statute section 718.116 need only attach the declaration of condominium (and not portions of prior foreclosure suit) to the complaint.

**Atlantica One, LLC v. Adragna, — So.3d —, 2015 WL 6023402 (Fla. 5th DCA 2015).**

A trial court does not abuse its discretion by approving a special jury instruction for breach of contract based on *Johnson v. Davis* (instead of the standard contract jury instruction for breach of contract) when suit is based on misrepresentations arising out of a real estate sales contract containing a *Johnson v. Davis* requirement.

**Florida Bankers Ass’n v. Florida Development Finance Corp., — So.3d —, 2015 WL 5996764 (Fla. 2015).**

A litigant which is not one of the original parties in the dispute may not appear in the appeal of the dispute unless it successfully intervened in the trial court.

**Rodriguez v. Wells Fargo Bank, N.A., — So.3d —, 2015 WL 5948169 (Fla. 4th DCA 2015).**

A servicing bank that brings a foreclosure action in its own name must prove it had authority to proceed as a non-holder in order to establish standing.

**Peoples v. Sami II Trust 2006-AR6, — So.3d —, 2015 WL 5948218 (Fla. 4th DCA 2015).**

A successor obligee on a note establishes standing by demonstrating that it had, at the time suit was filed, possession and either a blank indorsement or a special indorsement in its name.

**General Commercial Properties, Inc. v. State Dept. of Transp., — So.3d —, 2015 WL 5948530 (Fla. 4th DCA 2015).**

A government authority with condemnation powers has the ability to purchase real property outside of the condemnation process, and any offers it makes outside of the process are not considered written “first offers” for determining attorneys’ fees pursuant to Florida Statute section 73.015(1).

**Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta v. Florida Priory of**

**the Knights Hospitallers of the Sovereign Order of Saint John of Jerusalem, Knights of Malta, The Ecumenical Order, — F.3d —, 2015 WL 6000633 (11th Cir. 2015).**

The Eleventh Circuit maintains its minority view that incontestability affects the strength of a mark for purposes of confusion.

**Kearney Partners Fund, LLC ex rel. Lincoln Partners Fund, LLC v. U.S., — F.3d —, 2015 WL 5944308 (11th Cir. 2015).**

The Internal Revenue Service’s “Economic Substance” test holds that transactions that lack economic effect or substance (other than generating tax losses) or that have no business purpose will not be recognized. While both must be satisfied, the first prong – economic effects – is objective and the second prong – business purpose – is subjective.

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