

Real Property and Business Litigation Report – Vol. VIII, Issue 51

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Cases of interest this week include:

DIRECTV, Inc. v. Imburgia, — U.S. —, 2015 WL 8546242 (2015).

Contract provisions that apply the “law of your state” do not permit application of state law that was valid at time of contract but later ruled invalid.

In re Nica Holdings, Case No. 14-14685, slip op. (11th Cir. December 17, 2015).

An assignee under Florida Statute 727.01 (Assignment for Benefit of Creditors) may not, absent specific authorization, file a bankruptcy on behalf of its assignor.

JYSK Bed’n Linen v. Dutta-Roy, Case No. 13-15309, slip op. (11th Cir. December 16, 2015).

Re-registrations (not just initial registrations) in bad faith are prohibited under the Anticybersquatting Consumer Protection Act, § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

Heiskell v. Morris, Case No. 1D15-364, slip op. (Fla. 1st DCA December 18, 2015).

The words “trustee” or “as trustee” added to the name of deed grantee do not automatically vest title in the trustee, despite the language of Florida Statute section 689.071 (1). Subsection (1), which is meant to protect bona fide third party purchasers from secret trusts, must be read in conjunction with subsection (4), which allows proof of the trust’s existence to be established before or after the deed is recorded.

Portalp International SAS v. Zuloaga, Case No. 2D15-1676, slip op. (Fla. 2d DCA December 18, 2015).

Service by mail, specifically by Federal Express, is permitted under Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters article 10(a).

Mesa v. Bank of New York, Case No. 3D14-762, slip op. (Fla. 3d DCA December 16, 2015).

An attorney’s Notice of Appearance, without more, does not constitute a general appearance that waives objections to service of process.

Marriott International, Inc. v. American Bridge Bahamas, Ltd., Case No. 3D14-1817, slip op. (Fla. 3d DCA December 16, 2015).

Joint control of a separate corporation, which separate corporation is not part of the alleged joint venture, cannot be used to establish the existence of a joint venture.

Alvey v. City of North Miami Beach, Case No. 3D14-2935, slip op. (Fla. 3d DCA December 16, 2015).

Second-tier certiorari, although rarely granted, will be issued when the local government's decision to rezone conflicts with its own code and the local government decision results in a miscarriage of justice.

Benedetto v. U.S. Bank. N.A., Case No. 4D14-1811, slip op. (Fla. December 16, 2015).

A trial court errs when it fails to grant an evidentiary hearing if the allegations of the motion to quash service of process, if true, would entitle the movant to relief.

Cramer v. Bank of America, N.A., Case No. 4D15-1242, slip op. (Fla. 4th DCA December 16, 2015).

The rule providing immunity from service of process for an out-of-state resident while attending a court proceeding in a related matter does not apply to in-state residents, nor does it apply to proceedings closely related to the issues and the parties for the court proceeding attended.

Dickerson v. Senior Home Care, Inc., Case No. 5D14-4123, slip op. (Fla. 5th DCA December 18, 2015).

A trial court errs when it enters a temporary injunction prohibiting competition without affording the parties an opportunity to present evidence on the amount of a proper bond.

Brevard County, Florida v. Morehead, Case No. 5D15-2872, slip op. (Fla. 5th DCA December 18, 2015).

The Florida Legislature has waived sovereign immunity for written contract claims, but not for implied claims such as breach of contract implied in law.

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