

Real Property and Business Litigation Report - Vol. IX, Issue 9

Florida Real Property and Business Law Update

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The PDF of this week's Update can be read [here](#).

Cases of interest this week include:

Slater v. U.S. Steel, --- F.3d ---, 2016 WL 723012 (11th Cir. 2016).

Judicial estoppel is applied to avoid the perversion of the judicial process; the doctrine is concerned more with the orderly administration of justice than protecting final judgments so judicial estoppel may be invoked by a third party and the requirements of res judicata and collateral estoppel do not apply.

Phan v. Deutsche Bank, Case No. 2D14-3364 (Fla. 2d DCA 2016).

A holder of a negotiable instrument may have constructive, as opposed to actual physical, possession.

Klauber v. First Federal of Florida, Case No. 2D15-926 (Fla. 2d DCA 2016).

A trial court may lawfully order a judgment debtor to assist the Sheriff in executing upon the shares of a corporation, and an order requiring such assistance is not a mandatory injunction subject to the general requirements of an injunction such as posting a bond.

Off Lease Only, Inc. v. LeJeune Auto Wholesale, Inc., --- So. 3d ---, 2016 WL 717662 (Fla. 3d DCA 2016).

The Florida Deceptive and Unfair Trade Practices Act allows a claimant to seek an injunction even if the complained of conduct has ceased.

Security National v. Reid, --- So. 3d ---, 2016 WL 717798 (Fla. 4th DCA 2016).

The Florida Rules of Civil Procedure do not authorize motions for rehearing on orders determining Rule 1.540 (b) motions.

Monnot v. U.S. Bank, --- So. 3d ---, 2016 WL 717150 (Fla. 4th DCA 2016).

Evidence that a note was transferred into a trust and that the note was physically delivered to plaintiff's counsel prior to the lawsuit being filed does not, without more, establish standing as it does not prove that plaintiff was a holder at time of filing suit.

Nolan v. MIA Real Holdings, LLC, --- So. 3d ---, 2016 WL 731768 (Fla. 4th DCA 2016).

The two dismissal rule applies to suits on the same promissory note even if the two suits were filed by different plaintiffs.

Caraccia v. U.S. Bank, N.A., --- So. 3d ---, 2016 WL 731773 (Fla. 4th DCA 2016).

A holder may have "constructive possession" of a bearer instrument even if it does not have physical possession.

Rincon v. HSBC Bank, --- So. 3d ---, 2016 WL 742612 (Fla. 5th DCA 2016).

A party in possession of an instrument that has a special indorsement to a third party is not a "holder," despite the possession.

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