

Real Property and Business Litigation Report - Vol. IX, Issue 19

Florida Real Property and Business Law Update

May 10, 2016

By: [Manuel Farach](#)

The PDF of this week's Update, including the full text of each decision, can be read [here](#).

Cases of interest this week include:

HSBC Bank USA v. Parodi, --- So. 3d ---, 2016 WL 2342824 (Fla. 3d DCA 2016).

A trial court commits error when it refuses to vacate technically admitted Requests for Admission when the record reflects facts contradicting the technical admissions.

Florida Laundry Sevice, Inc. v. Sage Condominium Association, Inc., --- So. 3d ---, 2016 WL 2342851 (Fla. 3d DCA 2016).

The defense of impracticability, i.e., contract performance excused because it is unreasonably expensive to perform, is different from the defense of impossibility, i.e., contract performance excused because it is impossible to perform the contract.

Nationstar Mortgage, LLC v. Castro, --- So. 3d ---, 2016 WL 2342874 (Fla. 3d DCA 2016).

The trial court must address the *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981), factors before excluding a witness, including in foreclosure trials.

Wichi Management, LLC v. Masters, -- So. 3d ----, 2016 WL 2340743 (Fla. 3d DCA 2016).

An equitable lien may be imposed when (1) a written contract indicates an intention to charge a particular property with a debt or obligation or (2) a court imposes a lien out of general considerations of a right or justice as applied to a particular circumstances and based on the conduct of the parties. Moreover, funds must be directly traceable to the real property in question and the funds must have enriched the debtor's interest in that property in order for an equitable lien to be declared.

U.S. Bank Nat'l Assoc. v. Benoit, --- So. 3d ----, 2016 WL 2342891 (Fla. 4th DCA 2016).

A settlement agreement in a mortgage foreclosure case may be enforced even if the lender cannot produce the original promissory note.

Villalona v. 21st Mortg. Corp., --- So. 3d ---, 2016 WL 2342915 (Fla. 4th DCA 2016).

The assignee of a contract, including a mortgage, assumes the rights and obligations of the assignor, including the obligation to pay fees and costs of a prior unsuccessful foreclosure action by the assignor.

Bank of America v. Nash, --- So. 3d ----, 2016 WL 2596015 (Fla. 5th DCA 2016).

The failure to register as a foreign corporation transacting business in Florida, failure to register as a mortgage lender, and failure to file a proper fictitious name do not invalidate a note and mortgage nor prohibit their enforcement.

Related Professionals
[Manuel Farach](#)

Related Services
[Real Estate](#)