

2019 Real Property and Business Case Law Update

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FORECLOSURE



McGlinchey v. Mosley & Thomas LLP,
139 S. Ct. 1029, 203 L. Ed. 2d 390 (2019).
Non-judicial mortgage foreclosures are not
subject to the Fair Debt Collection
Practices Act, 15 U. S. C. §1692a(6), as the
Act does not apply to those merely
enforcing security interests.

[REDACTED]
[REDACTED] v. Meyer, 265 So. 3d 715 (Fla. 2d DCA 2019).

Standing is merely a sufficient interest in the outcome of a case that warrants the court entertaining it, and an affirmative defense requires proof unless the complaint demonstrates an affirmative defense on its face.



[REDACTED], 269 So. 3d 571 (Fla. 4th
DCA 2019).

■ An allonge may predate the execution of a note as a party may contract to sell property that it does not yet own.

[REDACTED] v. [REDACTED], 280 So. 3d 1124 (Fla. 2d DCA 2019).

A foreclosing lender may claim as damages all monies due, not just those that accrued within five years of default; the Second aligns with the Third, Fourth and Fifth Districts.

[REDACTED], 271 So. 3d 1073 (Fla. 3d DCA 2019).

Bartram v. U.S. Bank, N.A., 211 So. 3d 1009 (Fla. 2016), did not change then existing law and applies retroactively to revive claims.

, 272 So.
3d 430 (Fla. 3d DCA 2019).

A prevailing foreclosure defendant may not be awarded "fees for fees," i.e., for litigating the amount of attorney's fees to be awarded.

[REDACTED] 267
So. 3d 414 (Fla. 4th DCA 2019).

Failure to submit evidence in opposition to a lender's claim that (pursuant to Florida Statute section 673.3081) signatures on a negotiable instrument are presumed valid entitles lender to summary judgment.

[REDACTED]
[REDACTED]
[REDACTED] Association, 266 So. 3d 1274 (Fla. 5th DCA 2019).

A lender who fails to obtain a spouse's signature for a mortgage on homestead property may, under the principles of *Palm Beach Sav. & Loan Ass'n, F v. Fishbein*, 619 So. 2d 267 (Fla. 1993), be entitled to an equitable lien on the homestead property if necessary to avoid unjust enrichment.

[REDACTED] 270
So. 3d 403 (Fla. 4th DCA), *review
dismissed*, 2019 WL 3713848 (Fla. 2019).
A negative-amortization provision does not
render non-negotiable an otherwise
negotiable promissory note.

[REDACTED], 283 So.
3d 246 (Mem) (Fla. 3d DCA 2019).

Even when a surviving spouse did not sign the mortgage, a surviving spouse is a "borrower" under a reverse mortgage that does not permit foreclosure until all borrowers pass away; other documents executed contemporaneously with the mortgage cannot be considered in interpreting the mortgage terms even though the other documents may have created an ambiguity.

[REDACTED]

[REDACTED], 283 So. 3d 366 (Fla. 3d DCA 2019).

The Third District re-affirms that a spouse who signs a mortgage as a “borrower” will be treated as a borrower under the mortgage.



Wells Fargo Bank, N.A. v. Quest Systems, LLC, 269 So. 3d 598 (Fla. 2d DCA 2019).

On rehearing, the Second District holds that a promissory note modification agreement is an agreement “relating to” commercial paper and is self-authenticating under Florida Statute section 90.902(8).

HSBC Bank USA, N.A. v. Leone, 271 So. 3d 172 (Fla. 2d DCA 2019).

A second default notice for foreclosure does not need to be given when the first foreclosure is dismissed without prejudice.



MISREPRESENTATION

, 282 So. 3d 928
(Fla. 3d DCA 2019).

The payment by one party of the down payment and closing costs for the purchase of real estate with the subsequent titling of the property as joint tenants with right of survivorship creates a presumption of a gift to the non-paying party unless the contributing party manifests an intention that a resulting trust should arise.

[REDACTED] 284 So. 3d 1101 (Fla. 2d DCA 2019).

A constructive trust may be imposed in suits claiming derivative action and breach of fiduciary duty claims.

████████████████████, 274 So. 3d 1119 (Fla. 4th DCA 2019).

Upon rehearing and applying *Professional Insurance Corp. v. Cahill*, 90 So. 2d 916 (Fla. 1956), the Fourth District holds that "no oral modification" clauses are enforceable as written unless the oral modification "has been accepted and acted upon by the parties in such manner as would work a fraud on either party to refuse to enforce it." Moreover, a seller of corporate stock has three options upon breach by a buyer: treat the stock as belonging to the buyer and recover the contract price, resell the stock as an agent of the buyer and recover the difference between the contract price and the actual selling price, or keep the stock and recover as damages the difference between the contract price and the value of the stock on date of breach.


 265 So. 3d
698 (Fla. 4th DCA 2019).

Fraud or egregious misconduct is not a requirement for an equitable subrogation lien.

In Di [REDACTED], 271 So. 3d 1181 (Fla. 3d DCA 2019).

Fraud or another egregious act is necessary in order to impose an equitable lien on homestead property.



Padilla v. Padilla, 278 So. 3d 333 (Fla. 3d DCA 2019).

The Third District adopts *Hillcrest Pacific Corp. v. Yamamura*, 727 So. 2d 1053, 1058 (Fla. 4th DCA 1999), and holds that fraud in the inducement may not be pled when the contract documents contradict the alleged fraud.



TITLE

[REDACTED] 285 So. 3d 367 (Fla. 1st DCA 2019).

An escrow agent only owes a duty per his escrow agreement and does not owe a fiduciary duty to non-parties to the escrow agreement.



_____,
Inc., 281 So. 3d 546 (Fla. 5th DCA 2019).
Boundary lines established by federal government surveyors are “unchangeable and control all references in deeds and other documents describing parcels of land by reference to the federal government of sections, townships and ranges,” but a trial judge may order that survey markers be placed to show the updated boundary between parcels.

[REDACTED] 279 So.
3d 733 (Fla. 2d DCA 2019).

An untimely preservation notice (after expiration of the thirty-year period) filed under Florida Statute section 712.03 cannot reestablish interests extinguished by the Marketable Record Title Act.



Dorsey v. Robinson, 270 So. 3d 462 (Fla. 1st DCA 2019).

“In possession of the lands” for purposes of Florida Statute section 712.03(3) (the “possession exception” to the extinguishment provisions of the Marketable Record Title Act) requires more than merely the power to occupy the land and may require continued physical presence on the land.



Chaudhry v. Pedersen, 277 So. 3d 635
(Fla. 5th DCA 2019).

All parties having an interest in a disputed property are required to be joined to determine the true ownership of the property, i.e., a spouse who owns disputed property with her spouse is required to be joined when a plaintiff alleges he entered into an agreement to purchase property in the name of husband to then be transferred to plaintiff but instead husband transferred property to himself and his wife.



DEFICIENCY JUDGMENTS

[REDACTED], 267 So. 3d
478 (Fla. 2d DCA 2019).

The statute of limitations for a deficiency suit does not accrue until the foreclosure judgment and sale.



LIS PENDENS




, Case No. 2D17-2192 (Fla. 2d DCA 2019).

A titleholder to real property who purchased before litigation commenced and before a lis pendens was filed is entitled to defend a foreclosure suit, including questioning the amounts due on the note and mortgage.



[REDACTED],
264 So. 3d 295 (Fla. 2d DCA 2019).

The statutory presumption under Florida Statute section 45.033(1) that the owner of the real property at the time of the filing of the lis pendens is entitled to surplus foreclosure funds may be rebutted only by proof of either a voluntary or involuntary transfer or assignment from the record owner to the claimant of the right to collect the surplus.

[REDACTED], 266 So. 3d 248 (Fla. 4th DCA 2019).

Equitable liens can support a lis pendens so long as based on a duly recorded instrument or there exists a “fair nexus” between the property that is the subject of the lis pendens and the dispute embodied in the lawsuit. Additionally, the Fourth District sets forth the differences between the district courts of Florida in their treatment of appellate review of orders deciding whether to discharge a lis pendens.

[REDACTED] 271 So. 3d 115 (Fla. 3d DCA 2019).

The proponent of a lis pendens must only make a minimal "fair showing" of a "nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit" and need not prove same by a preponderance of the evidence. Moreover, the amount of any lis pendens bond typically consists of attorney's fees in having the lis pendens removed (not the entire litigation), damages relating to the effects on title measured by the difference between the value of the property on the date the lis pendens is imposed and the date it is removed, and the expenses of preservation and maintenance of the property for the interval between recordation and discharge.



ATTORNEY'S FEES AND COSTS

[REDACTED] 2018
WL 2069328 (Fla. 2019).

Jurisdiction was improvidently granted in the case, the opinion of January 4, 2019 awarding attorney's fees notwithstanding lack of connexity between the parties is withdrawn, and jurisdiction is discharged.



████████████████████, Case No. 5D14-4386 (Fla. 5th DCA 2019).

Attorneys who are parties to litigation and successfully represent themselves are entitled to an award of attorney's fees so long as the awarded time was spent as attorney (not as a party) and is not duplicative of other counsel's work.

 279 So. 3d 188
(Fla. 4th DCA 2019).

The standard used to determine an award of court costs under Florida Statute section 57.041(1) is the “party recovering judgment” and not the “prevailing party” standard.

**Fassy v. The Bank of New York Mellon,
273 So. 3d 52 (Fla. 4th DCA 2019).**

A plaintiff who suit is dismissed for lack of standing is still liable for taxable costs as costs are awarded pursuant to Florida Rule of Civil Procedure 1.420(d) and not the prevailing party provisions of the mortgage.



P [REDACTED], 274 So. 3d 1116 (Fla. 4th DCA 2019) (en banc), *review granted*, 2019 WL 6271587 (Fla. 2019).

A borrower who prevails on a “no standing” defense is not entitled to an award of attorney’s fees; conflict certified with *Madl v. Wells Fargo Bank, N.A.*, 244 So. 3d 1134 (Fla. 5th DCA 2017), and *Harris v. Bank of New York Mellon*, 44 Fla. L. Weekly D141 (Fla. 2d DCA Dec. 28, 2018).



[REDACTED], 278 So. 3d 306 (Fla. 2d DCA 2019).

A defending mortgagor that wins dismissal but does not admit privity with the plaintiff is not entitled to an award of attorney's fees under Florida Statute section 57.105(7); *Harris v. Bank of New York Mellon*, 44 Fla. L. Weekly D141 (Fla. 2d DCA Dec. 28, 2018), is distinguished on its facts.



Bayview Loan Servicing, LLC, v. Cross,
286 So. 3d 858 (Fla. 5th DCA 2019).

The standard FNMA mortgage does not permit an award of fees for litigating the amount of fees.



U.S. Bank Trust, N.A. v. Leigh, Case No. 5D17-2967 (Fla. 5th DCA 2019).

A mortgage may permit a lender the collection of attorney's fees incurred in a prior foreclosure action, even if the lender was not successful in the first action.



**Deutsche Bank, National Trust Company
v. Quintela, 268 So. 3d 156 (Fla. 4th DCA
2019).**

An attorney's fees provision which provides "[l]ender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22 . . . ,"
i.e., foreclosure, does not support an award of fees for a reformation action.



PROPOSALS FOR SETTLEMENT

Wheaton v. Wheaton, 261 So. 3d 1236
(Fla. 2015).

Proposals for settlement made pursuant to Florida Statutes section 768.79 and Florida Rule of Civil Procedure 1.442 do not need to comply with the email service provisions of Florida Rule of Judicial Administration 2.516.



Wilcox v. Neville, 283 So. 3d 878 (1st DCA 2019).

Florida Statute section 768.79(6) requires the “judgment obtained” calculation to include the amount of any settlement by a co-defendant after the date of service of the offer on the defendant by which the verdict was reduced.



Breger v. Robshaw Custom Homes, Inc.,
264 So. 3d 1147 (Fla. 5th DCA 2019).

An offeree defendant may not bind all three plaintiff joint tenants by accepting the offer of only one offering plaintiff and conditioning the acceptance upon dismissal of the lawsuit by all three joint tenant plaintiffs, including requiring dismissal by the two offerors whose proposal for settlement it did not accept.



Weiner v. Maulden, 267 So. 3d 1045 (Fla. 4th DCA 2019).

Consolidation of two cases for discovery and trial (but not for all other purposes) does not consolidate the two cases for proposals for settlement such that a plaintiff offeror must make the proposal for settlement to the two defendants in the two cases.



Brunson v. Ashley, 268 So. 3d 277 (Fla. 1st DCA 2019).

A proposal for settlement is not invalid for failure to describe the treatment of punitive damages if the complaint does not demand punitive damages.



HOMESTEAD

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████████████████████ 283 So. 3d 833 (Fla. 2d DCA 2019).

Florida Statute section 196.161(1)(b) (retroactive revocation of homestead exemption and imposition of tax penalties) does not contain an intent requirement, and thus applies to homeowners who received benefits of Florida homestead exemption while also unknowingly receiving *de minimus* homestead exemption benefits in another state.

[REDACTED] 279 So. 3d 328
(Fla. 2d DCA 2019).

The Florida Constitution requires residence in the property claimed homestead as of January 1 in order to receive the benefits of ad valorem tax exemption; *Semple v. Semple*, 89 So. 638 (Fla. 1921) (homestead continues when present intention to move into property), is distinguished for houses under construction.

[REDACTED] 263
So. 3d 95 (Fla. 4th DCA 2019).

A homestead is not "abandoned" (thus permitting one spouse to sell without the signature of both spouses) when the non-consenting spouse is involuntarily forced off the property.



RECEIVERS

Wright v. Receiver, Capital City Bank, Inc., 2019 WL 271 So. 3d 1088 (Fla. 3d DCA 2019).

A receiver appointed by a trial court arising out of the foreclosure of an apartment complex may not be sued for personal injury arising out of management of the complex unless the receiver acted outside the scope of the receivership.



ADVERSE POSSESSION

Patterson v. [REDACTED] 278 So. 3d 882
(Fla. 2d DCA 2019).

A permissive use of real property may change into a non-permissive use sufficient to support a claim for adverse possession.



EVIDENCE

[REDACTED], 278 So. 3d 551 (Fla. 2019).

Chapter 2013-107, sections 1 and 2, Laws of Florida (the “Daubert amendments) which amended Florida Statutes sections 90.702 (testimony by experts) and 90.704 (basis of opinion testimony by experts) is adopted.

[REDACTED]

[REDACTED], 286 So. 3d
951 (Fla. 1st DCA 2019).

A witness may provide evidence that plaintiff had standing at the time of the filing of the complaint if the documentary evidence is insufficient.



[REDACTED], 283 So. 3d 981 (Fla. 2d DCA 2019).

A mailing log is sufficient additional evidence to establish the mailing of a condition precedent letter.

River ... Mollen

276 So. 3d 979 (Fla. 2d DCA 2019).

A witness who did not create certain business records may lay the predicate for the introduction of the records but only so long as the witness has sufficient knowledge regarding how the records were created.



[REDACTED]

273 So. 3d 3 (Fla. 4th DCA 2019).

When witness testimony is needed to prove mailing of a default notice, the witness must have personal knowledge of the business's practices in mailing letters.



Richard v. Asset Management West 15, LLC, 283 So. 3d 1282 (Fla. 2d DCA 2019).
An affidavit of indebtedness that does not attach business records is insufficient evidence of the amount owed.



LIENS

[REDACTED] 78
So. 3d 776 (Fla. 3d DCA 2019).

A sheriff's execution sale eliminates the interest of inferior claims which were recorded after the judgment that served as the basis for the execution.

Parent v. [REDACTED], 277 So. 3d 1093
(Fla. 2d DCA 2019).

A charging lien may only be imposed on the proceeds of a pending case and cannot be imposed on "all of [the charged party's] money and/or personal property in her possession."

 , 272 So. 3d 506
(Fla. 3d DCA 2019).

An attorney's charging lien must be filed
before final judgment otherwise it is
ineffective.



TAXES

[REDACTED] Case Nos.
3D18-2090 & 3D18-1393 (Fla. 3d DCA
2019).

Improvements on leased land are taxed separately than the land itself, and the owner of the improvements may not contest the *ad valorem* valuation of the land.



Subroder, LLC v. Investors, LLC
Case No. 4D18-3177 (Fla. 4th DCA 2019).
Documentary stamp taxes must be paid on
the increased amount of a promissory note;
otherwise the note is unenforceable.



Joiner v. Pinellas County, 279 So. 3d 860
(Fla. 2d DCA 2019).

A county's general immunity from ad valorem taxation on real property it owns does not apply to real property it owns outside the county.



Crapo v. Gainesville Area Chamber of Commerce, Inc., 274 So. 3d 453 (Fla. 1st DCA 2019),

A chamber of commerce has a “charitable purpose” as defined in the Florida Statutes and thus is exempt from ad valorem taxation.



BUSINESS ENTITIES

[REDACTED]

287 So. 3d 587 (Fla. 4th DCA 2019).

A court's inquiry into suspension or termination of a member of a corporation is, under Florida Statute section 617.0607(1), limited to determining whether the board acted in a fair and reasonable manner and in good faith.

[REDACTED]

[REDACTED] 283 So. 3d 972 (Fla. 2d DCA 2019).

Florida law permits mandamus proceedings to allow shareholders in private corporations to inspect their corporation's books and records.

[REDACTED]
[REDACTED] 279 So. 3d 809 (Fla. 3d DCA 2019).

The fact that a company's board of directors are outside directors who are not company employees does not diminish the rule of *American Airlines, Inc. v. Geddes*, 960 So. 2d 830 (Fla. 3d DCA 2007), that intra-corporate communications are not "publications" to third parties for defamation purposes.

Derivative Developer
[REDACTED]
[REDACTED], 280 So. 3d 504 (Fla. 3d DCA 2019).

The proceeds of a derivative action brought under Florida Statutes section 605.0802 belong Section are required by Florida Statutes section 605.0805(1) to be paid to the limited liability company and not the plaintiff.

[REDACTED] So. 3d 803
(Fla. 5th DCA 2019).

A member of a limited liability company may bring a constructive fraud and breach of fiduciary duty suit against the manager of the company without satisfying derivative action requirements if the claim is based on violation of statutory or contractual duties.

[REDACTED] &
[REDACTED], Case No.
2D15-5579 (Fla. 2d DCA 2019).

A motion for continuance of trial to allow an insolvent company to reinstate should be granted; the court does not rule whether an insolvent corporation may proceed to trial under the province of the "winding up affairs" provision of Florida Statute section 605.0709.



EASEMENTS

██████████, 279 So. 3d 825 (Fla. 2d DCA 2019).

Use of another's land is considered permissive, and a party's use of a shared driveway for many years is insufficient by itself to demonstrate a use that is sufficiently adverse, exclusive or inconsistent with the owner's use to establish a prescriptive easement.



DEDICATIONS



[REDACTED]
[REDACTED] 157 So. 3d 289 (Fla. 2d
DCA 2019).

The owner of land in a common law dedication of a street retains title to the dedicated land but the owner of land in a statutory dedication does not. However, the owner of land in a statutory dedication retains a reversionary interest such that the land returns to the owner (or the owner's successors in title) if the governmental authority relinquishes the statutory dedication.



CONSTRUCTION



[REDACTED] Case
Nos. 3D18-1450, 3D18-1340, & 3D18-1337
(Fla. 3d DCA 2019).

Paragraph 4.2 of the standard American Institute of Architects A312 surety bond form permits the surety to select the defaulting principal as the contractor to finish the project despite an objection from the owner.



Grace and Naeem Uddin, Inc. v. Singer Architects, Inc., 278 So. 3d 89 (Fla. 4th DCA 2019).

A supervising architect owes a duty to a contractor and may be held liable in tort for professional negligence notwithstanding the architect and contractor both have contracts with the developer, i.e., the existence of the contracts does not bar the tort duty owed by the architect to the builder.



COMMUNITY ASSOCIATIONS

[REDACTED]

3D18-0631 (Fla. 3d DCA 2019).

Actions brought by mobile homeowners' associations under Florida Rule of Civil Procedure 1.222 are not subject to the class certification requirements of Florida Rule of Civil Procedure 1.220.

[REDACTED]

Homeowners' Association, Inc., 265 So. 3d 706 (Fla. 1st DCA 2019).

A homeowner's association may be named in an eminent domain case as class representative for all owners; it is not necessary to individually name all members of the association.

[REDACTED] **Boynon**
278 So. 3d 714
(Fla. 4th DCA 2019).

It is not a violation of the Florida Homeowner's Association Act for a developer to use working capital funds contributed by purchasers into a homeowner's association account to fund the developer's negative equity contributions under Florida Statute section 720.308(1)(b).



[REDACTED], Case No. 4D18-1647
(Fla. 4th DCA 2019).

The Business Judgment Rule applies to decisions of property owners' associations so long as the association had the contractual or statutory authority to perform the relevant acts, and if it does, so long as the board acted reasonably.

Cornfeld

30. 3d 1096 (Fla. 3d DCA 2019).

A shareholder's derivative suit against the not-for-profit corporation that operates a condominium complex must allege and prove the corporation or its individual officers acted fraudulently, illegally, oppressively or in bad faith in order to sustain a derivative action on the corporation's behalf under Florida Statute section 607.0831(1).



Coastal Creek Condominium Association, Inc. v. Fla Trust Services LLC, 275 So. 3d 836 (Fla. 1st DCA), *review dismissed*, 2019 WL 6249333 (Fla. 2019).

Under the present (2017 and beyond) version of Florida Statute section 718.116(1)(a), the present owner of a condominium unit is jointly and severally liable with the previous owner (other than the association it was an owner) for unpaid assessments that came due during the ownership of both; *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 105 So. 3d 637 (Fla. 3d DCA 2013), is distinguished as it interpreted the 2013 version of the statute prior to its amendment in 2017.



Eastwood Shores Property Owners Association, Inc. v. Department of Economic Opportunity, 264 So. 3d 264 (Fla. 2d DCA 2019).

Although the issue has been resolved by the 2018 amendment to the Marketable Record Title Act (M.R.T.A.), condominium associations may be considered “homeowner’s associations” capable of employing the prior M.R.T.A. covenant revitalization provisions (Florida Statutes sections 720.403-.407).

Windsor Falls Condominium Association, Inc. v. Davis, 265 So. 3d 709 (Fla. 1st DCA 2019).

An award of fees for litigating the amount of attorney's fees to be awarded is not permitted in a condominium assessment case when the relevant portion of the instruments provided for "costs of collection thereof, including Legal Fees"; *Waverly at Las Olas Condominium Ass'n, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386, 388 (Fla. 4th DCA 2012), is distinguished.



RESTRICTIVE COVENANTS

Robert Tawin

278 So. 3d 857 (Fla. 3d DCA 2019).

Restrictive covenants are interpreted in a fashion which least restricts the use of the property, and accordingly, the following provision prohibits a garage company but not a garage:

This property is being conveyed by the Grantor to the Grantee subject to the Grantee agreeing that the property will not be used as a parking lot, storage yard facility or for a garage or tow truck company. This covenant shall run with the land.



BANKRUPTCY

[REDACTED]

[REDACTED], 139 S. Ct. 1652, 203 L. Ed. 2d 876 (2019).

Rejection of an executory contract under Section 365 of the Bankruptcy Code has the same effect as if the contract has been breached outside of the bankruptcy context and does not rescind rights under the contract.



[REDACTED], 139 S. Ct. 1795, 204
L. Ed. 2d 129 (2019).

“A [bankruptcy] court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor’s conduct,” i.e., contempt is appropriate when a creditor violates a discharge order based on their objectively unreasonable view of the order.

█ [REDACTED], 281 So. 3d 565 (Fla. 3d DCA 2019).

Res judicata only applies to claims actually litigated and decided in a different case, and accordingly, a bankruptcy creditor whose claims were not actually decided in the bankruptcy case and against which the discharge injunction may not apply, is not estopped from bringing a state court suit for the debt.



[REDACTED]

279 So. 3d 876 (Fla. 2d DCA 2019).

A party that unequivocally surrenders their property in a Chapter 13 bankruptcy proceeding is estopped from challenging a foreclosure proceeding in state court; *Fischer v. HSBC Bank USA*, 257 So. 3d 512, 515 (Fla. 2d DCA 2018), is distinguished.



[REDACTED], 935 F.3d 1270 (11th Cir. 2019).

An “informational statement” sent to a borrower who has been discharged in a Chapter 13 bankruptcy does not violate the discharge injunction, 11 U.S.C. § 524, if the statement contains specific limiting language.



Thompson v. Gargula (In Re: Glenn Lee Thompson), 939 F.3d 1279 (11th Cir. 2019).

11 U.S.C. section 727(d)(2) (discharge vacated due to failure to disclose property of the estate), unlike section 727(d)(1) (discharge vacated due to fraud of debtor), does not require the party requesting revocation have been devoid of knowledge of the bad acts during the bankruptcy.



D'Agostino v. CCP Ponce, LLC, 274 So. 3d 1141 (Fla. 3d DCA 2019).

Whether guarantors have to pay all outstanding indebtedness due or the amounts the borrower has to pay after bankruptcy proceedings is a not a matter of bankruptcy law, but a matter of Florida contract law which determines whether the guaranty contract bound the guarantors to the indebtedness or the amount due by the borrower.



CONSUMER PROTECTION



_____, 941 F.3d 1031 (11th Cir. 2019).

Whether the Bankruptcy Code precludes or preempts Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq., and Florida Consumer Collection Practices Act (“FCCPA”), Fla. Stat. § 559.55 et seq., claims is a common rather than individual issue, and thus may meet class certification predominance requirements.

[REDACTED], 282 So. 3d 969 (Fla. 1st DCA 2019).

Condominium association assessments are a “consumer debt” under the Florida Consumer Collection Practices Act, Florida Statutes section 559.55 - .785; conflict certified with *Bryan v. Clayton*, 698 So. 2d 1236 (Fla. 5th DCA 1997), rev. denied, 707 So. 2d 1123 (Fla. 1998), cert. denied, 524 U.S. 933 (1998).



[REDACTED] 940 F.3d

627 (11th Cir. 2019).

Section 3604(b) of the Fair Housing Act, 42 U.S.C. § 3601 et seq. (discrimination based on “race, color, religion, sex, familial status, or national origin” in connection with the “sale or rental of a dwelling, or in the provision of services or facilities in connection therewith” is prohibited) applies to conduct after an individual has acquired housing.



Schaw v. Habitat for Humanity of Citrus County, Inc., 938 F.3d 1259 (11th Cir. 2019).

Failure to consider an applicant's ability to meet a minimum income threshold by obtaining money from family members and other sources constitutes a failure to make "reasonable accommodations" under the Fair Housing Amendments Act, 42 U.S.C. § 3601 et. seq.



Regions Bank v. Legal Outsource PA,
936 F.3d 1184 (11th Cir. 2019).

A guarantor is not an “applicant” under the
under the Equal Credit Opportunity Act, 15
U.S.C. §§ 1691(a), and accordingly, may
not seek relief under the Act.



LANDLORD TENANT



[REDACTED]
[REDACTED] 552 F.3d 1303 (11th Cir. 2019).

Landlords may be contributorily liable for trademark infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114, when the landlord has knowledge of specific acts of direct infringement.

[REDACTED] Investments, Inc. 264
So. 3d 951 (Fla. 4th DCA 2019).

A guarantee of a lease that is not a continuing guarantee only applies to the original term of the lease, notwithstanding a provision of the guarantee that the parties “agree[d] that this guarantee shall remain for the renewal, modification, extension or waiver of this Lease.”



[REDACTED], 286 So. 3d 315 (Fla. 4th DCA 2019).

A guarantor on a lease is liable to the extent of the principal's obligation, and accordingly, it may be relieved of liability if the principal is found not liable but may not escape liability if summary judgment has already been entered against it.

[REDACTED] 275

So. 3d 702 (Fla. 5th DCA 2019).

Whether an instrument is a lease or a license, and whether it is revocable or non-revocable, is determined from the terms of the instrument and not its title.

[REDACTED] 284 So. 3d 566 (Fla. 4th DCA 2019).

Exculpatory clauses are effective in leases, and the following clause bars negligence claims against a self-storage landlord:

(1) ALL PERSONAL PROPERTY IS STORED BY OCCUPANT AT OCCUPANT'S SOLE RISK.

(2) Owner and Owner's agents . . . will not be responsible for, and Tenant releases Owner and Owner's agents from any responsibility for, any loss, liability, claim, expense, damage to property . . . including without limitation any Loss arising from the active or passive acts, omission or negligence of Owner or Owner's agents.

(3) Tenant has inspected the Premises and the Property and hereby acknowledges and agrees that Owner does not represent or guarantee the safety or security of the Premises or the Property or any of the personal property stored therein, and this Rental Agreement does not create any contractual obligation for Owner to increase or maintain such safety or security.



GOVERNMENT



[REDACTED], 139 S. Ct. 682, 203 L.
Ed. 2d 11 (2019).

The Constitution's prohibition against
excessive fines applies to the States.

[REDACTED] 276

So. 3d 319 (Fla. 4th DCA 2019).

State and local government do not enjoy sovereign immunity from constitutional violation and inverse condemnation suits.

[REDACTED]

278 So. 3d 58 (Fla. 4th DCA 2019).

Evidence was sufficient to establish former commissioner acted with actual malice.




County, 279 So. 3d 1284 (Fla. 5th
DCA 2019).

A county is bound by its own ordinances and may not permit a communications tower in contravention of the setbacks in its land development regulations when the regulations do not authorize variances in this instance.



[REDACTED], Case No. 1D18-3095 (Fla. 1st DCA 2019).

The Municipal Home Rule Powers Act, Florida Statute section 166.021, inserted the rational basis test (an ordinance must be reasonable and not arbitrary) in place of the “per se nuisance” test (activity can only be banned if it is a per se nuisance) for determining whether activity can be banned; whether an ordinance is a zoning ordinance or a traffic control ordinance is irrelevant.



Chapman v. Town of Redington Beach,
282 So.3d 979 (Fla. 2d DCA 2019).

A property owner suing an adjoining property owner for violation of municipal ordinances must show special damages but may - by virtue of their proximity to the violation - be peculiarly and sufficiently affected by the violation to constitute special damages notwithstanding the injuries might be described as similar to other community members.



Pirate's Treasure, Inc. v. City of Dunedin,
277 So. 3d 1124 (Fla. 2d DCA 2019).

A landowner locked in a development dispute with a municipality may transfer the affected land to a third party and not lose standing to prosecute the dispute so long as it retains a sufficient interest in the property.



LAND USE AND ZONING



Knick v. Township of Scott, 139 S.Ct. 2162 (2019).

A landowner need not exhaust possible state remedies before filing suit in federal court under Section 1983.



Hillcrest Property, LLP v. Pasco County,
915 F.3d 1292 (11th Cir. 2019).

Executive functions such as a land-use decision never give rise to a substantive-due-process claim unless the action infringes on a fundamental right.



EMINENT DOMAIN AND INVERSE CONDEMNATION

[REDACTED]
[REDACTED] 283 So.
3d 953 (Fla. 2d DCA 2019).

The Florida Legislature may not pass laws which restrict the obligation of Florida government to pay for takings without just compensation under Article X, section 6(a) of the Florida Constitution.

[REDACTED], 279 So. 3d
747 (Fla. 3d DCA 2019).

A party complaining of government zoning and development action must have special injury apart from citizens at large and alleging that he would have had submitted a bid is too speculative and does not confer standing.



CONTRACTS



[REDACTED], 275 So. 3d 693 (Fla. 3d
DCA 2019).

A general release that releases “known and unknown” claims does not release unaccrued fraud claims.



[REDACTED], 284 So. 3d 575 (Fla. 4th DCA 2019).

A general release arising out of the sale of a business does not preclude a later claim of fraud in the inducement unless the release specifically states that fraud is not grounds for rescission.

[REDACTED], 270 So.
3d 392 (Fla. 4th DCA 2019).

Certified mail is deemed "first class mail" for purposes of contractual requirements that notices be sent via "first class mail."

[REDACTED] 273 So. 3d 1078 (Fla. 3d DCA 2019).

A buyer's email notification of intention to terminate and later formal written termination is sufficient substantial compliance with a contract provision that requires written notification.

[REDACTED], 266 So.
3d 1219 (Fla. 1st DCA 2019).

Consequential damages are not based on foreseeability but instead are based on the damaged party's relationship with third parties; the following is certified as question of great public importance:

WHERE A CONTRACT EXPRESSLY REQUIRES A PARTY TO INSPECT, MONITOR, AND OBSERVE CONSTRUCTION WORK AND TO DETERMINE THE SUITABILITY OF MATERIALS USED IN THE CONSTRUCTION, BUT THE PARTY FAILS TO DO SO AND INFERIOR MATERIALS ARE USED, ARE THE COSTS TO REPAIR DAMAGE CAUSED BY THE USE OF THE IMPROPER MATERIALS GENERAL, SPECIAL, OR CONSEQUENTIAL DAMAGES?



Postma v. Baker, 276 So. 3d 828 (Fla. 4th DCA 2019).

A settlement agreement which permits a party to inspect an item “to his satisfaction” prior to repurchase creates a condition precedent of the party’s satisfaction.



Corporate Creations International, Inc. v. Marriott International, Inc., 276 So. 3d 36 (Fla. 4th DCA 2019).

The following provisions allow either party to cancel a contract during its initial term:

Sentence 1: The term of this Agreement shall be for a period of seven (7) years from the effective date and thereafter shall be subject to automatic annual renewal unless either party elects to terminate the Agreement, by notice in writing.

Sentence 2: During this term, and any renewal thereof, either party may terminate this Agreement with or without cause and without liability, by providing written notice of termination to the other party at least ninety (90) calendar days prior to the renewal date.



ARBITRATION


Sales, Inc., — U.S. —, 139 S. Ct. 524,
529, 202 L.Ed.2d 480 (2019).

A court may not override an arbitration provision when the parties' contract delegates the arbitrability question to an arbitrator, even if the court thinks that the arbitrability claim is "wholly groundless."



[REDACTED] Case No. 2D18-4584 (Fla. 2d DCA 2019).

The filing of a declaratory judgment action as to one claim does not negate the right to arbitration arising from all claims.

 276 So. 3d 527 (Fla. 3d DCA 2019).

Equitable estoppel permits non-signatories to a contract to compel arbitration of claims brought by a signatory if the signatory raises allegations of concerted misconduct by both the non-signatory and one or more of the signatories to the contract, however, equitable estoppel on the basis of intertwined claims applies only when a signatory raises allegations of substantially interdependent and concerted misconduct by both a non-signatory and one or more of the signatories to the agreement.

[REDACTED],
[REDACTED] 274 So. 3d 473

(Fla. 3d DCA 2019).

A trial court may not sanction a party for failing to pay an arbitration fee and thus delay the arbitration proceedings.

[REDACTED]

So. 3d 345 (Fla. 2d DCA 2019).

An arbitration agreement survives a bankruptcy discharge because the arbitration provision is not a "debt" or "claim" as defined under the Bankruptcy Code.

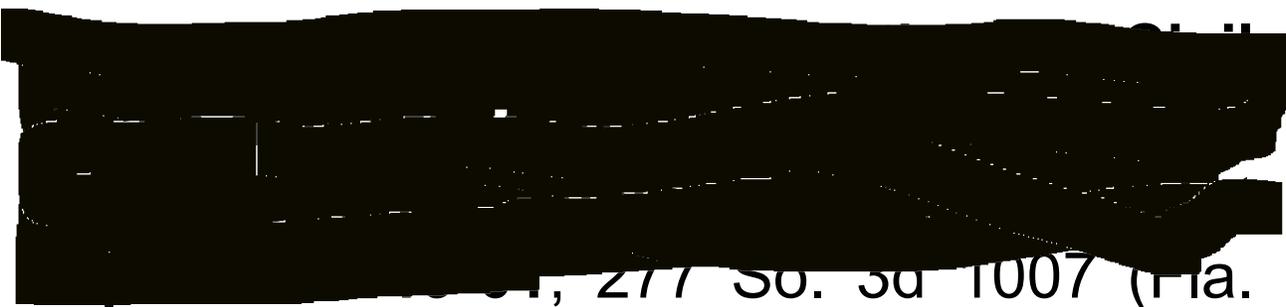


Wilson v. Amerilife of East Pasco, LLC,
270 So. 3d 542 (Fla. 2d DCA 2019).

A party waives the right to arbitrate when it files suit on a contract containing an arbitration provision seeking therein relief beyond that necessary for the trial court to issue equitable relief.



DAMAGES



2019).

The standard verdict form for breach of fiduciary duty is approved by the Florida Supreme Court.



PLEADINGS



Kendall Healthcare Group, Ltd. v. Madrigal, 271 So. 3d 1120 (Fla. 3d DCA 2019).

A trial court's almost verbatim adoption of one party's proposed final judgment does not demonstrate an improper delegation of the trial court's independent judgment when the record clearly reflects the trial court participated in the trial, asked meaningful questions, provided both sides the opportunity to comment, and appeared to understand the issues in the case.



Broz v. R.E. Reece, 272 So. 3d 512 (Fla. 3d DCA 2019).

The statute of limitations in a negligence suit against a surveyor is not tolled by the Delayed Discovery Doctrine.

Keys Country Resort, LLC v. 1733 Overseas Highway, LLC, 272 So. 3d 500 (Fla. 3d DCA 2019).

Competing affidavits whether a particular parcel was intended to be included in a mortgage require a denial of a motion for summary judgment of reformation of the mortgage.



APPEAL

[REDACTED]

[REDACTED] Case No. 5D19-943 (Fla. 5th DCA 2019).

Appeals from a local government code enforcement board are plenary appeals governed by Florida Statute section 162.11 and are not petitions for writ of certiorari.



[REDACTED]

279 So. 3d 776 (Fla. 3d DCA 2019).

It is a violation of procedural due process for a reviewing tribunal to dismiss a petition for first-tier certiorari review from an administrative order; reversal is required.



Florida Agriculture and Mechanical University v. United Faculty of Florida,
Case No. 1D17-2405 (Fla. 1st DCA 2019).
The time to appeal a final order runs from rendition of the final order, and a re-publication of the final order does not create a new period to appeal.



Gundel v. AV Homes, Inc., 264 So. 3d 304
(Fla. 2d DCA 2019).

Certiorari may be sought to seek review of an order denying a motion to dismiss under the Anti-SLAPP statute (Florida Statute section 768.295(3)) because the statute itself seeks to avoid unnecessary litigation.



JUDGES



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Manuel Farach is the resident Member (partner) in the Fort Lauderdale office of McGlinchey Stafford, PLLC where he practices real estate, business and appellate law. He is triple board-certified by The Florida Bar in Real Estate Law, Business Litigation, and Appellate Law, and also serves as an arbitrator for the American Arbitration Association and a Florida Supreme Court Certified Civil Mediator.

Mr. Farach is past Chair of the Florida Supreme Court Committee on Standard Jury Instructions for Contract Cases, and a past Chair of the Fourth District Court of Appeal Judicial Nominating Commission; he presently serves as Vice-Chair of the 19th Circuit Judicial Nominating Commission. Mr. Farach also serves as Chair of the ABA's Real Property Litigation Committee and is a Fellow of the American College of Real Estate Lawyers where he serves as Vice-Chair of the Creditor's Rights and Bankruptcy Committee.

Mr. Farach teaches Real Estate Law at The Florida State University College of Law and has also taught as an Adjunct Professor of Business Law at the Rinker School of Business at Palm Beach Atlantic University. He currently sits on the Executive Councils of the Real Property, Business Law and ADR Sections of the Florida Bar, and is listed in Chambers and Partners, The Best Lawyers in America[®], Florida Trend's Legal Elite (including its "Hall of Fame"), Florida Super Lawyers (including Florida's "Top 100"), and the South Florida Legal Guide, and holds an "AV Preeminent" Peer Review Rating from Martindale-Hubbell.

In addition to numerous seminars and other publications, Mr. Farach is the author of Florida Real Estate Law, the real estate treatise in West's Florida Practice Series, and publishes the Case Law Update, a weekly summary of both Florida and Federal real estate and business cases. Mr. Farach chairs the Real Property Section's Certification Review Seminar, sits on the Appellate Certification Examination Committee, and reviews questions for the Business Litigation Certification examination. Among his other honors, Manny has been named Board Certified Lawyer of the Year (2019) by The Florida Bar, one of the 50 Most Influential Hispanic Business Leaders (2019) by the Florida State Hispanic Chamber of Commerce, and Member of the Year (2016) by the Florida Bar Business Law Section.

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