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Argent Mortg. Co., LLC v. Wachovia Bank, N.A., 52 So.3d 796 (Fla. 5th DCA 2011).
Notwithstanding its opinion that states a party has to record first without notice of an earlier instrument affecting the real property, the Fifth District holds that Fla. Stat. § 695.11 makes Florida a "pure notice" state.

Pollizzi v. Paulshock, --- So.3d ----, 2010 WL 5391523 (Fla. 5th DCA 2010).
Shareholders transferring monies to themselves while company is insolvent, in the process of terminating operations, and after creditor files lawsuit seeking payment constitutes a fraudulent transfer under Fla. Stat. § 726.105. The filing of a motion for interpleader is sufficient notice to individual shareholders they are responsible for amounts due by corporation. Absent a fraud or conspiracy, no basis exists under the proceedings supplementary statutory scheme for joint and several liability of the implead defendants.

Fetta v. All-Rite Paving Contractors, Inc., --- So.3d ----, 2010 WL 5345140 (Fla. 4th DCA 2010).
The failure of a contractor to identify in the contractor's final affidavit a lienor who had not filed a Notice to Owner does not invalidate the contractor's final affidavit and the corresponding foreclosure of the contractor's construction lien.

Law Offices of David J. Stern, P.A. v. Banner, --- So.3d ----, 2010 WL 5346669 (Fla. 4th DCA 2010).
Class in suit against law firm specializing in foreclosures certified upon claims of excessive costs for service of process, title searches, and other costs of foreclosure.

Cohen v. Chicago Title Ins. Co., --- So.3d ----, 2010 WL 5347628 (Fla. 3d DCA 2010).
A title insurer is not liable for the theft of its title agent when the agent receives funds as escrow agent and not in the capacity of title or closing agent.

Ismael v. Certain Lands Upon Which Special Assessments are Delinquent, --- So.3d ----, 2010 WL 5348719 (Fla. 3d DCA 2010).
Statutory rights are assignable unless assignment is specifically prohibited, and a municipality may assign to a private party its rights to foreclose upon special assessment liens.

WH Smith, PLC v. Benages & Associates, Inc., --- So.3d ----, 2010 WL 5348724 (Fla. 3d DCA 2010).
Using a shell business entity to enter into a contract in Florida and then causing the company to breach a contract does not constitute such improper conduct to permit piercing the corporate veil. The *Venetian Salami* test likewise applies to claims of long arm jurisdiction through "mere instrumentality" or "alter ego" theories.

Diaz-Verson v. Walbridge Aldinger Co., --- So.3d ----, 2010 WL 5350690 (Fla. 2d DCA 2010).
Subpoenas to third parties seeking financial information of defendant will be quashed when defendant's personal financial statement is not relevant to the issues framed in the pleadings.

Country Place Community Ass'n, Inc. v. J.P. Morgan Mortg. Acquisition Corp., --- So.3d ----, 2010 WL 5350879 (Fla. 2d DCA 2010).
A foreclosing plaintiff who does not own and hold the note at time of filing and whose suit is dismissed for lack of standing is liable for Fla. Stat. § 57.105 fees, even if the dismissal for lack of standing is without prejudice and the foreclosure suit can be re-filed.

Connors v. Lake Dexter Woods Homeowners Ass'n, Inc., --- So.3d ----, 2010 WL 5381755 (Fla. 2d DCA 2010).
So long as adequate protections are in place, a homeowner's association can compel a guardian advocate for a developmentally disabled person to take "all reasonable steps" to keep the person from being a nuisance to the homeowners.

Rowe v. Duetche Bank Nat. Trust Co., --- So.3d ----, 2010 WL 5306529 (Fla. 1st DCA 2010).
A party seeking a writ of mandamus disqualifying a trial judge pursuant to Florida Rule of Judicial Administration 2.330 (j) must first seek a trial court order directing the clerk to re-assign the case.

In re Harwell, --- F.3d ----, 2010 WL 5374340 (11th Cir. 2010).
Defendants who claim to be mere conduits and who seek exculpation from bankruptcy fraudulent transfer liability under 11 U.S.C. §§ 548 and 550 must demonstrate they had no control over the transferred assets and acted in good faith as an innocent participant in the transfer. An attorney who uses his trust account to transfer funds and does not meet this test is liable to the estate under the bankruptcy code.

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Green v. Jorgensen, --- So.3d ----, 2011 WL 31394 (Fla. 1st DCA 2011).
"Usual place of abode," for purposes of service of process, means where the defendant is living at the time of service. There is no need for an evidentiary hearing with regard to service of process unless the affidavits in opposition and in support of service are in conflict and cannot be reconciled.

Tahiti Beach Homeowners Ass'n, Inc. v. Pfeffer, --- So.3d ----, 2011 WL 13701 (Fla. 3d DCA 2011).
Fla. Stat. § 720.305 (2) (limitation on fines by homeowner's association) is procedural and relates to forfeitures, and as a result, operates retrospectively. Accordingly, the statute applies to an association's rule imposing fines if homes are not constructed within a certain period of time, even if the association's rule was adopted prior to the adoption of the statute.

University Medical Clinics, Inc. v. Quality Health Plans, Inc., --- So.3d ----, 2011 WL 13721 (Fla. 4th DCA 2011).
An injunction resting on a restrictive covenant may apply to a company president, and a trial court may run the injunction period from the date of the order rather than the termination of the contract which contains the restrictive covenant.

Owen v. I.C. Systems, Inc., --- F.3d ----, 2011 WL 43525 (11th Cir. 2011).
The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, is a strict liability statute, and a violating debt collector may escape liability only for "bona fide errors" which are unintentional notwithstanding the maintenance of procedures reasonably adapted to avoid such errors. Whether the procedures are reasonable under the circumstances is a fact intensive inquiry that in each individual case.

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Britt v. Bank of America, N.A., --- So.3d ----, 2011 WL 111423 (Fla. 5th DCA 2011).
Federal law preempts Florida law for checks drawn on a national bank, and as a result, Fla. Stat. § 655.85 (account holders' checks presented at the bank where the account is held must be paid at par, i.e., without check cashing fees) does not apply to national banks.

Matissek v. Waller, --- So.3d ----, 2011 WL 116144 (Fla. 2d DCA 2011).
Homeowners' association restrictive covenants are eliminated by the Marketable Record Title Act (M.R.T.A.). In order to survive elimination, the restrictions must be re-recorded or a specific reference to the restrictions must be made by book and page or plat reference in later recorded instruments. Additionally, re-recording the restrictions outside the chain of title of the affected landowner does not re-institute the restrictions on the affected landowner.

Harrison v. J.P.A. Enterprises, L.L.C., --- So.3d ----, 2011 WL 103038 (Fla. 1st DCA 2011).
A "partial final judgment" is not appealable if all parties remain in the case.

Edwards v. Landsman, --- So.3d ----, 2011 WL 92746 (Fla. 4th DCA 2011).
A party may prosecute a suit for conversion even if the property in question has been returned under a predjudgment writ of replevin.

Someplace New, Inc. v. Francois, --- So.3d ----, 2011 WL 92766 (Fla. 4th DCA 2011).
A complaint which states who allegedly committed the fraud, the substance of the fraud, the time frame of the fraud and the context in which it was committed meets the requirement of particularity set forth in Florida Rule of Civil Procedure 1.120 (b).

Ransom v. FIA Card Services, N.A., --- S.Ct. ----, 2011 WL 66438 (2011).
A bankruptcy debtor who owns a car free of debt and does not make purchase or lease payments cannot elect the car ownership deduction for purposes of the bankruptcy "means test."

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City of Palm Bay v. Wells Fargo Bank, N.A., --- So.3d ----, 2011 WL 180363 (Fla. 5th DCA 2011).
Municipality's ordinance giving its code enforcement liens superpriority over prior recorded instruments violates Chapter 695.11of the Florida Recording Act (instruments with lower recording numbers take precedence over later recorded instruments) and is unconstitutional.

GE Fanuc Intelligent Platforms Embedded v. Brijot Imaging Systems, Inc., --- So.3d ----, 2011 WL 180373 (Fla. 5th DCA 2011).
A latent ambiguity in a contract, including a release, requires the development of extrinsic evidence regarding the intent of the instrument and typically precludes summary judgment.

Land & Sea Petroleum, Inc. v. Business Specialists, Inc., --- So.3d ----, 2011 WL 148314 (Fla. 4th DCA 2011).
The following terms contained in a proposal for settlement did not make the proposal ambiguous and unenforceable:

> 1. The party making this [Proposal for Settlement] is Defendant, LAND & SEA PETROLEUM, INC. The party to whom this [Proposal for Settlement] is made is Plaintiff, BUSINESS SPECIALISTS, INC.
>
> 2. This Proposal for Settlement is made for the purpose of resolving all claims as well as any and all claims that could have been or should have been brought by Plaintiff, BUSINESS SPECIALISTS, INC., against Defendant, LAND & SEA PETROLEUM, INC.
>
> 3. This Proposal for Settlement is inclusive of all damages and attorneys' fees, whether recoverable or not in this action, as well as any pre-judgment or post-judgment interest or costs.
>
> 4. The total amount of this Proposal for Settlement is FIVE HUNDRED DOLLARS ($500.00), inclusive of any punitive, compensatory or other damages and attorney's fees, whether recoverable or not in this action, as well as any pre-judgment interest or costs.

Parc Cent. Aventura East Condominium v. Victoria Group Services, LLC, --- So.3d ----, 2011 WL 148403 (Fla. 3d DCA 2011).
A residential cleaning service cannot file and foreclose on a Florida Statutes Chapter 713 lien because cleaning services do not "improve" real property as contemplated by Chapter 713.

Scherer v. Villas Del Verde Homeowners Ass'n, Inc., --- So.3d ----, 2011 WL 148801 (Fla. 2d DCA 2011).
The qualifying agent for a construction company is not personally responsible under Fla. Stat. § 553.84 (statutory civil action for violation of the Florida Building Code) for defects in construction.

Turner v. FIA Card Services, N.A., --- So.3d ----, 2011 WL 158449 (Fla. 3d DCA 2011).
Filing a showing of good cause four days before a scheduled hearing on a Motion to Dismiss for Lack of Prosecution is not sufficient under Florida Rule of Civil Procedure 1.420 (e) (notice of good cause must be filed five days before hearing of the motion to dismiss).

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Generation Investments, LLC v. Al-Jumaa, Inc., --- So.3d ----, 2011 WL 248548 (Fla. 5th DCA 2011).
Parties whose rights would be affected by an injunction are indispensible parties to the injunction proceedings, including cases where the issue is the proper use of real property. Accordingly, a tenant is an indispensible party to proceedings seeking to enforce restrictive covenants.

Van Diepen v. Brown, --- So.3d ----, 2011 WL 248634 (Fla. 5th DCA 2011).
It is the responsibility of the party moving for fees to separate out non-compensable work in a multi-count claim, and failure to do so results in moving party not being awarded fees.

Marger v. De Rosa, --- So.3d ----, 2011 WL 252942 (Fla. 2d DCA 2011).
A person with minor children may purchase and title real property as joint tenant with right of survivorship, and if he does so, homestead status does not attach to the property upon purchase.

Dama v. Bay Bank & Trust Co., --- So.3d ----, 2011 WL 263709 (Fla. 1st DCA 2011).
An easement for ingress and egress is presumed to be non-exclusive unless a contrary intention is shown from the instrument. The servient tenement is entitled to place items in the non-exclusive easement area unless the items in the easement substantially interfere with ingress and egress.

Willens v. Garcia, --- So.3d ----, 2011 WL 222150 (Fla. 3d DCA 2011).
Florida homestead real property will be re-assessed at full value at time of transfer, even if transfer is from a life estate tenant to a remainderman who is a child. A child who takes care of a disabled parent is not entitled to the exception contained in the Florida Constitution for transfers to a person who is "legally or naturally dependent" upon the prior owner.

Chase Bank USA, N.A. v. McCoy, --- S.Ct. ----, 2011 WL 197641 (2011).
Regulation Z, which interprets the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("T.I.L.A."), is interpreted as of the time of the transactions. Accordingly, the transaction in question does not violate the T.I.L.A. because T.I.L.A. permits change in credit terms without prior notice.

Ortiz v. Jordan, --- S.Ct. ----, 2011 WL 197801 (2011).
A party may not appeal the denial of a summary judgment after a full trial on the merits.

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L & H Const. Co., Inc. v. Circle Redmont, Inc., --- So.3d ----, 2011 WL 335237 (Fla. 5th DCA 2011).
Courts have the power to interpret, but not rewrite, contracts in a manner consistent with the intent of the parties. The intent of the parties is ascertained by examining the contract as a whole, and by not focusing on isolated parts. Courts should construe ambiguous contracts in a fashion that best comports with logic, reasoning and the purposes of the contract, and the parties' course of conduct can also be considered in interpreting a contract. A contract may be accepted by performance as well as by signifying intent to be bound.

Osborne v. Dumoulin, --- So.3d ----, 2011 WL 320986 (Fla. 2011).
A debtor in bankruptcy who does not claim the benefits of homestead protection in bankruptcy proceedings is entitled to the increased personal property exemption of $4,000 under Fla. Stat. § 222.25 (4).

Krause v. Textron Financial Corp., --- So.3d ----, 2011 WL 320989 (Fla. 2011).
State law claims are tolled while a defendant is in bankruptcy under 28 U.S.C. § 1367 (d).

McKenzie v. Betts, --- So.3d ----, 2011 WL 309318 (Fla. 4th DCA 2011).
Arbitration cannot be compelled for claims under remedial statutes such the Florida Deceptive and Unfair Trade Practices Act.

Pino v. Bank of New York Mellon, --- So.3d ----, 2011 WL 309441 (Fla. 4th DCA 2011).
The Fourth District holds that a trial court may strike a notice of voluntary dismissal as the result of fraud on the court only in situations where the defendant has been seriously prejudiced, and certified the question as one of great public importance to the Florida Supreme Court.

Feldman v. Davis, --- So.3d ----, 2011 WL 309429 (Fla. 4th DCA 2011).
Arbitration provisions are narrowly construed as to jurisdiction. Attorney engagement agreements which contain an arbitration provision must comply with the specific requirements of Rule 4-1.5 (i) of the Rules Regulating the Florida Bar.

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First States Investors 3300, LLC v. Pheil, --- So.3d ----, 2011 WL 478469 (Fla. 2d DCA 2011).
Money paid into the registry of the court upon a condition or contingency to happen can not be disbursed until the condition or contingency occurs. In this case, rent money paid into the registry should not be disbursed until the dispute under the lease is resolved. Moreover, more money than the amount in dispute cannot be paid into the registry.

Specialty Marine & Industrial Supplies, Inc. v. Venus, --- So.3d ----, 2011 WL 479912 (Fla. 1st DCA 2011).
An allegation of justifiable reliance is not necessary to state a claim for fraud, but is necessary to state a claim for fraudulent inducement. Due diligence or an investigation, however, does not automatically preclude a party from a negligent misrepresentation claim, and the representation only needs to be a substantial (not the sole or primary) reason for the reliance.

Bionetics Corp. v. Kenniasty, --- So.3d ----, 2011 WL 446205 (Fla. 2011).
The "safe harbor provisions" of Fla. Stat. § 57.105 do not apply to cases filed before the safe harbor provisions took effect.

Academy Express, LLC v. Broward County, --- So.3d ----, 2011 WL 408993 (Fla. 4th DCA 2011).
Dismissal of complaints for failure to state a cause of action for declaratory relief is reviewed for abuse of discretion, not the *de novo* standard applied to dismissal of complaints generally. A public body has wide discretion in awarding contracts, and that discretion will not be overturned unless the body's actions were arbitrary and capricious.

Commonwealth Land Title Ins. Co. v. Higgins, --- So.3d ----, 2011 WL 362415 (Fla. 1st DCA 2011).
Class action for overcharges on title insurance policies permitted to proceed in that common questions of law predominate over individual questions under the theory put forth by class, i.e., that the duty to inform of charges falls solely on title companies. However, motions for summary judgment are permissible both before and after class certification.

Physician Consortium Services, LLC v. Molina Healthcare, Inc., Slip Copy, 2011 WL 480013 (111th Cir. 2011).
Non-signatories to an arbitration agreement may be compelled to arbitrate under equitable estoppel principles if there is sufficient connection between the parties and non-signatories and the non-signatories are not specifically excluded under the arbitration agreement.

In re Lett, --- F.3d ----, 2011 WL 447460 (11th Cir. 2011).
A secured creditor may raise an objection to a cramdown confirmation of a Chapter 11 plan for the first time on appeal.

Marler v. U-Store-It Mini Warehouse Co., Slip Copy, 2011 WL 462163 (11th Cir. 2011).
The contract interpretation doctrine of the "last antecedent" is not a hard and fast rule, and a qualifying clause may apply to the entire sentence and not just the prior antecedent clause if it is clear that was the intent of the parties.

In re Miller, Slip Copy, 2011 WL 476599 (11th Cir. 2011).
A motion for sanctions under Bankruptcy Rule 9011 must specifically state, in accordance with the rule, the specific conduct alleged to violate the rule otherwise it cannot serve as the basis for sanctions.

Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc., --- F.3d ----, 2011 WL 383973 (11th Cir. 2011).
The following questions were certified to the Florida Supreme Court by the Eleventh Circuit Court of Appeals:
Does Fla. Stat. § 768.79 allow for valid offers of judgment in a separate second trial; and, if so, may offers be deemed valid in instances where an appellate court reinstates the judgment of the first trial?
Does the conditioning of an offer of judgment on the resolution and dismissal with prejudice of the offeree's claims in the action against a third-party render the offer of judgment a joint proposal, as that term is used in Florida Rule of Civil Procedure 1.442 (c)(3)?
Does Fla. Stat. § 768.79 apply to cases that are governed by the substantive law of another jurisdiction; and, if so, is this statute applicable even to controversies in which the parties have contractually agreed to be bound by the substantive laws of another jurisdiction?

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South Bay Lakes Homeowners Ass'n, Inc. v. Wells Fargo Bank, N.A., --- So.3d ----, 2011 WL 561188 (Fla. 2d DCA 2011).
An inferior lienor, a homeowners' association in this case, is entitled to an award of attorneys' fees under Fla. Stat. § 57.105 if the plaintiff filing the foreclosure did not have standing to sue when it filed suit.

LaVere-Alvaro v. Syprett, Meshad, Resnick, Lieb, Dumbaugh, Jones, Krotec & Westheimer, --- So.3d ----, 2011 WL 561721 (Fla. 2d DCA 2011).
An attorney seeking a charging lien must establish that her efforts produced a positive result for the client.

Siegel v. JP Morgan Chase Bank, --- So.3d ----, 2011 WL 519899 (Fla. 4th DCA 2011).
Beneficiaries have standing to challenge gifts made from principal of the trust.

PNC Bank, N.A. v. Progressive Employer Services II, --- So.3d ----, 2011 WL 519942 (Fla. 4th DCA 2011).
Contract terms are read in conjunction with each other, and a contract which contains a provision for an early termination fee while portion of the contract contains a ninety-day termination provision demonstrates the early termination provision is not to be interpreted as a liquidated damages clause.

Arzuman v. Bunin, --- So.3d ----, 2011 WL 519946 (Fla. 4th DCA 2011).
An "order of dismissal" closing a file without compliance with Florida Rule of Civil Procedure 1.420 (e) or some other indication the litigation is concluded is improper.

Arrowood Indem. Co. v. Acosta, Inc., --- So.3d ----, 2011 WL 522795 (Fla. 1st DCA 2011).
In making a determination whether an Offer of Judgment is made in good faith, subjective factors, including the offeror's motivation in making the offer, are to be considered together with objective factors such the amount of the offer. It is improper to analyze whether the offer is in good faith based solely on subjective factors.

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Gibson v. Progress Bank of Florida, --- So.3d ----, 2011 WL 637307 (Fla. 2d DCA 2011).
Pursuant to Florida Rule of Appellate Procedure 9.130 (f), a trial court may not enter a final order while a non-final appeal is pending. Accordingly, post judgment discovery based on a summary judgment entered while a non-final appeal was pending is void.

Southern Developers & Earthmoving, Inc. v. Caterpillar Financial Services Corp., --- So.3d ----, 2011 WL 637332 (Fla. 2d DCA 2011).
A party secured under Article 9 of the U.C.C. may re-possess personal property and sell same, but per Fla. Stat. § 679.610(2), "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable" in order for the secured party to be entitled to a deficiency judgment.

Rossmore v. Smith, --- So.3d ----, 2011 WL 665338 (Fla. 5th DCA 2011).
A proposal for settlement is not void because each defendant agrees to contribute one-half of the offered amount when making the joint offer to the single plaintiff. The proposal is not void because joint contribution by defendants does not require the assent of a person not a party to the litigation, and also because there is no need for differentiation in that there is only one offeree.

Molinos Valle Del Cibao, C. por A. v. Lama, --- F.3d ----, 2011 WL 651996 (11th Cir. 2011).
Applying Florida law, the Eleventh Circuit holds that creditors may only pierce the corporate veil against majority or controlling shareholders and must prove the following:
(1) the *shareholder* dominated and controlled the corporation to such an extent that the corporation's independent existence, was in fact non-existent and the *shareholders* were in fact alter egos of the corporation;
(2) the corporate form must have been used fraudulently or for an improper purpose; and
(3) the fraudulent or improper use of the corporate form caused injury to the claimant.

In re Mitchell, --- F.3d ----, 2011 WL 652517 (11th Cir. 2011).
Income taxes may not be discharged in bankruptcy if the debtor willfully attempted to evade or defeat collection of the taxes.

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Garner v. Langford, --- So.3d ----, 2011 WL 722522 (Fla. 1st DCA 2011).
On appeal, orders denying motions for continuance are reviewed to determine whether denial of the motion creates an injustice for movant, whether the reason for the continuance request was unforeseen, and whether the opposing party suffers prejudice or inconvenience from a continuance. The unexpected loss of counsel for one the parties satisfies these requirements.

Haughey v. Royal Caribbean Cruises, Ltd., --- So.3d ----, 2011 WL 709855 (Fla. 3d DCA 2011).
A trial court may not grant a motion to amend a complaint in a case after appellate remand when doing so violates the instructions set forth in the prior appellate opinion.

Wood v. Haack, --- So.3d ----, 2011 WL 709953 (Fla. 4th DCA 2011).
A party prevailing on a Fla. Stat. § 57.105 motion that alleges that suit was without merit from inception is entitled to an award of fees from inception of the case.

Spencer v. Digiacomo, --- So.3d ----, 2011 WL 710153 (Fla. 4th DCA 2011).
A court may not issue a satisfaction of judgment while the final judgment being satisfied is on appeal.

Miami-Dade County v. Second Sunrise Investment Corp., --- So.3d ----, 2011 WL 710185 (Fla. 3d DCA 2011).
Except as set forth in Florida Rule of Civil Procedure 1.540, a trial court has no jurisdiction to alter or amend final judgments.

Mgm Const. Services Corp. v. Travelers Cas. & Sur. Co. of America, --- So.3d ----, 2011 WL 710191 (Fla. 3d DCA 2011).
Depending on the purpose of the licensing statute or ordinance, violation of the licensing requirement may or may not bar enforcement of a contract.

Delmonico v. Crespo, --- So.3d ----, 2011 WL 710198 (Fla. 4th DCA 2011).
Financial information may not be discovered except in aid of execution or where relevance can be shown between the financial information and the allegations of the complaint.

Avi-Isaac v. Wells Fargo Bank, N.A., --- So.3d ----, 2011 WL 711061 (Fla. 2d DCA 2011).
A trial court must hold an evidentiary hearing on a motion to vacate a foreclosure sale. Moreover, the winning sale bidder must be afforded the opportunity to cross-examine witnesses and present evidence at the evidentiary hearing.

FCC v. AT & T Inc., --- S.Ct. ----, 2011 WL 691243 (2011).
Corporations may not decline to produce records under the Freedom of Information Act (F.O.I.A.) exemption for "personal privacy."

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Ecoventure WGV, Ltd. v. Saint Johns Northwest Residential Ass'n, Inc., --- So.3d ----, 2011 WL 830626 (Fla. 5th DCA 2011).
A foreclosing mortgagee is not jointly and severally responsible, under Fla. Stat. § 720.3085 (2) (b), for association payments not made by its mortgagor if the mortgagee took title prior to the effective date of Fla. Stat. § 720.3085 (2) (b).

General Star Indem. Co. v. Atlantic Hospitality of Florida, LLC, --- So.3d ----, 2011 WL 798909 (Fla. 3d DCA 2011).
Following Fourth District Court of Appeal case law, the Third District Court of Appeal declines to institute the "apex doctrine" (lower level employees must be deposed before higher level employees can be deposed) outside of the governmental context.

Walker v. Figarola, --- So.3d ----, 2011 WL 799737 (Fla. 3d DCA 2011).
An action for civil theft or conversion between parties to a contract to lend money may be brought only if the failure to repay the money constitutes an independent tort, i.e., goes beyond and is independent of the breach of contract. Additionally, an action for conversion of money must allege the money was specifically identifiable, i.e., in a specific fund or trust.

Mechaia Investments, LLC v. Romano, --- So.3d ----, 2011 WL 802698 (Fla. 3d DCA 2011).
A faxed approval from a lender which fails to contain essential matters (e.g., loan amount, interest rate and other terms) is a "pre-approval" and not a "commitment" under a contract for sale of real estate. Such a letter does not meet the financing contingency of a contract which requires a "loan commitment."

Slater v. Energy Services Group Intern., Inc., --- F.3d ----, 2011 WL 782023 (11th Cir. 2011).
Forum selection clauses are presumptively valid unless there is a strong showing enforcement of the clause is unfair or unreasonable under the circumstances. A forum selection clause will be invalidated when formed through fraud or overreaching, plaintiff is deprived of its day in court because of inconvenience or unfairness, the chosen law deprives plaintiff of a remedy, or enforcement of the clause contravenes public policy.

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Betts v. FastFunding The Company, Inc., --- So.3d ----, 2011 WL 917520 (Fla. 5th DCA 2011).
The law of the case doctrine is not applicable when an issue is not raised and not considered in a prior appeal. On remand from the appellate court, the trial court must follow the appellate mandate to choose an arbitrator from a particular arbitration forum. If the choice of forum is not integral to the arbitration agreement, then the circuit court must appoint a substitute arbitrator to make decisions regarding the mandate.

Genovese v. Provident Life and Accident Ins. Co., --- So.3d ----, 2011 WL 903988 (Fla. 2011).
Attorney-client communications between the insurer and its counsel are not discoverable in suit by insured for bad faith against his insurer, i.e., a first party suit.

Abner v. Johnson, --- So.3d ----, 2011 WL 890798 (Fla. 4th DCA 2011).
The dissolving of a *lis pendens* operates as an adjudication of its validity, and a property owner who seeks and obtains dissolution is entitled to attorneys' fees for the action under Fla. Stat. § 48.23 whether or not a *lis pendens* bond has been posted.

Boca Airport, Inc. v. Florida Dept. of Revenue, --- So.3d ----, 2011 WL 890945 (Fla. 4th DCA 2011).
Companies operating on government-owned land and fulfilling a government, municipal or public purpose are statutorily exempt from *ad valorem* but not intangible taxation.

Pill v. Merco Group of Palm Beaches, Inc., --- So.3d ----, 2011 WL 890962 (Fla. 4th DCA 2011).
The "joint residency rule" (actions must be brought in county where joint defendants are both resident) does not apply when venue selection is made on a basis other than residence of the defendant, i.e., on the basis of where the cause of action accrued or where the property in litigation is located.

Wells Fargo Bank, NA v. Haecherl, --- So.3d ----, 2011 WL 891039 (Fla. 4th DCA 2011).
A trial court has jurisdiction under Florida Rule of Civil Procedure 1.540 to hear a Motion to Vacate a Notice of Voluntary Dismissal with Prejudice so long as the motion is based on one of the five bases under the rule, i.e., mistake, inadvertence, surprise or excusable neglect; newly discovered evidence; fraud or misconduct of a party; the judgment being void; or satisfaction or release of the judgment.

Franks v. Bowers, --- So.3d ----, 2011 WL 891941 (Fla. 1st DCA 2011).
Pursuant to an enforceable arbitration agreement, arbitration will be compelled under Florida Statutes Chapter 766 for medical malpractice claims.

Heekin v. Del Col, --- So.3d ----, 2011 WL 897449 (Fla. 1st DCA 2011).
Financial discovery in a breach of fiduciary duty case can be compelled pre-judgment if based on an order granting summary judgment on the breach of fiduciary claims.

Beltran v. Kalb, --- So.3d ----, 2011 WL 904244 (Fla. 3d DCA 2011).
A dissolution of marriage judgment does not automatically transfer real property rights in the former couple's homestead; the transfer must be accomplished by specific language in the final judgment or by deed. The effect of the dissolution is to turn ownership of the former marital home into tenants in common. A former wife's homestead rights continue in the property after marriage if she lives in home, and a former husband, if he doesn not transfer the property to the former wife as required by order, continues to have homestead rights in the property as well. Accordingly, the claims of creditors cannot attach to the homestead.

Farah Real Estate and Investment, LLC v. Bank of Miami, N.A., --- So.3d ----, 2011 WL 904580 (Fla. 3d DCA 2011).
The requirement under the expedited mortgage foreclosure process, Fla. Stat. § 702.10 *et seq.*, to make interim payments during the foreclosure process and the resulting possible loss of the property due to not making payments, is permissible under the statute and does not transfer possession nor impose a material injury without remedy.

Parra v. Cruz, --- So.3d ----, 2011 WL 904581 (Fla. 3d DCA 2011).
The failure of jurors to disclose prior litigation history, if not relevant to the proceedings, is not a basis for juror interviews and a new trial.

First State Bank of Northwest Arkansas v. Georgia 4-S Investments LLP, Slip Copy, 2011 WL 924847 (11th Cir. 2011).
The following forum selection clause permits but does not mandate venue in a particular state court, i.e., the language below indicates the chosen forum is not exclusive of all other possible forums:

> [Banjee] agrees that the courts of the State of Georgia shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Guaranty or any matter arising therefrom. [Banjee] expressly submits and consents in advance to such jurisdiction in any action or proceeding in such court.

Beach Community Bank v. St. Paul Mercury Ins. Co., --- F.3d ----, 2011 WL 891252 (11th Cir. 2011).
An surety who contracts to insure that guaranties are not forged cannot defend on tort principles or on the principle that there is no resulting economic damage from a forged guaranty because the guarantor is judgment proof.

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Sheriff of Seminole County v. Oliver, --- So.3d ----, 2011 WL 1079337 (Fla. 5th DCA 2011).
Checks stolen by an employee from his employer are not "contraband" within the meaning of the Florida Contraband Forfeiture Act because they are the fruits of the crime and not the instruments used to accomplish the crimes.

Mady v. DaimlerChrysler Corp., --- So.3d ----, 2011 WL 1045598 (Fla. 2011).
A plaintiff in a Magnuson-Moss Warranty Act lawsuit who accepts a proposal for settlement is a "prevailing party" for purposes of Fla. Stat. § 768.79, and is entitled to an award of attorneys' fees.

Mintz & Fraade, P.C. v. Beta Drywall Acquisition, LLC, --- So.3d ----, 2011 WL 1004591 (Fla. 4th DCA 2011).
Arbitration agreements in attorney-client engagement contracts are enforceable, but are construed against the attorney and must comply with the Rules Regulating The Florida Bar.

Warrior Creek Development, Inc. v. Cummings, --- So.3d ----, 2011 WL 1004691 (Fla. 2d DCA 2011).
An email between attorneys, so long as it contains all the essential and material terms to the settlement, can constitute a binding settlement agreement notwithstanding one party later refused to sign the settlement paperwork.

Schantz v. Sekine, --- So.3d ----, 2011 WL 982457 (Fla. 1st DCA 2011).
A proposal for settlement under Fla. Stat. § 786.79, even if it is properly apportioned between two offerees, is not enforceable if it is conditioned upon acceptance by both offerees.

Matrixx Initiatives, Inc. v. Siracusano, --- S.Ct. ----, 2011 WL 977060 (2011).
The failure of a pharmaceutical company to disclose adverse incidents from the use of its product may, under certain circumstances, constitute "scienter" for purposes of § 10 (b) of the Securities and Exchange Act of 1934 and S.E.C. Rule 10b – 5; the lack of statistical significance in the number of adverse incidents does not necessarily make the information "non-material" for purposes of investors.

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Szymanski v. Cardiovascular Associates of Lake County, P.A., --- So.3d ----, 2011 WL 1195812 (Fla. 5th DCA 2011).
A trial judge may not swear in jurors piecemeal, i.e., one by one, as this eliminates the right of the parties to backstrike jurors under Florida Rule of Civil Procedure 1.431 (f).

In re Estate of Warner, --- So.3d ----, 2011 WL 1197668 (Fla. 2d DCA 2011).
A party seeking to compel the clerk to refund excess funds from a clerk's sale may not do so by mandamus as mandamus only lies when there is no adequate remedy at law and a party owed excess funds has an adequate remedy at law, i.e., it may file suit for payment of the funds.

Clark v. Estate of Elrod, --- So.3d ----, 2011 WL 1198272 (Fla. 2d DCA 2011).
Claims by attorneys against clients for breach of contract to pay fees are subject to the same statutes of limitations as contracts generally, and the cause of action accrues on the date of breach not the date of filing a charging lien.

Cohn v. Grand Condominium Ass'n, Inc., --- So.3d ----, 2011 WL 1158938 (Fla. 2011).
Applying Fla. Stat. § 718.404 (2) (the residents in a mixed-use condominium are entitled to vote for a majority of seats on the Board of Directors) retroactively, especially when the declaration of condominium does not state the Condominium Act "as amended" applies, constitutes an impermissible impairment of contract.

Pecora v. Berlin, --- So.3d ----, 2011 WL 1135264 (Fla. 3d DCA 2011).
A right of first refusal does not apply to a receiver's court ordered sale because rights of first refusal apply only to voluntary sales and court ordered sales are involuntary.

Talbott v. First Bank Florida, FSB, --- So.3d ----, 2011 WL 1135343 (Fla. 4th DCA 2011).
A contract addendum which states as follows is ambiguous as to when the closing can be scheduled, and thus summary judgment may not be ordered in an action for breach of contract for failure to close:

> 3. CLOSING DATE. The Closing Date shall be set by Buyer giving Seller 30 days written notice of the Closing. Notwithstanding the foregoing, Seller may require the Closing to occur at any time on or after October 31, 2007 by giving 120 days written notice to Buyer. Buyer and Seller shall provide closing instructions, if any, within 15 days of the Closing Date.

3618 Lantana Road Partners, LLC, v. Palm Beach Pain Management, Inc., --- So.3d ----, 2011 WL 1135364 (Fla. 4th DCA 2011).
The elements of an action for eviction are 1) the parties had an agreement requiring the tenant to pay the landlord rent for the use of the property; 2) the tenant defaulted in the payment of this rent; 3) three days' notice requiring the payment of the rent or the possession of the property was served on the tenant (or the requirement for a three day notice was waived by the lease); and 4) the tenant failed to pay rent or deliver possession of the property within three days.

Le v. Lighthouse Associates, Inc., --- So.3d ----, 2011 WL 1135371 (Fla. 4th DCA 2011).
A defendant moving for summary judgment must prove a negative with regard to plaintiff's complaint, i.e., the non-existence of a genuine issue of material fact. It is improper for a trial court to consider whether plaintiff can prove her case when considering defendants' motion for summary judgment.

Pino v. Bank of New York Mellon, --- So.3d ----, 2011 WL 1135541 (Fla. 4th DCA 2011).
A court may not strike a previously filed Notice of Voluntary Dismissal absent an extreme showing of fraud on the court.

Carlton Fields, P.A. v. LoCascio, --- So.3d ----, 2011 WL 1137300 (Fla. 3d DCA 2011).
A prior judgment may be equitably subrogated to a later judgment, but only if the actions of the prior judgment holder were inequitable. The defense of a father by a law firm against claims he murdered his wife, which law firm obtained a judgment against the father for unpaid fees, does not rise to the level of inequitable conduct such that the son's judgment against his father can be placed ahead of the law firm's judgment.

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K.E.L. Title Ins. Agency, Inc. v. CIT Technology Financing Services, Inc., --- So.3d ----, 2011 WL 1326230 (Fla. 5th DCA 2011).
An affidavit in opposition to summary judgment must be more than conclusory otherwise it will not create an issue of fact that defeats summary judgment.

Khan v. Bank of America, N.A., --- So.3d ----, 2011 WL 1326283 (Fla. 5th DCA 2011).
A mortgage foreclosure complaint whose allegations of note ownership are contradicted by the attachments will be dismissed for failure to comply with Florida Rule of Civil Procedure 1.130.

Isaac v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2011 WL 1261142 (Fla. 4th DCA 2011).
An allonge indorsed in blank and attached to a note makes the note payable to bearer and enforceable by the holder of the note.

Swain v. Meadows at Martin Downs Homeowners Ass'n, Inc., --- So.3d ----, 2011 WL 1261151 (Fla. 4th DCA 2011).
Summary judgment is reversed as the following language does not permit an association to construct a maintenance facility on common areas of a community:
"[t]he Association shall be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other assessments which are liens against the Common Area."
and
"[t]he Association shall maintain and keep in good repair the Common Areas. The maintenance of the Common Areas shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all ... recreational, maintenance, and office facilities."
and
"[t]he Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any Property Manager retained by the Association or business offices or storage facilities for the Association) as may more particularly be set forth in this Declaration."

Bank of America, N.A. v. Diamond, --- So.3d ----, 2011 WL 1261194 (Fla. 4th DCA 2011).
A motion to dismiss filed after foreclosure and directed solely to a remaining deficiency count is permissible.

Arsali v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2011 WL 1261283 (Fla. 4th DCA 2011).
A purchaser at foreclosure sale need not file a motion to intervene in order to participate in post-foreclosure proceedings. Additionally, a judge that grants a lender's post-foreclosure motion to vacate a sale based on inadequacy of price must rely on more than a motion without evidentiary support.

Surtain v. Caprio, --- So.3d ----, 2011 WL 1261295 (Fla. 4th DCA 2011).
A party seeking a *lis pendens* need not establish they will win, merely that there is a fair nexus between the claims and the real property. Unjust enrichment may be the basis for the imposition of a *lis pendens* where a party has furnished funds to or otherwise improved the property, and a fair nexus must be found if intervening claims will disserve the purposes of the *lis pendens*.

Stok & Associates, P.A. v. Citibank, N.A., --- So.3d ----, 2011 WL 1262152 (Fla. 3d DCA 2011).
When determining whether a party that engages in litigation has waived its right to arbitrate, the Florida courts do not require a showing of prejudice while federal courts do.

City Nat. Bank of Florida v. City of Tampa, --- So.3d ----, 2011 WL 1295874 (Fla. 2d DCA 2011).
Singling out a particular landowner for disparate treatment will sustain a § 1983 claim. Adopting the Third District's position, the Second District holds that a circuit court sitting in its appellate capacity will constitute an "appellate decision" sufficient to invoke the Law of the Case doctrine.

Double AA Intern. Inv. Group, Inc. v. Swire Pacific Holdings, Inc., --- F.3d ----, 2011 WL 1226879 (11th Cir. 2011).
Fla. Stat. § 718.202 requires a developer to establish a second and separate escrow account for all pre-construction deposits in excess of ten percent (10%), and failure to do so permits cancellation of a contract. Additionally, the statute does not authorize a private cause of action against escrow agents.

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Ciolli v. City of Palm Bay, --- So.3d ----, 2011 WL 1431515 (Fla. 5th DCA 2011).
An unauthenticated copy of a postal service receipt does not conclusively determine receipt of notice of code enforcement proceedings for summary judgment purposes.

Jagodinski v. Washington Mut. Bank, --- So.3d ----, 2011 WL 1414088 (Fla. 1st DCA 2011).
Absent allegations of fraud in the bidding process, the losing bidder at a foreclosure sale only has standing to challenge whether bids exceeded her own and whether payment in accordance with the successful bid is forthcoming.

Graves v. City of Pompano Beach ex rel. its City Com'n, --- So.3d ----, 2011 WL 1376617 (Fla. 4th DCA 2011).
A plat approval is not a "development order" as defined by Fla. Stat. § 163.3215 that has to comply with a municipality's comprehensive plan.

Ge Lin v. Ecclestone Signature Homes of Palm Beach, LLC, --- So.3d ----, 2011 WL 1376686 (Fla. 4th DCA 2011).
Whether to apply the statute of frauds found in Fla. Stat. §725.01 (contracts for the sale of real estate) or § 672.201 (contracts for the sale of goods) depends on the predominant intent of the contract to sell goods or real property. The sale of a furnished home is predominantly the sale of real property and not goods. The fact that the price of the furniture was not included in the contract does not make the contract void as the price can be determined by reference to other portions of the contract.

Phillips v. Citibank, N.A., --- So.3d ----, 2011 WL 1378373 (Fla. 2d DCA 2011).
A trial court's "master order of dismissal" dismisses parties who have not been served, but does not dismiss a party who has been served. A party may not argue a trial court is exceeding his jurisdiction through a writ of prohibition.

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LaSalle Bank Nat. Ass'n v. Blackton, Inc., --- So.3d ----, 2011 WL 1496001 (Fla. 5th DCA 2011).
A Notice of Termination under Fla. Stat. § 713.132 not need have a contractor's final affidavit attached in order to be effective. Likewise, a Notice of Termination is effective notwithstanding the owner and contractor are the same entity. Accordingly, a Notice of Termination with these characteristics will validly terminate a Notice of Commencement filed prior to a mortgage, and the mortgage will gain priority.

Basile v. Aldrich, --- So.3d ----, 2011 WL 1496721 (Fla. 2d DCA 2011).
There is no requirement that a will have a residuary clause in order to pass property acquired after execution of the will.

Accardo v. Brown, --- So.3d ----, 2011 WL 1496722 (Fla. 1st DCA 2011).
Lessees who hold all the practical benefits and burdens of fee simple ownership of real property (e.g., lease for 99 years with an option for 99 more years, responsibility for maintenance and carrying costs such as taxes and insurance, capital appreciation of leaseholds and free alienabilty of leaseholds) are equitable owners of real property, and not merely lessees, for ad valorem taxation purposes. Accordingly, the ownership interests are taxed as real property and not intangible personal property.

Corporacion Aero Angeles, S.A. v. Fernandez, --- So.3d ----, 2011 WL 1485292 (Fla. 4th DCA 2011).
Minimum contacts analysis is broken into general and specific jurisdiction review. General jurisdiction minimum contacts arises out of the defendant's activities in the forum state and specific jurisdiction requires three items: the contacts be related to the plaintiff's cause of action or have given rise to it, some act by which the defendant has purposefully availed itself of conducting activities within the state, acts such that defendant could reasonably anticipate being haled into the jurisdiction.

General Motors LLC v. Bowie, --- So.3d ----, 2011 WL 1485306 (Fla. 4th DCA 2011).
Aligning itself with the Third District, the Fourth District holds that "damages" does not encompass attorneys' fees under the Florida Lemon Law, Fla. Stat. § 681.112. Thus, a prevailing party is not entitled to an award of arbitration hearing attorneys' fees.

Hock v. Legacy Bank of Florida, --- So.3d ----, 2011 WL 1485398 (Fla. 4th DCA 2011).
A trial court requiring a $400,000 bond as a precondition to a Truth in Lending Act, 15 U.S.C. § 1635, rescission claim does not affect property rights of the mortgagors and can be remedied on appeal if in error. Accordingly, the writ of certiorari in this case is discharged.

Allen v. City of Key West, --- So.3d ----, 2011 WL 1485992 (Fla. 3d DCA 2011).
Real property used for short term or so-called "transient" rentals prior to enactment of a land use regulation prohibiting such rentals can constitute a "grandfathered" use not subject to the new regulation.

Anderson v. Upper Keys Business Group, Inc., --- So.3d ----, 2011 WL 1485989 (Fla. 3d DCA 2011).
For purposes of determining unfair competition and trademark dilution claims, the term "Conch Republic Independence Celebration" is a descriptive mark and the holder of the mark must establish secondary meaning and primacy in order to prevail. If these requirements are met, the holder of the mark must further prove dilution (based either on dilution of the quality of the mark or likelihood of injury to business reputation) or infringement (based on likelihood of confusion).

Dingle v. Prikhdina, --- So.3d ----, 2011 WL 1495995 (Fla. 5th DCA 2011).
A power of attorney is strictly construed, and a power of attorney to convey real property is invalid to transfer the property as a gift unless the power of attorney specifically lists the power to transfer as a gift.

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Homeowner's Ass'n of Overlook, Inc. v. Seabrooke Homeowners' Ass'n, Inc., --- So.3d ----, 2011 WL 1599575 (Fla. 2d DCA 2011).
Under Fla. Stat. § 720.303 (1), the sole requirement for the bundling of a class of members of a homeowners' association is a common interest in community property or common elements.

E. Qualcom Corp. v. Global Commerce Center Ass'n, Inc., --- So.3d ----, 2011 WL 1563005 (Fla. 4th DCA 2011).
A party seeking to prove lost damages as an opposition to summary judgment need not prove the lost damages to the same degree as if it were proving damages in the first instance, even if the party opposing summary judgment was a new company that had no track record of profits.

Jumbo Cargo, Inc. v. Lan Chile, S.A., --- So.3d ----, 2011 WL 1563708 (Fla. 3d DCA 2011).
Limitation in air waybill is effective if shipper had notice of the limitation.

State, Office of Attorney General v. Shapiro & Fishman, LLP, --- So.3d ----, 2011 WL 1563755 (Fla. 4th DCA 2011).
Civil investigative subpoena served on law firm pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.202 (2), quashed when law firm not engaged in "trade or commerce" as set forth in statute as subpoena's focus was on litigation and not the mortgage applications.

Austin Bldg. Co. v. Rago, Ltd., --- So.3d ----, 2011 WL 1563797 (Fla. 3d DCA 2011).
Pursuant to Fla. Stat. § 498.128 (1)(c), unlicensed contractors cannot enforce construction contracts and the critical dates for determining whether a contractor was unlicensed are the effective date of the contract, the date the last party executed the contract or the first date a party supplied labor, services or materials to the project.

Sam Rodgers Properties, Inc. v. Chmura, --- So.3d ----, 2011 WL 1565446 (Fla. 2d DCA 2011).
A construction contract whose price is "whited out" and increased by the builder does not create a new contract and does not vitiate the original contract. A builder may finish some items in a partially constructed house in order to protect the partial construction from the elements, i.e., to mitigate damages, and such costs can be added to a pending claim of lien. However, insurance and the amounts paid for pending real estate taxes may not be added to the claim of lien as such do not "improve" the real property as required by the construction lien law.

AT&T Mobility LLC v. Concepcion, --- S.Ct. ----, 2011 WL 1561956 (2011).
The Federal Arbitration Act preempts state law which holds that class actions may be conducted in arbitration proceedings, notwithstanding that the case under review is unique.

In re Winn -Dixie Stores, Inc., --- F.3d ----, 2011 WL 1601279 (11th Cir. 2011).
Confirmation of a plan of reorganization is tantamount to a final judgment, and while claims may be liberally amended prior to confirmation, such liberality does not apply after confirmation.

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Wekiva Springs Reserve Homeowners v. Binns, --- So.3d ----, 2011 WL 1705590 (Fla. 5th DCA 2011).
A homeowner's association fails to comply with Fla. Stat. § 720.303 (5) if it fails to deliver records, notwithstanding if the failure to deliver was willful or not.

Scarfone v. P.C.-Plantation, LLLP, --- So.3d ----, 2011 WL 1661397 (Fla. 4th DCA 2011).
Whether a change in a condominium offering is sufficiently "material" that it implicates Fla. Stat. § 718.503 is inherently a factual question that should be dealt with on summary judgment and not on a motion to dismiss.

Amquip Crane Rental, LLC v. Vercon Const. Management, Inc., --- So.3d ----, 2011 WL 1661443 (Fla. 4th DCA 2011).
The doctrine of mutuality of obligation in contracts does not require that in all cases each party have the same remedy; the doctrine is merely one aspect of the requirement that mutual promises constitute consideration for each other. Accordingly, a lease which states that lessee waives trial by jury (and is silent as to whether lessor waives) is enforceable.

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Castelli v. Select Auto Management, Inc., --- So.3d ----, 2011 WL 1813667 (Fla. 2d DCA 2011).
Party alleging tortious interference with specific business relationship must demonstrate interference with specific contracts or relationships and not just a class of clients or businesses. Accordingly, a form letter sent to a class of debtors directing payment to a different payee is not interference with a business relationship.

Morgan & Morgan, P.A. v. Guardianship of McKean, --- So.3d ----, 2011 WL 1813682 (Fla. 2d DCA 2011).
Time spent on a matter is only one of several factors in determining a *quantum meruit* fee. Accordingly, a law firm is not barred from seeking *quantum meruit* fees for work performed on a case even if it did not keep accurate and contemporaneous time records.

In re Amendments to Florida Small Claims Rule 7.090, --- So.3d ----, 2011 WL 1796171 (Fla. 2011).
Florida Small Claims Rule 7.090 has been amended to provide that non-judges may conduct pre-trial conferences. The text of the amended rule is as follows, with changes in italics:

> Rule 7.090. Appearance; Defensive Pleadings; Trial Date
> (a) [No change]
> (b) Notice to Appear; Pretrial Conference. The summons/notice to appear shall specify that the initial appearance shall be for a pretrial conference. The initial pretrial conference shall be set by the clerk not more than 50 days from the date of the filing of the action. *The pretrial conference may be managed by nonjudicial personnel employed by or under contract with the court. Nonjudicial personnel must be subject to direct oversight by the court. A judge must be available to hear any motions or resolve any legal issues.* At the pretrial conference, all of the following matters shall be considered:
> (1) The simplification of issues.
> (2) The necessity or desirability of amendments to the pleadings.
> (3) The possibility of obtaining admissions of fact and of documents that avoid unnecessary proof.
> (4) The limitations on the number of witnesses.
> (5) The possibilities of settlement.
> (6) Such other matters as the court in its discretion deems necessary.
> Form 7.322 shall and form 7.323 may be used in conjunction with this rule.

Carillon South Joint Venture, LLC v. Diamond, --- So.3d ----, 2011 WL 1772382 (Fla. 3d DCA 2011).

A writ of mandamus lies only for a ministerial act, and granting of a new trial is a discretionary act so mandamus does not lie to correct the granting of a new trial. Nor does certiorari lie because certiorari only lies for irreparable injuries, and the inconvenience and costs of a new trial do not constitute "irreparable injury."

Santini v. Cleveland Clinic Florida, --- So.3d ----, 2011 WL 1773561 (4th DCA 2011).

"Voluntary withdrawal" from representation of a client results in forfeiture of any possible contingent fee, and withdrawing from a case due to suspension by The Florida Bar constitutes "voluntary withdrawal."

Devon Medical, Inc. v. Ryvmed Medical, Inc., --- So.3d ----, 2011 WL 1775770 (Fla. 4th DCA 2011).

Lost profits for a company are measured by either a "before and after" or "yardstick" calculation, and the compared companies must be similar in size, location, profits and position for the "yardstick" method. In order to be awarded damages under the "yardstick" method, the plaintiff must prove the plaintiff is in a similar position to the comparable company, and must establish the profits, i.e., the income, costs and expenses of the related company. In a special concurrence, Chief Judge Gross opined that promissory estoppel only supports reliance (and not lost profit) damages.

Anderson v. Vanguard Car Rental USA Inc., --- So.3d ----, 2011 WL 1775812 (Fla. 4th DCA 2011).

Under federal principles of *res judicata*, a voluntary dismissal of federal lawsuit does not constitute *res judicata* of state court claims.

South Florida Pain and Rehabilitation Center, Inc. v. United Auto. Ins. Co., --- So.3d ----, 2011 WL 1775816 (Fla. 4th DCA 2011).

Under Fourth District precedent, attorney's fees must be requested by separate motion; including a request for fees in a brief is not sufficient.

PNCEF, LLC v. South Aviation, Inc., --- So.3d ----, 2011 WL 1775822 (Fla. 4th DCA 2011).

So long as it does not directly affect the title to the property, a court may act on property outside the jurisdiction of the court by acting on a party within the jurisdiction of the court over which the court has personal jurisdiction.

Hollywood, LLC v. Sures, --- So.3d ----, 2011 WL 1775860 (Fla. 4th DCA 2011).
Unless there are exceptional circumstances which preclude the need or ability to do so, a bond, in an amount sufficient to compensate parties for the improvident appointment of a receiver, must be posted upon the receiver's appointment.

Shakespeare Foundation, Inc. v. Jackson, --- So.3d ----, 2011 WL 1744411 (Fla. 1st DCA 2011).
Arbitration provision which contains the phrase "arising out of or related to" a contract is a "broad" arbitration provision that encompasses tort claims not found in the contract itself, the only limit being that the tort claim must be "substantially related" to the contract. A Multiple Listing Service statement, i.e., a statement outside of the contract, is not "substantially related" to the contract so as to require arbitration, and this position is in conflict with and conflict certified with the Fifth District opinion in *Maguire v. King, 917 So. 2d 263* (Fla. 5th DCA 2005). Unless it is complex, a real estate sales contract is inherently an intrastate transaction covered by the Florida Arbitration Code, and not an interstate transaction covered by the Federal Arbitration Act.

Baptista v. JP Morgan Chase Bank, N.A., --- F.3d ----, 2011 WL 1772657 (11th Cir. 2011).
Banks chartered by the federal government need not comply with Fla. Stat. § 655.85 (banks may only cash checks "at par," i.e., without a check cashing fee) because the National Banking Act preempts § 655.85.

In re Dumoulin, Slip Copy, 2011 WL 1772160 (11th Cir. 2011).
Acting on the answer to the question it certified to the Florida Supreme Court, the Eleventh Circuit rules that a bankruptcy debtor who waives the benefits of homestead protection is entitled to the additional exemptions for personal property under Fla. Stat. § 222.25 (4).

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Jordan v. St. Johns County, --- So.3d ----, 2011 WL 1899505 (Fla. 5th DCA 2011).
An inverse condemnation claim can arise from the failure of local government to fulfill a responsibility, e.g., failure of a county to maintain a road that has been dedicated to the local government.

Town of Ponce Inlet v. Pacetta, LLC, --- So.3d ----, 2011 WL 1899521 (Fla. 5th DCA 2011).
Florida Statute § 163.3167 (12) (local referenda or initiatives regarding land use decisions of five or fewer "parcels" improper) applies to land that is presently one parcel but had previously been several parcels and also applies notwithstanding the eventual use of the property may entail more than 5 parcels.

BankAtlantic v. Estate of Glatzer, --- So.3d ----, 2011 WL 1877839 (Fla. 3d DCA 2011).
An estate's power to marshal assets does not entitle it to transfer funds from the professional association business account of the decedent, even if decedent owned all the stock of the professional association.

Dedmon v. Kelly, --- So.3d ----, 2011 WL 1877895 (Fla. 4th DCA 2011).
Notwithstanding the fact that Florida Rule of Civil Procedure 1.200 (case management conferences) contains no such requirement, a court may only dismiss a case for failure to attend a case management conference when there has been willful and contumacious disregard of the court's order and a record is created demonstrating such.

Pearson v. Caterpillar Financial Services Corp., --- So.3d ----, 2011 WL 1877953 (Fla. 4th DCA 2011).
A contract which is capable of two or more reasonable interpretations is not proper to determine on summary judgment, and instead, extrinsic evidence should be taken to determine the intent of the parties.

Shelby Homes at Millstone, Inc. v. Cullinane, --- So.3d ----, 2011 WL 1877997 (Fla. 4th DCA 2011).
It is permissible for a sales contract to change the standard for anticipatory repudiation from an unequivocal expression that the other party will not fulfill the terms the of the contract to one where the other party expresses it may not be able to consummate the contract.

Western and Southern Life Ins. Co. v. Beebe, --- So.3d ----, 2011 WL 1878012 (Fla. 3d DCA 2011).
A court may not award attorneys' fees in an amount higher than the contract between the attorney and the client, unless the attorney-client agreement provides that the attorney will be paid the higher of the engagement agreement or that awarded by the court.

Nudel v. Flagstar Bank, FSB, --- So.3d ----, 2011 WL 1878127 (Fla. 4th DCA 2011).
A party who is successful in having a mortgage foreclosure case dismissed at the pleadings stage and who complies with Florida Rule of Civil Procedure 1.525 by filing a separate motion for attorney's fees within 30 days of dismissal is entitled to an award of attorneys fees even if the motion to dismiss did not contain a demand for fees; *Stockman v. Downs*, 573 So. 2d 835 (1991), only requires demands for fees in formal pleadings and the attorneys' fees provision in the mortgage contract is considered reciprocal.

Enzyme Environmental Solutions, Inc. v. Elias, --- So.3d ----, 2011 WL 1878133 (Fla. 4th DCA 2011).
Internet advertisements which do not directly target Florida consumers are not sufficient to confer long-arm jurisdiction over defendants.

4 **Tierra Holdings, Ltd. v. Mercantile Bank**, --- So.3d ----, 2011 WL 1879200 (Fla. 1st DCA 2011).
Florida Statute § 768.79 does not authorize elimination of other claims for fees, so a successful proposal for settlement does not cut off a competing award of for attorneys' fees under a contractual provision and one party in a case may be granted an award for fees under a proposal for settlement while the other party may simultaneously be awarded fees under a prevailing party contractual provision.

RJG Environmental, Inc. v. State Farm Florida Ins. Co., --- So.3d ----, 2011 WL 1879428 (Fla. 2d DCA 2011).
The creditor rationale for venue (venue lies where payments are due) does not apply when the sum in question is unliquidated.

Myers v. TooJay's Management Corp., --- F.3d ----, 2011 WL 1843295 (11th Cir. 2011).
The bankruptcy anti-discrimination provision (11 U.S.C. § 525) prohibits a private employer from firing an employee based on their declaring bankruptcy, but does not prevent a private employer from refusing to hire a person based on their bankruptcy.

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Conti v. B&E Holdings, LLC, --- So.3d ----, 2011 WL 2091139 (Fla. 1st DCA 2011).
Appeal from promissory note judgment is premature if parallel mortgage foreclosure count has yet to be determined by trial court.

Lewis v. Thunderbird Manor, Inc., --- So.3d ----, 2011 WL 2029624 (Fla. 2d DCA 2011).
Copy costs and postage are generally considered overhead costs which are not recoverable as taxable costs. Costs for copies may be recovered if they are filed with the court and "reasonably necessary" for determination by the court.

Boca Concepts, Inc. v. Metal Shield Corp., --- So.3d ----, 2011 WL 2031328 (Fla. 4th DCA 2011).
An offer to purchase a co-owner's interest under a business entity "put call" agreement need not specifically mention the "put call" or the correct article of the agreement so long as the intent of the parties is clear.

Nitv, L.L.C. v. Baker, --- So.3d ----, 2011 WL 2031339 (Fla. 4th DCA 2011).
A communication which impugns a business by calling the business a scam is defamatory, and will entitle a party to damages for defamation. However, business loss damages which are "vague and ill defined" will not be awarded despite the defamation.

Maynoldi v. Archibishop Coleman F. Carroll High School, Inc., --- So.3d ----, 2011 WL 2031340 (Fla. 3d DCA 2011).
A party may be denied Rule 1.380 (c) costs, i.e., costs for proving up a denied Request for Admission, when the request asks admission of a hotly contested issue in the case. Additionally, awarding attorneys' fees under Rule 1.380 (c) is discretionary with the trial court.

Nardella Chong, P.A. v. Medmarc Casualty Ins. Co., --- F.3d ----, 2011 WL 2083941 (11th Cir. 2011).
Improper disbursement of trust account funds due to attorney falling for a banking scam is a negligent act that is covered by the attorneys' malpractice insurer as maintenance of the trust account is a "professional service" covered by the policy.

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Erdman v. Bloch, --- So.3d ----, 2011 WL 2161939 (Fla. 5th DCA 2011).
Dismissals with prejudice for failure to comply with pretrial orders are first analyzed to determine whether the failure is due to the client or the counsel. If dismissal with prejudice is due to acts of attorney, *Kozel v. Ostendorf*, 629 So.2d 817 (Fla.1993), holds a court must look at six factors:
1. Whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience;
2. Whether the attorney has previously been sanctioned;
3. Whether the client is personally involved in the act of disobedience;
4. Whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;
5. Whether the attorney offered reasonable justification for noncompliance; and
6. Whether the delay created significant problems of judicial administration.

Johnson v. HSBC Bank USA, Nat. Ass'n, --- So.3d ----, 2011 WL 2154408 (Fla. 1st DCA 2011).
Appeal of a mortgage foreclosure judgment is premature if a counterclaim remains pending.

Givans v. Ford Motor Credit Co., --- So.3d ----, 2011 WL 2135479 (Fla. 4th DCA 2011).
A guarantee which requires a default and notice prior to becoming effective is a conditional (as opposed to an absolute) guarantee. Failure to give notice when notice is required under a conditional guarantee is a failure of condition precedent which negates the guarantee.

Konsulian v. Busey Bank, N.A., --- So.3d ----, 2011 WL 2135549 (Fla. 2d DCA 2011).
Failure to satisfy conditions precedent prior to filing suit requires reversal of mortgage foreclosure judgment. Additionally, failure to determine the legal or factual insufficiency of the affirmative defense of failure to satisfy conditions precedent also requires reversal.

Caproc Third Ave., LLC v. Donisi Ins., Inc., --- So.3d ----, 2011 WL 2135563 (Fla. 4th DCA 2011).
Contesting a claim of exemption from garnishment under Fla. Stat. § 222.12 requires the party, and not the attorney, to swear out the affidavit contesting the claim of exemption.

Caiazzo v. American Royal Arts Corp., --- So.3d ----, 2011 WL 2135585 (Fla. 4th DCA 2011).
Long arm jurisdiction under Florida law is divided into specific jurisdiction under Fla. Stat. § 48.193 (1) and general jurisdiction under Fla. Stat. § 48.193 (2). The due process analysis is different depending on whether specific or general jurisdiction is sought, namely, "minimum contacts" must be examined under specific jurisdiction and general jurisdiction has a more rigorous requirement of "substantial, continuous, and systematic business contacts," i.e., not *de minimus* contacts measured either as an absolute figure or as a percentage of the company's total sales in the forum state. An additional reasonableness requirement applies to both specific and general jurisdiction, i.e., a reviewing court must examine "the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief" and "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." These rules are not supplanted by the Internet, and the *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa.1997), analysis of "active" vs. "passive" websites is rejected unless the website contacts meet these specific tests.

Corzo Trucking Corp. v. West, --- So.3d ----, 2011 WL 2135589 (Fla. 4th DCA 2011).
A creditor can extend the life of a judgment by bringing an action on the judgment within the limitations period. The 20 year statute of limitations for actions on a judgment is waived if not raised as a defense.

Global-Tech Appliances, Inc. v. SEB S.A., --- S.Ct. ----, 2011 WL 2119109 (2011)
A claim of induced patent infringement requires proof that the purported infringer knew the induced acts constitute infringement.

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Wendt v. La Costa Beach Resort Condominium Ass'n., Inc., --- So.3d ----, 2011 WL 2224761 (Fla. 2011).
Fla. Stat. § 607.0850 (indemnification of corporate officers and directors) permits officers and directors to seek indemnification when the corporation itself, and not an outside third party, brings suit against the corporate officers and directors.

Banco Industrial De Venezuela C.A., Miami Agency v. De Saad, --- So.3d ----, 2011 WL 2224820 (Fla. 2011).
Fla. Stat. § 607.0850 (indemnification of corporate officers and directors) does not apply to foreign corporations. Even if the statute applied to foreign corporations, indemnification is not proper here because the corporate officer was prosecuted for her actions (money laundering) and not her official position.

Korte v. US Bank Nat. Ass'n, --- So.3d ----, 2011 WL 2200678 (Fla. 4th DCA 2011).
A court may award Fla. Stat. § 57.105 (1) (a) and (3) sanctions in the form of "delay damages" for filing frivolous and unsupported mortgage foreclosure affirmative defenses that delay resolution of the case.

BGT Group, Inc. v. Tradewinds Engine Services, LLC, --- So.3d ----, 2011 WL 2200800 (Fla. 4th DCA 2011).
An agreement which states it is subject to and sufficiently describes a collateral instrument will incorporate the collateral instrument into the agreement. An arbitration clause which is not mentioned in an agreement's referenced "terms and conditions" nor attached to the agreement is not incorporated by reference.

Microsoft Corp. v. i4i Ltd. Partnership, --- S.Ct. ----, 2011 WL 2224428 (2011).
The invalidity defense to a patent infringement claim must be proven by clear and convincing evidence.

Erica P. John Fund, Inc. v. Halliburton Co., --- S.Ct. ----, 2011 WL 2175208 (2011).
Plaintiffs seeking class certification in a private securities fraud action do not have to prove loss causation in order to be certified as a class.

Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc., --- S.Ct. ----, 2011 WL 2175210 (2011).
The Bayh-Dole Act is silent as to who is the owner of inventions produced by federal contractors, and does not automatically vest ownership in the inventors.

Fox v. Vice, --- S.Ct. ----, 2011 WL 2175211 (2011).
A court may fee shift under 42 U.S.C. § 1988 for only those counts on which plaintiff prevails, i.e., the plaintiff does not have win all counts in order to be entitled to fees.

In re Jacks, --- F.3d ----, 2011 WL 2183979 (11th Cir. 2011).

A lender's internal recording of costs and fees associated with a bankruptcy, without any attempt to enforce or collect the fees, is not a violation of the automatic stay under 11 U.S.C. § 362.

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Hirchert Family Trust v. Hirchert, --- So.3d ----, 2011 WL 2415787 (Fla. 5th DCA 2011).
Breach of fiduciary duty is a type of "constructive fraud" that entitles a claimant to attach claims to homestead property so long as the claims meet the "equitable jurisprudence" exception to the Florida Constitution's ban on liens attaching to homesteads. Furthermore, a court of equity, so long as it has personal jurisdiction over a party, can compel the party to convey real property in another state.

Spectrum Interiors, Inc. v. Exterior Walls, Inc., --- So.3d ----, 2011 WL 2415792 (Fla. 5th DCA 2011).
Notwithstanding the Law of the Case doctrine, an appellate court has the discretion to correct an earlier ruling based on an error in law or other circumstances such as intervening legislative action or the decision of a higher court on the issue.

Underwriters of Lloyds of London v. Cape Publications, Inc., --- So.3d ----, 2011 WL 2415845 (Fla. 5th DCA 2011).
The strict ("Sutton") rule as to whether an insured can seek indemnification/subrogation against a tenant that pays landlord's insurance premiums through pro-rata lease payments is rejected in favor of a case by case analysis based upon the intent of the parties as reflected in the lease.

Wilson v. Palm Beach County, --- So.3d ----, 2011 WL 2330077 (Fla. 4th DCA 2011).
A county with "home rule power" may adopt ordinances which supersede the statutory enactments of the Florida Legislature. Specifically, Florida Statutes Chapter 163's definition of "development" does not preempt local regulation of land used for farming.

Johnson, Pope, Bokor, Ruppel & Burns, LLP v. Forier, --- So.3d ----, 2011 WL 2341391 (Fla. 4th DCA 2011).
A legal services agreement which requires legal malpractice claims to be arbitrated in lieu of litigation is not void against public policy.

Smith v. Bayer Corp., --- S.Ct. ----, 2011 WL 2369357 (2011).
In order for the federal Anti-Injunction Act to apply to a party seeking class certification in state court when a prior federal case also sought class certification, the same issue pending in state court must have been decided in federal court and the state court party must have been a party to the federal lawsuit (or fall within limited exceptions).

Janus Capital Group, Inc. v. First Derivative Traders, --- S.Ct. ----, 2011 WL 2297762 (2011).
For purposes of S.E.C. rules concerning the making of false statements, the "maker" of a statement to the public regarding a security is the party with ultimate control over the statement, including its content and whether and how to communicate it.

Nevada Com'n on Ethics v. Carrigan, --- S.Ct. ----, 2011 WL 2297793 (2011).
A state's requirement that legislators with financial interests in a matter pending the legislator recuse themselves from a vote on the matter does not violate the legislator's free speech rights.

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Edward T. Byrd & Co., Inc. v. WPSC Venture I, --- So.3d ----, 2011 WL 2493656 (Fla. 5th DCA 2011).
A guarantor under a loan is a "borrower" for purpose of the Mortgage Brokerage Act, Fla. Stat. § 494.001 ("Act"), and pursuant to the Act, a mortgage broker who fails to obtain the signature of a guarantor on a mortgage brokerage contract may not collect their commission for obtaining a mortgage loan for the borrower.

Lion Gables Realty Ltd. v. Randall Mechanical, Inc., --- So.3d ----, 2011 WL 2493660 (Fla. 5th DCA 2011).
An intended third party beneficiary of a contract may enforce the arbitration clause of a contract, and it is the trial court (not the arbitration panel) that determines whether a party is an intended third party beneficiary. Furthermore, the Fifth District holds that a party who participates in merits discovery waives the right to arbitrate.

Cellco Partnership v. Kimbler, --- So.3d ----, 2011 WL 2496680 (Fla. 2d DCA 2011).
In order for a restrictive covenant to apply to future affiliates or merged companies of the protected party, the agreement containing the restrictive covenant must state that it will apply to third party beneficiaries, assignees or successors in interest to the protected party.

Bacon & Bacon Mfg. Co., Inc. v. Bonsey Partners, --- So.3d ----, 2011 WL 2496687 (Fla. 2d DCA 2011).
The burden of proof for establishing fraud is greater weight of the evidence; not clear and convincing.

Getman v. Tracey Const., Inc., --- So.3d ----, 2011 WL 2507056 (Fla. 2d DCA 2011).
Summary judgment must be based on movant's demonstration of no material issues of fact, not on non-movant's failure to file affidavits or offer proof in opposition to summary judgment.

Valencia v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2011 WL 2462673 (Fla. 4th DCA 2011).
A discrepancy between a complaint and "notice to cure" letters creates a triable issue that precludes summary judgment.

Bright v. Baltzell, --- So.3d ----, 2011 WL 2462760 (Fla. 4th DCA 2011).
Fees under Fla. Stat. § 768.79 may only be awarded upon a voluntary dismissal when the dismissal is with prejudice or the party plaintiff has once previously dismissed. A personal representative is not a "plaintiff" for purposes of the statute, and an "administrative closing" of a case is not a dismissal for purposes of the statute.

Lynn v. Sakharoff, --- So.3d ----, 2011 WL 2462791 (Fla. 4th DCA 2011).
If requested and not withdrawn or waived, a jury trial is necessary on unliquidated damages even after a default.

Tribeca Aesthetic Medical Solutions, LLC v. Edge Pilates Corp., --- So.3d ----, 2011 WL 2462832 (Fla. 4th DCA 2011).
Notwithstanding a lease provision that permits the a landlord to collect rent directly from a subtenant, the Fourth District follows *First States Investors 3300, LLC v. Pheil*, 52 So. 3d 845 (Fla. 2d DCA 2011), and holds that a landlord cannot withdraw money deposited into the Registry of the Court under Fla. Stat. § 83.232 (1) until the dispute over the rent is determined.

Rabie Cortez v. Palace Holdings, S.A. de C.V., --- So.3d ----, 2011 WL 2499428 (Fla. 3d DCA 2011).
The standard of review of an order granting a motion to dismiss based on *forum non conveniens* is generally abuse of discretion.

JPmorgan Chase Bank, N.A. v. Hernandez, --- So.3d ----, 2011 WL 2499641 (Fla. 3d DCA 2011).
A purported "tender" of payment of a foreclosure judgment and simultaneous creation of an apparently fictitious "Unilateral Note" purporting the make the lender a "borrower" under the Unilateral Note not supported by record nor facts, and sanctions imposed on borrower and their counsel.

Diaz, Reus & Targ, LLP v. Bird Wingate, LLC II, --- So.3d ----, 2011 WL 2500990 (Fla. 3d DCA 2011).
The power to correct a clerical error in a Notice of Voluntary Dismissal lies in Florida Rule of Civil Procedure 1.540 (b), i.e. a court can permit an attorney to withdraw a Notice of Voluntary Dismissal with Prejudice upon a proper factual showing the dismissal was intended to be without prejudice.

Duval Motors Co. v. Rogers, --- So.3d ----, 2011 WL 2449474 (Fla. 1st DCA 2011).
A merger and integration clause in a fully integrated agreement excludes not only pre-contract negotiation and statements, but also contemporaneous agreements or contracts that are not part of or incorporated into the agreement.

Pensacola Beach Pier, Inc. v. King, --- So.3d ----, 2011 WL 2437409 (Fla. 1st DCA 2011).
An argument or reason, not previously raised, which appears for the first time in a court's order on summary judgment and is not objected to nor the subject of a motion for rehearing cannot be argued on appeal.

Stern v. Marshall, --- S.Ct. ----, 2011 WL 2472792 (2011).
A bankruptcy court may not adjudicate state law, non-core counterclaims, notwithstanding a creditor "consenting" to the jurisdiction of the bankruptcy court by filing a claim.

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Winter Park Imports, Inc. etc. v. JM Family Enterprises, --- So.3d ----, 2011 WL 2581758 (Fla. 5th DCA 2011).
A proposal for settlement cannot be directed to claims seeking non-monetary relief (e.g., a declaratory action).

Citizens Property Ins. Corp. v. Admiralty House, Inc., --- So.3d ----, 2011 WL 2586344 (Fla. 2d DCA 2011).
A court cannot compel an insurance appraisal when there is factual dispute as to whether insured complied with insurance a post-loss requirement.

Peterson v. Affordable Homes of Palm Beach, Inc., --- So.3d ----, 2011 WL 2555407 (Fla. 4th DCA 2011).
A court should stay the execution of a final judgment if a counterclaim remains pending. Accordingly, a mortgage foreclosure judgment should be stayed while counterclaims directed to the transaction remain unresolved even if the party foreclosing is not part of the original transaction.

Klinow v. Island Court at Boca West Property Owners' Ass'n, Inc., --- So.3d ----, 2011 WL 2555408 (Fla. 4th DCA 2011).
Changes in community association restrictive covenants must be reasonable and must not be radical changes that would create an inconsistent theme or deviate the benefit from grantee to grantor. Requiring replacement of driveways and sidewalks at homeowner expense does not violate these principles.

Pembroke Center, LLC v. State, Department of Transp., --- So.3d ----, 2011 WL 2555569 (Fla. 4th DCA 2011).
A complaint for declaration of inverse condemnation states cause of action when complaint alleges "ripening seeds of controversy" although no controversy presently exists.

North Ridge Elec., Inc. v. City of Sunrise, --- So.3d ----, 2011 WL 2555658 (Fla. 4th DCA 2011).
Class action relief is not necessary for complaint alleging municipal building department improperly placed excess building fees into general fund as relief could be obtained through declaratory relief.

HCA Health Services of Florida, Inc. v. Cyberknife Center of Treasure Coast, LLC,--- So.3d ----, 2011 WL 2555698 (Fla. 4th DCA 2011).
A complaint alleging fraudulent inducement into a contract affirms the contract, including provisions in the contract which waive specific rights or remedies.

Kirkland v. Peoplessouth Bank, --- So.3d ----, 2011 WL 2535335 (Fla. 1st DCA 2011). Injunctions which do not specify the reasons for the injunction, including irreparable harm and inadequate remedy at law, are facially defective.

Brown v. Entertainment Merchants Ass'n, --- S.Ct. ----, 2011 WL 2518809 (2011). Video games qualify for protection under the First Amendment.

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SPM Resorts, Inc. v. Diamond Resorts Management, Inc., --- So.3d ----, 2011 WL 2650893 (Fla. 5th DCA 2011).
A trial court order requiring a recipient of discovery to bear a partial burden of responding to discovery departs from the essential requirements of law; certiorari granted.

Featured Properties, LLC v. BLKY, LLC, --- So.3d ----, 2011 WL 2638157 (Fla. 1st DCA 2011).
The Tipsy Coachman Rule cannot be applied when the trial court does not supply the appellate court with sufficient factual findings to determine what legal basis the trial court employed in its decision.

Central Square Tarragon LLC v. Great Divide Ins. Co., --- So.3d ----, 2011 WL 2622382 (Fla. 4th DCA 2011).
A statement of facts contained in a Joint Pretrial Stipulation need not be read to the jury in order to be binding on the parties, and failure to introduce evidence of facts that have been stipulated to cannot form the basis for a directed verdict.

East Coast Karate Studios, Inc. v. Lifestyle Martial Arts, LLC, --- So.3d ----, 2011 WL 2622483 (Fla. 4th DCA 2011).
Mandatory forum selection clauses may be applied to non-signatories when there is a close relationship between the signing party and the non-signing party and the interests of the non-signing party are derivative of the signing party's interests. Accordingly, the spouse and new employer, both non-signatories, may be controlled by a forum selection clause in a contract between the signatory and the signatory's former employer.

Quail Cruise Ship Management, Ltd. v. Agencia de Viagens CVC Tur Limitada, --- F.3d ----, 2011 WL 2654004 (11th Cir. 2011).
The Securities and Exchange Commission's anti-fraud rule, i.e., Rule 10b-5, does not apply extraterritorially and only applies to transactions of securities listed on a domestic exchange or actually occurring in the United States.

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Lowe v. Winter Park Condominium Ltd. Partnership, --- So.3d ----, 2011 WL 2731189 (Fla. 5th DCA 2011).

Two apparently conflicting contractual provisions must be read in a fashion that attempts to make both provisions valid. A contract provision permitting a seller to set the closing date is superseded by a different provision that sets the procedures for closing, including dealing with title defects and failure to timely close the transacxtion.

Boynton Waterways Inv. Associates, LLC v. Bezkorovainijs, --- So.3d ----, 2011 WL 2694522 (Fla. 4th DCA 2011).

Florida law does not require the recording of a declaration of condominium prior to sales of condominium units, and failure to record prior to sales does not violate 15 U.S.C. § 1703(d) (1) of the Interstate Land Sales Act ("Act") as the Act's requirement to deliver "recording data" in pre-construction condominium sales contract does not apply when the declaration of condominium has not yet been filed. The Act is not meant to supersede nor guarantee state law recording obligations.

Park Finance of Broward, Inc. v. Jones, --- So.3d ----, 2011 WL 2694573 (Fla. 4th DCA 2011).

Rule 1.420 (e)'s requirement that all actions be prosecuted within one year otherwise the case be dismissed does not apply to post-judgment proceedings in civil actions awarding money judgments (but continues to apply to post-judgment mortgage foreclosure proceedings).

Cat Charter, LLC v. Schurtenberger, --- F.3d ----, 2011 WL 2693967 (11th Cir. 2011).

Parties to arbitration can contract three different forms of award: standard, reasoned or findings of fact and conclusions of law. There is no specific format for a reasoned award, merely an explanation of the reasons supporting the award.

National Auto Lenders, Inc. v. SysLOCATE, Inc., Slip Copy, 2011 WL 2683163 (11th Cir. 2011).

A company can avoid the implications of an End User License Agreement (EULA) on a website used by the company's employees by informing the website that only certain employees of the company are authorized to accept the terms contained in the EULA.

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Novastar Mortg., Inc. v. Bucknor, --- So.3d ----, 2011 WL 2936753 (Fla. 2d DCA 2011).
A trial court must set an evidentiary hearing if there are conflicting affidavits seeking vacation of a judgment under Florida Rule of Civil Procedure 1.540.

Chen v. Whitney Nat. Bank, --- So.3d ----, 2011 WL 2937303 (Fla. 1st DCA 2011).
A mortgage foreclosure summary judgment which does not address all factual issues surrounding an affirmative defense of violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 (a creditor may not require a spouse without interest in the mortgaged asset to sign on a guaranty when the applicant qualifies for credit without the spouse's credit) will be overturned.

Mazine v. M & I Bank, --- So.3d ----, 2011 WL 2937307 (Fla. 1st DCA 2011).
Absent meeting the business records requirements of Florida Statute § 90.803 (6), an affidavit may not be introduced into evidence to prove the contested matters in the case. Moreover, a foreclosure plaintiff must prove at trial that it possess standing to proceed.

Craigside, LLC v. GDC View, LLC, --- So.3d ----, 2011 WL 2937310 (Fla. 1st DCA 2011).
A prospective purchaser who sends the seller a communication that it will not close on the scheduled date has anticipatorily repudiated the contract, and the seller may treat the contract as broken.

Tettamanti v. Opcion Sociedad Anonima, --- So.3d ----, 2011 WL 2848625 (Fla. 3d DCA 2011).
After a foreign judgment has been recognized in Florida under the Florida Uniform Out-of-Country Foreign Money-Judgment Recognition Act, collateral attacks on the judgment must be made in the foreign country where the judgment originated. An exception lies, however, for fraud in obtaining recognition of the judgment in Florida.

Barclay Square Associates, Ltd. v. Plantfind.com, --- So.3d ----, 2011 WL 2848659 (Fla. 4th DCA 2011).
A lease subject to the statute of frauds may be orally modified in order to avoid injustice when one party relies on the oral modification.

Heritage 5, LLC v. Estrada, --- So.3d ----, 2011 WL 2848664 (Fla. 4th DCA 2011).
A landowner is entitled to change surface water flows on her land as she sees fit so long as the change does not unreasonably affect neighboring landowners.

Davis v. Hinson, --- So.3d ----, 2011 WL 2752707 (Fla. 1st DCA 2011).
In order to be effective, a deed conveying property owned by co-tenants must be signed by all co-tenants and must adequately describe the property being conveyed. A plaintiff in ejectment who deraigns title based on a deed with these defects does not have standing to pursue the claim of ejectment.

Robertson Group, P.A. v. Robertson, --- So.3d ----, 2011 WL 2752762 (Fla. 1st DCA 2011).
An arbitration agreement that compels arbitration for disputes arising out of the operating agreement of a company also compels arbitration regarding the dissolution of the company and payment of creditors.

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Andrews v. Frey, --- So.3d ----, 2011 WL 3206882 (Fla. 5th DCA 2011).
A proposal for settlement wherein the offeror seeks the release of a third party is valid. However, the question is certified to the Florida Supreme Court (which is currently considering the same question upon a certification from the Eleventh Circuit Court of Appeals).

BMR Funding, LLC v. DDR Corp., --- So.3d ----, 2011 WL 3207810 (Fla. 2d DCA 2011).
Failure to plead entitlement to attorneys' fees in an answer waives fees unless the party opposing the claim for fees acquiesces to the claim.

Nunes v. Allstate Inv. Properties, Inc., --- So.3d ----, 2011 WL 3107801 (Fla. 4th DCA 2011).
An owner of property who is aware of a forged deed conveying her property, but takes no steps to stop a bona fide purchaser from buying the property is equitably estopped from claiming the forgery prevented title from transferring to the BFP.

Posner & Sons, Inc. v. Transcapital Bank, --- So.3d ----, 2011 WL 3109205 (Fla. 4th DCA 2011).
The fact that information is publicly available in the recorded chain of title is not an absolute bar to an action alleging fraud which could have been discovered had the chain of title been searched.

Ball v. D'Lites Enterprises, Inc., --- So.3d ----, 2011 WL 3109733 (Fla. 4th DCA 2011).
Statements made on a commercial website concerning pending litigation are not entitled to absolute judicial immunity since the statements are not made in the litigation itself, are made to the public at large, are not steps in the judicial process, and do thing to enhance the policy behind the privilege.

Legacy Place Apartment Homes, LLC v. PGA Gateway, Ltd., --- So.3d ----, 2011 WL 3111641 (Fla. 4th DCA 2011).
Failure to commence construction by the date stated in a contract with a "time of the essence" clause is a material breach of the contract, and renders unavailable the defense of substantial performance. However, the protections of a time of the essence clause may be waived.

Weston TC LLLP v. CNDP Marketing Inc., --- So.3d ----, 2011 WL 3111870 (Fla. 4th DCA 2011).
A "notice of unavailability" filed during the 30 day grace period of Florida Rule of Civil Procedure 1.420 (e) is sufficient to preclude involuntary dismissal for failure to prosecute.

Rudge v. City of Stuart, --- So.3d ----, 2011 WL 3111926 (Fla. 4th DCA 2011).
A municipality is not barred from seeking injunctive relief to abate a nuisance by virtue of the fact that the municipality has already obtained a daily fine intended to compel compliance.

Paul Jacquin & Sons, Inc. v. City of Port St. Lucie, --- So.3d ----, 2011 WL 3111937 (Fla. 4th DCA 2011).
Courts should not interfere with public entity decisions to accept or reject bids absent dishonesty, illegality, fraud, oppression or misconduct.

Laurencio v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2011 WL 3111972 (Fla. 2d DCA 2011).
Parties are entitled to liberally amend pleadings, even on eve of a summary judgment hearing, and failure to allow amendment to raise a condition precedent defense requires reversal of a summary judgment for a mortgagor.

Felger v. Mock, --- So.3d ----, 2011 WL 3055397 (Fla. 1st DCA 2011).
Failure to apply the correct standard of proof is not one of the statutorily enumerated bases for vacating an arbitration award, and an arbitration panel does not exceed its powers or jurisdiction by applying the wrong standard or applying the wrong law.

In re Diaz, --- F.3d ----, 2011 WL 3117875 (11th Cir. 2011).
Waiver of sovereign immunity in the bankruptcy context relies on the "litigation waiver" (a state invokes aid of bankruptcy court by filing a proof of claim), "congressional abrogation" (congressional decision to waive immunity), or "consent by ratification" (states consented to the bankruptcy supremely clause by ratifying into the Union) theories. Since the debtor raised violation of the automatic stay after confirmation of his Chapter 13 plan, none of the three theories operate to waive sovereign immunity.

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FL-Carrollwood Care, LLC v. Gordon, --- So.3d ----, 2011 WL 3364349 (Fla. 2d DCA 2011).
An arbitration agreement which lacks an express grant of jurisdiction to award punitive damages is not substantively unconscionable because arbitrators inherently have such jurisdiction. Likewise, a cap on non-economic damages and limitation on discovery also do not make a mandatory arbitration provision unconscionable. In any event, these provisions do not prevent arbitration because a court can sever these provisions from the agreement and still compel arbitration.

Razin v. A Milestone, LLC, --- So.3d ----, 2011 WL 3364362 (Fla. 2d DCA 2011).
A custodian to wind up a LLC dissolution is typically given the same powers as a receiver, and accordingly, parties may appeal appointment of a custodian under the same rule as appointment of a custodian, i.e., Florida Rule of Appellate Procedure 9.130 (a)(3)(D). Moreover, Florida Statute § 608.4225 (1)(d) states that a LLC manager does not violate the duty of loyalty by actions which incidentally further his own interests (such as hiring an attorney to represent him with company funds) and the LLC Act provides that parties may waive conflicts of interest in the LLC operating agreement.

Strickland v. Jacobs, --- So.3d ----, 2011 WL 3364379 (Fla. 2d DCA 2011).
An employer is liable for the intentional torts committed by her employee while the employee is acting in the course and scope of her duties when the act was meant to further the interests of the employer. Thus, an employer can be held responsible for the tort of false imprisonment under the circumstances set forth above.

Sheppard v. M & R Plumbing, Inc., --- So.3d ----, 2011 WL 3331216 (Fla. 1st DCA 2011).
A construction lien can only arise from an agreement, i.e., a contract, a verbal agreement or a contract implied in fact, and cannot arise from a contract implied in law. Accordingly, a construction claimant prevailing on a contract implied in law is not entitled to a construction lien nor prevailing party attorneys' fees under Florida Statute § 713.29.

Lepisto v. Senior Lifestyle Newport Ltd. Partnership, --- So.3d ----, 2011 WL 3300199 (Fla. 4th DCA 2011).
A person who signs an addendum to a nursing home contract as the "financially responsible party" is bound by the arbitration provisions of the addendum, but the party who signed the contract without an arbitration provision is not bound to arbitrate as he did not agree to the arbitration provision.

1000 Friends of Florida, Inc. v. Palm Beach County, --- So.3d ----, 2011 WL 3300204 (Fla. 4th DCA 2011).
Comprehensive land use plans are interpreted in the same manner as statutes, i.e., courts first look to the plain meaning of the plan. Accordingly, a local government may not issue a development order for rock mining if the list of reasons for rock mining is not met.

Hutson v. Plantation Open MRI, LLC, --- So.3d ----, 2011 WL 3300213 (Fla. 4th DCA 2011).
A party may oppose a summary judgment by filing an affidavit in opposition and moving to amend its affirmative defenses and setting the motion to amend for hearing the same date as the summary judgment.

Coral Way Condominium Investments, Inc. v. 21/22 Condominium Association, Inc., --- So.3d ----, 2011 WL 3300233 (Fla. 3d DCA 2011).
A party may not contest the payment of a condominium special assessment by the defense of breach of fiduciary duty by the board of directors of the association.

Miami-Dade County v. Torbert, --- So.3d ----, 2011 WL 3300308 (Fla. 3d DCA 2011).
A plat recorded in 1926 and not referred to nor relied upon in hundreds of transactions since that date cannot be used as the basis for stating the land is currently governed by the1926 plat as opposed to current land use restrictions.

B & I Contractors, Inc. v. Mel Re Const. Management, --- So.3d ----, 2011 WL 3300328 (Fla. 2d DCA 2011).
A trial court may not refuse to order proceedings supplementary.

Hotel 71 Mezz Lender, LLC v. Tutt, --- So.3d ----, 2011 WL 3300384 (Fla. 3d DCA 2011).
A trial court may not *sua sponte* order summary judgment against a non-movant.

Claridge H, LLC v. Claridge Hotel, LC, --- So.3d ----, 2011 WL 3300395 (Fla. 3d DCA 2011).
A trial court may not order a directed verdict against a defendant before the defendant has had an opportunity to present its case.

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Palmcrest Homes of Tampa Bay, LLC v. Bank of America, N.A., --- So.3d ----, 2011 WL 3518026 (Fla. 2d DCA 2011).
Trial courts, not arbitration panels, determine the threshold issues of waiver, unconscionability of the whole contract (as opposed to unconscionability of the arbitration clause), and whether third parties are bound to arbitrate.

Parker v. LaSalle Bank Nat. Ass'n, --- So.3d ----, 2011 WL 3476668 (Fla. 4th DCA 2011).
Constructive service is ineffective if the affidavit of diligent service shows a lack of diligence in attempting to locate the defendant, i.e., only one attempt at service and no attempts to inquire of neighbors or the tenant. This demonstrates lack of diligence despite searches for credit information, directory assistance, motor vehicle records, the post office, property tax records, national death records, and prison records.

Godfrey v. Reliance Wholesale, Inc., --- So.3d ----, 2011 WL 3477007 (Fla. 3d DCA 2011).
Writ of prohibition may only be invoked when a trial court is without jurisdiction; the fact that the plaintiff may lack standing but the trial court is prepared to allow the plaintiff to proceed is not grounds for a writ of prohibition.

Bennett ex rel. Bennett. Tenet St. Mary's, Inc., --- So.3d ----, 2011 WL 3477015 (Fla. 4th DCA 2011).
If counsel is involved in conduct which may result in the striking of pleadings, a trial court must consider and make findings on the following *Kozel v. Ostendorf*, 629 So.2d 817 (Fla.1993), factors:

> 1) whether the attorney's disobedience was willful, deliberate, or contumacious, rather than an act of neglect or inexperience; 2) whether the attorney has been previously sanctioned; 3) whether the client was personally involved in the act of disobedience; 4) whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion; 5) whether the attorney offered reasonable justification for noncompliance; and 6) whether the delay created significant problems of judicial administration.

Fit v. Attorney's Title Ins. Fund, Inc., --- So.3d ----, 2011 WL 3477019 (Fla. 3d DCA 2011).
Title insurance company that pays claims to lenders that were issued Closing Protection Letters for closings where the title agent fraudulently inflated values at closing and pocketed the difference is not entitled to an award of unjust enrichment unless it can show it, as opposed to the lenders, conferred the benefit that unjustly enriched the title agent.

Florida Gamco, Inc. v. Fontaine, --- So.3d ----, 2011 WL 3477081 (Fla. 4th DCA 2011).
Fla. Stat. § 47.051 provides that venue for a domestic Florida corporation is where the corporation has its home office, while venue is proper for a foreign corporation wherever it has an agent or other representative.

Katzman v. Rediron Fabrication, Inc., --- So.3d ----, 2011 WL 3477093 (Fla. 4th DCA 2011).
Discovery upon a hybrid fact/expert witness is not necessarily restricted to the factors set forth in *Elkins v. Syken*, 672 So.2d 517 (Fla. 1996).

B&C Investors, Inc. v. Vojak, --- So.3d ----, 2011 WL 3477163 (Fla. 2d DCA 2011).
A constructive trust is a remedy and not a cause of action.

CBT Flint Partners, LLC v. Return Path, Inc., --- F.3d ----, 2011 WL 3487023 (11th Circ. 2011).
Patent claim construction is a matter of law, and a reviewing court can correct an obvious mistake by inserting the word "and" in between "detect" and "analyze."

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St. Johns River Water Management Dist. v. Molica, --- So.3d ----, 2011 WL 3627412 (Fla. 5th DCA 2011).
A water management district does not exceed either its authority nor its jurisdiction under Chapter 373 of the Florida Statutes by creating an administrative rule that requires a permit to fill a wetland.

Martin County v. Polivka Paving, Inc., --- So.3d ----, 2011 WL 3586117 (Fla. 4th DCA 2011).
Reversal of a significant part of a judgment, even if plaintiff remains the prevailing party, requires the trial court to reconsider the contingency risk multiplier it applied to enhance an attorneys' fees award.

State Road 7 Investment Corp. v. Natcar Ltd. Partnership, --- So.3d ----, 2011 WL 586124 (Fla. 4th DCA 2011).
Error to grant summary judgment to mortgagee for default based on failure to pay municipal liens while the question of whether the municipal lien is valid is still being litigated on cross-claims. However, an attorneys' fees award to the mortgagee determining its mortgage was superior to the municipal lien is proper.

U.S. Bank Nat. Ass'n v. Paiz, --- So.3d ----, 2011 WL 3586132 (Fla. 3d DCA 2011).
An unsworn Rule 1.540 Motion for Relief from Judgment filed by mortgagors "nearly two years after being served with process, ten months after the final judgment of foreclosure was entered, more than five months after the property was sold and on the eve of eviction" is not legally sufficient; Rule 1.540 is not a substitute for timely appeal.

Robles-Martinez v. Diaz, Reus & Targ, LLP, --- So.3d ----, 2011 WL 3586179 (Fla. 3d DCA 2011).
Returns of service can be challenged by either demonstrating the return is not "regular on its face," i.e., does not comply with Florida Statute § 48.21 and is therefore facially invalid, or by alleging the service of process is invalid by contesting the factual allegations of the return, e.g., the party was substitute served at a location not her "usual place of abode." A facially regular return is *prima facie* proper, and the party contesting service must prove the deficiency by clear and convincing evidence. The statute requires service "at the usual place of abode," i.e., only requires the party be living at the premises at the time of service. The statute does not require service at the "residence" of the party (which may be different than "usual place of abode").

Martinez v. Aurora Loan Services, LLC, --- So.3d ----, 2011 WL 3586203 (Fla. 3d DCA 2011).
Motions for rehearing of orders deciding Rule 1.540 motions are not "authorized" for appellate purposes and do not toll the time to file an appeal.

BECC Holding II, Inc. v. Rachtanov, --- So.3d ----, 2011 WL 3586212 (Fla. 3d DCA 2011).
Purchaser at tax deed sale may request reimbursement of monies used to pay tax certificates from surplus tax deed sale proceeds.

I-Net Technologies, Inc. v. Salazar, --- So.3d ----, 2011 WL 3586233 (Fla. 4th DCA 2011).
A cause of action in a personal services contract dispute accrues, for venue purposes under Florida Statute §47.051, where the personal services are rendered.

City of Riviera Beach v. That Certain Unnamed Gray, Two Story Vessel Approximately Fifty-Seven Feet in Length, --- F.3d ----, 2011 WL 3629483 (11th Cir. 2011).
A "vessel" under 1 U.S.C. § 3 (federal maritime law) includes "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water," notwithstanding the vessel is built to be and is used as a residence and is not capable of navigation.

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Patel v. Boers, --- So.3d ----, 2011 WL 3754651 (Fla. 5th DCA 2011).
A general assignment is sufficient to assign a restrictive covenant pursuant to Fla. Stat. § 542.335 (1) (f) (2).

1321 Whitfield, LLC v. Silverman, --- So.3d ----, 2011 WL 3685757 (Fla. 2d DCA 2011).
Constructive service is permitted on LLCs as the Florida LLC Act provides for service on LLCs in accordance with Chapters 48 and 49 of the Florida Statutes, which chapters permit constructive service.

Blumstein v. Sports Immortals, Inc., --- So.3d ----, 2011 WL 3687423 (Fla. 4th DCA 2011).
A statement crosses the line from innocent, non-actionable statement to one upon which a claim for negligent misrepresentation lies when the utterer has a direct, pecuniary interest in the transaction or context such that it is equitable to impose a duty of care and diligence in making the statement.

Henn v. Ultrasmith Racing, LLC, --- So.3d ----, 2011 WL 3687448 (Fla. 4th DCA 2011).
A dismissal, whether with or without prejudice or whether voluntary or involuntary, generally makes the defendant the "prevailing party" for contractual or statutory attorney's fee determinations.

Hollywood Mobile Estates Ltd. v. Hollywood Estates Independent Tenants Ass'n, Inc.
--- So.3d ----, 2011 WL 3687460 (Fla. 4th DCA 2011).
Mobile home owners are required to comply with Fla. Stat. § 723.063 (2) (tenant disputing lease compliance by landlord required to deposit rent into Registry of the Court during pendency of litigation) because the tenant's association commenced litigation in its name on behalf of members, i.e., suing on behalf of members makes the members' compliance with Fla. Stat. § 723.063 (2) mandatory.

State Board of Administration v. Burns, 2011 WL 3667884 (Fla. 1st DCA 2011).
The following provision required arbitration of the issue of amount, but not entitlement of attorneys' fees:

> This Agreement is a contingency fee contract and is subject to the principle that it be commercially reasonable and that the fees provided for shall be commercially reasonable and be no more than the amount permissible pursuant to rule 4–1.5 of the rules regulating The Florida Bar and case law in-terpreting that rule. If the amount of the fee is dis-puted, the [law firms] shall participate in manda-tory binding arbitration. ... (emphasis added).

Walter Intern. Productions, Inc. v. Salinas, --- F.3d ----, 2011 WL 3667597 (11th Cir. 2011).

Trial court did not abuse discretion by requiring witness lists with estimates of time required for direct and cross-examination of each witness.

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Spalding v. Zatz, --- So.3d ----, 2011 WL 3861434 (Fla. 5th DCA 2011).
Neither "surprise testimony" nor attorney misconduct rise to the level of fundamental error; contemporaneous objection is still needed to preserve error in these situations.

Gick v. Wells Fargo Bank, N.A., --- So.3d ----, 2011 WL 3861525 (Fla. 5th DCA 2011).
A party may move for summary judgment twenty days after the case is filed, even if an answer is not yet filed and a motion to dismiss is pending. However, a party moving for summary judgment prior to the defendant filing an answer bears a very high burden.

Paul v. Wells Fargo Bank, N.A., --- So.3d ----, 2011 WL 3862091 (Fla. 2d DCA 2011).
Compassion, difficult personal circumstances, and failure to timely secure counsel are not grounds for defending foreclosures, but may be reasons why a default or sale may be vacated under Rule 1.540. A trial court retains jurisdiction after the foreclosure sale to vacate the sale.

Hill v. Davis, --- So.3d ----, 2011 WL 3847252 (Fla. 2011).
Absent fraud, misrepresentation or misconduct, a party objecting to the qualifications of a personal representative (including qualifications to serve in the first place) must be made within the three month time period of Fla. Stat. § 733.212 (3).

Willow Wood Mid-Rise Condominium I Ass'n, Inc. v. Vanco Const. & Supply, Inc., --- So.3d ----, 2011 WL 3819814 (Fla. 4th DCA 2011).
An order directing counsel to submit a final judgment is not a final order, and any motions for rehearing directed to such an order is not "authorized " motion for rehearing under Florida Rule of Appellate Procedure 9.030 (b) (1) (A) and does not extend the toll the time to file an appeal.

Bucky's Barbeque of Fort Lauderdale, LLC v. Millennium Plaza Acquisition, LLC, --- So.3d ----, 2011 WL 3820182 (Fla. 4th DCA 2011).
A landlord's use of the premises after retaking of premises determines its rights as such use determines whether landlord retook the premises for its own purposes or for the account of the tenant. Accordingly, a trial court must make factual findings as to the use of the premises in order to direct remedies such as accelerated rent.

Grupo Radio Centro S.A.B. de C.V. v. American Merchant Banking Group, Inc., --- So.3d ----, 2011 WL 3820208 (Fla. 3d DCA 2011).
Failure to strictly comply with the Hague Convention (e.g., failure to state whether the service time is calculated in calendar or works days) renders service under the convention void.

Sol Melía, S.A. v. Fontana, --- So.3d ----, 2011 WL 3820376 (Fla. 3d DCA 2011).
A party seeking to serve a parent corporation through service on a subsidiary corporation must demonstrate the parent corporation entirely controls the subsidiary.

Knights Armament Co. v. Optical Systems Technology, Inc., --- F.3d ----, 2011 WL 3889156 (11th Cir. 2011).
A claim of trade secret theft under the Florida Uniform Trade Secrets Act must be brought within three years of learning of theft or the time should have know of the theft. An owner of a descriptive mark without secondary meaning has no protectable right in the mark.

Lindo v. NCL (Bahamas), Ltd., --- F.3d ----, 2011 WL 3795234 (11th Cir. 2011).
The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, more commonly known as the New York Convention, is encompassed in the Federal Arbitration Act, which provides that defenses to enforcement of an arbitration award are to be raised at the confirmation stage.

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Jackson Hewitt, Inc. v. Kaman, --- So.3d ----, 2011 WL 3962886 (Fla. 2d DCA 2011).
A franchisor has no general duty to prevent criminal or fraudulent conduct by its franchisee.

Nunes v. Allstate Inv. Properties, Inc., --- So.3d ----, 2011 WL 3903144 (Fla. 4th DCA 2011).
Equitable estoppel applies to real property transactions if a party, by her acts, words or silence, leads another to take a position in which the assertion of legal title is contrary to equity and good conscience. Accordingly, a party that knows a deed transferring property out from her is forged but takes no steps to assert the invalidity of the deed until the property has been transferred to a third party purchaser without notice is estopped to assert the deed was forged.

Glarum v. LaSalle Bank Nat. Ass'n, --- So.3d ----, 2011 WL 3903161 (Fla. 4th DCA 2011).
A witness testifying under Fla. Stat. § 90.803 (6) (a), the Business Records Exception to the Hearsay Rule, must have personal knowledge or be otherwise qualified to testify with regard to the following:

> (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record.

VMD Financial Services, Inc. v. CB Loan Purchase Associates, LLC, --- So.3d ----, 2011 WL 3903167 (Fla. 4th DCA 2011).
Parties who are not signatories to a settlement agreement cannot be bound by its terms. Accordingly, junior mortgagees cannot be bound by a settlement agreement signed by the first mortgagor and the mortgagee.

Jones v. Publix Supermarkets, Inc., --- So.3d ----, 2011 WL 3903179 (Fla. 4th DCA 2011).
When there are no additional claims between the parties or unresolved claims of third parties and while it is the better practice to do so, it is not necessary to attach a general release to or summarize its contents in a proposal for settlement.

Shulgasser-Parker v. Triniey, --- So.3d ----, 2011 WL 3903182 (Fla. 4th DCA 2011).
Granting summary judgment while 10 days remains for discovery and after rolling the case to a future docket is error.

CRC 603, LLC v. North Carillon, LLC, --- So.3d ----, 2011 WL 3916151 (Fla. 3d DCA 2011).
The July 1, 2010 amendment to Fla. Stat. 718.202 permitting only one escrow account is not retroactive in that it impacts vested statutory rights. Accordingly, there remains a cause of action for failure to maintain a second escrow account for deposits in excess of ten percent (10%) prior to July 1, 2010.

Krinsk v. SunTrust Banks, Inc., --- F.3d ----, 2011 WL 3902998 (11th Cir. 2011).
The filing of an amended complaint will revive a previously waived right to compel arbitration under the Federal Arbitration Act.

Gentry v. Harborage Cottages-Stuart, LLLP, --- F.3d ----, 2011 WL 3904087 (11th Cir. 2011).
A developer cannot structure sales of condominium units in a complex with two sets of contracts so that it remains under the 100 lot exemption to the Interstate Land Sales Act.

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Medellin v. MLA Consulting, inc., --- So.3d ----, 2011 WL 4102290 (Fla. 5th DCA 2011).
A party's subjective "good faith" belief it is entitled to file a construction claim of lien is no defense to a fraudulent lien claim under Fla. Stat. § 713.31 (2) (b) where there is no basis under law for filing the lien. The "good faith" defense is primarily applicable to mistakes in amounts owed, and does not apply when the underlying claim does not support a construction lien in the first instance.

Ortmann v. Bell, --- So.3d ----, 2011 WL 4104908 (Fla. 2d DCA 2011).
Documentary stamps on a deed are not conclusive indication of the value of the transferred real estate.

Royal Caribbean Cruises Ltd. v. Eidissen, --- So.3d ----, 2011 WL 4056117 (Fla. 3d DCA 2011).
District court lacks jurisdiction to review on certiorari whether there is sufficient evidence to meet the *prima facie* proof requirements of § 768.72 (claimant must make *prima facie* showing in record of entitlement to plead punitive damages).

Northwood SG, LLC v. Builder Financial Corp., --- So.3d ----, 2011 WL 4056160 (Fla. 4th DCA 2011).
A loan structured as a series of future advances and not a single up-front advance requires the application of the spreading statute, Fla. Stat. § 687.071 (3), in order to determine whether the overall loan is usurious.

Stand Up for Animals, inc. v. Monroe County, --- So.3d ----, 2011 WL 4056163 (Fla. 3d DCA 2011).
The inability to collect a possible future judgment does not satisfy the "irreparable injury" requirement of a preliminary injunction as a money judgment, even if uncollectible, compensates an injured party as a matter of law.

Pompano Beach Community Redevelopment Agency v. Holland,--- So.3d ----, 2011 WL 4056251 (Fla. 4th DCA 2011).
For purposes of determining an award of eminent domain attorneys' fees under Fla. Stat. § 73.092, an unexecuted contract subject to contingencies does not qualify as a "first offer" under the statute.

Matusick v. DiSalvo, --- So.3d ----, 2011 WL 4056256 (Fla. 4th DCA 2011).
Execution of a contract or subsequent amendment with knowledge of a prior fraud related to the contract waives the prior fraud.

Jupiter Medical Center, Inc. v. Visiting Nurse Ass'n of Florida, Inc., --- So.3d ----, 2011 WL 4056293 (Fla. 4th DCA 2011).
A court may refuse to enforce an arbitration award on the basis of illegality, notwithstanding that illegality is not a statutory factors under Fla. Stat. § 682.13 for vacating arbitration awards.

In re The Florida Bar, --- So.3d ----, 2011 WL 4008136 (Fla. 2011).
The Oath of Admission to The Florida Bar is amended to require civility in all dealings with parties and counsel.

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Benenati v. Chase Home Finance, LLC, --- So.3d ----, 2011 WL 4406207 (Fla. 5th DCA 2011).
A motion to withdraw as counsel for appellant that lists vague reasons, does not comply with Florida Rule of Appellate Procedure 9.440, and is filed after all briefing and when a decision is imminent will be denied.

MB Plaza, LLC v. Wells Fargo Bank, Nat. Ass'n, --- So.3d ----, 2011 WL 4413859 (Fla. 2d DCA 2011).
A receiver may be appointed if a promissory note and mortgage is in default, rents are being collected but not paid over to the mortgagee, the value of the security has decreased dramatically, and taxes have not been paid; it is not necessary there be "waste" of the property. However, an order appointing receiver may not grant the receiver the right to sell or otherwise dispose of the property.

Alterra Healthcare Corp. v. Campbell, --- So.3d ----, 2011 WL 4415273 (Fla. 2d DCA 2011).
A cause of action for malicious prosecution for instituting criminal proceedings lies when "the criminal proceeding was initiated by the defendant without probable cause, i.e., without a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged." In order to defend, the defendant must establish she acted in good faith.

Mickel v. Norton, --- So.3d ----, 2011 WL 4415353 (Fla. 2d DCA 2011).
A party that borders one body of water has no riparian nor littoral rights of unobstructed view to a different body of water over a neighbor's property.

Roberts v. Nine Island Ave. Condominium Ass'n, Inc., --- So.3d ----, 2011 WL 4374452 (Fla. 3d DCA 2011).
The following provision requires a condominium association to purchase insurance on units and other common elements, but not limited common elements such as boat slips:

> B. Required Coverage. The Association shall purchase and carry insurance coverage as follows:
> Casualty Insurance. Casualty insurance covering the Building and other improvements of the Condominium, including, without limitation, Units (including the bathroom and kitchen fixtures initially installed into Units by the Developer) and Common Elements, in an amount equal to the maximum insurance replacement value thereof (subject to reasonable deductible clauses), exclusive of excavation and foundation costs, as determined annually by the Board of Directors of the Association; such insurance to afford protection against . . .

Frye v. Ironstone Bank, --- So.3d ----, 2011 WL 4375025 (Fla. 2d DCA 2011).
Opposing counsel may be disqualified on the basis of either a conflict of interest with a present or former client under the Rules Regulating the Florida Bar, or on the basis of an unfair informational advantage obtained through a prior representation. If disqualification is sought on the basis of unfair informational advantage, it is not necessary for movant to demonstrate she had an attorney client relationship with the attorney sought to be disqualified.

Hofmann v. De Marchena Kaluche & Asociados, --- F.3d ----, 2011 WL 4388169 (11th Cir. 2011).
Parties may not appeal consent orders, but may appeal deviations from the agreement of the parties or the order itself.

Ausar-El ex rel. Small, Jr. v. BAC (Bank of America) Home Loans Servicing LP, Slip Copy, 2011 WL 4375971 (11th Cir. 2011).
A party enforcing its own security interest is not a "debt collector" under the Fair Debt Collection Practices Act, and thus cannot violate the Act.

Trailer Bridge, Inc. v. Illinois Nat. Ins. Co., --- F.3d ----, 2011 WL 4346579 (11th Cir. 2011).
A misleading statement to company investors by a company representative does not trigger the duty to defend under the "personal and advertising injury" portion of a commercial general liability policy.

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John Deere Const. & Forestry Co. v. Lorelys Elec. Corp., --- So.3d ----, 2011 WL 4467255 (Fla. 3d DCA 2011).
Un-rebutted evidence that a party never had the equipment upon which a judgment was based and did not receive notice of default and motion for summary judgment will sustain vacating a final judgment under the "excusable neglect" provisions of Florida Rule of Civil Procedure 1.540 (b) (1).

Broward County Housing Authority v. Prats, --- So.3d ----, 2011 WL 4467325 (Fla. 3d DCA 2011).
The "sword wielder" exception to a state agency's home venue privilege only applies if a party's constitutional rights are being affected by the state agency.

Branscombe v. Jupiter Harbour, LLC, --- So.3d ----, 2011 WL 4467344 (Fla. 4th DCA 2011).
Parking agreement, attachments to parking agreement, long term use of disputed area and the creation of parking spaces with no way of access the spaces all create an ambiguity in the instruments permitting the introduction of parol evidence.

Rodriguez-Faro v. M. Escarda Contractor, Inc., --- So.3d ----, 2011 WL 4467385 (Fla. 3d DCA 2011).
Damages are unliquidated if testimony is required to ascertain the correct amount of damages, and damages for unjust enrichment are considered unliquidated even if there is an existing contract.

In re Amendments to Florida Rules of Judicial Admin., --- So.3d ----, 2011 WL 4467508 (Fla. 2011).
Various changes made to the rules, including requiring that attorney motions to withdraw contain both the telephone number and email address of the client, requiring foreign attorney *pro hac vice* appearances include appearances in different courts (e.g., appellate) of the same case, electronic equipment may be used in court with consent of all parties or if permitted by another rule, and requiring all electronically filed records to comply with state and federal law regarding the confidentiality of electronic records.

Regner v. Amtrust Bank, --- So.3d ----, 2011 WL 4467534 (Fla. 4th DCA 2010).
A foreclosure sale must be vacated if the homeowner contends it did not receive notice of the sale, the lender wrongfully rejected payment, and the foreclosure sale price was inadequate.

In re Amendments to Florida Probate Rules, --- So.3d ----, 2011 WL 4467595 (Fla. 2011).
Various changes made to the rules, including adding certain proceedings (to modify a will, reform a will, and determine pertermitted status) to the list of proceedings that are adversary under Rule 5.025 and removing Rule 1.525 from the civil rules incorporated into the probate rules.

Oldock v. DL&B Enterprises, Inc., --- So.3d ----, 2011 WL 4467636 (Fla. 2d DCA 2011).
A non-resident defendant that has continuous and systematic contacts with Florida for pecuniary gain establishes general (as opposed to specific act) long-arm jurisdiction and fulfills constitutional requirements of due process.

Findwhat Investor Group v. Findwhat.com, --- F.3d ----, 2011 WL 4506180 (11th Cir. 2011).
In a "fraud on the market" securities fraud case, loss causation requires proof that the fraudulently induced price is later removed from the stock price thus causing damage to investors.

Swindell v. Accredited Home Lenders, Inc., Slip Copy, 2011 WL 4469121 (11th Cir. 2011).
There is no right to state appointed counsel to defend a party in a mortgage foreclosure case because there is no risk of loss of liberty if defendant loses case.

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Speegle Const., Co., Inc. v. District Bd. of Trustees of Northwest Florida State, --- So.3d ----, 2011 WL 4597505 (Fla. 1st DCA 2011).
Contract addendum which mistakenly references the wrong documents when attempting to eliminate an arbitration provision fails to eliminate the arbitration provision.

Fidelity Warranty Services, Inc. v. Firstate Ins. Holdings, Inc., --- So.3d ----, 2011 WL 4577530 (Fla. 4th DCA 2011).
An owner can testify as to the value of his business, but his testimony becomes expert testimony when he offers an opinion based on special knowledge, skill, experience or training. Any of the three different methods used for valuing a business (income, market or asset based) must be based on non-speculative evidence, and using prior years' sales to determine market value is speculative. "Pure opinion" is not actionable as defamation.

Siegel v. Rowe, --- So.3d ----, 2011 WL 4578543 (Fla. 2d DCA 2011).
Even after the 1999 amendments relaxing the requirements for an action to be found frivolous, the offending position has to be completely without merit in order to find an action or defense frivolous under Florida Statute § 57.105.

Guy Bennett Rubin, P.A. v. Guettler, --- So.3d ----, 2011 WL 4577670 (Fla. 4th DCA 2011).
A clause in attorney contingency fee contract requiring a client to pay attorney at market hourly rates if the client chooses to discharge the attorney before recovery on the contingency violates Rule 4-1.5 of the Rules Regulating the Florida Bar.

1000 Friends of Florida, Inc. v. Palm Beach County, --- So.3d ----, 2011 WL 4577746 (Fla. 4th DCA 2011).
On rehearing, the Fourth District re-affirms its previous opinion that local government may not violate its own comprehensive plan.

Gemini Investors III, L.P. v. Nunez, --- So.3d ----, 2011 WL 4578015 (Fla. 3d DCA 2011).
Failing to inform a purchaser of shares in a company that the company is at risk of losing 50% of its business from one client is both a fraudulent inducement into a contract and securities violation under Florida Statute § 517.301 (1)(a).

American Safety Cas. Ins. Co. v. Mijares Holding Co., LLC, --- So.3d ----, 2011 WL 4578097 (Fla. 3d DCA 2011).
A forum selection clause in an insurance policy is enforceable.

Ness Racquet Club, LLC v. Ocean Four 2108, LLC, --- So.3d ----, 2011 WL 4578164 (Fla. 3d DCA 2011).
In the absence of cross-motions for summary judgment, a court may not enter summary judgment against a moving party absent granting the moving party an opportunity to file affidavits or otherwise respond to the entry of summary judgment against it.

Grimsley v. Moody, Jones, Ingino & Morehead, P.A., --- So.3d ----, 2011 WL 4578188 (Fla. 4th DCA 2011).
Issues of non-material fact are irrelevant to the summary judgment process.

Stock Building Supply of Florida, Inc. v. Soares Da Costa Const. Services, LLC, --- So.3d ----, 2011 WL 4578320 (Fla. 3d DCA 2011).
A notice to owner supplied when there is no payment bond on a construction project only perfects rights under the construction lien statute and not against the bond. If a Notice of Termination is filed and then a new Notice of Commencement is filed, a new notice to owner must be served in order to perfect rights of a party not in privity.

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Kavouras v. Mario City Restaurant Corp., --- So.3d ----, 2011 WL 4809021 (Fla. 3d DCA 2011).
Because of the risk of an inconsistent verdict, a corporate action in which plaintiff seeks parallel remedies of a constructive trust and damages may not be severed for trial. Certiorari is the proper remedy for orders severing claims for trial.

USAmeribank v. Klepal, --- So.3d ----, 2011 WL 4809107 (Fla. 2d DCA 2011).
The following language authorizes waiver of the head of household exemption from garnishment both as the issuance and enforcement of the continuing writ:

> I consent to the issuance of a continuing writ of garnishment or attachment against my disposable earnings, in accordance with Section 222.11, Florida Statutes, in order to satisfy, in whole or in part, any money judgment entered in favor of [the Bank].

FNS4, LLC v. Security Bank, N.A., --- So.3d ----, 2011 WL 4809165 (Fla. 3d DCA 2011).
After the passage of ten days, there is no process for setting aside a final judgment other than Florida Rule of Civil Procedure 1.540 (b).

TRG Brickell Pointe NE, Ltd. v. Gravante, --- So.3d ----, 2011 WL 4809209 (Fla. 3d DCA 2011).
A contract for sale of real estate does not need to comply with the Statute of Frauds nor does it need to be dated and witnessed in order to be enforceable.

Coral Wood Page, Inc. v. GRE Coral Wood, LP, --- So.3d ----, 2011 WL 4819816 (Fla. 2d DCA 2011).
A tenant does not have to prove a constructive eviction as a condition precedent to claiming a violation of the covenant of quiet enjoyment.

White Springs Agricultural Chemicals, Inc. v. Glawson Investments Corp., --- F.3d ----, 2011 WL 4907386 (11th Cir. 2011).
A party does not need to plead entitlement to attorneys' fees in its initial papers in arbitration as the rules of the American Arbitration Association do not require such and claims may be amended at any time in the discretion of the arbitration panel.

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Sarhan v. H & H Investors, Inc., --- So.3d ----, 2011 WL 4949799 (Fla. 3d DCA 2011).
A trial court is bound by the terms of its reservation of jurisdiction in an order approving a settlement agreement. Accordingly, failure of the trial court to reserve jurisdiction to summarily enter judgment for mortgagee after mortgagor default on a settlement agreement deprives the trial court of the power to do so.

Weinbergv. Siemens Financial Services, Inc., --- So.3d ----, 2011 WL 4949814 (Fla. 3d DCA 2011).
A party is not required to post a bond if its motion for prejudgment writ of replevin is denied.

State Farm Florida Ins. Co. v. Silber, --- So.3d ----, 2011 WL 4949815 (Fla. 4th DCA 2011).
A party may not move for confirmation of an insurance appraisal award when the appraisal award, minus prejudgment interest and attorneys' fees, was paid prior to the filing of the motion for confirmation.

City of Sunny Isles Beach v. Publix Super Markets, Inc., --- So.3d ----, 2011 WL 4949827 (Fla. 3d DCA 2011).
So long as the city attorney is not given special access to deliberations, it is not a violation of a party's due process that a city attorney simultaneously act as both "prosecutor" and advisor to a municipal commission.

Lower Fees, Inc. v. Bankrate, Inc., --- So.3d ----, 2011 WL 4949835 (Fla. 4th DCA 2011).
A "merger and integration" or "no reliance" clause does not bar a claim for rescission based on fraudulent inducement into a contract unless the clause itself explicitly waives fraud in the inducement claims. Accordingly, the following contract provision does not bar a fraud in the inducement claim:

> This Agreement and the Ancillary Agreements constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made or relied upon by the Parties. None of the provisions of this Agreement and the Ancillary Agreements is intended to confer upon any Person other than the Parties to this Agreement any rights or remedies under the Terms of this Agreement.

Del Monte Fresh Produce Co. v. Net Results, Inc., --- So.3d ----, 2011 WL 4949872 (Fla. 3d DCA 2011).
A non-breaching party in a breach of contract case is entitled to either restitution or expectation damages. Lost profits need not be calculated with mathematical precision, but must be calculated with "reasonable certainty."

BLT Now, LLC v. Coldwell Banker Residential Real Estate, --- So.3d ----, 2011 WL 4949884 (Fla. 3d DCA 2011).
The question of whether a party exercised reasonable diligence in fulfilling a financing contingency in a contract is ordinarily a question of fact for the trier of fact and not subject to summary judgment.

Investacorp, Inc. v. Evans, --- So.3d ----, 2011 WL 4949936 (Fla. 3d DCA 2011).
It is improper to let execution issue on a partial summary judgment for damages when other claims remain outstanding and a final order has yet to be entered.

Julia Feltus v. U.S. Bank Nat. Ass'n, --- So.3d ----, 2011 WL 4950279 (Fla. 2d DCA 2011).
An amended pleading filed without compliance with Florida Rule of Civil Procedure 1.190 is a nullity and cannot be considered by the court. Accordingly, a motion for summary judgment re-establishing a lost note must be denied if the correct note to be re-established is attached to an unauthorized pleading.

Faught v. American Home Shield Corp., --- F.3d ----, 2011 WL 5008531(11th Cir. 2011).
Federal injunctions are enforced through the court's civil contempt powers.

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Cuccarini v. Rosenfeld, --- So.3d ----, 2011 WL 5061347 (Fla. 3d DCA 2011).
A general preapproval letter, i.e., a financing approval letter not tied to any specific property, may satisfy the following financing contingency in a real estate sales contract:

> Buyer will apply for new conventional ... financing ... at the prevailing interest rate and loan costs based on Buyer's creditworthiness (the "Financing") within 5 days from the Effective Date and provide Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer is unable to obtain a Commitment within 30 days from Effective Date ... ("Commitment Period"). Buyer will keep Seller and Broker fully informed about loan application status, progress, and commitment issues ... [I]f, after using diligence and good faith, Buyer is unable to provide the Commitment and provides Seller with written notice that Buyer is unable to obtain a Commitment within the Commitment Period either party may cancel this Contract and Buyer's deposit will be refunded. Buyer's failure to provide Seller with written notice that Buyer is unable to obtain a Commitment within the Commitment period will result in forfeiture of Buyer's deposit(s). Once Buyer provides the Commitment to Seller, the financing contingency is waived and Seller will be entitled to retain the deposits if the transaction does not close by the Closing Date unless (1) the Property appraises below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to proceed....

Mejias v. Shelbourne Ocean Beach Hotel Condominiun, Inc., --- So.3d ----, 2011 WL 5061363 (Fla. 3d DCA 2011).
No abuse of discretion for a trial court to deny a continuance in a case that has been pending for ten years.

Tampa HCP, LLC v. Bachor, --- So.3d ----, 2011 WL 5061541 (Fla. 2d DCA 2011).
An arbitration agreement may be rescinded if it is unconscionable, but both procedural and substantive unconscionability must be proven. Procedural unconscionability, i.e., a lack of meaningful choice, must first be proven before reaching the issue of substantive unconscionability.

Bamert v. Pulte Home Corp., Slip Copy, 2011 WL 5105925 (11th Cir. 2011).
Sale of condominiums with the opportunity to establish rental agreements for third parties can constitute an investment "security" under state and federal securities laws if the condominium purchasers do not retain significant control over the rentals.

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Fifth Third Bank v. ACA Plus, Inc., --- So.3d ----, 2011 WL 5244325 (Fla. 5th DCA 2011).
Failure to deliver a privilege log by the production due date does not automatically waive privilege objections.

In re Amendments to Florida Rule of Civil Procedure 1.720, --- So.3d ----, 2011 WL 5216685 (Fla. 2011).
Florida Rule of Civil Procedure 1.720 is amended to clarify who has to attend a mediation. The amendment reads:

> RULE 1.720. MEDIATION PROCEDURES
> (a) Interim or Emergency Relief. [NO CHANGE]
> (b) Appearance at Mediation. Unless otherwise permitted by court order or stipulated by the parties in writing, a party is deemed to appear at a mediation conference if the following persons are physically present:
> (1) The party or a party representative having full authority to settle without further consultation; and
> (2) The party's counsel of record, if any; and
> (3) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
> (c) Party Representative Having Full Authority to Settle. A "party representative having full authority to settle" shall mean the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party. Nothing herein shall be deemed to require any party or party representative who appears at a mediation conference in compliance with this rule to enter into a settlement agreement.
> (d) Appearance by Public Entity. If a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.
> (e) Certification of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve all parties a written notice identifying the person or persons who will be attending the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by subdivision (b).

(f) Sanctions for Failure to Appear. If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion, shall impose sanctions, including award of mediation fees, attorneys' fees, and costs, against the party failing to appear. The failure to file a confirmation of authority required under subdivision (e) above, or failure of the persons actually identified in the confirmation to appear at the mediation conference, shall create a rebuttable presumption of a failure to appear.
(g) Adjournments. [NO CHANGE]
(h) Counsel. [NO CHANGE]
(i) Communication with Parties or Counsel. The mediator may meet and consult privately with any party or parties or their counsel.
(j) Appointment of the Mediator. [NO CHANGE]
(k) Compensation of the Mediator. [NO CHANGE]

St. Johns River Water Management Dist. v. Koontz, --- So.3d ----, 2011 WL 5218306 (Fla. 2011).
Exactions are considered "takings" for inverse condemnation purposes only when the exactions consist of the physical taking of land. Accordingly, requiring offsite mitigation in order to obtain a regulatory permit does not constitute an exaction.

Realauction.com, LLC v. Grant Street Group, Inc., --- So.3d ----, 2011 WL 5170004 (Fla. 4th DCA 2011).
There must be an existing relationship in order for the tort of interference with a business relationship to be committed; a speculative hope or desire that a relationship be created is not sufficient.

National City Bank v. Accent Marketing Associates, LLC, --- So.3d ----, 2011 WL 5170007 (Fla. 4th DCA 2011).
In order to be applicable, the doctrine of law of the case requires that the trial court have ruled on the issue allegedly barred by law of the case.

Animal Wrappers and Doggie Wrappers, Inc. v. Courtyard Distribution Center, Inc., --- So.3d ----, 2011 WL 5170288 (Fla. 4th DCA 2011).
The Fourth District holds that for purposes of determining attorneys' fees awards in contract disputes, there is always one party that is the "prevailing party."

Shamrock Jewelers, Inc. v. Schillaci, --- So.3d ----, 2011 WL 5170289 (Fla. 4th DCA 2011).
A dismissal arising from an order requiring compliance otherwise dismissal "without further order of court" is not an appealable order.

BKR Global, LLC v. Fourwinds Capital Management, --- F.3d ----, 2011 WL 5244948 (11th Cir. 2011).
Whether a broker is the "procuring cause" in a transaction is, under Florida law, a question of fact for the trier of fact.

Nelson v. Bank of America, N.A., Slip Copy, 2011 WL 5138591 (11th Cir. 2011). The United States Treasury Home Affordable Mortgage Program (HAMP) does not provide for nor authorize a private cause of action.

Value

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Alterra Healthcare Corp. v. Campbell, --- So.3d ----, 2011 WL 5374765 (Fla. 2d DCA 2011).
The September 23, 2011 opinion is withdrawn and new opinion issued which removes the statement that a defendant in a malicious prosecution action must establish she acted in good faith. Otherwise, the holding remains that a cause of action for malicious prosecution for instituting criminal proceedings lies when "the criminal proceeding was initiated by the defendant without probable cause, i.e., without a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged."

Taylor v. Bayview Loan Servicing, LLC, --- So.3d ----, 2011 WL 5374772 (Fla. 2d DCA 2011).
The mortgage follows the debt (i.e., the promissory note) unless the parties have expressed a different intent. Accordingly, a note indorsed in blank at closing is enforceable by bearer without the necessity of an assignment unless the defendant raises the affirmative defense of and can establish that the parties did not intend the mortgage to follow the debt.

Ospino v. Beach Developer, LLC, --- So.3d ----, 2011 WL 5375031 (Fla. 3d DCA 2011).
An appellate court, on its own motion and pursuant to Florida Rule of Appellate Procedure 9.315 (a) may summarily affirm an appeal if, upon review of the Initial Brief of Appeal, "no preliminary basis for reversal has been demonstrated."

Woodrum v. Wells Fargo Mortg. Bank, N.A., --- So.3d ----, 2011 WL 5375060 (Fla. 4th DCA 2011).
A court must consider affidavits in opposition to a motion for summary judgment, even if an answer is overdue and has not been filed at the time of the summary judgment hearing.

Pardo v. Goldberg, --- So.3d ----, 2011 WL 5375107 (Fla. 3d DCA 2011).
Contractual attorneys' fees on appeal are not awardable unless the particular language of the contract or related documents (a guaranty in this case) provide for appellate attorney's fees.

KPMG LLP v. Cocchi, --- S.Ct. ----, 2011 WL 5299457 (2011).
A court must direct arbitrable claims to arbitration, even if doing so leaves non-arbitrable claims in litigation and subjects the parties to possibly conflicting judgments and awards.

CompuCredit Holdings Corp. v. Akanthos Capital Management, LLC, --- F.3d ----, 2011 WL 5419663 (11th Cir. 2011).
"Conspiring" to force a commercial debtor to re-purchase commercial notes at par is not a violation of the Sherman Antitrust Act.

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Special v. Baux, --- So.3d ----, 2011 WL 5554531(Fla. 4th DCA 2011).
The Fourth District adopts the "more likely than not" test for harmless error in appeals, i.e., the effect of the error on the fact finder was minor and it is more likely than not the error did not contribute to the verdict, and recedes from the "but for" test. The following question is certified to the Florida Supreme Court:

> In a civil appeal, shall error be held harmless where it is more likely than not that the error did not contribute to the judgment?

Sexton v. Ferguson, --- So.3d ----, 2011 WL 5554809 (Fla. 4th DCA 2011).
Fla. Stat. § 57.105 does not permit an award of attorneys' fees against only the attorney (and not both the attorney and the client).

Sunrise Lakes Condominium Apts. Phase III, Inc. 5 v. Frank, --- So.3d ----, 2011 WL 5554818 (Fla. 4th DCA 2011).
After verdict and judgment, the issue of denial of a summary judgment is moot.

Pariz v. Colon, --- So.3d ----, 2011 WL 5554834 (Fla. 3d DCA 2011).
In addition to awarding an equitable lien, a trial court sitting in equity has the power to order the transfer of real property within its geographic jurisdiction.

Wolff v. Star Realty Trust No. 12549, Corp., --- So.3d ----, 2011 WL 5554851(Fla. 3d DCA 2011).
A party seeking to vacate a final judgment based on Florida Rule of Civil Procedure 1.540 (b) (3) must allege the fraud with particularity, and explain why, if the fraud exists, the judgment may be vacated. Upon meeting this requirement, a formal evidentiary hearing is required and discovery on the motion is permitted.

Terra Title Corp., Inc. v. Hellinger, --- So.3d ----, 2011 WL 5554853 (Fla. 3d DCA 2011).
A receiver has broad authority with regard to the property for which he is appointed receiver, and an order requiring an escrow agent to turn over escrow funds is within his discretion, does not deprive the escrow agent of an immediate right to money, and is not proper for certiorari review.

United Funding, LLC v. Brandao, --- So.3d ----, 2011 WL 5554854 (Fla. 3d DCA 2011).
A party not timely receiving a final judgment may move for rehearing of the order pursuant to Florida Rule of Civil Procedure 1.540 (b).

Raymond James Financial Services, Inc. v. Phillips, --- So.3d ----, 2011 WL 5555691(Fla. 2d DCA 2011).
Florida's statutes of limitations do not apply in arbitration proceedings unless specifically incorporated into the arbitration proceedings by the arbitration agreement.

Layne v. Layne, --- So.3d ----, 2011 WL 5560563 (Fla. 1st DCA 2011).
The After-Acquired Title Doctrine is an equitable doctrine which holds that a person who contracts to convey title when she does not hold title (but is expected to acquire title in the future) may not decline to convey title when she acquires title in the future. The doctrine is also described as a legal or equitable estoppel affecting land titles.

HSBC Bank USA, N.A. v. Reed, --- So.3d ----, 2011 WL 5561273 (Fla. 1st DCA 2011).
After judgment, a trial court loses jurisdiction to require post-judgment mediation.

Morgan v. Wilkins, --- So.3d ----, 2011 WL 5561293 (Fla. 1st DCA 2011).
The Florida Consumer Collection Practices Act applies to anyone collecting a debt, whether the collector meets the traditional definition of "debt collector" or whether the collector is collecting its own debt.

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Fortune Intern. Hospitality, LLC v. M Resort Residences Condominium Ass'n, Inc., --- So.3d ----, 2011 WL 5864545 (Fla. 3d DCA 2011).
A receiver may not release disputed property under the care of the receiver to a party in the dispute unless the trial court determines doing so preserves and/or benefits the receivership estate. Accordingly, releasing funds to one party to pay one side's attorneys' fees when the funds are in dispute is prohibited.

Duke v. HSBC Mortg. Services, LLC, --- So.3d ----, 2011 WL 5864572 (Fla. 4th DCA 2011).
Material issues of fact are created when allegations of the complaint contradict attachments to the complaint, and accordingly, summary judgment is not proper.

Venture Holdings & Acquisitions Group, LLC v. A.I.M. Funding Group, LLC, --- So.3d ----, 2011 WL 5864656 (Fla. 4th DCA 2011).
A party who assigns a note as collateral for a loan no longer has standing to foreclose the note and mortgage. A defendant who has been defaulted does not have the ability to raise standing as a defense, but does not waive the defense of ownership of the promissory note at judgment stage.

MHB Const. Services, L.L.C. v. RM-NA HB Waterway Shoppes, L.L.C., --- So.3d ----, 2011 WL 5864801 (Fla. 4th DCA 2011).
An owner landlord signing a Notice of Commencement for a tenant does not, without more, subject the owner's estate to construction liens if the tenant does not pay the contractor.

KJB Village Property, LLC v. Craig M. Dorne, P.A., --- So.3d ----, 2011 WL 5864817 (Fla. 3d DCA 2011).
Former client could not prove malpractice against attorney when client abandoned claim against developer for failure to deliver marketable title to unit; failure to proceed against the developer resulted in former client failing to prove redressable harm as the result of attorneys' work.

Gessa v. Manor Care of Florida, Inc., --- So.3d ----, 2011 WL 5864823 (Fla. 2011).
and
Shotts v. OP Winter Haven, Inc., --- So.3d ----, 2011 WL 5864830 (Fla. 2011).
Courts (not arbitrators) must determine whether arbitration provisions violate public policy, limitation of liability provisions in nursing home contracts undermine statutorily granted remedies and are unenforceable, and limitation of remedies provisions are not severable if there is no delegation provision.

Gorrin v. Poker Run Acquisitions, Inc., --- So.3d ----, 2011 WL 5865968 (Fla. 3d DCA 2011).

Unless there is an express waiver of obligations, the lender remains charged with the responsibility to dispose of collateral in a fashion so as not to harm the borrower.

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Alvarez v. Cooper Tire & Rubber Co., --- So.3d ----, 2011 WL 5964329 (Fla. 4th DCA 2011) (en banc).
Reversing its prior opinion, the Fourth District holds that discovery in products cases can be limited, in the discretion of the trial court, to similar and substantially similar products.

River Bridge Corp. v. American Somax Ventures, --- So.3d ----, 2011 WL 5964335 (Fla. 4th DCA 2011).
Reversal of most, but not all, of a judgment requires a trial court to hold an evidentiary hearing to re-examine the previous award of attorneys' fees in light of the reversal.

Wenzel v. Burman, --- So.3d ----, 2011 WL 5964344 (Fla. 3d DCA 2011).
Section 607.1430(2)(a) of the Florida Statutes permits a trial court to appoint a receiver for a corporation if "it is established that ... [t]he directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered."

Marshall, Amaya & Anton v. Arnold-Dobal, --- So.3d ----, 2011 WL 5964363 (Fla. 3d DCA 2011).
Arbitration must be compelled even if there is an attack on the contract containing the arbitration provision unless the attack is on the arbitration provision itself.

Bryson v. Branch Banking and Trust Co., --- So.3d ----, 2011 WL 5964567 (Fla. 2d DCA 2011).
A party's letters sent to another party are not "self-authenticating" unless they are sworn to or certified. Therefore, unauthenticated letters sent to the defendant purporting to give notice of default (as required under a mortgage) are not admissible without testimony and do not overcome an affirmative defense of failure of notice.

Jensen v. Bailey, --- So.3d ----, 2011 WL 5964572 (Fla. 2d DCA 2011).
In order to establish liability under *Johnson v. Davis*, the plaintiff must establish the seller of the home had actual knowledge of the defect at the time the contract was entered into. It is not sufficient to establish constructive knowledge for liability.

Bank of America, N.A. v. Lane, --- So.3d ----, 2011 WL 5965806 (Fla. 1st DCA 2011).
A court is limited to vacating judgments to those listed under Florida Rule of Civil Procedure 1.540; it may not *sua sponte* vacate a default judgment without there being a finding of excusable neglect, a meritorious defense, and diligence.

In re Garner, --- F.3d ----, 2011 WL 5979019 (11th Cir. 2011).
An over-secured creditor in a Chapter 13 proceeding is entitled to post-petition interest, costs, and fees as part of secured claim from date of filing through confirmation.

Brigliadora v. Wells Fargo Bank, N.A., Slip Copy, 2011 WL 5964617 (11th Cir. 2011).
A lender's use of a specific method of valuing real property (e.g., a computer based method such as the Automated Valuation Method) does not constitute a violation of the Truth in Lending Act or Regulation Z under the Act.

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Wal-Mart Stores East, L.P. v. Endicott, --- So.3d ----, 2011 WL 6117220 (Fla. 1st DCA 2011).
Improper for court order on discovery to provide for a "sharing provision," i.e., dissemination of confidential material and trade secrets to non-party litigants, without finding the sharing provision is specifically tailored to meet the needs of both parties while balancing the need to maintain confidentiality and without also considering whether the material (1) conceals a fraud or (2) works an injustice contrary to section Florida Statute § 90.506.

Pino v. Bank of New York, --- So.3d ----, 2011 WL 6089978 (Fla. 2011).
Florida Rule of Appellate Procedure 9.350 does not require a court to accept a stipulated voluntary dismissal of an appeal, especially when a party alleges a fraud on the court. Accordingly, a party may object under Florida Rule of Civil Procedure 1.540 (b) to a voluntary dismissal filed by the opposing party.

Heath v. Bear Island Homeowners Ass'n, Inc., --- So.3d ----, 2011 WL 6057944 (Fla. 4th DCA 2011).
A homeowner's association retains discretion to not enforce its own restrictions when the association declaration contains the following statement:

> The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Developer, the Association, or any individual may, but shall not be required to, seek enforcement of the Declaration. (emphasis supplied)

Garfinkel v. Katzman, --- So.3d ----, 2011 WL 6057977 (Fla. 4th DCA 2011).
A motion to quash a subpoena which contains substantive arguments does not waive the defense of lack of the court's jurisdiction over the person.

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Paravant, Inc. v. Langford, --- So.3d ----, 2011 WL 6258826 (Fla. 5th DCA 2011).
Party seeking expert fees as part of costs award must present evidence as to breakdown of the expert's fees.

In re Amendments to Florida Small Claims Rules, --- So.3d ----, 2011 WL 6220571 (Fla. 2011).
The Small Claims Rules are amended to harmonize with Rule of Judicial Administration 2.425 (minimization of sensitive personal information).

Atkinson v. Anderson, --- So.3d ----, 2011 WL 6183478 (Fla. 4th DCA 2011).
Mere possession by one co-tenant to real property cannot be considered ouster unless the co-tenant, by words or acts, manifests his intent to oust the other co-tenant.

SPCA Wildlife Care Center v. Abraham, --- So.3d ----, 2011 WL 6183491 (Fla. 4th DCA 2011).
The parties are deprived of procedural due process when the court decides a case on an issue neither pled nor noticed for determination by the parties. Accordingly, an order of court determining that a will has failed is improper when the parties only pled for determination the issue of who were the proper beneficiaries of the will.

Alpine Fresh, Inc. v. Washburn, --- So.3d ----, 2011 WL 6183518 (Fla. 3d DCA 2011).
Although dependent on the intent of the parties as reflected by the language used, the release of a principal generally releases the agent of the principal. Thus, release of an insurance company will release the insurance agent (but not an insurance broker) of the insurance company principal.

MYD Marine Distributor, Inc. v. International Paint Ltd., --- So.3d ----, 2011 WL 6183519 (Fla. 4th DCA 2011).
Complaint which alleges agreement was reached between manufacturer and competing distributors to force plaintiff to raise prices otherwise face termination of his distributorship states cause of action for violation of Florida antitrust laws. Agreement between competing distributors to convince manufacturer to raise prices or terminate a competitor's distributorship is horizontal agreement and a *per se* violation of Florida antitrust laws.

Rosenkrantz v. Feit, --- So.3d ----, 2011 WL 6183525 (Fla. 3d DCA 2011).
A co-attorney-in-fact under a power of attorney may file a declaratory action to determine whether another co-attorney-in-fact is complying with the power of attorney and Florida law.

McLean v. JP Morgan Chase Bank Nat. Ass'n, --- So.3d ----, 2011 WL 6183587 (Fla. 4th DCA 2011).
In order to be entitled to summary judgment in a mortgage foreclosure action, a party must have standing at the time the lawsuit was filed. An evidentiary hearing must be held if there is a question as to whether plaintiff had standing at the time the lawsuit was filed.

Suntrust Bank v. Puleo, --- So.3d ----, 2011 WL 6183591 (Fla. 4th DCA 2011).
An evidentiary hearing must be held to determine a motion to vacate final judgment of garnishment based upon fraud when the allegations of the motion to vacate are denied.

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MH New Investments, LLC v. Department of Transp., --- So.3d ----, 2011 WL 6438380 (Fla. 5th DCA 2011).
A license to use real property is a privilege and not an interest in real property, and condemnation business damages are awardable only for interests in real property. However, the title applied to a permitted use in a lease is not conclusive of the true nature of the interest, and an interest termed a "license" may be compensable.

Winter Park Imports, Inc. v. JM Family Enterprises, Inc., --- So.3d ----, 2011 WL 6439104 (Fla. 5th DCA 2011).
An attorney may not testify as to the value of an expert witness's services. Likewise, the general rule is that a party that has been provided an evidentiary hearing as to fees and costs is not entitled to a second evidentiary hearing upon remand.

Estela v. Cavalcanti, --- So.3d ----, 2011 WL 6372943 (Fla. 3d DCA 2011).
A plaintiff may not serve by publication where a defendant, in his motion to quash, provides an address where the defendant may be served, and the court has not made a finding that the defendant is evading service.

Inphynet Contracting Services, Inc. v. Soria, --- So.3d ----, 2011 WL 6372991(Fla. 4th DCA 2011).
Summary judgment is not proper if different inferences can be drawn from uncontroverted facts.

University of Miami v. Francois, --- So.3d ----, 2011 WL 6373020 (Fla. 3d DCA 2011).
A general release which fails to reserve rights and claims against subsequent tortfeasor releases the subsequent tortfeasor. The scope of such a release is as follows:

> . . . any and all claims, including bad faith claims, appellate claims, demands, damages, actions, causes of action, suits at law or in equity, or sum of money arising from any act or occurrence, or on account of any and all personal injury, death, disability, property damage, loss or damage of any kind whatsoever, known or unknown, already sustained or which may be hereafter sustained or allegedly sustained in consequence of any incidents, casualties, events, acts or omissions to act, from the beginning of time down to the date hereof, arising out of or resulting from the incidents occurring at the North Shore Medical Center, while Caroline Francois was under the care of the Defendants, Medical Staffing Network Holdings, Inc .... and [Nurse Martinez] which is the subject matter of the action brought by Nelson Francois....

Vilvar v. Deutsche Bank Trust Co., --- So.3d ----, 2011 WL 6373035 (Fla. 4th DCA 2011).
Motions to vacate final judgments as the result of fraud and pursuant to Florida Rule of Civil Procedure 1.540 (b)(3) must specify the purported fraud with specificity.

Katzman v. Rediron Fabrication, Inc., --- So.3d ----, 2011 WL 6373037 (Fla. 4th DCA 2011).
On rehearing, the Fourth District clarifies its prior position and holds that financial discovery of a person who may testify as an expert witness is not limited, in the property circumstances, to the matters set forth in Florida Rule of Civil Procedure 1.280 (b)(4)(A).

U.S. ex rel. Capital Computer Group, LLC v. Gray Ins. Co., Slip Copy, 2011 WL 6412090 (11th Cir. 2011).
The test for determining whether a party is a "subcontractor" for Miller Act purposes is the "substantiality and importance" of the relationship between the prime contractor and the subcontractor.

Grigsby & Associates, Inc. v. M Securities Inv., --- F.3d ----, 2011 WL 6371880 (11th Cir. 2011).
Under United States Supreme Court precedent, the questions of whether parties are bound by the arbitration provision and whether the arbitration clause applies to the controversy are presumptively for courts to decide, while procedural questions and questions of waiver, delay and similar defenses are for the arbitrator. Notwithstanding, allegations of waiver based on a party's litigation conduct are for courts to decide.

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Kissimmee Health Care Associates v. Garcia, --- So.3d ----, 2011 WL 6843009 (Fla. 5th DCA 2011).
Pre-suit mediation is not a condition precedent to filing suit under Fla. Stat. § 400.0233 (1) (nursing home negligence statute).

Tranquil Harbour Development, LLC v. BBT, LLC, --- So.3d ----, 2011 WL 6851194 (Fla. 1st DCA 2011).
Pursuant to Fla. Stat. § 718.104 (4)(e), a surveyor's certificate of substantial completion is necessary before units can be conveyed to purchasers so recording the certificate (and not issuance of certificate of occupancy) determines whether units are "substantially completed" for contract and legal purposes.

Department of Revenue v. Ruehl No. 925, LLC, --- So.3d ----, 2011 WL 6851275 (Fla. 1st DCA 2011).
Parties can provide in a lease that the "total rent" to be charged does not include the cost of leasehold improvements, and thus, no tax need be paid on the leasehold improvements.

Giordano v. Romeo, --- So.3d ----, 2011 WL 6782933 (Fla. 3d DCA 2011).
Under the Communications Decency Act and Florida Supreme Court precedent, a website enjoys complete immunity for the defamatory postings of third parties on its website.

Globetec Const., LLC v. Custom Screening & Crushing, Inc., --- So.3d ----, 2011 WL 6783057 (Fla. 3d DCA 2011).
Non-signatories to contracts cannot neither compel arbitration under the contract's arbitration provisions nor bring an action for fraudulent inducement into a contract.

Goldblatt v. C.P. Motion, Inc., --- So.3d ----, 2011 WL 6783565 (Fla. 3d DCA 2011).
Liquidated damages clause in the non-compete provisions of a settlement agreement constitutes a penalty and is unenforceable when damages are ascertainable.

American Safety Cas. Ins. Co. v. Mijares Holding Co., LLC, --- So.3d ----, 2011 WL 6783659 (Fla. 3d DCA 2011).
Neither the risk of inconsistent verdicts in two jurisdictions nor the splitting of causes of action are sufficient reasons to not enforce a valid forum selection clause.

In re United Tile & Stone, Inc., Slip Copy, 2011 WL 6846216 (11th Cir. 2011).
Mutual mistakes cancel contracts against all except third party bona fide purchasers without notice of the mistake.