

Real Property and Business Litigation Report
Volume IX, Issue 1
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Manuel Farach

Buehrle v. City of Key West, --- F.3d ----, 2015 WL 9487716 (11th Cir. 2015).
Tattoos are a form of speech protected by the First Amendment, and governmental zoning prohibiting tattoo parlors must meet comply with First Amendment requirements.

HDE, Inc. v. Bee-Line Supply Company, Inc., --- So. 3d ----, 2015 WL 9491810 (Fla. 5th DCA 2015).

Sanctions may be awarded for failure to comply with appellate mediation orders.

Hiles v. Americare Home Therapy, Inc., --- So. 3d ----, 2015 WL 9491847 (Fla. 5th DCA 2015).

Referral sources are not a legitimate business interest, i.e., are not protected under Florida Statute section 542.335; conflict certified with *Infinity Home Care, L.L.C., v. Amedisys Holding, LLC*, 40 Fla. L. Weekly D2589b (Fla. 4th DCA Nov. 18, 2015).

The Lake Hamilton Lakeshore Owners Association, Inc. v. Neidlinger, --- So. 3d ----, 2015 WL 9487589 (Fla. 2d DCA 2015).

The activities of a landowner may constitute a judicially recognized nuisance even if the activity is permitted by statute, regulation or ordinance.

New Dirt, Inc. v. Harrison, --- So. 3d ----, 2015 WL 9491879 (Fla. 5th DCA 2015).

A money lent claim based on an oral agreement is not barred by the Statute of Frauds unless it was impossible to repay the money in less than one year.

Ramos v. Cach, LLC, --- So. 3d ----, 2015 WL 9491850 (Fla. 5th DCA 2015).

Florida Statute section 559.715 (creditor assignees must give notice of the debt being assigned to them) does not establish a private cause of action.

Musa v. Wells Fargo Delaware Trust Co., --- So. 3d ----, 2015 WL 9584864 (Fla. 1st DCA 2015).

With narrow exception, removal to federal court divests a state court of jurisdiction and any state court judgment rendered while removal is pending is void.

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Messer v. Sander, -- So. 3d ----, 2016 WL 56338 (Fla. 1st DCA 2016).

Attorneys' fees are awardable under Florida Statute 704.01 for "unreasonable refusal to comply" to allow a statutory way of necessity under Florida Statute section 704.04.

Robert Rausschenberg Foundation v. Grutman, --- So. 3d ----, 2016 WL 56456 (Fla. 2d DCA 2016).

The factors in *West Coast Hospital Ass'n v. Florida National Bank of Jacksonville*, 100 So. 2d 807 (Fla. 1958), and not the lodestar method of *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), modified, *Standard Guaranty Insurance Co. v. Quanstrom*, 555 So. 2d 828 (Fla. 1990), are used to determine the calculation of a trustee's fees when a testamentary trust did not contain a provision specifying compensation.

Ross v. Prospectplus!, Inc., --- So. 3d ----, 2016 WL 56467 (Fla. 2d DCA 2016).

A party who moves for and receives an order confirming her unsuccessful arbitration award is not entitled to appeal the arbitration award.

Overseas Investment Group v. Wall Street Electronica, Inc., --- So. 3d ----, 2016 WL 64477 (Fla. 4th DCA 2016).

A contract that grants one party discretion in exercising a right is subject to the implied covenant of good faith, and whether the exercise is proper is a factual question.

Purificato v. Nationstar Mortgage, LLC, --- So. 3d ----, 2016 WL 64331 (Fla. 4th DCA 2016).

Florida Statute 673.2041(1) merely requires that an allonge be affixed (not "firmly affixed" as in previous versions of the statute) to the promissory note, and an allonge that contains evidence of a clear intent that the note and the allonge were to be physically attached to each other is sufficient to establish a valid indorsement under the Uniform Commercial Code.

Sill v. JP Morgan Chase Bank, N.A., --- So. 3d ----, 2016 WL 67256 (Fla. 4th DCA 2016).

A new notice of default need not be sent in a foreclosure case when the previous dismissal was without prejudice.

Onewest Bank, FSB v. Alessio, --- So. 3d ----, 2016 WL 67375 (Fla. 4th DCA 2016).

The striking of all of a party's witnesses just before trial may have the effect of a dismissal, and an involuntary dismissal under these circumstances must comply with the *Kozel v. Ostendorf*, 629 So. 2d 817, 818 (Fla. 1993), factors.

Popescu v. Laguna Master Ass'n, Inc., --- So. 3d ----, 2016 WL 72531 (Fla. 4th DCA 2016).

An objection to foreclosure sale need not be filed prior to moving to vacate a sale pursuant to Florida Rule of Civil Procedure 1.540 (b). Likewise, the right of redemption is exercised by paying the amount due and notice of the exercise is not necessary.

Miller v. Washington Mutual Bank, --- So. 3d ----, 2016 WL 72535 (Fla. 4th DCA 2016).

Both spouses must be foreclosed when property is owned by both husband and wife.

One South Ocean Drive 2000, Ltd. v. One Ocean Boca, LLC, --- So. 3d ----, 2016 WL 72550 (Fla. 4th DCA 2016).

A receiver remains liable for breaches of fiduciary duty committed during their term of engagement, and may be sued even though discharged.

Blake v. Ann-Marie Giustibelli, P.A., --- So. 3d ----, 2016 WL 75000 (Fla. 4th DCA 2016).

Internet postings are not pure opinion, and may constitute defamation as libel per se still exists in Florida for non-media defendants.

David v. Textor, --- So. 3d ----, 2016 WL 64743 (Fla. 4th DCA 2016).

On-line postings, especially regarding business matters, are not directed at specific persons and cannot constitute "cyberstalking" or "harassment" for purposes of Florida Statute sections 784.046 and 784.0485.

Lucky Nation, LLC v. Al-Maghazchi, --- So. 3d ----, 2016 WL 67396 (Fla. 4th DCA 2016).

Collateral estoppel does not bar a quiet title action when the titleholder did not participate in the prior action, i.e., there is no identity of parties.

Orange County, Florida v. Buchman, --- So. 3d ----, 2016 WL 81661 (Fla. 5th DCA 2016).

A jury in an eminent domain proceeding is prohibited from making an independent determination of value, and must find a value within the ranges of expert testimony.

Hendricks v. Dept. of Business and Professional Regulation, --- So. 3d ---- 2016 WL 90968 (Fla. 5th DCA 2016).

The intervening bankruptcy of a contracting party does not invalidate an otherwise valid claim on the Florida Real Estate Recovery Fund.

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In re Amendments to Florida Rules of Civil Procedure, --- So. 3d ----, 2016 WL 164134 (Fla. 2016).

The Florida Supreme Court approves modifications to the rules for filing residential mortgage foreclosure complaints so as to implement the changes required by the adoption of Florida Statute section 702.015, including requiring plaintiffs to state the basis for standing in the foreclosure complaint itself.

McCalla v. E.C. Kenyon Construction Company, Inc., --- So. 3d ----, 2016 WL 166732 (Fla. 1st DCA 2016).

Florida Statute section 726.108 (fraudulent conveyances) permits money damages against both the fraudulent transferor and the fraudulent transferee.

Cleveland v. Crown Financial, Inc., --- So. 3d ---- 2016 WL 167735 (Fla. 1st DCA 2016).

A foreclosing lender is limited to obtaining a judgment in the maximum amount set forth in its mortgage and corresponding future advance clause, notwithstanding it loaned monies in excess of the maximum amount in the clause.

Bonafide Properties, As Trustee Only Under 14329 Village View Dr Land Trust v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 145809 (Fla. 2d DCA 2016).

A purchaser who buys real property during a pending foreclosure in which a lis pendens has been filed is not entitled to intervene. Judge Altenbernd's concurrence states that while "[t]here is nothing inherently wrong with large profits in a market economy," present economic factors require further study to protect the right of redemption of borrowers when such purchasers pendent lite have no economic incentive to reduce the final judgment amount, and accordingly, the redemption dollar amount.

Deutsche Bank National Trust Company, As Indenture Trustee, For New Century Home Equity Loan Trust 2005-2 v. Quinon, --- So. 3d ----, 2016 WL 166648 (Fla. 2d DCA 2016).

A party alleging failure of a condition precedent must identify the condition precedent and also how the opposing party failed to satisfy its requirements.

Ridge Grove Condominium Association, Inc. v. Misserville, --- So. 3d ----, 2016 WL 166651 (Fla. 2d DCA 2016).

Florida Statutes section 718.111 (12)(c) allows a condominium association to adopt rules, including the requirement for an appointment, when providing members the right to copy association records.

Moriber v. Dreiling, --- So. 3d ----, 2016 WL 145968 (Fla. 3d DCA 2016).

A party may not rely upon statements made during the litigation and made by litigation adversaries to establish new fraud claims against the adversaries.

Save Calusa Trust v. St. Andrews Holdings, Ltd., --- So. 3d ----, 2016 WL 145997 (Fla. 3d DCA 2016).

A restrictive covenant imposed by government as part of development order is not subject to and cannot be extinguished by the Marketable Record Title Act.

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Campbell-Ewald Co. v. Gomez, --- S.Ct. ----, 2016 WL 228345 (2016).

An offer of settlement to a named class action plaintiff does not moot the case.

Brindise v. U.S. Bank, N.A., Case No. 2D14-3316 (Fla. 2d DCA January 20, 2016).

The giving of notice of the assignment of a debt to a new creditor as required under Florida Statute section 559.715 is not a condition precedent to filing suit on the debt.

Bryant v. Wells Fargo, Case No. 3D14-78 (Fla. 3d DCA January 20, 2016).

A post-judgment writ of possession is an appealable non-final order under Florida Rule of Appellate Procedure 9.130 (a)(3)(C)(ii).

Bank of America v. Cadet, --- So. 3d ---- 2016 WL 231890 (Fla. 3d DCA 2016).

Substantial, not strict, compliance with the condition precedent of Paragraph 22 of the standard mortgage is all that is required under the mortgage.

Alfonso v. JP Morgan Chase Bank, N.A., Case No. 4D13-4713 (Fla. 4th DCA January 20, 2016).

A servicer who is not the holder of the note may have standing to commence a foreclosure action, but evidence must be presented demonstrating the real party in interest granted the servicer authority to enforce the note.

SVI Capital, LLC v. Coon, -- So. 3d ----, 2016 WL 231480 (Fla. 4th DCA 2016).

A mortgagee's submission of an original note and mortgage into evidence in an earlier proceeding satisfies the Best Evidence Rule such that the original note and mortgage need not be reintroduced into evidence in a later deficiency proceeding.

Kotoura v. Stern, Case No. 4D15-1321 (Fla. 4th DCA January 20, 2016).

A defendant may commit a tortious act in Florida through telephonic, written or electronic communications sent into Florida, but the cause of action must arise from the communication.

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Neapolitan Enterprises, LLC v. The City of Naples, Case No. 2D14-4219 (Fla. 2d DCA January 29, 2016).

Res judicata and collateral estoppel can be applied in administrative land use decisions, but the record must demonstrate a prior decision on the merits.

Hayes v. Norman Harris Services, Inc., Case No. 2D15-1838 (Fla. 2d DCA January 29, 2016).

It is error for a trial court to refuse to conduct an evidentiary hearing on whether real property is exempt from levy as being the homestead of the judgment debtors.

HSBC Bank USA, N.A. v. Biscayne Point Condominium Association, Inc., Case No. 3D14-2980 (Fla. 3d DCA January 27, 2016).

Appellee and its counsel ordered to show cause why it should not be sanctioned for frivolous proceedings wherein a junior lien claimant contends it has priority over a prior recorded mortgage.

Artiles v. Pino, Case No. 3D15-1061 (Fla. 3d DCA January 27, 2016).

A mortgage covenant stating that the owner waives the right to pursue damages against tenants up to the amount of the mortgage is enforceable.

Glasswall, LLC v. Monadnock Construction, Inc., Case No. 3D15-1652 (Fla. 3d DCA January 27, 2016).

While the issue of arbitrability of claims is typically for the court to decide, the parties may agree in their arbitration agreement or pursuant to rules adopted in their arbitration agreement that the arbitrator may decide the issue of arbitrability.

Prewitt Enterprises, LLC v. Tommy Constantine Racing, LLC, Case. No. 4D11-4208 (Fla. 4th DCA January 27, 2016).

A misrepresentation of a present fact is sufficient to state a cause of action for fraudulent inducement, notwithstanding the abolition of the Economic Loss Rule as applied to contracts.

Sandefur v. RVS Capital, LLC, Case No. 4D14-543 (Fla. 4th DCA January 27, 2016).

A guarantee, like a mortgage, follows the note for assignment purposes.

Milce v. Wells Fargo Bank, N.A., Case No. 4D14-3744 (Fla. 4th DCA January 27, 2016).

A trial court may not stay a subsequent proceeding for failure to pay costs of the prior proceeding unless there has been an order liquidating the costs of the prior proceedings and a failure to pay those costs.

Cornerstone Investment Funding, LLC v. Painted Post Group, Inc., Case No. 4D15-1907 (Fla. 4th DCA 2016).

The mere failure to pay a debt due in Florida is not sufficient to establish minimum contacts.

Jallili v. Knightsbridge Village Homeowners Association, Inc., Case No. 4D15-2036 (Fla. 4th DCA January 27, 2016).

A second real property litigation action filed when a prior action has been filed on the same property together with a *lis pendens* is void.

Bank of New York Mellon v. Johnson, Case No. 5D14-3626 (Fla. 5th DCA January 29, 2016).

A default letter that substantially complies with required conditions precedent is not defective because it "might lead to confusion." Additionally, the Fifth District re-affirms the procedures employed by *Bank of New York v. Calloway*, 157 So. 3d 1064 (Fla. 4th DCA 2015).

Hidden Ridge Condominium Homeowners Association, Inc. v. Onewest Bank, N.A., Case No. 5D14-3727 (Fla. 5th DCA January 29, 2016).

A "certification or declaration that complies with sections 90.803(6)(c) and 90.902(11)" may be used to admit business records, but must comply with all foundational requirements if the certifying party did not prepare the business records.

Brown v. M & T Bank, Case No. 5D15-1397 (Fla. 5th DCA January 29, 2016).

A prior dismissal for lack of standing does not operate as an adjudication on the merits for *res judicata* and collateral estoppel purposes.

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Palmer Ranch Holdings, Ltd. v. Commissioner of Internal Revenue, --- F.3d ----, 2016 WL 453975 (11th Cir. 2016).

Valuation of conservation easements for tax purposes can be based on the comparable-sales method.

Vista Marketing, Inc. v. Burkett, --- F.3d ----, 2016 WL 425165 (11th Cir. 2016).

The Stored Communications Act, 18 U.S.C. §§ 2701-2712, requires a finding of actual damages before statutory damages can be awarded.

Bailey v. St. Louis., --- So. 3d ----, 2016 WL 403168 (Fla. 2d DCA 2016).

While a plaintiff generally may not recover disgorgement damages if any portion of the profits is attributable to the defendant's "special or unique efforts . . . other than those for which he is duly compensated," "[a]ggressive and enterprising management activities may break the causal chain between the fraud and the profits."

Corrigan v. Bank of America, N.A., --- So. 3d ---- 2016 WL 455718 (Fla. 2d DCA 2016).

The Second District recedes from the position that standing may be established at the time an amended complaint is filed.

Blicht v. Freedom Mortgage Corporation, --- So. 3d ---- 2016 WL 455737 (Fla. 2d DCA 2016).

Proof of adequate security for reestablishment of a lost promissory note is not an element required to prove the cause of action but a post-proof condition for entry of the final judgment.

Gary v. Mark Hall Homes, Inc., --- So. 3d ----, 2016 WL 459436 (Fla. 2d DCA 2016).

The damages for constructions defects is calculated as:

[t]he difference between the value that the product contracted for would have had and the value of the performance that has been received by the plaintiff, if construction and completion in accordance with the contract would involve unreasonable economic waste. There are numerous cases, however, in which the value of the finished product is much less than the cost of producing it after the breach has occurred. Sometimes defects in a complete structure cannot be physically remedied without tearing down and rebuilding, at a cost that would be imprudent and unreasonable. The law does not require damages to be measured by a method requiring such economic waste. If no such waste is involved, the cost of remedying the defect is the amount awarded as compensation for failure to render the promised performance.

Parker v. Parker, --- So. 3d ----, 2016 WL 404636 (Fla. 4th DCA 2016).

Affected parties may sue to set aside the inter vivos transfers of a decedent's property without joining the decedent's estate.

Wells Fargo Bank, N.A. v. Balkisoon, --- So. 3d ----, 2016 WL 403311 (Fla. 4th DCA 2016).

A prior servicer's records can be admitted by satisfying the foundational requirements of the Business Records Exception to the Hearsay Rule; *Yang v. Sebastian Lakes Condominium Ass'n*, 123 So. 3d 617 (Fla. 4th DCA 2013), and *Glarum v. LaSalle Bank National Ass'n*, 83 So. 3d 780 (Fla. 4th DCA 2011), are distinguished as the proponents of business records in those cases did not satisfy the foundational requirements.

Cartwright v. LJL Mortgage Pool, LLC, --- So. 3d ----, 2016 WL 404074 (Fla. 4th DCA 2016).

In order to overcome an affirmative defense of lack of standing, affidavits in support of a motion for summary judgment must expressly state the plaintiff owned and held the note at the time of filing suit, and if standing is by blank indorsement, that the blank indorsement was on the note at the time of filing suit.

Cox v. Village of Tequesta, --- So. 3d ----, 2016 WL 403252 (Fla. 4th DCA 2016).

In deciding a motion to compel arbitration, a trial court is limited to inquiring "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." Further, "waiver" only occurs by actively participating and seeking relief in a lawsuit.

Osborne v. Emmer, --- So. 3d ----, 2016 WL 424643 (Fla. 4th DCA 2016).

Extensive delay alone can warrant denial of class certification.

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Hilton v. Pearson, --- So. 3d ----, 2016 WL 517105 (Fla. 1st DCA 2016).

The First District adopts the Fourth District's opinion in *Harris v. Aberdeen Property Owners Association, Inc.*, 135 So. 3d 365 (Fla. 4th DCA 2014), and holds that suits challenging amendments to restrictive covenants must be filed within five years of the date that the amendment is recorded.

Angelini v. HSBC Bank USA, N.A., --- So. 3d ----, 2016 WL 519533 (Fla. 4th DCA 2016).

The holder of a promissory note is not the same as the owner of the note, and for standing purposes, a holder must establish that it held the note at the time of filing of the suit.

Whetstone v. City of St. Augustine, --- So. 3d ----, 2016 WL 542870 (Fla. 5th DCA 2016).

Spanish colonial law extended ownership of land bordering navigable waters to the high, not the low, water mark. Additionally, a landowner cannot grant additional land to themselves and any deed purporting to do so is void.

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Culverhouse v. Paulsen & Co, Inc., Case No. 14-14526 (11th Cir. 2016).

The Eleventh Circuit receives the answer posed to the Delaware Supreme Court and adopts the opinion of the Delaware Supreme Court that whether a claim alleged in a complaint is direct or derivative turns solely on “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” The court must review the complaint and determine that the duty owed was to the investor, not the entity, and that the plaintiff can show injury without showing injury to the entity.

Verandah Development, LLC v. Gualtieri, --- So. 3d ---, 2016 WL 618904 (Fla. 2d DCA 2016).

A private club may not unilaterally amend the refund policy contained in its Membership Agreement if the Membership Agreement does not reserve the right for unilateral amendment, even if the Membership Agreement contains the following language:

. . . to be bound by the terms and conditions [of the Membership Plan and Rules and Regulations] as the same may be amended from time to time by the Club or [Verandah] and irrevocably agree to fully substitute the membership privileges acquired pursuant to the Club Membership Plan and Rules and Regulations for any present or prior rights in or to use of the Club Facilities.

Francois v. University of Miami, --- So. 3d ----, 2016 WL 626145 (Fla. 3d DCA 2016).

An independent action may be brought to reform a release which inadvertently released more parties than releaser intended to release.

Gallimore v. Bank of America, --- So. 3d ----, 2016 WL 625237 (Fla. 4th DCA 2016).

A party who is not the named payee in the note must present evidence at trial that, at the time suit was filed, the note bore a special indorsement in favor of the initial plaintiff, a blank indorsement, or a transfer of the note in compliance with the Uniform Commercial Code that entitles the initial plaintiff to an indorsement.

Barnett v. U.S. Bank, National Association, --- So. 3d ----, 2016 WL 625365 (Fla. 4th DCA 2016).

Possession of a promissory note, without more, is not sufficient to prove standing.

Petrovsky v. HSBC Bank, USA, --- So. 3d ----, 2016 WL 625385 (Fla. 4th DCA 2016).

Prevailing party attorney's fees cannot be proven at trial through affidavits, and instead must be proven at hearing.

Chelminsky v. Branch Banking & Trust Company, --- So. 3d ----, 2016 WL 625401 (Fla. 4th DCA 2016).

A trial court should rule on motions for relief from technical admissions prior to trial, and should likewise not disregard the admissions based on trial evidence.

McNair v. Nationstar Mortgage, LLC, Case No. 5D14-4140 (Fla. 5th DCA 2016).

An affidavit based on the Business Records Exception to the Hearsay Rule must do more than merely state the elements of the Exception; it must demonstrate the background of how the affiant came to know the accuracy of the information.

Christiana Trust v. Taveras, Case No. 5D15-680 (Fla. 5th DCA 2016).

The Fifth District re-affirms its prior holdings following *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004).

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

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

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

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

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

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

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

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

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

The Florida Rules of Civil Procedure do not authorize motions for rehearing on orders determining Rule 1.540 (b) (4) motions.

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

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

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

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

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

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

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

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

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Fried v. Stieffel Laboratories, Inc., Case No. 14-14790 (11th Cir. 2016).

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 do not prohibit a mere failure to disclose information, a claimant must additionally prove that defendants omitted a material fact necessary to keep other statements from being materially misleading.

Evanto v. Federal National Mortgage Ass'n, Case No. 15-11450 (11th Cir. 2016).

Failure to provide a payoff statement is not a Truth in Lending Act violation that is “apparent on the face of the disclosure statement provided in connection with [a mortgage] transaction.” Assignees of the original lender are not liable for violations not apparent on the face of the disclosure statement, and accordingly, a servicer is not liable for the failure to provide the payoff statement.

Mlinar v. United Parcel Service, Case No. SC14-54 (Fla. 2016).

A state law claim against an interstate carrier is typically preempted by the Carmack Amendment to the Interstate Sales Act unless the claim alleges conduct or harm separate and distinct from the loss or damage of the goods.

Dandar v. Church of Scientology Flag Service Organization, Inc., Case No. 2D14-1511 (Fla. 2d DCA 2016).

Unless a court enters an order dismissing a case based on a settlement agreement presented to and incorporated or relied upon by the court, a dismissal forever terminates a court’s jurisdiction over the parties and the case.

Siegle v. Lee County, Case No. 2D15-3293 (Fla. 2d DCA 2016).

Laches can be raised as defense in code enforcement actions.

Gold King Apartments v. Dumornay, Case No. 3D14-2334 (Fla. 3d DCA 2016).

The appeal time runs from date of original judgment when there is no material change between the original and amended final judgment.

Yampol v. Schindler Elevator Corporation, Case No. 3D14-1338 (Fla. 3d DCA 2016).

The defendant is generally the prevailing party when the plaintiff voluntarily dismisses an action, including under Florida Statutes Chapter 718.

Edwards v. Reverse Mortgage Solutions, Case No. 3D14-3621 (Fla. 3d DCA 2016).

A spouse is a “borrower” for reverse mortgage purposes when she signs the mortgage, even if she does not sign the promissory note.

Onewest Bank, FSB v. Nunez, Case No. 4D13-4817 (Fla. 4th DCA 2016).

Reference to, as opposed to incorporation of or taking subject to, a simultaneously issued mortgage does not make a promissory note non-negotiable.

American Management Services, Inc. v. Merced, Case No. 4D15-1385 (Fla. 4th DCA 2016).

Upon finding there are disputed factual issues regarding enforcement of an arbitration agreement, the trial court must expeditiously set a hearing to decide the dispute.

Brock v. Garner Window and Door Sales, Inc., Case No. 5D14-1472 (Fla. 5th DCA 2016).

A suit for construction defects is governed by the four year statute of limitations for construction defects, even if the contractor was unlicensed.

Meritage Homes of Florida, Inc. v. Lake Roberts Homeowners Association, Case No. 5D14-2019 (Fla. 5th DCA 2016).

The homeowners at a members' meeting, not the developer at a board meeting, may waive association reserves pursuant to Florida Statute section 720.303 (6)(f).

Griffith v. Ramzey's A Plus, Inc., Case No. 5D15-486 (Fla. 5th DCA 2016).

A court need not set forth the *Kozel v. Ostendorf* factors when assessing sanctions against an attorney under Florida Rule of Civil Procedure 1.380 (a)(4) for improperly instructing a witness not to answer questions at a deposition.

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Americold Realty Trust v. Conagra Foods, Inc., --- S.Ct. ----, 2016 WL 854159 (2016).

Unincorporated entities possess the citizenship, for diversity purposes, of all their members.

Williams v. Victim Justice, P.C., --- So. 3d ----, 2016 WL 886563 (Fla. 2d DCA 2016).

A prejudgment “motion to preserve assets” is a motion for a preliminary injunction, and must meet all the requirements of a motion for a preliminary injunction.

Rautenberg v. Falz, Case No. 2D15-2938 (Fla. 2d DCA 2016).

A complaint seeking long arm jurisdiction for a tort, including a business tort, must allege a basis for jurisdiction by either tracking statutory language without supporting facts or alleging specific facts to show that the defendant's actions fall within at least one of the subsections of Florida Statute section 48.193. If plaintiff meets this pleading requirement, the defendant then has the burden to file a legally sufficient affidavit or other sworn proof to contest the jurisdictional allegations. The affidavit need not contest the ultimate allegations of the complaint but only the jurisdictional allegations. If the affidavit contests the jurisdictional allegations, then the burden shifts back to plaintiff to prove by evidence (affidavit or other evidence) the acts occurred in Florida.

Houri v. Boaziz, Case No. 3D14-1836 (Fla. 3d DCA 2016).

While the relationship between joint venturers is dictated by fiduciary responsibilities, the relationship between members of limited liability companies is dictated by the statutory duties of good faith and fair dealing and those other requirements set forth by any operating agreements.

Federal Nat. Mortg. Ass'n v. Sanchez, --- So. 3d ----, 2016 WL 899861 (Fla. 4th DCA 2016).

A foreclosure conducted with an incorrect legal description requires the vacating of the foreclosure judgment and sale, and further requires putting the parties back into their “original status.” However, dismissal of the foreclosure lawsuit is not required.

Lopez v. JP Morgan Chase, N.A., --- So. 3d ----, 2016 WL 899873 (Fla. 4th DCA 2016).

The Fourth District adopts the “substantial compliance” test for conditions precedent.

Ortiz v. PNC Bank, N.A., --- So. 3d ----, 2016 WL 889347 (Fla. 4th DCA 2016).

The attachment of a copy of the note to a complaint does not conclusively and necessarily prove that the lender had actual possession of the note at the time the complaint was filed, but establishes a rebuttable presumption sufficient to defeat a motion for involuntary dismissal.

Lane v. Cunniffe, --- So. 3d ----, 2016 WL 892358 (Fla. 4th DCA 2016).

In order to determine the homestead exemption to sale proceeds, a trial court must determine how much of the proceeds the seller intended, prior to and at the time of the sale, to reinvest in another homestead within a reasonable time and how much of the proceeds Seller had kept separate for that purpose.

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Companion Property & Casualty Insurance Co. v. Category 5 Management Group, LLC, --- So. 3d ----, 2016 WL 1051790 (Fla. 1st DCA 2016).

A stranger to a contract that is not an intended third-party beneficiary has no standing to advance arguments regarding interpretation of the contract.

Bugware, Inc. v. Williams, --- So. 3d ----, 2016 WL 1051827 (Fla. 1st DCA 2016).

Even if the signature on a contract is preceded by the word “by” and accompanied by language identifying the signer as a corporate officer, the contract must be read as a whole as other parts of the contract may indicate agreement to bind both the person individually and the entity.

Blinn v. Florida Power and Light Co., Case No. 2D14-1636 (Fla. 2d DCA 2016).

A perpetual easement may not be eliminated by amending restrictive covenants to not include the easement; the easement holder must consent to its easement being eliminated.

Geweys v. Ventures Trust 2013-I-H-R, --- So. 3d ----, 2016 WL 1038616 (Fla. 2d DCA 2016).

The promissory note, not just the mortgage, must be assigned, transferred or negotiated to a substituted plaintiff to confer the original plaintiff’s standing on the substituted plaintiff.

Santiago v. Mauna Loa, --- So. 3d ----, 2016 WL 1065620 (Fla. 3d DCA 2016).

A court is limited to the four corners of the complaint when deciding a motion to dismiss, and may not consider related matters even if a related case had been consolidated with the reviewed case at one time.

Reyes v. Claria Life & Health Insurance Co., --- So. 3d ----, 2016 WL 1039131 (Fla. 3d DCA 2016).

A Florida court, upon determining that a forum selection clause in a contract is controlling, must dismiss the action for refile in the selected forum and must not take further action (such as determining arbitrability of the case).

Marathon Sunsets, Inc. v. Coldiron, --- So. 3d ----, 2016 WL 1047778 (Fla. 3d DCA 2016).

The Doctrine of Impossibility of Performance applies to deed restrictions, including restrictions requiring affirmative action such a rebuilding a torn-down fence.

Mirzataheri v. FM East Developers, LLC, --- So. 3d ----, 2016 WL 1039124 (Fla. 3d DCA 2016).

So long as all owners of the property join in the sales contract, the sale of homestead property can be enforced through specific performance.

Cornerstone Investment Funding, LLC v. Painted Post Group, Inc., --- So. 3d ----, 2016 WL 1065973 (Fla. 4th DCA 2016).

The obligation to make payments on a debt in the State of Florida is, without more, insufficient to confer long-arm jurisdiction under Florida Statute 48.193.

Shaffer v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 1062807 (Fla. 5th DCA 2016).

Florida Statute section 702.06 permits a trial court, in the foreclosure action itself, to limit a plaintiff's right to a deficiency judgment, but the legal or equitable reasons for doing so must be set forth in the order or judgment limiting deficiency.

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Bishop v. Ross, Earle & Bonan, P.A., Case No. 15-12585 (11th Cir. 2016).

A notice to a debtor under the Fair Debt Collection Practices Act (F.D.C.P.A.) must inform the debtor that any disputes must be in writing. Likewise, a communication to a debtor's attorney qualifies as a communication to the debtor herself.

The Original Brooklyn Water Bagel Co., Inc. v. Bersin Bagel Group, LLC, Case No. 15-11748 (11th Cir. 2016).

The Anti-Injunction Act, 28 U.S.C. § 2283, restricts the ability of the federal court to limit the actions a party may take in state court.

Hyman v. Daoud, Case No. 3D14-2984 (Fla. 3d DCA 2016).

A trial judge has broad discretion under the Florida Declaratory Action Act, including the power to determine the ownership of business entities and percentages of ownership.

Verena Von Mitschke-Collande v. Skipworth Properties Limited, Case No. 3D15-1501 (Fla. 3d DCA 2106).

Upon a defendant not being served within 120 days of filing of the complaint, the trial court has three options: "(1) direct that service be effected within a specified time; (2) dismiss the action without prejudice; or (3) drop [the unserved] defendant as a party." Where good cause has been shown for the untimely service, the trial court has no discretion other than to extend the time for service. Where the statute of limitations has run, discretion should normally be exercised in favor of extending the time for service of process.

Deutsche Bank National Trust Company v. Altos Del Mar (7701 Collins Ave) LLC, Case No. 3D15-1647 (Fla. 3d DCA 2016).

A trial court may not grant an involuntary dismissal before the plaintiff has finished presenting its case-in-chief.

Endsley v. Broward County, Case No. 4D14-3997 (Fla. 4th DCA 2016).

Receipt of multiple homestead exemptions is specifically prohibited by the language of Article VII, section 6(b) of the Florida Constitution and Florida Statute section 196.031(5).

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DeGazelle Group, Inc. v. Tamaz Trading Establishment, --- F.3d ----, 2016 WL 1238239 (11th Cir. 2016).

Service of process by Federal Express is not good service unless service in this manner is first authorized by the court.

F.E.B. Corp. v. United States of America, -- F.3d ----, 2016 WL 1179951 (11th Cir. 2016).

The Quiet Title Act (“QTA”), 28 U.S.C. § 2409a, waives sovereign immunity and permits a private claimant to assert quiet title actions against the United States. However, the QTA is subject to a 12 year statute of limitations and further subject to numerous exceptions that limit its applicability.

Newman v. Ocwen Loan Servicing, LLC, --- So. 3d ----, 2016 WL 1235548 (Fla. 2d DCA 2016).

Remittitur, instead of reversal, may be appropriate remedy for collateral damage amounts in a foreclosure judgment that are unsupported by evidence.

National Auto Service Centers, Inc. v. F/R 550, LLC, --- So. 3d ----, 2016 WL 1235622 (Fla. 2d DCA 2016).

A cause of action under the Florida Uniform Fraudulent Transfer Act (FUFTA), § 726.105 *et seq.*, accrues upon discovery of the facts underlying the fraudulent transfer. Furthermore, FUFTA is statute of repose and thus its time limitations cannot be extended based on alleged acts constituting an equitable estoppel.

Catalina West Homeowners Ass’n, Inc. v. Federal Nat. Mortg. Ass’n, --- So. 3d ----, 2016 WL 1235728 (Fla. 3d DCA 2016).

The “safe harbor” provisions of Florida Statute section 720.3085 do not permit a community association to charge a foreclosing lender for interest and attorney’s fees.

Ortiz v. PNC Bank, N.A., --- So. 3d ----, 2016 WL 1239760 (Fla. 4th DCA 2016).

The attachment of a copy of the note to a complaint does not conclusively and necessarily prove that the lender had actual possession of the note at the time the complaint was filed, but establishes a rebuttable presumption sufficient to defeat a motion for involuntary dismissal if the lender who filed suit and lender at trial are the same and there are no additional evidentiary issues surrounding the note.

Cassell v. Green Planet Servicing, LLC, --- So. 3d ----, 2016 WL 1261119 (Fla. 5th DCA 2016).

A witness cannot testify to another business’s records unless the testifying witness can demonstrate familiarity with how the other business’s records were created.

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Rosenberg v. DVI Receivables XIV, LLC, --- F.3d ----, 2016 WL 1392642 (11th Cir. 2016).

The Federal Rules of Bankruptcy Procedure, not the Federal Rules of Civil Procedure, apply to bankruptcy cases tried by district courts.

Florida Dept. of Transp. v. Schwefringhaus, --- So. 3d ----, 2016 WL 1375699 (Fla. 2016).

State cannot invoke sovereign immunity if it agrees, by contract, to indemnify a private party.

Sorrell v. U.S. Bank Nat. Ass'n, --- So. 3d ----, 2016 WL 1360758 (Fla. 2d DCA 2016).

Evidence that plaintiff held a promissory note at the time of filing a foreclosure complaint can be either testimonial or documentary evidence, but has to be supported.

Hiller v. Phoenix Assoc. of South Florida, --- So. 3d ----, 2016 WL 1386642 (Fla. 2d DCA 2016).

The failure to commence an action against the surety of a transfer bond after a notice of contest has been served pursuant to Florida Statute section 713.24(4) eliminates the claim against the bond.

Deutsche Bank Nat. Trust Co. v. Marciano, --- So. 3d ----, 2016 WL 1385903 (Fla. 5th DCA 2016).

A purchase agreement for a note and mortgage can demonstrate standing to sue.

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Deutsche Bank Trust Company Americas v. Beauvais, --- So. 3d ----, 2016 WL 1445415 (Fla. 3d DCA 2016).

Dismissal of a mortgage foreclosure lawsuit, whether with or without prejudice, decelerates the prior acceleration and tolls the running of statute of limitations so that each missed mortgage payment is another act of breach entitling lender to foreclose.

Collazo v. HSBC Bank USA, N.A., --- So. 3d ----, 2016 WL 1445419 (Fla. 3d DCA 2016).

Lender cannot collect foreclose mortgage installment payments more than five years old.

Wells v. Halmac Development, Inc. and Hector Castro, --- So. 3d ----, 2016 WL 1445437 (Fla. 3d DCA 2016).

Seeking reconsideration of an arbitration award may subject a party to an award of Florida Statute section 57.105 fees.

MYD Marine Distributor, Inc. v. International Paint Ltd., --- So. 3d ----, 2016 WL 1445590 (Fla. 4th DCA 2016).

If the "true intent" of a suit is recovery of money damages, an award of attorney's fees under a Proposal for Settlement under Florida Statute 768.79 is available notwithstanding the entire suit has counts for relief in addition to money damages.

CitiMortgage, Inc. v. Flowers, --- So. 3d ----, 2016 WL 1446104 (Fla. 4th DCA 2016).

The requirement of *U.S. Bank National Ass'n v. Quadomain Condominium Ass'n*, 103 So. 3d 977 (Fla. 4th DCA 2012), that all interests with regard to real property have to be adjudicated in the case where the lis pendens was first filed applies only to unrecorded interests.

Rincon v. HSBC Bank, Nat'l Ass'n, --- So. 3d ----, 2016 WL 1465695 (Fla. 5th DCA 2016).

A party in possession of a note indorsed in blank which is transferred to it at time of suit has standing to foreclose.

Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC, --- So. 3d ---- 2016, WL 1465658 (Fla. 5th DCA 2016).

The Bert Harris Act, pursuant to Florida Statute section 70.001(4)(d)2, requires a circuit court to determine the public interest is not disserved when it adjusts the land use of a particular parcel.

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Manuel Farach

In Re: Standard Jury Instructions In Civil Cases—Report No. 15-01, Case No. SC15-1275 (Fla. 2016).

The Florida Supreme Court adopts new jury instructions, including new instruction on Failure to Maintain a Record.

Rivera v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 1579076 (Fla. 4th DCA 2016).

E-notes (electronic promissory notes without paper documentation) are enforceable.

Bowmar v. SunTrust Mortgage, Inc., --- So. 3d ----, 2016 WL 1600756 (Fla. 5th DCA 2016).

Judgment may not be entered in the name of a party who has assigned or sold the promissory note being foreclosed.

Deutsche Bank Nat. Trust Co. v. Alaqua Property, Case No. 5D14-4326 (Fla. 5th DCA 2016).

Promissory notes are instruments that have independent legal significance and thus are not business records that must meet the Business Records Exception.

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Manuel Farach

JBK Associates, Inc. v. Sill Bros., Inc., --- So. 3d ----, 2016 WL 1700546 (Fla. 2016).

Proceeds from the sale of a homestead are exempt from the claims of the creditors to the extent (and amount) those specific proceeds meet the following requirements:

- (1) there must be a good faith intention, prior to and at the time of the sale, to reinvest the proceeds in another homestead within a reasonable time;
- (2) the funds must not be commingled with other monies; (3) the proceeds must be kept separate and apart and held for the sole purpose of acquiring another home.

Deluca v. David M. King, C.P.A., Case No. 2D15-3122 (Fla., 2d DCA 2016).

A party impleaded under Florida Statute section 56.29 (proceedings supplementary) must be served with the impleader process in the same manner as original process; mailed process is insufficient.

C.P. Motion, Inc v. Goldblatt, -- So. 3d ----, 2016 WL 1660028 (Fla. 3d DCA 2016).

Assignment of a chose in action regarding a restrictive covenant is not prohibited by Florida Statute 542.335.

Alvey v. City of North Miami Beach, Case No. 3D14-2935 (Fla. 3d DCA 2016).

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

Giller v. Giller, --- So. 3d ----, 2016 WL 1658754 (Fla. 3d DCA 2016).

A deed to a grantee "as trustee" (with no listed beneficiaries) vests title in the grantee pursuant to Florida Statute section 689.071(1) regardless of whether or not the grantee relied on the public records in acquiring an interest in the property.

Vanguard Car Rental USA, LLC v. Suttles, --- So. 3d ----, 2016 WL 1658764 (Fla. 3d DCA 2016).

Conversion from one corporate entity to a different one is not determinative of the entity's existing rights and obligations, including for purposes of Offers of Judgment under Florida Statute section 768.79.

Federal Nat'l Mortg. Ass'n v. McFadyen, Case No. 3D15-1822 (Fla. 3d DCA 2016).

The Third District adopts the constructive possession doctrine for enforceability of negotiable instruments; including in order to reestablish lost instruments under Florida Statute section 673.3091.

Deer Valley Realty v. SB Hotel Associates LLC, --- So. 3d ----, 2016 WL 1660619 (Fla. 4th DCA 2016).

In addition to meeting the other requirements of Florida Statute section 768.79, an Offer of Judgment must state that “legal fees are part of the claim.”

City of Ft. Pierce v. Treasure Coast Marina, LC, --- So. 3d ----, 2016 WL 1660600 (Fla. 4th DCA 2016).

Municipally-owned marinas serve a public purpose and are therefore exempt from *ad valorem* taxation pursuant to Article VII, section 3(a) of the Florida Constitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Manuel Farach

Renfroe v. Nationstar Mortgage, LLC, Case No., 15-10582 (11th Cir. 2016).

A lender must respond to a borrower's notice of error under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(e)(2) ("RESPA"), by conducting a reasonable investigation of the alleged error. Damages must be pled in order to state a claim under RESPA, but overcharges will satisfy this requirement.

Michel v. Bank of New York, Case No. 2D14-3022 (Fla. 2d DCA 2016).

The Business Records Exception to the Hearsay Rule does not require a witness to have personal knowledge of a prior servicer's business practices or to participate in the lender's "boarding" process in order to admit the prior lender's documents into evidence.

Underwater Engineering Services, Inc. v. Utility Board of the City of Key West, --- So. 3d ----, 2016 WL 2731438 (Fla. 3d DCA 2016).

A contractor breaches a contract if it fails to give notification of its work (and opportunity to inspect) to an owner during the contract process and as required by the contract.

Colonnade 101 SE, Inc. v. Cordero, --- So. 3d ----, 2016 WL 2744495 (Fla. 3d DCA 2016).

A party cannot appeal a trial court order which grants the relief it requested.

Goodman v. Rose Realty West, Inc., --- So. 3d ----, 2016 WL 2744975 (Fla. 4th DCA 2016).

A real estate broker is liable for the acts of his or her sales agent in failing to disclose defects in a home which materially affects the value of home, and the broker is not insulated from liability merely because the sales agent is also the seller of the home.

Rivera v. Bank of America, Case No. 5D13-1618 (Fla. 5th DCA 2016).

A debtor who "surrenders" their real property in their bankruptcy proceedings relinquishes the property to the lender in state court foreclosure proceedings.

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Manuel Farach

Husky Int'l Electronics v. Ritz, 136 S.Ct. 1581, 2016 WL 2842452 (2016).

The “actual fraud” required for non-dischargeability under 11 U.S.C. § 523(a)(2)(A) encompasses fraud that can be effected without a false representation, e.g., fraudulent conveyance schemes,

Arizona Chemical Co. v. Mohawk Industries, Inc., --- So. 3d ----, 2016 WL 2941121 (Fla. 1st DCA 2016).

An expert testifying on lost profits must do more than make a mere assumption that defendant’s actions caused the lost profits; factors relevant to a particular case such as competition in the marketplace, an overall shift away from the product allegedly damaged, and issues regarding general damage to reputation.

Ochoa v. Koppel, --- So. 3d ----, 2016 WL 2941099 (Fla. 2d DCA 2016).

A motion to enlarge the time does not automatically toll the time to accept a proposal for settlement; conflict certified with the Fifth District’s opinion in *Goldy v. Corbett Cranes Services, Inc.*, 692 So. 2d 225 (Fla. 5th DCA 1997).

Frieri v. Capital Investment Services, Inc., --- So. 3d ----, 2016 WL 2941081 (Fla. 3d DCA 2016).

The entire contract must be considered when determining whether a corporate representative intended to be personally liable to a contract, and a person may be personally bound even if the signature block signifies a representative capacity if “the contract contains language indicating personal liability or the assumption of personal obligations.”

Wells Fargo Bank, N.A. v. Bilecki, --- So. 3d ----, 2016 WL 2894115 (Fla. 4th DCA 2016).

Movants for summary judgment must timely serve affidavits in support of their motion, an affidavit in opposition to an opposing party’s motion for summary judgment do not suffice.

United Food and Commercial v. Wal-Mart Stores, Inc., --- So. 3d ----, 2016 WL 2943255 (Fla. 5th DCA 2016).

Under certain circumstances, unions may be prohibited from trespassing on private property.

Billington v. Ginn-La Pine Island, Ltd., LLLP, --- So. 3d ----. 2016 WL 2942185 (Fla. 5th DCA 2016).

Merger/integration, waiver and “non-reliance” clauses are different, and a “non-reliance” clause will negate a cause of action for fraud in the inducement; conflict certified and the following questions certified as questions of great importance:

Did the court’s decision in *Oceanic Villas, Inc. v. Godson*, 4 So. 2d 689 (Fla. 1941), *sub silentio* overrule its decision in *Cassara v. Bowman*, 186 So. 514 (Fla. 1939)?

If *Oceanic Villas* did not overrule *Cassara*, does a merger clause such as that discussed in *Cassara* negate a claim for fraud?

Do clear and unambiguous disclaimer clauses, such as those in this case, negate or “ma[ke] incontestable” a claim for fraud as discussed in *Oceanic Villas*?

Does a clear and unambiguous non-reliance clause negate a claim for fraud, where one party alleges justifiable reliance on an extrinsic representation?

Did *Butler v. Yusem*, 44 So. 3d 102 (Fla. 2010), overrule *Fote v. Reitano*, 46 So. 2d 891 (Fla. 1950), and *Avila South Condominium Ass’n v. Kappa Corp.*, 347 So. 2d 599 (Fla. 1977), and reject Restatement (Second) of Torts § 537, by holding that reliance need not be justified to maintain a fraudulent misrepresentation claim?

If *Butler* did not overrule *Fote* or *Avila*, which standard applies in Florida, “justifiable” reliance or “reasonable” reliance?

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Manuel Farach

Johnson v. Midland Funding, LLC, Case No. 15-14116 (11th Cir. 2016).

A creditor violates the Fair Debt Collection Practices Act by filing a Proof of Claim in a debtor's bankruptcy case the creditor knows the debt to be time-barred.

Florida Dept. of Revenue v. American Business USA Corp., Case No. SC14-2404 (Fla. 2016).

Applying the four-part test of *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). the Florida Supreme Court holds that an internet business with no inventory in Florida may be taxed on its transactions (but not its items sold).

Bevilacqua v. U.S. Bank, N.A., Case No. 3D15-1684 (Fla. 3d DCA 2016).

Pursuant to Florida Statute section § 48.194(1), parties contesting service by the "central authority" under the Hague Convention must establish lack of actual notice of the proceedings or some other form of prejudice.

944 CWELT-2007 LLC v. Bank of America, N.A., Case No. 3D15-2091 (Fla. 3d DCA 2016).

A foreclosure sale may not go forward while a Rule 1.530 Motion for Rehearing remains pending and undecided.

U.S. Bank, N.A. v. Clarke, Case No. 4D14-3398 (Fla. 4th DCA 2016).

A copy of a note attached to the complaint, which note is introduced at trial in the same condition as the copy attached to the complaint creates a situation where "the combination of such evidence is sufficient to establish that the [plaintiff] had actual possession of the note at the time the complaint was filed and, therefore, had standing to bring the foreclosure action, absent any testimony or evidence to the contrary."

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Manuel Farach

United States Army Corps Of Engineers v. Hawkes Co., --- S.Ct. ----, 2016 WL 3041052 (2016).

A determination by the Corps of Engineers that land contains waters covered by the anti-discharge provisions Clean Water Act, 33 U. S. C. §§1311(a), 1362(7), constitutes “final agency action” that can be immediately challenged by the landowner without the necessity of seeking a permit or risking possible enforcement action.

Securities and Exchange Commission v. Graham, --- F.3d ----, 2016 WL 3033605 (11th Cir. 2016).

28 U.S.C. § 2462 bars the Securities and Exchange Commission from bringing claims for damages unless brought within five years. However, the limitations provision does not apply to claims for injunctions.

Hewett v. Wells Fargo Bank, N.A., -- So. 3d ----, 2016 WL 3065014 (Fla. 2d DCA 2016).

A debtor in bankruptcy, as the result of the automatic stay, may not file an appeal.

Wells Fargo Bank v. Sawh, --- So. 3d ----, 2016 WL 3065812 (Fla. 3d DCA 2016).

A trial court must hold a trial or evidentiary hearing in order to judicially determine the amounts necessary to redeem a mortgage under Florida Statute section 45.0315.

Segall v. Wachovia Bank, N.A., --- So. 3d ----, 2016 WL 3065599 (Fla 4th DCA 2016).

A party seeking to prove standing as the surviving corporate entity after a merger must offer evidence that all of the prior entity’s assets were merged into the surviving entity.

Deutsche Bank National Trust Company v. Baker, --- So. 3d ----, 2016 WL 3087775 (Fla. 4th DCA 2016).

Even if evidence of damages was erroneously admitted, a lender states a prima facie case for foreclosure upon admission of evidence of the default and damages.

Bunin v. Matrixx Initiatives, Inc., --- So. 3d ----, 2016 WL 3090777 (Fla. 4th DCA 2016).

The changes to Florida Statute 90.702 (the adoption of the Daubert standard for expert testimony) are procedural or remedial and are to be applied retroactively.

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Manuel Farach

Townsend v. R.J. Reynolds Tobacco Company, --- So. 3d ----, 2016 WL 3191105 (Fla. 2016).

The 2010 version of Florida Statute section 55.03(3) applies to a judgment entered between October 1998 and June 30, 2011, and accordingly, judgments entered in that time period have a non-fluctuating interest rate of six percent (6%).

Higgins v. Dyck-O'Neal, Inc., --- So. 3d ----, 2016 WL 3191146 (Fla. 1st DCA 2016).

A trial court's reservation of jurisdiction to consider the entry of a deficiency decree requires the plaintiff seek a deficiency in that action, and further prohibits the plaintiff from filing a separate suit at law seeking a deficiency.

Nowlin v. Nationstar Mortgage, LLC, Case No. 2D15-331 (Fla. 2d DCA 2016).

A contract (such as a mortgage) is modified upon there being an offer, acceptance, and consideration. "Pursuant to contract law, the acceptance of an offer which results in an enforceable agreement must be (1) absolute and unconditional; (2) identical with the terms of the offer; and (3) in the mode, at the place, and within the time expressly or impliedly stated within the offer." Acceptance is the last act necessary to complete a bilateral contract.

Florida Peninsula Ins. Co. v. Brunner, --- So. 3d ----, 2016 WL 3181908 (Fla. 3d DCA 2016).

The following provision makes a proposal for settlement ambiguous and unenforceable due to the requirement imposed on third parties:

It is agreed upon by ANN BRUNNER and his [sic] respective counsel that all known liens, attorney charging liens or other claims of third parties, will be satisfied and extinguished by ANN BRUNNER and his [sic] counsel.

Florida Community Bank, N.A. v. Red Road Residential, LLC, --- So. 3d ----, 2016 WL 3176813 (Fla. 3d DCA 2016).

A party seeking prevailing party fees under Florida Statute section 57.105(7) (reciprocity of contractual prevailing party fees) must both prevail in the litigation and be a party to the contract containing the fee provision.

Cornelius v. Holzman, --- So. 3d ----, 2016 WL 3182769 (Fla. 4th DCA 2016).

A trial court has no jurisdiction to make substantive changes to a final judgment based on Florida Rule of Civil Procedure 1.540 (a), and changes to a judgment under 1.540 (b) must be made within one year of final judgment (except for void judgments).

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June 18, 2016
Manuel Farach

Kirtsaeng v. Wiley, --- S.Ct. ----, 2016 WL 3317564 (2016).

In determining whether to award attorneys' fees to the prevailing party in a copyright infringement lawsuit, the district court has discretion to grant fees so long as it does not grant fees as a matter of course and so long as it does not treat plaintiffs and defendants differently. A non-exclusive list of factors a court may consider in determining whether to award fees includes "frivolousness, motivation, objective unreasonableness[,] and the need in particular circumstances to advance considerations of compensation and deterrence."

Halo Electronics, Inc. v. Pulse Electronics, Inc., --- S.Ct. ----, 2016 WL 3221515 (2016).

The test of *In re Seagate Technology, LLC*, 497 F. 3d 1360, 1371, "objective recklessness" test for awarding attorney's fees in patent infringement cases is rejected; there is "no precise rule or formula" for awarding damages under 35 U. S. C. §284 and a district court's "discretion should be exercised in light of the considerations underlying the grant of that discretion."

In Re: Standard Jury Instructions In Civil Cases—Report No. 15-01, Case No. SC15-1275 (Fla. 2106).

The Florida Supreme Court issues new instructions on duty to maintain evidence.

Wells Fargo Bank, N.A. v. Ousley, --- So. 3d ----, 2016 WL 3268330 (Fla. 1st DCA 2016).

A foreclosure complaint filed with a copy of a note with an undated allonge containing a blank indorsement is sufficient to establish standing as a matter of law, regardless of whether there had been a formal assignment at time of suit. Likewise, a certified copy of a publicly recorded document (such as a mortgage) is self-authenticating and not subject to a challenge based on hearsay or lack of foundation.

Federal National Mortgage Ass'n v. Morton, --- So. 3d ----, 2016 WL 3265485 (Fla. 2d DCA 2016).

Whether a party has substantially complied with a condition precedent is a question of fact, but "a comparison of the text of a notice letter to the requirements of paragraph twenty-two will often be all that is necessary to enable a court to determine whether the lender substantially complied with its requirements."

MMMG, LLC v. Seminole Tribe of Florida, Inc., --- So. 3d ----, 2016 WL 3265485 (Fla. 4th DCA 2016).

Recognized Native American tribes enjoy sovereign immunity under United States law, and any waiver of that immunity must be in accordance with that tribe's organizational documents.

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Manuel Farach

Cuzzo Speed Technologies, LLC v. Lee, Case No. 15–446 (2016).

The U.S. Patent Office’s determination of the validity of patents under the “inter partes” (i.e., requested by third party) review process of 35 U. S. C. §314(d) is final and non-appealable.

Herbits v. Board Of Trustees Of The Internal Improvement Trust Fund, Case No. 1D15-1076 (Fla. 1st DCA 2016).

Conveyance of sovereign submerged lands (“SSL”) by the Trustees of the Internal Improvement Trust Fund, even if the Trustees retain a reverter right, removes the SSL designation such that private third parties have no standing to challenge the Trustees’ later modification of the deed restrictions it originally placed on the land.

Nunez v. Riley, Case No. 5D14-4386 (Fla. 5th DCA 2016).

A proposal for settlement to a single defendant in a case with multiple defendants is rendered ambiguous and unenforceable by use of the word “all damages” since the proposal would impermissibly seek to settle claims for parties other than the named party.

Home Outlet, LLC v. U.S. Bank, Case No. 5D15-2643 (Fla. 5th DCA 2016).

A plaintiff seeking to reestablish a lost note through the affidavit of a prior servicer must introduce the affidavit into evidence, and the affidavit must comply with the requirements of Florida Statute section 673.3091.

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Flo & Eddie, Inc. v. Sirius XM Radio, Inc., --- F.3d ----, 2016 WL 3546433 (11th Cir. 2016).

The Eleventh Circuit Court of Appeals certifies questions to the Florida Supreme Court regarding Florida's common law of copyright.

Bazemore v. Jefferson Capital Systems, LLC, Case No. 15-12607 (11th Cir. 2016).

The Eleventh Circuit discusses the appropriate type and amount of proof to enforce an internet "click wrap" contract.

Forest Brooke/Hillsborough, LLC v. Henriquez, --- So. 3d ----, 2016 WL 3541045 (Fla. 2d DCA 2016).

Florida Statute section 194.171(5) requires a taxpayer pay all taxes due after the year for which the taxpayer is contesting the assessment; payment of all taxes for the year in which the taxpayer is contesting the assessment is not required.

Deutsche Bank National Trust Company v. Kummer, --- So. 3d ----, 2016 WL 3569565 (Fla. 2d DCA 2016).

A trial court may not make credibility determinations and weigh the evidence when considering a motion for involuntary dismissal; the court must only focus on whether a *prima facie* case has been proven.

HCA Health Services Of Florida, Inc. v. Cyberknife Center Of The Treasure Coast, LLC, --- So. 3d ----, 2016 WL 3540956 (Fla. 4th DCA 2016).

Damages for breach of true leases is measured by the difference between the amount stipulated to be paid and the amount paid; parties claiming damages for breach of hybrid leases (leases with non-lease elements) must prove lost profits. Additionally, lost profits are general (not consequential damages) when they flow from "directly and immediately from the breach of a contract."

Jallali v. Knightsbridge Village Homeowners Ass'n, Inc., --- So. 3d ----, 2016 WL 3548843 (Fla. 4th DCA 2016).

Declarations of restrictive covenants which are recorded before a lender's mortgage are "interests" under Florida Statute 48.23 (1)(d) that do not need to be joined in the lender's mortgage foreclosure action.

Dyck-O'Neal, Inc. v. Beckett, --- So. 3d ----, 2016 WL 3570108 (Fla. 5th DCA 2016).

Florida Statute section 702.06 does not prohibit a party from filing an independent action for deficiency judgment even if the trial court reserved jurisdiction to enter deficiency judgments in the foreclosure judgment; conflict certified with the First District's opinion in *Higgins v. Dyck-O'Neal, Inc.*, 41 Fla. L. Weekly D1376 (Fla. 1st DCA June 9, 2016).

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Le Scampi Condominium Ass'n, Inc. v. Hall, Case No. 2D15-3208 (Fla. 2d DCA 2016).

Courts will not insert words into a contract, and accordingly, the phrase that condominium “[u]nits may not be leased or rented for a period of less than one (1) month” does not imply that there are no further restrictions on leasing the units.

Wells Fargo Bank, N.A. v. Russell, Case Nos. 3D15-593 & 3D15-305 (Fla. 3d DCA 2016).

So long as movant proves standing by showing it owned the note both at inception and summary judgment/trial date, it cannot be denied summary judgment because an assignment of mortgage was filed four years after the suit was filed.

SunTrust Bank v. Arrow Energy, Inc., Case No. 4D15-1477 (Fla. 4th DCA 2016).

The Florida Statutes contemplate that a garnishee will be made whole for its participation in the garnishment process, thus a garnishment judgment that imposes cost against the garnishee is void because it imposes additional costs on the garnishee. Likewise, a garnishment judgment is not a money judgment that accrues interest.

Campbell v. Wells Fargo Bank, N.A., Case No. 4D16-1728 (Fla. 4th DCA 2016).

Mandamus typically will not lie to review a non-final order that a party contends was a failure of the trial court to comply with a procedural rule.

Citimortgage v. Hoskinson, Case No. 5D14-4500 (Fla. 5th DCA 2016).

A witness need only be “well acquainted enough with the activity” to give testimony based on the Business Records Exception to the Hearsay Rule.

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Collins Asset Group, LLC v. Property Asset Management, Inc., --- So. 3d ----, 2016 WL 3702926 (Fla. 1st DCA 2016).

A Motion for Deficiency Judgment is not a foreclosure complaint so it does not need to comply with the complaint verification requirements of Florida Rule of Civil Procedure 1.115(e).

Bank of America, N.A. v. Kipps Colony II Condominium Association, Inc., --- So. 3d ----, 2016 WL 3766582 (Fla. 2d DCA 2016).

On rehearing, the Second District holds that a junior lienor cannot foreclose a superior lienor and a judgment purporting to do so is void under Florida Rule of Civil Procedure 1.540 (b) (5). Priority of real estate interests under Florida law is determined by Florida Statutes section 28.222(2) (which requires the Clerk of Court to record instruments and keep records of the recorded instrument), 695.11 (which states the sequence of recorded instruments shall determine priority), and 695.01 (which states that first in time is first in right). The community association could have foreclosed its claim of lien through a cross-claim as a result of its powers under Florida Statute section 718.116(6)(a).

Sanabria v. Pennymac Mortgage Investment Trust Holdings I, LLC, --- So. 3d ----, 2016 WL 3767181 (Fla. 2d DCA 2016).

The following affirmative defense is sufficient to meet the “specifically deny a signature” requirement of Florida Statute section 673.3081:

With regard to all counts of the Complaint, the Plaintiff's claims are barred in whole or in part because the Defendants affirmatively question the veracity and authenticity of any possible endorsement (sic) made on any purported note or allonge the Plaintiff may produce pursuant to Fla. Stat. § 673.3081 (2011), assuming, without conceding, that such endorsement (sic) exists. Specifically, the Defendants question the veracity and authenticity of any possible endorsement (sic) because: (1) there is no mention in the Complaint as to who the endorser is; (2) there is no mention in the Complaint as to what authority the purported endorser may so endorse, (3) the indorsement wasn't on the documents attached to the original complaint, and (4) the copy of the note attached to the complaint does not contain Defendant's signature and is not the note signed by Defendant.

Aluia v. Dyck-O'Neal, Inc., --- So. 3d ----, 2016 WL 3766717 (Fla. 2d DCA 2016).

The venue provisions of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (FDCPA), do not apply to deficiency actions arising out of Florida mortgage foreclosures because a final judgment of foreclosure is not a “debt” but instead a judgment in rem or quasi in rem arising out of a foreclosure proceeding. As a result, a

deficiency suit is not a "legal action on" a promissory note, "an obligation of a consumer to pay money," nor a business dealing or consensual obligation and thus not subject to the FDCPA.

Annex Industrial Park, LLC v. Corner Land, LLC, --- So. 3d ----, 2016 WL 3745534 (Fla. 3d DCA 2016).

For purposes of temporary injunctions, "preserving the status quo" means preserving the situation that existed prior to the actions that precipitated the request for injunction.

Medley Plaza, Inc. v. The Rama Fund, LLC, --- So. 3d ----, 2016 WL 3747134 (Fla. 3d DCA 2016).

Florida Rule of Judicial Administration 2.514(b) does not extend the time for filing an appeal to thirty-five days from date of rendition.

Wells Fargo Bank, N.A. v. Williamson, --- So. 3d ----, 2016 WL 3745477 (Fla. 4th DCA 2016).

A borrower who knowingly signs loan documentation that is materially incorrect as to income cannot later claim that the lender conspired or forced the incorrect amounts and thus claim unclean hands on the part of the lender as a defense to enforcement of the loan documents.

Miles v. Parrish, -- So. 3d ----, 2016 WL 3745490 (Fla. 4th DCA 2016).

The sixty day non-claim time requirement within which to contest ad valorem assessments does not begin to run until the real property taxes are "certified for collection" under Florida Statute sections 193.122(2) and 194.171(2).

Lucas Games, Inc. v. Morris AR Associates, LLC, --- So. 3d ----, 2016 WL 3745372 (Fla. 4th DCA 2016).

An intervening change in law which renders the purpose of a lease illegal renders the lease unenforceable.

Victory Christian World Ministries, Inc. v. MJP Distribution, LLC, --- So. 3d ----, 2016 WL 3745482 (Fla. 4th DCA 2016).

The lack of mutuality of obligation on the part of the seller in the following contract clause is "cured" by the attempts of the seller to perform under the contract:

If Buyer fails to perform under this Contract, then, as Seller's sole and exclusive remedy under this Contract, the Settlement Agent is hereby irrevocably immediately directed and instructed that the Initial Escrow Deposit and if delivered by Buyer, the Additional Escrow Deposit shall be forfeited and paid over to Seller as agreed liquidated damages in order to compensate Seller for the damages caused by such breach and not as a penalty.

In the event of Seller's default under this Contract, Buyer's sole remedies shall be to receive the return of Buyer's Escrow Deposit(s), at which time the Contract shall cease and terminate and Seller and Buyer shall have no further obligations, liabilities or responsibilities to one another. Buyer shall

not have any claim against Seller (nor shall Seller be liable) for damages (actual, special, punitive or otherwise) and hereby waives any such claims.

Cruz v. Citimortgage, --- So. 3d ----, 2016 WL 3745488 (Fla. 4th DCA 2016).

A party may serve another party with an “insurance summons,” i.e., an additional summons when a party is not sure the first summons was effective, in order to ensure that the trial court has acquired jurisdiction over that party.

Dyck-O’Neal, Inc. v. Rojas, --- So. 3d ----, 2016 WL 3769012 (Fla. 5th DCA 2016).

A plaintiff acquiring long-arm jurisdiction over a defendant to foreclose a mortgage maintains the long-arm jurisdiction over the defendant for deficiency purposes, even if a separate action for deficiency is filed under Florida Statute section 702.06.

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Arizona Chemical Co., LLC v. Mohawk Industries, Inc., --- So. 3d ----, 2016 WL 3879252 (Fla. 1st DCA 2016).

Prejudgment interest is calculated from the date of plaintiff's loss (not the date plaintiff's cause of action accrued), subject only to equitable exceptions "where unique facts and 'considerations of fairness' militate against calculating prejudgment interest from the date of actual loss."

Steele v. Brown, --- So. 3d ----, 2016 WL 3880719 (Fla. 1st DCA 2016).

A 2007 probate court order determining real property is homestead cannot be challenged neither on the basis of a 1.540 (a) "clerical error" nor on the basis of 1.540 (b) if not challenged within one year of order's issuance.

Deutsche Nat'l Bank Trust Co. v. Hagstrom, --- So. 3d ----, 2016 WL 3926852 (Fla. 2d DCA 2016).

By its own terms, Florida Statute section 559.715 (creditor who receives the right to bill and collect a consumer debt must give notice to consumer) does not apply to a note holder.

Regents Park Investments, LLC v. Bankers Lending Service, Inc., --- So. 3d ----, 2016 WL 3911219 (Fla. 3rd DCA 2016).

The proponent of a lis pendens not founded on a duly recorded instrument must only show a "'fair nexus' between the plaintiff's claim and the property subject to a lis pendens," i.e., must show only a "good faith, viable claim," "at least some basis for the underlying claim," and "a good faith basis to allege facts supporting a claim and that the facts alleged would at least state a viable claim."

Ciklin Lubitz Martens & O'Connell v. Patrick J. Casey, P.A., --- So. 3d ----, 2016 WL 3913371 (Fla. 4th DCA 2016).

Conveyance back to the partnership of a withdrawing partner's interests in the law firm was not a "contribution of capital" to the firm, i.e., the conveyance back did not change the overall capital of the firm but merely reduced the number of partners who were owners of the overall capital.

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Citibank v. Unknown Heirs, --- So. 3d ----, 2016 WL 3974864 (Fla. 1st DCA 2016).

A final judgment entered during a bankruptcy automatic stay is void, even if the court and the party seeking judgment were not aware of the bankruptcy filing.

Dhanasar v. JP Morgan Chase Bank, N.A., --- So. 3d ----, 2016 WL 4035727 (Fla. 3d DCA 2016).

A foreclosure suit alleging default by the failure to make mortgage payments as of a date certain and all payments thereafter, some of which missed payments were within and some of which were outside five years from date of filing suit, is not barred by Florida's Statute of Limitations.

Kane v. Stewart Tilghman Fox & Bianchi, P.A., --- So. 3d ----, 2016 WL 4016280 (Fla. 4th DCA 2016).

The garnishment statute, Florida Statute section 77.01 *et seq.*, does not bar a creditor from seeking successive garnishments, even if a prior garnishment was dismissed upon an affidavit of exemption having been filed in the prior garnishment.

Corrections Corporation Of America v. City of Pembroke Pines, --- So. 3d ----, 2016 WL 4016206 (Fla. 4th DCA 2016).

A municipality has no obligation to provide utility services outside its boundaries unless it has contracted to do so or has otherwise assumed the duty to do so by holding itself out as the public utility for the affected area.

Lasala v. Nationstar Mortgage, LLC, --- So. 3d ----, 2016 WL 4035653 (Fla. 4th DCA 2016).

A final judgment that is defective for failure to prove all damages will be reversed and remanded for further proceedings when plaintiff has proven some of its damages, but will be reversed for dismissal when plaintiff has fully failed to prove its damages.

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Bair v. City of Clearwater, --- So. 3d ----, 2016 WL 4150220 (Fla. 2d DCA 2016).

Requests for additional information during a construction project does not arise to the level of a violation of the Bert Harris Act, Florida Statute section 70.001. Additionally, equitable estoppel is a defensive doctrine that may not be used offensively to seek money damages against government for blocking land development.

575 Adams, LLC v. Wells Fargo, LLC, --- So. 3d ----, 2016 WL 4132004 (Fla. 3d DCA 2016).

An owner of property may take the deposition of a foreclosing mortgagee's witness, even if the owner is a "stranger to the property" (i.e., acquired the property after the lis pendens was filed).

State of Florida, Dep't of Environmental Protection v. Beach Group Investments, LLC, --- So. 3d ----, 2016 WL 4132112 (Fla. 4th DCA 2016).

A administrative takings claim is not ripe unless the landowner has applied for a variance and been rejected.

Green Emerald Homes, LLC v. The Bank of New York Mellon, --- So. 3d ----, 2016 WL 4138237 (Fla. 4th DCA 2016).

A party seeking to serve a limited liability company pursuant to Florida Statute section 608.463(1)(a) must perform a diligent search for the person to be served before serving by constructive service, i.e., the serving party must do more than merely attempting to serve the registered agent.

Pro Finish, Inc. v. Estate of All American Trailer Manufacturers, Inc., --- So. 3d ----, 2016 WL 4132721 (Fla. 4th DCA 2016).

Assignee under Florida's Assignment for Benefit of Creditors Act, Florida Statutes Chapter 727, must strictly comply with the time frames set forth in the Act (including petitioning the trial court for the establishment of the assignment within ten days and publishing for one month) and failure to do so renders the assignment proceedings invalid.

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All South Subcontractors, Inc. v. Amerigas Propane, Inc., --- So. 3d ----, 2016 WL 4239846 (Fla. 1st DCA 2016).

An arbitration agreement contained in a bulk mailer sent out to prospective customers prior to the parties entering into a contract is not binding.

Gdovin v. Dyck-O'Neal, Inc., --- So. 3d ----, 2016 WL 4204470 (Fla. 2d DCA 2016).

Florida Statute section 702.06 permits the filing of an independent action for deficiency judgment, even if a deficiency was prayed for in the foreclosure complaint, so long as the foreclosure court did not render a decision on the deficiency claim. Conflict certified with the First District Court of Appeal's decision in *Higgins v. Dyck-O'Neal, Inc.*, 41 Fla. L. Weekly D1376 (Fla. 1st DCA June 9, 2016).

Effs v Sony Pictures Home Entertainment, Inc., --- So. 3d ----, 2016 WL 4198129 (Fla. 3d DCA 2016).

The Continuing Tort Doctrine is not applicable to a claim for tortious interference when the continuing wrong is the continuing harmful effects of the tort, i.e., damages.

Gomez v. Timberoff Roofing, Inc., --- So. 3d ----, 2016 WL 4205344 (Fla. 4th DCA 2016).

Recorded judgments which contain the address of the attorney for the creditor and not the creditor itself violate the requirements of Florida Statute section 55.10, and thus do not constitute liens on the real property of the judgment debtor.

Dyck-O'Neal, Inc. v. McKenna, --- So. 3d ----, 2016 WL 4262111 (Fla. 4th DCA 2016).

Florida Statute section 702.06 permit the filing of an independent action for deficiency notwithstanding deficiency was requested in the foreclosure complaint; conflict certified with the First District Court of Appeal's decision in *Higgins v. Dyck-O'Neal, Inc.*, 41 Fla. L. Weekly D1376 (Fla. 1st DCA June 9, 2016).

Kajaine Estates, LLC v. US Bank National Ass'n, --- So. 3d ----, 2016 WL 4252938 (Fla. 5th DCA 2016).

The question of whether a foreclosing lender can establish legal standing is different than whether the lender is the owner of a promissory note. Accordingly, an owner of a note may retrieve the original promissory note from the court file even if it was not able to establish legal standing to foreclose.

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Balaguer v. Physicians for the Hand, LLC, --- So. 3d ----, 2016 WL 4376724 (Fla. 3d DCA 2016).

Orders regarding motions to vacate arbitration awards are governed by the same standards as appeals from orders generally, including review of findings of fact under a competent substantial evidence standard and legal issues under a *de novo* standard of review. Accordingly, failure to provide the appellate court with an arbitration record precludes a review of factual questions.

JP Morgan Chase Bank Nat. Ass'n v. Colletti Investments, LLC, --- So. 3d ----, 2016 WL 4381258 (Fla. 4th DCA 2016).

Special damages do not necessarily flow from the wrong or breach (even though they may naturally and proximately flow from the wrong or breach), and as a result, must be specifically pled to be recovered.

Zucarelli v. Barfield, --- So. 3d ----, 2016 WL 4381651 (Fla. 4th DCA 2016).

In order to prevail on a claim of selective enforcement of building codes, a plaintiff must prove “(1) that they were treated differently from other similarly situated individuals, and (2) that [d]efendant unequally applied a facially neutral ordinance for the purpose of discriminating against [p]laintiffs.”

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Manuel Farach

Madison At Soho II Condominium Association, Inc. v. Devo Acquisition Enterprises, LLC, --- So. 3d ----, 2016 WL 4446527 (Fla. 2d DCA 2016).

A court may use the legislature's recent clarifying amendment to a statute, enacted during the pendency of this appeal, to interpret the pre-amended version of that statute. Accordingly and under Florida Statute section 718.116 (3), accord and satisfaction principles do not apply to payments to community associations.

Bollettieri Resort Villas Condominium Association, Inc. V. The Bank Of New York Mellon, Case No. 2D15-3186 (Fla. 2d DCA 2016).

While a mortgage foreclosure action must be based on a default within the five year statute of limitations, each missed payment is a new default and foreclosure may be based on a default within the five years even if not the first default. Conflict certified with *Hicks v. Wells Fargo Bank, N.A.*, 178 So. 3d 957 (Fla. 5th DCA 2015).

Abukasis v. MTM Finest, Ltd., Case No. No. 3D15-1448 (Fla. 3d DCA 2016).

Former Florida Statute section 605.0503 (then numbered section 608.433) points out the exclusive remedies available to a judgment creditor as to a judgment debtor's interest in an LLC is a charging order, or a charging order followed by a foreclosure sale.

Ober v. Town Of Lauderdale-By-The-Sea, Case No. 4D14-4597 (Fla. 4th DCA 2016).

A lis pendens terminates at final judgment, and liens or claims filed after final judgment of foreclosure are not extinguished by lis pendens or foreclosure sale.

Denault v. G. Robert Toney & Associates, Inc., Case No. No. 4D15-740 (Fla. 4th DCA 2016).

A listing agreement does not create a fiduciary duty to sell a repossessed property for a minimum sum.

Jupiter House, LLC v. Deutsche Bank National Trust Co., Case No. 4D15-1852 (Fla. 4th DCA 2016).

Substitute service on a limited liability company is strictly construed, and the failure to file the affidavit required by the statute invalidates the substitute service.

The Bank Of New York Mellon v. Sperling, Case No. 4D15-4207 (Case No. 4D15-4207).

An inferior lienor cannot extinguish a superior lienor, and a judgment that purports to do so is void.

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In Re: Amendments To The Florida Rules Of Civil Procedure, Case No. SC16-155 (Fla. 2016).

Changes adopted to the Florida Rules of Civil Procedure, including setting forth the Final Disposition Form in its own separate rule, replacement of “paper” with “document,” and replacement of “shall” with “must.”

Daake v. Decks N Such Marine, Inc., Case No. 1D15-1331 (Fla. 1st DCA 2016).

The primary rule of contract construction is to ascertain the intent of the parties, and such is done from instrument itself, the situation of the parties and the nature and object of their transactions. When there is a conflict between written terms and printed terms, the written terms of the contract typically control. Finally, a party may not claim quantum meruit when a valid, enforceable contract exists.

Ballantrae Homeowners Association, Inc. v. Federal National Mortgage Association, Case No. 2D15-1025 (Fla. 2d DCA 2016).

A community association which is not named in a foreclosure does not have its lien wiped out by the foreclosure and does not have to render an estoppel letter.

Demir v. Schollmeier, Case No. 3D15-213 (Fla. 3d DCA 2016).

An operating agreement for a limited liability company does not permit direct action by one member against another member.

Hastie v. Ekholm, Case No. 4D15-289 (Fla. 4th DCA 2016).

The words “subject to” generally make render a deed ambiguous as to its interpretation and require parol evidence to resolve the ambiguity.

Caddy v. Wells Fargo Bank, N.A., Case No. 4D15-4681 (Fla. 4th DCA 2016).

An error in a legal description, final judgment of foreclosure and foreclosure sale may not be corrected after final judgment and sale; vacating of sale and final judgment is required but dismissal is not required.

Autonation, Inc., v. Susi, Case No. 4D16-261 (Fla. 4th DCA 2016).

While contracts may not be extended into perpetuity, a contract indefinite as to time is not a contract in perpetuity as the law imposes a reasonable period of time.

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Magwitch, LLC v. Pusser's West Indies Limited, Case No. 2D15-897 (Fla. 2d DCA 2016).

The appointing of a registered agent and registering to do business in Florida are, without more, insufficient to confer minimum contacts on a defendant. Likewise, the use of a fulfillment house in Florida to fulfill internet orders is insufficient when the fulfillment house constitutes a *de minimus* amount of the defendant's total business.

Marcinkewicz v. Quattrocchi, Case No. 3D15-1068 (Fla. 3d DCA 2016).

A party challenging the validity of a deed based on lack of capacity of the grantor has to burden of proving the grantor lacked mental capacity, and moreover, the strong presumption in favor of the validity of deeds can only be overcome "by clear, strong and convincing evidence."

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Blair Nurseries, Inc. v. Baker County, Case No. 1D16-0423 (Fla. 1st DCA 2016).

A local agency has no discretion to deny the adoption or vacating of a plat when the statutory requirements are met, and the decision of the local agency is subject to review in the circuit court sitting in its appellate capacity.

Ganson v. City of Marathon, Case No. 3D12-777 (Fla. 3d DCA 2016).

Judge Shepherd writes an extensive dissent to the effect that “excessive economic injuries caused by government action [must] be compensated.

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Manuel Farach

Kjellander v. Abbott, --- So. 3d ----, 2016 WL 4992415 (Fla. 1st DCA 2016).

Notwithstanding a contract provision stating the parties did not rely on representations outside the contract, brokers were still responsible under another contract provision that they were still subject to statutory requirements, including therein duties of honesty and fair dealing, to disclose all known facts that materially affect the value of the property not readily observable, and to not make misleading, deceptive, or fraudulent representations in any transaction.

Beach Community Bank v. v. Disposal Services, LLC, --- So. 3d ----, 2016 WL 5118372 (Fla. 1st DCA 2016).

A secured creditor has the right to possess the collateral upon default, and accordingly, the failure of the debtor to turn over the collateral upon the secured creditor's demand constitutes an act of conversion.

Smith v. Reverse Mortg. Solutions, Inc., --- So. 3d ----, 2016 WL 5237209 (Fla. 3d DCA 2015).

Upon rehearing, the Third District rules that a reverse mortgage may not be foreclosed until the death of all borrowers; a wife who does not sign the promissory note (signed only by husband) but signs the mortgage itself is a "borrower" whose homestead may not be foreclosed until her death as death of the borrower is a condition precedent to foreclosure.

Accardi v. Regions Bank, --- So. 3d ----, 2016 WL 5118351 (Fla. 4th DCA 2016).

A mortgage encompasses alluvium that is added after the mortgage is granted.

Cole v. Wells Fargo Bank National Association, --- So. 3d ----, 2016 WL 5342428 (Fla. 5th DCA 2016).

A final judgment entered after the case has been removed to federal court is void.

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Anderson v. Epstein, Case No. 3D15-1050 (Fla. 3d DCA 2016).

Separate actions should be consolidated (not combined) when the causes of action and the parties are not identical.

Villamizar v. Luna Developments Group, LLC, Case No. 3D15-2222 (Fla. 3rd DCA 2016).

The giving of a power of attorney with regard to a non-assignable promissory note is not a transfer of the note that violates the anti-assignment provision.

Ocwen Loan Servicing, LLC v. Gunderson, Case No. 4D15-2809 (Fla. 4th DCA 2016).

A witness need not have participated in the boarding process nor have personal knowledge of a party's business practices in order to have business records admitted; general knowledge and trustworthiness of documents are sufficient.

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In re Failla, 838 F.3d 1170 (11th Cir. 2016).

Party that “surrenders” their principal residence in bankruptcy proceedings may not later contest state court foreclosure proceedings.

Reverse Mortgage Solutions, Inc. V. The Unknown Heirs, Case No. 1D16-966 (Fla. 1st DCA 2016).

A court may not dismiss a case for the bad acts of counsel in a prior case involving the same mortgage.

Charbonier Food Services, LLC v. 121 Alhambra Tower, LLC, Case Nos. Nos. 3D16-356 & 3D16-753 (Fla. 3rd DCA 2016).

The following provision in a lease agreement is ambiguous and requires parol testimony:

If the Percentage Rent results in \$10,000.00 of monthly rent over the Fixed Base Rent beginning January 2015, then \$10,000.00 shall be added to the Fixed Base Rent . . .

Brittany’s Place Condominium Association, Inc. v. U.S. Bank, N.A., Case No. 2D15–3444 (Fla. 2d DCA 2016).

Ownership of the note and mortgage is not determinative whether a party is entitled to the “safe harbor” provisions of Florida Statute section 718.116(1)(b).

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Branch Banking and Trust Company v. Taylor, Case No. 1D15-5291 (Fla. 1st DCA 2016).

There is no requirement a plaintiff allege that all conditions precedent have occurred in order to accelerate a note and mortgage.

Powers v. HSBC Bank USA, N.A., Case No. No. 2D14-4857 (Fla. 2d DCA 2016).

A party may prove standing through equitable transfer by proving transfer of the securitized mortgage pool, but has to prove the mortgage in question was in the pool.

Bank Of America, N.A. v. Siefker, Case No. 4D14-1923 (Fla. 4th DCA 2016).

Florida Statute section 559.715 is not a condition precedent that must be complied with in order to institute a foreclosure case.

State Trust Realty, LLC v. Deutsche Bank National Trust Company Americas, Case No. 4D15-1667 (Fla. 4th DCA 2016).

A party that acquires a defendant's interest in a property after a lis pendens has been recorded and the defendant has been defaulted cannot challenge standing.

U.S. Bank National Association v. Anthony-Irish, Case No. 5D15-3153 (Fla. 5th DCA 2016).

A post-trial motion entered by a court without jurisdiction can be attacked at any time under Florida Rule of Civil Procedure 1.540 (b).

American Eagle Veteran Contracting, LLC v. Eiland, Case No. 5D15-4483 (Fla. 5th DCA 2016).

A court cannot grant a motion for summary judgment while a motion to compel arbitration remains pending and without being ruled upon.

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Kuhajda v. Borden Dairy Company Of Alabama, LLC, Case No. SC15-1682 (Fla. 2016).

A Proposal for Settlement is not invalid under Florida Rule of Civil Procedure Florida Rule of Civil Procedure 1.442(c)(2)(F) for failure to state whether attorneys' fees were part of the claim even when the complaint does not include a claim for attorney's fees.

Franklin v. Bank Of America, N.A., Case No. 1D15-4296 (Fla. 1st DCA 2016).

The facts of a case, including the failure to include the right to amend, may indicate finality even though an order or judgment dismissing a case contains the words "without prejudice."

American Airlines Federal Credit Union v. Fonseca, Case No. 3D16-208 (Fla. 3d DCA 2016).

An arbitration provision in an agreement between parties cannot be extended to a prior, separate agreement (which does not contain an arbitration provision) unless the parties agreed to arbitrate both agreements.

MYD Marine Distributor, Inc. v. International Paint Ltd., Case No. 4D15-3510 (Fla. 4th DCA 2016).

A trial court acting in proceedings supplementary may assign a party's interest in a pending lawsuit to a judgment creditor.

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Wreal, LLC v. Amazon.Com, Inc., Case No. 15-14390 (11th Cir. 2016).

Delay in seeking a preliminary injunction, even if the delay is only a few months, may demonstrate and militates against a finding that movant has suffered irreparable harm.

In Re: Amendments To The Florida Rules For Certified And Court-Appointed Mediators, Case No. SC15-875 (Fla. 2016).

Amendments to the rules regarding mediators, especially with regard to procedures for discipline.

Bold MLP, LLC v. Smith, Case No. 1D15-5456 (Fla. 1st DCA 2016).

A lease agreement which has its five percent (5%) escalator clause scratched through with the handwritten words "\$75 2nd yr \$875 3rd yr \$950" means the rent will increase \$75 each year, and this interpretation applies to renewal periods after three years even though the lease is silent as to the rent to be paid during the renewal period.

Shores Of Panama Club, LLC v. Shores Of Panama Resort Community Association, Inc., Case No. 1D16-0920 (Fla. 1st DCA 2016).

In determining the boundaries of a condominium unit, the square footage assigned to units in a Declaration of Condominium controls over conflicting methods of measurements of the units.

Best Drywall Services, Inc. v. Blaszczyk, Case No. 2D15-2103 (Fla. 2d DCA 2016).

Conflicting evidence as to when a contractor last supplied labor or materials to a job site (such that its claim of lien was timely) should be submitted to the jury for its determination.

Ventures Trust 2013-I-H-R v. Asset Acquisitions And Holdings Trust, Case No. 2D15-1923 (Fla. 2d DCA 2016).

A purchaser during foreclosure proceedings is typically not permitted to intervene during the pendency of the proceedings, but if permitted to do so, takes the pleadings as he finds them and may not raise new affirmative defenses. Moreover, a foreclosing plaintiff must prove standing at the time of filing suit and at the time of trial, proof of standing at the time the plaintiff is substituted is not necessary.

JPMorgan Chase Bank, N.A. v. Ostrander, Case No. 2D15-3935 (Fla. 2d DCA 2016).

Paragraph 22 of the standard FNMA mortgage requires that notice be sent, not that borrower have received the notice.

Herbits v. The City of Miami, Case No. 3D15-1039 (Fla. 3d DCA 2016).

Taxpayers challenging legislative zoning decisions of local government must demonstrate an injury special to them not suffered by all taxpayers.

Miller v. Bank of America, N.A., Case No. 5D15-780 (Fla. 5th DCA 2016).

A Loan Transfer History (“LNTH”), without more and without supporting justification for its admission into evidence, is not capable of being introduced under the Business Records Exception to the Hearsay Rule.

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Bartram v. U.S. Bank National Association, --- So. 3d ----, 2016 WL 6538647 (Fla. 2016).

Florida's Statute of Limitations does not bar the filing of successive suits on the same mortgage so long as the latter suit is based on a different default date.

Shores Of Panama Resort Community Association, Inc. v. Shores Of Panama, LLC, --- So. 3d ----, 2016 WL 6493151 (Fla. 1st DCA 2016).

A condominium association may amend its budget after adoption, but must follow the procedures in Florida Statute section 718.112(2)(e)(2)(a) if the additional costs exceed 115% of the previous year's budget.

Zurro v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 6476293 (Fla. 2d DCA 2016).

A claim for attorneys' fees need not be pled in the "wherefore clause" if the opposing party is otherwise on notice of the party's request for attorneys' fees.

Chanin v. Feigenheimer, --- So. 3d ----, 2016 WL 6476313 (Fla. 4th DCA 2016).

The Fourth District declines to adopt a cause of action for conspiracy of an employer to artificially diminish the compensation of an employee subject to a domestic relations obligation, but certifies the following question as a question of great public importance:

MAY A FORMER SPOUSE PURSUE AN INDEPENDENT TORT CLAIM
AGAINST THE EMPLOYER OF THE OTHER FORMER SPOUSE FOR
FRAUDULENT CONDUCT THAT (1) OCCURS AFTER THE FINAL
JUDGMENT AND (2) FALSELY DEPRESSES THAT SPOUSE'S
INCOME SO AS TO LIMIT THE OBLIGATION FOR CHILD SUPPORT?

Bolous v. U.S. Bank National Association, -- So. 3d ----, 2016 WL 6476320 (Fla. 4th DCA 2016).

A pooling and service agreement that references the loan in question may be sufficient to demonstrate standing and plaintiff's ownership of the note and mortgage.

Infiniti Employment Solutions, Inc. v. MS Liquidators Of Arizona, LLC, Case No. 5D14-583 (Fla. 5th DCA 2016).

A trial court may award both attorney's fees and actual damages as "delay damages" under Florida Statute section 57.105 for interposing frivolous defenses.

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Agrelo v. Affinity Management Services, Inc., Case No. 15-14136 (11th Cir. 2016).

A homeowner's association assessment is a consumer debt for purposes of both the Fair Debt Collection Practices Act and the Florida Consumer Collection Practices Act, and an attorney collecting a debt on behalf of an association is a "debt collector."

Chang v. JPMorgan Chase Bank, N. A., Case No. 15-13636; 15-14529 (11th Cir. 2016).

The Eleventh Circuit finds there exists a Florida cause of action for aiding and abetting fraud when: (1) there exists "an underlying fraud"; (2) "[t]he defendant had knowledge of the fraud"; and (3) the defendant "provided substantial assistance to advance the commission of the fraud."

Shelton v. The Bank of New York Mellon, --- So. 3d ----, 2016 WL 6609686 (Fla. 2d DCA 2016).

A lender is not required to provide an estoppel letter after final judgment in order to allow a borrower to exercise his right of redemption; that function is covered by the statutory right of redemption under Florida Statute section 43.0315.

Village of Key Biscayne v. Department of Environmental Protection, --- So. 3d ----, 2016 WL 6609762 (Fla. 3d DCA 2016).

An adjoining municipality has no standing to intervene in or contest administrative permitting proceedings unless it is directly and substantially affected.

PNC Bank, National Association v. Inlet Village Condominium Association, Inc., -- - So. 3d ----, 2016 WL 6611300 (Fla. 4th DCA 2016).

In order for the Doctrine of Collateral Estoppel to apply to the "safe harbor" provision of Florida Statute section 718.116(1)(b), the issue of lien priority must have been tried in the prior case.

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Bank of America v. Leonard, --- So. 3d ----, 2016 WL 6684200 (Fla. 1st DCA 2016).
A certification under Florida Statute section 702.015 (4) may be executed by counsel, and a complaint with such a certification is not subject to dismissal.

pdrGrayson Dental Lab, LLC v. Progressive Dental Reconstruction, Inc., --- So. 3d ----, 2016 WL 6804588 (Fla. 1st DCA 2016).
Documents which are not privileged in the hands of a party do not become protected by the accountant-client privilege merely by turning them over to an accountant.

743 Mahoney, LLC v. MDC 5, LLC, --- So. 3d ----, 2016 WL 6775869 (Fla. 2d DCA 2016).
While an appraisal report for deficiency purposes should value the property as of foreclosure sale date, an appraisal report valuing the property six days after foreclosure sale is not so non-probative of value that it should be excluded from evidence.

Ocwen Loan Servicing, LLC v. Osmundsen, --- So. 3d ----, 2016 WL 6775903 (Fla. 2d DCA 2016).
A letter which fails to state where to send late mortgage payments (but including an addressed envelope) substantially complies with standard mortgage "paragraph 22" condition precedent requirements.

South Florida Pool and Spa Corp. v. Sharpe Investment Land Trust Number J, --- So. 3d ----, 2016 WL 6778649 (Fla. 3d DCA 2016).
Attaching a form of release to a proposal for settlement may make the proposal ambiguous, and therefore unenforceable, if the release's terms conflict with the terms of the proposal for settlement.

Lopez v. JP Morgan Chase Bank, N.A., --- So. 3d ----, 2016 WL 6778303 (Fla. 3d DCA 2016).
A trial court cannot, based on a lender's failure to comply with a mortgage's condition precedent requirement, simultaneously deny foreclosure but award damages on a promissory note.

Barton v. Metrojax Property Holdings, LLC, --- So. 3d ----, 2016 WL 6781827 (Fla. 3d DCA 2016).
Florida Statute section 701.02 (1) does not give later lienors priority over an earlier recorded mortgagee who failed to record an assignment of mortgage; "the purpose of section 701.02(1)'s recording requirement is to protect assignees of mortgages, not creditors of borrowers or others who place liens on the real property after the mortgage has been recorded."

The Tropicana Condominium Association, Inc. v. Tropical Condominium, LLC, --- So. 3d ----, 2016 WL 6778379 (Fla. 3d DCA 2016).

The failure of a condominium declaration to have “Kaufman language,” i.e., language stating that the declaration would be subject to Florida’s Condominium Act “as amended from time to time,” prohibits amendments to the Condominium Act having retroactive application to a condominium’s declaration if doing so impairs contractual obligations.

Adweiss LLLP v. Daum, --- So. 3d ----, 2016 WL 6778383 (Fla. 3d DCA 2016).

Applying Delaware law, the term “defend” in the phrase “indemnify, defend and hold harmless” in a LLC agreement provides for the advancement of attorney’s fees and costs prior to the conclusion of the litigation as the term “defend” means more than “indemnify” under Delaware law.

Grosso v. HSBC Bank USA, N.A., --- So. 3d ----, 2016 WL 6781609 (Fla. 4th DCA 2016).

Denial of a motion for attorneys’ fees without hearing, even if the motion was “left to languish on the record” with no activity for six months, is a denial of due process.

Bank of New York Mellon v. Withum, --- So. 3d ----, 2016 WL 6778674 (Fla. 4th DCA 2016).

A lender accepting partial payments after notice of acceleration may, depending on the language of the mortgage, not need to send out new default and acceleration notices.

Jericho All-Weather Opportunity Fund, LP v. Pier Seventeen Marina And Yacht Club, LLC, --- So. 3d ----, 2016 WL 6778688 (Fla. 4th DCA 2016).

Failure to fund a loan may be a breach of a loan commitment letter, but is not a breach of a loan agreement that presupposes the loan has already been made.

Boardwalk at Daytona Development, LLC v. Paspalakis, Case No. 5D15-1944 (Fla. 5th DCA 2016).

A description of the land to be conveyed is a necessary element of a claim for breach of a land sales contract; “[n]either law nor equity can furnish a sufficient description of land to be conveyed where the parties have failed to do so.”

Village Square Condominium v. U.S. Bank National Association, Case No. 5D15-2387 (Fla. 5th DCA 2016).

The Fifth District joins the Second District in holding that ownership of the note and mortgage is not necessary in order to qualify for the “safe harbor” exemption under Florida Statute section 718.116(1)(b).

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Rodriguez v. Ocean Bank, --- So. 3d ----, 2016 WL 6901638 (Fla 3d DCA 2016).

A borrower who does not release claims against its lender in a Loan Modification Agreement (LMA) is free to pursue lender liability claims against the lender, including delay damages.

Aligned Bayshore Marina, LLC v. American Watersports Coconut Grove, LLC, --- So. 3d ----, 2016 WL 6901638 (Fla. 3d DCA 2016).

A trial court order to maintain the status quo during litigation may amount to a temporary injunction, and if so, must comply with Florida Rule of Civil Procedure 1.610.

Gooden v. City Of Riviera Beach, --- So. 3d ----, 2016 WL 6901682 (Fla. 4th DCA 2016).

The failure of a court to reserve jurisdiction in a final judgment deems all pending motions to be denied. However, a motion for attorneys' fees may be impliedly granted if it is consistent with the final judgment.

Willson v. Big Lake Partners, LLC, --- So. 3d ----, 2016 WL 6901617 (Fla. 4th DCA 2016).

The proper remedy when a court reverses itself on the exclusion of slander of title damages evidence at trial is to permit a new trial on damages because the party whose objection has been sustained will have no opportunity to present counter-evidence on damages merely upon the motion for rehearing being granted.

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Sebo v. American Home Assurance, --- So. 3d ----, 2016 WL 7013859 (Fla. 2016).

The Concurrent Cause Doctrine (“coverage may exist where an insured risk constitutes a concurrent cause of the loss even when it is not the prime or efficient cause”), instead of the Efficient Proximate Cause Doctrine (“where there is a concurrence of different perils, the efficient cause—the one that set the other in motion—is the cause to which the loss is attributable”) applies to all-risk insurance policies in Florida.

Bank of America v. Turkanovic, Case No. 1D16-3416 (Fla. 1st DCA 2016).

Movant for sanctions cannot avoid non-movant’s use of the Florida Statute section 57.105’s “safe harbor” by filing a motion for attorney’s fees under Florida Rule of Civil Procedure 1.525 and requesting the court sanction under its “inherent authority.”

Citibank, N.A. v. Olsak, --- So. 3d ----, 2016 WL 6992272 (Fla. 3d DCA 2016).

An expert, including a “mortgage foreclosure fraud investigator and securitization auditor,” may not testify as to legal opinions in a conclusory fashion.

Jarrette Bay Investments Corporation v. BankUnited, N.A., -- So. 3d ----, 2016 WL 6992220 (Fla. 3d DCA 2016).

A party seeking 57.105 fees for appellate proceedings must comply with Florida Rule of Appellate Procedure 9.410(b), including the Rule’s service of proposed motion and “safe harbor” provisions.

Tixe Designs, Inc. v. Green Ice, Inc., --- So. 3d ----, 2016 WL 6992296 (Fla. 3d DCA 2016).

A tenant suing a landlord may, as “a sign of good faith,” deposit rent into the Registry of the Court pursuant to Florida Rule of Civil Procedure 1.600.

Polonsky v. HSBC Bank USA, N.A., --- So. 3d ----, 2016 WL 6992597 (Fla. 3d DCA 2016).

A party seeking to deny authenticity of signatures on a negotiable instrument must do so in their pleadings. However, a trial court may exercise its discretion and allow a party to raise the defense for the first time at trial.

BankUnited, N.A. v. Ajabshir, --- So. 3d ----, 2016 WL 6992367 (Fla. 3d DCA 2016).

Generally a party must plead entitlement to attorneys’ fees, but failure to object when a non-moving party is otherwise on notice of the request for fees may be sufficient to sustain an award of fees without requesting same in the pleadings.

Palma v. JPMorgan Chase Bank, Nat'l Ass'n, Case No. 5D15-3358 (Fla. 5th DCA 2016).

A note and mortgage which incorporates the Federal Housing Administration regulations, including the face-to-face meeting requirement of 24 C.F.R. § 203.604, transforms the face-to-face meeting requirement into a condition precedent.

Olson v. Pickett Downs Unit Iv Homeowner's Association, Inc., Case No. 5D15-4043 (Fla. 5th DCA 2016).

The “significant issues test” of *Moritz v. Hoyt Enterprises, Inc.*, 604 So. 2d 807 (Fla. 1992), does not apply when attorneys’ fees are awardable only on some of the counts that are pled and tried.

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Dyck-O'Neal, Inc. v. Konstantinos, --- So. 3d ----, 2016 WL 7174170 (Fla. 2d DCA 2016).

Second District re-affirms its ruling that the plain language of Florida Statute section 702.06 grants a trial court jurisdiction to entertain a separate deficiency suit even if a prior suit sought but did not award a deficiency; conflict again certified with *Higgins v. Dyck-O'Neal, Inc.*, 41 Fla. L. Weekly D1376 (Fla. 1st DCA June 9, 2016).

Palm Beach Florida Hotel And Office Building Limited Partnership v. Nantucket Enterprises, Inc., --- So. 3d ----, 2016 WL 7118850 (Fla. 4th DCA 2016).

Florida law does not permit self-help repossession, even if permitted in the lease between the parties and even if landlord has terminated the lease.

Vital Pharmaceuticals, Inc. v. Professional Supplements, LLC, --- So. 3d ----, 2016 WL 7118847 (Fla. 4th DCA 2016).

The damages for an improperly issued injunction are limited by the amount of the injunction bond, and a party is not entitled to damages for an improperly issued injunction if no bond was posted upon issuance of the injunction.

Liberty Home Equity Solutions, Inc. v. Raulston, --- So. 3d ----, 2016 WL 7118841 (Fla. 4th DCA 2016).

Failure to pay taxes and insurance are a material breach permitting foreclosure. To prove a prima facie case of foreclosure, a plaintiff must only prove: "(1) an agreement between the parties; (2) a default by the defendant; (3) acceleration of the debt to maturity; and (4) the amount due."

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Samsung Electronics Co. v. Apple, --- S.Ct. ----, 2016 WL 7078449 (2016).

There need not be infringement of the whole product for damages under Section 289 of the Patent Act; damages may be awarded for infringement of only a component of a multicomponent product.

Moro Aircraft Leasing, Inc. v. International Aviation Marketing, Inc., --- So. 3d ----, 2016 WL 7228858 (Fla. 2d DCA 2016).

Merely breaching a contract to be performed in Florida by not paying money due in Florida is not sufficient for a foreign defendant to be haled into Florida; minimum contacts, including performing substantial services in Florida, must still be satisfied.

De La Osa v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 7232272 (Fla. 3d DCA 2016).

An order dismissing a case for failure to appear for trial is a “judgment or decree” for purposes of Florida Rule of Civil Procedure 1.540 (b)(4).

Magnum Construction Management Corp. v. The City of Miami Beach, Florida, --- So. 3d ----, 2016 WL 7232268 (Fla. 3d DCA 2016).

The following provision requires notification and an opportunity to cure defects before a contractor can be held liable for breach of a construction contract:

If, within one (1) year after the date of substantial completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, or by any specific provision of the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from CITY, shall promptly correct such defective or nonconforming Work within the time specified by the CITY without cost to CITY, to do so.

Far Niente, LLC v. City of Key West, --- So. 3d ----, 2016 WL 7232265 (Fla. 3d DCA 2016).

An assistant city attorney is not acting in a “dual capacity” during administrative hearings if the attorney is not giving advice to the neutral magistrate while prosecuting the city’s position during the proceedings.

M&M Property Management, LLC, v. Palm-Aire Country Club Condominium Association No. 2, Inc., Case No. 4D16-1448 (Fla. 4th DCA 2016).

In order to change the date of voting for board members from a date commanded by the association by-laws, Florida Administrative Code Rule 61B-23.0021(1)(c) requires that an association must first “obtain the affirmative vote of a majority of the total voting interests”

Finn Law Group, P.A. v. Orange Lake Country Club, Inc., Case No. 5D16-1591 (Fla. 5th DCA 2016).

Unless the party seeking disclosure has made a prima facie showing that certain documents are not privileged, a party is not required to produce a privilege log regarding clearly privileged items.

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Kipnis v. Bayerische Hypo-Und Vereinsbank, AG, --- F.3d ----, 2016 WL 7406318 (11th Cir. 2016).

A taxpayer's claims against the promoter of fraudulent tax schemes becomes final ninety days after the tax court's judgment, i.e., at the expiration of the time period for an appeal of that judgment.

Harkless v. Laubhan, -- So. 3d ----, 2016 WL 7388547 (Fla. 2d DCA 2016).

The right to receive rent from a parcel of land is subject to Florida's Recording Act. Additionally, the phrase "subject to" in a deed does not automatically render the deed ambiguous so as to provide for parol testimony regarding the deed.

Escadote I Corp. v. Ocean Three Limited Partnership, --- So. 3d ----, 2016 WL 7403660 (Fla. 3d DCA 2016).

Set-off should only be allowed to co-defendants jointly and severally liable for the same claims.

Trump Endeavor 12, LLC v. Florida Pritikin Center, LLC, --- So. 3d ----, 2016 WL 7404564 (Fla. 3d DCA 2016).

Findings of fact and conclusions of law are necessary for appellate review of declaratory judgments.

Housing Opportunities Project v. SPV Realty, LC, --- So. 3d ----, 2016 WL 7403656 (Fla. 3d DCA 2016).

The Florida Fair Housing Act, Florida Statutes sections 760.20-760.37, requires a private claimant to file a complaint with the Florida Commission on Human Relations and participate in the statutory conciliation process as a condition precedent to the filing of a civil action under the statute.

Lally Orange Buick Pontiac GMC, Inc. v. Sandhu, --- So. 3d ----, 2016 WL 7405665 (Fla. 5th DCA 2016).

A trial court valuing corporate shares through the corporate statutory appraisal process must, pursuant to Florida Statutes section 607.1330, adopt a valuation supported by competent, substantial evidence or appoint an independent appraiser to recommend the fair value of the shares.

Trust No. 602W0 Dated 7/16/15 v. Wells Fargo Bank, N.A., --- So. 3d ----, 2016 WL 7405657 (Fla. 5th DCA 2016).

A person who purchases property that is the subject of foreclosure in which has been filed a proper *lis pendens* is a purchaser *pendent lite*, and may not intervene or otherwise be made a party to the lawsuit.

Ramphal v. TD Bank National Association, --- So. 3d ----, 2016 WL 7405629 (Fla. 5th DCA 2016).

So long as the conclusion is supported by competent, substantial evidence and is clearly articulated, a trial court in deficiency proceedings has the discretion to find the property value to be one that is different than the testimony of the expert witnesses.

Mackenzie V. Centex Homes, By Centex Real Estate Corporation, --- So. 3d ----, 2016 WL 7407341 (Fla. 5th DCA 2016).

Florida Statute section 720.308(1)(b) (a developer, while in control of the homeowners' association, may excuse itself from paying assessments if it agrees to fund any deficiencies in the budget) does not excuse a developer's otherwise valid obligation to fund reserves while it controls the association.

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Beach Community Bank v. Spellman, --- So. 3d ----, 2016 WL 7441729 (Fla. 1st DCA 2016).

A mortgage is a constitutionally protected property right, and a mortgagee cannot be forced to give up its mortgage in place of substitute collateral.

Ingenieria Y Exportacion De Tecnologia S.L. v. Freytech, Inc., Case No. 3D16-672 (Fla. 3d DCA 2016).

A summons must be issued even where service is effectuated pursuant to Article 10(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“the Hague Convention”).

Hartwood Reserve Homeowners' Association, Inc. v. Allen, Case No. 5D16-1193 (Fla. 5th DCA 2016).

A party seeking class certification must establish “numerosity”; “commonality”; “typicality”; and “adequacy” for all classes, including subclasses such as:

All persons who were members of the [Association] who were alleged to be late or delinquent in the payment of their monthly assessments, and were charged interest of more than 18% per annum, fees and costs and/or attorney’s fees and costs.