

Real Property and Business Litigation Report
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Manuel Farach

Jackson v. The Palms of Perdido, LLC, --- So.3d ----, 2013 WL 45866 (Fla. 1st DCA 2013).

Statutory violations prior to repudiation of a contract are actionable. Accordingly, a party can bring a claim for violation of Fla. Stat. § 718.202 (use of funds deposited for condominium construction) notwithstanding repudiation.

AG Group Investments, LLC v. All Realty Alliance Corp., --- So.3d ----, 2013 WL 11712 (Fla. 3d DCA 2013).

Fla. Stat. § 45.0315 changed the common law, and now a junior lienholder's interest in real property is not extinguished until filing of the certificate of sale (or as otherwise set forth in the final judgment) while at common law the junior lien was extinguished at time of judgment.

Absolute Trading Corp. v. Bariven S.A., Slip Copy, 2013 WL 49735 (11th Cir. 2013).

A foreign sovereign is immune from suit in the United States under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a) (2), but can be sued for business contracts under the commercial activity exception to the Act. Revocation of goods under the Florida Uniform Commercial Code, Fla. Stat. § 672.608, may be as to all shipments if the value of all the goods has been substantially impaired.

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Bishop v. Estate of Rossi, --- So.3d ----, 2013 WL 132449 (Fla. 5th DCA 2013).

Specific factual findings are not necessary when determining entitlement to fees but are necessary when determining amount of attorneys' fees.

Diamond Aircraft Industries, Inc. v. Horowitch, --- So.3d ----, 2013 WL 105328 (Fla. 2013).

A party that prevails in an action claiming a violation of the Florida Unfair and Deceptive Trade Practices Act is entitled to attorneys' fees, even if the substantive law of another jurisdiction applies. Moreover, the Offer of Judgment statute (Fla. Stat. § 768.79) does not apply in a case where both damages and equitable relief are sought.

Vrasic v. Leibel, --- So.3d ----, 2013 WL 85412 (Fla. 4th DCA 2013).

An injunction to prohibit future defamatory speech is improper as doing so has a chilling effect on a party's First Amendment rights and there is an adequate remedy at law (damages) for the future defamatory speech. The exception to the rule is narrowly limited to those situations where the future speech interferes with business relationships for which tort damages are not calculable.

Minkoff v. Caterpillar Financial Services Corp., --- So.3d ----, 2013 WL 85438 (Fla. 4th DCA 2013).

A court must consider evidence in order to enter judgment on an unliquidated amount (including attorneys' fees) even if a party has been defaulted.

Vidal v. Liquidation Props., Inc., --- So.3d ----, 2013 WL 85448 (Fla. 4th DCA 2013).

Unless raised in recoupment, Truth in Lending affirmative defenses are barred by the TILA one year statute of limitations. "Fraud" affirmative defenses of the lender orally misrepresenting the terms of a loan or that the lender inflated the borrower's income are not persuasive because the falsity of the statement is obvious to the borrower.

Already, LLC v. Nike, Inc., --- S.Ct. ----, 2013 WL 85300 (2013).

The Voluntary Cessation Doctrine eliminates standing on trademark claims for Article III standing purposes.

Los Angeles County Flood Control Dist. v. Natural Resources Defense, --- S.Ct. ---, 2013 WL 68691 (2013).

Water flow from an improved navigable waterway into unimproved section of same waterway is not a "discharge of pollutants" under the Clean Water Act, 33 U.S.C. § 1362(12).

Interface Kanner, LLC v. JPMorgan Chase Bank, N.A., --- F.3d ----, 2013 WL 104984 (11th Cir. 2013).

Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C.A. § 1821(c) (FIRREA), a district court has no jurisdiction over claims against the FDIC as receiver for a failed institution unless the claimant has exhausted its administrative remedies under FIRREA.

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Duke's Steakhouse Ft. Myers, Inc. v. G5 Properties, LLC, — So.3d —, 2013 WL 191922 (Fla. 2d DCA 2013).

A water management district can issue an Environmental Resource Permit based on its finding that granting the permit will actually improve water quality.

Congress Park Office Condos II, LLC v. First-Citizens Bank & Trust Company, — So.3d —, 2013 WL 163435 (Fla. 4th DCA 2013).

A trial court may grant summary judgment, even when discovery responses are outstanding, when the party opposing summary judgment has been dilatory in pursuing discovery. The Doctrine of Unclean Hands is similar to fraud, and holds that a party displaying inequity or bad faith cannot request equitable relief from the court. However, failure to comply with contract terms, even if intentional, does not constitute sufficient inequity to employ the Doctrine of Unclean Hands if the conduct is not egregious.

Pineiro v. American Exp. Card Services Co., — So.3d —, 2013 WL 163465 (Fla. 4th DCA 2013).

A post judgment garnishment can only lie for the amount contained in the final judgment upon which the writ is issued, and no more.

Pulte Home Corp. v. Vermillion Homeowners Ass'n, Inc., — So.3d —, 2013 WL 163651 (Fla. 2d DCA 2013).

As a result of Florida Rule of Civil Procedure 1.221, a homeowner's association is "assigned" the rights of individual homeowners to bring actions, and is accordingly bound by the arbitration agreements signed by the individual homeowners.

Lozman v. City of Riviera Beach, Fla., — S.Ct. —, 2013 WL 149633 (2013).

A floating home that does not have the usual characteristics of a "vessel," i.e., lacking a rudder, propulsion or a raked hull, is not a vessel for maritime navigation under the Rules of Construction Act, 1 U.S.C.A. § 3.

F.T.C. v. Washington Data Resources, Inc., — F.3d —, 2013 WL 163416 (11th Cir. 2013).

Net revenue, i.e., gross receipts minus refunds, and not the amount of profit is proper measure of "unjust gains" for violation of deceptive sales practices restrictions under the Federal Trade Commission Act, § 13(b), 15 U.S.C.A. § 53(b).

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Orlando Lake Forest Joint Venture v. Lake Forest Master Community, --- So.3d ---, 2013 WL 275117 (Fla. 5th DCA 2013).

A contract's prefatory language, e.g., "whereas, the parties desire to . . .," does not vary or alter the unambiguous terms of the contract.

Gaynor Hill Enterprises, Inc. v. Allan Enterprises, LLC, --- So.3d ----, 2013 WL 275264 (Fla. 5th DCA 2013).

The sale of a business constitutes sufficient activity under Fla. Stat. § 48.181 "arising out of any transaction or operation connected with or incidental to the business or business venture" to allow appointment of the Secretary of State to accept service of process on a non-resident.

Earth Trades, Inc. v. T&G Corp., --- So.3d ----, 2013 WL 264440 (Fla. 2013).

In pari delicto is not a defense to claims a contract entered into by an unlicensed contractor is unenforceable.

Aventura Management, LLC v. Spiaggia Ocean Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 238222 (Fla. 3d DCA 2013).

Under Fla. Stat. § 718.116 (1) (a), a purchaser of a condominium unit is liable only for the unpaid assessments owed by the previous owner. Accordingly, a purchaser from an association that took unit back through foreclosure is only liable for assessments owed by the association, and not by the previous unit owner upon whom the association foreclosed.

Seminole Tribe of Florida v. Hendry County, --- So.3d ----, 2013 WL 238231 (Fla. 2d DCA 2013).

First tier certiorari review from a local agency administrative order raises the questions of whether the tribunal provided procedural due process, observed the essential requirements of the law, and whether the tribunal's administrative findings and judgment are supported by competent substantial evidence. On second tier certiorari review, the questions are whether the first reviewer applied the correct law and afforded procedural due process. Fla. Stat. § 163.3215 provides the exclusive method of challenging whether a development order is consistent with the comprehensive plan.

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Jackson v. Shakespeare Foundation, Inc., --- So.3d ----, 2013 WL 362786 (Fla. 2013).

An “arising out of or related to” arbitration provision compels the arbitration of all controversies that have a significant relationship to the contract, whether the claim arises directly out of the contract or out of general legal principles. An “arising out of or related to” arbitration provisions requires the arbitration of fraud claims related to the contract.

Alachua Land Investors, LLC v. City of Gainesville, --- So.3d ----, 2013 WL 363376 (Fla. 1st DCA 2013).

The threshold step in analyzing whether a taking has occurred sufficient to constitute an inverse condemnation is to determine whether the claim is ripe. In order to find that a claim is ripe, a party must demonstrate a meaningful application for a land use decision, a final decision by the governmental authority, and that the submission of additional or revised applications would be futile.

Cynergy, LLC v. First American Title Ins. Co., --- F.3d ----, 2013 WL 309052 (11th Cir. 2013).

An affidavit of a decedent may be introduced into evidence under the “catch-all exception to the hearsay rule,” Federal Evidence Rule 807, if it is more probative than evidence that can be obtained through other means and the proponent of the affidavit has given notice of its intended use before hearing or trial.

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Bischoff v. Walker, --- So.3d ----, 2013 WL 461805 (Fla. 5th DCA 2013).

Upon rehearing, the original opinion is amended to reflect that factual issues precluding summary judgment exist with regard to the land underlying a lake adjoining the canal in dispute. The opinion re-affirms that Florida follows the majority rule that reference to a monument, such as a canal, in a deed grants title to the centerline of the monument. Accordingly, the following legal description indicates a grant to the centerline of the non-navigable waterway:

That part of the Northeast 1/4 of the Southeast 1/4 of Section 8, Township 22 South, Range 32 East, Orange County, Florida lying East of Canal and North of Lake, LESS the East 100 feet and LESS the North 30 feet thereof for road right-of-way.

Pino v. Bank of New York, --- So.3d ----, 2013 WL 452109 (Fla. 2013).

A plaintiff may voluntarily dismiss an action, and a trial court may not vacate the dismissal unless the plaintiff has fraudulently obtained affirmative relief and dismissal will obstruct the trial court's ability to correct the wrong. A trial court has no inherent authority to strike a notice of voluntary dismissal; relief may only be obtained through Florida Rule of Civil Procedure 1.540 (b) (3).

Pompano Masonry Corp. v. Anastasi, --- So.3d ----, 2013 WL 440085 (Fla. 4th DCA 2013).

An award of attorneys' fees under Florida Rule of Civil Procedure 1.730 (c) is a sanction, and thus a decision by an appellate court denying fees on this basis is not binding on a trial court after remand since its' basis is a factual determination to be made by the trial court.

Alexopoulos v. Gordon Hargrove & James, P.A., --- So.3d ----, 2013 WL 440095 (Fla. 4th 2013).

A single conclusory statement without a factual basis in a trial court pleading is not sufficient to support summary judgment.

Home Const. Management, LLC v. Comet, Inc., --- So.3d ----, 2013 WL 440101 (Fla. 4th DCA 2013).

A party must be a signatory to a construction contract in order to have damages against him trebled pursuant to Fla. Stat. § 768.0425.

Simpson v. Tarmac America, LLC, --- So.3d ----, 2013 WL 440138 (Fla.3d DCA 2013).

A motion for rehearing directed to an order granting summary judgment will be treated as being directed to the final summary judgment when the order granting summary judgment and the final summary judgment are the same; such a motion will be considered a premature motion for rehearing but still toll the time to file an appeal.

Suzlon Energy, A/S v. Ventus de Nicaragua, S.A., --- So.3d ----, 2013 WL 440150 (Fla. 3d DCA 2013).

A power of attorney need not expressly refer to arbitration to confer the power to initiate arbitration. However, and under the principle of *expressio unius est exclusio alterius* (“the mention of one thing implies the exclusion of another”), the listing of a power to compromise a dispute in arbitration without the specific power to initiate arbitration indicates there was no intention to grant the power to initiate arbitration.

Roemmele-Putney v. Reynolds, --- So.3d ----, 2013 WL 440222 (Fla. 3d DCA 2013).

The Florida Public Service Commission is the exclusive authority for determining whether electricity may be provided to an area such as one of the Florida Keys, notwithstanding the Coastal Barrier Resources Act, 16 U.S.C. §§ 3501–3510.

Clipper Bay Investments, LLC v. State Dep't of Transp., --- So.3d ----, 2013 WL 425882 (Fla. 1st DCA 2013).

Lands held in fee by a governmental unit for right of way purposes is exempt from the application of the Marketable Record Title Act under the following exception:

(5) Recorded or unrecorded easements or rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used and the use of any part thereof shall except from the operation hereof the right to the entire use thereof.

LABMD, Inc. v. Tiversa, Inc., Slip Copy, 2013 WL 425983 (11th Cir. 2013).

No long arm jurisdiction exists when an out of state company accesses an in state company's computers and then attempts to sell the in state company computer security services.

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Anhloan Tran v. Anvil Iron Works, Inc., --- So.3d ----, 2013 WL 561458 (Fla. 2d DCA 2013).

A proposal for settlement is ambiguous, and accordingly, unenforceable when the notices of voluntary dismissal attached to the proposal contradict the proposal's terms.

Laizure v. Avante at Leesburg, Inc., --- So.3d ----, 2013 WL 535417 (Fla. 2013).

Florida's Wrongful Death Act, Fla. Stat. § 768.19, is derivative of the claims of the individual prior to death. Accordingly, an individual's contractual agreement to arbitrate nursing home claims is binding on the estate of the individual who claims against the nursing home under the Wrongful Death Act.

DelMonico v. Traynor, --- So.3d ----, 2013 WL 535451 (Fla. 2013).

The Absolute Litigation Privilege against defamation does not apply to out of court statements, but a Qualified Litigation Privilege applies to out of court statements related to the litigation so long as the statements are not made with malice. Accordingly, defamatory statements made to potential witnesses are only entitled to a qualified privilege and only so long as the statements were not made with malice.

Information Systems Associates, Inc. v. Phuture World, Inc., --- So.3d ----, 2013 WL 512362 (Fla. 4th DCA 2013).

A conflict of interest by a person other than a party to the attorney/client relationship cannot be used to contest the *pro hac vice* status of an attorney.

Yale Mortg. Corp. v. Blot, --- So.3d ----, 2013 WL 514379 (Fla. 3d DCA 2013).

Party seeking to vacate a foreclosure sale after default final judgment must demonstrate 1) that the failure to respond was the result of excusable neglect; 2) the existence of a meritorious defense; and 3) that the movant acted with due diligence in seeking relief).

Deutsche Bank National Trust Co. v. LGC, --- So.3d ----, 2013 WL 514491 (Fla. 2d DCA 2013).

Dismissal with prejudice for single discovery violation is too severe a sanction, especially when party has not been prejudiced and case sits idle after sanction.

Kemmerer v. Klass Associates, Inc., --- So.3d ----, 2013 WL 514511 (Fla. 2d DCA 2013).

Substitute service of process must be made at the "usual place of abode" of the party being served, i.e., where the defendant was actually living at the time of service. "Residence" is not necessarily the same as "usual place of abode" for service of process purposes.

Ross v. Wells Fargo Bank, --- So.3d ----, 2013 WL 514558 (Fla. 3d DCA 2013).

A general retention of jurisdiction such as “[t]he Court retains jurisdiction of this action to enter further Orders that are proper including, without limitation, writs of possession and deficiency judgments” is not sufficient to allow re-foreclosure of property in order to add a party omitted after the initial foreclosure.

Meigs Properties, Ltd. v. Board of County Com'rs of Okaloosa County, --- So.3d ---, 2013 WL 500381 (Fla. 1st DCA 2013).

Abandonment of a particular land use sufficient to effectuate a deed reverter is not established by mere non-use alone; abandonment must be clearly proven by evidence of clear, affirmative intent to abandon.

Kinsey v. MLH Financial Services, Inc., Slip Copy, 2013 WL 536019 (11th Cir. 2013).

Actions taken during litigation are protected by Florida’s Absolute Litigation Privilege, thus actions taken in litigation cannot violate the Fair Debt Collection Practices Act nor the Florida Consumer Collection Practices Act.

In re Davenport, Slip Copy, 2013 WL 530842 (11th Cir. 2013).

A creditor objecting to dischargeability of a loan under 11 U.S.C. § 522 (a)(2)(B) must establish it acted with “reasonable reliance” upon the debtor’s financial statements and representations, and the reasonableness of the creditor’s reliance depends on factors such as “whether there had been previous business dealings with the debtor that gave rise to a relationship of trust; whether there were any ‘red flags’ that would have alerted an ordinarily prudent lender to the possibility that the representations relied upon were not accurate; and whether even minimal investigation would have revealed the inaccuracy of the debtor's representations.

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Raubvogel v. Credit Suisse Securities (USA) LLC, --- So.3d ----, 2013 WL 613610 (Fla. 4th DCA 2013).

The trial court determines the amount of fees awarded the prevailing party in an arbitration proceeding unless parties expressly waive the trial court right to do so.

Hoang Dinh Duong v. Ziadie, --- So.3d ----, 2013 WL 614212 (Fla. 4th DCA 2013).

A three part test determines whether juror's nondisclosure of information during *voir dire* warrants a new trial: was the information relevant to jury service, did the juror conceal the information during *voir dire*, and whether juror's failure to disclose information was due to lack of diligence by the complaining party.

Marcum LLP v. Potamkin, --- So.3d ----, 2013 WL 615698 (Fla. 3d DCA 2013).

One spouse's claim for accounting malpractice is assignable to another spouse in the first instance, and since the agreement with the accounting firm requires arbitration of all claims, it is up to the arbitrators to determine whether Florida public policy prohibits assignment of accounting malpractice claims.

Zapata v. Howett Holdings, Inc., --- So.3d ----, 2013 WL 615782 (Fla. 3d DCA 2013).

An appeal is premature when the trial court has granted reconsideration of its order and scheduled an evidentiary hearing regarding the reconsideration motion.

RSG, LLC v. Lenet, --- So.3d ----, 2013 WL 616039 (Fla. 3d DCA 2013).

There is no requirement to deposit rent into the Registry of the Court pursuant to Fla. Stat. § 83.60 when the trial court has not made initial determination whether the conditions precedent were met the lease actually commenced.

F.V. Const. Corp. v. Community Bank of Florida, Inc., --- So.3d ----, 2013 WL 616654 (Fla. 3d DCA 2013).

A pleading is struck as sham only if it is inherently false or based on facts conceded to be or clearly known to be false. Likewise, a hearing on motion to strike a sham pleading is not a trial on the merits, but only a proceeding to determine whether there are genuine issues to be tried.

Olen Properties Corp. v. Wren, --- So.3d ----, 2013 WL 646004 (Fla. 4th DCA 2013).

A trial court that retains jurisdiction to enforce a settlement agreement may enforce the terms of the settlement agreement, but does not have jurisdiction to award breach of contract damages for breach of the settlement agreement.

City of Freeport v. Beach Community Bank, --- So.3d ----, 2013 WL 598417 (Fla. 1st DCA 2013).

The doctrine of separation of powers requires that certain quasi-legislative policy-making, planning, or judgmental governmental functions are immune from tort liability. Accordingly, a local government is not liable to a lender that relies on a government required and monitored letter of credit that is later found to be non-collectible.

Gunn v. Minton, --- S.Ct. ----, 2013 WL 610193 (2013).

A malpractice claim arising out of patent law is not subject to the exclusive jurisdiction of the federal courts.

F.T.C. v. Phoebe Putney Health System, Inc., --- S.Ct. ----, 2013 WL 598434 (2013).

A state hospital authority is not immune from federal antitrust law under state-action immunity.

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State, Dep't of Fin. Services v. Peter R. Brown Const., Inc., --- So.3d ----, 2013 WL (Fla. 1st DCA 2013).

Florida Administrative Code Rule 69I-40.103, which restricts the categories of expenditures for which Florida government can contract, is an improper exercise of legislatively delegated authority. Accordingly, the State of Florida cannot defend against a vendor's payment claims under the authority of Rule 69I-40.103.

Alachua County v. Expedia, Inc., --- So.3d ----, 2013 WL 709561 (Fla. 1st DCA 2013).

Online travel reservation companies merely transfer a hotel request to the hotel, thus the Tourist Development Tax, which applies to the consideration paid "for occupancy" of a hotel room, applies only to amounts paid by the companies to the hotels and not to fees retained by online travel companies through which the rooms were booked.

Homeward Residential, Inc. v. Rico, --- So.3d ----, 2013 WL 692093 (Fla. 4th DCA 2013).

Corporation may not object to discovery on basis of third party claims of confidentiality unless it meets the three part *jus tertii* test of *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So.2d 936 (Fla.2002) (litigant has suffered "injury in fact" with "sufficiently concrete interest" in the outcome; the litigant has a close relation to the third party; and a hindrance prevents third party from protecting their own interest).

Fountas v. Microcomputer Resources, Inc., --- So.3d ----, 2013 WL 692442 (Fla. 4th DCA 2013).

A trial court has the discretion to release funds escrowed pursuant to Fla. Stat. § 607.1436(1), Fla. Stat. (2006) (a corporation or affected shareholder may elect to purchase shares of shareholder in lieu of dissolution) prior to conclusion of case.

Carbon Capital II v. Estate of Tutt, --- So.3d ----, 2013 WL 692820 (Fla. 3d DCA 2013).

Equitable title to real estate has passed when almost all payments have been made and purchaser/judgment debtor has taken possession of and made improvements on the real property. Accordingly, garnishee is not responsible to judgment creditors as it no longer holds title to the property sought to be garnished.

Lindsey v. Wells Fargo Bank, N.A., --- So.3d ----, 2013 WL 692825 (Fla. 1st DCA 2013).

Lack of standing is a defense that is waived if not raised in the answer as an affirmative defense; it is not waived by failure to raise the defense in a motion to dismiss.

Amgen Inc. v. Connecticut Retirement Plans and Trust Funds, --- S.Ct. ----, 2013 WL 691001 (2013).

The “fraud on the market” theory of class certification in securities actions does not require proof of materiality.

Gabelli v. S.E.C., --- S.Ct. ----, 2013 WL 691002 (2013).

Claims by the federal government for civil penalties for fraud must, under 28 U.S.C. § 2462, be brought within five years of fraud’s occurrence and not of discovery of fraud.

Marx v. General Revenue Corp., --- S.Ct. ----, 2013 WL 673254 (2013).

A federal court may award costs to a prevailing defendant in a Fair Debt Collection Practices Act case without first finding plaintiff brought case without basis and for purposes of harassment.

Flintlock Const. Services, LLC v. Well Come Holdings, LLC, --- F.3d ----, 2013 WL 673156 (11th Cir. 2013).

Bare bones claims and defenses in pleadings which are supplemented through memoranda deprive an appellate court the ability to conduct a meaningful review.

Meyer v. Greene, --- F.3d ----, 2013 WL 656500 (11th Cir. 2013).

A “corrective action” for a “fraud on the market” claim need not mirror the earlier misrepresentation, but must relate back to the misrepresentation (and not some other negative information).

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Browning v. Poirier, --- So.3d ----, 2013 WL 842853 (Fla. 5th DCA 2013).

While contracts of indefinite duration are generally outside of the Statute of Frauds, a terminable at will agreement to periodically purchase lottery tickets and divide winnings is capable of being completed in one year and does not require indefinite performance.

Lindon v. Dalton Hotel Corp., --- So.3d ----, 2013 WL 842880 (Fla. 5th DCA 2013).

While an appellate court generally gives deference to a trial court decision on whether to grant a new trial, the same deference is not applied when a successor judge (who did not initially hear the trial) decides whether to grant a new trial.

Avalon Legal Information Services, Inc. v. Keating, --- So.3d ----, 2013 WL 843033 (Fla. 5th DCA 2013).

An order restraining competition in violation of a restrictive covenant is overly broad to the extent it restricts competition from a potential class of customers as opposed to existing customers in that class, and also it restricts activities other than those specifically set forth in the restrictive covenant itself.

Deutsche Bank Nat. Trust Co. v. Prevratil, --- So.3d ----, 2013 WL 845285 (Fla. 2d DCA 2013).

A loan servicer's verification of residential foreclosure complaint complies with the requirement of Florida Rule of Civil Procedure 1.110 (b).

Spring Lake NC, LLC v. Beloff, --- So.3d ----, 2013 WL 845486 (Fla. 2d DCA 2013).

A party seeking to void an arbitration agreement on the basis of unconscionability must first demonstrate procedural unconscionability, i.e., the party had no meaningful choice.

Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Companies, --- So.3d ----, 2013 WL 828003 (Fla. 2013).

The Economic Loss Rule is limited to products liability cases.

Coastal Palms Holdings, LLC v. Paxton, --- So.3d ----, 2013 WL 811479 (Fla. 2d DCA 2013).

A replevin show cause hearing contemplates a temporary, not final, award pending the court conducting a trial and issuing a final judgment.

Indiana Lumbermens Mut. Ins. Co. v. Pennsylvania Lumbermens Mut. Ins. Co., --- So.3d ----, 2013 WL 811583 (Fla. 4th DCA 2013).

An insurer, in an action against another insurer, may be awarded attorneys' fees under Fla. Stat. § 627.428.

Hecht Consulting Corp. v. Manors of Inverrary XI Ass'n, Inc., --- So.3d ----, 2013 WL 811596 (Fla. 4th DCA 2013).

To the extent an interlocutory order granting summary judgment is inconsistent with the final summary judgment, the inconsistent interlocutory terms are extinguished.

Shahar v. Green Tree Servicing LLC, --- So.3d ----, 2013 WL 811612 (Fla. 4th DCA 2013).

The Doctrine of Unclean Hands encompasses a situation where a borrower claims the lender altered the loan application and loan instruments.

Great Lakes Reinsurance (U.K.) PLC v. Branam, --- So.3d ----, 2013 WL 811677 (Fla. 3d DCA 2013).

A stranger to a marine insurance contract has no standing to file claims against insurance company which insured boat and corporation that owns boat.

San Pedro v. Claridges Condominium, Inc., --- So.3d ----, 2013 WL 811696 (Fla. 4th DCA 2013).

A property manager may be sued in tort, including theories of private nuisance, trespass and negligence.

Sunbeam Television Corp. v. Nielsen Media Research, Inc., --- F.3d ----, 2013 WL 776361 (11 Cir. 2013).

In order to establish standing, a party suing under the Clayton Act must establish a competitor is willing and able to enter the market.

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Wendler v. City of St. Augustine, --- So.3d ----, 2013 WL 1007290 (Fla. 5th DCA 2013).

The four year statute of limitations under the Bert Harris Act, Fla. Stat. § 70.001 *et seq.*, begins to run when the government action inordinately affecting property rights is readily ascertainable to the property owner; an ordinance which may or may not affect property rights (depending on local government discretion) does not commence the running of the limitations period.

Wells Fargo Bank, NA v. Giglio, --- So.3d ----, 2013 WL 949989 (Fla. 4th DCA 2013).

Trial court errs if it refuses to cancel foreclosure sale and return original loan documents upon settlement and upon proper motion of mortgagee based on Fla. Stat. § 702.07 (power of courts to set aside foreclosure judgment prior to sale) and Florida Rule of Civil Procedure 1.540 (b)(5) (judgment no longer equitable).

Wells Fargo Bank, NA v. Giglio, --- So.3d ----, 2013 WL 949989 (Fla. 4th DCA 2013).

A trial judge cannot involuntarily dismiss an action under Florida Rule of Civil Procedure 1.420 (b) prior to the plaintiff concluding its case in chief.

Steiner Transocean Ltd. v. Efremova, --- So.3d ----, 2013 WL 950525 (Fla. 3d DCA 2013).

A reviewing court is not bound by the four corners of the complaint when a motion to dismiss is based on lack of subject matter jurisdiction, lack of personal jurisdiction, or when the motion is based on *forum non conveniens* or improper venue.

Placida Professional Center, LLC v. F.D.I.C., Slip Copy, 2013 WL 978271 (11th Cir. 2013).

Once the F.I.R.R.E.A. administrative claims process is completed, an affected party may bring suit for declaratory judgment regarding the loan instruments in dispute. Notwithstanding same, a setoff is not permitted to loan instruments as the potential "setoff" and any possible repudiation damages are encompassed in the claims process.

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Jossfolk v. United Property & Cas. Ins. Co., --- So.3d ----, 2013 WL 1136315 (Fla. 4th DCA 2013).

The Florida Arbitration Code does not apply to insurance appraisal procedures.

Carriage Hills Condominium, Inc. v. JBH Roofing & Constructors, Inc., --- So.3d ---, 2013 WL 1136399 (Fla. 4th DCA 2013).

The testimony of a witness noticed for deposition as the “person with most knowledge” will not necessarily bind the witness’s organization if the deposition is not noticed in accordance with Florida Rule of Civil Procedure 1.310 (b) (6).

Whitney v. Milien, --- So.3d ----, 2013 WL 1136409 (Fla. 4th DCA 2013).

In order to overturn a jury verdict, the “totality of all errors and improprieties” must be “pervasive enough to raise doubts as to the overall fairness of the trial court proceedings.”

South Beach Mortg. and Inv. Corp. v. Levine, --- So.3d ----, 2013 WL 1136441 (Fla. 3d DCA 2013).

The time period in which mortgagee is entitled to interest on funds held in supersedeas bond runs from date when trial court overrules purchaser's objections until disbursement of sale proceeds to mortgagee.

Mauna Loa Investments, LLC v. Santiago, --- So.3d ----, 2013 WL 1136448 (Fla. 3d DCA 2013).

A final judgment must be vacated when the complaint upon which it is based fails to state a cause of action, notwithstanding there was a default. Accordingly, a final judgment for a slip and fall must be vacated when the recorded deeds demonstrate the defendant was not the owner on the date of accident.

Standard Fire Ins. Co. v. Knowles, --- S.Ct. ----, 2013 WL 1104735 (2013).

A party representative may not bind a class prior to certification. Accordingly, a class-action plaintiff may not exclude an action from the Class Action and Fairness Act of 2005 by stipulating that he and the class he seeks to represent will not seek damages that exceed \$5 million in total.

Kirtsaeng v. John Wiley & Sons, Inc., --- S.Ct. ----, 2013 WL 1104736 (2013).

The First Sale Doctrine, as codified in the Copyright Act, applies to copies lawfully made outside the United States.

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Okaloosa New Opportunity, LLC v. LD Projects, LLC, --- So.3d ----, 2013 WL 1234193 (Fla. 5th DCA 2013).

Florida Statute § 56.29 (proceedings supplementary) allows a judgment holder to pursue and implead third parties upon filing an affidavit that complies with the statute.

Boumarate v. HSBC Bank USA, N.A., --- So.3d ----, 2013 WL 1234322 (Fla. 5th DCA 2013).

Lender seeking to re-establish and enforce a lost note retains the burden of proof to establish same, notwithstanding whether borrower raises this defense.

In re Amendments to Florida Rule of Jud. Admin. 2.420, --- So.3d ----, 2013 WL 1234993 (Fla. 2013).

Rule 2.420 (confidentiality of court records) is amended is changed to limit the amount of information a filer must disclose when filing confidential information and to provide for “after the fact” notification of confidential information in a court filing.

DK Arena, Inc. v. EB Acquisitions I, LLC, --- So.3d ----, 2013 WL 1235000 (Fla. 2013).

Promissory Estoppel is not an exception to the Statute of Frauds.

Calypso Developers I, LLC v. Pelican Properties of South Walton, LLC, --- So.3d --- -, 2013 WL 1235890 (Fla. 1st DCA 2013).

The question of whether sale of real estate is in gross or by the acre is normally a question of fact to be determined by the trial court.

Navarro v. Castro, --- So.3d ----, 2013 WL 1222764 (Fla. 4th DCA 2013).

Florida Rule of Civil Procedure 1.540 (b) (1) does not allow a party to seek relief from dismissal or final judgment when the mistake is tactical or judgmental.

Marble Unlimited, Inc. v. Weston Real Estate Inv. Corp., --- So.3d ----, 2013 WL 1222779 (Fla. 4th DCA 2013).

Whether a party is in contractual privity so as to dispense with a Notice to Owner requirement under Fla. Stat. § 713.06 is a factual question, but an owner cannot trigger a requirement for a subcontractor to file a Notice to Owner by transferring real property to a different legal (but same beneficial) owner after the subcontract is signed.

SO5 501, LLC v. Metro Dade Title Co., --- So.3d ----, 2013 WL 1222947 (Fla. 3d DCA 2013).

The common law fiduciary duty to exercise reasonable skill and diligence imposed on escrow agents may be modified by contract. Accordingly, escrow agent did not breach fiduciary duty when the escrow agreement compelled escrow agent to disburse upon developer’s written instruction.

Comcast Corp. v. Behrend, --- S.Ct. ----, 2013 WL 1222646 (2013).

A court reviewing class certification must measure the damages model to ascertain damages are ascertainable across the entire class, even if doing so means that the court will review issues for final determination.

Arthur J. Gallagher Service Co. v. Egan, Slip Copy, 2013 WL 1197107 (11th Cir. 2013).

The subsidiary of a protected entity is entitled to enforce a non-compete agreement with a former employee.

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Flescher v. Oak Run Associates, Ltd., --- So. 3d ----, 2013 WL 1348134 (Fla. 5th DCA 2013).

A developer may draft association covenants so that developer retains the absolute right to change provisions, but changes are subject to reasonableness requirement that character of development not be changed or burden on members increased.

U. S. Bank, N.A. v. Wanio-Moore, --- So. 3d ----, 2013 WL 1348245 (Fla. 5th DCA 2013).

Florida Rule of Civil Procedure 1.110 (b)'s verification requirement for mortgage foreclosures does not require the signer's position be stated in order to be valid.

Green v. JPMorgan Chase Bank, N.A., --- So. 3d ----, 2013 WL 1348399 (Fla. 5th DCA 2013).

Foreclosing lender does not prove it had standing on filing date by relying on physical possession of original note which has blank and undated indorsement. Additionally, mortgagor making payments after transfer of note does not automatically defeat defense of failure to comply with the servicer transfer notification requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(c)(1) and (2)(B).

Hunt v. State Farm Florida Ins. Co., --- So. 3d ----, 2013 WL 1352471 (Fla. 2d DCA 2013).

A claimant does not need to have prevailed on a breach of a contract claim before filing a "bad faith notice" against its insurer under Fla. Stat. § 624.155.

Malamud v. Syprett, --- So. 3d ----, 2013 WL 1352474 (Fla. 2d DCA 2013).

Claim for unjust enrichment is not barred when a cause of action for breach of contract also exists. Additionally, the direct benefit required for unjust enrichment may result from the actions of principals, and not just corporate entities.

Patrowicz v. Wolff, --- So. 3d ----, 2013 WL 1352488 (Fla. 2d DCA 2013).

A trial court errs, and certiorari will lie, for orders compelling discovery over objections of privilege and without first conducting an *in camera* review of the documents.

In Re: Amendments To Florida Rule Of Judicial Administration 2.516, --- So. 3d ---, 2013 WL 1338033 (Fla. 2013).

The Florida Supreme Court clarifies Rule of Judicial Administration 2.516 to reflect that parties are required to serve court papers by e-mail (but may stipulate to opt out of doing so), and to clarify that a separate designation of e-mail address is not necessary.

Fidelity Nat. Title Ins. Co. v. Grosso, --- So. 3d ----, 2013 WL 1316001 (Fla. 4th DCA 2013).

It is an abuse of a trial court's discretion to certify a class with an order that does not contain findings of fact upon which the certification is made.

Florida Eurocars, Inc. v. Pecorak, --- So. 3d ----, 2013 WL 1316115 (Fla. 4th DCA 2013).

There must be a "timely application" to vacate a default, and the length and reason of delay are analyzed to see whether the application was "timely filed." The delay occasioned by attempting to amicably resolve the dispute with opposing counsel (i.e., without filing a motion) constitutes a justifiable reason for delay in filing the petition.

LK Group Holding Co. v. Spurrier Investments, Inc., --- So. 3d ----, 2013 WL 1316134 (Fla. 4th DCA 2013).

An eviction which is reversed on appeal is not *ipso facto* a wrongful eviction.

Vocelle & Berg, L.L.P. v. IMG Citrus, Inc., --- So. 3d ----, 2013 WL 1316329 (Fla. 4th DCA 2013).

The following language creates a clear property interest in an escrow account held by a third party such that judgment creditor cannot garnish the account:

For ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the undersigned hereby assigns, transfers and delivers to Vocelle & Berg, L.L.P., all sums owned by the undersigned, due or which shall become due and owing to the undersigned from [the escrow agent] as escrow agent of the Escrow Agreement dated April 1, 2010 and Escrow Agreement dated April 1, 2010, attached as Exhibit "A" by reason of a certain agreement dated October 7, 2012 by and between the undersigned and Paul R. Berg, Esquire and Vocelle & Berg, LLP attached as Exhibit "B."

Gutierrez v. Rubio, --- So. 3d ----, 2013 WL 1316383 (Fla. 3d DCA 2013).

A trial court must make a factual determination confidential information was actually disclosed and that this information gives the non-moving party an unfair tactical advantage in order to disqualify counsel; this determination must be based on actual testimony and cannot be based solely on conflicts affidavits or the arguments of counsel.

Kalmanowitz v. Amerada Hess Corp., --- So. 3d ----, 2013 WL 1316392 (Fla. 4th DCA 2013).

The Relation Back Doctrine is to be liberally construed to allow complaints to be amended, even if the statute of limitations has run, when the "original pleading gives fair notice of the general fact situation out of which the claim or defense arises."

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Langley Ltd. Partnership, LLLP v. School Bd. of Lake County, --- So.3d ----, 2013 WL 1482779 (Fla. 5th DCA 2013).

A statute of limitations begins to run when the last element of a cause of action accrues, and is not affected (either by acceleration or by accrual) by a different cause of action.

Blue Earth Solutions v. Florida Consolidated Properties, LLC, --- So.3d ----, 2013 WL 1482839 (Fla. 5th DCA 2013).

Mandatory injunctions should issue only in rarest of circumstances where legal rights are clear. Accordingly, a trial court cannot put a party back into possession where there is no lease and no clear delineation of legal rights.

Nieto v. Mobile Gardens Ass'n of Englewood, Inc., --- So.3d ----, 2013 WL 1489377 (Fla. 2d DCA 2013).

A homeowner's association does not have standing to enforce a developer's rights under restrictive covenants unless it has been assigned the developer's rights or is the direct successor of the developer's interest.

In re Amendments To Florida Rule of Civil Procedure 1.442, --- So.3d ----, 2013 WL 1457749 (Fla. 2013).

A proposal for settlement must be accepted within thirty days of service; mailing time is not added to the thirty days.

McKenzie Check Advance of Florida, LLC v. Betts, --- So.3d ----, 2013 WL 1457843 (Fla. 2013).

Following *AT & T Mobility, LLC v. Concepcion*, 131 S.Ct. 1740, 1744 (2011), the Florida Supreme court holds that class action waivers in arbitration proceedings do not violate Florida public policy.

Citizens Property Ins. Corp. v. River Manor Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 1441294 (Fla. 4th DCA 2013).

Fla. Stat. § section 718.111(11) designates the insurance that condominium associations and unit owners must purchase. The statute section requires an association to use "best efforts" to purchase insurance but does not require an insurance company to provide a minimum level of coverage.

Bradshaw v. Boynton-JCP Associates, Ltd., --- So.3d ----, 2013 WL 1442041 (Fla. 4th DCA 2013).

A proposal for settlement will not be enforced if ambiguities within the proposal reasonably affect the offeree's decision.

GEICO General Ins. Co. v. Williams, --- So.3d ----, 2013 WL 1442157 (Fla. 4th DCA 2013).

Insurer abandons arguments raised only in a trial court Motion for Rehearing when it files its appeal before determination of the Motion for Rehearing.

Kurian v. Wells Fargo Bank, Nat. Ass'n, --- So.3d ----, 2013 WL 1442164 (Fla. 4th DCA 2013).

Mortgagee failure to refute affirmative defense of lack of notice and opportunity to cure requires reversal of summary judgment.

Merritt v. OLMHP, LLC, --- So.3d ----, 2013 WL 1442167 (Fla. 2d DCA 2013).

Appellate court can review factual findings of a trial conducted under the Voluntary Trial Resolution Act, Fla. Stat. §44.104.

Rogan v. Oliver, --- So.3d ----, 2013 WL 1442169 (Fla. 2d DCA 2013).

A former manager of a community association has no right to invoke the attorney-client privilege; the privilege only belongs to the client (the association) and only the current board of the association may invoke the privilege.

Leon F. Cohn, M.D., P.A. v. Visual Health and Surgical Center, Inc., --- So.3d ----, 2013 WL 1442234 (Fla. 4th DCA 2013).

A prevailing party attorney fees provision in an Asset Purchase Agreement that applies to “any dispute between the parties” applies to a separate consulting agreement entered into at the same time between the parties.

Beltran v. Vincent P. Miraglia, M.D., P.A., --- So.3d ----, 2013 WL 1442239 (Fla. 4th DCA 2013).

A shareholder may not be held individually responsible for the debts of a business entity unless the shareholder personally entered into the agreement, sufficient facts exist to pierce the corporate veil, or the shareholder agreed to personally guarantee the debts of the business entity.

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Walker v. Ruot, --- So.3d ----, 2013 WL 1687878 (Fla. 5th DCA 2013).

A defendant employer has no privacy rights in an employee's personnel file, but may object to its production that the requested discovery is not relevant to the litigation.

S.W. Florida Paradise Property, Inc. v. Segelke, --- So.3d ----, 2013 WL 1629124 (Fla. 2d DCA 2013).

A default during the main part of case does not waive the right to defend or object during post judgment proceedings.

Zodiac Records Inc. v. Choice Environmental Services, --- So.3d ----, 2013 WL 1629134 (Fla. 4th DCA 2013).

Former customer relationships are not trade secrets unless they are product of great effort and expense and consist of confidential (not publicly available) information.

Chanin v. Feigenheimer, --- So.3d ----, 2013 WL 1629154 (Fla. 4th 2013).

A family court judge has jurisdiction to hear fraud, FDUTPA and negligence claims against third parties.

Cromarty v. Wells Fargo Bank, NA, --- So.3d ----, 2013 WL 1629161 (Fla. 4th DCA 2013).

An undated blank indorsement does not, without more, establish that a plaintiff has standing at the time of filing a mortgage foreclosure suit.

Southfields of Palm Beach Polo and Country Club Homeowners Ass'n, Inc. v. McCullough, --- So.3d ----, 2013 WL 1629186 (Fla. 4th DCA 2013).

A community association has a duty, which can be enforced by mandatory injunction and mandamus if necessary, to file those documents under Fla. Stat. 712.05 of the Marketable Record Title Act to preserve the community's restrictive covenants.

Cobb v. Durando, --- So.3d ----, 2013 WL 1629226 (Fla. 2d DCA 2013).

A proposal for settlement must apportion between joint plaintiffs, even if the joint plaintiffs are married and even if their claim derives from real property owned as tenants by the entireties.

Branch Banking and Trust Co. v. Kraz, LLC, --- So.3d ----, 2013 WL 1629233 (Fla. 2d DCA 2013).

A FDIC "shared loss agreement" does not constitute "payment" of a defaulted mortgage loan such that the loan is not in default and a foreclosure cannot be prosecuted.

Foley v. Wilson, --- So.3d ----, 2013 WL 1629247 (Fla. 3d DCA 2013).

A circuit court's subject matter jurisdiction is satisfied with a good faith claim of \$15,000.

Swanky Apps, LLC v. Rooney Invest & Finance, S.A., --- So.3d ----, 2013 WL 1629250 (Fla. 3d DCA 2013).

Telephone and e-mail communications while a person is temporarily in Florida are insufficient minimum contacts to constitutionally exercise long arm jurisdiction.

In re Thomas, Slip Copy, 2013 WL 1579872 (11th Cir. 2013).

Proceeds from a post-petition real estate “short sale” are property of the estate even if the closing emanated from a pre-petition contract.

In re Northlake Foods, Inc., Slip Copy, 2013 WL 1603442 (11th Cir. 2013).

A dividend payment required to be made under a shareholders’ agreement, in this case to pay for taxes that might be imposed on the shareholders, is not a fraudulent transfer in that the company received reasonably equivalent value by virtue of the Subchapter S election.

Merle Wood & Associates, Inc. v. Trinity Yachts, LLC, --- F.3d ----, 2013 WL 1501928 (11th Cir. 2013).

The statute of limitations for quantum meruit and unjust enrichment begins to run when a benefit is conferred. Accordingly, the statute begins to run when a broker introduces prospective customers to a manufacturer and assists in the sale of yachts to customers.

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Walther v. Ossinsky & Cathcart, P.A., --- So.3d ----, 2013 WL 1775510 (Fla. 5th DCA 2013).

A charging lien requires “(1) an express or implied contract between attorney and client; (2) an express or implied understanding for payment of attorneys' fees out of the recovery; (3) either an avoidance of payment or a dispute as to the amount of fees; and (4) timely notice.” Since a charging lien attaches only to the fruits of the services, the attorney must produce a positive outcome to which attach the charging lien.

Marcus v. Florida Bagels, LLC, --- So.3d ----, 2013 WL 1748533 (Fla. 4th DCA 2013).

Equitable estoppel principles hold that a non-signatory to an arbitration agreement cannot compel the signatories into arbitration when they choose not to arbitrate.

DLJ Mortg. Capital, Inc. v. Fox, --- So.3d ----, 2013 WL 1748537 (Fla. 4th DCA 2013).

A trial court retains jurisdiction to find waiver for failure to file a privilege log, but waiver should not apply to categorical privileges such as the attorney-client privilege.

America Atlantic Transmission v. Nice Car, Inc., --- So.3d ----, 2013 WL 1748538 (Fla. 4th DCA 2013).

A lienholder, as opposed to a statutorily defined “customer” (owner) of a vehicle, is not entitled to release of a motor vehicle notwithstanding it has posted bond under Fla. Stat. § 559.917(1)(a) for the repair costs.

Heller v. Blue Aerospace, LLC, --- So.3d ----, 2013 WL 1748545 (Fla. 4th DCA 2013).

Equitable estoppel principles hold that a signatory to an arbitration clause may compel arbitration against a non-signatory when the signatory raises allegations of concerted conduct by the non-signatory and signatories to the contract.

Hillsboro Management, LLC v. Pagono, --- So.3d ----, 2013 WL 1748615 (Fla. 4th DCA 2013).

De La Rosa v. Zequeira, 659 So.2d 239 (Fla.1995), holds that juror non-disclosure during *voir dire* will result in new trial when the withheld information is relevant and material in the case, juror conceals the information during questioning, and the failure to disclose is not due to complaining party's lack of diligence. A juror's prior litigation is material, concealment need not be intentional, and the technological ease with which counsel may access information impacts the question of diligence.

Herman v. Intracoastal Cardiology Center, --- So.3d ----, 2013 WL 1748634 (Fla. 4th DCA 2013).

Dismissal for fraud on the court is proper only in the most extreme of circumstances, and actions or non-disclosure must be relevant to the issues in the case. What constitutes fraud on the court rests in the sound discretion of the court, but disputed issues of material fact typically do not constitute fraud on the court.

Atlantis Estate Acquisitions, Inc. v. DePierro, --- So.3d ----, 2013 WL 1748642 (Fla. 4th DCA 2013).

The full rental payment for a period, even if it is for the period of one year, means the rental payment is not “advance rent” under Fla. Stat. § 83.43 (9) and need not be segregated in a separate account under the Landlord Tenant Act. A tenant that pays for an entire year but is properly evicted under the Act before the end of the rental period may not claim the unused rental period as an “unjust enrichment” to the landlord.

Kritikos v. Andersen, --- So.3d ----, 2013 WL 1748678 (Fla. 4th DCA 2013).

The proper measure of damages for defective construction work that has been corrected is the actual cost of repair; the proper measure of damages for defective work that has not been corrected is the anticipated cost of correction.

Wells Fargo Bank, N.A. v. Bohatka, --- So.3d ----, 2013 WL 1715439 (Fla., 1st DCA 2013).

A trial court may not by-pass normal evidentiary principles by examining a promissory note at the motion to dismiss stage to determine whether it is an original.

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Muntzing v. Global Discoveries Ltd., LLC, --- So.3d ----, 2013 WL 1844268 (Fla. 5th DCA 2013).

A mortgagee (or its assignee) claiming surplus proceeds from a tax deed sale need not produce the original promissory note to claim the proceeds; a notarized statement and a valid lien are the only items required under the statute.

Dobek v. City of Minneola, --- So.3d ----, 2013 WL 1844271 (Fla. 5th DCA 2013).

A latent ambiguity (i.e., the contract language is clear but extraneous facts or circumstances create need for interpretation between possible different meanings) can require evidence be taken with regard to a general release's intent.

Stone v. BankUnited, --- So.3d ----, 2013 WL 1845584 (Fla. 2d DCA 2013).

A lender may prove standing by means other than a dated allonge; standing may be proven circumstantially by payments made by a borrower after assignment, a purchase and assumption agreement, and by the method of servicing the loan.

McColman v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2013 WL 1810583 (Fla. 4th DCA 2013).

While a plaintiff moving for summary judgment before the defendant answers bears a higher burden, the rule is not absolute and a defendant may not raise this rule while sitting on their rights (e.g., failing to file answer after court orders defendant to do so).

Kalb v. Sail Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 1810642 (Fla. 3d DCA 2013).

Motions under Florida Rule of Civil Procedure 1.540 must be filed within one year of the date of final judgment sought to be avoided or modified.

B&B Tree Service, Inc. v. Tampa Crane & Body, Inc., --- So.3d ----, 2013 WL 1810761 (Fla. 2d DCA 2013).

Claims for loss of use require a different measure of damages than lost profits as lost profits must have been in the reasonable contemplation of the parties at time of contract.

Dan Euser Waterarchitecture, Inc. v. City of Miami Beach, --- So.3d ----, 2013 WL 1810768 (Fla. 3d DCA 2013).

An out of state corporate defendant need not produce its corporate representative in Florida absent it seeking affirmative relief in the state or extraordinary circumstances.

Fisher Island Ltd. v. Fisher Island Investments, Inc., Slip Copy, 2013 WL 1831728 (11th Cir. 2013).

Bankruptcy courts, being Article II courts, have a different standard for standing than Article III courts. The bankruptcy court “person aggrieved” test requires a higher causal link between the act and injury in order to establish standing.

Dolphin LLC v. WCI Communities, Inc., Slip Copy, 2013 WL 1831737 (11th Cir. 2013).

A common sales force between two developments, even if both developments are owned by the same parent company, is not sufficient to constitute a “common marketing plan” so as to aggregate separate developments and subject an otherwise exempt development to the requirements of the Interstate Land Sales Act, 15 U.S.C. §§ 1701–1720.

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Kehoe v. Garemore, --- So.3d ----, 2013 WL 1918845 (Fla. 5th DCA 2013).

A jury's determination of the amount of damages in a quantum meruit action for improvements to real property is preclusive on a counterclaim for defective work.

Gautreaux v. Maya, --- So.3d ----, 2013 WL 1918847 (Fla. 5th DCA 2013).

Fraud on the court consists of unfairly influencing the trier of fact or impeding a party in the presentation of its case, and "[m]isconduct that falls short of the rigors of this test, including inconsistency, nondisclosure, poor recollection, dissemblance and even lying, is insufficient to support a dismissal for fraud, and, in many cases, may be well-managed and best resolved by bringing the issue to the jury's attention through cross-examination, and by traditional sanctions."

Spacebox Dover, LLC v. LSREF2 Baron LLC, --- So.3d ----, 2013 WL 1920626 (Fla. 2d DCA 2013).

Complete identity of parties and issues is not required for stay of a Florida action on comity principles when another state has initiated litigation first. Accordingly, a Florida mortgage foreclosure is stayed when litigation concerning the underlying promissory note is first initiated in another forum.

In re Amendments to Florida Rule of Civil Procedure 1.490, --- So.3d ----, 2013 WL 1908646 (Fla. 2013).

The rule is amended to allow magistrates to hear mortgage foreclosure cases subject to the objection of the parties.

Neuteleers v. Patio Homeowners Ass'n, Inc., --- So.3d ----, 2013 WL 1890627 (Fla. 4th DCA 2013).

Based on association member's failure to raise the defense of failure to state a cause of action, the defendant can be subject to a mandatory injunction to purchase insurance notwithstanding the association may have an adequate remedy at law.

Cooper Tire & Rubber Co. v. Cabrera, --- So.3d ----, 2013 WL 1891283 (Fla. 3d DCA 2013).

Upon an objection to production that certain documents are trade secrets, a trial court must determine which documents are trade secrets and must detail its findings.

Back Bay At Carillon LLC v. Quality Properties Asset Management Co., --- So.3d -- --, 2013 WL 1891306 (Fla. 2d DCA 2013).

A deficiency judgment must be reduced by monies a court appointed receiver collects after final judgment.

Sarasota Facility Operations, LLC v. Manning, --- So.3d ----, 2013 WL 1891311 (Fla. 2d DCA 2013).

An arbitration agreement is not void due to the unavailability of the arbitration forum designated in the arbitration agreement as both the Federal Arbitration Act and the Florida Arbitration Code provide for the substitution of a forum upon the unavailability of the designated forum.

Midgard Management, Inc. v. Park Centre Med-Suites, LLC, --- So.3d ----, 2013 WL 1891324 (Fla. 3d DCA 2013).

A tenant under a Tenant In Common Agreement may not object to the standing of a successor property manager to bring an eviction action against it when the tenant's actions caused the resignation of the initial property manager. Whether an instrument is a sub-lease or license depends on the terms, and not the title, of the instrument.

US Bank Nat. Ass'n v. Marion, --- So.3d ----, 2013 WL 1891373 (Fla. 2d DCA 2013).

A foreclosure complaint may not be dismissed for the mere fact that the person verifying the complaint cannot be identified; a trial court retains authority to require the plaintiff to provide more information regarding the party who verified the complaint.

Baron Services, Inc. v. Media Weather Innovations LLC, --- F.3d ----, 2013 WL 1876511 (11th Cir. 2013).

The trial court abused its discretion in not permitting party additional discovery in opposition to summary judgment such that non-movant can depose movant's affiants and to examine the computer source code in dispute.

In re Northlake Foods, Inc., --- F.3d ----, 2013 WL 1859118 (11th Cir. 2013).

A Subchapter S election is of sufficient value that its election by a shareholder in exchange for the payment of dividends does not constitute a fraudulent conveyance.

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Hagood v. Wells Fargo N.A., --- So.3d ----, 2013 WL 2112432 (Fla. 5th DCA 2013).
An issue not raised in the Initial Brief on Appeal is waived.

Saltzman v. Hadlock, --- So.3d ----, 2013 WL 2113799 (Fla. 5th DCA 2013).
A party who loses a trial *de novo* after an unfavorable arbitration decision under Fla. Stat. § 44.1036 (6), may become (but is not necessarily) obligated for attorneys' fees.

Sas v. Federal Nat. Mortg. Ass'n, --- So.3d ----, 2013 WL 2120264 (Fla. 2d DCA 2013).

A witness without personal knowledge may not testify as to the contents of a business record if the record is not first admitted into evidence. Accordingly, a lender's witness may not testify about amounts due according to business records without the records being in evidence.

Humphrey v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2013 WL 2121729 (Fla. 2d DCA 2013).

A trial court has no jurisdiction over a person who has not been properly served. Accordingly, a trial court that quashes a subpoena on a defendant may not then require the defendant to provide their correct address.

Raymond James Financial Services, Inc. v. Phillips, --- So.3d ----, 2013 WL 2096252 (Fla. 2013).

Florida's statute of limitations, Fla. Stat. § 95.011, applies to arbitration actions.

City of Palm Bay v. Wells Fargo Bank, N.A., --- So.3d ----, 2013 WL 2096257 (Fla. 2013).

Notwithstanding their home rule powers, municipalities may not create code enforcement liens that have superpriority over previously filed interests of record.

East Coast Metal Decks, Inc. v. Boran Craig Barber Engel Const. Co., Inc., --- So.3d ---, 2013 WL 1979058 (Fla. 2d DCA 2013).

Parties to construction litigation may be bound by the venue provisions in their contracts notwithstanding the construction project is physically located elsewhere.

Saver v. JP Morgan Chase Bank, --- So.3d ----, 2013 WL 1979824 (Fla. 4th DCA 2013).

If standing is raised as a defense and foreclosing plaintiff is the not the original obligee on the note, plaintiff must establish how it had standing on suit date.

Bengal Motor Co., Ltd. v. Cuello, --- So.3d ----, 2013 WL 1980147 (Fla. 3d DCA 2013).

Unless it is expressly conditioned on financing approval from a third party, TILA is impacted when a consumer signs a Retail Installment Sales Contract (RISC) notwithstanding later declination by the third party financier. However, no damages are awardable if consumer never actually paid any finance charges.

Greenspoon Marder, P.A. v. Moscoso, --- So.3d ----, 2013 WL 1980255 (Fla. 3d DCA 2013).

Charging lien is enforceable for hourly, non-contingent portions of an unpaid fee even when lawyer withdraws without cause before occurrence of contingency.

Miami-Dade County v. Concrete Structures, Inc., --- So.3d ----, 2013 WL 1980420 (Fla. 3d DCA 2013).

Aggrieved party that signed consent agreement to avoid administrative penalties for environmental violations is not entitled to an injunction prohibiting warrantless searches by governmental unit (to determine whether there is compliance with agreement) when aggrieved party has adequate remedy at law.

Bullock v. BankChampaign, N.A., --- S.Ct. ----, 2013 WL 1942393 (2013).

“Defalcation” under 11 U.S.C. § 523 (a) (4) involves a culpable state of mind of knowledge or gross recklessness with regard to actions inconsistent with fiduciary duty.

Bowman v. Monsanto Co., --- S.Ct. ----, 2013 WL 1942397 (2013).

The Patent Exhaustion Doctrine does not permit a farmer to save seeds from one planting season for use in another in violation of a licensing agreement.

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Castetter v. Henderson, --- So.3d ----, 2013 WL 2256520 (Fla. 5th DCA 2013).

A constructive trust on real property may not be based on co-habitation alone; a party must establish (1) a promise, express or implied; (2) a transfer of property and reliance thereon; (3) a confidential relationship; and (4) unjust enrichment of a contribution to acquisition of the real property (defrayment of household expenses is not sufficient).

Lyttle v. BankUnited, --- So.3d ----, 2013 WL 2256865 (Fla. 5th DCA 2013).

A promissory note, either the original or as re-established pursuant to Fla. Stat. § 673.3091, is necessary to foreclose a mortgage. If the plaintiff is not the original obligee, the note must be indorsed (either to the plaintiff or in blank), assigned to the plaintiff, or an affidavit must be filed demonstrating plaintiff is the owner.

Tara Woods SPE, LLC v. Cashin, --- So.3d ----, 2013 WL 2278011 (Fla. 2d DCA 2013).

The Prospectus under the Mobile Home Act, Florida Statutes § 723.01 *et seq.* is not to be granted greater weight than the Lifetime Lease as the Prospectus is a contract between the home owner and the park but is not the supreme governing document.

Braxton v. Grabowski, --- So.3d ----, 2013 WL 2278017 (Fla. 2d DCA 2013).

Upon meeting the technical requirements of Fla. Stat. § 768.79, a party is entitled to an order of entitlement to attorney's fees notwithstanding the fees may be *de minimus*.

Florida Capital Management, LLC v. Town of Palm Beach, --- So.3d ----, 2013 WL 2217806 (Fla. 4th DCA 2013).

An appeal is properly dismissed for failure to file an Initial Brief on Appeal if a party is subject to a show cause order stating dismissal will be the remedy for failure to comply and the party fails to discharge the show cause order.

Nivia v. Bank United,--- So.3d ----, 2013 WL 2218013 (Fla. 4th DCA 2013).

The 30 day postponement under the Home Affordable Modification Program (HAMP) is not applicable when the request for HAMP modification is made after the foreclosure judgment is entered and borrower does not qualify.

Diplomat Properties Ltd. Partnership v. Tecnoglass, LLC, --- So.3d ----, 2013 WL 2218514 (Fla. 4th DCA 2013).

Upon obtaining an arbitration award against a subcontractor and being assigned the award by the subcontractor, an owner may proceed in common law indemnity against the supplier to the subcontractor notwithstanding the subcontractor did not defend the arbitration action based on vicarious, constructive, technical, or derivative liability.

Bone & Joint Treatment Centers of America v. HealthTronics Surgical, --- So.3d --- -, 2013 WL 2221489 (Fla. 3d DCA 2013).

Reformation of a contract to include “tag along” sale rights is subject to the general reformation requirements that plaintiff prove, by clear and convincing evidence, that the parties made a mutual mistake or one party made a unilateral mistake and there was inequitable conduct by the other parties.

Deutsche Bank Nat. Trust Co. v. Prevratil, --- So.3d ----, 2013 WL 2231279 (Fla. 2d DCA 2013).

Upon rehearing, the Second District reaffirms its previous holding that a servicer, upon demonstrating a proper power of attorney, may verify foreclosure complaints under Florida Rule of Civil Procedure 1.110 (b).

U.S. Bank Nat. Ass'n v. Cramer, --- So.3d ----, 2013 WL 22318919 (Fla. 2d DCA 2013).

Appointment of a receiver is approached with great caution pre-judgment, but the caution and the legal requirements to appoint a receiver diminish once judgment is entered. A receiver may be appointed post-judgment in special circumstances (e.g., foreclosure sale postponement) to protect the property and the rights of parties.

Giles v. Wells Fargo Bank, N.A., --- Fed.Appx. ----, 2013 WL 2257131 (11th Cir. 2013).

The Truth In Lending Act requirement under 15 U.S.C. § 1641 (g) to give notice within 30 days of a transfer of a note does not apply when the transfer is made for the administrative convenience of the lender (e.g., a service assigning back the note to the beneficial owner).

Buckley Towers Condominium, Inc. v. Katzman Garfinkel Rosenbaum, Slip Copy, 2013 WL 2150901 (11th Cir. 2013).

A law firm is entitled to a quantum meruit award when a departing attorney takes a non-completed contingency case with her when she departs the firm, notwithstanding the form of entity (partnership, corporation, etc.) of the law firm. This rule is not changed by an agreement with departing lawyer to pay a greater portion of fees as part of a restrictive covenant signed by the lawyer.

Travelers Cas. and Sur. Co. of America v. Winmark Homes, Inc., Slip Copy, 2013 WL 2150920 (11th Cir. 2013).

A developer’s promise under an indemnity agreement to provide a letter of credit is enforceable by action for specific performance.

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Zlatkiss v. All America Team Concepts, LLC, --- So.3d ----, 2013 WL 2359108 (Fla. 5th DCA 2013).

Spendthrift trusts do not violate the right of access to courts found Fla. Const. Article I, Section 21 as spendthrift trusts bar collection on a judgment, not access to courts.

First Baptist Church of Cape Coral, Florida, Inc. v. Compass Const., Inc., --- So.3d ----, 2013 WL 2349380 (Fla. 2013).

So long as the fee agreement provides for this form of alternative fee, a court presiding over an indemnity case may award the higher of the contractual fee between the attorney and the client or the fee deemed reasonable by the court.

Rocket Group, LLC v. Jatib, --- So.3d ----, 2013 WL 2319486 (Fla. 4th DCA 2013).

Although not specifically listed as a category under Florida Rule of Judicial Administration 2.420 (a), corporate records may be confidential, and if so, may be filed under seal to “avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed . . .”

Early Auction Co. v. Koelzer, --- So.3d ----, 2013 WL 2319545 (Fla. 4th DCA 2013).

So long as the forum selection clause was communicated to a party in a reasonable and conspicuous manner such that the parties knew they were agreeing to the clause, mandatory forum selection clauses are enforceable even if not signed.

Berkovich v. Casa Paradiso North, Inc., --- So.3d ----, 2013 WL 2320680 (Fla. 4th DCA 2013).

Absentee ballots that do not contain the name of the person and their signature are not “written consents” pursuant to Fla. Stat. § 617.0701 (4) (a) such that they can be used at meeting amend the Bylaws of a cooperative community association.

Citibank (South Dakota), N.A. v. Desmond, --- So.3d ----, 2013 WL 2320747 (Fla. 4th DCA 2013).

Arbitration agreements containing class action waivers are enforceable.

Estrada v. Sorrento Townhomes, LLC, Slip Copy, 2013 WL 2321189 (Fla. 3d DCA 2013).

A party is entitled to proceedings supplementary upon (1) establishing the party holds an unsatisfied judgment; (2) identifying the issuing court and case number; (3) stating the unsatisfied amount of the judgment; and (4) confirming that execution is valid and outstanding; there is no requirement to conduct a preliminary evidentiary hearing.

McGee v. JP Morgan Chase Bank, NA, --- Fed.Appx. ----, 2013 WL 2321782 (11th Cir. 2013).

Complaint against lender sounding in negligent misrepresentation dismissed where parties had already entered into purchase transaction when contemplating loan transaction, and the alleged pricing, sales and appraisal misrepresentations were the same whether the transactions were cash or loans, i.e., the loan items were not the basis of the misrepresentations.

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Vivot v. Bank of America, NA, --- So.3d ----, 2013 WL 2451350 (Fla. 2d DCA 2013).

The mortgagor is the prevailing party if a foreclosure action is dismissed for failure to prosecute, and mortgagor is entitled to an award of attorneys' fees pursuant to Fla. Stat. § 57.105 (7) if he timely requested fees in his answer.

In re Standard Jury Instructions-Contract and Business Cases, --- So.3d ----, 2013 WL 2435441 (Fla. 2013).

The Florida Supreme Court approves the first set of standard jury instructions for contract and business cases.

In re Code for Resolving Professionalism Complaints, --- So.3d ----, 2013 WL 2435539 (Fla. 2013).

The Florida Supreme Court adopts procedures for resolving professionalism complaints.

Dixon v. Express Equity Lending Group, LLLP, --- So.3d ----, 2013 WL 2420417 (Fla. 4th DCA 2013).

A special indorsement on a negotiable establishes the indorsee is the owner and holder of the note notwithstanding a separate warehouse lending agreement.

Kurian v. Wells Fargo Bank, Nat. Ass'n, --- So.3d ----, 2013 WL 2420432 (Fla. 4th DCA 2013).

Affirmative defense stating lender failed to comply with conditions precedent by failing to give notice of default and opportunity to cure pursuant to mortgage is legally sufficient.

Allstate Ins. Co. v. Marotta, --- So.3d ----, 2013 WL 2420451 (Fla. 4th DCA 2013).

Jury award reversed when the cumulative effect of both preserved and unpreserved error creates reversible error.

Castro v. Charter Club, Inc., --- So.3d ----, 2013 WL 2420477 (Fla. 3d DCA 2013).

An Affidavit of Diligent Search is not sufficiently particular by merely stating "residence is unknown" without stating the information actually known by the party and the steps taken to learn the location of the defendant being served by publication.

Bleich v. Chicago Title Ins. Co., --- So.3d ----, 2013 WL 2420492 (Fla. 3d DCA 2013).

Fla. Stat. § 627.782, Fla. Stat. (2012) and Fla. Admin. Code R. 69O-186.003 (2002) do not require a title insurer to review its records to determine which transactions are subject to the lower "reissue" instead of "original issue" rate.

Wells Fargo Bank, N.A. v. Chatham, --- So.3d ----, 2013 WL 2421042 (Fla. 1st DCA 2013).

Dismissal of complaint for failure to timely comply with court order to properly verify complaint too harsh a measure.

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Presidio Networked Solutions, Inc. v. Taylor, --- So.3d ----, 2013 WL 2661678 (Fla. 2d DCA 2013).

Failure to provide due process (such as failing to give notice to a party before ordering the non-party to take action) is correctible by certiorari review.

Petersen & Hawthorne, P.A. v. EMI Enterprises, Inc., --- So.3d ----, 2013 WL 2494149 (Fla. 4th DCA 2013).

An order dismissing a case that does not set forth the willful and contumacious behavior is reversible on appeal, even if the dismissal is for failure to attend a case management conference.

Havens v. Coast Florida, P.A., --- So.3d ----, 2013 WL 2494713 (Fla. 2d DCA 2013).

A cause of action for breach of contract has three elements: (1) a valid contract, (2) a material breach, and (3) damages. An oral statement that a party will be suspended without pay can constitute an anticipatory breach of an employment agreement.

GMT Const., Inc. v. Gulfside Supply, Inc., --- So.3d ----, 2013 WL 2494715 (Fla. 3d DCA 2013).

The issues of estoppel, waiver, agency and apparent authority, when raised in affirmative defenses and in opposition to a motion for summary judgment, typically defeat summary judgment.

Goodwin v. Sphatt, --- So.3d ----, 2013 WL 2501984 (Fla. 2d DCA 2013).

Statute of limitations is typically raised as an affirmative defense, but may be raised in a motion to dismiss when the allegations of the complaint clearly show suit being filed beyond the statute of limitations period.

Association for Molecular Pathology v. Myriad Genetics, Inc., --- S.Ct. ----, 2013 WL 2631062 (2013).

Naturally occurring DNA is not able to be patented, but synthetic DNA may be patented under the Patent Act.

Tarrant Regional Water Dist. v. Herrmann, --- S.Ct. ----, 2013 WL 2631063 (2013).

Absent a compact between states that has been approved by Congress, water disputes between states are subject to resolution by the courts.

Oxford Health Plans LLC v. Sutter, --- S.Ct. ----, 2013 WL 2459522 (2013).

An arbitrator's interpretation of a contract, even if grossly wrong, cannot be overturned. Accordingly, arbitrator's decision to allow class action upheld even if not expressly permitted under the arbitration clause and contract.

In re Rothstein, Rosenfeldt, Adler, P.A., --- F.3d ----, 2013 WL 2494980 (11th Cir. 2013).

Criminal proceeds deposited into law firm's accounts are not directly traceable to the criminal activity, and thus are not subject to forfeiture.

In re Superior Homes & Investments, LLC, --- Fed.Appx. ----, 2013 WL 2477057 (11th Cir. 2013).

A bankruptcy court may enter an order barring state court parties from proceeding in state court against the bankrupt debtor and other entities.

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Tsafatinos v. Family Dollar Stores of Florida, Inc., --- So.3d ----, 2013 WL 3107329 (Fla. 2d DCA 2013).

Lessor's claim against lessee for third party indemnification arising out of lessee's operation of a retail store not barred by workers' compensation or law of contribution when lessor sued by employee of retail store.

Franks v. Bowers, --- So.3d ----, 2013 WL 3064807 (Fla. 2013).

A party seeking to enforce an arbitration agreement under the Medical Malpractice Act must agree to all terms and conditions of the Medical Malpractice Act.

Cortez v. Palace Resorts, Inc., --- So.3d ----, 2013 WL 3068147 (Fla. 2013).

Public interest factors should always be considered in *forum non conveniens* analysis, and must be in favor of the alternative forum in order to defeat a plaintiff's choice of Florida. The public interest factors must be considered even if the private interest factors favor the alternative forum.

Lindgren v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2013 WL 3014082 (Fla. 4th DCA 2013).

A properly verified complaint may serve to refute affirmative defenses, but a verified complaint based on "information and belief" is not the equivalent of an affidavit and cannot counter affirmative defenses for summary judgment purposes.

Willis v. Bank of New York Mellon, --- So.3d ----, 2013 WL 3014129 (Fla. 4th DCA 2013).

A motion for summary judgment of foreclosure may also serve as the platform for reforming the legal description of the mortgage, but the request to do so in addition to foreclosing the mortgage must be clearly and explicitly pled and proven.

Virgo v. National City Mortg. Co., --- So.3d ----, 2013 WL 3014135 (Fla. 4th DCA 2013).

Successive motions to vacate final judgments are barred by the doctrine of *res judicata*.

Kelly v. BankUnited, FSB, --- So.3d ----, 2013 WL 3014149 (Fla. 4th DCA 2013).

An attorney's failure to appear at hearing due to a secretary's scheduling error is sufficient excusable neglect for relief under Florida Rule of Civil Procedure 1.530.

Aristech Acrylics, LLC v. Lars, LLC, --- So.3d ----, 2013 WL 3015816 (Fla. 3d DCA 2013)

A party waives a contractual provision inserted for its benefit when it takes action inconsistent with the favorable provision. Accordingly, a re-seller waives a provision allowing it to sell inventory back to the distributor after contract termination by distributor when it does not exercise the sell-back but instead orders additional inventory.

DiSalvo v. Suntrust Mortg., Inc., --- So.3d ----, 2013 WL 3029998 (Fla. 2d DCA 2013).

An unauthenticated demand letter is not sufficient to counter denials and affirmative defenses that all conditions precedent have not been met and cannot serve as the basis for summary judgment.

American Exp. Co. v. Italian Colors Restaurant, --- S.Ct. ----, 2013 WL 3064410 (2013).

Class action waivers in arbitration agreements are enforceable, notwithstanding that eliminating class actions may deny “effective vindication” of statutory or common-law claims because the cost of arbitrating a claim outweighs the potential recovery.

F.T.C. v. Actavis, Inc., --- S.Ct. ----, 2013 WL 2922122 (2013).

Parties making reverse payment settlements, i.e., settlements based on payments by owners of drug patents to other manufacturers to keep their generic drugs off the market for a specified period of time, are not immunized from anti-trust liability by the Hatch-Waxman Act.

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Hagood v. Wells Fargo N.A., --- So.3d ----, 2013 WL 3238191 (Fla. 5th DCA 2013).

Appellate counsel admonished and fined for a systemic breakdown of law firm procedures such that an appellate brief was filed without record references, contained a false assertion of fact, and improperly interjected a new issue on appeal.

US Bank, N.A. v. Boyer, --- So.3d ----, 2013 WL 3239624 (Fla. 2d DCA 2013).

An attorney advancing a cash bond to comply with Fla. Stat. § 57.011 does not violate the prohibition of Fla. Stat. § 454.20 that “[n]o attorney shall become surety on the official bond of any state, county, or municipal officer of this state, nor surety on any bond of a client in judicial proceedings.” Additionally, a cash bond satisfies the Fla. Stat. § 57.011 requirement of posting a “bond with surety.”

Brown v. U.S. Bank N.A., --- So.3d ----, 2013 WL 3197074 (Fla. 4th DCA 2013).

Failure to note the date and time of service on a return of service invalidates the service. Filing defensive motions does not rise to the level of seeking affirmative relief, and does not waive objections of improper service of process.

Estate of Kester v. Rocco, --- So.3d ----, 2013 WL 3155849 (Fla. 1st DCA 2013).

A will may not be revoked where evidence discloses other persons also had a close relationship with the testatrix, and that the representative was not present when will instructions given to the testatrix or when will beneficiaries were changed.

Koontz v. St. Johns River Water Management Dist., --- S.Ct. ----, 2013 WL 3184628 (2013).

“Monetary exactions” as a condition of permitting land development must meet the *Nollan* and *Dolan* tests of nexus and rough proportionality. Government may not avoid a violation of the Unconstitutional Conditions Doctrine (government may not impose a burden upon citizens exercising their Constitutional rights) by imposing conditions to permit issuance such as off-site mitigation on public lands.

Mutual Pharmaceutical Co., Inc. v. Bartlett, --- S.Ct. ----, 2013 WL 3155230 (2013).

State law claims regarding drug labeling are preempted by federal law that expressly prohibits manufacturers of generic drugs from making unilateral changes to drug's label.

In re Piazza, --- F.3d ----, 2013 WL 3198005 (11th Cir. 2013).

Prepetition acts of “bad faith” can, under the totality of the circumstances test, constitute “for cause” grounds to dismiss a bankruptcy under 11 U.S.C. § 707 (a).

High Bid, LLC v. Everett, --- Fed.Appx. ----, 2013 WL 3198616 (11th Cir. 2013).
Auctions in Florida must be conducted by a licensed “auction business” under Fla. Stat. § 468.385 otherwise obligations arising from the auction are not enforceable.

Guarino v. Wyeth, LLC, --- F.3d ----, 2013 WL 3185084 (11th Cir. 2013).
Federal law preempts state law consumer claims regarding claims against generic drug manufacturers.

Quiroz v. MSC Mediterranean Shipping Co. S.A., --- Fed.Appx. ----, 2013 WL 3185470 (11th Cir. 2013).

Under the United Nations Convention on the Recognition and Enforcement of Arbitral Awards, there are four gateway issues for a court when deciding whether to compel arbitration: “(1) [whether] there is an agreement in writing within the meaning of the Convention; (2) [whether] the agreement provides for arbitration in the territory of a signatory of the Convention; (3) [whether] the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) [whether] a party to the agreement is not an American citizen, or that the commercial relationship has some reasonable relation with one or more foreign states.”

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Wolk v. Board of County Com'rs. of Seminole County, --- So.3d ----, 2013 WL 3357515 (Fla. 5th DCA 2013).

Circuit court reviewing agency action examines whether procedural due process was accorded the parties, the essential requirements of the law were complied with, and the findings and judgment rendered by the governmental agency are supported by competent substantial evidence. On second tier certiorari review, district court is limited to questions of whether circuit court afforded procedural due process and applied the correct law, i.e., whether the circuit court departed from the essential requirements of law. Failure to follow the land development code is departure from essential requirements of law.

Rosenberg v. MetroWest Master Ass'n, Inc., --- So.3d ----, 2013 WL 3357517 (Fla. 5th DCA 2013).

Notwithstanding that he pays association dues only to his sub-association, a person is also a "member" of the master association to which his sub-association pays dues under Fla. Stat. §§ 720.301(10) and 720.305(1) (2009).

Fi-Evergreen Woods, LLC v. Estate of Vratil, --- So.3d ----, 2013 WL 3357519 (Fla. 5th DCA 2013).

Adopting the rules of an arbitration association do not automatically render the arbitration agreement void as being against public policy under *Shotts v. OP Winter Haven, Inc.*, 86 So.3d 456(Fla.2011); merely those that erode "the specific remedies provided by [Fla. Stat.] sections 400.022 and 400.023."

Town of Ponce Inlet v. Pacetta, LLC, --- So.3d ----, 2013 WL 3357520 (Fla. 5th DCA 2013).

A party must have a vested right in order to claim a violation of the Bert J. Harris Act, and the promises of government officials to amend the comprehensive plan do not amount to an estoppel or a vested right sufficient to claim a violation of the Act.

Lougas v. Sophia Enterprises, Inc., --- So.3d ----, 2013 WL 3335045 (Fla. 4th DCA 2013).

A landlord that issues a termination notice terminates the lease, notwithstanding that tenant contests the termination and continues to pay rent that is accepted by the landlord. Accordingly, a tenant under these circumstances cannot be sued for damages.

Grant v. Bessemer Trust Co. of Fla., Inc. ex rel. Grant, --- So.3d ----, 2013 WL 3335064 (Fla. 4th DCA 2013).

A corporation's directors and officers have a fiduciary responsibility to the corporation, notwithstanding the desires in the will of the founder that his son have lifetime employment with the corporation.

Weitz Co., LLC v. MCW Acquisition, LLC, --- So.3d ----, 2013 WL 3336857 (Fla. 3d DCA 2013).

A person purchasing a sub-contractor that has completed work on a project and that assumes its obligations is a proper party to be sued if the works is defective, even if the majority of the work was done by the seller.

Omes v. Ultra Enterprises, Inc., --- So.3d ----, 2013 WL 3336867 (Fla. 3d DCA 2013).

Florida law holds that “a corporation is not obligated to produce a corporate record that it does not have at the time the request is made, and that it is not required to prepare the requested record from documents that it might obtain from others.” A corporation may provide raw, underlying data in order to comply with Fla. Stat. § 607.1620(1) that a corporation provide a “statement of cash flows for that year” in the annual financial statements to be provided to shareholders.

Lopez v. U.S. Bank, N.A., --- So.3d ----, 2013 WL 3336895 (Fla. 3d DCA 2013).

A case may not be tried before the passage of thirty days after it becomes at issue.

Scimone v. Carnival Corp., --- F.3d ----, 2013 WL 3287065 (11th Cir. 2013).

Under the Class Action Fairness act, district court lacks jurisdiction to entertain a claim if the lawsuits consist of one hundred or more parties with common claims, but plaintiffs and the state court have not asked that one hundred claims be tried together.

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Woide v. Fannie Mae, --- So.3d ----, 2013 WL 3480088 (Fla. 5th DCA 2013).

Service of process is defective when based on summonses which do not contain the court's seal and a deputy clerk's signature.

Arsali v. Chase Home Finance LLC, --- So.3d ----, 2013 WL 3466800 (Fla. 2013).

Inadequate sale price is not an absolute requirement to vacate a foreclosure sale, and only one of the equitable factors (surprise, accident, mistake, irregularity in conduct of sale or inadequate sale price) need be proven to vacate the sale.

Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Ass'n, Inc., --- So.3d ----, 2013 WL 3466814 (Fla. 2013).

The implied warranties of fitness and merchantability apply to subdivision improvements that supply essential services to a home, e.g., infrastructure, drainage systems, retention ponds and underground utilities. Fla. Stat. § 553.835 (no implied warranties may be extended for subdivision improvements off the homeowner's lot) is substantive in nature, and may not be applied retroactively to these parties.

Misha Enterprises v. GAR Enterprises, LLC, --- So.3d ----, 2013 WL 3448802 (Fla. 4th DCA 2013).

A tenant contesting eviction is required to deposit rent into the court registry under Fla. Stat. § 83.232 even if the eviction action is based on breach of contract and not on failure to pay rent.

Atwater v. City of Cape Coral, --- So.3d ----, 2013 WL 3449645 (Fla. 2d DCA 2013).

Surplus funds arising from foreclosure sale must first be given to a surplus trustee under Fla. Stat. § 45.032 before being given to the state's C.F.O. under the unclaimed funds procedure of Fla. Stat. § 43.19.

Greenwald v. Eisinger, Brown, Lewis & Frankel, P.A., --- So.3d ----, 2013 WL 3455600 (Fla. 3d DCA 2013).

Failure to proffer excluded testimony precludes reversal based on the evidence's exclusion. An un-ruled upon Motion in Limine is not sufficient to preserve error.

Citizens Prop. Ins. Corp. v. Mango Hill #6 Condo. Ass'n, Inc., --- So.3d ----, 2013 WL 3455604 (Fla. 3d DCA 2013).

The Florida Arbitration Code is not applicable to insurance appraisal awards.

Wells v. Castro, --- So.3d ----, 2013 WL 3455607 (Fla. 3d DCA 2013).

A trial court must confirm an arbitration award unless a motion to vacate or modify the award is filed within ninety days of the award's issuance. This rule applies even if the arbitrator finds that neither party prevailed in the arbitration.

Southern Communications Services, Inc. v. Thomas, --- F.3d ----, 2013 WL 3481467 (11th Cir. 2013).

A court must affirm an arbitrator's decision to allow class certification even if the arbitrator misinterpreted the parties' contract. *Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.*, 559 U.S. 662, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010), allows a court to review an arbitrator's decision only when the contract lacks any contractual basis for class certification and an arbitrator inserts their own policy choices instead of applying established rules or law, i.e., when an arbitrator exceeds their powers.

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Beckham/Tillman v. Bennett, --- So.3d ----, 2013 WL 3770840 (Fla. 1st DCA 2013).

A surveyor cannot set new points and establish new boundary lines unless he is surveying unplatted land or subdividing a new tract; subsequent surveyors may only locate the points and retrace the lines of the original survey.

Rhodes v. O. Turner & Co., LLC, --- So.3d ----, 2013 WL 3716943 (Fla. 4th DCA 2013).

A default final judgment cannot be vacated a year after its entry unless the judgment is void, including a judgment based on complaint that does not state a cause of action.

Florida Diversified Films, Inc. v. Simon Roofing and Sheet Metal Corp., --- So.3d ---, 2013 WL 3723215 (Fla. 3d DCA 2013).

Failure to notify the opposing party that claimed damages have changed make a proposal for settlement unreasonable and unenforceable.

Regions Bank v. Maroone Chevrolet, L.L.C., --- So.3d ----, 2013 WL 3724587 (Fla. 3d DCA 2013).

An action for conversion of a negotiable instrument requires delivery of the instrument under Fla. Stat. § 673.4201 (1) (b). The statutory judgment rate set forth by Fla. Stat. §§ 687.01 and 55.03 applies to prejudgment interest rates.

Wolfe v. Foreman, --- So.3d ----, 2013 WL 3724763 (Fla. 3d DCA 2013).

The Litigation Privilege applies to both abuse of process and malicious prosecution claims.

Judkins v. Walton County, --- So.3d ----, 2013 WL 3491163 (Fla. 1st DCA 2013).

The Stabilization Doctrine under *United States v. Dickinson*, 331 U.S. 745, 67 S.Ct. 1382, 91 L.Ed. 1789 (1947) (the statute of limitations for suits against the government for condemnation is tolled under the true extent of taking is fully determined, i.e., when the claim is “stabilized”) does not apply when government promises that future action will alleviate the taking.

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Manuel Farach

NAFH Nat. Bank v. Aristizabal, --- So.3d ----, 2013 WL 3811356 (Fla. 4th DCA 2013).

A trial court loses jurisdiction to entertain a motion to vacate a final judgment under Florida Rule of Civil Procedure 1.540 (b) after one year, including motions for “fraud on the court.” Only “extrinsic fraud,” i.e., that fraud which is outside and collateral to the issues tried in the case, may be raised beyond the one year period.

Agemy v. Health Business Solutions, LLC, --- So.3d ----, 2013 WL 3811482 (Fla. 4th DCA 2013).

A court does not abuse its discretion by refusing to dissolve an injunction whose entry was agreed to by the parties. However, a court must allow an evidentiary hearing on the motion to dissolve if the injunction was not clearly agreed to.

Pearson v. Peoples Nat. Bank, --- So.3d ----, 2013 WL 3814321 (Fla. 1st DCA 2013).

Initiating a lawsuit over a contract waives the right of the Plaintiff to enforce the arbitration provision in the contract.

State v. Basford, --- So.3d ----, 2013 WL 3814317 (Fla. 1st DCA 2013).

An “as applied” cause of action for inverse condemnation arising out of a new law accrues when the law becomes effective, not when the law is passed.

Tubbs v. Mechanik Nuccio Hearne & Wester, P.A., --- So.3d ----, 2013 WL 3835838 (Fla. 2d DCA 2013).

A plaintiff’s voluntary dismissal of a moot claim does not make the defendant a “prevailing party” for purposes of attorneys’ fees awards. The “prevailing party” in a complex, multi-suit dispute cannot be determined until the conclusion of all the litigation.

Dinkins v. Dinkins, --- So.3d ----, 2013 WL 3834371 (Fla. 5th DCA 2013).

The following is not a “penalty clause” which violates Fla. Stat. § 736.1108(1):

Conditional Specific Bequest of Cash If my spouse, JEANETTE M. DINKINS, survives me, and if she or her legal representative makes a valid disclaimer of all of her interest in the QTIP Trust created under Article VII of this Trust Agreement, and also makes a valid waiver of her right ... to elect the elective share in my estate, then the Trustee shall distribute five million dollars (\$5,000,000.00) to JEANETTE M. DINKINS, outright and free of trust.... My objective is to provide five million dollars (\$5,000,000.00) of assets to JEANETTE M. DINKINS, in addition to ... any ... property to which JEANETTE M. DINKINS is entitled as a result of my death, except for the Elective Share.

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Aery v. Wallace Lincoln-Mercury, LLC, --- So.3d ----, 2013 WL 3924091 (Fla. 4th DCA 2013).

A Chapter 13 bankruptcy debtor, not the bankruptcy Trustee, has the right to maintain a state court cause of action after a bankruptcy is filed.

Newton v. Tenney, --- So.3d ----, 2013 WL 3924103 (Fla. 4th DCA 2013).

The Fourth District broadly states that there must be a prevailing party in a contract dispute, but also recognizes there “may be compelling circumstances in which a trial court determines that neither party prevailed . . . ”

Carvajal v. Banc of America Inv. Serv., Inc., --- So.3d ----, 2013 WL 3927684 (Fla. 3d DCA 2013).

An arbitration panel may not award attorneys’ fees absent an “express waiver” of the trial court’s right to award fees. A fees request in arbitration pleadings does not rise to the level of an “express waiver.”

Peterson v. Lake Surprise II Condo. Assoc., --- So.3d ----, 2013 WL 3929060 (Fla. 3d DCA 2013).

A conscious mistaken belief that one need not answer a complaint is not “excusable neglect” permitting the vacating of a default judgment.

Reed v. Chase Home Finance, LLC, --- F.3d ----, 2013 WL 3868079 (11th Cir. 2013).

Mortgagee’s assignment of note to servicer to foreclose is an assignment for “administrative convenience” under the Truth in Lending Act, 15 U.S.C. § 1641 (f) and (g), and TILA does not require a notice that the assignees is the new owner of the debt.

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Bombardier Aerospace Corp. v. Signature Flight Support Corp., --- So.3d ----, 2013 WL 4029202 (Fla. 5th DCA 2013).

Choice of law provisions are enforceable in Florida, and a Florida jury may determine a Florida breach of contract dispute while applying Texas law.

Correa v. U.S. Bank N.A., --- So.3d ----, 2013 WL 4033634 (Fla. 2d DCA 2013).

In order to prove a lost promissory note, a party must prove that it was entitled to enforce the instrument at the time the instrument was lost (or acquired the instrument from someone entitled to enforce the instrument at the time of loss), the loss was not the result of transfer or lawful seizure, and the party cannot obtain possession because the instrument was destroyed, its whereabouts can't be determined, or it is in the wrongful possession of a third party (and possession cannot be reestablished). The party must also demonstrate that reestablishment of the note will not subject the obligor to multiple claims. Under the circumstances of this case, the party is not entitled to a second opportunity at trial to re-establish the lost instrument.

Regions Bank v. Cuny, --- So.3d ----, 2013 WL 4034413 (Fla. 1st DCA 2013).

A slander of title counterclaim may be raised beyond the statute of limitations period in recoupment, but must arise out of the same transaction or occurrence as the underlying claim. Accordingly, a slander counterclaim against a second mortgage may not be raised as a recoupment defense to a foreclosure of a first mortgage, even if both mortgages are from the same lender.

Attaway Elec., Inc. v. Kelsey Const., Inc., --- So.3d ----, 2013 WL 400641 (Fla. 4th DCA 2013).

Suits on transfer bonds under Florida Statute § 713.24 (3) must be brought in the county where the bond is filed and the property is located, notwithstanding mandatory venue provisions in contracts between parties.

Lago v. Kame By Design, LLC, --- So.3d ----, 2013 WL 4006870 (Fla. 4th DCA 2013).

A subsequent motion for Fla. Stat. § 57.105 sanctions that raises new grounds must comply with a new 21 day safe harbor provision.

Bennett v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2013 WL 4007079 (Fla. 4th DCA 2013).

Under Fla. Stat. § 673.3081 (1), the validity of signatures is presumed unless contested. Once contested in a pleading, the burden to prove signature shifts to party asserting the validity of the instrument.

Rembrandt Vision Technologies, L.P. v. Johnson & Johnson Vision Care, Inc., --- F.3d ----, 2013 WL 4007537 (11th Cir. 2013).

The failure of an expert to disclose his methodology in testing a product violates Federal Rule of Civil Procedure 26 (a)(2)(B)(i)'s requirement of disclosing "a complete statement of all opinions the witness will express and the basis and reasons for them." Failure to disclose calls into play Rule 37's self-executing sanction, and a party may not testify beyond their report and may not testify as to methodology not included in the report.

F.D.I.C. v. IIG Capital LLC, --- Fed.Appx. ----, 2013 WL 4007573 (11th Cir. 2013).

The mere appearance of bias or partiality is not enough to set aside an arbitration award, but is enough to conduct an evidentiary hearing. Participation in the same arbitrations, mediations and litigations before an arbitration begins, i.e., "familiarity due to confluent areas of expertise," is not evidence of bias.

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UCF Athletics Ass'n Inc. v. Plancher, --- So.3d ----, 2013 WL 4226848 (Fla. 5th DCA 2013).

The judgment (not the verdict) obtained determines whether a party has met the threshold for an award of attorneys' fees under Fla. Stat. § 768.79. Application of the sovereign immunity statute reduces the judgment notwithstanding a higher verdict, and both fees and costs cannot exceed \$200,000 under the statute.

City of Atlantic Beach v. Wolfson, --- So.3d ----, 2013 WL 4106695 (Fla. 1st DCA 2013).

A circuit court sitting in its appellate capacity on first-tier certiorari review commits error if it reviews the record and finds for a party other than the prevailing party at agency level; a circuit court reviews merely to determine whether substantial, competent evidence supports the finding.

Kent v. Marmorstein, --- So.3d ----, 2013 WL 4081001 (Fla. 4th DCA 2013).

A party that files an unsworn response in opposition to a sworn motion contesting jurisdiction has failed to meet its burden under *Venetian Salami Co. v. Parthenais*, 554 So.2d 499, 502 (Fla.1989), and jurisdiction is defeated.

Regions Bank v. MDG Frank Helmerich, LLC, --- So.3d ----, 2013 WL 4081005 (Fla. 2d DCA 2013).

A judgment creditor is entitled to discovery of a judgment debtor's assets, including those jointly held with a spouse.

Angelo's Aggregate Materials, Ltd. v. Pasco County, --- So.3d ----, 2013 WL 4081010 (Fla. 2d DCA 2013).

Landowner may seek declaratory judgment to determine whether its rights have vested under applicable land use ordinances.

General Elec. Capital Corp. v. Nunziata, --- So.3d ----, 2013 WL 4081011 (Fla. 2d DCA 2013).

Proceeding supplementary cannot be used to discover information about non-debtor third parties unless there is a close link and good reason to allow the discovery.

Dilican v. Normandy Village Prop. Owners Ass'n, Inc., --- So.3d ----, 2013 WL 4081064 (Fla. 4th DCA 2013).

A trial court cannot enter final judgment while a non-final appeal is pending.

Ocean Bank v. Caribbean Towers Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 4081702 (Fla. 3d DCA 2013).

A trial court has jurisdiction to determine the amount of association dues owed a condominium association in the foreclosure action notwithstanding Fla. Stat. § 718.303 (1), and also to determine the amount of attorneys' fees to be awarded in the action to determine the association dues.

CMH Homes, Inc. v. LSFC Co., LLC, --- So.3d ----, 2013 WL 4054908 (Fla. 1st DCA 2013).

A lender is not subject to an unjust enrichment counterclaim when it forecloses on property which a contractor has improved under contract with third party.

Lindley v. F.D.I.C., --- F.3d ----, 2013 WL 4269389 (11th Cir. 2013).

F.D.I.C. matters may be removed to federal court notwithstanding failure to meet typical removal requirements. The "state law exception" is the only exception and applies when: "(1) a state authority appointed the FDIC as receiver; (2) the litigation involves only the pre-closing rights against the failed institution; and (3) only state law need be interpreted." The Eleventh Circuit holds in accordance with the Second, Fifth and Eighth Circuits that F.D.I.C. removal jurisdiction over non F.D.I.C. defendants continues even after the F.D.I.C. is no longer in the case.

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AGIC, Inc. v. North American Risk Services, Inc., --- So.3d ----, 2013 WL 4482950 (Fla. 5th DCA 2013).

A trial court must conduct an evidentiary hearing on a motion to disqualify counsel when affidavits regarding the alleged facts are in conflict.

Cohen v. D.R. Horton, Inc., --- So.3d ----, 2013 WL 4482973 (Fla. 5th DCA 2013).

Inconvenience and expense after an allegedly erroneous trial court ruling are not bases for certiorari relief.

Kass Shuler, P.A. v. Barchard, --- So.3d ----, 2013 WL 4483095 (Fla. 2d DCA 2013).

An appellate court cannot overturn unless there is an adequate record or a settled and approved statement of the evidence adduced that demonstrates reversible error.

Chastain v. Chastain, --- So.3d ----, 2013 WL 4488692 (Fla. 1st DCA 2013).

A party seeking an attorney's fee award on multiple claims bears burden of showing that issues are so intertwined it is not possible to bill for separate claims. It is error to award "intertwined fees" if time is spent on claims for which no award was sought or received, notwithstanding that all claims arise from a common set of facts.

Harris v. Aberdeen Prop. Owners Ass'n, Inc., --- So.3d ----, 2013 WL 4436603 (Fla. 4th DCA 2013).

The statute of limitations to contest a community association restriction does not begin to run until the party purchases the real property subject to the restriction.

Jackson-Platts v. General Elec. Capital Corp., --- F.3d ----, 2013 WL 4463006 (11th Cir. 2013).

Proceedings Supplementary under Fla. Stat. § 56.29 are "civil actions," not ancillary proceedings, for purposes of removal to federal court.

In re Sears, --- Fed.Appx. ----, 2013 WL 4426516 (11th Cir. 2013).

Misrepresentations with regard to construction surety bonds will support a finding of non-dischargeability of debt under 11 U.S.C. § 523 (a) (2) (A).

Travaglio v. American Exp. Co., --- F.3d ----, 2013 WL 4406389 (11th Cir. 2013).

Citizenship, for diversity jurisdiction purposes, requires "domicile," i.e., residence in a state together with the intention to remain there.

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Heleski v. Harrell, --- So.3d ----, 2013 WL 4614666 (Fla. 2d DCA 2013).

Summary is judgment an inappropriate method of determining, for restrictive covenant purposes, whether a building was to be used for “storage” or as “garage” notwithstanding the homeowner listed use as “garage” on construction application.

Steinberg v. Winn-Dixie Stores, Inc., --- So.3d ----, 2013 WL 4525305 (Fla. 4th DCA 2013).

Pursuant to Rule Regulating the Florida Bar 4–3.7, an attorney who has personal knowledge of the facts of a case can be disqualified only if the attorney is a necessary witness on behalf of her client. Generally, disqualification should not occur if the opposing party calls the lawyer as a witness.

Yang v. Sebastian Lakes Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 4525318 (Fla. 4th DCA 2013).

Merely uttering the “magic words” under Fla. Stat. 90.803 (6) (a) is not sufficient; a witness must be able to testify as to the foundation of the business records.

Temple B'Nai Zion, Inc. v. City of Sunny Isles Beach, Fla., --- F.3d ----, 2013 WL 4574206 (11th Cir. 2013).

A determination of ripeness for zoning issues requires a decision “1) whether the issues are fit for judicial decision and 2) the hardship to the parties of withholding court consideration.” Upon a developed record and a claim of religious discrimination, a decision to enact a historic designation on a house of worship is ripe for adjudication.

In re Hood, --- F.3d ----, 2013 WL 4574249 (11th Cir. 2013).

The act of filling in blanks in a pre-printed *pro se* bankruptcy petition is not drafting or “ghostwriting” in violation of Rule Regulating the Florida Bar 4–1.2(c).

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Port Marina Condominium Ass'n, Inc. v. Roof Services, Inc., --- So.3d ----, 2013 WL 4726923 (Fla. 4th DCA 2013).

An action against a supplier for the implied warranty of fitness and merchantability for condominiums, Fla. Stat. § 718.203, must allege the defendant is a supplier of materials to a condominium; the materials fail to conform to the generally accepted standards of merchantability applicable to goods of that kind, or fail to conform to the requirements specified in the contract, and the failure of the goods to conform is a proximate cause of the plaintiff's damages.

S2 Global, Inc. v. Tactical Operational Support Services, LLC, --- So.3d ----, 2013 WL 4727111 (Fla. 4th DCA 2013).

A motion to dismiss for *forum non conveniens* is untimely under Florida Rule of Civil Procedure 1.061 (g) if brought more than sixty days after service of process is effectuated on the moving party.

Turton v. Singer Asset Finance Co., L.L.C., --- So.3d ----, 2013 WL 4727388 (Fla. 4th DCA 2013).

Statements in employment contracts do not constitute terms of employment, i.e., do not give rise to enforceable contract rights unless the statement induces an employee to refrain from acting separately from contract duties. Summary judgment regarding a plan is improper when impossible to determine whether intent was to induce merely to motivate employees or prevent them from exercising a right to terminate employment.

Florida Power & Light Co. v. Hayes, --- So.3d ----, 2013 WL 4727637 (Fla. 4th DCA 2013).

Summary judgment should not be granted if contract language is ambiguous. The term "lying within the lake" is ambiguous as it is capable two reasonable interpretations, i.e., underwater or within the boundaries of the lake.

Akerman Senterfitt & Eidson, P.A. v. Value Seafood, Inc., --- So.3d ----, 2013 WL 4734574 (Fla. 3d DCA 2013).

A writ of garnishment is automatically dissolved under Fla. Stat. § 77.07 (5) if movant does not, within six months of issuance of writ, file a Motion for Final Judgment or move to extend the writ; setting the matter for trial is not sufficient.

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Williams v. Washington, --- So.3d ----, 2013 WL 4996466 (Fla. 1st DCA 2013).
Summary judgment is a pretrial mechanism that cannot be invoked after trial.

New Jerusalem Church of God, Inc. v. Sneads Community Church, Inc., --- So.3d -
---, 2013 WL 4859091 (Fla. 1st DCA 2013).

Florida follows the “deference approach” with regard to interchurch property disputes such that courts will generally defer to the hierarchical church’s decision.

Briarwood Capital v. Lennar Corp., --- So.3d ----, 2013 WL 4823149 (Fla. 3d DCA 2013).

A final judgment adjudicating claims against one or more mentioned defendants does not adjudicate claims against non-mentioned defendants.

Munoz Hnos, S.A. v. Editorial Televisa Intern., S.A., --- So.3d ----, 2013 WL 4823150 (Fla. 3d DCA 2013).

Negligent misrepresentation and fraud claims are not barred by the Economic Loss Rule. Consent is typically a factual determination inappropriate for summary judgment.

McGee v. Commonwealth Land Title Ins. Co., --- Fed.Appx. ----, 2013 WL 4850298 (11th Cir. 2013).

Under Fla. Stat. § 718.110 (10), a Declaration of Condominium is effective to create a condominium notwithstanding defects in the declaration unless an action challenging the condominium is brought within three years.

Day v. Persels & Associates, LLC, --- F.3d ----, 2013 WL 4792547 (11th Cir. 2013).

A federal magistrate has the authority to certify a class action if absent class members have not participated in the action.

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Cricket Properties, LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n, Inc., --- So.3d ----, 2013 WL 5288863 (Fla. 2d DCA 2013).

Community association covenants are not eliminated by a tax deed sale under Fla. Stat. § 197.573(2), but any outstanding association liens or dues are eliminated.

Let Miami Beach Decide v. City of Miami Beach, --- So.3d ----, 2013 WL 5289012 (Fla. 3d DCA 2013).

Developer, as intervenor in referendum dispute between city and local residents, has no ability to challenge standing of other parties.

Heritage Circle Condominium Ass'n, Inc. v. State, Florida Dept. of Business and Professional Regulation, Division of Condominiums, --- So.3d ----, 2013 WL 5222646 (Fla. 4th DCA 2013).

A trial court cannot strike pleadings as a sanction unless it first conducts a hearing to examine the *Kozel v. Ostendorf*, 629 So.2d 817, 818 (Fla.1993), factors.

CVS EGL Fruitville Sarasota FI, LLC v. Todora, --- So.3d ----, 2013 WL 5225769 (Fla. 2d DCA 2013).

Property appraiser assessments are reviewed by using only the standards set forth in Fla. Stat. § 194.301; the “any reasonable hypothesis” standard for upholding tax appraiser assessments is legislatively abolished.

JPMorgan Chase Bank, Nat. Ass'n v. Bigley, --- So.3d ----, 2013 WL 5226054 (Fla. 3d DCA 2013).

Private postage meter stamp is competent evidence that can rebut the presumption created by the date of certificate of service on a court paper.

In re Feingold, --- F.3d ----, 2013 WL 5194272 (11th Cir. 2013).

Fines and charges imposed by a Bar lawyer disciplinary board are non-dischargeable under 11 U.S.C. § 523 (a) (7) as a “fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.”

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Pratt v. Equity Bank, N.A., --- So.3d ----, 2013 WL 5379124 (Fla. 5th DCA 2013).

Personal service of process is not necessary for court to acquire jurisdiction after domestication of foreign judgment in Florida pursuant to the Florida Enforcement of Foreign Judgments Act, Fla. Stat. §§ 55.501–.509.

Boyle v. Hernando Beach South Prop. Owners Ass'n, Inc., --- So.3d ----, 2013 WL 5379378 (Fla. 5th DCA 2013).

A community association may move for a mandatory injunction to require a resident to comply with association requirements and restrictions.

Zephyr Haven Health & Rehab Center, Inc. v. Hardin ex rel. Hardin, --- So.3d ----, 2013 WL 5382147 (Fla. 2d DCA 2013).

Contract nullification based on unconscionability requires a finding of both procedural and substantive unconscionability; the cost of arbitration is generally considered a substantive unconscionability question. Impossibility of performance is generally not considered a defense to arbitration. A party must show individualized costs in order to invoke the *Green Tree* prohibitive cost defense to arbitration.

In re Amendments to Florida Small Claims Rules, --- So.3d ----, 2013 WL 5355064 (Fla. 2013).

The Small Claims Rules are amended to clarify that equitable relief can be sought in Small Claims Court, when a party can testify telephonically, and when non-lawyers can represent a company.

Focht v. Wells Fargo Bank, N.A., --- So.3d ----, 2013 WL 5338048 (Fla. 2d DCA 2013).

Standing at time of filing suit must be conclusively proven notwithstanding that standing at time judgment is undisputed. The Second District Court of Appeal certifies the following question of great public importance:

CAN A PLAINTIFF IN A FORECLOSURE ACTION CURE THE INABILITY
TO PROVE STANDING AT THE INCEPTION OF SUIT BY PROOF THAT
THE PLAINTIFF HAS SINCE ACQUIRED STANDING?

Premier Finishes, Inc. v. Maggiras, --- So.3d ----, 2013 WL 5338052 (Fla. 2d DCA 2013).

A contract entered into by a party using a fictitious name is enforceable; a trial court must conduct an evidentiary hearing in a construction lien case to determine whether there has been any adverse effect of using a fictitious name in a construction contract.

Apex Capital LP v. Carnival Corp., --- So.3d ----, 2013 WL 5338774 (Fla. 3d DCA 2013).

Bills of lading that do not identify the actual carrier constitute mere receipts, not contracts of carriage, and do not form a contract between the shipper and carrier.

Casino Inv., Inc. v. Palm Springs Mile Associates, Ltd., --- So.3d ----, 2013 WL 5338932 (Fla. 3d DCA 2013).

A developer is not barred from constructing on its own land (and using some parking spaces in the process) by either a reciprocal access easement or a common parking provision as the proposed building did not prohibit access and did not eliminate parking in common with others:

[Reciprocal Access Easement] In the event that a conveyed portion of the Property (the “Conveyed Portion(s)”) is contiguous to a part of the Property owned and operated by Owner, its successors and/or assigns, both parties agree that no fence or other obstruction will be erected between the Conveyed Portion(s) and the adjacent Property so as to obstruct or impede vehicular and pedestrian traffic between the two parcels of land.

[Parking Provision] In addition, any parties affected by this Agreement agree that the parking areas, sidewalks and “common areas” of the shopping center and of the Conveyed Portion(s) will be available for use by the parties hereto, their tenants, customers, invitees and employees, in common with each other so that, in effect, the purchaser of the Conveyed Portion(s), its tenants, customers, invitees and employees, may use the so-called “common areas” of the adjacent shopping center in common with Owner, its tenants, customers, invitees and employees; and, by the same token, Owner, its tenants, customers, invitees and employees, may use the parking areas and sidewalk areas of the Conveyed Portion(s) in common with the new owner, its tenants, customers, invitees and employees.

Cacho v. Bank of New York Mellon, --- So.3d ----, 2013 WL 5339047 (Fla. 3d DCA 2013).

Attorney’s failure to timely assert a charging lien upon withdrawal waives a claim to fees when suit is dismissed and mortgagor is entitled to fees.

Board of Trustees of Internal Imp. Trust Fund v. Walton County, --- So.3d ----, 2013 WL 5302580 (Fla. 1st DCA 2013).

An inverse condemnation proceeding is a *in rem* action subject to the Local Action Rule requiring actions to be brought in the county where the land in question lies.

Hope v. Acorn Financial, Inc., --- F.3d ----, 2013 WL 5366291 (11th Cir. 2013).

A Chapter 13 Trustee is bound by a plan which has defects if the Trustee is aware of the defects, fails to object, and recommends confirmation.

Tampa Bay Water v. HDR Engineering, Inc., --- F.3d ----, 2013 WL 5305346 (11th Cir. 2013).

Issue preclusion requires more than some issue being relevant to prior adjudication between parties; contested issue must have been litigated and necessary to judgment earlier rendered. Specifically, federal law requires that issue at stake in the two proceedings be identical, the issue be actually litigated in earlier proceeding, the issue was a crucial part of earlier judgment, and party had full and fair opportunity to litigate issue.

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Fi-Evergreen Woods, LLC v. Robinson, --- So.3d ----, 2013 WL 5493462 (Fla. 5th DCA 2013).

The Florida Arbitration Code does not require a signature to a written agreement to arbitrate; parties may indicate their intention to arbitrate by words and conduct. Parol evidence regarding identity, capacity and relationship with another is permitted even when document is patently ambiguous, i.e., ambiguity is apparent on document's face.

Metnick & Levy, P.A. v. Seuling, --- So.3d ----, 2013 WL 5450970 (Fla. 4th DCA 2013).

Failing to pay debts due under a contract in Florida satisfies both the long-arm jurisdiction and minimum contacts requirements to be haled into Florida to defend.

Miccosukee Tribe of Indians of Florida v. Lewis, --- So.3d ----, 2013 WL 5474581 (Fla. 3d DCA 2013).

Florida Rule of Judicial Administration 2.514 (b) provides additional time to act after service of a pleading or notice, but not after rendition of an order.

Millennium Diagnostic Imaging Center, Inc. v. State Farm Mut. Auto. Ins. Co., --- So.3d ----, 2013 WL 5429556 (Fla. 3d DCA 2013).

An order granting discovery is equitable in nature, and circuit courts have concurrent equity jurisdiction with county courts to rule on discovery matters within their subject matter jurisdiction.

Village Carver Phase 1, LLC v. Fidelity Nat.Title Ins. Co., --- So.3d ----, 2013 WL 5429585 (Fla. 3d DCA 2013).

The Marketable Record Title Act may eliminate the rights under Fla. Stat. § 704.08 of ingress and egress to cemeteries. Thus, there is no coverage under a title policy for breach for a deed recorded before the root of title under M.R.T.A. Furthermore, title policies do not protect against future occurrences.

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Aegis, LLC v. Mawji, --- So.3d ----, 2013 WL 5575231 (Fla. 5th DCA 2013).

Any filing within the sixty day period set forth by Florida Rule of Civil Procedure 1.420 (e) is sufficient to avoid dismissal; the filing does not need to move case forward.

Universal Checks & Forms, Inc. v. Pencor, Inc., --- So.3d ---- (Fla. 5th DCA 2013).

Recommending a retirement plan as an investment vehicle is not an ERISA action, and is thus not pre-empted from state court action under ERISA.

Wells Fargo Bank, N.A. v. Morcom, --- So.3d ----, 2013 WL 5575634 (Fla. 5th DCA 2013).

Mortgagee is not required to be both the holder and owner of promissory note in order to have standing to foreclose; being holder of note indorsed in blank is sufficient even if foreclosing party is not the owner.

Office of Ins. Regulation and Financial Services Com'n v. Secure Enterprises, LLC, --- So.3d ----, 2013 WL 5584266 (Fla. 1st DCA 2013).

Manufacturer, in order to establish standing to challenge rules adopting certain forms for windstorm resistant products, must meet either the “substantially affected” or “zone of interest” tests for standing.

Bennett v. Deutsche Bank Nat. Trust Co., --- So.3d ----, 2013 WL 5538764 (Fla. 4th DCA 2013).

On rehearing, the Fourth District clarifies its earlier opinion and holds that the Fla. Stat. § 673.3081 (1) is a “bursting bubble” presumption that allows a holder of an instrument to presume the validity of a signature unless signer presents evidence to the contrary.

ASAP Services, LLC v. SA Florida Intern., LLC, --- So.3d ----, 2013 WL 5566680 (Fla. 3d DCA 2013).

Post –judgment motion to set aside a final judgment does not toll Florida Rule of Civil Procedure 1.525 requirement to file attorney’s fees motion within 30 days of judgment.

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AG Beaumont 1, LLC v. LSREF2 Oreo (Direct), --- So.3d ----, 2013 WL 5663211 (Fla. 2d DCA 2013).

A promissory note and its copy with different handwriting and different maturity dates creates a triable issue of fact and defeats summary judgment.

Alpha Data Corp. v. HX5, L.L.C., --- So.3d ----, 2013 WL 5663214 (Fla. 1st DCA 2013). Only a clear understanding of the parties that an oral contract was not to be performed within a year brings the contract into the Statute of Frauds; contracts for indefinite periods of time generally do not fall within Statute of Frauds.

Caruso v. Knight, --- So.3d ----, 2013 WL 5628653 (Fla. 4th DCA 2013).

Disqualification of counsel is a drastic remedy, and having access to plaintiff's employee records arising out of prior proceedings is not privileged information requiring removal.

Florida Dep't of Agriculture and Consumer Services v. Mendez, --- So.3d ----, 2013 WL 5628727 (Fla. 4th DCA 2013).

Presumption that state agency, when exercising police power, is seeking to prevent public harm does not mean that a compensable taking has not occurred.

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Hernandez v. Colonial Grocers, Inc., --- So.3d ----, 2013 WL 5762986 (Fla. 2d DCA 2013).

A contract containing both an arbitration provision for statutory claims and a prevailing party attorneys' fees provision is void and unenforceable when the statute awards fees only to a prevailing plaintiff.

Wadsworth v. JP Morgan Chase Bank, N.A., --- So.3d ----, 2013 WL 5729754 (Fla. 4th DCA 2013).

Mediation is not required prior to summary judgment of foreclosure when a case is filed outside of timeframe of mandated mediation ordered by the Florida Supreme Court.

Juvonen v. United Prop. and Cas. Ins. Co., --- So.3d ----, 2013 WL 5729808 (Fla. 4th DCA 2013).

Insurer must pay contractor overhead and profit expenses for post-hurricane repairs.

Careplus Health Plans, Inc. v. Interamerican Medical Center Group, LLC, --- So.3d ----, 2013 WL 5735342 (Fla. 3d DCA 2013).

An arbitration provision in a later contract does not cover disputes arising from earlier contracts; whether a claim is subject to arbitration is for court to decide.

Barber v. America's Wholesale Lender, --- Fed.Appx. ----, 2013 WL 5686757 (11th Cir. 2013).

Under the loan instrument in question, borrower has no right to a modification or to negotiate with only its original lender.

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Higgins v. Timber Springs Homeowners Ass'n, Inc., --- So.3d ----, 2013 WL 5849282 (Fla. 5th DCA 2013).

The Servicemembers' Civil Relief Act is to be liberally construed, and a court may, on its own volition, order a stay despite the servicemember not strictly complying with the Act.

Nationwide Mut. Fire Ins. Co. v. Advanced Cooling and Heating, Inc., --- So.3d ----, 2013 WL 5807880 (Fla. 4th DCA 2013).

"Property damage" as defined in a post 1986 standard CGL form only covers proper other than the property being repaired; defective work is not a property damage claim.

Golden v. Jones, --- So.3d ----, 2013 WL 5810360 (Fla. 4th DCA 2013).

A guardianship's statement of claim is governed by the two statute of limitations.

Merriman Investments, LLC v. Ujowundu, --- So.3d ----, 2013 WL 5813970 (Fla. 3d DCA 2013).

Whether a garnishee has given her wages to a religious order as part of an agency agreement or merely to avoid having wages garnished is a factual question determined by a party showing (1) acknowledgement by principal that agent will act for him, (2) the agent's acceptance of undertaking, and (3) control by the principal over actions of the agent.

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Beyer v. City of Marathon, --- So.3d ----, 2013 WL 5927690 (Fla. 3d DCA 2013).

A subjective expectation that land can be developed into a more intensive use does not constitute a taking when there remains investment back expectations; the granting of Residential Rate of Growth Ordinance (ROGO) points and current recreational uses reflect that an “as applied” taking has not occurred.

Browning v. Poirier, --- So.3d ----, 2013 WL 5950842 (Fla. 5th DCA 2013) (en banc).

The Fifth District, sitting *en banc*, partially reverses its earlier decision and holds that an oral agreement to share lottery proceeds is not barred under a theory unjust enrichment but is barred by the Statute of Frauds since the parties contemplated their personal relationship (and corresponding lottery ticket purchases) would last more than one year.

Ripps v. City of Coconut Creek, --- So.3d ----, 2013 WL 5925093 (Fla. 4th DCA 2013).

Fla. Stat. § 380.06 (19) allows changes be made to a Development of Regional Impact (DRI) without requiring new D.R.I. review unless the changes constitute a “substantial deviation.” The proposed change on appeal is not a “substantial deviation,” and therefore the proposed change is not a departure from law remediable by certiorari.

Illinois Union Ins. Co. v. Co-Free, Inc., --- So.3d ----, 2013 WL 5932244 (Fla. 1st DCA 2013).

Manrique v. Fabbri, 493 So.2d 437 (Fla. 1986), holds that forum selection clauses should be enforced unless the clause is the result of unequal bargaining power, contravenes strong public policy, and transfers a local dispute into a foreign forum.

King v. U.S. Bank, Nat. Ass'n, --- So.3d ----, 2013 WL 5941553 (Fla. 1st DCA 2013).

A final judgment of foreclosure must contain a final money amount to be paid, otherwise judicial labor is not complete on the case.

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Norberto Sanchez v. Renda Broadcasting Corporation, --- So.3d ----, 2013 WL 6030085 (Fla. 5th DCA 2013).

Proceedings supplementary may be used to pierce the corporate veil without first alleging fraud.

Talton v. CU Members Mortg., --- So.3d ----, 2013 WL 5988967 (Fla. 4th DCA 2013).

If allegations of motion to quash service entitle movant to relief if deemed true, then court must conduct evidentiary hearing on the motion.

Popescu v. Laguna Master Ass'n, Inc., --- So.3d ----, 2013 WL 5988984 (Fla. 4th DCA 2013).

Orders on motions to vacate foreclosure sales are “final orders” separate from the foreclosure judgment itself, and as a result, motions for rehearing lie for orders denying motions to vacate foreclosure sales.

Rocca v. Rones, --- So.3d ----, 2013 WL 5989826 (Fla. 3d DCA 2013).

Florida Rule of Civil Procedure 1.280(b)(5)(B) protects from disclosure an expert who is initially disclosed as a testifying expert but is later withdrawn from testifying.

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Ballard v. Campbell, --- So.3d ----, 2013 WL 6081741 (Fla. 4th DCA 2013).

A motion to disqualify a judge under Rule of Judicial Administration 2.330 is timely if made within 10 days of party learning of the basis for disqualification; motion does not need to be made within 10 days of issuance of disqualification information.

First Call Ventures, LLC v. Nationwide Relocation Services, Inc., --- So.3d ----, 2013 WL 6081758 (Fla. 4th DCA 2013).

An in-camera inspection is not necessary if the court directs a confidentiality order be instituted since the court has already decided the documents are confidential. Additionally, a non-party whose records have been subpoenaed is entitled to reimbursement of costs for production of the records.

Kathleen G. Kozinski, P.A. v. Phillips, --- So.3d ----, 2013 WL 6081766 (Fla. 4th DCA 2013).

A total lack of service makes a resulting judgment void but a defective service (which gives the defendant some notice of the proceedings against them) is only voidable. A party seeking to vacate a voidable judgment under Florida Rule of Civil Procedure 1.540 (b) must do so within one year of date of judgment.

H. Allen Holmes, Inc. v. Jim Molter, Inc., --- So.3d ----, 2013 WL 6081768 (Fla. 4th DCA 2013).

A lease contract which is ambiguous as to whether the landlord or tenant retains trade fixtures at lease termination entitles the tenant to retain the fixtures.

Elsner v. E-Commerce Coffee Club, --- So.3d ----, 2013 WL 6081771 (Fla. 4th DCA 2013).

A court, in its discretion, may allow prejudgment discovery of a party's financial information when the information is relevant to issues in the case. A trial court may, but is not required, to conduct an in-camera review prior to disclosing financial information.

Regions Bank v. Rhodes, --- So.3d ----, 2013 WL 6081776 (Fla. 4th DCA 2013).

A proposal for settlement is invalid under Florida Rule of Civil Procedure 1.442 (b) if the proposal was served less than 90 days after the complaint in which the served defendant was first served. Accordingly, a proposal for settlement served more than 90 days after the initial complaint but less than 90 days after the amended complaint adding that defendant is not responsible under the proposal.

Florida Dept. of Agriculture and Consumer Services v. Bogorff, --- So.3d ----, 2013 WL 6082242 (Fla. 4th DCA 2013).

In order to constitute an “offer” under Fla. Stat. § 73.092 for inverse condemnation claims, i.e., when the property has already been taken by the state, there must be an offer to relinquish claims for inverse condemnation damages. Failure to provide a pre-suit “offer” allows a party to claim attorneys’ fees pursuant to the multi-part test of Fla. Stat. § 73.092 (2) and not the “benefits achieved” test of Fla. Stat. § 73.091 (1).

Columbia Bank v. Columbia Developers, LLC, --- So.3d ----, 2013 WL 6097313 (Fla. 1st DCA 2013).

Unambiguous contracts are to be interpreted in accordance with their plain meaning. Accordingly, a settlement agreement that releases defendants with regard to a specific property will not release with regard to other property or claims.

Heart Surgery Center v. Thomas J. Bixler, II, M.D., P.A., --- So.3d ----, 2013 WL 6097322 (Fla. 1st DCA 2013).

When based on one of the factors in Fla. Stat. § 682.13 (1) (b) for vacating awards, the First District permits certiorari review while the Fourth District does not. The fact that the arbitrator’s son was injured by a drunk driver is not a basis for vacating an award arising out of “evident partiality” when arbitration concerns removal of a partner for alcoholism.

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Hokenstrom v. Environ Towers I Condominium Ass'n, Inc., --- So.3d ----, 2013 WL 6182369 (Fla. 4th DCA 2013).

A co-owner, who is under 55 years of age, is not in contempt of a final judgment to “vacate” an over 55 condominium when final judgment does not specify what constitutes “vacating” the unit.

Saga Bay Gardens Ass'n, Inc. v. For Appointment of Blanket Receiver, --- So.3d ---, 2013 WL 6212028 (Fla. 3d DCA 2013).

A receiver may be awarded fees only if receiver’s actions benefitted the estate. Only the receiver, not the attorney for the receiver, is entitled to an award of fees and costs.

Kingston Corp. Group Of Florida, Inc. v. Richard Kleiber Walter Kleiber Partnership, --- So.3d ----, 2013 WL 6212030 (Fla. 2d DCA 2013).

Attorneys’ fees and costs in proceedings supplementary may be awarded only against the original judgment debtor and may not be awarded against the implied parties.

Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC, --- So.3d ----, 2013 WL 6212040 (Fla. 3d DCA 2013).

A determination as to the method of calculating lost profits is reviewed *de novo* while the amount of lost profits awarded is reviewed for clear error. In breach of contract action, only damages that flow naturally from the breach and in reasonable contemplation of parties at time of contract is awardable. A court may award the value of a business instead of lost profits when the business has been completely destroyed and lost profits is an inadequate measure of damages.

Armas v. Banco Nacional De Credito, C.A., --- So.3d ----, 2013 WL 6224030 (Fla. 3d DCA 2013).

A finding of personal jurisdiction is not determinative of whether the forum is convenient under *forum non conveniens* analysis.

Kling Corp. v. Hola Networks Corp., --- So.3d ----, 2013 WL 6224036 (Fla. 3d DCA 2013).

An award granting entitlement to attorney’s fees (without awarding the amount of fees) is a non-appealable, non-final order.

Park West Professional Center Condominium Ass'n, Inc. v. Londono, --- So.3d ----, 2013 WL 6224038 (Fla. 3d DCA 2013).

Purchaser of condominium unit at a mortgage foreclosure sale is jointly and severally liable with association for assessments dating back to when association received certificate of title but not for the assessments predating association's taking of title.

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BOYI, LLC v. Premiere American Bank, N.A., --- So.3d ----, 2013 WL 6244182 (Fla. 4th DCA 2013).

A court may award liquidated (but not unliquidated) damages without notice.

Mlinar v. United Parcel Service, Inc., --- So.3d ----, 2013 WL 6244191 (Fla. 4th DCA 2013).

Unless the actions complained of arise out of other than the delivery or loss of goods in interstate travel, the Carmack Amendment limits the liability of interstate carriers for common law fraud, conversion, and unfair trade practices claims.

Detournay v. City of Coral Gables, --- So.3d ----, 2013 WL 6246242 (Fla. 3d DCA 2013).

The Doctrine of the Separation of Powers requires that a court abstain from compelling the executive branch to take certain zoning actions.

RC Aluminum Industries, Inc. v. Regions Bank, --- So.3d ----, 2013 WL 6246246 (Fla. 3d DCA 2013).

Only a "contractor" as defined in the Construction Lien Act may allege a cause of action for damages under Fla. Stat. § 713.3471 (2) (lender must communicate its decision to stop lending to contractor on project). A contractor may have an equitable action against a lender if lender's misrepresentation, fraud, or mistake result in contractor staying on job and unjustly enriching the lender.

Kelsey v. SunTrust Mortg., Inc., --- So.3d ----, 2013 WL 6246461 (Fla. 3d DCA 2013).

Only a records custodian or someone with personal knowledge may authenticate business records for introduction into evidence.

Taylor v. Gutierrez, --- So.3d ----, 2013 WL 6246464 (Fla. 3d DCA 2013).

Florida plaintiff lacked general personal jurisdiction over non-resident shipboard physician due to lack of minimum contacts notwithstanding that physician had probably treated a Florida resident at some time during his employment had entered into Florida contracts, had attended Florida medical conferences, had received work related Florida certification, and had bank accounts in Florida.

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Thompson v. Hancock Bank, --- So.3d ----, 2013 WL 6508390 (Fla. 5th DCA 2013).
Even if an answer was not filed by the date required in a court order, an answer filed prior to entry of default removes the ability of the court to enter a default.

Grove At Harbor Hills Homeowners v. Harbor Hills Development, L.P., --- So.3d ----, 2013 WL 6508392 (Fla. 5th 2013).
Words in contracts, including easements, are to be given their plain meaning. Accordingly, “control” and “maintenance” of an easement gate are not synonymous.

Rohleder v. Wiberg, --- So.3d ----, 2013 WL 6510902 (Fla. 2d DCA 2013).
A party may not use Florida Rule of Civil Procedure 1.420 (d) (party must pay costs of first suit when first suit is dismissed and re-filed) to prevent a plaintiff from re-filing a suit unless a judgment for costs was obtained in the first suit.

In re Amendments To Florida Evidence Code, --- So.3d ----, 2013 WL 6500888 (Fla. 2013).
To the extent they are procedural, the Florida Supreme Court declines to adopt rules implementing the changes to Fla. Stat. §§ 90.5021 (adoption of fiduciary lawyer – client relationship), 90.804 (2) (f) (party who procures absence of witness cannot object to hearsay statement of absent witness), and 766.102 (12) (person offering expert medical witness testimony in Florida must be licensed in Florida).

Tesla Elec., Armature and Mach., Inc. v. JLM Advanced Technical Services, Inc., -- So.3d ----, 2013 WL 6480980 (Fla. 1st DCA 2013).
An appellate court may require findings of fact with regard to an award of attorneys’ fees under Fla. Stat. 543.335 (1) (k), even though not required under the statute, in order to intelligently review the trial court’s decision.

Sprint Communications, Inc. v. Jacobs, --- S.Ct. ----, 2013 WL 6410850 (2013).
The question of whether a state agency can regulate intrastate VOIP (Voice Over Internet Protocol) telephone calls is not subject to *Younger* (*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669) Doctrine Abstention.

City of Rome v. Hotels.com, L.P., --- Fed.Appx. ----, 2013 WL 6510384 (11th Cir. 2013).
Online travel companies do not need to remit excise taxes for hotel rooms booked over the internet as they enable the transaction but do not book the rooms themselves.

CBT Flint Partners, LLC v. Return Path, Inc., --- F.3d ----, 2013 WL 6510953 (11th Cir. 2013).

In a case of first impression, the Federal Circuit rules that electronic discovery costs are reimbursable (under Federal Rule of Civil Procedure 54 (d) and 28 U.S.C. § 1920) depending on the stage of the process. Generally, costs are recoverable for the first (“mirroring” or collecting of digital information) stage, may or may not be recoverable for the specific task in the stage two analysis portion (e.g., load files and decryption is covered but “de-duping” may not be), and covered in stage three of copying responsive documents.

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Midtvaage v. Porches Bahamas, Ltd., --- So.3d ----, 2013 WL 6687844 (Fla. 5th DCA 2013).

A foreign lender (e.g., incorporated and maintaining its principal office outside the U.S.) is exempt from the Fla. Stat. § 201.23(1) (a) negotiable instruments excise tax.

Sovereign Healthcare Of Port St. Lucie, LLC v. Fernandes, --- So.3d ----, 2013 WL 6636018 (Fla. 4th DCA 2013).

The identity of those who may have information regarding a matter in dispute, even if non-parties in the dispute, is generally discoverable.

Straub v. Muir-Villas Homeowners Ass'n, Inc., --- So.3d ----, 2013 WL 6636854 (Fla. 4th DCA 2013).

Community association assessments are based on the declaration or plat reflecting the lots to be assessed. Accordingly, owner is required to pay assessments for lots which were originally platted as multiple lots although later combined into three lots.

Heldenmuth v. Groll, --- So.3d ----, 2013 WL 6636895 (Fla. 4th DCA 2013).

Party harmed by breach of escrow agreement can sue for breach of contract, but civil theft requires more proof than mere non-compliance with the agreement.

Federal Contracting, Inc. v. Bimini Shipping, LLC, --- So.3d ----, 2013 WL 6644852 (Fla. 3d DCA 2013).

While arbitrators generally rule on statutes of limitations defenses while trial courts rule on statutes of repose defenses, the Carriage of Goods by Sea Act, 46 U.S.C. app. § 1303, is a statute of limitation to be ruled on by an arbitrator.

US Bank Nat. Ass'n v. Rivera, --- So.3d ----, 2013 WL 6669880 (Fla. 3d DCA 2013).

Post-judgment discovery pursuant to a motion to vacate the final judgment is generally permitted only upon sworn proof of the allegations contained in the motion.

Republic of Ecuador v. Hinchee, --- F.3d ----, 2013 WL 6655490 (11th Cir. 2013).

Documents (e.g., personal notes and communications) of testifying expert are not exempt from discovery unless the expert is a "representative" under general work-product doctrine, are draft expert reports or attorney-expert communications.

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Lunohah Investments, LLC. v. Gaskell, --- So.3d ----, 2013 WL 6816627 (Fla. 5th DCA 2013).

While restrictive covenants survive tax deed foreclosure sale, a purchaser at tax deed foreclosure sale is not personally liable for unpaid association assessments.

Chase Financial Services, LLC. v. Edelsberg, --- So.3d ----, 2013 WL 6800978 (3d DCA 2013).

Equitable factors must be adequately alleged to set aside a foreclosure sale, and a neighbor allegedly stating “these sales never go through” is insufficient equitable factor.

Sazonov v. Karpova, --- So.3d ----, 2013 WL 6800981 (Fla. 3d DCA 2013).

Deference, under *forum non conveniens* analysis, to the plaintiff’s choice of forum applies only if plaintiff is a resident of this country.

Bull Motors, LLC v. Borders, --- So.3d ----, 2013 WL 6818377 (Fla. 3d DCA 2013).

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) does not statutorily require proportionality between a FDUTPA judgment and prevailing party fees.

Pretka v. Kolter City Plaza II, Inc., --- Fed.Appx. ----, 2013 WL 6813742 (11th Cir. 2013).

A purchaser’s claims for violation of Fla. Stat. § 718.202(3) of the Florida Condominium Act requires prejudice resulting from the violation in order to be actionable.

F.D.I.C. v. Skow, --- F.3d ----, 2013 WL 6726918 (11th Cir. 2013).

The “no duty” rule prohibiting tort claims against the F.D.I.C. as Receiver does not eliminate defendant’s affirmative defenses when F.D.I.C. brings suit against defendant.