Florida Real Property and Business Litigation Report
Volume XII, Issue 1
January 5, 2019
Manuel Farach

Wheaton v. Wheaton, 261 So. 3d 1236 (Fla. 2019).
Proposals for settlement made pursuant to Florida Statutes section 768.79 and Florida Rule of Civil Procedure 1.442 do not need to comply with the email service provisions of Florida Rule of Judicial Administration 2.516.

Crary v. Tri-Par Estates Park and Recreation District, 267 So. 3d 530 (Fla. 2d DCA 2018).
An over-55 community association, which is also an independent special taxing district created by the Florida Legislature, does not have the authority to enact (or enforce) rules and regulations promulgated by the association's board of trustees governing the use of its facilities if the district's enabling legislation did not provide for the power to enact such rules.

Shands v. City of Marathon, 999 So.2d 718 (Fla. 3d DCA 2018).
The awarding of Rate of Growth Ordinance (ROGO) points may be sufficient, in an as-applied inverse condemnation case, to avoid a finding that zoning and environmental regulations deprived the property owner of all or substantially all economic use of their property.

KIS Group, LLC v. Moquin, 263 So. 3d 63 (Fla. 4th DCA 2018).
A trial court’s denial of defendant's motion for summary judgment on a fraud claim is not the functional equivalent of a determination that a sufficient factual basis exists under Florida Statute section 768.72 for plaintiff to claim of punitive damages.

Florida Real Property and Business Litigation Report
Volume XII, Issue 2
January 12, 2019
Manuel Farach

Henry Schein, Inc. v. Archer & White Sales, Inc., ––– U.S. ––––, 139 S. Ct. 524, 529, 202 L.Ed.2d 480 (2019).
A court may not override an arbitration provision when the parties' contract delegates the arbitrability question to an arbitrator, even if the court thinks that the arbitrability claim is "wholly groundless."

Mielke v. Deutsche Bank National Trust Company, 264 So. 3d 249 (Fla. 1st DCA 2018).
Florida Statute section 673.3091(enforcement of lost note) is tied to a foreclosure action and does not create an independent cause of action triggering a separate statute of limitations on a mortgagee's right to foreclose, regardless of whether the note holder knew or did not know the note was lost.

Florida Real Property and Business Litigation Report
Volume XII, Issue 3
January 19, 2019
Manuel Farach

New Prime Inc. v. Oliveira, 139 S. Ct. 532, 202 L. Ed. 2d 536 (2019).
Certain transportation workers are exempt from the reach of the Federal Arbitration Act, and accordingly, arbitration cannot be compelled for those workers even when an arbitration agreement exists which contains a delegation provision.

Saccullo v. United States of America, 913 F.3d 1010 (11th Cir. 2019).
The curative provisions of Florida Statute section 95.231 (certain defects in deeds, including not having sufficient witnesses, are cured after 5 years) apply and vest a technically incorrect deed in the grantee after the statutory period; *United States v. Summerlin*, 310 U.S. 414, 416 (1940)(statutes of limitation are not enforceable against a sovereign) is not applicable as the deed vested before the claim of the U.S. vested.

1385 Starkey, LLC v. Superior Fence & Rail of Pinellas County, Inc., Case No. 2D15-5579 (Fla. 2d DCA 2019).
A motion for continuance of trial to allow an insolvent company to reinstate should be granted; the court does not rule whether an insolvent corporation may proceed to trial under the province of the "winding up affairs" provision of Florida Statute section 605.0709.

Haggin v. Allstate Investments, Inc., 264 So. 3d 951 (Fla. 4th DCA 2019).
A guarantee of a lease that is not a continuing guarantee only applies to the original term of the lease, notwithstanding a provision of the guarantee that the parties “agree[d] that this guarantee shall remain for the renewal, modification, extension or waiver of this Lease.”

Florida Real Property and Business Litigation Report
Volume XII, Issue 4
January 26, 2019
Manuel Farach

Florida Department of Health v. Tropiflora, LLC, 265 So. 3d 673 (Fla. 1st DCA 2019).
Failure of a claimant to exhaust administrative remedies is not within the narrow class of reasons for which prohibition will issue.

Keystone Airpark Authority v. Pipeline Contractors, Inc., 266 So. 3d 1219 (Fla. 1st DCA 2019).
Consequential damages are not based on foreseeability but instead are based on the damaged party's relationship with third parties; the following is certified as question of great public importance:

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

Eastwood Shores Property Owners Association, Inc. v. Department of Economic Opportunity, 264 So. 3d 264 (Fla. 2d DCA 2019).
Although the issue has been resolved by the 2018 amendment to the Marketable Record Title Act (M.R.T.A.), condominium associations may be considered "homeowner's associations" capable of employing the prior M.R.T.A. covenant revitalization provisions (Florida Statutes sections 720.403-.407).

Mercantil Bank, N.A. v. Pazmino, 262 So. 3d 826 (Fla. 4th DCA 2019).
A party that fails to conduct a foreclosure sale on a prior foreclosure judgment is not entitled to "revive" the prior judgment by filing a new suit.

Florida Real Property and Business Litigation Report
Volume XII, Issue 5
February 2, 2019
Manuel Farach

2017 Bell Ranch Residential v. Burrill, 264 So. 3d 295 (Fla. 2d DCA 2019).
The statutory presumption under Florida Statute section 45.033(1) that the owner of the real property at the time of the filing of the lis pendens is entitled to surplus foreclosure funds may be rebutted only by proof of either a voluntary or involuntary transfer or assignment from the record owner to the claimant of the right to collect the surplus.

Gundel v. AV Homes, Inc., 264 So. 3d 304 (Fla. 2d DCA 2019).
Certiorari may be sought to seek review of an order denying a motion to dismiss under the Anti-SLAPP statute (Florida Statute section 768.295(3)) because the statute itself seeks to avoid unnecessary litigation.

Nationstar Mortgage LLC v. LHF Hudson, LLC, 271 So. 3d 1073 (Fla. 3d DCA 2019).
Bartram v. U.S. Bank, N.A., 211 So. 3d 1009 (Fla. 2016), did not change then existing law and applies retroactively to revive claims.

Laptopplaza, Inc. v. Wells Fargo Bank, NA, 264 So. 3d 1049 (Fla. 3d DCA 2019).
Attorney's fees may be an element of damages in actions such as fraudulent conveyances, and orders determining liability but not the amount of damages are not appealable as the order is not yet final.

Davis v. Bailynson, 268 So. 3d 762 (Fla. 4th DCA 2019).
An attorney alone, not the attorney and his client, may be sanctioned under Florida Statute section 57.105(3)(c). Additionally, fees may be awarded when a suit asserts a theory of liability using more than one, but separate, factual scenarios in support of the theory and only one of the factual scenarios is not supported by law or fact.

Florida Real Property and Business Litigation Report
Volume XII, Issue 6
February 9, 2019
Manuel Farach

Al-Rayes v. Willingham, 914 F.3d 1302 (11th Cir. 2019).
A judgment debtor husband and his wife can form an "association in fact" under *Boyle v. United States*, 556 U.S. 938, 944 (2009)(individuals in an association-in-fact enterprise are "associated together for a common purpose of engaging in a course of conduct") for R.I.C.O. liability purposes.

Verizon Wireless Personal Communications, LP v. Bateman, 264 So. 3d 345 (Fla. 2d DCA 2019).
An arbitration agreement survives a bankruptcy discharge because the arbitration provision is not a "debt" or "claim" as defined under the Bankruptcy Code.

Zurich American Insurance Company v. Puccini, LLC, 271 So. 3d 1079 (Fla. 3d DCA 2019).
The Third District employs the "case by case" approach in determining whether a tenant is a co-insured under an insurance policy covering a landlord and thus immune from insurer subrogation actions against the tenant.

Yost-Rudge v. A to Z Properties, Inc., 263 So. 3d 95 (Fla. 4th DCA 2019).
A homestead is not "abandoned" (thus permitting one spouse to sell without the signature of both spouses) when the non-consenting spouse is involuntarily forced off the property.

Chaudhry v. Pedersen, 277 So. 3d 635 (Fla. 5th DCA 2019).
All parties having an interest in a disputed property are required to be joined to determine the true ownership of the property, i.e., a spouse who owns disputed property with her spouse is required to be joined when a plaintiff alleges he entered into an agreement to purchase property in the name of husband to then be transferred to plaintiff but instead husband transferred property to himself and his wife.

Florida Real Property and Business Litigation Report
Volume XII, Issue 7
February 16, 2019
Manuel Farach

Hillcrest Property, LLP v. Pasco County, 915 F.3d 1292 (11th Cir. 2019).
Executive functions such as a land-use decision never give rise to a substantive-due-process claim unless the action infringes on a fundamental right.

Amalgamated Transit Union, Local 1579 v. City of Gainesville, 264 So. 3d 375 (Fla. 1st DCA 2019).
A trial court's order vacating an arbitration award and remanding the case for a new arbitration constitutes irreparable harm entitling the aggrieved party to petition for certiorari; conflict certified with the Third, Fourth, and Fifth District Courts of Appeal.

Socarras v. Vassallo, 273 So. 3d 131 (Fla. 3d DCA 2019).
A home equity line of credit does not convert a non-marital asset into a marital asset such that a former spouse is entitled to 50% of the value of the asset.

Benzrent 1, LLC v. Wilmington Savings Fund Society, FSB, 273 So. 3d 107 (Fla. 3d DCA 2019).
Because the holding of *Pealer v. Wilmington Trust National Ass'n*, 212 So. 3d 1137 (Fla. 2d DCA 2017), on the issue of standing was a special concurrence, trial courts are required to follow *3709 N. Flagler Drive Prodigy Land Trust v. Bank of America, N.A.*, 226 So. 3d 1040 (Fla. 4th DCA 2017), and allow a subsequent title owner to challenge a foreclosing plaintiff's lack of standing to foreclose on a mortgage.

Asset Recovery Group, LLC v. Wright, 271 So. 3d 1088 (Fla. 3d DCA 2019).
A receiver appointed by a trial court arising out of the foreclosure of an apartment complex may not be sued for personal injury arising out of management of the complex unless the receiver acted outside the scope of the receivership.

Deutsche Bank National Trust Company v. Viteri, 264 So. 3d 963 (Fla. 4th DCA 2019).
A lender does not have to prove when a loan was placed into a pool if it holds the original note at trial and the note placed into evidence at trial is the same as attached to the complaint.

Florida Real Property and Business Litigation Report
Volume XII, Issue 8
February 23, 2019
Manuel Farach

Timbs v. Indiana, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).
The Constitution's prohibition against excessive fines applies to the States.

Perez v. Deutsche Bank National Trust Company, 264 So. 3d 1117 (Fla. 2d DCA 2019).
Merely introducing a default letter without introducing evidence the letter was actually sent does not satisfy the condition precedent requirement of a mortgage.

Papunen v. Bay National Title Company, 271 So. 3d 1108 (Fla. 3d DCA 2019).
A buyer of foreclosed property from a lender, which buyer signed a general release running to the lender for the purchase, may sue the title company that missed post-foreclosure matters that diminished buyer's title notwithstanding the release to the lender.

Obermeyer v. Bank of New York, 272 So. 3d 430 (Fla. 3d DCA 2019).
A prevailing foreclosure defendant may not be awarded "fees for fees," i.e., for litigating the amount of attorney's fees to be awarded.

Breger v. Robshaw Custom Homes, Inc., 264 So. 3d 1147 (Fla. 5th DCA 2019).
An offeree defendant may not bind all three plaintiff joint tenants by accepting the offer of only one offering plaintiff and conditioning the acceptance upon dismissal of the lawsuit by all three joint tenant plaintiffs, including requiring dismissal by the two offerors whose proposal for settlement it did not accept.

Winter Green at Winter Park Homeowners Association, Inc. v. Ware, 264 So. 3d 1143 (Fla. 5th DCA 2019).
A trial court, under its inherent power to sua sponte reconsider its own rulings, may dissolve a temporary injunction regarding board elections without a motion to dissolve being filed

Florida Real Property and Business Litigation Report
Volume XII, Issue 9
March 2, 2019
Manuel Farach

Yovino v. Rizo, 139 S. Ct. 706, 203 L. Ed. 2d 38 (2019).
Federal judges are appointed for life, not eternity, and a federal circuit may not count the vote of a deceased judge in deciding cases.

Windsor Falls Condominium Association, Inc. v. Davis, 265 So. 3d 709 (Fla. 1st DCA 2019).
An award of fees for litigating the amount of attorney's fees to be awarded is not permitted in a condominium assessment case when the relevant portion of the instruments provided for "costs of collection thereof, including Legal Fees"; *Waverly at Las Olas Condominium Ass'n, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386, 388 (Fla. 4th DCA 2012), is distinguished.

Leon County v. Lakeshore Gardens Homeowners' Association, Inc., 265 So. 3d 706 (Fla. 1st DCA 2019).
A homeowner's association may be named in an eminent domain case as class representative for all owners; it is not necessary to individually name all members of the association.

National Collegiate Student Loan Trust 2006-4 v. Meyer, 265 So. 3d 715 (Fla. 2d DCA 2019).
Standing is merely a sufficient interest in the outcome of a case that warrants the court entertaining it, and unless the complaint demonstrates an affirmative defense on its face, any such affirmative defense requires proof.

Tejera v. Lincoln Lending Services, LLC, 271 So. 3d 97 (Fla. 3d DCA 2019).
An action for civil conspiracy to perpetrate fraud in the inducement is an action founded upon fraud and thus is subject to the Delayed Discovery Doctrine.

Cone v. U.S. Bank Trust, N.A., 265 So. 3d 698 (Fla. 4th DCA 2019).
Fraud or egregious misconduct is not a requirement for an equitable subrogation lien.

First Church of the Nazarene of Gainesville, Florida, Inc. Site Concepts, Inc., 265 So. 3d 641 (Fla. 4th DCA 2019).
The rule that place of payment is a proper venue is inapplicable when the debt due is unliquidated.

Florida Real Property and Business Litigation Report
Volume XII, Issue 10
March 9, 2019
Manuel Farach

Lanson v. Reid, Case No. 3D18-2616 (Fla. 3d DCA 2019).
An order dismissing a complaint with prejudice is a final, appealable order and a motion under Florida Rule of Civil Procedure 1.540 seeking to vacate the final judgment does not toll rendition of nor the time to appeal the order of dismissal.

Schwartz v. Bank of America, N.A., 267 So. 3d 414 (Fla. 4th DCA 2019).
Failure to submit evidence in opposition to a lender's claim that (pursuant to Florida Statute section 673.3081) signatures on a negotiable instrument are presumed valid entitles lender to summary judgment.

Delta Aggregate, LLC v. Hermes Hialeah Warehouse, LLC, 266 So. 3d 248 (Fla. 4th DCA 2019).
Equitable liens can support a lis pendens so long as based on a duly recorded instrument or there exists a “fair nexus” between the property that is the subject of the lis pendens and the dispute embodied in the lawsuit. Additionally, the Fourth District sets forth the differences between the district courts of Florida in their treatment of appellate review of orders deciding whether to discharge a lis pendens.

Florida Real Property and Business Litigation Report
Volume XII, Issue 11
March 16, 2019
Manuel Farach

Lyday v. Myakka Valley Ranches Improvement Association, Inc., 279 So. 3d 733 (Fla. 2d DCA 2019).
An untimely preservation notice (after expiration of the thirty-year period) filed under Florida Statute section 712.03 cannot reestablish interests extinguished by the Marketable Record Title Act.

Dyck-O'Neal, Inc. v. Norton, 267 So. 3d 478 (Fla. 2d DCA 2019).
The statute of limitations for a deficiency suit does not accrue until the foreclosure judgment and sale.

LB Judgment Holdings, LLC v. Boschetti, 271 So. 3d 115 (Fla. 3d DCA 2019).
The proponent of a lis pendens must only make a minimal "fair showing" of a "nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit" and need not prove same by a preponderance of the evidence. Moreover, the amount of any lis pendens bond typically consists of attorney's fees in having the lis pendens removed (not the entire litigation), damages relating to the effects on title measured by the difference between the value of the property on the date the lis pendens is imposed and the date it is removed, and the expenses of preservation and maintenance of the property for the interval between recordation and discharge.

Woodson Electric Solutions, Inc. v. Port Royal Property, LLC, 271 So. 3d 111 (Fla. 3d DCA 2019).
The last element of a cause of action for fraudulent misrepresentation into a contract occurs where the contract is signed, and venue is properly laid in that location.

Volvo Aero Leasing, LLC v. Vas Aero Services, LLC, 268 So. 3d 785 (Fla. 4th DCA 2019).
A defendant cannot be held liable for interference with a business relationship when it has a supervisory interest in how the relationship is conducted or a potential financial interest in how a contract is performed.

AP Atlantic, Inc. v. Silver Creek St. Augustine, LLLP, 266 So. 3d 865 (Fla.5th DCA 2019).
A non-signatory to a contract containing an arbitration provision may enforce the arbitration provision when the signatory is relying on the contract to enforce claims against the non-signatory.

Florida Real Property and Business Litigation Report
Volume XII, Issue 12
March 23, 2019
Manuel Farach

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

Managed Care of North America, Inc. v. Florida Healthy Kids Corporation, 268 So. 3d 856 (Fla. 1st DCA 2019).
A party is entitled to the protection of Florida Statute section 812.081(1)(c) (trade secrets are not subject to Florida's open records laws) once it proves certain information is used in the operation of its business, that the information provides an advantage or the opportunity for an advantage, and that measures are taken to prevent its disclosure; there is no need to independently prove the information's value as such information is deemed "of value" under the statute.

Topalli v. Feliciano, 267 So. 3d 513 (Fla. 2d DCA 2019).
Although describing the process as "problematic," the Second District declines to prohibit the practice of granting motions for continuance conditioned upon a movant paying the fees and costs of the non-movant.

Kendall Healthcare Group, Ltd. v. Madrigal, 271 So. 3d 1120 (Fla. 3d DCA 2019).
A trial court's almost verbatim adoption of one party's proposed final judgment does not demonstrate an improper delegation of the trial court's independent judgment when the record clearly reflects the trial court participated in the trial, asked meaningful questions, provided both sides the opportunity to comment, and appeared to understand the issues in the case.

MTGLQ Investors, L.P. v. Davis, 270 So. 3d 392 (Fla. 4th DCA 2019).
Certified mail is deemed "first class mail" for purposes of contractual requirements that notices be sent via "first class mail."

Crawford v. Federal National Mortgage Association, 266 So. 3d 1274 (Fla. 5th DCA 2019).
A lender who fails to obtain a spouse's signature for a mortgage on homestead property may, under the principles of *Palm Beach Sav. & Loan Ass'n v. Fishbein*, 619 So. 2d 267 (Fla. 1993), be entitled to an equitable lien on the homestead property if necessary to avoid unjust enrichment.

Florida Real Property and Business Litigation Report
Volume XII, Issue 13
March 30, 2019
Manuel Farach

Marchisio v. Carrington Mortgage Services, LLC, 919 F.3d 1288 (11th Cir. 2019).
Reckless disregard consisting of multiple reporting mistakes can support a claim for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

Diversicare Management Services Co. v. The Estate of Catt, 267 So. 3d 560 (Fla. 2d DCA 2019).
Non-final appellate jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) to determine whether a party is entitled to arbitration does not permit the appellate court to adjudicate other issues on appeal.

Deutsche Bank, National Trust Company v. Quintela, 268 So. 3d 156 (Fla. 4th DCA 2019).
An attorney's fees provision which provides "[l]ender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22 . . . ," i.e., foreclosure, does not support an award of fees for a reformation action.

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

Florida Real Property and Business Litigation Report
Volume XII, Issue 14
April 6, 2019
Manuel Farach

Holzman v. Malcolm S. Gerald & Associates, Inc., 920 F.3d 1264 (11th Cir. 2019).
So long as one can reasonably infer an implicit threat, litigation need not be explicitly threatened for a collection letter seeking payment of a time-barred debt to constitute a violation of § 1692e of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.,

Marocco v. Brabec, Case No. 1D17-894 (Fla. 1st DCA 2019).
A trial judge may not *sua sponte* raise and apply the Sword and Shield Doctrine to reduce a jury's award.

Dorsey v. Robinson, 270 So. 3d 462 (Fla. 1st DCA 2019).
"In possession of the lands" for purposes of Florida Statute section 712.03(3) (the "possession exception" to the extinguishment provisions of the Marketable Record Title Act) requires more than merely the power to occupy the land and may require continued physical presence on the land.

Lehmann v. Cocoanut Bayou Association, Inc., 157 So. 3d 289 (Fla. 2d DCA 2019).
The owner of land in a common law dedication of a street retains title to the dedicated land but the owner of land in a statutory dedication does not. However, the owner of land in a statutory dedication retains a reversionary interest such that the land returns to the owner (or the owner's successors in title) if the governmental authority relinquishes the statutory dedication.

Wells Fargo Bank, N.A. v. Quest Systems, LLC, 269 So. 3d 598 (Fla. 2d DCA 2019).
On rehearing, the Second District holds that a promissory note modification agreement is an agreement "relating to" commercial paper and is self-authenticating under Florida Statute section 90.902(8).

Bazzichelli v. Deutsche Bank Trust Company Americas, 274 So. 3d 414 (Fla. 3d DCA 2019).
Florida Rule of Civil Procedure 1.540(a) allows a party to amend a judgment to correct a clerical error, including an error in the name of one of the parties in a foreclosure judgment, which error has created title issues.

Kronen v. Deutsche Bank National Trust Company, 267 So. 3d 447 (Fla. 4th DCA 2019).
A promissory note with its loan numbers redacted as required under Florida Rule of Judicial Administration 2.425(a)(4)(I) is entitled to the presumption of standing found in *Ortiz v. PNC Bank, National Ass'n*, 188 So. 3d 923, 925 (Fla. 4th DCA 2016).

Florida Organic Aquaculture, LLC v. Advent Environmental Systems, LLC, 268 So. 3d 910 (Fla. 5th DCA 2019).

A court that rules on a Motion for Rehearing loses jurisdiction to enter further orders other than post-decretal orders or orders under Florida Rule of Civil Procedure 1.540.

Florida Real Property and Business Litigation Report
Volume XII, Issue 15
April 14, 2019
Manuel Farach

Austin Commercial, L.P. v. L.M.C.C. Specialty Contractors, Inc., 268 So. 3d 215 (Fla. 2d DCA 2019).
The mere existence of a dispute resolution mechanism in a construction prime contract does not vitiate the arbitration provision contained in the subcontract.

Broz v. Reece, 272 So. 3d 512 (Fla. 3d DCA 2019).
The statute of limitations in a negligence suit against a surveyor is not tolled by the Delayed Discovery Doctrine.

Benitez v. Eddy Leal, P.A., 272 So. 3d 506 (Fla. 3d DCA 2019).
An attorney's charging lien must be filed before final judgment otherwise it is ineffective.

Keys Country Resort, LLC v. 1733 Overseas Highway, LLC, 272 So. 3d 500 (Fla. 3d DCA 2019).
Competing affidavits whether a particular parcel was intended to be included in a mortgage require a denial of a motion for summary judgment of reformation of the mortgage.

Weiner v. Maulden, 267 So. 3d 1045 (Fla. 4th DCA 2019).
Consolidation of two cases for discovery and trial (but not for all other purposes) does not consolidate the two cases for proposals for settlement such that a plaintiff offeror must make the proposal for settlement to the two defendants in the two cases.

Royal Palms Senior Apartments Limited Partnership v. Construction Enterprises, Inc. of Tennessee, 275 So. 3d 1257 (Fla. 5th DCA 2019).
The AIA construction contract requiring arbitration of construction disputes does not necessarily require arbitration of disputes after final payment is due.

Florida Real Property and Business Litigation Report
Volume XII, Issue 16
April 20, 2019
Manuel Farach

Glass v. Nationstar Mortgage, LLC, 2018 WL 2069328 (Fla. 2019).
Jurisdiction was improvidently granted in the case, the opinion of January 4, 2019 awarding attorney's fees notwithstanding lack of connexity between the parties is withdrawn, and jurisdiction is discharged.

Casasanta v. Sailshare 296 LLC, 274 So. 3d 418 (Fla. 1st DCA 2019).
The following is a sufficient pre-injury exculpatory clause in an "as is" residential lease:

> The Lessee(s) acknowledge and agree that they have independently examined and inspected the premises and are fully satisfied with the condition of the cleanliness and repair. The Lessee(s) agree that they waive any claims, rights or actions against Landlord, Agent or other person or entity for any alleged failure to disclose any defects in the premises. Lessee(s) further stipulate that they are leasing the property in “As-Is” condition and that no representations as to the present condition or future repair of the premises have been made except for those agreed upon in writing either made part of this agreement or by separate instrument.

Maguire-Ress v. Stettner, 268 So. 3d 171 (Fla. 4th DCA 2019).
A party seeking summary judgment in a replevin action where the defense is the items were gifted must set forth evidence as to his own intent (donative or not).

CalAtlantic Group, Inc. v. Dau, 268 So. 3d 265 (Fla. 5th DCA 2019).
Whether or not the mutuality provision of Florida Statute section 57.105(7) applies depends on the relief sought, not on the outcome of the litigation, and the following provision entitles defendants to an award of fees in homeowner association litigation:

> Section 1. Violation. If any person claiming by, through or under Declarant, or its successors or assigns, or any other person, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Declarant or any person or persons owning real estate subject to these covenants to bring any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant including action to enjoin or prevent him or them from so doing, or to cause the violation to be remedied and to recover damages or other dues for such violation. If the party or parties bringing any such action prevail, they shall be entitled to recover from the person or persons violating the restrictions the costs incurred by such prevailing party, including reasonable attorney’s fees and disbursements incurred through all appellate levels. Invalidation of any of these covenants by judgment of court order shall in no way affect any of the other covenants and provisions, contained herein, which shall remain in full force and effect.

Florida Real Property and Business Litigation Report
Volume XII, Issue 17
April 27, 2019
Manuel Farach

Lamps Plus, Inc. v. Varela, 139 S. Ct. 1407, 203 L. Ed. 2d 636 (2019).
An ambiguous arbitration provision cannot be construed to allow class actions under the "Contra Proferentem Doctrine (contractual ambiguities are construed against the drafter) as the Doctrine does not apply when there is a clear statutory direction such as under the Federal Arbitration Act.

Inversiones y Procesadora Tropical Inprotsa, S.A. v. Del Monte International GMBH, 921 F.3d 1291 (11th Cir.), *cert. denied*, 140 S.Ct. 124 (Mem), 205 L.Ed.2d 130 (2019).
A court has the power to confirm an award arising from the International Chamber of Commerce as an action that "fall[s] under the Convention [on Recognition and Enforcement of Foreign Arbitral Awards]" when the award involves a subject matter concerning and implicates interests the Convention seeks to protect.

MBC Gospel Network, LLC v. Florida's News Channel, LC, 277 So. 3d 647 (Fla. 1st DCA 2019).
A party seeking to enforce a negotiable instrument as defined by Florida Statute section 673.1041 is required to either introduce the original instrument into evidence or reestablish the instrument, introducing a duplicate is insufficient.

OneWest Bank, FSB v. Palmero, 2019 WL 1783727 (Mem) (Fla. 3d DCA 2019).
Even when a surviving spouse did not sign the mortgage, a surviving spouse is a "borrower" under a reverse mortgage that does not permit foreclosure until all borrowers pass away; other documents executed contemporaneously with the mortgage cannot be considered in interpreting the mortgage terms even though the other documents may have created an ambiguity.

All Seasons Condominium Association, Inc. v. Patrician Hotel, LLC, 274 So. 3d 438 (Fla. 3d DCA 2019).
Unit owners in a condominium cannot, under Florida Statute section 718.112, give a general proxy to the association board to sell their units.

de Diego v. Barrios, 271 So. 3d 1181 (Fla. 3d DCA 2019).
Fraud or another egregious act is necessary in order to impose an equitable lien on homestead property.

Megacenter US LLC v. Goodman Doral 88th Court LLC, 273 So. 3d 1078 (Fla. 3d DCA 2019).
A buyer's email notification of intention to terminate and later formal written termination is sufficient substantial compliance with a contract provision that requires written notification.

Florida Investment Group 100, LLC v. LaFont, 271 So. 3d 1 (Fla. 4th DCA 2019).
An "insufficient appraisal" of a property does not excuse the buyer from closing where the buyer never obtained Loan Approval as defined in the contract.

The Bank of New York Mellon V. Florida Kalanit 770 LLC, 269 So. 3d 571 (Fla. 4th DCA 2019).
An allonge may predate the execution of a note as a party may contract to sell property that it does not yet own.

Smith v. Rodriguez, 269 So. 3d 645 (Fla. 5th DCA 2019).
A non-reliance clause will not protect against claims arising under Florida Statutes Chapter 475 when the text of the contract excludes Chapter 475 claims from the non-reliance provision.

Shamrock-Shamrock, Inc. v. Remark, 271 So. 3d 1200 (Fla. 5th DCA 2019).
An non-party individual member of a municipal planning board, i.e., not a party to litigation pending between a developer and the municipality, may not be sued for spoliation of evidence concerning actions she took while serving on the planning board as Florida law does not impose a duty on nonparties to preserve evidence based solely on the foreseeability of litigation.

Florida Real Property and Business Litigation Report
Volume XII, Issue 18
May 4, 2019
Manuel Farach

City of Miami v. Wells Fargo & Co., 923 F.3d 1260 (11th Cir. 2019).
Redlining and reverse-redlining by banks can constitute a violation of the Fair Housing Act, which violation is best addressed by the municipality affected by the actions.

Brunson v. Ashley, 268 So. 3d 277 (Fla. 1st DCA 2019).
A proposal for settlement is not invalid for failure to describe the treatment of punitive damages if the complaint does not demand punitive damages.

Crapo v. Gainesville Area Chamber of Commerce, Inc., 274 So. 3d 453 (Fla. 1st DCA 2019),
A chamber of commerce has a "charitable purpose" as defined in the Florida Statutes and thus is exempt from ad valorem taxation.

Joiner v. Pinellas County, 279 So. 3d 860 (Fla. 2d DCA 2019).
A county's general immunity from ad valorem taxation on real property it owns does not apply to real property it owns outside the county.

HSBC Bank USA, N.A. v. Leone, 271 So. 3d 172 (Fla. 2d DCA 2019).
A second default notice for foreclosure does not need to be given when the first foreclosure is dismissed without prejudice.

Cornfeld v. Plaza of the Americas Club, Inc., 273 So. 3d 1096 (Fla. 3d DCA 2019).
A shareholder's derivative suit against the not-for-profit corporation that operates a condominium complex must allege and prove the corporation or its individual officers acted fraudulently, illegally, oppressively or in bad faith in order to sustain a derivative action on the corporation's behalf under Florida Statute section 607.0831(1).

D'Agostino v. CCP Ponce, LLC, 274 So. 3d 1141 (Fla. 3d DCA 2019).
Whether guarantors have to pay all outstanding indebtedness due or the amounts the borrower has to pay after bankruptcy proceedings is a not a matter of bankruptcy law, but a matter of Florida contract law which determines whether the guaranty contract bound the guarantors to the indebtedness or the amount due by the borrower.

Comvest IMC Holdings, LLC v. IMC Group, LLC, 276 So. 3d 874 (Fla. 3d DCA 2019).
A dispute resolution method as to valuation in a sale agreement does not, without more, rise to the level of an arbitration agreement.

Alessio v. Ocwen Loan Servicing, LLC, 273 So. 3d 3 (Fla. 4th DCA 2019).
When witness testimony is needed to prove mailing of a default notice, the witness must have personal knowledge of the business's practices in mailing letters.

Florida Real Property and Business Litigation Report
Volume XII, Issue 19
May 11, 2019
Manuel Farach

Meruelo v. Commissioner of Internal Revenue, 923 F.3d 938 (11th Cir. 2019).
Transfers between different real estate companies owned by a taxpayer lack "actual economic outlay" and thus are not a "bona fide indebtedness" that "runs directly" to the taxpayer such that the losses created by the transfers can be deducted by the taxpayer.

Wilson v. Amerilife of East Pasco, LLC, 270 So. 3d 542 (Fla. 2d DCA 2019).
A party waives the right to arbitrate when it files suit on a contract containing an arbitration provision seeking therein relief beyond that necessary for the trial court to issue equitable relief.

Troncoso v. Larraín, 273 So. 3d 1117 (Fla. 3d DCA 2019).
A trial court deciding whether to allow intervention must conduct an evidentiary hearing or must otherwise set forth in an order how it considered the factors set forth in *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992).

Plaza La Mer, Inc. v. Delray Property Investments, Inc., 275 So. 3d 640 (Fla. 4th DCA 2019).
A trial court is not required to apportion an award of fees where work on one claim cannot be distinguished from work on other claims, and accordingly, is not required to apportion work between joint parties when they proceeded as one party in the litigation.

Manney v. MBV Engineering, Inc., 273 So. 3d 214 (Fla. 5th DCA 2019).
A party hired to inspect completed construction, including a structural engineer, is not hired with regard to the design, planning or construction of a structure and thus may not invoke the ten-year statute of repose under Florida Statutes section 95.11(3)(c) but instead may be liable, under the Delayed Discovery Doctrine, until four years after a plaintiff discovers the negligence.

U.S. Bank National Association v. Williamson, 273 So. 3d 190 (Fla. 5th DCA 2019).
The corporate party who is producing the witness for deposition under Florida Rule of Civil Procedure 1.310(b)(6) is permitted to designate the person who will testify; the deposing party is not entitled under the Rule to choose the person who will testify on behalf of the corporate party.

Florida Real Property and Business Litigation Report
Volume XII, Issue 20
May 18, 2019
Manuel Farach

Alliant Tax Credit 31, Inc., V. Murphy, 924 F.3d 1134 (11th Cir. 2019).
The Uniform Voidable Transactions Act does not require a heightened level of burden of proof to the clear and convincing standard.

OneWest Bank, N.A. v. Leek-Tannenbaum, Case No. 3D18-244 (Fla. 3d DCA 2019).
The Third District re-affirms that a spouse who signs a mortgage as a "borrower" will be treated as a borrower under the mortgage.

FL Homes 1 LLC v. Kokolis, 271 So. 3d 6 (Fla. 4th DCA 2019).
The interests of a titleholder omitted from a foreclosure lawsuit cannot be eliminated by the Lis Pendens statute's intervention requirement.

Florida Real Property and Business Litigation Report
Volume XII, Issue 21
May 25, 2019
Manuel Farach

Mission Product Holdings, Inc. v. Tempnology, LLC, 139 S. Ct. 1652, 203 L. Ed. 2d 876 (2019).
Rejection of an executory contract under Section 365 of the Bankruptcy Code has the same effect as if the contract has been breached outside of the bankruptcy context and does not rescind rights under the contract.

In Re: Amendments to The Florida Evidence Code, 278 So. 3d 551 (Fla. 2019).
Chapter 2013-107, sections 1 and 2, Laws of Florida (the "Daubert amendments) which amended Florida Statutes sections 90.702 (testimony by experts) and 90.704 (basis of opinion testimony by experts) is adopted.

Valencia Golf and Country Club Homeowners' Association, Inc. v. Community Resource Services, Inc., 272 So. 3d 850 (Fla. 2d DCA 2019).
There is no "prevailing party" for purposes of attorney's fees awards when both parties compromise and plaintiff dismisses the lawsuit.

Matlacha Civic Association, Inc. v. City of Cape Coral, 273 So. 3d 243 (Fla. 2d DCA 2019).
A party opposing annexation under Florida Statute Section 171.081(1) need only show under the statute that it is a "party affected" and need not demonstrate material injury.

Sea Vault Partners, LLC, v. Bermello, Ajamil & Partners, Inc., 274 So. 3d 473 (Fla. 3d DCA 2019).
A trial court may not sanction a party for failing to pay an arbitration fee and thus delay the arbitration proceedings.

Falsetto v. Liss, 275 So. 3d 693 (Fla. 3d DCA 2019).
A general release that releases "known and unknown" claims does not release unaccrued fraud claims.

Venezia v. JP Morgan Mortgage Acquisition Corp., 279 So. 3d 145 (Fla. 4th DCA 2019).
A party that voluntarily dismisses a suit is the non-prevailing party.

Levine v. Stimmel, 272 So. 3d 847 (Fla. 5th DCA 2019).
Attorney's fees cannot be awarded for unsuccessfully litigating entitlement to Florida Statute section 57.105 fees.

Florida Real Property and Business Litigation Report
Volume XII, Issue 22
June 1, 2019
Manuel Farach

The School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., 274 So. 3d 492 (Fla. 1st DCA 2019).
The Public Official Standing Doctrine ("a public official may not defend his nonperformance of a statutory duty by challenging the constitutionality of the statute.") applies to keep a school district from disputing a property owner's tax assessment challenge.

Toscano Condominium Association, Inc. v. DDA Engineers, P.A., 274 So. 3d 487 (Fla. 3d DCA 2019).
An order denying a motion to amend, which order does not dismiss the action, is an interlocutory order that cannot be appealed until the conclusion of the case.

City of Pembroke Pines v. Corrections Corporation of America, Inc., 274 So. 3d 1105 (Fla. 4th DCA 2019).
Claims against a municipality for declaratory judgment, promissory estoppel, tortious interference with contract, and tortious interference with an advantageous business relationship are barred by Florida Statute section 768.28.

Avila v. HMC Assets, 273 So. 3d 1134 (Fla. 5th DCA 2019).
A trial court may not reserve jurisdiction to enter a deficiency judgment in a foreclosure final judgment when the borrowers have not been personally served.

Nazia, Inc. v. Amscot Corporation, 275 So. 3d 702 (Fla. 5th DCA 2019).
Whether an instrument is a lease or a license, and whether it is revocable or non-revocable, is determined from the terms of the instrument and not its title.

Florida Real Property and Business Litigation Report
Volume XII, Issue 23
June 8, 2019
Manuel Farach

Taggart v. Lorenzen, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (2019).
"A [bankruptcy] court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct," i.e., contempt is appropriate when a creditor violates a discharge order based on their objectively unreasonable view of the order.

Fountainbleau, LLC v. Hire Us, Inc., 273 So. 3d 1152 (Fla. 2d DCA 2019).
An order compelling parties to attend arbitration is not an order determining a party's "entitlement" to arbitration and thus is not an appealable non-final order under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

Green Emerald Homes, LLC v. 21st Mortgage Corporation, Case No. 2D17-2192 (Fla. 2d DCA 2019).
A titleholder to real property who purchased before litigation commenced and before a lis pendens was filed is entitled to defend a foreclosure suit, including questioning the amounts due on the note and mortgage.

Rokosz v. Haccoun, 274 So. 3d 498 (Fla. 3d DCA 2019).
A trial court cannot deny a party their right to have an evidentiary hearing on their Motion to Discharge Lis Pendens by reconsidering a prior order establishing a lis pendens.

Goodenow v. Nationstar Mortgage LLC, Case No. 3D18-1480 (Fla. 3d DCA 2019).
A loan servicer entitled to enforce a note can enforce the jury trial waiver contained in the mortgage.

MBlock Investors, LLC v. Bovis Lend Lease, Inc., 274 So. 3d 504 (Fla. 3d DCA 2019).
A lender that acquired property through foreclosure is a "successor and assign" of its borrower and bound by a pre-foreclosure release signed by its borrower that ran to "successors and assigns."

Fassy v. The Bank Of New York Mellon, 273 So. 3d 52 (Fla. 4th DCA 2019).
A plaintiff whose suit is dismissed for lack of standing is still liable for taxable costs as costs are awarded pursuant to Florida Rule of Civil Procedure 1.420(d) and not the prevailing party provisions of the mortgage.

Deutsche Bank Trust Company Americas v. JB Investment Realty, LLC, 274 So. 3d 1114 (Fla. 4th DCA 2019).
A foreclosing lender need only prove the loan is in default and need not introduce a loan payment history "from the beginning" in order to prove default.

Florida Real Property and Business Litigation Report
Volume XII, Issue 24
June 15, 2019
Manuel Farach

Landau v. Roundpoint Mortgage Servicing Corporation, 925 F.3d 1365 (11th Cir. 2019).
A motion to reschedule (as opposed to a motion to set) a foreclosure sale after does not violate the prohibition under 12 C.F.R. § 1024.41(g) of Regulation X, 12 C.F.R. § 1024.1, et seq., that a lender may not schedule a foreclosure sale after a borrower has submitted a complete loss mitigation package.

Deutsche Bank Trust Company Americas v. Page, 274 So. 3d 1116 (Fla. 4th DCA 2019) (en banc), *review granted*, 2019 WL 6271587 (Fla. 2019).
A borrower who prevails on a "no standing" defense is not entitled to an award of attorney's fees; conflict certified with *Madl v. Wells Fargo Bank, N.A.*, 244 So. 3d 1134 (Fla. 5th DCA 2017), and *Harris v. Bank of New York Mellon*, 44 Fla. L. Weekly D141 (Fla. 2d DCA Dec. 28, 2018).

Perera v. Diolife LLC, 274 So. 3d 1119 (Fla. 4th DCA 2019).
Upon rehearing and applying *Professional Insurance Corp. v. Cahill*, 90 So. 2d 916 (Fla. 1956), the Fourth District holds that "no oral modification" clauses are enforceable as written unless the oral modification "has been accepted and acted upon by the parties in such manner as would work a fraud on either party to refuse to enforce it." Moreover, a seller of corporate stock has three options upon breach by a buyer: treat the stock as belonging to the buyer and recover the contract price, resell the stock as an agent of the buyer and recover the difference between the contract price and the actual selling price, or keep the stock and recover as damages the difference between the contract price and the value of the stock on date of breach.

Ricci v. Ventures Trust 2013-I-H-R by MCM Capital Partners, LLC, 276 So. 3d 5 (Fla. 4th DCA 2019).
Parties should not take any action on state court orders after a removal notice has been filed until a remand order is issued, and if a remand order is entered, the state trial court should promptly vacate the prior state court order *sua sponte* or on motion of a party after the remand order is entered, and then the immediately re-enter the vacated order with notice.

Hoch v. Loren, 273 So. 3d 56 (Fla. 4th DCA 2019).
An attorney who copies his client on an allegedly defamatory cease and desist letter sent to an opposing party has not "published" a defamatory statement as the client and attorney's interests are considered unified.

Green Tree Servicing, LLC v. Simms, 274 So. 3d 1187 (Fla. 5th DCA 2019).
Collection notes in a foreclosure action should be admitted into evidence upon the proper laying of a predicate.

Florida Real Property and Business Litigation Report
Volume XII, Issue 25
June 22, 2019
Manuel Farach

Knick v. Township of Scott, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019).
The state litigation requirement of *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U. S. 172 (1985) (parties must first sue in state court when seeking just compensation for a Fifth Amendment claim under 42 U. S. C. §1983), is overruled and a property owner may bring Fifth Amendment claims in federal court when government takes property without just compensation without first seeking relief in state court.

Braden Woods Homeowners Association, Inc. v. Mavard Trading, 277 So. 3d 664 (Fla. 2d DCA 2019).
A plaintiff challenging a development permit decision need not exhaust administrative remedies prior to filing suit if the government action is *ultra vires*, i.e., the government lacks the authority to take the action under governing law.

YS Catering Holdings, Inc. v. Attollo Partners LLC, 274 So. 3d 1203 (Fla. 3d DCA 2019).
A party who enters into a settlement agreement and release after having asserted prior to settlement that the opposing party had defrauded them cannot argue oral misrepresentations of the opposing party to set aside the settlement.

Laptopplaza, Inc. v. Wells Fargo Bank, NA, 276 So. 3d 375 (Fla. 3d DCA 2019).
A lender, under Florida Statute section 701.04(1)(a), can be held responsible for "deliberate inflation of the amounts 'properly due under or secured by a mortgage.'"

Hurchalla v. Lake Point Phase I, LLC, 278 So. 3d 58 (Fla. 4th DCA 2019).
Citizens have a qualified privilege under both the United State Constitution and Florida common law to speak with government requesting discontinuation of a real estate development project, but the privilege may be overcome by a showing of "actual malice" (knowledge of falsity or reckless disregard of truth or falsity as shown by clear and convincing evidence) in cases under the First Amendment and by "express malice" (where the primary motive, as shown by a preponderance of the evidence, is shown to be an intention to injure the plaintiff) under Florida common law.

Florida Real Property and Business Litigation Report
Volume XII, Issue 26
June 29, 2019
Manuel Farach

Kisor v. Wilkie, 139 S. Ct. 2400, 204 L. Ed. 2d 841 (2019).
Auer v. Robbins, 519 U. S. 452 (1997), is not overruled but is "on life support."

Yerian v. Webber (In re Yerian), 927 F.3d 1223 (11th Cir. 2019).
An Individual Retirement Account (IRA) is not exempt from the claims of creditors, including a bankruptcy trustee, under Florida Statute section 222.21(2)(a)(2) if the account is not maintained in accordance with the IRA's governing documents.

Bullock v. Bayview Loan Servicing, LLC, 276 So. 3d 100 (Fla. 1st DCA), *review denied*, 2019 WL 6327413 (Fla. 2019).
It is inequitable to apply *res judicata* so that a prior final judgment prohibits a lender from foreclosing when unrebutted evidence demonstrates that borrower had not made payments in over a decade.

Cascar, LLC v. City of Coral Gables, 274 So. 3d 1231 (Fla. 3d DCA 2019).
Ordinances enacted on or before May 11, 1995 are exempt from the application of the Bert J. Harris Property Rights Protection Act, Florida Statute section 70.001.

Geico General Insurance Company v. Steinger, Iscoe & Greene-II, P.A., 275 So. 3d 775 (Fla. 3d DCA 2019).
A stakeholder who is notified of an appropriate charging lien may not disburse the proceeds of funds that come into its possession in violation of the charging lien.

Shoreline Foundation, Inc. v. Brisk, 278 So. 3d 68 (Fla. 4th DCA 2019).
Mere contribution of capital, absent the exercise of joint control, is insufficient to establish a joint venture.

Florida Holding 4800, LLC V. Lauderhill Lending, LLC, 275 So. 3d 183 (Fla. 4th DCA 2019).
A lost promissory note may be re-established through summary judgment.

Stamer v. Free Fly, Inc., 277 So. 3d 179 (Fla. 5th DCA 2019).
The Statute of Frauds prohibits a fraud misrepresentation and promissory estoppel suit against a party who makes oral misrepresentations that it will enter into a multi-year contract but does not sign a writing.

Florida Real Property and Business Litigation Report
Volume XII, Issue 27
July 6, 2019
Manuel Farach

Lapciuc v. Lapciuc, 275 So. 3d 242 (Fla. 3d DCA 2019).
A trial court should not determine what acts constitute "commercial reasonableness" in a settlement agreement without taking evidence.

Dezer Intracoastal Mall, LLC v. Seahorse Grill, LLC, 277 So. 3d 187 (Fla. 3d DCA 2019).
A lease rider which contains the following phrase limits operating expense increases to only three percent per year despite contrary terms contained in main lease:

> 8. OPERATING EXPENSES / FIXED INCREASES: Notwithstanding anything to the contrary contained in the Lease, Operating Expenses (as the term is defined in Section 2.3 of the Lease) shall increase annually during the Term by the fixed amount of three percent (3%) per calendar year over the Operating Expenses in effect for the immediately preceding calendar year, notwithstanding the actual amount of Operating Expenses otherwise allocable to the Leased Premises.

Davis v. OneWest Bank, FSB, Case No. 3D18-493 (Fla. 3d DCA 2019).
The Third District re-affirms its holding in *OneWest Bank, FSB v. Palmero*, 44 Fla. L. Weekly D1049 (Fla. 3d DCA April 24, 2019) (*en banc*), that a non-borrowing spouse under a reverse mortgage is a "co-borrower" and foreclosure cannot begin until both spouses pass away.

The Burton Family Partnership v. Luani Plaza, Inc., 276 So. 3d 920 (Fla. 3d DCA 2019).
Awarding fees for litigating the amount of fees is proper when the applicable by-laws of the real estate development provide recovery of fees "for litigating the issue of the amount of fees to be awarded" in both trial and appellate proceedings.

Morales v. Fifth Third Bank, 275 So. 3d 197 (Fla. 4th DCA 2019).
A lender may not move to conform the pleadings with the evidence to allow introduction of a loan modification agreement when same was not pled.

Florida Real Property and Business Litigation Report
Volume XII, Issue 28
July 13, 2019
Manuel Farach

United States of America v. $70,670.00 In U.S. Currency, 929 F.3d 1293 (11th Cir. 2019).
The federal government may dismiss a pending forfeiture action when a state court action will first determine ownership of the disputed funds.

Pier 1 Cruise Experts v. Revelex Corporation, 929 F.3d 1334 (11th Cir. 2019).
The Eleventh Circuit certifies to the Florida Supreme Court a question regarding the enforceability of self-indemnification clauses, specifically,

> Is a contractual "exculpatory clause" that purports to insulate one of the signatories from "any … damages regardless of kind or type … whether in contract, tort (including negligence), or otherwise" enforceable? Or, alternatively, does the clause confer such sweeping immunity that it renders the entire contract in which it appears illusory? Or, finally, might the clause plausibly be construed so as to bar some but not all claims and thus save the contract from invalidation?

Simon v. Deer Meadows Homeowners' Association, Inc., 277 So. 3d 197 (Fla. 1st DC 2019).
A homeowner whose property is flooded by surface water flows cannot sue, including claims for inverse condemnation, if the taking occurred before the homeowner purchased the property.

Pipeline Contractors, Inc. v. Keystone Airpark Authority, 266 So. 3d 1219 (Fla. 1st DCA 2019).
Estoppel can apply to a government entity to defeat a claim that a purported local special district was not validly created and thus there is no contractual liability.

Hayslip v. U.S. Home Corporation, 276 So. 3d 109 (Fla. 2d DCA 2019).
An arbitration provision in a deed runs with the land and will force a subsequent owner to arbitrate construction defect claims.

Grand Palace View, LLC v. 5 AIF Maple 2, LLC, 276 So. 3d 927 (Fla. 3d DCA 2019).
A foreclosing lender typically has no right to possess the real property prior to foreclosure.

Flinn v. Doty, 275 So. 3d 671 (Fla. 4th DCA 2019).
A party that has elected foreclosure of a claim through sale cannot then prosecute a money judgment for amounts still owing after foreclosure but must instead seek a deficiency judgment.

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

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

> Sentence 1: The term of this Agreement shall be for a period of seven (7) years from the effective date and thereafter shall be subject to automatic annual renewal unless either party elects to terminate the Agreement, by notice in writing.
>
> Sentence 2: During this term, and any renewal thereof, either party may terminate this Agreement with or without cause and without liability, by providing written notice of termination to the other party at least ninety (90) calendar days prior to the renewal date.

Florida Real Property and Business Litigation Report
Volume XII, Issue 29
July 20, 2019
Manuel Farach

Ace American Insurance Company v. The Wattles Company, 930 F.3d 1240 (11th Cir. 2019).
The United States is not a "Napoleonic Code" country for purposes of an exclusion to an insurance policy covering acts of a tenant.

Coastal Creek Condominium Association, Inc. v. Fla Trust Services LLC, 275 So. 3d 836 (Fla. 1st DCA), *review dismissed*, 2019 WL 6249333 (Fla. 2019).
Under the present (2017 and beyond) version of Florida Statute section 718.116(1)(a), the present owner of a condominium unit is jointly and severally liable with the previous owner (other than the association it was an owner) for unpaid assessments that came due during the ownership of both; *Aventura Management, LLC v. Spiaggia Ocean Condominium Association, Inc.*, 105 So. 3d 637 (Fla. 3d DCA 2013), is distinguished as it interpreted the 2013 version of the statute prior to its amendment in 2017.

Szurant v. Aaronson, 277 So. 3d 1093 (Fla. 2d DCA 2019).
A charging lien may only be imposed on the proceeds of a pending case and cannot be imposed on "all of [the charged party's] money and/or personal property in her possession."

Rosen v. Harborside Suites, LLC, Case No. 3D16-2678 (Fla. 3d DCA 2018).
Upon rehearing, the Third District withdraws its previous opinion and holds the following language constitutes a release from a loan guarantee as additional acts, e.g., approval of the delivered contracts by the lender, are not required before the lender is required to deliver a release:

> Notwithstanding anything to the contrary contained herein, upon Borrower's satisfaction of the Pre-Sales Requirement in accordance with the terms and conditions of the Agreement, Guarantor shall thereafter be released from his obligations under this Guaranty with respect to matters occurring from and after the date of such release . . .

Liebman v. The City of Miami, 279 So. 3d 747 (Fla. 3d DCA 2019).
A party complaining of government zoning and development action must have special injury apart from citizens at large and alleging that he would have had submitted a bid is too speculative and does not confer standing.

Space Coast Credit Union v. Day, 280 So. 3d 494 (Fla. 3d DCA 2019).
A party that is the successful bidder at foreclosure sale but declines to pay the purchase price is not entitled to return of his deposit as Florida Statute section 45.031(3) requires the deposit first be applied to the costs of re-advertising the sale and any excess be applied to the outstanding judgment.

Deutsche Bank National Trust Company v. Smith, 276 So. 3d 315 (Fla. 4th DCA 2019).

A party that moves for involuntary dismissal "'admits the truth of all facts in evidence and every reasonable conclusion or inference' that can be drawn from the evidence favorable to the nonmoving party," and thus an assignment of mortgage which contains statements regarding the transfers of notes are sufficient to establish standing.

Florida Real Property and Business Litigation Report
Volume XII, Issue 30
July 27, 2019
Manuel Farach

Highpoint Tower Technology Inc. v. Commissioner of Internal Revenue, 931 F.3d 1050 (11th Cir. 2019).
The Tax Court presiding over partner-level deficiency proceedings does not have jurisdiction over gross valuation misstatement penalties imposed against a partnership previously determined to be a "sham" and "lacking economic substance."

Rivera v. The Bank of New York Mellon, 276 So. 3d 979 (Fla. 2d DCA 2019).
A witness who did not create certain business records may lay the predicate for the introduction of the records but only so long as the witness has sufficient knowledge regarding how the records were created.

Heredia v. John Beach & Associates, Inc., 278 So. 3d 194 (Fla. 2d DCA 2019).
A contractor's subcontractors performing work on a construction site are entitled to "horizontal immunity" under worker's compensation law.

City of Fort Lauderdale v. Hinton, 276 So. 3d 319 (Fla. 4th DCA 2019).
State and local government do not enjoy sovereign immunity from constitutional violation and inverse condemnation suits.

Collection and Recovery of Assets, Inc. v. Patel, 276 So. 3d 494 (Fla. 5th DCA 2019).
Florida Rule of Civil Procedure 1.540(b)(5) (". . . the court may relieve a party from a final judgment . . . [when] it is no longer equitable that the judgment or decree should have prospective application.") relieves a defendant from collection under a joint and several guarantee when the party seeking to collect on the guarantee is a former co-guarantor who assigned the guarantee judgment to a solely held corporation and then attempted to use the corporation to collect the entire amount of the guarantee from his former co-guarantor.

Florida Real Property and Business Litigation Report
Volume XII, Issue 31
August 3, 2019
Manuel Farach

Yarbrough v. Decatur Housing Authority, 931 F.3d 1322 (11th Cir. 2019) (en banc).
The Housing Act of 1937, 42 U.S.C. § 1437 et seq., does not create a privately enforceable right to a preponderance standard under 42 U.S.C. § 1983 suits regarding a housing termination decision.

Miller v. Homeland Property Owners Association, Inc., Case No. 4D18-1647 (Fla. 4th DCA 2019).
The Business Judgment Rule applies to decisions of property owners' associations so long as the association had the contractual or statutory authority to perform the relevant acts, and if it does, so long as the board acted reasonably.

Postma v. Baker, 276 So. 3d 828 (Fla. 4th DCA 2019).
A settlement agreement which permits a party to inspect an item "to his satisfaction" prior to repurchase creates a condition precedent of the party's satisfaction.

Norman v. Jaimes, 276 So. 3d 836 (Fla. 4th DCA 2019).
A seller under an agreement for deed who contracts to deliver clear title does not breach the contract if a code enforcement lien is recorded and provides constructive notice to the purchaser.

Wells Fargo Bank, N.A. v. Stephenson, 277 So. 3d 286 (Fla. 5th DCA 2019).
The Fifth District agrees with *Bank of N.Y. Mellon Tr. Co., Nat'l Ass'n v. Ginsberg*, 221 So. 3d 1196, 1197 (Fla. 4th DCA 2017), and holds that a foreclosing party is not required to prove the trust on whose behalf it is acting in order to properly allege standing.

Florida Real Property and Business Litigation Report
Volume XII, Issue 32
August 10, 2019
Manuel Farach

Dear v. Q Club Hotel, LLC, 933 F.3d 1286 (11th Cir. 2019).
The following language in a condominium declaration limits the ability to back-charge "at any time" to a period of a year and prevents the operator of a condominium hotel from back-charging for common expenses due for previous years:

> "[t]he original charge for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary at any appropriate time during the year[]."

Luxottica Group, S.p.A. v. Airport Mini Mall, LLC, 932 F.3d 1303 (11th Cir. 2019).
Landlords may be contributorily liable for trademark infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114, when the landlord has knowledge of specific acts of direct infringement.

Abdo v. Abdo, Case Nos. 2D18-2270, 2D18-2764 (Fla. 2d DCA 2019).
A constructive trust may be imposed in suits claiming derivative action and breach of fiduciary duty claims.

Schwob v. Goss, 279 So. 3d 212 (Fla. 2d DCA 2019).
A circuit court has no jurisdiction to rule that a private utility has a Constitutional right to discontinue water and sewer service as utility service is exclusively regulated by the Florida Public Service Commission.

Young Land USA, Inc. v. Credo LLC, 278 So. 3d 776 (Fla. 3d DCA 2019).
A sheriff's execution sale eliminates the interest of inferior clams which were recorded after the judgment that served as the basis for the execution.

Greene v. Johnson, 276 So. 3d 527 (Fla. 3d DCA 2019).
Equitable estoppel permits non-signatories to a contract to compel arbitration of claims brought by a signatory if the signatory raises allegations of concerted misconduct by both the non-signatory and one or more of the signatories to the contract, however, equitable estoppel on the basis of intertwined claims applies only when a signatory raises allegations of substantially interdependent and concerted misconduct by both a non-signatory and one or more of the signatories to the agreement.

Florida Real Property and Business Litigation Report
Volume XII, Issue 33
August 17, 2019
Manuel Farach

Ford Motor Credit Company, LLC v. Arwine, 276 So. 3d 275 (Fla. 1st DCA 2019).
A lender seeking a deficiency judgment upon private sale of personal property need not demonstrate the sale of collateral was commercially reasonable unless the debtor first disputes the reasonableness of the sale under Florida Statute section 679.626(1).

Harrell v. The Ryland Group, 277 So. 3d 292 (Fla. 1st DCA 2019).
An attic stepladder constitutes an "improvement to real property" and thus is covered by the ten-year statute of repose for construction improvements under Florida Statute section 95.11(3)(c).

Pirate's Treasure, Inc. v. City of Dunedin, Florida, 277 So. 3d 1124 (Fla. 2d DCA 2019).
A landowner locked in a development dispute with a municipality may transfer the affected land to a third party and not lose standing to prosecute the dispute so long as it retains a sufficient interest in the property.

Wishinsky v. Choufani, 278 So. 3d 803 (Fla. 5th DCA 2019).
A member of a limited liability company may bring a constructive fraud and breach of fiduciary duty suit against the manager of the company without satisfying derivative action requirements if the claim is based on violation of statutory or contractual duties.

Florida Real Property and Business Litigation Report
Volume XII, Issue 34
August 24, 2019
Manuel Farach

Project Development Enterprise, LLC v. Elka Holdings, LLC, 280 So. 3d 504 (Fla. 3d DCA 2019).
The proceeds of a derivative action brought under Florida Statutes section 605.0802 belong Section are required by Florida Statutes section 605.0805(1) to be paid to the limited liability company and not the plaintiff.

Varela v. OLA Condominium Association, Inc., 279 So. 3d 266 (Fla. 3d DCA 2019).
A trial court must conduct an *in-camera* inspection to decide attorney-client privilege objections.

Real State Golden Investments Inc. v. Larraín, 278 So. 3d 812 (Fla. 3d DCA 2019).
A trial court's ruling on motions anticipated to be but not yet filed creates an objectively reasonable belief that the affected party will not receive a fair trial and is grounds for disqualification of the trial judge.

Guan v. Ellingsworth Residential Community Association, Inc., 278 So. 3d 840 (Fla. 5th DCA 2019).
A community association and a homeowner are required to arbitrate a dispute when the community's declaration requires arbitration after mediation; Florida Statutes section 720.311(2)(c) ("[after an unsuccessful mediation], the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration.") does not control over the declaration.

Florida Real Property and Business Litigation Report
Volume XII, Issue 35
August 31, 2019
Manuel Farach

Roth v. Nationstar Mortgage, LLC (In re Roth), 935 F.3d 1270 (11th Cir. 2019).
An "informational statement" sent to a borrower who has been discharged in a Chapter 13 bankruptcy does not violate the discharge injunction, 11 U.S.C. § 524, if the statement contains the following language:

> This statement is sent for informational purposes only and is not intended as an attempt to collect, assess, or recover a discharged debt from you, or as a demand for payment from any individual protected by the United States Bankruptcy Code. If this account is active or has been discharged in a bankruptcy proceeding, be advised this communication is for informational purposes only and is not an attempt to collect a debt. Please note, however Nationstar reserves the right to exercise its legal rights, including but not limited to foreclosure of its lien interest, only against the property securing the original obligation.

Salcedo v. Hanna, 936 F.3d 1162 (11th Cir. 2019).
Sending a single text message does not violate the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227(b)(1)(A)(iii).

Regions Bank v. Legal Outsource PA, 936 F.3d 1184 (11th Cir. 2019).
A guarantor is not an "applicant" under the under the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691(a), and accordingly, may not seek relief under the Act.

In Re: Standard Jury Instructions in Civil Cases and Standard Jury Instructions in Contract and Business Cases—Joint Report No. 19-01, 277 So. 3d 1007 (Fla. 2019).
The standard verdict form for breach of fiduciary duty is approved by the Florida Supreme Court.

Atkins North America, Inc. Tallahassee MH Parks, LLC, 277 So. 3d 1156 (Fla. 1st DCA 2016).
Reformation of a mortgage will not be permitted where doing so materially affects a creditor who recorded a judgment lien after the recordation of the inaccurate mortgage.

Suzuki Motor Corporation v. Winckler, Case No. 1D18-4815 (Fla. 1st DCA 2019).
The Apex Doctrine ("[an] agency head should not be subject to deposition, over objection, unless and until the opposing parties have exhausted other discovery and can demonstrate that the agency head is uniquely able to provide relevant information which cannot be obtained from other sources.") does not apply outside of government and thus does not apply to shield the C.E.O. of multinational company from discovery.

Batterbee v. Roderick, 278 So. 3d 882 (Fla. 2d DCA 2019).
A permissive use of real property may change into a non-permissive use sufficient to support a claim for adverse possession.

Hopson v. Deutsche Bank National Trust Company, 278 So. 3d 306 (Fla. 2d DCA 2019).
A defending mortgagor that wins dismissal but does not admit privity with the plaintiff is not entitled to an award of attorney's fees under Florida Statute section 57.105(7); *Harris v. Bank of New York Mellon*, 44 Fla. L. Weekly D141 (Fla. 2d DCA Dec. 28, 2018), is distinguished on its facts.

Ancla International, S.A. v. Tribeca Asset Management, Inc., Case No. 3D18-1078 (Fla. 3d DCA 2019).
The following provision both selects Florida as the jurisdiction whose law to apply as well as confers jurisdiction sufficient for long-arm purposes:

> This agreement will be governed by the laws of the State of Florida of the United States of America (USA), a jurisdiction accepted by the parties irrespective of the fact that the principal activity of the beer project will be conducted in Colombia.

Beach Towing Services, Inc. v. Sunset Land Associates, LLC 278 So. 3d 857 (Fla. 3d DCA 2019).
Restrictive covenants are interpreted in a fashion which least restricts the use of the property, and accordingly, the following provision prohibits a garage company but not a garage:

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

Valencia Reserve Homeowners Association, Inc. Boynton Beach Associates, XIX, LLLP, 278 So. 3d 714 (Fla. 4th DCA 2019).
It is not a violation of the Florida Homeowner's Association Act for a developer to use working capital funds contributed by purchasers into a homeowner's association account to fund the developer's negative equity contributions under Florida Statute section 720.308(1)(b).

Grace and Naeem Uddin, Inc. v. Singer Architects, Inc., 278 So. 3d 89 (Fla. 4th DCA 2019).
A supervising architect owes a duty to a contractor and may be held liable in tort for professional negligence notwithstanding the architect and contractor both have contracts with the developer, i.e., the existence of the contracts does not bar the tort duty owed by the architect to the builder.

Florida Real Property and Business Litigation Report
Volume XII, Issue 36
September 7, 2019
Manuel Farach

Linares v. Bank of America, N.A., 278 So. 3d 330 (Fla. 3d DCA 2019).
A party seeking under Florida Rule of Civil Procedure 1.540(b)(4) to set aside a final judgment based on voidness must establish the court had neither subject matter nor personal jurisdiction.

Padilla v. Padilla, 278 So. 3d 333 (Fla. 3d DCA 2019).
The Third District adopts *Hillcrest Pacific Corp. v. Yamamura*, 727 So. 2d 1053, 1058 (Fla. 4th DCA 1999), and holds that fraud in the inducement may not be pled when the contract documents contradict the alleged fraud.

Florida Real Property and Business Litigation Report
Volume XII, Issue 37
September 14, 2019
Manuel Farach

Fitts v. Furst, Case No. 2D18-538 (Fla. 2d DCA 2019).
Florida Statute section 196.161(1)(b) (retroactive revocation of homestead exemption and imposition of tax penalties) does not contain an intent requirement, and thus applies to homeowners who received benefits of Florida homestead exemption while also unknowingly receiving *de minimus* homestead exemption benefits in another state.

Baldwin v. Henriquez, 279 So. 3d 328 (Fla. 2d DCA 2019).
The Florida Constitution requires residence in the property claimed homestead as of January 1 in order to receive the benefits of ad valorem tax exemption; *Semple v. Semple*, 89 So. 638 (Fla. 1921) (homestead continues when present intention to move into property), is distinguished for houses under construction.

City of Miami Beach v. Beach Blitz, Co., 279 So. 3d 776 (Fla. 3d DCA 2019).
It is a violation of procedural due process for a reviewing tribunal to dismiss a petition for first-tier certiorari review from an administrative order; reversal is required.

OPKO Health, Inc. v. Lipsius, 279 So. 3d 787 (Fla. 3d DCA 2019).
Florida courts generally defer to previously filed federal or foreign state actions; the claims and actions do not have be identical for the rule to apply.

Florida Real Property and Business Litigation Report
Volume XII, Issue 38
September 21, 2019
Manuel Farach

Schaw v. Habitat for Humanity of Citrus County, Inc., 938 F.3d 1259 (11th Cir. 2019).
Failure to consider an applicant's ability to meet a minimum income threshold by obtaining money from family members and other sources constitutes a failure to make "reasonable accommodations" under the Fair Housing Amendments Act, 42 U.S.C. § 3601 et. seq.

Thompson v. Admiral Manufacturing Housing Community, 282 So. 3d 923 (Fla. 1st DCA), *appeal dismissed*, 2019 WL 6736910 (Fla. 2019),
An order merely granting a motion to dismiss is not a final, appealable order.

Dana v. Eilers, 279 So. 3d 825 (Fla. 2d DCA 2019).
Use of another's land is considered permissive, and a party's use of a shared driveway for many years is insufficient by itself to demonstrate a use that is sufficiently adverse, exclusive or inconsistent with the owner's use to establish a prescriptive easement.

Hullick v. Gibraltar Private Bank & Trust Company, 279 So. 3d 809 (Fla. 3d DCA 2019).
The fact that a company's board of directors are outside directors who are not company employees does not diminish the rule of *American Airlines, Inc. v. Geddes*, 960 So. 2d 830 (Fla. 3d DCA 2007), that intra-corporate communications are not "publications" to third parties for defamation purposes.

Baker v. The Courts at Bayshore I Condominium Association, Inc., 279 So. 3d 799 (Fla. 3d DCA 2019).
Florida Rule of Civil Procedure 1.530 may be used to correct an incorrect legal description when the error occurs in the final judgment itself and not as the result of an error in the underlying legal instrument.

Everglades Law Center, v. Inc. South Florida Water Management District, Case Nos. 4D18-1220, 4D18-1519 & 4D18-2124 (Fla. 4th DCA 2019).
The statutory mediation communication exemption under Florida Statute sections 44.102(3) and 44.405(1) provides a permanent exemption from the requirement to disclose "shade meetings" (conferences between a governmental board and its attorney to discuss settlement and litigation strategy which are not open to the public) conducted under Florida Statute section 286.011(8).

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

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

Florida Real Property and Business Litigation Report
Volume XII, Issue 39
September 28, 2019
Manuel Farach

Fernandez v. Manning Building Supplies, Inc., 279 So. 3d 349 (Fla. 1st DCA 2019).
A charge for late payment of an account is a delinquency charge, not a "finance charge" which permits a lienor not in privity to charge interest under Florida Statute section 713.06(1), and accordingly, prejudgment interest may not be awarded for this claim.

Fernandez v. Marrero, 282 So. 3d 928 (Fla. 3d DCA 2019).
The payment by one party of the down payment and closing costs for the purchase of real estate with the subsequent titling of the property as joint tenants with right of survivorship creates a presumption of a gift to the non-paying party unless the contributing party manifests an intention that a resulting trust should arise.

Bejarano v. City of Hollywood, 279 So. 3d 183 (Fla. 4th DCA 2019).
The claims of several tenants each less than $15,000 individually cannot be aggregated to reach the circuit court monetary threshold and accordingly, their combined case must be transferred to county court.

Sherman v. Sherman, 279 So. 3d 188 (Fla. 4th DCA 2019).
The standard used to determine an award of court costs under Florida Statute section 57.041(1) is the "party recovering judgment" and not the "prevailing party" standard.

Florida Real Property and Business Litigation Report
Volume XII, Issue 40
October 5, 2019
Manuel Farach

Lewis v. Innova Investment Group, LLC, 279 So. 3d 876 (Fla. 2d DCA 2019).
A party that unequivocally surrenders their property in a Chapter 13 bankruptcy proceeding is estopped from challenging a foreclosure proceeding in state court; *Fischer v. HSBC Bank USA,* 257 So. 3d 512, 515 (Fla. 2d DCA 2018), is distinguished.

Seawatch at Marathon Condominium Association, Inc. v. The Guarantee Company of North America, USA, Case Nos. 3D18-1450, 3D18-1340, & 3D18-1337 (Fla. 3d DCA 2019).
Paragraph 4.2 of the standard American Institute of Architects A312 surety bond form permits the surety to select the defaulting principal as the contractor to finish the project despite an objection from the owner.

Mt. Plymouth Land Owners' League, Inc. v. Lake County, Florida, 279 So. 3d 1284 (Fla. 5th DCA 2019).
A county is bound by its own ordinances and may not permit a communications tower in contravention of the setbacks in its land development regulations when the regulations do not authorize variances in this instance.

Florida Real Property and Business Litigation Report
Volume XII, Issue 41
October 12, 2019
Manuel Farach

Georgia State Conference of the NAACP v. City of LaGrange, Georgia, 940 F.3d 627 (11th Cir. 2019).
Section 3604(b) of the Fair Housing Act, 42 U.S.C. § 3601 et seq. (discrimination based on "race, color, religion, sex, familial status, or national origin" in connection with the "sale or rental of a dwelling, or in the provision of services or facilities in connection therewith" is prohibited) applies to conduct after an individual has acquired housing.

Thompson v. Gargula (In Re: Glenn Lee Thompson), 939 F.3d 1279 (11th Cir. 2019).
11 U.S.C. section 727(d)(2) (discharge vacated due to failure to disclose property of the estate), unlike section 727(d)(1) (discharge vacated due to fraud of debtor), does not require the party requesting revocation have been devoid of knowledge of the bad acts during the bankruptcy.

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

Soho Realty, LLC v. The Alexander Condominium Association, Inc., 282 So. 3d 953 (Fla. 3d DCA 2019).
A mixed-use project in which some units are occupied by permanent residents and some by transient residents is neither a "hotel" nor a "suite hotel" under the local ordinance.

National Collegiate Student Loan Trust 2007-3 v. De Leon, 281 So. 3d 565 (Fla. 3d DCA 2019).
Res judicata only applies to claims actually litigated and decided in a different case, and accordingly, a bankruptcy creditor whose claims were not actually decided in the bankruptcy case and against which the discharge injunction may not apply, is not estopped from bringing a state court suit for the debt.

Nunez v. Allen, Case No. 5D14-4386 (Fla. 5th DCA 2019).
Attorneys who are parties to litigation and successfully represent themselves are entitled to an award of attorney's fees so long as the awarded time was spent as attorney (not as a party) and is not duplicative of other counsel's work.

Florida Real Property and Business Litigation Report
Volume XII, Issue 42
October 19, 2019
Manuel Farach

Gannon v. Buckler, 281 So. 3d 587 (Fla. 2d DCA 2019).
Lack of personal jurisdiction must be raised by motion pursuant to Florida Rule of Civil Procedure 1.140(b) otherwise it is waived; conflict certified with Third, Fourth and Fifth District Courts of Appeal.

U**.S. Bank, National Association v. Sturm**, 280 So. 3d 1124 (Fla. 2d DCA 2019).
A foreclosing lender may claim as damages all monies due, not just those that accrued within five years of default; the Second aligns with the Third, Fourth and Fifth Districts.

Eskenazi v. Eskenazi, Case 3D18-1924 (Fla. 3d DCA 2019).
A party that seeks affirmative relief from a court consents to the court's jurisdiction.

Hurchalla v. Homeowners Choice Property & Casualty Insurance Company, Inc., 281 So. 3d 510 (Fla. 4th DCA 2019).
An insurer may estopped from later denying a defense even where the policy does not cover the claim where the insurer defends the insured and the insured has been prejudiced by the insurer's assumption of the insured's defense.

Cabrera v. U.S. Bank National Association, 281 So. 3d 516 (Fla. 4th DCA 2019).
An order dismissing a counterclaim seeking class certification of alleged foreclosure damages is, in effect, an order denying class certification under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(vi) and is immediately appealable.

Mahinbakht v. Mahinbakht, 281 So. 3d 514 (Fla. 4th DCA 2019).
Residence in Florida alone is not a basis to deny a Motion for Forum Non Conveniens.

Florida Real Property and Business Litigation Report
Volume XII, Issue 43
October 26, 2019
Manuel Farach

Kelly v. Duggan, 282 So. 3d 969 (Fla. 1st DCA 2019
Condominium association assessments are a "consumer debt" under the Florida Consumer Collection Practices Act, Florida Statutes section 559.55 - .785; conflict certified with *Bryan v. Clayton*, 698 So. 2d 1236 (Fla. 5th DCA 1997), rev. denied, 707 So. 2d 1123 (Fla. 1998), cert. denied, 524 U.S. 933 (1998).

Chapman v. Town of Redington Beach, 282 So.3d 97(Fla. 2d DCA 2019).
A property owner suing an adjoining property owner for violation of municipal ordinances must show special damages but may - by virtue of their proximity to the violation - be peculiarly and sufficiently affected by the violation to constitute special damages notwithstanding the injuries might be described as similar to other community members.

Systemax, Inc. v. Fiorentino, Case No. 3D17-2722 (Fla. 3d DCA 2019).
The victim of a federal crime may, under 18 U.S.C. § 3664 (m)(1)(B), record but cannot enforce a federal restitution order.

Florida Real Property and Business Litigation Report
Volume XII, Issue 44
November 2, 2019
Manuel Farach

Sellers v. Rushmore Loan Management Services, LLC, 941 F.3d 1031 (11th Cir. 2019).
Whether the Bankruptcy Code precludes or preempts Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., and Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq., claims is a common rather than individual issue, and thus may meet class certification predominance requirements.

Yarbrough v. Decatur Housing Authority, 941 F.3d 1022 (11th Cir. 2019).
Termination of housing vouchers issued under Section 8 of the Housing Act of 1937, 42 U.S.C. § 1437f, requires "some evidence" but a "robust substantive evaluation of the sufficiency of the evidence supporting an administrative determination" is not required.

Wilcox v. Neville, Case No. 1D18-4057 (1st DCA 2019).
Florida Statute section 768.79(6) requires the "judgment obtained" calculation to include the amount of any settlement by a co-defendant after the date of service of the offer on the defendant by which the verdict was reduced.

The Prestige Gallery, Inc. v. Napleton, Case No. 1D18-2318 (Fla 1st DCA 2019).
While there is no case law defining what constitutes "nominal damages," an award of $80,000 as nominal damages is excessive as a matter of law.

Hedden v. Z Oldco, LLC, Case No. 2D18-4584 (Fla. 2d DCA 2019).
The filing of a declaratory judgment action as to one claim does not negate the right to arbitration arising from all claims.

Port Royal Property, LLC v. Woodson Electric Solutions, Inc., Case No. 3D19-1397 (Fla. 3d DCA 2019).
The four-part *Kinney System, Inc. v. Continental Insurance Co.*, 674 So. 2d 86 (Fla. 1996), test is not to be used for determining venue transfers within Florida.

Florida Real Property and Business Litigation Report
Volume XII, Issue 45
November 9, 2019
Manuel Farach

Carruth v. Bentley, 942 F.3d 1047 (11th Cir. 2019).
The Governor and those in his employ are entitled to qualified immunity for governmental actions taken to regulate a credit union.

Center for Biological Diversity v. U.S. Army Corps of Engineers, 941 F.3d 1288 (11th Cir. 2019).
An agency must consider the indirect environmental effects of its permits, but the indirect effects must be proximate and sufficiently related to an agency's action to be a violation.

In Re: Amendments to Florida Rules of Appellate Procedure 9.120 And 9.210, Case No. SC19-884 (Fla. 2019).
The Florida Rules of Appellate Procedure are amended to allow cross-notices and briefs when jurisdiction is pending.

Blamey v. Menadier, Case No. 3D19-849 (Fla. 3d DCA 2019).
Upon rehearing, the Third District holds an attorney's drafting of a term sheet for purchase of corporate stock is sufficiently related to the dispute over failure to deliver the stock such that the attorney, who represented the selling entity in some matters, cannot represent the buyer against the selling entity.

JJN FLB, LLC v. CFLB Partnership, LLC, Case No. 3D19-1875 (Fla. 3d DCA 2019).
Adverse rulings are not grounds for recusal of a judge, but judicial findings that counsel lied in proceedings before the court indicate future bias and require recusal.

Tison Clairmont Condominium F Association, Inc., Case No. 4D19-117 (Fla. 4th DCA 2019).
Legal rights accrue and are fixed when the last element of the cause of action occurs and not when the action is brought; accordingly a former unit owner who sold his unit is entitled to an award of attorney's fees under Florida Statute section 718.303(1) if he was a unit owner when his right to attorney's fees accrued.

Central Florida Investments, Inc. v. Orange County, Case No. 5D19-943 (Fla. 5th DCA 2019).
Appeals from a local government code enforcement board are plenary appeals governed by Florida Statute section 162.11 and are not petitions for writ of certiorari.

Florida Real Property and Business Litigation Report
Volume XII, Issue 46
November 16, 2019
Manuel Farach

Pinson v. JPMorgan Chase Bank, National Association, 942 F.3d 1200 (11th Cir. 2019).
A consumer must establish three things in order to allege a creditor used a false name in violation of the Fair Debt Collection Practices Act: use of a name other than its own, use of the name in a way that would indicate a third person is attempting to collect its debt, and use of the false name in the process of collecting its own debt.

Classy Cycles, Inc. v. Panama City Beach, Case No. 1D18-3095 (Fla. 1st DCA 2019).
The Municipal Home Rule Powers Act, Florida Statute section 166.021, inserted the rational basis test (an ordinance must be reasonable and not arbitrary) in place of the "per se nuisance" test (activity can only be banned if it is a per se nuisance) for determining whether activity can be banned; whether an ordinance is a zoning ordinance or a traffic control ordinance is irrelevant.

Florida Department of Agriculture and Consumer Services v. Dolliver, Case No. 2D18-1393 (Fla. 2d DCA 2019).
The Florida Legislature may not pass laws which restrict the obligation of Florida government to pay for takings without just compensation under Article X, section 6(a) of the Florida Constitution.

Stacknik v. U.S. Bank National Association, Case No. 2D18-2156 (Fla. 2d DCA 2019).
A mailing log is sufficient additional evidence to establish the mailing of a condition precedent letter.

Villa Bellini Ristorante & Lounge, Inc. v. Mancini, Case No. 2D18-2249 (Fla. 2d DCA 2019).
Florida law permits mandamus proceedings to allow shareholders in private corporations to inspect their corporation's books and records.

Pillay v. Public Storage, Inc., Case No. 4D19-84 (Fla. 4th DCA 2019).
Exculpatory clauses are effective in leases, and the following clause bars negligence claims against a self-storage landlord:

> (1) ALL PERSONAL PROPERTY IS STORED BY OCCUPANT AT OCCUPANT'S SOLE RISK.
> (2) Owner and Owner's agents . . . will not be responsible for, and Tenant releases Owner and Owner's agents from any responsibility for, any loss, liability, claim, expense, damage to property . . . including without limitation any Loss arising from the active or passive acts, omission or negligence of Owner or Owner's agents.
> (3) Tenant has inspected the Premises and the Property and hereby acknowledges and agrees that Owner does not represent or guarantee the safety or security of the Premises or the Property or any of the personal property stored therein, and this Rental Agreement does not create any contractual obligation for Owner to increase or maintain such safety or security.

Bayview Loan Servicing, LLC, v. Cross, Case No. 5D18-2797 (Fla. 5DCA 2019).
The standard FNMA mortgage does not permit an award of fees for litigating the amount of fees.

Florida Real Property and Business Litigation Report
Volume XII, Issue 47
November 23, 2019
Manuel Farach

DeMartini v. Town of Gulf Stream, 942 F.3d 1277 (11th Cir. 2019).
Probable cause to file a RICO lawsuit defeats a retaliatory Section 1983 lawsuit.

Mattress One, Inc. v. Sunshop Properties, LLC, 282 So. 3d 1024 (Fla. 3d DCA 2019).
A registered agent's unavailability during the statutorily required times does not allow a process server to serve anyone at the business premises without first complying with Florida Statute section 48.081(1) (a return of service must show the absence of all officers of a superior class designated in the statute before service can be obtained by serving an officer or agent of an inferior class).

1601 Bay LLC v. Wilmington Savings Fund Society, FSB, 282 So. 3d 1027 (Fla. 3d DCA 2019).
A purchaser of property, including one purchasing at a foreclosure sale, cannot rely on a fraudulent satisfaction of a prior mortgage in the title record and the purchaser does not take title free of the unsatisfied mortgage.

The Naked Lady Ranch, Inc. v. Wycoki, Case No. 4D18-2068 (Fla. 4th DCA 2019).
A court's inquiry into suspension or termination of a member of a corporation is, under Florida Statute section 617.0607(1), limited to determining whether the board acted in a fair and reasonable manner and in good faith.

Mantilla v. Fabian, Case No. 4D18-2429 (Fla. 4th DCA 2019).
A general release arising out of the sale of a business does not preclude a later claim of fraud in the inducement unless the release specifically states that fraud is not grounds for rescission.

Iglehart v. Mitbank USA, Inc., Case Nos. 4D19-86 and 4D19-87 (Fla. 4th DCA 2019).
Contemporaneously executed contracts for different functions between two parties, one containing a mandatory arbitration provision and the other containing an exclusive venue litigation provision, do not require arbitration of all disputes between the parties.

Florida Real Property and Business Litigation Report
Volume XII, Issue 48
November 30, 2019
Manuel Farach

Carter Development of Massachusetts, LLC v. Howard, Case No. 1D18-3075 (Fla. 1st DCA 2019).
An escrow agent only owes a duty per his escrow agreement and does not owe a fiduciary duty to non-parties to the escrow agreement.

Magnolia Court, LLC v. Moon, LLC, Case No. 3D18-722 (Fla. 3d DCA 2019).
An unregistered foreign limited liability company is subject to service under Florida Statute section 605.0904(6), and such service is "personal service" so that plaintiff does not have to comply with the personal service requirements of Florida Statutes Chapter 48.

The Allegro at Boynton Beach, L.L.C. v. Pearson, Case No. 4D18-3387 (Fla. 4th DCA 2019).
A party may "deliver" a contract subject to a right of first refusal through discovery in pending litigation.

Florida Real Property and Business Litigation Report
Volume XII, Issue 49
December 7, 2019
Manuel Farach

In Re: Amendments to The Florida Rules of Civil Procedure–2019 Regular-Cycle Report, Case No**.** SC19-108 (Fla. 2019).
Substantial changes to the Florida Rules of Civil Procedure, including changes to the remitter and additur rules.

Richard v. Asset Management West 15, LLC, Case No. 2D18-4599 (Fla. 2d DCA 2019).
An affidavit of indebtedness that does not attach business records is insufficient evidence of the amount owed.

Merrick Park, LLC v. Garcia, Case Nos. 3D18-2090 & 3D18-1393 (Fla. 3d DCA 2019).
Improvements on leased land are taxed separately than the land itself, and the owner of the improvements may not contest the *ad valorem* valuation of the land.

295 Collins, LLC v. PSB Collins, LLC, Case No. 3D18-2069 (Fla. 3d DCA 2019).
"Prepay" a loan typically means a loan payoff prior to the stated maturity of the loan and does not require payoff of a loan prior to a sale transaction, i.e., funds borrowed as part of a closing may be used to pay the loan off at closing.

Tanis v. HSBC Bank USA, N.A., Case No. 3D18-2102 (Fla. 3d DCA 2019).
An attorney not of record is not entitled to notice of a re-scheduled foreclosure sale, even if the attorney attended and participated in a hearing in the case.

Conrad FLB Management, LLC Diamond Blue International, Inc., Case No. 3D18-2540 (Fla. 3d DCA 2019).
A corporate or business name change has no effect on the underlying obligations of the business.

U.S. Bank Trust, N.A. v. Leigh, Case No. 5D17-2967 (Fla. 5th DCA 2019).
A mortgage may permit a lender the collection of attorney's fees incurred in a prior foreclosure action, even if the lender was not successful in the first action.

Florida Real Property and Business Litigation Report
Volume XII, Issue 50
December 14, 2019
Manuel Farach

Rotkiske v. Klemm, Case No. 18–328 (2019).
The one-year statute of limitations for violations of the Fair Debt Collection Practices Act, 15 U. S. C. §1692k(d), begins to run when the violation occurs not when it is discovered.

High Five Products, Inc. v. Riddle, Case No. 2D19-913 (Fla. 2d DCA 2019).
The Second District aligns with the First, Third and Fifth Districts and holds that an order denying a motion to add a claim for punitive damages is not reviewable via certiorari.

Gokalp v. Unsal, Case No. 4D18-2535 (Fla. 4th DCA 2019).
A party which does not personally receive property or profits from a real estate deal cannot be held liable for conversion or civil theft arising out of the deal.

Florida Real Property and Business Litigation Report
Volume XII, Issue 51
December 21, 2019
Manuel Farach

In Re: Amendments to The Florida Rules of Judicial Administration—Parental Leave, Case No. SC18-1554 (Fla. 2019).
New Florida Rule of Judicial Administration 2.570 is adopted providing for, among other things, a presumptive three-month continuance for lead counsel upon the birth or adoption of a child.

In Re: Amendments to Florida Rule of Appellate Procedure 9.030, Case No. SC19-2064 (Fla. 2019).
Rule 9.030 is amended to provide for appeals of $15,000 or more from county courts directly to the district courts of appeal.

Wiener v. Taylor Morrison Services, Inc., Case No. 1D19-1649 (Fla. 1st DCA 2019).
Arbitration cannot be compelled when the arbitration provision covers structural damage and no such allegations are made in plaintiffs' complaint.

Githler v. Grande, Case No. 2D17-4963 (Fla. 2d DCA 2019) (en banc).
The Second District recedes from its prior precedent and adopts the broad definition of "security" set forth in *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686 (1985); conflict certified with *Rudd v. State*, 386 So. 2d 1216 (Fla. 5th DCA 1980), and *Levine v. I.R.E. Properties, Inc.*, 344 So. 2d 938 (Fla. 3d DCA 1977).

Biza, Corporation v. Galway Bay Mobile Homeowners Association, Inc., No. 3D18-0631 (Fla. 3d DCA 2019).
Actions brought by mobile homeowners' associations under Florida Rule of Civil Procedure 1.222 are not subject to the class certification requirements of Florida Rule of Civil Procedure 1.220.

The Bank of New York Mellon v. Figueroa, Case Nos. 3D18-2318 & 3D18-1649 (Fla. 3d DCA 2019).
Litigants in one foreclosure suit may not request banking information from other non-party bank customers as Florida Statute sec. 655.059(2)(b) "deems confidential books and records of deposit accounts at any financial institution" and such information cannot be released without consent.

Gulfstream Park Racing Association, Inc. v. MI-V1, Inc., Case No. 4D18-1460 (Fla. 4th DCA 2019).
A guarantor on a lease is liable to the extent of the principal's obligation, and accordingly, it may be relieved of liability if the principal is found not liable but may not escape liability if summary judgment has already been entered against it.

Florida Real Property and Business Litigation Report
Volume XII, Issue 52
December 28, 2019
Manuel Farach

Southside Church of Christ of Jacksonville, Inc. v. Walker, Case No. 1D17-5142 (Fla. 1st DCA 2019).
A witness may provide evidence that plaintiff had standing at the time of the filing of the complaint if the documentary evidence is insufficient.

Nationstar Mortgage, LLC v. Glisson, Case No. 2D18-686 (Fla. 2d DCA 2019).
A new notice of default need not be sent if a previous foreclosure action was dismissed without prejudice.