

Florida Real Property and Business Litigation Report
Volume XIV, Issue 1
January 1, 2022
Manuel Farach

Seaside Town Council, Inc. v. Seaside Community Development Corp., Case No. 1D19-755 (Fla. 2d DCA 2021).

An entity that has been assigned rights of community associations formed under Florida Statutes Chapter 720 may enforce the restrictive covenants of the associations.

GE Real Estate Services, Inc. v. Mandich Real Estate Advisors, Inc., Case No. 3D21-125 (Fla. 3d DCA 2021).

One may not enforce a non-circumvention agreement against a non-signatory to the agreement.

Enviropower Renewable Inc. v. Ritger, Case No. 3D21-0162 (Fla. 3d DCA 2021).

A general contractual waiver of rights to delay enforcement does not waive the right to a hearing on a deficiency judgment.

Florida Real Property and Business Litigation Report
Volume XV, Issue 2
January 8, 2022
Manuel Farach

5200 Enterprises Limited v. City of New York, Case No. 20-13753 (11th Cir. 2022).
New York law does not recognize continuing trespasses against municipalities, and accordingly, the City of New York is not responsible under trespass for contaminating property owned by the Debtor.

Acheron Capital, Ltd. v. Mukamal, Case No. 21-13052 (11th Cir. 2022).
An interim order directing a court-appointed trustee to sell the assets of a failed investment scheme is not a final decision under 28 U.S.C. § 1291 nor a refusal to wind up a receivership under 28 U.S.C. § 1292 and thus not capable of interim appeal.

In Re: Amendment To Florida Rule of Appellate Procedure 9.130, Case No. SC21-129 (Fla. 2022).
Florida Rule of Civil Procedure 9.130 is amended to include new subdivision (a)(3)(G) permitting non-final appeals of nonfinal orders that grant or deny a motion for leave to amend to assert a claim for punitive damages.

Buzby v. Turtle Rock Community Association, Inc., Case No. 2D21-1377 (Fla. 2d DCA 2022).
Professionals, including doctors and lawyers, are entitled to expert witness fees when testifying as an expert, i.e., when evaluating the work of others but not describing historical facts from personal knowledge.

GG Investment Realty, Inc. v. South Beach Resort Development, LLC, Case No. 3D20-1033 (Fla. 3d DCA 2022).
A party fraudulently induced into a contract may choose the remedy of rescission, thereby rejecting the contract, or damages, thereby reaffirming the contract and seeking damages arising from the tort.

Florida Department of Transportation v. Lauderdale Boat Yard, LLC, Case No. 4D20-1184 (Fla. 4th DCA 2022).
Only those waters which were navigable when Florida joined the union are sovereign lands which grant abutting owners riparian rights, and dredging upland so that it is covered by water does not make the dredged waters navigable nor lands which contain riparian rights.

Florida Real Property and Business Litigation Report
Volume XV, Issue 3
January 15, 2022
Manuel Farach

United States Trustee Region 21 v. Bast Amron LLP (In Re: Mosaic Management Group, Inc.), Case No. 20-12547 (11th Cir. 2022).

The amendments to 28 U.S.C. §1930(a)(6) (increasing fees paid to the U.S. Trustee) are applicable to all pending cases.

Mohler v. Elliott, Case No. 2D21-2276 (Fla. 2d DCA 2022).

A partial final summary judgment which permits execution while other claims remain pending is subject to certiorari review because the judgment debtor would not have the ability to post a supersedeas bond while he appealed the case.

Hayes v. Monroe County, Case No. 3D21-0632 (Fla. 3d DCA 2022).

A special magistrate's order on a code enforcement hearing which does not contain factual and legal findings under Florida Statute section 162.21(8) departs from the essential requirements of law and is subject to being overturned on second level certiorari review.

Florida Real Property and Business Litigation Report
Volume XV, Issue 4
January 22, 2022
Manuel Farach

Vital Pharmaceuticals, Inc. v. Alfieri, Case No. 20-14217 (11th Cir. 2022).

Presumptions of irreparable harm are ordinarily disfavored in the context of a preliminary injunctions in federal court, including applying to the statutory presumptions in Florida Statute section 542.335.

Sarasota County v. Southern Underground Industries, Inc., Case No. 2D20-2491 (Fla. 2d DCA 2022).

Although "no damages for delay" clauses are recognized as enforceable provisions in construction contracts, they will not be enforced in the face of governmental "fraud, bad faith, or active interference" with performance under the contract.

Riano v. Bank of America, N.A., Case Nos. 3D20-1260 and 3D20-1473 (Fla. 3d DCA 2022).

There is no independent cause of action for a lender's failure to provide a loan modification agreement under Home Affordable Modification Program (HAMP).

BMC Southwood LLC v. Monochelli, Case No. 3D20-1371 (Fla. 3d DCA 2022).

A party is not bound to the mandatory arbitration provisions of the Condominium Termination Act, Florida Statute section 718.117(16), if it alleges claims not covered by Florida Statute section 718.1255(1).

Campbell v. Harper's Air Inc., Case No. 3D21-0750 (Fla. 3d DCA 2022).

A release which releases a party and his "employer" is interpreted to mean "employer" at the time of the incident culminating in the release and is not affected by the released party having left employment at the time of the release.

Florida Real Property and Business Litigation Report
Volume XV, Issue 5
January 29, 2022
Manuel Farach

Hoffman v. Signature Bank of Georgia (In Re: Hoffman), Case No. 20-12823 (11th Cir. 2022).

Roth IRAs are exempt from the claims of creditors under Georgia exemption laws.

Hayslip v. U.S. Home Corporation, Case No. SC19-1371 (Fla. 2022).

A covenant in a master deed from a project developer requiring arbitration of all claims against the developer “touches and concerns the land” and thus runs with the land and is enforceable against later purchasers of the property.

Morrison v. Smolarick, Case No. 2D20-2693 (Fla. 2d DCA 2022).

Money damages may not be awarded in partition actions under Florida Statutes Chapter 64.

Shanks v. Bergerman, Case No. 2D20-3431 (Fla. 2d DCA 2022),

Florida Statute section 95.051(1)(f) (statute of limitation period on debt tolled for five years from “[t]he payment of any part of the principal or interest of any obligation or liability founded on a written instrument”) does not require a written or recorded agreement to toll the statute of limitations, even if the payment is made after the maturity date of the note.

Baron v. L.P. Evans Motors WPB, Inc., Case No. 3D21-1102 (Fla. 3d DCA 2022).

An arbitration clause which directs arbitration of all disputes arising out of or relating to the agreement requires the arbitrator to decide the issue of attorney’s fees and costs even if one party objects to the arbitrator doing so.

Florida Real Property and Business Litigation Report
Volume XV, Issue 6
February 5, 2022
Manuel Farach

Southern Coal Corporation v. Drummond Coal Sales, Inc., Case No. 20-14560 (11th Cir. 2022).

A party does not have to win all contested issues in order to be considered the prevailing party for purposes of an attorney's fees provision.

RAV Bahamas Ltd. v. Marlin Three, LLC, Case No. 3D21-976 (Fla. 3d DCA 2022).

The equitable claim of a pure bill of discovery lies only in the absence of a legal remedy and only to determine the identity of a proper party defendant or the appropriate legal theory for relief; it is not available to obtain a preview of discovery obtainable once suit is filed.

Handte v. Monroe County, Case No. 3D21-1527 (Fla. 3d DCA 2022).

Non-conforming real property is not exempted from subsequently enacted lawful regulations generally applicable to similarly situated properties.

Trident Asset Management, LLC 2050 v. Condotel Inn Condominium Association, Inc., Case No. 5D20-2130 (Fla. 5th DCA 2022).

The one percent safe harbor provision of Florida Statute section 718.116(1)(b) applies to the total and original mortgage debt, not as applied to each condominium unit.

Florida Real Property and Business Litigation Report
Volume XV, Issue 7
February 12, 2022
Manuel Farach

Palafox, LLC v. Diaz, Case No. 1D20-3415 (Fla. 1st DCA 2022).

Florida Statute section 120.569(2)(e) (sanctions imposed for filing frivolous pleadings in administrative proceedings) does not have a timeliness requirement.

Balm Road Investment, LLC v. Hillsborough County Board Of County Commissioners, Case No. 2D21-1033 (Fla. 2d DCA 2022).

The narrow scope of second-tier certiorari requires affirmance of a trial court (first tier review) order denying certiorari relief to landowner seeking reversal of county commission decision denying application for development notwithstanding the proposed development meets all legal and administrative requirements.

Coast Pump & Supply Co., Inc. v. Mathis, Case No. 2D21-1142 (Fla. 2d DCA 2022).

A Notice of Appearance is not a “pleading” for purposes of contesting jurisdiction under Florida Rule of Civil Procedure 1.140(b) (lack of personal jurisdiction must be raised in first pleading otherwise the defense is waived).

BPI Sports, LLC v. Florida Supplement LLC, Case No. 3D21-736 (Fla. 3d DCA 2022).

A term defined in the covenants portion of a contract controls over a conflicting definition contained in the recitals portion of the contract.

Aquino de Oliveira v. Sim, Case No. 3D21-1255 (Fla. 3d DCA 2022).

Clerk’s defaults are not independently appealable.

Boca Raton Community Redevelopment Agency v. Crocker Downtown Development Associates, Case No. 4D21-873 (Fla. 4th DCA 2022).

Unless an agreement by the parties requires otherwise, the fair market value of property encumbered by the lease must be computed as unencumbered by the lease.

Florida Real Property and Business Litigation Report
Volume XV, Issue 8
February 19, 2022
Manuel Farach

MidAmerica C2L Incorporated v. Siemens Energy Inc., Case No. 20-11266 (11th Cir. 2022).

The Eleventh Circuit applies the Independent Tort Doctrine to fraudulent inducement claims and further states that no Florida case recognizes rescission based on lack of consideration.

Wildes v. BitConnect International, PLC, Case No. 20-11675 (11th Cir. 2022).

The prohibition in Section 12 of the Securities Act of 1933 for soliciting the purchase of unregistered securities applies to mass-market as well as individual appeals.

In Re: Amendments to Rule Regulating The Florida Bar 4-5.5, Case No. SC21-1379 (Fla. 2022).

Rule 4-5.5 is amended to read:

[A] lawyer licensed in another United States jurisdiction does not have a regular presence in Florida for the practice of law when the lawyer works remotely while physically located in Florida for an extended period of time if the lawyer works exclusively on non-Florida matters, and neither the lawyer nor any firm employing the lawyer hold out to the public as having a Florida presence.

Vickery v. City of Pensacola, Case No. 1D19-4344 (Fla. 1st DCA 2022).

Florida Statute section 163.045(1) authorizes residential property owners to remove trees from their property without interference from local government if the owners obtain documentation from an International Society of Arboriculture (ISA)-certified arborist or Florida-licensed landscape architect indicating that the trees present a danger to persons or property.

Terra Mar Property Management, LLC v. Wilmington Savings Fund Society, FBS, Case No. 1D21-1484 (Fla. 1st DCA 2022).

The First District agrees with the Second and Fourth District Courts of Appeal and holds that failure to pay a mortgage is a continuing default and that a lender is not barred from foreclosing on a mortgage even if the original borrower gave up all rights in the real property during bankruptcy proceedings and the lender did not initiate foreclosure within five years from that time.

Selman v. Progressive American Insurance Company, Case No. 3D21-0299 (Fla. 3d DCA 2022).

A trial court exceeds its jurisdiction when it enters relief beyond that set forth in a settlement agreement, even if the court adopted the settlement agreement and retained jurisdiction to enforce its terms.

8425 Biscayne LLC v. Pinnacle Towers LLC, Case No. 3D21-0486 (Fla. 3d DCA 2022).
A restrictive covenant is different from an easement because a restrictive covenant limits what a landowner may do with their property.

Ridard v. Massa Investment Group, LLC, Case Nos. 3D21-1238, 3D21-1239, and 3D21-1240 (Fla. 3d DCA 2022).

The third-party beneficiary doctrine enables a non-contracting party to enforce a contract against a contracting party—not the other way around and not against an agent for a disclosed principal.

DHBH Atlantic L.L.C. v. City of Delray Beach, Case No. 4D21-852 (Fla. 4th DCA 2022).
Two separate owners—holding separate legal title – cannot make a combined claim under the Bert J. Harris Act for their unified interest in platted property.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 9
February 26, 2022
Manuel Farach

Unicolors, Inc. v. H&M Hennes & Mauritz, L. P., Case No. 20–915 (2022).

The safe harbor of 17 U. S. C. §411 (certificate of registration is valid, even though it contains inaccurate information, as long as the copyright holder lacked “knowledge that it was inaccurate”) does not distinguish between mistakes of law and mistakes of fact and a mistake of law is entitled to the safe harbor protection of the statute.

Agency for Health Care Administration v. Ybor Medical Injury & Accident Clinic, Inc., Case No. SC20-1814 (Fla. 2022).

Florida Statute section 120.68(3) (party is entitled to a presumptive stay upon the appeal of an agency decision that “has the effect of suspending or revoking a license”) does not apply to an agency decision to administratively withdraw an incomplete application for a license renewal.

Soboh v. Hamzeh, Case No. 2D21-407 (Fla. 2d DCA 2022).

Service on an individual not operating as a sole proprietor must be made at the individual's abode.

New Horizons Condominium Master Association, Inc. v. Harding, Case No. 3D20-1471 (Fla. 3d DCA 2022).

The Business Judgment Rule is a rule of substantive law and need not be pleaded as an affirmative defense in order to be invoked as a defense.

Iacono v. Kingsley Arms Apartments, Inc., Case No. 3D20-1830 (Fla. 3d DCA 2022).

Without more, a landowner has no duty under either premises liability or negligence per se to install devices to diminish the possibility of persons attempting to use the landowner's rooftop to attempt suicide.

Callava v. Yon, Case No. 3D21-1376 (Fla. 3d DCA 2022).

A real estate sales contract with the following language requires an escrow agent to disburse the deposit to the non-breaching party:

Closing date shall be on or before 45 days from the effective date. An initial deposit of \$50,000 shall be paid at the time of signing. An additional deposit of \$50,000 shall be made to Escrow agent 5 days from the effective date. In the event, Buyer does not close as per contract, Seller will retain all deposits paid or agreed to be paid by Buyer. Seller and Buyer authorize Escrow Agent or Closing Agent (collectively “Agent”) to receive, deposit, and hold funds and other property in escrow and, subject to collection, disburse them in accordance with the terms of this Contract. In the event the sale is not closed due to any default or failure on the part of Buyer, Seller may either (1) retain all deposit(s) paid or agreed to be paid by Buyer as agreed upon liquidated damages, consideration for the execution of this

Contract, and in full settlement of any claims, upon which this Contract will terminate or (2) seek specific performance.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 10
March 5, 2022
Manuel Farach

Reiterman v. Abid, Case No. 20-11025 (11th Cir. 2022).

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The Glynn Environmental Coalition, Inc. v. Sea Island Acquisition, LLC, Case No. 21-10676 (11th Cir. 2022).

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In Re: Amendments to The Rules Regulating The Florida Bar—Biennial Petition, Case No. SC20-1467 (Fla. 2022).

The Florida Supreme Court amends the Rules Regulating The Florida Bar, including Rules: 1-3.2 (Membership Classifications); 1-3.6 (Delinquent Members); 1-3.8 (Right to Inventory); 1-7.3 (Membership Fees); 1-12.1 (Amendment to Rules; Authority; Notice; Procedures; Comments); 1-13.1 (Time); 3-5.2 (Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct); 3-6.1 (Generally); 3-7.1 (Confidentiality); 3-7.7 (Procedures Before Supreme Court of Florida); 4-1.5 (Fees and Costs for Legal Services); 4-1.10 (Imputation of Conflicts of Interest; General Rule); 4-1.14 (Client Under a Disability); 4-5.8 (Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms); 4-6.1 (Pro Bono Public Service); 4-7.13 (Deceptive and Inherently Misleading Advertisements); 4-7.18 (Direct Contact with Prospective Clients); 5-1.2 (Trust Accounting Records and Procedures); 7-1.3 (Administration); 7-1.4 (Definitions); 7-2.3 (Payments); 7-2.4 (Prerequisites to Payment); 7-2.5 (Claims Ordinarily Denied); 10-2.1 (Generally); 10-2.2 (Form Completion by a Nonlawyer); 10-6.3 (Recommendations and Disposition of Complaints); 10-7.2 (Proceedings for Indirect Criminal Contempt); 14-2.1 (Generally); 14-3.1 (Application Required); 20-5.1 (Generally); and 21-3.1 (Continuing Legal Education), as well as proposed new Bar Rule 6-3.14 (Sunset of Certification Areas).

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Florida Real Property and Business Litigation Report
Volume XIV, Issue 11
March 12, 2022
Manuel Farach

Vintage Motors of Sarasota, Inc. v. MAC Enterprises Of North Carolina, LLC, Case No. 2D21-590 (Fla. 2d DCA 2022).

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Akerman LLP v. MSP Recovery Claims, Series LLC, Case No. 3D21-1198 (Fla. 3d DCA 2022).

Opposing party has no standing to seek disqualification of law firm's counsel that was hired to defend an earlier motion to disqualify the law firm.

Sakowitz v. Waterside Townhomes Community Association, Inc., Case No. 3D21-1453 (Fla. 3d DCA 2022).

While general law holds that contracts must be accepted within a reasonable time, a time period of eighty-five days to accept a settlement offer is reasonable in light of the fact that the negotiations occurred during the pandemic.

West Bay Plaza Condominium Association, Inc. v. Sika Corporation, Case No. 3D21-1834 (Fla. 3d DCA 2022).

Non-signatories to a contract containing a forum selection clause may be forced to comply with the forum selection clause when the claims arise directly from the contract.

Shader v. ABS Healthcare Services, LLC, Case Nos. 3D21-2344 & 3D21-2437 (Fla. 3d DCA 2022).

During the pendency of an arbitration, the arbitration panel – not the trial court – has the authority to decide confidentiality issues arising from a court order entered prior to the arbitration commencement.

Hallandale Plaza, LLC v. New Tropical Car Wash, LLC, Case No. 4D21-1445 (Fla. 4th DCA 2022).

The following lease provision requires the payment of "additional rent," and pursuant to Florida Statute section 83.22 deposit into the Registry of the Court if the tenant wishes to contest an eviction action for non-payment of rent:

Tenant shall pay, as additional Rent ("Additional Rent"), prorated for the part of the Lease Term within the applicable calendar year, Tenant's Percentage Share ("Tenant's Percentage Share"), as hereafter defined, of the total.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 12
March 19, 2022
Manuel Farach

Goetz v. AGB Tampa LLC, Case No. 2D21-1561 (Fla. 2d DCA 2022).

Surplus foreclosure funds arising out of the foreclosure of an inferior lien belong to the property owner and not the lender nor the purchaser at foreclosure sale.

Swedberg v. Goldfinger's South, Inc., Case No. 3D21-964 (Fla. 3d DCA 2022).

The Single Publication Rule under Florida Statute section 770.07 does not apply to two Facebook entries posted approximately a year apart.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 13
March 26, 2022
Manuel Farach

Tribeca Asset Management, Inc. v. Ancla International, S.A., Case No. SC21-24 (Fla. 2022).

The language that “[t]his 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” indicates a choice of law provision and not a forum selection clause.

Taneja v. First Street And Fifth Avenue, LLC, Case No. 2D20-679 (Fla. 2d DCA 2022).

The Doctrine of Law of the Case holds that once an appeal has been taken, the decision on appeal becomes “the law of the case,” and, on remand, no amendments to the pleadings can be made to present new and different issues of fact or law.

NM Residential, LLC v. Prospect Park Development, LLC, Case No. 2D20-3012 (Fla. 2d DCA 2022).

A contract which purports to waive claims for fraud must specifically state that claims for fraud are being waived and not merely disclaimed.

George Vargas, M.D., P.A. v. Vitra Gosine, M.D., LLC, Case No. 4D20-2462 (Fla. 4th DCA 2022).

An order compelling compliance with certain provisions of a settlement agreement but does not specify exactly what disputed issues were being settled nor dismiss the lawsuit is a non-final order not capable of appeal as it appears trial court judicial labor is not at end.

Walsh v. Abate, Case No. 4D21-1463 (Fla. 4th DCA 2022).

Extensive electronic communications are not sufficient to comprise an enforceable contract that is subject to the Statute of Frauds, e.g., a contract for the sale of real estate.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 14
April 2, 2022
Manuel Farach

Badgerow v. Walters, Case No. 20-1143 (2022).

The Look Through Doctrine for determining federal jurisdiction under the Federal Arbitration Act (courts are to “look through” the arbitration petition to examine the underlying claim to see if the claim is cognizable under the F.A.A.) does not apply to petitions to confirm or vacate arbitration awards.

Airbnb v. Doe, Case No. SC-20-1167 (Fla. 2022).

A website’s reference to an arbitral organization’s rules of procedure, which rules of procedure expressly delegate arbitrability determinations to an arbitrator, constitute “clear and unmistakable” evidence of the parties’ intent to empower an arbitrator and not a court to resolve questions of arbitrability.

Rivera Chiropractor, Inc. v. Rosello, Case No. 2D20-3068 (Fla. 2d DCA 2022).

Even if twenty-one days have passed since the safe harbor letter was sent, a motion for sanctions under Florida Statute section 57.105 cannot be filed if the plaintiff voluntarily dismisses the case.

Roberts v. Direct General Insurance Company, Case No. 2D21-195 (Fla. 2d DCA 2022).

The Business Records Exception to the Hearsay Rule permits the introduction of business records which are hearsay but does not permit hearsay testimony regarding the business records.

City of Sunny Isles Beach v. Gatto, Case No. 3D21-1003 (Fla. 3d DCA 2022).

A private communication between an elected official is not a public record under Florida’s Public Records Law, Florida Statute section 119.011(12), even if the communication occurred during and discussed municipal business.

U.S. Bank National Association v. Grob, Case No. 4D21-1456 (Fla. 4th DCA 2022).

A HELOC is a non-negotiable instrument but can be assigned and can – together with the Complaint – demonstrate standing to foreclose.

LEN-CG South, LLC v. Champions Club Condominium Association, Inc., Case No. 5D21-1294 (Fla. 5th DCA 2022).

A condominium association can be compelled to arbitrate turnover construction defects based on language in the Declaration of Condominium.

Florida Real Property and Business Litigation Report
Volume XIV, Issue 15
April 9, 2022
Manuel Farach

McNamara v. Government Employees Insurance Company, Case No. 20-13251 (11th Cir. 2022).

A settlement may constitute a “qualifying excess judgment” for a bad faith claim.

Pingora Loan Servicing, LLC v. Scarver (In re Lindstrom), Case No. 20-13615 (11th Cir. 2022).

An “attesting” witness sees the signature applied to the instrument and attest to having seen the act while a “acknowledging” witness is an officer before whom the grantor appeared and declared the paper to be their instrument.

Ocwen Loan Servicing, LLC v. Bishop, Case No. 4D21-69 (Fla. 4th DCA 2022).

The sentence “Lender may revoke the waiver as to any or all [e]scrow [i]tems at any time by a notice[.]” permits a lender to revoke a borrower’s ability to pay typical escrow expenses directly and further permits the lender to force-place insurance on a residence.

Ghazzawieh v. Iglesias, Case No. 5D21-879 (Fla. 5th DCA 2022).

A proposal for settlement that has a condition of payment of the proposed settlement amount within thirty days is enforceable as the payment can be tendered at the same time as acceptance of the proposal.

BMW of North America, LLC v. Henry, Case No. 5D21-885 (Fla. 5th DCA 2022).

Contingency-risk multipliers are prohibited under federal statutes awarding attorney’s fees.

Orlando Bar Group, LLC v. DeSantis, Case No. 5D21-1248 (Fla. 5th DCA 2022).

Pandemic-era restrictions did not amount to inverse condemnation as there was no taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992), *Penn Central*, and *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021).

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While general law holds that contracts must be accepted within a reasonable time, a time period of eighty-five days to accept a settlement offer is reasonable in light of the fact that the negotiations occurred during the pandemic.

West Bay Plaza Condominium Association, Inc. v. Sika Corporation, Case No. 3D21-1834 (Fla. 3d DCA 2022).

Non-signatories to a contract containing a forum selection clause may be forced to comply with the forum selection clause when the claims arise directly from the contract.

Shader v. ABS Healthcare Services, LLC, Case Nos. 3D21-2344 & 3D21-2437 (Fla. 3d DCA 2022).

During the pendency of an arbitration, the arbitration panel – not the trial court – has the authority to decide confidentiality issues arising from a court order entered prior to the arbitration commencement.

Hallandale Plaza, LLC v. New Tropical Car Wash, LLC, Case No. 4D21-1445 (Fla. 4th DCA 2022).

The following lease provision requires the payment of "additional rent," and pursuant to Florida Statute section 83.22 deposit into the Registry of the Court if the tenant wishes to contest an eviction action for non-payment of rent:

Tenant shall pay, as additional Rent ("Additional Rent"), prorated for the part of the Lease Term within the applicable calendar year, Tenant's Percentage Share ("Tenant's Percentage Share"), as hereafter defined, of the total

amount of (i) the annual operating expenses (“Operating Expenses”), as hereafter defined and (ii) the annual taxes (“Taxes”) for the Building.

Herff v. Weston Properties, LLC, Case No. 4D21-2668 (Fla. 4th DCA 2022).

The act of renting a single residential property in Florida does not arise to the level of a general course of business activity to allow service on the Secretary of State under Florida Statute section 48.181(1).

Florida Real Property and Business Litigation Report
Volume XV, Issue 12
March 19, 2022
Manuel Farach

Goetz v. AGB Tampa LLC, Case No. 2D21-1561 (Fla. 2d DCA 2022).

Surplus foreclosure funds arising out of the foreclosure of an inferior lien belong to the property owner and not the lender nor the purchaser at foreclosure sale.

Swedberg v. Goldfinger's South, Inc., Case No. 3D21-964 (Fla. 3d DCA 2022).

The Single Publication Rule under Florida Statute section 770.07 does not apply to two Facebook entries posted approximately a year apart.

Florida Real Property and Business Litigation Report
Volume XV, Issue 13
March 26, 2022
Manuel Farach

Tribeca Asset Management, Inc. v. Ancla International, S.A., Case No. SC21-24 (Fla. 2022).

The language that “[t]his 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” indicates a choice of law provision and not a forum selection clause.

Taneja v. First Street And Fifth Avenue, LLC, Case No. 2D20-679 (Fla. 2d DCA 2022).

The Doctrine of Law of the Case holds that once an appeal has been taken, the decision on appeal becomes “the law of the case,” and, on remand, no amendments to the pleadings can be made to present new and different issues of fact or law.

NM Residential, LLC v. Prospect Park Development, LLC, Case No. 2D20-3012 (Fla. 2d DCA 2022).

A contract which purports to waive claims for fraud must specifically state that claims for fraud are being waived and not merely disclaimed.

George Vargas, M.D., P.A. v. Vitra Gosine, M.D., LLC, Case No. 4D20-2462 (Fla. 4th DCA 2022).

An order compelling compliance with certain provisions of a settlement agreement but does not specify exactly what disputed issues were being settled nor dismiss the lawsuit is a non-final order not capable of appeal as it appears trial court judicial labor is not at end.

Walsh v. Abate, Case No. 4D21-1463 (Fla. 4th DCA 2022).

Extensive electronic communications are not sufficient to comprise an enforceable contract that is subject to the Statute of Frauds, e.g., a contract for the sale of real estate.

Florida Real Property and Business Litigation Report
Volume XV, Issue 14
April 2, 2022
Manuel Farach

Badgerow v. Walters, Case No. 20-1143 (2022).

The Look Through Doctrine for determining federal jurisdiction under the Federal Arbitration Act (courts are to “look through” the arbitration petition to examine the underlying claim to see if the claim is cognizable under the F.A.A.) does not apply to petitions to confirm or vacate arbitration awards.

Airbnb v. Doe, Case No. SC-20-1167 (Fla. 2022).

A website’s reference to an arbitral organization’s rules of procedure, which rules of procedure expressly delegate arbitrability determinations to an arbitrator, constitute “clear and unmistakable” evidence of the parties’ intent to empower an arbitrator and not a court to resolve questions of arbitrability.

Rivera Chiropractor, Inc. v. Rosello, Case No. 2D20-3068 (Fla. 2d DCA 2022).

Even if twenty-one days have passed since the safe harbor letter was sent, a motion for sanctions under Florida Statute section 57.105 cannot be filed if the plaintiff voluntarily dismisses the case.

Roberts v. Direct General Insurance Company, Case No. 2D21-195 (Fla. 2d DCA 2022).

The Business Records Exception to the Hearsay Rule permits the introduction of business records which are hearsay but does not permit hearsay testimony regarding the business records.

City of Sunny Isles Beach v. Gatto, Case No. 3D21-1003 (Fla. 3d DCA 2022).

A private communication between an elected official is not a public record under Florida’s Public Records Law, Florida Statute section 119.011(12), even if the communication occurred during and discussed municipal business.

U.S. Bank National Association v. Grob, Case No. 4D21-1456 (Fla. 4th DCA 2022).

A HELOC is a non-negotiable instrument but can be assigned and can – together with the Complaint – demonstrate standing to foreclose.

LEN-CG South, LLC v. Champions Club Condominium Association, Inc., Case No. 5D21-1294 (Fla. 5th DCA 2022).

A condominium association can be compelled to arbitrate turnover construction defects based on language in the Declaration of Condominium.

Florida Real Property and Business Litigation Report
Volume XV, Issue 15
April 9, 2022
Manuel Farach

McNamara v. Government Employees Insurance Company, Case No. 20-13251 (11th Cir. 2022).

A settlement may constitute a “qualifying excess judgment” for a bad faith claim.

Pingora Loan Servicing, LLC v. Scarver (In re Lindstrom), Case No. 20-13615 (11th Cir. 2022).

An “attesting” witness sees the signature applied to the instrument and attest to having seen the act while a “acknowledging” witness is an officer before whom the grantor appeared and declared the paper to be their instrument.

Ocwen Loan Servicing, LLC v. Bishop, Case No. 4D21-69 (Fla. 4th DCA 2022).

The sentence “Lender may revoke the waiver as to any or all [e]scrow [i]tems at any time by a notice[.]” permits a lender to revoke a borrower’s ability to pay typical escrow expenses directly and further permits the lender to force-place insurance on a residence.

Ghazzawieh v. Iglesias, Case No. 5D21-879 (Fla. 5th DCA 2022).

A proposal for settlement that has a condition of payment of the proposed settlement amount within thirty days is enforceable as the payment can be tendered at the same time as acceptance of the proposal.

BMW of North America, LLC v. Henry, Case No. 5D21-885 (Fla. 5th DCA 2022).

Contingency-risk multipliers are prohibited under federal statutes awarding attorney’s fees.

Orlando Bar Group, LLC v. DeSantis, Case No. 5D21-1248 (Fla. 5th DCA 2022).

Pandemic-era restrictions did not amount to inverse condemnation as there was no taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992), *Penn Central*, and *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021).

Florida Real Property and Business Litigation Report
Volume XV, Issue 16
April 16, 2022
Manuel Farach

KB Home Fort Myers LLC v. Taishan Gypsum Co., Ltd., Case No. 2D21-384 (Fla. 2d DCA 2022).

The adoption by a circuit judge of a magistrate's report and recommendation is typically a voidable act, and accordingly, an objection to the adoption order under Florida Rule of Civil Procedure 1.540(b) must be brought within one year.

Mauriello v. The Property Owners Association Of Lake Parker Estates, Inc., Case No. 2D21-500 (Fla. 2d DCA 2022).

A community association cannot state a cause of action for a mandatory injunction against a homeowner if the covenants for the association state that work is not performed by the homeowner, the association may do so and charge the homeowner for the work.

1000 Brickell, Ltd. v. City of Miami, Case No. 3D20-1046 (Fla. 3d DCA 2022).

A fee simple determinable deed to a local government is controlled by the time limitations of Florida Statute section 689.18, not section 95.36(1), and thus an action to enforce the deed's reverter clause is of unlimited duration and not subject to a statute of limitations.

The City of Cocoa v. The Villas Of Cocoa Village, LLC, Case No. 5D21-2208 (Fla. 5th DCA 2022).

A Request for Proposal ("R.F.P.") is not a contract and the "winner" of a R.F.P. only wins the right to negotiate for a binding contract and is not guaranteed that a binding contract will ensue.

Florida Real Property and Business Litigation Report
Volume XV, Issue 17
April 23, 2022
Manuel Farach

City of Austin v. Reagan National Advertising of Austin, LLC, Case No. 20–1029 (2022).

An on-site/off-site premises distinction for signs is facially content-neutral under the First Amendment.

Boechler, P.C. v. Commissioner of Internal Revenue, Case No. 20–1472 (2022).

For a limitations period to be jurisdictional, Congress must clearly state in the statute that statutory limitations period is jurisdictional.

Gulfstream Aerospace Corporation v. Oceltip Aviation 1 Pty Ltd., Case No. 20-11080 (11th Cir. 2022).

Unless the parties dictate otherwise, the Federal Arbitration Act will apply to interstate and international transactions.

Crawford v. Grubb, Case No. 2D21-735 (Fla. 2d DCA 2022).

The summary procedure process of Florida Statute section 83.60 only applies to actions seeking eviction for nonpayment of rent; the summary procedure process of section 83.59 (including therein the right to discovery and trial) otherwise applies.

Hornsleth v. McCloud, Case No. 2D21-2074 (Fla. 2d DCA 2022).

The CDC Moratorium prevented evictions only for the non-payment of rent.

UniFirst Corporation v. Stronger Collision Center, LLC, Case No. 3D21-0281 (Fla. 3d DCA 2022).

Applying New York law per the arbitration agreement's choice of law provision, a party is not required to seek a court order compelling arbitration and may proceed to a unilateral arbitration if the opposing party refuses to participate in the arbitration proceedings.

City of Homestead v. United States of America, Case No. 3D21-1280 (Fla. 3d DCA 2022).

A proceeding under the Bert J. Harris, Jr., Private Property Rights Protection Act is legislative action, and accordingly, aggrieved parties can only seek appellate remedies by filing a petition for certiorari in the circuit court.

Aersale v. Total Air Services, Inc., Case No. 3D21-1882 (Fla. 3d DCA 2022).

Fuel liens under Florida Statute section 329.41 are non-possessory liens, i.e., the lienor need not possess the aircraft in order for the lien to attach, and the recent change to statute merely clarified existing law and was not a change.

Florida Real Property and Business Litigation Report
Volume XV, Issue 18
April 30, 2022
Manuel Farach

Petro Welt Trading Ges.m.b.H v. Brinkmann, Case No. 2D20-3570 (Fla. 2d DCA 2022).

The Florida Supreme Court's reception adoption of the Apex Doctrine is not grounds for issuance of a writ of certiorari on a discovery decision as parties are free to reargue the issue back in the trial court.

Addit, LLC v. Hengesbach, Case Nos. 2D21-673, 2D21-674 (Fla. 2d DCA 2022).

An arbitration provision which is procedurally unconscionable and substantively unconscionable in some regards is still enforceable if the substantively unconscionable portions are severed pursuant to the agreement's severance clause.

Ross-Williams v. Leali, Case No. 3D21-2259 (Fla. 2d DCA 2022).

A receiver appointed pursuant to Florida Statute sections 56.10 and 56.29 to collect a judgment cannot broaden her authority into a plenary receivership over the judgment debtor.

Florida Real Property and Business Litigation Report
Volume XV, Issue 19
May 7, 2022
Manuel Farach

United States Pipe and Foundry Company, LLC v. Holland (In Re: United States Pipe & Foundry Co.), Case No. 20-13832 (11th Cir. 2022).

Under, 11 U.S.C. § 1141(d)(1), (1)(A), a plan of reorganization discharges a debtor from all claims “that arose before” the “order confirming the plan” less the plan itself excludes those claims so obligations fixed before the bankruptcy court confirmed the plan of reorganization, i.e., to provide health-care benefits are discharged by the plan.

SA Palm Beach, LLC v. Certain Underwriters at Lloyd’s London, Underwriters At Lloyds of London Known As Syndicates CNP 4444, Case No. 20-14812 (11th Cir. 2022).

Sitting “in effect, . . . as a state court[.]” under *Comm’r v. Estate of Bosch*, 387 U.S. 456, 465 (1967), the Eleventh Circuit follows the majority view and holds under Florida law there is no coverage under all-risk insurance policies for governmental closures arising as a result of COVID-19 because COVID-19 did not cause a tangible, physical alteration of the insured properties.

Wootton v. Iron Acquisitions, LLC, Case No. 2D21-2229 (Fla. 2d DCA 2022).

A landlord seeking to claim on a security deposit must strictly comply with Florida Statute section 83.49.

Sands v. Anti-Money Laundering & Financial Crimes Institute, LLC, Case No. 3D21-1852 (Fla. 3d DCA 2022).

A trial court must conduct an evidentiary hearing to determine the amount of the bond to impose a restrictive covenant.

Johansson v. Miami-Dade County Value Adjustment Board, Case No. 3D21-2170 (Fla. 3d DCA 2022).

A Value Adjustment Board has quasi-judicial immunity and may not be sued for its decisions; the proper party to any such suit is a claim against the property appraiser under Florida Statute section 194.171.

Colombo v. Robertson, Anschutz & Schneid, P.L., Case No. 4D20-1719 (Fla. 4th DCA 2022).

The Fourth District follows *U.S. Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust v. Leigh*, 293 So. 3d 515 (Fla. 5th DCA 2019), and holds that the following language allows recovery of attorney's fees incurred by the lender in a previous suit, even if the lender was not successful in the prior suit:

19. Borrower’s Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued . . . Those conditions are that Borrower:
(a) pays Lender all sums which then would be due under this Security

Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) *pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument . . .*

Florida Real Property and Business Litigation Report
Volume XV, Issue 20
May 14, 2022
Manuel Farach

Ford Motor Credit Company, LLC v. Parks, Case No. 1D21-1130 (Fla. 1st DCA 2022). It is the responsibility of litigants to provide legible copies of legal instruments to the trial court, but the appellate court may substitute its opinion as to what a difficult to read instrument says if the words are discernable.

Lee County Clerk of Court v. Gavidia, Case No. 2D21-35 (Fla. 2d DCA 2022). A Clerk of Court cannot be ordered to return a statutory registry deposit fee required under Florida Statute section 28.24, even if the foreclosure sale which created the deposit is canceled and the deposit is returned.

Davis v. Mishiyev, Case No. 2D21-1726 (Fla. 2d DCA 2022). The Second District re-affirms its holding that a party in a SLAPP suit under Florida Statute section 768.295 is entitled to certiorari review of an order on motion to dismiss the suit; conflict certified with *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 559-61 (Fla. 4th DCA 2019), on the issue of irreparable harm for certiorari purposes.

Commodore, Inc. v. Certain Underwriters at Lloyd's London, Case No. 3D21-0671 (Fla. 3d DCA 2022). An all-risk insurance policy does not cover COVID-19 related claims when the policy requires "direct physical loss" and COVID-19 did not create a tangible alteration to the insured property.

Amersham Enterprises, Inc. v. Hakim-Daccach, Case No. 3D21-1036 (Fla. 3d DCA 2022). A court may deny a party's request for court relief until the requesting party has purged itself of a contempt order, and accordingly, a court may deny a request to compel arbitration until an outstanding contempt order has been purged.

Wolfe v. 224 Via Marila, LLC, Case No. 4D21-1312 (Fla. 4th DCA 2022). Whether not re-supplying a title commitment and whether supplying a title commitment in electronic format are questions for a jury to determine whether a party has substantially performed the contract.

Richman v. Calzaretta, Case No. 5D21-1307 (Fla. 5th DCA 2022). Florida Statute section 607.1604(1) (attorney's fees authorized for a shareholder obtaining corporate records) does not authorize an award of fees incurred during garnishment proceedings.

Florida Real Property and Business Litigation Report
Volume XV, Issue 21
May 21, 2022
Manuel Farach

Ortuzar v. Foley, Case No. 2D21-1262 (Fla. 2d DCA 2022).

Florida Statute section 83.48 awards attorney's fees to a prevailing party in a "judgment or decree" so a defendant is not entitled to attorney's fees when a plaintiff voluntarily dismisses a suit without a judgment or decree being entered.

Llanso v. SHEDDF2-FL3, LLC, Case No. 3D21-783 (Fla. 3d DCA 2022).

A written credit agreement does not ensue if a borrower fails to comply with the conditions precedent for forming the agreement, and any oral agreements are barred by the Banker's Statute of Frauds under Florida Statute section 687.0304.

Wilmington Trust, N.A. v. Serpa, Case No. 3D21-1835 (Fla. 3d DCA 2022).

Florida Statute section 201.08(1)(b) precludes the enforcement of a mortgage, trust deed, or other instrument where documentary stamp taxes have not been paid and upon proof of failure to pay, a trial court should abate the action or dismiss without prejudice to allow the lender to pay the outstanding tax.

Nazarova v. Nayfeld, Case No. 3D21-1940 (Fla. 3d DCA 2022).

An attorney's fees provision in a lease entitling a party to fees "to enforce the Lease" is a broad-enough fees provision to allow for "fees for fees," i.e., litigation the amount of attorney's fees.

A. Alexis Varela, Inc. v. Pagio, Case No. 5D21-2077 (Fla. 5th DCA 2022).

The requirement that contractor's final affidavit under Florida Statute section 713.06(3)(d) be delivered at least five days before filing suit requires that, when counting, either the beginning date or the terminal date be excluded.

Florida Real Property and Business Litigation Report
Volume XV, Issue 22
May 28, 2022
Manuel Farach

Morgan v. Sundance, Inc., Case No. 21–328 (2022).

Federal courts interpreting the Federal Arbitration Act cannot add additional conditions to the Federal Arbitration Act, and accordingly, may not require a showing of prejudice to establish a party waived its right to arbitrate.

Laboratory Corporation of America v. Davis, Case No. SC19-1923 (Fla. 2022).

The Workers' Compensation Act does not eliminate the right of parties to sue medical providers under the Act for violation of the Florida Consumer Collection Practices Act.

Shim v. Buechel, Case No. SC21-249 (Fla. 2022).

A trial court may order a defendant over whom it has in *personam* jurisdiction in proceedings supplementary under Florida Statute section 56.29 to act on foreign property pursuant to the section 56.29(6).

In Re: Amendments to Florida Rule of Civil Procedure 1.442, Case No. SC21-277 (Fla. 2022).

Florida Rule of Civil Procedure 1.442 is amended to exclude conditions regarding nonmonetary terms other than voluntary dismissal of all claims with prejudice or any other nonmonetary terms permitted by statute.

Koung v. Giordano, Case No. 1D20-724 (Fla. 1st DCA 2022).

A pre-existing statutory obligation is not a *per se* condition of a settlement agreement and failure to comply with the statutory obligation does not vitiate the settlement agreement.

Mongelli v. Florida Health Sciences Center, Inc., Case No. 2D21-3577 (Fla. 2d DCA 2022).

A trial judge's referral of a party's counsel to the local professionalism panel for assistance in anger management and counseling in professionalism does not create a "well-founded fear" in the party represented by counsel they would not receive a fair and impartial trial.

Lecorps v. Star Lakes Association, Inc., Case No. 3D21-2195 (Fla. 3d DCA 2022).

The board of directors of a seventeen-building consolidated condominium association may order a special assessment against all unit owners for the reconstruction of one building destroyed by fire and is not required to limit the assessment to the unit owners of the destroyed building.

District Advisory Board of The Southern Florida District, Church of The Nazarene, Inc. v. Centro de Alabanza Oasis West Palm Beach, Inc., Case No. 4D21-756 (Fla. 4th DCA 2022).

The Ecclesiastical Doctrine prevents a court from intervening in the internal church decisions of a hierarchical church, including questions regarding real estate.

Massage Envy Franchising, LLC v. Doe, Case No. 5D20-1794 (Fla. 5th DCA 2022).
An agreement to arbitrate disputes is enforceable even if the arbitration provision is contained in electronic intake forms with which the user agreed through "clickwrap."

Florida Real Property and Business Litigation Report
Volume XV, Issue 23
June 4, 2022
Manuel Farach

U.S. Bank National Association v. Martinez, Case No. 2D21-1351 (Fla. 2d DCA 2022).
A court should enter a final judgment at the end of trial instead of granting a motion for involuntary dismissal.

O'Boyle v. Town of Gulf Stream, Case No. 4D21-972 (Fla. 4th DCA 2022).
Florida Statute section 119.12 (attorney's fees for government refusing to produce or copy a public record) does not provide for an award of "fees for fees" and does not permit an award of fees for associates of the testifying expert who did not testify.

Inlet Colony, LLC v. Martindale, Case No. 4D21-2330 (Fla. 4th DCA 2022).
The time under Florida Statute section 48.23(1)(b)(2) for an expired, withdrawn, or discharged lis pendens to no longer be a lien on the property includes the time for any filed appeal to be resolved.

Florida Real Property and Business Litigation Report
Volume XV, Issue 24
June 11, 2022
Manuel Farach

Siegel v. Fitzgerald, Case No. 21–441 (2022).

Congressional enactment of different bankruptcy fee structures for different states violates the uniformity requirement of the Constitution.

Doral Collision Center, Inc. v. Daimler Trust, Case No. 3D21-1385 (Fla. 3d DCA 2022).

The requirements of Florida Statute section 713.585 (enforcement of mechanic's lien by sale of motor vehicle) are mandatory and failure to strictly comply with the statute voids a lien claimed under the statute.

100 Emerald Beach Way LC v. Thornton, Case Nos. 4D20-2792 and 4D21-508 (Fla. 4th DCA 2022).

The Fourth District follows its prior precedent and holds that Florida Rule of Appellate Procedure 9.130(a)(3) authorizes review of pre-judgment contempt orders; conflict certified with the opinions of the First, Second, Third, and Fifth Districts which hold review of such orders is by certiorari.

Lloyd S. Meisels, P.A. v. Dobrofsky, Case No. 4D21-2397 (Fla. 4th DCA 2022).

A trial court does not abuse its discretion by treating the facts in a moving party's motion for summary judgment as undisputed when the non-moving party fails to comply with Florida Rule of Civil Procedure 1.510.

Florida Real Property and Business Litigation Report
Volume XV, Issue 25
June 18, 2022
Manuel Farach

ZF Automotive US, Inc. v. Luxshare, Ltd., Case No. 21–401 (2022).

Only a governmental or intergovernmental adjudicative body (i.e., not an arbitral body) constitutes a “foreign or international tribunal” under 28 U. S. C. §1782 such that a district court may order the production of evidence “for use in a proceeding in a foreign or international tribunal.”

Phillips v. Lyons Heritage Tampa, LLC, Case No. 2D21-816 (Fla. 2d DCA 2022).

Civil rights claims arising under 42 U.S.C. §1983 are generally subject to arbitration under a broad arbitration provision; those claims that cannot be arbitrated (e.g., attorney’s fees) can be severed.

DecisionHR USA, Inc. v. Mills, Case No. 2D21-3468 (Fla. 2d DCA 2022).

An officer of a business entity whose Motion for Protective Order under Florida Rule of Civil Procedure 1.280(h) who establishes their position as a senior officer without personal knowledge of the issues in the case is entitled to certiorari relief.

International Village Association, Inc. v. Weiss, Case No. 4D21-537 (Fla. 4th DCA 2022).

A party is entitled to a limited award of “fees for fees” for re-establishing entitlement when the issue of entitlement was previously determined but the opposing party continues to contest entitlement.

Florida Real Property and Business Litigation Report
Volume XV, Issue 26
June 25, 2022
Manuel Farach

Brucker v. City of Doraville, Case No. 21-10122 (11th Cir. 2022).

It is not un-Constitutional for a municipality to base its annual budget on the collection of code enforcement and traffic fines.

Tallo v. Illes, Case No. 3D21-1206 (Fla. 3d DCA 2022).

A proper predicate must be laid before a non-party is compelled to turn over personal financial information, even if the request to produce is post-judgment and the requested party is the spouse of the judgment debtor.

City of Miami v. Cruz, Case No. 3D21-2424 (Fla. 3d DCA 2022).

A municipality waives sovereign immunity for breaches arising out of express contracts it entered, including settlement agreements.

Karisma Hotels & Resorts Corporation Ltd. v. Hoffmann, Case No. 4D22-729 (Fla. 4th DCA 2022).

A party seeking a protective order under the Apex Doctrine of Florida Rule of Civil Procedure 1.280(h) must file an affidavit that explains that the officer “lacks unique, personal knowledge of the issues being litigated.”

Lexington Place Condominium Association, Inc. v. Flint, Case No. 5D21-2644 (Fla. 5th DCA 2022).

Eliminating an existing dog park and a wallyball court constitute material alterations to the common elements for which Florida Statute section 718.113(2)(a) requires member approval, even if the Declaration of Condominium arguably allows alteration without member approval.

Florida Real Property and Business Litigation Report
Volume XV, Issue 27
July 2, 2022
Manuel Farach

Perlman v. PNC Bank, N.A., Case No. 21-10432 (11th Cir. 2022).

A receiver appointed under Florida Statute Section 501.207(3) of the Florida Deceptive and Unfair Trade Practices Act must still comply with *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1308 (11th Cir. 2020), and establish that it had “at least one innocent officer or director” in order to have standing as an “honest corporation.”

Rubinstein v. Yehuda, Case No. 20-11189 (11th Cir. 2022).

A R.I.C.O. claim arising from the sale of a hotel without paying investors contains enough substance that it is not “obviously without merit” and can thus be the basis for supplemental federal jurisdiction under 28 U.S.C. § 1367 even if the R.I.C.O. claim is dismissed.

Lamirand v. Fay Servicing, LLC, No. 20-14286 (11th Cir. 2022).

A periodic mortgage statement of money owed sent as required by the Truth in Lending Act can also double as a demand for payment under the Fair Debt Collection Practices Act (“F.D.C.P.A.”) and must, accordingly, be truthful and correct to avoid liability under the F.D.C.P.A.

Rockwell at Amelia Passage, LLC v. Williams, Case No. 1D21-2663 (Fla. 1st DCA 2022).

A force majeure clause does not extend the deadline for closing a real estate sale contract when the purported force majeure event, the pandemic, did not cause the Buyer’s failure to acquire permit approvals and the parties did not accommodate for the pandemic in their last contract extension even though the pandemic was well known at the time of the last contract extension.

Ivy Chase Apartment Property, LLC v. Ivy Chase Apartments, Ltd., Case No. 2D21-436 (Fla. 2d DCA 2022).

Witness testimony alone of business records is insufficient to constitute competent, substantial evidence unless the witness has personal knowledge of the information contained in the business records.

Joseph Spine, P.A. v. Andrew Moulton, M.D., Case No. 2D21-781 (Fla. 2d DCA 2022).

A party seeking an injunction under Florida Statute section 542.335 is entitled to a presumption of irreparable injury; evidence that the affected party did not suffer a decline in revenue is not sufficient evidence that there was no irreparable injury.

814 Property Holdings, LLC v. New Birth Baptist Church Cathedral of Faith International, Inc., Case No. 3D20-0233 (Fla. 3d DCA 2022).

A right of first offer for purchase of real property which dictates the price and is unlimited in duration constitutes an impermissible restraint on alienation and is void.

CFLB Management, LLC v. Mabipa Overseas, S.A., Case No. 3D20-1714 (Fla. 3d DCA 2022).

It is not error to include an interest award in a final judgment for money lent.

FlexFunds Holdings, LLC v. Rivero, Case No. 3D21-1315 (Fla. 3d DCA 2022).

A lawyer cannot defend both the company and its owners or board of directors in a suit where the opposing party has filed derivative claims alleging improper actions by the owners or board.

William Hamilton Arthur Architect, Inc. v. Schneider, Case No. 3D22-834 (Fla. 3d DCA 2022).

A trial court cannot order disclosure of attorney-client communications or broad discovery of electronic media of a party despite threatening communications by the party.

Florida Real Property and Business Litigation Report
Volume XV, Issue 28
July 9, 2022
Manuel Farach

Royal Palm Properties, LLC v. Pink Palm Properties, LLC, Case No. 21-10872 (11th Cir. 2022).

A finding that neither party was a prevailing party for purposes of Federal Rule of Civil Procedure 54 is permissible in some cases.

Nationstar Mortgage LLC v. DeSouza, Case No. 1D21-2288 (Fla. 1st DCA 2022).

A party who does not comply with the requirement to timely intervene in an action after publication of a lis pendens is not a proper party to a foreclosure, even if the party has an unrecorded deed that predated the foreclosure.

Bass Venture Corporation v. Devom, LLC, Case No. 2D20-2725 (Fla. 2d DCA 2022).

An award of lost profits requires evidence that expenses were applied to gross revenues.

Joy v. Oaks Club Corporation, Case No. 2D21-1159 (Fla. 2d DCA 2022).

A recorded declaration is a community association's "Constitution," and its terms and requirements cannot be revised by changing the community's by-laws.

Hudson Capital Properties IV, LLC v. Lecho, Case No. 2D21-4021 (Fla. 2d DCA 2022).

An out of state entity's act of procuring insurance for a Florida property in which it has an interest does not subject the entity to long-arm jurisdiction under Florida Statute section 48.193(1)(a)(4) as that provision applies to insurers who are defendants.

Corredor v. Nichols, Case No. 3D21-1296 (Fla. 3d DCA 2022).

An award of fees and costs incurred by a receiver's experts must be made in the name of the receiver and may not be made in the name of the non-party expert.

Maroone Chevrolet, LLC v. Alvarado, Case No. 4D21-485 (Fla. 4th DCA 2022).

Florida's Unfair and Deceptive Practices Act only awards actual - not consequential - damages and accordingly diminution in value is awardable but deposits, loan, and warranty payments are not awardable.

Beacon Park Phase II Homeowners Association, Inc. v. Eagle Vista Equities, LLC, Case No. 5D22-1077 (Fla. 5th DCA 2022).

Billing records of opposing counsel are relevant to the issue of reasonableness of time expended in a claim for attorney's fees, and their discovery falls within the discretion of the trial court when the fees are contested and there is no blanket-attorney client protection for billing records.

Florida Real Property and Business Litigation Report
Volume XV, Issue 29
July 16, 2022
Manuel Farach

Huggins v. Lueder, Larkin & Hunter, LLC, Case Nos. 20-12957, 12959, 12961, 14320, 14318, & 14319 (11th Cir. 2022).

Rule 11 sanctions motions can be filed after final judgment.

In Re: Amendments To Florida Rules of Civil Procedure, Florida Rules of General Practice and Judicial Administration, Florida Rules of Criminal Procedure, Florida Probate Rules, Florida Rules of Traffic Court, Florida Small Claims Rules, and Florida Rules of Appellate Procedure, Case No. SC21-990 (Fla. 2022).

Florida Rules of Practice are amended to further permit the use of communications technology during court proceedings, include jury trials.

Fiberoptics Technology, Inc. v. Sunoptic Technologies, LLC, Case No. 1D21-3820 (Fla. 1st DCA 2022).

A trial court faced with an objection to production based on trade secret must conduct a hearing and issue findings whether the information requested includes trade secrets, and if so, whether the party seeking production can show a reasonable necessity for the information, and must determine what safeguards should be put in place to protect the information.

814 Property Holdings, LLC v. New Birth Baptist Church Cathedral of Faith International, Inc., Case No. 3D20-0233 (Fla. 3d DCA 2022).

The Third District *sua sponte* clarifies its prior opinion and holds that an option contract in a condominium declaration is a restraint on alienation and as such must be measured in terms of duration, type of alienation precluded, or the size of the class precluded from taking; an option contract which both a fixed price and an indefinite duration on the purchase option is unenforceable.

Karenza Apartments, LLP v. City of Miami, Case No. 3D21-384 (Fla. 3d DCA 2022).

The owner of an apartment building that rents its outside for the placement of advertising mural may have a claim under the Bert J. Harris Act.

Lawrence v. Marina Tower of Turnberry Isle Condominium Association, Inc., Case No. 3D21-1337 (Fla. 3d DCA 2022).

A purchaser at a foreclosure sale is a “quasi-party” entitled to participate in the proceedings and to be awarded Florida Statute section 57.105 sanctions.

The Avel Law Firm, PLLC v. Sechrist, Case No. 3D21-1985 (Fla. 3d DCA 2022).

An order denying a motion to quash impleader of a third party under Florida Statute section 56.29 is a non-final order that is appealable as a non-final appeal under Florida

Rule of Appellate Procedure 9.130(a)(3)(C)(i), but is not reviewable under Florida Rule of Civil Procedure 1.540.

Citizens For Responsible Development, Inc. v. The City of Dania Beach, Case No. 4D21-1306 (Fla. 4th DCA 2022).

An objection to the process used to approve a development order (not just zoning approvals) is subject to the requirement of demonstrating special damages under *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972) (objecting party must show that it was damaged differently than other citizens).

Southam v. Red Wing Shoe Company, Inc., Case No. 4D21-3338 (Fla. 4th DCA 2022).

A claimant under Fair and Accurate Credit Transactions Act must comply with the requirements of *Transunion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021), and demonstrate “economic” or “distinct or palpable” injury.

Florida Real Property and Business Litigation Report
Volume XV, Issue 30
July 23, 2022
Manuel Farach

Auriga Polymers Inc. v. PMCM2, LLC, Case No. 20-14647 (11th Cir. 2022).

Amounts paid post-petition that qualify as an administrative expense claim under Bankruptcy Code § 503(b)(9) (paid within twenty days of bankruptcy petition) also count toward a “new value” defense under Code § 547(c)(4).

U.S. Bank National Association v. Qadir, Case No. 1D21-1878 (Fla. 1st DCA 2022).

A party defending on the basis of unclean hands must produce substantial, competent evidence that there was condemnable conduct, reliance on the conduct, that the conduct was related to the litigation, and that injury resulted from the conduct.

City of Miami Gardens v. City of North Miami Beach, Case No. 3D21-865 (Fla. 3d DCA 2022).

Florida Statute section 180.191(1)(a) permits a municipality that operates a water plant to impose a 25% surcharge on water distributed to customers who are outside the municipality’s boundaries.

Navarro v. Varela, Case No. 3D21-1791 (Fla. 3d DCA 2022).

The claims raised in an arbitration must have a sufficient nexus to the contract from which the arbitration arose.

Malek v. Malek, Case No. 3D21-2451 (Fla. 3d DCA 2022).

An agreement requiring arbitration between a corporation and one of its shareholders is not implicated when a divorcing husband and wife are contesting who owns the corporation.

Mich Auto Sales Inc. v. 14004 NW 19th Avenue, LLC, Case No. 3D22-0954 (Fla. 3d DCA 2022)

A trial court has no jurisdiction to amend an eviction final judgment after the rehearing period has ended.

Perera v. Genovese, Case Nos. 4D21-2060 & 4D21-2755 (Fla. 4th DCA 2022).

A court that finds an arbitrator exceeded their powers in the arbitration award has the discretion to vacate the entire award or only the part where the arbitrator exceeded their powers.

Massey v. Thomas, Case No. 4D21-2125 (Fla. 4th DCA 2022).

Florida Supreme Court Administrative Order AOSC20-23 does not override a trial court’s obligations to comply *with Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1993) (establishes the process which a trial court must follow to dismiss a case as a sanction for failure to adhere to a deadline).

Florida Real Property and Business Litigation Report
Volume XV, Issue 31
July 30, 2022
Manuel Farach

Whitten v. Clarke, Case No. 20-14352 (11th Cir. 2022).

A party that files a derivative suit under Delaware corporate law must either make a demand on the board of directors to rectify the alleged wrongs or show why demand is excused, and if so, must adequately plead why demand is excused.

Deutsche Bank National Trust Company v. Russell, Case No. 1D21-1552 (Fla. 1st DCA 2022).

A foreclosing lender may prove standing through a Pooling Service Agreement, and minor failures to comply under the Agreement do not impact standing.

Columbus Apartments, LLC v. MJM Structural Corp., Case No. 3D21-1999 (Fla. 3d DCA 2022).

Florida Rule of Civil Procedure 1.540 is a basis for vacating a foreclosure sale when contesting the underlying foreclosure judgment but is not a basis, by itself, for vacating a foreclosure sale.

Sternberg v. RP & NP Corp., Case No. 3D21-2045 (Fla. 3d DCA 2022).

The following language in a residential lease provides a right of first refusal during the “Option Term” only: “In addition, during the Option Term only (if exercised), Landlord shall have the right to list the Unit for sale, subject to a right to first refusal in favor of Tenant to match any offer made in connection therewith.”

Bimini Properties, Inc. v. Puff or Sip Hookah Lounge & Liquor Store, LLC, Case Nos. 3D21-2350 & 3D21-2426 (Fla. 3d DCA 2022).

A trial court may not stay a writ of possession after a tenant’s failure to pay the determined rent into the registry of the court under Florida Statute section 83.232(5).

Renda v. Price, Case No. 4D21-534 (Fla. 4th DCA 2022).

An equitable lien may be placed against homestead property that has been purchased with funds obtained by fraud, and the lien may be foreclosed.

Florida Real Property and Business Litigation Report
Volume XV, Issue 32
August 6, 2022
Manuel Farach

Kim v. Galasso, Case No. 2D20-3313 (Fla. 2d DCA 2022).

Trees are generally considered part of the realty and not personalty; any contract taking planted trees out of the general rule must satisfy the statute of frauds and furthermore must clearly show an intent the trees be personal property.

Perez v. The Estate of Ofelia Reitman, Case No. 3D21-1104 (Fla. 3d DCA 2022).

A trial court is required by Florida Statute section 45.032(3)(b) to set an evidentiary hearing to determine entitlement to surplus foreclosure sale proceeds if - prior to the date the clerk reports the surplus as unclaimed - any person other than the owner of record claims an interest in the proceeds or the owner of record files a claim for the surplus but acknowledges there are others that may be entitled.

RKHub Logistics LLC v. Eastern Auto Motor Corp., Case No. 4D21-2665 (Fla. 4th DCA 2022).

Florida Rule of Civil Procedure 1.510 sets a mandatory requirement that a trial court state on the record the reasons it granted or denied a motion for summary judgment.

Florida Real Property and Business Litigation Report
Volume XV, Issue 33
August 13, 2022
Manuel Farach

AFC Franchising, LLC v. Purugganan, Case No. 20-13849 (11th Cir. 2022).

A “floating forum selection clause, i.e., one that is enforceable at a mutable location, is enforceable.

Victor Elias Photography, LLC v. Ice Portal, Inc., Case No. 21–11892 (11th Cir. 2022).

Copyright protection information which is embedded in a photograph’s metadata is not readily apparent without several clicks, and accordingly, cannot form the basis for claims of copyright infringement.

Holland M. Ware Charitable Foundation v. Tamez Pine Straw LLC, Case No. 1D22-4 (Fla. 1st DCA 2022).

A verified Motion for Temporary Injunction is insufficient to grant a temporary injunction if an evidentiary hearing has been scheduled.

Vericker v. Powell, Case No. 3D22-645 (Fla. 3d DCA 2022).

The Third District aligns with the Fourth District and holds that interlocutory review is not available to review non-final orders arising from SLAPP suits; conflict certified with decisions from the Second District.

Florida Real Property and Business Litigation Report
Volume XV, Issue 34
August 20, 2022
Manuel Farach

Annesser v. Innovative Service Technology Management Services Inc., Case No. 3D19-2429 (Fla. 3d DCA 2022).

The dropping of a party upon a complaint being amended is the same as dropping a party without prejudice and is not a basis for an award of attorney's fees under a proposal for settlement.

Maxwell v. Mark W. Edwards, D.M.E., Case No. 4D21-951 (Fla. 4th DCA 2022).

A party that did not sign a settlement agreement cannot be bound by its terms.

Shakhova v. Pugachov, Case No. 4D21-1253 (Fla. 4th DCA 2022).

A party seeking to enforce a foreign judgment is required by Florida Statute section 55.604(1) to record an affidavit at the time of filing the judgment, but compliance can be excused if the judgment debtor is aware of the pendency of the judgment being recorded.

Physicians Care Centers of Florida, LLC v. PNC Bank, National Association, Case No. 4D21-3228 (Fla. 4th DCA 2022).

An assignment of a judgment debtor's assets that is still conditional and not fully effective does not defeat a writ of garnishment.

Florida Real Property and Business Litigation Report
Volume XV, Issue 35
August 27, 2022
Manuel Farach

Sailboat Bend Sober Living, LLC v. Fort Lauderdale, Florida, Case No. 20-13444 (11th Cir. 2022).

The application of non-discriminatory zoning and building ordinances to “sober homes” is not a violation of the Fair Housing Act, 42 U.S.C. § 3604, and the Americans with Disabilities Act, 42 U.S.C. § 12132.

Mintz Truppman, P.A. v. Cozen O’Connor, PLC, Case No. SC20-1225 (Fla. 2022).

A writ of prohibition is only appropriate to prohibit future actions, and cannot be used as an “end-around” around the limited number appealable non-final orders set forth in Florida Rule of Appellate Procedure 9.130.

1944 Beach Boulevard, LLC v. Live Oak Banking Company, Case No. SC21-1717 (Fla. 2022).

Failure to correctly state a debtor’s name invalidates a filed UCC-1 financing statement; there being no “safe harbor” under Florida Statute 679.5061(3) as the result of the Florida Secured Transaction Registry not employing a statutorily required “standard search logic.”

In Re: Amendments to Florida Rules of Civil Procedure 1.530 And 1.535, Case No. SC22-115 (Fla. 2022).

Florida Rule of Civil Procedure 1.530 is amended to state the deadline to file a Motion for New Trial or Rehearing runs “15 days after the date of filing of the judgment,” and the text of Florida Rule of Civil Procedure 1.535 is moved to Rule 1.530 as new subdivision (h) while Rule 1.535 is deleted.

Florida Real Property and Business Litigation Report
Volume XV, Issue 36
September 3, 2022
Manuel Farach

Spring Valley Produce, Inc. v. Forrest (In Re: Forrest), Case No. 21-12133 (11th Cir. 2022).

The Eleventh Circuit holds a debtor is acting in a “fiduciary capacity” under 11 U.S.C. § 523(a)(4) only when there is a “trustee” who holds an identifiable trust res for the benefit of an identifiable beneficiary or beneficiaries, there are sufficient trust-like duties imposed on the trustee with respect to the trust res and beneficiaries sufficient to create a “technical” trust, and the debtor acted in a fiduciary capacity before the act of fraud or defalcation creating the debt.

Arrington v. Burger King Worldwide, Inc., Case No. 20-13561 (11th Cir. 2022).

An agreement between different restaurant franchisees to not hire each other’s employees is “concerted action” under the Sherman Antitrust Act and violates Section 1 of the Act.

CFLB Partnership, LLC v. Diamond Blue International, Inc., Case Nos. Nos. 3D21-1335 & 3D21-1639 (Fla. 3d DCA 2022).

A claim for unjust enrichment requires that a direct benefit be given to a party, and money given to a defendant entity which then loans the money to a different third entity is an indirect benefit incapable of sustaining a claim for unjust enrichment.

Metnick v. Right of the Dot, LLC, Case No. 3D22-156 (Fla. 3d DCA 2022).

Florida Statute section 49.011 does not permit service by publication of lawsuits seeking money damages.

Florida Real Property and Business Litigation Report
Volume XV, Issue 37
September 10, 2022
Manuel Farach

Hunstein v. Preferred Collection and Management Services, Inc., Case No. 19-14434 (11th Cir. 2022) (en banc).

A plaintiff claiming harm from a statutory violation has to demonstrate the harm is “real” and concrete in order satisfy Article III standing requirements, and it is acceptable to compare the statutory harm to a common-law tort to determine whether the harm is real and concrete. Under this analysis, a creditor sending financial information to a third-party vendor is analogous to the tort of public disclosure, but such claim fails because the information was not disclosed to the public.

In Re: Amendments To The Florida Evidence Code, Case No. SC22-1040 (Fla 2022). The Florida Supreme Court adopts Florida Statute section 90.2035 (judicial notice may be taken of information from web mapping services, global satellite imaging sites, or Internet mapping tools) to the extent it is procedural.

GCTC Holdings, LLC v. Tag QSR, LLC, Case No. 2D21-3457 (Fla. 2d DCA 2022).

A trial judge deciding a landlord-tenant case who is presented with an objection to defendant’s request for production of landlord’s rent roll for other tenants must conduct an *in camera* review of the discovery to see if it contains trade secrets, and must issue findings of fact on their decision.

Mikhaylov v. Bilzin Sumberg Baena Price & Axelrod LLP, Case No. 3D20-1627 (Fla. 3d DCA 2022).

The bankruptcy of a real estate project is not “underlying litigation” that must be resolved before a cause of action for transactional malpractice accrues.

Belvant v. Cohen, Case No. 3D21-862 (Fla. 3d DCA 2022).

A party seeking a fee award under Florida Statute section 78.20 (replevin) must prevail on the underlying replevin action and not just on vacating the writ of replevin; conflict certified with First District Court of Appeal.

Eclectic Synergy, LLC v. Seredin, Case No. 4D21-1701 (Fla. 4th DCA 2022).

Proposing additional non-material terms to a contract does not constitute violation of a court order to negotiate in good faith and does not entitle a trial court to dismiss a party’s pleadings as a sanction.

Brevard County v. Waters Mark Development Enterprises, LC, Case No. 5D21-1809 (Fla. 5th DCA 2022).

A Bert J. Harris claim does not lie against a county when the inability to develop the property is also due to the failure of another governmental agency to issue a development permit.

Florida Real Property and Business Litigation Report
Volume XV, Issue 38
September 17, 2022
Manuel Farach

Levitan v. Dancaescu, Case No. 1D21-806 (Fla. 1st DCA 2022).

Unless fraud is specifically disclaimed, a general contractual waiver of claims does not waive fraud claims.

Echo River Sanctuary, LLC v. 21st Mortgage Corp., Case No. 1D21-1940 (Fla. 1st DCA 2022).

The First District holds on rehearing that a personal property lien on a mobile home which is not timely perfected (either as a matter of fact or as a matter of law) is extinguished by foreclosure of a real property mortgage of the land on which the home sits when the mobile home is affixed to the land and becomes a fixture.

Pops Family Entertainment Center, Ltd. v. Kelly, Case 2D21-17 (Fla. 2d DCA 2022).

The Doctrine of Merger is controlled by the intent of the parties, and under the contracts and circumstances of this case, no merger occurred of a lease and the fee simple estate when a tenant exercised its right of first refusal under the lease.

Santana Equestrian Private Financial, LLC v. Richtmyer, Case No. 4D21-3363 (Fla. 4th DCA 2022).

A merchant entrusted with goods who then, without the consent of the entruster, sells the goods to a third-party bona fide purchaser conveys good title to the goods under Florida Statute section 672.403 notwithstanding the merchant himself did not have good title to the goods.

Florida Real Property and Business Litigation Report
Volume XV, Issue 39
September 24, 2022
Manuel Farach

Feldman v. Schocket, Case No. 3D21-1509 (Fla. 3d DCA 2022).

Failure to comply with the fair disclosure requirement of Florida Statute section 732.702(2) (waiver of homestead rights after marriage requires a fair disclosure of the estate of the non-waiving party) nullifies the waiver.

Trombino v. Echeverria, Case No. 4D21-3525 (Fla. 4th DCA 2022).

The general rule that courts cannot place restrictions on disposition of real estate sale proceeds prior to the entry of judgment against a defendant is not changed by either Florida Statute section 69.031(1) (a court may order the personal property of an “estate in process of administration” to be placed with a “bank, trust company, or savings and loan association” for cause) or section 736.1001(2)(c) (a court may order a trustee, as a remedy for a breach of trust, to pay money or otherwise restore the assets of a trust).

Smith v. Carlton, Case Nos. 5D21-1383 and 5D21-2174 (Fla. 5th DCA 2022).

A party does not necessarily waive claims for breach of portions of a real estate sales contract by proceeding to closing; waiver is a fact-specific determination in each case.

Florida Real Property and Business Litigation Report
Volume XV, Issue 40
October 1, 2022
Manuel Farach

1944 Beach Boulevard, LLC v. Live Oak Banking Company (In Re: NRP Lease Holdings, LLC), Case No. 21-11742 (11th Cir. 2022).

A financing statements which lists the debtor as “1944 Beach Blvd., LLC” instead of its legal name of “1944 Beach Boulevard, LLC” is “seriously misleading” under Florida Statutes section 679.5061(2), and is not enforceable against a bankruptcy trustee.

JD Development I, LLC v. ICS Contractors, LLC, Case No. 2D21-2759 (Fla. 2d DCA 2022).

A jury cannot award a contractor breach of contract damages for work that was not part of the bid and construction contract.

Marlette v. Carullo, Case No. 2D22-547 (Fla. 2d DCA 2022).

In a case with intertwined legal and equitable claims, the case should first be tried to a jury on the legal claims with the equitable claims then tried by the court as the determinations of the first trial control determinations of the second trial and trying the equitable claims first would deprive the requesting party of their right to a jury trial.

Bedoyan v. Samra, Case No. 3D21-821 (Fla. 3d DCA 2022).

A partner who has disassociated under Florida’s Revised Uniform Partnership Act of 1995, Florida Statute section 620.8405, cannot recover for breach of fiduciary duty and simultaneously for breach of contract for the same conduct and, under Florida Statute section 620.8701(9), can only recover the statutory payout of his partnership claim against the partnership and not against individual partners.

Berengo v. Daley Law Firm PLLC, Case No. 3D22-1163 (Fla. 4th DCA 2022).

Florida Rule of Appellate Procedure 9.130 is construed in narrow fashion, and accordingly, an order adopting a receiver’s report determining disputed corporate ownership percentages is not subject to non-final appeal as it merely determines, i.e., does not award, ownership of property.

Florida Real Property and Business Litigation Report
Volume XV, Issue 41
October 8, 2022
Manuel Farach

Gulf Coast Transportation, Inc. v. Hillsborough County, Case Nos. 2D20-3326 and 2D20-3432 (Fla. 4th DCA 2022).

Despite the regulatory scheme describing taxicab “medallions” (certificates of public convenience and taxicab operating permits) as “private property” and the emergence of a secondary market for the sale and purchase of the medallions, taxicab companies have no Constitutional property rights in the medallions and elimination of the medallion regulation scheme does not constitute a taking without compensation under the Fifth Amendment.

Exclusive Motoring Worldwide, Inc. v. Soral Investments, Inc., Case No. 3D21-1833 (Fla. 3d DCA 2022).

Rental monies deposited in a court registry under Florida Statute section 83.232(1) can only be distributed to the landlord to avoid loss of the premises or other hardship as a result of not receiving the rent.

Griffin Windows and Doors, LLC v. Pomeroy, Case No. 3D22-1069 (Fla. 3d DCA 2022).

A winning party under a proposal for settlement is entitled to an attorney’s fees judgment in the trial court notwithstanding the underlying judgment is on appeal and may be reversed.

Florida Real Property and Business Litigation Report
Volume XV, Issue 42
October 15, 2022
Manuel Farach

Avant Design Group, Inc. v. Aquastar Holdings LLC, Case No. 3D21-53 (Fla. 3d DCA 2022).

A trial court must make specific factual finding of a construction lienor's honest, good-faith mistake as to amounts due in order for the lienor to be excused from a fraudulent lien claim under the rule set forth in *Vinci Development Co. v. Connell*, 509 So. 2d 1128, 1132 (Fla. 2d DCA 1987) ("A subsequent dispute between the parties as to the amount of compensation due according to the contract plan of compensation or even a dispute as to the method of compensation provided in the contract does not convert such a good faith dispute into a fraudulent lien as provided in section 713.31.").

Versace v. Uruven, LLC, Case No. 4D21-2311 (Fla. 4th DCA 2022).

A bank account titled in the name of "husband and wife" is conclusively held as tenants by entireties subject to attack only through other methods, e.g., fraudulent conveyance claims.

Hohns v. Thompson, Case No. 5D21-3143 (Fla. 5th DCA 2022).

Florida Statute sections 679.609 (after default, a secured party may take possession of the collateral without judicial process "if it proceeds without breach of the peace") and 679.610 (creditor may dispose of collateral it has retaken) empower secured creditors to take possession of collateral after a debtor's default without the necessity of filing suit, including a secured creditor transferring collateral such as stock certificates to itself.

Florida Real Property and Business Litigation Report
Volume XV, Issue 43
October 22, 2022
Manuel Farach

Suarez Trucking FI Corp. v. Souders, Case No. SC21-369 (Fla. 2022).

Acceptance of an offer under Florida Statute section 768.79 forms a contract, i.e., an enforceable settlement agreement.

Gate Venture, LLC v. Skinner, No. 1D21-3574 (Fla. 1st DCA 2022).

A change in the character of the surrounding neighborhood may permit the revision or elimination of recorded deed restrictions.

Logan v. Morgan, Lewis & Bockius LLP, Case No. 2D21-337 (Fla. 2d DCA 2022).

A law firm may be held liable for aiding and abetting a breach of fiduciary duty by its client if a plaintiff demonstrates a fiduciary duty on the part of a primary wrongdoer, a breach of that fiduciary duty, knowledge of the breach by the alleged aider and abettor, and the aider and abettor's substantial assistance or encouragement of the wrongdoing.

Springsted Holdings, Inc. v. Del Prado Mall Professional Condominium Association, Inc., Case No. 2D21-1875 (Fla. 2d DCA 2022).

Construction of a dumpster pad on parking spaces available to association members via easement violates the easement.

Rebolledo v. Chaffardet, Case No. 3D21-2272 (Fla. 3d DCA 2022).

Forum state jurisdiction for defamation claims arising from comments on the internet, *Walden v. Fiore*, 571 U.S. 277 (2014), directs that courts review the defendant's contact with the forum (not the defendant) and the foreseeability of the defendant's action to cause harm in the forum state.

Florida Real Property and Business Litigation Report
Volume XV, Issue 44
October 29, 2022
Manuel Farach

Balch v. The Bank Of New York Mellon, Case No. 2D21-566 (Fla. 2d DCA 2022).

A non-party to a case has no right to appeal the final judgment, accordingly, a purported tenant who was not named in a foreclosure action and failed to intervene has no standing to file an appeal.

West v. City First Mortgage Corp., Case No. 3D21-1221 (Fla. 3d DCA 2022).

A trial court does not abuse its discretion when it enters a summary judgment despite the pendency of a motion for leave to file counterclaim based on newly discovered evidence when the motion for leave was filed six minutes before the summary judgment hearing.

Kapitanov v. Spinnaker Bay at the Waterways Condominium Association, Inc., Case No. 3D22-0316 (Fla. 3d DCA 2022).

The Third District has historically affirmed dismissals with prejudice after three attempts to properly state a claim.

Suntech Plumbing and Mechanical Corp. v. Bella Isla, LLC, Case Nos. 3D22-1321 & 3D22-1322 (Fla. 3d DCA 2022).

A trial court does not abuse its discretion when, upon a motion to compel arbitration, it dismisses the case without prejudice instead of staying the case.

Florida Association of Realtors v. Orange County, Case No. 5D22-2277 (Fla. 5th DCA 2022).

A county seeking to impose a rent-control ordinance must comply with Florida Statute section 125.0103(2) and establish “that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.” Moreover, the statute provides that rent controls may not be imposed for longer than one year, and certain types of properties, like second homes, are completely exempted from rent controls.

Florida Real Property and Business Litigation Report
Volume XV, Issue 45
November 5, 2022
Manuel Farach

United States of America F.E.B. v. Corp., Case No. 20-14047 (11th Cir. 2022).

Wisteria Island, created by the dumping of spoil from the dredging of Key West harbor by the United States for military purposes, was “filled in, built up, or otherwise reclaimed by the United States for its own use,” and is owned by the United States and incapable of ownership by private parties.

Delasol v. Ojtiskova, Case No. 1D22-1532 (Fla. 1st DCA 2022).

An order or judgment, including those in administrative proceedings, which contains conditional language as to finality is not a final order capable of appeal.

Manso v. Southeast Personnel Leasing, Inc., Case No. 1D22-2700 (Fla. 1st DCA 2022).

Appellate court cannot grant a writ of certiorari on which issue for which there is no controlling precedent because the lack of precedent precludes one of requirements for certiorari, i.e., that the trial court order violates a clearly established principle of law.

Nicholas v. U.S. Bank National Association, Case No. 5D21-2885 (Fla. 5th DCA 2022).

Award of attorney’s fees after trial based solely on filed fees affidavits and without evidence at trial is reversible.

Florida Real Property and Business Litigation Report
Volume XV, Issue 46
November 12, 2022
Manuel Farach

In Re: Amendments To Florida Rules of Civil Procedure – Uniform Guidelines For Taxation of Costs, Case No. SC21-1581(Fla. 2022).

Clarification and update of Guidelines for Taxation of Costs to include, among other items, costs for depositions and arbitration proceedings.

Florida First Financial Services, LLC v. Randolph, Case No. 1D21-661 (Fla. 1st DCA 2022).

If both foreign law and Florida law can apply to a contract dispute, foreign law need not be specifically argued until it “is claimed to be dispositional.”

Welsh v. Martinez, Case No. 2D21-4019 (Fla. 2d DCA 2022).

Whether a foreign judgment is final and capable of domestication in Florida is determined by the foreign state’s rules of finality.

Metalonis v. Boies Schiller Flexner LLP, Case No. 3D21-2249 (Fla. 3d DCA 2022).

An arbitrator does not exceed their authority by ruling on issues put before the panel by both parties.

Ayala v. Interavia Spares And Services, Inc., Case No. 4D22-300 (Fla. 4th DCA 2022).

A defendant merely prevailing on a claim for civil theft is not sufficient for an award of attorney’s fees as the Florida Statute section 772.11 requires a defendant to demonstrate the legal theft claimed lacked “substantial fact or legal support.”

Florida Real Property and Business Litigation Report
Volume XV, Issue 47
November 19, 2022
Manuel Farach

In Re: Amendments to The Florida Rules of General Practice and Judicial Administration and The Code Of Judicial Conduct, Case No. SC22-1387 (Fla. 2022).
Judicial rules are amended to clarify the treatment of judicial papers when a judge or justice leaves the bench.

Whitson v. Advocate 3413, LLC, Case No. 2D21-609 (Fla. 2d DCA 2022).
Florida's Partition Act does not contain a prevailing party attorney's fees provision, but instead the statute directs that each party bear attorney's fees based on their percentage ownership of the property with the fees dependent on the services rendered by the attorney that benefit the partition "to be determined on equitable principles in proportion to the party's interest."

The Parkland Condominium Association, Inc. v. Henderson, Case No. 2D22-1279 (Fla. 2d DCA 2022).
Florida Rule of Civil Procedure 1.730(b) requires settlement agreements reached through mediation must be signed by the parties to the agreement and their counsel; failure of counsel to sign renders the agreement unenforceable.

EcoVirux, LLC v. BioPledge, LLC, Case No. 3D21-1801 (Fla. 3d DCA 2022).
The use of the word "exclusive" in a forum selection clause indicates a mandatory clause, and the phrase "suit may be brought [in the selected forum]" does not diminish the exclusivity of the clause.

Save Calusa, Inc. v. Miami-Dade County, Case No. 3D22-1296 (Fla. 3d DCA 2022).
An improperly noticed zoning hearing is not saved by virtue of the hearing being canceled and rescheduled.

Gateland Village Condominium, Inc. v. Holly, Case No. 4D21-2639 (Fla. 4th DCA 2022).
Florida Section 718.116(6) does not contain condition precedent to the filing of a foreclosure suit, but instead provides for written notice of intent to foreclose on a lien for unpaid assessments before a foreclosure judgment may be entered.

Florida Real Property and Business Litigation Report
Volume XV, Issue 48
November 26, 2022
Manuel Farach

Carus v. Cove at Isles at Bayshore Homeowners Association, Inc., Case No. 3D21-2035 (Fla. 3d DCA 2022).

Failure to follow the requirements of Florida Statute section 48.21 invalidates the return of service on its face.

McElroy v. Florida Power & Light Company, Case No. 4D22-1344 (Fla. 4th DCA 2022).

A request for a temporary injunction cannot stand alone and must be supported by a viable cause of action, but a request for a permanent injunction to be entered after the temporary injunction satisfies this requirement.

Florida Real Property and Business Litigation Report
Volume XV, Issue 49
December 3, 2022
Manuel Farach

MGFB Properties, Inc. v. Viacom Inc., Case No. 21-13458 (11th Cir. 2022).

The Eleventh Circuit reaffirms its adoption of the *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989), test for balancing trademark and First Amendment rights, and declines to adopt an exception for titles of artistic works.

Utah Power Systems, LLC v. Big Dog II, LLC, Case No. 1D20-3084 (Fla. 1st DCA 2022).

A landlord that does not exercise dominion and control over a third party's personalty left at the leased premises when the former tenant vacated the premises is not liable for conversion to the owner of the personalty.

Tuscan River Estate, LLC v. U.S. Bank Trust National Association, Case No. 1D22-0054 (Fla. 1st DCA 2022).

A foreign limited liability company LLC that is not transacting business or operating or conducting a business venture in the state can only be served under Florida Statute section 48.062.

Freeman v. Berrin, Case No. 2D21-1885 (Fla. 2d DCA 2022).

The dictates of the Florida Trust Code, Florida Statutes Chapter 736, cannot be applied to a land trust under the Florida Land Trust Act, Florida Statute section 689.01.

Conservancy Of Southwest Florida, Inc. Collier v. County, Case No. 2D21-2094 (Fla 2d DCA 2022).

Traffic impact and fiscal neutrality of a proposed real estate project relate to use, density, or intensity of use and are thus within the scope of Florida Statute Section 163.3215(3); conflict certified with *Imhof v. Walton County*, 328 So. 3d 32 (Fla. 1st DCA 2021).

Gulf Coast Commercial, LLC v. KOS Corp., Case No. 2D22-464 (Fla. 2d DCA 2022).

A trial court cannot alter the status quo by entering a temporary injunction that is in the nature of a final injunction on the claims in the complaint.

Florida Real Property and Business Litigation Report
Volume XV, Issue 50
December 10, 2022
Manuel Farach

Concert Plantation, LLC v. Dorso, Case Nos. 2D21-3895 and 2D22-17 (Fla. 2d DCA 2022).

In a class action seeking refunds of equity memberships in a golf club, the club's position that no members were entitled to a refund at the time of their resignation – regardless of their position on the waiting list – the issues of liability are common and predominate.

Management Properties, LLC v. Town of Redington Shores, Case No. 2D22-372 (Fla. 2d DCA 2022).

A municipal ordinance requiring owners of short-term vacation rental properties to inform renters of local laws and ordinances is constitutional but that portion requiring owners to inform the town of violations is compelled speech and violates the holding of *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 650 (1985).

Dziegielewski v. Scalero, Case No. 5D22-157 (Fla. 5th DCA 2022).

A seller cannot rely on matters disclosed in a contract, i.e., the number of parking spaces appurtenant to a condominium unit, when there were continued misrepresentations surrounding the matter.

Florida Real Property and Business Litigation Report
Volume XV, Issue 50
December 10, 2022
Manuel Farach

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Florida Real Property and Business Litigation Report
Volume XV, Issue 51
December 17, 2022
Manuel Farach

Henry v. Aim Industries, LLC, Case No. 2D22-330 (Fla. 2d DCA 2022).

While a transcript of a hearing to discharge lis pendens is not always necessary for appellate review, it is required when the order on the motion to discharge does not set forth detailed facts and the appellate argument to be reviewed concerns what occurred at the hearing.

Isaacs v. Federal National Mortgage Association, Case No. 3D20-0604 (Fla. 3d DCA 2022).

A non-owner spouse's abandonment of the homestead property does not waive the homestead requirement for spousal joinder to devise or alienate the homestead.

Pascal v. Broward Water Consultants, Inc., Case No. 3D21-727 (Fla. 3d DCA 2022).

Prior case law regarding summary judgment proceedings still applies to hearings conducted before the adoption of amendments to Florida Rule of Civil Procedure 1.510.

First Call 24/7, Inc. v. Rios, Case No. 3D22-648 (Fla. 3d DCA 2022).

A dismissal for failure to prosecute entered while the automatic stay under the Bankruptcy Code was in effect is void.

Yacht Assist, Inc. v. CRP LMC PROP Co., Case No. 4D22-523 (Fla. 4th DCA 2022).

A trial court commits error when it permits counsel to withdraw without staying the case to allow retention of new counsel, immediately conducts a case management conference, and dismisses the case of plaintiff whose counsel was permitted to withdraw.

Florida Real Property and Business Litigation Report
Volume XV, Issue 52
December 24, 2022
Manuel Farach

In Re: Certification of Need For Additional Judges, Case No. SC22-1621 (Fla. 2022). The Florida Supreme Court certifies no need for additional judges and certifies excess capacity in the First District Court of Appeal, the Second District Court of Appeal, and Brevard County Court, all excess capacity to be addressed through attrition and not through statutory reduction of judges in those courts.

Solomon v. Shands Teaching Hospital and Clinics, Inc., Case No. 121-2523 (Fla. 1st DCA 2022).

Shand Teaching Hospital, being controlled by an instrumentality of the State of Florida, i.e., the University of Florida system, is exempt from ad valorem taxation.

Commons v. Spracklen, Case No. 2D20-2081 (Fla. 2d DCA 2022).

A prima facie case for an attorney's charging lien is set forth by alleging a contract between the attorney and client, an understanding that payment will come from recovery, an attempt to avoid payment or a dispute over the amount of the fee, and timely notice; a co-counsel withholding a portion of joint settlement funds satisfies the third element of the claim.

lemma v. Heichberger, Case No. 4D21-3149 (Fla. 4th DCA 2022).

An affidavit alleging facts constituting equitable estoppel, i.e., that the lender and borrower agreed to not sue borrower on a defaulted promissory note, is sufficient to defeat a statute of limitations argument for summary judgment by the borrower.

Vessels v. Dr. Terrazzo of Florida, LLC, Case No. 5D22-879 (Fla. 4th DCA 2022).

On the job training must be "specialized" or "extraordinary" in order in order to qualify as a "legitimate business interest" capable of sustaining an employment restrictive covenant.

Florida Real Property and Business Litigation Report
Volume XV, Issue 53
December 31, 2022
Manuel Farach

Casto v. First Coast Cardiovascular Institute, P.A., Case No. 1D21-3506 (Fla. 1st DCA 2022).

A settlement agreement which reserves the right to attorney's fees controls over a proposal for settlement that may not be effective.

James v. Highland Lakes Owners Association, Inc., Case No. 1D22-0526 (Fla. 1st DCA 2022).

A trial court cannot use "equitable grounds" to award attorney's fees to a third-party purchaser in litigation arising from a contested foreclosure sale.