

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 1**  
**January 2, 2021**  
**Manuel Farach**

**Ham v. Portfolio Recovery Associates, LLC**, 308 So. 3d 942 (Fla. 2020).

An action for account stated is an action on a contract and the prevailing party in the action can claim attorney's fees under the prevailing party provisions of Florida Statute section 57.105(7).

**Page v. Deutsche Bank Trust Company Americas**, 308 So. 3d 953 (Fla. 2020).

A borrower who prevails in a foreclosure action in which the plaintiff bank establishes standing to enforce a note and mortgage at the time of trial (but not at the time of filing suit) is entitled to an award of attorney's fees under the prevailing party provisions of Florida Statute section 57.105(7).

**In Re: Amendments to Florida Rule of Civil Procedure 1.510**, 309 So. 3d 192 (Fla. 2020).

Florida Supreme Court gives notice that it intends to adopt the federal *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), standard for motions for summary judgment effective May 2, 2021.

**Riverside Heights Development, LLC v. City of Tampa**, 313 So. 3d 776 (Fla. 2d DCA 2020).

Upon rehearing, the Second District re-affirms that notice requirements for the disposal of real property under Florida Statutes section 163.380(3)(a) apply to any property acquired by local government, whether acquired before or after a community redevelopment agency was formed.

**Riviera-Fort Myers Master Association, Inc. v. GFH Investments, LLC**, Case No. 313 So. 3d 760 (Fla. 2d DCA 2020).

Changes to master association recorded covenants that apply equally across several associations under the master association are presumed reasonable notwithstanding that the master association controls and the changes impact both residential and commercial units in a mixed-use development.

**The Pantry, Inc. v. Mijax Manager, LLC**, 310 So. 3d 504 (Fla. 5th DCA 2020).

A recorded document provides constructive notice to support a restrictive covenant notwithstanding the instrument calls for an acknowledgement but instead provides an oath and affirmation.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 2**  
**January 9, 2021**  
**Manuel Farach**

**Black Knight Servicing Technologies, LLC v. PennyMac Loan Services, LLC**, 310 So. 3d 1116 (Fla. 1st DCA 2021).

The filing of a separate lawsuit raising separate claims against a separate entity does not establish an evidentiary basis of a party's intent to relinquish the right to arbitration.

**Money v. Home Performance Alliance, Inc.**, 313 So. 3d 783 (Fla. 2d DCA 2021).

The Florida Deceptive and Unfair Trade Practices Act, Florida Statute sections 501.201-.213, require a judgment in favor of the party complaining of the violation notwithstanding that the complaining party reached a favorable settlement under Florida Statute Section 768.79 and Florida Rule of Civil Procedure 1.442; *Mady v. DaimlerChrysler Corp.*, 59 So. 3d 1129, 1133 (Fla. 2011), is distinguished.

**Gleman v. MWH Americas, Inc.**, 309 So. 3d 681 (Fla. 4th DCA 2021).

A Motion to Dismiss for Fraud on the Court due to inconsistent statements in an earlier suit bears a higher burden than a Motion to Strike Sham Pleading, and the fraud must be demonstrated through a "clear showing of fraud, pretense, collusion, or similar wrongdoing."

**Nunes v. Herschman**, 310 So. 3d 79 (Fla. 4th DCA 2021).

A deposition is not a "judicial proceeding" under Florida Statute section 92.57, ("[a] person who testifies in a judicial proceeding in response to a subpoena may not be dismissed from employment because of the nature of the person's testimony . . .") and thus an employee may be dismissed for testimony arising out of the deposition.

**Oakmont Custom Homes, LLC v. Billings**, 310 So. 3d 59 (Fla. 4th DCA 2021).

The transfer of home warranties as part of a sales transaction by a seller to a purchaser does not equal agreement by the purchaser to the arbitration provision contained in the home warranty.

**Jacocks v. Capital Commercial Real Estate Group**, 310 So. 3d 71 (Fla. 4th DCA 2021).

A third-party beneficiary who does not sign a contract which contains an arbitration agreement may be bound to the arbitration agreement but only if he is suing to enforce the contract which contains the arbitration agreement.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 3**  
**January 16, 2021**  
**Manuel Farach**

**City of Chicago v. Fulton**, 141 S.Ct. 585 (2021).

The mere retention of estate property after the filing of a bankruptcy petition does not violate the automatic stay under 11 U.S.C. §362(a)(3) of the Bankruptcy Code.

**United States of America ex rel Bibby v. Mortgage Investors Corporation**, 987 F.3d 1340 (11th Cir. 2021).

The False Claims Act, 31 U.S.C. § 3729(a)(1)(A)–(B), does not impart standing Article III to claimants seeking avoidance of fraudulent claims.

**R.J. Reynolds Tobacco Company v. Bessent-Dixon**, 313 So. 3d 173 (Fla. 1st DCA 2021).

A claimant seeking to prove the intentional tort of conspiracy to fraudulently conceal information must prove she relied to her detriment on a false statement by the defendant.

**Ramos v. Mississippi Real Estate Dispositions, LLC**, 314 So. 3d 643 (Fla. 3d DCA 2021).

Despite the equitable powers granted to judgment creditors by Florida Statute section 56.29(6), a judgment creditor executing a judgment on a judgment debtor's interest in a multi-member limited liability is constrained by Florida Statute section 605.0503 and may only levy a charging lien.

**National Medical Imaging, LLC v. Lyon Financial Services, Inc.**, Case No. 3D20-730 (Fla. 3d DCA 2021) (en banc).

The Third District recedes from *Shop in the Grove, Ltd. v. Union Federal Savings & Loan Ass'n of Miami*, 425 So. 2d 1138 (Fla. 3d DCA 1982), and holds that the automatic stay under 11 U.S.C. 362 applies even when the bankruptcy debtor is the appellant.

**Amezcuca v. Cortez**, 314 So. 3d 666 (Fla. 3d DCA 2021).

Florida recognizes international foreign judgments pursuant to Florida Statute section 55.064 while general principles of comity allow for the discretionary enforcement of certain interlocutory rulings.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 4**  
**January 23, 2021**  
**Manuel Farach**

**Citizens Property Insurance Corporation v. Manor House, LLC**, 313 So. 3d 579 (Fla. 2021).

Consequential damages such as lost rent are typically not covered by insurance policies and are reached through a bad faith action under Florida Statute section 624.155.

**In Re: Amendments to The Florida Rules of Judicial Administration—2020 Regular-Cycle Report**, 310 So. 3d 374 (Fla. 2021).

Substantial changes to the Florida Rules of Judicial Administration, including renaming the body of rules to “Florida Rules of General Practice and Judicial Administration” to reflect the rules apply to attorneys as well as judges, as well as details on disqualification of judges, and rules on appearance and termination of attorneys in litigated matters.

**In Re: Amendments to Florida Rule of Judicial Administration 2.420**, 68 So. 3d 228 (Fla. 2021).

Clerks of court are no longer required to identify and designate confidential information in certain cases.

**Moise v. Ola Condominium Association, Inc.**, 314 So. 3d 708 (Fla. 3d DCA 2021).

The Litigation Privilege does not prohibit the filing of counterclaims against an attorney for violations of the Fair Debt Collection Practices Act and the Florida Consumer Collection Practices Act.

**Ferro v. ECI Telecom, Inc.**, 314 So. 3d 711 (Fla. 3d DCA 2021).

Certiorari is the proper method to seek relief from being forced to litigate the same case in two different fora.

**The Board of Trustees of the Internal Improvement Trust Fund of the State of Florida v. Waterfront ICW Properties, LLC**, 310 So. 3d 939 (Fla. 4th DCA 2021).

Man-made canals as of March 3, 1845 are not “navigable waters” and thus not sovereign lands of the state of Florida.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 5**  
**January 30, 2021**  
**Manuel Farach**

**Gilligan, Gooding, Batsel & Anderson, P.A. v. Condor Aerial, LLC**, 312 So. 3d 168 (Fla. 1st DCA 2021).

Seeking to further impeach a trial witness after an adverse ruling may not be the basis of a sanctions award under Florida Statute section 57.105.

**Wilson v. Jacks**, 310 So. 3d 545 (Fla. 1st DCA 2021).

A claim of vicarious negligence liability must be specifically pleaded in a complaint to be considered in avoiding a summary final judgment.

**Taneja v. First Street and Fifth Avenue, LLC**, 310 So. 3d 1275 (Fla. 2d DCA 2021).

A deficiency arising out of a foreclosure judgment cannot be entered against a guarantor of the note and mortgage unless a claim under the guaranty was made in the pleadings.

**Pash v. Mahogany Way Homeowners Association, Inc.**, 310 So. 3d 430 (Fla. 4th DCA 2021).

A homeowners' association lien filed under Florida Statute section 720.3085 may be amended.

**Aquarius Condominium Association, Inc. v. Goldberg**, 312 So. 3d 86 (Fla. 4th DCA 2021).

Failure to comply with the requirement for non-binding arbitration of those condominium disputes set forth in Florida Statute section 718.1255 does not deprive the trial court of jurisdiction but is a condition precedent to filing suit.

**Reconco v. Integon National Insurance Company**, 312 So. 3d 914 (Fla. 4th DCA 2021).

A homeowner who has insurance force-placed on her home is not a third-party beneficiary of the force-placed insurance policy.

**Buechel v. Shim**, Case No. 5D19-3716 (Fla. 5th DCA 2021).

A court proceeding under Florida Statute section 56.29 may compel a party over whom it has *in personam* jurisdiction to "act on property that is outside of the court's jurisdiction, provided that the court does not directly affect the title to the property while it remains in the foreign jurisdiction" and direct the party to return the property to the jurisdiction; conflict certified with *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014) (a trial court is without authority to order a judgment debtor to act on out-of-state property).

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 6**  
**February 6, 2021**  
**Manuel Farach**

**Tsao v. Captiva MVP Restaurant Partners, LLC**, 986 F.3d 1332 (11th Cir. 2021).

In order to have Article III standing, a claimant with hypothetical harm must be subject to harm which is “certainly impending” or there is a “substantial risk” of such harm, and if not, the claimant cannot impose harm on himself to create standing.

**Gulfcoast Spine Institute, LLC v. Walker**, 313 So. 3d 854 (Fla. 2d DCA 2021).

A party may not obtain confidential trade secrets and business information of a third party by claiming the prices charged by the third party, which prices are the subject of damages in the main trial, were excessive.

**Hunter v. Catalano**, 311 So. 3d 995 (Fla. 2d DCA 2021).

The presuit mediation requirements of Florida Statute section 720.311(2)(a) applies only to disputes between homeowners and associations and does not apply to disputes between parcel owners or association members.

**Hendel v. Internet Escrow Services, Inc.**, 317 So. 3d 1175 (Fla. 3d DCA 2021).

Claims for fraud in the inducement and for declaratory judgment generally do not overcome the mandatory forum selection clause contained in an internet clickwrap agreement.

**F.H. Paschen v. B&B Site Development, Inc.**, 311 So. 3d 39 (Fla. 4th DCA 2021).

The dispute resolution portions of a construction contract, including the provisions that a third party such as an architect has the authority to determine performance under the contract, cannot override the clear terms of the contract.

**Boca Center at Military, LLC v. City of Boca Raton**, 312 So. 3d 920 (Fla. 4th DCA 2021).

A proposed or speculative land use is not sufficient to bring a property within the dictates of the Bert J. Harris Jr. Private Property Rights Protection Act, Florida Statutes section 70.001.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 7**  
**February 13, 2021**  
**Manuel Farach**

**In Re: Amendments to The Florida Rules of Appellate Procedure—2020 Regular-Cycle Report**, Case No. SC20-216 (Fla. 2021).

Substantial changes to the Florida Rules of Appellate Procedure, including a new subdivision (Public Availability of Written Opinions) that requires courts publish written opinions not covered by Florida Rule of Judicial Administration 2.420, a requirement that a Notice of Appeal indicate when a motion tolling rendition is pending in the trial court, a change that trial court clerks submit the record on appeal within 60 days, a change that that orders disposing of motions for rehearing are not reviewable separate and apart from a review of a final order, changes that notice be provided to the Attorney General in cases where the constitutionality of a state statute or constitutional provision is challenged, that an attorney of record for a party in an appeal or original proceeding shall be the attorney of record unless at the time of appearance, the attorney files a notice specifically limiting the attorney's appearance only to a particular matter or portion of the proceeding in which the attorney appears, and a new role setting forth limited representation.

**Dodd Chiropractic Clinic, P.A. v. USAA Casualty Insurance Company**, 313 So. 3d 178 (Fla. 1st DCA 2021).

Florida Statute 26.012 took jurisdiction away from circuit courts to hear extraordinary writs as well as appeals.

**Carollo v. Platinum Advisors, LLC**, 319 So. 3d 686 (Fla. 3d DCA 2021).

Unless undertaken in bad faith or with malicious purpose and so long as he does not participate in the process or the vote, an elected official may comment on a land use application of a former client.

**CFLB Management, LLC v. Diamond Blue International, Inc.**, 318 So. 3d 589 (Fla. 3d DCA 2021).

Upon reversal of a merits judgment, Florida Rule of Civil Procedure 1.540(b)(5) provides the trial court with jurisdiction to revisit a fees judgment based on the reversed judgment.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 8**  
**February 20, 2021**  
**Manuel Farach**

**Rohe v. Wells Fargo Bank, N.A.**, 988 F.3d 1256 (11th Cir. 2021)

The All Writs Act, 28 U.S.C. § 1651(a), cannot be used to intervene in a dispute when there is no underlying proceeding over which the district court has jurisdiction and the integrity of which the district court would be in an appropriate position to protect by making such an order.

**Krol v. FCA US, LLC**, 310 So. 3d 1270 (Fla. 2021).

The Federal Trade Commission's "single document rule," promulgated under the Magnuson Moss Warranty Act, does not require the disclosure of a binding arbitration agreement.

**Salazar v. Gomez**, 317 So. 3d 170 (Fla. 3d DCA 2021).

A claim of fraud upon the court cannot be made upon issues that were argued to and decided adversely by a jury.

**Valencia v. PennyMac Holdings, LLC**, 317 So. 3d 178 (Fla. 3d DCA 2021).

Certiorari does not lie from a court order prohibiting a litigant from "disseminating, publishing, distributing, or using the records (written, audio, and visual) of [opposing party's corporate] representative outside of this litigation" unless petitioner can show irreparable harm.

**Samara v. Tenet Florida Physician Services, LLC**, 317 So. 3d 187 (Fla. 3d DCA 2021).

Motions for rehearing are not authorized for non-final orders, and accordingly, do not toll rendition nor the time for filing an appeal.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 9**  
**February 27, 2021**  
**Manuel Farach**

**PBT Real Estate, LLC v. Town of Palm Beach**, 988 F.3d 1274 (11th Cir. 2021).

The decision of a municipality to bury underground electricity cables and to charge residents for doing so does not rise to the level of violation of Fourteenth Amendment rights to substantive due process and equal protection of the laws unless the municipality's actions were not rationally related to serve a legitimate government interest.

**Reynolds v. Behrman Capital IV L.P**, 988 F.3d 1314 (11th Cir. 2021).

The Doctrine of Derivative Jurisdiction prevents the post-removal use of Bankruptcy Rule 7004(d) to establish personal jurisdiction over the defendants in removed cases in which the state court lacked personal jurisdiction over the defendants.

**SVI Trust v. Williams Walk Condominium Association, Inc.**, 312 So. 3d 222 (Fla. 1st DCA 2021).

A trial court may not enter summary judgment for foreclosure of a condominium assessment lien when there is disputed testimony as to whether a representative of the condominium association fraudulently induced the owner to purchase the units by misrepresenting that there were no outstanding assessments on the unit.

**5F, LLC v. Hawthorne**, 142 So. 3d 936 (Fla. 2d DCA 2021).

Riparian owners have a common law right to construct a dock over privately owned submerged land adjacent to their upland property and out to navigable water without the consent of the owner of the submerged land.

**School Board of Miami-Dade County v. City of Miami Beach, Florida**, 317 So. 3d 1203 (Fla. 3d DCA 2021).

A school board is immune under sovereign immunity from being forced to pay municipal stormwater drainage fees.

**Faruk v. Madison Acquisitions Corp.**, 317 So. 3d 196 (Fla. 3d DCA 2021).

The law will imply a reasonable time for performance of a contract if the contract does not specify a time for performance.

**Massey Services, Inc. v. Sanders**, 312 So. 3d 209 (Fla. 5th DCA 2021).

Responding to inquiries from co-workers and his soon to be former employer as to where he was going to be employed does not constitute "solicitation" in violation of Florida Statute section 542.335.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 10**  
**March 6, 2021**  
**Manuel Farach**

**King v. Zaslavskiy**, 317 So. 3d 236 (Fla. 3d DCA 2021).

The hearing of a motion for summary judgment should be continued to allow a party to revise their declaration in opposition (proper under federal practice but not Florida practice) and convert the declaration to an affidavit in opposition.

**Point Conversions, LLC v. WPB Hotel Partners, LLC**, 324 So. 3d 947 (Fla. 4th DCA 2021).

A state court has jurisdiction over a suit in which there are federal patent law questions when the claim does not “arise” under federal law and does not meet the four-part requirements of *Gunn v. Minton*, 568 U.S. 251 (2013).

**Hinners v. Hinners**, 312 So. 3d 938 (Fla. 4th DCA 2021).

Replevin lies to recover checks, checkbooks, and other physical items, but does not lie to recover a sum of money and is not available to recover money in a bank account arising from checks deposited by a party.

**Parkin v. Eagle Home Mortgage, LLC**, 312 So. 3d 1034 (Fla. 5th DCA 2021).

An unauthenticated letter giving notice of default and letter log are not sufficient “evidence” to counter an affirmative defense of failure to comply with conditions precedent.

**Center State Transportation Motor v. Trend Orlando Service, LLC**, 312 So. 3d 225 (Fla. 5th DCA 2021).

Mandatory injunctions should rarely be granted before final hearing or before all parties can present their evidence, and accordingly, a mandatory injunction issued immediately after suit is filed requiring a tenant to remediate environmental contamination is improper.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 11**  
**March 13, 2021**  
**Manuel Farach**

**Uzuegbunam v. Preczewski**, 141 S.Ct. 792 (2021).

Nominal damages for claims arising under common law may be sufficient to confer Article III standing under *Spokeo, Inc. v. Robins*, 578 U. S. 330 (2016).

**Philip Morris USA, Inc. v. Brown**, 313 So. 3d 898 (Fla. 1st DCA 2021).

The First District adopts the Fourth District's Current Rates Approach (using current fee rates instead of historical rates) to award fees when there an exceptional, unanticipated delay in the resolution of a case is shown, but awarding prejudgment interest on top of the Current Rates Approach is double-dipping.

**Christ v. Deutsche Bank National Trust Company Americas**, 316 So. 3d 382 (Fla. 2d DCA 2021).

A witness testifying as to the admissibility of business records of a third party must either be able to testify from personal knowledge or knowledge of the third party's routine or general business practices.

**George Anderson Training and Consulting, Inc. v. Miller Bey Paralegal & Financing, LLC**, 313 So. 3d 214 (Fla. 2d DCA 2021).

A deed by a corporation is valid if signed by the president, vice-president, or chief executive officer but only if the deed is sealed with the common or corporate seal. Moreover, a deed generally cannot be witnessed by a grantee and a notary may not notarize her own signature.

**Bond v. Luzinski**, 313 So. 3d 196 (Fla. 2d DCA 2021).

An assignee under Florida Statutes Chapter 727 has the power to consent to venue over the objection of the officers and directors of the company whose assets were assigned.

**Mori v. Fortune Capital Partners, Inc.**, 316 So. 3d 744 (Fla. 3d DCA 2021).

A grantee of a contract for purchase of real property, which contract states the grantee may accept the property with the title defects the grantor was not able to cure or cancel the contract, may not obtain specific performance with abatement.

**Calderin v. Quartz Hill Mining, LLC**, 317 So. 3d 243 (Fla. 3d DCA 2021).

A bankruptcy debtor's legal malpractice claim against its attorneys is subject to concurrent jurisdiction between bankruptcy and state courts.

**Colon v. City of Riviera Beach**, 312 So. 3d 952 (Fla. 4th DCA 2021).

A general release is interpreted under state law, even if the underlying claim being released is based on federal law.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 12**  
**March 20, 2021**  
**Manuel Farach**

**Parker Waichman LLP v. Chaikin**, 313 So. 3d 921 (Fla. 2d DCA 2021).

Courts are reluctant to disregard corporate entities unless necessary to prevent injustice so a New York LLP does not consent to the jurisdiction of the Florida courts merely because its sister Florida LLP attached its corporate documents to Florida pleadings.

**Arizone v. Homeowners Choice Property & Casualty Insurance Company, Inc.**, 313 So. 3d 913 (Fla. 2d DCA 2021).

If a party is added after the lawsuit is filed, the date for determining when a proposal for settlement is timely is the date the new party is added and not the date of the filing of the lawsuit.

**Kratos Investments LLC v. ABS Healthcare Services, LLC**, 319 So. 3d 97 (Fla. 3d DCA 2021).

A non-signatory to an arbitration agreement may compel a signatory to arbitrate a dispute between them when signatory's allegations against the non-signatory are intertwined with the issues set forth in the contract containing the arbitration agreement.

**Rauch, Weaver, Norfleet, Kurtz & Co., Inc. v. AJP Pine Island Warehouses, Inc.**, 313 So. 3d 625 (Fla. 4th DCA 2021).

A confidentiality agreement may constitute a restraint of trade under Florida Statute section 542.335, and if so, a party seeking to enforce the agreement must meet the pleading requirements of the statute section.

**Bezl Limited, LLC v. Raymond Office Plaza, LLC**, 313 So. 3d 632 (Fla. 4th DCA 2021).

A circuit's court entry of final judgment of possession for failure to make rent deposits under Florida Statute section 83.232(5) does not extinguish other existing claims between the landlord and tenant.

**Rebalko v. Atallah**, 313 So. 3d 125 (Fla. 4th DCA 2021).

The filing of two deposition notices does not constitute the seeking of affirmative action, and consequently, does not amount to waiver of defenses to personal jurisdiction.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 13**  
**March 27, 2021**  
**Manuel Farach**

**Ford Motor Co. v. Montana Eighth Judicial District Court**, 141 S.Ct. 1017 (2021).

Specific personal jurisdiction is based on whether the claims “arise out of or relate to” the forum state and not based on “causal link” when a defendant avails itself of the jurisdiction.

**SuVicMon Development, Inc. v. Morrison**, 991 F.3d 1213 (11th Cir. 2021).

A finding of non-dischargeability of a debt under 11 U.S.C. § 523(a)(19) (violation of state securities laws) does not permit a creditor to recover on its fraudulent transfer claim against a discharged debtor; *Owaski v. Jet Florida Systems, Inc. (In re Jet Florida Systems, Inc.)*, 883 F.2d 970 (11th Cir. 1989) (holder of a discharged claim there a defamation claimant, could proceed nominally against the debtor for the purpose of recovering from the debtor’s insurer) is inapplicable.

**Garbark v. Gayle**, 312 So. 3d 1286 (Fla. 1st DCA 2021).

An unsworn letter regarding a material fact in a case is not competent evidence in opposition to and does not defeat a sworn motion for summary judgment.

**Pezeshkan v. Manhattan Construction Florida, Inc.**, 313 So. 3d 948 (Fla. 2d DCA 2021).

A non-signatory to a stock purchase agreement which contains an arbitration provision may not compel arbitration of appraisal rights under Florida Statute section 607.1301 when the non-signatory was not an intended third-party beneficiary of the stock purchase agreement and when there is no nexus between the stock purchase agreements and invocation of appraisal rights.

**Jackman v. Cebrink-Swartz**, Case No. 2D20-2384 (Fla. 2d DCA 2021).

Neighbors placing a camera on their roof which looks into the adjoining neighbor’s house and records same violates the tort of invasion of privacy (seclusion), which tort does not require publication of the information to a third party.

**Family Heritage Life Insurance Company of America v. Combined Insurance Company of America**, 319 So. 3d 680 (Fla. 3d DCA 2021).

A court deciding a suit for violation of restrictive covenants under Florida Statute section 542.335 may enjoin non-parties to the non-compete agreements where the nonparty is either under the signator’s control or otherwise being used to aid or abet the signator in violating the noncompete clause.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 14**  
**April 3, 2021**  
**Manuel Farach**

**Florida v. Georgia**, 138 S.Ct. 2502 (2021).

In an original action in the Supreme Court, the state of Florida failed to prove by clear and convincing evidence that the collapse of its oyster fisheries was caused by the state of Georgia's overconsumption of water from the Lake Lanier water system.

**Facebook, Inc. v. Duguid**, 141 S.Ct. 1163 (2021).

A device must have the capacity either to store a telephone number using a random or sequential number generator or to produce a telephone number using a random or sequential number generator to qualify as an "automatic telephone dialing system" under the Telephone Consumer Protection Act, 47 U. S. C. §227(a)(1).

**O'Neal Constructors, LLC v. DRT America, LLC**, 991 F.3d 1376 (11th Cir. 2021).

Service of a "notice of a motion to vacate" an arbitration award under 9 U.S.C. § 12 is not accomplished by emailing opposing counsel a "courtesy copy" of a memorandum in support of that motion where the party to be served does not expressly consent in writing to service by email.

**Reliable Restoration, LLC v. Panama Commons, L.P.**, 313 So. 3d 1207 (Fla. 1st DCA 2021).

The possibility of inconsistent verdicts between different courts adjudicating related lawsuits satisfies the irreparable harm requirement for seeking certiorari relief.

**Boyleston Realty and Auction, LLC v. Beasley**, 314 So. 3d 792 (Fla. 1st DCA 2021).

Florida Statute Section 468.388(1) does not prohibit an auctioneer from charging both a seller a sales commission and a buyer a "buyer's premium" (commission).

**Lemos v. Sessa**, 319 So. 3d 135 (Fla. 3d DCA 2021).

An attorney may require in her engagement agreement that all disputes arising out of the representation, including malpractice claims, be subject to binding arbitration but may not require the client to pay - regardless of outcome - the fees and costs of the arbitration.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 15**  
**April 10, 2021**  
**Manuel Farach**

**Gil v. Winn-Dixie Stores, Inc.**, 993 F.3d 1266 (11th Cir. 2021).

Websites are not places of public accommodation under 42 U.S.C. § 12182(a), and thus do not need to comply with the Americans with Disabilities Act.

**Circuitronix, LLC v. Kinwong Electronic (Hong Kong) Co., Ltd.**, 993 F.3d 1299 (11th Cir. 2021).

Federal Rule of Civil Procedure 6(a)(3) extends the time to file a document when the courthouse is closed, even if the document could have been filed electronically.

**In Re: Amendments to The Florida Rules of Civil Procedure**, 318 So. 3d 1240 (Mem) (Fla. 2021).

Documents that are served but not filed with the court must be served in accordance with Florida Rule of General Practice and Judicial Administration 2.516 (Service of Pleadings and Documents).

**Cavalry Portfolio Services, LLC v. Hodges**, 315 So. 3d 161 (Fla. 1st DCA 2021).

The Litigation Privilege does not protect a party from claims of wrongful garnishment arising out garnishing the assets of the wrong party.

**Clampitt v. Wick**, 320 So. 3d 826 (Fla. 2d DCA 2021).

The failure to post a bond does not preclude a party from opposing proceedings supplementary.

**Baird v. Mason Classical Academy, Inc.**, 317 So. 3d 264 (Fla. 2d DCA 2021).

The nature of Florida's Anti-SLAPP statute, Florida Statute section 768.295, permits certiorari relief to review denials of motions to dismiss based on the statute, and requires the party accused of SLAPP violations to present a prima facie case for its actions at which time the burden shifts to the party claiming the SLAPP violation.

**Dean Wish LLC v. Lee County, Florida**, 326 So. 3d 840 (Fla. 2d DCA 2021).

The Bert J. Harris, Jr. Private Property Rights Protection Act, Florida Statute section 70.001, requires a claimant to be a present "property owner" to be eligible for statutory relief under the Act.

**MTGLQ Investors, LP v. Leones**, 320 So. 3d 769 (Fla. 4th DCA 2021).

A loan modification need not be pled nor proven in a mortgage foreclosure action when the modification was cancelled for nonperformance.

**Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC**, 317 So. 3d 121 (Fla. 4th DCA 2021).

A buyer cannot claim fraud in the inducement on the purchase of a commercial property when it agrees to purchase the property “as is,” to conduct its own inspections, and to rely solely on its own inspections and not on any representations regarding the property.

**McIntosh Fish Camp, LLC v. Colwell**, 315 So. 3d 784 (Fla. 5th DCA 2021).

An “as is” contract and a merger and integration clause in a commercial real estate sales contract do not bar claims for fraud in the inducement.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 16**  
**April 17, 2021**  
**Manuel Farach**

**Hartz v. Wells Fargo Bank, N.A.**, 319 So. 3d 161 (Fla. 1st DCA 2021).

Merely incorporating Veteran's Administration regulations into a note and mortgage does not automatically convert those regulations into conditions precedent which must be satisfied by a foreclosing lender.

**Finlaw v. Finlaw**, 320 So. 3d 844 (Fla. 2d DCA 2021).

A specific limitation in a partnership agreement that shares of the partnership may be devised only to "children" controls over a general limitation in the agreement that shares may be devised only to "lineal descendants" and over instruction in testamentary instruments.

**UATP Management, LLC v. Barnes**, 320 So. 3d 851 (Fla. 2d DCA 2021).

The question of whether a contract to arbitrate has been formed is a threshold question for the trial court, and a trial court is empowered to determine whether an adult can agree to a contract to arbitrate for a minor who is neither her child nor legal ward.

**Siesta Key Association of Sarasota, Inc. v. City of Sarasota**, 320 So. 3d 833 (Fla. 2d DCA 2021).

A party cannot seek injunctive relief under Florida's Environmental Protection Act of 1971, Florida Statute section 403.412, if the agency conducting the action has a valid permit; the obtaining of all permits that might be needed is not necessary.

**Ranucci v. City of Palmetto**, 317 So. 3d 270 (Fla. 2d DCA 2021).

An annexation agreement between a city and landowners is subject to the five-year statute of limitations in Florida Statute 95.11(2)(b) and the one-year limitation in section 95.11(5)(a).

**Friedberg v. O'Doyle Rules, LLC**, 320 So. 3d 837 (Fla. 2d DCA 2021).

A real estate sales contract "subject to" a right of first refusal in favor of a third party requires the seller to notify the third party of any material changes to the contract and each material change gives the third party a new right of first refusal.

**Team Health Holdings Inc. v. Caceres**, 320 So. 3d 232 (Fla. 3d DCA 2021).

A defendant contesting long-arm jurisdiction need not attach business records to its affidavit contesting jurisdiction in Florida.

**FM 3 Liquors, Inc. v. Bien-Aime**, 319 So. 3d 706 (Fla. 3d DCA 2021).

An agreement to make, renew or extend a lease or to sell a property that fails to specify either the price (or definite procedure to establish same) for the rental or sale is too indefinite to be legally binding and enforceable.

**Lenmar Realty, LLC v. Sun Electric Works, Inc.**, 317 So. 3d 125 (Fla. 4th DCA 2021).  
A landlord is entitled to obtain the rental monies deposited in a court registry pursuant to Florida Statute section 83.232 by filing a motion and without filing a pleading containing a cause of action directed at obtaining the funds.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 17**  
**April 24, 2021**  
**Manuel Farach**

**AMG Capital Management, LLC v. Federal Trade Commission**, 141 S.Ct. 1341 (2021).  
Neither the text, structure nor the history of Section 13(b) of the Federal Trade Commission authorizes the Commission to obtain court-ordered damages.

**Moore v. Intuitive Surgical, Inc.**, 995 F.3d 839 (11th Cir. 2021).  
A trial court conducting a *Daubert* analysis may not conflate the reliability and qualifications prongs of the test.

**Walton Plantation Master Association, Inc. v. Opo, LLC**, 320 So. 3d 255 (Fla. 1st DCA 2021).  
A party is not entitled to a prevailing party award of attorney's fees based on a contract it claims never existed.

**Pucci v. May-Wong Chou**, 319 So. 3d 722 (Fla. 3d DCA 2021).  
A "Motion for Assignment of Chose of Action" is in the nature of proceedings supplementary and is not effective if it does not comply with Florida Statute section 59.29.

**Morburger v. J. Reporting, Inc.**, 318 So. 3d 619 (Fla. 3d DCA 2021).  
Formal pleading requirements are not necessary under the Small Claims Rules.

**National Fire & Marine Insurance Company v. Infinity Biscayne Myrtle Members, LLC**, 316 So. 3d 766 (Fla. 3d DCA 2021).  
A claim by an insured against their insurance company for breach of the implied duty of good faith and fair dealing is covered by the statutory remedy set forth in Florida Statute section 624.155 and must comply with the requirements of the statute.

**Font & Nelson, PLLC v. Path Medical, LLC**, 317 So. 3d 134 (Fla. 4th DCA 2021).  
A contract for a contingent fee agreement is governed by a Florida lawyer must comply Rule Regulating the Florida Bar 4-1.5(f)(2), including being signed by the client, even if the Florida lawyer performs work under the pending agreement.

**Shake v. Yes We Are Mad Group, Inc.**, 315 So. 3d 1223 (Fla. 4th DCA 2021).  
A temporary injunction requires there be a complaint or underlying action been filed against the party against whom the injunction is issued.

**Richeson v. South's Custom Construction, Inc.**, 317 So. 3d 1241 (Fla. 5th DCA 2021).  
Florida Statute section 701.04(2) does not require a satisfaction of mortgage to be issued until the mortgage is fully satisfied.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 18**  
**May 1, 2021**  
**Manuel Farach**

**Losch v. Nationstar Mortgage LLC** 995 F.3d 937 (11th Cir. 2021).

A credit reporting agency that is notified of potentially inaccurate information in a consumer's credit report may not rely merely on verification by the creditor and must conduct a reasonable investigation into the claimed inaccuracy.

**In Re: Amendments to Florida Rule of Civil Procedure 1.510**, 317 So. 3d 72 (Fla. 2021).

The Florida Supreme Court amends Florida Rule of Civil Procedure 1.510 by adopting Federal Rule of Civil Procedure 56 in its entirety.

**Royal Caribbean Cruises, Ltd. v. Spearman**, 320 So. 3d 276 (Fla. 3d DCA 2021).

Although dicta due to the appeal being decided based on the Two Issue Rule, the Third District explains *Daubert* analysis under Florida Statute section 90.702.

**Nuñez v. Aviv Air Conditioning, Inc.**, 319 So. 3d 731 (Fla. 3d DCA 2021).

Statutory attorney's fees are not awardable under Part I (Non-Residential Tenancies) of the Florida Landlord Tenant Act, Florida Statutes Chapter 83.

**Marchelos v. Adao**, 316 So. 3d 737 (Fla. 4th DCA 2021).

Interest on a promissory note must be calculated on a simple interest basis unless the note provides otherwise or a default occurs under a default interest rate provision.

**Margate Community Redevelopment Agency v. New Urban Communities, LLC**, 318 So. 3d 576 (Fla. 4th DCA 2021).

Decisions on requests for land use plan amendments are discretionary governmental functions thus tort claims against local government based on denial of the request are barred by sovereign immunity.

**Lake Pointe Trust Corporation v. Coleman**, 315 So. 3d 759 (Fla. 4th DCA 2021).

Without proper notice advising that dismissal would be considered at the hearing, the entry of an order of dismissal at a status conference violates due process.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 19**  
**May 8, 2021**  
**Manuel Farach**

**Shipley v. Helping Hands Therapy**, 996 F.3d 1157 (11th Cir. 2021).

A district court may not remand a case based on a procedural defect in removal when the motion to remand is untimely.

**Estate of Quinn v. CCRC OPCO Freedom Square LLC**, 320 So. 3d 300 (Fla. 2d DCA 2021).

Certiorari relief is not available regarding the selection of an arbitrator because the defect in selection, if any, can be remedied on plenary appeal.

**Mishpaja Shajine, Inc. v. Granada Insurance Company**, 319 So. 3d 762 (Fla. 3d DCA 2021).

A party has a liberal right to amend its answer and affirmative defenses, including at a hearing for summary judgment, unless the party seeking to amend has abused the privilege to amend, the opposing party would be prejudiced by the amendment, or the amendment would be futile.

**Bondar v. Town of Jupiter Inlet Colony**, 321 So. 3d 774 (Fla. 4th DCA 2021).

Property owners prevented from renting their home on a short-term basis by a municipality do not have a substantive due process claim because the right to rent properties to others is not a fundamental right and likewise do not have an equal protection claim unless the municipality acted with a discriminatory purpose.

**Wells Fargo Bank, N.A. v. Tan**, 320 So. 3d 782 (Fla. 4th DCA 2021).

Florida Statute section 702.036 (courts are prevented, under certain circumstances, from granting relief which “adversely affects the quality and character of title”) applies even if the underlying judgment is void.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 20**  
**May 15, 2021**  
**Manuel Farach**

**Refaie v. Bayview Loan Servicing, LLC**, Case No. 2D19-4780 (Fla. 2d DCA 2021).

The time to seek disbursement of surplus foreclosure sale proceeds under Florida Statute section 45.032 is sixty days from the certificate of disbursements, and the time period does not change even if the initial certificate of title is incorrect and is later amended.

**Soknoh Partners, LLC v. Audio Visions South, Inc.**, 319 So. 3d 175 (Fla. 2d DCA 2021).

Summary judgment is not proper when question remains whether a buyer of real estate had implied actual notice under Florida Statute section 695.01 of a parking easement over the real property being purchased.

**Castellanos v. Reverse Mortgage Funding LLC**, 320 So. 3d 904 (Fla. 3d DCA 2021).

The Third District recedes from *Suchman Corp. Park, Inc. v. Greenstein*, 600 So. 2d 532 Fla. 3d DCA 1992), and holds the reciprocal prevailing party fee provision of Florida Statute section 57.105(7) applies to non-recourse loans.

**Stern v. Department of Business & Professional Regulation**, 319 So. 3d 659 (Fla. 4th DCA 2021).

A conviction for violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, by conspiring to restrain trade through suppressing competitive bidding on foreclosed properties does not automatically create a violation of Florida Statute section 475.25(1)(f) and thus revocation of a real estate sales license.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 21**  
**May 22, 2021**  
**Manuel Farach**

**The Florida Bar Re: Advisory Opinion—Out-Of-State Attorney Working Remotely from Florida Home**, 318 So. 3d 538 (Fla. 2021).

Attorney not licensed in Florida who works exclusively for his out of state law firm through electronic means, does not have a Florida office, and does not serve Florida customers can practice from his Florida home without being barred in Florida.

**Point Conversions, LLC v. Omkar Hotels, Inc. d/b/a Sleep Inn & Suites**, 321 So. 3d 326 (Fla. 1st DCA 2021).

A breach of license suit based upon appropriation of a patent is fundamentally a patent dispute over which the federal courts have exclusive federal jurisdiction; conflict certified with *Point Conversions, LLC v. WPB Hotel Partners*, 46 Fla. L. Weekly D489, 2021 WL 822853 (Fla. 4th DCA Mar. 3, 2021) (motion for reh'g pending).

**Summerland Key Cove Park, LLC v. Murphy**, 321 So. 3d 888 (Fla. 3d DCA 2021).

Language on a plat granting an easement does not preclude the imposition of any restrictions on the easement, and remand is necessary for a determination whether the imposed restrictions are reasonable.

**Dov v. Nirestates, LLC**, 319 So. 3d 778 (Fla. 3d DCA 2021).

Defendant who was never served with process, filed an answer objecting to jurisdiction of the court, objected to being deposed, objected to trial while calling no witnesses at trial is not liable on a judgment even though she filed an answer.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 22**  
**May 29, 2021**  
**Manuel Farach**

**Brody Irrevocable Grantor Trust No. 2 v. Brody**, 322 So. 3d 150 (Fla. 2d DCA 2021). Accord and satisfaction requires a superseding agreement to accept reduced payment in complete settlement of a dispute, i.e., there must be a dispute as to the amount owed at the time of the reduced payment and a new agreement to accept less than amount originally owed.

**Wilmington Savings Fund Society FSB v. Morroni**, Case No. 2D20-3085 (Fla. 2d DCA 2021).

An appellate court's opinion that a lender failed to prove standing under loan instruments borrower contended were forged is not tantamount to a finding the loan instruments were forged, and accordingly, there is no harm returning the loan instruments to the lender.

**Mortellaro v. Caribe Health Center, Inc.**, 322 So. 3d 128 (Fla. 2d DCA 2021).

Failure to make payments when due under a settlement agreement is a material breach of the agreement even if late payments had been accepted in the past.

**1560-1568 Drexel Avenue, LLC v. Dalton**, 320 So. 3d 965 (Fla. 3d DCA 2021).

Upon termination of COVID-19 restrictions, a tenant is required to comply with Florida Statute section 83.60(2) and immediately deposit rent into the court registry.

**Rappaport v. Scherr**, 322 So. 3d 138 (Fla. 3d DCA 2021).

A demand under Florida Statute section 607.07401(2) must be made before filing a derivative suit, Florida law has changed and there is no longer a futility exception to the requirement of a demand.

**Hagstrom v. Co.Fe.Me. v. USA Marine Exhaust, LLC**, 322 So. 3d 145 (Fla. 3d DCA 2021).

A non-signatory LLC to an arbitration agreement may enforce the arbitration agreement.

**Five Solas, LLC v. Ram Realty Services, LLC**, 322 So. 3d 82 (Fla. 4th DCA 2021).

Unless the corporate veil is pierced, there is no double recovery if a landlord and tenant are owned by the same person and are awarded damages for a tort caused by a third party.

**Eglise Baptiste Bethanie de Ft. Lauderdale, Inc. v. Bank of America, N.A.**, 321 So. 3d 245 (Fla. 4th DCA 2021).

The Ecclesiastical Abstention Doctrine bars a church barred from claiming that a person wrongfully obtained bank accounts and bank funds of the church.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 23**  
**June 5, 2021**  
**Manuel Farach**

**Van Buren v. United States**, 141 S.Ct. 1648 (2021).

A person who exceeds his authorized access to a computer system violates the Computer Fraud and Abuse Act of 1986, 18 U. S. C. §1030(a)(2).

**Don't Look Media LLC v. Fly Victor Limited**, 999 F.3d 1284 (11th Cir. 2021).

A party seeking to enforce a forum selection clause should proceed under *forum non conveniens* rather than a Federal Rule of Civil Procedure 12(b)(3) motion to dismiss.

**Arch Insurance Company v. Kubicki Draper, LLP**, 137 So. 3d 487 (Fla. 2021).

An insurer has standing through contractual subrogation to maintain a malpractice action against counsel hired to represent the insured where the insurer has a duty to defend.

**Tank Tech, Inc. v. Valley Tank Testing, L.L.C.**, Case No. 2D19-422 (Fla. 2d DCA 2021).

Unlike the case where a party is seeking contribution arising out of a tort claim, a party seeking equitable subrogation arising out of a contract claim does not need to provide a release for the claimed damages.

**De Soleil South Beach Residential Condominium Association, Inc. v. De Soleil South Beach Association, Inc.**, 315 So. 3d 5817 (Fla. 3d DCA 2021).

A condominium association without Kaufman language in its recorded declaration of condominium cannot adopt later revisions to Florida Statute section 718.303, which revisions permit suspension of member's voting rights upon failure to pay dues.

**Segal v. Forastero, Inc.**, 322 So. 3d 159 (Fla. 3d DCA 2021).

A party seeking to pierce the corporate veil of a single member limited liability company arising out of the breach of a real estate contract may not solely rely on the company's lack of assets but must demonstrate the traditional factors, i.e., domination and control of the company to such extent that the company had no independent existence and was the mere instrumentality or alter ego of the individual, that the corporate form was fraudulently used or used for an improper purpose, and that the fraudulent use caused injury to the complaining party.

**Olson v. Eco Marine Contactor, LLC**, 319 So. 3d 788 (Fla. 5th DCA 2021).

An order entered by a recused judge is void unless the order is the mere ministerial act of reducing an oral ruling to writing.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 24**  
**June 12, 2021**  
**Manuel Farach**

**Burns v. Town of Palm Beach**, 999 F.3d 1317 (11th Cir. 2021).

The Eleventh Circuit declines to declare as a matter of law whether personal residences are a form of personal expression protected by the First Amendment but reaffirms the ability of municipal architectural review commissions to prohibit development so long as sufficient criteria are employed in the decision.

**Peoples Gas System v. Posen Construction, Inc.**, 322 So. 3d 604 (Fla. 2021).

The Underground Facility Damage Prevention and Safety Act, Florida Statute section 556.101 *et seq.*, creates a standalone cause of action which sounds in negligence and which is subject to proof of proximate causation requirements.

**Russell v. Hydroprocessing Associates, LLC**, 324 So. 3d 549 (Fla. 1st DCA 2021).

A trial court judge presented with objections to enforcement of an arbitration agreement must decide whether the agreement was signed by the party and whether the agreement is enforceable.

**Giles v. Recovery Associates, LLC**, 317 So. 3d 1287 (Fla. 1st DCA 2021).

Florida's public policy of converting certain unilateral attorney's fees provisions into reciprocal prevailing party provisions does not overcome a contractual choice of controlling law of a forum state that does not treat unilateral provisions as reciprocal.

**Amiri v. McGreal**, 323 So. 3d 242 (Fla. 2d DCA 2021).

The Second District follows *Camena Invs. & Prop. Mgmt. Corp. v. Cross*, 791 So. 2d 595, 596 (Fla. 3d DCA 2001), and holds that a party filing an action for possession under Florida Statute 83.21 may later file a separate action for damages.

**Cosentino v. Sarasota County**, 324 So. 3d 964 (Fla. 2d DCA 2021).

Substantial - not strict - compliance with the notice provisions of Florida Statute section 336.10 is required for abandonment of a roadway.

**Volynsky v. Park Tree Investments 21, LLC**, 322 So. 3d 714 (Fla. 3d DCA 2021).

A trial court need not conduct a hearing an evidentiary hearing on objections to a foreclosure sale if the objections are facially deficient.

**Lowery v. McBee**, 322 So. 3d 110 (Fla. 4th DCA 2021).

A social media post is not libelous until posted *and* accessed, and a publicly accessible post is accessible throughout Florida.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 25**  
**June 19, 2021**  
**Manuel Farach**

**Chua v. Ekonomou**, 1 F.4th 948 (11th Cir. 2021).

The Barton Doctrine does not apply once a receivership ends, but judicial immunity still applies.

**Jain v. Buchanan Ingersoll & Rooney PC**, 322 So. 3d 1201 (Fla. 3d DCA 2021).

A party seeking to enforce an unconditional guaranty of a promissory note need not produce nor enforce the promissory note to enforce the guaranty.

**1560-1568 Drexel Avenue, LLC v. Dalton**, 320 So. 3d 965 (Fla. 3d DCA 2021).

A trial court may properly enter an injunction requiring a landlord to restore electricity to a leased apartment.

**Laurel Point Care and Rehabilitation Center, LLC v. Estate of Carol DeSantis**, 323 So. 3d 186 (Fla. 4th DCA 2021).

A clear delegation to an arbitral organization's rules to decide arbitrability, which rules state the arbitrator will decide arbitrability, is sufficient to allow the arbitrator to determine arbitrability; *Fallang Family Ltd. P'ship v. Privcap Cos.*, LLC, 46 Fla. L. Weekly D639 (Fla. 4th DCA Mar. 24, 2021), is distinguished.

**MTW Jordan, Inc. v. Baskerville**, 323 So. 3d 331 (Fla. 5th DCA 2021).

A trial court is divested of jurisdiction to enforce a settlement agreement if the parties file a Notice of Voluntary without either obtaining an order of dismissal incorporating the settlement agreement nor an order reserving jurisdiction to enforce the settlement agreement.

**Specialty Solutions, Inc. v. Baxter Gypsum & Concrete, LLC**, 325 So. 3d 192 (Fla. 5th DCA 2021).

Florida Rule of Civil Procedure 1.440 does not require a trial be held to determine the amount of unliquidated damages against a defaulted defendant.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 26**  
**June 26, 2021**  
**Manuel Farach**

**Transunion LLC v. Ramirez**, 141 S.Ct. 2190 (2021).

Claimed violation of the Fair Credit Reporting Act, 15 U. S. C. §1681 et seq., require concrete harm to have a statutory violation to have Article III standing to seek damages.

**United States v. Arthrex, Inc.**, 141 S.Ct. 1970 (2021).

The unreviewable authority wielded by Administrative Patent Judges during *inter partes* review is incompatible with their appointment by the Secretary of Commerce to an inferior office.

**Cedar Point Nursery v. Hassid**, 141 S.Ct. 2063 (2021).

State law requiring access to private property constitutes a per se physical taking.

**Collins v. Yellen**, 141 S.Ct. 1761 (2021).

The anti-injunction provisions of the Housing and Economic Recovery Act of 2008 (as conservator of Fannie Mae and Freddie Mac) restricts the President's power to remove the Federal Housing Finance Agency director and thus violates the separation of powers.

**WVMF Funding v. Palmero**, 320 So. 3d 689 (Fla. 2021).

A mortgage must be read alongside the note it secures and the note prevails in the case of a conflict between the two instruments.

**Southeastern Concrete Constructors, LLC v. Western Surety Company**, Case No. 2D20-2475 (Fla. 2021).

The venue provision of a subcontract construction contract cannot be used to determine venue of a suit over a surety bond that does not contain a venue provision.

**Crawley-Kitzman v. Hernandez**, 324 So. 3d 968 (Fla. 3d DCA 2021).

The fraudulent statements by a person that he would pay plaintiff from the proceeds of the sale of property he claimed to own cannot be used to place a constructive trust on the property, which property was owned by a third party.

**Axen v. POAH Cutler Manor, LLC**, 323 So. 3d 800 (Fla. 3d DCA 2021).

A trial court cannot enter a final judgment of possession without first ruling on a pending Motion to Determine Rent.

**Kratos Holdings, LLC v. Direct Investments International, LLC**, 323 So. 3d 334 (Fla. 3d DCA 2021).

A trial court cannot enter partial summary judgment on one count of a multi-count, intertwined complaint and order immediate execution on the one count.

**Dupree v. Dellmar**, 323 So. 3d 342 (Fla. 3d DCA 2021).

A county court loses jurisdiction over an eviction action if the defendant claims an equitable interest in the property as only circuit court have jurisdiction over ejection actions.

**Domino v. Nielsen**, 322 So. 3d 691 (Fla. 4th DCA 2021).

A party who does not read emails they acknowledge receiving may be responsible for the content of the email based on the principle of implied, actual notice.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 27**  
**July 3, 2021**  
**Manuel Farach**

**Fisher v. PNC Bank, N.A.**, 2 F.4th 1352 (11th Cir. 2021).

A federal court is not limited by the Probate Exception and may exercise jurisdiction over a case brought by or involving an estate if doing so does not involve probating a will, administering the estate, or disposing of the estate's property.

**Gartner v. Reverse Mortgage Solutions, Inc.**, 322 So. 3d 751 (Fla. 1st DCA 2021).

The First District follows *Castellanos v. Reverse Mortgage Funding LLC*, Case No. 3D20-472, 2021 WL 1897069 (Fla. 3d DCA May 12, 2021), and holds that the reciprocity provisions of Florida Statute section 57.105(7) apply even when the loan is non-recourse.

**SG 2901, LLC v. Complimenti, Inc.**, 323 So. 3d 804 (Fla. 3d DCA 2021).

The agent of an owner may recover fees for acting as the agent for construction work so long as a contractor licensed under Florida Statute section 489.105(3) performs the work set forth in the statute.

**Petkovich v. Sandy Point Condominium Apartments Association, Inc.**, 325 So. 3d 201 (Fla. 3d DCA 2021).

Claims regarding the circumstances surrounding the execution – but not the contents - of documents in a title record are not claims founded on a duly recorded instrument under Florida Statute section 48.23.

**UN2JC Air 1, LLC v. Whittington**, 324 So. 3d 1 (Fla. 4th DCA 2021).

There is no need to conduct Independent Tort Doctrine analysis when the plaintiff is not a party to the contract.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 28**  
**July 10, 2021**  
**Manuel Farach**

**Suarez v. The Bank of New York Mellon Trust Co.**, 325 So. 3d 205 (Fla. 2021).

Failure to plead a demand for attorney's fees in a motion to dismiss negates the right to fees if the motion is granted, and continuing to seek fees under such circumstances will give the party whose complaint was dismissed the right to seek fees under Florida Statute section 57.105(7).

**Golden Cape of Florida, Inc. v. Perez de Ospina**, 324 So. 3d 558 (Fla. 3d DCA 2021).

A county court does not have jurisdiction to adjudicate a claim for ejectment, even if the only action taken is to dismiss the case.

**Bach v. Vlad Igor Investments, Inc.**, 325 So. 3d 41 (Fla. 4th DCA 2021).

The Fourth District re-affirms its holding in *Corporate Creations Enterprises LLC v. Brian R. Fons Attorney at Law P.C.*, 225 So. 3d 296 (Fla. 4th DCA 2017), and holds that Florida Statute sections 685.101 and 685.102 provide independent bases for long-arm jurisdiction so long as Constitutional requirements are met.

**Athene Annuity & Life Assurance Company v. Teavana Holdings**, 325 So. 3d 210 (Fla. 5th DCA 2021).

A party may not use Florida Rule of Civil Procedure 1.540 to re-litigate issues previously decided under Rule 1.530.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 29**  
**July 17, 2021**  
**Manuel Farach**

**Calderon v. Sixt Rent a Car, LLC**, 5 F.4th 1204 (11th Cir. 2021).

An arbitration clause which encompasses the arbitration of “claims” regarding “any services or products provided” requires arbitration only of the claims with the direct contracting party and not services affiliated with the contracting party.

**Harris v. Jayo (In re: Harris)**, 3 F.4th 1339 (11th Cir. 2021).

A state court default judgment must detail the factual background for the claims in the judgment to be given collateral estoppel effect in a § 523(a)(2)(A) proceeding.

**Lee v. 1510 N.E. 109 St., LLC**, 324 So. 3d 993 (Fla. 3d DCA 2021).

A tenant that seeks to interpose a COVID-19 related defense to eviction must still comply with Florida Statute section 83.60(2) and deposit rent into the Registry of the Court.

**Community/Condotte/De Moya JV v. Circuit Court Judge**, 325 So. 3d 218 (Fla. 3d DCA 2021).

A circuit court judge has no discretion under Florida Statute section 44.104 to deny a stipulated Motion to Appoint Trial Resolution Judge.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 30**  
**July 24, 2021**  
**Manuel Farach**

**St. Louis Condominium Association, Inc. v. Rockhill Insurance Company**, 5 F.4th 1235 (11th Cir. 2021).

The failure to provide not one date for the deposition of a party's expert witness before discovery cutoff supports a magistrate judge's decision to exclude the witness.

**Gulf Coast Solar Center I, LLC v. Busbee**, 326 So. 3d 120 (Fla. 1st DCA 2021).

A business located on federal property is not exempt from Florida personal property taxation simply because of the Federal Enclave Exemption to taxation.

**City of St. Petersburg v. Dorchester Holdings, LLC**, Case No. 2D20-463 (Fla. 2d DCA 2021).

A government responding to a records request under the Public Records Act must determine whether the requested records exist, locate the records, and review each record to determine if it is exempt from production, including attorney-client and work product, and the clerk of the government agency may charge a special service charge to cover investigative costs in addition to the costs of duplication, which special service fee must be paid in advance.

**Powers v. Whitcraft**, 325 So. 3d 239 (Fla. 4th DCA 2021).

A sublessor is bound by the Florida Landlord-Tenant Act, Florida Statutes Chapter 83.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 31**  
**July 31, 2021**  
**Manuel Farach**

**The Board of County Commissioners, Santa Rosa County, Florida v. Home Builders Association of West Florida, Inc.**, 325 So. 3d 981 (Fla. 1st DCA 2021).

Impact fees imposed without utilizing the “most recent and localized data” violates the Florida Impact Fee Act, Florida Statute section 163.31801(3)(a).

**Mojito Splash, LLC v. City of Holmes Beach, Florida**, 326 So. 3d 137 (Fla. 2d DCA 2021).

A landowner has no claim under the Bert J. Harris, Jr., Private Property Rights Protection Act, Florida Statute sections 70.001-.80, if the landowner purchased the property with constructive knowledge of zoning ordinance and comprehensive plan provisions which disallowed the use for which the landowner seeks compensation under the Act.

**Steven Enterprises Group Inc. v. Diversified Aero Inventory I, LLC**, 326 So. 3d 128 (Fla. 3d DCA 2021).

An evidentiary hearing on a motion to enforce a settlement agreement because of default in payment when it is clear the payments were not made.

**Vista Financial Group, LLC v. The Bank of New York Mellon**, 325 So. 3d 986 (Fla. 3d DCA 2021).

A purchaser at foreclosure sale is not “affiliated with the lender” merely because of the purchase at foreclosure sale and thus is entitled to protections of Florida Statute section 702.036.

**CRSJ, Inc. v. Miami-Dade County**, 325 So. 3d 976 (Fla. 3d DCA 2021).

Injunction to stop a home-rule county from considering a legislative proposal (such as annexation) is not proper.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 32**  
**August 7, 2021**  
**Manuel Farach**

**A Flock of Seagirls LLC v. Walton County Florida**, 7 F.4th 1072 (11th Cir. 2021).

An easement granted to a county for pedestrian access with abandonment if used for any other purpose is extinguished when the county passes an ordinance using the easement for “recreational purpose,” including among other uses, sunbathing, picnicking, fishing, swimming, surfing or “building sand creations.”

**Riverside Avenue Property, LLC v. 1661 Riverside Condominium Association, Inc.**, 325 So. 3d 997 (Fla. 1st DCA 2021).

A unit owner’s cause of action for declaratory relief does not accrue until there is a dispute against the association, not when the unit owner purchases their unit.

**Christopher v. Bank of America, N.A.**, 323 So. 3d 838 (Fla. 2d DCA 2021).

The filing of a bankruptcy petition divests a state court of jurisdiction, even if the bankruptcy filing clearly does not meet bankruptcy filing requirements.

**2000 Presidential Way, LLC v. The Bank of New York Mellon**, 326 So. 3d 64 (Fla. 4th DCA 2021).

Constructive notice under Florida Statute section 695.01 is dependent on proper recording with the Clerk and not on proper indexing of recorded documents by the Clerk.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 33**  
**August 14, 2021**  
**Manuel Farach**

**Behr v. Campbell**, 8 F.4th 1206 (11th Cir. 2021).

The Rooker-Feldman Doctrine is narrow and applies only when a losing state court litigant calls on a district court to modify or “overturn an injurious state-court judgment”; district courts do not lose subject matter jurisdiction over a claim “simply because a party attempts to litigate in federal court a matter previously litigated in state court.”

**Maas v. HSBC Bank USA, National Association**, 325 So. 3d 1024 (Fla. 2d DCA 2021).

A borrower altering an original promissory note in open court by striking through her signature is a not a clear contemptuous act and is not direct criminal contempt.

**Perez v. Jaimot**, 326 So. 3d 748 (Fla. 3d DCA 2021).

An order of partition is final at such time as the court directs the sale of the property.

**Wells Fargo Bank, N.A. v. Electronic Funds Transfer Corporation D/B/A The EFT Network, Inc.**, 326 So. 3d 753 (Fla. 5th DCA 2021).

A party seeking to impose punitive damages on a business entity based on the actions of a managing agent must prove the agent was more than a middle-level manager or that he was a middle-level manager with more than limited managerial authority.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 34**  
**August 21, 2021**  
**Manuel Farach**

**Buending v. Town of Redington Beach**, 10 F.4th 1125 (11th Cir. 2021).

Florida Statute section 163.035(4) permits a municipality to defend its decision to allow the public to use “dry sand” of beachfront owners in any proceeding, not just in defense to taking actions.

**City of Holmes Beach v. Coral Escapes of Holmes Beach, LLC**, 327 So. 3d 361 (Fla. 2d DCA 2021).

A municipality is entitled to attorney’s fees in Bert Harris Act litigation if it prevails in litigation and has appropriately responded to the claim, including a response under Florida Statute section 70.001(4)(c)(11) that it was making no changes to the governmental action.

**Davis v. Clark**, 326 So. 3d 781 (Fla. 2d DCA 2021).

Florida Statute section 768.79 applies in small claims matters.

**Maisonneuve v. Situs Investments, LLC**, 326 So. 3d 707 (Fla. 4th DCA 2021).

Citing *Page v. Deutsche Bank Trust Co. Americas*, 308 So. 3d 953 (Fla. 2020), the Fourth District holds a defending borrower is entitled to an award of attorney’s fees if he proves a contract existed but that the lender was not entitled to enforce it.

**Taubenfeld v. Lasko**, 324 So. 3d 529 (Fla. 4th DCA 2021).

The Fourth District recognizes the new tort of aiding and abetting a conversion.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 35**  
**August 28, 2021**  
**Manuel Farach**

**In Re: Amendment to Florida Rule of Civil Procedure 1.280**, 324 So. 3d 459 (Fla. 2021).

The Florida Supreme Court applies the Apex Doctrine to private parties, and amends Florida Rule of Civil Procedure 1.280(h) accordingly.

**New Life Rehab Medical Center v. Mercury Insurance Company of Florida**, 326 So. 3d 1178 (Fla. 3d DCA 2021).

Following *Hock v. Triad Guaranty Insurance Corp.*, 292 So. 3d 37 (Fla. 2d DCA 2020), the Third District holds that Florida Statute section 607.1622 “does not preclude a corporation that has been administratively dissolved for failing to file an annual report from prosecuting or defending against an action in order to wind up its business and affairs.”

**Rodriguez v. Department of Business and Professional Regulation**, 326 So. 3d 796 (Fla. 3d DCA 2021).

The notice process for revocation of licenses employed by the Department of Business and Professional Regulation under Florida Statute section 475.275 satisfies due process.

**Dawn Rene Holding, LLC v. World Jet of Delaware, Inc.**, 327 So. 3d 288 (Fla. 4th DCA 2021).

An award of damages under Florida Statute section 60.07 against a bond for a wrongfully issued injunction can include an award of attorney’s fees but awarded fees are limited to those necessary to dissolve the injunction.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 36**  
**September 4, 2021**  
**Manuel Farach**

**NLG, LLC v. Horizon Hospitality Group, LLC (In re Hazan)** 10 F.4th 1244 (11th Cir. 2021).

The Equitable Mootness Doctrine (reviewing courts will, under certain circumstances, reject bankruptcy appeals if rulings have gone into effect and would be extremely burdensome, especially to non-parties, to undo) applies in individual Chapter reorganizations as well as complex business bankruptcies.

**National Trust Insurance Company v. Southern Heating and Cooling Inc.**, 12 F.4th 1278 (11th Cir. 2021).

A district court may exercise its discretion and decline to adjudicate a claim under the Declaratory Judgment Act even in the absence of parallel proceedings.

**Furst v. DeFrances**, Case No. SC19-701 (Fla. 2021).

A property that has been taxed, even if taxed at a mistakenly undervalued rate, has not “escaped taxation” under Florida Statute section 193.092(1) and thus the tax collector cannot back-tax the property.

**In Re: Amendment to Florida Rule of Appellate Procedure 9.020**, Case No. SC21-253 (Fla. 2021).

Florida Rule of Appellate Procedure 9.020 is amended to include motions filed under Florida Rule of Civil Procedure 1.535 (remitter and additur) to the list of motions that toll rendition of the final order.

**Temnikova v. Eastern Financial Mortgage Corporation**, 324 So. 3d 1030 (Fla. 3d DCA 2021).

The determination of whether a transaction is either civilly or criminally usurious is made at the inception of the loan and a promissory note’s savings clause, though not dispositive in absolving a lender, is one factor in considering usurious intent.

**Lorber v. Passick**, 327 So. 3d 297 (Fla. 4th DCA 2021).

*Johnson v. Davis* claims are not eliminated by an “as is” contract for the sale of residential real property.

**Mortgage Assets Management, LLC v. Terraces/Banyan - 2, Inc.**, 326 So. 3d 1140 (Fla. 4th DCA 2021).

A court cannot impose an equitable lien on real property which trumps prior properly recorded interests.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 37**  
**September 11, 2021**  
**Manuel Farach**

**CCM Condominium Association, Inc. v. Petri Positive Pest Control, Inc.**, 271 So. 3d 1001 (Fla. 2021).

Pre-judgment interest that accrues after an offer of judgment is not counted in determining the “results obtained,” i.e., whether a plaintiff has met the threshold amount of difference between an offer of judgment and the judgment entered.

**Garcia v. The Insurance Exchange of America Corporation**, 325 So. 3d 1037 (Fla. 3d DCA 2021).

A party waives its contractual right to arbitration by participating in litigation concerning an arbitrable issue and waiver is determined not by the timing of the motion to compel arbitration but by the moving party having taken an inconsistent position prior to the filing of the motion to compel arbitration.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 38**  
**September 18, 2021**  
**Manuel Farach**

**McLaurin v. The Terminix International Company, LP**, 13 F.4th 1232 (11th Cir. 2021).  
A court should institute a briefing schedule when presented with a motion to confirm an arbitration award before the deadline to move to vacate an arbitration award has lapsed so that both motions may be considered at the same time.

**Imhof v. Walton County, Florida**, Case Nos. 1D19-0980 and 1D19-1530 (Fla. 1st DCA 2021).

A trial court reviewing a development order under Florida Statute section 163.3215(3) for inconsistency with the statute must review all of claims of inconsistency and not just those specifically addressed to plan components concerning land use, density, or intensity of use; conflict certified with *Heine v. Lee County*, 221 So. 3d 1254 (Fla. 2d DCA 2017).

**Canon v. Ziadie**, 327 So. 3d 327 (Fla. 4th DCA 2021).

Even in a liquidated damages case, a seller's failure to prove entitlement to a good faith deposit in a breach of contract case while the buyer proved entitlement to the deposit makes the buyer the prevailing party for attorney's fees determination.

**Handy v. Countertops to Go, LLC**, 327 So. 3d 895 (Fla. 5th DCA 2021).

A trial court should say – as opposed to dismiss – a case when granting a motion to compel arbitration and ordering arbitration.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 39**  
**September 25, 2021**  
**Manuel Farach**

**Rodriguez v. The Bank of New York Mellon**, Case No. 3D21-1778 (Fla. 3d DCA 2021). In an eviction action arising out of a contested foreclosure, “neither the ground of fairness nor “the “ground” of benevolence and compassion . . . constitute[s] a lawful, cognizable basis for granting relief to one side to the detriment of the other, and thus cannot support [the requested relief]: no judicial action of any kind can rest on such a foundation.”

**Cano, Inc. v. Judet**, Case No. 4D20-1509 (Fla. 4th DCA 2021).

A trial court may decide an issue not set forth in the pretrial stipulation when the issue has been previously raised in the pleadings and is argued during trial without objection.

**Arnold v. Arnold**, 327 So. 3d 910 (Fla. 5th DCA 2021).

Consistent with the principle that a trial court may enforce a judgment on appeal so long as doing so does not disturb the subject matter of the final judgment, a trial court may enforce a declaratory decree and require the return of land wrongfully conveyed while the declaratory judgment is on appeal.

**Ge v. Swearingen & Associates, Inc.** Case No. 5D21-262 (Fla. 5th DCA 2021).

Dismissal of an appeal restores the final judgment to full effectiveness.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 40**  
**October 2, 2021**  
**Manuel Farach**

**Pena v. Rincon**, 327 So. 3d 459 (Fla. 3d DCA 2021).

A handwritten agreement between non-lawyer business partners is effective and the commercial properties owned by the partnership may be partitioned.

**BREA 3-2 LLC v. Hagshama Florida 8 Sarasota, LLC**, 327 So. 3d 926 (Fla. 3d DCA 2021).

An agreement to arbitrate any disputes “under the Agreement” is a narrow arbitration provision and does not encompass indirect claims such, as in this case, usury, declaratory relief, and injunctive relief.

**Carus v. VRMTG Asset Trust**, 327 So. 3d 937 (Fla. 3d DCA 2021).

A trial conducted over electronic means is acceptable under the circumstances as due process is flexible and calls for as much procedural protections as the situation demands.

**Associated Energy Group, LLC v. Costa**, Case No. 3D20-1633 (Fla. 3d DCA 2021).

The two-dismissal rule applies only to dismissal of an entire action or controversy as to all defendants; it does not apply to a dismissal of any claim or cause of action against one or more, but less than all, of the defendants named in the complaint, and accordingly, does not apply to guarantors who were dismissed twice when the action remained pending after the second dismissal of the guarantors.

**Little Brownie Properties, Inc. v. Wood**, Case No. 5D20-2409 (Fla. 5th DCA 2021).

The requirement imposed on a garnishor by Florida Statute section 77.041(2) (2020) to serve notices upon the defendant within 5 business days after the writ is issued or 3 business days after the writ is served on the garnishee is mandatory, and failure to comply results in the dismissal of the garnishment even if the defendant was not prejudiced by the failure to timely serve.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 41**  
**October 9, 2021**  
**Manuel Farach**

**Levy v. Levy**, 326 So. 3d 678 (Fla. 2021).

Florida Statute section 57.105(7) is applicable only where the attorney's fees provision is unilateral, i.e., provides for an award of attorney's fees to only one party to the contract.

**In Re: Amendments to Florida Rules of Civil Procedure 1.280 And 1.340**, Case No. SC21-120 (Fla. 2021).

Florida Rule of Civil Procedure 1.280 is amended to require litigants, when responding to requests for production, written deposition questions, interrogatories, and requests for admissions, to state the deposition question, interrogatory, or discovery request followed by the answer, objection, or other response.

**Phillips v. Pritchett Trucking, Inc.**, Case No. 1D20-2068 (Fla. 1st DCA 2021).

The Clerk of Court is required by Florida Statute section 28.222(3) to "record . . . instruments presented to him or her for recording, upon payment of the service charges prescribed by law" and upon failure to do so, may be compelled by mandamus to record as date of presentment of the instrument and give priority irrespective of Florida Statute section 695.11.

**Akuwudike v. McKenzie**, Case No. 3D20-1364 (Fla. 3d DCA 2021).

Other than jurisdiction specifically retained, a trial court loses jurisdiction of a case after rendition of the final judgment and expiration of the time allotted for altering, modifying, or vacating the judgment, and as a result, cannot conduct case management conferences nor "dismiss" a case.

**Barak v. ACS International Projects, Ltd.**, 319 So. 3d 728 (Fla. 3d DCA 2021),

Article 4A (Electronic Funds Transfers) of the Uniform Commercial Code only allocates responsibility as to "parties" to the funds transfer, i.e., a term narrowly defined as including only the originator, sender, beneficiary, and enabling financial institutions, and does not allocate responsibility as to underlying parties laying claim to the funds.

**First Equitable Realty III, Ltd. v. Grandview Palace Condominium Association, Inc.**, Case No. 3D20-1807 (Fla. 3d DCA 2021).

An amendment to a condominium declaration giving a developer the right to reject further amendments which are, in the sole opinion of the developer, harmful to the sale of further units is enforceable.

**JD's Asphalt Engineering Corp. v. Arch Insurance Company**, No. 3D20-0407 (Fla. 3d DCA 2021).

Upon proper proof, a surety may enforce a contractual provision that all change orders in a construction contract be in writing and approved.

**Shechter v. R.V. Sales of Broward, Inc.**, Case No. 3D20-1413 (Fla. 3d DCA 2021).  
A trial court cannot enter summary judgment when no parties have moved for that relief.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 42**  
**October 16, 2021**  
**Manuel Farach**

**Dekalb Event Center, Inc. v. City of Chamblee**, 15 F.4th 1056 (11th Cir. 2021).

A liquor license is a vested property right but its application, e.g., hours of operation, may be changed by government.

**Lam v. Univision Communications, Inc.**, Case No. 3D19-2204 (Fla. 3d DCA 2021),

Florida Statute section 768.295 (2021), Florida's anti-SLAPP statute, does not create a different motion to dismiss standard requiring the plaintiff their claims are not without merit.

**Union Restoration, Inc. v. Heritage Property & Casualty Insurance Company**, 326 So. 3d 226 (Fla. 3d DCA 2021).

A property insurance policy may require the written signature of the property owners and the mortgagee before it can be assigned.

**Florida Woman Care LLC v. Nguyen**, Case No. 4D21-1554 (Fla. 4th DCA 2021).

Defendants who did not sign an agreement containing an arbitration may compel arbitration if the Plaintiff sues them on the agreement containing the arbitration provision.

**Soundbar, LLC v. BYM Commercial**, Case No. 5D21-176 (Fla. 5th DCA 2021).

A trial court hearing a Motion to Determine Rent under Florida Statute section 82.232 (2020) is limited to considering only the issue of the amount of rent due and whether the amount has been paid, and cannot consider any other issues such as the proper lease in place, force majeure, and other defaults.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 43**  
**October 23, 2021**  
**Manuel Farach**

**Gold-Fogel v. Fogel**, 16 F.4th 790 (11th Cir. 2021).

The Colorado River Doctrine (federal courts have discretion to not accept federal litigation when it is identical to state court litigation) is not to be applied mechanically and a non-exclusive list of factors the federal court may review include:

(1) the strength of the state’s interest in having the issues raised in the federal declaratory action decided in the state courts; (2) whether the judgment in the federal declaratory action would settle the controversy; (3) whether the federal declaratory action would serve a useful purpose in clarifying the legal relations at issue; (4) whether the declaratory remedy is being used merely for the purpose of “procedural fencing”—that is, to provide an arena for a race for res judicata or to achieve a federal hearing in a case otherwise not re-movable; (5) whether the use of a declaratory action would increase the friction between our federal and state courts and improperly encroach on state jurisdiction; (6) whether there is an alternative remedy that is better or more effective; (7) whether the underlying factual issues are important to an informed resolution of the case; (8) whether the state trial court is in a better position to evaluate those factual issues than is the federal court; and (9) whether there is a close nexus between the underlying factual and legal issues and state law and/or public policy, or whether federal common or statutory law dictates a resolution of the declaratory judgment action.

**In Re: Amendment to Rules Regulating The Florida Bar—Rule 3-7.18**, Case No. SC21-653 (Fla. 2021).

The Board of Governors of the Florida Bar may review allegations of misconduct referred by members of the judiciary that do not result in finding of probable cause or filing of a formal complaint.

**Bayview Loan Servicing, LLC v. Brown**, Case No. 2D20-1824 (Fla. 2d DCA 2021).

A trial court may not take judicial notice of matters outside the pleading when ruling on a motion to dismiss absent extraordinary circumstances.

**Capital Wealth Advisors, LLC v. Capital Wealth Advisors, Inc.**, Case No. 2D20-2446 (Fla. 2d DC 2021).

A commission sharing agreement is not an unlawful restraint of trade which violates Florida Statute section 542.335.

**Berggren v. North Miami Bagels, Inc.**, Case No. 3D19-2491 (Fla. 3d DCA 2021).

Florida Rule of General Practice and Judicial Administration 2.516(b)(2) requires service on unrepresented parties be made by “mailing [a document] to the party . . . at their last known address” and is “complete upon mailing”; Rule 2.516 does not require a party to include a certificate of service when mailing a document to an unrepresented party.

**James B. Pirtle Construction, Co., Inc. v. Warren Henry Automobiles, Inc.**, Case No. 3D21-830 (Fla. 3d DCA 2021).

At common law, a leasehold interest was considered a type of personal property, not realty and a lienholder contracting with a tenant can only lien the leasehold and not the real property.

**Friedman v. Deutsche Bank National Trust Company**, Case No. 5D20-1068 (Fla. 5th DCA 2021).

Failure to introduce evidence in support of a claim, including a claim for attorney's fees, requires reversal without the opportunity to re-submit evidence on the issue.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 44**  
**October 30, 2021**  
**Manuel Farach**

**College Health II, GP, Inc. v. Depau**, Case Nos. 3D19-1315 & 3D20-1179 (Fla. 3d DCA 2021).

Counsel for defaulting party must have "actual knowledge" that the defaulting party is represented by counsel and "actual knowledge" that the defaulting party intends to defend against the lawsuit to be required to serve the notice of default.

**Asgard Fund, L.P. v. MM80 Oceanside Holdings, LLC**, Case No. 3D19-2126 (Fla. 3d DCA 2021).

Pursuant to Florida Statute section 673.1051 (2021), an unissued note is binding on the maker.

**Morburger v. Yellow Funding Corp.**, Case Nos. 3D21-318 and 3D21-881 (Fla. 3d DCA 2021).

The Third District re-affirms agreement with its prior precedent and the Second District, and holds that the right to wind up under Florida Statute section 607.1405 "applies equally to corporations that are voluntarily dissolved and to corporations that are administratively dissolved."

**Isola Bella Homeowners Association, Inc. v. Clement**, Case No. 4D20-2306 (Fla. 4th DCA 2021).

The general rule the defendant is the prevailing party when a plaintiff dismisses a lawsuit applies when the dismissal is the result of a settlement agreement.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 45**  
**November 6, 2021**  
**Manuel Farach**

**Reynolds v. ServisFirst Bank (In Re: Stanford)**, 17 F.4th 116 (11th Cir. 2021).

Unless a section 363 sale or lease was stayed pending appeal, the reversal or modification on appeal of the authorization under 11 U.S.C. § 363(m) does not affect the validity of a sale or lease to an entity that purchased or leased such property in good faith and regardless of whether the transferee knew or did not know of the appeal.

**First Fidelity Trust Services, Inc. v. Shelter Cove Condominium Association, Inc.**, Case No. 1D20-1426 (Fla. 1st DCA 2021).

An attorney who represents a condominium association as receiver is precluded under Rule of Professional Conduct 4-1.9 from later representing a unit owner.

**AmeriGas Propane, Inc. v. Sanchez**, Case No. 3D20-1447 (Fla. 3d DCA 2021).

An employee soliciting clients of his former employer while at his new employer establishes substantial likelihood of success on the merits when the employee's former restrictive covenant prohibited the employee from directly or indirectly soliciting business from former customers.

**Ehlert v. Castro**, Case No. 4D20-2007 (Fla. 4th DCA 2021).

A Proposal for Settlement which offers to settle the lawsuit based on the allegations raised in the lawsuit is not vague and is accordingly enforceable.

**Deweese v. Johnson**, Case No. 4D21-446 (Fla. 4th DCA 2021).

Even under a broad arbitration provision, a claim for personal injury damages need not be arbitrated when the claim has no nexus to the contract containing the arbitration provision.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 46**  
**November 13, 2021**  
**Manuel Farach**

**Crescent Shore Condominium Association, Inc. v. Lani Kai, L.P.**, Case No. 2D21-234 (Fla. 2d DCA 2021).

A claim for violation of an easement is not barred by res judicata when the new claim of violation is different than the previous violation.

**12550 Biscayne Condominium Association, Inc. v. NRD Investments, LLC**, Case Nos. 3D19-1893, 3D20-752, and 3D20-292 (Fla 3d DCA 2021).

Residential owners of a mixed-use condominium cannot avoid application of a Reciprocal Easement Agreement between the residential and commercial owners based on oppression and unconscionability or Florida Statute section 718.302.

**2275 NE 120 Street, LLC v. Sanchez Struve Business Advisors, LLC**, Case No. 3D20-1277 (Fla. 3d DCA 2021).

A mortgagor that fails to exercise its right of redemption within the time set forth by Florida Statute section 45.0315 cannot later claim that the amount of redemption was incorrect due to not including previous paid amounts.

**Roche v. Cyrulnik**, Case No. 3D21-1741 (Fla. 3d DCA 2021).

Extraordinary circumstances are required to avoid that general rule of comity that a later filed state court action should defer to a previously filed federal action.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 47**  
**November 20, 2021**  
**Manuel Farach**

**Jackson v. Le Centre on Fourth, LLC (In re: Le Centre on Fourth, LLC)**, 17 F.4th 1326 (11th Cir. 2021).

Notwithstanding that a hearing notice did not comply with Bankruptcy Rule of Procedure 2002(c)(3) (conspicuous language on a notice is required when a plan of reorganization proposes an injunction against non-debtors), a creditor is barred from later objecting to a reorganization plan which contains discharge injunctions in favor of third parties if the creditor received actual notice of the confirmation hearing and did not object at the hearing.

**State Farm Florida Insurance Company v. Carapella (In Re: Gaime)**, 17 F.4th 1349 (11th Cir. 2021).

The Bankruptcy Code's automatic stay provision precludes a post-judgment motion to intervene in a state court action.

**Callahan v. United Network for Organ Sharing**, 17 F.4th 1356 (11th Cir. 2021).

Discovery materials are not conclusively deemed "judicial records" but may become so – and likewise become subject to public disclosure as a judicial record – if attached to a substantive motion.

**Andreatta v. Brown**, Case No. 1D20-2397 (Fla. 1st DCA 2021).

Email communication between counsel may satisfy the obligation of producing a privilege log.

**Gambrel v. Sampson**, Case No. 2D21-805 (Fla. 2d DCA 2021).

There is no excusable neglect provision within Florida Statute section 44.013 (nonbinding arbitration) and failure to object to the nonbinding arbitration award and demand trial de novo within the statutory twenty days leave the trial court with no discretion other than to enter a judgment on the arbitration award.

**JPMorgan Chase Bank, N.A. v. Llovet**, Case No. 3D19-1118 (Fla. 3d DCA 2021).

Florida Rule of Civil Procedure 1.540 cannot be used to reopen a consent judgment to obtain discovery regarding matters that a party knew or should have known about and for which he could have sought discovery before entering into the consent judgment.

**Flooring Depot FTL, Inc. v. Wurtzebach**, Case No. 4D20-1787 (Fla. 4th DCA 2021).

A claimant must prove three factors by a preponderance of the evidence to pierce the corporate veil: (1) the shareholder dominated and controlled the corporation to such an extent that the corporation's independent existence, was in fact non-existent and the shareholders were in fact alter egos of the corporation; (2) the corporate form must have been used fraudulently or for an improper purpose; and (3) the fraudulent or improper use of the corporate form caused injury to the claimant.

**Hobe-St. Lucie Conservancy District v. Martin County**, Case No. 4D20-2036 (Fla. 4th DCA 2021).

A 'tax' is an enforced burden of contribution imposed by sovereign for the support of the government while a special assessment is imposed on that portion of the community which receives some special or peculiar benefit in the enhancement of value of the property against which the assessment is imposed.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 48**  
**November 27, 2021**  
**Manuel Farach**

**Mississippi v. Tennessee**, 141 S.Ct. 2882 (Mem) (2021).

No State has a sovereign right to the water in an aquifer, and the Court's Equitable Apportionment jurisprudence (each of the States has an equality right to use the water at issue) applies to interstate, underground aquifers.

**In Re: Redefinition of Appellate Districts and Certification of Need for Additional Appellate Judges**, Case No. SC21-1543 (Fla. 2021).

The Florida Supreme Court certifies the need for a sixth appellate district and recommends it be based in the Northeast Florida area.

**Auction Company of America v. Russell Revocable Trust**, Case No. 3D20-1914 (Fla. 3d DCA 2021).

An auctioneer does not have a general, non-contractual legal duty to collect a deposit from a bidder before allowing a bid to be placed at auction.

**Carrington Mortgage Services, LLC v. Nicolas**, Case Nos. 3D21-1300, 3D21-1304, 3D21-1311, and 3D21-1320 (Fla. 3d DCA 2021).

A trial judge hearing a disputed factual issue should not issue an order to show cause why a witness should not be held in contempt as the result of the witness's testimony.

**El Brazo Fuerte Bakery 2 v. 24 Hour Air Service, Inc.**, Case No. 4D21-531 (Fla. 4th DCA 2021).

A trial court may not reduce a prevailing party's requested hourly rate (and the expert's requested hourly rate) absent competent substantial evidence or specific findings for such reductions.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 49**  
**December 4, 2021**  
**Manuel Farach**

**Jain v. Buchanan Ingersoll & Rooney PC**, Case No. 3D20-1529 (Fla. 3d DCA 2021). Florida Statute section 768.79 awards fees paid by a party as well as those paid on the party's behalf, and accordingly, a prevailing defendant may be awarded attorney's fees even if his firm (not him) paid his fees under an indemnification agreement.

**K.D. Construction of Florida, Inc. v. MDM Retail, Ltd.**, Case No. 3D20-1759 (Fla. 3d DCA 2021).

Florida Statute section 713.10 cannot be used by an owner/landlord to escape liability for unpaid construction charges when the owner/landlord personally contracted for the improvements, recorded the notices of commencement, and was contractually obligated to pay for the improvements.

**Cocoplum Civic Association, Inc. v. City of Coral Gables**, Case No. 3D21-1569 (Fla. 3d DCA 2021).

The Third District holds that "second-tier certiorari may not be utilized to challenge simple legal error, but only in instances where the petitioner establishes a violation of a clearly established principle of law resulting in a miscarriage of justice."

**Millan Law Firm, P.A. v. Zambrano**, Case No. 3D21-1726 (Fla. 3d DCA 2021).

Records regarding payments to law firms typically do not implicate either the attorney-client or work product privileges.

**McGregor v. Fowler White Burnett, P.A.**, Case No. 4D20-2684 (Fla. 4th DCA 2021).

Fraudulent transfer claims brought under Florida Statute section 56.29 (proceedings supplementary) are subject to the time limitations of Florida Statute chapter 726 (fraudulent conveyances) and thus can be barred by the application of Florida Statute section 726.110.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 50**  
**December 11, 2021**  
**Manuel Farach**

**1944 Beach Boulevard, LLC v. Live Oak Banking Company (In Re: NRP Lease Holdings, LLC)**, Case No. 21-11742 (11th Cir. 2021).

The Eleventh Circuit certifies questions regarding Florida Statute section 679.5016(3) (safe harbor for incorrect spelling of debtor names in UCC-1 Financing Statements) to the Florida Supreme, specifically:

- (1) Is the “search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic,” as provided for by Florida Statute § 679.5061(3), limited to or otherwise satisfied by the initial page of twenty names displayed to the user of the Florida Secured Transaction Registry’s search function?
- (2) If not, does that search consist of all names in the filing office’s database, which the user can browse to using the command tabs displayed on the initial page?
- (3) If the search consists of all names in the filing office’s database, are there any limitations on a user’s obligation to review the names and, if so, what factors should courts consider when determining whether a user has satisfied those obligations?

**In Re: Amendments to Rule Regulating the Florida Bar 1-3.10 and Florida Rule of General Practice and Judicial Administration 2.510**, Case No. SC21-722 (Fla. 2021).

The process for *pro hac vice* is amended and out of state attorneys are required to comply with the Florida Rules of General Practice.

**Blue Water Holdings SRC, Inc. v. Santa Rosa County, Florida**, Case No. 1D19-4387 (Fla. 1st DCA 2021).

The purpose of appraisals under the Bert Harris Act, Florida Statute section 70.001 (2012), is to give notice to the government to allow it to fairly assess the claim and the appraisals need not be “before and after,” i.e., appraisals before and after the inordinate government regulation which show the diminution in value due to the government regulation, nor admissible in evidence by themselves.

**The Solomon Law Group, P.A. v. Dovenmuehle Mortgage, Inc.**, Case No. 2D21-360 (Fla. 2d DCA 2021).

Forum selection clauses, being a contractual right and not a grant of jurisdiction, neither grant jurisdiction to nor remove jurisdiction from a particular court, and being a contractual right, can be waived by the actions of the party invoking the clause.

**ProntoCash, LLC v. The Autoboutique of Miami, Inc.**, Case No. 3D21-1277 (Fla. 3d DCA 2021).

A lis pendens not founded on a duly recorded instrument requires a fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit, and accordingly, is not enforceable against a party not involved in the underlying dispute.

**Cleveland v. Westport Recovery Corporation**, Case No. 4D20-2445 (Fla. 4th DCA 2021).

A motion denied under the prior Florida Rule of Civil Procedure 01.525 may be re-filed after the adoption of the revised rule and will be determined under the new rule.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 51**  
**December 18, 2021**  
**Manuel Farach**

**Costa del Mar, Inc. v. Haney**, Case No. 1D19-1787 (Fla.1st DCA 2021).

An appeal may be dismissed under Florida Rule of Appellate Procedure 9.350(a), but the appeal cannot be “without prejudice.”

**Tidewater Preserve Master Association, Inc. v. Department of Transportation**, Case No. 2D21-223 (Fla. 2d DCA 2021).

The fact there are competing real estate appraisals as to the good faith estimate for a “quick take” condemnation under Florida Statutes chapter 74, even if the appraisal adopted by the court presumes hypothetical conditions for its determination of value, does not render the adopted appraisal improper as a matter of law.

**Gill v. Parvez**, Case No. 3D21-0796 (Fla. 3d DCA 2021).

A tenant who seeks to defend an eviction must pay rent into the Registry of the Court during the litigation even if the initial Complaint does not demand back-due rent.

**Samoilova v. Loginov**, Case No. 3D21-1144 (Fla. 3d DCA 2021).

A successor judge has jurisdiction to rule on a Rule 1.540 motion regarding matters ruled upon by the predecessor judge.

**Florida Real Property and Business Litigation Report**  
**Volume XIV, Issue 52**  
**December 25, 2021**  
**Manuel Farach**

**Ballard v. Pritchard**, Case No. 2D20-2967 (Fla.2d DCA 2021).

A decedent's devise of a life estate of her homestead to a surviving spouse with the fee to decedent's child is invalid under Florida Statute section 723.4015(1) and the property descends via intestate secession under Florida Statute section 732.401(1).

**Unifirst Corporation v. Joey's New York Pizza, LLC**, Case No. 2D21-891 (Fla. 2d DCA 2021).

The Second District holds that an order vacating an arbitration award is a non-final order not subject to appeal under Florida Rule 9.130 nor capable of certiorari review; conflict certified with the First District under *Felger v. Mock*, 65 So. 3d 625, 628 (Fla. 1st DCA 2011).

**Lennar Homes, LLC v. Martinique at the Oasis Neighborhood Association, Inc.**, Case No. 3D20-1732 (Fla. 3d DCA 2021).

The Third District follows the Second District and holds that a homeowner's association's right to sue in its representative capacity requires it "to comply with the arbitration agreements signed by each of its members" under *Pulte Home Corp. v. Vermillion Homeowners Ass'n, Inc.*, 109 So. 3d 233, 235 (Fla. 2d DCA 2013).

**Wilmington Savings Fund Society, FSB v. Gulfstream of Las Olas Condominium Association, Inc.**, Case No. 4D20-1443 (Fla. 4th DCA 2021).

A receiver appointed at the request of a condominium association pursuant to Florida Statutes section 718.111(5) is subject to the safe harbor provision of Florida Statute section 718.116(1)(b)(1).

**Aquachile, Inc. v. Williams**, Case No. 4D21-1453 (Fla. 4th DCA 2021).

Whether a party qualifies for protection under a "Himalaya clause" (contractual limitation of liability extended to "downstream parties" expected to take part in performance of the contract) depends on the nature of the relationship between the party seeking protection and the contracting party as well as the nature of the services provided by the party seeking protection compared to the contracting party's responsibilities under the contract.