

## **Florida Real Property and Business Litigation Report**

### **Manuel Farach**

**Olivier v. City of Brandon**, Case No. 24-993 (2026).

A plaintiff previously convicted under a municipal ordinance may bring a 42 U.S.C. § 1983 action seeking purely prospective declaratory and injunctive relief challenging the ordinance's constitutionality without running afoul of *Heck v. Humphrey* because such relief does not necessarily imply the invalidity of the prior conviction.

**Cox Communications, Inc. v. Sony Music Entertainment**, Case No. 24-171 (2026).

An internet service provider is not contributorily liable for its subscribers' copyright infringement merely because it had knowledge that its service was being used by some subscribers to infringe as contributory copyright liability requires proof that the provider either affirmatively induced the infringement or provided a service tailored for infringement.

**Beazer v. Richmond County Constructors, LLC**, Case No. 24-11734 (11th Cir. 2026).

Equitable tolling of Title VII's ninety-day filing period applies when a pro se plaintiff diligently attempts to secure counsel, and being unable to do so, then timely mails his pro se complaint by guaranteed overnight delivery but misses the statutory filing deadline due to a confluence of prior counsel's delay and hurricane-related disruption delivery delays.

**In re Amendments to Florida Rule of Appellate Procedure 9.710**, No. SC2025-1415 (Fla. 2026).

Florida Rule of Appellate Procedure 9.710(b) is amended to remove the categorical bar excluding petitions filed under Florida Rule 9.100(c)(2) from appellate mediation.

**In re Amendments to Florida Rules of Appellate Procedure**, Case No. SC2025-1458 (Fla. 2026).

Amendments to Florida Rules of Appellate Procedure 9.020, 9.045, 9.200, and 9.420 conform the appellate rules to recent changes in the Florida Rules of General Practice and Judicial Administration, including removal of outdated e-filing docket references, updated paper-filing requirements, and revised provisions governing filing and service.

**In re Amendments to Rules Regulating the Florida Bar – Professionalism Expectations**, Case No. SC2025-1347 (Fla. 2026).

Amendments to The Florida Bar's Professionalism Expectations revise several expectations on billing, client communication, discovery practice, deposition conduct, criticism of participants in the justice system, and supervision of support personnel to provide clearer and more precise behavioral standards for lawyers.

**City of Tampa v. Liberty Hospitality Management, LLC**, Case No. 2D2024-2082 (Fla. 2d DCA 2026).

Florida's constitutional separation of powers clause found in Article II, Section 3, does not apply to municipalities, and a city council's site-specific rezoning decision constitutes a

quasi-judicial action derived from the municipality's broad home rule powers under Article VIII, Section 2(b) which is reviewable by certiorari in the circuit court.

**Pons Torres v. AP Air Conditioning Corp.**, Case No. 3D24-1802 (Fla. 3d DCA 2026).  
A trial court may not enter final summary judgment in favor of a nonmovant without notice and a proper motion under Florida Rule of Civil Procedure 1.510(c)(6).

**Wolfson v. Pardes**, Case No. 3D25-2509 (Fla. 3d DCA 2026).  
A civil contempt order imposing incarceration as a coercive sanction must include an affirmative finding that the contemnor possesses the present ability to comply with the purge conditions and must afford a reasonable time to purge, and the absence of such findings requires that the order and corresponding writ of bodily attachment be quashed.

**Bankers Life & Casualty Co. v. Borew**, Case No. 4D2024-1296 (Fla. 4th DCA 2026).  
A contingency fee multiplier may not be applied to a lodestar fee award absent record evidence that the relevant market required such enhancement to obtain competent counsel, and a court-awarded hourly rate may not exceed the rate expressly agreed upon in the parties' retainer agreement where that agreement contains no alternative fee recovery clause.

**Sudbury v. Konsker**, Case No. 4D2025-1181 and **Unified Women's Healthcare, LP v. Konsker**, Case No. 4D2025-1182 (Fla. 4th DCA 2026) (consolidated).  
A signatory to an asset purchase agreement that expressly incorporates a management services agreement is bound by the arbitration clause contained therein; and different arbitration clauses in related agreements are not rendered fatally ambiguous merely because they designate different administering bodies if no material irreconcilable conflict between the respective arbitration rules has been identified.

**Puleo v. Cohen**, No. 3D24-0586 (Fla. 3d DCA 2026).  
Florida law requires only reliance (not justifiable reliance) for misrepresentation claims thus summary judgment against a seller is improper when there is record evidence sufficient to create jury issues on reliance, materiality, and damages that the seller relied on misrepresentations about the true buyer's identity and intended use of residential property.

**CBRE, Inc. v. DidierGroup, LLC**, No. 6D2023-3011 (Fla. 6th DCA 2026).  
So as to prevent duplicate recovery, a non-settling defendant is entitled to a setoff under Florida Statutes sections 46.015(2) and 768.041(2) when the settling co-defendant previously paid the plaintiff for the same "identical" damages sought against the non-settling defendant.

**Gacek v. Avalon Dunes Condominium Owners Association, Inc.**, Case No. 1D2024-1029 (Fla. 1st DCA 2026).  
An action for malicious prosecution requires that the entire underlying proceeding, not merely one claim within it, terminate in favor of the plaintiff so a party who prevails on one claim but loses others in the same suit does not satisfy the favorable-termination element.

**State of Florida ex rel. Chertok v. Zillow, Inc.**, Case No. 1D2024-2804 (Fla. 1st DCA 2026).

A relator cannot establish liability under the Florida False Claims Act and Florida Disposition of Unclaimed Property Act when the alleged “unclaimed” property is not owed under the asserted instrument, is not presumed unclaimed due to ongoing communications, is not deliverable to Florida based on the owners’ non-Florida residency at the relevant times, and the owners’ actions negate any presumption of abandonment.

**Aaraya Public Adjusting, LLC v. Crucial Claims, Inc.**, Case No. 2D2025-2119 (Fla. 2d DCA 2026).

Untimely objections to discovery requests may result in waiver of non-privilege objections and permit an order compelling production of otherwise discoverable financial information but an untimely response does not waive attorney–client privilege, and a trial court must consider privilege claims, and where appropriate, conduct an in camera review before compelling production of arguably privileged materials.

**First Horizon Bank v. Hayworth**, Case No. 3D25-2468 (Fla. 3d DCA 2026).

Absent a timely rehearing motion, appeal, or relief under Florida Rule of Civil Procedure 1.540, a trial court lacks case jurisdiction to entertain a new amended complaint after entry of a final summary judgment that fully adjudicates the operative claims.

**BBurgett, LLC v. Benfam Holdings, LLC**, Case No. 6D2025-0157 (Fla. 6th DCA 2026).  
[https://flcourts-media.flcourts.gov/content/download/2486385/opinion/Opinion\\_2025-0157.pdf](https://flcourts-media.flcourts.gov/content/download/2486385/opinion/Opinion_2025-0157.pdf)

Florida Rule of Civil Procedure 1.510(a) requires the trial court to state on the record its specific reasons for granting or denying a motion for summary judgment, and a conclusory statement that there is or is not a genuine dispute as to a material fact does not satisfy this requirement.

**Salazar v. Ortiz**, Case No. 6D2025-2048 (Fla. 6th DCA 2026).

A trial court may not grant a motion for judgment of partition under Florida Statutes section 64.051 when the pleadings are not closed, the motion is based on evidence outside the pleadings without following summary judgment procedures, and the non-moving party has alleged partial performance of an oral contract that would constitute an exception to the Statute of Frauds.

**Ruffenach v. Deutsche Bank National Trust Co.**, Case No. 6D2023-1482 (Fla. 6th DCA 2026).

A trial court need not always conduct an evidentiary hearing or receive expert testimony concerning the reasonableness of attorneys’ fees before granting an award of attorneys’ fees pursuant to a statute, rule, or contractual provision providing for such an award as no statute or rule imposes these requirements and the judicially created requirements lack legal authority and sound policy grounds.

**All Dry USA v. Savell**, Case No. 1D2024-1700 (Fla. 1st DCA 2026).

Failure to comply with case management deadlines alone does not justify striking a party's pleadings and a trial court may not strike pleadings as a sanction for discovery violations under Florida Rule of Civil Procedure 1.380(b)(2) absent an express written finding that the party willfully and deliberately disregarded a court order.

**Watkins v. Corbett**, Case No. 2D2025-0214 (Fla. 2d DCA 2026).

The fact that the offerees owned property as tenants by the entireties does not excuse the offer's proponents from the strict apportionment requirement of Florida Rule of Civil Procedure 1.442 that an offer must apportion the amount and terms attributable to each party.

**Lincolnshire Maximo LLC v. Marina Walk, LLC**, Case No. 2D2025-0037 (Fla. 2d DCA 2026).

Use of a drainage pipe on another's property is presumed permissive under Florida law, and the burden rests on a prescriptive easement claimant to overcome that presumption by clear and positive proof of adverse use.

**Ybor Properties, LLC v. City of Tampa**, Case No. 2D2025-1535 (Fla. 2d DCA 2026).

A circuit court exercising first-tier certiorari review departs from the essential requirements of law by affirming a city council's rejection of a hearing officer's recommended order when the city council substituted its own factual findings for those of the hearing officer, concluded the zoning administrator lacked authority to rescind his own formal decision, and issued a written order with materially different findings and conclusions than those announced orally after the vote.

**Avesta Communities, LLC v. Fred**, Case No. 2D2025-0367 (Fla. 2d DCA 2026).

A trial court abuses its discretion when - without making any finding of prejudice to the opposing party - excludes a witness from testifying at an evidentiary hearing on a motion to disqualify counsel solely because the witness was not listed on the moving party's witness list, particularly where the opposing party itself listed the same witness and the proffered testimony remained within the scope of a previously produced sworn declaration.

**601 Cuda Properties, LLC v. Monroe County Board of County Commissioners**, Case No. 3D24-2101 (Fla. 3d DCA 2026).

An administrative agency need not conduct an evidentiary hearing before dismissing a petition for administrative review based on untimeliness when no genuine factual disputes exist, and equitable tolling of a filing deadline is unavailable where the petitioner fails to allege that any misleading or lulling communication by the agency caused the untimely filing.

**Miami-Dade County v. Garavan**, Case No. 3D25-0014 (Fla. 3d DCA 2026).

The Florida Public Whistleblower Act does not expressly and unequivocally waive sovereign immunity for non-economic damages, and accordingly, such damages are not recoverable against a governmental sovereign.

**Hare v. McLaughlin**, Case No. 4D2025-2001 (Fla. 4th DCA 2026).

A partial final judgment resolving fewer than all counts of a multi-count complaint is not appealable under Florida Rule of Appellate Procedure 9.110(k) where the unresolved counts are interdependent with the resolved counts, however, certiorari is available to review the propriety of authorizing post-judgment collection on such a non-final, non-appealable partial judgment.

**Marvin v. Jones**, Case No. 4D2025-0414 (Fla. 4th DCA 2026).

A general release consisting of a single, eighteen-word sentence that fails to define the claims released or impose a temporal limitation is ambiguous and cannot as a matter of law bar subsequent claims for equitable ownership by constructive trust or for fraudulent misrepresentation.

**Jhelum Enterprises, LLC v. Desmarais**, Case No. 4D2025-0554 (Fla. 4th DCA 2026).

Un-accessed funds in a homeowner's reverse mortgage line of credit retain Florida's constitutional homestead exemption from levy until the homeowner actually draws the funds from the mortgage line of credit.

**John F. Schutz, P.L. v. Ally Financial Inc.**, Case No. 4D2024-2838 (Fla. 4th DCA 2026).

An attorney's notice of charging lien that fails to identify the specific assets to which the lien attaches or the amount of fees owed is insufficient to impose liability on a third-party financial institution that was not a party to the underlying litigation and did not provide funds to obtain or pay a settlement or judgment.

**Sable Pass Community Association, Inc. v. Call**, Case No. 4D2024-3084 (Fla. 4th DCA 2026).

The statutory exemption from the Florida Building Code for chickee huts under Florida Statutes section 553.73(10)(i) does not exempt a structure from a homeowners' association's deed-restriction approval requirements.