

Florida Real Property and Business Litigation Report

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Savannah Shoals, LLC v. Commissioner of Internal Revenue, Case No. 24-12661 (11th Cir. 2026)

A taxpayer claiming a conservation easement deduction must prove its value based on the reasonably probable highest and best use, and a court need not apply a rigid four-factor appraisal test when the evidence shows the proposed use is not financially feasible due to lack of market support.

Bay United Holdings, LLC v. INXS 7, LLC (In re Aegis Asset Management, LLC), Case No. 25-10331 (11th Cir. 2026).

A creditor filing a bankruptcy proof of claim must show that it had the present right under applicable state law to enforce the underlying note at the time the claim was filed, and a claim based on a note is properly disallowed where the claimant did not then own or hold the note.

Trace Elements, Inc. v. Mackensen, Case No. SC2024-1274 (Fla. 2026).

Florida Rule of Civil Procedure 1.442(c)(3) requires apportionment of any joint proposal for settlement, including one addressing a unified, single claim, and noncompliance renders the proposal invalid for fee entitlement under Florida Statute section 768.79.

Publix Supermarkets, Inc. v. Goga, Case No. SC2024-0669 (Fla. 2026).

Trial court dismissals for fraud on the court are not subject to the more "stringent" or "narrowed" variant of the abuse of discretion standard but are instead reviewed by the traditional, bifurcated standard: factual findings are reviewed for competent substantial evidence, legal conclusions de novo, and the choice of sanction under abuse of discretion.

Kessler v. Ayzen, Case No. 3D25-0117 (Fla. 3d DCA 2026).

An upland owner's riparian right of view protects a direct, unobstructed view of the adjoining waterway but does not bar a neighboring owner from building a lawful dock and boat lift directly in front of their own property when the structure does not unreasonably interfere with the neighbor's direct view and partially obstructs view on one side by only 32 degrees.

Davidovich v. Lippoff, Case No. 3D25-1368 (Fla. 3d DCA 2026).

A buyer seeking nondisclosure damages under *Johnson v. Davis* must present timely, competent evidence that the seller had actual knowledge of a material, non-observable defect, and failure to timely respond to a motion for summary judgment allows judgment that the seller's lack of knowledge remains undisputed.

Schmidt v. Stokes McMillan Antúñez Martinez-Lejarza P.A., Case No. 3D26-0839 (Fla. 3d DCA 2026).

A post-judgment order compelling discovery in aid of execution under Florida Rule of Civil Procedure 1.560(c) departs from the essential requirements of law and warrants certiorari relief when the underlying judgment has been fully satisfied within the rule's forty-five-day period.

Martinez v. JPMorgan Chase Bank, N.A., Case Nos. 4D2025-1072, 4D2025-1073, & 4D2025-1075 (Fla. 4th DCA 2026).

So long as the claims arise from the same conduct, transaction, or occurrence described in the earlier motion, a supplemental fraudulent transfer complaint in proceedings supplementary under Florida Statute section 56.29 relates back under Florida Rule of Civil Procedure 1.190(c) to the earlier motion to commence proceedings supplementary.

Martin, Inc. v. Moore, Case No. 4D2025-0517 (Fla. 4th DCA 2026).

A defective notice of commencement affects a construction lien's priority date but does not invalidate an otherwise properly recorded and served construction lien against an owner in privity, and preliminary work such as taking measurements and ordering custom windows may constitute commencement within ninety days.

Morales v. Reservoir Media Management, Inc., Case No. 3D25-1878 (Fla. 3d DCA 2026).

A trial court order designed to manage the conduct of litigation proceedings rather than to grant or deny the substantive relief sought in the underlying complaint does not constitute an injunction, and accordingly, is not reviewable as a nonfinal order under Florida Rule of Appellate Procedure 9.130(a)(3)(B) merely because it restricts a party's behavior during litigation.

Amelia Island Sanctuary Property Owners Association, Inc. v. Nassau County, Case No. 5D2025-1050 (Fla. 5th DCA 2026).

A settlement agreement resolving a Bert Harris Act claim between a county and a property owner does not trigger a consistency challenge under Florida Statutes section 163.3215 because it is not a "development order" within the meaning of Florida Statutes section 163.3164(15).

Hitchens v. Murrell, Case No. 5D2025-1735 (Fla. 5th DCA 2026).

Proof of a selling owner's actual receipt of an exercise of a right of first refusal is not required where the applicable condominium declaration expressly provides that the right is effective upon certified mailing, and a seller's failure to plead a buyer's nonpayment of a deposit with the specificity required by Florida Rule of Civil Procedure 1.120(c) waives that defense.

Bank of New York as Trustee for the Certificateholders CWABS Asset-Backed Certificates, Series 2005-BC4 v. Henry, Case No. 6D2024-2168 (Fla. 6th DCA 2026).

A judgment creditor seeking to set aside a foreclosure sale on equitable grounds must make a proper showing of both an adequate equitable factor and a resulting injustice to the complaining party, and a failure to prove that any irregularity in the sale caused injustice to the creditor defeats the motion to vacate regardless of whether the clerk's conduct was procedurally irregular.

Annesser Armenteros, PLLC v. Caparo, Case No. 3D25-2154 (Fla. 3d DCA 2026).

A claim for leave to amend to assert punitive damages under Florida Statutes section 768.72(1) survives only where the claimant's proffer and record contain a reasonable evidentiary basis specific to each defendant, and punitive liability against a professional firm requires a showing that a managing agent engaged in willful and malicious conduct.

Jungle Jive, LLC v. Alton Jal, Inc., Case No. 3D24-1757 (Fla. 3d DCA 2026).

A judgment on appeal is presumed correct in the absence of a record and reversal when there is no appellate record available only for an error of law apparent on the face of the judgment which requires no evidence be taken.

Miccosukee Tribe of Indians of Florida v. Miami-Dade County, Case No. 3D25-0562 (Fla. 3d DCA 2026).

A motion to dismiss is not a responsive pleading and plaintiff possesses an absolute right to amend its complaint once as a matter of course before a responsive pleading is served so a trial court lacks discretion to deny – even on futility grounds - such an amendment.

Font v. Homes at Sheridan Ocean Club Homeowners' Association, Inc., Case No. 4D2024-3289 (Fla. 4th DCA 2026).

Attorney's fees provisions must be strictly construed and fees-for-fees awards require expansive contractual language so a contractual attorney's fee provision authorizing fees for judgments rendered in enforcement proceedings "pursuant hereto" is not broad enough to permit recovery of fees incurred in litigating the amount of fees.

City of Panama City v. Bambi's Doll House, Inc., Case No. 1D2025-2911 (Fla. 1st DCA 2026).

An ordinance defining when a "grandfathered" nonconforming sexually oriented business loses its status does not trigger Florida Statute section 166.041(3)(c) unless it changes the actual list of permitted, conditional, or prohibited uses or the actual zoning map designation, and a stock sale of the corporate owner is not a "change of ownership" of the business where the code defines the business as the place of business itself.

FLN Properties, LLC v. First Stop Food Mart, Inc., Case No. 2D2025-2453 (Fla. 2d DCA 2026).

Florida Statute section 83.232(5) requires immediate default for possession when a tenant fails to timely deposit rent into the court registry in strict compliance with an unmodified rent-deposit order, and Florida Rule of General Practice 2.514(a)'s Sunday extension does not apply to an order requiring payment on a specified monthly date rather than within a period of time.

Hillsborough County v. P & P Holdings Group, LLC, Case No. 2D2025-2614 (Fla. 2d DCA 2026).

Second-tier certiorari does not lie from a circuit court's use of the wrong standard of review in a Florida Statute section 162.11 appeal absent a miscarriage of justice or an error likely to be widespread.

Schmidt v. Stokes McMillan Antúñez Martinez-Lejarza P.A., Case No. 3D25-1221 (Fla. 3d DCA 2026).

The statutory scheme of Florida Statutes Chapter 682 requires that vacatur of an arbitration award be sought by motion in a pending civil action involving the agreement to arbitrate rather than through a separate lawsuit.

City of Lake Worth v. Viera, Case No. 4D2024-3001 (Fla. 4th DCA 2026).

A settlement agreement is not ambiguous merely because the parties propose competing readings, and courts must exhaust ordinary textual and contextual interpretive tools before treating contract meaning as a jury question.

MRS BTC FL Mining LLC v. Digital Alchemy, LLC, Case No. 4D2025-3378 (Fla. 4th DCA 2026).

Incorporation of AAA rules into an arbitration provision clearly and unmistakably delegates threshold arbitrability issues, including satisfaction of contractual conditions precedent to arbitration, to the arbitrator.

Taylor v. Town Clerk of Palm Beach, Case No. 4D2025-0965 (Fla. 4th DCA 2026).

In a Florida Statutes chapter 119 enforcement action, the proper defendant is the responsible agency rather than the agency's departments or employees sued in their official capacities, because complete relief runs against the agency and claims against subordinate entities or officials are redundant.

Treasure Coast Classical Academy, Inc. v. The Optima Foundation, Inc., Case No. 4D2025-1577 (Fla. 4th DCA 2026).

A forum-selection clause stating that rights shall be construed under Florida law "with venue in Collier County, Florida" is permissive rather than mandatory when the comma before the phrase "with venue in Collier County, Florida" grammatically shows that the mandatory term modifies only choice of law and not exclusivity of venue.

Green v. Green, Case No. 5D2024-0861 (Fla. 5th DCA 2026).

A trust term devising "homestead property" without a legal description is ambiguous where it is legitimately susceptible to two meanings, and a trial court's extrinsic-evidence-based interpretation of such a term cannot stand where it produces an absurd result inconsistent with an adjoining, unambiguous distribution provision in the same instrument of requiring all farm equipment, cattle, and vehicles to operate agricultural enterprises "on the above described property," which was undisputedly grazed by 150-200 head of cattle on a 1.57-acre tract.

Greenan v. Hometown Title & Closing Services, LLC, Case No. 6D2025-2101 (Fla. 6th DCA 2026).

Issues on appeal are waived when the appellant fails to preserve them with a timely, specific objection and ruling below or presents only conclusory argument on appeal.