

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

### **Manuel Farach**

**Berk v. Choy**, Case No. 24-440 (2026).

Rule 8 of the Federal Rules of Civil Procedure displaces Delaware's medical-malpractice affidavit-of-merit requirement in federal diversity actions, so failure to file a state-law required affidavit cannot justify dismissal of a complaint that otherwise states a plausible claim for relief.

**In re The Renco Group Inc. & The Doe Run Resources Corp.**, Case No. 24-13266, No. 24-13266 (11th Cir. 2026).

A law firm asserting attorney-client privilege or work-product protection in a 28 U.S.C. § 1782 (assistance to foreign and international tribunals and to litigants before such tribunals) proceeding must substantiate the claim on a document-by-document basis with an adequate privilege log and supporting evidence, and deficient, categorical assertions for mixed sets of documents forfeit protection even after production because meaningful relief remains available.

**SEC v. Spartan Securities Group, Ltd.**, Case No. 22-13129 (11th Cir. 2026).

Expert witness with forty years of securities regulation experience, including service as NASDAQ chief regulatory officer and oversight of hundreds of NASD microcap fraud investigations involving transfer agents, possesses sufficient qualifications and reliability under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to testify regarding transfer agent practices and their role in facilitating securities fraud, notwithstanding absence of peer-reviewed publications or formal academic credentials specific to transfer agent operations.

**In re Amendments to Florida Rules of Civil Procedure 1.350 and 1.370**, Case No. SC2024-0779 (Fla. 2026).

Amendments to Florida Rules of Civil Procedure 1.350 and 1.370 effective April 1, 2026 require requests for production and requests for admission and responses thereto to be served on all parties in the case.

**In re Amendments to Florida Rules of Civil Procedure 1.070, 1.430, and Form 1.902**, Case No. SC2025-0582 (Fla. 2026).

Amendments to Florida Rules of Civil Procedure 1.070 and 1.430 effective April 1, 2026 expand waiver of service methods to include registered mail as defined by Florida Statutes section 1.01 and require demands for jury trial to be filed rather than merely served.

**Dascal v. In re Dascal**, Case No. 3D24-0733 (Fla. 3d DCA 2026).

Florida Statutes section 736.08135(2)(c) requires trust accountings to identify and value trust assets to the extent feasible but does not mandate valuation when not reasonably capable of valuation.

**Capuzzo v. Joch**, Case No. 3D25-0632 (Fla. 3d DCA 2026).

A residential lease exceeding one year executed in January 2020 without two subscribing witnesses violates section Florida Statutes 689.01(1) (2019) and is unenforceable.

**Carmona Realty Group v. Fernandez**, Case No. 3D24-2164 (Fla. 3d DCA 2026). A broker earns a commission after procuring a willing, ready, and able purchaser at the listing price and terms; unsigned "Instructions to other agents" lack of consideration and constitute neither a valid contract for nor a modification of the exclusive listing agreement absent written amendment signed by broker as required by Florida Statutes section 725.01. Moreover, the merger doctrine demands mutual reference between instruments before merger or incorporation can occur.

**Beck v. North Broward Hospital District**, Case No. 4D2024-1814 (Fla. 4th DCA 2026). Informational notices required by statute do not create express written contracts sufficient to waive sovereign immunity under *Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 2d 4 (Fla. 1984), and Florida Statutes Section 768.28(1).

**Boca Aircraft Maintenance, LLC v. Fifteen Group Capital, LLC**, Case No. 3D24-0670 (Fla. 3d DCA 2025).

Tort damages arising from alleged fraud and negligence in aircraft maintenance services are precluded under the independent tort rule where the court fails to identify tort damages distinct from breach of contract damages.

**Eco Green International, LLC v. Acapital, S.R.O.**, Case No. 3D24-1761 (Fla. 3d DCA 2025).

An appellate court lacks jurisdiction to review a trial court's order granting a motion to dismiss certain counts "with prejudice" but does not have words of finality, i.e., is not a final order, and does have jurisdiction to review an order compelling jurisdiction on certain other counts.

**Pascalides v. Artico**, Case No. 3D24-1052 (Fla. 3d DCA 2025).

A defendant is entitled to funds in a joint tenancy bank account designated with survivorship rights where the estate fails to establish the account was created as a convenience account under Florida Statutes section 655.80.

**Monroe County v. Kearns Construction Company**, Case No. 3D25-1586 (Fla. 3d DCA 2025).

A county board's award of a competitive bid constitutes an executive function not subject to certiorari review through the circuit court appellate division absent a quasi-judicial hearing with sworn testimony and evidentiary development.

**Ricardo v. Typtap Insurance Company**, Case No. 3D24-0448 (Fla. 3d DCA 2025).

Reversal and remand for an evidentiary hearing is required before the trial court may enforce a settlement agreement if the parties dispute material facts concerning mutual assent and the formation of a mediated settlement agreement.,

**Levine v. Levai**, Case Nos. 3D24-2290, 3D25-0049 (Fla. 3d DCA 2025).

A court cannot grant a motion to amend pleadings to add punitive damages claims where the motion fails to comply with Florida Rule of Civil Procedure 1.190(a) by attaching the proposed amended complaint at least twenty days before the hearing.

**Athos Overseas Limited Corp. v. YouTube, Inc.**, Case No. 23-13156 (11th Cir. 2026). YouTube qualifies for safe harbor protection under Section 512(c) of the Digital Millennium Copyright Act against copyright infringement claims arising from user-uploaded content.

**Hill-Becton v. MIA Aesthetics Clinic, LLC**, Case No. 3D25-0072 (Fla. 3d DCA 2026). A party challenging arbitration provisions as being unconscionable must establish both procedural and substantive unconscionability to avoid enforcement of a valid written arbitration agreement.

**Breedlove v. Gersten**, Case No. 3D25-0543 (Fla. 3d DCA 2026). Rental tenants are not entitled to intervene in a partition action because they possess no direct and immediate interest in a receiver's partition action as their claims were contingent upon obtaining a future judgment and did not constitute a claim to or lien upon the property itself.

**Dean v. 1180 Bimini, LLC**, Case No. 4D2024-2963 (Fla. 4th DCA 2026). An injunction in a boundary dispute fails to comply with Florida Rule of Civil Procedure 1.610(c) if it lacks the requisite specificity regarding the reasons for entry and the acts restrained.

**NE 32nd Street, LLC v. State of Florida Board of Trustees of the Internal Improvement Trust Fund**, Case No. 4D2024-1298 (Fla. 4th DCA 2026). Florida Statutes section 57.041 mandates an award of costs to the prevailing party who obtains a judgment quieting title

**Shriberg v. Florida Flooring, Inc.**, Case No. 4D2025-0162 (Fla. 4th DCA 2026). Trustees of a revocable trust possess standing to sue as real parties in interest as Florida Rule of Civil Procedure 1.210(a) permits trustees to sue in their own names without joining the trust as a party.

**Raj v. Sutherlin**, Case No. 4D2024-3333 (Fla. 4th DCA 2026). The consideration supporting a right of first refusal need not be separately allocated from the underlying contract's purchase price when the addendum granting the right expressly incorporates the purchase agreement.

**Andersen Service Corporation v. Old Republic Surety Company**, Case No. 4D2025-2411, (Fla. 4th DCA 2026). No valid arbitration agreement exists between a subcontractor and a surety where the lien transfer bond neither contained arbitration language nor incorporated the subcontract's arbitration provision.

**Roque v. Swezy**, Case No. 3D25-0235 (Fla. 3d DCA 2026).

Florida Statutes section 768.72 permits punitive-damages claims by opposing parties when each side's proffer of defamatory accusations falsely portraying criminal, alcoholic, or drug addiction provide a reasonable evidentiary basis without weighing credibility and constitutes defamation *per se* that can support punitive damages without proof of actual damages.

**Whitehall at Bal Harbour Condominium Ass'n, Inc. v. Raviv**, Case No. 3D24-2031 (Fla. 3d DCA 2026).

A party that fully participates without timely objection in an evidentiary hearing and stipulates to costs waives any challenge to the entry of a final attorney-fee judgment before disposition of all claims, and such a judgment is merely voidable—not void—in the absence of defects in jurisdiction or due process.

**DG Auto Group Export, Inc. v. Mendez**, Case No. 3D24-2060 (Fla. 3d DCA 2026).

Federal law governs the determination of reasonable attorney's fees in Fair Labor Standards Act actions litigated in Florida state courts and allows a Perdue-type enhancement of the lodestar in the rare circumstances where defense misconduct causes exceptional delay in fee recovery.

**Wepard Corp., Ltd. v. Diaz, Reus & Targ, LLP**, Case No. 3D25-0252 (Fla. 3d DCA 2026).

Florida Statutes section 48.197(1)(c) authorizes court-ordered email service on foreign defendants without any statutory due-diligence prerequisite so long as the method is reasonably calculated to provide actual notice and is not prohibited by international agreement, and defendants who seek affirmative relief such as sanctions and attorney's fees thereby waive objections to personal jurisdiction and service.'

**The Firm Law Group, Inc. v. Cordero**, Case No. 3D25-0292 (Fla. 3d DCA 2026).

An escrow agent holding a residential real estate deposit under an escrow agreement requiring a good faith belief of conflicting demands in order to be awarded attorneys' fees lacks a contractual or evidentiary basis to charge its attorney's fees against the escrow in the absence of documented competing claims or a specific, well-supported good-faith doubt as to entitlement; a conclusory self-serving affidavit without corroborating communications cannot create a genuine issue of material fact.

**Van Fossan v. Safe Harbor Management & Advisory, LLC**, Case No. 3D24-1253 (Fla. 3d DCA 2026).

Breach of a non-compete agreement with respect to at least two specific clients establishes a presumption of irreparable harm sufficient to support entry of a temporary injunction.

**Libman v. Cardiovascular Mobile Service, Inc.**, Case No. 3D24-1994 (Fla. 3d DCA 2026).

A retainer agreement limiting recoverable attorney's fees to collection actions or abandoned lawsuits does not authorize an award of prevailing party attorney's fees for contract enforcement, and attorney's fees may not be awarded under a statutory provision not invoked in the pleadings.

**Williams v. Leesburg Regional Medical Center, Inc.**, Case No. 5D2024-1910 (Fla. 5th DCA 2026).

A court may make a determination based on deposition evidence to exclude expert causation testimony as lacking sufficient reliability or failing to assist the jury under Daubert and Florida Statutes section 90.702, and doing so is subject to abuse of discretion (not de novo) review on appeal

**Roe v. NPC International, Inc.**, Case No. 5D2024-2323 (Fla. 5th DCA 2026).

The common law Vicarious Liability Exoneration Rule (an employer can be found liable for the acts of its employee only if the employee is found liable) requires an affirmative adjudication on the merits, and a voluntary dismissal without prejudice under Florida Rule of Civil Procedure 1.420 does not constitute an adjudication on the merits when the underlying action was timely filed within the statute of limitations.