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By: **Manuel Farach**The PDF of this week's Update can be read [here](#).

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Cases of interest this week include:

**Palmer Ranch Holdings, Ltd. v. Commissioner of Internal Revenue, --- F.3d ---, 2016 WL 453975 (11th Cir. 2016).**

Valuation of conservation easements for tax purposes can be based on the comparable-sales method of appraisal.

**Vista Marketing, Inc. v. Burkett, --- F.3d ---, 2016 WL 425165 (11th Cir. 2016).**

The Stored Communications Act, 18 U.S.C. §§ 2701-2712, requires a finding of actual damages before statutory damages can be awarded.

**Bailey v. St. Louis, --- So.3d ---, 2016 WL 403168 (Fla. 2d DCA 2016).**

While a plaintiff generally may not recover disgorgement damages if any portion of the profits is attributable to the defendant's "special or unique efforts . . . other than those for which he is duly compensated," "[a]ggressive and enterprising management activities may break the causal chain between the fraud and the profits."

**Corrigan v. Bank of America, N.A., --- So.3d --- 2016 WL 455718 (Fla. 2d DCA 2016).**

The Second District recedes from the position that standing may be established at the time an amended complaint is filed.

**Blitch v. Freedom Mortgage Corporation, --- So.3d --- 2016 WL 455737 (Fla. 2d DCA 2016).**

Proof of adequate security for reestablishment of a lost promissory note is not an element required to prove the cause of action but a post-proof condition for entry of the final judgment.

**Gray v. Mark Hall Homes, Inc., --- So.3d ---, 2016 WL 459436 (Fla. 2d DCA 2016).**

The damages for constructions defects is calculated as:

[t]he difference between the value that the product contracted for would have had and the value of the performance that has been received by the plaintiff, if construction and completion in accordance with the contract would involve unreasonable economic waste. There are numerous cases, however, in which the value of the finished product is much less than the cost of producing it after the breach has occurred. Sometimes defects in a complete structure cannot be physically remedied without tearing down and rebuilding, at a cost that would be imprudent and unreasonable. The law does not require damages to be measured by a method requiring such economic waste. If no such waste is involved, the cost of remedying the defect is the amount awarded as compensation for failure to render the promised performance.

**Parker v. Parker, --- So.3d ---, 2016 WL 404636 (Fla. 4th DCA 2016).**

Affected parties may sue to set aside the inter vivos transfers of a decedent's property without joining the decedent's estate.

**Wells Fargo Bank, N.A. v. Balkissoon, --- So.3d ---, 2016 WL 403311 (Fla. 4th DCA 2016).**

A prior servicer's records can be admitted by satisfying the foundational requirements of the Business Records Exception to the Hearsay Rule; Yang v. Sebastian Lakes Condominium Ass'n, 123 So. 3d 617 (Fla. 4th DCA 2013), and Glarum v. LaSalle Bank National Ass'n, 83 So. 3d 780 (Fla. 4th DCA 2011), are distinguished as the proponents of business records in those cases did not satisfy the foundational requirements.

**Cartwright v. LjL Mortgage Pool, LLC, --- So.3d ---, 2016 WL 404074 (Fla. 4th DCA 2016).**

In order to overcome an affirmative defense of lack of standing at the summary judgment stage, affidavits in support of a motion for summary judgment must expressly state the plaintiff owned and held the note at the time of filing suit, and if standing is by blank indorsement, that the blank indorsement was on the note at the time of filing suit.

**Cox v. Village of Tequesta, --- So.3d ---, 2016 WL 403252 (Fla. 4th DCA 2016).**

In deciding a motion to compel arbitration, a trial court is limited to inquiring "(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived." Further, "waiver" only occurs by actively participating and seeking relief in a lawsuit.

**Osborne v. Emmer, --- So.3d ---, 2016 WL 424643 (Fla. 4th DCA 2016).**

Extensive delay alone can warrant denial of class certification.