

Real Property and Business Litigation Report - Vol. IX, Issue 10

Florida Real Property and Business Law Update

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By: [Manuel Farach](#)

The PDF of this week's Update can be read [here](#).

Cases of interest this week include:

Fried v. Stiefel Laboratories, Inc., Case No. 14-14790 (11th Cir. 2016).

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 do not prohibit a mere failure to disclose information, a claimant must additionally prove that defendants omitted a material fact necessary to keep other statements from being materially misleading.

Evanto v. Federal National Mortgage Ass'n, Case No. 15-11450 (11th Cir. 2016).

Failure to provide a payoff statement is not a Truth in Lending Act violation that is "apparent on the face of the disclosure statement provided in connection with [a mortgage] transaction." Assignees of the original lender are not liable for violations not apparent on the face of the disclosure statement, and accordingly, a servicer is not liable for the failure to provide the payoff statement.

Mlinar v. United Parcel Service, Case No. SC14-54 (Fla. 2016).

A state law claim against an interstate carrier is typically preempted by the Carmack Amendment to the Interstate Sales Act unless the claim alleges conduct or harm separate and distinct from the loss or damage of the goods.

Dandar v. Church of Scientology Flag Service Organization, Inc., Case No. 2D14-1511 (Fla. 2d DCA 2016).

Unless a court enters an order dismissing a case based on a settlement agreement presented to and incorporated or relied upon by the court, a dismissal forever terminates a court's jurisdiction over the parties and the case.

Siegle v. Lee County, Case No. 2D15-3293 (Fla. 2d DCA 2016).

Laches can be raised as defense in code enforcement actions.

Gold King Apartments v. Dumornay, Case No. 3D14-2334 (Fla. 3d DCA 2016).

The appeal time runs from date of original judgment when there is no material change between the original and amended final judgment.

Yampol v. Schindler Elevator Corporation, Case No. 3D14-1338 (Fla. 3d DCA 2016).

The defendant is generally the prevailing party when the plaintiff voluntarily dismisses an action, including under Florida Statutes Chapter 718.

Edwards v. Reverse Mortgage Solutions, Case No. 3D14-3621 (Fla. 3d DCA 2016).

A spouse is a "borrower" for reverse mortgage purposes when she signs the mortgage, even if she does not sign the promissory note.

Onewest Bank, FSB v. Nunez, Case No. 4D13-4817 (Fla. 4th DCA 2016).

Reference to, as opposed to incorporation of or taking subject to, a simultaneously issued mortgage does not make a promissory note non-negotiable.

American Management Services, Inc. v. Merced, Case No. 4D15-1385 (Fla. 4th DCA 2016).

Upon finding there are disputed factual issues regarding enforcement of an arbitration agreement, the trial court must expeditiously set a hearing to decide the dispute.

Brock v. Garner Window and Door Sales, Inc., Case No. 5D14-1472 (Fla. 5th DCA 2016).

A suit for construction defects is governed by the four year statute of limitations for construction defects, even if the contractor was unlicensed.

Meritage Homes of Florida, Inc. v. Lake Roberts Homeowners Association, Case No. 5D14-2019 (Fla. 5th DCA 2016).

The homeowners at a members' meeting, not the developer at a board meeting, may waive association reserves pursuant to Florida Statute section 720.303 (6)(f).

Griffith v. Ramzey's A Plus, Inc., Case No. 5D15-486 (Fla. 5th DCA 2016).

A court need not set forth the Kozel v. Ostendorf factors when assessing sanctions against an attorney under Florida Rule of Civil Procedure 1.380 (a)(4) for improperly instructing a witness not to answer questions at a deposition.

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