

November 9, 2015

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

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Cases of interest this week include:

**5730 Lake Underhill, LLC v. Smith-Horner, LLP, --- So.3d ---, 2015 WL 6757518 (Fla. 5th DCA 2015).**

A party claiming a prescriptive easement must demonstrate the use was adverse; use of another's land is presumed to be with the consent of the owner and subordinate to the rights of the owner and use by patrons is not adverse if pursuant to a written lease.

**Joseph B. Doerr Trust v. Central Florida Expressway Authority, --- So.3d ---, 2015 WL 6748858 (Fla. 2015).**

Florida Statute section 73.092(2), not the straight "benefits achieved" method of section 73.092(1), is employed to determine the landowner's attorneys' fees when the condemning authority engages in excessive litigation.

**Rogers v. U.S., --- So.3d ---, 2015 WL 6749915 (Fla. 2015).**

The estate conveyed by a deed and the actual property conveyed is determined by the intent of the grantor, and not by whether the consideration was nominal or whether "strips and gores" are created.

**Florida Digestive Health Specialists, LLC v. Colina, Case No. 2D14-4561 (Fla. 2d DCA November 4, 2015).**

A court may not consider factors outside of Florida Statute section 542.335 in determining whether to enforce restrictive covenants, and specifically may not consider whether the harm to the restricted party outweighs the benefit to the restricting party.

**Deutsche Bank Trust Co. Americas v. Frias, --- So.3d ---, 2015 WL 6735332 (Fla. 4th DCA 2015).**

A prior servicer's business records are admissible so long as the witness has some knowledge of how the prior records were maintained and created.

**Jelic v. BAC Home Loans Servicing, LP, --- So.3d ---, 2015 WL 6735353 (Fla. 4th DCA 2015).**

An undated indorsement that appears for the first time after suit is filed is insufficient, by itself, to confer standing on the holder of the note.

**Bank of New York Mellon v. Nunez, --- So.3d ---, 2015 WL 6735856 (Fla. 3d DCA 2015).**

Parties need only substantially comply with conditions precedent in mortgages.

**Straub v. Wells Fargo Bank, N.A., --- So.3d ---, 2015 WL 6738732 (Fla. 4th DCA 2015).**

For purposes of claiming surplus foreclosure proceeds under Florida Statute section 45.031, a foreclosure sale is completed upon the issuance of the certificate of title by the clerk of the court. Thus, a claim for surplus proceeds filed more than sixty days after judicial sale but less than sixty days after issuance of certificate of title is timely.

**Dana's R.R. Supply v. Attorney General, Florida, --- F.3d ---, 2015 WL 6725138 (11th Cir. 2015).**

Florida Statute section 501.0117 (surcharges not permitted on credit card transactions) is an unconstitutional abridgement of free speech.

**Parnell v. CashCall, No. 4:14-cv-00024-HLM (11th Cir. October 28, 2015).**

A party seeking to challenge the validity of a "delegation provision" in an arbitration agreement (the arbitrator decides challenges to arbitration) must challenge the delegation provision directly.