

## Real Property and Business Litigation Report - Vol. IX, Issue 8

Florida Real Property and Business Law Update

February 20, 2016

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

Cases of interest this week include:

**Culverhouse v. Paulsen & Co, Inc., Case No. 14-14526 (11th Cir. 2016).**

The Eleventh Circuit receives the answer posed to the Delaware Supreme Court and adopts the opinion of the Delaware Supreme Court that whether a claim alleged in a complaint is direct or derivative turns solely on "(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?" The court must review the complaint and determine that the duty owed was to the investor, not the entity, and that the plaintiff can show injury without showing injury to the entity.

**Verandah Development, LLC v. Gualtieri, --- So. 3d ---, 2016 WL 618904 (Fla. 2d DCA 2016).**

A private club may not unilaterally amend the refund policy contained in its Membership Agreement if the Membership Agreement does not reserve the right for unilateral amendment, even if the Membership Agreement contains the following language:

. . . to be bound by the terms and conditions [of the Membership Plan and Rules and Regulations] as the same may be amended from time to time by the Club or [Verandah] and irrevocably agree to fully substitute the membership privileges acquired pursuant to the Club Membership Plan and Rules and Regulations for any present or prior rights in or to use of the Club Facilities.

**Francois v. University of Miami, --- So. 3d ---, 2016 WL 626145 (Fla. 3d DCA 2016).**

An independent action may be brought to reform a release which inadvertently released more parties than releaser intended to release.

**Gallimore v. Bank of America, --- So.3d ---, 2016 WL 625237 (Fla. 4th DCA 2016).**

A party who is not the named payee in the note must present evidence at trial that, at the time suit was filed, the note bore a special indorsement in favor of the initial plaintiff, a blank indorsement, or a transfer of the note in compliance with the Uniform Commercial Code that entitles the initial plaintiff to an indorsement.

**Barnett v. U.S. Bank, National Association, --- So.3d ---, 2016 WL 625365 (Fla. 4th DCA 2016).**

Possession of a promissory note, without more, is not sufficient to prove standing.

**Petrovsky v. HSBC Bank, USA, --- So.3d ---, 2016 WL 625385 (Fla. 4th DCA 2016).**

Prevailing party attorney's fees cannot be proven at trial through affidavits, and instead must be proven at hearing.

**Chelminsky v. Branch Banking & Trust Company, --- So.3d ---, 2016 WL 625401 (Fla. 4th DCA 2016).**

A trial court should rule on motions for relief from technical admissions prior to trial, and should likewise not disregard the admissions based on trial evidence.

**McNair v. Nationstar Mortgage, LLC, Case No. 5D14-4140 (Fla. 5th DCA 2016).**

An affidavit based on the Business Records Exception to the Hearsay Rule must do more than merely state the elements of the Exception; it must demonstrate the background of how the affiant came to know the accuracy of the information.

**Christiana Trust v. Taveras, Case No. 5D15-680 (Fla. 5th DCA 2016).**

The Fifth District re-affirms its prior holdings following *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004).

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