

January 11, 2016

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

Please contact Manuel Farach at for past issues of this Update.

Cases of interest this week include:

**Messer v. Sander, -- So.3d ----, 2016 WL 56338 (Fla. 1st DCA 2016).**

Attorneys' fees are awardable under Florida Statute 701.01 for "unreasonable refusal to comply" to allow a statutory way of necessity under Florida Statute section 701.04.

**Robert Rauschenberg Foundation v. Grutman, --- So.3d ----, 2016 WL 56456 (Fla. 2d DCA 2016).**

The factors in West Coast Hospital Ass'n v. Florida National Bank of Jacksonville, 100 So. 2d 807 (Fla. 1958), and not the lodestar method of Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145 (Fla. 1985), modified, Standard Guaranty Insurance Co. v. Quanstrom, 555 So. 2d 828 (Fla. 1990), are used to determine the calculation of a trustee's fees when a testamentary trust did not contain a provision specifying compensation.

**Ross v. Prospectplus!, Inc., --- So.3d ----, 2016 WL 56467 (Fla. 2d DCA 2016).**

A party who moves for and receives an order confirming her unsuccessful arbitration award is not entitled to appeal the arbitration award.

**Overseas Investment Group v. Wall Street Electronica, Inc., --- So.3d ----, 2016 WL 64477 (Fla. 4th DCA 2016).**

A contract that grants one party discretion in exercising a right is subject to the implied covenant of good faith, and whether the exercise is proper is a factual question.

**Purificato v. Nationstar Mortgage, LLC, --- So.3d ----, 2016 WL 64331 (Fla. 4th DCA 2016).**

Florida Statute 673.2041(1) merely requires that an allonge be affixed (not "firmly affixed" as in previous versions of the statute) to the promissory note, and an allonge that contains evidence of a clear intent that the note and the allonge were to be physically attached to each other is sufficient to establish a valid endorsement under the Uniform Commercial Code.

**Sill v. JPMorgan Chase Bank, N.A., --- So.3d ----, 2016 WL 67256 (Fla. 4th DCA 2016).**

A new notice of default need not be sent in a foreclosure case when the previous dismissal was without prejudice.

**Onewest Bank, FSB v. Alessio, --- So.3d ----, 2016 WL 67375 (Fla. 4th DCA 2016).**

The striking of all of a party's witnesses just before trial may have the effect of a dismissal, and an involuntary dismissal under these circumstances must comply with the Kozel v. Ostendorf, 629 So. 2d 817, 818 (Fla. 1993), factors.

**Popescu v. Laguna Master Ass'n, Inc., --- So.3d ----, 2016 WL 72531 (Fla. 4th DCA 2016).**

An objection to foreclosure sale need not be filed prior to moving to vacate a sale pursuant to Florida Rule of Civil Procedure 1.540 (b). Likewise, the right of redemption is exercised by paying the amount due and notice of the exercise is not necessary.

**Miller v. Washington Mutual Bank, --- So.3d ----, 2016 WL 72535 (Fla. 4th DCA 2016).**

Both spouses must be foreclosed when property is owned by both husband and wife.

**One South Ocean Drive 2000, Ltd. v. One Ocean Boca, LLC, --- So.3d ----, 2016 WL 72550 (Fla. 4th DCA 2016).**

A receiver remains liable for breaches of fiduciary duty committed during their term of engagement, and may be sued even though discharged.

**Blake v. Ann-Marie Giustibelli, P.A., --- So.3d ----, 2016 WL 75000 (Fla. 4th DCA 2016).**

Internet postings are not pure opinion, and may constitute defamation as libel per se still exists in Florida for non-media defendants.

**David v. Textor, --- So.3d ----, 2016 WL 64743 (Fla. 4th DCA 2016).**

On-line postings, especially regarding business matters, are not directed at specific persons and cannot constitute "cyberstalking" or "harassment" for purposes of Florida Statute sections 784.046 and 784.0485.

**Lucky Nation, LLC v. Al-Maghazchi, --- So.3d ----, 2016 WL 67396 (Fla. 4th DCA 2016).**

Collateral estoppel does not bar a quiet title action when the titleholder did not participate in the prior action, i.e., there is no identity of parties.

**Orange County, Florida v. Buchman, --- So.3d ----, 2016 WL 81661 (Fla. 5th DCA 2016).**

A jury in an eminent domain proceeding is prohibited from making an independent determination of value, and must find a value within the ranges of expert testimony.

**Hendricks v. Dept. of Business and Professional Regulation, --- So.3d ---- 2016 WL 90968 (Fla. 5th DCA 2016).**

The intervening bankruptcy of a contracting party does not invalidate an otherwise valid claim on the Florida Real Estate Recovery Fund.