New in this edition

Larry R. Leiby, Esq.  
leiby@flaconstructionadr.com

New case holding that where there is a spousal transfer of assets, the burden to prove no intent to hinder creditors is on the transferor.

New statutory limits on homeowner's construction industries recovery fund.

New authority for disciplinary fines to be payable to the homeowner's construction industries recovery fund.

Elimination of improper payments as a basis for recovery from homeowner's construction industries recovery.

New outside time limit within which to make claim on homeowner's construction industries recovery fund.

New provision that if the amount in the homeowner's construction industries recovery fund is exhausted that the claim may be carried forward to the next fiscal year.

New statute requiring a person or government who desires to construct, develop, or modify a public swimming pool to submit an application, to the Department of Health for an operating permit before filing an application for a building permit.

New requirement that a county that issues building permits must post each type of building permit application on its website.

New requirement that completed permit applications must be able to be submitted electronically to the county building department.

New provision prohibiting a local enforcement agency from requiring the payment of any additional fees, charges, or expenses associated with: 1. Providing proof of licensure pursuant to chapter 489; 2. Recording or filing a license issued pursuant to this chapter; or 3. Providing, recording, or filing evidence of workers’ compensation insurance coverage as required by chapter 440.

New provision giving express authority for a building official to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the entire building or structure have been submitted. However, the holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder’s own risk and without assurance that a permit for the entire structure will be granted.

New provision that a plans reviewer or building code administrator who is responsible for issuing a denial, revocation, or modification request but fails to provide to the permit applicant a reason for denying, revoking, or requesting a modification, based on compliance with the Florida Building Code or local ordinance, is subject to disciplinary action against his or her license.

New provision allowing creation of local administrative boards with authority to review any decision made by the local fire official regarding application, interpretation, or enforcement of the Florida Fire Prevention Code or by the local building official regarding application, interpretation, or enforcement of the Florida Building Code, or the appropriate application of either code or both codes in the case of a conflict between the codes.

The Florida legislature passed a statute saying that there is a public need for public-private transportation facilities.

New provision calling for proposals for public-private partnerships to be solicited by a public entity and authorizing unsolicited proposals.

New statutory requirements for interim PPP agreements (similar to letters of intent), as well as requirements for the final public-private partnership agreement (comprehensive agreement).

Specific authority for an agreement entered into pursuant to a public-private partnership to authorize the private entity to impose fees to members of the public for the use of the facility.

New section addressing the creation of the one-year Construction Industry Workforce Task Force within the University of Florida M. E. Rinker, Sr., School of Construction Management.

New criminal statutes addressing bribery and official misconduct for the protection of the integrity of public bidding and other public service.

New cases addressing the statute of frauds as to agreements capable of being performed within one year.

New cases addressing pleading of conditions precedent in complaint and denial of conditions precedent in answer.

New case holding that a contract clause that read that failure or alleged failure to comply, *in whole or in part*, with any of its obligations hereunder, did not create a duty to indemnify the indemnitee from its own negligence.

New cases interpreting forum selection clauses.

New case holding that where a defendant is a non-resident of Florida, failure to pay on a contract is insufficient to satisfy Florida’s long arm statute concerning jurisdiction over breach of contract actions.

New case addressing standard of review for motions to transfer venue.

New case affirming the concept that acceptance of a written agreement by conduct other than a signature shows agreement to the arbitration clause in the agreement.

New case holding that an arbitration clause was waived by the terms of the agreement to arbitrate where the agreement provided that the arbitration clause was waived if the agreement was terminated based on unsound business practices.

New case holding that where a party seeks fees pursuant to an agreement and it is determined that the agreement does not exist between those parties, there is no agreement to pay fees that could become reciprocal under Fla. Stat. 57.105(7) with respect to the party who disavowed the agreement.

New section addressing public records in contracts with public agencies, pursuant to new statute.

New section on statutory provisions for contracts with School Districts and Florida College System Institutions.

New case holding that a plaintiff may not rely on statements made by litigation adversaries to establish fraud claims.

New case addressing damages for fraudulent transfers.

New case holding that while one may plead an action for breach of an express contract and an action for unjust enrichment based on quantum meruit as inconsistent remedies, there should be ultimate facts pleaded to support the infirmity of the contract as a basis for the equitable action.

New case holding that injunctive relief is specifically authorized by statute in cases brought by unit owners against condominium associations for their failure to perform obligations as required by the condominium documents.

New case affirming that attorney fee may not be awarded as a simple matter of equity.

New case holding that where an insured defeats a claim of unjust enrichment brought by the insurer resulting in a judgment of no liability, the insured may recover fees pursuant to Fla. Stat. 627.428.

New case affirming that where a party has notice that an opponent claims entitlement to attorney's fees, and by its conduct recognizes or acquiesces to that claim or otherwise fails to object to the failure to plead entitlement, that party waives any objection to the failure to plead a claim for attorney's fees.

New case holding that a defendant is not automatically the prevailing party for the purpose of an attorney's fee statute when a plaintiff takes a voluntary dismissal were the debtor paid a substantial part of the claim prior to the voluntary dismissal.

New case affirming an order of stay in a legal malpractice case pending the results of a bar grievance.

New case holding that courts are empowered in cases calling for fees to be awarded to the prevailing party, to find that there was no prevailing party.

New case identifying the three factors a court must consider in determining whether to award a contingency multiplier.

New Florida Supreme Court case holding that billing records of opposing counsel are relevant to the issue of reasonableness of time expended in a claim for attorney's fees, and their discovery falls within the discretion of the trial court when the fees are contested.

New case holding that where there was no record support of an award less than the lowest rate testified to, it was error to award attorney fees in a lesser amount.

New case holding that the burden is to prove that the paralegal time was, in addition to being necessary to the procurement of the benefits, “nonclerical, meaningful legal support to the matter involved.”

New case holding that In the Federal Eleventh Circuit, a Rule 11 challenge as to frivolity requires a two-prong inquiry –“whether the legal claims or factual contentions are objectively frivolous, and, if so, whether a reasonably competent attorney should have known they were frivolous.”

New discussion of the wrongful act doctrine.

Expanded discussion of Florida Statute 57.105 with new cases.

New case addressing dismissal for failure to serve summons within 120 days.

New U.S. Supreme Court case addressing failure to raise limitation of actions until appeal.

New discussion of statutes of repose.

Discussion of new scope of discovery in Federal Rules of Civil Procedure.

New treatment of completing jobs with new contractor.

New cases addressing privileged documents.

New case addressing production of cell phone records.

New case addressing striking of pleadings for willful disregard or gross indifference to a court order.

New case addressing limits on financial sanctions.

New discussion of obligation of a party contracting with a public entity to produce records.

New case addressing limits on number of experts.

New case requiring evidentiary hearing to determine if a privilege was waived.

New case discussing burden of establishing work product privilege.

New case holding that the litigation privilege cannot be applied to bar the filing of a claim for malicious prosecution where the elements of that tort are satisfied.

New case addressing extension of time to accept an offer of judgment.

New case holding that where the plaintiff did not pursue injunctive relief with the trial court and only litigated its money damages, the portion seeking injunctive relief did not bar application of the offer of judgment statute.

New case holding that where the proposal for settlement said that it was inclusive of all attorney's fees and costs incurred by Plaintiff or Defendant, but did not recite that attorney's fees were part of the legal claim, the proposal for settlement was defective.

New case addressing typicality requirement for class actions.

New case holding that it is premature to allow class action discovery until after it is determined that the nominal plaintiff has standing to serve as the class representative.

New case denying the award of costs for computerized legal research that were not billed to the client.

New case holding that without any finding that daily or expedited transcripts were necessary or used at trial, the costs of real time court reporter fees for daily voire dire were not recoverable.

New case holding that the cost of an expert who did not testify at trial may be denied.

New case holding that It was error to award a public adjuster’s fee as an expert cost.

New case holding that the failure by the trial court to make a reviewable record or written order stating that there was an affirmative finding of a reasonable basis for allowing a punitive damage claim resulted in the order permitting a punitive damage claim to be reversed.

New case awarding sanctions against a party who failed to have a party representative at an appellate mediation, the party’s insurer appearing and representing that it had full authority to settle the case.

New case holding that before awarding a sanction for a mediation confidentiality violation the court must conduct a hearing before determining the amount of the fees recoverable as the sanction.

New cases addressing who may make the decision on arbitrability of claims.

New case addressing venue for arbitration.

New case holding that the failure to make arbitration deposits by the claimant may act as a waiver of arbitration.

New case holding that In general, bankruptcy courts do not have the discretion to decline to enforce an arbitration agreement relating to a non-core proceeding.

New case holding that an order confirming an arbitration award without a final judgment is not an appealable order.