**The Florida Bar: Real Property, Probate and Trust Law Section**

**Construction Law Committee**

***Construction Regulation Subcommittee Monthly Report***

Month of: August 2011

**Appellate Decisions:**

*Travis Leroy Strickland v. TIMCO Aviation Services, Inc*., Case No. 1D10-4635, filed June 30, 2011: Affirmed Summary Judgment for property owner sued by the employee of an independent contractor hired to perform work on the property who was injured while spray clearing roof. Held that a property owner who employs an independent contractor will not be held liable for injuries sustained by an employee, unless: (1) the owner actively participates in or exercises direct control over the work; or (2) the owner negligently creates or negligently approves a dangerous condition.

*Boynton Waterways Investment Associates, LLC v. Jevgenijs Bezkorovainjs*, Case No. 4D09-4233, filed July 13, 2011: Reversed and remanded trial court’s voiding of a pre-construction condominium contract pursuant to the Interstate Land Sales Act (“ILSFDA”) where the contract failed to contain a legal description of the until in a form acceptable for recording. Held that s. 718.09 requirements for use of the recording data for the declaration of condominium did not apply before the declaration was recorded, and that the condominium documents delivered to the purchase were sufficient to identify the parcel for purposes of compliance with ILSFDA.

*Legacy Place Apartment Homes, LLC v. PGA Gateway, LTD*., Case Nos. 4D10-990 and 4D10-3053, filed July 27, 2011: Under the doctrine of “substantial performance,” which is generally not available where a party has substantially breached the terms of a contract, since a “time is of the essence” contract provision, which can be waived, case was reversed and remanded to the trial court to consider whether such a waiver occurred.

**DOAH Orders:**

(Nothing to report)

**Agency Actions:**

**Note that state agencies are beginning to again promulgate rules since the Governor’s Executive Order of January, 2011, “freezing” new rules has been modified (and is pending a supreme court challenge).**

1. **Department of Business and Professional Regulation.**
2. Construction Industry Licensing Board – Chapter 489, Part I, FS and Chapter 61G4 FAC:
   1. On June 21, 2011, a petition for Declaratory Statement was filed by Robert J. Koning, seeking a determination of whether mold related services including assessment and remediation are within the scope of a properly licensed Division ( contractor.

**Note:** It will be interesting to see if the CILB exercised jurisdiction over this question, since mold assessment and remediation licensing and regulation, while regulated by DBPR, is not part of this board’s jurisdiction.

* 1. On June 30, 2011, a petition for Declaratory Statement was filed by John R. Varsames, seeking a determination of whether the application of elastomeric coating that can be spray-applied to roofs and other surfaces for waterproofing purposes and as an alternative to re-roofing may be applied by a certified general contractor without a permit, or whether it must be permitted and applied by a licensed roofing contractor.

1. Electrical Contracting Licensing Board (includes both electricians and alarm contractors) – Chapter 489, Part II:

(Nothing to report)

1. Board of Architecture and Interior Design – Chapter 481, Part I, FS and 61G1 FAC

(Nothing to report)

1. Board of Landscape Architecture – Chapter 481, Part II, FS and 61G10 FAC:

(Nothing to report)

1. Board of Professional Engineers – Chapter 471, FS and 61G15 FAC: This board has noticed its WITHDRAWAL of the following proposed design rules:
   1. Rule 61G5-31.003 regarding design of structures utilizing prefabricated wood trusses.
   2. Rule 61G5-31.006 regarding design of structures utilizing open web steel joists and joist girders.
   3. Rule 61G5-31.010 regarding design of structures utilizing cold-formed steel framing.
   4. Rule 61G5-31.0011 regarding design of aluminum structures.
   5. Rule 61G5-31.0012 regarding design of temporary support structures.
2. Building Code Administrators and Inspectors Board – Chapter 468, Part XII and 61G19 FAC:

(Nothing to report)

1. Florida Building Commission[[1]](#footnote-1) – Chapter 553, Part IV and 9N FAC: The commission will be taking up thirteen (13) accessibility waiver applications at its meeting on August 8-9, 2011.
2. **Environmental Protection: To be determined.**
3. **Health**: Water Quality/Septic Tanks – Chapter 381 and 64E FAC: None of the various bills filed for consideration during the 2011 regular legislative session, repealing the inspection and repair requirements enacted in 2010, passed. **However, language was included in the budget implementing bill that prohibits the Department of Health from expending any monies for the inspection program without first seeking and obtaining approval of the Legislative Budget Commission.**
4. **Financial Services**: Workers’ Compensation Insurance – Chapter 440 and 69L FAC:

**Warning:** Insurance carriers and their representative joint underwriter association appear to be now checking for policies or exemptions issued to recently qualified businesses, and filing complaints with DBPR for those who do not have either. While the current licensure application forms purport to require such insurance coverage within thirty (30) days of licensure, there does not appear to be any statutory requirement for WC coverage until a business has a payroll.

**Legislative Action:**

(Nothing to report)

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Respectfully submitted,

August 8, 2011

-end of report-

1. In the case of all Petitions for Declaratory Statement filed with the Florida Building Commission, which normally meets every other month, the commission requires both a First Reading and a Second Reading at different meetings, with the results that any final action thereon requires at least 74-75 days, depending on the timing of the filing in relationship to the required publication dates for the Friday Florida Administrative Weekly (Wednesday noon deadline for publication 10 days later). [↑](#footnote-ref-1)