

# Real Property and Business Litigation Report – Vol. IX, Issue 21

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Cases of interest this week include:

**Arizona Chemical Co. v. Mohawk Industries, Inc., — So. 3d —, 2016 WL 2941121 (Fla. 1st DCA 2016).**

An expert testifying on lost profits must do more than make a mere assumption that defendant's actions caused the lost profits; the expert must consider factors relevant to a particular case such as competition in the marketplace, an overall shift away from the product allegedly damaged, and issues regarding general damage to reputation.

**Ochoa v. Koppel, — So. 3d —, 2016 WL 2941099 (Fla. 2d DCA 2016).**

A motion to enlarge time does not automatically toll the time to accept a proposal for settlement; conflict certified with the Fifth District's opinion in *Goldy v. Corbett Cranes Services, Inc.*, 692 So. 2d 225 (Fla. 5th DCA 1997).

**Frieri v. Capital Investment Services, Inc., — So. 3d —, 2016 WL 2941081 (Fla. 3d DCA 2016).**

The entire contract must be considered when determining whether a corporate representative intended to be personally liable under a contract, and a person may be personally bound even if the signature block signifies a representative capacity if "the contract contains language indicating personal liability or the assumption of personal obligations."

**Wells Fargo Bank, N.A. v. Bilecki, — So. 3d —, 2016 WL 2894115 (Fla. 4th DCA 2016).**

Movants for summary judgment must timely serve affidavits in support of their motion, an affidavits in opposition to an opposing party's motion for summary judgment does not suffice.

**SunTrust v. Arrow Energy, Inc., — So. 3d —, 2016 WL 2897611 (Fla. 4th DCA 2016).**

A garnishment that assesses interest against the garnishee is void.

**United Food and Commercial v. Wal-Mart Stores, Inc., — So. 3d —, 2016 WL 2943255 (Fla. 5th DCA 2016).**

Under certain circumstances, unions may be prohibited from trespassing on private property.

**Billington v. Ginn-La Pine Island, Ltd., LLLP, — So. 3d —. 2016 WL 2942185 (Fla. 5th DCA 2016).**

Merger, integration and "non-reliance" clauses are different, and a "non-reliance" clause will negate a cause of action for fraud in the inducement; conflict certified and the following questions certified as questions of great importance:

- Did the court’s decision in *Oceanic Villas, Inc. v. Godson*, 4 So. 2d 689 (Fla. 1941), *sub silentio* overrule its decision in *Cassara v. Bowman*, 186 So. 514 (Fla. 1939)?
- If *Oceanic Villas* did not overrule *Cassara*, does a merger clause such as that discussed in *Cassara*, negate a claim for fraud?
- Do clear and unambiguous disclaimer clauses, such as those in this case, negate or “ma[ke] incontestable” a claim for fraud as discussed in *Oceanic Villas*?
- Does a clear and unambiguous non-reliance clause negate a claim for fraud, where one party alleges justifiable reliance on an extrinsic representation?
- Did *Butler v. Yusem*, 44 So. 3d 102 (Fla. 2010), overrule *Fote v. Reitano*, 46 So. 2d 891 (Fla. 1950), and *Avila South Condominium Ass’n v. Kappa Corp.*, 347 So. 2d 599 (Fla. 1977), and reject Restatement (Second) of Torts § 537, by holding that reliance need not be justified to maintain a fraudulent misrepresentation claim?
- If *Butler* did not overrule *Fote* or *Avila*, which standard applies in Florida, “justifiable” reliance or “reasonable” reliance?

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