

DECEMBER 2022



The SideBar

NEWSLETTER OF THE MARTIN COUNTY BAR ASSOCIATION

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MCBA PRESIDENT,
JEFFREY FRIEDMAN*



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THE SIDE BAR NEWSLETTER

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If you have an article, opinion, news or other information for publication in the *SideBar*, please call (772) 220-8018 or email information to: martincountybarassociation@msn.com

The due date for all advertisements, articles and announcements is the 1st of the month preceding publication.

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Message From the President

Martin County Bar President - Jeffrey M. Friedman, Esq.

Dear Members:

This month’s luncheon speaker is Martin County Property Appraiser, Jenny Fields, CFA. Ms. Fields will be speaking about recent trends in the housing market, new property developments and the impact of the housing market on our community, including how property taxes affect the community as a whole.

We’ve made it to December and the holiday season is upon us. The MCBA is having our first Holiday Mixer, giving us an opportunity to celebrate the holidays together and meet new members. This is another example of the MCBA Board’s efforts to help members to get to know one another better. We look forward to a great membership turnout and start a new MCBA tradition.

Lastly, it is time for some December trivia. December comes from the Latin word “decem,” meaning “ten,” because it was originally the 10th month of the Roman Calendar. In 154 BC, the Roman Senate changed the beginning of the year from March to January, making December the 12th month. On December 7, 1941, Japan attacked Pearl Harbor, marking the beginning of the United States’ entry into World War II. “No matter how long it may take us to overcome this premeditated invasion, the American people in

their righteous might will win through to absolute victory.” President

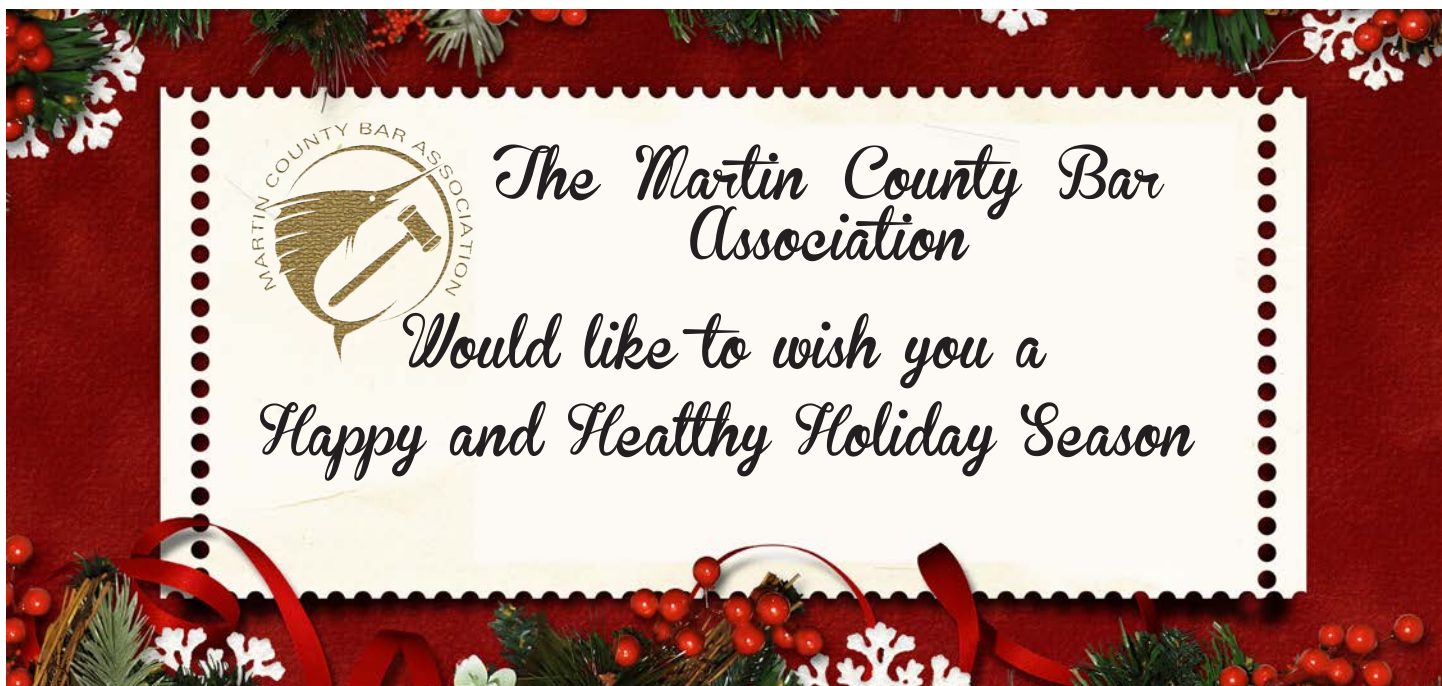
Franklin D. Roosevelt, December 8, 1941. On December 8, 1991, the Soviet Union dissolved, changing the landscape of Europe and Asia. The Bill of Rights became effective on December 15, 1791. December is also home to National Egg Nog Month, National Fruit Cake Month, and National Impaired Driving Prevention Month. Yes, there is a “month” for almost everything, even Fruit Cake.



We look forward to seeing everyone at the Holiday Mixer and monthly luncheon. No Fruit Cake, I promise. Happy Holidays!!

Sincerely,

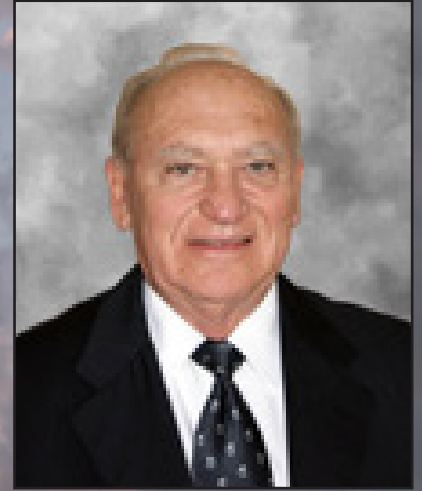
Jeffrey M. Friedman
2022-2023 MCBA President



In Memoriam
Joseph R. Greco

“That man is a success who has lived well, laughed often and loved much”

Robert Louis Stevenson



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Please Join Us!

The Martin County Bar Association will welcome **Jenny Fields, CFA, Martin County Property Appraiser** as the guest speaker at our monthly luncheon meeting on Friday, December 16, 2022 at Monarch Country Club. Networking begins at 11:30 a.m. and lunch will be served promptly at noon.

Ms. Fields has been with the Martin County Property Appraiser's Office since 1989 and was elected as Property Appraiser in 2020. She was born and raised in Stuart, attended Martin County High School and is active in many community organizations.



The Martin County Property Appraiser is responsible for valuing all real property and tangible personal property located in the county. Real property includes land and all buildings for commercial, residential, agriculture and industrial property. Tangible personal property is everything used in a business other than inventory and items of real estate and may include machinery, equipment, fixtures, and furniture. She is also in charge of maintaining property ownership records, address changes and parcel boundary maps and administering exemptions and agriculture classification.

Ms. Fields will discuss recent trends in the housing market, new property developments and the impact of the housing market on our community, including how property taxes affect the community as a whole.

RSVP IS REQUIRED on or before 5:00 p.m. **FRIDAY, December 9, 2022** by calling 772-220-8018 or emailing martincountybarassociation@msn.com. There is no charge for paid MCBA members. Guests are welcome; a \$35 guest fee may be paid at the luncheon (cash or check only).

**In order to expedite gate access for everyone,
please be sure to RSVP by the deadline.**

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2022 George W. Bush, Jr. Professionalism Award

The Martin County Bar Association Judicial Relations and Professional Relations Committees held their annual Judicial Reception at Stuart Yacht and Country Club on October 20, 2022. In addition to honoring the Judiciary of the 19th Circuit, the Professionalism Committee presented the George W. Bush, Jr. Professionalism Award to a deserving and long-time member of the MCBA.

On behalf of the Committee, Chairperson Beth Alcalde first shared some general observations about the strength and depth of the candidate pool and thanked the entire MCBA membership for having taken the time to write so many sincere

recommendations for their peers. Of particular note, the submissions included local lawyers at various stages of practice, which bodes well for the continued professionalism within our association.

Beth then invited Judge Forst to the stage to announce his nomination and recipient of this year's award. Judge Forst announced Judge Martha Warner from the Fourth DCA as this year's winner, and shared reflections on his own friendship and professional journey with Judge Warner. In response to the announcement, Judge Warner delighted the crowd with her heartfelt reaction to the unexpected honor, while on a live video chat. Judge Warner embodies the same high professional standards, generosity of mentorship, and commitment to the local bar as the award's namesake, George W. Bush. Congratulations, Judge Warner!





The Florida Bar Updates / Board of Governors' Report

GREG WEISS - 19TH CIRCUIT BOG REPRESENTATIVE



Keep updated on Florida Bar initiatives and Board of Governors' information, meeting minutes and reports by visiting the website regularly!

A direct link can be found at The Florida Bar's home page (www.floridabar.org) by clicking the "About The Bar"

19th Circuit Judicial Nominating Commission

The MCBA will continue to post updates on the 19th Circuit JNC Commission meetings and deadlines for appointments to fill judicial vacancies as they become available at www.martincountybar.org. For more information, email martincountybarassociation@msn.com

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Foreclosure Committee


In this case, a non-party claiming to have a leasehold interest in the property moved to intervene. The trial court did not rule on his motion and required Balch to provide proof of his legal right to possession of the property. Instead of complying with the order, Balch appealed the order and amended his notice of appeal to include the final judgment when it was subsequently entered during his appeal. The 2nd DCA found that Balch abandoned his motion to intervene by failing to comply with the trial court’s order and lacks standing to appeal the final judgment as a non-party to the foreclosure. Balch has a history of unsuccessfully attempting to intervene in foreclosure cases. See *Balch v. Wilmington Trust*, 336 so. 3d 289 (Fla. 5th DCA 2022); *Balch v. Bank of New York Mellon*, 335 So. 3d 141 (Fla. 4th DCA 2022); *Balch v. HSBC Bank, USA, N.A.*, 128 So. 3d 179 (Fla. 5th DCA 2013).

West v. City First Mortgage Corp. – abuse of discretion in denying motion for leave to amend


In this case, the borrower filed a motion for leave to amend her complaint to include a counterclaim against the lender six minutes before the lender’s summary judgment hearing. The trial court entered summary judgment in favor of the lender but did not enter an order denying the borrower’s motion for leave to amend or address the motion in the final judgment. The borrower appealed alleging the trial court abused its discretion in denying her motion. The 3rd DCA affirmed the final judgment because the Court was unable to determine abuse of discretion from the record.




Dorothy Dlugolecki
Chair



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Admiralty Committee

Barbara A. Kreitz Cook

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MCBA Admiralty Committee Chair



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Chair

IS IT TOWING OR IS IT SALVAGE?

Many boaters, including myself, have contracted with towing companies such as Sea Tow and BoatUS for assistance with a tow home, to a marina, or to repair facility in the event that need arises while boating away from their regular place for dockage. Occasionally, the provider will inform the boater that the assistance is a salvage event not covered under their towing contract and require the boater to sign its salvage contract to obtain assistance. This is significant because towing fees are paid in advance by contract while salvage fees are based on the value of the vessel salvaged, the extent of services rendered, and are awarded by a court or by agreement with the boat owner thereafter.

So what constitutes a salvage situation as opposed to a tow? The distinction between towing and salvage is absence of peril. For a situation to be that of salvage:

First, there must be a peril to the vessel such that the vessel is in a situation that might expose her to loss or destruction. *Lewis v. JPI Corp.*, 2009 WL 3761984 (S.D. Fla.2009). It is well settled that the danger need not be immediate or actual. Nor is it the degree of peril - it may be slight, moderate or severe - that determines whether a marine peril exists at the time assistance is rendered. The peril may be imminent or merely potential and prospective damage may be minimal. These figure into dollar value of the salvor's efforts. Distress signals from a vessel or crew are strong evidence that a marine peril is genuine and that the response effort is salvage. The fact that a vessel is anchored when service is requested does not eliminate the element of peril. For example, a vessel anchored near a reef when the weather is uncertain is in peril. A vessel at its home dock taking on water and having inoperable or inadequate pumps is in

peril of sinking. A vessel driven aground - on rocks, shoals, or a reef - is per se in a state of marine peril. In such a situation, the vessel is exposed to the vagaries of wind, weather, and waves, and clearly a vessel that remains in that helpless situation without further assistance is subject to damage, breaking up or sinking.

Second, the service offered and rendered must be voluntary. That is, the prospective salvor must not be under any official or legal duty to render assistance. The crew of a vessel have a duty to render assistance to prevent damage to their vessel and are, therefore, not entitled to seek a salvage award for rescuing their ship from a peril. Similarly, U.S. Coast Guard personnel have a duty to assist vessels in distress.

Third, the salvor must have success in saving the vessel from whatever real or potential peril was avoided and the ship is preserved for the benefit of the owner. The success need not be complete; there must be some part of vessel or its property that is saved. Nor does it need to be dramatic: it may consist of merely standing or escorting a distressed ship to safe harbor.

Potential salvors do not have an inherent right to save distressed vessels. Instead, the law of salvage permits an owner of a vessel in marine peril to decline the assistance of others so long as only the owner's property interests are at stake.



MCBA Small and Solo Practice Committee



A good time was had by all at the October 25, 2022 networking Happy Hour for the Solo and Small Firm committee. It was a great turnout at the District Table and Bar.

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Employment Law

David Miklas, Esq. – representing employers only

Do your hourly workers use computers?

An employer operates a call center that provides customer service and scheduling for an appliance recycling business. Employees work in-person at the call center in a variety of hourly-paid, non-exempt positions, including as call center agents whose primary responsibilities are to provide customer service and scheduling functions for customers over the phone.

Before employees are able to access job-relevant computer programs, they must awaken or turn on their computers, log in using a username and password, and open up the timekeeping system. Depending on the age of the computer and whether the computer was off or in sleep mode, it would take anywhere from 1-20 minutes for the computer to boot-up so they could clock in, with an average boot up time between 7 to 12 minutes.

Once clocked in, employees load various programs and scripts and confirm that their phone is connected and ready to accept calls. Employees use a phone program that operates through employees' computers rather than through a physical phone.

Employees sued the employer alleging violations of the overtime provisions of the Fair Labor Standards Act ("FLSA"). They contend that they were not paid for the time spent booting up their computers prior to clocking in to the electronic timekeeping system or closing down their computers after clocking out of the timekeeping program.

The district court granted summary judgment to the employer, but the employees appealed and the 9th Circuit Court of Appeals was presented with the following issue: Whether the employees' time spent booting up and shutting down their computers, through which they access their phone and customer service programs, is an integral and indispensable part of their duties and thus compensable under the FLSA.

The Appellate Court panel reversed the district court's summary judgment and remanded the case. *Cadena v. Customer Connexx LLC*, No. 21-16522, 2022 U.S. App. LEXIS 29511, at *3 (9th Cir. Oct. 24, 2022)



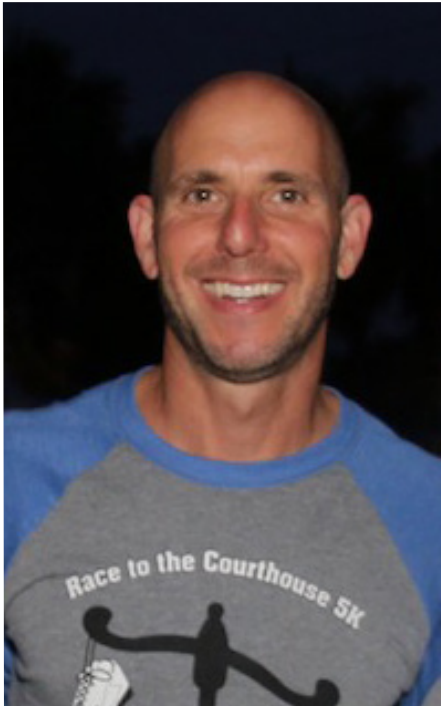
The Appellate Court explained that the correct inquiry is whether engaging the computer, which contains the phone program, scripts, customer information, and email programs, is integral to the employees' duties. All of the employees' principal duties require the use of a functional computer, so turning on or waking up their computers at the beginning of their shifts is integral and indispensable to their principal activities. Because clocking in to the timekeeping program occurs after booting up the computer—the first principal activity of the day—it is compensable.

Although this is not an Eleventh Circuit opinion, Florida Federal Courts will likely look at it carefully because there are few opinions on this issue nationwide. The take-home message is that if your business requires employees to boot-up computers in order to do their job, then that time waiting for the computers to boot-up must be paid to the hourly workers.

So, in law offices, if your employees cannot perform their principal duties while their system is offline, that time spent waiting is compensable time. This is not limited to just small offices with desktop computers hard-wired to each other in a network. So, if you use the "cloud" to store files or use case management software that is offsite and there is a problem accessing it (even if Wi-Fi is down) then the time the employees spend waiting probably must be paid time.



MARTIN COUNTY BAR ASSOCIATION RACE TO THE COURTHOUSE



6th Annual Race to the Courthouse 5k is April 6, 2022

We are excited to announce that the 6th Annual Race to the Courthouse 5k Run/Walk will be held on Saturday, April 22, 2023 and are looking forward to another great race. This race benefits the Legal Aid Society of Martin County and the Martin County Bar Association Scholarship Fund.

Please come out and run or walk with us around beautiful downtown Stuart...everyone is welcome!

We will also be having our competition for fastest law firm and largest law firm (so recruit away!). We will also have an award to the fastest male and female judges. If you are interested in sponsoring, volunteering, or helping out with the race committee, please email Gene Zweben at gene@zwebenlawgroup.com.

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Appellate Committee

TIPS FROM A DAY WITH THE THIRD DCA

By Carri S. Leininger, Esq.
Board Certified Appellate Specialist

The Appellate Section of the Florida Bar recently held a day long seminar with the judges of the Third DCA in Miami. Other than the very long trek down to southwest Miami, this seminar was a day well spent. If you represent clients on appeal, I recommend attending these seminars. They happen about once every two (2) years and it is an opportunity to hear directly from the judges what they like and maybe more importantly, what they don't like.

Also, the Third DCA is launching a pro bono program that appoints lawyers to cases when the judges believe the court would benefit from a party being represented by appellate counsel. This is a great opportunity to serve and to handle an appeal and probably an oral argument. If you are interested, contact the Third DCA.

Below are some of my take-aways, in no particular order:

1. If filing a motion for sanctions, know the DCA's definition of "frivolous".
2. The new Sixth DCA will open on January 3, 2023. Its headquarters will be in Lakeland. It runs from Orlando south down the middle of the state and then turns west to Naples.
3. The new Sixth DCA will probably develop its precedent on a case-by case basis similar to what the Fifth DCA did when it was created in the seventies.
4. Motions in appellate courts should be shorter than motions in the trial court.
5. If you are the Appellant, your brief should say succinctly where the trial court made a mistake and why the mistake requires reversal. Easier said than done.
6. Consider adding an introduction to the brief. The rules do not require it, but the judges appreciate an Introduction that gives them context before they start reading the brief.
7. At Oral Argument, know which case best supports your argument. The judges can and do ask for this information.
8. At Oral Argument, appellants should be ready to state the nature of relief that is requested.
9. Don't attack the trial judge. Most appellate judges are former trial judges and understand the challenges they face.
10. Don't shake your head during Oral Argument. Maintain a poker face.
11. NO MINI TRANSCRIPTS. Replace any mini transcripts by supplementing the record on appeal.



Carri Leininger
Chair

There are so many more practice tips from this seminar. I understand that it will be available for purchase. The sponsor was the Appellate Law Section of the Florida Bar and they did a fantastic job putting on this event. It is well worth the time.

NEED HELP?

If you are feeling isolated, worried about your practice, your family, your employees, reach out - to a friend, a spouse, a colleague OR call the Florida Bar Helpline at 833-FL1-WELL

The Florida Bar Helpline

Bar members will be able to dial the helpline (833-351-9355 or "833-FL1-WELL") and speak with a mental-health professional who can provide crisis intervention and a referral for up to three free visits with a locally based, licensed mental-health professional.

Judicial Reception

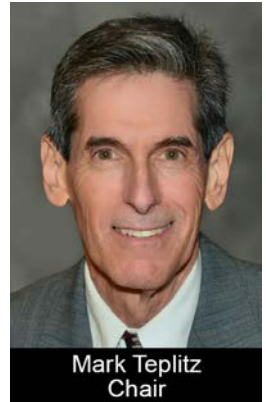
October 20, 2022





Sebastian State Park Beach Camping Weekend

HAVE FUN WITH YOUR COLLEAGUES and watch them try to start a campfire. Once it's started, it's visible from the International Space Station. Enjoy and tell stories (about colleagues not joining the camping weekend?). Paddle with Dolphins. Watch Judge Roby roll out the stoves (yes stoves) and prepare his Martin (World?) Famous Crepes. Teplitz will even cook you breakfast. Let your children teach how to fish. Debate who baits the hook. Take a walk through the nature trail. In short, COME CAMPING.



Mark Teplitz
Chair

Dinner Saturday night and breakfast Sunday morning are provided. Dinner Friday and breakfast and lunch Saturday are camper's responsibility.

With your participation, we will have a weekend camping trip at the nearby (2 hours away) Sebastian State Park Beach in late February 2023. The cost is still being worked out but we hope to set it at \$75 per couple. The eco tour (2 hour kayak trip) may be an additional \$35.

If interested, please email Marc Teplitz at Mteplitzlaw@bellsouth.net by December 20th so we can make full arrangements.

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Bankruptcy Committee

Thomas Zeichman – Chair

Distressed Assets Sales

Purchasers of assets often seek value or growth opportunities. Acquiring distressed assets may accomplish both goals. But what processes exist to buy distressed assets? How does the chosen approach create or mitigate against future creditor attacks, such as successor liability or fraudulent transfer claims?

Bankruptcy Sale

As part of a Chapter 11 bankruptcy a debtor company may sell all or part of its assets. Often, an auction is involved to ensure a fair market price sale to benefit of creditors; however, a private sale without competitive bidding is a possibility.

A purchaser under section 363 of the Bankruptcy Code is able to acquire the assets via a Court Order approving the sale. This Court Order may offer several benefits, including: (i) a finding the sale is free and clear of all interest, claims, and encumbrances; (ii) protections for good faith purchasers; (iii) a finding that the sale was fair to guard against fraudulent transfer challenges; and (iv) findings which address title and ownership issues.

These protections from future challenges to ownership come with certain trade-offs. Generally, bankruptcy sales are accelerated which minimizes due diligence periods. Further, such purchases are often “as is where is” without warranties.

Assignment for the Benefit of Creditors Sale (ABC Sale)

Assignments for the Benefit of Creditors (“ABC”) are not as well known as bankruptcy; however, this liquidation approach has existed for centuries. In an ABC proceeding, which occurs in state court under state law, a company assigns all of its assets to an independent party (the “Assignee”). The Assignee may sell, subject to Court approval, the company’s assets. Generally, the Sale Order states that the purchase is “free and clear” of creditor claims.

Receivership Sale

A court may appoint a receiver over a business when there is: (i) a dispute amongst the owners, (ii) at the request of a lender, or (iii) a request by a regulatory agency (SEC, FTC, among others). A Court order or specific statute is necessary for a receiver to sell assets. The receivership context determines the applicable statutory framework. Further, the order of appointment together with the sale approval order are among the key documents to protect purchasers .



Thomas Zeichman
Chair

Asset Purchases

The prior sections discuss distressed sales within a court proceeding; however, a proceeding is not required. Instead, certain buyers and sellers may prefer asset purchases. This approach provides privacy and avoids the risk of losing the assets to competitive bidding. Unlike the prior sale methods, the purchaser in an asset purchase does not obtain a court order to mitigate against future creditor attacks.

How to Learn About Distressed Sales

Notices of distressed sales, particularly within legal proceedings, often appear in local professional publications. For instance, the South Florida Business Journal and the Daily Business Review include distressed sale sections. Additionally, professional fiduciaries such as bankruptcy trustees and assignees regularly have websites which feature upcoming sales.

Want to discuss distressed sales – opportunities and risks? Reach out to Thomas Zeichman, MCBA Bankruptcy Chair at tzeichman@bmulaw.com or 561-549-9036



Cheers



Congratulations to Lauren Esposito and Ross Alagna who recently joined McCarthy Summers Wood Norman Melby & Schultz P.A.. Lauren will be practicing in the Trusts & Estates Department and Ross in Guardianships and Probate Litigation. Welcome both!



Kudos to MCBA Members who donated to the October and November Luncheon Food Drives. Over 150 pounds of non-perishable food items were collected and donated to House of Hope. Thank you to all who contributed.

PARALEGAL COMMITTEE *Pamela Lewis – Chair*

Hello from the Paralegal Committee. We are thrilled to be able to meet in person again. Last month we had an informative discussion on the spoliation of evidence presented by George Kastrenakes of the Mrachek Law firm. On November 8, Jack Sobel gave an informative and animated discussion on litigation practices guidelines.

We will resume our meetings on January 15, 2023.

I hope you all have a wonderful holiday season and that the New Year brings us new beginnings!

Pam Lewis, Paralegal Committee Chair, Mrachek Law



Pamela Lewis
Chair

Wills, Trusts & Estates

Lisa Clasen- Chair

Happy Holidays to all my friends and colleagues at the Martin County Bar Association! I wish you all much joy, health and happiness, not only through the holidays but every day.

Stay tuned for information regarding the next meeting of the Wills, Trusts and Estates Committee in January. Happy New Year!

Lisa Clasen



Lisa Clasen
Chair

Trial Lawyers

Paul Parton - Chair

The Trial Lawyers Committee is back! We hope everyone had a great fall and is looking forward to the upcoming Winter holidays. Notices will be going out soon for our upcoming meetings and events which are in the works!

Anyone wishing to join or participate in the Trial Lawyers Committee (or if you have any questions or suggestions) please contact Paul Parton at pparton@wpltrialattorneys.com.



Paul Parton
Chair

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Martin County Women Lawyers Association

Abby Spears: MCWLA President 2022 - 23



Martin County
MCWLA
Women Lawyers Association

The **Martin County Women Lawyers Association** is your local chapter of Florida Association for Women Lawyers (FAWL). The mission of FAWL is:

To actively promote gender equality and the leadership roles of FAWL's members in the legal profession, judiciary and community at large. To achieve these goals, FAWL will uphold the highest standard of integrity, honor and courtesy in the legal profession, promote reform in law, and facilitate administration of justice.

HAPPY HOLIDAYS FROM MCWLA!

**Please join us for a holiday social
at COLAB KITCHEN
DECEMBER 8, 2022**

5:30 – 7:30

Hors d'oeuvres provided for MCWLA members

RSVP to fawlmartin@gmail.com

**MCWLA will be collecting gift cards
for local children in need.**

BECOME A MEMBER OF MCWLA TODAY! To join or renew your membership, visit www.fawl.org. Contact our Membership Director, Davina Tala, at dt@talalegal.com with any membership questions.

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Real Estate and Commercial Litigation Update

Florida Real Property and Business Litigation Report

Manuel Farach

1944 Beach Boulevard, LLC v. Live Oak Banking Company (In Re: NRP Lease Holdings, LLC), Case No. 21-11742 (11th Cir. 2022).

A financing statement which lists the debtor as “1944 Beach Blvd., LLC” instead of its legal name of “1944 Beach Boulevard, LLC” is “seriously misleading” under Florida Statutes section 679.5061(2), and is not enforceable against a bankruptcy trustee.

J Suarez Trucking Fl Corp. v. Souders, Case No. SC21-369 (Fla. 2022).

Acceptance of an offer under Florida Statute section 768.79 forms a contract, i.e., an enforceable settlement agreement.

D Development I, LLC v. ICS Contractors, LLC, Case No. 2D21-2759 (Fla. 2d DCA 2022).

A jury cannot award a contractor breach of contract damages for work that was not part of the bid and construction contract.

Marlette v. Carullo, Case No. 2D22-547 (Fla. 2d DCA 2022).

When a case has intertwined legal and equitable claims, the case should first be tried to a jury on the legal claims with the equitable claims then tried by the court as the determinations of the first trial will control determinations of the second trial and trying the equitable claims first would deprive the requesting party of their right to a jury trial.

Bedoyan v. Samra, Case No. 3D21-821 (Fla. 3d DCA 2022).

A partner who has disassociated under Florida’s Revised Uniform Partnership Act of 1995, Florida Statute section 620.8405, cannot recover for breach of fiduciary duty and simultaneously for breach of contract for the same conduct and, under Florida Statute section 620.8701(9), can only recover the statutory payout of his partnership claim against the partnership and not against individual partners.

Berengo v. Daley Law Firm PLLC, Case No. 3D22-1163 (Fla. 4th DCA 2022).

Florida Rule of Appellate Procedure 9.130 is

construed in narrow fashion, and accordingly, an order adopting a receiver’s report determining disputed corporate ownership percentages is not subject to non-final appeal as it merely determines, i.e., does not award, ownership of property.



Manuel Farach
Chair

Gulf Coast Transportation, Inc. Hillsborough County, Case Nos. 2D20-3326 and 2D20-3432 (Fla. 4th DCA 2022).

Despite the regulatory scheme describing taxicab “medallions” (certificates of public convenience and taxicab operating permits) as “private property” and the emergence of a secondary market for the sale and purchase of the medallions, taxicab companies have no Constitutional property rights in the medallions and elimination of the medallion regulation scheme does not constitute a taking without compensation under the Fifth Amendment.

Exclusive Motoring Worldwide, Inc. v. Soral Investments, Inc., Case No. 3D21-1833 (Fla. 3d DCA 2022).

Rental monies deposited in a court registry under Florida Statute section 83.232(1) can only be distributed to the landlord to avoid loss of the premises or other hardship as a result of not receiving the rent.

Griffin Windows and Doors, LLC v. Pomeroy, Case No. 3D22-1069 (Fla. 3d DCA 2022).

A winning party under a proposal for settlement is entitled to an attorney’s fees judgment in the trial court notwithstanding the underlying judgment is on appeal and may be reversed.

Avant Design Group, Inc. v. Aquastar Holdings LLC, Case No. 3D21-53 (Fla. 3d DCA 2022).

A trial court must make specific factual finding of a construction lienor’s honest, good-faith mistake as to amounts due in order for the lienor to be excused from a fraudulent lien claim under the rule set forth in Vinci Development Co. v. Connell, 509 So. 2d

Continued On Next Page . . .

1128, 1132 (Fla. 2d DCA 1987) (“A subsequent dispute between the parties as to the amount of compensation due according to the contract plan of compensation or even a dispute as to the method of compensation provided in the contract does not convert such a good faith dispute into a fraudulent lien as provided in section 713.31.”).

Versace v. Uruven, LLC, Case No. 4D21-2311 (Fla. 4th DCA 2022).

A bank account titled in the name of “husband and wife” is conclusively held as tenants by entireties subject to attack only through other methods, e.g., fraudulent conveyance claims.

Hohns v Thompson, Case No. 5D21-3143 (Fla. 5th DCA 2022).

Florida Statute sections 679.609 (after default, a secured party may take possession of the collateral without judicial process “if it proceeds without breach of the peace”) and 679.610 (creditor may dispose of collateral it has retaken) empower secured creditors to take possession of collateral after a debtor’s default without the necessity of filing suit, including a secured creditor transferring collateral such as stock certificates to itself.

Gate Venture, LLC v. Skinner, No. 1D21-3574 (Fla. 1st DCA 2022).

A change in the character of the surrounding neighborhood may permit the revision or elimination of recorded deed restrictions.

Logan v. Morgan, Lewis & Bockius LLP, Case No. 2D21-337 (Fla. 2d DCA 2022).

A law firm may be held liable for aiding and abetting a breach of fiduciary duty by its client if a plaintiff demonstrates a fiduciary duty on the part of a primary wrongdoer, a breach of that fiduciary duty, knowledge of the breach by the alleged aider and abettor, and the aider and abettor’s substantial assistance or encouragement of the wrongdoing.

Springsted Holdings, Inc. v. Del Prado Mall Professional Condominium Association, Inc., Case No. 2D21-1875 (Fla. 2d DCA 2022).

Construction of a dumpster pad on parking spaces available to association members via easement violates the easement.

Rebolledo v. Chaffardet, Case No. 3D21-2272 (Fla. 3d DCA 2022).

Forum state jurisdiction for defamation claims arising from comments on the internet, *Walden v. Fiore*, 571 U.S. 277 (2014), directs that courts review the defendant’s contact with the forum (not the defendant) and the foreseeability of the defendant’s action to cause harm in the forum state.

Balch v. The Bank Of New York Mellon, Case No. 2D21-566 (Fla. 2d DCA 2022).

A non-party to a case has no right to appeal the final judgment, accordingly, a purported tenant who was not named in a foreclosure action and failed to intervene has no standing to file an appeal.

West v. City First Mortgage Corp., Case No. 3D21-1221 (Fla. 3d DCA 2022).

A trial court does not abuse its discretion when it enters a summary judgment despite the pendency of a motion for leave to file counterclaim based on newly discovered evidence when the motion for leave was filed six minutes before the summary judgment hearing.

Kapitanov v. Spinnaker Bay at the Waterways Condominium Association, Inc., Case No. 3D22-0316 (Fla. 3d DCA 2022).

The Third District has historically affirmed dismissals with prejudice after three attempts to properly state a claim.

Suntech Plumbing and Mechanical Corp. v. Bella Isla, LLC, Case Nos. 3D22-1321 & 3D22-1322 (Fla. 3d DCA 2022).

A trial court does not abuse its discretion when, upon a motion to compel arbitration, it dismisses the case without prejudice instead of staying the case.

Florida Association of Realtors v. Orange County, Case No. 5D22-2277 (Fla. 5th DCA 2022).

A county seeking to impose a rent-control ordinance must comply with Florida Statute section 125.0103(2) and establish “that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.” Moreover, the statute provides that rent controls may not be imposed for longer than one year, and certain types of properties, like second homes, are completely exempted from rent controls. AAB

October 21, 2022 Luncheon



Ross Alagna, Christen Spake, David Lewis, Loren Esposito, Kimberly Ryan



Carrie Lavagna, John Magnan



Jason Berger, Linda Weiksnar, Nicole Lalliberre



Chris Gaston, Erin Kirkwood, Gene Zweben



Christine Moreno, Linda Hake



Judge Steele, Gary Lesser, Florida Bar President



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Alex Gillen, Christen Spake, Katherine Gillen



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Legal Resources / CLE

CLE seminars are available free of charge to all MCBA members through the Clerk of Court Office - Official Records Division at the Martin County Courthouse (1st Floor). Non-members may rent them for a fee. If you have new seminar suggestions, please e-mail martincountybarassociation@msn.com for consideration.

The Law library has relocated to the first floor reference area of the main branch of our Martin County library system, The Blake Library at 2351 SE Monterey Road in Stuart,

with expanded hours of access to library patrons. Legal research assistance will continue to be offered Monday through Thursday (Noon to 4:00 p.m.); Blake Library hours are Monday – Thursday (10 a.m. to 8 p.m.) with all other days open 10 a.m. to 5:30 p.m. except for Sunday (closed).



Christine Moreno
Chair

Current CLE Seminars Available Include the Following:

- **2021 Survey of Florida Law**(2 copies) - Valid through 12/31/2022. **Credits:** 14.5 General; 3.5 Ethics; 0.5 Bias Elimination; 1.5 Professionalism; 3.0 Technology. **Certification Credits:** 5 Appellate Practice; 2.5 Business Litigation; 2.0 City, County and Local Government; 3.5 Civil Trial; 1.0 Condominium and Planned Development Law; 2.5 Criminal Appellate; 2.5 Criminal Law; 2.0 Elder Law; 1.0 Health Law; 1.0 Intellectual Property; 2.5 Juvenile Law; 1.0 Labor & Employment Law; 3.0 marital & Family Law; 2.0 Real Estate Law; 2.0 State & Federal Gov't & Administrative Practice; 1.0 Tax Law; 2.0 Wills, Trusts & Estates.
- **MCBA Monthly Meeting – November 19, 2021.** Valid through 5/31/2023. Speaker: Judge Robert J. Luck, U.S. Court of Appeals, 11th Judicial Circuit. Topic: Martin County's Legal Impact on State and Federal Law – Part 2. Credits: 0.5 General. Includes speaker notes.
- **MCBA Monthly Meeting – December 17, 2021.** Valid through 6/30/2023. Speaker: Edwin Bell, Director of Racial Justice, Equity & Inclusion National Center for State Courts. Topic: Blueprint for Racial Equality. Credits: 1.0 General; 1.0 Bias Elimination.
- **MCBA Monthly Meeting – January 21, 2022.** Valid through 7/31/2023. Speaker: Ambassador Tatiana Gfoeller-Volkoff; Topic: Afghan Women: Where are They Now? Credits: 1.0 General;
- **MCBA Monthly Meeting – February 25, 2022.** Valid through 2/28/2023; Speaker: Michael Tanner, Esq. Florida Bar President. Credits: 1.0 General; 1.0 Professionalism.
- **MCBA Monthly Meeting - September 19, 2022.** Valid through 3/31/2024; Speaker: Carolyn Timmann, Martin County Clerk of Circuit Court and Comptroller. Topic: Technology Enhancements and Updates. Credits: 1.0 General; 1.0 Technology

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ONLINE RESOURCES OFFERED BY THE MCBA

Notice: Your clients and the public at large can now access online courses directly through the MCBA website. They are fast, convenient, and inexpensive - available 24 hours a day, 7 days a week. All instructions are included online and programs can be started/stopped, picking up where you left off, as many times as you like. **Help the MCBA promote this community service while generating income to support local initiatives!**

Florida Online Traffic School Courses:

- Basic Driver Improvement 4-hour course (Traffic Ticket - TCAC)
- First-time Driver 4-hour course
- Advanced Driver Improvement 12-hour course (ADI / Judge-ordered class)
- Florida Mature Driver Program 6-hour course

All traffic courses are approved by the Florida Department of Highway Safety & Motor Vehicles and sponsored by the American Safety Council.

Parent Education and Family Stabilization Online Course:

This 4-hour course is required by Florida law for concerned parties seeking to obtain a final judgment of dissolution of marriage in Florida when minor children are involved. The course is approved by the Department of Children & Families and provided by a division of the University of Continuing Education.

The courses are provided via the American Safety Council which is the leading source for online driver education, workplace safety training, continuing education, online business and security solutions, and more!



Florida Free Legal Answers Program

Did you know that The Florida Bar provides free virtual legal information through its cooperative effort with the American Bar Association to low-income Floridians via the Florida Free Legal Answers Program?

Members of the public can go to: <https://florida.freelegalanswers.org/> to sign up and answer a few questions to see if they qualify to use the service.

Florida lawyers may enroll to join the effort by visiting [clicking on "Volunteer Attorney Registration"](#) and agreeing to the attorney agreement.

Links, Jobs and Legislation



19th Judicial Circuit Court of Florida

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Emergency Hotline / Info: 772.742.9229

Visit

www.martincountybar.org

for resources, links, events and member contact & practice area information.



Florida Bar Appointments / Vacancies

For applications and complete details, visit: www.floridabar.org

19th Circuit Appointments / Vacancies

For applications and complete details, visit: <http://www.circuit19.org/careers.html>

Track Legal Legislation

For more detailed information on specific legislation being tracked by the Bar, visit the Legislation Committee's webpage on the Bar website at this link:

<http://www.floridabar.org/cmdocs/bd160.nsf/WDOCS>



Martin County Ordinances

All Martin County ordinances may be found on the County website:

<https://www.martin.fl.us>

Click on Departments, County Attorney, County Code & Ordinances.

See ordinance list on right side of web page (ex: Ordinances 800-849).



City of Stuart Ordinances

All City of Stuart ordinances may be found on the City website:

www.cityofstuart.us

Click on link at the bottom of the page.

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--|--|---------|---------------|--|--|----------------|
| <h1>December 2022</h1> | | | | | | |
| SAVE THE DATES: January 20, 2023 – MCBA Monthly CLE Luncheon April 22, 2023 – Race to the Courthouse 5K May 13, 2023 – MCBA Sobel Cup Golf Tournament May 20, 2022 – MCBA Annual Installation Banquet | | | | | | |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| | | | | 1 | 2 | 3 |
| | | | | SideBar Articles Due Holiday Mixer 5:30 p.m. Twisted Tuna | | |
| | | | | MCWLA Holiday Social 5:30 p.m. @ Colab Kitchen | RSVP DEADLINE FOR 12/16 LUNCH | |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| | | | | | MCBA Luncheon @ Monarch CC (11:45am) | |
| | | | | | | |
| | | | | | | |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| Hanukkah Begins | | | Winter Begins | | Christmas Eve (observed) Courthouse Closed | |
| | | | | | | |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |
| Christmas Day | Kwanzaa Begins Christmas Day (Observed) Courthouse Closed | | | | | New Year's Eve |



MARTIN COUNTY BAR ASSOCIATION
PO Box 2197
STUART, FL 34995-2197

Please join us for MCBA's CLE Monthly Meeting, Friday, December 16, 2022

When: Friday, December 16, 2022
11:30 a.m. networking; 12:00 p.m. lunch

Where: Monarch Country Club
1801 SW Monarch Club Drive, Palm City

Menu: Caesar Salad; Champagne Chicken with Mushrooms and Peas, Rice Pilaf,
Green Beans, Rolls with Butter and Apple Pie with Whipped Cream

Speaker: Jenny Fields, CFA, Martin County Property Appraiser

CLE: 1.0 General CLE Credit
1.0 Mental Health CLE Credit

RSVP to: martincountybarassociation@msn.com
No later than Friday, December 9, 2022

*There is no charge for paid MCBA members. Guests are welcome;
a \$35 guest fee may be paid at the luncheon (cash or check only).*

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