

KASHI LAW LETTER

A Synopsis of Florida Case Law

Volume 7, Issue 12

April 01, 2015

REAL ESTATE: MORTGAGE FORECLOSURE: DEFENSES: UNCLEAN HANDS: TRIAL COURT PROPERLY DENIED FORECLOSURE BASED UPON EQUITABLE DOCTRINE OF UNCLEAN HANDS AND AWARDED COMPENSATORY AND PUNITIVE DAMAGES TO BORROWERS BASED UPON BANK'S CONSCIOUS INDIFFERENCE TO CONSEQUENCES AND RECKLESS INDIFFERENCE TO RIGHTS OF BORROWERS: DEED IN LIEU OF FORECLOSURE GRANTED: INJUNCTIONS: MANDATORY INJUNCTION GRANTED TO CORRECT BORROWERS' CREDIT HISTORY

**Bank of America, N.A. v. Pate, ___ So. 3d ___, 40 Fla. L. Weekly D663
(Fla. 1st DCA March 16, 2015)**

The appellate panel, consisting of Judges Rowe, Osterhaus, and Thomas, issued a per curiam affirmance without opinion. Judge Thomas wrote a specially concurring opinion explaining that the panel was affirming judgment, entered after a bench trial, that denied foreclosure (but granted a deed in lieu of foreclosure), based upon the equitable doctrine of unclean hands, and awarded over \$60,000 in compensatory damages and \$250,000 in punitive damages to the borrowers' on their counterclaims for breach of contract and fraud. The borrowers applied for a mortgage and home equity loan so that they could purchase and restore an old home with "historical appeal." Based upon the appraisal performed by an affiliate, the bank represented that it would issue both loans but, after it issued the mortgage, the bank refused to issue the home equity loan because the appraisal was flawed. As a result, "[the borrowers] were forced to invest all of their saving and much of their own labor in extensive repairs," and "[t]he record support[ed] the trial court's conclusion that the Bank acted with reckless disregard constituting intentional misconduct" The bank compounded its misconduct by failing to use the funds the borrowers had placed in escrow to pay for the borrowers' homeowners' insurance. As a result, the borrowers' policy lapsed for nonpayment, the borrowers were unable to obtain replacement coverage because of the condition of their home, and the bank obtained a force-placed policy that quadrupled their mortgage payments. Although the bank created the problem, it rejected the borrowers' offer to continue making their original mortgage payments. After the borrowers defaulted, the bank's agents repeatedly entered their home and attempted to remove the borrowers' furniture and place locks on their home. On two occasions, the borrowers had to enlist the aid of law enforcement officers, and they "were forced to obtain alternative housing for 28 months, at a cost of thousands of dollars." The evidence showed that the bank was consciously and recklessly indifferent to the consequences of its actions and that this indifference was the equivalent of an intentional act that violated the rights of the borrowers. "Unclean hands is an equitable defense, akin to fraud, to discourage unlawful activity. . . . The totality of the circumstances established the Bank's unclean hands, precluding it from benefitting by its actions in a court of equity. Thus, the trial court did not err by denying the foreclosure action" and by entering a mandatory injunction "ordering the Bank to take the necessary measures to correct the [borrowers'] credit histories."

To read more briefs in the Real Estate: Mortgage Foreclosure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/real-estate-law/mortgage-foreclosure/>.

To read more briefs in the Injunctions category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/injunctions/>.

**INJUNCTIONS: REPEAT VIOLENCE: NEIGHBORS:
THREATS, SCREAMING, CHASING, AND ALLEGED
POSSESSION OF LOADED GUN WAS INSUFFICIENT TO
SUPPORT INJUNCTION AGAINST REPEAT VIOLENCE
BECAUSE OF ABSENCE OF OVERT ACT REFLECTING
ABILITY TO CARRY OUT THREATS OR INDICATING THAT
VIOLENCE WAS IMMINENT: GENERAL ALLEGATION
WITHOUT SUPPORTING TESTIMONY THAT RESPONDENT
PHOTOGRAPHED PETITIONER'S GUESTS WAS
INSUFFICIENT TO SUPPORT INJUNCTION BASED ON
STALKING AND HARASSMENT**

**Corrie v. Keul, ___ So. 3d ___, 40 Fla. L. Weekly D664
(Fla. 1st DCA March 16, 2015)**

The court reversed an injunction for protection against repeat violence by a neighbor. Respondent's threats to take petitioner's home and throw him in jail, screaming at petitioner and chasing petitioner and his dogs down a sidewalk, and stating that respondent "h[e]d [one] in the chamber and [eight] more" did not justify entry of an injunction against repeat violence because of the absence "of an overt act on [the respondent's] part that indicated an ability to carry out any of her threats or that justified a belief that violence was imminent." In addition, "only a general allegation without any supporting testimony that [the respondent] took pictures of [the petitioner's] guests was insufficient to justify an injunction based on stalking and harassment.

To read more briefs in the Injunctions category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/injunctions/>.

**INJUNCTIONS: FAILURE TO SPECIFY TIMEFRAME TO POST
BOND: APPEALS: DISMISSAL: PREMATURE APPEAL:
APPEAL DISMISSED AS PREMATURE BECAUSE INJUNCTION
DID NOT GO INTO EFFECT BECAUSE APPELLEE NEVER
POSTED BOND SET BY TRIAL COURT**

**Salas v. Alexander, ___ So. 3d ___, 40 Fla. L. Weekly D667
(Fla. 3d DCA March 18, 2015)**

The appellate court dismissed as premature an appeal from a temporary injunction because the injunction never went into effect because the appellee failed to post the bond set by the trial court. The appellate court stated that trial courts should specify the timeframe for posting bonds and recommended an amendment to *Fla. R. Civ. P.* 1.610 to include this requirement.

To read more briefs in the Injunctions category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/injunctions/>.

To read more briefs in the Appeals category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/appeals/>.

To read more briefs in the Civil Procedure: Florida Rules of Civil Procedure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/florida-rules-of-civil-procedure/>.

CIVIL PROCEDURE: DISCOVERY: FINANCIAL RECORDS:

**NONPARTIES: COURT DECLINES TO ADOPT A BLANKET
RULE REQUIRING AN IN CAMERA INSPECTION OR AN
EVIDENTIARY HEARING WHENEVER FINANCIAL RECORDS
ARE SOUGHT FROM NONPARTIES: TRIAL COURT
BALANCED REQUESTING PARTY’S RIGHT TO KNOW
AGAINST THE PRODUCING PARTY’S RIGHT TO PRIVACY**

Bianchi & Cecchi Services, Inc. v. Navalimpianti USA, Inc., ___ So. 3d ___, 40 Fla. L. Weekly D668 (Fla. 3d DCA March 18, 2015)

The plaintiff sued former officers, directors, and employees for “conspir[acy] to breach fiduciary duties, misappropriat[ion of] trade secrets, and conver[sion of] property in order to shift business from [the plaintiff] to the defendants’ new company.” The new company filed a petition for certiorari when the trial court ordered it to produce financial records without conducting an in camera inspection or an evidentiary hearing. The appellate court denied the petition, refusing to adopt a blanket rule requiring the trial court to conduct an in camera inspection or an evidentiary hearing whenever nonparty financial records are sought in discovery. In this case, the trial court fulfilled its obligations to the parties by balancing the plaintiff’s right to know against the defendant’s right to privacy.

To read more briefs in the Civil Procedure: Discovery category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/discovery/>.

**TORTS: PRODUCT LIABILITY: FAILURE TO WARN:
CAUSATION: CARBON FIBER BICYCLE: JUDGMENT FOR
PLAINTIFF REVERSED BECAUSE DEFENDANT’S FAILURE TO
WARN THAT DAMAGED CARBON FIBER COULD FAIL
SUDDENLY WAS NOT THE CAUSE OF THE PLAINTIFF’S
ACCIDENT: ACCIDENT OCCURRED BECAUSE ROAD DEBRIS
GOT CAUGHT IN THE ROTATING SPOKES OF THE FRONT
WHEEL, SOMETHING THAT COULD HAPPEN REGARDLESS
OF THE MATERIAL FROM WHICH THE BICYCLE WAS
MANUFACTURED**

**Trek Bicycle Corporation v. Miguelez, ___ So. 3d ___, 40 Fla. L. Weekly d669
(Fla. 3d DCA March 18, 2015)**

The appellate court in a product liability case reversed judgment for the plaintiff, based upon a jury verdict, because of the plaintiff’s failure to establish causation. The plaintiff alleged that he would not have purchased the accident bicycle if he had been warned that damaged carbon fiber could fail suddenly, but the accident occurred because road debris became trapped in the rotating spokes of the front wheel, a phenomenon that could occur regardless of the material from which the bicycle was made. As a result, the plaintiff did not establish that the defendant’s failure to warn was the cause of his injuries.

To read more briefs in the Torts category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/torts/>.

To read more briefs in the Product Liability category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/product-liability/>.

**TORTS: PRODUCT LIABILITY: TOBACCO:
ENGLE PROGENY CASE: PLAINTIFF PROVIDED SUFFICIENT
EVIDENCE THAT HE WAS ADDICTED TO CIGARETTES
CONTAINING NICOTINE; CIVIL PROCEDURE: CLOSING
ARGUMENT: PLAINTIFF WAS ENTITLED TO COMMENT UPON**

DEFENDANT’S POSITION THAT IT DID NOT CONSPIRE TO CONCEAL INFORMATION ABOUT THE HEALTH HAZARDS OF SMOKING: ALTHOUGH IT IS PROBLEMATIC TO ARGUE THAT DEFENDANT’S CONDUCT AT TRIAL IS A CONTINUATION OF THE MISCONDUCT UPON WHICH THE PLAINTIFF’S LAWSUIT IS BASED, PLAINTIFF COUNSEL ENGAGED IN FAIR COMMENT IN THIS CASE

R.J. Reynolds Tobacco Company v. Ballard, ___ So. 3d ___, 40 Fla. L. Weekly D670 (Fla. 3d DCA March 18, 2015)

The appellate court affirmed judgment for the plaintiff in an *Engle* progeny case. Contrary to the defendant’s assertion, the plaintiff did provide sufficient evidence to prove that he was addicted to cigarettes containing nicotine. The plaintiff called an expert who testified about the hallmarks of addiction, and the plaintiff and his wife testified about his conduct, which corresponded with those hallmarks. The defendant was not entitled to a new trial because of the plaintiff’s closing argument, which castigated the defendant for denying that it conspired to conceal information about the dangers of smoking. On one hand, defense counsel told the jury that the defendant did not contest the *Engle* findings but, on the other hand, the defendant denied that it conspired to conceal information about the dangers of smoking, which is the fifth *Engle* factor. As a result, the plaintiff was entitled to comment upon the defendant’s inconsistent positions. The court stated in a footnote, “While we caution against the use of any arguments that suggest the conduct of the defense at trial is a continuation of the underlying wrongdoing at issue in the lawsuit, we cannot conclude that the arguments made by plaintiff counsel in this case, when viewed in the totality of the circumstances, rise to the level of cumulative prejudice necessary to vitiate the fairness of this trial.”

To read more briefs in the Torts category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/torts/>.

To read more briefs in the Product Liability category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/product-liability/>.

To read more briefs in the Civil Procedure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/>.

TORTS: MEDICAL MALPRACTICE: PRESUIT SCREENING REQUIREMENTS; CIVIL PROCEDURE: DISCOVERY: QUALIFICATIONS OF PRESUIT AFFIANT; APPEALS: CERTIORARI: IRREPARABLE HARM: DENIAL OF DISCOVERY CONCERNING QUALIFICATIONS OF PRESUIT AFFIANT DID NOT RESULT IN IRREPARABLE HARM BECAUSE PHYSICIAN COULD FILE A PETITION FOR CERTIORARI IF TRIAL COURT DENIED HIS MOTION TO DISMISS BASED UPON FAILURE TO COMPLY WITH PRESUIT REQUIREMENTS

Plantz v. John, ___ So. 3d ___, 40 Fla. L. Weekly D673 (Fla. 2d DCA March 18, 2015)

When the trial court in a medical malpractice case denied the defendant’s motion to compel discovery of the presuit affiant’s qualifications, the appellate court denied his petition for certiorari based on lack of jurisdiction. The defendant’s motion to dismiss based upon the plaintiff’s failure to comply with presuit requirements was pending; the motion to dismiss was based in part on a challenge to the presuit affiant’s qualifications; and defendant could file a petition for certiorari if his motion to dismiss was denied. As a result, irreparable harm did not exist.

To read more briefs in the Torts category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/torts/>.

To read more briefs in the Professional Malpractice: Medical Malpractice category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/professional-malpractice/medical-malpractice/>.

To read more briefs in the Civil Procedure: Discovery category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/discovery/>.

To read more briefs in the Appeals: Certiorari category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/appeals/certiorari/>.

REAL ESTATE: MORTGAGE FORECLOSURE: DAMAGES: PORTIONS OF JUDGMENT RELATING TO INTEREST, PROPERTY INSPECTION FEES, AND ATTORNEY'S FEES WERE REVERSED BECAUSE OF THE LACK OF COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTING THESE COMPONENTS OF THE JUDGMENT: CIVIL PROCEDURE: DO OVER: REMAND FOR EVIDENTIARY HEARING

Boyette v. BAC Home Loans Servicing, LP, ___ So. 3d ___, 40 Fla. L. Weekly D674 (Fla. 2d DCA March 18, 2015)

The appellate court in a mortgage foreclosure reversed final judgment to the extent that it awarded interest, property inspection fees, and attorney's fees because of the absence of competent, substantial evidence to support those components of the final judgment. The court reversed for an evidentiary hearing to establish the remaining amounts due and owing."

[Editor's Note: Query: Why was the lender entitled to a do over when it had the opportunity to quantify its costs at trial but failed to submit sufficient evidence to do so?]

To read more briefs in the Real Estate: Mortgage Foreclosure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/real-estate-law/mortgage-foreclosure/>.

To read more briefs in the Attorney's Fees category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/attorneys-fees/>.

To read more briefs in the Evidence category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/evidence/>.

INJUNCTIONS: DOMESTIC VIOLENCE: DAUGHTER'S DESIRE TO AVOID INTERACTION WITH MOTHER DID NOT SUPPORT INJUNCTION

Hair v. Hair, ___ So. 3d ___, 40 Fla. L. Weekly D682 (Fla. 4th DCA March 18, 2015)

A daughter's desire to avoid interaction with her mother was an insufficient basis for granting an injunction for protection against domestic violence.

To read more briefs in the Injunctions category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/injunctions/>.

**REAL ESTATE: MORTGAGE FORECLOSURE;
CIVIL PROCEDURE: VOLUNTARY DISMISSAL: ATTORNEY'S
FEES: DEFENDANT WAS NOT ENTITLED TO ATTORNEY'S
FEES WHEN PLAINTIFF DISMISSED FORECLOSURE ACTION
AFTER SHORT SALE BECAUSE NEITHER PARTY
SUBSTANTIALLY PREVAILED: APPLICATION OF GENERAL
RULE THAT DEFENDANT IS PREVAILING PARTY WHEN
PLAINTIFF TAKES A VOLUNTARY DISMISSAL WOULD EXALT
FORM OVER SUBSTANCE UNDER CIRCUMSTANCES OF THIS
CASE**

**Kelly v. Bankunited, FSB, ___ So. 3d ___, 40 Fla. L. Weekly D684
(Fla. 4th DCA March 18, 2015)**

The defendant in a mortgage foreclosure was not entitled to attorney's fees when the plaintiff voluntarily dismissed the action after a short sale of the property because neither party substantially prevailed. Although the general rule is that the defendant is the prevailing party when the plaintiff takes a voluntary dismissal, applying the general rule under the facts of this case would elevate form over substance. The defendant lost its home and did not receive any proceeds from the sale, and the plaintiff received only 25% of its damages. Everyone took a beating in this case despite the merits. The court "noted that [its] holding does not require trial courts 'to look behind a voluntary dismissal to decide whether the dismissal represents 'an end or finality to the litigation on the merits,'"' an approach the court previously rejected.

To read more briefs in the Real Estate: Mortgage Foreclosure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/real-estate-law/mortgage-foreclosure/>.

To read more briefs in the Civil Procedure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/>.

To read more briefs in the Attorney's Fees category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/attorneys-fees/>.

**NAME CHANGE: TRIAL COURT ERRED BY DENYING
FACIALLY SUFFICIENT PETITION FOR NAME CHANGE
WITHOUT CONDUCTING EVIDENTIARY HEARING TO
DETERMINE WHETHER THE CHANGE WAS SOUGHT FOR AN
IMPROPER PURPOSE**

**Wages v. State, ___ So. 3d ___, 40 Fla. L. Weekly D686
(Fla. 4th DCA March 18, 2015)**

The trial court denied the appellant's facially sufficient petition for name change because she concluded that the petition was sought for fraudulent purposes. The appellate court reversed because the trial court failed to conduct an evidentiary hearing to determine the motivation for the petition. The court observed that it was hard to understand that the petition was being made for a fraudulent purpose because "[the petitioner] was attempting to change his name legally to the name he had used all of his life – the same name used in his criminal conviction for assault and his bankruptcy. The [trial] court erred in summarily dismissing the . . . petition."

**INSURANCE: PIP: POLICY PROVISION THAT
REIMBURSEMENTS SHALL BE SUBJECT TO LIMITATIONS IN
SECTION 627.736, INCLUDING ALL FEE SCHEDULES,**

PROVIDED INSUREDS WITH ADEQUATE NOTICE THAT PIP INSURER WAS ELECTING TO LIMIT REIMBURSEMENTS BY USE OF FEE SCHEDULES

Allstate Fire and Casualty Insurance v. Stand-Up MRI of Tallahassee, P.A., ___ So. 3d ___, 40 Fla. L. Weekly D693 (Fla. 1st DCA March 18, 2015)

A provision in a PIP policy that “reimbursements ‘shall’ be subject to the limitations in § 627.736 [Florida Statutes], including ‘all fee schedules,’” provided insureds with adequate notice of the carrier’s “election to limit reimbursements by use of the fee schedules.”

To read more briefs in the Insurance: PIP category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/insurance/pip/>.

To read more briefs in the Florida Statutes category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/florida-statutes/>.

JUDGES: DISQUALIFICATION: APPEALS: PROHIBITION: WRIT OF PROHIBITION FROM DENIAL OF MOTION FOR DISQUALIFICATION GRANTED BECAUSE JUDGE’S COMMENTS INDICATED THAT SHE HAD PREJUDGED THE CASE

Wolfson v. Wolfson, ___ So. 3d ___, 40 Fla. L. Weekly D695 (Fla. 3^d DCA March 18, 2015)

When the trial court denied the petitioner’s motion for disqualification, the appellate court granted her petition for writ of prohibition because “the trial judge’s comments indicated[d] that she had prejudged the case.”

To read more briefs in the Judges category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/judges/>.

To read more briefs in the Appeals: Prohibition category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/appeals/prohibition/>.

GUARDIANSHIP: TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HONOR THE WARD’S CHOICE OF GUARDIAN WITHOUT FINDING THAT THE APPOINTMENT OF HIS DESIGNATED PRENEED GUARDIAN WAS CONTRARY TO HIS BEST INTERESTS: TRIAL COURT’S FINDINGS THAT PRENEED GUARDIAN MOVED WARD SEVERAL TIMES AND DID NOT COMMUNICATE WELL WITH STAFF OF NURSING FACILITY WHERE WARD WAS CONFINED DID NOT SHOW THAT PRENEED GUARDIAN ABUSED POWERS GRANTED TO HER BY DESIGNATION; DIFFICULTY COMMUNICATING WITH STAFF AT NURSING FACILITY WAS NOT AN ABUSE OF POWER

Martinez v. Smith, ___ So. 3d ___, 40 Fla. L. Weekly D695 (Fla. 4th DCA March 18, 2015)

“A rebuttable presumption exists that the preneed guardian is entitled to serve as guardian” unless “the preneed guardian is found to be unqualified to serve as guardian” or the

appointment of the preneed guardian would be “contrary to the best interests of the ward.” In this case, “[t]he trial court abused its discretion by failing to honor the ward’s choice of guardian without finding that appointment of his designated preneed guardian was contrary to his best interests.” “The trial court’s finding that [the preneed guardian] ha[d] moved the ward several times and d[id] not communicate well with the present [nursing] facility’s staff d[id] not show that [the preneed guardian] ‘abused powers’ granted to her by the designation. The [preneed guardian] had the authority to transfer the ward, and the trial court made no findings that the various transfers were contrary to the ward’s best interest. Nor would this record support such a finding. There were adequate reasons for each transfer, which were largely uncontested by [the professional guardian whom the trial court appointed instead of the preneed guardian].” “Nor would conflict and difficulty communicating with the staff at the [nursing] facility be an abuse of power. Although [the professional guardian] contended that the [preneed guardian] was interfering with the ward’s care, the testimony show[ed] that the [preneed guardian] was demanding more care for the ward than the staff thought was required. Since the ward left decisions regarding his care to the [preneed guardian], and not the staff of the facility, this cannot be treated as an abuse of power, unless her decisions [were] contrary to his wishes, as expressed in the designation. No one [showed] that they [were]. For these reasons, [the court] conclude[d] that the trial court erred in revoking the designation for [the preneed guardian’s] abuse of power.”

To read more briefs in the Estate Law: Guardianship category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/estate-law/guardianship/>.

**REAL ESTATE: MORTGAGE FORECLOSURE;
CIVIL PROCEDURE: DISCOVERY: ATTORNEY-CLIENT
PRIVILEGE: JOINT DEFENSE PRIVILEGE: JOINT DEFENSE
AGREEMENT NEED NOT BE IN WRITING FOR PRIVILEGE TO
APPLY: IN CAMERA INSPECTION WAS NECESSARY TO
DETERMINE WHETHER DEFENDANTS INTENDED TO
MAINTAIN CONFIDENTIALITY WHILE SHARING INFORMATION
IN PURSUIT OF THEIR COMMON INTERESTS:
COMMUNICATION TO AGENT OF HOLDER DOES NOT WAIVE
PRIVILEGE; APPEALS: CERTIORARI**

AG Beaumont 1, LLC v. Wells Fargo Bank, N.A., ___ So. 3d ___, 40 Fla. L. Weekly D704 (Fla. 2d DCA March 20, 2015)

The plaintiff in a mortgage foreclosure sued twenty-five limited liability companies and an individual. The plaintiff dismissed the individual and subpoenaed his communications with the LLC’s. When the trial court overruled the LLCs’ objection to production of numerous emails based on the attorney-client privilege, the appellate court granted the LLCs’ petition for certiorari. The appellate court concluded that the trial court departed from the essential requirements of law by ruling that the joint defense privilege did not apply without conducting an in camera inspection. The absence of a written agreement between the LLCs and the former defendant did not mean that the joint defense privilege was inapplicable. “If an in camera review were to reveal that the LLCs and [the former defendant] intended to maintain confidentiality while sharing information in pursuit of their common interests, the LLCs would be entitled to protect the communications by asserting the attorney-client privilege. Thus, review [was] necessary to resolve the privilege claim unless the privilege was otherwise waived.” The privilege was not otherwise waived by communications to an investment advisor for a member of one of the LLCs because “the member submitted an affidavit stating that she did not use email and that the investment advisor acted as her agent for communications about the lawsuit.” “In light of the affidavit, the use of the third party’s email address . . . present[ed] a question for the circuit court’s determination; it d[id] not automatically foreclose the claim of privilege.”

To read more briefs in the Real Estate: Mortgage Foreclosure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/real-estate-law/mortgage-foreclosure/>.

To read more briefs in the Civil Procedure: Discovery category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/discovery/>.

To read more briefs in the Appeals: Certiorari category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/appeals/certiorari/>.

TORTS: LEGAL MALPRACTICE: ARBITRATION: CIVIL PROCEDURE: VOLUNTARY DISMISSAL: TRIAL COURT LACKED JURISDICTION TO COMPEL VOLUNTARILY DISMISSED DEFENDANT TO SUBMIT TO ARBITRATION

**Williams v. Kevin F. Jursinski, P.A., ___ So. 3d ___, 40 Fla. L. Weekly D705
(Fla. 2d DCA March 20, 2015)**

The plaintiff sued a professional association and its former associate for legal malpractice. The plaintiff voluntarily dismissed the professional association after it filed a motion to compel arbitration. The trial court granted the motion and compelled the plaintiff, the professional association, and the associate to submit to arbitration. The appellate court reversed because the voluntary dismissal divested the trial court of jurisdiction over the professional association notwithstanding the pending motion to compel arbitration. The appellate court “reverse[d] the order compelling arbitration and remand[ed] the case for further proceedings without the professional association as a party.”

To read more briefs in the Torts category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/torts/>.

To read more briefs in the Professional Malpractice: Legal Malpractice category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/professional-malpractice/legal-malpractice/>.

To read more briefs in the Arbitration category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/arbitration/>.

To read more briefs in the Civil Procedure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/>.

TORTS: MOTOR VEHICLE NEGLIGENCE; CIVIL PROCEDURE: AMENDMENT: RELATION BACK: AMENDED COMPLAINT AGAINST WIFE DID NOT RELATE BACK TO INITIAL COMPLAINT AGAINST HUSBAND

**Russ v. Williams, ___ So. 3d ___, 40 Fla. L. Weekly D709
(Fla. 1st DCA March 20, 2015)**

A plaintiff, who sustained personal injuries in a motor vehicle accident, sued the husband as the owner and operator of the other vehicle. After the statute of limitations ran, the husband filed a motion for summary judgment contending that his wife was the owner and operator of the other vehicle. As a result, the plaintiff filed an amended complaint against only the wife, who moved to dismiss based upon the statute of limitations. The trial court granted the motion, and the appellate court affirmed because the amended complaint against the wife did not relate back to the initial complaint against the husband. The court distinguished the present case from one against “two corporate entities that are effectively one [and] the same entity” because the present case “involve[d] two separate individuals. The fact that the individuals [were] married [was] immaterial because each spouse has his or her own legal rights and obligations and Florida law is clear that one spouse is not responsible for the torts of the other. See §441.23, Fla. Stat. (abrogating the common law that a husband is responsible for the torts of his wife). Accordingly, just as a suit by one spouse is separate and distinct from a suit by another spouse, . . . a suit *against* one spouse is separate and distinct from a suit against the other spouse.” The fact that the wife knew that the suit was pending before the statute of limitations expired was inconsequential because “the [spouses] did not do anything to mislead [the plaintiff] as to the identity of the proper defendant.”

To read more briefs in the Torts: Negligence category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/torts/negligence/>.

To read more briefs in the Civil Procedure category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/civil-procedure/>.

To read more briefs in the Florida Statutes category of the Kashi Law Letter, please click here, <http://www.kashilawletter.com/category/florida-statutes/>.

This newsletter is prepared by
Joseph S. Kashi of
Sperry & Kashi, P.A.
1776 North Pine Island Road, Suite 324
Plantation, FL 33322

Telephone : (954) 423-6553
Toll-free : 1-877-287-7345
Facsimile : (954) 423-6833

The firm concentrates principally on insurance coverage disputes and bad faith litigation. The firm website may be found at: ssklawgroup.com

You are receiving this email because you opted in at our website, kashilawletter.com. We respect your privacy. **View our privacy policy.** If you believe this has been sent to you in error, please safely ***[UNSUBSCRIBE]***.