

Unique Claims in Florida Litigation

DEBRA P. KLAUBER, ESQ.

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- ▶ Declaratory Judgments
- ▶ Injunctions
- ▶ Breach of Contract
- ▶ Proposals for Settlement

DECLARATORY JUDGMENTS

Declaratory Judgments – What are they?

- ▶ Any person claiming to be interested or who may be in doubt about his or her rights under a deed, will, contract, or other article, memorandum, or instrument in writing or whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder.
- ▶ Power to construe, FL ST § 86.021

Declaratory Judgments

- ▶ Governed by Chapter 86 of the Florida Statutes
- ▶ Asking for the Court to “declare” something
- ▶ Usually involves the differing interpretation of a contract, statute or other written document
 - ▶ What are each party’s rights?
 - ▶ What are each party’s responsibilities?

Declaratory Judgments – Judge or Jury?

- ▶ Whether the matter will be decided by the judge as a matter of law, or whether there will be discovery and a jury determination depends on the nature of the case.
 - ▶ Is the document clear and unambiguous?
 - ▶ Does the determination require the court to evaluate disputed facts?
 - ▶ Is testimony or evidence necessary?
- ▶ When an action under this chapter concerns the determination of an issue of fact, the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending.
 - ▶ Jury trials, FL ST § 86.071
- ▶ The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.
 - ▶ Existence of another adequate remedy; effect, FL ST § 86.111

Declaratory Judgment – Who are the proper parties?

- ▶ When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

▶ Parties, FL ST § 86.091

Declaratory Judgment – Examples

- ▶ Interpretation of an Insurance Policy
 - ▶ Insurer
 - ▶ Insured
 - ▶ Anyone affected by the ruling (injured party, plaintiff)
- ▶ Interpretation of a Contract
- ▶ Validity of a Contract

INJUNCTIVE RELIEF

Injunctive Relief

- ▶ What is an injunction?
 - ▶ To stop or enjoin someone from acting.
 - ▶ Not to undo something that has already been done.

Injunction - Requirements

- ▶ 1. The moving party will suffer “irreparable harm”
- ▶ 2. The moving party has no adequate remedy at law
- ▶ 3. The moving party has a clear legal right to the relief requested or a substantial likelihood of success
- ▶ 4. A temporary injunction will serve the public interest.

Injunctive Relief – Temporary Injunctions

- ▶ A temporary injunction may be granted without written or oral notice to the adverse party only if:
 - ▶ (A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
 - ▶ (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.
- ▶ The court order must be given to the clerk's office and must be very specific:
 - ▶ Define the injury
 - ▶ State findings by the court why the injury may be irreparable
 - ▶ Give the reasons why the order was granted without notice if notice was not given
 - ▶ Generally requires a bond (but there are exceptions)
 - ▶ Court must hold a hearing within five days on a motion to dissolve an injunction
 - ▶ Temporary injunction can become permanent –after a hearing.

BREACH OF CONTRACT ACTIONS

Breach of Contract — Formation of the Contract

- ▶ An Offer
- ▶ An Acceptance
 - ▶ Can be by performance
 - ▶ Not a Counteroffer
- ▶ Consideration

Breach of Contract – Defenses to Formation

- ▶ Impossibility
 - ▶ Void if impossible at the time the contract was formed
- ▶ Illegality
 - ▶ Void if illegal at the time of the offer
 - ▶ If it becomes illegal after the contract was formed, it has become impossible and the contractual obligations are discharged
- ▶ Ambiguity
 - ▶ Neither party aware or both parties aware: no contract
 - ▶ If one party was aware the contract is enforced with the ambiguity construed against that party
- ▶ Mutual Mistake
 - ▶ Voidable by the adversely affected party
- ▶ Unilateral Mistake
 - ▶ Does not prevent formation of the contract but can be a basis for canceling it

Breach of Contract – Defenses to Enforcement

- ▶ Discharge
 - ▶ Performance, Illegality, Impossibility, Frustration
- ▶ Novation
 - ▶ Creation of New Contract
- ▶ Accord and Satisfaction
- ▶ Rescission
 - ▶ Discharges contractual duties (unilateral or mutual)
 - ▶ Mistake, misrepresentation, duress, no consideration
- ▶ Anticipatory Repudiation

Breach of Contract - Claims

- ▶ What are the potential causes of action?
 - ▶ Breach or Failure to Perform
 - ▶ Fraud or Misrepresentation in Creation
 - ▶ Makes the contract voidable

Breach of Contract – Damages

- ▶ Compensatory Damages
 - ▶ Returns the parties to the status quo.
- ▶ Expectation Damages
 - ▶ This is the standard measure of damages – buy substitute performance.
- ▶ Reliance Damages
 - ▶ If expectation damages are too speculative.
- ▶ Consequential Damages
 - ▶ Further losses a reasonable person would have foreseen. Burden is on the plaintiff to prove that both parties knew of these damages.
- ▶ Lost Profits
 - ▶ Can be permitted but often too speculative and there is a duty to mitigate.

PROPOSALS FOR SETTLEMENT

Proposals for Settlement

- ▶ Offer of Judgment / Demand for Judgment
- ▶ Governed by:
 - ▶ Florida Statute 768.79
 - ▶ Florida Rule of Civil Procedure 1.442
- ▶ If you “beat” the Proposal, the statute and rule entitle you to an award of costs and fees from the date the Proposal was served.

Proposals for Settlement – Statutory Requirements

- ▶ The Proposal Must:
 - ▶ a) Be in writing and state that it is being made pursuant to this Section
 - ▶ b) Name the party making it and the party to whom it is being made
 - ▶ c) State with particularity the amount offered to settle a claim for punitive damages, if any
 - ▶ d) State its total amount
- ▶ Offer of judgment and demand for judgment, FL ST § 768.79

Proposals for Settlement – Amount Required

- ▶ If a defendant serves an offer which is not accepted by the plaintiff, and if the judgment obtained by the plaintiff is at least 25 percent less than the amount of the offer, the defendant shall be awarded reasonable costs, including investigative expenses, and attorney's fees.
- ▶ \$100,000 proposal by defendant requires net judgment of < \$75,000.
 - ▶ Offer of judgment and demand for judgment, FL ST § 768.79
- ▶ If a plaintiff serves an offer which is not accepted by the defendant, and if the judgment obtained by the plaintiff is at least 25 percent more than the amount of the offer, the plaintiff shall be awarded reasonable costs, including investigative expenses, and attorney's fees.
- ▶ \$100,000 proposal by plaintiff requires net judgment > \$125,000.
 - ▶ Offer of judgment and demand for judgment, FL ST § 768.79

Proposals for Settlement – Rule Requirements

- ▶ Be in writing.
- ▶ Identify the applicable rule and statute.
- ▶ Name the party or parties making the proposal.
- ▶ Name the party or parties to whom the proposal is being made.
- ▶ State that the proposal will resolve all damages that would otherwise be awarded in a final judgment.
- ▶ State with particularity any relevant conditions (** release language)
- ▶ State the total amount of the proposal.
- ▶ State with particularity all non monetary terms of the proposal (confidentiality)
- ▶ State the amount included for punitive damages.
- ▶ State the amount included for attorneys' fees.
- ▶ Include a proper certificate of service.

Proposals for Settlement – Rule Requirements (Continued)

- ▶ A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal.
- ▶ A joint proposal shall state the amount and terms attributable to each party.
- ▶ When a party is alleged to be solely vicariously, constructively, derivatively, or technically liable, whether by operation of law or by contract, a joint proposal made by or served on such a party need not state the apportionment or contribution as to that party.

▶ Proposals for Settlement, FL ST RCP Rule 1.442

- ▶ Cannot serve until 90 days after service of process
- ▶ Must serve more than 45 days before trial docket
- ▶ SERVE, not FILE
- ▶ Ok to file only if you are seeking to enforce it
- ▶ Important to serve properly under the rules of judicial administration

Proposals for Settlement – Other Considerations

- ▶ You can serve and file more than one (earliest proposal that is “beat” by the final judgment will be effective)
- ▶ You can withdraw a proposal in writing before it is accepted
- ▶ Whether or not you “beat” the Proposal depends on the net judgment (including costs, interest, etc., not just verdict amount)
- ▶ There is a “good faith” consideration for the court to utilize detailed in both the statute and the rule
- ▶ In a wrongful death case, you cannot recover fees/costs from the survivors, only from the estate of the decedent.

- ▶ Slip and fall involving injured plaintiff and spouse vs. landowner
- ▶ Auto accident involving injured plaintiff vs. two defendants, owner and driver of vehicle
- ▶ Medical malpractice case by injured plaintiff vs. two defendants, physician and his employer/professional association

Questions?

DEBRA P. KLAUBER, ESQ.

954-523-9922

dklauber@hpslegal.com



HALICZER
PETTIS &
SCHWAMM
Attorneys At Law



Medical Malpractice Attorneys
YOUR CASE, OUR PRIORITY
WWW.HPSLEGAL.COM