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FLORIDA COURTS CONTINUE TO CLARIFY THE LIMITS OF JOINT SETTLEMENT PROPOSALS

Florida's Offer of Judgment statute F.S. § 768.79 (2010) was recently interpreted by two separate District Courts of Appeal. While both courts recognize the same threshold element, the dissimilarity between the two will likely spur further litigation where joint settlement offers are at issue.

On February 25, 2011, the 5th DCA decided ***Rossmore v. Smith,*** 36 Fla. L. Weekly D417 (Fla. 5th DCA February 25, 2011), which held two defendants were entitled to attorney's fees based on a joint offer to a single plaintiff. On March 22, 2011, the 1st DCA entered judgment on ***Schantz v. Sekine,*** 36 Fla. L. Weekly D597 (Fla. 1st DCA March 22, 2011), which had invalidated a settlement offer to two plaintiffs because the offer required joint acceptance. In both cases the different appellate courts noted that each offer of settlement had complied with Fla. R. Civ. P. 1.442, which authorizes joint offers.

In ***Rossmore***, two defendants offered to settle a contract dispute with one plaintiff for $50 per defendant. When the jury returned a defense verdict, both defendants moved for attorney's fees pursuant to the Offer of Judgment statute. The 5th DCA

distinguished plaintiff's situation from that in ***Attorneys Title Insurance Fund v. Gorka***, 36 So. 3d 646 (Fla. 2010) because that decision had invalidated an offer from one insurer to two property owners since the offer could only be accepted by both owners at once. The 5th DCA also distinguished ***Lamb v. Matetzshk,*** 906 So. 2d 1037 (Fla. 2005) where an offer from a single plaintiff to two defendants did not specify the amount the plaintiff would accept from each defendant.

Significantly, the 5th DCA's opinion in ***Rossmore*** is consistent with the 4th DCA's opinion in ***Donovan Marine, Inc. v. Delmonico***, 40 So. 3d 69 (Fla. 4th DCA 2010). In ***Donovan Marine***, the 4th DCA held the gravamen of the inquiry is whether a party could independently decide to accept or reject an offer of settlement.

Like ***Donovan Marine***, the 1st DCA held in ***Schantz*** that the critical requirement limiting a joint settlement proposal was whether the offeree is able to act independently. In ***Schantz***, plaintiffs were a husband and wife suing for medical malpractice. The defendant doctors made a joint offer to plaintiffs in which defendants would pay $95,000 to the wife and $5,000 to the husband. The 4th DCA noted an offer may comply with Fla. R. Civ. P. 1.442 and yet may still be unenforceable if it requires joint acceptance.

The 1st DCA relied heavily on the principle from ***Gorka*** that an offer requiring joint acceptance is "the antithesis of a differentiated offer." The 1st DCA pointed to specific language in the proposal requiring joint acceptance, such as "plaintiffs shall execute a general release in favor of the defendants" "plaintiffs shall dismiss this case with prejudice as to the defendants" and "if this proposal for settlement is not accepted in writing within 30 days of service, it shall be deemed rejected by the plaintiffs." According to the 1st DCA, these phrases conditioned settlement on plaintiffs acting jointly; therefore, the proposal was unenforceable.

The Florida legislature should explicitly recognize joint offer in the Offer of Judgment statute so as to discourage

future litigation. Furthermore, two issues have yet to be resolved regarding the Offer of Judgment statute.

The first issue is whether there is a strong reason to treat plaintiffs as completely separate parties when they are spouses and where one spouse's claim only arises because of injury to the other. Second, the statute could address whether enforceability is determined by differentiation or by the ability of each offeree to act independently, regardless of their classification as plaintiff or defendant.

JLH/MQW/tsr

*This is a summary of an article which appeared in the *Trial Advocate Quarterly* in the Spring 2011 edition.