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Lawyer Insights

October 31, 2018

Fla. Courts Encourage Enforcement of Proposals for Settlement—But Watch Out for Joint Proposal

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Published in Daily Business Review

In a case governed by Florida law, a proposal for settlement can be a useful tool to gain settlement leverage, particularly when there is no statutory or contractual fee-shifting provision. At times, though, the cases interpreting Fla. Stat. Section 768.79 and Fla. R. Civ. P. 1.442 have imposed such arcane and seemingly inconsistent requirements that drafting a proposal feels like aiming at a moving piñata after spinning around three times blindfolded. Fortunately, recent state and federal decisions confirm that courts should interpret settlement proposals reasonably and enforce them where the statutory requirements are satisfied. This would achieve the statute's goal—encouraging settlement—rather than breed further litigation. There is, however, one area in which practitioners should remain particularly wary: joint proposals.

In *Allen v. Nunez*, 43 Fla. L. Weekly S421a (Fla. Oct. 4, 2018), the Florida Supreme Court enforced separate proposals made by a single plaintiff to two codefendants, finding it was sufficiently clear that each defendant could settle independently of the other. *Allen* was an automobile negligence case. A single plaintiff made identical proposals to the driver and the owner of the vehicle. Each proposal stated that it was made by the plaintiff to the defendant (identified by name), for the purpose of settling claims by the plaintiff against the defendant, in an amount to be paid by the defendant. A final paragraph, however, stated that the proposal was inclusive of "all damages claimed by the plaintiff … ," without specifying that it was limited to damages claimed against a single defendant. The trial court enforced the proposal. The Fifth DCA reversed, finding the final paragraph created ambiguity as to whether acceptance by only one defendant would resolve the plaintiff's entire claim against both defendants.

The Florida Supreme Court upheld the validity of the proposal. Although proposals must be sufficiently clear to allow the offeree to fully consider the proposal, the court said it has not required the elimination of every ambiguity—"only reasonable ambiguities." The court cautioned lower courts against "nitpicking" proposals and reminded us that proposals should be construed as contracts, with the intent of the parties determined from an examination of the entire contract. In this context, the court found it was disingenuous to assert there was a legitimate question as to whether one codefendant's acceptance could have settled the offeror's claim against the other codefendant.

Florida state and federal courts also recently reaffirmed that nominal offers should be enforced, absent a finding that the offer was made in bad faith. In *Ruiz v. Policlinica Metropolitana,* 43 Fla. L. Weekly D2215b (Fla. 3d DCA Sept. 26, 2018), three defendants sought to enforce $3,500 offers of judgment against a

plaintiff that had been brought into the case as an indispensable party. Judgment of no liability was entered for one of the defendants, and judgment was entered in favor of the indispensable plaintiff against the other two defendants, but no damages were awarded to that plaintiff. The trial court found that the offers were made in good faith and the other statutory prerequisites were satisfied, but declined to award fees because doing so in these circumstances would lead to an absurd result. The Third DCA reversed, holding that once the statutory requirements are met, absent a finding of bad faith, a trial court cannot disallow an entitlement to a fee award. The trial court's finding that it was "not unreasonable" for the plaintiff to reject the offers was irrelevant to the question of entitlement. And, although the trial court ruled in the alternative that if it were to consider amount, the amount of fees awarded would be zero, the appellate court held that the issue of amount was not before the trial court and remanded for a determination of amount.

In *Zendejas v. Redman*, 2018 WL 4613327 (S.D. Fla. Sept. 25, 2018), the federal court found that the standard for enforcement of a nominal offer, established in Florida cases, is whether the offeror had a "reasonable basis" to conclude that his/her exposure was nominal or minimal. The court rejected the plaintiff's argument that a reasonable basis exists only where the "undisputed record" strongly indicates that the defendant had "no exposure," finding that such language in a few Florida cases appeared to be a deviation from the general standard.

The cases discussed above give us some hope that courts will enforce proposals for settlement more consistently. But, just a week after *Ruiz*, the Third DCA reminded us that joint proposals are "a trap for the wary and unwary alike" and once again "cautioned counsel in this district to avoid joint proposals," see *Atlantic Civil v. Swift*, 43 Fla. L. Weekly D2253a (Fla. 3d DCA Oct. 3, 2018). The court rejected a proposal made by one plaintiff to two defendants, which was conditioned on both defendants' accepting it, as not allowed under *Attorney's Title Insurance Fund v. Gorka*, 36 So. 3d 646 (Fla. 2010). Practitioners should heed the Third District's warning and tread cautiously when issuing proposals in multiparty cases.

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