The Florida Supreme Court Invalidates Joint Proposal for Settlement in Pratt v. Weiss

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Florida's Statutes and Rules of Procedure provide a mechanism by which parties may offer to settle cases, and in the process potentially create an entitlement to recover attorney's fees. The mechanism is through service of what are commonly called proposals for settlement or offers of judgment. Predicting the enforceability of joint proposals for settlement and offers of judgment under current Florida law, however, can be somewhat challenging. Exhibit "A" supporting this statement could be the trial court, appellate court, and Florida Supreme Court decisions in the Pratt case.

In Pratt, the trial court found the defendants' offer of judgment enforceable, the district court of appeal found it enforceable, the supreme court majority found it unenforceable, and the dissent concluded that the supreme court did not even have jurisdiction over the case since the perceived conflict at the district court level was not in fact a conflict at all. One might query, "…is there another differing interpretation that could have been applied to this single OJ?" Read on for more detail…..

Last Thursday the Florida Supreme Court issued an opinion invalidating a proposal for settlement. In *Pratt v. Weiss*, SC12-1783 (Fla. Apr. 16, 2015), a patient sued FMC Hospital, Ltd., and FMC Medical, Inc., for medical malpractice. The defendants shared a fictitious name, "Florida Medical Center." Also, the amended complaint alleged (confusingly) that ""FMC Hospital, Ltd. was a limited partnership, and that FMC Medical, Inc. was a general partner of Florida Medical Center." The proposal for settlement stated:

The Defendant(s), FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER, by and through their undersigned counsel, and pursuant to Florida Statute [s.] 768.79 and Fla. R. Civ. P. 1.142 state as follows:

The Party making this proposal are Defendants, FMC HOSPITAL LTD., a Florida Limited Partnership d/b/a FLORIDA MEDICAL CENTER; FMC MEDICAL, INC. f/k/a FMC CENTER, INC. d/b/a FLORIDA MEDICAL CENTER, and this proposal is being made to the Plaintiff, ANCEL PRATT, JR., individually. (subject-verb disagreement in original).

The plaintiff declined the offer, the defendants won at trial. The trial court upheld the proposal and awarded the defendants' fees. The district court affirmed.

However, the Florida Supreme Court reversed. First, the Court noted that section 768.79, Florida Statutes and Rule 1.442 of the Florida Rules of Civil Procedure conflict with the common-law rule, and therefore proposals for settlement are to be strictly construed. Second, the Court held that Rule 1.442(c)(3) requires a joint proposal to state the amount and terms attributable to each offeror or offeree. Because the offer did not apportion the amount contributable to each offeree, the analysis turned to whether FMC Hospital, Ltd., and FMC Medical, Inc., which shared a fictitious name, were indeed separate entities and parties in the lawsuit.

Concluding that they were separate entities and parties, the Court reasoned (1) that "the text of the proposal unambiguously refers to the defendant offerors in the plural," (2) that the amended complaint alleged counts against both FMC Hospital and FMC Medical, and (3) that the motion for fees repeatedly referred to FMC Hospital and FMC Medical as Defendants. The Court invalidated the proposal despite the argument that liability was coextensive between the offerors. "Even where no logical apportionment can be made," the court reasoned, "[apportionment] is nonetheless required where more than one offeror or offeree is involved." As support, the Court provided examples of invalidated offers:

> If two plaintiffs present an unapportioned settlement offer to one defendant. *Willis Shaw Express, Inc. v. Hilyer Sod, Inc.*, 849 So. 2d 276, 277 (Fla. 2003).

If one plaintiff presents an unapportioned settlement offer to two defendants, even though alleging a defendant as vicariously liable. *Lamb v. Matetzschk*, 906 So. 2d 1037, 1040 (Fla. 2005).

If one defendant presents an offer to two plaintiffs conditioned on acceptance by both plaintiffs. *Attorneys' Title Ins. Fund, Inc. v. Gorka*, 36 So. 3d 646, 647-48 (Fla. 2010) (holding that "the conditional nature of the offer divested each plaintiff of independent control over the decision to settle).

Justices Canady and Polston dissented based on jurisdiction. The dissent argued that, because the district court held that the offer was not a joint offer, no conflict existed among the district courts, and, therefore, the Court lacked jurisdiction. The dissent noted that the trial court and the parties treated the offerees as a single entity throughout the case; they were represented by the same lawyer, they filed a single answer, the verdict form listed them as only FMC Hospital, Ltd. d/b/a Florida Medical Center, and the parties stipulated that "FMC Hospital, Ltd. was the only proper defendant.

Much thought and analysis should be undertaken before making strategic or other litigation decisions based upon the service or receipt of a statutory proposal for settlement or offer of judgment.