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Parsing 'True Relief' In Florida's 4th District

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It is well settled in Florida that offers of judgment under Fla. Stat. § 768.79(1) apply only to “civil action[s] for damages.” Accordingly, an offer of judgment that seeks to resolve all claims when a suit involves both monetary and non-monetary causes of action is generally deemed to be invalid.

However, the Fourth DCA has carved out an exception to this rule in the consolidated appeal of MYD Marine Distributor, Inc., et al, v. International Paint LTD., et al, 4D13-2496, 4D13-2671, 4D13-3685, 4D13-4530, 4D13-4779 (April 13, 2016). Specifically, the Fourth DCA held that an award of attorney’s fees under Fla. Stat. § 768.79(1) is enforceable, despite the presence of a claim for non-monetary relief, if the “true relief” sought in litigation is monetary.

By way of background, MYD filed suit against International Paint alleging that they violated state antitrust laws by conspiring to oust MYD as a distributor of a certain brand of yacht paint and in doing so, “fixed” the market price of the paint. The complaint alleged several causes of actions for conspiracy in restraint of trade and breach of contract. With respect to the conspiracy in restraint of trade counts, MYD asked for damages, costs and fees, and “permanent injunction relief enjoining Defendants from continuing to engage in their illegal conspiracy.” International Paint ultimately obtained a summary final judgment, which was affirmed. MYD Marine Distrib., Inc. v. Int'l Paint Ltd., 151 So. 3d 1263 (Fla. 4th DCA 2014).

Following the entry of summary judgment, International Paint moved for its costs and attorney's fees based on rejected offers of judgment it served on each of the MYD entities. Each offer of judgment contained the following limiting language:

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The Total Amount of this Proposal will be paid by [International Paint] to [MYD] to settle all claims for money damages asserted or that could have been asserted by [MYD] against [International Paint] in the above-captioned lawsuit. This Proposal does not attempt to resolve [MYD's] claims for injunctive relief, and if accepted, the claims for money damages will be resolved, but the claims for injunctive relief will remain pending.

At the hearing on International Paint's fee motion, MYD argued that Florida's offer of judgment statute, section 768.79, did not apply because MYD sought both damages and equitable relief in the form of a permanent injunction in its complaint. International Paint countered that its offers were enforceable because they expressly limited themselves to MYD's money claims and MYD never sought any relief on its equitable claim. The trial court held that the offer of judgment statute applied and awarded International Paint its costs and attorney's fees, because MYD did not pursue injunctive relief with the trial court and only litigated its money damages. The Fourth DCA affirmed the costs awards without comment, but the opinion addresses International Paint's attorney's fee award.

The Fourth DCA noted in its opinion that "[t]he purpose of Section 768.79 is to lead litigants to settle by penalizing those who decline offers that satisfy the statutory requirements. Encouraging settlement lowers litigation costs for the parties and reduces the fiscal impact of litigation on the court system." *Id.* (citing *Allstate Prop. & Cas. Ins. Co. v. Lewis*, 14 So. 3d 1230, 1235 (Fla. 1st DCA 2009)).

The Fourth DCA also acknowledged that an offer of judgment which purports to resolve all claims is invalid if the case includes both monetary and nonmonetary causes of action. *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, (Fla. 2013). However, in *Diamond Aircraft*, the Florida Supreme Court approvingly cited to authority suggesting that section 768.79 may be utilized in a suit seeking monetary and nonmonetary relief if the "true relief" sought is monetary. *Id.* at 373 (citing *Nelson v. Marine Group of Palm Beach, Inc.*, 677 So. 2d 998, 999 (Fla. 4th DCA 1996), and

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DiPompeo Construction Corp. v. Kimmel & Associates, 916 So. 2d 17, 17-18 (Fla. 4th DCA 2005)).

More recently, the United States Court of Appeals for the Eleventh Circuit cited to Diamond Aircraft to reject a party's argument "that attorney's fees under [section] 768.79 are not available in any case in which a declaratory judgment accompanies a claim for damages." Yacht Club on the Intracoastal Condo. Ass'n, Inc. v. Lexington Ins. Co., 599 Fed. Appx. 875, 883 (11th Cir. 2015) (applying Florida law). It reasoned that "by citation to Nelson and DiPompeo Construction, [the Diamond Aircraft court] reiterated that a court should look behind the procedural vehicle used in a complaint to discern what true relief is sought." Id. Considering the facts behind a suit for breach of contract and declaratory relief, the Eleventh Circuit concluded that "the only dispute in the suit was one for damages" and thus, held that the "district court did not err in awarding attorney's fees under [section] 768.79" despite the presence of a claim for nonmonetary relief. Id. at 884.

The Fourth DCA relied on both the Diamond Aircraft and Yacht Club decisions in holding that the trial court in this case properly applied the "true relief" analysis in determining the enforceability of International Paint's offers. Specifically, the trial court found that in looking behind the procedural vehicle used in MYD's complaint, MYD did not actually pursue any nonmonetary relief during the course of the litigation. Instead, MYD only sought money damages. Accordingly, the Fourth DCA held that the trial court correctly concluded that International Paint's offers of judgment were enforceable.

In light of this case, a party with a case pending in a trial court in the Fourth DCA can no longer shield itself from exposure to attorneys' fees by including a cause of action for non-monetary damages when the true dispute is one for damages. Thus, if a lawsuit contains both monetary and non-monetary claims, defendants should consider serving an offer of judgment in cases where the "true relief" sought is for monetary damages. For example, if a lawsuit contains a cause of action for both breach of contract and declaratory relief, but the only litigated cause of action is the breach of contract claim,

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then defendants should serve an offer of judgment as to the monetary damages claim only. By taking steps to ensure that the offer of judgment is enforceable by limiting it to only monetary claim, defendants can better position themselves to recover their fees based on rejected offers of judgment.