

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION**

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A.,  
a Florida corporation; and WILLIAM  
J. COOK,

DIVISION: G

Defendants.

\_\_\_\_\_ /

**AFFIDAVIT OF NEIL J. GILLESPIE**

*Judge Martha J. Cook ordered Gillespie removed from the hearing on Defendants' Final Summary Judgment Count I, proceeded without Gillespie, granted SJ for Defendants on TILA fees previously denied with prejudice and by three different federal courts*

Neil J. Gillespie, under oath, testifies as follows:

1. My name is Neil J. Gillespie, and I am over eighteen years of age. This Affidavit is given on personal knowledge unless otherwise expressly stated.
2. I sued my former lawyers and they countersued me. The case is Gillespie v. Barker, Rodems & Cook, P.A. et al., Case No.: 05-CA-7205, Circuit Civil, 13th Judicial Circuit, Judge Martha J. Cook presiding. The lawsuit has not been lawfully adjudicated by the 13th Judicial Circuit.
3. Ryan C. Rodems and William J. Cook, partners at Barker, Rodems & Cook, P.A., have made campaign contributions to Judge Martha Cook. Mr. Cook is a Defendant and



was Counter-Plaintiff, and Mr. Rodems is representing Mr. Cook and the law firm. I did not make a campaign contribution to Judge Cook.

4. On the morning of the hearing September 28, 2010 I commenced a federal lawsuit by filing a Complaint in the US District Court, MD of Florida, Ocala Division shortly after the Court opened at 8:30 AM. (5:10-cv-503-oc-WTH-DAB). The lawsuit alleges the 13th Judicial Circuit has not lawfully adjudicated Gillespie v. Barker, Rodems & Cook. Judge Cook is a Defendant in the lawsuit.

5. After filing the Complaint I immediately drove from the US District Court in Ocala to Tampa for an 11:00 AM hearing before Judge Cook in Gillespie v. Barker, Rodems & Cook on Defendants' Motion For Final Summary Judgment Count I.

6. At the hearing I moved to disqualify Judge Cook on the basis that she is a Defendant in the federal lawsuit. Judge Cook said my motion to disqualify based on a federal lawsuit is legally insufficient and is denied. Judge Cook ordered me removed from the hearing on Defendants' motion for Final Summary Judgment Count I and I had no representation. A separate Affidavit shows how Judge Cook ordered me removed from the hearing, see Affidavit of Neil J. Gillespie, Judge Martha J. Cook ordered Gillespie removed from the hearing of September 28, 2010, and accused Gillespie in open court of feigning illness; ADA, dated October 28, 2010.

7. After Judge Cook ordered me removed from the hearing she granted Defendants' Final Summary Judgment as to Count I. I appealed Judge Cook's rulings to the Second District Court of Appeal on October 22, 1010.

8. Attached as "Exhibit A" is a certified copy of Final Summary Judgment As To Count I signed by Judge Cook September 28, 2010. The document sets forth a false and unlawful set of facts and law, essentially that Barker, Rodems & Cook, P.A. filed a federal Truth In Lending Act (TILA) lawsuit against AMSCOT Corporation and were entitled to \$50,000 in court-awarded fees and costs under a fee-shifting provision of TILA, and as such BRC could not split attorney's fees with Gillespie or the other two plaintiffs. This account is a complete and utter falsehood, an outright lie and fraud.

9. Judge Nielsen previously rejected the arguments offered by Mr. Rodems in the Court's Order of January 13, 2006 where Judge Nielsen denied Defendants' Motion to Dismiss and Strike: "Those portions of Defendant's Motion to Dismiss and Strike seeking to dismiss the Complaint are denied." A certified copy of the Order is attached as "Exhibit B". Therefore Mr. Rodems' argument is barred from further consideration under res judicata -matters that have been "definitively settled by judicial decision". Black's Law Dictionary, 7th Edition.

#### The Truth of the AMSCOT Lawsuit

10. On May 5, 2010 I filed Plaintiff's First Amended Complaint that amended and corrected my inartfully drafted original pro se complaint filed August 11, 2005. Judge Cook unlawfully refused to grant me a hearing on my amended complaint. Upon information and belief, Fla.R.Civ.P., Rule 1.190(a) states a party may amend a pleading once as a matter of course. Leave of court shall be given freely when justice so requires. A court should not dismiss a complaint without leave to amend unless the privilege of amendment has been

abused or it is clear that the complaint cannot be amended to state a cause of action. Trotter v. Ford Motor Credit Corp. 868 So.2d 593. Procedural rule allowing amended pleadings to relate back to the date of the original pleading is to be construed liberally. Rule 1.190(c). Stirman v. Michael Graves 983 So.2d 626.

11. Barker, Rodems and Cook, P.A. did not file the lawsuit against AMSCOT as claimed in paragraph number 3 on page two of Final Summary Judgment As To Count I. The lawsuit was commenced by Alpert, Barker, Rodems, Ferrentino & Cook, P.A. (“Alpert firm”). The Alpert law firm sought me to serve as a class-action representative in two separate lawsuits, one against ACE Cash Express and one against AMSCOT Corporation. The lawsuits were not limited to TILA, but included state law claims of usury and alleged violation of the Florida Deceptive and Unfair Trade Practices Act. The litigation involved so-called “payday loans” which are delayed deposit check cashing schemes that can result in usurious rates of interest for the consumer.

12. The Alpert firm needed me to intervene and save the AMSCOT case from dismissal as the initial plaintiff Eugene Clement was unqualified. The Alpert firm also filed a third payday loan lawsuit against a company called Payday Express. Barker, Rodems and Cook, P.A. assumed all three cases after the Alpert firm closed. BRC made promises to me to bring the AMSCOT and ACE Cash Express lawsuit to them instead of the new Alpert firm. BRC broke those promises, and hijacked the lawsuits for their own benefit. Once BRC had control of the lawsuits, BRC held me hostage and would not obey my instructions regarding AMSCOT. When this happened again with the ACE Cash Express lawsuit I contacted

opposing counsel and negotiated my own settlement. BRC was not happy about that and split their attorneys fees with the other plaintiff, Clement. For the whole story, *See Plaintiff's First Amended Complaint*.

13. Mr. Rodems made a fraudulent claim to the Court that Barker, Rodems & Cook had a \$50,000 "claim against AMSCOT for court awarded fees and costs" under a fee-shifting provision of TILA. Rodems knows Judge Lazzara dismissed the TILA claims with prejudice August 1, 2001 in the underlying case, Clement et al. v AMSCOT, case no. 8:99-cv-2795-T-26-EAJ. Clement et al. v AMSCOT had three claims:

Count I alleged violation of the Federal Truth in Lending Act (TILA).

Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes.

Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes.

In his Order August 1, 2001 (document 116) Judge Lazzara rules as follows:

1. Plaintiffs' Renewed Motion for Class Certification (Dkt. 89) is denied as moot.
2. Count I is dismissed with prejudice.
3. Counts II and III are dismissed without prejudice to bringing them in state court.
4. The Clerk is directed to close this file.

Attorney Robert W. Bauer outlined Mr. Rodems' fraud to Judge Barton October 30, 2007 during a hearing for judgment on the pleadings:

(Transcript, October 30, 2007, page 39)

22 [MR. BAUER] Another issue to point out the fact this is for  
23 their claim of court-awarded attorney's fees, there  
24 was no claim. The claim had already been determined  
25 by the court, denied. It didn't exist any more.

(Transcript, October 30, 2007, page 39)

1 [MR. BAUER] Yes, there was an appeal outstanding, but that  
2 doesn't resurrect any claim. The only thing that's  
3 going to resurrect a claim is an overruling by the  
4 appellate court. A claim no longer exist once it's  
5 been denied, even if it's on appeal. So in  
6 asserting there existed a claim for attorney's fees  
7 is false. It -it's not there.

14. TILA Claims Not Valid in Payday Express Lawsuit, Clement v. Payday Express, Inc. case no.: 8:99-cv-2768-T-23EAJ. On April 6, 2001, United States District Judge Steven D. Merryday issued an Order in the Payday Express lawsuit that dismissed with prejudice the TILA and RICO claims, and dismissed without prejudice the remaining state law claims of usury and FDUTPA. Judge Merryday held that “Because TILA’s mandatory disclosures were not required of the defendants before October 1, 2000, TILA cannot form a basis for relief of the plaintiff’s claims.”

15. TILA Claims Not Valid in ACE Cash Express Lawsuit. Clement & Gillespie v ACE Cash Express, case no.: 8:00-cv-593-T-26C. On December 21, 2000 United States District

Court Judge James S. Moody, Jr. issued an Order in the ACE lawsuit that dismissed with prejudice Count I, Plaintiff's TILA claims, and remanded the case to the Circuit Court of the Thirteenth Judicial Circuit for Count II, the alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes, and Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. Judge Moody explained his decision to dismiss with prejudice the TILA claims on page 3, paragraph 3 of the Order. "On March 31, 2000, the Federal Reserve Board ("FRB") promulgated revisions to a regulation that interprets TILA as applying to check-cashing transactions. See 65 Fed. Reg. 17129, 30 (2000), to be codified at 12 C.F.R. pt. 226. The revision to the regulation states, however, that the effective date of the new rule is March 24,2000, but that compliance is "optional" until October 1, 2000. Id. The Court agrees with Defendant that the plain language of the regulation means that compliance was not mandated until October 1, 2000. The transactions at issue in this case occurred prior to the FRB's regulation. Since Plaintiffs' transactions occurred prior to October 1, 2000, TILA is not applicable and cannot form a basis for relief against Defendant. Accordingly, Plaintiffs' claims under TILA are dismissed."

16. On July 1, 2008, attorney Robert W. Bauer argued the following to Judge Barton about the attorney's fees, starting at page 11, line 22:

MR. BAUER: Your Honor, our client will present evidence and testify to the fact that he was misled as to the meaning of those documents, specifically that he understood the \$50,000 was going to the defendants in this action. But there was fraud committed in

procuring those documents in the first place in that he was advised that the defendants must get the \$50,000, that it was pursuant to a court order, that the Court in the class action had approved this award, had moved it forward and said this is what must happen if this is going to settle. He thought that was wrong in the first place, but felt that because it was a court order that he must comply -- that the attorney's fees awarded was court ordered, he was advised by his attorney that this was the most he could get because an attorney was not entitled to split attorney's fees with -- which if it was a court order that would be true.

However, in a settlement negotiation the attorney could have negotiated a higher return for his client and a lower agreement of what the attorney's fees would have been paid for. I modify my attorney's fees all the time in the interest of making sure that a settlement goes through. And I believe my client will be able to proffer that testimony to the jury. The jury will determine whether or not they believe that testimony, whether fraud was committed in procuring that document. And I think that's the crux of our argument and that's where there is a factual dispute. Did those discussions go on? Did that fraud happen? A copy of relevant pages of the transcript are attached as Exhibit C.

17. On July 7, 2008 Judge Barton rejected Mr. Rodems argument for TILA fees when he denied Defendants' Motion for Judgment on the Pleadings as to BRC. A certified copy of the Order is attached as "Exhibit D". Therefore Mr. Rodems' argument is barred from further consideration under res judicata -matters that have been "definitively settled by judicial decision". Black's Law Dictionary, 7th Edition. In addition, the Order allows an

amended complaint: "3. in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I." (Exhibit D).

FURTHER AFFIANT SAYETH NAUGHT.

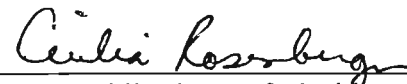
Dated this 1st day of November 2010.

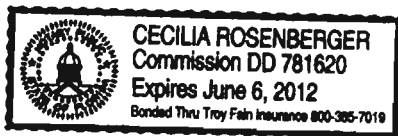
  
NEIL J. GILLESPIE

STATE OF FLORIDA  
COUNTY OF MARION

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, appeared NEIL J. GILLESPIE, personally known to me, or produced identification, who, after having first been duly sworn, deposes and says that the above matters contained in this Affidavit are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 1st day of November 2010.

  
Notary Public, State of Florida



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205  
Division: C

BARKER, RODEMS & COOK, P.A.,  
a Florida corporation; and WILLIAM  
J. COOK,

Defendants.

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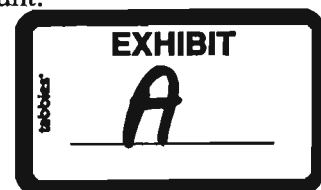
FINAL SUMMARY JUDGMENT AS TO COUNT I

THIS CAUSE came on to be heard on Tuesday, September 28, 2010, on Defendant Barker, Rodems & Cook, P.A.'s (BRC) motion for summary judgment as to Count I, alleging breach of contract.<sup>1</sup> A review of the pleadings, admissions, affidavits and other materials as would be admissible in evidence on file shows there is no genuine issue as to any material fact, and the following material facts are undisputed:

1. Plaintiff Neil J. Gillespie and two other individuals, who are not parties to this action, hired Defendant BRC to bring claims against Amscot for alleged violations of the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq. (Complaint, ¶¶ 6, 11).
2. Under TILA, an aggrieved individual may claim actual damages or statutory damages of up to \$1,000.00. 15 U.S.C. § 1640(a)(1), (2). Under 15 U.S.C. § 1640(a)(3), an aggrieved individual may also make a claim to have his or her attorneys' fees and costs paid by

<sup>1</sup> Plaintiff filed a two count complaint, alleging breach of contract against both Defendants in Count I and fraud against both Defendants in Count II. By Orders dated November 28, 2007 and July 7, 2008, the Court granted judgment in favor of Defendant Cook on both counts, and in favor of Defendant Barker, Rodems & Cook, P.A., on the fraud count.

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the losing party under, but only if he or she is represented by counsel. Hannon v. Security Nat. Bank, 537 F.2d 327, 328-29 (9th Cir. 1976)(denying attorneys' fees under TILA to pro se plaintiff, and holding that "[t]he purpose behind granting attorney's fees is to make a litigant whole and to facilitate private enforcement of the Truth in Lending Act.").

3. Defendant BRC filed a lawsuit under TILA in the United States District Court, Middle District of Florida, on behalf of Plaintiff and the two other individuals, (Complaint, ¶ 9), seeking, among other things, damages and court-awarded attorneys' fees. (Affidavit of William J. Cook, Esquire, ¶ 4). After discovery, William J. Cook, Esquire, an attorney employed by Defendant BRC, testified by affidavit that it became clear that none of the plaintiffs had actual damages. (Affidavit of William J. Cook, Esquire, ¶ 3).

4. After substantial litigation and discovery, the district court dismissed the TILA claims, and Defendant BRC filed a notice of appeal. (Complaint, ¶ 9); (Affidavit of William J. Cook, Esquire, ¶ 7).. While the case was on appeal, the parties began settlement negotiations. (Complaint, ¶¶ 22-23, Exh. 4-6).

5. Under the "Class Representation Contract," which Plaintiff attached to his Complaint as Exhibit 1,<sup>2</sup> Defendant BRC had a duty to investigate and litigate Plaintiff's "potential claims from [his] payday loans with AMSCOT Corporation." After the TILA action

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<sup>2</sup> Although Plaintiff argues the Class Representation Contract was unsigned, he alleged in the Complaint that "GILLESPIE and the LAW FIRM [defined as Defendant Barker, Rodems & Cook, P.A.] had a written Representation Contract." (Complaint, ¶¶ 2, 6). Whether the contract was signed is not material because it is undisputed from the pleadings that Plaintiff "acted as if the provisions of the contract were in force." Sosa v. Shearform Mfg., 784 So.2d 609, 610 (Fla. 5<sup>th</sup> DCA 2001)("Even if parties do not sign a contract, they may be bound by the provisions of the contract, if the evidence supports that they acted as if the provisions of the contract were in force.").

was dismissed, however, Plaintiff expressed a desire to end the litigation and avoid claims against himself, and he directed Defendant BRC orally and in writing to negotiate a settlement of his claims under TILA. (Complaint, Exh. 4 and 5);(Affidavit of William J. Cook, Esquire, ¶¶ 6-8).<sup>3</sup>

6. Eventually, Amscot made a settlement offer which Plaintiff accepted. (Complaint, ¶¶ 32-35). Amscot agreed to pay Plaintiff and the other two plaintiffs \$2,000.00 each, \$50,000.00 to Defendant BRC to settle the TILA plaintiffs' claims for court-awarded attorneys' fees and costs, and a general release of all claims against the TILA plaintiffs. (Complaint, ¶¶ 34-35 and Exh. 2; (Affidavit of William J. Cook, Esquire, ¶¶ 6-8 and Exh. 1)). Under the settlement agreement, neither Plaintiff nor the other two individuals had to pay any portion of their \$2,000.00 to Defendant BRC for attorneys' fees or costs. (Affidavit of William J. Cook, Esquire, ¶ 11). The Settlement Agreement, which Plaintiff, Amscot and Defendant BRC signed, constituted a modification to the Class Representation Contract for which there was consideration, as Defendant BRC took on the task of negotiating a general release, which was not a duty under the Class Representation Contract, and stated as follows: "Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action." (Affidavit of William J. Cook, Esquire, Exh. 1).

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<sup>3</sup> Plaintiff's written directive was for Defendant BRC to demand a settlement whereby Amscot would pay \$1,000 to him and \$10,000 for Plaintiff's and the other plaintiffs' claim for court-awarded attorneys' fees. (Complaint, Exh. 4 and 5). Had Plaintiff and the other plaintiffs in the TILA action not had counsel, there would have been no basis to make a claim for court-awarded attorney's fees. Hannon, 537 F.2d at 328-29(denying attorneys' fees under TILA to pro se plaintiff).

7. Plaintiff also signed a Closing Statement, which included the following statement: “In signing this closing statement, I acknowledge that Amscot Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against Amscot for court-awarded fees and costs. I also acknowledge that I have received a copy of the fully executed Release and Settlement Agreement dated October 30, 2001.” (Complaint, Exh. 2)(Emphasis added).

In Count I against Defendant BRC, Plaintiff contends that, even though he entered into the Settlement Agreement with Amscot, by which Plaintiff, Amscot and Defendant BRC agreed that Amscot would pay \$50,000.00 to Defendant BRC to settle Plaintiff’s and the other two plaintiffs’ claim for court-awarded attorneys’ fees and costs, and even though Plaintiff signed the Closing Statement, which acknowledged that the payment of \$50,000.00 was intended to resolve the claims for court-awarded attorneys’ fees and costs, and even through Plaintiff did not pay any portion of the \$2,000.00 Amscot paid him to Defendant BRC as attorneys’ fees, Defendant BRC should have paid Plaintiff some portion of the \$50,000.00 paid to settle the claims for court-awarded attorneys’ fees. (Complaint, ¶¶ 12-20). Plaintiff claims that the failure to do so was a breach of his contract with Defendant BRC.

Based on the undisputed material facts, and having read and considered the proceedings, heard from counsel and Plaintiff, and being otherwise fully advised in the premises, Defendant BRC is entitled to a judgment as a matter of law on Count I for several reasons. First, Amscot, not Plaintiff, paid the Plaintiff’s attorneys’ fees, and Defendant BRC did not take a percentage of the \$2,000.00 paid to Plaintiff for his claims for statutory damages. In other words, Defendant BRC did not charge Plaintiff any attorneys’ fees. As the Class Representation Contract states,

“[i]n rare cases, the Defendant(s) may pay all or part of the attorneys’ fees.” Amscot paid 100% of Plaintiff’s and the other two plaintiffs’ attorneys’ fees, as agreed to by Plaintiff, Amscot and Defendant BRC, and as permitted by TILA and the Rules Regulating the Florida Bar. R. Regulating Fla. Bar 4-1.8(f)(authorizing a lawyer to accept payment of his or her fees for representation of a client by one other than the client).

Defendant BRC did not breach any contract with Plaintiff by accepting the payment of \$50,000.00 that Plaintiff directed Amscot to pay to it. Moreover, Defendant BRC could not ethically share with Plaintiff any portion of the attorneys’ fees it was paid. R. Regulating Fla. Bar 4-5.4(a)(“A lawyer or law firm shall not share legal fees with a nonlawyer. . .”); Prof’l Ethics of the Fla. Bar, Op. 60-33 (1961)(Quoting with approval, HENRY S. DRINKER, LEGAL ETHICS 182: “The only situations in which a lawyer may properly permit a client to receive and retain fees paid by others on account of his legal services are when such payments are to reimburse the client in whole or in part for the client’s legal expenses actually incurred in the specific matter for which they are paid.”). The law assumes that parties have made a contract for a lawful purpose. See, e.g., J.R.D. Management Corp. v. Dulin, 883 So. 2d 314, 316-17 (Fla. 4th DCA 2004).


Finally, Plaintiff is estopped as a matter of law from adopting a contrary position in this litigation to the one he took during settlement negotiations with Amscot, in the Settlement Agreement signed by him, Amscot and Defendant BRC, and in the Closing Statement. “In order to demonstrate the existence of estoppel, a party must establish (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reliance upon that representation; and (3) a change in position detrimental to the party claiming estoppel, caused by the representation

and reliance.” Sun Cruz Casinos, L.L.C. v. City of Hollywood, Fla., 844 So.2d 681, 684 (Fla. 4th DCA 2003). According to the undisputed testimony by Mr. Cook, Defendant BRC relied on the statements Plaintiff made in the Settlement Agreement with Amscot that Amscot was authorized to pay Defendant BRC \$50,000.00 for the claim for court-awarded attorneys’ fees and costs, as well as in the Closing Statement, and Defendant BRC would not have accepted the money if Plaintiff had not agreed to the terms of settlement. Therefore, as a matter of law, Plaintiff is estopped from changing his position with Amscot that its payment of \$50,000.00 was to settle and resolve Plaintiff’s obligation to pay Defendant BRC attorneys’ fees and costs.

Based on the foregoing, it is ORDERED that Defendant BRC’s motion for summary judgment as to Count I is GRANTED; and,

IT IS ADJUDGED that Plaintiff Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, take nothing by this action and that Defendant Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, shall go hence without day and recover costs from Plaintiff, the amount of which the Court retains jurisdiction to determine if the parties cannot agree.

DONE AND ORDERED in Chambers this 28 day of September, 2010.

  
\_\_\_\_\_  
Martha J. Cook  
Circuit Judge

Copies to:

Mr. Neil J. Gillespie, pro se  
Ryan Christopher Rodems, Esquire (Counsel for Defendants)

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 25th DAY OF October 2010

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PAT FRANK  
CLERK OF CIRCUIT COURT  
BY Pat Frank D.C.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY, CIVIL DIVISION

NEIL J. GILLESPIE, PLAINTIFF,

CASE NUMBER ~~05-CA-72105~~

vs.

DIVISION " F "

BARKER, RODEMS & COOK, P.A., a Florida Corporation; and WILLIAM J. COOK,

DEFENDANTS.

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ORDER ON DEFENDANTS' MOTION TO DISMISS AND STRIKE

THIS CAUSE came on for hearing on September 26, 2005, upon Defendant's Motion to Dismiss and Strike, and counsel for the parties being present and having made arguments and the court having considered the Plaintiff's Rebuttal to Defendant's Motion to Dismiss and Strike. Defendant's Reply to Plaintiff's Rebuttal to Defendant's Motion to Dismiss and Strike and the Plaintiff's Second Rebuttal to Defendant's Motion to Dismiss and Strike, and the court being advised fully in the premises, it is thereupon,

ADJUDGED as follows:

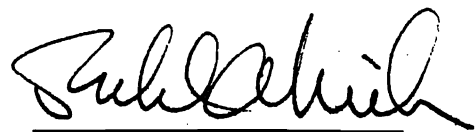
- 1. Defendant's Motion to Dismiss and Strike is granted in part and denied in part.
2. Those portions of Defendant's Motion to Dismiss and Strike seeking to dismiss the Complaint are denied. Defendant shall have fifteen days from the date of this order within which to file responsive pleadings.



3. Those portions of Defendant's Motion to Dismiss and Strike seeking to strike portions of the Complaint is granted in the following particulars:

- a. Paragraphs 47, 48, 49 and 50 of the Complaint are stricken.
- b. Exhibit 8 to the Complaint is stricken.
- c. All references to or demands for punitive damages are stricken or failure to comply with §768.72 of the Florida Statutes.

**ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this \_\_\_\_\_ day of JAN 13 2006, 20\_\_\_\_\_.

  
RICHARD A. NIELSEN  
CIRCUIT JUDGE

Copies furnished to:

Ryan C. Rodems, Esquire  
300 West Platt Street, Suite 150  
Tampa, Florida 33606

Neil J. Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH)  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 31<sup>st</sup> DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY Donna Healy D.C.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,  
Plaintiff,

Case No. 05-CA-7205

-vs-

Division: "F"

BARKER, RODEMS & COOK, P.A.  
a Florida corporation; and  
WILLIAM J. COOK,  
Defendants.

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TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE JAMES M. BARTON, II  
Circuit Judge

TAKEN AT: In Chambers  
George E. Edgecomb Courthouse  
Tampa, Florida

DATE & TIME: 1 July 2008

REPORTED BY: WILLIAM HERRMANN  
Court Reporter  
Notary Public



STENOGRAPHICALLY RECORDED (ORIGINAL )  
COMPUTER-AIDED TRANSCRIPTION (COPY )

Berryhill & Associates, Inc.  
501 East Kennedy Boulevard, Suite 1225  
Tampa, Florida 33602 (813) 229-8225

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APPEARANCES:

For the Plaintiff:

ROBERT W. BAUER, ESQUIRE  
Robert W. Bauer, P.A.  
2815 NW 13th Street  
Gainesville, Florida 32609  
(352) 375-2518

For the Defendants:

RYAN C. RODEMS, ESQUIRE  
Barker, Rodems & Cook, P.A.  
400 North Ashley Drive  
Suite 2100  
Tampa, Florida 33602  
(813) 489-1001

1 would be appropriate to allow us to amend our  
2 complaint. And I apologize, somehow I missed the  
3 case that I have specifically on point on that  
4 issue. I'll be happy to forward that to the Court  
5 and opposing counsel after this hearing. Even if  
6 the Court grants the motion for judgment on the  
7 pleadings it is appropriate to allow us to amend  
8 our complaint, if it's nothing more than a failure  
9 to state a cause of action if we're capable of  
10 fixing those issues, we should be able to fix such  
11 issues. And as if the Court grants this motion we  
12 would request that it's granted with leave to amend  
13 in 20 days.

14 THE COURT: Clearly the exhibits show that the  
15 plaintiff signed a number of documents  
16 acknowledging -- whereby he acknowledged that this  
17 \$50,000 that was sent to the defendant, it would be  
18 going to the defendant, was for this that and the  
19 other. And I think -- how is it that the plaintiff  
20 seeks to get around those? And there are exhibits  
21 I think to the complaint about it.

22 MR. BAUER: Your Honor, our client will  
23 present evidence and testify to the fact that he  
24 was misled as to the meaning of those documents,  
25 specifically that he understood the \$50,000 was

1 going to the defendants in this action. But there  
2 was fraud committed in procuring those documents in  
3 the first place in that he was advised that the  
4 defendants must get the \$50,000, that it was  
5 pursuant to a court order, that the Court in the  
6 class action had approved this award, had moved it  
7 forward and said this is what must happen if this  
8 is going to settle. He thought that was wrong in  
9 the first place, but felt that because it was a  
10 court order that he must comply -- that the  
11 attorney's fees awarded was court ordered, he was  
12 advised by his attorney that this was the most he  
13 could get because an attorney was not entitled to  
14 split attorney's fees with -- which if it was a  
15 court order that would be true. However, in a  
16 settlement negotiation the attorney could have  
17 negotiated a higher return for his client and a  
18 lower agreement of what the attorney's fees would  
19 have been paid for.

20 I modify my attorney's fees all the time in  
21 the interest of making sure that a settlement goes  
22 through. And I believe my client will be able to  
23 proffer that testimony to the jury. The jury will  
24 determine whether or not they believe that  
25 testimony, whether fraud was committed in procuring

1 that document. And I think that's the crux of our  
2 argument and that's where there is a factual  
3 dispute. Did those discussions go on? Did that  
4 fraud happen?

5 THE COURT: What about on the pure breach of  
6 contract, Count 1? If you look at -- here is the  
7 contract. They're all kinds of written agreements  
8 and then again you got letters. I mean, wasn't  
9 there -- don't Exhibits 4 and 5 to the complaint  
10 show that the plaintiff authorized the defendant in  
11 writing to negotiate a settlement for him and  
12 that -- in that underlying case that party was  
13 going to pay the fees?

14 MR. BAUER: Your Honor, yes, he did negotiate  
15 and he authorized the defendant to negotiate fees  
16 for him. And that's the whole problem is --  
17 authorized him to, it was contractually provided  
18 for that he would negotiate for my client's  
19 settlement with my client's interests in mind. I  
20 think clearly from the settlement there was a  
21 breach of that contract, that he did not settle --  
22 or he did not enter negotiate -- it was a failure  
23 of the agreement, which simply is if Your Honor was  
24 to contract for a house to be painted and for it to  
25 be properly painted and everything to be conducted

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205

Division: C

BARKER, RODEMS & COOK, P.A.,  
a Florida corporation; and WILLIAM  
J. COOK,

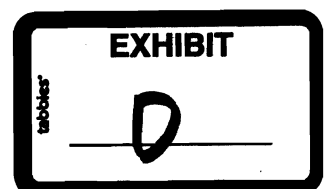
Defendants.

ORDER GRANTING AND DENYING IN PART DEFENDANTS' MOTION  
FOR JUDGMENT ON THE PLEADINGS

THIS ACTION was heard on Defendants' Motion for Judgment on the Pleadings on Tuesday, October 30, 2007 and Tuesday, July 1, 2008. During the October 30, 2007 hearing, the Court granted Defendant Cook's motion for judgment on the pleadings as to Count I, alleging breach of contract, with a written Order entered on November 28, 2008. The Court withheld ruling on the on the remainder of Defendants' motion for judgment on the pleadings pending resolution of Defendants' Petition for Writ of Certiorari filed with the Second District Court of Appeal regarding this Court's Order Granting Plaintiff's Motion to Withdraw Plaintiff's Notice of Voluntary Dismissal entered August 31, 2007. Subsequently, the Second District Court of Appeal denied the Defendant's petition, and the hearing on Defendants' Motion for Judgment on the Pleadings was concluded on July 1, 2008. Having read and considered the proceedings, and after hearing from counsel and otherwise being fully advised in the premises,

It is ORDERED:

1. the motion for judgment on the pleadings is DENIED as to Count I, alleging breach of contract, against Defendant Barker, Rodems & Cook, P.A. and,

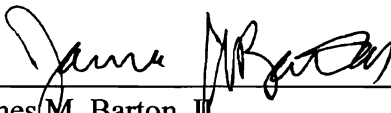


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HILLSBOROUGH COUNTY FL  
Clerk of Circuit Court

2. the motion for judgment on the pleadings is GRANTED as to Count II, alleging fraud, against Defendant Barker, Rodems & Cook, P.A. and Defendant Cook.

3. in lieu of an amended complaint, all factual allegations contained in Count II are incorporated in Count I.

DONE AND ORDERED in Chambers this 7<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
James M. Barton, II  
Circuit Judge

Copies to:

Robert W. Bauer, Esquire (Counsel for Plaintiff)  
Ryan Christopher Rodems, Esquire (Counsel for Defendants)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 3<sup>rd</sup> DAY OF August 2010



PAT FRANK  
CLERK OF CIRCUIT COURT  
BY Donna Leary D.C.