

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

COPY

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NEIL. J. GILLESPIE,	:	
	:	
Plaintiff,	:	
	:	CASE NO.: 05-CA-007205
vs	:	
	:	DIVISION: C
BARKER, RODEMS, & COOK,	:	
P.A., a Florida	:	
corporation; and WILLIAM J.	:	
COOK,	:	
	:	
Defendants.	:	
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TRANSCRIPT OF:	HEARING
BEFORE:	The Honorable Judge James M. Barton, II
DATE:	October 30, 2007
PLACE:	Room 512 800 East Twiggs Street Tampa, Florida
TIME:	10:33 a.m. to 11:22 a.m.
REPORTED BY:	Elizabeth W. Chorrushi, Registered Professional Reporter Florida Professional Reporter

1 APPEARANCES:

2 ROBERT W. BAUER, ESQUIRE
3 Robert W. Bauer, P.A.
4 Suite 200B
5 2815 NW 13th Street
6 Gainesville, Florida 32609

7 Appeared on behalf of Plaintiff

8 RYAN CHRISTOPHER RODEMS, ESQUIRE
9 Barker, Rodems & Cook, P.A.
10 Suite 2100
11 400 North Ashley Drive
12 Tampa, Florida 33602

13 Appeared on behalf of Defendants

14 I N D E X

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16 Proceedings 3
17 Certificate of Reporter 49

1 Transcript of proceedings held on October 30,
2 2007, commencing at 10:33 a.m., at Room 512, 800 East
3 Twiggs Street Tampa, Florida, before the Honorable James
4 M. Barton, II, and reported by Elizabeth W. Chorrushi,
5 Registered Professional Reporter, Florida Professional
6 Reporter.

7 THE COURT: How are you-all doing today?

8 MR. RODEMS: Good, Your Honor.

9 MR. BAUER: Good, Your Honor. How about you?

10 THE COURT: Good, good.

11 So in Gillespie versus Barker, Rodems & Cook
12 and William Cook, we have a motion to enter judgment
13 on the pleadings.

14 MR. RODEMS: Yes, sir.

15 THE COURT: So I'm not sure the volumes of the
16 case that I got had the pleadings in them.

17 Does anybody have them?

18 MR. RODEMS: Well, I do have the complaint
19 which has all the attachments. The answer is really
20 not material to this, Your Honor.

21 THE COURT: Unless they are denied.

22 MR. RODEMS: Well, true.

23 THE COURT: Do we have the answer?

24 MR. BAUER: Yes, Your Honor.

25 MR. RODEMS: I didn't bring an extra.

1 THE COURT: And I know where you are wanting to
2 go with this, but, you know.

3 MR. BAUER: And it will be -- in my index, it's
4 1 and 14 would be the complaint and then the answer.

5 THE COURT: Yeah. In fact --

6 MR. RODEMS: Well, the reason I say the answer
7 is really not material is because all the
8 well-pleaded allegations of the complaint are
9 accepted as true on a motion for judgment on the
10 pleadings.

11 THE COURT: But the pleadings include the
12 answer. And so, again, I know -- I mean, you -- it
13 looks like you denied quite a few allegations
14 starting with 1 and 4 and 6.

15 So how do we -- how do we get past that?

16 MR. RODEMS: Well --

17 THE COURT: I mean, in this motion you say
18 admit them as true, but in the answer you deny a
19 bunch of things.

20 MR. RODEMS: Right. But according to the
21 Second District in Wallace Brothers versus Yates at
22 117 So.2d 202, 203, the facts well-pleaded are
23 admitted, but of course conclusions of law are not.

24 So that's why I say the answer is largely
25 irrelevant. It doesn't matter if we denied them or

1 not. If he's alleged it and the complaint is true,
2 then we accept those as true for purposes of this
3 motion.

4 THE COURT: Well, how can you without
5 disavowing your answer?

6 MR. RODEMS: Well, it's only for the purposes
7 of this motion.

8 THE COURT: But it's a judgment on the
9 pleadings. It's not a motion for judgment on the
10 complaint.

11 MR. RODEMS: What I'm saying is that if you
12 look at the material allegations of the complaint
13 and accept them as true -- just disregard the answer
14 for purposes of this motion -- we are still entitled
15 to judgment on the pleadings.

16 THE COURT: Wouldn't that be a motion to
17 dismiss for failure to state a cause of action?

18 MR. RODEMS: Well, it's essentially the same
19 animal, yes.

20 THE COURT: It's a different animal.

21 MR. BAUER: Which has already been ruled on.
22 There has been a motion to dismiss and it's been
23 denied.

24 THE COURT: Was it for failure to state a cause
25 of action?

1 MR. BAUER: Yes, Your Honor.

2 It was like for actually like four different
3 reasons. It was for economic loss rule, failure to
4 state a cause of action --

5 MR. RODEMS: But the standard that the court
6 reviews a motion for judgment on the pleadings is
7 different than a motion to dismiss.

8 THE COURT: Is it? I mean, can you have your
9 cake and eat it too?

10 MR. RODEMS: Absolutely.

11 THE COURT: You can, in an answer, deny
12 allegations, but then still get a judgment on the
13 pleadings?

14 MR. RODEMS: Yes, sir.

15 MR. BAUER: I believe the proper pleading would
16 have been a motion for summary judgment, where --

17 MR. RODEMS: Well, just a second, Your Honor.
18 I mean, this is a motion for judgment on the
19 pleadings. It's not what it should have been. It's
20 a motion for judgment on the pleadings.

21 THE COURT: Right. And that's what I'm looking
22 at. I'm not looking at it as anything else. I
23 mean, occasionally, we can treat, by agreement, a
24 motion to dismiss as a motion for summary judgment.
25 But only if that's the right thing to do.

1 And, again, you know, back in 1960-whatever
2 when this case you cited came out, I guess they
3 still had -- you know, I'm looking at the original
4 note from back in -- I think it's 1968. A motion
5 for judgment on the pleadings, the motion for
6 judgment on the pleadings under Rule 1.140(c) --

7 MR. RODEMS: C.

8 THE COURT: -- does not present a defense or an
9 objection. It is made only after the pleadings are
10 closed, and it calls for a decision on the issues
11 they, meaning the pleadings, make.

12 MR. RODEMS: Correct.

13 THE COURT: So -- and that is what Miller?
14 What case are you citing?

15 MR. RODEMS: Oh, I'm sorry. It was Wallace
16 Brothers versus Yates, which is 1968.

17 Now again, the Fifth DCA in 2006, in Thompson
18 versus Napotnik, N-a-p-o-t-n-i-k, at 923 So.2d 537
19 said the same thing. Quote, "The court must accept
20 as true all well-pleaded allegations of the
21 non-moving party." So you can accept all the
22 allegations of his complaint as true. We are still
23 entitled to judgment on the pleadings. That's our
24 position today.

25 THE COURT: Mmm-hmm. You don't have any of

1 those cases, do you?

2 MR. RODEMS: Actually, I didn't bring those
3 cases with me because I thought it was so -- such a
4 well-understood concept. But I'll be happy to
5 submit those.

6 THE COURT: Yeah. Because I -- again, the last
7 thing I want to do is say, okay, let's do what you
8 say and then, you know, they -- assuming I rule in
9 your favor in whole or in part -- and then they take
10 an appeal and say, well, these pleadings set up
11 disputed issues of fact.

12 So how can you possibly have a motion for
13 judgment on the pleadings?

14 MR. RODEMS: Well, again, when you're on a
15 motion to dismiss, you accept all the allegations of
16 the complaint.

17 THE COURT: That's because there's no answer
18 filed denying anything.

19 MR. RODEMS: Right.

20 THE COURT: And you have to.

21 MR. RODEMS: Right.

22 THE COURT: But on the pleadings, it's not a
23 motion for judgment on the complaint. It's a motion
24 for judgment on the pleadings.

25 MR. RODEMS: Well, perhaps we could proceed and

1 it will become clear.

2 THE COURT: Yeah, I mean, go ahead. That was
3 just my initial thought.

4 MR. RODEMS: All right. If you will take a
5 look, there are three distinct arguments today. The
6 first is the breach of contract action against
7 Mr. Cook. The second is the breach of contract
8 action against Barker, Rodems & Cook. And the third
9 is fraud against both defendants. I'll address the
10 breach of contract action against Mr. Cook.

11 THE COURT: And, again, you said at the bottom
12 of Page 4 that you are entitled to summary judgment.
13 I don't think you meant that.

14 MR. RODEMS: Right. Well, judgment summarily,
15 Judge. But it should be judgment on the pleadings,
16 correct. I saw that as well when I was preparing
17 for this. I apologize.

18 The contract which Mr. Gillespie attached to
19 his complaint which he claims is the operative
20 contract, Your Honor, is Exhibit 1. If you will
21 take a look at Exhibit 1, you'll see that Neil
22 Gillespie is retaining and employing the law firm of
23 Barker, Rodems & Cook, P.A.

24 THE COURT: Right.

25 MR. RODEMS: Mr. William J. Cook is not a party

1 to this contract, so there's no possibility of
2 holding Mr. Cook liable for breach of contract.
3 There's just not -- he's not a party to the
4 contract. He's an attorney with the law firm of
5 Barker, Rodems & Cook. And Barker, Rodems & Cook is
6 the one that entered into this contract.

7 So, clearly a breach of contract action against
8 Mr. Cook is no more viable than if Mr. Gillespie
9 decided he would sue you, Your Honor, for breach of
10 contract. You're not a party to this contract
11 either.

12 THE COURT: Right. Except they did -- I think
13 you, in summarizing here, you concede that they have
14 alleged that Cook individually was part of this
15 contract, but that the written contract itself shows
16 he's not a party. Is that --

17 MR. RODEMS: Correct, Your Honor. And if you
18 will look at the cases, GRICO versus Graci,
19 G-r-a-c-i, 849 So.2d 1196 and 1199, "Any pleading,
20 any document attached to a pleading is part of the
21 pleading for all purposes. And if an attached
22 document negates a pleader's cause of action, the
23 plain language of the document will control and may
24 be the basis for a motion to dismiss." That's in
25 France Tractor versus JI Case Company and the other

1 case that holds that we've cited as well.

2 THE COURT: And it wasn't signed, right?

3 MR. RODEMS: No, Your Honor. But Mr. Gillespie
4 has taken the position that this is a contract
5 between the parties. And according to the case law,
6 even though the contract was not signed, until it's
7 superceded, it remains binding. That's what the
8 case law says.

9 We are not raising the issue today that the
10 contract has not been signed. But what we are
11 saying is that if the contract shows it's between
12 Barker, Rodems & Cook --

13 THE COURT: Right.

14 MR. RODEMS: -- and Gillespie --

15 THE COURT: But your case says -- the quote
16 that you gave says even if the parties do not sign a
17 contract, they may be bound by the provision of the
18 contract if the evidence supports that they acted as
19 if the provisions of the contract were in force.

20 MR. RODEMS: Correct.

21 THE COURT: So, I mean, you have, again, an
22 evidentiary issue as to who -- as to what -- whether
23 that was the contract between those parties or
24 whether maybe there were other parties because
25 nobody signed any written contract apparently.

1 MR. RODEMS: Well, there's no allegation in the
2 complaint that there's anything but this contract.

3 THE COURT: Well, except that, as alleged, it
4 says that the law firm and the individual lawyer
5 were parties to the contract. And since we don't
6 have a signed written contract, then -- right -- who
7 knows, depending what the evidence shows.

8 Isn't that what the case shows? Isn't that the
9 case you cited?

10 MR. RODEMS: No, that's not what the case says
11 at all. It just says that an unsigned contract is
12 binding on the parties --

13 THE COURT: Might be.

14 MR. RODEMS: Yeah.

15 THE COURT: Depending on what the evidence
16 shows.

17 MR. RODEMS: Right.

18 THE COURT: And it might not be depending on
19 what the evidence shows.

20 So, I mean, how can we answer this question
21 until we see what the evidence is?

22 MR. RODEMS: There's no allegation in the
23 complaint that Mr. Cook and Mr. Gillespie entered
24 into a written contract. There's no allegation in
25 the compliant --

1 THE COURT: Right. So then there is an oral
2 contract or there's that written contract maybe --

3 MR. RODEMS: Well, he has --

4 THE COURT: -- that no one signed.

5 MR. RODEMS: He would have to allege that in
6 the complaint for it to be the basis of a breach of
7 contract action.

8 I mean, again, we are talking about judgment on
9 the pleadings, does the pleadings state a cause of
10 action. And if he has not alleged that this written
11 contract was between him, Gillespie, and Cook, and
12 there's no other allegation in the complaint, we
13 can't -- we can't go behind the scenes and create a
14 cause of action for Mr. Gillespie that he hasn't
15 pleaded. We are entitled to due process on that.

16 THE COURT: What is alleged regarding what the
17 contract is?

18 MR. BAUER: Your Honor, that there was a
19 written representation contract.

20 However, the one thing that counsel appears to
21 be ignoring in this situation -- and that contract
22 is not attached to this complaint and we must keep
23 in mind that this was originally filed as a pro se
24 complaint, so there is going to be a little bit more
25 latitude with the interpretation of it -- there was

1 a written, signed contract by the predecessor firm
2 to Barker, Rodems & Cook that was signed by both
3 parties.

4 When that firm dissolved, this was assigned or
5 wasn't assigned. We don't know what -- and the
6 evidence will show, you know, whether, in fact, it
7 did become an assignment.

8 THE COURT: So are we on the pro se version of
9 the complaint?

10 MR. BAUER: Yes, Your Honor.

11 THE COURT: How do you feel about that?

12 MR. BAUER: I'd like to amend it and make it
13 a --

14 MR. RODEMS: Wait just a second, Your Honor.
15 The pro se plaintiff dismissed his claims against
16 us.

17 THE COURT: Right.

18 MR. RODEMS: And then he filed this motion
19 saying he wanted to revive them. We are here on a
20 motion for judgment on the pleadings. Mr. Bauer has
21 been in this case since April and now he comes in
22 here today when we are hearing this and says, well,
23 give him a break because Mr. Gillespie filed it pro
24 se, and by the way, I'd like to amend this?

25 MR. BAUER: Actually, I did make an attempt to

1 amend the complaint which characterized when I said
2 that we would be able to file this as a
3 counter-complaint and that would actually more stand
4 in the stead of what I would forward. And there
5 still needs to be some issues that I would like to
6 address with that.

7 However, I think -- first, I am kind of
8 confused as to why we're having this hearing at all
9 today because we have an appeal -- a writ of
10 certiorari that's outstanding that will get rid of
11 all these issues if it goes through.

12 THE COURT: As to what?

13 MR. BAUER: As to whether this court's last
14 order was valid in allowing the plaintiff to dismiss
15 their voluntary dismissal. That was immediately
16 filed after. It seemed to me that originally that
17 was something more warranted to go forward with and
18 was, you know, more expeditious and asserting
19 judicial economy.

20 So I think -- and as far as whether or not the
21 complaint itself is whether counsel is trying to
22 assert the issue of the voluntary dismissal, that
23 issue has been resolved as far as this court is
24 concerned. We are back to doing the issue.

25 Yes. We've been dealing with other issues.

1 But I don't see in any way there's been -- there
2 hasn't been a single amendment to this complaint.
3 The case law clearly states that it's not
4 prejudicial to the other party to at least allow one
5 amendment of the complaint. Many of the case law
6 goes up to the court shall allow up to four.

7 MR. RODEMS: There is no motion to amend the
8 complaint filed with this court.

9 MR. BAUER: The court asked a direct question
10 to me on whether or not I would think it would be
11 warranted to amended complaint and I responded.

12 THE COURT: I asked if you felt comfortable
13 with the current version.

14 MR. BAUER: I think there's probably things --
15 problems probably could be dealt with and clarified
16 and issues could be better dealt with if we went and
17 filed for an amended -- an amended complaint and
18 moved forward from that point.

19 THE COURT: How far along is the -- I know the
20 petition for writ of certiorari has been filed.

21 MR. RODEMS: We will filed a writ of certiorari
22 following Your Honor's ruling allowing them to
23 revive the dismissed claim. The Second DCA has
24 ordered Mr. Bauer to file a response on behalf of
25 Mr. Gillespie under the writ. Mr. Bauer has asked

1 me to agree to a two-week extension of time for him
2 to prepare his response because he's got a trial
3 scheduled, and I said I have no objection to that.
4 So that's where things stand with that.

5 We don't want this continued because we want --
6 we want this case to be brought to a conclusion. If
7 Mr. Bauer felt an amendment was necessary, he could
8 have filed a motion for leave to amend the complaint
9 at any time.

10 But to come in on the day that we're here on
11 the motion for judgment on the pleadings without a
12 written motion and then say, "I'm uncomfortable with
13 the complaint filed by Mr. Gillespie," and then ask
14 for leniency because he filed it pro se to me is
15 just one more further delay that my clients
16 shouldn't have to endure.

17 Now you should keep in mind that while
18 Mr. Gillespie was pro se, he litigated this case,
19 moved to disqualify Judge Nielson, moved to
20 disqualify Judge Isom, then took a discovery order
21 up on a petition for writ of certiorari and an
22 appeal. Both of those were dismissed. We had a
23 motion for order to show cause what he wouldn't turn
24 over discovery. He came in and filed a letter
25 saying that he was going to have an attorney

1 appointed for him by an insurance company. And then
2 he retracted from that and told the insurance
3 company not to defend the claim for him.

4 Everything about this case, Your Honor, has
5 been delayed. If you look at that file, you'll see
6 everything about this case has been delayed. He's
7 also moved to disqualify our law firm from
8 representing -- me from representing our law firm
9 and Mr. Cook which was also denied by Judge Nielson.

10 So, I mean, at what point do we stop saying
11 "Poor, Mr. Gillespie, he's pro se and he's an
12 individual," and start saying, "You know what, it's
13 a level playing field?"

14 These lawyers and this law firm should not be
15 treated any different and Mr. Gillespie should not
16 be given the advantage simply because he is an
17 individual who wants to claim that the legal system
18 has shafted him.

19 MR. BAUER: Your Honor, I would agree that I
20 think that a significant portion of this action has
21 been delayed, but I believe it's been on both sides.
22 I've been at motions to dismiss that aren't
23 necessarily warranted. We have a motion for summary
24 judgment and a motion for judgment on the pleadings.
25 We have a writ of certiorari that has been filed

1 instead of -- I think that that clearly could have
2 been dealt with at another time, more appropriately
3 dealt with all the issues at one time.

4 I don't see that -- I have been on this case
5 for a whole of six months. I don't think my failure
6 to have amended the complaint in six months is
7 overly egregious considering we have had multiple
8 issues to deal with, the hearings that have been
9 required to come down here, the writ of certiorari
10 that has been filed. I don't think there's been any
11 delay on my part or on the part of my firm.

12 And I was not -- I think, even without the
13 amendment at this time, I think there are sufficient
14 facts alleged in the complaint that bring up
15 questions to determine whether or not this is a --
16 you know, who this document is binding on.

17 Yes. There is an written agreement, but is
18 every -- and that written agreement memorializes
19 some of the terms that are contained in it.
20 However, there is the whole problem of is that even
21 the defendant's attempting to enforce an unsigned
22 contingency fee agreement is a breach of the
23 professional rules of ethics, so there's an issue
24 contained with that. But there's --

25 MR. RODEMS: Well, wait just a second.

1 MR. BAUER: If I --

2 MR. RODEMS: Wait just a second. I have a
3 written, signed copy of that contract. I'm not the
4 one that filed this lawsuit. Gillespie did. And
5 Gillespie filed an unsigned version of that
6 contract.

7 MR. BAUER: If I may, Your Honor, please finish
8 what I was saying prior to interruption -- is if
9 counsel is saying that there are -- there in fact
10 exists a signed contingency fee agreement, I think
11 that there certainly is a problem that in his
12 argument now that he's saying the pro se plaintiff
13 didn't have access, it wasn't available him, a
14 signed copy of that contract at the time when he did
15 the complaint. They are wanting to knock it out
16 because the signed contract that they admit exists
17 isn't attached to the agreement and they are wanting
18 to point out that the complaint says that there was
19 a written agreement.

20 They just admitted the allegations in the
21 complaint. There was a written contract between.
22 So, I mean, it's -- either it is or it isn't, so
23 where are we?

24 MR. RODEMS: That is completely incorrect.
25 There is a signed contract. It exists.

1 Mr. Gillespie has a copy of it.

2 THE COURT: But not in the pleading and not
3 attached to a pleading.

4 MR. RODEMS: No. But that was Mr. Gillespie's
5 decision not to do that. I don't know why he
6 didn't.

7 THE COURT: Okay. Well, then that was his
8 decision. And maybe he should have, but I can't
9 make a ruling on the pleadings as they should have
10 been filed.

11 MR. RODEMS: Exactly.

12 THE COURT: So the pleadings as they exist
13 allege a contract between Cook and the law firm on
14 the one hand and Gillespie on the other hand, and we
15 have an unsigned copy of a written contract between
16 a law firm and Gillespie.

17 And as the case you cited shows, the evidence
18 will determine what the contract was and whether
19 that was contract, the unsigned written contract or
20 whether it was something else. So --

21 MR. RODEMS: Well, Your Honor, if you look at
22 the complaint itself, Mr. Gillespie says that he
23 hired the law firm to represent him. He doesn't
24 says he hired Mr. Cook. He hired the law firm. And
25 then he says, Paragraph 8, Gillespie entered into a

1 written class representation contract with the law
2 firm to perform legal services, Exhibit 1. And he
3 points to that contract.

4 Nowhere in here does he say he had a contract
5 with Bill Cook to represent him. He doesn't allege
6 that, but yet he sued Mr. Cook for breach of
7 contract.

8 THE COURT: Right. Is there anything in the
9 complaint that says the plaintiff had a contract
10 with Cook individually?

11 MR. BAUER: Your Honor, no, there is nothing in
12 the complaint. And it was my understanding, and the
13 reason that I felt that it was still appropriate to
14 include Cook is that there was no actual written
15 contract between Barker, Rodems & Cook that was
16 signed. So there was an issue whether or not in the
17 failure to execute a new contract after the
18 termination of the predecessor firm may have opened
19 up Mr. Cook to the liability.

20 I will concede that if there exists a written
21 contract that clearly shows that the issue is only
22 between Barker, Rodems & Cook and Mr. Gillespie that
23 we have only a contract claim for breach of contract
24 against Barker, Rodems & Cook.

25 I don't believe that that same argument is

1 going to apply on to the fraud count which we
2 believe that Mr. Cook participated in the fraud and
3 attempted to cover --

4 THE COURT: That's a different issue.

5 MR. BAUER: Yes. But so --

6 THE COURT: Even as alleged, does the complaint
7 even say that Cook was party to this complaint?

8 MR. BAUER: No, it does not.

9 THE COURT: Right. So I'm going to grant that
10 motion --

11 MR. RODEMS: Thank you.

12 MR. BAUER: As to --

13 THE COURT: Cook, individually.

14 MR. BAUER: -- Cook, individually only?

15 THE COURT: Right.

16 MR. RODEMS: Your Honor, because --

17 MR. BAUER: If I may clarify, but that's denied
18 as to Barker, Rodems & Cook?

19 MR. RODEMS: We haven't got to that argument
20 yet.

21 All right. If I may proceed now to the fraud
22 claim, Your Honor, because I think that's going to
23 be the easiest one to resolve next.

24 In order to allege a fraud claim, there are
25 five elements that Mr. Gillespie must plead and

1 prove -- let me get to my motion here -- he's got to
2 allege a false statement was made regarding a
3 material fact, that the individual who said the
4 statement knew or should have known that it was
5 false, that the maker intended the other party rely
6 on the statement and that the other party relied on
7 a false statement to his detriment.

8 Now a fact is material if, but for the
9 representation, the aggrieved party would not have
10 entered into the contract. And this is from Ribak
11 versus Centex Real Estate Corp., 702 So.2d 1316,
12 quote, "Reliance on the alleged false statement is
13 an essential element. And if the evidence shows
14 that the recipient of the statement," in this case
15 Gillespie, "knew it was false, reliance on the
16 statement is unjustified. Moreover, the courts have
17 held that a party may not recover in fraud for an
18 alleged false statement when proper disclosure of
19 the truth is subsequently revealed in a written
20 agreement between the parties."

21 Now Mr. Gillespie claims that Cook told him
22 that the court awarded our law firm \$50,000 in fees.
23 The written documents attached to the complaint by
24 Mr. Gillespie, specifically Exhibit 2, is the
25 closing statement our law firm prepared, and this is

1 what Mr. Gillespie's signature is on. And it says,
2 "In signing this closing statement, I acknowledge
3 that Amscot Corporation separately paid my attorneys
4 \$50,000 to compensate my attorneys for their claim
5 against Amscot for court-awarded fees and costs."

6 Mr. Gillespie signed this statement
7 understanding that Amscot paid our law firm \$50,000
8 for our claim for court-awarded attorney's fees --
9 not for court-awarded attorney's fees, but for our
10 claim for court-awarded attorney's fees.

11 And let me back up for just a second, Your
12 Honor. Mr. Gillespie retained our firm to sue
13 Amscot for a pay day loan violation under the Truth
14 in Lending Act. The Truth in Lending Act is a
15 federal statute that provides that if it's violated,
16 the individual who suffers the violation is entitled
17 to certain damages, which are capped, and also that
18 if that party prevails, the losing party shall pay
19 the prevailing party an attorney fee.

20 Our contract with Mr. Gillespie says that the
21 defendant may pay some or all of our attorney's
22 fees, if you look at Exhibit 1. When the case
23 settled, Mr. Gillespie received \$2000 and Amscot
24 agreed to pay our law firm \$50,000 in attorney's
25 fees. When Mr. Gillespie signed this closing

1 statement, he knew that Amscot was paying us for our
2 claim for court-awarded attorney's fees.

3 Mr. Gillespie even participated in the
4 negotiations, Your Honor. Look at Exhibit Number 4.
5 This is a letter from -- and this is attached to
6 Mr. Gillespie's complaint. This is a letter from
7 Mr. Cook to Mr. Gillespie that says, quote, "In
8 addition, you," Gillespie, "authorized us to demand
9 1000 to settle your claim plus 50,000 in attorney's
10 fees and costs." So Mr. Gillespie knew and
11 authorized us to do that.

12 Then if you go to Exhibit 5, Mr. Gillespie
13 responded to that letter the next day and says,
14 "Thank you for your letter of August 15th relative
15 to the above captions. I agree with you that the
16 defendant will probably not accept your settlement
17 offer. I believe the sticking point is your request
18 for \$50,000 in attorney's fees and costs. I do not
19 believe that the \$1000 request each for myself
20 Mr. Clement and Ms. Bloomfield" -- two other people
21 involved in this lawsuit, Your Honor -- "is a
22 barrier to settlement. Therefore, I suggest that
23 you ask for a lesser amount of fees and costs."

24 And then he goes on to say, "Given your lack of
25 success in this matter thus far, I suggest you ask

1 for \$10,000 attorney's fees and costs." So
2 Mr. Gillespie not only knew that we were separately
3 negotiating payment to our law firm for attorney's
4 fees and costs, he directed to us how to do it.

5 Now we were successful and convinced Amcscot to
6 pay him \$2000 and to pay us \$50,000 in attorney's
7 fees and costs and a settlement release was prepared
8 that stated all that, which Mr. Gillespie signed.
9 But also we have the closing statement that shows
10 that Mr. Gillespie understood that the settlement
11 was for \$50,000 to compensate my attorneys for their
12 claim against Amcscot for court-awarded attorney's
13 fees.

14 Mr. Gillespie has gone through some Herculean
15 gymnastics and gone back to the contract and said,
16 well, just a second, if the court didn't award you
17 \$50,000 in attorney's fees, then I should get a
18 portion of that. And since you told me the court
19 awarded \$50,000 in attorney's fees and really what
20 happened was there was a settlement for 50,000 in
21 attorney's fees, you've defrauded me.

22 Now that's just crazy, Judge. It doesn't make
23 any sense. But the bottom line on this point is
24 that he can't meet the elements of fraud because he
25 can't rely on a false statement because the

1 statement he claims was false, that the court
2 awarded 50,000, was told to him on November 1, 2001,
3 that it was \$50,000 settlement by Amscot to settle
4 the claim for court-awarded attorney's fees and
5 costs.

6 So he can't meet reliance. If he cannot meet
7 reliance, his house of cards of fraud fails and the
8 claim must be dismissed. But that is not the only
9 reason that the fraud claim must be dismissed.
10 That's one of them.

11 The other reasons, as I address in the motion,
12 are that you cannot bring a fraud claim disguised as
13 a breach of contract, and that's what he's done.
14 He's claiming that we didn't pay him what
15 the contract -- we didn't take his attorney's fees,
16 what the contract says we should have taken and we
17 breached it.

18 He said under the contract we should have taken
19 the \$50,000, added to the amount that he got and
20 then paid him a portion of that. Now of course,
21 we'll talk about the rules regulating the Florida
22 Bar in just a moment.

23 But the bottom line is that his fraud claim is
24 basically that you breached the contract. And under
25 the case law, if the alleged tort or fraud arises

1 from the same conduct that breaches the contract,
2 the tort or fraud cannot survive. That's from
3 Richard Swaebe, Inc., versus Sears World Trade,
4 Inc., 639 So.2d 1120-1121; Lewis versus Guthartz,
5 428 So.2d 222 and Lake Placid Holding Company versus
6 Paperone, 508 So.2d 372. That's a Second DCA case
7 from 1987.

8 I cited several other decisions that all hold
9 that when you have a breach of contract, you can't
10 create a fraud claim out of it. So if he's saying
11 that we defrauded him by breaching the contract, he
12 gets a breach of contract claim.

13 The other thing is the that damages he's
14 claiming --

15 THE COURT: Economic loss rule.

16 MR. RODEMS: Yes, sir. Exactly.

17 The other thing is he's -- the damages he's
18 claiming in the fraud count are exactly the same as
19 in the breach of contract. And under RDMH, Inc.,
20 versus Dempsey, 618 So.2d 794, Florida Fifth DCA
21 from 1993, quote, "An award of compensatory damages
22 for both breach of contract and fraud is erroneous
23 where the plaintiff fails to establish that he
24 sustained compensatory damages based on fraud which
25 were in any way separate or distinguishable from the

1 compensatory damage awarded for the breach of
2 contract." In other words, you can't sue for fraud
3 and claim your damages are the same things that
4 happened in the breach of contract. So the fraud
5 claim can't survive on the allegations of a breach
6 of contract.

7 Now, Your Honor, as you well know, Rule 4-5.4
8 of the rules regulating the Florida Bar says a
9 lawyer or law firm shall not share legal fees with a
10 non-lawyer. Opinion 60-33 of the Florida Ethics
11 Opinions, which are available on the Florida Bar
12 website, cites Mr. Drinker, an expert on legal
13 ethics and says, quote, "The only situations in
14 which a lawyer may properly permit a client to
15 receive and retain fees paid by others on account of
16 his legal services are when such payments are to
17 reimburse the client in whole or in part for the
18 client's legal expenses actually incurred in the
19 specific matter for which they are paid."

20 Mr. Gillespie never paid our law firm one penny
21 for attorney's fees and costs, not a penny. So when
22 we received \$50,000 from Amscot which Amscot,
23 Gillespie, Bloomfield, Clement and our law firm
24 agreed was to pay us for our attorney's fees in a
25 fee-shifting case, for us to have given any portion

1 of that to Mr. Gillespie would have violated the
2 rules regulating the Florida Bar. And that's one of
3 the reasons that the breach of contract action must
4 fail too, because the contract cannot be enforced in
5 such a way as to require people to violate the law.

6 So as far as the fraud claim, you can't base
7 it -- you can't base a fraud claim on a breach of
8 contract. That's the economic loss rule. Second,
9 he cannot meet the reliance thing because he knew
10 when he signed the closing statement that they were
11 paying us for the claim for court-awarded attorney's
12 fees.

13 Besides that, Your Honor, if we had known
14 Mr. Gillespie was going to complain at some later
15 date after everything was signed, sealed and
16 delivered that this wasn't really a court-awarded
17 fee, we would have had Judge Lazara approve the fee,
18 which would have been simple enough to do, a simple
19 motion with Judge Lazara -- we've settled this case,
20 they've agreed to pay us \$50,000 in fees. Your
21 Honor, will you approve that? He would have said,
22 yes. That would have been the end.

23 We are being shaken down by Mr. Gillespie.
24 That's what's happening here. He's filed a bar
25 grievance against me. He's filed three bar

1 grievances against Mr. Cook. He's filed a bar
2 grievance against my other partner Mr. Barker, all
3 arising out of this.

4 The bottom line, Judge, is that we represented
5 this man without a penny from him. At the
6 conclusion of the case, under a fee-shifting case,
7 the defendant agreed to pay our attorney's fees.
8 Mr. Gillespie has never had to pay a penny of
9 attorney's fees.

10 And under the contract -- under the contract,
11 even if you read it the jaundiced way that
12 Mr. Gillespie does, he's never had to pay one penny
13 out of his \$2000 settlement for attorney's fees or
14 costs. He got to keep 100 percent of it.

15 So the bottom line is that he can't allege a
16 breach of contract because the defendant paid our
17 attorney's fees, which the contract contemplates.
18 Mr. Gillespie agreed in the closing statement to
19 them paying our attorney's fees. Mr. Gillespie knew
20 that it was for the settlement of the claim for
21 court-awarded attorney's fees. And the fraud and
22 the breach of contract action against the law firm
23 and the fraud action against Mr. Cook, just like the
24 breach of contract against Mr. Cook, should be -- a
25 judgment should be granted on the pleadings.

1 MR. BAUER: Your Honor, first of all --

2 THE COURT: Let me ask this: And we are still
3 on this original complaint?

4 MR. BAUER: Yes, Your Honor.

5 THE COURT: Count 1 asks for damages of a
6 little over \$6000.

7 MR. BAUER: Yes.

8 THE COURT: Count 2 is a fraud count but asks
9 for punitive damages.

10 MR. BAUER: Yes, Your Honor.

11 THE COURT: Which you can't get -- I'm ignoring
12 that.

13 MR. BAUER: Yes, Your Honor.

14 MR. RODEMS: I believe that was ultimately
15 stricken by Judge Nielson.

16 MR. BAUER: There's been a later motion that
17 was filed pro se to try to comply with the
18 requirements that are necessary to do punitive.

19 THE COURT: That's fine. But at this point
20 Count 2 asks for the same \$6000-plus, correct?

21 MR. BAUER: Yes, Your Honor.

22 THE COURT: So why shouldn't I dismiss this for
23 a lack of subject matter jurisdiction?

24 MR. BAUER: First of all, Your Honor, because
25 the subject matter jurisdiction goes to what --

1 THE COURT: Amount.

2 MR. BAUER: Yes, Your Honor -- what all the
3 amounts are. But it also goes -- and we raised this
4 last time. There's been a counter complaint for an
5 amount in excess of 15.

6 THE COURT: So we would be back here any way.

7 MR. BAUER: Okay.

8 THE COURT: So we covered this.

9 MR. BAUER: That's been dealt with.

10 Along those lines, the rest of these issues
11 have already been dealt with before by previous
12 court that was on this issue in a motion to dismiss,
13 the motion to dismiss for failure to state cause of
14 actions, also included the economic loss rule and
15 other allegations. The court denied those on the
16 grounds that it found distinct and separate causes
17 of actions to be placed.

18 I was not present for that hearing, so I'm not
19 really sure -- I mean, the order doesn't articulate
20 exactly what those findings were. But this really
21 appears to be an attempt to do nothing more than
22 appellate review within the circuit court just
23 simply because counsel has gotten a different judge
24 to be able to argue the same in front of.

25 Nonetheless, I believe the contract and fraud

1 issues are absolutely distinct in that the breach of
2 contract was that there would be an attempt -- that
3 the company would attempt to go after the plaintiff
4 in that case and attempt to get a high yield, get a
5 high reward and they would recover a percentage of
6 that amount.

7 That is always what the motive is, is whether
8 or not attorney's fees are given later. It's not
9 appropriate to say that the only target is to get
10 high attorney's fees in a situation that are
11 separate from your recovery of the clients.

12 Unfortunately, in breach of that contract, it
13 appears that with the agreement that they would be
14 pursuing a settlement or pursuing an action, an
15 award in court that the client would be able to
16 receive at the very least 60 percent of that.

17 They instead -- and it's clear from the
18 evidence that they presented -- all they ever
19 pursued was an attempt to negotiate a high
20 attorney's fee they discussed in the letter.
21 Although a lot of the arguments that have been
22 presented are contained in the pleadings that are
23 forwarded by the defendant in this case, and the
24 case law clearly says all of that must be assumed to
25 be false. So the court can't look at those to make

1 a determination whether or not there's anything
2 contrary to what the plaintiff has said.

3 So there was the breach of contract that
4 happened first is that they did not pursue the
5 action. To cover up that breach of contract,
6 Mr. Cook committed fraud by lying to Mr. Gillespie
7 as to how these fees came about. He -- and it's
8 clear from the complaints and the issues that he
9 never wavered.

10 And even an argument that was forwarded
11 before this -- that's been forwarded before this
12 court is the fees couldn't be -- that amount, that
13 60,000 couldn't be -- or the 50,000 that was
14 attorney's fees couldn't be shared with the
15 plaintiffs, that's not true. Because if they had
16 negotiated -- instead of trying to get a high
17 attorney's fees award, if they had negotiated and
18 said, look, this will be negotiated -- this is the
19 amount that you are willing to pay to settle this
20 case -- you are willing to pay \$60,000 -- you know,
21 we are not talking about how it's divided up in
22 attorney's fees. That will be handled pursuant to
23 our contract with our client. We won't put our
24 interests above our client. It very well could
25 have -- the 60,000 could have been shared more

1 significantly with the plaintiffs.

2 For the counsel to allege that it couldn't be,
3 that's the problem. That's false. That's the fraud
4 that was committed upon the client. It could be and
5 it could be done so that it would be in compliance
6 with the rules of ethics.

7 I make settlements all the time where there's
8 provision for attorney's fees in the statutes that
9 say they would be awarded. And we say, look,
10 these -- we add everything up. Forgetting what the
11 different sections are, these are at the very
12 minimum what we think we are going to hit you with.
13 You go ahead and -- you know, what do you think this
14 is going to be. And they say, well, that's a number
15 we can swallow.

16 It doesn't matter how you add those numbers up,
17 if the other side in a settlement agreement agrees
18 to a specific amount.

19 THE COURT: So I think you are conceding that
20 under these facts, if there's fraud, it's fraud in
21 the performance of the contract?

22 MR. BAUER: No. It's performance in the -- the
23 performance of the contract was initially to happen
24 with -- they committed fraud -- excuse me. They
25 breached the contract in its performance in getting

1 the negotiations.

2 THE COURT: Right.

3 MR. BAUER: Once the negotiations were settled,
4 there was a fraud committed to procure the
5 modification of the agreement. The modification of
6 the agreement would be the settlement.

7 There's actually two different contracts.
8 There was the original contract that was breached,
9 then there was a fraud committed to procure the
10 second agreement, the settlement agreement, in
11 saying this is what is fair and going to be
12 distributed.

13 As far as whether or not he agreed by saying
14 these are the claims, if you read it -- it took me
15 several times reading it. I was constantly
16 confused. I can't find awards of attorney's fees.
17 I can't find awards of attorney's fees. And I
18 finally caught their argument that they are saying
19 it was a claim of attorney's fees that -- and it
20 says claim of court-awarded -- past tense, awarded,
21 not claim for attorney's fees that would be award.
22 There's no future. There's court-awarded. That's a
23 past tense. It's very easy to understand how a
24 layperson would confuse that situation and think
25 that there had been awarded attorney's fees.

1 It's paramount within the attorney-client
2 relationship that the attorney is supposed to make
3 sure that the client understands. I believe,
4 that -- or my client believes that this was an
5 intentional misleading. It was -- the facts are
6 sufficient in this to, are alleged, to see that
7 there was a false statement that was made. There
8 were no court-awarded attorney's fees -- or we
9 allege that it was a false statement. And that's
10 all we have to do. We've alleged that there's a
11 false statement. And it will be up to a jury to
12 decide whether there was a false statement.

13 Mr. Gillespie did rely on it. He signed the
14 agreement. It was to the detriment because if there
15 hadn't been that fraud, there would have been the
16 possibility that he could have gotten a larger
17 percentage of that particular settlement, or he
18 could have realized the problems that were going on
19 and he would have retained other counsel to pursue
20 the full and entire action and go after the original
21 awards.

22 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.

1 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.

8 And so that false statement was -- and an
9 attorney, a savvy attorney should realize the
10 distinction between those, be able to forward that
11 to the client, let them -- make sure that they
12 understand what's going on. It was their intention
13 that he relied on that statement, that there was
14 court-awarded attorney's fees. He was confused and
15 he was damaged by that.

16 And I think that there are distinct and
17 separate damages because there's going to be the
18 breach of contract to start with which will go
19 initially to the -- they breached the contract and
20 it would be towards the original claim, the original
21 case that was filed.

22 Then the fraud is going to be afterwards, after
23 the original claim had been lost and there was an
24 additional contract that was made. There was fraud
25 procured on that. And there's going to be, we

1 believe we will be able to forward enough evidence
2 to also include punitive damages which will bring
3 this up to a significantly higher amount. I do
4 believe that the amounts, while difficult to
5 distinguish, can be distinguished.

6 THE COURT: But we don't know that yet.

7 MR. BAUER: Sir?

8 THE COURT: We don't know that yet, what
9 additional damages there might be for the fraud.
10 Especially since they haven't been alleged, right?

11 I mean, Mr. Gillespie was very specific in his
12 complaint that he thinks for the fraud count he
13 ought to get punitive damages in the amount of three
14 times his loss of little over \$6000, right? I mean,
15 that's what he said.

16 MR. BAUER: That is what he said.

17 THE COURT: Again, this is a judgment on the
18 pleadings.

19 MR. BAUER: Yes, Your Honor.

20 THE COURT: Well, again, before I make a ruling
21 on a judgment on the pleadings, I want to be
22 convinced that we can take the approach that the
23 defendants have suggested, basically ignoring the
24 answer which denies certainly factual allegations.

25 That was always my understanding, that we come

1 in here, Judge, they have admitted there is a
2 contract and we have admitted that in our answer and
3 that's why we -- that's why we win as opposed to,
4 you know, picking and choosing in the answer but
5 then coming into the hearing and say, Judge, ignore
6 our answer, just look at the complaint.

7 Well, that's what we do in a motion to dismiss
8 stage. And a judgment on the pleadings, I always
9 took the position -- and I never had it -- this is
10 the first time I've ever had this argued to me in 17
11 years, "Judge," you know, ignore-the-answer
12 approach.

13 MR. RODEMS: I'll be happy to submit a
14 memorandum of law to you.

15 THE COURT: Or just if a couple of the cases
16 say that, then that's fine. But I want it
17 explicitly in the facts or somewhere in an opinion
18 that says, well, even though the answer denied
19 certain factual allegations, if the defendant wants
20 to get judgment on the pleadings, we can ignore the
21 answer and go back to the complaint.

22 MR. RODEMS: I'll find that for you, but I
23 would like to respond to one thing Mr. Bauer said.
24 And that is he said the claim for court-awarded
25 attorney's fees disappeared when the claim was

1 dismissed, and that is absurd on its face. Because
2 if that were the case, no claim could ever be
3 settled once the --

4 THE COURT: I think what he's -- I don't think
5 he's denying the fact that there's -- there is a
6 claim out there that's on appeal that has been
7 dismissed or ruled on and that that -- therefore
8 there can't be any settlement. I mean, this happens
9 probably every day in this state and in the country.

10 MR. BAUER: I agree.

11 THE COURT: But I think what he's saying is
12 that that would -- this layperson would have been --
13 not have understood that that was the case, I guess.

14 MR. RODEMS: Well, the only problem with that
15 is his client's own writings and the communications
16 that Mr. Gillespie attached belie this.
17 Mr. Gillespie understood that we are separately
18 negotiating settlement of Mr. Gillespie's claims and
19 the claims for court-awarded attorney's fees. He
20 understood that. He says it in the closing
21 statement and he acknowledges it in the letter he
22 wrote to Mr. Cook following Mr. Cook's letter to
23 him.

24 MR. BAUER: Those are all factual assertions
25 that have to be determined, and that's what the fact

1 finder is for. What exactly do these letters mean?

2 THE COURT: Right. Well, he was finishing up.

3 MR. RODEMS: And the point is that the case law
4 is clear that when you are told in writing what the
5 true statements are, you can't later say, well, he
6 told me something different. And that's what
7 Mr. Gillespie says in the complaint -- not what
8 Mr. Bauer's spin is on it today. Mr. Gillespie says
9 in the complaint, I was told that the court awarded
10 \$50,000 for attorney's fees and the court did not,
11 so I was defrauded. But the writings that
12 Mr. Gillespie attached shows that he knows that this
13 was a settlement negotiation while the case was on
14 appeal.

15 That's what it was. So he can't meet the
16 reliance. He can't say, "I relied on a false
17 statement," when the truth was told to him. And as
18 far as Mr. Gillespie being confused, that does not
19 create a fraud. Fraud is the intent on the party
20 making the statements to deceive. How much intent
21 can there be to defraud Mr. Gillespie in saying on
22 the closing statement, here, Mr. Gillespie, sign
23 this. And the part that he signed says, I
24 acknowledge that Amcot separately paid my attorneys
25 50,000 to compensate my attorneys for their claim

1 against Amscot for court-awarded fees and costs.

2 There's no statement in here that Amscot was
3 order by the court to pay \$50,000 in fees and this
4 business about, well, that's in the past tense --
5 claim for court-awarded fees. The court awards fees
6 if there's a petition for fees after a judgment. We
7 never got there because the case was settled in the
8 interim at Mr. Gillespie's, by his own complaint's
9 allegations, behest. Settle this claim. I need the
10 money. Let's get this done. Lower your -- lower
11 your request for attorney's fees, so that we can get
12 this done.

13 THE COURT: That's in the pleadings?

14 MR. RODEMS: That's all in the pleadings, Your
15 Honor. And like I said, I'll be happy to submit a
16 memorandum of law to you on the issue of whether we
17 can ignore the answer and focus only on the
18 allegations of the complaint, and I'll highlight
19 these other positions for you.

20 But, you know, we believe that if you will
21 carefully consider this matter, you will see that,
22 you know, Mr. Gillespie is basically trying to shake
23 us down.

24 And at some point, somebody's got to say enough
25 is enough. And we are hoping that, you know, the

1 court of law, where justice prevails, where equity
2 is, where the parties are supposed to be equal, that
3 somebody is not going to say, "Poor Mr. Gillespie,
4 pro se, he didn't know what he was doing, even
5 though he wrote these letters and he said all these
6 things."

7 You know, we have -- Judge, we have suffered
8 bar grievance after bar grievance. We have
9 suffered -- we have had to defend this circuit bench
10 on two distinguished judges because of the things
11 that Mr. Gillespie has put into this record. At a
12 certain point we need to look at the four corners of
13 this complaint and say does this stand or does it
14 fall and not give him the benefit of the doubt
15 because he is an individual. It's just not right.

16 THE COURT: All right. And I assume if you are
17 successful at the Second District level --

18 MR. RODEMS: It would moot this.

19 THE COURT: Right.

20 MR. RODEMS: Yes, sir.

21 THE COURT: So I am inclined to -- on the
22 balance of this to wait and see what they do.

23 MR. RODEMS: Okay.

24 THE COURT: I don't want to issue an order that
25 could be gilding a lily, if you are successful.

1 MR. RODEMS: All right.

2 THE COURT: So, it's not automatic that we
3 get -- sometimes we do. They are pretty good on the
4 appeals, but on certs we don't always get -- I'll be
5 checking the Law Weekly, but as soon as either one
6 of you gets the decision, kind of shoot me a copy.

7 MR. BAUER: We will forward it.

8 THE COURT: And I'll jump on the rest of it.

9 MR. RODEMS: All right. But at least in terms
10 of Cook, may I prepare an order for that?

11 THE COURT: You may.

12 MR. RODEMS: And should the order say that the
13 balance of the motion will be taken under advisement
14 pending the writ of certiorari?

15 THE COURT: Yes.

16 MR. RODEMS: One final thing before we quit,
17 that really only affects the issues that are raised
18 on the judgment of the pleadings, but the other
19 things that are pending in the case, such as our
20 entitlement for attorney's fees, those would not in
21 any way be stayed, would they?

22 THE COURT: Where are we on that?

23 MR. RODEMS: Well, we just haven't filed our
24 fee petition. There's already been two orders
25 entered entitling us to attorney's fees. I just

1 want to make sure that the remainder of the case is
2 not stayed pending outcome of the certiorari.

3 THE COURT: I don't see any reason to.

4 MR. RODEMS: Okay. Thank you.

5 THE COURT: Okay. Thank you.

6 (Proceedings concluded at 11:22 a.m.)
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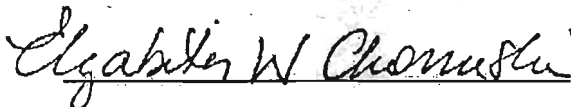
1 CERTIFICATE OF REPORTER

2
3
4 STATE OF FLORIDA5 COUNTY OF HILLSBOROUGH
6

7 I, ELIZABETH W. CHORRUSHI, Registered
8 Professional Reporter, Florida Professional Reporter,
9 certify that I was authorized to and did stenographically
10 report the foregoing proceedings and that the transcript
11 Pages 1 through 49 is a true record of the proceedings.
12

13 I further certify that I am not a relative,
14 employee, attorney, or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.
18

19 Dated: 11/12/2007.

20
21 

22 ELIZABETH W. CHORRUSHI

23 Registered Professional Reporter

24 Florida Professional Reporter
25