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

NEIL J. GILLESPIE,

Plaintiff,

vs.

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

Defendants.
_____/

CASE NO.: 05-CA-007205

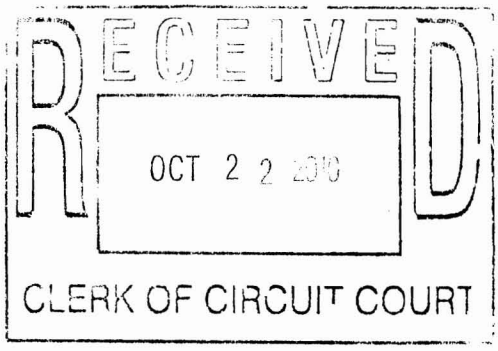
DIVISION: G

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, NEIL J. GILLESPIE, appeals to the Florida Second District Court of Appeals the order of this court rendered on September 28, 2010. A conformed copy of the FINAL SUMMARY JUDGMENT AS TO COUNT I is attached to the Notice of Appeal and is incorporated herein.

NOTICE IS GIVEN that Plaintiff, NEIL J. GILLESPIE, appeals to the Florida Second District Court of Appeals the order of this court rendered on September 30, 2010. A conformed copy of the ORDER ADJUDGING PLAINTIFF NEIL J. GILLESPIE IN CONTEMPT is attached to the Notice of Appeal and is incorporated herein.

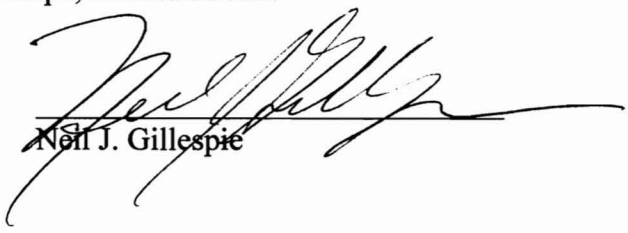
RESPECTFULLY SUBMITTED October 22, 2010.



Neil J. Gillespie, Plaintiff
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

Certificate of Service

I HEREBY CERTIFY that a true copy of the NOTICE OF APPEAL has been sent by U.S. mail October 22, 2010 to Ryan Christopher Rodems, Esq., Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.



/s/ Neil J. Gillespie

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.
_____/

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.[1] 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

[1] 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.

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,[2] 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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[2] 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. 5th 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).[3]

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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[3] 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 _____ day of September, 2010.

ORIGINAL SIGNED

SEP 28 2010

Martha J. Cook
Circuit Judge

MARTHA J. COOK
CIRCUIT JUDGE

Copies to:

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

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: G

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

Defendants.
_____/

ORDER ADJUDGING PLAINTIFF NEIL J. GILLESPIE IN CONTEMPT

THIS CAUSE came before the Court on Tuesday, September 28, 2010, on Defendants' Motion for an Order of Contempt and Writ of Bodily Attachment,[1] and the proceedings having been read and considered and counsel having been heard, and the Court being otherwise fully advised in the premises, the Court finds and concludes that Plaintiff Neil J. Gillespie has wilfully and with contumacious disregard violated the Court's Notice of Case Management Status and Orders on Outstanding Res Judicata Motions entered July 29, 2010 by refusing to appear for a duly noticed deposition on September 3, 2010.

On July 29, 2010, the Court entered the Notice of Case Management Status and Orders on Outstanding Res Judicata Motions, which stated: "The Plaintiff's 'Motion for Order of Protection,' (no date provided in Judge Barton's order) renewed in his 'Motion to Cancel Deposition' (6-16-10) is DENIED. The Plaintiff has repeatedly been the subject of Motions to

[1] Prior to this motion being heard, the Court heard Defendants' motion for summary judgment. During that hearing, Plaintiff Neil J. Gillespie voluntarily left the hearing and did not return.

Compel by the Defendants during the course of these proceedings, and has ignored Court orders requiring his participation. The Court will not accept these or any further attempts by the Plaintiff to avoid the Defendant's right to discovery in this case and to bring this matter to a close. Non-compliance with the Court's orders is grounds for dismissal of the Plaintiff's remaining count with prejudice." (Notice of Case Management Status and Orders on Outstanding Res Judicata Motions, ¶8).

The record shows that Plaintiff previously failed to appear for two properly noticed depositions. Defendants served a notice of deposition on October 13, 2009, scheduling Plaintiff's deposition on December 15, 2009. On June 1, 2010, Defendants served another notice of deposition, scheduling Plaintiff's deposition on June 18, 2010. While Plaintiff served "Plaintiff's Motion to Cancel Deposition Duces Tecum June 18, 2010 and for an Order of Protection" on June 14, 2010, he did not attempt to have it heard before the deposition, and did not appear at the deposition.[2]

After the Court's Order entered July 29, 2010, Defendants served a notice of deposition on August 17, 2010, scheduling the deposition for September 3, 2010. Plaintiff did not respond until September 3, 2010, asserting that he would not be attending the deposition for three reasons: First, Plaintiff asserted that "[t]he court has not responded to nor provided accommodations requested under the Americans with disabilities Act . . .." Second, he asserted that "the Oath of Office for judges in this matter [ ] are not legally sufficient, calling into question rulings in this matter." Finally, Plaintiff again asserted that Defendants' counsel's

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[2] As stated above, on July 29, 2010, this Court entered the Notice of Case Management Status and Orders on Outstanding Res Judicata Motions, denying the Plaintiff's motions for protection from being deposed.

representation of Defendants is "unlawful." Defendants contend that each of these reasons is either specious or has been expressly rejected by the Court. The Court agrees. Based on these findings

IT IS ORDERED AND ADJUDGED that the Plaintiff Neil J. Gillespie is guilty of contempt of this Court for failing to appear for deposition on September 3, 2010 and he will continue to be guilty of contempt unless and until the Plaintiff is deposed in this matter.

IT IS FURTHER ORDERED that Plaintiff shall submit to a deposition in Tampa, Florida, within 45 days. Plaintiff is directed to propose to Defendants' counsel, in writing, three dates on which his deposition may be taken on or before November 12, 2010.

IT IS FURTHER ORDERED that, if Plaintiff violates this Order by failing to submit to a deposition on or before November 12, 2010, then the Court will enter an Order to Show Cause requiring Plaintiff's appearance before the Court, and the Court will consider appropriate sanctions.

The Court retains jurisdiction to impose additional sanctions, as necessary, and to tax attorneys' fees and costs.

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

ORIGINAL SIGNED
SEP 3 0 2010

Martha J. Cook
Circuit Judge

MARTHA J COOK
CIRCUIT JUDGE

Copies to:

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