

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

NEIL J. GILLESPIE,

Plaintiff,

vs.

Case No.: 05CA7205

Division: F

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

Defendants.

RECEIVED
AUG 29 2005
CLERK OF CIRCUIT COURT

DEFENDANTS' MOTION TO DISMISS AND STRIKE

Defendants, Barker, Rodems & Cook, P.A. and William J. Cook, pursuant to Rules 1.140(b)(6) and (f), Florida Rules of Civil Procedure, move to dismiss the Plaintiff's Complaint and strike certain allegations and claims, and state as follows:

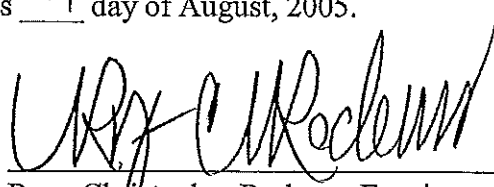
1. Count I fails to state a cause of action for breach of contract.
2. Count I is barred on its face by the doctrines of waiver and estoppel.
3. Count II fails to state a cause of action for fraud.
4. Count II is barred by the economic loss rule.
5. Count II must be dismissed for failure to comply with section 768.72(1), Florida Statutes.
6. Both counts must be dismissed as to William J. Cook because Defendant Cook acted at all times within the course and scope of his employment with Defendant Barker, Rodems & Cook, P.A, did not act on his own behalf, and was not a party to the contract at issue.
7. Paragraphs 47 through 50 and Exhibit 8 should be stricken as immaterial,

impertinent, or scandalous.

8. Plaintiff's claim for attorney's fees must be stricken because he is proceeding pro se.

WHEREFORE, Defendants Barker, Rodems & Cook, P.A. and William J. Cook move to dismiss and strike the claims and allegations described herein.

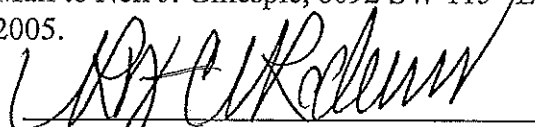
RESPECTFULLY SUBMITTED this 29 day of August, 2005.



Ryan Christopher Rodems, Esquire
Florida Bar No. 947652
Barker, Rodems & Cook, P.A.
300 West Platt Street, Suite 150
Tampa, Florida 33606
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Facsimile: 813/489-1008
Attorneys for Defendants,
Barker, Rodems & Cook, P.A. and William J. Cook

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Motion to Dismiss and Strike has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 29th day of August, 2005.



Ryan Christopher Rodems, Esquire