

**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: F

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

Defendants.

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Defendants, Barker, Rodems & Cook, P.A. and William J. Cook, answer Plaintiff's Complaint for Breach of Contract and Fraud (Complaint), demand trial by jury, and allege:

1. As to paragraph 1 of the Complaint, Defendants are without knowledge and therefore deny the allegations.
2. As to paragraph 2 of the Complaint, Defendants admit the allegations.
3. As to paragraph 3 of the Complaint, Defendants admit the allegations.
4. As to paragraph 4 of the Complaint, Defendants deny the allegation.
5. As to paragraph 5 of the Complaint, Defendants admit that Barker, Rodems & Cook, P.A. (BRC) has offices located as alleged; otherwise, Defendants deny the allegations.
6. As to paragraph 6 of the Complaint, Defendants admit that Plaintiff hired BRC to represent him; otherwise, denied.

BREACH OF CONTRACT

7. As to paragraph 7 of the Complaint, Defendants reallege their responses to paragraphs 1-6 and 22-51 of the Complaint.

8. As to paragraph 8 of the Complaint, Defendants admit that Plaintiff and Defendant BRC entered into a contract; otherwise denied. Denied that Exhibit "1" is a true and correct copy of the executed contract.

9. As to paragraph 9 of the Complaint, Defendants deny the allegations.

10. As to paragraph 10 of the Complaint, Defendants admit that it represented the three people named in the lawsuit against Amscot.

11. As to paragraph 11 of the Complaint, Defendants admit the allegations.

12. As to paragraph 12 of the Complaint, Defendants admit that Defendant BRC's lawsuit on behalf of the plaintiffs in that action was terminated before the appeal was completed or before there was a decision on the merits; otherwise denied.

13. As to paragraph 13 of the Complaint, Defendants deny the allegations.

14. As to paragraph 14 of the Complaint, Defendants deny the allegations.

15. As to paragraph 15 of the Complaint, Defendants deny the allegations.

16. As to paragraph 16 of the Complaint, Defendants deny the allegations.

17. As to paragraph 17 of the Complaint, Defendants deny the allegations.

18. As to paragraph 18 of the Complaint, Defendants deny the allegations.

19. As to paragraph 19 of the Complaint, Defendants deny the allegations.

20. As to paragraph 20 of the Complaint, Defendants deny the allegations.

FRAUD

21. As to paragraph 21 of the Complaint, Defendants reallege their responses to paragraphs 1-20.

22. As to paragraph 22 of the Complaint, Defendants admit the allegations.

23. As to paragraph 23 of the Complaint, Defendants admit that Defendant Cook spoke to Plaintiff about telephone conversations with Anthony; otherwise, denied.

24. As to paragraph 24 of the Complaint, Defendants are without knowledge as to Plaintiff's beliefs, and therefore deny the allegations.

25. As to paragraph 25 of the Complaint, Defendants admit that Defendant Cook spoke to Plaintiff about certain matters regarding negotiations or communications with Amscot; otherwise denied.

26. As to paragraph 26 of the Complaint, Defendants deny the allegations.

27. As to paragraph 27 of the Complaint, Defendants deny the allegations.

28. As to paragraph 28 of the Complaint, Defendants admit that Defendant Cook wrote to Gillespie; otherwise, denied.

29. As to paragraph 29 of the Complaint, Defendants admit that Plaintiff wrote to Defendant Cook; otherwise, denied.

30. As to paragraph 30 of the Complaint, Defendants admit that Defendant Cook wrote a memorandum and that Exhibit "6" is a true and correct copy; otherwise denied.

31. As to paragraph 31 of the Complaint, Defendants deny the allegations.

32. As to paragraph 32 of the Complaint, Defendants admit that an offer was submitted to Amscot stating "our clients are willing to accept \$1,000.00 each, representing the

amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs."

33. As to paragraph 33 of the Complaint, Defendants admit the allegations.

34. As to paragraph 34 of the Complaint, Defendants deny the allegations.

35. As to paragraph 35 of the Complaint, Defendants admit that Amscot offered and then paid each plaintiff \$2,000.00; otherwise, denied.

36. As to paragraph 36 of the Complaint, Defendants deny the allegations.

37. As to paragraph 37 of the Complaint, Defendants deny the allegations.

38. As to paragraph 38 of the Complaint, Defendants deny the allegations.

39. As to paragraph 39 of the Complaint, Defendants deny the allegations.

40. As to paragraph 40 of the Complaint, Defendants deny the allegations.

41. As to paragraph 41 of the Complaint, Defendants deny the allegations.

42. As to paragraph 42 of the Complaint, Defendants deny the allegations.

43. As to paragraph 43 of the Complaint, Defendants deny the allegations.

44. As to paragraph 44 of the Complaint, Defendants deny the allegations.

45. As to paragraph 45 of the Complaint, Defendants are without knowledge as to whether Plaintiff did what he said he did, and therefore deny the allegations; otherwise, denied.

46. As to paragraph 46 of the Complaint, Defendants deny the allegations.

47. As to paragraphs 47-50, the Court struck those allegations in the Order on Defendants' motion to Dismiss and Strike entered January 13, 2006.

48. As to paragraph 51 of the Complaint, Defendants deny the allegations.

49. Any allegation of the Complaint not specifically admitted is hereby denied.

AFFIRMATIVE DEFENSES

50. Count I is barred on its face by the doctrines of waiver and estoppel.

51. Count II is barred by the economic loss rule. Count II is not a separate transaction from Count I, and under Florida law, a tort claim arising from an alleged breach of contract may be brought only when the tort is independent of the alleged breach of contract claim.

52. 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.

53. As a matter of law, Plaintiff cannot recover attorney's fees because he is proceeding pro se.

54. Before commencement of this action Defendants discharged Plaintiff's claim and each item of it by payment.

55. On November 1, 2001, Defendant BRC delivered to Plaintiff and Plaintiff accepted from Defendant \$2,000.00 in full satisfaction of Plaintiff's claims.

56. On October 30, 2001 and November 1, 2001, and after Plaintiff's claim in this action accrued, Plaintiff released Defendants from it, a copy of the Closing Statement being attached as Exhibit "1".

57. Plaintiff has unclean hands. On June 13, 18 and 22, 2003, Plaintiff wrote letters to Defendants and stated that if they did pay him money, then Plaintiff would file a complaint against Defendant Cook with the Florida Bar, sue Defendants and contact their former clients. Defendants advised Plaintiff by letters that they considered these threats to be extortion under

section 836.05, Fla. Stat. (2000) and the holdings of Carricarte v. State, 384 So. 2d 1261 (Fla. 1980); Cooper v. Austin, 750 So. 2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

58. On October 30, 2001 and November 1, 2001, Plaintiff agreed to new terms and conditions between Plaintiff and Defendant BRC, thereby constituting a novation.

59. Plaintiff made false statements or misrepresentations to Defendants, on which Defendants relied, regarding settlement of the underlying lawsuit, and therefore, as a matter of law, Plaintiff cannot recover against Defendants in this action.

60. Plaintiff is estopped from taking a contrary position in this matter, that he was entitled to more than \$2,000.00, from positions taken in other forums that Amscot overpaid by \$43,000.00 in settling the underlying claims.

WHEREFORE, Defendants Barker, Rodems & Cook, P.A. and William J. Cook demand judgment in their favor, costs of this action and such further and other relief as the Court deems appropriate.

COUNTERCLAIMS

Defendants BRC and William J. Cook counterclaim against Plaintiff Neil J. Gillespie and allege:

61. This is an action for damages exceeding \$15,000.00, exclusive of interest and costs.

62. On information and belief, Plaintiff/Counterdefendant is a resident of Ocala, Marion County, Florida.

63. Defendant/Counterclaimant BRC is a Florida corporation with principal

operations in Hillsborough County, Florida.

64. Defendant/Counterclaimant William J. Cook is a resident of Tampa, Hillsborough County, Florida.

65. On or about July 25, 2005, Plaintiff/Counterdefendant composed and published a letter, a copy being attached as Exhibit "2", in which among other things, the following false, scandalous and defamatory statements concerning Defendants/Counterclaimants were made: (a) Plaintiff/Counterdefendant was "pressured into" the lawsuit against Amscot; (b) Amscot paid "\$43,000 too much to settle this case"; (c) "Mr. Cook said I was selfish for not suing Amscot"; (d) "Mr. Cook and his associates were incompetent and not truthful"; and, (e) Amscot's and Plaintiff/Counterdefendant's attorneys engaged in "collusion" to cause Amscot to pay a higher settlement amount than Plaintiff/Counterdefendant wanted.

66. Each of the aforementioned statements in Plaintiff/Counterdefendant's July 25, 2005 letter was false, made by Plaintiff/Counterdefendant knowing they were false or deliberately misleading or both. Plaintiff/Counterdefendant's intent was to injure or maliciously malign and tarnish Defendants/Counterclaimants' professional reputations and stature in the community, or both.

67. The false and defamatory statements were rendered with a malicious purpose. Plaintiff/Counterdefendant made these false statements and false allegations to discredit and ruin Defendants/Counterclaimants because they refused to give in to Plaintiff's extortionate demands: On June 13, 18 and 22, 2003, Plaintiff/Counterdefendant wrote letters to Defendant/Counterclaimants and stated that if they did pay him money, then Plaintiff/Counterdefendant would file a complaint against Defendant/Counterclaimant Cook with

the Florida Bar, sue Defendants/Counterclaimants and contact their former clients.

Defendants/Counterclaimants advised Plaintiff/Counterdefendant by letters that they considered these threats to be extortion under section 836.05, Fla. Stat. (2000) and the holdings of Carricarte v. State, 384 So. 2d 1261 (Fla. 1980); Cooper v. Austin, 750 So. 2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

68. The false statements by Plaintiff/Counterdefendant have subjected or will subject Defendants/Counterclaimants to distrust, ridicule, contempt or disgrace, or injured them in their trade or profession.

COUNT I
LIBEL

69. This count is brought against Plaintiff/Counterdefendant by Defendant/CounterClaimant BRC.

70. Defendant/CounterClaimant BRC realleges paragraphs 61-68.

71. As a result of Plaintiff/Counterdefendant's false statements, Defendant/Counterclaimant BRC suffered damage to its good name and reputation; the losses and expenses are permanent and continuing and it will suffer the losses in the future.

WHEREFORE, Defendant/Counterclaimant BRC demands judgment for damages, interest, costs, and for all other relief, legal and equitable, that this Court deems appropriate, and a trial by jury of all issues so triable.

COUNT II
LIBEL

72. This count is brought against Plaintiff/Counterdefendant by

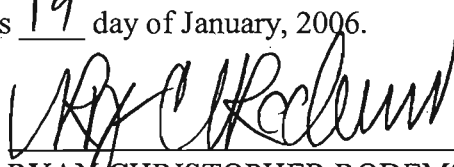
Defendant/CounterClaimant Cook.

73. Defendant/CounterClaimant BRC realleges paragraphs 61-68.

74. As a result of Plaintiff/Counterdefendant's false statements, Defendant/Counterclaimant Cook suffered humiliation and damage to his good name and reputation. The losses and expenses are permanent and continuing, and he will suffer the losses in the future.

WHEREFORE, Defendant/Counterclaimant Cook demands judgment for damages, interest, costs, and for all other relief, legal and equitable, that this Court deems appropriate, and a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 19 day of January, 2006.



RYAN CHRISTOPHER RODEMS, ESQUIRE

Florida Bar No. 947652

Barker, Rodems & Cook, P.A.

300 West Platt Street, Suite 150

Tampa, Florida 33606

Telephone: 813/489-1001

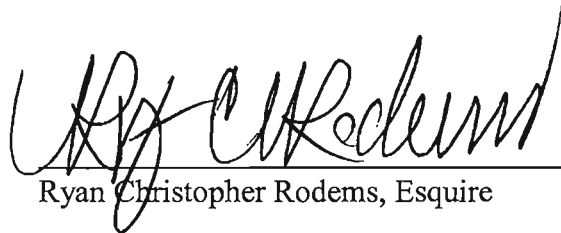
Facsimile: 813/489-1008

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 has been furnished via U.S. Mail to Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida 34481, this 19 day of January, 2006.



Ryan Christopher Rodems, Esquire

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President
Amscot Corporation
600 N. Westshore Blvd., 12th Floor
Tampa, Florida 33609

RE: Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, US District Court, Middle District Florida, Tampa Division; on appeal, Case No. 01-14761-A US Court of Appeals, For the Eleventh Circuit

Dear Mr. Mackechnie,

I was a plaintiff in the above captioned lawsuit. While this action is settled, I regret becoming involved, and was pressured into it by my lawyer, William Cook. I am sorry for the consequences you suffered. About two years ago I found discrepancies in the case file. This is part of my attempt to uncover the truth. As I see it, you paid \$43,000.00 too much to settle this case. Here's why.

Prior to my involvement in the above captioned lawsuit, Mr. Cook represented me in a lawsuit against ACE, America's Cash Express, for payday loan roll-over transactions. The lawsuit was joined by Florida Attorney General Robert Butterworth. I still believe the ACE litigation was justified. However, in my view Amscot was not as culpable as ACE, and I initially declined Mr. Cook's solicitation to join the lawsuit. But Mr. Cook said that I was selfish for not suing Amscot, and I relented.

During the course of litigation it became apparent to me that Mr. Cook and his associates were incompetent and not truthful. During the settlement negotiations I tried to settle this case for \$10,000.00 in legal fees and \$1,000.00 to each of the three plaintiffs (see copy of my letter, enclosed). You ultimately paid \$56,000.00 to settle, and I believe this was the result of our lawyers' collusion. This is my opinion, and I welcome any supporting evidence. In the alternative, perhaps your lawyer John Anthony was just a very poor negotiator, and you paid \$43,000.00 too much to settle the lawsuit.

I filed a complaint against William Cook with the Florida Bar (TFB No. 2004-11,734(13C) to no avail. I am available to discuss this further if you wish. Thank you.

Sincerely,


Neil J. Gillespie

