

Elements of Florida Causes of Actions We Routinely Litigate

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Introduction

The purpose of this presentation is to assist you in bringing or defending against Florida causes of action that we routinely litigate.

We will present

- the elements of the actions; and
- suggest potentially successful defenses* to those actions.



"You seem to know something about law. I like that in an attorney."

* We limit our focus here to defenses specific only to the action. The general affirmative defenses in Fla. R. Civ. P. 1.110 are not addressed here, but should always be considered for each action.

Roadmap - Causes of Action:

Debt Collection

1. [Account Stated](#)
2. [Open Account](#)
3. [Goods Sold](#)
4. [Conversion](#)
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Equitable Actions

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Actions by Consumers

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Contract Actions

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Yet to Come – A Work in Progress

Construction Actions

1. Negligence – Construction related
2. Building Code Violation
3. Construction Lien Foreclosure
4. Breach of Contract
5. Unjust Enrichment
6. Quantum Meruit
7. Commercial Foreclosure
8. Personal Guaranty
9. Temporary/Permanent Injunction
10. Eviction
11. Piercing corporate veil;
12. Indemnity

13. Breach of Contract
14. Fraud
 1. In the inducement;
 2. Misrepresentation;
15. Tortious interference with Business Rel.
16. Foreclosure of security interest, enforcement of assignment of rents, appoint a receiver and payments during foreclosure.



Account Stated: Elements

- (1) Plaintiff and Defendant made a previous transaction that created a financial liability; And
- (2) Defendant agrees that the balance is due and correct; And
- (3) Defendant promised (expressly or implicitly) to pay the balance; And
- (4) The balance remains unpaid.

Myrick v. St. Catherine Laboure Manor, Inc., 529 So 2d 369 (Fla. 1st DCA 1988)

- ✓ Account stated is defined as “an agreement between persons who have had previous transactions, fixing the amount due in respect of such transactions, and promising payment.”
Farley v. Chase Bank, 37 So. 3d 936, (Fla. 4th DCA 2010) (citing *Martyn v. Arnold*, 18 So 791, 793 (Fla. 1895).
- ✓ Proof of an account stated requires an express or implied agreement between the parties that a specified balance is correct and due, and an express or implied promise to pay this balance.
Farley
- ✓ It is not necessary to prove the specific items constituting the acknowledged account. An itemized statement of underlying charges is not required.
Farley, 37 So. 3d 936, (citing *Daytona Bridge Co v. Bond*, 36 So 445, 447 (Fla. 1904).
- ✓ When an account has been rendered to and received by one who made no objection thereto within a reasonable time, a prima facie case has been made.
Id.



Account Stated: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action for damages that (*insert jx amount*).
2. Before the institution of this action Plaintiff and Defendant had business transactions between them and on _____ (*date*), they agreed to the resulting balance.
3. Plaintiff rendered a statement of it to Defendant, a true and correct copy of which is attached hereto as Exhibit “A”, and Defendant did not object to the statement.
4. Defendant owes Plaintiff \$_____ that is due with interest since _____ (*date*), on the account.

WHEREFORE, Plaintiff demands judgment for damages against Defendant.

Account Stated: Defenses

- Pleading in the alternative may be fatal to a claim for account stated. Facts in the Complaint alleging a disputed balance may give rise to a motion to dismiss. Look also to exhibits to the Complaint illustrating a failure to reach agreement as to amount due.

Merkle v. Health Options, Inc., 940 So 2d 1190 (Fla. 4th DCA 2006).

- No contractual agreement creating a liability. Unsolicited invoices do not create liability for an account stated. Unless there was a contractual agreement that created the defendant's liability, the defendant does not become liable merely because the plaintiff sent the defendant a bill for which the defendant did not respond.

Page Avject Corp. v. Cosgrove Aircraft Services, 546 So 2d 16 (Fla 3d DCA 1989).

- Agent lacked authority to create the liability. Agent must have the authority to bind company so as to create a valid account stated. Plaintiff must prove actual or apparent authority of the representative of defendant that acknowledged the propriety of the debt.

South Moto Co of Dade County v. Accountable Construction Co, 707 So. 2d 909, 912 (Fla. 3d DCA 1998).

Open Account: Elements

****NOTE**** Actions for an account stated and an open account are two distinct causes of action requiring different burdens of proof. *Farley*

- (1) Plaintiff provided a series of services or materials to Defendant, with respect to which an unsettled debt was generated; And
- (2) The unsettled debt was generated in a context where Plaintiff expected additional transactions with Defendant; And
- (3) The unsettled debt remains unresolved.

H&H Design Builders, Inc. v. Travelers' Indem. Co., 639 So. 2d 697 (Fla. 5th DCA 1994).
See also *Evans v. Delro Industries, Inc.*, 509 So.2d 1262 (Fla. 1st DCA 1987).

- ✓ Open account is an unsettled debt arising from items of work and labor, with the expectation of further transactions subject to future settlements and adjustment. *Farley v. Chase Bank*, 37 So. 3d 936, (Fla. 4th DCA 2010)
- ✓ An open account refers to open transactions not reduced to writing, the sole record of which is usually the account books of the owner of the demand. It should not include express contracts or other obligations that have been reduced to writing. *H&H Design Builders, Inc. v. Travelers' Indem. Co.*, 639 So. 2d 697 (Fla. 5th DCA 1994)
- ✓ In order to state a valid claim on an open account, the claimant must attach an itemized copy of the account. An attached statement showing a lump sum is insufficient. *Farley*



Open Account: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action for damages that (*insert jx amount*).
2. Defendant owes Plaintiff \$____ that is due with interest since _____ (*date*), according to the attached itemized account.

WHEREFORE, Plaintiff demands judgment for damages against Defendant.

Open Account: Defenses

- Existence of a written contract or similar writing bars a claim for an open account..
H&H Design Builders, Inc. v. Travelers' Indem. Co., 639 So. 2d 697 (Fla. 5th DCA 1994)
(citing *Liberty Mutual Ins. V. Scalise*, 627 So. 2d 87 (Fla. 1st DCA 1993).
- Open account cannot be used to avoid the requirement of pleading and proving a breach of contract action. An obligation does not become an 'open account' simply because the amount due under a contract requires calculation. Mailing a demand for payment on a 'statement of account' does not turn a contractual debt into an open account.

H&H Design Builders, Inc.

Goods Sold: Elements

- (1) A sales contract between Plaintiff and Defendant for the subject goods ; And
- (2) Actual delivery and acceptance of the goods; And
- (3) That the amount claimed by Plaintiff represents either:
 - a) The agreed upon sales price; Or
 - b) The reasonable value of the goods actually delivered.

Alderman Interior Systems, Inc. v. First National-Heller Factors, Inc., 376 So. 2d 22 (Fla. 2d DCA 1979)
(citing *Chase & Co. v. Miller*, 88 So. 312 (Fla. 1921)..

- ✓ Actual proof of delivery and acceptance can create an inference of the existence of the sales contract. *Id.*
- ✓ Plaintiff must show that all of the conditions to the Defendant's liability had occurred or been performed. *Id.*

Goods Sold: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action for damages that (*insert jx amount*).
2. Defendant owes Plaintiff \$_____ that is due with interest since _____ (*date*), for the following goods sold and delivered by Plaintiff to Defendant between ____(*date*), and ____(*date*).

(list goods and prices)

WHEREFORE, Plaintiff demands judgment for damages against Defendant.

Goods Sold: Defenses

- A statement of account is insufficient to prove an action for goods sold. Delivery must be proven and the price must be agreed upon or reasonable.

Alderman Interior Systems, Inc. v. First National-Heller Factors, Inc., 376 So. 2d 22 (Fla. 2d DCA 1979)

- Consignment. State that the goods were consigned, rather than sold, to the defendant.

Wilson v. Pruette, 422 So.2d 351 (Fla. 2d DCA 1982).

Conversion: Elements

(1) An unauthorized act which deprives another of his property permanently or for an indefinite time; And

(2) Either:

a) A person who has a right to possession of the property demands its return at a time when the other has possession and the demand is not or cannot be met; Or

b) Such a demand and refusal are unnecessary because it would be futile.

Shelby Mt. Ins. Co. of Shelby, Ohia v. Crain Press, Inc., 481 So. 2d 501 (Fla. 2d DCA 1985), review denied, 491 So. 2d 278 (Fla. 1986).

✓ Conversion is defined as an act of dominion wrongfully asserted over another's property inconsistent with his ownership of it. *Belford Trucking Co. v. Zagar*, 243 So. 2d 646 (Fla. 5th DCA 1970)

✓ A demand is futile and therefore unnecessary if the wrongful possessor destroyed the item. *Shelby*

✓ A demand is not effective to create an action for conversion if the failure to comply is explained by want of possession; defendant did not have possession of the item at the time of the demand. *Sanfisket, Inc. v. Atlantic Cold Storage Corp.*, 347 so. 2d 647 (Fla. 3d DCA 1977).

✓ Conversion is different from the criminal act of theft because neither malice nor scienter are elements of conversion. Conversion includes taking upon a mistaken belief of a right of possession. *Seymour v. Adams*, 638 So.2d 1044 (Fla. 5th DCA 1994).



Conversion: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action for damages that (*insert jx amount*).
2. On or about _____ (*date*), Defendant converted to his/her own use (*insert description of property converted*) that was then the property of Plaintiff of the value of \$_____.

WHEREFORE, Plaintiff demands judgment for damages against Defendant.

Conversion: Defenses

- Fungible goods, or items lacking specificity. Usually, fungible goods are not subject to action for conversion, but exceptions exist, such as money capable of identification.

Belford Trucking Co. v. Zagar, 243 So. 2d 646 (Fla. 4th DCA 1970).

- Real estate. Real property may not be the subject of a conversion in Florida.

American Intern. Land Corp. v. Hanna, 323 So. 2d 567 (Fla. 1975).

- Failure to pay a financial debt is not conversion. Unless a defendant is required to pay to plaintiff the identical moneys which defendant collected, the obligation to pay money may not be enforced by a conversion action.

Belford.

- Actions sounding in contract are not actions for conversion. Conversion is a tort. Actions in tort are inappropriate where the basis of the suit is a contract.

Belford

- However, where it was not merely a failure to perform, but an affirmative and intentional act of converting the funds to his own use by allegedly stealing the monies to which he was entrusted, there is not merely a breach of contract but a separate and independent tort.

Burke v. Napieracz, 674 So. 2d 756 (Fla. 1st DCA 1996).



Replevin: Elements

- (1) A description of the claimed property that is sufficient to make possible its identification;
And
- (2) A statement, to the best knowledge, information, and belief of the Plaintiff of the
 - a) value of such property, and
 - b) its location; And
- (3) A statement that the Plaintiff is the owner of the claimed property or is entitled to possession of it, describing the source of such title or right. If the Plaintiff's interest in such property is based on a written instrument, a copy must be attached to the Complaint;
And
- (4) A statement that the property is wrongfully detained by Defendant, the means by which Defendant came into possession thereof, and the cause of such detention according to the best knowledge, information, and belief of Plaintiff; And
- (5) A statement that the claimed property has not been taken for a tax, assessment, or fine pursuant to law; And
- (6) A statement that the property has not been taken under an execution or attachment against the property of the Plaintiff or, if so taken, that it is by law exempt from such taking, setting forth a reference to the exemption law relied upon.

Section 78.055, Florida Statutes; *Al-Hakim v. Holder*, 787 So. 2d 939 (Fla. 2d DCA 2001).

✓ In Florida, the right to replevin is a creature of statute. No replevin outside statute.

State ex rel. Heavelow v. Frederick, 163 So. 885 (Fla. 1935); *National Leasing Corp. v. Bombay Hotel, Inc.I*, 159 So. 2d 111 (Fla. 3d DCA 1963).



Replevin: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action to recover possession of personal property in _____ County, Florida.
2. The description of the property is:
(list property)
3. To the best of Plaintiff's knowledge, information, and belief, the value of the property is \$_____.
4. Plaintiff is entitled to the possession of the property under a security agreement dated _____, a true and correct copy of which is attached hereto as Exhibit "A".
5. To Plaintiff's best knowledge, information, and belief, the property is located at _____.
6. The property is wrongfully detained by Defendant. Defendant came into possession of the property by (*method of possession*). To Plaintiff's best knowledge, information, and belief, Defendant detains the property because (*give reasons*).
7. The property has not been taken for any tax, assessment, or fine pursuant to law.
8. The property has not been taken under an execution or attachment against plaintiff's property.

WHEREFORE, Plaintiff demands judgment for possession of the property.



Replevin: Defenses

- A court must permit a plaintiff leave to amend his complaint to allege any omitted elements, unless the facts of the case make it impossible to allege one or more elements, in which case a dismissal is appropriate.
Al-Hakim v. Holder, 787 So. 2d 939 (Fla. 2d DCA 2001).

- Unclean hands. The doctrine of unclean hands bars the equitable relief of replevin.
Hauer v. Thum, 67 So. 2d 643 (Fla. 1953).

Promissory Note: Elements

- (1) Defendant executed a Promissory Note (a copy being attached); And
- (2) Plaintiff owns and holds the Note; And
- (3) Defendant either:
 - a) Failed to pay the Note when due; Or
 - b) Failed to pay the installment payment due on the note on _____(date) and Plaintiff elected to accelerate payment of the balance; And
- (4) Defendant owes Plaintiff \$_____ on the Note that is due with interest since _____(date).

See generally Fla. R. Civ. P. 1.934.

- ✓ Plaintiff's possession of an original uncanceled promissory note, which is ordinary on its face, raises a presumption of non-payment that shifts the burden of proof to Defendant to establish payment or another defense. *Cole Taylor Bank v. Shannon*, 772 So. 2d 546 (Fla. 1st DCA 2000)

Promissory Note: Sample Complaint

Plaintiff sues Defendant and alleges:

1. This is an action for damages that (*insert jx amount*).
2. On(date)....., defendant executed and delivered a promissory note, a copy being attached, to plaintiff in County, Florida.
3. Plaintiff owns and holds the note.
4. Defendant failed to pay (use a or b)
 - a. the note when due.
 - b. the installment payment due on the note on(date)....., and plaintiff elected to accelerate payment of the balance.
5. Defendant owes plaintiff \$..... that is due with interest since(date)....., on the note.

WHEREFORE, Plaintiff demands judgment for damages against Defendant.

Promissory Note: Defenses

- Promissory note has been discharged by a means identified in Chapter 673, Florida Statutes. E.g. 673.6041, 673.6011, Fla. Stat. *Cole Taylor Bank v. Shannon*, 772 So. 2d 546 (Fla. 1st DCA 2000)
- Complaint is insufficient if it fails to attach a copy of the Note. Fla. R. Civ. P. 1.130(a).
- However, payment schedules showing the amount of the unpaid balance need not be attached. *Student Loan Mktg. Ass'n v. Morris*, 662 So. 2d 990 (Fla. 2d DCA 1995).
- Note is unenforceable in Florida courts until Florida doc stamps tax is paid. The action must be dismissed without prejudice or stayed until paid. *Fla. Stat. 201.08; Somma v. Metra Electronics Corp.*, 727 So. 2d 302 (Fla. 5th DCA 1999).
- Original Note needs to be filed with the court. Not so for mortgages. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725 (Fla. 5th DCA 2004).
- If the original Note cannot be produced, the lost document must be reestablished under Fla. State. 673.3091. *Mason v. Rubin*, 727 So. 2d 283 (Fla. 4th DCA 1999)
- Venue is improper under Fla. Stat. 47.061. Only in the county in which the Note was signed by the maker or in which the maker resides. *See Olmo v. Muro*, 446 So. 2d 233 (Fla. 3d DCA 1984).



Equitable Accounting: Elements

- (1) The contract demands between the litigants
- (2) Involve extensive or complicated accounts; And
- (3) It is not clear that the remedy at law is as full, adequate and expeditious as it is in equity.

Bankers Trust Realty, Inc. v. Kluger, 672 So. 2d 897 (Fla. 3d DCA 1996).

Equitable Accounting: Defenses

- Account is not complex. *Bankers Trust Realty, Inc. v. Kluger*, 672 So. 2d 897 (Fla. 3d DCA 1996).
- Legal remedy is adequate. *Bankers Trust Realty*
- Jury inappropriate. Equitable accounting is properly awardable by a judge in a bench trial, and not by a jury. *Riggs v. Saltmarsh, Cleaveland and Gund*, 341 So. 2d 818 (Fla. 1st DCA 1977).

Promissory Estoppel: Elements

- (1) Plaintiff detrimentally relied on a promise made by Defendant; And
- (2) Defendant reasonably should have expected the promise to induce reliance in the form of action or forbearance on the part of Plaintiff or a third person; And
- (3) Injustice can be avoided only by enforcement of the promise against Defendant.

W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc., 728 So. 2d 297 (Fla. 1st DCA 1999).

- ✓ The same elements have been phrased as follows: A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

W.R. Grace & Co. v. Geodata Services, Inc., 547 So. 2d 919 (Fla. 1989)

- ✓ The burden of proof for promissory estoppel is ‘clear and convincing evidence.’

Castro v. Eat Pass Enterprises, Inc., 881 So. 2d 699 (Fla. 1st DCA 2004).

- ✓ It is important to understand the difference between promissory estoppel and other types:

- ✓ Collateral estoppel is a judicial doctrine which in general terms prevents identical parties from relitigating issues that have been previously decided between them

Mobil Oil Corp. v. Shevin, 354 So. 2d 372 (Fla. 1977)

- ✓ Equitable estoppel ‘estops’ or bars a party from asserting something (e.g. a fact, a rule of law, or a defense) that he or she otherwise would be entitled to assert.

Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001).



Promissory Estoppel: Defenses

- Contract law prevails over promissory estoppel. Florida courts are reluctant to use it as a means to avoid the application of contract law to a given case.

Tanenbaum v. Biscayne Osteopathic Hospital, Inc., 190 So. 2d 777 (Fla. 1966); *WR Grace*.

- Mere expectations do not give rise to a promissory estoppel. Mere expectations based upon oral representations regarding future rights of parties to a contract specific in its written terms is insufficient to support promissory estoppel.

Smith v. Piezo Technology and Professional Administrators, 427 So. 2d 182 (Fla. 1983).

- Promise was not definite as to terms and time.

Hygema v. Markley, 187 So. 373 (Fla. 1939).

- Degree of plaintiff's reliance is insufficient. The degree of reliance necessary has been defined as follows: "The promisor is affected only by reliance which he does or should foresee, and enforcement must be necessary to avoid injustice. Satisfaction of the latter requirement may depend on the reasonableness of the promisee's reliance, on its definite and substantial character in relation to the remedy sought, on the formality with which the promise was made, on the extent to which the evidentiary, cautionary, deterrent and channeling functions of form are met by the commercial setting or otherwise, and on the extent to which such other policies as the enforcement of bargains and the prevention of unjust enrichment are relevant."

WR Grace.

- Defendant made a truthful statement about his future intent. A truthful statement as to the present intention of a party with regard to his future act is not subject to promissory estoppel.

South Investment Corp. v. Norton, 57 So. 2d 1 (Fla. 1952).



Spoliation of Evidence – 3rd Party: Elements

- (1) Existence of a potential civil action; And
- (2) A legal or contractual duty to preserve evidence which is relevant to the potential civil action; And
- (3) Destruction of that evidence; And
- (4) Significant impairment in the ability to prove the lawsuit; And
- (5) A causal relationship between the evidence destruction and the inability to prove the lawsuit; And
- (6) Damages.

Continental Ins. Co. v. Herman, 576 So. 2d 313 (Fla. 3d DCA 1990), rev. den., 598 So. 2d 76 (Fla. 1991).

- ✓ In Florida, spoliation of evidence is a claim only against 3rd parties. Florida no longer recognizes 1st party spoliation claims. First party spoliators are now only subject to sanctions, not money damages. (First party spoliators are party to the underlying suit)

Martino v. Wal-Mart Stores, Inc., 908 So. 2d 342 (Fla. 2005).

- ✓ A duty to preserve is required for 3rd party spoliation of evidence claims. However, this is not true for sanctions in 1st party spoliation context.
- ✓ Duty to preserve can arise from several sources, including statutes, court order, duly served discovery request, administrative regulation, or a contract to preserve.

See Elements of an Action, 817.

- ✓ The Districts are split on whether there is a common law presuit duty to preserve evidence, and if such duty exists, whether notice of the suit is required.

Breach of Fiduciary Duty:

Elements

- (1) The existence of a fiduciary duty; And
- (2) The breach of that duty such that it is the proximate cause of the plaintiff's damage; And
- (3) Damages flowing from the breach.

Gracey v. Eaker, 837 So. 2d 348 (Fla. 2002); *Crusselle v. Mong*, 59 So. 3d 1178 (Fla. 5th DCA 2011).

- ✓ A fiduciary is defined as a person having a duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. *Black's Law Dictionary (6th ed. 1990).*
- ✓ A fiduciary is under a duty to act for or give advice for the benefit of another upon matters within the scope of that relation. *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002)
- ✓ A fiduciary relationship may be either express or implied. *Hogan v. Provident Life and Acc. Ins. Co.*, 665 F. Supp. 2d 1273 (M.D. Fla. 2009).

Rescission: Elements

- (1) The character or relationship of the parties; And
- (2) The making of the contract; And
- (3) The existence of either:
 - a. fraud, or
 - b. mutual mistake that is material to the transaction, or
 - c. false representations, or
 - d. impossibility of performance, or
 - e. other ground for rescission or cancellation; And
- (4) That the party seeking rescission has rescinded the contract and notified the other party to the contract of such rescission; And
- (5) If the moving party has received benefits from the contract, he should further allege an offer to restore these benefits to the party furnishing them, if restoration is possible; And
- (6) That the moving party has no adequate remedy at law.

Billian v. Mobil Corp., 710 So. 2d 984 (Fla. 4th DCA).

- ✓ Rescission, or cancellation, is a harsh remedy and is not favored by Florida courts.

Rood Co. v. Board of Public Instruction of Dade County, 102 So. 2d 139 (Fla. 1958).

- ✓ Rescission will not be granted for breach of contract in the absence of some independent ground for equitable interference.

Williamson v. Stephens, 411 So. 2d 286 (Fla. 1st DCA 1982).



Rescission: Defenses

- If the UCC applies (i.e. the contract was for the sale of goods), compliance with applicable UCC provisions must be shown before rescission can be granted. See Fla. Stat. 672.608.

Central Florida Antenna Service, Inc. v. Crabtree, 503 So. 2d 1351 (Fla. 5th DCA 1987).

- Inadequacy of consideration, when coupled with other inequitable circumstances, may afford a basis to warrant rescission.

Harrell v. Branson, 344 So. 2d 604 (Fla. 1st DCA 1977).

- A contract modification is subject to rescission if not supported by consideration.

Wilson v. Odom, 215 So. 2d 37 (Fla. 1st DCA 1968).

- Return to the status quo is the goal of rescission. Inability to return parties to status quo prevents application of rescission, even for fraud.

Mazzoni Farms, Inc. v. E.I. DuPont De Nemours and Co., 761 so. 2d 306 (Fla. 2000).

- Retention of contract benefits bars rescission. A party's right to rescind is subject to waiver if he or she retains the benefits of a contract after discovering the grounds for rescission.

Id.

- All parties to the transaction must be joined in action. In an action for rescission of a transaction, the parties to the transaction are indispensable.

Allman v. Wolfe, 592 So. 2d 1261 (Fla. 2d DCA 1992).

- Adequate remedy at law. Rescission is an equitable remedy that is only available if there is no adequate remedy available at law.

Williamson v. Stephens, 411 So. 2d 286 (Fla. 1st DCA 1982).

Declaratory Judgment: Elements

- (1) There is a bona fide, actual, present practical need for the declaration; And
- (2) The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; And
- (3) Some immunity, power, privilege or right of the Plaintiff is dependent upon the facts or the law applicable to the facts (i.e. some ascertainable rights); And
- (4) Plaintiff is someone with an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; And
- (5) The antagonistic and adverse interests are all before the court by proper process or class representation – Defendant is a true adversary that will fight against Plaintiff and against whom litigation is unavoidable; And
- (6) Relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity – the dispute is actual, not theoretical.

Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So. 2d 400 (Fla. 1996).

- ✓ Florida's Declaratory Judgment Act, Section 86.021, Florida Statutes, creates a right to declaratory judgment when the elements are pled and proven. The purpose of declaratory judgment is to afford the parties relief from their insecurity and uncertainty with respect to their rights, status, and relations.

Coalition for Adequacy and Fairness in School Funding, Inc

- ✓ Declaratory judgment is appropriate for written and oral contracts.

Sorrentino v. Barwick, 412 So. 2d 55 (Fla. 4th DCA 1982); *Coral Gates Properties v. Hodes*, 59 So. 2d 630 (Fla. 1952).



Declaratory Judgment: Defenses

- Factual dispute is basis of claim. Declaratory judgment action not available when the object of the action is to try disputed questions of fact as the determinative issue, rather than to seek a construction of definite stated rights, status, or other relations.
Smith v. Milwaukee Ins. Co. of Milwaukee, Wis., 197 So. 2d 548 (Fla. 4th DCA 1967), cert. dismissed, 204 So. 2d 332 (Fla. 1968).
- Contract clearly establishes rights. Declaratory judgment not available to settle factual issues bearing on the liability under a contract which is clear and unambiguous and which presents no need for its construction.
Burns v. Hartford Acc. & Indem. Co., 157 So. 2d 84 (Fla. 3d DCA 1963).
- Need not urgent. The dispute must be bona fide and there must be an actual, present need for the declaration.
Britamco Underwriters, Inc. v. Central Jersey Investments, Inc., 632 So.2d 138 (Fla. 4th DCA 1994).

Tortious Interference with a Contractual Relationship:

Elements

- (1) The existence of a contract; And
- (2) Defendant's knowledge of the contract; And
- (3) Defendant's intentional procurement of the contract's breach; And
- (4) Absence of any justification or privilege; And
- (5) Damages resulting from the breach.

McKinney-Green, Inc. v. Davis, 606 So. 2d 393 (Fla 1st DCA 1992).

- ✓ The gravamen of an action for tortious interference with a contractual relationship is the malicious interference by a third party, with a contract between other persons, whereby one contracting party is induced to breach the contract to the injury of the other.

Steffan v. Zernes, 124 So. 2d 495, 498 (Fla. 1st DCA 1960).

- ✓ Sample factual scenarios:
 - ✓ Luring clients away.

Williams v. Goldsmith, 619 So. 2d 330, 332 (Fla. 3d DCA 1993)

- ✓ Causing the loss of a construction subcontract.

Langan Eng'g & Envtl. Servs., Inc. v. Harris Constructors, Inc., 743 So. 2d 1177 (Fla. Dist. Ct. App. 2d Dist. 1999)

“Harris's complaint alleges that Langan intentionally interfered with its business relationship with Clark Construction Group, Inc. ("Clark"), a nonparty. Langan allegedly caused Clark to reject Harris' bid for a construction subcontract for pile foundation work for a project in Dade County. Langan allegedly misrepresented to Clark and the project's owners the construction and testing criteria for the project. Langan allegedly defamed Harris by telling Clark and other third parties that Harris' pile foundation system was inferior to other systems.”



Tortious Interference with a Contractual Relationship:

Defenses

- Improper venue. The proper venue is the county where the overt acts occurred.
Langan engineering & Environmental Svc.s v. Harris Constr., Inc., 743 So. 2d 1177 (Fla. 2d DCA 1999)
- Interference must be intentional. There is no such thing as a cause of action for interference which is only negligently or consequentially effected.
Ethyl Corp. v. Balter, 386 So. 2d 1220, 1224 (Fla. 3d DCA1980)
- Defendant is not liable if the defendant's actions did not directly induce the interference with the advantageous business relationship.
Chiquita Intern. Ltd. C. Fresh Del Monte Produce, N.V., 749 so.2d 578 (Fla. 3d DCA 2000).
- A cause of action for interference does not exist against one who is himself a party to the contract allegedly interfered with.
Ethyl Corp.
- So long as improper means are not employed, activities taken to safeguard or promote one's own financial, and contractual interests are entirely non-actionable.
Ethyl Corp.; Babson Bros. Co. v. Allison, 337 So.2d 848 (Fla. 1st DCA 1976), cert. denied, 348 So.2d 944 (Fla. 1977)
- A party's advantageous relationship with the public at large is not protected by this action. In order for the relationship to be protectable, it must be with an identifiable person, not the universe of potential new clients.
North American Van Lines, Inc. v. Ferguson Transportation, Inc., 639 so. 2d 32 (Fla. 4th DCA 1994), affirmed with opinion, 687 So. 2d 821 (Fla. 1996).
- "At will" relationships generally insufficient.
Greenberg v. Mount Sinai Medical Ctr. Of Greater Miami, Inc., 629 So. 2d 252 (Fla. 3d DCA 1993).



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THE END

