Garvin v. Tidwell

Failing to Disclose Information During Discovery Can Cause the Rescission of a Settlement Agreement

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As a case develops, parties exchange information through a process known as discovery. Discovery is a truth seeking device- each party is able to discover facts that the other party has. Parties and their attorneys are expected to comply with requests for discovery.

Florida's Fourth District Court of Appeal recently found in Garvin v. Tidwell that the appellee, Tidwell, violated her discovery obligations by failing to disclose an advertisement that featured her horse. No. 4D11-2712, 2012 WL 523224 at *3 (Fla. 4th DCA Oct. 24, 2012). The court allowed the appellant, Garvin, to rescind the settlement agreement because Garvin was not aware of all of the material facts because of Tidwell's failure to disclose information during discovery. Id. at *5. Let this case serve as a lesson to any lawyer or party considering executing a settlement agreement if you have been less than truthful or forthcoming in the discovery process.

Tidwell owned a ten year old quarter horse named Buster that she boarded at a stable. Id. at *1. Tidwell asked Garvin, an experienced equestrian, to ride Buster after observing Garvin ride other horses at the stable. Id. Garvin asked Tidwell if Buster had ever exhibited any dangerous behavior. Id. Tidwell replied: "no." Id. During Garvin's third time riding Buster, "the horse reared on his hind legs, bolted off at a fast gallop, then stopped suddenly and abruptly changed directions." Id. Garvin fell off Buster and hit a fence as result of the horse's behavior. Id. Garvin later required surgery on her back as a result of this injury. Id. Garvin believed that Tidwell knew that Buster had a history of "bucking and running away with riders" and that she failed to disclose this information. Id.

As part of the discovery process, Garvin sent Tidwell interrogatories and a request to produce. Id. Tidwell answered the discovery by listing twenty names of people who may have knowledge of Buster's behavior and care and produced four photographs. Id. Tidwell objected to producing some statements and documents under the work product privilege. Id. However, no privilege log was filed and no statements or documents were identified. Id. Garvin never filed a motion to compel. Id.

Garvin deposed Tidwell and Tidwell's daughter, who was Buster's primary caregiver. Id. Both testified that Buster had been "spooked" and had bucked as a young horse, but that these occurances were not characteristic. Id. In fact, they described Buster's personality as "a gentleman" who was "lazy, if anything." Id. After depositions and discovery, the parties went to mediation and later reached a settlement. Id.

Not long after the settlement, Garvin's attorney received an unmarked envelope that contained a magazine advertisement for a dietary supplement for calming horses dated a few

months prior to the date of the settlement. Id. The advertisement featured a color picture of Buster advertising "Ex Stress," which identified Tidwell as Buster's owner. Id. Tidwell is quoted in the advertisement, stating that she gave Ex Stress to Buster because "he can be a little difficult at times" and "What a difference [Ex Stress] made in him. Ever since he's been on it, we've had nothing but great rides." Id. Tidwell did not produce the advertisement during discovery and neither Tidwell or her daughter mentioned the use of calming supplements or Buster's difficult behavior during their depositions. Id. at *2. Tidwell's counsel later admitted that he and Tidwell were in possession of the advertisement at the time of the interrogatories and request for production were answered and at the time of the depositions. Id.

After the trial court denied Garvin's motion to rescind the settlement agreement and for sanctions, the appellate court determined that the motion should have been granted, but the motion for sanctions was properly denied. Id. In reaching that decision, the Fourth District Court of Appeals stated that one of the primary functions of discovery is to enable the parties to negotiate a settlement agreement with the understanding of their chances of success at trial. Id. Discovery allows each side to discover the other's strengths and weaknesses before trial, which can encourage settlement. Id. citing Surf Drugs, Inc. v. Vermette, 236 So. 2d 108, 111 (Fla. 1970). Lawyers should make a good faith effort to comply with discovery requests. Summit Chase Condo. Ass'n, Inc. v. Protean Investors, Inc., 421 So. 2d 562, 564 (Fla. 3d DCA 1982). Additionally, "evasive or incomplete" answers can be considered a failure to answer discovery and sanctions may be awarded. Herold v. Computer Components Int'l, Inc., 252 So. 2d 576, 579 (Fla. 4th DCA 1971). The court in Leo's Gulf Liquors explained that witnesses who give a sworn testimony through answering interrogatories or by testifying at a deposition "swear or affirm to tell the truth, the whole truth, and nothing but the truth." Leo's Gulf Liquors v. Lakhani, 802 So. 2d 337, 343 (Fla. 3d DCA 2001). Sworn answers to interrogatories and at depositions are crucial because a vast majority of cases are settled before trial. Id.

The appellate court found that Tidwell violated her discovery obligations by failing to disclose the advertisement and the information known to her about Buster's behavior through discovery requests and at depositions. Garvin, 2012 WL 5232224 at * 3. The advertisement would have likely been an important advertisement at trial. Id.

A trial court may rescind an agreement based on a unilateral mistake if two conditions are met: "(1) the mistake did not result from an inexcusable lack of due care, and (2) the defendant's position did not so change in reliance that it would be unconscionable to set aside the agreement." Stamato v. Stamato, 818 So. 2d 662, 664 (Fla. 4th DCA 2002). The court also considers if the mistake "goes to the 'very substance of the agreement.'" Rock Springs Land Co. v. West, 281 So. 2d 555, 556 (Fla. 4th DCA 1973); Langbein v. Comerford, 215 So. 2d 630, 631 (Fla. 4th DCA 1968). Considering the first prong of the Stamato test, Garvin's lack of knowledge concerning Buster's behavior and calming supplement did not arise from an "inexcusable lack of due care." Garvin, 2012 WL 5232224 at * 3. Instead, Garvin was not aware of Buster's behavior

because Tidwell failed to disclose the advertisement after having multiple opportunities to do so. Id.

The second prong of the Stamato test is whether Tidwell's position changed in relying on the agreement that it would be unconscionable to rescind the agreement. The court found that there was no evidence to suggest that rescinding the settlement agreement would be inequitable because Tidwell never argued that she had detrimentally relied on the agreement. Id. at *5.

The court denied Garvin's additional claim that the agreement was unconscionable because this argument was not presented in written motions or during the hearing before the trial court. Id. Garvin's claim of sanctions was also denied because the "purpose of sanctions is to promote compliance with discovery, rather than serve as a penalty." Id.; See Winn Dixie v. Teneyck, 656 So. 2d 1348, 1351 (Fla. 1st DCA 1995).

Ultimately complying with discovery is critical for both parties for fairness when creating a settlement agreement. First, Plaintiff A may enter into a settlement agreement without having knowledge of all the material facts in the case due to Defendant B's failure or neglect. This example hurts Plaintiff A because the settlement may have been higher if all of the material facts were known. Or, Plaintiff A may not have agreed to a settlement had he known the omitted fact. Second, due to Defendant B's failure to disclose a material fact during discovery, the settlement agreement can be rescinded. In conclusion, complying with discovery is critical for determining whether a settlement is possible and whether a settlement is fair. A resulting settlement agreement can be rescinded if a party does not comply with discovery.