

The Availability of Civil Theft as a Recovery Tool for Professional Service Providers in Florida

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Just as we can't see the air we breathe or radio waves transmitting data around the world, neither can we see thoughts and ideas. For those Professionals whose work product may not be a tangible, fungible item, it nonetheless exists. This is a crucial point when the intangible labor of a Professional is stolen. Florida Statute §772.11 provides a civil remedy as theft of Professional Services by defining such as "property."

Titled, "Civil remedy for theft or exploitation," this Statute provides a cause of action to anyone, upon a showing of clear and convincing evidence, injury resulting from a statutory violation of criminal theft. Fla. Stat. § 772.11(1) (2012). As a remedy, the injured party is entitled to treble damages, with a minimum entitlement of \$200, plus reasonable attorney's fees and court costs. Id. The statutory violation of criminal theft occurs when a person "knowingly obtains, uses, or endeavors to obtain or to use, the property of another, with intent to, either temporarily or permanently: (a) Deprive the other person of a right to the property or a benefit from the property [or] (b) appropriate the property to his her own use of any person not entitled to the use of the property. Fla. Stat. § 812.014(1)(a)-(b) (2012).

This is beneficial to Professionals because this Statute construes property subject to theft broadly to include "services." Fla. Stat. § 812.012(6) (2012). Services are defined as "anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property." Id. Professional services are explicitly stated within the Statute as property subject to theft, robbery, or fraud. Id. The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting the general definition, the personal services which typically come within the provisions of Florida law are the personal services rendered by certified public accountants, public accountants, chiropractic physicians, dentists, osteopathic physicians, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatric physicians, chiroprapodists, architects, veterinarians, attorneys at law, and life insurance agents. See Fla. Stat. § 621.03.

What this means is that a Professional Service Provider who has not been paid for services rendered may be entitled to significant damages. There is a formula, however, to invoke this remedy. The injured party must first give the wrongdoer an opportunity to cure. This is accomplished by making a written demand of either \$200 or three times the amount owed, whichever is greater. § 772.11(1). The wrongdoer then has thirty (30) days to comply with the demand letter. If the wrongdoer satisfied the debt owed, the injured party must formally release the wrongdoer from further obligation and refrain from future litigation on the matter. Id. If the wrongdoer fails to comply, the injured party may bring suit for civil theft for the amount claimed in the demand letter.

As a word of caution, should a court find that the cause of action for civil theft is unfounded, the defendant in that action may recover attorney's fees and court costs. Id. Further,

this remedy may be a powerful tool to recover monies owed and mete out harsh punishment to deadbeat clients, but it can backfire if the Statute isn't followed accordingly. This means that the theft of services must be in connection with the statutorily defined crimes found in § 812.012-812.037. Id. As an illustration, note Winters v. Mulholland, a civil theft case where the court found a theft occurred, but the injured party didn't prove a statutory violation, i.e. that the theft caused the injury, which resulted in a directed verdict for the defendant. Winters v. Mulholland, 33 So. 3d 54, 57 (Fla. 2nd DCA 2010). Consequently, ensure you can prove the elements of the claim before it is brought.

There are many Professionals who provide their expertise, knowledge, and skill to others as their trade and livelihood. It is no less a crime to steal the trained intelligence provided to someone in the course of business than it is to steal a car. Both are the product of work that is performed in exchange for compensation. Thus, if you are a Professional Service Provider, such as a Lawyer, Engineer, Accountant, Designer, Appraiser, Architect, Consultant, Recruiter, or Broker this remedy is available to you. Due to the balancing act courts must perform in applying a broadly inclusive statute according to fairly narrow guidelines, if you fall into the Professional category, it may be best to seek legal advice before invoking the wrath of § 772.11.

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