

# DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

## Michael Lally v. AIM Recovery Services, Inc.

No. 3D22-0845 (Fla. 3d DCA Mar. 1, 2023) · No. No. 3D22-0845 · Decided March 1, 2023

### SUMMARY

The Florida Third District Court of Appeal affirmed the circuit court’s judgment in favor of AIM Recovery Services, Inc. The court cited Florida’s amended summary judgment rule and cases addressing duress and the binding effect of contracts.

### CASE DETAILS

|                       |                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Third District                                                                                                         |
| WRITING FOR THE COURT | Per Curiam; Logue; Miller; Bokor                                                                                                                            |
| JURISDICTION          | Florida                                                                                                                                                     |
| DECIDED               | March 1, 2023                                                                                                                                               |
| DOCKET                | No. 3D22-0845                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                    |
| PROCEDURAL POSTURE    | Appeal from a circuit-court order in favor of or otherwise affecting appellants in a contract-related dispute; the Third District Court of Appeal affirmed. |
| PRECEDENTIAL VALUE    | Published                                                                                                                                                   |
| PARTIES               | Michael Lally, et al. v. AIM Recovery Services, Inc.                                                                                                        |

### TOPICS

- summary judgment
- duress
- contracts
- appellate procedure
- standard of review

### PRACTICE AREAS

- civil procedure
- contracts
- appellate procedure

### QUESTIONS PRESENTED

- Whether the circuit court's ruling should be affirmed in light of Florida's amended summary-judgment rule and the parties' contract-related arguments concerning duress and contractual assent.

### HOLDINGS

1. The circuit court's ruling was affirmed.

#### KEY QUOTATIONS

*“In cases where a summary judgment motion was denied under the pre-amendment rule, the court should give the parties a reasonable opportunity to file a renewed summary judgment motion under the new rule.” (at 2)*

*“duress involves a step beyond mere illegality and implies that a person has been unlawfully constrained or compelled by another to perform an act under circumstances which prevent the exercise of free will” (at 2)*

*“It has long been held in Florida that one is bound by his contract. Unless one can show facts and circumstances to demonstrate that he was prevented from reading the contract, or that he was induced by statements of the other party to refrain from reading the contract it is binding.” (at 2)*

#### FACTUAL BACKGROUND

The opinion is a brief per curiam affirmance and does not recite the underlying facts. Its cited authorities indicate that the appeal involved summary judgment under Florida Rule of Civil Procedure 1.510 and contract defenses or challenges based on duress and failure to read or understand a contract.

#### PROCEDURAL HISTORY

Michael Lally and the other appellants appealed from proceedings in the Circuit Court for Miami-Dade County, case number 19-20799. The Third District Court of Appeal issued a per curiam opinion affirming the circuit court.

#### DISPOSITION

affirmed

#### CASES CITED

- In re Amends. to Fla. Rule of Civ. Proc. 1.510, 317 So. 3d 72, 77-78 (Fla. 2021)
- Woodruff v. TRG-Harbour House, Ltd., 967 So. 2d 248, 250 (Fla. 3d DCA 2007)
- Estate of Etting v. Regents Park at Aventura, Inc., 891 So. 2d 558, 558 (Fla. 3d DCA 2004)

#### OPINION

MICHAEL LALLY v. AIM RECOVERY SERVICES, INC.

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed March 1, 2023. Not final until disposition of timely filed motion for rehearing. \_\_\_\_\_ No. 3D22-0845 Lower Tribunal No. 19-20799 \_\_\_\_\_ Michael Lally, et al., Appellants, vs. AIM Recovery Services, Inc., Appellee. An Appeal from the Circuit Court for Miami-Dade County, Charles Johnson, Judge. Rasco Klock Perez & Nieto, P.L., and Joseph P. Klock, Jr., and Gabriel E. Nieto, for appellants. Stok Kon + Braverman, and Robert A. Stok, Joshua R. Kon and David I. Rosenblatt

(Fort Lauderdale), for appellee. Before LOGUE, MILLER and BOKOR, JJ. PER CURIAM. Affirmed. See *In re Amends. to Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 77–78 (Fla. 2021) (“In cases where a summary judgment motion was denied under the pre-amendment rule, the court should give the parties a reasonable opportunity to file a renewed summary judgment motion under the new rule.”); see also *Woodruff v. TRG-Harbour House, Ltd.*, 967 So. 2d 248, 250 (Fla. 3d DCA 2007) (explaining that “[d]uress involves a step beyond mere illegality and implies that a person has been unlawfully constrained or compelled by another to perform an act under circumstances which prevent the exercise of free will”) (internal quotation and citation omitted); *Estate of Etting v. Regents Park at Aventura, Inc.*, 891 So. 2d 558, 558 (Fla. 3d DCA 2004) (“It has long been held in Florida that one is bound by his contract. Unless one can show facts and circumstances to demonstrate that he was prevented from reading the contract, or that he was induced by statements of the other party to refrain from reading the contract it is binding.”) (citation omitted). 2