DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Stuart N. Bornstein and Granada, LLC v. Ira Marcus and Ira Marcus, P.A.

275 So. 3d 636 (Fla. 4th DCA 2019) · No. No. 4D18-277 · Decided May 8, 2019

SUMMARY

The Florida Fourth District Court of Appeal affirmed a final judgment for the appellees in a dispute over attorney fees and a retainer credit. The court held that a distribution agreement modified the contingency-fee and retainer-credit provisions of the parties' fee agreement, even though it did not constitute a novation, and therefore the appellees did not breach the contract.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Elizabeth A. Metzger; C.J. Gerber; J. Conner
JURISDICTION	Florida
DECIDED	May 8, 2019
DOCKET	No. 4D18-277
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed the final judgment entered for appellees after a nonjury trial on claims including breach of contract, breach of fiduciary duty, conversion, and civil theft.
STANDARD OF REVIEW	The trial court's novation finding was entitled to great deference; the appellate court reviewed the contractual issue and record to determine whether the trial court reached the correct result, even for the wrong reason, under the tipsy coachman doctrine.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Stuart N. Bornstein, Granada, LLC v. Ira Marcus, Ira Marcus, P.A.

TOPICS

breach of contract · contract interpretation · contracts · appellate procedure · standard of review

PRACTICE AREAS

Contract law | Appellate procedure | Commercial litigation | Attorney's fees

QUESTIONS PRESENTED

1. Whether the Distribution Agreement constituted a novation that completely replaced the prior Fee Agreement.
2. If the Distribution Agreement was not a novation, whether it modified both the contingency-fee and retainer-credit provisions of the Fee Agreement so that the law firm was entitled to retain $450,000 without refunding the $50,000 retainer.
3. Whether the trial court's judgment should be affirmed under the tipsy coachman doctrine despite its incorrect characterization of the Distribution Agreement as a novation.

HOLDINGS

1. The Distribution Agreement was not a novation because the parties intended to modify, rather than completely replace, the original Fee Agreement.
2. The Distribution Agreement clearly and unambiguously modified the contingency-fee and retainer-credit provisions together, establishing that the firm was entitled to retain a flat $450,000 from the settlement proceeds.
3. The judgment for appellees was properly affirmed because the trial court reached the correct result on the breach-of-contract claims, although it gave the wrong reason by characterizing the Distribution Agreement as a novation rather than a modification.

KEY QUOTATIONS

> *"Under Florida law, four elements are required to effectuate the novation of a binding contract"* (at 639)

> *"The Distribution Agreement clearly and unambiguously modified both the contingency fee and retainer credit provisions of the Fee Agreement."* (at 640)

FACTUAL BACKGROUND

In 2009, Stuart Bornstein, Alan Potamkin, and Granada, LLC entered into a retainer and contingent-fee agreement with Ira Marcus, P.A. for representation in a claim against the City of Coral Gables. The agreement provided for a 40 percent fee and two retainers totaling $50,000, with the retainers to be credited against any recovery. When the City offered $1.45 million to settle, the parties executed a Distribution Agreement stating that Granada would net $880,816.01 and the firm would retain $450,000 in adjusted attorney's fees; Bornstein signed it individually and for Granada. The firm distributed the settlement exactly as stated, but appellants later claimed that the $50,000 retainer had to be refunded.

PROCEDURAL HISTORY

Granada, LLC and Stuart Bornstein sued Ira Marcus and Ira Marcus, P.A. over the distribution of proceeds from a settlement with the City of Coral Gables, principally claiming that the firm was required to refund a $50,000 retainer. After a bench trial, the circuit court entered final judgment for appellees, finding that a Distribution

Agreement created a novation and entitled the firm to retain $450,000. The Fourth District disagreed with the novation characterization but affirmed because the evidence established that the Distribution Agreement modified both the contingency-fee and retainer-credit provisions and appellees therefore did not breach the contract.

DISPOSITION

affirmed

CASES CITED

- Bornstein v. Marcus, 169 So. 3d 1239, 1241 (Fla. 4th DCA 2015)
- Miami Nat'l Bank v. Forecast Constr. Corp., 366 So. 2d 1202, 1204 (Fla. 3d DCA 1979)
- S.N.W. Corp. v. Hauser, 461 So. 2d 188, 189 (Fla. 4th DCA 1984)
- Franz Tractor Co. v. J.I. Case Co., 566 So. 2d 524, 526 (Fla. 2d DCA 1990)
- St. Joe Corp. v. McIver, 875 So. 2d 375, 381-82 (Fla. 2004)
- Lugassy v. Indep. Fire Ins. Co., 636 So. 2d 1332, 1335 (Fla. 1994)
- Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644-45 (Fla. 1999)
- S. Fla. Beverage Corp. v. Figueredo, 409 So. 2d 490, 495-96 (Fla. 3d DCA 1981)
- Moore v. State Farm Mut. Auto. Ins. Co., 916 So. 2d 871, 875 (Fla. 2d DCA 2005)