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Wrongful Act Doctrine: Recovering Third-Party Litigation Expenses as Damages

Commentary by
Richard I. Segal
and James J. Diamond



Segal

Florida follows the American Rule on the entitlement to attorney fees in that the fees generally are not recoverable as an element of damages in the absence of statutory authority or a contractual agreement. However, civil litigators throughout Florida should be aware of a powerful yet seldom utilized exception to that general rule — the wrongful act doctrine.

The doctrine permits “a plaintiff to recover third-party litigation expenses as special damages where the defendant’s wrongful act caused the plaintiff to litigate with the third



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party.” More specifically, the doctrine provides that “where the wrongful act of the defendant has involved the claimant in litigation with others and has placed the claimant in such relation with others as makes it necessary to incur expenses to protect its interests, such costs and expenses, including reasonable attorney’s fees upon appropriate proof, may be recovered as an element of damages.”

How does a plaintiff effectively take advantage of the doctrine?

First and most importantly, when pursuing a claim for attorney fees under the doctrine, the plaintiff must make sure to specifically plead entitlement to such damages in the complaint. Failure to specifically plead entitlement to attorney fees under the doctrine constitutes a waiver of entitlement to those fees. For example, in *Robbins v. McGrath*, the First District Court of Appeal held that the plaintiff waived

its claim for attorney fees under the doctrine where the plaintiff first requested such fees immediately before trial.

Second, the plaintiff must establish that the defendant engaged in a genuinely wrongful act.

Third, the plaintiff must establish that the defendant’s wrongful act caused the plaintiff to needlessly be forced into litigation with a “third party.”

The First DCA’s decision in *Northamerican Van Lines v. Roper* illustrates this concept. Plaintiffs Robbie B. Roper and Tawnia Gaskins hired North American Van Lines Inc. to transport their belongings from New Jersey to Florida. However, plaintiffs were notified by North American that their belongings would not be delivered as contracted but would instead be stored at a transfer company.

For an entire month, the transfer company refused to release plaintiffs’ belongings. Accordingly, plaintiffs were forced to file a replevin action against the transfer company and, as a result of the replevin action, North American finally ended up delivering the belongings nearly four months later.

RECOVERY OPTION

Plaintiffs sued North American for a variety of contract and tort claims, alleging that North American was liable to plaintiffs for compensatory and punitive damages. Although the jury returned a verdict in favor of plaintiffs, the trial court specifically prohibited plaintiffs from attempting to recover any attorney fees incurred during the replevin action as damages in the instant case.

The First DCA reversed the trial court’s decision, holding that pursuant to the wrongful act doctrine, the trial court erred in not allowing the plaintiffs to seek the attorney fees incurred in the replevin action as an element of damages. The court reasoned that “but for North American’s wrongful act in withholding personal effects and furniture, [plaintiffs] would not have been forced to institute a replevin action against the transfer company.”

A practitioner’s point to consider is that a plaintiff may not utilize the doctrine in order to recover attorney fees incurred in litigating an action against the actual wrongdoer. The plaintiff may only recover the reasonable expenses incurred in the initial litigation against a third party due to the wrongful acts of another.

To conclude, the wrongful act doctrine is a potential source of recoverable fees that all Florida civil litigators should keep in mind from the onset of litigation. The wrongful act doctrine provides another lucrative avenue for civil litigators to recover attorney fees — saving client resources.

Richard I. Segal is a Miami partner and practices in Kluger Kaplan’s commercial litigation and family law groups. James J. Diamond is a Miami associate at Kluger Kaplan in the commercial litigation department.

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