

IN THE DISTRICT COURT OF APPEAL OF FLORIDA,
FOURTH DISTRICT

CASE NO. 4D2024-1142
LOWER TRIBUNAL CASE NO. CONO23000096

KANGARU, LLC.

Appellant,

vs.

PAYROLL, LLC.

Appellee.

On Appeal from Final Judgment
of the Circuit Court for the Seventeenth Judicial Circuit
of Florida In and For Broward County

APPELLANT'S INITIAL BRIEF

MATTHEW D. GLACHMAN
Attorney for Appellant
6421 Congress Ave., Suite 120
Boca Raton, Florida 33487
matt@glachmanbrill.com
(561) 859-0679

TABLE OF CONTENTS

INTRODUCTION	iii
TABLE OF AUTHORITIES	iv-vi
STATEMENT OF THE CASE AND THE FACTS	1-3
SUMMARY OF ARGUMENT	4-5
STANDARD OF REVIEW	6
ARGUMENT	7-17

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY FAILING TO APPLY THE DAMAGE-LIMITING PROVISION SET FORTH IN THE AGREEMENT WHICH LIMITS APPELLEE'S DAMAGES TO THE SUM OF \$10,000.00, WITHOUT MAKING ANY FINDINGS OF FACT AS TO THE APPLICABILITY OF SUCH PROVISION.

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY APPLYING THE INCORRECT MEASURE OF DAMAGES THEREBY ERRONEOUSLY FINDING THAT PLAINTIFF'S DAMAGES FLOWING FROM DEFENDANT'S BREACH ARE THE LIQUIDATED SUM OF \$49,714.37.

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY ACCEPTING APPELLEE'S PROPOSED FINAL JUDGMENT VERBATIM WITHOUT AN OPPORTUNITY FOR COMMENTS OR OBJECTIONS BY THE APPELLANT.

CONCLUSION	18
CERTIFICATE OF SERVICE	19
CERTIFICATE OF COMPLIANCE	19

INTRODUCTION

KANGARU, LLC. will be referred to as Appellant. PAYROLL, LLC. will be referred to as Appellee.

References of record shall be designated as “R” followed by the appropriate page designation as set forth in record on appeal transmitted by the Clerk of the lower Court.

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
AT & T Information Systems, Inc. v. Enterprises, A.B.C., Inc. 486 So. 2d 652 (Fla. 3d DCA 1986)	9, 10
Atlanta & St. A. B. Ry. Co. v. Thomas 53 So. 510 (Fla. 1910)	12
Avatar Dev. Corp. v. De Pani Constr., Inc. 834 So.2d 873 (Fla. 4 th DCA 2002)	6
Ballard v. Krause 248 So.2d 233 (Fla. 4 th DCA 1971)	14, 15
Black v. Frank 176 So.2d 113 (Fla. 1 st DCA 1965)	10
Broxmeyer v. Elie 647 SO.2d 893 (Fla. 4 th DCA 1994)	13
Cooperative Leasing, Inc. v. Johnson 872 So.2d 956 (Fla. 2d DCA 2004)	13
Covelli Fam., L.P. v. ABG5, L.L.C. 977 So.2d 749 (Fla. 4 th Dist. App. 2008)	11
Federal Land Bank of Columbia v. Brooks 139 Fla. 506 (Fla. 1939)	8
Golf & Racquet Club of Palm Beach, Inc. v. Campbell-Dickey Advertising, Inc. 259 So.2d 192 (Fla. 4 th DCA)	14
HCA Health Services of Fla., Inc. v. CyberKnife Ctr. Of Treasure Coast, LLC 204 So.3d 469 (Fla. 4 th Dist. App. 2016)	6

Leisure Resorts, Inc. v. City of W. Palm Beach 864 So.2d 1163 (Fla. 4 th DCA 2003)	6
MCI Worldcom Network Services, Inc. v. Mastec, Inc. 995 So.2d 221 (Fla. 2008)	13,14
McLeod v. Continental Ins. Co. 591 So.2d 621 (Fla. 1992)	13
Mercury Motors Express, Inc. v. Smith 393 So.2d 545 (Fla. 1981)	13
Metro. Dad Cnty. V. Worsham Bros. Co., Inc. 563 So.2d 1107 (Fla. 3d DCA 1990)	10
Mnemonics, Inc. v. Max Davis Associates, Inc. 808 So.2d 1278 (Fla. 5 th DCA 2002)	12
Perlow v. Berg-Perlow 875 So.2d 383 (Fla. 2004)	16,17
Physicians Reference Laboratory, Inc. v. Daniel Seckinger, M.D. and Associates, P.A. 501 So.2d 107 (Fla. 3d DCA 1987)	14, 15
Sharick v. S.E. U. of Health Scis., Inc. 780 So.2d 136 (Fla. 3d Dist. App. 2000)	9
State ex rel. Peters v. Hendry 31 So. 2d 254 (Fla. 1947)	12
Thomas v. Vision I Homeowners Ass'n 981 So.2d 1 (Fla. 4 th Dist. App. 2007)	6
Totale, Inc. Smith 877 So.2d 813 (Fla. 4 th DCA 2004)	13
Travelers Insurance Co. v. VES Service Co. 576 So.2d 1349 (Fla 1 st DCA 1991)	8

Utopia Provider Sys., Inc. v. Pro-Med Clinical Sys., LLC 196 So.3d 557 (Fla. 4 th DCA 2016)	8
Volusia County v. Aberdeen at Ormond Beach, L.P. 760 So.2d 126 (Fla. 2000)	6
Weiner v. The Country Club at Woodfield, Inc. 254 So.3d 488 (Fla. 4 th DCA 2018)	7
Winn & Lovett Grocery Co. v. Archer 126 Fla. 308, 171 So. 214 (1936)	13
<u>Florida Statutes</u>	
Fla. Stat. §627.727	13
<u>Other Authorities</u>	
2 Fla. Jur. 2d, Agreed Case and Stipulations, § 6	8
17 Fla. Jur.2d Damages §§ 3-7	13,14
9 Fla. Jur. Damages § 27	15,16

STATEMENT OF THE CASE AND FACTS

By way of background, Appellee initiated the instant litigation on January 4, 2023, by filing its Complaint against Appellant seeking damages in the amount of \$37,026.88 pursuant to an Employee Retention Credit Agreement (“Agreement”) dated March 7, 2022, whereby Appellant agreed to pay Appellee to prepare and submit through the appropriate agencies all paperwork, forms, and materials with the Federal Employee Retention Credit benefits program. (R.15-23;232-247).¹ On February 6, 2023, Appellee filed its Amended Complaint, adjusting the amount of damages sought to \$49,714.37. (R.24-32). On June 12, 2023, Appellee filed a Motion for Leave of Court to File Second Amended Complaint, seeking to update the amount of Employee Retention Credit (“ERC”) received by Appellant and to include a claim for attorneys’ fees. (R.98-108). Appellee’s Second Amended Complaint was deemed filed by Order on Plaintiff’s Motion for Leave to Amend Complaint entered on July 7, 2023, rendering the Second Amended Complaint (“Complaint”) the operative Complaint at issue. (R.109-110).

On July 10, 2023, Appellant filed its Answer and Affirmative Defenses to Plaintiff’s Second Amended Complaint (“Answer”), raising, in pertinent

¹ It is undisputed that the Agreement is the written contract at issue in the instant litigation. (R.232-247).

part: (a) that it is unconscionable to enforce a contingent fee agreement for tax credits, as such a contingency agreement is unethical, against public policy, and prohibited by the Internal Revenue Service (“IRS”); and (b) that the measure of damages for breach of a services contract is the non-breaching party’s lost profits, which are calculated by subtracting the non-breaching party’s performance costs from the contract price. (R.111-118).

On December 12, 2023, Appellant filed a Motion for Partial Summary Judgment on Recoverable Damages (“Appellant MSJ”) seeking partial summary judgment limiting the Appellee to the stipulated recoverable damages of \$10,000.00. (R.191-203). On January 24, 2024, the Parties filed a Joint Pretrial Stipulation setting forth stipulated facts and statements of disputed law and fact. (R.232-247). On January 29, 2024, Appellee filed its Motion for Summary Judgment (“Appellee MSJ”) seeking summary judgment as to Count I of its Complaint for Breach of Contract, asserting in pertinent part, that its damages flowing from Appellant’s breach are the liquidated sum of \$49,714.37. (R.248-276).

Both the Appellant MSJ and the Appellee MSJ were heard before the Court at a hearing on March 22, 2024. (R.315-317). On April 3, 2024, the Court entered an Order Granting Plaintiff’s Order on Motions for Summary Judgment & Final Judgment (“Final Judgment”) granting the Appellee MSJ,

denying the Appellant MSJ, and entering Final Judgment for Breach of Contract in the amount of \$49,714.37 in favor of Appellee and against Appellant. (R.320-323). On May 2, 2024, Appellant appealed the Final Judgment, now pending and being the subject matter of this appeal. (R.335-342).

SUMMARY OF ARGUMENT

At the March 22, 2024 hearing, the trial court heard oral arguments on both the Appellant MSJ and the Appellee MSJ, found in favor of Appellee on both motions, and subsequently entered the Final Judgment.

In the Final Judgment, the trial court found that “[Appellant] breached the parties contract by failing to pay for [Appellee’s] services in the amount of 30% of the ERC refund [Appellant] obtained. The Court further finds that [Appellee’s] damages flowing from [Appellant’s] breach are the liquidated sum of \$49,714.37.” (R.320-323).

The trial court erred in failing to apply the damage-limiting provision set forth in the Agreement which limits Appellee’s damages to the sum of \$10,000.00, without making any findings of fact as to the applicability of such provision.

The trial court further erred in awarding Appellee damages for the balance of the subject contract price rather than calculating damages based on Appellee’s lost profits that would have been realized upon performance of the Agreement, together with the reasonable and necessary expenses incurred in good faith by the Appellee in partial performance of the Agreement up to the time of breach.

The trial court further erred by accepting Appellee's proposed final judgment verbatim without an opportunity for comments or objections by the Appellant.

The Final Judgment should be reversed and the case remanded.

STANDARD OF REVIEW

The trial court's interpretation of the contract in failing to apply the damage-limiting provision set forth in the Agreement is a matter of law subject to a *de novo* standard of review. See *Leisure Resorts, Inc. v. City of W. Palm Beach*, 864 So.2d 1163, 1166 (Fla. 4th DCA 2003); *Avatar Dev. Corp. v. De Pani Constr., Inc.*, 834 So.2d 873, 876 n. 2 (Fla. 4th DCA 2002).

Whether the trial court erred in adopting the Parties' Joint Pretrial Stipulation as the only findings of fact supporting the award in the Final Judgment is reviewed using a competent and substantial evidence standard. *Thomas v. Vision I Homeowners Ass'n*, 981 So. 2d 1, 2 (Fla. 4th Dist. App. 2007).

A trial court's determination as to the method of calculating damages is reviewed *de novo*. *HCA Health Services of Fla., Inc. v. CyberKnife Ctr. of Treasure Coast, LLC*, 204 So. 3d 469, 471 (Fla. 4th Dist. App. 2016).

The standard of review of an order granting summary judgment is *de novo*. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla.2000).

ARGUMENT

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY FAILING TO APPLY THE DAMAGE-LIMITING PROVISION SET FORTH IN THE AGREEMENT WHICH LIMITS APPELLEE'S DAMAGES TO THE SUM OF \$10,000.00, WITHOUT MAKING ANY FINDINGS OF FACT AS TO THE APPLICABILITY OF SUCH PROVISION.

It is uncontroverted that the trial court, in the Final Judgment, found that Appellee's damages flowing from Appellant's breach [of the subject contract] are the liquidated sum of \$49,714.37. (R.320-323). It is further uncontroverted that the trial court came to the number \$49,714.37 by calculating 30% of the ERC refund received by Appellant in the amount of \$165,714.56. (R.320-323).

Without making any specific findings of facts, Paragraph 1 of the Final Judgment incorporated the "Stipulated Facts" contained in the Parties' Joint Pretrial Stipulation. (R.320-323). The trial court incorrectly applied the Parties' Joint Pretrial Stipulation to the Appellee MSJ because the intent of the Appellant in stipulating to those facts was solely for the purpose of trial, and not for any other purpose, hence the heading of the document being titled "Joint Pretrial Stipulation." (R. 232-247). The trial court did not interpret the stipulation in line with the intent of the parties. See *Wiener v. The Country Club at Woodfield, Inc.*, 254 So. 3d 488, 492 (Fla. 4th DCA 2018), stating: "When construing stipulations, a court should attempt to interpret it in line

with the apparent intent of the parties.” *Utopia Provider Sys., Inc. v. Pro-Med Clinical Sys., LLC*, 196 So.3d 557, 561 (Fla. 4th DCA 2016). As explained in *Travelers Insurance Co. v. VES Service Co.*, 576 So.2d 1349 (Fla. 1st DCA 1991): A stipulation ... must be carefully examined to determine whether the language used actually discloses a clear, positive, and definite stipulated fact. The statement should not be vague or ambiguous. Nevertheless, it should receive a construction in harmony with the apparent intention of the parties. It is not to be construed technically, but rather in accordance with its spirit, in furtherance of justice, in the light of the circumstances surrounding the parties, and in view of the result that they were attempting to accomplish. 2 Fla. Jur. 2d, Agreed Case and Stipulations, § 6; see *Federal Land Bank of Columbia v. Brooks*, 139 Fla. 506, 190 So. 737 (Fla. 1939); *Id.*

Based solely on the Parties’ Joint Pretrial Stipulation’s Stipulated Facts adopted in Paragraph 1 of the Final Judgment, the trial court found that, “[Appellant] breached the parties’ contract by failing to pay for [Appellee’s] services in the amount of 30% of the ERC refund [Appellant] obtained. The Court further finds that [Appellee’s] damages flowing from [Appellant’s] breach are the liquidated sum of \$49,714.37.” (R.320-323).

The trial court erred in its finding that the damages flowing from Appellant’s breach are the liquidated sum of \$49,714.37 because the

Appellee's recoverable damages can only be those resulting from the breach and contemplated by the Parties at the time they entered into the Agreement. *Sharick v. S.E. U. of Health Scis., Inc.*, 780 So. 2d 136, 139 (Fla. 3d Dist. App. 2000) ("Damages recoverable by a party injured by a breach of contract are those which would naturally result from the breach and can reasonably be said to have been contemplated by the parties at the time the contract was made.").

The damages contemplated by the Parties at the time they entered into the Agreement is clearly and unequivocally set forth in Paragraph 4 of the Agreement as a fee in the amount of \$10,000.00, which expressly states: "If Client terminates this Agreement for any reason [...] Client shall be liable for an early termination fee in the amount of \$10,000.00 [...] if not paid then Firm will have the right to collect and purs[u]e the early termination fee [...]." (R.248-276).

Where a contract provides a damage-limiting provision, the court finds the provision to be valid and enforceable where the provision is clear and unambiguous. *See, e.g., AT & T Information Systems, Inc. v. Enterprises, A.B.C., Inc.*, 486 So. 2d 652, 652 (Fla. 3d DCA 1986) (holding the damage-limiting provision was clear and unambiguous therefore the plaintiff was limited to recover a maximum of the daily average charge multiplied by the

number of malfunction days and one month's recurring charge, as provided in the contract); see also *Metro. Dade Cnty. v. Worsham Bros. Co., Inc.*, 563 So. 2d 1107, 1108 (Fla. 3d DCA 1990) ("It is well settled that courts of this state will uphold any limitation of remedy or liability provision in a contract as long as the limitation is mutual, unequivocal and reasonable."); *Black v. Frank*, 176 So. 2d 113, 115 (Fla. 1st DCA 1965) ("Parties may stipulate by contract what the consequences of a breach shall be, and such stipulation, if reasonable, is controlling and excludes other consequences").

When entering into the Agreement, the Appellant expressly agreed the early termination fee "IS NOT A PENALTY" based on the understanding that the \$10,000.00 non-penalty was the amount the Appellant was obligated to pay the Appellee in the event it breached or opted to terminate the Agreement. (R.248-276; R.191-203).

Pursuant to Section 2 of the Agreement, Appellant retained Appellee to represent Appellant in obtaining "ALL The ERC, FFCRA & EPSLA eligible to the client for calendar year 2020 and 2021, and [Appellee] agree[d] to provide tax credits services and to represent [Appellant's] interests, all according to the terms set forth in the Agreement for the following tax agencies: IRS." (R.98-108).

The trial court found in the Final Judgment that “[Appellant] breached the parties’ [Agreement] by failing to pay for [Appellee’s] services in the amount of 30% of the ERC refund [Appellant] obtained. (R.320-323). However, the Final Judgment is completely devoid of any finding of fact to establish whether the Agreement was terminated in accordance with the terms and conditions thereof, despite Appellant’s Affidavit of Joe Dipalma in support of Appellant’s MSJ which unequivocally states that Appellant terminated the Agreement. (R.191-203; R.320-323). Moreover, the Final Judgment is completely devoid of any finding of a material breach of the Agreement. (R.320-323); *Covelli Fam., L.P. v. ABG5, L.L.C.*, 977 So. 2d 749, 752 (Fla. 4th Dist. App. 2008) (“To constitute a vital or material breach, a party’s nonperformance must ‘go to the essence of the contract.’”).

Accordingly, without any finding of fact regarding whether Appellee performed **all** services agreed to under the Agreement, or whether the agreement was terminated prior thereto, and without any finding of fact as to what action or inaction constituted a material breach of the Agreement, it was impossible for the trial court to ignore the clear and unambiguous termination fee of \$10,000.00, and instead award Appellee damages in the liquidated sum of \$49,714.37. (R.320-323).

As summarized by the Supreme Court of Florida in *Atlanta & St. A.B. Ry. Co. v. Thomas*, "[t]o warrant a recovery of substantial damages, the losses complained of must have actually and proximately resulted from the breach of the contract." 53 So. 510, 514-15 (Fla. 1910). The [Florida Supreme] Court continued that losses for a breach of contract claim must be reasonably certain and reasonably considered as either arising naturally of the agreement or reasonably in the contemplation of the parties as a probable result of the breach. *Id.* at 514. Stated differently, damages recoverable by a party injured by an alleged breach of a contract are limited to those that "flow from the breach" and can reasonably have been contemplated by the parties at the time they entered into the contract. *Mnemonics, Inc. v. Max Davis Associates, Inc.*, 808 So. 2d 1278, 1280 (Fla. 5th DCA 2002); see also *State ex rel. Peters v. Hendry*, 31 So. 2d 254 (Fla. 1947) (holding that damages resulting from the breakdown of equipment was appropriate, but damages related to losses suffered from the inability to use the equipment was too remote and speculative to recover as it was not in the contemplation of the parties at the time of contract).

The trial court erroneously ignored the damages reasonably contemplated by the Parties at the time they entered into the Agreement and

incorrectly found that the damages flowing from Appellant's breach are the liquidated sum of \$49,714.37. (R. 248-276; R.320-323).

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY APPLYING THE INCORRECT MEASURE OF DAMAGES THEREBY ERRONEOUSLY FINDING THAT PLAINTIFF'S DAMAGES FLOWING FROM DEFENDANT'S BREACH ARE THE LIQUIDATED SUM OF \$49,714.37.

The trial court's finding that Appellee's damages are the liquidated sum of \$49,714.37 was misguided. Generally, a person or entity injured by either a breach of contract or by a wrongful or negligent act or omission of another is entitled to recover a fair and just compensation that is commensurate with the resulting injury or damage. See *Winn & Lovett Grocery Co. v. Archer*, 126 Fla. 308, 171 So. 214 (1936); *Broxmeyer v. Elie*, 647 So.2d 893 (Fla. 4th DCA 1994). A plaintiff can receive compensatory or actual damages for the loss or injury caused by the action of the defendant. See *McLeod v. Continental Ins. Co.*, 591 So.2d 621 (Fla.1992), superseded on other grounds by § 627.727(10), Fla. Stat. (Supp.1992). Compensatory damages are designed to make the injured party whole to the extent that it is possible to measure such injury in monetary terms. See *Mercury Motors Express, Inc. v. Smith*, 393 So.2d 545 (Fla.1981); *Totale, Inc. v. Smith*, 877 So.2d 813 (Fla. 4th DCA 2004); *Cooperative Leasing, Inc. v. Johnson*, 872 So.2d 956 (Fla. 2d DCA 2004). A plaintiff, however, is not entitled to recover compensatory

damages in excess of the amount which represents the loss actually inflicted by the action of the defendant. See 17 Fla. Jur.2d Damages §§ 3–7 (2004); *MCI Worldcom Network Services, Inc. v. Mastec, Inc.*, 995 So. 2d 221, 223 (Fla. 2008).

Accordingly, even assuming *arguendo* that the liquidated damages provision set forth in Paragraph 4 of the Agreement, setting a termination fee in the amount of \$10,000.00, was not applicable, in finding that Appellant breached the Agreement, Appellee would only become entitled to compensatory or actual damages, i.e., lost profit damages. *Physicians Reference Laboratory, Inc. v. Daniel Seckinger, M.D. and Associates, P.A.*, 501 So.2d 107, 108 (Fla. 3d DCA 1987); *Golf & Racquet Club of Palm Beach, Inc. v. Campbell-Dickey Advertising, Inc.*, 259 So.2d 192, 193 (Fla. 4th DCA 1972); *Ballard v. Krause*, 248 So.2d 233, 234 (Fla. 4th DCA 1971). The burden of establishing profit as if there had been no breach of the contract is on [Appellee]. *Ballard*, 248 So.2d at 234. Damages cannot be based purely and simply upon the entire balance of the contract price to which [Appellee] would have been entitled upon full performance. *Golf & Racquet Club*, 259 So.2d at 193. In order to prove its prospective lost profits, [Appellee] must show its total costs and expenses necessary to perform the contract and then deduct that sum from the balance owing on the contract price.

Physicians Reference Laboratory, 501 So.2d at 109; *Ballard*, 248 So.2d at 234.

The trial court erred in finding that Appellee's damages flowing from the breach of the Agreement was the balance of the contract price, i.e. \$49,714.37. (R. 320-323). Rather, the trial court was required to determine Appellee's actual or compensatory damages, requiring Appellee to show its total costs and expenses necessary to perform the contract and then deduct that sum from the balance owing on the contract price.

Golf & Racquet Club., 259 So. 2d at 193 is also instructive. In *Golf & Racquet Club*, the Court held "Appellee [h]aving elected to sue on the contract rather than in quantum meruit, was necessarily limited in its recovery to the damages it sustained as a consequence of appellant's breach of the contract" (citing *Poinsettia Dairy Products, Inc. v. Wessel Co.*, 1936, 123 Fla. 120, 166 So. 306 ("where the performance of a contract to furnish services is prevented by the other party, the damages sustained by the party obligated to furnish the services is not the full contract price as though the contract had been fully performed, but rather is the lost profits that would have been realized upon performance of the contract, together with the reasonable and necessary expenses incurred in good faith by the plaintiff in partial

performance of the contract up to the time of breach. See 9 Fla.Jur., Damages, Section 27.”).

The trial court could not award Appellee the balance of the contract price, but rather was obligated to calculate damages by determining Appellee’s lost profits that would have been realized upon performance of the Agreement, together with the reasonable and necessary expenses incurred in good faith by the Appellee in partial performance of the Agreement up to the time of breach.

THE TRIAL COURT ERRED GRANTING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT BY ACCEPTING APPELLEE’S PROPOSED FINAL JUDGMENT VERBATIM WITHOUT AN OPPORTUNITY FOR COMMENTS OR OBJECTIONS BY THE APPELLANT.

The trial court erred by accepting Appellee’s proposed final judgment verbatim without an opportunity for comments or objections by the Appellant. At the conclusion of the March 22, 2024 hearing on Appellee’s MSJ and Appellant’s MSJ, the trial court requested that each Party prepare and submit competing proposed orders/final judgments for the trial court’s consideration. Such practice is not uncommon, as set forth in the instructive case of *Perlow v. Berg-Perlow*, 875 So. 2d 383 (Fla. 2004), wherein the Supreme Court of Florida explains, “We understand and appreciate the fact that a trial judge in these often complex and multi-issue dissolution cases can benefit from

proposed findings and conclusions prepared by the parties. Such proposals can serve as a starting point and reminder of the facts and issues that should be considered and weighed by the judge in his or her own evaluation. However, such submissions cannot substitute for a thoughtful and independent analysis of the facts, issues, and law by the trial judge.” *Perlow* at 389–90 (Fla. 2004).

Rather than using the Parties’ submitted competing orders as a starting point and a reminder of the facts and issues that should be considered and weighed by the judge in his own evaluation, the trial court Judge improperly adopted Appellee’s submitted order verbatim, as the Final Judgment. (R.320-323). *Id.* at 390 (“When the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case.”). Accordingly, the trial court Judge failed to exercise his or her independent judgment in executing the Final Judgment.


CONCLUSION

Based on the foregoing, the Order here under review should be reversed with directions to the lower Court on remand to enter final judgment in favor of Appellee in the amount of \$10,000.00.

Alternatively, based on the foregoing, the Order here under review should be reversed with directions to the lower Court on remand to hold a trial on lost profit damages.

Respectfully submitted,

MATTHEW D. GLACHMAN, ESQ.
Attorney for Appellant
6421 Congress Ave., Suite 120
Boca Raton, FL 33487
Telephone: 561-859-0679
Email: matt@glachmanbrill.com

By: 

Matthew D. Glachman
Florida Bar No. 98967

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to counsel by U.S. Mail and E-Mail to Brad Singer, Esq., P.O. Box 880305, Boca Raton, FL 33488 at brad@bradsingerlaw.com on this 5th day of September, 2024.



Matthew D. Glachman

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing comports with the font and spacing requirements of Fla. R. App. P. 9.210.



Matthew D. Glachman