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Statutory Proposals for Settlement In Probate and Trust Litigation

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Florida's statutory proposal for settlement is a powerful, yet often misunderstood, litigation tool. A valid statutory proposal certainly has the potential to bring about the early resolution of a lawsuit. Even when it does not, however, a valid statutory proposal for settlement – and the possibility of an attorney's fees judgment that comes with it – can nevertheless dramatically change the dynamics of a litigation matter. To say that the practical application of the statute is a complex matter would be a serious understatement. For this reason, this article will review the ever-changing scope of the statute and dissect some of the numerous appellate opinions interpreting the statute.¹

The Basics

Section 768.79, Fla. Stat.,² commonly known as the “proposal for settlement” or “offer of judgment” statute (referred to herein as the “statutory proposal statute”), provides that in any civil action for damages, either party may formally offer to settle all or some portion of the case for a specific monetary sum. The heart of the statute, and the source of most of its jurisprudential twists and turns, is its fee-shifting provision. The specific way in which the provision works is described below, but the general principle is this: if a party (the “offering party”) proposes a formal settlement offer and the other party (the “rejecting party”) rejects said offer, and the dispute is subsequently resolved with a judgment that leaves the rejecting party in a less favorable position that it would have been under the settlement proposal,³ the offering party may be entitled to an award of its reasonable attorney's fees and costs (referred to herein as the “fee-shifting provision”).

The procedural framework for offering and accepting a proposal for settlement is found in Rule 1.442 of the Florida Rules of Civil Procedure.⁴ Thus, to be valid, a statutory proposal for settlement must comply with the requirements of both Section 768.79, Fla. Stat., and Rule 1.442.⁵

The fee-shifting provision was designed to promote settlement, reduce litigation costs, and conserve judicial resources.⁶ However, as the Florida Supreme Court (the “Fla. Sup. Ct.”) recently noted, the statute “has not produced the desired outcome as the validity and applicability of section 768.79 and Florida Rule of Civil Procedure 1.442 have produced a significant amount of independent litigation.”⁷

At first glance, it might not seem obvious as to why the statute has generated so much independent litigation or, for that matter, whether any of the numerous issues discussed by the appellate courts have any particular application in the context of probate and trust litigation. Moreover, it might not even necessarily seem desirable to consider yet another avenue for obtaining attorney's fees in probate and trust litigation, which is a field already crowded with various

types of fees provisions.

However, many of the issues and scenarios addressed in the abundant case law interpreting the statute will likely be quite familiar to probate and trust litigators. For instance, and as discussed below, Florida courts have grappled with questions such as whether Section 768.79, Fla. Stat., applies to lawsuits that seek both equitable and monetary relief, whether it applies to declaratory judgment actions, and whether it applies to lawsuits that are governed by the substantive law of another jurisdiction. Further, the unique nature of the fee-shifting provision warrants its consideration even in probate and trust litigation where other fees options may already be available.

The Statute

Section 768.79(1), Fla. Stat., provides, in pertinent part, as follows:

In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him . . . from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award. . . . If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the date of the filing of the demand. If rejected, neither an offer nor demand is admissible in subsequent litigation, except for pursuing the penalties of this section.⁸

In other words, if a plaintiff does not accept a defendant's valid proposal for settlement, and the judgment that is ultimately entered is at least 25 percent less than the defendant's proposed settlement amount, the defendant may obtain an attorney's fees judgment against the plaintiff. If, on the other hand, a defendant does not accept a plaintiff's valid proposal for settlement, and the judgment ultimately entered is at least 25 percent greater than the plaintiff's proposed settlement amount, the plaintiff may obtain an attorney's fees judgment against the defendant. The statutory proposal statute has been described as the legislature's attempt to provide a way to encourage parties to realistically review at their claims and defenses and settle matters before protracted litigation ensues.⁹

With respect to attorney's fees, Florida courts generally follow the common-law rule known as the “American Rule,” under which each party bears its own fees regardless of the

prevailing party.¹⁰ The American Rule may be modified by statute or by contractual agreement of the parties.¹¹ Section 768.79, Fla. Stat., therefore, is an example of a statutory modification of the American Rule – one that creates a substantive right to an award of attorney’s fees.¹²

Because the fee-shifting provision is in derogation of common law, Florida courts strictly construe both the statute and the corresponding rule of civil procedure.¹³ Proposals that do not unambiguously comply with the requirements of both the statute and the rule are likely to be deemed invalid.¹⁴

The Rule

Florida Rule of Civil Procedure 1.442 sets out the format and content of formal proposals for settlement. Subsection (c) provides as follows:

- (1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.
- (2) A proposal shall:
 - (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made;
 - (B) identify the claim or claims the proposal is attempting to resolve;
 - (C) state with particularity any relevant conditions;
 - (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal;
 - (E) state with particularity the amount proposed to settle a claim for punitive damages, if any;
 - (F) state whether the proposal includes attorneys’ fees and whether attorneys’ fees are part of the legal claim; and
 - (G) include a certificate of service in the form required by rule 1.080.

A plaintiff must wait at least 90 days after service of process before serving a statutory proposal for settlement (a “statutory proposal”) on the defendant.¹⁵ A defendant, on the other hand, must wait at least 90 days after the complaint is filed before serving a statutory proposal on the plaintiff.¹⁶ Neither party can serve a statutory proposal within the 45-day period before trial or the first day of the docket on which the case is set for trial, whichever is earlier.¹⁷

An offeree who wishes to accept a statutory proposal must do so in writing within 30 days of service.¹⁸ A statutory proposal may not be accepted, however, after entry of summary judgment even if said 30 days has not yet run.¹⁹

Although Rule 1.442 authorizes statutory proposals to be made to “any combination of parties properly identified in the proposal,” the rule also requires that a joint statutory proposal state the amount and terms attributable to each party.²⁰ Indeed, in multi-party litigations, joint statutory

proposals are often deemed invalid for failure to expressly apportion the amount between the offerors or offerees.²¹

Entitlement To Attorney’s Fees

If an offeree rejects a valid statutory proposal and the judgment that is ultimately entered meets the 25 percent threshold amount (the “threshold amount”), the offeror may seek to invoke the fee-shifting provision and can do so by filing a motion for his or her reasonable attorney’s fees within 30 days of entry of the judgment.²² If the statutory proposal was valid and the threshold amount has been met, the court has no discretion to deny entitlement to such an award.²³ The court may, however, disallow an award of fees if the offeree demonstrates that the statutory proposal was not made in good faith.²⁴ This “good faith” obligation requires that the offeror merely have some reasonable foundation on which to base its offer.²⁵ Indeed, even nominal statutory proposals may be made in good faith so long as the court finds that the offeror had a reasonable basis in making the offer and had the intent to settle the case.²⁶ Furthermore, a statutory proposal that is made solely to obtain the right to attorney’s fees is not grounds for a finding that the offer was made in bad faith.²⁷

The amount of the fees award is determined by the court after an evidentiary hearing, and the statute expressly sets forth some of the factors for the court’s consideration. Section 768.79(7)(b), Fla. Stat., provides:

(7)(b) When determining the reasonableness of an award of attorney’s fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following additional factors:

1. The then apparent merit or lack of merit in the claim.
2. The number and nature of offers made by the parties.
3. The closeness of questions of fact and law at issue.
4. Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
5. Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.
6. The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.

The party entitled to attorney’s fees has the burden of demonstrating the reasonableness of the fees sought by “substantial competent evidence.”²⁸ This evidence typically includes invoices and other information detailing the services provided, as well as the testimony of the attorney who provided the services and an expert witness.²⁹ The

party liable for fees, in turn, has the burden of identifying, with specificity, which hours claimed by the party entitled to fees are either excessive or not reasonable.³⁰

Actions for Damages vs. Equitable Relief

Section 768.79, Fla. Stat., is limited by its own express terms to civil actions for damages.³¹ An “action for damages” includes tort and contract claims in which the plaintiff seeks a monetary judgment. The scope of “civil actions for damages” includes appellate actions.³² Also included within such scope are subrogation claims,³³ class actions,³⁴ and interpleader actions.³⁵

By contrast, the statute does not apply to cases in which litigants seek equitable relief. “Equitable relief” can refer to virtually anything other than a monetary judgment and typically involves a court order for a defendant to do or not do a specific act.³⁶ Statutory proposals have been held inapplicable to actions for equitable relief such as attempts to establish a common law way of necessity across private property,³⁷ forfeiture actions,³⁸ and will revocations.³⁹

In *Miller v. Hayman*, the plaintiff sought to set aside her mother’s will on the ground of lack of testamentary capacity and undue influence.⁴⁰ The plaintiff rejected a statutory proposal in the amount of \$100,000 and ultimately did not prevail on her action.⁴¹ The trial court assessed attorney’s fees against her on the basis of Section 768.79, Fla. Stat., but the Fourth District Court of Appeals (the “4th DCA”) reversed, holding that the statute did not apply to the equitable proceedings even though the offerors argued that the case was “at all times, about money.”⁴²

Given that the statute does not apply to actions for equitable relief, one might conclude that it will be of little to no use in the probate and trust context. After all, it is often said that a probate court is a court of equity,⁴³ and, indeed, many proceedings in the probate court seek equitable relief. This seemingly includes most of the proceedings that Florida Rule of Probate Procedure 5.025 characterizes as “specific adversary proceedings,” such as actions to remove a personal representative, probate a lost will, or determine beneficiaries. Probate courts also hear a fair number of injunction actions, which are classic examples of actions for equitable relief.⁴⁴

Probate and trust litigators would agree that, regardless of the relief sought, most litigation is, at its core, “at all times, about money.” Yet, as the 4th DCA made clear in *Miller v. Hayman*, the motivation of the litigants is not the test for determining the applicability of Section 768.79, Fla. Stat.,. It is the relief sought that matters, and, for the statute to apply, the plaintiff must plainly be seeking relief in the form of monetary damages. Without a doubt, probate courts clearly hear plenty of those types of actions, as surcharge petitions, actions for tortious interference, and many breach of trust actions are all actions that seek monetary relief.

It is common, though, for probate and trust litigation mat-

ters to be “hybrids,” i.e., to involve multi-count complaints seeking some combination of both monetary and equitable relief. The Fla. Sup. Ct. recently addressed the applicability of Section 768.79, Fla. Stat., to such a hybrid matter, albeit outside of the probate and trust litigation context. In *Diamond Aircraft Indus. v. Horowitch*, the plaintiff filed an action for specific performance of a contract or, in the alternative, to recover damages.⁴⁵ The case was removed to federal court where the defendant served a statutory proposal to resolve the entire case.⁴⁶ The plaintiff rejected the offer and did not prevail at trial.⁴⁷ The Middle District of Florida held that the statutory proposal was not valid because it included a count for equitable relief.⁴⁸ On appeal, the federal Eleventh Circuit Court of Appeals certified several issues to the Fla. Sup. Ct., which ultimately agreed with the Middle District of Florida that the statutory proposal for settlement was invalid.⁴⁹ Specifically, the Fla. Sup. Ct. held that “section 768.79 does not apply to an action for both damages and equitable relief and no exception for a meritless equitable claim exists”⁵⁰

Notably, the Fla. Sup. Ct. expressly declined to answer the question of whether the statutory proposal could have been deemed valid if it had been proposed as an offer to resolve only the count that sought to recover damages.⁵¹

Thus, a plaintiff who asserts at least one count for equitable relief may be shielding himself or herself from the fee-shifting provisions of any potential statutory proposal (and may, by the same token, also be precluding himself or herself from serving a statutory proposal). It is yet to be seen, however, whether the courts will enforce the fee-shifting provision where a statutory proposal is offered to settle only the counts of the complaint that seek monetary relief.

Claims for Breach of Fiduciary Duty and Declaratory Relief

Certain causes of actions can be difficult to categorically label as either actions for damages or for equitable relief. Two such actions that frequently arise in probate and trust litigation are claims for breach of fiduciary duty and claims seeking declaratory relief.

Breach of Fiduciary Duty

As the 4th DCA has explained, a “[b]reach of fiduciary duty is an ambiguous expression.”⁵² Fiduciaries typically have a number of legal and equitable duties towards their beneficiaries. Personal representatives and trustees are certainly no exceptions. For example, trustees owe duties to make proper and timely distributions, to properly invest trust assets, and to inform and account to the beneficiaries.

“Thus, it has been said that, ‘[a] fiduciary who commits a breach of his duty as fiduciary is guilty of tortious conduct and the beneficiary can obtain redress either at law or in

equity for the harm done.”⁵³ For that reason, the question of whether a statutory proposal for settlement will apply to an action for breach of fiduciary duty likely will turn on the particular breach alleged to have occurred and the nature of the remedy sought.

Declaratory Relief

Declaratory relief actions can similarly be ambiguous. These types of actions are also fairly common in probate and trust litigation.⁵⁴ In determining whether Section 768.79, Fla. Stat., is applicable to an action for declaratory relief, Florida courts examine – not surprisingly – “whether the ‘real issue’ is one for damages or declaratory relief.”⁵⁵

In *Nat’l Indemnity Co. of the So. v. Consol. Ins. Servs.*, the 4th DCA held that the statutory proposal statute was inapplicable because the plaintiff’s cause of action sought a declaration as to whether an insurance policy was in full force and effect on the date of an automobile accident.⁵⁶ The 4th DCA held that such a declaratory relief action could not be deemed a civil action for damages.⁵⁷

However, the 4th DCA reached a different conclusion in both *Nelson v. The Marine Grp. of Palm Beach, Inc.*⁵⁸ and *Coast to Coast Real Estate, Inc. v. Waterfront Props., Inc.*⁵⁹ In *Nelson*, the declaratory judgment action at issue sought a determination as to whether a seller was entitled to retain an escrowed deposit as liquidated damages.⁶⁰ The 4th DCA deemed that to be an action for monetary relief and held that the statutory proposal statute was applicable.⁶¹

In *Coast to Coast*, the declaratory judgment action at issue sought a determination as to who was entitled to real estate commissions.⁶² Again, the 4th DCA deemed that to be an action for monetary relief and held that the statute was applicable.⁶³

Judgment vs. Net Judgment

In construing the statutory proposal statute, courts have also considered the relationship between the fee-shifting provision and other fee-shifting statutes and agreements.

As discussed above, the question of whether a party who has made a statutory proposal will be entitled to an award of attorney’s fees turns, in part, on whether the judgment meets the threshold amount above or below the settlement offer. That calculation, however, is not always as straightforward as it might seem.

The Fla. Sup. Ct. has “interpreted the ‘judgment obtained’ under Section 768.79, Fla. Stat., to include the total net judgment, which includes the plaintiff’s taxable costs up to the date of the offer and, where applicable, the plaintiff’s attorney’s fees up to the date of the offer.”⁶⁴

In other words, to determine whether a plaintiff has obtained a judgment that is at least 25 percent lower than the settlement amount proposed by the defendant, or at least 25 percent greater than the settlement amount proposed by

the plaintiff itself, the courts must take into account, among other things, any attorney’s fees to which the plaintiff might otherwise be entitled under any other statute or contractual agreement. Adding that amount to the judgment obtained by the plaintiff can end up determining whether the threshold amount is satisfied and, thus, whether the fee-shifting provision is triggered.⁶⁵

For probate and trust litigators, this can be a particularly significant aspect of the case law interpreting statutory proposals. That is because many types of probate and trust litigation are already subject to one or more statutory attorney’s fees provisions. For example, in actions for breach of fiduciary duty against a trustee, the court is authorized to award fees and may direct that those fees be satisfied from the personal property of another party.⁶⁶ Other statutes authorize an award of fees where an attorney has rendered services to an estate or trust and permit the court to direct that those fees be directed from another party’s share of an estate or trust.⁶⁷ Further, personal representatives and trustees are generally permitted to pay their reasonable attorney’s fees from estate or trust assets.⁶⁸

The specific manner in which these variations of attorney’s fees provisions would be considered by the courts in calculating a plaintiff’s “net judgment” is yet to be examined in the case law. But probate and trust litigators would be wise to consider the potential that exists for an award of attorney’s fees under these statutes when attempting to decide on a particular dollar amount to offer as part of a statutory proposal and also when determining whether an offeror has satisfied the threshold amount.

Given that these other avenues for obtaining fees already exist in probate and trust law, it is worth considering what role, if any, the fee-shifting provision might play in probate and trust litigation and whether there is even a need for it. The answer, of course, depends on the circumstances of each litigation. A particularly interesting aspect of the fee-shifting provision is that it allows for the possibility that a non-prevailing party might nevertheless obtain a fees judgment against a prevailing party if the prevailing party has not obtained a judgment that is greater than the requisite threshold amount. The possibility that such a scenario could arise might, under certain circumstances, be a sufficient reason to serve a well-considered statutory proposal.

Cases Governed By Law of Another State

Another issue recently addressed by the Fla. Sup. Ct. is whether statutory proposals for settlement are valid and enforceable when served in connection with lawsuits that are governed by the substantive law of another jurisdiction.

This is an issue that may not arise quite as frequently in probate and trust litigation as it does in commercial litigation where, for example, a contractual agreement of the parties may include a choice of law provision designating the law of a foreign state. However, there are occasions

when a trust instrument may be governed by the laws of another state and, yet, the parties find themselves litigating in a Florida court.

In *Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co.*, the Fla. Supreme Court held that a statutory proposal is invalid when served in connection with a lawsuit that is governed by the laws of another jurisdiction.⁶⁹ This particular case began in the federal court where, on appeal, the federal Eleventh Circuit Court of Appeals certified the issue, among others, to the Fla. Sup. Ct.,⁷⁰ which held that the fee-shifting provision creates a right that it is substantive, not procedural, for conflicts of law purposes.⁷¹ For that reason, the Fla. Sup. Ct. determined that the statute is “inapplicable in instances where the parties have agreed to be governed by the substantive law of another jurisdiction.”⁷²

Conclusion

A statutory proposal can be an effective way of resolving a litigation. It can also be used as a means of recovering attorney’s fees when a lawsuit does not reach a pre-judgment settlement. Case law interpreting Section 768.79, Fla. Stat., however, is constantly evolving, and the issues that arise in these cases are seemingly endless. Although the courts have rarely discussed the scope and applicability of the statute in the context of probate and trust litigation in particular, many of the issues explored in the case law are issues that frequently surface in probate and trust litigation. Litigants who wish to serve a valid and enforceable statutory proposal should take care to comply not only with the strict requirements of Section 768.79, Fla. Stat., and Florida Rule of Civil Procedure 1.442 but also with the many nuances of the statute that are addressed in the numerous appellate opinions. ■



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Endnotes:

- 1 As of January 2013, there were over 700 reported cases citing § 768.79, Fla. Stat. (the proposal for settlement statute).
- 2 Unless specifically stated to the contrary, all section references in this article shall be references to the Florida Statutes.
- 3 To trigger a defendant’s entitlement to attorney’s fees, the judgment must be at least 25 percent less than the defendant’s settlement proposal. To trigger a plaintiff’s entitlement to attorney’s fees, the judgment must be at least 25 percent greater than the plaintiff’s settlement proposal. § 768.79(1), Fla. Stat.
- 4 Unless specifically stated to the contrary, all references in this article to a “Rule” shall be to the Florida Rules of Civil Procedure.
- 5 *Campbell v. Goldman*, 959 So. 2d 223, 224 (Fla. 2007).
- 6 *Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 79 (Fla. 2012).
- 7 *Id.*
- 8 The statute itself contains an ambiguity. While subsection (1) provides that attorney’s fees accrue “from the date of filing of the offer,” subsections 6(a) and (b) provide that fees will accrue “from the date the offer was served,” which is an earlier date. The courts have adopted the latter as the correct approach. See *Jordan v. Food Lion, Inc.*, 670 So. 2d 138, 142 (Fla. 1st DCA 1996).
- 9 *McMullen Oil Co. v. ISS Int’l Serv. Sys.*, 698 So. 2d 372, 373-74 (Fla. 2d DCA 1997).
- 10 *Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004).
- 11 *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993).
- 12 *TGI Friday’s, Inc. v. Dvorak*, 663 So. 2d 606, 611 (Fla. 1995).
- 13 *Ledesma v. Iglesias*, 975 So. 2d 1240, 1242 (Fla. 4th DCA 2008).
- 14 *Campbell*, 959 So. 2d at 225 (citing several examples).
- 15 Rule 1.442(b).
- 16 *Id.*
- 17 *Id.*
- 18 Rule 1.442 (f)(1). The provisions for “mail time” do not apply.
- 19 *Kroener v. Fla. Ins. Guaranty Assn.*, 63 So. 3d 914, 920 (Fla. 4th DCA 2011).
- 20 Rule 1.442(c)(e).
- 21 See, e.g., *Duplantis v. Brock Specialty Servs., Ltd.*, 85 So. 3d 1206, 1209 (Fla. 5th DCA 2012); *Arnold v. Audiffred*, 98 So. 3d 746, 747 (Fla. 1st DCA 2012); *C & S Chemicals, Inc. v. McDougald*, 754 So. 2d 795, 798 (Fla. 2d DCA 2000).
- 22 § 768.79(6), Fla. Stat.
- 23 *Schmidt v. Fortner*, 629 So. 2d 1036, 1040 (Fla. 4th DCA 1993).
- 24 *Id.* at 1040; § 768.79(7)(a), Fla. Stat.
- 25 *Schmidt*, 629 So. 2d at 1039.
- 26 *Talbott v. Am. Isuzu Motors, Inc.*, 934 So. 2d 643, 647 (Fla. 2d DCA 2006).
- 27 *Ryan, IV v. Lobo De Gonzalaez*, 841 So. 2d 510, 522 (Fla. 4th DCA 2003).
- 28 *Quality Holdings of Fla. Inc. v. Selective Instrs., IV, LLC*, 25 So. 3d 34, 37 (Fla. 4th DCA 2009).
- 29 *Id.*

30 *Centex-Rooney Constr. Co. v. Martin County*, 725 So. 2d 1255, 1259 (Fla. 4th DCA 1999).
 31 Section 768.79(1).
 32 *Metropolitan Dade County v. Cerezo*, 774 So. 2d 1 (Fla. 3d DCA 1996).
 33 *Stewart v. Tasnet, Inc.*, 718 So. 2d 820 (Fla. 2d DCA 1998).
 34 *Oruga Corp. v. AT&T Wireless of Fla., Inc.*, 712 So. 2d 1141 (Fla. 3d DCA 1998).
 35 *Duncan v. Prudential Ins. Co.*, 690 So. 2d 687 (Fla. 1st DCA 1997).
 36 *Hutchens v. Maxicenters, USA*, 541 So. 2d 618, 620-21 (Fla. 5th DCA 1988).
 37 *Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Prop. Owners Assn., Inc.*, 22 So. 3d 140, 144-145 (Fla. 4th DCA 2009).
 38 *Rosado v. Bieluch*, 827 So. 2d 1115, 1117 (Fla. 4th DCA 2002).
 39 *Miller v. Hayman*, 766 So. 2d 1116, 1117 (Fla. 4th DCA 2000).
 40 *Id.* at 1117.
 41 *Id.*
 42 *Id.*
 43 *Aiello v. Hyland*, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001); *In re Estate of Howard*, 542 So. 2d 395, 397 (Fla. 1st DCA 1999).
 44 *Clevens v. Omni Healthcare, Inc.*, 83 So. 3d 1011, 1012 (Fla. 5th DCA 2012).
 45 *Diamond v. Horowitz*, ___ So. 3d ___, No. SC11-1371, 2013 WL 105328, 38 Fla. L. Weekly 517 (Fla. Jan. 10, 2013).
 46 *Id.* at *2.
 47 *Id.*
 48 *Id.* at *3.
 49 *Id.* at *8.
 50 *Id.*
 51 *Id.* at *11.
 52 *King Mountain Condo. Assn. v. Gundlach*, 425 So. 2d 569, 571-

72 (Fla. 4th DCA 1982).
 53 *Id.* (citing Restatement of Restitution § 138 cmt. a (1937)); *see also* Restatement (Second) of Torts § 874 cmt. b (1979).
 54 *See, e.g.*, § 86.041 (authorizing declaratory actions in estate administration context); § 736.0201(4)(f) (authorizing declaratory actions in trust context).
 55 *Nat'l Indem. Co. of the So. v. Conso. Ins. Servs.*, 778 So. 2d 404, 408 (Fla. 4th DCA 2001).
 56 *Id.* at 406.
 57 *Id.* at 408.
 58 *Nelson v. The Marine Grp. of Palm Beach, Inc.*, 677 So. 2d 998 (Fla. 4th DCA 1996).
 59 *Coast to Coast Real Estate, Inc. v. Waterfront Props., Inc.*, 668 So. 2d 686 (Fla. 4th DCA 1996).
 60 *Nelson*, 677 So. 2d at 999.
 61 *Id.*
 62 *Coast to Coast*, 688 So. 2d at 687-88.
 63 *Id.*
 64 *Shands Teaching Hosp. and Clinics, Inc. v. Mercury Ins. Co. of Fla.*, 97 So. 3d 204, 214 (Fla. 2010) (citing *White v. Steak & Ale of Fla., Inc.*, 816 So. 2d 546, 551 (Fla. 2002)).
 65 *Id.*; *see also Frosti v. Creel*, 979 So. 2d 912, 916 (Fla. 2008); *White*, 816 So. 3d at 549-551.
 66 § 736.1004, Fla. Stat.
 67 §§ 733.106 and 736.1005, Fla. Stat.
 68 §§ 733.6171 and 736.1007, Fla. Stat.
 69 *Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 81-82 (Fla. 2012).
 70 *Id.* at 75.
 71 *Id.* at 80.
 72 *Id.* at 81.

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