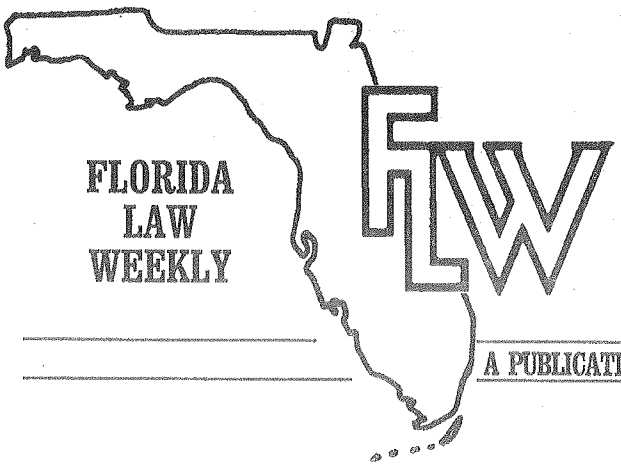
Volume 23, Number 7, February 29, 2016



SUPPLEMENT

A PUBLICATION OF JUDICIAL AND ADMINISTRATIVE RESEARCH ASSOCIATES, INC.

Pages 657-800

Reports of Decisions of:

THE CIRCUIT COURTS OF FLORIDA
THE COUNTY COURTS OF FLORIDA
and
Miscellaneous Proceedings of Other Public Agencies

Readers are invited to submit for publication any decisions of these courts and any reports from other public bodies which are not generally reported and which would, because of the issues involved, be of interest to the legal community.

SUMMARIES

Summaries of selected opinions or orders published in this issue.

- LICENSING—DRIVER'S LICENSE—HARDSHIP LICENSE—DENIAL—CONSUMPTION OF ALCOHOL. **Although the Department of Highway Safety and Motor Vehicles' interpretation of the statutory requirement that an applicant for a hardship license be "drug-free" for at least five years prior to a hearing includes alcohol is both reasonable and supported by the legislative history, the interpretation goes beyond the plain meaning of the statute's terms and imposes an additional substantive requirement not apparent from the literal reading of the statute. Accordingly, this interpretation must be effected through formal rulemaking, and the Department cannot rely on an invalid unpromulgated rule to deny a hardship license based on alcohol consumption.** *WALSH v. DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. Circuit Court, Second Judicial Circuit (Appellate) in and for Leon County. Filed January 19, 2016. Full Text at Circuit Courts-Appellate Section, page 657a.*

- STAND YOUR GROUND LAW. **A Miami-Dade County circuit judge ruled that a defendant was not entitled to immunity from charges arising out of incident in which he wrestled a beer bottle out of the hand of an unruly barbershop patron and struck him with it where, although the victim was belligerent and refused to leave, he did not threaten physical violence toward the defendant or the shop patrons.** *STATE v. HEREDIA. Circuit Court, Eleventh Judicial Circuit in and for Miami-Dade County. Filed November 20, 2015. Full Text at Circuit Courts-Original Section, page 739a.* **In two other cases involving homicide charges, the defendants were granted immunity from prosecution.** *STATE v. GODFREY. Circuit Court, Eleventh Judicial Circuit in and for Miami-Dade County. Filed December 24, 2015. Full Text at Circuit Courts-Original Section, page 740a. STATE v. MATTHEWS. Circuit Court, Eleventh Judicial Circuit in and for Miami-Dade County. Filed July 31, 2015. Full Text at Circuit Courts-Original Section, page 735a.*

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services. As such, his conclusion is not "based upon sufficient facts or data," and his conclusions are not the "product of reliable principles and methods," as required by Fla. Stat. §90.702. See *Perez v. Bell South Telecommunications Inc.*, 138 So.3d 492 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D865b].

For the reasons stated above, Defendant has not come forward with any admissible evidence demonstrating it paid a "reasonable" amount which would create a genuine issue of material fact. Accordingly, it is hereby:

ORDERED AND ADJUDGED that the Plaintiff's Motion for Final Summary Judgment is GRANTED. The Plaintiff is directed to submit to the Court a proposed final judgment.

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[1]The amendment changes the name of the assignee to Gladys Aballi. The name "Eusebio Mourino" was inadvertently left on the order.

[2]After reviewing Dr. Propper's affidavit, the Court adopts the findings as written by Judge Sharon Zeller in *Coastal Radiology, LLC. V. State Farm Insurance*, 22 Fla. L. Weekly Supp. 166a (August 5, 2014).

* * *

Consumer law—Florida Deceptive and Unfair Trade Practices Act—Vehicle sale—Dealer committed per se violation of FDUTPA by adding upcharge to advertised cash price of vehicle sold to plaintiff—Dealer and financial service company that is holder of dealer's written contract are liable to plaintiff for actual damages and attorney's fees—Where notice sent by financial service company prior to disposition of collateral failed to satisfy Uniform Commercial Code Article 9, plaintiff is entitled to statutory damages equal to finance charge plus 10% of principal amount

DANIEL BELL, Plaintiff, vs. MIAMI MOTORSPORTS, LLC and ZG FINANCIAL SERVICES, LLC., Defendants. County Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 12-9372 CC 25. September 28, 2015. Honorable Carlos Guzman, Judge. Counsel: Nicholas A. McCarville and Dana L. Manner, Dana L. Manner, P.L., Miami, for Plaintiff. Gerardo A. Vazquez, Vazquez & Associates, Miami, for Defendants.

[Appeal Pending]

FINAL JUDGMENT

THIS CAUSE came before the court on Plaintiff, DANIEL BELL's, Motion for entry of Judgment against Miami Motorsports, LLC and ZG Financial Services, LLC and for an Order Determining Entitlement to An Award of Attorney's Fees and Costs and the Court having considered the motion, prior orders, pleadings, Plaintiff's exhibit's in his Complaint, attached affidavit to Plaintiff's Motion for Summary Judgment, and any other matters of record show that Plaintiff is entitled to a Final Judgment in his favor.

ORDERED AND ADJUDGED as follows:

As to Count I of the Complaint ACTION FOR DECLARATORY JUDGMENT AND VIOLATIONS OF DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

IT IS ADJUDGED that there are no genuine issues of any material facts in dispute, which are:

1. Plaintiff is a "Customer" and Defendant, Miami Motorsports LLC, is a "Dealer" as defined in Fla. Stat. § 501.975(1) and (2) respectively, who entered into a written contract for the purchase and sale of a "Vehicle" as defined in Fla. Stat. §501.975(5) and Defendant, ZG Financial Services, LLC, is the holder of Dealer's written contract.

2. Dealer offered and advertised Vehicle for sale for the cash price of $9,990.00, and sold Vehicle to Customer for the amount of $10,985.00.

3. The resulting difference between the figures above, $995.00 (the "Upcharge"), was added to the advertised cash price of Vehicle by Dealer at the time of the sale to Customer.

4. Dealer's Upcharge included an unlawful addition to the cash price of Vehicle in the amount of $995.00.

IT IS ADJUDGED that as a matter of law:

5. Fla. Stat. § 501.976(16) requires that *"[t]he advertised price must include all fees or charges that the customer must pay*, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing." (Emphasis added).

IT IS ORDERED AND ADJUDGED that:

A. Defendant, Miami Motorsports, LLC, has committed a *per se* violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.976(16), by adding to the advertised cash price of the Vehicle.

B. Plaintiff has been aggrieved by Defendant's prohibited and unfair and deceptive trade practices, and as a direct result of Dealer's unfair or deceptive acts or practices of imposing and adding unlawful fees and other charges to the cash price of the Vehicle, Dealer has caused Plaintiff to suffer actual damages in the amount of $995.00, which are liquidated damages that shall bear interest according to Fla. Stat. 55.03, for which let execution issue forthwith.

C. Defendants, Miami Motorsports, LLC and ZG Financial Services, LLC as holder of Miami Motorsports, LLC's Retail Installment Sale Contract (RISC), are liable to Plaintiff for actual damages, and pursuant to Fla. Stat. §§501.211(2), 501.2105 and 57.105(7),Plaintiff is entitled to receive an award of reasonable attorneys' fees and costs as the prevailing party in this action from Defendants. *See* Award or Attorney's Fees below.

D. This Court shall retain jurisdiction over the parties and over this action to for all matters, including but not limited to enforcement with this judgment and award of attorney's fees and costs.

E. Pursuant to Fla. R. Civ. P. 1.540(b), judgment debtors, Miami Motorsports, LLC and ZG Financial Services, LLC, shall complete a "Fact Information Sheet" and serve it on Plaintiff's attorney(s). It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

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As to Count II of the Complaint ACTION FOR VIOLATIONS OF ARTICLE 9 UCC—SECURED TRANSACTIONS AND WRONGFUL REPOSSESSION as it pertains to Defendant ZG Financial Services, LLC only

IT IS ADJUDGED that there are no genuine issues of any material facts in dispute, which are:

6. Defendant's notice was found to be insufficient as a matter of law and in violation of Fla. Stat. §§ 679.613, 679.614.

IT IS ADJUDGED that as a matter of law:

7. Proof of a violation of Fla. Stat. §679.614 entitles the Plaintiff to recover damages in accordance with Fla. Stat. §679.625(3)(b), which provides in pertinent part that "[i]f the collateral is consumer goods, a person who was a debtor . . . at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation. . ." The Retail Installment Sale Contract (attached as Exhibit B to Plaintiff's complaint) shows the Plaintiff financed $8,398.50 and was changed a finance charge in the amount of $4,283.22 therefore, the Plaintiff's statutory damages under Fla. Stat. § 679.625(3)(b) to which he is entitled is $5,123.07[1].

IT IS ORDERED AND ADJUDGED that:

F. The damages above shall bear interest from November 7, 2011 according to Fla. Stat. 55.03, for which let execution issue forthwith.

G. The Plaintiff is entitled to his attorney's fees pursuant to Fla. Stat. §57.105(7) and taxable costs under Count II. *See* Award of Attorney's Fees below.

H. Pursuant to Fla. R. Civ. P. 1.540(b), judgment debtor, ZG Financial Services, LLC, shall complete a "Fact Information Sheet" and serve it on Plaintiff's attorney(s). It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

I. This Court shall retain jurisdiction over the parties and over this action to for all matters, including enforcement of this judgment and award of attorney's fees and costs.

AWARD OF ATTORNEY'S FEES

IT IS ORDERED AND ADJUDGED that:

J. The Plaintiff is entitled to an award of his attorney's fees and costs as stated above.

K. Due to the combined litigation of this cause against the two defendant's this court finds that the time and costs spent are inexorably linked between the Plaintiffs' two counts.

L. Therefore the Plaintiff is entitled and awarded his attorney's fees in the amount of $15,225.00 and his taxable costs in the amount of $556.59 from the Defendants, Miami Motorsports, LLC and ZG Financial Services, LLC, and each of them, jointly and severally

[1]$4,283.22 + ($8,398.50 * 10%) = $5,123.07

* * *

Insurance—Personal injury protection—Coverage—Medical expenses—Reasonableness of charges—Summary judgment—Opposing affidavit filed by insurer does not preclude summary judgment in favor of medical provider on issue of reasonableness of MRI charges where affiant's opinion is not based on sufficient facts or data, is not product of reliable principles and methods and is based on hearsay rather than first-hand knowledge and affiant did not apply principles and methods reliably to facts of case

MILLENNIUM RADIOLOGY LLC (a/a/o Lisset Rodriguez Ramos), Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 11th Judicial Circuit in and for Miami Dade County. Case No. 13-12617 SP 23 (4). September 22, 2015. Jason Emilios Dimitris, Judge. Counsel: Yigal D. Kahana, for Plaintiff. Luis Perez, for Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT

This matter came before the Court on September 21, 2015, after due notice to the parties, on the Plaintiff's motion for Final Summary Judgment. Having read the motion, considered the argument of counsel present, reviewed all the applicable documents in the Court file, and those presented at the hearing by the attorneys, and having reviewed the evidence and case law provided by the attorneys and being otherwise advised in the premises, the Court GRANTS the Plaintiffs Motion for Summary Judgment, finding as follows:

On April 23, 2015, this Court entered an agreed order granting Plaintiff's motion for summary judgment regarding the medical necessity and relatedness of the MRI studies at issue in this case. The parties also agreed that Defendant made a benefits payment of $1987.89 to Plaintiff for the services at issue. Thus, the only remaining issue for this court to decide is whether the Plaintiff's charge of $2150.00 for each of two MRIs (CPT Codes 72141 and 73221) provided to the assignor on the date of service, April 4, 2013, in Miami Dade County, Florida, was "reasonable."

Analysis and findings of fact

The Plaintiff filed its medical bills with the affidavit of Mrs. Roberta Kahana, a fact witness, to show that the Plaintiff's charge was reasonable for the services at issue, where and when they were rendered. The Defendant filed the affidavit of Dr. Edward Dauer, to show that Plaintiff's charge was not reasonable for the services at issue, where and when they were rendered.

Pursuant to Fla. Stat. §90.702(1)(2013), the party presenting expert opinion must demonstrate to the court that the expert's opinion is based upon sufficient facts or data, and the testimony is the product of reliable principles and methods which the witness has applied reliably to the facts of the case. See *Pan Am Diagnostic Services, Inc. vs. United Automobile Ins. Co.*, 21 Fla. L. Weekly Supp. 200a (Broward County, 2013).

Findings of law

The affidavit of Roberta Kahana, with its accompanying attachments, shows a substantial connection with Miami Dade County and is admissible evidence that the Plaintiff's charge was reasonable, for the services at issue where and when they were rendered. The Plaintiff has carried its burden of proof in this case.

The affidavit of Dr. Dauer had no attachments and fails to show sufficient nexus to Miami Dade County, and fails to establish that he has any experience or qualifications in the geographic region in which the services at issue were rendered, Miami-Dade County. Because charges and reimbursements for medical services vary widely throughout the State of Florida based on the location of the provider, it is crucial for an expert to establish the geographic applicability of the opinion the expert is giving. Therefore, the Court concludes it was incumbent on Dr. Dauer to explain what data he relied upon, and how any data used as the basis of his opinion on pricing could apply to the pricing of medical services in Miami-Dade County when the services at issue were provided. This he did not do. As such, the court rejects his "expert" opinion and his opinion will be considered as that of a lay witness by this court. As a lay witness, Dr. Dauer provided no evidence of having firsthand knowledge of MRI charges in Miami Dade County, and his affidavit cites only to hearsay regarding charges for MRI services in Miami Dade County.

Dr. Dauer's affidavit fails to meet the requirements of admissibility. His opinion is not based upon sufficient facts or data, is not the product of reliable principles and methods, he did not apply any principles and methods reliably to the facts of this case, and he based his opinion on hearsay, not firsthand knowledge. This court finds that, based on Dr. Dauer's affidavit, there is simply no competent admissible evidence to create a triable issue that the charged amount was unreasonable. A conclusory affidavit of a party is insufficient to create a disputed issue of fact. *Master Tech v. Mastec*, 49 So.3d 789, 791 (Fla. 3d DCA 2010) [35 Fla. L. Weekly D2381a]. A party does not create a disputed issue of fact by merely stating factual conclusions. *Id.* Dr. Dauer's testimony is not "based upon sufficient facts or data," and is not the "product of reliable principles and methods," as required by Florida Statutes §90.702 (2013). For the reasons stated above, Defendant has not come forward with any admissible evidence demonstrating that the Plaintiffs charge for the MRIs provided to the assignor was unreasonable, so there is no genuine issue of material fact in this case. Therefore it is

ORDERED AND ADJUDGED that Plaintiff's Motion for Final