

Significant Case Law For Attorneys and Mediators

Antonio Pita v. Heliodora Pita, 34 Florida Law Weekly D 1816 (Fla. 3rd DCA, Opinion Filed September 2, 2009): The former husband appealed from a final order compelling his compliance with a mediated marital settlement agreement. The Marital Settlement Agreement specified that the former husband was to pay the former wife lump sum alimony as well as \$575,000 as consideration for her quitclaiming her one-half interest in the former husband's commercial property. The parties agreed to make the Agreement contingent upon the former husband securing new financing on the commercial property he retained and to make a good faith effort to obtain such financing. The Agreement did not require a specific dollar amount for the refinancing, but only that the former husband make a good faith effort to obtain new financing or a second mortgage. The Agreement did include a 90-day period for fulfilling the financial requirements. Although the former husband attempted to obtain new financing he either failed or refused to accept a loan approved within 90 days. When the former wife learned of this, she moved to enforce the Settlement Agreement. The former husband claimed the Agreement was not enforceable. The trial court held an evidentiary hearing, found the financing clause was ambiguous and admitted extrinsic evidence to clarify the issue. The trial court found the only requirement was that the former husband be able to obtain financing or a second mortgage. The trial court found that the former husband could obtain, but refused, financing in the amount of \$500,000. The trial court found that the former husband had not fulfilled the "good faith effort" requirement of the Settlement Agreement. The Third District Court of Appeals agreed with the trial court's conclusion that the Settlement Agreement was not invalid for failure to specify an amount certain for refinancing. The appellate court held that the record supported the conclusion that the former husband had the ability to comply with its terms; and that he did not act in good faith when

he refused to accept financing on his commercial property for less than his total financial obligation to the former wife, where the record showed that he had other resources available to make up the difference. The Third DCA affirmed the trial court's order compelling the former husband's compliance with a mediated marital settlement agreement.

Practice Tip

As we have discussed many times before, the "devil is in the details" whenever you are involved in drafting a mediated settlement agreement. Please be as specific as possible. Avoid the use of "contingencies" and ambiguous language to the greatest extent possible. Please take your time and be patient when drafting these important settlement agreements. Good Luck.

MY "NEW" WEBSITE IS UP AND RUNNING

The "new" website is now more than two years old. You can find it at these addresses: **www.BABMediate.com** and **www.BruceBlitman.com**. The website contains past issues of mediation newsletters, as well as information about current mediation caselaw, ADR articles I've written and announcements about upcoming mediation seminars and presentations. Many thanks to Webmaster Gio Gutierrez for his invaluable expertise in designing this site. Please visit this site and let me know what you think. I hope you like it.

RECOMMENDED READING

"20 Must-See Legal Movies" by Michelle Weyenberg, appears in the January, 2010 edition of *The National Jurist*, the Magazine for Law Students. This entertaining article provides Ms. Weyenberg's 20 picks and critiques of these recommended films. Among her selections are: 1. "To Kill a Mockingbird" (1961); 2. "Twelve Angry Men" (1957); 3. "Anatomy of a Murder" (1959); 4. "Kramer vs. Kramer" (1979-is it possible it came out so many years ago?); 5. "Michael Clayton" (2007) and at 18. "My Cousin Vinny" (1992-this comedy always seems to appear on lists for favorite legal movies). The article mentions many

other legal movies that are worth watching. I was surprised at how many of these films I had never seen before.

“Presenting The Lemmies” by Rich Meneghello, appears in the March, 2010 edition of Labor Letter, the newsletter for the law firm of Fisher & Phillips LLP. Meneghello, an attorney with the Portland, Oregon office of the firm, has written an entertaining article to celebrate movie awards season by reviewing some of the best (and worst) films, all of which have labor and employment law themes. Among his selections for the First Labor and Employment Awards (“Lemmies”) are: 1. Best Picture: “On the Waterfront “ (1954); 2. Best Comedy: “Nine to Five” (1980); 3. Best Actress: Sally Field in “Norma Rae” (1979); 4. Best Actor: Tom Hanks in “Philadelphia” (1993) and 5. Least Realistic Movie: “Disclosure” (1994-its inaccurate depiction of a mediation conference almost had me jumping out of my seat). Meneghello’s comments about his movie selections are amusing. He has also referenced several films which you may not have seen in many years-or never have seen at all.

“Having ADHD Or Asperger’s Syndrome Raises The Risk Of Being Arrested” by Loring N. Spolter, is published at the People’s Law Guide link on the Broward County Bar Association’s website at www.browardbar.org. Spolter, an attorney in Fort Lauderdale, Florida, provides criminal defense representation and practices in the field of employment and discrimination law. In this informative article, Spolter observes that individuals with Attention Deficit Hyperactivity Disorder (ADHD) and Asperger’s Syndrome (AS), especially teenagers and young adults, are over-represented among persons arrested and convicted of criminal offenses. This article provides valuable information about the specific measures that should be taken by parents of ADHD or AS offspring, individuals with ADHD or AS, and police officers, prosecutors, criminal defense attorneys and judges in order to avoid involvement with the criminal justice system or how they should respond should such situations arise.

DISPUTE RESOLUTION IN THE NEWS - PART I

An article in the April 2, 2010 edition of The Miami Herald reported that Daimler, one of the world’s largest vehicle manufacturers, and its subsidiaries agreed to pay the U.S. government \$93.6 million in criminal fines and \$91.4 million in disgorgement of profits to settle a civil complaint by the U.S. Securities and Exchange Commission. The securities commission said that Daimler and its subsidiaries made at least \$56 million in improper payments over more than a decade in at least 22 countries to illicitly earn at least \$90 million in profits through tainted sales of 6,300 commercial vehicles and 500 passenger cars.

DISPUTE RESOLUTION IN THE NEWS - PART II

An article in the March 28, 2010 edition of the South Florida Sun-Sentinel reported that the City of Sunrise and the BankAtlantic Center have created a letter of agreement to reimburse the city beginning July 1, 2010 for its public safety presence during events such as concerts and hockey games. Since the center opened in 1998, the city has been directing traffic, setting up cones and controlling crowds during events. The city has been working with representatives from the BankAtlantic Center for more than six months to come up with a resolution that would meet both parties’ needs. The letter of agreement provides that the center will “mitigate the city’s cost incurred in providing public safety services for events at the arena.” The agreement will be looked at again in two years.

DISPUTE RESOLUTION IN THE NEWS - PART III

An article in the March 26, 2010 edition of The Miami Herald reported that the World Trade Center developer and government agencies that control the site reached a tentative deal to resolve a 16-month stalemate over rebuilding at Ground Zero. The proposed agreement will allow four office towers to be built, although one will be delayed indefinitely because of the poor economy. Construction is under way on the first Ground Zero office building, 1 World Trade Center, as well as a September 11 memorial and a transit hub. As part of the deal, the Port Authority of New York

and New Jersey would finance the second tower at the site, a 64-story building to be completed in 2013. It was reported that the parties will have 120 days to negotiate details of the deal announced on Thursday, March 25.

DISPUTE RESOLUTION IN THE NEWS - PART IV

An article in the March 5, 2010 edition of USA Today reported that two American International Group (AIG) subsidiaries will pay \$7.1 million to settle discrimination allegations of charging higher fees to African-American borrowers. The Justice Department reported that most of the money will go to 2,500 African-American borrowers of subprime loans who were charged higher broker fees. The case marks the first time a lender has been held responsible for failing to ensure brokers don't charge higher fees because of race, according to Thomas Perez of Justice's civil rights division.

RECENT AWARDS

On April 22, 2010, I received an Outstanding Leadership Award from the University of Miami-Nova Southeastern University Center for Autism and Related Disabilities (UM-NSU CARD) in recognition of my six years of volunteer service as a member of the organization's Constituency Board. UM-NSU CARD is a state-funded resource and support program dedicated to improving the lives of individuals with autism and related disabilities including deaf-blindness and pervasive developmental disorders. I was honored to serve this outstanding organization.

RECENT TRAINING

In accordance with the Florida Supreme Court's Administrative Order Number AOSC 09-54, in April, 2010, I successfully completed the Residential Mortgage Foreclosure Mediation Training Course sponsored by the University of South Florida's Conflict Resolution Collaborative and Continuing Professional Development Center. I am currently mediating residential mortgage foreclosure disputes in Miami-Dade County's managed mediation program and am looking forward to mediating residential mortgage foreclosure disputes when Broward County's managed mediation program begins in July, 2010.

RECENT SEMINAR

On May 7, 2010, I presented "Do Your Best, Angels Can Do No More: Reflections of a Veteran Mediator", a continuing mediation education teleseminar, to the Workers' Compensation State Mediators. Special thanks to Stuart F. Suskin, a state mediator in Gainesville, for graciously inviting me to present this program.

RECENT APPOINTMENT

In February, 2010, I was appointed to serve as a Special Magistrate for the City of South Miami. Special Magistrates have proven to be an expeditious, cost effective and fair means of adjudicating issues pertaining to code violations.

MEDIATION AND NEGOTIATION SEMINARS AVAILABLE FOR CONTINUING EDUCATION CREDITS

For years, I have written and spoken extensively about mediation and negotiation-related topics, including: "*Florida's Mediation Case Law*"; "*Ingredients For A Successful Mediation Process*"; "*The Alternative Dispute Resolution Continuum*"; "*What Is Your Negotiating Style?*"; and "*Effective Negotiating Tips And Tactics*". If you want to put on a seminar for your law firm, clients and/or staff, please contact me for details.

NOTABLE QUOTATIONS

"Know thyself."

-Plato

"If you are not criticized,
you may not be doing much."

-Donald Rumsfeld

"Management is doing things right;
leadership is doing the right things."

-Peter F. Drucker

"Anyone can hold the helm when the sea is calm."

-Publius Syrus, 1st century BC

"All the great leaders have had one characteristic in common: it was the willingness to confront unequivocally the major anxiety of their people in their time. This, and not much else, is the essence of leadership."

-John Kenneth Galbraith

“Honest disagreement is often a good sign of progress.”

-Mahatma Gandhi

“A leader is best when people barely know he exists.”

Lao Tzu, 4th century BC

“Personal leadership is the process of keeping your vision and values before you and aligning your life to be congruent with them.”

-Stephen Covey

“Treating people with respect will gain one wide acceptance and improve the business.”

-Tao Zhu Gong, 500 BC,

Assistant to the Emperor of Yue

“Leadership is not about being nice. It’s about being right and being strong.”

-Paul Keating,

Australian statesman and Prime Minister

“To the person who does not know where he wants to go there is no favorable wind.”

-Lucius Annaeus Seneca, 5 BC-65AD,

Roman philosopher

“To do great things is difficult; but to command great things is more difficult.”

Friedrich Nietzsche, German philosopher

“I claim not to have controlled events, but confess plainly that events have controlled me.”

-Abraham Lincoln

“A leader is a dealer in hope.”

-Napoleon Bonaparte

“Be not ashamed of thy virtues; honor’s a good brooch to wear in a man’s hat at all times.”

-Ben Jonson

“When you’re through changing, you’re through.”

-Bruce Barton

“Life is a moderately good play with a badly written third act.”

-Truman Capote

“The fragrance always remains in the hand that gives the rose.”

-Heda Bejar

“Credit is a system whereby a person who can not pay gets another person who can not pay to

guarantee that he can pay.”

-Charles Dickens

“Creativity requires the courage to let go of certainties.”

-Erich Fromm, Psychologist

“Ultimately, the bond of all companionship is conversation.”

-Oscar Wilde

“The older you get, the stronger the wind gets- and it’s always in your face.”

-Pablo Picasso

MESSAGES OF THANKS TO OUR TROOPS

To remember our troops in Iraq and around the world who risk their safety every day on our behalf, messages of appreciation and support can be sent via www.OperationDearAbby.net.

21 YEARS AS A SUPREME COURT CERTIFIED COUNTY AND CIRCUIT CIVIL MEDIATOR; 20 YEARS AS A CERTIFIED FAMILY MEDIATOR-AND STILL COUNTING!

February marks another anniversary as a certified mediator and another milestone. In February, 2010, I celebrated my twenty-first anniversary as a Florida Supreme Court certified County and Circuit Civil mediator and my twentieth anniversary as certified Family mediator. How quickly the years have passed! It doesn’t seem possible that I completed the training course so many years ago. I greatly appreciate your patronage and generous support through the years. It is always an honor and privilege to be of service to you and your clients. I am looking forward to (at least) another 20 years as a certified County, Family and Circuit Civil Mediator.

“KICK FOR NICK” PROJECT

On May 26, 2008, Memorial Day, I watched a beautiful and moving story on ESPN’s “Outside the Lines” program about Private First Class Nick Madaras, who was tragically killed while serving in

Iraq. The story by Tom Rinaldi described a program called "Kick For Nick," which was established by Nick's father, Bill Madaras, and friends and neighbors, to honor Nick's memory and promote Nick's dream of improving relations between American soldiers and Iraqi children through the sport of soccer. Shortly before his death, Nick asked his father to send him some soccer balls so that he could play with the game with Iraqi youngsters. Nick was going to give these balls to the children so they could enjoy playing soccer with the troops and develop friendships with them. Sadly, Nick was killed before the soccer balls were delivered. The "Kick For Nick" Foundation was established to carry out Nick's vision for friendship and peace. Soccer balls are collected, they are each inscribed with Nick's name on them and they are shipped to American soldiers in Iraq. These soldiers personally deliver the soccer balls to Iraqi children and tell them about Nick's dream. To learn more about this wonderful project, please visit the website at www.kickfornick.com and www.kickfornick.org. The site contains video about the program, as well as photographs of American soldiers and Iraqi children playing soccer and testimonial letters from American soldiers describing the positive affect this project has had on everyone. On Memorial Day, 2009, ESPN updated its story about this project and reported that more than 21,000 soccer balls inscribed with Nick's name have been shipped to Iraq and delivered to Iraqi children. According to the most recent e-mail I received from Bill Madaras on May 20, 2010, the last count for balls distributed by our troops to Iraqi and Afghani children was up to 29,890 (and still going strong)!

OTHER WORTHY CAUSES

THE COOPERATIVE FEEDING PROGRAM:

This 20-year-old agency, which dishes out more than a million meals a year, also provides free haircuts and other services to the needy, such as food stamp information and legal advice, with the help of volunteers. The agency also has an emergency food pantry that periodically supplies families with enough groceries to get them by for a few days. The program has seen a 25% increase in the demand for free food over the last year, but funding has been

flat for the same period. Checks can be mailed to: The Cooperative Feeding Program, 1 NW 33 Terrace, Fort Lauderdale, Florida 33311. For more information, call (954) 792-2EAT (2328) or visit feedingbroward.org. Thank you.

THE GIFT OF LIFE: For information on how to become an organ donor, please visit www.organdonor.gov. Thank you.

UNIVERSITY OF MIAMI-NOVA SOUTHEASTERN UNIVERSITY CENTER FOR AUTISM & RELATED DISABILITIES (UM-NSU CARD):

Is dedicated to optimizing the potential of people with autism, dual sensory impairment and related disabilities. In 1993, the legislature passed a statute that appropriated startup funds to establish the Center for Autism and Related Disabilities (CARD) at sites throughout Florida, including the University of South Florida, the University of Miami, Florida State University, University of Florida at Gainesville and Jacksonville, and the University of Central Florida. Individuals of any age with autism, pervasive developmental disorder, dual sensory impairment or sensory impairment with other disabling conditions, their family members, friends and professionals are eligible to receive CARD's free service. For contributions or information, please contact UM-NSU CARD's main office at: 5655 Ponce de Leon Boulevard, Coral Gables, Florida 33125-0725 Telephone: (305) 284-6563, 1-800-9-AUTISM, Fax: (305) 284-6555 www.umcard.org. Thanks.

MAKE- A- WISH FOUNDATION: Since 1980, the Make-A-Wish Foundation has granted more than 144,000 wishes for children with life-threatening medical conditions. It is the largest wish-granting charity in the world, with 74 chapters across the United States and its territories and 28 international affiliates on five continents. For more information, please visit the Make-A-Wish web site at: www.wish.org or call (866) 880-1382 (toll-free). You can also support the Make-A-Wish Foundation by returning a generous tax-deductible contribution to the Gift Processing Center at: P.O. Box 97104, Washington, DC 20090-7104. Thank you.

EASE FOUNDATION, INC.: The mission of this

501(c)(3) non-profit foundation is “To aid those qualified residents who are in need of temporary emergency assistance with food and financial help. Our objective is to assist them back into a self-sustaining, productive life.” EASE helps approximately one hundred families each month that come into the office for groceries. EASE only handles non-perishable items, paper products and canned goods for its pantry. The shelves are in need of food. If your business, church or organization would like to have food drive, please contact Linda Owen at (954) 797-1077 or e-mail Linda at Linda_owen@davie-fl.gov. Thank you.

DO YOU HAVE A FAVORITE CHARITY?

I am always interested in informing our readers about worthy causes. If there is some cause you want me to share with our readers in future issues of this newsletter, please send me an e-mail or a brochure which describes the charitable organization and its mission. I will be pleased to help you share this information.

MAY I ASK A FAVOR?

IF YOU HAVE A QUESTION OR SUBJECT

you'd like me to address in this newsletter, please send me an e-mail with your suggestion. Thanks.

PLEASE FORWARD: If you'd like to share this newsletter with your partners, associates, clients, friends and colleagues, feel free to forward this issue including the copyright notice.

ADDRESS CHANGES: If you want to continue to receive my newsletter, please make sure I have your current e-mail address.

QUESTIONS? COMMENTS?

IDEAS? OPINIONS?

I'm always happy to hear from you. How can it be summer already? Many college students are already on their vacations and the rest of the schools will soon close. Baseball season is now in full swing and, just 40 games into the new season a few managers have already been fired. Except for the Miami Heat and Florida Panthers, the seemingly endless basketball and hockey seasons are continuing-but the final rounds of their playoffs are soon approaching. The Florida Marlins are still in contention. I wish you and the members of your families and staff a very safe, relaxing and

enjoyable summer. I hope you will have some time to kick back and truly enjoy this wonderful season. I am grateful for your generous and loyal patronage for so many years. As always, Best wishes for a much Good Health, Happiness, Success, and Peace (and Good Mediation, too) in 2010 and beyond.

BRUCE A. BLITMAN, ESQ.

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