***Mediation Settlement Agreements – Nail Down Your Essential Terms***

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As promised in my last article, this piece will focus on the essentiality of essential terms to a mediated settlement agreement. This proposition would seem to need no discussion, yet two recent appellate decisions highlight otherwise.

As with any contract, a settlement agreement must be based on a meeting of the minds. Most of the caselaw regarding contests to settlement agreements are based on allegations that such a mind meeting never occurred.

When both parties to the agreement make this same allegation, the agreement is usually tossed. Rarely do both parties want out, so rarely does this shared allegation arise. In that common scenario, the courts are left with evaluating the agreement, to see if essential terms were established. As the Florida Supreme Court has declared, "Even though all the details are not definitely fixed, an agreement may be binding if the parties agree on the essential terms and seriously understand and intend the agreement to be binding on them." Blackhawk Heating & Plumbing Co. v. Data Lease Financial Corp., 302 So. 2d 404, 408 (Fla. 1974).

So, what are essential terms? Webster defines *essential* as "indispensible, necessary and fundamental". Does that clarify the matter? It didn't for two trial courts, or the appellate panels that reviewed their decisions.

In RAHO of Pass-A-Grille, Inc. v. Pass-A-Grille Beach Motel, Inc., 923 So. 2d 564 (Fla. 2d DCA 2006), the parties signed a mediated settlement agreement spelling out most, but not all, of the details of the settlement. A dispute subsequently arose regarding the performance of this agreement, and both parties presented their case to the trial court. After hearing different interpretations of the "agreement" from each party, the trial court ruled that there was no meeting of the minds and invalidated the settlement. Citing Blackhawk Heating, the appellate court disagreed, and reinstated the agreement with remand directions to assist the trial court in sorting out the pieces.

Almost simultaneously in time, the parties in Freedman v. Fraser Engineering & Testing, Inc., 927 So. 2d 949 (Fla. 4th DCA 2006) were disputing the terms of a mediated settlement agreement pertaining to an attorney's charging lien. As in RAHO, the trial court ultimately declared that essential terms were lacking and invalidated the purported settlement agreement. An appeal followed. The Fourth District Court of Appeal reviewed the record of what it described as a "vexatious" and "spiteful litigation" of this disputed settlement agreement, eventually affirming the trial court's ruling nullifying the purported agreement.

In both of these cases, the essential terms were disputable enough to justify contest motions by one of the parties. In both cases, the trial court granted such motion. And, in both cases, a viable appeal followed, one of which reversed the trial court (and reinstated the agreement) and the other of which affirmed the trial court (and negated the agreement).

I write this article not to provide definitional guidance on what your essential terms may be. Rather, I bring to your attention the fact that a dispute over them is best resolved at the mediation conference itself. Take the extra time at the conclusion of your mediation to nail down (and articulate) your essential terms, or face the prospect of becoming trapped in potentially vexatious and spiteful contest proceedings, holding your breath through the long appeal process.

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