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SIGNIFICANT APPELLATE DECISION

HGI Associates, Inc. v. Wetmore Printing Company

On October 4, 2005, the Eleventh Circuit Court of Appeals issued its opinion in HGI Associates, Inc. v. Wetmore Printing Company, case No.04-11931 (11th Cir. Oct. 4, 2005). The Court applied Texas law to determine issues of contract formation, interpretation, and validity. It applied Florida law to the issues of damages and remedies.

Very briefly, Wetmore attempted to trap HGI, an entity it suspected of software piracy. After a bench trial, the district court found that Wetmore formed and breached contracts with HGI, that HGI was entitled to accrued lost profits but no future lost profits caused by the breach, and that HGI was entitled to punitive damages due to Wetmore's fraudulent actions.

Wetmore argued that Kee v. Nat'l Reserve Life Ins. Co., 918 F.2d 1538, 1543 (11th Cir. 1990) correctly states Florida law that, "[w]here the compensatory damages requested in a count for tort are identical to the compensatory damages sought in a count for breach of contract, compensatory damages and punitive damages for the tort are not recoverable." The Eleventh Circuit disagreed in a discussion that appears to recede from Kee's statement of law.

The Eleventh Circuit also provided a good overview of Florida law as to the recovery of future lost profits. There is specific discussion of the need to mitigate damages through reasonable attempts to cover.

For more information, please contact Joseph H. Lang, Jr. at 813.229.4253
or visit www.carltonfields.com.

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