

Florida's Supreme Court Limits the Economic Loss Rule

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The Florida Supreme Court recently limited the application of the economic loss rule to products liability cases. In *Tiara Condominium Association, Inc. v. Marsh & McLennan Companies, Inc., et al.*, the Eleventh Circuit certified a question to the Court inquiring about the professional services exception to the economic loss rule. Rather than answering the certified question, the Court took the opportunity to roll back the economic loss rule.

The rule was first applied to prohibit a plaintiff from suing in tort for purely economic losses resulting from a product's defect. The rationale was that contract principles are more appropriate for recovering economic losses that occur without any physical injury or property damage. The strict liability doctrine was not intended to undermine the warranty provisions of contract law, but to govern the separate problem of physical injuries caused by defective products.

The economic loss rule, however, was subsequently applied, with certain exceptions, to cases in which parties were in contractual privity and where one party sought to recover damages in tort for matters arising from the contract. The majority in *Tiara* opined, however, that such applications represented an expansion of the rule beyond its origins that was unwise and unworkable in practice. As a result, the Court limited application of the economic loss rule to products liability cases.

Justice Pariente concurred and argued that the decision did not amount to a "dramatic unsettling of Florida law," as argued by the dissenting opinions. To bring a valid tort claim, Justice Pariente reasoned, a party still must demonstrate that all the required elements for the cause of action are satisfied. This includes demonstrating that the tort is independent of any breach of contract claim. When parties have negotiated remedies for nonperformance pursuant to a contract, one party may not seek to obtain a better bargain by turning a breach of contract claim into a tort claim. The majority only determined that common law principles of contract, not the economic loss rule, produced this result, which did not, in Justice Pariente's view, represent an "upsetting of firmly established principles."

Justice Polston and Justice Canady, however, disagreed. In his dissent, Justice Polston stated, "without justification, the majority greatly expands the use of tort law at a cost to Florida's contract law." Justice Canady also dissented, asserting that the majority's opinion represented a dramatic unsettling of Florida law. Furthermore, Justice Canady asserted that the majority failed to explain why the economic loss rule is workable and wise in the products liability context, but unworkable and unwise in the context of contract-based relationships. He stated, "With today's decision, we face the prospect of every breach of contract claim being accompanied by a tort claim."

The effects of this decision remain to be seen. Justice Pariente opined that it will not have a substantial impact, noting it merely altered the means by which a court will dismiss alleged tort claims that arise in a contractual setting. Justice Polston and Justice Canady, however, appear to believe that the majority eliminated a rule that "prevents contract law from drowning in a sea of tort."

Resources:

1. *Tiara Condominium Association, Inc., v. Marsh & McLennan Companies, Inc., et al.*, 110 So. 3d 399 (Fla. 2013).

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