THE CHANGING LANDSCAPE OF FLORIDA'S ECONOMIC LOSS RULE

For the last twenty years, it has been well established in Florida that a doctrine known as the "economic loss rule" prohibited parties that contracted with each other from recovering economic losses for business torts. The economic loss rule had set forth the circumstances under which a tort action was prohibited if the only damages suffered were economic losses.1 Economic losses are "damages for inadequate value, costs of repairs and replacement of a defective product, or consequent loss of profits – without any claim of personal injury or damage to other property".2

The Supreme Court of Florida recently reversed years of established case law in its decision, Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Co., Inc., and essentially limited the economic loss rule to cases involving products liability.3 In Tiara, the Court considered whether the economic loss rule barred an insured's suit against an insurance broker where the parties had contracted with one another and the damages sought were for economic losses. Ultimately, the Supreme Court held that the application of the economic loss rule is limited to products liability cases and did not bar the insured's claim.

Businesses owners will feel the impact of the Tiara decision as the use of theories of tort law to pursue economic damages will likely become widespread. The Tiara decision may make it costly to defend what would originally only have been a breach of contract case as tort claims and remedies will be available to contracting parties in addition to contractual remedies. In fact, since the Court's ruling in Tiara, other courts have already denied defendants' motions to dismiss tort claims.4

Another result of the Tiara decision is that tort claims could inject factual issues such as "comparative fault" and "reasonableness" into contract actions in Florida. In addition, judges will be far less likely to dispose of tort claims at the summary judgment stage of the case because of the factual issues that must be decided by a finder of fact.

The Tiara decision will therefore make it more difficult for a party to understand its expectations and potential exposure when entering into a contract. Before the Tiara decision, the economic loss rule prevented a party to a contract from circumventing the allocation of losses or liquidated damages provisions set forth in the contract. Now, a party's obligations and remedies under a contract are less clear.

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1 . Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Co., Inc., No. SC10-1022, 2013 WL 828003 at *2 (citing Indem. Ins. Co. of N. Am. v. Am. Aviation, Inc., 891 So.2d 532, 536 (Fla.2004)).

2. Id. at *2 (quoting Casa Clara Condominium Ass'n, Inc. v. Charley Toppino and Sons, Inc., 620 So.2d 1244, 1246 (Fla.1993)).

3. Id. at *1.

4. See Wiand v. Wells Fargo Bank, N.A., No. 8:12–cv–00557–T–27EAJ, 2013 WL 1401414, (M.D. Fla. 2013); see also In re Mouttet, No. 12–14490–LMI, 2013 WL 1547528, (Bkrtcy. S.D. Fla. 2013).