

Case Shows How Changes to Florida Summary Judgment Standard Is Affecting Litigation

by Michael A. Mora

Changes to the summary judgment standard in Florida are set for May 1. But litigants are already seeing the effect.

The spotlight came through litigation in which a startup business faced a company controlled by a well-connected businessman, which was represented by the former mayor of Fort Lauderdale, in litigation involving its expansion to a second location in Davie and won.

Thomas P. Angelo, the managing shareholder at Angelo & Banta in Fort Lauderdale who represented the startup business, Billy Jacks Shack Davie LLC, said the damages and attorney fees will be substantial for his startup clients. The startup is controlled by its owners John Hart and Todd Zimmer.



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“The takeaway is that the little guy doesn’t always lose,” Angelo said. “There is justice out there for people that don’t have the same resources as the very wealthy who think they

can unilaterally do things without any consequences.”

The dispute in the case involved a breach of a commercial lease between the startup with Southwest Broward Theaters

Holdings Ltd. in November 2017. The holding company is owned and controlled by prominent businessman Joseph Amato. Amato owns several businesses, including multiple radio stations and is a major philanthropist, with donations to entities like the Broward Amphitheatre, which honored him and his wife with the naming of the Amato Theater.

Amato, through his holding company, funded the plaintiffs' first restaurant in Lauderdale-By-The-Sea and then entered into the commercial lease and agreement to build out the second location at issue, in Davie. But, Angelo said, Southwest Broward backed out of the deal and violated the contract with Billy Jacks, leading to the complaint filed in May 2019.

Now, Broward Circuit Judge Keathan Frink has granted partial summary judgment in favor

of Billy Jacks. Frink will determine the amount of damages and attorney fees in the second part of the proceeding.

John P. Seiler, a partner at Seiler, Zaden, Rimes & Wahlbrink in Fort Lauderdale who represented Southwest Broward in the litigation, declined to comment.

While Seiler was previously the mayor of Fort Lauderdale for nearly a decade, Angelo claimed that the biggest challenge was not opposing his adversary nor the prominent businessman to prevail for his client. Instead, Angelo pointed to the phasing out of the summary judgment standard in the State of Florida on May 1.

The Florida Supreme Court closed out the year 2020 by replacing the current summary judgment standard with the federal standard. Florida's highest court stated the switch

would "improve the fairness and efficiency of Florida's civil justice system, to relieve the parties from the expense and burdens of meritless litigation," according to the ruling.

And following the deposition of Amato's son, Lawrence, in which the son "admitted" that the plaintiff was "never given notice" as stipulated in the contract, Angelo moved for summary judgment. He was surprised with the ruling by Frink. Under the current summary judgment standard, the slightest doubt could result in the defeat of a summary judgment motion.

"Summary judgment often times is a difficult standard," Angelo said. "But I was pleasantly surprised that the judge granted the motion for partial summary judgment."

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