

How Many People Does it Take to Render a Mediated Settlement Agreement Ambiguous?

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The few of you who have read my prior articles have undoubtedly detected a recurring theme therein – doing what it takes so that the close of mediation can bring closure to the settlement. Don't rush through the final step! It amazes me how parties will spend hours hashing out the terms of resolution but get impatient when it comes to documenting those terms in the mediation settlement statement.

The reasons for skimping on the final documentation are many: fatigue, hunger, other commitments, cost conservation, and trust in the other parties' word. None of these reasons is bad, and some are well-intentioned. Yet, many are the cases showing the folly of such an approach.

The latest is Commercial Capital Resources, LLC v. Giovannetti, 32 FLW D814 (Fla. 3rd DCA 3/28/07). This dispute was over the "divorce" of founding members of CCR, raised in the context of derivative claims and counterclaims. These two sophisticated parties, surely represented by sophisticated commercial litigators, eventually worked through a lengthy mediation in which CCR agreed to pay Giovannetti \$1 million in exchange for mutual releases. The mediated settlement agreement was fairly thorough and detailed. Yet, likely when the check was to be cut, CCR objected to Giovannetti's demand for a full release of trustee-related claims. Both plead their case at the trial court level, which ruled in Giovannetti's favor. The DCA disagreed, finding that both positions were reasonably supported by the release which, as a result, was ambiguous and unenforceable.

My suspicions are that CCR either had a change of heart or an ulterior motive all along. I suspect that both parties declared their intention that the settlement agreement would end all aspects and potential aspects of the dispute. Yet, closure was elusive, and the settlement was avoided. Applying time and attention in the final stage of mediation could have precluded this result.

So, how many people does it take to render a mediated settlement agreement ambiguous? Two – one sneaky/sophisticated/mind-changing party and one competent attorney representing him. Don't let your failure to properly close the mediation enable them to thwart the entire effort.

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