

# LITCHFORD & CHRISTOPHER

PROFESSIONAL ASSOCIATION

*Attorneys and Counselors at Law*

## LEGAL NEWS FOR CLIENTS

Summer 2006

© 2006, Litchford & Christopher Professional Association, 390 North Orange Avenue, Post Office Box 1549, Orlando, FL 32802. All Rights Reserved.

*Legal News for Clients* is published periodically by Litchford & Christopher Professional Association. It contains summaries of court decisions and other materials in an effort to keep you abreast of recent developments in areas of the law in which the firm represents clients. Each edition, however, does not necessarily cover cases and information relevant to all of the firm's practice areas. The substantive areas covered in each edition are selected by the firm's lawyers at their discretion based on their views of the significance of the cases and the other information available at the time of publication. The material covered in *Legal News for Clients* is condensed and is not intended to provide legal advice. While the information set forth in each article is accurate, every situation presents unique factual and legal considerations. Accordingly, we encourage you to consult an attorney for proper legal advice before taking any action based on the information summarized in *Legal News for Clients*. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. You may write to us at the address listed above, call us at (407) 422-6600, fax us at (407) 841-0325, or contact us through our website at [www.litchris.com](http://www.litchris.com).

---

---

### *In This Edition . . .*

- **GET IT IN WRITING – FROM YOUR OPPOSING PARTY, *NOT* THE OPPOSING ATTORNEY**
- **BE CAREFUL NOT TO “CLICK” AWAY YOUR LEGAL RIGHTS**
- **HOMEOWNER FINDS YOU CAN GO HOME AGAIN, BUT IT MAY COST YOU**
- **SUPERMAN CANNOT BE HELD RESPONSIBLE FOR FAILING TO RETURN FOR LEX LUTHOR'S APPEAL**
- **WELCOME ANGELA ALLEN**

Hal K. Litchford \* Donald E. Christopher \* David G. Lerner \* Alan B. Taylor \* G. Steven Fender

Richard C. Swank \* Paul E. DeHart \* Christine M. Ho \* Hutch K. Hicken

*Antitrust and Unfair Competition*  
*Financial Fraud*  
*Business Torts*  
*Real Property Transactions*  
*Corporate Control Disputes*  
*Civil Litigation*

*Agreements Not To Compete*  
*Patent, Trademark, Copyright Infringement*  
*Employment Discrimination*  
*Real Property Disputes*  
*Motor Vehicle Dealership Relations*  
*Commercial Litigation*

*Trade Secrets*  
*Contract Disputes*  
*Public Accommodations*  
*Corporate Transactions*  
*Partnership Disputes*  
*Class Actions*

**GET IT IN WRITING – FROM THE OPPOSING PARTY, *NOT*  
THE OPPOSING ATTORNEY**

Litigation has numerous downsides, including attorneys' fees, court costs, and the uncertainty of the ultimate outcome. These downsides are exacerbated by the ongoing psychological effects of being involved in the often-protracted litigation process. Motions for summary judgment drag into trials. In turn, those can drag into appeals and battles for attorneys' fees. The final judgment at the end of the day often fails to fully compensate for the heartburn and anxiety endured by the litigants.

Fortunately, many civil lawsuits can be cut short by negotiating a settlement. Settlement is often the most cost-effective way to resolve disputes. Perhaps more importantly, settlement frees the parties from the hassle, worry, and lingering stress associated with litigation.

Settlements can be brokered through attorneys or by the parties themselves. If done incorrectly, however, the benefits of settlement can be lost in needless litigation concerning the settlement agreement itself. To avoid such problems, the adage "get it in writing" is a useful starting point. In Florida, however, this adage should be modified to "get it in writing *signed by the opposing party.*"

For example, a Naples business recently discovered the value of this maxim the hard way. In *Architectural Network, Inc. v. Gulf Bay Land Holdings II, Ltd.*, 933 So.2d 732 (Fla. 2d DCA 2006), the business sought to enforce a settlement agreement in court. Unfortunately for the business, when it had initially negotiated the settlement, it did not insist that all other parties to the agreement sign the agreement. Instead, the business accepted the settlement even though the agreement was signed only by the attorney representing the other parties.

In Florida "[the] party seeking to enforce a settlement agreement bears the burden of showing that an attorney for the opposing party had the unequivocal authority to settle on the client's behalf." *Id.* In other words, the Second District Court of Appeal held the Naples business had the obligation to prove that the attorney for the other parties had "unequivocal authority" to sign the settlement agreement on behalf of those parties. Otherwise, there would be no enforcement of the parties' settlement.

By failing to insist on the signatures of the other parties, the Naples business had merely exchanged one set of headaches for another. A trial of the original dispute was avoided. The business nevertheless found itself with the burden of proving the validity of its settlement agreement. Worse, if the business should fail to prove that the attorney had authority to enter the agreement, it may still be forced to litigate the dispute it thought it settled long ago. In the event that happens, the business will encounter the additional disadvantages associated with the passage of time, potential loss of evidence, fading memories, and the effects of a possible statute of limitations. In short, the Naples business could find itself significantly worse off now than if it had actually gone to trial in the beginning.

On the other hand, whatever extra effort or expense may have been required to get the other parties to sign the settlement agreement at the outset would clearly have been cost justified. Failure to dot all “i”s and cross all “t”s can prove to be expensive later.

### **BE CAREFUL NOT TO “CLICK” AWAY YOUR LEGAL RIGHTS**

The Internet has made multi-tasking into a skill that every computer user must eventually master. Simultaneously, through the Internet, one can communicate with loved ones from overseas, play high-stakes poker, download recently broadcast television shows, and purchase rare pieces of memorabilia that might otherwise be impossible to find. The art of multi-tasking must be mastered, however, lest haste make waste. Simply clicking through the “I Accept” box on a web page to move on to the next screen can significantly alter your legal rights.

Larry Leatherwood recently discovered that he had not truly mastered the art of multi-tasking. After deciding to make an online purchase, Leatherwood was directed to a variety of screens, one of which required him to click an “I Accept” box. Most likely, Leatherwood did not pay any attention to what in fact he was “accepting.” He just hurriedly clicked on the box. Upon receiving his order, Leatherwood found it to be unsatisfactory. Leatherwood disputed the transaction with the Internet company responsible for the sale, Cardservice International, Inc.

When the dispute was not resolved, Leatherwood filed a lawsuit in Broward County, Florida. In response, Cardservice International, Inc. filed a motion to dismiss the lawsuit on the grounds that Leatherwood was not permitted to bring suit in Broward County. Cardservice International, Inc. argued that by clicking on the “I Accept” box, Leatherwood had agreed that the only proper venue for lawsuits against it would be in California. The trial court agreed with Cardservice International, Inc. and dismissed Leatherwood’s lawsuit. The trial court held that when Leatherwood clicked “I Accept,” he entered into a Merchant Agreement with Cardservice International, Inc. By the terms of this Merchant Agreement, Leatherwood personally guaranteed payment and agreed that the proper venue for any disputes arising from the transaction would be in California.

Leatherwood appealed the trial court’s decision. In *Leatherwood v. Cardservice International, Inc.*, 929 So.2d 616 (Fla. 4th DCA 2006), the Fourth District Court of Appeals affirmed the trial court’s decision and explicitly found that “click agreements” are valid and enforceable. The lesson to learn from *Leatherwood v. Cardservice International, Inc.* is to pay attention to what terms and conditions you are in fact accepting. Never click the seemingly innocuous “I Accept” box without knowing what it is you may be agreeing to.

## HOMEOWNER FINDS YOU CAN GO HOME AGAIN, BUT IT MAY COST YOU

As Florida's population has rapidly increased, homeowners' associations have become a fact of life for many residents. These entities permit developers to increase the population density of a subdivision by enlisting the residents to perform some of the supervisory and management tasks that might ordinarily be provided by local government.

Most homeowners elected to these posts take their positions seriously and perform their jobs admirably on behalf of their fellow residents. Typically, however, office holders in homeowners' associations are laymen, not trained in local governance and often elected to their position without prior experience serving in any similar post. Homeowner governance occasionally creates friction among the residents. As these associations have spread throughout our state, various types of conflicts have proliferated as well. One resident recently discovered, however, that Florida courts may have little patience when such a conflict gets out of hand.

The dispute in *Greenacre Properties, Inc. v. Rao*, 933 So.2d 19 (Fla. 2d DCA 2006), began in 1999, apparently when Dr. Radhakrishna Rao attempted to build a small pond in his back yard. The Second District commented that, "[j]ust as it is doubtful that the Defenestration of Prague was the actual cause of the Thirty Years' War of 1618, it is unlikely that Dr. Rao's pond, all by itself, precipitated the subsequent litigation." This comment gives some hint as to the trivial bitterness of the lawsuit.

In September 2002, after more than three years of intensive battle, the trial court denied the attempt of Dr. Rao's homeowners' association to secure an injunction to force him to remove the pond and designated Dr. Rao to have been the prevailing party in the case. Dr. Rao soon discovered his victory was somewhat pyrrhic. The trial court, finding that "the protracted litigation between the parties was the result of a simple misunderstanding the parties should have resolved between themselves," awarded him a mere \$5,545 in attorneys' fees.

Undaunted, Dr. Rao then turned his attentions to Greenacre Properties, the management company for the association. During the course of his case against the association, Dr. Rao had attempted to obtain association documents from the management company. The documents were not forthcoming in a timely manner. In response, Dr. Rao, employing the document disclosure provisions of Chapter 720 of the Florida Statutes, had filed a separate lawsuit against the management company seeking damages for breach of contract and negligence. As the case progressed, it became readily apparent that the bulk of the damages Dr. Rao was seeking were attributable to the more than \$30,000 in attorneys' fees he had incurred in his pond war against the association, but which the court had not allowed him to recover.

Against the management company, Dr. Rao prevailed at the trial court level, but the Second District Court of Appeal was not so generous. First, the appellate court held that Dr. Rao was not entitled to \$500 in statutory damages for the management company's failure to disclose association records. To the extent Chapter 720 provides a remedy to a homeowner, the appellate court held his sole remedy was against his homeowners' association for its refusal to disclose the records, not against the association's management company for following the association's instructions. The court also held that Dr. Rao was not a third-party beneficiary of the contract

between the association and the management company. He thus could not sue for the management company's supposed breach of that contract. Significantly, the court observed that entitlement to the documents in question should have been determined through the discovery procedures of the underlying lawsuit, rather than in a collateral case employing the statute.

The Second District was even more skeptical of the damages awarded to Dr. Rao for negligence. In fact, the court even went so far as to state that it was "doubtful that . . . Dr. Rao's complaint even stated a cause of action." He had not presented any proof of physical injury or illness requisite under a negligence theory. The appellate court therefore reversed the trial court's award of \$8,800 attributable to thirty-two hours of Dr. Rao's "lost earnings." The court also disregarded Dr. Rao's argument that the management company owed him some sort of fiduciary duty that it might have breached. Having thus found that Dr. Rao had failed to support any valid cause of action against the management company, the Second District reversed his damages award in full.

### **SUPERMAN CANNOT BE HELD RESPONSIBLE FOR FAILING TO RETURN FOR LEX LUTHOR'S APPEAL**

Moviemakers, no matter how fantastic or fanciful their stories, sometimes attempt to ground their films in reality by having their characters face real world problems. The audience can enjoy a comforting frame of reference if Spider-Man has trouble making a rent payment or Captain Jack Sparrow has to bail out a leaky boat. Occasionally, filmmakers untrained in the law attempt to have a character face a typical legal challenge. The results, no matter how well-intentioned, may turn out to be inaccurate and humorous.

A beloved American icon recently faced such a challenge in the summer blockbuster *Superman Returns*. During the film, Superman leaves Earth to investigate a report that his home world of Krypton may not have been destroyed. While he is gone, his arch-nemesis Lex Luthor is released from prison after the latest in a long series of appeals succeeds. When Superman returns, he is told that he is partly to blame for Luther's release because he was unavailable to testify during the appeal.

The problem with this storyline is that appellate courts seldom, if ever, take testimony. Appellate courts examine an already developed record to determine whether the law was correctly applied. They do not act as finders of fact, which is the province of the trial court. An appellate court may reverse a case because additional evidence needs to be presented or testimony taken, but it will not take the testimony itself. That task falls to the trial court. Thus, while Superman might be blamed for failing to prevent any number of disasters during his absence, he should not have been held responsible for Lex Luthor's freedom. That must be attributed to sloppy screenwriting.

## **WELCOME ANGELA ALLEN**

Litchford & Christopher is pleased to announce the arrival of our newest associate, Angela Allen. Angela attended Wake Forest University as both an undergraduate and a law student. As an undergraduate, she majored in Political Science with a minor in International Studies. Between her undergraduate and law school studies, Angela spent a year in New York City working for International Creative Management, Inc. (“ICM”), an international talent agency. At ICM, Angela worked with literary foreign rights agents and completed deals for ICM’s international publishing houses. Angela then returned to her alma mater for law school. During the summer following her second year of law school, Angela worked as a law clerk at Litchford & Christopher. She showed great promise and potential as an attorney and was offered full-time employment. Angela finished law school this past May and recently sat for the Florida Bar examination. We know you will enjoy working with Angela.