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# Equitable Remedies for Contract Actions: Florida

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A Q&A guide to understanding the equitable remedies available under Florida common law for contract actions. Specifically, this Q&A discusses injunctions, rescission, reformation, and specific performance.

## Injunctions

### 1. What types of injunctions are available in your jurisdiction for breach of contract?

In Florida, there are three types of injunctions that a party can seek for breach of contract. These are:

- A permanent injunction, which restrains or mandates conduct permanently or until a specific date (*Gulf Bay Land Invs., Inc. v. Trecker*, 955 So. 2d 1157 (Fla. 2d DCA 2007)).
- A temporary injunction (also called a preliminary injunction in some jurisdictions), which preserves the status quo while the plaintiff seeks final injunctive relief (*Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017)).
- An emergency ex parte temporary injunction, which is a temporary injunction entered without notice to the opposing party (*Thomas v. Osler Med., Inc.*, 963 So. 2d 896, 899-900 (Fla. 5th DCA 2007)). An ex parte temporary injunction is the Florida law equivalent of the federal temporary restraining order.

### 2. Please identify the legal standards that courts in your jurisdiction use in deciding whether to grant:

- Permanent injunctions.
- Temporary injunctions.
- Ex parte temporary injunctions.

#### Permanent Injunctions

A permanent injunction requires the moving party to show:

- A clear legal right to injunctive relief.
- The absence of an adequate remedy at law.
- That irreparable harm will arise absent injunctive relief.

(*Liberty Counsel v. Fla. Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009).)

#### Temporary Injunctions

The standard for obtaining a temporary injunction under Florida law differs slightly depending on the court. The most common standard applied by Florida's appellate courts requires the moving party to show:

- The likelihood of irreparable harm absent the entry of the injunction.
- The unavailability of an adequate remedy at law.
- A substantial likelihood of success on the merits (sometimes referred to as a clear legal right to the relief requested).
- That the injunction is not against the public interest.

(*Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017).)

However, a minority of cases (mostly from the Third District Court of Appeal):

- Combine the elements of irreparable harm and inadequate remedy at law into a single element.

- Require the movant to show the additional element that the threatened injury to the moving party outweighs any possible harm to the adverse party.

(See, for example, *Sammie Invs., LLC v. Strategic Capital Assocs., Inc.*, 247 So. 3d 596, 599-600 (Fla. 3d DCA 2018) (requiring movant to show that threatened injury outweighs possible harm to adverse party).)

### Emergency Ex Parte Temporary Injunctions

The standard for obtaining an ex parte temporary injunction is the same as the standard for obtaining a temporary injunction with notice. The major difference between the two types of remedies is that a court decides an ex parte temporary injunction on the papers without an evidentiary hearing.

## Rescission

### 3. What are the elements of a rescission claim in your jurisdiction?

A party seeking rescission under Florida law must allege:

- The existence of a contract.
- That the contract was:
  - breached **and** that the defendant engaged in some other inequitable conduct (such as fraud) in addition to the breach (*Bank of N.Y. Mellon v. Reyes*, 126 So. 3d 304, 308 (Fla. 3d DCA 2013));
  - substantially breached in that it relates to an essential part of the contract and defeats the parties' purpose for making it (*Levenger Co. v. Feldman*, 516 F. Supp. 2d 1272, 1292 (S.D. Fla. 2007));
  - induced by fraud, duress, or other deceitful conduct (*Columbus Hotel Corp. v. Hotel Mgmt. Co.*, 156 So. 893, 897 (Fla. 1934); *Gort v. Gort*, 185 So. 3d 607, 613 (Fla. 4th DCA 2016); *Smith v. Holley*, 363 So. 2d 594, 596 (Fla. 4th DCA 1978));
  - entered into by mutual or unilateral mistake (*DePrince v. Starboard Cruise Servs., Inc.*, 271 So. 3d 11, 20 (Fla. 3d DCA 2018); *Keystone Creations, Inc. v. City of Delray Beach*, 890 So. 2d 1119, 1127 (Fla. 4th DCA 2004));
  - impossible to perform or that the purpose of the contract has been frustrated (*Marathon Sunsets, Inc. v. Coldiron*, 189 So. 3d 235, 236 (Fla. 3d DCA 2016); *In re Maxko Petroleum, LLC*, 425 B.R. 852, 872 (Bankr. S.D. Fla. 2010)); or
  - influenced by any other factor or circumstance supporting rescission (*Lane v. Talloni*, 626 So. 2d 316, 317 (Fla. 5th DCA 1993) (explaining that rescission was proper where consideration was inadequate and plaintiff failed to understand the nature and effect of the transaction)).
- That the party seeking rescission has:
  - notified the other party that the contract is no longer binding; and
  - offered to restore to the other party any benefits received from the contract.

  (*Rood Co. v. Bd. of Pub. Instruction of Dade County*, 102 So. 2d 139, 141-42 (Fla. 1958).)
- That the court can restore the parties to the positions they occupied before the agreement (*Perlman v. Prudential Ins. Co. of Am., Inc.*, 686 So. 2d 1378, 1380 (Fla. 3d DCA 1997)).
- That there is no other adequate remedy at law (*Cintas Corp. No. 2 v. Shwalier*, 901 So. 2d 307, 309 (Fla. 1st DCA 2005)).

### 4. How, if at all, does bringing a rescission claim affect a party's ability to bring a breach of contract claim in your jurisdiction?

A party may request rescission as an alternative to damages for a breach of contract claim. However, that party must elect one of those remedies (that is, either rescission of the contract or damages for breach of contract) before entry of judgment if it prevails at trial. (Fla. R. Civ. P. 1.110(b); FRCP 8(d)(3); *Goldstein v. Serio*, 566 So. 2d 1338, 1339-40 (Fla. 4th DCA 1990); *Niesz v. Gehris*, 418 So. 2d 445, 448 (Fla. 5th DCA 1982); *Wynfield Inns v. Edward LeRoux Group, Inc.*, 896 F.2d 483, 488 (11th Cir. 1990) (applying Florida law).) Counsel should always include an alternative count for damages for breach of contract when pleading a rescission claim.

### 5. How does a party rescind a contract in your jurisdiction?

To rescind a contract in Florida, on discovering grounds for rescission of a contract, a party must:

- Promptly notify the defendant of its decision to rescind the contract.

- Act in a manner consistent with rescission.
- Return or offer to return to the defendant all consideration the plaintiff received from the contract.
- Demand that the defendant return to the plaintiff all consideration the defendant received from the contract.

(*Rood Co. v. Bd. of Pub. Instruction of Dade County*, 102 So. 2d 139, 141-42 (Fla. 1958).)

If the parties cannot mutually agree to rescind the contract, a party may seek a judicial decree of rescission by pleading and proving the elements of a claim for rescission (see Question 3).

## 6. What is the primary relief available to a party seeking rescission in your jurisdiction?

In Florida, the primary relief available in an action for rescission is restoration of the status quo. When a court grants rescission, it typically orders the return of any consideration exchanged by the parties (referred to as restitution in Florida or rescissory damages in other jurisdictions) and discharges both parties from any further obligations under the contract. (*Townsend v. Morton*, 36 So. 3d 865, 867-68 (Fla. 5th DCA 2010).)

## 7. What damages, if any, are available when a party seeks rescission in your jurisdiction?

In addition to ordering rescission and restitution, Florida courts may award consequential or incidental damages if necessary to return the parties to their prior positions, such as an award of interest on money previously paid to the defendant (*Hauser v. Van Zile*, 269 So. 2d 396, 398 (Fla. 4th DCA 1972) (explaining that rescission and incidental or consequential damages are available in the same action)).

## 8. What happens to the contract after the court grants rescission in your jurisdiction?

Under Florida law, when rescission is granted, the court typically orders the return of any consideration exchanged by the parties and discharges both parties from any further obligations under the contract (*Townsend v. Morton*, 36 So. 3d 865, 867-68 (Fla. 5th DCA 2010)). The contract essentially is extinguished, and the court restores the parties to the positions they occupied before the agreement (*TTSI Irrevocable Tr. v. ReliaStar Life Ins. Co.*, 60 So. 3d 1148, 1150 (Fla. 5th DCA 2011)).

## 9. What are the most common defenses to a rescission claim in your jurisdiction?

The most common defenses to a rescission claim under Florida law include that:

- The plaintiff waived the right to rescission by ratifying the contract through continued acceptance of any benefits of the agreement (*Nowlin v. Nationstar Mortg., LLC*, 193 So. 3d 1043, 1046 (Fla. 2d DCA 2016)).
- The plaintiff did not rescind or attempt to rescind the contract in a reasonably prompt fashion after discovering the alleged grounds for rescission (*Rosique v. Windley Cove, Ltd.*, 542 So. 2d 1014, 1015-16 (Fla. 3d DCA 1989)).
- The court cannot restore the parties to the pre-contract status quo (*Walker v. Eris*, 886 So. 2d 414, 415 (Fla. 1st DCA 2004)).
- The risk of mistake was assigned in the contract to the party seeking rescission on the grounds of mistake (*Rawson v. UMLIC VP, L.L.C.*, 933 So. 2d 1206, 1210 (Fla. 1st DCA 2006)).

## 10. How, if at all, can a defendant assert rescission in your jurisdiction?

Under Florida law, a defendant may plead rescission as a counterclaim in its responsive pleading (*Weinstein v. Nevel*, 366 So. 2d 159, 160 (Fla. 3d DCA 1979)). When asserted as a counterclaim, a defendant must comply with all the typical rules and requirements for pleading a claim for relief (Fla. R. Civ. P. 1.110(b) and 1.170).

A defendant may also plead rescission as an affirmative defense to an action on a contract by arguing that the underlying contract was rescinded before the suit was filed. If a defendant wants to assert rescission as an affirmative defense, it must be raised in the answer to avoid waiver of the defense. (*Joseph Bucheck Constr. Corp. v. W.E. Music*, 420 So. 2d 410, 414-15 (Fla. 1st DCA 1982) (allowing rescission as an affirmative defense in an action by an alleged third-party beneficiary to the contract).)

## 11. What is the statute of limitations for a rescission claim and when does the statute of limitations begin to run in your jurisdiction?

In Florida, the statute of limitations for an action to rescind a contract is four years (§ 95.11(3)(l), Fla. Stat.).

The statute of limitations generally begins to run when the last element constituting the cause of action occurs (§ 95.031(1), Fla. Stat.). In a rescission action, this generally is when the event giving rise to the plaintiff's alleged right to rescind occurs.

However, if the rescission action is based on fraud, the statute of limitations does not begin to run until the facts giving rise to the action were discovered or should have been discovered with the exercise of due diligence (§ 95.031(2)(a), Fla. Stat.).

## Reformation

### 12. What are the elements of a reformation claim in your jurisdiction?

A party seeking to reform a contract in Florida must allege that:

- The parties reached an agreement.
- The agreement was reduced to writing.
- The writing does not express the true intention or agreement of the parties because of:
  - the parties' mutual mistake (for example, a scrivener's error); or
  - a mistake on the part of one party coupled with inequitable conduct on behalf of the other party.

(*Providence Square Ass'n, Inc. v. Biancardi*, 507 So. 2d 1366, 1372 n.3 (Fla. 1987); *Bone & Joint Treatment Ctrs. of Am. v. HealthTronics Surgical Servs., Inc.*, 114 So. 3d 363, 366 (Fla. 3d DCA 2013).)

### 13. How, if at all, does bringing a reformation claim affect a party's ability to bring a breach of contract claim in your jurisdiction?

In Florida, reformation and breach of contract are not inconsistent remedies. A plaintiff therefore may bring a breach of contract claim and seek reformation of the underlying agreement in the same pleading (see, for example, *Gennaro v. Leeper*, 313 So. 2d 70 (Fla. 2d DCA 1975) (discussing the award of damages if a defendant breached a reformed contract)).

### 14. What relief is available to a party seeking reformation in your jurisdiction?

The relief available to a party seeking reformation under Florida law is a corrected contract that restates the terms of the written contract and brings it into conformity with the parties' actual agreement at the time of its execution (*Chanrai Invs., Inc. v. Clement*, 566 So. 2d 838, 839 (Fla. 5th DCA 1990)). The reformation relates back to the time the contract was originally executed (*Morey v. Everbank*, 93 So. 3d 482, 490 (Fla. 1st DCA 2012)).

However, a court awarding reformation does not have the power to:

- Write a new contract for parties where no actual agreement exists.
- Rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be a bad bargain.

(*Fed. Home Loan Mortg. Corp. v. Beekman*, 174 So. 3d 472, 476 (Fla. 4th DCA 2015) (reversing a reformation claim where no evidence supported modification of an original loan agreement).)

### 15. What damages, if any, are available when a party seeks reformation in your jurisdiction?

Under Florida law, a party may obtain reformation and damages for a breach of the reformed contract in the same action (see Question 13).

However, a party seeking damages in tort on the theory that the other party's tortious conduct is the reason the contract does not reflect the parties' agreement cannot obtain both tort damages and reformation in the same action. A party may plead both theories but must elect either reformation or tort damages before the entry of final judgment. (*Young v. Kurlansik*, 974 So. 2d 623, 623-24 (Fla. 4th DCA 2008).)

### 16. What happens to a contract after it is reformed in your jurisdiction?

The reformation order restates the terms of the written contract that brings it into conformity with the parties' actual agreement at the time of its execution (*Chanrai*

*Invs., Inc. v. Clement*, 566 So. 2d 838, 839 (Fla. 5th DCA 1990)). The reformed contract relates back to the time the contract was originally executed (*Morey v. Everbank*, 93 So. 3d 482, 490 (Fla. 1st DCA 2012)).

### 17. What are the most common defenses to a reformation claim in your jurisdiction?

The most common defenses to a reformation claim under Florida law are that:

- Reformation is futile because there is no way to reform the contract in a way that allows for performance under the parties' original understanding (see, for example, *Antonelli v. Smith*, 556 So. 2d 1132, 1134 (Fla. 3d DCA 1989) (reformation is inappropriate to convey land that a new owner has no way to access)).
- In the case of real property, the property was later conveyed to a bona fide purchaser acquiring the property for value and without notice of the claimed mistake (*Fla. Masters Packing, Inc. v. Craig*, 739 So. 2d 1288, 1290 (Fla. 4th DCA 1999)).
- The doctrine of laches bars the action (*Niagara Fire Ins. Co. v. Allied Elec. Co.*, 319 So. 2d 594, 595 (Fla. 3d DCA 1975)).
- The party seeking reformation waived the right to reformation because of its inaction and delay after discovering the alleged grounds for reformation (*Thompson v. Gross*, 353 So. 2d 191, 192 (Fla. 3d DCA 1977)).

### 18. How, if at all, can a defendant assert reformation in your jurisdiction?

Under Florida law, a defendant can assert reformation as a counterclaim or crossclaim (see *Calypso Developers I, LLC v. Pelican Props. of S. Walton, LLC*, 109 So. 3d 1214 (Fla. 1st DCA 2013) (reformation asserted as a counterclaim); *Inglis v. First Union Nat'l Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001) (reformation asserted as a crossclaim)).

A defendant typically asks the court to reform the contract and argues that there was no breach under the reformed contract (see, for example, *Miley v. Miley*, 402 So. 2d 557, 557-58 (Fla. 2d DCA 1981) (defendant counterclaimed for reformation to reflect an alleged agreement of parties that the defendant did not breach)).

### 19. What is the statute of limitations for a reformation claim and when does it begin to run in your jurisdiction?

There is conflicting authority concerning the statute of limitations for an action seeking reformation in Florida that is **not** based on fraud. Specifically:

- The Second District Court of Appeal has held that the typical contractual statute of limitations (§ 95.11(2)(b), (3)(k), Fla. Stat.) does not apply because an action for reformation is not a contract enforcement action. That court has instead applied the limitations rule for laches to reformation claims. (*Corinthian Invs., Inc. v. Reeder*, 555 So. 2d 871 (Fla. 2d DCA 1989).) This rule requires a case-by-case analysis of whether the action was brought in a reasonable amount of time (*Appalachian, Inc. v. Olson*, 468 So. 2d 266, 269 (Fla. 2d DCA 1985) (explaining the doctrine of laches)).
- Both the Middle and Southern Districts of Florida have applied the five-year limitations period prescribed in Section 95.11(2)(b), Florida Statutes, to an action seeking reformation of a written contract (*Andreasen v. Progressive Express Ins. Co.*, 2017 WL 5635403, at *6 (S.D. Fla. Aug. 25, 2017); *Simony v. Fifth Third Mortg. Co.*, 2014 WL 5420796, at *3 (M.D. Fla. Oct. 22, 2014)). These federal courts hold that the statute of limitations begins to run when the party seeking reformation knew or should have known of the mistake giving rise to the claim (*Andreasen*, 2017 WL 5635403, at *6).

In actions for reformation based on grounds of fraud, the statute of limitations is four years (§ 95.11(3)(j), Fla. Stat.; *Troiano v. Troiano*, 549 So. 2d 1053, 1055-56 (Fla. 5th DCA 1989)).

## Specific Performance

### 20. What are the elements of a specific performance claim in your jurisdiction?

A complaint seeking specific performance in Florida must allege that:

- A valid and enforceable contract exists (*Muhtar v. Goldman*, 419 So. 2d 383, 383-84 (Fla. 3d DCA 1982)).
- The plaintiff:
  - performed its obligations under the contract;
  - was ready, willing, and able to perform its obligations; or
  - was excused from performing its obligations.

  (*Invego Auto Parts, Inc. v. Rodriguez*, 34 So. 3d 103, 105-06 (Fla. 3d DCA 2010).)

- The defendant has the ability and power to perform its obligations and is choosing not to perform (*Con-Dev of Vero Beach, Inc. v. Casano*, 272 So. 2d 203, 206 (Fla. 4th DCA 1973)).
- There is no adequate remedy at law (*Palm Lake Partners II, LLC v. C & C Powerline, Inc.*, 38 So. 3d 844, 851 n.9 (Fla. 1st DCA 2010)).

## 21. How, if at all, does seeking specific performance affect a party's ability to bring a breach of contract claim seeking damages in your jurisdiction?

A party may request specific performance in the alternative to damages for a breach of contract (Fla. R. Civ. P. 1.110(b); FRCP 8(d)(3)). However, that party must elect one of those remedies (that is, either specific performance or contract damages) before entry of judgment if it prevails at trial (*Taines v. Berenson*, 659 So. 2d 1276, 1277-78 (Fla. 4th DCA 1995) (explaining that a party cannot elect specific performance and recover damages for breach of contract)).

Although a party generally cannot obtain specific performance and recover money damages for breach of the same contractual provisions, the plaintiff should always plead a claim for money damages in the alternative to a specific performance claim. The decision to grant specific performance is within the court's discretion and is not granted as a matter of right (*Castigliano v. O'Connor*, 911 So. 2d 145, 148 (Fla. 3d DCA 2005)).

Pleading a claim for money damages for breach of contract ensures that the claim is preserved and money damages remain an option if the court determines that the elements of specific performance have not been met. Counsel should be prepared to answer questions from the court regarding whether an alternative breach of contract claim seeking money damages undermines its claim for specific performance because the claim may suggest that damages are adequate to make the plaintiff whole.

## 22. What relief may be granted to a party seeking specific performance in your jurisdiction?

A party seeking specific performance generally seeks a court order compelling another party to do what it agreed to under the contract. The court's goal should be to put the parties in their respective positions as if both parties had performed the contract. (*Anthony James Dev., Inc. v. Balboa St. Beach Club, Inc.*, 875 So. 2d 696, 698 (Fla. 4th DCA 2004).)

## 23. What damages, if any, are available when a party seeks specific performance in your jurisdiction?

Florida courts generally cannot award **both** specific performance and money damages in the same action for the same breach because those remedies are inconsistent (see, for example, *Linkous v. Linkous*, 941 So. 2d 530 (Fla. 1st DCA 2006) (the availability of damages for a breach of contract precludes an order of specific performance)).

However, a court may award incidental damages to the plaintiff in addition to specific performance. These damages are considered incidental because they are:

- Limited to damages that return the parties to the status quo at the time of the breach.
- Distinct from traditional breach of contract damages.

(*Blanton v. Baltuskouis*, 20 So. 3d 881, 884 (Fla. 4th DCA 2009); *Walker v. Benton*, 407 So. 2d 305, 307 (Fla. 4th DCA 1981).)

When awarding incidental damages, the court essentially undertakes an accounting to balance the relative equities of the parties (*Wiborg v. Eisenberg*, 671 So. 2d 832, 835 (Fla. 4th DCA 1996)). For example, a purchaser of land seeking specific performance may also seek damages for lost rents and profits of the property that the delayed purchase cost them (*Walker*, 407 So. 2d at 307).

## 24. What are the most common defenses to a specific performance claim in your jurisdiction?

The most common defenses to a claim seeking specific performance are that:

- The contract has not been breached because it does not exist or never existed (see, for example, *Boardwalk at Daytona Dev., LLC v. Paspalakis*, 220 So. 3d 457, 461-62 (Fla. 5th DCA 2016)).
- It is impossible for the defendant to perform its obligations under the contract (*Con-Dev of Vero Beach, Inc. v. Casano*, 272 So. 2d 203, 206 (Fla. 4th DCA 1973)).
- The plaintiff's conduct was unlawful or inequitable resulting in unclean hands (*Buttner v. Talbot*, 784 So. 2d 538, 541 (Fla. 4th DCA 2001)).

- Specific performance is an improper remedy because it requires court supervision over a long or indefinite period of time (see, for example, *Fla. Jai Alai, Inc. v. S. Catering Servs., Inc.*, 388 So. 2d 1076, 1078 (Fla. 5th DCA 1980) (explaining that specific performance is inappropriate where the court assumes an endless duty to supervise performance)).
- Specific performance is improper because the contract specifically waives specific performance as a remedy for breach (*Sun Bank of Miami v. Lester*, 404 So. 2d 141, 143 (Fla. 3d DCA 1981)).

## 25. How, if at all, can a defendant assert specific performance in your jurisdiction?

Florida law authorizes a defendant to assert a counterclaim seeking specific performance. A defendant may assert this defense to force a nonperforming plaintiff suing for breach of contract to perform its obligations under the contract. (*People's Tr. Ins. Co. v. Nowroozpour*, 277 So. 3d 135, 136-37 (Fla. 4th DCA 2019).)

## 26. What is the statute of limitations for a claim seeking specific performance and when does the statute of limitations begin to run in your jurisdiction?

Under Florida law, the statute of limitations for bringing a breach of contract claim that seeks specific performance is one year after the date the cause of action accrues. The statute of limitations begins to run on the date the breach occurs. (§ 95.11(5)(a), Fla. Stat.; *McMillan v. Shively*, 23 So. 3d 830, 831 (Fla. 1st DCA 2009).)