

# Resolving Your Case at Pre-Trial

## I. Settlement

- Defendant admits the debt and wishes to work out a payment plan.
- A Settlement Agreement is a mutual agreement of terms between the parties. The terms most often settled at pre-trial are:
  - The amount of the principal debt,
  - The interest rate (usually the judgment rate as it is normally lower than the contract rate),
  - A payment amount, and
  - The date the payment will be due.
  - If the Defendant pays as agreed, the case will be dismissed.

## II. Consent to Judgment

- Defendant admits the debt and stipulates to a Judgment.
- A Stipulation is an agreement and acceptance of the information as presented in the case by the opposing party.
- Once a Judgment is entered, the debt will accrue interest at the statutory rate.<sup>1</sup>

- Because no set payment schedule is established, the Defendant can pay whatever he/she can afford in installments.

## Going to Trial

### Denial of liability:

If the Defendant denies liability for the debt, then the Court will set a trial. The Plaintiff has the burden of proving the debt by the preponderance of the evidence. Once the debt is established, the burden shifts to the Defendant to prove that he/she is not liable for the debt.

### Must have a defense:

Once the burden shifts, the Defendant will likely lose the case unless he/she has a valid defense.

**Not being able to afford to pay the debt owed is not a valid defense.**

## Examples of Defenses are:

- *This is not my account*—It is possible that the wrong person was served with the debt. Mistakes happen. Or, there is a possibility that identity theft is an issue.
- *Accord and Satisfaction*—Is it possible that you worked out a settlement with the original creditor for an amount less than the total debt? When this happens, the balance is charged off. Debt collection firms purchase charged-off debts, so it is possible that your debt was purchased and now the firm is suing for the balance. If you have proof that you worked out and satisfied an agreement to pay less than the total, you will not have to pay the remaining balance.
- *Statute of Limitations Expired*—The time within which an action must commence depends on the type of debt and the cause of action. For complete information, see § 95.11, Florida Statutes.<sup>2</sup>

<sup>2</sup> Five (5) Years—

1. Action on a contract, obligation, or liability founded on a written instrument (credit card debt).
2. Action to foreclose a mortgage.

Four (4) Years—

1. Negligence
2. The design, planning, or construction of an improvement to real property.
3. Account Stated
4. Open Account

<sup>1</sup>Pursuant to § 55.03, Florida Statutes, each year the Chief Financial Officer establishes the interest rate that accrues on all judgments.

- *Discharged in Bankruptcy*—If the debt was discharged in a bankruptcy proceeding, then you are not liable for its payment. It is possible that the debt was in transit at the time it was discharged and parties were not notified. Therefore, a new creditor may not know that the debt was discharged.

**If you have a defense, consider filing an answer to the claim.**

Once the Plaintiff receives your answer and investigates, he/she may agree with you and dismiss the case.



*The following is a sample form to use when filing an Answer to the Statement of Claim:*

In the County Court, Seventh Judicial Circuit, in and for \_\_\_\_\_ County, Florida

Case No.: \_\_\_\_\_

\_\_\_\_\_

Plaintiff,

vs.

\_\_\_\_\_

Defendant.

**Answer to Statement of Claim**

Comes now the Defendant in this cause and in response to the Statement of Claim (s) says as follows:

\_\_\_\_\_ The Defendant denies liability, because (state defense) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ The Defendant admits liability but disputes the damages, because \_\_\_\_\_

\_\_\_\_\_

Other reasons: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Defendant Signature  
Address:  
Phone number:

**Original** filed with Clerk of the Court  
**Copy** furnished to Plaintiff or Attorney

# Small Claims Court

Defending Yourself  
Resolving Your Case at  
Pre-Trial or Going to Trial



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