

GUEST EDITORIAL

Zamora v. Florida Atlantic University Board Of Trustees: The Fourth District Applies Sovereign Immunity Caps To Florida Civil Rights Act Cases

By Robert J. Sniffen

The Fourth District Court of Appeal has held that the statutory limitations on damages contained in section 768.28(5), Florida Statutes, applies to suits filed against the State of Florida and its subdivisions in cases arising under the Florida Civil Rights Act of 1992 ("FCRA").¹ In *Zamora v. Florida Atlantic University Board of Trustees*,² the Fourth District followed the decision of the Second District Court of Appeal in *Gallagher v. Manatee County*,³ which had reached the same conclusion. In *Zamora*, however, the Fourth District answered a question left unanswered in *Gallagher*, that is, whether the two claims filed by Mr. Zamora — one for discrimination and one for retaliation — were separate claims, and thus subject to the \$200,000.00 cap under section 768.28(5).⁴

Factual Background

Mr. Zamora sued Florida Atlantic University Board of Trustees ("FAU" or "University"), alleging that he had been discriminated against on the basis of his national origin and his age. He also alleged that he had been retaliated against after filing internal complaints with the University's EEO office and external complaints with the

Florida Commission on Human Relations ("FCHR") and Equal Employment Opportunity Commission ("EEOC").⁵ The case went to trial and, on February 1, 2005, a jury verdict was returned. The jury rejected some of Mr. Zamora's claims, but returned a verdict in his favor with regard to his claim that he had been denied a discretionary pay raise because of his age and that he had been retaliated against for filing an internal complaint with the University's EEO office. The jury awarded Mr. Zamora \$83,596.00 on his age discrimination claim and \$37,000.00 on his retaliation claim.⁶

Mr. Zamora's attorneys sought an award of attorneys' fees and costs as a prevailing party.⁷ The University filed a post-trial motion for judgment notwithstanding the verdict, for a new trial and for a remittitur. The University also filed a motion to apply the damages caps contained in section 768.28(5).⁸

The trial court entered an order applying the section 768.25(5) damages caps, finding that the \$100,000 sovereign immunity cap contained at section 768.28(5) applied to all of Mr. Zamora's claims.⁹ The trial court rejected Mr. Zamora's argument that his claims involved two separate incidents or occurrences, and, therefore, that

the \$200,000 limit should apply.¹⁰ Mr. Zamora appealed to contest the application of the sovereign immunity caps and the \$100,000 recovery limit.

The *Gallagher* Decision

Much of the debate before the Fourth District was whether the court should follow the decision of the Second District in *Gallagher*. In *Gallagher*, the Second District construed the following phrase in section 760.11(5) of the FCRA: "the total amount of recovery against the State and its agencies and subdivisions shall not exceed the limitation as set forth in Section 768.28(5)," and held that the phrase "total amount of recovery" meant that the damages caps contained in section 768.28(5) included all recovery awarded to a plaintiff in a FCRA action, including attorney's fees.¹¹ Thus, under *Gallagher*, when a plaintiff sues the State and its subdivisions under the FCRA, the sovereign immunity caps limit the total amount of recovery that may be obtained, inclusive of damages, attorney's fees and costs. What *Gallagher* did not answer is whether the \$100,000.00 damages limitation, rather than the \$200,000.00 limitation, applies when a plaintiff pursues multiple

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claims against the State and its subdivisions under the FCRA.

The Decision in *Zamora*

On appeal, Mr. Zamora argued that the trial court erred in determining that the statutory cap on damages applied to both attorney's fees and compensatory damages, and that it erred in categorizing his recovery as a single claim. With respect to the issue of the statutory cap on damages, the court adopted the holding and rationale of *Gallagher* and held that the damages limitations contained in section 768.28(5) apply to FCRA cases filed against the State and its subdivisions.¹² The court also followed *Gallagher* in holding that the statutory cap is inclusive of damages, attorney's fees and costs.¹³ The court noted that, while the damages caps should be applied in FCRA cases, a plaintiff-employee who secures a verdict in excess of the caps is free to file a claims bill with the Florida Legislature.¹⁴

With respect to the second issue regarding separate claims, the court held that recovery "should not be limited to \$100,000.00," because Mr. Zamora "prevailed on two separate claims — one for age discrimination and one for retaliation."¹⁵ In so holding, the court found that Mr. Zamora's discrimination and retaliation claims required the proof of different facts and constituted separate causes of action.¹⁶ In addition, the court noted that the jury made separate damages awards for both claims, and found persuasive the fact that the pursuit of one of the claims did not bar pursuit of the other under principles of *res judicata* or the rule against claim splitting.¹⁷ As such, the court found that Mr. Zamora's claims were separate, and that the damages awarded should be capped at \$200,000.00.

Conclusion

Like *Gallagher*, the decision in *Zamora* is important for those practicing in the area of labor and employment law. It is now settled in at least two District Courts of Appeal that aggrieved individuals pursuing discrimination and retaliation claims under the FCRA against the State and its subdivisions will be subject to the sovereign immunity caps set forth in section 768.28(5), and that the caps will be applied to the entire recovery, including attorney's fees. Governmental entities which enjoy the damages limitations set forth in section 768.28(5) may now assess exposure and determine with more certainty what amount of damages may be awarded in the event of an adverse jury verdict.

The decision in *Zamora* is mostly positive for public employers. Granted, the Fourth District's determination that discrimination and retaliation claims are "separate claims" increases the potential exposure in FCRA cases to \$200,000, and this is an unfortunate outcome for public employers. The court's adoption of the reasoning in *Gallagher*, however, and its determination that sovereign immunity caps should be applied to all amounts recoverable in FCRA cases, can be seen as a victory for public sector employers because of the increased predictability it will bring to the litigation of these cases.

¹ §§ 760.01-760.11, Fla. Stat. (2008). Fairly summarized, the FCRA prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, age, handicap, or marital status. The FCRA also prohibits retaliation against employees who engage in certain statutorily protected activities.

² 969 So. 2d 1108 (Fla. 4th DCA 2007), *reh'g denied*, 2008 Fla. App. LEXIS 267 (Fla. 4th DCA 2008).

³ 927 So. 2d 914 (Fla. 2d DCA 2006), *review denied*, 937 So. 2d 665 (Fla. 2006).

⁴ Section 768.28(5) states, in pertinent part: "Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or

any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000."§768.28(5), Fla. Stat. (2008).

⁵ Pursuant to Section 760.11, Florida Statutes, FCHR is given the responsibility of investigating charges of employment discrimination filed by aggrieved individuals under the FCRA and to make a finding of "cause" or "no cause." §§ 760.11(1)-(8), Fla. Stat. (2008).

⁶ *Zamora*, 969 So. 2d at 1110.

⁷ The FCRA contains a prevailing party provision that authorizes attorney's fees and costs. See § 760.11(5), Fla. Stat. (2008).

⁸ *Zamora*, 969 So. 2d at 1110.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 927 So. 2d at 918.

¹² 969 So. 2d at 1111.

¹³ *Id.*

¹⁴ *Id.* Note that, because most FCRA claims are filed in conjunction with companion claims under federal law analogs (i.e. Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, etc.), additional damages are available under federal law, to which different caps apply.

¹⁵ *Id.*

¹⁶ *Id.* at 1114.

¹⁷ *Id.*

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