

IN THE CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: "AO"
CASE NO.: 50-2024-CA-000690-XXXXA-MB

AUSTIN D RUDD,
Plaintiff/Petitioner

vs.

GOMEZ AND VELAZQUEZ CORP,
IVAN GOMEZ,
Defendant/Respondents.

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE 8th AFFIRMATIVE
DEFENSE IN PART**

This Cause came before the Court on August 26, 2024 at 8:30am for a special set hearing on the Plaintiff's Motion to Strike the Defendants' 8th Affirmative Defense in Part. This Court, having reviewed the Plaintiff's Motion to Strike the Defendants' 8th Affirmative Defense in Part (DE #72), the Defendant's Response in Opposition to the Plaintiff's Motion to Strike (DE #75), the Plaintiff's Memorandum of Law in Support of Plaintiff's Motion to Strike (DE #99), the Plaintiff's Supplemental Authority in Support of Plaintiff's Motion to Strike (DE #103), and the Defendant's Sur-Reply to Plaintiff's Second Memorandum in Support of Plaintiff's Motion to Strike the Defendants' 8th Affirmative Defense (DE #105), having reviewed the authorities cited therein, having heard arguments of counsel, and being otherwise apprised in the premises, finds as follows:

Statement of Facts Relevant to the Instant Motion

1. On or about September 20, 2022, the Plaintiff was involved in a motor vehicle crash and allegedly suffered injuries.

2. On or about March 24, 2023 HB 837 became effective which, *inter alia*, modified section 768.81(6), Florida Statutes, the comparative fault statute, to preclude recovery in a negligence action for any party found to be more than 50% at fault.
3. HB 837 states “[e]xcept as otherwise expressly provided in this act, this act shall apply to causes of action **filed** after the effective date of this act.”
4. On or about January 24, 2024, the Plaintiff filed the instant action.
5. On or about February 23, 2024, the Defendants filed an answer asserting section 768.81(6), Florida Statutes (2023) as their 8th affirmative defense.
6. Plaintiff moved to strike Defendants’ 8th affirmative defense, arguing that HB 837’s amendment to section 768.81(6) cannot be applied retroactively to causes of action that accrued prior to HB 837’s enactment.

Analysis

In determining whether a statute should be applied retroactively, the first inquiry is whether there is clear evidence of legislative intent to apply the statute retrospectively and, if the legislation clearly expresses such an intent, then the second inquiry is whether retroactive application is constitutionally permissible. *Metropolitan Dade Cnty. v. Chase Fed. Housing Corp.*, 737 So. 2d 494, 499 (Fla. 1999). The general rule is that, in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities, and duties is presumed to apply prospectively. *Id.* If a statute attaches new legal consequences to events *completed before its enactment*, the courts will not apply the statute to pending cases, absent clear legislative intent favoring retroactive, or retrospective, application. *Id.* (*emphasis added*).

Although a substantive statute will not operate retrospectively, the general rule is that procedural or remedial statute may operate retrospectively. *State Farm Mut. Auto. Ins. Co. v.*

Laforet, 685 So. 2d 55 (Fla. 1995); *Raphael v. Schecter*, 18 So. 3d 1152, 1156 (Fla. 4th DCA 2009). Substantive law prescribes “duties and rights” and procedural law amendments concern “means and methods.” *Raphael*, 18 So. 3d at 1156 (quoting *Alamo Rent-A-Car v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994) (holding that application of legislative limitation on punitive damages for causes of action arising on or after July 1, 1986 by amendment effective October 1, 1987 was a substantive decision of the legislature because it granted or eliminated a right or entitlement)). Where an act or event has already occurred affecting a claimant and has been transformed into an accrued right to sue, whether a suit has not yet been brought, or is pending without an outcome, both situations involve vested rights. *Raphael*, 18 So. 3d 1157 (declining to retroactively enforce statute imposing limits on non-economic damages in medical malpractice cases to a cause of action that accrued prior to the adoption of the amendments but not filed until two years after the statute became effective).

Simply because the legislature was aware of the law regarding joint and several liability does not itself establish a clear intent to apply the amendment retroactively. *Basel v. McFarland & Sons*, 815 So. 2d 687, 693 (Fla. 5th DCA 2002)(concluding application of October 1, 1999 amendment to section 768.81, Florida Statutes, to a cause of action which accrued in 1994, applied prospectively and was therefore inapplicable to the case even when the case went to trial in 2000)). There are any number of reasons the legislature could have omitted an explicit statement that the amendment be applied retroactively and, thus, in the absence of such an explicit statement the inquiry must become whether a modification of section 768.81 is substantive in nature as opposed to procedural or remedial. *Id.* at 693 – 94.

In *Basel*, the court, citing to *Mancusi*, reasoned that modification of the comparative fault framework was substantive. *Id.* at 694. *Basel* reasoned that *Mancusi* suggests a change in joint and

several liability affects a defendant’s existing legal obligation to pay economic damages and a plaintiff’s right to recover such damages from a particular defendant where joint tortfeasors are involved. *Id. Basel* reasons that *Mancusi* determines this change to be dealing with rights and duties and not means and methods. This Court finds that the analysis in *Basel* is instructive to the instant case, and dictates that the legislature’s amendment of the comparative fault statute was substantive.

The Court rejects Defendants’ reliance on *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973), as that case dealt with a change to common law, as opposed to a change in a statutory framework, and is therefore not applicable to the instant analysis. *Clausell v. Hobart Corp.*, 515 So. 2d 1275, 1275-76 (Fla. 1987)(“The United States Supreme Court has noted that “[o]ur cases have established that ‘[a] person has no property, no vested interest, in any rule of the common law.’[...] “To be vested a right must be *more than a mere expectation based on an anticipation of the continuance of an existing law[.]*”) *emphasis in original* quoting *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 88 (1978) and *Division of Workers’ Compensation v. Brevda*, 420 So.2d 887, 891 (Fla. 1st DCA 1982).

Conclusion

Relying on *Basel*, *Mancusi*, and *Raphael*, this Court finds the Defendant’s 8th affirmative defense is seeking retroactive application of the amendment to 768.81(6), and as set forth above, such retroactive application would be improper. Accordingly, the Court **GRANTS** the Plaintiff’s Motion to Strike Defendant’s 8th Affirmative Defense in Part.

DONE AND ORDERED in West Palm Beach, Florida.

 502024CA000690XXXAMB 09/18/2024
John J. Parnofiello Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT
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John J. Parnofiello
Circuit Judge