**BAH HUMBUG…. SUING SANTA?**

**BY: WILLIAM G. MORRIS, ESQ.**

Most people think of Santa Claus as a jolly old elf with a white beard and a red suit. They welcome Santa into their homes and even leave cookies and milk, which Santa gladly accepts as evidenced by his rather large belly that purportedly shakes like a bowl full of jelly.

But, not everyone is happy with Santa and a few disgruntled people have even voiced a desire to sue. Sue Santa, you ask? Yes. That is exactly what these unhappy souls are thinking. But what could they sue for? Well, let’s take a look.

Many claim Santa has breached a contract. They claim they were told if they were good, Santa would reward them with wonderful gifts. They claim they were good but Santa has not brought the gifts.

Those defending Santa argue there is no contract. Santa gives gifts to the people he finds deserving, after watching all year. They explain Santa maintains a naughty list and a nice list. Those on the nice list are rewarded. Hence, there is no bargained for consideration because Santa does not guarantee a gift in exchange for good behavior.

The defenders go on to argue Santa’s gifts are exactly that…. gifts. Under Florida law, a promise to make a gift is not a contract and can be revoked at any time unless there is bargained for consideration. The defenders explain Santa does not promise a gift for good behavior but only that good behavior may make someone eligible for Santa to consider making a gift.

Further proof that there is no contract is the fact that Santa often leaves gifts that were not on anyone’s Christmas gift list and omits those that were really wanted by the recipient. The anti-Santa folks point to that practice as simply another breach of contract.

The anti-Santa folks argue the delivery of something other than the most coveted gift item is simply bait and switch. They claim that practice is so widespread as to justify class action against Santa for fraud and unfair trade practices. To prove fraud, the plaintiffs would have to establish Santa made a false statement, Santa knew to be false and that it was intended to induce action by the recipient. Further, the recipient would have to be harmed by relying on the statement and the reliance was reasonable.

The defenders ask, how can being good be something that would only happen if Santa proposed a gift that Santa did not intend to deliver? And someone being good would be unable to prove they were damaged by their good behavior, so they say the case would be thrown out of court.

The anti-Santa folks do not stop there. They complain of trespass and property damage. They argue Santa is not welcome at their home but he often comes anyway. He even comes inside.

To establish trespass, they only need to prove Santa came on their property without their consent-which they say will be easy. But the defenders argue proving damages will be tough. How much will a jury award when an elf enters a home to give a gift? Nobody knows.

Property damage is easy to prove say the anti-Santas. Just look at what Santa leaves behind, Broken roof tiles, reindeer poop, cookie crumbs, spilled milk and even soot from chimneys. The cleaning bill alone can cost $100s. The defenders simply shrug and argue these claims are greatly exaggerated and most if not all of the “damage” was there already. After all, an elf with flying reindeer and the ability to circle the world in one night would certainly be able to avoid property damage.

Some of the anti-Santa folks argue Santa is a voyeur, peeping at all hours of day and night throughout the year. Santa claims he is watching for naughty and nice. But, is that all? They say Santa invades their privacy. Since no one knows for sure when Santa is watching, even his defenders concede the anti-Santa folks might win that point. Both sides wonder how Santa defines naughty and nice in his watching activity?

A few people want an injunction to keep Santa off of their property. They claim Santa is a nuisance, causing damage, leaving reindeer droppings and some even claim he makes such a clatter they have to get out of bed to see what is the matter. They want a good night’s sleep and want Santa banned from their homes. To get an injunction, these folks will have to prove damage and that they cannot get adequate relief from a money judgment. Easy, say the anti-Santas.

Some complain that when they were a child, a long time ago, Santa failed to show or did not bring their most treasured and desired gift. They say Santa did that on purpose and caused them emotional stress from which they have never recovered.

The defenders point out that most of those claims are likely barred by the statute of limitations, even if true. But even if not so barred, establishing a claim for intentional infliction of emotional distress would require proving Santa intended emotional distress, that Santa’s conduct was outrageous and that the emotional distress was severe. If emotional distress was caused by Santa’s negligence, they would also have to establish some bodily impact.

Defenders argue those claiming emotional distress are simply unhappy people and that is not Santa’s fault. the unhappy people They also argue the claims of emotional distress because Santa did not bring a wanted gift is nothing more than disappointment and that none of the required elements are present.

A few want to sue Santa for alienation of affections. At common law, alienation of affections was actionable when a third party deprived a married person of the love and affection of his or her spouse. Easy to beat that one, say the defenders. Florida abolished action for alienation of affections by statute in 1945. Only 7 states still allow suit for alienation of affections. In Florida, that claim ends before it starts.

Defenders smirk, even if someone is bold enough to sue, how would that person serve Santa with summons and complaint? Santa supposedly lives and works at the North Pole, but nobody has a good address. Florida would allow service on Santa personally or on anyone residing with Santa in Santa’s home who is at least 15 years old. But where would that be? And what is Santa’s name. Santa Claus? St. Nick.? St. Nicholas? Father Christmas? Kris Kringle? Papa Noel?

Defenders go on, before filing suit, one should worry that Sant might countersue. How many times has Santa been hurt visiting a home because the owner was negligent or had a dangerous condition? Food poisoning? Bad milk? How about a claim that a lawsuit is frivolous and Santa should get attorney fees from both the plaintiff and the lawyer under Florida Statutes?

To date, Santa has not been sued. Santa supporters believe it should stay that way forever.

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