

# Celebrity Cruises Upends Sanction, Ex-Worker's \$2.5M Award

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Law360, Miami (November 5, 2014, 8:09 PM ET) -- A Florida appeals court on Wednesday reversed a lower court's sanction order against Celebrity Cruises Inc. and a former employee's resultant \$2.5 million award, saying the "litigation/liability death penalty" was levied without prior notice or opportunity for the defendant to be heard.

The three-judge panel from the Third District Court of Appeal remanded the case for a new jury trial on liability, in a case concerning injuries plaintiff and former ship-worker Vicente J. Fernandes allegedly suffered in a fight with a much larger co-worker over a shortage of towels and bedding on board.

"We are very satisfied with the Third District's comprehensive analysis of the case and its decision," Celebrity counsel Rodolfo Sorondo Jr. of [Holland & Knight LLP](#) told Law360. "We look forward to providing the next jury with our side of the story."

The cruise line had argued in its briefs and [at oral arguments](#) Oct. 20 that Miami-Dade County Circuit Judge David C. Miller abused his discretion at a March 2013 hearing when he struck Celebrity's pleadings and sent the case directly to a jury for trial solely on damages.

Fernandes' trial counsel had scheduled the hearing for the end of the judge's motion calendar — where cases were allotted just five minutes each — to hear the plaintiffs' October 2012 motion to compel certain discovery.

"The motion does not say anything about sanctions, the 'wherefore' clause does not say anything about sanctions, the notice of hearing said nothing about sanctions, and of course the email correspondence," Sorondo said during oral arguments.

Sorondo referred to an email exchange from the day before the hearing that Celebrity said showed that the sides had all but reached an agreement on the depositions at issue, except for the order in which they would be taken. That made the developments at the hearing all the more surprising to the defendant, he said.

Celebrity claimed that the plaintiff had also played a role in delays in the case and argued that the judge made other errors in his rulings.

"While Celebrity argues a number of errors mandating reversal, we need go no further than the total lack of notice to Celebrity that sanctions were going to be considered much less imposed and the lack of an opportunity to present evidence on this issue, to conclude reversal is required," the judges said in their opinion.

They also noted, however, that striking a party's pleadings and entering default for failure to satisfy a discovery order represents the most severe possible penalty and should be reserved for "extreme circumstances."

They agreed with Celebrity that it was not solely to blame for delays in the case, noting that the case was reset for trial multiple times, usually on a joint agreement but also at times to accommodate Fernandes' trial counsel.

Fernandes, a resident of India, had not been able to get a visa to come to the U.S., the appeals panel added. As a result, he had not been deposed or received a medical examination of the severe leg injuries he was said to have suffered. Previous court orders said that Fernandes was to be deposed first, before Celebrity's employees, including several eyewitnesses.

Judge Miller's conclusion that Celebrity's delays in deposing Fernandes had left insufficient time for him to depose the other crewmembers before the May trial date did not fit the court record either, the appeals panel said, noting that the order was made March 20 and Fernandes had requested the depositions be scheduled for between March 23 and April 11 of that year.

Fernandes' appeals counsel Ervin A. Gonzalez of [Colson Hicks Eidson](#) said they look forward to the opportunity try the case again without being denied the chance to present the entire case to the jury.

"We are confident that the result of the new trial will meet or exceed the prior verdict when the jury hears the way Mr. Fernandes was treated by Celebrity," he said. "We will also be pursuing punitive damages this time."

Judges Linda Ann Wells, Kevin M. Emas and Thomas W. Logue sat for the Third District.

Celebrity is represented by Rodolfo Sorondo Jr. and Christopher N. Bellows of Holland & Knight LLP.

Fernandes is represented by [Tonya J. Meister of Meister Law LLC](#); and Maureen E. Lefebvre and Ervin A. Gonzalez of Colson Hicks Eidson.

The case is Celebrity Cruises Inc. v. Fernandes, case numbers 3D14-0085 and 3D13-2612, in the Third

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District Court of Appeal of the State of Florida.

--Editing by Edrienne Su.

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