FLORIDA
SUPREME COURT

Case No.: 92,655

MGR EQUIPMENT CORP., INC.
Appellant

Appellant

vs.

WILSON ICE ENTERPRISES, INC.,
Appellee.

_____/

5DCA CASE NO.: 97-00935

APPELLANT'S INITIAL BRIEF

Very respectfully submitted,

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STATEMENT OF THE FACTS AND THE CASE

APPELLANT, MGR EQUIPMENT COMPANY (MGR), manufactures ice dispensers. **APPELLEE, WILSON ICE ENTERPRISES, INC. (WILSON)**, is an ice-making equipment distributor. **MGR** sold 11 (eleven) ice dispensers to **WILSON** and invoiced it $22,473.55. **WILSON** did not pay **MGR** and **MGR** sued **WILSON** for goods sold. **WILSON** answered the complaint and filed a counterclaim seeking damages for allegedly defective goods.

During the underlying litigation **WILSON** served two separate Offers of Judgment under **F.S. §768.79 (1995).** Neither offer addressed **WILSON's** pending counterclaim for damages, nor unambiguously provided for disposition of the ice-dispensers which were the subject of the dispute.

After trial, the Jury returned its verdicts against **MGR** on its claim and in favor of **WILSON** on its counterclaim, awarded damages to **WILSON**, and directed return of the goods to **MGR**. The Trial Court entered Final Judgment on the Jury's verdicts, which final judgment was affirmed on appeal without opinion. ***MGR v. Wilson Ice***, 700 So.2d 700 (Fla. 5th DCA, 1997).

WILSON applied for attorneys' fees based upon the Offers of Judgment and on March 13, 1997, the Trial Court entered final judgment awarding attorneys' fees to **WILSON** based upon both Offers of Judgment, from which judgment **MGR** timely appealed.

On February 13, 1998, the Fifth District Court of Appeal rendered its opinion and held that the first Offer of Judgment was legally insufficient, but that the second Offer of Judgment was valid, expressly disagreeing with the Third District Court of Appeal's decision in ***Hartford v. Silverman***, 689 So.2d 436 (Fla. 3rd DCA 1997), and that the Trial Court was not bound by the Third District's decision. ***MGR v. Wilson Ice***, 706 So.2d 376 (Fla. 5th DCA 1998).

MGR timely appealed from the Fifth District's decision. **WILSON** has not cross appealed the District Court's decision as to the invalidity of the first Offer of Judgment.

SUMMARY OF ARGUMENT

During the underlying litigation **WILSON** served two separate Offers of Judgment on **MGR**. After the Jury's verdicts in favor of the Defendant/Counter Claimant, **WILSON** sought attorneys fees based upon the two Offers of Judgment.

At the time of the attorneys fees hearing, the Third District Court had decided ***Hartford v. Silverman***, 689 So.2d 346 (Fla. 3rd DCA, 1997). The ***Hartford*** decision was squarely on point and, based upon the doctrine of ***stare decisis***, required the Trial Court to deny **WILSON's** application for attorneys fees. Nevertheless, the Trial Court ignored that controlling precedent and awarded attorneys fees to **WILSON** and **MGR** appealed.

On appeal, the Fifth District Court ignored the doctrine of ***stare decisis***, and the dictates of this Court, failed or refused to direct the Trial Court to follow controlling law, affirmed a finding of liability for attorneys fees, rendered its opinion expressly disagreeing with the Third District's decision in ***Hartford***, and then declined to certify conflict with ***Hartford*** to this Court. (***MGR v. Wilson Ice***, 706 So2d. at 378, 379).

Even if ***Hartford*** were not controlling, the Third District's decision is correct as the Offers of Judgment were impermissibly vague, and both the Trial Court and the Fifth District Court erred in concluding that **WILSON's** second Offer of Judgment was valid.

THE FIFTH DISTRICT COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO REQUIRE THE TRIAL COURT TO FOLLOW CONTROLLING PRECEDENT

WILSON was awarded post-judgment attorneys' fees as prevailing party under two Offers of Judgment. **MGR** respectfully submits that the Trial Court's determination that the Offers of Judgment were valid and that **WILSON** was entitled to attorneys fees was reversible error, and that the Fifth District Court of Appeal departed from the essential requirements of law and committed reversible error when it ignored the doctrine of ***stare decisis***, and the decisions of this Court, and failed or refused to require the Trial Court to follow controlling precedent.

Under the doctrine of ***stare decisis***, Courts are obligated to follow controlling precedent. In the absence of a decision by our Supreme Court, Trial Courts are bound by the decisions of the District Courts of Appeal. ***Stanfil v. State***, 384 So.2d 141 (Fla. 1980); ***Pardo v. State*** , 596 So.2d 665 (Fla. 1992); ***Scottsdale v. DeSalvo*** , 666 So.2d 964 (Fla. 1st DCA 1995); ***Special Trading v. Intn'l Consumers***, 679 So.2d 369 (Fla. 4th DCA 1996).

Hartford v. Silverman, 689 So.2d 346 (Fla. 3rd DCA 1997) is the only Florida case which undersigned counsel has been able to locate on the issue of the legal sufficiency of an offer of judgment under **F.S.§768.79 (1995)** where a counterclaim for damages is pending.

At the attorneys fees hearing, the Trial Court made no effort to distinguish ***Hartford*** and, after MGR's Counsel argued that the Court was bound by ***Hartford***, Judge Miller replied "I don't think I am." (Hearing Transcript, p. 11) **WILSON's** counsel could not distinguish ***Hartford***, replying after the Court asked him if he had had an opportunity to review the opinion only that he felt that **WILSON** had complied with the statute. (Hearing Transcript pps. 8-9).

On appeal, the Fifth District Court found ***Hartford*** indistinguishable on its facts (706 So.2d

at 378), and then concluded that it disagreed with the Third District Court.

> " ... although we are unable to distinguish ***Hartford***, on its facts, we disagree with the Third District's reasoning inasmuch as it ignores the language of the statute"
> 706 So.2d 378

As a matter of law, the Third District's decision was binding upon the Trial Court **which was not free to decide otherwise**. In ***Stanfil***, this Court made it clear that " District Court decisions represent the law of Florida unless and until they are overturned by this Court " Id. at 143. Yet, even though it could not distinguish ***Hartford***, the Fifth District Court of Appeal did not require the Trial Court to follow the Third District.

Stare decisis is not a new or novel legal concept. The First District recently stated:

> "The trial court correctly concluded that, notwithstanding its reservations about the soundness of [the decision], in the absence of a contrary decision from this court or the supreme court, it was obliged to follow ... We share the trial court's concerns. However unlike it [the trial court] we are at liberty to disagree with the decision of another district court." (**Scottsdale Ins.**, ***supra*** at 946);

and the Second District stated:

> "A trial court is obligated to follow decisions of other district courts of appeal in this state in the absence of conflicting authority if the appellate court in its own district has not decided the issue." (***Pimm v. Pimm***, 568 So.2d 1299 (Fla. 2nd DCA 1990));

and the Fourth District has stated:

> "In reversing, we write to emphasize the rule that all judges in Florida are bound by ***stare decisis*** to follow any district court of appeal decision on point when their own district has not decided the issue" ***Special Trading***, ***supra***, at 369;

and in an appeal from the Third District, this Court stated:

> "Initially, we note that the district court erred in commenting that decisions of other district courts of appeal were not binding on the trial court. This court has stated that "[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court." (***Pardo***, ***supra***, at 666).

Only the Fifth District has not addressed this issue, and only in the Fifth District are Trial Courts left free to ignore the dictates of the Supreme Court and to disagree with other district courts of appeal.

MGR respectfully submits that all Trial Courts are bound to follow the laws of this State and that this Court must require the Fifth District to enforce the laws of Florida and regulate the Trial Courts within its jurisdiction for the fair, equal, and consistent administration of justice.

THE FIFTH DISTRICT COURT ERRED IN HOLDING THE SECOND OFFER OF JUDGMENT VALID

WILSON was awarded post-judgment attorneys' fees as prevailing party under **F.S. §768.79 (1995). MGR** respectfully submits that even if the Trial Court was not bound by ***Hartford***, its determination, and the Fifth District's determination that the second Offer of Judgment was valid, were error.

WILSON's August 26, 1996, Offer of Judgment, partially addressed disposition of the ice dispensers but did not address delivery costs or expenses, and it wholly failed to address **WILSON's** counterclaim for damages. Because the second Offer of Judgment failed to address the counterclaim, and was ambiguous as to disposition of the 11 ice dispensers, the Offer of Judgment was **void, as a matter of law**, and could not be the basis for an award of attorneys' fees.

In ***Hartford***, **Plaintiff** sued her insurance carrier seeking substantial damages based upon an alleged breach of an insurance policy by failing to pay for a theft loss and a hurricane claim. **Plaintiff** also had a claim for bad faith and sought punitive damages. **Hartford** counterclaimed seeking damages and recission of the insurance contract. **Hartford** served an offer of judgment in the amount of $500.00, inclusive of attorneys fees and costs in exchange for a full release in favor of the **Defendants**. The offer was not accepted, the case went to trial, and the jury returned a verdict in favor of **Hartford** and against **Silverman**. **Hartford** then filed its offer of judgment and moved for attorneys' fees. The Trial Court denied attorneys fees on the basis that the offer of judgment did not address the pending counterclaim and therefore was ambiguous and void, as a matter of law. The Third District Court of Appeal agreed and affirmed the decision of the Trial Court to deny attorneys fees, **holding that, as a matter of law, an offer of judgment which did not address a pending**

counterclaim was ambiguous and therefore defective and could not support an award of attorneys' fees. Id .

An Offer of Judgment must be strictly construed and the statute must be strictly complied with. ***Goldy v. Corbett***, 692 So.2d 225 (Fla. 5th DCA , 1997); ***McMullen Oil v. SSS***, 698 So.2d 372 (Fla. 2nd DCA 1997). **WILSON's** second Offer of Judgment failed to address the counterclaim for damages and was silent as to any costs or expenses for " .. Return of the 11 ... dispensers to **MGR**". Can there be any doubt that if **MGR** had accepted the offer, **WILSON** would have shipped the goods F.O.B. Orlando, or perhaps, freight collect?

In ***Hartford***, the Third District made it clear that the purpose of the Offer of Judgment statute is to bring finality to the litigation. An offer which leaves matters open for argument and interpretation does not satisfy that purpose.

Yet, even after it disagreed with the Third District, the Fifth District Court declined to certify conflict to this court because the Fifth District apparently believed that Fla.R.Civ.P. 1.442 (1997) which became effective after the Offers of Judgment in this case changed the law and would make the issue moot for prospective application. (***MGR II*** , ***supra*** at 378, 379)

MGR respectfully submits that the rule is consistent with ***Hartford***, and that it merely clarified existing law at the time the offers of judgment were made by **WILSON**.

Both Offers of Judgment upon which **WILSON** relied, and the second Offer of Judgment as to which the Fifth District affirmed liability, left matters unsettled. The Fifth District's opinion ought to be reversed and the Third District's opinion in ***Hartford*** confirmed.

CONCLUSION

The doctrine of ***stare decisis*** is an essential element in predicting the conduct of daily affairs. Citizens have the right to expect that the Courts of this state will follow established law. The Fifth District Court's opinion in this instance sends a dangerous message that Trial Courts are free to ignore controlling law, so long as the Fifth District ultimately agrees with them.

This Court should send its message to the District Courts and to the Trial Courts throughout the State of Florida upholding the doctrine of ***stare decisis***, reaffirming the force of controlling law, and also resolve the underlying conflict between the Fifth and Third Districts as to requirements for a valid offer of judgment made prior to the effective date of the amendments to the current rule by reversing the decision of the Fifth District and confirming the Third District's decision in ***Hartford***.

Very Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U.S. Mail to Alfred L. Frith, Esquire, 250 North Orange Avenue, 11th Floor, Orlando, Florida 32802 this 30 day of August, 1998.

ERIC W. LUDWIG, ESQUIRE