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FLORIDA
SUPREME COURT

Case No.: 92,655

MGR EQUIPMENT CORP., INC.

Appellant,

5th DCA CASE NO.: 97-00935

vs.

WILSON ICE ENTERPRISES, INC.,

Appellee.

_____/

APPELLEE'S BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

WILSON's offer of judgment was totally in accordance with Section 768.79, Florida Statutes, and existing case law at the time it was made and the count below was correct in so holding. However, even if a conflict exists between district courts of appeal, changes in the rule render this appeal moot for prospective application. Consequently, this Court should adhere to the policy underlying the appellate rule changes and limit its jurisdiction to cases that "substantially affect the law of the state," which this case clearly does not do.

ARGUMENT

I. THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION.

Appellee, WILSON ICE ENTERPRISES, INC. ("WILSON"), made an offer of judgment to the Appellant, MGR EQUIPMENT CORP. ("MGR"), on August 26, 1996 pursuant to Section 768.79 Florida Statutes. The offer was precisely in accordance with the statutory requirements of Section 768.79, Florida Statutes. The offer was not accepted and at trial WILSON prevailed. Subsequently, attorney's fees were awarded in favor of WILSON. In the decision below from the Fifth District Court of Appeals, the Court found that WILSON had strictly complied with the statute, which at the time required that it:

> (a) Be in writing and state that it is being made pursuant to this section.
> (b) Name the party making it and the party to whom it is being made.
> (c) State with particularity the amount offered to settle a claim for punitive damages, if any.
> (d) State the total amount.
>
> The offer shall be construed as including all damages which may be awarded in the final judgment."

MGR Equipment Corp., Inc. v. Wilson Ice Enterprises, Inc., 23 FLW D463, D464 (Fla. 5th DCA Feb. 13, 1998).

The Court held that at the time of the offer of judgment was made several court decisions, including a decision from the Fifth

District Court of Appeals, required that all offers of judgment be read as encompassing "all damages which may be awarded in the final judgment." ***Id.*** at D464 (citing, §768.79(2), Fla. Stat. (1995), ***Security Professionals, Inc. v. Segall***, 685 So.2d 1381 (Fla. 4th DCA), review denied 700 So.2d 687 (Fla. 1997); ***Hellmann v. City of Orlando***, 610 So.2d 103 (Fla. 5th DCA, 1992)). Indeed this Court had made pronouncements which were in effect at the time the offer of judgment was made, that would also indicate that an offer of judgment would include all claims in the action. In ***Unicare Health Facilities, Inc. v. Mort***, 553 So.2d 159, 161 (Fla. 1989), this Court had stated with respect to Rule 1.442 of the Florida Rules of Civil Procedure, which also pertains to offers of judgment, that "the clear intent of the underlying policy of the rule was to determine **all** *(emphasis added)*, claims in disputes and obviate the need for further intervention of the judicial process." This Court went on to say that "we find the better application of the Rules under the circumstances is that articulated by the Fifth District Court of Appeals in Ahmed and George v. Northcraft, 476 So.2d 758 (Fla. 5th DCA, 1985). There is an 'organic right of parties to contract a settlement, which **by definition** (emphasis added) concludes all claims unless the contract for settlement specifies otherwise.'" ***Id.***

Consequently, at the time the offer of judgment was made by WILSON there was no conflict among the various District Courts of Appeal and WILSON basically had to rely upon the statute, some Fourth District Court of Appeals decisions and specific decisions from the Fifth District Court of Appeals in making the offer of judgment.

MGR attacked the offer of judgment on the grounds that it did not mention counterclaims. This argument was rejected below and now MGR attempts to create conflict by virtue of the Third District Court of Appeals decision in ***Hartford Casualty Insurance Co. v. Silverman***, 689 So.2d 346 (Fla. 3d DCA, 1997). Contrary to MGR's argument, ***Hartford*** was not the only Florida case on the legal sufficiency of an offer of judgment where counterclaims are pending. In ***Security Professionals, Inc. v. Segall***, 685 So.2d 1381 (Fla. 4th DCA), review denied, 700 So.2d 687 (Fla. 1997) the Fourth District Court of Appeal held that an offer of judgment made by certain defendants to certain plaintiffs to settle all pending claims includes pending counterclaims in the case. The ***Hartford*** decision is also distinguishable because in that case the Court found the offer of judgment ambiguous because it did not mention Counterclaims **and** because it failed to address $9,000 that had been deposited into the Registry of the Court. The

WILSON offer of judgment did mention the return of equipment and based upon the case law existing at the time, mention of counterclaims was unnecessary. Consequently the decision of the Fifth District Court of Appeal was correct and this Court should do as it did in ***Security Professionals***, and not accept jurisdiction.

II. REVIEW BY THIS COURT OF THE DECISION BELOW WOULD BE A WASTE OF JUDICIAL RESOURCES GIVEN CHANGES IN THE RULE.

After the WILSON offer was made on August 26, 1996, and indeed after the case below was tried, Rule 1.442(c)(2)(B) of the Florida Rules of Civil Procedure became effective on January 1, 1997. That Rule, now mandates that offers of judgment "identify the claim or claims the proposal is attempting to resolve." Consequently, the Fifth District Court of Appeals correctly concluded that it would be inappropriate to certify the question to this Court. Indeed a decision of this Court would have no precedential value in light of the rule changes and would only add to the case load of this Court unnecessarily. In the Committee Notes to Rule 9.030 of the Florida Rules of Appellate Procedure in discussing the discretionary jurisdiction of this Court, it was noted that the modifications to the Supreme Court's jurisdiction would address the decisions of the District Court of

Appeal that "expressly and directly conflict with the decision of another district court of appeal" and that the "impetus for these modifications was a burgeoning case load and the attendant need to make more efficient use of limited appellate resources." Fla.R.App.P. 9.030, (Committee Notes). The notes went on to further indicate that Subdivision (2)(A), under which the Appellant seeks to have this Court accept jurisdiction "limits the Supreme Court's appellate, discretionary, and original jurisdiction to cases that substantially affect the law of the state." ***Id.*** Here, the law of the state would not be substantially affected by resolution of a conflict, even if it existed, between two district courts of appeal when the law has changed.

For these reasons this court should decline to accept jurisdiction in this matter.

CONCLUSION

For the foregoing reasons, Appellee, WILSON ICE ENTERPRISES, INC., by and through its undersigned counsel hereby respectfully requests that this Court decline to accept jurisdiction in this matter.

Dated this 13th day of April, 1998.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the FOREGOING, including all exhibits and attachments, if any, has been mailed by first-class U.S. Mail to Eric W. Ludwig, Esq., Eric W. Ludwig, P.A., 705 Douglas Avenue, Altamonte Springs, FL 32714, this 13th day of April, 1998.

Alfred L. Frith, Esq.