

ORIGINAL

**FLORIDA
SUPREME COURT**

Case No.: 92,655

FILED

310 J. WHITE

MAR 30 1998

CLERK, SUPREME COURT
BY *[Signature]*
Chief Deputy Clerk

MGR EQUIPMENT CORP., INC.

Appellant

Appellant

vs.

WILSON ICE ENTERPRISES, INC.,

Appellee.

5DCA CASE NO.: 97-00935

APPELLANT'S BRIEF ON JURISDICTION

Very Respectfully submitted,

[Signature]

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Attorney for Appellant

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STATEMENT OF THE FACTS AND THE CASE

Appellant, **MGR EQUIPMENT COMPANY**, manufactures ice dispensers. Appellee, **WILSON ICE ENTERPRISES, INC.**, is an ice making equipment distributor. Appellant sold and delivered 11 (eleven) ice dispensers to **WILSON** and invoiced Appellee for \$22,473.55.

WILSON did not pay **MGR** for the goods and **MGR** sued **WILSON** in a single count complaint for goods sold. **WILSON** answered the complaint, asserted its affirmative defenses, and filed a counterclaim seeking damages for allegedly defective goods.

On May 28, 1996, **WILSON** served **MGR** with an "Offer of Judgment". On August 26, 1996, **WILSON** served **MGR** with a second "Offer of Judgment".

The case was tried before a Jury which 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 has been affirmed on appeal.

On March 13, 1997, the Trial Court entered final judgment awarding attorneys fees to the Defendant/Appellee based upon the Offers of Judgment, from which judgment **MGR** timely appealed to the Fifth District Court of Appeal.

On February 13, 1998, the Fifth District Court of Appeal rendered its opinion, affirming in part, reversing in part and remanding the case to the Trial Court to award a lesser attorneys fee.

From the District Court's opinion, Appellant timely invoked the discretionary jurisdiction of this Court. A conformed copy of the Fifth District's opinion is attached in the appendix hereto.

SUMMARY OF ARGUMENT

During the underlying litigation, the Defendant/Appellee, WILSON, served two separate offers of judgment upon the Plaintiff/Appellant. After the Jury's verdicts, Appellee sought attorneys fees.

At the time of the fees hearing, the Third District Court of Appeal had decided Hartford v. Silverman, 689 So.2d 346 (Fla. 3rd DCA, 1997) which decision was squarely on point and required the Trial Court below to deny Defendant, Wilson Ice's application for attorneys fees. Nevertheless the Trial Court ignored controlling precedent and awarded attorneys fees to the Appellee based upon the offers of judgment and Appellant appealed.

On appeal, the Fifth District Court ignored the doctrine of stare decisis and the dictates of this Court and affirmed, in part, the Trial Court's judgment and rendered its opinion expressly disagreeing with the Third District.

From that opinion, Appellant asks this Court to exercise its discretionary review to uphold the doctrine of stare decisis, to reaffirm the Trial Court and the District Court's obligation to follow controlling law, and to resolve the conflict with Hartford.

**THE FIFTH DISTRICT COURT'S OPINION
EXPRESSLY AND DIRECTLY CONFLICTS WITH
THE DECISION OF ANOTHER DISTRICT COURT
AND WITH THE DECISIONS OF THIS COURT**

The Defendant below, was awarded post-judgment attorneys fees as prevailing party under offers of judgment. Appellant respectfully submits that the Trial Court's determination was reversible error and that the Fifth District Court of Appeal departed from the essential requirements of law when it ignored the doctrine of stare decisis and the decisions of this Court.

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); *Wieman v. Mahaffie*, 470 So2d 682 (Fla 1985); and *Pardo v. State*, 596 So.2d. 665 (Fla. 1992).

Hartford was the only Florida case on the issue of the legal sufficiency of an offer of judgment where a counterclaim for damages was pending. The *Hartford* decision is on all-fours, i.e. an offer of judgment was made that was silent as to a pending counterclaim for damages. As such, 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.

Even though the Fifth District could not distinguish *Hartford* on its facts, it did not require the Trial Court to follow *Hartford*. Then, after declining to require the Trial Court to abide by *Hartford*, the Fifth District Court of Appeal expressly disagreed with the Third District's decision in *Hartford*, (which is its proper function), thereby creating conflict jurisdiction to this Court pursuant to F.R.A.P. 9.030 (a)(2)(A)(4). In its opinion here on appeal, the District Court said:

“ ... 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”

23 F.L.W. D464

The District Court then declined to certify conflict because of changes to Fla.R.Civ.P. 1.442 which became effective after the Offers of Judgment in this case, which would make the issue moot for prospective application.

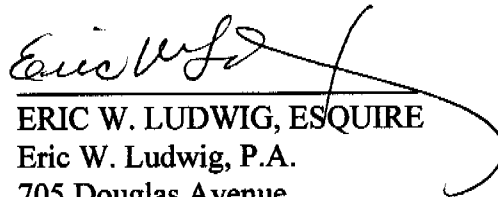
Appellants respectfully submit that the changes in the rule are consistent with Hartford and merely clarified existing law at the time the offers were made by Wilson Ice and that Appellant, MGR ought to be afforded the opportunity for this Court to decide the issue.

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 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 exercise its discretionary jurisdiction to uphold the doctrine of stare decisis, to reaffirm the force of controlling law, and to 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.

Very Respectfully Submitted,



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CERTIFICATE OF SERVICE

FILED

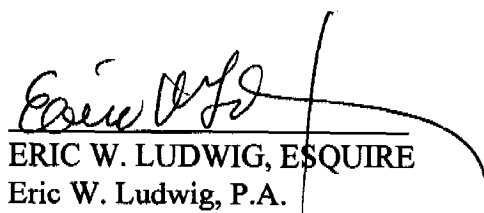
SID J. WHITE

MAR 30 1998

CLERK, SUPREME COURT

By: _____
Chief Deputy Clerk

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by U.S. Mail to Alfred L. Frith, Esquire, 501 Whitehead Street, Key West, Florida 33040 this 26th day of March 1998.


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