

**ORIGINAL**  
**FLORIDA**  
**SUPREME COURT**

Case No.: 92,655

**FILED**

SID J. WHITE

SEP 17 1990

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

**MGR EQUIPMENT CORP., INC.**

**Appellant**

**5DCA CASE NO.: 97-00935**

**Appellant**

vs.

**WILSON ICE ENTERPRISES, INC.,**

**Appellee.**

\_\_\_\_\_ /

---

**APPELLANT'S REPLY BRIEF**

---

Very respectfully submitted,

*[Signature]*

ERIC W. LUDWIG, ESQUIRE

Eric W. Ludwig, P.A.

705 Douglas Avenue

Altamonte Springs, Fl 32714

(407)869-0442

Florida Bar No. 328766

Attorney for Appellant

**TABLE OF CONTENTS**

	<b>PAGE</b>
Table of Contents .....	-i-
Table of Citations .....	-ii-
Argument in Reply: .....	1
 <b>APPELLEE’S ARGUMENTS MISCONSTRUE THE APPLICATION OF STARE DECISIS AND MISAPPLIES CITED CASE LAW</b>	
Conclusion .....	-4-
Certificate of Service .....	-5-

## TABLE OF CITATIONS

CASE AUTHORITY	PAGE
<i>Ciongoli v. State</i> , 337 So.2d 780 (Fla. 1976) .....	2
<i>Conway v. Sears</i> , 185 So.2d 697, (Fla. 1966) .....	2
<i>Hartford v. Silverman</i> , 689 So.2d 346 (Fla. 3rd DCA, 1997) <i>rev. den.</i> 707 So.2d 1124 .....	1
<i>Putnam County v. DeBose</i> , 667 So.2d 447 (Fla. 1st DCA 1996) .....	1
<i>Security Professionals v. Segall</i> , 675 So.2d 1381 (Fla. 4th DCA 1997) ....	2
<i>State ex rel Biscayne Kennel Club v. Board of Business Regulation</i> , 276 So.2d 823 (Fla 1973) .....	2

## ARGUMENT IN REPLY

### APPELLEE'S ARGUMENTS MISCONSTRUE THE APPLICATION OF STARE DECISIS AND MISAPPLY CITED CASE LAW

Contrary to the arguments urged in Appellee's Answer Brief, the Fifth District did not conclude that there was conflicting case law, or that the Trial Court did not fail to follow controlling precedent.

Appellee has apparently misconstrued the doctrine of *stare decisis*, as it appears that its argument is that the Fifth District's holding as to the sufficiency of Appellee's Second Offer of Judgment as the "...clear expression of the statute ..." mandated the result and therefore, the Trial Court was free to reach a conclusion contrary to the Third District's decision in Hartford , which was squarely on point.

That was reversible error as "... lower courts are bound to adhere to the rulings of higher courts when considering similar issues even though the lower court might believe the law should be otherwise". Putnam County School Board v. DeBose 667 So.2d 447, (Fla. 1st DCA 1996). The Fifth District is free to disagree with a District Court and create conflict, but trial Courts are not.

The primary case upon which Appellee relies for its contention that there was

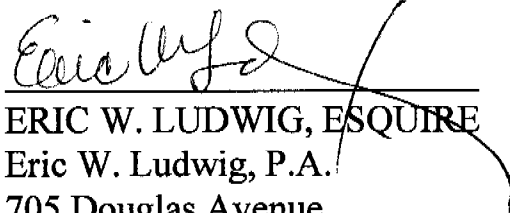
conflicting case law, thereby permitting the Trial Court to choose its course is *Security Professionals v. Segall*. However, a close reading of that case demonstrates that it is not on point. The Offer of Judgment in *Security Professionals* expressly stated that it was made to “... settle all claims...” (*Id. at 1382*) and the issues on appeal focused on a determination of which parties were bound by acceptance of the offer of judgment.

Although, the Fourth District commented with regard to the resolution of counterclaims between the offeror and offeree in *Security Professionals*, such comments were not directed to any issues in dispute and constituted mere *dicta*. In order for a case to be controlling precedent and for the doctrine of *stare decisis* to apply, the decision must be on a point of law necessary to the result. *Conway v. Sears*, 185 So.2d 697, (Fla. 1966).

Dicta cannot establish precedent and is without force. Nor can dicta create the conflict that Appellee urges this Court to find. *Ciongoli v. State*, 337 So.2d 780 (Fla. 1976); *State ex rel Biscayne Kennel Club v. Board of Business Regulation*, 276 So.2d 823 (Fla 1973).

Appellee's second Offer of Judgment did not identify the claims which it was offering to settle, but instead merely stated that it was an offer of judgment. There was no mention of the counterclaim. Frankly, had Appellee referred to "all claims" in its offer, this matter would not be before this Court.

Very respectfully submitted,

  
ERIC W. LUDWIG, ESQUIRE  
Eric W. Ludwig, P.A.  
705 Douglas Avenue  
Altamonte Springs, Fl 32714  
(407)869-0442  
Florida Bar No. 328766  
Attorney for Appellant

## 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 Trial 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,



ERIC W. LUDWIG, ESQUIRE

Eric W. Ludwig, P.A.

705 Douglas Avenue

Altamonte Springs, FL 32714

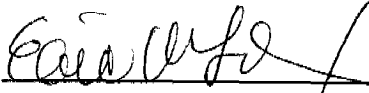
(407) 869-0442

Florida Bar No. 328766

Attorney for Appellant

## 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, 11<sup>th</sup> Floor, Orlando, Florida 32802 this 14<sup>th</sup> day of September, 1998.

  
ERIC W. LUDWIG, ESQUIRE