

IN THE SUPREME COURT OF FLORIDA

DONNA KOPPEL,
Petitioner,

v.

S. Ct. Case No.: SC16-1474
L.T. Case No.: 2D14-1866

LAURA OCHOA,
Respondent./

RESPONDENT'S ANSWER BRIEF ON THE MERITS
LAURA OCHOA

ON NOTICE TO INVOKE DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA

George A. Vaka, Esq.
Florida Bar No.: 374016
Nancy A. Lauten, Esq.
Florida Bar No. 0593052
Vaka Law Group
777 S. Harbour Island Blvd., #300
Tampa, FL 33602
(813) 549-1799 – Telephone
(813) 549-1790 – Facsimile
gvaka@vakalaw.com
nlauten@vakalaw.com

RECEIVED, 03/07/2017 03:28:26 PM, Clerk, Supreme Court

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PREFACE

This is a review of a decision of the Second District Court of Appeal reversing a final order dismissing Plaintiff's negligence action against the Defendant based upon the Defendant's untimely acceptance of the Plaintiff's proposal for settlement. The Respondent/Plaintiff, LAURA OCHOA, will be referred to by name or as the Plaintiff. The Petitioner/Defendant, DONNA KOPPEL, will be referred to by name or as the Defendant.

For ease of reference herein, the following symbols will be used:

(VR)- followed by the page number in the Record on Appeal

(SR)- followed by the page number in the Supplemental Record on Appeal

STATEMENT OF THE CASE AND FACTS

Laura Ochoa was injured in a motor vehicle crash on December 9, 2011, when the vehicle in which she was riding was struck by a vehicle driven by Donna Koppel. (R. 1) In April 2013, Ms. Ochoa brought suit against Koppel for the injuries she sustained in the motor vehicle crash. (R. 1-36)¹ The Defendant denied any negligence on her part. (R. 45-47).

On September 3, 2013, Ms. Ochoa served a Proposal for Settlement on Ms. Koppel for \$100,000 pursuant to §768.79, Fla. Stat. and Fla. R. Civ. P. 1.442. (R. 53; SR. 9-10) The proposal would be deemed withdrawn unless Koppel served a written notice of acceptance within thirty days. (SR. 10)² On October 2, 2013, the day before the offer was to expire, the Defendant filed an opposed motion for extension of time to respond to Plaintiff's Proposal for Settlement. (R. 59-60) The motion did not request a date certain in which to respond to the proposal.

A hearing on the Defendant's motion for extension occurred on December 2, 2013, two months **after** the proposal was scheduled to expire. (R. 64, 75) The lower court ordered defense counsel to submit legal authority supporting the extension by

¹ Mr. Ochoa also sued Progressive Select Insurance Company. Progressive provided uninsured/underinsured motorist coverage to Kim Nister, the owner of the vehicle in which Ms. Ochoa was riding as a passenger. (R. 3-36) Progressive Select was later dismissed from the case following a settlement. (R. 67-68)

² A few days later, Plaintiff filed a Notice that that Case was at Issue and requested that it be set for mediation and trial. (R. 54)

10 a.m., Thursday, December 5, 2013. (R. 64, 75) Before responding, Koppel filed her written acceptance of Plaintiff's proposal for settlement on December 3, 2013. (R. 62, 75) Two days later, on December 5, 2013, at 11:56 a.m., Defendant provided the court via electronic mail three case citations she claimed supported her position. (R. 65) At 1:01 p.m. the same day, the court notified the parties that it was denying Koppel's motion for extension of time to respond to the proposal for settlement. (R. 65, 108) The Order Denying the Motion for Enlargement of Time was entered on December 13, 2013. The court denied the motion without prejudice to the court's "consideration of the good faith and reasonableness factors contained in Fla. R. Civ. P. 1.442 and §768.79, Fla. Stat., "should a Motion for Attorney's Fees and Costs be made at a later date." (R. 63)

On January 10, 2014, Ms. Ochoa moved to strike, as untimely and unauthorized, Koppel's notice of acceptance of the proposal for settlement. (R. 64-66)³ Koppel responded by seeking to enforce the settlement. (R. 74-84) Defendant claimed that she properly accepted the proposal for settlement while it was still "open." She also claimed that her acceptance was valid because Plaintiff never withdrew the proposal while the time for responding was tolled. Ms. Koppel relied

³ The settlement check from Ms. Koppel's insurance company was returned to defense counsel on January 7, 2014. (SR. 12, 15)

on Goldy v. Corbett Cranes Services, Inc., 692 So. 2d 225 (Fla. 5th DCA 1997), as the sole support for her position. (R. 76-78)

The parties' respective motions for relief were heard on February 24, 2014. (R. 93-105) The Defendant again relied upon Goldy, supra, as support for her position. (R. 95) Plaintiff relied on the Second District's decision in Donohoe v. Starmed Staffing, Inc., 743 So. 2d 623 (Fla. 2d DCA 1999), as support for her position. (R. 96) The court believed the issue was "mechanical" because case law authorized an extension of the 30-day deadline. It found any potential for abuse could be prevented by the courts, and "that's not what happened in this case really. So somewhat to my surprise, I'm going to deny [Plaintiff's] motion." (R. 98-99) The Court then granted Defendant's motion to enforce the settlement. (R. 100) The lower court entered its order on the competing motions on March 4, 2014. (R. 86-87) A Final Order of Dismissal based on the settlement was filed on April 7, 2014. (R. 89-90) Ms. Ochoa timely appealed the Order of Dismissal to the Second District Court of Appeal.

On May 20, 2016, the Second District issued its decision reversing the lower court's April 7, 2014 Order enforcing the purported settlement and dismissing Ms. Ochoa's lawsuit. Ochoa v. Koppel, 197 So. 3d 77 (Fla. 2d DCA 2016). The court agreed with Ms. Ochoa that Ms. Koppel's filing of a motion for extension of time pursuant to Fla. R. Civ. P. 1.090 to extend the time to accept the proposal for

settlement did not automatically toll the thirty-day period for accepting the proposal until the motion to enlarge was ruled upon. The court found that the texts of Rules 1.090 and 1.442 were “unambiguous in that neither contains language that could in any way be construed as providing that the time to accept a proposal for settlement is tolled when a motion to enlarge the time to do so is filed.” Id. at 80. The court stated that apart from providing that the thirty-day period is not extended when service is by mail or email, rule 1.442 said “nothing about the computation or enlargement of time.” Id. 80-81. The court also found that Rule 1.090 provided that a party may seek to have the time in which an act must be performed enlarged, but that “such an extension requires an order of the court, the exercise of the trial judge’s discretion, and a showing by the movant that grounds for an enlargement exist—i.e., cause shown and, in the case of motions made after the expiration of the time period, excusable neglect. It too contains no provision tolling time while a motion for enlargement is pending.” Id.

The court found that the “practical effect” of interpreting the rule in the manner suggested by Ms. Koppel—to provide automatic tolling upon the filing of a motion for enlargement—was to give:

[T]he party filing the motion additional time under circumstances other than those the rule contemplates. The filing of the motion grants a party a de facto enlargement of time—without the judicial supervision, exercise of discretion, and substantive showings rule 1.090 requires—until the motion is decided. Neither rule contains any textual indication that this result was intended.

Ochoa v. Koppel, 197 So. 3d at 80–81. Accordingly, the court held that the filing of a Rule 1.090 motion to enlarge time to accept a proposal for settlement under Rule 1.442 “does not toll the thirty-day acceptance period between the date of the proposal and when it is deemed rejected.” Id. at 81.⁴

The Second District made it clear that it had never previously held that Goldy represented the law of the district. In Donohue, supra, the Second District reversed an order denying an award of fees and costs based on a proposal for settlement because the proposal was not timely accepted. The court rejected “the defendant’s argument under Goldy that its motion to enlarge the time to accept or reject the proposal tolled the thirty-day period finding that Goldy was distinguishable on the facts. 743 So. 2d at 625. The court made it clear that neither Donohoe (or Pinnacle

⁴ The Second District found further support for its ruling in the fact that when this Court has intended that the filing of a motion should toll time:

[It] has not had difficulty expressing that intention. Under Florida Rule of Appellate Procedure 9.300(b), the filing of a motion to enlarge time automatically ‘toll [s] the time schedule of any proceeding in the court until disposition of the motion.’ Because the supreme court knows how to provide for tolling when that is desired, it seems unlikely that the omission of a tolling provision in rules 1.090 and 1.442 was unintentional. Cf. Cason v. Fla. Dep’t of Mgmt. Servs., 944 So. 2d 306, 315 (Fla. 2006) (‘[W]e have pointed to language in other statutes to show that the Legislature ‘knows how to’ accomplish what it has omitted in the statute in question.’ (quoting Rollins v. Pizzarelli, 761 So. 2d 294, 298 (Fla. 2000))).

Ochoa v. Koppel, 197 So. 3d at 81.

Corp. of Central Florida, Inc. v. R.L. Jernigan Sandblasting & Painting, Inc., 718 So. 2d 1265, 1266 (Fla. 2d DCA 1998)), held that Goldy represented the law of the Second District.⁵ Nor did either case analyze the validity of its reasoning. Ochoa v. Koppel, 197 So. 3d at 82.

The Second District then analyzed the validity of Goldy's reasoning and found it lacking. The court was unable to reconcile the Fifth District's holding with the requirement that the civil rules be interpreted in accord with ordinary principles of statutory construction:

As we have described, although rule 1.090 authorizes enlargements of time, the applicable rules do not provide for tolling pending a decision on a motion for enlargement—whether of a strictly construed time period or otherwise. By limiting its tolling rule to time periods that are strictly construed, the Goldy court appears to have assumed (correctly, in our view) that tolling would not ordinarily be authorized or permitted when a party files a motion to enlarge a deadline. Its decision that time is nonetheless automatically tolled whenever the time limit is one that is strictly construed thus seems more like a revision of the rules to meet the perceived equities of a case—here, the protection of a party with a sincere desire to settle—than it does an exercise in determining what the rules actually authorize and what they do not.

⁵ The Petitioner claims Pinnacle stands for the proposition that the mere filing of a motion for extension tolls time until an order is entered. It does not. The court simply “noted” the conclusion in Goldy. The court set aside a final default judgment because the defaulting party had filed pleadings in the case before entry of the default judgment. The Court did not rule that a last minute motion for extension of time to respond to a proposal for settlement unilaterally tolls the thirty-day time period established by statute and rule for accepting or rejecting the proposal.

Ochoa v. Koppel, 197 So. 3d at 82. The Second District believed Goldy's holding that a motion to enlarge time automatically tolled time where the subject deadline is strictly construed "seems to us inconsistent with the concept of a strictly construed deadline. Allowing a party to suspend the occurrence of a deadline through the simple act of putting a piece of paper in the court file tends to liberalize rather than strictly enforce that deadline." Id. at 82. The court found that the "practical detriments" summarized by Judge Griffin in Goldy were all "the more reason to apply the rules as they are written, leave enlargements of time to the discretion of the trial judge in accord with those rules, and leave any broader policy issues with the rules to the body to which the law commits them—the supreme court." Id. at 83. The court then certified conflict with Goldy. Ms. Koppel timely invoked the jurisdiction of this Court. Jurisdiction was accepted by the Court on November 9, 2016.

SUMMARY OF THE ARGUMENT

Ms. Ochoa offered to settle her personal injury claim for \$100,000. The proposal, made pursuant to §768.79, Fla. Stat., and Fla. R. Civ. P. 1.442, was open for thirty days. The day before it was to expire, the Defendant filed an opposed motion for enlargement of time to respond to the proposal. A hearing on Defendant's motion did not occur for another two months. At that time, the Defendant was given three days to provide the court with legal authority to support her position. Instead, the next day, the Defendant "accepted" Plaintiff's proposal for settlement, two months after the proposal was scheduled to expire. The court ultimately denied Defendant's motion for enlargement of time, but nevertheless ruled the proposal had been timely accepted. The lower court then enforced the purported settlement and dismissed Plaintiff's personal injury lawsuit.

The Second District reversed the dismissal. The court agreed with Ms. Ochoa that Ms. Koppel's filing of a motion for extension of time pursuant to Fla. R. Civ. P. 1.090 to accept the proposal for settlement did not automatically toll the thirty-day period for accepting the proposal until the motion to enlarge was ruled upon. The court found that the texts of Fla. R. Civ. P. 1.090 and 1.442 were unambiguous, and neither contained language that could be construed as providing that the deadline to accept a proposal for settlement is tolled when a motion to enlarge the time to do so is simply filed. Accordingly, the Court held that the mere filing of a Rule 1.090

motion to enlarge time to accept a proposal for settlement under Rule 1.442 does not toll the thirty-day acceptance period between the date of the proposal and when it is deemed rejected. That ruling is correct.

As the Second District astutely noted, the practical effect of interpreting the Rules in the manner suggested by the Petitioner (providing automatic tolling upon the filing of a motion for enlargement) would grant the party filing the motion a de facto enlargement of time without the judicial supervision, exercise of discretion, and substantive showings Fla. R. Civ. P. 1.090 requires until the motion is decided. Neither Fla. R. Civ. P. 1.090 nor 1.442 contain any textual indication that such a result is intended.

The Second District correctly recognized that Fla. R. Civ. P. 1.090 provides a trial court with ample discretion to address the perceived inequities the Petitioner complains about in her Brief. If a party is genuinely interested in settlement and has a bona fide need for more time to accept or reject the proposal, the trial court has the discretionary authority to rectify the problem by granting an enlargement of time. If the party is unable to secure hearing time for the motion before the expiration deadline, but the trial court determines that an enlargement is warranted, its decision to grant the enlargement rectifies the problem. If, as in this case, the trial court determines that the extension was unwarranted, there is no equitable problem for a tolling rule to solve because an extension was not merited in the first instance.

This Court should reject Petitioner's alternative argument that the Second District's decision should be give prospective application only. Adopting Petitioner's position would fly in the face of the established law in Florida that appellate courts have the authority to decide a case by applying legal principles that come into existence after the rendition of the order under review. Appellate courts also can reverse an order under review even though there was no error at the time the decision was made in the lower tribunal. Under Petitioner's reasoning, that could never occur, which in turn would have a chilling effect on the appellate process.

The Court should also decline the Petitioner's invitation to adopt the alternative approach to tolling raised for the first time in her Initial Brief filed with this Court. First, the law in Florida is clear that new arguments will not be considered when initially raised on appeal. Second, the decision of the Second District recognizes and confirms that existing Florida law already affords a party the precise type of relief the Petitioner claims is needed—if a party is unable to get a motion seeking an enlargement heard before the time expires, but the trial court determines that an enlargement is warranted, the court has the discretion to rectify that problem by granting an enlargement of time. The decision of the Second District Court of Appeal should be approved.

STANDARD OF REVIEW

The standard of review in determining whether an offer of settlement and purported acceptance comport with Florida Rule of Civil Procedure 1.442 and §768.79, Fla. Stat., is de novo because a proposal for settlement is in the nature of a contract. Pratt v. Weiss, 161 So. 3d 1268, 1271 (Fla. 2015); Audiffred v. Arnold, 161 So. 3d 1274, 1278 (Fla. 2015); Frosti v. Creel, 979 So. 2d 912, 915 (Fla. 2008); Campbell v. Goldman, 959 So. 2d 223, 225-26 (Fla. 2007). Similarly, the standard of review of a court's interpretation of the rules of civil procedure, including Fla. R. Civ. P. 1.442 and 1.090, is also de novo. Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield, 49 So. 3d 741, 742 (Fla. 2010); Barco v. School Board of Pinellas County, 975 So. 2d 1116, 1121 (Fla. 2008).

LEGAL ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL CORRECTLY RULED THAT THE FILING OF A MOTION UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.090 TO ENLARGE THE TIME TO ACCEPT A PROPOSAL FOR SETTLEMENT DOES NOT AUTOMATICALLY TOLL THE THIRTY-DAY DEADLINE FOR ACCEPTING THE PROPOSAL UNTIL THE MOTION FOR ENLARGEMENT IS DECIDED.

The Petitioner raises five issues and multiple sub-issues in her Brief in an attempt to convince this Court to quash the Second District's decision in this case. Many of the points raised by Petitioner are simply variations of one another. When stripped to their essence, Petitioner's arguments are the following: the Fifth District's decision in Goldy is correct, and the Second District's decision in this case is wrong; if the Second District's decision is correct, it should be given prospective effect only; alternatively, this Court should adopt a third alternative regarding tolling raised for the first time in Petitioner's Initial Brief. None of Petitioner's points are well-taken. As explained below, this Court should approve the Second District's well-reasoned decision that in the absence of a timely court order or an agreement between the parties, a motion for extension of time, without more, does not toll the 30-day time period for accepting a proposal for settlement and constitutes a rejection of the proposal as a matter of law.

A. Proposals for Settlement in Florida.

Ms. Ochoa acknowledges that the general rule in Florida is that settlement agreements are favored, and thus, will be enforced whenever possible by the courts. Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985). The legislature enacted §768.79, Fla. Stat., in order “to encourage the early settlement and termination of litigation in civil cases generally.” National Healthcorp Limited Partnership v. Close, 787 So. 2d 22, 26 (Fla. 2d DCA 2001). See also Unicare Health Facilities, Inc. v. Mort, 553 So. 2d 159, 161 (Fla. 1989); Lamb v. Matetzschk, 906 So. 2d 1037, 1042-43 (Fla. 2005) (Pariente, C.J., specially concurring). The statute deters individuals from rejecting reasonable settlement offers through the imposition of the sanctions of costs and attorney’s fees. Diamond Aircraft Industries, Inc. v Horowitch, 107 So. 3d 362, 373 (Fla. 2013). However, a court cannot use the general rule that settlements are favored in the law in order to create and enforce a settlement that does not otherwise exist. Robbie v. City of Miami, *supra*. A proposal for settlement is intended to end judicial labor, not create more. Lucas v. Calhoun, 813 So. 2d 971, 973 (Fla. 2d DCA 2002).

Section 768.79(1), Fla. Stat., provides that “if a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees incurred from the

date of the filing of the demand.” Florida Rule of Civil Procedure 1.442 “provides the method and means of implementing this right by outlining the required form and content of a proposal for settlement.” Attorneys’ Title Ins. Fund, Inc. v. Gorka, 36 So. 3d 646, 649 (Fla. 2010). If an offeror files an offer of judgment which is not accepted by the offeree within 30 days, the offeror shall be entitled to recover reasonable costs and attorneys’ fees. See, e.g., MGR Equipment Corp. v. Wilson Ice Enterprises, Inc., 731 So. 2d 1262, 1263 (Fla. 1999).

Section 768.79, Fla. Stat., and Fla. R. Civ. P. 1.442 are to be “strictly construed because the offer of judgment statute and rule are in derogation of the common law rule that each party pay its own fees.” Willis Shaw Express, Inc., 849 So. 2d at 276, 278 (Fla. 2003); Lamb v. Matetzschk, 906 So. 2d 1037, 1040 (Fla. 2005). See also Campbell v. Goldman, 959 So. 2d 223 (Fla. 2007) (reaffirming bright-line rule regarding strict construction of offer of judgment rule and statute); R.J. Reynolds Tobacco v. Ward, 141 So. 3d 236, 238-39 (Fla. 1st DCA 2014); Miami-Dade County v. Ferrer, 943 So. 2d 288, 290 (Fla. 3d DCA 2006); D.A.B. Constructors, Inc. v. Oliver, 914 So. 2d 462 (Fla. 5th DCA 2005); Hess v. Walton, 898 So. 2d 1046, 1048 (Fla. 2d DCA 2005); Meyer v. Hutchinson, 861 So. 2d 1185, 1189 (Fla. 5th DCA 2003).

The proposal for judgment statute and rule plainly contemplate that an offeree has 30 days within which to accept an offer of judgment. Wright v Caruana, 640 So.

2d 197, 199 (Fla. 3d DCA 1994). Section 768.79(4), Fla. Stat., states that an offer “shall be accepted by filing a written acceptance with the court within 30 days after service. Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement.” Florida Rule of Civil Procedure 1.442 provides that “a proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal. The provisions of Florida Rule of Judicial Administration 2.514(b) do not apply to this subdivision. No oral communications shall constitute an acceptance, rejection, or counteroffer under the provisions of this rule.” Fla. R. Civ. P. 1.442(f)(1).⁶ The rule thus “sets a hard thirty-day deadline after which, unless accepted, a proposal for settlement is deemed by the rule to have been rejected.” Ochoa v. Koppel, 197 So. 3d at 80.

Florida Rule of Civil Procedure 1.090(b) governs the enlargement of time periods established by the civil rules. It provides, in relevant part:

When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown the court at any time in its discretion (1) with or without notice, may order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made and notice after the expiration of the specified period, may permit the act to be done when failure to act was the result of excusable neglect....

⁶ The provisions of Florida Rule of Judicial Administration 2.514(b), which grant five additional days to act if service of the document requiring the act is made by mail or email, “do not apply to this subdivision.” Ochoa v. Koppel, 197 So. 3d at 80.

The rule “does not contain any provision which tolls the running of the applicable time periods while a motion made pursuant to its provisions is pending.” Ochoa v. Koppel, 197 So. 3d at 80.

While motions for extension of time are not authorized by either Fla. R. Civ. P. 1.442 or §768.79, Fla Stat., the Fourth District has ruled that because the time for responding to a proposal for settlement is governed by Fla. R. Civ. P. 1.442, “there is no reason why rule 1.090(b) would not authorize the enlargement of the prescribed period of time to respond to an offer of judgment.” Schmidt v. Fortner, 629 So. 2d 1036, 1038 n. 3 (Fla. 4th DCA 1993).

Ms. Ochoa’s proposal was served on September 3, 2013. (R. 53) Ms. Koppel had thirty days, or until October 3, 2014, to accept the proposal. Instead of doing so, and without securing a hearing date, she filed an opposed motion for extension of time on October 2, 2013, one day before the proposal expired pursuant to Fla. R. Civ. P. 1.442 and §768.79, Fla Stat. (R. 59-60) Ms. Koppel then accepted the proposal two months later, two days before the court denied her motion for extension, and more than 60 days after the proposal had expired by its terms. The issue in this case was whether the Defendant’s opposed motion for enlargement of time, which was ultimately denied, nevertheless automatically tolled the time for her to “accept” Ms. Ochoa’s proposal for settlement and effectuate a settlement in the case. The Second District correctly ruled that it did not.

B. Case Law Interpreting Extensions of Time to Respond to Proposals for Settlement.

At the time this case was pending in the trial court, two seemingly conflicting decisions addressed the issue. The first was Goldy v. Corbett Cranes Services, Inc., 692 So. 2d 225 (Fla. 5th DCA 1997), the case relied on by Ms. Koppel. In that case, Goldy submitted an offer of judgment to the defendant Corbett to resolve his claim. The offer was set to expire in thirty days (March 6, 1991) pursuant to Fla. R. Civ. P. 1.442.⁷ Goldy agreed to grant the defendant a “gratuitous extension of time to March 29, 1991 to respond to the offer of judgment.” 692 So. 2d at 226. In the meantime, the defendant moved to dismiss plaintiff’s amended complaint (the case did not involve the need for further discovery). The hearing on the motion to dismiss was to occur after the March 29th deadline, so the defendant filed a motion for extension of time pursuant to Rule 1.090, seeking to further enlarge the time to respond to the offer. Id. Goldy opposed the motion, and informed the defendant his offer would remain open until the originally extended date of March 29, 1991, at which time it would be withdrawn. The motion for enlargement of time was never heard due to Goldy’s absolute withdrawal of the offer. Id.

The verdict in the case ultimately exceeded Goldy’s offer of judgment by 125%, so he moved for sanctions pursuant Rule 1.442. At the defendant’s urging,

⁷The rule addressed in Goldy was an earlier version of Fla. R. Civ. P. 1.442.

the trial court dismissed Goldy's motion, finding that although "the offer of judgment was timely, it was ultimately withdrawn in the letter of March 25, 1991, and thereby rendered void." The trial court found it logical to conclude "that the motion to enlarge the period within which to respond to an Offer of Judgment would effectively toll the responsive time period provided that the motion is filed before the period had otherwise expired." The court stated that:

In this case, [the defendant] filed its motion to enlarge the time to respond to the Offer of Judgment before the agreed on responsive period had expired. The filing of that motion effectively tolled the responsive period until the motion could be heard. [Goldy's] subsequent letter stating that he would withdraw the Offer on March 29, 1991, therefore, constituted a withdrawal of the Offer prior to the expiration of the agreed deadline for [the defendant] to respond which had previously been established by the parties. Thus, [Goldy's] Offer of Judgment was rendered void and cannot provide the basis for an award of attorneys' fees and costs.

692 So. 2d at 228.

The Fifth District agreed with the trial court's ruling. The court found that a plaintiff with a "sincere desire" to settle his case pursuant to an offer of judgment suffers no prejudice if the trial court grants a motion for extension based on a showing of good cause because the plaintiff "always has the power to withdraw the offer at any time before acceptance if the plaintiff's position changes." *Id.*

Judge Griffin expressed concern over the court's conclusion that the "mere filing of a motion to extend the deadline for response to an offer of judgment tolls the time for its expiration." *Id.* She explained:

Given the way this rule works, I think it makes more sense that the mere filing of the motion does not toll the running of the thirty days. The deadline must be extended before the expiration occurs. If it were otherwise, any offer of judgment could be stymied in this way. Any time, including the day before the offer is due to expire, the motion to extend the deadline is simply filed. The deadline thus does not ever arrive and the offeror does not get the benefit of the rule, nor can he withdraw the offer without losing the benefit of the rule. If the filing of the motion to extend prevents expiration, the offeree will likely always file one since there is no downside to doing so. If the motion is ever called up for hearing, the worst that can happen is the motion is denied and all that extra time will have been bought during which the offer (which cannot be “withdrawn” without losing the right to fees) can be accepted at leisure.

Goldy v. Corbett Cranes Services, Inc., 692 So. 2d at 228-29 (Griffin, J., concurring in part, dissenting in part) (emphasis added).

Petitioner’s continual representation that Goldy was the controlling case law for 19 years is false. (IB p. 12, 18, 20) Just two years after Goldy, a similar issue was addressed by the Second District in Donohoe v. Starmed Staffing, Inc., 743 So. 2d 623 (Fla. 2d DCA 1999). The defendants filed an offer of judgment pursuant to §768.79, Fla. Stat., and Fla. R. Civ. P. 1.442. The plaintiff requested that the time for responding be extended until after the completion of two depositions. The defendants did not believe the depositions would provide additional useful information, so they refused to agree to an extension. The plaintiff then filed a motion for extension with the trial court. The motion was never heard or even scheduled for hearing. 743 So. 2d at 624-25.

After prevailing in the case, the defendants sought to recover their attorneys' fees and costs pursuant to their offer of judgment. The trial court denied the motion. The court ruled the offer of judgment was not made in good faith. The trial court also ruled that the plaintiff's "motion for enlargement of time had the effect of tolling the time in which to respond to the offer, relying on Goldy v. Corbett Cranes Services, Inc., 692 So. 2d 225 (Fla. 5th DCA 1997)." 743 So. 2d at 625.

The defendants appealed, claiming the trial court erred in determining that plaintiff's motion for enlargement of time tolled the time in which it could respond to the offer of judgment. They also claimed the trial court abused its discretion in determining that the offer of judgment was not made in good faith. The Second District agreed and reversed. 743 So. 2d at 624. The court ruled the offer was made in good faith. Id. The Second District also disagreed with the trial court that the motion for enlargement tolled the time for responding to the offer. The court found that Goldy was distinguishable because the offer of judgment in that case was withdrawn before the motion for enlargement could be heard. Plaintiff Starmed chose not to set its motion for a hearing because depositions had been scheduled. 743 So. 2d at 625.

The Third District subsequently reached a similar result in Three Lions Construction, Inc. v. Namm Group, Inc., 183 So. 3d 1119 (Fla. 3d DCA 2015), when it ruled that a corporation's motion for extension of time to accept a proposal for

settlement was ineffective to toll the time for acceptance where the opposing party did not agree to the extension and the corporation did not obtain a hearing prior to expiration of the time for acceptance of the proposal. Likewise in this case, Ms. Koppel chose **not** to set her motion for extension of time prior to the expiration of the 30-day acceptance period. No showing of impossibility was asserted or even suggested.

A review of Goldy and this case shows they are materially distinguishable, and that this case is more like Donohoe and Three Lions. As the Second District recognized, unlike this case, the trial court in Goldy granted the defendant's motion for extension of time to decide whether to accept the proposal for settlement. The Fifth District found that "a plaintiff with a sincere desire to settle pursuant to an offer of judgment, is not prejudiced when a court grants an extension of time for acceptance after a good reason is shown by the offeree." 692 So. 2d at 228 (emphasis added). That statement alone distinguishes Goldy from this case because the trial court **denied** Ms. Koppel's motion for extension. She never challenged that ruling on appeal. Moreover, the plaintiff in Goldy indicated that the offer would be withdrawn at the end of a prior consensual extension regardless of how the trial court ruled on the subsequent motion for extension. 692 So. 2d at 229 (Griffin, J., concurring). That situation did not occur in this case. Rather, Ms. Koppel filed an opposed motion for enlargement of time on October 2, 2013, the **last** day of the 30-

day acceptance period. The hearing did not occur until December 2, 2013. Then on December 3, 2013, the day after the trial court requested legal authority to support her motion for enlargement of time, Ms. Koppel filed a notice of acceptance of proposal for settlement. Thereafter, on December 5, 2013, the trial court denied Ms. Koppel's motion for enlargement of time. It was only through chicanery that Defendant's purported "acceptance" occurred before the order denying the motion for extension was entered.

The Petitioner dismisses the concerns expressed by Judge Griffin in Goldy and echoed by the Second District in this case, because Plaintiff and the Second District purportedly failed to document that those concerns had materialized. (IB p. 33) The Petitioner misses the point. As the Second District recognized in this case, the effects of Goldy are not benign. (IB p. 33) Judge Griffin's misgivings clearly demonstrate the mischief that can and will occur when the offeree is given the power to unilaterally alter the 30-day acceptance period. That time period could be repeatedly manipulated so that the deadline for accepting the offer never arrives, and "the offeror does not get the benefit of the rule, nor can he withdraw the offer without losing the benefit of the rule." Goldy, 629 So. 2d at 228 (Griffin, J., concurring). If the motion is ever called up for hearing, "the worst that can happen is the motion is denied and all that extra time will have been bought during which the offer (which

cannot be “withdrawn” without losing the right to fees) can be accepted at leisure.”
Id. at 228-29. Ochoa, 197 So. 3d at 83.

That is precisely what occurred in this case. Ms. Koppel, at **her** leisure, accepted the proposal and Ms. Ochoa was bound because the trial court ruled that the motion for extension, standing alone, tolled the time to respond. Ms. Koppel even claimed below that if the Plaintiff was unhappy with the tolling effect of the motion, she was “free to withdraw the offer and restate it a later date.” Voiding the proposal is no solution, and defeats the benefits available to the offeror whose proposal is rejected—attorneys’ fees from the date of the proposal. Section 768.79(1), Fla. Stat. See also Kirby v. Adkins, 582 So. 2d 1209 (Fla. 5th DCA 1991) (offer of judgment withdrawn prior to expiration of 30-days was void and could not serve as basis for award of attorneys’ fees to offering party).

The case law is clear that litigants are required to strictly comply with the deadlines for filing proposals for settlement. See Wright v Caruana, 640 So. 2d 197 (Fla. 3d DCA 1994) (defendant’s offer of judgment made less than thirty days prior to trial could not serve as basis for award of costs or attorneys’ fees). There is no rational reason why recipients of those proposals should be held to a lesser standard.⁸

⁸ Baratta v. Braford Electric, Inc., 9 So. 3d 694 (Fla. 4th DCA 2009), does not hold otherwise. (IB p. 9) The parties in that case agreed to settle the matter after the 30-day deadline expired. The offeree later attempted to back out of the deal. The decision has nothing to do with strict construction of Fla. R. Civ. P. 1.442 and §768.79, Fla. Stat.

The deadline imposed by §768.79, Fla. Stat., and Fla. R. Civ. P. 1.442 to respond to a proposal is 30-days. If not accepted, the movant is not required to take any affirmative action to withdraw the proposal. It expires as a matter of law. The offeror should be able to rely upon the statutorily imposed deadline and not be held hostage by an offeree who, even if a motion for extension is denied, will have bought the extra time during which “the offer (which cannot be ‘withdrawn’ without losing the right to fees) can be accepted at leisure.” Goldy v. Corbett Cranes Services, Inc., 692 So. 2d at 228-29 (Griffin, J., concurring in part, dissenting in part). See also Ochoa, 197 So. 3d at 82-83.

As recognized by the Second District, much mischief could occur under the rule advocated by the Petitioner. The party to whom the proposal is directed could file a motion for extension of time on the final day of the 30-day period, and set the motion for hearing at a much later date (or not at all). In the meantime, the proceedings will move forward causing the movant to incur substantial attorneys’ fees and costs, which the proposal sought to avoid in the first instance. The damages sustained by the offering party also could be discovered to be much greater than contemplated by the proposal. The offeree could then “accept” the proposal and the offeror would be bound because the motion for extension, standing alone, tolled the time to respond. Such an illogical outcome should not be condoned.

Moreover, proposals for settlement are similar to non-statutory settlement offers in that they are in the nature of a contract. Campbell v. Goldman, 959 So. 2d at 225-26. In non-statutory cases, there is an offer, and there is an acceptance or rejection of the offer. To result in a contract, “an acceptance of an offer must be absolute and unconditional, identical with the terms of the offer and in the mode, at the place and within the time expressly or impliedly required by the offer.” Ribich v. Evergreen Sales & Service, Inc., 784 So. 2d 1201, 1202 (Fla. 2d DCA 2001) (emphasis added). See also Nichols v. Hartford Ins. Co. of the Midwest, 834 So. 2d 217, 219 (Fla. 1st DCA 2002); Giovo v. McDonald, 791 So. 2d 38, 40 (Fla. 2d DCA 2001). Time limits for accepting or rejecting a settlement offer are strictly construed, and failure to timely respond is considered a rejection. Ribich, 784 So. 2d at 1203 (Hartford’s out-of-time delivery of settlement check was counter-offer plaintiffs were not obligated to accept).

There is no rational reason for treating statutory proposals for settlement differently. After all, they are creatures of statute and are strictly construed by the courts. The moving party offers to settle the case for a sum certain if the proposal is accepted within thirty days. As in any other contract case, the offeree cannot be permitted to unilaterally and arbitrarily change the terms of the offer or alter the deadline for acceptance, and then proclaim the case is settled. The “acceptance” would simply be a counter-offer, and an absolute rejection of the original offer. This

Court should rule that in the absence a timely court order or an agreement by the parties, a motion for enlargement of time, standing alone, does not toll the time for responding to a proposal for settlement.

Not surprisingly, the Defendant fails to explain why the offeree should be “protected” when it is the offeree who fails to timely comply with §768.79, Fla. Stat., and Fla. R. Civ. P. 1.442. The Defendant’s concerns over “financial catastrophes” of adopting the Second District’s decision ring hollow because in the vast number of personal injury cases, it is the insurance company that controls whether to accept or reject the offer. It is not the individual defendant, who may not understand the procedure or the ramifications of accepting or rejecting the offer (such as violation of the non-settlement and cooperation conditions and their impact on coverage). An extension is likely required because the proposal sat too long on someone’s desk, not because there is an urgent need for additional discovery. Moreover, it would seem logical that a pending “financial catastrophe” would warrant immediate action, not waiting until the very last day of the 30-day period to file an opposed motion for extension, as was done in this case.

The Petitioner further claims throughout her Brief that adopting the Second District’s reasoning will result in “pernicious effects”, such as offerors acting in bad faith by revealing new evidence during the 30-day acceptance period, leaving the offeree with the unappealing option of either accepting the proposal without full

discovery, or rejecting the proposal and taking its chances at trial. She also makes the unsubstantiated claim that certain offerees will be placed at a disadvantage because securing hearing time within the 30-day time frame is more difficult in some counties than in others.

Ms. Koppel ignores the fact that the Second District addressed these very concerns in its decision in this case. The court found that Goldy's holding that a motion to enlarge time automatically tolled time where the subject deadline is strictly construed seemed “inconsistent with the concept of a strictly construed deadline. Allowing a party to suspend the occurrence of a deadline through the simple act of putting a piece of paper in the court file tends to liberalize rather than strictly enforce that deadline.” 197 So. 3d at 83. The court noted that:

The Goldy opinion does not state whether the party seeking the enlargement failed to seek a hearing. Because rule 1.090 by its terms requires that the court actually grant a party an extension of time in its discretion—and does not indicate that tolling is accomplished by the mere filing of the motion itself—we believe that the approach most consistent with the rules is to require the party seeking the enlargement of time to set a hearing or insist on a ruling, whichever may be required, and not to create an automatic tolling rule that springs into effect upon the filing of a motion for enlargement.

Id. at 83.

The Second District found that even if the Goldy court’s approach to interpreting the civil rules of procedure might be appropriate in some circumstances, and it did not “mean to imply that it is—it is particularly unjustified here because

rule 1.090, as drafted, provides a trial court with ample discretion to address the perceived equities with which Goldy was concerned.” Id. at 82. The court explained that if a party is sincerely interested in settlement and has a bona fide need for more time to accept or reject it:

[The] court has the discretion to rectify that problem by granting an enlargement of time. If the party is unable to get a motion seeking an enlargement heard before the time expires, but the trial court determines that an enlargement is warranted, its decision to grant the enlargement rectifies the problem. If, on the other hand, the trial court determines that the extension was unwarranted, there is no equitable problem for a tolling rule to solve because an extension was not merited in the first place. In sum, the court has sufficient room to address the problem of the party who is sincerely interested in settlement within the confines of existing rules.

Ochoa, 197 So. 3d at 82–83. (emphasis added)

As noted above, this Court has consistently ruled that the offer of judgment statute is in derogation of the common law rule that each party is responsible for its own fees and costs. As such, the party submitting a proposal for settlement or an offer of judgment must strictly comply with the numerous requirements of the statute and the rule, or the proposal/offer will be rendered invalid. Campbell v. Goldman, supra. The offeree, on the other hand, has but a single obligation—accept the proposal in writing within thirty days. See §768.79(4), Fla. Stat.; Fla. R. Civ. P. 1.442(f)(1). An offeree who wishes to extend that time should bear the burden of setting the motion for hearing and securing a ruling before expiration of the deadline. There is **no** cogent reason why that burden should be placed on the offeror or why

the offeror should lose the benefits of the offer of judgment statute if she fails to do so. The Second District's decision balances the competing interests of the parties. The decision also gives Rule 1.442 and §768.79, Fla. Stat., the type of construction that furthers justice. (IB p. 35) Petitioner's view of the law does not. This Court should approve the result reached below, reject Goldy (and Petitioner's suggested amendments to the Rules of Civil Procedure (IB p. 28, 36)), and hold that in the absence of a timely court order or an agreement between the parties, a motion for extension of time, without more, does not toll the 30-day time period for accepting a proposal for settlement and constitutes a rejection of the proposal as a matter of law.

C. The Second District's Decision in this Case should be given Retroactive Application.

Ms. Koppel no doubt recognizes the inherent defects of the Goldy ruling because throughout her Brief she implores the Court to apply any change in the "controlling law" of Goldy prospectively only. (IB p. 21-28) However, the Second District's opinion makes it clear that Goldy was **never** represented to be the controlling law in the Second District.⁹ Undeterred, Ms. Koppel claims the Second District's decision in this case should be prospective only—that Ms. Ochoa should

⁹ Petitioner is correct that a circuit court is required to follow decisions of other district courts of appeal when there is no controlling precedent law from the district in which it sits. Pardo v. State, 596 So. 2d 665 (Fla. 1992). That same rule does **not** apply to another district court of appeal.

not benefit from the very ruling she secured—because to apply it to Petitioner would unfairly deprive her of important legal rights. Petitioner is wholly incorrect.

As Ms. Koppel acknowledges, judicial decisions in the area of civil litigation have retrospective as well as prospective application. International Studio Apartment Assn., Inc. v. Lockwood, 421 So. 2d 1119, 1120 (Fla. 4th DCA 1982). This includes decisions of a “court of last resort overruling a former decision . . . unless specifically declared by the opinion to have a prospective effect only.” Florida Forest and Park Services v. Strickland, 18 So. 2d 251, 253 (Fla. 1944). The exception Petitioner claims exists is based on case law construing judicial construction of a statute. Such construction will ordinarily be deemed to:

[R]elate back to the enactment of the statute, much as though the overruling decision had been originally embodied therein. To this rule, however, there is a certain well-recognized exception that where a statute has received a given construction by a court of supreme jurisdiction and property or contract rights have been acquired under and in accordance with such construction, such rights should not be destroyed by giving to a subsequent overruling decision a retrospective operation.

Florida Forest & Park Serv. v. Strickland, 18 So. 2d at 253. (emphasis added)

With all due respect, the Second District is not the court of “last resort” or, the court of “supreme jurisdiction” referred to in Strickland or Lockwood.¹⁰ That

¹⁰ The Lockwood court also analyzed federal precedent because the decision declaring the statute at issue unconstitutional emanated from the Supreme Court of the United States rather than the Florida Supreme Court. 421 So. 2d at 1121-22. (Appellee’s Motion p. 7-8) Such precedent clearly has no application to this case.

distinction belongs solely to this Court, to which the Second District certified its conflict with Goldy. See National Ins. Underwriters v. Cessna Aircraft Corp., 522 So. 2d 53 (Fla. 5th DCA 1988); Cassidy v. Firestone Tire & Rubber Co., 495 So. 2d 801, 802 (Fla. 1st DCA 1986). Likewise, the decision in this case did not qualify as an “overruling decision” as described in Strickland and Lockwood. The court did not overrule or overturn any “prior decision” that was controlling in the Second District. The Fifth District issued the Goldy decision. The Second District had no authority to overrule a decision of another district court of appeal. That authority belongs solely to this Court. See Art. V, §3(b)(4), Fla. Const. (1968); Fla. R. App. P. 9.030(a)(2)(A)(vi). The Second District recognized that fact by certifying conflict with Goldy.

Moreover, even if the Fifth District could be considered a court of “supreme jurisdiction” for the purpose of this particular issue (which it is not), Ms. Koppel never acquired a contract right in accordance with a prior construction of a statute by the Goldy court. As pointed out above, the trial court in Goldy granted the defendant’s motion for extension of time, causing the Fifth District to find that the plaintiff was not prejudiced when “a court grants an extension of time for acceptance after a good reason is shown by the offeree.” 692 So. 2d at 228. That clearly distinguished Goldy from this case because the trial court **denied** Ms. Koppel’s motion for extension. It was only through counsel’s gamesmanship that Defendant’s

purported “acceptance” occurred before the order was entered. Therefore, the Second District’s decision in this case did not “overrule” a previous judicial construction of a statute in the manner described by Strickland, so as to warrant prospective application only.

Ms. Koppel’s reliance on Green Tree Servicing, LLC v. McLeod, 15 So. 3d 682 (Fla. 2d DCA 2009) (en banc), is misplaced at best. In that case, the Second District receded from one of its earlier decisions and had to decide whether “application of the rule that we adopt today to the facts of this case would be fundamentally unfair to Green Tree.” The court found there would be no unfairness. Green Tree thus addressed the effect of an en banc decision which recedes from one of the court’s own decisions. 15 So. 3d at 694-95. That did **not** occur in this case.

Aronson v. Congregation Temple De Hirsch, of Seattle, Washington, 123 So. 2d 408 (Fla. 3d DCA 1960), also has no application to this case. There, the Third District had receded from one of its earlier decisions construing the appellate rules and the deadline for filing a notice of appeal. Its recent decision (Wartman) shortening the time period had not been published and made available to the bar until after Aronson filed his notice of appeal in reliance on the earlier construction of the rule. The Third District held that fairness required the newer decision to operate prospectively from the date of its publication and, therefore, declined to dismiss Aronson’s appeal as untimely. That is not the issue in this case.

Adopting Petitioner's position also would fly in the face of the established law in Florida that appellate courts have the authority to decide a case by applying legal principles that come into existence after the rendition of the order under review. An appellate court can "ultimately reverse an order under review even though there was no error at the time the decision was made in the lower tribunal." Philip J. Padovano, Florida Appellate Practice, §20.1 (2016 ed.). See also Hendeles v. Sanford Auto Auction, Inc., 364 So. 2d 467 (Fla. 1978); North Broward v. Kalitan, 174 So. 3d 403 (Fla. 4th DCA 2015) (apply law in effect at time of appeal); State Farm v. Stylianoudakis, 946 So. 2d 647 (Fla. 4th DCA 2007) (appellate court applies law in effect at time of appeal). Under Petitioner's reasoning, that could never occur, which in turn would have a chilling effect on the appellate process. Litigants like Ms. Ochoa could never win their own appeals. Thankfully, that is not the law in Florida.

Under Petitioner's reasoning, appellate courts also would be forced into issuing impermissible advisory decisions. The requirement of justiciability applies to appellate courts. An appellate court cannot properly exercise its judicial power to review an order of a lower tribunal merely to render a decision. To the contrary, the review proceeding must be one that presents a justiciable controversy between parties who are affected by the order. Consequently, it has long been held that an appellate proceeding may not be used as a method of obtaining the answer to an abstract legal issue. "There must be a real and substantial dispute and there must be

a present need for resolution. An appellate proceeding may not be used to obtain an advisory opinion on an issue that may be in dispute in the future. The appellate courts have an independent duty to consider each of these issues in every case and to dismiss an appeal or petition that does not present a genuine controversy.” 2 Fla. Prac., Appellate Practice § 1:3 (2015 ed.). While this Court may issue advisory opinions to the governor under the limited circumstances outlined in Art. IV § 1(c) of the Florida Constitution, appellate courts are not otherwise authorized to render advisory opinions. See, e.g., Allen v. Martinez, 573 So. 2d 987 (Fla. 1st DCA 1991). Informing Ms. Ochoa that her view of the law was correct but she was not entitled to relief would amount to nothing more than an unauthorized and unrequested advisory opinion by the Second District and then by this Court.

D. The Petitioner’s Alternative Approach to Tolling should be rejected.

As a fallback position, the Petitioner urges this Court to adopt a third approach to the tolling issue—the “Berman & Webster Rule.” (IB p. 36-38) Under that approach, the rules (presumably Fla. R. Civ. P. 1.090 and 1.442) would “provide an automatic tolling effect upon pre-deadline service of motions, but only if the motions affirmatively establish the movant’s inability, after good faith effort, to obtain a pre-expiration court hearing or consensual extension.” (IB p. 36) In the absence of either condition, the motion for extension of time would need to contain a certificate of service specifying certain matter in order to automatically toll the 30-day deadline

until the court rules on the motion. (IB p. 36-37) This Court need not address this matter because it was not raised below.

It is well-established that new arguments cannot be raised for the first time on appeal in Florida. Betts v. Samardak, 609 So. 2d 700, 701 (Fla. 4th DCA 1992). This is true at both the District Court of Appeals and Supreme Court level. See Mariani v. Schleman, 94 So. 2d 829, 831 (Fla. 1957) (on appeal, Supreme Court will confine itself to review of those questions only which arose before trial court, and matters not presented to the trial court by pleadings and evidence will not be considered). Likewise, the tipsy coachman rule does not apply in reverse. While a reviewing court can consider alternative grounds for affirmance, the tipsy coachman rule does not allow a court to reverse a decision on an unpreserved and unargued bases. See State v. Sims, 110 So. 3d 113, 116 (Fla. 1st DCA 2013); Advanced Chiropractic and Rehabilitation Center, Corp. v. United Auto. Ins. Co., 103 So. 3d 866, 868-69 (Fla. 4th DCA 2012). See also State v. Baez, 894 So. 2d 115, 121 (Fla. 2004) (Pariente, C.J., dissenting). Ms. Koppel's position at the trial level and the Second District was that Goldy was correct and controlled the outcome of the case. She never raised the "Berman & Webster Rule" below; therefore, it has been waived.

Even if this argument had been preserved, the Court should reject it out of hand. The "policy" reasons the Petitioner relies upon for adopting the rule have not been shown to exist. (IB p. 28-37) There has been no showing that offerors are

blanketing offerees with new medical or liability evidence during the 30-day acceptance window. There also has been no showing that extensions of time to respond to proposals for settlement, and objections to them, are a recurring and critical issue in Florida. Petitioner also has made no showing in general, and certainly not in this case, that “congested” dockets put litigants at a disadvantage in timely responding within the 30-day deadline.

Further, there is no evidence Ms. Koppel attempted to secure a hearing within the 30-day window. It is highly unlikely she ever did, given the fact that she waited until the last day to even file her motion for extension. Moreover, if Ms. Koppel had, in fact, a valid reason for the extension, the trial court, in its discretion, had “sufficient room to address the problem of the party who is sincerely interested in settlement within the confines of existing rules.” Ochoa, 197 So. 3d at 82–83.¹¹ The Second District’s decision recognizes that the existing law already affords a party the exact type of relief the Petitioner claims is needed: “if a party is unable to get a motion seeking an enlargement heard before the time expires, but the trial court determines that an enlargement is warranted, the court already has the discretion to rectify that problem by granting an enlargement of time.” Id. This Court should approve the result reached below, and hold that in the absence of a timely court order

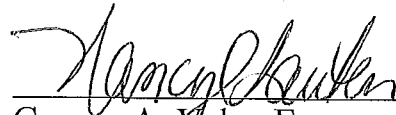
¹¹ The trial court, in denying the motion, obviously found the absence of a valid reason for the extension. (R. 63)

or an agreement between the parties, a motion for extension of time, without more, does not toll the 30-day time period for accepting a proposal for settlement and constitutes a rejection of the proposal as a matter of law.

CONCLUSION

The Second District Court of Appeal correctly ruled that the filing of a motion under Fla. R. Civ. P. 1.090 to enlarge the time to accept a proposal for settlement does not automatically toll the thirty-day period for accepting the proposal until the motion for enlargement is decided. The court then correctly held that the trial court erred in ruling that Plaintiff's proposal for settlement had been validly accepted by the Defendant. For the numerous reasons expressed herein, the Second District's decision should be approved, and the case remanded to the trial court for reinstatement of Plaintiff's negligence action.

Respectfully submitted,



George A. Vaka, Esq.

Florida Bar No. 374016

gvaka@vakalaw.com

Nancy A. Lauten, Esq.

Florida Bar No. 0593052

nlauten@vakalaw.com

Vaka Law Group

777 S. Harbour Island Blvd., Ste. 300

Tampa, Florida 33602

813.549.1799 Telephone

813.549.1790 Facsimile

CERTIFICATE OF SERVICE

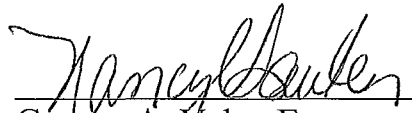
I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail on March 7, 2017 to:

Anthony J. Russo, Esquire, Esquire, and Ezequiel Lugo, Esquire, Butler Weihmuller Katz Craig, LLP, 400 North Ashley Drive, Suite 2300, Tampa, FL 33602 (arusso@butler.legal); (elugo@butler.legal); (fmoschenik@butler.legal)

Paul U. Chistolini, Esquire, Smoak & Chistolini, LLC, 320 W. Kennedy Blvd., 4th Floor, Tampa, FL 33606 (pchistolini@flatrialcounsel.com)
courtdocument@flatrialcounsel.com)

Derek A. Reams, Esquire, McCue, Reams and Associates, P.A., 524 9th Street West, Bradenton, FL 34205 (QLawservice@QLaw.com)

VAKA LAW GROUP


George A. Vaka, Esq.

Florida Bar No. 374016

gvaka@vakalaw.com

Nancy A. Lauten, Esq.

Florida Bar No. 0593052

nlauten@vakalaw.com

777 S. Harbour Island Blvd., Ste. 300

Tampa, Florida 33602


813.549.1799 Telephone

813.549.1790 Facsimile

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a) (2).


George A. Vaka, Esq.
Nancy A. Lauten, Esq.