

SUPREME COURT OF FLORIDA

CASE NO.: SC08-1899

ATTORNEYS' TITLE INSURANCE FUND, INC.

Petitioner,

vs.

JOSEPH GORKA and LAUREL LEE LARSON,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

Appeal from the Second District Court of Appeal
Case No.: 2D07-3369

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STATEMENT OF FACTS

Respondents accept Petitioner's Statement of Facts with the exception that the Second District addressed the issue of possible conflict with Clements v. Rose, 982, So.2d 731 (Fla. 1DCA 2008) with the following carefully drafted language:

Clements does not address the arguments considered here: (1) the impact such a conditional proposal has on an offeree's ability to independently evaluate and act on a proposal for settlement or (2) the potential that an offeree who was willing to accept the proposal would be penalized as a result of another offeree's refusal to accept. However, to the extent that Clements holds that joint offer conditioned on the mutual acceptance of all of the joint offerees are valid and enforceable, we disagree and certify conflict. Attorneys' Title Insurance Fund, Inc. v. Gorka, 989 So.2d 1210, 1214 (Fla. 2DCA 2008)

SUMMARY OF ARGUMENT

The issue in Clements was whether the offer of judgment was ambiguous. The holding in Clements was that the trial court erred in determining that the settlement proposal was ambiguous. The court's comments in Clements as to whether or not the offer could be conditioned on mutual acceptance of both offerees was dicta. Furthermore, as noted by the Second District in Attorneys' Title, the Clements case does not address the arguments considered in Attorneys' Title. Therefore, Attorneys' Title is not in express and direct conflict with Clements and jurisdiction should therefore be denied.

ARGUMENT

THE DECISION OF THE DISTRICT COURT BELOW IS NOT IN DIRECT AND EXPRESS CONFLICT WITH THE DECISION IN CLEMENTS

In Clements, a \$75,000 settlement offer was made by the Plaintiff to be paid 50% by Bobby Rose and 50% by Maudeanna Rose. Apparently the Roses were married. The offer was silent as to whether either Rose could or could not settle separately from the other. For this reason, the trial court ultimately found that the offer was ambiguous. On appeal, the First District reversed the trial court's order denying attorney fees and found that there was no ambiguity. The dissent recognized that because the settlement did not allow one Rose to settle without the other, the settlement violated the particularity requirement of the rule.

In the instant case, the settlement offer required each Respondent to receive \$12,500 and was conditioned upon the offer being accepted by both Joseph W. Gorka and Laurel Lee Larson. In other words, the offer can only be accepted if both Joseph W. Gorka and Laurel Lee Larson accept and neither Plaintiff can independently accept the offer without their co-plaintiff joining in the settlement.

Based on Lamb v. Matetzschk, 906 So.2d 1037 (Fla. 2005), the trial court concluded that the proposal was invalid and denied the motion for attorney fees. The Second District in a carefully worded decision concluded that because of the above quoted language the proposal was invalid under Lamb and other well

established case law. In its opinion, the Second District recognized Clements and noted the difference in the two cases.

For the reasons stated by the Second District, Clements did not address the arguments raised in the instant case. Furthermore, the language in Clements as to the viability of joint offers conditioned on the mutual acceptance of all the joint offerees was dicta. Therefore, there is no express and direct conflict with Clements and jurisdiction should be denied.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should not accept jurisdiction based upon conflict of decisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via regular U.S. Mail to John H. Pelzer, Esquire, Robin F. Hazel, Esquire and David L. Boyette, Esquire, Ruden, McClosky, Smith, Schuster & Russell, P.A., P.O. Box 49017, Sarasota, Florida 34230-6017 on this ____ day of November, 2008.

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I hereby certify that this brief complies with the font requirements (Times New Roman, 14 point type) specified in the Rule.

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