SUPREME COURT OF FLORIDA

Case No. SC08-1899

ATTORNEYS' TITLE INSURANCE FUND, INC.,

Appellant,

vs.

JOSEPH GORKA and LAUREL LEE LARSON,

Appellees.

JURISDICTIONAL BRIEF OF ATTORNEYS' TITLE

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

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STATEMENT OF FACTS

Joseph Gorka ("Gorka") and Laurel Larson ("Larson") are husband and wife (collectively, the "Respondents"). The Respondents own real property that is insured under a title insurance policy issued by Attorneys' Title Insurance Fund, Inc. ("Petitioner"). A dispute arose regarding the Respondents' property, which they asked the Petitioner to defend. The Petitioner refused and Gorka and Larson filed a suit seeking declaratory judgment and damages based on the Petitioner's refusal to defend the Respondents in the suit regarding their property.

Before the trial, the Petitioner proposed a settlement in the amount of $12,500 to Gorka and $12,500 to Larson, pursuant to § 768.79, Fla. Stat. and Fla. R. Civ. P. 1.442. The settlement proposal stated that it was conditioned on the offer being accepted by both Gorka and Larson; neither party could accept the offer without the other party joining the settlement.

At the end of the bench trial, judgment was entered in favor of the Petitioner and the Petitioner moved to tax fees and costs against the Respondents in light of the unaccepted settlement offer. The trial court found that while the offer was specifically apportioned as to each party, because neither party could independently accept the offer, the offer was invalid.

On appeal, the Second District agreed with the trial court's finding that the offer was invalid because it was conditioned upon acceptance by both parties. The

Second District noted that its ruling was in direct conflict with the *Clements v. Rose*, 982 So. 2d 731 (Fla. 1st DCA 2008), which found that a similar offer made to a husband and wife, conditioned upon acceptance by both parties, was valid and enforceable. The Second District thus certified conflict between its decision and *Clements*.

SUMMARY OF ARGUMENT

The district court in this case found that a settlement to multiple parties, conditioned upon acceptance of the offer by all parties, is not a valid offer under § 768.79, Fla. Stat. and Florida Rule of Civil Procedure 1.442. This is in express and direct conflict with the First District's opinion in *Clements v. Rose*, which found that such a settlement offer was valid and enforceable. This Court should accept jurisdiction of this case to settle for all litigants the issue of whether an offer to multiple parties is valid if such an offer is conditioned upon acceptance by all parties.

ARGUMENT

THE DECISION OF THE DISTRICT COURT BELOW IS IN DIRECT AND EXPRESS CONFLICT WITH THE DECISION IN *CLEMENTS*.

This case involves the interpretation of the language found in Florida Rule of Civil Procedure 1.442(c)(3), which requires that a joint proposal of settlement "state the amount and terms attributable to each party." This language has been interpreted by this Court to mean that "[e]ach defendant should be able to settle the suit knowing the extent of his or her financial responsibility." *Lamb v. Matetzschk*, 906 So. 2d 1037, 1040 (Fla. 2005).

Clements also involved an offer made to a husband and wife, conditioned on acceptance by both of them so that the litigation would be terminated. In *Clements*, the court found that an offer that is made to multiple parties, which specifically apportions the offer as to each party, meets the requirements of Rule 1.442(c)(3), even if that offer is conditioned upon acceptance by all parties. 982 So. 2d at 732. The *Clements* court found that the husband and wife in that case were both informed by the terms of the settlement offer about the amount that each would be responsible to pay if the settlement were accepted, and the decision of whether to accept the settlement was left up to them. *Id*. The district court in this case reached the opposite conclusion.

It is appropriate for this Court to accept jurisdiction and resolve the conflict that exists between the decision below and *Clements* because, as the *Clements* court noted, "Rule 1.442 is designed to facilitate settlements, not render settlement of a case impossible where there are multiple defendants." *Id.* Much litigation involves multiple parties, and therefore there is an important question that this Court should resolve. The district court's decision in this case undermines the policy of facilitating settlements by discouraging a party litigating against multiple parties from making offers of settlement.

If the decision of the court below is allowed to stand, it would have a chilling effect on settlement offers in cases involving multiple parties that would defeat the intent of Rule 1.442. Requiring offerors to open themselves to piecemeal settlements that do not terminate litigation will deprive offerors of the benefits of settlement and will discourage offers. For example, in this case, if the husband were permitted to accept the settlement without his wife also settling, the Petitioner would have been required to pay the husband $12,500 and then go to trial with the wife on the identical claim asserted by the Respondents regarding the property they owned as tenants by the entireties. The result is increased cost with no decreased risk. This runs afoul of the goal of Rule 1.442 and would discourage parties to a litigation involving multiple parties from making settlement offers since the acceptance of a settlement offer by one party would not mean the end of

litigation. Settlement is an important tool in litigation and the decision of the district court below places an artificial limit on settlement that should be addressed by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should accept jurisdiction based upon the certified conflict of decisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to counsel of record as noted below, by U. S. Mail, on October 13, 2008.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that TIMES NEW ROMAN, 14 pt., is used in this brief.

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