IN THE SUPREME COURT OF THE STATE OF FLORIDA

SUSANNE L. KUHAJDA,

Petitioner,

v.

Case No. : SC15-1682
First DCA No.: 1D14-4706

BORDEN DAIRY COMPANY
OF ALABAMA, LLC and
MAJOR O. GREENROCK,

Respondents.

RESPONDENTS' BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

Respondents do not dispute that the First District's decision below in *Borden Dairy Co. of Ala., LLC v. Kuhajda*, 171 So. 3d 242 (Fla. 1st DCA 2015), conflicts with the Fourth District's decision in *Bennett v. Am. Learning Sys. of Boca Delray, Inc.*, 857 So. 2d 986 (Fla. 4th DCA 2003). The First District below concluded that the proposal for settlement was invalid because it failed to "state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim," as required by Rule 1.442(c)(2)(F). In contrast, the Fourth District in *Bennett* held that this provision is optional when attorney's fees are not demanded in the complaint.

Still, there is no reason for this Court to exercise its discretionary jurisdiction to resolve this conflict because this Court has issued an unbroken line of opinions in the 12 years since *Bennett* expressly repudiating the notion that *any* of the requirements in Rule 1.442(c)(2) are optional. Indeed, in *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362 (Fla. 2013), this Court held that the precise provision from Rule 1.442(c)(2) addressed in these cases is mandatory, not optional, and expressly questioned the continuing validity of *Bennett* as a result. Thus, there is no ongoing confusion in Florida law over this issue—indeed, no Florida court has ever cited *Bennett* for this proposition—so there is no need for this Court to intervene to resolve a conflict that is, at best, academic by this point.

ARGUMENT

I. This Court has repudiated the basis for the holdings in *Bennett* and *Liggett*, so there is no need for the Court to resolve the academic conflict

Respondents concede that the First District's decision below conflicts with the Fourth District's decision in *Bennett* and, arguably, its decision in *Liggett Grp., Inc. v. Davis*, 975 So. 2d 1281 (Fla. 4th DCA 2008). But it is not a conflict that this Court need spend its finite time and resources resolving.

The First District below relied upon this Court's prior decisions in *Diamond Aircraft* and *Campbell v. Goldman*, 959 So. 2d 223 (Fla. 2007), in finding Kuhajda's proposal for settlement invalid because it did not "state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim." *Borden Dairy*, 171 So. 3d at 243 (quoting Fla. R. Civ. P. 1.442(c)(2)(F)). The First District noted that, in *Diamond Aircraft*, this Court held that a proposal was invalid for not including this precise language when attorney's fees were demanded in the complaint. The First District then observed that "we can see no reason why this holding would not apply equally to a case where attorneys' fees were not sought in the complaint" because Rule 1.442 expressly requires a proposal to include that information, and the requirements of the rule "must be strictly construed." *Id*. at 243.

The First District's decision is just the latest in an unbroken line of recent cases reaffirming that *all* of the requirements in Rule 1.442 are mandatory. *See Pratt v. Weiss*, 161 So. 3d 1268, 1273 (Fla. 2015) ("We reiterate that parties must strictly adhere to the requirements of section 768.79 and rule 1.442 to be eligible for an award of attorney's fees and costs"); *Diamond Aircraft*, 107 So. 3d at 377 ("if the elements of rule 1.442(c)(2) were not mandatory, we would have stated at the beginning of rule 1.442(c)(2) that the proposal 'may' contain the requirements listed in that subsection"); *Campbell*, 959 So. 2d at 226-27 (holding that even a "mere technical violation" invalidates a proposal for settlement); *Paduru v. Klinkenberg*, 157 So. 3d 314, 318 (Fla. 1st DCA 2014) ("[i]t is now a well settled principle, espoused in our previous decisions as well as those from sister districts, that offers of judgment must strictly comply with section 768.79 and rule 1.442, with any drafting deficiencies being construed against the drafter"); *Cano v. Hyundai Motor Am., Inc.*, 8 So. 3d 408, 410 (Fla. 4th DCA 2009) ("[i]f a proposed settlement does not comport with the strict requirements of rule 1.442, an award of attorney's fees and costs pursuant to 768.79 is improper").

While the Fourth District in *Bennett* held that the requirements in Rule 1.442(c)(2)(F) are optional if attorney's fees are not part of the underlying claim, it did so a dozen years ago, long before this Court's decisions in *Campbell*, *Diamond Aircraft*, and *Pratt*. Indeed, in *Diamond Aircraft*, this Court noted that the Fourth

District issued *Bennett* some four years before *Campbell*. As this Court explained, "[i]n *Campbell*, this Court stated that 'all portions' of both section 768.79 *and* rule 1.442 must be strictly construed, which draws the continuing validity of *Bennett* into question." *Diamond Aircraft*, 107 So. 3d at 377 (emphasis in original). Though this Court stopped short of expressly overruling *Bennett*—because it had no need to do so to reach its result—the Court made clear that *Campbell*, not *Bennett*, accurately stated Florida law on the proper construction of rule 1.442. Certainly there is nothing in the *Diamond Aircraft* opinion remotely suggesting that the Court agreed with the rationale of *Bennett*.

Thus, it is no surprise that, in the 12 years since the Fourth District issued *Bennett*, it has never been followed by any Florida court for that proposition. The First District below expressly declined to follow *Bennett*, and at least one federal court also concluded that it no longer provided an accurate statement of Florida law. *See Evanston Ins. Co. v. Premium Assignment Corp.*, No. 8:11-cv-2630-T-33TGW, 2013 WL 3285274, at 2-3 (M.D. Fla. June 26, 2013). In short, *Bennett* remains an outlier—not officially overruled but never followed—and it is universally acknowledged as having dubious precedential value at best.

The Fourth District's decision in *Liggett Grp., Inc. v. Davis*, 975 So. 2d 1281 (Fla. 4th DCA 2008), which Kuhajda also cites as conflicting authority, does not warrant this Court's time either. There, the Fourth District concluded that a

proposal that did not state "whether attorneys' fees are part of the legal claim" was nonetheless valid because the proposal stated that it "was inclusive of all claims for attorney's fees and costs." *Id*. at 1284. The Fourth District reached this conclusion without citing any authority for support—not even its prior decision in *Bennett*—and without any meaningful analysis. Thus, *Liggett* suffers from the same flaws as *Bennett*. To the extent it suggests that the requirement to state "whether attorney's fees are part of the legal claim" is optional, that holding has been expressly repudiated in the post-*Campbell* world. And, like *Bennett*, the Fourth District's decision in *Liggett* has never been cited by any Court for this proposition since it was issued more than seven years ago.[1]

This Court's conflict jurisdiction is discretionary, and the Court necessarily needs to spend its finite resources on conflicts that run the risk of creating confusion moving forward with trial courts, attorneys, and litigants. Respectfully, this is not one of those situations. After *Campbell*, *Pratt*, and—especially under these facts—*Diamond Aircraft*, there can no longer be any doubt that a proposal for settlement *must* "state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim" to be valid. To the extent they

[1] *Liggett* is also distinguishable from *Borden Dairy* because the proposal in *Liggett* stated that it "was inclusive of all claims for attorney's fees and costs." *Id*. at 1284. The proposal here failed to mention attorney's fees at all. *Borden Dairy*, 171 So. 3d at 242-43.

held otherwise back in 2003 and 2008, *Bennett* and *Liggett* have been effectively repudiated and their holdings remain, at best, on life support. This Court need not expend the effort to pull the plug on them completely.

CONCLUSION

For the foregoing reasons, this Court should decline to exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLYING WITH FONT REQUIREMENTS

I HEREBY CERTIFY that the foregoing has been prepared in Times New Roman 14-point font as required by the Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

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