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FLORIDA SUPREME COURT SETTLES THE ISSUE OF WHETHER JOINT OFFERS CAN REQUIRE MUTUAL ACCEPTANCE

In April 2010, the Florida Supreme Court issued an opinion addressing the enforceability of a joint offer or proposal for settlement that is conditioned upon the mutual acceptance of all of the offerees.

In ***Attorneys title Fund v. Gorka***, 35 Fla. L. Weekly S196 (Fla. Apr. 1, 2010), the Florida Supreme Court held that a joint offer conditioned upon mutual acceptance is invalid and unenforceable because neither offeree can independently evaluate or settle his or her respective claim by accepting the proposal. This decision resolved a conflict between the First and Second Districts.

Attorneys' Title Fund v. Gorka*I,* 989 So. 2d 1210 (Fla. 2d DCA 2008), was a 2d DCA decision that had been certified to be in conflict with the 1st DCA's decision of ***Clements v. Rose***, 982 So. 2d 731 (Fla. 1st DCA 2008). In ***Clements*** a husband and wife were defendants in a case wherein the plaintiff made a proposal for settlement that required the acceptance of both the husband and wife and payment, by each, of half of the $75,000 settlement. The 1st DCA found that the joint proposal was enforceable as it satisfied the particularity requirement of ***Fla. R. Civ. P.*** 1.442.

The 1st DCA emphasized that the joint proposal was made to a husband and wife and reasoned that the proposal was not ambiguous because it told each party what it would take; e.g., joint acceptance, to settle the lawsuit. The 1st DCA went on to say that the offer was definite, as the condition depended not on the plaintiff's election but on each defendant's election.

Similarly in ***Gorka***, a husband and wife were plaintiffs seeking a declaratory judgment after an insurer allegedly refused to defend a property related claim. The insurer proposed a settlement of $12,500 to each, which was contingent upon joint acceptance. The 2d DCA held that the proposal for settlement was unenforceable, for purposes of assessing attorneys' fees, because the condition of joint acceptance made it impossible for either party to settle his or her part of the underlying action.

The Florida Supreme Court agreed with the 2d DCA and cited ***Lamb v. Matetzsch*** 906 So. 2d 1037, 1040 (Fla. 2005), which held that an offer must be differentiated such that each party can unilaterally settle the action.

Therefore, in Florida, joint proposals cannot be conditioned upon mutual acceptance and no amount of specificity regarding other terms will make them enforceable if each party cannot independently choose to settle.

JLH/SEE/keo/tsr

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