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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC13-1431

Florida Bar No. 184170

NORMA WOLFE and JOHN WOLFE,)
individually and jointly,)
)
Petitioners,)
)
v.)
)
HILDA GIRA,)
)
Respondent.)
_____)

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE SECOND DISTRICT COURT OF APPEAL

BRIEF OF PETITIONERS ON JURISDICTION
NORMA WOLFE and JOHN WOLFE

(With Appendix)

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POINT ON APPEAL

THE DECISION IN THE PRESENT CASE CONFLICTS WITH NUMEROUS CASES WHICH APPLY EQUITABLE ESTOPPEL AND HOLD THAT A PARTY CANNOT ADDUCE ANOTHER PARTY INTO ACTING OR FORBEARING TO ACT, AND THEN BENEFIT BECAUSE THAT PARTY DID FORBEAR TO ACT AS A BASES OF THE FIRST PARTY'S CONDUCT.

STATEMENT OF THE FACTS AND CASE

The facts as reflected in the Opinion are that an accident occurred on July 14, 2010, and on July 20, 2010 Jeremy Moore the claims person at Auto Owners tendered the policy limits of \$50,000, enclosing a check and a Release.

On August 5, 2010, Moore sent a "Disclosure of Insured Information," stating that the only policy it was aware of was its own policy for \$50,000.

On August 6, 2010, the Plaintiff's attorney returned the \$50,000 check and Release, and said the Plaintiff was not physically in a position to consider settlement.

In November 2010, Auto Owners contacted Gira's attorney considering a settlement; and on December 7, 2010, Gira made a formal demand for the policy limits of \$50,000 and requested the disclosure information required by § 627.4137.

On December 20, 2010, Moore enclosed a check for the \$50,000 and also sent the same insurance disclosure.

On December 27, 2010, Gira's attorney provided a Revised Release which was not signed, and once again Gira did not voice any objection to the disclosure, which disclosure at this time had been sent twice.

On December 31, 2010, after the time had expired, Gira's attorney advised that the disclosure which had been furnished twice, the first time five months earlier being on July 20, 2010, was not sufficient and there is no settlement.

The Defendant filed a Motion to Enforce Settlement and the

trial judge enforced settlement.

On appeal, the Second District declined to apply the Doctrine of Equitable Estoppel and set aside the settlement, even though Gira had never voiced any objection to the disclosure over five months.

SUMMARY OF ARGUMENT

The Opinion in the present case conflicts with several cases which apply equitable estoppel, and hold that a party may not induce another party into acting or forbearing to act, and benefit from this by asserting that forbearance as a basis for denying that party relief.

That is exactly what happened in the present case and is apparent on the face of the Opinion.

Several cases apply this well-established principle of Florida law, namely Alachua County v. Cheshire, 603 So. 2d 1334 (Fla. 1st DCA 1992); Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001); Glance v. State Automobile Mutual Insurance Company, 573 So. 2d 1049 (Fla. 4th DCA 1991); Salcedo v. Asociacion Cubana, Inc., 368 So. 2d 1337 (Fla. 3rd DCA 1979); Cape Cave Corporation v. Lowe, 411 So. 2d 887 (Fla. 2nd DCA 1982); Jaszay v. H. B. Corporation, 598 So. 2d 112 (Fla. 4th DCA 1992); San Pedro v. San Pedro, 910 So. 2d 426 (Fla. 4th DCA 2005); City of Brooksville v. Hernando County, 424 So. 2d 846 (Fla. 5th DCA 1983).

The Opinion in the present case conflicts with numerous

cases which hold that equitable estoppel would preclude the result in the present case.

ARGUMENT

THE DECISION IN THE PRESENT CASE CONFLICTS WITH NUMEROUS CASES WHICH APPLY EQUITABLE ESTOPPEL AND HOLD THAT A PARTY CANNOT ADDUCE ANOTHER PARTY INTO ACTING OR FORBEARING TO ACT, AND THEN BENEFIT BECAUSE THAT PARTY DID FORBEAR TO ACT AS A BASES OF THE FIRST PARTY'S CONDUCT.

In the present case the Defendant first sent disclosure on August 5, 2010. The Plaintiff wrote four letters to the Defendant after that date addressing various matters, including a letter of December 7, stating that the Release was not sufficient; a letter of December 17, sending a Corrected Release; and a letter of December 27, sending a Revised Release. In all of these letters which went for 4½ months after the disclosure was first sent, the Plaintiff never voiced any objection whatsoever to the disclosure form which was sent. It was only after the time to settle had expired that the Defendant first voiced any objection to the disclosure sent, and stated that since the time for settlement had expired, there was no settlement.

It is clear that the actions in the present case induced the Defendant into thinking the disclosure was acceptable since the Plaintiff never voiced any objection to it in four letters, and therefore the Plaintiff cannot benefit from that inducement by

claiming there is no settlement.

A case directly on point is Salcedo v. Asociacion Cubana, Inc., 368 So. 2d 1337 (Fla. 3rd DCA 1979). In Salcedo, a defendant had a dismissed of an action which was filed timely by successfully contending the case must be submitted to medical mediation, but then when the mediation was filed the defendant argued that the mediation was barred by the Statute of Limitations. The defendant first moved to dismiss, arguing it was a medical malpractice claim and mediation was a prerequisite to the suit, but after it was mediated for 131 days it was terminated by Stipulation of the parties a suit was re-filed in Circuit Court. The defendant moved to dismiss the Circuit Court action based on the Statute of Limitations and the court held that equitable estoppel barred these "gotcha" tactics:

In earlier times, the rule we apply in this case was said to reflect the feeling that a party may not "mend his hold," *Ohio & M.R. Co. v. McCarthy*, 96 U.S. 258, 268, 24 L.Ed. 693 (1878), or "blow hot and cold at the same time" or "have his cake and eat it too." See *Federated Mutual Implement & Hardware Co. V. Griffin, supra*, at 237 So.2d 42; *State v. Board of Commissioners of Clinton County*, 166 Ind. 162, 76 N.E. 986, 1001 (1906). Today, we might say that the courts will not allow the practice of the "Catch-22" or "gotcha!" school of litigation to succeed. However it may be characterized, the estoppel doctrine means in this case that, having successfully claimed that mediation was a required condition precedent to the filing of this action, the defendant may not now be heard to say that the delay specifically caused by the pendency of that very proceeding has resulted in the running of the statute of limitations. Since the

defendant is thus estopped to plead the defense upon which the action was dismissed below, the final order under review is reversed and the cause remanded for further proceedings consistent with this opinion.

Salcedo, 1340-1341.

In the present case, the Plaintiff used similar "gotcha" tactics by four times after the disclosure was sent writing to the defense about various matters, including three letters stating the Release Form was not acceptable, and never voiced any objection to the disclosure which had been submitted until after the time applied. Accordingly, the Plaintiff is estopped by this conduct by equitable estoppel.

Another case which applied equitable estoppel is Glantz v. State Automobile Mutual Insurance Company, 573 So. 2d 1049 (Fla. 4th DCA 1991). The plaintiff brought a suit for uninsured motorist against its insurer, and seven months prior to the expiration of the Statute of Limitations the insurer demanded they arbitrate the claim. They proceeded to arbitration but several months later, after a neutral arbitrator had been selected, insurer said the Statute of Limitations had expired and denied the claim and refused to arbitrate further.

The insurer argued on appeal that equitable estoppel did not apply to this case because he had never made any representation to the insureds that it would waive the Statute of Limitations so there is no affirmative deception on its part.

The court held that the insurer was equitably estopped from asserting the Statute of Limitations by its actions:

As indicated above, we also hold that State Auto was equitably estopped from relying upon the statute of limitations because of its conduct. On September 12, 1988, State Auto accepted in writing appellant's demand for arbitration and the parties proceeded to pick arbitrators. Before the matter was heard by the arbitrators, five years passed from the date of the accident. State Auto then notified appellants "the deal was off." We find it difficult to envision a more unfair position for a party to assume. When appellants demanded arbitration, they also had the option to file suit. However, when State Auto accepted the demand to arbitrate and proceeded along those lines, the necessity for appellants to file suit was obviated. Having lulled appellants into this false sense of security, no fairminded person could condone abandoning the arbitration and invoking the statute of limitations. That would seem to be "gotcha" practice at its best. *Salcedo v. Association Cubana, Inc.*, 368 So.2d 1337 (Fla. 3^d DCA 1979).

* * *

Where the defendants induced the plaintiff to refrain from bringing a suit by an agreement to arbitrate or settle the damages without suit, and the damaged party relies on said agreement until after his action is barred by the statute of limitations, the defendant will be estopped from asserting the statute of limitations as a defense to said action.

Glantzis, 1051.

This is similar to the present case, in that after the disclosure was sent the Plaintiff wrote four letters to Auto Owners working out various details of the Release, but never voiced any objection to the disclosure until after the time had run. Therefore, applying Glantzis, the Plaintiff is barred by equitable estoppel from now contending there was not a

settlement.

A case which discussed the principles of equitable estoppel is Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001). The Florida Supreme Court discussed the principles of equitable estoppel, holding this is a valid doctrine in Florida:

Equitable estoppel presupposes a legal shortcoming in a party's case that is directly attributable to the opposing party's misconduct. The doctrine bars the wrongdoer from asserting that shortcoming and profiting from his or her own misconduct. Equitable estoppel thus functions as a shield, not a sword, and operates against the wrongdoer, not the victim. This Court has applied the doctrine for more than a century and a half.

* * *

"Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which perhaps have otherwise existed, either of property or of contract, or of remedy, as against another person, who has in good faith relied upon such conduct and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property or of contract or of remedy."

The doctrine of estoppel is applicable in all cases where one, **by word, act or conduct**, willfully caused another to believe in the existence of a certain state of things, and thereby induces him to act on this belief injuriously to himself, or to alter his own previous condition to his injury.

Major League Baseball v. Morsani, 790 So. 2d
1071 (Fla. 2001).

Therefore, the Opinion in the present case is clearly in

express and direct conflict with Major League Baseball, and the other cases cited, because it is clear that the Plaintiff misled the Defendant through its four letters into thinking the disclosure was sufficient, and never voiced any objection to it even though it did voice objections to the Release; and therefore, the Doctrine of Equitable Estoppel applies to this case.

A Second District case which supplied the principles of equitable estoppel to facts similar to the present one, is Cape Cave Corporation v. Lowe, 411 So. 2d 887 (Fla. 2nd DCA 1982). Cape Cave involved a tax assessment, and the decision of the board on the assessment should have been entered on November 25, but instead was entered on January 19. The property owner filed its appeal on February 18, less than 40 days after the decision was entered, but the defendant moved to dismiss it saying that State law requires that suit must be filed within 60 days from the date the challenged assessment was certified for collection, which is back on November 12, 1980.

The trial court dismissed the appeal and the Court of Appeal reversed, arguing the property appraisal adjustment board was estopped from asserting the Statute of Limitations by virtue as its failure to properly and timely notify the Appellant of its decision:

The sixty-day limit set forth in section 194.171(2) has been held to constitute a statute of limitations, *Williams v. Law*, 368 So.2d 1285 (Fla. 1979), and a defendant **may by its actions become estopped from claiming**

the benefit of a statute of limitations.

Salcedo v. Asociacion Cubana, Inc., 368 So.2d 1337 (Fla. 3d DCA), cert. denied, 378 So.2d 342 (Fla.1979); *North v. Culmer*, 193 So.2d 701 (Fla. 4th DCA 1967). We conclude that the PAAB has become estopped to raise section 194.171(2) as a bar to appellant's action by virtue of its failure to properly and timely notify appellant of its decision on appellant's petition.

Cape Cave, 889.

This rule of law was again discussed in Jaszay v. H.B. Corporation, 598 So. 2d 112 (Fla. 4th DCA 1992), where the court said:

The plaintiff appeals from a final summary judgment which dismissed her complaint holding that the statute of limitations barred the action. We reverse. The appellee is estopped from asserting the limitations defense because it stipulated to a sixty-day extension of the pre-suit screening period required under section 766.106, Florida Statutes (1991). To repeat Judge Schwartz's famous quote, we will not countenance such "gotcha" maneuvers. *Salcedo v. Asociacion Cubana, Inc.*, 368 So.2d 1337 (Fla. 3rd DCA), cert. denied, 378 So.2d 342 (Fla.1979). We also reject the appellant's companion argument that its insurer had no authority to enter into the stipulation.

Jaszay, 112.

Many other cases have applied the Rule of Equitable Estoppel, including Alachua County v. Cheshire, 603 So. 2d 1334, 1337 (Fla. 1st DCA 1992) (where the court held equitable estoppel precluded a County from asserting the Statute of Limitations where it had repeatedly told a lienholder its lien would be satisfied and he did not need to do anything further); City of

Brooksville v. Hernando County, 424 So. 2d 846 (Fla. 5th DCA 1983) (which held that although settlement negotiations generally do not toll the Statute of Limitations, that where the negotiations are infected with the element of deception this will estop a party from asserting it under the Doctrine of Equitable Estoppel); San Pedro v. San Pedro, 910 So. 2d 426 (Fla. 4th DCA 2005) (where a husband convinced his ex-wife in the divorce proceeding that if she sued him for battery he would lose his job and she would have nothing, and the court held the husband was equitably estopped at this time).

In the present case it is clear from the face of the Opinion that the Plaintiff wrote four letters to the Defendant after the disclosure had been sent, working out other details of the settlement, and specifically the Release, but never voiced any objection to the disclosure which had been sent five months earlier until after the time had run.

Accordingly, applying the principle of equitable estoppel it is clear that the Plaintiff was equitably estopped from raising this, and the Opinion is in express and direct conflict with the cases cited.

CONCLUSION

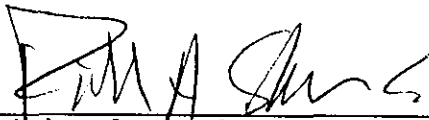
The Opinion in the present case is in express and direct conflict with the cases cited by not applying equitable estoppel, and the Court should accept jurisdiction.

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By:


Richard A. Sherman, Sr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 23rd day of August, 2013 to:

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CERTIFICATION OF TYPE

It is hereby certified that the size and type used in this Brief is 12 point Courier, a font that is not proportionately spaced.

CERTIFICATE OF EMAIL TO COURT


It is hereby certified that a copy of the Brief has been emailed to the Court.

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**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327**

June 19, 2013

CASE NO.: 2D11-6465
L.T. No. : 10-CA-24346

Hilda Gira

v. Norma Wolfe & John
Wolfe

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellees' motions for rehearing, rehearing en banc and for certification
are denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Christopher N. Ligor, Esq. Raymond T. Elligett, Jr., Esq. Richard A. Sherman, Sr., Esq.
Kerry C. Mc Guinn, Jr., Esq. Manuel J. Alvarez, Esq. Pat Frank, Clerk

me


James Birkhold
Clerk



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Law Offices of
Richard A. Sherman, P.A.

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MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HILDA GIRA,)
)
Appellant,)
)
v.)
)
NORMA WOLFE and JOHN WOLFE,)
individually and jointly,)
)
Appellees.)
_____)

Case No. 2D11-6465

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MAY -9 2013

Law Offices of
Richard A. Sherman, P.A.

Opinion filed May 8, 2013.

Appeal from the Circuit Court for
Hillsborough County; Robert A. Foster, Jr.,
Judge.

Raymond T. Elligett, Jr., of Buell & Elligett,
P.A., Tampa, and Christopher N. Ligor of
Christopher N. Ligor, P.A., Tampa, for
Appellant.

Richard A. Sherman, Sr., and James W.
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Lauderdale, and Manuel J. Alvarez and
Kerry C. McGuinn, Jr., of Rywant, Alvarez,
Jones, Russo & Guyton, P.A., Tampa, for
Appellees.

SILBERMAN, Chief Judge.

Hilda Gira appeals a final judgment in favor of defendants Norma and
John Wolfe. The trial court entered judgment after granting the Wolfes' motion to

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enforce settlement in Gira's negligence action arising from an automobile accident. Because the parties did not reach a binding settlement, we reverse and remand for further proceedings.

On July 6, 2010, an automobile accident occurred in which Norma Wolfe was driving and struck Gira, a pedestrian, causing Gira severe injuries. The Wolfes were insured under a policy issued by Southern-Owners Insurance Company that included bodily injury coverage. Southern-Owners is a subsidiary of Auto-Owners Insurance Company. Gira's claim against the Wolfes was assigned to Jeremy Moore, a claims representative employed by Auto-Owners.

In a letter to Moore dated July 14, 2010, Gira's attorney requested certain information, including "all the statements, documentation, and all of the information required to be disclosed pursuant to Section 627.4137, Florida Statutes, in the manner and form as required by statute." As discussed below, section 627.4137, Florida Statutes (2010), provides for the disclosure to a claimant of insurance information for the insured. In a letter dated July 20, 2010, Moore tendered the policy limits of \$50,000 for Gira's injury claim, enclosing a check for payment and a release. In a letter to Gira's attorney dated August 5, 2010, Moore enclosed a "Disclosure of Insured Information" which indicated that the Southern-Owners' policy provided \$50,000 coverage for bodily injury. The disclosure form further stated that "[o]ther insurance which may be available to the above named insured which is known to Southern-Owners at this time is as follows." The space for other insurance to be listed was left blank.

In a letter dated August 6, 2010, Gira's attorney returned the \$50,000 check and release to Moore. Counsel explained that he had not yet completed his

investigation and that Gira was not physically in a position to consider settlement. In November 2010, Moore contacted Gira's attorney and asked if he had completed his investigation and if Gira was in a position to settle.

Gira's attorney sent a letter to Moore dated December 7, 2010, that made a formal offer to settle all claims for the bodily injury policy limits of \$50,000. The letter further stated that

[t]he offer and relevant conditions are as follows: in order to verify that we are receiving all available coverage, Auto Owners must also forward all documents, statements and all information required to be disclosed pursuant to Section 627.4137 Florida Statutes, in the manner and form required by the statute. Compliance with all conditions, including delivery of Auto Owners' fifty thousand dollar (\$50,000) policy limits, must be received in my office within 21 days from the date of this letter.

The letter also requested \$440 for personal property lost in the accident. Further, the letter advised that Auto-Owners' release form was not in the form approved by The Florida Bar, and Gira's attorney enclosed an approved release. The letter informed Moore that "all conditions mentioned herein are material and should not be construed otherwise."

In response by letter dated December 13, 2010, Moore stated that Gira's demand gave numerous conditions as part of the settlement. Moore sought clarification to avoid confusion, not to make a counteroffer. Moore stated that the proper carrier was Southern-Owners, not Auto-Owners. He also clarified that the insureds were Norma and John Wolfe and requested that John Wolfe's name be added to the release. By letter dated December 17, 2010, Gira's attorney enclosed a corrected release that included Norma and John Wolfe.

In a letter dated December 20, 2010, Moore enclosed checks for \$50,000 and for \$440. He indicated his agreement with the corrected release. Further, he stated, "Also, per your request, enclosed is all information required to be disclosed pursuant to section 627.4137 of the Florida Statutes." The disclosure of insurance information form again stated that "[o]ther insurance which may be available to the above named insured which is known to Southern-Owners at this time is as follows." Again, the area to list other policies was left blank.

On December 27, 2010, Gira's attorney provided a further revised release form that included both Norma and John Wolfe and also added Southern-Owners, as Moore had requested. The release was not signed.

In a letter to Moore dated December 31, 2010, after the time to comply specified in the December 7 letter had expired, Gira's attorney stated that

you have not fully complied with my previous demand letter regarding fulfilling the requirements of Florida Statute §627.4137 otherwise known as Florida's Insurance Disclosure Statute. Specifically, you have failed to provide me with a statement from the insured or the insured's insurance agent stating the name and coverage of each known insurer [to] the claimant... As you are aware, this disclosure is required under Florida's Insurance Disclosure Statute and is crucial to determining if there is any other insurance that would be available to help pay for Ms. Gira's substantial medical bills and other damages.

Gira's attorney returned the settlement drafts and enclosed a courtesy copy of a complaint filed on behalf of Gira. The two-count complaint alleged negligence against Norma Wolfe in count I and dangerous instrumentality liability against John Wolfe in count II.

The Wolfes filed an answer and affirmative defenses that included the affirmative defense that Gira "made an offer of settlement which was accepted on behalf of the [Wolfes] prior to suit being filed and therefore there is an enforceable settlement agreement." The Wolfes filed a motion to enforce settlement, and Gira filed a motion for partial summary judgment as to the settlement defense. After a hearing, the trial court rendered an order granting the Wolfes' motion to enforce settlement. The trial court subsequently rendered a final judgment in favor of the Wolfes.

On appeal, Gira contends that the trial court erred in entering judgment for the Wolfes based on a settlement defense when they failed to comply with a material term of the settlement offer. Gira argues that she made the Wolfes' disclosure of their insurance a material element of her settlement offer and that Southern-Owners' statement that it knew of no other coverage did not satisfy the requirement that the Wolfes disclose coverage. Because the Wolfes did not provide all of the insurance disclosure information that was required by the terms of the offer, Gira asserts that the parties did not reach a settlement. We agree.

Gira's settlement offer made it a condition that the insurer provide "all documents, statements and all information required to be disclosed pursuant to section 627.4137" and that the disclosure be "in the manner and form required by the statute." The offer stated that all conditions stated in the offer were material. Section 627.4137(1) provides that a liability insurer shall provide a statement under oath setting forth certain information regarding each known policy of insurance within thirty days of a written request by a claimant. Section 627.4137(1) further provides as follows:

In addition, the insured, or her or his insurance agent, upon written request of the claimant or the claimant's attorney,

shall disclose the name and coverage of each known insurer to the claimant and shall forward such request for information as required by this subsection to all affected insurers. The insurer shall then supply the information required in this subsection to the claimant within 30 days of receipt of such request.

The disclosure Southern-Owners made as the insurer stated only what it knew about the Wolfes' insurance and did not contain a representation from the Wolfes or their insurance agent. And as to other insurance, the disclosure form was left blank. We reject the Wolfes' argument on appeal that they met all the conditions of settlement because Gira did not object to the insufficiency of the insurance disclosure until after the time to accept the settlement offer had passed.

Contract law governs the interpretation of settlement agreements.

Schlosser v. Perez, 832 So. 2d 179, 182 (Fla. 2d DCA 2002); Cheverie v. Geisser, 783 So. 2d 1115, 1118 (Fla. 4th DCA 2001). "Although the law favors settlement agreements and their enforcement whenever possible, the evidence must clearly demonstrate that there was mutual agreement to the material settlement terms." Cheverie, 783 So. 2d at 1119. " 'The making of a contract depends not on the agreement of two minds in one intention but on the agreement of two sets of external signs.' " Id. (quoting Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985)). Here, the required mutuality of assent did not exist regarding the material term of the insurance disclosure. See Spring Lake NC, LLC v. Holloway, 38 Fla. L. Weekly D262, D263 n.1 (Fla. 2d DCA Feb. 1, 2013) (acknowledging that the term "meeting of the minds" traditionally has been used to describe the formation of a contract but noting that "criticism has prompted courts to analyze contracts as requiring a 'mutuality of assent,' as a more objective concept").

By enacting section 627.4137, the legislature has recognized the importance of a claimant's access to the type of insurance information covered in the statute in order for a claimant to make settlement decisions. Cheverie, 783 So. 2d at 1119 (determining that production of the policy affidavit required by section 627.4137 was essential to a settlement acceptance and not a mere "technicality" when the plaintiff had made repeated demands for the policy affidavit). This court has also determined that an insurance disclosure in accordance with section 627.4137 was an essential term of a settlement offer in Schossler, 832 So. 2d at 183.

Schossler made a settlement offer to the insurer that requested "*all the information required by*" section 627.4137. Id. at 180. The offer stated that acceptance would be "*only by strict performance and not a promise to perform by you and/or your insureds.*" Id. at 180-81. The managing general agent for the insurer disclosed information regarding the insurer's policy with the defendant, Perez; however, no further disclosure or disclaimer was made, even after a second request for the information, regarding whether Perez had other policies of insurance. The essential term at issue was "the requirement that Perez or his insurer disclose the name and coverage of each of his insurers in compliance with section 627.4137." Id. at 182.

This court determined that an express reference to a request for all information required by section 627.4137 constituted a requested disclosure of each of the defendant's known insurers. Id. at 183. The statute permits the request for disclosure "to be made to 'the insured, or her or his insurance agent.' " Id. (quoting section 627.4137(1)). This court recognized that even if Schlosser had not objected to the lack of complete disclosure, "the insurance disclosure is an essential term under

Cheverie. Because Perez failed to provide the disclosure, his acceptance was not identical to the essential terms of the offer." Id. Therefore, without the acceptance of an essential term of the offer, there was no settlement. Id.

Here, Gira's settlement offer contained in the letter of December 7, 2010, stated that a condition of the offer was the disclosure of all information required under section 627.4137. The letter further stated that all conditions were material. Section 627.4137(1) requires the insurer to provide information upon request regarding each known policy of insurance; it also requires the insured or the insurance agent to disclose each known insurer to the claimant. Although Southern-Owners disclosed information regarding its policy, it is undisputed that there was no disclosure from the Wolfes or their insurance agent about whether they had any additional coverage and no disclosure from Southern-Owners purporting to relay the Wolfes' knowledge. Although Moore, as claims representative for Auto-Owners, may have had a subjective belief that he fulfilled the requirements of the offer, Gira was entitled to an acceptance of the offer that she made, including disclosure of all the information required by section 627.4137. That material term of the offer was not accepted, and the parties did not reach a settlement.

Therefore, we reverse the order granting the Wolfes' motion to enforce settlement and the final judgment in favor of the Wolfes, and we remand for further proceedings.

Reversed and remanded.

NORTHCUTT and DAVIS, JJ., Concur.

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