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IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

NORMA WOLFE
and JOHN WOLFE,

Petitioners,

vs.

CASE NO.: SC13-1431

HILDA GIRA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The Wolfes' statement of the facts has certain dates incorrect. The opinion states the accident occurred on July 6, 2010. 115 So. 3d at 415. It was on July 14 that Gira's attorney requested certain documents, including all documentation and information required to be disclosed pursuant to §627.4137, Florida Statutes, in the manner and form as required by statute. 115 So. 3d at 415.

Thus, the Wolfes' statement of the facts neglects to mention that the December 7 request for the disclosure information was the *second* request for this information. 115 So. 3d at 415.

Nowhere in the Second District's opinion do the words "equitable estoppel" appear, or is the concept discussed. *Gira v. Wolfe*, 115 So. 3d 414 (Fla. 2d DCA 2013).

SUMMARY OF ARGUMENT

The Wolfes' position on jurisdiction is not well taken. The Second District's opinion does not address the question of equitable estoppel. Even if it did, the Wolfes' insurer's position that the injured party's counsel owed a duty to the insurer to inform it of its statutory shortcomings is wrong. There are no cases supporting that position, and hence no conflict.

ARGUMENT

I. The Second District's Opinion Did Not Address Equitable Estoppel, and the Second District's Decision Presents No Conflict with Equitable Estoppel Decisions.

A. Standard of review.

This Court determines as a matter of law if there is conflict between decisions, and then exercises its discretion as to whether or not to accept a case in which it determines a conflict exists.

B. The Second District opinion did not address equitable estoppel.

Conflict jurisdiction is limited to cases that “expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.” Fla. R. App. P. 9.030(a)(2)(iv). *See also* Art. V, §3(b)(3), Fla. Const.

Here, the Second District opinion did not address an equitable estoppel question of law. Thus, it is not possible for the Second District's opinion to conflict with any of the cited equitable estoppel cases. *See Gee v. Seidman & Seidman*, 653 So. 2d 384 (Fla. 1995)(the court lacked jurisdiction over a case in which the district

court of appeal had certified a question of great public importance where the district court had not ruled on the question).

C. There is no conflict because there was no factual or legal basis on which to assert equitable estoppel.

As discussed below, Gira's lawyer had no obligation to tell the insurer of its statutory failings – detailed in the Second District's opinion. His duty was to his client. The Wolfes' "take" on the equitable estoppel also ignores that their carrier was, in effect, told that the information it provided earlier was insufficient to meet the statutory requirements because Gira's attorney demanded that information a second time in December. Thus, the insurer was on notice.

The Wolfes present no authority for the erroneous position that counsel for the injured party has a duty to the adversary insurer to point out how the insurer has not complied with the specific terms of an offer to settle. The obligations were clear from the Florida statute, the existing case law, and the two requests by Gira's counsel. Tacitly conceding there is no such law placing additional duties on a claimant, the Wolfes cite some general cases on estoppel that arose in contexts where a party affirmatively did something to induce inaction, such as promise to go to mediation or arbitration.

The quoted excerpts from their own authority show they are wrong. They cite a decision saying the doctrine of estoppel is applicable 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.” (citing *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1076 (Fla. 2001)).

First, Gira’s counsel did not by word, act or conduct cause anything. Rather, the most the carrier could even claim is that the Plaintiff remained silent. Yet, the Wolfes cite not a single case where a party remaining silent as to whether the clear terms of the party’s offer had been met is sufficient to eliminate one of those terms – and require the offerer to enter into what would be an altered contract.

Second, a lawyer owes a duty of loyalty to his or her client – not to the opposing side. A lawyer’s duties to the opposing side are specifically prescribed by Fla. R. Prof. Cond. 4-3.4 and they include not obstructing the other party’s access to evidence, fabricating evidence, etc. Nowhere do the rules or Florida law impose a duty on the counsel for one client to provide legal advice to the other side. Attorneys have “no duty to advise” the other side, “nor do they have an affirmative duty to correct errors in their opponent’s pleadings.” *Emerson Realty Group, Inc. v. Schanze*, 572 So. 2d 942, 944 (Fla. 5th DCA 1990).

Third, even without a lawyer's duty of loyalty to the client, attempts to rely on a claim of silence by another party to a contractual agreement have been rejected. In *Mizell v. Deal*, 654 So. 2d 659 (Fla. 5th DCA 1995), one party claimed the developer had waived and was estopped from enforcing a restrictive covenant due to the developer's silence for a year and a half beyond the two-year limitation for mobile homes contained in a restriction. The appellate court rejected that argument, holding "estoppel based upon silence cannot exist where the parties have equal knowledge of the facts or the same means of ascertaining that knowledge." 654 So. 2d at 663. Here, the carrier is charged with an equal knowledge of the requirements of §627.4137, and could read the plain language of Gira's December 7 letter stating the settlement terms.

Mizell relied on *Pelican Island Property Owners Ass'n, Inc. v. Murphy*, 554 So. 2d 1179 (Fla. 2d DCA 1989). In addition to holding that estoppel based on silence cannot exist where the parties have equal knowledge or the same means of ascertaining that knowledge, *Pelican* states, "the doctrine of estoppel should be applied with great caution and is applied only where to refuse its application would be virtually to sanction a fraud." 554 So. 2d at 1181. The Wolfes have not, and cannot, contend that Gira's conduct approaches fraud.

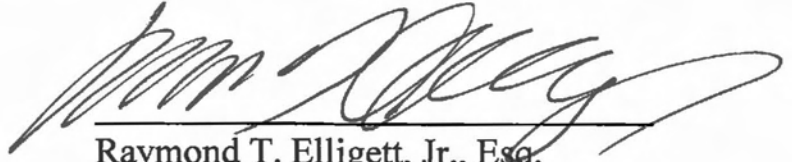
In sum, there is no conflict and the estoppel argument fails for multiple reasons:

1. The carrier was not induced to do, or not do, anything;
2. The carrier offered no evidence it detrimentally relied on anything;
3. Gira had no duty to tell the carrier that its form did not comply with Florida law;
4. The carrier had equal knowledge, or the ability to have knowledge, as to what was required under Florida law; and
5. The Wolfes do not, and cannot, contend Gira's conduct constituted a fraud.

CONCLUSION

The Wolfes have failed to demonstrate a jurisdictional basis for the exercise of discretionary review.

Respectfully submitted,



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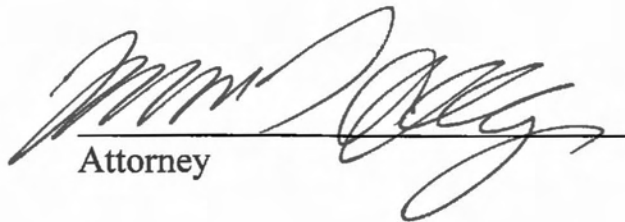
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-MAIL on September 5, 2013 to:

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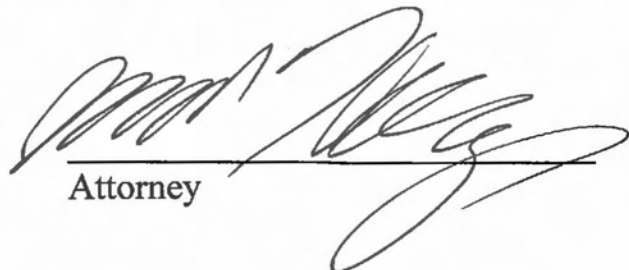
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with Rule 9.210(a)(2) and has been prepared using 14-point Times New Roman type, a font that is proportionately spaced.



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