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IN THE SUPREME COURT OF FLORIDA

SUPREME COURT CASE NO.: SC13-984
SECOND DISTRICT CASE NO.: 2D11-2819

ANHLOAN TRAN,

Petitioner/Appellant,

vs.

ANVIL IRON WORKS, INC., a Florida corporation, and
KENNETH MOULTEN,

Respondents/Appellees.

On appeal from the 6th Judicial Circuit
in and for Pinellas County, Florida
L.T. Case No.: 08-1823-CI

**RESPONDENTS, ANVIL IRON WORKS, INC. AND
KENNETH MOULTEN'S
JURISDICTIONAL ANSWER BRIEF**

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STATEMENT OF THE CASE AND FACTS

In the underlying appeal the Second District held that where the terms and conditions of a proposal for settlement facially conflict with the terms and conditions of a document appended to and incorporated within the proposal, an impermissible ambiguity within the meaning of Florida Rule of Civil Procedure 1.442 is present preventing the sanction of an attorney's fee. *Tran v. Anvil Iron Works, Inc.*, 110 So. 3d 923, 926–28 (Fla. 2d DCA 2013). The Second District under this Court's decision and opinion in *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006), found that rule 1.442's particularity requirements applied to the appended document—a Notice of Voluntary Dismissal—creating a “discrepancy between each proposal and the attached notice of voluntary dismissal [which] could ‘reasonably affect the offeree’s decision [to accept]’” thereby invalidating the proposal. *Tran*, 110 So. 3d at 926 (quoting *Nichols*, 932 So. 2d at 1079). Petitioner's Statement of the Case and Facts entirely omits the essential facts underpinning the *Tran* holding. Fortunately, all necessary undisputed facts appear within the *Tran* opinion.

As the *Tran* opinion shows, Petitioner simultaneously served two proposals to the named defendants, one each to Kenneth Moulten and Anvil Iron Works, Inc.¹ The

¹ Tran alleged injury arising from a motor vehicle accident when an auto, owned by Anvil Iron Works, Inc., and operated by its employee, Moulten, collided with her vehicle. *Id.* at 924.

Tran court, upon its plain language review of the proposals, found that there was a direct contradiction on the settlement terms within paragraph (c) of each proposal and the stated relevant condition of the later filing of a notice of voluntary dismissal upon acceptance. The proposed notice of voluntary dismissal, which Petitioner would file upon acceptance, was attached to and specifically incorporated within each proposal.

Id. at 927. The ambiguity is seen on review of the proposals and attachments.

Paragraph (c) of the proposal to Moulten states in pertinent part that:

- (c) The relevant conditions of this proposal are that Plaintiff will agree to a voluntary dismissal with prejudice of any and all claims against Defendant, **KENNETH MOULTEN**. A copy of the proposed Notice of Voluntary Dismissal With Prejudice that Plaintiff agrees to file with the Court upon acceptance of this proposal by the Defendant is attached to this Proposal for Settlement and marked as Exhibit “1” and incorporated by this reference;

Id. at 924. (Emphasis in original).

Petitioner’s separate proposal to Anvil Iron also contained a paragraph (c) which, as stated in *Tran*, is “essentially the same [as the proposal to Moulten] except that all references to Moulten were changed to refer to Anvil Iron.” *Id.* In the separate proposal directed to Anvil Iron it, as the offeree instead of Moulten, appeared in bold type as the **only** party subject to voluntary dismissal upon the proposal’s acceptance. *Id.* In the instance of each proposal, paragraph (c)’s relevant non-monetary condition

stated that Petitioner would dismiss only the identified offeree, i.e., Moulten, or as stated at paragraph (c) in the proposal to Anvil Iron, only Anvil Iron. *Id.* at 924–25.

Both of Petitioner’s proposals appended “Exhibit ‘1’” as identified at paragraph (c), which directly contrasted the dismissal terms as stated within that paragraph. In the proposal to Moulten the attached notice of voluntary dismissal stated:

COMES NOW, The Plaintiff, ANHLOAN TRAN, by and through her undersigned attorneys, and files this her Notice of Voluntary Dismissal With Prejudice as to the Defendant, **KENNETH MOULTEN** and the Defendant, **ANVIL IRON WORKS, INC.**, from any and all claims Plaintiff may have against Defendants, KENNETH MOULTEN and ANVIL IRON WORKS, INC., including but not limited to any and all claims for compensatory damages, punitive damages and bad faith damages.

Id. at 924 (Emphasis in original).

This “virtually identical notice of voluntary dismissal” was attached to each proposal, thus, in the proposal directed to Anvil Iron the attached notice of voluntary dismissal stated that both Anvil Iron and Moulten would be both dismissed with prejudice upon Anvil Iron’s acceptance. *Id.*

Throughout all post-judgment proceedings Petitioner has attempted to focus attention solely on “Exhibit ‘1’” while ignoring the paragraph (c). The *Tran* court recognized this by stating “[Petitioner] contends the only meaning that could be given to the proposals and the attached notices of voluntary dismissal [Exhibit “1”] is that

upon acceptance of either proposal, [Petitioner] would dismiss any and all claims against the named defendant by executing the attached voluntary dismissal, which in turn would dismiss both defendants.” *Id.* at 926. Petitioner’s argument was unavailing as the *Tran* court found that:

We disagree that this interpretation is the only meaning that can be given to the proposals and attachments. **Although the proposed notices of voluntary dismissal state that any and all claims against both defendants would be dismissed, the language contained in the body of each proposal states only that any and all claims against the named defendant would be dismissed. The proposals themselves are silent as to the unnamed defendant. Thus, the documents are ambiguous: if a proposal for settlement were accepted, would Tran be obligated only to dismiss the claims against the defendant named in the settlement proposal or would Tran be obligated to dismiss the claims against both defendants as indicated in the proposed notice of voluntary dismissal?** This discrepancy between each proposal and the attached notice of voluntary dismissal could “reasonably affect the offeree’s decision.” Nichols, 932 So. 2d at 1079.

Id. (Emphasis supplied).

SUMMARY OF THE ARGUMENT

There is no direct and express conflict with this Court’s decision and opinion in *Nichols* and the Second District’s decision and opinion in *Tran*. Further, the Second District did not ignore this Court’s holding in *Gorka*. Instead, in a holding consistent with and directly applying *Nichols*, the Second District found that Petitioner’s proposals for settlement failed to satisfy rule 1.442’s particularity

requirements by containing ambiguities which could reasonably affect an offeree's decision to accept.

Nor, as the Petitioner suggests, did the Second District ignore *Gorka*. The Second District did not review the issue of the validity of a joint proposal conditioned upon mutual acceptance by distinct offerees as this Court did in *Gorka*. Here, the Second District reviewed the validity—or invalidity—of a proposal on its own stated terms. In this instance those terms left the offerees uncertain of what parties and claims would be dismissed upon an acceptance of a proposal. Thus, the proposals could not be enforced.

There is no direct and express conflict with the rule announced in *Nichols* that a proposal must be “sufficiently clear and definite to allow the offeree to make an informed decision without needed clarification. If ambiguity within the proposal could reasonably affect the offeree's decision, the proposal will not satisfy the particularity requirement.” *Nichols*, 932 So. 2d at 1079. As such, it is requested that jurisdiction be denied.

ARGUMENT

THERE IS NO EXPRESS AND DIRECT CONFLICT BETWEEN THE SECOND DISTRICT DECISION AND *STATE FARM MUT. AUTO. INS. CO. v. NICHOLS*, 932 So. 2d 1067 (Fla. 2006) NOR DID THE SECOND DISTRICT IGNORE *ATTORNEYS' TITLE INS. FUND, INC. v. GORKA*, 36 So. 3d 646 (Fla. 2010).

This Court has announced that the “principal situations” permitting discretionary review based on conflict jurisdiction are:

(1) the announcement of a *rule of law* which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court.

Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960) (Italics in original). This Court “[m]ay review any decision of a district court of appeal that ... expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” Art. V, §3(b)(3), Fla. Const. Those cases are limited to cases “‘where there is a real and embarrassing conflict of opinion and authority’ between decisions.” *Ansin v. Thurston*, 101 So. 2d 808, 811 (Fla. 1958) (quoting *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387 (1923)). Here, there is no express and direct conflict, embarrassing or otherwise, between the Second District decision and the decisions relied on by Petitioner to establish conflict.

Petitioner summarily argues that *Nichols* holds that rule 1.442’s particularity requirement can be satisfied by either “summarizing the terms and details of a settlement condition” in the body of the proposal **or** by attaching the pertinent legal document to the proposal enabling the offeree to evaluate the conditions ‘firsthand.’”²

² Upon repeated readings of *Nichols*, Respondents’ counsel has been unable to locate a portion of the opinion stating that attaching a proposed release or

(Pet.’s Br. at 4). Petitioner then asserts that the conflict with *Nichols* arises from her subjective interpretation of the *Tran* court’s holding “that attaching the binding document (in this case, a notice of dismissal) actually created an ambiguity because the written settlement proposal did not also undertake summarizing all the details of the dismissal notice.” (Pet.’s Br. at 5–6). Petitioner argues that by attaching the notice of voluntary dismissal she complied with *Nichols* and eliminated any ambiguity. (Pet.’s Br. at 6). This argument fails as it completely ignores the holding of *Nichols*, completely ignores the *Tran* court’s analysis and its application of *Nichols*, and completely ignores the patent ambiguity within the proposals. Bluntly, Petitioner’s argument is without merit.

First, *Nichols* only allows for “a summary of the proposed release” to satisfy rule 1.442 where the summary “eliminates any reasonable ambiguity about its scope.” *Nichols*, 932 So. 2d at 1079. The *Nichols* court makes clear that the required level of particularity must “allow the offeree to make an informed decision without needing clarification. If ambiguity within the proposal could reasonably affect the offeree’s decision, the proposal will not satisfy the particularity requirement.” *Id.* at 1079.

notice of dismissal will, per se, satisfy rule 1.422’s particularity requirement. However, Petitioner’s interpretation of *Nichols* on this point is irrelevant to the issue before the Court.

Petitioner's proposals and attachments did not and cannot meet this standard, a fact she continues to ignore.

No where within the Petitioner's Brief does she even attempt to argue or explain how a proposal which states within its body that upon the payment of \$60,000.00 she "will agree to a voluntary dismissal with prejudice of any and all claims" against only one defendant while stating within the very same paragraph that an attached "Notice of Voluntary Dismissal with Prejudice" will be filed which, by its terms will dismiss "any and all claims Plaintiff may have against [both] Defendants" is unambiguous. The reason for this is clear, she cannot hope to overcome this ambiguity, which prevented an informed decision on settlement.³

Under *Nichols*, the *Tran* court found that the identified ambiguity rendered the proposals invalid, stating, "without giving additional weight to either proposal or the notices of voluntary dismissal, it is unclear whether one defendant's payment of \$60,000 would secure the dismissal of the claims against both Anvil Iron and Moulten or just the defendant named in the proposal." *Tran*, 110 So. 3d at 926. The

³ The definition of a patent ambiguity is one appearing on a document's face. *See Saenz v. Campos*, 967 So. 2d 1114, 1117 (Fla. 4th DCA 2007). The *Tran* court, while not labeling the ambiguity as patent, found an impermissible ambiguity exists relying on *Mix v. Adventist Health Sys./Sunbelt, Inc.*, 67 So. 3d 289, 292 (Fla. 5th DCA 2011) (reversing an award of attorney's fees where the subject proposal did not state with particularity all relevant non-monetary terms of a proposed release). *Tran*, 110 So. 3d at 926.

Tran court then rejects Petitioner’s argument repeated here—that the settlement offer identified the necessary condition of dismissal of a single offeree by the filing of a notice dismissing both offerees—by stating “the fact that *Tran* argues that the wording of the notices of voluntary dismissal should control over the wording of the proposals themselves highlights the fact that there is an ambiguity between those two documents.” *Id.* Because of the identified ambiguity, *Tran* stands as an on-point application of *Nichols*, not as an opinion in conflict with it.

Next, Petitioner argues that under *Gorka* valid proposals need only allow an offeree to independently evaluate and settle his individual claim irrespective of another offeree’s decision to accept a proposal. (Pet. Br. at 6). *Gorka* offers no support here to establish conflict jurisdiction under its rule as it is distinguishable on the facts. The proposals at issue here were not jointly made to multiple offerees nor were the conditioned upon an offeree’s mutual acceptance as discussed in *Gorka*. Instead Moulten and Anvil Iron were presented with ambiguous proposals which offered to dismiss only the identified, single offeree within the body while simultaneously offering to dismiss both offerees in “Exhibit ‘1’.” *Nichols*, not *Gorka*, is on point to in resolving the issue of an ambiguity within the proposal.

Finally, Petitioner suggests that parties within the Second District can no longer draft a proposal eliminating ambiguity by attaching documents establishing

settlement conditions. This policy argument does not serve to establish jurisdiction. Petitioners could have avoided the invalid proposal here by drafting a proposal from herself to Moulten with a condition of the proposal being, upon payment from Moulten, a dismissal of the entire action against both Moulten and Anvil Iron. Alternatively, Petitioner could have drafted a proposal to Anvil Iron with a condition of the proposal being, upon payment by Anvil Iron a dismissal of the entire action against both Anvil Iron and Moulten. *See generally, Easters v. Russell*, 942 So. 2d 1008, 1010–11 (Fla. 2d DCA 2006) (suggesting that an offeror may serve a valid proposal to a single offeree where acceptance by single offeree will result to dismissal of multiple defendants).

CONCLUSION

The Second District correctly applied the principles established *Nichols* and did not ignore *Gorka*. The Second District found that the proposal and attached notices of dismissal were contradictory, did not contain any language to resolve the conflict, and left the offerees without the ability to make an informed decision on acceptance of the proposals without the need for clarification. The ambiguity reasonably affected the offeree's decisions and the proposals did not satisfy the particularity requirement of *Nichols*. Therefore, it is respectfully requested that this Court decline jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been sent via *email service only* to: **Celene H. Humphries, Esq.**, Brannock & Humphries, 100 S. Ashley Drive, Ste. 1130, Tampa, Florida 33602 (chumphries@bhappeals.com, tpitchford@bhappeals.com, eservice@bhappeals.com); and **Tony Griffith, Esq.**, Tanney & Griffith, P.A., 29605 U.S. 19 North, Suite 210, Clearwater, Florida 33761 (stacy@tanneygriffithlaw.com, lynda@tanneygriffithlaw.com); on this **24th** day of **July**, 2013.

s/ Michael C. Clarke

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CERTIFICATE OF COMPLIANCE

In compliance with Florida Rule of Appellate Procedure 9.210(2), counsel for Respondent certifies that the size and style of type used in this Brief are 14 point type, Times New Roman.

BY: *s/ Michael C. Clarke*
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