Supreme Court of Florida

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No. SC16-1164
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W. RILEY ALLEN,
Petitioner,

vs.

JAIRO RAFAEL NUNEZ, et al.,
Respondents.

October 4, 2018

LEWIS, J.

W. Riley Allen seeks review of the decision of the Fifth District Court of Appeal in *Nunez v. Allen*, 194 So. 3d 554 (Fla. 5th DCA 2016), on the basis that it expressly and directly conflicts with several appellate decisions of courts of this State regarding proposals for settlement, pursuant to section 768.79, Florida Statutes (2017), and Florida Rule of Civil Procedure 1.442, for the purpose of assessing attorney's fees. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.

FACTUAL AND PROCEDURAL BACKGROUND

This case originates from a motor vehicle accident in which Gabriel Nunez was operating a vehicle owned by his father, Jairo Nunez,[1] when he struck a truck owned by Allen, which was lawfully parked along a street and unoccupied. *Id.* Allen filed a one-count complaint against Gabriel and Jairo alleging that Gabriel negligently operated the vehicle and that Jairo, as the owner of the vehicle, was vicariously liable for his son's negligent driving. *Id.* Allen sought damages for, among other things, the post-repair diminution in the value of his truck, the cost of the repairs, and the loss of use of his truck. *Id.* Respondents jointly answered the complaint. *Id.* Allen then served a separate proposal for settlement on each Respondent pursuant to Florida Rule of Civil Procedure 1.442. *Id.*

The proposal to Jairo provided:

1. This Proposal for Settlement is made pursuant to Florida Statute § 768.79, and is extended in accordance with the provisions of Rule 1.442, Fla. R. Civ. P.

2. The Proposal for Settlement is made on behalf of Plaintiff, W. RILEY ALLEN, and is made to Defendant, JAIRO RAFAEL NUNEZ.

3. This Proposal for Settlement is made for the purpose of settling any and all claims made in this cause by Plaintiff, W. RILEY ALLEN, against defendant, JAIRO RAFAEL NUNEZ.

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1. Hereinafter, Gabriel and Jairo Nunez may be referred to collectively as Respondents or individually according to their first names.

4. That in exchange for TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) in hand paid from defendant, JAIRO RAFAEL NUNEZ, Plaintiff agrees to settle any and all claims asserted against Defendant as identified in Case Number 2010–CA–25627–0, brought in and for the Circuit Court in and for Orange County, Florida.

5. This Proposal for Settlement is inclusive of all damages claimed by Plaintiff, W. RILEY ALLEN, including all claims for interest, costs, and expenses and any claims for attorney's fees.

Id. at 556 (footnote omitted). Allen contemporaneously served an identical proposal for settlement on Gabriel, except that Gabriel's name was substituted in place of Jairo. *Id.* Neither Respondent accepted his respective proposal; thus the proposals were considered rejected. *Id.*; *see also* Fla. R. Civ. P. 1.442(f)(1) ("A proposal shall be deemed rejected unless accepted by delivery of a written notice of acceptance within 30 days after service of the proposal.").

After securing a final judgment in the sum of $29,785.97, Allen filed a motion for attorney's fees pursuant to section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442. *Nunez*, 194 So. 3d. at 556. Respondents moved to strike Allen's proposals for settlement, contending that because paragraph 5 of the proposals stated that the monetary settlement was inclusive of all damages claimed by Allen, the proposals were ambiguous as to whether acceptance and payment of one of the $20,000 proposals for settlement would have resolved the case against both Respondents or only against the individual Respondent accepting the proposal. *Id.* at 557.

The trial court granted Allen's motion to enforce the proposals after finding the proposals for settlement were sufficiently clear and unambiguous; it was determined that Allen was entitled to be reimbursed $343,590 in attorney's fees and legal assistant's fees. *Id.* at 555, 557. Respondents appealed, asserting that the language contained in paragraph 5 of the proposals for settlement caused the proposals to be ambiguous and therefore unenforceable. *Id.* The Fifth District agreed, reasoning:

> Initially, paragraphs two, three, and four in each proposal for settlement make clear that payment of $20,000 by the [Respondent] named in the proposal would settle [Allen]'s claims brought in the case against that specific [Respondent]. However, paragraph five then stated that the proposal for settlement was inclusive of "all damages" claimed by [Allen]. As "all damages" claimed arguably are those that could have been (and were) imposed on both [Respondents] in this case, paragraph five of [Allen]'s proposal for settlement could be reasonably interpreted to mean that the acceptance of the proposal for settlement by only one of the [Respondents] resolved [Allen]'s entire claim against both [Respondents]. Put differently, if paragraph five had stated that the proposal was inclusive of all damages claimed by [Allen] against the individually named [Respondent], similar to the language in paragraph three of the proposal, there would have been no ambiguity.

Id. at 558 (emphasis omitted).

The district court relied on *Tran v. Anvil Iron Works, Inc.*, 110 So. 3d 923 (Fla. 2d DCA 2013), for support. *Nunez*, 194 So. 3d at 558. In *Tran*, the plaintiff was injured in an automobile accident and filed an action against the driver of the other vehicle and his corporate employer, which owned the vehicle. *Tran*, 110 So.

3d at 924. During litigation, plaintiff tendered separate proposals for settlement to the individual defendant and the corporate defendant. *Id.* Each proposal was specific as to the one defendant named therein and each stated that, as a condition of the proposal, the plaintiff would voluntarily dismiss, with prejudice, any and all claims against the specific defendant named in the proposal for settlement. *Id.* Attached to the proposal for settlement was a copy of the proposed notice of voluntary dismissal with prejudice to be filed if the proposal was accepted. *Id.* However, the attached dismissal notice named both defendants and indicated that the case would be dismissed against both defendants. *Id.* at 924-25. The Second District Court of Appeal affirmed the trial court's finding that the proposals for settlement were ambiguous because, while the body of the proposals did not indicate that both defendants would be dismissed, the notices of dismissal attached to the respective proposals did. *Id.* at 927. The district court held that the discrepancy could reasonably affect the decision to accept the proposal because one defendant might want to accept the proposal directed to it only if it knows for certain that its payment would result in the release of both defendants. *Id.* at 926 ("This may be especially significant in a case such as this where one defendant is the employer/owner of the car and the other defendant is the employee who was driving the car.").

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