

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2006*

**RICHARD GRAHAM**, an individual, **ANN GRAHAM**, an individual, and  
**OCEAN RIDGE YACHT CLUB HOMEOWNERS ASSOCIATION, INC.**, a  
Florida corporation,  
Appellants,

v.

**THE PETER K. YESKEL 1996 IRREVOCABLE TRUST**,  
Appellee.

No. 4D05-1100

[March 1, 2006]

GROSS, J.

We affirm the trial court's denial of appellants' motion for attorney's fees.

Richard and Ann Graham were the defendants in the circuit court. Their joint proposal for settlement did not apportion the offer between them, so that it did not "state the amount and terms attributable to each party," as required by Florida Rule of Civil Procedure 1.442(c)(3). This deficiency in the offer was fatal to their motion for fees.

*Lamb v. Matetzschk*, 906 So. 2d 1037, 1042 (Fla. 2005), holds that "[r]ule 1.442(c)(3) expressly requires that a joint proposal for settlement made by two or more parties be differentiated. The rule makes no distinction between multiple plaintiffs and multiple defendants, nor does it make any distinction on the theory of liability."

*Lamb* relied primarily on *Willis Shaw Express, Inc. v. Hilyer Sod, Inc.*, 849 So. 2d 276 (Fla. 2003). *Willis Shaw* invalidated a proposal that did not apportion a settlement amount between two plaintiffs to a single defendant. 849 So. 2d at 278-79. Despite the fact that *Willis Shaw* involved an offer from multiple plaintiffs to a single defendant, the *Lamb* court stated that "[t]he same logic nonetheless applies to a situation where there is an undifferentiated offer from a single plaintiff to multiple

defendants. Each defendant should be able to settle the suit knowing the extent of his or her financial responsibility.” *Id.* at 1040.

Here, the Grahams argue that they were sued on a “single unified claim” directed at their joint ownership of real property, so that their offer of settlement was valid. However, cases decided after *Lamb* recognize that the supreme court has adopted a bright line rule requiring apportionment under rule 1.442(c)(3). That the Grahams made their joint proposal for settlement as tenants by the entireties does not alter the bright line rule.

*Heymann v. Free*, 913 So. 2d 11 (Fla. 1st DCA 2005), held that attorney’s fees were not awardable where a single plaintiff made a proposal for settlement to multiple defendants, because “the [plaintiff’s] settlement proposal failed to apportion the offer between [defendants]....” *Id.* at 12. The court recognized that it was “constrained by *Lamb*” in a case where one defendant, the spouse of the other defendant, was vicariously liable under the dangerous instrumentality doctrine. *Id.*

In a situation similar to this appeal, the second district ruled that an unapportioned offer of judgment from multiple defendants to a single plaintiff failed to comply with rule 1.442. *1 Nation Technology Corp. v. A1 Teletronics, Inc.*, No. 2D04-2947, 2005 WL 2654787 (Fla. 2d DCA 2005 Oct. 19, 2005). The court found that *Lamb* controlled, stating:

Regardless of the fact that [one of the defendants] was vicariously liable for [the other defendant] or that the offer stated they would be jointly and severally responsible for the settlement amount, because the offer they presented to [plaintiff] did not differentiate between the two offerors, the offer did not comply with the clarification of rule 1.442(c) made by the supreme court in *Lamb*. Thus, the defendants were not entitled to fees and costs based on this offer of judgment.

*1 Nation Tech. Corp.*, 2D04-2947, 2005 WL 2654787 at \*3.

Finally, in *D.A.B. Constructors, Inc. v. Oliver*, 914 So. 2d 462, 463 (Fla. 5th DCA 2005), two defendants jointly and severally liable under a theory of vicarious liability made a joint proposal for settlement that failed to apportion “the amount of the offer between the defendants.” *Id.* at 463. The fifth district affirmed the trial court’s denial of fees because of the

failure of the offers to apportion, “[i]n light of the extremely broad language” in *Lamb*. *See id.*

Based on *Lamb*, the trial court did not err when it denied appellants’ motion for attorney’s fees.

*Affirmed.*

MAY, J., and IMPERATO, CYNTHIA, Associate Judge, concur.

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Appeal of a non-final order from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; David F. Crow, Judge; L.T. Case No. 502003CA007354XXOCAO.

Roy E. Fitzgerald, Jane M. Gordon, and Alan B. Rose of Page, Mrachek, Fitzgerald & Rose, P.A., West Palm Beach, for appellant.

Gerald F. Chapman of Gerald F. Chapman, LLC, Bethesda, Maryland, and Matthew D. Landau of Landau & Segal, P.A., Hollywood, for appellee.

***Not final until disposition of timely filed motion for rehearing.***