

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. SC03-97

JOHN J. FITZMAURICE and
CAROLE M. FITZMAURICE,

Petitioners,

vs.

PHILIP C. D'ANGELO, M.D., and
PHILIP C. D'ANGELO, M.D., P.A.,

Respondents.

DISCRETIONARY REVIEW OF A CERTIFIED CONFLICT
FROM THE DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT

PETITIONERS' REPLY BRIEF ON THE MERITS

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I.
ARGUMENT

We acknowledge that the issue presented here was decided adversely to our position in this Court's recent decision in *Willis Shaw Express, Inc. v. Hilyer Sod, Inc.*, Case No. SC02-1521 (Fla. Mar. 13, 2003). Nevertheless, the decision is not yet final at the time of this writing, and motions for rehearing are pending in the case, so at the time of this writing at least, our position is not entirely foreclosed. As we urged the Court in our "Motion for Leave to Appear and File Motion for Rehearing" in case no. SC02-1521, we believe that the Court's decision expands the meaning of the second sentence of Rule 1.442(c)(3), Fla. R. Civ. P., well beyond its initially intended meaning; that the Court's construction of the second sentence of that rule prohibits what the first sentence of that rule permits; that the Court's construction of the second sentence of the rule is contrary to the thoroughly settled principle of the law of contracts (and settlement agreements) that an offeror is the master of the terms of his offer; and that the Court's decision will ultimately create more problems than it solves.

We respectfully submit once again that there is a more sensible construction of Rule 1.442(c)(3) available to the Court, and we respectfully urge it to reconsider its decision in *Willis Shaw Express* in light of the argument made in our initial brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 7th day of April, 2003, to: Esther E. Galicia, Esq., George, Hartz, Lundeen, et al., 3rd Floor - Justice Building East, 524 South Andrews Avenue, Fort Lauderdale, FL 33301.

**CERTIFICATE OF COMPLIANCE WITH
RULE 9.210(a)(2)**

I hereby certify that the type style utilized in this brief is 14 point Times New Roman proportionally spaced.

JOEL D. EATON