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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

SUAREZ TRUCKING FL CORP. and PROGRESSIVE EXPRESS INSURANCE COMPANY,	)	
Appellants,	)	
v.	)	Case No. 2D19-572
ADAM J. SOUDERS,	)	
Appellee.	)	

Opinion filed October 28, 2020.

Appeal from the Circuit Court for Hillsborough County; Cheryl K. Thomas, Judge.

Stuart J. Freeman of Freeman, Goldis & Cash, P.A., St. Petersburg, for Appellant, Suarez Trucking FL Corp.

Jennifer C. Worden and Daniel A. Martinez of Martinez Denbo, LLC, St. Petersburg, for Appellant, Progressive Express Insurance Company.

Joel D. Eaton of Podhurst, Orseck, P.A., Miami; Chris M. Kavouklis of Brennan, Holden & Kavouklis, P.A., Tampa, for Appellee.

SLEET, Judge.

Adam Souders filed an action for damages against Suarez Trucking FL Corp. and Ynefre Fernandez Tomas for injuries Souders sustained in an accident with a Suarez Trucking dump truck driven by Tomas. While the suit was pending, Souders made an offer of settlement to Suarez Trucking and Tomas. At issue in this case is whether Suarez Trucking accepted or denied that offer. Because the undisputed facts of this case establish that Suarez Trucking never accepted the material terms of Souders' offer, we conclude that the trial court properly denied Suarez Trucking's motion to enforce settlement agreement, and we affirm the trial court's final judgment based on the jury's verdict entered in Souders' favor.[1]

Souders initiated this action by filing his complaint on March 6, 2014. His workers' compensation carrier, Guarantee Insurance Company, subsequently filed a notice of lien against any settlement, judgment, or verdict obtained by Souders to recover benefits previously paid to Souders by Guarantee. Then, on February 25, 2015, Souders sent a proposal of settlement to Suarez Trucking and Tomas that provided as follows:

> D. AMOUNT OF THE PROPOSAL: The Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP., only, shall pay $500,000.00 to the Plaintiff, ADAM J. SOUDERS, within ten (10) days from the date of acceptance. This claim is inclusive of all attorney's fees and costs and is made to settle all claims that ADAM J.

[1]After the jury had returned its verdict, Souders moved to add Suarez Trucking's insurance carrier, Progressive Express Insurance Company, to the final judgment. Progressive opposed the motion, but the trial court included Progressive as a named defendant on the final judgment, and Progressive joined in this appeal and adopted Suarez Trucking's arguments on appeal.

> SOUDERS, has against Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP.
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> E. CONDITIONS: Upon acceptance and payment of the Proposal for Settlement, Plaintiff, ADAM J. SOUDERS, will enter dismissal with prejudice against Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP. This Proposal for Settlement is not to be considered a demand to be aggregated with any other demand that may be made in conjunction with this demand.

Upon receipt of the offer, counsel for Suarez Trucking contacted Souders' attorney to request that the settlement include the satisfaction of Guarantee's lien from the proceeds of the $500,000 settlement draft. Souders' attorney unequivocally refused the request. Nevertheless, Suarez Trucking, intent upon addressing the lien based upon an unsubstantiated fear of being held liable for it, issued a $500,000 settlement draft but made it payable to Souders, Souders' attorneys, and Guarantee. The draft was dated March 26, 2015. On that same day, Suarez Trucking filed a one-page, boilerplate notice of acceptance of the proposal for settlement. Counsel for Souders then advised Suarez Trucking's counsel that the inclusion of nonparty Guarantee was not contemplated by the essential terms of Souders' settlement offer, that "there has been no valid timely acceptance of the Proposal for Settlement and therefore this case is not settled based on your client's counter offer [sic] to include Guarantee Insurance Company in the settlement," and that "Souders does not accept your counter-offer [sic] and will not be dismissing his claims against your clients." Suarez Trucking subsequently sought to reissue the check payable to Souders only. Souders, however, responded that he was "no longer interested in resolving this case" pursuant to his "rejected" proposal for settlement.

On May 19, 2015, Suarez Trucking filed a motion to enforce the settlement agreement. The trial court denied the motion following a hearing. The case proceeded to trial, and the jury returned a verdict for Souders and against Suarez Trucking in the amount of $1,960,000.[2]

On appeal, Suarez Trucking argues that the trial court erred in denying its motion to enforce settlement agreement because the payee or payees to whom the settlement payment would be made was not an essential term of the proposal. We disagree.

Section 768.79(2), Florida Statutes (2014), requires that an offer for settlement be in writing and specify, among other things, the party making the offer, the party to whom the offer is made, and the amount being offered. Similarly, Florida Rule of Civil Procedure 1.442 provides that a proposal for settlement must be in writing and shall, among other things, "name the party or parties making the proposal and the party or parties to whom the proposal is being made," "state that the proposal resolves all damages that would otherwise be awarded in a final judgment in the action in which the proposal is served," "state the total amount of the proposal," and "state with particularity all nonmonetary terms of the proposal." Fla. R. Civ. P. 1.442(c)(1), (2)(A), (B), (D).

General contract principles apply to proposals for settlement and offers of judgment, and "[t]he making of a contract depends . . . not on the parties having meant the same thing but on their having said the same thing." Lunas v. Cooperativa de Seguros Multiples de Puerto Rico, 100 So. 3d 239, 241 (Fla. 2d DCA 2012) (quoting

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[2]Prior to trial, on July 12, 2017, Souders filed a notice of voluntary dismissal with prejudice as to his claims against Tomas, indicating that he and Tomas had reached a settlement agreement.

Hanson v. Maxfield, 23 So. 3d 736, 739 (Fla. 1st DCA 2009)); see also Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985). Accordingly, once an offeror makes a proposal that complies with the statute and the rule, "an acceptance of an offer must be absolute and unconditional, identical with the terms of the offer." Pena v. Fox, 198 So. 3d 61, 63 (Fla. 2d DCA 2015) (quoting Ribich v. Evergreen Sales & Serv., Inc., 784 So. 2d 1201, 1202 (Fla. 2d DCA 2001)); see also 11 Fla. Jur. 2d Contracts § 35 (2020) ("The acceptance cannot vary from the terms of the offer either by way of omission, addition, or alteration because, if it does vary in any of these respects, no contract is consummated and the transaction remains in the state of negotiation, binding on neither party."); Richard A. Lord, Williston on Contracts § 6:4 (4th ed. 2020) ("An offeree who has thus led the offeror to believe that a bilateral contractual right has been acquired should not be allowed to assert an actual intent at variance with the meaning of the words used or acts performed.").

If the acceptance is not the " 'mirror image' of the offer in all material respects, . . . it will be considered a counteroffer that rejects the original offer." Pena, 198 So. 3d at 63; see also Breger v. Robshaw Custom Homes, Inc., 264 So. 3d 1147, 1150 (Fla. 5th DCA 2019) ("An acceptance of a settlement offer must be a 'mirror image' of the offer in all material respects. Otherwise, it will be considered a counteroffer that rejects the original offer."); cf. Romaine v. Romaine, 291 So. 3d 1271, 1272 (Fla. 5th DCA 2020) ("Former Wife's handwritten alterations to the marital settlement agreement changed the essential terms of Former Husband's proposal . . . . Therefore, Former Wife's response was not an acceptance but rather a counteroffer that Former Husband never accepted."). "An attempted acceptance can become a

counteroffer 'either by adding additional terms or not meeting the terms of the original offer.' " Pena, 198 So. 3d at 63 (quoting Grant v. Lyons, 17 So. 3d 708, 711 (Fla. 4th DCA 2009)).

Here, the record clearly demonstrates that the parties differed on certain essential terms of the settlement. As such, there was no meeting of the minds between the parties, and therefore, no enforceable settlement agreement was created. It is undisputed that Souders' proposal for settlement complied with the strict requirements of section 768.79 and rule 1.442. The proposal explicitly stated that Souders would dismiss with prejudice all of his claims against Suarez Trucking and Tomas if they paid "$500,000 to the Plaintiff, Adam J. Souders, within ten (10) days from the date of acceptance." (Emphasis added.) As such, the essential terms of the proposal included payment of the $500,000 to the named payee Adam J. Souders. And in no way did the proposal address Guarantee's workers' compensation lien, a fact that Suarez Trucking concedes on appeal.

By issuing a $500,000 draft to not only Souders but also to his attorneys and Guarantee, Suarez Trucking materially altered the essential terms of Souders' proposal. The inclusion of nonparty Guarantee as a payee of the draft changed not only the term of the proposal requiring payment be made to Souders but also rewrote the proposal to include a requirement that Souders use a portion of the $500,000 draft to satisfy Guarantee's workers' compensation lien, thereby reducing the amount of money Souders would receive in exchange for dismissing his claims against Suarez Trucking and Tomas. As such, the parties did not "sa[y] the same thing" and, therefore, did not enter into an enforceable binding agreement. See Lunas, 100 So. 3d at 241. Rather,

Suarez Trucking's altering of Souders' proposal amounted to a counteroffer. See Pena, 198 So. 3d at 63.

Suarez Trucking maintains on appeal that the designation of the payee or payees was not an essential term of Souders' proposal such that it required a mirror image acceptance because it was unlikely that the settlement draft was intended to be written only to Souders himself without consideration of his attorney fees and costs. Suarez Trucking claims that it added Guarantee to the settlement check to protect the interests of the defendants because if Souders did not satisfy the lien, Guarantee would likely pursue an action against the defendants based on a theory of equitable lien. These arguments are meritless and only illuminate that Suarez Trucking's attempted acceptance of Souders' proposal for settlement was based upon its own intent to satisfy the lien rather than to unconditionally accept the identical terms of a proposal that did not mention the lien.[3] A settlement agreement cannot be formed based upon the subjective intent of one party. See Pena, 198 So. 3d at 64 ("While we share the circuit court's view that the [offeree's] inclusion of [his] agents and employees within the release was not the product of nefarious motives, [the offeree's] intention when it drafted this document, whatever it might have been, was irrelevant to the issue at hand."). Regardless, the plain language of section 768.79 and rule 1.442 states that the name of the party to whom the proposal is made is an essential term of the offer. See §

[3]The record demonstrates that Suarez never intended to pay only Souders to settle this action. However, our dissenting colleague ignores Suarez Trucking's specious arguments on appeal regarding its personal liability for the lien, its assertion that it was unlikely that the settlement draft was intended to be written only to Souders himself without consideration of his attorney fees and costs, and the fact that Suarez Trucking's motion to enforce the settlement agreement sought to enforce the settlement based upon the original settlement draft payable to Souder and Guarantee.

768.79(2)(b) ("An offer must . . . name . . . the party to whom it is being made." (emphasis added)); Fla. R. Civ. P. 1.442(c)(2)(A) ("A proposal shall . . . name. . . the party or parties to whom the proposal is being made." (emphasis added)). As such, a mirror acceptance of that term was required to form an agreement, a fact that Suarez Trucking seems to have conceded by its subsequent request to reissue the check payable to Souders alone.

Suarez Trucking, as well as our dissenting colleague, would have us arbitrarily remove the essential term "to the Plaintiff, Adam J. Souders" from the proposal of settlement and reach the erroneous conclusion that filing a notice of acceptance and then tendering payment to Souders and Guarantee amounted to an unequivocal acceptance of Souders' proposal.[4] But to do so would disregard a cornerstone of contract law, namely, that in order to form a binding agreement, the parties must have a meeting of the minds. See generally Lunas, 100 So. 3d at 241 ("Settlement agreements are governed by contract law." (quoting Schlosser v. Perez, 832 So. 2d 179, 182 (Fla. 2d DCA 2002))); see also Pena, 198 So. 3d at 63 ("Like any contract, a settlement agreement is formed when there is mutual assent and a 'meeting of the minds' between the parties."). Furthermore, in order to determine Souders' intent in making the proposal, we must examine the entire instrument, not just isolated parts. Cf. L & H Constr. Co. v. Circle Redmont, Inc., 55 So. 3d 630, 634 (Fla. 5th DCA 2011)

[4]The dissent would seemingly oblige Suarez Trucking's request, as there is no other way for it to reach its conclusion that "Suarez Trucking unequivocally agreed to the material terms of the settlement agreement—payment of $500,000 in exchange for the dismissal of all claims against Suarez Trucking and its driver—by delivering its written acceptance of Souders' offer." (Emphasis added.)

("To ascertain the intent of the parties . . . the trial court must examine the whole instrument, not isolated parts.").

The dissent focuses on the fact that Souders' proposal required payment "within ten (10) days from the date of acceptance" and comes to the conclusion that the offer did not require performance but instead only required a promise to perform. The dissent maintains that Suarez Trucking accomplished this promise by filing a boilerplate notice of acceptance, which provided as follows:

> COMES NOW Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP . . . pursuant to Florida Statutes 769.89 and Florida Rule 1.442 gives notice that Defendants accept Plaintiff's Proposal for Settlement made to Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP. dated February 25, 2015 in the above referenced matter.

(Emphasis added.)

First, we must disagree with the assertion that the proposal only required a promise to perform as the proposal makes clear that Souders would only dismiss his claims against Suarez Trucking and Tomas if and when payment was tendered to him and him alone. Second, the provisions of section 768.79(4) providing that "[a]n offer shall be accepted by filing a written acceptance with the court within [thirty] days after service" and that "[u]pon filing of both the offer and acceptance, the trial court has full jurisdiction to enforce the settlement agreement" do not negate the fact that contract law governs settlement agreements, Lunas, 100 So. 3d at 241, or the requirement that the acceptance be the mirror image of the offer, Pena, 198 So. 3d at 63. By conferring jurisdiction to enforce an agreement upon the trial court only after both an offer and acceptance have been filed with the court, the statute prevents the trial court from

enforcing an agreement based only on a party's assertion that it accepted the offer. The statute does not, however, require the trial court to enforce a contract simply because a written acceptance has been filed. The trial court must still evaluate that acceptance as evidencing a meeting of the parties' minds.

The written notice of acceptance filed here by Suarez lacked the specificity necessary to create a binding contract. "An agreement 'must be sufficiently specific and mutually agreeable as to every essential element.' " Grimsley v. Inverrary Resort Hotel, Ltd., 748 So. 2d 299, 300-01 (Fla. 4th DCA 1999) (quoting Williams v. Ingram, 605 So. 2d 890, 893 (Fla. 1st DCA 1992)) (concluding that parties had not entered into a settlement agreement where proposal offered $9000 "to settle this matter in full" and stated that "[i]n order to settle, we will require that General Releases be exchanged between you and The Inverrary" but notice of acceptance stated that Grimsley was accepting the $9000 offer to settle his remaining claims against Inverrary but did not reference any general releases). Here, Suarez's written notice did not indicate any of the terms to which it purportedly agreed. It cannot be considered a mirror image of the offer where it contained no image and the payment delineated in the offer as necessary to acquire a dismissal was effectuated in a manner contrary to the offer. See generally Giovo v. McDonald, 791 So. 2d 38, 40 (Fla. 2d DCA 2001) ("[A]n acceptance is effective to create a contract only if it is . . . identical with the terms of the offer." (emphasis added) (citation omitted)).

Furthermore, Souders' proposal also stated, "Upon acceptance and payment of the Proposal of Settlement, Plaintiff, Adam J. Souders, will enter dismissal with prejudice against Defendants." (Emphasis added.) Based on the use of "and" in

the phrase "acceptance and payment," logic dictates that tendering payment was a requirement of the offer. The proposal clearly stated that Souders would only dismiss his claims against the defendants once payment was tendered to only Adam J. Souders. Accordingly, any acceptance on the part of Suarez Trucking could not be considered complete pursuant to the terms of the agreement until the payment to Souders was made. Contrary to the dissent's view, the boilerplate language of the notice of acceptance cannot be deemed an unequivocal agreement to the terms of the proposal. This conclusion is in no way a novel concept in contract law.

Suarez Trucking and the dissent lamentably would have this court effectuate a sea change in decades of jurisprudence concerning the establishment of a binding contract. With one citation to Restatement (Second) of Contracts[5] regarding the acceptance of a generic contract, the dissent attempts to redefine the requirement that an acceptance be the mirror image of the offer by suggesting that the phrase "Defendants accept Plaintiff's Proposal"—alone without any details of what terms defendants were accepting—created a binding contract and that Suarez's subsequent tender of payment—required by the offer before Souders would dismiss his claims—to Souders and Guarantee Insurance was merely an "alleged deficiency in that performance [that] was irrelevant to the question of contract formation."[6] But to reach

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[5]The dissent relies on Restatement (Second) of Contracts § 30 (Am. Law Inst. 1981), which provides as follows: "Unless otherwise indicated by the language or the circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances." We conclude that the language of Souders' offer indicated that acceptance included payment tendered to Souders alone.

[6]The dissent suggests that the addition of Guarantee as a payee is simply something to be argued about at a subsequent hearing to enforce the contract. If that were so, no litigant would file a proposal for settlement or offer of judgment for fear that

such a conclusion would require rewriting the proposal to remove the essential term that payment be made "to Plaintiff, Adam J. Souders." We cannot rewrite the terms of either the proposal or the acceptance in order to find that an agreement was or was not reached. Cf. Suess v. Suess, 289 So. 3d 525, 530 (Fla. 2d DCA 2019) ("[A] court is powerless to rewrite the contract to make it more reasonable or advantageous for one of the contracting parties." (quoting Emergency Assocs. of Tampa, P.A. v. Sassano, 664 So. 2d 1000, 1003 (Fla. 2d DCA 1995))). Suarez Trucking's inclusion of additional payees rewrote the terms of the proposal to say that as consideration for his dismissing his claims against Suarez Trucking and Tomas, Souders would accept less than $500,000, i.e., $500,000 minus however much is needed to satisfy Guarantee's workers' compensation lien. There simply is no legal basis for the trial court or this court to rewrite Souders' proposal in this way.

Although the dissent argues "the record reflects that at the time Suarez Trucking filed its motion to enforce settlement, it had already communicated its willingness to provide a check in the manner requested by Souders." However, Suarez Trucking argued below in its motion to enforce the settlement agreement that it effectuated a valid and enforceable acceptance by issuing the $500,000 draft payable to Souders, Souders' attorney, and Guarantee. Based on that argument, Suarez sought enforcement of "the settlement agreement that was entered into by the parties" or in the alternative that the trial court "[d]eposit such settlement funds into . . . the court registry

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the written notice of acceptance would create a binding contract to which the offeree could add terms not expressly included within the proposal or offer. The offeror would be compelled to seek court intervention to enforce the original expressed terms of his or her proposal.

until such time as the court determines whether the plaintiff's counsel and/or his client will provide some assurance that the outstanding workers' compensation lien will be satisfied pursuant to their statutory obligations." The trial court could only rule upon the motion it had before it. As such, despite our dissenting colleague's assertions to the contrary, had the trial court granted that motion, Souders would not have received the benefit for which he had bargained. He would not have received the entire $500,000 that he sought as consideration for dismissing his claims against Suarez Trucking and Tomas. Contrary to any of the articulated terms in his proposal, Guarantee would have a claim to a portion of the $500,000 in satisfaction of its lien.

Holding that the trial court should have granted that motion would allow offerees to file boilerplate notices of acceptance and subsequently alter the required performance as they see fit. But an offeror who complies with the strict requirements of the statute and the rule concerning proposals for settlement and offers of judgment should not be bound to comply with the terms of an agreement unilaterally created by the offeree simply because the offeree first filed a boilerplate notice of acceptance. Such a result is untenable.

Furthermore, by adding Guarantee to the settlement check, Suarez Trucking also injected a nonparty[7] into the action and set in motion a lien dispute

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[7]Again, Suarez Trucking's motion to enforce settlement agreement sought enforcement of an agreement that included Souders' satisfying Guarantee's worker's compensation lien. But the trial court cannot require nonparty Guarantee to be subject to and comply with an agreement between the parties, nor can it impose attorney fees if Guarantee fails to consent to the settlement and/or refuses to endorse the settlement draft. Proposals for settlement and offers of judgment are enforceable only against the parties to the agreement. See Breger, 264 So. 3d at 1150 ("We conclude that the only parties bound by the offer of judgment were the parties who made the offer and the parties who accepted the offer." (quoting Sec. Prof'ls, Inc. ex rel. Paikin v. Segall, 685

between Souders and Guarantee—additional litigation that the statute and the rule were designed to avoid. See Kuhajda v. Borden Dairy Co. of Ala., LLC, 202 So. 3d 391, 395 (Fla. 2016) ("The purpose of section 768.79 is to 'reduce litigation costs and conserve judicial resources by encouraging the settlement of legal actions.' The . . . purpose of rule 1.442 is to provide a procedural framework to implement the substantive requirements of section 768.79." (citations omitted) (quoting Attorneys' Title Ins. Fund, Inc. v. Gorka, 36 So. 3d 646, 650 (Fla. 2010))); Unicare Health Facilities, Inc. v. Mort, 553 So. 2d 159, 161 (Fla. 1989) ("[R]ule 1.442 . . . was implemented solely to encourage settlements in order to eliminate trials if possible."). But if Suarez Trucking had sufficiently complied with the proposal for settlement, the law would have protected it from any perceived legal obligation to satisfy the workers' compensation lien. See Fla. R. Civ. P. 1.442(c)(4) ("Acceptance by any party shall be without prejudice to rights of contribution or indemnity.").

For the reasons discussed, the learned trial judge was correct in finding that the parties had not entered into an enforceable binding settlement agreement because the parties never reached a meeting of the minds on all the material terms of the agreement. We therefore affirm the trial court's final judgment entered on the jury's verdict.

Affirmed.

CASANUEVA, J., Concurs.
ATKINSON, J., Dissents with opinion.

So. 2d 1381, 1382 (Fla. 4th DCA 1997))). Guarantee had not moved to intervene in the action, and the trial court had no authority to force Guarantee to endorse the settlement draft.

ATKINSON, Judge, Dissenting.

Because it is impossible to read the language of Souders' settlement offer to mean that acceptance could not be effective until payment was made, I respectfully dissent. Contrary to the majority's erroneous conflation of acceptance and performance, Souders' offer treats them as separate events, specifying that the latter must take place within ten days of the former. A binding contract for settlement was formed when Suarez Trucking accepted Souders' offer in writing. And while Souders' subsequent dissatisfaction with the method of payment was a reasonable criticism of Suarez Trucking's performance, it had nothing to do with contract formation.

After Souders sued Suarez Trucking and its driver for injuries Souders sustained in an accident involving one of Suarez Trucking's dump trucks, Souders sent Suarez Trucking and its driver a proposal to settle the case which included the following language:

> D. AMOUNT OF THE PROPOSAL: The Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP., only, shall pay $500,000.00 to the Plaintiff, ADAM J. SOUDERS, within ten (10) days from the date of acceptance. This claim is inclusive of all attorney's fees and costs and is made to settle all claims that ADAM J. SOUDERS, has against Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP.
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> E. CONDITIONS: Upon acceptance and payment of the Proposal for Settlement, Plaintiff, ADAM J. SOUDERS, will enter dismissal with prejudice against Defendants, YNEFRE FERNANDEZ TOMAS and SUAREZ TRUCKING FL CORP. This Proposal for Settlement is not to be considered a demand to be aggregated with any other demand that may be made in conjunction with this demand.

(Emphasis added.)

Suarez Trucking filed its written notice of acceptance of the proposal for settlement on March 26, 2015. The notice of acceptance indicated that it had been served on counsel for Souders. Suarez Trucking's carrier, Progressive Express Insurance Company, on behalf of Suarez Trucking and its driver, then provided Souders with a check for $500,000. The check was made payable to Souders, Souders' attorneys, and Souders' worker compensation carrier, Guarantee Insurance Company, which had filed a notice of lien in the case pursuant to section 440.39, Florida Statutes (2014). On April 23, 2015, Souders' attorney sent a letter to counsel for Suarez Trucking, stating in pertinent part the following:

> Yesterday I discovered that the check that was provided by Progressive to my office in response to th[e] Proposal for Settlement, was not only made payable to the Plaintiff, Mr. Adam Souders, but was also made payable to Guarantee Insurance Company . . . . Very simply, this check does not comply with the clear and unambiguous terms of Plaintiff's Proposal for Settlement and does not even permit Mr. Souders with the ability to negotiate the same without obtaining authority from an outside third party, Guarantee Insurance Company. . . . Based on the above, there has been no valid timely acceptance of the Proposal for Settlement and therefore this case is not settled based on your client's counter offer to include Guarantee Insurance Company in the settlement. Mr. Souders does not accept your counter-offer and will not be dismissing his claims against your clients.

The next day, on April 24, 2015, Suarez Trucking offered to reissue a check payable solely to Souders. Three days later, counsel for Souders indicated his client was "no longer interested in resolving this case" in light of what he alleged to have been Suarez Trucking's rejection of the proposal for settlement.

After the trial court denied Suarez Trucking's motion to enforce the settlement agreement, a jury returned a verdict in Souders' favor. Souders then moved

for an award of attorney's fees based upon the proposal for settlement, and the trial court entered an order granting the motion.

The issue presented in this appeal concerns whether the parties formed a contract for settlement, which is subject to de novo review. See Marin v. Infinity Auto Ins. Co., 239 So. 3d 751, 754 (Fla. 3d DCA 2018). Rules governing the interpretation of contracts also apply to settlement agreements. See Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985); Lee v. Chmielewski, 290 So. 3d 531, 534–35 (Fla. 2d DCA 2019) (citing Lunas v. Cooperativa de Seguros Multiples de Puerto Rico, 100 So. 3d 239, 241 (Fla. 2d DCA 2012)).

Formation of a settlement agreement occurs "when there is mutual assent and a 'meeting of the minds' between the parties—a condition that requires an offer and an acceptance supported by valid consideration." Pena v. Fox, 198 So. 3d 61, 63 (Fla. 2d DCA 2015). The acceptance must be a mirror image of the offer. Id. It "must be (1) absolute and unconditional; (2) identical with the terms of the offer; and (3) in the mode, at the place, and within the time expressly or impliedly stated within the offer." Trout v. Apicella, 78 So. 3d 681, 684 (Fla. 5th DCA 2012).

Where, for example, a party attempts to accept an offer but includes an additional party or term, that party has rejected the initial offer and advanced a counteroffer. See, e.g., Giovo v. McDonald, 791 So. 2d 38, 40 (Fla. 2d DCA 2001) (finding that the insurer's response to the initial offer proposing to pay a lower per diem amount operated as a rejection and a counteroffer); Breger v. Robshaw Custom Homes, Inc., 264 So. 3d 1147, 1150 (Fla. 5th DCA 2019) (concluding that acceptance was not the mirror image of the offer where the settlement proposal included a single

plaintiff but the acceptance provided for dismissal of the amended complaint brought by both plaintiffs). Suarez Trucking's written acceptance included no such alteration of terms; it simply announced that "Defendants accept Plaintiff's Proposal for Settlement."

Souders' offer required Suarez Trucking to pay $500,000 to Souders "within ten (10) days from the date of acceptance." While the proposal itself did not specify a time period during which Suarez Trucking was required to accept it, by rule Suarez Trucking had thirty days from the date of service of the proposal to provide written acceptance, failing which it would be deemed rejected. See Fla. R. Civ. P. 1.442(f)(1). Pursuant to the proposal, Suarez Trucking then had ten days from the date of that acceptance within which to tender payment in the amount of $500,000 to Souders.

Suarez Trucking unequivocally agreed to the terms of the settlement agreement by delivering its unqualified, written acceptance of Souders' offer. The inclusion of the additional payee on the check occurred after and independent of the written acceptance.

The majority dismisses Suarez Trucking's "boilerplate" notice of acceptance as ineffectual because it "lacked the specificity necessary to create a binding contract." In so doing, the majority announces a heretofore unknown standard for contract formation, requiring that an offeree must parrot back the terms of an offer in order to effectuate acceptance. The majority cites no case law that supports its conclusion that an offeree may not effectively enter into a contract by way of a simple and unequivocal acceptance of the offer. Cf. Restatement (Second) of Contracts § 30 (Am. Law Inst. 1981) ("Unless otherwise indicated by the language or the

circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances."). Notably, the statute governing this particular type of offer merely requires that an "offer shall be accepted by filing a written acceptance with the court within 30 days after service." § 768.79(4), Fla. Stat. (2014). "Upon filing of both the offer and acceptance, the court has full jurisdiction to enforce the settlement agreement." Id.

The mirror image rule applies when determining whether a contract was formed, which occurred when Suarez Trucking accepted Souders' offer without reservation. Tendering the check was a performance obligation of an agreement that had already been formed. As such, any alleged deficiency in that performance was irrelevant to the question of contract formation. The language of the offer compels this conclusion. The offer requires performance of the obligation to pay $500,000 within ten days "from the date of acceptance." Acceptance and payment are two distinct acts that can be performed at different times; logic dictates that tendering payment cannot itself be a requirement of acceptance if the offer allows ten days after acceptance within which to tender it.

This conclusion finds further support in other language in the proposal that treats acceptance and payment as two separate things: "Upon acceptance and payment of the Proposal for Settlement, [Souders] will enter a dismissal with prejudice . . . ." (Emphasis added). Contrary to the majority's analysis, this language does not make performance a requirement of acceptance; it merely establishes the order of performance, making the offeror's performance obligation contingent upon the offeree's performance. First Suarez Trucking was to accept, after which it was required to pay

the settlement amount within ten days, which would then trigger Souders' obligation to dismiss. That chronology is incompatible with the majority's conclusion that acceptance "could not be considered complete pursuant to the terms of the agreement until the payment to Sounders was made."

The majority's conclusions elide record facts in addition to contravening the language of the offer. The majority warns that reversing denial of the motion to enforce the settlement agreement in this case "would allow offerees to file boilerplate notices of acceptance and subsequently alter the required performance as they see fit" and that "Souders would not have received the benefit for which he bargained" if the settlement agreement were enforced. To the contrary, the record reflects that at the time Suarez Trucking filed its motion to enforce settlement, it had already communicated its willingness to provide a check in the manner requested by Souders.

While the majority's characterization of the motion to enforce settlement agreement may be accurate, the suggestion that Suarez Trucking insisted that the trial court was bound to enforce an agreement requiring payment to the additional payees is incorrect. At the hearing on its motion, Suarez Trucking argued that a contract was formed when it filed its notice of acceptance and that "whether [it] breached that contract is a separate issue." Suarez Trucking made clear that the agreement should be enforced "in the manner that the plaintiff asked for" in the event that the trial court disagreed that Suarez Trucking was within its rights to include the additional payees when it performed its payment obligation.[8]

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[8]Counsel for Suarez Trucking included the following in its argument to the trial court during the hearing on the motion to enforce settlement agreement:

> [P]laintiff filed a proposal for settlement under 768.79, the offer of judgment and demand for judgment statute. The defendants in this case on March 26th, pursuant to [s]ubsection 4 of that statute, accepted that offer. We didn't send a check on that date. The check wasn't required to be provided on that date. . . .
>
> The check that [counsel for Souders] is talking about, which he claims violates the [proposal for settlement], has nothing to do with whether we accepted their offer or not. They made an offer. We accepted it pursuant to the statute. Contract formed. Now we have a settlement.
>
> The question now becomes, did we have the right to add a lienholder that we knew to the check or if we should be penalized by interest for not paying in a timely fashion pursuant to the terms of the agreement. Like the Court would have the ability to do because we didn't pay the way we were supposed to, although I think we did by including the plaintiff.
>
> When you look at the terms of the contract, it's pretty clear. We named the plaintiff, his law firm, and the workers' comp carrier on it. I think we were entitled to do it.
>
> If the court disagrees, the right method isn't to set aside the entire agreement. The settlement agreement was made. It's to award interest on the amounts that should have been paid within 10 days in the manner that the plaintiff asked for because we have the settlement. . . .
>
> What happened in this case is we sent the acceptance, like the rules require us to, without equivocation. Offer, acceptance, contract. Now we should be here to enforce that contract and the terms of what should be done under the terms of that proposal for settlement.

(Emphasis added.)

The trial court acknowledged the argument, but erroneously concluded that acceptance had been retroactively nullified when Suarez Trucking subsequently issued a check with additional payees:

> That acceptance [filed on March 26th] was acknowledgement of the terms of the proposal for settlement. But once the condition was not satisfied as specifically stated in the offer, it invalidated the acceptance. So at the time of filing, the acceptance was not a nullity. It

The language of the proposal made a clear distinction between acceptance and payment, describing that the latter was to occur within a prescribed period of time after the former. Having unqualifiedly accepted the terms of the proposal, Suarez Trucking was prepared to perform its obligation under the resulting agreement by providing all the funds to Souders after Souders had alerted Suarez Trucking of his dissatisfaction with the initial check; Suarez Trucking communicated this willingness to Souders and explained it to the trial court. There was never any risk that Souders would not receive the benefit of his bargain.

The only question before this court is whether the parties formed a settlement agreement of which Suarez Trucking was entitled to enforcement—a question of acceptance not performance. The language of Souders' offer permitted Suarez Trucking to accept by promising to perform, which it did by providing the written acceptance. Because Suarez Trucking unqualifiedly accepted the offer, thereby forming an enforceable agreement of the parties, the trial court erred by denying Suarez Trucking's motion to enforce the settlement agreement. I would therefore reverse.

> only became null and void when a condition other than that which was authorized in the proposal was made.
>
> Meaning, of course, to be clear, that when the check was issued including a third party not authorized to be included by the plaintiff, that voided the notice of acceptance and instead created a counteroffer, which was ultimately rejected by plaintiff.