

# Third District Court of Appeal

State of Florida, July Term, A.D. 2012

Opinion filed December 12, 2012.

Not final until disposition of timely filed motion for rehearing.

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No. 3D11-2863

Lower Tribunal No. 08-56315

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**Alice Bennett,**  
Appellant/Cross-Appellee,

**Charles Bennett,**  
Cross-Appellee,

vs.

**BJ's Wholesale Club, Inc., a foreign corporation,**  
Appellee/Cross-Appellant.

An Appeal from the Circuit Court for Miami-Dade County, Beatrice Butchko, Judge.

Keith Chasin, for appellant/cross-appellee Alice Bennett, and for cross-appellee Charles Bennett.

Richard A. Sherman and James W. Sherman; Topkin, Egner, Partlow & Rader and Sanford R. Topkin (Deerfield Beach), for appellee/cross-appellant.

Before LAGOA and LOGUE, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

The November 9, 2011, order before us by both appeal and cross-appeal, granted in part and denied in part the Bennetts' motion to vacate the November 2, 2010, final judgment enforcing a mediated settlement of their personal injury action against the appellee. Because, however, an initial application for reconsideration (styled by the then-pro se Mrs. Bennett as "Disagree with Mediation Agreement and Motion to Enforce Settlement That was Done on November 2, 2010") had already been denied on March 30, 2011, and it is clear that the trial court thereafter lacked jurisdiction to consider the successive motion for rehearing or indeed any further proceeding related to the merits of the underlying judgment,<sup>1</sup> see *Shelby Mut. Ins. Co. of Shelby, Ohio v. Pearson*, 236 So. 2d 1 (Fla. 1970); *Travelers Cas. & Sur. Co. of Am. v. Culbreath Isles Prop. Owners Ass'n*, 37 Fla. L. Weekly D2461 (Fla. 2d DCA Oct. 19, 2012); *Wilson v. Ford*, 949 So. 2d 1151 (Fla. 3d DCA 2007); *Capital Bank v. Knuck*, 537 So. 2d 697 (Fla. 3d DCA 1989), the order is vacated and held for naught. The effect of this ruling is to confirm the validity of the final judgment, which itself has never been appealed.

Order vacated.

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<sup>1</sup> The motion also requested relief under Florida Rule of Civil Procedure 1.540(b). Because the judgment was not "void," however, that relief was not available. See *Everhome Mortg. Co. v. Janssen*, No. 2D11-4592 (Fla. 2d DCA Nov. 14, 2012); *Krueger v. Ponton*, 6 So. 3d 1258 (Fla. 5th DCA 2009); *Dep't of Health & Rehabilitative Servs. v. Morley*, 570 So. 2d 402 (Fla. 5th DCA 1990).