

DISTRICT COURT OF APPEAL, THIRD DISTRICT
2001 S.W. 117th Ave.
Miami, Florida 33175

MICHELLE MARTIN,

3DCA Case No.: 3D2024-1969

Appellant,

L.T. Case No.: 20-14464 CA

v.

BEAUCHAMP CONSTRUCTION
COMPANY, INC.,

Appellee.

**APPELLEE BEAUCHAMP CONSTRUCTION COMPANY, INC.'S MOTION FOR
ENTITLEMENT TO ATTORNEYS' FEES**

Appellee, Beauchamp Construction Company, Inc. ("Beauchamp"), by and through its undersigned counsel and pursuant to Rule 9.300 and Rule 9.440(b) of Florida Rules of Appellate Procedure as well as Florida Statute Section 59.46, hereby moves for entry of an order determining that Beauchamp is entitled to an award of its appellate attorneys' fees, and in support thereof would state:

1. In general, this matter emanates from a May 24, 2019 trip and fall incident whereby Plaintiff/Appellant, Michelle Martin ("Martin") allegedly suffered injuries while walking at or near 227 NE Street in Miami, Florida.

2. Martin filed suit against both Beauchamp and co-defendant, Miami Dade County.

3. On July 1, 2024, the trial court entered an order granting Beauchamp's Motion in Limine precluding Martin from

introducing evidence of an unrelated contract involving Miami Dade College and prohibiting any third-party beneficiary arguments related thereto.

4. The underlying matter proceeded to trial commencing September 30, 2024.

5. On October 2, 2024, after Martin's case in chief, the lower court granted Beauchamp's motion for directed verdict.

6. Prior to trial, on January 12, 2023, Beauchamp served Martin with a Proposal for Settlement. A true and accurate copy of the Proposal for Settlement along with the Notice of Service and the Proposal for Settlement is attached hereto as Exhibit "A".

7. Martin did not accept the Proposal for Settlement and, accordingly, the same was deemed rejected by the operation of Florida law. *See Fla. R. Civ. P. 1.442(f)*.

8. Beauchamp prevailed at the trial court level by virtue of the court's entry of an order granting Beauchamp's motion for directed verdict. Accordingly, pursuant to Florida Statute §768.79 and Florida Rule of Civil Procedure 1.420, Beauchamp is entitled to recovery its attorneys' fees and costs from Martin.

9. Florida Statute §59.46 provides, in relevant part,

In the absence of any expressed contrary intent, any provision of a statute ... entered into after October 1, 1977, providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorneys' fees to the prevailing party on appeal.

10. There is no contrary intent in Florida Statute §769.79 to prevent an award of appellate attorneys' fees for the failure to accept a proposal for settlement. Accordingly, Beauchamp is entitled to recover its reasonable attorneys' fees and costs in defending the appeal based upon Martin's rejection of the previously served Proposal for Settlement. See generally, *Hartley v. Guetzloe*, 712 So.2d 817 (Fla. 5th DCA 1998); *Williams v. Brochu*, 578 So.2d 491 (Fla. 4th DCA 1991).

11. This motion is timely filed pursuant to Fla. R. App. P. 9.400(b) as it is filed before the service of the reply brief.

WHEREFORE, Appellee Beauchamp Construction Company, Inc. respectfully requests this Court to enter an order granting it entitlement to recovery its attorneys' fees in the defense of the pending appeal, an order remanding the matter to the trial court for determination of the amount of appellate attorneys' fees and costs to be awarded and any additional relief the Court deems appropriate.

Respectfully submitted December 11, 2024.

GUNTHER LEGAL, PLLC
*Co-Counsel for Appellee,
Beauchamp Construction
Company, Inc.*

/s/ Scott A. Markowitz
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed on December 11, 2024, through the Florida Courts E-Filing Portal. I further certify that the foregoing document was furnished by E-Service through the Florida Courts E-Filing Portal to all e-mail addresses designated and all parties on the Service List.

GUNTHER LEGAL, PLLC

/s/ Scott A. Markowitz
Scott A. Markowitz Esq.
Florida Bar No.: 0016608

SERVICE LIST

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

MICHELE MARTIN,

CASE NO.: 2020-14464-CA-01

Plaintiff,

Exhibit "A"

v.

MIAMI-DADE COUNTY, A
Political subdivision of the
State of Florida, and BEAUCHAMP
CONSTRUCTION CO., INC., a
Florida Corporation,

Defendants.

NOTICE OF SERVICE OF PROPOSAL FOR SETTLEMENT

Defendant, **Beauchamp Construction Co., Inc.**, hereby notifies the Court of his serving a Proposal for Settlement pursuant to Rule 1.442 of the Florida Rules of Civil Procedure and Section 768.79 of the Florida Statutes, upon Plaintiff, **Michele Martin**, in the above styled matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were furnished by Electronic Mail on January 12, 2023 to William C. Robinson, Esq., P O Box 610575, North Miami, FL 33261 at wcrpleadings@gmail.com; robinsonwilliam8@gmail.com; and Richard Schevis, Esq., Stephen P. Clark Center, Suite 2810 111 Northwest First Street, Miami, FL 33128; Richard.Schevis@miamidade.gov; Michelle.RojasGarcia@miamidade.gov.

/s/ Rafael O. Rodriguez

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Attorneys for Defendant, Beauchamp Construction Co.,
Inc.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

MICHELE MARTIN,

CASE NO.: 2020-14464-CA-01

Plaintiff,

v.

MIAMI-DADE COUNTY, A
Political subdivision of the
State of Florida, and BEAUCHAMP
CONSTRUCTION CO., INC., a
Florida Corporation,

Defendants.

PROPOSAL FOR SETTLEMENT

Defendant, **Beauchamp Construction Co., Inc.**, through undersigned counsel, hereby serves this Proposal for Settlement upon Plaintiff, **Michele Martin** pursuant to Florida Statute § 768.79 and Rule 1.442 of the Florida Rules of Civil Procedure:

1. This proposal is made by Defendant, **Beauchamp Construction Co., Inc.**, to Plaintiff, **Michele Martin**.

2. This proposal is to resolve any and all claims against this named Defendant for damages or injuries, whether known, disclosed or manifested presently or in the future on the part of the Plaintiff, **Michele Martin**, arising out of the cause of action which is the subject matter of Case No. 2020-14464-CA-01, filed in the Circuit Court of Miami-Dade County, Florida.

3. The total amount of this proposal is **Five Thousand Dollars (\$5,000.00)** and is made in alternative to and not in addition to, any other offer.

4. The relevant conditions of this proposal are that this offer is to be construed as including any and all damages that may be awarded in a final judgment, including costs and attorney's fees.

5. The non-monetary terms of this Proposal is that Plaintiff, **Michele Martin**, shall execute a Voluntary Dismissal with Prejudice, as to the above named Defendant **Beauchamp Construction Co., Inc.**, after acceptance of the settlement funds.

6. No punitive damages are claimed in this action.

7. It is not believed that attorneys' fees are a part of **Plaintiff's** legal claim. However, should attorneys' fees be allowed, the Proposal for Settlement includes such attorney's fees.

8. This proposal is being served but not filed pursuant to Rule 1.442(d). It will be filed if necessary, to enforce the provisions of Rule 1.442.

9. This proposal supersedes any prior settlement offers or proposals made by this Defendant.

10. This Proposal shall expire in thirty (30) days from its service unless withdrawn in writing prior to that date. Any acceptance of this Proposal must be in writing. Failure by Plaintiff **Michele Martin**, to timely accept this Proposal for Settlement shall constitute a rejection of this Proposal for Settlement and may result in appropriate sanctions being imposed by the Court, including costs and reasonable attorneys' fees.

11. The Proposal is being made in an effort to resolve the case against the above-named Defendant only and avoid future costs and fees. If there are any questions about any of the above terms, you are encouraged to submit your questions, in writing. An attempt to answer your questions will be made whenever possible.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were furnished by Electronic Mail on January 12, 2023 to William C. Robinson, Esq., P O Box 610575, North Miami, FL 33261 at wcrpleadings@gmail.com; robinsonwilliam8@gmail.com; and Richard Schevis, Esq., Stephen P. Clark Center, Suite 2810 111 Northwest First Street, Miami, FL 33128; Richard.Schevis@miamidade.gov; Michelle.RojasGarcia@miamidade.gov.

/s/ Rafael O. Rodriguez

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Inc.