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Appellees' Merit Brief confuses the issue at hand, practically ignoring the certified conflict this Court ordered the parties to brief. Finally, on page 14 of the brief, Appellees reach the sole issue before this Court and argue that *Rulli* does not apply to cases denying enforcement of a disputed settlement agreement. This Court should hold that under *Rulli v. Fan Co.*, the trial court is required to conduct an evidentiary hearing when there is factual dispute between the parties as to the existence of a valid settlement agreement. *Rulli v. Fan Co.* (1997), 79 Ohio St.3d 374, 683 N.E.2d 337.

I. PARTIES' BRIEFS ARE TO BE LIMITED TO THE CERTIFIED ISSUE

The Ohio Supreme Court Rules of Practice provide that “[i]n their merit briefs, the parties shall brief only the issues identified in the order of the Supreme Court as issues to be considered on appeal.” S.Ct.Prac.R. IV(3)(B) (emphasis added). Pursuant to this rule, this Court has declined to consider an appellee’s arguments where they do not directly address the certified conflict. See *Dombroski v. Wellpoint, Inc.*, 119 Ohio St.3d 506, 895 N.E.2d 538, 2008-Ohio-4827 at note 2.

The Supreme Court’s order in this case accepting the conflict certified by the 12th District instructed the parties to “brief the issue stated at page 2 of the court of appeals’ entry filed December 14, 2010, as follows:

‘When there is a factual dispute between the parties over the existence of a valid settlement agreement, is the trial court required to conduct an evidentiary hearing regardless of whether it enforces or denies enforcement of the agreement and enters judgment pursuant to the Ohio Supreme Court decision in *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 1997-Ohio-380?’”

Appellees have ignored this Court’s limitation on briefing, and used over half of their argument to focus on issues wholly outside the certified conflict. (See Appellees’ Merit Brief at 7-13) Instead of focusing on the issue identified by this Court, Appellees argue this is a

“fabricated conflict” and spend three pages maintaining that a written contract was required for settlement. Not until page 14 of their 20 page brief do Appellees finally address the lone issue before this Court: whether a trial court is required to conduct an evidentiary hearing regardless of whether it enforces or denies enforcement of an agreement. Accordingly, this Court should not consider Appellees’ arguments except for those properly addressing the certified conflict in Appellees’ Proposition of Law No.2.

Appellees also appear to argue that Appellants should have filed a Motion to Enforce a Settlement instead of filing the independent breach of contract action at the base of this appeal. Despite being outside of the certified issue, Appellees are plainly wrong. If a settlement is “extrajudicial in the sense that the trial judge is advised that the parties have agreed to a settlement, but he is not advised of the terms of the agreement, then the settlement can be enforced only if the parties are found to have entered into a binding contract.” *Bolen v. Young* (1982), 8 Ohio App. 3d 36, 455 N.E.2d 1316. Relief is available through the “filing of an independent action sounding in breach of contract, or it may be sought in the same action.” *Id.* (emphasis added).

II. APPLICABILITY OF RULLI

When Appellees’ Merit Brief finally reaches the lone issue before this Court, it focuses on the case law referencing enforcement of settlement agreements and ignores this Court’s neutral language in an attempt to argue that *Rulli*’s evidentiary hearing requirement does not apply in cases where a court denies enforcement of an agreement.

A. *Rulli* Reasoning Applies in Both Enforcement and Denial of Enforcement Cases

In its *Rulli* syllabus, this Court stated: “Where the meaning of terms of a settlement is disputed, or when there is a dispute that contests the existence of a settlement agreement, a trial

court must conduct an evidentiary hearing prior to judgment.” 79 Ohio St.3d 374, at syllabus.

The syllabus does not state that the court must hold an evidentiary hearing prior to enforcing a settlement agreement, but instead states in neutral language that the trial court must do so prior to judgment. Id. at syllabus.

The Twelfth District’s ruling below erroneously construes *Rulli*’s requirement of evidentiary hearings as applicable only when a trial court chooses to enforce an at-issue settlement agreement. Appellees and the Twelfth District point to language in the case law requiring evidentiary hearings before enforcement of settlement agreements to argue that *Rulli* does not apply to cases where a trial court denies enforcement. That language is simply the natural result of the facts of those cases, and does not limit the logic of the Court’s holding. Courts requiring evidentiary hearings pursuant to *Rulli*, including this Court, continue to couch that requirement in neutral language such as “prior to entering judgment” and “before reducing the matter to judgment.” *Rulli* at 377. The language used by this Court in its holding and syllabus in *Rulli* is neutral as to enforcement or non-enforcement, and should now be held as to require evidentiary hearings before judgment as recognized by both the Sixth and Tenth districts. See *Michelle M.S. v. Eduardo H.T.*, 6th Dist. No. E-05-053, 2006-Ohio-2119; *Moore v. Johnson* (Dec. 11, 1997), 10th Dist. No. 96APE11-1579, unreported.

B. A Rulli Evidentiary Hearing Was Required In This Case

Appellees point to this Court’s reasoning in *Rulli* “that the law disfavors enforcement of contracts laden with ambiguity” and those including “indefinite, vague or unascertainable” terms. (Appellees’ Brief at 16) Their brief provides a plethora of case law in support of this proposition that courts should not make contracts where they cannot determine the terms of an agreement. Appellants do not take issue with that proposition; however, Appellees provide

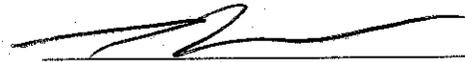
neither an indication of what terms are indefinite, vague or unascertainable nor can they point to any portion of the agreement "laden with ambiguity."

Appellees' omission is obviously because no such ambiguity exists in this case. The material terms were clear: (1) both sides "walk away" from the litigation (and they did); (2) a six month non-compete would commence immediately; and (3) both companies would not initiate new bids with the respective companies, meaning they would not submit anything in furtherance of any bid with those companies. Appellees argue these terms were indefinite and unascertainable by the court, but the record clearly reflects the agreement was made with more than sufficient particularity. In fact, mutual assent to these material terms is evident from Appellees' own words "We accept your offer...on the following terms and conditions." (See Appellant's Merit Brief at 1) (emphasis added).

CONCLUSION

Accordingly, Appellant Artisan asks this Court to resolve the conflict between the lower appellate districts and rule that under *Rulli*, trial courts are required to conduct an evidentiary hearing before entering a judgment enforcing or declining to enforce a disputed settlement agreement.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this 17th day of June, 2011, I served the foregoing Reply Brief of Appellant Artisan Mechanical, Inc. on the following via regular U.S. Mail:

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