ORIGINAL

SUPREME COURT OF FLORIDA

RELIANCE INSURANCE COMPANY, ET AL,

Petitioners,

vs.

SKILLED SERVICES CORPORATION,

Respondent

CASE NO. SCOO-61
Lower Tribunal No. 4D99-0020

RESPONDENT, SKILLED SERVICES CORPORATION'S,

BRIEF ON JURISDICTION

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STATEMENT OF THE CASE

On December 8, 1999, the Florida Fourth District Court of Appeal issued its decision in *Skilled Services Corporation v. Reliance Insurance Company and Sterling Contractors, Inc.*, 1999 WL 115298 (Fla. 4th DCA). The district court reversed the entry of a final summary judgment entered in favor of the Petitioners, ruling that the trial court erred in failing to rule upon a Motion For Leave To Amend Complaint that was filed by the Respondent before the entry of the executed Final Summary Judgment. The Petitioners served their Notice To Invoke Discretionary Jurisdiction on December 22, 1999. On February 10, 2000, the Petitioners served the Appellees, Reliance Insurance Company and Sterling Contractors, Inc. Jurisdictional Brief in which they contend that the Fourth District Court's opinion expressly and directly conflicts with this Court on the same question of law.

SUMMARY OF THE ARGUMENT

The Supreme Court should not accept jurisdiction because the Fourth District Court of Appeal's decision does not expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.

ARGUMENT

Fla. R. App.P. 9.030(a)(2)(A)(iv) states that the discretionary jurisdiction of this Court may be sought to review decisions of districts courts of appeal that ". . .expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law". The Petitioner claims that the Fourth District Court of Appeals' decision in *Skilled Services Corporation v. Reliance Insurance Company,* 1999 WI, 115298 (Fla. 4th DCA) is in conflict with this Court on the same question of law, but no express and direct conflict is specified in the Petitioner's Jurisdictional Brief.

It is fundamental that the "conflict" that can serve as the basis for this Court's acceptance of jurisdiction

> ". . .must be express and direct, i.e., it must appear within the four corners of the majority decision."

Reaves v. State, 485 So.2d 829 (Fla. *1986); Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc., 498* So.2d 888 (Fla. 1986). The Petitioner alleges that the Fourth District's opinion conflicts with this Court's decisions in *Lipe v. City of Miami,* 141 So.2d 738 (Fla. 1962) and *McGurn* v. *Scott,* 596 So.2d 1042 (Fla. 1992), but a review of those cases reveals that neither decision concerns the same question of law upon which the Fourth District based its ruling. In *Lipe* this Court was called upon to determine the

constitutionality of an act purporting to add positions to the unclassified civil service of the City of Miami. In *McGurn the* issue before this Court was whether a trial court may issue a final appealable order while reserving jurisdiction to award prejudgment interest. Neither *Lipe* nor *McGurn* concerns a party's right to file an amended complaint prior to the entry of an executed final summary judgment, the question of law determined by the Fourth District. Clearly, there can be no "express and direct conflict on the same question of law" appearing within the four corners of the Fourth District's decision when that question of law was not addressed at all in the cases relied upon for the purported conflict.

The Petitioner's effort to create a basis for conflict jurisdiction by referring to matters that do not appear in the Fourth District's decision, i.e., an alleged violation of "Local Rule 7" and the lack of evidence on the record that the Trial Court was aware of the Motion to Amend, are inappropriate and legally insufficient to create a basis for discretionary review. As this Court observed in *Reaves,* supra., the Court is not permitted to base conflict jurisdiction on a review of the record. Since the only facts relevant to the Court's decision to accept or reject petitions for discretionary conflict review are the facts contained within the decision allegedly in conflict, ".. . it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below,. .". *Reaves* at 830. Moreover, the Petitioners' attempt to inject the question of an appellate

court's inability to address an issue not ruled upon by a trial court - a question that is not addressed at all in the Fourth District's opinion - is an ineffectual effort to rely upon the concepts of "inherent" or so called "implied conflict" that this Court has stated may no longer serve as a basis for this Court's jurisdiction. *Department of Health and Rehabilitative Services,* supra.

The Petitioners have failed to demonstrate that the Fourth District's opinion is in express and direct conflict with the decision of another district court or of this Court on the same question of law. Accordingly, there is no basis for this Court to exercise the discretionary conflict jurisdiction set forth *in Fla. R.App. P.* 9.030(a)(2)(A)(iv).

CONCLUSION

This Court should not accept jurisdiction to review the decision of the Fourth District Court of Appeal.

CERTIFICATE OF SIZE AND STYLE OF TYPE

I HEREBY CERTIFY that the foregoing Brief On Jurisdiction was typed in 14 point proportionately spaced Times New Roman font.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Bruce E. Loren, Esquire, 301 Clematis Street, Suite 3000, West Palm Beach, Florida, 33401, and Thomas R. Shahady, Esquire, and John J. Shahady, Esquire, Houston & Shahady, P.A., 3 16 Northeast Fourth Street, Ft. Lauderdale, Florida, 33301, this 29 day of February, 2000.

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