

IN THE SUPREME COURT OF FLORIDA

SILVER BEACH INVESTMENTS
OF DESTIN, L.C. and THE CLUB
AT SILVER SHELLS, INC.,

Case No.: SC17-470
L.T. Case No. 1D16-4555

Petitioners,

v.

SILVER BEACH TOWERS
PROPERTY OWNERS
ASSOCIATION, INC., SILVER
BEACH TOWERS EAST
CONDOMINIUM ASSOCIATION,
INC. and SILVER BEACH TOWERS
WEST CONDOMINIUM
ASSOCIATION, INC.,

Respondents.

RESPONDENTS' JURISDICTIONAL BRIEF

On Discretionary Review from the District Court of Appeal, First District

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STATEMENT OF THE CASE AND FACTS

The Petitioners, Silver Beach Investments of Destin, L.C., and The Club at Silver Shells, Inc., seek to invoke this Court's discretionary jurisdiction on the basis of conflict in district court precedent, as certified by the First District Court of Appeal in its interlocutory February 21, 2017 Opinion (the "Opinion"). The alleged certified conflict issue arises out of the Opinion affirming the trial court's order staying execution on the underlying final judgment against Respondents pending appeal, conditioned upon Respondents posting a bond in an amount within the trial court's discretion, less than the amount calculated under rule 9.310(b)(1).

The underlying litigation arises out of Petitioners' complaint seeking unpaid membership dues, and other equitable relief, in the Petitioner Club, before and after Respondent Silver Beach Towers Property Owners Association, Inc. amended its Master Declaration of Condominium to eliminate unit owners' mandatory membership in the Club. Respondents appealed this final judgment entered in Petitioners' favor to the First District. Respondents' appeal to the First District is ongoing. On March 27, 2017, Petitioners filed their Answer Brief.

Citing Florida Rule of Appellate Procedure 9.310(a), Respondents filed a motion with the trial court to stay execution on the judgment pending appeal, and the trial court granted the motion, conditioned upon the Respondents posting a \$175,000 bond and agreeing not to encumber any assets. (Opinion, at 2).

Petitioners then filed a Motion for Review pursuant to rule 9.310(f) to the First District, arguing only that the mechanism supplied by rule 9.310(b)(1), requiring a bond in the full amount of the judgment plus two years' interest, "is the **sole** method of obtaining a stay of a money judgment." (Opinion, at 2) (emphasis added). Petitioners' Motion for Review did not challenge the sufficiency of the monetary condition imposed by the trial court to stay execution pursuant to rule 9.310(a). (Opinion, at 3 n.*).¹

The First District denied Petitioners' Motion for Review, concluding that rule 9.310(b)(1) "is not the only avenue for obtaining a stay of a money judgment. A trial court has the authority, upon the motion of a party pursuant to rule 9.310(a), to enter a stay upon conditions other than a bond, so long as the conditions are adequate to ensure payment." (Opinion, at 3). In reaching this conclusion, the First District agreed with *Platt v. Russek*, 921 So. 2d 5, 7-8 (Fla. 2d DCA 2004). Further, the First District reasoned that the phrase "[e]xcept as provided by general law and in subdivision (b) of this rule' at the beginning of rule 9.310(a) does not alter the analysis. This phrase simply carves out the alternative procedure

¹ Petitioners state "[u]ltimately, the First District held that it was a proper exercise of judicial discretion to allow the respondents in this case to post a \$175,000 bond" (Pet. Jur. Br., at 3). This statement is untrue because Petitioners did not challenge the factual sufficiency of the stay's conditions, so the First District expressly declined to reach this issue. (Opinion, at 3 n.*).

created in rule 9.310(b)(1).” (Opinion, at 5). The First District, however, stated there is “a split of authority among the District Courts of Appeal of this state on the question of whether rule 9.310(b)(1) is the only method of obtaining a stay of a judgment solely for the payment of money,” and certified conflict with *Mellon United Financial Bank v. Cochran*, 776 So. 2d 964 (Fla. 3d DCA 2000).

Petitioners did not seek Rehearing but, instead, filed a Petition for Writ of Mandamus in this Court, which was denied because Petitioners could not show “a clear and certain legal right to the relief requested.” *Silver Beach Invs. of Destin, LC v. Silver Beach Towers Prop. Owners Ass’n*, 2017 Fla. LEXIS 559 (Fla. Mar. 14, 2017). Petitioners then filed a Notice to Invoke Discretionary Jurisdiction.

SUMMARY OF THE ARGUMENT

There is no *genuine* conflict as to the interpretation of rule 9.310(a) and (b)(1) because reading the rule’s plain language alongside Florida Rule of Civil Procedure 1.550(b), and section 45.045(2), Florida Statutes, reveals a trial court’s clear discretion to stay execution on money judgments by imposing conditions other than a full bond. The conflict certified by the First District is illusory in that the conflict case, *Mellon*, is procedurally distinguishable, derived from authorities that do not stand for the proposition Petitioners rely on it for, and predates rule 9.310(a) and (b)(1) and section 45.045(2). As a result, any perceived conflict will be remedied upon further consideration of this issue in the Third District. This is

best exemplified by the Third District's opinion in *BDO Seidman*, which has already construed a different subsection of section 45.045, concluding that the Legislature may enter this area of law and control stay considerations. Furthermore, as the First District recognized, cases such as *Taplin v. Salamone*, 422 So. 2d 92 (Fla. 4th DCA 1982), and *Proprietors Ins. Co. v. Valsecchi*, 385 So. 2d 749 (Fla. 3d DCA 1980), are inapposite to the trial court's retention of discretion when a party files a rule 9.310(a) motion; the holding in those cases applies only *when* a party opts to utilize the automatic stay provision in rule 9.310(b)(1) in lieu of moving for stay, but that procedure does not prohibit a party from requesting a stay on alternate grounds.

This case is a poor vehicle to resolve the alleged conflict for other reasons too. As Petitioners admitted in their unsuccessful Petition for Writ of Mandamus, it is nearly certain that resolution of the alleged conflict now cannot have an effect on the actual parties to this case. Presently, only Respondents' Reply Brief remains due with the First District, which can be reasonably expected to render a decision in the underlying appeal in mid-to-late 2017. The decision of the First District will solidify the parties' obligations with respect to the final judgment, making the trial court's conditional stay moot. By the time this Court issues an Opinion, the resolution of the conflict will be of no interest to these parties and the Court's decision would be advisory-only. This process would require significant labor and

expenditure of resources that will not have a meaningful impact on disposition of the underlying proceedings. Thus, the instant case presents a completely inopportune vehicle for resolution of the alleged conflict.

ARGUMENT

I. CONFLICT AS TO THE CORRECT INTERPRETATION OF RULE 9.310(a) and (b)(1) IS SUPERFICIAL AND ANY ALLEGED PRE-EXISTING CONFLICT IS HARMONIZED BY SECTION 45.045(2)

Any perceived conflict between the Opinion and *Mellon* regarding the proper interpretation of rule 9.310(a) and (b)(1) is illusory. A plain reading of this rule demonstrates that subsection (b)(1) is simply an automatic stay provision incorporated to remove bond issues from the trial court’s discretion where a litigant chooses to use it—but that, where a stay is affirmatively sought, rule 9.310(a) permits the trial court “to increase or decrease the bond or deal with other conditions of the stay.” Rule 9.310 (1977 Committee Notes). This Court’s decision in *In re Amendments to the Florida Rules of Appellate Procedure*, 183 So. 3d 245, 248 (Fla. 2014), confirmed the correctness of the Opinion below by rejecting amendments to the rule that would have altered its current plain meaning. The Opinion too, is consistent with Florida Rule of Civil Procedure 1.550(b), which provides, “[t]he court before which an execution or other process based on a final

judgment is returnable may stay such execution or other process and suspend proceedings thereon for good cause on motion and notice to all adverse parties.”

Authorities to the purported contrary in the Third or Fourth Districts are procedurally distinguishable. Specifically, *Mellon* does not present a conflict with the Opinion because the defendant in *Mellon* did not appeal or file a motion to stay; the trial court, unlike here, merely *sua sponte* stayed execution. Further, the quote from *Mellon*, “[i]f a defendant seeks to stay execution of judgment pending the appeal, ‘he may obtain a stay ‘only by the posting of the bond in the amount set forth in Rule 9.310(b),’” can be traced back to *Jenkins Trucking, Inc. v. Emmons*, 207 So. 2d 280 (Fla. 3d DCA 1968). In fact, *Jenkins* (which predates rule 9.310(a) and (b)(1)) is actually consistent with the Opinion’s application of rule 9.310(a) in this case, only holding that a trial court could not stay execution on a judgment for 110 days with nothing posted by the judgment debtor. *Id.* at 281 (“[T]he judgment was subject to execution unless and until bond was filed *in the amount and on the conditions which the court had fixed therefor.*” (emphasis added)).

Even if this Court perceives isolated excerpts of case law from the Third District as in conflict with the Opinion, any conflict in the law is superficial as *Mellon* predates the enactment of section 45.045(2), Florida Statutes (2006) (not cited by Petitioners). This statute resolves any alleged conflict in favor of the First District’s interpretation of rule 9.310(a) and (b)(1). In fact, the Third District has

even held that a separate subsection of section 45.045, a “general law,” modifies rule 9.310 in another respect. *BDO Seidman, LLP v. Banco Espirito Santo Int’l*, 998 So. 2d 1, 2-3 (Fla. 3d DCA 2008) (“[T]he legislature . . . holds the power to limit the amount required to secure a payment stay.”).

This statute provides:

In any civil action brought under any legal theory, a party seeking a stay of execution of a judgment pending review of any amount may move the court to reduce the amount of a supersedeas bond required to obtain such a stay. The court, in the interest of justice and for good cause shown, may reduce the supersedeas bond or may set other conditions for the stay with or without a bond.

§ 45.045(2), Fla. Stat. (2006). This statute is in accord with the plain reading of rule 9.310(a) and (b)(1), and rule 1.550(b).

Florida law is replete with examples of decisional law becoming moot, ineffective, or irrelevant by the passage of a statute that changes or clarifies the law. *See generally Flores v. Bieluch*, 814 So. 2d 448 (Fla. 4th DCA 2001); *Nozza v. State*, 288 So. 2d 560, 563 (Fla. 3d DCA 1974); *Bleidt v. Lobato*, 664 So. 2d 1074 (Fla. 5th DCA 1995). The conflict case, *Mellon*, predates the passage of section 45.045(2) in 2006. As the Legislature has “resolved” any potential or perceived conflict, Respondents again submit that the conflict certified by the First District is merely superficial and, to the extent that it is in conflict, the law in the Third District will ultimately conform to the First District’s Opinion when section

45.045(2) is brought to its attention in the context of a proper case or controversy—just like when section 45.045(1) was brought to its attention in *BDO*.

II. THIS CASE DOES NOT PRESENT A LOGICAL VEHICLE TO RESOLVE THE ALLEGED CONFLICT

Even if this Court “agrees” with the First District’s certification of the presence of a conflict in Florida law notwithstanding the foregoing, the instant case presents a highly inopportune and ill-timed vehicle for resolving it. The First District will have resolved Respondents’ appeal significantly in advance of this Court’s issuance of a possible opinion resolving the merits of the alleged conflict. As it relates to these parties, given the need for merits briefing, oral argument, and the time for the Court to prepare an opinion, this Court’s opinion would be merely advisory. This Court does not render advisory opinions except to the Governor. *See Interlachen Lakes Estates, Inc. v. Brooks*, 341 So. 2d 993, 995 (Fla. 1976); *see also Montgomery v. Dep’t of Health & Rehab. Servs.*, 468 So. 2d 1014, 1016-17 (Fla. 1st DCA 1985) (“It is the function of a judicial tribunal to decide actual controversies by a judgment which can be carried into effect, and not to . . . declare principles or rules of law which cannot effect the matter in issue.”). If jurisdiction were granted, the process leading to an opinion would require significant expenditures of labor by counsel, and resources by the parties to this dispute, in support of purely academic goals of no relevance to each by the relevant time.

At the time this Response Brief on Jurisdiction is filed, only Respondents' Reply Brief remains due. Even if the First District holds oral argument, Respondents reasonably expect a decision in their appeal by mid-to-late 2017. The decision of the First District will solidify the interests of the parties with respect to the final judgment at issue. Should this Court grant discretionary review, by the time of the First District's Opinion, the parties would likely still be within the early stages of merits briefing in this Court on the then-moot and irrelevant issue of whether the trial court should not have granted Respondents a stay of execution conditioned on a \$175,000.00 bond. Indeed, Petitioners made these points throughout their Petition for Writ of Mandamus, submitting that the Court's discretionary review procedures for certified conflict were inadequate and "meaningless." (Pet. for Writ of Mand., No. SC17-344 (Fla. Mar. 1, 2017)). As such, Petitioners' assertion that "this case presents the perfect vehicle for this Court to clarify the meaning of the rule" rings hollow as inconsistent and inaccurate. (Pet. Jur. Br., at 5). By the time it issues, the decision of the Court will not be able to afford a benefit to either party. The Court should not render an advisory opinion on a moot question.

Comparison of Petitioners' condemnation of the Court's discretionary review procedures in their Petition for Writ of Mandamus to their present request for the Court to exercise jurisdiction reveals that Petitioners' reason for filing the

Notice is to elongate appellate proceedings and force further expenditures of resources. Even if real conflict is present (and it is not for the reasons stated above), a better vehicle for the Court to resolve it is certain to arise in the short-term. For example, parties in a different case may agree to stay underlying appellate proceedings so that the Court can resolve the perceived conflict *and* allow that resolution to have a real meaningful impact on the actual parties. Alternatively, a better case would involve a shorter period of time between an appellant's notice of appeal and the district court's resolution of the adversely affected party's motion for review. Lastly, this case is a poor vehicle to resolve any perceived or alleged conflict because Respondents submit that the final judgment at issue is *not* one solely for the payment of money, a contention that the Opinion did not reach. The final judgment discussed grants of relief on counts for injunctive relief and specific performance. If the final judgment is *not* solely for payment of money, this case could not legally serve as a vehicle to resolve the alleged conflict.

CONCLUSION

Respondents respectfully request this Court to decline to exercise its discretion to review the Opinion.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and accurate copy of the foregoing was served via Electronic Mail via filing with the Florida Courts e-Filing Portal this 11th day of April, 2017 on: **Philip J. Padovano, Esq.** and **Joseph T. Eagleton, Esq.**, Brannock & Humphries, 131 N. Gadsden Street, Tallahassee, FL 32301, (ppadovano@bhappeals.com; jeagleton@bhappeals.com; eservice@bhappeals.com; **Bruce P. Anderson, Esq.**, Bruce P. Anderson Law, 4954 Grand Blvd., Suite 206, Destin, FL 32550 (bruce@brucepandersonlaw.com), *Attorneys for Petitioners.* **Philip M. Burlington, Esq.** and **Adam Richardson, Esq.**, Burlington & Rockenbach, P.A., Courthouse Commons, Suite 650, 444 West Railroad Avenue, West Palm Beach, FL 33401 (pmb@FLAppellateLaw.com; ajr@FLAppellateLaw.com and kbt@FLAppellateLaw.com), *Attorneys for Potential Amicus Curiae.*

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.210(a), Fla. R. App. P., undersigned counsel hereby certifies that this brief is submitted in Times New Roman 14-point font.

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