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IN THE SUPREME COURT OF FLORIDA

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

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.

Case No. SC17-470

L.T. Case Nos. 1D16-4555
2012-CA-002019

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONERS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The certified conflict issue presented by this case involves the inconsistent interpretation and application of an important and oft-invoked rule of appellate procedure.[1] That rule—Florida Rule of Appellate Procedure 9.310, which governs stays pending appeal—provides in subdivision (a) that a trial court enjoys broad discretion to stay an order during appellate review "except as provided . . . in subdivision (b) of this rule." Fla. R. App. P. 9.310(a); (A.5). A stay entered based on a motion filed under subdivision (a) "may be conditioned on the posting of a good and sufficient bond, other conditions, or both." Fla. R. App. P. 9.310(a); (A.3).

Subdivision (b) of the rule then sets forth the "[e]xceptions" to the trial court's discretion conferred by subdivision (a). Fla. R. App. P. 9.310(b); (A.5). In pertinent part, Rule 9.310(b)(1) states: "If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of

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[1] Citations to the underlying opinion of the First District Court of Appeal will be to the appendix accompanying this jurisdictional brief. However, the opinion can also be located using the following Westlaw citation: *Silver Beach Towers Prop. Owners Assoc. v. Silver Beach Invs. of Destin, LC*, No. 1D16-4555, 2017 WL 672138 (Fla. 1st DCA Feb. 21, 2017).

interest on judgments on the total amount on which the party has an obligation to pay interest." Fla. R. App. P. 9.310(b)(1); (A.2).

The interplay between subdivisions (a) and (b) is the focus of the certified conflict here. (A.2-3). Specifically, the petitioners obtained a judgment in the principal amount of $1,827,372.18, plus prejudgment interest in the amount of $292,497.34, on their claims against the respondents for breach of contract and account stated. (A.2). The respondents appealed to the First District and then moved, under subdivision (a) of rule 9.310, for a stay of the judgment pending the appeal. (A.2). The petitioners opposed the motion to stay, arguing that the automatic bond procedure set forth under subdivision (b)(1) is the exclusive method for obtaining a stay of a money judgment, but the trial court rejected this argument, granted the respondents' motion, and entered a stay of the $2.1 million judgment conditioned on the posting of a $175,000 bond. (A.2).

The petitioners then filed a motion for review of the stay order in the First District. (A.2). They argued that the "sole method of obtaining a stay of a money judgment" is to post a bond under the fixed formula in rule 9.310(b)(1), and that the trial court therefore lacked discretion to depart from the mandatory requirements of the rule. (A.2). The First District noted "a split 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." (A.3).

Stating that it had "not yet weighed in on the issue," the First District rejected the petitioners' argument and held, contrary to the Third and Fourth District Courts of Appeal, "that rule 9.310(b)(1) is not the only avenue for obtaining a stay of a money judgment." (A.3). The First District reasoned that the automatic bond procedure in rule 9.310(b)(1) is merely one option that is available to a party seeking a stay of a money judgment, rather than the exclusive means for obtaining a stay, because subdivision (b)(1) "does not . . . eliminate the ability of a party to obtain a stay under rule 9.310(a) if it so chooses." (A.2). The First District explained that 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," distinguishing numerous cases cited by the petitioners "as standing not for the proposition that the only means of staying a money judgment is to utilize the automatic stay procedure of rule 9.310(b)(1), but rather that *when* a party opts to utilize this automatic stay provision, the trial court has no authority to alter the bond amount required by the rule." (A.3-4).

Ultimately, 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 to secure a money judgment in the amount of $2,119,869.52. (A.2, 5). The First District then

certified that its decision conflicts with *Mellon United National Bank v. Cochran*, 776 So. 2d 964 (Fla. 3d DCA 2000), one of the many Florida cases holding that the exclusive method of obtaining a stay of a money judgment is to comply with the bond procedure in rule 9.310(b)(1). (A.5).

The week after the First District issued its opinion, the petitioners sought mandamus relief in this Court, contending that the First District improperly swept aside almost forty years of precedent construing the automatic bond procedure in rule 9.310(b)(1) as nondiscretionary and asserting that, given the time constraints inherent in seeking review of a stay order, mandamus was uniquely suited to address the First District's error. *See* Pet. for Writ of Mandamus, *Silver Beach Invs. of Destin, LC v. Silver Beach Towers Prop. Owners Assoc.*, No. SC17-344 (Fla. Mar. 1, 2017). This Court denied the mandamus petition on March 14, 2017, concluding that mandamus was not an available remedy because, presumably in light of the conflict in the law, the petitioners could not "show a clear and certain legal right to the relief requested." *See Silver Beach Invs. of Destin, LC v. Silver Beach Towers Prop. Owners Assoc.*, No. SC17-344 (Fla. Sup. Ct. order filed Mar. 14, 2017). The petitioners then timely invoked this Court's discretionary jurisdiction based on the certified conflict. *See* Notice to Invoke Discretionary Juris., *Silver Beach Invs. of Destin, LC v. Silver Beach Towers Prop. Owners Assoc.*, No. SC17-470 (Fla. Mar. 17, 2017).

SUMMARY OF THE ARGUMENT

This Court should grant jurisdiction to resolve the decisional conflict amongst the district courts of appeal regarding the proper interpretation of the automatic bond procedure in Florida Rule of Appellate Procedure 9.310. This is an important conflict to resolve because it is currently creating confusion for trial courts and resulting in disparate treatment for similarly situated litigants around the state depending on which jurisdiction they are in. For example, trial courts in the Third and Fourth District Courts of Appeal lack any discretion to deviate from the fixed formula in rule 9.310(b)(1) when a litigant seeks to stay a judgment solely for the payment of money. To the contrary, trial courts in the First and Second District Courts of Appeal are ostensibly empowered to grant a stay pending appeal based on any conditions they choose (or no conditions at all), even if the judgment is solely for the payment of money. Trial courts in the Fifth District are left to wonder which of these interpretations is the correct one. Given the certification of interdistrict conflict, this case presents the perfect vehicle for this Court to clarify the meaning of the rule and to ensure consistent treatment of litigants throughout the state.

ARGUMENT

I. This Court has discretionary jurisdiction under article V, section 3(b)(4), of the Florida Constitution based on the First District Court of Appeal's certification of direct conflict with a decision of the Third District Court of Appeal.

The constitutional basis for this Court to exercise its jurisdiction in this case is straightforward. Article V, section 3(b)(4), of the Florida Constitution provides in material part that the Supreme Court "[m]ay review any decision of a district court of appeal . . . that is certified by it to be in direct conflict with a decision of another district court of appeal."

Here, the First District certified that its decision is in direct conflict with *Mellon United National Bank v. Cochran*, 776 So. 2d 964 (Fla. 3d DCA 2000). (A.5). Therefore, under article V, section 3(b)(4), this Court has discretionary jurisdiction to review the First District's decision. The existence of this conflict is made clear by the First District's own opinion—which explicitly noted "a split 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" (A.3)—and by an examination of cases from the Third and Fourth Districts. *See, e.g.*, *Tettamanti v. Opcion Sociedad Anonima*, 201 So. 3d 3, 4 (Fla. 3d DCA 2009); *Caruso v. Caruso*, 932 So. 2d 457, 458 (Fla. 4th DCA 2006); *Taplin v. Salamone*, 422 So. 2d 92, 93 (Fla. 4th DCA 1982); *Proprietors Ins. Co. v. Valsecchi*, 385 So. 2d 749, 751 (Fla. 3d DCA 1980).

II. This Court should exercise its discretion to decide this important issue, which is having a disparate impact on similarly situated litigants across the state.

The decisional conflict created by the First District's opinion is one that will have a widespread effect throughout the state. Rule 9.310(b)(1) is a universal rule that comes into play in every appeal from a money judgment in Florida. Because the rule involves execution on judgments and the conditions necessary for staving off execution during an appeal, the interpretation of the rule has practical impact on businesses, plaintiffs, and lawyers who must advise their clients about the real-world ramifications of seeking appellate review. The fixed formula in the rule cannot be mandatory in some parts of the state and discretionary in others. Yet that is the situation at present.

Numerous opinions by the Third and Fourth Districts have held that the rule is mandatory. *See, e.g., PS Capital, LLC v. Palm Springs Town Homes, LLC*, 9 So. 3d 643, 646 (Fla. 3d DCA 2009); *Caruso*, 932 So. 2d at 458; *Cochran*, 776 So. 2d at 964; *Campbell v. Jones*, 648 So. 2d 208, 209 (Fla. 3d DCA 1994); *Taplin*, 422 So. 2d at 93; *Palm Beach Heights Dev. & Sales Corp. v. Decillis*, 385 So. 2d 1170, 1171 (Fla. 3d DCA 1980); *Valsecchi*, 385 So. 2d at 751. A trial judge in these districts thus has no discretion to depart from the fixed formula in the rule.

In contrast, there are two cases in the Second District, *see Platt v. Russek*, 921 So. 2d 5, 7 (Fla. 2d DCA 2004), and *Waller v. DSA Grp., Inc.*, 606 So. 2d

1234, 1235 (Fla. 2d DCA 1992), and now one in the First, stating that a trial judge does have discretion to set a bond in an amount lower than that set by the formula in the rule. The impact of this conflict is best illustrated by the outcome of this case.

Because this case originated in the First District, the respondents were allowed to obtain a stay of a $2.1 million judgment by posting a bond in the amount of $175,000. But if the case had instead been tried in the Third or the Fourth District, the respondents would have been required to post a bond in the amount of $2.1 million plus twice the statutory rate of interest on judgments, no questions asked. This is quite a disparity in the way the court system is treating litigants in identical circumstances.

Of course, this is a pattern that will repeat itself again and again. There will certainly be many other plaintiffs who will obtain money judgments in Florida courts and many defendants who will want to appeal those judgments. Those defendants who are appealing to the First and Second Districts will have the benefit of a flexible rule that allows the trial court to grant a stay on the posting of a bond in an amount that is far less than the amount of the judgment. And those who are appealing in the Third and Fourth Districts will be required to comply with a fixed rule that is designed to treat every litigant exactly the same way by requiring a bond in the amount of the judgment plus two years' interest at the

statutory rate. It is an understatement to say that this inconsistent treatment of litigants is not the way the law should work—and precisely the type of issue this Court should resolve.

CONCLUSION

For the reasons set forth above, this Court should grant review of the First District's decision; dispense with oral argument; and, considering the time sensitivity of issues involving stays pending appeal, expedite the disposition of this case.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by email to Daniel Schwarz (daniel.schwarz@csklegal.com; maria.montenegro@csklegal.com; charo.fagundez@csklegal.com), Cole, Scott & Kissane, P.A., 600 N. Pine Island Road, Suite 500, Plantation, Florida 33324; and Ron M. Campbell (ron.campbell@csklegal.com) and Audrey Fisher (audrey.fisher@csklegal.com; angela.hernandez@csklegal.com), Cole, Scott & Kissane, P.A., 27300 Riverview Center Boulevard, Suite 200, Bonita Springs, Florida 34134, on this 22nd day of March 2017.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

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