IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC21-1255

SAMANTHA ELAINE TSUJI and
CRYSTAL IVY WILLIAMS,

Petitioners,

v. L.T. Case Nos. 1D20-0901
2018-CA-218

H. BART FLEET, AS THE DULY APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS E. MORTON, JR., DECEASED, and THE LEWIS BEAR COMPANY,

Respondents.
_____/

ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JURISDICTIONAL ANSWER BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUES

This Court should decline jurisdiction to review the First District's decision below.

Likewise, this Court should decline to review the supplemental issue of whether a dismissal on a nonclaim statute, statute of limitations, statute of repose or other similar grounds "exonerates" an active tortfeasor such that a passive tortfeasor may be shielded from vicarious liability.

STATEMENT OF THE CASE AND FACTS

A. Facts of the Case

This case arises from a motor vehicle accident. The following facts are undisputed:

- Thomas Morton, Jr. negligently caused a collision with a motor vehicle occupied by Petitioners on June 14, 2014. (R. 132-139, ¶¶ 15, 23, 34, 43; R. 143-145, ¶¶ 15, 23, 34, 43.)
- Mr. Morton was employed by The Lewis Bear Company ("LBC") at the time of the accident. (R. 48.)
- Mr. Morton was driving a motor vehicle in the course and scope of his employment with LBC at the time of the accident. (R. 48-49.)

- The vehicle being driven by Mr. Morton at the time of the accident was owned by LBC and used with LBC's consent. (*Id.*)
- Mr. Morton died on June 28, 2014, less than three weeks after the accident. (R. 26, 28, 63, 64.)

B. Petitioners' Allegations

Both the initial complaint and the amended complaint alleged direct negligence on the part of Mr. Morton. Specifically, Petitioners alleged "Defendant, THOMAS E. MORTON, JR., negligently operated or maintained the motor vehicle so that it collided with Plaintiff's motor vehicle." (R. 11, ¶ 8; R. 13-14, ¶¶ 22-23; ¶¶ R. 131, ¶¶ 10-11; R. 135, ¶¶ 29-30.)

But neither the initial complaint nor the amended complaint alleged any active or direct negligence on the part of LBC in causing the accident. Instead, Petitioners alleged LBC was merely *vicariously* liable under the concepts of respondeat superior and the dangerous instrumentality doctrine. (R. 12, ¶¶ 11-14; R. 13, ¶¶ 17-20; R. 14-15, ¶¶ 26-29; R. 15-16, ¶¶ 33-38; R. 132-133, ¶¶ 16-19; R. 134-135, ¶¶ 24-27; R. 136-137, ¶¶ 35-39; R. 138-139, ¶¶ 43-46.)

C. Trial Court Proceedings

Petitioners commenced their personal injury action against Mr. Morton and LBC on February 6, 2018[1]. (R. 10.) Several months later, on May 24, 2018, Petitioners moved to amend their complaint to, among other things, substitute the Estate of Thomas Morton, Jr. as a party defendant. (R. 107-126.) The trial court granted Petitioners' motion to amend and to substitute the Estate as a party defendant. (R. 127-128.)

LBC filed its motion for summary judgment on March 16, 2018. (R. 48-59.) The trial court heard LBC's motion for summary judgment on November 21, 2019. (R. 228-245.) The trial court granted LBC's motion and entered summary judgment in favor of Respondents on December 12, 2019. (R. 215-217.)

Thereafter, on December 20, 2019, Appellants filed their motion for rehearing. (R. 218-367.) LBC filed its response to the motion for rehearing on February 18, 2020. (R. 368-374.) The trial court denied Petitioners' motion for rehearing on February 21, 2020. (R. 375.)

[1] Three years, seven months after Mr. Morton's death.

D. First District Proceedings

Petitioners filed a notice of appeal to the First District Court of Appeal on March 16, 2020. (R. 376-393.)

In a unanimous opinion rendered on August 4, 2021, the First District affirmed the trial court's summary judgment. (A5-13.) In doing so, the First District analyzed the text of the relevant Florida statutes—namely sections 733.702, 733.710, and 627.4136—in concluding that Petitioners' claims were time-barred.

The First District also accounted for the long-standing rule of law that a plaintiff may not hold a principal liable under a theory of vicarious liability unless the agent is found to be liable. Thus, the First District reasoned, "the trial court was correct in its conclusion that LBC was not vicariously liable for Morton's negligence because the claims against Morton were time-barred." (A12.)

The First District acknowledged its decision conflicted with the Fourth District's opinion in *Pezzi v. Brown*, 697 So. 2d 883 (Fla. 4th DCA 1997). The First District certified conflict with the Fourth District's decision in *Pezzi*. (A13.)

SUMMARY OF ARGUMENT

Respondents do not dispute that the First District's opinion conflicts with *Pezzi*. That said, this Court should decline review under the particular circumstances of the facts of this case.

Should this Court accept this case for review, however, this Court should not (and need not) re-evaluate the long-standing case precedent on the issue of the liability of a principal for the acts of the principal's agent.

ARGUMENT

I. This Court should not accept jurisdiction to review the First District's decision.

Despite conflict between the First District and the Fourth District on the liability of a principal when the statute of repose has passed for a claim against an agent, this Court has discretion to decline to accept jurisdiction. This Court has declined jurisdiction where the dispute is a "narrow issue with very unique facts." *Dade County Property Appraiser v. Lisboa*, 737 So. 2d 1078 (Fla. 1999). Respondents submit that the circumstances at issue constitute a narrow issue with unique facts. This issue and the peculiar facts of this case (notably, Mr. Morton's untimely death shortly after the

accident) mitigate against the need for this Court to review the First District's decision.

Although Petitioners claim that the inter-district conflict "will now arise frequently in litigation" (Pet. Brief at 6), Petitioners provide no basis for such a doomsday scenario.

Likewise, this Court should reject Petitioners' claim that, "Brushing aside 24 years of legislative acquiescence, the court below changed the meaning of the Probate Code—as [sic] least in the First District." Pet. Brief at 9. Petitioners' blanket allegation in this regard is patently incorrect, as the First District carefully considered—but did not "change the meaning of"—the Probate Code in the case below. Notably, the First District specifically considered portions of the Probate Code that the *Pezzi* court did not:

> But in reaching its holding the Fourth District never addressed the limitation on claims expressed in section 733.702(5). And thus the *Pezzi* court did not consider whether an action seeking to hold a decedent's casualty insurer liable up to the policy limits is barred by sections 733.702(5) and 733.710(10) if filed more than two years after the decedent's death.

(A10.) Petitioners' broadside as to the First District's "brushing aside" of settled law rings hollow. The opposite is true: The First

District carefully analyzed and applied the plain language of the Probate Code.

II. If this Court accepts jurisdiction, the scope of review should not include a re-evaluation of the common law concepts of vicarious liability.

Petitioners urge this Court to re-examine the concept that the "exoneration" of an active tortfeasor is dispositive of a passive tortfeasor's liability. Even if this Court accepts jurisdiction, the Court should decline to reconsider long-standing precedent on the liability of a principal for the fault of its agent. There is no compelling legal or policy reason for this Court to engage in such an endeavor.

The essence of Petitioners' claim is that Mr. Morton was not "exonerated" by operation of the Probate Code's nonclaim statute; thus, Petitioners assert they could still pursue a claim against LBC as a merely vicariously liable party. Petitioners' faulty argument in this regard rests on language in the First District's opinion in which it quoted *Buettner v. Cellular One*, 700 So. 2d 48 (Fla. 1st DCA 1997) ("Appellant's vicarious liability action against Appellees is barred by the well-settled doctrine that 'when a principal's liability

rests solely on the doctrine of respondeat superior, a principal cannot be held liable if the agent is exonerated.'" (quoting *Bankers Multiple Line Ins. Co. v. Farish*, 464 So 2d 530, 532 (Fla. 1985))). In the same breath, however, the First District quoted this Court's opinion in *Mallory v. O'Neil*, 69 So. 2d 313, 315 (Fla. 1954): "[I]f the employee is not liable[,] the employer is not liable." Whether one uses the term "exonerated" or "not liable" in reference to the fault of an agent or employee, the result is still the same for the principal or employer: The principal or employer is not responsible for a plaintiff's damages.

And despite Petitioners' arguments to the contrary, this Court's opinion in *JFK Medical Center, Inc. v. Price*, 647 So. 2d 833 (Fla. 1994) did not alter Florida law on the liability of a passive tortfeasor for the fault of an active tortfeasor. This Court's decision in *JFK Medical Center* was quite narrow, and merely held that the voluntary dismissal of an active tortfeasor pursuant to a settlement agreement was not an adjudication on the merits as to the plaintiff's claims against the active tortfeasor. "We agree . . . that a voluntary dismissal of the active tortfeasor, with prejudice, entered by agreement of the parties pursuant to settlement, is not the

equivalent of an adjudication on the merits that will serve as a bar to continued litigation against the passive tortfeasor." *Id.* at 834.

The procedural circumstances in *JFK Medical Center* were markedly different than those in the case at hand. Notably, the dismissal in *JFK Medical Center* was based upon a settlement agreement under which the plaintiff was required to dismiss with prejudice the plaintiff's claims against the active tortfeasor.

In stark contrast, the "dismissal" of the active tortfeasor in this matter was the trial court's entry of summary judgment under the non-claim statutes in Chapter 733. Petitioners assert "the First District's decision and *JFK* cannot be reconciled." (Pet. Brief at 11.) Not so. The mechanisms by which claims against the active tortfeasors in *JFK Medical Center* and in this matter were resolved were wholly different, and *JFK Medical Center* provides no precedential hurdle to the analysis or evaluation of the dispute currently before this Court.

Ultimately, the need for this Court's review of this issue is obviated because the First District's decision below does not conflict with *JFK Medical Center.*

CONCLUSION

This Court should decline jurisdiction to review the First District's decision. Should this Court accept jurisdiction, however, there is no need for this Court to re-examine long-standing case precedent on the issue of vicarious liability of a passive tortfeasor.

* * *

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word count limitation in Rule 9.210, Florida Rules of Appellate Procedure, in that it contains 1,681 words (including words in headings, footnotes, and quotations), according to the word-processing system used to prepare this brief. This document also complies with the line spacing, type size, and typeface requirements of Rule 9.045, Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I CERTIFY that this document has been filed with the Florida Courts E-Filing Portal for electronic distribution to the following counsel of record on October 27, 2021:

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