

**IN THE SUPREME COURT
OF THE STATE OF FLORIDA**

CASE NO. SC22-984
L.T. CASE NOS. 1D19-850; 2016-CA-4539

JAMES SEADLER,

Petitioner,

vs.

MARINA BAY RESORT CONDOMINIUM
ASSOCIATION, INC. D/B/A MARINA BAY
RESORT,

Respondent.

_____ /

RESPONDENT'S ANSWER BRIEF

On Appeal from the First District Court of Appeal of Florida

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INTRODUCTION

This appeal arises from the April 21, 2021 Opinion from the First District Court of Appeal, which appeal arose from the September 28, 2017 verdict and January 31, 2019 Final Judgment in favor of the Petitioner, JAMES SEADLER, in the Circuit Court for Okaloosa County.

For the reasons detailed at length herein as in the absence of a true substantive right to additional peremptory challenges and no historical basis for considering it to be of fundamental importance, the trial court was not compelled to automatically grant a new trial, nor was the First District required to reverse. Rather, the First District properly affirmed the trial court's denial of a new trial as based on a case-specific thorough review, Petitioner's claimed error during jury selection did not result in a miscarriage of justice.

In this Answer Brief, the Petitioner shall be referred to as Mr. Seadler and the Respondent, MARINA BAY RESORT CONDOMINIUM ASSOCIATION, INC. D/B/A MARINA BAY RESORT, shall be referred to as Marina Bay. References to the Initial Brief will be designated "I.B. at [page number]." References to the record from the trial court shall be designated, "(TC R. [page number])"; references to the First

District Court of Appeal's record shall be designated, "(DCA R. [page number])"; and references to the Supplemental Record on Appeal shall be designated, "(SUPP R. [page number])."

STATEMENT OF THE CASE AND FACTS

The Underlying Action

Petitioner, James Seadler, brought the underlying premises liability action to recover damages for an injury he sustained in April 2015 in Marina Bay Resort in Fort Walton Beach, Florida when his pool chair allegedly broke. (TC R. 20-23). According to Mr. Seadler, as he sat down in a deck chair, the back broke from behind and caused him to fall to the ground, resulting in an aggravation of prior neck and back injuries. *Id.*

In December 2016, Mr. Seadler filed the underlying action for negligence against Marina Bay in the Circuit Court for Okaloosa County. *Id.* In its Answer, Marina Bay denied all the substantive allegations against it. (TC R. 26-29). Marina Bay affirmatively alleged that the accident was the result, in whole or in part, of Mr. Seadler's own negligence and that the condition of the chair was neither open and obvious nor did they have any prior notice. *Id.* Discovery was ongoing throughout the course of the proceedings.

The Trial

The case was tried before a jury from September 25, 2017 through September 28, 2017. *See, e.g.*, SUPP R. 1277–1471; 1473–1532. The trial court employed a common methodology for jury selection, which the First District later detailed at length. (DCA R. 140-152). The parties were to select six jurors and two alternates from a venire, but the trial court had the parties address ten randomly selected venirepersons at a time. *Id.* The first six randomly selected from the venire would be put “in the box” as a panel of presumptive principal jurors. *Id.* The next two would be a panel of presumptive alternates. And the final two would be “on deck.” *Id.* To pick the principal jurors, for-cause and peremptory strikes would be exercised just on those six venirepersons “in the box” at the time. *Id.* When a party would strike a presumptive juror from this principal panel, a venireperson from the alternate panel would move in, and the resulting empty slot on the alternate panel would be filled by someone from the “on-deck” panel. *Id.*

Juror 16 appeared among the first six in the box. Based on certain statements that Juror 16 made in response to questions during voir dire, Mr. Seadler asserted that Juror 16 was biased

against his case and asked that the juror be excused for cause. *Id.*; see also DCA R. p. 71-102 (detailing the relevant line of questioning). The trial court refused that request, and Mr. Seadler used the first of his three peremptory challenges to remove Juror 16 as a potential juror. *Id.*

As the selection process continued, the trial court excused other presumptive principal jurors for cause, and Mr. Seadler used his remaining two peremptory challenges. The lineup at that time would have been as follows:

Presumptive Principal Jurors

Juror 25	Juror 8	Juror 13
Juror 27	Juror 22	Juror 10

Presumptive Alternates

Juror 17	Juror 19
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On Deck

Juror 12	Juror 2
-----------------	---------

Id.

As indicated by the strikethrough, Mr. Seadler used his third peremptory strike to remove Juror 8 from the panel of principal jurors. Juror 22 then moved to the fourth position, and Juror 10 moved to the fifth, opening the sixth position on the principal panel to Juror 17, who moved up from the alternate juror panel. Mr. Seadler was out of strikes, and Marina Bay tendered the principal panel:

Presumptive Principal Jurors

Juror 25	Juror 13	Juror 27
Juror 22	Juror 10	Juror 17

Id.

The presumptive alternates at this point would have then included Juror 19 and Juror 12 in the second position, having moved up from the “on deck” panel:

Juror 19	Juror 12
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Id.

Meanwhile, Juror 20 filled the empty second slot on the “on-deck” panel as Juror 2 moved to the first slot on the panel, vacated by Juror 12:

On Deck

Juror 2	Juror 20
---------	----------

Id.

The trial court allowed a for-cause strike of Juror 19 in the alternate panel, and after Juror 2 moved into the second position on the alternate panel, the trial court allowed a for-cause strike of that juror, too. That left Juror 12 and Juror 20 in the first and second positions on the presumptive alternate panel, respectively:

Presumptive Principal Jurors

Juror 25	Juror 13	Juror 27
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Juror 22	Juror 10	Juror 17
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Presumptive Alternates

Juror 19 Juror 12	Juror 2 Juror 20
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On Deck

Juror 26	Juror 1
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Id.

Mr. Seadler at that point exercised his alternate peremptory challenge on Juror 12, so Juror 20 moved into the first alternate slot and Juror 26 moved to the second alternate slot. *Id.* Juror 1 shifted to the first “on-deck” position, with Juror 11 coming from the venire at large to fill in the second “on-deck” position. *Id.* Both parties tendered (Marina Bay did not use its alternate peremptory challenge), and the final lineup of principal jurors and alternates was as follows:

Principal Jurors

Juror 25	Juror 13	Juror 27
Juror 22	Juror 10	Juror 17

Alternates

Juror 12 Juror 20	Juror 26
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Id.

Jurors 25, 13, 27, 22, 10, and 17 served as the sworn members of the jury, with neither alternate being called up. *Id.*

The Verdict and Motion for New Trial

On September 28, 2017, the jury returned a verdict for Mr. Seadler in the amount of \$60,000, which award consisted of \$50,000 in past medical expenses and \$10,000 in past non-economic damages. (TC R. 883-884). This amount was later reduced to \$14,504.50 after post-trial reductions. (TC R. 1121; 1124; 1194; 1230; 1252).

Following the denial of Mr. Seadler's post-trial motions, the Final Judgment was entered in Mr. Seadler's favor in January 2019.

(R. 1120, 1258). The underlying appeal in the First District soon followed. (R. 1265; 1269).

The Appeal in the First District Court of Appeal

Despite having prevailed in the trial court, Mr. Seadler appealed the final judgment in February 2019, arguing he was entitled to a new trial on the basis that, according to him, the trial court erred when it denied his for-cause challenge of a Juror 16. (DCA R. 40-66). According to Mr. Seadler, this denied him a fair trial. *Id.* Marina Bay argued that the trial court's decision to deny Mr. Seadler's cause challenge as to Juror 16 was proper and based on sound judgment, and Mr. Seadler otherwise enjoyed a fair and clean trial, which he ultimately won; therefore, no new trial was warranted. (DCA R. 71-102).

Ultimately, the First District Court of Appeal unanimously affirmed the final judgment. (DCA R. 140-152). After a careful and extremely thorough review of the jury selection process, the First District issued a detailed 13-page Opinion holding that even if the trial court had stricken Juror 16 for cause, there would have been someone that Mr. Seadler found subjectively objectionable serving on his jury regardless, therefore no miscarriage of justice ensued

warranting a new trial. *Id.* at 152.

Mr. Seadler moved for rehearing of the First District's Opinion. (DCA R. 156-169). Following oral argument, the First District denied rehearing but certified conflict with several decisions from other district courts: *Kochalka v. Bourgeois*, 162 So. 3d 1122, 1126 (Fla. 2d DCA 2015); *Tizon v. Royal Caribbean Cruise Line*, 645 So. 2d 504, 506 (Fla. 3d DCA 1994); *Weinstein Design Grp., Inc. v. Fielder*, 884 So. 2d 990, 996 (Fla. 4th DCA 2004); and, *Gootee v. Clevinger*, 778 So. 2d 1005, 1009–10 (Fla. 5th DCA 2000). (DCA R. 228-239).

On Rehearing, Justice Tanenbaum, who authored the original 3-0 Opinion, wrote separately, concurring with the denial of the rehearing and with the original Opinion issued. *Id.* Justice Tanenbaum wrote that in affirming and denying Mr. Seadler's request for rehearing, the First District reached a conclusion consistent with the common-law usage of peremptory challenges and emphasized "there is no historical support for finding an equivalency between the peremptory challenge made available in a Florida criminal trial and one available in a civil trial" and that "[i]n Florida there is a substantive right to peremptory challenges in criminal trials (established by statute); no similar right exists for civil trials."

Id. at 230-239. He concluded, “Given the lack of an historical basis for the peremptory challenge in a civil trial context, and absent a constitutional or statutory right to such a challenge, we could not say that having to ‘waste’ a challenge provided merely by procedural rule provides a legal basis to find a miscarriage of justice.” *Id.* The instant appeal followed.

SUMMARY OF ARGUMENT

In the absence of a true substantive right to additional peremptory challenges and no historical basis for considering it to be of fundamental importance, the trial court was not compelled to automatically grant a new trial, nor was the First District required to reverse. The alleged conflict cases cited by the First District overlook the distinction between peremptory challenges in civil cases and those in the criminal context, and the principle stated in criminal cases has no proper application outside that context as historically, the two are not of similar fundamental importance.

The First District’s fact-specific review of the process by which the jury was selected in Mr. Seadler’s case was the proper method of evaluating whether a new trial was warranted. And to that end, the First District properly affirmed the trial court’s denial of a new trial

as its case-specific review showed Mr. Seadler's claimed error during jury selection did not result in a miscarriage of justice as there was no irregularity that deprived Mr. Seadler of a fair trial.

The First District's conclusion was consistent with what the law requires and in line with the intended usage of peremptory challenges in the civil context. For all these reasons, as more fully set forth herein, the April 21, 2021 Opinion from the First District Court of Appeal and the underlying September 28, 2017 verdict and January 31, 2019 Final Judgment should be affirmed in all respects and conflict, if any, should be resolved in favor of the First District's well-reasoned decision in the instant case.

ARGUMENT

I. IN THE ABSENCE OF A TRUE SUBSTANTIVE RIGHT TO ADDITIONAL PEREMPTORY CHALLENGES AND NO HISTORICAL BASIS FOR CONSIDERING IT TO BE OF FUNDAMENTAL IMPORTANCE, THE TRIAL COURT WAS NOT COMPELLED TO AUTOMATICALLY GRANT MR. SEADLER A NEW TRIAL, NOR WAS THE FIRST DISTRICT REQUIRED TO REVERSE.

The denial of additional peremptory strikes in civil trials historically is not of the same fundamental significance as peremptories in criminal trials such that a new trial on this basis in civil actions should not be treated as an automatic right over a case

specific inquiry into whether there was in fact a miscarriage of justice or error that deprived a party of a fair trial, in the context of the entire proceeding and not an isolated incident.

The main premise underlying Mr. Seadler's position in the underlying actions and before this Court is that a party being forced to "waste" a peremptory challenge on a potential juror who should have been stricken for cause is an automatic error warranting a new trial or requiring reversal where the party has otherwise exhausted his allotted challenges, requests another one, and has that request denied. According to Mr. Seadler, this "error" cannot be considered harmless because it effectively reduces the number of peremptory challenges that have been made available to the party. Mr. Seadler's argument therefore turns on the significance of a peremptory challenge in a civil trial, asserting that the right to peremptory challenges is critically important to effectuate the right to an impartial jury.¹

¹ As noted below, Mr. Seadler's argument for a new trial in this case does not turn on whether a juror was not impartial as there is no question that potential juror was stricken and did not serve on the panel, and his objection to Juror 22 was not one for cause. See *infra* Part II.

This principle originates in criminal law jurisprudence and has merely been extrapolated and applied in civil cases, despite the entirely different fundamental purpose between the two, to conclude that an improper denial of a for-cause challenge in a civil trial too necessarily results in the denial of a similar right related to the availability of peremptory challenges. This however is not consistent with the common-law usage of peremptory challenges as they were understood at the time the Florida Constitution was adopted, and there is no historical support for finding an equivalency between the peremptory challenges made available in a Florida criminal trial and a civil trial. Continuing to apply the approach reflected in the decisions of other district courts misses the unique historical purpose and role behind the peremptory challenge in the criminal context, which challenge does not have the same historical roots in civil trials.

Criminal trials have historically been treated differently with respect to jury selection because the consequences of such a trial are of course more severe, dealing with life and liberty itself. The peremptory challenge originated in England's common-law regarding criminal trials; there was no such tradition for civil trials. See

Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614, 639 (1991) (O'Connor, J., dissenting). The challenge stems from the purpose of making the criminal trial—particularly where life is on the line—more humane from the perspective of the defendant, while the King did not have access to the same type of challenge. *Id.* As Justice Tanenbaum held, this history counsels against treated peremptory challenges in the criminal and civil contexts equally:

This history, then, counsels against any equivalency between the supreme court's harmful error analysis in criminal cases like *Matarranz* [and its progeny], and an analysis to be used in a civil trial context where a party has to expend a peremptory to strike a potential juror who should have been stricken for cause." As significant as the stakes may be in a civil trial, they obviously still do not compare to the liberty at stake in a criminal trial. Moreover, the parties in a civil trial have a parity that does not exist between the parties in a criminal trial, where a defendant faces off against the sovereign. All of this to say that, in the light of the unique history behind the *criminal* peremptory challenge, there is no readily apparent, logically cogent rationale for taking the supreme court's "reversible error" analysis with regard to the use of that challenge in a criminal trial context, and simply applying it—without further consideration—in the civil trial context.

(DCA R. 228-239).

To be sure, the Florida Supreme Court has historically given special significance to this statutory right in criminal cases,

characterizing its purpose as “the effectuation of the constitutional guaranty of trial by an impartial jury,” such that the challenge is “one of the most important of the rights secured to the accused” *Smith v. State*, 59 So. 3d 1107, 1111 (Fla. 2011). (internal citations omitted). In *Carroll v. State*, 190 So. 437, 438 (Fla. 1939), the Florida Supreme Court stated as follows:

Under the Constitution of the United States and the State of Florida the defendant in a criminal case is guaranteed the right to a trial by an impartial jury and it is to effectuate this guaranty that he may reject a certain number of those who are called to the jury box without giving his reason for not wishing them to pass upon his guilt or innocence. By this means he may escape the judgment of those whom he may consider prejudiced against him but whom he may not be able to show disqualified for causes defined by statute.

Id. It thus follows that the following has been the rule in Florida — again, in *criminal* cases:

In a case where an objectionable juror is challenged by the defendant for cause, and the court wrongfully overrules the challenge, and the defendant uses one of his peremptory challenges to excuse the objectionable venireman, the record should show that the jury finally impaneled contained at least one juror objectionable to the defendant, who sought to excuse him peremptorily, but the challenge was overruled.

Young v. State, 96 So. 381, 383 (Fla. 1923).

In criminal cases, there is a statutory right guaranteeing

peremptory challenges, as well as a procedural rule, *See* § 913.08, Fla. Stat.; Fla. R. Crim. P. Rule 3.350. In fact, Rule 3.350 even provides for the consideration of additional peremptories when appropriate. Fla. R. Crim. P. 3.350(e). This further exemplifies both the fundamental importance of peremptories in the criminal context and the intended application of the rule as detailed in *Young* above.

Conversely, in civil cases, Florida substantive law no longer provides for peremptories. Since 1973, there has been no statutory right to peremptory challenges in a civil trial. *See* Laws 1973, c. 73-333, § 24 (repealing section 53.011 providing for peremptory challenges in civil trials); § 53.011, Fla. Stat. (1971) (entitling each party in a civil trial to three peremptory challenges). Instead, peremptory challenges in civil trials are only provided for by procedural rule. *See* Fla. R. Civ. P. 1.431(d) (“Each party is entitled to 3 peremptory challenges of jurors”). And, contrary to Criminal Rule 3.350, Civil Rule 1.431 does not provide for the consideration of additional peremptories. This absence is notable and further evidences that these are not intended to be employed as they are in criminal cases. This is also further indicative of how fundamental a right it is in criminal cases by comparison.

From a review of the purpose underlying the Florida Rules of Civil Procedure versus that of the Florida Rules of Criminal Procedure, this fundamental difference is further apparent. The general guide to construction of the procedural rules of civil procedure is set forth in Rule 1.010, which provides that the "rules shall be construed to secure the just, speedy, and inexpensive determination of every action." *See Barco v. School Bd. of Pinellas County*, 975 So. 2d 1116, 1123 (Fla. 2008) (quoting Fla. R. Civ. P. 1.010). On the other hand, the rules of criminal procedure "are intended to provide for the just determination of every criminal proceeding," and "shall be construed to secure simplicity in procedure and fairness and administration." Fla. R. Crim. P. 3.020. Given the significant difference in the purpose underlying each, the two must necessarily be interpreted differently, with criminal matters dealing with our most fundamental rights.

While certainly Rule 1.431 is equally enforceable as a statutory right (in the absence of any conflict, which we do not have here), this allowance for peremptories remains a matter of procedure and does not amount to a substantive right. *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994) ("[S]ubstantive law prescribes duties and rights and procedural law concerns the means and methods

to apply and enforce those duties and rights.”) (citing *Benyard v. Wainwright*, 322 So. 2d 473, 475 (Fla.1975)). As Justice Tanenbaum held, “[i]n a civil trial, then, the peremptory challenge at best is a procedural grace.” (DCA R. 237).

This – in conjunction with the historical considerations – remains an important distinction that bears directly on whether the erroneous failure to strike a potential civil juror necessarily warrants a new trial the way it does in criminal cases. As Justice Tanenbaum detailed:

Without the historical roots that the criminal peremptory can claim, the civil peremptory could be viewed only from an administrative perspective, as a tool to promote judicial economy. That is, as a procedural matter, the peremptory challenge serves as a “backstop” or “failsafe” in a civil trial to conserve judicial resources and limit the likelihood a case will not be sent back for a new trial. It does this by establishing a mechanism by which a prospective juror who may not be impartial can still be excluded from the trial panel, notwithstanding a trial court’s error in failing to strike that juror for cause. *Cf. United States v. Martinez-Salazar*, 528 U.S. 304, 315–16 (2000) (“In choosing to remove Gilbert rather than taking his chances on appeal, Martinez-Salazar did not lose a peremptory challenge. Rather, he used the challenge in line with a principal reason for peremptories: to help secure the constitutional guarantee of trial by an impartial jury.”); *id.* at 313 (explaining that when a defendant uses a peremptory challenge “to remove a juror who should have been excused for cause,” he “received all that state law allowed him” as well as the fair trial that the federal constitution guarantees).

Id. at 237-238.

Ultimately then, when deciding whether to grant a new trial or reverse a denial of a new trial on appeal, all of the foregoing counsels against an application of criminal law to automatically find in a civil context that a new trial is warranted without any further consideration of whether this did in fact hinder a party's right to a fair trial and impartial jury. Rather, based on all of the foregoing, on a motion for new trial and on appeal in a civil case, the relevant inquiry should be a case specific one to determine whether a miscarriage of justice warranting a new trial has occurred, as the First District did below, based on a thorough review of the totality of the circumstances and not merely on the denial of an additional peremptory challenge.

II. THE FIRST DISTRICT PROPERLY AFFIRMED THE TRIAL COURT'S DENIAL OF A NEW TRIAL AS MR. SEADLER'S CLAIMED ERROR DURING JURY SELECTION DID NOT RESULT IN A MISCARRIAGE OF JUSTICE.

The First District's case-specific review of the process by which the jury was selected in Mr. Seadler's case was the proper method of evaluating whether a new trial was warranted, and to that end, the First District properly affirmed the trial court's denial of a new trial

as Mr. Seadler's claimed error during jury selection did not result in a miscarriage of justice as there was no irregularity that deprived Mr. Seadler of a fair trial – a trial he won.

Throughout the proceedings, Mr. Seadler argued that the trial court erred when it denied his for-cause challenge of Juror 16 during jury selection, who he claimed was biased and could not be impartial.² As a result, Mr. Seadler argued that he had to use a peremptory challenge to strike Juror 16, leaving him without a challenge later to strike a juror he found subjectively objectionable, thereby resulting in him not receiving a fair trial, despite having won.

An extensive review of the jury selection process however, as conducted in detail by the First District below, revealed that someone Mr. Seadler found subjectively objectionable would have served on the jury regardless of whether the trial court had allowed Juror 16 to be stricken for cause. (DCA R. 140-152). Therefore, there was no miscarriage of justice that ensued warranting a reversal.

A party may ask that a potential juror be replaced for any of several objections “for cause,” which include that a potential juror is

² Even if that had been the case, Juror 16 did not serve on Mr. Seadler's jury.

biased or “does not stand indifferent to the action.” Fla. R. Civ. P. 1.431(c) (“Challenge for Cause”). The same rule allows each party to make three peremptory challenges to remove potential jurors from a panel without any legal cause at all. *See* Fla. R. Civ. P. 1.431(d). If there are going to be alternate jurors empaneled with the principal jurors, those alternates must be selected in the same manner. Fla. R. Civ. P. 1.431(g). During selection of these alternates, the rule allows each party one peremptory challenge, to “be used only against the alternate jurors.” *Id.* An unused peremptory challenge available for the principal jurors may not be used against the alternates. *Id.*

As detailed at length by the First District, the trial court used a common methodology for jury selection whereby the parties were to each select six jurors and two alternates from a venire. (DCA R. 140-152); *see also* SUPP. R. 1277 – 1471. The first six randomly selected from the venire would be put “in the box” as a panel of presumptive principal jurors. *Id.* The next two would be a panel of presumptive alternates. *Id.* Two more would be placed “on deck.” *Id.* To pick the principal jurors, for-cause and peremptory strikes would be exercised just on those six venirepersons “in the box” at the time. *Id.* When a party would strike a presumptive juror from this principal panel, a

venireperson from the alternate panel would move in, and the resulting empty slot on the alternate panel would be filled by someone from the “on-deck” panel. *Id.*

Juror 16 appeared among the first six “in the box” at the start of the selection process as a presumptive principal juror. *Id.* Based on certain statements that Juror 16 made in response to questions during voir dire, Mr. Seadler asserted that Juror 16 was biased against his case and asked that the juror be excused for cause. *Id.* After inquiry by the trial court and assurances by Juror 16 that she would be able to properly consider the facts and evidence before her and render a fair and impartial verdict, the trial court decided to deny Mr. Seadler’s cause challenge,³ and Mr. Seadler used the first of his three peremptory challenges to remove Juror 16. *Id.*

As the selection process continued, the trial court excused other presumptive principal jurors for cause, and Mr. Seadler used his remaining two peremptory challenges. *Id.* After Marina Bay tendered the six presumptive principals, Mr. Seadler asked for a fourth peremptory challenge, having already exhausted his three, to strike

³ See DCA R. 71-102 (discussing relevant line of questioning between Juror 16 and Mr. Seadler, as well as the trial court).

Juror 22. *Id.* Mr. Seadler did not explain why Juror 22 was objectionable, but he was not required to do so. *Id.* The trial court denied the request. *Id.*

After the venire had been excused, but before they were sworn, Mr. Seadler objected to Juror 22 serving on the jury and renewed his request to strike him. *Id.* Mr. Seadler acknowledged that his objection to Juror 22 was not one for cause, but nonetheless claimed, without elaboration, that he would not receive a fair trial with Juror 22 on the jury. *Id.* The trial court again denied Mr. Seadler's request. *Id.* Ultimately, Mr. Seadler won the trial. *Id.*; *see also* TC R. 884; 1258. He then filed a motion for new trial on the basis that he was improperly denied an additional peremptory challenge to strike Juror 22, thereby forcing him to go to trial with a juror who was subjectively objectionable to him. (TC R. 886-891).

However, as illustrated by the First District and included herein, even if Mr. Seadler had stricken Juror 22 with an extra peremptory challenge, that would have led to *another* juror he found subjectively objectionable serving on the panel – Juror 12:

Principal Jurors

Juror 25	Juror 13	Juror 27
Juror 22 Juror 10	Juror 17	Juror 12

As illustrated above, if Juror 22 had been stricken through Mr. Seadler's fourth peremptory challenge, jurors 10 and 17 would have moved left in the diagram into positions 4 and 5. As Juror 19, followed by Juror 2, moved into the vacant sixth position in the box, each would have been stricken for cause (as they were during the selection process detailed above). In this scenario, Juror 12 would have then moved up from the alternate panel into that sixth position on the panel, and Mr. Seadler would not have been able to strike Juror 12 with his alternate peremptory (which he had done during the selection process detailed above).

Because Mr. Seadler would have had no more peremptory challenges and no basis to ask for a fifth during principal-juror selection, Juror 12 would have served on Mr. Seadler's jury instead of Juror 22. This means that one way or another — regardless of

whether Mr. Seadler could strike Juror 22 — Mr. Seadler was going to be stuck with a juror that he otherwise wished to strike, as the First District held. Even if he had been given an additional peremptory with which to strike Juror 22, Juror 12, who he also found objectionable, would still have served on the jury. Therefore, the trial court's denial of a cause challenge as to Juror 16 did not result in a miscarriage of justice.

An appellant in a civil case is not entitled to have a judgment set aside or reversed, or to be granted a new trial, unless he can show that an error has “resulted in a miscarriage of justice.” § 59.041, Fla. Stat. Any error in the trial court's refusal to strike Juror 16 for cause did not prejudice Mr. Seadler because he would have had a subjectively objectionable principal juror sitting at his trial one way or another. There therefore could not have been a miscarriage of justice under the circumstances of this case.

There is no question that all parties to a civil suit are entitled to an impartial jury. *See* Art. I, § 22, Fla. Const. The Florida Supreme Court has said, “The tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the

community.” *State v. Silva*, 259 So. 2d 153, 160 (Fla. 1972). “[A]nything less than an impartial jury is the functional equivalent of no jury at all.” *R.J. Reynolds Tobacco Co. v. Allen ex rel. Allen*, 228 So. 3d 684, 693 (Fla. 1st DCA 2017) (Osterhaus, J., dissenting) (quoting *City of Miami v. Cornett*, 463 So. 2d 399, 402 (Fla. 3d DCA 1985)).

Mr. Seadler’s argument before the First District was not that one of the prospective jurors on the panel was not impartial. Because it is undisputed an impartial juror did not serve on Mr. Seadler’s jury. Rather, his argument was that the right to peremptory challenges is critical to the right to an impartial jury and that a party being forced to use a peremptory challenge on a potential juror who should have been stricken for cause is itself a miscarriage of justice if/when the party exhausts his allotted challenges, requests another, and has that request denied.

According to Mr. Seadler, having to use a peremptory challenge to remove the objectionable juror (Juror 16), rather than on another potential juror that he did not want (for reasons known only to Mr. Seadler), standing alone should have been enough to warrant a new trial. This is not the case where, as here, an objectionable juror would have served on the jury nonetheless; therefore, error, if any, could

not amount to a miscarriage of justice, particularly in consideration of the fact that Mr. Seadler won at trial.

In all the alleged conflict cases cited by the First District, the denial of a cause challenge resulted in the need to use a peremptory challenge and a subsequent denial of additional peremptories when those were used up. *See Kochalka*, 162 So. 3d 1122; *Tizon*, 645 So. 2d 504; *Fielder*, 884 So. 2d 990; *Gootee*, 778 So. 2d 1005. The district courts in all of these cases held this constituted reversible error in each instance because a case-specific review revealed the party who was denied the additional peremptory was forced to keep an objectionable juror on the panel as a direct result of that denial.

This case, however, is distinguishable from those cases because, as the First District's detailed analysis revealed, regardless of the denial of an additional peremptory, an objectionable juror still would have sat on the panel. In the other alleged conflict cases, but for the denial of the cause challenge, there would not have been an objectionable juror on the panel, whereas here, regardless of the denial of the cause challenge, an objectionable juror still would have served because there was more than one allegedly objectionable juror in Mr. Seadler's mind. *Id.*

That is the significant distinction between this case and those cited by the First District: the very fact that there would have been an objectionable juror regardless. One cannot then say with any degree of certainty that the one objectionable juror that sat on the panel (and not the other) deprived Mr. Seadler of a fair trial, or, applying the applicable legal standard, resulted in a miscarriage of justice – a trial which it is important to again note Mr. Seadler won. This very specific factual distinction from the cases cited by the First District shows there is not in fact a direct conflict and therefore, a similar application of a per se rule of reversal was not warranted under the unique facts of this case.

Notwithstanding that, and perhaps more importantly, the alleged conflict cases overlook the distinction between peremptory challenges in civil cases and those in the criminal context; the principle stated in criminal cases has no proper application outside that context. *See supra* Part I. On this basis as well, there is no true conflict.

Based on a case-specific review of the facts and circumstances of this case as detailed above, there was no miscarriage of justice

warranting a new trial and the trial court's Order, as well as the First District's Opinion, should be affirmed in all respects.

CONCLUSION

The First District's case-specific review of the process by which the jury was selected in Mr. Seadler's case was the proper method of evaluating whether a new trial was warranted, and showed there was no irregularity that deprived Mr. Seadler of a fair trial (which he won) and held that there would have been someone that Mr. Seadler found subjectively objectionable serving on his jury regardless of whether the trial court had allowed Juror 16 to be stricken for cause such that there was no miscarriage of justice warranting a new trial. The First District's conclusion was consistent with what the law requires and with the intended usage of peremptory challenges in the civil context.

The approach reflected in the alleged conflict cases cited by the First District was not applicable in the underlying case as the cases are factually distinct in that here, regardless of the denial of the additional peremptory here, an objectionable juror *still* would have served on the panel because there was more than one allegedly objectionable juror in Mr. Seadler's mind. On this very specific

factual distinction, the instant case stands apart from the cases cited by the First District and is not in fact in direct conflict.

Notwithstanding that, the alleged conflict cases overlook the distinction between peremptory challenges in civil cases and those in the criminal context. The principle stated in criminal cases has no proper application outside that context as historically, the two are not of similar fundamental importance. Therefore, the trial court was not required to grant an automatic new trial, nor was the First District required to automatically reverse, where both conducted a thorough case-specific inquiry and ensured no miscarriage of justice or reversible error resulted.

In sum, under the unique facts of this case, there is no true conflict between this case and the decisions cited by the First District. However, conflict, if any, should be resolved in favor of the First District's well-reasoned decision in the instant case, which is in line with the relevant historical and legislative history.

WHEREFORE, based on all of the foregoing arguments and legal authorities, the Respondent, MARINA BAY RESORT CONDOMINIUM ASSOCIATION, INC. D/B/A MARINA BAY RESORT, respectfully requests that this Court affirm in all respects the April 21, 2021

Opinion from the First District Court of Appeal and the underlying September 28, 2017 verdict and January 31, 2019 Final Judgment, resolve the conflict, if any, in favor of the First District's well-reasoned decision in the instant case, and grant any further relief deemed just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on this 24th day of March, 2023, a true and correct copy of the foregoing was electronically filed with the Florida Supreme Court, Clerk of the Courts by using the Florida Courts e-Filing Portal, therefore furnished via E-mail to: **Charles F. Beall, Jr., Esq.**, and **Haley J. VanFleteren, Esq.**, Moore, Hill & Westmoreland, P.A., 350 West Cedar Street, Pensacola, Florida 32502, (cbeall@mhw-law.com); **Jonathan D. Simpson, Esq.**, Simpson Law Firm, 1048 Mar Walt Drive, Fort Walton Beach, Florida 32547 (jd@dsimpsoninjurylaw.com; kristina@impsoninjurylaw.com).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.045(b), the undersigned counsel hereby certifies that this brief was submitted in Bookman Old Style 14-point font. This brief also complies with the word count limit requirements, excluding the parts exempted by Fla. R. App. P. 9.045(e).

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