Filing # 167402361 E-Filed 02/23/2023 12:18:13 PM

RECEIVED, 02/23/2023 12:18:22 PM, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC23-126

ANTHONY ROJAS,

Petitioner,

v.

UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,

Respondent.

PETITIONER'S AMENDED BRIEF ON JURISDICTION

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

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I. STATEMENT OF THE ISSUE

The sole issue in this appeal is the issue for which Petitioner invokes this Court's jurisdiction: whether Petitioner pled the existence of an express contract between himself and the Respondent, The University of Florida Board of Trustees ("UFBOT") that would cover the fees for certain on-campus services that the Respondent failed to provide during the Covid pandemic in a manner sufficient to avoid dismissal based on sovereign immunity.

II. STATEMENT OF THE CASE AND FACTS

Petitioner sued Respondent, UFBOT, for breach of contract and unjust enrichment stemming from UFBOT's failure to make certain campus services available as a result of campus closures in 2020 due to the pandemic or refund the related fees for the impacted semesters.

Petitioner alleged there was an express written agreement between the parties, and attached "attached several documents to the complaint in support of his claim, including a Spring 2020 tuition statement, a general statement of tuition and various fee estimates for the 2019–2020 academic year, and a copy of the University's

financial liability agreement.” (Opinion at 2-3) Respondent moved to dismiss Petitioner's lawsuit, arguing that the aggregated documents did not constitute an express written contract sufficient to overcome its sovereign immunity defense. The trial court denied Respondent's motion on Petitioner's breach of contract claim.

Respondent appealed the trial court's denial of its motion to dismiss. On November 22, 2022, the First District Court of Appeal reversed the trial court's order denying Respondent's motion to dismiss, holding that it could not “conclude that the University entered an express written contract with Rojas that obligated it to provide specific services at a specific time in a specific way.” (Opinion at 7) The Court reversed the trial court’s order denying the University's motion to dismiss the breach of contract claim. In doing so, however, it certified the following question of great public importance to this Court:

> Whether Sovereign Immunity Bars a Breach of Contract Claim Against a State University Based on the University's Failure To Provide Its Students With Access To On-campus Services and Facilities?

(Opinion at 2)

Judge Makar wrote a dissent, in which he cited to the Second District Court of Appeal's decision in *University of South Florida Board of Trustees v. Moore*, 347 So. 3d 545 (Fla. 2d DCA 2022), which affirmed the trial court's denial of a similar motion, determining that the Plaintiff there had sufficiently alleged the existence of an express contract. Judge Makar concurred with the majority's decision to certify a question to this Court.

On December 7, 2022, Petitioner filed a Motion for Rehearing *En Banc*. The Court denied Petitioner's motion on December 27, 2022. Petitioner filed a timely Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court on January 26, 2023.

III. ARGUMENT

A. This Court should accept discretionary review based on the First District's certification of a question of great public importance and based on the opinion's express and direct conflict with *University of South Florida Board of Trustees v. Moore*, 347 So. 3d 545 (Fla. 2d DCA 2022).

As the First District noted, this case is one of several that have been filed against state universities and colleges across Florida. Three have already progressed through appeal. Two cases, the

instant case and *Board of Trustees of Miami Dade College v. Verdini*, 339 So. 3d 413 (Fla. 3d DCA 2022), have been resolved in the schools' favor, while the third, *Moore, supra,* was resolved in the student's favor. Discretionary Review is thus necessary not only to address the certified question, but to address the express and direct conflict that now clearly exists between the District Courts.

In *Verdini,* the Third District noted that at least a dozen such cases have been filed against various state universities and colleges. 339 So. 3d 413, 417 n. 6. Thus, this is a case of great public importance because it will affect every Florida state college and university and the hundreds of thousands of students who were enrolled in those institutions when the COVID-19 pandemic struck. The *Rojas* majority noted that it was sympathetic to "all [the] students whose on-campus experiences were clipped short and rendered non-existent by the University's response to COVID-19." The majority further agreed that "if there were a sufficient contract attached to [Petitioner's] complaint, we would affirm the trial court without hesitation."

But as Judge Makar argued, and as Second District held in *Moore*, the Plaintiff's in both of these cases sufficiently alleged the existence of an express contract that could support the Plaintiff's claim for breach of contract, at the motion to dismiss stage. (Opinion at 12) District Courts and Circuit Courts need to know which interpretation of the law applies to these circumstances – the more narrow view advanced by the *Rojas* majority, or the more expansive view advanced by Judge Makar and by the Second District in *Moore*.

As Judge Makar noted, the First District has previously held that "'[s]everal writings may constitute a valid and binding written contract when they evidence a complete meeting of the minds of the parties and an agreement upon the terms and conditions of the contract.' *Waite Dev., Inc. v. City of Milton*, 866 So. 2d 153, 155 (Fla. 1st DCA 2004)." (Opinion at 10) Judge Makar points out in unassailable logic that an "enforceable written contract of some sort exists" and that "if the tables were turned, and students failed to pay tuition and fees, a breach of contract claim would be the first in a university's complaint." (Opinion at 11,12)

Judge Makar's argument implicates a second conflict, with this Court's opinion in *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4 (Fla. 1984). In *Pan-Am Tobacco Corp,* this Court held "[w]here one party retains to itself the option of fulfilling or declining to fulfill its obligations under the contract, there is no valid contract and neither side may be bound." *Pan-Am Tobacco Corp* at 5. Each of the State Universities sued in these cases are asking the Court to deny the existence of an express contract for the fees at issue here, while at the same time insisting upon their right to sue students for not paying those very fees.

While we don't know what position UFBOT will take on this request for review, we would be surprised if it opposed it. The University of South Florida Board of Trustees previously sought discretionary review in *Moore* based on conflict, but this Court declined the request. We agree with USFBOT's argument in *Moore* that the question here implicates the issue of judicial economy for both parties. The schools do not wish to be put through the process of going through class certification and trial, only to be told that they didn't have to go through any of it because they were sovereign

immune. And the students don't want to have to go through the same labor only to be told they never had a claim to begin with.

V. CONCLUSION

This Court has jurisdiction based on the certified question of great public importance and the express and direct conflict between the opinion and the Second District Court of Appeal's opinion in *University of South Florida Board of Trustees v. Moore*, 347 So. 3d 545 (Fla. 2d DCA 2022). Review should be granted to establish uniformity on the question of law at issue in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served this **23rd** day of **February 2023**, via the Florida e-Portal Filing System to: **Robert J. Sniffen, Esq., Jeffrey D. Slanker, Esq., Matthew J. Carson, Esq.,** SNIFFEN & SPELLMAN, P.A., *Attorneys for Appellant,* 123 North Monroe Street, Tallahassee, Florida 32301; rsniffen@sniffenlaw.com; jslanker@sniffenlaw.com; and **Adam Moskowitz, Esq., Barbara C. Lewis, Esq., Howard M. Bushman, Esq.,,** The Moskowitz Law Firm, PLLC, *Co-Counsel for Appellee,* 2 Alhambra Plaza, Suite 601, Coral Gables, FL 33134; howard@moskowitz-law.com; adam@moskowitz-law.com; barbara@ moskowitz-law.com.

CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(a)(2)(A), counsel for Petitioner hereby certifies that this brief complies with the applicable font and word count requirements because it is written in 14-point Bookman Old Style font and contains less than 2,500 words.

Respectfully submitted,

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