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IN THE SUPREME COURT OF FLORIDA

Case No.: SC23-0915

JJJTB, INC.,

Petitioner,

v.

STEPHEN V. SCHMIDT, and SCHMIDT FARMS, INC.,

Respondents
_____/

PETITIONER JJJTB, INC.'S INITIAL BRIEF

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INTRODUCTION

Can a party waive a challenge to case jurisdiction by participating in the proceedings, seeking affirmative relief, and not immediately asserting the argument at the first instance? This Court should approve the Fourth District's decisions in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000) and Schroeder v. MTGLQ Inv'rs, L.P., 290 So. 3d 93 (Fla. 4th DCA 2020), the Sixth District's decision in Clarke v. Global Guaranteed Goods & Servs., Inc., 364 So. 3d 1135 (Fla. 6th DCA 2023), the Third District's decision in Ocean Bank v. Caribbean Towers Condo. Ass'n, 121 So. 3d 1087 (Fla. 3d DCA 2013), answer this question in the affirmative, and quash the Second District's decision. A party can waive case jurisdiction—much like it can waive personal jurisdiction.

STATEMENT OF THE CASE AND FACTS

In 2011, JJJTB filed actions on a promissory note and for foreclosure of a mortgage in the Thirteenth Judicial Circuit, in and for Hillsborough County, against Stephen Schmidt and Schmidt Farms.[1] (R. 36-61; 129;

[1] The trial court record on appeal will be referred to as R., followed by the corresponding page number. The certified appellate papers will be referred to as A., followed by the corresponding page number.

1650-1651). The action focused on defaults from 2010. (R. 36-61). After a bench trial, the trial court found that the promissory note and mortgage were valid and enforceable. (R. 1656-1657). However, the trial court denied final judgment and found insufficient evidence that Schmidt and Schmidt Farms defaulted.[2] (R. 1656-1657). The trial court denied rehearing. (R. 1662-1670; 1679).

JJJTB appealed this decision to the Second District Court of Appeal. (R. 2218-2219; 2230-2240). The Second District issued a per curiam affirmance without written opinion. (R. 2219; 2242).

In December 2016, JJJTB filed an action on the promissory note in the Tenth Judicial Circuit, in and for Polk County, based on defaults on the note in 2015 and 2016, among other allegations. (R. 2413; 3081-3089). The trial court granted summary judgment in favor of Schmidt and Schmidt Farms, ruling that the statute of limitations barred the action. (R. 2413-2314). The trial court explained:

> The Court notes that a prior action on a promissory note does not bar a later foreclosure on a mortgage. *See NLG, LLC v. Hazan*, 151 So. 3d 455, 456 (Fla. 3d DCA 2014), *citing Junction Bit & Tool Co. v. Village Apartments, Inc.*, 262 So. 2d 659 (Fla.

[2] While it is labeled "final order," it does not contain language of finality, such as the Defendant shall go hence without day. (R. 1656-1657). The trial court subsequently ordered the parties to mediation. (R. 1659-1670). However, the parties below treated the order as final. (R. 1671).

> 1972). Further, the Court notes that a party may still enforce a mortgage despite the statute of limitations barring an action on a promissory note. *See Ellis v. Fairbanks*, 21 So. 107, 109 (Fla. 1987) ("It is settled beyond any doubt or cavil in this state that the fact that the remedy at law is barred by the statute of limitations upon promissory notes secured by a mortgage under a seal does not affect the lien of the mortgage,…."); *cited by Bank of Wildwood v. Kerl*, 189 So. 866, 868 (Fla. 1939).

(R. 2460-2461).

As a result, JJJTB sought leave to amend its initial complaint in the Thirteenth Judicial Circuit[3] to allege a cause of action on the promissory note, to add a new cause of action for new and separate defaults, and to reassert its foreclosure action.[4] (R. 2413-2445; 2464-2491). It maintained it was necessary in light of the ruling from the Tenth Judicial Circuit. (R. 2414). The trial court—the same presiding judge as over the trial—granted leave.[5] (R. 2463).

In response to the amended complaint, Schmidt and Schmidt Farms moved to dismiss asserting that it did not state a cause of action and the

[3] In March 2018, Schmidt and Schmidt Farms filed a separate action against JJJTB to quiet title. (R. 4270-4314; 4326-4327). This was consolidated with this action. (R. 4323).

[4] The court case was still open as no "re-open" fee is indicated on the docket. (R. 2-31).

[5] It does not appear Respondents filed any opposition to the motion for leave as none appears in the record. There also is no transcript from the case management conference where this was addressed.

statute of limitations had run. (R. 2496-2505). Lack of case jurisdiction was not one of the grounds asserted. (R. 2496-2505).

After a hearing, the court dismissed count I (Note) without prejudice and requested additional briefing as to count II (Foreclosure). (R. 2518-2519). Schmidt and Schmidt Farms subsequently moved for attorney's fees and costs on count I. (R. 2565-2571).

In its supplemental briefing on count II, Schmidt and Schmidt Farms focused on allegations in the complaint and requested that the trial court order JJJTB to amend its allegations. (R. 2528-2529; 2534). Lack of case jurisdiction was not one of the grounds asserted. (R. 2528-2534). The trial court granted Respondents' motion and ordered JJJTB to amend its complaint. (R. 2536-2537).

In accordance with the trial court's order, JJJTB filed a second amended complaint that set forth one count for foreclosure. (R. 2538-2564). Schmidt and Schmidt Farms again moved to dismiss arguing that the complaint did not allege the amount owed, statute of limitations barred an action on the mortgage where an action on the note is prohibited, and they were not provided the notice required by the mortgage. (R. 2732-2740). Again, lack of case jurisdiction was not asserted. (R. 2732-2740).

The trial court denied this motion. (R. 2756). Schmidt and Schmidt Farms answered the second amended complaint, asserted eighteen affirmative defenses, and reasserted their previous counterclaim seeking affirmative relief from the trial court. (R. 2761-2788). Lack of case jurisdiction was not one of the affirmative defenses. (R. 2761-2788).

Thereafter, the parties conducted discovery and litigated the matter for the next year and a half. (R. 8-12). The case proceeded to a three day bench trial. (R. 5070-5580). During trial, Schmidt and Schmidt Farms moved for judgment as a matter of law, focusing on the merits of the case and not lack of case jurisdiction. (R. 4370-4404; 5245).

The trial court entered a final judgment of foreclosure. (R. 4420-4429;). The trial court found:

- Schmidt and Schmidt Farms executed a mortgage that gave JJJTB a security interest in the land at issue;
- Schmidt and Schmidt Farms executed a promissory note in the amount of $500,000.00;
- Schmidt and Schmidt Farms defaulted on the mortgage by failing to pay 2015 property taxes, property insurance, and annual interest due;
- Schmidt did not cure the default;

(R. 4420-4429). A date for the sale of the property was set and Respondents were ordered to pay attorney's fees and costs. (R. 4420-4429). The trial court also dismissed with prejudice the Respondents' quiet title action. (R. 4420-2249).

Schmidt and Schmidt Farms moved for rehearing and reconsideration asserting—for the first time—that the trial court lacked "subject matter jurisdiction," among other evidentiary arguments. (R. 4487-4501). They claimed that the court could not entertain an amended complaint after the appellate court issued a mandate. (R. 4487-4501). No specific objection to "case jurisdiction" was made. (R. 4487-4501).

JJJTB opposed the motion and explained that the trial court had subject matter jurisdiction. (R. 6323-6329). To the extent the objection could be recast as one to case jurisdiction, the Respondents waived any argument thereon. (R. 6323-6329). A lack of case jurisdiction renders a judgment voidable—not void—and, therefore, subject to waiver. (R. 6323-6329). Any such challenge should have been raised in response to leave to amend the complaint. (R. 6323-6329). The Respondents failed to do so, and therefore, their argument is untimely. (R. 6323-6329).

The trial court heard argument from the parties.[6] It denied the Respondents' motion. (R. 6380). Schmidt and Schmidt Farms appealed the final judgment to the Second District. (A. 7-21; 26-39). The property was subsequently sold at auction to JJJTB. (R. 6411).

On appeal, Schmidt and Schmidt Farms argued[7] that the trial court lacked "subject matter jurisdiction or other legal authority" to allow JJJTB to amend its complaint and obtain a final judgment of foreclosure. (A. 456, 470, 486).

JJJTB responded that the trial court had subject matter jurisdiction. (A. 497; 511-514). It explained that the challenge is not to subject matter jurisdiction, but to case jurisdiction. (A. 515). To that effect, Schmidt and Schmidt Farms waived the argument participating in the litigation of the case, raising affirmative defenses, seeking affirmative relief, and not raising the issue until after final judgment had been entered. (A. 515-520).

Schmidt and Schmidt Farms replied that subject matter and case jurisdiction was a distinction without a difference. (A. 565-566).

[6] The transcript of this hearing was not included in the record on appeal.
[7] Other arguments were presented, such as res judicata and collateral estoppel. (A. 479-486). These arguments are not relevant to the issue before the Court.

Respondents maintained that they timely challenged "jurisdiction" for the first time in their motion for rehearing. (A. 568-569).

In its decision, the Second District explained the difference between subject matter and case jurisdiction. (A. 578-579). It noted that the instant matter concerns case jurisdiction as the trial court had subject matter jurisdiction. (A. 579). The Court held that a party cannot waive a challenge to case jurisdiction. (A. 578). And, it held that the trial court lacked case jurisdiction to proceed with the amended complaint. (A. 581-582). As a result, it reversed. (A. 582-583).

The Court certified conflict with the Fourth District's decision in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000). (A. 583). It also cited another Fourth District case that relied on MCR Funding—Schroeder v. MTGLQ Invs., L.P., 290 So. 3d 93 (Fla. 4th DCA 2020). (A. 583).

JJJTB timely moved for rehearing, asserting the Court overlooked which defaults were at issue in each complaint, and therefore, misapplied its own precedent. (A. 586-608). The Court denied the request. (A. 638).

SUMMARY OF THE ARGUMENT

Subject matter and case jurisdiction are different. The former concerns the existence of jurisdiction, while the later concerns the exercise thereof. Subject matter jurisdiction springs from our Constitution and statutes. Whereas, case jurisdiction is purely procedural and is judge-made. A lack of subject matter jurisdiction produces a void judgment, where a lack of case jurisdiction renders it merely voidable. As a result, these two types of jurisdiction should be treated differently.

This Court should quash the Second District's decision and approve the conflict cases—which treat lack of case jurisdiction as a procedural irregularity that can be waived. This would bring this area of law into conformity with other types of procedural irregularities. Forcing parties to object at the first opportunity would alert the trial court to any issue so it could remedy any error. This aligns with basic principles of preservation of error and the invited error doctrine. It would also save the court system and parties substantial resources. Otherwise, there is an incentive to remain silent about procedural defects; it would allow a party to litigate a case to conclusion and exercise veto power over the trial court's judgment.

STANDARD OF REVIEW

A pure question of law is reviewed de novo. Sheffield v. R.J. Reynolds Tobacco Co., 329 So. 3d 114, 119 (Fla. 2021).

ARGUMENT

I. THIS COURT SHOULD APPROVE THE CONFLICT CASES, AND QUASH THE SECOND DISTRICT'S DECISION.

A. AN OBJECTION TO CASE JURISDICTION IS WAIVED IF NOT ASSERTED AT THE FIRST OPPORTUNITY.

"Jurisdiction is a broad term that includes several concepts, each with its own legal significance." Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 801 n.3. (Fla. 2003). Florida generally recognizes three types of jurisdiction: 1) subject matter jurisdiction; 2) personal jurisdiction; and 3) case or procedural jurisdiction.[8] U.S. Bank Nat'l Ass'n v. Anthony-Irish, 204 So. 3d 57, 60 (Fla. 5th DCA 2016). Nevertheless, jurisprudence in this State has been less than clear on the third type of jurisdiction and often misidentifies it as subject matter jurisdiction. See, e.g., MTW Jordan, Inc. v. Baskerville, 323 So. 3d 331, 332 (Fla. 5th DCA 2021) (holding trial court did not have

[8] The Fourth District has also recognized "divisional jurisdiction." See, e.g., Partridge v. Partridge, 790 So. 2d 1280 (Fla. 4th DCA 2001).

"subject matter jurisdiction" to entertain motion for final judgment after voluntary dismissal filed as part of settlement agreement).

Subject matter jurisdiction concerns the "authority to hear and decide the case." G.P. v. C.P., 158 So. 3d 633, 636 (Fla. 5th DCA 2014). "This is jurisdiction in the abstract and is that sovereign authority, conferred upon a court by constitution, either directly or by authorized statute, to make adjudications, or binding decisions, as to controversies within a certain class of cases or causes." Fla. Power & Light Co. v. Canal Auth., 423 So. 2d 421, 423 (Fla. 5th DCA 1982).

Procedural events or defects do not affect subject matter jurisdiction. Cunningham v. Standard Guar. Ins. Co., 630 So. 2d 179, 181-82 (Fla. 1994); In re Adoption of D.P.P., 158 So. 3d 633, 636-37 (Fla. 5th DCA 2014) ("Stated differently, a challenge to subject matter jurisdiction is proper only when the court lacks authority to hear a class of cases, rather than when it simply lacks authority to grant the relief requested in a particular case.").

This type of jurisdiction cannot be conferred by consent, agreement, or waiver. MCR Funding, 771 So. 2d at 35. For this reason, an objection to subject matter jurisdiction can be raised at any time. Cunningham, 630 So. 2d at 181. Too, it can—and should—be raised sua sponte by a court.

Roberts v. Seaboard Sur. Co., 29 So. 2d 743, 748 (Fla. 1947); 84 Lumber Co. v. Cooper, 656 So. 2d 1297, 1299 (Fla. 2d DCA 1994).

If a court lacks subject matter jurisdiction, the proceedings and any resulting final judgment are void. Roberts, 29 So. 2d at 748 (Fla. 1947). "A void judgment is so defective that it is deemed never to have had legal force and effect." Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007).

"After the court's [subject matter] jurisdiction has been properly invoked, it is perfected by a proper service of sufficient process on all indispensable parties." Fla. Power & Light Co., 423 So. 2d at 424. This is called personal jurisdiction or jurisdiction over the party. Id.

"Personal jurisdiction refers to whether the actions of an individual or business entity as set forth in the applicable statutes permit the court to exercise jurisdiction in a lawsuit brought against the individual or business entity in this state." Borden v. E.-European Ins. Co., 921 So. 2d 587, 591 (Fla. 2006). It is a right personal to the defendant. Miller v. Goodell, 958 So. 2d 952, 953-54 (Fla. 4th DCA 2007). The nature of the objection renders a judgment either void or voidable. See Kathleen G. Kozinski, P.A. v. Phillips, 126 So. 3d 1264, 1268 (Fla. 4th DCA 2013) ("A total lack of service of

process renders a judgment void, not voidable. Defective service of process, however, renders a judgment voidable.") (internal citations omitted).

Nevertheless, this type of jurisdiction may be conferred by consent, agreement, or waiver. Miller, 958 So. 2d at 953-54. Accord Sternberg v. Sternberg, 190 So. 486, 488 (Fla. 1939). "Lack of personal jurisdiction . . . must be raised at the 'first opportunity' and before the defendant takes any steps in the proceeding constituting submission to the court's jurisdiction." Snider v. Metcalfe, 157 So. 3d 422, 424 (Fla. 4th DCA 2015). See also Babcock v. Whatmore, 707 So. 2d 702, 704 (Fla. 1998); Fla. R. Civ. P. 1.140(b), (h). "Active participation in the proceedings in the trial court, especially without objecting to jurisdiction due to the lack of service of process, constitutes a submission to the court's jurisdiction and a waiver of any objection." Solmo v. Friedman, 909 So. 2d 560, 564 (Fla. 4th DCA 2005).

Whereas, case jurisdiction concerns the exercise of jurisdiction—rather than the existence of jurisdiction. It "involves the power of the court over a particular case that is within its subject matter jurisdiction." T.D. v. K.D., 747 So. 2d 456, 457 n.2 (Fla. 4th DCA 1999). It is "a court's authority to act in a particular case." 14302 San Pablo Place SPE, LLC v. VCP-San

Pablo, Ltd., 92 So. 3d 320, 321 (Fla. 1st DCA 2012). Accord Tobkin v. State, 777 So. 2d 1160, 1163 (Fla. 4th DCA 2001).

This type of jurisdiction concerns the procedural posture of the case and is fact specific. See Scott Stephens, Florida's Third Species of Jurisdiction, 82 Fla. Bar J. 10, 11 (March 2008) ("Procedural jurisdiction has nothing to do with the scope of the court's constitutional or statutory power, or the status of the parties. Instead, it is a matter of compliance with applicable procedural principles, some codified in rules, but more often products of case law.").

This Court first recognized the distinction between subject matter jurisdiction and case jurisdiction in Malone v. Meres, 109 So. 677 (Fla. 1926). The Court rejected an attempt to elevate a mere procedural irregularity to subject matter jurisdiction. Justice Ellis wrote: "The jurisdiction of the chancery court to entertain this case being shown and the defendant having appeared by counsel, thus subjecting his person to the court's jurisdiction, the decree, although it may be subject to the criticism of procedural error, is not void." Id. at 694. See also State ex rel. Fulton Bag & Cotton Mills v. Burnside, 15 So. 2d 324, 326 (Fla. 1943) ("A judgment although iregular (sic) in form, entered by a court having jurisdiction of the subject matter and the

parties, is conclusive so long as unreversed and cannot be attacked collaterally.").

In other words, where subject matter and personal jurisdiction are present, a lack of case jurisdiction does not render the trial court's proceedings or judgment void. See also State v. King, 426 So. 2d 12, 14 (Fla. 1982) ("If a court has jurisdiction of the subject matter and of the parties, the proceeding is not a nullity and the judgment is not void."). It is considered merely voidable. Clarke, 364 So. 3d at 1138; 14302 Marina San Pablo Place SPE, LLC, 92 So. 3d at 321 (Ray, J., concurring). Indeed, a voidable judgment is one "based upon some error in procedure." Jones-Bishop v. Estate of Sweeney, 27 So. 3d 176, 177 (Fla. 5th DCA 2010).

Objections to voidable matters must be timely made or they are waived. King, 426 So. 2d at 14; Haddock v. State, 176 So. 782 (Fla. 1937); Fla. Power & Light Co., 423 So. 2d at 423 n.5; see also G.P., 158 So. 3d at 637-38 ("These are pleading and procedural deficiencies, not jurisdictional defects. Such deficiencies do not automatically deprive the court of jurisdiction, void the judgment, or subject it to collateral attack.").

This is similar to other objections to procedural irregularities. See, e.g., Page v. Deutsche Bank Tr. Co. Ams., 308 So. 3d 953, 960 (Fla. 2020) (holding party waived objection of lack of standing by failing to object at the

earliest opportunity); Portales v. Another Beautiful Corp., 121 So. 3d 562, 563 (Fla. 3d DCA 2012) ("By the appellant's failure to timely object to the procedure she now contends to be irregular, she is deemed to have waived the objection by acquiescence."); Williams v. Salem Free Will Baptist Church, 784 So. 2d 1232, 1234 (Fla. 1st DCA 2001) (holding party waived procedural right to move for directed verdict); E&I, Inc. v. Excavators, Inc., 697 So. 2d 545, 546 (Fla. 4th DCA 1997) (applying waiver to failure of the party moving for summary judgment to provide requisite notice to the other party before hearing); Wong v. Crown Equip. Corp., 676 So. 2d 981, 982 (Fla. 3d DCA 1996) (applying waiver to failure of the party moving for summary judgment to state with particularity in his motion a ground he argued at the hearing on the motion); Mole v. First Fed. Sav. & Loan Ass'n, 674 So. 2d 144, 145 (Fla. 5th DCA 1996) (applying waiver to an objection to the procedural grounds upon which the motion for judgment notwithstanding the verdict was based); E.J. Assocs., Inc. v. John E. & Aliese Price Found., Inc., 515 So. 2d 763, 764 (Fla. 2d DCA 1987) (applying waiver to failure to object to timeliness of summary judgment affidavits).

Indeed,

> [a] litigant may not sit on his hands, fail to voice his objections, and then claim prejudice when a final judgment is entered which may adversely affect him. Furthermore, he may not raise his

> objections for the first time on appeal. Procedural irregularities to which no objection is made are waived.

Allstate Ins. Co. v. Gillespie, 455 So. 2d 617, 620 (Fla. 2d DCA 1984) (applying waiver to "at issue" requirement in Rule 1.440). See also Posso v. Sierra, 311 So. 3d 1021, 1024 (Fla. 5th DCA 2021) ("After fully participating in the trial, Posso cannot, after what she perceived as an unfavorable result, then raise a procedural objection in a motion for rehearing."); Portales, 121 So. 3d at 563 ("By the appellant's failure to timely object to the procedure she now contends to be irregular, she is deemed to have waived the objection by acquiescence."); Marsh v. Sarasota Cty., 97 So. 2d 312, 313 (Fla. 2d DCA 1957) ("[O]bjections to procedural matters not raised in the lower court cannot be raised on appeal, and a party who fails to make timely objection to what he considers procedural irregularities at the time of trial will be deemed to have waived the same by acquiescence.").

Several District Courts have applied these principles to case or procedural jurisdiction. For example, in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000), the parties settled the case and filed a joint stipulation for dismissal. Id. at 33. Subsequently, each party individually moved to enforce the settlement agreement within the same case. Id. Neither party objected to the trial court's consideration of the

motions. Id. The trial court ruled on the motions and entered a judgment, which included damages. Id. On appeal, the appellant claimed—for the first time—that the trial court lacked subject matter jurisdiction. Id.

The Fourth District explained that the voluntary dismissal did not eliminate the subject matter jurisdiction of the trial court, but rather "terminated the trial court's 'case' jurisdiction." Id. at 35. Once the initial motion to enforce settlement was filed within the dismissed case, it was incumbent on the party to object and to "prevent[] the trial court from exercising any further 'jurisdiction' in the dismissed case" and "require[] [the moving party] to litigate the breach of the settlement agreement in a new lawsuit." Id. "Having failed to object to the court further considering the case, and having itself asked the court to decide the dispute over the settlement agreement, MCR cannot be heard to complain that somehow the court lacked jurisdiction." Id. at 36.

Likewise, in Schroeder v. MTGLQ Inv'rs, L.P., 290 So. 3d 93 (Fla. 4th DCA 2020), the appellant appealed a final judgment of foreclosure in favor of the lender. Another lender was substituted as a party plaintiff and the loan modification documents were attached to the amended complaint. Id. at 95. However, the loan modification documents did not show that the documentary stamp taxes or intangible tax on the increased principal

balance were paid. Id. Appellant did not raise the issue below. Id. On appeal, appellant asserted fundamental error. Id. at 97. The Court held that "[s]imilar to the situation we addressed in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000), any fundamental error was waived by Appellant having willingly submitted herself to the trial court's authority to decide the dispute." Id. The appellant "could have raised the issue as a matter of case jurisdiction," and didn't. Id.

The concurring opinion elaborated:

> That the taxes were not paid on the loan modification at the time of the final judgment and the trial court did not have 'case jurisdiction' is not fatal in this case for the reasons set forth in the majority opinion. Lack of case jurisdiction may make the judgment voidable, but it does not make it void. The appellant did not object to the nonpayment of taxes and acceded to the court's exercise of jurisdiction. Thus, they cannot now complain that the court did not have jurisdiction to enter the final judgment.

Id. at 99 (Warner, J., concurring).

Similarly, in Clarke v. Global Guaranteed Goods & Servs., Inc., 364 So. 3d 1135 (Fla. 6th DCA 2023), the parties entered into a settlement agreement in which Global was to pay Clarke a sum of money. As part of the agreement, Clarke was to file a stipulation for dismissal within ten days of receipt of the final payment; however, he did so eleven months before the anticipated payoff date. Id. at 1137. Clarke later filed a motion to enforce

settlement and sought entry of a final judgment. Id. The trial court denied the motion and gave Global extra time to pay. Id.

On appeal, Global—for the first time—argued that the trial court lacked jurisdiction to adjudicate the motion to enforce settlement. Id. at 1138. The Sixth District rejected that argument. Id. The Court was "persuaded by MCR Funding and Judge Ray's concurrence in 14302 Marina and h[e]ld that lack of case jurisdiction may be waived if not first raised in the trial court, and it was indeed waived here for that reason." Id.

Likewise, in Ocean Bank v. Caribbean Towers Condo. Ass'n, 121 So. 3d 1087 (Fla. 3d DCA 2013), the Bank appealed orders that denied its post-judgment requests for attorney's fees, but was in favor of the Bank on the merits of the statutory cap to the Association's liens. Id. at 1089. The trial court held it was the proper procedure to litigate the lien, but not the attorney's fees. Id. The Association did not appeal or cross-appeal the rulings on the merits of the lien, but claimed that the trial court lacked subject matter jurisdiction to entertain any post-judgment proceedings. Id. The Third District held that the trial court had subject matter jurisdiction. Id. While not expressly calling it case jurisdiction, the Court explained it was procedural. Id. at 1090. The Court held that by consenting to the post-judgment procedure as the proper forum to decide the merits of the lien, the

Association cannot claim that it was improper procedure to similarly decide attorney's fees. Id.

This Court should approve these conflict cases and hold that case jurisdiction can be waived if an objection is not timely asserted at the first opportunity. As explained above, this type of jurisdiction is not found in our Constitution or statutes. It is judge-made and based on mere procedure in the case. Procedural irregularities in a proceeding can be waived. See generally Page, 308 So. 3d at 960 (holding that standing is not a component of subject matter jurisdiction and is waivable).

A rule of law to this effect would bring this area of law in conformity with the law on procedural irregularities. See id.; Portales, 121 So. 3d at 563; Williams, 784 So. 2d at 1234; E&I, Inc., 697 So. 2d at 546; Wong, 676 So. 2d at 982; Mole, 674 So. 2d at 145; E.J. Assocs., Inc., 515 So. 2d at 764; Allstate Ins. Co., 455 So. 2d at 620.

It is especially important that this type of objection is made at the first opportunity to do so. It is possible that case jurisdiction "can appear and disappear depending on various events, and indeed it can be split into pieces when a court retains 'jurisdiction' over some issues but not others when rendering judgment." Stephens, supra at 17. See, e.g. ATM Ltd. v. Caporicci Footwear, Ltd., 867 So. 2d 413, 413-14 (Fla. 3d DCA 2003). In

any event, this will alert the trial court and allow it to immediately correct course if necessary.

This Court has explained:

> There is good reason for requiring defendants to register their objections with the trial court. A defendant should not be allowed to subject himself to a court's jurisdiction and defend his case in hope of an acquittal and then, if convicted, challenge the court's jurisdiction on the basis of a defect that could have been easily remedied if it had been brought to the court's attention earlier. Neither the common law nor our statutes favor allowing a defendant to use the resources of the court and then wait until the last minute to unravel the whole proceeding.

King, 426 So. 2d at 15. This is also in line with basic rules of preservation of error and the invited error doctrine. Aills v. Boemi, 29 So. 3d 1105, 1108-09 (Fla. 2010); Gjokhila v. Seymour, 349 So. 3d 496, 501 (Fla. 1st DCA 2022).

Lastly, requiring an objection at the first instance will ultimately save the court system and parties valuable resources. Cases will not be litigated for years only to unravel where someone did not voice an objection and fully acquiesced to the court's authority. Otherwise, there is an incentive to remain silent about procedural defects; it would allow a party to litigate a case to conclusion and exercise veto power over the trial court's judgment.

B. THE CASES HOLDING THAT CASE JURISDICTION CANNOT BE WAIVED, TREAT IT AS SUBJECT MATTER JURISDICTION.

The District Court cases which have found that case jurisdiction cannot be waived and any objection can be raised for the first time on appeal, treat the objection as one of subject matter jurisdiction. See Sanchez v. Sanchez, 285 So. 3d 969, 974 n.8 (Fla. 3d DCA 2019) ("We recognize that practitioners and courts — even this Court — have used the term 'jurisdiction' loosely, even interchangeably, and at times improperly."); Renovaship, Inc. v. Quatremain, 208 So. 3d 280, 283 n.6 (Fla. 3d DCA 2016) ("This court (and regrettably, this author) has on prior occasions referred to this issue as one involving subject-matter jurisdiction.").

These courts ignore the procedural nature of case jurisdiction. The procedural posture turns on specific facts of a case rather than whether a case sits within a statutorily or constitutionally defined category of cases. These courts conflate the procedural exercise of a court's jurisdiction with the existence of jurisdiction. And importantly, they ignore the well-established principle that procedural irregularities in proceedings can be waived.

For example, in Pulte v. New Common School Foundation, 334 So. 3d 677 (Fla. 2d DCA 2022), the Second District explained subject matter and

case jurisdiction. Nevertheless, it then stated: "Regardless of nomenclature. . . " and treated it as one in the same—loosely referring to it as "lack of jurisdiction." Id. at 680-681. See also Schmidt v. JJJTB, Inc., 357 So. 3d 208, 211 (Fla. 2d DCA 2023) ("Our cases dictate that a party cannot waive a challenge to subject matter or case jurisdiction."); Dandar v. Church of Scientology Flag Serv. Org., 190 So. 3d 1100, 1103-04 (Fla. 2d DCA 2016); 84 Lumber Co., 656 So. 2d at 1299 ("We conclude, therefore, that the joint stipulation for dismissal filed by Cooper and his insurance company in the uninsured motorist lawsuit under rule 1.420(a) divested the trial court of any subject matter jurisdiction to adjudicate any future issues arising in that case, including Cooper's motion to determine the amount 84 Lumber was entitled to be reimbursed.").

Similarly, in Wilson v. State, 487 So. 2d 1130 (Fla. 1st DCA 1986), the First District rejected an argument that Wilson waived an objection to jurisdiction by failing to timely object to the trial court's modification of his sentence. Id. at 1130-31. The Court held that a defendant cannot confer "jurisdiction" by waiver "since jurisdiction is established solely by general law." Id. See also White v. State, 404 So. 2d 804, 805 (Fla. 2d DCA 1981) (same).

Likewise, in MTW Jordan, Inc. v. Baskerville, 323 So. 3d 331 (Fla. 5th DCA 2021), the Fifth District referred throughout its opinion to simply "jurisdiction." In a footnote, it explained:

> We note that neither party raised the issue of subject matter jurisdiction with the trial court, and accordingly, it had no opportunity to address the arguments Appellant raises before us. But parties cannot consent or agree to subject matter jurisdiction, and Appellant can raise this issue for the first time on appeal.

Id. at 333 n. 1.

Nevertheless, as set forth above in more detail, subject matter and case jurisdictions are not the same. One springs from our Constitution and statutes, while the other is judge made and arises from procedure. One is about the existence of jurisdiction, the other is about the exercise thereof. One is about classes of cases, the other about case specific procedural facts. "Expecting all errors of 'jurisdiction' to be treated the same is a recipe for failure." Stephens, supra at 11.

This Court already recognized the difference long ago in Malone v. Meres, 109 So. 677 (Fla. 1926). See also Paulucci, 842 So. 2d at 801. As a result, this Court should disapprove of the cases that treat subject matter and case jurisdiction as one in the same.

C. OTHER STATES THAT RECOGNIZE CASE OR PROCEDURAL JURISDICTION HAVE FOUND THAT IT CAN BE WAIVED.

It appears that not all states expressly recognize case jurisdiction. This may be due to how their constitutions are worded or other statutory provisions. Nonetheless, many of the states that do recognize it have generally found that a lack of case jurisdiction creates a voidable order and is waivable.

The following states have done so, and this Court should follow:

California	People v. Am. Contractors Indem. Co., 93 P.3d 1020, 1024 (Cal. 2004); People v. Ramirez, 159 Cal. App. 4th 1412, 1422 (Cal. App. 2008).
Connecticut	Waterman v. United Caribbean, Inc., 577 A.2d 1047, 1049 (Conn. 1990).
Illinois	Taylor Coal Co. v. Indus. Com., 134 N.E. 169, 170 (Ill. 1922).
Indiana	State ex rel. Dean v. Tipton Circuit Court, 181 N.E.2d 230, 235 (Ind. 1962).
Kentucky	Commonwealth v. Steadman, 411 S.W.3d 717, 724 (Ky. 2013).
Missouri	In re Marriage of Neal, 699 S.W.2d 92, 94 (Mo. Ct. App. 1985).
Ohio	Pratts v. Hurley, 806 N.E.2d 992, 995 (Ohio 2004).
Oregon	Portland GE v. Ebasco Servs., 306 P.3d 628, 633 (Ore. 2013).

Pennsylvania	In re Melograne, 812 A.2d 1164, 1167 (Pa. 2002).
South Carolina	Thomas & Howard Co. v. T. W. Graham & Co., 457 S.E.2d 340, 343 (S.C. 1995).
Utah	Iota LLC v. Davco Mgmt. Co. LC, 391 P.3d 239, 256 (Ut. App. 2016).
Virginia	Qureshi v. Mahmood, No. 0616-20-2, 2021 Va. App. LEXIS 68, at *8 (Va. Ct. App. 2021).
Washington	Rabbage v. Lorella, 426 P.3d 768, 773 (Wn. App. 2018).

II. THE RESPONDENTS WAIVED ANY OBJECTION TO CASE JURISDICTION BY FAILING TO TIMELY OBJECT AND SEEKING AFFIRMATIVE RELIEF FROM THE COURT.

A. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION.

As an initial matter, the trial court throughout the proceedings had subject matter jurisdiction. Under the Florida Constitution, circuit courts have "original jurisdiction not vested in the count courts." Art. V, § 5(b), Fla. Const. Statutory authority resides in section 26.012, Florida Statutes. § 26.012(2)(a), (c), (g), Fla. Stat.; see also § 702.01, Fla. Stat.

B. RESPONDENTS WAIVED ANY OBJECTION TO CASE JURISDICTION.

In 2018, JJJTB sought leave to amend its complaint. The court case was still open as no "re-open" fee is indicated on the docket. (R. 2-31). It

does not appear that the motion was opposed, and leave was granted. (R. 2463). Thereafter, Schmidt and Schmidt Farms actively litigated this case for two and a half years. (R. 2-15). They twice moved to dismiss the complaint. They sought affirmative relief by way of a counterclaim, which was incorporated into their answer. They asserted eighteen different affirmative defenses. (R. 2761-2789). After proceeding in due course, the parties tried a three-day bench trial. (R. 5070-5580). During trial, the Respondents even moved for judgment as a matter of law in their favor. (R. 4370-4404; 5245).

Schmidt and Schmidt Farm had over two years to raise any objection. And, yet, they failed to do so. Schmidt and Schmidt Farm waited until *after* final judgment had been entered to raise any objection to "jurisdiction." Posso, 311 So. 3d at 1024 ("After fully participating in the trial, Posso cannot, after what she perceived as an unfavorable result, then raise a procedural objection in a motion for rehearing."). Even at that point, they simply objected on the basis of subject matter jurisdiction. (R. 4487-4556). There was no objection as to case jurisdiction. See generally Aills, 29 So. 3d at 1109 (explaining specific legal ground for objection must be made to trial court in order to be subject to appellate review).

This was a procedural irregularity, at best. By failing to raise this issue and alert the trial court at the first instance, Schmidt and Schmidt Farms waived any objection thereto. They voluntarily submitted themselves to the trial court's case jurisdiction. Schmidt and Schmidt Farms actively sought relief from the court and acquiesced to the court's authority. It appears now that they simply wanted to "wait and see" if they would receive a favorable decision after trial and exercise veto power over the trial court's judgment. Substantial judicial and party resources were expended in the process.

The Respondents should not be allowed to sit idly by, fail to object, and then claim prejudice when an adverse judgment has been entered. Allstate Ins. Co., 455 So. 2d at 620. "Procedural irregularities to which no objection is made are waived." Id. The Second District's decision should be quashed.

C. THE TRIAL COURT NEVER LOST CASE JURISDICTION OVER THIS CASE.

While not addressed before, it is questionable whether the "final order" from the initial appeal contained words of finality. (R. 1656-1657). While it is titled "final order," that is not dispositive and we must look to the substance. Boyd v. Goff, 828 So. 2d 468, 469 (Fla. 5th DCA 2002); Bank of N.Y. Mellon v. Swain, 217 So. 3d 226, 227 (Fla. 5th DCA 2017).

The order simply "denied" the counts in the complaint. See In re C.T.D., 623 So. 2d 834, 834 (Fla. 4th DCA 1993) ("An order denying relief does not constitute a final judgment. Words of finality are required to make the order an appealable order."). The order does not say that the Respondents shall go forth hence without day or enter judgment in their favor. See Allstate Ins. Co. v. Collier, 405 So. 2d 311, 312 (Fla. 4th DCA 1981) ("[U]se of additional language such as 'the plaintiff take nothing by [this] suit… and go hence without day' lends the necessary unequivocal declaration of finality that will support an appeal."); Hoffman v. Hall, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002) ("To be appealable as a final order, an order must contain unequivocal language of finality.").

This may explain why the case was still open and JJJTB was not required to pay a re-open fee in 2018. It would also explain why the trial court ordered the parties to mediation immediately after entering this order. (R. 1659-1661). Cf. U.S. Bank Nat'l Ass'n v. Anthony-Irish, 204 So. 3d 57, 61 (Fla. 5th DCA 2016) (holding trial court lacked case jurisdiction to order parties to mediation after final judgment was entered). And, it would explain why the trial court so readily granted leave to amend the complaint.

Even though the parties and the Second District treated the July 16, 2015 order as final, it was not one and should not have been treated as such.

It flows therefrom that the Second District did not have subject matter jurisdiction to adjudicate that appeal.[9] The order does not fall within any provisions of Article V, Section 4(b), of the Florida Constitution. Art. V, § 4(b), Fla. Const. Therefore, the per curiam affirmance opinion in the first appeal is a legal nullity.

Consequently, the trial court never lost case jurisdiction. It retained case jurisdiction after it entered its "final order." It continued to retain case jurisdiction throughout the litigation of the amended complaints, the three-day bench trial, and entry of final judgment.

CONCLUSION

This Court should approve the conflict cases—MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000); Schroeder v. MTGLQ Inv'rs, L.P., 290 So. 3d 93 (Fla. 4th DCA 2020); Clarke v. Global Guaranteed Goods & Servs., Inc., 364 So. 3d 1135 (Fla. 6th DCA 2023); and Ocean Bank v. Caribbean Towers Condo. Ass'n, 121 So. 3d 1087 (Fla. 3d DCA 2013). It should hold that an objection to case jurisdiction is waived if not timely

[9] The subject order also would not qualify as an appealable non-final order under Rule 9.130 or be reviewable by a writ of certiorari, or other extraordinary writ. The order denying the motion for rehearing was not separately reviewable. Fla. R. App. P. 9.130(a)(4).

asserted at the first opportunity. Case jurisdiction is about the procedural posture of the case. It is well-settled that procedural irregularities can be waived. Lastly, this Court should quash the Second District's decision in this case.

WHEREFORE, Petitioner JJJTB, INC. respectfully requests for this Court to approve the conflict cases, and quash the Second District's decision.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been furnished via E-PORTAL to: **Jesse L. Ray, Esq**., Jesse Lee Ray Attorney at Law, P.A., 13014 N. Dale Mabry Hwy., Suite 315, Tampa, FL 33618, (jray@jesseleeray.com); **Edward William Collins, Esq**., The Law Office of William Collins, P.A., 203 E. Jackson Street, #332, Tampa, FL 33602 (bill@williamcollinslaw.com); on this 23rd day of January, 2024.

/s/ Kansas R. Gooden
KANSAS R. GOODEN

CERTIFICATE OF COMPLIANCE

In accordance with Florida Rule of Appellate Procedure Rules 9.045 and 9.210(a)(2)(A) the undersigned counsel hereby certifies that this Brief complies with the font and word requirements of the Rule: Arial 14-point font and does not exceed 13,000 words.

/s/ Kansas R. Gooden
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