

IN THE SUPREME COURT OF FLORIDA

Case No.: SC23-0915

JJTB, INC.,

Petitioner,

v.

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

Respondents.

**RESPONDENTS' STEPHEN V. SCHMIDT
AND SCHMIDT FARMS, INC.'S
RESPONSE BRIEF ON JURISDICTION**

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TABLE OF CONTENTS

TABLE OF CITATIONS 3

STATEMENT OF THE ISSUES 5

STATEMENT OF THE CASE AND FACTS 5

ARGUMENT 6

I. CONFLICT JURISDICTION..... 6

II. ACCURATE NATURE OF THE ISSUE PRESENTED FOR REVIEW..... 7

III. THERE IS NO CONFLICT IN THIS CASE 9

**IV. THERE IS NO NEED FOR THE COURT TO CLARIFY A POINT OF
 LAW NOT AT ISSUE IN THE CASE 13**

CONCLUSION..... 14

CERTIFICATE OF SERVICE..... 16

CERTIFICATE OF COMPLIANCE..... 16

TABLE OF CITATIONS

Cases:

<i>Aravena v. Miami-Dade County</i> , 938 So. 2d 1163 (Fla. 2006)	7
<i>Clarke v. Global Guaranteed Goods & Servs., Inc.</i> , 2023 WL 3909995 (Fla. 6th DCA 2023)	9, 11
<i>Dept. of Law Enforcement v. House</i> , 678 So. 2d 1284 (Fla. 1996)	14
<i>Kartsonis v. State</i> , 319 So. 3d 622 (Fla. 2021)	8, 13
<i>Kyle v. Kyle</i> , 139 So. 2d 885 (Fla. 1962)	7
<i>MCR Funding v. CMG Funding Corp.</i> , 771 So. 2d 32 (Fla. 4th DCA 2000).....	6, 8, 9, 10, 11
<i>Ocean Bank v. Caribbean Towers Condo. Ass’n</i> , 121 So. 3d 1087 (Fla. 3d DCA 2013).....	9, 12
<i>Schroeder v. MTGLQ Inv’rs, L.P.</i> , 290 So. 3d 93 (Fla. 4th DCA 2020).....	9, 10
<i>Schroeder v. MTGLQ Inv’rs, L.P.</i> , 2020 WL 3525940 (Fla. 2020)	11
<i>State v. Barnum</i> , 921 So. 2d 513 (Fla. 2005)	7
<i>State v. Lovelace</i> , 928 So. 2d 1176 (Fla. 2006)	14
<i>Summit Claims Management v. Lawyers Express Trucking, Inc.</i> , 944 So. 2d 339 (Fla. 2006)	14

Florida Constitution:

Article V, § (3)(b)(3) 5, 6, 7, 10

Article V, § (3)(b)(4) 5, 6, 7

Rules:

Fla. R. App. P. 9.030(a)(2)(iv) 7

Fla. R. App. P. 9.045 16

Fla. R. App. P. 9.210(a)(2) 16

STATEMENT OF THE ISSUES

The Respondents disagree with the Statement of Issue presented in the Petitioner's Amended Brief on Jurisdiction. Contrary to the narrative issue presented by the Petitioner, the Respondents assert that the facts in this case are materially distinguishable from the case the Second District Court of Appeal certified conflict with. Thus, no conflict exists in this case whether it be construed as a certified conflict pursuant to Art. V. § (3)(b)(4), Fla. Const., or an express and direct conflict pursuant to Art. V. § (3)(b)(3).

Additionally, the Second District Court of Appeal did not error in ruling that a party cannot waive a subject matter or case jurisdictional challenge by failing to raise it in the trial court, and that case jurisdiction is not waivable and may be raised for the first time on appeal.¹

STATEMENT OF THE CASE AND THE FACTS

The Respondents accept and adopt the Petitioner's Statement of the Case and Facts presented in the Petitioner's Amended Brief on Jurisdiction.

¹ The Respondents do not agree or concede that its challenge to the trial court's case jurisdiction was not raised in the trial court or that it was raised for the first time on appeal. The contrary is an accurate statement of the facts in this case.

ARGUMENT

I. CONFLICT JURISDICTION

The Petitioner's rely on two separate grounds for jurisdiction; (1) Certified Conflict, under Art. V. § (3)(b)(4), Fla. Const. and (2) Express and Direct Conflict, under Art. V. § (3)(b)(3) Fla. Const.² Because the analysis of both grounds for invoking the Court's discretionary jurisdiction is factually driven, that discussion largely proceeds jointly within this Response Brief on Jurisdiction.

The Second District Court of Appeal certified conflict of the case at bar with the Fourth District's decision in *MCR Funding v. CMG Funding Corp.*, 771 So. 2d 32 (Fla. 4th DCA 2000). The Respondents readily acknowledge that this Court has discretionary jurisdiction given the Second District's

² The Petitioner's initial Notice of Appeal and Notice to Invoke Discretionary Jurisdiction of the Supreme Court and the Petitioner's initial Jurisdictional Brief of Petitioner only sought to invoke the discretionary jurisdiction of the Supreme Court pursuant to Art. V. § (3)(b)(3), Fla. Const. The Petitioner thereafter filed a Motion for Leave to Amend the Notice to Invoke Jurisdiction seeking to file an Amended Notice to Invoke Discretionary Jurisdiction to include Art. V. § (3)(b)(4), Fla. Const. as an additional basis to invoke the Court's discretionary jurisdiction. The Petitioner's Motion for Leave to Amend has not been ruled on and is presently pending before the Court. On July 10, 2023, the Petitioner filed the Petitioner JJTB, Inc.'s Amended Brief on Jurisdiction. The Petitioner's Amended Brief on Jurisdiction raises both Art. V. § (3)(b)(3), Fla. Const. and Art. V. § (3)(b)(4), Fla. Const. as a basis for invoking the Court's discretionary jurisdiction in this case.

certified conflict. See Art. V. § (3)(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi). However, a certification of conflict does not mandate Supreme Court review. *State v. Barnum*, 921 So. 2d 513 (Fla. 2005). The Respondents also recognize that this Court has discretionary jurisdiction over cases from the districts that truly present a direct and express conflict. See Art. V. § (3)(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). However, “[o]ne of the tests for conflict jurisdiction” is whether the decisions “are irreconcilable.” *Aravena v. Miami-Dade County*, 938 So. 2d 1163 (Fla. 2006). Specifically, the overall “conflict must be such that if the later decision and the earlier decision were rendered by the same court, the former decision would have the effect of overruling the latter. If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.” *Kyle v. Kyle*, 139 So. 2d 885 (Fla. 1962).

II. Accurate Nature of the Issue Presented for Review

The Petitioner presents for the Court’s review the issue of whether a party can waive a challenge to case jurisdiction by failing to timely assert such a challenge in the trial court. But that suggested issue in this case is simply manufactured by the Petitioner, and in no respect reflects the facts of this case. By asserting that the Respondents did not timely assert a

challenge to the trial court's case jurisdiction, the Petitioner infers that the Respondents failed to raise the issue (and challenge) of the trial court's case jurisdiction in the trial court. Such is simply not an accurate presentation of the facts in this case. The Respondents did in fact raise their challenge to the trial court's case jurisdiction in the trial court. The Second District's opinion specifically recognized this fact in writing "[S]chmidt moved for rehearing based, in part, on the trial court's lack of jurisdiction. The trial court denied Schmidt's rehearing motion" (App. 005).

The certified conflict case of *MCR Funding v. CMG Funding Corp.*, and every other case cited to the Court by the Petitioner, involve factual bases where the challenging party raised the challenge to the trial court's jurisdiction **for the first time** on appeal. Given that the Respondents did in fact raise their challenge to the trial court's case jurisdiction in the trial court, there is simply no waiver issue in this case, and no conflict between the district court cases for this Court to resolve. This Court has long recognized that the facts of the case are of the utmost importance in evaluating the existence of conflict between the district courts, and when the district courts decisions are materially distinguishable this Court has no discretion and lacks jurisdiction to review the case. *Kartsonis v. State*, 319 So. 3d 622 (Fla. 2021) (citing *Mancini v. State*, 312 So. 2d 732 (Fla. 1975)). The inquiry in

this case should now end here and the Court should decline to exercise its jurisdiction in this case.

III. There is No Conflict in this Case

The Petitioner identifies four cases allegedly conflicting with the Second District's decision in the case at bar, to wit: *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.*, 2023 WL 3909995 (Fla. 6th DCA 2023); and *Ocean Bank v. Caribbean Towers Condo. Ass'n*, 121 So. 3d 1087 (Fla. 3d DCA 2013). The facts of the case at bar are readily distinguishable from the cases presented to the Court by the Petitioner, and none are applicable or helpful.

In the certified conflict case of *MCR Funding v. CMG Funding Corp.*, on appeal, **for the first time**, the appellant claimed that the trial court lacked subject matter jurisdiction. *Id.* The Fourth District specifically ruled that “[h]aving willingly submitted itself, and the dispute, to the court’s authority, MCR may not **for the first time** on appeal challenge the court’s power to decide the issue.” *Id.* (Emphasis added). The facts in the case at bar are readily distinguishable from the facts in *MCR Funding v. CMG Funding Corp.* In the case at bar the challenge to the trial court’s case jurisdiction was clearly raised in the trial court by way of motion for rehearing. As such, the

trial court had the full opportunity to consider the issue and render a proper order. The trial court did in fact fully consider the issue, but unfortunately entered an erroneous order when ruling.

The Petitioner cites the case of *Schroeder v. MTGLQ Inv'rs, L.P.*, 290 So. 3d 93 (Fla. DCA 2020) in support of its argument for express and direct conflict with the case at bar. Again, the facts in *Schroeder* are readily distinguishable from this case. In *Schroeder*, the appellant claimed fundamental error occurred in the trial court. But the objection to the alleged fundamental error was not raised in the trial court, and was raised **for the first time** on appeal. The court in *Schroeder*, citing *MCR Funding v. CMG Funding Corp.*, ruled that any fundamental error was waived by the appellant having willingly submitted herself to the trial court's authority to decide the dispute. *Id.* The court went on to hold that the appellant "could have raised the issue as a matter of case jurisdiction," and didn't. *Id.* As with *MCR Funding v. CMG Funding Corp.*, the appellant raised the issue of alleged fundamental error **for the first time** on appeal. Again, in the case at bar the Respondents raised their challenge to the trial court's case jurisdiction in the trial court. It is significant to note that review of the *Schroeder* case was presented to this Court on jurisdictional briefs under Art. V. § (3)(b)(3) Fla.

Const., and the Court declined to accept jurisdiction and review of the case. *Schroeder v. MTGLQ Investors, L.P.*, 2020 WL 3525940 (Fla. 2020).

The Petitioner next cites the case of *Clarke v. Global Guaranteed Goods & Servs., Inc.*, 2023 WL 3909995 (Fla. 6th DCA 2023) in support of its argument for express and direct conflict with the case at bar. Again, the facts in *Clarke* are readily distinguishable from the case at bar. In *Clarke* the appellant **for the first time** on appeal argued that the trial court lacked jurisdiction to adjudicate a motion to enforce settlement. On appeal the Sixth District wrote that it was persuaded by *MCR Funding v. CMG Funding Corp.*, and held that “case jurisdiction may be waived if not first raised in the trial court, and it was indeed waived for that reason.” *Id.* A simple reading of *Clarke* establishes that it is inapplicable to the case at bar. In *Clarke*, the court clearly ruled that the challenge to the trial court’s case jurisdiction was waived for the very reason that the challenge was not first raised in the trial court. Such are not the facts in this case. The Respondents did in fact raise their challenge to the trial court’s case jurisdiction in the trial court. One can only surmise how the Sixth District would have ruled in *Clarke* had the appellant first raised the challenge to the trial court’s case jurisdiction in the trial court.

Finally, the Petitioner cites the case of *Ocean Bank v. Caribbean Towers Condo. Ass'n*, 121 So. 3d 1087 (Fla. 3d DCA 2013) in support of its argument for express and direct conflict with the case at bar. The citation of *Ocean Bank* by the Petitioner in this case seems to be a stretch. The court in *Ocean Bank* seemed to have construed “case jurisdiction” as “procedural” jurisdiction, but that is not exactly certain from the court’s opinion. It is also not certain if the issue of the challenge to the trial court’s procedural jurisdiction was raised in the trial court. The only thing that seems certain in *Ocean Bank* is that the court ruled that a non-jurisdictional argument can be waived. It seems in *Ocean Bank* that the appellant attempted **for the first time** on appeal to argue that the trial court’s jurisdiction had been waived, but even that assumption is uncertain from the *Ocean Bank* opinion.

The Petitioner asserts in its Amended Brief on Jurisdiction that the Third, Fourth and Sixth Districts have held that a challenge to the trial court’s case jurisdiction is waived if it is not timely raised. See Amended Brief on Jurisdiction at p. 8. But that is clearly not the issue in this case. The Second District’s case opinion and the Petitioner’s Amended Brief on Jurisdiction both readily acknowledge that the Respondents first raised their challenge to the trial court’s case jurisdiction in the trial court before appeal.

IV. There is No Need for the Court to Clarify a Point of Law Not at Issue in the Case

The Petitioner finally argues that clarity is necessary from the Court as to whether case jurisdiction is waivable or not. It is well established by both the Second District and the Petitioner itself that the Respondents raised (and therefore did not waive) the challenge to the trial court case jurisdiction in the trial court. Therefore, there is no waiver in this case for the Court to determine. A decision from the Court on the waiver issue would not be determinative in this case, as there is no waiver issue in this case given that the Respondents raised the case jurisdiction issue in the trial court. Any such opinion by this Court would be nothing more than an advisory opinion for future litigants. All of the Florida District Courts are in accord on what constitutes subject matter jurisdiction and case jurisdiction in Florida. There is nothing further required from this Court on those issues. Given that there is no waiver issue for the Court to determine in this case, the issue of waiver of case jurisdiction is not presented to the Court. Thus, there is no conflict on that issue and the Court has no discretion and lacks jurisdiction to review the case. *Kartsonis v. State*, 319 So. 3d 622 (Fla. 2021) (citing *Mancini v. State*, 312 So. 2d 732 (Fla. 1975)).

CONCLUSION

As the Second District clearly recognized, this case presents nothing more than an ill-advised tactical decision by the Petitioner to seek to amend its pleadings after the case had been determined in finality on appeal, rather than seeking to file a new action as it should have. Thereafter, the trial court entered an erroneous order permitting the Petitioner to amend its pleadings after appeal. There is no conflicting point of law presented in the case for this Court's determination.

This Court should decline review of this case because there is no actual conflict between the district courts' opinions. Although a decision certified as being in direct conflict does not need to "expressly" conflict with another appellate decision, there still must be conflict in the decisions of the district courts. *Dept. of Law Enforcement v. House*, 678 So. 2d 1284 (Fla. 1996). This Court may decide that the district court decisions are distinguishable and that there is no conflict to be resolved. *State v. Lovelace*, 928 So. 2d 1176 (Fla. 2006); *Summit Claims Management v. Lawyers Express Trucking, Inc.*, 944 So. 2d 339 (Fla. 2006).

Based on the foregoing, the Court should decline to exercise its jurisdiction in this case.

Dated: July 21, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2023, I served a true and correct copy of the foregoing document via electronic transmission via E-PORTAL to: Kansas R. Gooden, Esq., Boyd & Jenerette, P.A., 11767 S. Dixie Hwy, #274, Miami, FL 33156 kgooden@boydjen.com and APStaff@boydjen.com; Sophia Bernard, Esq. and Lauren Feldman, Esq., Taylor Johnson, PL, 20 3rd Street SW, #209, Winter Haven, FL 33880 sbernard@taylorlawpl.com; ifeldman@taylorlawpl.com; lroberts@taylorlawpl.com; efiling@taylorlawpl.com.

/s/ Jesse L. Ray, Esquire

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Respondents Response Brief on Jurisdiction complies with the font and page limit requirements of Rule 9.045 and 9.210(a)(2)(A) of the Florida Rules of Appellate Procedure, as this Response Brief on Jurisdiction is filed in Arial 14-point font and is less than 2,500 words in length excluding the portions exempted by Rule 9.210(a)(2)(E).

/s/ Jesse L. Ray, Esquire

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