

IN THE SUPREME COURT OF FLORIDA

Case No.: SC23-0915

JJTB, INC.,

Petitioner,

v.

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

Respondents

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**PETITIONER JJTB, INC.'S**  
**AMENDED BRIEF ON JURISDICTION**

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## **STATEMENT OF THE ISSUE**

Whether a party can waive a challenge to case jurisdiction<sup>1</sup> by participating in proceedings and not timely asserting the argument.

## **STATEMENT OF THE CASE AND FACTS**

In 2011, JJTB, Inc. filed a foreclosure action against Stephen Schmidt and Schmidt Farms in Hillsborough County. (App. 004). The trial court found that JJTB failed to prove that Schmidt and Schmidt Farms defaulted and denied the foreclosure judgment in July 2015. (App. 004). JJTB appealed to the Second District and the Court affirmed. (App. 004).

In December 2016, JJTB filed an action on the promissory note in Polk County based on 2015 and 2016 defaults in payment. (App. 004). The trial court entered summary judgment in favor of Schmidt and Schmidt Farms and found that the statute of limitations barred the action. (App. 004).

JJTB subsequently sought leave to amend its complaint in the Hillsborough action to allege a cause of action on the promissory note and to add a new cause of action for new and separate defaults. (App. 004).

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<sup>1</sup> For a discussion on case jurisdiction, see U.S. Bank Nat'l Ass'n v. Anthony-Irish, 204 So. 3d 57, 60 (Fla. 5th DCA 2016). It has been referred to as "continuing" or "procedural" jurisdiction. Id.; Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 801 n.3. (Fla. 2003).

Schmidt and Schmidt Farms moved to dismiss the amended complaint. (App. 005). JJJTB argued that the original action remained pending and that the amended complaint related back to the original filing. (App. 005). The trial court dismissed the promissory note claim and allowed the amended complaint. (App. 005). After the case proceeded in due course, the trial court entered a foreclosure judgment against Schmidt and Schmidt Farms. (App. 005). Schmidt and Schmidt Farms moved for rehearing and asserted for the first time that the trial court lacked jurisdiction. (App. 005). The trial court denied rehearing and Schmidt and Schmidt Farms sought review in the Second District. (App. 005).

In the appeal, Schmidt and Schmidt Farms argue that the trial court lacked subject matter jurisdiction or other authority to proceed on the amended complaint. (App. 005). JJJTB argued that the trial court had subject matter jurisdiction. (App. 005). It maintained that Schmidt and Schmidt Farms waived any challenge to case jurisdiction by actively participating in the proceedings and failing to timely raise the argument. (App. 005; 008).

The Second District explained the difference between subject matter and case jurisdiction. (App. 005-006). It noted that the instant matter concerns case jurisdiction as the trial court had subject matter jurisdiction.

(App. 006). The Court held that a party cannot waive a challenge to case jurisdiction. (App. 005). And, it held that the trial court lacked case jurisdiction to proceed with the amended complaint. (App. 008-009). As a result, it reversed. (App. 009-010).

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). (App. 010). 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). (App. 010).

## **ARGUMENT**

### **I. THIS COURT SHOULD ACCEPT JURISDICTION AS THERE IS CONFLICT AMONG THE DISTRICTS.**

#### **A. The Second District certified conflict with a decision from the Fourth District.**

This Court has jurisdiction as the Second District certified conflict with the Fourth District's decision in MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000). See Art. V, § 3(b)(4), Fla. Const.; State v. Vickery, 961 So. 2d 309, 311 (Fla. 2007) (explaining requirements of certified conflict).

In MCR Funding, the parties settled the case and filed a joint stipulation for dismissal. Id. at 33. Subsequently, each party moved to enforce the settlement agreement within the same case. 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. “‘Case’ jurisdiction is the ‘power of the court over a particular case that is within its subject matter jurisdiction.’” Id. (citing T.D. v. K.D., 747 So. 2d 456, 457 n.2 (Fla. 4th DCA 1999)). Once the initial motion to enforce the settlement was filed within the dismissed case number, it was on the other 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. “Thus, having 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.

**B. The Second District’s decision also expressly and directly conflicts with decisions from other district courts of appeal.**

In addition to the certified conflict, this Court also has jurisdiction as the Second District’s decision expressly and directly conflicts with other district court of appeal decisions on the same question of law. See Art. V, § 3(b)(3), Fla. Const. It expressly and directly conflicts with MCR Funding v. CMG Funding Corp., 771 So. 2d 32 (Fla. 4th DCA 2000), set forth above in detail and expressly incorporated therein, and other decisions from Third, Fourth, and Sixth District Courts of Appeal.

In the decision, the Second District cited another Fourth District decision. 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. A 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 the documentary stamp taxes or intangible tax on the increased principal balance were paid. Id. However, 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.<sup>2</sup> Id.

Recently, the Sixth District aligned itself with the Fourth District. In Clarke v. Global Guaranteed Goods & Servs., Inc., 48 Fla. L. Weekly D 1162 (Fla. 6th DCA June 9, 2023), the parties entered into a settlement agreement in which Global was to pay Clarke a sum of money. 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 \*2. Clarke filed a motion to enforce settlement and sought entry of a final judgment. Id. at \*3. The trial court denied the motion and gave Global extra time to pay. Id. at \*4.

On appeal, Global—for the first time—argued that the trial court lacked jurisdiction to adjudicate the motion to enforce settlement. Id. The Sixth District rejected that argument. Id. at \*5. The Court was “persuaded by MCR

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<sup>2</sup> 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.” Schroeder, 290 So. 3d at 99 (Warner, J., concurring).

Funding and Judge Ray's concurrence in 14302 Marina<sup>3</sup> 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, the Third District has held case jurisdiction can be waived. 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 proper

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<sup>3</sup> 14302 San Pablo Place SPE, LLC v. VCP-San Pablo, Ltd., 92 So. 3d 320, 320 (Fla. 1st DCA 2012) (Ray, J, concurring) ("While lack of subject matter jurisdiction renders a judgment or order of a court void ab initio, lack of case jurisdiction should merely render the court's act voidable, and under appropriate circumstances, subject to consent, waiver, or estoppel.").

forum to decide the merits of the lien, the Association cannot claim that it was improper procedure to similarly decide attorney's fees. Id.

MCR Funding, Schroeder, Clarke, and Ocean Bank expressly and directly conflicts with the Second District on the same question of law—whether an objection or challenge to case jurisdiction is waivable.

Schmidt and Schmidt Farms voluntarily submitted themselves to the trial court's case jurisdiction. They actively litigated the case below. It was not until after the foreclosure judgment was entered and they moved for rehearing that any argument concerning jurisdiction was raised. Yet, the Second District found that this belated argument was proper and a challenge to case jurisdiction is not waivable in any manner. On the other hand, the Third, Fourth, and Sixth Districts have held that this type of challenge is waived if not timely raised.

**C. A decision from this Court will clarify the law and provide certainty for litigants.**

Clarity is necessary on this issue. As demonstrated by three decisions over the past two years, this is an issue that is arising with some frequency. See, e.g., Clarke, 48 Fla. L. Weekly D 1162; Schmidt v. JJTB, Inc., 357 So. 3d 208 (Fla. 2d DCA 2023); Pulte v. New Common Sch. Found., 334 So. 3d 677, 680 (Fla. 2d DCA 2022). Litigants need certainty and resolution from this Court as to whether case jurisdiction is waivable or not.

Without uniform jurisdictional jurisprudence, litigants in some districts are further from the metaphorical courthouse door than those in other districts. This Court should resolve the conflict to foreclose forum shopping and provide equal access and due process throughout the state.

It would also be beneficial for this Court to write as some appellate courts have referred to subject matter jurisdiction where the case truly concerned case jurisdiction. See, e.g., MTW Jordan, Inc. v. Baskerville, 323 So. 3d 331, 332 (Fla. 5th DCA 2021) (holding trial court did not have “subject matter jurisdiction” to entertain motion for final judgment after voluntary dismissal filed as part of settlement agreement). A decision from this Court would make clear exactly what falls into each category of jurisdiction. Indeed, much of the detailed discussion concerning case jurisdiction has arisen in concurring opinions, which has no precedential effect. See, e.g., Schroeder, 290 So. 3d at 99 (Warner, J., concurring); 14302 San Pablo Place SPE, LLC, 92 So. 3d at 320 (Ray, J., concurring).

### **CONCLUSION**

This Court should accept jurisdiction. This case presents two avenues of jurisdiction for this Court—certified conflict and express and direct conflict. Art. V, § 3(b)(3), Fla. Const.; Art. V, § 3(b)(4), Fla. Const. Given the

frequency with which this issue has arisen over the past few years, this Court should resolve the conflict and determine whether challenges to case jurisdictional are waivable. It would provide certainty for litigants across Florida.

WHEREFORE, Petitioner JJJTB, INC. respectfully requests for this Court to accept jurisdiction and adjudicate this matter.

**BOYD & JENERETTE, P.A.**

*/s/ Kansas R. Gooden*  
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## **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a copy of the foregoing has been furnished via E-PORTAL to: **Sophia Bernard, Esq.**, and **Lauren Feldman, Esq.**, Taylor Johnson, PL, 20 3<sup>rd</sup> Street SW, #209, Winter Haven, FL 33880 ([sbernard@taylorlawpl.com](mailto:sbernard@taylorlawpl.com); [lfeldman@taylorlawpl.com](mailto:lfeldman@taylorlawpl.com); [lroberts@taylorlawpl.com](mailto:lroberts@taylorlawpl.com); [efiling@taylorlawpl.com](mailto:efiling@taylorlawpl.com)); **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](mailto: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](mailto:bill@williamcollinslaw.com)); on this 10<sup>th</sup> day of July, 2023.

*/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 2,500 words.

*/s/ Kansas R. Gooden*  
**KANSAS R. GOODEN**