SUPREME COURT OF FLORIDA

CASE NO. SC24-0099
FIRST DCA NO. 2D22-3465
L.T. NO. 20-CA-0811

STEAK N SHAKE, INC.,

***Petitioner*,**

v.

WILFRED W. RAMOS, JR.,

***Respondent*.**

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE ISSUES

Whether the Second District correctly applied the statutory provisions of § 760.11, Fla. Stat., by concluding that the act of dual-filing a charge of discrimination with the Equal Employment Opportunity Commission and Florida Commission on Human Relations, setting forth facts and particulars alleging discriminatory conduct in the workplace, complies with the administrative requirements set forth in the Florida Civil Rights Act, Chapter 760, Fla. Stat. ("FCRA").

STATEMENT OF THE CASE AND FACTS

In the original action before the Circuit Court, Respondent, Wilfred Ramos, Jr., filed a two-count complaint setting forth causes of action for disability discrimination and retaliation in violation of the FCRA. Petitioner, Steak N Shake, Inc., filed a Motion for Summary Judgment, arguing that Ramos failed to exhaust his administrative remedies. The trial court agreed, granting summary judgment and finding that because Ramos' dual-filed charge of discrimination did not contain the words, "and the FCRA" at the end of the narrative "particulars" section, he failed to "invoke" or otherwise assert a claim pursuant to the FCRA and his claims were procedurally barred.

On appeal, the Second District Court of Appeal reversed, finding that § 760.11(1), Fla. Stat., did not require such explicit or express language to exhaust administrative remedies. [A. 10]. The Second District further held that to require any such language would add a requirement not found anywhere within the statute, and would contravene the legislature's clear intent that the FCRA be interpreted liberally. [A. 9-10].

ARGUMENT

I. THE COURT HAS DISCRETIONARY JURISDICTION OVER CERTIFIED CONFLICTS.

Neither party disputes that this Court has discretionary jurisdiction to review a decision of a District Court of Appeal that is certified to be in conflict with a decision of another District Court of Appeal on the same questions of law. See Fla. Const. Art. V, § 3(b)(4); Fla. R. App. P. 9.030(a)(2)(A)(iv). Moreover, in its opinion, the Second District certified a conflict with the Fourth District Court of Appeal's decision in Belony v. N. Broward Hosp. Dist., 374 So. 3d 5 (Fla. 4th DCA 2023). [A. 10]. Whether such review is necessary is addressed below.

II. THE SECOND DISTRICT'S OPINION PROPERLY CONSTRUES THE STATUTORY PROVISIONS AT ISSUE.

The Second District correctly held that § 760.11(1), requiring that the "complaint shall contain a short and plain statement of the facts describing

the violation and the relief sought," does not require any additional language within the particulars section specifically referencing the FCRA. [A. 8]. Petitioner disagrees, and insists that the Second District's opinion renders the phrase "and the relief sought" superfluous, and that only the inclusion of specific language within the particulars section would remedy this issue and properly exhaust an employee's administrative remedies.

In rendering its opinion, the Second District noted that Ramos checked the box to dual-file his charge and thereafter described the facts supporting his claims. [A. 9]. That checked box alone is more than sufficient to put both the FCHR and the employer on notice that the employee may potentially bring suit under either statutory scheme. Petitioner has failed throughout to explain how dual-filing would *not* provide the appropriate notice, yet specific language in the particulars section would, and is thus required. Moreover, the FCRA makes clear that when an employee files a charge of discrimination with the EEOC, it is tantamount to a charge with the FCHR. § 760.11(1) ("In lieu of filing the complaint with the commission, a complaint under this section may be filed with the Equal Employment Opportunity Commission . . . .").

The Second District further correctly noted that had the legislature intended the FCRA to be available only when specific language is included

in the particulars section of a charge of discrimination, it could have included such instructions, but did not. [A. 9]. The court further held - again correctly - that by finding otherwise, the trial court added a requirement not found anywhere within the statute, contravening the legislature's clear intent that the statute be interpreted liberally. [A. 9-10]. See generally, Joshua v City of Gainesville, 768 S0. 2d 432 (Fla. 2000); Woodham v. Blue Cross & Blue Shield of Fla., 829 So. 2d 891 (Fla. 2002).

In contrast, the Fourth District erred by concluding the opposite in Belony. [A. 10]. Belony is contrary to the intent of the Florida legislature, noted above, as well as the decades of case law that followed the adoption of the FCRA. Perhaps most perplexing about the Belony opinion is this language:

> Our holding should not be interpreted to mean that a discrimination charge must specifically reference Florida law. Rather, our holding is intended to clarify that when a discrimination charge only and specifically alleges a violation of federal law, the act of dually filing the charge with the FCHR is insufficient to comply with the requirements of section 760.11, Florida Statutes (2019)

Belony, 374 So. 3d at 8 (Fla. 4th DCA 2023). Respectfully, this somewhat contradictory language misses the mark, particularly when the real-world implications are evaluated. Essentially, had Ramos included *no* language about either statute at the end of his particulars section, the Belony court

would have found his administrative remedies exhausted. But because the charge contained the EEOC's form language, and Ramos did not include any additional language referencing the FCRA, the Belony court would find that he did not exhaust his administrative remedies. That he still intentionally dual-filed his charge to invoke investigation pursuant to both statutes and by both agencies is immaterial under Belony, which makes little sense.

To the extent either holding renders any language superfluous, Belony is the bad actor, as it makes meaningless the workshare agreement between the FCHR and EEOC, along with the FCRA's specific instructions that filing with one agency is tantamount to filing with the other.

Simply put, "the relief sought" is satisfied by Ramos' checking of the dual-filing box, signaling his intent to proceed before both agencies under both statutory schemes. There is nothing in § 760.11, Fla. Stat., that requires the additional inclusion of any specific language or "magic words" to invoke the FCHR's jurisdiction and pursue one's rights under the FCRA. Any contrary finding, like the holding in Belony, runs afoul of both the plain language of the FCRA and several decades of interpretive case law reiterating that the FCRA is to be liberally interpreted.

III. THERE IS NO NEED FOR THE COURT TO EXERCISE JURISDICTION.

This Court retains the discretion to decline review of a case even where conflict has been certified. See Art. V, § 3(b)(4), Fla. Const. ("The supreme court:...(4) May review any decision of a district court of appeal that... expressly and directly conflicts with a decision of another district court of appeal...."); see also, e.g., Flynn v. State, 81 So. 3d 1219 (Fla. 2017) (declining to exercise jurisdiction as to certified direct conflict); Hernandez v. State, 81 So. 3d 414 (Fla. 2012) (accepting review as to certified question of great public importance, but declining to exercise jurisdiction as to certified direct conflict); and State v. Barnum, 921 So. 2d 513, 528 (Fla. 2005) (holding appellate jurisdiction to review a decision of a district court of appeal based on certified conflict is not mandatory).

Certified-conflict jurisdiction facilitates uniformity of law among the District Courts of Appeal. However, the Florida Constitution's drafters made such certified-conflict jurisdiction discretionary in order, in part, to avoid saddling the Florida Supreme Court with the review of appellate court decisions which inappropriately deviate from settled Florida Supreme Court precedent. By qualifying as discretionary certified-conflict review, the drafters of the Florida Constitution clearly envisioned situations in which the Court would choose not to address certified conflicts.

This is one such instance. Here, the Fourth District in Belony departed from clearly established, well-settled Florida law. The FCRA clearly encourages dual-filing, and "checking the box" ensures a charge is sent to and potentially investigated by the other agency. There is no requirement in either the statute or the case law interpreting the FCRA requiring specific written language within that charge - other than the factual allegations themselves - to "invoke" the protections of the FCRA. Accordingly, this Court need not exercise jurisdiction, regardless of the certified conflict.

CONCLUSION

Although the Court may exercise discretionary review based on the conflict between this matter and Belony, for the reasons set forth herein, the Court should deny review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is in compliance with Rules 9.120(d) and 9.210(A)(2)(a), Fla. R. App. P. In addition, this brief was typed in Arial, size 14 font and is in compliance with all applicable word count limitations. Specifically, this brief contains 1737 words.

s/ Ashley N. Richardson
Ashley N. Richardson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic filing to all parties of record on this 6th day of March 2024.

/s/ Ashley N. Richardson
Ashley N. Richardson