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IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC2024-0099

DCA Case No.: 2D 22-3465
Lower Tribunal Case No.: 20-CA-000811

STEAK N SHAKE, INC.,

Petitioner/Defendant,

v.

WILFRED RAMOS JR.,

Respondent/Plaintiff.

PETITIONER'S BRIEF ON JURISDICTION

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I. STATEMENT OF THE ISSUE

Petitioner, Steak N Shake, Inc., submits the following statement of issues on appeal:

> Did the Florida District Court of Appeal, Second District misapply the statutory scheme of the Florida Civil Rights Act established in Section 760.11, Florida Statutes by concluding that the act of dually filing a discrimination charge with the Equal Employment Opportunity Commission, which only specifically alleges a violation of federal law but not the state law, complies with that statute's requirements—a decision in certified conflict with a contrary decision of the Florida District Court of Appeal, Fourth District?

II. STATEMENT OF THE CASE AND FACTS

This case involves claims that Steak N Shake discriminated against Respondent, Wilfred Ramos, Jr., due to an actual or perceived disability. Ramos dual filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC) and Florida Commission on Human Relations (FCHR). The issue is whether Ramos failed to exhaust his administrative remedies under the Florida Civil Rights Act (FCRA) when he only identified the federal Americans with Disabilities Act (ADA) in his administrative complaint. The trial court concluded that because Ramos did not invoke the FCRA during the administrative process he could not

maintain such a claim, dismissing his lawsuit. On appeal, the Second District Court of Appeal reversed.

1. NATURE OF THE CASE

During his employment, Ramos was purportedly in an off-the-job accident in which he suffered a back injury. Ramos claims his supervisor discriminated against him due to this injury. Ramos filed a Charge with the EEOC, requesting it be dual-filed with the FCHR.

According to Ramos's charge, Ramos alleged he believed Steak N Shake discriminated against him "on the basis of [his] disability and/or perceived disability and by retaliation for [his] request for reasonable accommodation ***in violation of the Americans with Disabilities Act of 1991, as amended***." (Emphasis added). Ramos, however, did not allege that Steak N Shake violated the FCRA, did not invoke the FCRA, and did not otherwise mention the FCRA. The charge was dismissed, and the EEOC issued a notice of right to sue.

2. COURSE OF THE PROCEEDINGS AND DISPOSITION OF THE LOWER TRIBUNALS

Ramos filed a two-count Complaint, asserting discrimination and retaliation in violation of the FCRA—and only the FCRA. Steak N Shake filed its Motion for Final Summary Judgment, arguing that the

undisputed evidence showed Ramos had failed to exhaust his administrative remedies under the FCRA. The trial court granted summary judgment in Steak N Shake's favor. It observed that Ramos failed to allege any claims under the FCRA in the charge, meaning he did not exhaust his administrative remedies under the FCRA.

On appeal, Ramos did not argue there were any genuine issues of material fact; but instead, that Steak N Shake was not entitled to summary judgment as a matter of law. On December 20, 2023, the Second District Court of Appeal issued its order, concluding that Section 760.11(1), Florida Statutes did not require that a party like Ramos specifically allege a violation of the FRCA in his agency charge. [*Opinion of the Florida District Court of Appeal, Second District, December 20, 2023* (the "Opinion"), Appendix, Appx. p. 8].

III. ARGUMENTS ON JURISDICTION

This Honorable 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). Here, the Second District's decision conflicts with the Fourth District Court of Appeal's decision in *Belony v. N.*

Broward Hosp. Dist., 374 So. 3d 5 (Fla. 4th DCA 2023). The Second District's decision errs in construing Section 760.11(1), Florida Statutes. Because this conflict has the potential to create instabilities in uniform application of Florida law, this Honorable Court should invoke jurisdiction and provide guidance to the lower courts by resolving the conflict.

1. THIS COURT SHOULD EXERCISE JURISDICTION BECAUSE THE SECOND DISTRICT CERTIFIED A CONFLICT

Under Article V, Section 3(b)(4) of the Florida Constitution, this Court has the discretion to "review any decision of a district court of appeal…that is certified by it to be in direct conflict with a decision of another district court of appeal." FLA. CONST. Art. V, § 3(b)(4). "[D]istrict court opinions accepted [for review as certified conflict cases]. . . almost uniformly meet two requirements: they use the word 'certify' or some variation of the root word 'certif.-' in connection with the word 'conflict;' and, they indicate a decision from another district court upon which the conflict is based." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall, & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L.Rev. 431, 529 (2005) (footnote omitted); *see also State v. Vickery*, 961 So. 2d 309,

311-12 (Fla. 2007) (noting in *dicta* that "a certification of conflict provides [the Florida Supreme Court] jurisdiction *per se*.").

In this case, the Second District Court of Appeal met the requirements by using the word "certify" and identifying the decision of another district court of appeal to which the decision was in conflict by stating:

> Additionally, we certify conflict with the Fourth District's opinion in *Belony v. N. Broward Hosp. Dist.*, [374 So. 3d 5 (Fla. 4th DCA 2023)], to the extent that it holds "when a discrimination charge only and specifically alleges a violation of federal law, the act of dually filing the charge with the [Commission] is insufficient to comply with the requirements of section 760.11, Florida Statutes (2019)."

[Opinion, Appx. p. 10]. As such, this matter falls within requirements for a certified conflict.

2. THIS COURT SHOULD EXERCISE JURISDICTION BECAUSE THE SECOND DISTRICT'S DECISION ERRONEOUSLY CONSTRUES THE STATUTE

In its opinion, the Second District Court of Appeal analyzed this statutory text:

> (1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the [FCHR] within 365 days of the alleged violation. . . The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought. . .

§ 760.11(1), FLA. STAT. The Second District erred in its interpretation.

A. The Second District Rendered an Important Phrase in the Statute as Mere Surplusage

The Second District reasoned that because Chapter 760 is remedial in nature, it construed the language in Section 760.11(1) as only requiring that the charge describe the facts of the violation and be filed with the applicable agencies. [Opinion, Appx. pp. 8-9]. It opined that had the Legislature wanted "the aggrieved party specifically allege in the [charge] that his or her claims were under the FCRA, then it could have said so, but it did not." [*Id.* at p. 9]. Thus, it concluded the trial court improperly added to Section 760.11(1)'s statutory requirements. [*Id.* at pp. 9-10].

Putting aside other issues in its analysis, the Second District erred by ignoring the phrase "and relief sought" contained in Section 760.11(1). This Court has observed that an "elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute . . . words in a statute should not be construed as mere surplusage." *Sch. Bd. of Palm Beach Cnty v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009).

The Second District construed Section 760.11(1) as meaning the charge need only include sufficient factual allegations describing the alleged discrimination. [*See* Opinion, Appx. pp. 8-9]. According to the Second District, because Ramos's charge did this, "Steak N Shake was fully on notice as to the nature and substance of Ramos's claims" regardless of whether Ramos sued on federal or state law claims. [*Id.* at p. 9].

Yet, Section 760.11(1) states that "[t]he complaint shall contain a short and plain statement of the facts describing the violation ***and the relief sought***." § 760.11(1), FLA. STAT. (emphasis added). The fact the Legislature included the phrase "and the relief sought," is of primary importance here.

The relief the federal ADA affords—like Title VII and other federal discrimination laws—substantively differs from the relief the FCRA affords. For instance, federal law imposes a cap on the amount of compensatory damages available to a plaintiff. *See* 42 U.S.C. § 1981a(a)(2)-(3), (b)(3). The FCRA imposes no such limitation. § 760.11(5), FLA. STAT.

Given that, by including the phrase "and the relief sought," in Section 760.11(1), the Legislature required an aggrieved party like

Ramos identify the FCRA and applicable relief at issue. Despite this, the Second District Court erroneously interpreted Section 760.11(1) to render the material phrase "the relief sought," a mere surplasage, violating an elementary principal of statutory construction.

B. The Fourth District Properly Construed the Statute

The opinion Fourth District announced in *Belony v. North Broward Hospital District d/b/a Broward Health* bolsters this statutory construction. *Belony*, 374 So. 3d 5 (Fla. 4th DCA 2023).

The Fourth District in *Belony* observed that "a cause of action founded on a federal statute is not the same cause of action as one founded on a state statute, even where both statutes apply to the same transaction or occurrence." *Belony*, 374 So. 3d at 7 (citing *Andujar v. Nat'l Prop. & Cas. Underwriters*, 659 So. 2d 1214, 1217 (Fla. 4th DCA 1995) (explaining that a claim made under the FCRA and is not the same cause of action as a claim made under federal discrimination law because they arise from separate rights recognized and protected by different sovereigns); *Santini v. Cleveland Clinic Fla.*, 843 So. 2d 1029, 1033 (Fla. 4th DCA 2003)); *see also Najiy v. City of Miami*, 980 So. 2d 1157, 1161 (Fla. 3d DCA 2008) (noting the FCRA and Title VII emanate from different sovereign

bodies of law). Moreover, the Fourth District observed that, as the charge's drafter, "one would reasonably assume the claimant only intended to bring a discrimination charge under federal law. Concluding otherwise would leave the employer having to guess whether the claimant also intended to bring a charge under Florida law." *Belony*, 374 So. 3d at 8. Hence, Ramos's act of identifying facts that might give rise to legal theories under either the FCRA or federal law was not tantamount to invoking both sovereign bodies of law—especially where substantive and procedural differences exist.

3. THIS COURT SHOULD EXERCISE JURISDICTION TO RESOLVE THE DISTRICT COURT SPLIT

This Honorable Court should exercise jurisdiction to resolve district court split now before a wealth of further petitions arrive at this Court. The fact that the Second and Fourth Districts are diametrically divided, applying different statutory interpretations to Section 760.11(1), evidence a strong need for this Court to exercise jurisdiction and provide the necessary guidance. Two substantially same cases filed in, for instance, Hillsborough and Broward Counties will have significantly different results—the former proceeding and the later dismissed. It would seem to be a significant waste of judicial

resources to allow the lower courts to continue applying opposing standards—one of which must be erroneous—particularly when the legal standard is one that would resolve litigation early.

In fact, courts applying Florida law already await this Honorable Court's resolution of this issue. *See Narvaez v. Fla. Health Sci. Ctr.*, No. 8:23-cv-2195-TPB-NHA, 2024 WL 167260, at *4 (M.D. Fla. Jan. 16, 2024) (denying motion to dismiss awaiting this Court's "definitive answer on this important issue of state law."). With thousands of charges filed each year, more cases like this one will arise. *See EEOC FY 2009 - 2022 EEOC Charge Receipts for FL* https://www.eeoc.gov/statistics/enforcement/charges-by-state/FL (Last visited Jan. 29, 2024) (5,192 charges in Florida during Fiscal Year 2022 alone). Hence, this Court should exercise jurisdiction.

IV. CONCLUSION

Petitioner, Steak N Shake, Inc., respectfully submits that this Honorable Court accept jurisdiction and resolve the certified conflict between the decisions of the Second and Fourth Districts on whether the act of dually filing a discrimination charge with the EEOC and FCHR that only alleges a violation of federal law and not the state law complies with the requirements of Section 760.11, Florida Statutes.

Dated: January 29, 2024 Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on ***January 29, 2024***, I electronically filed the foregoing with the Clerk of Court by using the Florida Courts E-Filing Portal which will send an electronic copy to:

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CERTIFICATE OF COMPLIANCE
FOR COMPUTER-GENERATED BRIEF

I HEREBY CERTIFY that this Brief on Jurisdiction uses Bookman Old Style 14-point font and contains 2,003 words (exclusive of words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block) based on the word count of the word-processing system used to prepare the document, and therefore complies with the applicable font and word count limit requirements set forth in Florida Rules of Respondent Procedure 9.045(b), (e) and 9.210(a)(2)(B), (a)(5)(A), and (f).

/s/ J. Robert McCormack
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