# 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.

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## REPLY BRIEF

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**On Discretionary Review from the District Court of Appeal, Second District**

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## I. SUMMARY OF THE REPLY ARGUMENTS

In reply, Petitioner, Steak N Shake, Inc., offers three main points. First, just as a court may not add language to a statute, it may not ignore language when it interprets a statute. The Florida District Court of Appeal, Second District erred in this case because it read the phrase "and the relief sought," out of Section 760.11(1) of the Florida Civil Rights Act ("FCRA") in determining what an aggrieved party's complaint must contain.

Second, while Section 760.01(3) indicates courts should employ a liberal construction, it also directs courts to construe the FCRA "according to the fair import of its terms" so that each provision can achieve its purpose. The Second District's interpretation championed by Respondent, Wilfred Ramos, Jr., gives no import to the phrase highlighted above and undermines the very purpose of Section 760.11(1).

Third and finally, the out-of-state case law upon which Ramos directs this Court's attention is either distinguishable because the two statutes have different language or supports Steak N Shake's arguments.

Each argument will be addressed in order below.

## II. REPLY ARGUMENTS

For the reasons that follow, Steak N Shake maintains the trial court was correct to grant summary judgment and the Second District erred in its statutory interpretation when it reversed.[1]

### 1. THE SECOND DISTRICT AND RAMOS'S INTERPRETATION OF SECTION 760.11(1) IGNORES THE ENTIRE TEXT OF THE STATUTE.

As this Court has often observed, the focus should be on the statutory text at issue. *DeSantis v. Dream Defenders*, --- So. 3d ----, 2024 WL 3058653, at *3, 49 Fla. L. Weekly S156 (June 20, 2024). Courts are to "give effect to the words that the [L]egislature has employed in the statutory text." *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022).

It is presumed that the Florida "Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 198-199 (Fla. 2007). Similarly, "[u]nder the whole-text canon, proper interpretation requires consideration of 'the

[1] As before, pages within the Original Record on Appeal will be cited as "R." or "RR." followed by the page number(s) supplied by the Hillsborough County Clerk of Court; pages in the Certified Copies of Appeal Papers will be cited as "P." or "PP." followed by the page number(s) supplied by the Second District's Clerk of Court.

entire text, in view of its structure and of the physical and logical relation of its many parts.'" *Lab. Corp.*, 339 So. 3d at 323 (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 167 (2012 Kindle Ed.)). The interpretation offered by Ramos and the Second District cannot be reconciled with the statutory text because it ignores words the Legislature used.

According to the interpretation employed by Ramos and the Second District, all an aggrieved party need do to exhaust administrative remedies under the FCRA is allege facts that make out an FCRA violation and file a charge. [PP. 130-131]. But, Ramos like the Second District errs in not giving effect to all of the text of Section 760.11(1). Strikingly, Ramos only gives a passing mention to this text (*Answer Brief*, p. 7), which both he and the Second District ignored in their respective analyses:

> (1) . . . The 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). Neither Ramos nor the Second District appears to have considered the bolded language's import whatsoever and what the Legislature could have meant by

including the phrase "and the relief sought" in Section 760.11(1). [*Answer Brief*, p. 7; PP. 130-131].

Ramos and the Second District's interpretation ignores what the Legislature actually stated in Section 760.11(1) and relieves any aggrieved party from complying with what the Legislature actually wrote. Practically speaking, this interpretation makes the text read as if it instead stated this:

> (1) . . . The complaint shall contain a short and plain statement of the facts describing the violation ~~and the relief sought~~. . .

And the Florida Legislature need not have bothered itself with adding the phrase, "and the relief sought" to text at issue.

An interpretation that renders words in a statute mere surplasage is a sign that the interpretation has gone astray. *Sch. Bd. of Palm Beach Cnty v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009) (observing "words in a statute should not be construed as mere surplasage"). The Legislature must have meant something by including the phrase "and the relief sought."

Despite Ramos's repeated assertions, the ADA and FCRA are different causes of action or claims with differing types of relief available. Ramos and the Second District implicitly presume a claim

is just the factual allegations that lead to some sort of relief. (*See Answer Brief*, pp. 16-17 (contending the fact that a federal claim and FCRA claim are different is of no moment)).

But, that is not what a claim is. Black's Law Dictionary defines a "claim" in a manner of ways that help inform the interpretation of Section 760.11. *Black's Law Dictionary*, "claim" (12th Ed. 2024). A "claim" is defined as:

> 3. A demand for money, property, or a legal remedy to which one asserts a right; esp., ***the part of a complaint*** in a civil action ***specifying what relief the plaintiff asks for.*** — Also termed *claim for relief*;
>
> 4. An interest or remedy recognized at law; ***the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing***; CAUSE OF ACTION (1) <claim against the employer for wrongful termination>.

*Id.* (emphasis added).

It is noteworthy that the legal definition of "claim" includes the concept of identifying the legal means—in this instance, the statutory basis—by which a person can obtain one or more types of relief. That same concept appears in Section 760.11. There, the Legislature directed that an aggrieved party's complaint set out a "statement of the facts describing the violation and the relief sought." § 760.11(1), FLA. STAT. The use of the phrase, "relief sought," indicates the

Legislature meant for a complaint to include a description of the relief an aggrieved party wanted by some means—for instance, by identifying the applicable legal framework.

This facet is important when the Florida Legislature has crafted the FCRA to have different types of relief compared to federal law. As previously observed, the FRCA and the ADA have differing caps on damages. *Compare* 42 U.S.C. § 1981a(b)(3) *with* § 760.11(5), FLA. STAT. The two bodies of law do not equally provide for front pay. *Compare* § 760.11(5), FLA. STAT. *with* 42 U.S.C. § 12117(a), 42 U.S.C. § 2000e–5(g)(1). Because of the different relief available, seeking relief under one law does not automatically afford one the same relief under the other law.[2] That is why lawsuits asserting federal and FCRA claims raise the claims in separate counts with differing prayers for relief.

Of course, an aggrieved party may choose to seek only some of the relief available under either or both statutes. For example, if the individual has secured new and perhaps more favorable employment,

[2] Further still, procedurally resolving a state or federal claim does not preclude the other type of claim. *Andujar v. Nat'l Prop. & Cas. Underwriters*, 659 So. 2d 1214, 1216-17 (Fla. 4th DCA 1995).

that individual may opt to forgo certain available relief, such as reinstatement. Some may seek only injunctive relief to ensure future compliance by an employer violating one or both statutes. There are numerous options available to an aggrieved party each of whom may have different goals.

Steak N Shake is not asking that aggrieved parties like Ramos must use "magic words." It might have been one thing had Ramos provided his short narrative about the alleged facts supporting a violation and requested reinstatement or damages but failed to affirmatively identify federal law whatsoever. In that hypothetical scenario, he might have an argument that Section 760.11(1) does not forestall either claim.

Yet, that is not what happened. Ramos filed a charge where he failed to identify any relief and affirmatively identified federal law by itself. [RR. 79-80]. Had Ramos intended to proceed under the FCRA, Ramos had more than sufficient time to do so. Ramos filed the Charge on November 14, 2017. [R. 79]. Steak N Shake separated Ramos on November 24, 2017 for not showing up to work. [RR. 190, 226].

Ramos had one year, or until November 24, 2018, to submit a charge with the FCHR about the separation. § 760.11(1), FLA. STAT.

It is undisputed that he never did that. Ramos also could have amended his Charge to add the termination claim, include the FCRA or remove a reference to the ADA. He did none of those things. Rather, he waited until January 27, 2020 to file suit, which first raised the specter of a state law claim, primarily because he had also opted to forgo the federal lawsuit he could have filed a year earlier. [RR. 8-16].

In Ramos's specific factual situation, any "dual-filing" is of no moment. Even the most liberal interpretation of Ramos's Charge indicates that Ramos manifested an intent to proceed with a federal ADA claim through the administrative process—not an FCRA claim. As the District Court of Appeal, Fourth District correctly observed based on the statutory text at issue, a dual-filing that only identifies federal law is not enough to exhaust the administrative procedures under the FCRA. *Belony v. North Broward Hospital District*, 374 So. 3d 5, 7 (Fla. 4th DCA 2023).

Against this backdrop, the conclusion the trial court reached falls within the Legislature's statutory scheme. If, as Ramos did, an aggrieved party affirmatively identifies only federal law as the basis for a Charge, then he or she has not sought relief under the FCRA, and there has not been an exhaustion of remedies. Considering the

foregoing, this Court should reverse based on a complete reading of the pertinent statutory text in Section 760.11(1).

### 2. A LIBERAL CONSTRUCTION DOES NOT REQUIRE THAT COURTS IGNORE SECTION 760.11(1)'S TEXT AND PURPOSE.

The thrust of Ramos's argument rests on a misunderstanding of what the FCRA says about how the Legislature wants the statute construed. Ramos's assertion that this Court must liberally construe Section 760.11(1) relies on cherry-picking language from Section 760.01(3). *See* 760.01(3), FLA. STAT.; *see also Gallagher v. Manatee County*, 927 So. 2d 914, 919 fn. 3 (Fla. 2d DCA 2006), *rev. denied*, 937 So.2d 665 (Fla. 2006). In Section 760.01(3), the Legislature does not just state that this Court must apply a "liberal construction," but rather it must also construe the FCRA's text according to its fair meaning so as to accomplish each provision's purpose:

> The [FCRA] shall be construed ***according to the fair import of its terms*** and shall be liberally construed to further the general purposes stated in this section and ***the special purposes of the particular provision involved***.

§ 760.01(3), FLA. STAT. (emphasis added).

"The rule of liberal statutory construction. . . cannot be used to defeat the plain meaning of the statute." *Gallagher*, 927 So. 2d at 919

(footnote emitted); *see also* Scalia & Garner, *Reading Law* 274 (the historical intended meaning of a "liberal construction" was to reject any "strict construction" of a statute and instead use a "fair meaning" of the statutory language). Courts are supposed to effectuate the purpose of each provision in the FCRA. *See Gallagher*, 927 So.2d at 919 fn. 3.

Section 760.11's purpose—requiring exhaustion of administrative remedies through an administrative process as a precondition to suit—is to obtain voluntarily compliance and promote conciliation efforts. *See Sunbeam Television Corp. v. Mitzel*, 83 So. 3d 865, 873 (Fla. 3d DCA 2012). If the purpose of this provision, as Ramos seemingly argues, were to provide aggrieved parties' access to the courts, then the administrative process would be an unnecessary waste of time. Discrimination claims could be like any other tort that claimants can bring without similar preconditions to suit.

But Section 760.11 does include the administrative procedures as preconditions, and this purpose can only be accomplished by notifying the employer of discriminatory practices and relief sought. That way the employer can meaningfully engage with the aggrieved party, thereby securing voluntary compliance and conciliation.

By failing to identify the FCRA as a basis for relief when he affirmatively identified the ADA only, Ramos frustrated the special purpose of Section 760.11. Under Ramos's interpretation, Ramos and other aggrieved parties have a means to avoid wholesale the requirement to exhaust administrative remedies, undermining the purpose of Section 760.11. They can identify one set of laws, and leave the employer guessing about whether another set of laws may also apply.

Yet, the Second District endorsed this approach with a talismanic reference to "liberal construction" and providing access to the courts. Respectfully, it erred in doing so, and this Court should reject the invitation to employ a "liberal construction" to read the phrase "and the relief sought," out of Section 760.11(1) and instead reverse and reinstate the trial court's judgment.

### 3. RAMOS'S OUT-OF-STATE AUTHORITY IS DISTINGUISHABLE OR SUPPORTS STEAK N SHAKE'S INTERPRETATION.

Much like how Ramos misinterprets Section 760.11(1)'s text, Ramos also misconstrues the impact of out-of-state decisions on how this Court should interpret the statute. (*Answer Brief*, pp. 14-16 (citing, e.g., *Flippo v. American Home Products*, 59 F. Supp. 2d 572

(E.D. Va. 1999) and *Dodge v. Phillip Morris*, 175 F.3d 1014 (table), 1999 WL 162955 (4th Cir 1999) (*per curiam*)).

As an initial matter, Ramos's reliance on *Flippo* and its interpretation of the Virginia Human Rights Act is ill-advised. The Florida and Virginia statutes contain different language about how courts should construe them. *Compare* § 760.01(3), FLA. STAT. *with* VA. CODE § 2.2-3902 (re-designated from VA. CODE § 2.1-717 by Va. Acts 2001, Ch. 844 (eff. 10/1/2001)). As noted above, Florida's statute also directs the statute to be read according to its fair meaning. § 760.01(3), FLA. STAT. ("The [FCRA] shall be construed according to the fair import of its terms. . ."). The Virginia Human Rights Act contains no such similar language, instead only providing the following:

> The provisions of this chapter shall be construed liberally for the accomplishment of its policies.

VA. CODE § 2.2-3902. That textual different makes decisions interpreting the Virginia Human Rights Act to limited—if any—value in interpreting the FCRA.

Further still, Ramos erroneously claims the federal Fourth Circuit Court of Appeals decision in *Dodge* supports his arguments

when it in fact does not. The issue in *Dodge* was not a question of whether the *Dodge* Plaintiff asked the charge to be dual filed but rather whether the *Dodge* Plaintiff—like Ramos here—failed to allege any violation of state law so as to allow a federal claim to proceed. *Dodge*, 1999 WL 162955 at **1-2. Because the Plaintiff in that case did not include a state claim in her EEOC charge, she did not make a claim under the state law. *Id.* at *1. Importantly, the *Dodge* Court recognized that merely alleging facts supporting a state law claim and alleging a federal violation was not enough to allege a coextensive state law claim. *See id.* That also happened here because Ramos failed to reference or include a state claim in his charge. As such, the decision in *Dodge* further bolsters the conclusion that Ramos failed to exhaust his administrative remedies.

In sum, the out-of-state cases do not support Ramos's arguments. This Honorable Court should reject them, and it should reverse the Second District and reinstate the trial court's judgment.

## III. CONCLUSION

The Florida Legislature used specific language within Section 760, FLA. STAT. identifying what information a claimant like Respondent, Wilfred R. Ramos, should provide to exhaust

administrative remedies for purposes of the Florida Civil Rights Act. When Ramos affirmatively identified only federal law and failed to identify the Florida Civil Rights Act in the charge filed with the EEOC, he did not comply with the statutory text in Section 760.11(1) requiring him to identify the relief he sought. A federal discrimination claim does not entitle him to the same relief as an FCRA claim would.

Consequently, this Honorable Court should reverse the opinion issued by the Florida District Court of Appeal, Second District and instead affirm the trial court's final Order Granting the Motion for Summary Judgment for Petitioner, Steak N Shake, Inc.

Dated: July 25, 2024

Respectfully submitted,

*/s/ John C. Getty*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on ***July 25, 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**
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I HEREBY CERTIFY that this Brief on Jurisdiction uses Bookman Old Style 14-point font and contains 2,747 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 Appellate Procedure 9.045(b), (d), and (e) and 9.210(a)(2)(B), (2)(D), (d), and (h).

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