

**IN THE SUPREME COURT OF FLORIDA**

**ANDRZEJ MADURA,**

Petitioner,

**Case Number:**

**SC06-999**

**L.T. Case Number:**

**2D06-915**

vs.

**FULL SPECTRUM LENDING, INC.**  
and **COUNTRYWIDE HOME LOANS, INC.,**

Respondents.

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**RESPONDENTS' BRIEF ON JURISDICTION**

William P. Heller  
Florida Bar No. 987263  
E-mail: [william.heller@akerman.com](mailto:william.heller@akerman.com)  
Kimberly A. Leary  
Florida Bar No. 596051  
Email: [kimberly.leary@akerman.com](mailto:kimberly.leary@akerman.com)  
**AKERMAN SENTERFITT**  
Las Olas Centre II, Suite 1600  
350 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301  
Fax No. 954-463-2224  
Phone No. 954-759-8945  
Attorneys for Respondents

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## SUMMARY OF THE ARGUMENT

Petitioner seeks the discretionary jurisdiction of this Court to review the Second District Court of Appeal's unpublished, one paragraph order denying reconsideration of its dismissal of his petition for certiorari. That petition sought review of the trial court's interlocutory order denying leave to amend his complaint after petitioner had been ordered to arbitrate the very same claims.

Petitioner argues the Second District's order denying reconsideration of the dismissal of his petition for certiorari expressly conflicts with the Fourth District's 1975 decision in *Hall v. Wajechowski*, 312 So. 2d 204 (Fla. 4<sup>th</sup> DCA 1975), as required to invoke the discretionary review of this Court under section 3(B)(3) of Article V of the Florida Constitution.

First, the order sought to be reviewed is not a decision. It is nothing more than a one paragraph order that sets forth the long standing proposition that interlocutory orders are not reviewable by certiorari. It contains no discussion of the facts of the case.

Further, the Second District's order does not cite or mention the *Hall* case and certainly does not express conflict. Nor is any conflict discernable. In *Hall*, the Fourth District merely found that under the unique facts set forth therein that denial of leave to amend represented an abuse of discretion that could not be corrected by plenary review. No such facts were discussed in the order at issue.

## STATEMENT OF CASE AND FACTS

Because petitioner goes far beyond the four corners of the order sought to be reviewed in his statement of the facts, respondents restate the facts in full.

The petitioner seeks to invoke the discretionary jurisdiction of this Court to review a one-page, unpublished order issued by the Second District Court of Appeal denying reconsideration of its order dismissing petitioner's petition for certiorari review of the trial court's order denying leave to amend.

The April 13, 2006 order sought to be reviewed states in its entirety:

Petitioner's motion for consideration and amended motion for reconsideration are denied. This Court's order of March 16, 2006 dismissed petitioner's petition for writ of certiorari because the order denying petitioner's motion for leave to file an amended complaint is not reviewable by certiorari. *See Harry Pepper & Assoc. Inc. v. City of Cape Coral*, 369 So. 2d 969 (Fla. 2d DCA 1979).

*See* Petitioner's Jurisdictional Brief, Appendix C.

**I. THE COURT HAS NO DISCRETIONARY JURISDICTION TO REVIEW THE DISTRICT COURT OF APPEAL'S ORDER DENYING RECONSIDERATION OF ITS DISMISSAL OF MR. MADURA'S PETITION FOR CERTIORARI.**

Petitioner seeks to invoke the discretionary jurisdiction of this Court to review the Second District Court of Appeal's denial of reconsideration of its dismissal of his petition for certiorari review of the trial court's denial of leave to amend his complaint.

The petition must be dismissed for lack of jurisdiction because the order sought to be reviewed is not a decision and does not fall under any of the limited bases to invoke the discretionary jurisdiction of this Court set forth under section 3 of Article V of the Florida Constitution and echoed by Rule 9.030(a)(2)(A) of the Florida Rules of Appellate Procedure.

**A. Discretionary Jurisdiction.**

Section 3(B)(3) of Article V of the Florida Constitution governs the jurisdiction of the Supreme Court. *See* Art. V, § 3(B)(3), FLA. CONST. (1980). Rule 9.030 of the Florida Rules of Appellate Procedure tracks the language of the constitution regarding this jurisdiction as well. *See* FLA. R. APP. P. 9.030(a). Both the constitution and Rule 9.030 provide that the discretionary jurisdiction of the supreme court may be sought to review:

- (A) decisions of district courts of appeal that:
  - (i) expressly declare valid a state statute;
  - (ii) expressly construe a provision of the state or federal constitution;
  - (iii) expressly affect a class of constitutional or state officers;
  - (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
  - (v) pass upon a question certified to be of great public importance;
  - (vi) are certified to be in direct conflict with decisions of other district courts of appeal.

Art. V, § 3(B)(3), FLA. CONST. (1980); FLA. R. APP. 9.030(a)(2)(A).

The Second District's order dismissing petitioner's petition for certiorari for lack of jurisdiction fits into none of these categories.

Petitioner contends that the Second District's order is reviewable under Section 3(B)(3) of Article V and Rule 9.030(a)(2)(A)(iv) because it "expressly and directly conflicts with a decision of another district court of appeal." Specifically, he argues the dismissal of his petition for certiorari expressly conflicts with the Fourth District Court of Appeal's 1975 decision in *Hall v. Wajcechowski*, 312 So. 2d 204 (Fla. 4<sup>th</sup> DCA 1975).

However, the order, which did nothing more than deny reconsideration of the dismissal for lack of jurisdiction, does not conflict — expressly or otherwise.

**B. The Order Sought to Be Reviewed.**

The April 13, 2006 order sought to be reviewed denied reconsideration of the March 16 order dismissing petitioner's petition for certiorari for lack of jurisdiction. That petition requested review of the trial court's order denying him leave to amend his complaint after being ordered to arbitrate the same claims.

The order held that the trial court's order denying leave to amend was not reviewable by certiorari, citing *Harry Pepper & Assoc. Inc. v. City of Cape Coral*, 369 So. 2d 969 (Fla. 2d. DCA 1979) (denial of right to amend is interlocutory and not reviewable by certiorari).

**C. The Second District's Order in *Hall*.**

In *Hall*, the Fourth District Court of Appeal issued a writ of certiorari and quashed a trial court's order denying plaintiffs' motion for leave to amend their pleadings after their counsel inadvertently omitted certain claims for damages that had been included in a prior complaint and investigated by the defendants. *Hall*, 312 So. 2d at 204. The error was discovered at the pretrial conference at which point the motion to amend was made and denied. *See id.*

The rationale for the Fourth District's decision granting certiorari was that the denial of leave represented an abuse of discretion that could not be fully corrected by plenary appeal. *Id.*



**D. The Second District's Order Denying Reconsideration of its Dismissal of Mr. Madura's Petition for Certiorari Does Not Conflict with *Hall*.**

It takes only a cursory review of the Second District's one-paragraph order denying reconsideration of the dismissal order to see that it does not mention or express conflict with the *Hall* case. And because the order contains no facts, it is impossible to discern a conflict without reference to the record. Such "express" conflict is required to invoke the discretionary jurisdiction of this Court. See Art. V, § 3(B)(3), FLA. CONST. (1980); FLA. R. APP. P. 9.030(a)(2)(A)(iv).

In the *Hall* case, the court found that because counsel had inadvertently omitted a prayer for damages previously included and explored in discovery, denial of leave to amend was an abuse of discretion that could not be corrected by plenary review under those specific facts. No such facts are discussed here.

In this case, the Second District cited the long standing proposition that non-final orders are not reviewable by certiorari. Unlike in *Hall*, the order under review dismissed petitioners' petition, finding that the order was not reviewable by certiorari. Inherent in that ruling is that there were no facts necessitating review by certiorari.

Without an express conflict, the inquiry regarding jurisdiction need proceed no further.

Moreover, this Court only reviews cases of significant public importance. In fact, this Court has on numerous occasions clarified its strict jurisdictional limitations. *See, eg., Haines City Com. Devel. v. Hicks*, 658 So. 2d 523 (Fla. 1995).

### CONCLUSION

Because the Second District's order denying reconsideration of its dismissal of certiorari was not a decision setting forth any facts and did not conflict with the *Hall* case or any other decision of a sister district court of appeal, respondents respectfully request that petitioner's petition be dismissed for lack of jurisdiction.

Respectfully submitted,

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William P. Heller  
Florida Bar No. 987263  
E-mail: william.heller@akerman.com  
Kimberly A. Leary  
Florida Bar No. 596051  
E-mail: kimberly.leary@akerman.com

**AKERMAN SENTERFITT**  
Las Olas Centre II, Suite 1600  
350 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301  
(954) 759-8945 (ph)/(954) 463-2224 (fax)  
Attorneys for Respondents

**CERTIFICATE OF SERVICE**

*I hereby certify* that a true copy of the foregoing has been furnished by United States Mail to Andrzej Madura, 3614 57th Avenue Drive West, Bradenton, Florida 34210, this 31<sup>st</sup> day of July, 2006.

By: \_\_\_\_\_  
Kimberly A. Leary

**CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS**

*I hereby certify*, pursuant to Florida Rules of Appellate Procedure 9.210(a)(2), that the size and style of type used in this petition is Times New Roman, 14 point.

By: \_\_\_\_\_  
Kimberly A. Leary