

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC 06-999

Lower Tribunal No.: 2D 06-915

ANDRZEJ MADURA,
Petitioner

vs.

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

PETITIONER'S JURISDICTIONAL BRIEF

On the Review from the District Court of Appeal Second District
State of Florida

Respectfully submitted :

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STATEMENT OF THE CASE AND FACTS

The petitioner is the plaintiff, pro se, in action pertaining to a loan. On May 1, 2002 petitioner and his wife filed a joint complaint against the respondent for criminal usury

and for forgery of a promissory note and TILA disclosure. The Circuit Court, Manatee County, compelled the petitioner's claims to arbitration. His wife did not sign the arbitration agreement and she amended her original claims. On June 17, 2005 the petitioner moved to amend his original complaint to add claims for rescission and for avoidance of the loan transaction. The respondents uttered the foresaid forged loan instruments in the public record of their Transcontinental Title Insurance Agency in Tampa, Florida. Further, petitioner claimed that respondents never sent to him a correct Notice of his right to rescind this new forged loan as mandated by USC 1635. On January 31, 2006 the trial Court denied the petitioner's motion for leave to amend to file his first amended complaint and did so without a hearing. As the amendment was not futile, this trial Court's decision was a departure from the essential requirements of law. The Petitioner timely filed his petition for writ of certiorari with the 2nd district Court of appeal. On March 16, 2006, the 2nd Court of appeal dismissed the petitioner's petition for writ of certiorari without opinion. See Appendix A. On March 24, 2006 the petitioner timely filed his motion for rehearing. On March 23, 2006 the 2nd District dismissed petitioner's petition for certiorari for lack of jurisdiction. See Appendix B. On March 30, 2006 the petitioner timely filed his amended motion for rehearing. On April 13, 2006, the 2nd District Court of Appeal denied the petitioner motion for rehearing and held that the petitioner's motion for leave to file amended complaint is not reviewable by certiorari (Appendix C), citing *Harry Pepper & Assoc., Inc v. City of Cape Coral*. 369 So.2d 969 (Fla.2nd DCA 1979). On May 12, 2006, the petitioner filed timely his notice to invoke the discretionary jurisdiction of

this Honorable Court to review this second district Court's decision. See Appendix C

SUMMARY OF THE ARGUMENT

In this case the district Court of appeal held that the petitioner's motion for leave to file amended complaint is not reviewable by certiorari. The decision of the district court cannot be reconciled with the previous decision of the fourth district Court of appeal in *Hall v. Wojciechowski*, 312 So.2d 204 (Fla. 4th DCA 1975), wherein the Court issued certiorari to review trial court order denying plaintiff's motion for leave to amend complaint holding that denial represented abuse of discretion which could not be fully corrected by plenary appeal. Thus, the petitioner contends that the the decision of the second district Court of appeal expressly and directly conflicts with a previous decision of the fourth District Court of Appeal.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction review a decision of a district court of appeal that expressly and directly conflicts with decision of the Supreme Court or another district Court of appeal on the same point of law. Art V, Par. 3(b) Fla. Const. (1980), Fla. R. App. P. 9.030(a)(20(A)(iv))

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN HALL V WOJCIECHOWSKI, 312 So.2d 204 (Fla. 4th DCA 1975)

1. The district court of appeal cites, in its order, in support of its decision, that a petition for writ of certiorari is not review able by certiorari and cites: *Harry Pepper*

& Assoc., Inc. v. City of Cape Coral, 369 So.2d 969 (Fla. 2ndDCA 1979) wherein the second district Court held that certiorari did not lie to remedy denial of right to amend complaint since such denial is interlocutory in nature and could not be remedied by way of appeals from final judgment .

2. The second district cited in *Hary Pepper & Assoc. Inc.* other two holdings wherein the second district court of appeal held that a petition for writ of certiorari is a discretionary writ which will only be issued to review an interlocutory order at law where there is a clear showing there has been a departure from the essential requirement of the law which cause material injury to the petitioner throughout the remainder of the proceedings for which the remedy by appeal would be inadequate . See *Pic v. Hoyt Development Co.* 309 So.2d 586(Fla.2ndDCA1975). In the present case the 2nd District overlooked that the petitioner's remedy by appeal would be inadequate.

3. The petitioner, in the circumstances of the present case, has no remedy on appeal from the order of the arbitrator's panel because Florida Statute provides that the trial court may only confirm arbitration panel's award (s. 682.12) or vacate, when an award was produced by corruption, fraud or is evidence of the partiality by an arbitrator or the arbitrators exceeded their powers or refused to hear evidence. See

s. 682. 13(a-d). Further, s. 682.20 provides that an appeal may be taken only from:

- (a) An order denying an application made under s. 682.03; (2) An order granting an application to stay arbitration made under s.682.03(2-14); (c) An order confirming or denying confirmation of an award; (d) An order modifying or correcting an award;
- (e) An order vacating an award without directing a rehearing and: (f) A judgment or

decree entered pursuant to the provisions of this law. See *Davenport v. Dimitrijevic*, 857So.2d957(4thDCA 2003) wherein the district court held that review of arbitration proceedings is extremely limited. Further, Court in M.D. Fla.2003, in *Shields & Co. v. Bright*, 254 F. Supp.2d 1253 held that : “ when arbitration award sets forth its rationale, courts are prohibited from going beyond for corners of award, and are limited to specific rationale asserted in award itself.” In conclusion, the petitioner has no remedy to correct it by plenary appeal. See *Hall v. Wojciechowski*, 312 So.2d 204 (Fla. 4thDCA 1975) *Id*204. The district court of appeal held in *Hall* that petition for writ of certiorari from the trial court’s order denying motion for leave to file amended complaint is reviewable by certiorari. *Id at 204*. The district Court, in *Hall*, correctly conducted the jurisdictional analysis whether or not the petitioner, in *Hall* case, has remedy to correct the trial court’s non-final order on plenary appeal.

4. Therefore, the 2nd district court’s order denying rehearing of its order dismissing certiorari for lack of jurisdiction expressly and directly conflicts with the 4th district Court of appeal’s order wherein the district Court issued writ of certiorari to review a trial court order denying plaintiff’s motion for leave to amend complaint. *Hall at 204*.

5. Further, should be noted that the second district order, which is the subject of this jurisdictional brief, expressly conflicts with other 2nd district Court’s decision. See, for example *Hohl v. Croom Motorcross, Inc.* 358 So.2d 241(Fla.2nd DCA 1978) wherein the 2nd district Court issued writ of certiorari from the trial court’s order denying plaintiff’s motion for leave to file an amended complaint .

6. The Florida appellate Courts contend that the appellate courts must conduct

the jurisdictional analysis do determine whether the a trial court's interlocutory order result in material injury for the remainder of the trial court that cannot be corrected in plenary appeal, before it empowered to determine whether to grant relief is petition for writ from the non-final order. See *Barker v. Barker*, 909 So.2d 333 (Fla.2nd DCA 2005) *Id at 334 and 336*, and *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So.2d 646, 648(Fla.2ndDCA 1995)*Id at 649*. The petitioner contends that 2nd district court overlooked the special circumstances of this case and did not correctly conduct the foresaid analysis, and its decision in the present case, expressly and directly conflicts with a previous decision of the 4th district Court of appeal.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the petitioner's argument.

Respectfully submitted:

Andrzej Madura, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been served by U.S. Mail and Fax to the Defendant's counsels: William Heller, Esq. and Kimberly Learly, Esq., Akerman Senterfitt, Las Olas Centre II, Suite 1600, 350 East Las Olas Blvd., Fort Lauderdale, Florida 33301 by U.S. Mail on June 19, 2006.

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CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS

I HEREBY CERTIFY, that this Petition complies with the font standards as required by Florida Rule of Appellate Procedure 9.210,(a)(2) in that this petition is submitted in Times New Roman 14-point font type face.

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