

**IN THE SUPREME COURT
STATE OF FLORIDA**

FIRST BAPTIST CHURCH OF
FLORIDA

PETITIONER,

v.

**Appeal Case No. SC11-1278
L.T. Case Nos. 2D09-5444
06-CA-000179**

COMPASS CONSTRUCTION, INC.,

RESPONDENT,
_____ /

RESPONDENT'S JURISDICTIONAL BRIEF

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SUMMARY OF THE ARGUMENT

Respondent acknowledges that this Court has discretionary jurisdiction based upon the Second District Court of Appeal's decision in Compass Const., Inc. v. First Baptist Church of Cape Coral, Florida, Inc., 61 So.3d 497 (Fla. 2d DCA 2011) certifying direct conflict with the decision of the Fourth District Court of Appeals in Wolfe v. Nazaire, 758 So.2d 730, (Fla. 4th DCA 2000). Therefore, the Respondent does not dispute that this court has discretionary jurisdiction over this case.

Although this Court has jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution, and Fla. R. App. P. 9.030(2)(A)(vi), this Court should decline review of this case because there is no actual conflict between the lower courts' opinions.

ARGUMENT

WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION WHEN THERE IS NO ACTUAL CONFLICT BETWEEN THE SECOND DISTRICT COURT OF APPEAL Wolfe V. Nazaire, 758 So.2d 730, (Fla. 4th DCA 2000).

Respondent, respectfully asserts that this court should not exercise its discretionary jurisdiction to hear this matter. Although conflict is certified by the Second District Court of Appeals, this Court is not required to reach the merits of the case simply because of that certified conflict. This Court may decide that the district court decisions are distinguishable and that there is no conflict to be resolved.

In at least two prior occasions, this Court initially accepted jurisdiction because of a certified conflict only to discover upon further review that no actual conflict existed. See, State v. Lovelace, 928 So.2d 1176 (Fla. 2006) (discharging an earlier granted review based on the certified conflict); Summit Claims Mgmt., Inc. v. Lawyers Exp. Trucking, Inc., 944 So.2d 339 (Fla. 2006)(dismissing the proceeding and declining to exercise discretionary review of the district court's certified conflict, after the court determined that no actual conflict existed between the district courts' opinions regarding the certified question).

The underlying opinion from the Second District Court of Appeals, for which the Petitioner presently seeks this Court's jurisdiction to review, does not

present an actual conflict with a decision of another district court on the same question of law. As Petitioner points out, The Second District Court of Appeals held that the trial court erred when awarding attorney fees in excess of the amount charged to their client.

The opinion in the Second District Court of Appeals is in agreement with the holding in Wolfe v. Nazaire, 758 So.2d 730 (Fla. 4th DCA 2000). In Wolfe, The Fourth District Court of Appeals ultimately held that the trial court could not award attorneys' fees in excess of that charged to the client.

In Wolfe, the court stated it was within the trial court's discretion to enter an award in an amount higher than the agreed upon hourly rate set forth in the contract, but determined there must be sufficient evidence before it to support such an award.

Wolfe achieves the same outcome as the Second District Court of Appeals and prohibits the trial court from awarding higher attorney fees than those actually charged. The trial courts in both cases were reversed because neither courts could set forth sufficient evidence to award a higher fee.

Therefore, as there is no actual conflict, this is not a case that requires this Court to exercise its discretionary jurisdiction.

CONCLUSION

For the reasons, stated herein, the Respondent respectfully requests that this Court decline to exercise discretionary jurisdiction in this case.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by First Class United States Mail and facsimile this 26th day of July, 2011, to the following: W. Gus Belcher, II, Esq., Nuckolls, Johnson, Belcher & Ferrante, P.A., Post Office Box 2199, Ft. Myers, FL 33902-2199 – Fax No. (239) 334-3442.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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