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IN THE SUPREME COURT OF FLORIDA

SC13-2194
APPEAL CASE NO. 3D-12-1825
LWR. CT. CASE NO. 10-07498 CA 04 *CONSOLIDATED WITH* CASE NO.: 11-19139

ANAMARIA SANTIAGO,

Petitioner,
vs.

MAUNA LOA INVESTMENTS, LLC,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION 2014©

ON APPLICATION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

SUPPLEMENTAL STATEMENT OF CASE AND FACTS[1]

At least one-third of Petitioner Santiago's statement of "facts" is improper argument without any citation to the Third District Court of Appeal Decision, itself [Petitioner Brief (Ptn'r Br.) at 1], and her statements on page 1 should be entirely disregarded on that basis.[2]

The pertinent facts are simple. Petitioner Santiago was a commercial tenant who leased warehouse property from an entity named Iberia NV, owned by Marmol (the son of the original owner; the original owner/Marmol's father died in February 2008). Decision at 2-3. Santiago was injured on July 2, 2008, in a trip and fall on a walkway surface on the subject property allegedly caused by holes and uneven surfaces. Decision at 2-3. Iberia NV owned and was responsible for maintaining that commercial property. Decision at 2-3. That commercial property was not conveyed from Iberia NV to Respondent Mauna until October 6, 2008, three months after Santiago's trip and fall. Decision at 3.

Santiago did not sue until 2010 and she initially sued only Mauna, not initially Iberia, alleging that Mauna owned, maintained and/or controlled the property at the time of her July 2008 trip and fall. Decision at 2. After Mauna's first attorney never filed an answer or response, Santiago obtained a default within a week of Santiago's motion for same. Decision at 2.

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[1] The parties will be referred to as they were below unless otherwise stated herein. References to the Third District Court of Appeal's Opinion and page in Petitioner's Appendix will be referred to as "Decision at __". All emphasis is added unless otherwise noted herein.

[2] Fla. R. App. P. 9.120(d); 9.210(b)(3); 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, 512 (2005).

Santiago filed a second complaint in 2011 also alleging that Iberia NV and Marmol owned the subject property at the time of Santiago's accident, and that they had a legal duty to Santiago and responsibility to control and maintain in a safe condition the property that Santiago leased from them. Decision at 3. Santiago also alleged and referenced Iberia's public record corporate officers (none were Mauna) and ownership public records in her second complaint, and certain attachments that included a public record deed showing the subject commercial property was sold to Mauna three months after Santiago's trip and fall, in October 2008, with Santiago's allegations detailing the string of actual corporate ownership. Decision at 3. The trial court consolidated the two actions for all purposes. Decision at 3.

Mauna moved to vacate based on Santiago's repugnant allegations and exhibits in her consolidated complaints, including that Mauna did not even own the property at the time of the incident.[3] Decision at 3. All five motions to vacate the default order, premised on excusable neglect and repeated warnings that default on Santiago's poorly pled and repugnant allegations would be deemed void on appeal, were denied[4] and the case went to

[3] Immediately before the Amended Motion to Vacate hearing, Santiago tried to un-allege that Iberia owned and was responsible the subject property by voluntarily dismissing her second, consolidated complaint despite two orders consolidating the actions for all purposes and no order un-consolidating those cases. Decision at 4, 6.

[4] Because Fla. R. App. P. 9.130 was amended in 2000, thereby ending nonfinal appeals of default orders, Mauna could not appeal the default order. Decision at 4. Mauna did petition for writ of certiorari with all these arguments, as well as others, but its petition for writ of certiorari was denied for lack of jurisdiction. Third District Court of Appeal Case no. 3D12-644. Thus, the case went to trial on damages only.

trial on damages only, where Santiago was awarded a verdict in excess of $1 million for her trip and fall against the wrong party.[5] Decision at 2-3, 5-6.

The Third District reversed the judgment, finding that parties are bound by their pleadings and that default judgments may not be entered on a complaint where its attachments and repugnant "allegations. . .do not entitle the plaintiff to relief." Decision at 4-5 and citations therein. The Decision's core continues:

> Santiago also admitted that Iberia owned, controlled and maintained the property at that time. [The warranty deed that Santiago attached and] [t]hese facts precluded a claim for relief against Mauna relating to the property based on the alleged injury on that date. As the record before the trial court established that Santiago failed to state a claim for relief against Mauna, the trial court had no discretion but to grant the Amended Motion and set aside the default as void. Accordingly, because the final judgment was based upon the prior invalid default, the trial court erred in failing to grant Mauna's motion to vacate the judgment as void.[6]

Decision at 5-6 (citations therein omitted).

ARGUMENT SUMMARY

The Decision upheld three firmly-established rules: first, that litigants are bound by their pleadings and allegations; second, that defaults only admit well-pleaded allegations;

[5] After more post-judgment motions renewing Mauna's arguments that, among other defects, the judgment was void were denied, Mauna appealed. Opinion at 4.

[6] We are constrained to note that, while Santiago drops footnotes referencing nonrecord innuendo to create "conflict jurisdiction", she nowhere mentions that the Third District Court of Appeal panel during the recorded oral argument noted that the conduct of Santiago's trial counsel in doggedly pursuing the clearly wrong party to final judgment, when they clearly knew the correct defendant to prosecute, was "57.105 sanctionable", but stopped short of sanctions. R. Regulating Fla. Bar 4–3.3(a)(1), (4); *The Florida Bar v. MacNamara*, __ So. 3d ___, 38 Fla. L. Weekly S907 (Fla. Dec. 19, 2013); *BAC Home Loans Servicing, Inc. v. Headley*, __ So. 3d ___, 38 Fla. L. Weekly D2396 (Fla. 3d DCA Nov. 20, 2013).

and, third, that defaults standing on repugnant complaints that fail to state claims for relief cannot stand and must be vacated. The Decision further advances a vital, longstanding policy of Florida courts: litigants, whether plaintiff or defendant, cannot play fast and loose with the courts, by pretending their pleadings' allegations do not matter and attempting to *un*allege that which they have alleged in their consolidated actions. Ignoring this reality, Santiago presents this Decision as holding that a court should reach outside a party's pleadings and treat motions to dismiss as the same as evidence-based motions for summary judgment. The Decision nowhere states that. Not one of the cases that Santiago cites presents an express and direct conflict with this Decision. Santiago relies on snippets of general rules arising from entirely different cases, and wholly ignores the key holding of the Decision, to manufacture "express and direct conflict" where none exists and without supplying any textual support in the Decision itself. Santiago's misreading of the Decision and supplemental innuendo are simply not enough to create conflict jurisdiction. Her arguments about hypothetical conflict are equally deficient.

ARGUMENT

SANTIAGO HAS FAILED TO DEMONSTRATE THE REQUIRED EXPRESS AND DIRECT CONFLICT, AND THIS COURT, THEREFORE, LACKS JURISDICTION.

Notably, Santiago nowhere in her brief or in her notice to invoke discusses the Florida Rule of Appellate Procedure or the Constitutional provision governing express and direct conflict jurisdiction. Still, she has failed to demonstrate the required express and direct conflict of this Decision "with a *decision of another district court of appeal or of the*

supreme court on the same question of law", and this Court, therefore, lacks jurisdiction. Under article V of the Florida Constitution, this Court has conflict jurisdiction only if the decision of the district court to be reviewed expressly conflicts with a decision of the supreme court or another district court of appeal on the same question of law. Fla. R. App. P. 9.120(d); 9.030(a)(2)(A)(iv). "Expressly" requires a written representation or expression of the legal grounds supporting the decision under review.[7] "Express" as set out in the *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980), opinion means "to represent in words" or "to give expression to."[8] This Court has defined the term "express" by its ordinary dictionary meaning: "in an express manner."[9] *Jenkins* set forth the meaning of the "express" as: "to represent in words" or "to give expression to." In *Florida Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988), this Court explained: "in the broadest sense [it] has subject matter jurisdiction under article V, section 3(b)(3), of the Florida Constitution over any decision of a district court that expressly addresses a question of law within the four corners of the opinion itself." Santiago discusses none of these rules.

Also notable, Santiago nowhere discusses any particular case with which this Decision expressly and directly conflicts. She merely string cites chosen snippets within general rules, rendering it impossible for the Respondent to locate and respond to one, single, specific case within those string cites. Additionally, no case cited is even close factually to the Decision at issue here. Her Petition fails on these bases alone.

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[7] *Times Publ'g Co. v. Russell*, 615 So. 2d 158 (Fla. 1993).
[8] *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).
[9] *Id.* at 1359 (citing WEBSTER'S 3D NEW INT'L DICTIONARY (1961 ed. unabr.)).

Petitioner's brief [Ptn'r Br.] also nowhere acknowledges that, in considering whether conflict jurisdiction exists, the Court is confined to "a question of law within the four corners of the opinion itself." *The Florida Star*, 530 So. 2d at 288. Instead, Santiago's brief ironically violates the "four corners of the Decision" rule generously. She inserts throughout and in footnotes loose assertions as "fact", characterizations of what the Third District must have intended, innuendo about what drove the Third District's Decision, about what is supposedly in the record (again, not in the Decision or implied therein), what Mauna supposedly did not argue but was considered for the first time on appeal (again, not in the Decision or implied therein), and what supposedly transpired below that are ***not*** in the Decision and, further, simply untrue. *Compare* Pet'r Br. at 1, 2, 3, 4, 5, footnotes *with* the actual Decision. It follows that references to those assertions and innuendo in violation of the "four corners of the Decision" rule are not to be considered by this Court either.

Unable to cite and discuss one, specific conflict case, Santiago expounds on general rules and the 'hypothetical parade of horribles' to recast this Decision into something it is not. She goes so far as to posit that this Decision "cannot be reconciled with those from other courts" because it purportedly holds that: "1) extrinsic matters may be considered when determining whether a defaulted complaint states a cause of action; 2) alternative pleading is permitted in premises liability cases; 3) consolidation merges two cases thereby making allegations in one case proof in another; and 4) when an appellate court may grant relief not requested by the appellant below." Pet'r Br. at 4, 9. The Third District's Decision

nowhere states any of this. The Decision also does not state that (a) Mauna failed to raise these arguments in the trial court [Pet'r Br. at 4, 10] or (b) that the 2010 and 2011 cases were not consolidated for all purposes. Pet'r Br. at 6-7, 11.

Next, Santiago proclaims that the Third District's Decision creates "statewide uncertainty and inevitable, unnecessary litigation regarding some of Florida's most basic legal principles." Pet'r Br. at 4. The rules applied in this Decision are long-standing and they are statewide.[10] There is no uncertainty. There is no conflict.

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[10] The Third District's Decision upholds Florida's long-standing rule that a default judgment is void and should be set aside when the complaint contains repugnant allegations and exhibits and, thereby, fails to state a cause of action. *See Appel v. Lexington Ins. Co.*, 29 So. 3d 377 (Fla. 5th DCA 2010) (dismissal affirmed because allegations and referenced exhibits of a complaint directly conflicted with allegations of other inextricably intertwined complaint; default operated as admission only of well-pled allegations of complaint, and not as admission of facts not properly pled or conclusions of law); *Se. Land Developers, Inc. v. All Florida Site & Utilities, Inc.*, 28 So. 3d 166 (Fla. 1st DCA 2010); *Moynet v. Courtois*, 8 So. 3d 377, 378-79 (Fla. 3d DCA 2009) (citing *Becerra v. Equity Imports, Inc.*, 551 So. 2d 486 (Fla. 3d DCA 1989), and *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 493 (Fla. 3d DCA 1994)); *Hillcrest Pac. Corp. v. Yamamura*, 727 So. 2d 1053 (Fla. 4th DCA 1999) (affirming dismissal because exhibits attached or referenced contradicted allegations of complaint and allegations, thus fatally inconsistent); *Hooters of Am., Inc. v. Carolina Wings, Inc.*, 655 So. 2d 1231 (Fla. 1st DCA 1995) (same); *Nguyen v. Roth Realty, Inc.*, 550 So. 2d 490 (Fla. 5th DCA 1989) (same); *Striton Properties, Inc. v. City of Jacksonville Beach*, 533 So. 2d 1174, 1179 (Fla. 1st DCA 1988) (same), *rev. denied*, 544 So. 2d 201 (Fla. 1989); *GAC Corp. v. Beach*, 308 So. 2d 550 (Fla. 2d DCA 1975) (same); *Harry Pepper & Assocs., Inc. v. Lasseter*, 247 So. 2d 736, 736–37 (Fla. 3d DCA 1971) (same); *see also generally, e.g., Hunter v. Tyner*, 10 So. 2d 492 (Fla. 1942) (although option was not attached to the complaint, trial court was justified in considering the bill of particulars as part of the complaint); *Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249-50 (Fla. 2d DCA 2011) (rejecting argument that trial court erred by considering contents of a settlement agreement not attached to the complaint but referenced and impliedly incorporated therein, recognizing general rule, in deciding motion to dismiss, that trial court is limited to contents of pleadings, citing *Belcher Ctr. LLC v. Belcher Ctr., Inc.*, 883 So. 2d 338, 339 (Fla. 2d DCA 2004), but complaint "refers to the settlement agreement, and. . . *impliedly incorporates the terms of the agreement* by reference, the trial court was entitled to review the terms of that agreement to determine the nature of the claim

In seeking to invoke this Court's jurisdiction by attempting to manufacture conflict where none exists and by inflating the issues, Santiago ignores the mundane reality of this case. It is simply this: Santiago's consolidated[11] allegations and exhibits attached and referenced therein were repugnant, they failed to state a claim for relief, and they mandated vacating the default. *See* the Decision and decisions cited *supra*.

While Santiago argues a misreading of the Decision to suggest it stands for something more, she still acknowledges the Decision's core conclusion: that Santiago's allegations and exhibits attached and incorporated by reference failed to state a claim for relief. Ptn'r Br. at 3-4. Looking at the four corners of the Decision, as conflict jurisdiction review requires, it is evident, therefore, that this is all that the Decision stands for. The

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being alleged. Upon such review, the trial court not only found that Veal failed to allege a claim under which indemnification could be sought, but also found that based on the settlement agreement, Crown had no indemnification rights to assign and that the dismissal should be with prejudice.")*; see Land Developers, Inc. v. All Florida Site & Utilities, Inc*., 28 So. 3d 166, 168 (Fla. 1st DCA 2010) (held subcontractor's complaint against a contractor failed to state a claim, rendering default judgment in subcontractor's favor void because "allegation that a debt is unpaid is not sufficient. . . .As such, the complaint failed to state a claim, and the default judgment is void.").

[11] *B & L Trucking Co. v. Loftin*, 58 So. 2d 147 (Fla. 1952) (circuit court's order granting the trustees' motion to consolidate the cases for trial destroyed the separate identity of the trucking company's action for such purposes and court erred in dismissing action because no action was taken therein for over a year after case was ready for trial), *cited with approval in Elmer A. Yelvington & Son v. Sheridan*, 65 So. 2d 44, 45 (Fla. 1953); *Stephens v. Bay Med. Ctr.*, 742 So. 2d 297, 298 (Fla. 1st DCA 1998) (rejecting argument that consolidation of cases for all purposes, as opposed to limited purposes, does not cause them to lose their distinct identities; reversing dismissal for lack of prosecution in one of the two consolidated cases); *Strickland v. Muir*, 173 So. 2d 461 (Fla. 2d DCA 1965) (where separate causes were joined in single pleading and consolidated for all purposes, single notice of appeal was sufficient to give appellate court jurisdiction to review all such causes); *see, e.g., generally Wright v. State*, 5 So. 3d 670 (Fla. 2009) (consolidated for all purposes); *Woodhull v. Tower Oaks Homeowners Ass'n, Inc.*, 34 So. 3d 198 (Fla. 1st DCA 2010) (consolidation for all purposes); *Daniels v. Katz*, 237 So. 2d 58, 59 (Fla. 3d DCA 1970) (consolidated appeals involving the validity of a single final judgment).

Third District Decision does not state and it nowhere cited for the rule that courts look beyond the allegations of the complaints and that trial courts can suddenly treat attacks that are really summary judgments as attacks on pleadings. Nor does the Decision state or stand for the rule that arguments not raised in the trial court can be raised for the first time on appeal. There is simply no textual support for Santiago's assertions otherwise.

In sum, in her attempt to establish express and direct conflict, without discussing a single, particular case, Santiago skirts the key holding of the Decision and instead references general rules, none of which were violated here. Having no case with which this Decision expressly and directly conflicts on the same question of law, Santiago leaves us to guess where the conflict may hypothetically lie. Because that has never been a basis for express and direct conflict jurisdiction, this Court should properly find that it lacks jurisdiction. We are constrained to underscore one additional point, which has been a recurring challenge in this case: the Third District Court of Appeal Decision is firmly rooted in Florida law and advances important policy that parties are bound by their pleadings.[12]

CONCLUSION

For the reasons and legal authorities set forth herein, this Court should find that it lacks jurisdiction because no express and direct conflict exists.

Respectfully submitted,

[12] *Fernandez v. Fernandez*, 648 So. 2d 712, 713 (Fla. 1995) (party bound by pleading's allegations, accepted as facts without necessity of further proof); *Cessna Aircraft Co. v. Avior Techs., Inc*., 990 So. 2d 532 (Fla. 3d DCA 2008) (same); *City of Deland v. Mille*r, 608 So. 2d 121, 122 (Fla. 5th DCA 1992) (same).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Regular US Mail, this 6th day of January, 2014 to all Counsel on the Attached Service List.

BY: /S/DOROTHY F. EASLEY

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing complies with the typeface and font size, Times New Roman 14 point proportionately spaced, as set forth in Rule 9.210, Fla. R. App. P.

BY: /S/DOROTHY F. EASLEY

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