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IN THE SUPREME COURT OF FLORIDA

ANAMARIA SANTIAGO,

Petitioner,

v.

MAUNA LOA INVESTMENTS, LLC

Respondent.

Case No.: SC13-_____

L.T. Case Nos. 3D12-1825
10-07498-CA-04

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

PETITIONER'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

This Court has jurisdiction to hear this case because the Third District's decision expressly and directly conflicts with decisions from this Court and other district courts of appeal. This Court should exercise its jurisdiction because this decision has changed or ignored several fundamental principles of Florida law and procedure. First, on its face, the decision ignores the basic principle that a court may not look beyond the four corners of a complaint when determining whether the complaint states a cause of action. Second, in looking beyond the complaint at issue, the Third District violated two accepted principles of pleading practice, *i.e.*, that a plaintiff may plead claims in the alternative and that consolidated actions are not merged so as to incorporate the allegations of one action into the other. Here, the court used allegations in one action to disprove those found in another. Finally, the court raised an issue and granted relief based on an argument the appellant failed to request below and presented for the first time on appeal. This aberrant decision should not be permitted to remain uncorrected in Florida's body of law because it will confuse litigants and judges statewide, thereby generating unnecessary litigation and appeals on well-established legal principles. Therefore, this Court should exercise its discretion to hear this case.

Respondent, Mauna Loa Investments ("Mauna") appealed a judgment in favor of Petitioner, Anamaria Santiago, after Santiago obtained a default against

Mauna on liability and the trial court conducted a jury trial on damages. (A.2.) The Third District reversed the judgment because it found that Santiago's complaint failed to state a cause of action against Mauna for premises liability. (A.2.) Santiago filed a Motion for Rehearing and/or Rehearing En Banc. (A.1.) The court granted Santiago's motion, in part, and issued a revised opinion on October 16, 2013.[1] (A.1.) The revised opinion explains the case as follows:

Santiago leased space in a warehouse in Florida (the "Property"). (A.2.) In 2010, Santiago sued Mauna alleging she was injured when she tripped and fell on the Property because a walkway was in disrepair and, therefore, unsafe. (A.2.) Santiago alleged Mauna owned, maintained, and/or controlled the Property at the time. (A.2.) Mauna gave the complaint to its attorney (the "Defaulted Complaint"), but he never responded. (A.2.) Thus, Santiago obtained a default. (A.2.)

As the court noted "Mauna subsequently filed no fewer than five motions" to vacate the default. (A.3.) The court addressed only one – Mauna's Amended Motion to Set Aside Default (the "Motion"). (A.3.) In the Motion, Mauna claimed the default should be vacated because Mauna did not own the Property on the relevant date. (A.3.) Mauna asserted that the Property was actually owned by Iberia, NV ("Iberia") at that time. (A.3.) To support its argument, Mauna attached a 2011 complaint Santiago had filed against Iberia (the "Iberia Complaint"), which

[1] On November 12, 2013, Santiago timely filed her Notice to Invoke Discretionary Jurisdiction within thirty days of the revised decision. *See* Fla.R.App.P. 9.120(b).

sought damages against Iberia for the same injury alleged in the Defaulted Complaint.[2] (A.3.) In the Iberia Complaint, Santiago had alleged that Iberia owned, controlled, and/or maintained the Property at the relevant time.[3] (A.3.) The Iberia Complaint attached a deed, which showed that Iberia transferred the Property to Mauna three months after Santiago's injury. (A.4.) In the Motion, Mauna did not argue that the Defaulted Complaint failed to state a cause of action. (*See* A.3-4.) The trial court denied the Motion.

After the entry of judgment, Mauna filed several post-trial motions, including a motion to vacate the judgment because Mauna did not own or control the Property on the relevant date. (A.4.) Again, Mauna did not argue that the Defaulted Complaint failed to state a cause of action. (*See* A.4.) The motions were denied and Mauna appealed.

On appeal, the Third District did not conclude that the trial court abused its discretion by denying the Motion. (A.5-6.) Rather, relying on the Iberia Complaint and the deed, the court found that the Defaulted Complaint failed to state a cause of action against Mauna – as a matter of law – because the deed proved Mauna did not "own" the premises and because Santiago "admitted" in the Iberia Complaint

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[2] Santiago sued Iberia because Mauna had repeatedly asserted Iberia was the proper defendant and because she feared the running of the statute of limitations.

[3] Previously, in 2001, the trial court had consolidated the case against Iberia with the case against Mauna. (A.3.) Santiago dismissed the Iberia Complaint before the hearing on the Motion, however. (A.6, n.4.)

that Iberia owned, controlled, and/or maintained the Property at the time. (A.5-6.) Thus, the court vacated the judgment and remanded with instructions to dismiss the Defaulted Complaint. (A.6.)

SUMMARY OF ARGUMENT

The Third District's decision expressly and directly conflicts with decisions from this Court and other district courts of appeal on elementary principles of Florida law. Each of the conflict cases involves the same essential facts and points of law. Nevertheless, the Third District reached opposite conclusions from the other courts as to whether: 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. This decision cannot be reconciled with those from the other courts. Therefore, this Court has jurisdiction. The Court should exercise that jurisdiction to avoid statewide uncertainty and inevitable, unnecessary litigation regarding some of Florida's most basic legal principles.

ARGUMENT

In determining whether a complaint states a cause of action, it is axiomatic that the defect alleged to defeat the cause of action must appear on the face of the

complaint. *E.g.*, *Neuteleers v. Patio Homeowners Ass'n, Inc.*, 114 So. 3d 299, 301 (Fla. 4th DCA 2013). As this Court has repeatedly held, a court "must confine itself strictly to the allegations within the four corners of the complaint," when reviewing the sufficiency of a complaint. *Pizzi v. Central Bank & Trust*, 250 So. 2d 895, 896 (Fla. 1971) (citation omitted).[4] Prior to this case, the same limitation applied to the review of defaulted complaints. *E.g., Rhodes v. O. Turner & Co., LLC*, 117 So. 3d 872, 875-77 (Fla. 4th DCA 2013). To do otherwise would be to improperly treat a motion to dismiss as a motion for summary judgment. *E.g., Hill v. Murphy*, 872 So. 2d 919, 921 (Fla. 2d DCA 2003).

If a trial court cannot look to matters outside the four corners of a complaint, then a district court may not either. *E.g.*, *Rivera v. Torfino Enters., Inc.*, 914 So. 2d 1087, 1090 (Fla. 4th DCA 2005) (concluding that district court on appeal may not look outside four corners to determine whether complaint states a cause of action). Here, by expressly relying on the Iberia Complaint and the deed, the Third District relied upon matters outside the four corners of the Defaulted Complaint. The court's decision to do so expressly and directly conflicts with *Pizzi* and its progeny,

[4] Every district court in Florida, including the Third District, has articulated and followed this rule when determining whether a complaint states a cause of action. *See, e.g., Adams v. Lieberman*, 507 So. 2d 716, 717 (Fla. 1st DCA 1987); *Baycon Industr., Inc. v. Shea*, 714 So.2d 1094, 1095 (Fla. 2d DCA 1998); *Minor v. Brunetti*, 43 So. 3d 178, 179 (Fla. 3d DCA 2010); *Posner & Sons, Inc. v. Transcapital Bank*, 65 So. 3d 1193, 1199 (Fla. 4th DCA 2011); *Sobi v. Fairfield Resorts, Inc.*, 846 So. 2d 1204, 1206-07 (Fla. 5th DCA 2003).

which require courts to limit their review of a complaint to its four corners. Indeed, if the court had limited its review to the four corners of the Defaulted Complaint, it would have been constrained to affirm the judgment. As the court's own opinion admits, Santiago alleged Mauna owned, controlled, and/or maintained the Property at the relevant time. (A.2.) Those allegations are necessary elements of a cause of action for premises liability as opposed to simple negligence. *E.g.*, *Davis v. Bell*, 705 So. 2d 108, 110 (Fla. 2d DCA 1998). By expressly and directly conflicting with *Pizzi* and its progeny, the decision in this case fundamentally changes the rules for pleading complaints in default and non-default cases alike. Thus, this Court should hear this case to avoid the inevitable, statewide uncertainty this decision creates.

The fact that the case against Iberia was, at one time,[5] consolidated with the case against Mauna does not excuse the court's decision. Rather, by looking to the Iberia Complaint, which had been filed in a separate action, the court violated the fundamental, long-standing principle of Florida law that a consolidation does not a merger make. By looking to the Iberia Complaint to conclude that Santiago "admitted" that Iberia, and not Mauna, owned, controlled, and/or maintained the Property at the relevant time, the court treated the two, separate cases as if they had

[5] Strangely, the court stated that the fact that the Iberia Complaint was properly dismissed before the hearing on the Amended Motion did not affect its analysis in any way. (A.6, n.4.)

been merged into one. Such treatment expressly and directly conflicts with the undisputed principle of Florida law that consolidation "does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another." *Wagner v. Nova Univ., Inc.*, 397 So. 2d 375, 377 (Fla. 4th DCA 1981) (citation and footnote omitted). "Rather, each suit (maintains) its independent status with respect to the rights of the parties involved." *Id.* at 377 (citations omitted). Consolidated cases simply do not lose their individual identities as distinct, separately-filed causes of action. *E.g., OneBeacon Ins. Co. v. Delta Fire Sprinklers, Inc.*, 898 So. 2d 113, 116 (Fla. 5th DCA 2005) (granting certiorari where trial court improperly treated consolidated cases as merged) (citing *CDI Contractors, LLC v. Allbrite Elec. Contractors, Inc.*, 836 So. 2d 1031, 1033 (Fla. 5th DCA 2002) ("Consolidation affects only the procedure of the cases, but has no effect on the substantive rights of the parties in an individual case, and does not destroy their separate identities." (other citation omitted))). Consequently, the Third District's decision to rely on the allegations of the Iberia Complaint to find that Santiago "admitted" that Iberia owned, controlled, and/or maintained the Property and was, therefore, the only proper defendant, expressly and directly conflicts with *Wagner*, *OneBeacon*, and *CDI Contractors*.

The court's decision in this regard also expressly and directly conflicts with established Florida law recognizing the parties' right to plead claims in the

alternative. *E.g.*, *Holliman v. Green*, 439 So. 2d 955, 956-57 (Fla. 1st DCA 1983) (holding that HRS could join both the woman's husband and another possible biological father in the same paternity action thereby alleging, quite impossibly, that both men were the biological father of the child); *see also* Fla. R. Civ. P. 1.110(b). Numerous decisions recognize that alternative pleading is essential where a plaintiff cannot ascertain which person or entity is liable, without conducting the discovery permitted in litigation. *See* 29A Am.Jur.2d Evidence, § 791. Santiago simply was not required to know for certain whether Mauna or Iberia owned, controlled, or maintained the Property prior to filing suit so long as she made the allegations in good faith. *Id.* Indeed, Florida law even allows plaintiffs to file multiple counts in one complaint that contain inconsistent or even mutually exclusive allegations which, if not incorporated into the other counts, may not be used by the opposing party as proof of an issue. *E.g., Vann v. Hobbs*, 197 So. 2d 43, 45 (Fla. 2d DCA 1967) ("[I]nconsistent positions taken by a party through the pleadings [in different counts] he files in an action may not be used by an opposing party as proof of an issue."). On its face, the Third District's decision violates this well-established rule. Moreover, it is possible that Iberia owned the Property while Mauna maintained it, thereby potentially subjecting Iberia and Mauna to joint liability. *See Improved Benev. & Protected Order of Elks of World, Inc. v. Delano*, 308 So. 2d 615, 618 (Fla. 3d DCA 1975) (holding landowner and contractor jointly

liable for condition of premises). To allow this decision to stand uncorrected would be to deprive litigants of the established right to plead even inconsistent claims in the alternative where necessary. It would also require trial courts to dismiss complaints that allege alternative claims against more than one defendant on the ground that neither claim stated a cause of action. That is not, and should not be, Florida law.

There is another point that should not be missed here. Even if the deed proved Iberia owned the Property, it did not disprove the other allegations Mauna admitted by default, *i.e.*, that Mauna controlled or maintained the Property at the time. *E.g., Regency Lake Apts. Assoc. Ltd. v. French*, 590 So. 2d 970, 974 (Fla. 1st DCA 1991) ("In general, a cause of action for premises liability does not hinge on legal title or ownership, but rather on the failure of the party who is in *actual possession or control* to perform its legal duty." (citation omitted)). Even though Iberia may have owned the Property, Mauna could still have been responsible for maintaining the Property as Mauna admitted by default. *See Delano*, 308 So. 2d at 618. That Santiago also alleged, in a separate, unincorporated complaint, that Iberia controlled or maintained the Property does not establish that the Defaulted Complaint failed to state a cause of action against Mauna.

Finally, as the court noted, Mauna filed five separate motions to set aside the default, all of which were denied.[6] By attempting to convert the trial court's discretionary decision into an issue of law – yet disregarding the very rules it sought to apply – the Third District invaded the trial court's broad discretion in default and other discretionary matters. *See Farish v. Lum's Inc.*, 267 So. 2d 325, 327-28 (Fla. 1972). In doing so, the court also improperly granted Mauna relief the court seems to have acknowledged Mauna never sought in the trial court and, therefore, failed to preserve. *E.g, Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985). Here, the court's own description of the Motion establishes that Mauna argued only that Santiago should have sued Iberia and not that the Defaulted Complaint failed to state a cause of action against Mauna. As a result, the Third District granted Mauna relief it never argued for or requested below. In doing so, the court invaded the broad discretion granted to trial courts in these types of matters. Such a practice should not be condoned by this Court, nor should such a decision be permitted to remain in the body of Florida law. Thus, this Court should hear this case.

CONCLUSION

For the foregoing reasons, this Court should exercise its discretionary jurisdiction in favor of resolving this case on the merits.

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[6] These denials were actually issued by two different trial judges over the course of the case. (A.4, n.3.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was sent by email to Aubrey Rudd (ruddlawgroup@gmail.com), Rudd Law Group, Inc., 2100 Coral Way, Suite 602, Miami, Florida 33145; and Austin Carr (austin@austincarrlaw.com), Austin Carr Law Office, 371 N. Royal Poinciana Blvd., Miami Springs, Florida 33166; and by email to Dorothy F. Easley (administration@EasleyAppellate.com), 1200 Brickell Ave., Suite 1950, Miami, Florida 33131 this 18 day of November 2013.

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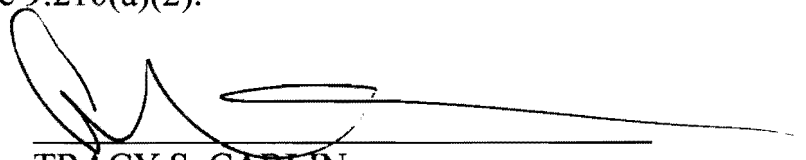
CERTIFICATE OF COMPLIANCE

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



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