IN THE SUPREME COURT OF FLORIDA
CASE NO.: SC15-722

LYANTIE TOWNSEND, ETC.,

Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY

Respondent.

L.T. Nos. 1D14-4147

012008CA003978XXXXXX

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

PETITIONER'S REPLY BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

This Court should reverse the First District's decision and answer the certified question in the affirmative. Section 55.03(3), as amended in 1998, created a new subsection (3), which expressly stated that the post-judgment interest rate is set when the judgment is entered and shall remain fixed until the judgment is paid in full. *See* § 55.03(3), Fla. Stat. (2010). To the extent there was any prior "common law default rule" that would require amendments to the post-judgment interest rate to be applied retroactively to preexisting judgments, which Townsend denies, that rule was abrogated by the unambiguous language of section 55.03(3) added in 1998. That "default rule" and the newly added subsection (3) are in direct conflict and cannot exist simultaneously. Thus, the 2011 amendment, which returned to a variable rate of post-judgment interest after July 1, 2011, did not resurrect the alleged "default rule" because the Legislature gave no indication that it intended the amendment to apply retroactively or to return to the "default rule." Therefore, even if a "default rule" once existed in this state, it does not exist now. As a result, the First District's decision should be reversed.

ARGUMENT

1. Reynolds' Vested Rights Argument Is Irrelevant.

Preliminarily, the Court should note that Townsend has made no argument before this Court that she has a vested right to a fixed rate of interest. Rather,

because the 2011 amendment, on its face, does not include any expressed intent that it be applied retroactively to preexisting judgments or to return to the so-called "default rule," the Court need not address the vested-rights question. *See* Initial Brief, pp. 12-18. Therefore, Reynolds' arguments on this issue are irrelevant and the Court should simply evaluate whether it should adopt the alleged "common law default rule," despite the plain language of section 55.03(3), Florida Statutes (2010).

2. *Glades County* Did Not Establish A Default Rule And Is Inapplicable In Any Event.

To argue that Florida follows a so-called "common law default rule," Reynolds relies upon *Glades County, Fla. v. Kurtz*, 101 F.2d 759 (5th Cir. 1939) and other cases that mentioned it. Reynolds argues that *Glades County* created a default rule requiring that a statute amending the rate of post-judgment interest applies to a pre-existing judgment, unless the statutory amendment expressly declares otherwise. Such a rule would be expressly contrary to Florida's retroactivity jurisprudence. *See* Initial Brief, pp. 12-18. But, more importantly, *Glades County* simply does not apply here because it is factually distinguishable, ignores Florida's long-standing retroactivity jurisprudence, and is a federal case that is not binding on Florida courts in any event.

In *Glades County*, the appellee argued that a preexisting judgment and a statute providing for post-judgment interest at eight percent provided a contractual

right to eight percent interest through the life of the judgment and, therefore, that an amendment to the statute establishing a lower post-judgment-interest rate was not applicable to that pre-existing judgment. *Id.* at 759-60. The court rejected that contract-based argument and ruled that the amended statute did apply to the preexisting judgment. The original statute at issue in *Glades County* did not contain language like that in section 55.03(3), Florida Statutes (2010), however, which requires the interest to remain the same until the judgment is paid. *See id.* Thus, *Glades County* is distinguishable on its facts and does not apply.

Glades County is also inapplicable to this case for two other reasons. First, Townsend has never argued that her judgment created a contractual right to a certain rate of post-judgment interest. Rather, Townsend has consistently argued that, under Florida's long-standing retroactivity analysis, the 2011 amendment could not be applied to a pre-existing judgment in the absence of expressed retroactive intent and that by operation of law, the 2010 version of section 55.03(3) gave her a right to fixed interest until the judgment is paid in full. The parties in *Glades County* did not raise and the court did not consider Florida's required retroactivity test. *See Glades County*, 101 F.2d 759-760. This is true even though that test has been part of Florida's jurisprudence since at least 1887. *See, e.g., McCarthy v. Havis*, 23 Fla. 508, 2 So. 819 (1887) ("It is a rule of construction that a statute shall not be given a retrospective effect, unless its terms show clearly that

such an effect was intended." (citations omitted)). Thus, because the *Glades County* court overlooked the retroactivity analysis required by Florida law, *Glades County* cannot be construed to overrule the retroactivity test prescribed by this Court as early as 1887 or to create an exception to that test. Thus, *Glades County* did not really create a so-called "common law default rule" in the first place.

Second, because *Glades County* is a federal case, it is not binding on Florida courts. *See, e.g., State v. Barquet*, 262 So. 2d 431, 435 (Fla. 1972) ("State courts are not bound to follow a decision of a federal court, even the United States Supreme Court, dealing with state law. Thus, a state court is not bound to follow a decision of a federal court, even the United States Supreme Court, construing the constitution or statute of that state." (citation omitted)). Thus, neither this Court nor any other Florida court is required to follow *Glades County*, nor should they. The *Glades County* court failed to properly apply Florida law when it allegedly created the "default rule."

Additionally, this Court should not adopt the so-called "default rule" allegedly established by *Glades County* because by doing so, it would authorize a judicially-created exception to Florida's long-standing retroactivity law in the context of post-judgment interest. Such a result would create inconsistency and confusion in this very important jurisprudence which exists to protect constitutional rights. It would also open the door to other judicially-created

exceptions to the standard retroactivity analysis. Thus, because the cases that seem to presuppose the existence of the "default rule" are all based upon *Glades County* and because *Glades County* is neither binding, applicable, nor based upon the proper analysis required by Florida law, this Court should reject the so-called "default rule" and reverse the First District's decision. *See, e.g.*, *Applestein v. Simons*, 586 So. 2d 441 (Fla. 3d DCA 1991) (citing to *Glades County* for the "default rule" but then finding that the statute expressly excluded retroactive application); *Beverly Enters.-Fla., Inc. v. Spilman*, 689 So. 2d 1230 (Fla. 5th DCA 1997) (relying upon *Applestein*, which relied upon *Glades County*, but concluding that the statute as amended expressly provided for only prospective application of the amendment); *Keanie v. Goldy*, 698 So. 2d 1264 (Fla. 5th DCA 1997) (referring to *Glades County* but concluding that there was no issue of retroactivity because the judgment was entered after the effective date of the amendment).

3. *Keanie* Does Not Adopt The So-Called "Default Rule" Or Support The Retroactive Application Of The 2011 Amendment.

Indeed, *Keanie*, one of the cases which referred to *Glades County* and upon which Reynolds relies, actually supports Townsend's position on this issue. In *Keanie*, the relevant question was whether the trial court erred in determining that section 55.03, as amended in 1994, required that the interest on the judgment at issue be amended annually. *Keanie*, 698 So. 2d at 1265. At the outset, the court observed that the case did not involve questions of retroactivity because the

judgment had been entered after the amendment's effective date. *Id.* at 1265. Rather, the question was whether the amended statute's adjustable-rate provision required an annual adjustment of the interest due on an outstanding judgment entered after the effective date of the statute where the judgment appeared to have indicated that it would accrue interest at the "legal rate." *Id.* at 1265-66.

To answer that question, the court traced the recent history of section 55.03. *Id.* at 1266. The court first looked at the 1981 version of section 55.03(1), which required a fixed rate of interest at twelve percent per annum, unless the judgment was rendered on a written contract or obligation that provided interest at a lower rate, in which case the judgment should bear the rate of interest set forth in the written contract or obligation. *Id.* In addition, the 1981 version of section 55.03(2) required that the amount of post-judgment interest, either the legal rate or some smaller amount as provided in a contract or obligation, must be stated on the face of the judgment. *Id.* The purpose of subsection (2) was to inform the sheriff whether the legal rate of interest was being assessed or whether a lower contract rate applied. *Id.* The judgment holder argued that because the 1994 amendment was only to subsection (1), which now provided for a variable rate of post-judgment interest rather than twelve percent, and subsection (2) remained unchanged, the Legislature must have intended the legal rate of interest on the date of the judgment, *i.e.*, twelve percent, to remain fixed throughout the life of the

judgment. *Id.* at 1266. The court rejected this argument and concluded that subsection (2) should be interpreted in light of the new policy indicated by the amended subsection (1) to simply require that the sheriff be advised as to whether the legal rate or some specific contract rate applied. If the face of the judgment indicates the legal rate, then it meets the statutory requirement to show which rate applies. *Id.* The court reasoned that even though subsection (2) could be interpreted to require a specific number on the face of the judgment or process, an interpretation that permitted a variable rate was more consistent with the Legislature's intent to subject unpaid judgment obligations to changing market conditions. *Id.* (citing *Applestein*, 586 So. 2d at 442). Thus, the variable rate of interest applied to the judgment that was rendered after the effective date of the amendments. *Id.* at 1266-67.

Although distinguishable, *Keanie* actually supports Townsend's argument in two ways. First, *Keanie* expressly recognized that a retroactivity problem would exist if it were concerned with a judgment entered before the effective date of the amendment. *See Keanie*, 698 So. 2d at 1264. But, because the relevant judgment was entered after the amendment's effective date, no retroactivity question existed. *Id.* Here, we are talking about a preexisting judgment, and therefore, the standard retroactivity test applies.

Second, when interpreting a statutory amendment, a court may consider whether the amendment follows closely on the heels of appellate decisions construing the meaning of a statute. *See Lowry v. Parole and Probation Comm'n*, 473 So. 2d 1248, 1250 (Fla. 1985). The Fifth District issued the *Keanie* decision in 1997. Approximately one year later, the Legislature amended section 55.03 to add the new subsection (3), which clarified that the post-judgment interest set at the time the judgment is entered is fixed and must remain the same until the judgment is satisfied. As Reynolds concedes, the Legislature is presumed to know how courts have construed a statute in the past when it amends a statute. *See* Answer Brief, pp. 22-23 (citing *Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1043 (Fla. 2008) ("In this context, 'the legislature is presumed to know the judicial construction of a law when enacting a new version of that law' and 'the legislature is presumed to have adopted prior judicial constructions of a law unless contrary intention is expressed in the new version.'" (quoting *Jones v. ETS of New Orleans, Inc.*, 793 So. 2d 912, 917 (Fla. 2001) (citations omitted)).); *cf. Scott v. Williams*, 107 So. 3d 379, 387-88 (Fla. 2013) (concluding that a preservation of rights statute was enacted in response to court decisions so as to change the law reflected in those decisions). The addition of the new subsection (3) in 1998 demonstrates that Legislature's intent that the appellant's argument in *Keanie* was the preferred policy and that post-judgment interest should be fixed at the time of the judgment's

entry and should remain the same until satisfied. *See* § 55.03(3), Fla. Stat. (1998). Thus, the Legislature's addition of subsection (3) shortly after *Keanie* indicates the Legislature's intent to abrogate any "default rule" that might provide a different result with respect to pre-existing judgments.

4. Reynolds Is Confused About The Difference Between Subsection (1), Which Addresses Prejudgment Interest, And Subsection (3), Which Pertains To Post-Judgment Interest.

Indeed, the 1998 amendment also demonstrates the Legislature's intent that, at that time, prejudgment interest should adjust annually, but post-judgment interest should remain fixed until the judgment is paid. *See* §§ 55.03(1), (3), Fla. Stat. (1998) (effective October 1, 1998). This interpretation explains the confusion Reynolds seems to have about the application of section 55.03(1), Florida Statutes (2010). *See* Answer Brief, pp. 1, 2, 14, 23. The relevant portion of section 55.03(1) that Reynolds relies upon (which remained unchanged by the 2011 amendment) reads: "Judgments obtained **on or after** January 1, 1995, shall use the previous statutory rate for time periods **before** January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time periods **after** January 1, 1995, for which interest is due." This sentence in subsection (1) pertains to prejudgment interest not post-judgment interest. No post-judgment interest would be due for the period **before** January 1, 1995, if the judgment was not entered until **on or after** January 1, 1995. Thus, this language simply means that in

determining the rate of prejudgment interest, where there is no governing contractual provision, a court must use the rate set by prior versions of the statute for the periods before 1995, and the rate set by the Chief Financial Officer for the time periods after that date.

Indeed, section 55.03, which is titled "Judgments: rate of interest, generally," originally applied only to post-judgment interest. Section 687.01, Florida Statutes, provided the prejudgment interest rate. When the Legislature amended section 55.03 in 1994 to provide post-judgment interest at a variable rate, it also amended section 687.01 to simply incorporate section 55.03 as the prevailing rate of prejudgment interest. *See Talking Walls, Inc. v. Hartford Cas. Ins. Co.*, No. 1:03-cv-00041-MK-AK, 2005 WL 6011243, *3 (N.D. Fla. July 5, 2005) (Paul, J.); *see also* Ch. 94-239, §§ 8, 10, Laws of Fla. (1994). Thus, the 1998 amendment, which created a new subsection that pertained only to post-judgment interest, limited the application of subsection (1) to prejudgment interest. Consequently, the language from section 55.03(1) that Reynolds relies upon has no bearing on post-judgment interest for judgments entered **after** January 1, 1995. Rather, in both the 2010 and 2011 versions of section 55.03, the subsection that sets the rate of post-judgment interest is subsection (3). *Compare* § 55.03(3), Fla. Stat. (1998) (stating that the rate of post-judgment interest is fixed when the judgment is entered until paid) *with* § 55.03(3), Fla. Stat. (2011) (stating that the

interest rate established at the time the judgment is obtained shall be adjusted annually on January 1 until the judgment is paid). Thus, Reynolds' argument about the impact of the language of subsection (1) is irrelevant.

5. The Plain Language Of Section 55.03(3), Florida Statutes (2010), Did Not Bind The Hands Of Future Legislatures.

Similarly, Reynolds is incorrect when it argues that Townsend's proper interpretation of the 1998 amendment to subsection (3) would bind future legislature's hands. Townsend has no quarrel with the 2011 Legislature's right to amend subsection (3) to provide for a variable rate of post-judgment interest on judgments obtained after the 2011 amendment's effective date. The Legislature could even have attempted to apply that amendment retroactively to pre-existing judgments. All the Legislature had to do was to include language expressing its retroactive intent.[1] The Legislature knows how to do that. *See, e.g.,* Ch. 2006-154, § 9, Laws of Fla. (2006) (stating that sections 2 and 8 are intended to be remedial in nature and to clarify existing law ... [and] "shall apply retroactively to all actions..."); Ch. 2005-184, § 3, Laws of Fla. (2005) ("This act shall take effect July 1, 2005, and shall apply retroactively to all actions initiated on or after such date and, to the maximum extent authorized by law, to all actions pending as of

[1] Of course, had the 2011 amendment included such a statement of retroactive intent, the Court would be required to analyze whether retroactive application is constitutional. *See Old Port Cove Holdings, Inc. v. Old Port Cove Condo. Ass'n One, Inc.*, 986 So. 2d 1279, 1284 (Fla. 2008). Because the Legislature did not include any such language, this Court need not engage in that analysis.

such date."). The Legislature did not include any such language expressing retroactive intent in the 2011 amendment. Thus, the 2011 amendment applies only to judgments obtained after its effective date. *See* Initial Brief, pp. 12-18.

6. Townsend Is Not Seeking The Enforcement Of Contractual Or Vested Rights In This Case; Rather, Townsend Argues Only That The Plain Language Of The 2011 Amendment Does Not Manifest Retroactive Intent.

Moreover, Reynolds misses Townsend's point when Reynolds argues that section 55.03(3), Florida Statutes (2010) did not provide Townsend with a contractual right to a stated rate of interest through the life of the judgment. *See* Answer Brief, pp. 7-9, 16-18. Townsend has never argued that her judgment created a "contractual" right to a particular rate of interest. Rather, Townsend has consistently argued that the 2010 version of the statute created a statutory, vested right to six percent interest until the judgment was paid. (Record: ("R:") Tab C, pp. 12-30.) Townsend has chosen not to make that vested-rights argument here because Townsend fully expects this Court to follow its own, well-established retroactivity test thereby alleviating the need to address that question. *See Old Port Cove Holdings, Inc.*, 986 So. 2d at 1284 (setting forth two-part retroactivity analysis and concluding that because the statute did not expressly include retroactivity language, the Court need not address the constitutionality prong of the test); *see also* Initial Brief, pp. 6-18.

7. If The Court Concludes The Plain Language Of The 2011 Amendment Manifests Retroactive Intent, The Court Must Conclude That It Would Be Unconstitutional To Apply It Retroactively To Pre-Existing Judgments.

However, should this Court find that the 2011 amendment expresses retroactive intent or that the alleged "default rule" actually exists and somehow trumps Florida's retroactivity law, then the Court should also conclude that the plain language of section 55.03(3), Florida Statutes (2010) granted Townsend a vested right to six percent interest until her judgment is paid in full. Because she has a vested right to a fixed rate of interest, it would be unconstitutional to apply the 2011 amendment to her preexisting judgment. (*See* R:Tab C, pp. 12-30.)

This case is directly analogous to *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994). In *Mancusi*, the Legislature had previously created a statutory right to a claim for punitive damages under certain circumstances. After the plaintiff's cause of action had accrued, but before the plaintiff actually filed suit, the Legislature amended the punitive damages statute to limit punitive damages to three times the compensatory damages. *Id.* at 1358. This Court ruled that the amended punitive-damage statute did not apply to the plaintiff's accrued cause of action, even though the amendment was effective before the plaintiff filed suit. *Id.* The Court reasoned that even though the right to punitive damages is a matter of legislative grace, the Legislature had previously granted the plaintiff a pre-existing right to punitive damages under the old statute because the plaintiff's

cause of action accrued while that version of the statute was in place. The Court did not conclude, however, that by granting unlimited punitive damages at one time, the Legislature's hands were now bound and it could not amend the statute to limit punitive damages in the future or even take away that claim altogether. Rather, the Court merely acknowledged that the plaintiff's right to unlimited punitive damages had already vested when the Legislature amended the statute limiting punitive damages. Consequently, the Court concluded that the amendment did not apply to the plaintiff's previously-vested right to unlimited punitive damages. *Id.*

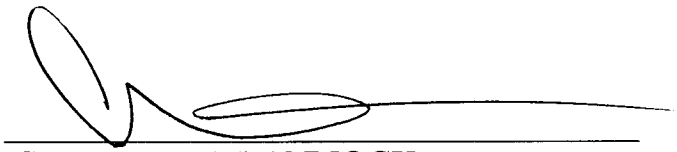
That is the same result that should occur in this case. Here, the trial court entered Townsend's judgment before the effective date of the 2011 amendment. As a result, by virtue of the 2010 version of section 55.03(3), Townsend had a vested, statutory right to post-judgment interest at a fixed rate until the judgment is satisfied. Therefore, because the 2011 amendment did not express any retroactive intent and because retroactive application would impair a vested, substantive right in any event, the 2011 amendment does not apply in this case. Rather, as shown by its effective date, the 2011 amendment applies only to judgments entered after July 1, 2011.

Reynolds' reliance on *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013), to argue to the contrary is misplaced. Although *Scott* involved the interpretation of a

preservation of rights statute, which stated that retirement benefits established as of July 1, 1974, were contractual and, therefore, could not be abridged, the Court interpreted that statute as protecting only those retirement benefits that had been earned by July 1, 1974. In other words, nothing in the statute indicated that it was intended to protect the right to a certain type of retirement benefits tied to employee service in the future or after July 1, 1974. *Id.* at 386-90. Reynolds tries to liken this interpretation to the one it advocates here by arguing that the 2011 amendment applies prospectively because it applies only to the interest that accrued after its effective date. In essence, Reynolds tries to compare the un-accrued-post-judgment interest in this case to the as-yet unperformed services in *Scott*. This is a false comparison, however, because the preservation of rights statute in *Scott* did not include any language that provided specific rights in the future. Here, section 55.03(3), Florida Statutes (2010), did; it provided that the rate "shall" remain the same until the judgment is satisfied. Therefore, *Scott* is inapplicable and the First District's decision should be reversed.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Initial Brief, this Court should reverse the First District's decision and answer the certified question in the affirmative.



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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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