

IN THE SUPREME COURT OF FLORIDA

ARMANDO RIVAS,

Petitioner,

vs.

THE BANK OF NEW YORK
MELLON, etc.,

Respondent.

Case No. SC17-1934
DCA Case No. 4D17-2704
L.T. Case No.
5012CA010633XXXXMB

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Mr. Rivas seeks conflict review under Article V, § 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) of the Fourth DCA's order denying his third identical emergency motion seeking to cancel foreclosure sale.¹ This Court should not accept jurisdiction as there is neither an opinion issued in this case nor any conflict.

STANDARD OF REVIEW

Standard of Review.

This Court's discretionary jurisdiction to review decisions of the district courts of appeal under Rule 9.030(a)(2)(A)(iv) is strictly construed. This construction is to prevent the district courts of appeal from functioning as intermediary courts. *See Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958). To serve as a basis for jurisdiction, a conflict must be express and direct. It cannot be implicit. *See Dept. of Health and Rehab. Serv. v. Nat. Adoption Counseling Serv., Inc.*, 498 So. 2d 888, 889 (Fla. 1986). In testing whether a conflict is express and direct, this Court looks to decisions, not orders. *Ansin*, 101 So. 2d at 811 (Fla. 1958.) And when it looks to decisions and testing whether a conflict is express and direct, this Court stated:

¹ The Court struck the majority of the appendix accompanying Mr. Rivas's "jurisdictional brief" on November 20, 2017—leaving only the November 2, 2017 order denying request for emergency treatment and informing Mr. Rivas not to further abuse the Court's emergency filing process.

A conflict of decisions must be on a question of law involved and determined, and such that one decision would overrule the other if both were rendered by the same court; in other words, the decisions must be based practically on the same state of facts and announce antagonistic conclusions.

Ansin, 101 So. 2d at 811 (Fla. 1958.)

There is no decision to review. Even if there were, there is no conflict.

SUMMARY OF THE ARGUMENT

Mr. Rivas seeks discretionary conflict review of a Fourth DCA order, not a decision. As a result, this Court does not have jurisdiction. There is no decision rendered for review.

ARGUMENT

This Court's discretionary jurisdiction under Article V, § 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) is to review decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. The only remaining portion of the appendix is the Fourth DCA's November 2, 2017 order denying emergency treatment and denying Mr. Rivas's third repeat filing of a motion to stay.

As a result, Mr. Rivas seeks review of an order not decision. Mr. Rivas cannot meet his burden to invoke this Court's discretionary jurisdiction, and this proceeding should be dismissed.

Even if the order was a decision—which it is not—Mr. Rivas's jurisdictional brief does not explain how this order conflicts with any other decisions of this Court or the district courts. Nor could there ever be any conflict because the order does not contain any factual discussion or background information related to the reason for the order.

CONCLUSION

This Court should decline discretionary jurisdiction and dismiss this proceeding.

Respectfully submitted,

/s/ Nancy M. Wallace

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January 2018 a true and correct copy of the foregoing has been electronically uploaded to the Supreme Court of Florida's e-Portal and a true and correct copy was furnished by E-Mail and U.S. Mail to all parties listed below.

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is the Times New Roman 14-point font and that the brief complies with the font requirements of Rule 9.210(a)(2).

/s/ Nancy M. Wallace _____
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