SUPREME COURT OF FLORIDA
STATE OF FLORIDA

CASE NO.: SC2025-1318

L.T. DCA CASE NO.: 6D23-3824
CASE NO.: 2023-CA-011647-O

MELROSE VENTURES, LLC,
INTELLIGENT PAYMENT
PROCESSING INC., and
SHAWN CARDEN,

Petitioners,

v.

UPTEMPO MARKETING CORP.,
UPTEMPO SERVICING CORP.,
HANK PAYMENTS CORP.,
METROPOLITAN COMMERCIAL
BANK.

Respondents.
_____/

**MOTION TO VACATE ORDER OF DISMISSAL AND REINSTATE APPELLANTS/PETITIONERS' NOTICE OF DISCRETIONARY REVIEW**

The Appellants/Petitioners, MELROSE VENTURES, LLC et al., by and through their undersigned counsel presents this, their Motion to Reinstate Notice to Invoke the Discretionary Review of the Florida Supreme Court pursuant to Fla. R. App. P. 9.120 and in support thereof states as follows:

## Facts

1. On July 25, 2025, the Sixth District Court of Appeal issued its Decision in form of an Opinion (hereinafter referred to as the "Decision"), affirming the trial court's Order of Dismissal based upon Forum Non Conveniens. See Exhibit "A" attached hereto for a copy of the Opinion.

2. The Decision explicitly, and in all capitalized letters, states:

> NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED *Id.*

3. The Decision also invoked the discretionary review of the Florida Supreme court in holding that: "[s]ince our holding is directly in conflict with the Fifth District's, pursuant to Article V, Section 3(b)(4) of the Florida Constitution, we certify this decision to be in direct conflict with *Kawsar* and *Elser.*" *Id.*

4. No Motion for Rehearing was filed by either of the parties.

5. On August 15, 2025, the Sixth District Court of Appeal issued its Mandate. See Exhibit "B" attached hereto for a copy of the Mandate.

6. On August 28, 2025, (thirteen days after the Mandate was issued) the Appellants/Petitioners filed their Notice to Invoke the Discretionary Jurisdiction of the Florida Supreme Court of Florida. See Exhibit "C" attached hereto for a copy of the Notice.



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## Memorandum of Law

It is the Appellants/Petitioners' contention that pursuant to the plain language of the Rules of Appellate Procedure that the Notice to Invoke the Discretionary Jurisdiction of the Supreme Court of Florida was timely filed. The Sixth District Court of Appeal's Decision was issued on July 25, 2025, but was not rendered until the Mandate was issued on August 15, 2025. The Notice was filed thirteen days after the Mandate issued and was well within the commencement requirements of Fla. R. App. P. 9.120(b)'s 30-day requirement. Florida Rule of Appellate Procedure 9.120(b) governs the commencement of "Discretionary Proceedings to Review Decisions of District Court of Appeal and states as follows:

> The jurisdiction of the supreme court described in rule 9.030(a)(2)(A) shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal within 30 days of rendition of the order to be reviewed. (Emphasis added).

The operative language to invoke the discretionary review of an order pursuant to Fla. R. App. P. 9.120(b) is the language "rendition of the order to be reviewed." And pursuant to Fla. R. App. P. 9.020, there is a definition of "rendition of an order." Fla. R. App. P. 9.00(h) defines rendition of an order as: "An order is rendered when a signed, written order is filed with the clerk



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of the lower tribunal." This is done by issuance of the Mandate, which lets the lower court know that there is no further work for the Appellate Court to handle.

Under Florida appellate procedure, "an appellate court's order is not final until its issuance of the mandate." *VME Grp. Int'l, LLC v. Grand Condo. Ass'n*, 305 So. 3d 30 (Fla. 3d DCA 2020). "The Mandate of an appellate court is the official method of communicating its judgment to the lower tribunal ... Opinions of appellate courts are not final until the time for rehearing and the disposition thereof, if any, has run..." *Id. at* 35.

"Under Fla. R. App. P. 9.120, a party has 30 days following the rendition of a decision by the district court in which to file a notice seeking to invoke the discretionary jurisdiction of the Supreme Court of Florida." *Romero v. State*, 870 So. 2d 816, 817 (Fla. 2004).

The critical issue is determining when the decision was actually "rendered." Given that the opinion explicitly stated it was not final until the time for rehearing expired, and the mandate was not issued until August 15, 2025, the thirty-day period began running from August 15, 2025, not July 25, 2025.

The Decision in this case explicitly stated "NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION



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THEREOF IF TIMELY FILED," confirming that judicial labor remained to be performed after July 26, 2025. When judicial labor remains to be performed after an initial order, the decision has not been rendered for purposes of calculating appeal deadlines. Dodgen v. Grijalva, 331 So. 3d 679 (Fla. 2021).

The language at the end of the Decision is not superfluous. The automatic delay in issuance of mandate is necessary to allow proper procedural protections of Fla. R. App. P. 9.330 and 9.340 to remain in effect. Under Fla. R. App. P. 9.330, a moving party has 15 days to file a Motion for Rehearing, Clarification, Certification or Written Opinion. Thus, whether or not a party files a Motion pursuant to Fla. R. App. P. 9.330, the jurisdiction of the Appellate Court, and the potential for additional judicial labor of the Appellate Court remains until the time to timely file a Motion pursuant to Fla. R. App. P. 9.330 has run (i.e., 15 days).

The district court of appeal has the sole authority to issue, and to stay the issuance of its Mandate. The Court of Appeal controls when a Mandate is issued and therefore when a Decision has been rendered. The fifteen-day delay in issuance of mandate serves important procedural purposes and confirms that the decision is not final until the mandate issues. Fla. R. App. P. 9.340.

The notice of invoking discretionary review was filed on August 28,



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2025, which was thirteen days after the Mandate issued on August 15, 2025. This filing was well within the thirty-day requirement under Rule 9.120.

## CONCLUSION

The notice to invoke discretionary review was timely filed within thirty days of the rendition of the decision, which occurred when the mandate issued on August 19, 2025, not when the preliminary opinion was issued on July 26, 2025. The dismissal order should be reversed and the case reinstated.

**DESIGNATION OF EMAIL ADDRESSES FOR SERVICE**

(Pursuant to Rule 2.516 Fla. R. Jud. Admin.)

The undersigned attorneys of The Ticktin Law Group hereby designate the following Email Address(es) for service in the above styled matter. Service shall be complete upon emailing to the following email addresses in this Designation, provided that the provisions of Rule 2.516 are followed.

Serv512@LegalBrains.com, Serv549@LegalBrains.com

**SERVICE IS TO BE MADE TO EACH AND EVERY EMAIL ADDRESS LISTED IN THIS DESIGNATION AND TO NO OTHERS.**



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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been emailed this **17th day of September 2025**, to **GARY S. ROSNER, ESQUIRE**, grosner@moritthock.com, lglatzer@moritthock.com, Moritt Hock Hamroff, LLP, Attorneys for the Defendant, Metropolitan Commercial Bank, 8151 Peters Road, Suite 3100, Plantation, Florida 33324 and to **ANDREW J. BERNHARD, ESQUIRE**, abernhard@bernhardlawfirm.com, Bernard Law Firm, PLLC, Attorney for the Defendants, Uptempo Marketing Corp., Uptempo Servicing Corp., Hank Payments Corp., 333 SE 2nd Avenue, Suite 2000, Miami, Florida 33131.

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_/s/ Ryan Fojo_____
PETER TICKTIN, ESQUIRE
Florida Bar No. 887935
JAMIE ALAN SASSON, ESQUIRE
Fla. Bar No. 10802
RYAN FOJO, ESQUIRE
Fla. Bar No. 1035588

# Exhibit “A”

# SIXTH DISTRICT COURT OF APPEAL
# STATE OF FLORIDA

---

Case No. 6D2023-3824
Lower Tribunal No. 2023-CA-011647-O

---

MELROSE VENTURES, LLC, INTELLIGENT PAYMENT PROCESSING INC., and SHAWN CARDEN,

Appellants,

v.

UPTEMPO MARKETING CORP., UPTEMPO SERVICING CORP., HANK PAYMENTS CORP., and METROPOLITAN COMMERCIAL BANK,

Appellees.

---

Appeal pursuant to Fla. R. App. P. 9.130 from Orange County.
Denise Kim Beamer, Judge.

July 25, 2025

PER CURIAM.

Appellants, Melrose Ventures, LLC, Intelligent Payment Processing, Inc., and Shawn Carden, appeal from an order granting a motion to dismiss their complaint and raise two arguments for our consideration. Finding merit in neither, we write only to explain why the second argument was unpreserved.

In 2023, Appellants filed a complaint against Appellees in Orange County, Florida. Appellees moved to dismiss the complaint on several grounds, including that one of the contracts at issue contained a mandatory and exclusive forum selection clause requiring litigation to be commenced in the Province of Ontario, Canada. While Appellants responded to the motion and raised several arguments against enforcement of the forum selection clause, they never argued that the motion should be denied as to Mr. Carden because: (1) he was not a party to the contract requiring litigation in Ontario, and (2) he had entered into a separate agreement with Appellees that contained a forum selection clause requiring litigation in Florida. Based on the arguments presented in the motion to dismiss, the response thereto, and during the hearing, the trial court granted Appellees' motion and dismissed the case in its entirety so it could proceed in Ontario.

Having lost, Appellants moved for rehearing under Florida Rule of Civil Procedure 1.530. In that motion, Appellants argued for the first time that Mr. Carden was not a party to the subject contract and, therefore, its terms could not deprive him of his chosen forum. Ultimately, the trial court summarily denied the motion for rehearing, a ruling Appellants do not challenge.

Rather than challenging the trial court's denial of their motion for rehearing, Appellants challenge only the trial court's granting of their opponents' motion to dismiss. They argue that the trial court erred by granting Appellees' motion to

dismiss because they later raised a meritorious argument against dismissal in their motion for rehearing.[1]

Appellants' argument fails because the trial court was not required to consider an argument that Appellants asserted for the first time in a motion for rehearing. While the trial court had discretion to grant rehearing and then consider Appellants' new argument, it was not required to do so. *See* Fla. R. Civ. P. 1.530(a) ("[O]n a motion for a rehearing of matters heard without a jury, . . . the court *may* open the judgment if one has been entered, take additional testimony, and enter a new judgment." (emphasis added)); *see also Crocker v. Crocker*, 370 So. 3d 363, 365 (Fla. 5th DCA 2023) ("Under Florida Rule of Civil Procedure 1.530 and Florida Family Law Rule 12.530, trial courts have discretion to consider and address arguments raised for the first time in a motion for rehearing, in part to prevent an injustice that would be caused by an error or omission by one of the lawyers." (quoting *Fitchner v. Lifesouth Cmty. Blood Ctrs.*, Inc., 88 So. 3d 269 (Fla. 1st DCA 2012) (internal quotations omitted))); *ARI Fin. Servs., Inc. v. Crystal Cap. Fund Series, LLC*, 404 So. 3d 586, 589 (Fla. 3d DCA 2025) (recognizing that a trial court is not "prohibited from considering an issue raised for the first time in a motion for rehearing"). And, as the party moving for rehearing, it was Appellants' burden below to demonstrate to the trial court why it should exercise its discretion to rehear

[1] We do not decide whether the later raised argument was in fact meritorious.

a matter that the trial court had already decided. *Kawsar v. Alhamdi Grp., LLC*, 369 So. 3d 1227, 1230 (Fla. 5th DCA 2023) (Eisnaugle, J., concurring); *see also Chris Thompson, P.A. v. GEICO Indem. Co.*, 349 So. 3d 447, 448-49 (Fla. 4th DCA 2022) ("Yet, it is not an abuse of discretion to deny a motion for reconsideration which raises an issue that could have been, but was not, raised in a pre-hearing filing or at the entitlement hearing." (citing *Bank of Am., N.A. v. Bank of N.Y. Mellon*, 338 So. 3d 338, 341 n.2 (Fla. 3d DCA 2022))); *Fision Corp. v. Frueh*, 369 So. 3d 1211, 1217–18 (Fla. 2d DCA 2023) (recognizing "trial courts need not grant rehearing when the movant raises a new argument that could have, and should have, been raised prior to entry of summary judgment"); *Coffman Realty, Inc. v. Tosohatchee Game Preserve, Inc.*, 381 So. 2d 1164, 1167 (Fla. 5th DCA 1982) (concluding that "it is not an abuse of discretion for a trial judge to hold that an affidavit filed with a petition for rehearing is too late"), *approved and adopted by*, 413 So. 2d 1 (Fla. 1982).

It follows then that on appeal, Appellants were required to show this Court that the trial court abused its discretion in denying their motion for rehearing.[2] *Villas at Laguna Bay Condo. Ass'n, Inc. v. CitiMortgage*., 190 So. 3d 200, 202 (Fla. 5th

[2] Such an argument would still have had to have been made in the context of an appeal of the order granting Appellants' motion to dismiss, as an order on a motion for rehearing is not reviewable separately from a review of the underlying final order. Fla. R. App. P. 9.130(a)(4).

DCA 2016). Appellants made no attempt to do so. Instead, Appellants miss the significance of the procedural posture they were in on rehearing and proceed as if raising an argument for the first time on rehearing is sufficient to preserve an argument, which could have been, but was not, raised when the underlying motion was being heard. We reject this premise and in doing so join our sister courts in the Second, Third and Fourth Districts who have already found that, as a general rule, new and different arguments untimely raised for the first time in motions for rehearing which were denied are unpreserved.[3] *School Bd. of Pinellas Cnty. v. Pinellas Cnty. Comm'n*, 404 So. 2d 1178, 1178 (Fla. 2d DCA 1981) (issues were not preserved when "appellant raised these issues for the first time in its motion for rehearing in the trial court"); *Ray Med. Ctr., Inc. v. Fla. Ins. Guar. Ass'n*, 406 So. 3d 1086, 1088 n.2 (Fla. 3d DCA 2025) (arguments were not preserved "because

[3]As to issues which could *not* have been raised before rehearing, the same reasoning does not apply. For example, when an error appears for the first time on the face of the order, it is well settled that parties can preserve the issue by filing a motion for rehearing. *See Williams v. Williams*, 152 So. 3d 702, 704 (Fla. 1st DCA 2014) ("[W]here an error by the court appears for the first time on the face of a final order, a party must alert the court of the error via a motion for rehearing or some other appropriate motion in order to preserve it for appeal."). The same reasoning also does not apply when a trial court grants a motion for rehearing and then rejects a new argument on its merits. In such a case, the trial court has exercised its discretion to grant rehearing and consider the newly raised argument. *See Crocker*, 370 So. 3d at 365 ("[W]here a trial court exercises its discretion to address an argument raised for the first time on rehearing, the argument is considered preserved for appeal.").

these arguments were not raised below until [appellant's] motion for rehearing")[4]; *High Definition Mobile MRI, Inc. v. State Farm Mut. Auto. Ins. Co.*, 321 So. 3d 818, 824 (Fla. 4th DCA 2021) (argument was not preserved where "raised for the first time in a Notice of Filing Argument in Opposition to Defendant's Motion for Summary Judgment, filed *after* the trial court had already granted the motion for summary judgment and entered a final judgment"); *Trinchitella v. D.R.F., Inc.*, 584 So. 2d 35, 35 (Fla. 4th DCA 1991) (issues were not preserved where "raised for the first time in a motion for rehearing in the trial court").

In contrast, the Fifth District has held that a party can preserve a new argument by raising it for the first time on rehearing. *Kawasar*, 369 So. 3d at 1228 (citing *Elser v. Law Offs. of James M. Russ, P.A.*, 679 So. 2d 309, 312 (Fla. 5th DCA 1996)). Considering himself bound by his court's decision in *Elser*, Judge Eisnaugle wrote a thoughtful concurrence outlining how, if he was writing on a blank slate, he would analyze whether an argument raised on rehearing is properly preserved for appellate review. *Id.* at 1229-31 (Eisnaugle, J., concurring).

Agreeing with his well-reasoned analysis, we expressly adopt his view, which begins by recognizing that to preserve an argument, a "party must make a timely,

[4] We note that the Third District previously made the opposite holding in *Bailey v. Treasure*, 462 So. 2d 537, 539 (Fla. 3d DCA 1985). Since *Bailey* does not appear to be the currently prevailing law of the Third District, this opinion does not certify conflict with *Bailey*.

contemporaneous objection at the time of the alleged error." *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010). Here, that required Appellants to raise their argument against the motion to dismiss either in response to the motion or at the hearing thereon.

By the time Appellants raised their argument at rehearing, the legal landscape had changed. Before the trial court's dismissal order, the burden rested with Appellees to demonstrate that the trial court should grant their motion *as a matter of law*. *See Ingalsbe v. Stewart Agency, Inc.*, 869 So. 2d 30, 35 (Fla. 4th DCA 2004) ("[A] complaint should not be dismissed for failure to state a cause of action 'unless the movant can establish beyond any doubt that the claimant could prove no set of facts whatever in support of his claim.'" (quoting *Morris v. Fla. Power & Light Co.*, 753 So.2d 153, 154 (Fla. 4th DCA 2000))). After rendition of the dismissal order, the burden shifted to Appellants, as the parties moving for rehearing, to convince the trial court to rehear the motion to dismiss, and the trial court had *substantial discretion* to deny the motion and thereby decline to consider Appellants' new argument. *See Kawsar*, 369 So. 3d at 1230 (Eisnaugle, J., concurring) (explaining that the party moving for rehearing has the burden of showing that the matter should be reopened for further consideration). Since the trial court declined to rehear the motion to dismiss, Appellants' raising a new argument in the motion for rehearing cannot be considered contemporaneous to the trial court's

consideration of the motion to dismiss. Accordingly, we find Appellants' second argument is unpreserved. Since our holding is directly in conflict with the Fifth District's, pursuant to Article V, Section 3(b)(4) of the Florida Constitution, we certify this decision to be in direct conflict with *Kawsar* and *Elser*.

AFFIRMED. CONFLICT CERTIFIED.

STARGEL, NARDELLA and MIZE, JJ., concur.

Peter Ticktin, Jamie Alan Sasson, and Ryan Fojo, of The Ticktin Law Group, Deerfield Beach, for Appellants.

Andrew J. Bernhard, of Bernhard Law Firm PLLC, Miami, for Appellees, Uptempo Marketing Corp., Uptempo Servicing Corp., and Hank Payments Corp.

Gary S. Rosner, of Moritt Hock & Hamroff LLP, Plantation, for Appellee, Metropolitan Commercial Bank.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

# Exhibit “B”

# MANDATE

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**SIXTH DISTRICT**

WHEREAS an opinion or dispositive order has issued following this Court's due consideration of the cause brought before it by appeal or by petition, this Court

HEREBY COMMANDS YOU to conduct further proceedings, if applicable, in accordance with this Court's ruling and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Dan Traver, Chief Judge of the District Court of Appeal of the State of Florida, Sixth District, and the seal of said Court at Lakeland, Florida on this day.

| | |
|---|---|
| DATE: | August 15, 2025 |
| DATE OF DISPOSITION: | July 25, 2025 |
| CASE NO.: | 6D2023-3824 |
| COUNTY OF ORIGIN: | Orange County |
| L.T. CASE NO.: | 2023-CA-011647-O |
| CASE STYLE: | INTELLIGENT PAYMENT PROCESSING INC., MELROSE VENTURES, LLC, SHAWN CARDEN, Appellant(s) v. METROPOLITAN COMMERCIAL BANK, HANK PAYMENTS CORP., UPTEMPO SERVICING CORP., UPTEMPO MARKETING CORP., Appellee(s). |

6D2023-3824 August 15, 2025

Stacey Pectol
Clerk

Mandate and opinion, if any, to follow to: TIFFANY RUSSELL, CLERK

cc:
Andrew J. Bernhard, Esq.
Hon. Denise Beamer
Ryan S. Fojo, Esq.
Gary S. Rosner, Esq.
Tiffany Russell, Clerk
Gary Scott Rosner
Jamie Alan Sasson, Esq.
Peter Ticktin, Esq.

# Exhibit “C”

IN THE SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

DCA CASE NO.: 6D23-3824
L.T. CASE NO.: 2023-CA-011647-O

MELROSE VENTURES, LLC,
INTELLIGENT PAYMENT
PROCESSING INC., and
SHAWN CARDEN,

Appellants,

v.

UPTEMPO MARKETING CORP.,
UPTEMPO SERVICING CORP.,
HANK PAYMENTS CORP.,
METROPOLITAN COMMERCIAL
BANK.

Appellees.
_____/

**NOTICE TO INVOKE THE DISCRETIONARY JURISDICTION**
**OF THE SUPREME COURT OF FLORIDA**

NOTICE IS GIVEN that MELROSE VENTURES, LLC, INTELLIGENT PAYMENT PROCESSING, INC., and SHAWN CARDEN, Appellants (Plaintiffs in the lower court) invoke the discretionary jurisdiction of the Supreme Court of Florida to review the decision of this court issued on July 25, 2025, and rendered on August 14, 2025. The Supreme Court of Florida has discretionary jurisdiction pursuant to Fla. R. App. P. 9.030 (2)(A)(vi), whereby discretionary jurisdiction is based upon a decision that is "certified to be in direct conflict with decisions of other district courts of appeal."

The Opinion issued on July 25, 2025, and rendered by Mandate on August 14, 2025 is in direct conflict with other decisions of other district courts of appeal. Specifically,

the Decision acknowledges this conflict and in that decision holds that the Decision is in direct conflict with the holdings of *Kaswar v. Alhamdi Grp., LLC,* 369 So. 3d 1227 (Fla. 5th DCA 2023) and *Elser v. Law Offs. of James M. Russ, P.A.,* 679 So. 2d 309 (Fla. 5th DCA 1996).



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**DESIGNATION OF EMAIL ADDRESSES FOR SERVICE**

(Pursuant to Rule 2.516 Fla. R. Jud. Admin.)

The undersigned attorneys of The Ticktin Law Group hereby designate the following Email Address(es) for service in the above styled matter. Service shall be complete upon emailing to the following email addresses in this Designation, provided that the provisions of Rule 2.516 are followed.

Serv512@LegalBrains.com, Serv549@LegalBrains.com

**SERVICE IS TO BE MADE TO EACH AND EVERY EMAIL ADDRESS LISTED IN THIS DESIGNATION AND TO NO OTHERS.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been emailed this **28st day of August 2025**, to **GARY S. ROSNER, ESQUIRE**, grosner@moritthock.com, lglatzer@moritthock.com, Moritt Hock Hamroff, LLP, Attorneys for the Defendant, Metropolitan Commercial Bank, 8151 Peters Road, Suite 3100, Plantation, Florida 33324 and to ANDREW J. BERNHARD, ESQUIRE, abernhard@bernhardlawfirm.com, Bernard Law Firm, PLLC, Attorney for the Defendants, Uptempo Marketing Corp., Uptempo Servicing Corp., Hank Payments Corp., 333 SE 2nd Avenue, Suite 2000, Miami, Florida 33131.

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