

**IN THE SUPREME COURT  
OF THE STATE OF FLORIDA**

MAYUR J. MEHTA,

Petitioner,

v.

Case No.: SC20-1247

2nd DCA Case: 2D19 -2530

T.C. Case No. 10-CA-7496

REGIONS BANK, an Alabama  
state chartered bank, as successor  
in interest to AmSouth Bank,

Respondent.

---

---

On Petition for Discretionary Review of a Decision

of the Second District Court of Appeal

**PETITIONER'S INITIAL BRIEF ON JURISDICTION**

---

**McIntyre Thanasides Bringgold  
Elliott Grimaldi Guito & Matthews, P.A.**

Katie Brinson Hinton, Esquire

Florida Bar Number: 0022367

Primary: katie@mcintyrefirm.com

Secondary: lois@mcintyrefirm.com

Richard J. McIntyre, Esquire

Florida Bar Number: 962708

rich@mcintyrefirm.com

lois@mcintyrefirm.com

500 E. Kennedy Blvd., Ste. 200

Tampa, FL 33602

Telephone: (813) 223-0000

Facsimile: (813) 225-1221

*Counsel for Petitioner, Mayur J. Mehta*

**TABLE OF CONTENTS**

TABLE OF CONTENTS .....ii

TABLE OF AUTHORITIES .....iii, iv, v

APPENDIX/OPINION CITATIONS .....4

STATEMENT OF THE CASE AND FACTS .....1, 2, 3, 4

SUMMARY OF THE ARGUMENT .....4

ARGUMENT .....5, 6, 7, 8, 9, 10

    I.    The Regions decision expressly and directly conflicts with multiple  
        decisions of this Court setting forth rules regarding what constitutes  
        Notice and meaningful opportunity to be heard for due process  
        purposes .....5

    II.   The Regions decision expressly and directly conflicts with multiple  
        decisions of this Court setting forth rules regarding what constitutes  
        Notice and meaningful opportunity to be heard for due process  
        purposes .....6

    III.  The Regions decision expressly and directly conflicts with this Court  
        and other District Appellate Courts as to the proper application and  
        interpretation of Fla. R. Civ. Proc. 1.540(b)(4) .....9

CONCLUSION .....10

CERTIFICATE OF SERVICE .....11

CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS .....11

## TABLE OF AUTHORITIES

CASES	PAGE
<i>Declaire v. Yohanan</i> , 453 So. 2d 375, 379 (Fla. 1984) .....	9
<i>Dougherty v. State</i> , 149 So.3d 672 (2014) .....	6
<i>Douglas v. Johnson</i> , 65 So.3d 605, 607 (Fla. 2d DCA 2011).....	7
<i>Epps v. State</i> , 941 So.2d 1206, 1207 (Fla. 4th DCA 2006) .....	10
<i>Falkner v. Amerifirst Fed. Sav. &amp; Loan Ass’n</i> , 489 So. 2d 758, 761 (Fla. 3rd DCA 1986) .....	10
<i>Florida Dep’t of Transp. v. Juliano</i> , 801 So. 2d 101, 103 (Fla. 2001) .....	5
<i>Greene v. Seigle</i> , 745 So.2d 411 (Fla. 4th DCA 1999) .....	8
<i>Hardee v. State</i> , 534 So. 2d 706 (Fla. 1988) .....	5
<i>Johnson v. State, Dept. of Revenue ex rel. Lamontagne</i> , 973 So.2d 1236 (2008) .....	9
<i>Kozich v. Hartford Ins. Co. of Midwest</i> , 609 So.2d 147, 148 (Fla. 4th DCA 1992) .....	8
<i>M.W. v. Davis</i> , 756 So.2d 90 (2000) .....	4
<i>Oka v. Cole</i> , 145 So. 2d 233 (Fla. 1962) .....	5, 6

CASE	PAGE
<i>Palmer v. Palmer</i> , 479 So.2d 221 (1985) .....	4, 9
<i>Ramagli Realty Co. v. Craver</i> , 121 So. 2d 648, 654 (Fla.1960) .....	9
<i>Regions Bank v. Big Bend Investments Group of Florida, LLC</i> , 2020 WL 4249064 (Fla. 2d DCA July 24, 2020, Case No. 2D19-2530)).....	5, 6, 8, 9
<i>Richard v. Bank of America, N.A.</i> , 258 So.3d 485 (Fla. 4th DCA 2018) .....	10
<i>Rinker Materials Corp. v. City of N. Miami</i> , 286 So. 2d 552, 553 (Fla. 1973) .....	5
<i>Robertson v. State</i> , 829 So. 2d 901, 904 (Fla. 2002) .....	5
<i>Rosen v. Florida Ins. Guar. Ass'n</i> , 802 So. 2d 291, 292 (Fla. 2001).....	5
<i>Sanchez v. City of W. Palm Beach</i> , 149 So.3d 92, 97 (Fla. 4th DCA 2014) .....	7
<i>Segalis v. Roof Depot USA, LLC</i> , 178 So.3d 83 (Fla. 4th DCA 2015) .....	9
<i>State Farm Fire and Cas. Co. v. Lezcano</i> , 22 So.3d 632 (Fla. 3d DCA 2009).....	4, 7, 8
<i>Viets v. American Recruiters Enterprises, Inc.</i> , 922 So.2d 1090 (2006) .....	10
<i>Vollmer v. Key Development Properties, Inc</i> , 966 So.2d 1022 (Fla. 2d DCA 2007).....	7

**CASE**

**PAGE**

*Wallace v. Dean*,  
3 So. 3d 1035, 1040 (Fla. 2009).....5

*Zelman v. Zelman*,  
175 So.3d 871 (2015) .....7

**STATUTES**

F.R.C.P. Rule 1.540(b)(4) .....4, 9, 10

**CONSTITUTIONAL PROVISION**

Art. V. § 3(b)(3), Fla. Const.....5

Fla. R. App. P. 9.030(a)(2)(A)(iv) .....5

## STATEMENT OF THE CASE AND FACTS<sup>1</sup>

On April 5, 2010, Respondent, Regions Bank, initiated its suit in trial court case 10-CA-7496, which includes Mr. Mehta in his individual capacity as a guarantor, and also simultaneously filed its Motion for Summary Judgment (the “MSJ”). Mehta subsequently filed his Amended Affirmative Defenses. At the scheduled 9/20/2010 hearing on Regions’ MSJ and its Motion to Strike Defendant’s Amended Affirmative Defenses, no argument was pursued by either party, and the trial court entered partial summary judgment, but expressly reserved ruling on certain of Defendants’ pending affirmative defenses, stating that Plaintiff would have to seek further relief from this Court to adjudicate those defenses. (Op. Pg. 2). Specifically, the trial court at the 9/20/2010 Hearing told Mehta, who was pro se at this time, and his co-guarantor Shah that per the request of Regions’ counsel at that hearing, Regions would not be pursuing to strike any affirmative defenses, and that a further hearing would be scheduled where Mehta would be to present his evidence and defenses as to his affirmative defenses.<sup>2</sup>

---

<sup>1</sup> The 2<sup>nd</sup> DCA Opinion expressly excluded the lengthy factual history of this case (See Op. At pg 2). Since one of Petitioner’s basis of discretionary jurisdiction includes the 2<sup>nd</sup> DCA’s misapplication of the decision/binding precedent of this Court, such factual references to the procedural facts of the underlying case, as referenced by the 2<sup>nd</sup> DCA opinion, are essential to this Court’s determination of jurisdiction and thus included herein.

<sup>2</sup> Transcript of Hearing on Motion for Summary Judgment dated September 20, 2010, 12:2-6, 12:22-13:5 (App. 15).

No further hearing was held on those Specified Affirmative Defenses. Instead, on October 14, 2010, only 5 days prior, Regions unilaterally set a another 10-minute hearing on its MSJ for October 19, 2010, without sending notice of the 10/19/10 Hearing to Mehta or Shah, who were pro se at the time. Regions instead, contrary to the trial court's prior order, sent notice to Mehta's prior counsel who had withdrawn. The trial court conducted the 10/18/10 second hearing on Regions' MSJ, without notice to Mehta and Shah as defendants, at which Defendants did not appear.

On September 7, 2011, a final hearing on Region's MSJ was held, at which hearing Mehta appeared pro se. (Op. pg. 3). The trial court would not allow Mehta to give **any** argument on his pending Affirmative Defenses, solely because at that 9/7/11 Hearing, Regions' counsel represented to the trial court that judgment had already been entered against Mr. Mehta, but did not mention that the Partial Summary Judgment neither adjudicated nor disposed of the Specified Affirmative Defenses.

Specifically, Mehta gave his name on the record, the trial court asked Regions' counsel if Mehta was named as an individual defendant, and Regions' counsel told the trial court that, "he is named personally. Judgment has already

been entered against him individually.”<sup>3</sup> The trial court then asked Regions’ counsel again if there had been judgment already entered against Mehta, to which Regions’ counsel replied “Uh-Huh”, without advising the trial court that the partial summary judgment expressly reserved jurisdiction as to Mehta’s pending defenses. Based on what Region’s counsel told the trial court at the 9/7/11, the trial court then proceeded with the final judgment of foreclosure, and explained to Mehta and Shah that they are not able to speak or give argument since judgment had already been entered against them.<sup>4</sup>

The trial court entered its Final Judgment of Foreclosure, which was a money judgment against Mehta on 9/7/11. (Op. pg. 3). On December 2, 2016, Mr. Mehta and Mr. Shah filed their Amended Motion for Relief from Judgment based on lack of meaningful opportunity to be heard in defending his affirmative defenses. *Id.* On February 16, 2017, the trial court entered an Order Denying Mehta’s Motions for Relief, to which Mehta appealed, and the 2<sup>nd</sup> DCA reversed on July 20, 2018. (Op. pg. 3-4). On May 31, 2019, the trial court ruled that Mehta and Shah were not given “meaningful opportunity to be heard” in violation of their

---

<sup>3</sup> See Transcript of Hearing on Final Judgment of Foreclosure dated September 7, 2011, 4:18-5:5, 13:5-13. (App. 24).

<sup>4</sup> See Transcript of Hearing on Final Judgment of Foreclosure dated September 7, 2011, 4:18-5:5, 13:5-13. (App. 24).

due process, that the Judgment was **void**, not merely voidable, pursuant to F.R.C.P. Rule 1.540(b)(4), and entered its Order Vacating the Judgment, to which Regions appealed to the 2<sup>nd</sup> DCA. (Op. pg. 4). On July 24, 2020, the 2<sup>nd</sup> DCA entered its Opinion reversing the Order Vacating Judgment.

### **SUMMARY OF ARGUMENT**

As shown hereafter, there is conflict jurisdiction for discretionary review on multiple grounds. The decision of the 2<sup>nd</sup> DCA (*Regions Bank v. Big Bend Investments Group of Florida, LLC et al*, 2020 WL 4249064 (Fla. 2d DCA July 24, 2020, Case No. 2D19-2530)), attached hereto as Appendix “A,” conflicts with *Dougherty v. State*, 149 So. 3d 672 (Fla. 2014) and *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000), in that the 2<sup>nd</sup> DCA wrongly applied the precedent of this Court in *Dougherty* and *Davis* and other binding precedent of this Court. In addition, as further grounds, the decision of the 2<sup>nd</sup> DCA conflicts with *Palmer v. Palmer*, 479 So. 2d 221 (Fla. 5<sup>th</sup> DCA 1985) in that the 2<sup>nd</sup> DCA incorrectly summarized and applied the holding of the 5<sup>th</sup> DCA in the *Palmer* Case, and several other decisions of other district courts of appeal, particularly the 3<sup>rd</sup> DCA in *State Farm Fire & Cas. Co. v. Lezcano*, 22 So. 3d 632 (Fla. 3d DCA 2009), which constitute conflicts upon the same question of law and resolution of these conflicts would provide certainty and would further the administration of *justice*.

## ARGUMENT

Art. V. § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(iv) provides that the Supreme Court has jurisdiction to review a decision of the 2nd DCA which expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same question of law, and where such decision creates conflicts with decisions of sister courts. *Robertson v. State*, 829 So. 2d 901, 904 (Fla. 2002); *Florida Dep't of Transp. v. Juliano*, 801 So. 2d 101, 103 (Fla. 2001) (*citations omitted*). Decisional conflict may be created by a conflict in legal principles appearing on the face of the decision or the misapplication of a specific holding previously announced by this Court. See *Rosen v. Florida Ins. Guar. Ass'n*, 802 So. 2d 291, 292 (Fla. 2001); *Wallace v. Dean*, 3 So. 3d 1035, 1040 (Fla. 2009); *Hardee v. State*, 534 So. 2d 706 (Fla. 1988). This case presents conflict jurisdiction for discretionary review on three grounds.

- I. **The Regions decision expressly and directly conflicts with multiple decisions of this Court setting forth rules regarding what constitutes notice and meaningful opportunity to be heard for due process purposes.**

Conflict jurisdiction can also arise where a district court fails “to follow established decisional rules of statutory construction” *Rinker Materials Corp. v. City of N. Miami*, 286 So. 2d 552, 553 (Fla. 1973). This occurs when a district court applies principals that “depart from the rule defined” by this Court. *Oka v.*

*Cole*, 145 So. 2d 233, 235 (Fla. 1962). This Court has clearly established the rule that procedural due process requires adequate notice and an opportunity to be heard “at a meaningful time and in a meaningful manner.” See *Dougherty v. State*, 149 So. 3d 672 (Fla. 2014). The Regions decision misapplied this Court’s precedent in *Dougherty* and other decisions of this Court by ruling that the mere fact that Mehta and his co-defendant, Shah, were able to only put their names on the record at the 9/7/11 Hearing, such constitutes a “meaningful opportunity to be heard.” The Regions Decision also misapplied this Court’s ruling on what is “notice” by ruling that Regions’ notice of the 10/19/10 Hearing being sent to Mehta’s prior withdrawn attorney only 5 days prior to the hearing, was sufficient adequate notice. In effect, the 2<sup>nd</sup> DCA Opinion establishes an overly broad interpretation of this Court’s due process requirements of “opportunity to be heard at a meaningful time and in a meaningful manner.” The Regions decision misapplied the rulings of this Court, and purports to establish unfounded contradictory precedent that due process “meaningful opportunity to be heard in a meaningful manner” is satisfied as long as a hearing is held and the parties are present, even if such defendants are never allowed to present argument as to their defenses. Such ruling conflicts with binding precedent of this Court, thus invoking the discretionary jurisdiction of this Court.

**II. The Regions decision expressly and directly contradicts decisions of other district appellate courts as to what constitutes “meaningful**

**opportunity to be heard”**

Several district courts of appeal have specifically held that “when a court fails to give one party the opportunity to present witnesses or testify on his or her own behalf, the court has violated that party’s fundamental right to procedural due process.” See *Douglas v. Johnson*, 65 So. 3d 605,607 (Fla. 2d DCA 2011); *Zelman v. Zelman*, 175 So. 3d 871 (Fla. 4<sup>th</sup> DCA 2015); See also *Sanchez v. City of W. Palm Beach*, 149 So. 3d 92, 97 (Fla. 4<sup>th</sup> DCA 2014)(“an opportunity to be heard includes the right to present evidence bearing on the issues.”); *Vollmer v. Key Development Properties, Inc.*, 966 So. 2d 1022 (Fla. 2d DCA 2007) (for due process, the right to be heard includes more than simply being allowed to be present and to speak; the right to be heard includes the right to present evidence at a meaningful time and in a meaningful manner, and the opportunity to cross-examine witnesses, and to be heard on questions of law).

Of note, the facts in the Regions case are most similar to the facts in the *Lezcano* case, yet both cases resulting in conflicting decisions. In *Lezcano*, co-insured policy holders/Plaintiffs, Lezcano and Diaz, each brought a separate but related suit against State Farm based on one accident. *Lezcano*, 22. So. 3d at 633. State Farm filed answers and affirmative defenses as to both Lezcano and Diaz’s suits. *Id.* Both plaintiffs filed motions for summary judgment. *Id.* The trial court held two summary judgment hearings in the Diaz suit within a month of each

other. *Id.* At the second SMJ hearing as to Diaz, counsel for Lezcano represented to the Court a separate hearing had been scheduled and continued as to Lezcano's MSJ. *Id.* The record reflected that no such SMJ hearing ever took place before the county court entered summary judgment in favor of Lezcano and against State Farm. *Id.* Upon appeal, in reversing the summary judgment entered against State Farm, the Third DCA expressly held that "a trial court's failure to conduct a hearing prior to ruling on the motion for summary judgment constitutes a denial of the due process guarantee of notice and an opportunity to be heard." *Id.* at 34. (citing to *Kozich v. Hartford Ins. Co. of Midwest*, 609 So.2d 147, 148 (Fla. 4th DCA 1992); See also *Greene v. Seigle*, 745 So.2d 411 (Fla. 4th DCA 1999).

The Regions decision of the Second DCA wholly departed from the majority of other circuit cases, as mentioned above, and misapplied Florida Constitution for what constitutes meaningful opportunity to be heard for due process, thus creating express conflict. The facts in the instant case nearly mirror the facts in the *Lezcano* case. Yet, in contrast, Regions decision resulted in a ruling that a party's due process is not violated, even if such party is not afforded an opportunity to defend its pending affirmative defenses prior to entry of summary judgment, based on misrepresentation by opposing counsel. Such Regions decision is an overly broad misapplication of due process rights afforded by the Florida Constitution, in total conflict with established precedent of this Court and the decisions of the other

district appellate courts on the same issue of law.

**III. The Regions decision expressly and directly conflicts with this Court and other District Appellate Courts as to the proper application and interpretation of Fla. R. Civ. Proc. 1.540(b)(4).**

Conflict jurisdiction exists since the 2<sup>nd</sup> DCA opinion effectively ruled that waiting years to seek to vacate a judgment based on lack of due process under Fla. R. Civ. P. 1.540(b)(4) is a “reasonable” amount of time, and such is not *void*, but at best, *voidable*. However, this Court and other district courts expressly ruled that a failure to provide a party meaningful opportunity to heard is a violation of due process, which makes a judgment **void**, *not voidable*, and such judgment can be attacked at any time, since “reasonable time” under the rule to mean **no time limit at all**. *Declaire v. Yohanan*, 453 So. 2d 375, 379 (Fla. 1984); *Ramagli Realty Co. v. Craver*, 121 So. 2d 648, 654 (Fla.1960). See also *Johnson v. State, Dept. of Revenue ex rel Lamontagne*, 973 So. 2d 1236, 1238 (Fla. 1st DCA 2008) (“the mere passage of time cannot make a void judgment valid.”); See *Segalis v. Roof Depot USA, LLC*, 178 So.3d 83 (Fla. 4th DCA 2015). However, in contrast, the Regions decision conflicts in that the 2<sup>nd</sup> DCA misapplied the *Palmer* case law when it effectively held that the entry of the final judgment against Mehta without first giving Mehta a fair opportunity to adjudicate such affirmative defenses, may render a judgment erroneous and appealable only, but such does not render a judgment void. Such ruling is contradictory to this Court and other Courts.

Of special note is *Richard v. Bank of America, N.A.*, 258 So. 3d 485 (Fla. 4th DCA 2018), where the 4<sup>th</sup> DCA held that “[a] motion for rehearing is not a sufficient, meaningful opportunity to be heard. To be fair or meaningful, the opportunity to be heard must be provided ‘before rights are decided.’” *Id.* at 488. See also *Epps v. State*, 941 So.2d 1206, 1207 (Fla. 4th DCA 2006) (quoting *Peoples Bank of Indian River Cty. v. State, Dep't of Banking & Fin.*, 395 So.2d 521, 524 (Fla. 1981)); see also *Viets*, 922 So.2d at 1095; *Falkner v. Amerifirst Fed. Sav. & Loan Ass'n*, 489 So. 2d 758, 761 (Fla. 3rd DCA 1986).

### **CONCLUSION**

This Court’s Discretionary Conflict Jurisdiction is properly invoked by the Petitioner, Mehta, as the 2<sup>nd</sup> DCA misapplied this Court’s holdings and directly and expressly contradicted other district courts on due process and what constitutes sufficient notice and a meaningful opportunity to be heard “in a meaningful time and in a meaningful manner”. This Court’s Discretionary Conflict Jurisdiction is also properly invoked as the Second DCA expressly misapplied overwhelming Florida law under Fla.. R. Civ. P. 1.540(b) to hold that lack of due process does not render a judgment void, but merely voidable, which requires the judgment to be timely appealed or rehearing sought. Such decision effectively results in direct conflict.

## **CERTIFICATE OF SERVICE**

I certify that on August 31, 2020, pursuant to Fla. R. Jud. A. 2.516(b)(1), a true and correct copy of the foregoing document has been electronically filed and served using the Florida Courts e-filing Portal and e-Service System to: **Stephenie B. Anthony, Esq.** [santhony@anthonyandpartners.com; [eservice@anthonyandpartners.com](mailto:eservice@anthonyandpartners.com)], counsel for Respondent, Regions Bank.

by: /s/ Katie Brinson Hinton

## **CERTIFICATE OF COMPLIANCE WITH FONT STANDARDS**

I HEREBY CERTIFY that this document complies with the font standards required by Florida Rule of Appellate Procedure 9.210 for computer-generated documents on August 31, 2020.

/s/ Katie Brinson Hinton  
Richard J. McIntyre, Esquire  
Florida Bar Number: 962708  
[rich@mcintyrefirm.com](mailto:rich@mcintyrefirm.com)  
Katie Brinson Hinton, Esquire  
Florida Bar Number: 0022367  
[katie@mcintyrefirm.com](mailto:katie@mcintyrefirm.com)  
McIntyre Thanasides Bringgold  
Elliott Grimaldi Guito & Matthews, P.A.  
500 E. Kennedy Blvd., Ste. 200  
Tampa, FL 33602  
Telephone: (813) 223-0000  
Facsimile: (813) 225-1221  
*Counsel for Petitioner. Mayur Mehta*