

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-734  
L.T. CASE NO. 3D19-1404

RICHARD RANDALL GLASS, ALL TROPIC REAL ESTATE, INC.,  
& GLASS LAND ACQUISITION SERVICES SPECIALISTS, INC.,

Petitioners,

vs.

LAW OFFICES OF GRANOFF  
& KESSLER, P.A.

Respondent.

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## STATEMENT OF THE CASE AND FACTS

The facts of this case are accurately set forth in the Background and Procedural History portion of the Third District Court of Appeal's April 8, 2020 Opinion (a copy of which is included in the Petitioner's Appendix). Neither of the parties disagree with the Third District's recitation of the material facts. However, confusingly, in their Statement of the Case and Facts section of their Brief on Jurisdiction, which brief should be limited solely to the issue of the Supreme Court's jurisdiction, the Petitioners have simply cut and paste from the trial court's final judgment and included that court's legal analysis. However, in order for the Supreme Court to obtain a concise and accurate understanding of the facts of this matter, it really does not need to look any further than the Third District's April 8, 2020 Opinion.

To summarize, the Third District reversed the trial court's judgment in favor of the Petitioners and against the Respondent on the Respondent's claim for unpaid fees, and remanded the case to the trial court for an entry of damages award to the Respondent. The Third District held that with an attorney's claim against his/her own client for breach of contract and seeking to recover unpaid fees, a recovery can be had without independent expert testimony regarding the value of the legal services allegedly rendered. Corroboration by an independent expert on the stipulated rates and hours incurred is unnecessary if the attorney claiming the fees

from his or her former client has testified regarding those matters and the fee contract and invoices are admitted in evidence (which is what occurred in the case at hand). The Third District also certified conflict with the decision of the Second District in *Snow v. Harlan Bakeries, Inc.*, 932 So. 2d 411 (Fla. 2d DCA 2006). The Petitioners are now invoking the discretionary jurisdiction of the Supreme Court.

### SUMMARY OF THE ARGUMENT

The Court's jurisdiction in this case depends upon a finding that the decision sought to be reviewed expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. In addition, even if the district court has certified a conflict, this does not mean that the Supreme Court must exercise its discretionary jurisdiction.

The Court does not have jurisdiction or should decline to exercise its discretionary jurisdiction. None of the cases relied upon by the Petitioners are in direct conflict with the decision of the Third District. Many of the cases relied upon by the Petitioners involve actions whereby one party sought attorney's fees from the other party in the underlying action. These cases deal with a request or a motion for attorney's fees (fees expended at trial or on appeal) against an opposing party. On the other hand, in the case at hand, a law firm was seeking to recover its previously incurred attorney's fees as compensatory damages in a separate breach

of contract action. And, the law firm presented testimony from the attorney and the fee agreement and invoices were admitted into evidence. Under these circumstances, independent expert testimony was not required.

### ARGUMENT

The Petitioners are invoking the discretionary jurisdiction of the Supreme Court pursuant to Fla. R. App. P. 9.030(a)(2). This Court is now tasked with making a preliminary determination of whether this case presents an appropriate basis for the exercise of its discretionary jurisdiction. In addition, discretionary review entails only a judicial power to review a case and not an absolute obligation to do so.

Specifically, the Petitioners focus on parts (iv) and (vi) of Fla. R. App. P. 9.030(a)(2)(A). Similar language is found in article V, section 3, subsections (b)(3) and (b)(4) of the Florida Constitution.

The discretionary jurisdiction of the supreme court may be sought to review:

- (A) decisions of district courts of appeal that . . .
  - (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law . . .
  - (vi) are certified to be in direct conflict with decisions of other district courts of appeal.

Fla. R. App. P. 9.030(a)(2).

Thus, subsection (iv) deals with a decision that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law. This has been referred to as “conflict jurisdiction.” “One of the tests for conflict jurisdiction” is whether the decisions “are irreconcilable.” *Aravena v. Miami-Dade County*, 928 So. 2d 1163, 1166 (Fla. 2006). “If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise.” *Kyle v. Kyle*, 139 So. 2d 885, 887 (Fla. 1962).

Subsection (vi) of Fla. R. App. P. 9.030(a)(2)(A) pertains to decisions that are “certified to be in direct conflict with decisions of other district courts of appeal.” The Third District in its Opinion certified conflict with the decision of the Second District in *Snow*, 932 So. 2d 411. However, just because a court of appeal certifies conflict, this Court can still decline review. The Supreme Court can determine that there is no actual direct conflict or if there is a conflict, this does not warrant review. “[A] district court's certification of conflict does not present this Court with mandatory jurisdiction.” *State v. Barnum*, 921 So. 2d 513, 528 (Fla. 2005), *as revised on denial of reh'g* (Feb. 9, 2006).

The Petitioners seem to be employing a “throw everything against the wall and see what sticks” approach to obtaining review by this Court. As revealed in the Petitioners’ Brief on Jurisdiction (and their Notice to Invoke Discretionary

Jurisdiction), the Petitioners insist that the Third District's decision directly conflicts with the following six cases:

- *Crittenden Orange Blossom Fruit v. Stone*, 514 So. 2d 351 (Fla. 1987);
- *Snow v. Harlan Bakeries, Inc.*, 932 So. 2d 411 (Fla. 2d DCA 2006);
- *Ghannam v. Shelnut*, 199 So. 3d 295 (Fla. 5th DCA 2016);
- *Sourcetrack, LLC v. Ariba, Inc.*, 34 So. 3d 766 (Fla. 2d DCA 2010);
- *MCO Inv'rs, Inc. v. Dansby*, 545 So. 2d 442 (Fla. 1st DCA 1989); and
- *Boyette v. Carden*, 347 So. 2d 759 (Fla. 1st DCA 1977).

Some, but not all of these cases were brought to the Third District's attention by the Petitioners during the course of the appeal in that court. In any event, none of these decisions directly conflict with the Third District's decision in this case. Unlike the cases listed above, this case dealt with a scenario where an attorney was seeking to recover previously incurred attorney's fees as an element of compensatory damages in a separate breach of contract action. In that situation, a party is not required to provide an independent expert witness.

Here, the Respondent, a law firm, was seeking to recover previously incurred attorney's fees as an element of compensatory damages in a separate breach of contract against its client. Thus, independent expert testimony was not required. The Third District is not alone in recognizing this rule. This rule is clearly laid down without exceptions in several other decisions from the other appellate

districts, and most recently by the Fourth District in *Rodriguez v. Altomare*, 261 So. 3d 590 (Fla. 4th DCA 2018), *review denied sub nom. Altomare v. Valentin Rodriguez, P.A.*, SC19-296, 2019 WL 2261369 (Fla. May 28, 2019).

If, however, a party is seeking to recover previously incurred attorney's fees as an element of compensatory damages in a separate breach of contract action, that party is not required to provide an independent expert witness to corroborate the reasonableness of the fees.

261 So. 3d at 592; *see also Sea World of Florida, Inc. v. Ace Am. Ins. Cos., Inc.*, 28 So. 3d 158, 161 (Fla. 5th DCA 2010) (“[T]hese cases are distinguishable because they do not involve a situation where a party is seeking to recover previously incurred attorney's fees as an element of damages in a breach of contract action.”).

Again, the decisions that the Petitioners claim are in direct conflict with the Third District's decision are simply not. The decisions are not irreconcilable. Many of these decisions simply deal with a motion or request made by a party during a lawsuit for attorney fees against the opposing party. Of course, that scenario is far different from an attorney bringing a standalone breach of contract action against the former client for a breach of the fee agreement and to recover the unpaid fees as compensatory damages.

First, the Supreme Court's decision in *Crittenden Orange Blossom Fruit*, 514 So. 2d 351, does not present a conflict. That case involved a worker's compensation case in which there was an order for the losing parties (the employer

and the carrier) to pay the employee's attorney's fees. This case was not even remotely similar to what was involved in the case at hand—a law firm suing a client in a separate, standalone breach of contract action and seeking to recover the fees as compensatory damages, and the attorney testifying and the fee agreement and invoices being introduced into evidence.

*Snow*, 932 So. 2d 411, involved a personal injury action in which the trial court awarded trial and appellate attorney's fee to the prevailing party in that same action. The fees were not being sought as contract damages by an attorney in a separate lawsuit against his/her client for non-payment. *Snow* was a case involving an award of attorney's fees sought by a prevailing party against an opposing party—not fees sought as contract damages by an attorney suing his own client for non-payment.

*Sourcetrack, LLC*, 34 So. 3d 766, involved an award of appellate attorney's fees to the appellee. Again, this was not a situation where an attorney was suing his/her client for breach of contract and seeking to recover the fees as compensatory damages for the breach.

*MCO*, 545 So. 2d 442, was a foreclosure case producing a final judgment of foreclosure and an award to the mortgagee of attorney's fees. Again, this was a case involving a fee award to an opposing party in the same lawsuit. Likewise, *Boyette*, 347 So. 2d 759, involved attorney's fees in a foreclosure action. These

foreclosure cases have no similarities to a situation where an attorney is suing his/her client in a separate action for breach of contract for failure to pay the contractually agreed to fees.

The final case relied upon by the Petitioners is *Ghannam*, 199 So. 3d 295. In that case, a law firm brought a collection action against a former client to recover reasonable fees allegedly earned representing the client in a dissolution of marriage action. The law firm was seeking to recover as damages a “reasonable fee,” but the court held expert testimony was required regarding the reasonableness of the claimed fee. On the other hand, in the case at hand, the law firm was seeking to recover a specific fee amount based on a contractually agreed to hourly amount and for regular invoices for the time expended. The action by the law firm in the instant case was a straightforward breach of contract action seeking to recover compensatory damages for the breach of the fee agreement by the client. Moreover, in the case at hand, the parties did not even dispute the reasonableness of the fee. The Petitioner’s counsel even informed the trial court that, “we do not dispute that [the Law Office’s] hourly rate of 325 and 375 is reasonable.” (R. 443-549, transcript at p. 68, lines 15-17).

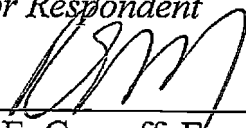
**CONCLUSION**

Based on the foregoing, it is respectfully requested that the Court decline to exercise its jurisdiction in this case.

Respectfully submitted,

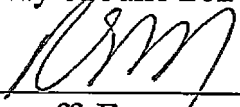
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to counsel by U.S. Mail and E-mail to Mark Goldstein, Esquire, 1835 NE Miami Gardens Drive, Suite 211, Miami, Florida, 33179, and at markgoldsteinattorney@gmail.com on this <sup>9<sup>th</sup></sup> day of June 2020.

  
\_\_\_\_\_  
Roy E. Granoff, Esq.

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing comports with the font and spacing requirements of Fla. R. App. P. 9.210 and Rule 9.100.

  
\_\_\_\_\_  
Roy E. Granoff, Esq.