

**IN THE SUPREME COURT OF FLORIDA**  
Case No. SC22-1760

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DIAMOND BLUE INTERNATIONAL INC. and FUNDACION LEMAR,  
*Petitioners,*  
v.  
CFLB PARTNERSHIP, LLC,  
*Respondent.*

On Petition for Discretionary Review from the Third District Court of  
Appeal  
Case Nos. 3D21-1335 and 3D21-1639

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## **Statement of the Issues**

**Jurisdictional Issue:** whether the Court should review *CFLB Partnership LLC v. Diamond Blue International Inc. et al.*, 2022 WL 3903152 (Fla. 3d DCA Aug. 31, 2022) (App.3), which was governed by this Court's decision in *Kopel v. Kopel*, 229 So. 3d 812, 818 (Fla. 2017), on the basis that *CFLB Partnership* expressly and directly conflicts with eight pre-*Kopel* cases on the nature of unjust-enrichment's direct-conferral requirement.

**Affirmative Issues if Review is Granted:** (1) whether reversal is still warranted on the basis that the trial court awarded summary judgment to the Petitioners on an argument the Petitioners did not make in the trial court; (2) whether reversal is still warranted because the trial court's summary judgment order improperly resolved factual disputes related to the consideration that the Respondent paid to a third-party, as addressed by the Second District in *Behm v. Cape Lumber Co.*, 834 So. 2d 285, 287 (Fla. 2d DCA 2002); and (3) whether reversal is still warranted because the trial court's order striking the Respondent's unclean-hands defense was improper.

## **STATEMENT OF THE CASE AND FACTS**

The Respondent, CFLB Partnership LLC (Partnership), is owned by two entities: CFLB Management (Management) and Boston Equity Partners. (A.4 n.1). The Petitioners, Diamond Blue International and Fundacion Lemar (Plaintiffs), loaned money to Management—a legal entity separate from Partnership—and, in return, received a promissory note from Management. (A.4, 9-10). Then, in a separate transaction, Management used the funds it had borrowed from the Plaintiffs to make a capital contribution to Partnership and, in return, received a recalculation of its ownership interest in Partnership. (A.4).

When Management was unable to repay the Plaintiffs' loans, the Plaintiffs sued and obtained a breach-of-promissory note judgment against Management. (A.4-5). That judgment was affirmed. (A.5).

Separately, the Plaintiffs sued Partnership for unjust enrichment. (A.5). Although Partnership and Management are separate legal entities, the Plaintiffs did *not* seek to pierce their corporate veil. (A.9). Nevertheless, the Plaintiffs argued—on summary judgment—that unjust enrichment was proper because Management and Partnership were “related entities” and Partnership had,

ultimately, received the same amount of money from Management that the Plaintiffs had loaned to Management. (A.5).

Partnership responded that the Plaintiffs had only loaned money to *Management*, and that the Plaintiffs thus had not *directly* benefited Partnership. (A.4, 6). Partnership further responded that an unjust enrichment claim could not lie because Partnership had paid adequate consideration to Management for its capital contribution by adjusting Management's ownership interest in Partnership. (A.4, 6).

The trial court entered an unjust-enrichment judgment against Partnership. (A.6-7). The court found that, because Management and Partnership were related entities, the consideration Partnership paid Management for Management's capital contribution was not "real" and, since there was no "true economic transaction" between Management and Partnership, the Plaintiffs had conferred a direct benefit on Partnership. (A.6-7).

The Third District reversed, holding that the Plaintiffs had not conferred a direct benefit on Partnership:

The undisputed facts establish that Plaintiffs each loaned \$1,000,000 to Management, they transferred these funds to Management's account, and they received individual

promissory notes executed by Management in exchange. Based on these undisputed facts, Plaintiffs cannot establish that they conferred a direct benefit on Partnership.

(A.8).

The Third District recognized that its decision was dictated by “the Supreme Court’s decision *Kopel [v. Kopel]*, 229 So. 3d 812, 818 (Fla. 2017)]” and its own precedent, which require the “benefit to be more direct than what occurred here.” (A.10). The Plaintiffs sought rehearing *en banc*, which the Third District denied. (A.12).

## **ARGUMENT**

### ***I. The Court lacks jurisdiction: There is no conflict***

#### **A. Unjust enrichment law**

The elements of unjust enrichment are simple: “(1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff.” *Hillman Const. Corp. v. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994).

In 2017, addressing the first prong, this Court made explicit a requirement that the district courts of appeal had already applied: “to prevail on an unjust enrichment claim, the plaintiff must **directly** confer a benefit to the defendant.” *Kopel v. Kopel*, 229 So. 3d 812, 818 (Fla. 2017) (emphasis added); *see also Peoples Nat. Bank of Commerce v. First Union Nat. Bank of Florida, N.A.*, 667 So. 2d 876, 879 (Fla. 3d DCA 1996) (requiring a “direct” benefit).

To understand why the Plaintiffs’ conflict analysis fails, it is critical to understand this Court’s decision in *Kopel*. There, a plaintiff transferred money to a corporation that the defendant partially owned. *Kopel v. Kopel*, 117 So. 3d 1147, 1152–53 (Fla. 3d DCA 2013), *decision quashed on other grounds*, 229 So. 3d 812. The Third District held that the plaintiffs’ unjust-enrichment claim against the defendant failed because such a transfer provided “only an indirect benefit [to the defendant] through a corporation of which [the defendant] happened to be an owner.” *Id.*

This Court quashed *Kopel* on other grounds, but expressly held that the Third District was “correct that to prevail on an unjust enrichment claim, the plaintiff must directly confer a benefit to the defendant.” *Kopel*, 229 So. 3d at 818. Accordingly, the Court did not

quash the portion of the Third District’s decision dealing with unjust enrichment, stating it was only “quash[ing] the Third District’s finding of insufficient evidence of Petitioner’s breach of oral promise claim,” a separate cause of action. *Id.* at 820.

Thus, under this Court’s precedent, where an unjust-enrichment defendant receives a benefit through a third-party (even a traceable one), the plaintiff cannot state a claim for unjust enrichment. *Id.*; see also *Extraordinary Title Services, LLC v. Florida Power & Light Co.*, 1 So. 3d 400, 404 (Fla. 3d DCA 2009) (transfer through subsidiary corporation insufficient to make parent corporation liable for unjust enrichment).

### **B. The Plaintiffs cannot show conflict**

Seeking to conjure conflict, the Plaintiffs argue that the Third District’s decision (dictated by this Court’s decision in *Kopel*) irreconcilably conflicts with *eight* different cases that *predate Kopel*. (Pet. at 4-9). Those eight cases not only span the State of Florida—arising out of this Court, the First District, the Second District, and the Fourth District—they are also temporally expansive, covering over 30 years of unjust enrichment law from 1981 to 2013.

The Plaintiffs’ alleged conflict is so widespread that it begs the question: how could the Third District’s opinion upend what amounts to decades of settled Florida law? The answer is simple: it does not. In their petition, the Plaintiffs seek to recast the Third District’s opinion as a ground-breaking one, which they contend has enunciated a novel “rule of law” that has drastically narrowed the scope of unjust enrichment relief. (Pet. at 4). That interpretation is wrong.

The Plaintiffs choose to ignore (and manufacture confusion about) what the decision below really is: a case that goes no farther than applying *this* Court’s precedent and settled Florida law governing unjust enrichment’s “direct” requirement. No conflict exists.

***i. Alleged conflict with this Court’s precedent***

The Plaintiffs first allege conflict with *Palm Beach Savings & Loan Assn. v. Fishbein*, 619 So. 2d 267 (Fla. 1993). But *Palm Beach Savings* did not even address unjust enrichment. It addressed a different issue: whether a court could impose an equitable lien on an individual’s homestead property. *Id.* at 271. While the Court cited two cases imposing equitable liens in relation to (proper) unjust

enrichment claims, *Palm Beach Savings* did not even broach unjust enrichment's direct-conferral requirement. 619 So. 2d at 270.

If the Plaintiffs' argument were correct, *Kopel* would have implicitly overruled *Palm Beach Savings*. The Court does not do so *sub silentio*. See *Willis v. Gami Golden Glades, LLC*, 967 So.2d 846, 875 (Fla.2007) (“[W]e do not recede from our cases *sub silentio*.”).

***ii. Alleged inter-district conflict***

Outside this Court, the Plaintiffs cite seven district-court cases purportedly holding that unjust-enrichment's direct-conferral requirement is satisfied by transfers through third parties. None do.

One of the Plaintiffs' cases did not even address unjust-enrichment's direct-conferral requirement: *Kane v. Stewart Tilghman Fox & Bianchi, P.A.*, 85 So. 3d 1112, 1114 (Fla. 4th DCA 2012). In *Kane*, the closest the Fourth District got to the issue addressed by the Third District below was whether the unjust enrichment claim in that case was barred by the existence of a direct contract. *Id.* A case cannot conflict on an issue it does not address.

Even if *Kane* had addressed the issue, it would not conflict. As the *Kane* court made clear in affirming the trial court's damages calculation, the unjust-enrichment plaintiff's actions in the parties'

joint litigation *directly* resulted in the unjust-enrichment defendant obtaining more money than they otherwise would have. *Id.* at 1114-15.

Three of the Plaintiffs' cases involve direct benefit transfers between the plaintiff and defendant. These cases are consistent with the opinion below and *Kopel* and, thus do not create conflict:

*14th & Heinberg LLC v. Terhaar and Cronley General Contractors, Inc.*, 43 So. 3d 877, 879 (Fla. 1st DCA 2010), involved an unjust-enrichment action between a contractor and a building owner. *Id.* The building owner received improvements to its building, but the contractor was not paid. *Id.* There was no intermediary. A more direct benefit could not exist. *Id.*

The First District affirmed that judgment in three sentences, "without further comment." *Id.* The written portion of the opinion deals with an inapposite cross-appeal issue: how to calculate unjust enrichment damages. *Id.* at 879-82.

*Emporium Inc. v. Jones*, 396 So. 2d 237 (Fla 1st DCA 1981), is equally direct. The unjust-enrichment plaintiff, Jones, loaned \$10,000 to the unjust-enrichment defendant, Emporium. *Id.* at 238. When the money was not repaid, Jones obtained an unjust-

enrichment judgment against Emporium. *Id.* The unjust-enrichment plaintiff gave money *directly* to the unjust-enrichment defendant. *Id.*<sup>1</sup>

*Policastro v. Myers*, 420 So. 2d 324, 325 (Fla. 4th DCA 1982), is equally inapt. In *Policastro*, a wife obtained a loan to purchase a home jointly with her husband. *Id.* at 325. By using the loan proceeds *jointly* (along with his wife) to purchase the home, the husband obtained a direct benefit from the lender. *Id.* There was *only one* transaction in *Policastro*: a loan used jointly by husband and wife. *Id.*

*Policastro* is, thus, unlike the two separate transactions in this case: the Plaintiffs here loaned money to Management (in return for a promissory note), and then Management separately made a capital contribution to Partnership (in return for a recalculation of its ownership interests in Partnership). (A.4).

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<sup>1</sup> If anything, *Emporium* buttresses the result reached below. In that case, Emporium created a subsidiary called Emporium Men's and Boy's Store (EMB). *Id.* After Emporium received the money from Jones, Emporium gave that money to EMB. *Id.* That is just what happened below. The Plaintiffs loaned money to Management (just as Jones loaned money to Emporium). (A.4). Management then made a capital contribution to Partnership (just as Emporium used the funds it borrowed from Jones to infuse money into EMB). (A.4). Yet, in *Emporium*, Jones received an unjust enrichment judgment against Emporium (not EMB). 396 So. 2d at 238-39.

Two of the Plaintiffs' cases involve a plaintiff paying off a debt for a defendant. Such a benefit is conferred directly because, in accounting terms, paying off a defendant's debt owed to a third-party directly extinguishes a liability held by that defendant. Such a direct benefit is consistent with the decision below:

In *Malamud v. Syprett*, 117 So. 3d 434, 437-39 (Fla. 2d DCA 2013), an unjust-enrichment plaintiff (a guarantor on a loan) overpaid his share of the loan and the unjust-enrichment defendant (another guarantor on the same loan) paid nothing; yet both were released. *Id.* The Second District was clear that the loan holder "had been made whole by the payment of the investors, including [the plaintiff's] payment in excess of the" amount he owed. *Id.* at 437. Thus, by overpaying, the plaintiff had *directly* extinguished the debt of the plaintiff's co-guarantor (the unjust enrichment defendant)—a direct benefit to the defendant. *Id.*

*Fiske v. Shelton*, 469 So. 2d 248 (Fla. 2d DCA 1985), is the same. Fiske and Shelton were partners, and the partnership needed funds: according to Fiske, both partners agreed to take out a \$300,000 loan to advance to the partnership. *Id.* at 249. But Shelton could not obtain favorable loan terms, so Fiske took out the full \$600,000 in

his own name. *Id.* Shelton paid over \$27,000 in interest on the loan taken out by Fiske. *Id.*

After Shelton paid some of the interest off on Fiske's loan, Fiske arranged for the receipt of additional partnership shares equivalent to the entire \$600,000 advance" and, accordingly, he was "estopped [from claiming] that \$300,000 of the advance was originally made for the benefit of Shelton." *Id.* At that point, "Shelton ha[d] paid out \$27,114.67 [to pay-down a debt held by Fiske] with nothing to show for it." *Id.* By paying down Fiske's loan, Shelton bestowed a direct benefit on Fiske. *Id.*

The Plaintiffs' final case involves a payor unjust-enrichment defendant who improperly *retained* funds that should have gone to the unjust-enrichment plaintiff:

*Merkle v. Health Options Inc.*, 940 So. 2d 1190, 1193 (Fla. 4th DCA 2006), involved an unjust-enrichment action between a treating physician and HMO insurers. There, the treating physician claimed that the HMOs had paid him less than they were statutorily required to. *Id.* By retaining funds that legally should have gone to the plaintiff, the HMO insurers *directly* benefitted since they retained more money than they were, otherwise, entitled to. *Id.*

## **II. *There is no reason to exercise discretion***

*First*, each of Plaintiffs' conflict cases were decided before *Kopel*, so even if conflict could be found in those cases, the conflict would be academic because it would be mooted by this Court's more-recent decision in *Kopel*, 229 So. 3d at 818. As explained above, in *Kopel*, this Court held that unjust enrichment could *not* lie where the benefit flowed through a third-party entity the unjust-enrichment defendant owned. (*Supra* at 5-6). Such a benefit was, according to the Court, not direct. *Id.* *Kopel's* holding governed below. Indeed, the Third District explicitly stated that the decision on review was dictated by this Court's decision in *Kopel*. (A.10).

Accordingly, even if those pre-*Kopel* cases had held that unjust enrichment could flow through a third-party intermediary entity (they did not), the decisions would no longer be good law today, after *Kopel*. Without *viable* conflict, review is unnecessary. See *Wainwright v. Taylor*, 476 So. 2d 669, 670 (Fla. 1985) (review unnecessary where precedential effect of conflict is minimal); Harry Lee Anstead *et al.*, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 NOVA L. REV. 431, 523 n.527 (2005) (discussing conflict "corrected by other means").

*Second*, the Plaintiffs’ *federal* conflict argument is unavailing. (Pet. at 9-11). The Plaintiffs make it seem that review is necessary because *every* federal court has disagreed with the Third District. But even if conflict with federal trial-court orders gave this Court jurisdiction (it does not), the subset of federal orders the Plaintiffs rely on do not tell the whole story.

The Eleventh Circuit has *never* endorsed the Plaintiffs’ position. To the contrary, that court has consistently applied *Kopel*. See *Johnson v. Catamaran Health Sols., LLC*, 687 Fed. Appx. 825, 830 (11th Cir. 2017) (applying *Kopel*); see also *Vibo Corp., Inc. v. US Flue-Cured Tobacco Growers, Inc.*, 762 Fed. Appx. 703, 705–06 (11th Cir. 2019) (same); *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1102 (11th Cir. 2021) (same).

Moreover, the federal orders the Plaintiffs reference predate *Kopel*. Since then, the “direct benefit requirement has been strictly applied by Florida courts.” *Donoff v. Delta Air Lines, Inc.*, 18-81258-CV, 2020 WL 1226975, at \*12 (S.D. Fla. Mar. 6, 2020); see also *Cutler v. Voya Fin., Inc.*, 18-20723-CIV, 2018 WL 4410202, at \*11 (S.D. Fla. Aug. 23, 2018) (same). The federal disarray that the Plaintiffs cite is not a compelling basis for review.

## **CONCLUSION**

The Court should deny jurisdiction.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the font and word limit requirements of Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(A), as it was prepared in Bookman Old Style 14-point font and has fewer than 2,500 words.

/s/ Brian C. Tackenberg