Filing # 208063892 E-Filed 10/01/2024 06:29:49 PM

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 3D24-0533

ACF IV, LLC, JUAN CARLOS ZURITA, and RODRIGO LOPEZ,

Appellants,

v.

FDI CAPITAL, LLC and ALAN BEARD,

Appellees.

REPLY BRIEF OF APPELLANTS ACF IV, LLC, JUAN CARLOS ZURITA, and RODRIGO LOPEZ

ON APPEAL FROM A FINAL JUDGMENT ENTERED IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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ARGUMENT

I. STANDARD OF REVIEW.

FDI does not disagree with ACF's depiction of the review standard. (IB:14-15; AB:12).

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT BASED ON ITS RULING THAT THE PARTIES' PARTICIPATION AGREEMENTS CONSTITUTED A "SECURITY" UNDER CHAPTER 517, FLORIDA STATUTES.

A. The Statutory Text.

Invoking the "supremacy-of-text principle," FDI argues for a mechanistic application of Section 517.021(25)(s), Florida Statutes, *i.e.*, that *every* "participation agreement"—of *every* kind—is *per se* a "security." (AB:13 (citation omitted)). But supremacy of text, which merely denotes that "'[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means," *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (citation omitted), "is always *the starting point* in statutory interpretation." *Alachua Cnty. v. Watson*, 333 So. 3d 162, 169 (Fla. 2022) (citation omitted; emphasis added).

Because "judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text," *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (citation and internal quotation marks omitted), properly channeled statutory construction remains a core judicial function. The need to do so is particularly pressing when, as here, a key term is left *undefined*.

"When a contested term is undefined . . . we presume that the term bears its ordinary meaning at the time of enactment, taking into consideration the context in which the word appears. And we typically look to dictionaries for the best evidence of that ordinary meaning." *Conage*, 346 So. 3d at 599 (footnote omitted). That is, "the terms of a statute should be given their plain and ordinary meaning as they were understood at the time of enactment." *S.C. v. State*, 224 So. 3d 249, 250 n.3 (Fla. 3d DCA 2017); *accord Pradaxay v. Kendrick*, 387 So. 3d 437, 440 (Fla. 6th DCA 2024) (courts should "ascertain [term's] meaning by considering its plain and ordinary public meaning at the time of enactment). But "plain and ordinary public meaning" is inapplicable where, as here, there is no such

thing. "Participation," in the context of securities laws, is a specialized term that must be construed in that sense.

Since passage of the Securities Act of 1933, which, like Section 517.021(25)(s), includes participation agreements in the definition of "security," 15 U.S.C. § 77b(a)(1), "loan participation" has meant "[t]he coming together of multiple lenders to issue a large loan (called a *participation loan*) to one borrower." BLACK'S LAW DICTIONARY (12th ed. 2024) (original emphasis); *see also* Bloomberg Law, *Finance, Document Description-Participation Agreements (Loan)*, https://www.bloomberglaw.com/external/document /XF5IGQD000 0000/finance-document description-participation-agreements-loan (loan participation agreement "documents an arrangement among two or more lenders, borrowers, or lenders and borrowers that agree to 'participate' as partners in a financing transaction").

As set forth in ACF's brief, federal case law uniformly holds that participation agreements involving ordinary commercial loans are *not* "securities." (IB:20-24). "[E]ven a statute's most crystalline words come at us with history and in context, and we don't wait until we

are confused to consider those things." *DeSantis v. Dream Defs.*, 389 So. 3d 413, 425 n.12 (Fla. 2024).

FDI does not suggest that supremacy-of-text concerns require this Court to disregard the principle that federal -law should guide the Florida courts in interpreting Chapter 517. (IB:20; AB:16-17). Indeed, FDI cites to *Githler v. Grande*, 289 So. 3d 533 (Fla. 2d DCA 2019) (en banc) (AB:16)—albeit ignoring that decision's holding that the Florida courts should look to federal securities law to interpret Chapter 517. (IB:20). *Githler* is hardly an outlier: as this Court has held, because "a securities fraud claim under [Chapter 517] . . . is nearly identical to a securities fraud claim under Rule 10b 5 of the related federal law. . . . Florida courts will look to interpretations of the federal securities laws for guidance in interpreting Florida's securities laws." *Ward v. Atl. Sec. Bank*, 777 So. 2d 1144, 1147 (Fla. 3d DCA 2001).

Indeed, it is an established Florida-law principle that courts *should* look to federal law to interpret Florida statutes and rules that are derived from federal counterparts. *E.g.*, *Washington v. Florida Dep't of Revenue*, 337 So. 3d 502, 511 (Fla. 1st DCA 2022) ("[b]ecause

the Florida Civil Rights Act was modeled on Title VII, Florida courts apply Title VII caselaw when interpreting the Florida Civil Rights Act"); *Capital Wealth Advisors, LLC v. Capital Wealth Advisors, Inc.*, 335 So. 3d 164, 166 n.1 (Fla. 2d DCA 2021) ("Florida courts routinely rely upon federal courts' interpretations" of federal antitrust statute in applying Florida restraint-of-trade statutes); *Yaro v. Israel*, 242 So. 3d 1140, 1141 (Fla. 4th DCA 2018) (Florida courts apply federal age-discrimination case law to Florida civil rights claims); *Jackson v. Kleen 1, LLC*, 238 So. 3d 378, 380 n.3 (Fla. 3d DCA 2017) ("decisions construing Title VII are applicable when considering claims of discrimination under the Florida Civil Rights Act" (citation omitted)); *L.L. v. State*, 189 So. 3d 252, 255 (Fla. 3d DCA 2016) ("[w]here . . . a Florida evidentiary rule is patterned after its federal counterpart, federal cases interpreting comparable provisions are persuasive and routinely looked to for interpretive guidance" (citation and internal quotation marks omitted); *Russell v. KSL Hotel Corp.*, 887 So. 2d 372, 377 (Fla. 3d DCA 2004) ("when Florida statutes are adopted from an act of Congress, the Florida Legislature also adopts the construction placed on that statute by the federal courts insofar as that

construction is not inharmonious with the spirit and policy of Florida's general legislation of the subject" (citation omitted)). This principle does no violence to the supremacy-of-text rule.

In *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Supreme Court construed the term "any note" in the 1934 Act, 15 U.S.C. § 78c(a)(10), to determine whether the note issued in that case was a security. The Court first concluded that "the phrase 'any note' should not be interpreted to mean literally 'any note," but must be understood against the backdrop of what Congress was attempting to accomplish in enacting the Securities Acts." 494 U.S. at 63. To distinguish "notes issued in an investment context (which are 'securities') from notes issued in a commercial or consumer context (which are not)," the Court approved the Second Circuit's "family resemblance" test for notes. *Id.* at 63-64.

Application of that test turns on whether "the note in question 'bear[s] a strong family resemblance' to an item on the judicially crafted list of exceptions." *Id.*[1] If so, the note is not a security. *Id.* at 66-67.

[1] The Second Circuit's list, which the Supreme Court approved, includes "the note delivered in consumer financing, the note secured

The United States Supreme Court, like the Florida courts, is committed to the "supremacy of text": "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (citation omitted); *accord SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 370 (2018) ("[o]ur duty is to give effect to the text that 535 *actual* legislators (plus one President) enacted into law"); *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018) (if statute is unambiguous, the Court's "inquiry begins with the statutory text, and ends there as well"). But the *Reves* holding on undefined terms of art in the securities statutes remains a federal securities law touchstone. *E.g.*, *Kirschner v. JP Morgan Chase Bank, N.A.*, 79 F.4th 290, 303 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 818 (2024); *Pollack v. Laidlaw Holdings, Inc.*, 27 F.3d 808, 811 (2d Cir. 1994).

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by a mortgage on a home, the short-term note secured by a lien on a small business or some of its assets, the note evidencing a 'character' loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business (particularly if, as in the case of the customer of a broker, it is collateralized)," and "notes evidencing loans by commercial banks for current operations." 494 U.S. at 65 (citations omitted).

Just as the Florida courts "distinguish between terms of art that may have specialized meanings and other words that are ordinarily given a dictionary definition," *OB/GYN Specialists of Palm Beaches, P.A. v. Mejia*, 134 So. 3d 1084, 1088 (Fla. 4th DCA 2014),so too does the United States Supreme Court, *e.g., George v. McDonough*, 596 U.S. 740, 753 (2022) ("when Congress employs a term of art, that usage itself suffices to adop[t] the cluster of ideas that were attached to each borrowed word in the absence of indication to the contrary" (citation and internal quotation marks omitted; brackets in original). As the Florida Supreme Court noted in *Conage*, when directing adherence to dictionary definitions of common terms included in a statute, "[n]o one before us argues that 'purchase' is a legal term of art or that it bears a specialized meaning." 346 So. 3d at 599 n.5.

The Court should reject FDI's argument that plain meaning should be used to hold that *any* participation agreement is *per se* a "security" under Florida law.

B. The Federal Standards.

FDI argues that that the federal case law upon which ACF has relied is "outdated" and "stale" because it "pre-date[s] the United

States Supreme Court's decision in *S.E.C. v. Edwards*, 540 U.S. 389, 397 (2004)." (AB:17 & n.13, AB:21). *Edwards*, however, merely applies *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946), the venerable Supreme Court decision that establishes the framework for interpreting securities laws, to an "investment contract" scheme:

> The test for whether a particular scheme is an investment contract was established in [*Howey*]. We look to "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." This definition "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."

540 U.S. at 393 (quoting *Howey*, 328 U.S. at 299, 301).[2] *Edwards* found "no reason to distinguish between promises of fixed returns and promises of variable returns for purposes of the [*Howey*] test," and declined to "read into the securities laws a limitation not

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[2] In a footnote, FDI argues that ACF's brief insufficiently presents the question whether the Agreements constituted a security because ACF "fail[ed] to develop any arguments directed to any of the *Howey* elements." (AB:21 n.18). That assertion cannot be taken seriously: Point II.A. of the brief elucidates the *Howey* test; and Point II.B. argues that the Agreements are not securities under the cases that have applied the standards in *Howey* and its progeny. (IB:16-25). FDI seems to have mistaken a *transitional* sentence at the end of Point II.A. (IB:20 ("[u]nder [the *Howey*] test, the Agreements cannot constitute securities")) for a truncated *substantive* argument.

compelled by the language that would . . . undermine the laws' purposes." *Id.* at 394-95.

The Court accordingly held that a "fixed rate of return" does not *per se* establish that investment contract is not a security. *Id.* at 392-97. *Edwards* thus reaffirmed *Howey*'s "flexible test" for determining whether a transaction is an "investment contract" that constitutes a security. *S.E.C. v. Mut. Benefits Corp.*, 408 F.3d 737, 742 (11th Cir. 2005). But not only did the Supreme Court not break any new ground in *Edwards*, the Court made *no mention whatsoever* of the precedent upon which ACF has relied to show that participation in an ordinary commercial loan is not a "security" under federal securities law. (IB:20-24).

Nothing in *Edwards* undercuts that authority. In particular, FDI's dismissal of the Second Circuit's leading decision in *Banco Espanol de Credito v. Sec. Pac. Nat'l Bank*, 973 F.2d 51, 54 (2d Cir. 1992), as "pre-*Edwards* authority" (AB:17-18 & n.13), would certainly come as a surprise to the Second Circuit—because that court resoundingly reaffirmed *Banco Espanol* in its 2023 decision in *Kirschner v. JP Morgan Chase Bank*, 79 F.4th 290 (2d. Cir. 2023).

Kirschner came before the Second Circuit on an appeal by the trustee for a bankrupt drug-testing company from a dismissal of the trustee's complaint against numerous lenders that had participated in a syndicated $1.775 billion loan to the company. 79 F.4th at 295-97. The syndicated lenders were issued notes as part of the transaction. *Id.* at 295, 297-98. The district court dismissed the trustee's state securities law claims upon a ruling that the trustee failed sufficiently to plead that the notes were securities. *Id.* at 300.

Under federal securities statutes, "security" is defined as, among other things, "any note." 15 U.S.C. § 78c(a)(10). But the United States Supreme Court, consistent with the *Howey* test, has held that only "notes issued in an investment context" are "securities"; notes "issued in a commercial or consumer context" are not. *Reves*, 494 U.S. at 63.[3]

Reaffirming *Banco Espanol*, 79 F.4th at 303 n.58, 305 n.70, 307-08, 309 n.111, & 310, 311 & n.119, the Second Circuit declared its unwillingness "to revisit that decision now" and held that the notes, "*like the loan participations* in *Banco Espanol*, 'bear[] a strong

[3] Notably, the Second Circuit applied *federal* securities precedents to claims under *state* securities laws. 79 F.4th at 306 n.58.

resemblance' to one of the enumerated categories of notes that are not securities: '[L]oans issued by banks for commercial purposes.'" *Id.* at 310-11 (emphasis added; footnotes omitted).

Kirschner utterly belies FDI's attempt to read more into *Edwards* than the decision says. *Banco Espanol* is even more persuasive authority after *Kirschner*, as is the earlier precedent on which that decision rests also remains valid.[4]

Finally, *Kirschner's* reaffirmance of *Banco Espanol* further requires rejection of FDI's attempt to shoehorn these commercial loan agreements into the *Howey* test for whether a transaction creates a security, *i.e.*, an investment, in a "common enterprise," with an expectation of profits from the "efforts of the promotor or a third party." *Howey*, 328 U.S. at 298-99. (IB:22-24).[5] As FDI's managing

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[4] FDI cites a series of district court orders finding that a loan participation "*may* be a security." (AB:20 n.17 (emphasis added)). ACF has never suggested otherwise: the distinction is set forth in *Reves* and applied in the precedent upon which ACF has relied—it is the *purpose* of the loan that is all but dispositive.

[5] There is irony in FDI's reliance on the *Howey* factors. In the trial court, FDI cited *Howey* only in support of its argument that the Agreements constituted "investment contracts." (R:1943-45). The trial court, however, ruled that FDI's failure to plead that the Agreements were investment contracts barred FDI from seeking summary judgment on that theory. (R:12207). The court treated *Howey* as merely "persuasive or instructive" on whether the

director admitted (IB:21), FDI understood that that "the instruments were participations in loans and *not* investments in a business enterprise." *Banco Espanol*, 973 F.2d at 55 (emphasis added); *accord Kirschner*, 79 F.4th at 308. The most that FDI can say is that its *motivation* for participating in the so-called "common enterprise"—the loans to RCS—was financial. (AB:22).

FDI, which is a "lending organization" (R:7615-16, 7635), expected to make money on the deal. (AB:22). But "the dilemma inherent in distinguishing between investment and commercial transactions" in the context of loan participations is that, "[i]n one sense, every lender of money is an investor since he places his money at risk in anticipation of profit in the form of interest." *Union Planters Nat'l Bank of Memphis v. Com. Credit Bus. Loans, Inc.*, 651 F.2d 1174, 1181 (6th Cir.1981). "[I]n a broad sense every investor lends his money to a borrower who uses it for a price and is expected to return it one day." *Id.* That does not make every lender an investor or every loan participation a security. As *Kirschner* reaffirms, 79 F.4th at 306,

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Agreements were securities. (R:12209). For FDI now to assert that the trial court "applied the *Howey* test correctly" (AB:21) is somewhat odd.

310, the expectation of profit—meaning interest—does *not* convert a private commercial deal into a security. (IB:22-24).[6] "[L]oans issued by banks for commercial purposes" are *not* securities. *Id.* at 311 (footnote omitted).

C. Preservation of Error.

In a parting shot, FDI briefly argues that ACF "did not characterize the Agreements as loan participation agreements below—they argued repeatedly that FDI's involvement in the 2018 and 2019 Participation Agreements themselves were loans," and that ACF's appellate argument in this appeal was waived. (AB:21 n.18; AB: 24-25). FDI is wrong.

First, it was *FDI's* summary judgment motion that teed up this issue in the trial court. (R:824-40). That motion argued that "the Participations that FDI acquired pursuant to [the] Participation

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[6] The contrary result urged by FDI would upend the syndicated commercial loan market, which presently amounts to $6.4 trillion. Fed. Reserve Bd., *Shared National Credit Program: 1st and 3rd Quarter Reviews* (Feb. 2024), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20240216a1.pdf. Loan syndication is the "process of involving multiple lenders in providing various portions of a loan." 79 F.4th at 297 n.12. In this respect, it is indistinguishable from traditional loan participation; syndicated loans are simply loan participations writ large.

Agreements are securities" because "an interest in or under a . . . [p]articipation [a]greement" are securities under Section 517.021, Florida Statutes. (R:831-32). ACF's response argued that the Agreements "are not 'securities,'" and that FDI "has not made an investment of money, but rather a loan." (R:9795-97). *Second*, ACF cross-moved for summary judgment, and made the same arguments. (R:7541-43).[7]

Third, the trial court ruled that the Agreements "were not merely loans" and that FDI "invested money for an 80% share of profits." (R:12243-44). Thus, the issue raised by ACF on this appeal—

[7] The record citations offered by FDI do not show otherwise. (R:7541 ("[t]he loan agreements are not 'securities'"); R:7550 ("[t]he Loan Participation Agreements are not securities as a matter of factual and textual review"; FDI "admits that the Loan Participation Agreements are in essence an asset-based lending deal"); R:7551 ("all tax, business, and accounting records show the traditional features of a loan"); R:7568 (FDI "has not made an investment of money, but rather a loan"); R:7569 ("plain reading" of Agreements shows documents "are not securities but loan documents"); R:7570 (FDI "acknowledges that Loan Participation Agreements are an asset-based lending deal"); R:7571 (FDI's "tax records show that the Loan Participation Agreements have consistently been booked and treated as loan receivables and interest income"); R:9707 ("FDI's financial records reconfirm that the Loan Participation Agreements and all elements of these agreements, including FDI's participation, are simply part of a loan transaction"); R:9773 ("[t]he securities claim fails . . . since the Loan Participation Agreements are loans").

whether the Agreements constituted a "security" under Florida law—was raised in *both* parties' summary judgment motions and the trial court ruled on that issue. Nothing more was required to preserve the issue: "the specific legal argument" presented on appeal was indeed argued to the trial court. *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005); *see also Universal Underwriters Ins. Co. v. Morrison*, 574 So. 2d 1063, 1065 (Fla. 1990) (issue "squarely addressed in the legal memorandum submitted . . . in opposition to the motion for summary judgment" preserved for appeal).

III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO FDI ON DEFENDANT LOPEZ'S LIABILITY ON COUNT II OF THE AMENDED COMPLAINT.

FDI's attempt to muddy the waters by accusing Lopez of having been involved with the 2019 Agreement (AB:27) goes nowhere. There is *no* evidence, much less *undisputed* evidence, of such involvement.

Zurita testified that, by the time of the 2019 Agreement, "Rodrigo Lopez was part of our team" (R:1320), but *not* that Lopez had any involvement in that agreement. Lopez testified that he had rejoined ACF in May 2019. (R:8110, 8146, 8151-52, 9776). And the trial court *did not find* that Lopez had participated in the 2019

Agreement. (R:12246). To the contrary, the court found that "Lopez joined ACF in May 2019, *after the execution of the 2018 and 2019 Participation Agreements*." (R:12201 (emphasis added)).

The dispositive question—FDI's effort to have the Court believe that Lopez was attempting to get out from under his admissions (AB:27-28) notwithstanding—is whether the evidence was undisputed that Lopez had acted as a "dealer" in connection with the 2018 Agreement. (IB:27-28). *Nothing* in Lopez's admissions suggests that he did (R:1880-82) and Lopez disputed FDI's assertion that he had been involved. (IB:27-29).

FDI fails to show that a reasonable jury could *not* have returned verdict for Lopez on the 2018 Agreement. That failure disentitles FDI to a summary judgment. *E.g.*, *Benitez v. Lawson Indus. Inc.*, 367 So. 3d 600, 602-03 (Fla. 3d DCA 2023).

IV. THE TRIAL COURT ERRED IN ENTERING AN EXECUTABLE FINAL JUDGMENT AFTER GRANTING SUMMARY JUDGMENT ON ONLY ONE COUNT IN THE MULTI-COUNT AMENDED COMPLAINT.

FDI's preservation argument (AB:31-32) fails because this question is one of this Court's jurisdiction to hear an appeal from a purported "final" judgment that adjudicates fewer than all claims.

E.g., *Almacenes El Globo De Quito, S.A. v. Dalbeta L.C.*, 181 So. 3d 559, 561 (Fla. 3d DCA 2015) ("[w]hile neither party challenged the jurisdiction of this Court to hear the instant appeal, or the 'finality' of the trial court's . . . order, we have an independent duty to determine whether we have appellate jurisdiction"). Thus, where, as here, a trial court orders execution on an unappealable partial final judgment, it is the Court's "duty to *sua sponte* dismiss any appeal where it is clear we lack appellate jurisdiction," but also to treat the appeal as a certiorari petition and quash the order allowing execution before entry of final judgment. *Empire Fire & Marine Ins. Co. v. Chmilarski*, 390 So. 3d 182, 184 & n.2 (Fla. 3d DCA 2024).[8] Accordingly, preservation is of no moment on this issue.

On the merits, FDI cites no authority for its argument that its notice of voluntary dismissal, *without prejudice*, of all claims except Count II, left the trial court "divested of jurisdiction with respect to the dismissed claims," such that entry of final judgment "was

[8] This Court has maintained jurisdiction over an order that directs execution on a less-than final judgment. *Vital v. Summertree Vill. at Cal. Club Condo. Ass'n, Inc.*, 343 So. 3d 1260, 1263 & n.5 (Fla. 3d DCA 2022) ("[w]e express no opinion in this decision as to which is the better practice").

appropriate and disposed of the entire case." (AB:33). FDI does not respond to the federal case law that refuses to allow voluntary dismissals without prejudice to confect a final judgment (IB:33-35), except to note that the federal rule does not expressly allow for the dismissal of individual claims (AB:33-34). As set forth in the case cited in ACF's brief, however, it is federal practice to allow dismissals of individual counts (so long as the plaintiff is not attempting to confect a "final" judgment). (IB:33-35).

Lastly, FDI cites *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1231 (11th Cir. 2020), and argues that an "intra-circuit split[]" should persuade the Court to reject the federal rule on which ACF has relied. (AB:34-35). The "intra-circuit split" is illusory: *Corley* attempted to harmonize Eleventh Circuit law on this issue, 965 F.3d at 1227-31; but the court held *only* that "an order granting a motion to voluntarily dismiss the remainder of a complaint . . . qualifies as a final judgment for purposes of appeal." *Id.* at 1231 (citation and internal quotation makrs omitted). Here, there is *no* order granting a motion by FDI to dismiss its claims without prejudice—and FDI seems to welcome the opportunity to reinstate its dismissed claims if this appeal does not

end as FDI wishes it would. (AB:35). This sort of piecemeal review is unacceptable to the Florida courts. (IB:36).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 1, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the Florida Courts E-Filing Portal, which will send an electronic copy of the foregoing to all counsel of record listed below:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief was prepared using Bookman Old Style 14-point font in compliance with Rule 9.045 of the Florida Rules of Appellate Procedure. I also certify that this brief contains 3,995 words, in compliance with Rule 9.210(a)(2)(B) of the Florida Rules of Appellate Procedure.

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