2D23-2319

IN THE DISTRICT COURT OF APPEAL
FOR THE SECOND DISTRICT, STATE OF FLORIDA

A & A HOUSING, INC.,

Appellant,

v.

SAFEBUILT FLORIDA, LLC,

Appellee.

REPLY BRIEF

On Appeal from a Final Judgment of the Circuit Court of the Sixth Judicial Circuit, Pinellas County
Case No. 19-007157-CI

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INTRODUCTION

A & A Housing, Inc. ("A & A") demonstrated in its Initial Brief that the trial court committed reversible error by concluding: (1) Safebuilt Florida LLC, an "agency" under Florida's Public Records Law, had no obligation to produce public records for inspection or copying in response to a public records request; (2) A & A had submitted no summary judgment evidence that it made public records requests directly to the City pursuant to section 119.0701, Florida Statutes; and (3) Safebuilt's failure to comply with the Public Records Law could be excused by Safebuilt's alleged "good faith belief" that it was not subject to the law.

For the reasons described below, in addition to those set forth in the Initial Brief, this Court should reject the arguments in the Answer Brief, and reverse.

REPLY TO APPELLEE'S STATEMENT OF CASE AND FACTS

A. The September 16, 2019 Request to the City

Safebuilt states that in response to the September 16, 2019 public records request, "[t]he City identified Mr. Nichols as a Safebuilt employee, but did not identify Safebuilt as the custodian of records as Appellant erroneously believes." A.B.5. While the City did not identify Safebuilt as a custodian of records in this particular communication, it did identify Safebuilt as a contractor and indicated Safebuilt may possess some of the requested records regarding Mr. Nichols. R.625-626.

ARGUMENT

I. The trial court erred in concluding that Safebuilt had no obligation to produce public records to A & A.

Safebuilt argues that the trial court correctly applied section 119.0701, Florida Statutes, when determining whether Safebuilt complied with A & A's public records requests. But Safebuilt ignores additional Florida law requiring production of public records. See § 119.07(1), Fla. Stat. ("***Every person*** who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records.") (emphasis added). This Court should reverse.

A. Because Florida law favors disclosure of public records, any doubts about the application of the law must be resolved in favor of disclosure.

Safebuilt agrees with A & A that Florida law favors disclosure of public records. A.B.9. Yet Safebuilt argues that A & A is still not entitled to the requested records because it relied on the definition of "agency" in section 119.011, Florida Statutes, and the procedures for requesting to inspect public records under section 119.07, Florida Statutes, instead of following the procedure articulated in section 119.0701, Florida Statutes. A.B.9-10.

To support its position, Safebuilt relies on outdated precedent under which courts purported to give effect to legislative intent. A.B.10. *See, e.g., Capone v. Philip Morris USA, Inc.*, 116 So. 3d 363, 376 (Fla. 2013) ("It is well established that '[o]ur purpose in construing a statutory provision is to give effect to legislative intent. Legislative intent is the polestar that guides a court's statutory construction analysis.'") (quoting *Bautista v. State*, 863 So. 2d 1180, 1185 (Fla. 2003)). Under the Florida Supreme Court's current precedent, however, courts are to follow the "supremacy-of-text principle" when interpreting statutes. *Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 946 (Fla. 2020). This means that "[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Advisory Op. to Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 ("*Reading Law*") (2012)).

Safebuilt argues that because Florida law and "basic principles of statutory construction mandate that a more specific statute controls over a more general statute," section 119.0701, Florida

Statutes applies to A & A's requests. A.B.11. Safebuilt's argument ignores a competing interpretative tool—the "whole text" canon—under which laws should be read as a whole, in context, and where applicable they should be construed *in pari materia* to harmonize provisions of the same law. *See, e.g., Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005). ("The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent."); *see also Reading Law* 167 (2012) ("Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."). Appellate courts have applied this doctrine to related sections within a chapter. *See Matheson v. Miami-Dade Cnty.*, 258 So. 3d 516, 522 (Fla. 3d DCA 2018) (holding appellant's reading of a section was "not in harmony with the other, related sections" of the chapter). And there is nothing in Chapter 119 that would prohibit this Court from reading sections 119.07 and 119.0701, Florida Statutes, together in harmony with one another.

Because Florida law favors the disclosure of public records, the trial court erred by granting summary judgment in favor of Safebuilt.

B. Safebuilt was obligated to produce public records as an "agency" under section 119.011(2), Florida Statutes.

Safebuilt asserts that because it is a "contractor" under section 119.0701, Florida Statutes, its public-record obligations should not be analyzed under the Florida Supreme Court's seminal case of *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). A.B.15. In response to A & A's application of the *Schwab* factors, Safebuilt argues that "A & A's argument is not well taken because the case law upon which it relies pre-dates the legislative amendment to Chapter 119 in the year 2013, wherein the Florida legislature enacted section 119.0701, Florida Statutes." A.B.16-17. Yet multiple appellate courts have applied the *Schwab* test *even after* the enactment of section 119.0701.

In *Economic Development Commission v. Ellis*, for example, the Economic Development Commission of Florida's Space Coast ("EDC") appealed the trial court's final judgment requiring EDC to provide records to the Clerk of the Courts for Brevard County. 178 So. 3d 118 (Fla 5th DCA 2015). EDC is "a private non-profit economic

development agency that entered into a contract to provide certain services to Brevard County." *Id.* at 120. The trial court applied the "delegation of function test," which is appropriate when "there was a complete assumption of a governmental obligation by a private entity." *Id.* at 122 (quoting *Stanfield v. Salvation Army*, 695 So. 2d 501 (Fla. 5th DCA 1997)). The Fifth District reversed, holding that the trial court erred in using the delegation of function test instead of the *Schwab* test because "EDC provided services to, not in place of, the county." *Id.* at 123. The case was remanded to the trial court for "further analysis utilizing the *Schwab* totality of factors test and further proceedings consistent with this decision." *Id.*

In 2021, also after the enactment of section 119.0701, the First District Court of Appeal applied the *Schwab* test when determining whether a private entity acted on behalf of a public agency by entering into a contract to provide professional services to the agency. *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739, 741 (Fla. 1st DCA 2021). The *Holifield* opinion makes no mention of section 119.0701, Florida Statutes.

Moreover, this Court has stated that "it is ordinarily assumed that the legislature is aware of the state of the common law when it

enacts or amends a statute." *Parsons v. Culp*, 328 So. 3d 341, 349 (Fla. 2d DCA 2021). As a result, "statutes should be construed with reference to the common law, and we must presume that the legislature would specify any innovation upon the common law." *Id.* (quoting *Baskerville-Donovan Eng'rs, Inc. v. Pensacola Exec. House Condo. Ass'n*, 581 So. 2d 1301, 1303 (Fla. 1991)). Nothing in section 119.0701, Florida Statutes, indicates that the Florida Legislature intended to supersede *Schwab* or its successor cases regarding the section 119.07 public-record obligations of private entities, like Safebuilt, that satisfy section 119.011's definition of an "agency."

Because *Schwab* is still good law, the trial court erred in failing to evaluate the genuine issues of material fact as to whether Safebuilt is not only a "contractor" under section 119.0701, but also an "agency" under section 119.011 with independent public-records obligations to A & A under section 119.07. The trial court's order granting summary judgment in favor of Safebuilt should be reversed.

C. A & A complied with section 119.0701 by making public records requests directly to the City.

Even if this Court were to conclude that A & A was obliged to request records from the City under section 119.0701, Safebuilt errs

in stating that A & A "fail[ed] to cite to record evidence or argument to assist this Court in reversing the trial court's sound judgment." A.B.25. Safebuilt disregards the numerous record citations provided by A & A supporting a finding that A & A made public records requests directly to the City. I.B.16; R.160-161, 215.

Safebuilt admits that A & A sent its first public records request to the City. A.B.21. The City responded to that request on September 30, 2019. R.168. But A & A's request to the City, and whether the request complied with section 119.0701, Florida Statutes, is irrelevant to determining whether *Safebuilt* complied with *its own obligations* under the Public Records Law.

The trial court therefore erred in concluding that A & A "presented no summary judgment evidence that it ever made its Requests directly to the City as the public agency pursuant to Section 119.0701(3)," R.754. Summary judgment in favor of Safebuilt on this basis was improper, and must be reversed.

D. The trial court erred in adopting a "good faith" exception to Safebuilt's public records obligations.

Finally, Safebuilt argues that the trial court would only make a "good faith" determination if it had determined that section 119.07,

Florida Statutes applied. A.B.23. This argument misstates the law. Section 119.12, Florida Statutes applies to any civil action filed under Chapter 119, and provides for the award of reasonable attorney fees. The Florida Supreme Court "decline[d] to import a 'good faith' or 'reasonableness' requirement into section 119.12, which does not contain any such language." *Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, 189 So. 3d 120, 128 (Fla. 2016). While section 119.07(1)(c) does include "good faith" language, the Court erroneously chose to apply section 119.0701 instead of section 119.07. As a result, the Court further erred by making a "good faith" determination. If this Court holds that section 119.0701 applies, then the trial court's "good faith" determination warrants reversal.

CONCLUSION

This Court should vacate the final judgment in favor of Safebuilt and should reverse for entry of judgment in favor of A & A as a matter of law. In the alternative, this Court should vacate the order granting Safebuilt's motion for summary judgment and denying A & A's motion for summary judgment and should remand for further proceedings before the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been filed via the E-Filing Portal and served via electronic service on October 1, 2024, to:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(b) and (e) and 9.210(a)(2) because it was prepared using Bookman Old Style 14-point font and because the word count from the word-processing system used to prepare this document is 1,853.

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