DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIRST DISTRICT

JEFFRY KNIGHT, INC. D/B/A JKI INDUSTRIES, a Florida Limited Liability Company,

Appellant,

v.

ALBERT E. POIRE and CINDY POIRE,

Appellees.
_____/

CASE NO.: 1D23-3111
L.T. CASE NO.: 2021-CA-000039

ANSWER BRIEF OF APPELLEES, ALBERT E. POIRE and CINDY POIRE, ON APPEAL FROM THE THIRD JUDICIAL CIRCUIT IN AND FOR MADISON COUNTY, FLORIDA

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STATEMENT OF CASE AND FACTS

This claim arises from the purchase and sale of Poire Underground Services, LLC ("Company") by Jeffry Knight, Inc. d/b/a JKI Industries ("JKI"). On August 19, 2020, JKI executed a Purchase and Sale Agreement ("Purchase Agreement"), agreeing to pay $1,500,000.00 to purchase the Company (R. 50-70; 619, Exh. 13; 377-404), which included of an executed Promissory Note dated August 19, 2020, in which JKI agreed to pay Mr. Poire $250,000 ("Promissory Note"). (R. 607, Exh. 12; 26-27). JKI made a $1,250,000 payment on the date of the Purchase Agreement (R. 622, l. 7-12; 407, ¶ 5) and retained the Company's former principal, Albert E. Poire ("Mr. Poire") as an employee. A year after the initial purchase of the Company, on August 19, 2021, when the entire principal for the Promissory Note, along with any accrued and unpaid interest, became due, JKI failed to make the payment. (R. 407, ¶ 10; 26).

On September 3, 2021, Poire filed the underlying Complaint for Breach of Promissory Note against JKI. (R. 21-27). JKI's operative Third Amended Counterclaim (titled "Second Amended Answer, Affirmative Defenses, and Counterclaim") ("Third Amended Counterclaim") alleges causes of action conspiracy against Cindy Poire ("Mrs. Poire") (Count III) and Fraud and Fraudulent Inducement (Count I), Recession (Count II), Conspiracy to Commit Fraud (Count III), and Breach of Contract (Count IV) against Mr. Poire. (R. 307-24). On

September 3, 2024, Mr. Poire filed a Motion for Summary Judgment on the Breach of Promissory Note cause of action against JKI (R. 355-362) with supporting affidavit (R. 363-404) and a Motion for Summary Judgment against JKI's causes of action for Fraud and Fraudulent Inducement, Recession, Conspiracy, and Breach of Contract against the Poires (R. 363-404) with supporting affidavits (R. 409-18). On March 15, 2023, JKI filed responses to both motions (R. 449-545) as well as an affidavit of Jeffry Knight (R. 442-48) and deposition transcript of JKI corporate representative Gary R. Ponder, II (R. 546-742). After a hearing on the Motions on April 4, 2023 (R. 881-935), the Court granted both Poires' Motions for Summary Judgment. (R. 743-55). On December 4, 2023, Final Judgment was entered against JKI. (R. 836-37). JKI now files this Appeal.

Company is a Florida limited liability company engaged in the business of underground installation of water, sewer and electrical utilities and related construction. Mr. Knight is the owner of JKI. (R. 442, ¶ 2). JKI performed a similar business as Company, just in a different geographic area of Florida. (R. 567, l. 1-9). Mr. Poire owned 100% membership interest in the Company. (R. 412, ¶ 3). Mrs. Poire did not own a membership interest in the Company. (R. 417, ¶ 3). Gary R. Ponder, II ("Mr. Ponder") is JKI's Chief Financial Officer and testified as JKI's corporate representative. (R. 557, l. 13; 564, l. 18-22). Mr. Ponder has an MBA with a specialty in accounting. (R. 554, l. 20-21). Prior to purchasing the Company, JKI

had purchased several other companies before. (R. 560, l. 9-18).

Mr. Knight first approached Mr. Poire about purchasing the Company. (R. 443, ¶ 6; 412, ¶ 4). Mr. Knight and Mr. Poire have known each other for 20 years. (R. 443, ¶ 9). On July 18, 2020, Mr. Ponder, Mr. Knight, and Mr. Poire, along with their families met at Mr. Knight's residence for boating activities on the lake and lunch to discuss the purchase of the Company. (R. 443, ¶ 10-11; 570, l. 10-13). The get-together lasted from approximately 11 a.m. to 4 p.m. (R. 571-72, l. 20-1). Discussion between Mr. Knight, Mr. Poire, and Mr. Ponder took place regarding the purchase of the Company. (R. 572, l. 12-20; R. 578, l. 1-9). During these discussions, Mr. Poire allegedly made a comment in the presence of Mr. Ponder and Mr. Knight that the Company was netting a profit of $500,000 annually. (R. 572, l. 8). Mr. Ponder was surprised by and did not believe Mr. Poire's comment about the profit margin because JKI had never seen such large margins. (R. 572, l. 9-10, 24-25; 573, l. 1-2). Mr. Ponder advised Mr. Knight of his concerns. (R. 573, l. 24-25; 574, l. 1-11). Mr. Ponder set out to perform additional due diligence before Mr. Knight closed the deal. (R. 580, l. 8-19).

Shortly after the meeting on July 21, Mr. Ponder requested additional information from Mr. Poire regarding the business earnings and assets. (R. 581, l. 14-20). Mr. Poire provided Mr. Ponder information about the Company and its assets, including outstanding debts for equipment owned by the Company. (R. 584,

l. 17-21; 590, l. 11-14). Mr. Ponder did not check the value of the equipment JKI was acquiring from the Company. (R. 598, l. 9-11). Mr. Ponder acknowledged that an income statement would have verified whether the $500,000 profit statement was accurate. (R. 598, l. 12-16). Mr. Ponder asked for the Company's income statement, but never made sure he received an income statement prior the closing of the purchase. (R. 599, l. 6-11). Mr. Ponder never asked to review the Company's tax returns. (R. 599, l. 12-18). Mr. Ponder agreed that there were several ways he could have valued the Company's profitability prior to the sale. (R. 600, l. 4-7). However, no valuation was done prior to Mr. Knight's purchase of the Company. Mr. Ponder made no effort to follow up prior to the closing of the deal. Mr. Knight, despite conversations with Mr. Ponder, closed the deal and executed the contract for the sale of the Company with Mr. Poire only 30 days after the July 18 get together. (R. 50-70). JKI had the opportunity to review the Company's financial records prior to the purchase and simply chose not to.

Mr. Poire accepted Mr. Knight's offer and the agreement was immortalized in writing in a purchase agreement dated August 19, 2020 ("Purchase Agreement"). (R. 412, ¶ 4; R. 619, Exhibit 13; R. 50-70). Only Mr. Knight and Mr. Poire were involved in negotiations regarding the terms of the Purchase Agreement. (R. 602, l. 6-10). Notably, the Purchase Agreement stated that it was between Mr. Poire and JKI alone. (R. 51). Mrs. Poire signed the agreement but was not listed as a party to the

agreement. When asked to explain why Mrs. Poire signed the Purchase Agreement, Mr. Poire provided in Interrogatory responses:

> I do not read well. Cindy reads documents such as this to me so that I will know what they say. She initialed the pages and signed the agreement I believe to indicate that she had done so. Cindy was not a party to the agreement.

(R. 428). Additionally, the Promissory Note is only made payable to Mr. Poire. (R. 26-27). Notably the Purchase Agreement provides the following provision limiting claims:

> 6.04. Limitations on Claims.
>
> (a) An Indemnifying Party shall have no obligation to indemnify an Indemnified Party until the aggregate amount of all Losses incurred that are subject to indemnification by such Indemnifying Party pursuant to this Article 6 equal or exceed $75,000 (the "Deductible") in which event the Indemnifying Party shall be liable for Losses only to the extent they are in excess of the Deductible; provided that, the Deductible shall not apply to Losses resulting from, arising out of or relating to any claim that the Seller does not own the Membership Interests, the Company does not own any of the Company Assets on the Schedule, or the Company Debt has not been paid in full at the Closing Date.
>
> (b) **Neither Party shall have any obligation to indemnify the other Indemnified Party in connection with any single item or group of related items that result in Losses that are subject to indemnification in the aggregate of less than $25,000.**
>
> (c) The aggregate liability of the Seller Indemnifying Parties and the Purchaser Indemnifying Parties under this Article 6 resulting from any claims under any breaches of representations or warranties herein and in any certificates delivered pursuant hereto, shall be limited to an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) (the "Cap"); provided that, the Cap shall not apply to Losses resulting from, arising out of or relating to common law fraud.

(R. 61) (emphasis added). The Purchase Agreement also contains the below provision:

> 8.02 Entire Agreement. This Agreement the documents referenced herein supersede all prior discussions and agreements, whether oral or written, between the Parties and contain the entire agreement between the Parties with respect to the subject matter hereof.

(R. 65).

Two days before signing the Purchase Agreement, on August 17, 2020, JKI's counsel sent correspondence to Mrs. Poire and Mr. Knight stating "JKI cannot recover for misrepresentations unless the aggregate losses exceed the deductible of $75,000." (R. 605-06, l. 7-24, l. 1-19, Exh. 11). The email indicates prior to the sale of the Company, JKI understood that JKI's recovery from any loss was limited by the Purchase Agreement.

The Promissory Note dated August 19, 2020 ("Issuance Date") was signed by Mr. Knight and Mr. Poire. (R. 71-72). The Promissory Note provided that JKI would make monthly payments of interest and the entire principal amount, together with any accrued and unpaid interest shall be due and payable on August 19, 2021 ("End Date"). (R. 71, ¶ 2(a); 407, ¶ 10). Mr. Poire was the owner of the Promissory Note. (R. 407, ¶ 7). Between the Issuance Date and the End Date, Mr. Knight made eight payments of interest on the principal amount of the Promissory Note, paying a total of $11,701.06 in interest. (R. 407, ¶ 11). On the End Date, August 19, 2021, Mr.

Knight owed Mr. Poire the entire principal amount of $250,000.00, plus $798.94 of accrued and unpaid interest, for a total of $250,798.94. (R. 407, ¶ 12).

After Mr. Poire filed the lawsuit to enforce payment of the Promissory Note and more than a year after operating the Company, JKI alleged causes of action for fraud and recission. JKI claimed that Mr. Poire breached the contract by failing to disclose an unpaid IRS tax amount. (R. 322-23). Mrs. Poire provided a sworn affidavit that she paid the underlying IRS debt. (R. 417, ¶ 12). When shown a "Release of Levy/Release of Property from Levy," Mr. Ponder claimed he had never seen the document before and had not received confirmation from his bank or the IRS that the levy had been paid. (R. 646-47, Exh. 16). Prior to purchasing, JKI made no investigation into the Company's outstanding tax liability. (R. 617, l. 7-14).

SUMMARY OF THE ARGUMENT

The Trial Court did not err in granting summary judgment for Plaintiff/Counter-Defendant, Mr. Poire. Mr. Poire, as the movant for summary judgment against Defendant/Counter-Plaintiff Jeffry Knight, Inc. d/b/a JKI Industries ("JKI"), for its claims for breach of Promissory Note, presented evidence to establish all elements for the cause of action. The burden shifted to JKI, as the nonmovant, to produce sufficient summary judgment evidence that presented a disagreement to require submission to a jury. JKI could not provide sufficient summary judgment evidence that created a genuine issue of material fact to dispute

Mr. Poire's Breach of Promissory Note cause of action. Furthermore, as the movant for summary judgment against JKI for JKI's counterclaims, Mr. Poire established that JKI could not produce admissible evidence to support its claims for Fraudulent Inducement, Recission, Conspiracy, and Breach of Contract. The Trial Court properly determined whether JKI's counter evidence presented a sufficient disagreement of material fact to require submission to a jury. This Court should affirm the Trial Court's Order granting Poire's Motion for Summary Judgment on the Complaint against JKI for Breach of Promissory note and Poire's Motion for Summary Judgment against JKI for the counterclaim causes of action for Fraudulent Inducement, Recission, Conspiracy, and Breach of Contract.

STANDARD OF REVIEW

This Court reviews a trial court's order on a motion for summary judgment de novo. *Volusia Cty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Pursuant to Florida Rule of Civil Procedure 1.510(a), "The court shall grant summary judgment if the movant shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a). On December 31, 2020, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.510 governing summary judgment proceedings, to align Florida's summary judgment standard with that of the federal courts pursuant to Rule 56 of the Federal Rules of Civil Procedure. *In re Amendments to Fla. Rule of Civil*

Procedure 1.510, 309 So. 3d 192, 194 (Fla. 2020). The amendment narrowed Florida's concept of what constitutes a genuine issue of material fact by establishing that the correct test for the existence of a genuine factual dispute is whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 193 (quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986)). Both parties must support their assertions that a material fact cannot be or is genuinely disputed by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fla. R. Civ. P. 1.510(C)(1).

Once the party moving for summary judgment satisfies this initial burden, the burden then shifts to the nonmoving party to come forward with evidence demonstrating that a genuine dispute of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (noting that the nonmoving party must go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial') (quoting Fed. R. Civ. P. 56)). Under the new rule, "[w]hen opposing parties tell two different stories, one of which is blatantly

contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). In Florida, it is no longer plausible to maintain that "the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." *In re Amendments to Fla. Rule of Civil Procedure 1.510*, 317 So. 3d 72, 76 (Fla. 2021) (quoting Bruce J. Berman & Peter D. Webster, Berman's Florida Civil Procedure § 1.510:5 (2020 ed.) (describing Florida's pre-amendment summary judgment standard)). To defeat summary judgment, Plaintiff must show more than the existence of a "metaphysical doubt" regarding material facts, and a mere scintilla of evidence is not sufficient. *Anderson*, 477 U.S. at 252. Moreover, summary judgment is appropriate when evidence on which Plaintiff relies "is merely colorable or is not significantly probative." *Chambers v. Fla. Dep't of Transp*., 620 F. App'x. 872, 876 (11th Cir. 2015).

The trial court, therefore, must determine whether the nonmovant's "evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52. That is to say, the nonmovant's evidence must be of sufficient weight and quality that "reasonable jurors could find by a preponderance of the evidence that [the

nonmovant] is entitled to a verdict." *Id*. at 252. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574, 587, (1986) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co*., 391 U.S. 253, 289, (1968)).

I. Substantial Summary Judgment Evidence Supports the Trial Court's Order Granting Summary Judgment as to JKI's Counterclaims

A. Fraudulent Inducement

i. JKI presented no summary judgment evidence that created a genuine issue of material fact.

To establish a cause of action for fraud in the inducement, the complaining party must show that: 1) there was a misrepresentation of material fact; 2) the representer knew or should have known of the falsity of the statement; 3) the representer intended that the representation would induce another to rely and act on it; and 4) the other party suffered injury in justifiable reliance on the representation. *See Biscayne Inv. Group Ltd. v. Guarantee Mgmt. Servs., Inc.*, 903 So. 2d 251, 255 (Fla. 3d DCA 2005).

The record evidence does not establish a genuine factual dispute as to JKI's claim for Fraudulent Inducement. The Trial Court did not improperly weigh the evidence but analyzed the evidence presented under the standards set forth in Florida Rule of Civil Procedure 1.510(C)(1). Under the new Rule 1.510, summary judgment

is appropriate when "the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." *In re Amendments. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 75 (Fla. 2021) (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248, (1986)); *Garbark v. Gayle*, 312 So. 3d 1286, 1288 (Fla. 1st DCA 2021) (finding burden shifts to nonmovant once movant filed his affidavit stating that he never made the alleged defamatory statements). Credibility determinations and weighing the evidence "are jury functions, not those of a judge," when ruling on a motion for summary judgment. *Anderson*, 477 U.S. at 255. Entry of summary judgment is mandatory "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.*, 477 U.S. at 322. "In such a situation, there can be no 'genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id*. at 322-23. "[I]f the nonmoving party must prove X to prevail, the moving party at summary judgment can *either produce evidence that X is not so or point out that the nonmoving party lacks evidence to prove X*." *Bedford v. Doe*, 880 F.3d 993, 996-97 (8th Cir. 2018) (emphasis added). Here, Mr. Poire has pointed out that JKI lacks evidence to prove its claim for Fraudulent Inducement and JKI was unable to produce sufficient summary judgment evidence to the contrary.

In this case, unlike the Court in *Garcia v. Sec. First Ins. Co.*, 347 So. 3d 479 (Fla. 5th DCA 2022), the Trial Court did not weigh the credibility of the evidence presented and found one party's explanation incredible. The summary judgment evidence presented included CFO of JKI Gary Ponder's deposition transcript with exhibits (R. 546-742), the Purchase Agreement (R. 50-70; Exh. 13 to Ponder Deposition), the Promissory Note (R. 71-72; Exh. 12 to Ponder Deposition), Albert Poire's Affidavits (R. 405-08, 409-13), Cindy Poire's Affidavit (R. 414-18), Jeffry Knight's Affidavit (R. 442-48), and Poire's Responses to Interrogatories (R. 425-30). The Trial Court reviewed the evidence presented to determine if Poire met its initial burden of establishing that it was entitled to summary judgment (i.e. there is no evidence to support JKI's claim for Fraudulent Inducement, *see Bedford*, 880 F.3d at 996-97). Mr. Poire argued to the Trial Court that there is no substantial summary judgment evidence that he made a false statement (R. 371-72) or that the Poires knew or should have known any representations were false (R. 372-73). Once Mr. Poire's burden is met, then the Trial Court determines whether JKI presented counter-evidence establishing whether there is a genuine issue of material fact. *See Bedford*, 880 F.3d at 996-97. The Initial Brief does not point to any contradictory evidence presented by the parties in which the Court chose to believe one party over the other. *See e.g. Garcia*, 347 So. 3d at 481 (noting the Court improperly weighed evidence by finding Garcia's explanation was not credible); *Lassiter v. Citizens*

Property Ins. Co., 2024 WL 2744676 (Fla. 2d DCA May 29, 2024) (disregarding competing affidavits because they resulted in a "tie"). As discussed in detail below, the Trial Court reviewed the evidence needed to support JKI's Fraudulent Inducement claim and found the record evidence insufficient to establish a genuine issue of material fact.

Notably, the Trial Court commented as part of its analysis of the evidence presented, that "a party who relies on a misrepresentation must show that the party exercised some diligence in investigating misrepresentation unless it is shown that a fraudulent party had exclusive or superior knowledge, or preventing further investigation." (R. 926). The Trial Court went on to say "It's also been stated that misrepresentation is not actionable where truth might have been discovered by the exercise of ordinary diligence." (R. 926). "[A] party who relies on a misrepresentation must show that it exercised some diligence in investigating the misrepresentation, unless it is shown that the fraudulent party had exclusive or superior knowledge, or prevented further investigation." *Adams v. Prestressed Sys. Indus.*, 625 So. 2d 895, 897 (Fla. 1st DCA 1993) (citing *Ramel v. Chasebrook Constr. Co.,* 135 So. 2d 876 (Fla. 2d DCA 1961); *Nessim v. DeLoache,* 384 So. 2d 1341 (Fla. 3d DCA 1980)). The due diligence standard is expressed in the following terms:

> The right to rely on a representation is closely related to the duty of the representee to use some measure of precaution to safeguard his own

> interest. In cases of this kind, assuming that the parties are not dealing in some fiduciary or confidential relation, the principle that the representee must exercise reasonable effort or diligence for his own protection will usually be applied, both in law and in equity.

Adams, 625 So. 2d at 897 (quoting 27 Fla. Jur. 2d *Fraud & Deceit* § 52 (1981)).

JKI makes no allegations that Mr. Poire had exclusive or superior knowledge prior to making the deal or otherwise prevented JKI from conducting its own investigation prior to the purchase of the Company. Accordingly, JKI's reliance on Mr. Poire's alleged false statement does not excuse JKI's failure to exercise due diligence prior to purchasing the Company. The Trial Court takes into account Mr. Ponder's position as the CFO of JKI with a master's degree in accounting and his ability to make determinations as to the valuations of the Company with respect to the equipment (R. 926), acknowledging the only fraudulent comment JKI relies on is the "off-the-cuff comment made by Mr. Poire" (R. 927), the relationship of the parties (R. 927), the 30 day time period for the deal to close (R. 928-29), and the education of Mr. Poire (R. 929) to determine if there was sufficient summary judgment evidence to overcome the motion. Furthermore, the Purchase Agreement contained the following provision:

> 8.02 Entire Agreement. This Agreement the documents referenced herein supersede all prior discussions and agreements, whether oral or written, between the Parties and contain the entire agreement between the Parties with respect to the subject matter hereof.

(R. 65). There was no weighing of credibility of one witness over the other.

Reviewing the evidence presented as to each component needed to establish a claim for Fraudulent Inducement reveals the Trial Court did not err in granting summary judgment in favor of Mr. Poire for the claim. As to the first factor of establishing a claim for Fraudulent Inducement, there must be evidence of a misrepresentation of a material fact. Here, there is no evidence that Mr. Poire made a false statement. The only misrepresentation that JKI allegedly relies upon to its detriment is the statement that the Company was making an average net profit of $500,000 a year. (R. 575, l. 5-9; 442, ¶ 8, 11). There is no summary judgment evidence establishing that this statement was incorrect.

As to the second and third prongs to establish Fraudulent Inducement, there is no record evidence that Poire knew or should have known of the falsity of the statement and intended that the representation would induce Mr. Knight to rely and act on it. The statement was allegedly made during a lake day while the families of the parties were spending time together. (R. 443, ¶ 10-11; 570, l. 10-13). There was no pressure to quickly close the sale and the summary judgment evidence indicates Mr. Poire reasonably complied with Mr. Ponder's requests for information prior to the purchase of the Company, during the due diligence period. Prior to the purchase of the Company, during the due diligence period, Mr. Poire provided information regarding outstanding debts for equipment owned by the Company. (R. 590, l. 11-14). However, Mr. Ponder did not check the value of the equipment JKI was

acquiring from the Company. (R. 598, l. 9-11). Even the language of the Purchase Agreement specifically stated that the document "supersede[s] all prior discussion and agreements, whether oral or written, between the Parties and contains the entire agreement between the Parties with respect to the subject matter hereof." (R. 65). Mr. Knight, owner of JKI, was a knowledgeable business owner who had purchased several other companies before purchasing the Company. (R. 560, l. 9-18). JKI utilized the services of an attorney and Mr. Ponder, with a master's degree in accounting, to facilitate the purchase. Additionally, Mr. Ponder expressed his concerns to Mr. Knight regarding the gross income statement (R. 573, l. 24-25; 574, l. 1-11) and set out to perform due diligence before Mr. Knight closed the deal. (R. 580, l. 8-19). However, Mr. Ponder made no effort to follow up during the due diligence period prior to the closing of the deal. Mr. Knight, despite conversations with Mr. Ponder, closed the deal and executed the contract for the sale of the Company with Mr. Poire only 30 days after the July 18 get together. JKI had the opportunity to review financial records prior to purchase and simply chose not to. Accordingly, there is no summary judgment evidence that Mr. Poire induced Mr. Knight to purchase the Company with the purported false statement regarding net profit.

Finally, as to the last element, whether JKI "suffered injury in justifiable reliance on the representation", the Court analyzed the evidence presented as to

whether JKI “justifiabl[y] reli[ed]” on the purported false statement. Mr. Ponder did not feel comfortable with the deal surrounding the purchase and set out to try to "combat" Mr. Knight entering the deal with Mr. Poire. (R. 579, l. 15-25; 580, l. 1-19). Mr. Ponder expressed his concern regarding the deal to Mr. Knight. (R. 580, l. 8-14). Mr. Ponder testified that he prepared a spreadsheet of categories for Mr. Poire to fill out requesting information and had sent it to Mr. Poire on July 21, 2020. (R. 582, l. 23-25; 583, l. 1-17). Mr. Ponder was also actively trying to extend the terms of the promissory note because of issues with the profits and the company not performing as expected. (R. 608, l. 3-11). Mr. Ponder testified that no other representations were made other than the one alleged $500,000.00 annual net profit statement that was made on July 18th, 2020. (R. 628, l. 2-9). Mr. Knight was buying many companies at the time including a cellular network software company and corporate plane rental company. (R. 560, l. 23 to 561, l. 4; 562, l. 4-7). Mr. Poire's Company was not the only one that Mr. Knight purchased within a short period of time. Additionally, Mr. Ponder, JKI's CFO, had a master's degree in accounting. (R. 554, l. 20-21). Mr. Ponder acknowledged that an income statement would have verified whether the $500,000 profit was accurate. (R. 598, l. 12-16). Mr. Ponder asked for the Company’s income statement, but never followed up to make sure he received it prior to the closing of the sale. (R. 599, l. 6-11). Mr. Ponder never asked to review the Company’s tax returns. (R. 599, l. 12-18). Mr. Ponder agreed that there

are several ways he could have valued the Company's profitability prior to the purchase. (R. 600, l. 4-7). However, no valuation was done prior to Mr. Knight's purchase of the Company. It would not have taken much effort to make determinations as to valuation of the Company and equipment prior to the sale. It would also not have taken much time to determine if the gross profit statements were accurate shortly after JKI began operating the Company. Notably, no fraud allegations were brought until October 28, 2021, fourteen months after the Purchase Agreement was signed.

Persuasively, the Trial Court found:

> The only statement with respect to fraud and the inducement is a single comment allegedly made by Mr. Poire in the presence of Mr. Knight and Mr. Ponder. It is unreasonable to believe that a $1,500,000.00 purchase was based off just one off-the-cuff statement. Mr. Knight has known Mr. Poire and his work for many years. They have known each other for 20 years and they -have even worked together in the past. Their agreement was reduced to writing and it was Mr. Knights option to enter it or not. Mr. Knight made a cognizant decision to close a $1,500.000.00 deal in 30 days on August 19, 2020, without giving Mr. Ponder sufficient time for due diligence. In fact, balance sheets, profit and loss statements, and tax returns were not even requested. See Ponder Dep. Page 51 Line 21 to Page 52 Line 18 [R. 589-599]. Admittedly, Ponder testified that business and equipment value did not matter to Knight once he and Poire reached an agreement as to price. See Ponder Dep. Page 51 Lines 15-19 [R. 598].

(R. 752).

Accordingly, the summary judgment record, taken as a whole, is devoid of critical, significantly probative details that would allow a reasonable fact-finder to

conclude that Mr. Poire's statement was fraudulent, made to induce JKI into purchasing the Company, JKI justifiably relied on the false statement, and JKI suffered injury. *See Gonzalez v. Patane,* 234 So. 2d 8 (Fla. 3d DCA 1970) (upholding summary judgment against property purchasers seeking rescission of contract where purchasers relied on real estate broker's incorrect estimate of property taxes and "failed to use even the slightest diligence to determine the amount of the taxes when the information was readily available"). The Trial Court did not improperly weigh the evidence and make a credibility determination, but found the evidence presented was not sufficient to survive Mr. Poire's Motion for Summary Judgmen as to JKI's claim for fraudulent inducement. (R. 751-753). Therefore, this Court should affirm the Trial Court's finding of summary judgment for Fraud and Fraudulent Inducement in favor of Poire.

ii. Notwithstanding, the Trial Court did not err in finding Fraudulent Inducement is barred as matter of law.

JKI does not argue on appeal that the Trial Court erred in finding its claim for Fraudulent Inducement is barred as a matter of law. If this Court affirms the Trial Court's finding, then there is no reason to undergo an analysis of the summary judgment evidence because the Trial Court found as threshold issue in favor of Mr. Poire as a matter of law. JKI's Fraudulent Inducement claim is barred as a matter of law because the Poires' alleged misrepresentations form the basis of JKI's Breach of Contract claim. (R. 213, ¶ 50, Third Amended Counterclaim ("Third Amend.

Counter."); R. 218, ¶¶ 91-93, Third Amend. Counter.). It is well established under Florida law that a breach of contract claim may not serve as the basis for a fraud claim. *Spears v. SHK Consult. & Dev., Inc.*, 338 F. Supp. 3d 1272, 1279 (M.D. Fla. 2018) ("District courts in Florida have thus 'held that it 'is well settled that a plaintiff may not recast causes of action that are otherwise breach-of-contract claims as tort claims . . . . The critical inquiry for a fraud claim' focuses on whether the alleged fraud is separate and apart from the performance of the contract."); *see also Kaye v. Ingenio Filiate De Loto-Quebec, Inc.*, 2014 WL 2215770, at 4 (S.D. Fla. May 29, 2014) ("[T]o set forth a claim in tort between parties in contractual privity, a party must allege action beyond and independent of breach of contract that amounts to an independent tort."). Where a contract exists, a separate tort action for intentional or negligent acts can stand only if the acts are considered to be independent from the acts that breached the contract. *See HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.,* 685 So. 2d 1238, 1239 (Fla. 1996) ("Where a contract exists, a tort action will lie for either intentional or negligent acts considered to be independent from acts that breached the contract."); *AFM Corp. v. S. Bell Tel. & Tel. Co.*, 515 So. 2d 180, 181 (Fla. 1987) ("In the instant case, AFM has not proved that a tort independent of the breach itself was committed. Consequently, we find no basis for recovery in negligence.").

Damages sought for tort actions must also be distinct from damages

recoverable for breach of contract. *Williams v. Peak Resorts Int'l Inc*., 676 So. 2d 513, 517 (Fla. 5th DCA 1996); *Huie v. Dent & Cook, P.A.,* 635 So. 2d 111 (Fla. 2d DCA 1994) (finding "a fraud claim may not be pursued if its damages merely duplicate the damages recoverable for breach of a related contract"). Additionally, a party cannot recover for alleged fraud or civil conspiracy that is adequately covered or expressly contradicted by a written contract. *Hillcrest Pac. Corp. v. Yamamura*, 727 So. 2d 1053 (4th DCA 1999).

JKI's Fraudulent Inducement claim is barred as a matter of law because the Poires' alleged misrepresentation form the basis of JKI's Breach of Contract claim and JKI's Fraudulent Inducement claim. JKI alleges that Mr. Poire made false representations regarding the Company's profitability and concealed that the Company owed unpaid back taxes. (R. 317, ¶ 37). This misrepresentation is the same basis for Fraudulent Inducement claim (R. 317, ¶ 37, Third Amend. Counter.) and the Breach of Contract claim. (R. 322, ¶ 72, Third Amend. Counter.). The clear separation of JKI's factual claims is important because it has asserted contract-based claims that appear to correlate with claims sounding in fraud. JKI has not identified how the factual basis for JKI's fraud claim are at all distinct from its contract claim. "A plaintiff will not succeed merely by labeling a breach of contract claim 'fraud in the inducement;' rather, the alleged fraud must be separate from the performance of the contract." *Freeman v. Sharpe Res. Corp*., 2013 WL 2151723, at 8 (M.D. Fla.

May 16, 2013). Accordingly, the Trial Court did not err in finding that JKI's Fraudulent Inducement claim is barred as a matter of law. *See Joyeria Paris, SRL v. Gus & Eric Custom Servs., Inc*., 2013 WL 6633175, at 3-4 (S.D. Fla. Dec. 17, 2013) (holding that plaintiffs fraud claim was barred because it was not independent of plaintiff's breach of contract claim); *Freeman*, 2013 WL 2151723, at 8 (applying Florida law and dismissing fraudulent inducement claim to the extent it covered alleged misrepresentations contained in the contract at issue).

B. Recission

To prove a cause of action for rescission of a contract, JKI must establish:

(1) The character or relationship of the parties;

(2) The making of the contract;

(3) The existence of fraud, mutual mistake, false representations, impossibility of performance, or other ground for rescission or cancellation;

(4) That the party seeking rescission has rescinded the contract and notified the other party to the contract of such rescission.

(5) If the moving party has received benefits from the contract, he should further allege an offer to restore these benefits to the party furnishing them, if restoration is possible;

(6) Lastly, that the moving party has no adequate remedy at law.

Crown Ice Machine Leasing Co. v. Sam Senter Farms, Inc., 174 So. 2d 614, 617

(Fla. 2d DCA 1965). JKI's claim for Recission (R. 215, ¶ 68) is based upon JKI's claim for Fraud and Fraudulent Inducement (R. 213, ¶ 54). Since JKI could not establish its claim for Fraudulent Inducement, its claim for Rescission also fails. *See Billian v. Mobil Corp.*, 710 So. 2d 984, 991 (Fla. 4th DCA 1998) (holding that one of the required elements of a claim for rescission is "[t]he existence of fraud, mutual mistake, false representations, impossibility of performance, or other ground for rescission or cancellation . . . . "); *see also Thomas J. Duggan, LLC v. Peacock Point, LLC*, 89 So. 3d 283, 284 (Fla. 1st DCA 2012) (affirming trial court's denial of rescinding a contract, noting no fraud occurred because party did not knowingly make a false statement of material fact).

As JKI failed to present evidence establishing the existence of fraud or false representation (see p. 12-21 above), its claim for Recission also fails. Accordingly, the Trial Court did not err in granting summary judgment against JKI's Recission claim.

C. Conspiracy to Commit Fraud

A conspiracy requires: (a) an agreement between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts done under the conspiracy. *See Fla. Fem Growers Assoc., Inc. v. Concerned Citizens of Putnam Cty.*, 616 So. 2d 562, 565 (Fla. 5th DCA 1993); *Nicholson v.*

Kellin, 481 So. 2d 931, 935 (Fla. 5th DCA 1985); *Kurnow v. Abbott*, 114 So. 3d 1099, 1102 n.4 (providing elements of civil conspiracy). Additionally, an actionable conspiracy requires an actionable underlying tort or wrong. *See Fla. Fern Growers*, 616 So. 2d at 565; *Kurnow*, 114 So. 3d at 1102 ("an actionable conspiracy generally cannot exist between an entity and its officers, agents, or employees"); *Menendez v. Beech Acceptance Corp*., 521 So. 2d 178, 180 (Fla. 3d DCA 1988) (some proof of knowledge of a conspiracy and participation by tortfeasor must be shown to survive summary judgment); *Trautz v. Weisman*, 809 F. Supp. 239, 246 (S.D.N.Y. 1992) (mere knowledge of the conspiracy is insufficient; there must be an actual knowing participation); *Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1998) (finding the inference of a conspiracy must outweigh all reasonable inferences to the contrary).

First, JKI's Third Amended Complaint asserts in its "WHEREFORE" clause in Count IV Conspiracy as to judgment solely against Cindy Poire. JKI asserts that Mrs. Poire participated in the conspiracy to defraud JKI by "st[an]d[ing] idly by" why Mr. Poire made a representation about the Company's gross profits during a day of boating among Mr. Poire, Mr. Knight, Mr. Ponder and various members of their families. (R. 568-73). There is no record evidence to support JKI's allegations that either Albert or Cindy Poire had any knowledge of or participated in a conspiracy to defraud JKI. Contrary to JKI's representation that Mrs. Poire "was an essential part

of the negotiations of the selling of the Company to JKI and she, as the person handling the Company's finances and filing its taxes, had intricate details of the Company's financial status":

> Cindy Poire is the wife of 42 years to Albert E. Poire. Cindy had no title or position with the Company and received no compensation other than the love and affection of her husband. Cindy assisted Albert E. Poire with most written agreements and communications as well as general clerical bookkeeping work.

(R. 428). Mrs. Poire did not have any membership interest in the Company. (R. 417, ¶ 3). She did not hear Mr. Poire make any false representations of material fact to Jeffry Knight prior to the contract being entered. (R. 417, ¶ 7). There is no record evidence besides opposing counsel's arguments that Mrs. Poire endorsed false claims that the Company had no outstanding debts by standing idly by. *See* (R. 510, 685-86). There is no record evidence that Mrs. Poire failed to produce the Company's financial documents and records after they were requested. (R. 616-17, 445). There is no legal duty for Mrs. Poire to correct the purported false statement. Unlike *Ward v. Atlantic Sec. Bank*, 777 So. 2d 1144 (Fla. 2d DCA 2001), Mrs. Poire is not a bank representative aware of significant problems with a fund who intentionally conceal information from stockholders. In fact, summary judgment evidence supports that Mrs. Poire made efforts to resolve any outstanding tax issues at the time of the sale of the Company. (R. 417, ¶ 12). Accordingly, there is no record evidence establishing proof of either Mr. or Mrs. Poire's knowledge of a conspiracy

and participation by the Poires to survive summary judgment. Therefore, this Court should find that Trial Court did not err in granting summary judgment in favor of Mrs. Poire pursuant to the Conspiracy claim.

D. Breach of Contract

JKI alleges that Mr. Poire "breached the contract when he wrongfully represented and warranted that he and the Company were in compliance with all Laws" (¶ 91, Third Amend. Comp.) and "representing and warranting that the Company had no outstanding debt" (¶ 93, *id.*). To establish a cause of action for Breach of Contract, JKI must prove that (1) a contract existed, (2) the contract was breached, and (3) damages flowed from that breach. *A.R. Holland, Inc. v. Wendco Corp.*, 884 So. 2d 1006, 1008 (Fla. 1st DCA 2004) (citing *Knowles v. C.I.T. Corp.,* 346 So. 2d 1042, 1043 (Fla. 1st DCA 1977)). "[W]hen parties choose to agree upon certain terms and conditions of their contract, it is not the province of the court to second-guess their wisdom or 'substitute [its] judgment for that of the parties in order to relieve one from an alleged hardship of an improvident bargain.'" *City of Pompano Beach v. Beatty*, 222 So. 3d 598, 600 (Fla. 4th DCA 2017) (alteration in original) (quoting *Int'l Expositions, Inc. v. City of Miami Beach*, 274 So. 2d 29, 30–31 (Fla. 3d DCA 1973)).

The evidence presented to the Trial Court does not establish that Mr. Poire breached the terms of the Purchase Agreement or that JKI was damaged. The

Purchase Agreement clearly states what is a material breach and what is not. Specifically, the Purchase Agreement provides at 6.04 *Limitations on Claims* (b):

> Neither Party shall have any obligation to indemnify the other Indemnified Party in connection with any single item or group of related items that result in Losses that are subject to indemnification in the aggregate of less than $25,000.

(R. 388). To rise to a material breach, a party's conduct must "go to the essence of the contract; it must be the type of breach that would discharge the injured party from further contractual duty on his part." *JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co*., 292 So. 3d 500, 509 (Fla. 2d DCA 2020) (quoting *Beefy Trail, Inc. v. Beefy King Int'l, Inc.*, 267 So. 2d 853, 857 (Fla. 4th DCA 1972)). "When focusing on the breach of the contract, not every breach permits the nonbreaching party to cease performance. Instead, the failure to perform the contractual obligation must be central to the contract or, in other words, material." *JF & LN*, 292 So. 3d at 509. The issue of whether an alleged breach is vital or material is reviewed as a question of fact. *Moore v. Chodorow,* 925 So. 2d 457, 461 (Fla. 4th DCA 2006); *Beefy Trail, Inc.,* 267 So. 2d at 858 (citing 17A C.J.S. *Contracts* § 630, p. 1268).

The Trial Court found the language of the Purchase Agreement was clear and unambiguous. (R. 753; "Here, the parties' intent in the contract agreement is clear from the language of the agreement . . . ."); *see W. Am. Ins. Co. v. Band & Desenberg*, 925 F. Supp. 758 (M.D. Fla. 1996) (finding if the language of the contract is clear and unambiguous, there is no occasion for construction). As the Trial Court notes,

the Purchase Agreement states under section 6.04 *Limitations on Claims* (a):

> An Indemnifying Party shall have no obligation to indemnify an Indemnified Party until the aggregate amount of all Losses incurred that are subject to indemnification by such Indemnifying Party pursuant to this Article 6 equal or exceed $75,000 (the "Deductible") . . .

(R. 61). On August 17, 2020 (2 days prior to Mr. Knight's execution of the Purchase Agreement), JKI's attorney, Timothy Weber, sent an email to Ms. Poire and Mr. Knight, which is in the record as Exhibit 11 to Mr. Ponder's Deposition, reads:

> "JKI cannot recover for misrepresentations unless the aggregate losses exceed the deductible of $75,000. Accordingly, most if not all representations regarding the business, even if untrue, are unlikely to result in losses that high."

(R. 605-06, l. 7-24, l. 1-19, Exh. 11; 913-14). Both the Purchase Agreement and JKI's own attorney put JKI on notice of what is considered material and what is not. (R. 754). Accordingly, JKI's claims that the Poires breached the contract by failing to disclose an unpaid tax amount below the $25,000 threshold as a matter of law does not constitute a material breach of the Purchase Agreement.

Presenting evidence of damages that flow from the breach is a necessary element of establishing a breach of contract action. *See A.R. Holland, Inc.*, 884 So. 2d at 1008. The amount of damages is relevant to determine if JKI is harmed by the alleged breach. As to damages, it is unclear from Mr. Ponder's testimony whether JKI even lost the amount because he was unsure whether the taxes were ultimately paid. (R. 646). Mrs. Poire provided sworn testimony that she paid the underlying

IRS debt. (R. 417, ¶ 12). When shown a "Release of Levy/Release of Property from Levy", Mr. Ponder claimed he had never seen the document before and had not received confirmation from his bank or the IRS that the levy had been paid. (R. 646-47, Exh. 16). There was no investigation into the Company's outstanding tax liability. (R. 617, l. 7-14). Furthermore, the Trial Court cannot rewrite the terms of the Purchase Agreement. *See Beatty*, 222 So. 3d at 600. JKI argues that the application of the terms of the Purchase Agreement by the Trial Court would "lead to the non-breaching party being stuck in a contractual relationship with a breaching party and still being required to perform as long as the breaching party didn't cause damages beyond a threshold amount." (I.B. 29). This is precisely the terms and conditions of paragraph 6 of the Purchase Agreement, providing an indemnity threshold amount which Mr. Poire did not breach. (R. 61). Therefore, this Court should find that the Trial Court did not err in granting Summary Judgment against JKI's Breach of Contract cause of action.

II. Substantial Summary Judgment Evidence Supports the Trial Court's Order Granting Summary Judgment as to Mr. Poire's Breach of Promissory Note

The elements of breach of promissory note are (1) a valid contract; (2) a material breach; (3) damages; and (4) that plaintiff is the owner and holder of the note. *Franquiyama Holdings, Inc. v. Tamayo*, 2020 WL 4279896, *5 (S.D. Fla. June 2, 2020) (citing *Suntrust Bank v. Ruiz*, 2014 WL 5321094 (S.D. Fla. Oct. 17, 2014));

see also Abott Laboratories, Inc. v. Gen. Elec. Capital, 765 So. 2d 737, 740 (Fla. 5th DCA 2000) (citing elements of breach of contract are (1) a valid contract; (2) material breach; and (3) damages).

JKI does not argue that there was insufficient evidence to establish Mr. Poire's cause of action for Breach of Promissory Note - i.e. that there was a valid contract, a material breach, damages, and Poire owned and held the note. JKI argues that it should be excused from having to pay the Promissory Note because of disputed issues of material fact regarding fraud in the inducement. (I.B. 31-32).

To establish a cause of action for fraud in the inducement, the complaining party must show that: 1) there was a misrepresentation of material fact; 2) the representer knew or should have known of the falsity of the statement; 3) the representer intended that the representation would induce another to rely and act on it; and 4) the other party suffered injury in justifiable reliance on the representation. *See Biscayne Inv. Group Ltd.*, 903 So. 2d at 255.

As asserted in section I.(A) above of the Answer Brief (p. 11-20 above), the Trial Court did not improperly weigh evidence. JKI simply did not provide sufficient evidence to establish their affirmative defense of fraud in the inducement to overcome Mr. Poire's Motion for Summary Judgment. JKI fails to demonstrate more than some "metaphysical doubt" as to the material facts whether the gross profit statement induced Mr. Knight into purchasing the Company. Based on the record

evidence produced through discovery responses, depositions, and affidavits, there is no genuine dispute of material fact exists that Mr. Poire's alleged statement made during a family lake day was material or that statement induced JKI to purchase he Company. While JKI asserts arguments to the contrary, none are significantly probative or supported by the record evidence. Therefore, based on the record evidence, this Court should affirm the Trial Court's award of summary judgment in Mr. Poire's favor as to the Breach of Promissory Note cause of action. *See Ibarra v. Ross Dress for Less, Inc.*, 350 So. 3d 465, 468 (Fla. 3d DCA 2022) (affirming summary judgment when nonmovant failed to provide probative or summary judgment evidence to overcome the motion).

CONCLUSION

The Trial Court did not err in granting summary judgment for Mr. Poire. Mr. Poire, as the movant for summary judgment against JKI for its claim for Breach of Promissory Note, presented evidence to establish all elements for the cause of action for Breach of Promissory Note – that Mr. Knight entered into a valid promissory note for $250,000, plus interest (R. 71-72); Mr. Knight failed to pay under the note (R. 407), Mr. Poire incurred damages (the principal amount plus interest as provided in the Promissory Note) (R. 407); and Mr. Poire was the holder of the Promissory Note (R. 407). JKI does not dispute the validity of the evidence in support of Poire's Breach of Promissory Note claim. JKI, as the nonmovant, could not provide

sufficient summary judgment evidence that presented a disagreement to require submission to a jury. Furthermore, as the movant for summary judgment against JKI for JKI's counterclaims, Poire established that JKI could not produce admissible evidence to support its claims for Conspiracy, Fraudulent Inducement, Recission, and Breach of Contract. (R. 371-74). The Trial Court properly determined whether JKI's evidence presented a sufficient disagreement to require submission to a jury. There was no contradictory evidence presented for the trial Court to weigh. The Trial Court properly took into account the reasonableness of JKI's "reasonable reliance" on the purported fraudulent statement to determine if there was really a genuine issue of disputed fact.

Therefore, this Court should affirm the Trial Court's Order granting Poire's Motion for Summary Judgment on the Complaint against JKI for breach of promissory note and Poire's Motion for Summary Judgment against JKI for the Counterclaim causes of action for fraud and fraudulent inducement, recission, conspiracy to commit fraud, and breach of contract.

Respectfully submitted this 3rd day of July, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the eDCA E-portal which will deliver an electronic copy of said filing to Timothy W. Weber, Esquire, timothy.weber@webercrabb.com, lisa.willis@webercrabb.com, and Kyle Bass, Esquire, kyle.bass@webercrabb.com, carol.sweeney@webercrabb.com, honey.rechtin@webercrabb.com, 5453 Central Ave, St. Petersburg, Florida 33710, this 3rd day of July, 2024.

/s/ Muriel Whitehead
Muriel Whitehead, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Answer Brief complies with the font and word limit requirements of Fla. R. App. P. 9.045 and 9.210.

/s/ Muriel Whitehead
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