

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

BRIDGESTONE/FIRESTONE
NORTH AMERICAN TIRE, LLC,

Petitioner,

-vs-

CASE NO. SC08-2061
LT Cons. Case Nos. 4D07-1793, 4D07-2600

HORTENSIA PALMIRA GARCIA, etc., et al.,

Respondents.

BRIDGESTONE/FIRESTONE
NORTH AMERICAN TIRE, LLC,

Petitioner,

-vs-

ANIBAL OSCAR PAPANDOPLES, etc., et al.,

Respondents.

BRIEF OF RESPONDENTS ON JURISDICTION

On Appeal from the Fourth District Court of Appeal of the State of Florida

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PREFACE

This is a proceeding seeking to invoke this Court's jurisdiction to review a decision of the Fourth District Court of Appeal on the grounds that the decision creates express decisional conflict in Florida. The parties will be referred to by their proper names or as they appeared in the trial court.

STATEMENT OF THE CASE AND FACTS

Bridgestone's Statement of the Case and Facts is unduly argumentative and inaccurate. The Fourth District's Opinion clearly explains that the case was presented to the trial court on conflicting affidavits regarding the four relevant factors established in Kinney System, Inc. v. Continental Ins. Co., 674 So.2d 86 (Fla. 1996), and codified in Fla.R.Civ.P. 1.061(a). The Fourth District determined that the trial court had not abused its discretion in concluding that the Defendants had failed in their burden of persuasion on the Kinney factors, based on its analysis of the conflicting affidavits and other materials. The decision also notes the trial court's experience in presiding over an Argentinian Ford/Firestone case, see (991 So.2d at 915 n.2, 916) which was virtually identical to these cases.

While noting that the Fourth District applied a deferential abuse of discretion standard of review, Bridgestone characterizes the Fourth District's decision as

requiring “defendants to guarantee an insured’s jurisdiction in the foreign forum to establish its availability.” However, the Fourth District decision did not establish such a legal requirement, it simply determined that the trial court was not unreasonable in relying on the affidavits of Plaintiffs’ experts as to whether Argentina would exercise jurisdiction over this international products liability tort or contract claim, or whether the consent of the Defendants would be sufficient to support jurisdiction in Argentina (991 So.2d at 916-17).¹

Finally, Bridgestone’s claim in the Statement of the Case and Facts that the Fourth District establishes “requirements [that] are impossible to meet” is simply wrong. The Fourth District did not establish any requirements, it analyzed the trial court’s decision under Kinney, and determined there was no abuse of discretion.

¹/Bridgestone contends that Plaintiffs’ consent necessarily establishes the prerequisite to jurisdiction in Argentina, but ignores the authority cited in the court below that Latin American courts do not consider a plaintiff’s filing of a case pursuant to a forum non conveniens order to be voluntary, thereby precluding jurisdiction based on the consent theory espoused by the Defendants’ experts, Garro, Forum Non Conveniens: “Availability” and “Adequacy” of Latin American Fora From a Comparative Perspective, 35 U. MIAMI INTER-AM. L. REV. 65 at 69 (2003-04); Dahl, Forum Non Conveniens, Latin America and Blocking Statutes, 35 U. MIAMI INTER-AM. L. REV. 21 at 21 (2003-04); Figueroa, Conflicts of Jurisdiction Between the United States and Latin America in the Context of Forum Non Conveniens Dismissals, 37 U. MIAMI INTER-AM. L. REV. 119, at 151 (2005).

SUMMARY OF ARGUMENT

The Fourth District's decision does not create express and direct conflict with any other appellate decision in Florida on the doctrine of forum non conveniens. The Fourth District simply affirmed the trial court's ruling, finding that its resolution of conflicts in the evidence did not constitute an abuse of discretion. The Fourth District did not establish any principle of law regarding the forum non conveniens doctrine, but simply applied the principles established in Kinney, *supra*, and codified in Fla.R.Civ.P. 1.061. In this case, the trial court was presented affidavits of experts on Argentine law which stated that the courts would not accept jurisdiction of the Plaintiffs' cases, and the Fourth District determined that it was not unreasonable for the trial court to rely upon them. That holding does not create conflict with any other appellate decision in Florida.

The Fourth District also did not create conflict with regard to the appropriate standard of review. Fla.R.Civ.P. 1.061 explicitly provides that trial court rulings on forum non conveniens are reviewed under the abuse of discretion standard. The Fourth District followed that standard, and the Third District has only expressed exceptions for it where a trial court fails to address particular factors required under the Kinney analysis. As a result, the Fourth District's adherence to the abuse of discretion standard does not create conflict with any other Florida decision.

Therefore, for the reasons stated above, this Court should decline to exercise jurisdiction in this cause.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT DOES NOT EXPRESSLY AND DIRECTLY CREATE DECISIONAL CONFLICT WITH ANY FLORIDA APPELLATE DECISION.

The Fourth District's Decision Does Not Conflict with Kinney.

Bridgestone contends that the Fourth District's decision conflicts with Kinney, even though it holds firm and follows the specific analysis adopted by this Court in that case (991 So.2d at 915-17). Bridgestone contends that the Fourth District did not properly apply the first Kinney factor, i.e., whether the Defendant satisfied its burden of persuasion that an adequate alternative form exists. The Fourth District concluded that the trial court was faced with conflicting affidavits and was not unreasonable in accepting those submitted by the Plaintiffs, whose experts on Argentina law stated that there was no jurisdiction there for international product liability tort or contract claims, and that the requisite consent jurisdiction could not be established under the civil law system utilized in Argentina.

Bridgestone criticizes the Fourth District, contending that the Plaintiffs conceded there would be jurisdiction by consent, which is not the case. In fact, in a case involving Bridgestone, the federal court held that the Defendants had not satisfied

their burden of persuasion to demonstrate that Argentina was an available alternative form, because they did not demonstrate that Plaintiffs' filing there pursuant to an FNC order would be considered voluntary, so as to support the exercise of jurisdiction, see In Re Bridgestone/Firestone, Inc., 190 F.Supp.2d 1125, 1130-32 (S.D.Ind. 2002). That is also the view of other authorities, see footnote 1, supra. Therefore, that attack on the Fourth District's decision is meritless.

Bridgestone simply fails to demonstrate that the Fourth District created decisional conflict in Florida, and certainly does not establish that the Fourth district created "an insurmountable requirement that would prevent defendants from ever obtaining a forum non conveniens dismissal" (Petitioner's Brief 4). Bridgestone relies on Tananta v. Cruise Ships Catering & Services International, N.V., 909 So.2d 874 (Fla. 3d DCA 2004), as conflicting with the Fourth District's decision. However, in that case, the plaintiffs did not present any evidence that the alternative forms were unavailable or inadequate, as the opinion expressly notes (909 So.2d at 885). As a result, the court found no abuse of discretion in the trial court's dismissal of the actions based on forum non conveniens, since the defendants "stipulated to jurisdiction before a tribunal of competent jurisdiction in these other countries..." (909 So.2d at 885).

Bridgestone also fails to demonstrate express and direct conflict between the Fourth District's decision and Aerolineas Argentinas, S.A. v. Gimenez, 807 So.2d 111

(Fla. 3d DCA 2002). That case was not an international products liability tort or contract claim, but rather involved the death of Argentinian citizens as a result of a crash of an Argentinian airliner traveling from one Argentine city to another. Moreover, while contending that Argentina was not an adequate available forum, it was undisputed that 49 of the plaintiffs had filed court actions in Argentina arising out of the same incident. As a result, it was obvious that those forums were adequate and available, and the existence of the filing fee could not reasonably compel a contrary conclusion. Neither Ford nor Bridgestone ever cited a single products liability case which had been successfully filed against them in Argentina.

Finally, Bridgestone contends that the Fourth District overlooked that it cited authority with its Reply Brief that the 3% filing fee in Argentina could be waived. The Fourth District noted that submission in its decision (991 So.2d at 917 n.4). However, it is clear from that footnote that those authorities were not presented to the trial court below and, thus, could not be properly utilized to demonstrate an abuse of discretion by the lower tribunal. Bridgestone cites additional authorities on page six, which it did not cite in the trial court or the Fourth District, and apparently expects this Court to rely on them to demonstrate conflict. Clearly, that would be inappropriate.

The trial court was presented with a record in which the 3% filing fee was not ever described as capable of being waived, but rather the affidavits characterized it as

a requirement (991 So.2d at 917). Such a filing fee cannot be considered a procedural “nuance” if it would bar these actions arising out of eight deaths and 20 individuals who were injured. Moreover, the Fourth District only ruled that it was not an abuse of discretion for the trial court to consider the filing fee “in light of the affidavits submitted by [Plaintiffs] experts.” Id. That does not create decisional conflict with Gimenez.

Finally, it needs to be emphasized that each FNC case necessarily involves different record materials to be evaluated by the trial court, and each decision is reviewed under an abuse of discretion standard. As a result, differences between the results in such cases are often the result of differences in the affidavits, evidence, other materials which were presented to the trial judge. Additionally, the judge’s resolution of conflicts in those affidavits and evidence, which are reviewed under an abuse of discretion standard, necessarily means there will be some differences in results. However, that does not mean that such differences equate to a conflict in a principle of law so as to justify exercise of this Court’s discretionary jurisdiction, see The Florida Star v. B.J.F., 530 So.2d 286, 288 (Fla. 1988); Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958) (conflict jurisdiction requires conflict “on the same point of law”). For these reasons, the Fourth District’s ruling does not create decisional conflict which would warrant this Court accepting jurisdiction in this case.

The Fourth District's Decision Does Not Create Conflict on the Appropriate Standard of Review

Firestone contends that there is a conflict between decisions of the Third and Fourth Districts regarding the standard of review for motions to dismiss based on forum non-conveniens, citing Kawasaki Motors Corp. v. Foster, 899 So.2d 408 (Fla. 3d DCA 2005), and Ryder System, Inc. v. Davis, 2008 WL 4862570 (Fla. 3d DCA November 12, 2008). There is no such conflict. Fla.R.Civ.P. 1.061(a) specifically provides that:

The decision to grant or deny the motion for dismissal rests on the sound discretion of the trial court, subject to review for abuse of discretion. [Emphasis supplied.]

Moreover, the Third District's decision in Ryder System, *supra*, reconciles the decisions of the Third and Fourth Districts on this issue, and clearly states that it adheres to the abuse of discretion standard (2008 WL 4862570 *2):

As already stated, the Florida Supreme Court has specified that the standard of review is abuse of discretion, and we follow that standard. The only exception--a limited one--is when the trial court did not address (and therefore did not exercise any discretion) regarding one or more of the Kinney factors. In that situation, this court has the latitude to address the previously-unaddressed Kinney factors for the first time on appeal in the interest of judicial economy and efficiency.

The trial court here did not fail to address any of the Kinney factors and, therefore, there was no basis under Ryder Systems to apply any standard of review other than abuse of discretion. That is precisely the standard applied by the Fourth District.

Therefore, there is no conflict between the Third and Fourth Districts' decisions regarding the standard of review, which would require resolution by this Court.

CONCLUSION

For the reasons stated above, this Court should decline to exercise jurisdiction and deny the Petition for Review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished to WENDY LUMISH, ESQ., and ALINA ALONSO, ESQ., 100 SE Second St., Ste. 4000, Miami, FL 33131; CHRISTOPHER N. BELLOWS, ESQ., and REBECCA PLASENCIA, ESQ., 701 Brickell Ave., Ste. 300, Miami, FL 33131, by mail, on January 20, 2009.

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CERTIFICATE OF COMPLIANCE

Respondents hereby certify that the type size and style of the Brief of Respondents on Jurisdiction is Times New Roman 14pt.

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