

IN THE SUPREME COURT OF FLORIDA

FRANCISO CRUZ and  
NIKURA CHIRINIO,

Petitioners,

CASE NO.: SC 12151  
SECOND DCA CASE NO.: 2D11-1826

v.

COOPERATIVA DE SEGUROS MULTIPLES  
DE PUERTO RICO, INC.,

Respondent.

**RESPONDENT'S BRIEF ON JURISDICTION**

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

This lawsuit arises out of a sinkhole claim submitted by the Petitioners, Francisco Cruz and Nikura Chirino, to Cooperativa De Seguros Multiples De Puerto Rico, Inc. (hereinafter referred to as “Cooperativa”). The Petitioners obtained Cooperativa Homeowner’s Insurance Policy No.: HO-0025817 with effective dates of June 5, 2009 through June 5, 2010 for their home located at 15714 Squirrel Tree Place in Tampa, Florida 33624 (hereinafter referred to as “the loss location”). On or about June 8, 2009, the Petitioners discovered potential sinkhole damage at the loss location and reported said damage to Cooperativa.

Cooperativa then investigated said damage at the loss location. Specifically, Cooperativa’s investigation included an inspection of the loss location by an independent adjuster and also a Subsidence Investigation conducted by a geological engineering firm. The Subsidence Investigation revealed sinkhole activity at the loss location.

Cooperativa then received an estimate for cosmetic repairs and also obtained three subsurface remediation bids. On or about December 30, 2009, Cooperativa mailed to the Petitioners (through their attorney) a letter which informed the Petitioners of those three subsurface remediation bids. Said December 30, 2009 letter also contained a check from Cooperativa made payable to Francisco Cruz,

Nikura Chirino, Countrywide Home Loans, and Austin & Laurato, P.A. in the amount of \$10,964.55 for the cosmetic repair estimate.

Instead of receiving a response to said December 30, 2009 letter, the Petitioners, Francisco Cruz and Nikura Chirino, through their attorney, filed a Complaint and Demand for Jury Trial in the lower court. On or about January 10, 2011, Cooperativa was electronically served with the Petitioners' Complaint.

On or about January 31, 2011, Cooperativa requested Neutral Evaluation with regard to the sinkhole claim submitted by the Petitioners. Thereafter, on or about February 1, 2011, Cooperativa filed its Motion to Dismiss, Abate, and/or Stay the Plaintiffs' Lawsuit pending completion of the Neutral Evaluation process. The lower court granted that Motion following a March 7, 2011 hearing.

On or about March 8, 2011, the Petitioners filed their Motion to Reconsider Order Granting Stay of Proceedings Pursuant to F.S. Section 627.7074. The lower court denied that Motion following a March 16, 2011 hearing.

On or about March 17, 2011, the Petitioners filed their Motion to Lift Stay and Prohibit Neutral Evaluation Outside of Statutory 45-Day Period. The lower court denied that Motion following an April 4, 2011 hearing and ordered the parties to work together to complete Neutral Evaluation.

Thereafter, Cooperativa took the lead in coordinating with the Petitioners' attorney, Michael Laurato, and the selected Neutral Evaluator, Laurel Hall, to schedule Neutral Evaluation for April 12, 2011 at 2:00 p.m.

On or about April 8, 2011, Attorney Laurato informed Cooperativa via e-mail message that he had unilaterally canceled the Neutral Evaluation scheduled for April 12, 2011 and that he was appealing the lower court's April 4, 2011 ruling denying the Plaintiffs' Motion to Lift Stay and Prohibit Neutral Evaluation Outside of Statutory 45-Day Period.

On or about April 12, 2011, the Petitioners' filed a Petition for Writ of Certiorari and Writ of Mandamus with the Second District Court of Appeal seeking relief with regard to the lower court's April 4, 2011 ruling.

On or about December 30, 2011, the Second District Court of Appeal dismissed in part and denied in part said Petition for Writ of Certiorari and Writ of Mandamus. Thereafter, the Petitioners filed their Notice of Appeal and Brief on Discretionary Jurisdiction.<sup>1</sup>

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<sup>1</sup> Cooperativa notes that Florida Rule of Appellate Procedure 9.120(d) indicates that Petitioners' brief should be limited solely to the issue of the Supreme Court's jurisdiction. In addition, the committee notes to Florida Rule of Appellate Procedure 9.120(d) state that "it is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue. The petitioner may wish to include a very short statement of why the supreme court should exercise its discretion and entertain the

## **SUMMARY OF THE ARGUMENT**

Petitioners, Francisco Cruz and Nikura Chirino, have alleged no sufficient grounds under Florida Rule of Appellate Procedure 9.030(a)(2) to trigger this Court's discretionary jurisdiction as the Second District Court of Appeal did not expressly declare valid a state statute. Therefore, Respondent, Cooperativa, asks this Court to refuse to exercise jurisdiction over this matter.

## **ARGUMENT**

Florida Rule of Appellate Procedure 9.030(a)(2)(A)(i) states that "the discretionary jurisdiction of the supreme court maybe sought to review decisions of district courts of appeal that expressly declare a valid state statute." In their Brief on Jurisdiction, the Petitioners assert that "the Second District Court of Appeal's decision in this case expressly declared that the stay provision provided in section 627.7074(11), Florida Statutes (2010), is constitutional, and does not impermissibly usurp the Florida Supreme Court's rulemaking authority. Thus, this Court has discretion to review the Second District Court of Appeal's decision."

However, the Petitioner's brief does not cite to the actual text of the Second District Court of Appeal's decision. A careful review of the Second District Court case on its merits if it finds it does have certiorari jurisdiction." Cooperativa further notes that Petitioners' Brief on Jurisdiction contains approximately three (3) pages of substantive argument which appears to violate Florida Rule of Appellate Procedure 9.120.

of Appeal's opinion indicates a lack of an express or explicit declaration that Florida Statutes, Section 627.7074 is valid. Rather, the Second District Court of Appeal's opinion states that the mandatory stay provision of Florida Statutes, Section 627.7074 (2010) is not an unconstitutional violation of separation of powers.

More specifically, the Second District Court of Appeal stated the following:

We agree that the stay provision is sufficiently intertwined with substantive provisions so that it is not an unconstitutional violation of powers. The statute reflects a legislative intent to encourage early resolution of a sinkhole claim where the parties disagree on valuation; the automatic stay and the other provisions of the statute combine to facilitate this intent. We deny the petition for writ of mandamus. (internal citations omitted).

The above-quoted language does not expressly declare valid a state statute. Rather, the above-quoted language makes a pronouncement about the constitutionality of the mandatory stay provision of Florida Statutes, Section 627.7074 (2010) in light of the principle of separation of powers.

An express declaration as to the validity of a state statute is required under Florida Rule of Appellate Rule 9.030(a)(2)(A)(i) as a prerequisite to a request to invoke the discretionary jurisdiction of this Court. A tacit hint or other "clue" as to the validity of a statute will not suffice for purposes of Rule 9.030(a)(2)(A)(i). See Harry Lee Anstead, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 503 (Spring 2005). In light of the fact that the



Second District Court of Appeal did not expressly declare a state statute, i.e. Florida Statutes, Section 627.7074, valid, this Court should decline to exercise its discretionary jurisdiction.

### **CONCLUSION**

For the aforementioned reasons, Respondent, Cooperativa, asks this Court to refuse to exercise jurisdiction over this matter.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by first class U.S. Mail delivery to: **Michael Laurato, Esquire, Austin & Laurato, P.A.**, 1902 West Cass Street, Tampa, Florida 33606 on this 21<sup>st</sup> day of February, 2012.

*s/Aimee M. Nocero*

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**CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS**

I hereby certify that this Brief on Jurisdiction complies with the font requirements of Rule 9.210(a).

*s/Aimee M. Nocero*

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AIMEE M. NOCERO, ESQUIRE