

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-

SECOND DCA CASE NO.: 2D11-3599

JEHAD MASWADI,
Appellant,

vs.

WACHOVIA BANK, N.A. a/k/a
BANK CARD SERVICES, N.A.,
Appellee.

_____ /

FILED
THOMAS D. HALL
2013 AUG -2 AM 9:54
CLERK, SUPREME COURT
BY _____

JURISDICTIONAL BRIEF OF APPELLANT

ON DISCRETIONARY REVIEW FROM A DECISION OF THE SECOND
DISTRICT COURT OF APPEAL

JEHAD MASWADI
2003 Larkspur Court
Trinity FL 34655

TABLE OF CONTENTS

TABLE OF CONTENTS.....	I
TABLE OF AUTHORITIES	ii
PREFACE	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF COMPLIANCE	7
APPENDIX	8

TABLE OF AUTHORITIES

<i>Collazo v. Hupert,</i> 693 So.2d 631 (Fla. 3d DCA 1997)	5
<i>Henderson v. Reyes,</i> 702 So.2d 616 (Fla. 3d DCA 1997)	5
<i>Holl v. Talcott,</i> 191 So.2d 40, 43-44 (Fla.1966)	4
<i>Kemper v. First Nat'l Bank of Dayton, Ohio,</i> 277 So.2d 804 (Fla. 3d DCA 1973)	4
<i>Payne v. Cudjoe Gardens Prop. Owners Ass'n.,</i> 837 So.2d 458, 461 (Fla. 3d DCA 2002)	5
<i>Singer v. Star,</i> 510 So.2d 637, 639 (Fla. 4th DCA 1987)	4
<i>Smith v. Smith,</i> 734 So.2d 1142, 1144 (Fla. 5th DCA 1999)	4
<i>Spradley v. Stick,</i> 622 So.2d 610, 613 (Fla. 1st DCA 1993)	5

OTHER AUTHORITIES:

Art. V, §3(b)(3), Fla. Const.	3, 4, 6
Fla. R. App. P. 9.030(a)(2)(A).	2, 3, 4, 6

PREFACE

The Appellant, JEHAD MASWADI, seeks to invoke the discretionary jurisdiction of this Court. The Appellant has filed a belated Motion for Clarification and for a Written Opinion with the Second District Court of Appeal and requests this Court hold this case in abeyance until such time as a written opinion is produced by the Second District. The Appellant concedes this Court is ordinarily without jurisdiction to exert discretionary review over a per curiam affirmance from a District Court of Appeal. This brief will address the issues as if the Second District had issued an opinion rather than a per curium affirmance.

The Appellant, JEHAD MASWADI, will be referred to as “Maswadi” or “Defendant.” The Appellee, WACHOVIA BANK, N.A. a/k/a BANK CARD SERVICES, N.A., will be referred to as “Wachovia” or “Plaintiff.” The decision of the Second District Court of Appeal is attached hereto as an Appendix consisting of one page. References to the Appendix will by the abbreviation “Appx.” This brief was prepared with the assistance of counsel.

APPELLANT'S STATEMENT OF THE FACTS AND CASE

On May 17, 2013, Second District Court of Appeal issued a per curiam affirmance of the trial court's Summary Final Judgment (the "Final Judgment"). At the time the Final Judgment was entered, outstanding discovery was due from the Wachovia.

Wachovia had failed to provide full and complete responses to the Defendant's Request for Production and Request for Admissions, and a Motion to Compel had not been fully adjudicated by the trial court at the time the Final Judgment was entered. By allowing the Motion for Summary Judgment to be heard while discovery was not complete, the trial court engaged in conduct that is in direct conflict with existing case law. The Defendant appealed the Final Judgment to the Second District Court of Appeal. On May 17, 2013, the Second District issued a per curiam affirmance. The Defendant timely filed a motion for hearing, clarification, and certification. Same was denied by the Second District on June 18, 2013. This appeal was initiated timely. Defendant has filed with the Second District a Motion for Clarification and for a Written Opinion, and same has not yet been adjudicated.

The Defendant seeks to invoke the discretionary jurisdiction of this Court pursuant to Fla. R. App. P. 9.030(a)(2)(A), assuming the Second District issues a written opinion.

SUMMARY OF THE ARGUMENT

By affirming the Final Judgment, the Second District has issued a ruling in conflict with other Florida District Courts of Appeal, including the First, Third, Fourth, and Fifth DCAs, regarding the propriety of proceeding with summary judgment when discovery is incomplete. Upon issuance of a written opinion from the Second District, this Court will have jurisdiction to review the opinion pursuant to Fla. R. App. P. 9.030(a)(2)(A) and Art. V, sec. 3(b)(3), Fla. Const.

ARGUMENT

Pursuant to Fla. R. App. P. 9.030(a)(2)(A) and Art. V, sec. 3(b)(3), Fla. Const., jurisdiction of the Supreme Court may be sought to review orders of a District Court of Appeal that are in conflict with other District Courts of Appeal.

The order under review was entered by the trial court as a summary judgment when Wachovia had failed to fully and completely respond to outstanding discovery. The discovery sought was germane to the issues before the trial court on summary judgment. The discovery requests included, *inter alia*, the credit agreement. Other Florida courts have addressed the issue of premature summary judgment while discovery is outstanding, and the decision of Second District, by issuing a per curiam affirmance, appears to be in conflict with the law established by other Florida District Courts of Appeal.

Summary judgment may not be granted unless the moving party is able to show that no genuine issues of material fact exist. *See Holl v. Talcott*, 191 So.2d 40, 43-44 (Fla.1966); *Kemper v. First Nat'l Bank of Dayton, Ohio*, 277 So.2d 804 (Fla. 3d DCA 1973). Where discovery is not complete, the facts are not sufficiently developed to enable the trial court to determine whether genuine issues of material facts exist. *See Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). Thus, where discovery is still pending, the entry of Summary Judgment is premature. *See Smith v. Smith*, 734 So.2d

1142, 1144 (Fla. 5th DCA 1999)("Parties to a lawsuit are entitled to discovery as provided in the Florida Rules of Civil Procedure including the taking of depositions, and it is reversible error to enter summary judgment when discovery is in progress and the deposition of a party is pending."); *Henderson v. Reyes*, 702 So.2d 616 (Fla. 3d DCA 1997)(reversing the entry of Summary Judgment where depositions had not been completed and a request for the production of documents was outstanding.); *Collazo v. Hupert*, 693 So.2d 631 (Fla. 3d DCA 1997) (holding that a trial court should not entertain a motion for summary judgment while discovery is still pending); *Payne v. Cudjoe Gardens Prop. Owners Ass'n.*, 837 So.2d 458, 461 (Fla. 3d DCA 2002); *Spradley v. Stick*, 622 So.2d 610, 613 (Fla. 1st DCA 1993).


The Defendant has filed a belated Motion for Clarification and for a Written Opinion with the Second District Court of Appeal and requests this Court hold this case in abeyance until such time as a written opinion is produced by the Second District. The Defendant concedes that this Court is ordinarily without jurisdiction to exert discretionary review over a per curiam affirmance from a District Court of Appeal, and requests this Court hold this case in abeyance until such time as the Second District adjudicates the pending Motion for Clarification and for a Written Opinion. This brief has addressed the jurisdictional issues as if the Second District had issued an opinion rather than a per curium affirmance.

CONCLUSION

The trial court should have continued the hearing on Wachovia's Motion for Summary Judgment until discovery was complete. By issuing the per curiam affirmance, the Second District has effectively ratified the conduct of the trial court. The trial court's decision to proceed with summary judgment when discovery was still pending is in conflict with the law in the First, Third, Fourth, and Fifth DCAs.

For the reasons set forth above, the Defendant respectfully requests the Court hold this appeal in abeyance until such time as the Second District adjudicates Defendant's Motion for Clarification and for a Written Opinion, and if an opinion is written, invoke its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A) and Art. V, sec. 3(b)(3), Fla. Const.

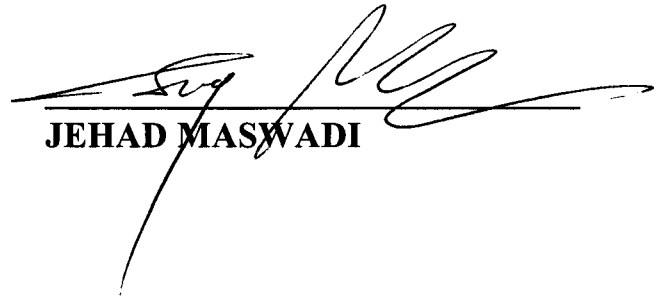
Respectfully submitted,



JEHAD MASWADI
2003 Larkspur Court
Trinity FL 34655

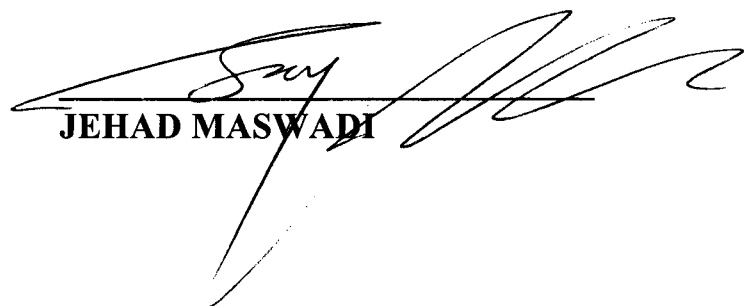
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S. Mail to Nancy M. Wallace, Esq. and Michael J. Larson, Esq., 106 E. College Avenue, Suite 1200, Tallahassee, Florida 32301, this 30 day of July, 2013.


JEHAD MASWADI

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief uses Times New Roman 14-point font and complies with all font requirements of the Florida Rule of Appellate Procedure.


JEHAD MASWADI

APPENDIX

A. *Maswadi v. Wachovia Bank, N.A., a/k/a Bank Card Services, N.A.*

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JEHAD MASWADI,

Appellant,

v.

WACHOVIA BANK, N.A., a/k/a BANK
CARD SERVICES, N.A.,

Appellee.

Case No. 2D11-3599

Opinion filed May 17, 2013.

Appeal from the Circuit Court for Pasco
County; Stanley R. Mills, Judge.

Jehad Maswadi, pro se.

Nancy M. Wallace and Michael J. Larson of
Akerman Senterfitt, Tallahassee, and William
P. Heller of Akerman Senterfitt, Fort
Lauderdale, for Appellee.

PER CURIAM.

Affirmed.

DAVIS, WALLACE, and LaROSE, JJ., Concur.