

IN THE SUPREME COURT OF FLORIDA

Case No.: SC 14-1276

FILED
JOHN A. YOUNG SR.

2014 JUL -3 A 10: 48

CLERK SUPREME COURT

KEVIN J. PROODIAN and ANNETTE L. PROODIAN,

Petitioner,

vs.

WASHINGTON MUTUAL BANK, F.A.

Respondent,

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

Case No.: 4D13-4425

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

Kevin J Proodian and Annette L Proodian (“Proodians”) filed an action to remove a cloud on their title. The Cloud belongs to Washington Mutual Bank, F.A. (WAMU). WAMU appeared generally through its counsel. WAMU requested more time to respond. The trial court granted the request and ordered WAMU to file an answer within 15 days of the date of the Order. WAMU failed to comply with the trial court’s order. Proodians moved for entry of a default. The trial court denied the motion on the grounds that an answer had been filed by a non-party JP MORGAN CHASE BANK, N.A. individually and as Acquirer of Certain Assets and Liabilities of Washington Mutual Bank, F.A. (CHASE). The record does not reflect that the trial court entered an Order allowing CHASE to intervene in the case. Proodians moved for reconsideration and rehearing of the Order denying their Motion for Judicial Default and Default Judgment. The trial court denied the Motion for Rehearing. The Proodians filed a petition for an extra ordinary writ in the Fourth District Court of Appeals (4th DCA). The 4th DCA granted a motion to dismiss from non-party CHASE and dismissed the case citing that the Order being appealed is not an appealable order.

The Fourth District was asked to determine whether the trial court erred as a matter of law when it denied Proodians’ Motion for Default and Default Judgment on the basis on papers filed by CHASE without properly intervening in the case. The

entirety of the Fourth District's decision was focused upon that the order was not one of the orders listed as an appealable order. The 4th DCA then proceeded to allow a non-party to intervene in the case on appeal without an Order granting intervention and without an order substituting CHASE for WAMU. Proodians timely requested a re-hearing or a re-hearing en banc on the grounds that the 4th DCA overlooked the fact that Proodians filed a Petition for a Writ and not an Appeal and accordingly, the 4th DCA has jurisdiction to review the petition. Additionally, Proodians pointed out that the party filing the reply is a non-party to the case. Proodians also pointed out that the matter to be reviewed is of great public importance since the acts of the trial court, specifically allowing a non-party to litigate a case without first issuing an Order, has allowed CHASE to intervene. Proodians seek that this Court to take jurisdiction of this case and allow them to file a brief on the merits because the acts of the trial court and the 4th DCA are in complete contradiction to long established law and rules enacted by this Court. Specifically, the acts of the trial court and the 4th DCA contradict well established law governing Notice of Lis Pendens and intervention in a pending action.

SUMMARY OF ARGUMENT

Petitioner, Proodians, seek to invoke the discretionary jurisdiction of this Court pursuant to Article V, Section 3(b) of the Florida Constitution. The April 4th, 2014 Order below (the "Order"), *see* Appendix at P1, misapplies Rule 1.230 Fla. Civ. P. and thereby conflicts with other district court's rulings in, among other

cases, *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992) (quoting *Morgareidge v. Howey*, 78 So. 14, 15 (1918)). Further, the 4th DCA expressly construed Florida Rules of Appellate Procedures in reaching its decision. *see* Appendix at P1.

As this Court has established the following test to determine what interest entitles a party to intervene:

[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992) (quoting *Morgareidge v. Howey*, 78 So. 14, 15 (1918)).

The Trial court and the 4th DCA failed to comply with this Court's established test and proceeded to allow intervention without strict compliance with the rule.

JURISDICTIONAL ARGUMENT

This Court should exercise its jurisdiction because the trial court and 4th DCA did not apply the Rule 1.230 Fla. Civ. P. as mandated by this Court to determine whether CHASE may intervene in the case. Although intervention under the rule is classified as of right, there must be an application made to the court for the court to rule on upon full consideration. The trial Court and the 4th DCA allowed an abrupt and unnoticed intervention by CHASE in lower tribunals contrary to the established

requirements for intervention in a pending action. CHASE did not petition the trial court nor the 4th DCA for intervention. Yet, CHASE was allowed to file papers and defend against an action filed against WAMU, a represented party by counsel. CHASE did not identify its capacity or its interest in the property or how the outcome of the litigation may affect any undisclosed interest it may have in Proodians' property. The trial court and the 4th DCA ruled contrary to law when they allowed CHASE to file papers in the cases without first complying with these Courts established rules and law. Florida law recognizes the importance of protecting rules of civil procedure that give transparency to the judicial proceedings and save scarce judicial resources when complied with. Rule 1.230 Fla. Civ. P., provides the orderly steps that would allow a party that can show the court it has a valid interest in the outcome of the litigation to assert its interest by timely intervening in the case pursuant to Rule 1.230 Fla. Civ. P.

One stated purpose of the Rule 1.230 Fla. Civ. P., is providing the limited time to intervene and challenge the claim upon a showing of a valid interest and obtaining a court order allowing the intervention. This purpose can no longer be served if any party can add the words "as acquirer of certain assets and liabilities of Defendant". This entire bar on untimely intervention and the requirement to show a valid interest in the outcome of the litigation, along with numerous requirements provided in Florida law, is now at risk as a result of the 4th DCA decision. Parties who can now intervene without filing a motion to intervene and without obtaining a court order,

can now intervene by simply filing papers and adding the words "as acquirer of certain assets and liabilities of a named defendant". The 4th DCA's dismissal effectively opened the floodgates to any party without a valid interest in the outcome of the litigation to come into a case by a simple addition of some words after its name and be able to negate most or all of the statutory requirements of Florida law.

Florida law provides that "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Rule 1.230 Fla. Civ. P. Further, "[a]ll persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff." Rule 1.210(a) Fla. Civ. P.

This Court has established the following test to determine what interest Entitles a party to intervene:

[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.

Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992)

(quoting *Morgareidge v. Howey*, 78 So. 14, 15 (1918)).

In applying this test, "[f]irst, the trial court must determine that the Interest asserted is appropriate to support intervention. Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention." /d. "In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance." /d. at 508.

"Second, the court must determine the parameters of the intervention.

As the drafters of rule 1.230 noted: "Under this rule, the court has full control over intervention, including the extent thereof; although intervention under the rule is classified as of right, there must be an application made to the court, and the court in its discretion, considering the time of application as well as other factors, may deny the intervention or allow it upon conditions." /d. (citation omitted).

CHASE did not submit a request for intervention which should have been denied even if it were submitted for the following reasons:

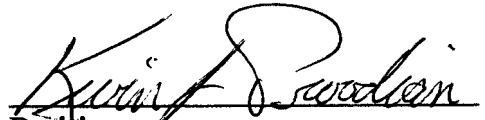
First, CHASE does not have nor is able to demonstrate that it has a direct and immediate interest sufficient to justify intervention because it does not have any recorded or unrecorded interest in the property subject to the action.

Second, the sound exercise of the trial courts and the 4th DCA's discretion weighs in favor of not permitting intervention under the circumstances because

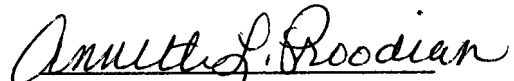
Proodians and CHASE have no privity of contract nor has CHASE acquired an interest in their property by transfer or assignment from WAMU. Neither WAMU nor Proodians have consented to the improper intervention that occurred without filing a motion and the intervention occurred more than 30 days after this case was initiated. The improper intervention that occurred in the trial court and the 4th DCA prejudiced Proodians and caused material delay to the forward progress of their action.

CONCLUSION

The Fourth District's order expressly and directly conflicts with *the intent of* Rule 1.230 Fla. Civ. P. The 4th DCA's failure to apply the two-part analysis required to determine the permissibility of intervention was contrary to the methods for administering justice. In so doing, the Fourth District construed the rule enacted by this Court as not being required which is inconsistent with the rule of law as pronounced by this Court. This Court should exercise its jurisdiction to enforce the Rules put in place for the proper administration of justice and ensuring procedural due process.


Petitioner

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on Wednesday, June 2nd, 2014, a true and correct copy of the foregoing was furnished via facsimile and e-mail to Washington Mutual Bank, F.A., 400 East Main Street, Stockton, California 95202; Nicola Gelormino, attorney for Respondent, Washington Mutual Bank, F.A., Wargo & French, LLP, 201 S. Biscayne Boulevard, Suite 1000, Miami, Florida 33131.


Email: ngelormino@wargofrench.com, flservice1@wargofrench.com,
flservice2@wargofrench.com

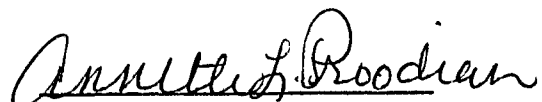

Petitioner
Kevin J. Proodian


Petitioner
Annette L. Proodian

CERTIFICATE OF COMPLIANCE

Petitioners, KEVIN PROODIAN and ANNETTE L. PROODIAN, certify that this *Jurisdictional Brief* is typed in 14 point (proportionately spaced) Times New Roman, in compliance with Rule 9.210 of the Fla. App. P.


Petitioner
Kevin J. Proodian


Petitioner
Annette L. Proodian