

20-1417

SUPREME COURT OF THE UNITED STATES

MIGUEL ESTIVILL and CIRABEL ESTIVILL,

Petitioners,

Vs.

STATE OF FLORIDA,

Respondent.

FILED
JAN 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for a Writ of Certiorari to
the Florida Third District Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

Florida Supreme Court, Case No. SC20-1508

3rd District Court of Appeals, Case No. 3D19-2460

Lower Tribunal No. 2017-017425

RECEIVED
APR - 5 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

I. QUESTION PRESENTED

Where the 3DCA neglected their prime duty to Rule by affirming the Trial Court's order which was in clear violation of R. Jud. Admin. 2.215(f) and Florida Rules, Code of Judicial Conduct, Canon 3, B(1) i.e. Duty to Rule within a Reasonable Time and Adjudicative Responsibilities respectively. The 3DCA caused the petitioners Irreparable Harm/loss which cannot be remedied through a final appeal.

Where the 3DCA while having Jurisdiction violated Petitioners Constitutional Rights as per the United States Constitution, Amendment XIV, Section 1, when they abridged Petitioners right and privilege of a Fair Hearing, by not Hearing and Ruling on Petitioners Motion for Rehearing and Reconsideration Filed at the Trial Court Level which was previously denied for Lack of Jurisdiction, which cannot be the same answer from the 3DCA., hence affirming the Trial's Court Order is a Serious Legal Mistake.

Whereas per Rule 9.330(a)(2)(D)(i), *a legitimate basis for supreme court review.* The decision rendered by the Third District Court of Appeal in *Miguel Estivill and Cirabel Estivill v. Philip Von Kahle* expressly and directly conflicts with the Fifth District Court of Appeal decision in *Berry v. Berry* regarding what is defined as a

ministerial act. In Petitioners Case, Petitioners did not receive a fair trial or hearing because of the specifically described prejudice or bias of the judge.

Where Petitioners presented Substantial Competent Evidence of at least 10 badges of Fraud done with the Clear Intent to Defraud Creditors to the Trial Judge and to the 3DCA, Solid Proof of Serious Fraudulent Actions as part of an Adversary Proceedings Complaint that was never Properly addressed or answered by any of the Courts in an Act of clear miscarriage of Justice.

II. TABLE OF CONTENTS

Sections	Page
I. QUESTION PRESENTED	2
II. TABLE OF CONTENTS	4
III. TABLE OF AUTHORITIES	5
IV. PETITION FOR WRIT OF CERTIORARI	6
V. ORDER TO REVIEW	6
VI. JURISDICTION	8
VII. CONSTITUTIONAL PROVISIONS INVOLVED	9
VIII. STATEMENT OF THE CASE AND FACTS	10
1. Historical Context	14
IX. REASONS FOR GRANTING THE WRIT	23
X. CONCLUSION	29
XI. CERTIFICATE OF SERVICE	30
XII. CERTIFICATE OF COMPLIANCE	31
XIII. APPENDIX	32

III. TABLE OF AUTHORITIES

Cases

<i>CID v. MAX SOUTH CONST., INC.</i> , 208 So. 3d 763 (Fla: Dist. Court of Appeals, 3rd Dist. 2016)	
<i>Mejia v. Ruiz</i> , 985 So. 2d 1109 (Fla. 3dDCA 2008)	10
<i>Anstead, The Operation and Jurisdiction of the Supreme Court of Florida</i> , 29 Nova L. Rev. at 511 (2005).	22
<i>The Florida Star v. B.J.F.</i> , 530 So. 2d 286, 288 n.3 (Fla. 1988).	23
<i>Fernwoods v. Alonso and T&G Management</i> , 26 So.3d 27, 29 (Fla. 3rd DCA 2009)	24
<i>Berry v. Berry</i> , 765 So. 2d 855, 857-58 (Fla. 5th DCA 2000)	24
<i>Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co.</i> , 864 F.2d 927, 929 (1st Cir. 1988);	26
<i>Combs v. State</i> , 436 So. 2d 93, 95 (Fla. 1983),	27
<i>Hazel-Atlas Glass Co. v. Hartford Empire Co.</i> , 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)	11,12, 25

Constitutional Provisions

United States Constitution, Amendment XIV, Section 1	8
United States Constitution, Amendment VII	8

Statutes

28 U.S.C. § 1257 and Rule 18 of the RULES OF THE SUPREME COURT OF THE UNITED STATES, 2019	7, 22
---	-------

RULE 2.215. TRIAL COURT ADMINISTRATION (f)	23
Florida Rules, Code of Judicial Conduct , Canon 3, B.	23
Florida Rules of Appellate Procedure, Rule 9.330(a)(2)(D)	4, 25, 27

IV. PETITION FOR WRIT OF CERTIORARI

Petitioners MIGUEL ESTIVILL and CIRABEL ESTIVILL, represented *Pro-Se*, respectfully petitions this Court for a Writ of Certiorari to Review the Florida 3rd District Court of Appeals Final Opinion / Orders / Judgments, and allow Petitioner's right to receive a fair trial or hearing.

V. ORDER TO REVIEW

1. Per Curiam Affirmed Opinion by the 3DCA on August 19, 2020, Exhibit "A". being the response to the Appeal filed by Petitioners on Three Final Orders from the Trial Court and a result of an improper and incomplete Review of all the Illegal Actions performed by the Assignor and the Assignee during the course of the Assignment for the Benefit of Creditors Proceedings, and based on the Substantial Competent Evidence presented by Petitioners, which were completely ignored.

The Orders being reviewed as part of Petitioners Appeal:

(a) ORDER DENYING C&ID and MIGUEL ESTIVILL (the "Movants") (i) Motion to Compel and (ii) Objection to Settlement Agreement, on April 22,

2019, Order which ignored by not Ruling ESTIVILL's Motion to Compel Assignor Pitchman, and Order which ignored by not Ruling ESTIVILL's Adversary Proceeding Complaint, (Substantial Accusation of Fraud). Exhibit "B"

- (b) Order Granting Assignee's Motion for Approval of Settlement Agreement with Eric Pitchman, May 9, 2019, Exhibit "C"
- (c) Final Order Granting Assignee's Motion to Close Assignment Proceedings, to approve final report, to approve fees of the assignee and assignee's counsel, to Approve Final Distribution, to Abandon Preparation of Federal and State Tax Return, to Reject All Executory Contracts, to Abandon All Other Assets of the Assignor and to Discharge Assignee and Release Assignee's Bond. Nov 19, 2019, Exhibit "D"

Petitioner's claims and issues were not addressed at both the levels. The most relevant motions and Complaints filed were unheard, ignored and out-rightly denied by the 3DCA following the pattern of the Trial Court.

In order to understand why the Per Curiam Affirmed opinion of 3DCA is Legally Improper, this Honorable Court is requested to review "Petitioners Amended Initial Brief and Response to Appellee,s Answer Brief" Exhibit "E", since a Per Curiam Affirmed Opinion doesn't explain any reasoning or analysis done to reach such Result and Petitioner's request for a written opinion was denied, barring

Petitioner's right to Appeal at State Level. Keeping in consideration the statement of facts of the case and the historical background, the PCA order is passed with utmost prejudice and no legal standing. It is biased in its entirety and is a clear violation of the Petitioner's constitutional right to fair trial.

VI. JURISDICTION

The Florida Supreme Court Issued an Order Dismissing the Case in response to Mr. and Mrs. Estivill's Notice of Appeal which was directed to the US Supreme Court, and sent mistakenly by the 3DCA to the Florida Supreme Court, knowing that based on Legal Technicalities it was going to be denied as explained in Detail on the Same Notice of Appeal.

After the Per Curiam Affirmed Opinion was issued by the 3DCA, Petitioners filed a Motion for Rehearing and Reconsideration along with a Request for a Written Opinion on Sept 03, 2020, which was denied, eliminating Petitioner's chances to Appeal at the Florida Supreme Court.

The Last Motion for Rehearing and Reconsideration Filed at the Trial Court Level was denied for Lack of Jurisdiction, since Petitioners had already File the Appeal at the 3DCA, and the 3DCA while having Jurisdiction for such Rehearing, didn't granted it either without any legal explanation.

MIGUEL ESTIVILL and CIRABEL ESTIVILL invokes this Court's Jurisdiction under 28 U.S.C. § 1257 and Rule 18 of the RULES OF THE SUPREME COURT OF THE UNITED STATES, 2019, having timely filed this petition for a Writ of Certiorari within (90) ninety days of the Florida Supreme Court Final Order (Rule 13.1), having timely resubmit with Corrections within the allowed 60 days of US Supreme Court Letter dated Jan 26, 2021 (Rule 13.5), and as Petitioners Last and Only resource.

VII. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,

Amendment XIV, Section 1: *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Petitioners are being denied the right to fair hearing and the protection of the laws, The State of Florida is enforcing a Law that abridges Petitioner's Constitutional Privileges.

Amendment VII: *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.*

The Court has indicated frequently, however, that, in cases involving a claim of a denial of constitutional rights, it is free to examine and review the evidence upon which the lower court based its conclusions,

Issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court.

Congress had, “by statute, provided for the trial of issues of fact in civil cases by the court without the intervention of a jury, only when the parties waive their right to a jury by a stipulation in writing.”

Petitioners are being denied the right to be heard and Rule Upon on the Factual Evidence of Fraud presented to the Trial Court, the 3DCA and the Florida Supreme Court, and the Right to a Jury Trial to resolve the issues of facts presented to every Court of Law.

VIII. STATEMENT OF THE CASE AND FACTS

In this Specific Case, Petitioners presented Substantial Competent Evidence of at least 10 badges of Fraud and several million dollars missing from Assignor's bank accounts with the Clear Intent to Defraud Creditors to the Trial Judge and to the 3DCA, Solid Proof of Serious Fraudulent Actions as part of an Adversary Proceedings Complaint that was never Properly addressed or answered in an Act of Clear miscarriage of Justice. On the ABC Case, Assignee and Assignor never responded to Petitioners Accusations of Fraud, since they lack Substantial Competent Evidence to prove otherwise, every Supporting Document provided by the Assignee was intentionally and conveniently merely the Last 6 months of the Assignee Managing the Stated, showing most of Assignors Banks Accounts with \$0.00 Balance, just a fake report after Assignor made all the Necessary Fraudulent Transfers to Hide his Assets from Creditors; the replacement Trial Judge never forced the Assignee or the Assignor to respond to Petitioners Accusations of Fraud, which was the clear intention of the Original Judge before getting Transferred.

"While a single badge of fraud may amount only to a suspicious circumstance, a combination of badges will justify a finding of fraud." *Mejia v. Ruiz*, 985 So.2d 1109, 1113 (Fla. 3d DCA 2008).

Petitioners Case has one of the largest amounts of Badges of Fraud compared to any other Cases filed on any Courts of Law in the United States, not a single one of these Badges of Fraud has being Contested, instead they were thrown under the Rug to be hidden and ignored, on Petitioner's Case it is undeniable the presence of Fraud at Large, but it all just die and becomes mute if the Judge Ignores them and let the Assignee and Assignor proceed to Close the Case without having to respond to Justice for their Crimes, Petitioner doesn't have the Power or the

Legal Recourses to do more, if the mere Justice System that is supposed to protect us Fails in doing so.

Miguel Estivill came to USA “The Greatest Country in the World” in 1991 by Raft from Cuba risking his life and looking for Freedom, Freedom of Speech, Justice and Human Rights, things that were totally missing in his Country of Birth because of the Castro’s Dictatorship; Petitioner Miguel arrived without a single Penny and has worked very Hard to secure his and his Family Future in the Land of Opportunities. Petitioners through their Company Classical & Innovative Designs, Inc. “Minority Construction Firm of the Year, Atlanta Regional in 2009, and Minority Construction Firm of the Decade, Dade and Broward in 2010”, has also received National Recognition for Building one of the Best Exposed Concrete Structures in the Industry, Nationally and Worldwide. Sadly as a result of Max South and Eric Pitchman’s Actions, Petitioners lost their Construction Capital, Bonding Capacity, Family Personal Savings, all CID’s Employees and even caused an irreparable damage to Miguel Estivill’s Health and his Family’s mental health. The fruit of 30 Years of Hard Work and the Future of a Humble Family of Five has been taken away by some Criminals while the Justice System by the means of improper legal technicalities refuses to look for the Absolute Truth and make Justice.

Just like in *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, there is more than enough and adequate evidence that shows Fraud at Large, Actions that shouldn’t ever be tolerated consistently with the good order of society. “The Circuit Court did not hold that Hartford’s fraud fell short of that which prompts equitable intervention, but thought Hazel had not exercised proper diligence in uncovering the fraud and that this should stand in the way of its obtaining relief. We cannot easily understand how, under the admitted facts, Hazel should have been expected to do more than it did to uncover the fraud. But even if Hazel did not exercise the

highest degree of diligence, Hartford's fraud cannot be condoned for that reason alone. This matter does not concern only private parties. There are issues of great moment to the public" *Hazel-Atlas Glass Co. v. HartfordEmpire Co.*,

"Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co. v. HartfordEmpire Co.*,

Like on *Hazel-Atlas Glass Co. v. HartfordEmpire Co.*, the Trial Court and the 3DCA Court should have vacated the Final Order which allows the Assignee to Close the ABC Proceedings and Granted Petitioners Adversary Proceedings Complaint, returning all the Moneys from all Fraudulent Transfers before and during the curse of the ABC Proceedings to the State, to be properly disbursed to Creditors. Tampering with the administration of justice should not be tolerated

"We have, then, a case in which undisputed evidence filed with the Circuit Court of Appeals in a bill of review proceeding reveals such fraud on that Court as demands, under settled equitable principles, the interposition of equity to devitalize the 1932 judgment despite the expiration of the term at which that judgment was finally entered.", *Hazel-Atlas Glass Co. v. HartfordEmpire Co.*,

“Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule,” *Hazel-Atlas Glass Co. v. Hartford Empire Co.*,

1. Historical Context

The Claims which are involved in the Dispute (including the Assignment for the Benefit of Creditors mere Existence) aroused out of Contract between CID and Max South *on 11/06/2013* for the Concrete/Masonry Shell Scope of the Bay Harbor Club Condominium Project.

The Record Index on Appeal filed by Petitioners at the 3DCA is hereby cited as "RI" followed by the page number. Appellant initial brief is hereby cited as "IB" followed by the page number.

Case #: 14-027158-CA-01 (Max South Breach of Contract for Non-Payment to CID) is a Claim that aroused out of Max South Misappropriation of Money rightfully owed to CID for the Work done on the Bay Harbor Club Condominium Project, about \$1,020,797.49 (Work Done, Approved by Max South and Approved and Allegedly Paid by the Owner (BH Developers, LLC.), but Illegally retained by Max South). Total Original Claim Value Including Damages are \$3,788,689.49 plus Interest, Legal Fees and Costs to Date.

- *On November 13, 2013 CID Started Work on the Bay Harbor Club Condominium Project,*
- *On August 20, 2014 Eric Pitchman and Three Other employees of Max South Orchestrated a Brutal Attack on ESTIVILL (RI. 149), an Aggravated Battery Criminal Act that almost Killed ESTIVILL out of frustration for not being able to Find any Legal excuse to Terminate CID and Retain CID's Money.*
- *On August 25, 2014 CID Filed its Claim of Lien for \$789,000.00*
- *On August 29, 2014 After Four Prior Notices of Non-Payment, CID Filed its Notice of Termination of CID Subcontract with Max South for Non-Payment,*
- *On September 3, 2014 Max South Filed a Complaint against CID on Bases of Alleged Construction Defects. (Case #: 14-022705-CA-01), along with Max South Notice of Termination of CID's Contract on September 4, 2014*
- *On September 19, 2014 CID Filed a Motion to Dismiss Max South Complaint*
- *On September 26, 2014 CID Filed its Amended Claim of Lien for \$593,766.65*
- *On September 30, 2014 CID Filed its First Set of Request for Production.*
- *On October 22, 2014 Max South Filed its Show Cause Complaint vs. CID (Case #: 14-027158-CA-01) "New Case #" Same Issue*
- *On November 14, 2014 CID Filed its Answer to Max South's Complaint and 3rd Party Complaint for Foreclosure of Lien against the Owner.*
- *On November 17, 2014 CID Filed its Second Set of Request for Production.*

- *On November 21, 2014* Max South posted a \$826,820.06 Cash Bond with part of CID's Money to Release the Lien from the Property and allow BH Developers, LLC. to sell all the Units and Receive the Benefits of the Construction without paying CID for the Cost of the Shell Work done.
- *On March 30, 2016* The Trial Court Issued an Order Granting Max South's Motion for Judgment on the Pleadings, Cancelling CID's Claim of Lien and Amended Claim of Lien, and Returning the \$826,820.06 Cash Bond to Max South.
- *On November 16, 2016* The 3DCA Issue its Opinion Granting CID's petition for Certiorari, reverse the Trial Court's Order and remand with directions to vacate that Order, to issue an Order granting Petitioner's Motion for leave to Amend relating back to the Date that the First Amended Counterclaim and Third Party Complaint was filed, and Ordering that the \$826,820.06 Cash Bond security be reposted to the court registry "within ten days" (3DCA Case #: 3D17-2115). Until the Filing of this Appeal Pitchman and/or the Appellee haven't produce the Document that reflects all the transactions involving the Cash Bond Money which wasn't Reposted violating an Order from the 3DCA and Trial Court, and is also a Clear Violation of the Assignee's Fiduciary Duty by Failing to Comply with his Obligations under § 727.108, Fla. Stat. and the Assignor's Failure to comply with his Obligation under § 727.107, Fla. Stat.

- *On July 21, 2017* Max South Filed its Petition for Assignment for the Benefit of Creditors (Lower Trial Court Case #: 17-017425-CA-01).
- *On October 09, 2017* Hearing Assignee posted its Bond for \$350,499.00 as per Order from Honorable Judge Bronwyn C. Miller on the same date.
- *On February 28, 2018* Order from the 3DCA granting CID's motion to Tax Appellate Attorney's Fees and Remanding Case to Trial Court to fix Amount, Case Number 3D17-2115.
- *On September 4, 2018* Assignee Filed its Omnibus Objection to Claims.
- *On September 26, 2018* ESTIVILL Filed its Creditor Objection to Assignee's Omnibus Objection to Claims.

Objection I - Breach of Contract Claim vs. Max South/Assignment for the Benefit of Creditors of Max South for Non-Payment, Case #: 14-027158-CA-01. Total Claim Value Including Damages are \$3,788,689.49 plus Interest, Legal Fees and Costs op to the Date on Record.

Objection II - Personal Injury Claim vs. Max South/Assignment for the Benefit of Creditors of Max South, Eric Pitchman, Phillip Carter and Ademir Jairo Narvaez (Defendants), Case #: 16-027138-CA-01. Total Claim Value Including Damages are \$10,000,000 plus Interest, Legal Fees and Costs to Date.
- *On October 02, 2018* Assignee Filed its Motion for Approval of Settlement Agreement with Eric Pitchman.

- *On October 04, 2018* Assignee Response to Objection to Claim.
- *On November 07, 2018* Order on Assignee Omnibus Objection to Claims
- *On November 07, 2018* Order for Evidentiary Hearing on Assignee's Objection to (i) Claim of Miguel & Cirabel Estivill, (ii) Claim of Classical & Innovative Designs, Inc., and "The Creditors Response" thereto.
- *On February 25, 2019* CID Filed its 3rd Set of Request for Production to Assignor, Eric Pitchman, Jonina Pitchman and to Assignee. Missing File on Record.
- *On March 25, 2019* CID Filed its Objection to Assignee's Motion for Approval of Settlement Agreement with Eric Pitchman, Motion to Compel & Adversary Proceeding Complaint.
- *On March 25, 2019* Was the 1st 5 min Motion Calendar Hearing with the replacement Honorable Judge Carlos Guzman
- *On March 31, 2019* CID Filed its Objection to Assignee's Motion for Approval of Settlement Agreement with Eric Pitchman, Amended Adversary Proceeding Complaint & Motion to Compel Assignor's and Assignee's Response to CID 3rd Set of Request for Productions to Assignor, Max South, Eric Pitchman, Jonina Pitchman and Assignee and for Sanctions.
- *On April 05, 2019* CID Filed its Objection to Assignee's Motion for Approval of Settlement Agreement with Eric Pitchman, Amended Adversary Proceeding

Complaint & Motion to Compel Assignor's and Assignee's Response to CID 3rd Set of Request for Productions to Assignor, Max South, Eric Pitchman, Jonina Pitchman and Assignee and for Sanctions. This Filing has 52 Pages Additionally to 3/31/19 Filing,

- ***On April 22, 2019 ORDER DENYING C&ID and MIGUEL ESTIVILL (the "Movants") (i) Motion to Compel and (ii) Objection to Settlement Agreement with Eric Pitchman,***

The Motion to Compel is Denied as Moot as to the Assignee;

The Objection to Settlement is Overruled as Untimely;

The Court will Communicate with the Parties Regarding his Ruling on the Settlement.

- ***On April 30, 2019 Notice of Assignee's Withdrawal of Objection to Claims of Classical & Innovative Designs, Inc. and Miguel and Cirabel Estivill***

- ***On May 9, 2019 ORDER GRANTING ASSIGNEE'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH ERIC PITCHMAN,***

Order should have never been Granted when Facing and Accusation for Fraud that has never been addressed by the replacement Judge (see explanation given on the 4/22/2019 Order),

- ***On May 15, 2019 CID's Emergency Motion for Reconsideration/Rehearing on Order Granting Assignee's Motion for Approval of Settlement Agreement with***

Eric Pitchman rendered by the Trial Court on 05/09/2019, on Order Denying CID and ESTIVILL Motion to Compel and Objection to Settlement Agreement with Eric Pitchman rendered by the Trial Court on 04/22/2019

- *On May 15, 2019* CID's Emergency Motion to Stay
- *On July 16, 2019* Return of Service, Subpoena Duces Tecum without deposition served on Eric Pitchman on 07/02/2019
- *On October 2, 2019* Order Denying CID & ESTIVILL Motion for Reconsideration and Motion to Stay.
- *On October 18, 2019* Assignee's Motion to Close Assignment Proceedings, to Approve Final Report, to Approve Fees of the Assignee and Assignee's Counsel, to Approve Final Distribution, to Abandon Preparation of Federal and State Tax Returns, to Reject all Executory Contracts, to Abandon all other assets of the Assignor and to Discharge Assignee and Release Assignee's Bond.
- ***On November 19, 2019* FINAL ORDER GRANTING ASSIGNEE'S MOTION TO CLOSE ASSIGNMENT PROCEEDINGS, TO APPROVE FINAL REPORT, TO APPROVE FEES OF THE ASSIGNEE AND ASSIGNEE'S COUNSEL, TO APPROVE FINAL DISTRIBUTION, TO ABANDON PREPARATION OF FEDERAL AND STATE TAX RETURNS, TO REJECT ALL EXECUTORY CONTRACTS, TO ABANDON ALL OTHER ASSETS OF THE ASSIGNOR AND TO DISCHARGE ASSIGNEE**

AND RELEASE ASSIGNEE'S BOND. Order should have never been Granted when Facing and Accusation for Fraud that has never been addressed by the replacement Judge. Additionally any and all documents prepared by the Assignee including Motions, Financial Reports, etc. don't Have any Valid Documents that support the Assignee's allegations, see complete reports presented by Appellants, there are Several Millions of Dollars Missing from the Reports, Missing Reports and Documents.

- *On November 30, 2019* CID & ESTIVILL Emergency Motion for Reconsideration/Rehearing on Final Order.
- *On November 30, 2019* CID & ESTIVILL Emergency Motion to Stay on Final Order.
- *On December 1, 2019* CID & ESTIVILL Emergency Motion for Reconsideration/Rehearing with Exhibits on Final Order.
- *On December 1, 2019* CID & ESTIVILL Emergency Motion to Stay with Exhibits on Final Order.
- *On December 19, 2019* CID & ESTIVILL Filed its Notice of Appeal.
- *On January 27, 2019* Order Granting CID & ESTIVILL Motion to Stay on Final Order.
- *On January 27, 2020* Order Denying CID & ESTIVILL Emergency Motion for Reconsideration/Rehearing on Final Order, for Lack of Jurisdiction.

- *On May 20, 2020* Petitioners filed its Amended Initial Brief and Response to Appellee's Answer Brief at the 3DCA.
- *On July 28, 2020* Order from the 3DCA dismissing Petitioners Appeal unless an attorney in good standing with the Florida Bar files an appearance on behalf of Classical within ten days, ignoring that Petitioners did file the Amended Brief and Answer Brief only on Behalf of Mr. and Mrs. Estivill as Creditors *Pro-Se* on the Personal Injury Claim to avoid the possibility of precisely this outcome.
- *On August 7, 2020* Petitioners filed a Motion to Reconsider/Clarify the Dismissal Order from the 3DCA along with a Notice of Dropping Party in Case if Needed to Avoid an Improper Dismissal of the Case.
- *On August 14, 2020* Order from the 3DCA granting Petitioners *Pro-Se* Motion to Reconsider/Clarify and Notice of Dropping Party dismissing Classical & Innovative Designs, Inc. and allowing the Appeal to proceed as to all other parties.
- *On August 19, 2020* Opinion PER CURIAM Affirmed from the 3DCA.
- *On September 03, 2020* Petitioners filed its Request for Written Opinion along with its Motion for Rehearing and Reconsideration at the 3DCA.
- *On September 09, 2020* Order Denying Petitioners Request for Written Opinion, and Motion for Rehearing and Reconsideration from the 3DCA.
- *On October 18, 2020* Petitioners filed its Notice of Appeal to the United States Supreme Court, Notice that was mistakenly sent by the 3DCA to the Florida

Supreme Court, knowing that based on Legal Technicalities and not the merits of the Case it was going to be denied as explained in Detail on the Same Notice of Appeal.

- *On October 19, 2020* Order from the Florida Supreme Court Denying Petitioners Notice of Appeal which was sent to the wrong Court.
- *On November 19, 2020* Petitioners filed its 2nd Attempt on Notice of Appeal to the United States Supreme Court, now directly with the Florida Supreme Court and under New Case No. SC20-1508
- *On November 20, 2020* Letter from the Florida Supreme Court explaining that United States Supreme Court does not have Appeal Jurisdiction, that the Only Resource left for Petitioners is to File a Petition for a Writ of Certiorari directly with the US Supreme Court under Case No. SC20-1508.

IX. REASONS FOR GRANTING THE WRIT

Petitioners are Filing this Petition for a Writ of Certiorari at the US Supreme Court as the Last and Only resource, and as per Rule 18 of the RULES OF THE SUPREME COURT OF THE UNITED STATES, 2019; and by applying the abuse of discretion standard and the departure from the essential requirements of the law standard.

1. The US Supreme Court is Petitioners last and only Legal Recourse to Finally make Justice, the Florida Supreme Court couldn't review the 3DCA opinion because of a Legal technicality, not based on the merits of the Case; See *Anstead, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L. Rev. at 511 (2005)*. Because it no longer has such jurisdiction, the only possible appellate review of a PCA issued by a Florida district court will be by the U.S. Supreme Court. *The Florida Star v. B.J.F., 530 So. 2d 286, 288 n.3 (Fla. 1988)*.
2. The Opinion Issued by the 3DCA Affirming the Trial Judge decisions, should be reviewed and reconsidered since the 3DCA also neglected their duty to Rule upon every matter submitted by Petitioners, In this Specific Case, the Trial Judge and the 3DCA Judges did not addressed or Ruled on the Adversary Proceeding Complaint filed by Petitioners, resulting in a miscarriage of justice that caused irreparable harm to Petitioners which couldn't be remedy on a Final Appeal.

As per the general rule under the Florida Rules of Judicial Administration RULE 2.215. TRIAL COURT ADMINISTRATION (f) Duty to Rule within a Reasonable Time: Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time.

Based on Florida Rules, Code of Judicial Conduct , Canon 3, B. Adjudicative Responsibilities. (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

3. As per Rule 9.330(a)(2)(D)(i), *a legitimate basis for supreme court review.*

The decision rendered by the Third District Court of Appeal in Fernwoods v. Alonso and T&G Management expressly and directly conflicts with the Fifth District Court of Appeal decision in Berry v. Berry regarding what is defined as a ministerial act.

"Decisions of the Third District Court of Appeal and the Fifth District Court of Appeal expressly and directly conflict with each other on the question of law regarding what actions are encompassed under the scope of a "ministerial act." The Third District Court of Appeal held that, encompassed under the definition of ministerial act, a judge is permitted to reserve jurisdiction over matters whereas the Fifth District Court of Appeal has outright stated that actions only qualify as a ministerial act when the judge retains no ability to exercise his/her discretion in the matter"

4. 9.330(a)(2)(D)(iii)b., *the issue decided is expected to recur in future cases;* Appellants believe that the issues presented in this case are substantially likely to recur in future cases, and that a written opinion would be helpful in providing guidance to future Attorneys and Pro-Se litigants in navigating

Assignment for the Benefit of Creditor proceedings and appeals from such proceedings. Like on *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, the Trial Court and the 3DCA Court should have vacated the Final Order which allows the Assignee to Close the ABC Proceedings and Granted Petitioners Adversary Proceedings Complaint, returning all the Moneys from all Fraudulent Transfers before and during the curse of the ABC Proceedings to the State, to be properly disbursed to Creditors. Tampering with the administration of justice should not be tolerated.

Hazel-Atlas Glass Co. v. Hartford Empire Co., "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.

5. 9.330(a)(2)(D)(iii)d., *the issue decided is one of first impression;*

On Appellants Amended Initial Brief, pages 46 & 47: The Trial Judge accepted as Competent Substantial Evidence the Assignee's Incomplete and Fraudulent Reports "The Trial judge must consider the proper mix of factors and juxtapose them reasonably. Abuse occurs when a material factor

deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them.” Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co., 864 F.2d 927, 929 (1st Cir. 1988);

Trial Judge Abused his Discretion by Ignoring material Factors which deserve Significant Weight as the Appellant's Adversary Proceedings Complaint and Motion to Compel, and by relying on improper Documents which lacks Competent Substantial Evidence that Supports the Assignee's and Assignor's Allegations.

Based on the Code of Judicial Conduct Canon 3, A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently, 3 B Adjudicative Responsibilities (1) A Judge shall hear and decide matters assigned to the Judge except those in which disqualification is required.”

Petitioners presented Substantial Competent Evidence of at least 10 badges of Fraud and several million dollars missing from Assignor's bank accounts to the Trial Judge and on the Face of such Accusations No Order should have been issued which Allows Assignor to Close the Proceedings, and not paying for his crimes.

6. 9.330(a)(2)(D)(iii)e., *the issue arises in a case in which the court has exclusive subject matter jurisdiction.*

"The Florida Supreme Court explained in Combs v. State, 436 So. 2d 93, 95 (Fla. 1983), that "the district courts of appeal should not be as concerned with the mere existence of legal error as much as with the seriousness of the error." Although courts have "a large degree of discretion" in determining whether a departure from the essential requirements of the law has occurred, they "should exercise this discretion only when there has been a violation of a clearly established principle of law resulting in a miscarriage of justice. """

- *On January 27, 2020* The Trial Court Issued an Order Granting CID & ESTIVILL Motion to Stay on Final Order.
- *On January 27, 2020* The Trial Court Issued an Order Denying CID & ESTIVILL Emergency Motion for Reconsideration/Rehearing on Final Order, for Lack of Jurisdiction.

Appellants Motion for Reconsideration wasn't Heard by the Trial Judge for Lack of Jurisdiction, since Appellants had to File their Appeal before the Rehearing to avoid losing their Right to Appeal for being Late.

The 3DCA has Jurisdiction for Appellants Motion for Reconsideration filed at the Trial Court, and by Affirming the Trial Judge Orders, the 3DCA is

also ignoring this Motion by not Ruling while Having Jurisdiction, on this Motion the 3DCA Opinion cannot be the same as the Trial Judge's, and as a result of the PCA Opinion Petitioners lost their legal right to a proper Hearing on their Motion for Rehearing and Reconsideration, which should have happened on the 3DCA Court.

X. CONCLUSION

WHEREFORE, for the foregoing reasons Petitioners respectfully request that The United States Supreme Court grants this Petition for a Writ of Certiorari and may graciously review the Per Curiam Affirmed Opinion by the 3DCA dated August 19, 2020, which upholds the Trial Court's Final Orders comprised on Petitioners Appeal, and may Please Grant any other relief this Honorable Court deems Just, Equitable and Proper under the circumstances.

XI. CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 27th, 2021, pursuant to Admin. Order No. AOSC13-49, and in accordance with Fla. R. Jud. Admin 2.516, the undersigned complied with the service requirements by electronically filing a Copy of this document via Certified Mail and/or through the Florida Courts E-Filing Portal, which provides for electronic service upon: maxsouthcm@aol.com, Eric Pitchman & Jonina Pitchman, 104 NE 100 Street, Miami FL 33138, and Max South Construction, 13203 NE 16 Avenue North Miami, Florida 33161, and to brett@elrolaw.com, Edelboim Lieberman Revah Oshinsky PLLC, for Assignee, 20200 W Dixie Highway, Suite 905 Miami, FL 33180, and to njoseph@moecker.com, Philip J. von Kahle, Assignee, 1883 Marina Mile Boulevard, Suite 106, Fort Lauderdale, FL 33315, on this 27 day of March 2021, and the original hereof filed with the Clerk of the above-styled court.

Miguel Estivill &
Cirabel Estivill
APPELLANTS (The Creditors)
7901 SW 120 Street
Pinecrest, Florida 33156
Ph: (786) 554-8669
Ph: (786) 444-7464
mestivill@cidesignsinc.com
cestivill@cidesignsinc.com

By: *1s/ Miguel Estivill*

Miguel Estivill

By: *1s/ Cirabel Estivill*

Cirabel Estivill