

In the
Supreme Court of the United States

IN RE: KELACO CORPORATION
D/B/A KELACO CONSTRUCTION CO.,
A FLORIDA CORPORATION,

Petitioner.

**On Petition For an Extraordinary Writ of Mandamus
to the Florida Supreme Court**

**PETITION FOR
EXTRAORDINARY WRIT OF MANDAMUS**

CULLIN A. O'BRIEN, ESQ.
COUNSEL OF RECORD
CULLIN O'BRIEN LAW, P.A.
6541 NE 21ST WAY
FT. LAUDERDALE, FL 33308
(561) 676-6370
CULLIN@CULLINOBRIENLAW.COM

QUESTION PRESENTED

“This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.” *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966).

Denying a party “full access to [the judicial] processes raises problems for its legitimacy.” *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971).

The question presented here is:

Where a Florida state appellate court finds enough merit to an appeal such that it holds an oral argument but, after the oral argument, refuses to issue a written opinion disposing of the appeal, does it violate a party’s rights to Access to Courts and to Due Process guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution given that where there is no written opinion by the Florida state appellate court, the Florida Supreme Court will not consider triggering its discretionary appellate review?

CORPORATE DISCLOSURE STATEMENT

No public company owns 10% or greater of the stock of Kelaco Corporation or any parent company.

LIST OF PROCEEDINGS

Supreme Court of Florida

No. SC21-1142

Kelaco Corporation, Etc., *Petitioner(s), v.*
Best Truss Company, Inc., et al., *Respondent(s)*.

Date of Final Order: August 6, 2021

Court of Appeal of Florida

No. 4D20-1113

Kelaco Corporation d/b/a Kelaco Construction Co., A
FLORIDA CORPORATION, *Appellant/Petitioner(s), v.* Best
Truss Company, Inc., et al., *Appellee/Respondent(s)*

Date of Per Curiam Affirmed: May 13, 2021

Date of Rehearing Denial: July 14, 2021

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISIONS AND JUDICIAL RULE INVOLVED	1
RULE 20 STATEMENT	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE EXTRAORDINARY WRIT OF MANDAMUS	7
CONCLUSION.....	9

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS**OPINIONS AND ORDERS**

Opinion of the Supreme Court of Florida (August 6, 2021)	1a
Opinion of the Court of Appeal of Florida, Fourth District (May 13, 2021)	3a
Final Judgment of the Circuit Court of the Seventeenth Judicial Circuit (Signed December 19, 2019, Filed December 20, 2019) .	5a

REHEARING ORDER

Order of the District Court of Appeal of the State of Florida Denying Petition for Rehearing (July 14, 2021)	15a
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RELEVANT JUDICIAL RULE

Florida Rule of Appellate Procedure 9.030 Jurisdiction of Courts	17a
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TABLE OF AUTHORITIES

	Page
CASES	
<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971)	i, 8
<i>Castro v. Sangles</i> , 637 So. 2d 989 (Fla. 3d DCA 1994)	4
<i>Cooper v. Paris</i> , 413 So. 2d 772 (Fla. 1st DCA 1982)	4
<i>D & L Harrod, Inc. v. U. S. Precast Corp.</i> , 322 So. 2d 630 (Fla. 3d DCA 1975)	4
<i>Eskridge v. Washington Prison Board</i> , 357 U.S. 214 (1958)	8
<i>FCC v. WJR, Goodwill Station, Inc.</i> , 337 U.S. 265 (1949)	7
<i>Harris v. Gonzalez</i> , 789 So. 2d 405 (Fla. 4th DCA 2001)	5
<i>Katz v. Frank Weinberg & Black, P.L.</i> , 268 So. 3d 773 (Fla. 4th DCA 2019)	4
<i>Local No. 234, United Ass'n of Journeymen & Apprentices v. Henley & Beckwith</i> , 66 So. 2d 818 (Fla. 1953)	4
<i>Omega Cong., Inc. v. BAF Tour Servs.</i> , 855 So. 2d 113 (Fla. 3d DCA 2003)	4
<i>Promontory Enters. v. Southern Eng'g & Contr., Inc.</i> , 864 So. 2d 479 (Fla. 5th DCA 2004)	4
<i>Rinaldi v. Yeager</i> , 384 U.S. 305 (1966)	i, 8

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I	i
U.S. Const. amend. V	i, 1
U.S. Const. amend. XIV § 1	i, 2

STATUTES

28 U.S.C. § 1651.....	1
-----------------------	---

JUDICIAL RULES

Fla. R. App. P. 9.030	2
Sup. Ct. R. 20	2

OTHER AUTHORITIES

<i>SEE IT: Condo Collapse In Surfside</i> , CBS 4 Miami News, https://miami.cbslocal.com/2021/06/24/see-it-condo-collapse-in-surfside/	6
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OPINIONS BELOW

This petition for a writ of *mandamus* arises out of the following decisions:

Kelaco Corp. v. Best Truss Co., CASE NO.: SC21-1142, 2021 Fla. LEXIS 1318, at *1 (Fla. Aug. 6, 2021) (App.1a).

Kelaco Corp. v. Best Truss Co., 320 So. 3d 162 (Fla. 4th DCA 2021) (App.3a, 5a).



JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1651.



CONSTITUTIONAL PROVISIONS AND JUDICIAL RULE INVOLVED

U.S. Const., amend. V

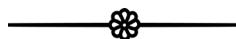
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses

in his favor, and to have the assistance of counsel for his defense.

U.S. Const., amend. XIV, § 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.

Florida Rule of Appellate Procedure 9.030
(Jurisdiction of Courts) is reproduced at App.17a.



RULE 20 STATEMENT

Name and Function of Parties to Whom Mandamus is Sought to be Directed

Petitioner seeks mandamus issued to the Florida Supreme Court.

Petitioner Seeks the Following Relief:

The underlying result in the proceedings before Florida's Fourth District Court of Appeal creates a conflict between Florida district courts of appeal about whether parties like Best Truss are barred from obtaining contractual or other recovery where there is an underlying violation of the law or code.

The Florida Supreme Court has the discretion to review the decision by Florida's Fourth District Court of Appeal but cannot without Florida's Fourth District Court of Appeal writing a written opinion. Thus, because Florida's Fourth District Court of Appeal refused to issue a written opinion in the underlying appeal after holding oral argument, Kelaco cannot ask the Florida Supreme Court to review the merits of the underlying appeal.

The Florida Supreme Court has refused to require Florida's Fourth District Court of Appeal to issue a written opinion.

Accordingly, Kelaco asks this Court to require the Florida Supreme Court to require the Florida's Fourth District Court of Appeal to issue a written opinion so that Kelaco can ask the Florida Supreme Court to review the underlying case.

Why Petitioner Has Filed for Relief in this Court

Petitioner has asked Florida's Fourth District Court of Appeal to write a written opinion. Florida's Fourth District Court of Appeal denied the request. Petitioner has asked the Florida Supreme Court to require one. The Florida Supreme Court denied the request. The only remaining court of higher authority is the United States Supreme Court.



STATEMENT OF THE CASE

Kelaco lost a bench trial. Best Truss sued Kelaco for non-payment of roof trusses. Put aside the many problems with the trial judgment in favor of Best

Truss. The roof trusses at issue violated the Florida building code and posed a safety threat.

Best Truss' recovery flies in the face a vast body of settled Florida law that prohibits parties like Best Truss from obtaining contractual or other recovery where there is an underlying violation of the law or code.¹ This legal doctrine makes it clear that Florida State Courts have a duty to prevent such recovery on public policy grounds.²

¹ *Castro v. Sangles*, 637 So. 2d 989, 992 (Fla. 3d DCA 1994) (“We cannot allow one to invoke the judicial process when, for his own financial benefit, he has participated in the very activity the law precludes, with the resulting danger that the law seeks to avoid.”); *Katz v. Frank Weinberg & Black, P.L.*, 268 So. 3d 773, 777 (Fla. 4th DCA 2019) (“When a contract is void as against public policy, no alleged right founded upon the contract or agreement can be enforced in a court of justice.”) (internal quotations and citations omitted); *D & L Harrod, Inc. v. U.S. Precast Corp.*, 322 So. 2d 630, 631 (Fla. 3d DCA 1975) (“In our opinion, since appellant was not properly certificated by the State Public Service Commission to engage in the trucking activities contracted for with appellee, the contract sought to be enforced by appellant is contrary to the public policy of this state and therefore unenforceable.”); *Omega Cong., Inc. v. BAF Tour Servs.*, 855 So. 2d 113, 114 (Fla. 3d DCA 2003) (“[S]ince Omega was not registered as a seller of travel at the time the contracts were made, the contracts are void and unenforceable.”); *Promontory Enter. v. Southern Eng’g & Contr., Inc.*, 864 So. 2d 479, 485 (Fla. 5th DCA 2004) (“Contracts entered into in violation of section 489.128 are declared by the Legislature to be against public policy and, therefore, unenforceable.”).

² *Cooper v. Paris*, 413 So. 2d 772, 774 (Fla. 1st DCA 1982) (describing the “Court’s affirmative duty to see that the party violating public policy not benefit in any way as a result of his wrongdoing.”); *Local No. 234, United Ass’n of Journeymen & Apprentices v. Henley & Beckwith*, 66 So. 2d 818, 821 (Fla. 1953) (“there rests upon the courts the affirmative duty of refusing to

Kelaco took an appeal to Florida's Fourth District Court of Appeal. Florida's Fourth District Court of Appeal held oral argument. Attorneys for both parties argued in front of the three appellate judges and Florida's Fourth District Court of Appeal has a copy of the argument on its website. <https://www.4dca.org/Oral-Arguments/Archived-Video-Oral-Arguments> (last visited August 2, 2021)

In the end, Florida's Fourth District Court of Appeal denied Kelaco's appeal with three words:

“PER CURIAM. AFFIRMED.”

No analysis.

No explanation.

“Per Curiam. Affirmed.”

Kelaco subsequently moved Florida's Fourth District Court of Appeal to issue a written opinion, which Florida's Fourth District Court of Appeal declined to do.

Kelaco then asked the Florida Supreme Court to require the Fourth District Court of Appeal to issue a written order.

The Florida Supreme Court refused to require the Fourth District Court of Appeal to issue a written opinion.

sustain that which by the valid statutes of the jurisdiction, or by the constitution, has been declared repugnant to public policy.”); *Harris v. Gonzalez*, 789 So. 2d 405, 409 (Fla. 4th DCA 2001) (“The Harris/Gonzalez contract violates public policy because . . . [it] is precisely the type of financial incentive for a health care provider that the legislature determined is harmful to the public’s safety and welfare.”).

Kelaco is now stuck.

Appellate review by the Florida Supreme Court can be triggered where Florida state appellate courts issue conflicting written opinions on the same question of law. Fla. R. App. 9.030(a)(2)(A)(iv).

Kelaco has no written opinion to show the Florida Supreme Court for the purposes of invoking discretionary review.

Yet Best Truss' recovery flies in the face a vast body of settled law. Indeed, the condominium collapse tragedy in Surfside underscores the severe injustice here.³ This is a case about roof trusses that violated the building code and posed a safety threat. The building code is in place to prevent buildings from falling down, like the Surfside condominium, and to otherwise prevent severe injury and the loss of property.

Granted, the roof trusses are not currently inside of any building. Best Truss destroyed them. But the same severe injustice remains the same. Public policy requires Courts to prevent parties like Best Truss from obtaining contractual or other recovery where there is an underlying violation of the law or code.

Kelaco is asking this Court to require the Florida Supreme Court to require the Florida's Fourth District Court of Appeal to issue a written opinion so that Kelaco can ask the Florida Supreme Court to review the underlying case, given the vast body of settled law that prohibits parties like Best Truss from

³ SEE IT: *Condo Collapse In Surfside*, CBS 4 Miami News, <https://miami.cbslocal.com/2021/06/24/see-it-condo-collapse-in-surfside/> (last visited August 2, 2021).

obtaining contractual or other recovery where there is an underlying violation of the law or code.



REASONS FOR GRANTING THE EXTRAORDINARY WRIT OF MANDAMUS

Florida's Fourth District Court of Appeal was not required to provide Kelaco with oral argument. *FCC v. WJR, Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949).

But Florida's Fourth District Court of Appeal found enough merit in Kelaco's appeal such that it warranted oral argument. In other words, Florida's Fourth District Court of Appeal opened the door to a more fulsome judicial process than one without oral argument.

The reason why there was sufficient merit for oral argument was because the trial court's judgment conflicted with the vast body of settled law that prohibits parties like Best Truss from obtaining contractual or other recovery where there is an underlying violation of the law or code.

At oral argument, the issues were vetted in front of an appellate panel in an expansive manner. Indeed, Florida's Fourth District Court of Appeal even saw fit to upload a copy of the video of the oral argument on its website. Yet Florida's Fourth District Court of Appeal ultimately refused to articulate any reasoning as to why it rejected Kelaco's appeal.

Given that there was an oral argument, the inference from the Florida's Fourth District Court of

Appeal refusal to write a written opinion and from the Florida Supreme Court refusal to require one is that those Florida courts do not want to give Kelaco the opportunity to seek relief from the Florida Supreme Court regarding a conflict between Florida appellate courts regarding the question of law as to whether contractual or other recovery is barred where there is an underlying violation of the law or code.

Such an inference and such refusal deprives Kelaco “full access to [the judicial] processes [and] raises problems for its legitimacy.” *Boddie*, 401 U.S. at 376. Florida’s Fourth District Court of Appeal did not have to open the door in the first place, but by opening the door to and holding oral argument, Florida’s Fourth District Court of Appeal is required to explain why it is affirming the trial court decision. Otherwise, Kelaco has no ability to ask the Florida Supreme Court to review the matter. *Rinaldi*, 384 U.S. at 310 (“[I]t is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts.”); *cf. Eskridge v. Washington Prison Board*, 357 U.S. 214, 215 (1958) (“The conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript.”).

Thus, it violates Kelaco’s rights of Access to Courts and Due Process for Florida’s Fourth District Court of Appeal to truncate a fulsome appellate process the court itself opened by allowing for oral argument.



CONCLUSION

For the foregoing reasons, Petitioners respectfully ask this Court to grant this extraordinary writ of mandamus and require the Florida Supreme Court to require the Florida's Fourth District Court of Appeal to issue a written opinion so that Kelaco can ask the Florida Supreme Court to review the underlying case, given the vast body of settled law that prohibits parties like Best Truss from obtaining contractual or other recovery where there is an underlying violation of the law or code.

Respectfully submitted,

CULLIN A. O'BRIEN, ESQ.
COUNSEL OF RECORD
CULLIN O'BRIEN LAW, P.A.
6541 NE 21ST WAY
FT. LAUDERDALE, FL 33308
(561) 676-6370
CULLIN@CULLINOBRIENLAW.COM

COUNSEL FOR PETITIONER

NOVEMBER 11, 2021