ORIGINAL

No. 23-313

In the
Supreme Court of the United States

ANGELA W. DEBOSE, PETITIONER

v.

JPMORGAN CHASE BANK, N.A. ET AL, RESPONDENTS

On Petition for Writ of Certiorari to the Florida Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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August 17, 2023

QUESTION PRESENTED

The constitutional provision or statutory language of Florida Vexatious Litigant Law, Florida Statute § 68.093(2)(a), guarantees a particular form of process. A deprivation of that guarantee by definition affects substantial rights without requiring any further harmlessness inquiry. The application of the Vexatious Litigant Law in any small claims matter is subject to statutory override by 68.093(2)(a) and constitutes reversible harmful constitutional error.

The questions are:

(1) Whether an Injunction Order rendered under Florida Vexatious Litigant Law, Florida Statute § 68.093(2)(a), requires reversal where it is:

(a) applied in a small claims matter or

(b) applied retroactively to a prior existing case(s) or

(c) expired automatically for failure to hold mandatory injunction hearing;

(2) Whether a dismissed party has standing to raise new unpreserved argument for the first time on appeal, absent fundamental error.

PARTIES TO THE PROCEEDING

Angela DeBose was the defendant-petitioner below.

JPMorgan Chase Bank, N.A. ("Chase") was the plaintiff-respondent below.

Main Street Debt Solutions ("MSDS") was a nonparty with whom the petitioner/defendant contracted and with whom MSDS, Chase, and DeBose agreed to settle the defendant's debt with Chase. Petitioner/defendant sought coercive civil contempt sanctions and to compel MSDS and Chase to produce the contracts/agreements by and between them on behalf of DeBose. Subsequently, the Petitioner/defendant filed a counterclaim against Chase and Third Party Complaint against MSDS because DeBose was materially injured by being made responsible for settlement debt, without indemnity or contribution from MSDS.

The University of South Florida Board of Trustees and/or Greenberg Traurig, P.A. were the defendants in the cases from which the state circuit court injunction order issued.

STATEMENT OF RELATED PROCEEDINGS

This case arises from proceedings in small claims in the Thirteenth Judicial Circuit Court, in and for Hillsborough County, Florida, and the Florida Supreme Court:

JPMorgan Chase Bank, N.A. v. Angela DeBose, 21-CC-007465, (Jan. 23, 2023)

Angela DeBose v. JPMorgan Chase Bank, N.A., et al., 2D23-0277, (May 3, 2023)

Angela DeBose v. JPMorgan Chase Bank, N.A., et al., (renamed *Angela DeBose v. University of South Florida Board of Trustees, et al.*, SC23-0461, (May 19, 2023)

The injunction order against Angela DeBose applied in the small claims matter arose from prior state court cases, and was appealed in state and federal actions because the injunction was issued without notice and a hearing; there was no basis for state/federal injunctive relief, and the injunction(s) automatically expired:

Angela DeBose v. University of South Florida Board of Trustees, 15-CA-5663, (July 25, 2022);

Angela DeBose v. University of South Florida Board of Trustees, Greenberg Traurig, P.A., 17-CA-1652, (July 25, 2022);

Angela DeBose v. Ellucian L.P., et al., 19-CA-4473, (July 25, 2022); *appealed* No. 2D22-2779.

Angela DeBose v. United States, et al., No. 8:21-cv-02127-SDM-AEP, (Sept. 12, 2022); appealed Nos. 22-13380; 23-10961, 23-12235.

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The Order of the Trial Court dismissing JPMorgan Chase Bank as a party, (a21), is unreported. The Transcript of Proceedings of the Trial Court departing from the essential requirements of the law by applying an Injunction Order premised on Florida's Vexatious Litigant Law to a small claims matter is at (a24). The Opinion and Order denying the Petitioner's motion for civil contempt and to compel, (a39), is unreported. The Injunction Order retroactively applied to the small claims matter and challenged on appeal before the Florida Supreme Court as unconstitutionally overbroad on its face and in its application is at (a41), is unreported. The Order of Florida Second District Court dismissing the action, (a53), and denying rehearing, rehearing en banc, etc., (a55), are unreported. The Order of the Florida Supreme Court denying the Petition for Writ of Mandamus to compel the Trial Court to order discovery and enter contempt sanctions and declare the Injunction Order was unconstitutionally applied to invalidate 68.093(2)(a)'s prohibition to a small claims matter, (a57), is unreported. The Florida Supreme Court's Order denying certification of its order as final and appealable, (a59), is unreported.

JURISDICTION

The most important provisions respecting the Supreme Court's appellate jurisdiction are 28 U.S.C.A. §§ 1254 (federal courts of appeals) and 1257 (state courts). The Supreme Court is authorized to review state court decisions holding state laws violative of the Constitution. Specifically, under 1257(a), final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by writ of certiorari. The Supreme Court decides only

those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved.[1] The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Individual rights for which Congress has provided a private right of action—specifically the protections and liberties guaranteed to the people by the U. S. Constitution, as outlined in the Bill of Rights and United States Declaration of Independence, including the rights to life, liberty, and the pursuit of happiness.

2. The Privileges or Immunities Clause of the Fourteenth Amendment operates with respect to the civil rights associated with both state and national citizenship. ... It requires that whatever those rights are, all citizens shall have them alike: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Due process under the Fourteenth Amendment can be broken down into two categories: procedural due process and substantive due process. Procedural due process, based on principles of "fundamental fairness," addresses which legal procedures are required to be followed in state proceedings: 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. The Supreme Court has accepted that liberty of contract is an enforceable constitutional right under the due process clause.

3. The contract clause, found in Article I, section 10 of the Constitution, prohibits the states from impairing the obligations of contracts. The Supreme Court held in

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[1] Vinson, C.J., 69 S.Ct. vi (1949).

Ogden v. Saunders, 25 U.S. 213 (1827), that the clause applies to retroactive impairments of existing contracts.
4. The Florida Constitution, Article I, Section 24
5. Florida Statutes: Section 68.093 - Florida Vexatious Litigant Law

> **(2)** As used in section, the term:
>
> > **(a)** "Action" means a civil action governed by the Florida Rules of Civil Procedure and proceedings governed by the Florida Probate Rules, but does not include actions concerning family law matters governed by the Florida Family Law Rules of Procedure or any action in which the Florida Small Claims Rules apply ...
> >
> > **(d)** "Vexatious litigant" means:
> >
> > > **1.** A person as defined in s. 1.01(3) who, in the immediately preceding 5-year period, has commenced, prosecuted, or maintained, pro se, five or more civil actions in any court in this state, except an action governed by the Florida Small Claims Rules, which actions have been finally and adversely determined against such person or entity;
> > >
> > > **2.** Any person or entity previously found to be a vexatious litigant pursuant to this section. An action is not deemed to be "finally and adversely determined" if an appeal

> in that action is pending. If an action has been commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from the representation and the party does not retain new counsel.

STATEMENT OF THE CASE AND FACTS

JPMorgan Chase ("Chase") initiated the underlying litigation after a dispute arose concerning consumer or credit card debt with the Petitioner ("DeBose"), alleging breach of contract on the basis that DeBose allegedly stopped making payments to resolve her outstanding credit card balance. DeBose alleged and produced documents to show that Chase agreed with her debt settlement company, Main Street Debt Solutions ("MSDS"), to settle the Defendant's credit card debt for $1753.00. DeBose produced the contractual agreement by and between DeBose and MSDS regarding settlement of her debt with Chase. The Petitioner produced evidence to show that MSDS provided the settlement terms from Chase via a text message, email, and other documents. Following DeBose's acceptance of the Chase settlement offer, MSDS withdrew $1,749.00 from the Petitioner's bank account purportedly for payment to Chase in full satisfaction and accord to settle the account.

In the proceedings below, Chase denied that it agreed with MSDS to settle the Petitioner's debt and sued DeBose for breach of contract. DeBose contended that Chase sued the wrong party because she did not materially breach any alleged contract with Chase. DeBose asserted that if a breach occurred, it was MSDS and/or Chase that breached and demanded a full

accounting from Chase and nonparty MSDS. On that basis, DeBose requested all documents related to her debt settlement agreement with MSDS to (1) prove or show evidence of the existence of an agreement between Chase and MSDS to settle the debt, (2) show that DeBose performed and did not breach or repudiate the Chase-MSDS agreement, and (3) demonstrate that DeBose had claims and defenses against MSDS and the creditor banks, including but not limited to Chase.

MSDS failed to produce records pursuant to a court-issued subpoena. Chase failed to produce the records requested via discovery. On May 19, 2022, DeBose filed a counterclaim against Chase and a third-party claim against MSDS and retained counsel[2] to represent her in the Chase lawsuit. On June 10, 2022, Chase defaulted by failing to respond to the counterclaim.[3] On July 25, 2022, in an unrelated case(s), an Injunction Order was issued in Petitioner's active, existing, open cases, **[a41]**, which prohibited the Petitioner from appearing before any division of the state court, whether as a plaintiff, defendant, petitioner, respondent, appellant or appellee, unless represented by a member in good standing of The Florida Bar.

On August 25, 2022, the Petitioner's representatives filed a notice of nonrepresentation of the Petitioner's counterclaim because it was outside their scope of services on Chase Bank's account stated claim. Therefore, the counterclaim against MSDS would have to continue under Petitioner Pro Se. On December 13, 2022, the Trial Court held a hearing on the Petitioner's motion for contempt sanctions against MSDS. Though served prior notice, neither MSDS nor its representative appeared at the proceeding, **[a35, (12/13/22 Contempt Hearing Transcript, 12:22-25)]**. At hearing, the

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[2] The same representatives retained to defend against Bank of America in 21-CC-086589.

[3] The trial court failed to authorize the clerk to issue the summons.

Petitioner specifically inquired about the Trial Court's refusal to allow the clerk to issue the summons or accept Petitioner's filing fee for the counterclaim/Third Party Claim: "*Well, they declined to accept it because there is an order by Judge Polo declaring you to be basically a vexatious litigant and that if you're going to file anything in circuit court, you need an attorney to send out...*" **[a30, (Id., pg. 7:11-16)]**. The trial court deferred ruling on Petitioner's Motion for Civil Contempt, stating it would consider ordering MSDS to show cause why contempt sanctions should not be issued. **[a36, (Id., pg. 13:2-9, 19-23)]**. On January 8, 2023, DeBose moved the trial court for an Order to Show Cause ("OSC") as to Why Nonparty and/or Third-Party MSDS should not be held in Civil Contempt for its noncompliance with the Subpoena Duces Tecum, then late by 590 days. On January 23, 2023, the trial court issued an Order Quashing the Subpoena and denying Petitioner's motion for coercive civil contempt sanctions from MSDS, categorizing the amount of $100 per day as a criminal contempt sanction. Because the trial court's order, **[a39],** did not discuss the Order to Show Cause to MSDS, the Petitioner requested clarification and filed objections to the "lockout" in small claims court and the material injury she suffered as a result. Specifically, the trial court refused its ministerial duties, including failing to issue summons to serve Chase as a counter-defendant and join MSDS as a third-party defendant and rejecting DeBose's payment of the filing fee.

The trial court improperly considered the Injunction Order and/or Florida's Vexatious Litigant law in the small claims matter. The Injunction Order is unconstitutionally overbroad and vague and was not authorized or applicable in a Small Claims case. The Injunction Order was not merely given prospective application; it was applied retroactively to past and existing cases, already in progress in advance of its issue date. Future application is also questionable because

under the Florida Vexatious Litigant Law, the Injunction Order expired five (5) days after its issue because the statutorily required injunction hearing was not noticed or held. Florida Rule of Civil Procedure 1.1610.

On February 5, 2023, DeBose filed a petition(s) for Writ of Certiorari direct to the Florida Supreme Court to appeal the overbreadth and misapplication of state law in the Injunction Order in a manner violative of the Constitution, to cause harm to the Petitioner and/or other similarly situated individuals. The Second District Court of Appeal asserted that it had jurisdiction to review the matter and assigned Case No. 2D23-0277. Despite Petitioner's clarification of the appeal to the Florida Supreme Court, the Second District maintained the jurisdiction and the confusing case style it assigned the case. On February 19, 2023, the Petitioner amended the Petition. On March 23, 2023, Chase filed to dismiss the action. The Petitioner filed an objection and/or opposition to Chase's motion to dismiss. On May 3, 2023, the Florida Second District Court granted dismissal. On May 17, 2023, the Petitioner filed a motion for rehearing, rehearing en banc, also requesting a written opinion and certification. Concurrently exercising jurisdiction over the same matter, on May 19, 2023, the Florida Supreme Court denied mandamus relief. The Florida Supreme Court stated that it would not consider a motion, if filed by the Petitioner, for rehearing. On June 26, 2023, the Florida Supreme Court denied Petitioner's motion for certification of its decision as final and appealable. On June 28, 2023, the Florida Second District Court denied the motion for rehearing, rehearing en banc, etc. in an unelaborated opinion to bar a potential appeal to the Florida Supreme Court.

Petitioner timely submits this Petition for Writ of Certiorari by the Supreme Court of the United States of the May 19, 2023 order of the Florida Supreme Court.

INTRODUCTION

A petitioner seeking a writ of certiorari "must establish a departure from the essential requirements of the law, resulting in material injury for the remainder of the trial that cannot be corrected on postjudgment appeal". A certiorari petition must pass a three-prong test before an appellate court can grant relief from an erroneous interlocutory order. A petitioner must establish (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the trial (3) that cannot be corrected on postjudgment appeal. *See Gulf Cities Gas Corp. v. Cihak,* 201 So.2d 250 (Fla. 2d DCA 1967).

A. The trial court departed from the essential requirements of the law by violating the Vexatious Litigant state statute and misapplying it and the Injunction Order to a small claims matter.

"A ruling constitutes a departure from the essential requirements of law when it amounts to a violation of a clearly established principle of law resulting in a miscarriage of justice." *Clay Cty. v. Kendale Land Dev. Inc.*, 969 So. 2d 1177 (Fla. 1st DCA 2007) (internal quotations omitted). The trial court violated a state statute by applying the Florida Vexatious Litigant Law and a state court Injunction Order retroactively to the small claims matter and prior existing cases. Florida Vexatious Litigant Law, 68.093(2)(a) does not include any action in which the Florida Small Claims Rules apply. The Petitioner was represented by counsel in the small claims case. If an action was commenced on behalf of a party by an attorney licensed to practice law in this state, that action is not deemed to be pro se even if the attorney later withdraws from representation and the party does not retain new counsel. Therefore, DeBose

was considered "represented", despite her counsels' limited scope to only Chase Bank's account stated claim.

Despite the above facts, the Petitioner's contract with MSDS and the MSDS-Chase agreement to settle the debt for $1,749.00 was made legal nullity by the trial court's actions. The Petitioner was again materially injured by being made responsible for the settlement debt a second time, without indemnity or contribution from MSDS. The third party claim to join MSDS as a party was thwarted by the court's refusal to perform its ministerial duty to issue a summons. The Trial Court departed from the essential requirements of the law. The Injunction Order itself, including but not exclusive to the ways noted above, also satisfies prong (1).

B. The Trial Court's departure has resulted in material injury to the Petitioner's prosecution of her case, trial preparation for the remainder of the case, and violated her constitutional "due process" rights.

The Injunction Order is unconstitutionally broad and vague. Because section 68.093 infringes on a person's right of access to the courts, as otherwise guaranteed by article 1, section 21 of the Florida Constitution — a "fundamental right" — "courts will review the law under a strict scrutiny test and uphold it only when it is narrowly tailored to serve a compelling state interest." *Smith v. Fisher*, 965 So. 2d 205, 208 (Fla. 4th DCA 2007) (citation and internal quotation marks omitted). "The compelling state interest behind section 68.093 is to prevent vexatious litigation from interfering with the business of the court system." *Id.* At 209. "Narrowly tailored" means that the method for remedying the asserted malady must be strictly tailored to remedy the problem in the most effective way and must not restrict a person's rights more than absolutely necessary." *Id.* at 208–09 (citation and internal quotation marks

omitted). The Petitioner was not previously found vexatious. The prior cases were filed before any final judgment. The claims, supported by substantial evidence, were not clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. § 68.086(2). The Petitioner has won and has been granted the relief requested, which goes against a finding of abuse of process or harassment. The litigation filed falls short of the level of five cases, as manifested under the statute to trigger an injunction. The record does not suggest a case in which the "orderly and expeditious administration of justice" has been so impeded as to require such an extreme sanction. *Urban v. United Nations,* 768 F.2d 1497, 1500 (D.C. Cir. 1985) (per curiam). DeBose's history was *insufficient* for the Trial Court to enjoin her from joining a third party, here MSDS, from future litigation. The action by the Trial Court resulted in violations of the Petitioner's constitutional rights. " Interference with a party's constitutional rights "would ipso facto result in an injury that cannot be corrected on postjudgment appeal." Id. (citing *Citizens Prop. Ins. Corp. v. San Perdido Ass'n,* 104 So. 3d 344, 354 (Fla. 2012)).

MSDS was paid the amount that Chase requested to settle the account. The Trial Court denied the Petitioner meaningful discovery from Chase Bank and MSDS to prove this fact. The discovery violations of Florida Rule of Civil Procedure 1.380 materially hindered the Petitioner's ability to prosecute the case on the merits and her trial preparation, satisfying prong (2). Orders concerning discovery and/or compelling discovery are frequent candidates for certiorari, based on the concept that one cannot "unring a bell". See *Manatee County v. Estech General Chemicals Corporation,* 402 So. 2d 75 (Fla. 2d DCA 1981); *Criswell v. Best Western International, Inc.,* 636 So. 2d 562 (Fla. 3d DCA 1994). Certiorari review was granted to review a trial court's refusal to permit a defendant to implead third parties.

Sterling Drug, Inc. v. Lugo, 614 So. 2d 16 (Fla. 3d DCA 1993). The court noted the defendant could be exposed to inconsistent results in an independent action for indemnity or contribution. Akin to the violation of state statute and the misapplied Injunction Order in the small claims matter, review was also granted of an order dissolving or refusing to dissolve a lis pendens. *James v. Wolfe*, 512 So. 2d 954 (Fla. 2d DCA 1987). It has also been granted to review contempt orders. *Knorr v. Knorr*, 751 So. 2d 64 (Fla. 2d DCA 1999).

The Trial Court prevented the Petitioner from impleading third party MSDS. The court refused to perform its ministerial duty to issue a summons for service of process. The court refused payment of docketing or filing fees. The court refused to permit a necessary transfer when the jurisdictional amount was exceeded. The court declined to review/approve DeBose's proposed crossclaim and the amendment converting it to a third party complaint. Therefore, it is not clear whether MSDS is a nonparty or third-party because the proposed counterclaim / third-party complaint did not progress beyond the sheer filing of the complaint. See *Trucap Grantor Trust 2010-1 v. Pelt*, 84 So. 3d 369, 371 (Fla. 2d DCA 2012). In *Trucap*, the trial court left the plaintiff without the ability to amend. Thus, while the erroneous denial of a motion to amend normally could be remedied on appeal from a final judgment, in this unusual circumstance the Petitioner could be barred or prevented from proceeding in circuit civil with the third-party action against MSDS. The action against Chase only has been "voluntarily" dismissed, which cannot be appealed. Because the Petitioner cannot proceed to obtain an appealable final judgment from Chase and was prevented from pursuing MSDS, she has suffered a material injury that cannot be corrected on postjudgment appeal.

C. The Trial Court's enforcement of the Injunction Order in violation of state statute and procedural due process cannot be corrected on postjudgment appeal.

The final prong (3) concerns whether the lower court's violation of the vexatious litigant law and misapplication of the injunction order to a small claims matter "cannot be corrected on postjudgment appeal." Notably, an action taken in violation of state law is unauthorized. See *Germano v. Winnebago County*, 403 F.3d 926, 929 (7th Cir. 2005). Therefore, under federal (and state) law an act occurring in violation of a statutory mandate is void ab initio. *Ewert v. Bluejacket*, 259 U.S. 129, 138, 42 S.Ct. 442, 444, 66 L.Ed. 858 (1922).

In *CB Condominiums, Inc. v. GRS South Florida, Inc.*, 165 So. 3d 739 (Fla. Dist. Ct. App. 2015), the Court concluded: We acknowledge the circuit court's common sense thought that "1.380 sanctions are appropriate ... [b]ecause court orders can't be ignored." MSDS did not comply with a properly served subpoena, though directed to do so. MSDS did not object, file a motion to quash, or file a motion for protective order. MSDS did not answer, though having an unreasonably long time to do so. In discussing the purpose of Rule 1.380, *Hurley v. Werly*, 203 So.2d 530 (Fla. 2d DCA 1967), stated as follows:

> **[The rule] is not penal. It is not punitive. It is not aimed at punishment of the litigant. The objective is compliance — compliance with the discovery Rules. The sanctions are set up as a means to an end, not the end itself. The end is compliance. The sanctions should be invoked only in flagrant cases, certainly in no less than aggravated cases, and then only after the court has given the defaulting party a reasonable opportunity to conform after**

originally failing or even refusing to appear. This is unmistakably the trend of judicial thinking in Florida on the "sanction" Rule.

MSDS did not comply and its noncompliance was unmistakably *flagrant.* MSDS disregarded the subpoena power of the court, refusing to appear or conform even after a reasonable opportunity. The Trial Court refused to demand compliance and instead implied that Petitioner was vexatious for seeking compliance and sanctions. In assessing this prong, courts should consider whether the noncompliance was the result of culpable or willful conduct. *See Compania Interamericana Exp.-Imp., S.A. v. Compania Domenicana De Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). The Eleventh Circuit has repeatedly acknowledged that most failures to follow court orders are not willful, as long as the defendant was not given ample opportunity to comply and failed to do so. *Compania Interamericana*, 88 F.3d at 952; *Robinson v. United States*, 734 F.2d 735, 739 (11th Cir. 1984). MSDS's noncompliance was willful. Given ample opportunity to comply, MSDS failed to do so. The Trial Court went outside the law of the small claims rules and erred by applying concepts specifically forbidden by Florida law, particularly in characterizing demands brought through ordinary proceedings. It deferred to the Injunction Order as mandatory authority over state statute. This required Petitioner to challenge the injunctive relief as an appeal to the equity jurisdiction of the appellate court. The Trial Court in small claims and the Injunction Order caused this impermissible invasion. Claims in equity are not intended to be resolved under the Florida Small Claims Rules. Fla. Sm. Cl. R. 7.010(b) ("These rules are applicable to all actions at law of a civil nature in the county courts." (Emphasis added.)). Again, Prong (3) is satisfied.

A. REASONS TO GRANT THE PETITION

Harmless error is an error by a trial judge in the conduct of a trial that an appellate court finds was not damaging enough to the appealing party's right to a fair trial to justify reversing the judgment, or to warrant a new trial. Under Federal Rule of Criminal Procedure 52(a), harmless error is any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. 52(b) provides that plain errors or defects affect substantial rights and may be noticed although they were not brought to the attention of the court. Federal Rule of Civil Procedure 61 is similar in stating, "Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Federal courts utilize a doctrine of "plain error, an extremely stringent form of review. *See Olano*, 507 U.S. at 732; *see also* Fed. R. Crim. P. 52(b); *Farley v. Nationwide Mutual Ins.*, 197 F.3d 1322, 1329-30 (11th Cir. 1999). In *United States v. Olano*, 507 U.S. 725 (1993), this Court held that plain error review requires a reviewing court to refrain from correcting an error unless it is plain and affects "substantial rights," such that the error "seriously affect the fairness, integrity or public reputation of judicial proceedings". The Supreme Court applies a four-factor analysis for plain-error review: (1) there must be an error that has "not been intentionally relinquished or abandoned, i.e., affirmatively waived"; (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute"; (3) "the error must have affected the appellant's substantial rights"; and (4) "if the above three prongs are satisfied, the [appellate court] has the discretion to

remedy the error—discretion which ought to be exercised only if the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *State v. Rich*, 415 Md. 567, 578-79 (2010) (Internal citations omitted) (quoting Puckett, 566 U.S. at 135). "Meeting all four prongs is difficult, 'as it should be.'" *Puckett*, 566 U.S. at 135 (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)). We may consider the prongs in any order, and failing to satisfy a single prong ends the plain error inquiry. In the 11th Circuit, the courts define an "error" as a "[d]eviation from a legal rule." *United States v. Madden*, 733 F.3d 1314, 1322-23 (11th Cir. 2013) (citations omitted). To find that the error is "plain," the "error must be one that is obvious and clear under current law." *Id.*; *see also United States v. Saenz*, 134 F.3d 697, 701 (5th Cir. 1998). However, the error need not be plain at the time of the trial so long as the error was rendered plain and obvious by the time of the appellate review. *Henderson v. United States*, 568 U.S. 266 (2013). In addition, a plain error affects a party's substantial rights when the error is "prejudicial." *Madden*, 733 F.3d at 1322-23 (citations omitted). Finally, the error must seriously undermine the fairness, integrity, and public reputation of the judicial proceedings. *Id.*

The plain reading of the statutory language requires reversal without any analysis of harmlessness. Because the error by definition violated the Petitioner's rights, the Injunction Order is unconstitutional on its face and in its application in a small claims matter. Essentially, the Injunction Order was subject to statutory override or preempted by 68.093(2)(a). This constitutional provision of the statute guarantees a particular form of process. A deprivation of that guarantee by definition affected substantial rights without requiring any further harmlessness inquiry; however, if applied, all prongs of the four-factor plain/harmful error test are satisfied.

1. The Injunction Order was applied retroactively, violating Florida Law to *ex post facto* laws.

An ex post facto law is a law that retroactively changes the legal consequences of actions that were committed, or relationships that existed, before the enactment of the law or here, rendition of an order. Chase filed its action on January 25, 2021. The Petitioner filed her Counterclaim on May 18, 2022. The Injunction vexation order was issued by Judge Polo on July 25, 2022. The Injunction Order was unlawfully given retroactive application. *Ex post facto* actions are barred to protect people from a government's unjust or oppressive use of power "from a thing done afterward."

2. A dismissed party does not have standing to object on appeal, and even if the party has standing, it cannot raise new unpreserved argument (i.e., the two dismissal rule) for the first time on appeal.

Respondent Chase objected contending the Trial Court erred in failing to apply the two dismissal rule to MSDS, a nonparty (*prospective* third party) defendant. First, only nonparty MSDS had standing to object. Second, Chase was dismissed as a party. A person who was a party but ceased to be a party as a result of dismissal from the action ordinarily has no appellate standing.[4] See *Pheifer v. Powell,* 498 So.2d 614 (Fla 5th DCA 1986). The fact that Chase received notice of the mandamus proceeding was not a proper basis for allowing Chase to intervene. Thus, Chase has no standing to object or bring an appeal. If arguably Chase had standing, it did not raise any objection to the Trial

[4] *Bates v. John Deere Co.* (1983) 148 Cal.App.3d 40, 53 [would-be appellant initially became a party by complaint-in-intervention but its complaint was thereafter dismissed at its request].

Court's order(s). Therefore, Chase lacked standing to object and/or could not raise new argument concerning the two dismissal rule for the first time on appeal. No Respondent preserved this argument below, which should have altered the affirmance of the order on appeal. The Respondent's failure to raise the two issue rule below was not fundamental error; therefore, because it was not fundamental error, it had to be preserved by objection at the trial level. *See State v. Barber*, 301 So.2d 7 (Fla. 1974), the issue must be preserved for appeal. Furthermore, the two issue rule arguably does not apply. Florida Rule of Civil Procedure 1.420(a)(1) ["two dismissal rule"] provides, in relevant part:

> **[A]n action may be dismissed by plaintiff without order of court**
>
> **(A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a non-jury case to the court for decision, or**
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> **(B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. *Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice*, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.**

MSDS was not officially made a party to the case. There was not a dismissal of the third party claim against MSDS by the Trial Court or by motion from Chase (or the Petitioner) for purposes of applying the two dismissal rule. The Petitioner's proposed counterclaim and/or third party complaint to join MSDS was never ruled upon. No summons was issued. No docketing fees were permitted to be paid. Therefore, as to MSDS, there was no operative pleading to dismiss in the case because the trial court prevented the commencement of the action beyond filing. In *Frengut v. Vanderpol*, 927 So. 2d 148 (Fla. Dist. Ct. App. 2006), the court concluded that the "entire controversy" in the case of a third party claim includes dismissal of the third party action where the third party plaintiff... dismisses all claims against the third party defendant(s). Neither the Trial Court nor the Petitioner, as third party plaintiff, dismissed the third party action against MSDS. The Trial Court's order and hearing transcripts reflect quite the opposite. Furthermore, Chase improperly argued the two dismissal rule in a motion to dismiss on appeal. Chase did not challenge the Trial Court order continuing the third party complaint against MSDS. See *Wildwood Props., Inc. v. Archer of Vero Beach, Inc.*, 621 So.2d 691, 692 (Fla. 4th DCA 1993). Chase did not preserve this issue nor argue the preclusive effect of res judicata as an affirmative defense. Chase raised this argument for the first time on appeal, as a dismissed party. Chase cannot show harm and did not have standing; it was not the right party to appear before the appellate court. Although the Court has been inconsistent, it has now settled upon the rule that, "at an irreducible minimum," the constitutional requisites under Article III for the existence of standing are that the plaintiff must personally have: 1) suffered some actual or threatened injury; 2) that injury can fairly be traced to the challenged action of the defendant; and 3) that the

injury is likely to be redressed by a favorable decision. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). A litigant must also maintain standing to pursue an appeal. *See, e.g., Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013). Chase did not maintain its standing.

3. The trial court looked beyond the four corners of the complaint in preventing the third party complaint and/or amendment in deciding the discovery orders.

A trial court's order dismissing a complaint / appeal is reviewed de novo. *Mortg. Elec. Registration Sys., Inc. v. Azize*, 965 So.2d 151, 153 (Fla. 2d DCA 2007). " An appeal involving jurisdiction is under the de novo standard. A motion to dismiss ... tests the legal sufficiency of a complaint to state a cause of action and is not intended to determine issues of ultimate fact." *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So.2d 214, 215 (Fla. 2d DCA 1998). As such, when passing on a motion to dismiss, the trial court "is limited to considering the four corners of the complaint along with the attachments incorporated into the complaint." *Neapolitan Enters., LLC v. City of Naples*, 185 So.3d 585, 589 (Fla. 2d DCA 2016); see also *McWhirter*, 704 So.2d at 215 ("[T]he trial court must confine itself strictly to the allegations within the four corners of the complaint."). A court is permitted to consider evidence outside the *four corners* of the complaint where the motion to dismiss challenges subject matter jurisdiction or personal jurisdiction, or where the motion to dismiss is based upon forum non conveniens or improper venue. However, no exception to the "four corners" rule applies. The question which this *certiorari* brings here is . . . whether the Judge exceeded his jurisdiction in hearing the case at all, or adopted any method unknown to the law or essentially

irregular in his proceeding under the statute. The decisions were not made according to the form of law and the rules prescribed for rendering it. The conclusions and the law as applied to facts, was erroneous, unlawful, or irregular—remediable by *certiorari. Basnet v. City of Jacksonville,* 18 Fla. 523, 526-27 (1882); *see also Edgerton v. Mayor of Green Cove Springs,* 18 Fla. 528 (1882). The Florida Supreme Court has held "a large word like justice . . . compels an appellate court to concern itself not alone with a particular result but also with the very integrity of the judicial process." *Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251, 1257 (Fla. 2014). It would be fundamentally improper to dismiss the petition without further review. Judge Chris W. Altenbernd stated in *Hagan v. Sun Bank of Mid-Florida, N.A.*, 666 So. 2d 580, 584 (Fla. 2d DCA 1996) the following: "Relief is granted ... not because the party has preserved a right to relief from a harmful error, but because the public's confidence in our system of justice would be seriously weakened if the courts failed to give relief as a matter of grace ... for serious mistakes."

CONCLUSION

In the interest of justice, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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