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IN THE SUPREME COURT OF FLORIDA
CLERK, SUPREME COURT

By _____
Deputy Clerk

MARTIN-JOHNSON, INC.,

Petitioner,

vs.

TOMMIE SAVAGE,

Respondent.

CASE NO. 68,832
FIRST DISTRICT COURT OF
APPEAL NO. BM-150

PETITIONER'S INITIAL BRIEF
ON THE MERITS

GORDON D. CHERR
KARL, McCONNAUGHAY, ROLAND
MAIDA & BEAL, P.A.
Post Office Drawer 229
Tallahassee, Florida 32302
(904) 222-8121

Attorneys for Petitioner

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INTRODUCTORY NOTE

Petitioner herein, MARTIN-JOHNSON, INC., was petitioner before the First District Court of Appeal and defendant in the lower court. Respondent, TOMMIE SAVAGE, was respondent before the First District and plaintiff in the lower court.

All items of record before the First District and lower court, germane to the present appeal, are attached hereto in Petitioner's Appendix (referred to as "A" followed by the appropriate page citation).

STATEMENT OF THE CASE AND OF THE FACTS

Respondent (Plaintiff) filed his Complaint on January 9, 1986 alleging a wrongful discharge contrary to §440.205, Florida Statutes, and including a demand for an award of punitive damages (A1-2). Petitioner (Defendant) answered, denying the material allegations of the Complaint (A3-4). Subsequently, Petitioner filed a Motion to Strike Plaintiff's Demand for Punitive Damages and for Attorney's Fees (A5-6) and Respondent filed his Request for Production (A7-8), specifically seeking financial disclosure directly related to his prior demand for punitive damages.

Petitioner's previously filed Motion to Strike (A5-6), with regard to Respondent's demand for punitive damages, did not contest the right to assert a demand for punitive damages under §440.205, Florida Statutes, but rather argued that Respondent's Complaint (A1-2) simply did not allege ultimate facts sufficient, if proven, to warrant imposition of punitive damages. In other words, Respondent's allegations were not legally sufficient to state a claim for punitive damages and the demand should therefore be stricken, subject to Respondent's right to amend his Complaint. Respondent's Complaint stated, in pertinent part, no more than that he was discharged because he attempted to claim worker's compensation benefits and that the alleged discharge was "willful,

malicious and with total disregard for the rights of" Respondent (A1-2).

The lower court disagreed with Petitioner and rendered its Order on March 27, 1986 (A9). Petitioner's Petition for Writ of Certiorari followed on April 2, 1986 (A10-13).¹ Respondent chose to not respond to the Petition for Writ of Certiorari.

The opinion of the First District was rendered on or about April 28, 1986 (A14). The First District declined to review by certiorari, the denial of the previous Motion to Strike the demand for punitive damages, holding that Petitioner would have an adequate remedy by way of appeal of a final order at a later date. The First District specifically noted its decision to be in conflict with Sunrise Olds-Toyota, Inc. v. Monroe, 476 So.2d 240 (Fla. 5th DCA 1985) and Jaimot v. Media Leasing Corp., 457 So.2d 529 (Fla. 5th DCA 1985). Petitioner served its Motion for Certification of Conflict on May 2, 1986 (A15-16) and the First District responded upon rehearing, on May 22, 1986, certifying the present matter (whether to review the lower court Order of March 27, 1986 by certiorari) to be in direct conflict with Sunrise Olds-Toyota, supra, and Jaimot, supra (A17).

¹ The Appendix to the Petition for Writ of Certiorari is not reproduced in the present appendix to avoid duplication.

Meanwhile, in the lower court, Respondent (Plaintiff) served his Motion to Compel regarding Petitioner's (Defendant) failure to produce those discovery documents relating to his claim for punitive damages on April 8, 1986 (A18).

Petitioner's responsive Motion for Protective Order, noting that the matter was presently being considered by the First District, was served on April 9, 1986 (A19-20).

The present Notice to Invoke Discretionary Jurisdiction of the Supreme Court was timely filed in the District Court on May 28, 1986.

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal to refuse certiorari review of the lower court Order of March 27, 1986, is in error. This is so because the Order of March 27, 1986 is a departure from the essential requirements of law as well as an order from which Petitioner will suffer irreparable harm which cannot be cured by subsequent appeal of a final order.

ARGUMENT

POINT I

THE FIRST DISTRICT COURT OF APPEAL ERRED IN FAILING TO REVIEW BY CERTIORARI THE LOWER COURT ORDER OF MARCH 27, 1986.

POINT II

THE FAILURE OF THE LOWER COURT TO STRIKE RESPONDENT'S DEMAND FOR PUNITIVE DAMAGES IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.

ARGUMENT

POINT I

THE FIRST DISTRICT COURT OF APPEAL ERRED IN FAILING TO REVIEW BY CERTIORARI THE LOWER COURT ORDER OF MARCH 27, 1986.

The lower court order of March 27, 1986, among other things, denied Petitioner's Motion to Strike Respondent's demand for punitive damages (A9). The action of the lower court ipso facto subjected Petitioner to Respondent's request for production of documents relating directly to Respondent's demand for punitive damages (A7-8). The items requested included copies of Petitioner's tax returns for the past five years, year end balance sheet statements, income and loss statements for the past five years and accountant's statements showing net worth as of December 31, 1985. The First District Court of Appeal erred in declining to review by certiorari the lower court Order of March 27, 1986 as Petitioner, under the circumstances, was without an adequate remedy at law by way of appeal and would suffer irreparable harm.

The common law writ of certiorari is not intended to serve the purpose of an appeal but to cause the record of an inferior court to be brought up in order that a superior court may determine from the face of the record whether the inferior court has not proceeded in accordance with the essential requirements of law. Nation v. State, 22 So.2d 219 (Fla.

1945). The superior court will consider granting a writ of certiorari where the lower court order does not conform with the essential requirements of law and may cause material injury throughout subsequent proceedings for which appeal will be inadequate. Brooks v. Owens, 97 So.2d 693 (Fla. 1957); Hamel v. Seekell, 404 So.2d 1144 (Fla. 5th DCA 1981); Ford Motor Company v. Edwards, 363 So.2d 867 (Fla. 1st DCA 1978).

In the present case, the First District declined review, holding that an adequate remedy by appeal of a final order would exist at a subsequent time (A14). In so stating, the First District recognized and later certified its decision (to decline review by certiorari) to be in direct conflict with Sunrise Olds-Toyota, Inc. v. Monroe, 476 So.2d 240 (Fla. 5th DCA 1985) and Jaimot v. Media Leasing Corp., 457 So.2d 529 (Fla. 5th DCA 1984) (A17).

Assuming for the moment that the lower court Order of March 27, 1986 is erroneous and a departure from the essential requirements of law (see Point II below), the issue for consideration is whether Petitioner would have an adequate remedy at law by way of subsequent appeal from the order of March 27, 1986.

Jaimot, supra, is certainly on all fours with the present matter. In Jaimot, as in the present case, the defendants petitioned for certiorari review of the trial court's denial of their motion to strike a claim for punitive damages. The

Fifth District specifically noted certiorari review was appropriate and further:

"Since a punitive damages claim can serve as the basis for an inquiry into defendant's net worth, an otherwise private matter, the trial court's failure to strike the invalid punitive damages claim is a departure from the essential requirements of law giving rise to an irreparable injury. Accordingly, we grant certiorari review and quash the order of the trial court in that regard." 457 So.2d at 529.

The Fifth District implicitly, if not explicitly, reiterated the previous holdings of Jaimot, in Sunrise Olds-Toyota, Inc. v. Monroe, 476 So.2d 240 (Fla. 5th DCA 1985), wherein review by certiorari was granted and a lower court order denying a motion to dismiss an amended complaint, including a claim for punitive damages, was again quashed. See also Allstate Ins. Co. vs. Kelley, 481 So.2d 989 (Fla. 5th DCA 1986) and Solodky v. Wilson, 474 So.2d 1231 (Fla. 5th DCA 1985).

Each of the cited cases recognizes, in the present context, that a punitive damages claim can serve as the basis for inquiry into normally private and protected affairs of a litigant, therefore, subsequent appeal (in contrast to certiorari review) does not serve as an adequate remedy at law. Moreover, Florida jurisprudence has long recognized that common law certiorari is an appropriate vehicle by which discovery orders of a lower court may be reviewed in light of the possible irreparable harm which cannot be remedied by

subsequent appeal. Fla. Cypress Gardens, Inc. v. Murphy, 471 So.2d 203 (Fla. 2d DCA 1985); Greyhound Lines, Inc. v. Jackson, 445 So.2d 1107 (Fla. 4th DCA 1984); Young, Stern & Tannenbaum, P.A. v. Smith, 416 So.2d 4 (Fla. 3d DCA 1982).

Based upon the foregoing, the decision of the First District Court of Appeal should be reversed and the Order of March 27, 1986 should be reviewed by certiorari.

POINT II

THE FAILURE OF THE LOWER COURT TO STRIKE RESPONDENT'S DEMAND FOR PUNITIVE DAMAGES IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.

Should this Court accept discretionary review of the opinion of the First District Court of Appeal, it may also choose to review the lower court Order of March 27, 1986. Cantor v. Davis, 11 FLW 249 (Case No. 64,663 and 64,664, opinion rendered June 5, 1986).

The lower court's failure to strike Respondent's demand for punitive damages is a clear departure from the essential requirements of law. In order to recover punitive damages, a complaint must allege some general facts and circumstances of fraud, malice, gross negligence or oppression tending to show a plaintiff's right to recover such damages in addition to damages by way of compensation. Winn & Lovett Grocery Co. v. Archer, 171 So. 214, 126 Fla. 308 (1936). The mere

allegations, as stated in Respondent's complaint, that termination was done willfully, maliciously and with total disregard for the rights of Respondent, are not sufficient to properly state a claim for punitive damages. Adjectives employed in a complaint to label an act, without more, are of themselves insufficient to support a claim for punitive damages. Rice v. Clements, 184 So.2d 678 (Fla. 4th DCA 1966).

Numerous cases are directly on point with the present matter. For example, in Moore v. Southern Bell Telephone and Telegraph Company, 176 So.2d 558 (Fla. 2d DCA 1965), the Plaintiff complained that he was entitled to exemplary damages because that his telephone service had been wrongfully discontinued and that the discontinuance was "wrongful, willful and without probable cause". However, the mere allegations of the complaint were not sufficient to state a valid claim for punitive damages in the absence of the allegations of some general facts and circumstances constituting fraud, malice, gross negligence or oppression. 176 So.2d at 559.

In the present case, the Respondent has alleged only that his termination was wrongful and that the Petitioner's actions were "willful, malicious and with total disregard for the rights of the" Respondent. Respondent has not alleged the first general fact and circumstances of fraud, malice, gross negligence or oppression. The use of "buzz words" cannot

substitute for the pleading requirement of supporting ultimate facts. See also American International Land Corporation v. Hanna, 323 So.2d 567 (Fla. 1975); Carroll v. Magnaflux Corp., 460 So.2d 991 (Fla. 4th DCA 1984); Thompson v. City of Jacksonville, 130 So.2d 105 (Fla. 1st DCA 1961); Jaimot, supra.

A violation of §440.205, Florida Statutes, does automatically entitle the complaining party to an award of punitive damages. As a result, Respondent in the present case is required to set out appropriate and adequate allegations to at least state a valid claim for punitive damages. Respondent has failed to state such a valid claim. The Order of March 27, 1986 with regard to the issue of punitive damages is a clear departure from the established and essential requirements of law and is an order from which Petitioner has no adequate remedy at law by way of subsequent appeal.

WHEREFORE, Petitioner respectfully requests the Court to review the present matter, grant the Petition, issue a Writ of Certiorari, quash the appropriate portion of the lower court Order of March 27, 1986 and instruct the lower court to enter an order granting Petitioner's Motion to Strike Demand for Punitive Damages.

CONCLUSION

The lower court Order of March 27, 1986 is a clear departure from the essential requirements of law and an order from which Petitioner would suffer irreparable harm despite the right of subsequent appeal at a later date. As a result, the decision of the First District Court of Appeal, to decline review by certiorari, is erroneous and should be reversed. The Order of March 27, 1986 should be quashed with appropriate directions to the lower court.

Respectfully submitted,

KARL, McCONNAUGHAY, ROLAND
MAIDA & BEAL, P.A.

By *Gordon D. Cherr*
GORDON D. CHERR
Post Office Drawer 229
Tallahassee, Florida 32302
(904) 222-8121
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail to J. NIXON DANIEL, Esquire, Post Office Box 12950, Pensacola, Florida 32576 this 20th day of June, 1986.



GORDON D. CHERR