IN THE DISTRICT COURT OF APPEAL
FOR THE FOURTH DISTRICT
STATE OF FLORIDA

JOSEPH AND JUDY CAMMARATA Case No.: 4D13-0185

Plaintiffs/Appellants,

v.

STATE FARM FLORIDA
INSURANCE COMPANY

Defendant/Appellee./

APPELLANTS' RESPONSE IN OPPOSITION TO MOTIONS TO FILE AMICUS BRIEFS

The APPELLANTS, JOSEPH AND JUDY CAMMARATA, through undersigned counsel, and pursuant to Fla. R. App. P. 9.300 and 9.370, file their Response in Opposition to the Motions to file Amicus Briefs, and state as follows:

1. On September 3, 2014, this Court issued its decision reversing the final summary judgment entered in favor of State Farm. The Court, En Banc, ruled that the Cammaratas' bad faith action was not premature because there had been a determination of State Farm's liability for coverage and the extent of the Cammaratas' damages. Based on its thorough examination of the precedent of the Florida Supreme Court, particularly Blanchard v. State Farm Mutual Automobile Insurance Co., 575 So. 2d 1289 (Fla. 1991) and Vest v. Travelers Insurance Co., 753 So. 2d 1270 (Fla. 2000), this Court held that "an insurer's liability for coverage and

the extent of damages, and not an insurer's liability for breach of contract, must be determined before a bad faith action becomes ripe." Cammarata v. State Farm Florida Ins. Co., 2014 WL 4327948 *4 (Fla. 4th DCA Sept. 3, 2014).

The Court also resolved the apparent conflict between its decision in Lime Bay Condominium, Inc. v. State Farm Florida Insurance Co., 94 So. 3d 698 (Fla. 4th DCA 2012), the supreme court's opinion in Vest, and the Court's opinion Trafalgar at Greenacres, Ltd. v. Zurich American Insurance Co., 100 So. 3d 1155 (Fla. 4th DCA 2012), by receding "from Lime Bay to the extent it held that an insurer's liability for breach of contract must be determined before a bad faith action becomes ripe, even though the insurer's liability for coverage and the extent of the insured's damages already have been determined by an appraisal award favoring the insured." Cammarata v. State Farm Florida Ins. Co., 2014 WL 4327948 *7.

2. On September 29, 2014, State Farm filed its 30-page Motion for Rehearing asking the Court to reconsider its En Banc ruling or, alternatively, to certify direct conflict with North Pointe Ins. Co. v. Tomas, 999 So. 2d 728 (Fla. 3rd DCA 2008), or to certify a question of great public importance to the Florida Supreme Court.

3. Exactly ten days later, motions for leave to file amicus briefs in support of State Farm were filed by the following entities: Property Casualty Insurers Association of America and National Association of Insurance Companies

("Associations"); Chamber of Commerce of the United States of America ("Chamber"); and Florida Justice Reform Institute ("Institute"). The Institute seeks to file an amicus brief in support of State Farm's Motion for Certification; the other entities seek to file amicus briefs supporting State Farm's Motion for Rehearing, and its alternative Motion for Certification.

4. Fla. R. App. P. 9.370(a) states that an amicus curiae "may file a brief only by leave of court." If permitted, the amicus brief must be served "no later than 10 days after the first brief, petition, or response of the party being supported is filed." Rule 9.370(c). Instead of waiting for a ruling on their motions to appear as amici, the Association, Institute and Chamber have taken it upon themselves to file their amicus briefs without the Court's permission.

5. Briefs from "amicus curiae, which means 'friend of the court,' are generally for the purpose of assisting the court in cases which are of general public interest, or aiding in the presentation of difficult issues." Ciba-Geigy Ltd. V. Fish Peddler, Inc., 683 So. 2d 522, 523 (Fla. 4th DCA 1996). Rule 9.370(c) contemplates that amicus briefs will be filled during the briefing stage of the appeal so they will actually be of assistance to the court during the decision-making process.

6. The Cammaratas filed their notice of appeal in January 2013. Their Initial Brief was filed in July 2013. It was clear from the beginning that they intended to rely on Trafalgar, Blanchard and Vest, along with Hunt v. State Farm Florida Ins.

Co., 112 So. 3d 956 (Fla. 2nd DCA 2013), rather than Lime Bay and North Pointe, for the proposition that their bad faith claim was ripe. State Farm's Answer Brief was not filed until October 11, 2103. During that three month period, none of the movants sought to file an amicus brief. Briefing was closed in December 2013; the issues and parties' respective positions were well known by then. Still, none of the movants sought to file an amicus brief. Another five months would pass before oral argument was held, and it would be another four months before the Court issued its decision. During the course of those nine months, no effort was made by any of the movants to participate in the case by filing an amicus brief. If the case was truly of such great magnitude and significance as they now claim, the movants would have sought to become involved long ago. They never did so. It is only now, after the Court issued a decision they do not like, that movants seek inject themselves into the case. They should be precluded from disrupting the proceedings at this late date.

6. The Cammaratas recognize that although post-opinion filing of an amicus brief is not authorized by Rule 9.370, it has been permitted on limited occasions by Florida precedent. C. Wozniak, Amicus Briefs: What have They Done For Courts Lately?, 86 Fla. B. J. 81 n. 30 (June 2012). Compare Home Devco/Tivoli Isles, LLC v. Silver, 26 So. 3d 718 (Fla. 4th DCA 2010) (allowing amicus to file motion for rehearing) with City of Temple Terrace v. Hillsborough Association for Retarded Citizens, Inc., 322 So. 2d 571 (Fla. 2nd DCA 1975) (motion to file amicus

brief during rehearing period comes too late). This is not one of those rare special occasions. In order to be granted amicus curiae status, the movants must demonstrate that they specifically contribute expertise and arguments not presented by the parties. An amicus brief that merely repeats or advances the same arguments that a party advances is improper, especially when the brief functionally serves only to give one side more exposure than allowed by the appellate rules. "Me-too" briefs, "briefs that are too one-sided, or briefs that belabor the positions of parties whose positions are already well represented, are of no value to judges and will be disregarded." Sylvia H. Walbolt and Joseph Lang, Jr., Amicus Briefs: Friend or Foe of Florida Courts?, 32 Stetson L. Rev. 269, 308 (Winter 2003).

7. With all due respect to able counsel, the proposed amicus briefs do not contribute expertise and arguments not presented by the parties in their briefs or by State Farm in its thirty-page Motion for Rehearing and/or Certification. The Institute's proposed brief reiterates State Farm's arguments regarding certification, as do the Chamber and Associations' proposed briefs.[1] Those briefs also advance substantially the same arguments State Farm presents in its Motion for Rehearing and, for that matter, its Answer Brief. The proposed amicus briefs bring nothing new

[1]If the Court's decision actually did conflict with North Pointe (which it does not), State Farm could seek supreme court review without certification pursuant to Fla. R. App. P. 9.030(2)(A)(iv).

to the Court's attention. They simply give the Court (and the Cammaratas) another forty-plus pages of argument to review and ultimately address.

8. The movants also have not shown that counsel for State Farm is incapable of continuing to adequately present issues to the Court for resolution. Chacon v. State, 102 So. 2d 593, 594 (Fla. 1958). Counsel skillfully represented State Farm throughout the course of this appeal. The Motion for Rehearing is no exception. The Motions to File Amicus Briefs should be denied. If, however, the Court is at all inclined to allow the amicus briefs to be filed, the Cammaratas respectfully request they be granted sufficient time to respond to the briefs.

WHEREFORE, the Appellants, JOSEPH AND JUDY CAMMARATA, respectfully request the Court to deny the Motions for Leave to File Amicus Briefs filed by the Property Casualty Insurers Association of America and National Association of Insurance Companies, the Chamber of Commerce of the United States of America, and the Florida Justice Reform Institute.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic mail to the following individuals on this 17th day of October, 2014.

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