

IN THE SUPREME COURT OF FLORIDA

BRENDAN BRINDISE and,
SUZANNE BRINDISE,

Petitioners,

SC Case No. SC16-300

v.

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE, FOR THE BENEFIT OF
HARBORVIEW 2005-3 TRUST FUND,

Respondent.

On Petition for Discretionary Review From
The Second District Court of Appeal, Florida Case No. 2D14-3316

PETITIONERS' BRIEF ON JURISDICTION

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ARGUMENT

I. THIS COURT SHOULD EXERCISE JURISDICTION.

Brindise and their undersigned counsel realize a jurisdictional brief is not necessary in light of the Second District having certified the question at bar as one of great public importance. See Brindise v. U.S. Bank, N.A., 2016 WL 229572, ___ So. 3d ___ (Fla. 2016). That said, the undersigned believes this Court should be aware of the following as it decides whether to accept jurisdiction in this cause.

When it certified the question whether § 559.715 operates as a condition precedent in a mortgage foreclosure case as one of great public importance, the Second District explained how this issue affects the adjudication of “innumerable foreclosure cases.” Id. That language may come as a surprise to this Court, given the relative paucity of published decisions citing § 559.715 on the DCA level, at least until recent months.¹ If so, this Court should realize the question at bar impacts,

¹ See Deutsche Bank v. Quinion, ___ So. 3d ___ (Fla. 2d DCA, Jan. 15, 2016) (non-final decision setting forth pleading requirements for § 559.715 in the event it is a condition precedent); Amstone v. Bank of New York Mellon, ___ So. 3d ___ (Fla. 2d DCA, Jan. 6, 2016) (reversing summary judgment in mortgage foreclosure case where lender did not disprove affirmative defense predicated on § 559.715); Ramos v. Cach, LLC, ___ So. 3d ___ (Fla. 5th DCA, Dec. 31, 2015) (consumers cannot sue based on a violation of § 559.715); Burt v. Hudson, Keyse, LLC, 138 So. 3d 1193 (Fla. 5th DCA 2014) (reversing summary judgment for creditor where disputed issue of fact regarding whether consumer received the written notice contemplated by § 559.715).

by the undersigned's estimate,² as many as 90% of all mortgage foreclosure lawsuits filed in Florida, not to mention countless other consumer cases and credit card lawsuits.³

The undersigned has no case citation for that proposition and, to the extent this Court deems that assertion inappropriate, apologizes for same. That said, the plaintiff which files suit in a mortgage foreclosure case is not the original lender, by

² The undersigned has litigated many thousands of mortgage foreclosure lawsuits since 2008 and has been counsel in many published decisions involving issues of first impression in Florida. See Brindise, ___ So. 3d at ___ (2-1 decision on whether § 559.715 is a condition precedent in a mortgage foreclosure case, certifying the question to this Court as one of great public importance); Quinion, ___ So. 3d at ___ (explaining the type of specificity with which a borrower must plead § 559.715 in the event it is a condition precedent); Green Tree Servicing, LLC v. Milam, 177 So. 3d 7 (Fla. 2d DCA 2015) (whether the notice required by paragraph 22 of the standard, Fannie Mae mortgage contains the requisite information is viewed under a “substantial compliance” analysis); Correa v. U.S. Bank, 118 So. 3d 952 (Fla. 2d DCA 2013) (foreclosure defendants can raise sufficiency of the evidence for the first time on appeal, and dismissal is the appropriate remedy on remand, not a new trial, where the lender failed to prove its *prima facie* case); Wells Fargo v. Taboada, 93 So. 3d 973 (Fla. 2d DCA 2012) (regarding verification requirements of Fla.R.Civ.P. 1.110(b)). The undersigned gives this background so this Court can, hopefully, give some credence to the undersigned's statements where, admittedly, no case citation is possible.

³ Brindise couches the issue in the foreclosure context, and appropriately so. That said, this issue arises in other many other contexts, e.g. credit card cases. After all, under the plain language of § 559.715, written notice of the assignment of the debt is required any time a plaintiff has filed suit seeking to collect a debt but was not the original creditor. See e.g. Burt, 138 So. 3d at 1194.

the undersigned's estimate, see n.2, approximately 90% of the time. As a result, whether the notice contemplated by § 559.715 is condition precedent to foreclosure impacts, in the Second District's words, an "innumerable" number of lawsuits in Florida.

Notably, the undersigned has appeals pending with this issue, as both appellant and appellee, before the First, Second, Fourth, and Fifth Districts. In fact, the Second District's certified question in Brindise was precipitated by the undersigned arguing this issue at Oral Argument before various panels of the Second District on *seven* different occasions.

After a flurry of Oral Arguments in August and September of 2015, the Second District was so divided on the issue that it issued a 2-1 decision in Brindise, certified the question to this Court, and withheld ruling on all other, pending appeals where § 559.715 is an issue except Quinion, where it assumed *arguendo* § 559.715 is a condition precedent and explained how to plead it as such.⁴

DCA cases aside, the undersigned has argued this issue many hundreds of

⁴ Why would the Second District issue a decision assuming § 559.715 is a condition precedent and explaining how to plead it as such just five days before ruling it is not a condition precedent? The only reasonable explanation is the same reason the Second District has withheld ruling on other appeals involving this issue: it believes this Court may rule the notice requirement in the statute is a condition precedent.

times on the circuit court level. Since first doing so in 2010, 51 different circuit court judges have dismissed a foreclosure case based on § 559.715 at least once. All told, the undersigned has successfully advanced this argument approximately 450 times on the circuit court level. To so illustrate, filed contemporaneously herewith is a “Notice of Authority” reflecting some such rulings.

Judge Khouzam, the dissent in Brindise, was the 52nd different Florida judge to rule § 559.715 is a condition precedent in a mortgage foreclosure case, and that is just in the undersigned’s cases. Of course, many judges have ruled against the undersigned on this issue, and many, frankly, have gone back and forth on the issue over the years. Suffice it to say whether the notice requirement of Fla. Stat. § 559.715 serves as a condition precedent has been a hotly-contested issue for many years now, one which the Second District believes worthy of adjudication by this Court.

The undersigned recognizes the unusual nature of some of the statements contained in this Brief and, to the extent this Court finds such statements misplaced, apologizes for same. That said, the undersigned filed this Brief in the good-faith belief the contents hereof would assist this Court in deciding whether to exercise jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-service to Debra Rescigno, Esq., Robertson, Anschutz & Schneid, P.L., mail@rasflaw.com, 6409 Congress Ave., Suite, 100, Boca Raton, FL 33487, and Nancy M. Wallace, Esq., nancy.wallace@akerman.com, elisa.miller@akerman.com, Michele.rowe@akerman.com, William P. Heller, Esq., William.heller@akerman.com, Lorraine.corsaro@akerman.com, Akerman, LLP, Las Ola Centre II, Suite 1600, 350 East Las Olas Boulevard, Fort Lauderdale, Florida 33301, on this 5th day of March, 2016.

/s/ Mark P. Stopa, Esquire _____

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is Times New Roman 14-point, in compliance with Fla.R.App.Pro. 9.210(a)(2).

/s/ Mark P. Stopa, Esquire _____

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