

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed April 6, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1611
Lower Tribunal No. 03-13413

Kurt S. Browning, etc.,
Appellant,

vs.

Angelfish Swim School, Inc., et al.,
Appellees.

An Appeal from a non-final order of the Circuit Court for Miami-Dade County, William Thomas, Judge.

C.B. Upton, General Counsel, Florida Department of State; Gray Robinson and Juan C. Martinez, Charles T. Wells, Allen Winsor, and Andy Bardos, for appellant.

Andrew T. Traylor and Brian H. Pollock; Gerald Kogan; Wexler Wallace and Edward A. Wallace and Amy E. Keller; Jorge A. Duarte; for appellees.

Varnell & Warwick and Brian W. Warwick; and Melanie Hirsch, for Public Justice, P.C., as amici curiae.

Before GERSTEN, SUAREZ, and CORTIÑAS, JJ.

PER CURIAM.

Kurt S. Browning, the Secretary of the State of Florida, appeals from an order granting Angelfish Swim School, Inc., and Steak On The Run, Inc.'s motion for class certification in an action challenging late fees and reinstatement fees charged to corporations. We reverse.

Florida Rule of Civil Procedure 1.220(a) establishes the requirements for class certification: numerosity, commonality, typicality, and adequacy of the proposed class representatives. Here, the trial court erred in its determination on the adequacy requirement. See Ownby v. Citrus Cnty., 13 So. 3d 136 (Fla. 5th DCA 2009); Browning v. Angelfish Swim Sch., Inc., 1 So. 3d 355 (Fla. 3d DCA 2009).

Accordingly, since the adequacy threshold requirement for class certification was not satisfied, we reverse and remand with instructions to vacate the order granting the class certification and dismiss the class action.

Reversed and remanded with instructions.