

Third District Court of Appeal

State of Florida

Opinion filed September 26, 2018.

No. 3D17-352
Lower Tribunal No. 13-29724

Aquasol Condominium Association, Inc.,
Appellant,

vs.

HSBC Bank USA, National Association, etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Michael Hanzman and Rodolfo A. Ruiz, Judges.

Jacobs Legal, PLLC, and Bruce Jacobs, for appellant.

DeLuca Law Group, PLLC, and Shawn Taylor (Fort Lauderdale), for appellee.

Before LAGOA, EMAS and FERNANDEZ, JJ.

PER CURIAM.

ORDER TO SHOW CAUSE

INTRODUCTION

Following our issuance of a panel opinion affirming the judgment below, appellant filed a motion for rehearing and rehearing en banc. Upon our review of that motion, as well as a review of the initial and reply briefs filed by Mr. Jacobs in this appeal, we hereby order Bruce Jacobs, Esquire, and Jacobs Legal, PLLC, to show cause within ten days why this court should not impose sanctions for filing a motion and briefs that violate the Florida Rules of Appellate Procedure and Rules Regulating the Florida Bar.

DISCUSSION

Conduct Related to Mr. Jacobs' Initial and Reply Briefs

With regard to the initial and reply briefs filed by Mr. Jacobs, this court finds there is a reasonable basis to conclude Mr. Jacobs violated his duty of candor to the tribunal (see Rule 4-3.3(a)(3), Rules Regulating the Florida Bar) by failing to disclose to this court controlling adverse law. That controlling adverse law is HSBC Bank USA, N.A. v. Buset, 241 So. 3d 882 (Fla. 3d DCA 2018). As we noted in our opinion, see Aquasol Condo. Ass'n, Inc., v. HSBC Bank USA, N.A., 43 Fla. L. Weekly D1878 at *4 (Fla. 3d DCA August 15, 2018)), Mr. Jacobs was counsel of record in Buset (in both the trial court and on appeal), and thus was fully aware of Buset's holding and its binding nature on the trial court and the

panel of this court. Indeed, the trial court expressly and affirmatively relied on Buset for its ruling on a central legal issue presented in this case. However, Mr. Jacobs failed to cite, acknowledge or address Buset in either his fifty-page initial brief or his ten-page reply brief.

“Appellate courts . . . depend on counsel to accurately state both the facts and the applicable law. Therefore, regardless of trial counsel's conduct or representations, appellate counsel (who often is separate from trial counsel) has an independent ethical obligation to present both the facts and the applicable law accurately and forthrightly.” Boca Burger, Inc. v. Forum, 912 So. 2d 561, 571 (Fla. 2005). This does not mean Mr. Jacobs was foreclosed from arguing that our decision in Buset is inconsistent with Florida Supreme Court precedent. It does mean, however, that he was obligated to cite and acknowledge Buset, given its binding and adverse nature.

Conduct Related to Mr. Jacobs’ Motion for Rehearing and Rehearing en Banc

We turn next to Mr. Jacobs’ motion for rehearing and rehearing en banc. The introductory section of Mr. Jacobs’ motion for rehearing and rehearing en banc consists of seven pages. Here are some highlighted passages from that initial portion of his motion (all emphases added):

- “Most disturbing, the opinion sends the wolves after Aquasol’s counsel personally by commending the trial court’s ‘patience’ for not

holding him in contempt of court. Truthfully, no court should dare make the front page of the paper for jailing an attorney for asking about a false document in evidence. **This Court's opinion intentionally emboldens judges to abuse their contempt powers.**

- “This Court’s insistence on **ignoring established Florida Supreme Court law to benefit bad corporate citizens** is certain to cause chaos.”

- “Fla. Stat. § 673.3011 controls enforcement of negotiable instruments, not mortgages. Ownership controls the right to enforce the mortgage. **This Court is acting illegally by instructing the law is otherwise.**”

In addition, this portion of Mr. Jacobs’ motion contains several pages devoted entirely to recapitulating the very arguments advanced in his initial and reply briefs, and to express his intense disagreement and dissatisfaction with the decision and opinion of this court.

The balance of Mr. Jacobs’ motion is entitled “Conclusion.” It begins with what can best be described as a desultory diatribe, consisting of personal opinions, reflections and experiences which are completely outside the record and entirely irrelevant to the issues on appeal or the decision of the court. Here are the opening paragraphs to this portion of Mr. Jacobs’ motion:

I have faith that this David v. Goliath battle will end justly. I deeply reject that I should be held in contempt for standing up for homeowners against a corrupt foreclosure system. This is not Russia or North Korea.

My ancestors on my mother’s side trace back to the tribe of Kohanim, the priests of the temple in Jerusalem. My father’s ancestors trace back to the tribe of Levi, who assisted the priests of the temple in

Jerusalem. My ancestors were the first refugees. They have stood up to injustice and abuse throughout history.

The motion continues in this vein for more than five pages, describing Mr. Jacobs' painful childhood, his wife and children, the nature of his law practice, and how he became a "student of the [foreclosure] crisis."

Regrettably, the motion does not end with Mr. Jacobs' account of his personal and professional journey.¹ Instead, the "arguments" evolve from mere irrelevance and extra-record digression into a withering attack on the judiciary, as illustrated by the following passages in the final portion of his motion (all emphases added):

- "I refuse to accept the idea that you cannot win when you are right. This is a biblical, spiritual journey for me. I have faith I will be protected *because I am acting so clearly within the law and this Honorable Court is not.*"
- "It's become clear to me that the 'powers that be' support this fraudulent foreclosure system that took so long to put in place. If only the Courts enforced the 2001 amendments to Article 9 and forced Banks to bring their contracts to prove their purchase of the debt to prove standing. . . . *This foreclosure crisis was such an interesting phenomenon. Courts kept covering up for Banks that were intentionally doing it wrong.*"
- "Banks have all the resources to do it right but made business decisions to do it fraudulently. *It's as if they knew the Courts would always let them get away with it. Some out of fear as elected*

¹ The unabashedly personal and inappropriate nature of his motion is exemplified by the fact that, in the twenty-page document, Mr. Jacobs refers to himself (using "I," "me" or "my") 115 times.

officials. Some out of indifference. Some out of belief that banks and bad corporate citizens got them to their position and they are on that team. The banks should always win. I call those judges traitors to the constitution.

- “These banks have so much and keep taking more. They don’t care if you are rich or poor, white or black. . . . **It is easy to win when the game is rigged.**

- “In the decade that I’ve fought on the trenches of foreclosure court, I’ve been blessed to help so many clients save their homes. Yet, I’ve had to warn them this broken system is riddled with fraud and perjury. **The judges decide the rule of law, and whether any rule of law exists. Maybe the rule of law only applies to the rest of us.**”

- “**This Court is sworn to protect and defend the constitution of the United States of America, not the foreclosure fraud of Bank of America or HSBC.**”

- “**Why would anyone sworn to protect and defend the constitution stay silent while domestic enemies destroy our democracy from within? Is this really the world Americans should live in where those in power do not do what is right?**”

- “I’m fighting the modern-day monopoly. I am calling all the patriots who swore the oath to protect and defend the Constitution to join me. **Any court that protects the monopoly over the rule of law is a traitor to the constitution and should be tried for treason.**”

- “This Court should not ignore Florida Supreme Court precedent and the actual facts of the dispute **to reach a pre-determined result of blow the dogwhistle for judges to attack Aquasol’s counsel with contempt and jail for doing his job.**”

There are more examples, but further recitation is unnecessary. This court finds there is a reasonable basis to conclude that Mr. Jacobs has violated Rule 4-

8.2(a), Rules Regulating the Florida Bar, by impugning the qualifications or integrity of the judges of this court and of the trial court. Rule 4-8.2(a) provides in pertinent part:

Impugning Qualifications and Integrity of Judges or Other Officers. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge

See also The Florida Bar v. Norkin, 132 So. 3d 77 (Fla. 2013) (approving referee's finding that respondent was guilty of violating Rules Regulating the Florida Bar where respondent, inter alia, filed a motion containing disparaging remarks about two judges, including that one of the judges was at opposing counsel's "beck and call"); The Florida Bar v. Ray, 797 So. 2d 556, 558 (Fla. 2001) (approving referee's recommendation, finding respondent guilty of violating the Florida Rules of Professional Conduct where he made several statements impugning the integrity of a trial judge and noting: "Ethical rules that prohibit attorneys from making statements impugning the integrity of judges are not to protect judges from unpleasant or unsavory criticism. Rather, such rules are designed to preserve public confidence in the fairness and impartiality of our system of justice"); The Florida Bar v. Weinberger, 397 So. 2d 661, 662 (Fla. 1981) (finding respondent guilty of professional misconduct where he "filed various pleadings and made public statements denigrating the courts and the administration of justice"); Faddis v. City of Homestead, 157 So. 3d 447 (Fla. 3d DCA 2015) (counsel's insinuation

that he was being bullied by judges of the appellate court and that a miscarriage of justice was knowingly being perpetrated on counsel was found to be a violation of the Rules Regulating the Florida Bar because the attorney had impugned the qualifications and integrity of the judges of this court); Shortes v. Hill, 860 So. 2d 1, 3 (Fla. 5th DCA 2003) (referring an attorney to the Florida Bar where, in his appellate brief, he wrote that the trial judge’s ruling was “cockeyed and absurd,” and demonstrated a “most startling absence of legal knowledge and irrational decision”).²

This court further finds there is a reasonable basis to conclude Mr. Jacobs has violated Florida Rule of Appellate Procedure 9.330(a), which provides that motions for rehearing “shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding.” See also Committee Notes to 2000 Amendment to Rule 9.330 (providing that a motion for rehearing may not be utilized “to express mere disagreement with [the court’s] resolution of the issues on appeal”); Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959) (holding motion for rehearing may not be used as a means to reargue points involved in the case or to raise other or different grounds than those

² We also note that, in taking the Oath of Admission to the Florida Bar, attorneys solemnly swear that they “will maintain the respect due to courts of justice and judicial officers.”

previously relied on in the appeal); Ayala v. Gonzalez, 984 So. 2d 523, 526 (Fla. 5th DCA 2008) (issuing show cause order and holding that a motion for rehearing in an appellate court is not “an open invitation for an unhappy litigant or attorney to reargue the same points previously presented, or to discuss the bottomless depth of the displeasure that one might feel toward this judicial body as a result of having unsuccessfully sought appellate relief.”)

Finally, this court finds that there is a reasonable basis to conclude that Mr. Jacobs has filed a motion that is frivolous or in bad faith. Florida Rule of Appellate Procedure 9.410(a) provides:

After 10 days’ notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filing of any . . . motion . . . that is frivolous or in bad faith. Such sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorney’s fees, or other sanctions.

CONCLUSION

Based upon the foregoing, and upon this court’s own motion, Bruce Jacobs, Esquire, and Jacobs Legal, PLLC, are hereby ordered to show cause within ten days why this court should not impose sanctions for filing a motion and briefs that violate the Florida Rules of Appellate Procedure and Rules Regulating the Florida Bar.

The court reserves jurisdiction to impose such sanctions as may be appropriate and to order further response, including the personal appearance of appellant's counsel, should the written response be deemed insufficient.

Order to show cause issued.