

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

RONALD DESBRUNES,

Appellant,

Case No.: 4D22-2647

vs.

US BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR STRUCTURED
ASSET SECURITIES CORPORATION
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-AM1,

Appellee.

_____ /

APPELLANT’S OBJECTION TO AMICI CURIAE’S BRIEF

The undersigned, as counsel for Appellant RONALD DESBRUNES, hereby files Appellant’s Objection to the “Amicus Curiae Brief in Support of US Bank National Association’s Motion for Rhearing [sic]” (hereinafter “Amici Curiae’s Brief”) filed within this Court’s record as an attachment to the “USFN – America’s Mortgage Banking Attorneys,¹ American Legal and Financial

¹ Appellant refers to “USFN – America’s Mortgage Banking Attorneys” as “USFN” herein.

Network,² and Legal League³ Motion for Leave to File Amicus Brief in Support of Appellee’s Motion for Rehearing, Rehearing En Banc, and Certification” (hereinafter “Amici Curiae’s Motion”),⁴ and states as follows:

As Amici Curiae’s Motion, by its own terms, limited the scope of Amici Curiae’s involvement in this appeal to briefing this Court regarding whether this Court should grant or deny Bank’s Motion for Rehearing, Motion for Rehearing En Banc, or Motion for Certification, the issues and argument that can properly be presented within Amici Curiae’s Brief are necessarily limited to the parameters defined within the relevant Florida Rules of Civil Procedure.

Fla. R. App. P. 9.330(a)(2)(A) (Motions for Rehearing) states:

“A motion 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 order or decision. The motion shall not present issues not

² Appellant refers to “American Legal and Financial Network” as “ALFN” herein.

³ Appellant refers to “Legal League” as “LL” herein.

⁴ Appellant refers to USFN, ALFN, LL, and 32 *amici curiae* law firms collectively as “Amici Curiae” herein (see “List of Amici Curiae” in the first operative exhibit appearing within the Amici Curiae’s aggregate “Exhibit” to Amici Curiae’s Brief, which identifies 32 law firms as additional *amici curiae* in this case).

previously raised in the proceeding.”

Amici Curiae’s Brief fails in its entirety to acknowledge the scope of content allowed within motions for rehearing under Fla. R. App. P. 9.330(a)(2)(A), or to reflect any attempt to comply with the requirements of the Rule. A word search of Amici Curiae’s Brief reflects that the terms “overlook” and “misapprehend” do not appear anywhere within Amici Curiae’s Brief. Amici Curiae has clearly and entirely failed to “... state with particularity the points of law or fact that ... the court has overlooked or misapprehended in its order or decision.”

Further, similar to Bank’s Three Post-Decision Motions, Amici Curiae’s Brief is replete with new issues not previously raised within this appeal. It appears clear to Appellant that the Amici Curiae prepared Amici Curiae’s Brief as if it were being submitted to this Court during the briefing phase of this appeal. That phase has long since passed. In fact, a word search of Amici Curiae’s Brief reflects that there are no references to Fla. R. App. P. 9.330 or 9.331 throughout Amici Curiae’s Brief. Specifically, Amici Curiae’s failure to state with any particularity whatsoever any points of law or fact that this Court purportedly “overlooked” or

“misapprehended” within this Court’s decision in this case, combined with the broad scope of issues presented within Amici Curiae’s Brief that were not previously raised within this proceeding, necessarily precludes this Court from considering any of Amici Curiae’s Brief regarding whether this Court should grant or deny Bank’s Motion for Rehearing.

Fla. R. App. P. 9.330(a)(2)(C) (Motions for Certification) states:

A motion for certification shall set forth the case(s) that expressly and directly conflicts with the order or decision or set forth the issue or question to be certified as one of great public importance.

Amici Curiae’s Brief fails in its entirety to set forth any case that expressly and directly conflicts with this Court’s decision in this appeal. A word search of Amici Curiae’s Brief reflects that the term “conflict” does not appear anywhere within Amici Curiae’s Brief. Therefore, the only grounds upon which this Court may consider Amici Curiae’s Brief under Fla. R. App. P. 9.330(a)(2)(C) involves the three questions the Amici Curiae propose be certified as questions “of great public importance.” The phrase “great public importance” appears only twice within Amici Curiae’s Brief (on page 21 of 22, immediately preceding the three questions Amici Curiae

suggests should be certified to the Florida Supreme Court, and on page 22 of 22 within the Conclusion to Amici Curiae's Brief).

Amici Curiae otherwise failed in the entirety to specifically identify any issues of "great public importance" within the body of Amici Curiae's Brief. If any issues presented in Amici Curiae's Brief were perceived by Amici Curiae to rise to the level of "great public importance" required under Fla. R. App. P. 9.330(a)(2)(C), it is difficult to conceive why Amici Curiae did not identify any such issues within the body of Amici Curiae's Brief. Further, Amici Curiae's Brief purportedly asserted numerous issues and arguments in support of Bank's Motion for Rehearing. It is also difficult to conceive that each of the numerous issues and arguments intended by Amici Curiae to apply to Bank's Motion for Rehearing would all rise to the level of "great public importance" required of motions for certification under Fla. R. App. P. 9.330(a)(2)(C).

The second and third questions presented within Amici Curiae's Brief are the same as the second and third questions presented by Appellee within Bank's Motion for Certification. The first question presented within Amici Curiae's Brief is significantly

different from the first question proposed by Appellee within Bank's Motion for Certification. Appellant will leave the propriety of Amici Curiae presenting a substantially revised first question for possible certification to the sound discretion of this Court.

Fla. R. App. P. 9.331(d) (Rehearings En Banc) states in pertinent part:

- (2) Required Statement for Rehearing En Banc. ... I express a belief, based on a reasoned and studied professional judgment, that the case or issue is of exceptional importance.

It appears that Amici Curiae met the requirements of Fla. R. App. P. 9.331(d) (Rehearings *En Banc*) for a party submitting a motion for rehearing *en banc* by reflecting the bare required statement within the conclusion of Amici Curiae's Brief. Amici Curiae otherwise failed in the entirety to specifically identify any issues of "exceptional importance" within the body of Amici Curiae's Brief. If any issues presented in Amici Curiae's Brief were perceived by Amici Curiae to rise to the level of "exceptional importance" required under Fla. R. App. P. 9.331(d), it is difficult to conceive why Amici Curiae did not identify any such issues within the body of Amici Curiae's Brief. Further, Amici Curiae's Brief purportedly

asserted numerous issues and arguments in support of Bank's Motion for Rehearing. It is also difficult to conceive that each of the numerous issues and arguments intended by Amici Curiae to apply to Bank's Motion for Rehearing would all rise to the level of "exceptional importance" required of motions for rehearing *en banc* under Fla. R. App. P. 9.331(d).

Fla. R. App. P. 9.370 (Amicus Curiae) states, in pertinent part:

- (c) Time for Service. An amicus curiae must serve its brief no later than 10 days *after the first brief, petition, or response of the party being supported is filed*. An amicus curiae that does not support either party must serve its brief no later than 10 days *after the initial brief or petition is filed*. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an *amicus brief does not alter or extend the briefing deadlines for the parties*. An amicus curiae may not file a reply brief. *Leave of court is required to serve an amicus brief in support of or opposition to a motion for rehearing, rehearing en banc, or for certification to the supreme court.* (Emphasis added).

As argued above, Amici Curiae's Brief is replete with new issues not previously raised within this appeal. It appears clear that the Amici Curiae prepared Amici Curiae's Brief as if it were being submitted to this Court during the briefing phase of this appeal. That phase has long since passed. In fact, a word search of Amici

Curiae's Brief reflects that there are no references to Fla. R. App. P. 9.330 or 9.331 throughout Amici Curiae's Brief.

The language of Fla. R. App. P. 9.370(c) presents the authority of an appellate court to grant leave of court for the filing of "... an amicus brief in support of or opposition to a motion for rehearing, rehearing en banc, or for certification to the supreme court" at the end of subsection (c). The authority of an appellate court to grant leave of court for the filing of amicus curiae briefs during the briefing phase of an appeal is presented at the beginning of subparagraph (c) of said Rule. Surely it must be safe to presume that the Florida Supreme Court did not intend to allow amicus curiae to submit briefs in support of a specific party's motion for rehearing, rehearing *en banc*, or for certification to the Florida Supreme Court that would introduce new issues and arguments not previously raised by such supported party during the briefing phase of the appellate proceeding, as does Amici Curiae's Brief in this instant case. If Amici Curiae wished to befriend this Court during the briefing phase of this appeal, the new issues and argument presented within Amici Curiae's post-decision Brief could have been timely and appropriate. At the current post-decision phase of this

appeal, Amici Curiae's new issues and arguments are impermissible.

Even if this Court should decide to consider any of the new issues and arguments presented within Amici Curiae's Brief that were not raised by Bank as Appellant during the briefing phase of this proceeding, Appellant presents two objections.

FIRST, Appellant questions the relative weight which should be afforded to the issues and arguments presented within Amici Curiae's Brief. Appellant hereby objects to Amici Curiae's implicit assumption that this Court should afford full credibility and weight to the issues and arguments presented within Amici Curiae's Brief.

In *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997), citing *United States v. Michigan*, 940 F.2d 143, 164-65 (6th Cir. 1991), Chief Judge Posner presented a cogent analysis of the propriety of involvement of amicus curiae in pending matters which includes a compelling historical analysis of relevant cases existent at the time of the 7th Circuit's opinion, stating in relevant part:

“The vast majority of amicus curiae briefs **[1]** are filed by allies of litigants and **[2]** duplicate the arguments made in the litigants' briefs, in effect merely extending the

length of the litigant's brief. Such amicus briefs should not be allowed. They are an abuse. [3] An amicus is to be a friend of the court, not a friend of a party. ...

An *amicus* brief should normally be allowed [4] when a party is not represented competently or is not represented at all, [5] when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or [6] when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. See, e.g., *Miller-Wohl Co. v. Commissioner of Labor Industry*, 694 F.2d 203 (9th Cir. 1982) (*per curiam*). Otherwise, leave to file an amicus curiae brief should be denied. *Northern Securities Co. v. United States*, 191 U.S. 555, 556 (1903) (Chief Justice Fuller, in chambers); *American College of Obstetricians Gynecologists v. Thornburgh*, 699 F.2d 644 (3d Cir. 1983) (*per curiam*); *Rucker v. Great Scott Supermarkets*, 528 F.2d 393 n. 2 (6th Cir. 1976); *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970); *United States v. Gotti*, 755 F. Supp. 1157 (E.D.N.Y. 1991); *Fluor Corp. v. United States*, 35 Fed. Cl. 284 (1996).”

Ryan v. Commodity Futures Trading Commission, 125 F.3d 1062, 1063 (7th Cir. 1997). (Enumeration provided).

Judge Posner's first precept asserts that purported amicus curiae who are allies of a party to the action constitute an abuse of court rules that allow involvement of amicus curiae under limited circumstances, and therefore should not be allowed. *Ryan, id.* In this instant case, the 35 entities purported within Amici Curiae's

Motion for Leave to File Brief to be friends of this Court (including the 32 Florida law firms identified as additional Amici Curiae within the Exhibit to Amici Curiae's Brief that represent foreclosure plaintiffs) are, in fact, allies of the Bank as Appellee in this case. Therefore, the objectivity and accuracy of assertions in general, and improper evidence in particular, presented within Amici Curiae's Brief and its associated Exhibit is prejudicial to Appellant. A friend of this Court should come to this proceeding with exceptionally clean hands, and with no appearance of impropriety regarding issues and arguments presented to this Court. In accordance with Judge Posner's analysis, the implicit bias and lack of objectivity reflected by the inclusion of the 32 Florida foreclosure law firms as Amici Curiae in this case effectively disqualify Amici Curiae in the aggregate as "friends" of this Court.⁵

Judge Posner's fifth precept involves whether the 35 Amici Curiae in this instant case have any interest in other cases that may be affected by the decision in the present case. Neither Amici

⁵ "With friends like these, who needs enemies?" See Shapiro, Fred R. (ed.) (2006) *The Yale Book of Quotations*, Yale University Press, page 478 (attributing this quotation to Joey Adams).

Curiae's Motion nor Amici Curiae's Brief identify any pending cases in which they have an interest that may be affected by the decision in this case. If no such cases exist among the 32 Amici Curiae that represent foreclosure plaintiffs in Florida, such a revelation would seriously undermine Amici Curiae's argument that the abuses of Fla. R. Civ. P. 1.260(a)(1) and the due process clause of the federal Constitution similar to this instant appeal are so widespread that they justify this Court revising its opinion. On the other hand, if the 32 Amici Curiae law firms do have cases in which abuses of Fla. R. Civ. P. 1.260(a)(1) and the due process clause of the federal Constitution similar to this instant appeal have occurred or are currently being perpetrated, it would be helpful if the 32 Amici Curiae law firms would disclose such cases to this Court.

Judge Posner's sixth precept involves whether the Amici Curiae in our instant appeal have any unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Certainly, a full disclosure from the 32 Amici Curiae law firms identifying all past and present cases involving abuses of Fla. R. Civ. P. 1.260(a)(1) and the due process clause of the federal Constitution similar to those reflected within

this instant appeal could be extremely helpful to this Court. An unbiased, objective, and legitimate friend of this Court should arguably do no less.

SECOND, Amici Curiae's presentation of evidence in the form of data and statistics supposedly related to any purported repercussions of this Court's decision is objectionable because Amici Curiae has not been properly proffered or qualified as an expert witness during either the lower tribunal action or this appellate proceeding. Amici Curiae requested leave of this Court to file Amici Curiae's Brief with Exhibit, and this Court granted Amici Curiae's Motion upon the assertions presented within said Motion. Amici Curiae's filing of Amici Curiae's Brief and associated Exhibit within this Court's record constituted the introduction of impermissible evidence within this appeal. Introduction during this post-decision phase of this appeal of any evidence in general, and specifically of the hearsay evidence reflected within Amici Curiae's Brief [Amici Brief, pp. 18-20] and the Exhibit to Amici Curiae's Brief [Amici Exhibit, pp. 5-14] is prejudicial to Appellant and is improper, objectionable, and inadmissible.

Appellant hereby respectfully moves that this Court strike the

portions of Amici Curiae's Brief and related Exhibit that improperly introduced inadmissible evidence into this Court's record which is objectionable and prejudicial to Appellant.

WHEREFORE, Appellant respectfully requests that this Court:

- (1) Sustain Appellant's objection to *all* issues and arguments raised within Amici Curiae's Brief due to the bias, lack of objectivity, and limited credibility Amici Curiae bring to this proceeding as friends of the Bank as Appellee, and moderate the credibility and relative weight afforded to said issues and arguments;
- (2) Sustain Appellant's objection to *new* issues and arguments raised within Amici Curiae's Brief that were not previously asserted within Appellee's answer brief, and moderate the credibility and relative weight afforded to said issues and arguments;
- (3) Sustain Appellant's objection to evidence improperly introduced into this appeal within Amici Curiae's Brief [Amici Brief, pp. 19-20], and the Exhibit to Amici Curiae's Brief [Amici Exhibit pp. 5-14] by filing such improper, objectionable, and inadmissible evidence; and

- (4) Strike the portions of Amici Curiae's Brief [Amici Brief, pp. 19-20], and the Exhibit to Amici Curiae's Brief [Amici Exhibit pp. 5-14] that present such improper, objectionable, and inadmissible evidence.

Dated: April 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished electronically to the recipients on the attached service list on this 2nd day of April, 2024.

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