
IN THE SUPREME COURT OF FLORIDA

Case No. SC2024-0669
L.T. Case No. 4D2023-0011

PUBLIX SUPER MARKETS, INC.,

Petitioner,

v.

JONIDA GOGA, et al.,

Respondents.

**AMICUS BRIEF OF FLORIDA JUSTICE REFORM INSTITUTE IN
SUPPORT OF PETITIONER PUBLIX SUPER MARKETS, INC.**

Tiffany Roddenberry

Florida Bar No. 92534
tiffany.rodnenberry@hklaw.com

Kathryn Isted

Florida Bar No. 1005163
kathryn.isted@hklaw.com
HOLLAND & KNIGHT LLP
315 South Calhoun St., Ste. 600
Tallahassee, Florida 32301
Telephone: (850) 224-7000

William W. Large

Fla. Bar No. 981273
william@fljustice.org
**FLORIDA JUSTICE REFORM
INSTITUTE**
210 South Monroe Street
Tallahassee, Florida 32301
Telephone: (850) 222-0170

***Attorneys for Amicus Curiae
Florida Justice Reform Institute***

TABLE OF CONTENTS

Page

TABLE OF CITATIONS	iii
STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE...	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. CASES ADDRESSING FRAUD ON THE COURT FROM JURISDICTIONS ACROSS THE COUNTRY SUPPORT THE TRIAL COURT’S DISMISSAL OF MS. GOGA’S CASE AS A SEVERE BUT APPROPRIATE SANCTION.	4
A. Courts have repeatedly held that dismissal is warranted as a sanction for fraud on the court because fraud on the court prejudices the judicial system at large and requires strong deterrence.....	5
B. Courts find dismissal is warranted as a sanction for fraud on the court even where the litigant has a meritorious claim or the tainted evidence can be contained or remedied through less severe sanctions.	10
C. <i>Aoude</i> and its progeny support the trial court’s dismissal of Ms. Goga’s case.....	13
II. CASES FROM JURISDICTIONS ACROSS THE COUNTRY SUPPORT AFFIRMING THE TRIAL COURT’S DISMISSAL OF MS. GOGA’S CASE AS A DETERMINATION WITHIN THE TRIAL COURT’S DISCRETION.	16
III. SEVERE SANCTIONS FOR FRAUD ON THE COURT ARE ALSO WARRANTED BECAUSE FRAUD ON THE COURT WASTES JUDICIAL RESOURCES, EXPANDS LITIGATION AND COSTS, AND REDUCES SETTLEMENTS.	19
CERTIFICATE OF SERVICE	24
CERTIFICATE OF COMPLIANCE	24

TABLE OF CITATIONS

	Page(s)
Cases	
<i>Alexander v. Jackson Radiology Assocs., P.A.</i> , 156 S.W.3d 11 (Tenn. Ct. App. 2004)	10, 16
<i>Aoude v. Mobil Oil Corp.</i> , 892 F.2d 1115 (1st Cir. 1989)	<i>passim</i>
<i>Arzuman v. Saud</i> , 843 So. 2d 950 (Fla. 4th DCA 2003)	5
<i>Ashmore v. Miss. Auth. on Educ. Television</i> , 148 So. 3d 977 (Miss. 2014)	20
<i>Asztalos v. Stop & Shop Supermarket</i> , No. CV 990263111S, 2000 WL 327450 (Conn. Super. Ct. Mar. 14, 2000)	16
<i>Brown v. Kimsey</i> , No. CV 22-3441, 2023 WL 1928211 (E.D. Pa. Feb. 10, 2023)	10
<i>Davis v. Clark</i> , 326 So. 3d 781 (Fla. 2d DCA 2021)	19
<i>Derzack v. Cnty. of Allegheny</i> , 173 F.R.D. 400 (W.D. Pa. 1996)	8
<i>Fiorillo v. Oasis, Inc.</i> , No. 992455, 2009 WL 3086016 (Mass. Super. Aug. 1, 2009)	9
<i>Goga v. Publix Supermarkets, Inc.</i> , 383 So. 3d 490 (Fla. 4th DCA 2024)	<i>passim</i>
<i>Hale v. Cottrell, Inc.</i> , 456 S.W.3d 481 (Mo. Ct. App. 2014)	13
<i>Hartman v. C.I.R.</i> , T.C. Memo. 2009-124, 97 T.C.M. (CCH) 1649, 2009 WL 1520008 (T.C. 2009)	19
<i>Hazel–Atlas Glass Co. v. Hartford–Empire Co.</i> , 322 U.S. 238 (1944)	7
<i>Hooker v. Hooker</i> , 220 So. 3d 397 (Fla. 2017)	18

<i>Hull v. Municipality of San Juan</i> , 356 F.3d 98 (1st Cir. 2004)	9, 11, 12, 17
<i>Hutchinson v. Plantation Bay Apts., LLC</i> , 931 So. 2d 957 (Fla. 1st DCA 2006)	21
<i>In re Theokary</i> , 592 F. App'x 102 (3d Cir. 2015)	11, 12, 14
<i>Jimenez v. Ortega</i> , 179 So. 3d 483 (Fla. 5th DCA 2015)	11, 12
<i>Lett v. Providence Journal Co.</i> , 798 A.2d 355 (R.I. 2002)	9, 17
<i>McKnight v. Evancheck</i> , 907 So. 2d 699 (Fla. 4th DCA 2005)	21
<i>Munshani v. Signal Lake Venture Fund II, LP</i> , 805 N.E.2d 998 (Mass. App. Ct. 2004)	7, 9
<i>Nat'l Eng'g Serv. v. Galello</i> , No. CA9205303, 1995 WL 859241 (Mass. Super. May 9, 1995)...	8
<i>Nat'l Hockey League v. Metro. Hockey Club</i> , <i>Inc.</i> , 427 U.S. 639 (1976)	15, 17, 18
<i>Pierce v. Heritage Props., Inc.</i> , 688 So. 2d 1385 (Miss. 1997)	11, 12
<i>Ramey v. Haverty Furniture Cos.</i> , 993 So. 2d 1014 (Fla. 2d DCA 2008)	5, 17, 21
<i>Rockdale Mgmt. Co. v. Shawmut Bank, N.A.</i> , 638 N.E.2d 29 (Mass. 1994)	9
<i>Schultz v. Sykes</i> , 638 N.W.2d 604 (Wis. Ct. App. 2001)	8
<i>Scoggins v. Ellzey Beverages, Inc.</i> , 743 So. 2d 990 (Miss. 1999)	20
<i>Shangold v. Walt Disney Co.</i> , No. 03 CIV. 9522 (WHP), 2006 WL 71672, (S.D.N.Y. Jan. 12, 2006)	9
<i>Shaw v. Shaw</i> , 334 So. 2d 13 (Fla. 1976)	18

<i>Standard Oil v. United States</i> , 429 U.S. 18 (1976)	7
<i>State v. Musumeci</i> , 717 A.2d 56 (R.I. 1998)	17
<i>Vaughn v. Texas Emp. Comm’n</i> , 792 S.W.2d 139 (Tex. App. 1990)	12
<i>Wenwei Sun v. Aviles</i> , 53 So. 3d 1075 (Fla. 5th DCA 2010)	21
<i>Young v. Gordon</i> , 330 F.3d 76 (1st Cir. 2003)	16, 17
<i>Zimmerman v. Superior Court In & For Maricopa Cnty.</i> , 402 P.2d 212 (Ariz. 1965)	20

STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The Institute is Florida’s leading organization of concerned citizens, business owners and leaders, and lawyers who are working towards the common goals of promoting predictability and personal responsibility in Florida’s civil justice system and promoting fair and equitable legal practices. Consequently, the Institute has a particular interest in ensuring that trial courts have all necessary tools to control their dockets. Such tools include dismissal of an action after finding, by clear and convincing evidence, that a plaintiff has engaged in fraud on the court and has abused the judicial system.

The Institute submits this amicus brief in support of Petitioner Publix Super Markets, Inc. (“Publix”) to address why the Court should quash the portion of the Fourth District Court of Appeal’s decision in *Goga v. Publix Supermarkets, Inc.*, 383 So. 3d 490 (Fla. 4th DCA 2024), that created a new sanctions remedy—despite agreeing with the trial court that the plaintiff had engaged in fraud on the court—and remand the case to the Fourth District with instructions to affirm the trial court’s dismissal of the case in its entirety.

SUMMARY OF ARGUMENT

Ms. Goga repeatedly lied in interrogatory answers and deposition testimony in an effort to drastically inflate her alleged injuries and drive up the damages she sought from Publix. After conducting an evidentiary hearing, the trial court determined that her explanations were not credible and that, based on clear and convincing evidence, she had committed fraud on the court. The trial court then determined that dismissal was warranted as a sanction for Ms. Goga's unconscionable scheme calculated to interfere with the court's ability to adjudicate the matter impartially. The Fourth District did not find error with the trial court's determination that Ms. Goga committed fraud on the court, but nonetheless reversed dismissal and created a new, reduced sanction that Ms. Goga would be barred from pursuing pain and suffering damages and lost wages, but was free to pursue other damages.

The Fourth District's decision reversing dismissal of Ms. Goga's case should be rejected. Decisions from courts across the country—including, in particular, the U.S. Court of Appeals for the First Circuit's decision in *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989), which is the foundation for Florida's fraud on the

court case law—support dismissal as a sanction for Ms. Goga’s fraud on the court. Such cases hold that trial courts must be authorized to dismiss cases when fraud on the court is demonstrated. Fraud on the court not only prejudices the parties and court involved in the particular case, but the entire judicial system, which depends on the truthful disclosure of facts. This affront to the foundation of the judicial system must be stringently deterred, which requires trial courts to have broad authority to use dismissal as a sanction. The Fourth District erred by substituting its judgment for that of the trial court, even though the Fourth District found that the trial court’s determination of fraud on the court was supported by competent substantial evidence.

Rejection of the Fourth District’s holding is also warranted because fraud on the court impedes efficiency in the legal process by wasting judicial resources, baselessly expanding litigation, increasing litigation time and costs, and reducing early settlements. This further shows the necessity of a sanction that strongly deters litigants from engaging in fraud on the court and supports the trial court’s dismissal of Ms. Goga’s case.

Finally, a sanction that effectively deters fraud on the court is

particularly necessary in personal injury cases like this one. Personal injury cases are more susceptible to fraud on the court because the facts are better known to the plaintiff than to the defendant and are often impossible for the defendant to discover with certainty. Unlike damages in most other cases, a personal injury plaintiff is able to exaggerate or manufacture injuries using their own testimony as the basis. Florida businesses and the insurance companies that cover them bear the brunt of the harm caused by personal injury plaintiffs who engage in fraud on the court, which has widespread repercussions to Florida residents. This further supports the trial court's decision that Ms. Goga's fraud on the court by repeatedly lying under oath regarding the nature and extent of her alleged injuries warranted dismissal of her case.

ARGUMENT

I. CASES ADDRESSING FRAUD ON THE COURT FROM JURISDICTIONS ACROSS THE COUNTRY SUPPORT THE TRIAL COURT'S DISMISSAL OF MS. GOGA'S CASE AS A SEVERE BUT APPROPRIATE SANCTION.

The trial court's dismissal of Ms. Goga's case is supported by cases across the country holding that dismissal is an appropriate sanction to punish and deter fraud on the court. The trial court's

decision properly aligns with this jurisprudence in ordering dismissal of Ms. Goga's case, and the Fourth District erred in reversing the dismissal as an abuse of the trial court's discretion.

A. Courts have repeatedly held that dismissal is warranted as a sanction for fraud on the court because fraud on the court prejudices the judicial system at large and requires strong deterrence.

The great weight of authority across the county holds that dismissal is an appropriate sanction for fraud on the court because it prejudices the entire judicial system, which depends on the truthful disclosure of facts, and requires strong deterrence.

The seminal case defining fraud on the court and explaining why dismissal is often the appropriate remedy is the First Circuit's decision in *Aoude*, which is followed by the Fourth District and other Florida courts.¹ In *Aoude*, the First Circuit addressed the standard for when a trial court is permitted to order dismissal or default as a sanction for abuses of the judicial process, such as bad faith discovery violations, disobeying court orders, or fraud on the court:

¹ See, e.g., *Arzuman v. Saud*, 843 So. 2d 950, 952 (Fla. 4th DCA 2003) (quoting *Aoude*, 892 F.2d at 1118); *Ramey v. Haverty Furniture Cos.*, 993 So. 2d 1014, 1018 (Fla. 2d DCA 2008) ("To determine whether particular conduct was sufficient to justify dismissal for fraud on the court ... [we] utilize[] the test set forth in *Aoude*.").

Although dismissal need not be preceded by other, less drastic sanctions, it is an extreme remedy, and should not lightly be engaged. Thus, a district court may dismiss a case only when circumstances make such action appropriate, and after thoughtful consideration of all the factors involved in a particular case, ... reserv[ing] such strong medicine for instances where the defaulting party's misconduct is correspondingly egregious. In calibrating the scales, the judge should carefully balance the policy favoring adjudication on the merits with competing policies such as the need to maintain institutional integrity and the desirability of deterring future misconduct.

See Aoude, 892 F.2d at 1118 (citations and quotation marks omitted). The court applied this standard to the plaintiff's fabrication of an agreement attached to his complaint, finding the standard was easily met. *See id.* at 1118–19. The court determined that the plaintiff's conduct constituted fraud on the court, which occurs “where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.” *Id.* The court explained that, in such cases, the trial court's inherent authority to order dismissal or default is “irrefragable.” *See id.* at 1119.

Unlike some other abuses of the judicial process, fraud on the

court “involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society[.]” *Id.* (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944), *overruled on other grounds*, *Standard Oil v. United States*, 429 U.S. 18 (1976)); *cf. Munshani v. Signal Lake Venture Fund II, LP*, 805 N.E.2d 998, 1005 (Mass. App. Ct. 2004) (stating that the analysis that applies to sanctions for failure to comply with discovery orders is inapplicable to the “significantly more egregious type of conduct” involved with fraud on the court). Thus, when fraud on the court is perpetrated regarding a material issue in a case, the policy favoring adjudication on the merits is readily overcome by the need to maintain institutional integrity and deter future misconduct:

Courts cannot lack the power to defend their integrity against unscrupulous marauders; if that were so, it would place at risk the very fundament of the judicial system[.] All in all, we find it surpassingly difficult to conceive of a more appropriate use of a court’s inherent power [to order dismissal or default] than to protect the sanctity of the judicial process—to combat those who would dare to practice unmitigated fraud upon the court itself. To deny the existence of such power would, we think, foster the very impotency against which the *Hazel-Atlas* Court specifically warned.

Aoude, 892 F.2d at 1119.

The numerous courts following *Aoude* recognize that, “[w]here fraud on the court is the underlying misconduct upon which the [trial] court is considering dismissal, ... ‘prejudice’ encompasses not only the prejudice to the litigants but also the impact on the judicial system and the threat to the integrity of the courts which cannot command respect if they cannot maintain a level playing field amongst the participants.” *E.g.*, *Derzack v. Cnty. of Allegheny*, 173 F.R.D. 400, 414 (W.D. Pa. 1996), *aff’d sub nom. Derzack v. Cnty. of Allegheny Child. & Youth Servs.*, 118 F.3d 1575 (3d Cir. 1997).² In addition, given the prejudicial impact of fraud on the court to the judicial system at large, and the difficulty of discovering fraud on the court, the sanction for fraud on the court must be a “strong”

² See also, *e.g.*, *Schultz v. Sykes*, 638 N.W.2d 604, 612 (Wis. Ct. App. 2001) (“[W]e believe that a court must be empowered to protect itself from those egregious practices which threaten the dignity of the judicial process. Because an attempt to suborn perjury undoubtedly threatens this dignity, we conclude that [trial] courts have inherent authority to sanction with dismissal a party who has attempted to suborn perjury from a witness.”); *Nat’l Eng’g Serv. v. Galello*, No. CA9205303, 1995 WL 859241, at *2 (Mass. Super. May 9, 1995) (“The wrong that is asserted—fraud on the court—is a wrong done to the judicial system, a wrong which goes to the heart of the judicial process.”).

deterrent to other litigants:

All courts are at the mercy of litigants and their advocates ... in the often difficult search for truth. The ability to discover fraud in the process is greatly limited. Thus the imposition of strong sanctions is one of the very few ways of deterring such activity in the future.

Fiorillo v. Oasis, Inc., No. 992455, 2009 WL 3086016, at *7 (Mass. Super. Aug. 1, 2009) (quoting *Munshani*, 805 N.E.2d at 1004). Based on these principles, where fraud on the court is shown, courts across jurisdictions rule that dismissal or default is the “strong medicine” most appropriate for the affliction. *See, e.g., Shangold v. Walt Disney Co.*, No. 03 CIV. 9522 (WHP), 2006 WL 71672, at *4–*5 (S.D.N.Y. Jan. 12, 2006) (ruling that, because of their fraud on the court, plaintiffs “forfeited their right to litigate th[e] case and no sanction short of dismissal w[ould] suffice to deter future misconduct”), *aff’d*, 275 F. App’x 72 (2d Cir. 2008).³

³ *See also, e.g., Hull v. Municipality of San Juan*, 356 F.3d 98, 103 (1st Cir. 2004) (“[S]ince not everyone will be caught, the penalty needs to be severe enough to deter.”); *Rockdale Mgmt. Co. v. Shawmut Bank, N.A.*, 638 N.E.2d 29, 32 (Mass. 1994) (affirming dismissal where plaintiff attempted to bolster his damages claim by proffering a forged document, providing misleading answers to interrogatories, and giving false deposition testimony); *Lett v. Providence Journal Co.*, 798 A.2d 355, 369 (R.I. 2002) (affirming dismissal despite other available sanctions where plaintiff lied under oath that he was unable to testify trial due to medical reasons); *Alexander v. Jackson Radiology*

B. Courts find dismissal is warranted as a sanction for fraud on the court even where the litigant has a meritorious claim or the tainted evidence can be contained or remedied through less severe sanctions.

Dismissal in cases of fraud on the court is not limited to situations where the litigant lacked a meritorious claim or defense or the tainted evidence could not be contained or remedied through less severe sanctions. *See, e.g., Brown v. Kimsey*, No. CV 22-3441, 2023 WL 1928211, at *17 (E.D. Pa. Feb. 10, 2023) (dismissing case even though the court found the plaintiff's claim would still have "some merit even if [the court] exclude[d] his alleged neck and back injuries," which were tainted by his fraud on the court). Courts find dismissal warranted in such cases because of the twofold policies discussed above—prejudice to the judicial system at large and the necessity of strong deterrence:

[The plaintiff] essentially asserts that the ... Court should have been more akin to a skilled surgeon using a scalpel, extracting only those portions of the evidence and proceedings actually touched by disease. This argument fails to recognize that his fraudulent conduct did not simply impact the tainted evidence, the damages trial, or the adversarial proceedings as a whole—it represented a

Assocs., P.A., 156 S.W.3d 11, 17 (Tenn. Ct. App. 2004) (affirming dismissal where plaintiff disposed of a document containing his handwritten calculation of damages and then lied about it in his deposition).

direct and brazen affront to the judicial process.

In re Theokary, 592 F. App'x 102, 107 (3d Cir. 2015) (upholding dismissal of case where litigant fabricated an expert report to drastically inflate his damages, even though liability was not disputed and some damages could have been shown by untainted evidence); *see also Hull*, 356 F.3d at 102–03 (upholding dismissal even though lesser sanctions were available to fully redress plaintiff's false testimony regarding the nature and extent of his damages because “the penalty needs to be severe enough to deter”); *Pierce v. Heritage Props., Inc.*, 688 So. 2d 1385, 1390–91 (Miss. 1997) (upholding dismissal as a sanction for plaintiff's false testimony even though defendant did not demonstrate it had suffered prejudice that could not be remedied with other sanctions).⁴

⁴ At first blush, these cases seem at odds with *Jimenez v. Ortega*, 179 So. 3d 483 (Fla. 5th DCA 2015), on which the Fourth District relied in finding that dismissal of Ms. Goga's entire action was an abuse of the trial court's discretion. However, the cases are easily reconciled. In *Jimenez*, the Fifth District reviewed a trial court's order imposing no sanction for the plaintiff's repeated false testimony regarding the extent of his injury. *Id.* at 489. The Fifth District held that the trial court abused its discretion in failing to dismiss the plaintiff's claim for lost earnings and pain and suffering damages, but did not abuse its discretion in failing to dismiss the plaintiff's entire action “in light of the fact that this was an admitted liability claim where the damages for property loss and medical expenses were undisputed.”

Sanctions which would merely put the parties back in the positions in which they would have been absent the plaintiff's fraud on the court "virtually allow the plaintiff to get away with lying under oath without a meaningful penalty" and therefore "would not achieve the deterrent value of [a] dismissal." *Pierce*, 688 So. 2d at 1391; see also *Vaughn v. Texas Emp. Comm'n*, 792 S.W.2d 139, 144 (Tex. App. 1990) ("A discovery wrongdoer does not have an absolute right, if his or her offense is detected, to avoid dismissal as a sanction by simply amending pleadings to render tainted evidence no longer material. Such an option in the offender's hands would render useless, or at least strongly dilute, the trial court's power to enforce the threefold purpose of discovery sanctions."); *Hale v. Cottrell, Inc.*, 456 S.W.3d

See *id.* The Fifth District did *not* review the question reviewed by the Fourth District here and the appellate courts in *Theokary*, *Hull*, and *Pierce*—whether it was an abuse of the lower courts' discretion to dismiss the litigants' entire actions even though lesser sanctions were available. See *Theokary*, 592 F. App'x at 104, 107; *Hull*, 356 F.3d at 102–03; *Pierce*, 688 So. 2d at 1390–92. Because *Jimenez* reviewed a different question than the question reviewed by the courts in *Theokary*, *Hull*, and *Pierce* and the Fourth District here, *Jimenez* is distinguishable. This is why the Fourth District's reliance on *Jimenez* was misplaced. The Fourth District "[a]dopt[ed] the Fifth District's reasoning" in *Jimenez* without even acknowledging that the *Jimenez* Court reviewed a different question than the one reviewed by the Fourth District. See *Goga*, 383 So. 3d at 496–97.

481, 489 (Mo. Ct. App. 2014) (“The fact that all medical records [the plaintiff wrongfully concealed] had been disclosed prior to the new trial date does not expunge [his] misrepresentations to the trial court [W]e cannot say that the trial court abused its discretion when it invoked its inherent power to dismiss the case to protect the integrity of the judicial process.”). Accordingly, a trial court “need not always impose lesser remedial sanctions before dismissing a case. To hold otherwise would impermissibly tie the trial j[udge]’s hands, even in the face of the most egregious fraudulent or outrageous conduct.” *Hale*, 456 S.W.3d at 494 (citation omitted).

C. *Aoude* and its progeny support the trial court’s dismissal of Ms. Goga’s case.

The Fourth District followed *Aoude* in affirming the trial court’s determination based on clear and convincing evidence that Ms. Goga’s conduct constituted fraud on the court. *See Goga*, 383 So. 3d at 495–96. But the court then turned its back on the principles espoused in *Aoude* and its progeny by nonetheless finding that dismissal of Ms. Goga’s case was an abuse of discretion. *See id.* at 496. The court did not give proper weight to the fact that the prejudice caused by Ms. Goga’s fraudulent conduct was not limited

to the defendants or the particular proceedings, but constituted “a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.” *See Aoude*, 892 F.2d at 1119 (citation omitted).

In addition, contrary to *Aoude* and its progeny, the Fourth District essentially held that the trial court abuses its discretion if it does not act as a “skilled surgeon using a scalpel, extracting only those portions of the evidence and proceedings actually touched by disease.” *See Theokary*, 592 F. App’x at 107. This reasoning “fails to recognize that [Ms. Goga’s] fraudulent conduct did not simply impact the tainted evidence, the damages [claim], or the ... proceedings as a whole—it represented a direct and brazen affront to the judicial process.” *See id.* Nor did the court consider the deterrence value of dismissing Ms. Goga’s case. *See Goga*, 383 So. 3d at 495–96. As the U.S. Supreme Court has explained, in assessing the deterrence effect of a sanction, the court not only considers the sanction’s impact on the offending litigant, but on “other parties to other lawsuits”:

[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose

conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. If the decision of the Court of Appeals remained undisturbed in this case, it might well be that [t]hese respondents would faithfully comply with all future discovery orders entered by the District Court in this case. But other parties to other lawsuits would feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders of other district courts.

Nat'l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976) (approving trial court's dismissal of a case due to plaintiff's bad faith conduct in discovery).

Ms. Goga's fraud on the court was only discovered because Publix undertook the substantial cost of hiring a private investigator to surveil and record Ms. Goga. *See Goga*, 383 So. 3d at 492–93. However, because of the difficulty and cost of discovering such fraudulent conduct, an untold number of other plaintiffs will be successful in their fraudulent schemes to wrongly exaggerate their injuries. Accordingly, upon a proper finding of fraud on the court, the trial court was authorized to dismiss Ms. Goga's case to punish Ms. Goga for prejudicing both Publix and the judicial system and to “deter others who might be tempted to follow in [Ms. Goga's] path.” *Asztalos v. Stop & Shop Supermarket*, No. CV 990263111S, 2000 WL 327450, at *5 (Conn. Super. Ct. Mar. 14, 2000).

II. CASES FROM JURISDICTIONS ACROSS THE COUNTRY SUPPORT AFFIRMING THE TRIAL COURT'S DISMISSAL OF MS. GOGA'S CASE AS A DETERMINATION WITHIN THE TRIAL COURT'S DISCRETION.

Appellate courts across the country hold that the determination of an appropriate remedy for a litigant's abuse of the judicial system is within the trial court's broad discretion. *See, e.g., Young v. Gordon*, 330 F.3d 76, 81 (1st Cir. 2003) (“[T]he choice of an appropriate sanction must be handled on a case-by-case basis. For that reason, appellate panels traditionally give district courts considerable leeway in the exercise of the latter's admitted authority to punish noncompliant litigants.” (citations omitted)); *Alexander*, 156 S.W.3d at 14 (“Appellate courts review a trial court's decision to impose sanctions and its determination of the appropriate sanction under an abuse of discretion standard.”). Because the trial judge “is in the best position to determine the harm resulting from [an abuse of the judicial system] and can best assess the possibility of mitigating that harm, his or her ruling on what sanction should be imposed on that score [should] not be overturned absent a clear abuse of discretion.” *State v. Musumeci*, 717 A.2d 56, 60 (R.I. 1998); *see also Hull*, 356 F.3d at 102 (noting the trial judge has “special competence in judging

the extent of the [litigant's] misbehavior and its effects"); *Lett*, 798 A.2d at 368 ("It is generally inadvisable to bind a trial justice's hands on discretionary matters such as selecting the appropriate sanction for a litigant's misconduct.").

The abuse of discretion standard of review "is not appellant-friendly—and a sanctioned litigant bears a weighty burden in attempting to show that an abuse occurred." *Young*, 330 F.3d at 81. When reviewing a dismissal by the trial court, "[t]he question, of course, is not whether [the appellate court] would as an original matter have dismissed the action; it is whether the [trial court] abused its discretion in so doing." *Nat'l Hockey League*, 427 U.S. at 642.

Similar to these cases from across the country, Florida law recognizes that, where the trial court held an evidentiary hearing and found fraud on the court based on clear and convincing evidence, the trial court's determination of an appropriate sanction is a matter within its discretion. *See Ramey*, 993 So. 2d at 1018 (citation omitted). Under the Florida standard, supported by cases across the country, the Fourth District erred in failing to defer to the remedy ordered by the trial court below following an evidentiary hearing. *See*

Goga, 383 So. 3d at 497.

The Fourth District concluded that substantial evidence in the record supported the trial court’s determination that Ms. Goga committed fraud on the court under the clear-and-convincing-evidence standard. *See id.* at 495–96. Nonetheless, the court reversed the trial court’s determination that dismissal was an appropriate sanction and replaced the trial court’s judgment with its own in fashioning a new, lesser sanction. *See id.* at 496–97. The Fourth District inappropriately considered “whether [it] would as an original matter have dismissed the action” instead of appropriately evaluating “whether the [trial court] abused its discretion in so doing.” *See Nat’l Hockey League*, 427 U.S. at 642; *see also Hooker v. Hooker*, 220 So. 3d 397, 403 (Fla. 2017) (“It is not the function of the appellate court to substitute its judgment for that of the trial court through re-evaluation of the testimony and evidence from the record on appeal before it.” (quoting *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976))). The Fourth District’s holding was therefore improper and should be reversed for this reason.

III. SEVERE SANCTIONS FOR FRAUD ON THE COURT ARE ALSO WARRANTED BECAUSE FRAUD ON THE COURT WASTES JUDICIAL RESOURCES, EXPANDS LITIGATION AND COSTS, AND REDUCES SETTLEMENTS.

In addition to impairing the truth-finding process, fraud on the court impairs the judicial system's goals of "reduc[ing] litigation costs," "conserv[ing] judicial resources," and "encouraging the settlement of legal actions." *See Davis v. Clark*, 326 So. 3d 781, 784 (Fla. 2d DCA 2021). This provides an additional reason that fraud on the court harms the judicial system, which must be effectively fought and deterred, particularly in personal injury cases.

Fraud on the court results in judicial resources being wasted adjudicating legal theories, defenses, claims for damages, or entire actions that should never have been pursued. *See, e.g., Hartman v. C.I.R.*, T.C. Memo. 2009-124, 97 T.C.M. (CCH) 1649, 2009 WL 1520008, at *7 (T.C. 2009) (noting that "[e]normous amounts of time and judicial resources ha[d] been wasted" as a result of the IRS's attorney's fraud on the court). A litigant's misrepresentations regarding material facts will necessarily expand the litigation and increase litigation costs, often requiring additional discovery and investigation measures in an effort to discern fact from fiction. *See,*

e.g., *Ashmore v. Miss. Auth. on Educ. Television*, 148 So. 3d 977, 984–85 (Miss. 2014) (“The [plaintiffs] pattern of ‘willful misrepresentations’ spanned more than two years, causing the [] Defendants ‘major inconvenience in time, attorney fees and general frustration.’” (quoting *Scoggins v. Ellzey Beverages, Inc.*, 743 So. 2d 990, 994 (Miss. 1999)). Finally, where a litigant appears to be misrepresenting material facts, particularly in connection with the nature and extent of damages, the case is unlikely to be resolved through early settlement.

Fraud on the court is a particular problem in personal injury cases because a personal injury plaintiff is able to exaggerate or even manufacture injuries using his or her own testimony as the basis. A personal injury case

almost invariably concerns facts which are better known to the plaintiff than to the defendant, facts which in all fairness should be known equally to both parties but which, because of their nature, often are impossible for the defendant to discover with certainty. It is, therefore, a fertile field for fraud and magnification [of injuries], and a field in which the parties are not on even terms.

Zimmerman v. Superior Court In & For Maricopa Cnty., 402 P.2d 212, 219 (Ariz. 1965) (Struckmeyer, J., dissenting). Indeed, case law in Florida is replete with examples of fraud on the court found in

personal injury cases,⁵ and the use of costly private investigators to surveil personal injury plaintiffs who appear to have exaggerated or manufactured their alleged injuries has become commonplace.

Florida businesses and the insurance companies that cover them bear the brunt of harm caused by fraudulent conduct by personal injury plaintiffs. However, this harm has widespread repercussions to Florida residents because increased litigation costs, settlement values, and judgments based on personal injury plaintiffs' manufactured or exaggerated injuries result in increased insurance costs and other costs to business owners. This further supports dismissal as a necessary sanction and deterrent of the abuse of the civil justice system.

Accordingly, fraud on the court impairs the efficient

⁵ See, e.g., *Wenwei Sun v. Aviles*, 53 So. 3d 1075, 1077–78 (Fla. 5th DCA 2010) (finding personal injury plaintiffs “lied on virtually every discovery occasion ... making it virtually impossible for the appellees to defend against the [plaintiffs’] damage claims”); *Ramey*, 993 So. 2d at 1020 (finding personal injury plaintiff “provided intentionally false deposition testimony and interrogatory answers”); *Hutchinson v. Plantation Bay Apts., LLC*, 931 So. 2d 957, 960 (Fla. 1st DCA 2006) (finding personal injury plaintiff and his wife misrepresented his medical history); *McKnight v. Evancheck*, 907 So. 2d 699, 700 (Fla. 4th DCA 2005) (finding personal injury plaintiff misrepresented that he had never been hospitalized or had prior medical problems).

administration of justice, expanding litigation and wasting judicial resources. Fraud on the court requires affording a trial court a sanction that provides strong deterrence to litigants for this additional reason.

CONCLUSION

The trial court was well within its discretion to dismiss Ms. Goga's case after it found, based on clear and convincing evidence, that Ms. Goga had committed fraud on the court. This decision is supported by cases addressing fraud on the court from across the country, which hold that the sanction of dismissal is a necessary tool to combat and deter fraud on the court. Accordingly, the Fourth District's decision reversing dismissal should be rejected and the trial court's order of dismissal restored.

Respectfully submitted on October 24, 2024.

/s/ Tiffany Roddenberry

Tiffany Roddenberry

Florida Bar No. 92534

tiffany.rodtenberry@hklaw.com

Kathryn Isted

Florida Bar No. 1005163

kathryn.isted@hklaw.com

jennifer.gillis@hklaw.com

HOLLAND & KNIGHT LLP

315 South Calhoun Street, Suite 600

Tallahassee, Florida 32301

Telephone: (850) 224-7000

- and -

William W. Large

Fla. Bar No. 981273

william@fljustice.org

becky@fljustice.org

**FLORIDA JUSTICE REFORM
INSTITUTE**

210 South Monroe Street

Tallahassee, Florida 32301

Telephone: (850) 222-0170

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2024, a copy of the foregoing amicus brief was filed with the Florida Courts E-Filing Portal, which will provide notices of electronic filing to the following:

Edward G. Guedes
Blayne J. Yudis
Weiss Serota Helfman
COLE & BIERMAN, P.L.
2800 Ponce de Leon Blvd.
Suite 1200
Coral Gables, Florida 33134
eguedes@wsh-law.com
byudis@wsh-law.com
szavala@wsh-law.com

Attorneys for Petitioner

Annabel C. Majewski
Roy D. Wasson
WASSON & ASSOCIATES
Chartered Courthouse Plaza-
Suite 600
28 West Flagler Street
Miami, Florida 33130
annabel@wassonand
associates.com
roy@wassonandassociates.com

Attorneys for Respondents

/s/ Tiffany Roddenberry
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements of Rules 9.045 and 9.370(b) of the Florida Rules of Appellate Procedure.

/s/ Tiffany Roddenberry
Attorney