

# Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed September 17, 2008.

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No. 3D06-2156  
Lower Tribunal No. 05-173 CA 25

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**Espirito Santo Bank,**  
Petitioner,

vs.

**Mercio Goncaives Rego,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Scott M. Bernstein, Judge.

Robert W. Stewart; Silver, Garvett & Henkel and Tim D. Henkel, for petitioner.

Bernardo Burstein, for respondent.

Before RAMIREZ and LAGOA, JJ., and SCHWARTZ, Senior Judge.

ON MOTION FOR REHEARING

PER CURIAM.

The motion for rehearing is denied.

LAGOA, J., and SCHWARTZ, Senior Judge, concur.

RAMIREZ, J., dissents.

Before GERSTEN, C.J., and COPE, GREEN, RAMIREZ, WELLS,  
SHEPHERD, SUAREZ, ROTHENBERG, LAGOA and SALTER, JJ.

ON MOTION FOR REHEARING EN BANC

PER CURIAM.

The motion for rehearing en banc is denied.

GERSTEN, C.J., and COPE, GREEN, WELLS, SHEPHERD, SUAREZ,  
ROTHENBERG, LAGOA and SALTER, JJ., concur.

RAMIREZ, J. (dissenting).

I dissent from our denial of rehearing and rehearing en banc because it leaves unclear what our instructions are upon remand.

In addition to the reasons given in my original dissent, the majority decision gives no guidance to the trial court on whether it should allow the respondent Rego the opportunity to renew his motion to amend to assert punitive damages or whether the issue is now foreclosed. Given that the majority has ruled that the trial judge committed a procedural error in allowing the amendment, I see no impediment to the renewal of the motion at a newly noticed evidentiary hearing. The majority's reversal was not based on the merits of Rego's claim for punitive damages. The majority reasoned that "the trial court's error was in . . . allow[ing] a punitive damages claim in each instance when fraud is alleged, instead of only when a reasonable evidentiary basis has been submitted in support of the fraud claim." Maj. op. at p. 5 (emphasis in the original). On rehearing, Rego points out that he "attempted to make an additional evidentiary proffer to the lower court, which the lower court did not permit." Thus, on remand, the trial court should allow such an evidentiary proffer.