Case No. SC11–1611

IN THE SUPREME COURT
STATE OF FLORIDA

AMANDA JEAN HALL,

Plaintiff/Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant/Respondent.

ON DISCRETIONARY REVIEW FROM A DECISION
OF THE FIRST DISTRICT COURT OF APPEAL

RESPONDENT R.J. REYNOLDS TOBACCO COMPANY'S RESPONSE TO MOTION FOR REHEARING

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The Motion for Rehearing should be denied because it simply reargues points already briefed and decided.

It is black-letter law that a motion for rehearing should not "simply re-argue[] the merits of the court's opinion," so as "to suggest to the court that [it] did not read the briefs the first time." *Amador v. Walker*, 862 So. 2d 729, 733 (Fla. 5th DCA 2003) (citing numerous cases); *cf. Snell v. Florida*, 522 So. 2d 407, 407 (Fla. 5th DCA 1988) ("To maintain that the court has overlooked something or misapprehended something when no written opinion is available to support the basis of the motion is less than persuasive, to put it nicely."). Despite that settled rule, Mrs. Hall repeats the identical arguments previously made in her response to the Suggestion of Mootness: (1) that Reynolds's mootness arguments mislead the Court, and (2) that the Court should resolve her claims even if they are moot.

First, Mrs. Hall accuses Reynolds of misleading the Court in its Suggestion of Mootness by stating that Reynolds has paid the underlying judgment, even though that allegedly "was not true then and is still not true today." Mot. for Reh'g at 1. Yet she made precisely the same baseless accusation in her five-page response to Reynolds's Suggestion of Mootness. *See* Petr's Resp. in Opp'n to Suggestion of Mootness at 4 ("[D]espite Reynolds's contention that it 'has paid the judgment,' . . . it is still withholding post-judgment interest."). There is no reason to suppose that this Court simply missed that argument.

In all events, Mrs. Hall is factually mistaken. On April 27, 2012, Reynolds paid her the entire $15.75 million *judgment*, as well as a significant amount of *post-judgment* interest not subject to further dispute. Specifically, Reynolds paid Mrs. Hall $1,949.965.89 in post-judgment interest, including interest at 6% from the judgment date to January 1, 2012, and additional interest at 4.75% from January 1, 2012 to the payment date. The only amount unpaid is a possible *additional* amount of *post-judgment* interest, based on Mrs. Hall's contention that the interest rate after January 1, 2012 should be 6% rather than 4.75%. If upheld on appeal, that contention would result in an additional payment to Mrs. Hall of $63,382.31—less than one-half of one percent of the satisfied judgment.

Mrs. Hall further errs in her repeated contention that the dispute over post-judgment interest keeps her bond-cap claims alive. "An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (citing *Dehoff v. Imeson*, 15 So. 2d 258 (Fla. 1943)). That is precisely the case here. Mrs. Hall argued that the bond-cap statute violated the Florida Constitution because it required Reynolds to post a bond for *less* than her entire $15.75 million judgment, and she asked the Court to require Reynolds to post the full amount required under Fla. R. App. P. 9.310. *See* Initial Br. of Pet'r 6-24. However, now that Reynolds has paid the judgment and the parties dispute only a small fraction of post-

judgment interest, the $15 million appeal bond currently in place vastly *exceeds* the remaining *$63,382.31* currently in dispute. A decision from this Court invalidating the bond-cap statute thus would make no practical difference in this case. Contrary to Mrs. Hall's claim, such a decision would not allow her to "enforce" the trial court's ruling as to the disputed post-judgment interest, Mot. for Reh'g at 3, because the bond amount already posted surpasses by over 100 times the amount that would be sufficient to obtain an automatic stay, pending Reynolds's appeal of the interest issue, under Fla. R. App. P. 9.310. Because Mrs. Hall is currently over-secured by any possible measure, she faces no continuing risk of injury from the bond-cap statute.

Second, Mrs. Hall asserts that the Court should review her claims even if they are moot, because her appellate counsel is, in other cases, "fully prepared to litigate" the issue "to the end." Mot. for Reh'g at 3. This contention also was made at length in Mrs. Hall's response to Reynolds's Suggestion of Mootness, *see* Petr's Resp. in Opp'n to Suggestion of Mootness at 2-4, and there is again no reason to believe that the Court overlooked it.

Mrs. Hall also continues to exaggerate the need for review at this time. As this Court well knows, the First District's decision in this case will bind not only that court, but also trial courts throughout the State, *see Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). And the possibility of future rulings from other DCAs on the

questions presented here is hardly cause for concern. After all, this Court normally benefits from the percolation of issues in more than one DCA, and, because statutes come "clothed with a presumption of constitutionality," *Dep't of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879, 881 (Fla. 1983), the Court should exercise particular caution before unnecessarily deciding constitutional challenges to important state statutes.

For these reasons, the Court should deny Mrs. Hall's Motion for Rehearing.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 28, 2012, I served a copy of the foregoing by email[1] on the counsel for Petitioner listed below and by U.S. mail on the counsel listed for the Attorney General and for Amici below:

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[1] The parties have agreed to accept service by email at the email addresses listed in the certificate of service in lieu of mail and have further agreed that electronic service will be deemed service by mail for purposes of Fla. R. App. 9.420(e).

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