

Disparate Rulings in Student-Fee Refund Class Actions Could Lead to Florida Supreme Court Review

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by Michael A. Mora

What You Need to Know

- The Third District Court of Appeals reversed and remanded a Miami-Dade trial court ruling centered around the concept of sovereign immunity.
- The student failed to allege a breach of an express, written contract to provide on-campus or in-person services in exchange for the various fees in the lawsuit.
- An attorney said this ruling could have implications on similar class actions both in and beyond the sunshine state.

A [Florida appellate court ruled](#) that a trial judge erred in denying Miami-Dade College’s motion to dismiss based on sovereign immunity, a doctrine that generally protects government entities from lawsuits.

Javier A. Lopez, the managing partner at Kozyak Tropin &

Throckmorton in Coral Gables, was among the attorneys who successfully represented the district board of trustees of Miami-Dade College in a class action that was similar to the numerous cases stemming from campus shutdowns during the start of the coronavirus pandemic.

“This particular case and this particular ruling will have rumbblings not only in the State of Florida but throughout the country,” Lopez said. “When the lower court denied our motion to dismiss, opposing counsel, in this case, filled 11 more class actions. The Third went out of its way to provide detailed and specific deficiencies that show the plaintiff’s case has no merit.”

Adam Moskowitz, managing partner at the Moskowitz Law



L-R: Judge Norma S. Lindsey, Judge Kevin Emas, and Judge Monica Gordo.

Courtesy photo

Firm in Coral Gables, is counsel for Fernando Verdini and the class in the litigation.

Moskowitz pointed to the discrepancies in the litigation between the Miami Dade College ruling and the [Florida International University ruling](#) in which he represented a student with identical claims. FIU has appealed the ruling.

“The court ruling is different from FIU because the school gave internal records,” Moskowitz said. “We saw what existed and FIU’s specific agreements with students,

and that is exactly what the court was looking for. We hope that the court can at least analyze whatever agreements Miami-Dade had, which is identical to what FIU had to produce.”

The case stemmed from Verdini’s putative class action lawsuit, in which he alleged breach of contract. Miami-Dade Circuit Judge William Thomas presided over the litigation. Verdini took issue with charges for on-campus services by Miami Dade College, which the school failed to provide because of social distancing rules.

Verdini argued that express, written contracts are constituted by bills, invoices and other written agreements, but the nursing student explained that he did not have all the documents constituting the express contracts, [according to the complaint](#).

Instead, Verdini cited his spring and summer invoices during the 2020 semesters and a financial obligation agreement. He argued in the complaint that he should be allowed to establish these unidentified documents by way of discovery.

However, Miami Dade College, in moving to dismiss the case, argued that sovereign immunity precludes it from being sued without consent. As a result, the defendant argued the law required Verdini to establish waiver by

identifying an express, written contract requiring Miami Dade College to provide on-campus services.

Ultimately, Thomas denied Miami Dade College’s [motion to dismiss](#), citing the attached invoices to the complaint as sufficient to demonstrate the express written terms and the specific services that Miami Dade College was contractually obligated to provide.

Now, Third DCA Judges Norma Lindsey, Kevin Emas and Monica Gordo ruled in their 16-page opinion that Verdini failed to “identify an express, written contractual obligation to provide on-campus or in-person services in exchange for the various fees listed in the complaint.”

And the appellate court also determined that Verdini is not entitled to discovery “simply for alleging the possible existence of unspecified documents.”

Beyond the FIU appeal, Moskowitz noted that there were additional cases in which courts have taken different stances on the question of whether these educational institutions breached contracts in requiring students to learn remotely during those spring and summer semesters.

Moskowitz cited one of those



(L-R): Javier A. Lopez, managing partner of Kozyak Tropin & Throckmorton in Coral Gables. Adam M. Moskowitz, managing partner of The Moskowitz Law Firm in Coral Gables, and (Credit: ALM/Courtesy photo)

cases in which an Alachua County judge refused to dismiss a similar lawsuit. That decision is pending for appellate review at the First District Court of Appeal. Moskowitz said the disparate rulings are an indication that the Florida Supreme Court will likely decide who ultimately prevails, the students who paid the fees or the schools that charged them.

In the meantime, Lopez said the Miami Dade College case “should be over” but had a warning for opposing counsel if they plan on filing a new lawsuit that will reflect the deficiencies that the Third DCA ruled plaintiffs counsel failed to allege in the previous complaint. Lopez said there is no contract on which opposing counsel can base a claim.

Lopez said: “If they attempt to file an amended complaint, we’ll probably be moving for sanctions.”