37,305

IN THE SUPREME COURT OF FLORIDA

NO. 37,305

JEFFERSON REALTY OF FORT LAUDERDALE, INC., a Florida corporation; JEFFERSON REALTY OF SOUTH DADE, INC., a Florida corporation; JEFFERSON FUNLAND, INC., a Florida corporation; and JEFFERSON STORES, INC., a Delaware corporation authorized to do business in the State of Florida,

Petitioners,

vs.

UNITED STATES RUBBER COMPANY, a New Jersey corporation,

Respondent.

FILED

APR 30 1969

SID J. WHITE
CLERK SUPREME COURT

By _____
Chief Deputy Clerk

PETITION FOR REHEARING

TO THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF THE STATE OF FLORIDA.

Deny
Morton
circuit judge

The Respondent, UNITED STATES RUBBER COMPANY, by its undersigned attorneys, hereby petitions for a rehearing of the opinion and decision filed herein on April 16, 1969, on the following several grounds:

1. Respondent is perfectly aware that petitions for rehearing are rarely if ever granted. However, in this case, on July 8, 1968, this Court, after consideration, denied the Petition for Writ of Certiorari herein and thereafter on September 19, 1968, in response to a petition by Petitioners, granted their Petition for Rehearing and the Petition for a Writ of Certiorari to the District Court of Appeal, Third District. It is respectfully submitted that this Court's

initial decision in the matter of July 8, 1968 was correct and that by quashing the decision of the District Court and reinstating the verdict of the jury rather than at the least, remanding this matter for a new trial on damages, this Court has erred.

2. This Court overlooked and failed to consider that a jury verdict for damages for breach of an agreement to lease requires, but in this case was not supported by, evidence of fair rental value.

(a) To the extent it is material, we contend that the "Lease Agreements", since they contained various conditions as to their effectiveness, and since the Respondent never, in fact, took possession, were and are agreements to lease and not leases as such. See 32 Am.Jur. Landlord and Tenant, §28.

(b) This Court's opinion (page 7) apparently concedes that the measure of damages is the difference, if any, between the rent contracted to be paid and the actual rental value or value of the use of the premises, and that the burden is upon the landlord to show that the rental value of the property is less than the contract rental.

(c) This Court has long recognized, as stated in Young v. Cobbs, 83 So.2d 417,420 (Fla.1955):

> "Since no evidence was offered by the plaintiff as to the difference between the agreed rental and market value of the leasehold for the unexpired term, it must be assumed that plaintiff suffered no damage in this respect." (Emphasis supplied)

(d) However, the gist of this Court's opinion, as we understand it, is that (page 7-8):

> "...the contract or reserved rent was based upon the use of the property for the operation of an automotive center by this particular defendant, in connection with the Jefferson Super Store adjacent thereto, and there is testimony in the record to the effect that the plaintiffs were unable after the breach by the defendant to secure another tenant who would agree to operate a similar automotive center upon the property. Secondly, the president of Jefferson Stores, Inc., the parent corporation, testified that the only use the plaintiffs were thereafter able to put the property was for parking area in connection with plaintiffs' existing stores. From this evidence the jury was justified in concluding that the use or rental value was <u>substantially</u> less than the reserved or contract rent or that the property so located and adapted that it has no use value except as a part of the Jefferson Store complex."
> (Emphasis supplied)

(e) We respectfully submit that the above statement, in addition to being legally insufficient on the issue of rental value, is completely erroneous and this Court overlooked or failed to consider the fact that there was no adequate testimony before the trial court justifying the submission to the jury of the question of whether the plaintiffs had adequately demonstrated that there was a difference between the contract and the market value of the premises. Mr. Samuel Mufson, the President of Jefferson Stores, Inc., testified as follows:

(T 60-61)

"Q. Have you been able to secure a substitute tenant under the terms and provisions of this type of a lease for an automotive center in each of these locations?

A. No, sir.

MR. BANICK: I object to the form of the question. The law would not require the obtaining of a lessee under these precise terms and conditions.

MR. PEARSON: I did not mean these precise terms.

THE COURT: All right. The adjective will be stricken.

A. The answer is no, we have not been able to obtain any other company to go into this type of operation."

* * * *

(T 62)

A. I am sorry. I did not get the question.

I would say that we have always been receptive to any possible new company that we could make a similar kind of deal with; we would be most happy to effectuate some sort of an arrangement."

* * * *

(T 64-65)

"Q. What attempt, if any, did you make to secure any other type of tenant for the property which was not occupied by U. S. Rubber?

A. Well, we have done practically nothing at all. We have a problem here as far as ---

MR. BANICK: I object. He has responded to the question. I object to any voluntary statement.

THE COURT: I do not think he has finished his answer.

A. I started to explain that on these properties which we occupy there are ten prior incumbrances on the three properties, and we do not have a free hand as far as financing additional improvements are concerned, because on each of the properties you have a first mortgagee, you have the owner of the fee, so that whereas with U. S. Rubber Company we had an agreement where they were going to advance the funds for the cost of the improvements, it would be very, very difficult without getting some similar agreement to finance additional improvements on these properties, and one of the things that enabled us to make this arrangement with U. S. Rubber was their agreement to advance these funds for construction.

MR. BANICK: I move to strike the whole answer as not being responsive to the question.

THE COURT: I deny the motion."
(Emphasis supplied)

* * * *

(T 95)

Q. They have always had the right to lease it to anyone they wanted to, have they not?

A. The right to lease it?

Q. Yes.

A. Well, we would not have the legal right to leave the property. We could not convey legal title.

* * * *

(T 95-96)

Q. (By Mr. Banick) After the breach occurred, whenever that was, you always had the right to sublease the property to anyone else, did you not?

A. Yes; that would be right.

Q. Can you take us back in point of time--the lease agreements are dated August 1, 1963. Was it not approximately in November of 1963 that it became fairly well known by the Jefferson Realty Corporations and by United States Rubber Company that these lease agreements would not be consummated?

A. I think it was about that time.

Q. Using, then, November of 1963 as the starting point--and I recognize that this is your best estimate of the starting point--would you tell us, sir, when you first directed a communication to anyone for the purpose of determining their interest to lease these properties from any of the three plaintiff Jefferson corporations.

A. There were no such negotiations.

Q. I thought you mentioned that you contacted Diamond Rubber Company about leasing this property?

A. Oh, yes; we spoke to them, yes.

Q. When did that occur?

A. That was in the early part of this year,'66.

Q. That was in 1966, was it not?

A. That is right.

Q. For the period of November of 1963 until the early part of 1966, it is a fact, is it not,

that neither you nor anyone else for or on behalf of the three Jefferson corporations directed a communication to anyone else with regard to the possibility of leasing these properties?

A. That is correct."

* * * *

(T 107-108)

Q. The property that was to have been leased to United States Rubber Company, that is being used for some purpose right now by the Jefferson Corporations or some of them, is that not right?

A. Well, it's available for parking at the present time. To answer your question more specifically, it is not being used for parking because of the fact that where those automotive centers were to be located, they are very far removed from the main entrance to the store, and in view of the fact--particularly at the North Miami and Kendall ones where we have large sites, we have what I would consider a surplus of parking, so that even at peak times, we have not used those sites for parking. They are available, but they have not been used. Now, at Fort Lauderdale, where our site is a little smaller, at peak times that is used for parking."

* * * *

(f) We respectfully submit that the above-stated testimony, which we submit is all the testimony in the record that would at all bear on the market value of the premises,

is patently insufficient to establish that the premises had a market value substantially less than the contract rental. Giving the most favorable interpretation to the Mufson testimony, it is clear that for over two years no effort was made to lease the properties and the properties were at all material times used or available for use for parking. This testimony does not and cannot support a conclusion that use or rental value was "substantially" less than contract rent. This Court and District Courts have repeatedly held that damages are to be determined by the difference, if any, between contract rent and rental value of the premises for the term. See: Young v. Cobbs, supra, Brewer v. Northgate of Orlando, Inc., 143 So.2d 358 (Fla.1962), Lanzalotti v. Cohen, 113 So.2d 727 (Fla.1959), Leslie E. Brooks Co. v. Long, 67 Fla. 68, 64 So. 452 (1914), Hodges v. Fries, 34 Fla.63, 15 So. 682 (1894). What was the rental value of these premises for the term? This Court has equated parking use (before and after Respondent's alleged breach) and inability to secure a similar tenant (one effort of Petitioners over two years after the alleged breach) to rental value which, we submit, is erroneous. Moreover, the cases do not hold that rental value substantially less than contract rent is the measure of damages. For the jury to have been justified, as this Court has said, to conclude that rental value was substantially less than contract rent, since no figure or dollar amount of rental value was offered, the jury necessarily had to "pick a number" and speculate. The law requires more --

competent proof of rental value -- which is totally lacking in this case. The premises indeed had a rental value when the leases were negotiated -- even though the premises were used for parking, if at all, -- and the premises may well have had a lower rental value after the breach by Respondent, but the record is devoid of any evidence from which the jury could have concluded a lesser value. A "substantial" decrease indeed connotes the absence of a measuring device, demonstrates the speculation required, and makes clear the legal insufficiency of the only evidence on this issue.

Against this background, we submit that the position of the Petitioners is demonstrably illogical. If Mr. Samuel Mufson, the president of Jefferson Stores, were approached by a party who desired the use of the premises for a period of 15 years, would Mr. Mufson take the position that no rent would be necessary as the premises had a rental value of zero dollars? Certainly not. He may well not be able to negotiate the same rental as he did from Respondent, but he certainly would negotiate some rent for the use of the premises. It is that "some rent" which is absent in this case, which renders the instant decision completely contrary to prior Florida decisions forbidding verdicts predicated upon speculation.

This Court has long held that proof of disparity in values must not be "speculative and obscure as to afford no information from which the jury could intelligently assess dsmages." Davis v. Stow, 67 So.2d 630 (Fla.1952). This Court has further continually held that the evidence on damages must afford sufficient predicate "on which a definite sum could be awarded *** there must be something to authorize or justify a definite amount in damages before it can be awarded ***."

Florida Ventilated Awning Co. v. Dickson, 65 So.2d 215, 217 (Fla.1953). Moreover this Court has held that in arriving at market value of property consideration must be given to all of the uses to which the property is reasonably adaptable and to which it either is or in all reasonable probability will become available during the reasonable future. See Board of Com'rs of State Inst. v. Tallahassee B. & T. Co., 116 So.2d 762 (Fla.1959).

3. The Court overlooked and failed to consider that the plaintiff was not entitled to recover damages based on the anticipated or projected sales of a commercial business in contemplation and not yet in existence because such damages as a matter of law are too speculative for recovery.

(a) The law in Florida is well settled as stated in New Amsterdam Casualty Co. v. Utility Battery Manufacturing Co., 166 So. 856-860 (1935):

> "The general rule is that the anticipated profits of a commercial business are too speculative and dependent upon changing circumstances to warrant a judgment for their loss. There is an exception to this rule, however, to the effect that the loss of profit from the interruption of an established business may be recovered where the plaintiff makes it reasonably certain by competent proof what the amount of his actual loss was. Proof of the income and of the expenses of the business for a reasonable time anterior to the interruption charged or facts of equivalent import, is usually required."

Other Florida cases to the same effect are Leslie E. Brooks v. Long, 67 Fla. 68, 64 So. 452 (1914), Young v. Cobbs, 83 So. 2d 417, 419 (Fla.1955) and Rogers v. Standard Oil Company, 178 So. 14.

(b) The thrust of petitioners' damage evidence was the profit which they would have earned under the leases by projecting minimal and percentage rent over the terms of the leases, less anticipated expenses, reduced to present worth. Petitioners did not -- as the record patently discloses -- approach damages by proving the difference between contract rent and rental value. Their proofs, as this Court noted, relate to pre-contract projections of sales, anticipated growth and prospective percentage rentals from businesses to be established, which heretofore have been declared under Florida law to be too speculative for recovery.

(c) Approximations and estimates -- the total of petitioners' damage evidence -- are insufficient to support a verdict. See Toland Manufacturing Corp. v. Roy Feiner Handbags, Inc., 173 So.2d 714 (Fla.3rd Dist.1965). Moreover, petitioners cannot prove damages through a pre-contract remark of respondent, George v. Drawdy, 56 Fla. 303, 47 So. 939 (1909), which is the effect given by this Court to the Kamens pre-contract sales estimates.

4. The Court overlooked or failed to consider that the evidence of loss of advertising revenue was too speculative for recovery.

(a) This Court has held that there is evidence in the record that would justify the jury in finding there was damage to the plaintiff's business for failure of the defendant to advertise as required by the terms of the lease. We respectfully submit that this conclusion is completely contrary to the testimony that was before the trial court. Mr. Samuel Mufson, the president of the plaintiff, testified that he did not know how to measure the financial benefits to his

corporation of the advertising by U. S. Rubber (T 102).

Mr. Jones testified that there is no way that one can measure the benefit in dollars and cents that Burdine's derives from the advertising done by its lessees. (T 669-670). Mr. Kamens testified that you cannot measure the financial or economic benefits of advertising (T 541,542).

There was testimony by a Prof. Noetzel that the advertising expenditures made by U. S. Rubber under the leases would be of economic benefit to the Jefferson "complex" and that each dollar spent on advertising would bring in $1.00 in revenue of the complex. (T 289,290). However, Professor Noetzel also stated that he could not say what portion of the revenue from any advertising dollar spent by U. S. Rubber would go to the plaintiffs and what portion would go to other lessees other than the plaintiff in the "complex":

> "Q. Then you cannot tell us what portion of that dollar even under this theory would be of benefit to Jefferson?
>
> A. No sir, except that it would be a substantial part of it." (T 307)

There is no testimony in the record that any definite dollar benefit would have come to any plaintiff from U. S. Rubber's advertising or that any plaintiff lost a definite dollar amount absent such advertising.

5. In holding that the decision of the District Court of Appeal, Third District, was in direct conflict with Jones v. Allen, 184 So. 651 (Fla.1938) and Povia v. Melvin, (Fla.1963), 66 So.2d 494 and Goldfarb v. Robertson, (Fla.1955), 82 So.2d 504 and Northern Investment Corporation v. Coppock, (Fla.1938) 183 So. 635, this Court overlooked or failed to consider that not

one of these authorities was cited by petitioners in the Petition for Certiorari or in any of the briefs which they have filed in this cause in support of said Petition. The rule as stated by this Court in Williams v. Noel, 112 So.2d 5 (Fla.1959) is that it is the responsibility of the petitioner to specify the cases which allegedly support conflict certiorari jurisdiction and that "it is not the responsibility of this Court to research the law in order to develop points of cleavage not insisted upon by the petitioner." Accordingly it is unprecedented for this Court to develop points of conflict upon its own research not stated or argued by the petitioners in their Petition for Certiorari or briefs.

7. In ruling that Jefferson Stores, Inc. was the real party in interest and entitled to recover upon leases entered into by its subsidiaries, this Court overlooked and failed to consider established Florida law that stockholders of a corporation cannot create a corporation and enjoy its benefits and disregard the corporation at their pleasure and thereby escape its detriments; that they cannot have their cake and eat it too. Here, Jefferson created its subsidiaries, made them viable corporations, which contracted with respondent, and by this Court's decision has permitted the subsidiaries to be cast aside by the creator contrary to: Florida Industrial Commission v. Schwob Co., 14 So.2d 666 (1943), Marks v. Green, 122 So.2d 491 (Fla.App. 1st Dist.1960); Soclof v. State Road Department, 169 So.2d 510 (Fla.App.1st Dist. 1964).

8. The Court overlooked and failed to consider that the issue of whether Jefferson Stores, Inc. was the real party in interest under the lease agreements entered into by its subsidiaries with the respondent, was neither pleaded, nor an issue on which this defendant has ever had a day in court.

(a) The Second Amended Complaint upon which this case was tried alleges that the subsidiaries are the operators of the three Jefferson Super Department Stores and have the right to sub-lease portions of the premises; that U. S. Rubber contracted with the subsidiaries to be sub-lessee and that as a result of U. S. Rubber's breach said subsidiaries had been damaged. The motion at trial to amend this complaint by adding Jefferson Parent Corporation as a party-plaintiff added only one substantive allegation to the Second Amended Complaint: that subsidiaries are "wholly owned subsidiaries of the plaintiff Jefferson Stores, Inc., which is the operator of the business known as Jefferson Super Department Stores in the three above set forth locations. Accounting and income tax reports for all four plaintiffs are consolidated. The Second Amended Complaint, even as amended during trial, did not allege (a) any cause of action by Jefferson Parent Corporation against U. S. Rubber, or (b) that Jefferson is the real party in interest, or (c) that it is or was intended to be a third party beneficiary or (d) that subsidiaries are its alter ego and that fraud or injustice would result if they were not disregarded.

(b) Jefferson was permitted to enter the suit as a plaintiff on the last day of the trial with no issue having been made and joined as to any contractual or other duty or obligation owed by U. S. Rubber and without any pleading or other notice to U. S. Rubber of the claim that the subsidiaries were its alter ego. Under traditional and rudimentary concepts of due process Jefferson was a stranger in the litigation and established no right to be in the

litigation and its admission into the suit was a denial of due process which calls for reasonable notice, a hearing and opportunity to defend. See 6 Fla. Jur. Constitutional Law, §§ 319,320,322,325,326, Tomayko vs. Thomas, 143 So.2d 227 (Fla.3d Dist.1962), Brooker vs. Smith, 101 So.2d 607 (Fla. 2d Dist.1958).

(c) Additionally, Jefferson has been permitted by this Court to elevate its status in this cause to that of a real party in interest, notwithstanding that subsidiaries contracted with U. S. Rubber, they were the record title holders of the land to be sublet, and they were necessary parties of the litigation who indeed sought recovery therein. See 24 Fla.Jur. - Parties - § 3, 18 FLP Parties § 10; White vs. Exchange Corp., 167 So.2d 324 (Fla.1964).

9. In affirming the partial summary judgment on liability entered by the trial Court, an issue that the District Court of Appeal did not rule upon because of its method of disposition of the cause, the Court overlooked or failed to consider that the trial court adjudicated the existence of a contract between the parties despite the non-performance by petitioners of an express condition precedent.

The record establishes that at the hearing on the cross motions for summary judgments the following facts were undisputed and uncontroverted:

(a) That U. S. Rubber required title insurance on its leasehold interest against extinguishment of loss of possession by reason of a default or insolvency of the realty corporations or any party having a paramount interest. (R 52, 92, 132, 190, 191, 194, 195, 380).

(b) That Realty Corporations and U. S. Rubber executed lease agreements which were not to become effective until certain conditions were met. (R 194,195).

(c) That one of the conditions to be met was the receipt by U. S. Rubber of satisfactory title reports on the approval of same. (R 194,195).

(d) That proposed specimen policies of title insurance, based upon year-old title searches, were submitted to U. S. Rubber as specimen forms of coverage to be afforded on two of the three locations to be subleased. (R 438,439, 503-510).

(e) That prior to the issuance of interim title binders to U. S. Rubber, it was necessary to record certain Attornment Agreements. (R 196,197).

(f) That Attornment Agreements could not be recorded unless the parties thereto consented to the delays in time. (R 196,197).

(g) That U. S. Rubber consented to the release of Attornment Agreements from escrow and the recordation of same. (R 177,184).

(h) That the Attornment Agreements were never recorded and neither interim title binders nor title policies were ever issued or submitted to U. S. Rubber. (R 562,508,510,562-564).

(i) That U. S. Rubber never approved any title report, binder or policy. (R 398-400,407).

(j) That Realty Corporations never requested Lawyers Title to issue title binders or title policies to meet the requirements of U. S. Rubber as one of

the conditions for the lease to become effective. (R 508-510, 562-564).

(k) That no specimen policy, interim binder or insurance policy was ever prepared or issued with regard to the Broward County location. (R 390-391).

(l) Each lease provides:

"On or before the first day of the term hereof Sub-Lessor shall procure and furnish to Sub-Lessee a policy of title insurance issued by Lawyers Title Insurance Company insuring Sub-Lessee's right to possession as above provided subject to the conditions aforesaid."

(m) By settled law, the plaintiff must perform the conditions precedent or show a valid excuse for non-performance. Ballas v. Lake Weir Light & Water Co., 100 Fla. 913, 130 So.421 (1930); Cohen v. Rothman, 127 So.2d 143 (Fla.1961). The record does not show and petitioners have not pointed to any evidence that they performed or even attempted to perform in the particulars complained of above. No title report was ever submitted to U. S. Rubber, no title work was ever requested by petitioners, title approval was an express condition to the effectiveness of the lease agreements and petitioners have not shown any valid justification for having failed to perform the express conditions precedent. Certainly the problem presented here on its face merits more than a summary affirmance.

10. In affirming the trial court's actions with regard to the cross motions for summary judgment, the Court overlooked or failed to consider that this issue should have been decided by the District Court of Appeal in the first instance. The question as to the propriety of a partial summary judgment for the plaintiffs (including the plaintiff, Jefferson Stores, Inc., which obtained the benefit of such ruling at trial) is one that on its merits is at least fairly debatable. The appropriate exercise of this Court's discretion would be to remand the matter to the District Court of Appeal, Third District, for the determination of this question, which that Court, because of its prior ruling, has not yet been called upon to decide. See Florida Power & Light Co. v. Ahearn, 118 So.2d 21 (Fla.1960); Mark v. Hahn, 177 So.2d 5 (Fla.1965); South Florida Citrus Industries, Inc. v. Tonkovich, 196 So.2d 438 (Fla.1967).

CONCLUSION

We respectfully submit that this Court's decision is erroneous, for the reason that it overlooks, ignores, departs from, or conflicts with settled principles of Florida law, namely:

(a) In the absence of evidence of rental value of the premises for the unexpired term, and this record presents no such evidence, it must be assumed that Petitioners suffered no damage in that respect. Young v. Cobbs, 83 So.2d 417.

(b) Use of the premises for parking and one effort of Petitioners in more than two years after the breach to attempt to lease does not and cannot equate to rental value. Board of Com'rs of State Inst. v. Tallahassee B. & T. Co., 116 So.2d 762.

(c) Petitioners' damage evidence totally related to sales estimates, percentage rental projections, and net profit to be earned from businesses to be established, which evidence is too speculative for recovery. New Amsterdam Casualty Co. v. Utility Battery Manufacturing Co., 166 So. 856.

(d) Damages may not be proven through a pre-contract remark, which was the effect given by this Court to the Kamens pre-contract sales projections. George v. Drawdy, 47 So. 939.

(e) The total of petitioners' damage evidence relates to approximations and estimates, which are insufficient to support a verdict. Toland Manufacturing Corp. v. Roy Feiner Handbags, Inc., 173 So. 2d 714.

(f) Stockholders of a corporation may not discard corporations which they have created, whereas the effect of this Court's opinion is the contrary. Florida Industrial Commission v. Schwob Co., 14 So.2d 666; Soclof v. State Road Department, 169 So.2d 510.

(g) As to the admission of Jefferson Stores into the litigation, particularly since it was not a contracting party with Respondent, Respondent was deprived of procedural due process, requiring notice, hearing and an opportunity to defend. Tomayko v. Thomas, 143 So.2d 227.

(h) This Court's opinion reinstates a judgment, on a jury verdict, for a non-contracting party, whereas only a contracting party or its privy may recover damages for its breach. White v. Exchange Corp., 167 So.2d 324.

(i) The leases were subject to the performance by Petitioners of conditions precedent and the record demonstrates non-performance thereof and Petitioners have not proven or shown any valid excuse for non-performance. Ballas v. Lake Weir Light & Water Co., 130 So. 421; Cohen v. Rothman, 127 So.2d 143.

We further respectfully urge a rehearing in this cause because of the above-noted departures from settled principles of Florida law, which we herein have endeavored to state and set forth our reasons and reasoning therefor. Remanding this cause for reinstatement of a judgment of a non-contracting party who, by the opinion of this Court, has been permitted to cast aside its subsidiaries, without pleading or proof, on evidence repeatedly held by this Court to be speculative, in the total absence of any evidence of rental value, in our considered opinion and judgment is a gross miscarriage of justice. The ends of justice are not thereby served, but rather defeated, since the verdict upon which the judgment is predicated is patently permeated with the stains of estimates, projections and approximations. The very least to which a litigant, including Respondent, is entitled under our system of jurisprudence is a day in Court on issues joined and proofs received within the framework of the law. Considering the history of this case, the total divergence of opinion between this Court and the Third District Court of Appeal, we respectfully urge that the only fair disposition of this cause would be a new trial on all issues,

as to all parties, which at one point in this proceeding Petitioners themselves sought and urged (Petitioners' Reply Brief filed on or about May 6, 1968).

Respectfully submitted,

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and
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I HEREBY CERTIFY that a true and correct copy of the above and foregoing Petition for Rehearing was mailed on this 29th day of April, 1969, to BERNARD C. FULLER and FRATES, FAY, FLOYD & PEARSON, Attorneys for Petitioners, Twelfth Floor, Concord Building, Miami, Florida.

RICHARD S. BANICK