O/A 12-6-83

30

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

CASE NO. 63,242

JOSEPH T. LANCE AND CROSS
KEY WATERWAYS, INC.,

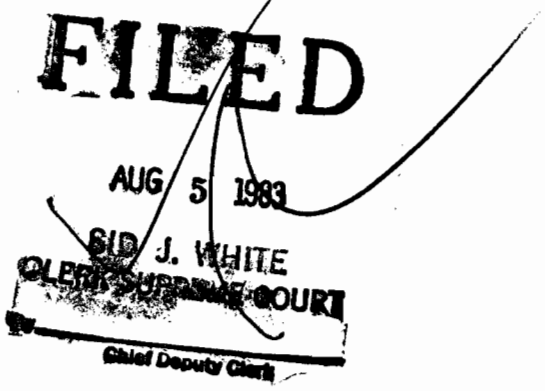
Appellants,

vs.

CHARLES H. WADE, FRANK C.
HERRINGER, and all others
similarly situated, and
the HOMEOWNERS ASSOCIATION
OF CROSS KEY WATERWAYS,
INC.,

Plaintiff/Appellee.

_____/



On Appeal From the District Court
Of Florida, Third District

APPELLANTS' BRIEF ON THE MERITS

KARL BECKMEYER
Attorney for Appellants
88539 Overseas Highway
Tavernier, FL 33070
(305) 852-2423

TABLE OF CONTENTS

LIST OF CITATIONS

LIST OF CITATIONS continued

INTRODUCTION AND PRELIMINARY STATEMENT

Appellants, Joseph T. Lance and Cross Key Waterways, Inc. (hereinafter referred to as "Lance" and "Cross Key Waterways" or "Defendants"), were the Defendants in the Court below. Appellees, Charles H. Wade, Frank C. Herringer, and all others similarly situated, and the Homeowners Association of Cross Key Waterways, Inc. (hereinafter referred to as "Wade", "Herringer", "Homeowners Association" or "Plaintiffs"), were the Plaintiffs in the Court below.

The symbol "R" will signify reference to the record proper and "TR" to transcript of the testimony. Exhibits, if any, will be identified by the number or as otherwise indicated in the record. All emphasis herein is supplied unless otherwise indicated.

STATEMENT OF THE CASE

This action was begun on September 29, 1978, by the Plaintiffs' filing of their Complaint (R 1-11). Thereafter, Defendants filed a Motion to Strike (R 12-14), and Motion for Change of Venue (R 15-16).

An Order was entered on April 3, 1979 (R 30) and Defendants' filed their Answer and Affirmative Defenses to the original Complaint on April 23, 1979 (R 31-34).

Plaintiffs filed their First Amended Complaint on November 7, 1979 (R 47-55) and Defendants filed their Answer and Affirmative Defenses to Plaintiffs' First Amended Complaint on November 21, 1979 (R 56-60).

On April 18, 1980, the Court set this cause for jury trial which began on September 15, 1980. Trial resulted in a verdict in favor of Plaintiffs for both compensatory and punitive damages.

Defendants' timely Motion for Judgment in Accordance with Motions for Directed Verdict, Motion for Judgment Notwithstanding the Verdict, and/or Motion for New Trial (R 95-102) were denied (R 105), and timely Notice of Appeal was filed on January 6, 1981 (R 106). On January 4, 1983, the Third District Court of Appeal filed in Opinion affirming (with dissent by Baskin, J.), the judgment of the trial court. Timely Motion for Re-hearing was denied on January

24, 1983, and Notice to Invoke Discretionary Jurisdiction was filed on February 8, 1983. This Appeal seeks review of the Verdict and Final Judgment entered in this cause on October 3, 1980, and the Opinion of the Third District Court of Appeal dated January 4, 1983.

STATEMENT OF THE FACTS

This was an action for damages by the purchasers of mobile home lots in Key Largo against the Seller/ Developer and its President for fraudently misrepresenting that the Developer would install in the trailer park roads which were paved to the specifications of the Monroe County Engineer and subsequently not installing said roads. The Complaint was filed by two of the lot owners on their own behalf and "on behalf of all others similarly situated" and the Homeowners Association of Cross Key Waterways, Inc., a non-profit corporation formed by some of the lot owners.

The Complaint alleged that the Plaintiffs were real property owners of Cross Key Waterways Estates and that the Complaint was brought on behalf of themselves and all other persons who had purchased property in the subdivision from the Defendants or their agents. The Plaintiffs alleged that this was a matter of common or general interest to many persons constituting a class so numerous as to make it impractical to bring them all before the Court. Neither the size nor the identity of the alleged members of the class was otherwise alleged.

The Complaint further alleged that Cross Key Waterways filed a Public Offering Statement pursuant to Section 478.011, Florida Statutes, which contained the following

alleged mis-statements of material facts upon which the Plaintiffs materially relied to their detriment:

> "Improvements will include...construction of a graded, rolled, water bonded, oiled and sanded road".
>
> "...the balance of the lots shall have access by a paved road constructed to the specifications of the Monroe County engineer, which road shall be constructed down the middle of a fifty foot right-of-way fronting each of the lots".

Plaintiffs claim that on or about the calendar years 1970 to 1971 the various individual Plaintiffs purchased lands from Cross Key Waterways. Plaintiffs did not allege that the members of the class were engaged in a cooperative enterprise or had a joint pecuniary interest. Nor did the Complaint allege that the interest of the named Plaintiffs was coextensive with the interests of the others in the class, that the named Plaintiffs adequately represented the class, or show Plaintiffs' right to represent the class. Plaintiffs' class action allegations merely tracked the language of the Rule of Civil Procedure.

The Defendants filed an Answer (R 56-60) to the Amended Complaint admitting the filing of the Public Offering Statement, but denying the remaining allegations. In their Answer the Defendants raised the Affirmative Defenses of statute of limitations, laches, waiver and estoppel, lack of constitution of a valid class,

failure to state a cause of action, lack of jurisdiction over the subject matter, and performance by the Defendants of the acts represented in the Offering Statement.

On February 26, 1980, Plaintiffs filed a Motion to specially set this cause for trial, even though Plaintiffs had taken no action to either certify this action as a class action or to notify the members of the alleged class. On April 18, 1980, the Court entered an Order (R 63) setting the action for trial by jury beginning on September 16, 1980.

The testimony at trial revealed that Cross Key Waterways had filed a Public Offering Statement as alleged and in 1970 entered into a contract with Zinke-Smith, Inc. to perform the construction of the road as specified in the Public Offering Statement. Testimony further proved that the work was done in the years 1970 and 1971 (T 155, 535). Mr. Jasper Dudley, a foreman of Zinke-Smith, testified that the roads were constructed as represented in the Public Offering Statement (T 526).

The evidence demonstrated that some (2), but not all, of the members of the class had seen the Offering Statement before entering into their separate contracts for the purchase of their lots. Reliance on the Public Offering Statement was not proven on behalf of all of the Plaintiffs.

Plaintiffs offered no testimony on damages except for Mr. Calvin Chalker, a paving contractor, who testified that the cost to pave the roads was $250,000.00.

At the close of Plaintiffs' case in chief and at the close of all of the evidence, Defendants moved for a directed verdict on the grounds of the insufficiency of the Pleadings and the evidence, but said Motions were denied.

At the close of the evidence a jury charge conference was held, at which time Defendants raised the question of the propriety of the Court's allowing the action to proceed as a class action in view of the general rule prohibiting class actions for fraud, the lack of certification of the class, the lack of proof of identity of the class, and the lack of notice to the members of it. This objection was overruled and the case was allowed to go to the jury as a class action.

At the charge conference, the Plaintiff Homeowners Association was dismissed as a Plaintiff since the Association never purchased any property from the Defendants and had not even been formed as a corporation until 1976, 5 years after the alleged misrepresentation.

At the jury charge conference the Defendants objected to the Court's instruction on damages (TR 566-569). The specifications of the Monroe County engineer were never

introduced into evidence. After receiving the Court's charges, the jury returned with two questions. In the first one the jury requested the specifications of the Monroe County engineer. These were not in evidence.

After lengthy deliberations the jury returned a verdict against Cross Key Waterways for $200,000.00 compensatory damages and $300,000.00 punitive damages, and against Joe Lance for $50,000.00 compensatory damages and $60,000.00 punitive damages.

The Court entered judgment on the verdict. A timely Motion for New Trial, Motion for a Judgment in Accordance with Motions for Directed Verdict, and Motions for Judgment Notwithstanding the Verdict, were denied. On January 4, 1983, the Third District Court of Appeal filed an Opinion affirming (with dissent by Baskin, J.), the judgment of the trial court. Timely Motion for Re-hearing was denied on January 24, 1983, and Notice to Invoke Discretionary Jurisdiction was filed on February 8, 1983. This Appeal seeks review of the Verdict and Final Judgment entered in this cause on October 3, 1980, and the Opinion of the Third District Court of Appeal dated January 4, 1983.

ARGUMENT

POINT I

WHETHER THE TRIAL COURT AND DISTRICT COURT ERRED IN ALLOWING THIS ACTION WHICH WAS BASED ON FRAUD ON SEPARATE CONTRACTS TO PROCEED AS A CLASS ACTION.

This case involves a class action for fraud allegedly committed on approximately 350 purchasers of mobile home lots under separate contracts. Plaintiffs claim that they relied to their detriment upon statements contained in the Public Offering Statement, brochure and Contract for Deed which represented the lots would be provided access to U. S. Highway 1, by roads paved to the specifications of the Monroe County engineer.

The Florida Supreme Court has ruled that actions predicated on fraud can not be maintained as class action. Osceola Groves v. Wiley, 78 So. 2d 700, (Fla. 1955), Avila South Condominium Association, Inc. v. Kappa Corp., 347 So. 2d 599, (Fla. 1976), Cherin v. Southern Star Land and Cattle Company, Inc., 400 So. 2d 1, (Fla. 1981). In Osceola Groves, supra, the Court stated the basis for the rule as follows:

1. The demands of the various defrauded parties are legally distinct.
2. Each cause of action depends upon its own facts and material difference in facts may exist.
3. A choice of remedies is presented.
4. Plaintiff can not known that other persons similarly situated will not elect to affirm the fraudulent action. Id. at 702.

This rule was reaffirmed by this Court in Avila South, supra, in which this Court in affirming dismissal of two counts for fraud in a class action suit, stated:

> "Counts III and IV allege fraud and for that reason fall under the rule of Osceola Groves vs. Wiley, 78 So. 2d 700 (Fla, 1955), the recovery for fraud on separate contract can not be had in a class action. Id. at 608.

The Court went on to state that:

> "The clear import of Osceola Groves vs. Wiley, supra, is that fraud claims on separate contracts are inherently diverse as a matter of law, because "the demands of the various defrauded parties are not only legally distinct, but each depends on its own facts...(and) a choice of remedies is ordinarily presented." Id. at 609.

The fraud class action rule has been followed in the District Courts of Appeal in Costin v. Hargraves, 283 So. 2d 375 (Fla. 1stDCA, 1973); Equitable Life Assurance Society of the United States v. Fuller, 275 So. 2d 568 (Fla. 3DCA, 1973); and Hendler v. Rogers House Condominium, 234 So. 2d 128 (Fla. 4DCA, 1970). In 1981, in Cherin vs. Southern Star Land and Cattle Company, Inc., 400 So. 2d 1 (Fla. 1981), this Court was provided an opportunity to modify the Osceola Groves fraud class action rule when the Third District Court of Appeal certified the question to the Supreme Court as one which passes upon a question of great public importance, but the Court declined to answer the certified question presented by the Appellate Court in Cherin v. Southern Star Land and Cattle Company, Inc., 390 So. 2d 104 (Fla. 3DCA, 1980) or to overrule Osceola Groves.

The District Court below erroneously interpreted Franco v. City of Miami Beach, 340 So. 2d 463 (Fla. 1976) as allowing class actions in limited circumstances, and then attempted to distort the facts of the subject case to fit those circumstances. This was error for at least two reasons. First, the Franco case did not involve fraud class action and the Court did not rule on the issue. As stated at page 340 of the Franco decision:

> "since the Complaint in the instant case does not allege fraud, we have no occasion to consider that the desirability of continued adherence to the fraud class action rule adopted in Osceola Groves, supra."

Secondly, Franco was overruled by the Florida Supreme Court's subsequent ruling in Avila South, supra.

In the subject case, the Plaintiffs claim that they were defrauded by misrepresentations of material fact which were made in a Public Offering Statement and that as a result of said misrepresentations, they entered into separate contracts to purchase their lots. The Plaintiffs neither plead nor proved that they were engaged in any cooperative enterprise or that they had a joint pecuniary interest. It further appears that the Plaintiffs do have a choice of remedies (in that they could either affirm the transaction and sue for damages or elect to rescind the transaction and sue for restitution) and that said remedies are subject to separate and distinct defenses both equitable and legal (waiver, estoppel, failure to investigate, statute of limitations, laches).

The subject case demonstrates the validity of the Osceola Groves rule and the desirability of continued adherence to it. In this case, only two of the nine members of the "class" testified that they relied on the statements made in the Public Offering Statement. Since it affirmatively appears that all of the members of the alleged class were not defrauded, it would be and is inequitable to allow those persons who have not been defrauded to participate in recovering not only compensatory damages of $250,000.00, but also punitive damages in the amount of $360,000.00 from the Defendants.

This case, therefore, clearly falls under the Osceola Groves rule prohibiting class actions based on fraud and the trial court and the district court erred in allowing this action to proceed as a class action.

No rule of procedure or case law authorize the institution of a class action for fraud at the time that the appellees filed suit. Even if the Supreme Court should reconsider the question of class action lawsuit, the Court is required to follow the law as it presently exists, Hoffman v. Jones, 280 So. 2d 431, (Fla. 1973), and reverse the judgments entered by the trial court and the decision of the District Court of Appeal.

POINT II

WHETHER THE EVIDENCE WAS SUFFICENT TO SUPPORT THE VERDICT WHERE PLAINTIFFS OFFERED NO PROOF AS TO THE SPECIFIC REQUIREMENTS WHICH DEFENDANTS ALLEGEDLY FAILED TO MEET AND INTRODUCED NO EVIDENCE AS TO ANY LEGALLY RECOVERABLE DAMAGES.

It is fundamental that there must be substantial evidence to support a jury's findings and verdict. A verdict and judgment entered thereon will be reversed when there is not legally enough evidence to support it under any reasonable view that may be taken of the evidence, where there is a clear lack of proof of some essential element to support the findings, or where the findings are against the manifest weight or contrary to the legal effect of the evidence. Food Fair Stores, Inc. v. Sommer, (1959, Fla. App. D3) 111 So. 2d 743; Stigletts v. McDonald (1938) 135 Fla. 385, 186 So. 233; Palm Beach Sash & Door Co. v. Rice (1941) 146 Fla.780, 1 So. 2d 861; Allen v. Wilhelm, (1959, Fla. App. D2) 113 So. 2d 857; Stubblefield v. Dunlap (1941) 148 Fla. 401, 4 So. 2d 519; Kellogg v. Porter, (1944) 155 Fla. 287, 20 So. 2d 49; Holland v. Gross (1956, Fla.) 89 So. 2d.

The test of the sufficiency of the evidence is whether reasonable men could have found the verdict that they did. 3 Fla. Jur. 2d, § 346 and cases cited at footnote #40.

In order for this verdict, which is based on a cause of action for fraud based upon alleged misrepresentation of a future occurance, there must be substantial evidence as to all of the following elements:

1. A statement made concerning a specific material fact.

2. That the statement was made without any intention of performing it or made with the positive intention not to perform it.

3. That the future occurance never occured.

4. The intention that the representation induced another to act on it.

5. Consequent injury by the other party acting in reliance on the representation.

Nixon v. Temple Terrace Estates, Inc., (1929) 97 Fla. 392, 121 So. 475; Huffstetler v. Our Home Life Ins. Co., (1914) 67 Fla. 324, 65 So. 1; Home Seekers Realty Co. v. Menear, (1931) 102 Fla. 7, 135 So. 402; Day v. Weadock, (1931) 101 Fla. 333, 134 So. 525; Alechman v. Edwards, (1952, Fla.) 56 So. 2d 327; Steak House, Inc. v. Barnett, (1953, Fla.) 65 So. 2d 736.

Plaintiffs in this action wholly failed to prove that the Defendants made a statement concerning a specific material fact to all of the members of the class, and that all of the members of the class relied on said representations.

Of the 9 members of Plaintiffs' alleged class who testified at trial, only 2 testified that they had seen the Public Offering Statement before purchasing their property. Only 2 property owners (Wade and Redish) testified that they relied on the representations made in the Public Offering Statement. Even Mr. Wade, the first named Plaintiff, testified that he did not receive a copy of the Public Offering Statement before purchasing his first lot (TR 194). Further, Mr. Herringer, the other named representative of the "class", testified that he had never either met Joe Lance or seen the Public Offering Statement (TR 440).

Who knows how many other members of the alleged class neither saw the Offering Statement nor relied on the representations made in it. Plaintiffs, through their own testimony (by which they are bound), proved that the Defendants did not practice a fraud on all of the members of the alleged class.

Secondly, the Plaintiffs failed to prove that the statements which Defendants made in the Public Offering Statement were made without any intention of performing them or with a positive intention not to perform them.

Charles Netter, the President of Cross Key Waterways, Inc., and Joe Lance both testified that they had every intention of performing in accordance with the

terms of the public offering statement. They testified that Cross Key Waterways entered into a contract with Zinke-Smith, Inc. in 1970 (TR 535 et seq.), and that the contract was performed in 1970 and 1971 (TR 155). The foreman on the job on behalf of Zinke-Smith, Jasper Dudley, also appeared and testified at Trial to these matters (TR 526).

Plaintiffs introduced absolutely no evidence to show that the Defendants had no intention of paving the roads as represented or that the Defendants had a positive intention not to pave the roads. To the contrary, all of the evidence in Trial indicated that the roads had been paved exactly as they had been represented in the Public Offering Statement.

Thirdly, the Plaintiffs failed to prove that the representations that the roads would be paved was never carried out. The representations which was allegedly made by the Defendants was that "the Plaintiffs would be provided with paved roads to the specifications of the Monroe County engineer." The Plaintiffs completely failed to produce any evidence as to either the specifications of the Monroe County engineer or that the Defendants failed or refused to provide Plaintiffs with roads paved to those specifications. There were no expert witnesses to testify at Trial as to what standards the

roads had been paved to. The only evidence introduced as to paving was that of Charles Netter, on behalf of Cross Key Waterways, Inc., to the effect that the roads were, in fact, paved to the specifications of the Monroe County engineer and that funds were released from the Barnett Bank as a result of that fact. Even Mr. Chalker, the Plaintiffs' expert, testified that the roads as installed by the Defendants could be considered "paved".

There was no rational basis on which the jury could find that the Defendants had not paved the roads to the specifications of the Monroe County engineer when those specifications were not in evidence. The jury was obviously troubled by this since the first questions the jury asked after retiring for deliverations, was whether the specifications were in evidence. They were not. There is no way that a jury could rationally find that the Defendants had failed to meet specific standards when those standards were never introduced into evidence.

Damages are an essential element in a cause of action for fraud. Plaintiffs in this action failed to introduce into evidence any evidence of damages which were legally recoverable.

The measure of damages for a seller's misrepresentation of a material fact relating to property sold by him is the difference between the actual value of the

property and the value if the facts represented were true. Williams vs. McFadden, (1887) 23 Fla. 143, 1 So. 618, and West Florida Linen Co. vs. Studebaker, (1896) 37 Fla. 28, 19 So. 176.

Where a purchaser seeks damages for a misrepresentation as to matters affecting the value of the property that he purchases, he must prove with certainty and definiteness, the value of the property at the time of the purchase and what such value would have been if the representations were true. See West Florida Linen Co. v. Studebaker, supra and Tampa Union Terminal Co. v. Richards, (1933) 108 Fla. 516, 146 So. 591.

In Golden Loaf Bakery, Inc. v. Charles W. Rex Construction Company, Inc., 311 So. 2d 390 (Fla. 4thDCA, 1975), a building owner brought an action against the contractor to recover damages resulting from failure to build the floor of the building in accordance with the specifications. At the close of the Plaintiff's case, the Trial Court directed a verdict against the building owner on the grounds that the only evidence of damages was the cost to repair the building, whereas the property measure of damages was the difference in value between the building as it was built and as it should have been built. The Fourth District Court of Appeal affirmed the Trial Court's directed verdict against the building owner.

In this case, the Plaintiff likewise failed to introduce any evidence as to any damages which were legally recoverable. The only evidence of damages which the Plaintiff introduced was the cost to pave the roads. Those damages were not legally recoverable. The jury's verdict obviously cannot stand where there is no evidence as to any legally recoverable damages.

For these reasons it is clear that the Plaintiffs failed to carry its burden of proof and therefore that the verdice is not supported by substantial evidence and that the verdict and the judgment entered thereon should be set aside.

POINT III

WHETHER THE COURT IMPROPERLY INSTRUCTED THE JURY ON THE PROPER MEASURE OF DAMAGES FOR THE SELLERS' ALLEGED MISREPRESENTATION OF MATERIAL FACTS RELATING TO THE PROPERTY SOLD BY THEM.

The measure of damages for a seller's misrepresentation of a material fact relating to properties sold by him is the difference between the actual value of the property and the value if the facts represented were true. Williams v. McFadden, supra, and West Florida Linen Co., v. Studebaker, supra.

In this action the Plaintiffs allege that the Defendants fraudulently misrepresented to the Plaintiffs that the improvements will include construction of a graded, rolled, water bonded, oiled and sanded road and that the balance of the lots shall have access by a paved road constructed to the specifications of the Monroe County engineer.

At the jury charge conference, Defendants urged the Court to give instruction No. 4, which correctly reflected Florida law under these circumstances, and which read as follows:

> "You are further instructed that if you find the Defendants or either of them guilty of fraud, the measure of actual damages, if any, in this case is the difference between the

> actual value of the property and the value of the property if the facts represented were true".

A copy of the instruction is attached as Exhibit "1".

The Court rejected Defendants' proposed instruction and instead charged the jury on the issue of damages as follows:

> "What award to Plaintiffs would restore them to the position they would be in had the wrong not been committed?"

The Court, in effect, instructed the jury on the "cost to repair the roads". This is obviously incorrect under Florida law in that the proper measure of damages is the difference between the actual value of the property and its value if the facts represented were true.

POINT IV

WHETHER THE COURT ERRED IN ALLOWING THIS ACTION TO GO TO THE JURY AS A CLASS ACTION WHERE THE PLAINTIFFS FAILED TO EITHER ALLEGE OR PROVE SUFFICIENT FACTS TO JUSTIFY MAINTAINING THIS ACTION AS A CLASS ACTION.

It is fundamental that an action is not a class suit merely because Plaintiff designates it as such in the Complaint and used the language of the rule. Point Royale, Inc. v. Convoy, 154 So. 2d 734, (Fla. 2dDCA, 1963). It is not sufficient to plead merely the language of the rule relating to class suits. The Plaintiff must also plead and describe the class with certainty and must plead and prove with a fair degree of certainty that the class is so numerous as to make it impractical to bring them all before the Court. 24 Fla. Jur., Parties, Section 21 and cases cited therein.

In Harrell v. Hess Oil and Chemical Corp., 287 So. 2d 291 (Fla. 1973), the Florida Supreme Court enumerated the prerequisites which a Complaint in a class action must contain:

1. Show the necessity for bringing the action as a class suit.
2. Show Plaintiffs' right to represent the class.
3. Allege that Plaintiff brough the suit on behalf of himself and all others similarly situated.

4. Allege the existence of a class described with some degree of certainty.

5. Allege that the members of the class were so numerous as to make it impracticable to bring them all before the Court.

6. Make it clear that Plaintiff adequately represents the class.

7. Show that the interests of the Plaintiff were coextensive (common interest-community interest) with the interest of the others in the class, 293-94.

It is clear that one endeavoring to bring a class suit must plead facts showing a right and a necessity for that and "more is required than the mere pleading the language of the Statute". City of Lakeland v. Chase Nat. Co., 159 Fla. 783. 32 So. 2d 833, 838. In addition to pleading those matters as a class action generally, there are three additional criteria which must be plead and proved in class actions in fraud, Osceola Groves, supra, and Franco. Those are:

> That the members of the class against whom a fraud has allegedly been perpetrated must:
>
> 1. Be engaged in a cooperative enterprise;
>
> 2. Have a joint pecuniary interest, and
>
> 3. Not have a choice of remedies subject to spearate and distinct remedies.

In the subject case the Plaintiffs have failed to allege the necessary prerequisite to maintain this as a class action. The Complaint merely tracked the language of the Statute which is clearly insufficient under Florida

law to effectively plead a class. It pleads no ultimate facts as to 1) the necessity for bringing the action as a class suit, 2) Plaintiffs' right to represent the class, 3) the existence of a class described with some degree of certainty, 4) that the named Plaintiffs adequately represent the class, or 5) that the interests of the Plaintiffs were coextensive with the interests of the other members of the class.

Since Plaintiff failed to either plead or prove these facts the Court erred in allowing this action to proceed as a class action.

CONCLUSION

The trial court and the District Court of Appeal erred in allowing this action to proceed as a class action. Plaintiffs failed to prove that Defendants did not perform according to the standards stated in the Public Offering Statement, and failed to present any evidence as to any legally recoverable damages.

The judgment of the District Court of Appeal should be reversed with instructions to reverse the judgments entered by the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellants' Brief on the Merits was mailed to Silver, Levy & Hershoff, on this 4th day of August, 1983.

KARL BECKMEYER
Attorney for Appellants
88539 Overseas Highway
Tavernier, FL 33070
(305) 852-2423

By: Karl Beckmeyer