

FILED

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

AUG 10 1983

THE ABSTRACT CORPORATION
and CHELSEA TITLE AND
GUARANTY COMPANY,

SID J. WHITE
CLERK SUPREME COURT
By _____
Chief Deputy Clerk

Petitioners,

CASE NO. 63,971

v.

FERNANDEZ COMPANY,

Respondent.

RESPONDENT'S REPLY BRIEF ON
DISCRETIONARY JURISDICTION

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The original notice to invoke discretionary jurisdiction in this matter appeared to be pursuant to Rule 9.030(a)(2)(A)(vi) Florida Rules of Appellate Procedure. The brief on jurisdiction makes it clear that the Petitioners are seeking jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(iv).

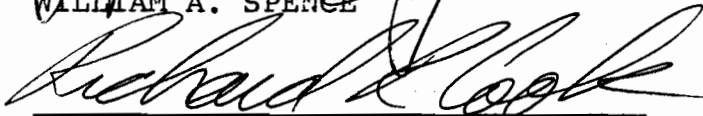
The apparent conflict in this case arises due to the next to the last paragraph of the opinion of the Fifth District Court of Appeal wherein that Court states that it is accepting the principals as set out in Kovaleski v. Tallahassee Title Co., 363 So.2d 1156 (Fla. 1st DCA 1978). By footnote the Fifth District Court of Appeal states that their holding is thus in conflict with First American Title Insurance Co. v. First Title Service Co., 423 So.2d 66 (Fla 3d DCA 1982). As can be seen by the briefs filed in the Fifth District Court of Appeal which are appended hereto (Respondent's Appellate Court Brief being appendix pages 1 through 14; Petitioners' Appellate Court Brief being appendix pages 15 through 26); it is therefore clear that the privity issue upon which Kovaleski, supra, conflicts with First American Title Insurance Co., supra, and Sickler vs. Indian River Abstract & Guaranty Co., 195 So. 195 (Fla. 1940), is an issue injected by the Petitioners herein for the first time before the Supreme Court in an effort to obtain an appeal to this Court.

This Court can certainly decide whether or not Sickler, supra, should still be the law of this State when it decides the First American Title Insurance Co., supra, case which is currently before

the Court. There is no need for the Court to exercise its discretionary jurisdiction when the issue upon which a conflict arises is an issue that was not before the appellate court and an issue, the resolution of which, was not the basis of the appellate court's decision.

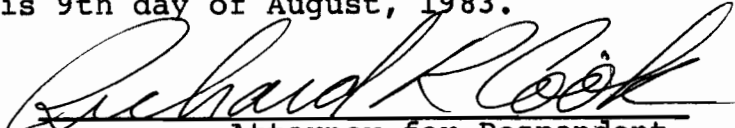
RESPECTFULLY SUBMITTED,


WILLIAM A. SPENCE


RICHARD R. COOK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to W.C. HUTCHISON, JR., ESQUIRE, Post Office Drawer H. Sanford, Florida 32771, this 9th day of August, 1983.


Attorney for Respondent