

**FILED**

**JUL 25 1983**

**SID J. WHITE**  
**CLERK SUPREME COURT**  
**Chief Deputy Clerk**

IN THE SUPREME COURT  
OF THE STATE OF FLORIDA

THE ABSTRACT CORPORATION and  
CHELSEA TITLE AND GUARANTY COMPANY,

Petitioners,

v.

CASE NO. 63,971

FERNANDEZ COMPANY,

Respondent.

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PETITIONERS' BRIEF ON  
DISCRETIONARY JURISDICTION

PETITION FOR DISCRETIONARY RELIEF  
FROM FIFTH DISTRICT COURT OF APPEAL

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Jurisdiction of this Court is invoked pursuant to Fla.R. App.P. 9.030(a)(2)(A)(iv), decision of the Fifth District Court of Appeal conflicting directly with a decision of the Third District Court of Appeal and of this Court.

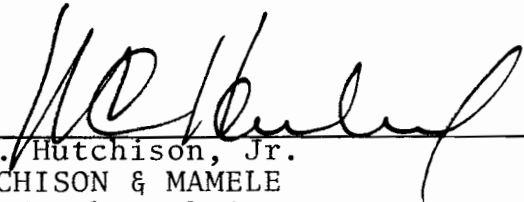
The decision of the Fifth District Court of Appeal, Fernandez Company v. The Abstract Corporation and Chelsea Title and Guaranty Company, Case No. 82-1021, is reproduced in the appendix beginning at page 1. The decision of the Third District Court of Appeal which conflicts, First American Title Ins. Co. v. First Title Service Co., 423 So.2d 600 (Fla. 3d DCA 1982), is reproduced in the appendix beginning at page 6. The case of Kovaleski v. Tallahassee Title Co., 363 So.2d 1156 (Fla. 1st DCA 1978), which was relied upon by the Fifth District Court of Appeal and which conflicts with First American Title Ins. Co., supra, is reproduced in the appendix beginning at page 8. Sickler v. Indian River Abstract & Guaranty Co., 195 So. 195 (Fla. 1940), upon which the Third District Court of Appeal relied in deciding First American Title Ins. Co., supra, and which conflicts with Kovaleski, supra, and Fernandez, supra, is reproduced in the appendix beginning at page 15.

The Fifth District Court of Appeal decision in Fernandez, supra, by its express terms adopts the position of the First District Court of Appeal in Kovaleski, supra, which, as pointed out in First American Title Ins. Co., supra, and Fernandez, supra, is in conflict therewith. It is likewise in conflict with Sickler, supra.

As a result of the foregoing, since both the Third District Court of Appeal and the Fifth District Court of Appeal specifically point out the conflict, jurisdiction of this Court should be invoked as above requested in order that the conflicts can be resolved.

It should be pointed out that First American Title Ins. Co. v. First Title Service Co., supra, is presently before the Supreme Court, Case No. 63,136, with oral argument set therein on October 6, 1983. Accordingly, it is suggested that this case should be consolidated therewith.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail to WILLIAM A. SPENCE, 730 S. Atlantic Avenue, Suite 103, Ormond Beach, FL 32074, and RICHARD R. COOK, 309 Oakridge Boulevard, Suite C, Daytona Beach, FL 32018, this 20th day of July, 1983.

  
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W.C. Mutchison, Jr.