

**FILED**

IN THE SUPREME COURT OF FLORIDA NOV 14 1983

Tallahassee, Florida

CASE NO. 64,380

**SID J. WHITE**  
**CLERK SUPREME COURT**

Chief Deputy Clerk

PENTHOUSE NORTH ASSOCIATION,  
INC.,

Petitioner,

vs.

REMO M. LOMBARDI, et al.,

Respondents.

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JURISDICTIONAL BRIEF OF RESPONDENTS  
LOMBARDI, SUBRIC & NOVOTNY

LEVY, SHAPIRO, KNEEN & KINGCADE  
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and

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and

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ARGUMENT

ISSUE

THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH:

- A. THE DECISION OF THE THIRD DISTRICT IN BURLEIGH HOUSE CONDOMINIUM, INC. V. BUCHWALD.

We do not disagree with petitioner's argument that there is conflict with this decision.

- B. THE DECISION OF THIS COURT, IN FLORIDA FOREST AND PARK SERVICE V. STRICKLAND.

We do not agree that there is conflict in this regard. Petitioner has taken one statement out of context from this Court's opinion in Florida Forest and Park Service v. Strickland, 154 Fla. 472, 18 So.2d 251 (1944). The statement quoted on page 7 of petitioner's brief, and the statements following are from page 253 of that decision, where this Court stated:

Ordinarily, a decision of a court of last resort overruling a former decision is retrospective as well as prospective in its operation, unless specifically declared by the opinion to have a prospective effect only. 14 Am.Jur. p. 345, Sec. 130; 21 C.J.S., Courts, p. 326, § 194. Generally speaking, therefore, a judicial construction of a statute will ordinarily be deemed to relate back to the enactment of the statute, much as though the overruling decision had been originally

embodied therein. To this rule, however, there is a certain well-recognized exception that where a statute has received a given construction by a court of supreme jurisdiction and property or contract rights have been acquired under and in accordance with such construction, such rights should not be destroyed by giving to a subsequent overruling decision a retrospective operation... (Emphasis added)

The decision of the Fourth District in the present case is not that a change in the law cannot be applied retroactively. The holding is that where the applicable statute of limitations has run from the time of the occurrence on which the cause of action is based, a subsequent change in the law does not revive the cause of action. There is thus no conflict presented with Florida Forest and Park Service.

C. THE DECISION OF THIS COURT IN FLEEMAN V. CASE AND POMPONIO V. THE CLARIDGE OF POMPAÑO CONDOMINIUM, INC.

We have at all times argued in this case that we were entitled to attorney's fees based on the indemnification provision in the Articles of Incorporation. The applicability of Section 607.014, Florida Statutes (1977), as the Fourth District noted on page 5 of the opinion, was not mentioned by any of the parties. Petitioner recognizes that there is no conflict in the opinion which holds that the indemnification clause authorizes the award of attorney's

fees. The discussion of the Fourth District with regard to Section 607.014 is simply dictum and unnecessary to support the decision.

CONCLUSION

Conflict is presented with Burleigh House, supra, but not with the other decisions.

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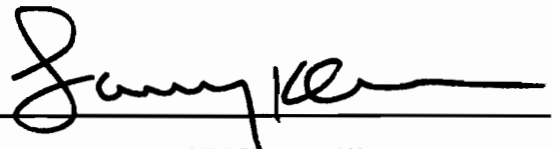
and

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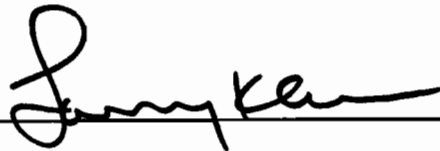
LARRY KLEIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished, by mail, this 10th day of November, 1983, to:

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