w/o o/a

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,532

GENERAL BUILDERS CORPORATION OF FORT LAUDERDALE, INC., et al.,

Petitioners,

vs.

KELLEY SISK, etc.,

Respondent.

FILED
SID J. WHITE
JUN 27 1984
CLERK, SUPREME COURT.
By _____ Chief Deputy Clerk

BRIEF OF PETITIONERS GENERAL BUILDERS CORPORATION OF FORT LAUDERDALE, INC., et al. ON THE MERITS

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and

Wicker, Smith, Blomqvist, Tutan,
O'Hara, McCoy, Graham & Lane

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STATEMENT OF THE FACTS AND THE CASE

The Fourth District in this case expressly based its decision on its recent decisions in the cases of Dania Jai-Alai Palace v. Sykes, 425 So.2d 594 (Fla. 4th DCA 1982); and Vantage View, Inc. v. Bali East Development, 421 So.2d 728 (Fla. 4th DCA 1982).

However, the Florida Supreme Court has since accepted jurisdiction and reversed the Dania Jai-Alai, supra decision and disapproved the Vantage View decision. Dania Jai-Alai Palace. Inc. v. Sykes, ___ So.2d ___ (Fla. 1984), (Case Number 63,394, Opinion filed May 3, 1984). Therefore the decision in the present case which was premised solely on Dania Jai-Alai and Vantage View must similarly be reversed.

This case concerns, as do Dania Jai-Alai and Vantage View, the legal basis for piercing the corporate viel of a subsidiary corporation. The traditional rule of law is that it is necessary to show domination and fraud or wrongdoing in order to pierce the corporate veil. However the Dania Jai-Alai and Vantage View cases hold that it is only necessary to show domination of the subsidiary corporation by the parent corporation in order to pierce the corporate veil. The Florida Supreme Court has now reversed the rule of law temporarily promulgated by Dania Jai-Alai and Vantage View and reinstated the traditional rule of law, that fraud or wrongdoing must be shown.

The basic facts of this case are that the Plaintiff, an employee of a subcontractor was injured on a construction jobsite. However, he cannot file a common law action for his injuries against

either the subcontractor or general contractor because of Workers' Compensation immunity. Therefore, the Plaintiff filed this lawsuit against the general contractor alleging it is an owner/builder. The Plaintiff produced no legally sufficient testimony that it was an owner/builder and therefore the trial court ruled that as a matter of law the separate corporate structure was intact.

The basis for the plaintiff's allegation that the general contractor was an owner/builder is that both the corporate owner of the land and the general contractor are wholly owned subsidiaries of a large national corporation. The Plaintiff did not allege any fraud or wrongdoing by use of the corporate structure but only alleged that it was the wholly owned subsidiary of the parent corporation. The trial court applied the traditional law and held this was insufficient, and the Fourth District reversed holding that merely the allegation of domination was sufficient.

The following are the three corporations involved in the present action: (T 692-716; 770-831; 832-836.)

> General Builders Corporation (hereinafter called "National Corporation") is a public company and a large national corporation. It was traded on the American Stock Exchange and is now traded in the over the counter market. It is a holding company. Among its numerous subsidiaries are General Builders Corporation of Fort Lauderdale, Inc., and Cedar Lane Developers, Inc., both of which are wholly owned subsidiaries.
>
> General Builders Corporation of Fort Lauderdale, Inc., (hereinafter called "Ft. Lauderdale General Contractor"). This is the wholly owned subsidiary which has been in existence for several years working on numerous projects as a general contractor.
>
> Cedar Lane Developers, Inc. (hereinafter called "Cedar Lane"). This is a wholly owned subsidiary which was organized to build the development project and owns

the land.

Similarly it should be pointed out to this Honorable Court that the subcontractor was not related to these; the subcontractor was Wentworth Plaster of Boca Raton, Inc., and the employee who was killed was the Plaintiff, James Sisk. Therefore, the appropriate chart is as follows:

Cedar Lane Developers, Inc. (Cedar Lane)-
Owner of project.

General Builders Corporation of Fort Lauderdale, Inc. (Ft. Lauderdale General Contractor)-
The general contractor on the job.

Wentworth Plaster of Boca Raton, Inc. (Wentworth)
Plastering subcontractor.

James Sisk
Employee of Wentworth who was killed.

Therefore, the crux of the facts are that the Plaintiff cannot file suit because of workers' compensation immunity and therefore sought to disregard the separate corporate identity of Cedar Lane and General Builders Corporation of Fort Lauderdale, Inc., and therefore labeled them together as an owner/builder on the basis that they are both wholly owned subsidiaries of the national holding company of General Builders Corporation. The allegation was solely domination by the parent corporation of the subsidiary corporation, and there was no allegation of fraud or wrongdoing.

WORKERS' COMPENSATION IMMUNITY STATUTES

The relevant Statutes concerning statutory workmens compensation immunity are FSA 440.10 and 440.11:

"440.10 Liability for Compensation

(1) Every employer coming within the provisions of this chapter, including any brought within the chapter by waiver of exclusion or of exemption, shall be liable for, and shall secure, the payment to his employees or any physician, surgeon, or pharmacist providing services under the provisions of s. 440.13, of the compensation payable under ss. 440.13, 440.15, and 440.16. In case a contractor sublets any part or parts of his contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be demmed to be employed in one and the same business or establishment; and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment. A subcontractor is not liable for the payment of compensation to the employees of another subcontractor on such contract work and is not protected by the exclusiveness of liability provisions of s. 440.11 from action at law or in admiralty on account of injury of such employee of another subcontractor. (Emphasis supplied).

440.11 Exclusiveness of Liability

(1) The liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability of such employer to any third party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury to death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter.

> Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment." (Emphasis supplied)

As indicated previously the trial court granted a summary judgment for the Defendant/Appellee, the Fourth District, reversed based on Dania Jai Alai and Vantage View, and the Florida Supreme Court has accepted jurisdiction based on its reversal of those cases.

ARGUMENT

THE DECISION IN THE PRESENT CASE MUST BE REVERSED BASED ON THE FLORIDA SUPREME COURT 'S SUBSEQUENT REVERSAL OF DANIA JAI-ALAI, SINCE THE ONLY PROOF WAS OF DOMINATION OF THE SUBSIDIARY BY THE PARENT, AND THERE WAS NO PROOF OF FRAUD OR WRONGDOING.

The basis for seeking to circumvent workers' compensation immunity was domination of the subsidiary by the parent corporation, thus piercing the corporate veil and creating one "owner/builder" corporation.

However, it has long been held that the corporate structure is an appropriate method of structuring liability; indeed this is one of the primary purposes of the corporate structure and use of it. As long as there is no fraud or wrongdoing the corporate veil will not be pierced, as the Florida Supreme Court expressly held in Dania Jai Alai, supra.

As will be revealed from the face of the statutory sections quoted in the Statement of the Facts and The Case section of this Brief, a contractor is required to provide workers' compensation coverage for employees of subcontractors. Further, once that protection has been provided, the contractor is immune from common law liability.

Florida jurisprudence has long held that the liability to secure compensation gives rise to the immunity from suit. Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954). In the present case, General Builders was required to and did provide workers' compensation for subcontractor employees. As a result of doing so it is shielded from common law actions by statutory immunity. (A copy of the Workers' Compensation policy was attached as Exhibit C to this Defendant's Answer to Amended Complaint, dated December 5,

1980.)

Florida jurisprudence interpreting the Workers' Compensation Act has long recognized the statutory mandate that where a subcontractor's employee is injured on the job, the general contractor is the employee's statutory employer and therefore statutory immunity automatically attaches to safeguard the general contractor from common law liability. Brickley v. Gulf Coast Construction Company, 14 So.2d 264 (Fla. 1943); Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954); Smith v. Poston Equipment Rentals, Inc., 105 So.2d 578 (Fla 3d DCA 1958); Cuyahoga Wrecking Corp. v. Mastres, 368 So.2d 380 (Fla. 3d DCA 1979); Dodge v. William E. Arnold Company, 373 So.2d 98 (Fla. 1st DCA 1979); Favre v. Capeletti Brothers, Inc., 381 So.2d 1356 (Fla. 1980). Moreover, the Statute sections previously quoted have been expressly upheld as constitutional by the Florida Supreme Court stating that the sections preclude a subcontractor's injured employee from suing the general contractor. Favre v. Capeletti Brothers, Inc., 381 So.2d 1356 (Fla. 1980).

In the present case the Plaintiff sought to simply ignore the separate corporate structure of the corporations on the basis that they are both wholly owned subsidiaries of the same national holding company, arguing simply domination, and the Fourth District ruled this was sufficient. However this is contrary to numerous Florida cases on point and the Florida Supreme Court has now clarified the law.

The traditional rule in Florida as in the rest of the country is that mere ownership of all the stock of a subsidiary absent a showing of some improper purpose does not render the parent liable

for liabilities of the subsidiary, but there must be fraud or wrongdoing. This was stated in the case of St. Petersburg Sheraton Corp. v. Stuart, 242 So.2d 185 (Fla. 1970):

> The Stuarts failed to prove that Delaware Sheraton America was merely alter ego, adjunct, agency or instrumentality of IT&T. Ownership by one corporation of all the stock of another corporation does not destroy the identity of the latter as a distinct legal entity; nor does the fact that the stockholders or officers in two corporations are the same persons operate to destroy the legal identity of either corporation. 18 AmJur2d, Corporations, § 17; 18 C.J.S. Corporations §5, pp. 374,375; 7 Fla.Jur., Corporations §§ 31-38. The Stuarts did not establish control by the parent corporation over the subsidiary to the degree necessary to make it a mere instrumentality of the parent. Markow v. Alcock, 5 Cir. 1966. 356 F.2d 194; 7 ALR 3rd 1343, 1355, the Court erred in reversing for directed verdict."

PLAINTIFF RELIED ON OWNER/BUILDER THEORY

The Plaintiff sought to circumvent workers' compensation theory by "piggy-backing" the theory of piercing the corporate veil by mere domination, with the legal theory of non-immunity for an owner/builder. In the Fourth District the Plaintiff relied on the owner/builder line of cases, none of which involved subsidiary corporations.

The rationale of the Plaintiff's argument in the Fourth District is exemplified by his reliance on Smith v. Ussery, 261 So.2d 164 (Fla. 1972). That case involved the construction of the Hialeah Hospital Annex, and the hospital functioned as the general contractor using the general contractor's license of Flesher who was a member of the hospital board. The Supreme Court held that Flesher was not a true general contractor, and therefore,

the hospital was an owner/builder. The hospital's agent contracted with A.C. Electric Company, and with cement contractor Alvin and Aubrey Ussery. An employee of Ussery injured an employee of A.C. Electric. The Court held that since the project was handled by an owner/builder, Ussery and A.C. Electric were independent contractors and therefore, there was no workers' compensation immunity. As indicated, that case is not on point because it does not involve an attmpt to pierce the corporate veil of corporations absent fraud or wrongdoing, but instead involves an admitted owner/builder.

Similarly the Plaintiff cited as authority for this proposition the case of State Ex. Rel. Auchter Company v. Luckie, 145 So.2d 239 (Fla. 1st DCA 1962). In that case, the Auchter Company was the owner of the land and also a licensed general contractor and entered into a contract with Florida Steel Corporation to erect the steel structure, which contract referred to Auchter as the general contractor and Florida Steel as subcontractor. An employee of Florida Steel was injured by and filed suit against Auchter, which argued it was a general contractor and therefore, immune from suit by an employee of a subcontractor. The Court held that despite the fact that the contract provided that Auchter was the general contractor:

> "... Auchter must be held to be an owner and primary employer, and that Florida Steel is an independent contractor engaged for the specific purpose of performing one identifiable phase of work."
>
> Page 242.

The Florida Supreme Court held that since the project was handled by an owner/builder, Florida Steel was an independent contractor, and there was no workmens compensation immunity. Once again, this case is not on point since there was an admitted owner/

builder and there was no question of separate corporations.

Plaintiff also cited as authority in the Fourth District the case of Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954). However, that case similarly is not on point. In that case, Florida Power Corporation wanted to construct an addition to its plant in Avon Park, Florida and therefore entered into a contract with Grinnel Company, Inc., to do the plumbing work, which recited that Grinnel was an independent contractor. It entered into a separate contract with Burns & Roe, Inc., which stated that Burns would be a general contractor to handle construction and erection work. An employee of Grinnel was injured by an employee of Burns and brought suit. Burns and Florida Power argued that they wereimmune from suit because Burns was a general contractor. The Court held that since Florida Power handled some of the construction as an owner/builder, there was no immunity and suit could be brought against them because there were no subcontractors but only independent contractors. Once again, this involved an admitted owner/builder and not a question of piercing the corporate veil.

The other cases relied on by the Plaintiff in the Fourth District similarly are not on point because they do not deal with piercing the corporate veil but instead deal with admitted owner/builders. Atlantic Coast Development Corp. v. Napoleon, 385 So.2d 676 (Fla. 3d DCA 1980); Motchkavitz v. L.C. Industries, Inc., 384 So. 2d 259 (Fla 4th DCA 1980). Additionally several of the cases relied on by the Plaintiff are not even relevant in the present situation since they do not involve an owner/builder. Florida Power and Light Company v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973); General Portland Land Development Co. v. Stevens, 395 So.2d 1296 (Fla. 4th

DCA 1981); Conklin v. Cohen, 287 So.2d 56 (Fla.1973).

THE PRESENT LAW: DANAI JAI-ALAI

Any confusion or lack of clarity in the law has now been corrected by the Florida Supreme Court in its decision in Dania Jai-Alai, supra which reversed the Fourth District's decision in that same case, which was the basis of the decision in the present case.

The Florida Supreme Court in Dania Jai-Alai, summarized the issue as follows:

> The district court affirmed the judgment against Saturday on the ground that Carrousel and Dania were mere instrumentalities of Saturday and that it was not necessary to establish fraud or other wrongdoing on the part of Saturday under the mere instrumentality doctrine. At trial, respondent's counsel stipulated that there was no wrongdoing or fraud involving Saturday and that the theory of respondent's case was that the mere instrumentality doctrine alone, without improper conduct, was sufficient to permit piercing of the corporation veil. The issue of whether, as a matter of law, it was necessary to show wrongdoing or fraud on the part of Saturday in order to pierce the corporate veil was thus squarely posed. The district court recognized that there were conflicting lines of cases on this point but relief on Vantage View, Inc. v. Bali East Development Corp., 421 So.2d 728 (Fla. 4th DCA 1982), and the cases cited therein (Levinstein v. Sapiro, 279 So.2d 858 (Fla. 1973); Aztec Motel, Inc. v. State ex rel. Faircloth, 251 So.2d 849 (Fla. 1971); Barnes v. Liebig, 146 Fla. 219, 1 So.2d 247 (1941); Mayer v. Eastwood-Smith & Co., 122 Fla. 34, 164 So. 684 (1935)), for the proposition that it is not necessary to show improper conduct in order to pierce the corporate veil. We acknowledge that there is language in this line of cases which seems to support the holding of the district court, but find on closer examination that each of them is distinguishable on fact or law from the pre-

sent case. (9 F.L.W. 164)

* * * *

We conclude that the district court decision directly and expressly conflicts with decisions of this Court which hold that the corporate veil may not be pierced absent a showing of improper conduct. We decline to recede from these cases. The district court holding is quashed on this point. (9 F.L.W. 166)

Countless other Florida cases have applied the traditional rule of law and held the opposite of the present case. In Unijax, Inc. v. Factory Insurance Association, 328 So.2d 448 (Fla. 1st DCA 1976), the question involved the requirement that to pierce the corporate veil it is not only necessary to show domination by the parent of the subsidiary, but it is also necessary to show fraud or wrongdoing:

"Consistent with the foregoing, courts have uniformly held that a parent company is not liable for the torts of its subsidiaries, unless the subsidiary is operated as a 'mere instrumentality' of the parent. Taylor v. Standard Gas and Elec. Co., 96 F.2d 693 (10th Cir. 1938) reversed on other grounds, 306 U.S. 307, 59 S.Ct. 543, 83 L.Ed. 669 (1939). The 'mere instrumentality' rule is rarely applied and only under special circumstances, for it runs contrary to established principles of corporate identity.

'The instrumentality rule should only be invoked after mature consideration and caution. Indiscriminate application would destroy the purpose of the corporate law.' Brown v. Margrande Compania Naviera, 281 F.Supp. 1004, 1006 (E.D.Va. 1968). (Emphasis supplied.)

The tests to be applied for the instrumentality rule were set out in Steven v. Roscoe Turner Aeronautical Corp., 324 F.2d 157, 160 (7th Cir. 1963):

'In order to establish that a subsidiary is the mere instrumentality of its parent,

> three elements must be proved: control by the parent to such a degree that the subsidiary has become its mere instrumentality; fraud or wrong by the parent through its subsidiary, e.g. torts, violation of a statute or stripping the subsidiary of its assets; and unjust loss or injury to the claimant, such as insolvency of the subsidiary.' 324 F.2d 157, 160." (Emphasis added) Page 453-454.

Similarly in Gulfstream Land & Development Corp. v. Wilkerson, 402 So.2d 550 (Fla 4th DCA 1981) which was a workers' compensation case, the plaintiffs sought to disregard the separate corporation structure of a wholly owned subsidiary, and the court held that the separate corporate structure must be recognized and therefore there was workers' compensation immunity. The District Court stated the traditional rule of law succinctly:

> "The result herein is dictated by basic corporate law principles which require that the corporate fiction be recognized and the corporate veil only be pierced where the corporate structure is used fraudulently. In analyzing the parent/subsidiary problem we now face, the court in Boggs v. Blue Diamond Coal Co., supra, explained:
>
> > [A] business enterprise has a range of choice in controlling its own corporate structure. But reciprocal obligations arise as a result of the choice it makes. The owners may take advantage of the benefits of dividing the business into separate corporate parts, but principles of reciprocity require that courts also recognize the separate identities of the enterprises when sued by an injured employee.
>
> 590 F.2d at 662." (Emphasis added) Page 551.

Id. at page 551. The Florida Supreme Court by written opinion affirmed this decision at 420 So.2d 587.

The Third District relied similarly in Gladding Corp. v. Register, 293 So.2d 729 (Fla. 3d DCA 1974) where it held:

> "We point out that the fact that one corporation, the parent, owns all of the stock of a subsidiary company does not erase the latter's identity as a legal entity, nor create any conclusions that the latter is only the alter ego of the former. St. Petersburg Sheraton Corp. v. Stuart, Fla. App. 1970, 242 So.2d 185."

A decision of the Florida Supreme Court often cited for this rule of law is Riley v. Fatt, 47 So.2d 769 (Fla. 1950) in which the Court said:

> The rule is that the corporate veil will not be pierced, either at law or in equity, unless it be shown that the corporation was organized or used to mislead creditors or to perpetuate a fraud upon them. See South Florida Citrus Land Co. v. Waldin, 61 Fla. 766, 55 So. 862; Biscayne Realty & Ins. Co. v. Ostend Realty Co., 109 Fla. 1, 148 So.560; 14 C.J. 61, Corporations § 22; 18 C.J.S., corporations, §§ 6,7, page 376 et seq. There is no indication in the record that the corporation was organized as a subterfuge or for the purpose of enabling its members to escape, avoid or evade personal responsiblity ohter than in a proper and legal manner. Compare Bellaire Securities Corporation v. Brown, 124 Fla. 47, 168 So. 625...." Page 773.

It should also be pointed out that the Third District recently stated this rule of law in a workers' compensation case. The plaintiff had sought to disregard the separate corporation structure of a partially owned subsidiary and the Third District held that the separate corporate structure must be recognized and therefore there was workers' compensation immunity in the De Armas v. P.J. Constructors, Inc., 402 So.2d 39 (Fla. 3d DCA 1981):

> "Although De Armas could not sue his employer, Southwest, or Pan American, he has, under Section 440.10, a right to bring an action against a subcontractor standing in a horizontal relationship to his employer. Despite Pan American's partial ownership of P.J., P.J. legal identity. Unijax, Inc. v. Factory

> Insurance Association, 328 So.2d 448 (Fla. 1st DCA), cert. denied, 341 So.2d 1086 (Fla. 1976); Gladding Corporation v. Register, 293 So.2d 729 (Fla. 3d DCA 1974), cert. discharged 322 So.2d 911 (Fla. 1975). We see no reason to pierce the corporate veil. See Roberts' Fish Farm v. Spencer, 153 So.2d 718 (Fla 1963); Naranja Rock Co. v. Dawal Farms, 74 So.2d 282 (Fla. 1954)."
>
> Page 40.

In two Workers' Compensation cases the Florida Supreme Court stated the philosophy of the law regarding piercing the corporate veil. In Naranja Rock Co. v. Dawal Farms, 74 So.2d 282 (Fla. 1954) the Florida Supreme Court said:

> "...The record does show that the same person was President of each company and that both companies were closely interwoven in their business activities and financial set-up. Nevertheless, the companies were distinct legal entities and must be treated as separate employers....
>
> Page 288

Similarly in Roberts' Fish Farm v. Spencer, 153 So.2d 718 (Fla. 1963), the Florida Supreme Court went into a lengthy discussion as to the sanctity of the corporate structure in Florida and traditionally since common law:

> The corporate entity is an accepted, well used and highly regarded form of organization in the economic life of our state and nation. As we said in State ex rel. Continental Distilling Sales Co. v. Vocelle, 1946, 158 Fla. 100, 27 So.2d 728, 'Their purpose is generally to limit liability and serve a business convenience. Those who utilize the laws of this state in order to do business in the corporate form have every right to rely on the rules of law which protect them against personal liability unless it be shown that the corporation is formed or used for some illegal, fraudulent or other unjust purpose which justifies piercing of the corporate veil. This is the reason for the rule, stated in all Florida cases, that the courts are reluctant to pierce the corporate veil and will do so only in a

> court of competent jurisdiction, after notice to and full opportunity to be heard by all parties, and upon showing of cause which necessitates the corporate entity being disregarded in order to prevent some injustice."
>
> Page 721.

Numerous other decisions were discussed and quoted from in discussing this rule of law in the Supreme Court's decision in Dania Jai-Alai and additional discussion of those is not required. See generally Mayer v. Eastwood-Smith & Co., 122 Fla. 34, 164 So.2d 684 (1935); Biscayne Realty & Insurance Co. v. Ostend Realty Co., 109 So. 560, 564 (1933); Barnes v. Liebig, 146 Fla. 219, 1 So.2d 247 (1941); Reisen v. Maryland Casualty Co., 153 Fla. 205, 14 So.2d 197 (1943); Aztec Motel, Inc. v. State ex rel. Faircloth, 251 So.2d 849 (Fla. 1981); Levenstein v. Sapiro, 279 So.2d 858 (Fla. 1973); Gross v. Cohen, 80 So.2d 360 (Fla. 1955); Advertects Inc. v. Sawyer Industries, Inc., 84 So.2d 21 (Fla. 1955).

Any ambiguity in the law has been clarified by the decision of the Florida Supreme Court in Dania Jai-Alai, supra. The decision in the pesent case must be quashed with instructions to reinstate the judgment in the trial court.

CONCLUSION

Any confusion in the law has been clarified by the subsequent decision of the Florida Supreme Court in Dania Jai-Alai, which reversed the decision which was the authority of the Fourth District for its decision in the present case. Accordingly this case must be reversed and the Judgment in the trial court reinstated.

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By Richard A. Sherman
Richard A. Sherman

CERTIFICATE

I HEREBY CERTIFY that a true and correct copy of the forgoing was mailed this 25th day of June 1984 to:

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