IN THE SUPREME COURT OF FLORIDA

CASE NO. 65, 794

BARBARA J. MILLER,

Petitioner,

vs.

FORTUNE INSURANCE CO.,

Respondent.

_____/

BRIEF OF PETITIONER ON THE MERITS

HORTON, PERSE & GINSBERG
and
ASSOCIATES AND BRUCE L. SCHEINER
410 Concord Building
66 W. Flagler Street
Miami, Florida 33130
(305) 358-0427
Attorneys for Petitioner

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I.

INTRODUCTION

The petitioner, Barbara J. Miller, was the plaintiff in the trial court, appellant in the Circuit Court and unsuccessful common law certiorari petitioner in the District Court of Appeal, Second District. The respondent, Fortune Insurance Company, was the defendant/appellee/respondent. In this brief of petitioner on the merits, the parties will be referred to as the plaintiff and the defendant and, alternatively, by name. The symbols "R" and "A" will refer to the record on appeal and the plaintiff's rule-required appendix which accompanies this brief. All emphasis has been supplied by counsel unless indicated to the contrary.

II.

STATEMENT OF THE CASE AND FACTS

Plaintiff, Barbara J. Miller, initially filed suit in County Court against the defendant for (covered loss) medical expenses incurred as a result of an automobile accident (A. 1). The plaintiff subsequently filed "NOTICE OF VOLUNTARY DISMISSAL" (A. 3).

Plaintiff next filed, pursuant to Florida Rule of Civil Procedure 1.540(b) "PLAINTIFF'S MOTION FOR RELIEF FROM VOLUNTARY DISMISSAL" and accompanied same with the affidavits of the plaintiff's trial counsel and the trial counsel's secretary. The thrust of the pleading filed was that the voluntary dismissal, as filed (A. 3), contained (BUT SHOULD NOT HAVE CONTAINED)--within its body--a secretarial error, to

wit: the words "with prejudice."

The trial court held a hearing on the plaintiff's motion. The trial court's order denying relief reflects the consideration of only the motion, the two affidavits, the law and arguments of counsel (A. 10). No evidentiary hearing, to wit: the taking of testimony, occurred.

The plaintiff appealed to the Circuit Court of the 20th Judicial Circuit in and for Lee County, Florida (A. 11). That court affirmed the trial court's order (A. 11). Plaintiff then petitioned the District Court of Appeal, Second District, for writ of certiorari. In MILLER v. FORTUNE INSURANCE COMPANY, 453 So. 2d 489 (Fla. App. 2nd 1984) the District Court denied the petition for writ of common law certiorari (A. 12) noting in its opinion the existence of conflict in the District Courts of Appeal regarding the subject matter.

On February 6, 1985, this court entered its order accepting jurisdiction and dispensing with oral argument. This brief followed.

III.

QUESTION PRESENTED

While the plaintiff believes the specific issue before this Court is:

> WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND/OR GROSSLY ABUSED ITS DISCRETION WHEN IT DENIED PLAINTIFF'S MOTION FOR RELIEF FILED PURSUANT TO RULE 1.540, FLORIDA RULES OF CIVIL PROCEDURE

the plaintiff would suggest that resolution of the above requires a consideration of the following specific issue:

WHETHER, AND UNDER WHAT CIRCUMSTANCES IF ANY, DOES A TRIAL COURT POSSESS JURISDICTION TO GRANT RELIEF UNDER A MOTION FILED PURSUANT TO RULE 1.540, FLORIDA RULES OF CIVIL PROCEDURE, IN A CASE WHICH HAS BEEN VOLUNTARILY DISMISSED WITH PREJUDICE.

IV.

SUMMARY OF ARGUMENT

It is the plaintiff's contention that in Florida, past and present, a trial court has always possessed jurisdiction to correct record mistakes as well as mistakes in decrees, judgments or orders, and this jurisdiction has been given to trial court judges through legislative enactments, common law decisions and rules of court. As such, this case (and the subject issue) should not turn on whether or not trial court judges have "jurisdiction" to grant relief pursuant to Florida Rule of Civil Procedure 1.540 but, rather, should turn on whether or not this Court intended its opinion in RANDLE-EASTERN AMBULANCE SERVICE, INC. v. VASTA, 360 So. 2d 68 (Fla. 1978), to encompass situations involving "non-tactical decisions." For the reasons to be argued in detail, infra, the plaintiff would suggest that this Court render its opinion and reiterate that Rule 1.540 provides the vehicle to obtain relief in those situations arising from non-tactical decisions--which is nothing more than what Rule 1.540 was designed to cover and to recognize that VASTA, supra, covers those areas not involving mistake, excusable neglect, etc., such as "tactical decisions."

The instant cause does not involve any "tactical decision" and does not involve any attempt on the plaintiff's part to have a dismissed cause of action "reinstated." The plaintiff has alleged that a Rule 1.540 "mistake" has occurred and asks only that the merits of the contentions be reviewed by the trial court, something that VASTA, supra, does not prohibit.

The opinion of the District Court of Appeal, Second District, should be quashed with directions that the Circuit Court's order affirming trial court denial of the plaintiff's motion for Rule 1.540 relief be reversed and the cause remanded.

V.

ARGUMENT

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND/OR GROSSLY ABUSED ITS DISCRETION WHEN IT DENIED PLAINTIFF'S MOTION FOR RELIEF FILED PURSUANT TO RULE 1.540, FLORIDA RULES OF CIVIL PROCEDURE.

The plaintiff suggests to this Court the opinion of the District Court of Appeal, Second District, should be quashed with directions that the Circuit Court order affirming trial court denial of the plaintiff's motion for Rule 1.540 relief be reversed and the cause remanded. It is the plaintiff's contention that the trial court did, at all times relevant, possess lawful jurisdiction to entertain (and rule upon) plaintiff's motion for Rule 1.540 relief.

In Florida, past and present, whether one looked or looks to statute, rule, common law or equity principles, a trial court has always possessed jurisdiction to correct mistakes in decrees, judgments or orders and this jurisdiction to so act has existed even after the time for filing of petitions for rehearing, motions for new trial, and notice of appeal has passed. That the grounds necessary to support the (then) petition or (now) motion are limited does not alter the basic fact that possession of such jurisdiction existed even as it exists today.

In KIPPY CORPORATION v. COLBURN, 177 So. 2d 193 (Fla. 1965) this Court re-examined the basic principles of Florida jurisprudence and specifically noted:

> "Our present system embodied in our rules and statutes is designed to give reasonable force and operation to both principles by

> requiring some compromise and relaxation of each, but ignoring neither. The objective of an early and final end to litigation is modified in favor of the goal of justice free from error by rules, statutes, and constitutional provisions FOR THE CORRECTION OF ERROR BOTH BY THE TRIAL COURT ITSELF ON MOTION OR PETITION FOR NEW TRIAL, REHEARING, OR TO VACATE, or by another court by means of the appellate process." 177 So. 2d at p. 196.

In discussing then extant Florida Rules of Civil Procedure as pertains to trial court jurisdiction and authority to act, this Court explained:

> "So it is that motions and petitions for correction of error by the trial court must be made within the time prescribed by rule or statute, usually ten days from entry of the order. . .unless a proper motion or petition is filed within the allotted time, the order becomes absolute and except as provided by the rules, notably Rule 1.38 and Rule 2.8, F.R.C.P., the trial court has no authority to alter, modify or vacate the substance of the order. If such a motion is timely filed, or the trial court acts timely on its own initiative under Rule 2.8, F.R.C.P., the jurisdiction of the trial court continues until the motion or petition is disposed of, or the rehearing or new trial, if one is ordered, is had. . . ." 177 So. 2d at pp. 196, 197.

In reiterating the continued vitality of former precedent, this Court cited to PACE v. PACE, 99 Fla. 859, 128 So. 488 (1930) and BARTLETT & SONS CO. v. PAN-AMERICAN STUDIOS, INC., 144 Fla. 531, 198 So. 195 (1940) wherein this Court applied then existing legislative enactments to the facts before it noting in each case that procedure has always existed to allow trial courts the jurisdiction to correct an assortment of mistakes in pleadings, judgments, orders and decrees.

From an analysis and examination of the above, it is clear that trial courts possess jurisdiction to grant "post

case" relief even where the "initial" jurisdiction has been lost. Illustrative of this conclusion is the District Court of Appeal, Third District, decision in STATE v. ANDERSON, 157 So. 2d 140 (Fla. App. 3rd 1963). In ANDERSON, supra, the District Court of Appeal, Third District, had occasion to define the scope and extent of Rule 1.38(b), Florida Rules of Civil Procedure, 30 F.S.A., the forerunner of today's Rule 1.540. While the case discusses whether or not trial courts have the jurisdiction to proceed to entertain a motion for relief filed pursuant to then Rule 1.38, absent prior permission of the appellate court [where an appeal from the final judgment had previously been filed] inherent in the issue actually decided was the accepted legal principle that irrespective of whether permission was needed from the appellate court (to allow the trial court to entertain the motion) the existence of Rule 1.38 served to provide "jurisdiction" for the trial court to ultimately entertain the motion regardless of whether express permission was actually needed. Compare: AVANT v. WAITES, 295 So. 2d 362 (Fla. App. 1st 1975) wherein the Court, after being presented with the question "whether a trial court, after affirmance on appeal of a judgment, may thereafter entertain a timely motion pursuant to Rule 1.540(b), F.R.C.P., 31 F.S.A., without first obtaining leave of the appellate court which theretofore affirmed the judgment" and while disagreeing with the Third District's holding as to the necessity of obtaining permission from the appellate court prior to passing upon a motion for Rule 1.540(b) relief, specifically held:

> "The trial court had jurisdiction to entertain the motion for one year after date of the entry of the final judgment; . . ." 295 So. 2d at p. 365

See also: BATTEIGER v. BATTEIGER, 109 So. 2d 602 (Fla. App. 3rd 1959) wherein the District Court of Appeal, Third District, stated:

> "The only question presented by the appellant is whether the lower court had jurisdiction to enter an amended final decree. It is a well recognized principle that the trial court loses jurisdiction of the case at the expiration of the time for filing a petition for rehearing or motion for new trial unless such petition or motion is filed (Citations omitted.). This rule is subject to the exception that the trial court may correct clerical mistakes or mistakes arising from oversight or omissions at any time. Rule 1.38, Florida Rules of Civil Procedure, 30 F.S.A." 109 So. 2d at p. 603.

The plaintiff would suggest to this Court it should, by now, be clear that the issue before this Court should not pose a "jurisdictional" issue, but rather an issue the resolution of which requires a clarification, indeed, perhaps only a reiteration of what was actually stated and decided in the case of RANDLE-EASTERN AMBULANCE SERVICE, INC. v. VASTA, 360 So. 2d 68 (Fla. 1978). In VASTA, supra, the plaintiff had taken a voluntary dismissal (announced, on the record, during the course of the trial) and later realized that the opportunity to relitigate with the defendant was foreclosed because at the time of announcing the voluntary dismissal, the applicable Statute of Limitations had run. The plaintiff attempted to correct the earlier tactical error by asking the trial judge for permission to be relieved of the dismissal. The

District Court of Appeal, Third District, held that the plaintiff could be relieved of her dismissal and this Court (resolving conflicts arising as a result of District Court ruling) specifically held:

> "A voluntary dismissal under Rule 1.420(a)(1)(i) divests the trial court of jurisdiction to relieve the plaintiff of the dismissal. . . ." 360 So. 2d at p. 69.

In discussing what only could be considered public policy reasons for this Court's holding, this Court noted:

> "Our rules prevent several filings and dismissals against the defendant for the same claim, and they provide authority for defendant to recoup their court costs when a voluntary dismissal has been taken. There is no recompense, however, for a defendant's inconvenience, his attorney's fees, or the instability to his daily affairs which are caused by a plaintiff's self-aborted lawsuit. Nor is there any recompense for the cost and inconvenience to the general public through the plaintiff's precipitous or improvident use of judicial resources.
>
> "The benefit of the dismissal privilege must carry with it commensurate responsibility--responsibility for counsel, as an officer of the courts, to ascertain the need for and the consequences of a voluntary dismissal before removing a client's cause from the adjudicatory process which counsel has set in motion. Correlative with this responsibility must be the risk, like so many others which attend counsel's judgmental decisions in the course of a trial, that the action taken may prove prejudicial to the ultimate success of the litigation. It has never been the role of the trial courts of this state to relieve attorneys of their tactical mistakes. The Rules of Civil Procedure were never designed for that purpose, and nothing in Rule 1.540(b) suggests otherwise. . ." 360 So. 2d at p. 69.

In point of fact the instant cause does not involve "tactical error" nor does it involve utilizing Rule 1.540(b) for any

purpose other than that which Rule 1.540 was intended to be used for, to wit: to provide relief in a "non-tactical" situation where a rule-covered mistake has occurred.

Post-VASTA, supra, the District Courts of Appeal have "taken off" with the "VASTA opinion" and have applied it to numerous fact patterns. Only the District Court of Appeal, Fourth District, has seemed to recognize the distinction that the plaintiff herein seeks to make. Indeed, in McKIBBIN v. FUJAREK, 385 So. 2d 724 (Fla. App. 4th 1980) the District Court of Appeal, Fourth District, entertained petition for writ of common law certiorari which writ sought to quash an order of the trial court which allowed the plaintiffs to file an amended notice of voluntary dismissal more than one year after the entry of the original notice of dismissal. Although the District Court granted certiorari and quashed the trial court's order which allowed an amended notice of dismissal, the court stated it was not concerned with the trial court's jurisdiction, but rather with the extent to which Rule 1.540 may be applied.

In initially rejecting the petitioner's argument that the trial court exceeded its jurisdiction because the original dismissal divested the court of jurisdiction, the court noted that VASTA and its progeny hold:

> ". . . A voluntary dismissal under Rule 1.420(a), Fla. R. Civ. P., divests the court of jurisdiction to entertain a later request FOR REINSTATEMENT OF A CAUSE OF ACTION. . ." 385 So. 2d at p. 725.

The court further noted, however, that Rule 1.540(a) allows

the court to correct clerical mistakes, and errors from oversight or omission, in any part of the record at any time.!

The court stated:

> "The rule limits relief to those seeking to correct errors or misprisions that result from an accidental slip or omission. When a trial court's order under the rule goes beyond the correction of a technical error and actually modifies the substance of a record, the court has acted in excess of the power conferred upon it by the rule. (Citations omitted.)" 385 So. 2d at p. 725.

Because the record before it did not indicate that the original notice of dismissal was the product of a technical, clerical error or omission, the District Court determined that relief under Rule 1.540(b) was inappropriate. As the court stated:

> ". . .Furthermore, the record does not indicate that the original notice of dismissal was the product of a technical, clerical error or omission. If anything, it would seem to have been the product of 'mistake, inadvertance, or excusable neglect' which may be remedied by employment of Fla. R. Civ. P. 1.540(b)." 385 So. 2d at p. 725.

A later opinion from the District Court of Appeal, Fourth District, pertinent to the subject discussion is SHAMPAINE INDUSTRIES, INC. v. SOUTH BROWARD HOSPITAL DISTRICT, 411 So. 2d 364 (Fla. App. 4th 1982) wherein the issue presented to the District Court asked:

> "Whether Rule 1.540(b), Florida Rules of Civil Procedure, may be used to afford relief when a party asserts that a voluntary dismissal with prejudice was filed by reason of mistake, inadvertance or excusable neglect." 411 So. 2d at p. 365.

In SHAMPAINE, supra, the trial judge determined that he had

jurisdiction under Rule 1.540(b) to afford relief to the appellee who alleged that the words "with prejudice" were inadvertantly included in an intentionally filed voluntary dismissal. The appellant contended that this Court's opinion in VASTA, supra, precluded such a holding. In disagreeing with the appellant, in distinguishing VASTA, supra, from the facts before it, and in adhering to its prior opinion in McKIBBIN v. FUJAREK, supra, the District Court held:

> ". . . That Rule 1.540(b) may be used to afford relief to all litigants whose attorneys have filed voluntary dismissals as the clear result of the type of 'mistake, inadvertance or excusable neglect' contemplated by Rule 1.540(b)." 411 So. 2d at p. 367.

In explaining the basis for its ruling, the court reiterated the underlying premise for the existence, vel non, of Rule 1.540(b). The court stated:

> ". . . The determination of whether Rule 1.540(b) may be used to afford relief when a party asserts that a voluntary dismissal was filed by mistake, inadvertance or excusable neglect should not turn on whether such a dismissal was with or without prejudice, but rather such determination should be based on consideration of the underlying circumstances resulting in the dismissal. The Florida Rules of Civil Procedure, as interpreted by the courts, dictate a policy of liberality in relieving a party from the termination of an action which was brought about by 'mistake, inadvertance, surprise, or excusable neglect.' See Rule 1.540(b), supra. The question of the trial judge's nominal loss of jurisdiction after final judgment or other final disposition of a cause by the court does not prevent the granting of appropriate relief, and we see no reason why it should prevent the granting of appropriate relief when an action is likewise terminated by a voluntary dismissal. It makes little sense to conclude for instance that a trial court would have no jurisdiction to relieve a party whose

> action had been terminated by voluntary dismissal for the same kind of 'mistake, inadvertance, surprise or excusable neglect' that would clearly entitle a party to relief if a default judgment or order of dismissal had been entered because of the same kind of mistake. Relief under Rule 1.540(b) has been authorized in a wide variety of circumstances, including secretarial error such as is alleged to have been involved herein." 411 So. 2d at p. 368.

The District Court then held that Rule 1.540(b) may be used to afford relief to all litigants who can demonstrate the existence of the grounds set out in the rule. Interestingly enough, the court's holding is totally consistent with the decisions rendered by this Court in PACE v. PACE, supra, BARTLETT, supra, KIPPY, supra, and the interpretation given Rule 1.540 is consistent with the forerunner to Rule 1.540, to wit: Rule 1.38, Florida Rules of Civil Procedure, 30 F.S.A.

Recently, in PIPER AIRCRAFT CORPORATION v. PRESCOTT, 445 So. 2d 591 (Fla. App. 1st 1984) the District Court of Appeal, First District, applied this Court's opinion in VASTA, supra, to reverse trial court order setting aside a voluntary dismissal and reinstating the action. In that case the trial court set aside the voluntary dismissal under the theory of "fraud or misrepresentation." The District Court reversed that order and held:

> ". . . Even assuming the existence of fraud or misrepresentation within the meaning of Rule 1.540(b)(3), there was no 'judgment, decree, order or proceeding' from which the court could relieve the plaintiff under that rule." 445 So. 2d at p. 593.

The District Court then turned to VASTA, supra, and noted that the trial court had lost jurisdiction to proceed. As has

been clearly demonstrated, the plaintiff's position herein is simply that VASTA, supra, was not intended to operate past the particular facts of that case. Indeed, VASTA is unique because the underlying basis for the entire case was a "tactical decision" which backfired. Rule 1.540 in its entirety (much less its sub-parts) was never intended to cover circumstances where a tactical decision was made, a position was taken as a result of the tactical decision and the party making the tactical decision subsequently realized that it was a "bad" tactical decision. The plaintiff would suggest to this Court that a fair reading of VASTA, supra, leads one to the inescapable conclusion that it was never this Court's intent to put VASTA, supra, on the books to stand for the proposition that after a plaintiff takes a voluntary dismissal (whether with or without prejudice) a trial court "loses jurisdiction" to act under any circumstance and for any reason. This is especially so since this Court held in EDWARDS v. CITY OF FORT WALTON BEACH, 271 So. 2d 136 (Fla. 1972):

> ". . . The facts of each case are of singular importance in determining whether or not relief under R.C.P. 1.540(b) should be granted. . ." 271 So. 2d at p. 137.

Perhaps of even more significance is the fact that in VASTA, supra, this Court noted two significant legal principles:

> a. If the trial judge loses the ability to exercise judicial discretion or to adjudicate the cause in any way, it follows that he has <u>no jurisdiction</u> to <u>reinstate</u> a dismissed pro-

ceeding. The policy reasons for this consequence support its apparent rigidity; and

b. A voluntary dismissal under Rule 1.420(a)(1)(i) divests the trial court of jurisdiction to relieve the plaintiff of the dismissal.

The opinion in VASTA, supra, does not hold that Rule 1.540 relief is not available to a plaintiff who can establish that he falls within the rule and VASTA, supra, certainly does not hold that a trial court--after a case has been voluntarily dismissed--has "no jurisdiction" to proceed in any way, shape or form. Indeed, in VASTA, supra, this Court, in discussing plaintiff's right to take a voluntary dismissal and the significance that a voluntary dismissal would have, noted:

> "The effect is to remove completely from the court's consideration the power to enter an order, equivalent in all respects to a deprivation of 'jurisdiction.'" 360 So. 2d at p. 69.

That this Court put the word "jurisdiction" into quotes is indicative of this Court's emphasis that the filing of the voluntary dismissal did not actually deprive the court of jurisdiction but that its "effect" was to remove from the court's consideration the power to enter an order equivalent in all respects to a deprivation of jurisdiction. This Court did not equate "voluntary dismissal" with "deprivation of jurisdiction." While it may well be true that for public policy reasons this Court would hold that Rule 1.540 should not be construed so broadly as to encompass circumstances of

relieving a party of "bad" tactical decisions, the plaintiff does not believe this Court intended to remove from Rule 1.540 the trial court's power to grant relief where a plaintiff can show he validly comes within the rule. Further, since a "notice of voluntary dismissal" is not a judgment, order or decree, it cannot be "vacated" as contemplated within Rule 1.540. Yet it certainly is a record content capable of "being corrected" upon a showing of those grounds provided for in Rule 1.540.

As has been noted throughout the course of this proceeding:

a. This case does not present an attempt to reinstate a cause of action previously dismissed.

b. This case does present the threshold issue: to what extent, if any, may a trial court act in a cause--pursuant to Florida Rule of Civil Procedure 1.540(b)--after the filing of a notice of voluntary dismissal?

c. "VASTA" sought to reinstate a cause of action previously voluntarily dismissed because a re-filed action would have been barred by the applicable Statute of Limitations. "VASTA" dealt not with secretarial error but, rather, with trial/tactical maneuvering totally unrelated to the subject of inadvertance, excusable neglect, mistake.

The plaintiff suggests to this Court the operative facts

herein involve the scope/application of Florida Rule of Civil Procedure 1.540(b) to correct a secretarial error contained within the body of a pleading filed during the course of a lawsuit. This case cannot be controlled by VASTA, supra, as VASTA involved neither the same facts as those appearing herein nor the same principle of law, to wit: a request to have a cause of action "orally" dismissed during a trial "reinstated," vis-a-vis (the instant cause) removing from a written voluntary dismissal words entered as a result of secretarial error. It may be seen from an examination of VASTA, supra, that the plaintiff therein dismissed her case and <u>at the time</u> did not comprehend the significance of the action taken although at all times relevant the dismissal <u>without qualification</u> was desired. It was not until counsel realized the full effect of what the dismissal brought about that counsel "sought to change his mind" about what he had done. Counsel sought to have vacated the <u>entire</u> "voluntary dismissal." The instant cause presents no such analogous situation. The instant cause falls within the rationale of SHAMPAINE, supra, and is completely consistent with those opinions rendered by this Court prior to VASTA wherein this Court noted that trial courts <u>are possessed</u> of jurisdiction by virtue of the existence of Rule 1.540. Nowhere in VASTA, supra, did this Court <u>hold</u> (as stated and implied in those cases cited post-VASTA) that after a voluntary dismissal a trial court loses, <u>for all purposes</u>, jurisdiction. Further, even if such an interpretation can be made from the result reached in

VASTA, supra, detailed examination of VASTA, supra, reflects no intent on this Court's part to equate the power that a trial court loses (after a plaintiff files a notice of voluntary dismissal) with a complete absence of "jurisdiction." The operative words in VASTA, supra, were "equivalent in all respects to a deprivation of 'jurisdiction.'" Nothing in VASTA, supra, indicates this Court's intent to directly equate the two.

The plaintiff would respectfully suggest to this Court:

1. That this Court render its opinion and reiterate that Rule 1.540 provides the vehicle to obtain relief in those situations arising from nontactical decisions--which is nothing more than what Rule 1.540 was designed to cover;

2. To recognize that VASTA, supra, covers those areas not involving mistake, excusable neglect, etc. such as "tactical decisions"; and/or

3. To hold that opinions to the contrary should be disapproved as it was not this Court's intention to equate a trial court's loss of power with a complete absence of jurisdiction to act.

The opinion of the District Court of Appeal, Second District, should be quashed with directions that the Circuit Court's order affirming trial court denial of the plaintiff's motion for Rule 1.540 relief be reversed and the cause remanded.

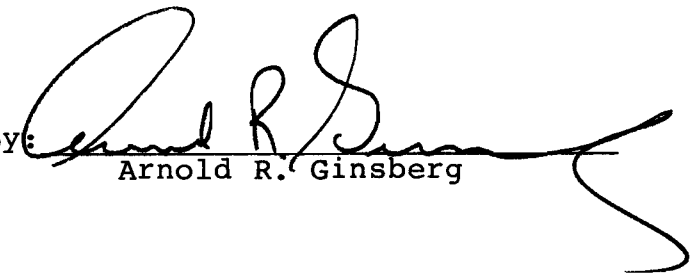
VI.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the plaintiff respectfully urges this Honorable Court to quash the opinion of the District Court of Appeal, Second District, with directions to the lower tribunals that the plaintiff be allowed to proceed pursuant to the motion initially filed.

Respectfully submitted,

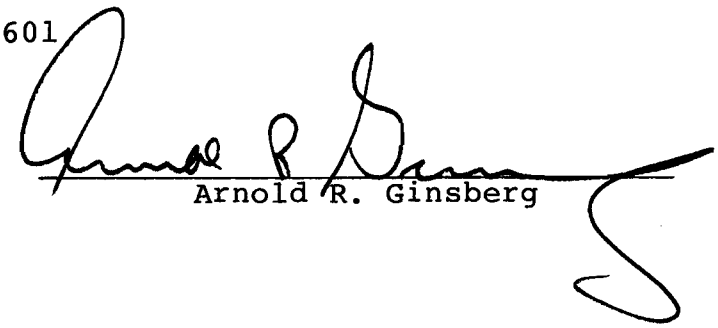
HORTON, PERSE & GINSBERG
and
ASSOCIATES AND BRUCE L. SCHEINER
410 Concord Building
66 W. Flagler Street
Miami, Florida 33130
(305) 358-0427
Attorneys for Petitioner

By: 
Arnold R. Ginsberg

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing Brief of Petitioner on the Merits was mailed to the following counsel of record this 8th day of March, 1985.

WILLIAM A. GILLEN, JR., ESQ.
Schackleford, Farrior, Stallings
and Evans, P.A.
P. O. Box 3324
Tampa, Florida 33601


Arnold R. Ginsberg