IN THE
SUPREME COURT OF FLORIDA

CASE NO.

JOSEPH ROBBIE, THE SOUTH FLORIDA SPORTS CORPORATION, and THE MIAMI DOLPHINS, LTD.,

Defendants/Petitioners,

v.

THE CITY OF MIAMI,

Plaintiff/Respondent.

ON PETITION TO INVOKE THE DISCRETIONARY
JURISDICTION OF THE SUPREME COURT
FROM THE DISTRICT COURT OF APPEAL
OF THE THIRD DISTRICT
(CASE NUMBER 83-2148)

JURISDICTIONAL BRIEF OF PETITIONERS

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STATEMENT OF THE CASE AND OF THE FACTS

This petition concerns the enforcement of a settlement agreement between the Miami Dolphins and the City of Miami. The Trial Court, after a full evidentiary hearing (with testimonial and documentary evidence), held that there was a valid, enforceable settlement agreement. The Third District Court of Appeal reversed, over a commendably articulate and stinging dissent, on the basis that there was no "meeting of the minds" as to a single aspect of a lengthy, settlement agreement, the terms of which were otherwise undisputed.

The majority opinion characterized the Stipulation of Settlement (drafted by the City of Miami's attorney) (A-46) as "the Dolphins version of the 'settlement'" (A-2). The majority then wrongfully recharacterized (A-2-3) what the parties supposedly "understood":

> Thus, the Dolphins understood the parties' settlement to be that they would not owe the $30,000 to the City per each unplayed tenth home game in the 1985 and 1986 seasons under circumstances where the cause of not playing the game was the unfitness of the Orange Bowl because of any Act of God or public enemy; and the City understood the parties' settlement to be that these moneys would be due and owing as a postponed payment of a past-due obligation even if the Orange Bowl became unfit for play for the described reasons.[1/]

Relying upon a misapplication or erroneous understanding of Gaines v. Nortrust Realty Management Inc., 422 So.2d 1037 (Fla. 3d DCA 1982), the majority wrongfully applied a subjective test to determine whether there was a "meeting of the minds" (A-3; emphasis added):

1/ Actually, the Dolphins' principal contention is that in the event of a highly unlikely, future occurrence of an Act of God or other "force majeure", the contract, as amended by the settlement, would have to be construed as to the $30,000 being payable "for any reason" (settlement language indisputably agreed to by the Dolphins), despite the "force majeure" clause (language in the original contract indisputably not the subject of settlement negotiations).

In Gaines, we set aside a judgment enforcing an agreement to exchange releases where:

> "Gaines and his counsel believed the undertaking to exchange releases involved releasing Nortrust from any past and further (sic) claim under the lease that the base rental was to be computed by averaging the rent paid by all tenants and being relieved of Nortrust's claim that only the average rents of new and renewal tenants were to be used in the computation; Nortrust and its counsel believed that the release was to be a general release. . . ."2/

Despite the majority's sketchy statement of the facts, Judge Jorgenson's dissent reflects (at A-4, A-6; emphasis added) that:

> The parties to the instant settlement agreement ratified it during a public meeting of the City of Miami Commission and, in addition, exchanged letters of acceptance. The complete terms of the settlement were embodied in a resolution adopted by the city commission, signed by the mayor, attested to by the city clerk, prepared and approved by an assistant city attorney, and approved as to form and correctness by the city attorney.
>
> A careful reading of the record below reveals that the City drafted all versions of all settlement documents, both those that reflect and those that contradict the settlement agreed to by the parties. Contrary to the majority's assertion, there is no Dolphins' version. The only versions are the agreed-upon settlement and the City's unilaterally altered version of the settlement.

Thus, despite the objective evidence of settlement intent, lengthy negotiations before and on the record at the City Commission meeting resulting in the approval of Resolution 83-635 (bearing the title "A Resolution instructing the City Attorney to enter into a stipulation of settlement", a document which was five pages long and drafted and approved for correctness by the City Attorney's office), the majority invalidated the settlement on the sole basis of a subjective

---

2/ Gaines, unlike this case, involved an "off-record" settlement, the terms of which were not recalled by the trial court independently, and there was in that case, unlike this case, an absence of documented, transcribed evidence of the settlement terms. Thus, "beliefs" were all the Gaines court had before it.

failure, supposedly, of a "meeting of the minds" as to the "if for any reason" clause of otherwise detailed and specific settlement documents.

ISSUE

WHETHER THIS COURT SHOULD EXERCISE DISCRETIONARY JURISDICTION TO REVIEW A DISTRICT COURT OPINION WHERE THE DISTRICT COURT'S INTERPRETATION OF THE VALIDITY OF A SETTLEMENT AGREEMENT DIRECTLY AND EXPRESSLY CONFLICTS WITH A LINE OF SUPREME COURT CASES BY APPLYING A SUBJECTIVE, RATHER THAN AN OBJECTIVE TEST TO CONTRACTUAL INTERPRETATION, WHERE THE PROPER AND EXPEDIENT ADMINISTRATION OF JUSTICE CLEARLY RELIES UPON PARTIES BEING ABLE TO ENTER INTO BINDING AND ENFORCEABLE SETTLEMENT AGREEMENTS THAT CANNOT BE UNILATERALLY AND CASUALLY SET ASIDE, AND WHERE THE DISTRICT COURT IMPROPERLY REWEIGHED THE EVIDENCE.

JURISDICTIONAL ARGUMENT

As aptly expressed in the dissenting opinion by Judge Jorgenson (A-4; emphasis added):

> The majority opinion not only sanctions an improper extra period of play, it allows the game's rules to be changed well after the game has ended.

The City of Miami, after settling the case and approving a formal settlement resolution, took a "Prufrock" position and said "that isn't what we meant at all."

Settlement agreements are to be interpreted by the same principles governing the interpretation of contracts. Dorson v. Dorson, 393 So.2d 632,633 (Fla. 4th DCA 1981). By attempting to subjectively psychoanalyze the "understanding" and "beliefs" of the parties -- rather than looking at the objectively ascertainable statements and settlement documents drafted by the party who now objects to the settlement and the transcribed minutes of the settlement hearing held at a public commission meeting -- the Third District Court of Appeal applied an

incorrect "subjective test" to contractual interpretation that directly and expressly conflicts with opinions of this Court and opinions of other District Courts of Appeal.

Blackhawk Heating & Plumbing v. Data Lease Financial Corp., 302 So.2d 404, 407-409 (Fla. 1974) (emphasis added), comprehensively states a recurrent theme of this Court:

> The making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs -- not on the parties having meant the same thing but on their having said the same thing.
>
> * * *
>
> Even though all the details are not definitely fixed, an agreement may be binding if the parties agree on the essential terms and seriously understand and intend the agreement to be binding on them. A subsequent difference as to the construction of the contract does not affect the validity of the contract or indicate the minds of the parties did not meet with respect thereto.
>
> * * *
>
> If the parties have concluded a transaction in which it appears they intend to make a contract, the court should not frustrate their intention if it is possible to reach a fair and just result, even though this requires a choice among conflicting meanings and the filling of some gaps that the parties have left.
>
> * * *
>
> The law does not favor, but leans against the destruction of contracts because of uncertainty; and it will, if feasible, so construe agreements as to carry into effect the reasonable intentions of the parties if that can be ascertained.

The majority opinion characterized paragraph 3 of the stipulation of settlement (drafted by the City of Miami's attorney) (A-46) as "the Dolphins' version of the settlement'" (A-2), and then proceeded to analyze the "understanding" of each of the parties. The record before the Third District, however, contained a transcription of the minutes of the settlement negotiations publicly held at the City Commission meeting

(A-25-38); a five-page resolution adopted by the City Commission, signed by the mayor, attested to by the city clerk, prepared and approved as to form and correctness by the city attorney (A-39-44 and dissent, A-4); a letter dated July 19 to the Dolphins' legal counsel from the city attorney's office "confirming that the city commission accepted your settlement proposal," (A-22-23 and dissent, A-5); a "stipulation and order of settlement and general release (A-45-52), "both drafted by the City's legal counsel" (dissent, A-5-6) (emphasis in the original); and the disputed and belatedly delivered "Supplemental Agreement" also drafted by the City Attorneys (A-53-58 and dissent, A-6).

According to the majority opinion, the City "understood" the parties' settlement to be that moneys would be due and owing . . . "even if the Orange Bowl became unfit for play" as the result of any of the reasons enumerated under the "force majeure" clause of paragraph 28 of the 1977 Orange Bowl Agreement. The sole document that reflects the City of Miami's "understanding" appears in the Supplemental Agreement, again drafted as the very last document and by the City Attorney.3/

3/ The Supplemental Agreement which is in dispute was prepared by the City Attorney and delivered to counsel for the Dolphins after all of the other settlement documents had been delivered and reviewed. Paragraph 4 of the Supplemental Agreement contained, for the first time, and at the last moment, a provision which had not been addressed at all in the comprehensive language of the approved City Commission Resolution or even discussed at all in settlement negotiations (between Shevin and Ferre) or at the City Commission meeting of July 18, 1983.

This added unauthorized paragraph 4 stated (new language underlined):

> Further, paragraph No. 28 of the JUNE 8, 1977 AGREEMENT is amended as follows:
>
> No liability of any kind shall be incurred by either of the parties hereto should the ORANGE BOWL Stadium, during the term of this Agreement become unfit for events to be played or

(Footnote Cont'd)

Judge Jorgenson recognized (A-6; emphasis added), as did the trial judge,[4/] that the Supplemental Agreement, "contained all the terms

> staged therein because of any Act of God or public enemy except that this provision will in no fashion or way relieve the PARTNERSHIP of its obligation to pay Thirty Thousand Dollars ($30,000.00) per each guaranteed tenth home game in the 1985 and 1986 seasons not played as set forth in paragraph No. 2 of this SUPPLEMENTAL AGREEMENT as such obligation is assumed in partial compensation for the PARTNERSHIP'S failure of performance under the June 8, 1977 AGREEMENT prior to July 18, 1983.

This provision added unilaterally, and totally unauthorized, attempted to amend the "force majeure" clause embodied in Paragraph 28 of the June 1977 agreement (A-56).

While the Resolution referred to modifications of specific paragraphs of the Lease Agreement, the Resolution did not refer to any change in paragraph 28 of the Orange Bowl Agreement. The Orange Bowl Agreement at paragraph 29 contained an additional "force majeure" clause. Yet the City Attorney did not attempt to amend paragraph 29. This alone evidences the hasty and unauthorized attempts by the City Attorney to draft terms which were never included in the Resolution and never agreed to by the parties as part of the settlement. In addition, the settlement negotiations and settlement documents acknowledged that the Dolphins did not admit liability by entering into the settlement. However, the newly added, unauthorized, and objectionable language inferred that the Dolphins did admit a "failure of performance" and the transcript of the Commission reflects that the City Attorney had clearly been opposed to the settlement (A-35).

4/ The Miami Dolphins deleted Paragraph 4 of the Supplemental Agreement, and both the Miami Dolphins and Counsel executed the Stipulation of Settlement, the Release, and the Supplemental Agreement. The City refused to execute the settlement documents. The Miami Dolphins moved to enforce the settlement (A-11-20). During the evidentiary hearing on the Dolphins' Motion, Mayor Ferre repeatedly admitted he never discussed amending any "Act of God" or "force majeure" provision with the Miami Dolphins' attorney. At the evidentiary hearing the following questions were asked and answered:

Q. Isn't it also a fact, Mr. Mayor, that you never discussed with me, never, the act of God provision?
A. Never discussed it.
Q. And you don't know what force majeure is?
A. I know what force majeure means.
Q. Did we ever discuss the words force majeure?
A. No, we never -- you never brought that up in discussion.
Q. And did you ever bring it up at the Commission meeting on July 18, 1983?
A. No, sir, I did not bring that up at the Commission meeting (A-153-154).

(Footnote Cont'd)

agreed to at the city commission meeting and contained in the stipulation and order of settlement and general release plus an additional term that was never discussed or negotiated, much less agreed to by the parties."

At the time that the City of Miami approved the Resolution, the settlement structure was complete, the "meeting of the minds" of the parties was clearly and comprehensively recorded, and it was only necessary to draft the actual settlement documents in conformance with the terms of the Resolution (A-39-44). At the end of the City Commission meeting, through the City's Resolution No. 83-628 (A-39-44), all parties looked at the settlement as a complete and sufficient structure. By unilaterally attempting to add a provision which admittedly had never been discussed by any of the parties, the City, through its attorney (who did not personally approve of the settlement) (A-35), deliberately, without authority, and unilaterally, added a new term, knowing the settlement would fall apart because of the addition of an objectional and obnoxious provision. Similar factual situations have been reviewed in contractual disputes by this Court and by other jurisdictions, and it

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In addition, the City's attorney admitted during oral argument before the 3rd DCA that the City of Miami never even discussed any modification of the "force majeure" clause until after the City Commission meeting and after the drafting and execution of the controlling Resolution.

The Trial Court (Judge J.C. Henderson), after the evidentiary hearing, entered an Order enforcing the settlement, and holding that the settlement documents, as executed by the Miami Dolphins:

> . . .were and are in full conformity with the expressed intent of the parties to the settlement, save and except for the single change proposed by the City of Miami for inclusion in the Supplemental Agreement . . .
>
> . . . The terms of that original contract in regards to Paragraph 28 were plainly not discussed . . . (A-13-14).

has been uniformly held that where the "external signs" of the written agreement speak for themselves and manifest that the parties have agreed on essential terms, there is a "meeting of the minds," and any unwritten, secret, or unilateral intention is not admissible, relevant or proper. E.g., Gendzier v. Bielecki, 97 So.2d 604, 608-609 (Fla. 1957) (the document "should be permitted to 'speak for itself' and the evidence as to the secret unilateral intention of any of the parties would be inadmissible").[5/] The majority opinion directly and expressly conflict with these decisions by improperly attempting to analyze the subjective "versions", "understandings" and "beliefs" rather than the objective statements.

In applying the incorrect standard of contractual interpretation to the settlement agreement, the majority opinion has not been faithful to, and is in direct and express conflict with, the often stated cardinal "rules of play": "Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits." Dorson v. Dorson, 393 So.2d 632 (Fla. 4th DCA 1981) (emphasis added). The clear message here of the majority opinion is that anyone who wants to get out of a settlement can simply invent a new "term of settlement," long after the actual "meeting of the minds" of the parties, and insist

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5/ Accord, Blackhawk Heating & Plumbing v. Data Lease Financial Corp., 302 So.2d 404 (Fla. 1974); Hanover Realty Corp. v. Codomo, 95 So.2d 420 (Fla. 1957); Florida Power Corp. v. City of Tallahassee, 154 Fla. 638, 18 So.2d 671 (Fla. 1944); McDonald v. Allstate Insurance Company, 408 So.2d 580 (Fla. 4th DCA 1982). See also, City of Homestead v. Roney Construction, Inc., 357 So.2d 749, 752 (Fla. 3d DCA 1978); Torcuse v. Perez, 319 So.2d 41 (Fla. 3d DCA 1975); Bal Harbour Shops, Inc. v. Greenleaf & Crosby Co., 274 So.2d 13, 15 (Fla. 3d DCA 1973), cited by Judge Jorgenson for the proposition that the majority opinion expressly conflicted with case law from the Third District itself governing contractual interpretation.

on it unilaterally and purposefully in order to "kill" the settlement. This Honorable Court cannot allow this to happen without jeopardizing the settlement process that is vital to the ability of the courts to handle properly the ever-expanding crush of cases.

Although the majority opinion does not discuss the Trial Court judgment in detail, it is clear from Judge Jorgenson's dissenting opinion (A-7) that the Trial Court reviewed "the transcript of the . . . city commission meeting, the stipulation of settlement and order of dismissal (drafted by the City) and the release of all claims (also drafted by the City)," held that the settlement should be enforced, dismissed the action, and "struck the proposed changes to paragraph 28 but enforced the remainder of the settlement."

The majority opinion (A-3) reversed "the Trial Court's judgment purporting to enforce the Dolphins' agreement." If there was a "Dolphins' version" of the settlement, the task of weighing the evidence as to whether the "Dolphins' version" or the "City of Miami's version" of the settlement was correct is delegated solely to the Trial Court Judge. The majority opinion did not reject the Trial Court's findings as based on inherently incredible or improbable evidence or testimony. The majority simply reweighed the evidence and came to a different conclusion. The decision below therefore:

> conflicts with the myriad cases setting forth the rule that an appellate court cannot substitute its judgment by a reevaluation of the evidence. Westerman v. Shells City, Inc., 265 So.2d 43 (Fla. 1972).

Judge Jorgenson cogently expressed his dissatisfaction with the majority opinion and stated:

> "Considering the settlement reached by the Dolphins and the City (as reflected in the transcript of the City Commission Meeting and the original settlement documents) not in a vacuum,

> but as a part of the whole 1977 agreement between the parties, the inescapable conclusion is that the parties did reach an agreement 'sufficiently specific as to be capable of implementation,' Gaines at 1039, following which the City attempted to unilaterally alter certain terms." (Emphasis added; A-9-10).

This Court thus has conflict jurisdiction under Fla. R. App. P. 9.030(a)(2)(iv) and review should be granted.

CONCLUSION

The majority decision of the Third District Court of Appeal will discourage parties from carrying settlement agreements to fruition. Here, the Miami Dolphins (a) have given up their right to an interlocutory appeal from a summary judgment on liability, (b) have given up their right to an expedited jury trial, (c) promised to play additional games in the Orange Bowl (which will generate over $100,000 gross income per game for the City), and (d) in fact took other steps (such as changing insurance coverages), all in reliance on the settlement improperly "undone" by the Third District. No one should be encouraged to "kill" a carefully negotiated settlement by interposing an objectionable and unilateral provision into settlement documents long after such a change in circumstances when there was in fact a "meeting of the minds." This Court is respectfully requested to accept discretionary jurisdiction and entertain these important policy issues concerning the enforceability of settlement agreements.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered this 17th day of October, 1984 to: City Attorney for the City of Miami, 1101 Alfred I. Dupont Building, 169 East Flagler Street, Miami, Florida 33131.

Robert L. Shevin

ROBERT L. SHEVIN

03-104-129/4*