

FILED

IN THE SUPREME COURT OF FLORIDA

CASE NO: 66,045

CLERK OF COURT  
JULY 10 1966  
JLB

C. U. ASSOCIATES, INC., a  
Florida corporation, and  
AETNA CASUALTY AND SURETY  
COMPANY, a Connecticut  
corporation,

Petitioners,

vs.

R. B. GROVE, INC., a  
Florida corporation,

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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Counsel for Petitioners

Petitioners, C.U. Associates, Inc., and Aetna Casualty and Surety, Inc., file this brief on jurisdiction pursuant to the Notice filed on October 16, 1984, and state:

ARGUMENT

This court has jurisdiction of this matter pursuant to Article V, Section (3)(b)(3) and pursuant to Fla.App.P. 9.030(a)(2)(A)(iv) in that the instant decision of the Third District conflicts with decisions rendered in other districts of this state. See Hollywood, Inc. v. Broward County, 108 So.2d 752 (Fla. 1960).

The decision rendered by the Third District on September 18, 1984 directly and expressly conflicts with the decisions made in the Fourth District and in the Second District. This conflict was recognized in the Opinion where the Third District noted:

While Appellant's position finds some support elsewhere in this state, see Monde Investments No. 2, Inc. v. R. D. Taylor-Made Enterprises, Inc., 344 So.2d 871 (Fla. 4th DCA 1977); cf. S.C.M. Associates, Inc. v. Rhodes, 395 So.2d 632 (Fla. 2d DCA 1981), this court has taken the view that a claimant who succeeds in establishing a mechanics' lien and receives a judgment in his favor in any amount whatever is necessarily the 'prevailing party' under Section 713.29 without regard to whether the judgment recovered exceeds, equals or is less than any prelitigation offer. (See Appendix)

The issue for consideration by the Third District was whether a party that rejects a prelitigation tender or offer and then files suit and fails to recover an amount in excess of the amount available prior to the institution of the litigation is the prevailing party under Florida's Mechanics' Lien Statute. The Second and Fourth Districts ruled that such a party

is not the prevailing party. See Monde Investments and S.C.M. Associates supra. The instant decision of the Third District, however, ruled that notwithstanding any prelitigation offer or tender, a party is the prevailing party and entitled to recover attorney's fees pursuant to the Florida Mechanics' Lien Law if they recover an affirmative judgment in any amount whatsoever. Such a conclusion, therefore, directly and expressly conflicts with the decisions cited above.

In reaching its result in the present decision, the Third District held "in essence, then, a party prevails and is entitled to fees and costs when it receives a favorable judgment, and it is irrelevant that he turn down a more favorable prelitigation offer or that his victory in court is pyrrhic." The court's discussion then centered upon the use of an offer of judgment pursuant to Fla. R. of Civ. Proc. 1.442.

In the Monde Investments case the fourth district held that a party that failed to accept the amount it should have accepted "was not the prevailing party in this lawsuit." 344 So.2d at 872. The instant decision of the third district, however, ruled that C.U. Associates' offer and tender of the exact amount due to R.B. Grove had no affect on R.B. Grove's right to recover attorney's fees. In fact, Grove was rewarded for not accepting the amount it should have by being determined the prevailing party in this litigation. This holding gave Grove nearly \$10,000 in costs and attorneys fees. This decision, therefore, creates a different precedent on the same point of law and should be resolved by this court. See Ansin v. Thurston, 101 So.2d 808 (Fla. 1958).

Petitioners assert that in addition to creating conflict with other districts, that the Third District's decision is contrary to the policy of the Florida courts. Specifically, the decision does not encourage the settlement of lawsuits but rather promotes litigation. Secondly, as the Third District noted, even by making an offer of judgment that such an offer only tolls the running of attorney's fees after the offer was made. Thus, needless attorney's fees can still be incurred and punish a party that did everything it was supposed to do prior to litigation.

While the third district's opinion addresses what steps should be taken after the litigation commences, it does not provide a course of action by a that can be taken by a party to avoid attorney's fees before litigation starts. The S.C.M. and Monde Investments decisions provided such a course that when a party complies with its obligations it does not have to pay attorney's fees which are needlessly incurred.

In Florida, the mechanics' liens cases are common place. Fla. Statute Section 713.29 is perhaps the most significant provision in that statute in that it provides attorneys fees to the prevailing party. Such provision is clearly intended to make a party "whole" for successfully prosecuting a mechanics' lien case. In this case, however, R. B. Grove would have been made "whole" by not filing this lawsuit and accepting the monies offered to them prior to trial. They chose not to accept these monies and instead filed a lawsuit and ultimately recovered the identical amount at trial that was offered to them before litigation. By not following the second and fourth districts, the Third District

has created a conflict in an area that public policy dictates must be resolved by this court.

CONCLUSION

In conclusion, Petitioners assert that this court has jurisdiction of this matter pursuant to Article V, Section 3(b)(3), Florida Constitution and pursuant to Fla. R. App. P. 9.030(2)(A) (iv) in that the instant decision expressly and directly conflicts with another decision of both the Second and Fourth Districts. Therefore, Petitioners respectfully request that this court accept jurisdiction of this case and permit the Petitioners to have this court determine this matter on the merits.

Respectfully submitted,

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BY: 

STEVEN W. DAVIS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 1984, a true and correct copy of the foregoing was mailed to Fred A. Harrison, Jr., Esq., Suite 304, 7600 Red Road, South Miami, Florida, 33143.

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