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IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,237

UNDERWRITERS AT LaCONCORDE,
as Subrogee of INTERNATIONAL
AIRCRAFT SALES AND LEASING
CORPORATION,

Plaintiff/Petitioner,

vs.

AIRTECH SERVICES, INC.,

Defendant/Respondent.

ON PETITION FOR REVIEW
FROM DISTRICT COURT OF
APPEAL, THIRD DISTRICT

BRIEF OF PETITIONERS
ON JURISDICTION
(With Separate Appendix)

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QUESTION PRESENTED

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL BECAUSE IT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS ON THE SAME QUESTION OF LAW OF THE FIRST DISTRICT COURT OF APPEAL IN A.O SMITH HARVESTONE PRODUCTS V. SILVER CATTLE CO., 416 So.2d 1176, 1179 (Fla. 1st DCA 1982) AND THE FOURTH DISTRICT COURT OF APPEAL IN FORT PIERCE TOYOTA, INC. V. WOLF, 345 So.2d 348 (Fla. 4th DCA 1977) AND BROWARD COUNTY V. SATTLER, 400 So.2d 1031, 1033, (Fla. 4th DCA 1981)

PREFACE

This action arose from a lower court order striking prejudgment interest from a Final Judgment previously awarded in a civil action for recovery of liquidated damages. In this jurisdictional brief, the Petitioner/Appellant, Underwriters at LaConcorde, as Subrogee of International Aircraft Sales and Leasing Corp., will be referred to respectively as "International" and "LaConcorde" or jointly as "International/LaConcorde". The Respondent/Appellee, Airtech Services, Inc., will be referred to as "Airtech". References to the Appendix submitted herewith will be designated by the symbol "A", and all emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

This appeal arose from a civil negligence case brought by LaConcorde to recover liquidated damages it incurred as a result of the crash of International's aircraft. The International aircraft crashed on its first flight after having been repaired in Airtech's maintenance facility. LaConcorde, the insurer of International's aircraft, paid International for the damage to the aircraft resulting from the crash. LaConcorde, then brought a subrogation action in Dade County Circuit Court to recover from Airtech the liquidated damages it sustained as a result of its payment to International. The cause of action against Airtech in this subrogation action was based on negligent maintenance of the aircraft.

The jury returned a verdict in favor of LaConcorde. The jury found Airtech 100% negligent in the cause of the crash.

Based on the jury verdict, the lower court entered a Final Judgment against Airtech for the damages awarded in the jury verdict and the lower court included in that Final Judgment an award of prejudgment interest on the damages awarded in the verdict.

Airtech filed a motion to strike prejudgment interest and the lower court after hearing argument of counsel struck the award of prejudgment interest from the final judgment.

LaConcorde's counsel appealed the lower court's order striking prejudgment interest from the final judgment. In an opinion filed April 23, 1985, the Third District Court of Appeal affirmed the lower court's order striking prejudgment interest.

The Third District Court of Appeal based its decision on the following:

"Florida Appellate Courts have reached conflicting conclusions regarding the issue of prejudgment interest awards. The First and Fourth Districts have enunciated a rule relieving the court of the obligation to submit the question of prejudgment interest to the jury where the amount of damages is liquidated. See A.O. Smith Harvestone Products v. Silver Cattle Co., 416 So.2d 1176, 1179 (Fla. 1st DCA 1982) (where insurer paid insured pursuant to insurance policy and amount of damages not disputed below, damages incurred by insurer liquidated upon payment, and prejudgment interest 'permissible even though verdict fail[ed] to allow it or indicate a decision to allow interest'); Broward County v. Sattler, 400 So.2d 1031, 1033 (Fla. 4th DCA 1981) (where no dispute existed regarding amount of compensation sought by county employee for termination of employment without notice, there was 'no need to submit the question of [prejudgment] interest to the jury where the amount of damages [was] liquidated and the assessment merely require[d] calculation'); Fort Pierce Toyota, Inc. v. Wolf, 345 So.2d 348 (Fla. 4th DCA 1977) (in action for breach of contract based on stopped payment on check, trial court erred in denying post verdict motion to tax prejudgment interest on amount

of check where face amount of check was for liquidated sum). In addition, the United States Court of Appeal for the Fifth Circuit has stated that 'under Florida law, a judge may add interest to a jury's award of liquidated damages.' Plantation Key Developers v. Colonial Mortgage Co. of Indiana, 589 F.2d 164, 170-171 (5th Cir. 1979)."

"The Third District Court of Appeal, however, considers an award of prejudgment interest a question for jury determination without regard to whether the damages are liquidated. In Shulman v. Cort Aviation Corp., 330 So.2d 114, 115 (Fla. 3d DCA 1976) this court stated that where 'the verdict rendered by the jury [does] not allow or provide for the allowance of interest, . . . it [is] error for the court, in entering judgment on the verdict, to add to the sum assessed by the jury an additional sum for interest thereon.' Where interest is an element of damages, and the jury fails to award interest, the trial judge is not authorized to include interest in the judgment. (Citations of authority omitted).

LaConcorde's counsel timely filed a Motion for Rehearing [A.8-12] and was denied a rehearing by the Third District. [A.13]

LaConcorde timely filed its notice to invoke this Court's discretionary jurisdiction on the basis that the decision of the Third District Court expressly and directly conflicts with the decisions of the First District Court and Fourth District Court on the same question of law.

SUMMARY OF ARGUMENT

This court has jurisdiction of this cause because the opinion of the Third District Court of Appeal expressly and directly conflicts with the opinions of the First District Court of Appeal and the Fourth District Court of Appeal on the same question of law.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL BECAUSE IT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE OPINION OF THE FIRST DISTRICT COURT OF APPEAL AND THE FOURTH DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

Florida Rule of Appellate Procedure 9.030(a)(2)(iv) provides that this court may exercise its discretionary jurisdiction when a decision of a district court of appeal expressly and directly conflicts with a decision of another district court of appeal on the same question of law. The Third District in its opinion [A.2-3] specifically admits that its decision conflicts with the opinions of the First District Court in the case of A.O. Smith Harvestone Products v. Silver Cattle Co., 416 So.2d 1176, 1179 (Fla. 1st DCA 1982), and the Fourth District Court cases of Fort Pierce Toyota, Inc. v. Wolf, 345 So.2d 348 (Fla. 4th DCA 1977) and Broward County v. Sattler, 400 So.2d 1031, 1033, (Fla. 4th DCA 1981) and the United States Court of Appeal for the Fifth Circuit in Plantation Key Developers v. Colonial Mortgage Co. of Indiana, 589 F.2d 164, 170-171 (5th Cir. 1979). Because the district court's decision thus conflicts expressly and directly with the decisions of the First District and Fourth District, this court has jurisdiction to accept it for review.

The Third District in its decision stated prejudgment interest is an element of damages which must be submitted to the jury and further stated:

"In conclusion, we reiterate our previous holdings that prejudgment interest is an element of damages to be decided by the jury upon appropriate instructions by the Court."

The above decision of the Third District is expressly and directly in conflict with the decisions of the Fourth District held in the case of Broward County, supra, that where no dispute existed regarding the amount of compensation sought by county employee for termination of employment without notice, there was "no need to submit the question of [prejudgment] interest to the jury where the amount of damages [was] liquidated and the assessment merely require[d] calculation". Further, the Fourth District in the case of Fort Pierce Toyota, Inc., supra, ruled that in action for breach of contract based on stopped payment on check, the trial court erred in denying the post verdict motion to tax prejudgment interest on the amount of the check where face amount of check was liquidated sums.

The First District in A.O Smith Harvestone Products v. Silver Cattle Co., 416 So.2d, 1176, 1179 (Fla. 1st DCA 1982). In A.O. Smith Harvestone Products, supra, the First District held where an insurer paid an insured pursuant to insurance policy and the amount of damages was not disputed below, damages incurred by insurer became liquidated upon payment, and prejudgment interest was "permissible even though verdict fail[ed] to allow it or indicate a decision to allow interest".

The United States Court of Appeal for the Fifth Circuit has stated that "under Florida law, a judge may add interest to a jury's award for liquidated damages." Plantation Key Developers v. Colonial Mortgage Co. of Indiana, 589 F.2d 164, 170-171 (5th Cir. 1979).

In addition, the Third District in its Jockey Club, Inc. v. Bleemer, Levine & Associates Architects & Designers, 413 So.2d 433 (Fla. 3d DCA 1982) decision held

"Moreover, since the amount of interest is itself a liquidated, mathematically calculable sum, a retrial is not required to correct the error which may be remedied simply by adding the appropriate amount to the judgment."

In Jockey Club, supra, the lower court did not submit to the jury the issue of prejudgment interest and the jury did not award prejudgment interest as part of the verdict and the Third District affirmed the case with the exception of remanding the case to the lower court with directions to add prejudgment interest to the Final Judgment.

Consequently, a basis exists upon which this court rightfully may accept jurisdiction to review this cause.

LaConcorde and its counsel requests this Honorable Court to exercise its discretion to entertain this case on its merits since the result of the Third District's opinion, that prejudgment interest must be submitted to the jury, is an unfair burden on an injured Plaintiff. The Third District's opinion is an antiquated theory of law which has been replaced in other district courts by a more progressive theory of law. The old theory creates confusion as to what the law of Florida is with

reference to prejudgment interest in liquidated damages cases, and results in different outcomes in cases with the same facts depending upon what of Florida Circuit the original lower court case arose in.

CONCLUSION

The decision reached by the district court in this case is in direct conflict with the decisions of other district courts on the same issue of law. Consequently, a proper ground exists for this court to accept jurisdiction over it and to entertain it on its merits. Because of the important policy issues involved, Petitioner urges the Court to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing Jurisdictional Brief was mailed to GILBERT E. THEISSEN, ESQ., Walsh, Theissen & Boyd, P.A., 633 S.E. Third Avenue, Suite 402, Ft. Lauderdale, Florida, on this 3rd day of July, 1985.

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