IN THE SUPREME COURT OF FLORIDA

AETNA LIFE AND CASUALTY COMPANY,
as subrogee of Energy Conservation,
Unlimited, Inc.,

Petitioner,

vs.

THERM-O-DISC, INC.,

Respondent.

CASE NO.: 68933

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent adopts the Preliminary Statement contained in Petitioner's Brief on Jurisdiction and will utilize the same designations contained therein.

STATEMENT OF THE CASE

Respondent adopts Petitioner's Statement of the Case. However, Respondent would add that Petitioner originally sought to establish jurisdiction in this cause of action on three separate bases: Florida Statutes, Section 48.193(1)(a), (1)(f) and (1)(g).

Upon an exhaustive review of the facts and proceedings below, the First District Court of Appeal held that the allegations and proof submitted by Plaintiff were insufficient to establish jurisdiction under Section (1)(a). With respect to the jurisdictional allegations under Section (1)(g), the First District remanded the cause to the trial court for further evidentiary findings of fact. With respect to the jurisdictional allegations under Section (1)(f), the First District held that, under the clear facts of this case, Plaintiff had not shown acts or omissions by the Defendant outside of the State of Florida causing injury or damage inside the State.

On remand, the First District specifically stated that Plaintiff was free to amend his pleadings or submit further proof on all jurisdictional allegations so as to state a cause of action under any of the sections of the Long Arm Statute.

Petitioner now seeks discretionary review of the decision of the First District Court of Appeal only with respect to the

Court's finding in connection with the jurisdictional allegations under Section (l)(f).

STATEMENT OF FACTS

Respondent, an Ohio corporation, is alleged to have sold certain temperature activated switches to Petitioner, a Florida corporation. These switches were designed to open and close at certain specified temperature ranges.

Petitioner incorporated the switches into energy conservation units which are a connection of pipes, pumps and switches between residential hot water heaters and air conditioning units, the purpose of which is to use the heat generated by heating and air conditioning plants to heat water for residential use.

As incorporated into these units by Petitioner, the switches were intended to open at certain designated low temperature ranges thus allowing water circulation and the pumping of water through pipes so that the pipes would not freeze during the winter. Petitioner installed these energy conservation units, with Respondent's switches incorporated in them, in certain government housing projects in Georgia and South Carolina. Subsequent to their installation, during the winter of 1981-82, Petitioner has alleged that the switches failed to operate properly at the designated temperatures, thus allowing water in the pipes to freeze and resulting in burst pipes and water damage at those government housing installations in Georgia and South Carolina. As a result, Petitioner was called upon to reimburse the United States Government for the damages sustained to its property

as a result of the failure of the energy conservation units. In the Court below, Petitioner now seeks recovery of those damages from Respondent, the manufacturer of the switches.

SUMMARY OF ARGUMENT

The First District Court of Appeal has properly applied the clear meaning of Florida Statutes, Section 48.193(1)(f) to the facts of the case before them. In doing so, the First District has not created a conflict with the decision of the Fourth District in Yale Industrial Products, Inc. v. Gulf Stream Galvanizing and Finishing, Inc., 481 So.2d 1304 (Fla. 4th DCA 1986). The material facts of that case are substantially different and distinguishable from the facts in the instant case and, thus, no conflict is created. The First District did not acknowledge such a conflict, as argued by Petitioner, but itself noted the factual distinctions between the two cases.

ARGUMENT

Petitioner seeks review of the decision of the First District Court of Appeal based solely upon the alleged conflict between that decision and the decision of the Fourth District Court of Appeal in Yale Industrial Products, supra. Respondent respectfully suggests that, although the language of the two cases may be construed as somewhat conflicting, the holdings of the two cases are not in any way in conflict.

In Yale, Plaintiff brought action for the costs of replacing certain defective equipment and the costs of lost production time due to the defectiveness to that equipment against the

manufacturer of the equipment. In that case, the equipment was sold by a foreign corporation to a Florida corporation and was utilized in Florida by the Florida corporation. The defective equipment broke down in Florida and the lost production time referred to was incurred in Florida by the Florida plaintiff. The sole holding of the Fourth District in that case was that those types of damages were recoverable under the Florida Long Arm Statute, Section (1)(f).

While it might have been preferable, as the First District noted, for the Court in Yale to reference its decision to Section (1)(g) which is more appropriate for breach of contract type damages, there was no holding in the Yale case which established jurisdiction for damages which occur outside the State of Florida. That was simply not the fact situation which confronted the Fourth District in Yale.

In the instant case, Petitioner attempts to analogize the language in Yale in order to create a conflict. The clear facts in our own case involve a situation where a certain component, manufactured by a foreign corporation, failed in the States of South Carolina and Georgia. Consequential damages occurred there and the Florida corporation was called upon to reimburse these consequential damages to the United States Government for the incidents which occurred in South Carolina and Georgia. The damages sought by Petitioner in this case are not restricted to contract type damages for failure of the product itself and replacement of the product (or lost production time). Rather,

Petitioner seeks remuneration for the consequential damages which were damages to physical property caused by the freezing and bursting of pipes in the energy conservation units installed by Petitioner. There is simply no similarity of facts or holding between the decision of the First District in the instant case and the decision of the Fourth District in Yale.

The meaning of Florida Statute, Section 48.193(1)(f) could not be clearer. The statute states that a foreign person or corporation will be subject to the jurisdiction of Florida courts if the foreign person or corporation performs an act or omission which causes "injury to persons or property within this State". This section of the statute goes on to state that jurisdiction will attach for such injuries to persons and property in the State if the injury arises from the use of manufactured products which are "used or consumed within this State". The clear meaning of this language in the Statute could not be more obvious. It is equally obvious that the wording of this Statute does not apply to the undisputed facts in our own case.

Simply stated, there has been no injury to persons or property within this State which is the subject of this cause of action. Nor can any injury to persons or property in this case be attributed to the use of manufactured products which have been used or consumed within this State. Quite the contrary is true in this undisputed record.

The manufactured goods complained of were used and consumed in the States of South Carolina and Georgia and it is equally

clear that any injury to persons or property occurred in South Carolina and Georgia.

Petitioner attempts to create an issue by stating that, as the result of damages to property in Georgia and South Carolina, Petitioner as a Florida corporation was damaged because it was called upon to reimburse the government for those losses. If Petitioner's interpretations were applied, there would be absolutely no need for any state to have a Long Arm Statute. Under those conditions, any plaintiff would be entitled to bring action against any foreign defendant in the plaintiff's home forum upon a simple showing that plaintiff had suffered financial loss. This would be true regardless of the situs of the alleged acts of the defendant, regardless of the nature of the cause of action and allegations against the defendant, and regardless of the place where actual damages occurred.

For example, under Petitioner's analysis, if a Florida building corporation contracted with an Oregon corporation to construct a building in Oregon and if the parties entered into a contract in Oregon for the services, and if all contract terms were to be performed in Oregon, the Florida building contractor would still be allowed to bring an action for breach of that contract against the Oregon corporation in Florida merely by alleging that the breach resulted in monetary loss which was borne by the Florida corporation. There is simply no support for this analysis in Florida or in any other jurisdiction, nor could there be. As advanced by Petitioner, the meaning of the

Florida Long Arm Statute would violate any known standard of due process.

The Fourth District in Yale was simply dealing with an issue as to the type of damages recoverable under this section of the Long Arm Statute. The limited holding of that decision was to allow recovery of contract type damages as well as consequential damages where injury to persons or property had occurred within the State of Florida. There is simply no relationship between the holding in that decision and the holding of the First District in our own case.

As alleged, Petitioner's case has nothing to do with contract damages at this stage. Consequential damages are being sought. More to the point, the damages sought arise out of property damages occurred in the States of Georgia and South Carolina where the alleged defective manufactured goods were used or consumed. Thus, no conflict appears between the decision of the First District in the instant case and the decision of the Fourth District in Yale.

Petitioner has also cited in his Brief on Jurisdiction the case of Pennington Grain & Seed, Inc. v. Murrow Brothers Seed, Co., 400 So.2d 157 (Fla. 1st DCA 1981). This case is exactly analogous to the Yale case and, therefore, does not support Petitioner's position. In Pennington, the First District simply stated that the users of defective seed which failed to germinate when it was purchased and planted in Florida could seek recovery for their damages in a Florida jurisdiction.

Again, there was no factual issue in that case which allowed the application of Florida jurisdiction for injury to persons or property outside the State. The injury in Pennington clearly occurred in the State when the defective seed was planted and failed to germinate. Again, in that case, the District Court was wrestling with the difference between contract type damages and consequential damages.

Finally, Petitioner has also cited the case of Hyco Manufacturing Company v. Rotex Industrial Corp., 355 So.2d 471 (Fla. 3d DCA 1978). Oddly enough, Hyco can only stand for the proposition that, where injury or loss occurs outside the State of Florida, jurisdiction will not lie in Florida, a position directly contrary to Petitioner's position here.

None of the cases cited by Plaintiff nor, to this reviewer's knowledge, any other cases in Florida rest on a finding of "financial damages". It would appear, under Petitioner's analysis, that "financial damages" occur in whatever jurisdiction a plaintiff finds himself when he has to dig into his pockets and make good a loss.

There is simply no authority whatsoever supporting this position. On the other hand, the meaning and intent of the Florida Long Arm Statute is abundantly clear in this respect. No conflict between the instant decision and any other decision in Florida has been shown by Petitioner and its petition for review should be denied.

CONCLUSION

The First District has properly applied the clear meaning of Florida Statute, Section 48.193(1)(f) to the facts in the instant case. In doing so, the First District has created no conflict between its decision and the decision of any other District.

Although Petitioner cites as conflict the decision of the Fourth District in Yale, even a brief review of that decision will reveal that its holding is unrelated to the holding of the First District in the instant case and that the Court reached its decision based on facts directly contrary to the facts in the instant case.

Petitioner advances an interpretation or analysis of the Long Arm Statute which is wholly unsupported by any authority in this jurisdiction or any other jurisdiction.

In the absence of conflict, the petition for discretionary review should be denied.

Respectfully submitted,

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