

IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,398

ANGEL, COHEN and ROGOVIN,

Petitioners,

vs.

OBERON INVESTMENT, N. V.,  
a Netherlands Antilles  
corporation,

Respondent.

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ON PETITION FOR A WRIT OF CONFLICT CERTIORARI TO THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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1237 CITY NATIONAL BANK BUILDING

TABLE OF CONTENTS AND CITATIONS

TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	1, 2
ARGUMENT:	2
I. NO CONFLICT IS DEMONSTRATED BY THE PETITIONER	2-5
CONCLUSION	5, 6
CERTIFICATE OF SERVICE	6

CITATIONS

<u>Adams vs. Chenowith,</u> 349 So. <sup>2</sup> 230 (4 DCA Fla. 1977)	3
<u>Amey, Inc. vs. Henderson, et al.,</u> 367 So. <sup>2</sup> 633 (2 DCA Fla. 1979)	3
<u>Drawdy vs. Sapp,</u> 365 So. <sup>2</sup> 461 (1 DCA Fla. 1978)	3
<u>McAbee vs. Edwards,</u> 340 So. <sup>2</sup> 1167 (4 DCA Fla. 1976)	3

### STATEMENT OF THE CASE

This cause comes to this Court on Petition for a Writ of Conflict Certiorari to the District Court of Appeal of Florida filed by Angel, Cohen and Rogovin, a Law Firm who were Appellees below and Defendants in the Circuit Court of the Eleventh Circuit in and for Dade County, Florida. The Respondent here, Appellant in the Third District and Plaintiff below, is Oberon Investment, N. V., a Netherlands Antilles corporation. The parties will be referred to in this Brief by standing here or below or by proper name as appropriate. References to the appendix to the Brief of the Petitioner will be made by use of the symbol "A" with appropriate page number.

### STATEMENT OF FACTS

Oberon is a foreign corporation. Oberon had a wholly owned subsidiary, Meson Investments, N. V. Meson owned an office building in Miami, Florida. Treister, a lawyer, was acting as agent and attorney for Oberon and Meson with respect to the investment. Treister came to Angel, a partner in the firm of Cohen, Angel and Rogovin, (misnamed Angel, Cohen and Rogovin in this proceeding). The firm acted through Angel as respects these proceedings. Angel's deposition was taken (A 6 et seq.).

Angel testified that he was a seasoned and experienced real estate attorney. He further testified that Treister told him that Treister wanted Angel to assist him in connection with

the acquisition of the corporate stock of Meson from Oberon. Treister wanted Angel to act as an agent for an undisclosed principal. (A 12). He wanted Angel to take title as though Angel were the principal when, in essence, Treister was the principal. Angel testified that it became apparent that the transaction was one in which Treister was involved with the owner and Angel presumed that Treister wanted someone to act as an agent so that his involvement in this transaction would not be readily apparent to the owner. In fact, Angel became aware that the transaction proposed by Treister was a "flip" transaction (A 15 et seq). Treister was going to have Cohen buy the stock from Oberon for \$4,000,000 and he had a contract to resell it for \$4,350,000. Angel, in fact, went through with the transaction, purchased the stock in his name for the \$4,000,000, allowed Treister to complete the sale to a third party for \$4,350,000 without disclosing this profit to Oberon. Oberon sued Angel for negligence (A 1 et seq). The trial court granted Summary Judgment against Oberon in an unexplicated order (A 41) and Oberon appealed. The District Court reversed in the Opinion to which certiorari is here sought (A 42 et seq.).

#### ARGUMENT

##### I. NO CONFLICT IS DEMONSTRATED BY THE PETITIONER.

The Petitioner asserts conflict with the following cases:

Adams vs. Chenowith, 349 So.<sup>2</sup> 230 (4 DCA Fla. 1977). In Adams the Fourth District held that where an attorney was hired by a seller, he owed his sole allegiance to the seller and owed no duty to the purchaser. In Adams, the purchaser and seller were at arms length.

McAbee vs. Edwards, 340 So.<sup>2</sup> 1167 (4 DCA Fla. 1976). In McAbee, the Fourth District holds that where there is only one side to a transaction, such as where a lawyer drafts a Will, the lawyer will be responsible to the beneficiary of the Will. In Drawdy vs. Sapp, 365 So.<sup>2</sup> 461 (1 DCA Fla. 1978), the Court was faced with a factual situation where the Appellant sued her husband's lawyer for allegedly negligently drawing a Deed. The Court held that the lawyer was not responsible to the Appellant.

In Amey, Inc. vs. Henderson, et al., 367 So.<sup>2</sup> 633 (2 DCA Fla. 1979), the Second District held that where an attorney represents a side opposing the Plaintiff, the Plaintiff cannot possibly be a beneficiary of the attorney's services.

Respondent, of course, freely concedes that public policy and well established law prevents an attorney from being liable to a person on the opposite side of his case. That is not the situation which confronted the Court here. Although this transaction was cast in terms of a buyer and seller, clearly Mr. Treister was engaged in defrauding his client and he enlisted

Mr. Angel to help him. Mr. Angel clearly has a responsibility to the real party in interest in this case which was Oberon. It was Oberon's property that was being manipulated and Oberon was the beneficiary of the flip transaction in real terms, but for Treister's fraud. Angel clearly understood that as he testified.

Additionally, Angel, as a member of the Florida Bar, was subject to the code of professional responsibility. That provided in its preamble;

"The disciplinary rules unlike the ethical considerations are mandatory in character. The disciplinary rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of a fair trial, the disciplinary rules should be fairly applied to all lawyers, regardless of the nature of their professional activities. The code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a disciplinary rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a disciplinary rule should be determined by the character of the offense and the attendant circumstances."

Further, the code went on to provide in disciplinary rule 7-102 (B):

"A lawyer who receives information clearly establishing that:

1. That his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected

person or tribunal."

Angel thus clearly had an affirmative duty to prevent this fraud by Treister. That was his standard of care. His failure to comply with the minimum standard of conduct required of lawyers is and must be evidence of his negligence. Negligence as a matter of law is the failure to do that which a reasonable man ought do under the circumstances.

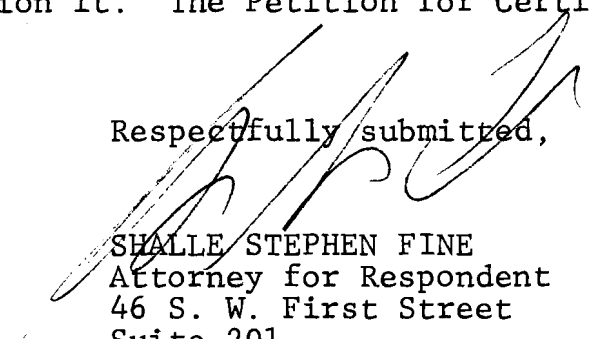
It is therefore apparent that the facts in this case have been correctly treated by the Third District Court of Appeal in the Opinion to which certiorari is here sought and there is no conflict with the cases cited by Petitioner which govern other factual situations not in point here. Just as the beneficiary of a Will is entitled to sue the drafting lawyer for his negligence, so the owner of property who is being defrauded by his agent and lawyer is entitled to sue another lawyer who undertakes to further that fraud.

#### CONCLUSION

Contrary to the contention of the Petitioner, this case does not subject an attorney to the possibility of a lawsuit being filed by someone somewhere who has been affected by the attorney's zealous representation of his client. What it does is it prevents an attorney from assisting a fiduciary from defrauding his cestui que trust with impunity. That is a rule of public policy that ought be reinforced and applauded. The conduct here on the part of Angel can only be characterized as

outrageous. We suggest that the Supreme Court of Florida ought not and cannot sanction it. The Petition for Certionari ought be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Douglas H. Stein, Esq., Walton, Lantaff, et al., 900 DuPont Building, 169 East Flagler Street, Miami, FL 33131, this <sup>30</sup> day of October, 1986.



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SHALLE STEPHEN FINE