IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 69,519

ROBERT DAY, Osceola County Tax Appraiser; MURRAY A. BRONSON, Osceola County Tax Collector; and RANDY MILLER, Executive Director of the Department of Revenue of the State of Florida;

Appellants,

vs.

HIGH POINT CONDOMINIUM RESORTS, LTD.; HIGH POINT WORLD RESORT CONDOMINIUM ASSOCIATION, INC.; and ROBERT H. HARRISS, JR., individually, and

ROBERT H. HARRISS, JR., FOR CLASS ACTION REPRESENTATION OF THE CLASS OF PERSONS HEREIN DESCRIBED,

Appellees.

CROSS-APPELLANTS' BRIEF

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Cross-Appellants

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STATEMENT OF THE CASE

Cross-Appellants were Plaintiffs in the Trial Court and Appellants in the District Court of Appeal.

This Statement Of The Case will address only the matters pertaining to the cross-appeal.

Plaintiffs brought suit in the Circuit Court of the Ninth Judicial Circuit of Osceola County, Florida, challenging the validity of Chapter 82-226, Laws of Florida 1982 (Special Session D - HB 21-D). The challenge which is involved in this cross-appeal charged that said Act was not within the purview of the Governor's proclamation and was not introduced by the consent of 2/3 of the Members of each house as required by Section 3(c), Article III, Constitution of the State of Florida. That therefore having never been lawfully introduced in either house of the legislature, it never became law (A-1).

On this Point, the Trial Court Judge found from the Journals of each house that the Act was either within the purview of the Proclamation of the Governor, or introduced by the consent of 2/3 of the membership of each house (A-10).

On appeal, the District Court Of Appeal found from the Journals (and correctly so) that the Act was not within the purview of the Proclamation of the Governor and was not introduced by the consent of two-thirds of the membership of each house. However, the Appellate Court held that the defect in the legislation was cured by the enactment of the 1985 Official Statutes. (A-24)

This cross appeal is limited to that portion of the decision of the District Court Of Appeal which holds that the invalid enactment of Chapter 82-226 at Special Session D of the 1982 Legislature was cured by enactment of the 1985 Official Statutes (A-24).

The Plaintiffs challenged chapter 82-226 because that is the genisis of Section 192.037, Florida Statutes which the District Court of Appeal has found to be unconstitutional on other grounds asserted by these Plaintiffs.

The case on this point was decided by the Lower Court on Summary Final Judgment entered upon motion made by Defendants (A-10).

The appeal to the District Court Of Appeal was from the Summary Final Judgment upholding the validity of Chapter 82-226 and Section 192.037, F.S. Both sides of the controversy concede that as to this point there is no material issue of fact. The Governor's Proclamation House Journal pages 1 and 2 (A14 and 15); House Journal Re HB 21-D pages 40 and 41 (A-16 and 17); Senate Journal re HB 21-D pgaes 1, 5, 110, 111, 113, 114 (A-18, 19, 20, 21, 22, 23).

SUMMARY OF ARGUMENT

Cross-Appellants contend that HB 21-D was never properly introduced in either the Senate or the House of Representatives, i.e. it was not within the purview of the Proclamation of the Governor and was not introduced by consent of 2/3 of the members of both houses. All subsequent proceedings in each house on HB 21-D were Brutum Fulmen. Accordingly, HB 21-D, later identified as Chapter 82-226 never became an enactment by the Florida Legislature at Special Session D. Its appearance as an Act, its enrollment, its approval by the Governor, its placement in the 1983 Official Statutes and in the 1985 Official Statutes were likewise Brutum Fulmen.

A Bill which was never lawfully before either house of the legislature cannot become law. The omission of a constitutionally required condition precedent to introduction of a Bill in the legislature cannot be cured by including the void copy in a subsequent codification of the Official Statutes.

POINTS INVOLVED

Point I

SECTION 3(c), ARTICLE III OF THE FLORIDA CONSTITUTION SETS FORTH CONSTITUTIONALLY MANDATED CONDITIONS PRECEDENT FOR INTRODUCTION OF LEGISLATION AT A SPECIAL SESSION OF THE LEGISLATURE WHICH IF OMITTED CANNOT BE CURED.

ARGUMENT

Point I

SECTION 3(c), ARTICLE III OF THE FLORIDA CONSTITUTION SETS FORTH CONSTITUTIONALLY MANDATED CONDITIONS PRECEDENT FOR INTRODUCTION OF LEGISLATION AT A SPECIAL SESSION OF THE LEGISLATURE WHICH IF OMITTED CANNOT BE CURED.

The decision of the District Court Of Appeal declaring that the defects in introduction of HB 21-D (which it found to exist) were cured by incorporating Section 54 of Chapter 82-226 into the Official 1985 Statutes as Section 192.Ø37 was the first appearance of the point in this case. The Defendants had argued that the defects either didn't exist or were cured by the enactment of Section 11.2424, Fla.Stat. 1983.

This counsel recognizes that Chapter 82-226, ostensibly enacted as HB 21-D, encompasses many subjects. In fact, of the 81 sections of the Bill, only 5 sections (Sections 53, 54, 55, 56 & 58) related to Special Classification of fee time share condominiums for purposes of ad valorem taxation. There would no doubt be substantial concern to the interests involved with the other 76 sections if the Act is held invalid because of the defect in its enactment.

However, it is respectfully suggested that such concerns are not proper considerations for the Courts to override, or to permit the legislature to ignore, specific constitutional provisions. See City of St. Petersburg v. Briley, Wild &

Associates, Inc., 239 So.2d 817 (Fla. 1970). It is the duty of the Courts to strike down invalid legislation once its invalidity has been made to appear. In this case, the invalidity appears from the record of the legislative proceedings and has been recognized by the District Court Of Appeal.

However, the District Court Of Appeal granted a dispensation to the legislature for its violation of the constitutional provisions by holding that the inclusion of provisions of the invalid act in the adoption of the Official Statutes cured the invalidity.

It may be overly optomistic for this counsel to assert that all parties to this cause and all courts would agree that there is no language of the Florida Constitution which provides for such curative measures. Therefore, this counsel will simply say that if such language exists, this counsel has not been able to find it. It is respectfully suggested that to apply a rule for cure by judicial fiat, is to effectively diminish the vitality of the Constitution.

The language of the particular section of the Constitution is an explicit prohibition against introduction of legislation at a Special Session of the legislature, except upon certain conditions precedent. If the legislation can't be introduced, this counsel suggests that it can't be passed. If it wasn't introduced, it didn't pass. If there was no motion to introduce it passed by the required 2/3 consent of the membership of each house, it was not introduced. It (an act passed without

introduction) is a nullity - of no virtue - of no effect.

The logic of the particular constitutional prohibitions, or even the desirability of such provisions might be debated. Apparently, they were in fact debated by the Constitution Revision Committee with the ultimate decision made, not only to keep them but to strengthen the requirements. Compare the earlier constitutional provisions with the 1968 Constitution, i.e. Article IV, Section 8, Fla.Const. 1885 - Article III, Section 3(c), revised Florida Constitution 1968.

The logic of the District Court Of Appeal seems to follow the propsition that the Chapter was enacted but was voidable - not void. First they say the Chapter was saved from repeal by Chapter 83-61, Laws of Florida 1983. That Act amended Sections 11.2421 et seq. Fla.Stat. to adopt the 1983 Official Statutes. The language alluded to by the District Court Of Appeal as applicable to Chapter 82-226 is as follows, to-wit:

> "11.2424 - Laws Not Repealed - Laws enacted at the 1982 regular and special sessions and the 1983 regular session are not repealed by the adoption of and enactment of the Florida Statutes 1983 by s.11.2421, as amended."

The key words are "<u>laws enacted</u>." Chapter 82-226 was <u>not</u> enacted. Thus the operative savings statute had no application. Next the District Court Of Appeal refers to s.11.242 as some authority ostensibly vesting the joint legislative management committee with the power to carry Chapter 82-226 forward into the 1985 Official Statutes. The District Court Of Appeal viewed the violation of the prohibition against introduction to be of the

same character as the "Title and Subject" limitations, citing State ex rel Badgett v. Lee, 156 Fla. 291, 22 So.2d 804 (1945). By its express language the "cure theory" sanctioned in that case was limited to cases involving attacks on legislation because of a "defective title."

This counsel refuses to accede to the proposition that failure to meet the constitutional conditions precedent to introduction of legislation equates on any basis to introduction of legislation containing a defective title. The latter is within the power of the legislature; the former is not.

This counsel would urge this Court to carefully scrutinize in retrospect the myriad decisions of the Courts of this state involving the "title and subject" question. This counsel suggests that the continual weakening of Article III, Section 6, Fla.Const. by "Judicial Cures" has reduced the status of the Title of an act to little more than symbolic gesture.

It should be noted that the title question was timely presented to the Trial Court in this case but without avail. The inevitable "cure", even as against a timely challenge, on the title question made the point almost moot from the beginning. Certainly not a point to be relied on in view of the cases.

This counsel would urge this Court to protect and defend Article III, Section 3(c), Fla.Const. against such judicial incursions.

This counsel respectfully suggests that within the circumstances of this case, a Bill introduced other than by the

required consent of 2/3 of the membership of each house, has the same status as a Bill which contains no enacting clause. Neither can become an Act of the legislature. Neither can be nurtured into law by enrollment, filing, executive approval, or copying into a code which is then adopted.

This point is not entirely without precedent in this State.

In the case of Wood v. State, 98 Fla. 703, 124 So. 44 (1929), this Court held that the inclusion of chapter 12246 as Section 7157, Compiled Gen. Laws of Fla. 1927, "acquired no additional strength, force, or effect by having been included in the Compilation." In that case, the Journals failed to show "a second reading" or final passage taken by yeas or nays entered in the Journal.

While the Wood case obviates the holding of the Court on the point asserted in this cross appeal, this Counsel is not blinded to the proposition that distinctions, both as to legislative defect and methods of compilation, could be found.

However, the point which counsel asserts appears to be a general rule.

In Sutherland Statutory Construction, Sands 4th Edition Volume 1A, Section 28.08 (page 477) the following language appears.

> "In a case involving a defect in procedures of enactment provisions of an act which were held invalid because it was enacted by a Special Session on a subject not included in the Governor's Call were held not to have been validated by re-enactment in a Code."

In 82 C.J.S. 458, Statutes, Section 274, language of like effect appears. It is also suggested that the Constitution may vest some explicit powers to revisors, but of course, our Constitution has no such provision.

In the case of Bowen v. Missouri Pac. Ry. Co., 118 Mo. 541, 24 S.W. 436 (Mo. 1893), the Supreme Court of Missouri went behind the revised statutes and took judicial notice of the processes of enactment and re-enactments. With respect to an act passed at a special Session which was outside the call of the Governor, the Missouri Court stated:

> "The two sections of the act were simply brought forward and placed in Article 2 by the Committee on revision * * * *. That Committee had no legislative power conferred upon it, for the legislature could not, and indeed did not attempt to, delegate to it any such powers. The fact that the Committee brought the act forward and placed it in the revised statutes gave it no validity, and the two are void, just as they were when first enacted in form of law."

Other cases holding enactments void because not within the call of the Governor are:

In Sebastian Bridge Dist. v. Lynch, 138 S.W.2d 81 (Ark. 1940) (page 85) after reciting that the subject of Clerk's fee was not fairly connected to subject of Highway Indebtedness, the Arkansas Court Stated:

> "And we therefore hold that Act No. 5 was beyond the call of the Governor's

> proclamation, and is void and ineffective, for that reason."

In Smith v. Curran, 256 N.W. 453 (Mich. 1934), the Michigan Court in holding an act unconstitutional because not within the call of the Governor for the Special Session, the Court stated:

> "It is immaterial that the Governor by formal signature has approved the bill after it's enactment."

The mandate of the people by the language of the Constitution is that the legislature has no power to consider legislation at Special Sessions which is not either within the purview of the proclamation of the Governor, or introduced by the consent of 2/3 of the membership of each house.

The legislature should not be condoned in its departure from the organic law and a judicial decision which excuses the ommision on any ground would do just that.

CONCLUSION

The adoption of a statutory revision prepared by the joint committee authorized by Chapter 11, Florida Statutes, does not lend any force or effect to any law not previously "enacted" by the legislature. If a bill is not properly introduced, it is not before the legislature and all proceedings thereon are void. Regardless of the treatment it received or the dignity accorded it by either, or both houses, the officers of both houses, the Secretary of State and the Governor it does not become law.

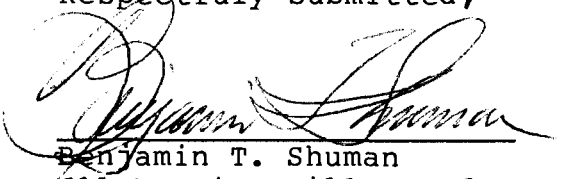
If the law is not constitutionally enacted, the constitutionality of the substance of the law need not be considered.

Chapter 82-226, Laws of Florida 1982 (Special Session D) was void ab initio and cannot be cured except by introduction in a lawful manner at some regular or Special Session of the Florida Legislature, as a Bill.

If, as urged by this brief, said Chapter 82-226 was never enacted, either at the 1982 Special Session D, or at the 1985 regular session, then the Special Classification of fee time shares and the extraordinary procedure for ad valorem taxation do not exist.

A reversal of the District Court Of Appeal on the "cure" theory would dispose of this Appeal on all issues and require the ultimate mandate to the Trial Court that the laws attacked were unconstitutional because the same were not validly enacted.

Respectfuly submitted,



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