IN THE SUPREME COURT OF THE STATE OF FLORIDA
JANUARY TERM, 1987

SHARON PAIT,

Appellant,

vs. CASE NO. 69,917

FORD MOTOR COMPANY,

Appellee.
_____/

AMICUS BRIEF

FIELD, GRANGER, SANTRY &
MITCHELL, P.A.

Jaime D. Liang
2833 Remington Green Circle
Post Office Box 14129
Tallahassee, Florida 32317
(904) 385-3800

Attorneys for Albert B. Verhine, Jr., a minor, A. Brennis Verhine, his legal guardian, and A. Brennis Verhine and Glenda L. Verhine, individually.

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A cause of action is a vested right. This Court so held in Rupp v. Bryant, 417 So.2dd 658 (Fla. 1982); State Department of Transportation v. Knowles, 402 So.2d 1155 (Fla. 1981). What means this term "vested right"? It means that there are interests conveyed to the holder of that right which are constitutionally protected. It means that once that interest is defined by the State, the State is not free to destroy the interest without adequate procedural safeguards. Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).

The judiciary, and specifically the Florida Supreme Court, is the ultimate arbitrator of the laws and the constitution of the State of Florida. In strong language this Court has held that once a cause of action accrues, the rights thereunder vest. Rupp v. Bryant, 417 So.2d at 665-666; State Department of Transportation v. Knowles, 402 So.2d at 1158. The Legislature has not been permitted, by constitutional interpretation, to retroactively divest a Florida citizen of his cause of action once it has accrued or vested. Id. In State Department of Transportation v. Knowles, the Florida Supreme Court liberally interpreted the vested or property rights protected by the Constitution:

> as a matter of principle, it is indisputable that a retroactive application of the 1980 law has taken from Knowles something of value and nothing of value has been substituted or otherwise provided. 402 So.2d at 1158. (Emphasis supplied.)

Id.

Similarly, this Court has held that Legislative action which operates to shorten a limitations period without providing the opportunity to bring suit is unconstitutional. Purk v. Federal Press Company, 387 So.2d 354 (Fla. 1980); Bauld v. J. A. Jones Construction Co., 357 So.2d 401 (Fla. 1978). See also, Durring v. Reynolds, Smith & Hills, 471 So.2d 603 (Fla. 1st DCA 1985) (declining to apply statute retroactively when statute contained no savings clause).

Petitioner's case is subject to an exception. If a decision holding a statute unconstitutional is subsequently overruled, the general rule is the statute will be held valid from the date it first became effective. However, there is a recognized exception that where a statute has received a given construction by a court of last resort, and property or contract rights have been acquired in accordance with such construction, they will not be destroyed by giving to a subsequent overruling decision a retrospective operation. Florida Forest & Park Service v. Strickland, 18 So.2d 251 (Fla. 1944); Tigertail Quarries, Inc. v. Ward, 16 So.2d 1812 (Fla. 1984). 13 Fla.Jur.2d Courts and Judges Section 159 (2nd Ed. 1979). Petitioner's case, as does movant's case, deals with vested rights and is subject to the exception to the rule.

Retrospective application of Pullum in the situation at bar does that which is forbidden to the Legislature: it deprives those whose cause of action accrued between Battilla v. Allis

Chalmers Manufacturing Co., 392 So.2d 874 (Fla. 1980) (the decision which held Florida Statutes Section 95.031 unconsitutional) and Pullum (the decision in which reversed the holding of unconstitutionality) of a vested cause of action. A vested right is entitled to constitutional protections. Deprivation of protected or vested rights without due process is unconstitutional. It matters not which arm of the government destroys the constitutional right. The right is destroyed.

The Federal Courts have struggled with the difficult question before this Court. The correct answer was reached by United States District Judge Maurice M. Paul in George v. Firestone Tire & Rubber Co., Case No. GCA-85-0117. (Order denying summary judgment entered June 13, 1986.) In that decision Judge Paul found:

> Plaintiff has indeed acquired a property right which would be destroyed by retrospective operation of Pullum. During the dormancy of the statute of repose, between Battilla and Pullum, Plaintiff's cause of action accrued. An accrued cause of action must be carefully distinguished from the sort of generalized right to sue possessed by one has not yet been injured . . . . .

Order at page 7. Appendix A. The Order written by Judge Paul has been endorsed by Senior Judge for the United States District Court for the Northern District of Florida, Winston E. Arnow, in Cox v. Farrel-Birmingham Co., Case No. PCA-86-4064 (Order denying summary judgment entered September 16, 1986):

> A cause of action is a species of property protected by the Fourteenth Amendment's due process clause. Logan v. Zimmerman Brush,

> 455 U.S. 422, 428 (1981). Under case law the retroactivity of Pullum could not eliminate that cause of action.
>
> This conclusion follows the reasoning of Judge Maurice Paul in George v. Firestone Fire & Rubber Co., Case No. GCA-85-0117-MMP (June 13, 1983) in the Northern District of Florida.
>
> In several other cases, including cases by the undersigned, as well as by Chief Judge Stafford of the Northern District of Florida, Judge Paul's reasoning has not been applied. The undersigned concludes that Judge Paul's reasoning is correct and that this Court and other Courts, in not applying his reasoning, were in error.

Order September 16, 1986, page 2-3. (Emphasis supplied.)

Appendix B.

Clearly both this Court and the United States Supreme Court have declared that a vested cause of action is a species of property entitled to protection under the constitutions of the United States and the State of Florida. Having recognized the rights vested in those such as the petitioner, this Court should clarify the constitutional protections attendant such rights by declaring the holding of Pullum v. Cincinnati, Inc. prospective only.

FIELD, GRANGER, SANTRY & MITCHELL, P.A.

Jaime D. Klang

John S. Derr
2833 Remington Green Circle
Post Office Box 14129
Tallahassee, Florida 32317

(904) 385-3800

Attorneys for Verhines

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to James Curtis, Blecke, Biscayne Bldg., S-705, 19 W. Flagler St., Miami, FL 33130; Susan S. Lerner, Biscayne Bldg., S-705, 19 W. Flagler St., Miami, FL 33130; Ronald E. Cabaniss, P. O. Box 1873, Orlando, FL 32802; and Sharon Lee Stedman, P. O. Box 1873, Orlando, FL 32802, on April 6, 1987.

Attorney