IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO: 70,394

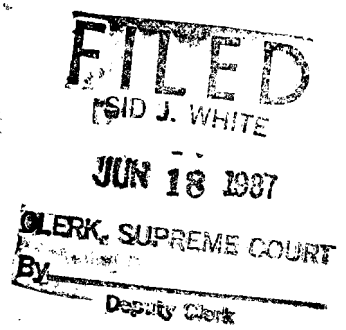
WILLIAM F. SCOTT,

Petitioner/Plaintiff,

vs.

OTIS ELEVATOR COMPANY,

Respondent/Defendant.
_____/




RESPONDENT'S ANSWER BRIEF TO
AMICUS CURIAE BRIEF

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## CITATIONS OF AUTHORITY

## RESPONSE TO SUMMARY OF ARGUMENT

The Academy of Florida Trial Lawyers states that the prevailing law in all states that have considered the issue is that an action for wrongful discharge is an intentional tort. That is not true as a number of states have refused to adopt a tort theory to allow recovery for wrongful discharge. 12 ALR 4th 544 §15(b).

The Academy next argues that BROWARD BUILDERS EXCHANGE, INC. v. GOEHRING, 231 So.2d 513 (Fla. 1970) is not controlling since the decision was rendered prior to the legislature's enactment of §440.205. That fact is irrelevant. In GOEHRING this Court held that all wage claims, however accruing, brought by an employee against an employer would be controlled by the predecessor to Fla. Stat. §95.11(4)(c). The legislature's enactment of §440.205 did nothing more than give an employee another method of bringing a suit for wages and/or damages against his employer, and therefore under GOEHRING the two year statute of limitations would be applicable.

The Academy argues that GOEHRING is inapplicable because it concerned a written employment contract whereas here Scott was an employee at will. The Fourth District Court of Appeal had held in GOEHRING that the statute of limitations for contracts was applicable since a written contract was involved. This Court disagreed and reversed the Fourth District's holding finding that in every employment context there is a contract, written or implied, and that the statute of limitations for recovery of wages would be applicable for both. The language in GOEHRING

makes it clear that this Court did not feel that there was any distinction between a lawsuit brought by an employee against his employer when it was based upon a written contract, and when it was not.

## ARGUMENT

### POINT I

A CAUSE OF ACTION UNDER FLA. STAT. 440.205 FOR WRONGFUL DISCHARGE IS SUBJECT TO THE TWO YEAR STATUTE OF LIMITATIONS.

The Academy first argues that this Court held in SMITH v. PIEZO TECHNOLOGY AND PROFESSIONAL ADMINISTRATORS, 427 So.2 182 (Fla. 1983) that §440.205 created a statutory cause of action for wrongful discharge. Irrespective of that fact, Otis has argued extensively in the brief filed in opposition to Scott's brief that the statute of limitations for a wage claim is applicable. Otis relies upon the argument set forth in that brief.

The Academy next argues that Scott's Complaint sought not only past and future wages but damages for loss of morale, self esteem, humiliation and loss of reputation and that those are traditional tort damages. But §440.205 allows for recovery of not only wages but also "damages". And in GOEHRING this Court held that the statute of limitations for the recovery of wages was applicable where an employee sued an employer for wages, regardless of the type cause of action pursued. Likewise in MCGHEE v. OGBORN, 707 F.2d 1312 (Fla. 11th Cir. 1983) the court held that the spirit of the Florida law appeared to be that employee/employer cases were governed by the two year statute of

limitations. The court said that this was true "no matter how an employment termination suit is characterized" and "no matter the theory or legal basis for the cause of action".

The Academy incorrectly argues that if the Fourth District's decision is allowed to stand, any claim which includes as damages past or future wages will be subject to a two year statute of limitations, including personal injury, products liability and medical malpractice claims. This is not true since the GOEHRING decision clearly limited its holding to suits brought by an employee against his employer for wages.

Finally, the Academy argues that Scott has no direct entitlement to lost past or future wages but rather his cause of action is based upon his entitlement to worker's compensation benefits. Otis does not understand this argument. As stated in LAKE v. MARTIN MARIETTA CORP., 538 F.Supp. 725 (M.D. Fla. 1982) where a plaintiff's claim can reasonably be characterized as an action to remedy the affects of past wage losses and to prevent future wage losses resulting from termination of the employee's employment with his employer, it follows that the appropriate Florida statute of limitations is a two year statute of limitation provided in §95.411(4)(c).

The balance of the Academy's argument on this point is that the Academy urges this Court to judicially hold that a cause of action for wrongful discharge is a tort and therefore Scott's claim is subject to a four year statute of limitations under Florida law. The Academy's request is a very broad request asking for the adoption of a tort remedy in all cases where an

employee sues an employer for wrongful discharge, regardless of the reason, and regardless of whether the discharge contravenes public policy. Otis' response is that set forth in HARTLEY v. OCEAN REEF CLUB, INC., 476 So.2d 1327 (Fla. 3d DCA 1985). In that case the plaintiff was an at-will employee who sued his employer for wrongful discharge because he alleged he was discharged solely because he refused to participate in his employer's criminal activity. The trial court dismissed the employee's complaint for failure to state a cause of action. The Third District Court affirmed holding that the established rule in Florida is that when the term of employment is discretionary or indefinite, either party can terminate the employment at any time for any reason or no reason without assuming any liability. The court reviewed the out of state cases which had created an exception to that rule by creating a tort for a retaliatory discharge.

The Third District correctly stated that the Florida courts had consistently and expressly refused to adopt this new tort theory. The Third District held that the creation of a cause of action for a retaliatory firing of an at-will employee would abrogate the inherent right of contract between an employer and employee. It would also overrule outstanding Florida law and create uncertainty in present employer-employee relationships as to the rights of the parties involved. This the court held, would be contrary to one of the basic functions of the law which is "to foster certainty of business relationships". The Third District felt that a significant change in the law such as the

creation of a tort cause of action for a retaliatory or wrongful discharge in this State was best left to the legislature citing HINRICHS v. TRANQUILAIRE HOSPITAL, 352 So.2d 1130 (Ala. 1977); MARTIN v. PLATT, 386 N.E.2d 1026 (Ind.App. 1979); MURPHY v. AMERICAN HOME PRODUCTS CORP., 58 N.Y.2d 293, 461, N.Y.Supp.2d 232, 448 N.E. 2d 86 (1983). The court approved the following observations or comments of the New York High Court in MURPHY:

> Those jurisdictions that have modified the traditional at-will rule appear to have been motivated by conclusions that the freedom of contract underpinnings of the rule have become outdated, that individual employees in the modern work force do not have the bargaining power to negotiate security for the jobs on which they have grown to rely, and that the rule yields harsh results for those employees who do not enjoy the benefits of express contractual limitations on the power of dismissal. Whether these conclusions are supportable or whether for other compelling reasons employers should, as a matter of policy, be held liable to at-will employees discharged in circumstances for which no liability has existed at common law, are issues better left to resolution at the hands of the Legislature. In addition to the fundamental question whether such liability should be recognized in [this state], of no less practical importance is the definition of its configuration if it is to be recognized.
>
> Both of these aspects of the issue, involving perception and declaration of relevant public policy (the underlying determinative consideration with respect to tort liability in general...) are best and more appropriately explored and resolved by the legislative branch of our government. The Legislature has infinitely greater resources and procedural means to discern the public will, to examine the variety of pertinent considerations, to elicit the views of the various segments of the community that would be directly affected and in any event critically interest, and to investigate and anticipate the impact of imposition of such

> liability. Standards should doubtless be established applicable to the multifarious types of employment and the various circumstances of discharge. If the rule of nonliability for termination of at-will employment is to be tempered, it should be accomplished through a principled statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants.
>
> Additionally, if the rights and obligations under a relationship forged, perhaps some time ago, between employer and employee in reliance on existing legal principles are to be significantly altered, a fitting accommodation of the competing interests to be affected may well dictate that any change should be given prospective effect only, or at least so the Legislature might conclude. [citations omitted]
>
> 448 N.E.2d at 89-90.
>
> For the reasons stated, we hold that a common law cause of action for retaliatory or wrongful discharge does not exist in Florida. See SMITH, 427 So.2d at 184; SEGAL, 364 So.2d at 90; DE MARCO, 360 So.2d at 136 aff'd, 384 So.2d 1253. Aggrieved at-will employees must await legislative action before bringing such suits before the courts. (emphasis added).

## CONCLUSION

The Fourth District's decision should be affirmed. Alternatively, judgment should still be entered in Otis' favor based upon Points IV - VIII, supra.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true copy of the foregoing was furnished by mail this 15th day of JUNE, 1987, to: EARLE LEE BUTLER, ESQ., 1995 E. Oakland Park Boulevard, Suite 100, Ft. Lauderdale, FL 33306; CATHY JACKSON BURRIS, ESQ., P. O. Box 030067, Ft. Lauderdale, FL 33303; EDWARD J. DEMPSEY, United Technologies Corp., United Technologies Building, Hartford, CT 06101.

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PSTUV6/SCOTT AMICUS BRIEF
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