OA 6-21-88

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, by and through GERALD LEWIS as Comptroller and Head of the Department of Banking and Finance, Petitioner, v. BYRON D. BEELER, BEELER DEVELOPMENT COMPANY, PARKVIEW NURSING HOME, INC. and INVESTORS MORTGAGE AND LOAN COMPANY, Respondents.	Case No. 71,516 FIRST DISTRICT COURT OF APPEAL NO. 87-389

DISCRETIONARY REVIEW OF DECISION OF
THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

RESPONDENTS' ANSWER BRIEF

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STATEMENT OF THE CASE

Petitioner filed a supposedly Verified Complaint against Respondents and others not parties to this appeal in the Circuit Court of Okaloosa County, on February 4, 1987 (A.-6), requesting a temporary and permanent injunction, appointment of a receiver, impoundment of Respondents' assets, property and businesses, appointment of a receiver, and an order of restitution (A.-6, p. 29-33). During discovery conducted later in the case, both of Petitioner's officials who signed "verifications" of the Complaint (Larry Padgett and Ben H. Pridgeon, Jr.) could not recall whether the notary public administered an oath to either of them prior to signing (A.-10,11). The complaint alleged, inter alia, that Respondents were acting as unregistered securities dealers engaging in the offer and sale of unregistered securities by means of misrepresentations and fraudulent schemes relating to mortgage transactions, in violation of §494 and §517, Fla. Stat. (1985) (A.-6,§10 et seq.). The complaint alleged that irreparable injury would likely result if Respondents were given notice of Petitioner's application (A.-6,§49).

The trial court apparently considered Petitioner's Complaint and accompanying affidavits, even though the allegations relating to notice clearly fell short of established standards and most of the attached exhibits were not legally admissible evidence. The trial judge nevertheless entered a temporary injunction without notice on February 5, 1987, along with an order

impounding all of Respondents' assets, property and businesses and appointing a receiver (A.-8). The order also enjoined any Florida bank or depository from allowing any disbursement, withdrawal or transfer of any funds of any of the Respondents, pending further order of Court (A.-8,§6).

Respondent, Beeler, filed a Motion to Dissolve Temporary Injunction on March 26, 1987 (A.-2) and an Amended Motion to Dissolve Temporary Injunction on April 27, 1987 (A.-3). The corporate Respondents also filed a Motion to Dissolve Temporary Injunction (A.A.-5) along with a formal application for hearing on April 24, 1988 (A.-4). The trial judge refused to hear Respondent, Beeler's, amended motion or the corporate Respondents' motion before May 12, 1987, long after the 5 day hearing requirement of Fla. R. Civ. P. 1.610(d). The trial court denied both motions (A.-1) and pursuant to Fla. R. App. P. 9.130(a)(3)(B), all Respondents took an emergency interlocutory appeal to the First District Court of Appeal.

The First District ruled that the trial court should have granted the motions to dissolve because Petitioner failed to state facts showing how and why the giving of notice would accelerate or precipitate the alleged injury, or that the time required to give notice of a hearing would actually permit the threatened injury to occur. It also ruled that Petitioner failed to satisfy Fla. R. Civ. P. 1.610(a)(1)(B) in that Petitioner's attorney failed to certify what efforts were made to give Respondents notice.

It is from this ruling that Petitioner has requested the discretionary jurisdiction of this Court, which was granted on March 22, 1988.

STATEMENT OF THE FACTS

The Respondents have challenged solely the lack of notice and an opportunity to be heard not given them in the trial court. Respondents have in their Answer to the Complaint denied all of the allegations brought by Petitioner and have asserted affirmative defenses to the Complaint.

Respondent, Beeler, was at the time of Petitioner's application for injunction, a licensed mortgage broker, real estate broker and associated securities person, having been engaged in various businesses in the same location at 423 Racetrack Road, N.E. in Ft. Walton Beach, Florida, for over 20 years. In various corporate capacities, Respondent, Beeler, had been involved in the sale of fractionalized interests in mortgages for over five years. He had been annually audited by Petitioner without objection to alleged illegality of selling unregistered securities. He enjoyed a fine reputation and had a considerable number of quite satisfied investors.

On February 5, 1987, the trial court issued the Temporary Injunction and Order Appointing Receiver (A.-8). The receiver took possession of Beeler's business offices and impounded its entire contents. Property of employees was also seized and held during the entire term of the receivership. All of Respondents' bank accounts were impounded or frozen. In addition, all other bank accounts on which Respondent, Beeler, was a signer were impounded or frozen including: Augustus Investment, Inc., Cendeco, Inc., Christian Financial Services,

Inc., Coralville Development Co., and Mini Farms of Florida, Incorporated. All bank accounts belonging to Respondent, Beeler's wife, Marjorie W. Beeler, were impounded. During the term of the receivership, Beeler's personal and business mail sent to his office was opened and held by the receiver, as was mail sent to his wife at the office address, including mail containing checks payable to her.

The receiver acted under strict instructions from the trial court and operated primarily as a "caretaker" receiver. Even though sizeable receipts were paid into the receivership, few mortgage payments on existing corporate obligations were made. As a result, mortgages on which Respondents were liable went into default. When the injunction was dissolved by the appellate court, so many of Respondents' obligations were in default that they were forced to seek protection from their creditors by filing for relief in bankruptcy court.

SUMMARY OF ARGUMENT

Respondents proceeded according to law in moving to dissolve the injunction granted by the lower court based on lack of notice. Fla. R. Civ. P. 1.610(d) provides that a party against whom a temporary injunction has been granted may move to dissolve it at any time. Grounds for dissolution can be that the movant failed to allege specific facts by affidavit or verified pleading that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition, pursuant to Fla. R. Civ. P. 1.610(a)(1))(A). In addition, Petitioner's failure to file the attorney's certificate required by Fla. R. Civ. P. 1.610(a)(1)(B) was an additional ground for dissolving the injunction. The trial judge erred in failing to hear Respondents' motions to dissolve within 5 days of application for a hearing on the motions, contrary to Fla. R. Civ. P. 1.610(d).

§517.191(2), Fla. Stat. (1985) cannot possibly be constitutional either under the federal constitution or the Florida Constitution because it violates fundamental due process. In addition, said statute violates Art. I, §2, Fla. Const. (interference with the right of all natural persons to acquire, possess and protect property), Art. I, §12, Fla. Const. (interception of all of Respondents' mail during the term of the receivership, including the mail of Respondent, Beeler's, wife, Marjorie, constitutes the unreasonable interception of private communications by any means) and Art. I, §17, Fla. Const.

(loss of all of Respondents' assets, property and businesses constitutes forfeiture of estate). Respondents urge this Court to consider the unconstitutionality of this statute as fundamental error and to find it to be unconstitutional by its terms as well as by its operation.

ARGUMENT

I. THE DENIAL OF RESPONDENTS' MOTIONS TO DISSOLVE FILED UNDER FLA. R. CIV. P. 1.610 ATTACKING NOTICE ALONE WERE ABSOLUTELY REVIEWABLE BY THE DISTRICT COURT UNDER APPLICABLE APPELLATE RULES.

Petitioner is in error when it advances the proposition that Respondents cannot appeal the order denying their motions to dissolve (A.-1) when based solely upon lack of notice to them of Petitioner's application for injunction. The leading case of Belk's Department Store, Miami, Inc. v. Scherman, 117 So. 2d 845 (Fla. 3d DCA 1960), wherein the Court obviously considered the sufficiency of the sworn facts in the complaint and affidavits to support the entry of an injunction, precludes appellate review of an order denying a motion to dissolve based on lack of notice only when additional matters are also raised at the same time. In addition, at the time of Belk's, §64, Fla. Stat. (1959) was the prevailing law and Fla. R. Civ. P. 3.19 was the applicable rule, under which there was a guaranteed right to present evidence at a hearing on a motion to dissolve, unlike present Fla. R. Civ. P. 1.610. Indeed, in the short amount of time set aside by the trial court for consideration of Respondents' motions (A.A.-4 and A.-9), there was barely sufficient time allotted to present legal arguments going to the notice issue, much less refute the allegations of a quite lengthy complaint with live testimony.

Petitioner argues that the delay in Respondents' filing

their motions to dissolve somehow made them defective. However, Fla. R. Civ. P. 1.610(d) authorizes the filing of a motion to dissolve a temporary injunction at any time. Handcuffed by Petitioner's taking of Respondents' assets and bank accounts, Respondents were financially unable to retain counsel until well past the time for appealing the injunctive order itself.

The fact that the hearing on Respondents' motions did not take place until nearly 3 months following the issuance of the injunction was the result of the trial court's failure to schedule Respondents' motions to dissolve before May 12, 1988. Certainly, appearing and attempting to protect Respondents' property rights at receivership hearings held by the trial judge during the interim could not have constituted a waiver of any right they had to move to dissolve the injunction.

In point of fact, because of the changes in law since Belk's and other cases decided in reliance on it, there can be no doubt that a party against whom a temporary injunction has been granted may move to dissolve or modify it at any time pursuant to Fla. R. Civ. P. 1.610(d), which, when read together with Fla. R. Civ. P. 1.610(a)(1)(A)(B)(C) surely enables such party to attack absence of notice on a motion to dissolve. If denied, Fla. R. App. P. 9.130(a)(3)(B) expressly permits the appeal of orders refusing to dissolve injunctions. Respondents would urge this Court to rule that because of the changes in law between the

time of Belk's and other cases decided in reliance on it that Respondents were perfectly within their rights to proceed as they did, both before the trial court and the district court. In addition, manifest due process considerations certainly dictate that these Respondents should have some means of challenging the actions of the trial court for it is not in the least inconceivable that it would take them longer than 30 days following the issuance of the injunction and order of impoundment to retain counsel to defend them against such a multitude of allegations, having been deprived of all of their financial resources whether or not related to the allegations of the complaint (and without any notice or a hearing of any kind).

II. RESPONDENTS CLEARLY DEMONSTRATED TO THE TRIAL COURT THAT IN PETITIONER'S COMPLAINT AND ACCOMPANYING AFFIDAVITS IT DID NOT APPEAR FROM THE SPECIFIC FACTS SHOWN THAT IMMEDIATE AND IRREPARABLE INJURY, LOSS OR DAMAGE WOULD RESULT TO PETITIONER BEFORE RESPONDENTS COULD BE HEARD IN OPPOSITION.

Petitioner makes numerous equity arguments that purport to remedy its clear and fatal defect of failing to comply with Fla. R. Civ. P. 1.610(a)(1)(A). However, in the absence of compliance with the rule, the trial court should not have entered the injunction.

The specific facts presented by Petitioner in its Complaint in paragraphs 49, 50, 51 and 52 (A.-6, p. 28-29) fail to satisfy the rule and the legal considerations announced in established case law. The language of paragraph 49 of the complaint, which alleges only that notice "would likely result" in acceleration of unlawful, fraudulent acts falls short of the rule standard requiring a showing that irreparable injury will result. Similarly, the allegations in paragraphs 50-52 are not direct and positive and fail to satisfy the rule.

In Godwin v. Phifer, 51 Fla. 441, 41 So. 597 (Fla. 1906), it was held that "...not only must the allegations in the bill for an injunction be clear, direct and positive, but that they must be verified by an affidavit, which also must be direct and positive; and, where any of the material allegations in the bill are stated upon information, there should be annexed to the bill the additional affidavit of the person from whom

the information is derived, verifying the truth of the information given." 41 So. at 601. This holding coupled with the Florida Evidence Code would eliminate from judicial consideration most of the exhibits attached to Petitioner's Complaint, including the following:

1. Unauthenticated newspaper articles (A.-7, #1);

2. Unverified attachments to investor affidavits (A.-7, #2);

3. Unverified letter from Respondent, Beeler (A.-7, #3);

4. Unverified references to checks drawn on Parkview Nursing Home account in affidavit of Ben H. Pridgeon, Jr. (A.-7, #6);

5. Unsworn statement of Respondent, Beeler (A.-7, #6);

6. Unverified bank record summaries in Pridgeon "verification" (A.-7, #7) and in Poff affidavit (A.-7, #10); and

7. Unverified sewer plant appraisal (A.-7, #8).

In point of fact, little if any of Petitioner's exhibits are legally admissible evidence and should not have been considered by the trial court. Of course, Respondents had no opportunity to object and were not given any opportunity to participate in the trial court's deliberations. Ironically, all of the investor affidavits attached as exhibits (A.-7, #2) indicate that Respondents had not failed to repay <u>any</u> of the principal of their investments when due. If indeed Respondents <u>had</u> violated §494 and 517, Fla. Stat. by selling fractionalized

interests in mortgages, the fact that they had been successfully doing so for over five years under Petitioner's supervision (A.-6, ¶10) (and with the apparent satisfaction of numerous investors) certainly would have availed them of the defenses of laches and estoppel, which they were unable to assert without fair notice and a reasonable opportunity to be heard.

After removing the Godwin and other evidentiary objections from Petitioner's proof, there is little evidence to suggest that giving Respondents notice of the application for injunction would have led to the injuries imagined by Petitioner. In fact, it is sheer speculation by Petitioner that notice would have precipitated or accelerated violations of Florida law, the destruction and concealment of records, and the dissipation and concealment of assets. Respondents had given no indication that they would do any of the things suspected by Petitioner if notice were given. Indeed, Respondent, Beeler, having been engaged in business in Ft. Walton Beach, Florida, in the very same location for over 20 years before the filing of Petitioner's Complaint, would have vigorously defended against Petitioner's allegations and would have explained his conduct in court, had he been given the chance. Perhaps Petitioner did not want to risk being unable to prove its entitlement to an injunction by giving Respondents any opportunity to be heard.

There are numerous allegations of wrongdoing or violation of law argued in Petitioner's brief; in many instances, there are no references to "proof" of same or reference to statutes

presumably violated. For instance, where is it shown that the inability to repay investors 100¢ on the dollar from existing financial resources, upon demand, violates Florida law? Is the apparency of previous misappropriation of funds sufficient to lead to the conclusion that giving notice of Petitioner's application would lead to actual misappropriation? Where has Petitioner proven that Respondents have made unauthorized "roll overs" to defer the return of investment principal? Does Respondent Beeler's alleged statement to investor Kammerer (A.-7, #2, Affidavit 4) that he needed to acquire a new investor in order to replace the principal provided by her investment automatically result in the presumption of the existence of a "Ponzi" scheme, or does it merely reflect the contemporary realities of investment financing where funds are committed when invested based upon the expectation of profit derived from the investment project?

Perhaps the most critical disparity in reasoning between the parties to this appeal is the sufficiency of the allegations relating to the necessity of proceeding without notice. Petitioner has cited Dixie Music Co. vs. Pike, 185 So. 441 (Fla. 1938) for the premise that the failure to use words of certainty (such as "the injury will be committed") will not be fatal to an application for injunction without notice so long as all of the allegations relating to the necessity of proceeding without notice, when taken together, manifestly make it appear that the apprehended acts will be committed. The Court in Dixie

held that the use of the conditional future ("would commit") and the infinitive of the verbs employed did not satisfy the rule of certainty, but would suffice when all notice allegations were construed together. In the case at bar, Petitioner's language in paragraph 49 of the complaint alleging that notice "would likely result" in injury is not positive, even when construed with other allegations. In short, there is a sizeable difference in meaning between "would commit" and "would likely commit."

Allegations of fraud, even when properly sworn to and when sufficient to state a cause of action, do not exempt Petitioner from compliance with Fla. R. Civ. P. 1.610(a)(1)(A) as it suggests in its brief. Petitioner mistakes the holdings in the cases which have ruled that irreparable harm is presumed upon a mere showing of a statutory violation. Rich v. Ryals, 212 So. 2d 641 (Fla. 1968); Harvey v. Wittenberg, 384 So. 2d 940 (Fla. 2d DCA 1980); Times Publishing Company v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969). These cases did not involve an application for a temporary injunction to be entered without notice. Nothing in any of them holds that proof of irreparable harm during the notice period is presumed upon a mere showing of a statutory violation.

Petitioner complains of being held to a higher, unreasonable standard of proof and asks this Court to hold that an exception should be made for Petitioner in seeking injunctions without notice. However, it has long been the law that notice should

always be required to be given when an injunction is being applied for, unless the provisions therein for dispensing with notice have been strictly followed. Godwin, supra, 41 So. at 602 (emphasis added). The standard for Petitioner should, if anything, be exceedingly strict because in addition to applying for an injunction without notice, Petitioner also applied for and had granted an order of impoundment and appointment of a receiver for all of the property, assets, and business of the Respondents pursuant to §517.191, Fla. Stat. (1985). If sheer speculation of irreparable injury during the notice period is sufficient to cause a person to lose possession of all of his property and assets, certainly overriding due process considerations are not even remotely satisfied.

III. PETITIONER FAILED TO SATISFY THE PROVISIONS OF FLA. R. CIV. P. 1.610(a)(1)(B)&(C) AND THE ORDER GRANTING THE TEMPORARY INJUNCTION WAS ACCORDINGLY DEFICIENT.

Fla. R. Civ. P. 1.610(a)(1)(B)&(C) requires the attorney for a party moving for a temporary injunction without notice to certify in writing any efforts that have been made to give notice. In the case sub judice, Petitioner's attorney failed to include such a certification at the time of filing of the Complaint. The rule is obviously enacted to require an officer of the court to certify to the trial judge considering such a motion for extraordinary relief what efforts, if any, were made to give notice to the adverse parties. Conversely, common sense dictates that when notice is intentionally and purposefully not given, counsel is also required to certify that no efforts were made to give notice. Explanation in the body of the complaint as to reasons why notice should not be not given does not satisfy the rule requiring an attorney's certification.

Petitioner's counsel apparently recognized the omission of the certificate after Respondents filed their motions to dissolve and attempted to cure the omission by filing a certificate as contemplated under the rule just before the trial court's hearing on Respondents' motions (A.A.-7), though no copy of it was served upon opposing counsel. Such a last gasp effort is just not what the rulemakers had in mind in providing for certain integrities to be present before the trial court in determining whether to grant a temporary injunction without

notice.

Petitioner argues that requiring an attorney's certificate in cases where, in its opinion, notice is not required, is mere surplusage; yet, it filed such a certificate in the trial court, albeit late. It argues in its brief that "there was no real failure to comply with any of the requirements of the rule (p. 35)." How would the trial judge be able to know, notwithstanding allegations in the complaint that notice should not be required, whether any attempt was indeed made to give notice unless the movant's attorney certifies as to what efforts, if any, were made to give notice. Even though a movant alleges that notice should not be required, the trial court should have the benefit of the attorney's certificate to know whether notice has nevertheless been given to the adverse parties; such information could assist the judge in determining how quickly he must rule on such an application.

Petitioner mistakes the holding in Torok v. Blue Skies Mobile Home Owners Association, Inc., 467 So. 2d 474 (Fla. 5th DCA 1985). In Torok, the Court held that because of substantial failures of the party moving for a temporary injunction without notice to satisfy the requirements of Fla. R. Civ. P. 1.610 that the injunction should be quashed. It did not hold that "it's alright to skip one or two of them, just don't omit all of the requirements of the rule." Rule 1.610 clearly states that a temporary injunction may be granted without notice only if, among other requirements, movant's attorney certifies in

writing any efforts that have been made to give notice. This certification is neccessary to be filed before the trial court can even consider an application for temporary injunction without notice. In addition, as already cited, established case law requires that notice should always be given when an injunction is being applied for, unless the provisions therein for dispensing with notice have been strictly followed. Godwin, supra, 41 So. at 602 (emphasis added). Because in the case at bar the injunction is coupled with an order of impoundment and appointment of receiver over all of Respondents' assets, property, and business, this Court should require Petitioner to rigorously adhere to court rules.

IV. THE TRIAL COURT ERRED IN FAILING TO HEAR RESPONDENTS' MOTIONS TO DISSOLVE WITHIN FIVE DAYS OF APPLICATION FOR A HEARING ON THE MOTION, ACCORDING TO FLA. R. CIV. P. 1.610(d).

Respondents below filed a Motion to Dissolve on March 26, 1987 (A.-2), in open court prior to the trial judge's consideration of Petitioner's Motion for Default against all Respondents. The judge entered a default only against all corporate Respondents. Following the hearing, counsel for Petitioner and Respondents met informally in the judge's chambers and discussed the five day hearing requirement under Fla. R. Civ. P. 1.610(d). At that time the Court announced that it did not have any available hearing time during the following five days and asked if counsel would be agreeable to having the motion heard on April 2, 1987, seven days after the motion was filed. To accomodate the trial judge's calendar, Respondent, Beeler, through counsel, conditionally waived his right to a hearing within five days, understanding that the Court would hear the matter in seven days. Because defaults had been entered against all three corporate Respondents at the hearing immediately preceding the conference of counsel, their interests were not considered at such conference.

Thereafter, Respondent, Beeler, filed an Amended Motion to Dissolve Temporary Injunction on April 27, 1987 (A.-3), and the three corporate Respondents filed a Motion to Dissolve Temporary Injunction on April 24, 1987 (A.A.-5) along with a formal Application for Hearing on the same date (A.-4), after

the defaults against them had been set aside.

No hearing was held on April 2, 1987, and the trial judge refused to hear Respondent, Beeler's, motion at subsequent hearings held on April 1, 1987, and April 21, 1987, and would not hear either Beeler's amended motion or the corporations' motion before May 12, 1987. Clearly, the three corporate Respondents were entitled to have their motion heard within 5 days from the filing of their motion and application for hearing on April 24, 1987. While Respondent Beeler may have informally and conditionally waived his right to a hearing within five days on his initial motion, he waived nothing with regard to his amended motion, on which he was entitled to be heard within 5 days of April 27, 1987. The trial judge's failure to timely hear Respondents motions blatantly violated Fla. R. Civ. P. 1.610(d) and the obvious purposes of the requirement of having motions to dissolve heard within 5 days especially when, as in the case below, a man's entire estate, livelihood and reputation were at stake.

V. §517.191(2), FLA. STAT. (1985) IS UNCONSTITUTIONAL BOTH BY ITS TERMS AS WELL AS BY ITS OPERATION. IT WAS FUNDAMENTAL ERROR FOR THE LOWER COURT TO NOT SO HOLD.

Respondents raised the constitutionality of §517.191, Fla. Stat. (1985) in their reply brief in the lower court, citing Davis v. City of South Bay, 433 So. 2d 1364 (4th DCA 1983). Respondents argued that none of the allegations of Petitioner's Complaint constituted a public emergency within the meaning of that decision and others cited therein. Respondents urge this Court to declare said statute unconstitutional in that it deprived Respondents of property without due process of law. Respondents urge that it is fundamental error to not so hold.

Even if somehow the statute could represent a proper delegation of police power to Petitioner, not requiring notice and hearing in the proper exercise of it, because a method of review is not provided by the rules of practice and procedure in the courts of Florida, it is also unconstitutional. While the injunction itself is subject to a motion to dissolve pursuant to Fla. R. Civ. P. 1.610, the order of impoundment has no recognized means of review. Larson v. Warren, 132 So. 2d 177 (Fla. 1961) and cases cited therein.

The statute is also unconstitutional because it resulted in the receiver's retention of Respondents' (and others) mail, in violation of Art. 1, §12, Fla. Const., forbidding the unreasonable interception of private communications by any means.

Because the statute provides for the taking of all assets,

property and business of an offending party, it constitutes a forfeiture of estate contrary to Art. 1, §17, Fla. Const.

Clearly, Petitioner's seizure of other corporate bank accounts on which Respondent, Beeler, was a signer, violated due process. To take the money of five different Florida corporations and abrogate their contract rights in a suit in which the corporations had not been joined, served and given an opportunity to be heard, amounts to a taking without due process of law in violation of constitutional guarantees. St. Anne Airways, Inc. v. Webb, 142 So. 2d 142, 143, 144 (Fla. 3d DCA 1962). Apparently, Petitioner wanted Respondent, Beeler, to have no access to any of his other business resources to aid in his defense. Seizure of these other corporate bank accounts clearly violated due process.

"In the exercise of the police power, property and individual rights may be interfered with or injured or impaired only in the manner and to the extent that is reasonably necessary to conserve the public good. An unreasonable or unnecessary exertion of ... the police power in the manner or extent in which personal or property rights are curtailed or impaired, violates organic law in that it deprives persons of liberty and property without authority or due process." Maxwell v. City of Miami, 100 So. 147 at 149 (Fla. 1924). A statute that provides for the taking of all of Respondents' assets, property and businesses, whether or not related to the alleged violations of law, represents an unreasonable and unnecessary delegation

of police power.

In addition, in the case sub judice, Petitioner's conduct in the trial court proceedings amounted to a substantial and arbitrary invasion of private rights by illegal or palpably unjust means, which included the taking of Respondents' mail, the mail of Respondent, Beeler's wife, Marjorie, the bank accounts of five different duly chartered Florida corporations on which Respondent, Beeler, was a signer, the taking of personal property belonging to employees of Respondents found in the Respondents' business offices, and the allowance of numerous mortgage obligations of Respondents to go into default by the Receiver when funds existed to pay some or all of them.

Petitioner's seizure of all property located within Respondents' offices, including employees' property, and its retention during the term of the receivership violated Art. I, §2, Fla. Const. in that the seizure seriously interfered with the right of natural persons to acquire, possess and protect property.

CONCLUSION

Petitioner blatantly violated rules of evidence, court rules and established case decisions in proceeding against Respondents in the Okaloosa County Circuit Court. Not only could the affiants to Petitioner's Complaint not recall being administered an oath, but also the allegations pertaining to why notice should be dispensed with fell critically short of rule requirements and case law. Failure of Petitioner's attorney to certify what efforts were made to give notice to Respondents is an additional, and entirely separate, reason for dissolving the injunction and sustaining the district court. The trial judge's inaction on Respondents' motions after application for hearing is both obvious and deplorable.

A statute that, if violated, results in the seizure of all of a natural person's property, assets, and business, without a hearing, cannot be constitutional, either under the United States Constitution or the Florida Constitution because it clearly violates due process of law. In addition, Petitioner's conduct in the trial court proceedings regarding the property and mail of Respondents and others, as well as the impoundment of corporate bank accounts when the corporations were not joined in the suit, openly and oppressively violated due process.

The decision of the district court should be affirmed and §517.191(2), Fla. Stat. (1985) should be ruled unconstitutional and void, as dangerously hostile to liberty and property in Florida.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of Respondent's Answer Brief was furnished by U.S. Mail to CHARLES L STUTTS, ESQ., Office of the Comptroller, The Capital, Legal Section, Tallahassee, Florida 32399-0350; SHARON L. BARNETT, ESQ., Office of the Comptroller, 1313 Tampa Street, Suite 615, Tampa, Florida 33602-3394; MATTHEW W. BURNS, ESQ., P.O. Box 1226, Destin, Florida 32541; and JAMES W. MIDDLETON, ESQ., 216 Hospital Drive, Ft. Walton Beach, Florida 32548 this 9th day of May, 1988.

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