5 cy 87

THE SUPREME COURT OF FLORIDA

FILED
JAN 29 1988
CLERK, SUPREME COURT
By

JOHN S. ROE and
PATRICIA T. ROE,

Petitioners,

vs.

AMICA MUTUAL INSURANCE
COMPANY,

Respondent.
_____/

DCA No. 87-345

Supreme Court No. 71682

RESPONDENT'S JURISDICTIONAL BRIEF

MANUEL J. ALVAREZ of
Mitchell, Alley, Rywant &
Vessel, P. A.
707 Franklin Street Mall,
Fourth Floor
Post Office Box 2003
Tampa, Florida 33601
(813) 229-7009
Attorneys for Respondent

TABLE OF CONTENTS

CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

Petitioners, John S. Roe and Patricia T. Roe, were the Appellees/Cross-Appellants below, and will be referred to as "The Roes". Respondent, Amica Mutual Insurance Company, was the Appellant/Cross-Appellee below and will be referred to as "Amica". Citations to the Appendix submitted by Petitioners will be made using the symbol "A".

Despite Petitioners' desire to have this cause heard before this Court under the "direct conflict" discretionary jurisdiction of this Court, this Court should deny jurisdiction to review the decision of the Second District Court of Appeal.

SUMMARY OF ARGUMENT

The Roes contend that the decision of the District Court of Appeal, Second District, which is sought to be reviewed in this case, is in conflict with the decision of the Third District Court of Appeal's decision in Berger v. Fireman's Fund Ins. Co., 12 FLW 1023 (Fla. 3d DCA April 24, 1987); revised 12 FLW 2159 (Fla. 3d DCA September 8, 1987); On Motion for Rehearing En Banc, 12 FLW 2676 (Fla. 3d DCA November 24, 1987). While the Court of Appeal for the Second District acknowledged a conflict with the Berger opinion, it did not certify this question to this Court or believe it to be of great public importance. In any event, the decision of the Second District is eminently correct and accurately sets forth the law on the issue sought to be reviewed by The Roes.

ARGUMENT

This Court should not exercise its discretionary jurisdiction in this matter. Based on the restrictive construction which is used when determining whether this Court should grant conflict jurisdiction, and the fact that the District Court of Appeal, Second District, did not deem it necessary to certify this question based on a conflict, discretionary jurisdiction is both unnecessary and inappropriate. This Court's restrictive view towards granting discretionary jurisdiction is well documented. See Carlin v. City of Miami Beach, 113 So.2d 551 (Fla. 1959); Lake v. Lake, 103 So.2d 639 (Fla. 1958); Ansin v. Thurston, 101 So.2d 808 (Fla. 1958).

The issue for which The Roes seek review in this case concerns an arbitration clause contained in a liability insurance policy. The clause provided that any arbitration award in excess of $10,000 would be non-binding should either party demand a trial. The Second District Court of Appeal found the clause to be valid and enforceable, in part relying upon Section 682.02 Florida Statutes (1985) and interpreting that section to allow parties to stipulate that arbitration may not be binding.

The Court also relied on Florida case law for the proposition that the parties are allowed to stipulate that arbitration may not be binding in such cases. See Hallmark Industries v. Scarbough Chemicals, 409 So.2d 216 (Fla. 4th DCA 1982); State v. British Leyland Motors, Inc., 290 So.2d 576 (Fla. 1st DCA 1974). The Court found that, because the Florida

Statutes permit non-binding arbitration, both The Roes and Amica had competent counsel prior to the arbitration proceeding and were aware of the limitation clause, and both parties agreed without objection that arbitration would be subject to the limitations expressed in the contract of insurance, the provision violated neither the Arbitration Code nor public policy.

CONCLUSION

The decision of the District Court of Appeal, Second District, is imminently correct in this matter. That court properly held that, where parties to a contract of insurance stipulate that arbitration may not be binding where an award is in excess of $10,000, this violates neither the spirit of the Arbitration Code nor public policy. The fact that the District Court of Appeal, Third District, reached a contrary result in Berger v. Fireman's Fund Ins. Co., 12 FLW 1023 (Fla. 3d DCA April 24, 1987); revised 12 FLW 2159 (Fla. 3d DCA September 8, 1987); On Motion for Rehearing En Banc, 12 FLW 2676 (Fla. 3d DCA November 24, 1987), is not dispositive. The Berger decision, incorrect in both reasoning and result, is not of such importance as to require this Court to exercise its discretionary jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 19 day of January, 1988, by regular U. S.

Mail to C. Kenneth Stuart, Jr., Esq., Post Office Box 2177, Lakeland, Florida, and George W. Phillips, Esq., Post Office Box 270504, Tampa, Florida 33688.

Manuel J. Alvarez