

SUPREME COURT  
OF THE STATE OF FLORIDA

FILED  
JUD. CLERK

JAN 20 1988

CLERK OF THE SUPREME COURT  
JAMES M. WHITE  
Clerk

JAMES MICHAEL WATSON,  
as Personal Representative  
of the Estate of MICHAEL  
CORSO, deceased,

CASE NO. 71,717

Petitioner,

-VS-

FIRST FLORIDA LEASING,  
INC.,

Respondent.

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BRIEF ON JURISDICTION

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Cases Cited:

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## SUMMARY OF ARGUMENT

In 1984, the Florida Legislature amended Section 733.705(3), Florida Statutes to require a creditor to file, within twenty days from an objection to the claim, both an independent action and a notice of filing the independent action. The Legislature was properly exercising its jurisdiction in an attempt to expedite the resolution of probate proceedings. A copy of the transcript of the proceedings in the House is included in the Appendix, with a copy of the district court's amended opinion in the case at bar.

The Third District's rulings that the statute is unconstitutional also conflict with the earlier First District decision in Golden v. Atlantic National Bank, 481 So.2d 16 (Fla. 1st DCA 1985), review denied, 492 So.2d 1332 (Fla. 1986).

The Court should promptly accept jurisdiction of this case, especially since the Court's already scheduled consideration of In Re Estate of Hammer, 511 So.2d 708 (Fla. 4th DCA 1987), may result in the parties to this case having their rights determined without the opportunity to be heard.

AGRUMENT AND  
STATEMENT OF GROUNDS FOR INVOKING JURISDICTION

This case involves the lack of constitutionality of section 753.705(3), Florida Statutes.

The probate and general jurisdiction judges granted personal representative Watson's motion to strike First Florida's claim, due to First Florida's non-compliance with that part of the statute requiring the creditor to file - in the probate proceeding - a notice that the independent action has been properly filed.

The district court reversed the summary judgment and reinstated the claim, citing its opinion in Z & O Realty v. Lakow, 12 F.L.W. 1542 (Fla. 3d DCA June 23, 1987) that the statute is unconstitutional; it also certified that its decision conflicts with Golden v. Atlantic National Bank, 481 So.2d 16 (Fla. 1st DCA 1985), review denied, 492 So.2d 1332 (Fla. 1986)

Personal representative Watson suggests that this Court exercise its discretion and consider this case on the merits because:

1. The rights of these parties have been affected by the district court's finding that section 733.705(3) is unconstitutional, and the Court has mandatory jurisdiction to consider

decisions declaring invalid a state statute. Article V, Section 3(b)(1) of the Florida Constitution and Rule 9.030(a)(1)(A)(ii), Florida Rules of Appellate Procedure.

2. The case expressly and directly conflicts, and is acknowledged to conflict, with the First District's opinion in Golden, supra, vesting this Court with jurisdiction pursuant to Article V, Section 3(b)(3) and 3(b)(4) of the Florida Consitution and Rule 9.030(a)(2)(A)(iv) and (vi), Florida Rules of Appellate Procedure.

CONCLUSION

This Court should accept jurisdiction of this case  
and set an expedited briefing schedule.

Respectfully submitted

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Attorneys for Petitioner

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing  
was furnished by mail this 19<sup>th</sup> day of January, 1988  
to: LENARD H. GORMAN, ESQUIRE, Suite 208, 1444 Biscayne  
Boulevard, Miami, Florida 33132.

GIEVERS & GONZALEZ, P.A.

By:   
KAREN A. GIEVERS

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