IN THE SUPREME COURT
OF THE STATE OF FLORIDA

ROY LEE HULLINGER,

Petitioner,

vs.

RYDER TRUCK RENTAL, INC.,
a Florida corporation,

Respondent.

Supreme Court Case No: 71,795

Fifth DCA Case No: 87-1073

APPEAL FROM THE FIFTH DISTRICT
COURT OF APPEALS OF FLORIDA

BRIEF OF ONDENT,

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

FEDERAL STATUTES:

Florida Statutes:

FLORIDA ADMINISTRATIVE CODE:

PRELIMINARY STATEMENT

Petitioner was the plaintiff-appellant below, and he will be referred to in this brief as "petitioner." Respondent, Ryder Truck Rental, Inc., was the defendant-appellee below, and it will be referred to as "Ryder" or as "respondent." Citations to the record on appeal will be noted as (R-). All emphasis is supplied unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

In this appeal, Petitioner asserts that he is entitled to a jury trial for his claim under Florida's job discrimination statute, Section 760.10, Fla. Stat. He also claims that the applicable limitations period for his claim should be four years rather than the two-year period provided by Section 95.11(4)(c), Fla. Stat.

Petitioner's employment with Ryder terminated on April 30, 1980. Petitioner filed his claim with the Florida Commission on Human Relations, as he was required by law to do, and the proceedings in that forum continued for more than three and a half years.[1/] On January 16, 1987, Petitioner abandoned the administrative process, which ultimately could have brought his claim before the district court; instead, he attempted to start anew by filing the Complaint whose dismissal is the subject of this appeal.

The Fifth District specifically upheld the trial court's ruling as to the statute of limitations, under which Petitioner's Complaint was dismissed as time-barred. Accordingly, it did not reach the trial court's decision to strike Petitioner's demand for jury trial. See Hullinger v. Ryder Truck Rental, 516 So.2d 1148 (Fla. 5th DCA 1987) (R-2).

1/ Petitioner asserts in his brief that Ryder caused delays in the Commission's investigation; this statement has no support in (or citation to) the record before this Court, and Ryder unequivocally denies this charge.

SUMMARY OF ARGUMENT

The normal procedure for resolution of disputes between employers and employees under Florida's job discrimination statute is a process of administrative investigation, conciliation, and adjudication culminating in a final order by the Florida Commission on Human Relations; the final agency order is then appealable to the district court. Where the Commission is unable to resolve the claim within 180 days, the statute provides that a court can act upon the claim instead of the Commission. But the Florida Legislature clearly never intended that a complainant become entitled to a jury trial on such a claim merely because his case happened to be adjudicated by the court rather than the Commission, while others' claims are handled through the administrative process without any right to a jury trial.

This conclusion is confirmed by the plain language of the statute (Section 760.10), which places upon the Commission or "the court" (not a jury) the responsibility for making a finding as to whether an unlawful employment practice has occurred. Moreover, the remedies portion of Section 760.10 directs the Commission or "the court" to "issue an order prohibiting the practice and providing affirmative relief."

Beyond the lack of legislative intent, there is no constitutional right to a jury trial under Section 760.10 because the statute provides only for an award of back pay -- not compensatory or punitive damages. As courts have repeatedly

ruled, an order for back pay is not an award of compensatory or punitive damages; it is a purely equitable remedy in the nature of restitution -- which is traditionally the province of judges, not juries. For this reason, the availability of an order for back pay does not give rise to a right to trial by jury.

Florida's job discrimination statute was modeled after Title VII, under which courts have held that compensatory and punitive damages are not recoverable and that consequently there is no right to a jury trial. If the Florida Legislature had intended that compensatory or punitive damages be available under Section 760.10, it would have provided for them expressly in order to differentiate this statutory scheme from the federal statute. Moreover, if it had done so, the statute would have been unconstitutional because an agency such as the Florida Commission on Human Relations cannot constitutionally award damages.

In filing an action under Section 760.10 nearly four years after the termination of his employment, Petitioner subverts the whole purpose of that statute's procedural provisions: to bring and resolve job discrimination claims as quickly as possible. This need for dispatch was *so* important to the Legislature that it required claimants under Section 760.10 to file a complaint with the Commission within six months after the alleged violation -- yet Petitioner now asserts he should be able to wait four years before filing a complaint in court.

This Court's holding in Scott v. Otis Elevator Co., 524 So.2d 642 (Fla. 1988), which Petitioner contends provides a four-year statutory time bar here, applies to actions for retaliatory discharge under Section 440.205 (part of the complex workmen's compensation scheme). Scott does not, on its face, apply to actions under Section 760.10, and it should not be expanded to such actions. Complaints under Section 760.10 differ fundamentally from those before the Court in Scott. Plaintiffs suing for retaliatory discharge under Section 440.205 can recover compensatory and punitive damages. By contrast, under Section 760.10, the only monetary relief available to successful plaintiffs is an equitable award of back wages.

The limitations period for suits to recover wages is two years. Regardless of what damages Petitioner may claim, back wages are all he can recover in his action under Section 760.10. Thus, the specific suit-for-wages limitations period should prevail over the more general limitations period for statutory causes of action. This is especially so because the policies behind the suit-for-wages statute of limitations are congruent with those of the job discrimination statute which contemplates that such disputes are to be resolved with dispatch so that the discriminatory practice can be ended promptly.

POINT ONE

A JURY TRIAL IS NOT PERMITTED ON AN AGE DISCRIMINATION CLAIM FOR BACK WAGES

The language of the job discrimination statute under which Petitioner has brought this action shows that the Florida Legislature did not intend for a jury to determine these statutory claims. Moreover, there is no constitutional right to a jury trial on such claims because only equitable relief can be granted. Thus, the trial court properly struck Petitioner's jury demand.[2]

A. Petitioner is not entitled to a jury trial merely by the fortuity that his case came before a court instead of an administrative tribunal.

Persons claiming a violation of section 760.10 are not even entitled in the first instance to file a civil complaint, much less to demand a jury.[3] Section 760.10 contains its own internal procedure and remedies provisions, which require all persons claiming a violation to file a complaint with the Florida Commission on Human Relations within 180 days of the alleged violation. The Commission then undertakes a process of investigation,[4] conciliation, and adjudication;[5] unless

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[2] The district court did not reach this issue in view of its holding on Point Two.

[3] Section 760.10 provides, inter alia, that it is an unlawful employment practice to "discharge or to fail to refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status . . . ." §760.10(1)(a), Fla. Stat. (1987).

[4] The investigation results in a determination of "reasonable cause," analogous to that of "probable cause" in other procedural contexts. Rule 22T-9.004, F.A.C. At the same time, the

(footnote continued)

conciliation is reached, this process culminates in the issuance of the Commission's final order granting or denying relief. Section 760.10(13), Fla. Stat. (1987): **see** Rule 22T-9.001 et seq F.A.C. Such orders are then appealable to the district court pursuant to Section 120.68(1), Fla. Stat. (1987).

Thus, the core of this statutory scheme is an administrative process for the resolution of disputes between employers and employees over alleged job discrimination violations. There is only one circumstance in which a complainant may file an action in court: where more than 180 days pass without conciliation or final action by the Commission. §760.10(12), Fla. Stat. This is the equivalent of a "speedy trial" provision, providing an alternative forum for complainants in cases where the Commission's workload prevents it from resolving disputes as quickly as the Legislature intended.6/

Now that Petitioner has involved this alternative forum, he demands a "right" which is not available through the Commission: a jury trial. This disparate treatment obviously would be unfair to other complainants whose claims are adjudicated without a jury

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(footnote continued from previous page)
investigating office is directed to encourage a settlement between the employer and complaining employee. Rule 22T-9.003(10), F.A.C.

5/ The administrative hearing procedure allows for examination of witnesses and introduction of documentary evidence: the outcome is a recommended order, which is presented to the Commission. Rules 22T-9.008(3) and 22T-8, F.A.C.

6/ This is somewhat comparable to Section 2000e-5(f)(5) of Title VII, which allows judges to appoint a special master if they are unable to hear a discrimination case within 120 days after issue has been joined. 42 U.S.C.A. §2000e-5(f)(5)(1981).

trial through the administrative process provided under Section 760.10. The Legislature clearly intended in the normal case that such claims would be determined only by the hearing officer in an administrative proceeding. It cannot be that the Legislature intended for these statutory claims to be a matter for jury determination for some claimants but not others. Certainly the right to a jury does not depend upon the mere fortuity of the administrative agency's ability to render a timely determination in a particular case.

B. The statute calls for findings by the Commission or court, not by a jury.

The plain language of the statute further establishes that Petitioner is not entitled to a jury trial. The remedies portion of 760.10 provides: that, in the event that "the commission" or "the court . . . finds that an unlawful employment practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including reasonable attorney's fees." § 760.10(13), Fla. Stat. (1987).

This provision calls upon the Commission or the court -- not a jury -- to make findings on the alleged violations. Relief must come in the form of an "order prohibiting the practice and providing affirmative relief." Significantly, the statute provides for exactly the same form of relief to be given by the court as would be given in the administrative proceeding, where juries are of course, not available. In short, the court is

simply substituted for the Commission if the latter is unable to act upon the claim in a timely fashion, and it then performs the same function the Commission would have otherwise performed.

C. **There is no constitutional right to a trial by jury on a Section 760.10 claim because only equitable remedies are available.**

As stated in a case Petitioner himself has cited, "the right to a jury trial applies only to legal as opposed to equitable causes of action." King Mountain Condominium Ass'n v. Gundlach, 425 So.2d 569, 570 (Fla. 4th DCA 1982). As shown below, Section 760.10 creates a statutory cause of action whose only remedies are equitable; therefore no jury right exists here. See Slack v. Havens, 522 F.2d 1091, 1094 (9th Cir. 1975) ("It is well established that a jury trial is required only if a statute creates legal rights and remedies enforceable in the ordinary courts of law.")

The only reference in Section 760.10(13) to a monetary award by the Commission or the court relates to back pay. The statute provides that "[n]o liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint . . . ." This provision clearly contemplates an equitable remedy of back pay, not a legal remedy of damages.

The Florida anti-discrimination statute was modeled upon Title VII, which also provides for orders for back pay. Cases under Title VII are therefore recognized as providing interpretive guidance for the state act. Bennett v. Southern Marine Management Co., 531 F. Supp. 115, 116 (M.D. Fla. 1982); School Board v.

Hargis, 400 So.2d 103, 108 n.2. (Fla. 1st DCA 1981); Maggio v. Martin Marietta Aerospace, 9 FALR 2168 (1986). Cases under Title VII establish that "[t]he demand for back pay is not in the nature of a claim for damages, but rather is an integral part to the statutory equitable remedy, to be determined through the exercise of the court's discretion, and not by a jury." Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1125 (5th Cir. 1969) (rejecting a demand for jury trial under Title VII); see Albemarle Paper Co. v. Moody, 422 U.S. 405, 416-417 (award of lost wages is part of the courts' "historic power of equity"). Thus, courts have consistently held that there is no right to a jury trial in Title VII actions because damages at law are not available. Wilson v. City of Aliceville, 779 F.2d 631 (11th Cir. 1986); Sullivan v. School Board of Pinellas County, 773 F.2d 1182 (11th Cir. 1985); see Lehman v. Nakshian, 453 U.S. 156, 164 (1981) ("there is no right to trial by jury in cases arising under Title VII").

Since only equitable remedies are available under Title VII, it is especially significant that Section 710.10 contains no express provision for compensatory or punitive damages. As noted, Florida's statute was modeled upon Title VII. If the Florida Legislature had wanted to establish a remedies scheme under the Human Rights Act which would be different in certain particulars from that of Title VII, it surely would have done *so* in specific terms.

This point was emphasized in Bennett v. Southern Marine Management Co., 531 F. Supp. at 116-117, where the district court ruled that punitive damages are not available under Section 760.10.7/ The court contrasted the remedies provision of Section 760.10 with that of Florida's equal pay statute, Section 725.07. Id. Although the Federal Equal Pay Act (29 U.S.C. §206(d)) does not provide for either compensatory or punitive damages, the Florida Legislature wanted to establish a different remedies scheme when it passed its own equal pay act. Accordingly, it specifically Provided that compensatory and punitive damages are available. §725.07(2), Fla. Stat. There is no such provision in Section 764.10.

Like the federal court in Bennett, Florida's Fourth District has held that compensatory damages are not available under the Florida Human Rights Act. Florida Public Utilities Co. v. Large, 493 So.2d 491 (Fla. 4th DCA 1986). The Court unanimously held, inter alia, that it was error to award damages for mental pain and suffering under the act. Id.

The absence of any right to damages at law under Section 760.10 is confirmed by the fact that it is unconstitutional for administrative tribunals such as the Florida Commission on Human Relations to award such damages. This Court squarely held to that very effect in Broward County v. La Rosa, 505 So.2d 422 (Fla. 1987). La Rosa concerned a challenge to the validity of a county ordinance which set up a local Human Rights Board to review

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7/ (At that time, the statute was designated as Section 23.167.)

complaints of discrimination. The ordinance empowered the Board, upon finding a discriminatory practice, to provide relief which specifically included damages for humiliation and embarrassment. The Florida Supreme Court held that, in authorizing an award of damages without a jury trial, the ordinance violated the Constitution. La Rosa, 505 So.2d at 424.[8]

If section 760.10 empowered the Florida Commission on Human Relations to make damage awards, the statute would be unconstitutional on exactly the same grounds as the county ordinance in La Rosa. Thus, it is constitutionally necessary that section 760.10 only allow equitable relief by the Commission, such as awards for back pay and injunctive relief. But the remedies provision of 760.10(13) refers to both the Commission and the court in describing the relief that can be granted under this statute. It would be absurd to construe this provision as authorizing one set of remedies (equitable) for the Commission and another, different set of remedies (legal and equitable) for the court. That would, on its face, improperly discriminate among claimants as to the relief they could obtain, depending upon whether the Commission was or was not able to complete the administrative proceeding within the specified time frame.

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[8] Petitioner incorrectly stated on page 12 of his brief that this Court has held that jury trials are proper in age discrimination claims, citing Metropolitan Dade County Fair Housing and Employment Appeals Board v. Sunrise Village Mobile Home Park, Inc., 511 So.2d 962 (Fla. 1987). That case, which expressly relied upon Broward County v. La Rosa, simply reaffirmed that an administrative tribunal cannot assess common law money damages.

D. Decisions under a federal statute that provides for leual remedies have no application to this case.

Petitioner stresses his claim that the alleged discrimination in this case was intentional. But this is no different from any other age discrimination claim where only back pay is available. Examples of Florida Commission on Human Relations orders upon a finding of intentional age discrimination may be found in Maggio v. Martin Marietta Aerospace, 9 FALR 2168 (1986) and Sayles v. Loomis Armored, Inc., 8 FALR 4690 (1986). In each case, the only monetary relief came through an order for back pay, which is consistent with the proper reading of Section 760.10.

In an attempt to support his contention that compensatory and punitive damages are available for age discrimination claims under the Florida Human Rights Act, Petitioner only cites cases involving claims under the Federal Age Discrimination in Employment Act (ADEA). See Brief of Petitioner/Appellant at page 9. But these cases have no application here because, unlike the Florida Human Rights Act, the ADEA expressly authorizes the courts to provide legal as well as equitable relief. 29 U.S.C. § 626(b).9/

The ADEA is also the statute construed in the U.S. Supreme Court case Lorillard v. Pons, 434 U.S. 575, 584 (1978), upon which Petitioner relies. In holding that the plaintiff was entitled to

9/ Unlike the Florida Human Rights Act, under the ADEA only the court (not a commission) has adjudicatory power. See 29 U.S.C.A. § 626(b)(1987).

a jury trial under the ADEA, the Supreme Court specifically distinguished the ADEA from Title VII, which served as the model for Florida's job discrimination statute. As the Court wrote:

> Looking first to the statutory language defining the relief available, we note that Congress specifically provided for both "legal or equitable relief" in the ADEA, but did not authorize "legal" relief in so many words under Title VII.

The Court further noted that Congress chose not to base the ADEA upon Title VII, but to base it instead on the Fair Labor Standards Act. 434 U.S. at 583. It has long been established that, in light of the FSLA's provision for "legal" relief, there was a right to a jury trial under the FSLA. Therefore, the same was true of the ADEA. Id.[10/]

The holding in Lorillard is unquestionably based on the type of relief available under the ADEA rather than upon the fact that the ADEA involves age discrimination. The plain fact is that Florida, instead of enacting a state version of the ADEA, included age discrimination along with other forms of discrimination in a statute modeled on Title VII.

Petitioner appears to believe that there must be a right to jury trial for all alleged age discrimination, regardless of the remedial or procedural provisions of the statutes upon which the claims are based. But, using Petitioner's logic, age discrimination claims under Section 760.10 would become entitled to jury trials -- but claims based on discrimination of other

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10/ The ADEA has since been amended to provide expressly for trial by jury. See 29 U.S.C.A. §626(c)(2)(1985).

kinds (e.g. race, sex or handicap) would not. This would be an intolerable divergence under a single statute with a single remedies provision. Petitioner's demand for a jury trial was properly denied.

POINT TWO

THE DISTRICT COURT APPLIED THE CORRECT STATUTE OF LIMITATIONS TO PETITIONER'S CLAIM FOR BACK WAGES

The District Court correctly applied Section 95.11(4)(c), which is the statute of limitations for claims for wages to Petitioner's claim under Section **760.10.** Back pay is the only monetary relief available to a complainant under that statute.

A. Back pay is the only monetary relief available to a complainant under Section 760.10.

Petitioner argues that the District Court incorrectly held that he was subject to Florida's two-year limitations period governing suits for wages (Florida Statute 95.11(4)(c)). Petitioner insists his action is not a suit for wages because in addition to back pay, he seeks compensatory damages (e.g., damages for alleged mental suffering) and punitive damages. However, as has already been demonstrated,[11] the only monetary remedy available under Section **760.10** is an order in equity for payment of back wages. This is so because:

(1) The plain language of the statute authorizes only an "order prohibiting the [discriminatory] practice and providing affirmative relief" -- a clear reference to equitable remedies. An order for payment of back wages, just like a restraining order or injunction, is part of the courts' "historic power of equity" (akin to restitution).

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[11] See pages 7-11, supra.

(2) The statute provides for one and the same remedy, regardless of whether the order for relief is issued by the Florida Commission on Human Relations or a court -- and it would be unconstitutional for the Commission to award compensatory or punitive damages.

(3) The Florida Legislature patterned the state job discrimination statute after the federal discrimination statute, Title VII -- and it is settled that compensatory and punitive damages are not allowed under Title VII.

Thus, regardless of what monetary damages Petitioner may seek, a successful complainant under Section 760.10 is limited to recovery of back wages. Florida's specific limitations period for suits for wages is two years, and that is therefore the period which should be applied to plaintiffs' claim for back wages under Section 760.10.12/

B. This Court's decision in Scott v. Otis Elevator Co. is not applicable to actions under Section 760.10.

In arguing that the two-year limitations period should not apply to his claim, Petitioner relies heavily on the decision of this Court in Scott v. Otis Elevator Co., 524 So.2d 642 (Fla. 1988). In Scott, the court held that actions for retaliatory discharge brought under Section 440.205, Fla. Stat. are subject to a four-year limitations period rather than the two-year period

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12/ It should also be noted that, although Section 760.10 does not contain an internal statute of limitations, it does expressly prohibit an award of back pay accruing more than two years before a complaint was filed with the Commission on Human Relations. The District Court made this point in holding that the two-year limitation period applied in this type of case. See Hullinger, 516 So.2d at 1149.

governing actions to recover wages. In order to show why Petitioner's reliance on Scott is misplaced, it is necessary to discuss the "action-for-wages" statute and some of the pre-Scott decisions that construed it.

The full text of section 95.11(4)(c) applies the statute of limitations to any "action to recover wages or overtime or damages or penalties concerning payment of wages and overtime." In this context, the phrase "damages or penalties" does not refer to compensatory and punitive damages, but to statutory (liquidated) damages and penalties accruing under labor laws respecting payment of wages and overtime. See Broward Builders Exchanse v. Goehring, 231 So.2d 513, 514-515 (Fla. 1970). Thus, Florida case law on section 95.11(4)(c) has focused on the meaning of the phrase "action for recovery of wages."

The Florida Supreme Court appeared to construe this phrase broadly in Broward Builders v. Goehring, supra, where the plaintiff sought to recover compensation owed him under a contract of employment. The defendant (employer) argued that the statute's reference to actions for "recovery of wages" should be construed just as narrowly as actions for damages or penalties -- i.e., that the statute only referred to actions alleging statutory liability for wages arising under the federal Fair Labor Standards Act and other legislation. The Goehring Court rejected this argument.

Instead, the Court held that the action-for-wages statute" was intended to apply to all suits for wages or overtime, however accruing . . . ." Id. at 515.[13]

Based on this broad language in Goehring, courts applied the two-year "suit-for-wages" limitations period in cases where the potential recovery consisted not only of back pay but of compensatory and punitive damages as well. For example, the federal courts have applied the two-year limitation of Section 95.11(4)(c) to federal actions known as Section 1983 and Section 1981 torts, in which back pay was just one component of the

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13/ Goehring also made a distinction between "wages" and "salary" for purposes of the statute. 231 So.2d at 514-15. This distinction is not at issue in this appeal because Petitioner has not disputed that his earnings were wages. Nonetheless, it is respectfully submitted that this Court should recede from this distinction in order to bring the interpretation of Section 760.10 into harmony with subsequent legislative enactments and with case law under other statutes construing the term "wages." Specifically:

(1) The Florida Legislature has defined "wages" as an all-inclusive term, meaning "all compensation paid by an employer or his agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash." 448.07(1)(c), Fla. Stat. (emphasis added): see also, § 443.03(31), Fla. Stat.

(2) For purposes of section 448.08, Fla. Stat., which provides for successful litigants to recover attorney fees in actions for unpaid wages, Florida courts have construed "wages" to include all forms of remuneration for employment. See, e.g., Ferry v. XRG International, Inc., 492 So.2d 1101 (Fla. 4th DCA 1986) ("golden parachute" of Chief Executive Officer): Williams v. Florida Memorial College, 453 So.2d 541 (Fla. 3d DCA 1984) (salary of professor of music).

(3) In the absence of an express distinction between "wages" and "salary" in the language of Section 760.10, it is unfair to allow salaried employees more time than hourly workers in which to recover wages from their employers.

plaintiffs' claim. See McGhee v. Oqburn, 707 F.2d 1312 (11th Cir. 1983) and McWilliams v. Escambia County School Board, 658 F.2d 326 (5th Cir. 1981).

Most recently, the Fourth District held that the action-for-wages statute applied to retaliatory discharge actions pursuant to Section 440.205, Fla. Stat., which provides that "[n]o employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law." Otis Elevator Co. v. Scott, 503 So.2d 941 (Fla. 4th DCA 1987). The Florida Supreme Court reversed this decision in Scott v. Otis Elevator Co., supra, 524 So.2d at 643, and held that the two-year limitations period of actions for wages was inapplicable to Section 440.205 claims.

In reaching its holding in Scott, this Court stressed that, although recovery under retaliatory discharge actions may include wages, compensatory and punitive damases are also recoverable. Id. The Court concluded that retaliatory discharge under Section 440.205 was essentially "tortious in nature," rather than a suit for wages.[14/] For this reason, the Court applied the more general limitations category of actions "founded on a statutory liability" under § 95.11(3)(f), Fla. Stat.

14/ Indeed, there could easily be cases where plaintiffs could recover money damages under Section 440.205 without any claim to back wages whatsoever. For example, in addition to discharge situations, Section 440.205 creates liability in employers who "intimidate" an employee by reason of his valid claim for workers' compensation. If an employee suffered damages arising from intimidation which did not culminate in an actual firing, no wages would be included in his damages award.

Of course, Scott does not, on its face, apply to Section **760.10,** which is found in a different chapter of the Florida Statutes. More importantly, the reasoning of Scott is not applicable to claims under Section **760.10.** As shown above, the only monetary relief available to a complainant under this statute is back wages. Unlike the "tort" claim for retaliatory discharge, this claim is more like a suit for wages, thus falling within the two-year statute for such claims.

Furthermore, the nature of a Section **760.10** action as an action for wages is not affected by dictum in Scott regarding McGhee v. Ouburn and McWilliams v. Escambia Countv School Board, supra. The Court criticized those decisions as applying Goerhing more broadly than had been intended. But that concern arises in a totally different context and does not exist here. Like the retaliatory discharge claim in Scott, the torts at issue in these federal cases allow recovery of compensatory and punitive damages; and, like retaliatory discharge actions, those federal claims are basically "tortious in nature."

A complaint under Section **760.10** is different from a retaliatory discharge action in both these respects. Because of the limited remedies, Petitioner's complaint is necessarily focused on recovery of wages. Therefore, even though reliance of the court below on McGhee and McWilliams may be inapposite in light of Scott, the district court was nonetheless correct in holding in this case that Section **760.10** is subject to the suit-for-wages limitations period.

C. A four-year limitations period for claims under Section 760.10 would subvert the statute's purpose to speedily resolve such claims.

At the outset, it is important to note that, resardless of the statute of limitations for filing a court action in this case, Petitioner already had access to an avenue of justice through the Florida Commission on Human Relations.[15/] If the Commission ruled against his job discrimination claim, Petitioner could have then appealed the Commission's final order directly to the District Court. S120.68, Fla. Stat. But Petitioner turned his back on this process of agency action and court review; he chose instead to file a new and separate civil complaint at the trial level.

Now, having abandoned his complaint through the Commission, Petitioner is attempting to keep his court action alive by arguing that he is entitled to the benefit of the four-year statute of limitations for statutory claims. But there are important policy reasons, which did not exist in the type of claim at issue in Scott, why this Court should uphold the Fifth District's decision. In Title VII, upon which the Florida Commission on Human Relations is modeled, courts have found "a clear congressional policy" that job discrimination cases "be adjudicated as promptly as possible." Bennett, supra, 531 F. Supp. at 117; Lim v. International Institution of Metropolitan Detroit, Inc., 510 F. Supp. 722, 726 (E.D. Mich 1981). This goal of speedy resolution is evidenced,

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15/ All complaints alleging violations of section 760.10 must be initially filed with the Commission. See supra at pages 5-6.

inter alia, by provisions which allow the courts to appoint a special master if they cannot resolve a Title VII claim within 120 days. Bennett, 531 F. Supp. at 117; Lim, 510 F. Supp. at 725.

Like Title VII, Florida's Section 760.10 contains special procedural requirements which demonstrate that the Florida Legislature intended for claims under the section to be pursued promptly and resolved with dispatch. Under this statute, all persons claiming against their employer must file a complaint with the Florida Commission on Human Relations within 180 days after the alleged violation. §760.10(10), Fla. Stat. Then, if (and only if) the Commission fails to conciliate or take final action within 180 days from the filing of the complaint, the complainant is allowed to bring a civil action. §760.10(12), Fla. Stat.

A lengthy limitations period for filing a court action under Section 760.10 would allow Petitioner to subvert the purpose of this "speedy trial" provision. The purpose was obviously not to permit the Petitioner to delay for several years before bringing suit in court. To the contrary, the purpose is to allow a complainant to promptly pursue an alternative course of justice if, after 180 days, the Commission on Human Relations still has not conciliated or adjudicated the dispute. However, Petitioner waited more than three Years before bringing his action in court -- and argues that he should have been allowed up to four years!

By providing a two-year statute of limitations governing suits for wages, the Florida Legislature mandated through Section 95.11(4)(c) that such actions be brought more quickly than many

other types of action. This is clearly congruent with Section 760.10's policy that claims for back pay under the Florida Commission on Human Relations be brought and handled with dispatch.

A special statute of limitations such as Section 95.11(4)(c), which addresses itself to specific matters, must take precedence over a more general statute. Dubin v. Dow Corning Corp., 478 So.2d 71, 73 (Fla. 2d DCA 1985); Carcaise v. Durden, 382 So.2d 1236, 1237-38 (Fla. 5th DCA 1980); see Havertv Furniture Co. v. McKesson & Robbins, Inc., 154 Fla. 772, 19 So.2d 59, 60 (1944) (as between two statutes, the more particular one controls). Because the only monetary remedy under Section 760.10 is back wages -- and especially in light of the Legislature's demonstrated intent that disputes under Section 760.10 be resolved quickly -- the limitations period for actions for wages is applicable here. For these reasons, this Court should uphold the ruling of the Fifth District.

CONCLUSION

The district court correctly ruled that Florida's two-year statute of limitations for recovery of wages applies to actions for recovery of back wage under the state's job discrimination statute Section 760.10, Fla. Stat. Moreover, there is no right to a jury trial under Section 760.10 because the only monetary remedy available is back wages (i.e., no compensatory or punitive damages).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail this 11th day of August, 1988, to: Glen D. Wieland, Esq., 20 N. Orange Ave., P.O. Box 944, Orlando, FL 32802.

John P. McAdams
Attorney