

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 72,448

SAM SPECTOR , BETTY SPECTOR
APPELLANTS/PETITIONERS

-vs.-

TRANS WORLD AIRLINES, INC. SID J. WHITE

APPELLEE/RESPONDENT

JUL 27 1988

CLERK, SUPREME COURT

By _____

Deputy Clerk

REPLY BRIEF FOR PETITIONERS SAM SPECTOR
AND BETTY SPECTOR

SAM AND BETTY SPECTOR
pro-se for Appellants/Petitioners
123 Finch Court
Royal Palm Beach, Florida

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CITATIONS OF AUTHORITY

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STATEMENT

Appellant filed suit against TWA in the County Court for Palm Beach County, Florida. The Trial Court entered a judgment on the pleadings in favor of the Defendant. (exhibit A) The judgment was an egregious error in constitutional law which the trial court and the circuit court in its Appellate capacity failed to address. The Predecessor Judge in his final order (exhibit B) ruled that this case is governed by the WARSAW CONVENTION. The Defendant in his signed pre-trial stipulation " the obligation and duties between the parties is established by international law" Which is a treaty of the United States. (exhibit C)

Treaties and legislative acts passed pursuant to the Federal Constitution are clothed with equal dignity and by the Constitution are made the Supreme law of the land. Judges in every State are bound to enforce its provisions, anything in the State Constitution or laws to the contrary notwithstanding. U.S. Const. Art. VI.

Respondent's Answer brief has failed to address itself to the arguments contained in the petitioners brief, instead seeks to have the Court dismiss the appeal on the alleged and mistaken assumption that said notice was untimely, therefore we disagree and intend to prove to the Court it was delivered in a timely manner .

However this Honorable Court is legally bound to review the Constitutional question raised by the petitioner and ignored in the lower tribunals.

CERTIORARI IS AVAILABLE WHEN ORDER UNDER REVIEW DOES NOT CONFORM TO ESSENTIAL REQUIREMENTS OF LAW AND MAY REASONABLY CAUSE IRREPARABLE INJURY WHICH CANNOT BE REMEDIED ON APPEAL

Petitioner concurs with Respondent's opening statement

" an appeal should only be treated as a petition for writ of certiorari if the selection of a remedy is difficult or if the notice of appeal is filed in the Appellate Court within thirty days of rendition of the order for which the Appellant seeks to review."

Appellant is seeking a remedy on constitutional law which the lower tribunals have failed to address. in addition has met the timely requirements.

SUMMARY OF ARGUMENTS

1. SPECTORS NOTICE OF APPEAL TO THE FOURTH DISTRICT COURT OF APPEAL WAS TIMELY.
2. THE APPELLANT SEEKS A REMEDY THAT THE LAW PROVIDES THAT ALL INTERNATIONAL FLIGHTS ARE GOVERNED BY A TREATY OF THE UNITED STATES AND MUST BE RULED UPON IN ACCORDANCES WITH ITS ARTICLES.
3. IN THE ABSCENCE OF MISTAKE OR FRAUD SUCCESSOR JUDGE CANNOT REVIEW, MODIFY OR REVERSE, UPON MERITS ON THE SAME FACTS FINAL ORDERS OF HIS PREDECESSOR
4. THE EX PARTE EPISODE
5. JUSTICE DELAYED JUSTICE DENIED

P O I N T I

SPECTOR's NOTICE OF APPEAL TO THE FOURTH DISTRICT COURT OF APPEAL WAS TIMELY.

Notice of appeal to the 4th DCA WAS TIMELY FILED IN the lower tribunal pursuant to Fla. App. P. 9.020 (g) Circuit Court acting in its Appellate capacity rendered judgment on December 7, 1987. Spector filed notice of appeal on January 6, 1988, within the 30 day limit. A copy of SPECTOR'S notice by the Clerk of the 4DCA having been filed January 6, 1988 (exhibit D) and clocked in by the Clerk of the 4 DCA. on January 7, 1988, This is not a Jurisdictional requirement, The Clerks function is ministerial..

The records of the Clerk of the Circuit Court establishes that the Notice of Appeal was Transmitted by Courier on the same day . January 6, 1988.

Sworn Affidavit is appended hereto and made part of the reply brief, based upon information furnished, Notice of Appeal was transmitted to 4 DCA on January 6, 1988 within the 30 day limit. Paul v. City of Miami Beach, 515 So 2d 1150 (Fla. 3rd DCA 1988) I quote from opinion of C.J. SCHWARTZ, Chief Judge " when the notice of appeal is not transmitted to the Appellate Court." The operative word is [transmitted]. The sworn affidavit attests to notice of appeal being transmitted on January 6, 1988. There is no requirement by law that the Clerk must perform his ministerial duty of instantaneous clock in.

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 72,448

SAM SPECTOR, BETTY SPECTOR
Appellant/Petitioner

-vs-

TRANS WORLD AIRLINES, INC.,
Appellee/ Respondent

AFFIDAVIT IN SUPPORT OF THE TIMELY FILING BY
THE CIRCUIT COURT PALM BEACH COUNTY, FLORIDA
TO THE FOURTH DISTRICT COURT OF APPEAL

STATE OF FLORIDA
COUNTY OF PALM BEACH:

BEFORE ME, the undersigned authority personally appeared SAM SPECTOR, who being duly sworn, stated under oath, the following:

1. I am appearing pro se for Appellant/Petitioner.
2. In this capacity makes and files an affidavit certifying that the notice of appeal filed in the Circuit court of Palm Beach County, complied with Florida Rule of Appellate Procedure, Rule 9.100(c) which requires petitions for writ of certioari to be filed within 30 days of the rendition of the order to be reviewed.
3. Appellant personally submitted his notice of appeal to the Circuit Court, Appellate Division on January 6th, 1988 at approximately 11 A.M.
4. Appellant upon paying the required fee, personally hand delivered the notice of appeal to the Appellate Division of the Honorable John B. Dunkle, Clerk of the Circuit Court Fifteenth Judicial Circuit in and for Palm Beach County, Florida, and to his designated ^{EMPLOYEE} empowered to receive such

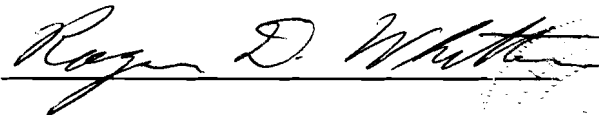
document Ms SUSAN SCHWARTZ.

5. On April 7, 1988, Appellant inquired of Ms Susan Schwartz to check her records which indicated that Appellants notice of appeal was sent by Courier the same day January 6, 1988 to the Fourth District Court of Appeals, a distance of approximately twomiles.
6. The notice of appeal was transmitted to the Fourth District Court of Appeals within the required 30 days, was timely and met the Florida Rule of Appellate Procedure .

SAM SPECTOR, appearing pro se certifies that such affidavit was based upon my knowledge and belief, and made in good faith.


SAM SPECTOR pro se

SWORN to and SUBSCRIBED before me this 22nd Day of July 1988



NOTARY PUBLIC
STATE OF FLORIDA

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES: APRIL 21, 1992
BONDED THRU NOTARY PUBLIC UNDERWRITERS

P O I N T I I

PRECESSOR JUDGE RULED THIS CASE IS GOVERNED BY
THE WARSAW CONVENTION (exhibit E) AND STIPULATED
TOO BY DEFENDANT. (exhibit C)

The trial Judge in his motion to dismiss (exhibit A) acknowledged Plaintiffs were on an international flight and then by equivocation and avoidance pre-empted Federal Law in favor of State law. This is contrary to the will of the CONGRESS of THE UNITED STATES Which enacted a Treaty the WARSAW CONVENTION and signed into law on the 29th day of October 1934, by FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA. NOEL v. LINEA VENEZOLANA, 247 F. 2d 677, 679 (2d Cir 1957)

" the law to be applied is not state law but a Federal treaty. It is applied in state Court because it expresses State policy which a Federal court must follow, but because it express Federal policy which a State court must follow.

The trial Judge was in possession of all matters pending before him, in addition the citation of a similar case COHEN v VARIG, 405 N.Y.S. 2d 44 Appellate Division 1978. The Court ruled that Mental and Emotional suffering, etc., were not compensible. The trial Judge found the Plaintiffs were travelling on an international flight and that the provisions of the Warsaw Convention controlled and awarded compensatory damages in accordance with the articles of the convention.

BURNETT v. TRANS WORLD AIRLINES, INC., 368 F. Supp. (121 Avi. 18,405) The Warsaw Convention is a sov-
erign treaty and as such is the Supreme Law of
the land.

Treaties and legislative acts passed pursuant to
the federal constitution are clothed with equal
dignity and by the constitution are made the
Supreme law of the land, Judges in every state
are bound to enforce its provisions, anything in
the state constitution or laws to the contrary
notwithstanding. U.S. CONST., ART. VI AEROVIAS
INTERAMERICANS DE PANAMA, S.A. v. BOARD OF
COUNTY COMMISSIONERS.

A TREATY IS SUPERIOR TO A STATE CONSTITUTION AND
IN CASE OF CONFLICTS THE TREATY WILL CONTROL. US.
v. ROCKEFELLER, D.C. MONT 200 F. 346.

THE COURTS HAVE NO RIGHT TO ANNUL ANY PROVISIONS
OF A TREATY. DOE v. BRADEN (1853) US 635, 14 Led
1090

THE trial court erred in not allowing the issue of the
Warsaw Convention to go to trial. This was a denial of the Plain-
tiffs constitutional right of due process.

ROBBINS v. ROBBINS, 429 So 2d 424, Due process
mandates that state action shall be consistent
with the fundamental principles of liberty and
justice which lie at the base of all our civil
and political institutions. U.S.C.A. CONST.
AMENDS. 5, 14.

P O I N T I I I

SUCCESSOR JUDGE SHOULD GIVE CREDENCE TO A
PREDECESSOR'S RULINGS ON ISSUES OF LAW.
YET A SUCCESSOR JUDGE HAS THE OBLIGATION
TO CORRECT ANY ERROR IN A PRIOR INTERLO-
CUTORY RULINGS ON MATTERS OF LAW (exhibit G)

This is the written opinion of the Honorable T. K. HURLEY, as Appellate Judge, Circuit Court Palm Beach County. This appears to conflict with

Florida Statute 38:12 ALL MATTERS PENDING BEFORE HIM (trial judge) SHALL BE HEARD AND DETERMINED BY HIS SUCCESSOR. The intent of the statute is clear

all matters must include the issue of the Warsaw Convention. Surely the Predecessor Judge in ruling: THIS CASE IS GOVERNED BY THE WARSAW CONVENTION DID NOT ERR. ON WHAT ISSUE OF LAW DID THE SUCCESSOR JUDGE CORRECT MISTAKES OF HIS PREDECESSOR.

McBRIDE v. McBRIDE, 352 So 2d 1254. generally in absence of mistake or fraud successor judge cannot review, modify or reverse, upon merits on the same facts, final orders of his predecessor.

GROVER v. WALKER, 88 so 2d 312, a successor judge may not correct errors of law committed by his predecessor and hence cannot review and reverse on the merits and on the same facts the final orders and decrees of his predecessor.

On the 19 May 1986, Predecessor Judge by order, this case is governed by the Warsaw Convention. And on September 17, 1985 Supplemental Defensas of TWA. Defendant is entitled to the limitation provisions as established by the warsaw convention.(record pg.502)

And again on October 16, 1986 TWA. stipulated....the obligation and duties between the parties is established by international law.

Does the ruling of the Predecessor Judge on the Warsaw Convention constitute error?

Does the concurrence by the Defendant of the Predecessor ruling on Warsaw constitute error?

Successor Judge in his motion to dismiss cited the Plaintiffs were on an international flight.

On February 18, 1987, Successor Judge regarding Tariffs raised by the Defendant, agreed with the Plaintiff and I quote from the STATEMENT IN LIEU OF TRANSCRIPT (Record page 496-501) Plaintiff Spector: Par.1 is incorrect as the Warsaw Convention which is the supreme law of the land overrules local tariffs. Attorney Beasley: I.11 concede that.

The Successor Judge was made aware of the Supreme law of the land , on what basis of law did he refuse to allow this issue to be tried?

The stipulation by the Defendant becomes part of the record. Judge made no reference. The Judge had approved the Motion permitting the Statement in Lieu of Transcript to become part of the record.(record pg. 502) Yet Successor Judge gave no credence to its content nor to the Predecessor's ruling on law specifically the Warsaw Convention. I submit that Judge Smith made reversible error in not making proper and lawful rulings.

P O I N T I V

THE EX PARTE HEARING EPISODE

On August 8, 1986, scheduled date of 1st Jury trial, Successor Judge on his own motion directs a pre-trial conference with instructions to return with a JOINT Stipulation (-record pg. 377-8) At the conference it was agreed that Attorney Beasley Counsel for TWA. would submit the agreed

stipulation to Plaintiff Sam Spector in a reasonable time for signature before presentation to the Court. On February 18, 1987 (after 3 trial postponments by the court) Judge Smith, addressing Attorney Beasley, " now why was it necessary to have two stipulated statements." " (Beasley) Your Honor I got too busy and did not submit to the Plaintiff the stipulation in time" " Judge Smith: Lets go over the Defendants stipulation."

Based upon this unilateral stipulation the Court ruled that it would dismiss the case on the pleadings.

This was a one sided interpretation and amounted to an ex parte proceeding. This is contrary to the Courts own directive for Joint Stipulation. It was contrary to Rule 16, General Rules Appellate Procedure.

E. Unilateral Filing of pretrial stipulation where Counsel do not agree; If for any reason the pretrial stipulation is not executed by all counsel , each counsel shall file and serve separate proposed pretrial stipulations not later than five days prior to the pretrial conference, with a statement of reason no agreement was reached thereon.

F. Record of pretrial conference is part of trial record. Upon the conclusion of the pretrial conference, the court will enter further orders as may be appropriate

Thereafter the pretrial stipulation as so modified will control the course of the trial., and may thereafter be amended by the court only to prevent manifest injustice. The record made upon the pretrial conference shall be deemed a part of the trial record.

P O I N T V

JUSTICE DELAYED

JUSTICE DENIED

Plaintiff instituted suit in the County Court in and for Palm Beach County, florida, on July 24, 1985. Case was assigned to the HONORABLE JUDGE EDWARD FINE. Case was fully and disposed of all motions, orders, court appearances. Defendant submitted notice for trial pursuant to rule 1.440 of the Florida Rules of Civil Procedure. Trial was set for August 8, 1986. (exhibit H)

Prior to the scheduled trial date Judge Edward Fine, an experienced Judge was elevated to the Circuit Court. (there is no question that if this vacancy did not occur the trial would have proceeded. The Defendant then would have the option to appeal on errors committed.) To fill this vacancy, a Lawyer, member of the Bar Association was appointed with no previous judicial experience. The Honorable Judge I.C. SMITH was assigned to this complicated case

On the scheduled trial date, Judge Smith in Chambers stated that he had reviewed the case , was familiar with it. He found the issues too complex for a jury, more like an anti-trust suit. Over the objections of both parties who were prepared to go to trial with their witnesses, the Judge on his own motion ruled another pretrial conference with a Joint stipulation returnable October 16, 1986.

On that day, the case was assigned to the Honorable JUDGE KROLL, who accepted both stipulations without comment, and set another trial date for December 16, 1986.

On that date both parties being present and ready for trial the case was assigned to the Honorable Judge Michael Miller pinch hitting for Judge Kroll who had given birth to a Baby a little ahead of time. Judge Miller was most gracious, stated he had gotten up very early that day to review the record, felt he was familiar with the case and would preside over the trial providing his calender would permit. Unfortunately his calendar did nt permit. Attorney Beasley was annoyed at this delay, he

had called Judge Kroll's Secretary the preceeding afternoon and was assured it was a go. (this is no way to run a rail road) And so we make a full circle and another trial date is set for February 18, 1987 before Judge Smith.

It is the opinion of the Plaintiff, Judge Smith was not exactly thrilled to have this case foot balled back to him. His first utterance in Chambers was, I do not have a Jury Box in my Courtroom, so this case would have to be tried in the Courthouse annex across the street.

Judge Smith then proceeded with the unilateral stipulation of the Defendant, looking at Attorney Beasley " HOW COULD THIS CASE HAVE GOTTEN SO FAR!" And to the Plaintiff waving a citatiion declared with unjudicial attitude inferring the plaintiff was trying to get away with something " HOW ARE YOU GOING TO GET AROUND THIS!"

At that moment the Plaintiff's feeling were that he was being told, that he was an outsider, he was not a lawyer or a member of the elite Bar association , How dare he come into a small claims court with such a complicated case.

Every litigant is entitled to nothing less than cold neutrality of an impartial Judge. PAUL JENSEN, CO-EXECUTORS OF THE ESTATE OF A.P. JENSEN, 166 so 2d 625

.....It's sort of like a baseball game, where a rookie is protesting vigorously an unfair call by the umpire, and is thrown out of the game for having the temerity to question his decision.

CONCLUSION

Petitioners, SAM SPECTOR and BETTY SPECTOR, respectfully submit that the Trial Court Judgment entered May 12, 1987 must be denied based upon the authority set forth in this brief. That the facts stated above has raised the importance of constitutional law, that the lower tribunals have failed to address.

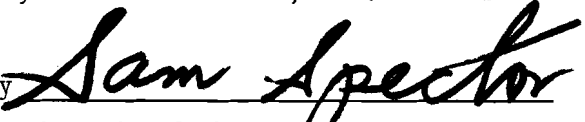
This action developed on International Flight which is controlled by a United States Treaty. The Warsaw Convention.

On Writ of Certiorari to review a judgment of the Circuit Court Appellate for the Fifteenth Judicial Circuit affirming a judgment of the County Court, Palm Beach County, Florida, which dismissed, on the grounds of res judicata, failed to rule on the Constitution Issues, should be reversed.

WE HEREBY CERTIFY that true and correct copies of the Brief has been personally delivered to a UNITED STATES POST OFFICE and mailed on the 25th day of July 1988 to: DANIEL F. BEASLEY Attorney for TWA., of FOWLER, WHITE, BURNETT, HURLEY, BANICK, & STRICKROOT P.A., 25 West Flagler Street, Miami, Fl. 33130

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