IN THE SUPREME COURT OF FLORIDA

GATOR FREIGHTWAYS, INC., and CLAIMS CENTER,

Petitioners,

vs.

ROLAND ROBERTS,

Respondent.

CASE NO.: 73,925

RESPONDENT'S JURISDICTIONAL BRIEF

Filed by:

DAVID A. SNYDER, ESQ.
Florida Bar No. 325929
Attorney for Respondent
2298 S. Dixie Highway
Miami, Fl 33133
(305) 856-9900
(305) 764-2522

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STATEMENT OF CASE AND FACTS

Petitioners, Gator Freightways, Inc., and Claims Center, will be referred to as Petitioners or GATOR in this brief. Respondent, ROLAND ROBERTS, will be referred to as Respondent or ROBERTS. References to Petitioners' appendix will appear as (App.___).

The Respondent, ROLAND ROBERTS, the Appellant below, perfected an appeal to the First District Court of Appeal from a final Order of the Department of Labor and Employment Security, District K, Dade County, Florida, dated April 27, 1987, denying Respondent's claim for workers' compensation benefits incurred as a result of an on the job accident on June 23, 1986. The Petitioner, GATOR FREIGHTWAYS, INC., was the employer to which Respondent, ROLAND ROBERTS, applied for workers' compensation benefits. The First District Court of Appeal filed its decision on January 20, 1989, reported as Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989). (App. A). The First District Court of Appeal affirmed the Deputy Commissioner's finding that Respondent was not an "employee" of GATOR, but held that Respondent was a "statutory employee" of GATOR thereby reversing the Deputy Commissioner's Order on that point. Petitioner's Motion for Rehearing and Rehearing en banc were denied on February 23, 1989. (App. B). Petitioner's Motion for Certification of Great Public Importance was also denied on February 23, 1989. (App. B).

In June, 1986, the Respondent was making a delivery to the Ace Rudd Company. Respondent was driving a tractor leased to GATOR by Lucious Reason, the owner and operator, and pulling a trailer

owned by GATOR that was loaded with freight being transported for GATOR's customers pursuant to GATOR's bills of lading. While unloading the trailer at Ace Rudd Company, Respondent fell out of the trailer, injuring himself on the pavement. There was no civil negligence suit filed by Respondent as there was no negligence involved.

JURISDICTIONAL STATEMENT

Respondent requests this Court to exercise its discretion to decline jurisdiction under Fla. R. App. P. 9.030(a)(2)(A)(iv) and Art. V, §3(b)(3), Fla. Const. (1980) as the decision of Roberts v. Gator Freiahtwavs. Inc., 538 So.2d 55 (Fla. 1st DCA 1989) does not expressly and directly conflict with decisions of the Third District Court of Appeal. The Third District Court of Appeal decisions cited by Petitioners are factually distinguishable from the First District Court of Appeal's decision in Roberts v. Gator Freishtwavs, Inc., supra.

SUMMARY OF ARGUMENT

There is no express and direct conflict between the First District Court of Appeal's decision in Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989) and the Third District Court of Appeal's decisions in Florida Power & Light Company v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984) as required by Fla. R. App. P. 9.030 (a)(2)(A)(iv) and Art. V, §3(b)(3), Fla. Const. (1980). The Third District Court of Appeal decisions cited by Petitioners are factually distinguishable from the First District Court of Appeal's decision in Roberts, supra.

Therefore, Petitioners have no basis upon which to invoke this Court's discretionary jurisdiction and Petitioners' Petition for Review should be denied.

ARGUMENT

Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) and Art. V, §3(b)(3), Fla. Const. (1980), provide that the discretionary jurisdiction of the Supreme Court may be sought to review decisions of District Courts of Appeal that expressly and directly conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law.

Prior to the 1980 Constitutional revision of Article V, the Florida Supreme Court had a broad constitutional power to entertain "conflict certiorari" petitions. Article V, §3(b)(3) Fla.Const. (1972) allowed the Supreme Court to review "by certiorari any decision of a District Court of Appeal.. .that is in direct conflict with a decision of any District Court of Appeal or of the Supreme Court on the same question of law." The 1980 revision deleted all reference to the term **"certiorari"** and severely restricted the class of District Court of Appeal decisions that could be reviewable by the Supreme Court on the basis of a conflict. Presently, a District Court of Appeal decision is reviewable only if it "expressly and directly" conflicts with a decision of the Supreme Court or another District Court of Appeal. It is not enough to show that the District Court decision is effectively in conflict with other appellate decisions.

Petitioners maintain that the decision of the First District Court of Appeal in Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989) expressly and directly conflicts

with the decisions of the Third District Court of Appeal in Florida Power & Light Co. v. Brown, 274 So.2d 558 (Fla. 3d DCA 1983) and Williams v. Pan American World Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984).

In Brown, supra, the Third District ruled that Florida Power & Light was not a F.S.§§440.10 and 440.11 "statutory employer" of the employee of an independent contractor hired by Florida Power & Light to perform certain work for Florida Power & Light's customer, Pompano Fashion Square. Since Florida Power & Light was not a statutory employer it was not entitled to workers' compensation immunity from a civil judgment for its negligent acts which injured Brown. In Brown, the court correctly noted that in order for a company to qualify as a **"contractor"** under §§440.10 and 440.11, the company's primary obligation in performing a job or providing a service must arise out of a contract. 274 So.2d at 560. The Brown court found no contract between Florida Power & Light and the Fashion Square. 274 So.2d at 560. The court went on to hold that even assuming such a contract existed, the primary obligation of Florida Power & Light, a public utility who provided electricity to the public, arose out of a statute (i.e., Florida Statute §366.03). 274 So.2d at 560.

The Brown decision is materially distinguishable from Roberts, supra. The Brown opinion does not hold that any statute which pertains to a company will automatically act as the source of its primary obligation or will supersede existing contracts which

require the company to perform a job or provide a service. Petitioners clearly interpret Brown in an overbroad manner. The Roberts opinion cogently points out that Brown is materially distinguishable from Roberts:

> "Different law governs the relationships of a power company exercising an exclusive franchise for supplying electric power to the public and a trucking company operating as a common carrier. In the Brown case, the court found there was no contract between FP&L and its customer, Pompano Fashion Square, and that FP&L's duties were predicated entirely upon statutes. [] A trucking company's duties to its customers, as we have seen above, are primarily based on contract law; for a trucking company, whether a common carrier or a contract carrier enters into a contract specifying the terms of its undertaking with each of its customers, and such contract can be customized to meet the specific needs of the customer." (emphasis supplied)

538 So.2d at 59.

The Roberts court noted that the Brown court found there was no contract between Florida Power & Light and the Fashion Square. 538 So.2d at 59. The Roberts court also noted in a footnote that the Brown court disclaimed making the assumption that a contract existed in deciding Florida Power & Light's status. 538 So.2d at 59, fn.3. In contrast, the Roberts' court found a contract between GATOR and each of its customers in the form of bills of lading. 538 So.2d at 58, 59, 60.

The Roberts court further distinguished Brown by refuting Petitioners' appellate argument that GATOR's primary obligation to its customers arose from federal statute by discussing, at length,

laws which pertain to common carriers such as GATOR. 538 So.2d at 58-59. This well developed analysis led the Roberts court to conclude that GATOR's primary obligation to its customers arises from contract and contract law.

The court's opinion in Roberts makes it clear that not just any statute which may pertain to a company will be deemed to be the source of its primary obligation. The court employed a well developed legal analysis to determine whether GATOR's primary obligation arose from a statute which strictly and entirely regulated GATOR, such as the statute in Brown which strictly and entirely regulated a power company exercising a monopoly, or whether a contract relationship existed which was the source of its primary obligation and superseded any peripheral statute.

The Roberts court further distinguished Brown by stating:

> "[t]he court in Brown appears to have followed without question this court's opinion in State ex rel. Auchter Co. v. Luckie, 145 So.2d 239 (Fla. 1st DCA), cert. denied, 148 So.2d 278 (Fla. 1962), which limited the application of section 440.10 to building construction contracts. In Luckie the court construed West v. Sampson, 142 So.2d 74 (Fla. 1962), as indicating, although not specifically holding that
>
> > The type of contractual obligations by which one must be bound in order to be held a contractor within the meaning of the statute is the conventional type of contract entered into between a general contractor and an owner of property...
>
> 145 So.2d at 242. Judge Rawl's dissent in Luckie cogently points out that the court misinterpreted the Supreme Court's opinion in West v. Sampson,....

538 So.2d at 59.

The Williams, supra, decision is also distinguishable from the Roberts decision and therefore not in direct and express conflict therewith. The Williams court held that Pan American was not a statutory employer under §§440.10 and 440.11 because its primary obligation arose from federal statutory and common law requirements to transport passengers. The Williams court set forth two reasons in support of its holding. First, it relied on the "controlling case" of Brown. 448 So.2d at 69. For that reason, Williams is distinguishable from Roberts for the same reasons set forth in the above analysis which distinguished Roberts from Brown. Further distinguishing Williams from Roberts is the fact that the Williams court incorrectly interpreted Brown by stating that a "single express written agreement to supply electricity to a shopping center was involved. "448 So.2d at 69. As previously stated, the Brown court found there was no such contract.

The second reason set forth by the Williams court in support of its holding was that the sublet work of handling baggage was "incidental" to the contracts to transport the passengers themselves (i.e., airline tickets). 448 So.2d at 70. Williams can again be distinguished because the sublet work in Roberts was an indispensable and not incidental portion of GATOR's primary contractual obligation. GATOR contracted with each customer to transport goods. GATOR would sublet these contracts (i.e., bills of lading) to Roberts who would perform most, if not all, of the contracted for services.

CONCLUSION

Based on the argument and law presented herein, Respondent, ROLAND ROBERTS, respectfully requests this Court to decline jurisdiction over the Petition as there is no express and direct conflict between the First District Court of Appeal's decision in Roberts v. Gator Freightways, Inc., 538 So.2d 55 (Fla. 1st DCA 1989) and the Third District Court of Appeal's decisions in Florida Power and Light Company v. Brown, 274 So.2d 558 (Fla. 3d DCA 1973) and Williams v. Pan American Airways, Inc., 448 So.2d 68 (Fla. 3d DCA 1984) as required by Fla. R. App. P. 9.030(a)(2)(A)(iv) and Art. V, §3(b)(3), Fla. Const. (1980).

Respectfully submitted,

DAVID A. SNYDER, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 26th day of April, 1989 to: Ronald Hock, Esq., P.O. Box 3391, Tampa, Florida 33601-3391 and Henry T. Wihnyk, Esq., Conroy, Simberg & Lewis, P.A., 2620 Hollywood Blvd., Hollywood, Florida 33020.

LAW OFFICES OF DAVID A. SNYDER
2298 South Dixie Highway
Miami, Florida 33133
(305) 856-9900

By: _____
DAVID A. SNYDER