

SUPREME COURT OF FLORIDA

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PANNELL KERR FORSTER,

Petitioner,

vs.

VAUGHN DURHAM, et al.,

Respondents.

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CASE NO. 75,529

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PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, Pannell Kerr Forster ("PKF"), has invoked the discretionary jurisdiction of this Court to review the decision of the Fourth District Court of Appeal rendered January 24, 1990. A 551, 558.<sup>1</sup> This Court accepted jurisdiction on April 24, 1990. A 569.

Respondents, Vaughn Durham, et al., were defendants in an action arising out of a failed condominium hotel project in Palm Beach, Florida, known as the Palm Court Hotel. A 1. Respondents had purchased 66 condominium units in the Palm Court Hotel, and when the hotel failed financially, Respondents ceased making payments on their units. A 1. Palm Court, Inc., the owner and developer of the Palm Court Hotel, filed a complaint against Respondents to foreclose the 66 promissory notes and mortgages on Respondents' condominium units. A 1. Respondents counterclaimed for rescission, and the case went to trial in the form of a "first wave" severed proceeding designed to resolve only those claims between Palm Court, Inc. and a limited number of Respondents. A 1-2. On March 28, 1988, after a five week nonjury trial, the trial court issued a Memorandum Opinion in which it found in favor of Respondents and against Palm Court, Inc. A 1-32. The court held that "the unit owners are entitled to rescission and to an award of incidental damages." A 31.

.....  
The Appendix To Petitioner's Brief On The Merits will be cited as "A (page number(s))."

Subsequently, on May 31, 1988, Respondents served a counterclaim on PKF, an accounting firm. A 41A, 42.<sup>2</sup> In their counterclaim, Respondents allege that Palm Court, Inc. retained PKF to prepare studies for the proposed hotel, and on June 30, 1985, four months prior to the scheduled opening of the Palm Court Hotel, PKF prepared an inaccurate "Market Demand Report" and an inaccurate "Financial Forecast And Financial Projections," in which PKF inaccurately "forecast[ed] the market demand and financial forecast for the Hotel." A 45-47, 89-92. Respondents allege that Palm Court, Inc. included these forecasts in a Confidential Private Placement Memorandum, which Palm Court, Inc. disseminated to prospective investors, including Respondents, during November and December of 1985 for purposes of inducing sales of the hotel units. A 45-47, 89-92.<sup>3</sup>

Specifically, Respondents' counterclaim against PKF alleges:

14. Counter-Defendant, PANNELL KERR FORSTER ("PKF") is an accounting and consulting firm with offices in and doing business in Palm Beach County, Florida. PKF prepared a "Market Demand Report" and a "Financial Forecast and Financial Projections" which were used by PCI to market the securities offering which is the subject of this suit.

. . .

<sup>2</sup> Respondents' counterclaim against PKF is actually a third party complaint, since PKF is not a plaintiff in the original proceeding. A 1, 41A, 42.

<sup>3</sup> Eleven of the Respondents admit in the counterclaim that they "at no time prior to closing [on their units] received a copy of the Memorandum." A 47. This alone requires reversal of the Fourth District's decision that these 11 Respondents have a cause of action against PKF. A 551-557.

18. In an effort to sell THE PALM COURT to numerous investors, PCI [Palm Court, Inc.] sponsored a securities offering ("the Offering") of the 66 rooms within THE PALM COURT (hereinafter referred to as "units"). The Offering was conducted pursuant to the terms of a Confidential Private Placement Memorandum dated June 30, 1985 as amended by an addendum dated October 15, 1985 (collectively referred to as "the Memorandum").

. . .

21. During November and/or December of 1985, the Memorandum and numerous other documents used in connection with the Offering were distributed by PCI and/or its agents to each of the Purchasers, with the exception of [11 purchasers], who at no time prior to closing received a copy of the Memorandum. . . .

22. On approximately December 29, 1985, each Purchaser purchased one or more units in THE PALM COURT pursuant to the Offering at a closing. . . .

. . .

COUNT XXIII  
NEGLIGENCE AGAINST PKF

Counter-Claimants reallege and incorporate by reference paragraphs 1 through 24 above as if fully set forth herein.

185. In connection with the Palm Court Securities Offering, PKF was retained by PCI to prepare a "Market Demand Report" and a "Financial Forecast and Financial Projections" relating to the Palm Court Hotel.

186. At all times PKF had actual knowledge of the fact that the reports it was retained to prepare would be included in an Offering Memorandum that was to be used by PCI to market the Palm Court Securities. In fact, PKF provided PCI with express permission to include both the Market Demand Report and the Financial Forecast and Financial Projections as exhibits to the Offering Memorandum.

187. Because each of the Purchasers were intended and foreseeable beneficiaries of the PKF studies, and further because PKF knew that the Purchasers would rely on said studies in making a determination as to whether to invest in the Palm Court Securities Offering, PKF owed each of the Purchasers the duty to conduct its studies in accordance with standards used by reasonable prudent professionals of PKF's experience and expertise, under the circumstances involved.

188. In connection with the Market Demand Report and the Financial Forecast and Financial Projections, PKF breached its duty of care to the Purchasers by negligently compiling the data necessary to forecast the market demand and financial forecast for the Hotel, and by negligently analyzing the data which was compiled. As a result of PKF's failure to exercise the care and skill that a prudent professional would exercise under the circumstances in compiling the data and formulating the studies, the reports prepared and contained in the Offering Memorandum were grossly inaccurate even assuming the assumptions underlying the studies had come into fruition.

189. PKF's negligence in connection with the Market Demand study and "Financial Forecast and Financial Projections" compiled in connection with the Palm Court Offering has proximately caused damage to each of the Purchasers.

WHEREFORE, the Purchasers demand judgment against PKF for compensatory damages, interest, costs, such other relief as this Court deems appropriate.

COUNT XXIV  
GROSS NEGLIGENCE AGAINST PKF

Counter-Claimants reallege and incorporate by reference paragraphs 1 through 24 and Count XXIII above as if fully set forth herein.

190. Prior to the time the Palm Court Offering was allegedly consummated, PKF obtained actual knowledge of the fact that its "Market Demand Report" and "Financial Forecast and Financial Projections" were not reliable



due to numerous changes in conditions that had occurred between the time the studies were completed and the fall of 1985, approximately two months prior to the alleged closing of the offering. Specifically, PKF knew that many of the assumptions on which its studies were based did not, and in fact would not come into fruition, and it knew, or had formed an opinion that the proposed management of the Hotel would be unable to provide the type of service which was necessary in order for PKF's studies to remain valid and an accurate forecast for Hotel operations.

191. Notwithstanding the fact that PKF obtained knowledge that its studies were invalid, or materially inaccurate, at least two months prior to the time the Palm Court Securities Offering was allegedly closed, PKF took absolutely no action whatsoever to modify its studies, nor did it direct the sponsor of the Offering to cease using the studies as a basis for marketing the Palm Court Securities. This is so even though PKF had given PCI express permission to utilize its studies in connection with marketing the Offering, and even though PKF knew that prospective purchasers would be relying upon said studies in making a determination as to whether to participate in the Offering.

192. PKF's failure to take any action subsequent to the time it knew that its studies were invalid, or materially inaccurate, constituted a reckless and wanton disregard for the rights of the prospective purchasers who were intended beneficiaries of PKF's studies.

193. PKF's refusal to take any action in connection with the Offering after it obtained the knowledge set forth above constituted gross negligence which has proximately caused injury to each of the Purchasers.

WHEREFORE, the Purchasers demand judgment against PKF for compensatory damages, costs, interest, and such other relief as this Court deems appropriate.

COUNT XXV  
BREACH OF FIDUCIARY DUTY AGAINST PKF

Counter-Claimants reallege and incorporate by reference paragraphs 1 through 24 and Counts XXIII and XXIV above as if fully set forth herein.

194. As a result of its giving PCI express permission to use its studies in connection with marketing the Palm Court Securities Offering, PKF assumed a fiduciary duty to the prospective investors in the offering. PKF was therefore obligated to exercise the highest duty of loyalty and care toward the rights of said purchasers.

195. By failing to take any action to prevent use of the studies by PCI or to warn the Purchasers that the studies were invalid or materially inaccurate after receiving actual knowledge of such, PKF breached its fiduciary obligations to the perspective purchasers of the Palm Court securities. PKF's breach of its fiduciary obligations to the investors was in reckless and wanton disregard of their rights as intended beneficiaries of the PKF studies.

196. PKF's reckless and wanton breach of fiduciary duty in total disregard to the rights of the Purchasers has proximately caused the Purchasers to suffer substantial injury.

WHEREFORE, the Purchasers demand judgment against PKF for compensatory damages, interest, costs and such other relief as this Court deems appropriate.

A 45-48, 89-92.

PKF filed a motion to dismiss the counterclaim, arguing that because PKF and Respondents were not in privity of contract, and in fact the counterclaim does not allege privity of contract, PKF is not liable to Respondents. A 33-39. PKF also argued that Respondents do not allege reliance upon the PKF studies. A 33-39.

On October 24, 1988, the trial court granted PKF's motion and entered an order dismissing Respondents' counterclaim against PKF. A 120-121. The trial court relied on Gordon v. Etue, Wardlaw & Co., 511 So.2d 384 (Fla. 1st DCA 1987), in which the First District Court of Appeal held that "an accountant is not liable to persons with whom there is no privity of contract." Id. at 389; A 121.

Respondents appealed to the Fourth District Court of Appeal, and on January 24, 1990, the Fourth District reversed the trial court. A 551. Acknowledging that the First District in Gordon, as well as the Second District in First Florida Bank, N.A. v. Max Mitchell & Co., 541 So.2d 155 (Fla. 2d DCA 1989), quashed, 558 So.2d 9 (Fla. 1990), had held that an accountant is not liable to persons with whom there is no privity of contract, the Fourth District nevertheless decided that "we are not bound by the Gordon decision and, in fact, we disagree with it." A 553. Although Respondents' counterclaim against PKF does not allege privity of contract, A 45-48, 89-92, the Fourth District held that it "state[s] a cause of action against the accountants." A 553. The court recognized conflict with Gordon and First Florida Bank. A 557.

In its opinion, however, the Fourth District did not address PKF's argument that regardless of the privity issue, PKF's studies were opinions of future events, specifically economic forecasts for a proposed hotel that was not then open or in operation; Respondents could not justifiably rely on the studies; and any inaccuracy in the economic forecasts cannot support an

action for misrepresentation. A 541-542. On February 1, 1990, PKF filed in the Fourth District a notice to invoke the discretionary jurisdiction of this Court. A 558. On April 24, 1990, this Court accepted jurisdiction. A 569.

Prior to accepting jurisdiction, this Court, in First Florida Bank, N.A. v. Max Mitchell & Co., 558 So.2d 9 (Fla. 1990), held that absence of privity does not bar an action against an accountant. Id. at 14. That decision, however, does not address the liability of an accountant for an erroneous opinion of future events, specifically an inaccurate economic forecast for a proposed hotel that was not open for business at the time the forecast was prepared. See id.

ISSUE

Whether An Accountant May Be Held Liable To Purchasers Of Units In A Condominium Hotel Not Yet In Operation, Based Upon The Accountant's Forecast Of Market Conditions And Estimates Of Future Revenues And Expenses Of The Hotel

SUMMARY OF ARGUMENT

The studies prepared by PKF for Palm Court, Inc. were a Market Demand Report and a Financial Forecast And Financial Projections. They were completed on June 30, 1985, four months prior to the scheduled November 1985 opening of the Palm Court Hotel. The studies forecasted market and financial conditions for the proposed hotel for the period commencing November 1985 and ending December 1995. Because these economic forecasts were mere opinions of future events, not statements of present or past fact, as a matter of law they are not actionable, and they cannot render PKF liable to Respondents.

ARGUMENT

The studies prepared by PKF for the proposed Palm Court Hotel were a Market Demand Report and a Financial Forecast And Financial Projections. A 240-296, 410-432. As the counterclaim states, these studies "forecast[ed] the market demand and financial forecast for the Hotel." A 90. They are unlike the audited statements of present or past financial condition found in other accountant liability cases, such as First Florida Bank, in which the accountant prepared "audited financial statements" that reflected the "total assets" and "total liabilities" of the accountant's client. 558 So.2d at 10.

Rather, the PKF studies were merely opinions of future events, specifically economic forecasts for a proposed hotel that was not then open for business. A 240-296, 410-432. They did not assess the current financial condition of the Palm Court Hotel, or Palm Court, Inc. A 240-296, 410-432. Indeed, the PKF forecasts were completed on June 30, 1985, A 302, and the Palm Court Hotel was not scheduled to open for business until four months later, in November 1985. A 246, 413.<sup>4</sup> The Market Demand Report forecasted market conditions, such as estimated occupancy levels and estimated market share, for the Palm Court Hotel for the last two months of 1985 and the years 1986 through 1990. A 253-254, 283, 286. The Financial Forecast And Financial

.....  
<sup>4</sup>It in fact did not open until late December 1985. A 15-16.

Projections estimated income and cash flow for the Palm Court Hotel for the last two months of 1985 and the years 1986 through 1995. A 415, 426-432.

The inherently speculative nature of these economic forecasts is evident from the studies themselves. The Market Demand Report states:

In accordance with your authorization, we have conducted a review of potential market demand for a proposed 66-unit hotel in Palm Beach, Florida.

The conclusions reached are based on our present knowledge and information with respect to the status of the hotel market in Palm Beach at the completion of our field work in January 1985, and updated research performed in May 1985.

As in all studies of this type the projected occupancies and average daily room rates are based upon competent and efficient management and presume no significant change in the market from that as set forth in this report.

. . .

Pannell Kerr Forster has been retained by Palm Court, Inc., hereafter known as the sponsor, to study the existing and potential market demand and to prepare estimates of future performance for the renovated [Palm Court] Hotel. . . .

. . .

It is our understanding that all renovation work will be completed by the first of November 1985, enabling The Palm Court to operate fully during November and December of this year.

. . .

Our study involved determining the demand for the proposed hotel's rooms, services, and related amenities. To assess the market and to project the potential future demand and



share of the market that could reasonably be attained by the property, we followed a four-step procedure. . . .

. . . .  
Our study and estimates of future performance in the marketplace are based on the assumption that The Palm Court will be operated as a luxurious hotel. The commitment on the part of the sponsor and management to have the level of quality described to us, will determine whether the results in this report will be achievable.

A 240, 242, 246, 250, 254 (emphasis added).

The Financial Forecast And Financial Projections states:

The appended forecasted financial information . . . and accompanying summary of forecast assumptions for each of the periods indicated from November 1985 through December 31, 1995 present, to the best of the knowledge and belief of Palm Court, Inc. (the "Sponsor"), based on present circumstances, the expected income and cash flow for the forecast periods for The Palm Court, a proposed 66-unit hotel/condominium.

We have reviewed the forecast in accordance with applicable guidelines for a review of **financial** forecast established by the American Institute of Certified Public Accountants. Our review included those procedures we considered necessary to evaluate both the assumptions used by the Sponsor and the preparation and presentation of the forecast. We have no responsibility to update this report for events and circumstances occurring after the date of this report.

Based on our review, we believe that the accompanying forecast is presented in conformity with applicable guidelines for presentation of a financial forecast established by the American Institute of Certified Public Accountants. We believe that the underlying assumptions provide a reasonable basis for the Sponsor's forecast. However, some assumptions inevitably will not materialize and unanticipated events and

circumstances may occur; therefore, the actual results achieved during the forecast period will vary from the forecast and the variations may be material.

. . .

The Assumptions set forth below are those that the Sponsor believes are significant to the forecast or are key factors upon which the income and cash flow before Unit Owner's direct expenditures and cost recovery (depreciation) depend. Some assumptions inevitably will not materialize, and unanticipated events and circumstances may occur subsequent to June 30, 1985, the date of this forecast. Therefore, the actual results achieved during the forecast period will vary from the forecast, and the variations may be material. . . .

The forecasted statement sets forth the expected income and cash flow before Unit Owner's direct expenditures and cost recovery (depreciation) at the forecasted average room rates and occupancy levels for the hotel ("Hotel"). Although it may be possible that the Hotel will be open and operating prior to November 1985, the financial forecast assumes operations as of November 1985 and reflects operating results for the remaining calendar year. . . . The forecasted statement should not be relied upon to indicate actual results. Since this is a condominium/hotel, the tax and other consequences of owning and operating a Unit . . . cannot be predicted with any certainty, and there is no assurance that the . . . cash flow in the amount projected by the Sponsor from Hotel operations will ever be realized in any year or from year to year.

A 410-411, 413-414 (emphasis added).

The significance of the distinction between economic forecasts and audited statements of present or past financial condition is that Florida law does not recognize a cause of action for an erroneous opinion of future events, such as an

economic forecast for a proposed business not yet in operation. This Court long ago identified those misrepresentations that do give rise to a cause of action:

To entitle a party to maintain an action for deceit by means of false representations, he must, among other things, show that the defendant made false and fraudulent assertions in regard to some fact or facts material to the transaction in which he was defrauded, by means of which he was induced to enter into it. The misrepresentation must relate to alleged facts, or to the condition of things as then existent. It is not every misrepresentation relating to the subject-matter of the contract which will render it void, or enable the aggrieved party to maintain an action for deceit. It must be as to matters of fact substantially affecting his interests, not as to matters of opinion, judgment, probability, or expectation.

Williams v. McFadden, 1 So. 618, 620 (Fla. 1887) (emphasis added). Accord, Houchins v. Case, 189 So. 402, 404 (Fla. 1939).

More recently, in Bower v. Selecman, 52 So.2d 680 (Fla. 1951), this Court held that the evidence was insufficient to support a claim for fraud because "[t]here was no misrepresentation of any past or existing fact." Id. at 681. Conversely, in Oceanic Villas v. Godson, 4 So.2d 689 (Fla. 1941), this Court held that fraud was properly claimed because "false and fraudulent misrepresentations as to past income, gross receipts or profits may constitute fraud." Id. at 690. In Sleight v. Sun & Surf Realty, 410 So.2d 998 (Fla. 3d DCA 1982), the Third District Court of Appeal held that an action for fraudulent misrepresentation is allowed only if the alleged misrepresentation "[r]elates to a past or existing fact." Id. at 999.

PKF's allegedly inaccurate market and financial forecasts for the Palm Court Hotel, therefore, cannot serve as a basis for recovery. They could not be relied upon as actionable representations because they were mere opinions of future economic events, not statements of present or past fact. For example, in Evans v. Gray, 215 So.2d 40 (Fla. 3d DCA 1968), cert. denied, 222 So.2d 748 (Fla. 1969), the Third District held that the plaintiff could not sue for alleged misrepresentations made by the defendants, sellers of the capital stock in a corporation, regarding the value of the corporation's assets on a date in the future and the capacity of the corporation to produce in the future:

The amended complaint is ambiguous as to the representation of value of the assets of the corporation on June 30, 1966. The amended complaint is susceptible of the view that this representation was made in April, 1966, which would be a representation of value on a date in the future. Therefore, it is not an actionable representation. . . .

As to the capacity of the corporation to produce in the future, this is also a representation of future performance and not actionable. . . .

. . .

If the sellers had, by some fraud, prevented the purchasers from attempting to learn the true condition of the corporate business . . . , then possibly the purchasers might have had a cause of action. . . . However, in the instant amended complaint the purchasers do not allege that they were prevented by any artifice, trick, device, or fraud from learning what they alleged to be the true condition of the business.

215 So.2d at 41-42 (emphasis added).

In Butts v. Dragstrem, 349 So.2d 1205 (Fla. 1st DCA 1977), cert. denied, 361 So.2d 831 (Fla. 1978), a seller of rental property represented to a prospective purchaser that the property could easily yield \$1,000 net income per month, since it had yielded at least that much per month for the past several years. After purchasing the property, the buyer found that it did not produce anywhere near the \$1,000 per month net income claimed by the seller, and that the seller's actual monthly net income had been only \$540. The First District held that because the seller's misrepresentation was of a past fact, it supported a claim for fraud:

At the outset we conclude there was ample evidence in support of the conclusion that [the defendant] fraudulently misrepresented the average monthly net income he derived from his business. In general, misrepresentations as to past income - as opposed to probable future profits - are proper predicates for alleging fraud.

349 So.2d at 1206 (emphasis added).

The United States Court of Appeals for the Eleventh Circuit, interpreting and applying Florida law, has come to the same conclusion. In Çavic v. Grand Bahama Dev. Co., 701 F.2d 879 (11th Cir. 1983), the court held:

In general, to constitute actionable fraud, a false representation must relate to an existing or pre-existing fact, . . . an unspecific and false statement of opinion such as occurs in puffing generally cannot constitute fraud. Also, a promise of future action or a prediction of future events cannot, standing alone, be a basis for fraud because it is not a representation, there is no right to rely on it, and it is not false when made.

Id. at 883 (emphasis added). See also Royal Typewriter Co. v. Xerographic Supplies Corp., 719 F.2d 1092, 1103 (11th Cir. 1983) (fraud action not allowed for misrepresentation that "financial projections, based upon testing and experience, revealed that the leasing and rental of the RBC-1 [copying machine] would result in a profitable enterprise").

Indeed, the federal courts are unwilling to impose liability under federal securities laws for inaccurate financial forecasts. In Luce v. Edelstein, 802 F.2d 49 (2d Cir. 1986), the plaintiffs alleged fraud in the solicitation of investors for a real estate partnership that eventually failed. With respect to the allegedly fraudulent misrepresentations in the offering memorandum, the Second Circuit held:

Plaintiffs allege that the Offering Memorandum contained intentional misrepresentations as to the potential cash and tax benefits of the partnership. However, the Offering Memorandum made it quite clear that its projections of potential cash and tax benefits were "necessarily speculative in nature" and that "[n]o assurance [could] be given that these projections [would] be realized." Indeed, the Offering Memorandum warned prospective investors that "[a]ctual results may vary from the predictions and these variations may be material." We are not inclined to impose liability on the basis of statements that clearly "bespeak caution." Polin v. Conductron Corp., 552 F.2d 797, 806 n. 28 (8th Cir.), cert. denied, 434 U.S. 857 (1977) (quoted approvingly in Goldman v. Belden, 754 F.2d 1059, 1068 (2d Cir. 1985)).

Luce, 802 F.2d at 56 (emphasis added).

The Luce holding applies to accountants. In Nichols v. Merrill Lynch, Pierce, Fenner & Smith, 706 F.Supp. 1309 (M.D. Tenn. 1989), investors in a condominium hotel brought an action

against an accounting firm for alleged violations of federal securities laws. The plaintiffs claimed that the accounting firm had been retained by the developer of the project to prepare a market study and financial projections for the proposed hotel; the market study and financial projections were included in the private placement memorandum; and the private placement memorandum induced the plaintiffs to purchase units in the hotel. Specifically, the plaintiffs alleged that the accounting firm, in preparing estimates of the future rental income of the hotel, had relied upon assumed inflation rates that were much higher than the rate of inflation later realized. The court, noting that the accounting firm was merely "predicting a future event," *id.* at 1327, held that the plaintiffs' allegations failed to state a cause of action against the accounting firm:

The complaint makes sense only on the premise that the accountants should have known that reliance on the high inflation projections was unreasonable. Thus, the complaint in substance is one for negligence.

In any case, the **PPM** [private placement memorandum] clearly states that

[t]he projected inflated average room rates could be materially different if significantly higher or lower rates of inflation are actually experienced. Since the actual rates of inflation cannot be predicted with any degree of certainty. no assurance is given that the projected average room rates will not vary materially from those shown above. (emphasis added)

**PPM, 1-3.**

For anyone who can read, this seems a clear warning that the forecast of rental income was highly speculative and in some measure

contingent upon uncontrollable future events. To say nothing more, it certainly "bespeaks caution" in the language of the leading case of Luce v. Edelstein, 802 F.2d 49, 56 (2d Cir. 1986), and this is enough to insulate defendant [accounting firm] from liability.

Nichols, 706 F.Supp. at 1327. See also In re National Smelting of N.J., Inc., 722 F.Supp. 152, 171 (D.N.J. 1989); Andreo v. Friedlander, Gaines, Cohen, Rosenthal & Rosenberg, 651 F.Supp. 877, 881 (D. Conn. 1986). Significantly, PKF's economic forecasts contain the same warnings and disclaimers found in Luce and Nichols. A 240, 242, 246, 250, 254, 410-411, 413-414.

In First Florida Bank, this Court held that an accountant can be liable to a person with whom there is no contractual privity only to the extent that there is "justifiable reliance" on the information supplied by the accountant. 558 So.2d at 12, quoting RESTATEMENT (SECOND) OF TORTS, §552 (1976). PKF respectfully submits that because of the inherently speculative nature of its Market Demand Report and Financial, Forecast And Financial Projections, any inaccuracies therein cannot render PKF liable to Respondents. The PKF economic forecasts were mere opinions of future events, not statements of present or past fact, and thus Respondents could not justifiably have relied on them.

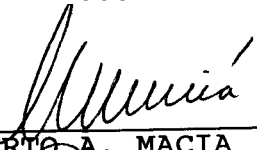


CONCLUSION

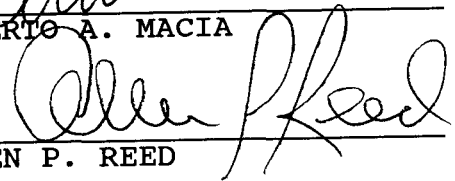
PKF is not liable to Respondents for its economic forecasts. The decision of the Fourth District Court of Appeal should be reversed.

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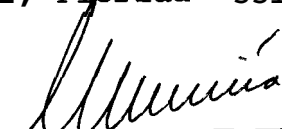
  
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ALLEN P. REED

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Petitioner's Brief On The Merits was served by mail this 21st day of May, 1990, on Michael A. Hanzman, Esq., Floyd, Pearson, Richman, Greer, Weil, Zack & Brumbaugh, Attorneys For Respondents, Courthouse Center, 26th Floor, 175 N.W. First Avenue, Miami, Florida 33128-1817.

  
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