IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 76,167

PALMA DEL MAR CONDOMINIUM ASSOCIATION #5 OF ST. PETERSBURG, INC., a Florida not-for-profit corporation,

Petitioner,

v.

COMMERCIAL LAUNDRIES OF WEST FLORIDA, INC., a Florida corporation,

Respondent.

_____/

AMERIVEND CORPORATION'S AMICUS CURIAE BRIEF ON BEHALF OF RESPONDENT

On Petition for Discretionary Review
from the Second District Court of Appeal
Case No. 89-02144

MITCHELL RYAN KATZ, ESQUIRE
SPENCER & KLEIN, P.A
801 Brickell Avenue
Suite 1901
Miami, Florida 33131
(305) 374-7700

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES:

Section 718.3025, FLA.STAT. (1979) and (1986)

STATEMENT OF CASE AND FACTS

Petitioner, Palma Del Mar Condominium Association #5 of St. Petersburg, Inc., is the condominium association of a condominium complex located in Pinellas County, Florida. (R1-6).[1] On or about August 1, 1983, Petitioner and Respondent entered into a Standard Florida Laundry Space Lease wherein, for a rental fee, Petitioner leased to Respondent, on an exclusive basis, all space designated for commercial laundry equipment in the residential complex. (R3-6) Respondent performed all conditions required under the lease. See, Opinion of Second Disrict Court of Appeal at page 2.

On or about July 27, 1988, Petitioner commenced an action in the Circuit Court of Pinellas County seeking a declaratory judgment finding the lease unenforceable. (R1-6) Respondent moved to dismiss and/or transfer the matter to the Circuit Court of Hillsborough County (R7-10) and pursuant to the motion, the case was transferred. (R11)

Respondent's Motion to Dismiss was denied (R12) and as a result Respondent answered the complaint and alleged affirmative defenses. (R13-15) Thereafter, both parties moved for summary judgment. (R18-31 and 32-33) Petitioner's motion was granted and final summary judgment was entered in its favor on May 9, 1989. (R34-36) Subsequently, Respondent moved for a rehearing (R37) and Amerivend Corporation sought leave to file a memorandum of

---

[1]The symbol "R" will refer to the Record on Appeal.

law in support of Respondent's position. (R84-94) Both motions were denied after hearing on July 19, 1989. (R95) Respondent filed its timely Notice of Appeal on August 3, 1989. (R96) Amerivend Corporation requested leave to file an amicus curiae brief on behalf of Respondent in the appellate court and the request was granted. The matter was argued before the Second District Court of Appeal on April 11, 1990 at which time Amerivend Corporation also presented argument. On May 11, 1990, the Second District Court of Appeal issued its opinion reversing the decision of the trial court. This appeal ensues.

ISSUE PRESENTED

WHETHER THE SECOND DISTRICT COURT OF APPEAL ERRED IN HOLDING THAT §718.3025, FLA.STAT. (1983) DID NOT APPLY TO CONDOMINIUM LAUNDRY SPACE LEASES.

SUMMARY OF ARGUMENT

The Second District Court of Appeal did not err when it found that the requirements set forth in §718.3025, Fla. Stat. (1983) were not applicable to condominium laundry space leases. The original intent of the legislature to exclude such leases from the preview of the statute was expressed through a subsequent clarifying amendment. Notwithstanding that the 1986 amendment to §718.3025 Fla. Stat. does not expressly provide that it is to be retrospective in effect, it clearly expresses the original intent of the legislature. The language of the amendment and the circumstances surrounding its enactment indicate that the 1986 amendment is intended to clarify legislative intent rather than change the existing law. Indeed, the only logical purpose for the amendment was to reject and discard a prior erroneous judicial interpretation of legislative intent.

ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL DID NOT ERR IN HOLDING THAT §718.3025, FLA.STAT. (1983), DID NOT APPLY TO CONDOMINIUM LAUNDRY SPACE LEASES, SINCE THE LEGISLATURE ENACTED A SUBSEQUENT CLARIFYING AMENDMENT SPECIFICALLY STATING ITS ORIGINAL INTENT TO OMIT SUCH LEASES FROM THE PURVIEW OF THE STATUTE

The Second District Court of Appeal was correct when it found that when the legislature enacted §718.3025, it did not envision that the statute would apply to coin operated laundry, food, soft drink, telephone, or other similar vendors. The Court was correct in its determination that "[t]he statute plainly was directed to contracts involving the operation, maintenance, and management of the entire condominium complex and not contracts involving the operation of laundry equipment installed for the benefit of the condominium owners." (Emphasis added.) See, Opinion of Second District Court of Appeal at page 4. A review of the original statute, the amendment thereto and applicable case law confirms the Second District's opinion.

In 1978, the Florida legislature enacted Chapter 78-314, §7 creating §718.3025, Fla.Stat.

The statute, as amended in 1979,[2] read as follows:

718.3025. **Agreement for operation, maintenance, or management of condominiums; specific requirements**

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or

---

[2]Laws 1979, c. 79-314, §12, rewrote subsec. (1), and deleted "time schedule set forth in the" following "services in accordance with the" in subsec. (2).

property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(2) In any case in which the party contracting to prove maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

From 1978 through 1985, no Florida case interpreted the statute. In 1986, the Third District Court of Appeal was called upon to interpret §718.3025, Fla. Stat. (1983) in Wash-Bowl Vending Co., Inc. v. No.3 Condominium Association, Village Green, Inc., 485 So.2d 1307 (Fla. 3d DCA 1986) review denied 492 So.2d

1336 (Fla. 1986). The principal issue before the Wash-Bowl Court was identical to the issue before this Court. That being whether §718.3025, which contains requirements for enforceable condominium maintenance or management contracts, applied to condominium laundry space leases. The Third District found that the statute did apply and stated at pages 1310-11:

> Wash-Bowl contends that the requirements of the statute do not logically relate to laundry space leases. We do not agree. Although no Florida cases have interpreted section 718.3025, Florida Statutes, we believe laundry space leases fall under its purview. First, it seems to be clear that the language "property serving the unit owners" covers washers and dryers which are available for use by all owners §718.3025(1), Fla.Stat.

That decision was rendered on March 4, 1986, and rehearing was denied on April 16, 1986. During the 1986 legislative session, from April 8, 1986 to June 7, 1986, the legislature, in direct response to the Wash-Bowl decision clarified its original intent by enacting Chapter 86-175, §7. That provision amended §718.3025, Fla. Stat., by adding the following language:

> (4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable television operators; retail operators; businesses; restaurants; or similar vendors. (Emphasis Added)

Interpreting the foregoing amendment to be a clarification of the original legislative intent of §718.3025, Fla. Stat. various Florida courts have rejected the Wash-Bowl decision, finding that the original statute did not apply to laundry space leases. Among them, are the following cases:

A. Harbour Light Condominium Association, Inc. v. Coin Operated Apartment Laundries, Inc., Case No. 87-12112 (Div. A)

B. The Blue Grass Beach Club Motel Condominium v. Cleanco, Inc., Case No. 86-41069 (27)

C. Seashore Club South Motel Condominium Association, Inc. v. Wash-Bowl Vending, Inc., Case No. 86-41068 (27)

D. Wash-Bowl Vending, Co., Inc. v. Lucaya Village, II Condominium Association, Inc., Case No. 85-08269 (20) (Court dismissed Counterclaim under §718.3025)

It is settled law that in arriving at the correct meaning of an original prior statute, Florida courts have the right and duty to consider subsequent legislation. Ivey v. Chicago Ins. Co., 410 So.2d 494 (Fla. 1982) citing, Gay v. Canada Dry Bottling Co. of Florida, 59 So.2d 788 (Fla. 1952). Indeed, legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction. Red Lion Broadcasting v. F.C.C., 395 U.S. 367, 89 S.Ct. 1794, 23 L. Ed.2d 371 (1969). Moreover, a subsequent clarifying legislative enactment need not expressly provide that it is intended to clarify a prior law to be retrospective in effect. When an amendment is enacted soon after controversies as to the interpretation of the original act

arise, a court should consider that amendment to be a legislative interpretation of the original law and not as a substantial change thereof. Lowry v. Parole and Probation Commission, 473 So.2d 1248 (Fla. 1985). In other words, when construing statutes, consideration should be given to the legislature's reaction or inaction to judicial interpretation of its intent. Ropfogel v. Enegren, 649 P.2d 1138 (Kan. Ct. App. 1982).

In construing §718.3025, Fla.Stat. (1983), this Court should be guided by its own case of Ivey v. Chicago Insurance Co., 410 So.2d 494 (Fla. 1982). In that case, this Court, in interpreting the original legislative intent of §627.727, Fla.Stat., relied exclusively on a subsequent clarifying amendment disregarding a contrary judicial finding as to the legislative intent. Justice Adkins for the majority wrote that:

> Respondent argues that the 1977 amendment to the language of section 627.727(2)(b) post-dated the accident in question, and was not intended to operate retroactively to clarify the intent of the prior wording. Respondent further contends that had the amendment merely been intended to clarify the law, rather than to change it, the legislature would have so indicated and would not have made the amendment prospective in its operation.
>
> We disagree. An act's legislative history is an invaluable tool in construing the provision thereof. We believe that the 1977 amendment to section 627.727 (2)(b) was intended to clarify the legislature's intention, and that the amendment should be considered in construing said law....
>
> ... Thus we will consider the 1977 amendment when construing section 627.727(2)(b), Florida Statutes (1975), and do find that it indicates an intent on the part of the legislature that one in petitioner's position be allowed to stack the uninsured motorist coverage of policies of which she is a beneficiary when

> determining whether another party is an uninsured motorist.

Ivey v. Chicago Insurance Co., at 497.

The principle that courts should rely on subsequent clarifying enactments to determine the original legislative intent of a prior statute is not new to Florida jurisprudence nor is it unique to Florida courts. Actually, this method of statutory construction was utilized by the Florida Supreme Court long before the Ivey case. For instance, in Gay v. Canada Dry Bottling Co. of Florida, 59 So.2d 788 (Fla. 1952), this Court relied on a 1951 amendment to clarify the Revenue Act of 1949. Specifically, the Revenue Act of 1949 created an exemption for "containers". A controversy arose as to whether the exemption applied only to those containers which are not returnable or to all containers. The Court concentrated on the 1951 amendment which specifically applied only to containers intended to be used one time only when determining the original intent of the legislature. Although the amendment did not expressly provide that it was retrospective in effect, the Court inferred a legislative intent to clarify rather than to change the existing law. It did so by concluding that in passing the clarifying amendment, the legislature was reacting to the wrong interpretation of its original intent by groups resisting the collection of taxes.

This method of relying upon clarifying amendments to determine the original intent of the legislature is utilized by federal courts and in various other jurisdictions. For instance,

in the landmark decision preserving the "fairness doctrine" in broadcasting, the United States Supreme Court in Red Lion Broadcasting v. F.C.C., supra, pointed to a subsequent clarifying amendment to 47 U.S.C. §315(a) to vindicate and ratify the F.C.C.'s interpretation of the original act. As in the instant case, the subsequent enactment in the Red Lion case did not expressly state that it was retrospective in effect but clearly communicated the true intent of the legislature in enacting the original law. See also, People v. Holland, 708 P.2d 119 (Colo. 1985) (Colorado Supreme Court found that subsequent clarifying amendment overcame conflicting interpretations by trial court); Fund Manager v. Tucson Police and Fire, 708 P.2d 92 (Ariz. Ct. App. 1985) (Arizona Court retrospectively applied subsequent clarifying amendment to deny employment benefits not contemplated under original law); and Wilson v. Fireman's Fund Ins. Co., 499 A.2d 81 (Conn. Super. Ct. 1985) (Connecticut Court found that legislature rejected judicial interpretation of a certain statute through a timely clarifying amendment).

With the above principles of law in mind, it is evident that the 1986 amendment was intended to clarify the original intent of the statute and is therefore to be retrospective in effect. The legislative intent in passing the 1986 amendment can be determined from its language as well as from the circumstances surrounding its enactment.

A cursory reading of the 1986 amendment clearly indicates that it is a legislative rejection of the Wash-Bowl Court's inter-

pretation of the Condominium Act. Indeed, that is the only logical justification for the enactment of the amendment. It serves no other purpose. In the Wash-Bowl decision the Third District Court of Appeal wrote the following:

> Although no Florida cases have interpreted Section 718.025, Florida Statutes, we believe laundry space leases fall under its purview. First, it seems to be clear that the language "property serving the unit owner" covers washers and dryers which are available for use by all owners.
> (Emphasis added)

In direct response thereto, the legislature provided the following clarifications:

> (4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this Section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable television operators; retail operators; businesses; restaurants; or similar vendors.
> (Emphasis added)

Since the legislature expressly rejected the Wash-Bowl, Court's interpretation of the original statute, it did not have to expressly provide that the 1986 amendment was retrospective in application. Consider for instance, the case of State v. Parker, 406 So.2d 1089 (Fla. 1982), where this Court ruled that the phrase "notwithstanding the provision of s. 893.12" as used in a subsequent amendment to Section 893.135, Fla.State., was a suffi-

cient declaration of the legislature's prior intent. Therefore, the Court not only rejected contradictory interpretations but also applied the amendment retrospectively. Here, not only did the legislature provide like language, it specifically set forth its intent.

The legislative intent to clarify rather than to change §718.3025, Fla.Stat., through the 1986 amendment can also be inferred from the circumstances leading to its enactment. From the 1979 to the 1985 the legislature found no compelling reason to amend the statute. In 1986, when the Wash-Bowl decision was published, the legislature immediately sought to amend the statute to clarify its true intent and to discard and rebut the rogue decision.

Where a legislature enacts an amendment to a statute soon after a controversy as to the interpretation of the original act arises, the amendment is construed to be retrospective in that it interprets the original law. Glidden Company v. Zdanok, 370 U.S. 530, 52 S.Ct. 1459 (1962) and Wilson, supra. For instance, in Lowry v. Parole and Probation Commissions, 473 So.2d 1248 (Fla. 1985) the Florida Supreme Court discarded a contradictory Attorney General's Opinion interpreting Chapter 947, Florida Statutes, on the basis of subsequent clarifying enactments drafted in reaction to the opinion. The Court stated that:

> In examining Chapter 947 in light of section 775.021(4), Florida Statutes (1983) and section 775.087(2), Florida Statutes (1983), it is unmistakable that the amendments contained in the pending bill are

> expressions of prior and continuing legislative intent. Thus we hold that while AGO 85-11 is a reasonable interpretation of the law, it does not represent legislative intent.

In examining §718.3025, Fla.Stat. (1983), in light of Section 718.3025(4), it is unmistakable that the amendment is an expression of prior and continuing legislative intent. Accordingly, it is equally unmistakable that the Wash-Bowl decision, does not represent legislative intent and should be discarded.

CONCLUSION

For the reasons stated above, the decision of the Second District Court of Appeal should be affirmed.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 24th day of August, 1990 o Brian P. Deeb, Esquire, STOLBA, ENGLANDER & SHAMS, P.A., Attorneys for Plaintiff, 405 Pasadena Avenue South, Post Office Box 41750, St. Petersburg, Florida 33743-1750 and Ainslee R. Ferdie, Esquire, FERDIE AND GOUZ, Attorneys for Defendant, 717 Ponce De Leon Boulevard, Suite 215, Coral Gables, Florida 33134-2084

SPENCER & KLEIN, P.A.
Suite 1901
801 Brickell Avenue
Miami, Florida 33131
(305) 374-7700

By: _____
MITCHELL RYAN KATZ, ESQUIRE