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FILED
SID J. WHITE
MAY 23 1991
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CARL A. MORITZ and SARA H. MORITZ, his wife,

Petitioners,

v.

HOYT ENTERPRISES, INC.,

Respondent.

Fourth District Court
Case No. 89-1232
Case No. 89-1525

Supreme Court
Case No. 77,892

RESPONDENT'S BRIEF ON CONFLICT JURISDICTION

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Preface

Petitioners CARL A. MORITZ and SARA H. MORITZ, his wife were the Plaintiffs in the trial court. They were the Appellants in the Fourth District Court of Appeal. Respondent, HOYT ENTERPRISES, INC., was the Defendant and Counterclaimant in the trial court. It was the Appellee in the Fourth District Court of Appeal.

TABLE OF CONTENTS

TABLE OF CONTENTS

STATEMENT OF CASE AND FACTS

The Respondent does not fully agree with the case and facts as presented by the Petitioner and offers the following:

The case went to trial on the MORITZ' suit to rescind a real estate contract, along with HOYT'S Counterclaim for breach of contract and its affirmative defense that the MORITZS had wrongfully refused the refund of their down payment less damages suffered by the HOYTS as a result of the HOYTS wrongful repudiation of the agreement. After a non-jury trial, the court found the MORITZS had, after finding a better deal on an oceanfront house, wrongfully repudiated the contract. This repudiation had taken place after the house was substantially completed with various additions and changes done at the MORITZS' request.

Because the MORITZS loss their breach of contract claim and because an affirmative judgment was entered in favor of HOYT on its Counterclaim for Breach of Contract, the trial court found HOYT to be the prevailing party and awarded it costs and attorneys' fees. The case was affirmed on appeal by the Fourth District Court of Appeal which cited its previous decision in Reinhart v. Miller, 548 So.2d 1176, 1177 (Fla. 4th DCA 1989) as its authority. The portion of that decision cited, stated that a trial court must find only one prevailing party in a lawsuit. There was no express or direct

conflict with any decision of the Supreme Court or any other district court.

SUMMARY OF ARGUMENT

The Supreme Court should not accept jurisdiction because this case is not in express or direct conflict with any decision of the Supreme Court or any other district court. The case does not apply a rule of law to produce a different result in a case involving controlling facts substantially similar to those in a prior case decided by the Supreme Court or another district court. Also, the decision does not announce a rule of law that conflicts with a rule previously announced by the Supreme Court or by another district court of appeal. There is no basis for the Supreme Court to take jurisdiction over this case.

POINT ON APPEAL

WHETHER OR NOT A DECISION OF A DISTRICT COURT OF APPEAL IS IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THE SUPREME COURT OR OTHER DISTRICTS WHEN IT MERELY CITES ANOTHER OPINION IN ITS OWN DISTRICT AS AUTHORITY, ANNOUNCES NO RULE OF LAW IN CONFLICT WITH A PREVIOUS RULE, AND DOES NOT ANNOUNCE THE APPLICATION OF AN EXISTING RULE OF LAW, BASED ON SIMILAR FACTS, TO PRODUCE AN EXPRESS AND DIRECT CONFLICT WITH A PREVIOUS CASE IN ANY OTHER DISTRICT OR THE SUPREME COURT.

ARGUMENT

The discretionary jurisdiction of the Supreme Court can only be invoked in conflict cases where; (1) the decision advances a rule of law that conflicts with a rule previously announced by the Supreme Court or by another DCA or (2) the decision applies a rule of law to produce a different result in a case involving controlling facts substantially similar to those in a prior case decided by the Supreme Court or another district court. Mancini v. State, 312 So.2d 732 (Fla. 1975); Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960). The conflict must be "express and direct". It must be found in the majority opinion. The conflict jurisdiction cannot come from the dissenting opinion or the record itself. Reaves v. State, 485 So.2d 829 (Fla. 1986).

The test of jurisdiction is not whether the Supreme Court would have arrived at a different result, but whether the District Court decision, on its face, so collides with the Supreme Court decision or the decision of another district on the same point of law so as to create a conflict among precedents. Kincaid v. World Ins. Co., 157 So.2d 517 (Fla. 1963).

This case meets none of the requirements for the Supreme Court to accept jurisdiction. It announces no rule of law in conflict with a previous rule, nor does it announce the application of an existing rule of law, based on similar facts, to produce an express

and direct conflict with any previous case in any court. Here, the Fourth District Court of Appeal cites only Reinhart (Supra) in support of its decision to affirm the lower court. The court referred to none of the cases cited by the Petitioner as being in conflict, the District Court did not state its decision to be in conflict with any of them. Contrary to Petitioners' claim, the decision of the District Court did not state that the "prevailing party" in contract litigation is determined only by which party breached the contract.

All of the cases relied on by Petitioner to invoke this court's jurisdiction are factually distinguishable from the instant case. Even if the cases were not factually distinguishable, because the district court's decision is not in "express and direct conflict" with any of them, the Supreme Court's jurisdiction cannot be invoked.

For the reasons stated above, the Supreme Court should decline to take jurisidiction of this appeal.

CONCLUSION

The district court opinion, on its face, was not an express and direct conflict with a decision of the Supreme Court or other district court. The cases cited by Petitioner involve different rules of law and different facts than set out by the district court in the majority opinion. The Supreme Court should not accept jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to FREEMAN W. BARNER, JR., P.A., Cromwell, Pfaffenberger, Dahlmeier, Barner & Griffin, Attorney for Petitioners, 631 U. S. Highway One, Suite 410, P. O. Box 14036, North Palm Beach, FL 33408 this 21st day of May, 1991.

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