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In the
SUPREME COURT OF FLORIDA

ROBERT A. BUTTERWORTH, ETC.,)	
Petitioner,)	Case No. 78,377
vs.)	District Court of Appeal,
LOUIS A. CAGGIANO,)	2nd District - No. 90-02026
Respondent.)	

BRIEF OF AMICUS CURIAE
FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

ROBERT AUGUSTUS HARPER
Chairman
FACDL Amicus Curiae Committee
300 West Park Avenue
Post Office Box 10132
Tallahassee, Florida 32302
904/224-5900
Florida Bar No. 127600

JAMES T. MILLER
Co-Chairman
FACDL Amicus Curiae Committee
520 E. Bay Street, Room 407
Jacksonville, Florida 32202
904/630-1550
Florida Bar No. 293679

GEORGE E. TRAGOS
FACDL President
Mangrove Bay
1755 US 19 South, Suite 333
Clearwater, FL 34624
813/535-3453
Florida Bar No. 184830

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STATEMENT OF THE CASE AND OF THE FACTS

Amicus curiae the FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (hereinafter "FACDL") adopts that "Statement of the Case and of the Facts" found in the Initial Brief of the Petitioner STATE OF FLORIDA (hereinafter the "State" or "Petitioner") and in the Answer Brief of the Respondent LOUIS A. CAGGIANO (hereinafter referred to as "Caggiano" or "Respondent").

SUMMARY OF ARGUMENT

At issue before this Court is the Second District Court of Appeal's holding that Article X, Section 4 of the Florida Constitution protects Respondent Caggiano's residential homestead from the Petitioner's effort to forfeit the property pursuant to Chapter 895 of the Florida Statutes (1989). Caggiano v. Butterworth, 16 F.L.W. D1642 (Fla. 2d DCA, June 21, 1991) is in apparent conflict with DeRuyter v. State, 521 So.2d 135 (Fla. 5th DCA 1988). Caggiano and DeRuyter are the only two appellate decisions in this State that have addressed the applicability of Florida's constitutional homestead protection in the context of Chapter 895 RICO forfeiture. Indeed, no other reported decisions in this State have addressed the applicability of constitutional homestead protection to any type of statutory forfeiture that is predicated on the alleged illegal use of real or personal property.

Despite this lack of precedent, there is ample case law from both this Court and the lower appellate courts of this State which supports the conclusion that Article X, Section 4 must be "liberally construed," and its stated exceptions strictly applied, so as to exempt the residential homestead sought to be forfeited by the Petitioner. That precedent not only establishes the principles of constitutional construction

to be applied to homestead exemption issues, but also articulates the public policy behind the broad protection afforded homestead property in the State of Florida -- and especially residential homestead property -- since the constitutional homestead provision was enacted in 1885. That policy is the protection of the family home.

Amicus curiae the FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS respectfully submit that, should this Court accept jurisdiction in this cause, these principles of constitutional and statutory construction, as well as the public policy considerations for the protection of a residential homestead, support the District Court of Appeal's decision in this case that such homestead property can not be forfeited.

ARGUMENT

THIS COURT SHOULD AFFIRM THE HOLDING OF THE SECOND DISTRICT COURT OF APPEAL THAT ARTICLE X, SECTION 4 OF THE FLORIDA CONSTITUTION PROTECTS THE RESPONDENT'S HOMESTEAD RESIDENCE FROM THE STATE'S "RICO" FORFEITURE EFFORT.

At issue is the applicability of Article X, Section 4 of the Florida Constitution to real property forfeiture under the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. That Article provides in relevant part:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family;

(2) personal property to the value of one thousand dollars.

The Petitioner seeks forfeiture pursuant to Section 895.05(2)(a), Florida Statutes (1989), which provides:

(2)(a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01-895.05 is subject to civil forfeiture to the state.

The State contends that Respondent Caggiano used his residence on three occasions (20 October, 25 October and 1-2 December 1984) for bookmaking. The State does not allege any other illegal use of the property. Nor does the State allege that the Respondent's residence was purchased or obtained through the use of illegally obtained proceeds.

On this record, the Second District Court of Appeal specifically held that the forfeiture of the Respondent's homestead under the RICO Act is forbidden under Article X, Section 4 of the Florida Constitution because homestead protection must be "liberally construed in favor of the claim [of exemption] in order to acknowledge the beneficial purpose for which those [homestead] laws were created, i.e., to preserve home and shelter for the family, so as to prevent the family from becoming public charge." Caggiano v. Butterworth, 16 F.L.W. at 1643, citing In the Matter of Hersch, 23 Bankr. 42 (M.D. Fla. 1982) and Deem v. Shinn, 297 So.2d 611 (Fla. 4th DCA 1974).¹

The Second District's holding is supported by general principles of constitutional construction. The Florida Constitution is the framework for this state's government,

¹The Second District Court of Appeal implicitly noted that there is more than one homestead law in Florida. Additional constitutional protection for homestead is found in the Florida Constitution and the Florida Statutes. See Art. VII, §6, Fla. Const.; §§196.031, 196.041, Fla. Stat. (1989).

providing general principles by which the government functions. The fundamental purpose in construing a constitutional provision is to "ascertain and give effect to the intent of the framers and the people who adopted it." City of Jacksonville v. Continental Can Company, 113 Fla. 168, 151 So. 488, 489 (Fla. 1933). That construction "should not be technical nor liberal," and it must be "absolutely certain, that the people did not intend what the language they had employed in its natural signification imports before a court should feel at liberty to depart from the plain meaning of a constitutional provision." Id. at 489-90.

Applied to the issue at hand, these principles require a straightforward reading of Article X, Section 4. The language is plain; the constitutional provision contains three exceptions to an otherwise broad homestead exemption. Those three exceptions do not include forfeiture. Rather, the clearly expressed language of this Article must be read to specifically exclude any exception other than those three circumstances outlined in Section 4(a).

This reading of Article X, Section 4 is consistent with this Court's construction of the homestead exemption in Graham v. Azar, 204 So.2d 193 (Fla. 1967). In that case, the Court examined the homestead provision as it originated in the Florida Constitution of 1885:

This particular article of the 1885 Constitution was debated extensively by the Convention which proposed it. See, Journal of Proceedings of the Constitutional Convention, 1885, and Index to the Journal, by Thursby and Hartsfield. At no point was it ever suggested that a judgment of the type under consideration should be excluded from the exemption provision. In view of the fact that the framers of the Constitution devoted extensive consideration to the wording of the exemption, as well as to the specific exclusions, we feel justified in concluding that any judgment within the broad scope of the exemption is covered by it, unless specifically excluded. Expressio unius est exclusio alterius.

Id. at 195 (emphasis added).

The Graham case examines other rules employed by this Court in construing the scope of the homestead exemption. Thus, the exemption should be "liberally construed" and, "[a]t the same time ... the exemptions should be strictly construed." Id., citing several authorities. See also Quigley v. Kennedy & Ely Insurance, Inc., 207 So.2d 431, 432-33 (Fla. 1968); Orange Brevard Plumbing & Heating Company v. LaCroix, 137 So.2d 201, 203-06 (Fla. 1962); Daniels v. Katz, 237 So.2d 58, 60 (Fla. 3d DCA 1970). Similar protection has been accorded the homestead tax exemption. See, e.g., Schooley v. Judd, 149 So.2d 587, 589-90 (Fla. 2d DCA 1963).

The fundamental doctrine at issue is the "interest of the family home." Olesky v. Nicholas, 82 So.2d 510, 512 (Fla. 1955). In that case, this Court applied the homestead exemption to insure "preservation of a domestic roof" despite creditors' claims predicated on the tort of malicious

prosecution. Id. at 511-12. While the Court noted that the "homestead exemption provisions of the Florida Constitution should not be employed as a vehicle to defraud creditors," nonetheless, broad application of the exemption "has contributed immeasurably to the happiness and solidarity of family life and such, in the ultimate, is the bulwark of our social system." Id. at 512. The protection of a residence is no less at issue in the instant case.

Other than DeRuyter, the State points to no precedent that establishes a homestead exception for real property forfeiture under Chapter 895. Certainly, that proposed exception is not articulated in Article X, Section 4 and it is not found in Chapter 895. The proposed exception has been articulated by no Florida Court other than DeRuyter. The State has cited no decisional law in any jurisdiction in this country in which such an exception has been engrafted onto a homestead provision of a state constitution such as that found in Article X, Section 4. In fact, other state jurisdictions have expressly declined to follow the State's argument.²

The State's proposed forfeiture exception to homestead protection also runs counter to the nature of forfeiture as a remedy. The State would justify forfeiture of homestead by

²See Kansas v. Mitchell, 399 P.2d 556 (Kan. 1965), construing, consistent with Caggiano, a Kansas constitutional homestead exemption that is "similar" to Florida's. See generally Orange Brevard Plumbing & Heating Company v. LaCroix, 137 So.2d at 205.

citation to Delisi v. Smith, 423 So.2d 934, 937 (Fla. 2d DCA), review denied, 434 So.2d 887 (1982) which states that RICO forfeiture is a remedial civil proceeding. Interestingly, Delisi was decided by the same appellate Court that has rendered Caggiano. Not surprisingly, the Second District Court of Appeal did not feel bound by its civil/remedial finding in Delisi, because the questions of whether RICO forfeiture serves a remedial purpose or is a civil proceeding in nature are irrelevant to the nature of the constitutional protection at issue in Caggiano. The application of Florida's constitutional homestead protection to forfeiture is not controlled by whether this remedy under the RICO Act is called "criminal" or "civil"; rather, "[d]isputes over rights guaranteed by the Florida Constitution must be decided by evaluating and, if necessary, balancing the interests as appropriate under the circumstances." Department of Law Enforcement v. Real Property, 16 F.L.W. S497, S502 n.15 (Fla., Aug. 15, 1991).

Forfeiture precedent uniformly states that whatever the label, forfeiture is a "harsh penalty" that is not favored by the courts and must be strictly construed and applied. City of Miami v. Miller, 148 Fla. 349, 4 So.2d 369, 370 (1941); Martinez v. Heinrich, 521 So.2d 167, 168 (Fla. 2d DCA 1988). This is particularly so with RICO forfeiture, which "must, even in its civil applications, possess the degree of

certainty required for criminal laws" H.J. Inc. v. Northwestern Bell Telephone Company, 109 S.Ct. 2893, 2909 (1989) (Scalia J., concurring). Given that not only the Florida Constitution, but also Florida's RICO Act, is silent on the application of forfeiture to homestead property, these rules of statutory construction certainly do not justify such a broad expansion of forfeiture.

Finally, other provisions of the Florida Constitution bar the otherwise unwarranted homestead exception proposed by the State. Thus, Article I, Section 2 protects property rights, and particularly residential property interests, as basic substantive rights under the Florida Constitution. Department of Law Enforcement v. Real Property, 16 F.L.W. at S499. Further, in the context of residential property, the constitutional right of privacy guaranteed by Article I, Section 23 is invaded by the State's proposed homestead exception.

CONCLUSION

Rules of constitutional and statutory construction, including rules that govern the scope of both homestead protection under the Florida Constitution and forfeiture under the Florida Statutes, directly govern and affirm the Second District Court of Appeal's decision in Caggiano. That Court's holding is further supported by the substantive rights under

the Florida Constitution that are implicated through the unwarranted expansion of forfeiture urged by the State in this case.

In its argument to forfeit the Respondent's residence, the State warns of a homestead "forfeiture-free zone" for the conduct of criminal activity. Such a concern is supported neither by the Record in this case, nor by an objective analysis of the constitutional issue raised in this proceeding. If, indeed, the people of the State of Florida or the Florida legislature seek to create no safe haven, under any circumstances, for either an owner alleged to have committed criminal activity or his or her family, then the people or the legislature, through procedures under Article XI, can effect that change in the Florida Constitution. They have not chosen to do so. Accordingly, this Court is urged to affirm the ruling of the Second District Court of Appeal in this case and preserve the fundamental protection of homestead property from forfeiture.

Respectfully submitted,


FLORIDA ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS

ROBERT AUGUSTUS HARPER
Chairman
FACDL Amicus Curiae Committee
300 West Park Avenue
Post Office Box 10132
Tallahassee, Florida 32302
904/224-5900
Florida Bar No. 127600

JAMES T. MILLER
Co-Chairman
FACDL Amicus Curiae Committee
520 E. Bay Street
Room 407
Jacksonville, Florida 32202
904/630-1550
Florida Bar No. 293679

GEORGE E. TRAGOS
FACDL President
Mangrove Bay
1755 US 19 South, Suite 333
Clearwater, FL 34624
813/535-3453
Florida Bar No. 184830


By:



ROBERT S. GRISCTI
Turner & Griscti, P.A.
204 W. University Ave., Suite 6
Gainesville, FL 32601
904/375-4460
Florida Bar No. 300446
Counsel for FACDL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **BRIEF OF AMICUS CURIAE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS** has been served by regular United States mail/hand delivery/facsimile to ROBERT A. BUTTERWORTH, Attorney General, in care of ROBERTA J. FOX, Assistant Attorney General, Department of Legal Affairs, 135 West Central Blvd., Suite 250, Orlando, Florida 32801 and KEITH P. VANDEN DOOREN, Assistant Attorney General, Department of Legal Affairs/RICO, The Capitol, Tallahassee, Florida 32399, Counsel for Petitioner; and JOSEPH A. EUSTACE, JR., Law Offices of Anthony J. LaSpada, P.A., 1802 North Morgan Street, Tampa, Florida 33602, Counsel for Respondent this 23rd day of September 1991.


ROBERT S. GRISCTI