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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs. Case No. 78,377

LOUIS A. CAGGIANO

Respondent.

PETITIONER'S REPLY BRIEF

On Discretionary Review from the District Court of Appeal, Second District of Florida

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SUMMARY OF REPLY ARGUMENT

Contrary to the assertions in RESPONDENT'S (Answer) BRIEF, a judgment or order of forfeiture is not a "forced sale" as that term is used in Article X, § 4 of the Florida Constitution. Neither is it a "lien thereon". RESPONDENT correctly argues that this Court has previously opined that the homestead provision of Art. X, § 4 should be liberally construed in favor of the exemption. However, a principle of liberal or broad interpretation does not support expansion of the scope of a term or a phrase beyond any logical extension of its definition, and against public policy and the intent of the framers who drafted, and the voters who ratified Article X, § 4. Petitioner has not waived its right to argue that a forfeiture is not a forced sale as Petitioner specifically argued that point in its Answer Brief before the Second District Court of Appeal and then addressed that issue again in a Motion for Rehearing and for Rehearing En Banc addressed to that court.

ARGUMENT

ARTICLE X, § 4, FLORIDA CONSTITUTION DOES NOT BAR FORFEITURE OF HOMESTEAD PROPERTY UNDER THE FLORIDA RICO ACT

The underlying concept of construction of any constitutional provision is to ascertain the intent of the framers and voters as to the meaning of that provision. (Emphasis added) Williams v. Smith, 360 So.2d 417, 419 (Fla. 1978). Moreover, Petitioner recognizes that the homestead exemption is to be liberally construed to effectuate its purpose, but not so liberally construed as to pervert public policy or make it an instrument of fraud. Milton v. Milton, 68 Fla. 533, 58 So. 718 (Fla. 1912).

For over 100 years homestead has been a part of the Constitution of this state. Throughout those 100 years this Court has held that the purpose of Article X, § 4 of the Florida Constitution was to protect the homestead from forced sale for debt. In Hill v. First Nat. Bank of Marianna, 84 So. 190, 192 (Fla. 1920), this Court stated:

> The whole theory of the law with relation to homesteads is based upon the idea that as a matter of public policy, for the promotion of the prosperity of the state, and to render independent and above want each citizen of the government, it is proper he should have a home where his family may be sheltered, and live beyond the reach of financial misfortune, and the demands of creditors, who have given credit under such a law. 13 R.C.L. 543; Carter's Adm'rs v. Carter, supra.

In Bigelow et al. v. Dunphe, 197 So. 328, 330 (Fla. 1940), this Court declared:

> The following exposition of the real purpose for the protection of the homestead is

> selected from 26 American Jurisprudence, page 10:
>
> "Homestead laws are founded upon considerations of public policy, their purpose being to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune. The statutes are intended to secure to the householder a home for himself and family, regardless of his financial condition - whether solvent or insolvent - without reference to the number of his creditors, and without any special regard to the extent of the estate or title by which the homestead property may be owned. The laws are not based upon the principles of equity; nor do they in any way yield there-to; their purpose is to secure the home to the family even at the sacrifice of just demands, the preservation of the home being deemed of paramount importance." (Emphasis added)

This Court recently reaffirmed this announced purpose of Florida's homestead exemption in Public Health Trust of Dade County v. Lopez, 531 So.2d 946, 949 (Fla. 1988).

In accord with this Court's decisions is Vandiver v. Vincent, 139 So.2d 704 (Fla. 2d DCA 1962), an opinion which was totally ignored by the panel of the Second District Court of Appeal below, wherein the Court further expounded upon the purposes of homestead as follows:

> In 11 Fla. Law & Practice, 301, Homestead Exemption § 4, it is said:
>
> § 4. Nature and Purpose-.
>
> "The homestead was designed for the head of the family, for the family's protection, where it can be sheltered and live beyond the reach of financial reverses or economic misfortune. It should be so applied as to promote the prosperity of the state and to

render independent and above want each citizen, to the end that his family may live beyond the reach of creditors who have given credit under such law."

In 16 Fla. Jur. 274, 275, Homesteads § 4, it is said:

§ 4. Purpose; Public Policy.

"Homestead laws are founded upon considerations of public policy, their purpose being to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune. The homestead exemption is designed to benefit not only the head of the household, but also the family, and to protect the family home. The statutes are intended to secure to the householder a home for himself and family, regardless of his financial condition - whether he is solvent or insolvent - without reference to the number of his creditors, and without any special regard to the extent of the estate or title by which the homestead property may be owned. The laws are not based on the principles of equity; nor do they in any way yield thereto; their purpose is to secure the home to the family even at the sacrifice of just demands, the preservation of the home being deemed of paramount importance." (Emphasis added)

Id. at 708.

It is with this common understanding of the purpose and public policy considerations underpinning the homestead exemption that the people of this state have continued to adopt, essentially unchanged since 1885, the homestead provisions of the Florida Constitution. Respondent asks this Court to ignore this history and in essence amend the plain language of the Constitution by judicial fiat. Such a suggestion is unconscionable. *See* Public Health Trust of Dade County v. Lopez, 531 So.2d 946 (Fla. 1988).

Respondent argues that the purpose of the homestead provision has also been described as being to protect the family home and provide for it a refuge from misfortune. Respondent's Brief p.10. Initially, it must be observed that, since 1984, the homestead provisions provide for any individual to claim the exemption notwithstanding the lack of a family unit. In fact, the Respondent here is a single person without a family. The only "misfortune" to befall Respondent in this case was that he was caught by law enforcement authorities engaging in bookmaking and racketeering and is now a convicted criminal.[1]

Respondent has cited In Re Noble's Estate, 73 So.2d 873 (Fla. 1954), for the proposition that the purpose of homestead is simply to shelter the family (Respondent's Brief p. 10). However, this Court was not talking about homestead under the Constitution, but instead it was speaking to descent of the homestead under Chapter 731, Florida Statutes, as it existed at that time. In comparing the homestead provisions contained in Chapter 731, Florida Statutes (1953), with the homestead provision contained in Article X, § 1 of the Florida Constitution of 1885, this Court stated:

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[1]Respondent describes his bookmaking activities in the use of his homestead as "three isolated acts". Respondent's Brief n.4, p.16. This assertion is incorrect as a matter of fact and law. Respondent was tried and convicted on 16 counts of bookmaking and 1 count of racketeering, and his conviction has been upheld. Caggiano v. State, 505 So.2d 482 (Fla. 2d DCA 1987). An essential element of a RICO conviction in Florida is the existence of a pattern of racketeering activity. By definition the conduct forming the pattern cannot consist of "isolated incidents", but must be interrelated incidents. Section 895.02(4), Fla. Stat.

> The underlying principle being the same, there seems no need now to engage in a separate discussion of the law as it relates on the one hand to immunization from debt such as we find in Section 1 of Article X, F.S.A., and on the other hand to descent, some of which we have already cited. (Emphasis added)

Id. at 874.

Respondent's assertion that this Court's various decisions interpreting the homestead exemption as protecting the family from forced sale "for debts of the owner" arose from a factual situation involving claims for debt against the homestead is specious at best. Neither In Re Nobles Estate, *supra,* nor Tullis v. Tullis, 360 So.2d 375 (Fla. 1978), previously discussed in Petitioner's Initial Brief, involved claims for debt.

Respondent contends that because forfeitures have historically been disfavored and because the RICO statute is "silent" as to homestead property, it can be argued that either the Legislature did not intend the forfeiture [RICO] statute to apply to homestead property or that forfeitures are forced sales. First, the value of precedents which hold that forfeitures are historically disfavored is steadily eroding. Modern property forfeiture statutes of various types, allowing for forfeiture of property to the government, or to governmental agencies when it is used in, acquired through, or maintained by various types of criminal activity, are in place in virtually every state. Many states have more than one such statute. 28 states including Florida, the Commonwealth of Puerto Rico, and the Territory of the United States Virgin Islands all have "little" RICO statutes based

on the federal Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C.A. § 1961 et seq.[2]

Second, the scope of the civil forfeiture provision in the Florida RICO Act as it applies to interests in real property is not the issue in this case. It is the scope of the constitutional language "forced sale" and the scope of what constitutes a judgment lien which is at issue. While the Florida RICO Act does not provide separately for homestead property, the Florida RICO Act is unambiguous as to the intended scope of what property may be forfeitable. All property real or personal used, intended to be used, or acquired through conduct in violation of the Florida RICO Act is subject to civil forfeiture to the state.[3] "Real property" is defined to include any real property or any interest in such real property.[4] The Legislature was certainly aware of the existence of Article X, § 4 of the Florida Constitution when it enacted the RICO Act into law in 1977. The Legislature's use of the specific language "All property real or personal" when describing property subject to forfeiture under the Act, suggests that the Legislature did not see any conflict between that statutory provision and the homestead exemption contained in Article X, § 4.

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[2]*See generally*, D. Abrams, *The Law of Civil RICO*, Little, Brown & Company (1991); and Commerce Clearing House, *RICO Business Disputes Guide* ¶ 4000 et seq. [State Law Texts].

[3]§ 895.05(2)(a), Florida Statutes (Supp. 1990), Ch. 77-334, § 2, Laws of Florida.

[4]§ 895.02(9), Florida Statutes (Supp. 1990), Ch. 81-141, § 1, Laws of Florida.

The plain meaning of the homestead exemption in our Constitution and the decisions of this Court interpreting the language of the exemption, compel the conclusion that a forfeiture is not a forced sale and falls outside the homestead exemption. A sale of some species is intrinsic in the concept of "forced sale". The Florida Constitution prohibits the "forced sale" of homestead property, not the forfeiture of homestead property. Forced sales are predicated upon debts either underlying existing debts sued upon and reduced to judgments or judgments awarding money damages in other than debtor/creditor causes of action such as torts in which a tortfeasor may then become a judgment debtor. In truth, there is no indication that forfeitures of real property were considered at all by the Florida Constitutional Convention of 1885 in drafting the homestead exemption provision. Indeed, there is no indication that such forfeitures were later given any contemplation during the 1968 revision of the Florida Constitution. This is understandable in light of the fact that modern forfeiture statutes which provide for the forfeiture of interests in real property began with the enactment of the federal Racketeer Influenced and Corrupt Organizations (RICO) statute in 1970[5]. This Court has previously opined that constitutional provisions should be construed in light of the reasonable meaning attributable to the words, in the framework of contemporary societal needs and structure. In re Advisory Opinion to the Governor, 276 So.2d 25,

[5]Title IX, Pub. L. 91-452. Part of the Organized Crime Control Act of 1970. Codified at 18 U.S.C.A. § 1961 et seq.

29 (Fla. 1973). The purposes such provisions were intended to accomplish and the evils sought to be prevented or remedied should also be examined. Amos v. Matthews, 99 Fla. 1, 126 So. 308 (1930).

The contemporary societal framework in the instant case is one in which asset forfeiture statutes have become an accepted and valuable tool for combatting organized criminal activity. Given that forfeitures are not prohibited by the plain language of the homestead provision, and forfeitures to the state were certainly not an evil sought to be prevented, the constitutional homestead exemption provision should not be construed so out of proportion as to be interpreted as prohibiting such remedies. To say that forfeiture was contemplated or intended to be included within the homestead exemption of our Constitution would be intellectually dishonest and a fraud on the people of this state. It is patently obvious from the purpose and plain meaning of Article X, § 4 of the Florida Constitution, and the court decisions interpreting the provision, that fraud and other reprehensible conduct (including criminal activity resulting in forfeiture of property) is not protected by the homestead exemption.

Respondent asserts that the decision of the Second District Court of Appeal is supported by [Kansas] v. Mitchell, 399 P.2d 556 (Kan. 1965). Contrary to the assertion, the Kansas Supreme Court specifically noted that the remedy sought by the state, the padlocking of a homestead residence for illegal possession and sale of intoxicating liquor, was not a "forced sale". The court went on to decide, however, that the homestead

provision is enlarged by the clause "and shall not be alienated without the joint consent of the husband and wife" and that the action sought to be taken by the state amounted to a violation of that clause. State v. Mitchell, 399 P.2d 556, 558 (Kan. 1965). It should be noted that the husband in Mitchell had not been made a party to the action.

Respondent argues that the 1880 Illinois case of Leupold v. Krause, 95 Ill. 440 (1880), stands for the proposition that a homestead should be exempt even from the consequences of fraud or other criminal activity. Respondent's Brief page 12. As pointed out in Petitioner's Initial Brief, this Court has already decided that the homestead exemption from forced sale cannot be used to shield fraud or other reprehensible conduct contrary to the holding in Leupold.[6] Furthermore, the constitutional provisions governing the Illinois Supreme Court decision are not comparable.

Respondent argues that equitable liens can be imposed only where proceeds from fraud or reprehensible conduct are used to invest in, purchase, or improve real property, or to secure to an owner the benefit of his ownership interest. Respondent cites no authority for this restrictive interpretation of the law pertaining to equitable liens, and no rational basis exists to support the proposition. The equitable lien and constructive trust cases cited in Petitioner's Initial Brief are not cited for the proposition

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[6]Bessemer v. Gersten, 381 So.2d 1344, 1347 (Fla. 1980); LaMar v. Lechlider, 135 Fla. 703, 185 So. 833, 837 (1939); Jetton Lumber Co. v. Hall, 67 Fla. 61, 64 So. 440 (1914); Milton v. Milton, 68 Fla. 533, 58 So. 718 (1912).

that a forfeiture should be deemed an equitable lien, but to show that the courts in Florida have refused to allow the homestead exemption to be used to shield property where there is fraud or other reprehensible conduct. Certainly, a constitutional provision which does not shield property where there is fraud or other reprehensible conduct should not reasonably and logically shield property where a pattern of criminal conduct is involved.

Respondent relies heavily for support on the Iowa case of In the Matter of Property seized from Bly, 456 N.W.2d 195 (Iowa 1990). The Court in Bly decided that a "judicial sale" under §561.16, Code of Iowa should be interpreted to include an order of forfeiture. The Bly Court grounded its interpretation, in part, on a previous decision in which it had been determined that a foreclosure sale carried out without proceedings in court was a "judicial sale". Bly, *supra* n.6, at 198 (citing Sturdevant v. Norris, 30 Iowa 65, 71 (1870)). However, the Florida constitutional homestead exemption uses the language "forced sale" not "judicial sale". As previously mentioned above, the use of the language "forced sale" is indicative of the intent that the Florida homestead provision was to apply to judgment debts. And in contrast to the Iowa precedent, the law in Florida is that even a judicially ordered foreclosure sale of a non-purchase money mortgage on homestead property is not a "forced sale" and does not violate the Florida constitutional homestead provision. Hicks v. Mid-Florida Production Credit Association, 374 So.2d 566, 567

(Fla. 1st DCA 1979).[7]

The "out-of-state" cases cited by your Petitioner[8] and referred to in Respondent's brief at page 11, were cited in Petitioner's Initial Brief to show that those appellate courts in sister states approved of the reasoning of the Fifth District Court of Appeal in DeRuyter v. State, 521 So.2d 135 (Fla. 5th DCA 1988), when that court indicated that the homestead exemption in Article X, § 4, of the Florida Constitution was not meant to immunize real property for use in a criminal enterprise. DeRuyter, *supra* at 138.

Respondent asserts that the case of Olesky v. Nicholas, 82 So.2d 510 (Fla. 1955), further undermines the argument that the homestead exemption is limited to forced sales. Respondent's Brief page 12. Respondent further asserts that this Court in Olesky held:

> "...that the homestead exemption provided for in the Constitution applied to preclude an execution sale grounded upon the intentional tort of malicious prosection[sic]."

Id. The Olesky decision actually supports Petitioner's position that the homestead provision of Article X, § 4 was intended to prohibit forced sales for debts of the owner. The execution sale referred to in the quote next above was not grounded upon the

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[7]*See also*, Hart v. Sanderson's Administrators, 18 Fla. 103 (1881). The key to this decision is that a mortgage is a voluntary alienation of the property, and therefore the foreclosure of such is not a prohibited forced sale. This is in contrast to the more expansive interpretation that the Iowa Supreme Court has given the term "judicial sale" under Iowa law.

[8]In the Matter of a Parcel of Real Property known as 1632 North Santa Rita, Tucson, 801 P.2d 432, 437 (Ariz. App. 1990); People v. Allen, 767 P.2d 798, 800 (Colo. App. 1988).

intentional tort of malicious prosecution as asserted by the Respondent, but upon a money judgment for damages recovered for the tort of malicious prosecution. It was the levy and execution to satisfy the money judgment debt which this Court ruled was prohibited by the Florida Constitution. This case is consistent with Petitioner's position that Article X, § 4 prohibits a forced sale for debt.

Respondent argues that since a sale and a RICO forfeiture are both transfers of the property or an alienation of title that it is "...difficult to perceive how a forfeiture is different from a sale." Respondent's Brief p.17. Simple logic is sufficient to rebut this argument. While all sales may be transfers, all transfers are not sales. And forfeitures are simply not sales.

With respect to Respondent's argument concerning RICO liens (Respondent's Brief p.17), Article X, § 4 only prohibits judgments and decrees from being a lien on homestead property. RICO liens are statutory in nature, not premised on a judgment, decree or execution, and are designed to preserve the status quo pending a determination by the Circuit Court as to the forfeitability of the property at issue.

Finally, petitioner has not waived its argument that a RICO forfeiture is neither a forced sale nor a judgment which acts as a lien. Homestead was raised as a defense by Respondent at the trial court level. In response, Petitioner filed a Motion to Strike Affirmative Defense [homestead]. The trial court granted Petitioner's Motion after hearing, and subsequently granted and

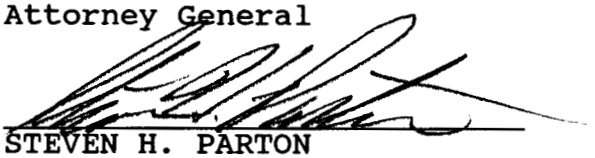
entered Final Summary Judgment in favor of Petitioner based upon DeRuyter v. State, 521 So.2d 135 (Fla. 5th DCA 1988). A panel of the Second District Court of Appeal in the case below grounded its decision, in part, on the basis that a forfeiture is a forced sale, opining that such was impliedly held in a previous decision by the Fifth District Court of Appeal. Caggiano v. Butterworth, 583 So.2d 347 (Fla. 2d DCA 1991), *referring to* DeRuyter v. State, 521 So.2d 135 (Fla. 5th DCA 1988). In fact, the DeRuyter court, as pointed out in Petitioner's Initial Brief, described forfeitures as being "entirely different" from the forced sale language used in the Florida Constitution. DeRuyter, *supra*, at 138. The Caggiano ruling below was in direct conflict with the DeRuyter decision and resulted in certification to this Court of whether forfeiture of homestead property is prohibited by Article X, § 4 of the Florida Constitution.

CONCLUSION

Based on the above, Petitioner prays this Honorable Court answer the certified question in the negative and reverse and remand the decision of the District Court with instructions to reinstate the order granting petitioner a final summary judgment.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



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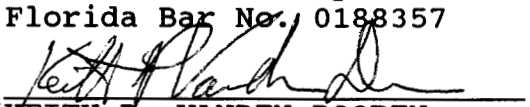

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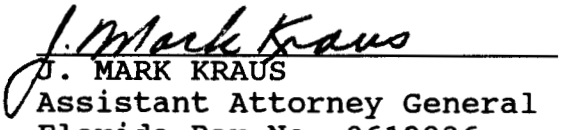

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven copies of the foregoing PETITIONER'S REPLY BRIEF have been hand delivered this 17th day of October, 1991 to the **CLERK OF THE SUPREME COURT**, and a true and correct copy of the foregoing has been sent by U.S. mail this 17th day of October, 1991, to **JOSEPH A. EUSTACE, JR., ESQ.**, Anthony J. LaSpada, P.A., 1802 North Morgan Street, Tampa, Florida 33602

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