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SID J. WHITE

IN THE SUPREME COURT OF THE STATE OF FLORIDA

APR 15 1992
CLERK, SUPREME COURT

By: _____
Chief Deputy Clerk

LOUIS CHIUOLO,

Petitioner,

vs.

WILLIAM KENNEDY and
MORIA KENNEDY,

Respondent.

CASE NO.: 79,103

APPEAL FROM THE DISTRICT COURT
IN AND FOR THE FIFTH DISTRICT, FLORIDA

REPLY BRIEF

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ARGUMENT

Respondent's answer brief appears to argue that an injunction is almost identical to a lis pendens. Petitioner submits that Respondents are incorrect in their analysis. Unlike an injunction, a lis pendens has only an indirect effect on the alienability of property. See Wiggins v. Dojcsan, 411 So.2nd 894 (Fla. 2nd DCA 1982). "A lis pendens is not an injunction nor is it the equivalent of an injunction." Cacaro v. Swan, 394, So.2nd 538, 539 (Fla. 4th DCA) rev. dismissed, 402 So.2nd 608 (Fla. 1981).

Respondents also argue that the issue before this Honorable Court has not been addressed since Fox v. Charles Wayne Group, 568 So.2nd 512 (Fla. 5th DCA 1990) and that Diamond Builders, Inc. v. Radnor/Sarasota Corporation, 572 So.2nd 1018 (Fla. 2nd DCA 1991) is inapplicable. Petitioner submits that the Respondents are incorrect. In Diamond Builders the Fourth District Court of Appeal stated "We are persuaded by the logic expressed in Cacaro that a notice of lis pendens has only indirect effect on the alienability of property...." Id. at 1019. In addition, the Diamond Builders' Court stated at this juncture, we will not rule on the merits of whether Respondent established that the notice was inappropriate in this case," and added that "the trial court shall consider whether notice of lis pendens is appropriate in this matter and if so, whether a bond should be posted and in what amount." Id. at 1019. There is no other way to interpret that language from Diamond

Builders than that the burden is upon the party moving for dissolution of the lis pendens to establish that the notice is inappropriate in the cause.

Petitioner submits that this Honorable Court should adopt the position expressed in Cacaro and articulated by Judge Sharp in the separate opinion filed in the instant case. The burden of proof at the evidentiary hearing on motion to dissolve lis pendens is correctly placed upon the party moving for discharge. The right to demand bond continues to protect the party moving for dissolution of the lis pendens.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been provided by U.S. Mail to the Clerk of Courts, Florida Supreme Court, 500 South Duval Street, Tallahassee, Florida 32399-1927 and that a true and correct copy of the foregoing has been provided to Richard Manzo, Esquire, Post Office Box 599, Titusville, Florida 32780 this 13 day of April, 1992.



Leonard R. Ross, Esquire