Supreme Court of Florida

No. 80,250

AUGUST URBANEK, et al., Petitioners,

vs.

THE 18TH HOLE INVERRARY CONDOMINIUM ASSOCIATION, INC., et al., Respondents.

[March 4, 1993]

PER CURIAM.

We have for review <u>Urbanek v. 18th Hole at Inverrary</u>

Condominium Ass'n, 599 So. 2d 1056, 1056 (Fla. 4th DCA 1992), in which the Fourth District Court of Appeal affirmed based on its earlier decision in <u>Urbanek v. 18th Hole at Inverrary Condominium</u>

Ass'n, 582 So. 2d 154 (Fla. 4th DCA), review <u>dismissed</u>, 587 So.

2d 1331 (Fla. 1991), and certified the same question that it had certified in the prior case. In the first Urbanek case, the district court certified the following question:

WHETHER CATE v. OLDHAM APPLIES TO PRIVATE LITIGANTS TO BAR A SUBSEQUENT ACTION FOR MALICIOUS PROSECUTION WHERE THE PLAINTIFF HAS PREVIOUSLY ELECTED TO TAX COSTS AND/OR FEES AFTER SUCCESSFULLY DEFENDING THE UNDERLYING ACTION?

<u>Urbanek</u>, 582 So. 2d at 155. We have jurisdiction based on article V, section 3(b)(4) of the Florida Constitution. We answer the certified question in the negative based on our decision in <u>Londono v. Turkey Creek</u>, <u>Inc.</u>, 609 So. 2d 14 (Fla. 1992). Accordingly, we quash the decision below and remand for proceedings consistent with this Court's decision in Londono.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District $Court\ \mbox{of}$ Appeal - Certified Great Public Importance

Fourth District - Case No. 91-0969 (Broward County)

J. Cameron Story, III of Gunster, Yoakley & Stewart, P.A., Fort Lauderdale, Florida,

for Petitioners

G. Bart Billbrough of Walton, Lantaff, Schroeder & Carson, Miami, Florida,

for Respondents