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IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,786
FLORIDA BAR #203378

FILED

SID J. WHITE

JAN 6 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

SAMUEL FRIEDLAND FAMILY
ENTERPRISES, d/b/a THE
DIPLOMAT HOTEL, INC., DIPLOMAT
HOTEL, INC., BILL'S SUNRISE
BOAT RENTALS-SUNRISE WATER
SPORTS, INC., SUNRISE WATER
SPORTS, INC., WILLIAM THORAL,
et al.

Petitioners,

vs.

PAULA AMOROSO and ROBERT
AMOROSO, her husband,

Respondents.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

ROBIN RHODENBAUGH and RHODENBAUGH'S SHEET METAL REPAIRS, INC.'S
ANSWER BRIEF ON THE MERITS

✓
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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
Introduction.....	1
Statement of the Facts and the Case.....	2
Argument.....	3
Certificate of Service.....	4

INTRODUCTION

ROBIN RHODENBAUGH and RHODENBAUGH SHEET METAL REPAIRS, INC., (hereinafter referred to simply as RHODENBAUGH), come before this Court content with the Directed Verdict at the trial court in favor of RHODENBUAGH and the affirmance of that Directed Verdict by the Fourth District Court of Appeals. RHODENBAUGH also recognizes that this Court, in consideration of the certified question presented by the Fourth District Court of Appeals, is not a party directly at issue.

However, in the interests of accuracy, RHODENBAUGH feels compelled to point out certain factual testimony at trial upon which Directed Verdict for RHODENBAUGH was eventually based.

References herein to the Record where made will be those same reference numbers used by Petitioners SAMUEL FRIEDLAND FAMILY ENTERPRISES, et al.

STATEMENT OF THE FACTS AND THE CASE

RHODENBAUGH is in general agreement with the FRIEDLAND Petitioners' Statement of the Facts and Case with the following important exceptions.

Plaintiff attempted to introduce testimony concerning evidence of corrosion (Trial Day 3, pages 258-259). Moreover, Plaintiff tried to introduce testimony concerning replacement of a crossbar on the Hobie Cat (Trial Day 3, page 268). This testimony was offered, without proper predicate, education, background or experience, by witness Charles Stevens. The testimony of Stevens to this extent was disregarded by the trial court for the reason that Mr. Stevens is a marine surveyor. He is not an expert in welding repair or replacement. He does not have the requisite education or experience to entitle him to testify as an expert witness in that regard. For that reason the trial court properly granted Directed Verdict to RHODENBAUGH and that Directed Verdict was properly affirmed by the Fourth District Court of appeals.

Also, the Sixth Amended Complaint in this matter does not contain a claim of breach of duty on RHODENBAUGH's part for failure to suggest replacement of parts on this boat. The Fourth District Court of Appeals properly found that no such duty did exist in any event.

ARGUMENT

After several long days of trial testimony on the issues presented by a Sixth Amended Complaint, the Court could find no competent evidence of any improper welding repair by RHODENBAUGH. Specifically, it is admitted by all parties that the crossbar in question on the Hobie Cat failed next to the repaired area and not in the repaired area of the weld (Trial Day 3, page 55).

Under the circumstances, the Court had no competent evidence before it of any negligent repair on the part of RHODENBAUGH and there was, as discussed above, no requirement that RHODENBAUGH was to suggest replacement of parts of this Hobie Cat.

Under the circumstances, the trial Court correctly granted directed verdict in favor of RHODENBAUGH and the Fourth District Court of Appeals properly upheld that Directed Verdict.

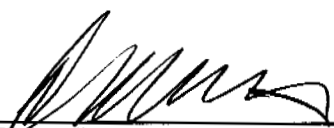
Only these unusual factual circumstances bring RHODENBAUGH to highlight these factual parts of the record for the benefit of this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer Brief on the Merits was forwarded by U. S. Mail to all counsel of record per the attached Service List, this 4th day of January, 1993.

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