DA 4-5-94 047

IN THE SUPREME COURT OF FLORIDA

BRUCE H. JOHNSON, et al,

Petitioners,

CASE NO. 82,237

v.

PLANTATION GENERAL HOSPITAL LIMITED PARTNERSHIP,

Respondent.

ON APPEAL FROM THE

FOURTH DISTRICT COURT OF APPEAL

CASE NO. 93-0059

AMICUS CURIAE BRIEF

IN SUPPORT OF RESPONDENT

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SUMMARY OF THE ARGUMENT

In its decision below the Fourth District Court of Appeal properly held that the Petitioners may not aggregate their claims to meet the jurisdictional minimum requirement for the circuit courts of this state. The district court's decision accords with the constitutional and statutory framework defining the respective jurisdictional purview of the circuit and county courts and also accords with the decisional law in respect to the aggregation of claims.

The Florida Constitution vests in the legislature the power to define the respective jurisdictions of the circuit and county courts. The legislature measures the distinction between circuit and county court jurisdiction by means of the "matter in controversy" in a given case. The longstanding traditional construction of that phrase, especially in federal law, is that each individual member of the class in a class action must independently meet the jurisdictional requirement. Petitioners incorrectly seek to set aside this longstanding construction of the statutory phrase by substituting their own judgment concerning the qualifications of the county courts of this state to hear class action claims in place of the judgment of the legislature.

Furthermore, Petitioners' claims do not meet the longstanding requirements set out in the Florida decisional law which permits aggregation where the claims are closely related to each other. Petitioners' claims are not closely related to each other because they arise out of separate hospital services and billings.

Petitioners rely on the similarity of the alleged wrong rather than the similarity or commonality of their claims. Petitioners also seek to establish the similarity of their claims by demonstrating the suitability of the class action rule to this case. This is also an error since procedural rules, including the class action rule, cannot in themselves expand a court's jurisdiction.

Lastly, the litigation of Petitioners' claims under the Florida Small Claims Rules would not deprive Petitioners of any constitutional right to bring a class action proceeding because the Florida Small Claims Rules do not in fact prevent Petitioners from bringing a class action.

ARGUMENT

I. THE PHRASE "MATTER IN CONTROVERSY" USED IN FLA. STAT. §34.01 MEANS Petitioners' CLAIMS CANNOT BE AGGREGATED TO MEET THE JURISDICTIONAL AMOUNT.

A. The Constitutional Structure of the Florida Courts vests policy-making decisions concerning aggregation of class action claims solely in the Legislature.

Article V of the Florida Constitution of 1968 creates and defines judicial power in Florida. Section 1 of Article V vests all judicial power in the Florida courts:

> The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts.

Section 5 of Article V sets out the jurisdiction of the circuit courts as follows:

> (b) JURISDICTION - the circuit courts shall have original jurisdiction not vested in the county courts and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Finally, Section 6 of Article V sets out the jurisdiction of the county courts as follows:

> (b) JURISDICTION - the county courts shall exercise the jurisdiction prescribed by general law. Such jurisdiction shall be uniform throughout the state.

The Florida courts have traditionally recognized that the circuit courts have a special status as courts of general jurisdiction and are thereby attributed broad powers:

> The circuit courts of the State of Florida are courts of general jurisdiction - similar to the Court of Kings Bench in England - clothed with the most generous powers under the Constitution, which are beyond the competency of the legislature to curtail [citations omitted]. They are superior courts of general jurisdiction, subject of course to the appellate and supervisory powers vested in the supreme court by the Constitution, and as a general rule if might be said that nothing is outside the jurisdiction of the superior court of general jurisdiction except that which is clearly vested in other courts or tribunals, or is clearly outside of and beyond the jurisdiction vested in circuit courts by the constitution and the statutes enacted pursuant thereto.

State v. Trammell, 192 So. 175, 177 (Fla. 1939). Also see, Chapman v. Reddick, 25 So. 673 (Fla. 1899) ("the circuit courts of this state are superior courts of general jurisdiction, and it requires no citation or authority to show that nothing is intended to be out of the jurisdiction of the superior court, except that which specially appears to be "); English v. McCrary, 348 So.2d 293 (Fla. 1977). This traditional view of the circuit court is confirmed by the present constitution in Article V, Section 5(b), which states, "the circuit court shall have original jurisdiction ..." (emphasis added).

However, under the design of Florida's present constitution, original jurisdiction is not irrevocably vested in the circuit court. Article V, Section 5(b) specifically provides: "the circuit court shall have original jurisdiction not vested in the county courts." (emphasis added). In the same way, Article V, Section

6(b) provides that the jurisdiction of the county courts is defined by the legislature when it says, "the county court shall exercise the jurisdiction prescribed by general law." In short, this constitutional design creates a presumption of original jurisdiction in the circuit court while at the same time vesting power in the legislature to reduce the circuit court's jurisdiction by increasing the jurisdiction of the county court through general law.[1] For example, in Kinney v. Lechner Lumber Co., 55 So.2d 917 (Fla. 1951) this court held that a statute creating a civil court of record with exclusive jurisdiction in cases where the sum of money sought to be recovered was less than $3,000.00, deprived the circuit court of all cases at law involving less than that amount.[2]

Consequently, the legislature retains the sole constitutional power, short of violating any other constitutional restriction, to define where the original jurisdiction of the county courts ends and where the original jurisdiction of the circuit court begins.

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[1] The language of the 1885 Constitution, Section 11 of Article V, fixed the jurisdiction of the circuit courts by giving them "exclusive original jurisdiction in all cases in equity, also in all cases at law not cognizable by inferior courts...". In State v. Taylor, 145 So.2d 751 (Fla. 2d DCA 1962) the court held that such language "divested" the circuit court's jurisdiction. The language of the present constitution is very similar, providing circuit court jurisdiction where it is "not vested in the county courts."

[2] Such a presumption is implied by the decisions in State v. Dickensen, 138 So. 376 (Fla. 1951) where this court explained that when the legislature abolishes a statutory court inferior to the circuit court, the effect is to "automatically reinstate the full powers and jurisdiction of the circuit court to proceed with the unexercised jurisdiction and powers formally committed" to the abolished court. This decision is consistent with the presumption of circuit court jurisdiction in the absence of legislative revision.

Although constitutional jurisdiction cannot be restricted or taken away, it can be enlarged by the legislature as long as the enlargement does not lessen the constitutional jurisdiction to some other court, or as long as the enlargement is not forbidden elsewhere by the constitution. South Atlantic S.S. Co. of Delaware v. Tutson, 190 So. 685 (Fla. 1939).

Similar to Florida's present constitution, the 1885 constitution provided for fixed jurisdiction of courts inferior to the circuit courts. In commenting on that constitution, this court noted that such a design vested power in the legislature to meet the changing needs of society:

> In so organizing the judiciary of the state, it is evident that the framers of our constitution have undertaken to prescribe the powers of each of the courts so created; and when they felt it necessary, the provision be made for further jurisdiction, in order that the courts, by flexibility of their powers, might meet the unforeseen or growing demand engendered by new conditions, they made express provision therefore, designating the courts upon which such creative power should be conferred. Were no such powers delegated the legislature cannot vest in one of these courts jurisdiction of a matter withheld from it by the constitution.

Ex parte Cox, 33 So. 509 (Fla. 1902). Similarly, Florida's present constitution grants the legislature great latitude in defining the respective roles of the circuit and county courts by regulating their jurisdiction.

The legislature has defined the respective jurisdiction of the circuit and county courts by statute. Section 26.012(2) of the Florida Statutes provides that the circuit court will have exclusive original jurisdiction "in all actions at law not

cognizable by the county courts." Section 26.012(2)(c) further provides that the circuit court shall have exclusive original jurisdiction "in all cases in equity." On the other hand, the jurisdiction of the county courts are set out in Fla. Stat. §34.01, which provides county court shall have original jurisdiction:

> (c) As to causes of action accruing:
>
> 1. Before July 1, 1980 of all actions at law in which the matter in controversy does not exceed the sum of $2,500, exclusive of interest, costs and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.
>
> 2. On or after July 1, 1980, of all actions at law in which the matter in controversy does not exceed the sum of $5,000, exclusive of interest, costs and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.
>
> 3. On or after July 1, 1990, of actions at law in which the matter in controversy does not exceed the sum of $10,000, exclusive of interest, costs and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.
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> 4. On or after July 1, 1992, of actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

Fla. Stat. Chapter 34.01(4) further provides equity jurisdiction to the county courts:

> Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except

as otherwise restricted by the state constitution or the laws of Florida.[3]

The above provisions reflect the legislature's exercise of its constitutional power to accomplish the "flexibility" necessary to meet "unforeseen or growing demands engendered by new conditions" described in Ex parte Cox. These provisions evidence the jurisdiction of the county courts while, on the other hand, relieving the case load of the circuit courts. A parallel circumstance has arisen in the federal system in regard to diversity cases in the federal courts.[4] The Diversity Statute, which creates a jurisdictional bar by imposing a minimum "amount in controversy" was revised in 1958 by the United States Congress so that the amount in controversy requirement was raised from $3,000 to $10,000. Congress revised the statute again in 1988 to raise the amount in controversy requirement from $10,000 to $50,000. The U.S. Supreme Court explained that the purpose of the 1958 increase was to reduce congestion in the federal district courts partially caused by the large number of civil cases being brought under the long-standing $3,000 jurisdictional rule. Horton v. Liberty Mut. Ins. Co., 81 S.Ct. 1570, 367 U.S. 348, 6 L.Ed.2d 89, rehearing denied, 82 S.Ct. 24, 368 U.S. 870, 7 L.Ed.760. Also

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[3] This provision was the subject of a 1990 amendment to Chapter 34.01 and was effective October 1, 1990.

[4] The United States District Courts are vested with diversity jurisdiction over certain claims pursuant to 28. U.S.C. §1332 (a) which provides, "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000.00, exclusive of interest and costs."

see Gauldin v. Virginia Winn Dixie, Inc., 370 F.2d 167 (4th Cir. 1966) (by raising the jurisdiction requirement, congress intended to relieve federal courts of litigation of relatively minor importance). In the same way, the Florida legislature's increase of the county court jurisdictional limit reflects a legislative policy decision to reduce the number and kind of cases that the circuit courts must hear.

Petitioner essentially argues that county courts are inappropriate and ill suited to adjudicate complex class actions. In light of the above authority, this argument would be more appropriately addressed to the Florida legislature rather than the court system. Florida's constitutional design vests in the legislature the power to adjust the courts in order to meet the changing needs of society. Petitioner would desire to have this court make a judgment about the suitability of the county courts to handle complex class actions in which the relief sought for the class exceed $10,000,000, but that judgment is the sole prerogative of the legislature and not the courts. Consequently, any appeal by Petitioner to the adequacy of county courts is irrelevant to the resolution of the controversy at hand. The only relevant consideration is the intent of the legislature in the phrase "matter in controversy" in Fla. Stat. §34.01 concerning the jurisdictional limits of the county and circuit courts.

B. The longstanding traditional construction of the phrase "matter in controversy" used in Fla. Stat. §34.01 prohibits the aggregation of claims to meet jurisdictional requirements.

The "matter in controversy" requirement in Fla. Stat. §34.01(c) should be read in light of the longstanding federal interpretation of the parallel "matter in controversy" with jurisdictional requirement of 28 U.S.C. §1332 (a).[5] The federal decisions have interpreted the matter in controversy requirement to mean that each individual plaintiff in a class action suit must satisfy the jurisdictional amount. [6] In Zahn v. International Paper Company, 414 U.S. 291, 38 L.Ed.2d 511, 94 S.Ct. 505 (1973), the United States Supreme Court held plaintiffs in a class action had not met the matter in controversy requirement where some of the individual class members had not suffered damages in excess of the jurisdictional amount. The plaintiffs in that suit consisted of 200 lakefront property owners and lessees who sought damages from the defendant for allegedly having permitted discharges from its manufacturing plant that polluted the waters of the lake and

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[5] That section provides in pertinent part, "the District Court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs and is between - (1) citizens of different States ..."

[6] The federal counterpart to Fla.R.Civ.Pro. 1.220 is Federal Rule of Civil Procedure, Rule 23, which is substantially similar. See Committee Notes to Fla.R.Civ.Pro. 1.220, 1980 Amendment ("the rule is based on Federal Rule of Civil Procedure 23," noting some changes that were made to eliminate problems in the federal court decisions and giving particular attention to making the notice requirements more stringent than the federal rule.).

damaged the value and utility of the surrounding properties. The court held:

> Each plaintiff in a Rule 23(b) class action must satisfy the jurisdictional amount, and any plaintiff who does not must be dismissed from the case - "one plaintiff may not ride on another's coattails." 469 F.2d at 1035.

414 U.S. at 301, 94 S.Ct. at 512, 38 L.Ed. 2d at 518. Since the individual petitioners in this action do not meet the jurisdictional amount of the circuit court, the principle expressed in Zahn prevents the petitioners from aggregating their claims to meet the matter in controversy requirement.

The Zahn opinion is based substantially on the earlier case of Snyder v. Harris, 394 U.S. 332, 22 L.Ed. 2d 319, 89 S.Ct. 1053 (1969). The Snyder court explained that the above rule of non-aggregation was based on very well established judicial concepts dating back to the first congressional grant to district courts to take suits between citizens of different states. [7] The Snyder court explained:

> The traditional judicial interpretation under all these statutes has been from the beginning that the separate and distinct claims of two or more plaintiffs cannot be aggregated in order to satisfy the jurisdictional amount requirement. Aggregation has been permitted only (1) in cases in which a single plaintiff seeks to aggregate two or more of his own claims against a single defendant, and (2) in cases in which two or more plaintiffs unite to enforce a single title or right in which they have a common and undivided interest.

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[7] The first grant can be found in Section 11 of the Judiciary Act of 1789, 1 Stat. 78, and set the jurisdictional amount in controversy requirement at $500.00.

394 U.S. at 335, 22 L.Ed. at 323, 89 S.Ct. at 1056. The Snyder court makes it clear that the above principles precluding aggregation of claims are not based on the class action rule, but rather on the Court's interpretation of the statutory phrase, "matter in controversy." 394 U.S. at 336, 22 L.Ed.2d at 324, 89 S.Ct. at 1057. There is no reason this Court in the present case should adopt a construction of the statutory phrase "matter in controversy" any different than that proven by the long-established tradition of the United States Supreme Court. Therefore Petitioners' claims should not be aggregated.

Petitioner argues that because state courts have a "different jurisdictional genesis" from the federal courts that state courts are not bound by the congressional intent that prevents aggregation of claims. (Petitioner's Brief, p. 14). Petitioners point out that if an action cannot be brought in the federal court because of a failure of jurisdiction, then the action may be brought in a state court since all state courts are courts of general jurisdiction and are empowered to decide issues of state law. No one would contest that if an action cannot be brought in the federal court for lack of jurisdiction, then it may be brought in a state court of general jurisdiction. However, the issue in this case is which particular state court is the lawful forum for relief. The petitioner's argument fails because it ignores that the persuasive force of both Zahn and Snyder are in their construction of the statutory phrase "matter in controversy." In the same way that the "matter in controversy" requirement of the federal statutes divides

the line between federal and state court jurisdiction, so also does the "matter in controversy" requirement of Fla. Stat. §34.01 divide the line between circuit and county court jurisdiction. It is appropriate to read the statutory language "matter in controversy" in a unified way, regardless of the fact that state courts have a "different jurisdictional genesis" from the federal courts.

A number of state courts have adopted the long-standing interpretation of the phrase "amount in controversy" as expressed in Zahn and Snyder. For example, in the very thorough opinion of Pollokoff v. Maryland Nat. Bank, 418 A.2d 1201, (Md.1980) the Maryland Supreme Court, when facing a similar issue of the aggregation of claims to satisfy the jurisdictional amount requirement in a class action suit, said:

> When we expand beyond our decisions in a search for guidance in the application of "amount in controversy" to the facts presented here, we look to the federal cases. Beginning with the Judiciary Act of 1789, Chapter 20, §11, 1 Stat. 78, diversity and general federal question jurisdiction has been qualified by monetary minimum limitation, initially expressed in terms of the "matter in dispute" and, since the Act of March 3, 1911, Ch. 231, §24, 36 Stat. 1091, in terms of "matter in controversy" a large body of decisional law has been developed in the federal courts interpreting the federal standard, which, while not binding, is a logical reference.

Id. at 1205. The Pollokoff court adopted the long-standing interpretation of "matter in controversy" expressed in Snyder and Zahn, as have other state courts. See e.g. Lamar v. Office of Sheriff of Daviess Cty., 669 S.W. 2d 27 (Ken. 1984); Carvalho v. Coletta, 457 A.2d 614 (R.I. 1983). Long before the adoption of federal or Florida class action rules, the federal courts had

determined the amount of the matter in controversy by analyzing the claim asserted and they held that two or more plaintiffs' separate and distinct claims cannot be aggregated. The long-standing construction of the "matter in controversy" requirement which provides each plaintiff in a class action must satisfy the jurisdictional amount independently should also apply in Florida.

Furthermore, Petitioner's interpretation of the "amount in controversy" requirement will substantially cloud the distinction between circuit and county court jurisdiction. As the Snyder court reasoned:

> Any change in the doctrine of aggregation in class action cases...will inescapably have to be applied as well to the liberal joinder [of parties] provisions of Rule 20 into the Joinder of Claims provisions of Rule 18. The result would be to allow aggregation of practically any claims of any parties that for any reason happen to be brought together in a single action. This would seriously undercut the purpose of the jurisdictional amount requirement. 394 U.S. at 339-40, 22 L.Ed.2d at 326, 89 S.Ct. at 1058-59. [8]

This reasoning has application to any trial court minimum jurisdictional amount, including that dividing the circuit and

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[8] Rule 18 of the Federal Rules of Civil Procedure provides "(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, crossclaim, or third party claim, may join, either as independent or as alternative claims, as many claims, legal, equitable or maritime, as the party has against an opposing party." Paragraph (a) of Rule 20 of the Federal Rules of Civil Procedure provides, "Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right of relief jointly, severally, or in the alternative in respect of arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action."

county courts of Florida. [9] If separate and distinct claims can be aggregated under the Florida Rules of Civil Procedure - for class action proceedings, joinder of claims and joinder of parties - then the amount in controversy requirements of Fla. Stat. §34.01 are ultimately rendered meaningless and of no practical effect. Consequently there is no satisfactory reading of the statutory "matter in controversy" requirement which would permit the aggregation of claims such as the Petitioners' in the present action.

II. FLORIDA DECISIONAL LAW DOES NOT PERMIT THE AGGREGATION OF CLAIMS FOR JURISDICTIONAL PURPOSES IN THE CIRCUMSTANCES OF THIS CASE.

A. The appropriate standard is established on two seminal cases which require a specific relationship between claims before aggregation is permissible.

The oldest authority that Amicus Curie has been able to locate in Florida setting forth a standard for the aggregation of claims for jurisdictional purposes: Director General of Railroads v. Wilford, 88 So. 256 (Fla. 1921). [10] In Wilford, the plaintiff

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[9] Florida's counterparts to the Federal Rules on this issue can be found in Fla. R.Civ.P. 1.10 (g) which provides "a party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both," and Fla.R.Civ.P. 1.210(a) which provides "all persons having an interest in the subject of the action and obtaining the relief demanded may join as plaintiffs and any person may be made to defend it who has or claims an interest adverse to the plaintiff.

[10] There is one older case which, although it does not set forth a clear standard, permitted aggregation. In Georgia F&A Ry. Co. v. Andrews, 54 So. 461 (Fla. 1911) the court permitted aggregation of claims for stock "killed at the same time" by defendant's train. If that opinion expresses any general principle at all, it would only be that the claims sought to be aggregated amount arise out of a single occurrence, a theme that will emerge

brought an action to recover damages for livestock killed by a railroad train. The complaint revealed that four cows had been killed in three separate accidents, and further revealed that the value of no one of the cows was sufficient to satisfy the jurisdictional requirements of the circuit court. The Wilford court held that the damages were for "several separate and distinct torts" and so could not be joined to confer jurisdiction on the circuit court:

> In this case, each demand is for a separate and distinct tort committed at different times and no one demand exceeds $100.00, therefore, no one is within the jurisdiction of the circuit court.
>
> * * *
>
> This is not a case of several demands growing out of a single transaction or out of a single or continuing delict, or out of a course of business relations, or out of the general act of tort.

Wilford at 257. With these words the Wilford court for the first time set out the framework for aggregating claims to meet jurisdictional requirements, contrasting claims that are "separate and distinct" from those that "grow out" of some common element.

This Court revisited and further clarified the aggregation rule in Burkhart v. Gowin, 98 So. 140 (Fla. 1923). In that case the plaintiff sought to aggregate claims brought under separate notes, none of which were individually sufficient to confer jurisdiction on the circuit court. The Burkhart court stressed that the "organic limitations" of the Constitution should not be

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from the cases analyzed in this section.

breached by aggregating claims which are not "joint or composite, and that are in no way related, but are wholly distinct and several in that character." Burkhart at 142. The court set out its standard in this lengthy explanation:

> [S]everal claims, no one of which is in an amount within the jurisdiction of the court may be aggregated to confer jurisdiction if the claims from that nature or character are joint or composite or are in some way related to each other, or arise out of the same transaction or circumstances or occurrence, and the sum of the claims makes the requisite jurisdictional amount... But where the subsection claims are not in their nature or character joint or composite, and do not arise out of the same transaction, circumstances or occurrence and are not consequent upon a continuous course of dealing, as evidenced by an open account, or a continuing contract, or other appropriate means, and the claims are in no way related, but are several and distinct, and wholly independent demands, whether ex contractu or ex delicto, they may not be aggregated to give jurisdiction, as this would violate the organic limitations as to jurisdictional amounts.

Id. The court held that the demands based on the various notes were "separate and unrelated" and therefore could not be aggregated to confer jurisdiction on the circuit court. Id. at 143.

The Burkhart court did not limit itself to merely offering an abstract rule as set out above. The court also offered applications of the rule to illustrate its use and purpose. Items the court described as aggregable claims were the above standard included claims for the following: (1) successive obligations to pay rent, (2) open accounts, and (3) several head of livestock killed in the same railroad accident. Items the court described as not aggregable included the following: (1) promissory notes given at different times and (2) livestock killed at different

times. Burkhart at 142. These examples demonstrate the very straightforward and functional way the court intended these principles to be applied. The usage indicates the court was anticipating claims that logically should be heard in one preceding since they arise out of a common core of facts.

The standard set out in Burkhart was essentially restated in State v. Chillingworth, 129 So. 817 (Fla. 1930). In that case, the court permitted the owners of bonds which originated from a single bond issue aggregate their claims arising from twenty interest coupons. In addition to confirming the principles set out in Burkhart concerning aggregating several courses of action, the Chillingworth court also set out a standard for the aggregation of claims belonging to different parties:

> The rule is also well settled that, when several parties sue jointly for the recovery of money or property claiming under a common right, and the adverse party is wholly unaffected by the manner in which it may be apportioned in case of recovery, it is the aggregate sum of their several claims which determines the amount in controversy, but persons having distinct and separate interests cannot join their accounts for the purpose of making the jurisdictional amount to appear.

Chillingworth at 818.

In the end, the relevant principles for aggregating claims are set out in Burkhart and Chillingworth so that the issues in this appeal ultimately turn in the construction and application of the ideas set out within them. This brief will analyze the issues in two parts: (1) the aggregation of claims rules as set out in Burkhart and restated in Chillingworth, and (2) the aggregation of claims belonging to separate parties as set out in Chillingworth.

B. The standards set forth in Burkhart and Chillingworth do not permit Petitioners to aggregate their claims to meet the jurisdictional amount requirement.

1. At least one Florida court has ruled that claims cannot be aggregated to meet the jurisdictional amount in class actions.

The only court in Florida that has addressed the issue of the aggregation of claims in order to ratify the jurisdictional amount is Curtis v. Bader, 266 So.2d 78 (Fla. 3d DCA 1972). In that case, a class action was brought to recover prepaid subscription for the failure to provide a newspaper as agreed. That court held that such claims could not be aggregated, citing Chillingworth as the basis for the holding. If the Curtis decision is correct, then Respondent should prevail in these proceedings. The present case puts this court in the position to definitively rule that Curtis properly applied the Chillingworth standard. [11]

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[11] Petitioners urge that the Curtis court's conclusion as to aggregation was implicitly overruled by this court's decision in Frankel v. City of Miami Beach, 340 So.2d 463. (Petitioner's Brief, p.20). The Frankel opinion, however, only addressed the question of whether special class action requirements must be pleaded and proved in class actions involving fraud. Frankel does not specifically address the issue of aggregation and this court was careful to overrule Curtis and numerous other cases only "insofar as they apply the Osceola Groves fraud class action rule." Frankel at 409. In any event, this court is obviously the final arbiter of the meaning of its prior decisions and is not bound by a lower court's decisions. Rather than exacerbating the subsequent history of the Curtis decision, we urge that Curtis was simply correct about aggregation under the rules in Burkhart and Chillingworth, the underlying cases that set out the appropriate analysis.

2. Petitioner's arguments torture the common sense reading of the standards set out in Burkhart and Chillingworth.

Petitioner goes to great lengths to emphasize specific language confirmed in Burkhart and Chillingworth. For example, at page 15 through 17 of Petitioner's brief, Petitioner cites Chillingworth at length adding italics to the part of the opinion which says that claims may be aggregated where they are "in some way related to each other" and the part allowing aggregation where claims arise out of same "circumstance", urging that these phrases support aggregation in the present suit. However, petitioner's emphasis on specific language is too technical and inappropriately formalizes the functional intent of the passages in Burkhart and Chillingsworth.

Petitioner relies upon Chillingworth's statement that claims may be aggregated if they are "in some way related." (Petitioner's Brief, p.15). The sense of the argument is that the phrase "in some way related" offers an independent standard for analysis. That sense of reading the phrase is misguided in light of the context of the lengthy discourse in Chillingworth and Burkhart. The Fourth District Court of Appeal detected this misguided reading in its opinion below:

> The meaning of the words "in some way related to each other" is found in the examples used by the court to illustrate its point. The court addressed "continuous course of dealing as evidenced by an open account, or a continuing contract ..." While these illustrations may apply to dealings between the same parties, they plainly do not apply to separate and isolated transactions between one party and several other parties unrelated to

> one another and not jointly participating in the transaction with the others.

Plantation General Hospital v. Johnson, 621 So.2d 551, 552-553 (Fla. 4th DCA 1993). It is not as though any of the particular phrases such as "in some way related" convey a determinative meaning in and of themselves. To the contrary, both Burkhart and Chillingworth recommend examples as the surer guides to meaning.

The examples set out in Burkhart and Chillingworth do not support aggregation in the case at hand. Chillingworth requires a continuous course of dealing such as an open account or a continuing contract in order to justify aggregation. Chillingworth, 129 So.817, at 818. Burkhart adds that claims for promissory notes given for wholly unrelated and separate items of indebtedness and claims for livestock killed at different times would not justify aggregation. Burkhart, 98 So.140, at 142. The facts at issue in this case do not resemble an open account or a continuing contract. It is much more like the claims for promissory notes on wholly unrelated items or livestock killed at different times. The alleged hospital overcharges arise from the separate medical treatments and separate billings. Even if, arguendo, there were a scheme of hospital overcharging, such a scheme could not in itself convert separate claims into aggregable claims any more than the fact that a railroad company regularly schemes to send trains down a track would convert claims for livestock killed by a train at separate times into aggregable claims.

The examples set out in Burkhart and Chillingworth illustrate that claims are not aggregable by virtue of the mere similarity in the means of wrongdoing, but by virtue of the completion of a singular transaction or occurrence or the happening of a single event. Petitioners again torture the language of Chillingworth when they distinguish "transaction and occurrence" from "transaction, circumstance or occurrence" apparently arguing that their claims arise from the same "circumstance." (Petitioner's Brief p.17). [12] Again, Petitioner's approach ignores the basically functional analysis in Burkhart and Chillingworth and overemphasizes the phrases used by this court rather than the demonstration of the principles by illustration. Consequently, Petitioners' claims should not be aggregated.

C. **The standard set forth in Chillingworth permitting aggregation of claims belonging to separate parties do not apply to Petitioners' claims.**

The Chillingworth opinion states not only that several causes of action may be combined to confer jurisdiction, but also state

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[12] The phrase "transaction or occurrence" has been defined in the context of Fla.R.Civ.P. 1.170(a) which requires that claims arising out of the same transaction or occurrence as the original claim must be set up as a counterclaim in the same action. It has been held that the test of whether a counterclaim is compulsory focuses upon whether the issues of fact and law raised by the claim and counterclaim were larger, the same, whether res judicata would bar subsequent suit on defendant's claim absent the compulsory counterclaim rule, whether substantially the same evidence would support or refute plaintiff's claims as well as defendant's counterclaim, and whether there is any logical relation between the claim and counterclaim. City of Mascotte v. Florida Mun. Liability Self Insurers Program, 444 So.2d 965 (5th DCA 1983) rev. den. 451 So.2d 847 (Fla. 1984). Because Petitioners claims meet none of these traditional standards, they rely on the theory that their claims arose out of the same "circumstance."

that claims may be aggregated "when several parties sue jointly for the recovery of money on property claiming under a common right." Chillingworth, 129 So. 816, at 818. The court contrasted persons who bring suit "jointly" and under a "common right" with those persons who have "distinct and separate interests." So that those with distinct and separate cannot join their actions to satisfy the jurisdictional amount. Id.

Petitioners do not bring this action under a "common right" and therefore cannot aggregate their claims pursuant to the above standard. When Chillingworth refers to "common right." It cites to the case of Green County v. Thomas, 211 U.S. 598, 29 S.Ct. 168, 53 L.Ed. 343 (1909), which involved a suit by parties who were "jointly the owners and holders" of a number of bonds. Id. at 600. Therefore, the sense of a claim under "common right" is that the parties have some joint ownership interest in relation to the underlying claim for relief as one might find in the case of a joint property interest. No such common right exists under the circumstances of the present case. The only thing the petitioners have in common is that they were the alleged "victims" of a scheme of overcharging, which does not amount to anything even resembling a joint property interest. (Petitioner's Brief, 18). As a result, Petitioners cannot aggregate their claims to meet the jurisdictional requirements.

D. Petitioners' claims cannot be aggregated because procedural rules cannot expand a court's jurisdiction.

1. Rule 1.220 does not create substantive rights nor can it change the jurisdiction of the court.

Petitioners urge that if the requirement of commonality is met, then aggregation is appropriate (Petitioner's Brief, 19-21). [13] In the end, the gist of petitioner's argument is that if a class meets the requirements set out in Florida Rules of Civil Procedure 1.220, then all the claims of the class members may be aggregated for jurisdictional purposes. [14] Petitioner's implicit presumption that procedural rules can determine the jurisdictional requirements of the courts is erroneous.

Petitioner's argument confuses jurisdiction with the rules of practice and procedure. As this court stated in Sheldon v. Powell, 128 So. 260 (Fla. 1930):

> Jurisdiction has reference to the power of a court to adjudicate or determine any issue or

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[13] Petitioner contends "This court has made it clear that the controlling consideration [for aggregation] must be whether common questions of law or fact exist among the plaintiff class members," citing Frankel v. City of Miami Beach, 340 So.2d 463, at 466. (Fla. 1977). (Petitioner's Brief, 21).

[14] Florida Rules of Civil Procedure 1.220 provides: " (a) Prerequisites to Class Representation. Before any claim or defense may be maintained on behalf of a class by one party or more suing or being sued as the representative of all the members of a class, the court shall first conclude that (1) the members of the class are so numerous that separate joinder of each member is impracticable, (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, (3) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class."

> cause submitted to it, while practice and procedure has reference to the manner in which the power to adjudicate or determine is exercised.

Id. at 263. [15] Petitioner's position reverses the above standard and would have the courts of this state first analyze whether a class action is appropriate under the terms of Florida Rules of Civil Procedure 1.220, and once having determined that a class action is appropriate, conclude that it may then aggregate claims to meet any jurisdictional requirement. Sheldon shows that jurisdiction and procedure are unrelated concepts. Therefore, procedural rules promulgated by this court should not influence any court's evaluation of its jurisdiction over a case.

Petitioner's confusion of jurisdiction and procedure raises important issues relating to the Florida Constitution which vests the Legislature with the power to control the jurisdiction of the courts. [16] Art. V, Sections 5 and 6, of the Florida Constitution likewise grant to this court the exclusive power to "accept rules for the practice and procedure in all courts." Art. V. §2(a), Fla. Const. This court should not read Florida Rules of Civil Procedure 1.220 in such a way as to create substantive rights by creating

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[15] Justice Adams in his oft-quoted concurring, opinion in In re Florida Rules of Criminal Procedure, 272 So.2d 65 (Fla. 1972) cited Sheldon with approval and explained, "Practice and procedure pertains to the legal machinery by which substantive law is made effective," and, "It has also been said that substantive law creates, defines, adopts and regulates rights, while procedural law prescribes the method of enforcing those rights."

[16] The constitutional power of the Legislature to control the jurisdiction of the courts is discussed at Section I.A. of this brief at length.

jurisdiction over claims where it has not been granted by the Legislature. See Bennett v. Stutts, 521 S.W. 2d 575 (Tenn. 1975) (commenting on Tennessee's class action rule, " These rules simply regulate procedure; they do not create substantive rights"). Rather than construe a provision in a way that would be unconstitutional, this court has traditionally preferred a construction which renders a constitutional result. State v. Cotney, 104 So.2d 346 (Fla. 1958). Therefore, the mere fact that a class action may be appropriate under Rule 1.220 does not imply that the court may aggregate claims for jurisdictional purposes.

2. The single judgment contemplated in a class action is an inappropriate standard for determining the amount in controversy.

Petitioners further rely on the argument that, because a class action contemplates a single judgment, the amount in controversy is the claim of the entire class. [17] The fundamental flaw in this analysis is that it relies on the premise as explained above, that procedural rules which contemplate a single judgment can govern a determination of a court's jurisdiction. [18] Yet there is also an additional flaw. Looking to the single judgment violates the well established principle in Florida that the determination of the

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[17] Petitioners essentially rely on the Fifth District Court of Appeal's opinion in Galen of Florida, Inc., d/b/a Humana Hospital Daytona Beach v. Arscott, 5th DCA #93-79. (Petitioner's Brief, p. 24-25.

[18] Florida Rules of Civil Procedure 1.220(d)(3) makes provision for the "judgment" in a class suit.

jurisdiction of the court is determined by the sum in good faith demanded or actually put in controversy and not on the amount of recovery. Wilkie v. Roberts, 109 So. 225 (Fla. 1926). If the court is to contemplate the single judgment gained for the entire class, the courts are relying on the amount of recovery rather than the amount demanded or actually put in controversy.

Members of a plaintiff class may in fact choose not to be members and thus not be bound by the judgment. National Lake Developments, Inc. v. Lake Tippecanoe Owners Ass'n., Inc., 417 So.2d 655 (Fla. 1982). When the petitioners invite the court to contemplate the single judgment, they have to assume that all of the members of the class will not in fact choose to opt out of the class representation. A court's jurisdiction cannot, in good faith, rest on such a hypothesis. To the contrary, the court should look to the claims which are asserted by the representatives of the class.

3. Aggregating claims for jurisdictional purposes ignores the representative character of a class suit.

In Tenney v. City of Miami Beach, 11 So. 188 (Fla. 1942), this court explained the underlying nature of a class action:

> The class suit is brought on the theory that claims, issues, and defenses are common and that when the right of the nominal parties to the suit is adjudicated, the right as to all becomes in effect, adjudicated.
>
> ...In the case at bar, the court had jurisdiction of the City and when the right of Tenney [the class representative] was adjudicated, it was competent for him to adjudicate the right of all in the class.

The above passage contemplates that the court in a class action will first adjudicate the individual right of the nominal party or parties to the suit. Only after the nominal party's right is adjudicated does the right as to all of the parties become in effect adjudicated. Consequently, in Tenney, when the court adjudicated the right of the class representative, and only after that individual right was adjudicated, was it competent for the court to adjudicate the right of the remaining members of the class. Petitioner's argument invites this court to view the court's adjudication in a class action as a one-step process. However, the Tenney court explains that the underlying theory of the class action is that the adjudication is a two-step process where the rights of the nominal parties are adjudicated first and the rights of the class members are adjudicated second.

Because the rights of the nominal parties are adjudicated first, the amount of their aggregating the claims of the class ignores the representative character of class actions. It is well established in Florida law that the parties named in a class action must actually represent the class. Costin v. Hargraves, 283 So.2d 375 (Fla. 1st DCA 1973). Also see, Southern Bell Telephone & Telegraph Co. v. Wilson, 305 So.2d 301 (Fla. 3d DCA 1974) ("It should be made clear that the plaintiff adequately represents the class, and whether a party adequately represents the persons on whose behalf he sues depends on the facts of the particular case.") The petitioner's argument fails to recognize the nominal parties as representatives because the amount of the claim of the

representative would be disregarded for jurisdictional consideration. It would be arbitrary if the law would not require nominal parties to adequately represent the class itself in respect to the jurisdictional amount while at the same time requiring that the nominal parties adequately represent the class in all other regards. Therefore Petitioners' claims should not be aggregated in order to satisfy the jurisdictional requirement.

III. LITIGATION OF PETITIONERS' CLAIMS UNDER THE FLORIDA SMALL CLAIMS RULES WOULD NOT DEPRIVE PETITIONERS OF ANY CONSTITUTIONAL RIGHTS.

Petitioners argue that litigation of its class action under the small claims rules would deprive them of their rights as citizens under Sections 9 and 21 of Article I of the Florida Constitution. Section 9 of the Florida Constitution provides as follows:

> Due Process. No person shall be deprived of life, liberty, or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Section 21 of the Florida Constitution provides:

> Access to Courts. The court shall be open to every person for redress of any injury, and justice shall be administered without fail, denial or delay.

Petitioners represent that the small claims rules themselves violate the access to courts provision in that they "prohibit" them from asserting their claims in county court. (Petitioner's Brief p. 37).

Florida's Small Claims Rules do not violate the Petitioners' right of access to the court. It is simply not true that the

Florida Small Claims Rules "prohibit" one from asserting a class action claim in county court. Although Fla.R.Civ.P. 1.220, the class action rule, is not one of the rules adopted as a matter of course in the Florida Small Claims Rules pursuant to Rule 7.020(b), Fla.Sm.Cl.R., the class action rule is not "prohibited" by the terms of the Florida Small Claims Rules. To the contrary, Rule 7.010(c), Fla.Sm.Cl.R., permits use of the class action rule:

> Additional Rules. In any particular action, the court may order that action to proceed under one or more additional Florida Rules of Civil Procedure on application of any party or a stipulation of all parties on the court's own motion.

Therefore, Petitioners cannot contend that the Florida Small Claims Rules "prohibit" class actions.

Petitioners essentially argue that there is a constitutional deprivation because petitioners have no absolute right under the Florida Small Claims Rules to require proceedings under the class action rule. However, the rule is well established that in determining the constitutionality of legislation the courts must give it a construction which will uphold it rather than invalidate it, if there is any reasonable basis for doing so. Sarasota v. Barg, 302 So.2d 737 (Fla. 1974). The same rule should apply to the court's construction of the Florida Small Claims Rules, which should be construed in such a way as to prohibit any alleged constitutional deprivation. Therefore, Rule 7.010 (c) Fla.Sm.Cl.R., providing that the court may order the action to proceed under additional Florida Rules of Civil Procedure, preserves rather than prohibits Petitioners' alleged constitutional

rights. Therefore, the Florida Small Claims Rules do not violate any constitutional right of the petitioner.

Petitioners further contend that even if the Florida Small Claims Rules do not deny them access to the courts, then the actual procedures required by the Florida Small Claims Rules effectively deny petitioners their rights to due process. (Petitioner's Brief p.38-42). Petitioners are incorrect. Florida Small Claims Rules are flexible enough to accommodate the class action rules. When Rule 7.020(c), Fla.Sm.Cl.R., provides that the court may order that action to proceed under one of more additional Florida Rules of Civil Procedure, that implies that the court will have the power to do whatever is necessary to execute the procedure. Ford v. Ford, 8 So.2d 495 (Fla. 1942) (where "the rigid enforcement of rules of procedure would defeat the great object for which they were established it is [the judge's] duty to so relax them - when it can be done without injustice to any - as to make them subserve their true purpose, which is to promote the administration of justice"). Therefore any concerns about the time frames in which a trial will be brought or the contents of the statement of claim, or the multifarious requirements of Florida Rule of Civil Procedure 1.220 are ill-founded. If the court is empowered to apply class action rule, it is also empowered to make whatever provision is necessary to apply the class action rule in accordance with law. The Florida Small Claims Rules simply do not prohibit the bringing of a class action and therefore do not violate any constitutional right of due process.

CONCLUSION

For the reasons stated above, the District Court ruled correctly in concluding that the circuit court lacks subject matter jurisdiction to consider Petitioners' claims. This Court should affirm the District Court's decision.

Respectfully Submitted,

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I HEREBY CERTIFY that a copy of the foregoing Amicus Curiae Brief in Support of Respondent has been furnished by U.S. Mail on this 3rd day of February, 1994, to:

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