095

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

BRUCE A. JOHNSON, MARTHA RICH, ALFRED SCHEMPP and JUDITH OSIT, For Themselves and All Others Similarly Situated,

Petitioners,

PLANTATION GENERAL HOSPITAL, LIMITED PARTNERSHIP,

Respondents,

_____/

CASE NO. 82,237

4TH DCA CASE NO. 93-0059
- CLASS REPRESENTATION -

JURISDICTIONAL BRIEF TO ACCOMPANY NOTICE TO THE SUPREME COURT TO INVOKE DISCRETIONARY REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FLORIDA RULES OF APPELLATE PROCEDURE

STATEMENT OF THE CASE

This case, one of several state wide consumer class actions, came to the District Court of Appeal after a circuit court challenge upon the grounds that the claims of the class representatives did not meet the $15,000 jurisdictional floor of the circuit court. The circuit judge (similar to other circuit judges in other class actions) rejected the defendant hospital's theory that each class representative and each class member must have a contract claim in excess of $15,000 in order for this class action to be maintained in circuit court.

The District Court of Appeal, Fourth District rendered and entered its decision upon an opinion of July 14, 1993. (App. 12)

The gravamen of the district court's opinion is that the claims of class members may not be aggregated to permit circuit court subject matter jurisdiction even though the claim of the class is far in excess of the $15,000 jurisdictional floor of the circuit court. It is that jurisdictional decision for which review is sought by the Supreme Court

The named class representatives, and the class, apply to this Court for the issuance of its order invoking discretionary jurisdiction directed to the court of appeal for review of that court's opinion and decision.

This application is made pursuant to the "all writs" provision of Rule 9.030(a)(3), as well as Rule 9.100(c)(1) and Rule 9.120 of the Florida Rules of Appellate Procedure.

The nature of the order sought to be reviewed is the opinion and decision of the Court of Appeal, Fourth District, Florida, rendered July 14, 1993. (App. 12) The Supreme Court's jurisdiction is appropriate to be exercised in this action because the trial court to which the district court assigned the underlying class action (the County Court of Palm Beach County) *is itself without jurisdiction to afford the relief sought by this class action, namely, a judgment against the defendant hospital in the tens of millions of dollars for patient overcharges.* The final judgment jurisdiction of the County Court by law may not exceed the sum of $15,000. This Court has previously held that an erroneous ruling on the issue of subject matter jurisdiction is reviewable by [discretionary writ]:

> An incorrect decision on subject matter jurisdiction is fundamental error. It constitutes a departure from the essential requirements of law, sufficient to justify invocation of this court's certiorari jurisdiction.

Stel-Den of Am. Inc. v. Roof Structures, Inc., 438 So.2d 882, 884 (Fla. 4th DCA 1983), rev. denied, 450 So.2d 488 (Fla. 1984), citing Hartford Accident & Indem. Co. v. Thomasville, 100 Fla. 748, 130 So. 7 (Fla. 1930).

The determination in this cause by the lower tribunal raises distinct and critical subject matter jurisdictional issues the resolution of which are appropriate for this Court.

The district court's majority opinion, as pointed out by Judge Stone's dissent, is not consistent with this Court's decision in State ex rel. City of West Palm Beach v. Chillingworth, 100 Fla.

489, 129 So. 816 (1930) (App. 15) and with this Court's holding in Frankel v. City of Miami Beach, 340 So.2d 463 (Fla. 1976). (App. 17) Thus, in addition to the rule-based jurisdictional authority cited above, the precedential conflicts with Chillingworth and Frankel, supra. indicate that the underlying question of the jurisdictional confusion pointed out by Judge Stone in his dissenting opinion requires resolution by the Supreme Court.

STATEMENT OF THE FACTS

The named plaintiffs and the class which they represent comprise more than 100,000 former patients of the defendant hospital. As is alleged in the underlying complaint, each patient has been subject to the identical type of overcharging practices by the defendant hospital. (App. 1, Paragraph 9) The fact that no individual class member has a claim in excess of $15,000 is non sequitur. The entire class of overcharge victims has been subject to monetary injury in a total amount in excess of several million dollars. (App. 1)

The Relief Sought:

The class seeks monetary recovery of overcharges for the three distinct categories of hospital charges alleged in the complaint. Such recovery must come from a common fund created either through judgment or settlement paid by the defendant hospital. The amount of any individual's recovery will be the subject of determination by a common-fund claims administrator upon appropriate proof. The thousands of class members will not obtain separate and individual judgments from the court based on the

jury's finding of total overcharges. The court will be asked to enter a single judgment for the entire class as opposed to more than 100,000 individual judgments for amounts estimated to be in the $200-$300 range.

The relief sought from the Supreme Court is consistent with the nature of class action litigation. Upon review, this Court should vacate the district court's decision and reinstate the trial court's determination as found in its order denying the hospital's motions to dismiss for lack of subject matter jurisdiction. (App. 6)

SUMMARY OF THE ARGUMENT

The nature of class actions as a vehicle to take many individual small claims that would not be feasible to pursue individually, and bring them in a single cause, has long been recognized by this Court and met with judicial favor. A class action is the quintessential means of obtaining the economy of judicial labor and resources favored by our courts.

The instant class, like that seen in virtually all consumer class actions, is comprised of individuals (hospital patients) each of whom have a claim as a victim of overcharging by the defendant hospital for pharmaceuticals, supplies and laboratory tests. Typical of consumer classes, the individual patient has been overcharged and states a claim in an amount well below the $15,000 jurisdictional threshold of the circuit court. Also, typical of consumer class actions, the aggregated sum of the class

of many thousands of patients exceeds the $15,000 barrier by several million dollars.

The lower tribunal, in a 2-1 decision (Judge Stone dissenting) established the governing case law that individual class member's claims, even though arising from the same business relationship and course of business conduct, may not be considered as a unitary claim by the class as alleged in the complaint.

The district court decision is not consistent with this Court's governing authority and precedent and constitutes a departure from an essential requirement of law. The district court's jurisdictional decision casts the cause of hundreds of thousands of class members (there are several similar actions pending around the state) seeking monetary damages and recovery of tens of millions of dollars into the several county courts which do not have the jurisdictional authority to render judgment in the amounts claimed by the classes in these cases.

The Supreme Court has previously considered this jurisdictional issue and has, without equivocation, established governing case law that is contravened by the decision sought to be reviewed.

The class seeks to have the district court's decision on jurisdiction vacated; the dissenting opinion of Judge Stone recognized as the correct view and the trial court's rejection of the hospital's jurisdictional challenge reinstated to govern the future course of this action and to serve as authority for similar pending cases.

ARGUMENT

THE MAJORITY OPINION OF THE DISTRICT COURT DISREGARDS THIS COURT'S STANDARDS FOR THE NATURE OF CLASS ACTION CLAIMS AND THE JUDICIAL HOSPITALITY THAT EXISTS FOR CONSUMER CLASS ACTIONS.

The district court simply stated that the class members' individual hospital bills containing the overcharges are separate from each other and the multimillion dollar claim of the class cannot suffice for circuit court jurisdiction. The district court's opinion is just wrong, but more important, a departure from the essential requirements of law and warrants this Court's grant of discretionary review. Such review has been recognized as the means to correct essential illegality. See Chief Justice Boyd's special concurrence in Jones v. State, 477 So.2d 566-569 (Fla. 1985). Here the decision to be reviewed contradicts the legal analysis of Chillingworth and Frankel and it thus poses the paradox; how can a county court with a jurisdictional ceiling of $15,000 enter one single judgment for several million dollars in a class action case. That question was asked in the class' brief below. The district court neither dealt with the issue nor answered the critical question. The trial judge considered that issue and rejected the hospital's argument that each class representative and class member must individually meet the circuit court's jurisdictional floor.

The district court rather matter-of-factly said:

> "That does not leave them without a remedy, of course. It simply means that they must bring their suit in county courts." (App. 12)

That opinion would be correct if this action were solely for the named plaintiffs bringing a suit to obtain a judgment recovering their own, individual small amounts of damages. Individual judgments by the county court for $200 or $300 would be appropriate and enforceable. But the district court misperceives the nature of consumer class actions. These "small dollar plaintiffs" are not asserting their own individual claims in the action. They are asserting the claim of the class of more than 100,000 patients, in which each of the named plaintiffs happens to have a small dollar interest. The class does not seek individual judgments for 100,000 patients, only a single judgment in excess of $10 million as a common fund. It is axiomatic that class actions are the appropriate way for many persons with small claims, that standing alone would not be feasible to pursue, to join in asserting a common and related right arising from a commercial context.

The Florida Supreme Court addressed the question of whether individual claims could be aggregated so as to bring an action within the jurisdiction of the circuit court. City of West Palm Beach v. Chillingworth, 100 Fla. 489, 129 So. 816 (1930). The amount material to each Chillingworth claimant was below the circuit court's jurisdictional limit, but in the aggregate, the jurisdictional limit was met. This court held that aggregation of the individual claims was proper because the individual demands were affected by a *common right and were related*. See Container Corp. of America v. Seaboard Air Line RR, 59 So.2d 737 (Fla. 1952).

In its reasoning, this Court first considered the rule adopted in some states that jurisdiction is fixed by the amount of each separate demand. After citing an Arkansas case that represented this restrictive view, the Florida Supreme Court stated:

> This court is, however, committed to the rule that, if the demands from their nature or character are joint or composite, or are in some way related to each other or arise out of the same transaction, circumstance, or occurrence, they may be aggregated to confer jurisdiction.

Id. (emphasis added). Thus, the Florida Supreme Court has already rejected the view announced by the district court in the instant cause. The Supreme Court in Chillingworth describes the correct essential element of law material to the instant patient class.

The claim of the class alleged in this case arises from the defendant hospital's uniform and institutional method of imposing overcharges on the class. It is non sequitur that each patient/class member has a separate hospital bill. The class alleges and claims under a common right, specifically, the contractually implied covenant of reasonableness and the doctrine of "imposition" Southern States Power v. Ivey, 118 Fla. 756, 160 So. 46 (1935). The claims of all class members are related to each other and "arise out of the same ... circumstance ..." Container Corp. of America v. Seaboard Air Line RR, 59 So.2d 737 (1952) favorably citing, Burkhart v. Gowin, 86 Fla. 376, 98 So. 140 at 142 (Fla.). The issue of aggregation comes down to the question of whether these class members have "distinct and separate interests"

or whether they are "claiming under a common right." Commonality has been well pled and is fully described in the complaint. The common right to be vindicated arises from the consistent course of business conduct by which the hospital overcharged each patient for three categories of items also described in the complaint. (App. 1) If the county judge cannot enter a judgment for $10 million then the defendant has effectively created a classic "catch-22" and defeated a meritorious claim and obstructed the proper operation of our court system.

CONCLUSION

Instead of solving the jurisdictional problems of class action cases such as this, the district court has created a nightmare of confusion and uncertainty. It should be clear and unmistakable that the class asserts a common claim arising from a singular and wrongful course of business conduct. The claim of the class far exceeds the floor of the circuit court. The claim of the class cannot be divided by some mechanical process that elevates form over substance. The lower appellate tribunal's opinion and decision should be subject to this court's review and vacated with a recognition that the unified claim of the consumer class is the basis of the relief sought and that such relief is within the circuit court's jurisdiction.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Jurisdictional Brief to Accompany Notice to the Supreme Court to Invoke Discretionary Review has been furnished by U.S. Mail to Debora A. Sampieri, Attorney at Law, Kenny, Nachwalter, Seymour, Arnold & Critchlow, P.A., 400 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131-2305, this 30th day of August 1993.

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