3-14

SUPREME CO&T OF FLORIDA

Case No.: 82,934

CHANDRIS, S.A., CHANDRIS INC., d/b/a CHANDRIS CRUISE LINES, TRANSPORT MUTUAL SERVICES, INC., NIKOLAS MILIARESIS, and MATRONA MILIARESIS,

Defendants-Appellants,

vs.

BASIL YANAKAKIS, IRA H. LEESFIELD and ROGER BLACKBURN, d/b/a LEESFIELD & BLACKBURN, P.A.,

Plaintiffs-Appellees,

ON CERTIFICATION FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF APPELLANTS, CHANDRIS, S.A. AND CHANDRIS, INC.

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III. INTRODUCTION

CHANDRIS, S.A. and CHANDRIS, INC., Defendants below and Defendants here shall be referred to as "Defendant" or "CHANDRIS". Appellant, Transport Mutual Services, INC. shall be referred to as "Defendant" or "TMS". In several instances these parties will be referred to collectively as "Defendants".

Basil Yanakakis, Ira H. Leesfield, and Roger L. Blackburn d/b/a Leesfield & Blackburn, P.A., Plaintiffs below, shall be referred to as "Plaintiffs", or "Yanakakis", or "Leesfield & Blackburn".

References to exhibits introduced into evidence at trial will be referred to as "Ex." with a corresponding exhibit number. Reference to Exhibits marked by the Court will be by "Ct. Ex.". References to the Supplement Record on Appeal will be by "Supp. Rec." Reference to the Record Excerpts filed with this brief will be by "RE-". Reference to the Appendix will be by "A-".

IV. STATEMENT OF THE CASE AND OF THE FACTS

A. Nature of the Case

Pursuant to Article V, §3(b)(6) of the Florida Constitution the United States Court of Appeals for the, Eleventh Circuit has certified two questions to this Court for determination. Yanakakis v. Chandris S.A., 9 F. 3d 1509 (11th Cir. 1993). The Eleventh Circuit characterized these two questions as being of "first impression" under Florida Law, to wit:

1. Whether an out of state attorney who resides in Florida but is not associated with a Florida law firm, engages in the unauthorized practice of law where that attorney enters into a contingent fee agreement in Florida thereby rendering that fee agreement void; and

2. Whether a fee agreement of a Florida law firm born of a fee agreement that is void as the unauthorized practice of law is itself void.

B. Course of the proceedincrs and disposition in the lower tribunal.

This is an appeal from a judgment rendered after a 18 day jury trial conducted in the United States District Court for the Southern District of Florida presided over by Judge Jacob Mishler sitting by designation. After a "two-step" trial a judgment was rendered in favor of the Plaintiffs for $600,000 in compensatory damages, 2.6 million dollars in punitive damages against Chandris, S.A. and Chandris, Inc., and $550,000 in punitive damages against

Transport Mutual Services.

Suit was initiated on September 9, 1987, against Chandris, S.A. and Chandris, Inc. alleging tortious interference with a contract. (Rl-1). Attached to the initial Complaint was an authority to represent dated March 18, 1985. (Ex. 86) The authority to represent refers to prosecution of a claim for damages for personal injuries sustained by Nikolas Miliaresis in an accident in Cozumel, Mexico, on October 3, 1984. The authority to represent refers to Basil Yanakakis and Leesfield & Blackburn, P.A., as attorneys. This authority to represent is signed only by Basil Yanakakis and Nikolas Miliaresis.

On October 5, 1988, a Second Amended Complaint (R3-40-2) was filed alleging a claim for tortious interference with a contract for legal representation and attaching only the March 18, 1985 agreement, This Second Amended Complaint joined Defendant, Transport Mutual Services, Inc. Also, in the Second Amended Complaint, Nikolas and Matrona Miliaresis, Plaintiffs, alleged former clients of Plaintiffs, were sued for breach of contract and fraud. (R3-40-10-13).

Nikolas Miliaresis was injured on October 3, 1984 aboard the Panamanian flag cruiseship AMERIKANIS, managed by Chandris, S.A. Mr. Miliaresis sustained a severe injury to his right lower leg in a mooring line accident. He was airlifted to Miami for microsurgical treatment.

On February 6, 1985 a suit seeking recovery for personal injuries ostensibly on Nikolas Miliaresis' behalf against "Chandris

Lines" was filed by Appellees, Leesfield & Blackburn, P.A. This suit alleged the applicability of 46 U.S.C. §688 (The Jones Act) and the General Maritime Law of the United States, The claim of Nikolas Miliaresis was settled by Nikolas Miliaresis in Greece on March 12, 1986 without participation by Yanakakis or Leesfield & Blackburn. Yanakakis and Leesfield & Blackburn's claims for tortious interference were based on this settlement.

In answer to Plaintiffs' Second Amended Complaint, Defendants asserted the claim for tortious interference with a contract for legal representation was legally precluded due to the illegality of the contract. (R4-85). Plaintiff, Yanakakis, an attorney admitted only in Massachusetts, engaged in the unauthorized practice of law in the State of Florida in procuring the contracts of representation and representing Nikolas Miliaresis. Additionally, the March 18, 1985 "Authority to Represent" is unconscionable and in violation of Florida Disciplinary Rule 2-106(E) and DR2-107(A)(2)(a).

Another "Authority to Represent" surfaced in January of 1991. (Ex. 87). This document identifies only Plaintiff, Basil Yanakakis as the "accepting attorney" and Nikolas Miliaresis as the "client".

Plaintiffs moved for partial summary judgment dismissing Defendants' claim that Yanakakis' unauthorized practice of law barred recovery on January 18, 1991 (R10-209). Defendants cross-moved for judgment on Appellees' claim for tortious interference with contract asserting the invalidity of the contract based upon

unauthorized practice of law by Appellee Yanakakis and the failure of the March 18, 1985 Authority to Represent to comply with Florida Disciplinary Rules (Accord. Folder 1-252; R15-253).

Plaintiffs' motion directed to the defense of unauthorized practice was granted and appellants' cross-motion was denied by opinion and order dated March 5, 1991. (R15-262). The trial court held -- without citation to any authority -- that Yanakakis, despite his Florida domicile and non-admitted status, was permitted to enter into a contingent fee retainer agreement for the prosecution of a personal injury case which he intended be brought in a court in the State of Florida (R15-262). The trial court also concluded without proof that the "choice of the forum [for the alleged Jones Act case in state court] was [Appellee] Leesfield's" as opposed to that of Yanakakis, and that "Yanakakis could reasonably have anticipated that had the forum been the U.S. District Court, an application for permission to appear pro hac vice would have been granted" (R15-262). The trial court excused Mr. Yanakakis' admitted practice of law in connection with the Miliaresis' suit for damages because "Yanakakis was permitted to advise Nikolas on international law and maritime law" again citing no authority. The trial court observed that: "[w]ere we to find that Yanakakis engaged in the unauthorized practice of law...we would nevertheless find that such activity did not affect the validity of the retainer agreement with Leesfield", although Florida Disciplinary Rules 3-101 to 104 forbid assisting unauthorized practice; and that: "the validity of a retainer

agreement does not depend upon the execution of a written contract" (R15-262), despite contrary provisions of Florida Disciplinary Rules 2-106(E) and DR 2-107(A)(2)(a).

At trial the only proof Plaintiffs offered on damages was that direct settlement of the Miliaresis' claim caused them to lose the expectancy of a fee based upon the percentages stated in the Authorities to Represent applied to the "true value" of the case brought in state court. The Plaintiffs did not urge nor prove any claim for quantum merit compensation for their services.

On May 1, 1991, the jury returned a verdict finding that the "true value" of Nikolas Miliaresis' claim initiated in Florida state court was $1,500,000. (R18-302). Apparently applying the percentages set forth in the Authority to Represent the trial judge awarded Plaintiffs judgment for $600,000 compensatory damages, in lieu of fees.

After the verdict awarding compensatory damages Defendants moved to bar trial for punitive damages amount based on the special verdict finding that no appellant had acted with malice. (R18-309) This motion was denied orally. On May 9, 1991 at the conclusion of the second step trial, the jury returned a verdictassessingpunitive damages of $2,600,000 against "Chandris" and $550,000 against TMS. Defendants moved for directed verdict at the end of Plaintiffs' case (R31-475-499) and at the close of evidence (R34-1206-19). Defendants' post-trial motions were denied initially by the Court as untimely (R20-347), a ruling which potentially would have deprived Defendants of any appeal. On

February 18, 1992, the trial court, having been given leave and guidance by the Eleventh Circuit Court of Appeals, entertained and denied Defendants' post-trial motions (Supp. Rec. 4-390).

Defendants' post-trial motions renewed argument on the issues of unauthorized practice of law by Yanakakis; Leesfield & Blackburn's failure to comply with the legal requisites for a valid contingency fee contract of representation, and the disciplinary rules against assisting unauthorized practice; and the resultant invalidity of both authorities to represent. Defendants requested the trial court to rule that the contracts were void and could not be a proper basis for judgment in favor of Plaintiffs. (R10-337-338).

After the post-trial motions were denied on their merits, Defendants initiated an appeal to the United States Court of Appeals for the Eleventh Circuit. Several issues were argued on appeal.

The Eleventh Circuit stated that its certification of the two (2) questions is not meant to limit the scope of inquiry by the Supreme Court of Florida. Citing from Martinez v. Rodriguez, 394 F.2d 156, 159 n. 6 (5th Cir. 1968), the Eleventh Circuit observed that its phrasing of the questions certified is "not to restrict the Supreme Court's consideration of the problems involved and the issues as the Supreme Court perceives them to be in its analysis of the record certified in this case." Yanakakis, 9 F.3d at 1514.

In the opinion certifying the aforesaid questions the Eleventh Circuit acknowledged Defendants' contention the District

Court erred in denying Defendants' cross-motion for summary judgment. The Eleventh Circuit observed correctly that a decision on the cross-motion for summary judgment in favor of the Defendants will eliminate the necessity of considering the balance of the issues presented to the Eleventh Circuit on Appeal from the judgment rendered by the trial court in this action.

However, on Appeal, Defendants also sought review of the orders by the trial court denying Defendants' post-trial motions which raised issues pertaining to the questions certified by the Eleventh Circuit to the Florida Supreme Court. Consistent with the Eleventh Circuit's recognition the scope of inquiry of the Supreme Court of Florida here is not necessarily limited to the review expressed by the Eleventh Circuit in its opinion. Defendants Chandris S.A. and Chandris, Inc. submit it is appropriate for this Court to consider testimony adduced at trial in the course of responding to the questions certified by the Eleventh Circuit.

c. Statement of the facts.

The opinion of the Eleventh Circuit certifying questions to this Court sets forth a narration of the facts capsulizing certain salient aspects of the transactions underlying the questions certified to this Court for determination. Moreover, the briefs submitted by Appellants to the Eleventh Circuit were transmitted to this Court and set forth a recitation of the facts. In view of these circumstances, Chandris will forebear from an extensive recitation of the facts. However, a recap of certain particulars is useful to put the questions certified in proper

perspective. For brevity's sake Chandris will then adopt the balance of the statement of facts set forth by Appellant Transport Mutual Services (hereinafter TMS).

The October 16, 1984 authority to represent (Ex. 87) was executed in Jackson Memorial Hospital, Miami, Florida by Basil Yanakakis and by Nikolas Miliaresis. The authority to represent was also witnessed by Nikolas' brother, Gerasimos Miliaresis. (R14-245; G. Miliaresis' Aff. p.2).

Gerasimos Miliaresis learned of his brother's accident and was flown to Miami at the expense of Chandris to be with his brother while he was in Jackson Memorial Hospital. (R14-245 G. Miliaresis' Aff. paragraphs 2 and 3).

After Gerasimos Miliaresis' arrival, he met Basil Yanakakis who advised Gerasimos and Nikolas Miliaresis that he was a lawyer who could handle his brother's affairs in Florida. (R14-245 G. Miliaresis Aff. paragraphs 4, 5, and 6). Mr. Yanakakis gave Gerasimos Miliaresis a business card with his name, address and confirmation that he was an attorney. (R14-245 G. Miliaresis' Aff. paragraph 11). During Gerasimos Miliaresis' stay in Miami between October 7 and November 18, he did not meet any other lawyers nor discuss his brother's case with any other lawyers other than Mr. Yanakakis. During that period of time Yanakakis advised that he was a lawyer and that if the Miliaresis brothers wanted to make a claim against the P & I Club, he could do it for them in Miami. (R14-245 G. Miliaresis' Aff. paragraphs 12 and 13).

The agreement of 16 October 1984 that Mr. Yanakakis

presented to Nikolas Miliaresis was in English. The only thing explained by Yanakakis to Miliaresis was the attorney's fees. Yanakakis did explain to Nikolas Miliaresis that he had other associates that would assist him in the handling of the case, but that he would be the only one handling Nikolas Miliaresis' affairs. At all times, Nikolas Miliaresis understood Yanakakis to be his lawyer and the only lawyer that he had who was responsible for the handling of his case. (R14-245 N. Miliaresis' Aff. paragraphs 9, 12, 14 and 15).

The October 16, 1984 authority to represent identified Yanakakis as "an attorney from the Commonwealth of Massachusetts" and as Nikolas Miliaresis' "attorney", retained to prosecute a claim for damages against "Chandris Lines Co., Owner of S/S AMERIKANIS", the vessel aboard which he was injured. (Ex. 87)

A second alleged authority to represent dated March 18, 1985 identified Yanakakis and Appellee, Leesfield and Blackburn, P.A., as "attorneys". (Ex. 86) This "agreement" was signed only by Yanakakis and not by Leesfield and Blackburn, P.A. or any of its members, Miliaresis could not read or write English, nor could he speak it fluently at the time. (R14-245; N. Miliaresis' Aff. p.1; R31-521). Indeed, Yanakakis described Nikolas Miliaresis' knowledge of English as "practically" none (Accord. Folder No. 2; Yanakakis Dep., September 21, 1989, p.91).

The only aspect of the retainer agreements ever explained to Miliaresis by Yanakakis was the "fee" that Yanakakis would take. Miliaresis was never told there was going to be a division of

attorneys' fees between Yanakakis and any other lawyer (R14-245; N. Miliaresis' Aff. p.3). Neither the October 16, 1984 nor March 18, 1985 Authorities reflect any indication fees would be divided among attorneys. On the contrary, Yanakakis informed Miliaresis at all times that he was a qualified lawyer who could "handle the matter" for Mr. Miliaresis in Miami and that he had "associates" who would assist him (R14-245; N. Miliaresis' Aff. pp.2-3). Similarly, Yanakakis informed Gerasimos Miliaresis he was a "lawyer who could handle his brother's affairs in Florida** (R14-245; G. Miliaresis' Aff. pp.2, 4).

Gerasimos Miliaresis visited Yanakakis at his office on October 10, 1984 (Yanakakis Dep., January 22, 1991, p.60; R22-151-152). On this occasion, Yanakakis gave Gerasimos Miliaresis a printedmailing sticker identifying himself as "Basil S. Yanakakis, Attorney at Law, Suite 801 New World Tower, 100 North Biscayne Boulevard, Miami, Florida 33132 (Aff. of G. Miliaresis; R22-154; See, Appellant's Exhibit B).

Nikolas and Gerasimos Miliaresis both testified that Yanakakis never disclosed he was not a Florida attorney, or that an admitted Florida attorney would have to be retained to prosecute Miliaresis' claim (R14-245; N. Miliaresis Aff.; G. Miliaresis Aff.; R31-532; R32-686-718-19).

Yanakakis has been domiciled in the State of Florida since 1979 and resided continuously in Florida since 1980. (Yanakakis Dep. September 21, 1989, pp. 6, 21; R22-136-37). The only state in which Yanakakis was admitted to practice law was the

Commonwealth of Massachusetts where he last practiced in 1979. In 1980, Yanakakis discontinued the practice of law and moved to Florida where he became involved in real estate and managed personal investments. Yanakakis did not complete the Florida Bar examination although he claimed to have taken only a portion in 1980 (Yanakakis Dep., September 21, 1989 pp. 6, 19; R22-32).

Appellants Chandris S.A and Chandris, Inc. adopt as if set forth at length herein the balance of the recitation of "facts relevant to the questions certified" set forth in the brief of Co-Appellant TMS commencing at page 13 of the brief of Transport Mutual Services, Inc.

V. SUMMARY OF ARGUMENT

At all times material, Basil Yanakakis was permanently domiciled and residing continuously in Florida. All Yanakakis' activities and dealings with Nikolas Miliaresis took place within Florida. In his dealings with Nikolas Miliaresis, Yanakakis engaged in the unauthorized practice of law.

The October 16, 1984 Authority to Represent signed by Miliaresis, the dealings leading up to it, and Yanakakis' activities thereafter constituted the unauthorized practice of law since Yanakakis was not admitted to practice law in Florida. The October 16, 1984 Authority to Represent was void ab initio.

The March 18, 1985 Authority to Represent was also procured through Yanakakis' unauthorized practice of law. Moreover, Leesfield and Blackburn failed to comply with several legal

requisites for contingency fee contracts and impermissibly assisted Yanakakis in the unauthorized practice of law. As a result the March 18, 1985 Authority to Represent was void ab initio and cannot be the basis for a claim of tortious interference.

The Court should respond "yes" to both of the questions certified by the United States Court of Appeals for the Eleventh Circuit.

VI. ARGUMENT

A. YANAKAKIS ACTIVITIES CONSTITUTED THE UNAUTHORIZED PRACTICE OF LAW RENDERING BOTH AUTHORITIES TO REPRESENT VOID.

In Florida a contract is void and cannot be a source of rights if either the formation or the performance of the contract is criminal, tortious or otherwise opposed to public policy. Thomas v. Ratiner, 462 So.2d 1157, 1159 (Fla. 3d DCA 1984) review denied 472 So.2d 1182 (Fla. 1985); See also Sunbeam Corporation v. Masters of Miami, Inc., 225 F.2d 191 (5th Cir. 1955); See also Yanakakis v. Chandris S.A., 9 F.3d 1509 (11th Cir. 1993).

Article V § 15 of the Florida Constitution states "The Supreme Court shall have exclusive -Jurisdiction to regulate the admission of persons to the practice of law..." It is recognized this section

> ... carries with it the power to prevent the practice of law by those who are not admitted to the practice. We think that it must and it does for if it does not the express power to control admissions would be meaningless.

State of Florida ex rel. The Florida Bar v. Sperry, 140 So.2d 587

(Fla. 1962), judgment vacated on other grounds 373 U.S. 379 (1963). This Court declined to define a rigid test for determining what constitutes practicing law. In Sperry the Court discussed the unauthorized practice of law question in the following terms:

> ... if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

In drafting the October 16, 1984 Authority to Represent, and obtaining the signature of Nikolas Miliaresis on the contract, Basil Yanakakis was impermissibly practicing law in Florida. See, The Florida Bar v. Arango, 461 So.2d 932 (Fla. 1985); The Florida Bar v. Snapp, 472 So.2d 459 (Fla. 1985); The Florida Bar v. Strickland, 468 So.2d 983 (Fla. 1985). Yanakakis unquestionably offered to represent Miliaresis for a fee in his "claim for damages against Chandris Lines Co., Owner of S.S. AMERIEANIS . . . resulting from injuries sustained as a result of an accident which occurred on board the S.S. AMERIKANIS on or about October 3, 1984". (Ex. 87). The October 16, 1984 contract was signed "at Miami". Id.

Yanakakis' use of a mailing label or stationery identifying himself as a practicing attorney with a Miami office clearly constitutes the unauthorized practice of law in Florida. (Aff. of G. Miliaresis,; R22-154; -Appellants' Exhibit B); The

Florida Bar v. Arango, 461 So.2d 932 (Fla. 1984); The Florida Bar v. Martin, 432 So.2d 54 (Fla. 1983).

The mailing label is but a glaring example of other acts undertaken by Yanakakis which constituted the unauthorized practice of law. The record is clear that Yanakakis held himself out to Nikolas and Gerasimos Miliaresis as a licensed and qualifiedmember of the Florida Bar able to evaluate Nikolas Miliaresis' case and conduct the litigation himself. (R14-245 N. Miliaresis' Aff. paragraphs 8, 9 and 15; G. Miliaresis' Aff. paragraphs 6, 11, 13, 14 and 15).

In fact, Leesfield & Blackburn regarded Yanakakis as their "co-counsel" with both Yanakakis and Leesfield & Blackburn representing Miliaresis. (Accord. Folder No. 2-236 1/22/91 deposition of Mark Dresnick at p. 141; 1/10/91 deposition of Ira Leesfield, p. 316). Yanakakis' status as "co-counsel" also constituted the unauthorized practice of law. The Florida Bar v. King, 468 So.2d 982 (Fla. 1985). In King, the respondent who was not duly licensed to practice law in Florida was enjoined by the Florida Supreme Court from engaging in the unauthorized practice of law. The proscribed acts of the respondent in King involved inter alia direct contact in the nature of consultation, explanation, recommendations, advice, and assistance to clients as Yanakakis did in this case. Moreover, the respondent in King selected, negotiated compensation for, and monitored the efforts of attorneys acting as "counsel of record" for respondent's "clients" and in effect acted as "co-counsel". King, 468 So.2d at 983.

This is exactly what Yanakakis did in the case at hand. Even Mr. Yanakakis testified that he selected Leesfield & Blackburn "for" Miliaresis. R22-367-183; Accord. Folder #2-236, Deposition of B. Yanakakis (9/21/89), pp. 62-64. The testimony of Messrs. Leesfield and Dresnick is that Yanakakis continued to act as "co-counsel", Based on the record in this case, this constitutes the unauthorized practice of law in Florida. See, The Florida Bar v. King, supra.

That the October 16, 1984 Authority to Represent makes reference to the Commonwealth of Massachusetts does not distinguish Yanakakis' activities from the unauthorized practice of law in Florida. The mere statement in the Authority to Represent referring to Yanakakis as "ATTORNEY from the Commonwealth of Massachusetts" is effectively a non-disclosure of his status in Florida. The wording of Yanakakis' contract contravened an express requirement of Florida law as stated in The Florida Bar v. Savitt, 363 So.2d 559, 560 (Fla. 1978). Addressing communications with clients in Florida by non-Florida lawyers, the Court in Savitt held they may:

> . . . communicate with clients . . provided it is initially and immediately confirmed in writing and at all times made clear to such clients . . . in a manner which avoids confusion, that the person so communicating is not a member of The Florida Bar . . . (emphasis supplied)

363 So.2d at 560.

There was no written confirmation furnished to Mr. Miliaresis that Yanakakis was not a member of The Florida Bar. Identification of Yanakakis in the Authority to Represent as

"ATTORNEY from the Commonwealth of Massachusetts" did not make clear to Miliaresis that Yanakakis was not a member of the Florida Bar (cf. R14-245 N. Miliaresis' Aff.). If anything, the wording of the 10/16/84 "Authority to Represent" confused Miliaresis regarding Yanakakis' status--Miliaresis believed Yanakakis was a Florida lawyer who was going to handle his case. (R14-245 N. Miliaresis' Aff.). Indeed, Mr. Miliaresis continued under the impression Yanakakis was exclusively handling his case right through to the point he discharged Yanakakis. (R14-245 N. Miliaresis Aff. paragraph 54).

Under Florida law "those who hold themselves out to practice in any field or phase of law must be members of the Florida Bar, amenable to the rules and regulations of the Florida courts." Petition of Kearnev, 63 So.2d 630, 631 (Fla. 1953). Advice of what the law is on a subject with the intent that such advice be used is the most basic form of the practice of law. See, The Florida Bar v. American Legal & Business Forms, Inc., 274 So.2d 225 (Fla. 1973).

At all times material to this case, Basil Yanakakis was unquestionably not admitted to practice nor permitted by virtue of Florida law to practice law in the State of Florida. Notwithstanding this prohibition Mr. Yanakakis counseled Nikolas Miliaresis and Gerasimos Miliaresis regarding legal matters. The testimony of Nikolas Miliaresis was unequivocal. He considered Yanakakis alone to be his lawyer. (R31-518-22) To Nikolas Miliaresis' knowledge he did not ever retained the firm of

Leesfield & Blackburn to act as his lawyers. (R31-518-22).

The activities to which Yanakakis testified at trial constitute the unauthorized practice of law in Florida. See, The Florida Bar v. King, 468 So.2d 982 (Fla. 1985); The Florida Bar v. Savitt, 363 So.2d 559 (Fla. 1978); The Florida Bar v. Martin, 432 So.2d 54 (Fla. 1983); The Florida Bar v. Arango, 461 So.2d 932 (Fla. 1985); The Florida Bar v. Snapp, 472 So.2d 459 (Fla. 1985); The Florida Bar v. Strickland, 468 So.2d 983 (Fla. 1985); State v. Sperry, 140 So.2d 587 (Fla. 1962). rev'd on other grounds 373 U.S. 379 (1979).

In Martin, supra, the Supreme Court of Florida held that printing or having printed stationery identifying a non-admitted lawyer as "J.D." and a non-admitted lawyer holding himself out to the community as being able to render assistance with legal problems, constituted the unauthorized practice of law. In Arango, supra, the non-admitted respondent presented himself to the public clothed in the trappings of an attorney. This included drafting contracts, rendering advice about legal matters, and agreeing to accept a fee therefore,

In Snapp, supra, the Florida Supreme Court held that offering to represent an individual for a fee in a dispute with an insurance company, offering to represent an individual for a fee in a personal injury dispute, and giving legal advice regarding litigation and settlement of disputes constituted the unauthorized practice of law. In Strickland, supra, the court held that counseling persons as to their rights under Florida law and

assisting in preparation of legal documents constituted the unauthorized practice of law.

Yanakakis engaged in exactly the same activities proscribed as the unauthorized practice of law by the Florida Supreme Court in the aforecited cases.

The October 16, 1984 contingency fee contract relied upon by Plaintiffs was void ab initio because it was procured by Yanakakis through the unauthorized practice of law. See, Thomas v. Ratiner, 462 So.2d 1157 (Fla. 3d DCA 1984) review denied 472 So.2d 1182 (Fla. 1985). The rights under a contract of retainer are determined by the laws of the state where it was made. In ret Paschal, 10 Wall 483, 77 U.S. 483, 19 L.Ed. 992; Spellman v. Banker's Trust Co., 2d Cir., 6 F.2d 799,

The Court's decision in The Florida Bar v. Savitt, 363 So.2d 559 (Fla. 1978) does not legitimize the activity of Yanakakis as the trial court erroneously concluded. In Savitt, the Florida Supreme Court enumerated rules for practice of law by multi-state firms across state lines. However, the relationship between Yanakakis and Leesfield & Blackburn, P.A. as "co-counselors" in practice of law does not constitute interstate practice of law. The activities of Plaintiffs had no "multi-state" character. Yanakakis and Leesfield & Blackburn never intended to practice together other than to bring the Miliaresis case in a court in Florida. Plaintiffs agreed to share the fees "as Florida attorneys".

None of the policy reasons for allowing out of state

counsel practicing in an interstate law firm with a Florida office exist in this case. Nor, is this a situation where an out-of-state lawyer is validly retained by a client in the state where he is admitted and then associates Florida counsel to prosecute an action in Florida because the out-of-state lawyer is not permitted to practice in the courts of this state. Yanakakis moved to Florida in 1979 or 1980, established his domicile in Florida, and resided in Florida continuously thereafter. (R15-262-64).

In its opinion the Eleventh Circuit states that "Florida Law does not clearly establish what constitutes the unauthorized practice of law within the context of an out-of-state attorney who resides in Florida." Yanakakis, 9 F.3d at 1513 In the course of discussing this point the Eleventh Circuit refers to a "line of cases" cited by Defendants in which "lay persons" were found to have engaged in the unauthorized practice of law. Yanakakis, 9 F.3d at 1513 The Eleventh Circuit termed these cases "unpersuasive". Id.

Chandris respectfully submits two cases in particular demonstrate the impropriety of out-of-state lawyers residing in Florida and purporting to practice law in Florida without being admitted to the Florida Bar. Florida Bar v. Dale, 496 So.2d 813 (Fla. 1986); Florida Bar v. Moran, 273 So.2d 390 (Fla. 1973). See also, Florida Bar v. Tate, 552 So.2d 1106 (Fla. 1989). (The Eleventh Circuit apparently discounted the impact of Tate on the grounds that the attorney in that instance filed pleadings. Yanakakis, 9 F.3d at 1513, n.7)

In Florida Bar v. Moran, supra, the Court found that the unauthorized practice of which Moran was guilty consisted of distributing and using business cards bearing the words "Independent Bar Associationof Massachusetts, Lucile E. Moran...". 273 So.2d at 390. The Supreme Court found that the card falsely represented and suggested Moran was an attorney licensed to practice in Florida. The Court observed that Moran was a resident in Florida, she appeared to hold herself out for business in Florida and she indicated that she was an attorney at law. The Court concluded the logical inference from these factors was that Florida permitted her to practice.

Similarly, in the Florida Bar v. Dale, supra, Dale, a member of the Mississippi Bar "not an active member of the Florida Bar in good standing" participated in certain real estate transactions indicating to clients he was able to represent them. In the course of these discussions Dale, a member of the Mississippi State Bar, never informed the clients he was not licensed to practice law in Florida. The Court concluded that although Mr. Dale was an attorney in another state, he was not licensed to practice in Florida. The Court enjoined Dale from holding himself out as willing and able to render legal assistance and counsel to a client and charging a fee for his advice in Florida.

Yanakakis' conduct violated F.S. § 454.23. This renders both authorities to represent void ab initio. Thomas v. Ratiner, supra.

B. THE "FEE AGREEMENT" OF LEESFIELD AND BLACKBURN IS ALSO VOID BECAUSE IT WAS "BORN" OF YANAKAKIS' UNAUTHORIZED PRACTICE AND LEESFIELD AND BLACKBURN FAILED TO COMPLY WITH THE DISCIPLINARY RULES PERTAININGTO CONTINGENCYFEE AGREEMENTS AND SEARING OF FEES IN PERSONAL INJURY CASES.

The second question certified by the Eleventh Circuit Court of Appeals apparently pertains to the March 18, 1985 Authority to Represent. The text of this Authority to Represent makes reference to Leesfield and Blackburn. However, the authority is signed only by Basil Yanakakis. There is not a signature from anybody affiliated with Leesfield and Blackburn. The testimony of Nikolas Miliaresis is clear. He did not consider anyone other than Yanakakis to be his attorney. No other person was introduced to him as his attorney. At trial Miliaresis was not even able to identify Mr. Leesfield--Miliaresis had never even seen him. R32-377-658.

The preamble to the Florida Code of Professional Responsibility in effect at the time the March 18, 1985 Authority to Represent was created noted that "lawyers as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct." Florida Code of Professional Responsibility, Preamble, Vol. 35, F.S.A. (1983), p. 229.

Under the heading "Preliminary Statement", the impact of the Florida Disciplinary Rules in effect at the time is expressed:

"The Disciplinary Rules unlike the Ethical Considerations are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." Florida Code of Professional Responsibilitv, Preliminary Statement, Vol. 35, F.S.A. (1983), p. 231, 232.

The Contract of Representation dated March 18, 1985 is also void and cannot provide a viable basis for the claim for tortious interference against these Defendants. See, Thomas v. Ratiner, supra; See also, Fiaa v. R.V.M.P. Corp., 681 F. Supp., 806, 810 (S.D. Fla. 1988). The Florida Bar rules in effect at the time concerning contingency fee retainer contracts required the fee arrangements to be expressed in a written contract, signed by the client, and by an attorney for himself or the law firm representing the client. No attorney or firm could participate in the fee without the consent of the client in writing. Each participating attorney or law firm was required to sign the contract or agree in writing to be bound by the terms of the contract with the client, and was further required to agree to assume the same legal responsibility to the client for the performance of the services in question as if the attorney or law firm was a partner of the other attorneys involved. D.P.R. 2-106 (E), In the Matter of the Florida Bar Amendment to Code of Professional Responsibilitv (Contingency Fees), 349 So.2d 631, 636 (Fla. 1977).

Furthermore, Rule D.R. 2-107 (A)(2) provided:

D.R. 2-107 Division of Fees Among Lawyers.

A. A lawyer shall not divide a fee for legal services with another lawyer who is not a partner or associate of his law firm or law office unless:

(2)(a) The client consents in writing signed by him to employment of the other lawyer which writing shall fully disclose that a division of fees will be made and the basis upon which the division of fees will be made. (emphasis added).

In re: Florida Bar re: Amendment, supra, 349 So.2d at 636,637.

No evidence was adduced demonstrating Nikolas Miliaresis' written consent regarding the purported division of fees between Basil Yanakakis and Leesfield and Blackburn. Neither Yanakakis or any representative of Leesfield and Blackburn explained any fee division to Mr. Miliaresie. There was no verbal communication or explanation regarding the proposed fee distribution to Miliaresis. (R31-522, 525). Miliaresis understood only Yanakakis to be his lawyer. (R31-522, 525).

Furthermore, Florida Disciplinary Rules 3-101 through 104 forbade admitted Florida lawyers from assisting the unauthorized practice of law by others. Leesfield and Blackburn impermissably assisted Yanakakis' unauthorized practice of law where they acted as "co-counsel" with him.

Florida cases recognize no valid fee agreement can ever come into being where there is misconduct by an attorney in procuring the agreement for representation. See, Jackson v. Griffith, 421 So.2d 677 (Fla. 4th DCA 1982); Spence, Payne, Masinuton & Grossman, P.A. v. Philip M. Gerson, P.A., 483 So.2d 775 (Fla. 3d DCA), review denied, 492 So.2d 1334 (Fla. 1986). These

cases are construed to stand for the principle that Florida Courts reject the idea an attorney who violates the statutes or rules of discipline in procuring contracts for fees can validly earn any fee. See, Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Scheller, 18 Fla. L. Weekly 2651, 2652 (Fla. 4th DCA 1993).

The involvement of Leesfield and Blackburn[1] was the result of a violation of Florida Statute 5454.23 and was pursued thereafter in disregard of the disciplinary rules pertaining to contingency fee contracts and prohibiting assisting the unauthorized practice of law. These violations rendered the March 18, 1985 authority to represent void and any services rendered by Leesfield and Blackburn pursuant to the purported agreement are not compensable. Spence, Payne et al., supra, As long as specific actions are against the law, attorneys who engage in those actions or seek to benefit from the proscribed actions are entitled "to no fruit from the forbidden tree" on any theory of recovery. Spence, Payne et al., supra at 778.

The recognition of a valid contractual relationship by the law in this situation would necessarily circumvent the very dictates of Florida Statute S454.23 and the pertinent Disciplinary Rules by enabling Yanakakis and Leesfield and Blackburn to ignore these legal requirements. Spence, Payne et al., supra at 778; Cf. Osteen v. Morris, 481 So.2d 1287 (Fla. 5th DCA 1986).

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[1] If it is assumed they were in fact employed by Miliaresis. Miliaresis' position was that he employed only Yanakakis and understood Yanakakis to be his only attorney. (R31-522, 525).

In Florida, a contract is "illegal" and cannot be the source of rights if either the formation or performance of the contract is criminal, tortious, or otherwise opposed to public policy. Thomas v. Ratiner, 462 So.2d 1157 (Fla. 3d DCA 1984), review denied 472 So.2d 1182 (Fla. 1985). Aviolation of a statute results in the contract being void as a matter of public policy and thus incapable of supporting a charging lien. Spence, Payne, Masinston v. Philip M. Gerson, 483 So.2d 775 (Fla. 3d DCA), review denied, 492 So.2d 1334 (Fla. 1986).

Under Florida law there can be no actionable interference with a void contract. Sunbeam Corporation v. Masters of Miami, Inc., 225 Fed.2d 191 (5th Cir. 1956); Ely v. Donoho, 45 F. Supp. 27 (S.D. Fla. 1942). To permit recovery of damages for interference with such a contract aids in upholding it. A court "should not put its stamp of approval on any contract which has as its genesis criminal activity". Agudo, Pineiro & Kates v. Harbert Construction, 476 So.2d 1311, 1318 (Fla. 3d DCA 1985, dissenting op., Barkdull, J.).

VII. CONCLUSION

Chandris respectfully submits this Court should answer both questions certified "yes".

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY a true and correct copy of the foregoing Initial Brief was mailed this 17th day of February, 1994, to:

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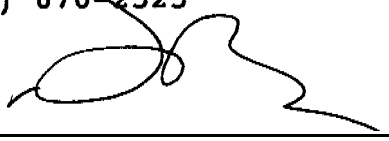

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