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SUPREME COURT 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

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

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III. ARGUMENT

A. ADOPTION BY REFERENCE.

Appellants, CHANDRIS, S.A. and CHANDRIS, INC. (hereinafter CHANDRIS) adopt by reference the arguments set forth by Co-Appellant, Transport Mutual Services (hereinafter, TMS), in its Reply Brief under the headings "The Motions for Summary Judgment" (page 1); the testimony at trial (page 3); and Point I, The Court May Consider the Entire Record (commencing at page 8). In addition thereto, CHANDRIS presents the following argument in reply to APPELLEES' Answer Brief. CHANDRIS urges the Court the appropriate response to the two (2) questions certified is, "Yes."

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

Under the heading "context is important". APPELLEES then embark on a protracted course of obfuscating the facts and issues pertinent to the questions certified. Essentially, APPELLEES seek to turn the inquiry "on its ear" apparently hoping to side-step objective analysis.

On the one hand APPELLEES contend the Court should not consider the trial record illustrating APPELLEES' conduct. Then, masked in apology for length, APPELLEES argue APPELLANTS' allegedly tortious conduct purportedly proven at trial.

APPELLEES' Brief is fraught with arguments and statements irrelevant to the questions certified. This appears to be a calculated attempt to confuse the issues presented and invokes, negative perceptions of the APPELLANTS designed to color this

Court's determination of the questions presented. At several turns, APPELLEES' arguments seek "to fit a round peg in a square hole". CHANDRIS respectfully submits these arguments are not persuasive.

Seeking to legitimize Yanakakis' activities, APPELLEES start with the premise the initial authority to represent he procured dated October 16, 1984 was "facially" legal. APPELLEES' contentions of irony relating to the pro hac vice admission of Mr. Stearns (counsel for TMS) are hollow. Mr. Stearns sought and was granted pro hac vice admission. In so doing, he satisfied this Court of his qualifications to practice law. Equally important he subjected himself to this Court's regulation.

APPELLEES characterize pro hac vice admission as a "simple expedient". CHANDRIS suggests this demonstrates APPELLEES' cavalier disregard for the rules regulating lawyers and the purpose for these rules.

APPELLEES concede "the single most important concern in the Court's defining and regulating the practice of law is the protection of the public . . . ". p. 27, Answer Brief (emphasis supplied). This notion has long been a cornerstone of Florida law. 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 Kearney, 63 So. 2d 630, 631 (Fla. 1953). (Emphasis supplied).

As Kearney demonstrates and APPELLEES' citation to the Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980) corroborates, the

concern of this Court relating to the practice of law is expressed in the conjunctive, i.e. "defining and regulating" the practice of law. This distinction is crucial here. The flaw underlying APPELLEES' argument is actually exposed by their contention Yanakakis "could have" sought pro hac vice admission. He never did. This unequivocally demonstrates he was never subject to the regulation of the Florida Bar or the Florida Courts as required.

The test for protection of the public from harm in the context of the unauthorized practice of law is prospective rather than retrospective. APPELLEES cite no pertinent authority permitting the activities of the Florida domiciled Yanakakis. Cognizant of this deficiency, APPELLEES belatedly proffer Yanakakis' purported qualifications ostensibly seeking retroactive "pro hac vice" admission to practice.

Mr. Yanakakis purported credentials might arguably be the "stuff" of which qualification as an expert witness before a jury to render opinions might be premised (although argument and corroborating data submitted by co-appellant, TMS suggests he might not be accepted as an expert). However, this does not equate with permission to engage in direct dealings with the public in the State of Florida holding himself out to be a lawyer and collecting a fee directly from the "client" for his "services".

That Miliaresis could (or could not) institute a claim in Massachusetts is of no moment to the questions certified. Massachusetts had absolutely nothing to do with the transaction underlying this case (other than it was Yanakakis' former state of

residence). There is nothing in the record to demonstrate a claim in Massachusetts was ever contemplated, much less that it could be pursued there due to jurisdictional notions or other possible legal pratfalls. In any event, all Yanakakis' dealings with Miliaresis were in Florida. From Yanakakis testimony at deposition and at trial, the only logical inference is that Yanakakis' intended to pursue Miliaresis' claims in Florida.

APPELLEES' contentions Miliaresis' causes of action were governed exclusively by Federal Law and that Yanakakis could actually have prosecuted Miliaresis claims are deceptively over simplistic. Perhaps the Federal Law embodied in the Jones Act and General Maritime Law provides the substantive rights and obligations pertinent to Miliaresis' claims. However, the Jones Act and the Savings to Suitors Clause to the Judiciary Act allow these claims to be pursued in State Court (as Miliaresis' case was filed). Of course, in Florida this necessitates admission to practice in the State before a lawyer can permissibly represent an individual on such a claim.

Objective appraisal of the record betrays the lack of logic for APPELLEES' argument Yanakakis could have pursued these claims. If indeed matters actually are the way APPELLEES argue them, a "Jones Act Bar" of attorneys practicing throughout the courts of the nation would exist. This is not the case nor have APPELLEES cited any pertinent precedent to suggest it is.

The practice of Patent Law may be uniquely Federal to justify exception in limited instances to customary notions governing

definition, regulation and prohibition of the practice of law. However, Jones Act claims are hardly on equal footing.

APPELLEES argue Yanakakis had an isolated, carefully limited contractual relationship with Mr. Miliaresis in which Yanakakis involved himself only in matters of Federal law. Notwithstanding this imaginative attempt by APPELLEES' counsel to cast Yanakakis' role as arising out of a "special relationship" limited "simply to act as liaison with (interpreter for) the client and give advise to the Florida attorneys..." (cf. p. 24 Answer Brief), the factual record negates these characterizations.

It is noteworthy APPELLEES commence this segment of argument with a "viewed in the light most favorable" preface. For the Court to accept this argument it must ignore the perceptions and understanding of Nikolas Miliaresis, the very one the rules regulating the Bar are designed to protect.

Mr. Miliaresis understanding of Yanakakis' role is disclosed in his Affidavit. (R14-245; N. Miliaresis' Aff.) In that Affidavit Miliaresis testified Yanakakis discussed the case with his brother and him and advised that he was a qualified lawyer who could handle the matter in Miami. Yanakakis advised Miliaresis he could state a claim which would be worth four (4) million dollars. Id. at Para. 9. Yanakakis never explained to Miliaresis, nor did anyone else at any time, there was going to be a division of attorney's fees between Yanakakis and any other lawyer or law firm. Id. at Para. 13. When Miliaresis encountered an associate of the Leesfield and Blackburn firm, Yanakakis explained to Miliaresis the

other people were associates of his assisting him in the handling of the case. Id. at Para. 16 (emphasis supplied). Yanakakis told Miliaresis, he was going to file a lawsuit against the company and the vessel. Id. at Para. 18. Yanakakis told Miliaresis he was going to take depositions and statements in Jacksonville, Florida. Id. at paragraph 19.

The Affidavit of Gerasimos Miliaresis, Nicholas Miliaresis' older brother and mentor also negates APPELLEES' erroneous characterization of Yanakakis' role in this transaction. (R14-245; G. Miliaresis' Aff.). Yanakakis advised Gerasimos he was a lawyer who could handle his brother's affairs in Florida. Id at Para. 6. Yanakakis gave Gerasimos a business card with his name, address and description of Yanakakis was an attorney at law in Miami, Florida. Id. at Para. 11); See, Exhibit B. Yanakakis told Gerasimos Miliaresis he was a lawyer and if the Miliaresis brothers wanted to make a claim, he could do it for them in Miami. Id. at Para. 13. From the comments made by Yanakakis and the observations Gerasimos made of Yanakakis and his office, Gerasimos concluded Yanakakis was a lawyer who could handle his brother's affairs in Miami, file a claim on his behalf, and obtain a settlement on his behalf in Miami. Id. at Para. 27.

Nikolas Miliaresis' trial testimony also demonstrates Yanakakis was the focal player in the transaction from Miliaresis' perception. Pertinent passages of Nikolas Miliaresis' trial testimony are cited in CHANDRIS' Initial Brief. These passages demonstrate Miliaresis considered Yanakakis to be his only lawyer.

Miliaresis had never even met Mr. Leesfield and at trial could not even identify him.

APPELLEES suggest this Court's constitutional power to regulate Yanakakis practice of law is limited to activities he might undertake in Florida State Courts. cf. P. 29 Answer Brief. APPELLEES have the temerity to contend this Court cannot prohibit Yanakakis' practice of law in Florida on Maritime Law matters. Id.

This argument is baseless. The logic (or lack thereof) underlying APPELLEES' position would permit lawyers from New York, New Orleans, Texas, California or any other state with Jones Act/Maritime experience to practice law in Florida outside the parameters of this Court's admission to practice law and regulation thereafter.

APPELLEES' effort to contort the realities of Yanakakis' dealings with Miliaresis to justify Yanakakis' activities should not be condoned. APPELLEES' suggestion Yanakakis was employed as an "expert" to "assist" are simply not borne out by the record. The terms of the Authority to Represent contrast sharply with contentions Yanakakis had a "carefully limited contractual relationship" with Miliaresis. The Authority to Represent specifies:

> AUTHORITY TO REPRESENT
>
> I, the undersigned client, do hereby retain and employ Basil S. Yanakakis, attorney from the Commonwealth of Massachusetts as my attorney to represent me in my claim for damages against:
>
> CHANDRIS LINES CO., owner of SS. AMERIKANIS

or any other person, firm or corporation liable therefore, resulting from injuries sustained as a result of accident which occurred on board the SS. AMERIKANIS on or about October 3, 1984.

I hereby agree to pay for the cost of investigation, and should it be necessary to institute suit, the Court costs. As compensation for his services, I agree to pay my said attorney, from the proceeds of recovery the following fee:

The fee structure specified was thirty-three and one third percent (33 1/3%) of settlement without suit; forty percent (40%) in the event suit is filed; and fifty percent (50%) if an appeal from the lower court is taken by either side.

Immediately above the signature line for Basil Yanakakis are the words "The above employment is hereby accepted upon the terms stated herein." (Exhibit 87).

APPELLEES' contention a result against Yanakakis might harm the public by depriving them of representation in this area border on ludicrous. A more than ample number of Admiralty and Maritime law practitioners admitted to the Florida Bar exist. The Admiralty Law Committee of the Florida Bar has existed for forty (40) years and currently has over 70 members. The representation of foreign seaman by Florida Bar admitted attorneys is an area of practice well developed in Florida.[1] A Lexis or Westlaw scan demonstrates that pivotal precidental decisions in the area of Admiralty and Maritime law in general, and cases of foreign seaman in particular,

[1] In South Florida where the Yanakakis/Miliaresis transaction took place some of the finest foreign/Jones Act seaman's lawyers practice. Indeed, Roger Vaughan, a former partner of APPELLEES' trial counsel, Mr. Cunningham, is renowned as a Florida Lawyer skilled in the area of representing foreign/Jones Act seaman.

have emanated from Florida Courts and were handled by Florida Bar admitted lawyers.[2]

The cases cited by APPELLEES are clearly distinguishable on their facts. Cf. Appell; In Re: Estate of Waring; Spanos. There was no interstate aspect to Yanakakis' dealings with Miliaresis nor Yanakakis' dealings with Leesfield. Indeed, Yanakakis' dealings apparently never exceeded the boundaries of Dade County. This contrasts sharply with the notions of recognition of multi-state transactions in modern times underlying the rationale for the inapposite decisions cited by APPELLEES.

APPELLEES expect the Court to totally ignore the input of two important participants in the transactions underlying the questions certified; Nikolas Miliaresis (APPELLEES' purported "client") and Gerasimos Miliaresis, his brother. The Affidavits of the Miliaresis brothers demonstrate the pertinence of the cases cited in APPELLANTS' Initial Brief. See, e.g. The Florida Bar v. Dale, 496 So. 2d 813 (Fla. 1986); The Florida Bar v. Arango, 461 So. 2d 932 (Fla. 1985); The Florida Bar v. Moran, 273 So. 2d 390 (Fla. 1973); The Florida Bar v. Tate, 552 So. 2d 1106 (Fla. 1989); The Florida Bar v. King et al., 468 So. 2d 982, 985 (Fla. 1985).

Three Ethics Opinions authored by the pertinent Florida Bar Committee are instructive and demonstrate Yanakakis' conduct constituted the unauthorized practice of law and Leesfield conduct violated disciplinary rules. Professional Ethics of the Florida Bar, Op. 90-8 (1991); Op. 60-18 (1967); Op. 62-3 (1962). In Op.

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[2] Without any "input" or assistance from Mr. Yanakakis.

90-8, the Committee discusses the situations in which it is or is not permissible for a Florida attorney to divide a fee with an out-of-state attorney who is not admitted to the Florida Bar. Four (4) possible fee division scenarios were discussed.

The first scenario discussed involved a member of an out-of-state bar living in a condominium in Florida. A resident of the condominium needing legal advice talked to the out-of-state attorney. The attorney referred the resident to a Florida attorney.

The Committee concluded that upon the facts of this scenario, the Florida attorney could not divide a fee with the resident non-Florida attorney who referred the case. The non-Florida attorney cannot practice law in Florida nor can he agree to assume joint responsibility as required by the rules governing Florida lawyers. The Committee concluded a division of fee in such a case would constitute improper fee sharing with a non-Florida attorney and could constitute aiding in the unlicensed practice of law. Professional Ethics of the Florida Bar, Op. 90-8 at page 1340.

In Op. 60-18 and Op. 62-3, the Florida Bar Committee for the unauthorized practice of law concluded it would be improper for a Florida attorney to divide a fee with a non-Florida attorney residing in Florida for referring the case to the Florida lawyer. At Op. 60-18, the Committee specifically concluded it may constitute aiding in authorized practice of law for a Florida Bar member to accept cases referred to him by a New York Bar member residing in Florida and to divide the fee with the New York lawyer.

Discussing this situation, the Committee opined that for the New York lawyer to refer clients to the Florida Bar member might constitute the unauthorized practice of law. In Op. 62-3, the Committee determined it would be unethical for a Florida lawyer to divide any portion of his fee with an out-of-state lawyer residing in Florida because there could not be ultimately be a division of services or

responsibility in the matter with an admitted lawyer.

C. **THE "AGREEMENT" OF LEESFIELD AND BLACKBURN IS ALSO VOID BECAUSE IT WAS "BORN" OF YANAKAKIS' UNAUTHORIZED PRACTICE. THE CONTRACT UPON WHICH LEESFIELD AND BLACKBURN RELY FAILED TO COMPLY WITH THE REQUISITES FOR A CONTINGENCY FEE CONTRACT, WAS CONTRARY TO PUBLIC POLICY AND IS THEREFORE 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) rev. 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). In Florida, contracts are void if they violate a policy designed to protect the public. Robert G. Lassiter & Co. v. Taylor, 128 So. 2d 14 (Fla. 1930).

With respect to the conduct of lawyers, 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 Responsibility, Preliminary Statement,

Vol. 35, F.S.A. (1983) pp. 231, 232.

APPELLEES cavalierly ignore the impact of the Disciplinary Rules in effect at the time of the pertinent transaction. Indeed, APPELLEES go so far as to suggest oral contingency fees in personal injury cases were permissible at the time. They clearly were not. In The Matter of The Florida Bar Amendment to Code of Professional Responsibility (Contingency Fees), 349 So. 2d 631 (Fla. 1977). Id.

The requirements for contingency fee contracts implemented by this Court were adopted in the best interests of the public. Id. at 349 So. 2d 630, 631 (Fla. 1977). Amazingly, APPELLEES ask the Court to render a ruling which will totally ignore the failure of the Leesfield firm to adhere to the clear minimum requirements for contingency fee contracts in personal injury cases.

There is a faulty factual premise underlying APPELLEES' arguments regarding the March 18, 1985 Authority to Represent. APPELLEES state "Miliaresis hired" the Leesfield firm. This is directly contrary to the record. Nikolas Miliaresis never met Leesfield. To the extent he met associate members of the Leesfield firm, Yanakakis identified these individuals to Miliaresis as Yanakakis' "associates" (emphasis supplied). (R14-245, Miliaresis Affidavit). The Authority to Represent upon which Leesfield ostensibly relies shows no signature of a member of the Leesfield firm. (Ex. 86). Moreover, the Authority to Represent demonstrates Leesfield impermissibly shared fees with a non-admitted lawyer; failed to disclose a fee sharing agreement between lawyers to a client in writing; and aided the unauthorized practice of law in

violation of the terms and provisions of DR 3-101(A).

APPELLEES argue they did "nothing wrong". However, APPELLEES' conduct contravenes the Disciplinary Rules of the Florida Bar in effect at that time which were enacted to protect the public interest. See, In the Matter of The Florida Bar Amendment to Code or Professional Responsibility (Contingency Fees), 349 So. 2d 630, 631 (Fla. 1977). Moreover, the facts of the transaction conducted between Yanakakis and Leesfield mirror closely the factual scenarios condemned by the pertinent Florida Bar Committee in Professional Ethics of the Florida Bar, Ops. 90-8, 62-3, and 60-18, cited hereinabove.

APPELLEES argue based on United Yacht Broker's Inc. v. Gillespie, 377 So. 2d 668 (Fla. 1979) the March 18, 1985 retainer is not void. APPELLEES reliance is misplaced.

Contracts for legal representation, particularly contingency fee contracts in the context of personal injury claims, have long been a matter of concern for this Court. See, e.g. In the Matter of The Florida Bar Amendment to Professional Responsibility (Contingency Fees), 349 So. 2d 631 (Fla. 1977). The Court has developed clear requirements for these contracts to prevent abuse and excesses.

The concern of this Court and requirements for contingency fee contracts promulgated by this Court are sharply distinct from the noncompliance with the legislative provision involved in United Yacht Broker's Inc. v. Gillespie. In Gillespie the Court held that "the unenforceable nature of the alleged contract" involved did not

bar a suit for intentional interference with an existing business relationship. 377 So. 2d at 672.

In this case, the "nature" of the unenforceability of the authorities to represent procured by Yanakakis must bar the suit for tortious interference. The authorities to represent are void. Their formation and performance violated the law, or otherwise opposed public policy. Thomas v. Ratiner, supra.; Sunbeam Corporation v. Masters of Miami, supra.; Yanakakis v. Chandris, S.A., 9 F.3d 1509 (11th Cir. 1993).

In Gillespie, the Court reasoned absent the alleged interference United would have been paid its commission regardless of the enforceability of the agreement. 377 So. 2d at 672. There was no criminal sanction for noncompliance with the legislative provision calling for written authorization.

The crucial distinction here is that even absent the alleged interference, Yanakakis and Leesfield should not have recovered a contingency share of any recovery/settlement realized by Miliaresis. It should be anticipated that had the appropriate authorities been made aware the manner of the transaction with Miliaresis was conducted by Yanakakis and Leesfield, the Florida Bar, this Court, or perhaps the appropriate State Attorney would have intervened to prevent an abuse of the contingency fee contract requirements clearly spelled out by this Court. This intervention could have been effectively triggered by a complaint from a third-party given the nature of the violations involved. This clearly differentiates void from voidable in this context.

To grasp APPELLEES arguments and decide the case in the manner they urge will have at least two (2) profound effects. The first will be to undermine the regulatory regime for the admission and practice of Florida lawyers. A result of the nature sought by APPELLEES will effectively endorse imaginative evasion of the requirements for admission to practice law in Florida and submission to regulation by the Florida Bar and this Court thereafter.

The second result is perhaps even more troubling. The APPELLEES will be able to profit considerably from their imaginative evasion.

IV. CONCLUSION

CHANDRIS respectfully urges the Court to answer both questions certified "Yes".

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY a true and correct copy of the foregoing Reply Brief of Appellants was mailed this 8th day of August, 1994, to:

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