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IN THE SUPREME COURT OF FLORIDA

Case No. 82,267

88,267

FILED

SID J. WHITE

OCT 17 1996

FLORIDA DEPARTMENT OF REVENUE;  
et al.,

Petitioners,

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

vs.

DAVID KUHNLEIN and SCOTT ENOS,  
BARBARA BLANCHARD, JOEL CURRAN,  
and KATHERINE CURRAN, both  
individually and on behalf of  
all others similarly situated,

Respondents.

\_\_\_\_\_ /

REPLY BRIEF OF THE PETITIONERS

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## ARGUMENT

### I. THE TRIAL COURT DID DEPART FROM THE ESSENTIAL REQUIREMENTS OF THE LAW

Contrary to Peterson's argument, the State has shown that the trial court has departed from the essential requirements of the law. The court not only departed, it did so in such a manner that the State has been totally and utterly deprived of any opportunity to correct the grievous error of the trial court

#### *1. IT IS A DEPARTURE FROM THE LAW TO HAVE A COURT DEPRIVE A PARTY OF ALL DUE PROCESS IN DEFENDING A CLAIM*

Peterson brought a claim to have a valid, written contract (in which it participated in the negotiations and drafting) voided by the trial court without so much as a hearing on the underlying merits of the contract or events surrounding the contract. By the trial court's acceptance of Peterson's motion, the State was deprived of its right to due process in court. It is a departure for a court to deprive any party of due process and impair the right to contract. The courts are in existence to uphold contracts where possible and grant due process, not take away the right to have all grievances heard and decided.

Injury - the State was injured when it lost all chance to have the opportunity to have allegations presented against it; to answer those allegations; to investigate the truth of the allegations; to present documentary and testimonial evidence to rebut any allegations and have an impartial court decide based on all the evidence presented. There is no adequate remedy at law in these circumstances. The motion hearing is all the State was provided. How can that be reversed if not on some form of appeal. No where does Peterson tell this Court how the State's attack on the trial court's voiding and impairment of a contract is to be remedied. Peterson

argues that the State can contest the charges by Peterson. But that does not get to the question of the power of the circuit court to void a valid, executed written contract, especially one in which, prior to Peterson's motion, there never was any written complaint to the State or the trial court. If this Court is not open for a challenge to the trial court voiding a contract, then the State will have no right of appeal whatsoever. That, is a departure from the essential element of the law.

Peterson's argument that the State will be able to contest the fees charged is ludicrous.<sup>1/</sup> The State's challenge or objection to a charge can come only AFTER the State pays Peterson. This creates two conflicts. First, as set out above, because all the State could do is challenge the "reasonableness" of Peterson's charges, the State has been totally denied any opportunity to challenge the trial court's voiding of the contract and have full due process in the litigation of the dispute. This is totally inadequate. Without review here and now the State will have no further opportunity to challenge the trial court's illegal impairment of an executed contract.

Second, what protection is this as to the amount of fees charged? What guarantee is there that Peterson will have the money to repay the State after some review of the charges is completed and Peterson ordered to return money to the State? This too denies due process to the State.

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<sup>1/</sup> Peterson's response to the State's initial complaint was

the State has an adequate remedy at law set forth in paragraph 3 of the Amendment to Administrative Order which provides the trial court retains jurisdiction to review the reasonableness of Peterson's invoices if requested by the State.

Peterson's Brief, p. 12.

2. *IT IS A DEPARTURE FROM THE LAW FOR A TRIAL COURT TO KNOWINGLY APPROVE A CONTRACT AND THEN IMPAIR THE CONTRACT AFTER ITS EXECUTION, WITHOUT ANY OBJECTION UP TO THE TIME OF IMPAIRMENT*

It is a departure from the essential requirement of the law for a trial court to approve of a contracting process, know a contract will be entered, know a contract is drafted and executed, know that rights and obligations under the contract are met and fulfilled and then impair that contract by the voiding of the contract.

Peterson misses the point in its argument of interlocutory orders. In general, interlocutory orders can be changed. But where the order calls for certain conduct, the parties rely on that order and complete the conduct, the court is not free to just change its mind and subject one of the parties to consequences never imagined. The trial court below did just that when it voided a totally valid contract; a contract that was freely entered into by both parties; a contract that has never been breached or challenged. Not once prior to its motion did Peterson come to the State to seek any modification of the contract. Peterson was told up front the limitations of the contract process without bidding. Peterson accepted those terms and has to live by them. The trial court had no right to impair that contract and subject the State to additional costs without evidentiary support why such costs were necessary.

**II. PETERSON DID NOT ADDRESS THE ARGUMENTS PRESENTED BY THE STATE**

1. *PETERSON'S CONTRACT DISPUTE WITH THE DEPARTMENT CANNOT BE LITIGATED IN THIS CASE*

The first of the two underlying objections to the trial court hearing and deciding Peterson's motion was that it was totally improper to mix and join two separate and distinct

causes of action in one suit. The State argued that the case law requires two separate cases in such matters. Williams v. Ricou, 143 Fla. 360, 196 So. 667, 669-670 (1940); Franklin Life Insurance Co. v. Tharpe, 118 Fla. 832, 160 So. 199, 201 (1935). See also American Federation of Labor v. Watson, 31 So. 2d 394 (Fla. 1947).

Peterson did not address the State's argument in any manner. Peterson did not argue that the joined of causes was permissible or how such a procedure was not a departure from the essential elements of the law. The failure to address a point raised in an appeal is either a concession of the point of law or an abandonment. American Baseball Cap, Inc. v Duzinski, 308 So. 2d 639, 641 (Fla. 2nd DCA 1975) ["Instead of responding to the argument presented by appellant on the points raised by appellant, appellee has ignored appellant's points and the arguments in support thereof . . ."].

2. *PETERSON'S MOTION SHOULD BE DENIED BASED UPON THE EXPRESS, UNAMBIGUOUS TERMS OF THE AGREEMENT*

Likewise, Peterson has not attempted to address the contract issues presented and argued by the State<sup>2/</sup>. This failure to address the State's appellate issues can only mean that Peterson has abandoned any argument in opposition to the State's argument on contracts and has nothing to rebut the State's assertions. C.f. F.M.W. Properties, Inc. v. Peoples First Financial Sav. and Loan Ass'n, 606 So.2d 372, 377 (Fla. 1st DCA 1992) [Argument which addresses a point not set out in the issue on appeal will not be considered. Citing McClendon v. International House of

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<sup>2/</sup> The determination of whether a contractor is legally entitled to be compensated for extra or additional work beyond the fixed contract price is governed by the express terms of the contract. Coggin v. C.C. Moore Construction Co., 24 So. 2d 97 (Fla. 1945); Housing Authority of Sanford v. Boyce Construction Co., 358 So. 2d 35 (Fla. 4th DCA 1978).

Pancakes, 381 So.2d 728 (Fla. 1st DCA 1980)]; Singer v. Borbua, 497 So.2d 279, 281 (Fla. 3d DCA 1986) ["It is well settled that, in order to obtain appellate review, alleged errors relied upon for reversal must be raised clearly, concisely, and separately as points on appeal."]

### CONCLUSION

Based upon the foregoing authorities, the Department of Highway Safety and Motor Vehicles requests this Court in the alternative, to 1) dismiss, without prejudice, Peterson's action against the Department contained in the Kuhnlein case, allowing Peterson to bring a separate and independent action against the State as allowed by law. In the alternative, 2) reverse the trial court below, reinstate the written contract between the State and Peterson, and deny Peterson's requested relief as it is outside the scope of the contract.

Respectfully submitted,

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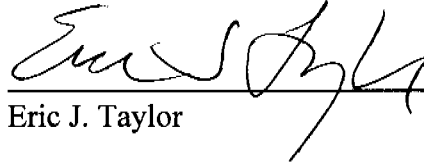
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to:

ROBERT L. YOUNG, Esq., Carlton Fields, Post Office Box 1171, Orlando, FL 32802; and

JOSEPHINE A SCHULTZ, Esq., Office of the Comptroller, The Capitol, Tallahassee, Florida

32399-0350 (4<sup>th</sup>) day of October, 1996.

  
Eric J. Taylor