

ORIGINAL

SUPREME COURT OF FLORIDA

CAREERS USA, INC., a
Pennsylvania corporation,

Appellant,

vs.

SANCTUARY OF BOCA, INC.,
a Florida corporation,

Appellee.

FILED

SID J. WHITE

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CASE NO. 90,579

District Court of Appeal, By *[Signature]*
4th District • Case No. 96-02357
CLERK, SUPREME COURT
CLERK, DISTRICT COURT

APPELLEE'S ANSWER BRIEF

Appeal from the Fourth
District Court of Appeal

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PREFACE

Appellant, CAREERS USA, **INC.**, will be referred to as “**CAREERS.**”

Appellee, **SANCTUARY OF BOCA, INC.**, will be referred to as “**SANCTUARY.**”

The record will be cited as “**R. ____.**”

The transcript of the final hearing will be cited as “**T. ____.**”

STATEMENT OF THE CASE AND OF THE FACTS

The Appellee approves and adopts the Appellant's Statement of the Case set forth in its Initial Brief

ISSUE

Is defense of an action for declaratory judgment regarding tenant's obligation to pay rent an effort to enforce the terms of a commercial lease thereby entitling the prevailing party to recover attorney's fees.

SUMMARY OF ARGUMENT

The position adopted by the Fourth District Court of Appeal in answering the above-stated Issue in the **affirmative** is the better reasoned and more practical decision, and should be adopted as the law of the State of Florida. The Court's opinion in Casarella, Inc. v. Zaremba Coconut Creek Parkway Corp., 595 **So.2d** 162 (**Fla.** 4th DCA 1992), which served as the basis of the Court's opinion in the instant case, offers a logical analysis regarding the actual effort and result of a declaratory action respecting the payment of rent, and correctly refuses to distinguish the procedural vehicles to reach the requested outcome. The conflicting holdings from the Third and Fifth Districts belie the true nature of the relief sought, and ignore the effect of a declaratory judgment.

ARGUMENT

CAREERS argues that there must be an alleged default or breach of a lease in order for there to be an action "enforcing" the terms and conditions thereof, and cites Ocala Warehouse Investors, Ltd, v. Bison Co., 416 **So.2d** 1269 (**Fla.** 5th DCA 1982) and Martin L. Robbins, M.D.. P.A. v. I.R.E. Real Estate Fund. Ltd., 608 **So.2d** 844 (**Fla.** 3d DCA 1992) as authority. This position directly conflicts with the holdings of the Fourth District Court of Appeal in Casarella and the Third District Court of Appeal in Silver Blue Lake Apts. No. 3, Inc. v. Manson, 334 **So.2d** 48 (**Fla.** 3d DCA 1976) which permitted recovery of fees under lease provisions identical to that of the lease in question in actions for declaratory relief in which no breach or default was alleged. For the reasons set forth herein, it is SANCTUARY'S position that the holdings in Casarella and Silver Blue Lake

are the better reasoned and more logical opinions and should be adopted as the law of the State of Florida.

The Fourth District Court of Appeal has held that a prevailing party landlord is entitled to attorney's **fees** pursuant to a lease, as here, for successfully defending a declaratory judgment action brought by the tenant. **Casarella**. In **Casarella**, a tenant brought an action against its landlord regarding escalation of CAM charges assessed under the lease. The tenant subsequently took a voluntary dismissal of the action and the landlord then moved for attorney's fees based upon the following clause in the lease:

“In the event it **becomes necessary** for landlord to employ the services of an attorney to **enforce** any of its rights under this lease or to remedy the breach of any covenant of the lease on the part of the tenant to be kept or performed, tenant shall pay the landlord such reasonable fees as shall be charged by landlord's attorney for such services.”
(emphasis provided)

The tenant argued that since the landlord was merely defending itself against the tenant's suit, and not enforcing any of its rights per se under the lease, it was not entitled to attorney's fees. **Notwithstanding** tenant's arguments, the landlord was awarded attorney's fees pursuant to the lease.

On appeal, the Court **affirmed** the Trial Court's award of attorney's fees to the landlord. As authority for its position, the Court cited the Third District Court Case of Silver Blue Lake Apartments and specifically distinguished the cases of Chesterfield Comvanv v. Ritzenheim, 357 **So.2d** 350 (Fla. 4th DCA 1977) and Fairways Royale Ass'n v. Hasam Realty Corp., 428 **So.2d** 288 (Fla. 4th DCA 1983) relied upon by the tenant therein and by CAREERS in the instant case.

The Silver Blue Lake case involved an action brought by a tenant seeking declaratory judgment with regard to provisions of the lease providing for the payment of rent on a percentage basis. The defendant landlord prevailed in the action and moved for attorney's fees under the lease. The provision in the lease regarding attorney's fees stated:

“If at any time... it becomes necessary for the lessor to protect the rights and interests of the lessor in the property demised or to enforce the lease or proceed under any particular, then, . . . the lessee will owe and will pay unto the lessor all costs of court and reasonable attorney's fees incurred or expended by the lessor in taking such actions”. (emphasis provided)

As in the case under review, the Trial Court denied an award of attorney's fees to the **defendant** landlord. However, on appeal, the District Court held that "the denial of attorney's fees, where the Defendant in a declaratory judgment proceeding prevailed and secured a judgment enforcing the terms of the lease, was an infringement of the terms of the contract between the parties". (**Id.** at 49)

Siily, in the case of Dinn v. Edmonson, 428 So.2d 286 (**Fla.** 4th DCA 1983), the Fourth District awarded attorney's fees to the prevailing party in a suit for declaratory judgment pursuant to the terms of a lease between a landlord and tenant, The lease contained an attorney's fee provision virtually identical to that contained in the Retail Lease Agreement between SANCTUARY and CAREERS, providing for the prevailing party to recover attorney's fees:

"In the event of any court action between the lessor and lessee to **enforce** any provisions or rights thereunder, the prevailing party shall be entitled to recover **from** the other all costs and expenses, including reasonable attorney's fees, in such a manner as the court may determine." (**Id.** at 287) (emphasis provided).

The Fourth District Court found that under this provision, the prevailing party tenant in this case was entitled to attorney's fees.

In the opinion under review (Sanctuary of Boca, Inc. v. Careers USA, Inc., 691 So.2d 596 (**Fla.** 4th DCA 1997), Judge Stevenson found that the landlord's defense of an action seeking declaratory relief concerning the amount of rent due was "tantamount to an enforcement of its rights under the lease". (p. 597) The Court acknowledged CAREERS' attempt to distinguish Casarella from the instant case on the basis that Casarella involved a suit for breach of contract and this case involved an action for declaratory **relief**, and concluded that "the attempted distinction belies the true nature of the relief sought in both cases and ignores the force and effect of a **final** declaratory judgment" (p. 598). Judge Stevenson points out that there was no real substantive difference between the relief sought by the tenant in Casarella and the relief sought by CAREERS (p. . Each complained that the landlord was demanding more than was due under the lease in question, and both sought an order **from** the Trial Court determining that the rents should be less than those demanded by the respective landlords. This opinion stands for the proposition that the requested outcome, the proposed result, should be considered in determining whether the action is one for

enforcement, rather than the form of the action instituted by the Plaintiff.

In Ocala Warehouse, the Fifth District Court of Appeal adopted a short-sighted analysis, concluding that since the suit was an action for declaratory relief, alleging a difference of opinion **regarding the** amount of rent to be paid, the action necessarily did not involve the enforcement of any lease provision (**Id. 1270**), citing Chesterfield as its authority. The Court does not offer the basis for its decision, there is no analysis or reasoning, merely a one sentence conclusion. As previously indicated, the Fourth District has specifically distinguished Chesterfield in cases similar to the one under consideration. The Ocala Warehouse opinion fails to take into consideration the nature of the remedies sought, and **if taken** to its logical conclusion, **could** serve as an open invitation for litigants to **craft** lease disputes in the form of declaratory judgment actions, and thereby avoid the obligation to make the prevailing party whole if they should lose. More specifically, an unscrupulous tenant could represent itself in a declaratory relief claim in an effort to rewrite a lease provision, placing a fee paying landlord at a significant disadvantage, not previously contemplated by the parties.

In both Casarella and Silver Blue Lake, the Courts suggested that the nature of the claim was less relevant than the result of the action in determining whether the dispute involved “enforcement” of lease rights. When a party is brought into court to defend an action seeking the interpretation of a lease provision, the outcome of which will have direct impact on rights derived from the lease, the clearly logical conclusion is that the lease rights are being enforced. The Court in Casarella aptly stated “**In defending itself**, the Landlord, sub **justice**, is trying to ‘enforce... its **rights** under this lease’, and **collect** the sums due it”. (p. **163**) This is precisely what SANCTUARY was doing in the case at bar. In defending CAREERS’ declaratory action seeking interpretation of the lease provision regarding the commencement of rent and common area maintenance charges, SANCTUARY was attempting to retain sums paid to it under the terms of the lease between the parties. The result sought by the parties pertains to a specific and integral lease provision -- the payment of rent.

The concept of enforcing lease rights in the context of an action for declaratory relief was addressed by the Third District Court in the case of Dade Savings & Loan Association v. Broks Center, Ltd., **529 So.2d 775 (Fla. 3d DCA 1988)**. In this matter, Broks Center had agreed to sell commercial property to Dade Savings at a price to be set by appraisals conducted according to **specific guidelines. (Id. at 776)**. The Contract for Sale between the parties provided for attorney’s

fees to the prevailing party when an action was brought to **enforce** the Contract. A dispute developed regarding whether the property value should include existing commercial leases when the lease of the major tenant was due to expire in the near future, and Broks Center sought declaratory judgment as an appropriate method of appraising the property. Broks Center prevailed in the action and was awarded attorney's fees. The attorney's fee provision in the Dade **Savings/Broks** Center Contract contained language similar to that in the SANCTUARY/CAREERS lease.

On appeal by Dade Savings, the Court distinguished between declaratory judgment cases construing lease provisions "which result in the enforcement of a contractual term" (Id. 776) and declaratory judgments which involve matters "ancillary to the actual contract", (Id. 777). The Court approved an award of fees when the action culminated in the enforcement of contract rights citing, with approval, Dinn and Silver Blue Lake. To the contrary, in Dade Savings and I.R.E. Real Estate, cited by CAREERS to the Trial Court in its Answer Brief to the Fourth District Court of Appeal and in the Initial Brief herein, the parties were not seeking enforcement of specific contract rights. In IRE, Real Estate, the Court was called upon to construe whether the right to make alterations and adopt rules and regulations authorized the imposition of parking fees, which the Court concluded was collateral to specific contract terms. The logical extension of this Third District Court opinion is to propose a test for whether a lease provision that allows for recovery of attorney's fees to the prevailing party in an action to enforce terms and provisions of the lease. The criteria is whether the matter involves the **implementation** of a **specific** contractual term. The Third District Court has ruled that the payment of rent is the type of contractual term that will support **an** award of attorney's fees in a declaratory action (Silver Blue Lake) as had the Fourth District in Dinn.

Therefore, since the declaratory judgment action instituted by CAREERS against SANCTUARY called into question the contract & provision regarding the payment of rent and CAM charges, the logical conclusion is that the holdings of Casarella, Silver Blue Lake, and Dinn are applicable. The action resulted in the application of a specific lease term, and the propositions set forth in I.R.E. Real Estate are inapplicable. SANCTUARY suggests that the specific/ancillary distinction set forth in the Dade Savings opinion is a good measure to evaluate whether or not an action involves the "enforcement" of lease terms, regardless of how the matter is presented to the Court, since the result of the proceedings will impact specific rights and/or duties set forth in the

lease. The Courts have already offered guidelines in applying the proposed tests. Suits involving issues of payment of rent (Casarella) are clearly actions **regarding** specific contractual terms, while issues involving the right to impose parking fees (**I.R.E. Real Estate**) or whether a particular lease should be **included** in the **calculation** of a sales price (**Dade Savings**) are ancillary to the lease contract and do not involve specific contractual terms. In succinct fashion, if the nature of the relief sought involves the application of a **specific** lease term, the action should be deemed an enforcement action, and the prevailing litigant would be entitled to attorney's fees under a provision similar to that set forth in the SANCTUARY/CAREERS lease.

Adoption of the foregoing test would allow potential litigants to assess the applicability of attorney's fee provisions of the type under evaluation in the instant case by analyzing the relief sought, rather than having the issue determined by the form of action selected by a plaintiff. This would serve to avoid confusion among the several Districts and maintain uniformity in the case law.

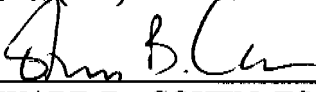
CONCLUSION

The Fourth District Court's opinions in **Casarella** and **Dinn**, and the Third District Court opinion in **Silver Blue Lake**, are the better reasoned, logically consistent decisions and should be adopted by this Court. The distinction between the "enforcement" of a lease provision and the "**interpretation**" of a lease provision requested by CAREERS and approved by the opinions in **Ocala Warehouse** and **IRE. Real Estate** is nothing more than an exercise in semantics, which is uniformly disapproved by the public. There is no meaningful reason or purpose to adopt such a distinction when analyzing the terms and conditions of a lease provision of the type under review here. The Fourth District's opinion in this matter constitutes a well-reasoned, fully supportable approach to the

issue, and should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and **correct** copy of the foregoing has been served by U.S. Mail on the 11th day of July, 1997 to: **Geoffrey C. Bennett, Esq.**, Sweetapple, Broeker & Varkas, 465 East Pahnetto Park Road, **Boca Raton**, Florida 33432

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