IN THE SUPREME COURT OF FLORIDA

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant/Petitioner

vs. CASE NO.: 91,117

CTC DEVELOPMENT CORPORATION, INC. and GREGORY UZDEVENES,

Plaintiff/Respondent.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT
LOWER TRIBUNAL NO. 96-2976

PETITIONER'S BRIEF ON THE MERITS

MICHAEL D. HOOK
Florida Bar Number 309826
CHARLES F. BEALL, JR.
Florida Bar Number 66494
MOORE, HILL, WESTMORELAND, HOOK & BOLTON, P.A.
220 West Garden Street - Suite 900
Post Office Box 1792
Pensacola, Florida 32598-1792
Telephone: (850) 434-3541
Fax Number: (850) 435-7899

ATTORNEYS FOR PETITIONER

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Whether The Decision Of The First District Court Of Appeal Should Be Quashed Because It Conflicts With The Decision Of This Court In Hardware Mut. Cas. Co. v. Gerrits, 65 So.2d 69 (Fla. 1953).

STATEMENT OF THE CASE AND FACTS

Respondent Gregory Uzdevenes, in his capacity as a professional architect, designed and built a house for John and Annette Bray through his construction company, CTC Development Corporation, Inc. (For simplicity, Uzdevenes and CTC Development Corporation, Inc. will be referred to collectively as "CTC"). CTC built the house some four feet across a set back line in violation of recorded restrictive covenants. R 55. The adjoining landowners, Finley and Judy Holmes, filed suit against CTC, the Brays, and the construction lender seeking injunctive relief and compensatory damages as a result of the violation of the set back covenant.

In the underlying complaint against CTC, the Holmes alleged that, prior to commencing construction, CTC knew of the set back requirements in the restrictive covenants, but constructed the house in violation of the covenants anyway. R 35 at ¶ 10; R 42 at ¶ 22. Specifically, the complaint alleged:

> (a) CTC, by and through its president UZDEVENES knew that the restrictive covenants required a 15-foot side-line setback.
>
> (b) CTC, by and through its president UZDEVENES knew such side-line setback requirements prior to the time that it commenced construction of BRAY's house.
>
> (c) CTC, by and through its president UZDEVENES knew from the time construction did commence that BRAY's house was approximately four

> feet closer to the east line which abutted HOLMES property than the restrictive covenants allowed.
>
> (d) CTC, by and through its president UZDEVENES knew before it commenced construction of BRAY's house that it had not properly requested a variance or other permission from the Baycliffs Homeowners Association to construct BRAY's house in violation of the subdivision restrictions.
>
> (e) CTC, by and through its president UZDEVENES knew that it had never notified HOLMES of its intention to violate the restrictive covenant, or that it intended to request a variance in order to construct the home closer to the HOLMES property than the restrictive covenants allowed.
>
> (f) CTC, by and through its president UZDEVENES misrepresented to HOLMES that it had obtained a proper variance to place the house where it is now situated, but upon demand that a copy of such variance be produced, UZDEVENES informed HOLMES that no such variance existed, because no such variance was ever obtained.

R 44 at ¶ 27. Identical allegations were raised in a separate count against Mr. Uzdevenes, individually. R 37-38 at ¶ 15. The Holmes complaint further alleged that CTC was notified of the objections to the location of the building during construction, but that Mr. Uzdevenes responded by informing the Holmes "that he intended to proceed with the construction, acknowledging in writing that he understood that he would be proceeding at his own risk." R 38 at ¶ 16; R 45 at ¶ 28; R 63-64.

Uzdevenes and CTC demanded that Petitioner, State Farm Fire and Casualty Company ("State Farm"), defend and indemnify them in the lawsuit as a result of a "Contractor's Policy" that was in

effect between CTC and State Farm. State Farm declined coverage. After settling the underlying lawsuit, CTC and Uzdevenes filed this suit against State Farm, demanding that State Farm indemnify them for the costs of the settlement and the attorney fees they incurred in defending the Holmes suit. R 1-3.

State Farm moved for summary judgment on the grounds that the injury caused to the adjoining landowners was not an "occurrence" within the terms of the insurance policy between CTC and State Farm, relying upon this Court's decision in Hardware Mut. Cas. Co. v. Gerrits, 65 So.2d 69 (Fla. 1953). In response to State Farm's motion, CTC filed with the Court transcripts of the depositions of Finley Holmes (R 71-102) and Judy Holmes (R 103-132), and a brief affidavit from Mr. Uzdevenes (R 133). None of the materials filed by CTC in opposition to State Farm's motion raised an issue as to whether CTC's actions during construction were anything but knowing and intentional. In fact, in his affidavit, Mr. Uzdevenes reaffirmed the accuracy of the statements he made in a February 16, 1993 letter to the Holmes' attorney, in which he acknowledged the violation of the set back provisions and conceded that he was going to complete construction "`at my own risk.'" R 63-64; 134.

The trial court granted State Farm's motion and entered Summary Final Judgment against CTC. R 135. CTC appealed the decision to the First District Court of Appeal, and the District Court reversed the trial court in a September 26, 1997 Opinion. CTC

Development Corp. v. State Farm Fire and Casualty Co., No. 96-2976 (Fla. 1st DCA Aug. 26, 1997). (A copy of the District Court Opinion is attached to this brief in a numbered appendix. App. 1-11). In its opinion, the District Court expressly declined to follow the Hardware Mutual decision, and instead elected to follow one of its own decisions, Grissom v. Commercial Union Ins. Co., 610 So.2d 1299 (Fla. 1st DCA 1992), rev. denied, 621 So.2d 1065 (Fla. 1993). CTC Development Corp., slip op. at 4; App. 4.

State Farm filed a timely motion for rehearing, which was denied without opinion on October 3, 1997. The Petitioner's notice to invoke the discretionary jurisdiction of this Court was filed on October 31, 1997. On February 23, 1998, this Court issued an Order indicating that it had accepted jurisdiction to review the District Court decision.

SUMMARY OF ARGUMENT

District Courts are bound by the doctrine of stare decisis to follow prior decisions from this Court on similar issues. Here, the District Court erred by expressly declining to follow the prior decision from this Court in Hardware Mut. Cas. Co. v. Gerrits, 65 So.2d 69 (Fla. 1953). In Hardware Mutual, this Court held that a builder's construction of a building outside of a permissible boundary line was not an "accident" for purposes of insurance coverage. The controlling facts of this case are virtually identical to those in Hardware Mutual, a fact expressly acknowledged by CTC in its jurisdictional brief.

CTC has contended that the Hardware Mutual decision still can be meaningfully distinguished from this case because of differences in the language of the underlying insurance policies. As the District Court itself recognized, however, any differences in the actual language of the policies are irrelevant. In both cases, the coverage issues are dependent upon whether the property damage was caused by an "accident," a term not defined in either policy. Further, the addition of an intentional acts exclusion in CTC's policy is irrelevant because an exclusion cannot create coverage if coverage is not provided elsewhere under the policy. Because this Court previously held that a builder's construction of a building over a boundary line does not meet the plain meaning of the word "accident" for purposes of insurance coverage, the District Court's

decision to the contrary should be quashed.

ARGUMENT

The Decision Of The First District Court Of Appeal Should Be Quashed Because It Conflicts With The Decision Of This Court In Hardware Mut. Cas. Co. v. Gerrits, 65 So.2d 69 (Fla. 1953).

This Court has held that a builder's construction of a building over a permissible boundary line did not constitute an "accident" for purposes of insurance coverage. See Hardware Mut. Cas. Co. v. Gerrits, 65 So.2d 69 (Fla. 1953). The Hardware Mutual decision has stood, virtually unchallenged, for more than 40 years. Despite the remarkably similar facts between this case and those in Hardware Mutual, the First District Court of Appeal below, however, expressly declined to follow the Hardware Mutual decision and held that CTC's knowing construction of the Bray house across the set back line constituted an accident for purposes of insurance coverage. The District Court decision is incorrect as a matter of law because it is contrary to the doctrine of stare decisis. The District Court decision, therefore, should be quashed.

I. The District Court Opinion Should Be Quashed Because It Violates The Doctrine Of Stare Decisis

A. Stare Decisis Requires District Courts To Adhere To Precedent Established By This Court

This Court has held repeatedly that District Courts must follow prior decisions from this Court on similar issues of law. See State v. Dwyer, 332 So.2d 333, 335 (Fla. 1976) ("[w]here an issue has been decided in the Supreme Court of the state, the lower courts are bound to adhere to the Court's ruling when considering

similar issues, even though the court might believe that the law should be otherwise"). Pursuant to the doctrine of stare decisis, prior decisions from this Court cannot be overruled by a District Court, but instead must be followed by the District Court until expressly overruled by this Court. Id. See also Hoffman v. Jones, 280 So.2d 431, 434 (Fla. 1973) (District Courts are "bound to follow the case law set forth by this Court"). Stare decisis is not a new or novel doctrine, but instead "is a fundamental principle of Florida law." State v. Dwyer, 332 So.2d 333, 335 (Fla. 1976).

B. The District Court Erred By Refusing To Follow This Court's Prior Decision In Hardware Mutual

Because Hardware Mutual was decided by this Court more than 40 years ago and has not been overruled – or even questioned – since, the District Court was bound to follow it as long as it presented "similar issues" to those in this case. See State v. Dwyer, 332 So.2d at 335. The District Court, however, neither followed nor distinguished Hardware Mutual from this case.

A review of the Hardware Mutual decision leads to the inescapable conclusion that it is directly on point with the facts of this case. In Hardware Mutual, a builder constructed a building so that it encroached upon a neighbor's property line. Hardware Mutual, 65 So.2d at 70. The neighbor sued for damages and the case ultimately settled. The builder's insurance company denied all

liability, claiming that the builder's location of the building was not an "accident" within the terms of the builder's liability insurance policy. The builder subsequently filed suit against the insurance company seeking a declaratory judgment that the construction of the building was an accident. The trial court entered judgment in favor of the builder. Id. at 70.

This Court reversed. The Court held that the location of the building was not an accident, but rather was based upon a mistake of fact. According to the Court, "[a]n effect which is the natural and probable consequence of an act or course of action is not an accident." Id. at 70. (Emphasis in original). Because the builder "deliberately and designedly (although erroneously) located the building" where it was ultimately constructed, the Court held that the builder's actions did not meet the plain meaning of an "accident." Id. at 71. Accordingly, this Court held that the builder's actions were not covered by his liability insurance policy. Id.

As demonstrated by the District Court's own opinion, the controlling facts of this case are virtually identical. In both cases, the builder intentionally constructed the buildings in a particular location, but in both cases the buildings were located across a permissible boundary line. CTC Development Corp., slip op. at 2; App. 2; Hardware Mutual, 65 So.2d at 70-71. In both instances, the builders were sued by neighbors, the builders

settled the suits, and the builders in turn sued their insurance companies for indemnification. CTC Development Corp., slip op. at 2-3; App. 2-3; Hardware Mutual, 65 So.2d at 70.

In its jurisdictional brief, CTC conceded that the "underlying factual scenarios" in this case and Hardware Mutual were "substantially the same." Respondent's Jurisdictional Brief at 2. If anything, the minor factual differences in the two cases argue even more strongly against the District Court decision in this case. In Hardware Mutual, the builder apparently was unaware that the building was constructed in an improper location until after it was completed. In contrast, the underlying complaint in this case alleged – and CTC did not dispute - that CTC was aware of the potential problem with the building's location before construction began. R 35, 37-38, 42, 44. See National Union Fire Ins. Co. v. Lenox Liquors, Inc., 358 So.2d 533, 536 (Fla. 1977) ("[t]he allegations of the complaint govern the duty of the insurer to defend").

The only argument that CTC has articulated in an effort to distinguish Hardware Mutual from this case is that there are differences in the underlying insurance policies – an argument expressly rejected by the District Court below. CTC Development Corp., slip op. at 5; App. 5. Specifically, CTC suggests that the policy in this case differs from the policy in Hardware Mutual because this policy contains an exclusion for property damage

"expected or intended from the standpoint of the insured." R 24. CTC's argument is flawed for at least two reasons.

First and foremost, the coverage issues in both this case and Hardware Mutual are not dependent upon intricate policy language but instead revolve around the plain meaning of the word "accident." In Hardware Mutual, the policy provided coverage for property damage "caused by accident." Hardware Mutual, 65 So.2d at 70. In this case, the policy provided coverage for property damage caused by "an occurrence," and "occurrence" was further defined as "an accident." R 23 (back of page) and 29. Significantly, neither policy defined the word "accident." The District Court itself noted that "[w]e cannot state that there is a meaningful difference in language between an `accident' and an `occurrence' defined as an `accident.'" CTC Development Corp., slip op. at 5; App. 5. When a term in an insurance policy is not defined, Florida courts have consistently held that the term should be given its plain and ordinary meaning. See, e.g., Old Dominion Ins. Co. v. Elysee, Inc., 601 So.2d 1243, 1245 (Fla. 1st DCA 1992). In Hardware Mutual, this Court held that the plain meaning of the word "accident" did not encompass a builder's construction of a building over a permissible boundary line. Nothing in the language of the policy in this case dictates a different result.

Second, the fact that the policy in this case includes a specific "intentional acts" exclusion apparently not found in the

Hardware Mutual policy is irrelevant. An exclusion does not provide coverage, but rather limits coverage. See LaMarche v. Shelby Mut. Ins. Co., 390 So.2d 325, 326 (Fla. 1980). In other words, if the property damage here was not caused by an “accident," then the inquiry is complete. Hardware Mutual unequivocally holds that a builder’s construction of a building over a permissible boundary line does not meet the plain meaning of an “accident” for purposes of insurance coverage. Therefore, the addition of this exclusion in CTC’s policy makes no difference in the outcome of the coverage issue.

Because the Hardware Mutual decision is on point with this case, the District Court erred by following its own decision in Grissom v. Commercial Union Ins. Co., 610 So.2d 1299 (Fla. 1st DCA 1992), rev. denied, 621 So.2d 1065 (Fla. 1993). First, The facts in Grissom are completely distinguishable from those in this case (and Hardware Mutual). Unlike both this case and Hardware Mutual, the Grissom case did not involve a builder constructing a building across a permissible boundary line. Instead, it involved a property owner intentionally filling a natural watercourse across his land, which unexpectedly flooded a neighboring church. Id. at 1301. Second, even if Grissom was factually on point with this case, the District Court should have followed Hardware Mutual because a District Court is bound to follow precedent from this Court over its own contrary decisions. See State v. Dwyer, 332

So.2d 333, 335 (Fla. 1976). The District Court's decision, therefore, should be quashed.

CONCLUSION

District Courts are required to follow prior decisions from this Court on similar issues. This case cannot be distinguished meaningfully from this Court's prior decision in Hardware Mutual. Accordingly, because the District Court expressly declined to follow the controlling precedent of Hardware Mutual, the District Court decision should be quashed.

Respectfully submitted,

MICHAEL D. HOOK
Florida Bar Number: 309826
CHARLES F. BEALL, JR.
Florida Bar Number 66494
MOORE, HILL, WESTMORELAND, HOOK & BOLTON, P.A.
220 West Garden Street - Suite 900
Post Office Box 1792
Pensacola, Florida 32598-1792
Telephone: (850) 434-3541
Fax Number: (850) 435-7899

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Louis K. Rosenbloum, Esquire**, One Pensacola Plaza, Suite 212, 125 West Romana Street, Pensacola, FL 32501, and to **Stephen H. Echsner, Esquire**, Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A., 316 South Baylen Street, Pensacola, FL 32501 by **hand delivery** this _____ day of March, 1998.

_____

MICHAEL D. HOOK
Florida Bar Number: 309826
CHARLES F. BEALL, JR.
Florida Bar Number 66494
MOORE, HILL, WESTMORELAND, HOOK & BOLTON, P.A.
220 West Garden Street - Suite 900
Post Office Box 1792
Pensacola, Florida 32598-1792
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