

DA 5-6-98

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✓ APR 22 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

SUP. CT. CASE NO.: 91,767

3RD DCA CASE NOS.: 94-03011
95-00534

DADE COUNTY SCHOOL BOARD,

Petitioner,

vs.

THREE KINGS PARADE, INC.,
RADIO STATION WQBA,
SUSQUEHANNA BROADCASTING
COMPANY, and CITY OF MIAMI,

Respondents.
_____ /

RESPONDENTS' CROSS-REPLY BRIEF

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ARGUMENT ON CROSS-APPEAL

I. THE THIRD DISTRICT INCORRECTLY AFFIRMED THE TRIAL COURT'S DENIAL OF THREE KINGS' CLAIM FOR PRE-JUDGMENT INTEREST WHERE SUCH CLAIM WAS BASED UPON THREE KINGS' CONTRACTUAL INDEMNITY CLAIM WHICH FALLS OUTSIDE THE PURVIEW OF § 768.28.

With regard to Petitioner/Cross Respondent's arguments pertaining to whether or not THREE KINGS was entitled to have an "execution" provision in the subject judgment and also an award of pre-judgment interest on the basis of its claim for breach of contract, THREE KINGS relies upon the arguments asserted in its cross-appeal brief (at pages 44 through 47).

In its response to THREE KINGS' cross-appeal, DCSB further argued, *inter alia*, at page 31 that THREE KINGS was not entitled to pre-judgment interest from the date the underlying personal injury claims were settled because: (A) the amount in controversy in this case was not liquidated; and, (B) the jury verdict did not fix damages for DCSB's negligence as of a prior date. Such contentions ignore the record in this case as well as the effect of the jury's verdict.

In this case, there was no dispute regarding the amount which was paid on behalf of THREE KINGS to settle the underlying personal injury claims by the injured spectators and/or the dates on which said settlement payments were made. (R. 6182, 6199). Thus, this case was a classic claim for reimbursement of a

precise, liquidated amount of money which said sums had been paid "out of pocket" on dates certain. Calculation of the amount of pre-judgment interest due and owing on these out of pocket losses would have been a simple mathematical computation.

Further, the jury by its verdict found DCSB to be 100 percent at fault for the parade spectators' injuries. Thus, not only was THREE KINGS--as the fault-free party--entitled to contractual indemnity, the verdict had the effect of fixing THREE KINGS' damages for purposes of pre-judgment interest as of the date the underlying claims were settled. See, Hurwitz v. Frank, 598 So.2d 99, 100 (Fla. 4th DCA 1992) (holding that the trial court erred in denying pre-judgment interest as the final judgment "liquidates damages from the date that the settlement was reached") [citing Argonaut Ins. Co. v. May Plumbing Co., 474 So.2d 212 (Fla. 1985)].

Finally, on page 32 of its brief DCSB argues that THREE KINGS should not be entitled to pursue a claims bill to recover a pre-judgment interest award if Sec. 768.28 applies to THREE KINGS' claim. THREE KINGS asserts two points in reply. First, even if Sec. 768.28 applies, the immunity from an award of interest prior to judgment should not be applied to claims (such as the one sub judice) for reimbursement of a liquidated amount of settlement monies paid. Second, DCSB's argument should not be construed to impair efforts by THREE KINGS to petition the legislature to award amounts over and above DCSB's liability

under Sec. 768.28 and/or to pursue recovery of a pre-judgment interest award under a contract-based petition for a writ of mandamus.

CONCLUSION

For the foregoing reasons, the order striking the execution language from the subject judgment and denying THREE KINGS' claim for pre-judgment interest should be reversed and this aspect of the cause remanded with instructions to allow for said relief.

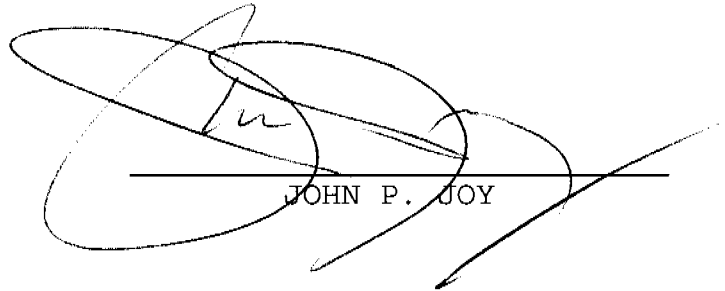
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 20th day of April, 1998 to:
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