IN THE SUPREME COURT OF FLORIDA
CASE NO. 95,954

JEFFREY CANNELLA and	**)**
JOANNE CANNELLLA	**)**
	)
Plaintiffs/Petitioners,	**)**
	)
vs.	**)**
	)
AUTO-OWNERS INSURANCE COMPANY	**)**
	)
Defendant/Respondent.	**)**

_____/

PETITIONERS' INITIAL BRIEF ON THE MERITS

REVIEW OF A DECISION OF THE
SECOND DISTRICT COURT OF APPEAL
CASE NO. 98-01663

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CERTIFICATE OF TYPE SIZE & STYLE

Petitioners hereby certify that the type size and style of Petitioners' Initial Brief On The Merits is Times New Roman 14pt.

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STATEMENT OF THE CASE AND FACTS

Petitioners, Jeffrey Cannella and Joanne Cannella appeal the decision of the Second District Court of Appeal rendered June 4, 1999, which reversed a partial final judgment entered against Respondent, Auto-Owners Insurance Company.

The procedural history of this case extends back nearly ten years and involves two separate lawsuits. The underlying lawsuit involved a claim by the Cannellas for bodily injuries incurred as a result of the negligence of Mock Plumbing Contractor, Inc., which was insured by Auto-Owners (R. 550-553).

Service of process was effectuated against Monica Mock, the registered agent for Mock Plumbing (R. 554), who was also its president and sole shareholder (R. 524-526). At the time service of process was effectuated, Mock Plumbing Contractor, Inc. was a dissolved Florida corporation (R. 322-326). No legal defense was tendered by Mock Plumbing, and after the conclusion of a non-jury trial on damages, a default judgment was entered in favor of the Cannellas.

Thereafter, Mock Plumbing assigned its rights to any claims it had against Auto-Owners, to the Cannellas. The Cannellas then filed a lawsuit against Auto-Owners and its claims adjuster for breach of contract for failure to provide a legal defense, negligence as to the claims adjuster, and breach of contract, for which the Cannellas claimed status as third-party beneficiaries of the insurance contract (R. 17-25). The third-party beneficiary claim is the only count pertinent to this appeal.

In that claim, the Cannellas alleged that after obtaining the default judgment against Mock Plumbing, Auto-Owners breached its contract of insurance by failing to pay the prior default judgment up to the amount of its policy limits.

Auto-Owners answered the complaint, denying that it was in breach, and asserted various affirmative defenses (R. 115-118). Thereafter, Auto-Owners moved to set aside the Mock Plumbing default judgment on several grounds, including that the judgment was void, voidable or otherwise unenforceable (R. 232-233). Auto-Owners argued that because Mock Plumbing was a dissolved corporation, service of process must be made on one or more of the directors of the corporation as trustee, in accordance with Section 48.101, Florida Statute (1991), and that service upon the registered agent was invalid.

In response, the Cannellas successfully argued that Mock Plumbing had no directors at the time service was made upon the registered agent, and therefore it was impossible to comply with Section 48.101, Florida Statutes (1991), and they had no alternative but to serve the registered agent. The trial court agreed, and Auto-Owners' motions were denied. Ultimately, the Cannellas obtained a partial final judgment against Auto-Owners on the third-party beneficiary count, and damages were awarded up to the policy limits (R. 375).

Upon review, the Second District Court of Appeal relied upon its prior decisions in Stoeffler v. Castagliola, 629 So. 2d 196, (Fla. 2d DCA 1993) and Polk County Rand Investments, Inc. v. State of Florida Department of Legal Affairs, 666 So.2d 279 (Fla. 2d

DCA 1996), and held that pursuant to Section 48.101, Florida Statute (1991), service of process on a dissolved corporation must be made on one or more directors of the corporation as trustee.

Finding that service of process was improperly made upon the registered agent for Mock Plumbing, the court held that the default judgment was thereby void, and reversed the partial final judgment against Auto-Owners.

SUMMARY OF THE ARGUMENT

The Second District erred in holding that service of process upon a dissolved corporation must be made upon the directors as trustees of the corporation, and that service upon the registered agent was improper and defective.

Prior to the overhaul of the Corporations Act in 1989, there was a valid reason for requiring service solely upon a director as trustee. Upon dissolution, title to all corporate property was transferred to the directors as statutory trustees, and these directors/trustees had the duty of accepting suit on behalf of the corporation. Thus, it was only logical that the process statute, Chapter 48.101, provide the manner in which the directors, as trustees, should be served.

The legislature, through Ch. 89-154, Laws of Florida, materially changed the substantive law applicable to the dissolution of corporations in 1989. Section 607.301, which provided for directors to assume the capacity of trustees upon dissolution, was repealed. Under the Act, the authority of the registered agent was now maintained. One of the duties of the registered agent has always been to accept service of process.

Also, the Corporations Act now provides that a dissolved corporation retains title to all of its property; it can sue or be used in its own name, and now continues its corporate existence.

Mock Plumbing, Auto-Owner's insured, was administratively dissolved on October 11, 1991, and clearly comes within the provisions of the 1989 Corporations Act.

For this court, under the facts of this case, to continue requiring service of process upon the directors, as trustees, as the exclusive method of serving a dissolved corporation would be to ignore the legislative intent of the 1989 amendments.

More recently, the legislature clarified its intent as it pertains to dissolved corporations when it amended section 48.101 in 1997. Now, section 48.101 mandates that corporations dissolved after July 1, 1990 shall be served in accordance with section 48.081. Section 48.081 specifically provides for registered agents to accept service of process on behalf of a corporation.

Clearly, with the passage of the amendments to the Corporation Act, the intention of the legislature was for registered agents to continue to accept service of process even after a corporation became dissolved. The legislature clarified that intent by amending section 48.101. Thus, the contrary holding of the Second District must be reversed.

Regardless of the proper method of effectuating service of process upon dissolved corporations, a distinction must nevertheless be made between judgments that are void and those that are voidable.

A judgment entered without service of process is void. However, a judgment is merely voidable where the service or return is irregular or defective but actually gives the defendant notice of the action or proceeding.

In the case at bar, as a ground for setting aside the default judgment, Mock

Plumbing in its motion stated that the company failed to file an answer through mistake, inadvertence or excusable neglect. By its own admission, Mock Plumbing admitted it received the process, knew it needed to file an answer but mistakenly or inadvertently forgot to do so.

Thus, at worst, the judgment was merely voidable and not void ab initio. Mock Plumbing never obtained an adjudication that the judgment was voidable, and that judgment cannot now be collaterally attacked by Auto-Owners. The decision of the Second District allowing such an attack is in error.

Lastly, the holding of the Second District is violative of Article 1, Section 21, of the Florida Constitution. At all times material to this action, Mock Plumbing had no directors upon which service of process could be perfected. Thus, for the Second District to require the Cannellas to effect service upon individuals which do not exist in order to have access to the courts violates their rights under Article 1, Section 21, and that decision must be reversed.

ARGUMENT

POINT I.

THE DISTRICT COURT OF APPEAL ERRED IN HOLDING THAT SERVICE OF PROCESS UPON THE REGISTERED AGENT OF A DISSOLVED CORPORATION WAS IMPROPER.

The Second District Court of Appeal, relying on its precedents in Stoeffler v. Castagiola, 629 So.2d 196 (Fla. 2d. DCA 1993) and Polk County Rand Invs., Inc. v. State Department of Legal Affairs, (Fla. 2d DCA 1996) held in the instant case that service of process upon a dissolved corporation must be made on one or more directors of the corporation as trustee, and that service of process upon the registered agent of the dissolved corporation was improper, thus rendering the subsequent monetary judgment against it void.

This holding has been expressly rejected by the Fifth District Court of Appeal in Liszka v. Silverado Steak & Seafood Co., 703 So.2d 1226 (Fla. 5th DCA 1998), and the Fourth District Court of Appeal in Wong v. Gonzalez & Kennedy, Inc., 719 So.2d 937 (Fla. 4th DCA 1998), review granted, 727 So.2d 905 (Fla. 1999).

The decision of the Second District Court of Appeal in the case at bar is erroneous for several reasons. First, section 48.101 was amended by Chapter 97-230, Laws of Florida, which became law on May 30, 1997. Prior to the 1997 amendment section 48.101 (1991) provided as follows:

Service on dissolved corporations

Process against the directors of any corporation which is dissolved as trustees of the dissolved corporation shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof.

Following the 1997 amendment, Section 48.101 now provides as follows:

Service on dissolved corporations

Process against the directors of any corporation which was dissolved before July 1, 1990, as trustees of the dissolved corporation shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. Process against any other dissolved corporation shall be served in accordance with s. 48.081.

This amendment is of obvious importance to the case at bar. With this amendment the Legislature clarified what its intention had been regarding dissolved corporations when it substantially overhauled the Florida Corporation Act in 1989 with Ch. 89-154, Laws of Florida. The pivotal date of July 1, 1990 used in the amended statute is critically significant in that this is the effective date of Ch. 89-154.

Prior to Ch. 89-154's overhaul of the Florida Corporation Act, the substantive law

of Florida was that upon the dissolution of a corporation, title to all property of the corporation was transferred to the directors of the corporation as statutory trustees for the shareholders and creditors of the dissolved corporation. Among the fiduciary duties imposed upon the directors was the duty to accept suit on behalf of the now dissolved corporation. 607.301, Fla. Stat (1989); see, e.g. Gould v. Brick, 358 F.2d 437, 439 (5th Cir. 1966), citing, Trueman Fertilizer Co. v. Allison, 81 So.2d 734, 737 (Fla. 1955).

Before its recent amendment, Florida Statute 48.101 (1991) provided the manner by which those statutory trustees should be served, binding each director upon the service of one. The substantive law provided who shall be served (the directors as statutory trustees), and why (because, upon dissolution, the life of the corporation was extinguished and title to all the corporation's assets vested in the directors as statutory trustees).

The legislature, through Ch. 89-154, Laws of Florida, now codified in part in Florida Statute 607.1405 and 607.1421, materially changed the substantive law applicable to the dissolution of corporations. Florida Statute 607.301 was repealed by Ch. 89-154, Laws of Florida. No longer does Chapter 607 provide for directors of a dissolved corporation to act as trustees. 607.1405 Fla. Stat.; In Re: Miner, 185 B.R. 362 (N.D. Fla. 1995), affirmed 83 F.3d 436 (11th Cir. 1996).

Section 607.1405, Florida Statutes (1990) provides in relevant part:

> (1) A dissolved corporation continues its corporate existence ... (emphasis added)
>
> (2) Dissolution of a corporation does not:
>
> > (a) transfer title to the corporation's Property;
> >
> > ...
> >
> > (e) prevent commencement of a proceeding by or against the corporation In its corporate name;
> >
> > ...
> >
> > (g) terminate the authority of the registered agent of the corporation

Section 607.1421, Florida Statutes (1990) provides in relevant part:

> ...
>
> (3) a corporation administratively dissolved continues its corporate existence...
>
> ...
>
> (5) the administrative dissolution of a corporation does not terminate the authority of its registered agent.

Now, upon dissolution, the corporation continues in existence, the assets stay in the corporation for winding up the affairs of the corporation (or until reinstatement), the corporation can sue and be sued in its own name, and the registered agent maintains its authority.

Upon analyzing the foregoing changes to the Business Corporation Act, the Fifth District in Liszka v. Silverado Steak & Seafood Co., 703 So.2d 1226 (Fla. 5th DCA 1998)

rejected the rationale of the Second District in Stoeffler and Polk County Rand Investments, and stated:

> To continue requiring service of process on the directors, as trustees of the dissolved corporation, as the sole means of serving a dissolved corporation would be to ignore the legislative amendments of 1989. We hold that process on a dissolved corporation may properly be made on the registered agent thereof. Accordingly, we conclude the trial court erred in finding the service of process void because of Liszka's service on the registered agent.
>
> Id at 1228

Joining in the rejection of the rationale of Stoeffler and Polk County Rand Investments, the Fourth District in Wong v. Gonzalez & Kennedy, Inc., 719 So.2d 937 (Fla. 4th DCA 1998), review granted, 727 So.2d 905 (Fla. 1999), adopted the Liszka's court's recent interpretation of the law as it pertained to service of process on dissolved corporations following the 1990 revision to the Business Corporation Act.

In discussing the amendment of Florida Statute 48.101, the court stated:

> "[A]lthough the amendment did not become effective until May 30, 1997, see Ch. 97-230, Section 8, at 3990, Laws of Fla., we believe that the legislature merely clarified what the law had been, at least from the time the 1989 revision to the Business Corporation Act became effective."
>
> Id at 938

In fact, the preamble to Ch. 97-230, Laws of Florida reads in part as follows

> "An act relating to corporations ...amending s. 48.101 FS; clarifying service of process on certain corporations..."

(Emphasis added)

Inasmuch as Florida Statute 48.101 had remained unaltered for more than 30 years, the need for clarification clearly related to the legislature's prior intention that with the passage of Ch. 97-230, Laws of Florida, and the substantive changes made therein, no longer would service of process be effectuated upon a dissolved corporation by serving its board of directors in a capacity as trustees.

Mandating July 1, 1990 as the critical date for distinguishing between methods of service of process involving dissolved corporations, rather then merely making the amendment applicable to corporations dissolved after the effective date of the amendment, unequivocally demonstrates the legislature's intention to merely clarify what the law had been following the 1990 revision of the Business Corporation Act, rather than reflecting an intention to change the law.

As this court noted in State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickenson, 286 So.2d 529, (Fla. 1973), "[T]he mere change of language does not necessarily indicate an intent to change the law for the intent may be to clarify what was doubtful and to safeguard against misapprehension as to existing law."

In addition, an interpretation of the language of a statute that leads to an unreasonable result should not be adopted when, considered as a whole, the statute is

fairly subject to another construction that will aid in accomplishing the manifest intent and the purposes designed. Tampa-Hillsborough County Expressway Authority v. K.E. Morris Alignment Service, Inc., 444 So.2d 926 (Fla. 1983); City of Miami v. Romfh, 66 Fla. 280, 63 So. 440 (Fla. 1913).

Inasmuch as the legislature abolished the capacity of directors of dissolved corporations acting as trustees when it repealed section 607.301 in 1990 with Ch. 89-156, the continued interpretation by the Second District that section 48.101 mandates service of process upon a dissolved corporation be made upon one or more directors as trustee even though such a relationship no longer exists under Ch. 607, unavoidably leads to an illogical result, and should be disregarded.

In the case at bar, Mock Plumbing Contractor, Inc. was dissolved on October 11, 1991 (R. 227), and service of process was effectuated against it in accordance with Florida Statute 48.081(3). Although service of process was effectuated against Mock Plumbing Contractor, Inc. prior to the amendment of section 48.101, because the amendment was a mere clarification of what was already existing law following the changes to Chapter 607 in 1990, section 48.101, as amended, applies to the case at bar, and validates the method of service of process effectuated against Mock Plumbing Contractor, Inc. This, in turn, validates the monetary judgment against Mock Plumbing, and mandates that this court reverse the judgment of the Second District.

Regardless of whether the amendment of section 48.101 was a clarification of existing law or an actual change in the law, because Florida Statute 48.101 is a procedural statute, and the substance of the amendment of it was both procedural and remedial in nature, Florida Statute 48.101, as amended should be applied retroactively to the case at bar.

The general rule of statutory construction is that a substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but procedural or remedial statutes operate retrospectively. State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So.2d 55, 61 (Fla.1995) (citing Arrow Air, Inc. v. Walsh, 645 So.2d 422 (Fla.1994); Alamo Rent-A-Car Inc. v. Mancusi, 632 So.2d 1352 (Fla.1994); City of Lakeland v. Catinella, 129 So.2d 133 (Fla.1961)).

Whereas substantive statutes prescribe duties and rights, procedural statutes, on the other hand, concern the means and methods to apply and enforce those duties and rights. Alamo Rent-A-Car Inc. v. Mancusi, 632 So.2d at 1358. Furthermore, no one has a vested interest in any given mode of procedure. Walker & LaBerge, Inc. v. Halligan, 344 So.2d 239 (Fla. 1977).

Thus, inasmuch as the amendment of section 48.101 was remedial and procedural in nature, and since Mock Plumbing had no vested interest in any particular method of

service of process, no bar exists to the application of the amendment to the case sub judice.

Taking into consideration the effects of the substantive changes made to the Business Corporation Act by its overhaul in 1990, and applying section 48.101, as amended, to the case at bar mandates that this court approve the decisions of the Fourth District in Wong and the Fifth District in Liszka, and disapprove the decisions of the Second District in the case sub judice, and its progeny.

POINT II

THE DECISION OF THE SECOND DISTRICT DECLARING THE MONEY JUDGMENT AGAINST MOCK PLUMBING VOID AB INITIO WAS ERROR

.

Even assuming that Florida Statute 48.101, as amended, is inapplicable to the case at bar, and assuming that pre-amendment, Florida Statute 48.101 provided the sole and exclusive method upon which service of process is perfected against dissolved corporations (an argument which the Cannellas clearly do not embrace), a distinction must nevertheless be made between judgments that are void and those merely voidable.

A judgment entered without service of process is void. However, a judgment is merely voidable where the service or return is irregular or defective but actually gives the defendant notice of the action or proceeding. State v. Chillingworth, 171 So. 649 (Fla. 1937); Myrick v. Walters, 666 So.2d 249 (Fla. 2d DCA 1996); Craven v. J.M. Fields,

Inc., 226 So.2d 407, 410 (Fla. 4th DCA 1969).

In the case at bar, process was served upon Monica Mock, as registered agent of Mock Plumbing Contractor, Inc. Monica Mock was not merely the registered agent, she was also the President and sole shareholder of the company (R. 524).

Approximately 8 months after the Final Judgment was entered against it, Mock Plumbing filed a Motion To Vacate Default (R. 574). The very first ground set forth in the motion was that the company failed to file an answer through mistake, inadvertence or excusable neglect. By its own admission, Mock Plumbing admitted it received the process, knew it needed to file an answer but mistakenly or inadvertently forgot to do so. The motion even asserts that Mock Plumbing's counsel will be filing affidavits establishing such mistake, inadvertence or excusable neglect.

As the Second District stated in Estate of Bobinger v. Deltona Corp., 563 So.2d 739 (Fla. 2d DCA 1990), "[W]hen the appellants claim relief from defaults based on mistake, inadvertence or excusable neglect, they are essentially putting forth a claim in the nature of an avoidance of the default; thus we can infer that process was received". Id at 747.

At the deposition of Ted Mock, the father of Monica Mock, and Vice-President of Mock Plumbing, the following exchange took place between Auto-Owners's counsel and Mr. Mock. Although this deposition was not filed with the trial court, it was indexed as Item #16 in Auto-Owner's Appendix To Appellant's Initial Brief in Auto-Owners v.

Cannella, Appeal No. 97-641. This was Auto-Owner's first attempt at appealing the Partial Summary Judgment against it. The Second District subsequently dismissed that appeal as being premature.:

(Page 10 at line 15):

Mr. James: "Mr. Cannella in 1992 filed a complaint against Mock Plumbing Contractors, Inc. Do you recall personally ever receiving service of process in that case?

Mr. Mock: "No, I don't remember ever getting personal service on it, myself"

Mr. James: " All right. Do you ever recall--"

Mr. Mock: "I'm sure I've seen the document, if that's what you mean."

Later in the deposition the following exchange took place:

(Page 13 at line 10):

Mr. James: "Did you have an understanding as to whether you needed to respond either individually or on behalf of Mock Plumbing to any sort of legal process brought by the Cannellas?"

Mr. Mock: "I never felt that I had to after the bankruptcy, you know. I just never felt — you know, I figured that was the end of it you know."

Further, Mock Plumbing's motion maintains that any reasonable doubt in vacating the default should be resolved in favor of granting the motion and <u>allowing an adjudication on the merits</u>. (Emphasis added). This language clearly indicates that Mock

Plumbing acknowledged that it was subject to the jurisdiction of the court, and in fact requested the court in furtherance of that jurisdiction to adjudicate the merits of the action.

Thus, at worst, the judgment rendered against Mock Plumbing was merely voidable and not void. This Court in State v. Chillingworth,, 171 So. 649 (Fla. 1937), noted that service which is irregular or defective but gives the defendant actual notice of the proceedings against him confers jurisdiction upon the court of the person summoned so that the judgment based upon it is voidable only and not void and cannot be collaterally attacked. (Emphasis added).

At no time has any action by Mock Plumbing resulted in an adjudication by any court that the judgment was voidable, and by timely objection, thus void.

The judgment at worst was merely voidable. Mock Plumbing failed to obtain an adjudication that the judgment was indeed voidable due to defective service of process. Upon the holding of this court in State v. Chillingworth,, the judgment remains valid and enforceable, and cannot now be collaterally attacked by Auto-Owners.

That being so, then of course, the holding of the Second District in the case at bar allowing Auto-Owners to collaterally attack the judgment as being void for lack of personal jurisdiction is in error, and must be reversed.

POINT III

THE DECISION OF THE SECOND DISTRICT VIOLATES THE CANNELLAS' RIGHT OF ACCESS TO COURTS UNDER ARTICLE 1, SECTION 21, FLORIDA CONSTITUTION

The foregoing notwithstanding, there is an additional basis for rejecting the Second District's ruling that the Mock Plumbing judgment is void for failure to effectuate service of process in accordance with the pre-amended version of chapter 48.101.

Application of the Second District's holding results in an unconstitutional denial of access to courts in violation of Article 1, Section 21, of the Florida Constitution. Unlike the Second District's cases in Polk County and Stoeffler, in the case at bar Mock Plumbing Contractor, Inc. did not have any directors upon which service of process could have been effectuated.

In an affidavit executed by Monica Mock, she attests that during the period from July 8, 1990 to October 24, 1991, (the latter date being the date the bankruptcy file was closed and the corporation officially defunct) she was the sole shareholder of Mock Plumbing Contractor, Inc. She further attests that from July 8, 1990 to December 4, 1990, (the latter date being the date the company filed for bankruptcy) Mock Plumbing Contractor, Inc. had no directors, and none were appointed following the filing for Chapter 7 liquidation. (R. 524).

This affidavit is fully supported by Mock Plumbing Contractor, Inc.'s last

Corporate Annual Report (R. 323-324), and the Statement of Financial Affairs (R. 298,303) filed in the bankruptcy court. The names and addresses of all directors were required by law to be listed in both of these documents. However, neither of these documents lists any such persons. In addition, each of the documents was sworn to be true by an officer of the company, under penalty of perjury.

Interestingly, corporate information maintained by the Secretary of State for a previously formed, but different corporation with a similar name (Mock Plumbing Corporation) operated by the Mock family shows director designations for two Mock family members. (R. 326). Clearly the Mock family understood the legal requirements and methodology of designating those persons who were directors, as well as the legal distinction between directors and other corporate officeholders.

To mandate that the Cannellas could only effectuate service of process upon Mock Plumbing Contractor, Inc. by serving its directors as trustees when in fact there were no directors would be an unconstitutional violation of the Cannellas' right of access to courts under Article 1, Section 21 of the Florida Constitution. Article I, section 21, expressly provides that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The right to go to court to resolve our disputes is one of our fundamental rights. A review of the history of the provision demonstrates the courts' intention to construe this right liberally in order

to guarantee broad accessibility to the courts.

In Kluger v. White, 281 So.2d 1 (Fla.1973), this court announced the following test as a means of assessing whether a particular statute may be deemed violative of the access to courts provision: If a right of access to courts for redress of an injury has been provided by statute before the Declaration of Rights of the Florida Constitution was adopted, or if such right has become a part of the state's common law, the legislature cannot abolish such right without providing a reasonable alternative, unless the legislature is able to show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown. Id. at 4.

There can be little argument but that an action for damages allegedly caused by another's negligence, as exists in this case, is a right of redress guaranteed by Article 1, Section 21. On the other hand, it would be very difficult to assert a valid argument that there is an overpowering public necessity for requiring that service of process upon dissolved corporations only be effectuated upon its directors as trustees, and no one else.

Thus, as applied to the particular facts of this case, to require the Cannellas, as a condition precedent to obtaining redress for their injuries, to effectuate service of process upon nonexistent corporate directors in their capacity as trustees, would be violative of Article 1, Section 21 of the Florida Constitution. Therefore, the decision of the Second District must be reversed.

CONCLUSION

The decisions of the Fifth District in Liszka, and the Fourth District in Wong properly reconciled the clarifying amendment of Fla. Stat. 48.101 with the current Corporation Act. In so doing, the courts correctly recognized the legislature's intent that with the substantive changes it made to the Corporation Act regarding dissolved corporations, it no longer intended service of process upon directors as trustees of dissolved corporations as a proper method of effecting service of process.

Not only do these decisions properly follow the legislature's intent, but they avoid the illogical result of requiring a director of a dissolved corporation be served in a capacity which the legislature has already abolished. Therefore, the decisions of the Fourth and Fifth Districts should be approved, and the decision of the Second District and its progeny disapproved.

In addition, in the case sub judice the underlying judgment against Mock Plumbing was at worst merely voidable, and not void ab initio, and thus not subject to collateral attack by Auto-Owners. That being so, then the decision of the Second District declaring the judgment void cannot stand.

Lastly, application of the decision of the Second District to the case at bar results in an impermissible violation of Article 1, Section 21, of the Florida Constitution by requiring the Cannellas to effect service of process upon non-existent directors of Mock Plumbing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to A. Wade James, Esq., 216 Mirror Lake Drive, St. Petersburg, Fl., 33701, and to Jeffrey W. Pearson, Esq., 1519 Dale Mabry Hwy., , Ste. #100, Lutz, Fl., 33549, this ___ day of October, 1999.

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