

**IN THE
SUPREME COURT OF FLORIDA**

COLBY MATERIALS, INC.,)	Appeal from the Fifth
a Florida corporation,)	District Court of Appeal
)	No. 5D02-3657
Petitioner,)	
)	There Heard on Appeal
vs.)	from the Circuit Court
)	of the Fifth Judicial
CALDWELL CONSTRUCTION,)	Circuit, Citrus County
INC., a Florida corporation,)	
)	The Honorable Richard
Respondent.)	Howard, Judge Presiding

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CASES AND CITATIONS

Article I, sec. 22, Constitution of Florida

North Shore Hospital, Inc. vs. Barber, 143 So.2d 849 (Fla. 1962)

Torrey vs. Leesburg Regional Medical Center, 769 So.2d 1040 (Fla. 2000)

ARGUMENT

It remains undisputed in this case that, upon the service of the underlying trial court complaint and summons, the Petitioner (Defendant below) timely filed with the court and served upon opposing counsel a responsive pleading--- two of them actually--- both denying any liability, as well as challenging Plaintiff's pleadings.

The face of the record in this cause shows that, immediately upon the filing of a motion merely questioning the validity of his *pro-se* pleadings, the president of the Petitioner instantly engaged counsel to represent the Petitioner further. This is fully in keeping with the law confirmed by this Court in North Shore Hospital, Inc. vs. Barber, 143 So.2d 849 (Fla. 1962). The Petitioner cannot possibly be found to be the "dilatory or procrastinating defendant" described by this Court in North Shore as previously referenced in Petitioner's Initial Brief on the Merits.

By refusing to allow counsel for the Petitioner to file amended pleadings and confirming the default against Petitioner, the trial court denied Petitioner its fundamental civil right of a trial by jury as enunciated in, and protected by, Article I, sec. 22, of the Constitution of Florida. There had been no delay, or any claim of delay, in the administration of justice in this case. In fact, the trial court entered judgment based upon its default against Petitioner slightly more than two months after the filing of the action. Now, well over two years later, this Court will consider whether either or both the circuit court and the district court have delayed the administration of justice sought by the Petitioner.

By upholding the trial court and the Default Judgment entered against this Petitioner, the Fifth District embarked upon a path which was contrary to its own prior decisions and further conflicted with this Court's holding in Torrey vs. Leesburg Medical Center, 769 So.2d 1040 (Fla. 2000).

CONCLUSION

The opinion of the district court in this case runs counter to this Court's authority in Torrey and North Shore Hospital, and should be overturned. This Court should reverse the February 20, 2004, opinion of the Fifth District Court of Appeal and require the Fifth District to return this matter to the trial court below for further proceedings consistent with the opinion of this Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief has been prepared in compliance with the font requirement of Florida Rules of Appellate Procedure 9.210.

CLIFFORD M. TRAVIS, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to MICHAEL D. SECHREST, ESQ., 5203 SW 91st Ter., Ste, D, Gainesville, FL 32608, Attorney for Respondent, Caldwell Construction, Inc., by U.S. Mail and facsimile this _____ day of Feb., 2005.

CLIFFORD M. TRAVIS, ESQUIRE