

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC15-977
FOURTH DCA CASE NO.: 4D14-3049
L.T. No.: 502010CA009707XXXXMB

JBK ASSOCIATES, INC., f/k/a
COASTAL INSULATION, INC.

Appellant,

v.

SILL BROS., INC., PATRICK T. SILL,
STEPHEN D. SILL, LISA D. SILL, and
BARBARA H. SILL,

Appellees.

APPELLANT'S JURISDICTIONAL BRIEF

UPON PETITION FOR DISCRETIONARY REVIEW OF A DECISION
RENDERED BY THE FOURTH DISTRICT COURT OF APPEAL

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KEY TO ABBREVIATIONS USED IN THIS BRIEF

“App. ____ ” refers to the specified page in the Appendix on Appeal.

“JBK” refers to Appellant JBK Associates, Inc., f/k/a Coastal Insulation, Inc.

“Sill” refers to Appellee Patrick T. Sill.

STATEMENT OF THE CASE

This Court has discretionary jurisdiction to review the decision of the Fourth District Court of Appeal because it expressly construed Florida's Homestead Exemption under Article X, Section 4 of the Florida Constitution. See, Art. V, § 3, Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(ii) ("The discretionary jurisdiction of the supreme court may be sought to review (A) decisions of the district courts of appeal that ... (ii) expressly construe a provision of the state constitution..."). More specifically, the Fourth District Court of Appeal affirmed the trial court's decision to dissolve a writ of garnishment over funds that were obtained from the sale of a former residence, and subsequently invested into unprotected securities that generated interest and dividends.

STATEMENT OF FACTS

In 2010, JBK obtained a judgment against Sill, after he reneged on a contract and refused to satisfy a promissory note that he had executed to purchase JBK's business. App. 3. On or about January 30, 2014, in support of its collection efforts, JBK obtained four (4) Post Judgment Writs of Garnishment against Sill. *Id.* In turn, Sill filed four (4) separate motions to dissolve those Writs. *Id.* The trial court granted Sill's Motion to Dissolve the Writ of Garnishment only as to Sill's Wells Fargo Advisors Homestead Account based upon the application of the Florida Homestead Exemption and this Court's decision in *Orange Brevard Plumbing & Heating Co. v. La Croix*, 137 So.2d 201 (Fla. 1962). *Id.* at 4; Art. X, § 4, Fla. Const.

The Fourth District Court of Appeal affirmed the trial court's decision and crystalized the issues on appeal along with its holding, as follows:

[a] judgment debtor segregated his portion of the proceeds of the sale of his homestead in a brokerage account, where he purchased mutual funds and unit investment trusts. A judgment creditor seeks to reach that portion of the debtor's proceeds arguing that these types of investments forfeited the debtor's homestead protection. We hold that the debtor's investments were not so incompatible with the purpose of homestead that the protected status of the sale proceeds was destroyed.

App.3.

JBK now seeks this Court's discretionary review of the Fourth District Court of Appeal's decision under Art. V, § 3, Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(ii).

ARGUMENT

The Florida Constitution provides that the Florida Supreme Court “[m]ay review any decision of a district court that ... expressly construes a provision of the state or federal constitution....” Art. V, § 3, Fla. Const. Likewise, Florida Rule of Appellate Procedure 9.030(a)(2)(A)(ii) provides that “[t]he discretionary jurisdiction of the supreme court may be sought to review (A) decisions of district courts of appeal that ... (ii) expressly construe a provision of the state or federal constitution....” As explained in *Bd. of County Com'rs of Dade County v. Boswell*, 167 So.2d 866, 867 (Fla. 1964), in order to construe a provision of the state constitution, a decision must “undertake to explain or define the constitutional language.”

This Court has discretionary jurisdiction to hear this action pursuant to Art. V, § 3, Fla. Const. and/or Fla. R. App. P. 9.030(a)(2)(A)(ii) because the Fourth District Court of Appeal expressly construed Florida’s Homestead Exemption, as established by Article X, Section 4 of the Florida Constitution. The Fourth District Court of Appeal’s decision “address[ed] JBK's argument that Sill lost the homestead protection of the proceeds from the sale of the marital home because he purchased securities with a portion of the money.” App. 4. In short, the Fourth District explained its decision of affirming the application of the Homestead

Exemption by writing that “[t]he investment in securities was not so inconsistent with the purposes of homestead that the funds lost their protected status.” *Id.*

In the seminal case of *Orange Brevard Plumbing & Heating Co. v. La Croix*, 137 So.2d 201, 203 (Fla. 1962), this Court considered a related question: “whether the exemption of homestead property from forced sale ... extends also to the proceeds of a voluntary sale of a homestead when it is intended in good faith that such proceeds are to be reinstated in a new homestead.” In explaining the basis for its jurisdiction, this Court noted that in entering an order dissolving a writ of garnishment based upon the Florida Homestead Exemption, the trial court had “construed a controlling provision of the Constitution....” *Id.* at 202. Although at the time of *Orange Brevard* this Court’s jurisdiction over such issues was exclusive¹, the rationale for this Court’s jurisdiction remains the same: the Fourth District Court of Appeals decision in the instant case construed a controlling provision of the Constitution when it decided to extend the Homestead Exemption to funds that were obtained from the sale of a former residence, and subsequently invested into unprotected securities that generated interest and dividends.

¹ In 1980, Fla. R. App. P. 9.030 was amended, changing the Supreme Court’s jurisdiction from mandatory to discretionary when a district court construes a provision of the State or Federal Constitutions.

CONCLUSION

Based upon the foregoing argument and authorities, Appellant JBK respectfully requests that this Court exercise its discretionary jurisdiction under Art. V, § 3, Fla. Const. and/or Fla. R. App. P. 9.030(a)(2)(A)(ii) to review the Fourth District Court of Appeal's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 9.210

I hereby certify that the font type and size of this brief complies with the requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy hereof was provided this 3rd day of June, 2015 via **E-mail** to: **Les Osborne, Esquire**, Rappaport Osborne & Rappaport PL, counsel for Patrick Sill, 1300 N. Federal Highway, Suite 203, Boca Raton, Florida 33432 (office@rorlawfirm.com).

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