

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC06-843

Lower T.C. Case No. 3D04-872

Fla. Bar No. 137172

U.S. HOLDINGS, INC.,

Petitioner,

vs.

ANTOINIER BELANCE and
PAULETTE BELANCE, his wife,

Respondents.

BRIEF AND APPENDIX OF RESPONDENTS
IN OPPOSITION TO JURISDICTION

(Conflict Certiorari)

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I.

INTRODUCTION

The Respondents, Antoinier Belance and Paulette Belance, his wife, were the Plaintiffs in the trial court and were the Appellees in the Third District. The Petitioner was the Defendant/Appellant. In this brief of Respondents, the parties will be referred to as the Plaintiffs and the Defendant and, alternatively, by name. The symbol “A” will refer to the Appendix accompanying this brief. All emphasis has been supplied by counsel unless indicated to the contrary.

II.

STATEMENT OF THE CASE AND FACTS

The facts of this case, as they relate to the single (jurisdictional) issue before the Court, are neither complex nor lengthy and are found within the four corners of the Third District’s opinion:

* * *

“In 1997, Antoinier Belance was seriously injured when he fell through a skylight of the building that his employer, U.S. Foundry and Manufacturing Corporation (“Foundry”), leases from Holdings. At the time of the accident, Foundry was the wholly owned subsidiary of Holdings; Holdings served as Foundry’s self-insured workers’ compensation carrier providing workers’

compensation benefits to Foundry's employees; and Holdings was Foundry's safety consultant. The plaintiffs, Mr. Belance and his wife, Paulette Belance, filed a premises liability negligence action against Holdings in its capacity as the owner of the building. Holdings moved for final summary judgment, asserting that pursuant to section 440.11(3), Florida Statutes (1997), it was entitled to workers' compensation immunity because it served as Foundry's safety consultant and self-insured workers' compensation carrier. The trial court denied Holdings' motion for summary judgment, finding that, as a matter of law, Holdings was not entitled to the statutory immunity found in section 440.11(3).

Holdings contends that the trial court erred by denying its motion for summary judgment. We disagree.

Section 440.11(3), Florida Statutes (1997), provides in part as follows:

An employer's workers' compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer's rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers' compensation or employers' liability coverage or to the workers' compensation or employer's liability servicing contract....

As Holdings admits, it has 'worn three hats': 1) as the owner of the allegedly defective and dangerous property;

2) as the safety consultant for Foundry, Mr. Belance's employer; and 3) as Foundry's self-insured workers' compensation carrier. Had Mr. Belance sued Holdings in its capacity as the employer's safety consultant or worker's compensation carrier, we would agree that pursuant to section 440.11(3), Holdings would be immune from tort liability. However, Holdings was not sued in either of these capacities. Rather, it was sued in its capacity as the owner of the allegedly defective and dangerous premises. Thus, Holdings' reliance on section 440.11(3) is misplaced as section 440.11(3) does not grant immunity to property owners.

* * *

(A.2, 3)

Having reached its own, independent conclusion that Section 440.11(3), Fla. Stat. (1997) did not, as a matter of law, immunize the Defendant, the Third District then stated that the conclusion it reached:

“... is further supported by the Florida Supreme Court's decision in *Deen v. Quantum Resources, Inc.*, 750 So.2d 616 (Fla. 1999)...” (A.2)

Acknowledging that the subject case and DEEN involved different subsections in Chapter 440, the Court concluded:

“... that the holding and reasoning in *Deen* are dispositive, and accordingly, affirm the trial court's order denying Holdings' motion for summary judgment...” (A. 4).

In this proceeding the Defendant argues “conflict” with DEEN and asserts:

“... the Third District's ruling is wrong on the merits and

has become a source of confusion for the lower courts and the personal injury and worker's compensation bar. This Court should accept review and provide guidance for the bench and bar in the numerous similar lawsuits that are bound to arise as a result of the Third District's decision." *See:* Brief of Defendant, at page 1.

First, although perhaps not foremost, the Defendant's musings regarding the effect of the Third District's opinion in this case having (in such a short period of time) become a "source of confusion for the lower courts and the personal injury and workers' compensation bar" is suspect to say the least. The Defendant's assertion is without record citation, case authority, or support in any way, shape or form. More importantly, the Third District's opinion follows DEEN which is crystal clear in its holding, remains unchallenged since its rendition, and appears to not be a source of "confusion" anywhere! Apparently no Court since DEEN, nor the trial court nor the District Court in this case have been confused by the language in DEEN, to wit:

"... the legal status of the 'carrier' and of the landowner are independent of one another and do not interact in any manner. The alleged acts of negligence for which FP&L is being sued here are in its capacity as the landowner and are not affected by its 'carrier' immunity..." 750 So.2d at pages 621 and 622.

Second, and more importantly, because there exists nothing on the face of the subject opinion to suggest it conflicts with any other Florida case and further because the opinion of the Third District is totally consistent with the holding and reasoning in DEEN, it should be found here that there is no conflict.

III.

SUMMARY OF ARGUMENT AND STANDARD FOR REVIEW

This Court would have jurisdiction only if the Third District had applied a recognized rule of law to reach a conclusion that conflicted with another case involving substantially the same controlling facts, or if the Third District had announced a rule of law that was not in harmony with prior announcements. H.R.S. v. NATIONAL ADOPTION COUNSELING SERVICE, INC., 498 So.2d 888 (Fla. 1986). The subject opinion announces no new rule of law. The opinion examined the Plaintiffs' pleadings, concluded that the Plaintiffs filed a premises liability negligence action against Holdings in its capacity as the owner of the building and affirmed the trial court's denial of the Defendant's motion for summary judgment [noting that Defendant's reliance on Section 440.11(3) was misplaced as it did not grant immunity to property owners when obligations

undertaken (under a lease) are negligently performed and cause injury]. Because it is the Defendant, not the Third District, which ignores precedent from this Court, precedent which is well settled and totally consistent with the opinion rendered herein, it should be found there is no conflict.

IV.

ARGUMENT AND STANDARD FOR REVIEW

The Third District concluded, after acknowledging the Defendant's admissions that it has, in this case, "worn three hats" and that it was sued solely in its capacity as the owner of the allegedly defective and dangerous premises (A.3), that:

"... Holdings' reliance on section 440.11(3) is misplaced as section 440.11(3) does not grant immunity to property owners..." (A.3).

The foundation for the Court's assertion arises from recognition of long standing Florida law, as repeatedly announced by this Court, *See: A.R. DOUGLAS, INC. v. MCRAINEY*, 137 So. 157 (Fla. 1931); *FLORIDA DEPARTMENT OF REVENUE v. NEW SEAESCAPE CRUISES, LTD.*, 894 So.2d 954 (Fla. 2005); and *STATE FARM v. NICHOLS*, 31 FLW S358 (Fla. 2006), that, where a statute is free from ambiguity, courts must follow its plain meaning:

“... when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning... (citations omitted)” 31 FLW at S359.

In accord: MILLER v. SCOTTSDALE INSURANCE CO., 31 FLW S310 (Fla. 2006) wherein this Court reminded:

“... we are ‘without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.’ (Citations omitted)...” 31 FLW at S310.

Section 440.11(3), Fla. Stat. (1997) applies herein and provides, in part, as follows:

* * *

“An employer’s workers’ compensation carrier, service agent, or safety consultant shall not be liable as a third-party tortfeasor for assisting the employer in carrying out the employer’s rights and responsibilities under this chapter by furnishing any safety inspection, safety consultative service, or other safety service incidental to the workers’ compensation or employers’ liability coverage or to the workers’ compensation or employer’s liability servicing contract...”

* * *

(A.3)

There exists no legislative intention expressed therein that a property owner is to be immunized when obligations it undertakes under a lease are negligently performed and causes injury. Defendant was not sued for “assisting the employer...” It goes without saying that if Plaintiffs’ trial evidence implicates duties other than those arising from the ownership of property, such evidence may well fall within the parameters of the compensation immunity. However, given the statute as written, there exists no conflict with DEEN or any other Florida case. The trial court was correct in denying the Defendant’s motion for summary judgment because the Defendant, sued in its capacity as a property owner, was not entitled, as a matter of law, to compensation immunity.

Lastly, it may fairly be stated that DEEN does implicate Sections 440.02(3), Section 440.11(1), and Section 440.11(4), Fla. Stat. as opposed to the subsections here. However, in DEEN this Court found:

“...no merit in *FP&L*’s argument that its status as an insurance carrier renders it immune from Deen’s negligence suit...” 750 So.2d at page 622.

This Court reached said conclusion, finding FP&L was not entitled to workers’ compensation immunity under Chapter 440 because:

“... it is both a ‘carrier,’ with the rights and responsibilities as such, and a landowner, with its attendant rights and responsibilities. The legal status of the ‘carrier’ and of the landowner are independent of one another and do not interact in any manner. The alleged acts of negligence for which FP&L is being sued here are in its capacity as the landowner and are not affected by its ‘carrier’ immunity...” 750 So.2d at pages 621 and 622.

No more precise or dispositive language can be found than that already spoken by this Court in DEEN. The Third District approved it, adopted it and followed it. Consequently, it should be found that the instant cause does not conflict with DEEN, supra.

For the stated reasons, discretionary review should be denied.

V.

CONCLUSION

Based upon the foregoing reasons and citations of authorities, the subject request for discretionary review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief and Appendix of Respondents in Opposition to Jurisdiction was mailed to the following counsel of record this 12th day of June, 2006.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Brief was prepared in accordance with the rule requiring 14 point Times New or 12 point Courier New.

Arnold R. Ginsberg

APPENDIX

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