SUPREME COURT OF FLORIDA

DARLENE EASTERDAY, etc.

Petitioner

vs.

FRANK MASIELLO, et. al.,

Respondents

Case No: 70,082

Fourth DCA Case No: 4-86-0562

REPLY BRIEF OF PETITIONER

TOMBERG & TOMBERG, PA
626 SE Fourth Street
P O Drawer EE
Boynton Beach, FL 33435
(305) 737-1345
(305) 732-6488

BY:________________________________

For the Firm
Florida Bar No: 241180

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SUMMARY OF ARGUMENT

The Slavin v. Kay doctrine should be reversed. The Respondents have not provided sufficient legal bases to demonstrate that Slavin should be viable. Issues of proximate cause are for the jury to decide, not the judge.

The Answer Brief filed on behalf of Reynolds, Smith and Hill, the engineers, through their counsel, never addresses the issue of their duty of care. It simply indicates that Slavin should remain as a bar to recovery, not in the absence of proximate cause, but in a situation where they claim an extensive duty to the owner. This is not a situation where the defect as been clearly discovered by the owner, but should be discoverable by the owner, assuming the owner reviews all the plans. This is not in conformity with generally accepted practices whereby the owner relies to a great extent, especially in a situation that involves a complex structure such as a jail, with its nuances and numerous rules and regulations from various entities regarding the conduct and standards for construction. There is not an owner's duty to be familiar with the South Florida Building Code, Southeast Regional Building Code or the various electrical, heating, air conditioning and plumbing requirements, but it is the duty of the architect and engineer.

To say that the architect and engineers can be relieved of liability and responsibility in a first-instance case under all circumstances when the structure is completed is certainly not in conformity with the general posture and philosophy of the Courts of Florida. Nor does the concern of the Statute of Repose address the grievances herein. Under the facts of this case, it should not, as a matter of law, be denied that the knowledge of the owner is equal to the technical knowledge of the architect and engineers.

The purpose of a jury is to determine whether or not the defect, which is clearly within the obligations, duties and re-

sponsibilities of the architects and engineers to obviate, was a proximate cause to injury. The architects and engineer can certainly third-party the Sheriff's Office and claim the Sheriff's Office failed to inspect or discover this patent defect. The jury should decide which of several defendants should be liable for the onus of providing reasonable compensation. Slavin clearly prohibits this, and it is clearly contrary to the public policy that has been enunciated by this Court since Hoffman v. Jones.

This is not a situation where the defect has been discovered and should have been corrected by the owner, but rather a situation where the owner is going to claim, and has in fact claimed in this litigation, that the defect was not discoverable; therefore, the trier of fact should determine whether or not it was an open and obvious defect that the possessor of the jail, specifically the Sheriff, should have discovered and corrected or whether or not it was a defect, although obvious, latent by nature based upon the representations of the architects and engineers that they had complied with all the material code requirements imposed upon them as architects and engineers. Slavin prohibits the jury from making this determination. As a result, it is bad law and should be overturned. The jury, not the Court, should make this decision.

For the foregoing reasons, the Slavin v. Kay doctrine should be reversed.

I HEREBY CERTIFY that a true copy of the foregoing was sent by mail this 27th day of May 1987 to:

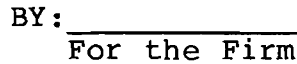
Winslow D. Hawkes, III, Esquire
P O Drawer 15700
West Palm Beach, FL 33416

Joseph W. Downs, III, Esquire
Pamela A. Chamberlin, Esquire
2700 Southeast Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2395

Charles J. Kahn, Esquire
226 South Palafox Street
P O Box 11308
Pensacola, FL 32581

Glenn Mitchell, Esquire
2001 Palm Beach Lakes Boulevard
Suite 502
West Palm Beach, FL 33409

TOMBERG & TOMBERG, PA
626 SE Fourth Street
P O Drawer EE
Boynton Beach, FL 33435
(305) 737-1345
(305) 732-6488

BY: 
For the Firm