

IN THE SUPREME COURT
STATE OF FLORIDA

FILED
SID J. WHITE

SEP 17 1987

ENVIROGENICS SYSTEMS COMPANY,
a Delaware corporation,

Appellant, Petitioner

vs.

CITY OF CAPE CORAL, FLORIDA,
a Municipal corporation,

Appellee, Respondent

CLERK, SUPREME COURT

By _____
Deputy Clerk
Supreme Court
Case No. _____

71,096

District Court
Case No. 86-2031

WATER SERVICES OF AMERICA, INC.,
A Wisconsin corporation,

Appellant, Petitioner

vs.

THE CITY OF CAPE CORAL, FLORIDA,

Appellee, Respondent.

Supreme Court
Case No. _____

District Court
Case No. 86-2045

BRIEF ON JURISDICTION OF APPELLEE/RESPONDENT

CITY OF CAPE CORAL

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PREFACE

The appellee is the respondent and the appellants are the petitioners. The appellee-respondent shall be referred to as "Cape Coral" and the appellants-petitioners shall be referred to as "Envirogenics" and "Water Services," respectively.

The following symbol will be used:

A. - Appendix

QUESTION PRESENTED

Whether the decision of the Second District Court of Appeal is expressly and directly in conflict with the decision of the First District Court of Appeal in Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc. with respect to the statutory interpretation of the exemption set forth in Section 489.103(1), Florida Statutes (1983)?

SUMMARY OF ARGUMENT

The decision of the Second District Court of Appeal in this case does not expressly or directly conflict with the same issue of law on the interpretation of Florida Statutes, Section 489.103(1), with a decision rendered by the First District Court of Appeal in Wood-Hopkins Contracting Company v. Roger J. Au & Son, Inc., 354 So.2d 446 (Fla. 1st DCA 1978). The Second District Court of Appeal has provided a detailed, exhaustive statutory interpretation of Section 489.103(1), Florida Statutes, with respect to whether an exemption exists for contractors performing work on utilities. The Wood-Hopkins case provides a generalization without comprehensive analysis of the exemption for all contractors on utility projects. Accordingly, the Wood-Hopkins Court was not squarely presented with the same question as the present Court, although its opinion does espouse to the interpretation argued by the Appellants. This Court need not exercise its discretionary jurisdiction because the decision of the Second District Court of Appeals resolves the meaning of the exemptions as set forth in Section 489.103(1), Florida Statutes, by virtue of the indepth analysis provided by the Court.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS NOT EXPRESSLY AND DIRECTLY IN CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN WOOD-HOPKINS CONTRACTING CO. V. ROGER J. AU & SON, INC., ON THE STATUTORY INTERPRETATION OF THE EXEMPTION FOR CONTRACTORS UNDER SECTION 489.103(1) BECAUSE WOOD-HOPKINS WAS NOT SQUARELY PRESENTED WITH THE SAME QUESTION OF LAW.

In the present case, the Second District Court of Appeal was presented with a question of statutory construction with respect to whether appellant required a license as a general contractor under Chapter 489, Florida Statutes (1983), or was exempt from the licensing requirements by virtue of Section 489.103(1), Florida Statutes. The section interpreted by the Second District Court of Appeal reads as follows:

489.103 Exemptions. - This act does not apply to:

(1) Contractors in work on bridges, roads, streets, highways, railroads, or utilities and services incidental thereto.

The Second District Court of Appeal found that the word "utilities" did not constitute a separate category for an exemption of a contractor like the category of, ". . . bridges, roads, streets, highways, and railroads." The statutory interpretation offered by the Second District Court of Appeal dealt with Section 489.103(1) and how this exemption was interrelated with Section 489.103(5) which granted an exemption to, "Public utilities on construction, maintenance, and development work performed by their employees, which work is incidental to their business." The Court interrelated these sections and determined that,

If Section 489.103(1) were meant to be constructed as appellants argue, to exempt all utilities, it would not have been necessary to include Section 489.103(5), which exempts public utilities in regard to construction, maintenance, and development work performed by their own employees.

The present case is far reaching when compared to the Wood-Hopkins case because Wood-Hopkins only provided a conclusion on the exemption granted to contractors under 489.114(1) (the predecessor of 489.103(1)) without providing a detailed statutory interpretation as was applied by the Second District Court of Appeal. Wood-Hopkins merely provided a cursory review of 489 Florida Statutes, Section 468.114, and concluded in a footnote that Florida Statute, Section 468.114(1), "expressly exempts 'contractors in work on . . . utilities and services incidental thereto' from registration." Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc., 354 So.2d 446, 448 (Fla. 1st DCA 1978). Accordingly, the reasonable conclusion to be drawn from a review of Wood-Hopkins is that the Court never exhaustively reviewed the exemption requirements under Section 468.114 because it never noticed 468.114(6) which is almost identical to 489.103(5) which exempts public utilities on certain construction and maintenance work performed by their employees.

In the present case, the Second District Court of Appeal stated that,

. . . we also realize that we are, or may be, in conflict with Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc., 354 So.2d 446 (Fla. 1st DCA 1978). While it appears from Wood-Hopkins that the Court there was not squarely presented with this question, the Opinion does espouse the interpretation argued by appellants here.

Accordingly, the Second District Court of Appeal realized that Wood-Hopkins did not provide the detailed statutory interpretation as it did in providing the statutory interpretation of Section 489.103(1), and as such, the decision of the Second District Court of Appeal is not expressly and directly in conflict with the decision of the First District Court of Appeal since the question of law was not squarely addressed.

CONCLUSION

By reason of the review of the Second District Court of Appeal statutory interpretation of Section 489.103(1) when compared to the limited analysis made by the First District Court of Appeal in Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc., 354 So.2d 446 (Fla. 1st DCA 1978), it is apparent that the First District Court was not squarely presented with same question, and as such, this Court should not exercise its discretionary jurisdiction.


Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing BRIEF ON JURISDICTION OF APPELLEE/RESPONDENT CITY OF CAPE CORAL, has been furnished by regular United States mail to George H. Knott, Esquire, Humphrey, Jones & Myers, P.A., Envirogenics Systems Company, 1625 Hendry Street, Suite 301, Fort Myers, FL 33901 and Enrique Arroyo, Esquire, Arroyo & Arroyo, P.A., Water Services of America 1550 Madruga Avenue, Suite 230, Coral Gables, FL 33146, on this 16th day of September, 1987.



William M. Powell
City Attorney