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APR 10 1992

CLERK, SUPREME COURT

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IN THE SUPREME COURT
IN AND FOR THE STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO. 79,449

FAMILY BANK OF HALLANDALE, etc.

Respondent.

_____ /

BRIEF OPPOSING JURISDICTION BY
FAMILY BANK OF HALLANDALE

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TABLE OF CONTENTS

Table of Citations	ii
Statement of the Case	1
Summary of Argument in Opposition to Jurisdiction	2
Argument in Opposition to Jurisdiction	3
I. The First District's holding that the warrant at issue was a negotiable instrument under the Uniform Commercial Code as adopted in 1965 does not conflict with this court's 1926 decision in Town of Bithlo . . .	3
II. The First District's holding that interest is payable on contractual obligations of the state does not conflict with Broward County v. Finlayson or other decisions of this court	4
III. The First District's decision does not conflict with Beverly or Richey, which expressly recognize that Attorney General opinions are not binding on the courts	6
Conclusion	8
Certificate of Service	9

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212 (Fla. 1985)	5
Beverly v. Division of Beverages, 282 So.2d 657 (Fla. 1st DCA 1973)	7
Brooks v. School Board, 419 So.2d 659 (Fla. 5th DCA 1982)	5
Broward County v. Finlayson, 555 So.2d 1211 (Fla. 1990)	4
Dade County v. American Re-Insurance Co., 467 So.2d 414 (Fla. 3d DCA 1985)	5
Department of Health and Rehabilitative Services v. Boyd, 525 So.2d 432 (Fla. 1st DCA 1988)	5
Florida Livestock Board v. Gladden, 86 So.2d 812 (Fla. 1956)	4
Florida Steel Corp. v. Adaptable Developments, Inc., 503 So.2d 1232 (Fla. 1986)	5
Kissimmee Utility Authority v. Better Plastics, Inc., 526 So.2d 46 (Fla. 1988)	5
Leadership Housing, Inc. v. Department of Revenue, 336 So.2d 1239 (Fla. 4th DCA 1976)	7
Metropolitan Dade County v. Bouterse Perez & Fabregas Architects Planners, Inc., 463 So.2d 526 (Fla. 3d DCA 1985)	5
Richey v. Town of Indian River Shores, 337 So.2d 410 (Fla. 4th DCA 1976)	7
Town of Bithlo v. Bank of Commerce, 110 So. 837 (Fla. 1926)	4
Treadway v. Terrell, 117 Fla. 838, 158 So. 512 (1935)	4

Table of Citations cont'd

Florida Statutes

§ 17.13	6
§ 673.105(1)(g)	3
§ 673.413(1)	6
§ 673.104(1)	3
§ 673.104(1)(a)	3
§ 673.104(1)(b)	3
§ 673.104(1)(c)	3
§ 673.104(1)(d)	3

Other

Article 3 of the Uniform Commercial Code	3
J. White & R. Summers, Handbook of the Law under the Uniform Commercial Code § 13-6 at 498 (2d ed. 1980)	6
Uniform Commercial Code Comment 4 to § 3-104	3
Uniform Commercial Code Comments to § 3-105	3

Statement of the Case

On February 5, 1987, the State of Florida ("the state") issued a state warrant for \$16,932 payable to "Teds Sheds." The warrant was endorsed by Teds Sheds and deposited to its account at the respondent bank on February 12, 1987. The bank accepted the warrant in good faith and without any knowledge of any dispute or alleged irregularity concerning the warrant.

On February 19, 1987, the state issued a second warrant for the same amount, also payable to "Teds Sheds," based on the uncorroborated assertion of the payee that it had not received the first warrant.¹ The state issued the second warrant without obtaining any statement under oath (as required by statute prior to issuance of a replacement warrant), without obtaining an indemnity bond (as authorized by statute), and without attempting to locate the first warrant. The state stopped payment on the first warrant and refused to honor it when presented through normal banking channels by the respondent bank.

The bank sued the state for payment on the warrant. The circuit court granted summary judgment for the bank for the amount of the warrant plus prejudgment interest. The First District affirmed.

¹ The person contacting the state noted that there were two corporations with similar names: Ted's Sheds, Inc. and Ted's Sheds of Broward, Inc. The person who contacted the state asserted the wrong corporation had obtained the warrant. The state accepted this assertion without inquiry. As it turns out, the two companies had the same officers.

Summary of Argument in Opposition to Jurisdiction

The issue on liability is whether a state warrant is a negotiable instrument under the Uniform Commercial Code. As the state itself emphasized in the courts below, this is an issue of first impression. No Florida court has addressed the issue except the First District in the decision now before the court; that decision is not in conflict with any other decision on this point because there are no other decisions on this point. The 1926 decision with which the state now asserts conflict obviously did not address the meaning of the Uniform Commercial Code, which was not adopted until 1965, nearly four decades later.

The First District's decision on prejudgment interest was fully consistent with every decision on this point and conflicted with none. This court has repeatedly held prejudgment interest proper in similar circumstances. The state's assertion now that it would be "inequitable" to award prejudgment interest was not addressed by the First District (presumably because baseless on the facts); the First District's silence would not constitute an express and direct conflict even if there were cases tying prejudgment interest to the "equities."

Finally, the First District's refusal to follow an erroneous Attorney General opinion did not conflict with any Florida decision; Florida cases uniformly recognize that Attorney General opinions are not binding.

Argument in Opposition to Jurisdiction

- I. THE FIRST DISTRICT'S HOLDING THAT THE WARRANT AT ISSUE WAS A NEGOTIABLE INSTRUMENT UNDER THE UNIFORM COMMERCIAL CODE AS ADOPTED IN 1965 DOES NOT CONFLICT WITH THIS COURT'S 1926 DECISION IN TOWN OF BITHLO

In 1965, the state of Florida adopted the Uniform Commercial Code, perhaps the most comprehensive revision of an entire area of the law ever undertaken. Article 3 of the Code explicitly defined the "negotiable instruments" to which it applied. See §673.104(1), Florida Statutes (1965). That definition remained in effect until long after all the events at issue in this case and indeed until after the final judgment was entered.

As the state admitted in the courts below, the state warrant involved in this case came within the express statutory definition: it was signed by the maker (§673.104(1)(a)), contained an unconditional order to pay (§673.104(1)(b)), was payable on demand (§673.104(1)(c)), and was payable to order (§673.104(1)(d)). The statute declared that "[a]ny writing" meeting this statutory definition was a negotiable instrument. See §673.104(1); see also Uniform Commercial Code Comment 4 to § 3-104, reprinted in 19B Florida Statutes Annotated at page 34 (any writing that meets statutory definition is negotiable instrument) (West 1966).

The Uniform Commercial Code strongly favored negotiability and was specifically intended to displace prior decisions holding many government instruments non-negotiable. See, e.g., Florida Statutes § 673.105(1)(g); Uniform Commercial Code Comments to § 3-105, reprinted in 19B Florida Statutes Annotated at pages 44-45 (West

1966). Florida adopted the relevant provisions without change.

The principal issue in the courts below was whether the warrant at issue was a negotiable instrument under the Uniform Commercial Code. The state repeatedly emphasized in both the circuit and district court that this was an issue of first impression: no Florida court had ever addressed this issue under the Uniform Commercial Code.

The state still admits that no Florida decision addresses this issue under the Uniform Commercial Code. The state now asserts, however, that the First District decision conflicts with Town of Bithlo v. Bank of Commerce, 110 So. 837 (Fla. 1926). That 1926 decision obviously did not decide the meaning of the Uniform Commercial Code, which was written four decades later as a complete overhaul of prior law and which was expressly intended to change the law on the specific point at issue.

II. THE FIRST DISTRICT'S HOLDING THAT INTEREST IS PAYABLE ON CONTRACTUAL OBLIGATIONS OF THE STATE DOES NOT CONFLICT WITH BROWARD COUNTY v. FINLAYSON OR OTHER DECISIONS OF THIS COURT

This court has repeatedly held that interest may be awarded against the state or its subdivisions. See, e.g., Broward County v. Finlayson, 555 So.2d 1211 (Fla. 1990) (prejudgment interest awarded against county on statutory overtime claim); Florida Livestock Board v. Gladden, 86 So.2d 812 (Fla. 1956) (interest awarded against state on claim for destruction of cattle); Treadway v. Terrell, 117 Fla. 838, 158 So. 512 (1935) (prejudgment interest awarded against state on claim for breach of road building

contract).²

The state has cited no case holding to the contrary. Instead, the state now apparently admits that interest may be awarded against the state. The state also admits that interest would be payable by a private party under the circumstances of the case at bar. See, e.g., Argonaut Insurance Co. v. May Plumbing Co., 474 So.2d 212 (Fla. 1985) (prejudgment interest is a component of full compensation; the debt is being paid later rather than earlier, and the award of interest recognizes the time value of money); Kissimmee Utility Authority v. Better Plastics, Inc., 526 So.2d 46 (Fla. 1988) ("once damages are liquidated, prejudgment interest is considered an element of those damages as a matter of law, and the plaintiff is to be made whole from the date of the loss"); Florida Steel Corp. v. Adaptable Developments, Inc., 503 So.2d 1232, 1236-37 (Fla. 1986).

The state asserts, however, that interest can be awarded against the state only where it is "equitable" to do so. The state

² The district courts also have held that prejudgment interest is awardable against the state or its subdivisions. See, e.g., Department of Health and Rehabilitative Services v. Boyd, 525 So.2d 432, 433 (Fla. 1st DCA 1988) (when state waives immunity from contract action, "it has also impliedly waived immunity in regard to interest, which is a relief flowing naturally from a finding of liability and is necessary for complete compensation in such actions"); Dade County v. American Re-Insurance Co., 467 So.2d 414, 418 (Fla. 3d DCA 1985) (affirming award of interest against county in contract action; "The principle is established in Florida that where the state (or any of its subdivisions) can sue or be sued, the state (or subdivision) is impliedly liable for any interest on a claim against it"); Metropolitan Dade County v. Bouterse, Perez & Fabregas Architects Planners, Inc., 463 So.2d 526, 527 (Fla. 3d DCA 1985) (county is liable in contract action for interest from date when payment was due); Brooks v. School Board, 419 So.2d 659, 661-62 (Fla. 5th DCA 1982) (prejudgment interest awarded against school board on claim "in the nature of a contract action").

cites no case, and none exists, suggesting that it is "inequitable" to require payment of prejudgment interest by a party that chooses not to honor a contractual obligation.³ In any event, the First District did not disagree with the state's "equity" contention; the First District simply did not address that contention in any way, probably because the equities here strongly favor the bank, rendering moot any legal issue concerning the role of "the equities."⁴ The First District's decision does not conflict with any decision on the payment of prejudgment interest.

III. THE FIRST DISTRICT'S DECISION DOES NOT CONFLICT WITH BEVERLY OR RICHEY, WHICH EXPRESSLY RECOGNIZE THAT ATTORNEY GENERAL OPINIONS ARE NOT BINDING

Finally, the state asserts that the First District decision conflicts with decisions regarding the effect of Attorney General

³ A party's liability on a negotiable instrument is contractual. See, e.g., Florida Statutes § 673.413(1) ("Contract of maker" is to pay instrument according to its tenor); J. White & R. Summers, Handbook of the Law under the Uniform Commercial Code § 13-6 at 498 (2d ed. 1980) (maker's liability on instrument is contractual).

⁴ The state has admitted that the respondent bank acted entirely in good faith; there was nothing the bank could have done to prevent the loss at issue. The state, in contrast, botched its handling of the matter at every turn. The state issued a purchase order - the parties' contract - to "Teds Sheds," an abbreviated trade name, without further identifying the entity. The state issued a warrant to "Teds Sheds," the same abbreviated trade name. When an officer of "Teds Sheds" claimed the warrant had gone to the other "Teds Sheds," the state accepted this assertion without inquiry. Just 14 days after issuing the first warrant the state issued a second; the state did so without bothering to check the Secretary of State's records (which showed that both corporations had the same officers) and, worse, without attempting to learn the whereabouts of the first warrant. The state also did not require an indemnity bond (as authorized by statute) and did not obtain a statement under oath that the original warrant had been lost, as mandated by statute. See Florida Statutes § 17.13. The state now seeks to shift the loss resulting from the officer's fraud and the state's gross negligence to the admittedly innocent bank that paid the warrant. The "equities" do not favor the state.

opinions. As the state admits, however, those decisions uniformly recognize that Attorney General opinions are "not legally binding." See Petitioner's Brief on Jurisdiction at 9; Beverly v. Division of Beverages, 282 So.2d 657, 660 (Fla. 1st DCA 1973); Richey v. Town of Indian River Shores, 337 So.2d 410, 414 (Fla. 4th DCA 1976); see also Leadership Housing, Inc. v. Department of Revenue, 336 So.2d 1239, 1241 (Fla. 4th DCA 1976) (declining to follow Attorney's General opinion that the court found to be erroneous).⁵

Here the First District properly chose not to follow the incorrect Attorney General opinion. The First District's view that Attorney General opinions are not binding is fully consistent with the decisions cited by the state.⁶ There is no conflict.

⁵ The state's assertion of conflict with Beverly would provide no basis for jurisdiction in this court even if correct; Beverly was a decision of the same First District that rendered the decision of which the state seeks review.

⁶ Attorney General Opinion 073-101, relied on by the state here, expressly recognized that the issue of whether state warrants are negotiable instruments under the Uniform Commercial Code was an issue never addressed by the Florida courts, thus refuting the state's assertion of conflict under point I of its jurisdictional brief in this court. In addressing that issue, the Attorney General specifically expressed his opinion only "until legislatively or judicially determined to the contrary." Attorney General Opinion 073-101. The Attorney General thus recognized the authority of the courts to make a contrary determination, as the First District now has done.

Conclusion

The First District's decision does not conflict with any decision of this court or any other district court. Review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Kimberly J. Tucker, Department of Legal Affairs, The Capitol, Suite LL04, Tallahassee, Florida 32399-1050, by mail this 10th day of April, 1992.

Robert L. Hinkle