

Supreme Court of Florida

No. 80,250

AUGUST URBANEK, et al., Petitioners,

vs.

THE 18TH HOLE INVERRARY
CONDOMINIUM ASSOCIATION, INC., et al., Respondents.

[March 4, 1993]

PER CURIAM.

We have for review Urbanek v. 18th Hole at Inverrary Condominium Ass'n, 599 So. 2d 1056, 1056 (Fla. 4th DCA 1992), in which the Fourth District Court of Appeal affirmed based on its earlier decision in Urbanek v. 18th Hole at Inverrary Condominium Ass'n, 582 So. 2d 154 (Fla. 4th DCA), review dismissed, 587 So. 2d 1331 (Fla. 1991), and certified the same question that it had certified in the prior case. In the first Urbanek case, the district court certified the following question:

WHETHER CATE v. OLDHAM APPLIES TO PRIVATE
LITIGANTS TO BAR A SUBSEQUENT ACTION FOR
MALICIOUS PROSECUTION WHERE THE PLAINTIFF HAS
PREVIOUSLY ELECTED TO TAX COSTS AND/OR FEES
AFTER SUCCESSFULLY DEFENDING THE UNDERLYING
ACTION?

Urbanek, 582 So. 2d at 155. We have jurisdiction based on article V, section 3(b)(4) of the Florida Constitution. We answer the certified question in the negative based on our decision in Londono v. Turkey Creek, Inc., 609 So. 2d 14 (Fla. 1992). Accordingly, we quash the decision below and remand for proceedings consistent with this Court's decision in Londono.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of
Appeal - Certified Great Public Importance

Fourth District - Case No. 91-0969

(Broward County)

J. Cameron Story, III of Gunster, Yoakley & Stewart, P.A., Fort
Lauderdale, Florida,

for Petitioners

G. Bart Billbrough of Walton, Lantaff, Schroeder & Carson, Miami,
Florida,

for Respondents