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Business Associations: 1992 Survey of Florida Law

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Abstract

This article discusses decisions by Florida courts during the survey period of June 1991 - June 1992 which impact business associations.

KEYWORDS: jurisdiction, contractor, employee

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I. INTRODUCTION

This article discusses decisions by Florida courts during the survey period of June 1991-June 1992 which impact business associations. The article has been drafted to assist practitioners in keeping current with recent case law, and it has been divided into categories traditionally associated with business law: corporations; partnerships; and agency relations.

II. CORPORATIONS

A. *Piercing the Corporate Veil*

During the survey period, Florida courts continued to refuse to pierce

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the corporate veil and impose personal liability absent a showing of improper conduct. The following two cases give Florida practitioners a notion of what does *not* constitute improper conduct.

In *Ally v. Naim*,[1] an employee, Mohammed Naim, was injured during his employment and received a workers' compensation award against his employer, Hialeah Vending Company. The award was reduced to a judgment, but the execution on the judgment was returned unsatisfied. Naim then instituted proceedings against Mohamood Ally, president and stockholder of Hialeah Vending Company.[2]

The Dade County Circuit Court pierced the corporate veil and held Ally personally liable for the judgment entered against Hialeah Vending Company.[3] The court relied upon the landmark case of *Dania Jai-Alai Palace, Inc. v. Sykes*.[4] The Third District Court of Appeal reversed, restating that "the corporate veil may not be pierced absent, a showing of improper conduct."[5] The district court rejected the employee's argument that the veil should be pierced when corporate property can be traced into the hands of a stockholder.[6] Instead, the court opined that *Advertects, Inc. v. Sawyer Industries, Inc.*,[7] whether read alone or together with *Dania Jai-Alai Palace*, requires a showing that the corporation was organized or used to mislead creditors or to perpetrate a fraud on them before the corporate veil will be pierced. The court specifically held it is not enough to show poor handling of business affairs. In order to establish "improper conduct," the plaintiff must show that the shareholders have improperly converted corporate property or inequitably abused their relationship with the corporation.[8] The fact that Ally received all the corporate income after expenses were paid did not, standing alone, constitute "improper conduct."[9]

The Fourth District Court of Appeal reached a similar result in *Munder v. Circle One Condominium, Inc.*[10] Although the court did not cite *Dania Jai-Alai Palace*, the court was still looking for "improper conduct" before piercing the corporate veil and subjecting the president and sole stockholder

1. 581 So. 2d 961 (Fla. 3d Dist. Ct. App. 1991).
2. *Id.* at 962.
3. *Id.*
4. 450 So. 2d 1114 (Fla. 1984).
5. *Ally*, 581 So. 2d at 962.
6. *Id.* at 963.
7. 84 So. 2d 21 (Fla. 1955).
8. *Ally*, 581 So. 2d at 963.
9. *Id.*
10. 596 So. 2d 144 (Fla. 4th Dist. Ct. App. 1992).

to personal liability.[11] In this case, a condominium association had sued the condominium developer in both his corporate and individual capacities. The trial court entered judgment against both the developer individually and his corporation.[12] The judgment as to the personal liability of the developer was reversed by the appellate court because the underlying wrongdoing, failure to renew a fire insurance policy on the condominium's clubhouse, did not rise to a level of "fraud, self dealing, unjust enrichment, [or] betrayal of trust."[13]

B. *Breach of Fiduciary Duties*

Two cases from the survey period dealt with the issue of fiduciary duties of directors and officers of a corporation. Both cases arose prior to the effective date of the revised Florida Business Corporation Act.[14]

In *Cohen v. Hattaway*,[15] the Fifth District Court of Appeal examined a complaint to see if it was sufficient to establish claims of breach of duty of loyalty and misappropriation of corporate opportunity. A shareholder sued the defendants (directors/officers) in a four count complaint. The trial court dismissed with prejudice the shareholder's fifth amended complaint. The Fifth District Court of Appeal reversed in part.[16]

The appellate court found that the shareholder established a cause of action by pleading defendants improperly purchased corporate property for themselves, developed and resold the property, and retained the profit.[17] The shareholders did not have to plead the unfairness of the transaction. Such a self-dealing transaction is not void, but rather, voidable, and its intrinsic fairness is a defense available to the defendants.[18] The court found the complaint sufficient to establish a cause of action for breach of duty of loyalty.

These same facts, however, did not provide a sufficient basis for the complaint to establish a claim of misappropriation of a corporate opportunity.[19] The court used a two-prong test for judging the existence of a

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11. *Munder*, 596 So. 2d at 145.
12. *Id.*
13. *Id.*
14. FLA. STAT. §§ 607.0101-.1907 (1991). The revised Florida Business Corporation Act became effective on July 1, 1990.
15. 595 So. 2d 105 (Fla. 5th Dist. Ct. App. 1992).
16. *Id.*
17. *Id.* at 107.
18. *Id.* at 108.
19. *Id.*

corporate opportunity. First, the complaint must allege the existence of a business opportunity. Second, the complaint must allege this business opportunity fits into the present activities of the corporation or into established corporate policy.[20] The defendants did not just purchase and resell the property, instead they "developed" it before they resold it.[21] The complaint failed to allege that "development" of real property was a present activity of the corporation[22] or an established corporate policy.[23] Thus, the defendants were not precluded from entering into a separate, although similar, business enterprise.[24] Interestingly, however, the court did find the complaint sufficient to establish a corporate opportunity in another count where the corporate property was purchased and resold without "development."[25]

In *Karakaze v. Quinoa*,[26] the Third District Court of Appeal reversed a summary judgment granted in favor of the plaintiff. The appellate court held that officers and directors of a dissolved corporation were not *ipso facto* liable for an obligation incurred *prior* to the dissolution.[27] The court remanded for consideration of the claim that defendants were liable as distributees or for violation of their duties as trustees of the assets.[28]

C. *Corporate Existence*

A promotor, Roy Latham, was held personally liable when the

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20. *Cohen*, 595 So. 2d at 108. The court in adopting this test specifically held the test used by the trial court was in error. In order for a corporate opportunity to exist, one does *not* have to plead either an existing right by the corporation in the business opportunity or that the opportunity be of the "utmost importance" to the corporation's welfare. *Id.* at 108-09.

21. *Id.* at 109.

22. *Id.* Count I of the complaint alleged the corporation had been formed for the purpose of "purchasing and reselling real property." Development was not included. *Id.*

23. *Cohen*, 595 So. 2d at 109. While the court at this point in its opinion uses connector "and" when discussing present activity "and" established corporate policy, it is quite likely that had property development fit into either present activity "or" established policy, the court would have recognized a properly plead allegation of misappropriation of corporate opportunity. The court's two prong test links the concepts with an "or." *Id.* at 108.

24. *Id.* at 109.

25. *Id.*

26. 593 So. 2d 596 (Fla. 3d Dist. Ct. App. 1992).

27. *Id.*

28. *Id.*

corporation he formed refused to close on a parcel of real property.[29] The court in *Royal Development & Management Corp. v. Guardian 50/50 Fund V Ltd.*, specifically found that at the time the contract for the purchase of the property was signed, Latham knew the corporation was not formed.[30] The closing was set for October 5, 1988, and the court correctly applied the former statute.[31] The court held Latham personally liable even though he had signed the contract in his capacity as vice president.[32] The court found Latham had assumed to act as a corporation when he knew it had not yet been incorporated.[33] The court also cited *Harry Rich Corp. v. Feinberg*[34] and stated Latham was personally liable on the theory of promoter liability.[35]

The next two cases involve corporations which had been involuntarily dissolved and later had their corporate status reinstated. In each case, the court held that the reinstatement had a retroactive effect.

In *First Coast Restaurants, Inc. v. Vogel*,[36] the defendant corporation had been involuntarily dissolved for failing to file an annual report. During the involuntary dissolution period, the defendant corporation owned and operated an airplane.[37] The corporation was reinstated, but Volusia County filed a petition seeking forfeiture of the plane because the corporation had violated section 329.10 of the Florida Statutes[38] by operating the airplane when the corporation had been dissolved. The court, however, found that upon reinstatement, a corporation is deemed to have continued without interruption, as if it had never been dissolved.[39] Since the seizure did not occur until after reinstatement and the reinstatement related back to the dissolution, the court found the seizure improper and reversed the forfei-

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29. Royal Dev. & Mgt. Corp. v. Guardian 50/50 Fund V Ltd., 583 So. 2d 403 (Fla. 3d Dist. Ct. App. 1991).

30. *Id.* at 405.

31. *Id.* (citing FLA. STAT. § 607.397 (1987), *repealed by* FLA. STAT. § 607.0204 (1991)).

32. *Royal Dev. & Mgt. Corp.*, 583 So. 2d at 405.

33. *Id.* Latham himself signed the Articles of Incorporation three days *after* he signed the real property purchase contract as a vice president of the corporation.

34. 518 So. 2d 377 (Fla. 3d Dist. Ct. App. 1987).

35. *Royal Dev. & Mgt. Corp.*, 583 So. 2d at 405.

36. 592 So. 2d 1258 (Fla. 5th Dist. Ct. App. 1992).

37. FLA. STAT. § 607.271(2)(a) (1987). This statute has been repealed and replaced with FLA. STAT. § 607.1420(1)(a) (1991).

38. Section 329.10(2) provides: "Any aircraft in or operated in this state that is found to be registered to a nonexistent person, firm, or corporation, which is no longer a legal entity is in violation . . . ." FLA. STAT. § 329.10(2) (1991).

39. *First Coast Restaurants, Inc.*, 592 So. 2d at 1259.

ture.[40]

The second case also involved an involuntary dissolution for failure to file an annual report. In *Friedlander v. J.W. Dyches, Inc.*,[41] the dissolution continued for three years before the corporation was reinstated. The corporation had filed the instant lawsuit prior to its involuntary dissolution.[42] Defendant argued that the plaintiff corporation could not maintain the action because the three year statute of limitations concerning dissolved corporations had expired.[43] The court found this would apply only if the plaintiff corporation had not been reinstated. Once reinstatement occurred, the corporation could bring an action, even if the action was based on facts arising prior to reinstatement.[44]

D. *Long Arm Jurisdiction*

The next three cases involve instances where plaintiffs did not prove that defendant foreign corporations had sufficient minimum contacts within Florida. Consequently, long arm jurisdiction did not attach. The fourth

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40. *Id.* at 1260.
41. 582 So. 2d 56 (Fla. 2d Dist. Ct. App.), *review denied*, 591 So. 2d 182 (Fla. 1991).
42. *Id.* at 57.
43. Section 607.297 states:

> The dissolution of a corporation either:
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> (1) By the issuance of a certificate of dissolution by the Department of State;
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> (2) By a decree of court; or
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> (3) By expiration of its period of duration
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> shall not take away or impair any remedy available to or against such corporation, or its directors, officers, or shareholders for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within 3 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 3 years so as to extend its period of duration.

FLA. STAT. § 607.297 (1989). This statute has been repealed and replaced with FLA. STAT. § 1407 (1991).

44. *Friedlander*, 582 So. 2d at 57. The court did however reverse and enter judgment for defendant finding that the plaintiff was not contractually entitled to receive the percentage of rents because defendant had terminated the contract. *Id.*

jurisdictional case involves a question concerning which long arm statute should apply in the case of an asbestos containing product.

Defendant corporations prevailed in the cases of *Qualley v. International Air Service Co.*,[45] *Milberg Factors, Inc. v. Greenbaum*,[46] and *Aquila Steel Corp. v. Fontana*.[47] In the first case, Qualley sued International Air Service Company (IASCO) for money due in connection with the sale of aircraft goods and services to Cam Air International, Inc. (Cam Air). Cam Air was incorporated in Massachusetts with a base of operations in Miami, Florida. Cam Air was a subsidiary of a Delaware corporation, Integrity Aircraft Sales, Inc. (Integrity).[48] IASCO was a California corporation and did not conduct business in Florida. In 1985 IASCO bought Integrity; however, there was no merger. Integrity became a subsidiary of IASCO and Cam Air became a second tier subsidiary of IASCO.[49]

Qualley sued IASCO for Cam Air's failure to pay on its open account with Qualley. Qualley asserted that IASCO was liable for this debt because when it bought Integrity's stock, thereby acquiring Cam Air, it assumed Cam Air's debt. IASCO moved for dismissal for lack of personal jurisdiction.[50]

The court held the facts that: 1) IASCO had a subsidiary corporation in Florida (Cam Air) and, 2) handled the accounting and payroll functions for Cam Air at IASCO's California facility, were not enough to subject IASCO to Florida's long-arm statute.[51] The court also upheld the trial

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45. 595 So. 2d 194 (Fla. 3d Dist. Ct. App.), *reh'g denied*, 1992 Fla. LEXIS 1020 (Fla. 1992).
46. 585 So. 2d 1089 (Fla. 3d Dist. Ct. App. 1991).
47. 585 So. 2d 426 (Fla. 3d Dist. Ct. App. 1991).
48. *Qualley*, 595 So. 2d at 195.
49. *Id.*
50. *Id.*
51. *See id.* Section 48.193 of the Florida Statutes provides in pertinent part:

> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
>
> (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
>
> . . . .
>
> (2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

court's finding that IASCO did not assume the debt of Cam Air when it bought Integrity merely because the stock purchase agreement outlined and itemized each contract to which either Integrity or Cam Air was a party.[52] The agreement contained no language to indicate that IASCO intended to assume Cam Air's obligations.[53]

Insufficient business activity to validly assert long-arm jurisdiction was also found in *Milberg Factors, Inc. v. Greenbaum*.[54] Milberg Factors, Inc. (Milberg) was a Delaware corporation with its principal place of business in New York and licensed to operate in Florida. Milberg did not have any offices in Florida, nor did it own property in Florida. Milberg entered into a factoring agreement with Pennshire Shirt Corporation (Pennshire). Greenbaum personally guaranteed all of Pennshire's debts to Milberg. The guarantee was to be governed by New York law.[55] Pennshire subsequently defaulted and Greenbaum brought a declaratory judgment action in Florida claiming that her liability was limited to Pennshire's debts pursuant to the factoring agreement only. Milberg moved to dismiss for lack of personal jurisdiction.[56]

The court found for Milberg based upon certain key facts. Primarily, the court relied on the fact that Milberg had no office, agent, employee, or telephone listing in Florida. Further, the court was persuaded by the fact that Milberg did not solicit any business in Florida. Moreover, the factoring agreement was signed in New York and was governed by New York law. Finally, the court noted that Milberg's only contacts with Florida were five factoring agreements with other Florida companies; U.C.C. financing statements filed in Florida; and, lawsuits filed by Milberg in Florida.[57] The court held that these contacts were insufficient to show the existence of a collective business activity for pecuniary benefit that is substantial and not

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FLA. STAT. § 48.193(1), (2) (1989).

52. *Qualley*, 595 So. 2d at 196. The agreement contained a segment in which Integrity and Cam Air itemized each contract to which either was then a party. This listing served as a disclosure of outstanding liabilities but there was no language indicating IASCO was assuming liability for these debts.

53. *Id.* The court distinguished the case of Bernard v. Kee Mfg. Co., 409 So. 2d 1047 (Fla. 1982), where the purchased corporation ceases to operate business. Cam Air continued to operate and had responsibility for its own preexisting debts. *Qualley*, 595 So. 2d at 196 n.4.

54. 595 So. 2d 1089 (Fla. 3d Dist. Ct. App. 1991).

55. *Id.* at 1091.

56. *Id.*

57. *Id.*

isolated and which is both continuous and systematic as required by Florida's long-arm statute.[58]

In the third case, *Aquila Steel Corp. v. Fontana*,[59] the court held that service upon a wholly owned subsidiary does not establish substituted service for the parent corporation. The court found there was no evidence that parent and subsidiary companies were alter egos or that the parent thoroughly controlled the subsidiary. Thus, service on the subsidiary could not substitute as service on the parent.[60]

Finally, in the most interesting of this survey's jurisdictional cases, the Third District Court of Appeal in *Fibreboard Corp. v. Kerness*[61] certified the following question to the Florida Supreme Court: "in an asbestos case, is the applicable long-arm statute that which was in effect when the plaintiff's cause of action accrued, or that which was in effect when the asbestos-containing products were manufactured and/or distributed?"[62]

The dispute arose when plaintiff brought an action against Fibreboard and thirteen other foreign corporations[63] for injuries caused by an asbestos related disease diagnosed in 1989. Fibreboard moved for dismissal for lack of personal jurisdiction claiming the products containing asbestos were produced and distributed before 1984[64] and thus, the prior long-arm statute applied.[65] The prior statute required connexity: a plaintiff had to show that the action arose from the conduct of business in Florida or that the action had some other connection to a specified act in Florida.[66] Both the trial and appellate courts found that an action accrues when an injury is or should have been discovered and the long-arm statute in effect when the

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58. *See* FLA. STAT. § 48.193 (1989). The text of this statute is set forth in note 51.
59. 585 So. 2d 426 (Fla. 3d Dist. Ct. App. 1991).
60. *Id.*
61. 590 So. 2d 501 (Fla. 3d Dist. Ct. App. 1991).
62. *Id.* at 502.
63. All claims have been settled except those with Fibreboard Corp. *Id.* at 501 n.1.
64. *Id.* at 501.
65. Section 48.181(1) of the Florida Statutes provided:

> (1) The acceptance by . . . all foreign corporations . . . of the privilege extended by law to nonresidents . . . to operate, conduct, engage in, or carry on a business or business venture in the state . . . constitutes an appointment by the persons and foreign corporations of the secretary of state of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served.

FLA. STAT. § 48.181(1) (1961).
66. *Id.*

action accrues[67] is the applicable statute.[68] The question was certified to the Supreme Court of Florida as one of great public concern.[69]

III. PARTNERSHIPS

Five cases have been identified as being of interest to practitioners in the area of partnerships. In two cases during this survey period, district courts of appeal reversed awards of punitive damages granted to partners against other partners.

The Fifth District Court of Appeal, in *Rogers v. Mitzi*[70] found that negligent misrepresentation by one's partner is not sufficient to support an award of punitive damages. Rogers, Mitzi, and Gorman were partners in various real estate investments. Mitzi and Gorman contributed cash while Rogers contributed cash, management and legal services, and improvements to the investment property. Mitzi and Gorman brought the instant action against Rogers for breach of fiduciary duty, fraud and deceit, conversion, and sale of unregistered securities. The trial court found Rogers guilty of constructive fraud and awarded compensatory damages to Mitzi and Gorman in amounts equal to their respective investments plus punitive damages.[71] The Fifth District Court, however, reversed the award of punitive damages because Mitzi and Gorman failed to show aggravating circumstances.[72] Holding that the mere failure to perform a promise does not give rise to punitive damages, the court found that the record did not establish a

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67. *Fibreboard Corp.*, 590 So. 2d at 502.

68. *Id.* (citing FLA. STAT. § 48.193(1)(f) (1989)). The statute applied by the trial and appellate court provides that one submits to the jurisdiction of the courts of Florida by:

> (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of injury, either:
>
> (1) The defendant was engaged in solicitation or service activities within this state; or
>
> (2) Products, materials or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use.

FLA. STAT. § 48.193(1)(f) (1989).

69. *Fibreboard Corp.*, 590 So. 2d at 502.

70. 584 So. 2d 1092 (Fla. 5th Dist. Ct. App. 1991), *review denied*, 598 So. 2d 77 (Fla. 1992).

71. *Id.* at 1093-94.

72. *Id.* at 1094-95.

deliberate and knowing misrepresentation designed to cause detrimental reliance.[73]

The amount of compensatory damages awarded also troubled the court.[74] The trial court had awarded compensatory damages equal to the amount of the plaintiffs' cash investments. The Fifth District Court found this to be equivalent to an award based upon rescission where no party had asked for rescission and where there was no showing that monetary damages would be insufficient. Thus, the court reversed the award of compensatory damages and remanded on this issue.[75]

Punitive damages were also not recoverable in a breach of contract action between partners. In *U.S. Rescio, Inc. v. Henry*,[76] one partner sought damages from his copartners after they failed to purchase his partnership interest per the terms of the partnership agreement.[77] The Second District Court of Appeal reversed the award of punitive damages because there were no extraordinary circumstances which supported such an award.[78]

The interests of partners in partnership real property became the subject of two other cases. In *Anderson v. Potential Enterprises, Ltd.*,[79] the Fifth District Court of Appeal reaffirmed[80] that a partnership is an entity separate from its members. However, in *Hayes v. H.J.S.B.B. Joint Venture*,[81] the Fourth District Court of Appeal found that a joint venture is a partnership for a specific enterprise and is subject to the provisions of the Uniform Partnership Act.

In *Anderson*,[82] the circuit court incorrectly entered a foreclosure on property owned by a partnership when the partnership had not been named

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73. *Id.* at 1094.

74. *Id.*

75. *Rogers*, 584 So. 2d at 1094-95. The appellate court stated that Mitzi and Gorman were entitled to damages based upon the difference between what Rogers actually contributed to the partnership as capital in cash or property, not including legal or other services, and the $15,000 he was obligated to contribute under the agreement. Mitzi and Gorman were also entitled to damages based upon their respective interests for the purchase by Rogers of property he used to represent as part of his contributed interest to the partnership. *Id.* at 1094.

76. 590 So. 2d 1107 (Fla. 2d Dist. Ct. App. 1991).

77. *Id.*

78. *Id.* at 1107-08.

79. 596 So. 2d 488 (Fla. 5th Dist. Ct. App. 1992).

80. The court cited its own previous decision of Century Bank v. Gillespy, 399 So. 2d 1109 (Fla. 5th Dist. Ct. App. 1981).

81. 595 So. 2d 1000 (Fla. 4th Dist. Ct. App. 1992).

82. 596 So. 2d at 488.

as a party to the foreclosure.[83] Anderson, Crawley, and Villacres were partners in Triad Properties (Triad) with respective partnership interests of forty percent, twenty percent, and forty percent. Triad purchased a parcel of real estate in which Anderson and Villacres were designated mortgagors, and Potential Enterprises, Ltd. was the mortgagee. In a slight twist, Villacres was also named as a mortgagee. Triad defaulted and foreclosure proceedings commenced. The foreclosure complaint only named Anderson and Crawley. Neither Triad nor Villacres was named and when the trial court entered the foreclosure, it ordered only sixty percent of the property, representing the interests of Anderson and Crawley, be sold. Potential Enterprises, Ltd. purchased the property.[84]

The judgment of foreclosure was vacated by the Fifth District Court because the action entered against two of the three partners as an attempted foreclosure on the partnership real property was a nullity.[85] The mortgage in this case involved a lien on specific partnership property. Additionally, the mortgagees were not given security interests in Anderson's and Crawley's respective interests in Triad. Consequently, the judgments entered against them as partners could not constitute a lien against the real property owned by Triad.[86]

In *Hayes v. H.J.S.B.B. Joint Venture*,[87] property held by the joint venture was quitclaimed to a third party. The deed was accompanied by an affidavit stating that the person signing was a partner of the joint venture with authority to convey. In an action to quiet title, the circuit court determined that the quitclaim deed from the joint venture was invalid because it was unauthorized under the joint venture agreement. The circuit court held that the third party had constructive notice of a title defect because: 1) title was in a joint venture which could not be construed as a partnership; 2) the words "a Florida General Partnership" added to a grantor's name places subsequent purchasers on notice to go beyond the deed and determine the signator's authority to convey; and 3) absent any specification as to a greater interest conveyed, a conveyance by quitclaim transfers only the signator's interest in a joint venture.[88]

The Fourth District Court reversed and found the third party was not on notice that there was a deviation from the terms of the joint venture

83. *Id.* at 489.
84. *Id.*
85. *Id.* at 490.
86. *Id.* at 491.
87. 595 So. 2d at 1000.
88. *Id.* at 1001.

agreement. The court reasoned that laws applicable to partnerships govern a joint venture and nothing about the nature of a joint venture should cause a conveyance by a joint venture to receive treatment inconsistent with that afforded to a conveyance by a partnership.[89] The court held that the procedure for conveying title held in a partnership name was outlined in the Florida Statutes[90] and applied in this case. The court rejected the theory espoused by expert testimony that a careful title examiner would inquire into a signator's authority in both partnership and joint venture conveyances.[91] Further, the court stated "to mandate such additional investigation as a matter of law is contrary to the overriding purpose of the statute. The public policy . . . . is to facilitate commercial transactions by partnerships which might be hampered by a requirement for additional inquiry not required of corporate transfers."[92]

The last partnership case involved an action by a limited partner to collect a loan of more than four million dollars from its general partner. The trial court in *HMG/Courtland Properties, Inc. v. Grove Isle Associates, Ltd.*[93] dismissed the complaint. The Third District Court of Appeal reversed holding that section 620.13(1)(b) of the Florida Statutes[94] prevents competition for partnership assets between limited partners and partnership creditors but it does not bar actions on a debt solely because the lender is a limited partner.[95]

IV. AGENCY

Florida courts published decisions in line with traditional agency theories during this survey period. The concept of respondeat superior was addressed when the courts examined employer responsibility for intentional torts committed by employees. As one might expect, the ever present question of who is an employee as opposed to an independent contractor

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89. *Id.* at 1002.
90. The court cited FLA. STAT. § 620.595 (1991) and FLA. STAT. § 620.605(1) (1991).
91. *Hayes*, 595 So. 2d at 1003.
92. *Id.*
93. 589 So. 2d 1021 (Fla. 3d Dist. Ct. App. 1992).
94. FLA. STAT. § 620.13(1)(b) (1985). The court quoted this statute as providing "that no limited partner shall '[r]eceive from a general partner or the partnership any *payment, conveyance, or release from liability*, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.'" *HMG/Courtland Properties*, 589 So. 2d at 1021 (emphasis supplied by the court).
95. *Id.* at 1022.

was revisited by the courts. Cases concerning the dangerous instrumentality doctrine, as well as the fiduciary duties of agents, have been included.

Finally, the area of negligent retention and hiring has been addressed. There has been significant activity in this area during the survey period, and it is of particular interest to employers because it provides the basis for potential liability when no liability would otherwise attach under the doctrine of respondeat superior.

A. *Respondeat Superior*

1. Employee Intentional Torts

In *Canto v. J.B. Ivey & Co.*,[96] two children who had been detained for suspected shoplifting sued the merchant for defamation, false imprisonment, negligent hiring, and intentional infliction of emotional distress. The trial court entered judgment against the children on their claims of false imprisonment and negligent hiring and granted a directed verdict against the children in the claims of defamation and intentional infliction of emotional distress.[97] On appeal, the court held that the trial court had erred in finding that a merchant could not be held vicariously liable for intentional torts of an employee.[98] The First District Court cited *Dieas v. Associates Loan Co.*,[99] for the converse proposition that an employer is liable for intentional acts of employees when the employees are acting within the scope of apparent authority.[100]

The First District Court did, however, affirm the trial court's decision on other grounds.[101] Regarding the claim of intentional infliction of emotional distress, the court found the conduct of the merchant's employee was privileged. The court held that an employee's conduct, although reckless or outrageous, is privileged when the employee "'did no more than assert legal rights in a legally permissible way.'"[102] Since the evidence disclosed that the employee acted within her right in detaining the children,

96. 595 So. 2d 1025 (Fla. 1st Dist. Ct. App. 1992).
97. *Id.* at 1027.
98. *Id.* at 1027-28.
99. 99 So. 2d 279 (Fla. 1957).
100. *Id.* at 280-81.
101. *Canto*, 595 So. 2d at 1028.
102. *Id.* (citing Metropolitan Life Ins. Co. v. McCarson, 467 So. 2d 277, 279 (Fla. 1985)).

whom she had probable cause to suspect of shoplifting,[103] the merchant was not vicariously liable for intentional infliction of emotional distress.[104] Similarly, as to the defamation claim, the statement referring to one of the children as a shoplifter was also privileged because there was no showing of malice, and the employee was acting in good faith while fulfilling her duties on behalf of the merchant.[105] "A communication is privileged, even though defamatory, 'when made in good faith upon any subject in which the party communicating has an interest, or in reference to which he has a right or duty, and made upon an occasion to properly serve such right, interest, or duty.'"[106]

Although the case of *Jones v. Gulf Coast Newspapers, Inc.*[107] did not deal with privilege, the Second District Court did find that the doctrine of respondeat superior does not apply to hold the employer liable if the employee is not liable.[108] An employee, Judith Camus, was operating a privately owned automobile during the course and scope of her employment with Gulf Coast Newspaper, Inc. The Camus automobile struck another vehicle in the rear, and the passenger sued Camus and Gulf Coast Newspapers, Inc. Prior to trial, the passenger settled her claim with Camus and executed a release stating: "[t]his release expressly and specifically does not release . . . GULF COAST NEWSPAPERS, INC., from liability for the above accident."[109] The suit against Camus was dismissed with prejudice.

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103. In a separate issue, the children argued that the verdict form submitted to the jury was an improper statement of the law because it asked the jury to determine whether the employees detained the children "in an unreasonable manner *and* without probable cause . . . ." *Id.* at 1027. The court cited § 812.015 of the Florida Statutes which states:

> A merchant, merchant's employee, or farmer who takes a person into custody, as provided in subsection (3) . . . shall not be criminally or civilly liable for false arrest or false imprisonment when the merchant, merchant's employee, or farmer *has probable cause* to believe that the person committed retail theft or farm theft.

FLA. STAT. § 812.015 (1989). The statute does not require the detention be "in an unreasonable manner," and the phrase should have been omitted. The court did not find this to be reversible error because the judge had instructed the jurors to find for the children if at any time during the children's detention there was no longer probable cause to detain them. *Canto*, 595 So. 2d at 1027.

104. *Id.* at 1028.

105. *Id.*

106. *Id.* (quoting Chapman v. Firlough, 334 So. 2d 293, 295 (Fla. 1st Dist. Ct. App. 1976)).

107. 595 So. 2d 90 (Fla. 2d Dist. Ct. App.), *review denied*, 602 So. 2d 942 (Fla. 1992).

108. *Id.* at 91.

109. *Id.* at 90.

The trial court granted the employer's motion for summary judgment on the basis that since the action against the employee had been dismissed, there could be no claim based solely on respondeat superior. The Second District Court affirmed and stated that dismissal of the claim against the employee was a negative adjudication on the merits. Since the passenger could no longer establish Camus' liability, the passenger was barred from establishing the vicarious liability of Gulf Coast Newspaper, Inc.[110]

Arguing that the parties' intent should have controlled the court's decision, the dissent criticized the majority for putting form over substance in this case.[111] The choice of form made a difference here; had the passenger simply dropped her case against the employee without prejudice, the cause of action against the employer would have been preserved.[112] The dissent recognized that a dismissal with prejudice against the employee barred any further action against the employer. The dissent maintained that this result should not be reached when the employer was the moving party in the mediation and joined in the method the parties chose to effectuate the meditated partial settlement. This method resulted in a joint motion, inartfully drawn, to dismiss the plaintiff with prejudice; but the dissent points out it was not the intent of the motion to conclude all pending claims.[113]

2. Independent Contractor Versus Employee

The ever present question of who is an independent contractor versus an employee was dealt with in *Alexander v. Morton*.[114] In yet another motor vehicle collision case, an injured third party sued an air conditioning installer and his employer. The trial court granted the employer's motion for summary judgment on the ground that the installer was an independent contractor.[115] The Second District Court of Appeal reversed[116] and distinguished its own decision in *Kane Furniture Corp. v. Miranda*.[117]

110. *Id.* at 90-91.
111. *Id.* at 92 (Patterson, J., dissenting).
112. *Id.*; *see* FLA. STAT. § 768.041(1) (1991).
113. Jones v. Gulf Coast Newspapers, Inc., 595 So. 2d at 92 (Patterson, J., dissenting).
114. 595 So. 2d 1015 (Fla. 2d Dist. Ct. App. 1992).
115. *Id.* at 1016.
116. *Id.*
117. 506 So. 2d 1061 (Fla. 2d Dist. Ct. App.), *review denied*, 515 So. 2d 230 (Fla. 1987).

In *Kane*, although acknowledging the Restatement's ten part test of determining whether one is an independent contractor or employee,[118] the Second District Court of Appeal held that the extent of control[119] was the most important factor.[120] The court retreated somewhat from this position in *Alexander v. Morton*,[121] and found that when some of the remaining nine factors are also present, there is a question for the factfinder.[122] Since application of several of these nine factors[123] created factual questions that the installer could have been an employee, entry of summary judgment in favor of the employer was improper, and the judgment was reversed and remanded.[124]

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118. *See* RESTATEMENT (SECOND) OF AGENCY § 220 (1958).

119. Indeed "control" is a prime factor in establishing any agency. In Colon v. Operation South, Inc., 597 So. 2d 364 (Fla. 3d Dist. Ct. App. 1992), the court reversed a summary judgment, finding there to be conflicting evidence as to whether a restaurant's manager was the agent of a marina. The marina retained 95% of the profits produced by the restaurant and had the right to review the prices, menus and standards of the restaurant. *Id.* at 366.

120. *Kane*, 516 So. 2d at 1064-65.

121. 595 So. 2d at 1016.

122. *See id.* The court states control is "*probably* the most important" factor and still analyzes the extent of control. The court mentions it "considered affirming this close case on the authority of *Kane Furniture Corp. v. Miranda* . . . ." *Id.* (emphasis added).

123. The factors are outlined by the Restatement as:

> (2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others are considered:
>
> (a) the extent of control which, by the agreement, the master may exercise over the details of the work;
>
> (b) whether or not the one employed is engaged in a distinct occupation or business;
>
> (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
>
> (d) the skill required in the particular occupation;
>
> (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
>
> (f) the length of time for which the person is employed;
>
> (g) the method of payment, whether by the time or by the job;
>
> (h) whether or not the work is a part of the regular business of the employer;
>
> (i) whether or not the parties believe they are creating the relationship of master and servant; and
>
> (j) whether the principal is or is not in business.

RESTATEMENT (SECOND) OF AGENCY § 220(2)(a)-(j) (1958).

124. *Alexander*, 595 So. 2d at 1018.

3. The Dangerous Instrumentality Doctrine

The Fifth District Court of Appeal reversed in part the summary judgment entered on behalf of the lessor of a truck in *Cheung v. Ryder Truck Rental, Inc.*[125] In this case, the plaintiff was a passenger in a third party's automobile and was injured when a runaway wheel from a Toyota Corolla towed by a rented Ryder truck crashed through the windshield of the third party's automobile. The plaintiff sued the driver of the truck, the owner of the Toyota, the lessee of the truck, and the lessor/owner of the truck.[126] The court affirmed the summary judgment in favor of defendants as to the counts of negligent failure to maintain and inspect the Toyota and negligent failure to warn as to the use of the truck.

Regarding the count of unspecified negligence, which was based on the theory of *res ipsa loquitur*, the court reversed the summary judgment as to the driver of the truck while it affirmed as to the owner of the Toyota.[127] The court found the doctrine of *res ipsa loquitur* particularly applicable in wayward wheel cases, but found, since the driver of the truck was in sole control of the Toyota, that there was no basis for imposing vicarious liability on the owner of the Toyota.[128]

The case presents an interesting twist in light of the dangerous instrumentality doctrine. Although automobiles typically are considered dangerous instrumentalities, the court concluded the Toyota was not a dangerous instrumentality because its engine was not running, its front wheels were not on the road, and it did not have an independent driver.[129] Thus, the court affirmed summary judgment in favor of the Toyota's owner. The court, however, reversed summary judgment in favor of the lessor/owner of the truck on the basis that the Ryder truck was a dangerous instrumentality.[130] The court opined that the lessor/owner of the truck had made it possible for another to inflict injury via the public highway by towing the Toyota behind the truck.[131]

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125. 595 So. 2d 82 (Fla. 5th Dist. Ct. App. 1992).

126. The appellate court noted that the lessee was sued under Count V on the doctrine of dangerous instrumentality but the lessee did not appear anywhere else in the record and his present status was unknown. *Id.* at 83 n.1. The lessor/owner of the Ryder Truck was not joined in this count.

127. *Id.* at 84.

128. *Id.* at 83-84.

129. *Id.* at 84.

130. *Cheung*, 595 So. 2d at 84.

131. The question of whether the truck driver had negligently towed the Toyota was left to the jury. *Id.* at 85.

Conversely, the owner of a crane, in *Northern Trust Bank v. Construction Equipment International, Inc.*,[132] was found not to be vicariously liable because the owner's crane did not fall within the dangerous instrumentality doctrine.[133] The Third District Court reasoned that the crane used in construction was fenced and not exposed to the public, and was not used as a motor vehicle. Therefore, there was not a sufficient danger to the public, and the dangerous instrumentality doctrine did not apply.[134]

While the crane in the case was not a dangerous instrumentality, the use of the crane did constitute an inherently dangerous activity.[135] If the crane had been a dangerous instrumentality, the crane owner would have been vicariously liable. When, instead, the court found the use of the crane to involve an inherently dangerous activity, it was not the crane owner who was vicariously liable, but rather the party responsible for the use of the crane assumed liability.[136]

B. *Duties of Agents*

This survey period yields an interesting case involving the demand of an insurance company for repayment of an advance made to its agent. The underlying facts in *Life Marketing v. A.I.G. Life Insurance Co.*[137] involved an overpayment of $18,691.92 made to a general agent in 1983. The agent placed the money in a separate account and advised his principal, A.I.G. Life Insurance Co. (Company) that the money was being characterized as an advancement. The Company replied that no further adjustments were needed and characterized the money as "miscellaneous non-income."[138]

In a marriage dissolution action between the agent and his wife, the court disregarded the agent's argument that the funds were held in trust for the Company and awarded the wife a portion of the money under the parties' equitable distribution of marital property. The Company then sought repayment of the full amount of $18,691.92.[139] The trial court found in favor of the Company and the Fifth District Court of Appeal affirmed. The district court reasoned that the Company and the agent had

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132. 587 So. 2d 502 (Fla. 3d Dist. Ct. App. 1991).
133. *Id.* at 504.
134. *Id.*
135. *Id.* (citing Channell v. Musselman Steel Fabricators, Inc., 224 So. 2d 320 (Fla. 1969)).
136. *Id.*
137. 588 So. 2d 663 (Fla. 5th Dist. Ct. App. 1991).
138. *Id.* at 664.
139. *Id.* at 664-65.

an ongoing relationship and the Company's failure to demand immediate return of the funds was irrelevant. The fact that the agent placed the money in an account which was later adjudged marital property did not relieve the agent of his fiduciary obligation to the Company concerning this money.[140]

The dissent did not dispute the agent's fiduciary duty but contended that the Company was precluded from recovery by laches, estoppel, and collateral estoppel.[141] The dissent noted that the Company appeared to have been notified that the agent's wife was claiming the money as a marital asset, and yet the Company did not demand repayment until after the marital dissolution became final.[142] The dissent also found the trial court erred in refusing to judicially note the agent's marriage dissolution case.[143]

C. *Negligent Hiring and Retention*

The Florida Supreme Court had the opportunity to examine the concept of an employee's previous criminal record as it impacts on an employer's future liability for negligent hiring. In the case of *Island City Flying Service v. General Electric Credit Corp.*,[144] an aircraft owner sued an employee and his employer after the employee stole an airplane and crashed it into the ocean.

The employee, Steve Diezel, was a refueler for Island City Flying Service (Island City). Diezel was first employed by Island City in 1984. Prior to this he had received a bad conduct military discharge as a result of a drug offense. At Island City, Diezel was first employed in the maintenance shop. His work record included various offenses for failing to ground airplanes while refueling, for taking a one week leave of absence without permission, for being late, and for allowing riders on the running board of the fuel truck. Island City fired him on two occasions, but quickly rehired him on both occasions.[145]

On the night of the incident, Diezel was working as an extra refueler and had been drinking. He stole the unlocked plane; no key was necessary

140. *Id.* at 665.

141. *Id.* (Sharp, J., dissenting).

142. *Life Marketing*, 588 So. 2d at 665.

143. In fact, the Fifth District Court of Appeal affirmed the distribution awards in Blankenship v. Blankenship, 502 So. 2d 1002 (Fla. 5th Dist. Ct. App. 1987).

144. 585 So. 2d 274 (Fla. 1991).

145. *Id.* at 274-75.

to start its engines. Shortly after takeoff, he crashed into the ocean and destroyed the plane.[146]

The owner of the airplane based its suit against Island City solely on theories of negligent hiring and retention.[147] The jury found Island city liable for negligent hiring and retention of Diezel, but it also found the owner comparatively negligent because the plane was unlocked. The negligence was apportioned twenty-five percent to Island City and seventy-five percent to the owner.[148] The Third District Court of Appeal affirmed. The Florida Supreme Court reversed finding "it is clear in the instant case that the district court relied almost entirely on Diezel's military criminal record."[149] Florida courts have been concerned that such reliance has the effect of making rehabilitation of former offenders by future employment very difficult because of the risks of liability which adhere to the employer.[150] Thus, the supreme court held that there must be a connection and foreseeability between the previous criminal offense and the offense now being examined to such a degree that the employer should have foreseen the employee's wrongful conduct.[151]

The court did not find that type of connection and foreseeability in this case. Diezel's record concerned a drug offense, not theft. His poor work record might have made him a lackluster worker, but it did not make it foreseeable that he would steal an airplane for a joy ride.[152]

Although it was unnecessary to its disposition, the supreme court did note that the Third District Court of Appeal was incorrect in its conclusion that the owner could not be comparatively negligent.[153] The supreme court reasoned since the action was based on negligent hiring and retention, and not on the vicarious liability of an employer, comparative negligence was applicable. It was irrelevant that Diezel, having committed an intentional tort, could not assert the defense of comparative negligence. In

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146. *Id.* at 275. Diezel was charged with stealing the airplane and entered a plea of guilty. *Id.*

147. *Id.* at 278.

148. *Island City Flying Serv.*, 585 So. 2d at 275.

149. *Id.* at 277.

150. In Williams v. Feather Sound, Inc., 386 So. 2d 1238 (Fla. 2d Dist. Ct. App. 1980), *review denied*, 392 So. 2d 1374 (Fla. 1981) the court said: "To say that an employer can never hire a person with a criminal record at the risk of being held liable for his tortious assault flies in the face of the premise that society must make a reasonable effort to rehabilitate those who have gone astray." *Id.* at 1241.

151. *Island City Flying Serv.*, 585 So. 2d at 277.

152. *Id.*

153. *Id.*

a negligent hiring and retention action, the employer's own negligence is at issue and thus, the employer can assert any comparative negligence of the plaintiff concerning the incident.[154]

A decision finding negligent retention and hiring was upheld in the case of *Tallahassee Furniture Co., v. Harrison*.[155] In that case, a customer who had been attacked in her home on New Year's Day by a furniture store deliveryman sued the furniture store on three theories: negligent hiring, negligent retention, and actual or apparent agency.[156] A summary judgment in favor of the furniture store was reversed on the basis that numerous issues of fact existed.[157] The case went to trial and the jury returned a general verdict in favor of the customer.[158] The First District Court of Appeal held the doctrine of respondeat superior did not apply and refused to hold the furniture store liable on the theory of actual or apparent agency.[159] However, the court did affirm the judgment on the basis of negligent hiring and negligent retention.[160]

The court rejected the customer's argument that the employee was acting as the agent of the furniture store when the assault occurred.[161] The employee, accompanied by a co-worker, delivered a couch to the customer in October, 1985. The customer gave the employee a broken television set. The customer later found the couch defective and was told by the furniture store that a replacement couch would be delivered around Christmas. On New Year's Day, the employee returned to the customer's apartment and requested a receipt for the television set she had given him. After gaining admittance to the apartment, the employee obtained a knife from the kitchen and attacked the customer. The court agreed that the customer met the employee through his job, but held that his attack on her was so outrageous and removed from the nature of his work that his actions could not possibly fall within the scope of his employment.[162] The court, therefore, found

154. *Id.* at 277-78.

155. 583 So. 2d 744 (Fla. 1st Dist. Ct. App. 1991), *review denied*, 595 So. 2d 558 (Fla. 1992).

156. *Id.* at 747.

157. Harrison v. Tallahassee Furniture Co., Inc., 529 So. 2d 790 (Fla. 1st Dist. Ct. App. 1988).

158. The jury awarded the customer $1,900,000 in compensatory damages, and $600,000 in punitive damagers. *Tallahassee Furniture Co.*, 583 So. 2d at 748.

159. *Id.* at 759.

160. *Id.*

161. *Id.* at 758.

162. *Id.* at 758-59.

that the issue of actual or apparent agency should not have been submitted to the jury.

On the other hand, the court found the issue of negligent hiring and negligent retention were properly submitted to the jury. The court rearticulated its concern for limiting the boundaries of liability of employers for acts by employees which occur outside of the scope of employment.[163] In reviewing the case for negligent hiring, the court applied the parameters set by the Second District Court of Appeal in *Williams v. Feather Sound, Inc.*:[164] 1) what type of inquiry would have been reasonable under the circumstances; 2) what information would the employer have obtained if it had made such an inquiry; and 3) what was the cost of obtaining such information.[165] In reviewing the case for negligent retention, the court followed *Garcia v. Duffy*[166] and stated that negligent retention occurs when the employer knew or should have known of problems with an employee that indicate his unfitness, and the employer fails to take action such as investigation, discharge, or reassignment.[167] Indeed, the court found the facts egregious and held the employer's conduct in hiring or retaining this employee showed a reckless disregard of safety. The court on this basis upheld the award of punitive damages.[168]

In yet another case involving negligent hiring and retention, the Fourth District Court of Appeal found the employer could not be liable because there was not a sufficient connection between the employee's prior criminal record and the incident in question nor was there sufficient reason for the employer to have known its employee might act in this improper manner.[169] In *Phillips v. Edwin P. Stimpson Co.*,[170] an employee, Lewis

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163. *Tallahassee Furniture Co.*, 583 So. 2d at 750-51.

164. 386 So. 2d 1238 (Fla. 2d Dist.Ct. App. 1980), *review denied*, 392 So. 2d 1374 (Fla. 1981).

165. *Tallahassee Furniture Co.*, 583 So. 2d at 751. The furniture store never had this employee complete its standard application form which would have included questions concerning the applicant's mental and physical health and his arrest record. The evidence at trial revealed the employee had an arrest record as a juvenile and as an adult, and had a history of mental health problems including hospitalization for these problems. *Id.* at 749.

166. 492 So. 2d 435 (Fla. 2d Dist. Ct. App. 1986).

167. *Tallahassee Furniture Co.*, 583 So. 2d at 753. Evidence revealed at trial showed that the employee was a heavy intravenous cocaine user during the time he was employed by the furniture store. Management was also aware that he had used drugs and alcohol on the premises during work hours. *Id.* at 754.

168. *Id.* at 764. One judge did dissent finding the employer's conduct not to have been so extreme as to support an award of punitive damages. *Id.* (Nimmons, J., dissenting).

169. Phillips v. Edwin P. Stimpson Co., 588 So. 2d 1071 (Fla. 4th Dist. Ct. App. 1991).

170. *Id.*

Phillips, sued his employer for injuries suffered during an off duty incident where one of Phillips' co-workers threw acid on Phillips. The co-worker did have a criminal record for selling narcotics some nineteen years prior to the incident in question. The employer knew of this record prior to hiring the co-worker. The co-worker obtained the acid through his employment, but it was conceded it was taken for the purpose of keeping drain pipes unclogged.[171] The court concluded there was no basis for finding the employer had reason to know the co-worker would act in some improper manner concerning his access to acids and affirmed the summary judgment in favor of the employer.[172]

The court also affirmed the summary judgment as to the issue of negligent retention. Although the co-worker had been recently arrested for aggravated assault, the matter never went to trial, and there was no evidence the employer was aware of the arrest. The co-worker did notify the employer on the day of the incident that he had a marijuana substance abuse problem. The co-worker was granted a leave of absence to seek treatment. The co-worker never received treatment since the acid throwing incident occurred later the same day. The court found neither of these facts was sufficient to put the employer on notice that it was retaining an employee who could constitute a danger to others.[173]

IV. CONCLUSION

While the survey period did not reveal dramatic developments in Florida law as it affects business associations, the selected cases do represent the rather broad range of law which faces busy practitioners in this area. The cases selected did not comprise every decision published by Florida courts during the survey period, but rather reflect issues which are most likely to be seen again by practicing attorneys.

171. *Id.* at 1073.
172. *Id.* at 1074.
173. *Id.* at 1073.