

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT OF FLORIDA

Case No. 3D23-1205

84 SHOPPING PLAZA CORPORATION and DANIEL ARIAS,
Appellants,

vs.

BRU'S ROOM BIRD ROAD, LLC.
Appellee.

APPELLANTS' SUPPLEMENTAL BRIEF
PURSUANT TO ORDER OF DECEMBER 9, 2024

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*Rodeway Inns of America. v. Alpaugh,
390 So.2d 370 (Fla. 2d DCA 1980) 1*

INTRODUCTION

The Appellant, 84 SHOPPING PLAZA CORPORATION, will be referred to as the Appellant 84 SHOPPING or simply 84 SHOPPING.

The Appellant. DANIEL ARIAS, will be referred to as the Appellant ARIAS or simply Mr. ARIAS.

The Appellee, BRU'S ROOM BIRD ROAD, LLC, will be referred to as the Appellee or BRU'S ROOM.

All citations to the Record on Appeal will appear as (R).

ARGUMENT

THE HISTORY OF APPELLANTS' MOTION FOR PARTIAL SUMMARY JUDGEMENT AS TO DAMAGES

As this Court noted, the Appellants filed and served a Motion for Partial Summary Judgment as to Damages on November 11, 2021 (R. 3521-3545) and then filed and served the Lease and the Amendment to the Lease which formed the subject matter of this action (R.3647-3675).

The gravamen of the Motion was that as section 22.12 of the lease, agreed to by the parties, excluded personal liability of Appellant ARIAS “to be absolute, unconditional and without exception” and as section 46(a) of the Lease Amendment prepared by Appellee’s attorney and agreed to by the parties, specifically excluded “the right to recover consequential, indirect, special or punitive damages” Appellant therefore sought Partial Summary as to Damages on the basis of *Rodeway Inns of America v. Alpaugh*, 390 So.2d 370 (Fla. 2d DCA 1980) and *Jenkins v. Eckerd Corporation*, 913 So.2d 43 (Fla. 1st DCA 2005) and on the principle that when contractual language is clear and unambiguous, courts cannot indulge in construction or interpretation of its plain meaning. *Hurt v. Leatherby Insurance Company*, 380 So.2d 432 (Fla.1980), *Frank Maio*

General Contractor, Inc. v. Consolidated Electric Supply, Inc., 452 So.2d 1092 (Fla. 4th DCA 1984).

Appellants argued to the trial court that those agreed terms were thus binding upon Appellee and requested the trial court to enter judgment in favor of Appellant 84 SHOPPING PLAZA as to damages on the Appellee's Fourth Amended Counter-claim Counts II ("Fraudulent Misrepresentation – Lease", III ("Fraudulent Misrepresentation – Parking and Use Matrix") and IV ("Negligent Misrepresentation") and in favor of Appellant ARIAS on Counts V ("Fraudulent Misrepresentation - Lease") and VI (Fraudulent Misrepresentation – Parking and Use Matrix").

On November 18, 2021 Appellants noticed the Motion for ZOOM hearing to be held on January 5, 2022; however, Counsel for Appellee advised the Court that he was no longer going to be available and on January 2, 2022 the Court cancelled the hearing and the parties agreed to a new hearing date of January 28, 2022, which was so noticed by Appellants on January 4, 2022. The Appellee filed and served its Response in Opposition to the Motion on January 26, 2022 (R. 3676-3688).

Although a hearing was held, as scheduled, on January 28, 2022, the Motion was not raised, argued nor ruled upon.

Nevertheless, after the rather protracted trial, the court entered its Amended Final Judgement (R. 7938 – 7945) finding in favor of Appellant 84 SHOPPING PLAZA on Count IV (“Negligent Misrepresentation”) of the Fourth Amended Counter-Claim and in favor of the Appellee on all other Counts (R. 7940) and awarded economic damages, prejudgment interest and punitive damages against Appellants (R. 7941).

Respectfully submitted,
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_____/s/_____
FREDERICK CHARLES SAKE, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Appellants' Supplemental Brief was provided this 18th day of December, 2024 to Elliot H. Scherker, Esq., attorney for Appellee, at ScherkerE@gtlaw.com and to all attorneys and parties listed on eFile.

_____/s/_____
FREDERICK CHARLES SAKE, ESQ.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is submitted in Arial 14 point type font and complies with Fla.R.App.P.9.210(a)(2).

_____/s/_____
FREDERICK CHARLES SAKE, ESQ.

