

# Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed March 25, 2009.

Not final until disposition of timely filed motion for rehearing.

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No. 3D08-2397

Lower Tribunal No. 06-6740

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**All Seasons Condominium Association, Inc.,**  
Appellant,

vs.

**Eduardo Busca and Flor D. Busca, his wife,**  
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Thomas S. Wilson, Jr., Judge.

Pyszka, Blackmon, Levy, Mowers & Kelly and Cindy J. Mishcon, for appellant.

Bradshaw W. Lotspeich, for appellees.

Before RAMIREZ and CORTIÑAS, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

In a suit by the owners of condominium units against the association for money damages arising out of the latter's alleged failure properly to maintain and repair the common elements, see *All Seasons Condo. Ass'n v. Busca*, 985 So. 2d

1143 (Fla. 3d DCA 2008)(reversing summary judgment for plaintiffs), the trial court appointed a receiver for the association, apparently in order to conduct that process more efficiently. See also *Busca v. All Seasons Condo. Ass'n*, 983 So. 2d 1212 (Fla. 3d DCA 2008)(affirming denial of motion for receiver). The association appeals and we reverse with directions to vacate the order because there is simply no cognizable basis for such an appointment in such a case. *Akers v. Corbett*, 138 Fla. 730, 190 So. 28 (1939)(appointment of receiver must be pursuant and subsidiary to primary claim); *County Nat'l Bank of N. Miami Beach v. Stern*, 287 So. 2d 106 (Fla. 3d DCA 1973)(same); *Apalachicola N. R.R. Co. v. Sommers*, 79 Fla. 816, 85 So. 361 (1920)(appointment of a receiver improper in absence of fraud, self dealing, or waste of secured asset); *McAllister Hotel v. Schatzberg*, 40 So. 2d 201 (Fla. 1949) (same); *Conlee Constr. Co. Krause*, 192 So. 2d 330 (Fla. 3d DCA 1966)(same).

Reversed.