

Third District Court of Appeal

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

Opinion filed September 16, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-264
Lower Tribunal No. 03-12769

Westgate Miami Beach, Ltd.,
Appellant,

vs.

Newport Operating Corp.,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Jeri Beth Cohen, Judge.

Robert P. Frankel & Associates and Robert P. Frankel, for appellant.

Arnstein & Lehr and Franklin L. Zemel and John M. Cooney (Fort Lauderdale), for appellee.

Before RAMIREZ, C.J., and COPE and ROTHENBERG, JJ.

On Motion for Certification

PER CURIAM.

We grant the motion for certification. As stated in the majority and concurring opinions, it is our view that the rule in McGurn v. Scott, 596 So. 2d 1042 (Fla. 1992), should be revisited. The Florida Supreme Court has said that the district courts of appeal may suggest a change in law by certifying questions. Strickland v. State, 437 So. 2d 150, 152 (Fla. 1983); Hoffman v. Jones, 280 So. 2d 431, 434 (Fla. 1973). We certify that we have passed on the following questions of great public importance:

WHERE THERE HAS BEEN AN AGREEMENT ON, OR NO OBJECTION TO, A RESERVATION OF JURISDICTION TO AWARD PREJUDGMENT INTEREST, SHOULD THE RESERVATION BE UPHELD IN ORDER TO PREVENT AN INJUSTICE NOTWITHSTANDING THE RULE IN MCGURN V. SCOTT, 596 So. 2d 1042 (Fla. 1992)?

WHERE A JUDGMENT CONTAINS A RESERVATION OF JURISDICTION TO AWARD PREJUDGMENT INTEREST, SHOULD THE APPEAL OF SUCH A JUDGMENT BE TREATED AS A PREMATURE APPEAL UNDER FLORIDA RULE OF APPELLATE PROCEDURE 9.100(I), OR MUST THE APPEAL BE TREATED AS ACCOMPLISHING A WAIVER OF PREJUDGMENT INTEREST PURSUANT TO MCGURN V. SCOTT, 596 So. 2d 1042 (Fla. 1992)?

WHETHER A TRIAL COURT SHOULD BE ALLOWED TO RESERVE JURISDICTION TO AWARD PREJUDGMENT INTEREST POST-APPEAL AS IT CAN WITH ATTORNEYS' FEES AND COSTS?

Certification granted.