

Balair, Inc
vs.
De La Torre, Jose Elias

Page 136

CASE NO.

Docket 315

Division

THOMAS E. LEE.

72 26090
72 26090

3

CIVIL ACTION

IN CIRCUIT COURT

IN AND FOR
DADE COUNTY, FLORIDA

Balair, Inc

Plaintiff

vs.
Jose Elias de la Torre

Defendant

Action for

JUDGMENT

Robert J. Stampfl

Attorney for Plaintiff

This File Must Not Be Withheld from
Clerk's Office Without Leave of Court.

E. B. LEATHERMAN,
Clerk, Circuit Court

NOB 11-29-88

FILED IN RECORD

'72 DEC 22 PM 2:00

CLERK OF THE COURT
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

Case No.

72-26090

BALAIR, INC., a Florida corporation

Plaintiff,

vs.

JOSE ELIAS de la TORRIENTE,

Defendant.

COMPLAINT

THOMAS E. LEE,

dep 25.00
✓

Plaintiff, BALAIR, INC., sues Defendant, JOSE ELIAS de la TORRIENTE, and alleges:

1. This is an action for damages in excess of \$5000.00 namely, \$8,311.82 plus interest plus court costs, plus attorney fees.
2. That on or about the latter part of July, 1971, in Dade County, Florida, the Defendant negotiated with the President of the Plaintiff corporation, namely, Captain Jose Balboa, for a certain number of trips by air for the transportation of certain goods between various points in Central and South America; that the rate quoted to the Defendant was \$1.61 per statute mile for all statute miles flown from Miami to the point of pick up and then to the point of delivery and return to Miami.
3. That on or about August 5, 1971, the Defendant contracted with the said President of the Plaintiff corporation to transport certain goods by air at the quoted rate from Belem, Brazil, to Puerto Cabezas, Nicaragua via Maiquetia, Nicaragua for refueling; that at that time Defendant paid to Plaintiff \$1,500.00 as an advance under the transportation contract and as earnest money to bind the contract.
4. A. That on or about August 10, 1971, Plaintiff dispatched its aircraft, namely a Super Constellation model #L-1049H

(FAA #N-6932C) with pilot and co-pilot and that the said aircraft landed at Belem, Brazil, on or about August 12, 1971, and loaded the cargo then and there designated for transportation under the contract; that the aircraft forthwith departed Belem, Brazil, and flew to Maiquetia, Nicaragua, where it refueled, and on the same date delivered the cargo to Puerto Cabezas, Nicaragua; the cargo consisting of about 30 boxes, total weight 37,000 pounds.

B. That on the same date the aircraft returned to Miami, Florida, landing at Miami International Airport.

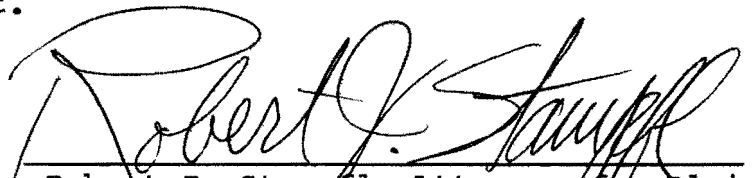
C. That agents of the Plaintiff notified the Defendant of the delivery and the balance due under the contract of \$8,311.82 as per invoice number 1372 dated August 10, 1971, which is attached to this complaint by reference and made a part hereof and is labeled Plaintiff's Exhibit A; that the statute miles flown by the said aircraft are set forth in Plaintiff's Exhibit B, which by reference is incorporated and made a part of this Complaint.

D. That at all times pertinent to this Complaint Plaintiff had complied with all the laws, rules and regulations, filing of flight plans, etc. entitling it to effect the said transportation contract.

5. That Defendant has always admitted his liability to make payment and has never denied this obligation, but said acknowledgement notwithstanding, no payment has been made since the payment under the contract of \$1500.00 after numerous demands.

6. Plaintiff prays that the ancillary remedy of Writ of Garnishment be issued by the Clerk of this Court pursuant to the pleadings filed by Plaintiff entitling it to this remedy.

Wherefore Plaintiff demands judgment against the Defendant in the amount of \$8,331.82 plus interest from August 12, 1971, plus costs of court, plus attorney's fees and the issuance of a Writ of Garnishment against Defendant.



Robert J. Stampfl, Attorney for Plaintiff
HIALEAH, FLORIDA 33010



BALAIR, Inc.

NO 1372

To: Ing. Jose Elias de la Torriente
709 Cremona Avenue
Coral Gables, Fla.

666-2272

DATE OF INVOICE	PURCHASE ORDER NO.	WORK ORDER NO.	TERMS - NET		
8-10-71		1132-33	Cash	N-6932C	
QUANTITY	DESCRIPTION			PRICE	TOTAL
	AIRCRAFT LEASE FROM MIAMI, FLA. TO BELEM TO PUERTO CABEZAS(ONE STOP AT MAIQUETIA FOR REFUEL)				\$ 10,758.02
	LESS:				
	ADVANCE			\$ 1,500.00	
	FUEL AT BELEM (3000 Gal.)			525.00	
	FUEL AT NICARAGUA (2000 Gal.)			350.00	
	OIL AT NICARAGUA(80 Gal.)			71.20	2,446.20
	TOTAL DUE:				\$ 8,311.82
	El precio acordado fue de \$1161 Statute Mile.				
	PLAINTIFF'S Exhibit A				

	<u>Miles</u>
Miami-Belem	2,892
Belem-Maiquetia	1,556
Maiquetia-P. Cabezas	1,195
P. Cabezas-Miami	1,039
	<hr/>
	6,682 Statue Miles
	x \$1.61
	<hr/>
	\$ 10,758.02
Less Advance	<u>1,500.00</u>
Balance	\$ 9,258.02

PLAINTIFF'S Exhibit B

GARNISHMENT AFFIDAVIT

IN THE ELEVENTH JUDICIAL CIRCUIT, DADE COUNTY, FLORIDA

BALAIR, INC., a Florida
corporation
Plaintiff
vs.
JOSE ELIAS de la TORRIENTE
Defendant
REPUBLIC NATIONAL BANK OF MIAMI
Garnishee

Case No. 72-26090

Action of Breach of Contract

Damages \$8,311.82

DEC 22 1972
PM 2:03
RECORD
CLERK OF CIRCUIT COURT
DADE COUNTY, FLA.

Before me personally appeared CAPTAIN JOSE BALBOA
who upon oath says that he is President of Balair, Inc., a Florida
corporation, Plaintiff

in the above stated cause; that the said suit is now pending in said Court, has not been prosecuted to final Judgment; that the debt for which the Plaintiff sues is just, due and unpaid; that the garnishment applied for is not sued out to injure either the Defendant or the garnishee, and that the affiant does not believe that the Defendant will have in his possession after execution shall be issued, visible property in this State and in Dade County upon which a levy can be made sufficient to satisfy the amount of the Plaintiff's claim.

Affiant therefore suggests that REPUBLIC NATIONAL BANK OF MIAMI
10 N.W. LeJeune Road of DADE County,
Florida, is indebted to the said Defendant or has effects, or said property of said Defendant in
its hand, custody or control and prays that a garnishment issue, commanding the said
REPUBLIC NATIONAL BANK OF MIAMI to appear and answer according
to law in such cases made and provided.

The money or other things sought to be garnished herein is not due the head of a family residing in
Florida for personal labor or services. BALAIR, INC., a Florida corporation

Plaintiff expects to recover \$ 8,311.82

By: Capt Jose Balboa
Capt. Jose Balboa, President

Sworn and subscribed before me this the 22nd day of December

A. D., 19 72

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES APRIL 11, 1973
BONDED THRU FRED W. DIESTELHORST

Robert J. Stumpf

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

FILED FOR RECORD
DEC 22 AM 2:02
CLERK CIRCUIT COURT
DADE CO. FLA

CASE NO. 72-26090

BALAIR, INC., a Florida
corporation

Plaintiff(s)

vs.

JOSE ELIAS de la TORRIENTE

MOTION FOR GARNISHMENT
BEFORE JUDGMENT

Writ Iss

Defendant(s)

REPUBLIC NATIONAL BANK OF MIAMI

Garnishee(s)

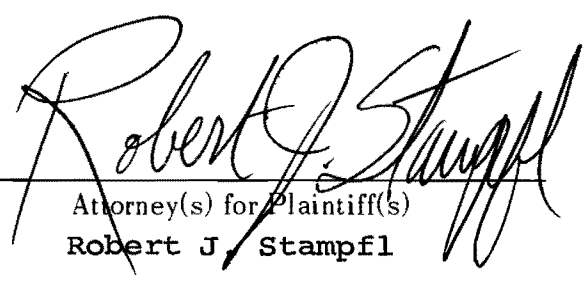
COME(S) NOW the Plaintiff(s), BALAIR, INC., a Florida
corporation

by and through the undersigned attorney(s), and state(s) that the debt for which the Plaintiff(s) sue(s) is just, due and unpaid; that the garnishment applied for is not sued out to injure the Defendant(s) or the Garnishee(s); that Movant(s) do(es) not believe that the Defendant(s) will have in his possession, after execution is issued, visible property in this State and in Dade County on which a levy can be made sufficient to satisfy Plaintiff's(s') claim; and that the debt demanded by Plaintiff(s) is in the amount of \$ 8,311.82.

Plaintiff(s) suggest(s) that REPUBLIC NATIONAL BANK OF MIAMI
10 N.W. LeJeune Road

is (are) indebted to, or has (have) tangible or intangible personal property of the Defendant(s) JOSE ELIAS de la TORRIENTE

in its hands, possession or control, and move(s) that the Clerk of the above Court issue a WRIT OF GARNISHMENT, commanding the Garnishee(s) named above to answer according to law in such cases provided.


Attorney(s) for Plaintiff(s)
Robert J. Stampfl

ROBERT J. STAMPFL
ATTORNEY AT LAW
39 EAST 6th STREET
HIALEAH, FLA. 33010

FILED - OR RECORD

72 DEC 22 PM 2:02

Garnishment Bond

STATE OF FLORIDA

COUNTY OF DADE

BALAIR, INC., a Florida
corporation

Plaintiff

vs.

JOSE ELIAS de la TORRIENTE

Defendant

Case No. _____

72-26090

In The Eleventh Judicial Circuit

DADE COUNTY, FLORIDA
STATE OF FLORIDA)
COUNTY OF DADE)

This Copy is a true Copy of the Original on file
in this Office. WITNESS my hand and Official Seal.
This 22 day of Dec. A.D., 1972

E. B. LEATHERMAN,
Clerk Circuit Court

By M.M. Moore D.C.

Know All Men by These Presents That We BALAIR, INC., a Florida corporation

_____, as Principal, and
BANKERS FIRE & CASUALTY INSURANCE COMPANY, a Fla. corp.
and _____

as sureties, are held and firmly bound unto JOSE ELIAS de la TORRIENTE
in the sum of SEVENTEEN THOUSAND (17,000) Dollars

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors and
administrators, jointly and severally, firmly by these Presents.

Signed and sealed this 22nd day of December, A. D. 1972

The condition of the above obligation is such that whereas the said BALAIR, INC.

has this day applied for a Writ of Garnishment against the goods, money, chattels or effects of
JOSE ELIAS de la TORRIENTE

for the sum of EIGHT THOUSAND THREE HUNDRED ELEVEN AND 82/100 Dollars
(\$8,311.82)

Now, therefore, if the said BALAIR, INC.

shall well and truly pay all costs and damages the Defendant may sustain in consequence of
Plaintiff improperly suing out said Writ of Garnishment, then this bond to be null and void, else
to remain in full force and virtue.

BELAIR, INC., a Florida corporation

Taken and approved by me

By:

Capt. Jose Balboa (Seal)
Capt. Jose Balboa, President (Seal)

BANKERS FIRE & CASUALTY INSURANCE COMPANY (Seal)

By

Attorney in Fact

E. B. Leatherman
By: M. E. Bonstein
D.C.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

BALAIR, INC., a Florida
corporation,

CASE NO. 72-26090

Plaintiff

CIVIL ACTION
SUMMONS

- vs -

JOSE ELIAS de la TORRIENTE,

Defendant

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in the above styled cause upon the defendant:

JOSE ELIAS de la TORRIENTE
709 Cremona Avenue
Coral Gables, Florida

73 JAN 5 AM 11 20
RECORDED
INDEXED
RICHARD SKINNER
CLERK CIRCUIT COURT
DADE CO. FLA.

Each defendant is hereby required to serve written defenses to said complaint or petition on

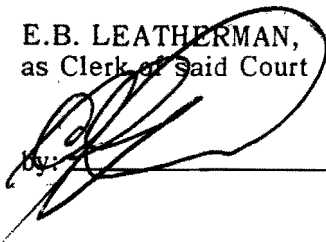
Plaintiff's attorney, whose address is:
ROBERT J. STAMPFL
ATTORNEY AT LAW
39 EAST 6th STREET
HIALEAH, FLA. 33010

within 20 days after service of this summons upon you, exclusive of the day of service, and to file the original of said written defenses with the Clerk of said Court either before service on Plaintiff's attorney or immediately thereafter. If you fail to do so, a default will be entered against you for the relief demanded in the complaint or petition.

DEC 22 1972

WITNESS my hand and the seal of said Court on _____, 19 _____

E.B. LEATHERMAN,
as Clerk of said Court



as Deputy Clerk

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CASE NO. 72-26090

BALAIR, INC., a Florida
corporation,

Plaintiff,

- vs -

JOSE ELIAS de la TORRIENTE,

Defendant.
.....

FILED FOR GARNISHEE
73 JAN 2 PM 4 30
RICHARD CLARK
CLERK OF CIRCUIT COURT
DADE CO. FLA.

The REPUBLIC NATIONAL BANK OF MIAMI, Garnishee in these proceedings, files its Answer to the Writ of Garnishment served upon it, and states:

1. At the time of filing this Answer or at the time of service of the Writ of Garnishment or at any time between such times, this Garnishee had a checking account in the name of JOSE ELIAS de la TORRIENTE or GILDA with a balance of \$1,129.70, the proceeds of which will be held pending further Order of the Court.

2. This Garnishee knows of no other person indebted to the defendants nor does it know of any person who may have any effects or properties of the defendants in their hands or control.

WHEREFORE, having filed its Answer, the Garnishee requests that the Court allow it such fees as are permitted by law for its appearance in this case and for such other sums of money that the Court may allow it for attorneys' fees in connection with the preparation of this Answer.

WE HEREBY CERTIFY that a true copy of the foregoing ANSWER OF GARNISHEE was this 30 day of December, 1972, served by mail upon ROBERT J. STAMPFL, ESQ., 39 East 6 Street, Hialeah, Florida, Attorney for Plaintiff.

PAUL, LANDY & BEILEY
Attorneys for Garnishee
341 Pan American Bank Building
Miami, Florida 33131


Stanley Arthur Beiley

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

BALAIR, INC., a Florida

corporation

Plaintiff(s)

VS

JOSE ELIAS de la TORRIENTE

Defendant(s)

THE STATE OF FLORIDA, To All and Singular the Sheriffs of said State:

YOU ARE COMMANDED TO SERVE THIS WRIT OF GARNISHMENT UPON

REPUBLIC NATIONAL BANK OF MIAMI

10 N.W. LeJeune Road

Miami, Florida

_____, as garnishee herein, who is directed to file an answer to this writ of garnishment with the Clerk of the above styled Court and to serve a copy thereof on the above named plaintiff _____, or plaintiff's _____ attorney, Robert J. Stampfl

whose address is 39 East 6th Street, Hialeah, Florida 33010

within twenty days after service hereof, exclusive of the day of service, and in said answer to state, whether you, the said garnishee _____, are at the time of your answer indebted to the defendant JOSE ELIAS de la TORRIENTE

or were indebted to said defendant _____ at the time of service upon you of this writ, or at any time between such times, and in what sums and what tangible or intangible personal property of said defendant _____ you have at the time of your answer in your hands, possession, or control, or that you had at the time of service upon you of this writ, or at any time, between such times and whether you know of any other person indebted to said defendant _____, or who may have any of the property of said defendant _____ in his possession or control. The amount named in plaintiff's motion is EIGHT THOUSAND THREE HUNDRED ELEVEN AND 82/100 Dollars

\$ 8,311.82

FAILURE OF THE GARNISHEE TO SO FILE AND SERVE AN ANSWER MAY RESULT IN JUDGMENT BY DEFAULT BEING ENTERED AGAINST THE GARNISHEE FOR THE AMOUNT DUE THE PLAINTIFF, TOGETHER WITH INTEREST AND COSTS.

WITNESS, The Honorable Judges of The Circuit Court, as also E. B. LEATHERMAN, Clerk, and the seal of said Court, at the Courthouse in Miami, aforesaid, this _____

Dec 22, 1972

E. B. LEATHERMAN,
Clerk of Circuit Court

Seal: Circuit Court

By

M. E. Bonstein
As Deputy Clerk

72-26090

CORPORATION SERVICE

COURT Cir ~~FILE~~ STYLE Writ of
Garnishment

ATTORNEY: Robert J. Stampfl

ADDRESS: 39 East 6thSt. Hialeah

PLAINTIFF: **Balair, Inc.**

DEFENDANT: De La Torriente

RECEIVED THIS WRIT ON THE 22nd DAY OF
Dec. A.D. 1972, AND SERVED
THE SAME ON Republic National Bank of
Miami

Garnishee'

A CORPORATION, THE WITHIN NAMED ORFEDUX INC.
IN DADE COUNTY, FLORIDA, AT 11:40 am. ON
THE 28th DAY OF Dec.

A.D. 19 72, BY DELIVERING A TRUE COPY OF
THE WRIT WITH THE DATE AND HOUR OF SERVICE
ENDORSED THEREON BY ME, AND ~~NOTARY PUBLIC OF~~

PLANT, ~~XX~~
 XXXXXXXXXXXXXXXX TO Robert Gonzales.

Cashier,

IN THE ABSENCE OF: Pres.

V.Pres., and all other

heads.

OF SAID CORPORATION,

WRIT

\$ 7.50

Sgt. JMS, pam, 1/4/73

SHERIFF,

DADE COUNTY, FLORIDA

BY

DEPUTY SHERIFF

373

R. J. A. L.

8 30

RECEIVED
CLERK OF CIRCUIT COURT
DADE CO. FLA.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

CASE NO. 72-26090

BALAIR, INC., a Florida Corporation,)

Plaintiff,)

vs.)

JOSE ELIAS de la TORRIENTE,)

Defendant.)

MOTION TO DISMISS

RECEIVED
CLERK OF CIRCUIT COURT
DADE CO. FLA.

73
JAN 18 AM 8 30

COMES NOW the Defendant, JOSE ELIAS de la TORRIENTE,
by and through his undersigned attorney and moves this Honorable Court
for a Motion to Dismiss on the following grounds:

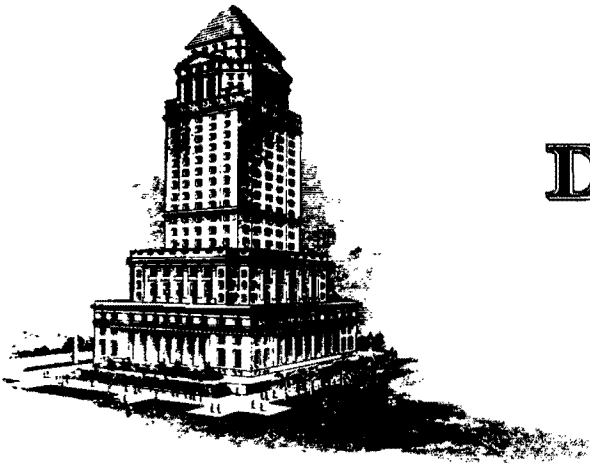
1. That Plaintiff failed to attach the copies of the written contract establishing contractual relationship between Plaintiff and Defendant.
2. That Plaintiff failed to allege either contractual or statutory authorization for the claim for attorney's fees.
3. That Plaintiff failed to establish the necessary grounds for justification for issuance of the ancillary remedy of writ of garnishment.
4. That Plaintiff failed to state a cause of actions against the Defendant.

WHEREFORE, Defendant prays that the Complaint be dismissed with prejudice and the writ of garnishment dissolved.

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss was mailed this 16th day of January, 1973, to Robert J. Stampfl, 39 East 6th Street, Hialeah, Florida 33010.

ROBERT A. SPIEGEL, ESQUIRE

Robert A. Spiegel
Attorney for Defendant
800 Douglas Road
Coral Gables, Florida 33134



DADE COUNTY COURTHOUSE

DADE COUNTY

MIAMI, FLORIDA 33101

OFFICE OF
E. B. LEATHERMAN
CLERK OF CIRCUIT COURT
AND RECORDER
P. O. BOX 1031

January 16th, 1973

Paul, Landy and Beiley
341 Pan American Bank Building
Miami, Florida 33131

Balair, Inc. vs. Jose Elias de la Torriente
Civil Action No. 72-26090

RE:

Gentlemen:

Enclosed herewith check No. 24 in the amount of \$ 10.00
payable to your order, re: answer of garnishee in the
above styled cause.

Yours very truly,

E. B. LEATHERMAN
Clerk Circuit Court

M. M. MOORE

BY: _____
Deputy Clerk

EBL:dkb
Encl:

73 APR 11 PM 3:49
RECORDED
CLERK CIRCUIT COURT
DADE CO. FLA.

BALAIR, INC., a Florida corporation :
and :
JOSE ELIAS de la TORRIENTE, :
Defendant. :

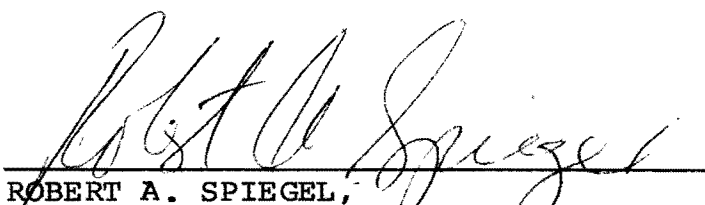
IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY


GENERAL JURISDICTIONAL DIVISION
Case No. 72-26090 (J. Thomas E.
Lee)

STIPULATION AND JOINT MOTION
FOR ORDER OF DISMISSAL

Both parties through their respective undersigned counsel hereby represent unto this Honorable Court that all matters in controversy between them in the above styled Cause have amicably settled and agreed upon.

Wherefore, both parties jointly move for a dismissal of the above styled cause with prejudice under Rule 1.420 a2, each party to bear its or his own costs and that the Writ of Garnishment heretofore issued be dissolved and the Garnishment Bond thereon be discharged.


ROBERT A. SPIEGEL,
Attorney for Defendant, Jose Elias
de la Torriente


ROBERT J. STAMPFL
Attorney for Plaintiff, Balair, Inc.

RECORD

73 APR 11 PM 3.49

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY

M.M.
BALAIR, INC., a Florida corporation, :
Plaintiff, :
vs. :
JOSE ELIAS de la TORRIENTE, :
Defendant. :

GENERAL JURISDICTIONAL DIVISION

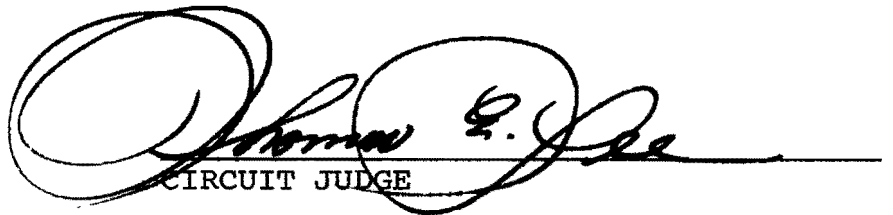
Case No. 72-26090 (J. Thomas E. Lee)

ORDER OF DISMISSAL WITH PREJUDICE

This Cause came on to be heard before me this date upon stipulation of the parties by their respective counsel and joint motion for Order of Dismissal; upon consideration

IT IS ORDERED AND ADJUDGED that this Cause be dismissed with prejudice each party to bear its or his respective costs and that the Writ of Garnishment heretofore issued by the Clerk of this Court shall be dissolved and that the account on deposit with the Republic National Bank of Miami under the name of Jose Elias de la Torriente or Gilda be released from said Writ and that the Surety for the Garnishment Bond, Banker's Fire and Casualty Insurance Company, a Florida corporation, be released and discharged from any liability under the Garnishment Bond.

ORDERED in Miami, Florida, this 11th day of April, 1973.


CIRCUIT JUDGE

COPIES OF THE ABOVE ORDER WERE
MAILED TO ATTORNEYS OF PARTIES
ON THE DATE OF ENTRY HEREIN
BY ELAINE TOWNSEND, SECY.

Recorded this 13 day of April, A.D. 19 73
In Circuit Court Official Record Book and
Page noted below.

RICHARD P. BRINKER
Clerk Circuit Court

By: R. Barta
Deputy Clerk