

SUPREME COURT OF FLORIDA, SPECIAL DIVISION B

Michael Olesky and Arthur W. Chairsell, Appellants, v. Daniel J. Nicholas, Fred J. Nicholas, Josephine B. Bowerman, Sadie S. Moreno, Amelia E. Nicholas, Adam A. Nicholas and Frieda T. Nicholas, Appellees

Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955)

SUMMARY

The Florida Supreme Court held that a homestead including a business house is not abandoned absent a clear-cut intention to abandon, determined by cautious consideration of all facts and circumstances; a period of vacancy due to economic necessity and without intent to abandon does not destroy the exemption. The court further held that the Florida constitutional homestead exemption protects against all forced sales except those specifically enumerated in the constitution, and therefore a judgment grounded on a malicious tort cannot overcome the exemption.

CASE DETAILS

COURT	Supreme Court of Florida, Special Division B
WRITING FOR THE COURT	THORNAL, Justice; THORNAL; DREW; TERRELL; THOMAS
JURISDICTION	Florida
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final decree of the Chancellor holding the property to be a homestead and business house exempt from judgment liens.
STANDARD OF REVIEW	Review of whether the Chancellor correctly declared the property exempt from judgment liens based on the facts and law regarding homestead abandonment and exemption applicability.
PRECEDENTIAL VALUE	binding
PARTIES	Michael OLESKY, Arthur W. Chairsell v. Daniel J. NICHOLAS, Fred J. Nicholas, Josephine B. Bowerman, Sadie S. Moreno, Amelia E. Nicholas, Adam A. Nicholas, Frieda T. Nicholas

TOPICS

- real estate
- constitutional law
- civil procedure
- appellate procedure

PRACTICE AREAS

Creditors' Rights

Real Property

Homestead Exemptions

QUESTIONS PRESENTED

1. Whether the deceased parents abandoned the exempt character of the business house portion of the property.
2. Whether the Florida constitutional homestead exemption protects the homestead from the lien of a judgment for malicious tort.

HOLDINGS

1. There was no intended abandonment of the business house; whether a homestead including a business house has been abandoned must be determined by cautious consideration of facts and circumstances, requiring a clear-cut intention to abandon, which was not present despite a period of non-use.
2. The Florida constitutional exemption protects the homestead against every type of claim and judgment except those specifically mentioned in the constitutional provision, and therefore the homestead exemption precludes an execution sale even when the judgment is grounded on a malicious tort.

KEY QUOTATIONS

*“Whether there has been an abandonment of a homestead so as to deprive it of its exemption character under the Constitution should be determined by a consideration of all the pertinent facts and circumstances of each case as it arises, having in view the intent and purposes of the organic provisions that the homestead 'shall be exempt from forced sale,' and that 'the exemptions * * * shall inure to the widow and heirs.'” (512)*

“The homestead exemption rights in the property having been duly acquired before the judgments were rendered, unless an intentional and actual abandonment of the exemption rights clearly appear, the property is not subject to liens under the judgments; and, when the owner with his family after an absence for business and school purposes again occupy the property claiming that he has not abandoned his homestead rights therein, a forced sale of the property under executions issued on the judgments is a violation of the organic homestead rights.” (512)

FACTUAL BACKGROUND

Tofic and Sophie Nicholas acquired a small house in Miami in 1940. A room and part of the porch were converted into a sundry store operated by the father. He later took outside employment, leaving the store-room vacant for several years but intending to return. He resumed operation of the store in 1950. After his death in 1951 and his wife's death in 1952, the property remained the family home and business house, never rented to non-family members. Appellants held judgments from 1947 for malicious prosecution against the parents.

PROCEDURAL HISTORY

Appellees, as heirs of Tofic and Sophie Nicholas, filed suit in the lower court for a declaration that the property constituted a homestead and business house exempt from the lien of appellants' judgments. The Chancellor entered a final decree in favor of appellees, declaring the entire property exempt. Appellants appealed.

DISPOSITION

affirmed

CASES CITED

- Nelson v. Hainlin, 89 Fla. 356, 104 So. 589
- Read v. Leitner, 80 Fla. 574, 86 So. 425
- Cowdery v. Herring, 106 Fla. 567, 143 So. 433, 144 So. 348
- Smith v. Guckenheimer, 42 Fla. 1, 27 So. 900
- Jones v. Carpenter, 90 Fla. 407, 106 So. 127, 43 A.L.R. 1409

CITED IN

- Michael Olesky and Arthur W. Chairsell, Appellants, v. Daniel J. Nicholas, Fred J. Nicholas, Josephine B. Bowerman, Sadie S. Moreno, Amelia E. Nicholas, Adam A. Nicholas and Frieda T. Nicholas, Appellees, Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955)
- Michael Olesky and Arthur W. Chairsell, Appellants, v. Daniel J. Nicholas, Fred J. Nicholas, Josephine B. Bowerman, Sadie S. Moreno, Amelia E. Nicholas, Adam A. Nicholas and Frieda T. Nicholas, Appellees, Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955)