

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Frazier v. Baker Material Handling Corp.

540 So. 2d 205 (Fla. 3d DCA 1989) · Decided March 21, 1989

SUMMARY

The court affirms summary judgments based on Florida’s twelve-year products-liability statute of repose. It rejects applying the Strickland exception to preserve tort claims allegedly affected by reliance on Battilla, follows Pullum and Melendez, and certifies conflict with decisions from the First and Fifth District Courts of Appeal.

CASE DETAILS

|                       |                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Third District                                                                                                    |
| WRITING FOR THE COURT | Nesbitt; Ferguson; Schwartz                                                                                                                            |
| JURISDICTION          | Florida                                                                                                                                                |
| DECIDED               | March 21, 1989                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                               |
| PROCEDURAL POSTURE    | Consolidated appeals from orders granting appellees' motions for summary judgment based on Florida's twelve-year products-liability statute of repose. |
| STANDARD OF REVIEW    | De novo review of summary judgment and the legal effect of the statute of repose and subsequent judicial decisions.                                    |
| PRECEDENTIAL VALUE    | Published appellate opinion; conflict certified with decisions of the Florida First and Fifth District Courts of Appeal.                               |
| PARTIES               | Frazier v. Baker Material Handling Corp.                                                                                                               |

TOPICS

- products liability
- negligence
- statutory interpretation
- constitutional law

PRACTICE AREAS

- products liability
- negligence
- constitutional law
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the trial courts properly granted summary judgment under the twelve-year products-liability statute of repose.
2. Whether the Strickland exception protecting property or contract rights acquired in reliance on a prior judicial construction should be extended to tort claims allegedly affected by the retrospective application of Pullum.
3. Whether the 1986 repeal of the products-liability statute of repose or the plaintiffs' asserted reliance on Battilla prevented application of Pullum to their claims.

#### **HOLDINGS**

1. Pullum applies retroactively to bar the plaintiffs' tort claims that accrued during the Battilla-Pullum interval; the Strickland exception does not extend to these claims merely because the plaintiffs assert reliance on Battilla.
2. Summary judgment for the appellees was proper because the applicable statute of repose, as interpreted by Pullum and Melendez, barred the plaintiffs' claims.

#### **KEY QUOTATIONS**

*“The narrow Strickland exception should not be extended to all cases based on the fictional belief that all claimants barred by Pullum ‘relied’ on Battilla.” (207)*

#### **FACTUAL BACKGROUND**

The products involved in the consolidated cases were delivered in 1972. The plaintiffs suffered injuries in 1982 and 1983 and filed negligence and products-liability actions in 1986. The plaintiffs argued that their claims should not be barred because they had detrimentally relied on Battilla v. Allis Chalmers Manufacturing Co., which had invalidated the statute of repose before Pullum v. Cincinnati, Inc. receded from Battilla.

#### **PROCEDURAL HISTORY**

The trial courts granted summary judgment for the appellees, concluding that the claims were barred by the twelve-year statute of repose in section 95.031(2), Florida Statutes (1983). The plaintiffs appealed, and the Third District consolidated the cases, affirmed the judgments, and certified conflict with decisions of the First and Fifth District Courts of Appeal.

#### **DISPOSITION**

affirmed

#### **CASES CITED**

- Battilla v. Allis Chalmers Manufacturing Co., 392 So. 2d 874 (Fla. 1980)
- Pullum v. Cincinnati, Inc., 476 So. 2d 657 (Fla. 1985)
- Melendez v. Dreis and Krump Manufacturing Co., 515 So. 2d 735 (Fla. 1987)
- Black v. Nesmith, 475 So. 2d 963 (Fla. 1st DCA 1985)

- Florida Forest and Park Service v. Strickland, 154 Fla. 472, 18 So. 2d 251 (1944)
- Department of Revenue v. Anderson, 389 So. 2d 1034 (Fla. 1st DCA 1980), review denied, 399 So. 2d 1141 (Fla. 1981)
- National Insurance Underwriters v. Cessna Aircraft Corp., 522 So. 2d 53 (Fla. 5th DCA 1988), review denied, 531 So. 2d 1352 (Fla. 1988)
- Lowell v. Singer Co., 528 So. 2d 60 (Fla. 1st DCA 1988)
- Brackenridge v. Ametek, Inc., 517 So. 2d 667 (Fla. 1987), cert. denied, 109 S. Ct. 30, 102 L. Ed. 2d 9 (1988)

## OPINION

NESBITT, J.

NESBITT, Judge. The issue in these consolidated cases is whether the trial courts erred in granting appellees' motions for summary judgment, based upon the twelve-year statute of repose, section 95.031(2), Florida Statutes (1983).

We affirm the trial courts' decisions. The Florida supreme court, in *Battilla v. Allis Chalmers Mfg. Co.*, 392 So.2d 874 (Fla.1980), invalidated the twelve-year products liability statute of repose, as applied, as an unconstitutional deprivation of a plaintiff's access to the courts under Article I, section 21, Florida Constitution. Subsequently, in *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla.1985), appeal dismissed, 475 U.S. 1114, 106 S.Ct.

1626, 90 L.Ed.2d 174 (1986), the court receded from *Battilla*, holding that the products liability statute of repose was not unconstitutional. The legislature repealed the statute of repose as to products liability actions effective July 1, 1986.

In the recent case of *Melendez v. Dreis and Krump Mfg. Co.*, 515 So.2d 735 (Fla.1987), the Florida supreme court determined (1) that the 1986 abolition of the statute of repose in product liability actions does not operate retrospectively; and (2) that *Pullum* bars causes of action that accrued in the *Battilla-Pullum* interval.<sup>1</sup> Thus, *Melendez* followed the general rule that a decision of a court of last resort that overrules a prior decision is retrospective as well as prospective, unless declared by the opinion to have prospective effect only.

*Melendez*, 515 So.2d at 736, citing *Black v. Nesmith*, 475 So.2d 963 (Fla. 1st DCA 1985). The exception to this general rule is set forth in *Florida Forest and Park Serv. v. Strickland*, 154 Fla. 472, 18 So.2d 251 (1944): To this rule, however, there is a certain well-recognized exception that where a statute has received a given construction by a court of supreme jurisdiction and property or contract rights have been acquired under and in accordance with such construction, such rights should not be destroyed by giving to a subsequent overruling decision a retrospective operation.

*Id.* 18 So.2d at 253; see *Department of Revenue v. Anderson*, 389 So.2d 1034 (Fla. 1st DCA 1980), review denied, 399 So.2d 1141 (Fla.1981). This *Strickland* exception was utilized by our

sister courts in *National Ins. Underwriters v. Cessna Aircraft Corp.*, 522 So.2d 53 (Fla. 5th DCA), review denied, 531 So.2d 1352 (Fla.1988) as well as in *Lowell v. Singer Co.*, 528 So.2d 60 (Fla.

1st DCA 1988). In both cases, it was determined that plaintiffs' detrimental reliance upon Battilla in their tort claims required that Pullum not be applied retroactively. We disagree with the application of the Strickland exception to such claims and find that Judge Cowart's dissent in *National* provides the better analysis and appropriate result.

The appellants sub judice, as in *Lowell* and *National*, seek damages for negligence and products liability, which claims are rights in causes of action in tort. The Florida supreme court has not extended the exception in *Strickland* to tort cases.

We concur with Judge Cowart's conclusion that: "The narrow Strickland \*207exception should not be extended to all cases based on the fictional belief that all claimants barred by Pullum 'relied' on Battilla." We acknowledge that this decision is in direct conflict with *National Ins. Underwriters v. Cessna Aircraft Corp.*, 522 So.2d 53 (Fla. 5th DCA), review denied, 531 So.2d 1352 (Fla.1988) and *Lowell v. Singer Co.*, 528 So.2d 60 (Fla.

1st DCA 1988). This conflict has not been settled by *Melendez* or the subsequent opinion of *Brackenridge v. Ametek, Inc.*, 517 So.2d 667 (Fla.1987), cert. denied, — U.S. -, 109 S.Ct. 30, 102 L.Ed.2d 9 (1988). Accordingly, we affirm on the above stated analysis and certify the conflict..

The products in these cases were delivered in 1972. The injuries occurred in 1982 and 1983. Plaintiffs filed their actions in 1986.