

RECEIVED 07/27/2017 10:12 am FLORIDA SUPREME COURT

RECEIVED, 7/26/2017 2:21 PM, Clerk, Fourth District Court of Appeal

**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA**

STEPHEN TOGNOLI, as
Personal Representative for the
Estate of LYNDA TOGNOLI,

Appellant,

Case No. 4D16-224

v.

L.T. Case No. 2008-CV-045898

PHILIP MORRIS USA INC.,

Appellee.

_____ /

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS GIVEN that Petitioner, Stephen Tognoli, as Personal Representative for the Estate of Lynda Tognoli, invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered June 28, 2017.

The decision is within the discretionary “tag” jurisdiction of the Florida Supreme Court because it is a “citation PCA” to *Reynolds Tobacco Co. v. Schoeff*, 178 So. 3d 487 (Fla. 4th DCA 2015), which is currently pending review in the Florida Supreme Court, *Schoeff v. R.J. Reynolds Tobacco Co.*, SC15-2233, 2016 WL 3127698 (Fla. May 26, 2016). *See, e.g., Jollie v. State*, 404 So. 2d 418 (Fla. 1981) (“[A] district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court

continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.”). Appellant therefore asks that this case be “tagged” to *Schoeff* to ensure the uniformity of decisions and so that Petitioner may benefit from the Supreme Court’s resolution of *Schoeff*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail and email to Timothy E. Congrove (SHBPMAttBroward@shb.com, tcongrove@shb.com), Stacey E. Deere (sdeere@shb.com) and Scott D. Kaiser (skaiser@shb.com), Shook, Hardy & Bacon, LLP, 2555 Grand Blvd., Kansas City, Missouri 64108; J. Daniel Gardner (SHBPMAttBroward@shb.com; jgardner@shb.com), Shook, Hardy & Bacon, LLP, 201 South Biscayne Blvd., Suite 3200, Miami, Florida 33131; Joseph M. Fasi II (fasi@gwmlaw.com, wiza@gwmlaw.com), Gass Weber Mullins, LLC, 255 Aragon Avenue, Second Floor, Miami, Florida 33134; John P. Wunderli (jwunderli@rqn.com), Ray Quinney & Nebeker, P.C., 36 S. State Street, Suite 1400, Salt Lake City, Utah 84111; Peter M. Henk (SHBPMAttBroward@shb.com; phenk@sb.com), Shook, Hard & Bacon, LLP, 600 Travis Street, Suite 3400, Houston, TX 77002; Geoffrey J. Michael (Geoffrey.Michael@aporter.com), Arnold & Porter LLP, 601 Massachusetts Avenue, NW, Washington, DC 20001 on this 26th day of July 2017.

ALEX ALVAREZ



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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

STEVEN TOGNOLI, as Personal Representative for the Estate of **LYNDA
TOGNOLI**,
Appellant,

v.

PHILIP MORRIS USA INC.,
Appellee.

No. 4D16-224

[June 28, 2017]

Appeal and cross-appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy III, Judge; L.T. Case Nos. 08-80000 (19) and 2008-CV-045898 (19).

Thomas J. Seider, Celene H. Humphries and Maegen Peek Luka of Brannock & Humphries, Tampa; Alex Alvarez of The Alvarez Law Firm, Coral Gables; Randy Rosenblum of Dolan, Dobrinsky, Rosenblum, LLP, Miami; Philip Freidin of Freidin Brown P.A., Miami; and Maria P. Sperando of the Law Office of Maria P. Sperando, P.A., Stuart, for appellant.

Scott D. Kaiser of Shook, Hardy & Bacon LLP, Kansas City, Missouri; and Geoffrey J. Michael of Arnold & Porter LLP, Washington, DC, for appellee.

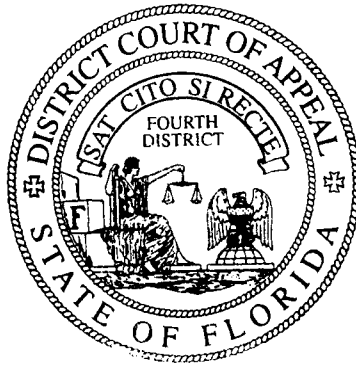
PER CURIAM.

Affirmed. See R.J. Reynolds Tobacco Co. v. Schoeff, 178 So. 3d 487 (Fla. 4th DCA 2015), *review granted*, SC15-2233 (Fla. May 26, 2016).

CIKLIN, C.J., DAMOORGIAN and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.



i hereby certify that the above and foregoing is a true copy of instrument filed in my office.

Lonn Weissblum, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

Per *Lynn Lewis*
Deputy Clerk

**FOURTH DISTRICT COURT OF APPEAL
1525 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FLORIDA 33401
(561) 242-2000**

Date: July 27, 2017

Case Name: Steven Tognoli v. Philip Morris USA Inc.

Case No: 4D 16-224

Trial Court No.: 08-80000(19), 2008CF045898(19)

Trial Court Judge: John Joseph Murphy

Dear Mr. Tomasino:

Attached is a certified copy of a Notice to Invoke Discretionary Jurisdiction/Notice of Appeal to the Supreme Court of Florida pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

- The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be mailed.
- The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this court.
- Petitioner/Appellant has been previously determined insolvent by the circuit court or our court.
- Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's Motion to proceed without payment of costs in this case.
- Petitioner/Appellant filed Notice via EDCA and the fee has not been received by this court.

No filing fee is required in the underlying case in this court because it was:

- A Summary Appeal (Rule 9.141)
- From the Unemployment Appeals Commission
- A Habeas Corpus Proceeding
- A Juvenile Case
- Other – _____

If there are any questions regarding this matter, please do not hesitate to contact this Office.

Sincerely,

LONN WEISSBLUM
Clerk of the Court

By: /s/ Lynn Lewis
Lynn Lewis
Deputy Clerk