

YLS President's Message

BY EVIAN WHITE DE LEON



President-Elect Profile: Isabella Poschl

When I put my name in the ring for President-Elect, my first thought was, "Ayo, I'm gonna need a right-hand [wo] man." Let me introduce you to that woman, your 2018-19 YLS President-Elect, Isabella Poschl. Over the next year, you're going to meet the YLS E-Board and Directors here. We're starting with Isa.



President-Elect Isabella Poschl

Full disclosure: Isa worked for me as an intern and volunteer attorney when I was at Legal Services of Greater Miami, Inc. We quickly became, and stayed, friends after her time at Legal Services came to an end. I'm glad she let me coerce/convince her to join the YLS.

Without further ado, a Q&A with Isa:

Q: Tell us about your professional path and how you ended up where you are today.

A: I graduated from St. Thomas University School of Law in May 2013, intent on practicing immigration law. Before getting there, my career took a few twists and turns. I was hired as a finance director for a Florida Attorney General campaign. Simultaneously, I was hired by CABA Pro Bono Project as a contract attorney to handle all their foreclosure defense work. In June 2015, I was hired as an associate

at an immigration firm and was recently offered an Asylum Officer position with the government.

Q: Why do you care about what you do?

A: The opportunity to help people has always been what has motivated my work.

Q: If you weren't a lawyer, what would you have done with your life?

A: Before deciding to go to law school, I was intent on being a music and entertainment writer with the hope of someday writing for Rolling Stone. My mom wasn't too keen on the idea and there was an audible sigh of relief when I changed course and decided to go to law school.

Q: What makes you get up in the morning?

A: It's usually a smooch from my dog that makes me get up in the morning, but it also helps that I really like what I do!

Q: What are you most looking forward to this year?

A: I am looking forward to working closely with our Directors to help them develop programming they are passionate about for our YLS members, the legal community, and Miami as a whole. We have come up with inspiring ideas in the past, including our high school essay contest, and I cannot wait to see what great things we come up with this year.

Q: Last, but not least, whom would you most like to meet?

A: I would love to meet Lin Manuel-Miranda. I am a fan of everything he does, especially Hamilton, and I would love to bask in his genius and nerd out over musical theater and history with him.

Evian White De Leon, is Program & Policy Director at Miami Homes For All, Inc. ■

Court Affirms Judgment in Favor of Contractors in Motorcycle Accident Wrongful Death Case

BY MICHAEL LEVINE



For nearly 60 years, the Slavin Doctrine has stood at the intersection of construction and personal injury litigation. In its recent opinion in Valiente v. R.J.

Behar & Company, Inc., the Third District Court of Appeal signaled a willingness to resolve issues concerning the Slavin Doctrine at the summary judgment stage. Whether resolved at summary judgment or at trial, the continued application of Slavin requires lawyers for plaintiffs and defendants to fully investigate the potential liability of property owners and contractors.

The Slavin Doctrine arises from a 1959 Florida Supreme Court decision in Slavin v. Kay and acts to cut off the liability of contractors after an owner has accepted the work, so long as the alleged defect is a patent defect that the owner could have discovered had it made a reasonably careful inspection. The test for patency is not whether or not the condition was obvious to the owner, but whether or not the dangerousness of the condition was obvious had the owner exercised reasonable care.

The rationale behind Slavin is that by accepting the work, the property owner has deprived the contractor of the opportunity to remedy any defects. On the other hand, if the dangerousness of a potential defect could not have been discovered despite reasonable investigation, then it is considered latent and the contractor remains liable while

the property owner may escape liability. See *Mai Kai, Inc. v. Colucci*, 205 So. 2d 291 (Fla. 1967).

In the recent Valiente case, a man was killed when his motorcycle collided with another vehicle at an intersection in Hialeah. The decedent's mother filed suit against several defendants including multiple contractors, arguing they were negligent in planting shrubs that obstructed the view of drivers near the intersection, causing the accident.

The defendant contractors, who were hired by the City of Hialeah, planted the shrubs as part of their work on a city roadway project. Two years prior to the accident, the city accepted the contractors' work despite the fact that, when planted, the shrubs were more than two feet taller than the maximum height permitted by Miami-Dade's Public Works Manual.

The contractors moved for summary judgment based upon Slavin, arguing that because the alleged defect in their work was patent and the city accepted their work, they could not be held liable. Appellate courts across the state, including the Third District, have ruled that the question of patency is generally left for a jury to decide. E.g., *Plaza v. Fisher Dev., Inc.*, 971 So. 2d 918, 924 (Fla. 3d DCA 2007). In Valiente, however, the trial court granted summary judgment and the Third District affirmed finding that the defect was patent and the city had accepted the work, and therefore the contractors could no longer be held liable.

The Court reasoned that "because any visual obstruction these shrubs might have posed could have been

discovered by the City upon a reasonable inspection, the alleged visual obstruction would have been patent and therefore, [the defendant contractors] are protected by the Slavin doctrine because the City accepted their completed work."

Judge Emas, dissenting in Valiente, wrote that the majority had improperly conflated patency of the condition with the patency of the dangerousness of the condition. Citing to the Court's prior precedent in *FDOT v. Capeletti Bros., Inc.*, 743 So. 2d 150 (Fla. 3d DCA 1999), Judge Emas specifically noted that summary judgment is inappropriate where the condition may be obvious, but the dangerousness of the condition remains in dispute.

Whether you agree with the majority opinion or Judge Emas, Valiente will likely lead to more trial courts determining the application of Slavin at summary judgment. For construction litigators representing a contractor, if the defective condition was obvious, Valiente may support your argument that the dangerousness of the condition was also obvious, absolving your client of liability. And for personal injury attorneys representing an injured party, Valiente may be used to pressure a property owner into taking responsibility for a defective condition that causes harm. In any event, Slavin is alive and well and requires lawyers to take a hard look at the nature of a property's defective condition at the time of acceptance in order to determine liability.

Michael Levine is an attorney at Stewart Tilghman Fox Bianchi & Cain, P.A. and represents plaintiffs in catastrophic injury

and wrongful death cases. Prior to joining the firm, he clerked for the Honorable Paul C. Huck. Michael is a member of the board of directors of the Dade County Bar Association Young Lawyers Section and Jewish Community Services, and serves on the Florida Bar Young Lawyers Division Board of Governors. ■

PROFESSIONALISM TIP OF THE MONTH

From the Eleventh Judicial
Circuit Standards of
Professionalism and Civility

REMEMBER

all attorneys practicing within the Eleventh Judicial Circuit are bound by the Eleventh Judicial Circuit Standards of Professionalism and Civility. The standards are controlling authority. Upon being employed by a new client, a lawyer should discuss fee and cost arrangements at the outset of the representation and promptly confirm those arrangements in writing. In any representation in which the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat-sum fee, or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular, frequent interim basis. Sections 1.6 and 1.7, Commitment to Equal Justice Under Law and the Public Good.