

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2001

C.R. THEATRICALS, INC.,

**

Appellant,

**

vs.

** CASE NO. 3D00-2861

CONCERT ASSOCIATION OF
FLORIDA, INC.,

** LOWER

TRIBUNAL NO. 99-14475

**

Appellee.

Opinion filed November 21, 2001.

An Appeal from the Circuit Court for Miami-Dade County,
David Tobin, Judge.

Stone & Pestcoe, and Scott L. Pestcoe, for appellant.

Kubicki Draper and Barbara E. Fox, for appellee.

Before SCHWARTZ, C.J., and FLETCHER and SORONDO, JJ.

PER CURIAM.

We agree with Appellant that the trial court's final summary judgment must be reversed. At the very least, it is clear that in the light most favorable to the non-moving party, there are disputed issues of material fact concerning whether the

provisions of the contract being litigated in this case are in conflict, and how such conflicts should be resolved.

Reversed and remanded for further proceedings.

FLETCHER and SORONDO, JJ., concur.

C.R. Theatricals, Inc. v. Concert Assoc.
Case no. 3D00-2861

SCHWARTZ, Chief Judge (dissenting in part).

I too would reverse, but for entry of summary judgment on liability in favor of the appellant. In my view, the appellee landlord is liable as a matter of law under paragraph twelve of the lease for the damage to its tenant's sets, props, and costumes caused when it activated its deluge sprinkler system.¹ The fact stressed by the Concert Association that the sprinkler was, although at its direction, actually turned on by an employee of another company, has no effect upon its own contractual liability for the damage in question. See *Jaar v. University of Miami*, 474 So. 2d 239 (Fla. 3d DCA 1985), review denied, 484 So. 2d 10 (Fla. 1986); *Mills v. Krauss*, 114 So. 2d 817 (Fla. 2d DCA 1959), cert. denied, 119 So. 2d 293 (Fla.

¹ A handwritten portion of paragraph twelve states:

Licensors [appellee] shall not disturb, move or alter licensees [sic][appellant's] sets, props or costumes, etc., and assumes liability for any damage done to same or for loss of income due to such damage. [sic] If such damage occurs during periods of use by entities other than C.R. Productions. [e.s.]

On the other hand, the allegedly contrary provisions of paragraphs 16, 19 and 29 of the lease cited by the landlord, have no application to the present claim.

1960).