

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., 2004

ESTATE OF ANTHONY MARTINEZ, **
Deceased, by and Through Co- **
Personal Representatives, PAUL **
COWAN and SHELDON ROSENTHAL and **
ANDRES MARTINEZ, SR. and JESSICA **
HERNANDEZ, **

CASE NO. 3D03-2407

Appellants,

**

vs.

LOWER
TRIBUNAL NO. 00-29395

**

POST BUCKLEY SCHUH & JERNIGAN, **
INC., GROSSMAN HOLDINGS LIMITED, **
BLEEMAN HOLDINGS LIMITED, and **
HOMESTEAD PROPERTIES, **

Appellees.

**

Opinion filed August 11, 2004.

An Appeal from the Circuit Court for Dade County, Jon
Gordon, Judge.

Feiler, Leach & McCarron and Michael B. Feiler and Martin
Leach, for appellants.

Patrick C. Barthet and Alexander E. Barthet; Thornton,
Davis & Fein and Holly S. Harvey, for appellees.

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

PER CURIAM.

On this appeal from the dismissal of an amended complaint
in a child drowning-wrongful death case for failure to state a

cause of action, the order under review is vacated and the cause remanded for a determination by the trial court as to whether the building permit and other pertinent documents relating to the construction and maintenance of the lake in which the child drowned create a mandatory slope requirement (which the plaintiffs allege the appellees violated). If the court so finds, or if a jury question is presented on the issue, the complaint should not be dismissed. See *Gilbertson v. Lennar Homes, Inc.*, 629 So. 2d 1029 (Fla. 4th DCA 1993), review denied, 639 So. 2d 979 (Fla. 1994). If, as a matter of law, there is no such mandatory requirement, the motion to dismiss the complaint should again be granted. See *Longmore v. Saga Bay Property Owners Ass'n*, 868 So. 2d 1268 (Fla. 3d DCA 2004); *Kaweblum v. Thornhill Estates Homeowners Ass'n, Inc.*, 801 So. 2d 1015 (Fla. 4th DCA 2001).

Vacated, remanded with directions.