IN THE SUPREME COURT OF FLORIDA

CITY OF ST. PETERSBURG, FLORIDA,	]	
Defendant/Petitioner,	]	
vs.	]	CASE NO. 62,821
BARRY L. WALL and GEORGE D. CRANTON,	]	
Plaintiffs/Respondents.	]	

JURISDICTIONAL BRIEF OF RESPONDENTS

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PREFACE

For the purposes of this Brief the Petitioner, CITY OF ST. PETERSBURG, FLORIDA, shall be referred to as "Petitioner" or "City", and the Respondents, BARRY L. WALL and GEORGE D. CRANTON, shall be referred to as "Respondents".

The following symbols shall be used throughout this Brief:

"A" shall refer to Petitioner's Jurisdictional Brief.

"AA" shall refer to the Appendix to Petitioner's Jurisdictional Brief.

"B" shall refer to this Brief.

"AB" shall refer to the Appendix to this Brief.

Respondents object to the Point at Issue as framed by the City in its Jurisdictional Brief since it erroneously characterizes the Judgment appealed herein as one involving the validity of a legislative, planning level governmental function. Accordingly, Respondents rephrase the Point at Issue as follows:

> WHETHER THE DICISION OF THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN CITY OF LAUDERDALE LAKES v. CORN AND THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN CITY OF JACKSONVILLE v. BRENTWOOD GOLF COURSE, INC.

STATEMENT OF THE CASE AND FACTS

On September 9, 1977, the City filed a petition in eminent domain seeking to condemn a parcel of real property owned by the Respondents for incorporation in a proposed storm water retainage system. City of St. Petersburg v. Wall, Circuit Court, Sixth Judicial Circuit in and for Pinellas County, Florida, Circuit Civil No. 78-151. At the order of taking hearing the evidence presented by the City showed that the St. Petersburg City Council reluctantly approved the condemnation of Respondents' land, even though the Respondents had been subjected to four prior condemnation proceedings and no other suitable property zoned light manufacturing existed in the community to replace the land sought to be acquired. During cross-examination of the City's engineers it became apparent that the proposed drainage system was improperly designed and, in fact, inoperative. The trial court subsequently ruled that the necessity for the taking had not been established. The Final Judgment denying the City's right to acquire title to Respondents' property and dissolving the lis pendens filed of record was entered on January 16, 1978. On January 20, 1978, the City timely appealed the aforesaid Final Judgment to the Second District Court of Appeal.

The Respondents subsequently filed a motion for supersedeas bond with the trial court, requesting that the City's automatic stay provided by Rule 5.12(1), Florida Appellate Rules, be conditioned upon the posting of a bond to secure payment of all damages incurred by the Respondents by virtue of the delay during the appellate proceedings. (AB-1).

Respondents specifically noted that the pendency of the condemnation action and the Lis Pendens which remained of record effectively precluded the Respondents from making use of their property for the purposes for which it was intended, to-wit, the construction of a commercial complex to house their corporate and business ventures. In support of their request for a supersedeas bond, the Respondents cited the First District Court of Appeal's decision in City of Jacksonville v. Brentwood Golf Course, Inc., 338 So.2d 1105 (Fla. 1st DCA, 1979), which held that the recovery of damages caused by appellate delay is precluded when no supersedeas bond is requested or required. In the alternative, Respondents requested that the existing stay be vacated. On April 27, 1978, Respondents filed with the District Court of Appeal a motion for order authorizing the lower court to hear and determine the motion for supersedeas bond pursuant to Rule 3.8, Florida Appellate Rules, again specifically citing Brentwood Golf Course, Inc., supra, in support of said motion. (AB-3).

On May 31, 1978, the Second District Court of Appeal denied Respondent's motion for the requirement of a supersedeas bond, but provided in its order that the denial was "WITHOUT PREJUDICE TO APPELLEES' SEEKING RECOVERY OF DAMAGES AND COSTS RESULTING FROM ANY STAY PENDING APPEAL PURSUANT TO RULE 9.310(b)(2), FLORIDA RULES OF APPELLATE PROCEDURE." (AB-5). The City did not seek review of the aforesaid Order. On November 1, 1978, the Second District Court of Appeal affirmed the trial court's dismissal of the City's Complaint per curiam. Subsequently this Court denied the City's Petition for Writ of Certiorari on September 17, 1979.

Respondents subsequently commenced an action on October 29, 1979, and alleged that the City was liable for damages on two legal theories: (1) the aforementioned order of the District Court of Appeal, and (2) inverse condemnation. A jury trial was held on July 13, 1981, and the verdict rendered awarded Respondents $6,477.81 for damages incurred during the period of time in which the condemnation action was pending in the trial court, to-wit, September 9, 1977 to January 20, 1978, and $121,826.95 as damages incurred during the appellate proceedings, to-wit, January 20, 1978 to September 17, 1979. Final Judgment was entered August 10, 1981, and the City timely appealed to the Second District Court of Appeal. (AB-6). The Second District Court of Appeal subsequently affirmed in part and reversed in part, and the City timely filed its notice pursuant to Rule 9.120(b), Florida Rules of Appellate Procedure. (AA-1-5).

ARGUMENT

POINT AT ISSUE

WHETHER THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN CITY OF LAUDERDALE LAKES v. CORN AND THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN CITY OF JACKSONVILLE v. BRENTWOOD GOLF COURSE, INC.

Petitioner requests this Court to invoke its discretionary jurisdiction to review a decision of the Second District Court of Appeal which properly interpreted and applied established case law to the issues raised by the City on its appeal from an adverse judgment in the trial court. The rules of law and supporting facts set forth in the decisions alleged to be in conflict with the subject opinion are readily distinguishable from those involved in the case at bar.

As set forth more particularly in the Statement of Case and Facts herein, the City filed suit to condemn Respondents' land for use in a public project. The trial court determined that the City failed to establish necessity for the taking and denied its right to acquire Respondents' property. The Court entered judgment in favor of Respondents, dismissed the Petition for Condemnation, and dissolved the Lis Pendens. The City appealed that judgment to the Second District Court of Appeal. Respondents promptly filed a Motion for Supersedeas Bond with the trial court requesting that the City's automatic stay under the appellate rules be conditioned upon its posting a bond to secure payment of all damages incurred by Respondents as a result of the appellate proceedings. Since jurisdiction had vested in

the Second District Court of Appeal, the Respondents sought an Order to authorize the trial court to hear and determine the motion.

By Order dated May 31, 1978, the Second District Court of Appeal denied Respondents' request for said bond but provided therein that the denial was "without prejudice to Appellees (Respondents) seeking recovery of damages and costs resulting frm any stay pending appeal . . . " (AB-5). Although the City could have sought review of the aforesaid Order, it failed to do so. By said Order the Court did not require the City to expend funds from the public treasury for the payment of an appeal bond premium, but it did condition the stay of execution of the Final Judgment by reserving Respondents' right to seek compensation for the damages and costs thereby incurred.

The above-described condition did not automatically hold the City responsible for the damages incurred by Respondents during the delay, but merely tempered the City's right to a stay of execution with the responsibility for the consequences of such stay. The City was free to choose its course of action after final judgment, knowing in advance the risks involved. The City, upon receipt of such Order, had two alternatives: it could have accepted the condition and received the stay of execution or it could have proceeded with its appeal without the stay. If the City had selected the latter course, the pending lawsuit would have been dismissed, the Lis Pendens dissolved, and the Respondents could have proceeded with the construction of the desired commercial complex on their property, subject, of course, to the risk of subsequent reversal of the Final Judgment. The City, however, chose to accept the stay and proceeded with its appeal to the Second District Court of Appeal and subsequently on to this Court.

The Second District Court of Appeal's decision clearly explained the rationale for affirming the Judgment against the City for damages when it stated:

> "Here, the City was on notice that we recognized its potential liability even though we excused it from the expense of posting a bond. There is little reason to request a solvent municipality to post a bond when its potential liability for obtaining a stay is made a matter of record. A stay is not a matter of absolute right. It may be conditioned, and both Rule 5.12, 1962 revision, and Rule 9.310(b)(2), 1977 revision, give courts broad authority over stays. Our order reflected that the stay permitted appellees to seek damages resulting from it. The City had the option of pursuing the appeal without the stay. Having chosen to accept the stay, the City became responsible for the damages resulting therefrom."

Petitioner alleges on page 4 of its Jurisdictional Brief that it is impossible to understand how Rule 9.310, Florida Rules of Appellate Procedure, or Rule 5.12, Florida Appellate Rules, could create a theory of liability that imposes upon a public body an obligation to pay for the financial effects of the stay while the judgment is under review. The City's inability to comprehend the propriety of such ruling is premised upon its failure to consider 1) the extent of the Court's authority over stays, and 2) the obvious factual distinctions between the case at bar and those involved in City of Luderdale Lakes v. Corn, 415 So.2d 1270 (Fla. 1982).

In Corn, supra, a land developer successfully instituted an action to invalidate a municipal zoning ordinance and obtained a judgment which required the City to permit the development of certain property within the City. The City appealed the judgment and the land owner requested the trial court to condition a stay of the final judgment upon the City's posting of a bond. The trial court granted the land owner's request and the Fourt District Court of Appeal denied the City's motion for review. This Court, however, subsequently reversed said decision and declared that no authority existed to lawfully require the posting of bonds in an appeal stemming from a judgment involving a planning level governmental function.

Two patent distinctions exist between the Corn decision and the case at

bar which render the rules of law announced in Corn, supra, inapplicable to this proceeding. First, in Corn, the judgment required the municipality to permit the development of the project and, thus, a stay was necessary to proceed with the appeal. In the case at bar, the City was not required by the Judgment to do anything whatsoever. Therefore, there was no absolute need to stay the execution of the Final Judgment in order to appeal. As noted previously, the risk of loss in the event of a reversal of the Judgment would have been on the Respondents, not the City. The second and most important distinction is that the Respondents herein were not seeking to invalidate a legislative act. Instead of attempting to reverse a planning level decision such as the municipality's refusal to permit development based on the zoning ordinance in Corn, the Respondents herein were simply establishing the fact that the condemnation of their property was unnecessary.

Contrary to the contention set forth by the Petitioner, the proximate cause of the damages for which Respondents sought recovery herein was not a planning level governmental function. Admittedly, the City's determination to exercise its power of eminent domain to acquire Respondents' property was a planning level decision. Respondents, however, were not harmed by the City Council's legislative act. The damage was initiated when the City implemented its planning level decision by the filing of the condemnation suit and the Lis Pendens. The stay during the appeal process, which in turn prohibited execution of the final judgment dismissing the Complaint and dissolving the Lis Pendens, caused Respondents to be unable to utilize their property. These were the factors which caused the damages incurred by Respondents. The Second District Court of Appeal recognized this distinction when it stated in a footnote to its Opinion: "We note the City's supplemental reliance on City of Lauderdale Lakes v. Corn, number 57,247 (Fla. June 17, 1982) but we regard the case as inapposite because it concerns matters of legislative planning."

The City Council's function in the decision-making phase of the exercise of power of eminent domain is a legislative act determined in accordance with statutory guidelines. The final determination of the necessity of the public project, however, is a judicial function. See City of Lakeland v. Bunch, 293 So.2d 66 (Fla. 1974). In Bunch, supra, the landowner asserted that the Florida Statutes governing eminent domain actions were unconstitutional as violative of due process rights. The trial court so ruled, declaring that since the City Council in an eminent domain matter is acting as an administrative body, minimal elements of administrative due process are required before the filing of the suit. On appeal, this court reversed and held that adequate and meaningful procedural safeguards were provided within the subject statutes since notice and opportunity to be heard was provided prior to the entry of an Order of Taking. In reaching such conclusion, this Court held that the necessity for the exercise of eminent domain power, although initially determined by the City Commission, is ultimately a judicial question for the courts. In the case at bar, the planning level decision was completed when the City Council passed a Resolution authorizing the eminent domain proceedings. The subsequent filing of the suit and the Resolution by the trial court of the necessity of the condemnation was a judicial function, not legislative. Thus, contrary to the judgment in Corn, supra, the judgment appealed herein is not one involving the validity of a legislative planning level governmental function.

The Second District Court of Appeal's decision in this case also can be easily distinguished from the holding in City of Jacksonville v. Brentwood Golf Course, Inc., 338 So.2d 1105 (Fla. 1st DCA 1976). In Brentwood Golf Course, Inc., supra, the City of Jacksonville unsuccessfully appealed a trial court decision invalidating a deed restriction. The property owner

sought recovery for damages incurred during the City's appeal of the decision. However, he failed to request that a supersedeas bond be posted. The First District Court of Appeal denied relief to the property owner, stating that there was no requirement for the City to post a bond to obtain the supersedeas. Respondents herein made every effort to obtain a bond and specifically advised both the Second District Court of Appeal and the trial court of the import of the decision in Brentwood Golf Course, Inc. when no bond is requested or required. Although the Second District Court of Appeal herein ordered that no bond be posted, it nevertheless reserved Respondents' right to seek compensation for damages incurred during the appellate process. (AB-5).

CONCLUSION

Based upon the unique facts involved in the case at bar, it is apparent that the principles of law set forth in the Second District Court of Appeal's decision appealed herein are consistent with existing case law and in accordance with the mandates of procedural statutory guidelines. No conflict exists between the opinion sought to be reviewed herein and the cases cited by Petitioner. As noted by the Second District Court of Appeal in a footnote to its Opinion, the Judgment appealed herein did not involve the validity of a legislative planning level governmental function. Respondents respectfully submit that no confusion or discord will arise in the decisional law of this State as a result of the statements of law set forth by the Second District Court of Appeal in its decision and therefore request that this Court refuse to accept jurisdiction of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by mail to MICHAEL S. DAVIS, ESQUIRE, and B. NORRIS RICKEY, ESQUIRE, City Attorney's Office, City of St. Petersburg, Florida, P. O. Box 2842, St. Petersburg, FL 33731 this 26th day of November, 1982.

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