FILED

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SID J. WHITE
CLERK SUPREME COURT
By ______
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CITY OF ST. PETERSBURG, FLORIDA,

Defendant/Petitioner,

vs.

BARRY L. WALL and GEORGE D. CRANTON,

Plaintiffs/Respondents.

CASE NO. 62,821

JURISDICTIONAL BRIEF OF PETITIONER CITY OF ST. PETERSBURG, FLORIDA

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PRELIMINARY STATEMENT

For the purposes of this brief the following symbols will be utilized:

"A" - shall refer to the Appendix accompanying the Petitioner's jurisdictional brief. Copies of the District Court Opinion, as well as those cited as conflicting, are included in the Appendix. Also included is the lower Court's opinion in City of Lauderdale Lakes v. Corn.

POINT AT ISSUE

THE DECISION OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FLORIDA SUPREME COURT IN CITY OF LAUDERDALE LAKES V. CORN AND THE FIRST DISTRICT COURT OF APPEAL IN CITY OF JACKSONVILLE V. BRENTWOOD GOLF COURSE ON THE SAME POINT OF LAW, i.e., THE LIABILITY OF A MUNICIPAL CORPORATION FOR DAMAGES SUFFERED BY A LITIGANT DURING THE PENDENCY OF AN APPEAL FROM A JUDGMENT INVOLVING THE VALIDITY OF A LEGISLATIVE, PLANNING LEVEL GOVERNMENTAL FUNCTION.

City of Lauderdale Lakes v. Corn 415 So.2d 1270 (Fla. 1982) (A: 2)

City of Jacksonville v. Brentwood Golf Course, Inc., 338 So.2d 1105 (Fla. 1st DCA 1976) (A: 3)

STATEMENT OF THE CASE AND FACTS

This case arose when the Petitioner, CITY OF ST. PETERSBURG, initiated formal condemnation proceedings for a parcel of land owned by the Respondents. The trial court ruled that necessity for the taking was not shown by the condemning authority and therefore denied the City's right to take. The City took an appeal from that ruling and the Appellees made application to the Appellate Court for the imposition of a superseades bond to be posted by the City. The Court denied Respondents' request for said bond. On November 1, 1978, the Second District Court of Appeal affirmed *per curium* the ruling of the trial court below which was appealed from. This Court on September 17, 1979, declined to invoke its discretionary jurisdiction under Rule 9.120(b), Fla.R.App.

The case below was then filed against the City, claiming damages as a result of the delay *caused by the Appellate process*. Trial of this case resulted in a jury verdict and judgment against the City in the amount of $128,304.76. Appeal was taken to the District Court of Appeal, Second District, from that judgment. The District Court of Appeal affirmed in part and reversed in part in the opinion which is sought herein to be reviewed.

The opinion of the District Court of Appeal, Second District of Florida, which Petitioner herein contends conflicts

with a rule of law announced by the Supreme Court and another District Court of Appeal was entered on September 29, 1982.

This proceeding was begun by the filing of a Notice pursuant to Rule 9.120(b), Fla.R.App. on October 29, 1982, invoking the jurisdiction of the Supreme Court under Rule 9.030 (a)(2)(A)(iv).

ARGUMENT

POINT AT ISSUE

THE DECISION OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT, EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FLORIDA SUPREME COURT IN CITY OF LAUDERDALE LAKES V. CORN AND THE FIRST DISTRICT COURT OF APPEAL IN CITY OF JACKSONVILLE V. BRENTWOOD GOLF COURSE ON THE SAME POINT OF LAW, i.e., THE LIABILITY OF A MUNICIPAL CORPORATION FOR DAMAGES SUFFERED BY A LITIGANT DURING THE PENDENCY OF AN APPEAL FROM A JUDGMENT INVOLVING THE VALIDITY OF A LEGISLATIVE, PLANNING LEVEL GOVENMENTAL FUNCTION.

The conflict which the Petitioner seeks to have this Court resolve is between the rule of law previously announced by this Court in its decision in the case of City of Lauderdale Lakes v. Corn, 415 So.2d 1270 (Fla. 1982) and the rule of law announced and applied by the District Court of Appeal, Second District, in its opinion herein, as well as conflict between the rule of law previously announced by the District Court of Appeal, First District, in City of Jacksonville v. Brentwood Golf Course, Inc., 338 So.2d 1105 (Fla. 1st DCA 1976) and the rule of law announced and applied by the District Court of Appeal, Second District, in its opinion herein.

The gravamen of this case is the financial liability of a Florida municipal corporation for injuries alleged to be suffered by a litigant during the pendency of an adverse judgment. The Second District Court of Appeal has held that as a matter of law a municipality is liable to an appellee for the financial consequences of the delay experienced during the pendency of an appeal. The City of St. Petersburg

submits to this honorable Court that the decision of the Second District is in direct conflict with this Court's recent decision in <u>City of Lauderdale Lakes v. Corn</u>, 415 So.2d 1270 (Fla. 1982) and that unless this Court grants the Petition for Discretionary Review, the law in this vital area of public interest will be confused and obscured.

At the core of this case and the conflict between the Second District's decision and <u>City of Lauderdale Lakes v. Corn</u>, <u>supra</u>, is Rule 9.310 (b)(2) of the Fla.R. App. which provides for an automatic stay when a public body seeks review of a decision by a lower tribunal (or Rule 5.12, 1962 revision, which is the same). Rule 9.310(b)(2) goes on to provide that the court may, on motion, vacate the stay or impose conditions including the posting of a bond in order to continue the affect of the stay. Prior Rule 5.12 provided, similarly, that the Court may, on motion, require a supersedeas bond as a condition for a stay. In its decision, <u>sub judice</u>, the Second District holds that Rule 9.310(b)(2) or former Rule 5.12 somehow creates 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. How that could be so in light of <u>City of Lauderdale Lakes v. Corn</u> is simply impossible to understand.

In this case the City of St. Petersburg, by and through its legislative body, determined to exercise its power of eminent domain in order to acquire a parcel of land. That determination of public purpose and necessity was indisputably a legislative act and as such a "planning-level" decision as distinguished from an operational level decision. Respondents objected to the condemnation of their property and successfully overcame the presumption of validity and persuaded the Circuit Court that the proposed acquisition did not serve a public purpose and was unnecessary. The City, accustomed to the deference of the Court to the legislative body in terms of wisdom and policy, appealed to the Second District Court of Appeal. When the notice of appeal was filed, the judgment of the trial court was automatically stayed under Rule 5.12(1), Florida Appellate Rules, 1962 revision. Respondents, however, asked the appellate court to vacate the stay or at least require the posting of a supercedeas bond. The District Court denied Respondent's motion stating that there was no necessity to require the City to post a bond but 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)" of the Fla.R.App. (A - 1). When the Second District affirmed the trial court's decision per curiam and this Court denied a petition for writ of certiorari, Respondents instituted this proceeding and ultimately recovered $128,000 for the cost of delay during appeal.

That judgment was in turn affirmed by the Second District Court of Appeal in the decision sought to be reviewed herein. In its opinion, the Court said ". . .Having chosen to accept the stay, the City became responsible for the damages resulting therefrom." (A -1)

Petitioner respectfully submits that the Second District's decision herein, cannot be reconciled with this Court's decision in City of Lauderdale Lakes v. Corn, supra, and that justice and equity cry out for the review of this case.

In Lauderdale Lakes, supra, this Court addressed the following question certified to it by the Fourth District Court of Appeal:

> May a city be required to post a bond for damages for delay in order to secure a stay of a final judgment that requires the public body to permit the construction of a development project? (A - 2)

This Court's answer was in the negative "because the city's action is in performance of a legislative 'planning-level' function." The Court said:

> While we agree that the court may require a bond of a public body under many circumstances, we cannot agree that supersedeas bond is proper for appellate review of legislative planning level determinations. Requiring a bond in this situation would clearly chill the right of a governmental body to appeal an adverse trial court decision declaring invalid a legislative act. We distinguished between "operational-level" and "planning-level" governmental functions in Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla. 1979). We find that the distinction also applies in supersedeas bond proceedings under Rule of Appellate Procedure 9.310(b)(2). To rule otherwise would make cities liable for damages resulting from legislative planning-level decisions. This is clearly contrary to existing law. (A - 2)

In other words, no bond was required because the City was not liable for money damages for actions taken in a legislative, planning-level capacity. Yet in this case, the Second District Court of Appeal holds that the City of St. Petersburg is liable for money damages for actions taken in its legislative, planning-level capacity. A more direct and unreconcilable conflict can hardly be imagined.

Even if Corn had not been decided by this Court, the decision of the Second District Court of Appeal in this case would be in direct conflict with the case of City of Jacksonville v. Brentwood Golf Course, Inc., 338 So.2d 1105 (Fla. 1st DCA 1976).

In that case, the City of Jacksonville was unsuccessful in appealing a trial court decision to invalidate a deed restriction. After the appeal terminated in favor of the landowner, damages were sought by the landowner for the delay caused by the appeal. In denying those damages the First District Court of Appeal said:

> So also, the obligation of an appellant, as principal, is founded wholly on the bond itself. He signs the bond, not as a redundant confirmation of some independent obligation imposed as an incident of the appeal, but to bind himself and his heirs and assigns to pay according to its terms, and thereby to obtain supersedeas. When as here a bond was not required for super sedeas, there is consequently no obligation. For the appeal itself the law exacts no price or penalty. Statutory interest is of course incurred on unsatisfied money judgments regardless of whether execution is stayed. Sec. 55.03, F.S. 1975, Id. at 1106.

As to the Second District Court's reference to Rule 9.310 (b)(2) in its Order denying supersedeas, the First District went on to say:

> The rules (referring to the predecessor appellate rules) do not, however, create a cause of action independent of a bond for delay damages. Id. at 1106-1107.

The decision in Brentwood directly conflicts with the decision herein appealed.

CONCLUSION

In conclusion the Petitioner, CITY OF ST. PETERSBURG, requests this Court to invoke its discretionary jurisdiction to review the decision of the District Court of Appeal herein so that the confusion and inconsistency created by that decision may be set to rest and the law in this important area may be uniform and clear. Governmental entities need to know that this Court's decision in City of Lauderdale Lakes v. Corn is the law in the Second District of Florida as well as the entire state.

Respectfully submitted,

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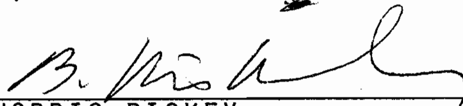

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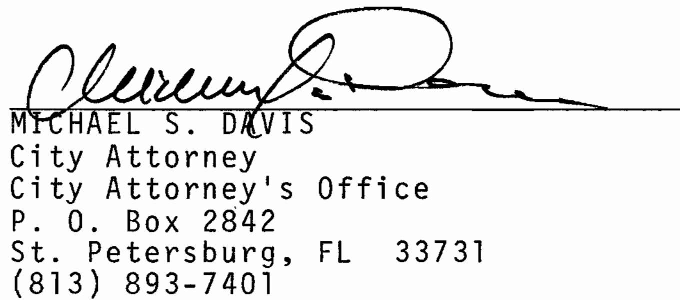
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Jurisdictional Brief has been furnished by U. S. mail to H. REX OWEN and BRUCE CRAWFORD of OWEN & McCRORY, 157 Central Avenue, Post Office Drawer "O", St. Petersburg, Florida 33731, this 5th day of November, 1982.



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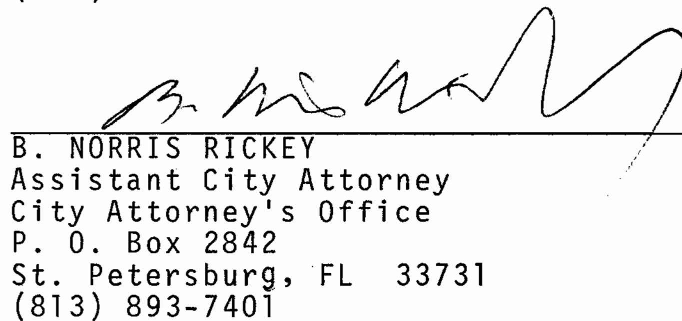

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