IN THE SUPREME COURT OF FLORIDA

CITY OF ATLANTIC BEACH, FLORIDA,

Petitioner,

vs.

GEORGE BULL,

Respondent.

CASE NO. 66,446

DCA Case No. AW-339

GEORGE BULL,

Petitioner,

vs.

CITY OF ATLANTIC BEACH, FLORIDA,

Respondent.

CASE NO. 66,488

DCA Case No. AW-339

PETITIONER'S REPLY BRIEF

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STATEMENT OF THE CASE

In its Initial Brief, the City of Atlantic Beach ("the City") set forth a complete Statement of the Case as provided by rule 9.210(b) Florida Rules of Appellate Procedure. Notwithstanding the restriction contained in 9.210(c) Fla. R. App. Proc., Appellee Bull's Answer Brief also contains a full statement of the case, without designating any portion thereof which is in alleged disagreement with the statement of the case set forth in Petitioner's Initial Brief. [See Bull's brief pp. 1 - 4]. Respectfully, it is not proper that Appellee has done so. (See Rule 9.210(c), and committee notes thereon).

Several comments are in order in reply to Bull's statement of the case. First, at page 3 of Bull's brief, it is suggested that the City filed its notice to invoke the discretionary jurisdiction of this court before the Opinion of the First DCA was "rendered". That simply is not correct. The First DCA's Opinion was dated and filed in that court on January 8, 1985; it was therefore "rendered" on that date pursuant to the express provisions of rule 9.020(g) Fla. R. App. Proc. The City then filed its notice to invoke discretionary jurisdiction on January 21, 1985. Clearly, said notice was filed "within thirty days of rendition of the order to be reviewed". Rule 9.120(b) Fla. R. App. Proc.

Secondly, at page 2 of Bull's brief it is stated that various prior appeals to the First District Court of Appeal (relating to the trial court's dismissal of the individual City commissioners and the City manager who were named by Bull as original defendants in this action) were "concluded in favor of Bull". That is not entirely correct. The trial court's dismissal of the individual defendants never was disturbed on appeal; only the trial court's awards to those individuals of their attorneys fees against Bull were reversed on appeal. Bull v. City of Atlantic Beach, 450 So.2d 570 (Fla. 1st DCA 1984); Bull v. Persons, et al, 453 So.2d 103 (Fla. 1st DCA 1984); and Bull v. Gulliford, 453 So.2d 103 (Fla. 1st DCA 1984).

The City respectfully reincorporates the Statement of the Case contained in its Initial Brief, pp. 1-3.

STATEMENT OF THE FACTS

In its Initial Brief, the City set forth a complete Statement of the Facts germane to this appeal. Notwithstanding the restrictions of rule 9.210(c) Florida Rules of Appellate Procedure, Bull's brief also contains a full statement of the facts, without indication as to any areas of disagreement with the statement set forth in Petitioner's Initial Brief. Again, as with the statement of the case set forth in appellee's answer brief, it is improper to have done so. (See Rule 9.210(c), Fla. R. App. Proc. and committee notes thereon).

The City also respectively objects to the content of the Statement of Facts set forth at pages 4 and 5 of Bull's brief, where Bull rather freely summarizes the allegations of the Third Amended Complaint. In particular, and as pointed out in the Statement of the Facts contained in the City's Initial Brief (at pages 4 and 5), the Third Amended Complaint admitted that the City properly requested and received bids for the construction of its new maintenance building, and thereafter began negotiations with the low bidder. The only matter complained of in that complaint is the fact that the City did not seek competitive bids for the architectural consulting services which were rendered to the City to assist it in the actual bidding and contract-negotiation process. That distinction is emphasized because, although the issue was not

presented to the trial court or to the First DCA in the instant case, it may well be that such consulting services preparatory to the actual bidding process required by Chapter 287, Fla. Stat. are not at all encompassed by that statute. In any event, certainly the alleged breach by the City of the competitive bidding requirements of Chapter 287, Fla. Stat. is nowhere near as blatant as suggested in Bull's Statement of the Facts. [Bull's brief page 4].

The City respectfully reincorporates the Statement of the Facts contained in its Initial Brief, pp. 4-5.

SUMMARY OF ARGUMENT

The City reiterates that which Bull has failed to refute in his Answer Brief, to wit: the most recent decisions of this Court reflect that a taxpayer who cannot show that he has sustained a special injury different from that suffered by other taxpayers similarly situated is without standing to maintain an action to prevent an alleged unlawful expenditure of public funds by governmental officials.

Similarly, the City reiterates and emphasizes the strong public policy supporting the "no standing" rule which presently exists. Appellee Bull has failed utterly to demonstrate why the restrictive standing requirement should be liberalized to permit such taxpayer suits which, in all likelihood, would have a crippling effect on public officials in the conduct of public business and would result in great expense to municipal and county governments (and their taxpayers) which are put to the cost of defending against such actions.

The City also re-emphasizes that there are other remedies available to protect the public against allegedly wrongful expenditures by their elected officials; remedies which are provided by our State Constitution and statutes and which are preferred by our courts. Appellee Bull's contention to the contrary is weak and premised entirely on unfounded conjecture that the public officials charged with such responsibilities will be derelict in failing to discharge them, and the

competitors who are directly injured by the alleged violation of competitive bidding requirements will not be interested enough to seek judicial relief. That conjecture is unsupported either by legal reasoning or by human experience.

Finally, contrary to Bull's suggestion that the Third Amended Complaint contains a "constitutional challenge" to the City's actions, thus precluding its dismissal, no such independent constitutional grounds are alleged. Bull's attempt to characterize the alleged statutory violation as some form of constitutional infirmity is poorly reasoned and untenable.

ARGUMENT

A TAXPAYER WHO WILL SUFFER NO SPECIAL INJURY DIFFERENT FROM OTHER TAXPAYERS SIMILARLY SITUATED IS WITHOUT STANDING TO MAINTAIN AN ACTION TO PREVENT AN ALLEGED UNLAWFUL EXPENDITURE OF PUBLIC FUNDS BY GOVERNMENTAL OFFICIALS

1. Appellee Bull Refuses to Acknowledge the Most Recent Decisions of This Court on the Issue Now Presented.

In this case, Appellee Bull refuses to acknowledge the consistent rulings of this Court over the past 45 years and, instead, argues vehemently that in each case decided by this Court during that period of time the Court really meant something different from what it said.

A great portion of Bull's brief is addressed to the "true meaning" of the "Rickman rule" and, in particular, what this Court said (and meant to say) in the Rickman case itself. In doing so, Bull has become enmeshed in an argument which is now moot, given the consistent string of more recent decisions by this Court. As emphasized by the Second DCA in the case of Godheim v. City of Tampa, 426 So.2d 1084 (Fla. 2d DCA 1983):

> "At this point, however, it makes no difference that others might read Rickman in a different light. The Supreme Court has, in fact, unmistakably interpreted Rickman to mean that the Plaintiff must show a special injury different from other taxpayers in order to have standing to bring a taxpayer's suit. (citing the cases of Department of Administration v. Horne, 269 So.2d 659 (Fla. 1972) and Department of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981).

Attempting to circumvent the effect of the most recent 45 years of legal precedent on the issue, Appellee Bull offers in support of his interpretation of the the "Rickman Rule" a multitude of cases (some of which do and some of which do not support that interpretation), none of which were decided by this Court more recently than 1937. [see, e.g., Bull's Brief, page 25].

When finally addressing the more recent Supreme Court decisions on the issue, Bull argues summarily that those decisions comprise a collective "misconstruction of the Rickman Rule." [Bull's Brief, pages 14-18]. Bull contends, for instance, that this Court did not really mean to state in the case of Department of Administration v. Horne:

> "Essentially, the "Rickman Rule" requires a showing of special injury." (269 So.2d 662).
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> "Thus, we find that where there is an attack upon Constitutional grounds based directly upon the Legislature's taxing and spending power, there is standing to sue without the Rickman requirement of special injury, which will still obtain in all other cases." (Id. at 663) (original emphasis).

Instead, by careful dissection of various sentences within that opinion and an examination of particular words taken out of context, Bull urges that what this Court really meant to say in the Horne case was that a taxpayer who alleges an increase in

his taxes by virtue of an unlawful expenditure will have standing to seek injunctive relief to prevent that expenditure. [Bull's Brief, pages 15-16]. That proposition is absurd given the clear language of the opinion.

Similarly, by the same process of "dissection" and "selective examination", Bull suggests that this Court did not really mean to say in Department of Revenue v. Markham:

> "It has long been the rule in Florida that, in the absence of a constitutional challenge, a taxpayer may bring suit only upon a showing of special injury which is distinct from that suffered by other taxpayers in the taxing district." Id. at 1121.

Bull refers to the Court's holding as "some rather loose language regarding Rickman v. Whitehurst" [Bulls' brief page 18]. Bull then attempts to distinguish the Markham case on the grounds that the relief sought in that case was "only a declaratory judgment and not an injunction" (original emphasis). [Bulls brief page 17]. On the contrary, a reading of the case illustrates that plaintiffs in that case indeed were seeking injunctive relief, which was denied because they had no standing.

Similarly, Bull's attempt to "distinguish" or "explain away" the multitude of other Supreme Court cases cited in the City's Initial Brief is poorly reasoned and not at all supported by the actual holdings and reasoning of this Court in those cases. [See Bull's brief pages 18-24].

Perhaps the most glaring misstatement by Appellant Bull regarding the extensive legal precedent with which he is confronted in this case is that contained at pages 24-25 of his brief where it is stated:

> "None of the cases, however, relied upon by the City are factually similar to the case sub judice; none address the issue as to whether or not a taxpayer whose taxes will be increased has standing to seek injunctive relief against wrongful and unlawful expenditures.....".

Bull either overlooks or misconstrues that both Horne and Markham addressed the issue, and both recognized that a taxpayer in such an instance has no standing to sue unless he alleges a separate, legitimate constitutional challenge attacking the public body's authority to make such an expenditure.

In Horne, the issue was more obviously presented since the case dealt with a taxpayer's challenge to an actual expenditure of funds; because the general appropriations act at issue in that case was challenged on separate constitutional grounds, the taxpayers there were accorded standing they otherwise would not have had. 269 So. 2d 662, 663. In Markham, the issue was a bit more obscured since there was no question posed as to an actual expenditure of funds; however, since the plaintiffs in Markham sought to challenge the exemption of various property from taxation, it is obvious that the challenged exemption

would, if sustained, result in higher taxes paid by those taxpayers who did not benefit from such exemption. Thus, the taxpayer plaintiffs in Markham, like Bull in the instant case, were seeking to enjoin governmental action which, if not enjoined, allegedly would result in higher taxes to them. They were denied standing to do so.

Respectfully, the City is pleased to let this Court's prior decisions speak for themselves and to let this Court decide whether those earlier decisions comprised nothing more than "loose language" or, instead, whether those decisions individually and collectively establish, and were meant to establish, a well-reasoned rule founded on legitimate public policy grounds.

2. Bull Has Failed To Refute The Strong Public Policy Considerations Which Support And Require The "No Standing" Rule Which Now Exists.

In the City's Initial Brief, it was emphasized that the public policy underlying the "no standing" rule heretofore established by this Court is premised on the likelihood that, without such a "special injury" standing requirement, the Courts of this State would be faced with a "great number of frivolous lawsuits filed by disgruntled taxpayers who are

unhappy with the spending decisions of their elected officials". Paul v. Blake, supra; Department of Revenue v. Markham, supra. Particularly since other, more reasonable remedies are available to redress such alleged unlawful expenditures (please see discussion infra), there is no good reason to abate the existing rule denying standing to taxpayers who can show no special injury. United States Steel Corporation v. Save-Sand-Key, Inc., 303 So. 2d 9 (Fla. 1974).

In his Answer Brief, Bull responds to the City's "public policy" argument by suggesting that "granting taxpayers standing may well cause more complaints to be filed and more honesty in government but it will hardly inundate the courts". No facts or legal precedent are cited in support of that proposition, which blatantly contradicts the specific concerns previously expressed by this Court. While Bull unjustly attacks the City's motive for wishing to invoke the "no standing" rule in this case, he offers not one bit of consolation to the many municipalities and the multitude of Florida citizens who will have to bear the expense of unrestricted taxpayer litigation if the rule is abandoned.

In its Initial Brief, the City suggested that Bull, himself, may be an example of a taxpayer using litigation to harass the City, based on admissions made in Bull's brief filed in the DCA. [P.I.B. p. 19]. At page 31 of his brief, Bull

attempts to divert attention away from his own prior admission that he is presently engaged in "multiple law suits" against the City of Atlantic Beach, all instituted by Bull. [Bulls brief page 31]. Bull then carefully directs the Court's attention to three related Appellate Proceedings in which awards of attorneys fees in favor of the City and its commissioners were reversed on appeal. What Bull omits, however, and what Bull referred to in his brief filed in the First District Court of Appeal (please see Petitioner's Initial Brief, App. page 7) is the fact that Bull has sued the City in at least three separate law suits, all initiated within six months of one another (the instant case being one such law suit). All but one of those suits have been resolved in favor of the City; the last remains pending with no activity in over one year. Clearly, this case is an excellent example of the type of "interminable litigation" instigated by a "disgruntled taxpayer" which has been anticipated by this Court in its prior decisions.

3. Bull Admits That Constitutional Remedies Already Exist to Protect the Public Against Wrongful Expenditures by Their Elected Officials.

In the City's initial brief it was agrued that, for the public policy reasons previously articulated, the enforcement

of competitive bidding statutes must be left to the appropriate public officials and to those private citizens who are peculiarly injured by such actions, such as unsuccessful bidders and other competitors injured by the alleged violation. [PIB pages 20-25]. It was there emphasized that, under the Florida Constitution and statutes, the Attorney General and the Governor are authorized to bring legal actions to enjoin allegedly unlawful expenditures by public officials. Similarly, it was noted that a municipality's violation of the competitive bidding statutes can, and in most instances will, be challenged by unsuccessful bidders or other competitors directly affected by such action. Finally, the City contends that public officials guilty of such wrongful expenditures can be held accountable to their electorates at the polls.

All of those forms of redress suggested in Petitioner's Initial Brief eminate from the Florida Constitution, Florida Statutes and Florida case law (please see Petitioner's Initial Brief pages 20-25). In his reply, Bull skirts the issue by suggesting, without factual basis or legal precedent, that: the Attorney General will not perform his constitutionally-appointed duty [Bulls' brief, pp. 31-32]; the Attorney General is unable to do his job [id]; the Attorney General will avoid his responsibilities for "political reasons" [id]; and, wronged bidders cannot be relied on to

seek legal redress for violations of competitive bidding statutes [id at p. 13]. It is unfortunate that Appellant suggests neither legal nor factual basis in support of those untenable propositions.

Carried to its logical extreme, Bulls' argument that the Attorney General cannot be relied on to prosecute public officials who violate state statutes suggests that each of us, as "affected citizens", should be permitted to institute criminal proceedings against any individual suspected of violating the law, since we cannot depend on the Attorney General and his State Attorneys to do so. Considering the obvious chaos such a rule would promote, it must be emphasized that the existence of the Attorney General's office (with its constitutional powers and duties) provides a necessary level of scrutiny which must be applied, in civil as well as in criminal matters, to "filter" the valid claims from those which, in the judgment of our elected representatives, are unfounded.

Bull has suggested that this Court abandon the constitutionally-provided means for redressing unlawful conduct of the type alleged in the instant case. Respectfully, such drastic action by this Court is neither necessary nor well advised in light of the public policy previously articulated in this Court's opinions.

4. Bull Has Not Alleged Separate Constitutional Grounds To Support His Attack Against The City.

Bull cannot seriously suggest, as he attempts at pages 33-34 of his Answer Brief, that his Third Amended Complaint contains a legitimate, separate constitutional challenge to the City's action described in that complaint. Apparently grasping for straws to salvage his "standing" argument in this instance, Bull would have this Court believe the City's action in the instant case is analogous to the unconstitutional general appropriations act at issue in the Horne case. [Bulls' brief, pp. 34]. That contention is wholly untenable.

Bull does not allege in this case the unconstitutionality of any act, statute or city ordinance pursuant to which the City allegedly spent funds wrongfully. On the contrary, Bull seeks to enforce the provisions of Chapter 287 Florida Statutes, which he claims have been violated by the City. Clearly, Bull's action is premised on that alleged violation of a legislative restriction on the City's constitutional authority to expend public funds on public projects; the expenditure of those funds would not be objectionable at all if it were not for the competitive bidding requirements imposed by Chapter 287.

In a most cavalier manner, Bull has attempted to color an alleged violation of state statute as a "constitutional

challenge", and to convert the City's alleged actions into some form of "constitutional infirmity". [Bulls' brief pp. 34]. Notably, Bull hasn't even suggested the source or nature of the "constitutional" claim which he contends is alleged in the Third Amended Complaint, nor can he! Respectfully, Bull hasn't come close to stating a legitimate constitutional challenge which might otherwise afford him the standing he so clearly lacks in this case. Department of Administration v. Horne, supra.

CONCLUSION

Respondent Bull has failed to demonstrate why this Court should recede from the restrictive standing requirements previously established in taxpayer actions. There is nothing suggested in Bulls' brief which alleviates the fears previously articulated by this Court in its expression of the public policy underlying that restrictive requirement. Nor does Bull demonstrate in any meaningful manner why the constitutionally provided remedies now available to the public through its elected representatives are not adequate to protect the taxpaying public.

Respectfully, the City requests that this honorable Court reverse the decision of the First District Court of Appeal and answer the certified question in the negative.

Respectfully submitted,

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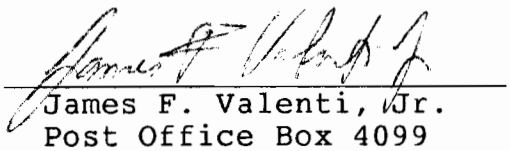
By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foegoing has been furnished to Tyrie A. Boyer, Esquire, 3030 Independent Square, Jacksonville, Florida 32202, by hand delivery and Thomson Zeder Bohrer Werth Adorno & Razook, 100 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131, by Federal Express, this 19th day of April, 1985.

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