

SUPREME COURT OF FLORIDA

AS
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SEP 14 1993

CLERK, SUPREME COURT

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Chief Deputy Clerk

MICCOSUKEE VILLAGE SHOPPING
CENTER, et al.,

Petitioner,

vs.

CASE NO.: 82,175

STATE OF FLORIDA,
DEPARTMENT OF TRANSPORTATION,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Thornton J. Williams
General Counsel
MARIANNE A. TRUSSELL
Assistant General Counsel
FLORIDA BAR NO.: 437166
Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458
(904) 488-9425

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PRELIMINARY STATEMENT

For purposes of this brief, the Respondent, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, will be referred to as the "DEPARTMENT". The Petitioner, MICCOSUKEE VILLAGE SHOPPING CENTER, LTD., will be referred to as the "VILLAGE".

References to the Appendix accompanying the Petitioner's Jurisdictional Brief will be referred to by the symbol "A" followed by the appropriate page number(s). References to the transcript of the Summary Judgment hearing will be referred to by the symbol "TR" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent accepts, for the most part, Petitioner's statement of the case and facts but specifically rejects the Petitioner's inappropriate argument and quoted testimony taken out of context as appear on pages 3 and 4.

SUMMARY OF ARGUMENT

This appeal emanates from an inverse condemnation action grounded on the filing of a map of reservation. The circuit court granted summary judgment in favor of the VILLAGE based upon Joint Ventures and Agrigrowth. (A. 1) By the time rehearing was granted the Fifth District Court of Appeal had receded from its opinion in Agrigrowth. Department of Transportation v. Weisenfeld, 617 So. 2d 1071 (Fla. 5th DCA 1998). Accordingly, the first district withdrew its prior opinion and found in favor of Department citing to Weisenfeld. State of Florida Department of Transportation v. Miccosukee Village Shopping Center, 18 Fla. L. Weekly D1572 (Fla. 1st DCA July 7, 1993) The First District Court of Appeal has placed its opinion in the instant case in direct conflict with that of another district court. (A 2). In fact, in its the holding in Weisenfeld, the fifth district also acknowledged its decision was in conflict with the decision of another district court. The Weisenfeld decision is currently under review by this Court in Case No. 81,653. The opinion with which Weisenfeld expressly and directly conflicts, i.e., Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corporation, 608 So.2d 52 (Fla. 2d DCA 1992) (A. 10-17), is also under review before this Court in Case No. 80,656 upon which oral argument was heard on October 8, 1993.

BASIS FOR EXERCISING JURISDICTION

The DEPARTMENT agrees with the VILLAGE that conflict jurisdiction should be accepted for the following reasons:

A. STATEMENT BY DISTRICT COURT OF EXPRESS
CONFLICT.

When rendering its final opinion the district court stated that the decision "expressly conflicts" with A.G.W.S., 608 So. 2d at 52. While the district court did not use the term "certify" in its statement, it is clear that an invitation to resolve the conflict has been made and that invitation should be accepted.

B. RELIANCE UPON A DECISION WHICH WAS
PREVIOUSLY CERTIFIED TO BE IN CONFLICT WITH
A.G.W.S.

In its final opinion the district court cited as authority the decision of Department of Transportation v. Weisenfeld, 617 So. 2d at 1071. The majority in Weisenfeld specifically certified that its decision was in conflict with A.G.W.S. Weisenfeld, 617 So. 2d at 1074. The district court in this case has expressed conflict, and has relied upon a decision which likewise expresses conflict with A.G.W.S. As such, the conflict jurisdiction of this Court should be exercised.

C. RELIANCE UPON A DECISION WHICH IS
CURRENTLY PENDING BEFORE THIS COURT.

The Weisenfeld decision relied upon by the first district, is currently pending before this Court in Case No. 81,653. This Court may, therefore, exercise conflict jurisdiction over the cause at

hand. Jollie v. State, 405 So. 2d 418 (Fla. 1981); Childers v. Hoffmann-LaRoche, Inc., 540 So. 2d 102 (Fla. 1989).

D. THE DECISION OF THE DISTRICT COURT IN THIS CAUSE EXPRESSLY AND DIRECTLY CONFLICTS WITH A.G.W.S. ON THE SAME QUESTION OF LAW.

In A.G.W.S. and in this case the owners filed inverse condemnation claims alleging that the imposition of a map of reservation upon their respective properties resulted in a "taking" of property without the payment of full compensation. In both cases the owners moved for and obtained partial summary judgments on the "taking" issue based upon this Court's decision in Joint Ventures, Inc. v. Department of Transportation, 563 So.2d 622 (Fla. 1990). On appeal the Second District Court of Appeal in A.G.W.S. affirmed the granting of the summary judgment on the "taking" issue, finding that such a result was required by the decision in Joint Ventures. The First District Court of Appeal in their case reversed the summary judgment on the same legal issue, citing to Weisenfeld, which held that the decision in Joint Ventures did not determine the "taking" issue. While the DEPARTMENT agrees with the court in Weisenfeld that this Court in Joint Ventures did not find that the filing of a map of reservation resulted in per se takings the opinions are irreconcilable. Given the legal issue presented and the fact that the district courts have resolved that issue in a conflicting manner, jurisdiction should be exercised to resolve that conflict.

CONCLUSION

Conflict jurisdiction should be exercised in this cause.

Respectfully submitted,

Marianne A. Trussell

MARIANNE A. TRUSSELL
Assistant General Counsel
FLORIDA BAR NO.: 437166
Thornton J. Williams
General Counsel
Department of Transportation
605 Suwannee Street, MS - 58
Tallahassee, Florida 32399-0458
(904) 488-6212

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail on this 14th day of October, 1993 to ALAN E. DESERIO, ESQUIRE, 777 South Harbour Island Blvd., Suite 900 Tampa, Florida 33602.

Marianne A. Trussell

MARIANNE A. TRUSSELL