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**FILED**

BID J. WHITE

IN THE SUPREME COURT OF THE STATE OF FLORIDA

MAR 7 1994

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

CITY OF SARASOTA,  
a municipal corporation,

Appellant/Petitioner,

v.

J. W. MIKOS,  
Property Appraiser for  
Sarasota, County, Florida,

Appellee/Respondent.

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Supreme Court  
Case No. 83,177

Second District  
Case No. 92-04486

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BRIEF OF APPELLEE/RESPONDENT, J. W. MIKOS, ON JURISDICTION

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)  
)  
ROBERT K. ROBINSON  
Florida Bar No. 0815081  
JOHN C. DENT, JR.  
Florida Bar No. 0099242  
DENT, COOK & WEBER  
1844 Main Street  
Post Office Box 3269  
Sarasota, Florida 34230  
(813) 952-1070  
Attorneys for  
Appellee/Respondent

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TABLE OF CITATIONS

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**PRELIMINARY STATEMENT**

The Appellant/Petitioner, City of Sarasota, will be referred to as "City". The Appellee/Respondent, JOHN W. MIKOS, Property Appraiser for Sarasota County, Florida, will be referred to as "Mikos". References to the Appendix shall be made with the use of the letter "A" followed by the appropriate page.

### SUMMARY OF ARGUMENT

The per curiam affirmed in the District Court offered a mere counsel notification citation of Sebring Airport Authority v. McIntyre, 623 So.2d 541 (Fla. 2d DCA 1993). The District Court did not follow the recommended procedure outlined in Jollie v. State of Florida, 405 So.2d 418 (Fla. 1981) when given two separate opportunities to do so. This Court should decline jurisdiction on the basis of the Dodi Publishing Company v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980) and Robles Del Mark Inc. v. Town of Indian River Shores, 385 So.2d 1371 (Fla. 1980) decisions.

### STATEMENT OF THE CASE AND THE FACTS

On November 24, 1993, the District Court of Appeal of Florida, Second District, per curiam affirmed with citation the decision of the lower court in favor of Mikos (A-1). The City filed a motion for rehearing and for stay on the basis of Sebring Airport Authority et al. v. McIntyre, 623 So. 2nd 541 (Fla. 2nd DCA 1993) which is on appeal to the Florida Supreme Court (A-3). The City's reasoning was that, since the Second District Court of Appeal had cited Sebring Airport Authority as the basis for the per curiam affirmed and, if the Florida Supreme Court reversed or modified Sebring Airport Authority, it might in some way impact the Second District decision in the case at bar. The Second District Court of Appeal denied the City's motion on January 10, 1994 (A-2). The City filed a timely notice to invoke the discretionary jurisdiction of the Florida Supreme Court, on January 31, 1994.

The citation PCA from the Second District Court of Appeal does not set forth any facts from the underlying case. Mikos would disagree and take exception to the statement of facts in the case set forth in the City's brief.<sup>1</sup> Mikos would also take exception with the Appendix attached to and filed with Petitioner's Brief.

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<sup>1</sup> See Jenkins vs. State, 385 So.2nd, 1356 (Fla. 1980); School Board of Pinellas County vs. District Court of Appeal, 467 So.2nd, 985 (Fla. 1985).

The Appendix contains documents outside those allowed by Rule 9.120(d) Florida Rules of Appellate Procedure.<sup>2</sup>

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<sup>2</sup> Rule 9.120(d), Florida Rules of Appellate Procedure provides that a Petitioner's brief on jurisdiction is to be accompanied by an Appendix containing a conformed copy of the decision of the District Court of Appeal. Unlike other provisions in the Appellate Rules authorizing an Appendix in compliance with Rule 9.220, Florida Rules of Appellate Procedure, this Rule limits the appendix to the decisions of the District Court. See also Jenkins v. State and School Board of Pinellas County v. District of Appeal.

## ARGUMENT

A MERE CITATION PER CURIAM AFFIRMED RENDERED IN THE TRADITIONAL FORM BY A DISTRICT COURT REMAINS NON-REVIEWABLE BY THE FLORIDA SUPREME COURT.

The City is attempting to have this Court accept jurisdiction under its power of discretionary jurisdiction, pursuant to Article 5, Section 3(b)(3) of the Florida Constitution, to review the citation PCA of the District Court. The City is basing its jurisdictional arguments on purported conflict jurisdiction between Sebring Airport Authority and Page v. Fernandina Harbor Joint Venture, 608 So.2nd 520 (Fla. 1st DCA 1992).

Traditionally, citations PCA do not establish conflict jurisdiction in the Florida Supreme Court. Dodi Publishing Company v. Editorial America, S.A., 385 So.2nd 1369 (Fla. 1980); Robles Del Mar Inc. v. Town of Indian River Shores, 385 So.2nd 1371 (Fla. 1980). In Dodi, the Florida Supreme Court stated:

The issue to be decided from a petition for conflict review is whether there is express and direct conflict in the decision of the District Court before us for review, not whether there is conflict in the prior written opinion which is now cited for authority.

It is undisputed that the decision of the Second District Court of Appeal for which the City seeks review was a citation PCA (A-1).

The City bases its argument for conflict jurisdiction primarily upon the case of Jollie v. State of Florida, 405 So.2nd 418 (Fla. 1981). A review of the principles set forth in Jollie,



the citation PCA in the case at bar, the City's motion for rehearing and for stay, and the order on motion for rehearing and for stay, reveals that conflict jurisdiction is inappropriate in this case.

In Jollie, the Florida Supreme Court was faced with a difficult decision. The Court had overturned two conflicting District Court decisions along with three per curiam affirmed decisions citing one of the above conflicting cases on the issue of mandatory jury instructions in a criminal case. The petition for review in Jollie on the same issue and citing the same case was filed after the effective date of the 1980 constitutional amendment limiting Supreme Court jurisdiction. Thus, the incorrect District Court's PCA was at risk of standing due to the change in the constitution.

The Supreme Court carved out an exception to the new limits on jurisdiction based upon the record proper doctrine. The Court concluded:

a district court of appeal per curiam opinion with cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

The Court, however, recommended a two-step procedure for isolating for review in the Florida Supreme Court those decisions which reference to a lead opinion as distinguished from those per curiam opinions which merely cite counsel-advising cases such as in Dodi.

First, the Court suggested that:

District Courts add an additional sentence in each citation PCA which references a controlling contemporaneous or companion case, stating that the mandate will be withheld pending final disposition of the petition for review, if any, filed in the controlling decision. In essence, this will "pair" the citation PCA with the referenced decision in the District Court until it is final without review, or if review is sought, until that review is denied or otherwise acted upon by this Court.

The Supreme Court also suggested that the district courts devise a method to distinguish a contemporaneous or companion case from cases which offer a mere counsel notification citation. The Court went on to reaffirm the traditional rule on citation PCAs established in Dodi and Robles Del Mar.

The Second District citation PCA in the case at bar contains no additional sentence which would pair the case at bar to the case in Sebring Airport Authority. Furthermore, the District Court did not certify that an identical point was at issue in Sebring Airport Authority. An example of a District Court implementing the Supreme Court's suggested procedure can be found in Stewart v. State, 452 So.2d 578 (Fla. 4th DCA 1984).

In the City's motion for rehearing and for stay in this case, the City made the same arguments to the District Court based on the Jollie decision (A-3). Given the opportunity to pair this case with the Sebring Airport Authority decision pending review before the Florida Supreme Court, the Second District Court declined and denied the City's motion (A-2). Therefore, it is evident the citation PCA in the case at bar cited the Sebring Airport Authority decision as a mere counsel advising case such as

in Dodi. The Florida Supreme Court should deny jurisdiction on that basis.

**CONCLUSION**

The City's notice to invoke the discretionary jurisdiction of this Court should be denied.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that he has served a true copy of the foregoing upon Attorneys for Appellant/Petitioner, Sarah A. Schenk, Esq., Taylor, Lawless & Singer, P.A., 46 North Washington Boulevard, Suite 21, Sarasota, Florida 34236, and Attorney for Amicus Curiae, Michael S. Davis, Esq., P. O. Box 2842, St. Petersburg, Florida 33731, by U.S. mail this 3 day of March, 1994.

DENT, COOK & WEBER  
1844 Main Street  
Post Office Box 3269  
Sarasota, Florida 34230  
(813) 952-1070  
Attorneys for  
Appellee/Respondent  
J. W. MIKOS

By Robert K. Robinson  
Robert K. Robinson  
Florida Bar No. 0815081  
John C. Dent, Jr.  
Florida Bar No. 0099242

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CITY OF SARASOTA,  
a municipal corporation,

Appellant/Petitioner,

v.

Supreme Court  
Case No. 83,177

J. W. MIKOS,  
Property Appraiser for  
Sarasota, County, Florida,

Second District  
Case No. 92-04486

Appellee/Respondent.

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APPENDIX OF BRIEF  
OF APPELLEE/RESPONDENT, J. W. MIKOS, ON JURISDICTION

---

ROBERT K. ROBINSON  
Florida Bar No. 0815081  
JOHN C. DENT, JR.  
Florida Bar No. 0099242  
DENT, COOK & WEBER  
1844 Main Street  
Post Office Box 3269  
Sarasota, Florida 34230  
(813) 952-1070  
Attorneys for  
Appellee/Respondent

APPENDIX - INDEX

Per Curiam Opinion of  
Second District rendered on  
November 24, 1993 . . . . . 1

Order of Second District  
Denying Motion for Rehearing and a  
Stay, entered January 10, 1994 . . . . . 2

Motion for Rehearing and for a Stay  
Filed December 7, 1993 . . . . . 3

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CITY OF SARASOTA, a  
municipal corporation,

Appellant,

v.

J. W. MIKOS, Property  
Appraiser for Sarasota  
County, Florida,

Appellee.

CASE NO. 92-04486

RECEIVED  
CITY ATTORNEY'S OFFICE

Opinion filed November 24, 1993.

Appeal from the Circuit  
Court for Sarasota County;  
Robert J. Boylston, Judge.

NOV 24 1993

Sarah A. Schenk of Taylor,  
Lawless and Singer, P.A.,  
Sarasota, for Appellant.

Michael S. Davis, City Attorney,  
St. Petersburg, Special Counsel  
for Florida League of Cities,  
Amicus Curiae.

Robert K. Robinson and John C.  
Dent, Jr. of Dent, Cook & Weber,  
Sarasota, for Appellee.

PER CURIAM.

Affirmed. See Sebring Airport Authority v. McIntyre,  
623 So. 2d 541 (Fla. 2d DCA 1993).

CAMPBELL, A.C.J., and HALL and THREADGILL, JJ., Concur.



IN THE SECOND DISTRICT COURT OF APPEAL, LAKE LAND, FLORIDA

JANUARY 10, 1994

RECEIVED  
CITY ATTORNEY'S OFFICE

CITY OF SARASOTA,  
a municipal corporation,  
  
Appellant(s),  
  
v.  
  
J. W. MIKOS, Property  
Appraiser, Sarasota Co.,  
  
Appellee(s).

Case No. 92-04486

JAN 13 1994

BY ORDER OF THE COURT:

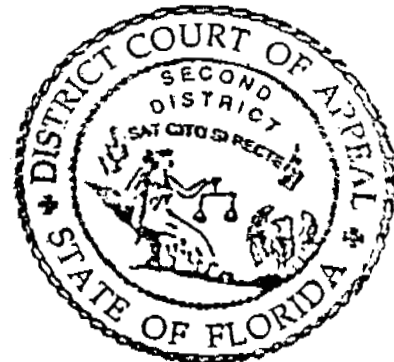
Counsel for appellant having filed a motion for rehearing and for a stay in this case, upon consideration, it is ORDERED that the motion is hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

  
WILLIAM A. HADDAD, CLERK

c: Sarah A. Schenk, Esq.  
Michael S. Davis, Esq.  
John C. Dent, Jr., Esq.  
Robert K. Robinson, Esq.

/JM



IN THE DISTRICT COURT OF APPEAL FOR THE SECOND DISTRICT  
STATE OF FLORIDA

CITY OF SARASOTA,  
a municipal corporation,

Defendant/Appellant,

v.

Appeal No. 92-04486

J. W. MIKOS,  
Property Appraiser for  
Sarasota County, Florida

Plaintiff/Appellee.

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**MOTION FOR REHEARING AND FOR A STAY**

Defendant/Appellant CITY OF SARASOTA respectfully requests this Honorable Court for an Order granting a rehearing and stay pursuant to Fla.R.App.P. 9.330 and 9.310, and in support thereof would state:

1. This Court by decision dated November 24, 1993, issued a per curiam opinion affirming the Summary Judgment granted by the Circuit Court in favor of J. W. MIKOS, citing Sebring Airport Authority v. McIntyre, 623 So.2d 541 (2nd DCA 1993).


2. The Sebring Airport Authority and Sebring International Raceway filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court on September 29, 1993, a copy of which is labeled Exhibit "A," attached hereto, and made a part hereof by reference. The basis of the Notice is that the decision in Sebring Airport Authority, 623 So.2d 541, directly and expressly conflicts with a decision of another district court of

appeal on the same question of law. The Florida Supreme Court has not yet decided whether to accept jurisdiction.

3. In the event the Florida Supreme Court accepts jurisdiction in Sebring Airport Authority, 623 So.2d 541, and modifies or reverses the decision, a rehearing for the case at bar would be clearly justified. See Jollie v. State of Florida, 405 So.2d 418 (Fla. 1981), and Childers v. Hoffman-LaRoche, Inc., 540 So.2d 102 (Fla. 1989).

4. In accordance with Fla.R.App.P. 9.300(a), counsel for Defendant/Appellant CITY OF SARASOTA certifies she has contacted Michael S. Davis, Special Counsel for Florida League of Cities, Amicus Curiae, and he has indicated no objection to this Motion.

WHEREFORE the Defendant/Appellant CITY OF SARASOTA respectfully requests of this Court an Order granting a rehearing, said rehearing being stayed until after the Florida Supreme Court decides whether to accept jurisdiction in Sebring Airport Authority v. McIntyre, 623 So.2d 521 (2nd DCA 1993), and in the event jurisdiction is granted, until such time as a final order is rendered by the Florida Supreme Court on the merits.


By   
Sarah A. Schenk, Esquire  
Florida Bar No. 0436739

TAYLOR, LAWLESS AND SINGER, P.A.  
46 North Washington Boulevard  
Suite 21  
Sarasota, Florida 34236  
(813) 366-0911  
Attorneys for Defendant/Appellant  
CITY OF SARASOTA

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that she has served a true and correct copy of the foregoing upon Attorneys for Plaintiff/Appellee, John C. Dent, Jr., Esquire, and Robert K. Robinson, Esquire; Dent, Cook, and Weber, 1844 Main Street, Sarasota, Florida 34236, and upon Attorney for Amicus Curiae, Michael S. Davis, Esquire, P.O. Box 2842, St. Petersburg, Florida 33731, by U.S. mail this 7<sup>th</sup> day of December, 1993.

TAYLOR, LAWLESS AND SINGER, P.A.  
46 North Washington Boulevard  
Suite 21  
Sarasota, Florida 34236  
(813) 366-0911  
Attorneys for Defendant/Appellant  
CITY OF SARASOTA.

By   
Sarah A. Schenk, Esquire  
Florida Bar No. 0436739

IN THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT  
LAKELAND, FLORIDA

THE SEBRING AIRPORT AUTHORITY and :  
SEBRING INTERNATIONAL RACEWAY, :  
INC., :

Appellants, :

v. :

CASE NO.: 92-04403

C. RAYMOND MCINTYRE, PROPERTY :  
APPRAISER OF HIGHLANDS COUNTY, :  
FLORIDA, THE DEPARTMENT OF :  
REVENUE, STATE OF FLORIDA, and :  
J.T. LANDRESS, TAX COLLECTOR OF :  
HIGHLANDS COUNTY, FLORIDA, :

Appellees. :

NOTICE TO INVOKE DISCRETIONARY  
JURISDICTION OF THE SUPREME COURT

NOTICE IS GIVEN that Appellees, Petitioners, The Sebring Airport Authority and Sebring International Raceway, Inc., by and through their undersigned counsel, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this Court dated July 30, 1993, and rendered final by the Order Denying Motion for Certification entered on September 1, 1993. The decision expressly and directly conflicts with a decision of another District Court of Appeal on the same question of law.

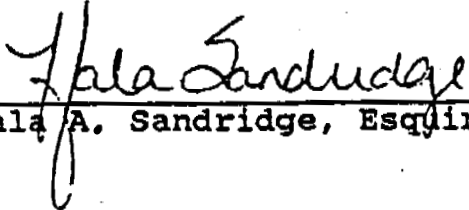
Respectfully submitted,

FOWLER, WHITE, GILLEN, BOGGS,  
VILLAREAL & BANKER, P.A.  
Post Office Box 1438  
Tampa, Florida 33601  
(813) 228-7411  
Attorneys for Appellants

By: Hala Sandridge  
Hala A. Sandridge, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: LARRY E. LEVY, Esquire, Post Office Box 10583, Tallahassee, Florida 32302; CLIFFORD M. ABLES, III, Esquire, 130 E. Center Street, Sebring, Florida 33870; and RALPH R. JAEGER, Esquire, Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida 32399-1050 on this the 29<sup>th</sup> day of September, 1993.

  
Hala A. Sandridge, Esquire