IN THE SUPREME COURT OF FLORIDA

HAINES CITY COMMUNITY DEVELOPMENT, d/b/a PARKVIEW VILLAGE,
Petitioner,

v. Case No.: 84,243

LEILA HEGGS,
Respondent.
_____/

DISTRICT COURT CASE NO.: 94-00524
CIRCUIT COURT APPELLATE CASE NO.: U-93
COUNTY COURT NO.: 93-CC11-0282

ANSWER BRIEF OF RESPONDENT ON THE MERITS

ON PETITION FOR CERTIORARI
FROM THE SECOND DISTRICT COURT OF APPEAL

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Statement of the Facts and of the Case

Leila Heggs is a resident of Parkview Village, a government subsidized rental housing project, in Haines City, Florida. (A-22). She has lived in the project since October of 1981. Id. Ms. Heggs paid her rent late many times during her twelve year residency at Parkview Village. (A-27-29). There were occasions when Ms. Heggs paid her rent more than thirty days from the due date. Id. There were many occasions during the twelve year tenancy when Ms. Heggs had been served with a three day notice of termination of tenancy, and had not tendered the rent within the three days. Id. At trial, Ms. Heggs produced two long-term residents of Parkview Village, Irma Campbell and Grace Johnson, who testified that they, like Ms. Heggs, had often paid their rent late and had not been evicted as a result. (A-113, 117.) Both Ms. Campbell and Ms. Johnson had previously gone in to talk to Parkview Village after receiving the three day notice. (A-114, 119).

Flora Jo Haber testified at trial that it was her policy, at the time Ms. Heggs' tenancy was terminated, to accept late rent from tenants based on "the actions of the tenant" showing "good faith of the tenant". (A-70). Ms. Haber testified that Ms. Heggs had not acted in good faith because she did not follow up on her promise to make partial payments. Id. A deposition taken of Ms. Haber, and which was admitted into evidence shows that Ms. Heggs

had previously maintained a large outstanding balance, often owing several months back rent. (A-179-180).

Finally, there was testimony that in 1992 there was a push made to have all the tenants catch up on their back balances. (A-68-69). However, there was no notice or effort made to indicate to the tenants that in the future, late payments would subject the tenants to eviction. Id.

When Ms. Heggs moved to Parkview Village, she was an agricultural laborer, harvesting fruit with her husband. (A-23). During 1985, Ms. Heggs became disabled and unable to harvest fruit. Id. The Social Security Administration awarded her benefits based on a disability due to mental illness. Id.

Ms. Heggs suffers from depression (A-24). She takes several medications for her condition, including Vistaril, a mood elevator. Id. Although she has been taking medication since 1981 or 1982, the medication does not always lift the depression. Id. When the medication does not lift the depression, Ms. Heggs is unable to get out of bed. (A-25). She cannot eat or sleep, and her normal functioning is impaired. Id. Ms. Heggs also suffers from peptic ulcers, migraines and back problems. (A-26). She is hospitalized frequently for her condition. Id. During September and October of 1992, Ms. Heggs was taking Valium and Parafon Forte for pain. (A-27). The medication made her drowsy and she rested in bed. Id. At the time that Ms. Heggs failed to pay rent in the fall of 1992, she had been depressed and unable to take care of business. (A-38). She called Flora Jo Haber, who owns the management company which

operates Parkview Village, and asked her to be patient, because she intended to have one of her daughters take care of her financial affairs.(A-39).

Parkview Village was aware of Ms. Heggs disability. (A-25). She was required to provide Parkview with a copy of the award letter from the Social Security Administration showing her to be disabled. (A-26-27). In addition, her disability had been the subject of a previous eviction trial that Parkview Village had unsuccessfully brought in 1991. (A-91-92).

On deposition, Ms. Haber also testified that she had no policy concerning mentally handicapped tenants, and that "on mental-illness, it's wide-open. I mean what would the accommodations be? We're talking about barrier handicaps." (A-188). Ms. Haber also indicated that her only obligation toward Ms. Heggs concerning her illness was to recommend that she go to certain agencies "to see that her handicap is taken care of." (A-189). She also indicated she had no written policies concerning the disabled. (A-208).

In 1989, Ms. Heggs became actively involved with a tenants' association. (A-29). Ms. Heggs was asked by the then-president of the organization, Wanda Berto, to become the vice-president of the association, and she did so. Id. She believed that there were many problems at Parkview Village, including the lack of a relationship between the tenants and the management. Id. In late 1989 or early 1990, Ms. Heggs became president of the association (A-29-30) As president, Ms. Heggs passed out brochures to the tenants, advising them of the availability of legal services. (A-29-31). After she

became president, Ms. Heggs' relationship with Parkview Village began to deteriorate. Id. The former president of the tenants' association, Wanda Berto, had become a member of the Board of Directors for Parkview Village. (A-32). Ms. Berto contacted Ms. Heggs about organizing the tenants to have the management of Parkview changed. Id. Members of the management staff asked Ms. Heggs if she had plans to try to get rid of them. (A-33). Ms. Heggs wrote a letter to the Board of Parkview Village, questioning many of the activities of the management company, and more specifically, Flora Jo Haber. *See* letter (A-213). Ms. Haber responded to Ms. Heggs' letter in February of 1990 by stating that Ms. Heggs should have brought her complaints to Ms. Haber first. (A-214). The relationship between Ms. Heggs and Parkview continued to deteriorate. (A-34).

In 1991, Parkview Village initiated eviction proceedings against Ms. Heggs on the grounds that the household was no longer qualified to reside at Parkview Village because the household's income did not come substantially from agricultural employment. (A-90-91). Parkview was unsuccessful in this litigation. Id. The case was not over until the spring of 1992, (A-101), and the money was not disbursed from the court until approximately October of 1992. In January of 1993, the instant action was filed for possession of the rental unit on the basis of Ms. Heggs' failure to pay rent. (A-73).

Ms. Heggs has conceded from the inception of the action that she did not pay her rent timely, as alleged in the complaint.

However, Ms. Heggs raised the following as affirmative defenses: a) lack of good cause for termination of tenancy (as required by federal regulation); b) lack of proper notice of termination of tenancy under state law; c) an equitable defense concerning her disability and attendant interference with her ability to meet her daily needs; d) retaliatory eviction; e) violation of Fair Housing Act and the Rehabilitation Act of 1973; and f) estoppel, i.e., history of acceptance of late rent payments. (A-218). The trial court entered a partial judgment on the pleadings with regard to the first two affirmative defenses (lack of good cause and lack of proper notice) prior to the trial. (A-226).

The trial on the remaining affirmative defenses was held on April 29, 1993.

At trial, the Court ruled against Ms. Heggs' affirmative defenses. The final judgment was entered in this case on May 10th, 1993, awarding possession of the premises to Parkview Village. No grounds were stated for the decision.

On appeal to the Circuit Court for the Tenth Judicial Circuit, Leila Heggs raised several grounds. However, the appellate court reversed only on one issue, the issue of equitable estoppel, i.e., that the history of late acceptance of payments precluded Parkview Village from evicting Ms. Heggs or late payment without adequate notice that there was a change in policy.

Parkview Village next filed a petition for a writ of certiorari in the Second District Court of Appeal. The Second District denied the petition, but certified a question of great

public importance to this Court:

> AFTER EDUCATIONAL DEVELOPMENT CENTER, INC. V. CITY OF WEST PALM BEACH, 541 SO. 2D 106 (FLA. 1989), DOES THE STANDARD OF REVIEW IN COMBS V. STATE, 436 SO. 2D 93 (FLA. 1983), STILL GOVERN A DISTRICT COURT OF APPEAL WHEN IT REVIEWS, PURSUANT TO FLORIDA RULE APPELLATE PROCEDURE 9.030(b)(2)(B), AN ORDER OF A CIRCUIT COURT ACTING IN ITS REVIEW CAPACITY OVER A COUNTY COURT?

Parkview Village moved for a rehearing on the decision of the Second District Court to deny its petition. The motion for rehearing was denied.

Subsequently, Parkview filed a petition for writ of certiorari in this Court, and filed a jurisdictional brief. This Court has postponed its decision on jurisdiction and has requested that the parties file briefs on the merits of the case.

SUMMARY OF THE ARGUMENT

This case began as an eviction action by the Petitioner, Parkview Village, a federally subsidized farmworker housing project, against the Respondent, a disabled former farmworker. The reason for the eviction was late payment of rent.

Parkview Village, the Petitioner in this Court, is seeking a third appeal in the guise of a petition for writ of certiorari. Parkview Village prevailed on the initial trial in this case before the county court, was reversed on appeal to the circuit court, sought a writ of certiorari in the Second District Court of Appeal (and was denied), and now seeks certiorari review here. There is simply no jurisdiction available at all in this Court for the review sought by Parkview.

The Second District Court of Appeal certified a question to this Court concerning the standards to be employed when the District Courts of appeal review circuit courts acting in their appellate capacity. The Second District denied certiorari review to Parkview Village on the merits of the case. Nonetheless, Parkview argues before this Court that the Second District should have granted certiorari, an issue which is not properly the basis of jurisdiction in this Court according to the Florida Constitution, the rules of this Court, or any other authority.

Even if there were appeal review or certiorari available in this court in the instant case, the Circuit Court appellate decision should be upheld. The Circuit Court applied the correct law, and no procedural violations have been alleged.

The only issue properly before this Court in this matter is the certified question from the Second District Court of Appeal. The issue is the perceived inconsistency between two cases decided by this Court *Combs v. State*, 436 So.2d 93 (Fla. 1983) and *Education Development Center, Inc. v. Zoning Board of Appeals*, 541 So.2d 106 (Fla. 1989). However, a close look at these cases and their progeny reveals that the cases are not inconsistent.

Clearly, certiorari review of appellate decisions is a narrower review than the initial appellate review. Otherwise, certiorari would be nothing more than a second appeal. The standard for such review requires more than just a disagreement with the decision. There must be an egregious error. Regardless of whether such error is labeled as error resulting in a "miscarriage of

justice" (the term used in *Combs*) or a failure to observe the "essential requirements of the law", (the term used in Educational Development) the standard requires more than just a disagreement with the legal correctness of the decision. There is no difference between the standards in these two cases. However, because of the variety of terms used by the courts to describe the standard, it may appear that different standards are being used. The standard to be applied requires that before certiorari can be granted, there must be legal error resulting in a miscarriage of justice. Because there was no miscarriage of justice wrought by the appellate decision, the Second District Court decision to deny certiorari was correct.

ARGUMENT

I. THE COURT SHOULD ANSWER THE QUESTION CERTIFIED BY THE SECOND DISTRICT COURT OF APPEALS IN THE NEGATIVE.

The question certified by the Second District Court of Appeal indicates that the cases of Combs v. State, 436 So.2d 93 (Fla. 1983) and Education Development Center, Inc. v. Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989) contain inconsistent standards for certiorari review:

> AFTER EDUCATIONAL DEVELOPMENT CENTER, INC. V. CITY OF WEST PALM BEACH, 541 SO. 2D 106 (FLA. 1989), DOES THE STANDARD OF REVIEW IN COMBS V. STATE, 436 SO. 2D 93 (FLA. 1983), STILL GOVERN A DISTRICT COURT OF APPEAL WHEN IT REVIEWS, PURSUANT TO FLORIDA RULE APPELLATE PROCEDURE 9.030(b)(2)(B), AN ORDER OF A CIRCUIT COURT ACTING IN ITS REVIEW CAPACITY OVER A COUNTY COURT?

However, a close look at these cases and their progeny indicates that there is no inconsistency. Both cases require that

on certiorari, simple legal error is insufficient to warrant review; there must be error that results in a miscarriage of justice.

The Combs case involved a county court conviction of driving while intoxicated. On appeal, the circuit court affirmed. 436 So.2d at 94. Combs then filed a petition for writ of certiorari in the Fifth District Court of Appeal. The Fifth District, in denying the petition, held that:

> Certiorari is not the vehicle for us to review alleged errors of law made by a circuit judge sitting in review of county court judgments. There is no vehicle for that review. The decision of the circuit court is final and reviewable. . . .
>
> * * *
>
> The only thing we can take by certiorari in this type of case is an alleged "departure from the essential requirements of law" which essentially amounts to violations which effectively deny appellate review such as the circuit judge rendering a decision without allowing briefs to be filed and considered. . . .

Id. at 94.

This Court, on review, held that the Fifth Circuit had taken too narrow a view of what constitutes a "departure from the essential requirements of law." Id. at 95.

The Court held that this phrase means flaws in procedural matters are reviewable as well as legal error, provided that the legal error results in a miscarriage of justice. Id. at 94-95. The Court correctly synthesized the problem of such a standard in Combs:

> These conflicting decisions result from this Court's efforts to clothe the decisions of all appellate courts with finality while at the same time providing a means for review in those few extreme cases where the appellate court's decision is so erroneous that justice requires that it be corrected.

Id. at 98. The court went on to say that it would be impossible to list all the circumstances in which a miscarriage of justice occurs. In the instant case, the Second District Court, applying Combs, found that there has been no miscarriage of justice that would warrant certiorari review. However, the Second District has found a later decision of the Supreme Court, Education Development Center, Inc. v. Zoning Board of Appeals, 541 So.2d 106 (Fla. 1989), to contain a different standard. Analysis of the two cases reveals that there is no inconsistency.

Education Development Center involved a request by a corporation who sought a zoning change in order to turn a residential property into a preschool and kindergarten. The zoning board denied the request, and the center appealed to the Circuit Court. The Circuit Court reversed, holding that there was substantial competent evidence to support the application. 541 So.2d at 107. The Center then obtained certiorari review in the Fourth District Court of Appeal. The District found that there had been an incorrect standard of review applied by the circuit court and remanded the case. The Fourth Circuit held that the appellate court had to determine "whether there is substantial competent evidence to support the agency's conclusion" and not whether there was substantial, competent evidence to "support a position contrary

to that reached by the agency." Id. at 108.

The circuit court again reversed on remand, finding that there was no substantial competent evidence to support the Board's decision. The board sought review once again in the Fourth District. The Fourth District reversed, holding that there had been substantial, competent evidence to support the denial of the application, and that the circuit court had improperly reweighed the evidence. Id. at 108.

This Court held that the District Court had exceeded its scope of review. This Court held that the circuit court, in reviewing the decision of an administrative agency, cannot reweigh the evidence nor substitute its judgment for that of the agency. Id. This Court next described the district court's standard of review:

> In turn, the standard of review to guide the district court when it reviews the circuit court's order . . . . is necessarily narrower. The standard for the district court has only two discrete components . . . whether the circuit court afforded procedural due process and applied the correct law.

Id., quoting from City of Deerfield Beach v. Vaillant, 419 So.2d 624 at 626 1982). The court held that there is no jurisdiction in the Fourth District simply because the district court disagreed with the circuit court's evaluation of the evidence. The Court did not announce a broader appeal standard in Education Development, it merely reiterated the two-pronged standard of Combs.[1]

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[1]There is a three-step analysis for an appellate review of an administrative agency decision: 1) whether there is substantial, competent evidence to support the decision; 2) whether there was an application of the correct law, and 3) whether there were procedural

In subsequent cases, the various courts have uniformly applied the Combs standard, even when the Combs case is not cited. In Conahan v. Dept of Highway Safety, 619 So.2d 988 at 989 (5th DCA 1993), both the Combs and Education Development case are cited for the proposition that certiorari cannot be used as a "vehicle to obtain a second appeal." If the "application of the correct law" standard were to be applied as the Second District has interpreted Education Development, then certiorari would always be a second appeal.

In the case of Horatio Enterprises, Inc. v. Rabin, 614 So.2d 555 (3rd DCA 1993) the Third District, on certiorari, quashed an appellate court decision which had resulted in forfeiture of a tenancy. Citing Combs, the Third District held that the "legal error in reversing the county court's judgment caused a 'miscarriage of justice' because it resulted in a forfeiture of the sublease." As in the instant case, the tenant (a commercial tenant) had paid all the money to which the landlords were entitled. Id. at 556.

In Branch v. Charlotte County, 627 So.2d 578 (2nd DCA 1993), the Second District denied certiorari in an administrative manner, stating "(u)nder Education Development Center, we are not permitted to "disagree with the circuit court's evaluation of the evidence." Cites omitted, 627 So.2d at 579. In that case, a local utility

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deficiencies. The certiorari review in Education Development involved the first prong, which is not an issue in the instant case, since it only applies to administrative agency decisions.

company sought an interim rent increase, was denied by the County, and had appealed to the Circuit Court. The Circuit Court had affirmed the denial. The District Court, in affirming the denial, held:

> When a district court reviews a circuit's denial of a petition for writ of certiorari challenging a decision of an administrative body, the standard of review is very limited. The district court may only determine whether the petitioner was afforded due process and whether the circuit court applied the correct law.

Id. at 578, citing Education Development. The district court found that the standard that the circuit court had used, i.e., whether there was substantial competent evidence to support the decision, was the correct standard, and that therefore the court's decision must be sustained. The district court made it quite clear that regardless of the outcome, if the correct standard was used, the district court could not intervene. This is a much narrower standard of certiorari review than whether the decision is legally correct, because the application of any standard can result in varying interpretations. According to the Florida Constitution, that kind of interpretation may only be had at the trial level, and on appeal.

To the extent there may be differing consideration of administrative matters, it is due to the fact that our legal system has always deferred to agency expertise, hence, the "substantial competent evidence" standard is applied to factual matters. However, there is no additional "de novo" review in administrative matters. Unless there is a miscarriage of justice, one appeal is

enough.

II. THE SUPREME COURT LACKS JURISDICTION TO REVIEW THIS CASE DE NOVO.

Petitioner seeks a writ of certiorari to review the correctness of a reversal entered by a Circuit Court acting in its appellate capacity. There is no jurisdiction in this Court for review of this matter.

In 1980, the Florida Constitution was amended to change the jurisdiction of the Courts. The 1980 changes narrowed the jurisdiction of the courts of the state in response to heavy caseloads:

> Subdivision (a) of this rule has been extensively revised to reflect the constitutional modifications in the supreme court's jurisdiction as approved by the electorate on March 11, 1980. *See* art. V sec. 3(b), Fla. Const. (1980). The impetus for these modifications was a burgeoning caseload and the attendant need to make more efficient use of limited appellate resources. Consistent with this purpose, revised subdivision (a) limits the supreme court's appellate, discretionary, and original jurisdiction to cases that substantially affect the law of the state. The district courts of appeal will constitute the courts of last resort for the vast majority of litigants under amended article V.

See Committee notes to Rule 9.030, Fla. R. App. P.

The Supreme Court has jurisdiction only under very narrow circumstances.[2] None of the jurisdictional grounds exists here.

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[2]Rule 9.030 JURISDICTION OF COURTS

(a) Jurisdiction of Supreme Court.

(1) **Appeal Jurisdiction,**

(A) The supreme court shall review, by appeal
(i) final orders of courts imposing sentences of death;
(ii)decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(B) If provided by general law, the supreme court shall review
(i) by appeal final orders entered in proceedings for the validation of bonds or certificates of indebtedness;
(ii)action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(2) **Discretionary Jurisdiction.** The discretionary jurisdiction of the supreme court may be sought to review

(A) decisions of district courts of appeal that
(i) expressly declare valid a state statute;
(ii)expressly construe a provision of the state or federal constitution;
(iii)expressly affect a class of constitutional or state officers;
(iv)expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
(v) pass upon a question certified to be of great public importance;
(vi)are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court, and
(i) to be of great public importance, or
(ii)to have a great effect on the proper administration of justice;

(C) questions of law certified by the Supreme Court of the United States or a United States

There is certainly no appeal jurisdiction, or original jurisdiction in the instant case. *See* Rule 9.030(a)(1), (3), of the Florida Rules of Appellate Procedure. Appeal jurisdiction is limited to death sentence cases, cases finding statutes or constitutional provisions invalid, bond invalidation matters, and decisions of statewide agencies involving electric, gas or telephone service. Original jurisdiction is limited to writs of habeas corpus, writs of prohibition, and all writs "necessary to the complete exercise of its (the Court's) jurisdiction." This Court, in its original jurisdiction, may issue writs to the extent it is necessary for cases in which the Court has jurisdiction according to the Florida Constitution.

Discretionary jurisdiction in the supreme court can be obtained when the district courts "pass upon a question certified to be of great public importance" and when an order or judgment of the trial courts are certified by the district courts to be of great public importance. *See* Rule 9.030(a)(2)(A)(v)and

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court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

(3) **Original Jurisdiction.** The supreme court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

9.030(a)(2)(B)(i). In the instant case, the Second District Court of Appeals certified a question to this Court. This is the only matter properly before this Court. *See* Section I of this brief.

There is no other discretionary jurisdiction available in this case.

The Florida Supreme Court has no jurisdiction to grant writs of common law certiorari. That jurisdiction was transferred to the District Courts of Appeal nearly 40 years ago. In 1956, the Florida Constitution was amended to create the District Courts of Appeal. Fla. Const., Art. 5.[3] The District Courts were given jurisdiction to grant writs of certiorari. Id. at Sec. 5(3). The Supreme Court retained jurisdiction to hear, *inter alia*, certain appeals and cases that fell within limited classes where the court could exercise discretion in granting review. Fla. Const., Art. 4. However, the common law certiorari jurisdiction that, until then, had lied in the Supreme Court, now rested at the District Court bench.

Subsequent to 1957, the Supreme Court of Florida was no longer empowered to issue these writs. That power was delegated to the District Courts. Dresner v. City of Tallahassee, 164 So.2d 208, 210 (Fla. 1964). Prior to July 1, 1957, the writ was employed by the Florida Supreme court to review the appellate judgments of circuit courts within the applicable historical limitations. Since

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[3]The District Courts of Appeal later came into existence on July 1, 1957 by virtue of legislation passed that same year. In 1965, the number of Districts increased to five.

the critical date mentioned, the writ is available to the District Court of Appeal for the same purpose. Id. *See also* City of Winter Park v. Jones, 392 So.2d 568, 571 (Fla. 5th DCA 1980).

Even where proper, review of circuit court appellate decisions by a common law writ of certiorari is of a limited nature. Griffin v. State, 367 So.2d 736, 737 (Fla. 4th DCA 1979). Certiorari cannot be a means to obtain another review. When a case is tried in county court and then appealed to the circuit court, the parties have exercised their right of review and the decision of the circuit court is final. Further review by common law certiorari cannot be employed so as to result in a second appeal. Id. (citing Kennington v. Gillman, 284 So.2d 405 (Fla. 1st DCA 1973)).[4] If

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[4]In Kennington v. Gillman, 284 So.2d 405 (Fla. 1st DCA 1973), the District Court of Appeal noted the limits of the writ of certiorari:

> 'The extraordinary writ of certiorari is highly discretionary on the part of a Superior Court. It cannot be used as a substitute for an appeal or to give a party a second appeal. Evidentiary questions are to be resolved by the trial court and its action was properly reviewable on direct appeal by the appellate court. The correctness of the appellate court's decision is not reviewable in an attempted second appeal by a superior court in the name of certiorari. It is only when a judgment has been rendered in the absence of any competent evidence to support the judgment or material fundamental errors in apply the law that such a departure from the essential requirement of law will arise to justify a superior court to

certiorari is not meant to afford a second bite of the apple, it certainly cannot be used to allow a third bite. Yet that is precisely what the landlord attempts here by seeking yet another review of the facts and issues considered by the county court.

The Supreme Court, of course, can review the decision of a county court where the county court has ruled on a particular statute's constitutionality. Pace v. State, 368 So.2d 340 (Fla. 1979). [5] That situation is quite different than the one presented here. Here, the appellants seek to invoke the jurisdiction of the Supreme Court only because it is dissatisfied with the result obtained in the petition for certiorari to the Second District Court of Appeal.

Where there has been a full review in circuit court as a matter of right, one appealing the circuit court's judgment is not entitled to a second full review in the district court. *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 626 (Fla. 1982). In *Deerfield Beach,* a discharged employee appealed an administrative decision to the circuit court. Following the full review in the circuit court, the employee succeeded in obtaining a reversal of the lower tribunal's decision. The city then sought review in the

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> exercise its ancient power to issue the common law writ of certiorari."

Id. at 406.

[5] Pace dealt with the constitutionality of §877.02(1), Fla. Stat. (1973), which prohibited solicitation by attorneys. The County Court convicted the attorney of violating the statute. The Supreme Court affirmed, finding that the statute was constitutional. Id. at 346.

district court. Id. at 625. The city failed in the district court's certiorari review because the district court determined that the circuit court had afforded the parties procedural due process and that essential requirements of law were observed. Id. at 626. The Supreme Court agreed and affirmed the district court. Id. It noted that as a case moves up the appellate ladder, each level of review does not become broader. Id. There is certainly no right to a third review of the case.

In the instant case, the circuit court provided all the procedural due process required by the Florida Rules of Appellate Procedure. It permitted the Petitioner, who was the appellee in the circuit court, to file its brief in response to the appellant's brief. By that brief, the appellee/petitioner was given the opportunity to respond to all points raised by the appellants. The circuit court's decision was rendered only after consideration of the briefs. It is assumed the Petitioner would agree that all of this is in compliance with the Florida Rules of Appellate Procedure, since it raises no question about the procedure in the circuit court.

The District Court reviewed the case and denied jurisdiction, applying the standard in Combs v. State, 436 So.2d 93 (Fla. 1983). The District Court found that no miscarriage of justice had been wrought which would justify the Court's intervention. The Court did indicate that it might have decided the case differently, but found that Parkview Village retained the right to evict Ms. Heggs in the future.

III. EVEN IF THERE WERE REVIEW AVAILABLE THERE WAS NO DEPARTURE FROM THE ESSENTIAL ELEMENTS OF LAW IN THE APPELLATE DECISION CONCERNING ESTOPPEL, AND THERE WAS NO MISCARRIAGE OF JUSTICE IN FINDING THAT PARKVIEW VILLAGE WAS EQUITABLY ESTOPPED FROM EVICTING LEILA HEGGS

A. The Circuit Court Correctly Decided the Issue of Estoppel

In *Ross v. Metropolitan Dade County*, Docket No. 92-4619 (11th Cir. March 5, 1993), the Court cited the law of Florida which provides that equity will afford relief against the forfeiture of a tenancy "whenever it is equitable and just to do so." Slip opinion at page 6. A copy of the decision is attached in the Appendix to this brief at 228.

The Court cited the case of *Rader v. Prather,* 130 So. 15 (Fla. 1930), for the proposition that the only condition for relieving the forfeiture is the tender of the rent. In the case of *Herrell v. Seyfarth* 491 So.2d 1173 (Fla. 1st DCA 1986), the court held (in the context of a non-residential tenancy) that equitable defenses are valid against forfeiture of a commercial tenancy. In dicta, the court stated that "as to residential tenancies, the (Landlord/Tenant Act) explicitly authorizes such tenants" to file all legal and equitable claims, citing to Section 80.60(1) Fla. Stat. (1991).

It is difficult to conceive of a situation more compelling then the instant one where it would be "equitable and just" to set aside the forfeiture of a tenancy. Leila Heggs is ill, is responsible for minor children, and has a very low income. She had made her payments current by paying them into the court registry by

the time of the trial. Even if these factors had not mitigated in Ms. Heggs' favor, the doctrine of equitable estoppel precluded judgment against Ms. Heggs, as correctly decided by the Circuit Court on appeal. The doctrine of equitable estopped consists of:

> (1) Words and admissions, or conduct, acts, and acquiescence, or all combined, causing another person to believe in the existence of a certain state of things.
>
> (2) In which the person speaking, admitting, acting, and acquiescing did so willfully, culpably, or negligently.
>
> (3) By which such other person is or may be induced to act so as to change his own previous position injuriously."

Boynton Beach State Bank v. Wythe, 126 So.2d 283 (Fla. 2d DCA 1961)(cities omitted); *Hallam v. Gladman*, 132 So. 2d 198 (Fla. 2d DCA 1961).

In the *Hallam* case, Id., an heir to property allowed sixteen years to go by in which he made no claim to the property, nor took any active part in maintaining the property, Id at 289. The court held that he was not entitled to the property, stating:

> Plaintiff, after the lapse of many years dating back to a time when properties in issue were worth but little, now speaks to assert a claim in what, because of defendant's efforts, expenditures, and sacrifices over those years, has greatly increased in value.

Id. at 209.

In the instant case Leila Heggs never believed that late payment of rent would be a problem after so many years of Parkview Village allowing it. She relied on their late acceptance of rent, and she should not be penalized for it. The Circuit Court applied

the correct standard of law, and there was no miscarriage of justice as a result of the reversal.

B. The Appellate Court Did Not Substitute Findings of Fact; There Was No Substantial Competent Evidence to Support a Finding That the Defense of Estoppel Did Not Apply

At the outset, it is important to note that the findings of fact as stated by the Circuit Court in its appellate decision are the same as asserted by Parkview Village in its brief to that court. The trial court had not made any particular findings of fact. The Circuit Court, in reviewing the case, found the facts to be as stated by Parkview Village:

> Appellant was a tenant of that housing project, Parkview Village, and in the Fall of 1992 failed to make rent payments that were due in November and December. In the beginning of January 1993, Appellant contacted Respondent concerning the past due account and reached an agreement on payment. However, Appellant failed to go to Appellee's office and sign the agreement or make any payment on the past due amounts. On January 11, 1993, Appellee issued Appellant a three day notice of termination. Appellant did not respond and Appellee initiated this action.
>
> * * *
>
> It appears to this Court that Appellee arbitrarily enforces its own rules and regulations regarding rent payments. In, the past, Appellee has allowed past due amounts to accrue for several months without issuing a three day notice. Here in the instant case, Appellant failed to pay rent for two months, and then filed (sic) to satisfactorily attend to the matter. Appellee then issued the three day notice to which Appellant did not respond. Appellee then initiated eviction proceedings. It does appear that at least some of the tenants understood that a three day notice means "Respond or Be Evicted"; however, there

> is no indication that Appellant was aware of this policy. Appellant even testified that there were times in the past when she had been served with a three day notice, had not tendered the rent within three days, and had not then been evicted or faced with any eviction proceedings.

(A-156-158).

The record reveals that there was no indication to Leila Heggs that payment of late rent in the future would lead to eviction.

> Q. So you're saying then that you started to in the fall of 1992, evict any tenant who was late with the rent.
>
> (Haber). No, I didn't say that.
>
> Q. Ok. Well, I --what was it then that you were going to do in response to the Farmers Home----
>
> (Haber). We sent notices to them that they must catch up their past due balances.
>
> Q. Did you begin an eviction action against everyone who did not catch up these past due balances.
>
> (Haber). I don't know an answer to that question. Not everyone, no, because we had promises, and we try to work with the tenants as much as possible. If they come in, and they give us a story, they sign an agreement for repayment, then we work with the tenants.

(A-68,69).

> Q. Did you ever send out a notice to the tenants at Parkview Village indicating that they would have to start paying their rent on time after the fall of 1992?
>
> (Haber). It wasn't worded like that. I said they would have to go into the new year with a zero balance.

Id. at 82.

Nor did Lopez, the on-site manager of the complex, testify that

such a change in policy had taken place:

Q. Do you recall sending--receiving a notice from anywhere or sending a notice or posting a notice in late 1992 concerning late payment of rent?

(Lopez). To Mrs. Heggs?

Q. To anybody, to all of the tenants at Parkview Village?

(Lopez). Late '92? I think there was a letter.

* * *

Q. Well, let me back track a little bit. Was there a change in policy concerning late acceptance of rent in late 1992?

(Lopez). A change in policy about accepting rents late--we give out three day notices. That's always been the procedure.

* * *

Q. The notice that you sent out that you put in the tenants' apartment in late 1992, what did it say?

(Lopez). I don't remember.

* * *

(Lopez). As far as I remember, there was a letter asking or--well, I'm not sure. It's a letter that says they are late on their rent, and it needs to be paid.

* * *

Q. So the only notices that you recall ever sending about catching up the late balances by the end of the year were just notices to the people who were behind saying please catch up by the end of the year?

(Lopez). Uh-huh, yes.

Q. Were you ever informed by Flora Jo Haber, by anyone, that there was going to be a new

policy concerning the acceptance of rent late?

(Lopez). I don't recall.

(A-123-128).

In short, there was no notice ever sent to the tenants stating that the previous policy of accepting rent late had been changed. The only notice sent to the tenants was one concerning a "push" to catch up late rent. The clear and only testimony concerning the policy indicated that Parkview accepted rent if the tenant came in and talked about the late rent after receiving the three day notice, but as the Circuit Court correctly pointed out, there was no evidence that Leila Heggs knew about this "policy". There was no written or other indication to her of this so-called policy, and in fact, she had previously gone several months without paying rent and without discussing it with Parkview. The record is devoid of any evidence that Parkview told Ms. Heggs anything about such a policy. Moreover, the record is replete with evidence that in fact Ms. Heggs had previously run a balance for several months. The balance sheets from Parkview's own records show that. (A-238-242).

In summary, the argument in the petition before this court is disingenuous to the extent that it suggests that there was evidence in the record that the trial judge could have relied upon to find there was a change in policy. The facts are clear that the standards employed by Parkview were at best arbitrary. There were no written guidelines, or oral time limits, or any other means by which a tenant might know if she had crossed Parkview's line of error concerning lateness.

C. The Circuit Court Correctly Applied Principles of Law in Reversing the Decision of the Trial Court.

The pivotal point of any appeal is fairness. As this court stated in *Morgan v. State*, 341 So.2d 201 (Fla. 2d DCA 1977):

> (Fairness) is a simple word, but constitutes the very root of our judicial system. Without fairness, the system would not function and the proper administration of justice would fall be the wayside.

Id. at 2020. The Circuit Court, in the instant case accepted and analyzed the facts in the record, and found that the law required that Parkview be estopped from evicting Leila Heggs.

The Court held that:

> Applying (the law) to our case, as shown by its past acts, Appellee conducted itself in such a manner as to cause Appellant (sic) that she would not face eviction for her failure to respond to the three day notice of termination of tenancy. Appellant, in reliance on this acted in such a way as to put her tenancy in jeopardy. Appellee should not be allowed to act. Equity demands that Appellee be required to adhere to the policies, either adopted by regulation or by action, that it sets. There is no question here that the Appellant has a history of repeated non-payment.

(A-157-158).

The Circuit Court reversed on a point of law, and reached a decision that was fair and equitable. There has been no miscarriage of justice suffered by Parkview. In addition, there was no error by the Circuit Court acting in its appellate capacity. There was no substitution of finding of fact, nor a reweighing of the facts.

For these reasons, the decision of the circuit court acting in its appellate capacity, should not be reversed.

D. There Is No Miscarriage of Justice In Allowing Leila Heggs to Remain in Her Subsidized Unit.

Although the following issues are not properly before this Court because they were not addressed by the order which is the subject of the petition for certiorari, Parkview Village has nonetheless briefed the issues. Moreover, an analysis of the peripheral issues in this case indicate that there has been no miscarriage of justice wrought by the appellate court in allowing Leila Heggs to retain her apartment.

1. Parkview Village Attempted to Evict Leila Heggs in Retaliation for her Tenants' Association Activities as Well as For Her Successful Defense of Previous Eviction Attempts

Section 83.64 of the Florida Statutes provides, in pertinent part:

> (1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:
>
> * * *
>
> (b) The tenant has organized, encouraged, or participated in a tenants' organization;
>
> * * *
>
> (4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

The landlord must show that there is "good cause" for the

eviction, defined as "good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter." §83.64(3) Fla. Stat. (1991).

Parkview Village had accepted rent late from Ms. Heggs and from other tenants on many occasions. The witnesses as well as the tenant file from Parkview Village attest to this fact. The true reason for the eviction was Ms. Heggs' leadership of an active, anti-management tenants' organization.

As stated in 1 Hauser, J., Florida Residential Landlord Tenant Manual, p. 5-6, Chapter 9:

> (I)f a tenant participated in a tenant's organization, a landlord would be considered to be retaliating against the tenant if the landlord increased his rent, but not any of the other tenant's. The key issue is the subjective intent of why the landlord has undertaken his actions.
>
> * * *
>
> In making a decision of whether the landlord's conduct is retaliatory, the court must look at the landlord's subjective intent. The question must be answered, what is the *primary* reason the landlord is evicting the tenant. If the primary reason is retaliatory, then the tenant cannot be evicted. (footnote omitted.)
>
> If the landlord has a valid non-retaliatory reason for evicting the tenant, then the tenant can be evicted. Examples include evictions based on non-payment of rent, violation of the lease or rules, or violation of Chapter 83, Part II.
>
> Obviously, the landlord will not state in his suit to evict that he is retaliating against the tenant. It will be up to the Court to determine whether the reasons stated

are a ruse or legitimate.

In the case of *Great Atlantic v. Hughes*, 5 Fla. Supp.2d 46 (County Court, Orange County 1983), a tenant formed an organization to protest a rent increase in April of 1983. In late April, the landlord terminated the tenancy, stating that the tenant had been late with her rent from April through December of 1982, and that her son had broken into a soda machine in March of 1983. The court held that the eviction was retaliatory. The court indicated that an action for late payment of rent should have been brought at the time of the late payments. Moreover, the soda machine incident had resulted in the son agreeing to do some light maintenance work in March when it had happened.

In the case of *Poole v. Melton* 5 Fla. Supp.2d 103 (County Court, Orange County 1983), a tenant had complained to the landlord that certain repairs were not being made, and eventually the landlord stopped accepting rent from the tenant. At about the same time, the tenant sent a rent withholding letter to the landlord, stating that unless the repairs were made, she would withhold rent. The tenant brought an action against the landlord, and the landlord terminated the tenancy. The court held that although there was no personal animosity on the part of the landlord toward the tenant, the landlord had nonetheless evicted the tenant in retaliation for the tenant having taken action against the landlord concerning the repairs.

Finally, in the case of *Smith v. Rooy*, 11 Fla. Supp.2d 53 (Orange County 1985), the court held that there does not even have

to be ill-feeling between the parties in order for the eviction to be retaliatory:

> In fact, Plaintiff has at all times been willing to give Defendant additional time to vacate. The meaning of the word "retaliate" may often encompass actions predicated upon animus, but its meaning is sufficiently broad that it is not limited to such actions.
>
> * * *
>
> The court therefore holds that it is sufficient to establish retaliatory intent if the primary reason for the eviction action is some conduct of the tenant that is protected...regardless of whether the relationship between landlord and tenant is attended by hostility.

The Court went on to find that the landlord's wish to repair the premises was not good cause for termination of the tenancy, even though the law allowed the landlord to terminate the tenancy (there was no lease) upon proper notice without any cause at all.

Clearly then, a landlord cannot avoid a retaliation defense by merely raising a statutory ground for eviction, nor even by proving entitlement to eviction upon a statutory ground. There is a requirement that there be no discrimination on the basis of protected conduct.

Ms. Heggs sent a letter criticizing Flora Jo Haber to Ms. Haber's employer, the Board of Directors of Parkview Village. Ms. Heggs also organized the tenants against the management. Ms. Heggs has, since taking this action, been the subject of not one, but two eviction proceedings. After twelve years as a tenant at Parkview Village, the complex sought her eviction, and on grounds that encompass conduct which has been the same since the beginning of

the tenancy.

In the eviction case brought in 1991, (prior to this action being brought), the issue was Ms. Heggs' status as a farmworker. Ms. Heggs had not engaged in agricultural employment for many years prior to 1991, as Ms. Haber testified at the trial in the instant action. (R-84). In fact, beginning in 1984, Parkview Village had given Ms. Heggs notice that she was ineligible due to her non-farmworker status every year, but never sought to evict her until after the tenants' organization activity. (R-84). At the trial in the instant case, Ms. Haber testified that in 1991, Parkview Village (in essence Ms. Haber) changed its policy and decided to go ahead and evict Ms. Heggs. Ms. Heggs was ultimately found to be an eligible tenant (disabled farmworkers are also eligible tenants), and so Parkview then turned to another previously acceptable policy, the payment of rent late. Suddenly, after twelve years, this too was no longer acceptable from Ms. Heggs.

The trial court in the instant action did not state grounds for its decision that there was no retaliatory eviction. The burden of proof in proving affirmative defenses is on the party raising the defenses. The party must prove the affirmative defense or avoidance by a preponderance of the evidence. *Longergan v. Peebles*, 81 So 514 (Fla. 1919); *Hattaway v. Fla. Power and Light*, 133 So.2d 101 (Fla. 2nd DCA 1961). Ms. Heggs introduced witnesses and documents proving Parkview's policy of accepting late rent, as well as documentary evidence of her activities as the president of the tenants' organization. Parkview Village introduced only the

testimony of Flora Jo Haber, in which she denied having any discriminatory intent. Ms. Haber alluded to changes in policy, but produced no documentation of such changes. The evidence clearly weighed in Ms. Heggs' favor. On appeal from the trial court, the circuit court stated:

> Although not dispositive here, Appellee's treatment of Appellant hints of retaliatory measures arguably taken against Appellant because of her successful defense of a prior eviction proceeding and her activities with a tenants' association.

2. The Federal Regulations Which Govern This Tenancy Require Good Cause For Termination of Tenancy, And There Was No Good Cause In The Instant Case

Ms. Heggs tenancy is subject to the federal regulations found at 7 C.F.R Part 1930, Subpart C, Exhibit B, Section XIV A. 1. These regulations, at the time the instant action was brought, allowed a termination of tenancy only for "material non-compliance with the lease...or other good cause." Material non-compliance is defined in pertinent part, as (o)ne or more substantial violations of the lease, *repeated non-payment of rent or other financial obligation*" (emphasis supplied). Id. at XIV.A.2.b.

Clearly then, a single episode of failure to pay rent cannot be grounds for termination of tenancy. It is undisputed that the instant case concerned one notice of termination of tenancy, which was served on Ms. Heggs in January of 1993. However, the trial court held that because in January of 1993 more than one month of rent was due, that this constituted repeated non-payment

of rent.(R-68-69).

It was argued before the trial court that here was only one incident of non-payment of rent in this case because there was only one notice given. Although Mrs. Heggs failed to pay rent for more than one month, the only notice attached to the complaint was one three day notice for termination of tenancy. Reading the provision in any other manner nullifies the purpose of the regulation, which is to require a higher standard for eviction of the low income tenants who live in these projects. If the tenant can be evicted after only one notice dealing with non-payment of rent, the tenant has really had no opportunity to correct the problem. According to the trial Court's ruling, in every case in which a tenant is more than thirty days late with rent, i.e., running over the following month's due date, the tenant has engaged in repeated non-payment.[6] This was a particularly harsh result in light of the circumstances of this case, where the landlord had previously accepted rent late over a period of months. In 1990 alone, Ms. Heggs had run several months late. Yet, she never received notice that future late payments would result in a termination of tenancy.

In order to prove repeated non-payment of rent, the landlord must give notice that non-payment of rent will not be tolerated a second time.

Again, the Circuit Court did not rule on this affirmative

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[6]This order is currently not part of the record. A copy is included in the Appendix to this brief.

defense on appeal.

3. According to State Law, In Order To Terminate A Tenancy For Repeated Non-Payment of Rent, The Tenant Must Be Given An Opportunity To Cure.

According to Florida law, for any non-compliance with the rental agreement which is not an emergency, a notice and opportunity to cure must be provided. Section 83.56(2)(b) Fla. Stat. (1991). For a simple failure to pay rent, a three day notice is sufficient Section (83.56(3) Fla. Stat. (1991). However, the instant case does not deal with a simple failure to pay rent.

The only notice provided to the tenant in this case is a three day notice for termination of tenancy for failure to pay rent. It is undisputed that a simple failure to pay rent cannot be the basis of a termination of tenancy in the instant case according to the federal regulations, and that, instead, the termination is for repeated failure to pay rent. For such terminations, an opportunity to cure must be provided. The statute provides that if a noncompliance is of a nature that the tenant should be given an opportunity to cure it the landlord shall:

> Deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. The notice shall be adequate if

it is in substantially the following form:

> You are hereby notified that (note the noncompliance). Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

Section 83.56(2)(b), Fla. Stat. (1991).

The statute contains examples of situations where no right to cure must be provided, e.g. destruction, damage, or misuse of the landlord's or other tenants' property... Id. at 83.56(2)(a).

4. Parkview Village Failed To Accommodate Ms. Heggs' Handicap In Violation of the Fair Housing Act and the Rehabilitation Act of 1973.

Both the Fair Housing Act (42 U.S.C. §3601, et.seq.) and the Rehabilitation Act of 1973 (29 U.S.C. §794) require that Parkview Village accommodate persons with disabilities. Parkview Village has utterly failed to accommodate Ms. Heggs disability so that she could maintain her tenancy. This was done despite Parkview Village's knowledge, for several years, of Ms. Heggs' disability.

a. Fair Housing Act

The Fair Housing Act prohibits any person from discriminating against a person with a "handicap", and defines discrimination as:

> (1) refusal to make reasonable accommodations in rules, policies, practices, services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

42 U.S.C. §3604(f)(3)(B). A handicap includes "a physical or

mental impairment which substantially limits one or more of such person's major life activities." 42 U.S.C. §3602(h)(1).

Ms. Heggs established that she is ill and that at times she is incapable of managing her business affairs. She testified that she had asked Parkview for some time in which to arrange for one of her children to become responsible for her financial affairs. By contrast, the testimony of Flora Jo Haber indicates that Parkview Village had no responsibility toward Ms. Heggs at all. The testimony of Ms. Haber included the following exchange:

> Question: In other words, so you don't have to make any accommodations?
>
> Answer: No. The only thing I can do is to recommend that she goes to certain agencies to see that her handicap is taken care of. It's not my job to see that her handicap -- it's only my job to make recommendations.
>
> Question: Did you do that in her case?
>
> Answer: I didn't see that it was necessarily needed. She suffers depression. I mean, you're trying to make here a big thing of mentally handicapped like she's some dummy. She's no dummy. She suffers depression. She takes medication for depression.
>
> * * *
>
> Question: So you believe that depression really has no effect on a person's ability to pay their rent or meet their daily obligations and needs? Is that what you --
>
> Answer: Well, when I had depression, it didn't stop me from seeing that my bills were paid. It didn't stop me from operating day-to-day.

Ms. Haber's position was that depression is not a disability which would require accommodation.

B. Rehabilitation Act of 1973

The Rehabilitation Act of 1973 provides that no person with a handicap shall be discriminated against or denied the benefits of, any program which receives financial assistance from the Federal Government. 29 U.S.C. §794(A). In *Majors v. Housing Authority of the County of DeKalb, Georgia*, 652 F.2d 454 (5th Cir. 1981), a mentally ill woman asked the housing authority to allow her to have a pet, because her mental illness required that she have the companionship of the dog. The Court held that the housing authority's no-pet rule could be amended to allow an exception for the tenant, and that this would be the type of accommodation required.

In a case directly on point, *Atlanta Housing Authority v. Franklin*, Case No. 92ED0101612 (Fulton County, Georgia, March 1992),[7] a mentally ill tenant in a housing project could not pay his rent on time because his mental illness prevented him from doing so. The Housing Authority had agreed to extensions of time in which to pay the rent, but would not agree to an additional amount of time in which to arrange for a representative payee for his disability check. The Court found that allowing the additional time for obtaining a representative payee was a required accommodation. The instant case presents a nearly identical situation.

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[7]A copy of this decision is included in the appendix to this brief.

Conclusion

There has been no miscarriage of justice which would warrant certiorari review in the instant case. In addition, the question certified by the Second District should be answered in the negative. The standard for review on certiorari requires that there be more than legal error. There must also be a miscarriage of justice. For these reasons, the appellate decision of the circuit court should not be disturbed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by regular U.S. Mail to JERRI BLAIR, ESQUIRE, Post Office Box 130, 351 West Alfred Street, Tavares, Florida 32778 on this 25th day of October, 1994

NORA LETO, Attorney