

IN THE  
SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

**MAR 31 1997**

89,093 89,094  
CASE NOS. 89,903 and 89,904

CLERK, SUPREME COURT  
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PROVIDENT MANAGEMENT CORPORATION,

Petitioner,

vs.

CITY OF TREASURE ISLAND,

Respondent.

ON REVIEW FROM THE  
SECOND DISTRICT COURT OF APPEAL  
LAKELAND, FLORIDA

**AMICUS BRIEF OF THE  
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STATEMENT OF THE CASE

Florida Association of County Attorneys accepts and adopts the Statement of the Case and of the Facts contained in the Initial Brief of Provident.

STATEMENT OF THE FACTS

Florida Association of County Attorneys accepts and adopts the Statement of the Case and of the Facts contained in the Initial Brief of Provident.

## SUMMARY OF ARGUMENT

The Florida Association of County Attorneys files this *Amicus Brief* because of the extreme importance of the issue in this case. Rule 1.610(b), Florida Rules of Civil Procedure requires that a bond be posted by a party obtaining a temporary injunction, but allows a waiver of the bond requirement when a governmental agency obtains a temporary injunction. The waiver facilitates public bodies in carrying out their duties by making it easier for them to obtain a temporary injunction. The Second District's ruling in City of Treasure Island v. Provident, 21 Fla. L. Weekly D1521 (Fla. 2d DCA June 28, 1996), will thwart the purpose of this rule. The effect of this ruling will be that public bodies will either be denied injunctions, or they will be required to spend time and money to secure a bond for each injunction obtained. It is of great public importance that the Court reverse the decision below and clarify the scope of Parker Tampa Two v. Somerset Development Corp., 544 So.2d 1018 (Fla. 1989). This Court should make clear that the decision to dispense with the bond when a public body brings an action for relief does not eliminate the injured party's right to recovery if the injunction proves wrongful. By doing so, the Court will preserve the ability of public bodies to obtain an injunction expeditiously and inexpensively.

## ARGUMENT

### A. THE INJUNCTION BOND REQUIREMENT AND THE GOVERNMENTAL WAIVER

Rule 1.610(b) requires that a bond be posted by a party that is granted a temporary injunction. This bond requirement is in place in order to provide the enjoined party with a source of funds to redress any injury it may suffer if the temporary injunction is found to be wrongfully issued. See AOT, Inc. V. Hampshire Management Company, 653 So.2d 476 (Fla. 3d DCA 1995), Cushman & Wakefield, Inc. v. Cozart, 561 So.2d 368 (Fla. 2d DCA 1990). The rule, however, grants discretion to the trial court to dispense with a bond when a governmental agency is the party moving for the temporary injunction. This discretion is based on the presumption that a public body is solvent. In dispensing with the bond requirement, the court can make the process easier for the public body, saving it the time and expense of securing a bond.

Rule 1.610(b) relieves public bodies of the burden of spending the time and money normally associated with obtaining a temporary injunction by allowing the trial court to dispense with the requirement of posting a bond. This is especially important because municipalities and local governments must often request temporary injunctions in order to carry out their duties of protecting the public.

B. LIABILITY FOR WRONGFUL INJUNCTION AFTER PARKER TAMPA TWO

The intent of Rule 1.610(b) in allowing the trial court to dispense with the bond requirement for public bodies is not intended to deny the enjoined party a means of recovery for a wrongful injunction. In Parker Tampa Two v. Somerset Development Corp., 544 So.2d 1018 (Fla. 1989), this Court set the rule for recovery in a wrongful injunction case, holding that the amount of recoverable damages for a wrongful injunction is limited to the amount of the injunction bond. In Parker Tampa Two, the Appellee, Somerset Development Corporation, obtained a temporary injunction against Hillsborough County. Id. at 1019. The temporary injunction prohibited the county from issuing building permits to an applicant which had unused sewer permits for a particular treatment plant. Id. Somerset was required to post a bond in the amount of \$10,000. Id. The Appellant, Parker Tampa Two, Inc., was denied building permits under the injunction. Id. The injunction was dissolved by the trial court after Parker filed a wrongful injunction claim against Somerset, and Parker's recovery was limited to the amount of the bond. Id. at 1020. On appeal, the Second District agreed with the ruling of the trial court, limiting Parker's recovery to the amount of the bond. Parker Tampa Two v Somerset Development Corporation, 522 So. 2nd 502 (Fla. 2nd DCA 1988). The question of whether damages recoverable for wrongful injunction were limited to the amount of the injunction bond was certified by the Second District, and this Court answered in the affirmative, agreeing with the lower courts ruling. Parker Tampa Two, 544 So. 2nd at 1022. This Court held that the injunction bond amount was the court's determination of foreseeable damages, allowing a party to be informed of their potential liability. Id. at 1021. It also held that the injunction bond was

an equitable way of apportioning liability for fault in issuing an injunction between the court and the party seeking the injunction. Id.

Following the Parker Tampa Two ruling, where the amount of an injunction bond is zero, an enjoined party has no means of recovery available to it in a wrongful injunction action. The enjoined party "must look to the injunction bond as its sole source of recovery from the wrongful issuance of the injunction." Shea v. Central Diagnostic Services, Inc., 552 So.2d 344, 346 (Fla. 5th DCA 1989).

C. THE EFFECT OF THE SECOND DISTRICT COURT'S DECISION

In light of Parker Tampa Two and the Second District's ruling in Provident, courts granting a governmental waiver under Rule 1.610(b) would effectively deny any recovery for wrongful injunction by the enjoined party because the waiver of the bond requirement would be treated as setting the bond amount at zero. The Second District held that a municipality does not become a surety when the trial court declines to require a bond for a temporary injunction pursuant to Florida Rules of Civil Procedure 1.610(b). Provident at 1522. In this determination, the Second District interprets Parker Tampa Two to stand for the proposition that when a trial court grants a temporary injunction and does not require the moving public body to post a bond, the enjoined party cannot recover anything on the issue of wrongful injunction. Id.

The Second District's ruling will have the effect of making it more difficult for a governmental agency to obtain a temporary injunction, defeating the purpose of Rule 1.610(b). Courts will be unwilling in the future to grant a public body a temporary injunction without requiring a bond, for to do so would open up the possibility of the enjoined party being unjustly



harm and having no recourse available to it. To avoid putting all of the risk of wrongful injunction on the enjoined party, courts will be forced to either deny a temporary injunction to a public body or require it to post a bond. Either alternative is contrary to the intent of Rule 1.610(b).

This effect was not contemplated by this Court in Parker Tampa Two. In that case, damages recoverable for a wrongful injunction were limited to the amount of the injunction bond. However, since a private party sought the temporary injunction, they were required to post an injunction bond. Thus, no consideration was given to the effect of a governmental waiver. Further, in Parker Tampa Two, the wrongfully enjoined party had a means of recovery because a bond had been posted.

The ability to recover from an injunction bond for an injury caused by the wrongful issuance of a temporary injunction is an important safeguard of the enjoined party's economic welfare. However, the Second District's ruling in Provident gives the trial court the discretion to deny an enjoined party any possibility of recovery in an action for wrongful injunction. This ruling is inconsistent with the holdings of other courts which recognize the importance of an injunction bond in an amount appropriate to cover any potential harm caused by a wrongful injunction, and an enjoined party's right to recover.

In Shea, the Fifth District held that when the trial judge ordered the return of an injunction bond, he was denying the enjoined party "the opportunity and right" to recover for wrongful injunction and that was a right that "should not be denied." 552 So.2d 344, 346 (Fla. 5th DCA 1989). In Ross v. Champion Computer Corporation, 582 So.2d 152 (Fla. 4th DCA 1991), the Fourth District held it an error for the trial court to have applied a clause in a non-

competition agreement dispensing with the bond requirement for a temporary injunction without considering the ramifications of that decision. In Cushman & Wakefield Inc., 561 So.2d 368, 371 (Fla. 2d DCA 1990), the Second District held that a trial judge deciding to set an injunction bond below the amount of anticipated damages was an "extraordinary decision". Effectively, the Provident ruling would allow the trial court to set the amount of damages recoverable by a wrongfully enjoined party at zero without hearing any evidence as to possible damages a temporary injunction would cause.

In light of Provident, if a trial court decides not to require an injunction bond, it will leave the enjoined party without recourse in the case of a wrongful injunction. Accordingly, in the future, courts will be unwilling to dispense with the bond requirement for public bodies, to avoid leaving the enjoined party without redress for harm caused by the injunction. Courts will have only two choices when a public body requests a temporary injunction: they can either deny the request, or they can require that a bond be posted to give the enjoined party recourse if the issuance of the injunction proves to be wrongful. Public bodies will be treated the same as private parties, making the waiver provision in Rule 1.610(b) useless, and defeating its purpose. The Second District Court clearly recognized this possibility in a footnote to its opinion in Provident, stating "an injured party will find it far more difficult to establish a claim against a municipality in the absence of a bond" because of this decision. Provident at 1522. This dilemma can be avoided simply by ruling that the decision to dispense with the bond in cases brought by public bodies does not deny the enjoined party's right to recover. By so ruling, this Court can harmonize those cases requiring that the enjoined party be made whole with the public body's right to expeditious and inexpensive relief.

## CONCLUSION

The Second District's ruling and interpretation of Rule 1.610(b) will either leave the defendant without a remedy, or will make trial courts less likely to grant bond waivers. Because of this decision, this Court should reverse the decision below because it has the effect of nullifying the ability of local governments to obtain an injunction bond waiver under Rule 1.610(b). This Court should make clear that dispensing with the bond in cases brought by governmental entities does not eliminate the enjoined party's right to recover.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by U.S. Mail to Steven L. Brannock, Esquire, Stacy D. Blank, Esquire, and Karl J. Brandes, Esquire, Holland and Knight, P. O. Box 1288, Tampa, Florida 33601; Brian P. Battaglia, Esquire and Rodney S. Fields, Esquire, Battaglia, Ross, Dicus & Wein, P.A., 100 North Tampa Street, Tampa, Florida 33602; James Denhardt, Esquire, 2700 First Avenue North, St. Petersburg, Florida 33713; Edward Foreman, Esquire, 100 Second Avenue North, Suite 300, St. Petersburg, Florida 33701; and W. Douglas Berry, Esquire, Bayport Plaza, Suite 1100, 6200 Courtney Campbell Causeway, Tampa, Florida 33607-1458 on this 28th day of March, 1997.



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