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IN THE SUPREME COURT OF FLORIDA
CASE NO.: 89,093 & 89,094

PROVIDENT MANAGEMENT CORPORATION,
and LAURENCE N. BELAIR,

Petitioners,

vs.

CITY OF TREASURE ISLAND, a
municipal Corporation,

Respondent.
_____/

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

PETITIONER, LAURENCE N. BELAIR'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The following reference symbol (R.), followed by the appropriate page number, will refer to the Record herein.

In the court below, LAURENCE N. BELAIR (Belair) and PROVIDENT MANAGEMENT CORPORATION (Provident) sought damages against the City of Treasure Island (Treasure Island) for the wrongful injunction proceedings initiated by Treasure Island in 1988 (R. 1-97).

To add clarity to the status of this Appeal, this Court on February 26, 1997 accepted jurisdiction with respect to Belair's previously filed Notice to Invoke Discretionary Jurisdiction of the Supreme Court as a result of the Second District Court of Appeals decision in City of Treasure Island, a Florida municipal corporation v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla. 2d DCA 1996) wherein it reversed a judgment entered in favor of Belair for damages as a result of the wrongful injunction proceedings initiated by the City of Treasure Island.

STATEMENT OF THE CASE AND FACTS

Belair adopts the statement of the case and facts as contained in Provident's Initial Brief. In addition, Belair adds the following statement to assist the Court in it's review of this appeal.

In 1984, Belair entered into a contract with Provident to act on behalf of Belair as his rental agent (R. 535-58;3257-60;3289-90). Provident was a Florida corporation, with its principle place of business in Clearwater, Pinellas County, Florida, and was in the business of assisting owners with the renting of their condominium units (R. 1-97). Belair, along with 101 other condominium owners at Land's End, had contractual relationships with Provident, wherein Provident assisted Belair and other owners with the rental of their units.

On May 25, 1988, Treasure Island, through its Fire Chief/Building Official, issued an official cease and desist letter to Provident, U.S. Lend Lease, (who was the developer of Land's End), and the Land's End Owners Association (R. 100). Belair is a member of the Lands End Owners Association, and at one time was its President (R. 535-58).

On October 21, 1988, Treasure Island filed a Complaint for Injunctive Relief against Belair and Provident (R. 1-97). On November 3, 1989, Treasure Island filed its verified motion for injunctive relief against Belair and Provident (R. 259-63). Treasure Island alleged that as a result of the rental activity at Land's End, the units were being used for income and investment purposes rather than residential use and that Belair and Provident were operating a commercial business that Treasure Island alleged was prohibited by its zoning code (R. 259-63). Treasure Island sought to enjoin Belair and Provident from engaging in rental activities (R. 259-63).

The lower court heard testimony and considered evidence on the temporary injunction at hearings conducted on January 25-26, 1990, March 9, 1990, and May 11, 1990 (R. 421-560). Provident and Belair presented testimony, evidence, and legal arguments (R. 421-560). On May 30, 1990 the lower court entered an order temporarily enjoining Provident and its agents from directly or indirectly

participating in any rental activity (R. 646-49). The lower court's temporary injunction order also prevented and prohibited Provident from renewing the contract it had with Belair and other unit owners (R. 646-49). At the end of the temporary injunction hearing, citing Fla. R. Civ. P. 1.610(b), the trial court did not require Treasure Island to post an injunction bond. Fla. R. Civ. P. 1.610(b) gives the trial court the discretion to dispense with the injunction bond in cases brought by government entities.[1]

The trial court's decision to dispense with the bond was based on the fact that Treasure Island was solvent and would be able to cover the parties [Provident and Belair] damages in the event the injunction was reversed (R. 2474-76). As explained by the trial court: "If they are damaged, [Provident and Belair] they can sue them [Treasure Island]" (R. 2517-18). Treasure Island also assumed that it remained liable for injunction damages, in related federal litigation, when its counsel admitted, "If the state court determines that this order is improvidently entered at any point in time, then there are going to be some damages against the City" (R. 2639-41).

Thereafter, the lower court entered a permanent injunction which was reversed by the Second District Court of Appeals in Belair v. City of Treasure Island, 611 So.2d 1285 (Fla. 2d DCA 1992), review denied, 624 So.2d. 264 (Fla. 1993). However, the reversal came to late to prevent damages to Belair. True to his testimony at the temporary injunction hearing, Belair lost rental income, and his properties were damaged (R. 535-58).

Following the Second District Court of Appeals reversal of the injunction at Laurence N. Belair and Provident Management Corporation vs. The City of Treasure Island, a Florida municipal corporation 611 So.2d 1285 (Fla. 2d DCA 1993), Belair filed motions for an award of damages, attorney's fees and

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[1] According to Fla. R. Civ. P. 1.610(b): "No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payments of costs and damages sustained by the adverse party of the adverse party is wrongfully enjoined. When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof the court may require or dispense with the bond, with or without surety, and conditioned in the same manner, having due regard for the public interest...

costs for wrongful injunction against Treasure Island (R. 2375-77; 2397-2408; 2417-20; 2421-24). Belair in his motions pointed out that the Second District Court of Appeals decision resulted in a determination that the injunction was wrongful. Belair requested an evidentiary hearing (R. 2417-20; 2421-24; 2749-70).

Thereafter, Treasure Island asserted by way of a Motion for Summary Judgment that Belair's damages for wrongful inunction were limited to the amount of the injunction bond, and because no bond had been posted, Belair was not entitled to recover any damages (R. 2444-46; 2598-2601). Treasure Island later added [for the first time] an argument that sovereign immunity protected it from Belair's claims (R. 2598-2601). Belair responded to Treasure Island's motion for summary judgment, stating that Treasure Island was excused from posting an injunction bond only because it was municipality, not because the trial court intended to relieve Treasure Island from the obligation of paying damages should its injunction ultimately be declared wrongful (R. 2519-20; 2687-90; 2691-94). Waiver and Estoppel arguments were also raised by Belair due to Treasure Island's acknowledgement of its potential responsibility for wrongful injunction damages throughout the course of the litigation (R. 2517-18; 2639-41).

Treasure Island's defenses were all rejected by the court below in an order of March 29, 1994 (R. 2772-74). The court ruled that Treasure Island was not immune from damages merely because the predecessor trial judge had exercised his discretion not to require Treasure Island to post a bond. Id. The court also rejected Treasure Island's new sovereign immunity defense. Id. Belair was permitted to pursue wrongful injunction damage claims against Treasure Island (R. 2746-70; 2778).

The trial court ruled that the matter would proceed to an evidentiary hearing on the issue of the amount of damages suffered by Belair and Provident from the wrongful injunction proceedings (R. 2778). After a week-long trial, the trial court awarded Belair a judgment for damages in the amount of $48,843.00 (R. 3208-13). Thereafter, Treasure Island appealed the trial courts judgment to the Second

District Court of Appeals (R. 4927-48).

The Second District Court of Appeals reversed, holding that Belair had no right to recover his damages, as a result of the trial courts decision under Fla. R. Civ. P. 1.610(b) which relieved Treasure Island from posting bond. Belair's notice of intent to invoke discretionary review followed the reversal, and this Court on February 26, 1997 accepted Jurisdiction in this case.

SUMMARY OF ARGUMENT

Treasure Island convinced the trial court to excuse it from posting an injunction bond under Fla. R. Civ. P. 1.610(b), because it is a municipality (R. 2517-18). The Court agreed, stating unequivocally that the security of a bond was unnecessary in this case because Treasure Island, as a municipality, has "unlimited resources". Id.

Nothing in Fla. R. Civ. P. 1.610(b) indicates that Treasure Island is protected from damages, when in this case, it argued that it was not required to post a bond pursuant to the express language of Fla. R. Civ. P. 1.610(b). Rather, the rule is designed to secure an enjoined party's right to recover damages by requiring the posting of a bond. That requirement may be dispensed with if, in it's discretion, the trial court determines that a municipality can financially cover the damages its injunction may cause. This is what the trial court decided in dispensing with a bond. The Second District Court of Appeals decision to deny Belair's wrongful injunction claim for the damages he suffered as a result of Treasure Islands wrongful injunction proceedings is contrary to decisions of this Court and other Florida District Courts of Appeal. It is also inconsistent with a plain reading of Fla. R. Civ. P. 1.610(b). Florida law has long held that a party who suffers damages as a result of a wrongfully entered injunction has the right to recover damages from the party seeking the injunction. Moreover, recent cases confirm that a low or nominal bond does not limit a wrongfully enjoined party's right to damages unless the trial court makes a reasoned and explicit determination to so limit the enjoined party's damages. Florida law permits a wrongfully enjoined party to recover all damages,including costs and attorneys' fees, caused by the wrongful injunction There is no exception to this rule for municipalities. The fact that a trial court may relive a municipality from the expense and inconvenience of posting a bond [as permitted by Fla. R. Civ. P. 1.610(b)] does not render the municipality immune from wrongful injunction damages. The trial court's decision in the instant case to waive the bond under Fla. R. Civ. P. 1.610(b) was made with the understanding of all parties, including Treasure Island, that Provident and Belair would be made

whole in the event the injunction proved wrongful. According to Fla. R. Civ. P. 1.610(b): "No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payments of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined. When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof the court may require or dispense with the bond, with or without surety, and conditioned" in the same manner, having due regard for the public interest. . . . (emphasis added).

The decision of the Second District Court of Appeals places trial courts in a quandary. If the trial court grants a municipality the protection contemplated by Fla. R. Civ. P. 1.610(b) and permits an injunction to be entered without a bond, future litigants in Florida Courts, like Belair and Provident, will be without the most expedient remedy of a wrongful injunction claim when damaged by an injunction action brought by a governmental entity. The only solution is unacceptable for Florida governmental entities, and contrary to the protection of Florida citizens from government initiated injunctions that are later overturned. If the trial court protects the citizen's remedy by requiring state, county or a municipality to post a bond, the state, county or municipality will lose the very benefit conferred by Fla. R. Civ. P. 1.610(b). That is that injunctions will be harder to obtain by the state, a county or municipality, and at the very least, such injunctions will be expensive and take up more time. Indeed, any state agency, county or municipality that often seeks injunctive relief will find itself with substantial public funds tied up to secure its bond obligations, or may be unable to post a bond, as a result of other pending cases where bonds have been posted as a result of the Second District Court of Appeals decision in this case.

Belair, as a wrongfully enjoined party is entitled to recover his damages by way of a wrongful injunction proceeding when a court dispenses with the posting of a bond by the governmental agency that instigated the action, as contemplated by the express provisions of Fla. R. Civ. P. 1.610 (b). The Second

District Court of Appeals decision in Citv of Treasure Island. a Florida Municipal comoration v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla 2d DCA 1996) should respectfully be reserved, and the judgment previously entered in Belair's favor reinstated.

ARGUMENT

I.

The City Treasure Island, although not required to post an Injunction Bond pursuant to Fla. R. Civ. P. 1.610(b), is still liable for wrongful injunction damages incurred by Laurence Belair and Provident Management Corporation

The purpose underlying the requirement that Treasure Island answer to Belair and Provident as wrongfully enjoined parties is to protect them from the damage caused by the wrongful injunction. In Belk's Dent. Store. Miami. Inc. v, Schcrman, 117 So. 2d. 845 (Fla 3d DCA 1960) the Court described these balanced purposes as follows:

> The party who initiates such drastic writs and processes should be made to place himself in a position of accountability, at least to the extent that the law specifies, to recompense his adversary for losses sustained, if it should be concluded ultimately that his action which brought it about was irregularly or improvidently invoked, or his cause without merit. Id. at 848.

Belair is entitled to recover any damages, attorneys' fees and costs incurred as a proximate result of the wrongful injunction proceedings initiated by Treasure Island. The proper measure of damages for wrongful injunction in Florida is set forth in Global Contact Lens. Inc. v. Knight, 254 So.2d 807 (Fla. 3d DCA 1971) is as follows:

> All actual damages sustained by reason of the wrongful issuance of the injunction, that is, such damages as are the direct, natural, and proximate result of the injunction, In such actions the general rules governing the measurement of damages ordinarily apply. The measure of damages is the difference between the fair cash reasonable market value of the items in controversy on the day the injunction was issued and such value on the day it was dissolved. Id. at 809.

Florida law is clear that a defendant is entitled to any damages sustained by him as a result of wrongfully issued an injunction. Such damages include reasonable attorneys' fees incurred by the defendant to secure the dissolution of the wrongfully issued injunction. Lake Worth Broadcasting Corp. v. Hispanic Broadcasting. Inc., 495 So. 2d 1234 (Fla. 3d DCA 1986).

The Second District Court of Appeals reversal of the injunction in Laurence N. Belair and Provident Management Corporation v. The City of Treasure Island. a Florida municipal corporation, 611 So.2d 1285 (Fla. 2d DCA 1992) constitutes a finding that the injunction was wrongful. As this Court stated in Parker Tampa Two v. Somerset Development Corp., 544 So. 2d 1018 (Fla. 1989), a determination that the injunction should not have been entered is a determination that the injunction was wrongful:

> The standard for determining whether an injunction was wrongfully issued is simply whether the petitioning party was entitled to injunctive relief. Id. at 1021-22.

Thus, this case fit squarely in the rule permitting recovery of damages. See also; National Suretv Co. v. Willys-Overland, Inc., 138 So. 25 (Fla. 1931); Rice v. White, 147 So. 204, 206-07 (Fla. 1st DCA 1962).

Treasure Island convinced the trial court to excuse it from posting an injunction bond under Fla. R. Civ. P. 1.610(b), because it is a municipality (R. 2517-18). The Court agreed, stating unequivocally that the security of a bond was unnecessary in this case because Treasure Island, as a municipality, has "unlimited resources" (R. 2517-18). However, after the injunction preceding had been declared wrongful, Treasure Island changed it's tune. Treasure Island conveniently argued that Belair and Provident's damages were limited to the amount of the bond and, because there was no bond in this case, Belair and Provident could not recover damages for wrongful injunction (R. 3 142-3 172). The Second District Court of Appeals in City of Treasure Island. a Florida municipal corporation v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla. 2d DCA 1996) held that any time a trial court excuses a municipality from posting an injunction bond under Fla. R. Civ. P. 1.610(b), the enjoined party is precluded as a matter of law from recovering damages against the municipality for a wrongful injunction damages claim.

The Second District Court of Appeals constructed its opinion around this Courts decision in

Parker Tamna Two, however, Parker Tamna Two, and the rule it has established, are inapplicable to cases in which municipalities have been excused from posting an injunction bond pursuant to Fla. R. Civ. P. 1.610(b).

The issue herein is whether a trial court's decision not to require a municipality from posting an injunction bond insulates the municipality from the damages for a wrongful injunction resulting from the obtaining of a injunction which is later reversed.

To affirm the decision of City of Treasure Island, a Florida municipal corporation v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla. 2d DCA 1996) would make Fla. R. Civ. P. 1.610 (b) meaningless. Nothing in rule 1.610(b) indicates that Treasure Island [or any other governmental agency for that matter] is protected from damages, when in this case it argued that it was not required to post a bond pursuant to the express language of Fla. R. Civ. P. 1.610 (b) (R. 2517-18). Rather, the rule is designed to secure an enjoined party's right to recover damages by way of a wrongful injunction damage proceeding by requiring the posting of a bond. That requirement may be dispensed with under the express language of Fla. R. Civ. P. 1.610 (b) if, in its discretion, the trial court determines that a municipality can financially cover the damages its injunction may cause. This is what the trial judge decided in dispensing with a bond herein (R. 2517-18).

Not only is the Second District Court of Appeals decision in City of Treasure Island, a Florida municipal corporation v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla. 2d DCA 1996) inconsistent with the express provisions of Fla. R. Civ. P. 1.610 (b), it is also inconsistent with this Court's holding in Parker Tamna Two, 544 So.2d 1018 (Fla. 1989) It is critical for this Court to note that Parker Tampa Two, was decided on June 1, 1989, which was well before the temporary injunction was entered by the lower court in this case on May 30, 1990 (R. 646-49). Thus, Treasure Island was on constructive notice of the Supreme Court's pronouncement in Parker Tampa Two. Specifically, the Supreme Court held that if a party wishes to limit its potential exposure in obtaining an

injunction, it can do so by posting a bond. Id. at 1021. Treasure Island could have limited its exposure, but it chose not to do so by arguing to the lower court that it was not required to post a bond and then acquiescing in the court's ultimate ruling in Treasure Island's favor (R. 2517-18). The Second District Court of Appeals misapplied this Court's decision in Parker Tamna Two. According to the opinion below, a trial court's decision not to require a municipality to post an injunction bond based on Fla. R. Civ. P. 1.610(b) should be treated as the equivalent of a decision that the bond was set at "zero", thus, the municipality cannot be held liable for damages resulting from the wrongful injunction.

By requiring the parties to litigate over the amount of the injunction bond at the outset of the litigation and then limiting damages to the amount of the bond so litigated, the plaintiff is given notice of its potential liability from the beginning of the action. Thus, the plaintiff can make an intelligent decision as to whether the risk of liability under the bond is worth the benefits of the injunction.2 The defendant's right of recovery is preserved, but the parties are placed in a position to make intelligent decisions about the costs and benefits of continuing the litigation.

There is nothing in Parker Tampa Two, or in any of the cases upon which it relies, that limiting recovery to the amount of the bond was designed to artificially lower the plaintiffs obligations below the amount of the defendant's potential damages. To the contrary, Parker Tampa Two and it's progeny make clear that the amount of the bond must be set at a level consistent with the amount of damages the defendant is likely to suffer. The point of Parker Tampa Two was not to lessen the plaintiffs damages obligations, but to set these obligations in advance, given the plaintiff fair notice of what it's obligations were.

Thus, in limiting damages to the bond amount, Parker Tampa Two contemplates a situation where the parties have had an opportunity to reasonably litigate before the trial court the amount of the bond.

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[2]Belair testified at the temporary injunction hearing that he would suffer damages and the amounts of those damages, if an injunction was entered (R-535-558).

The important prerequisite to the enforcement of the bond limitation has been confirmed by decisions of the Third and Fourth District Courts of Appeals. Seascane. Ltd.. Inc. v. Maximum Marketing Exposure, Inc., 568 So. 2d 952 (Fla. 3d DCA 1990); Ross v. Chamnion Computer Corp., 582 So 2d 152 (Fla. 4th DCA 1991). In both Ross and Seascape, the courts declined to limit recovery to the amount of the bond because there had been no reasoned attempt by the trial court to set a bond approximating the defendant's potential damages. In Ross, the trial court granted an injunction without a bond based on a contract between the parties which purported to waive the obligation to post a bond. The Fourth District Court of Appeal rejected the plaintiffs argument that the defendant had no right to recover injunction damages because no bond had been posted. Instead, the court remanded to permit the trial court to make a reasoned determination concerning the amount of the bond. Similarly, in Seascape, the court set a nominal bond. The defendant's recovery was not limited to the amount of the bond because the trial court had never made a reasoned determination that the bond approximated defendant's potential damages.[3]

This Court reached a similar conclusion in the analogous case of City of St. Petersburg v. Wall, 475 So. 2d 662 (Fla. 1985). In Wall, the City of St. Petersburg sought to condemn respondents' land and filed a lis pendens against the property. The City lost and took an appeal. Because the City was entitled to an automatic stay, the lis pendens remained in effect upon appeal. The respondents moved the trial court to require the City to post a bond, but this motion was denied "without prejudice to

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[3]Treasure Island's response has been that Provident and Belair should have appealed the decision not to post a bond. This argument is circular in that it assumes that a decision to dispense with a bond under Fla. R. Civ. P. 1.610(b) is the same as a reasoned decision setting the amount of a bond. The trial court dispensed with the bond but affirmed Treasure Island's liability if the injunction later proved wrongful. This Court in City of St. Petersburg v. Wall, 475 So.2d 662 (Fla. 1985) did much the same when it denied the motion to require a bond but contemporaneously affirmed that the City would ultimately be liable if it lost the appeal. In Wall, the absence of the bond did not limit recovery. There was nothing for Belair or Provident to appeal, unless one presumes, like the court below, that the trial judge could give effect to Fla. R. Civ. P. 1.610(b) only by depriving Belair and Provident of their well-settled right to damages.

respondents seeking recovery of damages and costs resulting from any stay pending appeal.. . " When the City's appeal was later rejected, the City, like Treasure Island in the instant case, argued that absent a bond, respondents had no right of recovery. This Court rejected the City's argument, approving the following quote from the District Court of Appeals opinion which is relevant to this case:

> Here the City was on notice that we recognized its potential liability even though we excused it from the expense of posting a bond. There is little reason to reauest a solvent municipality to post a bond when its potential liability for obtaining a stay is made a matter of record, (emphasis added)

Wall, 475 So. 2d at 663.

The above decisions indicate that a trial court's decision to waive a bond because that plaintiff is a municipality is not the equivalent of a reasoned determination of what the defendant's damage limitation should be. Fla. R. Civ. P. 1.610(b) was designed to make it easier and less expensive for a public body to obtain an injunction. There is no authority for the proposition that the rule was designed to immunize a municipality, such as Treasure Island, from the consequences of seeking and obtaining a wrongful injunction, In this case, the trial court confirmed that its intent was that Treasure Island remain liable. According to the court: "If they [Provident and Belair] are damaged, they can sue them [Treasure Island]." (R. 2517-18). Treasure Island was well aware of what potential damages it would incur, based upon the evidence in the record (R. 535-58).

The Second District Court of Appeal's decision to enforce the bond limitation of Parker Tampa Two in the absence of any intent to provide immunity from damages, and in the absence of any reasoned determination to set a bond in the amount of Belair's potential damages is contrary to the decision in National Surety and Lake Worth, supra which confirm the right to recover wrongful injunction damages. It also is contrary to cases like Ross. Seascape, and Wall, supra which demonstrate that a decision not to require a bond under Fla. R. Civ. P. 1.610(b) should be distinguished from a decision to set the amount of bond after a full and fair opportunity to litigate the amount of defendant's damages. The Second District Court of Appeals decision is also contrary to the plain provisions of Fla. R. Civ. P.

1.610(b) wherein, court may dispense with the posting of a bond when obtained by a "municipality", but when the bond is dispensed with, it shall be "conditioned" on the municipality paying for "costs" and "damages" if the injunction later proves wrongful. See, Fla. R. Civ. P. 1.610(b). In the instant case the trial court did exactly what is contemplated by Fla. R. Civ. P. 1.610(b). After the reversal, Belair and Provident, as contemplated by Fla. R. Civ. P. 1.610(b) and Florida Law, sought recovery of their "costs" and "damages" for the wrongful injunction.[4]

The decision of the court below creates a terrible dilemma for trial court's faced with actions from injunctions brought by the state, county or a municipality. Fla. R. Civ. P. 1.610(b) was designed and approved by this Court to make it easier for municipalities to obtain an injunction by relieving governmental bodies of the obligation to post a bond; not relieving them from paying for costs and damages when the injunction proves wrongful. Fla. R. Civ. P. 1.610(b) is simply a recognition that governmental bodies are generally solvent and that a bond is superfluous. Yet, if a trial court follows the express language and of Fla. R. Civ. P. 1.610(b) and waives the bond, it risks placing the defendant in position where, contrary to long-settled precedent, the defendant has no right to be made whole, in a later wrongful injunction proceeding claim, if the injunction proves wrongful,

Even the decision below recognizes this problem. The Second District Court of Appeals specifically cautions trial courts to be very careful in dispensing with a bond, even when it is sought by a governmental entity. According to the court:

> A trial court that automatically dispenses with the bond when the plaintiff is a governmental agency risks creating losses for a defendant that will not be recoverable if the injunctions ultimately reversed. Thus, his discretionary decision should be made with care. City of Treasure Island, at 678 So.2d 1322, 1325, fn.3 (Fla 2d DCA 1996).

The decisions cautionary instruction highlights what my be the biggest problem caused by the

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[4] In State v. Williams, 472 P.2d 109, 111 (Ariz. Civ. App. 1970), the Court concluded that relief from the bond requirement did not also relieve the state from liability from wrongful issuance of an injunction.

decision below[5]. No court is likely to enter an injunction against a party knowing that the enjoined party will be without remedy of a wrongful injunction claim against a governmental agency in the event the injunction proves wrongful. Certainly, the trial court in this case had no such intent. The practical effect of the Second District Court of Appeals decision is that trial courts will give even greater scrutiny to applications for injunction sought by government entities. Thus, the effect of the decision below will be to make it more difficult for government entities to obtain injunctions.

As a result of the Second District Court of Appeals application of Parker Tampa Two, supra and it's misreading of Fla. R. Civ. P. 1.610 (b), injunctions that would otherwise be entered on behalf of government entities may be denied. Moreover, even if the court enters the injunction, it is highly unlikely to dispense with the bond and leave the enjoined party without remedy. In virtually every injunctive action sought by a government entity, the entity will be required to post a bond. Every case in which such entity seeks an injunction will be less likely to succeed, and, at the very least, will be more time-consuming and expensive. Indeed, any county or municipality that frequently seeks injunctive relief may find itself with substantial funds tied up in order to secure its bond obligations, or worse, may be unable to post a bond, all of which would be contrary to existing law and Fla. R. Civ. P. 1.610(b). More importantly, the Second District Court of Appeals decision will irreparably prejudice the citizens such as Belair and Provident, who are finding themselves in the position of defending the injunction actions where the government seeks mandatory relief, without bond [as permitted by Fla. R. Civ. P. 1.610(b)] and thus potentially no recovery of damages if the injunction is later overturned. The Second District Court of Appeals decision does not direct the court to require the municipality to post a bond,

[5]The trial court below, in dispensing with the bond, followed the provisions of Rule 1.610 that apply to municipalities and other governmental agencies, knowing, as did all present at the temporary injunction hearing that Treasure Island would be liable for damages for wrongful injunction if the lower courts order was later reversed, which it was. Unfortunately, the Second District, rejected existing precedent and a plain reading of Rule 1.610 in order to reach it's conclusion which, in essence renders the governmental portion of Rule 1.610 meaningless.

and thus the Court can simply follow the express provision of Fla. R. Civ. P. 1.610(b), dispense with a bond, leaving the potentially wrongfully enjoined parties in harms way, without later redress.

The Second District Court of Appeals decision misconstrues Parker Tampa Two, turns Fla. R. Civ. P. 1.610 (b) on it head, rendering it meaningless.

THE DECISION OF THE TRIAL COURT IS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE

The trial court took exhaustive measures in rendering the ultimate decision in favor of Belair. This Court may not overturn such a finding of fact if there is competent substantial evidence in the record to support that finding. See, e.g. Pasco County v. Franzel, 569 So. 2d 877, 879 (Fla. 2d DCA 1990); Tsavaris v. NCNB National Bank of Florida, 497 So.2d 1338, 1338-39 (Fla. 2d DCA 1986). Not only is there competent substantial evidence in the record, the evidence is overwhelming that the trial court's determination was the correct one. The trial court's ruling should be affirmed.

CONCLUSION

The Second District Court of Appeals decision is contrary to existing law and inconsistent with a plain reading of Fla. R. Civ. P. 1.610 (b). Belair respectfully requests that this Court reverse the Second District Court of Appeals decision in City of Treasure Island, a Florida municipal corporation v. Provident Management Corporation and Laurence N. Belair, 678 So.2d 1322 (Fla. 2d DCA 1996) and reinstate the final judgment entered in favor of Belair (R. 3208-3213).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via U.S. Mail to STEVE BRANNOCK, ESQUIRE, Holland & Knight, Post Office Box 1288, Tampa, Florida 33601; W. DOUGLAS BERRY, ESQUIRE, Butler, Burnette & Pappas, Bayport Plaza, Suite 1100, 6200 Courtney Campbell Causeway, Tampa, Florida 33607; JAMES DENHARDT, ESQUIRE, 2700-1st Avenue North, St. Petersburg, Florida 33713; EDWARD D. FOREMAN, ESQUIRE, 100-2nd Avenue North, St. Petersburg, Florida 33701; JULIA C. MANDALL, ESQUIRE, Assistant County Attorney,

Post Office Box 1110, Tampa, Florida 33601; and JORGE FERNANDEZ, ESQUIRE, Office of the County Attorney, 1660 Ringling Blvd., 2nd Floor, Sarasota, Florida 34236 and VIA Airborne Express to the Supreme Court of Florida, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927, this 28th day of March, 1997,

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