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**IN THE SUPREME COURT OF FLORIDA**

\_\_\_\_\_  
CASE NUMBER 90,018  
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**FILED**

SID J. WHITE

SEP 8 1997

CLERK, SUPREME COURT

Chief Deputy Clerk

**LENNAR FLORIDA PARTNERS 1, L.P.  
and LENNAR FLORIDA LAND V Q.A., LTD.,**

**Petitioners,**

v.

**REWJB GAS INVESTMENTS, FS CONVENIENCE STORES, INC.,  
REWJB GAS INVESTMENTS, and TONI GAS AND FOOD STORES INC.,**

**Respondents.**

\_\_\_\_\_  
**ON DISCRETIONARY REVIEW FROM  
THE THIRD DISTRICT COURT OF APPEAL**  
\_\_\_\_\_

**AMICUS CURIAE BRIEF OF THE  
REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF  
THE FLORIDA BAR**

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## **SUMMARY OF ARGUMENT**

The use of the word “Notwithstanding” does not create an “irreconcilable conflict” that is resolved by parol evidence. Rather, its usage in a clause or sentence preempts or reconciles any conflicting statement. Despite what else may appear to conflict in the document, it is the agreement of the parties.

## **STATEMENT OF THE CASE AND FACTS**

The Real Property, Probate and Trust Law Section of The Florida Bar relies on the facts as set forth in the decision of the Third District Court of Appeal and in the statements of the case and facts in the briefs of the parties.

## ARGUMENT

The issue presented in the instant case is of substantial and significant interest to members of the Real Property, Probate and Trust Law Section of The Florida Bar because it involves the stability of the interpretation of legal documents. The case sub *judice* involves the word “notwithstanding”, which is commonly inserted at the beginning of various clauses and sentences and which is frequently utilized by lawyers, jurists, legislators, and other legal writers in contracts, court cases, statutes, and other legal writings in the areas of real property, probate, trust and other areas of the law.

Until the Third District issued its decision in this case, there was no question but that the use of a “notwithstanding” clause in a document acted as a clear and unambiguous override for any other conflicting or inconsistent language or statements. See Grier v. M.H.C. Realty Corp., 274 So.2d 21 (Fla. 4th DCA 1973); KRC Enterprises, Inc. v. Soderauist, 553 So.2d 760 (Fla. 2d DCA 1989); and Quiring v. Plackard, 412 So.2d 415 (Fla. 3d DCA 1982).

“Notwithstanding” is derived from the Latin term “Non obstante” which Black’s Law Dictionary defines as “[w]ords anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes,” Black’s Law Dictionary 1055 (6th ed. 1990). “Non obstante” is most often seen in the term “Judgment non obstante verdicto” or in its shorten version, “Judgment n.o.v”, which simply means the Judgment of the Court notwithstanding an inconsistent previously reached verdict. It is a word that is found in numerous contracts, wills, and trusts, as well as the decisions of this Court and the statutes of the State of Florida. The word “notwithstanding” is even found in the Supremacy

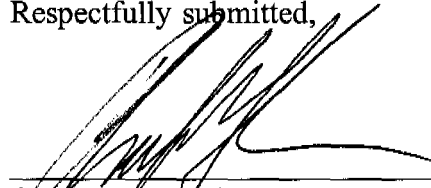
Clause of the Constitution of the United States, specifically, Article VI, Clause 2.

The decisions in KRC Enterprises, inc., Quiring, and Grier, represent the obvious better rule of law. If the decision of the Third District in the decision sub **judice** is not reversed, there will be needless litigation and lingering doubt about and instability with respect to the meaning of many provisions in contracts, wills, trusts, statutes, and rules.

## CONCLUSION

The Real Property Section is of the opinion that the majority decision of the Third District Court of Appeals in the case sub judice is wrong and should be reversed by this Court.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of this AMICUS CURIAE BRIEF OF THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR was mailed this 3rd day of September, 1997 to the following attorneys at the indicated addresses:

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