

FILED

SID J. WHITE

JUL 2 1998

CLERK, SUPREME COURT

By _____
Chef Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BROWARD COUNTY,

CASE NO: 93,115

Petitioner,

v.

G.B.V. INTERNATIONAL, LTD., etc.; et al.

Respondents.

_____ /

BRIEF OF PETITIONER ON JURISDICTION

✓ **SHARON L. CRUZ**
Interim County Attorney for Broward County

✓ **ANTHONY C. MUSTO**
Chief Appellate Counsel
Florida Bar No: 207535

Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

TABLE OF CONTENTS

TABLE OF CITATIONS	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	3
THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN <i>GULF OIL REALTY CO. V. WINDHOVER ASSN.</i> , 403 SO. 2D 476 (FLA. 5TH DCA 1981); <i>ABG REAL ESTATE DEV. V. ST. JOHNS COUNTY</i> , 608 SO. 2D 59 (FLA. 5TH DCA 1992); <i>SNYDER V. DOUGLAS</i> , 647 SO. 2D 275 (FLA. 2D DCA 1994), AND; <i>TA MIAMI TRAIL TOURS, INC. V. RAILROAD COMM.</i> , 128 FLA. 25, 174 SO. 451 (1937).....	3
CONCLUSION	5
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<i>ABE Real Estate Dev. v. St. Johns County</i> , 608 So. 2d 59 (Fla. 5th DCA 1992)	i, 3, 4
<i>Gulf Oil Realty Co. v. Windhover Assn.</i> , 403 So. 2d 476 (Fla. 5th DCA 1981)	i, 3, 4
<i>Snyder v. Douglas</i> , 647 So. 2d 275 (Fla. 2d DCA 1994)	i, 3, 4
<i>Tamiami Trail Tours, Inc. v. Railroad Comm.</i> , 128 Fla. 25, 174 So. 451 (1937).	i, 3, 4
 <u>OTHER AUTHORITIES</u>	
Florida Constitution, Article V, Section 3(b)(3)	4
Florida Rule of Appellate Procedure 9.030 (a)(2)(A)(iv)	4

INTRODUCTION

Petitioner was the respondent in both the circuit court and the district court of appeal. Respondents were the petitioners in each court. The parties will be referred to in this brief as "Broward County" and "GBV." The symbol "A" will constitute a reference to the appendix being filed along with this brief.

STATEMENT OF THE CASE AND FACTS

After the Broward County Commission denied GBV's application for plat approval, GBV unsuccessfully sought certiorari in the circuit court (A 1). GBV then sought certiorari review of the circuit court's decision in the Fourth District Court of Appeal (A 1). The district court found that the circuit court departed from the essential requirements of law by deciding an issue that had not been presented to or decided by the Commission (A 1). It went on to find that GBV was entitled to relief on the merits (A 1-2) and granted certiorari (A 2). It did so, however, in the following manner (A 2).

We therefore grant review by certiorari, quash the order of the circuit court and remand *for the entry of an order directing Broward County to approve the plat as requested.*

(emphasis added)

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN *GULF OIL REALTY CO. V. WINDHOVER ASSN.*, 403 SO. 2D 476 (FLA. 5TH DCA 1981); *ABG REAL ESTATE DEV. V. ST. JOHNS COUNTY*, 608 SO. 2D 59 (FLA. 5TH DCA 1992); *SNYDER V. DOUGLAS*, 647 SO. 2D 275 (FLA. 2D DCA 1994), AND; *TA MIAMI TRAIL TOURS, INC. V. RAILROAD COMM.*, 128 FLA. 25, 174 SO. 451 (1937).

In the present case, the Fourth District Court of Appeal granted certiorari and quashed the order it was reviewing. It did not stop there, however. It went on to expressly direct the circuit court to take a particular action. Specifically, the district court stated (A 2):

We therefore grant review by certiorari, quash the order of the circuit court and remand *for entry of an order directing Bro ward County to approve the plat as requested.*

(emphasis added)

The district court's **decisison** in this regard expressly and directly conflicts with numerous other decisions from other district courts and from this court.

In *Gulf Oil Realty Co. v. Windhover Assn.*, 403 So. 2d 476, 478 (Fla. 5th DCA 1981), the Fifth District stated:

. . . [A]fter review by certiorari, an appellate court can only quash the lower court order; it has no authority to direct the lower court to enter contrary orders.

(footnote omitted)

Likewise, in *ABG Real Estate Dev. v. St. Johns County*, 608 So. 2d 59, 64 (Fla. 5th DCA 1992), the Fifth District said:

A court's certiorari review power does not extend to directing that any particular action be taken, but is limited to quashing the order reviewed.

The Second District expressed similar sentiments, in its decision in *Snyder v. Douglas*, 647 So. 2d 275, 279 (Fla. 2d DCA 1994):

. . . [O]n certiorari an appellate court can only deny the writ or quash the order under review. It has no authority to take any action resulting in the entry of a judgment or order on the merits or to direct that any particular judgment or order be entered.

(citation omitted)

In reaching its conclusion, the Second District relied on this court's decision in *Tamiami Trail Tours, Inc. v. Railroad Comm.*, 128 Fla. 25, 174 So. 451, 454 (1937), which stated:

The appellate court has no power when exercising its jurisdiction in certiorari to enter a judgment on the merits of the controversy under consideration, nor to direct the respondent to enter any particular order or judgment.

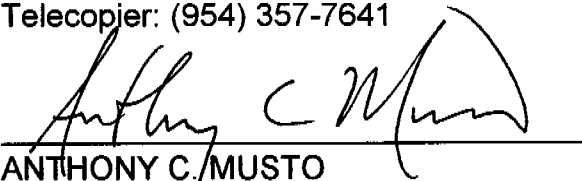
Clearly, the Fourth District's decision here expressly and directly conflicts with the decisions of the Fifth District in *Gulf Oil* and *ABG*, with the decision of the Second District in *Snyder*, and with the decision of this court in *Tamiami Trail Tours*. This court should therefore exercise its jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030 (a)(2)(A)(iv).

CONCLUSION

Based upon the foregoing, Broward County respectfully submits that the decision of the district court in the present case expressly and directly conflicts with decisions of other district courts of appeal and of this court and that this court should therefore exercise its jurisdiction.

Respectfully submitted,

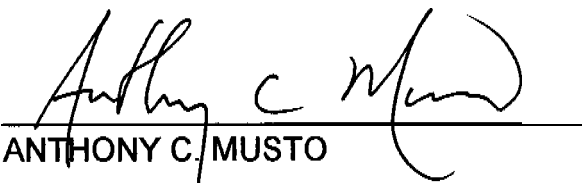
SHARON L. CRUZ
Interim County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641



ANTHONY C. MUSTO
Chief Appellate Counsel
Florida Bar No. 207535

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to JAMES C. BRADY, ESQUIRE, Counsel for Respondent, BRADY & COKER, 1318 Southeast Second Avenue, Fort Lauderdale, Florida 33316, on this ^{25th} day of June, 1998.



ANTHONY C. MUSTO