

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-1284

L.T. CASE NOS.

4D19-1537

15th Jud. Cir. 50-2018-CA-015447-XXXX-MB

CITY OF WEST PALM BEACH,

Petitioner,

v.

PETER AND GALINA HAVER,

Respondents.

PETITIONER'S BRIEF ON JURISDICTION

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PREFACE

Petitioner, City of West Palm Beach (“City”), seeks review of the decision of the Fourth District Court of Appeal in *Haver v. City of West Palm Beach*, 298 So. 3d 647 (Fla. 4th DCA 2020) (reh’g denied, July 28, 2020). Respondents, Peter Haver and Galina Haver, shall be referred to as “The Havers” or “Mr. and Mrs. Haver.”

The Fourth District in this case certified direct conflict with the Second District’s decision in *Chapman v. Town of Redington Beach*, 282 So. 3d 979 (Fla. 2d DCA 2019), and with the Third District’s decision in *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013).

STATEMENT OF THE CASE AND FACTS

The City seeks review of a case certified to be in direct conflict with decisions of other district courts of appeal and involving the question of whether a private party can bring an equitable action against a municipality to compel a local government to enforce municipal zoning regulations. Mr. and Mrs. Haver, residents in the City of West Palm Beach, filed a complaint against the City, municipal employees, and the Havers’ neighbor, alleging violations of the City’s Zoning Code. (A:001) The complaint contained five counts: Count I sought a declaratory judgment that a zoning violation occurred and injunctive relief requiring the City to enforce its Zoning Code; Count II requested a declaratory judgment that the City’s refusal to enforce the code violates section 94-34(b)(2) of its Zoning Code; Count

III requested an injunction requiring the City to enforce its Zoning Code and to take enforcement measures against the Havers' neighbor; Count IV sought a writ of mandamus; and Count V contained a petition for writ of certiorari. (A:003) The City filed a motion to dismiss arguing, in pertinent part, that the separation of powers doctrine prohibits interference with a municipality's discretionary function of enforcing its zoning code, citing *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013). (A:003)

Following a hearing, the circuit court entered an order granting the City's motion to dismiss. (A:004) The Havers then filed an appeal. (A:004) On June 10, 2020, the Fourth District Court of Appeal issued an opinion reversing the trial court's dismissal of Counts I, II, and III, and affirming the dismissal of Counts IV and V. (A:001-009) In its decision, the Fourth District certified conflict with *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013), and *Chapman v. Town of Redington Beach*, 282 So. 3d 979 (Fla. 2d DCA 2019). (A:009)

The Fourth District concluded that it was bound by *Boucher v. Novotny*, 102 So. 2d 132, 134 (Fla.1958), which indicates that equitable relief may be sought "where municipal officials threaten or commit a violation of municipal ordinances" if special damages are shown. (A:006) The Fourth District's decision is in direct conflict with decisions of the Second and Third Districts, both of which applied the separation of powers doctrine as set forth by this Court in *Trianon Park*

Condominium Association v. City of Hialeah, 468 So. 2d 912 (Fla. 1985), to preclude actions against local government that infringed upon the local governments' discretion in enforcing their local zoning codes. (A:009)

The City timely filed a Motion for Rehearing and Rehearing En Banc on June 25, 2020, and the Fourth District Court of Appeal denied the motion on July 28, 2020. Petitioner City has timely filed a notice to invoke the discretionary jurisdiction of this Court. The City seeks review in this Court as to Counts I, II, and III, pertaining to declaratory and injunctive relief.

SUMMARY OF ARGUMENT

This Court should exercise discretionary jurisdiction to resolve the certified direct conflict among the district courts of appeal. Courts should uniformly apply the separation of powers doctrine throughout the State of Florida and prohibit the judicial branch's interference in a local government's exercise of its police powers to cite and prosecute alleged municipal ordinance violations. This Court should accept jurisdiction and reverse the decision of the Fourth District Court of Appeal.

ARGUMENT

- I. **The court should accept jurisdiction to review this certified direct conflict in order to provide uniform guidance to the district courts in applying the constitutional principle of separation of powers to actions against local governments that seek to compel the enforcement of local building and zoning codes.**

This Court should accept jurisdiction to review this certified direct conflict case in order to protect the constitutional principle of separation of powers and to provide uniform guidance to the district courts in applying this important constitutional principle. This Court has the power to review a decision certified by a district court to be in direct conflict with a decision of another district court of appeal. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi). The Fourth District has certified that its decision in this case conflicts with decisions of the Second and Third District Courts of Appeal. The conflicting cases involve the separation of powers, discretionary functions, and enforcement of local building and zoning codes. This Court should exercise its discretion to review the important issues presented and resolve the certified direct conflict between districts.

The Florida Constitution provides for the separation of powers between the legislative, executive, and judicial branches. Art. II, § 3, Fla. Const. The constitutional doctrine of separation of powers has formed the basis for many decisions, including the Third District's opinion in *Detournay v. City of Coral Gables*, 127 So. 3d 869 (Fla. 3d DCA 2013), *review denied*, 153 So. 3d 903 (Fla.

2014). In *Detournay*, the plaintiffs filed a declaratory and injunctive relief action against the City of Coral Gables. The *Detournay* plaintiffs alleged that a neighboring property owner was operating a private yacht basin in a manner that violated the city's building and zoning code. *Id.* at 871. The city issued administrative citations, but it chose not to pursue them while seeking a settlement with the property owner. *Id.* The plaintiffs sought judicial intervention to require the city to pursue its enforcement action. *Id.* However, the trial court dismissed the declaratory judgment count and entered judgment in favor of the city on the injunctive relief count. *Id.* at 871-72.

On appeal, the Third District determined that both counts against the City of Coral Gables should be dismissed based upon the separation of powers doctrine, "one of the structural pillars upon which American freedoms rest." *Id.* at 872-73. Citing *Trianon Park Condominium Association, Inc. v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985), the Third District noted that "the judicial branch must not interfere with the discretionary functions of the legislative or executive branches of government absent a violation of constitutional or statutory rights." *Id.* at 873. Enforcing compliance with a building and zoning code is discretionary. *Trianon*, 468 So. 2d at 922 ("The discretionary power to enforce compliance with the building code flows from the police power of the state.") Discretionary power is given to "judges, prosecutors, arresting officers, and other law enforcement officials," and to

“regulatory officials such as building inspectors, fire department inspectors, health department inspectors, elevator inspectors, hotel inspectors, environmental inspectors, and marine patrol officers.” *Id.* at 919. The *Detournay* Court concluded that “the City’s discretion to file, prosecute, abate, settle, or dismiss a building and zoning enforcement action... is an executive function that cannot be supervised by the courts, absent the violation of a specific constitutional provision or law.” *Detournay*, 127 So. 3d at 873. The City of Coral Gables had the discretion whether to prosecute citations under its municipal building and zoning code, and the separation of powers doctrine prohibited interference by the judicial branch. *Id.*

The Second District Court of Appeal reached a similar conclusion in *Chapman v. Town of Redington Beach*, 282 So. 3d 979 (Fla. 2d DCA). In *Chapman*, the plaintiffs filed a declaratory and injunctive relief action against their town and their neighbor. They alleged that their neighbor’s property improvements violated town zoning ordinances. *Id.* at 981. The complaint requested a declaratory judgment that the property improvements constituted a violation and requested an injunction requiring the removal of the improvements. *Id.* at 981. The town argued that a court decree compelling it to enforce its local zoning ordinances would violate the doctrine

of separation of powers. *Id.* The trial court granted summary judgment to the town, and the judgment was affirmed by the Second District.¹ *Id.*

In contrast, the Fourth District, in this case, rejected the holdings of *Detournay* and *Chapman* and certified conflict. Here, just as the plaintiffs in *Detournay* and *Chapman*, the Havers sought declaratory and injunctive relief against the City of West Palm Beach and the Havers' neighbor, Ms. Galan. The Havers alleged that Ms. Galan violated the City's Zoning Code, and they sought a declaratory judgment that the municipal code had been violated and an injunction requiring the City to take enforcement measures. The trial court dismissed the Havers' action against the City in reliance upon *Detournay*.

The Fourth District reversed the dismissal, relying instead upon a dissenting opinion in *Detournay* that interpreted *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958), to allow a declaratory and injunctive relief action against a municipality to compel enforcement of its zoning laws. *Boucher* held that "where municipal officials threaten or commit a violation of municipal ordinances which produces an injury to a particular citizen which is different in kind from the injury suffered by the people of the community as a whole, then such injured individual is entitled to injunctive relief in the absence of an adequate legal remedy." *Boucher*, 102 So. 2d

¹ Summary judgment for the neighbor based upon lack of standing was reversed and remanded for further proceedings. *Id.* at 988.

at 134. The City argued that there is a clear distinction between cases where a municipal official has committed a violation of an ordinance and cases where –like here—a city has taken no action of enforcement. However, the Fourth District did not recognize such a distinction and felt bound by *Boucher* rather than *Trianon*. The cases of *Haver*, *Detournay*, and *Chapman* involved nearly identical facts, yet the *Haver* Court has reached a completely different result. The Fourth District’s decision creates an undeniable conflict between districts, and it has certified conflict with the Third District’s decision in *Detournay* and the Second District’s decision in *Chapman*. See *Aravena v. Miami-Dade Cnty.*, 928 So. 2d 1163, 1166-67 (Fla. 2006) (finding that conflict jurisdiction exists where holdings are irreconcilable). This conflict must be resolved to ensure the separation of powers doctrine is applied uniformly across the State of Florida.

II. The court should accept jurisdiction to resolve a certified conflict that has a severe impact on local governments in Florida.

The Fourth District’s ruling opens the door to litigation against local governments that was not permissible under prior precedent. Pursuant to the *Haver* decision, an individual may now bring a declaratory and injunctive relief action against a municipality to force it to prosecute building and zoning code violations against a property owner. It essentially eliminates the discretion of local building and zoning code inspectors, a discretionary function that is key to the separation of powers. The decision will have a detrimental impact on local governments across

the State of Florida and alter the state's jurisprudence regarding separation of powers.

While *Boucher* recognized a limited exception that allows an aggrieved party to bring a cause of action when a local government acts in a manner that violates an ordinance and produces an injury, *Haver* finds that even in the absence of any action taken by local government, a party may file suit to compel the government to prosecute claims against his neighbor. *See Boucher*, 102 So. 2d at 134-35. The *Haver* decision will open the floodgates and encourage litigation brought by residents. Rather than remain as private disputes between individuals, grievances will escalate into legal actions against counties and municipalities. The Fourth District's decision will result in the expansion of local governments' enforcement of building and zoning codes as they are forced to pursue every alleged violation rather than exercising their prosecutorial discretion.

Code enforcement is a quintessential discretionary governmental function. Limited staffing and budget may require policy decisions regarding the prioritization of certain violations over others. Local governments have intimate knowledge of their communities and residents, and they have the ability to form policies, develop plans, and create priorities that reflect their needs. Such discretionary policy decisions are essential to the act of governing and are traditionally protected from interference by the constitutional doctrine of separation

of powers. The *Haver* decision allows these policy decisions to be challenged by individuals and second-guessed by the judicial branch. The decision allows the judicial branch to interfere with the discretion of code enforcement officers and building inspection officers in identifying violations, and it allows courts to interfere with a local government's decision whether to prosecute alleged violations. The effect is far-reaching and will have an immediate impact on every city and county within the Fourth District, potentially affecting all local governments within the State of Florida. The Court should exercise its discretion to decide this important issue and resolve the certified conflict.

CONCLUSION

This Court should accept jurisdiction to review the direct certified conflict presented by this case and reverse the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail this 8th day of September, 2020, to the parties listed in the service list below.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that Petitioner’s Brief on Jurisdiction has been typed in Times New Roman 14-point font.

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