

IN THE SUPREME COURT  
STATE OF FLORIDA

STATE OF FLORIDA,  
DEPARTMENT OF TRANSPORTATION

Petitioner,

CASE NO: SC06-333  
DCA CASE NO.: 2D04-4371

-v-

CAUSEWAY VISTA, INC., a  
Florida Corporation

Respondent.

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JURISDICTION BRIEF OF RESPONDENT,  
CAUSEWAY VISTA, INC.

ON PETITION FOR REVIEW OF A DECISION OF  
THE DISTRICT COURT OF APPEAL  
SECOND DISTRICT, STATE OF FLORIDA  
CASE NO. 2D04-4371

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**TABLE OF CONTENTS**

**Page**

TABLE OF AUTHORITIES..... iii

PRELIMINARY STATEMENT ..... 1

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF THE ARGUMENT ..... 2

ARGUMENT ..... 3

**ISSUE**

The Second District’s Decision Below Does Not Expressly and  
Directly Conflict with Denmark..... 3

CONCLUSION..... 4

CERTIFICATE OF SERVICE..... 6

CERTIFICATE TYPEFACE COMPLIANCE ..... 7

TABLE OF AUTHORITIES

CASES

Behm v. Div. of Admin., State Dep’t of Transp.,  
336 So. 2d 579 (Fla. 1976).....3

Causeway Vista, Inc. v. State of Florida, Dept. of Transp.,  
918 So.2d 352 (Fla. 2d DCA 2005).....1

Fleissner v. Div. of Admin., State Dep’t of Transp.,  
298 So. 2d 547 (Fla. 2d DCA 1974).....3

State Dept. of Transp. v. Denmark,  
366 So.2d 476 (Fla. 4th DCA 1979).....passim

## **PRELIMINARY STATEMENT**

Causeway Vista, Inc., a defendant and appellant below and respondent here, will be referred to as Causeway Vista. The State of Florida, Department of Transportation, the petitioner/condemning authority and appellee below and petitioner here, will be referred to as the Department.

Citations to the Department's Appendix attached to the Department's Brief on Jurisdiction will be indicated parenthetically as "A." with the appropriate page number (s).

The decision of the lower tribunal is currently reported as Causeway Vista, Inc. v. State of Florida, Department of Transportation, 918 So.2d 352 (Fla. 2d DCA 2005).

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

Causeway Vista accepts the statement of case and facts set forth by the Department.

## SUMMARY OF ARGUMENT

In an eminent domain case involving both compensation for the part taken and severance damages to the remaining property, the jury is required to determine the value of the part taken separately from the value of the severance damages.

In the instant case, the range of testimony for severance damages was from \$100 to \$14,000. The jury awarded zero compensation for severance damages. The Second District Court of Appeal found that the jury's verdict was inadequate because the verdict was below the range of testimony, and reversed the trial court's order denying a motion for a new trial.

In Denmark, the range of severance damages was from zero to \$320,000. The jury awarded \$48,000 for severance damages. The Fourth District Court of Appeal expressly found that the award of \$48,000 "is well within the permissible range of damages established by the evidence" and reversed a judgment notwithstanding the verdict.

Since the Denmark verdict on severance damages was expressly stated to be well within the range of testimony and the Causeway Vista verdict on severance damages was expressly stated to be below the range of testimony, there is no conflict. This Court should not exercise its discretionary jurisdiction to review the Second DCA's decision in this case.

## **ARGUMENT**

### **The Second District's Decision Below Does Not Expressly And Directly Conflict with Denmark**

In an eminent domain case involving both compensation for the part taken and severance damages to the remaining property, the jury is required to determine the value of the part taken separately from the value of the severance damages. (A. 5 citing Fleissner v. Div. of Admin., State Dep't of Transp., 298 So. 2d 547, 548 (Fla. 2d DCA 1974)).

In the instant case, the range of testimony for severance damages was from \$100 to \$14,000. (A. 3). The jury awarded zero compensation for severance damages. (A. 4). Causeway Vista moved for a new trial based on the verdict being inadequate. (A. 4). The trial court denied the motion for new trial. (A. 4). On appeal, the Second District stated “the jury was required by the unique law applicable to condemnation cases to award Causeway Vista no less than \$100 in severance damages.” (A. 5 citing Behm v. Div. of Admin., State Dep't of Transp., 336 So. 2d 579, 581 (Fla. 1976); Fleissner, 298 So. 2d at 548). The Second District found that the verdict was legally improper and inadequate because the verdict was zero and below the range of testimony and reversed for a new trial on severance damages. (A. 6).

In order to allege conflict with Denmark, the Department argues that the severance damages verdict in Denmark was below the range of testimony. (See

Petitioner's Brief, p.3, 5). However, in State Dept. of Transp. v. Denmark, 366 So.2d 476 (Fla. 4th DCA 1979), which was also an eminent domain case, the range of severance damages was from zero to \$320,000, and the jury awarded \$48,000 for severance damages. See id. at 478, 479. In Denmark, D.O.T., contended "that the jury's verdict specifying \$48,000 for severance damages was within the range of testimony presented and should have been allowed to stand." Id. at 477. The Denmark court expressly found that the award of "\$48,000 is well within the permissible range of damages established by the evidence" and reversed a judgment notwithstanding the verdict. Id. at 478.

The Department, in order to allege conflict, is focusing on the "gross" severance damages prior to the severance damages being "totally eliminated when offset by the special enhancement." Id. at 477.

Since the Denmark verdict on severance damages was expressly stated to be well within the range of testimony and the Causeway Vista verdict on severance damages was expressly stated to be below the range of testimony there is no conflict.

### **CONCLUSION**

The instant decision of the Second District Court of Appeals does not expressly or directly conflict with the decision of the Fourth District Court of Appeal in Denmark. In order to allege conflict, the Department erroneously takes

the position that the severance damage verdict in Denmark, was below the range of testimony. The Department's position is erroneous because in Denmark the severance damage verdict was well within the range of testimony. Consequently, the instant case does not expressly and directly conflict with Denmark. As a result, this Court should not exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

Tileston, Simon & Holloway, P.A.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing notice has been delivered to those persons on the attached mailing list by course of regular U. S. Mail on this \_\_\_\_\_ day of March, 2006.

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**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that this brief uses 14-point Times New Roman type in compliance with Fla. R. App. P. 9.210(a)(2).

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