SUPREME COURT OF FLORIDA

MIA CONSULTING GROUP, INC.,

Petitioner,

District Court
Case No.: 3D10-1331

vs.

HACIENDA VILLAS, INC.,

Supreme Court
Case No.: SC10-2408

Respondent.
_____/

On Petition For Discretionary Review From
The Third District Court of Appeal

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF CASE AND FACTS

Respondent accepts the Statement of the Case and Facts from Petitioner's Brief on Jurisdiction, with the following additions. The Third District noted, page 3 of its opinion, that the Stipulated Statement of Proceedings[1] established that the Petitioner asserted that venue was proper in Miami-Dade County solely as a result of the holding in Rayman v. Langdon Asset Management, Inc., 745 So.2d 426 (Fla. 3rd DCA 1999). The court's opinion addressed whether the Rayman rule supported venue in Miami-Dade County and concluded it did not.

[1]Rule 9.200(b)(4), Florida Rules of Appellate Procedure.

The opinion also acknowledged that the Petitioner was never actually retained by the Respondent to perform any services in Hillsborough County and the Petitioner, as a result, never performed such services. Accordingly, the breach of contract claim requested unliquidated damages for services which were never performed.

SUMMARY OF THE ARGUMENT

This Court should reject Petitioner's request for it to exercise jurisdiction in this case. There is no conflict as the Third District correctly noted the limitations on the debtor-creditor rule flowing from the very authority cited by Petitioner to establish venue in Miami-Dade County.

The four corners of the Third District's opinion do not expressly and directly conflict with another decision of either this Court or another Court of Appeal on the same question of law. Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Reaves v. State, 485 So.2d 829 (Fla. 1986). Since the Third District correctly applied the very authority which the Petitioner suggested was controlling, no conflict of any type exists.

ISSUE I
THIS COURT SHOULD REJECT PETITIONER'S APPLICATION TO EXERCISE JURISDICTION

This Court's jurisdictional review is *de novo*. Aravena v. Miami-Dade County, 928 So.2d 1163 (Fla. 2000). As here, the trial and district courts in Aravena decided the venue issue as a matter of law applied to the undisputed facts. See also: Blanton v. City of Pinellas Park, 887 So.2d 1224, 1226 (Fla. 2004). Moreover, this Court determines whether there is conflict solely upon a determination if a conflict appears "within the four corners of the majority decision" subject to review. Reaves v. State, 485 So.2d 829, 830 (Fla. 1986).

Since the Petitioner supported its choice of venue in the trial court by relying upon the debtor-creditor rule established in Rayman, the Third District expressly addressed this doctrine. (Opinion, pages 3-4). Thus, while the rule generally provides for venue in the county where payment is to be made and, further, that Petitioner's Complaint alleged that payment for management services would be made in Miami-Dade County, the court also noted that there were well established limitations to the debtor-creditor rule. One of these limitations requires that there must be an express promise to pay a sum certain. PDM Bridge Corp. v. JC Industrial Mfg., 851 So.2d 289, 291 (Fla. 3rd DCA 2003); Morales Sand and Soil, LLC v. Kendall Props. and Invs., 923 So.2d 1229, 1232-34 (Fla. 4th DCA 2006).[2] Since the allegations of the Complaint did not ". . . involve an agreement to pay a liquidated sum in Miami-Dade County", the Third District correctly concluded that

[2]The Stipulated Statement of Proceedings submitted to the Third District also provided that the Respondent had relied upon Morales in the trial court.

the debtor-creditor rule was inapplicable. There is no conflict, and certainly not one which is express and direct.

The Third District recognized, however, that its work was not completed once it concluded that there was no liquidated debt alleged as part of the breach of contract. Instead, the court acknowledged, pursuant to Magic Wok International, Inc. v. Li, 706 So.2d 372, 374 (Fla. 5th DCA 1998), that it was still obligated to review the basic assertions in the Complaint to determine where the cause of action may have accrued and where proper venue would thus lie. The court then noted from the Complaint that any services to have been performed by the Petitioner would have been in Hillsborough County for that is where Respondent's living facility was located. As such, there was no nexus to Miami-Dade County and no basis existed for venue there, even beyond that asserted by the Petitioner.

There is no clear express and direct conflict presented to the Court by this case. Indeed, the case reflects the application of established precedent in a straightforward venue context. The opinion of the Third District neither notes nor establishes conflict of any type. Petitioner's request should be denied.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Respondent respectfully requests that this Court decline to exercise its jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, and Article V, §3(b)(3), Florida Constitution.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via regular U.S. Mail to BRIAN J. STACK, ESQ., 1200 Brickell Avenue, Suite 950, Miami, Florida 33131, this 10th day of January, 2011.

DAVID T. WEISBROD, ESQ.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Jurisdictional Brief of Respondent complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and has been typed in Times New Roman 14-point font.

DAVID T. WEISBROD, ESQ.