IN THE SUPREME COURT OF FLORIDA

140 ASSOCIATES, LTD.,
etc., et al.,
Appellants,
v. **CASE NO. SC10-974**

SEACOAST NATIONAL BANK,
etc., et. al.,
Appellees.
_____/

ANSWER BRIEF OF APPELLEE (TJCV LAND TRUST)

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STATEMENT OF THE CASE AND FACTS

The facts recited in the opinion of the Fourth DCA below are sufficient for this court to review the federal preemption issue addressed by the Fourth DCA. However, this Appellee (TJCV Land Trust) also raised an alternative reason to affirm the summary judgment which was not addressed by the Fourth DCA below, and the facts relevant to that alternative "Tipsy Coachman" argument are not discussed in the Fourth DCA's opinion (nor in the Appellants' Initial Brief filed with this court). The Appellant's Initial Brief states (at p. 1) that "for convenience" it only discusses the facts in the companion case (140 Associates, Ltd. v. Seacoast National Bank). That is only convenient in order to circumvent the alternative argument raised in the 770 PPR, LLC v. Seacoast National Bank case, which involves the Appellants' waiver of the right to challenge the bank's capacity to sue in the trial court based on the specific facts of the 770 PPR case. Accordingly, we respectfully supplement the Appellants' statement of facts as follows.

This was an action by Seacoast National Bank to foreclose a mortgage and recover on a promissory note in the amount of $2,015,000 that was more than 18 months in default. (R. 1-11)[1] Additionally, real estate taxes had not been paid by the defendants in over two years and were over $84,000 in

[1] All record references in this brief are directed to the record in 4th DCA case number 4D08-4796 (770 PPR, LLC v. Seacoast National Bank).

arrears. (R. 240-243) The verified complaint alleged that the plaintiff, Seacoast National Bank, is a national banking association which was and is doing business in Palm Beach County, Florida. (R. 1). The defendants first filed a motion to dismiss which raised no issue regarding the bank's capacity to sue or it's authority to do business in Florida. (R. 85-86) The defendants' subsequent answer and affirmative defenses again failed to raise any challenge to the bank's capacity to sue or it's authority to do business in Florida. (R. 180-183). At no time did the defendants ever seek leave to amend their affirmative defenses to add this as an additional defense. This issue regarding the bank's capacity to sue was not raised by the defendants until after the bank had moved for summary judgment. (See R. 345)

In opposition to summary judgment, the defendants filed the affidavit of Gregory Talbott (R. 344-346) which asserted for the first time in the litigation that Seacoast National Bank is not properly registered with the State of Florida Division of Corporations as a foreign corporation authorized to transact business in Florida. (R. 345) At the hearing on the bank's motion for summary judgment, the trial court requested the parties to file supplemental briefing on the issue that had just been raised about the bank's capacity to maintain a law suit in a Florida court. (See hearing transcript at A:10 of the appendix to Appellants' Initial Brief, in particular, Tr. 22-23).

The bank did complain at the summary judgment hearing about the late "eleventh hour" raising of this new defense that was never raised in any pleading nor anytime prior to the bank's motion for summary judgment. (See *Id*., Tr. 11) The trial court ultimately entered summary judgment for the bank and in doing so did not articulate whether it rejected the newly raised defense challenging the bank's capacity to sue for substantive reasons, or for procedural reasons (or both). (See R. 382-383, 384-388).

The bank again raised this procedural issue (waiver) as an alternative reason to affirm the summary judgment in its brief filed with the Fourth DCA. (See Appellee's Answer Brief in 4th DCA case No. 4D08-4796 at pp. 6, 8-10) The Fourth DCA ultimately affirmed the summary judgments and rejected the defendants' "capacity to sue" defense for substantive reasons (federal preemption) and thus never did reach the alternative procedural issue (waiver). See 770 PPR, LLC v. TJCV Land Trust, 30 So.3d 613 (Fla. 4th DCA 2010).

STANDARD OF REVIEW

We agree with the Appellants that the federal preemption issue is a pure issue of law subject to *de novo* review. Our alternative reason to affirm (waiver) is also a pure issue of law subject to *de novo* review.

However, we disagree with the Appellants' assertion that this court has mandatory appellate jurisdiction, since the Fourth DCA below never declared any state statute to be invalid, but rather, only declared section 607.1501(1), *Florida Statutes* to be inapplicable to a national banking association. That does not create mandatory supreme court appellate jurisdiction, nor is there any other basis for this court to exercise mandatory or discretionary jurisdiction to review the Fourth DCA's opinion. We acknowledge that this court has previously denied our motion to dismiss this appeal (with one justice dissenting) and we will not belabor this issue except to say that it is still our position that this court does not have mandatory appellate jurisdiction for the reasons stated in our previously filed motion to dismiss this appeal.

SUMMARY OF ARGUMENT

A. Discussion of Federal Preemption

A State cannot condition a national banking association's right to exercise it's federally-created and federally-authorized powers by first registering with the State Division of Corporations, obtaining the State's certificate of authority (in essence, a license), filing annual reports and paying annual filing fees (in essence, a tax) to the State. Nor can any State treat a national banking association as anything other than a "natural person" (not as a "foreign corporation") for purposes of granting access to any court of law or equity, according to the express provisions of the National Banking Act. Appellants' discussion of "implied preemption" cases is not on point since this case involves express preemption.

The Florida foreign corporation statute should be construed with federal preemption in mind because any statute should be construed, when reasonably possible, to avoid an interpretation that would render it invalid. Therefore, the statutory term "foreign corporation" should not be construed to include national banking associations.

B. Discussion of alternative reason to affirm (waiver)

Although not addressed by the Fourth DCA below, the summary judgments in favor of the bank are also warranted for procedural reasons

because the defendants' "lack of capacity to sue" argument was not timely raised in the trial court. It was never pleaded as a defense at any point in the litigation and never articulated until after the bank moved for summary judgment. Contrary to the Appellants' argument, this is not a "subject matter jurisdiction" issue that can be raised at any time. Rather, it is a defense that several Florida appellate courts have held must be timely raised in the pleadings or else it is waived.

Although the circuit court did not articulate in its summary judgment whether it was ruling on the basis of federal preemption or on the basis of waiver of the defense, either method of reasoning may (and should) be resorted to by an appellate court to affirm the final judgment.

ARGUMENT

WHETHER THE DISTRICT COURT ERRED WHEN RULING ON THE BASIS OF FEDERAL PRE-EMPTION THAT SEACOAST NATIONAL BANK COULD SEEK FORECLOSURE AND A MONEY JUDGMENT IN A FLORIDA COURT WITHOUT HOLDING AND MAINTAINING A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN FLORIDA AS A FOREIGN CORPORATION PURSUANT TO SECTION 607.1501(1), FLORIDA STATUTES?

A. Discussion of Federal Preemption

National Banking Associations are creatures of federal law, empowered by an Act of Congress and subject to strict oversight by the United States Office of the Comptroller of the Currency ("OCC"). The enabling act of Congress (the National Banking Act) contains an express preemption clause to supplant state control and eliminate the type of argument that Appellants are now advancing.

Seacoast National Bank, formerly known as "First National Bank and Trust Company of the Treasure Coast" has been headquartered and operating in Florida since 1933. (See Appellants' Appendix at A:4, p.2) Originally chartered as a Florida state bank, it converted to a national bank in 1958 when the OCC issued the bank a federal charter as a national banking association under 12 U.S.C. §21, *et seq*. (the "National Bank Act"). (*Id*. at

A:4, p.2) There is no evidence it was ever questioned about being a non-registered "foreign corporation" over all those years. There is also no evidence that any other national banking association operating in Florida has registered with the Florida Department of State Division of Corporations as a foreign corporation. (In fact, the Appellants seem to acknowledge that in their initial brief at p. 16)

Intent of United States Congress

As the Fourth DCA below noted in its opinion in the case at bar, the National Bank Act was created over 150 years ago to facilitate a national banking system and to protect national banks from intrusive regulation by the States. See Kroske v. U.S. Bank Corp., 432 F.3d 976, 982 (9th Cir. 2005). 12 U.S.C. §24 outlines the powers of a national bank and provides that it "shall have power...to sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons". Other sections of the same Act and federal administrative regulations further buttress the unconditional nature of that power.

12 U.S.C. §371(a) confers on national banking associations the power to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate." OCC regulation 12 C.F.R. §34.4 expressly preempts any state statutes that "obstruct, impair, or condition" [e.s.] a

national bank's ability to fully exercise its federally-authorized real estate lending powers. Another OCC regulation, 12 C.F.R. §7.4009(b), provides that such state laws "do not apply to national banks". Additionally, 12 U.S.C. §42 states: "The provisions of all acts of Congress relating to national banks shall apply in the several states...."

Simply put, a State cannot condition a national banking association's right to exercise it's federally created and federally authorized powers by first registering with the State Division of Corporations, obtaining the State's certificate of authority (in essence, a license), filing annual reports and paying annual filing fees (in essence, a tax) to the State. Nor can a State treat a national banking association as anything other than a "natural person" (not as a "foreign corporation") for purposes of granting access to any court of law or equity. See 12 U.S.C. §24.

Although this is apparently a question of first impression in Florida, this precise issue has arisen in several other jurisdictions and the courts in those jurisdictions are unanimous in rejecting the same arguments the Appellants are presenting to this court. Beginning with the seminal decision written by Chief Justice John Marshall in McCullough v. Maryland, 17 U.S. 316 (1819), it has been a basic precept of American jurisprudence that state

laws cannot govern the corporate authorization and powers of entities chartered by the federal government.

Every court to have considered this issue has ruled that State filing or registration requirements imposed on a national bank before it can exercise its federally-chartered powers do in fact obstruct, impair or condition the bank's ability to fully exercise such powers and are preempted or inapplicable to national banks. See e.g., Bank of America Nat'l Trust & Sav. Assoc. v. Lima, 103 F. Supp. 916, 918, 920 (D. Mass. 1952)(holding that state statutes requiring registration of foreign corporations before they could sue in state courts are not applicable to national banks, as instrumentalities of the federal government); Indiana Nat'l. Bank v. Roberts, 326 So.2d 802, 803 (Miss. 1976)(same); First Nat'l. Bank of Tonasket v. Slagle, 5 P.2d 1013, 1014 (Wash. 1931)(same); State Nat'l Bank of Connecticut v. Laura, 256 N.Y.S.2d 1004, 1006 (Cty. Ct. 1965)(national bank located in Connecticut may sue in New York without qualifying to do business there). See also OCC Corporate Decision 95-46 (a West Virginia statute prohibiting out-of-state national banks from transacting business in West Virginia is preempted). See also Steward v. Atlantic Nat'l Bank of Boston, 27 F.2d 224, 228 (9th Cir. 1928)(declining to construe state foreign corporation statute as including national banks in the absence of

unmistakably clear language that the state is attempting to exercise regulatory authority over national banks).

Recently the United States Supreme Court held that a national bank's mortgage business "is subject to the OCC's superintendence, and not to the licensing, reporting, and visitorial regimes of the several states in which the bank operates." See Watters v. Wachovia Bank, 550 U.S. 1 (2007). See also Britt v. Bank of America, N.A., __ So.3d __ (Fla. 5th DCA case no. 5D10-835, Jan. 14, 2011)(holding Florida's statute prohibiting banks from charging convenience fees to be inapplicable to national banks due to express federal preemption).

The Appellants do not cite a single case from any jurisdiction that supports their argument, but they criticize the cases cited above as having been incorrectly decided. They argue that the phrase "to sue or be sued...as fully as natural persons" doesn't really mean what it says. The Appellants seem to place their primary reliance on an 1871 federal district court case, Manufacturers' Natl Bank v. Baack, 2 Abb U.S. 232, 16 F. Cas. 671 (D.C. N.Y. 1871), which involved the question of "citizenship" of a national bank for purposes of federal diversity jurisdiction. That is clearly off point and has nothing to do with the issue here regarding Florida's foreign corporation statute.

Appellants discuss a number of federal preemption cases that involve "implied preemption" and presumptions against implied preemption, which are not instructive here because, as the Fourth DCA below concluded, this case involves "express preemption". See also some of the cases cited previously that determined the issue involved here to be governed by principles of express preemption. E.g., Bank of America v. Lima, *supra*; Indiana Natl. Bank v. Roberts, *supra*; State Nat'l. Bank of Conn. v. Laura, *supra*.

Even under an "implied preemption" analysis, the Appellants' argument is still incorrect. The Appellants rely on a general presumption that no federal preemption was intended by Congress. However, as noted by the Fourth DCA below, that presumption does not apply to an area of the law that is subject to significant federal presence. See United States v. Locke, 529 U.S. 89, 108 (2000); Aguayo v. U.S. Bank, 658 F.Supp.2d 1226, 1231 (S.D. Cal. 2009). Registration and licensing of national banks is an example of an area of the law that is subject to significant (and indeed, exclusive) federal presence. See Aguayo v. U.S. Bank, *supra*; Bank of America v. City & County of San Francisco, 309 F.3d 551, 558 (9th Cir. 2002).

The Appellants argue that the Fourth DCA below somehow turned the general presumption up-side-down and "shifted" it in favor of federal preemption. (See Appellants' Initial Brief at pp. 5, 10, 32) That is completely untrue. The Fourth DCA did no such thing. There was no "shifting" of any presumption. The Fourth DCA simply noted that the initial presumption against federal preemption "is not implicated" when the area of law being analyzed is subject to significant federal presence. In those cases the presumption doesn't "shift" to the other party, it simply disappears. The Fourth DCA below never said anything to the contrary. Aside from the significant federal presence in the authorization, licensing and registration of national banks, the presumption Appellants rely on is overcome by the express language of 12 U.S.C. §24 and the administrative regulations promulgated pursuant to it and cited above.

Appellants argue (initial brief at p. 20) that the "mundane day-to-day business operations of a national bank" (such as the enforcement of notes and mortgages) is subject to state law. In many respects that is true. Congress did not enact comprehensive federal legislation purporting to govern the general law of contracts, commercial paper, secured transactions, real estate conveyances, and certain other types of day-to-day business functions traditionally carried on by national banks. All banks, state and

federal, are governed by a state's version of the Uniform Commercial Code, real property statutes, trust administration statutes, usury statutes, and many other state laws that govern its daily transactions. But that is not what this case is about. The issue in this appeal is whether a State may condition a national bank's exercise of it's federally-granted powers on first registering with, and being licensed by, and paying annual fees to, and submitting annual reports to the State Division of Corporations.

The Appellants' position in this appeal would effectively deprive national banking associations in general of the ability to conduct any business whatsoever in Florida without receiving a certificate of authority (i.e., a license) at the state level. The power to license and register necessarily includes the power to revoke licensing and registration. That is exclusively a federal power when dealing with national banking associations.

According to Appellants (see initial brief, p. 35), the only consequence to a foreign corporation transacting business in Florida without a certificate of authority is that it cannot access Florida courts. That is totally wrong. It would also mean that under section 607.1502(4), *Florida Statutes*, every national banking association that has heretofore been doing business "illegally" in the State of Florida will owe the State, for all the years it

transacted business, all the fees and taxes which would have been imposed if it was registered as a foreign corporation, as well as a civil penalty of not less than $500 or more than $1,000 for each year during which business was "illegally" transacted without a state-issued certificate of authority. Most likely, every national bank in Florida would be liable for that and, in the aggregate, could be facing civil penalties in the millions of dollars. The Appellants are attempting to trivialize their own argument to make it fit within the "implied preemption" analysis, but it clearly does not fit within that analysis (nor is that even the correct analysis in this express preemption case).[2]

At one point in their initial brief (pp. 13-14) Appellants assert that the federal government does not have the power to preempt a state general corporation statute even if it wanted to, because the states traditionally grant permission to corporations to transact business in the state. Not only is that the first time Appellants have raised what would essentially be a constitutional challenge to the National Banking Act's preemptive language, but Appellants cite no provision in the United States Constitution that would

[2] Appellants' initial brief asserts that there is no federal repository of corporate information similar to that maintained by the State Division of Corporations, which makes it difficult for anyone to obtain information about national banking associations if they do not have to register with the State. It is unclear how that applies to the federal preemption issue at hand, but it should also be pointed out that it is factually incorrect. Such information is available through the web sites of the Office of the Comptroller of the Currency. See, for example, the "File a Bank Complaint" page on the OCC web site (http://www.helpwithmybank.gov/complaints/index.html), which also lists a toll-free number for the OCC Customer Assistance Group to intercede on behalf of national bank customers.

prohibit Congress from creating a national banking system and authorizing federally-chartered national banks to transact business in the several states.

Intent of the Florida Legislature

The Fourth DCA below stated that, pursuant to Florida law, the bank was "seemingly" required to register and obtain a certificate of authority from the Department of State. Although the Fourth DCA seemed to assume that the Florida Legislature intended to include national banking associations within the ambit of the phrase "foreign corporation" in section 607.1501(1), *Florida Statutes*, there was no discussion about that in the court's opinion. That is actually a threshold issue because if the Florida Legislature never intended to include national banking associations within the ambit of this statute, it becomes unnecessary to consider the Supremacy Clause or engage in any federal preemption analysis at all. A statute should be construed, if reasonably possible, to avoid an interpretation that would render it unconstitutional or otherwise invalid. See State ex rel. Shevin v. Metz Const. Co., 285 So.2d 598 (Fla. 1973).

There is no reason to believe that the Florida Legislature had any intention to require all national banking associations to register as foreign corporations and apply for a certificate of authority from the State Division of Corporations, and pay annual fees to the State. The Appellants cite no

legislative history that would support such an unlikely intent on the part of the legislature. The Appellants point out that this statute is part of the Model Business Corporation Act adopted in all 50 states, but Appellants do not cite any evidence that the drafters of the Model Business Corporation Act intended this section of the Model Act to apply to national banking associations. Especially since court decisions throughout the country are unanimous in holding that a statute such as this cannot be applied to a national banking association (see cases cited supra at p. 10-11), the Florida Legislature should not be presumed to have enacted a statute that would be in clear conflict with all those cases. The legislature is presumed to be aware of the existing case law and to have intended to enact a statute that comports with such existing law, unless there is reason to believe the opposite. See A.B.A. Industries, Inc. v. City of Pinellas Park, 366 So.2d 761 (Fla. 1979).

At least one court that has considered the precise issue in this case has ruled that, because of the preemption implications, a state legislature should not be presumed to have meant to include national banks within the state's foreign corporation statute in the absence of unmistakably clear language that the state is attempting to exercise regulatory authority over national banks. Steward v. Atlantic Nat'l Bank of Boston, 27 F.2d 224, 228 (9th Cir.

1928). That same reasoning applies to the present case since there is no unmistakably clear language in the foreign corporation statute, nor any legislative history to suggest that the legislature intended to include national banking associations within this regulatory statute. In fact, the Florida Business Corporation Act, section 607.0301, *Florida* Statutes, provides that Chapter 607 applies to all corporations, "except that special statutes for regulation control of types of businesses and corporations shall control when in conflict herewith." National banking associations are such special, independently regulated corporations, as discussed above.

This reasoning leads to the same ultimate disposition made by the Fourth DCA below (affirming the summary judgment for the bank), but makes it unnecessary to find any part of the Florida statute to be preempted by federal law. In either case, however, this court should decline the Appellants' invitation to suddenly discard 150 years of unbroken precedent.

B. Discussion of alternative reason to affirm (waiver)

The statement of facts previously set out in this brief at pp. 1-3 presents the course of proceedings giving rise to this procedural issue which the Fourth DCA did not address in its opinion. The entire issue about the bank failing to register as a foreign corporation was not timely raised.

Fla. R. Civ. P. 1.120(a), entitled "Pleading Special Matters" provides:

> It is not necessary to aver the capacity of a party to sue or be sued…. When a party desires to raise an issue as to…the capacity of any party to sue or be sued…that party shall do so by specific negative averment which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

Florida appellate courts have interpreted that rule to require a defendant to raise such an issue in the answer and affirmative defenses to the complaint, or else be deemed to have waived the defense. See McDonough Equip. Corp. v. Sunset Amaco West, Inc., 669 So.2d 300 (Fla. 3d DCA 1996). Some appellate courts have also allowed that defense to be raised in a motion directed to the plaintiff's complaint such as a motion to dismiss, a motion to drop a party, or a motion to strike. See Keehn v. Joseph C. Mackey & Co., 420 So.2d 398 (Fla. 4th DCA 1982). See also Shelbourne Ent., Inc. v. Last, 129 So.2d 430 (Fla. 3d DCA 1961).

In the present case the bank did complain at the summary judgment hearing about the late "eleventh hour" raising of this new defense that was never raised in any pleading nor anytime prior to the bank's motion for summary judgment. (See Statement of Facts, supra) The trial court did not articulate the reason it ultimately rejected the defense challenging the bank's capacity to maintain a law suit in Florida, but the court would have been

justified in doing so for procedural reasons without even reaching the merits. That constitutes an alternative reason to affirm the trial court's summary judgment.

The Appellants contend that the defense they raised under Florida's foreign corporation statute is not really a "capacity to sue" defense but is instead a challenge to the trial court's subject matter jurisdiction which, they argue, is not waivable and can be raised at any time, even for the first time on appeal. That is incorrect because this issue has nothing to do with the court's subject matter jurisdiction.

The circuit court's subject matter jurisdiction is created and defined by the Florida Constitution Art. V, Section 5; and by *Florida Statutes* section 26.012. The circuit court's subject matter jurisdiction extends to all actions at law not cognizable by the county courts, all suits in equity, all actions for ejectment, and all actions involving title to real property. See §26.012, Fla. Stat. (2009) The foreign corporation statute involved here, § 607.1502(1), Fla. Stat., does nothing to alter the circuit court's subject matter jurisdiction. It simply creates a legal disability on the part of any non-compliant foreign corporation to utilize the Florida court system until it has rectified its non-compliance. That does not impact the circuit court's jurisdiction over the subject matter of the case. In fact, according to section 607.1502(3), the

circuit court can stay the proceeding until the foreign corporation rectifies its non-compliance. If the circuit court lacked subject matter jurisdiction it could not stay the proceeding, but rather, it would have to dismiss it for lack of jurisdiction.

There is no case law or other authority cited by the Appellants that would transform this "lack of capacity" defense into a subject matter jurisdiction issue. Understandably, the Appellants do not want to refer to this issue as a "lack of capacity" issue because it was not timely raised. It could possibly also be referred to as a "lack of standing" issue, but that would still lead to the same end result. See Kissman v. Panizzi, 891 So.2d 1147, 1150 (Fla. 4th DCA 2005)(holding, "There is no question that lack of standing is an affirmative defense that must be raised by the defendant and that the failure to raise it generally results in waiver."). See also Glynn v. First Union Nat'l Bank, 912 So.2d 357 (Fla. 4th DCA 2005)(same holding). Appellants might have chosen to call this issue a "failure to perform a condition precedent", but that would also lead to the same end result because it was not timely raised as an affirmative defense. See Fla.R.Civ.P. 1.120(c).

So, regardless of how the Appellants may now try to cleverly couch the title of this defense, it leads to the same end result. But one thing that is absolutely clear is that this defense does not impact the circuit court's

jurisdiction over the subject matter and it is most definitely a waivable defense if it is not timely raised. The circuit court did not articulate in its summary judgment whether it was ruling on the basis of federal preemption or on the basis of waiver of the defense. However, either method of reasoning may (and should) be resorted to by an appellate court to affirm the final judgment. See Dade Co. Sch. Bd. v. Radio Station WQBA, 731 So.2d 638 (Fla. 1999); Landis v. Allstate, 546 So.2d 1051 (Fla. 1989).

CONCLUSION

The opinion of Fourth DCA below should be approved, whether based on the reasoning used by the Fourth DCA or on alternative reasoning leading to the same result. Moreover, this court should grant Appellees' separately filed motion for appellate attorney's fees (as did the Fourth DCA below).

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing document has been furnished by U.S. Mail this 9th day of February, 2011 to: **Robert A. Sweetapple, Esq.,** counsel for Appellants, 165 East Boca Raton Road, Boca Raton, FL 33432; **Morris G. (Skip) Miller, Esq**. and **John H. Pelzer, Esq**., counsel for Appellee (Seacoast National Bank), Ruden, McClosky, et al., P.A., 222 Lakeview Avenue, Ste. 800, West Palm Beach, FL 33401; **Eric Christu, Esq.**, counsel for Appellee (Seacoast National Bank), Shutts & Bowen LLP, 525 Okeechobee Blvd., Ste. 1100, West Palm Beach, FL 33401; and to **Harvey R. Schneider, Esq**., co-counsel for Appellee (TJCV Land Trust), 33 S.E. 7th Street, Suite G, Boca Raton, FL 33432.

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellee (TJCV Land Trust) certifies that the size and style of type used in this document is 14 Point Times Roman.

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