IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC11-2590

GRANADA LAKES VILLAS CONDOMINIUM ASSOCIATION, INC. VELINDA STRAUB, PAOLO FERRARI, MICHAEL OROFINO, and KW PROPERTY MANAGEMENT CONSULTING, LLC.,

Petitioners,

vs.

METRO-DADE INVESTMENTS CO., and SANTA BARBARA LANDINGS PROPERTY OWNER'S ASSOCIATION, INC.,

Respondents.

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA
2D11-1188

AMENDED JURISDICTIONAL BRIEF FOR PETITIONERS

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STATEMENT OF THE CASE AND THE FACTS

On February 9, 2009, Plaintiffs, Metro-Dade Investments, Co. ("Metro-Dade") and Santa Barbara Landings Property Owners Association, Inc. ("Santa Barbara"), filed a multi-count Complaint against Granada Lakes Villas Condominium Association, Inc. (the "Association"), Velinda Straub, Paolo Ferrari, Michael Orofino, and KW Property Management Consulting, LLC., (collectively "Granada Lakes") based upon what they considered to be improper management of Granada Lakes Villas. *Opinion*, 2. Metro-Dade was the developer of the Granada Lakes Villas, Collier County condominiums, and still owns 55 of the 248 condominiums in the complex. *Id*. Granada Lakes Villas is a subdivision of the larger development of Santa Barbara Landings, managed by Santa Barbara. *Id*.

Essentially, the litigation is a dispute between the Metro-Dade, the developer, and the Association concerning the management and operation of Granada Lakes. *Id*. Metro-Dade, Santa Barbara, and the Association initially agreed to have the same property manager oversee all of the condominiums in Granada Lakes Villas, but later, a dispute arose resulting in the condominiums being managed by two separate entities. *Id.* Both sides have alleged failures to cooperate, provide necessary documents, and failure to pay their fair share of the utilities, and other maintenance expenses of Granada Lakes Villas. *Id.* at 2-3.

On November 30, 2010, Metro-Dade and Santa Barbara filed an Emergency Motion for Receiver and Injunction. *Id.* at 3. Therein, the Metro-Dade and Santa Barbara requested that the trial court appoint a receiver to manage the affairs of the Association. *Id*. On December 10, 2011, Granada Lakes filed a Response in Opposition to the Appellee's Motion for Receiver, and argued not only that the appointment of a receiver was unwarranted under the facts, but also that the trial court's jurisdiction to appoint a receiver for a community association was statutorily-limited by the Florida Condominium Act, and specifically Sections 617.1432, 718.117, and 718.1124, Florida Statutes. *Id.*

On December 13, 2010, a hearing was held on the Plaintiffs' Emergency Motion for Receiver and Injunction, and the trial court orally granted the Plaintiffs' Motion and appointed a receiver. *Id.* On December 15, 2010, Granada Lakes filed an Emergency Motion for Rehearing, Motion for Referral to Mediation and Supporting Memorandum of Law in Opposition to Plaintiffs' Motion for Appointment of a Receiver. *Id*. On February 1, 2011, the trial court entertained an evidentiary hearing to determine whether or not conditions existed that would justify the appointment of a receiver. Then, on February 9, 2011, the trail court entered an Order dictating that under the factual circumstances of this case, it did not have jurisdiction to appoint a receiver to manage the Association. *Id*.

On March 4, 2011, Metro Dade and Santa Barbara filed a Notice of Appeal, challenging the trial court's February 9, 2011 interlocutory Order. The issues were briefed by the parties, and on November 23, 2011, the Second District Court of Appeals issued its Opinion, reversing and remanding for further proceedings. *Id.* at 1-5. The Second District attempted to distinguish the Third District's decision in *All Seasons Condominium Association v. Busca*, 8 So. 3d 434 (Fla. 3d DCA 2009), a case with nearly identical facts and directly on point, and based its Opinion upon the general inherent powers of a court of equity. *Id.* at 5. The Second District did not specifically address the Florida Condominium Act, but opined that Florida Statutes §§617.1432, 718.117, and 718.1124 could not restrict a trial court's broad equitable authority to appoint a receiver. *Id.* at 4. The Second District held that the specific statutes of the Florida Condominium Act merely cited specific instances when a receiver may be appointed, and were not statutorily-created rights. *Id.*

SUMMARY OF ARGUMENT

The Second District incorrectly framed the issue as one of circuit court authority, without appreciating the context of a receivership appointment for a condominium association governed by the Florida Condominium Act. The decision directly and expressly conflicts with the Third District Court of Appeal's decision in *All Seasons Condominium Ass'n, Inc. v. Busca*, 8 So. 3d 434 (Fla. 3d DCA 2009), because it rejects the Third District's recognition that there is no

cognizable basis for the appointment of a receiver over an elected association that is subject to re-election and recall by its membership where it fails in its duties of care and management. The Florida Condominium Act permits the appointment of a receiver only if an association fails to fill vacancies on its board of directors sufficient to constitute a quorum or following a natural disaster. Essentially, the Florida Condominium Act restricts the appointment to situations where the Association is and can no longer function. Those are not our facts, and the Second District's decision, rejecting *All Seasons*, opens the door to judicial entanglement with elected association boards over management decisions that should only be judged by their membership and fidelity to the governing association documents.

JURISDICTIONAL ARGUMENT

This Court should exercise its jurisdiction because the Second District erroneously failed to take into consideration that the trial court's inherent authority to appoint a receiver is constrained by the Florida Condominium Act with respect to receiverships established to manage and govern an association. The decision directly and expressly conflicts with the Third District Court of Appeal's decision in *All Seasons Condominium Ass'n, Inc. v. Busca*, 8 So. 3d 434 (Fla. 3d DCA 2009), because it rejects the Third District's recognition that there is simply no cognizable basis for the appointment of a receiver over an elected association that is subject to re-election and recall by its membership where it fails its management,

handling and care of association duties. The Second District's conflicting decision opens the door to judicial entanglement with elected association boards over management decisions that should only be judged by their membership and fidelity to the governing documents for the condominium association.

Condominiums are strictly creatures of statute, and all of their rights, powers and obligations are contained exclusively within the Florida Condominium Act as set forth by our Legislature. *Century Village, Inc. v. Wellington E,F,K,L,H,J,M, and G Condo. Ass'n.*, 361 So. 2d 128 (Fla. 1978). The Florida Legislature has broad discretion to fashion such remedies as it deems necessary to protect interests of parties involved, which includes both the Association and property owners within each Association. *Id.* at 133. With respect to the appointment of a receiver specifically to operate a condominium association, the trial court was correct in finding that there exists no statutory support for such an appointment.

Section 718.1124, Florida Statutes, specifically limits the instances when a receiver can be appointed for a condominium association, stating as follows:

> (1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association.

§ 718.1124, Fla. Stat. Section 718.117, allows for the appointment of receiver following a natural disaster. These sections do not apply to the instant matter as

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there was no natural disaster, the Association properly held its elections, and the Association does not have any vacancies on its board preventing a quorum. If the owners of condominiums within Granada Lakes Villas are unhappy with the operation of *their* Association by *their elected representatives*, they may freely vote them out of office and replace them with other candidates, including the developer's favored candidates, as it continues to own 55 units. It is noteworthy, however, that despite Metro-Dade and Santa Barbara's warnings of imminent catastrophic disasters, the Association's membership have not chosen to replace their elected representatives and no dire calamity has befallen them.

The Second District Court of Appeal's decision fails to take into consideration this regenerative dynamic unique to elected management for an association. The Opinion does not cite to any specific statute that gives the trial court judge the right to appoint a receiver to control a properly-elected condominium association board, and simply states that the trial court judge has the inherent authority to appoint a receiver in a civil action. *Opinion*, 5. But that is insufficient even under general Florida receivership law. A receiver should not be appointed unless "there is a strong reason to believe that the party asking for a receivership will recover." *Apalachicola N. R.R. Co. v. Sommers*, 79 Fla. 816, 85 So. 361, 362 (1920); *Phillips v. Greene*, 994 So. 2d 371, 373 (Fla. 3d DCA 2008); *KeyBank Nat. Ass'n v. Knuth Ltd.*, 15 So. 3d 939, 940 (Fla. 3d DCA 2009).

Furthermore, a receiver should not be appointed simply because it can do no harm. *Edenfield v. Crisp*, 186 So. 2d 545, 548 (Fla. 2d DCA 1966). The appointment of a receiver is a drastic matter in that it constitutes a taking of property and, therefore, should not be used by the courts except in cases of necessity. *Electro Mechanical Products, Inc. v. Borona*, 324 So. 2d 638, 639 (Fla. 3d DCA 1976).

Beyond general receivership law, the Florida Condominium Act takes into consideration that a condominium association is a democratically-elected entity. The Second District's decision ignores the unique ameliorative and transformational nature that an association's board can undergo after an election held by the condominium association's members. The Florida Legislature has prescribed that absent an interlocking board or natural disaster, the association's members, not a trial court, are in the best position to determine whether there should be changes to an association's board or amendments to its Declaration and Bylaws. The Second District's decision, here, is thus inconsistent with the law in Florida that condominiums are strictly creatures of statute defined by the Legislature.

Furthermore, this decision expressly and directly conflicts with the Third District Court of Appeal's decision in *All Seasons*. In *All Seasons*, a case with nearly identical allegations to those the Respondents here made in their Complaint, certain owners of condominium units brought an action against the association for money damages arising out of the latter's alleged failure to properly maintain and

repair the common elements. *See All Seasons Condominium Ass'n, Inc. v. Busca*, 985 So. 2d 1143 (Fla. 3d DCA 2008). In *All Seasons*, the trial court originally appointed a receiver for the association, apparently in order to conduct the maintenance process more efficiently. *All Seasons*, 8 So. 3d at 435. The association appealed, and the Third District reversed with directions to vacate the order *because there is simply no cognizable basis for such an appointment in such a case*. *Id.* This case is virtually identical factually and legally to our case.

The Second District, however, asserted that:

> "[i]f [they] were to follow Granada Lakes' argument, then the only time a receiver could ever be appointed [to manage the affairs of a condominium association] would be during the dissolution of a nonprofit corporation, after a natural disaster when the members of a condominium's board of directors are unable or refuse to act, or when a condominium association fails to fill vacancies on its board of directors to constitute a quorum in accordance with its bylaws. See §§ 617.1432(1), 718.117(7)(a), 718.1124(1), [Florida Statutes].

Opinion, at 4. Yet, that constitutes a comprehensive list of situations when an association falls outside of the control of its membership or there is no longer a need for the association to exist. The Legislature appreciated that a functioning condominium association is managing its own affairs. Its membership has control over the entity and has the capacity to make changes, additions, removals, as required to ensure that the association fulfills its statutory and practical purposes.

The "plain meaning" of the statute is always to be given effect in a condominium setting. *Scudder v. Greenbrier C. Condominium Ass'n., Inc.*, 663 So.

2d 1362 (Fla. 4th DCA 1995). The Florida Condominium Act lists very specific instances where a receiver can be appointed, as stated *supra*, but none of them exist in this case. The Third District has held that the efficient management of a condominium association is not a cognizable basis for the appointment of a receiver to control the association. *All Seasons*, 8 So. 3d at 435. Thus, even if the Second District thought that the Association was not maintaining the Granada Lakes Villas property properly, that is not a statutory basis, and thus, not a cognizable basis under Florida statutory law and precedent for the appointment of a receiver. The trial judge was correct in determining, on rehearing, that the courts should not become entangled in a dispute where, if there was a serious problem affecting Association members, those members have the statutory right and ability to rectify or ameliorate the problem by voting out or recalling the Board members.

The only other avenue through which the Plaintiffs might have been able to seek the appointment of a receiver was pursuant to the Not-for-Profit Corporation Act. Florida Statutes § 617.1432 states the following:

> (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

§ 617.1432, Fla. Stat. This statute limits the appointment of a receiver for a not-

for-profit corporation, such as the Association, when a judicial proceeding has been initiated to dissolve the corporation. *See Phillips v. Greene*, 994 So. 2d 371 (Fla. 3d DCA 2008). It was inapplicable here, however, because none of the parties have filed a lawsuit seeking to dissolve the Association.

CONCLUSION

As the trial court noted in its Order, none of the caselaw authority submitted by Respondents was "case specific to the facts of this case." Meanwhile, *All Seasons* is directly on point. Accordingly, the trial court was erroneously advised that it possessed the inherent authority to impose a receivership upon a properly elected and functioning Association, expressly and directly conflicting with *All Seasons*. This Court should exercise its jurisdiction to resolve the express and direct conflict caused by the Second District's erroneous rejection of precedent.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

WE CERTIFY that the foregoing Amended Original Jurisdictional Brief has been produced in a 14-point Times New Roman type and in compliance with Fla. R. App. Pro. 9.210, 9.120 and 9.100(l).

_____

JOHN S. PENTON, JR.
KATIE M. MERWIN

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and accurate copy of the foregoing was served via Federal Express this 26th day of March 2012 to the Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927, and via U.S. Mail to: **Denise V. Powers, Esq.,** Denise V. Powers, P.A., 2600 Douglas Road, Suite 607, Coral Gables, FL 33134, **Jeffrey P. Shapiro, Esq**., Shapiro Ramos, P.A., Biscayne Building, Suite 516, 19 West Flagler Street, Miami, FL 33130, **Jose M. Herrera, Esq**., 2350 Coral Way, Suite 201, Miami, FL 33145 and **Eric Glazer, Esq.,** Glazer & Associates P.A., 3113 Stirling Road, Suite 201, Hollywood, FL 33312.

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