IN THE SUPREME COURT OF FLORIDA

CASE NO: SC11-2590

DISTRICT COURT CASE NO.: 2D11-1188

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 SECOND DISTRICT COURT OF APPEAL

JURISDICTIONAL ANSWER BRIEF OF RESPONDENTS

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SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeal in *Metro-Dade Investments, Co. v. Granada Lakes Villas Condominium, Inc.,* 74 So.3d 593 (Fla. 2d DCA 2011) does not expressly and directly conflict with the decision of the Third District Court of Appeal in *All Seasons Condominium Association, Inc. v. Busca,* 8 So.3d 2009 (Fla. 3d DCA 2009). Without the constitutionally mandated conflict, there is no basis for this Court's discretionary jurisdiction.

STANDARD OF REVIEW

This Court must determine if the decision of the Second District Court of Appeal expressly and directly conflicts with a decision of this Court or of another district court of appeal. Art. V, § 3(b)(3), Fla. Const.

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL DOES NOT PROVIDE A CONSTITUTIONALLY MANDATED DIRECT AND EXPRESS CONFLICT WITH ANY DECISION OF THIS COURT OR WITH ANY OTHER DISTRICT COURT OF APPEAL.

Pursuant to art. V, § 3(b)(3), Fla. Const., this Court needs direct and express conflict as a basis for its jurisdiction.

A. The decision of the District Court creates no express and direct

conflict upon which to base jurisdiction.[1]

The jurisdiction of this Court is constitutionally limited by Article V, §3(b)(3), Florida Constitution. Although the Petitioners have attempted to invoke this section as a basis for jurisdiction, no conflict exists to allow review by this Court of the decision of the District Court. Article V, section 3(b)(3) provides that the Florida Supreme Court:

> (3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

To be within the Supreme Court's jurisdiction to review a District Court of Appeal decision in express and direct conflict with another decision, the District Court decision under review must contain a statement or citation effectively establishing a point of law upon which the decision rests. *Tippens v. State,* 897 So.2d 1278 (2005). To keep within the constitutional limits, this Court does not "exercise our discretion where the opinion below establishes no point of law contrary to a decision of this

[1]This is the issue before the Court at this time. Petitioners, in their third brief to this Court, have included arguments on the merits in their brief. This requires an analysis of the facts before the trial court which are not part of the record at this time. Respondents want the lack of jurisdiction addressed by this Court and do not want any further delay due to the Respondents inability to file a proper jurisdictional brief.

Court or another district court." *The Florida Star v. B.J.F.,* 530 So.2d 286, 289 (Fla. 1988). "Express and direct conflict" must be based on the four corners of the decision of the lower court. *Reaves v. State*, 485 So.2d 829 (Fla. 1986).

In order to have conflict jurisdiction, this Court must find "a real, live and vital conflict within the [constitutional] limits." *Nielsen v. City of Sarasota*, 117 So.2d 731, 735 (Fla. 1960) (Court rejected certiorari jurisdiction under former conflict provision, Art. V, §4(2), Fla. Const. (1957)). There is conflict jurisdiction where the rule of law conflicts with a decision of the Florida Supreme Court or of the other District Courts or where there are contrary results on substantially the same facts involved in prior decisions. *Id.*; *Continental Video Corp. v. Honeywell*, 456 So.2d 892 (Fla. 1984) (no basis for conflict jurisdiction where contracts and terms are not similar to those in other cases alleged to be in conflict). No basis exists in the present case.

The Second District in *Metro-Dade Investments, Co. v. Granada Lakes Villas Condominium, Inc.,* 74 So.3d 593 (Fla. 2d DCA 2011) held that "the trial court erred as a matter of law because its right to appoint a receiver in this instance is inherent in a court of equity, not a statutorily created right." 74 So.3d at 595. The opinion in *All Seasons Condominium Association, Inc. v. Busca,* 8 So.3d 434 (Fla. 3d DCA 2009), does not address the legal theory that a trial court has inherent equitable authority to appoint a receiver. In fact, the court specifically cites with approval non-condominium

cases dealing with the appointment of a receiver. *See, e.g., Akers v. Corbett,* 138 Fla. 730, 190 So. 28 (1939); *County Nat'l Bank of N. Miami Beach v. Stern,* 287 So.2d 106 (Fla. 3d DCA 1973); *Apalachicola N. R.R. Co. v. Sommers,* 79 Fla. 816, 85 So. 361 (1920); *McAllister Hotel v. Schatzberg,* 40 So.2d 201 (Fla.1949); *Conlee Constr. Co. v. Krause,* 192 So.2d 330 (Fla. 3d DCA 1966).

The facts in *All Seasons* show that "the trial court appointed a receiver for the association, apparently in order to conduct that process more efficiently." *Id.* at 435. "That" refers to the suit "by the owners of condominium units against the association for money damages arising out of the latter's alleged failure properly to maintain and repair the common elements." *Id.* The legal issue was that the "appointment of receiver must be pursuant and subsidiary to primary claim." The *All Seasons* court cited case law that the "appointment of a receiver [is] improper in absence of fraud, self dealing, or waste of secured asset." *Apalachicola N. R.R. Co. v. Sommers, supra*; *McAllister Hotel v. Schatzberg, supra*; *Conlee Constr. Co. v. Krause, supra*. Thus, the appointment of a receiver was not based on the condominium statutes, but was denied based on the facts presented for the use of the receiver. Thus, *All Seasons* did not hold that a receiver could only be appointed based on the Florida Condominium Act or the Florida Non-Profit Corporation Act. *All Seasons* makes no reference to any statute.

B. **The decision of the Second District followed long established legal precedent to determine that the trial court had inherent equitable jurisdiction to appoint a receiver.**

The Second District in *Metro-Dade* acknowledged that "'The power to appoint a receiver ... lies in the sound discretion of the chancellor to be granted or withheld *according to the facts and circumstances of the particular case.' Ins. Mgmt., Inc. v. McLeod,* 194 So.2d 16, 17 (Fla. 3d DCA 1966) (emphasis added); *see also Edenfield v. Crisp,* 186 So.2d 545, 549 (Fla. 2d DCA 1966) ('The power to appoint a receiver is *always* one that is inherent in a Court of equity ....' (emphasis added))." 74 So.3d at 594. In *Metro-Dade* the trial court reversed its initial decision to appoint a receiver due to its belief that it did not have a statutory basis to do so. *Id.* at 594.

The court in *Metro-Dade* considered and rejected the Petitioners' argument that *All Seasons* was on point.

> In *All Seasons,* the Third District summarily held that "there [was] simply no cognizable basis for such an appointment in such a case." 8 So.3d at 435. The cases the appellate court relied upon in support of its conclusion pertained to a proper appointment of a receiver pursuant to a primary claim or in conjunction with the presence of fraud, self-dealing, or waste of a secured asset. *Id. All Seasons* does not cite to sections 617.1432, 718.117, and 718.1124 in support of its holding.

74 So.3d at 595. The Second District also noted that "*All Seasons* does not cite to sections 617.1432, 718.117, and 718.1124 in support of its holding." 74 So.3d at 595.

The Second District "disagree[d] with Granada Lakes' assertion that sections

617.1432, 718.117, and 718.1124 restrict the right of a trial court to appoint a receiver in *any* action concerning a nonprofit corporation or condominium association." 74 So.3d at 595 (emphasis in original). The Petitioners' position would limit the appointment of a receiver in any action involving a condominium to "the dissolution of a nonprofit corporation, after a natural disaster when 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." *Id.*

The Second District addressed each of Petitioners' arguments that the appointment of a receiver by the trial court was limited to sections 718.117 and 718.1124 of the Condominium Act and section 617.1432 of the Not-for-Profit Act. Petitioners argue that the decision in *Metro-Dade* is contrary to Florida law and the above statutes. Not only is that position wrong, but it does not come within the limited ambit of this Court's jurisdiction.

The legal concept that the authority to appoint a receiver is inherent in the equitable jurisdiction of the trial court is not new. *Insurance Management, Inc. v. McLeod,* 194 So.2d 16, 17 (Fla. 3d DCA 1967). No conflict exists to provide a constitutional basis for discretionary review by this Court.

CONCLUSION

RESPONDENTS, METRO-DADE INVESTMENTS CO. and SANTA BARBARA LANDINGS PROPERTY OWNER'S ASSOCIATION, INC., respectfully request that this Court not exercise its discretionary jurisdiction as no express and direct conflict exists for this Court to resolve.

The decision of the Second District Court of Appeal forms no basis for conflict jurisdiction for review by this Court. The District Court followed well-settled law and precedent, including decisions by this Court. Petitioners take issue with the result not the law. This Court should decline jurisdiction for failure to meet the constitutional requirements of this Court's discretionary jurisdiction.

Respectfully submitted,

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Denise V. Powers, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of April 2012 to: John S. Penton, Esq., Cole, Scott & Kissane, P.A., 1645 Palm Beach Lakes Boulevard, 2nd Floor, West Palm Beach, Florida 33401; Eric M. Glazer, Esq., Glazer and Associates, P.A., One Emerald Place, 3113 Stirling Road, Suite 201, Hollywood, Florida 33312; Jeffrey P. Shapiro, Esq., Shapiro Ramos, P.A., 19 West Flagler, Suite 601, Miami, Florida 3313, and Jose M. Herrera, Esq., Jose M. Herrera, P.A., 2350 Coral Way, Suite 201, Miami, Florida 33145.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing petition has been prepared with Times New Roman 14-point font and is in compliance with Fla. R. App. P. 9.210(a)(2).

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