IN THE SUPREME COURT OF FLORIDA

VILLASOL COMMUNITY
DEVELOPMENT DISTRICT,
Appellant,

CASE NO.: SC17-1293
L.T. CASE NO.: 5D16-1774;
492015CA000254OCXXXX

vs.

TC 12, LLC,

Appellee.

_____/

JURISDICTIONAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

Appellant, Villasol Community Development District, a special purpose unit of local government, seeks discretionary review of a determination by the Fifth District Court of Appeal that, despite its status as a local government, its liability for damages due to a wrongful injunction is not limited to the amount of the bond it posted. *Villasol Community Development District v. TC 12, LLC*, 2017 WL 1788021 (Fla. 5th DCA 2017) (the "Opinion").

The appeal below arose from a non-final order determining that Appellant's liability for wrongful injunction damages sought by Appellee was not limited by the amount of an injunction bond discretionarily established and required by the Trial Court and duly posted by Appellant. Appellant is a community development district existing under Chapter 190, Florida Statutes, and levied special assessments to pay bond debt associated with the development. When the developer did not pay the assessments, Appellant foreclosed and acquired title to certain parcels. One of those parcels was subject to delinquent ad valorem taxes. TC 12, LLC, Appellee, acquired tax certificates for those taxes and applied for a tax deed. Upon learning of TC's tax deed application, Appellant filed the action below, seeking a writ of prohibition or injunction to stop the pending tax sale and seeking a declaratory judgment as to the rights of the parties holding coequal tax liens.

The trial court entered an order granting a temporary injunction and requiring Appellant to post a $10,000.00 bond, notwithstanding Appellant's status as a "political subdivision of the State." After the trial court dissolved the injunction, Appellee filed a motion seeking damages against the injunction bond pursuant to Fla. Stat. § 60.07. In the motion, Appellee expressly asserted that its damages were not capped by the amount of the injunction bond, and the trial court agreed. The Fifth District affirmed the trial court's order, holding that Appellant had waived sovereign immunity by filing the request for an injunction, and that such "waiver is not limited to the amount of the posted bond." (See Appendix)

SUMMARY OF ARGUMENT

THE DISTRICT COURT'S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH AN OPINION OF THIS COURT THAT THE AMOUNT OF WRONGFUL INJUNCTION DAMAGES THAT MAY BE AWARDED AGAINST A GOVERNMENTAL ENTITY IS CAPPED BY THE AMOUNT OF THE BOND POSTED.

This Court held in *Provident Management Corporation v. City of Treasure Island,* 796 So. 2d 481, 487 (Fla. 1998) (also referred to herein as *"Provident II")* that when a governmental entity seeks a temporary injunction and a bond is posted, the governmental entity is liable only up to the amount of the bond. By eliminating this limit, the District Court's opinion expressly and directly conflicts with *Provident II.*

ARGUMENT

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH *PROVIDENT MANAGEMENT CORPORATION V. CITY OF TREASURE ISLAND*, 796 So. 2d 481 (FLA. 2001).

The holding of the Fifth District is expressed as follows:

> "A governmental body waives sovereign immunity when it takes affirmative action to obtain an injunction. *State v. Bradenton Grp., Inc.*, 26 So. 3d 636, 637 (Fla. 5th DCA 2010). The waiver is not limited to the amount of the posted bond. It is the invocation of equity jurisdiction that gives rise to the waiver, not the posting of a bond."

The Opinion is premised upon the authority of *Bradenton Group*. In *Bradenton Group*, the panel quoted from *Provident II*. Both cases provided that a governmental entity waived sovereign immunity when it obtained a temporary injunction and that such waiver was unlimited *when no bond was posted*. Because a bond was required and posted before the trial court below, the result in *Bradenton Group* should have been distinguished. However, the language in *Bradenton Group* presented the standard that should apply where a bond is posted:

> "The conclusion we reach provides the optimal balance between the interests of government entities and the interests of the wrongfully enjoined litigants. A governmental entity seeking injunctive relief has the option not to seek a temporary injunction but to wait and obtain a permanent injunction after a full presentation of evidence and a determination of entitlement to the relief. The government entity has the further choice to attempt to obtain the temporary injunction with a bond ***so as to cap damages in the event the injunction is wrongfully***

> ***entered***...." *Bradenton Group*, at 636, citing *Provident II* at 487 (emphasis supplied).

The Fifth District's opinion failed to follow the rationale of its own holding in *Bradenton Group* and, by doing so, departed from this Court's holding in *Provident II*. The rationale of *Provident II* described the sovereign immunity waiver as follows:

> "If a bond had been posted, the governmental entity would be liable up to the amount of the bond. This is because the bond obligation is likened to a contractual obligation for which sovereign immunity has been waived." *Provident II* at 486.

This Court has discretion, under Article V, Section 3(b)(3) of the Florida Constitution and Fla. R. App. P. 9.030(a)(2)(A)(iv), to review decisions of a district court of appeal that "expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law." The requirement of "express and direct" conflict does not require that the district court identify specifically the conflicting case, but is met when a discussion of legal principles involved supplies a sufficient basis to determine that a conflict exists. *Ford Motor Co. v. Kikis*, 401 So. 2d 1341, 1342 (Fla. 1981). Such a conflict exists when the district court announces, "a rule of law that conflicts with a rule previously announced by this Court or another district court." *Wallace v. Dean*, 3 So. 3d. 1035,

1039 (Fla. 2009) (at footnote 4), citing *Neilsen v. City of Sarasota*, 117 So. 2d 731, 734 (Fla. 1960).

The conflict between the Opinion and *Provident II* is apparent on the face of the Opinion. The Opinion provides that, where a governmental entity obtains a temporary injunction and furnishes a bond, "the waiver is not limited to the posted bond." *Provident II* provided that the bond serves to "cap damages in the event the injunction is wrongfully entered....[1]" and that "[i]f governmental entities desire to limit their liability through a bond, with or without surety, they will be able to do so.[2]" The contrast between these holdings could not be more stark.

CONCLUSION

This Court in *Provident II* struck a careful balance between the rights of private litigants in temporary injunction cases and the desire of governmental entities to protect the public treasury by providing injunction bonds when they seek temporary injunctions. The Opinion rejects that balance and ignores the rule of law set forth by this Court in *Provident II*. Because the Opinion so clearly conflicts with *Provident II* and because of the important public policy considerations at stake, this Court should exercise its discretion and accept jurisdiction in this matter.

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[1] *Provident II*, at 487

[2] *Id.*, at 488.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2017, the foregoing was filed electronically using the Florida Courts E-filing Portal and was furnished by email to:

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CERTIFICATE OF COMPLIANCE

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