IN THE SUPREME COURT OF FLORIDA

QUIETWATER ENTERTAINMENT, INC., FRED SIMMONS, MICHAEL A. GUERRA JUNE B. GUERRA, WAS, INC., and SANDPIPER-GULF AIRE INN, INC.,	)	
Petitioners,	)	**CASE NO. SC05-215**
v.	)	**Lower Tribunal Case No. 1D03-4396**
ESCAMBIA COUNTY, FLORIDA,	)	
Respondent.	)	

PETITIONERS' BRIEF ON JURISDICTION

APPEAL FROM THE DISTRICT COURT OF APPEAL

FOR THE FIRST DISTRICT

THOMAS J. GILLIAM, JR.
Florida Bar Number 0146821
DANNY L. KEPNER
Florida Bar Number 0174278
SHELL, FLEMING, DAVIS & MENGE, PA
Post Office Box 1831
Pensacola, Florida 32591-1831
Telephone (850) 434-2411
Facsimile (850) 435-1074
Attorneys for Petitioners

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioners, Quietwater Entertainment, Inc., Fred Simmons, Michael A. Guerra, June B. Guerra, WAS, Inc., and Sandpiper-Gulf Aire Inn, Inc., will be referred to collectively herein as "Petitioners." Respondent, Escambia County, Florida, will be referred to herein as "Respondent" or as "County." References to the Appendix of this Petitioners' Brief on Jurisdiction shall be made with an "A" indicating the Appendix, followed by the page number of the appended decision of the lower tribunal, e.g. (A2).

This is an appeal from a decision rendered by the First District Court of Appeal affirming an order of the Circuit Court for the First Judicial Circuit granting final summary judgment in favor of Respondent, Escambia County, Florida.

The essential facts of the case are not in dispute. (A2). Respondent is the fee simple owner of substantially all of the land on Santa Rosa Island not otherwise owned by the Federal Government. (A2). The Petitioners lease real property from Respondent through its agent, the Santa Rosa Island Authority ("SRIA"). (A2). The SRIA is an entity created for such purpose by special act of the Florida Legislature in Chapter 24500, Laws of Florida (1947). (A2). Although the SRIA collects rent on Petitioners' leases, it does not provide law enforcement or mosquito control services for the Petitioners. (A2). Law enforcement and

mosquito control are provided by the County. (A2).

In order to recover the cost of providing law enforcement and mosquito control services on Santa Rosa Island, the County created a Municipal Services Benefit Unit ("MSBU") which includes all real property on Santa Rosa Island owned by the County. (A2). The MSBU was enacted by Escambia County Ordinance 89-11, which was codified in §§ 46-201 to 46-218 of the Escambia County Code of Ordinances. (A2). All real property within the MSBU, including the property leased by Petitioners, is subject to special assessments for law enforcement and mosquito control services. (A2). In enacting the MSBU, the County made a legislative finding that the assessed services provide a benefit to the real property within the MSBU. (A3).

Petitioners filed suit seeking a declaratory judgment, arguing that the MSBU is invalid because it does not confer any direct, special benefit to the real property it burdens. (A3). As a basis for their argument, Petitioners relied on three rulings by the Florida Supreme Court and one ruling by the Fifth District Court of Appeal which specifically determined that law enforcement activities and other general governmental services are not the proper subject of special assessments because such services do not confer a direct, special benefit upon the real property burdened by such assessments. (A3). See Lake County v. Water Oak Management Corp., 695 So. 2d 667 (Fla. 1997); Collier County v. State, 733 So.

2d 1012 (Fla. 1999); City of North Lauderdale v. SMM Properties, Inc., 825 So. 2d 343 (Fla. 2002); and Donnelly v. Marion County, 851 So. 2d 256 (Fla. 5th DCA 2003).

Upon the filing of cross motions for summary judgment, the trial court entered a Final Summary Judgment in favor of Respondent. (A1). On appeal, the Final Summary Judgment was affirmed by the First District Court of Appeal. (A5).

SUMMARY OF THE ARGUMENT

The discretionary jurisdiction of the Florida Supreme Court should be granted because the decision of the First District Court of Appeal below expressly and directly conflicts with three decisions of the Florida Supreme Court and one decision by the Fifth District Court of Appeal on the same question of law.

ARGUMENT

Petitioners file this Brief on Jurisdiction in support of their Notice invoking the discretionary jurisdiction of the Florida Supreme Court as allowed pursuant to Art. V, § 3(b)(3), Fla. Const., and Fla. R. App. P. 9.030(a)(2)(A)(iv).

I. THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT SHOULD BE GRANTED BECAUSE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IS EXPRESSLY AND DIRECTLY IN CONFLICT WITH THREE DECISIONS OF THE FLORIDA SUPREME COURT AND ONE DECISION BY THE FIFTH DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW

There is little dispute in the facts of the present case, and this appeal can be summarized as involving a single issue of law: Can the Respondent, Escambia County, Florida, impose non-ad valorem special assessments on real property through a Municipal Services Benefit Unit for purposes of funding law enforcement and mosquito control services?

The prior cases of this Court expressly indicate that the Respondent cannot impose special assessments to fund law enforcement and mosquito control services. This Court first addressed the issue in dicta in Lake County v. Water Oak Management Corp., 695 So. 2d 667, 670 (Fla. 1997). Later, this Court made its position clear by quoting its dicta from Water Oak Management in the body of its decision in Collier County v. State, 733 So. 2d 1012, 1017-18 (Fla. 1999). In Collier County, this Court ruled:

> In rejecting the criticism that our decision in Water Oak Management would open the flood-gates for municipalities and counties to impose improper taxes labeled as special assessments, we made it clear that "**services such as general law enforcement activities, the provision of courts, and indigent health care are**, like fire protection services, **functions required for an organized society**. However, unlike fire protection services, those services provide no direct, special benefit to real property. **Thus, such services cannot be the subject of a special assessment**."

Id. (emphasis in original). A plain reading of Water Oak Management indicates that this Court was directly addressing law enforcement and other general governmental services similar to the mosquito control in the present case.

Following Water Oak Management, this Court ruled again on the issue of special assessments in a case involving emergency medical services. City of North Lauderdale v. SMM Properties, Inc., 825 So. 2d 343 (Fla. 2002). The decision in SMM Properties made it clear that this Court distinguishes between benefits provided to people and benefits provided to land with regard to special assessments. Simply put, benefits provided to land may be the subject of a special assessment, but benefits provided to people may not. In the instant case, the law enforcement and mosquito control services provided by Respondent are benefits provided to people, and under the clear pronouncement in SMM Properties, the County may not impose special assessments on the land for the cost of such services.

The issue of using special assessments to fund law enforcement has also been considered by the Fifth District Court of Appeal. Donnelly v. Marion County, 851 So. 2d 256 (Fla. 5th DCA 2003). Citing the trio of cases discussed hereinabove—Water Oak Management, Collier County, and SMM Properties—the Fifth District observed that those cases "reflect the supreme court's recognition of limits on the use of special assessments to fund municipal-type services that, while providing a general benefit to individuals, do not confer a direct benefit upon the land burdened by the assessment." Id. at 263-264.

Relying on the authority of the Supreme Court cases, the Fifth DCA then reversed the decision of the circuit court with the following analysis:

> "Enhanced" law enforcement services provide no more direct, special benefit to real property than basic law enforcement activities. The defendants' argument confuses the **nature** of the service with the **level or degree** of such service. It is the nature of law enforcement services which precludes funding by way of special assessment because such services, while undoubtedly beneficial to individuals, do not directly benefit the real property being burdened."

Id. at 264 (emphasis in original).

Despite the decisions by this Court and the Fifth DCA which specifically address law enforcement, the First DCA has rendered a decision in the present case which is expressly and directly in conflict with those decisions.

In the decision rendered below in this matter, the First DCA discussed the above-cited decisions rendered by this Court and by the Fifth DCA. (A3-4).

Nevertheless, the First DCA disregarded those decisions and relied instead upon the legislative findings made by the Respondent at the time it enacted the ordinance creating the MSBU. (A4-5).

Petitioners concede that the established rule prior to the above-cited trio of Supreme Court cases was that a legislative finding of a special benefit being conferred on property subject to a special assessment should be upheld unless that finding is arbitrary. See Sarasota County v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 184 (Fla. 1995). However, the prior "arbitrary" standard has been modified by the later decisions of this Court which require a "logical relationship" between the services provided and the benefit to real property. Water Oak Management, 695 So. 2d at 669. See also SMM Properties, 825 So. 2d at 349-50 (discussing the "logical relationship" test created by this Court in Lake County v. Water Oak Management).

The creation of the logical relationship test demonstrates that this Court shifted its focus away from a pure "arbitrary" standard to a "logical relationship" standard in order to address the growing problem of counties mislabeling taxes as special assessments to avoid the Constitutional limits on ad valorem taxation. After establishing the "logical relationship" test, this Court ruled as a matter of law that law enforcement services cannot be the subject of a special assessment because such services do not provide a direct, special benefit to real property.

Collier County v. State, 733 So. 2d 1012, 1017-18 (Fla. 1999). Despite the above-described case law, the First DCA has rendered a decision expressly and directly in conflict with this Court and the Fifth DCA.

The dissent in the First DCA decision below certainly recognized that court's departure from the established case law of this Court and of the Fifth DCA. The dissent wrote, "[t]he Florida Supreme Court has expressly stated general law enforcement, unlike fire protection services, provides no direct, special benefit to real property, and may not be the subject of a special assessment." (A6).

The dissent also recognized that the Fifth DCA's decision in Donnelly "serves as persuasive authority that even 'enhanced' law enforcement services do not directly benefit the property being burdened, despite expert testimony that enhanced law enforcement generally renders property more valuable and marketable." (A6). The dissent's observation that the Fifth DCA ruled against the special assessment in Donnelly despite the fact that there was expert testimony of a benefit being conferred shows that the dissent and the Fifth DCA no longer adhere to the "arbitrary" standard upon which the First DCA based its decision in this case. (A6). Thus, the dissent recognized the split between the First and Fifth District Courts of Appeal on the issue of law set forth in this case.

The dissent concluded, "[b]ecause we are bound to follow the precedent of the Florida Supreme Court, the case should be reversed." (A6). Thus, the dissent

recognized the split between the Florida Supreme Court and the First District Courts of Appeal on the issue of law set forth in this case.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court exercise its discretionary jurisdiction and grant review of the decision of the First District Court of Appeal in this cause.

Respectfully submitted,

THOMAS J. GILLIAM, JR.
Florida Bar Number 0146821
DANNY L. KEPNER
Florida Bar Number 0174278
SHELL, FLEMING, DAVIS & MENGE, PA
Post Office Box 1831
Pensacola, Florida 32591-1831
Telephone (850) 434-2411
Facsimile (850) 435-1074
Attorneys for Petitioners

* * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the INITIAL BRIEF OF APPELLANTS has been furnished to Charles V. Peppler, Esquire, of the Escambia County Attorney's Office, 14 West Government Street, Room 411, Pensacola, Florida 32501, attorney for Defendant/Appellee by Hand Delivery, this 11th day of February, 2005.

_____
THOMAS J. GILLIAM, JR.

* * * * *

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Initial Brief of Appellants has been prepared using Times New Roman 14-point font in compliance with the font requirements of Fla. R. App. P. 9.210.

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THOMAS J. GILLIAM, JR.