

PENDING LITIGATION – INTERIM REPORT – October 26, 2010
PREPARED BY THE CITY ATTORNEY

**CITY OF CORAL GABLES VS. BIJAN'S CORAL GABLES, LLC D/B/A
BIJAN'S KEY WEST GRILL AND BIJAN NAKHJAVIAN.**

Circuit Court – General Jurisdiction Division – Case No. 10-26973 CA 13

On May 6, 2010, the City of Coral Gables filed its Complaint against Bijan's Coral Gables, LLC and Bijan Nakhjavan for Breach of Lease Agreement. The Defendants were served on May 7, 2010 and their answers were due by May 26, 2010. To date, the City has not been served with an Answer by either Defendant. On June 3, 2010, the City of Coral Gables filed a Motion for Default. The City is awaiting the Clerk of Court's and has entered a Default Judgment. The City filed a Motion for Entry of Final Judgment by the Court. The Final Judgment for \$630,629.80 was entered by the Court on July 6, 2010.

LEO BUENO AND LEO BUENO ATTORNEY, P.A., V. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 09-30619 CA 30

Plaintiffs filed for declaratory judgment after the Code Enforcement Board issued a guilty finding for violation of the City Code Sec. 66-21 and 101.168 for failure to pay local business tax for 2008-2009 for which a fine was imposed, and alleges that the City does not have authority to assess a penalty charge on such business tax to attorneys, and seeking to certify this as a class action on behalf of fellow attorneys practicing in the City. **Court approved agreed order to stay proceedings pending final resolution of the appeal in *Addison* class certification case currently before the District Court of Appeal for the Second District of Florida. Supreme Court has been asked to jurisdiction in the Addison case.**

CITY OF CORAL GABLES V. QUANTUM LEAP NETWORK, INC.

Circuit court – General Jurisdiction Division – Case No. 09-17991 CA 27

In March of 2009, the City filed its complaint for specific performance of a license agreement for failure of Quantum Leap Network to complete the process to transfer the domain name, www.venetianpool.com, to the City of Coral Gables. The City has amended its complaint to add claims that a new domain name used by Quantum Leap, www.coralgablesvenetianpool.com, violates the City's trademark rights and constitutes unfair competition. The City has also added as individual defendants Robert Burr and Robin Burr for their participation in these wrongful acts which include the use of the City's service marks to promote their individual businesses. The defendants have retained Joel Hirschhorn and Bennett Hirschhorn to represent them. The depositions of David Brown, Robert Burr and Robin Burr have been taken. Upon the request of the defendants, the court referred the case to non-binding mediation, to be scheduled within 30 days after

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the Burrs filed their answer to the complaint. The Burrs recently filed their answer and filed counterclaim against the City. Mediation is set for November 4, 2010.

CITY OF TAMPA V. MICHAEL C. ADDISON and RICHARD T. PETITT

13th Judicial Circuit in and for Hillsborough County – Case No. 03-5425; Florida Supreme Court – Case No. SC 07-2198; Second District Court of Appeal – Case No. 06-3168; Second District Court of Appeal – Case No. 09-2059

The Second District Court of Appeal certified a defendant class of all cities and counties in the State with an occupational license tax. Tampa filed an appeal challenging the certification of the defendant class on the basis that significant differences between different cities' and counties' occupational license fee ordinances make it inappropriate for a court to treat all ordinances alike. The Florida League of Cities put together a consortium of cities and retained an appellate attorney, with Coral Gables participating as a named party in the filing of an amicus brief to insure that the City's interests are properly represented in this case. The amicus brief was filed October 9, 2006. Oral Argument was heard April 10, 2007. An opinion was rendered by the 2nd District Court of Appeal affirming the order of class certification. Tampa sought further review from the Florida Supreme Court on the class certification. Since the Florida Supreme Court refused to hear the appeal, the matter is back at the trial court level. The City will continue to defend Coral Gables' interests and support the on-going litigation along with the League and other municipalities which stand to be adversely affected in this decision. The Second District Court of Appeal ruled in our favor in the Addison "attorney/business tax" putative class action case pending in Hillsborough County. Plaintiffs' class counsel tried to sue all cities and counties in Florida in a "non-opt out" defendant class in Hillsborough County and to obtain a res judicata judgment that each local government's business tax against attorneys was unconstitutional. The trial judge had granted our motion and had dismissed all non- Hillsborough local governments from the defendant class and the appeal ensued. The 2nd DCA affirmed in all respects the trial court's order dismissing the non-Hillsborough defendant class members. Following the logic of our brief and argument, the Court held that: (a) the Home Venue Privilege is absolute and does not have a "defendant class action" exception unless created by the Supreme Court or Legislature; (b) each putative member of the defendant class (i.e. your city) is a "party" for the purposes of interposing its individual Home Venue Privilege and has a due process right to assert it. Plaintiff counsel will likely file a request for rehearing (perhaps en banc) and reconsideration within the next 15 days. After that, we expect them to attempt to appeal to the Florida Supreme Court. But the well-reasoned 9 page opinion by the Second DCA renews our confidence that our arguments will prove equally persuasive to the Florida Supreme Court should it take up the appeal. Supreme Court has been asked to take jurisdiction.

DETOURNAY, RANDOL and RIVIERA NEIGHBORHOOD ASS'N V. CITY OF CORAL GABLES and Intervenor, AMACE PROPERTIES

Circuit Court – General Jurisdiction Division – Case No. 07-29458 CA 13

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On September 7, 2007, Plaintiffs filed their complaint for declaratory and injunctive relief against the City seeking to have the Court declare the yacht basin operating at the base of the Mahi Waterway illegal and issue an injunction closing the yacht basin. Amace Properties, Inc. ("Amace"), the abutting property owner, moved to intervene in the case. Both the City and Amace moved to dismiss the complaint which were denied in part and granted in part. On September 7, 2007, Plaintiffs filed their complaint for declaratory and injunctive relief against the City of Coral Gables seeking to have the Court declare the yacht basin operating at the base of the Mahi Waterway illegal and issue an injunction closing the yacht basin. Amace Properties, Inc., the abutting property owner, intervened in the case. The case is set for the trial calendar beginning February 7, 2011.

R. TUCKER, TRUSTEE, Counter-Plaintiff V. JOEL ISRAEL AND CITY OF CORAL GABLES, Counter-Defendants

Circuit Court – General Jurisdiction Division – Case No. 08-30617 CA 06

Counter-Plaintiff, R. Tucker, Trustee, who is the owner of a recorded tax deed on property situated in the MacFarlane Homestead, Lot 27, Block 1-A, filed a countersuit against Joel Israel and the City concerning a City waste lien which the City sold to Mr. Israel, and seeks to declare that the City's delegation, authorization and lien sale certificate is invalid and void. The City filed its Answer and Affirmative Defenses. **Israel has agreed to take over the defense of this case and provide indemnification of the City pursuant to the hold harmless agreement he signed when the lien sale certificates were issued. The case has settled.**

R. TUCKER, TRUSTEE, V. JOEL ISRAEL, BARRY KATZ and CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 09-36939 CA 08

Tucker, the owner of the property at 130 Florida Avenue, filed a quiet title action and the City was named as a defendant by virtue of the certain code enforcement claims against the property which did not involve the lien sale certificates sold to Israel. City's Answer and Plaintiff's Reply have been filed. The case has settled.

KUVIN V. CITY OF CORAL GABLES

Third District Court of Appeal – Case No. 3D05-2845 Circuit Court – Appellate Division – Case No. 03-8911-AP;

Petitioner filed a Petition for Writ of Certiorari seeking a permanent injunction and damages to prohibit the City from enforcing the provisions of its code, arising from a citation which Petitioner received for parking his truck in violation of the Coral Gables

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Zoning Code Section 8-11 and 8-12. The Court, in a ruling rendered October 14, 2005, granted the City's motion for summary judgment and upheld the constitutionality of the City's truck ordinance. The Plaintiff filed a Notice of Appeal with the Third District Court of Appeal, and the City has filed a Motion to Dismiss. The Court dismissed the appeal for failure of Kuvin to comply with the court's November 10, 2005 order. Upon payment of the filing fee, the appeal was reinstated. Kuvin has filed his initial brief in the district court of appeal, and the City filed its answer brief on Sept. 28. Kuvin has to file his reply brief. The court heard oral argument on Tuesday, November 14, 2006 before JJ. Schwartz, Cortinas and Rothenberg. Decision entered August 22, 2007, reversing with directions to enter declaratory judgment for appellant and to vacate the guilty determination of the hearing officer, with J. Rothenberg dissenting with a comprehensive separate opinion. The City has filed with the Third District Court of Appeal a Motion for Rehearing En Banc and a Motion requesting the Court to certify this case to the Florida Supreme Court as a matter of great public importance. **The Court ruled on the City's favor, and Kuvin has asked the Supreme Court to take Jurisdiction and reverse the decision of the District Court of Appeals.**

NAVARRO, MARILYN and HERNANDEZ, JOE V. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 05-18262 (T009835)

Plaintiffs seek a temporary injunction, declaratory relief, and incidental damages arising from a citation which Plaintiffs received for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.

NAVARRO, MARILYN and HERNANDEZ, JOE V. CITY OF CORAL GABLES

Circuit Court – Appellate Division – Case No. 05-357 (T009646)

Petitioners filed a Petition for Writ of Certiorari Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. Meanwhile, the Court granted the City's request to consolidate this case with Case No. 05-422 AP Martinez v. City of Coral Gables. Upon consideration of the Petitioner's Request for Temporary Injunction, the Court denied the request on February 8, 2006. The three-judge panel on March 2, 2006 granted City's Motion to Dismiss petitions for certiorari and to transfer the case to the trial court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**

NOA, PERAZA AND PEREZ SIAM V. CITY OF CORAL GABLES

Circuit Court - Appellate Division – Case No. 06-249 AP

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Petitioners filed a Notice of Appeal with the Appellate Division seeking review of the citation which was issued for parking a truck in violation of the Coral Gables Zoning Code Section 8-11 and 8-12. The parties agree to abate the action pending final decision in Kuvin. Appellant's counsel will file the motion and agreed order with the court. **As this case challenges the same ordinance on essentially the same grounds as Kuvin, the case is awaiting resolution of the Kuvin appeal.**

GLADYS RODRIGUEZ V. CITY OF CORAL GABLES

Appellate Division Case No.: 10-215 AP Ticket Case No.: T38369

Gladys Rodriguez was issued a code enforcement ticket for a violation of a City Code Section 10-26, for allowing a dog to run at large without a leash. On May 4, 2010, the Hearing Officer entered an Order finding Ms. Rodriguez guilty of the violation and ordering her to pay a fine and administrative costs. Ms. Rodriguez filed an appeal of the Order and a Motion for Rehearing. The Motion for Rehearing is scheduled to be heard by the City's Hearing Officer on July 7, 2010. In the meantime, the Honorable Mark King Leban entered an Order on June 9, 2010, relinquishing Circuit Court appellate jurisdiction until August 7, 2010, if no ruling is made on the Motion for Rehearing by the Hearing Officer. As a result of not coming before the hearing officer in July, Ms. Rodriguez has entered a new Motion to Relinquish Circuit Court Appellate Jurisdiction in order to be re-heard by the hearing officer. **The Hearing Officer denied Ms. Rodriguez' Motion for Re-Hearing on September 8, 2010.**

SOMERSET ACADEMY, INC. V. CITY OF CORAL GABLES

Case No. 10-36228 CA 40, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida

This lawsuit was served on the City on July 2, 2010. Plaintiff Somerset Academy filed a complaint for temporary and permanent injunctive relief and for declaratory judgment. Somerset Academy seeks to operate a charter school in the City at the University Baptist Church at 624 Anastasia Avenue. Somerset has submitted an application to the City for a certificate of use to operate a charter school for up to 675 students at the Church. (Somerset has already been issued a CU for the operation of a 110 student charter school there). The existing land use designation on the property is Religious/Institutional, and it is zoned "S". Accordingly, the City is requiring Plaintiff to undergo the requisite processes, including obtaining a change in land use and zoning designations, filing a conditional use and site plan as well as a certificate of use application. Plaintiff claims that Florida Statute § 1002.33(18)(c) exempts charter schools from complying with these municipal requirements other than the Florida Building Code and Florida Fire Prevention

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Code. Plaintiff is seeking to have the Court require the City to issue a CU (and all other necessary approvals) for a charter school up to 675 students and to prevent the City from applying the City's Comprehensive Plan and Zoning Code to deny the operation of the charter school. Finally, Somerset is seeking to have the Court declare that Fla. Stat. § 1002 preempts and supersedes any provisions of the City's Zoning Code and City's Comprehensive Plan. On July 20, 2010, the Court held a hearing on Plaintiff's emergency motion for temporary injunction. The Court denied the motion, finding no preemption and no grounds for a temporary injunction. Plaintiff did not appeal the ruling and is proceeding with the litigation, attempting to obtain a permanent injunction. In addition, the Biltmore Neighborhood Association and Carlos Carta have filed suit challenging the issuance of the Certificate of Use. The parties are seeking to consolidate both cases. A status hearing has been set for September 1 at 1:30 p.m.

**CITY OF WESTON, FLORIDA VS. THE HONORABLE CHARLIE CRIST,
Governor of the State of Florida.**

**Case No. 09-CA-2639 Circuit Court of the Second Judicial Circuit in and for Leon
County, Florida.**

As I previously advised you, we prevailed at the Circuit Court in our SB360 challenge. Judge Francis granted our motion for summary judgment on the unfunded mandate challenge, ruling that "SB 360 (Ch. 2009-96) is declared unconstitutional as a violation of Article VII, Section 18(a), Florida Constitution, and The Secretary of State is ordered to expunge said law from the official records of this State." As to the single subject rule, he found that it is moot as a result of the statutory codification that was passed earlier this year.

Two of the defendants (the Speaker of the House and the Senate President) moved for rehearing, which was denied. In addition, an Affordable Housing Group moved to intervene and seek rehearing which was also denied. The Speaker of the House and the Senate President (but not the Governor or Secretary of State) have appealed the decision regarding the unfunded mandate issue. The City of Weston, as the lead plaintiff, has determined that, in addition to defending the appeal, we should cross-appeal as to the single subject issue. We also intend to seek to by-pass review at the First District Court of Appeal and request that the Florida Supreme Court hear the matter directly.

CITY OF CORAL GABLES
OFFICE OF THE CITY ATTORNEY
List of Mortgage Foreclosure
As of October 21, 2010

<u>Case</u>	<u>Case No.</u>
American Home Mortgage Servicing Inc vs Ana Hernandez	2007- 038753 CA 15
Amtrust Bank v Maria Dora Valencia a/k/a Dora Lopez	08-41654 CA 11
Aurora Loan vs Ruben Garcia	10-13843- CA 27
Aurora Loan vs Juan Rodriguez	13-2010 CA 010125
Aurora Loan vs Yesenia Pouparina	09-86033 CA 22
Aurora Loan v Wendy Sanchez	09-00331 CA 23
BAC Home Loans Servicing v Maria Arias Esquivi	09-91091 CA 02
BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP v Christian Lavin AKA Christian Alfredo Lavin	09-77720 CA 22
BAC Home Loans Servicing LP f/k/a Countywide Home Loans Servicing LP, vs Susana Rueda-Gonzalez	09-57168 CA 23
BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP v Carmen Rodriguez	09-048065 CA 20
BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP v Carmen Rodriguez	09-68654 CA 10
Bank of America vs Jose Joaquin Abad and America Sanchez-Hurtado a/k/a America Sanchez, Husband and wife	09- 60713 CA 25
Bank of America NA vs Carmen R. Delgado	10-12087 CA 30
Bank of America vs Hamilton Gutierrez	09-70870 CA 22
Bank of America vs Juan C. Rodriguez	09-30773 CA 08
Bank of New York Mellon Trust Company vs Norma J. Balsera a/k/a Normi J. Hernandez	09-00866 CA 31
Bank of New York Mellon Trustee vs Frank Marrero	13-2009 CA 050583
Bank of New York Mellon Trustee vs Yanet Marrero	09-72365 CA 21
Bank of New York Mellon vs Howard Cortez a/k/a Howard V. Cortez	08-50763 CA 31

Bank of New York Mellon vs Manuel Garcia Gonzalez	09-51649 CA 04
BankUnited, as Sucesor in Interest to BankUnited, FSB vs Kristian Stensby	13-2009-CA 058722
Bayview Loan Servicing, LLC v Armando Aguirre	09-35336 CA 30
Bayview Loan Servicing, LLC v Raul Gutierrez	10-30187 CA 30
Brickell Place Phase II Association, Inc. vs Lord Toussant	08-34611 CC 23
Chase Home Finance LLC vs Daniel Bach	09-22772 CA 08
Chase Home Finance LLC vs Tracy M. Baker and Jackie Gloria Yee	10-06177 CA 22
Chase Home Finance vs Joanna Casanueva	07-26013 CA 22
Chase Home Finance vs Howard Vicente Cortez	09-85326 CA 22
Chase Home Finance LLC vs Mirtha Garcia aka Mirtha Gilda Garcia	2008-066212 CA 13
Chase Home Finance LLC vs Yamila Gonzalez	08-42353 CA 09
Chase Home Finance LLC vs Darren K. Gordon	08-62744 CA 32
Chase Home Finance LLC vs Javier Antonio Iglesias	09-91023 CA 08
Chase Home Finance, LLC vs Reinaldo Perez	09-61703 CA 01
Chase Home Finance LLC vs Ana Alonso Pujol	08-05153 CA 24
Chase Home Finance LLC vs Michael Rodriguez	09-92420 CA 30
Chase Home Finance LLC vs Jorge F. Vanegas	08-58526 CA 32
Chase Home Finance LLC vs Juan C. Rodriguez, et al	10-24231-CA-24
CitiMorgage Inc vs Silvia C., Castro-Hernandez and Juan Carlos Rodriguez	09-90613 CA 01
CitiMortgage Inc vs Elena Reyes	09-71152 CA 13
CitiMortgage Inc vs Juan A. Rodriguez	08-71275 CA 23
CitiMortgage Inc vs Juan R. Rodriguez	09-21335 CA 6
CitiMortgage Inc vs Alvaro Sanchez	10-40141 CA 27
CitiMortgage Inc vs Miguel Valdes	09-06871 CA 20
CitiBank NA vs Ana Hernandez	07-24075 CA
CitiBank NA vs Juan Francisco Rodriguez a/k/a Juan F. Rodriguez Acosta	09-15675 CA 25
Continental Nat Bank vs Frank J. Segredo	08-79136 CA 01
Countrywide Home Loans Inc. vs Ernesto Delgado	09-20706 CA 05
Countrywide Home Loans Servicing vs William Delgado	09-03642 CA 08
Countrywide Home Loans Inc. vs Pena Holdings	06-22812- CA 27
Deutsch Bank National Trust Company vs Jorge L. Garcia	08-44978 CA 09
Deutsch Bank National Trust Company vs Carlos L. Iglesias	07-11027 CA 21
Deutsch Bank National Trust Company vs Stephen Ostrow, USAA Federal Savings Bank	10-32074 CA 15
Deutsch Bank National Trust Company vs Manuel Perez	09-90462 CA 03
Deutsch Bank National Trust Company vs Julia L. Rodriguez	08-033455 CA 05
Deutsch Bank National Trust Company vs Rodolfo Rodriguez	08-66097 CA 23
Deutsch Bank National vs Yolanda Uribe aka Yolanda Uribe Daravina	09-82512- CA 01

Eastern Financial Florida Credit Union vs Julia Rodriguez	08-24269 CA 24
Eastern National Bank vs Lucia Fraga	09-01722 CA 09
Flagstar Bank, F.S.B. vs Juan Mauricio Rodriguez	08-77231 CA 24
GMAC Mortgage Corporation vs Mariela Rayo a/k/a Mariela Vilaboa	06-07090 CA 31
GMAC Mortgage Corporation vs Luis Rodriguez	10-03080 CA 32
Greenpoint Mortgage Funding, Inc. vs Maria Del Carmen Diaz	05-00464 CA 22
HSBC Bank USA, Nat. Assoc vs. Miguel Del Sol	08-62794 15
HSBC Bank USA, Nat. Assoc vs Antonio Lazaro Molejon a/k/a Alberto Lazaro Molejo	09-42705 CA 27
HSBC Bank USA, Nat. Assoc vs. Richard Martinez	09-53628 CA 32
HSBC Bank USA, Nat. Assoc vs Celestina Pileggi	10-361850 CA 22
HSBC Bank USA, Nat. Assoc vs Luis F. Rodriguez	09-90610 CA 20
HSBC Bank USA, Nat. Assoc vs Rodolfo Rodriguez	09-04189 CA 23
HSBC Bank USA, Nat. Assoc vs Lucia Santiago	13-2008- CA 031258
HSBC Bank USA Nat Assoc vs D'Angelo Salvatore	2007-39464 CA 01 Div 02
HSBC BANK USA Nat Assoc vs Danilo A. Ventura	10-13236 CA 24
INDYMAC Federal Bank FSB vs Eduardo Arias	08-81485 CA 01
INDYMAC Federal Bank FSB vs Orlando Nicholas Milan	09-00044 CA 21
INDYMAC Federal Bank FSB vs Orin R. Fogelquist Jr.	08-07215 CA 30
INDYMAC Bank, FSB v Maria Victoria Lopez	2008-CA 007215
J.P. Morgan Chase Bank, NA vs Maria Magdalena Cabrera	2009 CA 031853 09
JP Morgan Chase Bank NA vs Rolando F. Cruz	09-034406 CA 32
JP Morgan Chase Bank NA vs Juan Rodriguez	08-62471 CA 09
JP Morgan Chase Bank NA vs Juan C. Rodriguez; Moraima Brito	09-34324 CA 05
JP Morgan Chase Bank NA vs Remy Developments of Florida, Inc.	09-83053 CA 04
JP Morgan Chase Bank NA vs Lisa Valdes	13-2008- CA 053173
LaSalle Bank NA vs Lucia Fraga	09-09114 CA 02
National City Bank vs Raul C. Gutierrez-German a/k/a Raul C. Gutierrez	08-66333 CA 01(02)
One West Bank, FSB vs Franklin R. Rodriguez	09-92887 CA 20

