

**PENDING LITIGATION – INTERIM REPORT – November 17, 2009**  
**PREPARED BY THE CITY ATTORNEY**

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**DANILO BENEDIT v. CITY OF CORAL GABLES**

**United States District Court for the Southern District of Florida – Case No. 08-23558-CIV-SEITZ/O’SULLIVAN**

The Plaintiff filed an action claiming the City violated the Whistleblower Act, Sec. 112.3187, Florida Statutes, and the First Amendment to the United States Constitution for allegedly taking adverse action against him for engaging in protected activity under the law. The Court has set this matter for trial during the two week trial calendar commencing June 21, 2010. The Court also issued an order referring this matter to mediation. The parties have exchanged initial disclosures pursuant to Rule 26, Federal Rules of Civil Procedure. The City has sent out initial written discovery to the Plaintiff and subpoenas to some of the witnesses he identified. **Plaintiff's deposition is currently scheduled for November 17, 2009.**

**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.**

**CITY OF CORAL GABLES V. A.D.P.T., AND ROBERT RUGILO, INDIVIDUALLY**

**Circuit Court – General Jurisdiction Division – Case No. 07-33733 CA 22**

The City filed a Complaint for Injunctive Relief against the City's former provider of microfilming, digitizing and storing of plans and other documents for the City's Building and Zoning Department, and other departments, seeking an order compelling ADPT to return to the City's custody and control the index to the records which ADPT claims to be proprietary in nature. An Evidentiary Hearing took place December 6, 2007 before the Honorable David C. Miller. Judge Miller ordered a continuation of the hearing wherein the following was to occur: (1) a site visit at the ADPT warehouse before December 24, 2007, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz. This site visit took place on December 12, 2007;

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(2) a site visit at the Certified Records Management (CRM) warehouse before January 15, 2008, with Mr. Rugilo, Mr. Ruck, Dona Lubin and Lourdes Alfonsin Ruiz; and (3) a presentation by ADPT of its document retrieval process at the City of Coral Gables City Hall. The CRM site visit took place January 11, 2008, at their Tampa warehouse and the ADPT demonstration will be scheduled for late January. The City's complaint for injunctive relief may be amended to include a claim for breach of professional services agreement for failing to provide the City with an index and failure to microfilm and digitize the City's plans and documents. Alternatively, the City may file a separate lawsuit for the claim for breach of agreement. The City's motion to quash ADPT's answer, affirmative defenses, and counterclaim was filed December 5, 2008. The City has filed a motion asking the trial court for sanctions to force the defendants to deliver all indices of the City's documents, as well as any computer codes required to read the indices, which ADPT purportedly prepared when ADPT warehoused the Building and Zoning Department's documents. In addition, the City has filed a Civil Remedy Notice of Insurer Violations against First Sealord Surety, Inc., for denying, on spurious grounds, the City's claim against the performance bond issued by First Sealord to assure the performance by ADPT of its contract obligations to the City. The City's Motion for Order to Show Cause why Sanctions for Civil Contempt should not be entered against Defendants is scheduled for August 20, 2009. **Motion granted and hearing set for September 24, 2009. On September 24, 2009, the Court heard the motion and ordered the defendants to deliver the City's index, together with all computer codes required to be able to read the index, by October 7, 2009. On October 9, the defendants delivered a computer disk to the City. The City has sent the disk to CRM for analysis to determine whether the disk complies with the Court's order.**

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

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

On March 5, 2009, the City filed its Complaint for specific performance of its license agreement for failure of Quantum Leap Network to complete the process to transfer the domain name, [www.venetianpool.com](http://www.venetianpool.com), to the City of Coral Gables. On April 21, 2009, the Court struck the Defendant's pro se answer, and required Quantum Leap to hire an attorney to represent it in this case. The City has chosen to amend its complaint to include a claim that a new domain name used by Quantum Leap, [www.coralgablesvenetianpool.com](http://www.coralgablesvenetianpool.com), violates the license agreement and the City's trademark rights. The Amended Complaint was served on August 11, 2009. The defendant has retained attorneys Joel Hirschhorn and Bennett Hirschhorn to represent it in this action. Quantum Leap has filed an answer to Count I of the amended Complaint and a motion to dismiss Count II. As defenses to Count I, Quantum Leap asserts that the signed agreement between it and the City was "a draft, not final version of the contract being negotiated," that it did not breach the agreement, and that the City failed to give proper notice of breach. In its

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motion to dismiss Count II of the Amended Complaint, Quantum Leap asserts that Count II fails to state adequately a cause of action for unfair competition and that the action is barred by laches. The City intends to contest these assertions vigorously, and the motion to dismiss will be scheduled for hearing promptly. **Settlement discussions were not successful.**

**CITY OF TAMPA v. MICHAEL C. ADDISON and RICHARD T. PETITT**

**13<sup>th</sup> 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 2<sup>nd</sup> 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. On April 20, 2009, the City of Tampa argued its Motion to Modify the Certified Class. The basis for Tampa's Motion is the preservation of the common law home venue privilege. As a result, the Motion asked the Court to modify the certified class to exclude all counties and municipalities located outside of Hillsborough County. On April 22, 2009, another special set hearing was scheduled to consider several motions and issues. One key issue relates to competing Notices to Defendant Class Members being proposed by both the Plaintiff and Tampa. Tampa's Notice permits all municipalities and counties to opt-out of the Defendant Class whereas the Plaintiff's Notice does not. Several Cities, including the City of Coral Gables, filed a Joint Motion for the limited purpose of asserting and arguing the home venue privilege and decertifying the Class to make it a B3 class which provides the right to opt-out of the class. Order entered on April 23, 2009 that all non-Hillsborough County Defendant Class Members are excluded from the defendant class and, therefore, the City was dismissed with prejudice from this action, and, further, that no judgment entered in this case shall have a res judicata effect on any non-Hillsborough County municipalities or counties. On May 5, 2009, Addison filed a Petition for Writ of Certiorari to quash the 13<sup>th</sup> Judicial Circuit's April 23, 2009 Order and directing the trial court to permit Tampa to file an amended answer on its own behalf, and not to permit it to file an answer and affirmative defenses on behalf of the individual members of the defendant class. The City of

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Tampa has filed its response. On July 15, 2009, the Honorable Sam D. Pendino granted the Defendant Class Motion to Decertify the Class, ruling that the case shall proceed solely against the City of Tampa. **Addison and Petitt filed Notice of Appeal to the 2<sup>nd</sup> District Court of Appeal, and the case has been fully briefed. Oral Argument granted but not yet set.**

**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**

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, moved to intervene in the case. Amace moved for summary judgment on both claims. The Court denied the motion for summary judgment and indicated that the case should be set for trial. In the meantime, the parties will engage in further discovery as to the legality of the yacht basin and related issues. A trial date has not yet been set. On June 22, 2009, the Court granted Plaintiffs' counsel's motion to withdraw as counsel. Plaintiffs have filed a notice of new counsel -- Andrew Dickman. **Discovery is proceeding.**

**GATOR LEASING V. CITY OF CORAL GABLES**

**Appellate Division – Circuit Court – Case No. 09-599 AP; L.T. Case No.**

**Appellant, Gator Leasing, filed appeal of the order of the Code Enforcement Board to the Circuit Court, Appellate Division, and Motion to Stay Enforcement of the Order. The Appellant has until November 19, 2009 to file the Initial Brief.**

**FABRIC FAMILY LIMITED PARTNERSHIP v. SALONE CONSULTING GROUP, INC. and CITY OF CORAL GABLES**

**Circuit Court – General Jurisdiction Division – Case No. 09-38886 CA 30; consolidate with Case No. 09-8439 CA 15**

The City was named as Co-Defendant in an action brought by Fabric, one of the two parties to a promissory note, ~~which~~ alleges breach of contract against the City for withholding payment on the ~~contract~~ for the purchase of an ERDMS system until the dispute between Salone and Fabric has been resolved. Fabric moved to consolidate this case with Salone. Fabric filed Motion for Summary Judgment, which has been set for February 25, 2010. The City has filed its Memorandum of Law In Opposition to the Motion. In the meantime, the parties have agreed to proceed to mediation.

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**SALONE CONSULTING GROUP, INC. v. CITY OF CORAL GABLES**

**Circuit Court – General Jurisdiction Division – Case No. 09-8439 CA 15**

Plaintiff in this case is a corporation providing services to the City, under a Professional Services Agreement, to provide functionality to the City Clerk for the effective and secure management of official city records or evidence, claiming monies owed to them under the agreement. **The City has filed a Motion to Dismiss for failure to comply with the mandatory Arbitration Clause of the Professional Services Agreement. Plaintiff filed complaint with the American**

**Arbitration Association, and the City filed its Answer. Salone filed notice of Voluntary Dismissal in the arbitration case on July 28, 2009. Salone and Fabric filed Motions for Summary Judgment. City filed Memorandum of Law in Opposition to both Motions for Summary Judgment. The hearing on both the Fabric Motion and Salone Motion has been set for February 25, 2010. Mediation efforts have fallen apart. Coral Gables will file monies with Court registry.**

**GRANADA LLC v. CITY OF CORAL GABLES**

**Circuit Court – General Jurisdiction Division – Case No. 07-23410 CA 40**

Following the City's Notice of Default letter, Granada LLC, the operator of the Country Club of Coral Gables, filed an action for damages including lost profits, prejudgment interest and cost of action, alleging that the City breached its obligations under the Management Agreement and the Operating Agreement to fully fund the capital improvements to the property and that its failure to do so has led the Plaintiff to be exposed to threatened and actual liability from certain vendors including the General Contractor who performed a portion of the capital improvement work, and seeking to recover the loans allegedly made by Plaintiff to City, and the deferred Operator Fees, which Plaintiff contends were used to fund capital improvements. The City filed a Motion to Dismiss Granada's Complaint as it is an unlawful attempt by Granada to force the City to pay for Granada's obligations. The Motion to Dismiss further states that the City, as a sovereign entity, is immune from the claims of implied contractual liability as the City does not have a contractual relationship with Granada. Finally, the motion states that Granada's claims are barred by the Statute of Frauds as there is no memorialized agreement between Granada and the City. On April 14, 2008, Judge Gil S. Freeman denied the City's Motion to Dismiss without oral argument. The City has filed its Answer and Affirmative Defenses and has requested extension to file its counterclaims and third party claims on or about May 24, 2008. The City Attorney's Office was authorized to file a counterclaim against Granada LLC for failure to fulfill its obligations under the operative agreement and for breach of the settlement agreement entered into with Courtelis Construction Company, and a third party complaint against Stuart Bornstein, individually, and breach of the operative agreements, and breach of the settlement agreement entered into with Courtelis Construction Company, and to take all action necessary to represent the interests of the City. The parties attempted to mediate but were unsuccessful. The court denied the City's Motion for Summary Judgment as premature. Trial has been set for 3 week period beginning May 10, 2010. **Granada filed its Second Amended Complaint. Non expert discovery is**

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almost complete. Expert disclosures are due in November, 2009; expert depositions are to be completed by January 15, 2010; dispositive motions are to be filed no later than February 12, 2010, and motions in limine are due by April 1, 2010. The Court has mandated another mediation prior to March 26, 2010.

**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.**

**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.**

**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 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

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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<sup>th</sup>. Kuvin has to file his reply brief. The court heard oral argument on Tuesday, November 14<sup>th</sup>, 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 City has filed with the Third District Court of Appeal a Motion for Rehearing en Banc and Motion for Certification to the Florida Supreme Court as a matter of great public importance. Decision on City's motion is pending.**

**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. **Plaintiffs filed Motion for Relief from Stay for Final Summary Judgment.**

**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**

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

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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.**

**SAENZ v. CITY OF CORAL GABLES**

C. Michael Saenz (“Saenz”), has filed a Harris Act claim with the City relating to 14,300 sq. ft. of property located at 111 Salamanca Avenue, claiming that the Historic Preservation Board’s decision to designate the property as historic, coupled with his claim that the City Commission’s refusal to properly consider the issue of undue economic hardship, and its predisposition to oppose demolition, prevents Saenz from attaining any “reasonable, investment-backed expectation” of developing his property. Saenz’s claim further states that the City’s actions have caused a substantial loss in fair market value to the Property of approximately 99%. Expert report received.

**GATOR PROPERTY, INC. V. CITY OF CORAL GABLES**

Appellant filed a Notice of Appeal from an Order issued by Hearing Officer Oliver Langstad on September 17, 2009, denying Appellant’s Motion to Dismiss a ticket issued by the Code Enforcement Division of the Building & Zoning Department. The Appellant has also filed a Motion to Stay Enforcement of the Order rendered by the Code Enforcement Division and a Motion to Consolidate the Appellate review of two (2) tickets issued by the Code Enforcement Division. The City will file a Motion to Dismiss the Notice of Appeal as premature because the order issued by the hearing officer is a non-final order. The Hearing Officer has not made a ruling on the merits of the case below.