

PENDING LITIGATION – INTERIM REPORT – July 7, 2009
PREPARED BY THE CITY ATTORNEY

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, and will start conducting discovery in this matter.**

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.**

CHURCH OF THE LUKUMI BABALU, AYI, INC. V. CITY OF CORAL GABLES

Circuit Court – General Jurisdiction Division – Case No. 08-38294 CA 02

Petition for Writ of Mandamus was filed with the City in connection with the public records request served on the City, stating that the City’s responses have been overwhelmingly incomplete. Numerous depositions were taken by Petitioner to determine whether any documents were withheld by the City. The depositions did not reveal any such documents. A hearing was also held to review the documents that the City listed on its privilege log and did not turn over. The Court found the documents privileged. On April 1, 2009, the Court dismissed the action and reserved ruling on fees. **On June 24, 2009, the Court summarily denied Petitioner’s motion for fees.**

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

Circuit Court – General Jurisdiction Division – Case No. 07-33733 CA 01

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; (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.**

CITY OF CORAL GABLES V. GABLES VIEW OFFICE LLC ET AL

Circuit court – General Jurisdiction Division – Case No. 09-46869

On June 19, 2009, the City filed its Complaint for foreclosure of Business Improvement District tax liens against Gables View Office LLC for failure to pay the BID taxes for the years 2002, 2003, 2004, 2005, 2006 and 2007 in the amount of \$33,855.08, plus interest, costs and attorney's fees.

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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 the Defendant to complete the process to effectively transfer the domain name, www.venetianpool.com, to the City of Coral Gables. Defendant filed Answer and Affirmative Defenses. On April 21, 2009, the Court granted the City's Motion to Strike Quantum Leap's answer and ordered Burr to hire an attorney for Quantum Leap, giving them sixty (60) days, that is until June 22, 2009, to do so. **The City filed a Motion for Default against the Defendant for failure to abide by the Court's order to secure counsel.**

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. Hearing was held on June 13, 2008 in the 13th Judicial Circuit on Defendant, City of Tampa's Motion to Amend Answer and Affirmative Defenses on behalf of Tampa, individually, and the Defendant Class. After Plaintiffs filed a Motion to Disqualify the Judge on the basis that he had made several disclosures over a period of time about being in the class, he disqualified himself. The Chief Judge is to reassign the matter to another trial judge. On April 20, 2009, the City of Tampa has a special set hearing to argue 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 asks the Court to modify the certified class to exclude all counties and municipalities located

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outside of Hillsborough County. On April 22, 2009, another special set hearing is 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, are filing 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 has been 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 13th 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 Tampa has filed its response.**

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 and gave Plaintiffs 20 days to obtain new counsel. Depositions are scheduled of various witnesses for mid-July. Amace has objected to the notice for trial.**

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

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.

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GARCIA, OLGA v. CITY OF CORAL GABLES

United States District Court – Southern District of Florida – Case No. 09-20733-CIV-UNGARO

The Plaintiff filed a complaint under the Fair Labor Standards Act of 1938 alleging violation of the overtime provisions while she was employed in the Mayor's Office from 2006 to 2008 seeking compensation for hours worked in excess of forty hours, and including in the complaint a collective action under 29 USC § 216 for those employees similarly situated. **The City has filed its Answer and Affirmative Defenses. The Court has set trial in this matter for the two-week period commencing January 18, 2010. Discovery cut-off is September 18, 2009.**

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 Gill 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. The parties are proceeding with discovery.**

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IN THE MATTER OF COMCAST CABLE COMMUNICATIONS, LLC, on behalf of its subsidiaries and affiliates
Federal Communications Commission – CSR 6046-E, CSR 6047-E, CSR 6048-E, CSR 6409-E, CSR 6010-E

Comcast has filed a Petition for Special Relief with the FCC. It is seeking a determination that it is subject to effective competition in Coral Gables, along with 14 other franchise areas in Miami Dade County. The City filed its opposition December 3, 2004. To show effective competition, Comcast must demonstrate that more than 15% of the City's households subscribe to DBS service and not to Comcast's service. If granted, it will allow Comcast to raise rates whenever it likes for basic tier service and equipment without being subject to FCC rules. It will also eliminate some federal consumer protections such as uniform rates (allowing Comcast to charge different rates in different areas of the city) and anti buy through (allowing Comcast to require subscribers to purchase advanced products such as digital) to obtain premium services (i.e. HBO). On Jan. 31, 2007, the Federal Communications Commission's ("FCC") Media Bureau issued a Memorandum Opinion and Order granting Comcast's Petition for Effective Competition. The City has 30 days, until March 5, 2007, to appeal by filing a Petition for Review with the full FCC. If no appeal is filed, Comcast's rates will be deregulated in the City and Comcast will be able to raise rates whenever and to whatever level it wants, and will be able to charge different rates to different residents in the City. Comcast will also be able to require residents to subscribe to premium and other higher level services if they want to obtain basic service. The City filed its Application for Review of the Media bureau's Order granting Petition, to which Comcast filed its opposition. **The matter remains pending at the Commission.**

IN RE. PETITION OF TEAMSTERS LOCAL UNION 769 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, TO AMEND CERT. NO. 428
State of Florida, Public Employees Relations Commission ("PERC") Case No. AC 2008 016

This matter is terminated. Petitioner did not appeal dismissal of the Petition. Instead, Petitioner filed a Representation-Certification Petition with PERC. A consent election agreement was entered between the parties. The election was held on June 30, 2009.

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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.**

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 Kuvín to comply with the court's November 10, 2005 order. Upon payment of the filing fee, the appeal was reinstated. Kuvín has filed his initial brief in the district court of appeal, and the City filed its answer brief on Sept. 28th. Kuvín has to file his reply brief. The court heard oral argument on Tuesday, November 14th, 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.**

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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 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,

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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%.

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

**Circuit Court – General Jurisdiction Division – Case No. 09-8439CA 15
American Arbitration Association Case No. 32 117 00445 09**

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.**