

PENDING LITIGATION – INTERIM REPORT – March 23, 2010
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 set this matter for trial during the two week trial calendar commencing June 21, 2010. Pursuant to the Court's order, the parties attended one day of mediation in December and are expecting to mediate again sometime in March. The case has settled pending City Commission approval. Please see separate memorandum.

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. 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 include 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. A settlement proposal, subject to Commission approval, has been communicated to the defendants and we await their

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response. The defendants have asked the court to refer the case to non-binding mediation.

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 Octobernd, 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. 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 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. 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 District Court of Appeal, and the case has been fully briefed. Oral Argument granted but not yet set.**

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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 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. 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. Plaintiffs are now represented by Andrew Dickman, Esq. On February 16, 2010, the deposition of Frank Sibiero was taken. He is the property manager for the Amace Properties Waterway project. The deposition of Armando Guerra, the President of Amace Properties, is scheduled for March 19, 2010. Plaintiffs have attempted to depose Dennis Smith but have been unable to effect service on him. The non-jury trial has been set in this case for the four week period beginning June 7, 2010. **Discovery is proceeding.**

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 Court denied Salone's Motion for Summary of Judgment and granted Fabrics Motion for Summary Judgment against Salone. The Court approved the City's Motion to deposit funds in the Court Registry.

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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. In the meantime, the Court denied Salone's Motion for Summary of Judgment and granted Fabrics Motion for Summary Judgment against Salone. The Court approved the City's Motion to deposit funds in the Court Registry. The parties mediated on December 18, 2009.

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

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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 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 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.**

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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.**

NORTHERN TRUST BANK OF FLORIDA(NA) vs. CITY OF CORAL GABLES

Circuit Court – Appellate Division – Case No. 2010-1709-CA

The complaint was filed January 12, 2010. The case is before Judge Lester Langer. All defendants have been served. The attorney for the two individual defendants wrote us letters in their behalf disclaiming any interest in the property, and the disclaimers were filed with the court. Northern Trust was served on February 24th and we received a call from their legal department on March 1st that they are pulling their files and reviewing the complaint.