

PENDING LITIGATION – INTERIM REPORT – September 28, 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. Because the Burrs did not file their answer during the subsequent five months, formal service of process was recently effected. The Burrs failed to respond and a request for entry of default against them has been filed with the court.

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 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.

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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. The case is set for the trial calendar beginning September 14, 2010.

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. On March 8, 2010, the City deposited the funds in the Court registry. The Court, thereafter, entered an order to disburse the funds on May 29, 2010. Trial was set for the two-week period beginning August 2, 2010. **The case has been resolved and is being dismissed by plaintiff.**

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

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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. On March 8, 2010, the City deposited the funds in the Court registry. The Court, thereafter, entered an order to disburse the funds on May 29, 2010. **Trial was set for the two-week period beginning August 2, 2010. The case has been resolved and is being dismissed by the plaintiff.**

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 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

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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

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**

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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 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

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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.

BARNET V. CITY OF CORAL GABLES, AMERICAN TRAFFIC SOLUTIONS, LLC AND ATS AMERICAN TRAFFIC SOLUTIONS, INC.

Circuit Court – General Jurisdiction Division – Case No. 10-47078 CA 23

On September 13, 2010, the City was served with a Complaint asserting class representation and includes four counts, including unjust enrichment, tort of conversion, malicious prosecution/abuse of process, and injunctive and declaratory relief. The City has requested full contractual indemnification from ATS. The City's Answer is due on October 4, 2010.