

PENDING LITIGATION – INTERIM REPORT – February 10, 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 has set this matter for trial during the two week trial calendar commencing June 21, 2010. Fact discovery has been completed and the City filed its motion for summary judgment on January 22, 2010. Expert discovery must be completed by March 12, 2010. Pursuant to the Court's order, the parties attended one day of mediation in December. The mediation ended with the possibility of the parties scheduling additional days in the future, but nothing has been scheduled as of this date.

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

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Brown, Robert Burr and Robin Burr have been taken. The parties have agreed to submit to non-binding mediation to be conducted within the next few weeks.

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. 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 2nd 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 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.**

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 mediated on December 18, 2009. Mediation was unsuccessful.

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

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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 was December 18, 2009. Mediation was unsuccessful.

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 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.**

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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. **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 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**

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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 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.**

CITY OF CORAL GABLES**OFFICE OF THE CITY ATTORNEY****List of Mortgage Foreclosure Files**

<u>Case</u>	<u>Case No.</u>
Amtrust Bank v Maria Dora Valencia a/k/a Dora Lopez	08-41654 CA 11
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 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 Mello 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
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 vs Joanna Casanueva	07-26013 CA 22
Chase Home Finance vs Howard Vicente Cortez	09-85326 CA 22
Chase Home Finance LLC vs Katherine Ferro	07-46579 CA 02
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
CitiMortgage 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 Miguel Valdes	09-06871 CA 20
CitiMortgage Inc vs James S. Wilcox	08-39137 CA 02
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 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 Villaboa	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 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 D'Angelo Salvatore	2007-39464 CA 01 Div 02
HSBC Bank USA Nat Assoc vs Lucia Santiago	13-2008 CA 031258 Div 23
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
JP Morgan Chase Bank NA vs Maria Magdalena Cabrera	09-31853 CA 09
JP Morgan Chase Bank NA vs Rolando F. Cruz	09-034406 CA 32
JP Morgan Chase Bank NA vs Francisco Arcenio Pena a/k/a Arsenio Pena	09-61371 CA 10
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
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 Eduardo R. Perez and Esperanza C. Perez	09-78163 CA 25
One West Bank, FSB vs Michelle Rojas	09-92887 CA 20
Parc Central Aventura East Cond Association vs Javier Montes	09-94003 CA 08

Suntrust Mortgage Inc vs Jorge Luis Garcia a/k/a Jorge L. Garcia	09-80026 CA 01
Suntrust Mortgage Inc vs Carlos Gomez	09-91213 CA 21
Suntrust Mortgage Inv vs Juan Gonzalez	08-725 CA 15
Suntrust Mortgate Inc vs Alicia Menendez	09-92534 CA 24
US Bank National Assoc va Cesar Acuna	09-60966 CA 05
US Bank National Assoc vs Emilia Fortes a/k/a Emilia C. Fortes	08-38089 CA 13
U.S. Bank National Assoc vs Analia Jitric; Carlos Jitric	08-13684 CA 03
US Bank National Assoc vs Colombia Margarita Mejia	09-00045 CA 06
US Bank National Assoc vs Marisol Mendoza	09-88679 CA 13
US Bank National Assoc vs Julia S. Rodriguez	08-38191 CA 20
US Bank National Assos vs Juan C. Rodriguez	09-91947 CA 05
US Bank National Assoc. vs Lucia Santiago; The Unknown Spouse of Lucia Santiago: Lourdes Conte	08-31258 CA 23
US Bank National Assoc vs Cynthia Wise	07-24259 CA Div 09
Wachovia Bank vs Jennifer Laitano	08-044549 CA 04
Washington Mutual Bank, FA vs Lisa Valdes	08-53173 CA 01 (22)
Wells Fargo Bank NA vs Patrick Catania	08-53331 CA 15
Wells Fargo Bank NA vs Juan F. Contijoch	09-48890 CA 10
WMC Mortgage Corp vs Maria T. Lopez	07-277733 CA