IN THE SUPREME COURT OF
FLORIDA

CONSOLIDATED CASE NOS.: SC18-876 and SC18-908
Consolidated L.T. Nos.: 3D17-1197 and 3D17-1198

CENTRAL CARILLON BEACH CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v.

PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida; and **LEON M. BIEGALSKI**, as Executive Director of the State of Florida Department of Revenue, ***et al***.,

Respondents.

RESPONDENT'S REPLY BRIEF ON JURISDICTION

ON PETITION FOR MANDATORY AND
DISCRETIONARY REVIEW OF A
CONSOLIDATED DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

ABIGAIL PRICE-WILLIAMS
Miami-Dade County Attorney
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: (305) 375-5151
Facsimile: (305) 375-5611

By: Jorge Martinez-Esteve
Daija Page Lifshitz
Assistant County Attorneys

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

STATEMENT OF THE CASE AND FACTS

In these consolidated cases, the Property Appraiser brought suit in circuit court against the individual unit owners (or the "Taxpayers") of the subject condominium to reinstate his 2015 assessment of market value on each residential unit in the subject condominium. Each challenged residential unit is individually owned and individually taxed. The Condominium Association (the "Condo Association" or "Petitioner") is not a taxpayer nor does it have any interest in the subject residential units; however, in an abundance of caution, the Property Appraiser also named the Condo Association as an interested party.

Before the individual unit owners were served, the Condo Association filed a "Motion to Dismiss and/or Motion to Strike," in an attempt to remove the individual unit owners from the action without their input, thereby violating their due process. The trial court entered an order denying the Condo Association's motion and ordering that the individual Taxpayers respond to the Complaint within 20 days. The trial court also ordered the Condo Association's attorney to hold a meeting within five business days to inform the Taxpayers of the proceedings in order to provide the Taxpayers with the opportunity to decide whether they wanted the Condo Association's attorney to represent them in the suit.

Despite the trial court's order, the Condo Association filed an answer to the complaint, titled "Answer (Class Representative) to Complaint." The Condo

Association also filed a Motion for Class Certification, relying on the same arguments already rejected by the trial court, which the trial court denied again. The trial court's amended order denying the motion for class certification also expanded on the court's rationale and basis for the ruling, finding that (1) section 194.181, Florida Statutes (2015) unambiguously required the Taxpayers to be the defendants; (2) Florida Rule of Civil Procedure 1.221 and section 718.111(3), Florida Statutes (2015), limit the Condo Association's litigation authority to bringing actions protesting ad valorem taxes but not defending actions; and (3) the Taxpayers have a due process right to participate in their defense.

Following this order, the Petitioner filed a petition seeking a writ of certiorari quashing orders denying their motions for certification of a class of the defendant unit owners in their respective associations, relying on the same arguments it already presented twice and had rejected twice by the trial court. On appeal, the Third District Court of Appeal of Florida properly rejected Petitioner's arguments just as the trial court did. However, Petitioner still maintained its position and filed a Motion for Rehearing, Rehearing En Banc and Certification. This Motion was denied, and Petitioner's arguments were again properly rejected. Now, Petitioner filed a Petition seeking mandatory and discretionary review of the Third District's Opinion in *Central Carillon Beach Condo. Ass'n, Inc. v. Garcia*, No. 3D17-1197,

2018 WL 1404113 (Fla. 3d DCA 2018) (the "Opinion"). For the reasons set forth below, this Petition should be denied.

SUMMARY OF ARGUMENT

The Opinion in this case does not declare any state statute or provision of the state constitution invalid, nor does it expressly and directly conflict with any of the decisions cited by Petitioner. No proper basis exists for this Court to review the Opinion. Therefore, this Court should dismiss this case for a lack of jurisdiction.

ARGUMENT

I. THIS COURT SHOULD NOT EXERCISE MANDATORY APPEAL JURISDICTION BECAUSE THE THIRD DISTRICT'S OPINION DOES NOT DECLARE INVALID § 718.111(3).

The Supreme Court of Florida is vested with mandatory appellate jurisdiction over appeals from opinions of a district court declaring a state statute or provision of the Florida Constitution invalid. The plain language provided in Florida law requires that the district court's opinion declare the statutory or constitutional provision invalid. *See* Fla. Const. Art. V, §3(b)(1) and *Fla. R. App. P.* 9.030(a)(1)(A)(ii). While the Constitution "does not require that the district court 'expressly' declare a statute invalid, it still requires that the district court of appeal make a declaration." *Jackson v. State*, 926 So. 2d 1262, 1266 (Fla. 2006). Here, the Third District made no such declaration in its Opinion.

Petitioner incorrectly interprets the Opinion to stand for the invalidation of "the portion of section 718.111(3) that expressly authorizes associations to

collectively represent their unit owners". On the contrary, the Opinion merely states that section 718.111(3) does not control or apply to the specific facts of this case. Instead of invalidating the statute, the Opinion only distinguishes this type of case from the types of cases to which section 718.111(3) does apply. In doing so, the Opinion provides:

> The provision [718.111(3)] only addresses ad valorem taxes in one phrase: 'protesting ad valorem taxes on commonly used facilities and on units.' The Associations protested the ad valorem taxes administratively on behalf of all units, but the lawsuits brought by the Appraiser against the unit owners are not 'protests'—they are judicial review proceedings in which the unit owners are defendants. The specific cases in which an association may defend on behalf of all unit owners are 'actions in eminent domain.'

Central Carillon Beach Condo. Ass'n, Inc. v. Garcia, No. 3D17-1197, 2018 WL 1404113, at *3 (Fla. 3d DCA 2018). As evidenced by the plain language of the Opinion, there is no such declaration invalidating section 718.111(3). Therefore, this Court should decline to exercise mandatory appeal jurisdiction.

II. THIS COURT SHOULD NOT EXERCISE DISCRETIONARY CONFLICT JURISDICTION BECAUSE THE THIRD DISTICT'S OPINION DOES NOT CONFLICT WITH *AVILA, IN RE: RULE 1.220(B), KESL,* AND *FOUR JAY'S.*

Petitioner's alleged basis for discretionary conflict jurisdiction is an "express" and "direct" conflict with decisions of this Court and other courts of appeal. *See* Art. V, § 3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv). To constitute such a conflict, the opinion must either (1) announce a rule of law that conflicts with an expression of law from another court; or (2) apply a rule of law to produce a

different result in a case involving substantially the same controlling facts as a prior case. *See City of Jacksonville v. Florida First Nat'l Bank of Jacksonville*, 339 So. 2d 632, 633 (Fla. 1976). The conflict must appear "within the four corners of the decision." *See Reaves v. State,* 485 So. 2d 829, 830 (Fla. 1986).

No express or direct conflict exists between the Opinion and those cases cited by Petitioner, which include: (i) *Avila South Condo. Ass'n., Inc. v. Kappa Corp.*, 347 So. 2d 599 (Fla. 1977); (ii) *In re: Rule 1.220(b), Florida Rules of Civil Procedure*, 353 So. 2d 95 (Fla. 1977); (iii) *Kesl, Inc. v. Racquet Club of Deer Creek II Condo., Inc.* 574 So. 2d 251 (Fla. 4th DCA 1991); and (iv) *Four Jay's Const., Inc. v. Marina at Bluffs Condo. Ass'n., Inc.*, 846 So. 2d 555 (Fla 4th DCA 2003). These cases stand for the proposition that an association may sue and be sued as the representative of condominium unit owners in an action to resolve a controversy affecting the matters of common interest to all units recited in Rule 1.221. *See Avila*, 347 So. 2d 599 at 608-09; *In re: Rule 1.220(b)*, 353 So. 2d 95 at 97; *Kesl*, 574 So. 2d 251 at 253; *Four* Jay's, 846 So. 2d 555 at 557.

However, nowhere in the Opinion is there any mention that the Third District is rejecting the rule of law contained in Rule 1.221. Therefore, there is no conflict between the Opinion and the cases cited by Petitioner. *See, e.g., City of Jacksonville*, 339 So. 2d at 633 (holding that decision must expressly "announce a rule of law" contrary to other decisions to establish a genuine conflict). Indeed, the Opinion

expressly announces that the ruling does not conflict with an expression of law from other decisions:

> Our holding in these cases regarding property tax appeals brought by a county property tax appraiser against condominium unit owners does not dilute or qualify the continued amenability of other types of lawsuits to the common representation of unit owners by their association as permitted by section 718.111(3) and Rule 1.221.

Central Carillon, 2018 WL 1404113, at *3 (Fla. 3d DCA 2018). Furthermore, Petitioner fails to show how the cases allegedly in conflict with the Opinion have "substantially the same controlling facts" as this case, which is another requirement for establishing a genuine conflict. *See City of Jacksonville*, 339 So. 2d at 633.

The difference between the cases cited by Petitioner and this case is correctly recited in the Opinion—the difference being that the cases cited by Petitioner do not involve, as here, a separate statute specifying that each individual unit owner must be a party defendant. *See, e.g.*, *Avila*, 347 So. 2d 599 at 608-09 (ruling that the association lacked standing to sue because the fraud claims of the members did not constitute matters of common interest); *In re: Rule 1.220(b)*, 353 So. 2d 95 at 97 ("As to controversies affecting the matters of common interest enumerated in the rule of civil procedure, the condominium associations may represent the class composed of its members"); *Kesl*, 574 So. 2d 251 at 253 (permitting the association as defense class representative in case seeking enforcement of a "Club Membership Agreement" because "the subject matter of the suit is an integrated part of the total

living package equally shared by all units and the matters of common interest arise out of recorded condominium documents and their exhibits"); *Four Jay's*, 846 So. 2d 555 at 557 (permitting association as defense class representative in breach of contract case because "the controversy was of common interest to all units, i.e., structural improvements to the common elements including balcony additions appurtenant to each unit").

For these reasons, the Opinion does not conflict with *Avila*, *In re: Rule 1.220(b)*, *Kesl*, and *Four Jay's*. Therefore, this Court should decline to exercise discretionary conflict jurisdiction.

CONCLUSION

Because the Opinion does not declare invalid a state statute or a provision of the state constitution and does not expressly and directly conflict with any of the cases cited by Petitioner, there is no jurisdiction conferred upon this Court in accordance with Article V, section 3(b) of the Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a). Accordingly, this Court does not possess either mandatory or discretionary jurisdiction over this case.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Response has been prepared in Times New Roman 14-point font and complies with the requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Respectfully submitted,

ABIGAIL PRICE-WILLIAMS
Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993

By:/s/Jorge Martinez-Esteve
Jorge Martinez-Esteve
Assistant County Attorney
Florida Bar No. 126391
E-mail: jme@miamidade.gov
kih@miamidade.gov
Telephone: (305) 375-5151
Facsimile: (305) 375-5634

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was served *via* electronic mail on this 17th day of July, 2018 upon (i) Thomas S. Ward, Esq., Rennert Vogel Mandler & Rodriguez, P.A., *Counsel for Petitioner, Central Carillon Beach Condominium Association, Inc.*, at tward@rvmrlaw.com, jfernandez@rvmrlaw.com, jblock@rvmrlaw.com, nparadela@rvmrlaw.com; and (ii) Amanda B. McKibben, Esq., Revenue Litigation Bureau, *Counsel for Respondent, Leon M. Biegalski, as Executive Director of the State of Florida Department of Revenue*, at Amanda.mckibben@myfloridalegal.com, lorann.jennings@myfloridalegal.com , and jon.annette@myfloridalegal.com

By: */s/Jorge Martinez-Esteve*
Assistant County Attorney