

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 3D2024-0134

FIRST BORN AGAIN BAPTIST OF NORTH
MIAMI, INC., a Florida not-for-profit
corporation,

Appellant,

v.

FIRST BAPTIST CHURCH OF GREATER
MIAMI, a Florida not-for-profit corporation,

Appellee.

Appeal From A Non-Final Order (Temporary Injunction) Of
The Circuit Civil Division, Eleventh Circuit Court, Miami-
Dade County, Florida, Case No. 22-11442 (CA 15), Hon.
Jose M. Rodriguez, Circuit Judge

APPELLANT'S INITIAL BRIEF

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THE CIRCUIT COURT ERRED WHEN IT TEMPORARILY ENJOINED APPELLANT FIRST BORN AGAIN BAPTIST OF NORTH MIAMI, INC. ("FIRST BORN AGAIN"), BECAUSE THE COUNTERCLAIM OF APPELLEE FIRST BAPTIST CHURCH OF GREATER MIAMI ("GREATER MIAMI") IS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

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STATEMENT OF THE CASE AND OF THE FACTS¹

A. Case No. 17-9735 (CA 05)

In a civil action styled *First Baptist Church Of Greater Miami v. Miami Baptist Association, Inc., et al.*, Case No. 17-9735 (CA 05), Circuit Civil Division, Eleventh Circuit Court, Miami-Dade County, Florida (“Case No. 17-9735”), Greater Miami was the Plaintiff, First Born Again was a Defendant and Greater Miami challenged First Born Again’s title to and possession of the real property located at 15395 North Miami Avenue, Miami, Florida 33169-6736 (“the Property”).

On October 10, 2023, the Circuit Court dismissed, with prejudice, Case No. 17-9735, by means of its *Order Granting Fourth Motion For Sanctions And/Or For Involuntary Dismissal For Violation Of Court Order*. [App. 155-171] Greater Miami has appealed the foregoing sanctions/dismissal order, *First Baptist Church Of Greater Miami v. Miami Baptist Association, Inc., et al.*, Case No. 3D23-1975, which appeal is pending before this Court.

¹ References to First Born Again’s Appendix will appear in this Initial Brief as follows: “App. _____”.

B. Case No. 22-11442 (CA 15)

On June 21, 2022, First Born Again filed a civil action in the Circuit Court to eject Greater Miami from the Property, which civil action was assigned Case No. 2022-11442 (CA 15) ("Case No. 2022-11442"). Greater Miami, on May 25, 2023, in Case No. 2022-11442, filed and served its Amended Affirmative Defenses and Amended Counterclaim, which reiterated Greater Miami's contentions in Case No. 17-9735. [App. 7-57]

On June 1, 2023, Greater Miami moved in Case No. 2022-11442 for a temporary injunction barring First Born Again from interfering with Greater Miami's activities on the Property. [App. 58-67]

First Born Again, in Case No. 2022-11442, moved for leave to amend its answer to Greater Miami's counterclaim to interpose the affirmative defense of *res judicata*. [App. 68-150]

On November 15, 2023, in Case No. 2022-11442, First Born Again, invoking the doctrine of *res judicata*, responded in opposition to Greater Miami's motion for a temporary injunction. [App. 151-174] In addition, on November 15, 2023, in Case No. 2022-11442, First Born Again filed and served its amended answer and affirmative defense to Greater Miami's counterclaim. [App. 175-177] The affirmative defense alleged:

3. By virtue of the October 10, 2023, Order Of Dismissal in the civil action styled *First Baptist Church Of Greater Miami v. Miami Baptist Association, Inc., et al.*, Case No. 17-9735 (CA 05), Circuit Civil Division, Eleventh Circuit Court, Miami-Dade County, Florida, Greater Miami's Amended Counterclaim in this civil action for ejectment is barred by *res judicata*.

The Circuit Court, on January 16, 2024, in Case No. 2022-11442, granted Greater Miami's motion for a temporary injunction and set a \$5,000.00 temporary injunction bond. [App. 178-184]

First Born Again, on January 20, 2024, in Case No. 2022-11442, filed its Notice of Appeal with respect to the January 16, 2024, temporary injunction order. [App. 185-195]

Greater Miami, on January 20, 2024, in Case No. 2022-11442, posted a \$5,000.00 cash injunction bond with the Clerk of the Circuit Court. [D.E. 196]

SUMMARY OF THE ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT TEMPORARILY ENJOINED FIRST BORN AGAIN BECAUSE THE COUNTERCLAIM OF GREATER MIAMI IS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

The October 10, 2023, sanctions/dismissal order in Case No. 17-7395, by virtue of Rule 1.420(b), Florida Rules of Civil Procedure, was an adjudication on the merits. In Case No. 2022-11442, the Circuit Court should have denied Greater Miami's motion for a temporary injunction on the authority of this Court's decision in *City of Miami Beach v. Dor Rich, Inc.*, 289 So. 2d 52 (Fla. 3d DCA 1974).

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT TEMPORARILY ENJOINED FIRST BORN AGAIN BECAUSE THE COUNTERCLAIM OF GREATER MIAMI IS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

The October 10, 2023, sanctions/dismissal order in Case No. 17-9735 closed with the following statement:

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby **ORDERED AND ADJUDGED** that the motion is **GRANTED**. This action is hereby **DISMISSED**. The Court reserves jurisdiction to consider any timely-filed motions for attorneys' fees and/or court costs.

[App. 170]

Rule 1.420(b), Florida Rules of Civil Procedure, is entitled *Involuntary Dismissal* and in pertinent part provides:

Under the court in its order for dismissal otherwise, specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication on the merits.

This Court's opinion in *City of Miami Beach v. Dor Rich, Inc.*, *supra*, follows:

I This is an appeal from interlocutory orders granting injunctions against the City of Miami Beach. The

appeal was heard upon application for a constitutional writ; it was expedited pursuant to Rule 4.5(g)(2), F.A.R., 32 F.S.A. The orders prevent the City from enforcing a zoning ordinance. The appellees are the tenants of Arthree, Inc. which is the owner of The Carriage House, an apartment hotel in Miami Beach.

An opinion of this court determining the validity of the zoning ordinance with which we are concerned was filed on November 21, 1972. See City of Miami Beach v. Arthree, Inc., Fla.App.1972, 269 So.2d 699. That opinion was reviewed upon petition for certiorari by the Supreme Court of Florida and the Supreme Court of the United States, and certiorari was denied. Thereafter, certain of the tenants, as intervenors, moved in the trial court for relief from our mandate. The City presented a motion in this court for an order enforcing our mandate. The trial court entered its order in accordance with our mandate. See City of Miami Beach v. Arthree, Inc., Fla.App.1973, 3rd D.C.A., Case Numbers 72-36 and 72-90, filed December 11, 1973. After the mandate of this court was filed in the trial court, the appellees, Dor Rich, Inc. and Jean Fisher, Inc., filed a pleading termed "Second Intervenors Complaint". The trial court, pursuant to our opinion upon the motion to enforce our mandate, declined to permit the intervention. Thereupon, the appellees, Dor Rich, Inc., and Jean Fisher, Inc., filed an independent action. That complaint contained no independent allegations but relied for its facts upon the complaint for intervention previously filed and denied. On December 3, 1973, the trial court entered a temporary injunction in the second action. The injunction prohibited the City from enforcing its zoning ordinance and added the appellee Medici II Gallery, Inc. as a beneficiary of the injunction. This injunctive order is one of the orders now appealed by the City. On December 10, 1973, the trial court entered a supplemental temporary injunction. This order added Flo's Red Garter, Inc. The trial court made its injunctive orders nunc pro tunc as of November 28, 1973 which was the date on which the order on our mandate had been entered

in the prior cause.

The appellees as tenants of the prior litigant were represented in the prior suit. This court's rulings in City of Miami Beach v. Arthree, Inc., supra, under the doctrine of stare decisis control the instant action in the trial court. Rott v. City of Miami Beach, Fla. 1957, 94 So.2d 168; Metropolitan Dade County v. E. B. Elliott Advertising Co., Fla.App. 1968, 214 So.2d 511.

Further, the appellees as the tenants of Arthree, Inc. are barred by the doctrines of res judicata and estoppel by judgment from relitigating the same issues tried in Arthree, Inc., supra. Although they were not parties in that case, their claims are derived from their landlord. Cf. Hay v. Salisbury, 92 Fla. 446, 109 So. 617 (1926).

The injunctive orders should not have been granted where there was a substantial dispute as to the legal rights involved, and the appellees' right is not only very doubtful but contrary to the law in view of the prior decisions of this court in Arthree, Inc. Granting these injunctions in this case is tantamount to the issuance of a judicial license to the appellees to operate illegally in the face of this court's decision holding the zoning ordinance valid.

The orders enjoining the City of Miami Beach from enforcing the zoning ordinance are reversed. The time for filing petition for rehearing is limited to three days from the date of the filing of this opinion.

Reversed. (Footnotes omitted)

289 So. 2d at 53-54.

The Circuit Court's temporary injunction in Case No. 2022-11442 stands on the same porous legal footing as the temporary injunction which was set

aside in *City of Miami Beach v. Dor Rich, Inc., supra*. Having lost Case No. 2017-9735, Greater Miami was and is not now entitled to a “second bite at the apple” through the vehicle of an identical counterclaim in Case No. 2022-11442.

CONCLUSION

The Circuit Court's January 16, 2024, temporary injunction should be reversed. This cause should be remanded to the Circuit Court with the direction that First Born Again be afforded the opportunity to move for summary judgment of dismissal of Greater Miami's amended counterclaim on the basis of *res judicata*.

Respectfully submitted,

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by 

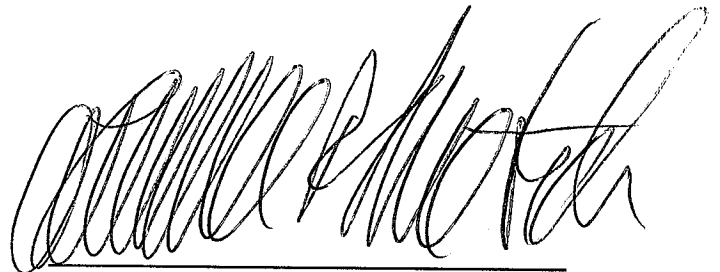
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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Appellant's Initial Brief
have been electronically served this 12th day of February, 2024, on:

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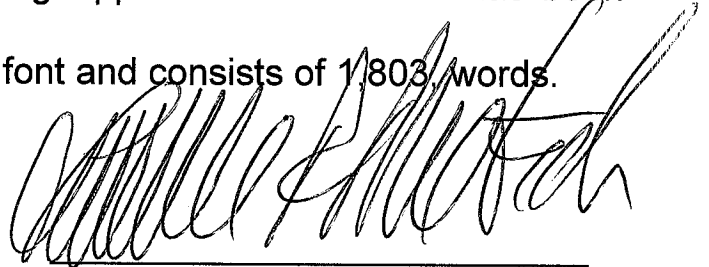
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A handwritten signature in black ink, appearing to read 'Lawrence R. Metsch', written over a horizontal line.

LAWRENCE R. METSCH

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Initial Brief has been computer printed using 14-point Arial font and consists of 1,803 words.

A handwritten signature in black ink, appearing to read 'Lawrence R. Metsch', written over a horizontal line.

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