

**IN THE SUPREME COURT OF FLORIDA**

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**CASE NO:**

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Third DCA Case No. 3D02-2129  
Circuit Court Case No. 97-27400FC 07

MIRIT MENDELSON,

Petitioner,

vs.

YOSI GIL,

Respondent,

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**RESPONDENT'S BRIEF ON JURISDICTION**

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## STATEMENT OF THE CASE AND FACTS

In 1997, the Former Wife filed a petition for dissolution of marriage. *Gil v Mendelson*, 793 So. 2d 1061 (Fla 3d DCA 2001) (*Gil v Mendelson I*). The initial pleadings filed by the parties expressly requested that the trial court take jurisdiction and equitably distribute all real and personal property owned by the parties. *Gil v Mendelson*, 2003 WL 21459243 (Fla. 3d DCA June 25, 2003) (*Gil v Mendelson II*). On January 18, 2000, a Final Judgment of Dissolution of Marriage was entered which awarded substantially more than 50% of the parties' assets to the Former Wife based upon the Former Husband's superior economic circumstances. *Gil*, 793 So. 2d at 1061.

The Third District in "*Gil v. Mendelson I*" reversed the trial court's judgment holding that the husband's superior earning capacity as a matter of law did not justify any such result. The Third District stated that "in the now-determined absence of any cognizable reason not to do so (citations omitted), it is necessary only to require, instead of the present award of the parties' entire interest in their \$420,000 apartment in Israel to the wife, the equal division of this asset between the two..." *Gil*, 793 So. 2d at 1062. Since the Former Wife had also wrongfully retained the Former Husband's watch collection which had been awarded to the Former Husband, the

Third District credited the Former Husband with its value. *Id.*

Shortly after the Third District's mandate in *Gil v. Mendelson I*, the Former Wife conveyed her portion of the Israeli property to her father, thus frustrating the Former Husband's efforts to carry out the trial court's subsequently entered Amended Final Judgment of Dissolution of Marriage. *Gil v Mendelson*, 2003 WL 21459243 at \*1.

The Former Husband filed "Respondent/Husbands' Motion to Equitably Distribute Real Property by Compelling Sale of the Apartment and its Furnishings in Israel and Supporting Memorandum of Law," which requested that the trial court "order the parties to hire an independent listing agent and have the parties to execute any and all documents necessary to effectuate the sale of the apartment in Israel." It also requested that the trial court order the Former Wife "to remove/discharge any and all liens on the property authorized by her in favor of her father for money advanced."<sup>1</sup>

Pursuant the mandate of the Third District, the trial court granted the Former Husband's motion and distributed the property in Israel to each party equally with a credit in favor of the Former Husband in the amount of \$102,500.00 but denied the motion as to compelling the sale of property in Israel. *Id.* The Former Husband

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<sup>1</sup>The trial court had found that "any money advanced by the Petitioner 's father to the parties for the purchase of the condominium as a gift to the Parties."

appealed the denial.

The Third District in *Gil v. Mendelson II*, reversed and remanded finding that the trial court had “*in personam* jurisdiction to equitably distribute all property owned by the parties regardless of the property’s location.” *Id.* The Third District also found that the trial court had the inherent jurisdiction to enforce both its own orders and its own opinion in *Gil v. Mendelson I*. *Id.* The Third District held that “the trial court erred in refusing to compel the sale of the parties’ Israel apartment and in refusing to order the former wife to execute the necessary documents to sell the apartment and to remove or discharge any liens on the property held by her father.” *Id.*

After the Former Wife’s motion for rehearing and rehearing *in banc* were denied she filed her Notice to Invoke Discretionary Jurisdiction.

### **SUMMARY OF ARGUMENT**

The decision of the Third District does not conflict with the cases cited by Petitioner. These decisions attempt to directly effect title to real property or conduct judicial sales in other venues, whereas in the case *sub judice* the lower court is directed to compel the parties to perform certain acts which are within its *in personam* jurisdiction.

## ISSUE PRESENTED FOR REVIEW

WHETHER THE DECISION OF THE THIRD DISTRICT EXPRESSLY OR DIRECTLY CONFLICTS WITH THE FOLLOWING DECISIONS: *The State of Florida and the Trustees of the Internal Improvement Fund v. Jacksonville, Pensacola and Mobile Railroad Company, et al.*, 16 Fla. 708 (Fla. 1878); *Goedmakers v. Goedmakers*, 520 So. 2d 575 (Fla. 1988); *Denison v. Denison*, 658 So. 2d 581 (Fla. 4<sup>th</sup> DCA 1995); *Polkowski v. Polkowski*, 854 So. 2d 286 (Fla. 4<sup>th</sup> DCA 2003)

## ARGUMENT

The decision below does not conflict with any of the cases cited by the Petitioner nor does it apply legal principles which conflict with prior decisions of this Court or of decisions of the other district courts of appeal. It is not a decision which Art. V, Sec. 3(b)(3), Fla. Const. contemplates as being subject to review by this Court.<sup>2</sup>

These cases are distinguishable in that they all attempt to directly effect title to

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<sup>2</sup>Prior to the 1980 Amendment to Art. V, Sec. 3(b)(3), Fla. Const. , this Court construed the conflict certiorari provision to require one of the following two events at the district court level: (1) Announcement of a rule of law conflicting with a rule previously announced by this Court or district court; or (2) the application of a rule of law to produce a substantially different result in a case which involves substantially the same facts as a prior case. *Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975); *Neilson v. City of Sarasota*, 117 So. 2d 731, 734 (Fla. 1960). In the case *sub judice*, there has been no announcement of a rule of law conflicting with a rule previously announced nor do the cases cited for conflict involve substantially the same facts as the instant case.

property in other jurisdictions or conduct proceedings in other venues, whereas the decision in the case *sub judice* would require the parties to perform specific acts that do not require court supervision in other venues or jurisdictions.

In *The State of Florida and the Trustees of the Internal Improvement Fund v. Jacksonville, Pensacola and Mobile Railroad Company, et al.*, 16 Fla. 708 (Fla. 1878), the lower court attempted a judicial sale of property located in another judicial circuit of Florida. It would thus require court supervision in another venue. This Court stated that the lower court

under the Constitution of the State, ***has no power to decree a sale by its officers of property not within its territorial jurisdiction.*** (citation omitted) The power of the Circuit Court, therefore, in this case did not extend beyond a decree establishing the rights and defining the liens of the State and of the Trustees...

*Id.* 1878 WL 2253, \* 3 (emphasis added). The decision in the case *sub judice* does not conflict with this principle since it does not involve court officers conducting a sale in another venue. The Third District held that the “trial court erred ...in refusing to order the Former Wife to execute the necessary documents to sell the apartment and to remove or discharge any liens on the property held by her father.” *Id.*, at \*2.

It stated that the trial court having *in personam* jurisdiction could have ordered the Former Wife to execute the necessary documents. The Third District did not attempt to act pursuant to *in rem* jurisdiction.

This Court's decision in *Goedmakers v. Goedmakers*, 520 So. 2d 575 (Fla. 1988), does not conflict with the Third District decision in the case *sub judice*. The issues are entirely unrelated and the ruling by this Court if anything is consistent with the opinion of the Third District. This Court held that an action for dissolution of marriage is personal or transitory and that § 47.011, Fla. Stat. (1973) did not confer venue in such actions where the property was located.<sup>3</sup>

In *Denison v. Denison*, 658 So. 2d 581 (Fla. 4<sup>th</sup> DCA 1995), the dissolution of marriage action was settled between the husband and wife. All issues were disposed of except their son's counterclaim against the father for declaratory judgment as to his rights in Michigan property. The son's claim as stated by the Court was an "attempt to assert an equitable interest in the land." *Id.*, at 582. The Court stated that "[u]nder ***the particular facts of this case***, we hold that Florida cannot exercise jurisdiction." *Id.*, at 582. (emphasis added) The Court held

that because the Florida court cannot act directly on the property, it

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<sup>3</sup>This Court in *Goedmakers* cited various examples where there was no "property in litigation": *Coon v. Abner*, 246 So. 2d 143 (Fla. 3d DCA 1971)(suit for cancellation of note on real property - not subject to local action rule); *Royal v. Parado*, 462 So. 2d 849 (Fla. 1<sup>st</sup> DCA 1985)(action for rescission or cancellation of contract for sale or exchange of land is transitory, not local action); *Jutagir v. Marlin*, 453 So. 2d 503 (Fla. 3d DCA 1984)(complaint to rescind agreement to sell land, not local action); *St. Laurent v. Resort Marketing Associates, Inc.*, 399 So. 2d 362 (Fla. 2d DCA 1981)(suit for breach of sales marketing agreement for sale of ownership units at condominium, no property in litigation).

cannot effect complete relief in this case to which the parties would be entitled by Michigan law.

*Id.*, at 583.

In *Polkowski v. Polkowski*, 854 So. 2d 286 (Fla. 4<sup>th</sup> DCA 2003), the Fourth District held that since the trial court lacked *in rem* jurisdiction over the North Carolina property, it erred in ordering partition and sale of the property. It stated

In this case, the trial court lacked *in rem* jurisdiction over the North Carolina property. It erred in that portion of the final judgement ordering the partition and sale of the North Carolina property.

*Id.* In order to have a partition the trial court would have to supervise a proceeding which would occur in North Carolina.

Here the court was not conducting a sale in another jurisdiction but was exercising its personal jurisdiction to direct the parties to hire an independent listing agent to execute any documents necessary to effectuate the sale of the property. It stated that the trial court had jurisdiction to order the sale of the Israeli property, by ordering, "...the parties to execute a listing agreement...and...execute documents..." *Gil*, 2003 WL 2149 243 at \*1. The court's decision was based upon its *in personam* jurisdiction over the parties.<sup>4</sup>

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<sup>4</sup>A court that has obtained in personam jurisdiction over a party may order that party to act on property that is outside of the court's jurisdiction. Because such order operates directly against the parties to the action rather than against the land, it is within the court's jurisdiction. *Fall v. Easton*, 215 U.S. 1, 11-12, 30 S.Ct. 3,

**CONCLUSION**

The decision below clearly does not conflict with any of the cases cited by the Petitioner nor does it apply legal principles which conflict with prior decisions of this Court or of decisions of the other district courts of appeal. It is respectfully submitted that review be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished by facsimile and mail to Barry S. Franklin, Esq. and Donald G.

\_\_\_\_\_  
54 L.Ed. 65 (1909); *General Electric Capital Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139 (Fla. 3d DCA 1995); *Dusesoi v. Dusesoi*, 498 So. 2d 1348 (Fla. 2d DCA 1986); *Sammons v. Sammons*, 479 So. 2d 223 (Fla. 3d DCA 1985); *General Motors Corp. v. State*, 357 So. 2d 1045 (Fla. 3d DCA 1974), *cert. denied*, 365 So. 2d 712 (Fla. 1978); *Belsky v. Belsky*, 324 So. 2d 111 (Fla. 3d DCA 1975), *cert. denied*, 336 So. 2d 1180 (Fla. 1976).

Criscuolo, Esq., Franklin & Criscuolo, Attorneys for Appellant/Former Wife, 801 N.E. 167<sup>th</sup> Street, Second Floor, North Miami Beach, Florida 33162-3729 on this \_\_\_\_\_ day of June, 2004.

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**CERTIFICATE OF TYPE SIZE AND STYLE**

In accordance with Florida Rule of Appellate Procedure 9.10(a)(2), undersigned counsel certifies that the foregoing Petitioner's Brief on Jurisdiction is printed in Times New Roman, 14-point.

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