

**THE FLORIDA SUPREME COURT**

Case No.: SC07-155

Lower Court Case No.: 2D06-5808

FLORIDA WEST REALTY  
PARTNERS, LLC  
Petitioner,

v.

MDG LAKE TRAFFORD, LLC,  
Respondent.

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**PETITIONER'S BRIEF ON JURISDICTION**

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## STATEMENT OF THE CASE AND FACTS

In September, 2005, Florida West Realty Partners, LLC (“Florida West”) sued MDG Lake Trafford, LLC (“MDG”) for specific performance, breach of contract, and declaratory relief concerning a contract for the sale of real property. In connection with that lawsuit, Florida West recorded a Notice of Lis Pendens pursuant to §48.23 Florida Statutes (2005). Subsequently, MDG sued Florida West for breach of contract and declaratory relief. The trial court consolidated the cases in July 2006.

Because §48.23(2) Florida Statutes (2005) provides, *inter alia*, that a notice of lis pendens is not “effectual for any purpose beyond one year from the commencement of the action . . . except when the court extends the time on reasonable notice and for good cause”, Florida West moved to extend the lis pendens. In making this motion, Florida West relied on this Court’s decisions in *Chiusolo v. Kennedy*, 614 So.2d 491 (Fla. 1993) and *Medical Facilities Development, Inc. v. Little Arch Creek Properties, Inc.*, 675 So.2d 915 (Fla. 1996) to establish the existence of “good cause” for the extension of the notice of lis pendens on the basis that a “fair nexus” existed between Florida West’s claims and the real property described in the notice of lis pendens. Florida West offered to post a bond in connection with any extension of lis pendens. At the hearing on the motion to extend, MDG conceded the existence of a “fair nexus” but argued that

the lis pendens should be discharged because MDG was being damaged by the continued existence of the lis pendens and that Florida West had not established “good cause” for the extension because it had not yet taken any discovery in the case.

Florida West timely sought certiorari review in the Second District. On July 11, 2007, the Second District entered its opinion denying Florida West’s petition for certiorari review and upheld the trial court’s decision to discharge the lis pendens. In its decision, the Second District determined that the “fair nexus” test established by *Chiusolo* was not, by itself, sufficient to establish “good cause” for the extension of a notice of lis pendens under §48.23(2) and held that the statute “requires more” than a “fair nexus” if the proponent of a lis pendens seeks to extend the notice beyond one year from the commencement of the litigation.

### **STATEMENT OF JURISDICTION**

Florida West seeks review in this court based on the Second District’s misapplication of *Chiusolo* and *Medical Facilities*. This Court has discretionary jurisdiction to review a district court decision which expressly and directly conflicts with a decision of this Court on the same issue of law. Fla. Const. Article V., §3(b)(3). Decisional conflict may be created by a conflict in legal principles appearing on the face of the decision or the misapplication of a specific holding previously announced by this Court. *Rosen v. Florida Ins. Guar. Ass’n*, 802 So.3d

291, 292 (Fla. 2001); *Vest v. Travelers Ins. Co.*, 753 So.2d 1270, 1272 (Fla. 2000); *Arab Termite and Pest Control of Florida, Inc. v. Jenkins*, 409 So.2d 1039, 1040 (Fla. 1982).

### **SUMMARY OF THE ARGUMENT**

The District Court’s ruling fails to properly apply the “procedural requirements” relating to lis pendens as set forth in this Court’s decision in *Chiusolo and Medical Facilities Development* by requiring a lis pendens proponent to establish “something more” than showing a “fair nexus” between the property and the claims made in the litigation. As such, the Second District has misapplied this Court’s prior rulings relating to the conditions under which a lis pendens may be maintained.

### **ARGUMENT**

In *Chiusolo v. Kennedy*, 614 So.2d 491 (Fla. 1993), this Court held that “the procedural requirements associated with lis pendens should advance [the] important purposes” of protecting purchasers or encumbrancers from being embodied in a dispute involving title in property and protecting the plaintiff from intervening liens and from possible extinguishment of the plaintiff’s unrecorded interest in the property. *Id.* at 492.

The “procedural requirement” at issue in *Chiusolo* was the discharge of plaintiff’s notice of lis pendens. Accordingly, this Court held that so long as the

proponent of the lis pendens “can establish a fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit,” the lis pendens “cannot be dissolved”. *Id.* Finally, this Court held that a bond, “whenever appropriate, is a vehicle for protecting the property holders just as the lis pendens protects the plaintiff and third parties.” *Id.* at 493.

In *Medical Facilities Development, Inc. v. Little Arch Creek Properties, Inc.*, 675 So.2d 915 (Fla. 1996), this Court addressed another “procedural requirement” relating to lis pendens: the standard a trial court should use to determine if a bond is required when the notice of lis pendens is governed by §48.23(3) Florida Statutes. *Id.* at 916. This Court held that, notwithstanding the statutory reference to injunctions in §48.23(3) Florida Statutes, a lis pendens proponent was not required to post a bond in every case. *Id.* at 918. This ruling was premised on *Chiusolo’s* holding that a lis pendens was different than an injunction in that it also warned third parties about the pending litigation. As noted by this Court in the *Medical Facilities* decision, the policy considerations set forth in *Chiusolo* governed the interpretation and application of §48.23(3) Florida Statutes concerning that subsection’s reference to “injunctions”. The same policy considerations should govern the interpretation of §48.23(2) with respect to extensions of a notice of lis pendens “for good cause”.

In the instant case, the trial court and the Second District were presented with another “procedural requirement” relating to lis pendens in the form of a request by Florida West to extend the lis pendens. Florida West submits that, given the principles set forth in *Chiusolo*, there is no functional distinction between a request for discharge of a lis pendens by a defendant early in the case under Section 48.23(3) as occurred in *Chiusolo* and the request by a plaintiff for an extension of a lis pendens under Section 48.23(2) as the one-year time period approaches. Both scenarios present “procedural requirements associated with lis pendens” as announced in *Chiusolo*. The underlying interests of the plaintiff, of third parties who may deal with the property and of the defendant do not change merely because one year has passed since the commencement of the litigation and it is the plaintiff seeking an extension of the lis pendens rather than a defendant seeking to discharge the lis pendens. However, the rulings of the trial court and the Second District imposed further requirements on Florida West other than establishing a “fair nexus” thereby ignoring the clear policies regarding lis pendens and the procedural aspects of lis pendens as set forth in *Chiusolo* and *Medical Facilities*.

### **CONCLUSION**

In its ruling below, the Second District discussed the policies regarding lis pendens as announced in *Chiusolo* but then proceeded to hold that an extension of



a lis pendens required more than a showing of a “fair nexus”. This is a “conflict in legal principles appearing on the face of a decision.” It is also a misapplication of this Court’s lis pendens jurisprudence as set forth in *Chiusolo* and *Medical Facilities*. As such, this Court should accept jurisdiction of this case and permit further briefing and argument on the merits in accordance with Florida Const. Art. V, §3(b)(3).

**CERTIFICATE OF TYPE SIZE AND STYLE**

Undersigned counsel certifies that the size and style of type used in this brief is 14 pt. New Times Roman.

Respectfully Submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Petitioner’s Brief on Jurisdiction** has been furnished by U.S. Mail, Postage Prepaid, this 20<sup>th</sup> day of August, 2007, to:

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## **APPENDIX**

1. Decision of Second District Court