

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-_____
Lower Tribunal No. 5D06-1280

GREENTREE SERVICING, LLC, ETC.

Petitioner

vs.

MICHAEL J. DECANIO, ET AL.

Respondents

PETITIONER'S BRIEF ON JURISDICTION

PETITION FOR DISCRETIONARY REVIEW OF
THE FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

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STATEMENT OF THE CASE AND OF THE FACTS

Petitioner, Green Tree Servicing, LLC, Etc., pursuant to article V, section 3(b)(3) of the Florida Constitution, seeks review of a written opinion of the Fifth District Court of Appeal of Florida, in which it determined that the clerk of the circuit court was not required to give Petitioner notice of a tax deed sale. Greentree Servicing, LLC, etc., v. DeCanio, et al., 5D06-1280 (Fla. 5th DCA February 23, 2007). Petitioner filed suit in the trial court for replevin of a mobile home. The trial court granted summary judgment for the purchaser of a tax deed to real property on which the mobile home was located, determining that Petitioner's lien on the mobile home was extinguished by the tax deed sale and that Petitioner was not entitled to notice of the tax deed process. The decision was affirmed by the Fifth District Court of Appeal on February 23, 2007.

Petitioner timely filed a notice to invoke discretionary jurisdiction on March 23, 2007.

SUMMARY OF THE ARGUMENT

The decision of the Fifth District Court of Appeal expressly affects a class of constitutional officers. Clerks of court, who are constitutional officers charged with providing notice of tax sales, are directly affected by the decision because it determines which lienholders are entitled to notice under section 197.522, Fla. Stat.

ARGUMENT

I. THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AFFECTS A CLASS OF CONSTITUTIONAL OR STATE OFFICERS

The decision of the Fifth District Court determining that Petitioner, as a lienholder listed on the title to a mobile home, is not entitled to notice of the tax deed process, affects the performance of clerks statewide in their compliance with section 197.522, Florida Statutes. Therefore, the decision of the Fifth District Court of Appeal expressly affects a class of constitutional officers, and this Court has jurisdiction to review the decision of the Fifth District Court of Appeal pursuant to article V, section 3(b)(3), of the Florida Constitution. See Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974).

In Spradley, this Court held:

A decision which "affects a class of constitutional or state officers" must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state. Such cases naturally affect all classes of constitutional or state officers, in that members of these classes are bound by the law the same as any other citizen. To vest this Court with certiorari jurisdiction, a decision must Directly and, in some way, Exclusively affect the duties, powers, validity, formation, termination or regulation of a particular class of constitutional or state officers. This may be a decision in a case in which the class, or some of its members, is directly involved as a party. It may also be in a case in which no member of the class is a party if the decision generally affects the entire class in some way unrelated to the specific facts of

that case.

Id. (emphasis added).

In the case at issue, the decision of the Fifth District Court of Appeal expressly affects the actions of clerks of court statewide. The Fifth District Court of Appeal has established the standard for performance of the clerk's duty to notify lienholders of a tax deed sale. This affects how all clerks will perform their statutory duty. In Bystrom v. Whitman, 488 So. 2d 520, 520 (Fla. 1986), this Court exercised jurisdiction when tax assessments were at issue and the challenge affected the conduct of tax valuations by property appraisers. The case at issue is analogous because it involves the manner in which clerks determine what notice is required of a tax sale. Therefore, Petitioner requests this Court exercise jurisdiction pursuant to article V, section 3(b)(3), of the Florida Constitution, to review the decision of the Fifth District Court of Appeal and hear this case on the merits.

CONCLUSION

The decision of the Fifth District Court of Appeal that clerks of court have no duty to notify lienholders listed on mobile home titles of tax sales of the underlying real property expressly affects the class of clerks of court. Accordingly, Petitioner respectfully requests this Court exercise its discretionary jurisdiction to review the decision of the Fifth District Court of Appeal and hear this case on the

merits.

RESPECTFULLY SUBMITTED this 30th day of March, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petitioner's Brief on Jurisdiction has been furnished to Dock A. Blanchard, of Blanchard, Merriam, Adel & Kirkland, P.A., Post Office Box 1869, Ocala, Florida 34478, by U.S. Mail this 30th day of March, 2007.

Donna S. Biggins

CERTIFICATE OF TYPE AND STYLE

I hereby certify that this brief was typed in New Times Roman 14-point font in compliance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

Donna S. Biggins