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IN THE SUPREME COURT OF FLORIDA

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CASE NO.: 71,640

CLERK, SUPREME COURT
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JAMES RISHER and CAROLYN RISHER, et al.,
Intervenors/Appellants,

v.

TOWN OF INGLIS, a municipality of the
State of Florida,

Plaintiff/Appellee.

Appeal From a Final Judgment of the Eighth
Judicial Circuit, In and For Levy
County, Florida

Case No.: 87-436-CA

INITIAL BRIEF FOR INTERVENORS/APPELLANTS

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TABLE OF CITATIONS

CASES:

State v. City of Miami, 369 So.2d, 651, 654
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(Fla. 1954)

STATUTES:

§75.08, Fla. Stat. (1967)

§75.07, Fla. Stat. (1967)

§75.02, Fla. Stat. (1967)

ENCYCLOPEDIAS:

Rules 9.110(a)(1) and 9.030(a)(1)(b)(i) of the
Florida Rules of Appellate Procedure

61 Am Jur2d, Pleading, §382

ABBREVIATIONS AND DESIGNATIONS

The following abbreviations and designations shall be used in this brief:

Florida Statute shall be abbreviated to Fla. Stat.

Section shall be abbreviated to §.

STATEMENT OF THE CASE

This is an appeal from a Final Judgment rendered in a bond validation proceeding by the Circuit Court of the Eighth Judicial Circuit, In and For Levy County, Florida, entered on the 12th day of November, 1987, by the Honorable Elzie S. Sanders, determining the TOWN OF INGLIS, a municipality of the State of Florida, had the authority to incur the bonded debt sought to be validated and confirmed by said proceedings. Appellate jurisdiction is conferred by §75.08, Fla. Stat. (1967) and Rules 9.110(a)(1) and 9.030(a)(1)(b)(i) of the Florida Rules of Appellate Procedure.

On October 22, 1987, the Circuit Court for Levy County, Florida, held a show cause hearing to ascertain if there was any basis for denying the TOWN OF INGLIS' prayer seeking to validate certain bonds, notes and special assessments necessary to fund certain improvements to be made to real property allegedly within the boundary of the municipality. Pursuant to §75.07, Fla. Stat. (1967), Appellants, property owners and taxpayers seeking to avoid the legal creation of a debt which they, in common with certain property owners and taxpayers of the TOWN OF INGLIS, might be compelled to pay as a result

of the bond validation procedure, intervened in the bond validation proceedings, questioning the TOWN OF INGLIS' authority to incur the bonded indebtedness. Appellants had, prior to the commencement of the bond validation proceedings, filed a class action lawsuit in the Circuit Court of the Eighth Judicial Circuit, In and For Levy County, Florida, on June 5, 1987, requesting certain Declaratory and Injunctive relief regarding the TOWN OF INGLIS' authority to conduct business under the presently alleged valid Town Charter of 1975, as well as the TOWN's territorial jurisdiction over Appellants' real property. Appellants expressed their concern the res judicata effect attributable to Final Judgments entered in bond validation proceedings might preclude Appellants from further questioning the TOWN OF INGLIS' authority to conduct municipal business in its class action lawsuit, also currently pending before the Honorable Elzie S. Sanders. Appellants requested the bond validation proceedings be stayed pending resolution of the class action lawsuit. The Court deferred ruling on the matter and ordered counsel for each party to brief the issue of the propriety of issuing a stay order in the bond validation proceedings,

pending resolution of Intervenor/Appellants' class action lawsuit. No substantive evidence was presented at the show cause hearing concerning the TOWN OF INGLIS' authority to conduct business. On November 12, 1987, the Honorable Elzie S. Sanders entered an Order of Final Judgment in the bond validation proceedings. The Court in its Final Judgment failed to address the propriety of issuing a stay order in the bond validation proceedings pending resolution of Intervenor/Appellants' class action lawsuit, the precise issue the Court had previously ordered respective counsel to brief. Instead, the Court, in a conclusory fashion, stated the TOWN OF INGLIS was a valid municipality possessing the requisite power and authority to conduct municipal acts, even though no evidence had been submitted at the show cause hearing regarding that issue. Intervenor/Appellants maintain the Final Judgment entered by the Eighth Judicial Circuit in the bond validation proceedings should be vacated because there was no evidence submitted to or cited by the Court which would sustain the conclusions contained in the Judgment regarding the authority of the TOWN OF INGLIS to conduct its municipal business. Moreover, Intervenor/Appellants maintain it was error not to grant their request for a

stay order in the bond validation proceedings pending resolution of Intervenor/Appellants' prior-filed class action lawsuit requesting certain Declaratory and Injunctive relief regarding the TOWN OF INGLIS' authority to conduct municipal business. The principal issue in the class action lawsuit, the authority of the TOWN OF INGLIS to conduct its municipal business, is also the principal issue before the Court in the bond validation proceedings. Accordingly, Intervenor/Appellants believe the Trial Court should have granted its request to stay the bond validation proceedings, consistent with the well-established policy of Courts to honor filing priority of suit, staying the second action instead of the action first commenced, where similiar parties and subject matter are involved.

STATEMENT OF FACTS

1. On the 22nd day of October, 1987, the Honorable Elzie S. Sanders, Circuit Court Judge for the Eighth Judicial Circuit, In and For Levy County, Florida, conducted a hearing to show cause why the TOWN OF INGLIS, a municipality of the State of Florida, Plaintiff in a bond validation proceeding, should not be entitled to have its bonds, notes and special assessments validated and confirmed with respect to certain improvements to be made to the real property allegedly within the boundary of the municipality.

2. Appellants in the instant action, property owners and taxpayers affected by the issuance of the proposed bonds, intervened in the bond validation proceedings because they believed the TOWN OF INGLIS had no authority to incur the bonded indebtedness.

3. Appellants had, prior to the commencement of the bond validation proceedings, on June 5, 1987, filed a class action lawsuit in the Circuit Court of the Eighth Judicial Circuit, In and For Levy County, Florida, requesting certain Declaratory and Injunctive relief regarding the TOWN OF INGLIS' authority to conduct business under the presently alleged valid Town

Charter of 1975 as well as the TOWN's territorial jurisdiction over Appellants' real property. The class action lawsuit was also being heard by the Honorable Elzie S. Sanders.

4. Appellants, at the show cause hearing, expressed their concern the res judicata effect attributable to judgments entered in bond validation proceedings might preclude them from further litigating the question of the TOWN OF INGLIS' authority to conduct municipal business in its class action lawsuit.

5. Appellants requested the bond validation proceedings be stayed pending resolution of the class action lawsuit.

6. The Court deferred ruling on the matter and ordered respective counsel to brief the issue of the propriety of issuing a stay order in a related action which was not on appeal. The Court did not entertain any substantive evidence substantiating the TOWN OF INGLIS' authority to conduct business.

7. On November 2, 1987, the Honorable Elzie S. Sanders entered a Final Judgment in the bond validation proceedings but failed to address in any manner the propriety of issuing a stay order in the bond validation proceedings pending resolution of the

proceedings pending resolution of the class action lawsuit despite having ordered respective counsel to brief that specific issue.

8. The Final Judgment concluded the TOWN OF INGLIS was a valid municipality possessing the requisite power and authority to conduct municipal acts even though no evidence had been submitted at the show cause hearing that would support that conclusion. Nor did the Court cite any independent evidentiary matters in support of its conclusion.

9. On the 20th day of November, 1987, Appellants filed a Motion for Rehearing setting forth the aforementioned objections.

10. On the 23rd day of November, 1987, the Court entered an Order denying Appellant's Motion for Rehearing.

11. On the 15th day of December, 1987, Intervenors/Appellants filed their Notice of Appeal from the Final Judgment rendered in the bond validation proceeding.

SUMMARY ARGUMENT

The Final Judgment rendered in the bond validation proceeding conducted by the Circuit Court of the Eighth Judicial Circuit, In and For Levy County, Florida, entered on the 12th day of December, 1987, by the Honorable Elzie S. Sanders, concluding the TOWN OF INGLIS was a valid municipality possessing the requisite power and authority to conduct municipal acts was erroneous as a matter of law because there was no evidence submitted to or cited by the Court that would support such a conclusion.

The Trial Court committed further error by failing to grant Appellants' request for a stay order in the bond validation proceedings pending resolution of Appellants' prior-filed class action lawsuit requesting certain Declaratory and Injunctive Relief respecting the TOWN OF INGLIS' authority to conduct municipal business where the principal issue involved in the class action lawsuit and the bond validation proceedings was the same, i.e., whether the TOWN OF INGLIS possessed the fundamental authority to conduct its municipal business.

ARGUMENT

THE TRIAL COURT ERRED IN ENTERING A FINAL JUDGMENT WHICH CONTAINED CONCLUSIONS REGARDING THE AUTHORITY OF THE TOWN OF INGLIS TO CONDUCT ITS MUNICIPAL BUSINESS WHERE THERE WAS NO EVIDENCE SUBMITTED TO OR CITED BY THE COURT WHICH WOULD SUSTAIN THOSE CONCLUSIONS.

Florida Statute §75.07 permits any property owner, taxpayer, citizen or person interested to intervene at the time bond validation hearings are held, and by virtue of said intervention to become a party to the action. Accordingly, Appellants intervened in the instant bond validation proceedings for fear the res judicata effect attributable to Final Judgments entered in bond validation might preclude further argument questioning the authority of the TOWN OF INGLIS to conduct its municipal business in its class action lawsuit brought prior to the commencement of the bond validation proceedings. See Appendix, Exhibit "A", Appellants' Complaint for Declaratory and Injunctive Relief. The crucial issue involved in both cases is whether the TOWN OF INGLIS possesses the requisite power and authority to conduct its municipal activities. It is clear the basic function of a Court in a bond validation proceeding is to determine whether the authorizing body has the power to act. §75.02, Fla. Stat. (1967); State v. City of Miami, 369 So.2d 651,

654 (Fla. 1980).

Appellants requested the bond validation proceedings be stayed pending resolution of class action lawsuit. The Court deferred its ruling, pending submission of briefs of respective counsel considering the propriety of issuing a stay order in a related action not on appeal where the principal issue in the respective actions were similiar, if not identical. The Court did not enter any substantive evidence concerning the TOWN OF INGLIS' authority to conduct its municipal business. In fact, no evidence on any substantive matter was tendered.

On November 12, 1987, the Honorable Elzie S. Sanders entered the Final Judgment in the bond validation proceedings. See Appendix, Exhibit "D". The Final Judgment failed to address in any manner the Appellants' request that the bond validation hearings be stayed and concluded the TOWN OF INGLIS was a valid municipality possessing the requisite power and authority to conduct municipal acts. Appellants fail to understand how the Court could conclude the TOWN OF INGLIS was a valid municipality possessing the requisite power and authority to conduct municipal acts when no evidence

had been submitted to or cited by the Court supporting such a conclusion. Moreover, Judge Sanders was quite emphatic at the show cause hearing that the briefs to be submitted by respective counsel address no substantive issue except the propriety of issuing a stay order in the bond validation proceedings under the circumstances in the case at bar. Clearly, judgments must be based on pleadings and evidence. Bannen v. Trammell, 118 So. 167, 170 (Fla. 1928); Paul v. Commercial Bank of Ocala, 663 So. 265 (Fla. 1913); Cooper v. Cooper, 406 So.2d 1223, 1224 (Fla. 4th D.C.A. 1981); 61 Am Jur2d, Pleading, §382.

THE TRIAL COURT ERRED IN FAILING TO GRANT INTERVENORS/APPELLANTS' REQUEST FOR A STAY ORDER IN THE BOND VALIDATION PROCEEDINGS PENDING RESOLUTION OF INTERVENORS/APPELLANTS' PRIOR-FILED CLASS ACTION LAWSUIT REQUESTING CERTAIN DECLARATORY AND INJUNCTIVE RELIEF RESPECTING THE TOWN OF INGLIS' AUTHORITY TO CONDUCT ITS MUNICIPAL BUSINESS WHERE THE PRINCIPAL ISSUE TO BE DECIDED IN BOTH PROCEEDINGS IS THE AUTHORITY OF THE TOWN OF INGLIS TO CONDUCT ITS MUNICIPAL BUSINESS.

It is clear from the requested relief in Appellants' class action Complaint for Declaratory and Injunctive relief, specifically paragraphs 2(a) and (d), the principal issue to be resolved is whether the TOWN OF INGLIS possesses the requisite power and authority to conduct its municipal functions either

because the town boundaries are so uncertain or because the amended Charter recorded in the office of the Secretary of State on October 30, 1975, is voidable for attempting to effect changes not within the power of a municipality to change or change without a referendum. Furthermore, Appellants have already established the principal purpose of bond validation proceedings is the determination of whether the authorizing body has the power to act.

Appellants' Memorandum of Law regarding the propriety of issuing a stay order in a related but separate action not on appeal essentially asserts where two actions are pending between the same parties involving the same state of facts and seeking to accomplish the same results the Trial Court may stay proceedings in the latter action until the prior action has been heard and decided. Appellants' brief further notes that residents and taxpayers have the right to invoke the aid of equity to prevent the illegal creation of debt, which they in common with certain property owners, may be compelled to pay. Appellants argue it has become an accepted practice among Courts to honor the filing priority of suits where similar parties and subject matter are involved. Finally,

Appellants maintain bond validation proceedings by their very nature should be restricted in scope and, whenever possible, limited to evaluating whether or not the technical prerequisites to the bond validation process have been complied with. Accordingly, Appellants submit the class action lawsuit is a more proper forum in which to extensively question the authority of a municipality to act. See Appendix, Exhibit "B", Appellants' Memorandum of Law, Propriety of Issuing a Stay Order in a Collateral, But Separate Action Not on Appeal.

Notwithstanding Judge Sanders' admonishment that respective counsel were not to brief any other issues than the propriety of issuing a stay order under the circumstances existing in the instant case, Appellee, addressed several substantive issues, apparently with the ultimate intention of demonstrating there are no common issues in both proceedings and, therefore, a stay of the bond validation proceedings would be inappropriate. See Appendix, Exhibit "C", Appellee's Memorandum on Objections to Validation. Appellee contends State v. City of Miami, 379 So.2d 651 (Fla. 1980), completely resolves any issues raised by

Appellants' class action suit questioning whether the current 1975 Town Charter for the TOWN OF INGLIS was properly adopted. Appellants believe State v. City of Miami supra, is easily distinguishable. State v. City of Miami supra, assumed and never questioned the City Commission's authority to approve the issuance of revenue bonds. The Court however, did acknowledge the first function of a tribunal in a bond validation proceeding is to determine whether the authorizing body has the power to act. Clearly, the Eighth Judicial Circuit, in the case at bar, would be remiss to examine the TOWN OF INGLIS' authority and power to act where it was put on notice, by virtue of Appellants' intervention in the bond validation proceedings, that there were serious questions as to whether the TOWN OF INGLIS possessed the fundamental power to act. The Court in State v. City of Miami supra, engaged in a second tier analysis, and determined the municipality in question was exercising its power in accordance with the purpose and intent of existing law. The Court never really addressed the issue of whether the City Commission validly possessed the power to act. It either assumed such power or failed to indicate the evidentiary basis for that conclusion in its opinion. Further, Appellee's

assertion that State v. City of Miami, supra, is dispositive of Appellants' due process argument likewise misses the mark. Appellants maintain there is a violation of due process because the TOWN OF INGLIS continues to assert an improper boundary line and/or has failed to follow the specific statutory procedures mandated for annexation, resulting in Appellants being improperly assessed for taxes on acreage not legally within the boundaries of the municipality of the TOWN OF INGLIS. Appellants' claims of violation of due process are not based upon a lack of referendum to validate and approve the revenue bond issue in the bond validation proceedings. The remaining portion of Appellee's brief consists of several cases which Appellee cites for the proposition that an alleged boundary dispute is a collateral issue which cannot properly be considered in a bond validation hearing or proceeding. State v. City of Coral Gables, 154 So. 234, 243 (Fla. 1934) does not stand for the proposition that all boundary disputes are collateral in nature. Certainly boundary disputes are collateral in nature where the issue raised by the interested party is compliance with statutory prerequisites, annexation procedures, for example. However, a boundary dispute

is not collateral where the boundary issue is intertwined with the existence of the municipality itself because the legal description is so uncertain or the power of the municipal government to act with respect to certain real property is brought into question because the municipality has failed to either properly comply with the procedures for adoption of ordinances and resolutions or charter amendments. In the case at bar, the boundary dispute referred to in the class action lawsuit and raised in the bond validation proceedings is not collateral in nature, but goes directly to the question of the municipality's power to govern the territory in dispute. State v. City of Miami, 103 So.2d 185 (Fla. 1985). Moreover, Appellants in the instant case differ from the Appellant in National Airlines v. County of Dade, 76 So.2d 277 (Fla. 1954), who intervened and contested the validation proceedings on the basis that the County Port Authority had violated an agreement respecting equal allocation of space in a terminal building rather than "contesting the right, power, and authority of Dade County to issue and sell... revenue bonds." Appellants having raised objections at the bond validation proceedings not collateral in

nature, contend the Eighth Circuit should have continued to uphold the accepted practice of Courts honoring the filing priority of suits, staying the second action instead of the action first commenced, where similiar parties and subject matter are involved.

CONCLUSION

The Final Judgment entered by the Circuit Court of the Eighth Judicial Circuit, In and For Levy County, Florida, on the 12th day of November, 1987, concluding the TOWN OF INGLIS, a municipality of the State of Florida, Plaintiff in the bond validation proceedings, had authority to incur the bonded indebtedness sought to be validated and confirmed by said proceedings was erroneous as a matter of law because the conclusion was not supported by any evidence cited or proffered. Further, the Eighth Judicial Circuit erred as a matter of law in not granting Intervenors/Appellants' request to stay the bond validation proceedings pending resolution of Intervenors/Appellants' prior-filed class action lawsuit requesting certain declaratory and injunctive relief concerning the TOWN OF INGLIS' authority to conduct business because the principal issue in the class action lawsuit, the authority of the TOWN OF INGLIS to conduct its municipal business, was also the principal issue before Court in the bond validation proceedings.

WHEREFORE, Intervenors/Appellants respectfully request this Honorable Court:

- (1) Vacate the Trial Court's Final Judgment entered in the bond validation proceedings

on the 12th day of November, 1987, in the
Eighth Judicial Circuit, In and For Levy
County, Florida;

- (2) Issue an Order staying the bond validation
proceedings pending resolution of Appellants'
class action lawsuit currently before the
Eighth Judicial Circuit, In and For Levy
County, Florida.

Dated this 31st day of December, 1987.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a conformed copy hereof has been furnished by mail, on this 31ST day of December, 1987, to PETER LANGLEY, III, Town Attorney, Town of Inglis, P.O. Box 124, Yankeetown, Florida 32698.



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