

**IN THE SUPREME COURT OF FLORIDA**

---

Case No.: SC18-83  
L.T. No.: 1D15-5888; 2011CA002418

---

CHRIS JONES, as Property Appraiser for  
Escambia County, Florida; SCOTT LUNSFORD, as  
Tax Collector for Escambia County, Florida,

Petitioners,

v.

PORTOFINO TOWER ONE ASSOCIATION  
AT PENSACOLA BEACH, INC., et al.,

Respondents.

---

**RESPONDENTS' REPLY TO PETITIONERS' RESPONSE  
TO ORDER TO SHOW CAUSE**

---

EDWARD P. FLEMING  
Florida Bar No. 615927  
R. TODD HARRIS  
Florida Bar No. 651931  
*MCDONALD • FLEMING • MOORHEAD*  
P. O. Box 12388  
Pensacola, Florida 32591  
(850) 202-8531; (850) 477-0660  
[harrisservice@pensacolalaw.com](mailto:harrisservice@pensacolalaw.com)  
[flemingservice@pensacolalaw.com](mailto:flemingservice@pensacolalaw.com)  
*Counsel for Respondents*

RECEIVED, 05/02/2018 10:48:26 AM, Clerk, Supreme Court

**RESPONDENTS' REPLY TO PETITIONERS' RESPONSE  
TO ORDER TO SHOW CAUSE**

Respondents, Portofino Tower One Association at Pensacola Beach, Inc., et al, (“Portofino”) provides the following Reply to Petitioners’ “Response to Order to Show Cause”:

1. On October 11, 2017, the First District Court of Appeal issued its opinion in Beach Club Towers Homeowners Ass'n, Inc. v. Jones, 231 So. 3d 566 (Fla. 1<sup>st</sup> DCA 2017), reh'g denied (Dec. 14, 2017), review denied, SC18-81, 2018 WL 1634108 (Fla. Apr. 4, 2018) (Fla. 1<sup>st</sup> DCA 2017).

2. Also, on October 11, 2017, the First District Court of Appeal issued a *per curiam* citation opinion in Portofino Tower One Ass'n at Pensacola Beach, Inc. v. Jones, 231 So. 3d 565 (Fla. 1<sup>st</sup> DCA 2017), reh'g denied (Dec. 14, 2017). The citation opinion cited to Beach Club Towers as its basis.

3. On April 4, 2018, this Court declined jurisdiction in Chris Jones v. Beach Club Towers Homeowners Association, Inc., Case No. SC18-81.<sup>1</sup>

4. On April 6, 2018, this Court issued an Order for Petitioners to show cause why the Court should not also decline to accept jurisdiction in Chris Jones v. Portofino Tower One Association at Pensacola Beach, Inc., Case No. SC18-83<sup>2</sup>

---

<sup>1</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81\\_disposition\\_142296\\_d20a.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81_disposition_142296_d20a.pdf)

<sup>2</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83\\_order\\_226844\\_o01a.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83_order_226844_o01a.pdf)

which seeks review of a *per curiam* citation opinion which relies upon the Beach Club opinion which this Court has now declined to review.

5. On April 23, 2018, Petitioners filed their Response<sup>3</sup> citing to supposed “distinguishing factors” between this case and Beach Club based on the *trial court* ruling in Portofino which was reversed by the First District with a *per curiam* citation opinion.

6. Notably, Petitioners’ Jurisdictional Brief<sup>4</sup> in this case is virtually identical to the Jurisdictional Brief it submitted in Beach Club<sup>5</sup>. And, Petitioners expressly represented to this Court in their Jurisdictional Brief herein that the issues for which they seek review in Portofino are “identical” to the issues in Beach Club.<sup>6</sup>

### **REVIEW NOT AVAILABLE FOR PER CURIAM CITATION OPINION**

The First District opinion at issue in this case is a *per curiam* citation opinion. Portofino Tower One, 231 So. 3d at 565. This Court has said it will not

---

<sup>3</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83\\_response\\_50575\\_response.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83_response_50575_response.pdf)

<sup>4</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83\\_brief\\_127440\\_juris20initial20amd20brief.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83_brief_127440_juris20initial20amd20brief.pdf)

<sup>5</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81\\_brief\\_127438\\_juris20initial20brief.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81_brief_127438_juris20initial20brief.pdf)

<sup>6</sup> See footnote 1 of Petitioner’s Jurisdictional Brief in this case. [https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83\\_brief\\_127440\\_juris20initial20amd20brief.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83_brief_127440_juris20initial20amd20brief.pdf)

review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See Wells v. State, 132 So.3d 1110 (Fla.2014); Stallworth v. Moore, 827 So.2d 974 (Fla.2002); Harrison v. Hyster Co., 515 So.2d 1279 (Fla.1987); Dodi Publ'g Co. v. Editorial Am. S.A., 385 So.2d 1369 (Fla.1980); Jenkins v. State, 385 So.2d 1356 (Fla.1980).

The Portofino opinion states:

PER CURIAM.

For the reasons stated in Beach Club Towers Homeowners Ass'n v. Jones, 1D15–5886, 231 So.3d 566, 2017 WL 4526773 (Fla. 1<sup>st</sup> DCA Oct. 11, 2017), we reverse the order under review and remand for further proceedings consistent with Beach Club Towers.

REVERSED and REMANDED.

OSTERHAUS and WINOKUR, JJ., CONCUR. BOYER, TYRIE, ASSOCIATE JUDGE, DISSENTS.

A *per curiam* decision that merely cites a controlling precedent does not expressly conflict with another appellate decision even if a conflict could be demonstrated from the cited precedent. Dodi Pub. Co. v. Editorial America, S. A., 385 So. 2d 1369 (Fla. 1980). This Court has deemed this kind of decision as unreviewable even if the cited precedent was decided contemporaneously with the decision sought to be reviewed. Robles Del Mar, Inc. v. Town of Indian River Shores, 385 So. 2d 1371 (Fla. 1980). There are two exceptions when *per curiam*

opinions have been subject to review by this Court. The first is that a *per curiam* citation opinion is deemed reviewable if the case cited as a precedent has been reversed. See Jollie v. State, 405 So.2d 418, 419 (Fla. 1981). The second is that a *per curiam* citation opinion is reviewable if the case cited as a precedent is pending review. Id.

A case is not “pending review” merely because a party has filed a notice to invoke the Court’s discretionary jurisdiction. This Court must have granted jurisdiction and the case must be pending for disposition on the merits. Harrison, 515 So. 2d 1279, 1280.<sup>7</sup>

Portofino cites, *per curiam*, to Beach Club Towers, which is not a case that is pending review by this Court, nor is it a case that has been reversed or quashed by this Court. In fact, this Court has now expressly declined to review Beach Club Towers.<sup>8</sup>

Finally, Petitioners have represented to this Court in their Response to Order to Show Cause that there are “distinguishing factors” between Beach Club Towers and Portofino which would merit this Court, in essence, disregarding the well-

---

<sup>7</sup> A thorough discussion of jurisdiction in regard to per curiam citation opinions can be found at § 3:10. Express and direct conflict of decisions, 2 Fla. Prac., Appellate Practice § 3:10 (2017 ed.)

<sup>8</sup> [https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81\\_disposition\\_142296\\_d20a.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/81/2018-81_disposition_142296_d20a.pdf)

established rule on citation *per curiam* opinions. Petitioners make this “distinguishing factors” argument, despite having represented to this Court that Beach Club and Portofino concern “identical issues.”<sup>9</sup> And, Petitioners were right. The cases do present identical issues. That is, of course, why the District Court issued a *per curiam* citation opinion relying upon Beach Club.

Respondents respectfully submit the decision of the First District in this matter is a *per curiam* citation opinion which neither cites to an opinion that is under review or an opinion which has been reversed. Under the well-established case law of this Court, it is not reviewable.

/s/R. Todd Harris  
EDWARD P. FLEMING  
Florida Bar No. 615927  
R. TODD HARRIS  
Florida Bar No. 651931  
*McDonald- Fleming-Moorhead*  
P. O. Box 12388  
Pensacola, Florida 32591  
(850) 202-8531; (850) 477-0660  
[harrisservice@pensacolalaw.com](mailto:harrisservice@pensacolalaw.com)  
[flemingservice@pensacolalaw.com](mailto:flemingservice@pensacolalaw.com)  
*Counsel for Respondents*

---

<sup>9</sup> See footnote one of Petitioners’ Jurisdictional Brief:  
[https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83\\_brief\\_127440\\_juris20initial20amd20brief.pdf](https://efactssc-public.flcourts.org/casedocuments/2018/83/2018-83_brief_127440_juris20initial20amd20brief.pdf)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy hereof has been furnished to the following on this 2<sup>nd</sup> day of May, 2018, via electronic mail transmission:

Thomas M. Findley, Esquire  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
101 N. Monroe Street, Suite 925  
Tallahassee, FL 32301  
E-mail: [tfindley@bakerdonelson.com](mailto:tfindley@bakerdonelson.com)  
[jwarmack@bakerdonelson.com](mailto:jwarmack@bakerdonelson.com)

Robert J. Telfer, III, Esquire  
MESSER CAPARELLO, P.A.  
2618 Centennial Place  
Tallahassee, FL 32308  
Email: [rtelfer@lawfla.com](mailto:rtelfer@lawfla.com)  
[clowell@lawfla.com](mailto:clowell@lawfla.com)  
[statecourtpleadings@lawfla.com](mailto:statecourtpleadings@lawfla.com)

*Counsel for Petitioners*

/s/ R. Todd Harris  
\_\_\_\_\_

R. TODD HARRIS

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this Reply was prepared in Times New Roman 14-point font, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ R. Todd Harris  
\_\_\_\_\_

R. TODD HARRIS