

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

ISAAC AELION AND RIVA AELION,  
his wife, and MICHELLE AELION,

Plaintiffs,

vs.

CASE NO.: 2017-002393-CA-01

1ST PARKING USA, INC., a Florida  
Profit Corporation; and SANDS POINTE  
OCEAN BEACH RESORT  
CONDOMINIUM ASSOCIATION,  
INC., a Florida Not for Profit  
Corporation; and PAULO GONCALVES,  
Individually,

Defendants.

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**VERIFIED MOTION FOR JUDICIAL DISQUALIFICATION  
OF THE HONORABLE JUDGE DAVID C. MILLER**

The Defendants, SANDS POINTE OCEAN BEACH RESORT CONDOMINIUM ASSOCIATION, INC. and PAULO GONCALVES, through undersigned counsel and pursuant to the applicable Florida Rules of Civil Procedure, Florida Rule of Judicial Administration 2.330, and section 38.10, Florida Statutes, hereby file this Verified Motion for Judicial Disqualification of the Honorable David C. Miller (the "Verified Motion"), and in support hereof, state as follows:

1. On Friday, April 6, 2018, attorney Elisabeth Espinosa, of the undersigned's law firm, Cole, Scott & Kissane, P.A., submitted her application for candidacy for the judicial position currently held by Judge David C. Miller in the Eleventh Judicial Circuit, in and for Miami Dade County, to run against Judge Miller in the 2018 election cycle.

**COLE, SCOTT & KISSANE, P.A.**

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2. Judge David C. Miller presently presides over the above-captioned case.

3. The Defendants, SANDS POINTE OCEAN BEACH RESORT CONDOMINIUM ASSOCIATION, INC. and PAULO GONCALVES, have a well-founded fear that they will not receive a fair trial or hearing in front of Judge Miller as a result of Ms. Espinosa's candidacy against Judge Miller, resulting in inherent prejudice or bias by Judge Miller against the Defendants and the Defendants' law firm, Cole, Scott & Kissane, P.A., in this case.

4. "It has long been said in the courts of this state that 'every litigant is entitled to nothing less than the cold neutrality of an impartial judge.'" *Great Amer. Ins. Co. of New York v. 2000 Island Blvd. Condo. Assoc., Inc.*, 153 So. 3d 384 (Fla. 3d DCA 2014) quoting *State ex rel. Davis v. Parks*, 194 So. 613, 615 (Fla. 1939).

5. Section 38.10, Florida Statutes, provides that a judge should recuse himself under the following circumstances:

Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. . . .

6. Florida Rule of Judicial Administration 2.330 further provides that a motion should be sworn to, in writing, and specify the facts relied upon showing that the party "fears that he or she will not receive a fair trial or hearing" due to the described prejudice or bias of the trial judge. See Fla. R. Jud. Admin. 2.330(a)-(d).

7. Rule 2.330(f) further provides that a judge may only pass on the legal sufficiency of the motion and not the truth of the facts asserted. If the motion is legally

sufficient on its face the judge must "immediately enter an order granting disqualification and proceed no further in the action." Fla. R. Jud. Admin. 2.330(f) (emphasis added).

8. Legal sufficiency of a motion turns upon whether "[t]he facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial." *Mackenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1335 (Fla. 1990). This is a question that must be adjudged from the moving party's perspective, and not that of the judge. See *Barber v. Mackenzie*, 562 So. 2d 755, 757 (Fla. 3d DCA 1990) ("So long as the allegations 'are not frivolous or fanciful, they are sufficient to support a motion to disqualify.'" (citation omitted)).

9. Canon 3E(1)(a) of the Florida Code of Judicial Conduct provides guidance regarding when a judge should disqualify himself:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

See also Canon 3E(1)(f) (addressing recusal of a judge upon making of a public statement during judicial campaign that commits or appears to commit the judge with regard to parties, issues or controversy in pending proceedings before the judge).

10. Importantly, the Florida Courts have definitively held that "disqualification of a trial judge is appropriate where the petitioner asserts that he cannot receive a fair trial or hearing because his counsel was an opponent in the judge's reelection campaign." *Leeder v. Espinosa*, 833 So. 2d 776, 776 (Fla. 3d DCA 2002), citing *Tower Grp., Inc. v. Doral Enters. Joint Ventures*, 760 So. 2d 256, 257 (Fla. 3d DCA 2000) (same); see also *Barber*, 562 So. 2d at 758 (mandating disqualification where lawyers were active in

judge's reelection campaign); *Nieman-Marcus Grp., Inc. v. Robinson*, 829 So. 2d 967, 968 (Fla. 4th DCA 2002) (requiring disqualification of judge where one of the party's attorneys is acting as the judge's campaign treasurer); *Rivera v. Bosque*, 188 So. 3d 889 (Fla. 5th DCA 2016) (holding that involvement of respondent's counsel in the judge's ongoing campaign was legally sufficient reason rendering disqualification necessary).

11. In fact, in *Leeder*, the Third District Court of Appeal explained that a trial judge "may have had an obligation to *sua sponte* recuse herself" under the circumstances, and pursuant to Canon 3(E)(1)(a) of the Code of Judicial Conduct. *Leeder*, 833 So. 2d at 776, quoting *Tower Grp.*, 760 So. 2d at 257.

12. Necessity of disqualification under the circumstances presented in this case is further supported by the Florida Supreme Court Commission on Standards of Conduct Concerning Judges, which has issued an opinion recommending that a trial judge be disqualified in cases involving his election opponent "for a period of time, perhaps two years, until . . . considering all the circumstances . . . , your impartiality cannot reasonably be questioned." *Barber*, 562 So. 2d at 758, quoting Fla. Sup. Ct. Comm'n on Stds, of Conduct Concerning Judges, Op. 84-23 (Oct. 26, 1984); see also Fla. Sup. Ct. Comm'n on Stds, of Conduct Concerning Judges, Op. 84-12 (May 30, 1984) ("The committee unanimously states that you should be disqualified in cases of your political opponent.").

13. The Judicial Ethics Advisory Committee has also found that disqualification extends not only to the defense attorney appearing before the judge, but to other members of the defense attorney's law firm. See Jud. Ethics Advisory Comm., Opinion 2007-17 (Nov. 15, 2007) ("Finally, the Committee advises that any ethical obligations regarding disclosure and disqualification arising out of attorney's appearance extends to

any member of the attorney's law firm."), *citing* Jud. Ethics Advisory Comm., Opinion 2003-22 ("If a judge believes that a relationship with an attorney must be disclosed or if a judge believes he or she should disqualify himself or herself, then that same disclosure and/or disqualification applies when any member of the attorney's law firm appears before the judge.").

14. It is for all these reasons that the Defendants have a well-founded fear that they will not receive a fair trial or hearing in front of Judge Miller as a result of Ms. Espinosa's candidacy against Judge Miller, resulting in inherent prejudice or bias by Judge Miller against the Defendants and the Defendants' law firm, Cole, Scott & Kissane, P.A., in this case. And, for these reasons and to ensure impartiality, the Defendants respectfully request that Judge Miller immediately grant this Verified Motion and recuse himself from this matter.

15. This Verified Motion, and the statements contained herein, are made in good faith, and within 10 days after discovery of the facts constituting the grounds for the Verified Motion, and is being promptly presented to the trial court for an immediate ruling. See Fla. R. Jud. Admin. 2.330(c) & (e).

16. Pursuant to rule 2.330(j), the trial judge "shall rule on a motion to disqualify immediately." Indeed, "[t]he general rule is that a judge must immediately grant a legally sufficient motion to disqualify and take no further action in the matter." *Berry v. Berry*, 765 So. 2d 855, 857 (Fla. 5th DCA 2000).

WHEREFORE, based upon the above facts and legal authority, the Defendants, SANDS POINTE OCEAN BEACH RESORT CONDOMINIUM ASSOCIATION, INC. and PAULO GONCALVES, respectfully request that this Honorable Court (i) grant this Verified

Motion; (ii) enter an order of recusal; and (iii) reassign this matter to another division.

**Dated this the 9<sup>th</sup> day of April, 2018.**

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**VERIFICATION PURSUANT TO SECTION 92.525, FLORIDA STATUTES**

Under penalty of perjury, I declare that I have read the foregoing Motion for Disqualification and Verified Motion for Judicial Disqualification of Honorable David C. Miller, and the facts alleged therein are true and correct to the best of my knowledge and belief. As set forth in the Motion, I fear that I will not receive a fair trial or hearing because of the described prejudice or bias of Judge Miller.

PAULO GONCALVES

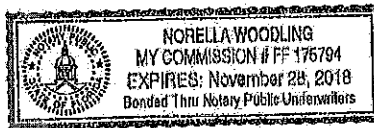
By:   
Paulo Goncalves

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF MIAMI-DADE    )

Sworn to and subscribed before me this the 9 day of April, 2018, by Paulo Goncalves on behalf of Defendant, PAULO GONCALVES, who is (  ) personally known to me, or (        ) who has produced \_\_\_\_\_ as identification.

  
NOTARY PUBLIC

My commission expires: Nov 28/2018




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**ATTORNEY'S CERTIFICATION PURSUANT TO RULE 2.330(c)(4)**

I hereby certify that this Verified Motion and the client's statements are made in good faith.

By:



Joseph J. Goldberg, Esq.  
FL BAR. No. 91107

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY on this 9th day of April, 2018, that a true and correct copy of the foregoing has been furnished by electronic mail (email) at designation bpanter@panterlaw.com to **Brett A. Panter, Esq.**, Panter, Panter & Sampedro, P.A., 6950 N. Kendall Drive, Miami Florida 33156, Counsel for Plaintiff, miactrpleadings@wickersmith.com to **Jacob J. Liro, Esq.**, Wicker Smith O'Hara McCoy & Ford, P.A., 2800 Ponce de Lean Blvd., Suite 800, Coral Gables, Florida, 33134, Counsel for 1<sup>st</sup> Parking USA, Inc., BMC-KD@kubickidraper.com and PSB-KD@kubickidraper.com, **Brad J. McCormick, Esq.**, 25 West Flagler Street, Penthouse, Miami, Florida, 33310, Counsel for 1<sup>st</sup> Parking USA, Inc., and we have electronically filed the foregoing with the Clerk of Miami-Dade County by using the Florida Courts e-Filing Portal.

By: /s/Joseph J. Goldberg

Joseph J. Goldberg

FBN: 091107

Dennis J. Egitto

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