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Real Estate: Alert - February 8, 2010

Developers and lenders with projects in Miami-Dade County that have current permits, time-sensitive agreements, or capacity reservations nearing expiration should be aware that there is now an administrative mechanism for extending certain approvals. The Board of County Commissioners approved an ordinance granting holders of certain specific development approvals the option to request a one-time, two-year extension of time for these approvals. The extension of time is available only upon application. Lenders for ongoing development projects may wish to confirm that their borrowers are taking the necessary steps to avail themselves of this extension as well.

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Media and Communications

Newsletter - January/February 2010

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"Dixie Chick" Deftly Defends Against Defamation Lawsuit

January 20, 2010

Zachary R. Potter- Jacksonville

After criticizing former President George W. Bush, the lead singer of Natalie Maines, learned that the marketplace can impose a heavy price on those who speak publicly about controversial issues. In 2007, one of Maines' public comments attempted to use the courts to exact a legal judgment on those who speak publicly about controversial issues. In 2007, one of Maines' public comments attempted to use the courts to exact a legal judgment on those who speak publicly about controversial issues. Fortunately for Maines, Amendment came to her rescue when a federal district court in Arkansas granted her motion for summary judgment.

The events underlying the case began in May 2007, when Maines watched documentaries about the case of the "West Memphis Three" (WM3), the murder prosecution of three teenagers who were accused and convicted of brutally killing three eight-year-olds in the early 1990s. Inspired by Maines became convinced that the WM3 were innocent and prepared a letter posted on her website asking her fans to donate to a legal defense fund. However, the letter suggested that Terry Hobbs, the stepfather of the victims, was the actual murderer.

Hobbs took particular offense to Maines' involvement in the case and threatened legal action against her. Interestingly, by doing so, Hobbs provided Maines with the opportunity to investigate the murders herself, as her lawyers were allowed to depose Hobbs regarding his whereabouts on the night of the murders, his contacts

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and other matters. The WM3 are now using the deposition transcript claims of innocence and are hailing Maines as a "hero." Ultimately, the defamation case did not turn on whether Hobbs was guilty of murder.

During the summary judgment proceedings, Hobbs's sought to avoid the "malice" standard, which would require him to prove that Maines's knowledge that her statements were false or with reckless disregard for the truth. Hobbs needed to win the issue because his purported evidence of actual malice was virtually non-existent. Accordingly, the court focused on two issues: whether Hobbs could be classified as a limited purpose public figure.

Hobbs' first argument was that there was no "public controversy" before the court. In view, the case had no impact on anyone other than the direct parties, the victims and the accused. In making this argument, Hobbs had to acknowledge that there had been extensive press regarding the case. Indeed, the arguments were similar to the Supreme Court case, *Time, Inc. v. Firestone*. In that case, the Court held that extensive public interest in the divorce of the "scion of America's wealthier industrial families" was not the sort of public concern that merited heightened constitutional protection. Without identifying where the controversy was drawn, the district court rejected Hobbs' comparison, holding that the issue of crime and the prosecutions that result from it are "without question" public controversies, even if a divorce is not.

Hobbs' second argument was that he was a mere private figure in the controversy. He acknowledged that he had done some press interviews and that he was entitled to defend himself after being defamed. Again, the court rejected his argument based upon the timing and purpose of Hobbs' interactions with the press. Specifically, the court found that Hobbs took advantage of his press prior to Maines' statements by, for example, selling his life rights to the company and attempting to sell his journal as a book. Having done so, Hobbs forfeited any claim to private figure status with respect to the WM3.

Having resolved the above questions against Hobbs, the district court held that Hobbs was a limited purpose public figure and, because he had no actual malice, granted Maines' summary judgment motion. With her court victory, Maines can continue to speak out on public issues of concern to the community. It can be comfortable that, if there is a price to be paid for doing so, it should be paid in the marketplace, not in the courts.

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