

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2004

OCEANSIDE AT FISHER ISLAND,
ETC., ET AL.,

**

**

Petitioners,

**

vs.

**

CASE NO. 3D03-2805

CITY OF MIAMI BEACH, ET AL.,

**

LOWER

TRIBUNAL NO. 02-162AP

Respondents.

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Opinion filed April 21, 2004.

A Petition for Writ of Certiorari to the Circuit Court for
Miami-Dade County, Celeste H. Muir, Eugene J. Fierro, and Jennifer
D. Bailey, Judges.

Shubin & Bass, and Jeffrey S. Bass, for petitioners.

Murray H. Dubbin, City Attorney, and Gary M. Held, First
Assistant City Attorney, and Greenberg Traurig, and Elliot H.
Scherker, for respondents.

Before COPE, GREEN, and RAMIREZ, JJ.

PER CURIAM.

Oceanside at Fisher Island Condominium Association No. 5, Inc.
(the Association), along with John and Carolyn Kapioltas, Skip

Pines, David Paresky, and Mr. and Mrs. Steven Berkman (collectively, the neighbors), petition this Court for a writ of certiorari seeking to quash the circuit court appellate division's order rendered on September 24, 2003, after the appellate division denied rehearing. Pursuant to the Florida Supreme Court's decision in Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003), we reiterate that a petition seeking certiorari review is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance. Id. at 199. Accordingly, because petitioners are challenging the constitutionality of certain sections of the City of Miami Beach Code, we deny the petition for writ of certiorari and remand the matter back to the circuit court, with instructions to treat the petitioners' case as an original action for declaratory judgment.

Certiorari denied; case remanded with instructions.