


COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul Aguila, City Attorney 

DATE: June 5, 2019

SUBJECT: **City Attorney's Status Report**

LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT:

1. **BERMAN V. THOMAS MOONEY, IN HIS CAPACITY AS PLANNING DIRECTOR OF THE CITY OF MIAMI BEACH, THE CITY OF MIAMI BEACH, A FLORIDA MUNICIPAL CORPORATION, AND FRANCIS MILON, IN HIS INDIVIDUAL CAPACITY**, Case No. 2019-010314-CA-01 (11th Judicial Circuit in and for Miami-Dade County, Florida).

On April 17, 2019, the Plaintiff served the above-subject lawsuit upon the City of Miami Beach (the "City") and Francis Milon, an individual unaffiliated with the City of Miami Beach. Out of six counts plead in the Complaint, the Plaintiff set forth two causes of action against the City – a petition for writ of mandamus and, in the alternative, a request for declaratory judgment with injunctive relief. Specifically, the Plaintiff is alleging that Mr. Milon made misrepresentations on submissions to and concealed his true intentions from the City to wrongfully obtain permits for the illegal construction on his property. The Plaintiff is further alleging that after being made aware of Mr. Milton's misrepresentations, the City had a legal duty to revoke the illegally issued permits, require the removal of any and all structures erected pursuant to such permit(s) that are not compliant with the City Code requirements, and prohibit the issuance of any Certificate of Occupancy for Mr. Milon's property, yet refused to do so. The City Attorney's Office considers the causes of action set forth against the City to be devoid of any legal merit and will be defending the City to the fullest extent of the law.

2. **HERBERT JIMENEZ V. CITY OF MIAMI BEACH, A FLORIDA MUNICIPAL CORPORATION**, Case No. 2019-010687-CA-01 (11th Judicial Circuit in and for Miami-Dade County, Florida).

On April 24, 2019, the Plaintiff served the above-subject lawsuit upon the City of Miami Beach (the "City"). The Plaintiff is attempting to recover overtime compensation, liquidated damages, and reasonable attorney's fees and costs under the Fair Labor Standards Act ("FLSA"). Specifically, the Plaintiff is alleging that he was employed by the City as an hourly paid non-exempt employee from January 28, 2013, through April 3, 2019. The Plaintiff further alleges that during the course of his employment, the City violated the FLSA by regularly requiring the Plaintiff to work in excess of forty (40) hours per week, failing to pay full and proper overtime compensation, and by failing to maintain proper time records as mandated by the Act. The City Attorney's Office will be defending the City to the fullest extent of the law.

3. **MARIA VALDES V. CITY OF MIAMI BEACH**, Case # 18-007406 CA 01(11th Judicial Circuit in and for Miami-Dade County, Florida).

The City was served with this complaint on May 7, 2019. The plaintiff, Maria Valdes, has alleged that on March 10, 2014 she was walking at the sidewalk at or about 942 Michigan Avenue, Miami Beach, Florida, and subsequently tripped and fell due to the fact that the sidewalk at issue was broken and in a state of disrepair. The plaintiff is alleging injuries as a result of the fall. We shall file our answer and propound discovery to the plaintiff.

4. **FLORIDA CARRY, INC., a Florida not for profit corporation, MICHAEL TAYLOR, an individual, STEVEN JENKINS, an individual, SEAN DEVINE, an individual, CHRISTOPHER PHILPOT, an individual, CARLOS GUITERREZ, an individual, JONAH WEISS, an individual, Plaintiffs, v. CITY OF MIAMI BEACH, FLORIDA, JIMMY L. MORALES, in his official and individual Capacity, DAN OATES, in his official and individual capacity, OFFICER (FNU) GARCIA, an individual OFFICER KENNETH BOLDUC, an individual OFFICER GUSTAVO VILLAMIL, an individual OFFICER (FNU) RIVER, an individual LT. EDUARDO GARCIA, an individual OFFICER ERROL VIDAL, an individual OFFICER MANUEL CANO, an individual OFFICER JESSICA SALABARRIA, an individual OFFICER ROBERT MITCHELL, an individual OFFICER NAHAMI BICHELIS, an individual OFFICER LAVANIEL HICKS, an individual OFFICER ELIZABETH VIDAL, an individual Defendants** Case # 13-2019-CA-009499 (11th Judicial Circuit in and for Miami-Dade County, Florida).

On May 8, 2019, the Plaintiffs (Florida Carry, Inc. and six (6) individuals) served a Complaint in the above-captioned lawsuit upon the City of Miami Beach ("City") and the City Manager (Jimmy L. Morales), and on May 9, 2019 served the Complaint upon the Chief of Police (Daniel J. Oates). The Complaint also names twelve (12) individual Miami Beach police officers as Defendants in the lawsuit, and many of these police officers have been served with the Summons and Complaint.

The Plaintiffs' allegations contained within the lawsuit stem directly from an encounter between the City's police officers and the Plaintiffs (who are members of, or associated with, Florida Carry, Inc.), during which Plaintiffs were openly carrying firearms and weapons at South Pointe Park Pier, while allegedly engaged in a fishing expedition.

The Plaintiffs allege that the City, the City Manager and the Chief of Police violated Section 790.33 of the Florida Statutes by improperly, and in violation of the State preemption, placing signs which illegally prohibit the possession of firearms by individuals in City owned parks and facilities. Moreover, the Plaintiffs allege that the Chief of Police and the Mayor ratified the conduct of the police officers by certain statements they made publicly after the event had concluded. The Plaintiffs seek civil fines of \$5,000 each against the City Manager and the Chief of Police, and they seek damages, attorneys' fees and costs, as well as declaratory and injunctive relief, against the City. Additionally, the Plaintiffs are seeking an award of damages and attorneys' fees and costs, pursuant to 42 U.S.C. 1983 and 42 U.S.C. 1985, alleging that the conduct of the City and its police officers violated the Plaintiffs' civil rights, and that the City and the police officers conspired to do so.

The City Attorney's Office will be defending this lawsuit.

5. **BRIAN ALMONTE V CITY OF MIAMI BEACH** Case # 2019-9497-CA 01 (11th Judicial Circuit in and for Miami-Dade County, Florida)

The City was served with this complaint on May 10, 2019 alleging that on January 27, 2018, the plaintiff, Brian Almonte, while walking at the sidewalk in front of the Edwards Apartment located at 953 Collins Avenue in Miami Beach, Florida, tripped and fell due to an elevated portion of the sidewalk. The plaintiff is alleging injuries as a result of the fall. We shall file our answer and propound discovery to the plaintiff.

6. **ALAN T BROWN V CARILLON HOTEL, LLC F/K/A Z CAPITAL FLORIDA RESORT, LLC CLEAR CHANNEL OUTDOOR, INC., AND CITY OF MIAMI BEACH** Case #: CACE 170922353 (25) (11th Judicial Circuit in and for Miami-Dade County, Florida)

The City was served with this complaint on May 14, 2019. The plaintiff, Alan T. Brown, who is quadriplegic and in a wheelchair, after leaving the gym, was travelling northbound on the sidewalk by the bus shelter between 68th and 69th Street on Collins Avenue. The Plaintiff alleges that his wheelchair caught the edge of the bus shelter, and threw him from the wheelchair and into oncoming traffic on Collins Avenue. The plaintiff is suing the Carillon Hotel who rebuilt the sidewalk during renovation of the hotel. The Plaintiff is also suing Clear Channel, who built the bus shelter pursuant to a contract with the City, wherein the City derives some advertising revenue placed on the bus shelter.

The plaintiff filed this suit in Broward County contrary to the home rule privilege that stands for the proposition that a municipality be sued in its own county. Plaintiff counsel has indicated that the joint tortfeasor exception applies in this case since the City is a joint tortfeasor along with the other co-defendants. Plaintiff's third amended complaint was pled in a manner that included the City as merely a co-defendant, but not as a joint tortfeasor.

7. **DADE COUNTY POLICE BENEVOLENT ASSOCIATION INC V. CITY OF MIAMI BEACH** Case #: 2019-01378-CA-01 (11th Judicial Circuit in and for Miami-Dade County, Florida).

On May 17, 2019, the Dade County Police Benevolent Association, Inc. (the "Plaintiff") served a Complaint upon the City of Miami Beach (the "City"), which seeks a Writ of Mandamus (an Order) from the Circuit Court compelling the release of certain public records held by the City of Miami Beach Police Department (the "Police Department").

The Plaintiff asserts in the Complaint that the Police Department willfully acted in violation of Chapter 119 of the Florida Statutes by: 1) unlawfully refusing to permit the inspection and copying of those public records responsive to Plaintiff's public records request submitted to the Police Department on February 28, 2019; 2) failing to assert an applicable exemption which would authorize the Police Department to withhold the requested records; and 3) acting in bad faith through its general course of conduct in response to the Plaintiff's request for public records.

As a result of the Police Department's alleged violations of Chapter 119, the Plaintiff has requested an immediate hearing pursuant to Section 119.12 of the Florida Statutes at which hearing the Plaintiff will be seeking, in addition to the aforementioned Writ of Mandamus, its attorneys' fees and costs incurred in obtaining the requested relief.

The City Attorney's Office hopes to prevail at the immediate hearing conducted pursuant to Fla. Stat. 119.12, and will be filing an Answer to the Complaint denying the material allegations set forth therein.