

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

MEMO #

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney

Rafael Paz
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DATE: December 8, 2021

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

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

1. **ROBERT MITCHELL V. CITY OF MIAMI BEACH** (United States District Court for the Southern District of Florida) Civil Action No. 21-22835-Civ-Scola

Plaintiff sued the City alleging employment discrimination. The City will vigorously defend this claim.

2. **940 OCEAN DRIVE LLC, a Florida Limited liability company, THE STRAND ON OCEAN DRIVE CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, VMSB, LLC, a Florida limited liability company, S&M AIRPLANE ENTERPRISES< LLC, a Connecticut limited liability company, 1236 OCEAN DRIVE, LLC, a Florida limited liability company, NAKASH STRAND, LLC, a Florida limited liability company, v. CITY OF MIAMI BEACH, a Florida municipal corporation** (Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida) Case No. 2021-023095-CA-021

Plaintiffs sued the City alleging that the closure of Ocean Drive to vehicular traffic violated the law. Given the pending reopening of one lane of traffic to vehicular traffic, the City expects that this case will be voluntarily dismissed by the Plaintiffs.

3. **CARRIE COCCA V. CITY OF MIAMI BEACH** (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida) Case No. 2021-012677-CA-01

The City was served with this complaint on October 22, 2021, alleging that on February 16, 2019, Plaintiff Carrie Cocca was walking on/or near the public sidewalk along Collins Avenue and 35th Street when she tripped over an uneven, broken and dangerous handhole/cover meter box cover causing injuries which required multiple surgeries. We shall file our answer to the complaint, assert affirmative defenses and propound discovery to the Plaintiff.

4. **PEDRO J. GARCIA, as Property Appraiser Appraise of Miami-Dade County, Florida v. MIAMI BEACH REDEVELOPMENT AGENCY and JIM ZINGALE, as Executive Director of the State of Florida Department of Revenue,** (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida) Case No. 2021-18058-CA-01

This is an action to overturn the Value Adjustment Board ("VAB") ruling in favor of the Miami Beach Redevelopment Agency in connection with the reduction of 2020 tax assessment. The Summons and Complaint were served on the City on October 26, 2021.

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The basis for the challenge, as alleged by the Property Appraiser, is that the VAB adopted the Special Magistrate's recommendation and reduced the assessment in excess of the thresholds provided in section 194.036(1)(b) and below "just" value in violation of section 193.011, F.S. and Article VII, Section 4 of the Florida Constitution.

The Answer and Affirmative Defenses was timely filed on September 15, 2021.

5. **REVERSE MORTGAGE SOLUTIONS, INC. VS. EDWARD SULTON, ET AL** (Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida) Case No. 2021-022093-CA-01

This is an action to foreclosure a residential mortgage on the real property located at 1325 Normandy Drive, Miami Beach, FL. The Summons and Verified Complaint for Foreclosure of Mortgage were served on the City on October 29, 2021.

The lender alleges that its Adjustable Rate Home Equity Conversion Mortgage, which was recorded on December 9, 2013, is superior to the City's lien for unpaid utility bills, which was recorded on August 25, 2015.

The Answer and Affirmative Defenses was timely filed on November 4, 2021.

6. **BRIAN DONELAN V. CITY OF MIAMI BEACH, 1701 MIAMI (OWNER), LLC D/B/A SLS SOUTH EACH HOTEL AND SUPERIOR LANDSCAPING & LAWN SERVICES, LLC** (Circuit Court of the 11th Judicial Court in and for Miami-Dade County, Florida) Case No. 2021-019884-CA-01

The City was served with this complaint on November 1, 2021, alleging that on May 18, 2019, Plaintiff, Brian Donelan was a business invitee of Defendant SLS South Beach Hotel, when he exited said hotel and began to walk west bound on the sidewalk which was on the north side of 17th street approaching Collins Avenue, when he tripped and fell on the portion of the sidewalk which contained a landscaping tree and dirt, which resulted in a change of elevation, causing Plaintiff to fall and suffer significant and severe injuries. We shall file our answer to the complaint, assert affirmative defenses and propound discovery to the Plaintiff.

7. **SETAI HOTEL ACQUISITION LLC, a Delaware limited liability company, SETAI RESORT & RESIDENCES CONDOMINIUM ASSOCIATION, INC. a Florida corporation v. CITY of MIAMI BEACH, a Florida municipal corporation** (Circuit Court of the 11th Judicial Court in and for Miami-Dade County, Florida) Case No. 2021-016693-CA-01

On July 6, 2021, Setai Hotel Acquisition LLC and Setai Resort & Residences Condominium Association, Inc. ("Plaintiffs"), filed suit in Miami-Dade County Circuit Court seeking declaratory and injunctive relief in connection with the City Commission's adoption of (i) Ordinance No. 2021-4422 (amending the RM-3 district regulations to create additional regulations on ground floor additions, and amending supplementary district regulations pertaining to rooftop additions in the Architectural District), and (ii) Resolution No. 2021-31723 (approving the vacation of a portion of the southern half of 21st Street east of Collins Avenue).

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Plaintiffs allege procedural violations, due process violations, a violation of the City Charter, violations of the U.S. and Florida Constitutions, claims under 42 U.S.C. § 1983, illegal spot zoning, illegal contract zoning, inverse condemnation, damages, and attorney's fees.

The City was served with the Amended Complaint on November 9, 2021.

8. **SETAI RESORT & RESIDENCES CONDOMINIUM ASSOCIATION, INC. a Florida Not for Profit Corporation; and SETAI HOTEL ACQUISITION, LLC, a Foreign Limited Liability Company v. BHI MIAMI LIMITED CORP., a Delaware Limited Partnership; and THE CITY OF MIAMI BEACH, a Florida municipal corporation.** (Circuit Court of the 11th Judicial Court in and for Miami-Dade County, Florida) Case No. 2021-24426 CA-01

Setai Resort & Residences Condominium Association, Inc., and Setai Hotel Acquisition, LLC, filed a Verified Complaint for Writ of Prohibition against BHI Miami Limited Corp. and the City of Miami Beach. The Complaint requests the Circuit Court issue a writ of prohibition to the City's Historic Preservation Special Magistrate preventing the Special Magistrate from exercising jurisdiction over and rendering a decision in *In Re: 100 21st Street* (Special Magistrate Appeal Case No. 2021-002).

The City was served with the Verified Complaint on November 10, 2021. On November 23, 2021, the City and BHI Miami Limited Corp. filed a Joint Motion to Transfer the Case to the Appellate Division, and a Joint Response in Opposition to Plaintiffs' Verified Complaint for Writ of Prohibition.

9. **ERNESTO ORSETTI V. CITY OF MIAMI BEACH ET AL SERGIO CAMPOS** (Circuit Court of the 11th Judicial Court in and for Miami-Dade County, Florida) Case No. 2021-022375 CA-01

Plaintiff's Complaint alleges claims for malicious prosecution and abuse of process.

The City received Plaintiff's Complaint on October 28, 2021. The City anticipates it will file its Motion to Dismiss on or about December 13, 2021.

10. **SRA/LINCOLN THEATER, LLC. OUNZE CORPORATE, LLC D/B/A TAPELIA, LINCOLN CENTER ASSOCIATES, LLC AND BRAZA Y LENA, LLC D/B/A OLE OLE STEAKHOUSE V THE CITY OF MIAMI BEACH** (Circuit Court of the 11th Judicial Court in and for Miami-Dade County, Florida) Case No. 2021-025673-CA-01

Plaintiffs are sidewalk café operators and their landlords who sued the City challenging the non-renewal of Plaintiffs' Sidewalk Café Permits. The City will vigorously defend this lawsuit.

RAP/lr