

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Victoria Méndez, City Attorney
DATE: May 20, 2020
RE: Office of the City Attorney - General File for FY 2019-2020
Litigation Report for the Month of April 2020
Matter ID No.: 19-2538

In order to keep you informed of the status of pending litigation matters currently handled by the Office of the City Attorney, provided below is a summary of significant results and new cases in April 2020, and other important updates. My attorneys and I remain available to discuss any of these matters in further detail at your convenience.

SIGNIFICANT RESULTS AND UPDATES:

SUMMARY JUDGMENT: *1000 Brickell, Ltd. and Kai Properties, Ltd. v. City of Miami*, Miami-Dade County Circuit Court, Case No. 14-11755-CA-23 (CAG/EJE). This case arises from a warranty deed that conveyed property to the City, which became known as the Allen Morris Brickell Park. The warranty deed included a reverter clause. It provided that if “any” part of the property was “used for any purpose other than public park purposes,” the entire property would revert to the grantor or its successors in interest. Years later, the City and Plaintiff 1000 Brickell, Ltd., entered into a consent agreement that authorized La Cucina Management, Inc., d/b/a Perricone’s Marketplace, to use a portion of the property for its restaurant. The Plaintiffs eventually sued the City, claiming that the property reverted back to them because Perricone’s Marketplace exceeded the scope of use authorized by the consent agreement. The Plaintiffs not only sought possession of the property; they also sought damages in the form of rent payments made by Perricone’s Marketplace to the City. Both the Plaintiffs and the City moved for summary judgment. The trial court agreed with the Plaintiffs that they were entitled to the property based on the reverter clause. However, the court agreed with the City that the Plaintiffs were not entitled to any damages. The court then entered final judgment. The City has moved for rehearing which is pending.

DECLARATORY ACTION: *Platinum Advisors, LLC, and Skyviews of America, LLC, vs. City of Miami*, Miami-Dade County Circuit Court, Case No. 20-1679 (02) (CAG/EJE). Plaintiffs are Arizona limited liability companies which sued Commissioner Carollo and his consulting company for breach of contract and other claims in a separate lawsuit. In the first lawsuit, Plaintiffs sought, among other things, injunctive relief against the Commissioner in his official capacity to prevent him from exercising his voting duties. In this proceeding, Plaintiffs sought a declaratory judgment that the City Attorney unlawfully agreed to pay the Commissioner's legal fees because he was acting as a private party during the term of the contract and had breached the

contract by disclosing proprietary trade secrets. The City moved to dismiss this case asserting that the relief sought violated the separation of powers doctrine, Plaintiffs lacked standing to sue as foreign corporations, that a private party cannot challenge a government's executive decision to appoint counsel for an employee, and the City Code authorizes the City Attorney to engage outside counsel to comply with the rules of the Florida Bar. On April 30, 2020, Judge Alan Fine heard arguments on the City's motion to dismiss and granted the City's motion without prejudice based on Plaintiffs' failure to plead sufficient facts showing that they were residents, citizens, or taxpayers of the City of Miami. Notably, the complaint did not specifically reference the City's Citizens Bill of Rights. The Plaintiffs filed an amended complaint, to which the City will respond.

PETITION FOR WRIT OF CERTIORARI: *Robert Owusu v. City of Miami*, Third District Court of Appeal, Case No. 3D19-2385 (**EJE**). This is a public records case, in which the plaintiff sought to depose the City employee with the most knowledge of his public records request. In response, the City moved for a protective order, arguing the trial court should protect it from annoyance and undue burden. The City emphasized that the plaintiff (a) failed to pay the costs of production for the public records before filing suit, and (b) obtained the public records when he paid the costs after filing suit. The trial court granted the City's motion and prohibited the deposition. In a petition for writ of certiorari to the Third District, the plaintiff argued that the trial court caused irreparable harm by denying him the opportunity to depose the City employee. The City responded and refuted his claim. In a written opinion, the Third District agreed with the City's argument and concluded that no irreparable harm existed.

DISMISSAL – MOTOR VEHICLE ACCIDENT CASE: *Arguelles v. City of Miami*, Miami-Dade County Circuit Court, Case No. 2019-35456 CA 01 (**JPO/RSD**). In this matter, the Plaintiff filed suit against the City alleging that on October 5, 2018, a City of Miami Officer rear-ended her automobile while she was traveling on State Road 821 and approximately SW 112th Street. The City filed a Motion to Dismiss the Complaint for Failure to State a Cause of Action stating that the Officer was off-duty, outside the City limits, and not within the course or scope of his duties at the time of the accident. The telephonic hearing was scheduled before the Honorable Maria de Jesus Santovenia; however, due to unforeseen technical difficulties, the hearing was taken off calendar by the Court. Rather than reschedule the hearing, the Plaintiff filed a Notice of Voluntary Dismissal Without Prejudice and opposing counsel advised that they settled the matter with the Officer's insurance carrier.

DISMISSAL – WRONGFUL DEATH ACTION: *Lien C. Oramas as Personal Representative of the Estate of Sixto Oramas Megias v. City of Miami, et al.*, Miami-Dade County Circuit Court, Case No. 19-24757 CA 06 (**CAG**). In this wrongful death action arising out of a motor vehicle accident, Plaintiff alleged that on August 22, 2017, the decedent, Sixto Oramas Megias, visited a supermarket and bar located in a shopping center at 1400 S.W. 6th Street in Miami. Plaintiff alleged that while Megias was standing outside of the Taberna Bar, two cars collided and struck him causing his death. Plaintiff alleged the corner where the accident occurred had a history of motor vehicle accidents due to the design of the shopping center and adjacent street. Plaintiff alleged the City was negligent in failing to warn, protect, guard and secure the safety of decedent from motor vehicle accidents. The City moved to dismiss the complaint asserting Plaintiff's claims were barred by sovereign immunity as the alleged negligence involved discretionary, planning level functions of City government. On March 2, 2020, Judge Abby Cynamon granted the City's motion to dismiss without prejudice. On March 23, 2020, the Plaintiff filed a notice of

voluntary dismissal as to the City of Miami. An amended complaint was filed against the private party defendants.

SUMMARY JUDGMENT – TRIP AND FALL CASE: *Torres v. City of Miami and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 2015-29298 CA 24 (**JPO/RSD**). In this matter, the Plaintiff filed suit against the City and County alleging that on September 26, 2014, she suffered personal injuries after falling on the sidewalk located on or about 3401 Main Highway (East Side) in the Coconut Grove area in the City of Miami. The Plaintiff specifically alleged that the City was negligent in failing to maintain said location, failing to correct a dangerous condition at said location, and failing to warn the Plaintiff of a dangerous condition at said location. The City had previously advised both the Plaintiff and the County that the City did not own, operate, or maintain the public right of way, including the sidewalk where the Plaintiff allegedly fell at the time of the accident. It is well-known that the County took over the maintenance of the said location and “brick pavers” in 2013. The City filed two Motions for Summary Judgment on these issues. The first Motion for Summary was granted in part and denied in part, with Judge Arzola finding that the City did not have maintenance jurisdiction over the area in question on the date of the accident, however, there were questions of fact regarding the alleged dangerous condition, and the City’s failure to warn of the same. Following additional depositions, the City filed its Second Motion for Summary Judgment on the Plaintiff’s Third Amended Complaint on December 20, 2019, and the parties attended a telephonic hearing on the same on April 2, 2020. Judge Arzola granted the City’s Second Motion for Summary Judgment, thereby dismissing the City from the litigation.

DISMISSAL – TRIP AND FALL ACTION INVOLVING SCOOTER: *Guillaume Lauseure v. City of Miami and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 19-18063 CA 13 (**JTM**). The Plaintiff filed suit against the City and County alleging that on May 16, 2018, at N. Miami Avenue and NW 20th Street, he was caused to fall and sustain a right elbow fracture when the electric scooter he was riding hit an unmarked pole protruding from the sidewalk. The Plaintiff alleged that both defendants negligently maintained the sidewalk. At the outset of litigation, the City advised opposing counsel that the subject sidewalk was maintained by the County, not the City. Subsequently, the County’s discovery responses confirmed this information. On April 1, 2020, the Plaintiff voluntarily dismissed the City.

NEW CASES OPENED IN APRIL 2020

NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT): *Hidalgo, Angel v. City of Miami*, Miami Dade County Circuit Court, Case No. 20-8416 CA 02 (**JTM**). The Plaintiff alleges that on May 21, 2018, on NE 10th Avenue in Miami, Yovanni Jose Frias' negligent operation of the City's 2013 Freightliner Truck caused it to collide with the Plaintiff's vehicle and injure the Plaintiff.

NEGLIGENCE ACTION (TRIP AND FALL): *June Pasquier, et. al. v. City of Miami et al.*, Miami-Dade County Circuit Court, Case No. 20-8703 CA 01 (**NMR**). Plaintiff alleges that on September 21, 2019, she "tripped and fell because of an uneven sidewalk with multiple code violations and no warnings." The location of the alleged condition was on the north side of East Flagler Street adjacent to/in front of the Amazing Discount store. Plaintiff's trip allegedly caused

her to fall causing personal injuries and enjoyment of life. Plaintiff alleges that the City failed to keep and maintain said premises in a reasonably safe condition and that it also breached its duty to warn her of the alleged dangerous condition. Plaintiff also plead notice/constructive notice. A loss of consortium claim has also been plead by Plaintiff's husband, Harry Pasquier.

WRONGFUL DEATH CLAIM: *Gadith Sabbah as Personal Representative of the Estate of Menachem Krispin v. Federal Express et al.*, Miami-Dade County Circuit Court, Case No. 17-29664 CA-04 (**HJH**). This is a wrongful death action brought against Federal express relating to a one vehicle motorcycle collision on July 22, 2016. Federal Express filed a third party claim against the Miami Parking Authority for indemnity and contribution.

APPEAL - DECLARATORY JUDGMENT ACTION: *Adrian Santos vs. City of Miami & Armando Aguilar, Jr*, Circuit Court Case No. 17-29422 CA 01 (**JAG**). Former Police Officer Adrian Santos filed an action for declaratory and injunctive relief against the City and Assistant Chief Aguilar, Jr, alleging the City violated Santos' Law Enforcement Officers Bill of Rights by allegedly failing to turn over records prior to his Disciplinary Review Board hearing, allegedly failing to permit more than one attorney in his Disciplinary Review Board hearing, and by allegedly failing to have a Compliance Review Hearing. The City filed a motion to dismiss, which the court granted. Santos thereafter refiled his complaint seeking the same relief. The City responded by filing a second motion to dismiss. The court dismissed Santos' Amended Complaint with prejudice. The court reasoned that Santos' Amended Complaint was moot because Santos has been terminated for over two years. The court also found that it could not award the remedy Santos sought based on case law. Santos has appealed.

CHALLENGE TO MARINA CLOSURES: *Yachts, LLC and Alan Kaufman v. City of Miami*, United States District Court for the Southern District of Florida, Case No. 20-CV-21819 (**HJH/EJE**). The Plaintiffs, a yacht company and its owner, filed suit against the City, challenging the City's authority to close its marinas during the COVID-19 pandemic. They also sought money damages for lost profits as a result of the marina closures. Among other claims, the Plaintiffs argued that the City's decision to close the marinas was preempted by state law and violated the Florida and United States Constitutions. The case was filed in state court on April 29th, but the City removed the case to federal court on May 1st. In their emergency motion for injunctive relief, the Plaintiffs demanded the immediate reopening of all marinas in the City. In a written response, the City disputed all the Plaintiffs' claims and defended its authority to close its marinas during a pandemic. After a hearing before the Honorable Federico A. Moreno and the reopening of the marinas, the Plaintiffs agreed to voluntary dismiss their case without receiving any relief or monetary compensation from the City.

APPEAL – CODE ENFORCEMENT ORDER: *Rebuild Miami Edgewater, LLC v. City of Miami, Florida Code Enforcement Board*, Miami-Dade County Circuit Court, Appellate Division, Case No. 20-97 AP 01 (**JAG**). This is an appeal from the Final Enforcement Order of the Miami Code Enforcement Board finding the property owner in violation of the City Code for work performed without a finalize permit. The Board gave owner until March 12, 2020 to come into compliance. Absent compliance, the Board imposed a fine of \$250.00 per month.

MISCELLANEOUS MATTERS: During the month of April 2020, 1 foreclosure matter; 1 bankruptcy matter; 1 quiet title action; 1 labor grievance; 1 unemployment compensation matter; and 4 workers compensation lien subrogation matters were opened by this Office. The details of

those matters are not included in this report. In addition, this report does not include new matters involving pre-litigation claims or investigations. If you wish to be briefed on any or all of these additional matters, a meeting will be coordinated at your convenience.

TRIALS, HEARINGS, AND/OR ORAL ARGUMENTS IN MAY 2020

HEARING – MOTION FOR SUMMARY JUDGMENT: *Vilma Marcos v. City of Miami and Medcare Medical et al.*, Miami-Dade County Circuit Court, Case No. 18-2979 CA 01 (**JPO/EJE**). Plaintiff alleges that, on or about April 3, 2017, she tripped and fell on a sidewalk located at 1149 S.W. 27th Avenue. Plaintiff alleges that she sustained bodily injuries and loss of wages due to her fall. Plaintiff alleges that the City failed to keep and maintain said premises in a reasonably safe condition and that it also breached its duty to warn her of the alleged dangerous condition. On May 1, 2020, the Court held a hearing on the City of Miami’s motion for summary judgment. At the conclusion of the hearing, the Court denied the motion.

APPELLATE ORAL ARGUMENT – RECALL MATTER: *Piper, et al. v. The City of Miami, et al.*, Third District Court of Appeal, Case Nos. 3D20-464 & 3D20-466 (**KLM**). In this litigation, the recall committee brought an action for a writ of mandamus against the City and the Clerk requesting that the Court order the Clerk to forward the recall petitions on to the County Supervisor of Elections. The Clerk did not forward the petitions when they were filed on March 2, 2020, because the petitions were untimely – the petitions were filed outside of the 30-day filing period. Following a hearing on Tuesday, March 10, the Court granted the recall committee’s request for mandamus relief, and ordered the Clerk to forward the recall petitions to the County Supervisor of Elections by the following day. The City appealed that decision. Following expedited briefing, the Court heard oral argument, via Zoom, on the matter on May 7, 2020.

APPELLATE ORAL ARGUMENT – SOVEREIGN IMMUNITY: *City of Miami v. Zico Fremont*, Third District Court of Appeal, Case No. 3D19-1126 (**EJE**). The case arises from a car accident where an off-duty police officer, who was driving a police vehicle, collided with the plaintiff’s vehicle. The City moved for summary judgment on sovereign immunity, arguing that the officer was acting outside the course and scope of employment because he was off duty. The trial court denied the motion, and the City appealed. Oral argument was held before the Third District Court of Appeal, via Zoom, on May 19, 2020.

APPELLATE ORAL ARGUMENT – QUALIFIED IMMUNITY: *Brian White v. Andrew Mesa, et al.*, Eleventh Circuit Court of Appeals, Case No. 18-13879 (**KLM**). This is an interlocutory appeal from an action in which Brian White has sued the City, former Mayor and two officers for excessive force under state and federal law. Plaintiff claims that he was a passenger in a vehicle that fled from the police on July 2, 2015. He claims that after the vehicle he was in came to a stop at a dead end, he was assaulted by officers resulting in physical injuries. The incident from which the claims arose involved a call to 911 of a reported bank robbery, which identified the vehicle White was the passenger in as the vehicle driven by the suspects. When the police caught up with the vehicle and attempted a stop, the vehicle fled on the high speed chase. Once the vehicle was forced to stop on a dead end street, the Plaintiff had to be forcibly removed from the vehicle after he remained inside once officers approached. Plaintiff claims that the officers used excessive force while detaining him, while the officers claim that he resisted arrest and tried to run as they attempted to handcuff him. The incident was captured by security footage from a

nearby building. The claims against the City and former Mayor have been dismissed. The court denied the City's motion for summary judgment as to the individual officers on qualified immunity grounds, and this appeal follows. The City's primary argument on appeal is that the security footage of the incident required summary judgment in favor of the officers. Following full briefing, the Court has scheduled oral argument, via telephone, for May 22, 2020.

HEARING – MOTION FOR PROTECTIVE ORDER: *Steven Miro v. City of Miami*, Miami-Dade County Circuit Court, Case No. 18-30366 (**SKP**). The City and Plaintiff have cross-filed motions concerning the discovery of work-product privileged material and the deposition of a non-listed expert retained in anticipation of litigation. The Plaintiff has moved to compel a document concerning the non-listed expert's work product. The City has moved for a protective order for the non-listed expert's deposition. A hearing is scheduled for May 22, 2020.