Office of the City Attorney

Recent Highlights

<u>FAVORABLE RESULT IN THE TRIAL OF *PAULINE LAWHORN V. CITY OF MIAMI*</u>

Plaintiff, Pauline Lawhorn (59 years old), alleged that on October 15, 2011, she was involved in a trip-and-fall incident in the swale area in front of her home located at NW 50th Street between NW 10thand 11th Avenue. Ms. Lawhorn alleged that the City of Miami had failed to inspect and/or replace a discarded tree/root guard which was located in the swale in front of her home. She further alleged that the City had failed to properly maintain trees in her neighborhood which resulted in an "unreasonable darkening" of her sidewalk. This "darkening", she asserted, prevent her from noticing where she was walking, and thereby lead to her fall. On the day of the incident, Ms. Lawhorn claimed that she was startled by a stray cat as she was walking on her sidewalk. She suffers from ailurophobia (an irrational fear of cats). In an effort to avoid the stray cat, Ms. Lawhorn stepped towards the opposite side of the sidewalk, which lead to her stumbling onto an alleged dangerous condition (a discarded tree/root guard). Ms. Lawhorn claimed that she suffered permanent injuries to her right shoulder, right elbow, right arm and both legs. Ms. Lawhorn alleged that her subsequent right shoulder surgery was directly related to the trip-and-fall incident.

In addition to Ms. Lawhorn's claim, her husband, Turner Lawhorn, also brought a cause of action against the City of Miami for the loss of consortium, society and industry of his wife.

Before litigation was instituted, the Plaintiffs' demanded $750,000. Prior to trial, the Plaintiffs reduced their demand to $250,000 for their alleged injuries.

The City was effective in precluding Ms. Lawhorn from introducing into evidence her medical bills and records to the jury. The Plaintiff requested the jury award damages in the amount of $55,000 for past medical bills and $30,000/per year, for the remainder of her life, to cover epidural injections. The jury returned a verdict that the City of Miami was not liable for the allegations asserted by the Lawhorns. This case will now proceed to seek recovery for the City attorneys' fees and costs pursuant to the City's Proposal for Settlement.

This case was successfully tried by Assistant City Attorneys, Forrest Andrews, Carlos Gamez and Douglas Harrison.

FAVORABLE RESULT IN THE CASE OF *VILLAGE OF KEY BISCAYNE V. NATIONAL MARINE MANUFACTURERS ASSOCIATION AND CITY OF MIAMI*

In this case, the Florida Department of Environmental Protection granted a five year permit for the installation of the temporary floating docks for the Boat Show. The Village attempted to challenge the permit but the DEP dismissed its petition. The Village appealed.

After oral argument, the Third District Court of Appeal upheld the decision of the Florida Department of Environmental Protection.

FAVORABLE RESULT IN THE CASE OF *ST. JOHN INSTITUTIONAL MISSIONARY BAPTIST CHURCH, INC. V. STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, AND CITY OF MIAMI*

In this case, the FDOT instituted eminent domain proceedings. The trial court conducted an evidentiary hearing to determine apportionment of the condemnation proceeds. After hearing, the trial court granted the SEOPW CRA's amended motion for apportionment and awarded the CRA $225,371.43 for improvements on the property (after an offset for the value of fixtures returned to the CRA). The property owner, St. John Institutional Missionary Baptist Church, filed an appeal. The Third District Court of Appeal affirmed the decision in favor of the CRA without a written opinion. The Third District also denied St. John's motion for appellate attorney's fees against FDOT.

FAVORABLE RESULT IN THE CASE OF *VICTOR IGWE V. CITY OF MIAMI*

In this case, the Plaintiff, a former City of Miami Auditor General, filed a complaint against the City alleging that the City terminated him because he participated in the SEC investigation into the City's finances. He alleged that he was a "Whistleblower" under the Dodd-Frank Act and entitled to reinstatement and damages in the millions! He further alleged that because he gave sworn testimony to the SEC, the City of Miami retaliated against him in violation of his First Amendment Right to freedom of speech.

On September 29, 2016, the Court granted the City's Motion to Dismiss for Failure to State a Claim finding that all the allegations, in light most favorable to the Plaintiff, failed to state a cause of action. Specifically, the Court found that the Plaintiff failed to file his claim within the statute

of limitations, improperly split his cause of action and that his claims were barred by res judicata. This case was dismissed with prejudice.

This matter was successfully handled by Labor and Employment Division Chief Kevin R. Jones and Assistant City Attorney Kerri L. McNulty and Paralegal Isiaa Jones.

FAVORABLE RESULT IN THE CASE OF *ERIC B. CHEELEY V. CITY OF MIAMI*

In this case, the Plaintiff, a former City of Miami employee in the CITP Department, filed a complaint against the City alleging the City discriminated against him on the basis of his religion and failed to accommodate his religious beliefs, in violation of Title VII of the federal Civil Rights Act of 1964 and Florida's Civil Rights Act. He further alleged that he was wrongfully terminated after he anointed the entire CITP Department with oily crosses.

On August 10, 2016, the Court granted the City's Motion for Summary Judgment finding that there were no genuine issues of material fact and that the City is entitled to judgment as a matter of law for the federal Title VII claims and remanded the Florida Civil Rights Act claim to state court, which will have very little merit since Florida follows Title VII. Specifically, the Court found that the City would not be able to accommodate the Plaintiff's religious beliefs without an undue hardship and further that the City had a legitimate non-discriminatory basis for terminating the Plaintiff due to the vandalism caused by the anointing and further due to his poor work performance.

This matter was successfully handled by Labor & Employment Division Chief Kevin R. Jones and Assistant City Attorney Stephanie K. Panoff.