

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Victoria Méndez, City Attorney
DATE: December 20, 2019
RE: Office of the City Attorney - General File for FY 2019-2020
Litigation Report for the Month of November 2019
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 November 2019, and other important updates. My attorneys and I remain available to discuss any of these matters in further detail at your convenience.

SIGNIFICANT RESULTS:

UNSAFE STRUCTURE BOARD APPEAL: *Samuel G. Jones v. City of Miami*, Miami-Dade County Circuit Court, Appellate Division, Case No. 18-181-AP-01 (**JAG**). Unsafe structure appeal involving property located at 1016 N.W. 59th Street. The property owner passed away and the lender filed a foreclosure action. In the meantime, the unsafe structure board entered an order requiring demolition of the property. After entry of the unsafe structure order, the Appellant, Atlantic 10 LLC, successfully bid on the property at the foreclosure sale. Atlantic 10 LLC appealed the unsafe structure order. On appeal, the Circuit Court Appellate Division held that Atlantic 10 LLC did not have standing to appeal. Further, the Court held that there was no legal authority requiring the unsafe structure board to delay its hearing pending the outcome of the judicial foreclosure sale.

SUMMARY JUDGMENT - NEGLIGENCE ACTION (TRIP AND FALL): *Louise Pappas v. City of Miami and Miami-Dade County*, Miami-Dade County Circuit Court, Case No. 17-008777 CA 01 (21) (**JTM**). Trip-and-fall case from December 25, 2014, in which the Plaintiff alleged both defendants negligently maintained the sidewalk at 3444 Main Highway in Miami. The 67-year-old Plaintiff sustained a fractured left wrist, which required ORIF surgery and physical therapy. The City filed two motions for summary judgment, asserting (1) the City did not own, operate, or maintain the subject sidewalk at the time of the alleged incident, and (2) the City did not have actual or constructive notice regarding the alleged dangerous condition. On November 21, 2019, summary judgment was entered in favor of the City.

SUMMARY JUDGMENT – SUBROGATION ACTION: *Esurance Property and Casualty Insurance Company v Reinaldo Goyos and City of Miami*, Miami-Dade County Court, Case No. 2018-4576 SP 05 (**RSD**). The Plaintiff insurance company filed suit against Officer Goyos

and the City of Miami arising out of a motor vehicle accident that occurred while Officer Goyos was driving his take-home vehicle while off-duty to pick up an off-duty work check. The City answered the complaint denying liability and filed a Motion for Summary judgment. On November 15, 2019, the trial court granted the City's Motion for Summary Judgment.

DENIAL OF MOTION TO AMEND COMPLAINT TO ADD CLAIMS AGAINST THE CITY – FALSE IMPRISONMENT ACTION: *Mayrelis Zamora and Enrique Pando v. City of Miami and Officer Raymond Gonzalez*, Miami Dade County Circuit Court, Case No. 16-018369 CA 01 (34) (**EJE/DAH**). The Plaintiffs sued the City of Miami and Officer Raymond Gonzalez, alleging false imprisonment and loss of consortium. Later, the Plaintiffs moved to amend their complaint to add claims for malicious prosecution and negligent infliction of emotional distress against the City and Officer Gonzalez. The City and Officer Gonzalez filed a response in opposition to the motion, explaining that sovereign immunity barred any malicious prosecution claim against the City and that the allegations failed to state a claim for negligent infliction of emotional distress. The hearing on the matter was held on December 10, 2019. After the hearing, the trial court denied the plaintiffs' motion amend the complaint to add claims for malicious prosecution and negligent infliction of emotional distress.

CODE ENFORCEMENT: In November 2019 there were 169 code compliance, nuisance abatement, and ticketing matters before Boards and/or Special Masters.

NEW CASES OPENED IN NOVEMBER 2019

PETITION FOR WRIT OF MANDAMUS – LAND USE MATTER: *SPV Realty, LC v. City of Miami*, Miami-Dade Circuit Court, Case No.: 19-32456 (**KLM/ALK**). SPV Realty brings a petition for writ of mandamus against the City of Miami, seeking the issuance of a writ of mandamus to compel the Planning and Zoning Board to hear and vote on a comprehensive plan amendment portion of its application for a special area plan. On December 13, 2019, the court issued an alternative writ of mandamus, which is the procedure to require a response to the petition by the City. The City will be preparing and filing a response.

CIVIL RIGHTS ACTION: *Rodney Keaton v. Miami-Dade County Police Department Director Juan Perez, Miami-Dade County Mayor Carlos Gimenez, City of Miami Police Officer Rafael Muina, and City of Miami Police Sergeant Darien Pastor*, United States District Court, Southern District of Florida, Case No. 19-22859-CIV-Gayles (**DAH**). Pro Se Plaintiff alleges that on October 18, 2016, Officer Muina and Sergeant Pastor falsely arrested him for Felon in Possession of a Firearm and Carrying a Concealed Firearm without a Concealed Weapons Permit at a residence located at 1317 NW 2nd Avenue, Miami, Florida. Plaintiff alleges defendant officers subjected him to false arrest, false imprisonment, and malicious prosecution and in doing so violated the Fourth Amendment. Plaintiff is seeking compensatory and punitive damages.

APPEAL – CIVIL RIGHTS ACTION: *Jamie Brown v. Ti'Andre Bellinger*, United States Court of Appeals, Eleventh Circuit, Case No. 19-14586. (**EJE**). This is an action brought under federal and state law for damages claiming excessive force and intentional infliction of emotional distress. The case arises from a pat-down search of the Plaintiff that extended to his groin area. The search was incident to an undisputedly lawful arrest after multiple bags of marijuana were found in the

Plaintiff's possession. Officer Bellinger moved for summary judgment based on qualified immunity and the absence of evidence demonstrating intentional infliction of emotional distress. The district court granted summary judgment in favor of the Officer on all counts. The Plaintiff has appealed.

NEGLIGENCE ACTION: *Luis Perez v. City of Miami and Miami-Dade County*, Miami-Dade County Circuit Court Case No. 19-32823 CA 01 (**CHG**). Plaintiff Luis Perez alleges that on February 7, 2017, while performing construction work at or near NW 5th Street and NW 1st Avenue (Miami Central Station), an unoccupied MetroMover shuttle collided with certain "work equipment" causing Plaintiff to be "thrown off the ramp." Plaintiff further alleges that as a direct and proximate cause of the negligent operation of the MetroMover, he sustained serious and permanent injuries.

NEGLIGENCE ACTION (TRIP AND FALL): *Rickie Robinson v. City of Miami & Florida Department of Transportation*, Miami Dade County Circuit Court, Case No. 19-32960 CA 02 (**JTM**). The Plaintiff has filed suit against the City and FDOT alleging that on December 6, 2015, he tripped and fell on a sidewalk at 79th Street and 11th Avenue in Miami-Dade County, Florida, due to the defendants' negligence in maintaining said sidewalk, and sustained injuries.

INJUNCTION ACTION – LAND USE MATTER: *Save Grove Isle, LLC v. City of Miami & Grove Isle Associates*, Miami-Dade County Circuit Court, Case No. 19-32391 CA 01 (**KLM**). Plaintiffs, a group of condominium owners on Grove Isle, bring this action for injunctive relief, seeking to prohibit the City from issuing any building permits to the defendant Grove Isle Associates ("the Developer"). The Complaint alleges that the proposed development constitutes a life safety hazard, because the configuration of the buildings will cause a wind phenomenon resulting in winds in excess of 300 mph on the island. The Complaint also alleged that the traffic and noise caused by the planned construction will constitute a nuisance. The Developer has moved to transfer the matter to one of the divisions that heard previous and ongoing matters related to this development. The administrative law judge has set a hearing for January 7, 2020, to consider which division all related matters should be transferred to.

NEGLIGENCE ACTION: *Mary Gimenez & German Gimenez v. City of Miami*, Miami Dade County Circuit Court, Case No. 19-30490 CA 01 (**JTM**). The Plaintiffs have filed suit alleging that on February 14, 2019, at SW 59th Avenue and SW 2nd Terrace in Miami-Dade County, an unrelated accident knocked down a stop sign. The plaintiffs allege that the City then responded to process and control the scene, during which time a third party ran the downed stop sign and struck the Plaintiffs' vehicle causing injuries. Each Plaintiff has alleged a separate claim based on (1) Premises Liability and (2) General Negligence.

SUBROGATION ACTION - MOTOR VEHICLE ACCIDENT: *GEICO General Insurance Company a/s/o Sanon-Jules, Karina v. City of Miami*, Miami-Dade County Circuit Court, Case No. 19-23578 CC 23 (**CHG**). Plaintiff GEICO, as subrogee of Karina Sanon-Jules, alleges that July 21, 2018, its insured was involved in a motor vehicle accident with City of Miami employee, Rony Rodriguez, who was negligently operating a City-owned vehicle at the time of the incident. Plaintiff alleges that it has paid monies towards property damages arising out of this accident and is seeking recovery for said payments.

NEGLIGENCE ACTION (MOTOR VEHICLE ACCIDENT): *Evelyn Lopez Gonzalez v. Shedrick Pope and City of Miami*, Miami-Dade Circuit Court, Case No. 19-24815 CA 01 (**CHG**). Plaintiff, Evelyn Lopez Gonzalez alleges that on September 7, 2017, she was involved in a motor vehicle accident with City of Miami Parks & Recreation employee Mr. Shedrick Pope (“Pope”) at or near the intersection of SW 61st Avenue and SW 4th Street. Plaintiff alleges that Pope negligently operated a City of Miami vehicle at the time of the incident. As a direct and proximate cause of said accident, Plaintiff alleges that she suffered permanent bodily injuries and property damages.

MISCELLANEOUS MATTERS: During the month of November 2019, 10 foreclosure matters; 3 bankruptcy matter; 6 quiet title actions; and 2 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 DECEMBER 2019

APPELLATE ORAL ARGUMENT – LAND USE MATTER: *The Riverfront Master Association Inc., et al. v. City of Miami, et al.*, Miami-Dade County Circuit Court, Appellate Division, Case No. 19-92 AP (**KLM**). This petition involves an appeal from a decision of the City's Planning and Zoning Appeals Board to deny an appeal taken by Petitioners (associations of homeowners in adjacent condominiums) of the City's grant of several waivers to the property owner for the development of the subject property. Petitioners argue that the Board departed from the essential requirements of the law in denying the appeal. Following full briefing, the court conducted oral argument on December 17, 2019.