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October 10, 2019

Keith Stephens, Chair
Board of Trustees for the Fort Pierce Retirement System
100 North U.S. Highway One
Fort Pierce, FL 34950

RE: ***City of Miami Firefighters' and Police Officers' Retirement Trust & Plan et al v. Castro***

Dear Mr. Stephens,

This letter is addressed to you and, through you, the remaining members of the Board of Trustees of our Fort Pierce Retirement System. My purpose is to briefly acquaint our Board, with a retirement-related decision recently handed down in the Third District Court of Appeals, ***City of Miami Firefighters' and Police Officers' Retirement & Plan, et al v. Castro***, __So.3d ___, Case No. 14-7987 (Fla 3d DCA 9/18/19), 44 FLWD 2343. A copy will be found attached.

In ***City of Miami*** , Defendants offered retirement plan coverage to their employees, as does Fort Pierce for its own employees. Like our City, Miami's plan contained provision for DROP. In 2010, Miami declared a "financial emergency", and proposed adoption of an ordinance formally declaring such distressed state. Rumors started circulating among Miami's employees that if they failed to retire and go into DROP before the "financial emergency" ordinance was adopted, then their retirement benefits would be severely impaired under the new ordinance. It was purportedly a confusing situation, compounded by what was claimed to be bad advise received from Plan administrators. Later, those employees who retired and took DROP prematurely as a result of the confusion sought to rescind their retirement. They sued the City and its Plans, seeking rescission of the DROP status, and further suing for breach of contract, and breach of an implied covenant of good faith and fair dealing.

If all that sounds a little familiar to our Board members, it should. This is the second appearance made by the case in the Third District Court. The first time around the trial court granted Defendant City of Miami's Motion to Dismiss the claim for rescission. In so doing, the trial court did not reach another issue raised by Defendant Miami, sovereign immunity. The trial court's dismissal went up to the Third District Court of Appeals. But the appeal was then dismissed on jurisdictional grounds, and sent back to the trial court to rule on the sovereign immunity issue.

The Third District Court's opinion there is discussed with our Board in correspondence formally addressed to Mr. Perona, dated 2/14/18.

The trial court went on, after the remand, to treat sovereign immunity and determined that Miami and it's retirement systems were not entitled to sovereign immunity as it might have otherwise related to the claims for breach of contract. Once again, here, Miami appealed to the District Court. That Court noted the general rule that "sovereign immunity is waived only as to an express governmental contract and its attendant duties." It then determined that any confusion motivating Plaintiff employees to retire when they did was not the product of any express contract language, so did not override City's sovereign immunity:

> We are loath to adopt a rule of law that transforms general language in a retirement plan ordinance—requiring that the performance of a pension administrator be observed and evaluated—into an express contractual duty guaranteeing the accuracy of advice provided to pension beneficiaries on pending legislation. While the Pension ordinances might have imposed upon the Pension Defendants an express contractual duty to provide retirement *benefits* to pension beneficiaries (see footnote 12, supra), we do not view the Pension ordinances as expanding that contractual duty to voluntarily undertaken advise-giving to pension beneficiaries on the effects of pending legislation.
>
> Municipalities commonly include language in their pension ordinances requiring supervision and oversight of the employees charged with handling plan logistics. Indeed, such ordinances, including those of the City, provide that trustees of retirement plans owe a fiduciary duty to the beneficiaries of the retirement system. Again, though, a judicial expansion of such general duties into express contractual obligations—as suggested by the plaintiffs, for which the city and the Pension Defendants must waive sovereign immunity— is a leap we are unprepared to take.

The District Court held that, however poor the advice given to the employees might have been, it was not the equivalent of express contract language, so did not constitute an exception to the sovereign immunity otherwise available to the City and it's pension systems. The Court thus found that the trial court erred in denying application of such immunity and ruled that Plaintiffs failed to state a cause of action for breach of contract.

It is an interesting decision. While it affirms that a Plan, including our own, may not be subjected to liability for giving beneficiaries bad advice, leaving them ultimately responsible for their own reading and understanding of plan materials, it nevertheless remains important that our Plan members continue to strive for the highest standard of care when communicating plan information to its beneficiaries, and to this end one is pleased that education, through formal Trustee Certification, continues to receive such high priority. If there are any questions about this case, please let me know and I will be happy to respond accordingly. Thanking you for your attention, I am and shall ever continue to remain, as always,

Most Cordially and Respectfully Yours,

James T. Walker, Esquire
JTW/dam
Attachment
cc: Pete Sweeney, City Attorney (via email)
Robert V. Schwerer, Esquire (via email)

documents—all opportunities to be heard prior to the issuance of both the Proposed Assessment and the Notice of Decision. Indeed, the auditor provided accommodations and extensions for several months but still did not receive verifiable tax returns, bank statements or copies of cancelled checks. On at least ten occasions, the Department's auditor requested documentation in writing from A & S. Still, A & S chose not to meaningfully submit to or participate in the Department's audit proceedings. A & S's voluntary failure does not constitute a denial of procedural due process.

Additionally, under Florida law, where a dealer "fails or refuses to make his or her records available for inspection . . . it shall be the duty of the department to make an assessment from an estimate based upon the best information then available to it for the taxable period." § 212.12(5)(b), Fla. Stat. (2018). The Department is entitled to collect the estimated taxes, interest and penalty based on the auditor's assessment. *Id.* These amounts "shall be considered prima facie correct, and the burden to show the contrary shall rest upon the dealer." *Id.*

"Evidence that is confirmed untruthful or nonexistent is not competent, substantial evidence. Competent, substantial evidence must be reasonable and logical." *Wiggins v. Fla. Dep't of Highway Safety & Motor Vehicles*, 209 So. 3d 1165, 1173 (Fla. 2017) (citing *Gonci v. Panelfab Prods., Inc.*, 179 So. 2d 856, 858 (Fla. 1965)). Additionally, "evidence that is unreliable is not competent, substantial evidence." *Id.* at 1170.

The Department's auditor properly prepared an assessment based on the reliable documentation it had. Using the best information available in September of 2016 and the months that followed, the auditor made a sales tax assessment. Specifically, the auditor utilized the 2013 federal income tax returns that A & S filed and A & S's reported gross sales to assess the unreported sales for 2014 and 2015—evidence that the Department obtained from A & S and was able to verify and cross-reference. This evidence was reliable, reasonable and logical. Because the Department's assessment is prima facie correct as a matter of law, it was A & S's burden to show that the assessment was incorrect. *See* § 212.12(5)(b), Fla. Stat. A & S has failed to do so in this appeal. Thus, we affirm the Department's assessment, which was based on competent, substantial evidence. *See id.* § 120.68(7)(b).

The auditor was not required to consider evidence that the Department was unable to substantiate within the records and information that A & S provided. Indeed, unsubstantiated and unreliable evidence is neither competent nor substantial. *See Wiggins*, 209 So. 3d at 1170. Finally, we note that because the record on appeal is confined to the information that was available to the administrative agency, it would be improper for this Court to consider any documentation submitted by A & S after completion of the Department's assessment and administrative proceedings. *See* § 120.68(4), Fla. Stat. ("Judicial review of any agency action shall be confined to the record transmitted . . . .").

A & S also contends that the Department's assessment was improper, as it contained misapplications of law. More particularly, A & S argues that the Department's classifications of the stage dancer fees and valet parking fees were erroneous. According to A & S, the dancer fees cannot be rental income because payment thereof does not give the dancers any property rights. The fees qualify as income because the dancers pay the fees to A & S for a license—the fee gives the dancers use of A & S's establishments for their performances. *See id.* § 212.02(10)(i) (defining a license as "the granting of a privilege to use or occupy a building . . . for any purpose"); *id.* § 212.031 (providing that licenses to use real property are subject to sales tax). We find the Department properly categorized the stage dancer fees as taxable income pursuant to Florida law and its own precedent. *See id.* §§ 212.02(10)(i), 212.031; *see also U.F., Inc. v. Dep't of Revenue*, No. 02-0686, 2002 WL 1592381 (Fla. DOAH June 14, 2002) (deeming taxable fees received for granting areas designated for lingerie modeling).

As for the valet parking fees, A & S states that the valet company, an outside vendor, is responsible for payment of the sales and use tax connected with that income. However, A & S failed to provide the Department with documentation evidencing this third-party's existence. Assuming that a third-party vendor was responsible for parking the cars, the valet parking fees are taxable as rental charges for parking paid to the operator by the one parking the vehicles. *See* Fla. Admin. Code R. 12A-1.073(2). Further, A & S did not provide any evidence that the valet fees were for a valet service rather than a taxable charge for rental of parking spaces. Under Florida Statutes section 212.03(6), the valet fees are taxable if patrons of an establishment are required to use and pay for valet services and parking. On the record before us, we find no misapplication of law in the Department's categorization of valet parking fees as taxable income pursuant to section 212.03(6).

CONCLUSION

The Department did not violate A & S's due process rights in conducting the audit based on an assessment of the records it was given after months of requests for clarification and additional evidence. The Department adhered to Florida law and its own precedent and procedures in categorizing the stage dancer fees and valet parking fees as taxable income. The Department's findings are supported by competent and substantial evidence, the essential requirements of law were observed and procedural due process was accorded.

Affirmed.

* * *

Contracts—Municipal corporations—Sovereign immunity—City pension boards are immune from liability in breach of contract action brought by city employees alleging that board staff members gave plaintiffs erroneous advice regarding effect of city's financial urgency ordinance on pension benefits—Defendant pension boards are entitled to sovereign immunity in breach of contract action, as defendants' giving of inaccurate advice did not breach any contractual duty imposed on defendants by city's pension ordinances

CITY OF MIAMI FIREFIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST & PLAN, et al., Appellants, v. LIEUTENANT JORGE CASTRO, et al., Appellees. 3rd District. Case Nos. 3D18-1436 & 3D18-1437. L.T. Case Nos. 14-7987 & 14-7997. September 18, 2019. Appeals from a non-final order from the Circuit Court for Miami-Dade County, Michael A. Hanzman, Judge. Counsel: Klausner, Kaufman, Jensen & Levinson, and Robert D. Klausner, Adam P. Levinson and Paul A. Daragjati (Plantation), for appellants. Sorondo Rosenberg Legal, PA, and R. Edward Rosenberg; The Silverstein Firm, LLC, and Ira B. Silverstein (Philadelphia, PA); James C. Blecke, for appellees.

(Before LOGUE,[1] SCALES and LINDSEY, JJ.)

(SCALES, J.) The Miami-Dade Circuit Court determined, as a matter of law, that the two City of Miami retirement boards and their respective boards of trustees were not protected by sovereign immunity from the breach of contract claims brought by certain City employees. We reverse because the subject pension ordinances, relied upon by the trial court in determining that the defendants owed contractual duties to the plaintiffs, do not impose the express contractual obligations that the plaintiffs alleged were breached. Thus, the retirement boards and their trustees are sovereignly immune from the alleged breach of contract claims.

I. Case History

A. The Parties

This consolidated appeal is from an amended order on a motion to

dismiss entered by the trial court on June 22, 2018. The order was entered in two cases below which, for ease of reference, we call the *Castro* case[2] and the *Rodriguez* case.[3] The plaintiffs in the *Castro* case (appellees here) are Lieutenant Jorge Castro and fellow former and current City of Miami Police officers. The three named defendants in the *Castro* case are: the City of Miami Firefighters' and Police Officers' Retirement Trust and Plan; the Board of Trustees of the City of Miami Firefighters' and Police Officers' Retirement Trust; and the City of Miami. The plaintiffs in the *Rodriguez* case (also appellees here) are Jose Rodriguez and fellow former and current City of Miami civilian employees. The three named defendants in the *Rodriguez* case are: the City of Miami Civil Employees' and Sanitation Employees' Retirement Trust and Plan; the Board of Trustees of the City of Miami Civil Employees' and Sanitation Employees' Retirement Trust; and the City of Miami. For the purposes of this opinion, the retirement boards and trustee defendants in both cases will be referred to collectively as "the Pension Defendants," and the City of Miami will be referred to as the "City."

B. *Relevant Background Procedure and Facts*[4]

The plaintiffs in each case were eligible to receive retirement benefits in accordance with the terms and conditions of their retirement plans administered, managed and operated by the Pension Defendants. Both retirement plans were created pursuant to, and are memorialized within, city ordinances.[5]

Each retirement plan employed a pension administrator charged with assisting his or her board in the performance of its duties. Each retirement plan also offered participants a Deferred Retirement Option Program ("DROP"). Once an employee becomes eligible, he or she may enter DROP and, in exchange for certain guaranteed lump sum and future payments, the employee: (i) commits to retire within a specified time period; and (ii) agrees that his or her contributions (and the City's contributions) to the retirement plan will cease and he or she will no longer earn creditable service for pension purposes. So, upon entering DROP (an election binding once made), the employee effectively retires for pension purposes and each employee is obligated to cease work on or before a specified future date.[6]

On July 28, 2010, the City declared "financial urgency" and proposed adopting an ordinance that—as alleged by the plaintiffs—threatened to adversely affect their vested pension benefits. Ordinance No. 10-010-91 (hereinafter the "Financial Urgency Ordinance") declaring the financial urgency—which was to become effective September 30, 2010—was passed on first reading on September 14, 2010, and on second reading on September 27, 2010.[7] In their operative amended complaints, the plaintiffs alleged that, in the months leading up to the Financial Urgency Ordinance's effective date, rumors circulated concerning the ordinance's impact on their future pensions, and it became "common knowledge" that the only way an employee could avoid a substantial diminution of benefits was to retire or enter DROP prior to such effective date.

The plaintiffs also alleged that: (i) the language of the Financial Urgency Ordinance (and of certain disclosure bulletins released by the City) was confusing; (ii) the unions, Pension Defendants and the City all issued differing and confusing interpretations of the Financial Urgency Ordinance; and (iii) a state of "confusion, panic and chaos" set in among the pension participants regarding the effect of the Financial Urgency Ordinances on their benefits.[8] The plaintiffs alleged that they sought advice from individuals identified by the Pension Defendants who could provide them counsel on the effects of the Financial Urgency Ordinance.

The gravamen of their allegations was that they were provided "incorrect advice, counsel and guidance which led to the plaintiffs prematurely retiring or entering the DROP program." Specifically, they alleged that they received the incorrect advice that they would suffer a reduction in their pension benefits if they did not retire or enter DROP by October 1, 2010; and further that the Pension Defendants did nothing to clarify the "chaos and confusion" that the impending adoption of the Financial Urgency Ordinance was causing.

Against this backdrop, the plaintiffs alleged three causes of action: (i) rescission based on unilateral mistake; (ii) breach of contract; and (iii) breach of the implied duty of good faith and fair dealing. The trial court dismissed, with prejudice, the counts for rescission based on unilateral mistake and breach of the implied duty of good faith and fair dealing, but it denied the Pension Defendants' motion to dismiss the breach of contract claims. The trial court's initial order, denying the Pension Defendants' motion to dismiss the breach of contract claims, did not specifically and expressly determine as a matter of law that the Pension Defendants were not entitled to sovereign immunity from the respective breach of contract claims; and therefore, we dismissed the Pension Defendants' initial appeals of the November 28, 2017 order for lack of jurisdiction.[9]

After we dismissed the initial appeals, the trial court entered the June 22, 2018 amended order on the Pension Defendants' motion to dismiss that *did* determine specifically and expressly that the Pension Defendants were not entitled to sovereign immunity on the plaintiffs' breach of contract claims. The Pension Defendants timely appealed this amended order and for the reasons stated below, we reverse.[10]

II. Analysis.[11]

A. *Introduction*

Unless the immunity is waived, governmental entities in Florida generally are sovereignly immune from suit. *City of Key West v. Fla. Keys Cmty. Coll.*, 81 So. 3d 494, 497 (Fla. 3d DCA 2012). Florida courts determine whether a municipality has waived sovereign immunity depending on whether the claim against the municipality sounds in tort or contract. In the torts sphere, assuming the municipality owes a legal duty to the injured party, section 768.28 of the Florida Statutes provides for a limited waiver of municipal sovereign immunity. *See Piedra v. City of N. Bay Vill.*, 193 So. 3d 48, 52 (Fla. 3d DCA 2016). In the contracts sphere, the limited waiver of sovereign immunity is founded in common law and occurs only when the municipality breaches an express written contract. *See City of Fort Lauderdale v. Israel*, 178 So. 3d 444, 447 (Fla. 4th DCA 2015).

B. The Trial Court's Determination

The trial court below concluded that the City, by adopting the Pension Ordinances, created an express contract between the plaintiffs and the Pension Defendants, and thereby waived sovereign immunity for the plaintiffs' breach of contract claims. Citing several cases from our sister courts,[12] the trial court first concluded that the Pension Ordinances constitute express contracts among the Pension Defendants, the City, and the participating employees. The trial court then analyzed the general duties imposed by the Pension Ordinances and the alleged breach of those "contracts."

The trial court specifically relied on the section of the Pension Ordinances that impose upon the Pension Defendants, and particularly on the pension boards, a "continuing duty to observe and evaluate the performance of any pension administrator employed by the Board." Miami, Fla. Code § 40-194(b)(1)b.[13] The trial court concluded that this broad oversight language in the Pension Ordinances created a *contractual* obligation on the Pension Defendants to ensure the accuracy of any advice their staff gave to plan participants about the effect of the pending Financial Urgency Ordinance. The trial court then found that the alleged incorrect advice given to the plaintiffs, combined with the Pension Defendants' declining to allow the plaintiffs who had participated in DROP to rescind their DROP election, constituted a breach of the Pension Ordinances. Consequently, the trial court determined that the Pension Defendants were

not entitled to sovereign immunity.

C. Our Analysis

Our analysis focuses on whether the Pension Ordinances impose the express duty that the plaintiffs alleged was breached.

1. The Alleged Breach

As stated earlier, the plaintiffs allege that the Pension Defendants breached a contract between the parties when their staff provided plaintiffs with poor advice regarding the effect on them of the City's Financial Urgency Ordinance, as well as the Pension Defendants' declining to offer plaintiffs an opportunity to revoke their DROP elections considering the impact of that alleged poor advice. The plaintiffs argue, and the trial court concluded that, while the respective Pension Ordinances do not expressly require the Pension Defendants' employees to provide advice regarding pending City legislation, their voluntary undertaking to do so—resulting in the alleged incorrect advice—constituted a breach of contract.

2. Contrasting the Alleged Breach to the Duty Imposed by the Texts of the Pension Ordinances

An examination of the duty imposed upon the Pension Defendants by the Pension Ordinances is critical to our analysis because sovereign immunity is waived only as to an express governmental contract and its attendant duties. *Israel*, 178 So. 3d at 447. Did the Pension Ordinances expressly require the Pension Defendants' employees to give accurate advice regarding the Financial Urgency Ordinance to pension beneficiaries? Our review of the text of the Pension Ordinances simply does not reveal such an express duty of the Pension Defendants.

We are loath to adopt a rule of law that transforms general language in a retirement plan ordinance—requiring that the performance of a pension administrator be observed and evaluated—into an express contractual duty guaranteeing the accuracy of advice provided to pension beneficiaries on pending legislation. While the Pension Ordinances might have imposed upon the Pension Defendants an express contractual duty to provide retirement *benefits* to pension beneficiaries (see footnote 12, *supra*), we do not view the Pension Ordinances as expanding that contractual duty to voluntarily undertaken advice-giving to pension beneficiaries on the effects of pending legislation.

Municipalities commonly include language in their pension ordinances requiring supervision and oversight of the employees charged with handling plan logistics. Indeed, such ordinances, including those of the City, provide that trustees of retirement plans owe a fiduciary duty to the beneficiaries of the retirement system.[14] Again, though, a judicial expansion of such general duties into express contractual obligations—as suggested by the plaintiffs, for which the City and the Pension Defendants must waive sovereign immunity—is a leap we are unprepared to take.

Under the auspices of ordinances requiring general supervision, municipal employees routinely provide advice to their colleagues and the public without meaning to waive sovereign immunity, even when the advice is mistaken. We view the sovereign immunity doctrine as designed to preclude liability for such conduct. *See City of Dunedin v. Pirate's Treasure, Inc.*, 255 So. 3d 902, 905 (Fla. 2d DCA 2018) (holding in the tort context that municipal sovereign immunity is not waived when a city employee allegedly misrepresents information in the city's development code).

III. Conclusion

The alleged poor advice given by the Pension Defendants' employees to the plaintiffs, and the Pension Defendants' declining to allow the plaintiffs to revoke their DROP elections made as a result of such advice, do not constitute a breach of any express contractual duty imposed on the Pension Defendants by the Pension Ordinances. The plaintiffs, therefore, have not stated causes of action for breach of contract for which the Pension Defendants have waived sovereign immunity. We reverse that portion of the trial court's June 22, 2018 order that determined, as a matter of law, that the Pension Defendants are not entitled to sovereign immunity. We remand for proceedings consistent with this opinion.

Reversed and remanded.

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[1]Did not participate in oral argument.

[2]Lower tribunal case number 14-7987-CA-01(22)

[3]Lower tribunal case number 14-7997-CA-01(22)

[4]The facts recited herein are based on the allegations in the operative amended complaints which, for the purposes of a motion to dismiss directed to those complaints, are to be taken as true. *Minor v. Brunetti*, 43 So. 3d 178, 179 (Fla. 3d DCA 2010). The operative complaint in the *Castro* case is the fifth amended complaint. The operative complaint in the *Rodriguez* case is the fourth amended complaint.

[5]Section 40-191 *et seq.* of the City's Code of Ordinances establishes and governs the police and firefighters plan; section 40-241 *et seq.* establishes and governs the civil employees and sanitation employees' plan. Collectively, we refer to these as the "Pension Ordinances."

[6]All monies needed to fund the retirement plan and DROP accounts are contributed by the City and its employees.

[7]The City's declaration of "financial urgency" and attempt to modify its "certified bargaining agreement" with the Fraternal Order of Police was met with an unfair labor practice claim that eventually worked its way up to our Supreme Court. *See Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017).

[8]As a result of this alleged confusion and misinformation, the plaintiffs alleged that during the summer of 2010, "over one hundred civilian employees" and "over one hundred senior or high-ranking police officers and firefighters" retired or entered DROP.

[9]Separate panels of this Court dismissed the two cases. *See City of Miami Firefighters' & Police Officers' Ret. Tr. Plan v. Castro*, 250 So. 3d 64 (Fla. 3d DCA 2018); *City of Miami Gen. Emps. & Sanitation Emps. Ret. Tr. v. Rodriguez*, 246 So. 3d 567 (Fla. 3d DCA 2018).

[10]We have jurisdiction. Fla. R. App. Proc. 9.130(a)(3)(C)(xi).

[11]Our review of a trial court determination regarding whether a party is entitled to sovereign immunity is *de novo. Plancher v. UCF Athletics Ass'n*, 175 So. 3d 724, 725 n.3 (Fla. 2015).

[12]For the proposition that a contractual relationship occurs between a municipality through its retirement plan and participating employees of that plan, the trial court cited: *Bd. of Trs. Of Jacksonville Police & Fire Pension Fund v. Kicklighter*, 106 So. 3d 8 (Fla. 1st DCA 2013); *City of Hollywood v. Petrosino*, 864 So. 2d 1175 (Fla. 4th DCA 2004); *City of Riviera Beach v. Bjorklund*, 563 So. 2d 1114 (Fla. 4th DCA 1990); *Bishop v. State, Div. of Ret.*, 413 So. 2d 776 (Fla. 1st DCA 1982). These cases are uniformly about retirement benefits. Because we conclude that no breach of an express provision of the Pension Ordinances occurred in this case, we express no opinion on the trial court's general conclusion that the Pension Ordinances constitute contracts.

[13]This ordinance language is pertinent to the *Castro* case. Similar language, worded slightly differently, pertinent to the *Rodriguez* case is at Miami, Fla. Code § 40-244(b)(3), to wit: "The Board shall have a continuing duty to observe and evaluate the performance of the pension administrator."

[14]*See* sections 40.193(c) and 40-243(c).

* * *

Torts—Defamation—Publication to third party—Statements made by CEO and chairman of Federal Savings Association Board of Directors to Board of Directors do not constitute publication to a third party, although a majority of Board are non-employees of Association—Because plaintiff failed to establish essential element of publication to third party, trial court properly entered summary judgment for defendant in action alleging defamation per se

JONATHAN HULLICK, Appellant, v. GIBRALTAR PRIVATE BANK & TRUST COMPANY, and STEVEN D. HAYWORTH, Appellees. 3rd District. Case No. 3D18-0203. L.T. Case No. 12-43235. Opinion filed September 18, 2019. An Appeal from the Circuit Court for Miami-Dade County, Eric William Hendon, Judge. Counsel: Weil Snyder Schweikert & Ravindran, P.A., and Ronald P. Weil, and Iva U. Ravindran; Joel S. Perwin, P.A., and Joel S. Perwin, for appellant. Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Jose G. Sepulveda, Carlos J. Canino, and Julie Fishman Berkowitz; Wicker Smith O'Hara McCoy & Ford, P.A., and Dennis M. O'Hara, Alyssa M. Reiter, Lindsey A. Hicks, and Brandon J. Hechtman, for appellees.

(Before SALTER, LOGUE, and LINDSEY, JJ.)

(LINDSEY, J.) Appellant Jonathan Hullick (Plaintiff below) appeals