

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 18-23224-CA-30

WILLIAM DOUGLAS MUIR, AN
INDIVIDUAL,

Plaintiff,

vs.

CITY OF MIAMI, A FLORIDA
MUNICIPAL CORPORATION,
FRANCIS SUAREZ, MAYOR, CITY
OF MIAMI, EMILIO T. GONZALEZ,
CITY MANAGER, CITY OF MIAMI,
VICTORIA MENDEZ, CITY
ATTORNEY, CITY OF MIAMI, KEON
HARDEMON, CHAIRMAN, CITY OF
MIAMI COMMISSION, KEN
RUSSELL, VICE CHAIRMAN, CITY
OF MIAMI COMMISSION, JOE
CARROLLO, COMMISSIONER, CITY
OF MIAMI COMMISSION,
WILFREDO GORT, COMMISSIONER,
CITY OF MIAMI COMMISSION,
MANOLO REYES, COMMISSIONER,
CITY OF MIAMI COMMISSION,

Defendants,

vs.

MIAMI FREEDOM PARK, LLC,

Intervenor.

**CITY OF MIAMI'S MOTION TO DISMISS OR DENY PETITION FOR WRIT OF
MANDAMUS AND QUASH ALTERNATIVE WRIT**

The Defendant, City of Miami, by and through undersigned counsel, files its Motion to Dismiss or Deny Petition for Writ of Mandamus and to Quash Alternative Writ, and states the following in support thereof:

Background

This action involves the City Commission's decision to submit to the voters a referendum on a lease of City property to Intervenor Miami Freedom Park, LLC, for their development of the property including a soccer stadium.

The issue was originally noticed and discussed at the City's regular bi-monthly Commission Meeting on Thursday, July 12, 2018. At that meeting, numerous members of the public were afforded the opportunity to speak on this item. The Petitioner, Douglas Muir, spoke on this item.

The issue was not resolved at the regular Commission meeting, and the City scheduled a Special Meeting. The Special Meeting was noticed and occurred on Wednesday, July 18, 2018.

Since the public was allowed the full opportunity to speak on the issue during the legislative process, the Commission did not have public comment at the special meeting and devoted its time and efforts in the public meeting to discussion with the administration and the representative of Miami Freedom Park, LLC and their deliberation on the proposal before them.

At the conclusion of the Special Meeting, the Commission voted to approve a resolution submitting to the electorate a proposed charter amendment to section 29B of the charter to authorize the City Commission to waive competitive bidding by a 4/5 vote and to negotiate and execute the lease with Miami Freedom Park, LLC.

The Plaintiff, an alleged citizen of the City with no special interest in the subject matter of this lawsuit, has filed this action seeking a writ of mandamus request the Court to "exercise its

discretion to grant this writ to order defendant Commissioners to allow public comment in response to the personal appearance of the Mas Group and to comply with the terms of its Charter.”

As explained herein, the Petitioner is not entitled to any relief as the Petitioner cannot demonstrate a clear legal right to the performance of a ministerial duty by the City. The City has fully complied with the Sunshine law. The City’s actions fully comply with the City Charter. Hence, the alternative writ must be quashed, and this petition dismissed or denied.

Argument

Standard for Mandamus Relief

“In order to be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.” Putnam Cty. Env'tl. Council v. Johns River Water Mgmt. Dist., 168 So.3d 296, 298 (Fla. 1st DCA 2015) (quoting Huffman v. State, 813 So.2d 10, 11 (Fla. 2000)); RHS Corp. v. City of Boynton Beach, 736 So. 2d 1211 (Fla. 4th DCA 1999); McDaniel v. City of Lakeland, 304 So. 2d 515 (Fla. 2d DCA 1974); PGB, Inc. v. City of Miami, 128 So. 2d 415 (Fla. 3d DCA 1961); Morse Diesel Int’l, Inc. v. 2000 Island Blvd., Inc., 698 So. 2d 309 (Fla. 3d DCA 1997).

The duty of the respondent in a mandamus action must be ministerial in nature, and not discretionary. Florida Agency for Health Care Admin. v. Zuckerman Spaeder, LLP, 221 So. 3d 1260, 1263 (Fla. 1st DCA 2017); Wuesthoff Mem’l Hosp. Inc. v. Florida Elections Comm’n, 795 So.2d 179, 180 (Fla. 1st DCA 2001). A duty is ministerial when “there is no room for the exercise of discretion, and the performance being required is directed by law.” Town of Manalapan v. Rechler, 674 So.2d 789, 790 (Fla. 4th DCA 1996); Shea v. Cochran, 680 So.2d 628, 629 (Fla. 4th DCA 1996).

“Mandamus is a recognized remedy to require a public official, who is clothed with the authority, to discharge his duty.” Dante v. Ryan, 979 So.2d 1122, 1123 (Fla. 3d DCA 2008) (quoting Alexander v. City of Coral Gables, 745 So.2d 1004, 1005 (Fla. 3d DCA 1999)); see also Browning v. Young, 993 So.2d 64, 65 (Fla. 1st DCA 2008) (stating that mandamus is a civil remedy to compel a public official to discharge a ministerial duty); Eichelberger v. Brueckheimer, 613 So.2d 1372, 1373 (Fla. 2d DCA 1993) (“Mandamus is used to compel an official to perform lawful duties.”). “For the issuance of a writ of mandamus, the petitioner must demonstrate a clear legal right to the performance of a ministerial duty by the respondent and that no other adequate remedy exists.” Morse Diesel Int'l v. 2000 Island Boulevard, Inc., 698 So.2d 309, 312 (Fla. 3d DCA 1997).

Mandamus is available only to “enforce an established legal right ... not to establish that right.” Morse Diesel Int'l, 698 So.2d at 312; accord Fla. League of Cities v. Smith, 607 So.2d 397, 401 (Fla.1992) (“Mandamus may not be used to establish the existence of such a right, but only to enforce a right already clearly and certainly established in the law.”); Miami-Dade County Bd. of County Com'rs v. An Accountable Miami-Dade, 208 So. 3d 724, 730–31 (Fla. 3d DCA 2016). A genuine dispute as to existence of clear legal right precludes mandamus relief. See Morse Diesel Intern., Inc. v. 2000 Island Blvd., Inc., 698 So. 2d 309 (Fla. 3d DCA 1997) (given genuine dispute as to whether general contractor's claim of lien against condominium units had expired by operation of law, condominium project owner had no clear legal right to writ of mandamus).

As explained herein, (1) The plaintiff’s claims for mandamus relief regarding the Sunshine Law are moot as the subject Commission meeting has already occurred; (2) The plaintiff’s claims regarding compliance with the charter are not ripe because even if the charter amendment passes, the City Commission must still waive competitive bidding by a 4/5 vote and to negotiate and

execute the lease with Miami Freedom Park, LLC.; and (3) There is no clear legal right to the performance of a ministerial duty. The City has neither violated the City Charter nor the Sunshine Law.

Mootness

The plaintiff claims that he was entitled to present additional public comment at the Special City Commission meeting on Wednesday, July 18, 2018. However, that meeting has already occurred and therefore the claim for mandamus relief based on this contention is rendered moot and should be dismissed or denied. See Solares v. City of Miami, 23 So. 3d 227 (Fla. 3d DCA 2009) (holding that motion seeking to enjoin the County from issuing and selling bonds was moot where issuance and sale of bonds had already occurred).

Ripeness

The plaintiff further seeks an order from the Court compelling the City to “comply with the terms of the Charter.” Specifically, the plaintiff claims that the City should go through the processes outlined in sections 29A and 29B of the City Charter. However, as explained above, the Commission voted to approve a resolution submitting to the electorate a proposed charter amendment to section 29B of the charter to authorize the City Commission to waive competitive bidding by a 4/5 vote and to negotiate and execute the lease with Miami Freedom Park, LLC. Thus, there is no final action by the Commission at this time waiving competitive bidding by a 4/5 vote and executing a lease with Miami Freedom Park, LLC. Until that time, the plaintiff’s claims for compliance with the charter are not ripe for judicial determination.

The City Commission Fully Complied with the Sunshine Law

The City Commission fully complied with the requirements of the Sunshine law for notice of public meetings and the opportunity to be heard. Hence, there is no clear legal right to the performance of any ministerial duty.

First, Special Meeting of the City Commission was properly noticed as required by the Sunshine Law. See section 286.011 (1), Fla. Stat. (“The board or commission must provide reasonable notice of all such meetings.”).

Second, the petitioner, as well as all members of the public, were given the opportunity, which was substantial, to speak and address the City Commission on the on the subject proposition during the decisionmaking process. Section 286.0114 provides:

Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

§ 286.0114, Fla. Stat. Ann. As demonstrated by the draft minutes of the City Commission meeting held on Thursday, July 12, 2018, the public, including the petitioner, was given a reasonable opportunity to comment on this proposition during the decisionmaking process. It was in reasonable proximity (less than a week) to the special meeting when the City Commission took official action. Hence, the City fully complied with the Sunshine Law. As a result, the alternative writ should be quashed, and the writ of mandamus dismissed or denied.

The City Fully Complied with Section 29A and 29B of the City Charter

The City Commission fully complied with the requirements of the section 29A and 29B of the City Charter. Hence, there is no clear legal right to the performance of any ministerial duty.

Section 29A pertains to unified development projects and provides in part:

Sec. 29-A. - Contracts for, unified development projects, and real property; safeguards.

(a) *Unified development projects.* A unified development project shall mean a project where an interest in real property is owned or is to be acquired by the city, is to be used for the development of improvements, and as to which the city commission determines that for the development of said improvements it is most advantageous to the city to procure from a private person, as defined in the Code of the City of Miami, one or more of the following integrated packages:

- (1) planning and design, construction, and leasing; or
- (2) planning and design, leasing, and management; or
- (3) planning and design, construction, and management; or
- (4) planning and design, construction, leasing, and management.

So long as the person from whom the city procures one of the above-mentioned integrated packages provides all of the functions listed for that package, such person need not provide each listed function for the entire unified development project nor for the same part of the unified development project.

As demonstrated by plain language of section 29A, a unified development project is a project where the City procures services from a private party (“the person from whom the city procures one of the above-mentioned integrated packages...”). It does not cover the current proposed project whereby the City is leasing City property to a private party. The fact that the City’s approval of the lease will include conditions which will be made part of the lease agreement does not convert the project into a procurement for services. The lease of city property is governed exclusively by section 29B. Furthermore, the decision of the City Commission whether or not to procure services for a unified development project is discretionary with the City Commission (“and as to which the city commission determines that for the development of said improvements it is most advantageous to the city to procure from a private person...”). Therefore, there can be

no clear legal right to the performance of a ministerial duty. Hence, there is no violation of section 29A and the plaintiff is not entitled to a writ of mandamus because the City is in compliance with section 29A of the City Charter.

Section 29B pertains to the lease or sale of City owned property and provides for a procurement process as well as other requirements and exceptions. One category of exception covers property specific project explicitly exempted from the process and expressly set forth in section 29B of the charter as follows:

Notwithstanding anything herein to the contrary, the city commission, by a 4/5ths affirmative vote, may:

(a) grant a lessee of city-owned property a one-time extension during the last five years of its lease, without the necessity of a referendum, for the purpose of funding additional capital improvements. The extended term shall not exceed twenty-five percent of the original term or ten years, whichever is less. The granting of such an extension is subject to the lessee paying fair market rent as determined by the city at the time of such extension and not being in default of its lease with the city nor in arrearage of any monies due the city; and

(b) amend the Lease Agreement between the City of Miami and Biscayne Bay Restaurant Corp., d/b/a Rusty Pelican, dated February 13, 1970, as amended, to (i) extend the lease for an additional term of fifteen (15) years, with the option to renew for two (2) additional five (5) year periods, (ii) increase the amount of the minimum guarantee to the City to at least \$360,000 per lease year effective upon execution of the lease amendment, and (iii) require Rusty Pelican to complete capital improvements to the property, including a public baywalk, in the amount of not less than \$3 Million, within twenty-four (24) months of the effective date of the lease amendment; and

(c) waive competitive bidding and execute a lease with Dade Heritage Trust, Inc. for the City-owned building located at 190 Southeast 12th Terrace, for a term of thirty (30) years, with two (2) thirty (30) year renewals, for minimum annual rent of \$600.00 with Consumer Price Index adjustments, with restrictions, reversions, and retention by the City of all other rights; and

(d) waive competitive bidding and execute a Fifth Amendment to the Lease Agreement with Aligned Bayshore Marina, LLC, also known as Monty's, to extend the current lease term by an additional term of approximately thirty-two (32) years (to expire May 31, 2067), with two (2) ten (10) year options to renew for a total term of fifty-two (52) years (to expire May 31, 2087); which will increase minimum rent payment by an additional two hundred thousand dollars (\$200,000.00) per lease year, for a minimum of ten million dollars (\$10,000,000.00) over the base term of the amended Lease Agreement, or one and three quarters percent (1.75%) of gross

rent receipts from the Property, whichever is greater, as additional rent due to the City and, commencing January 1, 2019, minimum annual total rent (inclusive of the additional minimum rent) shall be one million five hundred thousand dollars (\$1,500,000.00), plus an additional twenty five thousand dollars (\$25,000.00) to be paid on an annual basis for the full amended term to a special fund to be established by the City for the benefit of low income housing renovation; further providing capital improvements to the Property of a minimum of seven million five hundred thousand dollars (\$7,500,000.00) to be spent within three (3) years of the electorate's approval of the Fifth Amendment to the Lease Agreement; further creating a capital account requiring a minimum additional investment in the Property of four million dollars (\$4,000,000.00) over the amended Lease term, inclusive of the renewal options; requiring a Transfer Fee payment to the City if the Property is transferred or assigned; and further requiring a Refinancing Fee payment to the City should the Property be refinanced after the initial refinancing.

Hence, as set forth in the above section of 29B, the City has in the past submitted to the voters a referendum to determine whether to amend section 29B of the charter for specific leases/sales of City property. There is nothing in the law, or the Charter, that prohibits the City from amending its charter or amending section 29B to include additional exemptions for the other requirement of that section. Therefore, there is no clear legal right to the performance of a ministerial duty. Hence, there is no violation of section 29B, and the plaintiff is not entitled to a writ of mandamus because the City is in compliance with sections 29A and 29B of the City Charter.

Single Subject Rule

The plaintiff claims that the City's proposed charter amendment violates the single subject rule. However, this rule does not apply to local government charter amendments. See Charter Rev. Comm'n of Orange County v. Scott, 647 So. 2d 835 (Fla. 1994).

Conclusion

Based on the foregoing, the Petitioner is not entitled to any relief as the plaintiff cannot demonstrate a clear legal right to the performance of a ministerial duty by the City. The City has

fully complied with the Sunshine law. The City's actions fully comply with the City Charter.
Hence, the alternative writ must be quashed, and this petition dismissed or denied.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to those individuals on the attached Service List by e-mail generated by My Florida Courts E-Filing Portal this 31st day of July 2018.

By: John A. Greco
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