

**IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN
AND FOR PALM BEACH COUNTY,
FLORIDA**

School Board of Palm Beach County, a political subdivision of Florida, a
CIVIL DIVISION: AH
CASE NO. 502013CA010144XXXXMB

Plaintiff and Counter-defendant,

vs.

City of West Palm Beach, a Florida
Municipal Corporation,

Defendant and Counter-plaintiff.

**ORDER GRANTING SCHOOL BOARD'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING WEST PALM BEACH'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

This MATTER came before the Court for review on Plaintiff School Board of Palm Beach County's ("School Board") *Motion For Partial Summary Judgment With Attached Memorandum Of Law In Support* and Defendant City of West Palm Beach's ("City") *Motion For Partial Summary Judgment As To The Plaintiff, The [School Board's] Waiver Of Sovereign Immunity/Response And Memorandum Of Law In Opposition To [School Board's] Motion For Partial Summary Judgment As To Same*. Both motions were heard on December 20, 2017. After consideration of the parties' respective counsel's extensive oral argument, review of the procedural history, motions, memoranda, and responses thereto, this Court finds as follows:

This dispute concerns whether School Board enjoys sovereign immunity from suit for the non-payment of City's stormwater utility fees. By way of background, in May 2012, School Board suspended stormwater utility payments to City. In response, City threatened to sever certain School Board properties from City's stormwater system. In June 2014, School Board filed a Complaint For Temporary And Injunctive Relief ("Initial Complaint") seeking a temporary and permanent injunction. In 2016, School Board amended its Initial Complaint to include a count for declaratory judgment.

In July 2017, School Board moved for partial summary judgment seeking declaratory judgment that it enjoyed sovereign immunity from suit for non-payment of City's stormwater

utility fees. In August 2017, City moved for partial summary judgment as well, which sought a declaratory judgment arguing that Chapter 403, Florida Statutes, contained language waiving School Board's sovereign immunity from suit for non-payment of City's stormwater utility fees.

The parties agreed, and this Court finds, there are no genuine issues of material fact in dispute that preclude this Court from entering partial summary judgment. School Board is a subdivision of the State of Florida, which enjoys sovereign immunity. The City duly adopted a stormwater utility code and stormwater utility in 1993. There is no written contract or agreement between City and School Board obligating School Board to pay stormwater utility fees to City. Both parties admitted that the issuance of a judgment addressing whether the School Board enjoys sovereign immunity from suit for payment of stormwater utility fees would resolve the present dispute, and dispose of the pending action.

In Florida, sovereign immunity is the rule, rather than the exception". *Pan-Am Tobacco Corp. v. Dep't of Corrs.*, 471 So. 2d 4, 5 (Fla. 1984). The Florida Constitution provides that the Legislature can abrogate the State's sovereign immunity. *See* Art X, § 13, Fla. Const. Importantly, "any waiver of sovereign immunity must be clear and unequivocal", and "waiver will not be found as a product of inference or implication". *Am. Home Assur. Co. v. Nat'l R.R. Passenger Corp.*, 908 So. 2d 459, 472 (Fla. 2005). As such, Florida courts must "strictly construe" any alleged legislative waiver of sovereign immunity. *Id.* Absent a waiver by the Florida Legislature or contract waiving same, sovereign immunity applies to the ability of the City to sue School Board for non-payment of City's stormwater utility fees.

In support of its motion, City contends Chapter 403, Florida Statutes, and more specifically, the definitions of "person" and "stormwater utility" at section 403.031, evidence the Florida Legislature's intent to waive School Board's sovereign immunity from suit for non-payment of City's stormwater utility fees. This Court must strictly construe any alleged waiver of sovereign immunity.

In its motion, School Board relies on a series of Florida District Court of Appeal ("DCA") opinions involving similar, if not identical factual and legal issues to the matter at hand. *City of Gainesville v. Dept. of Transportation*, 920 So. 2d 53 (Fla. 1st DCA 2005), *rev. denied* 921 So.

2d 661 (Fla. 2006); *City of Key West v. Florida Keys Community College*, 81 So. 3d 494 (Fla. 3d DCA 2012), *rev. denied*, 105 So. 3d 518 (Fla. 2012); and *City of Clearwater v. School Board of Pinellas County*, No. 52199CA007479XXCICI (Fla. 6th Cir. Ct. May 23, 2008), *affirm.* 17 So. 3d 1287 (Fla. 2d DCA 2009). These opinions involved a local government that established a stormwater utility and fee pursuant to section 403.093, Florida Statutes; the local government imposed the stormwater utility fee on a school board or state agency and attempted to collect the fee via suit despite the absence of a written contract; the local government claimed the Florida Legislature waived sovereign immunity in Chapters 403 or 180, Florida Statutes; and the DCA held that the school board or state agency was found to enjoy sovereign immunity from the local government's suit for non-payment of stormwater utility fees because nothing in Chapters 403 or 180, Florida Statutes, constituted a clear and express waiver of sovereign immunity.

This Court finds the City's argument that *City of Key West* is not applicable to this matter because of the recitation in the opinion that "[t]he City has no operational stormwater system on the College's property, and has not identified any of the City's facilities that collect or treat stormwater generated by the College's property" is purely dicta. 81 So. 3d at 496. On the contrary, whether the School Board receives a benefit from the City's stormwater system is immaterial to a determination, as a matter of law, as to whether the School Board enjoys sovereign immunity.

The decisions of *City of Gainesville*, 920 So. 2d 53; *City of Key West*, 81 So. 3d 494; and *City of Clearwater*, 17 So. 3d 1287 are both controlling and persuasive. These Florida DCA opinions address the sovereign immunity of school boards and state agencies from suit for non-payment of stormwater fees adopted pursuant to Chapter 403, Florida Statutes. "The decisions of the district courts of appeal represent the law of Florida[.]" *Pardo v. State*, 596 So. 3d 665, 666 (Fla. 1992) (internal citation omitted). This Court finds there has been no statutory waiver of sovereign immunity from the payment of stormwater fees in Chapter 403, Florida Statutes, and there is no contract between School Board and City for the provision of stormwater fees; therefore, the School Board enjoys sovereign immunity from suit for non-payment of the City's stormwater fees.

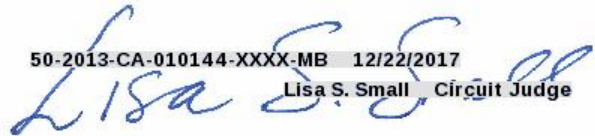
Accordingly, it is

ORDERED AND ADJUDGED that Plaintiff School Board of Palm Beach County's Motion For Partial Summary Judgment With Attached Memorandum Of Law In Support is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that City of West Palm Beach's Motion For Partial Summary Judgment As To The Plaintiff, The School Board Of Palm Beach County's Waiver of Sovereign Immunity is **DENIED**.

The Court reserves jurisdiction to enter appropriate final judgment in accordance with this order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.

50-2013-CA-010144-XXXX-MB 12/22/2017

Lisa S. Small, Circuit Judge

50-2013-CA-010144-XXXX-MB 12/22/2017
Lisa S. Small
Circuit Judge

Copies furnished to:

Douglas Yeargin, Esq., Anthony Stella, Esq.
Attorneys for City of West Palm Beach
City of West Palm Beach
401 Clematis Street, 5th floor
West Palm Beach, FL 33401
dyeargin@wpb.org; astella@wpb.org; svegas-catinella@wpb.org

John J. Fumero, Esq., John K. Rice, Esq.
Nason, Yeager, Gerson, White & Lioce, P.A.
Special Counsel for School Board of Palm Beach County
750 Park of Commerce Boulevard, Suite 210
Boca Raton, FL 33487
jfumero@nasonyeager.com; jrice@nasonyeager.com; kchang@nasonyeager.com

Hollie N. Hawn, Esq., Blair Littlejohn, Esq.
Office of the General Counsel
School Board of Palm Beach County
General Counsel for School Board of Palm Beach County
Post Office Box 19239
West Palm Beach, FL 33416-9239

Blair.littlejohn@palmbeachschools.org; Hollie.hawn@palmbeachschools.org