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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Case No. *2013-2112 CA 01*

KEVIN BURNS,

Plaintiff

v.

LUCY TONDREAU, PENELOPE TOWNSLEY,  
as Miami-Dade County Supervisor of  
Elections; MICHAEL A. ETIENNE, as City  
Clerk, and CITY OF NORTH MIAMI  
CANVASSING BOARD.

Defendants.

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**COMPLAINT FOR DECLARATORY RELIEF  
AND JUDGMENT OF OUSTER**

Plaintiff, KEVIN BURNS, sues Defendants, LUCY TONDREAU, PENELOPE  
TOWNSLEY, MICHAEL A. ETIENNE and THE CITY OF NORTH MIAMI  
CANVASSING BOARD and states:

**PARTIES, VENUE AND JURISDICTION**

1. This is a complaint for declaratory relief and judgment of ouster pursuant  
to sections 86.021 and 102.168, Florida Statutes, determining entitlement to an elected  
office.

2. Plaintiff, KEVIN BURNS (hereinafter "BURNS") was a candidate for the office of Mayor of the City of North Miami, Florida ("City").

3. Defendant, LUCY TONDREAU, ("TONDREAU") was the other candidate in a runoff election for the office of Mayor of the City of North Miami. The runoff election for the office occurred on June 4, 2013, and the results of that election were certified (attached as Exhibit A), by defendant CITY OF NORTH MIAMI CANVASSING BOARD ("BOARD") on June 7<sup>th</sup>, 2013 in favor of TONDREAU.

The members of the BOARD for the City of North Miami include County Court Judge Diana Gonzalez-Whyte; Kertch J. Conze, and Thelisca Louis.

4. On June 11, 2013, TONDREAU was sworn in and took office as Mayor of the City.

5. Defendant, PENELOPE TOWNSLEY (hereinafter "SUPERVISOR") is the Supervisor of Elections of Miami-Dade County Florida, and is responsible for certain aspects of the May 14, 2013, and June 4, 2013, municipal election in the City of North Miami under contract to the City. TOWNSLEY is sued solely in her official capacity.

6. Defendant, MICHAEL A. ETIENNE, (hereinafter "CLERK") is the City Clerk of the City of North Miami and is responsible for the conduct of the municipal election of North Miami, on May 14, 2013, and June 4, 2013. He is sued in his official capacity.

7. The BOARD and its members are sued in their official capacities.

#### **FACTUAL ALLEGATIONS**

8. Section 6-78 of the City Code of the City of North Miami requires all

persons seeking the office of mayor or council person to be a resident of the City for a minimum period of one year prior to qualifying for office. City Code § 6-78(b) (attached as Exhibit B). There are also a number of other mandatory preconditions to seeking office, including the submission of documentary proof of residence. See Exhibit A, City Code § 6-78(b)(2)

9. On April 8, 2013, TONDREAU filed candidacy forms with the CLERK for the position of Mayor, providing an address within the City of North Miami of 1005 NW 128<sup>th</sup> Terrace North Miami FL 33161. A copy of the application forms is attached as Exhibit C.

10. TONDREAU, at the time of registering with the Clerk, failed to produce proper documentation as required by City Code § 6-78(b)(2). Specifically, section 78(b)(2) permits but requires any one of the following: "voter's registration, driver's license, property tax receipt, homestead exemption, utility bill or lease agreement; all of which must have been in effect for at least one (1) year prior to qualifying."

11. TONDREAU failed to provide any of the required documentation which demonstrated her residency within the City of North Miami for one year prior to March 31, 2103. Specifically, TONDREAU provided:

- a. a voter's I.D. which was issued less than one year before March 31, 2013;
- b. a document which specifically says that it is not a lease regarding a property located at 1005 NW 128<sup>th</sup> Terrace, North Miami, dated February 2011, but which does not qualify as evidence or proof of residency as defined in the Code and which on its face specifically states that it is not a lease;

c. a residential lease for an in-city address of 12235 NW 8<sup>th</sup> Avenue with a term of December 15, 2012, to December 15, 2013. That lease commenced a mere four months prior to the qualification date.

12. In addition, at the time of registering with the Clerk, TONDREAU had not continuously resided within the City of North Miami for at least one (1) full year prior to qualifying.

13. TONDREAU was not a bona fide resident of the City of North Miami for the one year period preceding the April 8, 2013, qualifying date, *i.e.*, from April 9, 2012 to April 8, 2013.

14. Upon information and belief, TONDREAU has, for all or part of the one year period preceding the election, resided at 520 NE 195<sup>th</sup> Street, a residential address outside of the City of North Miami limits.

15. Upon information and belief, it does not appear that TONDREAU maintained residence with her minor children within the City and that any claimed in-city residence was not, in fact, her true residence or the residence of her minor children.

16. Plaintiff has good reason to believe that TONDREAU, did not become of resident of the City of North Miami until December 12, 2012, less than one year prior to the qualifying date.

17. No documentation of residency in the City of the period from April 8, 2012 to December 11, 2012, was provided. TONDREAU provided an affidavit of residency attesting that she resided at 1005 NW 128<sup>th</sup> Terrace from February 15, 2011, to December 15, 2012, however there is no claim that she owned that property, no residential lease for that property was provided, and no proof of utility service in her

name or other indicia of residence was supplied in the application materials, as required.

18. Throughout the period of April 8, 2012, through December 15, 2012, there is no qualifying proof that TONDREAU maintained a residence within the City, and upon information and belief, it appears that she resided outside of the City during that period.

19. Because she (a) was not a bona-fide resident of the City for the full one-year period preceding April 8, 2013, and (b) did not provide proper documentation at the time of filing to permit her to be a bona fide candidate, TONDREAU may not hold office. Either these defects result in TONDREAU not being a qualified candidate for election to the position of the Mayor and not being not qualified to hold that office now.

#### **COUNT I - DECLARATORY RELIEF**

20. Plaintiff readopts and realleges Paragraphs 1-19 as if fully set forth herein.

21. Because she did not meet the residency requirements of the City Code, TONDREAU does not qualify for the office of Mayor in North Miami.

22. Because she did not provide proper proof of residence as part of her application as required by the City Code, TONDREAU does not qualify for the office of Mayor in North Miami.

23. Plaintiff brings this action so that the Court can determine the status of TONDREAU's residency for the purposes of said election and/or for the Court to determine Plaintiff's rights, status or interest in regard election *vis a vis* his opponent.

24. There is a bonafide, actual, present practical need for the declaration as TONDREAU is currently sitting and exercising the duties and powers of the Mayor of

North Miami

25. Plaintiff BURNS, as the only other candidate in the June 4 election, has a real, presumed interest, as TONDREAU's disqualification from office will result in his accession to the office of Mayor as the only other candidate, whose vote tally exceeds 50 percent of the vote after discounting the votes cast for the improper candidate.

26. All of the parties needed to resolve the dispute are before the Court in this action.

WHEREFORE, BURNS requests that the Court assume jurisdiction over the cause and the parties, declare that LUCIE TONDREAU was not a properly-qualified candidate for the office of the Mayor of North Miami on the date that she qualified, April 8, 2013, that she neither provided proper evidence required to be a candidate of residency nor was she a resident of the City of North Miami for the one year period prior to April 8, 2013, that her candidacy should be stricken and her election voided, and that BURNS be declared to the successful candidate and duly-elected Mayor in the June 4 election for Mayor of the City North Miami.

#### **COUNT II - JUDGMENT OF OUSTER**

27. Plaintiff readopts and realleges Paragraphs 1 through 25 as if fully set forth herein.

20. Because she did not meet the residency requirements of the City Code, TONDREAU does not qualify for the office of Mayor of North Miami.

21. Section 102.168, Florida Statutes, sets forth the process for challenging the election of one not qualified to sit for a particular office for, among other reasons, "ineligibility of the successful candidate for the nomination or office in dispute" Fla. Stat. 102.168(3)(b). If such ineligibility is established, as it is in this case, the proper

remedy is the entry of a judgment of Ouster pursuant to section 102.1682, Florida Statutes.

22. BURNS is one of the parties who may properly raise and does hereby raise the issue as her disqualification from office will result in his accession to the office of Mayor as the only other candidate in the June 4 election, whose vote tally exceeds 50 percent of the vote after discounting the votes cast for the improper candidate, TONDREAU.

WHEREFORE, Plaintiff requests this Court grant the following:

1. Set an emergency hearing at which the issue of TONDREAU's qualification to hold office may be determined;
2. Declare that TONDREAU is not qualified for the position of Mayor of North Miami because she (1) has not been a bona fide resident of the City of North Miami for the minimum residency period established by law for that office and/or (2) did not provide the proper documentation of such residency as part of her application as required.
3. Enter a Judgment of Ouster in favor of Plaintiff and against TONDREAU on the grounds that TONDREAU is not qualified for the position of Mayor of North Miami because she was not a bona fide resident of the City of North Miami for the minimum residency period established by law for that office and/or did not provide the proper documentation of such residency as required as part of her application.
4. Declare BURNS to be the properly-elected and duly qualified Mayor of North Miami as the successful candidate in the June 4, 2013 election.

5. Grant such further relief as the Court deems proper including the award of costs.

DATED: June 17, 2013.

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*Attorneys for Plaintiff, Kevin A. Burns*

By:   
Joseph P. Klock, Jr.

Under penalties of perjury, I declare that I have read the foregoing document,  
and that the facts set forth as facts are true.

  
Kevin A. Burns