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

GENERAL JURISDICTION DIVISION

CASE NO. 08-17486 CA 13

JORGE L. FERNANDEZ,

Plaintiff/Counter-Defendant,

v.

THE CITY OF MIAMI,

Defendant/Counter-Plaintiff.

FINAL ORDER AS TO ALL PARTIES

SRS DISPOSITION

NUMBER 02

FILED
MAY 11 11 14:25

JUDGMENT

This matter was tried before the Court on March 22-24, 2011. Based on the evidence presented and the findings of fact, credibility determinations, and conclusions of law set forth in open court on March 24, 2011, Judgment is entered in favor of Defendant/Counter-Plaintiff The City of Miami ("the City"), and against Plaintiff/Counter-Defendant Jorge L. Fernandez ("Fernandez"), on all claims and counterclaims. In further explanation of the Judgment, the Court states as follows:

1. Following his termination as City Attorney for the City, Fernandez filed the instant lawsuit on or about March 27, 2008, alleging that he was entitled to payment of severance, vacation leave, and sick leave from his time as City Attorney, as well as interest, attorney's fees, and costs.
2. The City answered the complaint and filed numerous affirmative defenses, asserting that Fernandez was not entitled to collect any money.
3. In addition to the affirmative defenses, the City filed five counterclaims against Fernandez, all seeking damages, for breach of fiduciary duty, fraud, breach of oath of office, civil theft, and conversion.

4. The matter proceeded to bench trial on March 22-24, 2011. In addition to the documentary evidence presented, the Court analyzed and considered the testimony of the following witnesses: Jorge Fernandez, Tomas Regalado, Joe Sanchez, Angel Gonzalez, Linda Haskins, Julie Bru, Diana Gomez, Hector Mirabile, and Bettie Vogler. The Court has also thoroughly considered the legal arguments and authorities presented by both sides.

5. With respect to Fernandez's claims, the Court has determined that Fernandez is entitled to no relief and therefore finds for the City on all claims.

6. With regard to the severance pay that Fernandez seeks, the Court finds that the term sheet that Fernandez prepared and presented to his client, the City Commission, in or about July 2006 was ambiguous in that it never addressed whether the severance would be owed even if Fernandez were discharged for cause after being adjudicated guilty of committing a crime against the City. The Court resolves any ambiguity against the drafter of that provision, Fernandez, and therefore concludes that the severance provision cannot be read to require payment in the event Fernandez was terminated for cause after being adjudicated guilty of committing a crime against the City.

7. The Court further finds that Fernandez breached his fiduciary duty to the City when he failed to explain to the City Commission the view which he expressed at trial that he would be entitled to the severance pay even if he were to be discharged for committing a crime against the City. This breach of fiduciary duty prevents Fernandez from prevailing on his claim for severance.

8. Separately, the Court determines that Fernandez is not entitled to severance, vacation leave, or sick leave because he materially breached his contract with the City when he falsified expense allowance reimbursement records, thus stealing from the City and perpetrating a fraud on

14. The City has proven by clear and convincing evidence that Fernandez committed civil theft by stealing City funds for his own benefit. To the extent Fernandez testified that he did not have any intent to commit theft, the Court does not find this testimony credible. The record contains clear and convincing evidence that Fernandez intended to commit theft. The City has proven by clear and convincing evidence that the base damage amount for civil theft in this case should be three thousand and ninety-three dollars (\$3,093.00). The Court further finds that the City has satisfied all conditions precedent to recovering treble damages under Section 772.11 of the Florida Statutes.

15. Based on the findings set forth above, the City has proven damages of \$3,093.00 for each of its five counterclaims. For the civil theft claim, these damages shall be trebled to \$9,279.00. However, Fernandez shall be given credit for the \$3,093.44 that he has previously paid to the City as restitution on or about February 19, 2008. Therefore, the total amount of damages to which the City is entitled is six thousand one hundred and eighty-five dollars and fifty-six cents (\$6,185.56). This damage amount applies to the civil theft claim and to the four other counterclaims, in total.

16. The City is also entitled to collect pre-judgment interest in the amount of one thousand two hundred and seventy-two dollars and fourteen cents (\$1,272.14).

17. The damages and pre-judgment interest set forth above shall bear interest in the amount of six (6) percent per year, 0.0001644 percent per day, from the date of rendition of judgment until paid.

18. This Court will retain jurisdiction to enter a judgment of costs in favor of the City upon submission of a motion for costs pursuant to Section 57.041 of the Florida Statutes. The Court will also retain jurisdiction to award the City reasonable attorney's fees upon motion pursuant to Section 772.11(1) of the Florida Statutes. Pursuant to Rule 1.525 of the Florida Rules of Civil

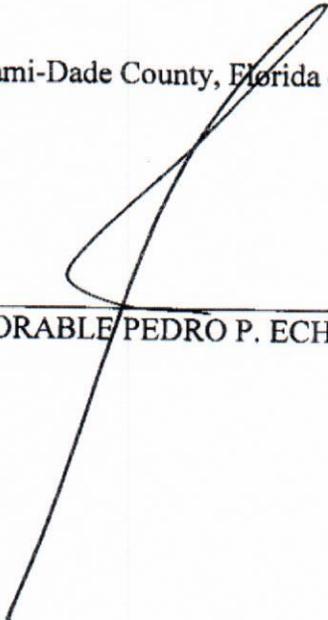
Procedure, any motions for fees and costs shall be submitted no later than thirty (30) days after the entry of this judgment.

19. Pursuant to Section 55.01(2) of the Florida Statutes, it shall be noted that Fernandez's address is 2260 S.W. 27th Way, Miami, Florida, 33145, and his social security number is XXX-XX-8591.

20. On Fernandez's claims, Fernandez shall take nothing by this action and the City shall go hence without day.

21. On the City's Counterclaims, judgment is entered in favor of the City as set forth above, for which let execution issue.

DONE and ORDERED in Chambers, at Miami-Dade County, Florida on this 11 day of April, 2011.



HONORABLE PEDRO P. ECHARTE, JR.

Copies to:
All Counsel of Record