Filing # 14660467 Electronically Filed 06/10/2014 07:28:06 PM

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

MUSEUM OF CONTEMPORARY ART, INC.,

Plaintiff,

v. **Case No.: 2014-008991 CA 01 (30)**

THE CITY OF NORTH MIAMI, FLORIDA; LUCIE TONDREAU; STEPHEN E. JOHNSON; SCOTT GALVIN; CAROL KEYS; PHILLIPPE BIEN-AIME; and MARIE STERIL,

Defendants.
_____/

DEFENDANTS' MOTION TO STRIKE NON-PARTIES' MOTION TO INTERVENE AS PARTIES IN INTEREST; AND, ALTERNATIVELY, MOTION TO DENY INTERVENTION WITH INCORPORATED MEMORANDUM OF LAW OPPOSING NON-PARTIES' MOTION TO INTERVENE AS PARTIES IN INTEREST

DEFENDANTS, The City of North Miami ("**City**"), Lucie Tondreau,[1] Carol Keys, Phillippe Bien-Aime, Marie Steril, and Stephen E. Johnson,[2] ("**Defendants**"), by and through undersigned counsel, file "Defendants' Motion to Strike Non-Parties' Motion to Intervene (the "**Motion to Intervene**") as Parties in Interest. Alternatively, Defendants file a Motion to Deny the Motion to Intervene (the "**Motion**") with Incorporated Memorandum of Law Opposing the

[1] On May 20, 2014, Governor Rick Scott issued Executive Order Number 14-170, suspending Mayor Lucie Tondreau following her indictment and arrest under alleged federal felonies.
[2] Stephen E. Johnson is no longer the City Manager for the City of North Miami. Defendants filed a Motion to Dismiss Complaint, Strike Improper Defendant, and Strike Redundant, Immaterial, Impertinent and Scandalous Portions of the Complaint, which is pending before the Court.

Miami-Dade: HSBC Bank Bldg., 301 Arthur Godfrey Road, Suite 502, Miami Beach, FL 33140-3609 Tel.: (305) 575-2400 Fax: (305) 575-2409
Broward: Huntington Square III, 3350 S.W. 148th Ave., Suite 110, Miramar, FL 33027-3237 Tel.: (954) 874-1736 Fax: (305) 575-2409

Motion to Intervene. The proposed Non-Party Intervenors are: Norman and Irma Braman (the "**Bramans**"), Estelle and Paul Berg (the "**Bergs**"), Ray Ellen and Allan Yarkin (the "**Yarkins**"), and the Martin Z. Marguiles Foundation (the "**Foundation**"), collectively the Proposed Intervenors (the "**Proposed Intervenors**"). In support of their Motion, Defendants state as follows:

Introduction

The Proposed Intervenors' Motion to Intervene must be struck or denied, because: (1) Plaintiff's counsel filed the Motion to Intervene aware of and in violation of the Court's order to stay all litigation pending mediation; and (2) since the Museum of Contemporary Art, Inc. ("**MOCA**"), is a Florida not-for-profit corporation claiming exemptions under 26 U.S.C. §501(c)(3) and gifts to nonprofits must be completed gifts for the donors or grantors to claim the federal tax exemption, the Proposed Intervenors do not have a clear interest in this Court's determination of MOCA's contractual claims, as their gifts were completed gifts.

Summary

On May 12, 2014, the Court rendered an Order (the "**May 12th Order**") instructing, "[t]he parties … [to] … maintain the *status quo* and take no actions with respect to the issues involving the subject matter of this litigation pending mediation." Mediation is scheduled for Monday, June 16, 2014. However, on June 3, 2014, Plaintiff's counsel acting as co-counsel filed the "Non-Parties' Motion to Intervene as Parties in Interest." When Plaintiff's counsel filed the Motion to Intervene, they did so knowing they would defy the Court's May 12th Order. Therefore, the Motion to Intervene must be stricken and Plaintiff's counsel sanctioned, to include but not be limited, to the payment of Defendants' attorney's fees and costs associated with filing this Motion and Response.

Alternatively, although issues related to U.S. Tax Law are Federal Questions within the purview of Federal Courts, the Court is within its discretion to deny and must deny the Motion to Intervene, because the Proposed Intervenors do not have a "clear interest" in this litigation. Once they donated or gifted to MOCA and claimed a tax deduction for such donations or gifts, they lost all interest in the gift. Under U.S. Tax Laws, in order to claim a valid tax deduction for donating or giving a gift to an exempt not for profit-corporation, the donation or gift must be a completed gift. In their Motion to Intervene, the Proposed Intervenors state they "… donat[ed] to MOCA, which is a 501(c)(3),"[3] without claiming they retained any control over the gifts. The donation or gift would be incomplete, if the donor or grantor maintained control over the gift. Maintaining such control would make the gift incomplete; and, accordingly, any claim for tax deduction the Proposed Intervenors had, would be questionable *ab initio*. Therefore, the Court must find the Potential Intervenors have no interest in this case; and deny the Motion to Intervene.

Background and Procedural History[4]

1. The Defendants are: the City, a Florida municipality created with authority under Art. VIII, §2, Fla. Const., and its governing body, the City Council.

2. The Plaintiff is Museum of Contemporary Art, Inc. ("**MOCA**"), located at 770 NE 125th Street in the City of North Miami, Florida.

3. On October 14, 1980, MOCA's Board of Trustees (the "**Board**") was "created and established" through City Ordinance No. 768.

4. MOCA is a Florida non-profit-corporation; which is organized to meet the

[3] Motion to Intervene page 3, first sentence continued from page 2.
[4] Portions excerpted and modified from the Trial Court's May 12, 2014, Order on Case Management Conference.

requirements of 26 U.S.C. §501(c)(3), which exempts it from corporate taxes.

5. On April 7, 2014, MOCA filed its Complaint along with a Verified Emergency Motion for Temporary Injunctive Relief without Notice. On April 8, 2014, the Court entered an Order denying the Motion.

6. On April 8, 2014, MOCA re-filed the Motion for Preliminary Injunctive Relief, which remains pending.

7. On April 28, 2014, the City filed an Emergency Ex-Parte Motion for Temporary Injunctive Relief, Demand for Immediate Equitable Accounting and Incorporated Memorandum of Law (the "**Defendants' *Ex Parte* Motion**).

8. On April 28, 2014, Defendant filed a Motion to Dismiss Complaint, Strike Improper Defendant, and Strike Redundant, Immaterial, Impertinent and Scandalous Portions of Complaint, in the Court below, which remains pending.

9. On April 30, 2014, the Court entered an Order denying Defendants' *Ex Parte* Motion and directing the motion to be set for hearing upon reasonable notice to all parties, which remains pending.

10. The Trial Court *sua sponte* set a Case Management Conference on May 5, 2014. The Court instructed the parties to provide the Court with the name of a mediator.

11. On May 8, 2014, the Court held a follow-up status conference.

12. The Court then ordered the parties to tell it whether they could mutually agree on the mediator proposed by the City at the "… May 8th status conference – or any other Mediator – by noon on Friday May 9, 2014."

13. On May 9, 2014, Defendants filed a Notice of Appeal of Non-Final Orders to the Third District Court of Appeal based on the Court's May 8th oral pronouncements.

14. On May 12, 2014, the Court rendered a written Order instructing the parties to provide a Joint Notice of Agreement of Designation of Mediator. Otherwise, the Trial Court would set and appoint a "Mediator." The Trial court further stayed all litigation and discovery, ordering the *status quo* as to all matters in the case.

15. On May 13, 2014, Defendants filed a Second Amended Notice of Appeal, which included the Trial Court's May 12th written order.

16. On May 13, 2014, the Third District Court of Appeal Acknowledged Appellants' New Case.

17. On May 14, 2014, the Court, "[a]bsent an Order of Stay… from the Third District Court of Appeal," ordered a status conference to be held on May 16, 2014.

18. On May 16, 2014, the Court rendered an Order Appointing Mediator.

19. On May 19, 2014, Defendants filed a Motion for Clarification on Order Appointing Mediator.

20. On May 21, 2014, Defendants filed Motion to Extend Time to Complete Mediation. Stating that additional time was required to gather internal documents and information to endeavor to have a successful mediation and to properly assist the Mediator to understand Defendants' potential counter-claims and position with respect to Plaintiff's claims for mediation.

21. On May 22, 2014, Plaintiff filed a Motion to Compel Mediation and Opposition to Defendant's Motion to Extend time to Complete Mediation.

22. On May 22, 2014, the Court set a May 23, 2014, Case Management Conference.

23. On May 23, 2014, after the Case Management Conference, the Court rendered an "Order on May 23, 2014 Case Management Conference." In this order the Court "Ordered and

Adjudged that:"

a. [The] matter is referred for Mediation to the Hon. Joseph P. Farina, Jr. (Ret.) former Chief Judge of the Eleventh Judicial Circuit (the "Mediator"), whose address is 600 Brickell Ave., Ste. 2600, Miami, Florida 33131-3083; telephone: (305) 371-5267;
b. The parties shall contact the Mediator by close of business on Wednesday May 28, 2014, to schedule the Mediation;
c. If the parties are unable to agree on a date for the Mediation, the date shall be set by the Mediator;
d. Mediation shall be commenced on or before Friday June 13, 2014;
e. The automatic stay, pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure, is hereby vacated for the limited purpose of Mediation;
f. The Mediation is hereby limited to Plaintiff's claims for breach of contract and declaratory relief, which are not subject to Defendants' sovereign immunity defense; and,
g. The proper Defendant to attend the Mediation is the City of North Miami through its designated representative.

24. On June 2, 2014, the Court entered an Agreed Order Enlarging the Time to Start Mediation on June 16, 2014.

<u>Summarized Additional Relevant Facts</u>

25. The Court was very clear and explicit, when on May 8, 2014, it told counsel that "[t]he idea is that the status quo is maintained until you go to mediation." (May 8, 2014 Transcript, 14: 22 – 23, incorporated herein by reference as Exhibit — 1).

26. The Court's May 12, 2014, Order on Case Management Conference ordered "[t]he parties … [to] … maintain the *status quo* and take no actions with respect to the issues involving the subject matter of this litigation pending mediation." See Exhibit — 2, incorporated herein by reference.

27. On June 3, 2014, the Non-Parties: Norman and Irma Braman (the "**Bramans**"), Estelle and Paul Berg (the "**Bergs**"), Ray Ellen and Allan Yarkin (the "**Yarkins**"), and the

Martin Z. Marguiles Foundation (the "**Foundation**"), collectively the Intervenors (the "**Intervenors**"); represented by Mr. Manuel Kadre, Esq., and Messrs. Alan J. Kluger, Esq., Abbey L. Kaplan, Esq., and Casey H. Cusik, Esq., of Kluger, Kaplan, Silverman, Katzen & Levine, P.L., filed the Motion to Intervene.

28. Notably, Messrs. Alan J. Kluger, Esq., Abbey L. Kaplan, Esq., and Casey H. Cusik, Esq., signed the Motion to Intervene as co-counsel with Mr. Manuel Kadre, Esq.

29. Messrs. Alan J. Kluger, Esq., Abbey L. Kaplan, Esq., and Casey H. Cusik, Esq., are counsel for the Plaintiff in the instant case.

Response to Motion to Intervene

30. In paragraph 1, of the Motion to Intervene, Potential Intervenors state that they comprise "… the largest contributors of art to [MOCA]." However, they provide no evidence to substantiate such a claim and ignore the millions of dollars contributed by the City to MOCA throughout the close to 40 years of MOCA's existence and to its predecessor. The City's financial contributions to MOCA are public record.

31. The Board has been acting under the misguided illusion that they are a separate and distinct entity from MOCA.

32. Ray Ellen Yarkin and Irma Braman co-chair the Board.

33. Now, Braman and Yarkin remove their corporate veil and openly seek to intervene in this case.

34. The City does not deny all contributions to MOCA were contributions to MOCA.

35. Just because the potential Intervenors donated to MOCA "… to take advantage of certain tax benefits made possible only by MOCA's status as a 501(c)(3) designated entity under the Internal Revenue Code …[,]" these donations do not give them any claim of right or interest

in the completed gifts.

36. The potential Intervenors repeatedly refer to former Mayor Lucie Tondreau's statements made to the press and from the dais in the City of North Miami Council Chambers. Those statements were privileged subject, either to absolute or qualified, immunity. "[G]overnment officials are entitled to some form of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982). Notably, Ms. Lucie Tondreau has not been mayor since May 20, 2014. Even so, the former mayor's statements to the press, made in her official capacity are privileged.

37. The potential Intervenors parrot the Plaintiff's statements about the Management Agreement, which ignore the City Ordinances that created the Board, MOCA, and authorized the Management Agreement between the City and the Board for MOCA's benefit.

38. Those ordinances have the same character and force of state statutes, which are superior in force to any contract. In fact, an ordinance is an official legislative action of a governing body and it is enforceable as a local law. §166.041(1)(a), Fla. Stat. (2013). Ordinances have the same force of law as state statutes. *City of Miami v. Rosen*, 10 So. 2d 307, 309 (Fla. 1942). Furthermore, municipalities may enact legislation concerning any subject matter upon which the state Legislature may act, unless expressly preempted by county, state, or federal law. §166.021(3), Fla. Stat. (2013). Here, the City's ordinances preempt the Management Agreement and Florida's Legislature has not acted on the matters covered by the subjects covered by the ordinances at hand.

39. The Potential Intervenors just state they "… have a clear interest in the Court's

determination of MOCA's contractual claims." And without more, they claim "… they could face potentially significant tax consequences." Yet they do not substantiate the nature of their donations or in what capacity the donations were made. They do state, however, that the "… gifts run in the tens of thousands of dollars in value … and were … made to MOCA (as opposed to the City) …." And this is precisely the point; the gifts were made to MOCA and not to the Board.

40. There is no question about to whom the art belongs to. It belongs to MOCA. The overarching issue is where MOCA belongs, and this is in the City of North Miami, not in Miami Beach or anywhere else.

41. It is well known that an attorney's "…unsworn statements do not establish facts in the absence of stipulation. Trial judges cannot rely upon these unsworn statements as the basis for making factual determinations...." (quoting *Leon Shaffer Golnick Adver., Inc. v. Cedar,* 423 So.2d 1015, 1017 (Fla. 4th DCA 1982). *Korte v. U.S. Bank Nat. Ass'n*, 64 So, 3d 134, 138 (Fla. 4th DCA 2011). The City's counsel did not make a sworn or stipulated statement during the May 23, 2014 Case Management Conference. Therefore, any statements made by the City's counsel are just argument and cannot be attributed to the City, as the Potential Intervenors fruitlessly state in paragraph 12 of the Motion to Intervene.

42. To say "… the City has threatened to sue the Board's members for breach of fiduciary duty," does not, without more, give them an interest in this litigation. Especially, when City's motion to dismiss the complaint is still pending before this Court and the Defendants have not been able to file an Answer, Defenses, and/or Counter Claims. What is clear, is that MOCA, as directed by the Board sued the City and the City's motion to dismiss and strike has not been heard.

43. Potential Intervenors say that "… in the framework of litigation, the Intervenors should be permitted to intervene at this time for purposes of being copied on all pleadings, motions, notices, and other filings made in this litigation."[5] However, this hollow reason is insufficient to permit intervention; especially, because the Proposed Intervenors have access to all pleadings and filings in the case at bar, especially when their counsel is Plaintiff's counsel, and the case docket and contents are open to the public, they don't need to be on the service list to have access to this information.

Motion to Strike the Motion to Intervene — Argument and Applicable Law

The Court must strike the Motion to Intervene and Sanction Plaintiff's counsel under the Court's Inherent Authority.

There was nothing unclear or ambiguous about this Court's May 12, 2014 Order or the Court's stated intent. When the Court ordered the parties to maintain the *status quo* and to take no action with respect to this litigation, that is what it means. In fact, earlier, the Court was very clear to all counsel when on May 8, 2014, it told counsel that "[t]he idea is that the status quo is maintained until you go to mediation." This obviously means do nothing including litigation. One thing would have been for Plaintiff's counsel to advise Mr. Kadre about the Court's order and for Mr. Kadre to have filed the Motion to Intervene on his own. Here, Plaintiff's counsel joined in filing the Motion to Intervene, as co-counsel, two weeks before the mediation.

Arbitration, like mediation, is an alternative to judicial action. Mediation is a form of alternative dispute resolution "… whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties." §44.1011(2) Fla. Stat.

It is axiomatic that when a court orders a stay of the litigation pending dispute resolution

[5] Motion to Intervene page 3, paragraph 4.

proceedings, it means that no litigation may occur during the stay. Especially when resolution of the claims subjected to alternative dispute resolution can affect the outcome of the litigation. "[I]t cannot be said that the resolution of the arbitrable claims will have no effect on the claims pending in court. *See Sabates v. Int'l Medical Centers, Inc.,* 450 So.2d 514, 519 (Fla. 3d DCA 1984)." *Okeelanta Corp. v. U.S. Sugar Corp.*, 712 So. 2d 814, 815 (Fla. 2 DCA 1998). "'[c]ourts are required to indulge every reasonable presumption in favor of arbitration recognizing it as a favored means of dispute resolution.' *Am. Int'l Grp., Inc., v. Cornerstone Bus., Inc.,* 872 So. 2d 333, 338 (Fla. 2d DCA 2004) (citing cases). …." *Spivey v. Teen Challenge of Florida, Inc.*, 122 So.3d 986, 992 (Fla. 1st DCA 2013).

Here, analogizing arbitration to mediation, as a form of alternative dispute resolution, the Court stayed litigation pending mediation. Accordingly, the stay of litigation was complete, and Plaintiff's counsel filing the Motion to Intervene, was a clear violation of the Court's May 12th Order. The Court is within its authority to find Plaintiff's counsel filing of the Motion to Intervene was an act in violation of the Court's May 12th Order. Therefore, the Court must strike the Motion to Intervene.

The Court must Sanction Plaintiff's counsel under the Court's Inherent Authority for failure to comply with the May 12th Order.

"As we have … stated, '[c]learly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice.' *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.,* 639 So.2d 606, 608-09 (Fla.1994)." *Moakley v. Smallwood*, 826 So.2d 221, 224 (Fla. 2002). "*Bitterman v. Bitterman,* 714 So.2d 356, 365 (Fla.1998), recognized the inherent authority of a trial court to award attorneys' fees for bad faith conduct against a party, even though no statute authorized the award[.]" *Id.*

The Supreme Court went on, "[n]othing in the Court's reasoning in *Bitterman,* in which we acknowledged the trial court's inherent authority to award attorneys' fees under extremely narrow circumstances, limits the application of this authority to a party rather than the party's attorney. Indeed, the attorney is not only a representative of the client, but also an officer of the court. *See* Preamble to Rules of Professional Conduct, R. Regulating Fla. Bar ("A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.")." *Id.*, 224, 225.

Here, Plaintiff's counsel were ordered to stay all litigation. Instead, Plaintiff's counsel filed a Motion to Intervene with Mr. Kadre. Defendants' counsel were, under the circumstances, forced to respond and file this motion objecting to the Motion to Intervene. Accordingly, Defendants have incurred additional attorney's fees and costs therefor. Therefore, Court must find that Plaintiff's counsel intentionally and wantonly ignored its May 12th Order and sanction Plaintiff's counsel under the Court's inherent authority.

Motion and Incorporated Memorandum of Law Opposing the Motion to Intervene

A Completed Gift Ends the Donor's Interest in the Gift. Defendants oppose Non-Parties' Motion to Intervene as Parties in Interest — The Motion to Intervene Must be Denied.

The Potential Intervenors have no interest in their donations and gifts. Since they completed the gifts to MOCA. The Potential Intervenors do not claim they did not complete their tax-deductible gifts to MOCA and did not claim they retained control thereto.

Gifts to MOCA are tax exempt, because MOCA is a Florida non-profit corporation organized under 26 U.S.C. §501(c)(3). "To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual." IRS Publication — Exemption Requirements – 501 (c)(3) Organizations, Page Last

Reviewed or Updated: 13-Mar-2014. Therefore, gifts to MOCA can be tax-exempt.

However, the gift's donor or grantor must complete the gift to claim the tax exemption. If s/he does not relinquish economic control of the gift, the donation or gift is incomplete. "In cases … where the grantor has neither the form nor substance of control and never will have …, we must conclude that he has lost all 'economic control' and that the gift is complete except for the value of his reversionary interest." *Smith v. Shaughnessy*, 63 S. Ct. 545, 87 L.Ed. 690, 43-1 USTC P 10,013, 30 A.F.T.R. 388, 1943 C.B. 1144, 318 U.S. 176 (1943), *at* 547, 548. *See also*, *Autin v. C.I.R.*, 109 F.3d 231, 235 (5th Cir. 1997) ("Autin asserts that the counter letter constituted a legally binding agreement with his son, that it conveyed a real right, and that as such, the gift was complete upon execution of the counter letter in 1974. We agree. … A legally enforceable promise to give is subject to gift tax at the time the promise is made, not when the property is actually transferred.")

Here, the Potential Intervenors state in their Motion to Intervene that their tax-deductible gifts were to MOCA. "[S]o that the Intervenors could benefit from the tax advantages associated with MOCA's status as a Section 501(c)(3) designated entity under the Internal Revenue Code."[6] Further, the Potential Intervenors did not state they made a promise to give or retained actual control of any gift. Regardless, their donations or gifts were complete when made.

Therefore, the Potential Intervenors lost all interest in their donations and gifts, once the donations and gifts were completed and they claimed the respective tax exemption. Accordingly, the Motion to Intervene must be denied.

The Court is Within Its Discretion to Deny the Motion to Intervene

Fla. R. Civ. P. 1.230 governs Interventions and states as follows:

---

[6] Motion to Intervene, page 3, paragraph 5.

> Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the ***court in its discretion***. (Emphasis added.)

In *Grimes v. Walton County*, 591 So.2d 1091, 1093 (Fla. 1st DCA 1992), the First District Court stated that "[a]s the language of the rule clearly indicates, whether or not to grant a request to intervene in a pending action is a decision which rests within the sound discretion of the trial court; and the trial court's decision will not be reversed unless shown to have been an abuse of discretion. *Idacon, Inc. v. Hawes,* 432 So.2d 759 (Fla. 1st DCA 1983)."

Id., at 1094, "[a]lthough substantially predating Rule 1.230, the test generally applied to determine whether a trial court has abused its discretion in ruling upon a request for leave to intervene is the following:

> '... [T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation.'

Morgareidge v. Howey, 75 Fla. 234, 78 So. 14, 15 (1918). Plainly, under this test, "[a] showing of indirect, inconsequential or contingent interest is wholly inadequate...." *Faircloth v. Mr. Boston Distiller Corp.,* 245 So.2d 240, 244 (Fla.1970), *receded from on other grounds in National Distributing Co. v. Office of Comptroller,* 523 So.2d 156 (Fla.1988)."

Here, out of Plaintiff's eight count complaint, there are only two counts going before the mediator on June 16, 2014: (1) Plaintiff's Breach of Contract against the City, and (2) Plaintiff's claim for Declaratory Judgment against the City. Plaintiff's claim that "[a]s a proximate result of the City's breaches of its contractual obligations to MOCA under the [Management] Agreement, as an intended third-party beneficiary of the Agreement MOCA has been damaged. MOCA 's

damages include, but are not limited to, diminution in value of MOCA 's permanent art collection."[7] These claims specifically relate to MOCA and have nothing to do with the Potential Intervenors. That the Potential Intervenors reserve "… their right to proceed in this litigation …" and that the City, through its counsel "… represented … its intent to file a counterclaim;"[8] does not give the Potential Intervenors an interest in the matter in litigation.

"Although intervention is called a matter of right, in fact allowing intervention is at the trial court's discretion. The power to grant or deny intervention in a pending litigation rests within the sound discretion of the trial court and will not be disturbed without a showing of abuse of discretion." (Internal citations omitted.) *Fasig v. Florida Society of Pathologists*, 769 So.2d 1151, 1153 (Fla. 5th DCA 2000).

In *Union Central Life Ins. Co. v. Carlisle,* 593 So.2d 505, 507 (Fla.1992), Florida's Supreme Court "… established a two-step analysis to decide if the trial court should grant a motion to intervene.

First step, "…the trial court must determine that the interest asserted is appropriate to support intervention.... Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention." *Fasig at* 1153. "In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance. Second, the court must determine the parameters of the intervention." *Union Central Life Ins. Co.*, 507, 508.

Defendants showed, above, that the Potential Intervenors do not have an interest in their donations or gifts to MOCA. Here, the Court must determine the Potential Intervenors' claimed

---

[7] Complaint paragraph 55.
[8] Motion to Intervene footnote 2.

interest is inappropriate to support intervention, because it is not. Therefore, the Court does not get to the issue of determining the parameters of intervention and the Motion for Intervention must be denied.

Conclusion

The Court's May 12, 2014 Order staying all litigation pending the Mediation of June 16, 2014, was unambiguously clear. Plaintiff's counsel filed a Motion to Intervene as co-counsel knowing the stay was in force and acting in blatant violation of this Court's order. In the Motion to Intervene the Potential Intervenors claim they have an interest in the gifts they gave MOCA, because their claimed tax deductions for donations to non-profit. However, in order to be able to claim the tax exemption, the gifts must have been completed gifts. As such, the Potential Intervenors retained no interest in the gifts. Accordingly, the Court is within its discretion to deny the Motion to Intervene. Therefore, the Court must strike the Motion to Intervene and sanction Plaintiff's counsel for filing the Motion to Intervene defying the Court's order staying all litigation; or alternatively, deny the Motion to Intervene.

WHEREFORE, the Defendants ask the Court to:

1. Strike the Motion to intervene and, under its inherent authority, sanction Plaintiff's counsel; or,

2. Alternatively, deny the Motion to Intervene;

3. Grant Defendants attorney's fees and cost related to filing this response to the Motion to Intervene; and

4. Provide any other relief the Court deems just and right.

[SIGNATURE ON NEXT PAGE]

Dated: June 10, 2014

Respectfully Submitted,
/s/Olivia S. Benson, Esq.
Olivia S. Benson, Esq.
Florida Bar No.: 0874450
/s/Gilbert K. Squires, Esq.
Florida Bar No.: 584185
Attorneys for Defendants
Law Offices of SquiresBenson, P.L.
HSBC Bank Building
301 Arthur Godfrey Road, Suite 502
Miami Beach, FL 33140-3609
(305) 575-2400 (o)
(305) 575-2409 (f)
E-mail 1: e-service@squiresbenson.com
E-mail 2: jessicaortega@squiresbenson.com
E-mail 3: oliviabenson@squiresbenson.com
E-mail 4: gilbertsquires@squiresbenson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the Defendants' subject motion was sent by electronic mail to **Alan J. Kluger, Esq., Abbey L. Kaplan, Esq.,** and **Casey H. Cusick**, **Esq.**, at **Kluger, Kaplan, Silverman, Katzen & Levine, P.L.,** 17th Floor Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131, at akluger@klugerkaplan.com, akaplan@klugerkaplan.com, and ccusick@klugerkaplan.com; **Regine M. Monestime, Esq.**, Office of the City Attorney, City of North Miami, 776 N.E. 125th Street, North Miami, FL 33161, at cityattorney@northmiamifl.gov; **Manuel Kadre, Esq.**, 10055 NW 12th Street, Miami, FL 33131 at many@mannykadre.com, on this 10th day of June, 2014.

/s/Olivia S. Benson, Esq.
Olivia S. Benson, Esq.
Florida Bar No.: 0874450
/s/Gilbert K. Squires, Esq.
Attorneys for Defendants
Florida Bar No.: 0584185
Law Offices of SquiresBenson, P.L.
HSBC Bank Building
301 Arthur Godfrey Road, Suite 502

Miami Beach, FL 33140-3609
(305) 575-2400 (o)
(305) 575-2409 (f)
E-mail 1: e-service@squiresbenson.com
E-mail 2: jessicaortega@squiresbenson.com
E-mail 3: oliviabenson@squiresbenson.com
E-mail 4: gilbertsquires@squiresbenson.com

Exhibit - 1

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO. 14-008991 CA (01)

MUSEUM OF CONTEMPORARY ART, INC.,

Plaintiff,

-vs-

THE CITY OF NORTH MIAMI, FLORIDA;
LUCIE TONDREAU; STEPHEN E.
JOHNSON; SCOTT GALVIN; CAROL
KEYS; PHILIPPE BIEN-AIME; and
MARIE STERIL,
Defendants.
_____/

- - -

Miami-Dade County Courthouse
73 West Flagler Street
Miami, Florida
May 8, 2014
2:04 p.m. - 2:45 p.m.

The above-entitled cause came on for hearing before the Honorable Norma S. Lindsey, Circuit Court Judge, taken before Lilly Villaverde, Florida Professional Reporter and Notary Public in and for the State of Florida at Large.

APPEARANCES:

ABBEY KAPLAN, ESQUIRE
Akaplan@klugerkaplan.com
Kluger Kaplan Silverman Katzen & Levine, P.L.
201 South Biscayne Boulevard
17th Floor
Miami, FL 33131
on behalf of the Plaintiff

GILBERT K. SQUIRES, ESQUIRE
Gilbertsquires@squiresbenson.com
OLIVIA S. BENSON, ESQUIRE
Oliviabenson@squiresbenson.com
Squires Benson, P.L.
301 West 41st Street
Suite 502
Miami Beach, FL 33143
on behalf of the Defendant

ALSO PRESENT:

REGINE MONESTIME, ESQUIRE
City of North Miami
776 Northeast 125th Street
Miami, FL 33161

ALEEM GHANY, INTERIM CITY MANAGER

(The following proceedings were had:)

THE COURT: This is Museum of Contemporary Art versus The City of North Miami, case number 14-8991.

Have the defense side been able to propose anyone as a potential mediator? I saw the correspondence that was still pending.

MR. SQUIRES: Yes, Your Honor. It's pending because we don't know at this moment because of engagements whether Mr. Kaiser is going to be available and that's whom we're working with and he has been very involved with Kennedy Museum and others in New York, Your Honor.

MS. BENSON: But that's the person that we're using, that we are considering using.

THE COURT: Well, you all understand that unless both sides are agreeable, the Court will select the mediator, correct?

MR. SQUIRES: Yes, Your Honor.

MS. BENSON: Yes, Your Honor.

THE COURT: Have you discussed that person's name with Mr. Kaplan?

MR. SQUIRES: It's the first time we mentioned it before Mr. Kaplan, Your Honor, because we didn't have authority to discuss it.

THE COURT: I understand. Do you have

authority at this time to propose that person to him?

MS. BENSON: Well, what Mr. Squire was suggesting a few minutes ago is that that's the person that we would like, but we don't know about his availability and so on. So in terms of getting to mediation, we are, as we said during the hearing, amendable to it, but there are many details that have to be addressed before we can say, yes, we are ready to go and this is the official list and the person is available.

MS. MONESTIME: Regine Monestime.

THE COURT: Good afternoon Ms. Monestime. We were just discussing whether the parties have been able to agree upon a mediator.

Could you please --

MS. BENSON: Judge, we have not proposed this to the attorneys for the plaintiff as the name of the person that we are considering because there have been so many other issues we have been in contact with them addressing a number of different things and mediation, of course, is pretty significant, but, as you know, there is a motion for preliminary injunctive relief also before the Court and also there's a motion for protective order that's before -- for protective order for a deposition that's

before the Court. So there have been a number of things that we are working on all at the same time to get this case to the point where our client is comfortable addressing mediation and I know that this is significant in terms of the Court's --

MS. GHANY: Aleem Ghany.

MS. BENSON: -- to get this case to mediation, but at the same time, our client is in the position where they're concerned about the damages that they're suffering and so their primary concern, and with us as their counsel, they are looking at us and saying, well, what about the motion for preliminary injunctive relief? How can we be talking about mediation if the Court has not addressed this pending issue, and of course tied up with that is the motion for protective order for Mr. Babacar, which counsel for the plaintiff has suggested is important with regards to the motion for preliminary injunctive relief.

THE COURT: Did someone else join the call, I thought I heard another name?

MS. BENSON: I just heard Ms. Monestime, Your Honor.

MS. GHANY: Yes, actually, interim city manager Aleem Ghany is on the call.

THE COURT: Okay. Good afternoon.

MS. GHANY: Good afternoon.

THE COURT: Okay. Mr. Kaplan, anything you want to add to that?

MR. KAPLAN: I don't know what to add. I don't know Mr. Kieser's first name, so I can't comment whether or not the plaintiff would accept or reject.

Number two, I am clueless as to why details need to be agreed upon in advance of mediation, but the fact that the defendants seem to think we need to either limit or detail the issues for mediation and the plaintiff can't agree on that shows, to me anyway, more of a reason to get this case to mediation so that somebody can try to resolve all the issues.

And number three, the issue of the emergency motion for preliminary injunction, we agree that it needs to be set, but we also believe that while we're going through the process leading up to that, that this case screams out to be mediated early and we are prepared to move forward either with one of the people that we've suggested and/or somebody that the Court will suggest if they do not agree to anybody that we've suggested and, sitting here today, I would have to say I don't agree to Mr. Kaiser because I

don't know him and I have no authority from the client to do that.

THE COURT: What is Mr. Kaiser's first name?

MR. SQUIRES: His first name, Your Honor, is Michael Kaiser.

THE COURT: And where is he based?

MR. SQUIRES: Ordinarily he is based on the east coast and we just need to be able to get back to him for clarity, Your Honor.

MR. KAPLAN: Your Honor, that just doesn't do me any good. So sitting here today --

MR. SQUIRES: I understand that.

MR. KAPLAN: -- I will have to reject Mr. Kaiser.

MR. SQUIRES: We will get you all the information, but as we discussed, we have been discussing this with our client and the concerns that Ms. Benson raised are still in play to include the fact that there is a motion to dismiss the complaint in place and until that motion is also addressed to give us then the opportunity to file any appropriate counterclaims that we believe are required, as well as defenses and an answer, those kinds of things, Your Honor, and Mr. Kaplan, would allow us to further narrow the issues, if we can not agree on narrowing

the issues at this time.

THE COURT: Okay.

MS. BENSON: Your Honor, I would like to add, I have been in practice for 24 years and I've rarely seen a case go to mediation without an answer and if there's a counterclaim, a well-stated counterclaim, that is the problem with the plaintiff pushing to go to mediation with a complaint that even if an answer was pending, I mean, there's specifically a motion to dismiss alleging that the complaint is not well-stated, and so if we can get the complaint to be properly formatted, I mean, at least that would be appropriate. Far less considering that the defendant have counterclaims that they want to allege. Any mediator sitting and listening to this case is not going to have a complaint and the plaintiff's claims -- I mean the defendant's claims.

What the plaintiffs want to do is to force us to go to mediation with a complaint that really is not legally sufficient and basically foreclose the defendant from having their claims properly stated in front of a mediator, that is the issue -- that's the reason that we repeatedly said let's narrow the issues for mediation because there's nothing in the record that a mediator can read that says, okay, this

is what the plaintiff is claiming and this is what the defendant is claiming, other than what we would otherwise frame for them to go to mediation, and that is the defendant, The City and the other parties named in the complaint, that is their primary concern with regards to mediation right this second.

MR. SQUIRES: Especially, Your Honor, when we still have the motion for injunctive relief before you, because the plaintiffs are still proceeding with the activities that they have and Her Honor has competing affidavits at the moment and it would be proper for Her Honor to give us an opportunity to present and Her Honor to have a hearing on that issue so that we can get a ruling relating to the motion for injunctive relief and a hearing, Your Honor, on the motion to dismiss the complaint.

THE COURT: Okay. It seems to the Court that the respective sides are set forth in the competing ex parte motions for temporary injunctive relief that were both previously denied by the Court.

Are there other issues outside those motions?

MR. KAPLAN: I can address that, Your Honor --

MS. BENSON: Yes, there are, Your Honor, with regards to the defendant making their counterclaims. There are specific claims against the board that the

defendant will be making. As a matter of fact, the defendant has given the board notice of default and intends to make claims against the board for their specific actions.

We have given them notice that they also need to put their carrier, their errors and omissions carrier on notice because the City of North Miami believes that they have breached, not only a contract, but their fiduciary obligations.

There are a series of claims against the board, which are not even addressed anywhere until this point. The injunctive relief simply addresses things that have factually occurred, which have placed the City in danger with regards to the operation of MOCA and with regards to other issues. So the City's claims are stated nowhere in the record.

THE COURT: Okay.

MR. KAPLAN: Your Honor, I think --

MS. MONESTIME: First of all --

MR. KAPLAN: One second, excuse me. I have two lawyers on the either side and now Ms. Monestime who has not made an appearance taking a position. I think -- double teaming is hard enough, but triple teaming I think is inappropriate, especially for some -- a lawyer who hasn't made an appearance in the

case.

THE COURT: All right. Counsel on the phone, I will give all of you all a chance to speak, but if one of you all speaks, I am going to then turn the floor to counsel for the other side before we hear from another counsel on the phone, okay?

MS. BENSON: That's fine, Your Honor.

MR. SQUIRES: Your Honor, this issue of other issues pending, the plaintiff doesn't have any problem whatsoever with going to mediation with the issues that might be framed in a counterclaim that is not yet filed. We will risk that. We believe that we can handle those issues in a mediation because we know what the issues are. They have already been put forth with a letter from the City to my client and this fact that there has to be a counterclaim filed before sophisticated business people and lawyers with significant years of practice have to have something in writing first is just outside of my historical knowledge of how these things should work and we're willing to risk it that it could still be a good mediation and with a strong mediator, the mediator can handle that because the City will present to the mediator a confidential mediation summary that I am not going to see. We will present a confidential

mediation summary to the mediator that they are not going to see and the horses will be let out of the gate and we can start trying to get this case resolved, all issues, their issues as well.

THE COURT: Okay. Back to the defense.

MS. MONESTIME: This is Regine Monestime again, City attorney.

One issue that I would like to really hone in on again is the idea of, as a matter of law, there are counts that you may very well dismiss, find that these claims have not been put forth properly and so for us to jump that step into mediation without you ruling, as a matter of law, whether a mediator can even consider a claim, for example, of defamation, if you were to decide you will dismiss that claim, if you were to decide you will dismiss the claim with prejudice, obviously that type of action would not be before a mediator, and I think it's a little premature for us to have any issues discussed before a mediator when you have not had an opportunity to rule whether, as a matter of law, they can even bring a claim against elected officials for sovereign immunity, for example.

So, Judge, I just -- we do not believe that this case is ripe for mediation without you having an

opportunity to rule on some facially legal issues prior to getting to the substance and the content of the complaint.

THE COURT: Okay. Back to the plaintiff.

MR. KAPLAN: I just have a question, Your Honor, for procedure perspective. Ms. Monestime appeared at the last hearing, I specifically asked her if she was making an appearance for notice purposes and she said that she wasn't, but now she is arguing as a lawyer for the City, it's perfectly okay if she's going to make an appearance as counsel for the City, and I don't think it's appropriate that -- that would be like having one of our board of directors who happens to be a practicing lawyer sitting here and making argument to Your Honor as well, although not making an appearance in the case.

THE COURT: Okay. Ms. Monestime, are you going to appear as counsel in the case?

MS. MONESTIME: I will be happy to do that, Your Honor.

THE COURT: Okay. That way we can add you to the service list on everything.

MS. BENSON: She's already on the service list, Your Honor, for everything.

MS. MONESTIME: Judge, I think we shouldn't get

distracted by non-issues.

THE COURT: All right. It's not unusual when a case is mediated to have unresolved issues. When you all were all here yesterday, you indicated, from both sides, that you all were amendable to mediation. If the parties are unable to mutually agree upon a mediator, the Court will select a mediator that can take up all the issues, perhaps narrow them. In the interim, until that mediation, the Court would entertain a stay in the litigation as well as an order to maintain the status quo with respect to everything with the museum on both sides pending the mediation.

MR. SQUIRES: All right. Your Honor, we can consult with our client and prepare a proposed order and subsequently consult with Mr. Kaplan and we can jointly bring forth to Her Honor something that would underscore those three things that she mentioned.

MR. KAPLAN: Are you granting their motion, Your Honor, for relief?

THE COURT: There's no motion being granted. The idea is that the status quo is maintained until you all go to mediation.

MR. KAPLAN: Okay.

THE COURT: I know that there are competing

claims about things that may be occurring or not occurring from both sides' perspective, but the intent would be that the status quo be maintained on things until you all go to a mediation, in fairly short order, to see if you all can come to some resolution or perhaps narrow the issues that need to be resolved by the Court.

MR. SQUIRES: Is Your Honor referring to the status quo ante the lawsuit or the status quo now, Your Honor?

THE COURT: What specifically has changed since the litigation was filed?

MS. BENSON: All the things that are listed in the affidavit, the assistant director was removed from the bank account, access for the accountant was removed from the bank account --

MR. KAPLAN: Not true.

MS. BENSON: -- the exhibits were canceled, the programs removed. There's a list in both the initial motion for preliminary relief, as well as with the supplemental affidavit, all of the things that were done, some of it was done before the litigation was began and then following the litigation most of the activity began where essentially the practical operation of MOCA was sort of taken away from its

normal course where the City was working with them and they shut it down and essentially have proceeded as though they have no obligation or no contract with the City and are sort of running it as an independent entity.

So all of those things in our motion for preliminary injunctive relief what we said is put it back to what it was on January 1, 2014, and leave it there and then we can go to mediation and then talk without the City being concerned about if operations being sort of canceled or damaged and that would make sense in terms of going to a mediation and all the issues on the table, which like Ms. Monestime mentioned as well, the issue of sovereign immunity and this lawsuit I think is a big legal issue.

It is not unusual as the Court has indicated for parties to go to mediation with unresolved issues. That is typical. In fact, that's kind of why we go, but the problem here is that we are talking about a municipal agency, a government agency who have the legal right to file an answer and to go to mediation with claims that are clearly stated and this is the problem that the City has with -- and we don't have a problem with going fairly quickly either --

THE COURT: Well --

MS. BENSON: -- the motion to dismiss being heard and the other side who has not only filed this complaint, but done a series of other things in the public arena and the City doesn't have anything that they have filed to respond, other than the motion to dismiss, and we believe that we are entitled, the City of North Miami, is entitled to have a claim that is clearly stated in the public record before they appear for any kind of mediation and procedurally the law requires us an opportunity do that, and so mediation without that would also be damaging for the defendant's case.

We are talking about these plaintiffs suing the City, the mayor and the entire counsel and not a piece of paper has come back, other than the motion to dismiss to state their claim in the public record and procedurally, we do not believe that that is correct prior to mediation.

THE COURT: Okay. Ms. Benson, in terms of the order that the Court proposes, it is not to grant either side preliminary injunction at this time, but to enter an order that no action be taken by either side to affect the operation of the museum, the art collection, the personnel, the funds, the scheduling

of events and that mediation take place within the next ten days or so.

MR. KAPLAN: Your Honor, can we please --

MS. BENSON: We have a question, Your Honor, for clarity sake. Everything has already been done. When you say no further, it's unclear to my client what you're addressing because the things that we complained about have already occurred. So there's nothing in that order that we can hear that addresses the damage that the City has already suffered. In the meantime, bank accounts are out of their control.

THE COURT: Okay. Let me go back to --

MS. BENSON: So it's important if a stay is going to be issued, really to bring things to status quo it needs to address what already has been done, otherwise, we are just going to sit here and the City is going to continue in the same exact position and at the same time you're suggesting that the City would be paralyzed from doing anything else and that is completely out of balance.

THE COURT: Okay. Back to Mr. Kaplan --

MS. BENSON: Putting it back, as you know, and I don't want to get into the motion if that's not what the Court chooses to do, but if you say that today and you enter an order saying that today, they

will stay with the bank accounts as they are, with the accountant having no access, with the director in place doing what the board is directing and the City will still remain completely out of control.

THE COURT: Well, there is -- the order will include that no transfers can go in or out of the bank account. Things need to be at a standstill until you all sit down and talk.

MR. KAPLAN: Your Honor, the payroll has got to be made, and let me be very, very clear. The affidavit from Mr. Gartenfeld (phonetic), obviously opposing counsel hasn't studied it yet, but the fact of the matter is --

MS. BENSON: That is not true, Your Honor.

MR. KAPLAN: Wait a minute. It is very, very clear in that affidavit that the City accountant has complete access to see what goes in and what goes out of that account. There are things that are in place currently that allow for the execution of contracts for business as usual and I think I understand what the Court is saying, but I don't -- we would be very much against granting the relief that the defendant has asked for in that motion because we don't think that the Court has -- will ultimately rule that they have any right to this relief that they want, and we

are prepared to move forward and I understand the stay of litigation, I got it. No discovery goes on, no depositions go on, no hearings go on, let's get this case done and if it doesn't work, bingo, we are back, we can start scheduling things and doing everything else, but right now the City -- the museum is in good hands.

Mr. Gartenfeld's affidavit was very, very clear about that.

MR. SQUIRES: What Mr. Kaplan just said, Your Honor, does not include what Ms. Benson and Ms. Monestime have already addressed. Since last October up until now, the plaintiffs have been operating as though they are a separate independent entity --

MR. KAPLAN: That's not true. That's not true, Judge, and I'm sorry, I don't mean to interrupt, this is getting impatient because we keep rehashing the emergency motion issues all over again with quantification that has no basis in fact.

THE COURT: They can't hear you.

MR. SQUIRES: However --

MR. KAPLAN: That's okay. It was you that I wanted to have heard.

THE COURT: Okay. Counsel, hello?

MR. SQUIRES: Yes, Your Honor.

THE COURT: If I can just please ask everyone to talk one at a time for the purposes of the court reporter and just to let you all know, and I just told Mr. Kaplan as well, when you all are on speaker, whichever voice the speaker is picking up at the moment, it won't allow another one to cut in until that voice ends.

MR. SQUIRES: Thank you, Your Honor. So to complete my statement, Your Honor, what Mr. Kaplan has presented to the Court in his last statement is a position as Ms. Benson described that is beneficial to his clients and it does not address the spirit of what we believe Her Honor wants to address with the status quo.

To allow the MOCA plaintiffs to continue operating as they are in absolute control without the City being able to participate as it was before, with them disregarding the participation of the City, Your Honor, is not proper under the law and is not the status quo ante that they are trying to avoid.

THE COURT: Okay.

MR. SQUIRES: You have the authority, Judge, to provide in your order for that position today.

THE COURT: All right. The intent is that

nothing else happens and that mediation be commenced within ten days.

MR. KAPLAN: Do you have a suggestion for -- we are -- obviously they won't agree to ours. I don't know Mr. Myers -- Kaiser, I have to respectfully decline, and we don't even know if he's got availability, we will certainly accept anyone that the Court appoints.

THE COURT: Okay.

MS. BENSON: Judge, we are not in a position to -- first of all, we have not declined the people that Mr. Kaplan has recommended and before we get to the position where we say that -- to move to where the Court is going to recommend, we think that we ought to have the opportunity to consider this issue clearly.

I don't understand why the -- first of all, his name is Kaiser. I don't understand why the plaintiff is attempting to, essentially, push into mediation without the legally required procedural step.

Ten days, if the Court orders mediation within ten days, that's fine. Within those ten days we can have an amended complaint, the City could state its claims and we could still go to mediation.

At the same time we have, if it's clear that

the litigation is stayed, meaning there will be no additional depositions or anything like that, that means that our motion for protective order with regard to Babacar M'Bow would also be granted, but we still, and I have to make sure that I put this on the record, because the City has not submitted to any jurisdiction of the Court and has not waived its right to sovereign immunity, which the plaintiffs have not even raised in their complaint.

So I want to make sure that before the Court orders us to mediation, that this issue is very clear on the record because the City does not have to proceed to mediation in this matter without that procedural requirement being met and it has not been met.

THE COURT: Okay. As things stand right now, there are -- all defenses are preserved, there are no waivers on either side. It is simply an opportunity for both sides to present, confidentially because that is what mediation is, your respective positions, any potential counterclaims, positions that haven't been laid out thus far in the paperwork confidentially to a mediator who would hear from both sides and attempt to bring you all together on all of the issues or at least perhaps some of them.

MR. SQUIRES: Your Honor, excuse me, this is Gilbert Squires. Procedurally there's something that seems out of order, Your Honor, because if we present the City's counterclaims confidentially during mediation, that is presenting the counterclaims and all positions on a complaint that is defective.

So if within these 10 days, Your Honor, we can get the issue of the motion to dismiss the complaint heard and address the issues that Her Honor has to rule on regarding that complaint and at that time Her Honor may give them leave to amend, but the big issue is the one on sovereign immunity on others. The law requires that that is addressed, Your Honor, before we go forward traveling on a complaint that is deficient.

So we would request Her Honor to give us a hearing expeditedly, before these 10 day so that we can address the complaint because it would not make sense to present to the mediator our counterclaims on a confidential basis when we are presenting them to the other side at that time. Let's have something that Her Honor can properly rule on under the law, as we are required to see procedurally, and we can do that, Judge.

MR. KAPLAN: Your Honor, they wouldn't be

presenting anything to us on a confidential basis. The mediators know what to disclose and what not to disclose to the other side. We are not trying to do any pre counterclaim discovery on this thing.

This is so remarkable that it's a plaintiff that wants to see if the parties can't end this litigation, that's how simple this is. There's nothing clandestine going on here. This is a question of dollars and cents and aggravation that both parties have had in a very short period of time with the expectation that there can be a resolution that everybody can agree upon. I just don't --

MS. BENSON: Judge, it's very easy for the plaintiff to remark how easy this is that -- it's very easy for the plaintiff to remark how easy this is and why they really want to go to mediation when they filed a complaint that has basically become a media circus with allegations that are, you know, some in the City's opinion completely unfounded, allegations that are contrary to what is required by either the management agreement or the ordinance.

In fact, in their complaint, there's very little reference to the fact that there's actually an ordinance that governs the process that's supposed to occur with regards to the management of the MOCA

museum and now the defendant is saying we want to make sure that -- first of all, that we are properly before the Court, because we don't admit at this particular point, we don't waive our right to sovereign immunity, and you are procedurally, plaintiff, required do that before we actually enter into the litigation process, and now they are like, you know, We don't mind. We are the plaintiff. We want to push this to litigation -- I mean to mediation.

The procedure requires them to, number one, file a proper complaint, which they haven't done and they are going to try to drag the City of North Miami into a mediation with a complaint that has claims that are not properly stated.

No question, Judge, you are correct people have disagreements about what's at issue when they go into mediation, but I think the City is very well within its rights to say, make them, Your Honor, prepare a complaint that is proper and allow us an opportunity to answer and deny those claims in the record because they have a right to deny the claims or admit the claims in the record. For them to say, it doesn't really matter, you know, we're perfectly willing to go. Well, the City objects to that, Your Honor,

because we have a right to answer.

THE COURT: Okay.

MS. BENSON: And we have a right to file a counterclaim so that the record is clear and then we can go to mediation and we are just saying, Judge, just please hear it. Hear the motion to dismiss.

I mean, Mr. Kaplan, we can do an agreed order.

There are certain things that are clear in the motion to dismiss that need to be addressed. We can do an agreed order. He knows which ones need to be dismissed or rewritten, which things need to be modified. There are some basic little things in the complaint --

THE COURT: Okay.

MS. BENSON: There are some other ones --

THE COURT: Okay.

MS. BENSON: -- that need to be addressed. Why would the City of its own volition agree to go to mediation with a complaint that is not well stated, that is not legally sufficient and without an opportunity to stay, these are the claims that we have against them.

Why would we prepare a summary, which, you know, confidential or not, prepare a summary to give to the mediator, which what you normally do is you

take the complaint, you take the answer and you take the counterclaims and that's what the mediator works with, and they -- of course they are against the motion for any kind of stay or they agree with what the Court is suggesting at this time because there's nothing for them to lose at this particular time.

THE COURT: Okay.

MS. BENSON: Everything that they have wanted to do up until this point, they have essentially done --

THE COURT: Counsel, counsel --

MS. BENSON: -- and the City has followed the procedure under the law --

THE COURT: Counsel --

MS. BENSON: -- and has not responded.

THE COURT: Counsel.

MS. BENSON: Yes.

THE COURT: The Court envisions the parties going to mediation on the allegations raised in the competing ex parte motions for temporary injunction.

MS. BENSON: Judge, that is not a complete record of the claims that the defendants have against the plaintiff.

THE COURT: While you may --

MS. BENSON: That is not, by any stretch of the

imagination, a complete record.

THE COURT: Okay.

MS. BENSON: It doesn't reflect in any way any of the counterclaims that -- those affidavits and that motion just addresses the issue that needed to be raised with regards to the fact that they were suffering irreparable harm, that the City had a clear right to proceed for the injunctive relief. I mean, that was a basic claim for preliminary injunctive relief, it has nothing to do with any other claims. It doesn't say anything.

They have alleged that the mayor, without stating any issue -- addressing any issues of sovereign immunity, they have stated that the mayor of the City of North Miami, an elected official, is liable, so to speak, for defamation. They have tried to state a claim for defamation.

THE COURT: Okay. Counsel.

MS. BENSON: Judge, how can we go -- now they want to stay, you know what, probably we can leave that one aside and get to the central issues, but that is inappropriate. The mayor has been sued for defamation.

THE COURT: Okay.

MS. BENSON: They have said, no, you filed --

there is no case -- you have not stated a case or a claim for defamation in our motion to dismiss, yet we haven't had an opportunity to respond to that in the public record.

THE COURT: Okay.

MS. BENSON: So if we go to mediation and if the mediation is successful, well, it dies there, but if the mediation is unsuccessful, we still have to come back and address all those issues.

THE COURT: Absolutely.

MS. BENSON: And it just seems procedurally that this would be reversible error to force a City, a government municipality to go forward into mediation without having the issues in the case, even -- we are not talking about discovery, just an answer to a complaint.

THE COURT: Okay.

MS. BENSON: And the issue of sovereign immunity not being properly pled. I personally have not seen that. So it's very easy for them, oh, yeah, Judge, we can go. There's no problem. We are the plaintiff, we agree. Then they avoid correcting their complaint and allowing us an opportunity to answer, not only in the public record, but having a document in front of the mediator that states all

claims of both parties.

THE COURT: Okay.

MR. KAPLAN: It's a disadvantage to the defendants to appear at mediation without having the proper pleadings.

THE COURT: Okay. Ms. Benson, I am going to hear briefly again from Mr. Kaplan and then I am going to conclude the hearing for today.

Mr. Kaplan.

MR. KAPLAN: I don't know that I can add anything to what I have already said, Your Honor. Just, we would like to have -- I would like to know who the Court is recommending so that we can begin the process of scheduling it within this ten-day period.

THE COURT: Does either side object to Ray Abadin, president elect of the Florida bar?

MR. KAPLAN: We do not.

MS. BENSON: We do, Your Honor.

MR. SQUIRES: We do, and he is a friend and we respect him and he is a fabulous lawyer, Your Honor. At this point, we stand on the position, Judge, that this is reversible error at this time to go to mediation under the circumstances of this case because the City has not submitted itself to the

Court's jurisdiction, Judge.

THE COURT: Okay.

MR. KAPLAN: Do you have another suggestion, Your Honor?

MS. BENSON: Judge, I really don't understand. Counsel is essentially pressuring the Court to give a name in these five seconds and any name that would be brought up, first of all, we have not even provided our information on Mr. Kaiser. We would, of course, respect a list that the Court -- that you would provide, but whatever name you might give in these five seconds, we still have to go back to the City, we still have to talk to the -- to our direct clients, whether it be the mayor, the counsel, all of that process has to occur.

So I object to counsel's continuous pounding on give us a name right now because we still have a whole government entity that we have to deal with and we cannot make those decisions in five seconds.

THE COURT: Okay.

MS. BENSON: It has to be discussed with the clients.

MR. KAPLAN: I am actually not asking for a suggestion. I am asking for a ruling.

MS. BENSON: Oh, well, that makes it even more

interesting.

THE COURT: Okay. By tomorrow at noon provide to -- or today the information as to Mr. Kaiser and advise the Court whether the parties can agree to a mediator. If the parties do not agree to a mediator, the Court will select a mediator from a name that neither side has proposed.

MR. KAPLAN: Okay. Your Honor, I have a doctor's appointment.

MR. SQUIRES: That Your Honor's ruling?

THE COURT: That's the ruling, yes.

MR. KAPLAN: I have a doctor's appointment.

MS. BENSON: With regards to the motion to dismiss, Your Honor, can that be heard in the next ten days?

THE COURT: You would have to check with my JA. I am starting a jury trial Monday morning.

MR. SQUIRES: Would it be the intention of the Court to hear the motion to dismiss, Judge, within the next ten days?

THE COURT: The intent would be that the parties would mediate within the next ten days and then come back and hear any motions that are unresolved.

MS. MONESTIME: Okay. And with regards to the

motion for protective order, is it clear then that that -- there's a stay with regard to that deposition.

MR. KAPLAN: No, there's a stay --

MR. SQUIRES: Or any orders or any discovery?

MR. KAPLAN: Your Honor, as I understood it --

THE COURT: Yes, go ahead.

MR. KAPLAN: No more litigation, which means that I am not going to take Mr. Babacar's deposition, but it doesn't mean, in my view, that you have granted their motion for protective order, because if we are going to argue the motion for protective order, I have got a lot to say about that because I think they are completely wrong.

So the way I envision it, you are not ruling on that. You are telling the litigants, don't file any more papers in court, don't take any depositions. For the next ten days, you guys are going to work towards getting this case to mediation, if it's unsuccessful, the bell rings again and you are off and running.

THE COURT: So there would be a stay of the litigation right now including discovery.

MS. BENSON: Thank you, Your Honor.

THE COURT: As Ms. Benson so eloquently stated,

if we go to mediation and resolve it, that ends it, and that can be the result here. If not, we will start scheduling hearings.

MR. KAPLAN: Thank you, Your Honor.

MS. BENSON: Thank you, Your Honor.

MR. SQUIRES: Thank you, Judge.

THE COURT: Thank you all. Have a nice afternoon.

(The proceedings were concluded at approximately 2:45 p.m.)

REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF BROWARD

I, LILLY VILLAVERDE, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 8th day of May, 2014.

_____

LILLY VILLAVERDE
Florida Professional Reporter

&

& 2:3

0

01 1:2

1

1 16:8
10 24:7,17
11th 1:1
125th 2:14
14-008991 1:2
14-8991 3:3
17th 2:4

2

201 2:4
2014 1:14 16:8 36:10
24 8:4
2:04 1:15
2:45 1:15 35:10

3

301 2:9
33131 2:5
33143 2:10
33161 2:14

4

41st 2:9

5

502 2:10

7

73 1:13
776 2:14

8

8 1:14
8th 36:10

a

abadin 31:17
abbey 2:2
able 3:4 4:14 7:8 21:18
absolute 21:17
absolutely 30:10
accept 6:7 22:7
access 15:15 19:2,17
account 15:15,16 19:7,18
accountant 15:15 19:2,16
accounts 18:11 19:1
action 12:17 17:23
actions 10:4
activities 9:10
activity 15:24
add 6:4,5 8:3 13:21 31:10
additional 23:2
address 9:22 18:15 21:13,14 24:9,18 30:9
addressed 4:8 5:14 7:20 10:11 20:12 24:13 27:9,17
addresses 10:12 18:9 29:5
addressing 4:20 5:4 18:7 29:13
admit 26:3,22
advance 6:9
advise 33:4
affect 17:24
affidavit 15:14,21 19:11,16 20:8
affidavits 9:11 29:4
afternoon 4:12 6:1,2 35:8
agency 16:20,20
aggravation 25:9
ago 4:3
agree 4:14 6:12,17,23 6:25 7:25 14:6 22:4 25:12 27:18 28:4 30:22 33:4,5
agreeable 3:16
agreed 6:9 27:7,10
agreement 25:21
ahead 34:7
aime 1:8
akaplan 2:3
aleem 2:16 5:6,25
allegations 25:18,20 28:19
allege 8:14
alleged 29:12
alleging 8:10
allow 7:24 19:19 21:7 21:16 26:20
allowing 30:23
amend 24:11
amendable 4:7 14:5
amended 22:23
answer 7:23 8:5,8 16:21 26:21 27:1 28:1 30:15,24
ante 15:9 21:21
anybody 6:23
anyway 6:13
appear 13:18 17:10 31:4
appearance 10:22,25 13:8,11,16
appearances 2:1
appeared 13:7
appointment 33:9,12
appoints 22:8
appropriate 7:21 8:13 13:12
approximately 35:10
arena 17:5
argue 34:12
arguing 13:10
argument 13:15
art 1:3 3:2 17:24
aside 29:21
asked 13:7 19:23
asking 32:23,24
assistant 15:14
attempt 23:24
attempting 22:19
attorney 12:7
attorneys 4:17
authority 3:24 4:1 7:1 21:23
authorized 36:6
availability 4:5 22:7
available 3:10 4:10
avoid 21:21 30:22

b

babacar 5:16 23:4
babacar's 34:9
back 7:8 12:5 13:4 16:8 17:16 18:12,21 18:22 20:5 30:9 32:12 33:23
balance 18:20
bank 15:15,16 18:11 19:1,7
bar 31:17
based 7:6,7
basic 27:12 29:9
basically 8:20 25:17
basis 20:20 24:20 25:1
beach 2:10
began 15:23,24
behalf 2:5,11
believe 6:18 7:22 11:12 12:24 17:7,18 21:14
believes 10:8
bell 34:20
beneficial 21:12
benson 2:8,9 3:13,19 4:2,16 5:7,22 7:18 8:3 9:23 11:7 13:23 15:13,18 17:2,20 18:4,13,22 19:14 20:11 21:12 22:10 25:13 27:3,15,17 28:8,12,15,17,21,25 29:3,19,25 30:6,11 30:18 31:6,19 32:5 32:21,25 33:13 34:24 34:25 35:5

bien 1:8
big 16:15 24:11
bingo 20:4
biscayne 2:4
board 9:25 10:2,3,10 13:13 19:3
boulevard 2:4
breached 10:8
briefly 31:7
bring 12:21 14:17 18:14 23:24
brought 32:8
broward 36:2
business 11:17 19:20

c

ca 1:2
call 5:20,25
canceled 15:18 16:11
carol 1:8
carrier 10:6,7
case 1:2 3:3 5:3,7 6:13,20 8:5,15 11:1 12:3,25 13:16,18 14:3 17:13 20:4 30:1 30:1,14 31:24 34:19
cause 1:18
central 29:21
cents 25:9
certain 27:8
certainly 22:7
certificate 36:1
certify 36:5
chance 11:3
changed 15:11
check 33:16
chooses 18:24
circuit 1:1,1,19
circumstances 31:24
circus 25:18
city 1:7 2:13,16 3:3 5:24 9:4 10:7,14 11:15,23 12:7 13:10 13:12 16:1,4,10,23 17:5,8,15 18:10,16 18:18 19:3,16 20:6 21:18,19 22:23 23:6 23:12 26:13,18,25 27:18 28:12 29:7,15 30:12 31:25 32:12
city's 10:15 24:4 25:19
claim 12:14,15,16,22 17:8,17 29:9,17 30:2
claiming 9:1,2
claims 8:17,17,21 9:25 10:3,10,16 12:11 15:1 16:22 22:24 26:14,21,22,23 27:21 28:22 29:10 31:1
clandestine 25:8
clarity 7:9 18:5
clear 19:10,16 20:8 22:25 23:11 27:4,8 29:7 34:1
clearly 16:22 17:9 22:16
client 5:3,8 7:2,17 11:15 14:15 18:6
clients 21:13 32:14 32:22
clueless 6:8
coast 7:8
collection 17:25
come 15:5 17:16 30:9 33:23
comfortable 5:4
commenced 22:1
comment 6:6
competing 9:11,18 14:25 28:20
complained 18:8
complaint 7:19 8:8 8:10,11,16,19 9:5,16 13:3 17:4 22:23 23:9 24:6,8,10,14,18 25:17,22 26:12,14,20 27:13,19 28:1 30:16 30:23
complete 19:17 21:10 28:21 29:1 36:8
completely 18:20 19:4 25:19 34:14
concern 5:10 9:5
concerned 5:9 16:10
concerns 7:17
conclude 31:8
concluded 35:9
confidential 11:24,25 24:20 25:1 27:24
confidentially 23:19 23:23 24:4
consider 12:14 22:15
considering 3:14 4:18 8:13
consult 14:15,16
contact 4:19
contemporary 1:3 3:2
content 13:2
continue 18:17 21:16
continuous 32:16
contract 10:9 16:3
contracts 19:19
contrary 25:20
control 18:11 19:4 21:17
correct 3:17 17:19 26:16
correcting 30:22
correspondence 3:6
counsel 5:11,16 11:2 11:5,6 13:11,18 17:15 19:12 20:25 28:11,11,14,16 29:18 32:6,14
counsel's 32:16
counterclaim 8:6,6 11:11,16 25:4 27:4
counterclaims 7:22 8:14 9:24 23:21 24:4 24:5,19 28:2 29:4
counts 12:10
county 1:1,13 36:2
course 4:21 5:15 16:1 28:3 32:9
court 1:1,19 3:2,15 3:16,20,25 4:12,23 5:1,14,20 6:1,3,23 7:3,6 8:2 9:17,17,20 10:17 11:2 12:5 13:4 13:17,21 14:2,7,9,21 14:25 15:7,11 16:16 17:1,20,21 18:12,21 18:24 19:5,21,24 20:21,25 21:2,3,11 21:22,25 22:8,9,14 22:21 23:7,10,16 26:3 27:2,14,16 28:5 28:7,11,14,16,18,18 28:24 29:2,18,24 30:5,10,17 31:2,6,13 31:16 32:2,6,10,20 33:2,4,6,11,16,19,21 34:7,17,22,25 35:7
court's 5:5 32:1
courthouse 1:13
currently 19:19
cut 21:7

d

dade 1:1,13
damage 18:10
damaged 16:11
damages 5:9
damaging 17:12
danger 10:14
dated 36:10
day 24:17 31:14 36:10
days 18:2 22:2,21,22 22:22 24:7 33:15,20 33:22 34:18
deal 32:18
decide 12:15,16
decisions 32:19
decline 22:6

declined 22:11
defamation 12:14 29:16,17,23 30:2
default 10:2
defective 24:6
defendant 2:11 8:13 8:21 9:2,4,24 10:1,2 19:22 26:1
defendant's 8:17 17:13
defendants 1:10 6:10 28:22 31:4
defense 3:4 12:5
defenses 7:23 23:17
deficient 24:15
denied 9:20
deny 26:21,22
deposition 4:25 34:3 34:9
depositions 20:3 23:2 34:17
described 21:12
detail 6:11
details 4:7 6:8
dies 30:7
different 4:20
direct 32:13
directing 19:3
director 15:14 19:2
directors 13:14
disadvantage 31:3
disagreements 26:17
disclose 25:2,3
discovery 20:2 25:4 30:15 34:5,23
discuss 3:24
discussed 3:20 7:16 12:19 32:21
discussing 4:13 7:17
dismiss 7:19 8:10 9:16 12:10,15,16 17:2,7,17 24:8 27:6,9 30:2 33:14,19
dismissed 27:11
disregarding 21:19
distracted 14:1
doctor's 33:9,12
document 30:25
doing 18:19 19:3 20:5
dollars 25:9
double 10:23
drag 26:13

e

e 1:7
early 6:20
east 7:8
easy 25:13,14,15,15 30:20
either 6:11,21 10:21 16:25 17:22,23 23:18 25:21 31:16
elect 31:17
elected 12:22 29:15
eloquently 34:25
emergency 6:16 20:19
ends 21:8 35:1
engagements 3:9
enter 17:23 18:25 26:6
entertain 14:10
entire 17:15
entitled 1:18 17:7,8
entity 16:5 20:15 32:18
envision 34:15
envisions 28:18
error 30:12 31:23
errors 10:6
especially 9:7 10:24
esquire 2:2,7,8,13
essentially 15:24 16:2 22:19 28:9 32:6
events 18:1
everybody 25:12
ex 9:19 28:20
exact 18:17
example 12:14,23
excuse 10:20 24:1
execution 19:19
exhibits 15:18
expectation 25:11
expeditedly 24:17

f

fabulous 31:21
facially 13:1
fact 6:10 7:19 10:1 11:16 16:18 19:12 20:20 25:22,23 29:6
factually 10:13
fairly 15:4 16:24
far 8:13 23:22
fiduciary 10:9
file 7:21 16:21 26:12 27:3 34:16
filed 11:12,16 15:12 17:3,6 25:17 29:25
find 12:10
fine 11:7 22:22
first 3:22 6:6 7:3,4 10:19 11:19 22:11,17 26:2 32:8
five 32:7,12,19
fl 2:5,10,14
flagler 1:13
floor 2:4 11:5
florida 1:1,7,14,20 1:22 31:17 36:2,15
followed 28:12
following 3:1 15:23
force 8:18 30:12
foreclose 8:20
foregoing 36:7
formatted 8:12
forth 9:18 11:15 12:11 14:17
forward 6:21 20:1 24:14 30:13
frame 9:3
framed 11:11
friend 31:20
front 8:22 30:25
funds 17:25
further 7:24 18:6

g

galvin 1:8
gartenfeld 19:11
gartenfeld's 20:8
gate 12:3
getting 4:5 13:2 20:18 34:19
ghany 2:16 5:6,6,24 5:25 6:2
gilbert 2:7 24:2
gilbertsquires 2:7
give 7:21 9:12 11:3 24:11,16 27:24 32:6 32:11,17
given 10:2,5
go 4:9 8:5,7,19 9:3 14:23 15:4 16:9,17 16:19,21 18:12 19:6 20:3,3 22:24 24:14 25:16 26:17,25 27:5 27:18 29:19 30:6,13 30:21 31:23 32:12 34:7 35:1
goes 19:17,17 20:2
going 3:9 6:19 8:16 11:4,10,25 12:2 13:11,17 16:12,24 18:14,16,17 22:14 25:8 26:13 28:19 31:6,8 34:9,12,18
good 4:12 6:1,2 7:11 11:21 20:7
government 16:20 30:13 32:18
governs 25:24
grant 17:21
granted 14:21 23:4 34:11

granting 14:19 19:22
guys 34:18

h

handle 11:13,23
hands 20:7
happens 13:14 22:1
happy 13:19
hard 10:23
harm 29:7
hear 11:5 18:9 20:21 23:23 27:6,6 31:7 33:19,23
heard 5:21,22 17:3 20:24 24:9 33:14
hearing 1:18 4:6 9:13 9:15 13:7 24:17 31:8
hearings 20:3 35:3
hello 20:25
historical 11:19
hone 12:8
honor 3:7,12,18,19 3:23 5:23 7:4,9,10,24 8:3 9:7,10,12,13,15 9:22,23 10:18 11:7,8 13:6,15,20,24 14:14 14:17,20 15:8,10 18:3,4 19:9,14 20:11 21:1,9,10,14,20 24:1 24:3,7,9,11,13,16,22 24:25 26:19,25 31:11 31:19,21 32:4 33:8 33:14 34:6,24 35:4,5
honor's 33:10
honorable 1:19
horses 12:2

i

idea 12:9 14:22
imagination 29:1
immunity 12:23 16:14 23:8 24:12 26:5 29:14 30:19
impatient 20:18
important 5:17 18:13
inappropriate 10:24 29:22
include 7:18 19:6 20:11
including 34:23
independent 16:4 20:14
indicated 14:4 16:16
information 7:16 32:9 33:3
initial 15:19
injunction 6:17 17:22 28:20
injunctive 4:23 5:13 5:18 9:8,15,19 10:12 16:7 29:8,9
intends 10:3
intent 15:3 21:25 33:21
intention 33:18
interesting 33:1
interim 2:16 5:24 14:9
interrupt 20:17
involved 3:11
irreparable 29:7
issue 5:15 6:16 8:22 9:13 11:8 12:8 16:14 16:15 22:15 23:11 24:8,11 26:17 29:5 29:13 30:18
issued 18:14
issues 4:19 6:11,15 7:25 8:1,24 9:21 10:15 11:9,11,13,14 12:4,4,19 13:1 14:1,3 14:8 15:6 16:13,18 20:19 23:25 24:9 29:13,21 30:9,14

j

ja 33:16
january 16:8
johnson 1:8
join 5:20
jointly 14:17
judge 1:20 4:16 12:24 13:25 20:17 21:23 22:10 24:24 25:13 26:16 27:5 28:21 29:19 30:21 31:22 32:1,5 33:19 35:6
judicial 1:1
jump 12:12
jurisdiction 23:7 32:1
jury 33:17

k

k 2:7
kaiser 3:9 6:25 7:5 7:14 22:5,18 32:9 33:3
kaiser's 7:3
kaplan 2:2,3 3:21,23 6:3,5 7:10,13,24 9:22 10:18,20 13:5 14:16 14:19,24 15:17 18:3 18:21 19:9,15 20:10 20:16,23 21:5,10 22:3,12 24:25 27:7 31:3,7,9,10,18 32:3 32:23 33:8,12 34:4,6 34:8 35:4
katzen 2:3
keep 20:18
kennedy 3:11
keys 1:8
kieser's 6:6
kind 16:18 17:10 28:4
kinds 7:23
kluger 2:3
klugerkaplan.com 2:3
know 3:8 4:4,22 5:4 6:5,6 7:1 11:14 14:25 18:22 21:4 22:5,6 25:2,18 26:8,24 27:24 29:20 31:10,12
knowledge 11:20
knows 27:10

l

laid 23:22
large 1:22
law 12:9,13,21 17:11 21:20 24:12,22 28:13
lawsuit 15:9 16:15
lawyer 10:25 13:10 13:14 31:21
lawyers 10:21 11:17
leading 6:19
leave 16:8 24:11 29:20
legal 13:1 16:15,21
legally 8:20 22:20 27:20
letter 11:15
levine 2:3
liable 29:16
lilly 1:20 36:5,15
limit 6:11
lindsey 1:19
list 4:9 13:22,23 15:19 32:10
listed 15:13
listening 8:15
litigants 34:16
litigation 14:10 15:12 15:22,23 20:2 23:1 25:7 26:7,9 34:8,23
little 12:18 25:23 27:12
looking 5:11
lose 28:6
lot 34:13
lucie 1:7

m

m'bow 23:4
maintain 14:11
maintained 14:22 15:3

making 9:24 10:1 13:8,15,16
management 25:21 25:25
manager 2:16 5:24
marie 1:9
matter 10:1 12:9,13 12:21 19:13 23:13 26:24
mayor 17:15 29:12 29:14,22 32:14
mean 8:9,12,17 20:17 26:9 27:7 29:8 34:10
meaning 23:1
means 23:3 34:8
media 25:18
mediate 33:22
mediated 6:20 14:3
mediation 4:6,21 5:4 5:7,14 6:9,11,14 8:5 8:8,19,24 9:3,6 11:10 11:13,22,24 12:1,12 12:25 14:5,9,13,23 15:4 16:9,12,17,22 17:10,12,19 18:1 22:1,19,21,24 23:11 23:13,20 24:5 25:16 26:10,14,18 27:5,19 28:19 30:6,7,8,14 31:4,24 34:19 35:1
mediator 3:5,17 4:14 8:15,22,25 11:22,22 11:24 12:1,13,18,20 14:7,7 23:23 24:19 27:25 28:2 30:25 33:5,5,6
mediators 25:2
mentioned 3:22 14:18 16:14
met 23:14,15
miami 1:1,7,13,14 2:5,10,13,14 3:3 10:7 17:8 26:13 29:15
michael 7:5
mind 26:8
minute 19:15
minutes 4:3
moca 10:14 15:25 21:16 25:25
modified 27:12
moment 3:8 9:11 21:7
monday 33:17
monestime 2:13 4:11 4:11,12 5:22 10:19 10:21 12:6,6 13:6,17 13:19,25 16:13 20:12 33:25
morning 33:17
motion 4:22,24 5:12 5:15,18 6:17 7:19,20 8:9 9:8,14,16 14:19 14:21 15:20 16:6 17:2,6,16 18:23 19:23 20:19 23:3 24:8 27:6,9 28:4 29:5 30:2 33:13,19 34:1 34:11,12
motions 9:19,21 28:20 33:23
move 6:21 20:1 22:13
municipal 16:20
municipality 30:13
museum 1:3 3:2,11 14:12 17:24 20:6 26:1
mutually 14:6
myers 22:5

n

name 3:21 4:17 5:21 6:6 7:3,4 22:18 32:7 32:7,11,17 33:6
named 9:5
narrow 7:25 8:23 14:8 15:6
narrowing 7:25
need 6:9,10 7:8 10:5 15:6 19:7 27:9,10,11 27:17
needed 29:5
needs 6:18 18:15
neither 33:7
new 3:12
nice 35:7
non 14:1
noon 33:2
norma 1:19
normal 16:1
normally 27:25
north 1:7 2:13 3:3 10:7 17:8 26:13 29:15
northeast 2:14
notary 1:21
notes 36:8
notice 10:2,5,7 13:8
number 3:3 4:20 5:1 6:8,16 26:11

o

object 31:16 32:16
objects 26:25
obligation 16:3
obligations 10:9
obviously 12:17 19:11 22:4
occur 25:25 32:15
occurred 10:13 18:8
occurring 15:1,2
october 20:13
official 4:9 29:15
officials 12:22
oh 30:20 32:25
okay 6:1,3 8:2,25 9:17 10:17 11:6 12:5 13:4,10,17,21 14:24 17:20 18:12,21 20:23 20:25 21:22 22:9 23:16 27:2,14,16 28:7 29:2,18,24 30:5 30:17 31:2,6 32:2,20 33:2,8,25
olivia 2:8
oliviabenson 2:8
omissions 10:6
ones 27:10,15
operating 20:14 21:17
operation 10:14 15:25 17:24
operations 16:10
opinion 25:19
opportunity 7:21 9:12 12:20 13:1 17:11 22:15 23:18 26:20 27:21 30:3,23
opposing 19:12
order 4:24,25 5:16 14:11,15 15:5 17:21 17:23 18:9,25 19:5 21:24 23:3 24:3 27:7 27:10 34:1,11,13
orders 22:21 23:11 34:5
ordinance 25:21,24
ordinarily 7:7
ought 22:14
outside 9:21 11:19

p

p.l. 2:3,9
p.m. 1:15,15 35:10
paper 17:16
papers 34:17
paperwork 23:22
paralyzed 18:19
parte 9:19 28:20
participate 21:18
participation 21:19
particular 26:4 28:6
parties 4:13 9:4 14:6 16:17 25:6,10 28:18 31:1 33:4,5,22
payroll 19:9
pending 3:6,7 5:14 8:9 11:9 14:12

people 6:22 11:17 22:11 26:16
perfectly 13:10 26:24
period 25:10 31:15
person 3:13 4:1,4,9 4:18
person's 3:20
personally 30:19
personnel 17:25
perspective 13:6 15:2
philippe 1:8
phone 11:2,6
phonetic 19:11
picking 21:6
piece 17:16
place 7:20 18:1 19:3 19:18
placed 10:13
plaintiff 1:4 2:5 4:17 5:17 6:7,12 8:7 9:1 11:9 13:4 22:18 25:5 25:14,15 26:6,8 28:23 30:22
plaintiff's 8:16
plaintiffs 8:18 9:9 17:14 20:13 21:16 23:8
play 7:18
pleadings 31:5
please 4:15 18:3 21:2 27:6
pled 30:19
point 5:3 10:12 26:4 28:9 31:22
position 5:8 10:22 18:17 21:12,24 22:10 22:13 31:22
positions 23:20,21 24:6
potential 3:5 23:21
pounding 32:16
practical 15:24
practice 8:4 11:18
practicing 13:14
pre 25:4
prejudice 12:17
preliminary 4:22 5:12,18 6:17 15:20 16:7 17:22 29:9
premature 12:19
prepare 14:15 26:19 27:23,24
prepared 6:21 20:1
present 2:12 9:13 11:23,25 23:19 24:3 24:19
presented 21:11
presenting 24:5,20 25:1
preserved 23:17
president 31:17
pressuring 32:6
pretty 4:21
previously 9:20
primary 5:10 9:5
prior 13:2 17:19
probably 29:20
problem 8:7 11:10 16:19,23,24 30:21
procedural 22:20 23:14
procedurally 17:10 17:18 24:2,23 26:5 30:11
procedure 13:6 26:11 28:13
proceed 23:13 29:8
proceeded 16:2
proceeding 9:9
proceedings 3:1 35:9 36:7
process 6:19 25:24 26:7 31:14 32:15
professional 1:21 36:15
programs 15:19
proper 9:12 21:20 26:12,20 31:5
properly 8:12,21 12:11 24:22 26:2,15 30:19
propose 3:4 4:1
proposed 4:16 14:15 33:7
proposes 17:21
protective 4:24,25 5:16 23:3 34:1,11,12
provide 21:24 32:11 33:2
provided 32:8
public 1:21 17:5,9,17 30:4,24
purposes 13:9 21:3
push 22:19 26:9
pushing 8:7
put 10:6 11:14 12:11 16:7 23:5
putting 18:22

q

quantification 20:20
question 13:5 18:4 25:9 26:16
quickly 16:24
quo 14:11,22 15:3,9 15:9 18:15 21:15,21

r

raised 7:18 23:9 28:19 29:6
rarely 8:4
ray 31:16
read 8:25
ready 4:8
really 8:19 12:8 18:14 25:16 26:24 32:5
reason 6:13 8:23
recommend 22:14
recommended 22:12
recommending 31:13
record 8:25 10:16 17:9,17 23:6,12 26:21,23 27:4 28:22 29:1 30:4,24 36:8
reference 25:23
referring 15:8
reflect 29:3
regard 23:4 34:2
regarding 24:10
regards 5:18 9:6,24 10:14,15 25:25 29:6 33:13,25
regine 2:13 4:11 12:6
rehashing 20:18
reject 6:7 7:13
relating 9:14
relief 4:23 5:13,19 9:8,15,19 10:12 14:20 15:20 16:7 19:22,25 29:8,10
remain 19:4
remark 25:14,15
remarkable 25:5
removed 15:14,16,19
repeatedly 8:23
report 36:6
reporter 1:21 21:4 36:15
reporter's 36:1
request 24:16
required 7:22 22:20 24:23 25:20 26:6
requirement 23:14
requires 17:11 24:13 26:11
resolution 15:6 25:11
resolve 6:14 35:1
resolved 12:4 15:7
respect 14:11 31:21 32:10
respectfully 22:5
respective 9:18 23:20
respond 17:6 30:3
responded 28:15
result 35:2
reversible 30:12 31:23

rewritten 27:11
right 9:6 11:2 14:2 14:14 16:21 19:25 20:6 21:25 23:8,16 26:4,22 27:1,3 29:8 32:17 34:23
rights 26:19
rings 34:20
ripe 12:25
risk 11:12,21
rule 12:21 13:1 19:24 24:10,22
ruling 9:14 12:13 32:24 33:10,11 34:15
running 16:4 34:21

s

s 1:19 2:8
sake 18:5
saw 3:5
saying 5:12 18:25 19:21 26:1 27:5
says 8:25
scheduling 17:25 20:5 31:14 35:3
scott 1:8
screams 6:20
second 9:6 10:20
seconds 32:7,12,19
see 11:25 12:2 15:5 19:17 24:23 25:6
seen 8:5 30:20
select 3:17 14:7 33:6
sense 16:12 24:19
separate 20:14
series 10:10 17:4
service 13:22,23
set 6:18 9:18
short 15:5 25:10
shows 6:12
shut 16:2
side 3:4 10:21 11:5 17:3,22,24 23:18 24:21 25:3 31:16 33:7
sides 3:16 9:18 14:5 14:12 15:2 23:19,24
significant 4:21 5:5 11:18
silverman 2:3
simple 25:7
simply 10:12 23:18
sit 18:16 19:8
sitting 6:24 7:11 8:15 13:15
somebody 6:14,22
sophisticated 11:17
sorry 20:17
sort 15:25 16:4,11
south 2:4
sovereign 12:22 16:14 23:8 24:12 26:5 29:14 30:18
speak 11:3 29:16
speaker 21:5,6
speaks 11:4
specific 9:25 10:4
specifically 8:9 13:7 15:11
spirit 21:13
squire 4:2
squires 2:7,9 3:7,18 3:22 7:4,7,12,15 9:7 11:8 14:14 15:8 20:10,22 21:1,9,23 24:1,2 31:20 33:10 33:18 34:5 35:6
squiresbenson.com 2:7,8
stand 23:16 31:22
standstill 19:7
start 12:3 20:5 35:3
starting 33:17
state 1:22 17:17 22:23 29:17 36:2
stated 8:6,11,21 10:16 16:22 17:9 26:15 27:19 29:14 30:1 34:25
statement 21:10,11
states 30:25
stating 29:13
status 14:11,22 15:3 15:9,9 18:14 21:15 21:21
stay 14:10 18:13 19:1 20:2 27:21 28:4 29:20 34:2,4,22
stayed 23:1
stenographic 36:8
stenographically 36:6
step 12:12 22:20
stephen 1:7
steril 1:9
street 1:13 2:9,14
stretch 28:25
strong 11:22
studied 19:12
submitted 23:6 31:25
subsequently 14:16
substance 13:2
successful 30:7
sued 29:22
suffered 18:10
suffering 5:10 29:7
sufficient 8:20 27:20
suggest 6:23
suggested 5:17 6:22 6:24
suggesting 4:3 18:18 28:5
suggestion 22:3 32:3 32:24
suing 17:14
suite 2:10
summary 11:24 12:1 27:23,24
supplemental 15:21
supposed 25:24
sure 23:5,10 26:2

t

table 16:13
take 14:8 18:1 28:1,1 28:1 34:9,17
taken 1:20 15:25 17:23
talk 16:9 19:8 21:3 32:13
talking 5:13 16:20 17:14 30:15
teaming 10:23,24
telling 34:16
temporary 9:19 28:20
ten 18:2 22:2,21,22 22:22 31:14 33:15,20 33:22 34:18
terms 4:5 5:5 16:12 17:20
thank 21:9 34:24 35:4,5,6,7
thing 25:4
things 4:20 5:2 7:23 10:12 11:20 14:18 15:1,4,13,21 16:6 17:4 18:7,14 19:7,18 20:5 23:16 27:8,11 27:12
think 6:10 10:18,23 10:24 12:18 13:12,25 16:15 19:20,23 22:14 26:18 34:14
thought 5:21
three 6:16 14:18
tied 5:15
time 3:22 4:1 5:2,8 8:1 17:22 18:18 21:3 22:25 24:10,21 25:10 28:5,6 31:23
today 6:24 7:11 18:25,25 21:24 31:8 33:3
told 21:5

tomorrow 33:2
tondreau 1:7
transcript 36:7
transfers 19:6
traveling 24:14
trial 33:17
tried 29:16
triple 10:23
true 15:17 19:14 20:16,16 36:7
try 6:14 26:13
trying 12:3 21:21 25:3
turn 11:4
two 6:8 10:20
type 12:17
typical 16:18

u

ultimately 19:24
unable 14:6
unclear 18:6
underscore 14:18
understand 3:15,25 7:12 19:20 20:1 22:17,18 32:5
understood 34:6
unfounded 25:19
unresolved 14:3 16:17 33:24
unsuccessful 30:8 34:20
unusual 14:2 16:16
usual 19:20

v

versus 3:3
view 34:10
villaverde 1:20 36:5 36:15
voice 21:6,8
volition 27:18
vs 1:5

w

wait 19:15
waive 26:4
waived 23:7
waivers 23:18
want 6:4 8:14,18 18:23 19:25 23:10 25:16 26:1,9 29:20
wanted 20:24 28:8
wants 21:14 25:6
way 13:21 29:3 34:15
we've 6:22,24
west 1:13 2:9
whatsoever 11:10
whichever 21:6
willing 11:21 26:24
work 11:20 20:4 34:18
working 3:10 5:2 16:1
works 28:2
writing 11:19
wrong 34:14

y

yeah 30:20
years 8:4 11:18
yesterday 14:4
york 3:12

Exhibit - 2

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

GENERAL JURISDICTION
CASE NO. 14-008991 CA 01

MUSEUM OF CONTEMPORARY ART, INC.,

Plaintiff,

v.

THE CITY OF NORTH MIAMI, FLORIDA; LUCIE TONDREAU; STEPHEN E. JOHNSON; SCOTT GALVIN; CAROL KEYS; PHILIPPE BIEN-AIME; and MARIE STERIL,

Defendants
_____/

ORDER ON CASE MANAGEMENT CONFERENCE

This case came before the Court on the May 5, 2014, for a Case Management Conference. Both Plaintiff, Museum of Contemporary Art ("MOCA"), and Defendants, The City of North Miami, Florida, Lucie Tondreau, Stephen E. Johnson, Scott Galvin, Carol Keys, Philippe Bien-Aime and Marie Steril ("Defendants") appeared through Counsel. The procedural history is set forth below:

1. On April 7, 2014, MOCA filed its Complaint along with a Verified Emergency Motion for Temporary Injunctive Relief without Notice. On April 8, 2014, the Court entered an Order denying the Motion.
2. On April 8, 2014, MOCA filed a second Motion for Preliminary Injunctive Relief, which remains pending.
3. On April 28, 2014, Defendant, The City of North Miami, Florida (the "City"), served upon

the Court an Emergency *Ex-Parte* Motion for Temporary Injunctive Relief, Demand for Immediate Equitable Accounting and Incorporated Memorandum of Law. On April 30, 2014, the Court entered an Order denying same and directing that the Motion would be set for hearing upon reasonable notice to all parties.

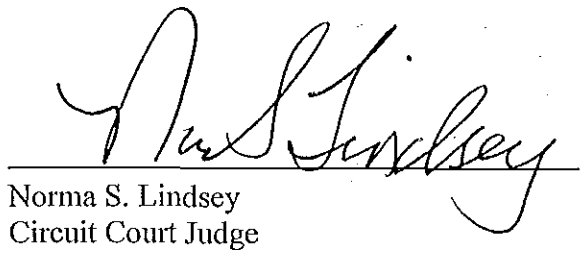
4. Also on April 28, 2014, the City filed a Motion to Dismiss Complaint, Strike Improper Defendant, and Strike Redundant, Immaterial, Impertinent and Scandalous Portions of Complaint, which remains pending.
5. Thereafter, the Court *sua sponte* set this matter for Case Management Conference on Monday May 5, 2014. At the Case Management Conference, the Court instructed the parties to provide the Court with their respective positions regarding proposed discovery and timeframes for same, proposed order of and timeframes for the scheduling of motions, and with any additional affidavits by 3:00 p.m. on Wednesday May 7, 2014.
6. And, at the Case Management Conference on Monday May 5, 2014, the Court further directed the parties to provide the Court with the name of a mutually agreed upon Mediator by 3:00 p.m. on Wednesday May 7, 2014, if such agreement was possible. The parties did not provide the name of a mutually agreed upon Mediator.
7. The Court then conducted a follow-up status conference with the parties on Thursday May 8, 2014. At this status conference, the City proposed the name of a potential mediator. However, MOCA advised the Court that it was unable to agree to the individual proposed by the City at that time.
8. The Court then directed the parties to advise the Court whether they could mutually agree upon the individual proposed by the City at the May 8th status conference -- or any other Mediator -- by noon on Friday May 9, 2014.

9. On Friday May 9, 2014, Counsel for MOCA, via written correspondence, copied to all counsel of record for the City, advised the Court that it was willing to accept the individual proposed by the City at the May 8th status conference, but was unable to confirm with the City whether it was still in agreement with that individual serving as the Mediator. To date, the Court has not been advised by the City with respect to same.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The parties shall file with the Clerk of Court, and provide a courtesy copy of same to the Court at Chambers, a Joint Notice of Agreement of Designation of Mediator by 3:00 p.m. on Thursday May 15, 2014, if such agreement if possible. Should the parties fail to do so, the Court shall select and appoint a Mediator;
2. This litigation, including all discovery, is hereby stayed pending mediation; and,
3. The parties shall maintain the *status quo* and take no actions with respect to the issues involving the subject matter of this litigation pending mediation.

DONE and **ORDERED** in Chambers in Miami-Dade County, Florida, this 12th day of May, 2014.



Norma S. Lindsey
Circuit Court Judge

Copies furnished to:

Olivia S. Benson, Esq. (oliviabenson@squiresbenson.com)
Gilbert K. Squires, Esq. (gilbertsquires@squiresbenson.com)
Abbey L. Kaplan, Esq. (akaplan@klugerkaplan.com)
Alan J. Kluger, Esq. (akluger@klugerkaplan.com)
Regine Monestine, Esq. (cityattorney@northmiamifl.gov)