

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

FLORIDA KEYS COMMUNITY COLLEGE,

Plaintiff,

vs.

Case No.: 2009-CA-729-K

CITY OF KEY WEST,

Defendant.

DEC 14 2012

AMENDED FINAL JUDGMENT

THIS CAUSE comes before this Court on the Plaintiffs' Motion for Assessment of Prejudgment Interest and Costs, and this Court, having considered Plaintiff's Motion, heard the arguments of the Parties, and being otherwise fully informed of the premises therein, it is ORDERED AND ADJUDGED as follows:

1. The Final Summary Judgment dated January 21, 2011 entered in the above-styled action is amended to include prejudgment interest in the amount of Thirty-Three Thousand Seven Hundred Fifty-Five and 30/100 Dollars (\$33,755.30) and Four Hundred Ten and 00/100 Dollars (\$410.00) in costs, such that the total amount due and owing to the Plaintiff is One Hundred Ninety-Four Thousand Six Hundred Ninety-Four and 90/100 Dollars (\$194,694.90).

2. All other provisions of the Final Summary Judgment dated January 21, 2011 remain in full force and effect.

DONE AND ORDERED in Chambers at Key West, Monroe County, Florida, this

12 day of ^{Dec.} ~~June~~, 2012.

MARK H JONES

HONORABLE MARK H. JONES
Circuit Court Judge

Copies to

12/14/12

Bob Kras

David Fernandez

Mark Fingon

*Shawn says this needs to be paid.

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Case No.: 2009-CA-729-K

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ORDER AWARDING PREJUDGMENT INTEREST

THIS CAUSE having come before the Court on the Plaintiffs' Motion for Assessment of Prejudgment Interest and Costs, and the Court having reviewed the Motion, heard arguments of counsel and being otherwise fully advised in the premises, it is hereupon ordered and adjudged as follows:

1. The Plaintiff, FLORIDA KEYS COMMUNITY COLLEGE, is entitled to an award of pre-judgment interest for storm water utility fee payments made to the Defendant, CITY OF KEY WEST. However, based on considerations of equity and fairness, the Court determines that pre-judgment interest should commence on May 24, 2008, or the date on which the payment was made, whichever is later.

2. In Broward County v. Finlayson, 555 So.2d 1211 (Fla. 1990), the Supreme Court of Florida stated:

Interest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.

Further, in Ball v. Public Health Trust, 491 So.2d 608 (Fla. 3rd DCA 1986), the Third District Court of Appeal allowed pre-judgment interest, but restricted the date it commenced to the date of demand or the commencement of the lawsuit, whichever occurred first. The district court did so on equitable grounds, relying on our decision in First State Bank v. Singletary. As noted by these decisions, the law is not absolute and may depend on equitable considerations. Broward County v. Finlayson, 555 So.2d 1211, 1213 (Fla. 1990).

3. The Court finds that based upon the case law in existence at the time the majority of the payments were made, the CITY OF KEY WEST was well within its right to pursue the collection thereof. The Court finds that the Defendant, CITY OF KEY WEST acted in good faith in pursuing these fees and that the Plaintiff, FLORIDA KEYS COMMUNITY COLLEGE certainly disputed them and paid them under protest. I further find that on May 23, 2008, a fundamental change in the law occurred when a decision was rendered in the case styled, School Board of Pinellas County, Florida, Plaintiff vs. City of Clearwater, A Municipal Corporation Organized Under the Laws of the State of Florida, Defendant. Case No. 52 1999-CA-007479 XX CICI, In the Circuit Court of the Sixth Judicial Circuit In and For Pinellas County, Florida (the "Clearwater case"). The Court finds that it is inequitable to award prejudgment interest for payments made prior to the rendition of the Clearwater case.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. Nothing in this Order alters, changes, or amends the findings and/or reasoning of this Court contained within the Final Summary Judgment dated January 21, 2011 ("Final Summary Judgment") entered by this Court in the above-styled action.

2. This Court's Final Summary Judgment is amended to include prejudgment interest from and including May 24, 2008 to January 21, 2011, the date this Court granted Final Summary Judgment to Plaintiffs. The total amount of prejudgment interest is Thirty-Three Thousand Seven Hundred Fifty-Five and 30/100 Dollars (\$33,755.30). The Court also grants court costs to the Plaintiff in the amount of Four Hundred Ten and 00/100 Dollars (\$410.00).

3. The total amount due and owing to Plaintiff is One Hundred Sixty Thousand Five Hundred Twenty-Nine and 60/100 Dollars (\$160,529.60) in damages, Thirty-Three Thousand Seven Hundred Fifty-Five and 30/100 (\$33,755.30) in prejudgment interest, and Four Hundred Ten and 00/100 Dollars (\$410.00) in court costs for a total final judgment in the amount of One Hundred Ninety-Four Thousand Six Hundred Ninety-Four and 60/100 Dollars (\$194,694.90) which sum is due and owing as of January 21, 2011.

DONE AND ORDERED in Chambers at Key West, Monroe County, Florida this 12 day
Dec.
of ~~June~~, 2012.

MARK H JONES

HONORABLE MARK H. JONES
Circuit Court Judge

cc: Counsels of Record