

IN THE SUPREME COURT OF FLORIDA

CASE NO. 73,956

PALM BEACH COUNTY,

Petitioner,

v.

TOWN OF PALM BEACH, et al.,

Respondents.

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PETITIONER'S REPLY BRIEF

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## ARGUMENT

UNDER FLORIDA LAW, PALM BEACH COUNTY IS IMMUNE FROM PAYMENT OF POSTJUDGMENT INTEREST IN THIS ACTION.

In the initial paragraph of their Answer Brief referring to Section 55.03(1), Florida Statutes (1987), the Cities state:

Florida courts have uniformly recognized that, in the absence of a specific statute evidencing a contrary statutory intent, once the state and its agencies have been found subject to suit, this statute requires them to pay interest following entry of a final judgment.

This statement twists the true state of Florida law and turns the doctrine of sovereign immunity on its head by suggesting that immunity may be waived by silence. On the contrary, postjudgment interest against a governmental entity is not authorized solely by Section 55.03, Florida Statutes, but requires a waiver of the governmental immunity from payment of interest in the underlying statute upon which the suit is maintained. Furthermore, purely governmental functions remain immune from payment of interest and considerations of equity also play a role in any award of interest against a governmental entity.

The Cities quote Treadway v. Terrell, 117 Fla. 838, 158 So. 512 (1935), for their proposition that waiver of immunity from suit includes waiver of immunity from payment of interest "in the absence of a contrary statutory intent." In so quoting Treadway, the Cities omit the entire quotation from the decision which states something quite different. The entire quote is as follows:

The statute authorizes suits against the state road department on any claim arising under contract for work done since June 7, 1923, and the contracts for road and bridge construction which the state road department is authorized to make may be of such a nature that the payment of interest on amounts due and unpaid by the state may be necessary to do complete justice between the parties; and, in the absence of a contrary statutory intent, it may be assumed that, in authorizing suits against the state road department, the statute intends that interest may be adjudged against the state in proper cases where it is necessary to do complete justice and to accomplish the purposes of the statute in authorizing suits against the state on any claim arising under contract for work done since June 7, 1923. Treadway at 519.

Clearly, Treadway did not say that interest against the State (which includes its subdivisions) was authorized in any case where suit is authorized, but only that it may be authorized in "proper cases." Furthermore, the applicable statute authorized suit against the State for "any claim arising under contract for work done." (emphasis added) A close reading of the entire decision demonstrates that the Court considered "any claim" to include interest, thus, there was specific statutory authority for interest in that case. Treadway certainly does not support an award of interest against the State in any case where suit is allowed.

The Cities' argument concerning Berek v. Metropolitan Dade County, 422 So.2d 838 (Fla. 1982), further underscores the inconsistency of the Cities' position. On the one hand, the Cities maintain that Section 55.03, Florida Statutes, is itself a waiver of sovereign immunity and authorizes the payment of interest in any case where suit is authorized against the State. Yet, in

attempting to explain why Berek limited the recovery of interest to the limits of the waiver of sovereign immunity, the Cities concede that a governmental entity's liability for payment of interest depends upon the underlying statute authorizing suit.

In discussing Florida Livestock Board v. Gladden, 86 So.2d 812 (Fla. 1956), the Cities quote a portion of one sentence of the decision for the Cities' proposition that interest follows whenever there is statutory authority to sue the State. The Cities omit the entire next sentence of the opinion, which states as follows:

Where statutory authority to sue a state agency is given, payment of interest on a claim adjudicated under the statute may be impliedly authorized when the nature of the claim and the object designed in permitting such suits against the state or its agency warrant such implication. We are of the view that the implication is warranted in the case before us. Gladden at 813.

Clearly, Gladden did not find that interest follows wherever suit is authorized against the State. On the contrary, it depends! In Gladden, there was a statute providing that the Florida Livestock Board was to be treated as any corporate body. Thus, the Florida Livestock Board, like any corporate body, was liable for interest. There is no such broad statute present in the instant case involving the County and the Cities.

The Cities attempt to avoid decisions such as Mailman v. Green, 111 So.2d 267 (Fla. 1959), and Department of Revenue v. Goembel, 382 So.2d 783 (Fla. 5th DCA 1980), arguing that these cases involved prejudgment interest. The Cities ignore the fact

that taxation is a sovereign governmental function and that this Court stated in Treadway, supra, at 518, as follows:

Where there is statutory authority to sue, not the state generally for matters affecting its sovereign governmental functions, but upon 'any claim arising under contract for work done' . . . the general principles of liability for interest may be applied in proper cases of contract obligation . . . .  
(emphasis added)

Thus, Treadway indicates that even if there is general authority to sue, interest may not be assessed against the State when the matter involves a sovereign governmental function.

The Cities also attempt to avoid the considerations of equity arguing that this case only involves the statutory interpretation of Section 55.03(1), Florida Statutes. This approach ignores the decisions of this Court where equitable considerations are relevant in awarding interest. See Florida Livestock Board v. Gladden, supra; Roberts v. Askew, 260 So.2d 492 (Fla. 1972); and Flack v. Graham, 461 So.2d 82 (Fla. 1984). As stated in the County's Initial Brief, the County had relied upon the existing law stating that there was no required minimum tax which must be levied under Section 336.59, Florida Statutes, and could not know until the Fourth District decision in Palm Beach County v. Town of Palm Beach, 507 So.2d 128 (Fla. 4th DCA 1986)[Palm Beach I] that there could be an insufficient road and bridge tax levy.

Similarly, the Cities reliance on Lewis v. Anderson, 382 So.2d 1343 (Fla. 5th DCA 1980) is misplaced. In Lewis, the court reversed an award of prejudgment interest in a tax refund case.

In a footnote, the court noted that Section 55.03, Florida Statutes, would provide a basis to collect postjudgment interest on the judgment, however, this statement is clearly dicta. Furthermore, the issue of sovereign immunity with regards to payment of interest is not discussed. More significantly, Lewis reiterates the consideration of equitable circumstances in the award of interest but rejects its application in that case finding no such equitable grounds established.

The significance of equity is repeated in Broward County v. Finlayson, 533 So.2d 817 (Fla. 4th DCA 1988) which is currently before this Court. Therein, the Fourth District stated:

In the case at bar, Broward County has wrongfully withheld the overtime pay. As we see it, fundamental fairness suggests that where the sovereign is liable for a debt because of a wrongful act, it is not improper to award prejudgment interest. Interest should only be denied "when its exaction would be inequitable". Flack, 461 So.2d at 84.

533 So.2d at 818.

Although the court in Finlayson upheld the award of interest, the case is distinguishable because it involved a contract dispute and there were no equities favoring Broward County. Here, there is no contract upon which a waiver of sovereign immunity from payment of interest can be based and the equities favor Palm Beach County.



THE LAW OF THE CASE DOES NOT BAR THE COUNTY'S  
IMMUNITY FROM INTEREST.

The County asserted in the trial court and before the Fourth District Court in Palm Beach I, that sovereign immunity barred the Cities' recovery of road and bridge taxes collected under Section 336.59, Florida Statutes (1983)(repealed October 1, 1984). Interest was not at issue before the trial court or on appeal. The trial court and the appellate district rejected the County's claim that sovereign immunity barred the underlying claim but did not discuss its application to interest on that claim. As stated in State v. Stabile, 443 So.2d 398, 400 (Fla. 4th DCA 1984):

The law of the case precludes relitigation of all issues necessarily ruled upon by the court, as well as all issues upon which appeal could have been taken, but which were not appealed.

The trial court did not previously rule on the issue of the County's immunity from interest. Therefore, the "law of the case" is not applicable.

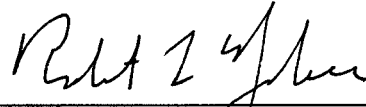
Furthermore, as demonstrated by the many cases cited by the Cities and the County, a determination that sovereign immunity does not bar the underlying claim does not determine the issue of immunity from payment of interest. In each of the cited cases, the governmental entity was liable on the underlying claim, yet the determination of liability for interest was treated as a separate matter. As stated by this Court in Treadway, supra, at 518:

Where statutory authority to sue a state is given, the implied immunity of the state from payment of interest upon obligations of the

sovereign state may be waived or the payment of such interest may be impliedly authorized or assented to by the statute; and interest may be awarded on such implied statutory authority when the nature of claims on which suits may be maintained and the object designed in permitting suits against the state or its agencies warrant it. (emphasis added)

Thus, authority to sue the State may, but does not necessarily, determine immunity from payment of interest. Here, there are no statutory provisions explicitly or implicitly waiving the County's immunity from payment of interest.

Respectfully submitted,



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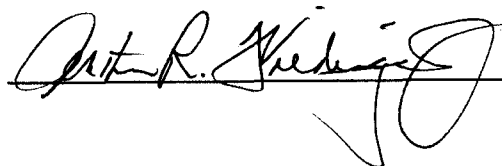
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Reply Brief has been furnished by U.S. Mail to the parties on the attached Service List, this 31<sup>st</sup> day of July, 1989.



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