ORIGINAL

IN THE SUPREME COURT OF FLORIDA
CASE NO.: 89,093 & 89,094

PROVIDENT MANAGEMENT CORPORATION,
and LAURENCE N. BELAIR,

Petitioners,

vs.

CITY OF TREASURE ISLAND, a
municipal Corporation,

Respondent.
_____/

ON REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

AMENDED REPLY BRIEF OF LAURENCE N. BELAIR

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III. SUMMARY OF ARGUMENT IN REPLY

The trial court correctly concluded that Treasure Island could not use Fla.R.Civ.P. 1.610(b), as a shield against damages after invoking the power of the courts process as a sword. A municipality guilty of instituting wrongful injunction proceedings cannot escape liability for damages incurred by a defendant as a result of the wrongful injunction action, because the court used its discretionary power, and as permitted by Fla.R.Civ.P. 1.610(b), did not require a bond.

Treasure Island cannot raise the Doctrine of Sovereign Immunity after turning to the court for injunctive relief. Florida law is clear that a municipality cannot use the power of the court system, and then upon defeat, invoke sovereign immunity to avoid liability. This case did not involve a tort claim, but rather consisted solely of an injunction action prosecuted by Treasure Island against Belair and Provident.

Belair's out-of-pocket expenses, which are a direct and proximate result of wrongful injunction proceedings, are an additional element of damages. Treasure Island's characterization of this item as a non-taxable cost of litigation is not accurate. The law is clear that a defendant is entitled to any damages sustained by him as a result of the wrongful injunction proceedings.

Belair's reasonable attorney's fees expended in an attempt to defend against and dissolve the wrongful injunctions are an element of damages, and were correctly awarded by the trial court.

The trial court's award of prejudgment interest was appropriate. Florida law requires the trial court to award prejudgment interest when the court fixes an amount and a date certain for the loss.

The trial court's award of post-judgment interest is a correct interpretation of Section 55.03, Fla. Stat. The amendment to that section applied only to judgments entered on or after January 1, 1995. The final judgment in favor of Belair was entered on December 28, 1994. (R. 3208-13). In addition, as a result of this Courts resolution of the conflict which had existed concerning the propriety of post judgment interest on the prejudgment interest amount, Belair is entitled to said interest on that portion of the judgment awarding Belair prejudgment interest.

IV. ARGUMENT

A. THE CITY OF TREASURE ISLAND, ALTHOUGH RELIEVED FROM POSTING A BOND, PURSUANT TO Fla.R.Civ.P. 1.610(b), IS STILL LIABLE FOR THE WRONGFUL INJUNCTION DAMAGES SUFFERED BY LAURANCE N. BELAIR AND PROVIDENT MANAGEMENT CORPORATION.

The trial court correctly concluded that Treasure Island could not use Fla. R. Civ. P., 1.610 (b) as a shield against damages after asking the trial court to dispense with the injunction bond. Treasure Island argued that Fla.R.Civ.P. 1.610(b) gave the trial court discretion not to require a bond because Treasure Island is a municipality. The theory behind this exception as stated by the trial court and affirmed by counsel for Treasure Island was that a municipality has unlimited resources to secure a Defendant against any damages he or she may suffer due to a wrongful injunction. (R. 2639-41).

Treasure Island asks this Court to hold that any time a trial court excuses a municipality from posting an injunction bond under Fla.R.Civ.P. 1.610(b), the enjoined party is precluded as a matter of law from recovering for wrongful injunction damages against a municipality or other governmental agency. Treasure Island has constructed its argument around Parker Tampa Two, Inc. v. Somerset Dev. Corp., 544 So. 2d 1018 (Fla. 1989) and cases following that decision. In Parker Tampa Two, a case in which a private party sought the injunction, this Court held that a [private] party's damages for wrongful injunction are generally limited to the amount of the injunction bond. Belair does not dispute the general proposition set forth in Parker Tampa Two. However, Parker Tampa Two, and the rule it has established, are inapplicable to cases in which municipalities have been excused from posting an injunction bond under Fla.R.Civ.P. 1.610(b).

Again, this case involves a municipality which attempted to obtain an injunction. The cases cited by Treasure Island, and in particular Parker Tampa Two, are inapplicable to the instant case in that the party moving for injunctive relief was not a municipality, but rather a private party. As a result, the provisions under Fla.R.Civ.P. 1.610(b) which permit a trial court to waive the requirement of the

posting of a bond were not applicable. In addition, this Court should carefully note that Treasure Island also misreads Section 60.07, Fla. Stat. Treasure Island at page eight (8) of it's brief states that "Section 60.07, Fla. Stat. specifically states that the Court may "assess damages to which a defendant" may be entitled to under "an" injunction bond. (emphasis added by Treasure Island). However, that is not what Section 60.07, Fla. Stat. indicates. Section 60.07, Fla. Stat. does not state "under an injunction bond", rather it states that "on dissolution, the Court may hear evidence and assess damages to which a Defendant may be entitled under any injunction bond (emphasis added). The Statute does not say that a bond must be posted, and further, goes on to eliminate the necessity for an action on the injunction bond if no party has requested a jury trial on damages. In the instant case, Belair along with Provident filed motions for damages upon the dissolution of the injunction by the Second District in Belair v. City of Treasure Island, 611 So. 2d 1285 (Fla. 2d DCA 1992) rev. denied 624 So. 2d 264 (Fla. 1993). As previously indicated, the trial court following the requirements of Fla.R.Civ.P. 1.610(b) waived the necessity for the posting of an injunction bond, and therefore, Treasure Island's insertion and emphasis at page 8 of it's Answer Brief on the word an "injunction bond" in the second sentence of Section 60.07, Fla. Stat. is misplaced. The statute says "any" injunction bond, which in light of the facts in the instant case, a municipality pursuing an injunction claim need not post a bond under Fla.R.Civ.P. 1.610.(b). The Second District failed to apply a plain reading of Fla.R.Civ.P. 1.610.(b) and Section 60.70 Fla. Stat. Treasure Island's claim that Section 60.07 Fla. Stat. only authorizes damages as a result of wrongful injunction, if and only if, an injunction bond has been posted is clearly inconsistent with the Fla.R.Civ.P. 1.610(b).

Treasure Island in support of it's position cites several Florida cases which are all distinguishable by the fact that none of the plaintiffs in the cited cases were a municipality which would fall within the provisions of Fla.R.Civ.P. 1.610(b). For example, Treasure Island places great emphasis on Town of Davie v. Sloan, 566 So. 2d 938 (Fla. 4th DCA 1990). In Town of Davie, the Court ruled the Sloan's,

who were the Plaintiffs in the case, did not have to increase the amount of bond posted pursuant to a motion to increase bond filed by the Town of Davie because of their vast land holdings. Later, when the injunction was dissolved, the town was limited to the amount of bond posted. This case is consistent with Florida Law, but is not on point, because a bond was required of the private Plaintiff, and the Plaintiff, was not a municipality. Treasure Island's reliance on Hathcock v. Hathcock, 533 So. 2d 802 (Fla. 1st DCA 1988), rev. denied, 542 So. 2d 1333 (Fla. 1989) is similarly misplaced. As with the Town of Davie, Hathcock concerns an injunction obtained by a private party, not a municipality. It should be noted that several cases from other jurisdictions support Belairs position in this case.

In State v. Williams, 472 P.2d 109 (Ariz. Ct. App. 1970) Arizona secured a permanent injunction against a private party. Like in the instant case, on appeal, the permanent injunction was reversed and the wrongfully enjoined party sought to recover wrongful injunction damages against the state. The state argued that, because it was not required under the Arizona Rules of Civil Procedure to post an injunction bond, the enjoined party was not entitled to assert a cause of action against the state for wrongful injunction damages. The state of Arizona contended that the enjoined party's only remedy was an action for malicious prosecution. The court rejected the state's argument and explained that the "statutory reason for not requiring the state to post a bond is that there is no problem of solvency." Williams, 472 P. 2d at 111. The court then concluded that relief from the bond requirement does not also relieve the state from liability for wrongful issuance of an injunction. Id.

Likewise, in Cone v. City of Lubbock, 431 S.W. 2d 639 (Tex. Ct. App. 1968), the court concluded that even when a municipality is excused from posting an injunction bond, the municipality remains liable for wrongful injunction damages. See, Cone, 431 S.W.2d at 646-47.

Before the trial court, Treasure Island took the position that the court could waive the bond requirement under Fla.R.Civ.P. 1.610(b) because it had had unlimited resources to cover the defendants damages if the injunction proved to be wrongful at a later date. (R. 2474-76; 2517-18; 2639-41). Now,

Treasure Island in it's answer brief before this Court, as it did in the Second District, takes the inconsistent position that because the trial court did not require a bond, Belair is left with out the remedy of a wrongful injunction claim against Treasure Island. The doctrine of estoppel against inconsistent positions provides that a party "who assumed a certain position in a legal proceeding may not thereafter assume a contrary position, especially if it is prejudicial to the party who acquiesced in the former position." McCurdy v. Collis, 508 So. 2d 380 (Fla. 1st DCA, 1987). Treasure Island attempts to use Fla.R.Civ.P. 1.610(b) as both a sword and a shield in the same litigation changing its position to fit its interests during the different stages of the cause.

Treasure Island argues that Parker Tampa Two, supra, provides that limiting damages to the amount of bond has a two-fold rationale. First, to protect the Defendant from damages and second, to put the Treasure Islands on notice of its exposure to damages. This position is again inconsistent with Treasure Islands earlier argument asking the trial court to waive posting of a bond. Throughout the motion for temporary injunction hearings, Belair, Provident and the trial court made it clear to Treasure Island that damages would be substantial and if the injunction was found to be wrongful, and Belair and Provident would seek damages. Not only does a plain reading of Fla.R.Civ.P. 1.610(b) prevent Treasure Island from taking such a position, Treasure Island is also estopped from arguing that it was prejudiced by the trial court waiving the bond requirement pursuant to it's own request. McCurdy v. Collis, supra.

Finally, Treasure Island argues that Belair should have appealed the trial courts decisions not to require Treasure Island to post a bond. This argument is contrary to the stated positions of the parties during the injunction proceedings. There was no reason for Belair to appeal for the following reasons:

a). The parties understood that Fla.R.Civ.P. 1.610(b) allowed the court to dispense with the posting of a bond since Treasure Island was a municipality. [without a waiver of liability for damages for a wrongful injunction claim].

b). The trial court, as confirmed by Treasure Island, made it clear that Treasure Island would be responsible for the Defendants damages if the injunction was later overturned. (R. 2774-76; 2517-18; 2639-41).

The position of Belair is that the decision of the trial court to not require the posting of a bond does not protect Treasure Island from damages suffered by Belair for a later wrongful injunction damage claim. However, Treasure Island's contention that such damages are limitless, and thus contrary to this courts holding in Parker Tampa Two, supra is simply contrary to the facts. In this case at the evidentiary hearing on damages, the court did not give Belair the "keys" to the Treasure Island vault, but rather conducted an evidentiary hearing to determine the proper amount of damages. Belair was awarded significantly less that what he had requested. Thus, the damages awarded were not "limitless", but based upon actual evidence presented by both Treasure Island and Belair.

Treasure Island chose its course of action by asking the trial court to waive bond. Belair should not now be prejudiced by a decision which was consistent with the law, as all parties in this case understood it in 1990. (R.646-49). However, that all changed once the injunction was reversed and Treasure Island had to face the consequences of its decision to pursue an injunction claim against Belair. It was only at that point that the law, as all parties to the action understood it to be in 1990, began to drastically change as Treasure Island contorted and twisted the plain meaning of Fla.R.Civ.P. 1.610(b) to suit its own desperate attempt to avoid liability.

Based on the foregoing, the trial court correctly concluded that Treasure Island was liable for all damages that are the direct, natural and proximate result of the wrongful injunction action. Treasure Island fails to cite any case or statute on point to support its position which would create a heretofore non-existent exemption from liability for municipalities and governmental agencies who cause damages to citizens through a wrongful injunction proceedings.

B. THE DOCTRINE OF SOVEREIGN IMMUNITY DOES NOT APPLY TO THIS CASE

Treasure Island claims that it is protected from paying the damages incurred by Belair due to the wrongful injunction action it filed. This position is completely without support in Florida case law. Treasure Island claims that a municipality can invoke the powers of the court in the same fashion as a private citizen, and due to some alleged immunity, cause a citizen to suffer damages due to wrongful injunction with impunity.

While there are no cases in Florida directly on point involving a municipality's suit for an injunction, Florida law is clear that a municipality may not avail itself of the "sword" of the court system and when its actions are deemed wrongful, and then retreat behind the "shield" of sovereign immunity. See, Northern Coats v. Metropolitan Dade County, 588 So. 2d 1016 (Fla. 3d DCA 1991); Simpson v. Merrill, 234 So. 2d 350 (Fla. 1970); Dade County v. Carter, 231 So. 2d 241 (Fla. 3d DCA 1970); See, Wall, 475 So. 2d at 662 (award entered against municipality for damages caused by stay pending appeal). In each of these cases the municipality was liable for the damages or costs of the defendant that ultimately prevailed in the litigation. And in the two cases previously referred to from other jurisdictions, the state or municipality was not immune from wrongful injunction damages. State v. Williams, 472 P. 2d 109 (Ariz. Ct. App. 1970); Cone v. City of Lubbock, 431 S.W. 2d 639 (Tex. Civ. App. 1968).

The instant case was not a tort case. Rather, Treasure Island prosecuted an injunction claim. Thus, this case was analogous to a contract action, as indicated by several courts. See, Marine Construction & Dredging, Inc. v. United States Army Corp. of Engineers, No. 88-3963, WL 150651 (9th Cir. 1989). Under Florida Law, governmental units such as Treasure Island are not immune from liability relating to contract actions. See, Pan American Tobacco Corp. v. Dept. of Corrections, 471 So.2d 4 (Fla. 1985).

By invoking the power of the court system to carry out its will, Treasure Island became bound by the same consequences as a private citizen to pay for the damages which result because of its actions, if they are later deemed wrongful. A ruling otherwise will have the undesirable effect of all trial courts

being unwilling to forego the bond requirement in cases brought by a governmental entity. If the law is that a defendant is precluded from recovering damages under a wrongful injunction claim when a bond has not been required, no court would permit an injunction to issue without one. As a result, taxpayers' dollars would be needlessly tied up in bond liability, awaiting the outcome of appeals of injunction proceedings, an expense spared under a correct reading of Florida rules, statutes and case law.

Additionally, a trial court could waive the need for a municipality to post a bond, as permitted by Fla. R. Civ. P. 1.610(b), and if later dissolved, the wrongfully enjoined party, like Belair herein, would be barred from recovering damages pursuant to a wrongful injunction damage claim. This is not what was intended by Fla.R.Civ.P. 1.610(b) or Florida Law.

C. OUT OF POCKET EXPENSES SUSTAINED AS A RESULT OF A WRONGFULLY ISSUED INJUNCTIONS ARE AN ADDITIONAL ELEMENT OF DAMAGES

As a result of the wrongful injunction proceedings, Provident was barred from carrying out the rental and management of Belair's units and the units of many other landowners at the Lands End Resort. As a direct and proximate result of this action, Belair was forced to carry out many of these functions personally.

Additionally, the expenses of Belair relating to travel for court appearances, costs incurred in defending the action, and to maintain his property are a direct and proximate result of the wrongful injunction proceedings. (R. 3371-3463; 3508; 3592-99). These out of pocket expenses are an additional element of damages. Global Contact Lens v. Knight, 254 So. 2d 807, 809 (Fla. 3d DCA 1971).

Treasure Island mischaracterizes these expenses as costs of litigation, citing cases involving the travel of lawyers to obtain depositions. These cases are easily distinguishable from the instant case by the fact the cases cited by Treasure Island do not involve the out of pocket expenses of a person who has been wrongfully enjoined. "The law is clear that a defendant is entitled to any damages sustained by him as a result of a wrongfully issue temporary injunction...", Lake Worth Broadcasting Corp. v. Hispanic

Broadcasting, Inc., 495 So. 2d 1234 (Fla. 3d DCA 1986). Treasure Island further alleges no evidence of reasonableness of the expenses was presented to the court. This allegation is simply incorrect. Belair testified before the trial court about his out-of-pocket expenses and receipts and proof of payment for all of the expenses were received in evidence as part of the damages suffered by Belair as a result of the wrongful injunction action (R. 2945-2950; 3371-3463; 3592-99).

Based upon the foregoing, the Court was correct in awarding Belair his out-of-pocket expenses as damages which were a direct and proximate result of the wrongful injunction proceedings.

D. DAMAGES FOR WRONGFUL INJUNCTION INCLUDE REASONABLE ATTORNEY'S FEES INCURRED BY THE DEFENDANT TO DEFEND AGAINST AND SECURE THE DISSOLUTION OF THE WRONGFULLY ISSUED INJUNCTIONS

The trial court below awarded Belair attorney's fees directly related to his efforts to defend against and dissolve the wrongfully issued injunctions. These fees included those expended attempting to dissolve the injunction before the trial court, and until the injunction was dissolved, on December 18, 1992. Treasure Island asks the court to cut off Belair's right to recover attorney's fees. Contrary to Treasure Island's position, a number of cases have held that a wrongfully enjoined party is entitled to recover all damages, including attorneys fees. Global Contact Lens v. Knight, 254 So. 2d 807 (Fla. 3d DCA 1971); Lake Worth Broadcasting Corp. v. Hispanic Broadcasting, Inc., 495 So. 2d 1234 (Fla. 3d DCA 1986); Southern Properties, Inc. v. Carpenter, 50 S.W. 2d 876 (Tex. Ct. App. 1932); Columbia Amusement Co. v. Pine Beach Investment Corp., 63 S.E. 1002 (Va. 1909); Houghton v. (Meyer) Cortelyou, Postmaster General, 208 U.S. 149, 156 (1908); Sheridan Cty. Elc. Co-op v. Ferguson, 227 P. 2d 597 (Mont. 1951). (Court awarded attorneys fees incurred at temporary injunction hearing and permanent injunction hearing in that the object of the proceedings was the same i.e. to obtain injunctive relief and the appellee had a right to counsel throughout the proceedings).

The general rule is that a wrongfully enjoined party may recover all attorneys fees incurred in dissolving the injunction. See, Lake Worth, 495 So.2d at 1234; Morse Taxi & Baggage Transfer, Inc.

v. Bal Harbour Village, 242 So.2d 177 (Fla. 3d DCA 1970); Roger Dean Chevrolet Inc. v. Painters, Decorators, & Paper Hangers of America, Local No. 452, 155 So.2d 422,424 (Fla. 2d DCA 1963); United Bonding Insurance Company of Indianapolis, Indiana v. Presidential Insurance Company, 155 So.2d 635, 636 (Fla. 2d DCA 1963).

The court in Houghton, supra explained that while the entry of a permanent injunction following a temporary restraining order (TRO) effectively cuts off a TRO, the same effect does not result when a permanent injunction follows a temporary injunction. The temporary injunction remains in force until specifically rescinded by the court, an action never taken by the trial court in this case.

Treasure Island attempts to support its position by citing several cases which can all be distinguished from the case before this Court. Treasure Island cites P.A.G. v. A.F., 602 So. 2d 1259 (Fla. 1992) (paternity action) and Bidon v. Department of Professional Regulation, Florida Real Estate Commission, 596 So. 2d 450 (Fla. 1992) (claim against Florida's real estate recovery fund) for the proposition that fees are not recoverable in the absence of statutory authority or a contractual agreement. Neither of these cases involve a wrongful injunction. These cases also contrast sharply with Saporito v. Madras, 576 So. 2d 1342 (Fla. 5th DCA 1991) in which the Fifth District allowed recovery of attorney's fees incurred in removing a wrongful lis pendens despite the absence of statutory authority. The court noted the validity of such recovery in absence of an express statute was justified, "due to the trend of decisions upholding an award of attorney's fees as damages in suits to quiet title or remove a cloud from title."

The appellant does cite the Brite v. Orange Belt Security Co., 182 So. 892 (Fla. 1938) case which involves an injunction but this case is distinguishable by the fact the case does not involve a municipality or governmental organization.

The law is clear in Florida that a defendant who is wrongfully enjoined can recover all damages which are a direct and proximate result of the injunction, including reasonable attorney's fees for all efforts to dissolve the injunction. Global Contact Lens v. Knight, supra.

The amount of the fees awarded is supported by the evidence presented at the evidentiary hearing on damages (R.3552-3588). Attorney Wallace Pope, Jr. testified as an expert on the issue of attorney's fees. Pope testified that he was "astonished" how low the fees were in that the instant case was a very intense one. (R.3559). Pope considered all relevant factors in reaching his opinion, including "the significance of or amount involved in the subject matter of the representation, responsibility involved in the representation and the results obtained. (R. 3560). The trial court's order likewise reflects the required findings under Florida Patient's Compensation Fund v. Rowe, 472 So.2d 1145 (Fla. 1985). The judgment contains specific findings that the number of hours expended by Belair's counsel and the rate charged were both reasonable. There was no issue of an enhancement factor in this case. The only omission is a reference to the specific number of hours and rate. However, those numbers are readily apparent in the record. (R. 2952; 3552-3588; 3697-3711). The trial court clearly considered the evidence and made the findings required by Rowe. If this court is concerned that the judgment is technically deficient on this point, it should simply remand for entry of a corrected order. Under Florida law, trial courts may correct such an omission without the necessity of a new hearing on fees. See, Abdalla v. Southwind, Inc., 561 So.2d 468 (Fla. 2d DCA 1990); De Loach v. Westman, 506 So. 2d 1142 (Fla. 2d DCA 1987).

The injunction constituted the entire substance of this case, and was not dissolved until after the final appeal. Therefore, Belair is entitled to those attorney's fees awarded to him by the trial court. Based on the foregoing, the trial courts award of attorney's fees to Belair as part of his wrongful injunction damages was proper.

E. THE TRIAL COURT'S AWARD OF PREJUDGMENT INTEREST TO BELAIR WAS APPROPRIATE

Florida law provides that prejudgment interest is one element of an award of pecuniary damage and is appropriate when a court's order liquidates damages. See, Argonant Ins. Co. v. May Plumbing Co., 474 So. 2d 212 (Fla. 1985). The Argonant case holds that a claim is liquidated when the court's order fixes an amount of damages and a date certain by which time the losses had occurred. Once the court has liquidated damages as of a date certain, computation of prejudgment interest is nothing more than a ministerial task. The addition of prejudgment interest is not discretionary with the court. Id. at 215.

Treasure Island's argument that sovereign immunity barrs the award of prejudgment interest in this case is also erroneous. This court has stated that the State's immunity from interest can be waived. "The law is not absolute and a judicial determination regarding interest may depend on equitable considerations and whether the nature of this claim warrants a prejudgment interest award, " State v. Family Bank of Hallandale, 623 So.2d 474, 479 (Fla. 1993). Treasure Island failed to demonstrate to the trial court why the equitable determination to award prejudgment interest in this case should be overturned. For the reasons stated above, the trial court's award of prejudgment interest to Belair was justified.

F. THE TRIAL COURT'S AWARD OF POST JUDGMENT INTEREST AT THE RATE OF 12% PER YEAR WAS APPROPRIATE

The final judgment against Treasure Island and in favor of Belair was filed December 29, 1994. (R. 3208-13). Therefore, the rate of interest prescribed by Section 55.03, Fla. Stat., before the amendment took effect on January 1, 1995, would apply. The rate before the amendment took effect on January 1, 1995, was 12% a year. The statute was correctly applied by the trial court.

Although the trial court awarded post-judgment interest on Belairs damages, it refused to apply post-judgment interest to the prejudgment interest amount. In deciding not to apply post-judgment interest

to the prejudgment interest amount, the trial court correctly followed the law in the Second District in S & E Contractors, Inc. v. City of Tampa, 629 So.2d 883 (Fla. 2d DCA 1993) following Central Contractors, Inc. v. Spectrum Contracting Co., 621 So. 2d 526, 527 (Fla. 4th DCA 1993). Although there was great conflict concerning the issue at the time the judgment was entered, it has since been resolved in Belairs favor. In Quality Engineered Installation, Inc. v. Higley South, Inc., 670 So.2d 929 (Fla. 1996) this Court held that prejudgment interest like all other components of the "judgment", automatically bears interest provided by Section 55.03, Fla. Stat. (1993). As a result, Belair requests this Court award him post-judgment interest on the prejudgment interest amount, and other liquidated damage items.

CONCLUSION

The trial court correctly concluded that Treasure Island, a "municipality", is liable for damages incurred by a defendant who is wrongfully enjoined, even though the court in its discretion did not require an injunction bond, pursuant to Fla.R.Civ.P. 1.610(b). The Second District reach the wrong result in overturning the judgment entered in favor of Belair.

The Doctrine of Sovereign Immunity does not apply when a municipality, as Treasure Island did in this case, avails itself use of the court system. When Treasure Island chose to use the court system, it waived any right to claim sovereign immunity. In addition, injunction actions are analogous to contract actions, and under Florida Law no sovereign immunity attaches. The court's award of attorney's fees, prejudgment interest and post-judgment interest should be affirmed. Attorney's fees are an additional element of damages in a wrongful injunction claim. Prejudgment interest must be awarded to the prevailing party when a fixed amount and a date certain for damages is fixed. Post judgment interest should also be applied to the prejudgment interest amount of the judgment. The Trial Court correctly applied Section 55.03, Fla. Stat., in determining 12% interest should accrue on the judgment because it was entered before January 1, 1995.

Wherefore, Laurence Belair respectfully requests that this Honorable Court reverse the decision of the Second District in City of Treasure Island v. Laurence Belair and Provident Management Corp., 678 So.2d 1322 (Fla. 2d DCA 1996) and reinstate the judgment previously entered in favor of Belair and against Treasure Island.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Reply Brief of Laurence Belair has been furnished via Airborne Express to STEVE BRANNOCK, ESQUIRE, Holland & Knight, Post. Office Box 1288, Tampa, FL 33601; W. DOUGLAS BERRY, ESQUIRE, Butler, Burnette & Pappas, Bayport Plaza, Suite 1100, 6200 Courtney Campbell Causeway, Tampa, FL 33607; JAMES DENHARDT, ESQUIRE, 2700 First Avenue North, St. Petersburg, Florida, 33713; EDWARD D. FOREMAN, ESQUIRE, 100 2nd Avenue North, St. Petersburg, FL 33701; JULIA C. MANDALL, ESQUIRE, Assistant County Attorney, P.O. Box 1110, Tampa, FL 33601; and JORGE FERNANDEZ, ESQUIRE, Office of the County Attorney, 1660 Ringling Blvd., 2nd Floor, Sarasota, FL 34236 and VIA

Airborne Express to the Supreme Court of Florida, Office of the Clerk, 500 South Duval Street, Tallahassee, FL 32399-1927 this 19th day of May, 1997.

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