Third District Court of Appeal

State of Florida

Opinion filed August 5, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-711
Lower Tribunal No. 18-35876

Bruce C. Matheson,
Appellant,

vs.

City of Miami, Florida, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Mavel Ruiz, Judge.

Carlton Fields, P.A., and Richard J. Ovelmen and Enrique D. Arana and Scott E. Byers and Rachel A. Oostendorp, for appellant.

Victoria Mendez, City Attorney, and Christopher A. Green, Senior Assistant City Attorney, and John A. Greco, Deputy City Attorney, for appellee City of Miami; Shubin & Bass, P.A., and John K. Shubin and Ian E. DeMello, for appellee Miami Freedom Park, LLC.

Before SALTER, LOGUE and GORDO, JJ.

SALTER, J.

Bruce C. Matheson ("Matheson"), plaintiff in a circuit court action seeking to invalidate a ballot initiative regarding a proposed soccer stadium and related commercial development, appeals a final judgment in favor of the defendants in that lawsuit, the City of Miami ("City") and Miami Freedom Park, LLC ("MFP"). We affirm the trial court's order granting the City's motion for final summary judgment and denying Matheson's motion for summary judgment.

I. Facts and Procedural Background

Beginning at some point in 2014, international soccer star David Beckham announced an intention to bring a new Major League Soccer team, Club Internacional de Fútbol Miami, or "Inter Miami CF," to Miami. Over a course of several years, negotiations to place a new stadium for the team on the waterfront near the Port of Miami, or at other locations including those near Marlins Park, in Overtown, or as part of Florida International University, were unavailing. Beckham also obtained financial backing for the team and stadium. The team owners and investors organized MFP as the entity to accomplish these objectives.

By 2018, MFP and the City considered a site consisting of 73 acres within the 131-acre City park known as Melreese Park. As this possibility was discussed, the concept attracted public interest and vocal opposition from some quarters. The proposed site included the City of Miami's only public golf course, a popular venue for residents and for a wide variety of charitable activities. The construction of

another professional sports stadium on taxpayer-owned land also raised the specter of potential taxpayer financial burdens, a circumstance attributed to the recall of a prior mayor a few years earlier when the aging Orange Bowl was replaced with a new stadium for the Miami Marlins.

In July 2018, the City Commission directed the Office of the City Attorney to draft resolutions that would facilitate the Commission's ability to enter into a long-term lease with MFP for development of a stadium and related retail and commercial space on the 73-acre site within Melreese Park. One resolution was a proposed amendment to Section 29-B of the City Charter,[1] which would waive competitive bidding with respect to a future lease to MFP meeting certain minimum requirements (notably, no cost to the City). The other resolution was to place the amendment on the ballot for a special election of City voters to be held November 6, 2018. The resolutions were passed by the Commission on July 18, 2018.

On October 23, 2018, Matheson filed a two-count "Emergency Complaint for Declaratory Relief" (the "Complaint"), against the City of Miami. A week later, MFP filed an emergency motion to intervene as a defendant. That motion was later

[1] Pertinent excerpts from Section 29-B of the City Charter are attached as an appendix to this opinion. The first excerpt addresses the general requirements for the City's sale or lease of City-owned property, and appears as in effect both before and after the July 2018 amendments. The second excerpt (identified as subparagraph (f)) was added in 2018 to address specific requirements for a City-MFP lease of the 73-acre site, if and when presented for a Commission vote.

heard and granted. Count I of Matheson's Complaint sought a declaration declaring the proposed amendment and ballot item invalid as violative of section 101.161, Florida Statutes (2018). Count II sought such a declaration declaring the proposed amendment and ballot item invalid as violative of section 29-B of the City Charter.

The Charter Amendment was approved by a majority of voters in the special election of November 6, 2018. Later that month, Matheson and the City filed cross-motions for summary judgment. After additional briefing on the cross-motions for summary judgment and on MFP's motion to intervene, on February 4, 2019, the trial court heard argument on the motions. Four days after the hearing, the court granted MFP's motion to intervene as a party defendant.

On March 21, 2019, the trial court granted the City's motion for summary judgment, denied Matheson's motion for summary judgment, and entered a final judgment in favor of the City and MFP. This appeal followed.

II. Analysis

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Thus, our standard of review is de novo." Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000) (internal citation omitted). Similarly, analyzing whether ballot language proposing an amendment is deficient "presents a pure question of law which we review de novo." Dep't of State v. Fla. Greyhound Ass'n, Inc., 253 So.

3d 513, 519 (Fla. 2018).[2] "[T]his Court should invalidate [the ballot question] 'only if the record shows that the [ballot language] is clearly and conclusively defective.'" Matheson, 187 So. 3d at 225 (quoting Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000)).

In the opinion which follows, we first provide the title and ballot question approved by the City Commission in July 2018 and by the voters in the November special election. We then address in detail, and separately, the Florida statutory and City Charter provisions relied upon by Matheson in the Complaint and his motion for summary judgment, and relied upon by the defendants in the City's cross-motion.

A. The Ballot Question

The ballot question as approved by the City Commission in July 2018 was:

> **Proposed Charter Amendment for the Lease and development of a soccer stadium and commercial complex.**
>
> Shall Miami's Charter be amended authorizing City to negotiate, execute 99-year lease with Miami Freedom Park LLC, for approximately 73 acres of City land, waiving bidding, converting Melreese Country Club (1400 Northwest 37 Avenue) at no cost to City to:
>
> • soccer stadium;

[2] See also Matheson v. Miami-Dade Cty., 187 So. 3d 221, 230–31 (Fla. 3d DCA 2015) (Emas, J., concurring) ("Although our standard of review is de novo, such review is tempered by the strong public policy against courts interfering in the democratic processes of elections." (internal quotations and citation omitted)). That appeal by Matheson concerned Miami-Dade County's referendum regarding tennis facilities at a County park, and is not related to the City's soccer stadium plans in the present case.

• minimum 1,000,000 square feet office, retail, commercial uses;

• minimum 750 hotel rooms;

• living wage for on-site employees;

• $3,577,365 minimum annual rent;

• $20,000,000 for 58-acre public park or other green space?

B. Section 101.161(1), Florida Statutes (2018)

The pertinent part of this statute governing referenda and ballots requires: "The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." This simple formulation has been evaluated in numerous Florida appellate decisions.

> Florida law requires the ballot language to give the voters "fair notice" of the decision they must make. Miami Dolphins, Ltd. v. Metropolitan Dade Cty., 394 So. 2d 981, 987 (Fla. 1981). In terms of a ballot title and summary, fair notice "must be actual notice consisting of a clear and unambiguous explanation of a measure's chief purpose." Askew [v. Firestone], 421 So. 2d [151,] 156 [(Fla. 1982)]. To evaluate whether a proposed amendment's ballot language is clearly and conclusively defective, the Court considers two questions: first, "whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment," and second, "whether the language of the ballot title and summary misleads the public." Advisory Op. to Att'y Gen. re Rights of Elec. Consumers Regarding Solar Energy Choice, 188 So. 3d 822, 831 (Fla. 2016).

Fla. Greyhound Ass'n, 253 So. 3d at 519–20 (internal footnote omitted).

Although several of these cases involve proposed amendments to the Florida Constitution, section 101.161 codifies the "accuracy requirement" implicit in Article

XI, section 5 of the Florida Constitution, Armstrong, 773 So. 2d at 12 (Fla. 2000), and that requirement applies with equal force to the municipal referendum before us, Wadhams v. Board of County Commissioners of Sarasota County, 567 So. 2d 414, 416 (Fla. 1990). The criteria articulated in Florida Greyhound Ass'n and the decisions cited within that opinion thus apply as well to the ordinance amendment and ballot at issue in the present case.

Matheson argues that (1) "the trial court applied the wrong standard for reviewing a ballot question challenge"[3]; (2) "the ballot question camouflaged the chief purpose of the charter amendment, which was to waive the existing charter protections of competitive bidding and fair market value," thereby violating section 101.161; and (3) "the ballot question was defective because the proposed terms were misleading as presented," which also violates section 101.161.

These arguments all focus on two critical questions, formulated in slightly different ways. First, did the ballot title and summary "fly under false colors," presenting the proposed amendment in a misleading way? Second, did they "hide

[3] MFP argues that Matheson failed to preserve the argument that the trial court committed reversible error in applying the accuracy test to the referendum. Matheson contends that the accuracy test requires a challenger only to prove that the summary either was not "clear and unambiguous," or was misleading (a disjunctive rather than conjunctive burden), rather than both of these alleged deficiencies. We need not resolve this collateral question, as we conclude that Matheson failed to meet either test.

the ball" as to the "true effect" of the proposed amendment, camouflaging its primary effect, consequence, or purpose in a misleading way? Armstrong, 773 So. 2d at 16.

The title of the ballot item stated that the amendment provided for the lease and development of a soccer stadium and commercial complex. The body of the proposed amendment notified a City voter that the soccer stadium would be on City land, that the authorization would only apply to a single, already-identified entity (MFP), and that the transaction would include "waiving bidding," "converting Melreese Country Club (1400 Northwest 37 Avenue)," and "no cost to City." "Waiving bidding," surely connotes a "no bid" transaction,[4] and the single prospective lessee for negotiation of a long-term lease of the specific site to be considered by the City Commission is identified by name: MFP.

Similarly, Matheson contends that the ballot summary's failure to apprise voters of the "fair market value" mandate in Section 29-B of the City Charter was misleading and "hid the ball." Matheson argues that this failure was not cured by simply including the limited terms regarding minimum annual rent, the fact that stadium and other facilities would be built on the leased property at no cost to the

[4] "Bidding" is associated most closely in the dictionary with an auction (as in "auction sale") in which offers to buy are made by bidders. *Bidding*, Webster's Third New Int'l Dictionary Unabridged (3d ed. 2017) ("The act of making bids; also, the period during which bids are made (as in a card game or at an auction)."); see also *Bid*, Webster's, supra, ("The act of one who bids; an offer of a price (as at an auction); a statement of what one will give or do for something to be done or furnished.").

City, and the lessee's financial contribution for a park or other green space. Matheson's summary judgment evidence included an affidavit from an MAI-certified appraiser regarding real estate comparables and the fragmentary lease terms in the ballot summary, but does not address any financial benefits to the City and its residents derived from having a professional soccer league based in Miami.

The usual mechanism for obtaining fair market value for a proposed sale or lease of City property is detailed in Section 29-B of the City Charter (in the general provisions, the first excerpt in the attached Appendix). The solicitation of proposals for a sale or lease is to be published in a newspaper of general circulation, and the next step turns on whether the City receives three or more "written proposals . . . from prospective purchasers or lessees." But such "written proposals" are commonly called "bids," and "waiving bidding" means waiving that otherwise-applicable mechanism for ascertaining the market's assessment of "fair market value."

Matheson essentially accuses the City of "camouflaging" an amendment to delete the competitive bidding and fair market value requirements as an amendment to authorize a lease of a specific City-owned property without a request for bids and on a basis which might not yield a fair market return to the City and its taxpayers. It should be noted, however, that 75 words does not allow for the presentation of the economics of drawing an international soccer team to a municipality. Does "fair

market value" in this instance include income generated for City businesses and voters if an internationally televised sports franchise locates here? The purpose of a ballot summary is not to inform on every detail. Smith v. Am. Airlines, Inc., 606 So. 2d 618, 620 (Fla. 1992) (stating that section 101.161's purpose is to give voters sufficient notice of what they are supposed to decide but not necessarily every detail or ramification). There is no indication that multiple professional soccer franchises might make offers to site a team in Miami; Matheson does not quibble with the obvious exclusivity associated with such franchises.

The 75-word limitation is also quite restrictive as applied to a prospective commercial transaction as complex as the one that may emerge here. While the summary before us is 72 words, the more detailed outline of the prospective transaction in the actual amendment to Section 29-B (subparagraph (f) in the attached Appendix) is 274 words.[5]

The issues raised by Matheson are not "camouflaged"; ultimately, they are political questions to be addressed first by the voters (and such issues are readily apparent to them, depending perhaps on their personal feelings about parks, golf,

[5] The actual amendment, as opposed to the ballot summary, contains the phrase "waive competitive bidding," rather than "waiving bidding," the term in the ballot summary. The actual amendment was a public document continuously available to the public and, as previously noted, the word "bidding" itself conveys an openness to consider multiple offers. "Waiving bidding" means that the solicitation of multiple offers is being relinquished, underscored by the disclosure in the summary that the single prospective offeror has already been identified.

soccer, tourism, charitable events, and traffic) and, second, if voters were to approve the amendment, by the five City Commissioners, with four favorable votes required to approve the lease when and if negotiated and presented for consideration. The Commissioners will be answerable to the electorate for their votes on any specific lease proposal, if and when presented.

We conclude that Matheson, though justifiably commended by the trial court for his "effort to safeguard what he believes is in the best interest of the City of Miami," has not demonstrated that the ballot summary is clearly and conclusively defective under the statutory and precedential analysis above.

C. City Charter Section 29-B

The analysis is not markedly different for Matheson's second count for declaratory judgment, a claim that the City's lack of transparency violated section 29-B of the City Charter. Section 166.031, Florida Statutes (2018), empowers the City and other municipalities to adopt amendments to their own charters.

The legal sufficiency of the title and summary are, as noted previously, controlled by section 101.161 and the appellate decisions cited in the preceding section of this opinion. Matheson's reliance upon Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282 (Fla. 3d DCA 2013), is misplaced.

Under section 1.03(b)(2) of the City of Miami Beach Charter, any lease of City properties in the vicinity of the Miami Beach Convention Center for a term of

ten years or more required a favorable referendum vote by Miami Beach voters (as opposed to a favorable vote of only the Miami Beach Commissioners). The referendum at issue in Let Miami Beach Decide asked voters to approve "a lease of certain properties to SBACE for ninety-nine years." Id. at 1284. This Court invalidated the approval question on this point because it failed to give voters "notice of the material terms of the lease they are being asked to approve." Id.

In the present case, Section 29-B of the City Charter did not contain a mandatory referendum provision applicable to any and all proposed long-term leases of City property. The purpose of the amendment in the present case was to give a super-majority, 80%, of the City Commissioners the authority to negotiate a lease of a particular municipal property to a single, already-designated lessee, provided certain conditions are met—no public funding of the soccer stadium, bidding waived (as authority was limited to a specific, named lessee), and certain specific parameters to be included in any such lease to be submitted to the Commission. Let Miami Beach Decide involved a Charter, transaction, and record inapplicable to the amendment in this case.

We affirm the trial court's order granting the City's motion for summary judgment and entering final judgment against Matheson on Count II, concluding that the ballot summary gave fair notice of its chief purpose and did not mislead the public.

III. Conclusion

We also find no merit in arguments raised by one or both appellees challenging Matheson's standing and the mootness or ripeness of his claims, and reject them without discussion (except to observe that our review does not address any actually-proposed lease of the subject property negotiated by the City and MFP for consideration by the City Commission).

The final judgment in favor of the City and MFP and the order denying Matheson's motion for summary judgment are affirmed in all respects.

Affirmed.

Appendix

Case No. 3D19-711, Matheson v. City of Miami, et al.

Sec. 29-B, City of Miami Charter [Pertinent Excerpts]

Notwithstanding any provision to the contrary contained in this Charter or the City Code, and except as provided below, the city commission is prohibited from favorably considering any sale or lease of property owned by the city unless there is a return to the city of fair market value under such proposed sale or lease. The city commission is also prohibited from favorably considering any sale or lease of city-owned property unless (a) there shall have been, prior to the date of the city commission's consideration of such sale or lease, an advertisement soliciting proposals for said sale or lease published in a daily newspaper of general paid circulation in the city, allowing not less than ninety (90) days for the city's receipt of proposals from prospective purchasers or lessees, said advertisement to be no less than one-fourth (¼) page and the headline in the advertisement to be in a type no smaller than 18-point and, (b) except as provided below, there shall have been at least three (3) written proposals received from prospective purchasers or lessees; however, if there are less than three (3) such proposals received and if the guaranteed return under the proposal whose acceptance is being considered is equal to fair market value the city commission determines that the contemplated sale or lease will be in the city's best interest then, subject to the approval of a majority of the votes cast by the electorate at a referendum, the sale or lease may be consummated. Any lease for the development of improvements of city-owned property which has been approved by voter referendum shall require additional voter referendum approval for a development on City-owned property where the developer has not obtained the necessary building permits within four (4) years of the effective date of the lease. Such section shall not be applicable when the delay in the performance of any obligation is as a result of force majeure, or litigation that questions the validity of the vote, or the City Commission action to place the question for referendum, then the performance of such obligation shall be extended by the length of the delay. In the case of city-owned property which is not waterfront, when the value of such property to be sold or leased (individual leaseholds within a single city-owned property shall not be considered as a single parcel of property for such valuation purposes) is five hundred thousand dollars ($500,000) or less, based on an appraisal performed by a state-certified appraiser, the city commission, by a 4/5 ths affirmative vote, may sell or lease said city-owned property after compliance with the advertisement requirements set forth above but without the necessity of a referendum.

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Notwithstanding anything herein to the contrary, the city commission, by a 4/5ths affirmative vote, may:

• • • • •

(f) waive competitive bidding to negotiate and execute a Ground Lease and Master Development Agreement with Miami Freedom Park, LLC, for a total lease term of ninety-nine (99) years, for approximately seventy-three (73) acres of City-owned property located generally at 1400 Northwest 37th Avenue, Miami, Florida 33125, also known as Melreese County Club, with a minimum annual base rent payable to the City equal to the greater of (a) fair market value as determined by state certified appraisers or (b) five percent (5.0%) of rent from the retail, office, and hotel development within the Demised Property, but annual base rent of no less than three million five hundred seventy-seven thousand three hundred sixty-five dollars ($3,577,365.00), in addition to a contribution to the City of twenty million dollars ($20,000,000.00) payable over thirty (30) years in annual installments, and any rent increases and/or additional rents negotiated by the parties; authorizing the use of the Demised Property for a soccer stadium; with at least one (1) million square feet of art and entertainment center including food and beverage venues, offices, retail, and a hotel with at least 750 units and conference center with ancillary commercial uses, guaranteeing a living wage for all on-site employees, further requiring MFP to undertake the remediation and Site development for a public park of approximately fifty-eight (58) acres to be developed on property adjacent to the Demised Property as MFP's sole cost, with any restrictions, reversions, and retention by the City of all other rights including at least a one (1%) transfer fee payable to the City, with such Lease and Master Development Agreement requiring City Commission approval by a four-fifths (⅘ths) vote.