

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 09-15404CA25

**GRACIELA SOLARES**, an individual,  
and **ELVIS CRUZ**, an individual,

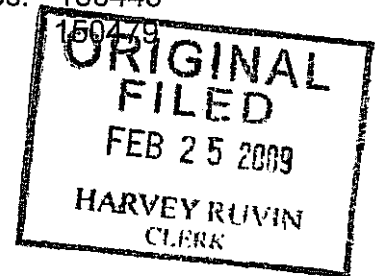
Plaintiffs,

vs.

**COMPLAINT**

The **CITY OF MIAMI**, a municipality  
of the State of Florida, and  
**MIAMI-DADE COUNTY**, a political  
subdivision of the State of Florida.

Fla. Bar Nos: 150445



Defendants.

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Plaintiffs Graciela Solares and Elvis Cruz, through their undersigned counsel, sue Defendants, the City of Miami, a municipality of the State of Florida and Miami-Dade County, Florida, a political subdivision of the State of Florida, for declaratory and equitable relief as follows:

Introduction

1. This is an action for declaratory and equitable relief. At issue is the application of the state "Sunshine Law" to negotiations by the City of Miami and Miami-Dade County with respect to agreements for the construction and operation of a proposed baseball stadium. The negotiations have resulted in six separate agreements<sup>1</sup> that will be filed under separate cover. Together, those agreements total many hundreds of

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<sup>1</sup> At issue in this action is the validity under the Sunshine Law of the Baseball Stadium Agreement ("BSA") and five other, related agreements: a Construction Administration Agreement ("CAA"), an Operating Agreement ("OA"), a City Parking Agreement ("PA"), an Assurance Agreement ("AA") and a Non-Relocation Agreement ("NR"). Not at issue in this action are the merits of the proposed stadium deal, including the potential surrender of extremely valuable property owned by the City, the likelihood that the "government-caused cost overrun exception" will drown the City's taxpayers in debt, or a vast list of other issues. The very purpose of the Sunshine Law is so that the public can be aware of negotiations as they proceed and thereby have the opportunity to make coherent comments at the appropriate times. Florida voters and the Florida Legislature claimed this right. By this action, the Plaintiffs simply ask this Court to enforce those rights, which thus far have been ignored by the Defendants.

dense, convoluted, legalese pages. Obviously, extensive documents such as those did not spring into existence over night. The public was excluded from all negotiating sessions that resulted in these agreements and has been made privy to virtually nothing that was considered or rejected. The purpose of this lawsuit is not to ask this Court to substitute its judgment for that of the City or County, but to request respectfully that the City of Miami and Miami Dade County be ordered to comply with the organic law of the state of Florida, as expressed in the state Constitution, state statutes, Florida decisional law, and opinions of the state Attorney General. At issue in this case are fundamental questions of the trust of the electorate for the government. The need for that trust is clear: one City Commissioner already has decried the proposed contracts as a typical City of Miami backroom deal. Rather than mire this and other Courts in endless inquiries about corruption or stupidity among elected officials, the Legislature in its wisdom and the People in amending the Constitution realized that sunlight is the best disinfectant. All citizens of the state of Florida have a right to insist on strict compliance with the statutory and Constitutional provisions of the Sunshine Law. They are not required to show that any outcome would have changed or the manner in which it might have changed in order to vindicate those rights: there is a presumption of irreparable harm deriving from violations of the Sunshine Law. One of the six agreements already has been approved by the City and the County. Plaintiffs respectfully submit that this agreement must be declared "void" for violation of the Sunshine Law. The other five agreements have not yet been approved. If ever passed (the City and the County both have meetings scheduled for early March to consider them) they, too, must be invalidated unless any and all Sunshine Law violations are cured.

#### Jurisdiction and Venue

2. This Court has subject matter jurisdiction pursuant to Florida Statutes, §§ 26.012, 86.011, and 286.011 and the Florida Constitution, Articles I, § 21 and 24, and V, § 5(b).

3. Venue is proper in this Court because all matters complained of herein occurred in Miami-Dade County, Florida.

The Parties

4. Plaintiff Graciela Solares resides in the City of Miami. She is a citizen, property owner, taxpayer, and elector thereof.

5. Plaintiff Elvis Cruz resides in the City of Miami. He is a citizen, property owner, taxpayer, and elector thereof.

6. Defendant City of Miami ("City") is a municipality of the State of Florida, subject to the Constitution of the State of Florida, the General Laws of the State of Florida, the Charter of Miami-Dade County, and the Charter and Ordinances of the City of Miami. Pursuant to its Charter, the City has a "Mayor-Commissioner" plan. The function of the Mayor is to exercise all powers conferred by the City Charter. Pursuant thereto, the Mayor serves as the City's chief executive officer and head of the City government, is the presiding officer of the City Commission, has the power to establish and appoint members of all standing and special committees of the City Commission, appoints the chairperson and vice chairperson of each Commission Committee, and appoints the City's Chief Administrator officer (the City Manager). The City Commission is the actual legislative and governing body of the City of Miami. It alone has the legal authority to enact law (by the passage of ordinances or adoption of resolutions) and to exercise all powers conferred upon the City as an entity.<sup>2</sup>

7. Defendant Miami-Dade County ("County") is a political subdivision of the State of Florida, subject to the Constitution of the State of Florida, the General Laws of the State of Florida, and the Charter of Miami-Dade County. The County Mayor serves as the head of County government. He is responsible for the management of all administrative departments, carrying out policies adopted by the Commission, and has the right to attend and be heard at regular or special meetings of the Commission.

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<sup>2</sup> City of Miami Charter, § 4.

However, he does not have the right to vote at such meetings.<sup>3</sup> The Miami-Dade County Manager assists the Mayor in the administration of County government and serves under the direction of the County Mayor.<sup>4</sup> The County's Board of County Commissioners is the actual legislative and governing body of the County. It alone has the legal authority to enact law (by the passage of ordinances or adoption of resolutions) and to exercise all powers conferred upon the County as an entity.<sup>5</sup>

#### Facts

##### Florida's Government in the Sunshine

8. Forty two years ago, the Florida legislature enacted the "Sunshine Law."<sup>6</sup> It has been in effect at all times relevant to this action. It requires that any meeting of "any agency or authority" of the City or the County at which official acts are to be taken must be open to the public with reasonable advance notice of the meeting given to it.<sup>7</sup>

9. Fifteen years ago, the voters of Florida amended the state Constitution to

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<sup>3</sup> Miami-Dade County Charter, Art. 2, § 2.02.

<sup>4</sup> Miami-Dade County Charter, Art. 4, § 4.

<sup>5</sup> Miami-Dade County Charter, Article I.

<sup>6</sup> Florida Statutes, § 286.011 became law in 1967.

<sup>7</sup> Florida Statutes, § 286.011: "(1) **All meetings** of the any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. **The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.** "(Emphasis added) The statute also provides for the payment of attorney's fees, for which Plaintiffs pray. The first sentence of section 2 has been interpreted to extend to all that are covered by the statute, not just state actors.

require specifically that any meeting of any collegial public body of any county or municipality at which official acts are to be taken must be open to the public and noticed to it.<sup>8</sup>

10. Florida decisional law and the state's Attorneys General have emphatically interpreted these provisions of Florida Statutes and/or state Constitution, thereby seeking to ensure that the rights of the citizens are not trampled by run-away, secret government machinations. As a result, the applicable law is both clear and of long standing. So that it is not circumvented by delegation of authority,

a. The Sunshine Law applies to all meetings of **anyone** – not just the government officials themselves -- to whom public officials have delegated *de facto* authority to act on their behalf in the formulation, preparation or promulgation of plans on which foreseeable action might be taken in the future by those public officials.<sup>9</sup>

b. The Sunshine Law applies to advisory groups assisting officials covered by the Sunshine Law in performing their official functions.<sup>10</sup>

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<sup>8</sup> On November 23, 1992, the electorate adopted Article I, §24, which provides: "(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution."

<sup>9</sup> IDS Properties, Inc. v. Town of Palm Beach, 279 So.2d 353 (Fla. 4<sup>th</sup> DCA 1973), approved subnom, Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974).

<sup>10</sup> Krause v. Reno, 366 So.2d 1244 (Fla. 3<sup>rd</sup> 1979) [all meetings of a citizen's advisory group assisting the city manager of the City of Miami to screen applications for the position of police chief were within the scope of the Sunshine Law and therefore all of their meetings required notice and had to be conducted in the open].

c. The Sunshine Law applies to all meetings of citizens' commissions if they provide recommendations to a city commission, even if the recommendations are non-binding.<sup>11</sup>

d. The Sunshine Law applies to all meetings of ad hoc committees appointed by a public body subject to the Sunshine Law to assist in formulation of a budget.<sup>12</sup>

e. The Sunshine Law reaches far beyond just the ultimate action taken by the government, such as the final vote; it includes the entire "decision making process." That "process" consists of all steps involved in considering the pursuit or rejection of options, even if merely advisory. It ends -- not begins -- when a final decision is reached and announced.<sup>13</sup>

f. The Sunshine Law applies to all "Meetings of a negotiating team created by resolution of the City Commission which reports the final negotiations to the City Commission for ratification and approval . . . . While the negotiation team may not take final action but rather must present the final negotiations to the city commission for ratification and approval, the negotiation team plays an integral part in the development of an agreement and, therefore, is subject to the requirements of the Sunshine Law."<sup>14</sup>

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<sup>11</sup> Gradison, supra, 296 So.2d 473 (Fla. 1974).

<sup>12</sup> News' Press Publishing Co., Inc. v. Carlson, 410 So.2d 546 (Fla. 2d DCA 1982).

<sup>13</sup> Wood v. Marston, 442 So.2d 934, 938 (Fla. 1983).

<sup>14</sup> Opinion of Florida Attorney General Robert Butterworth, Fla. AGO 1994 – 21. The Attorney General gave that opinion in response to an inquiry by the City of Miami about the applicability of the Sunshine Law to negotiations with the Miami Heat. It therefore is difficult to reconcile the actions of the City complained of in this action with the law. Plaintiffs respectfully submit that the City knew it was breaking the law. Governor Crist agrees. Opinion of Florida Attorney General Charles Crist, Fla. AGO 2005-06 ["As a statute enacted in the public interest to protect the public from "closed-door" politics, the Sunshine Law must be broadly construed to effect its remedial and protective purpose. The courts of this state have repeatedly stated that it is the entire decision-making process to which the Sunshine Law applies and not merely a

11. In February 2007, the City Commission by resolution affirmed the roles of the City Mayor and the City Manager as negotiators of an agreement with the County and the Florida Marlins to build a baseball stadium. In March 2007, the County's Board of Commissioners resolved that the County Manager or his designee would negotiate the agreement(s) between or among the County, the City, and the Florida Marlins for the construction of a baseball stadium, plus any related agreements.

12. From February 2007 through February 2008, the City's negotiators conducted meetings and formed plans and proposals for the construction and operation of a baseball stadium. From February 2007 through February 2008, the County's negotiators conducted meetings regarding the construction and operation of a baseball stadium. Between February 2007 and February 2008, the City's negotiators, the County's negotiators, and negotiators for the Florida Marlins, LLP, held meetings regarding plans, proposals for the construction, funding, and the operation of a baseball stadium.

13. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state Attorney Generals, no one gave the public notice of the various meetings held by the City's negotiators, the County's negotiators or of the two in tandem and with the representatives of the Florida Marlins, LLP. The meetings were not open to the public. No minutes were made available to the public.

14. Between February 2007 and February 2008, one or more of the negotiators for Miami-Dade County met with individual County Commissioners to discuss the progress and terms of the negotiations that were ongoing with regard to construction of a baseball stadium and agreements relating thereto.

15. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state Attorneys General, no one gave the public notice of the meetings between any of the County

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formal assemblage of a public body at which voting to ratify an official decision is carried out."]

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negotiators and any of the County commissioners. The meetings were not open to the public. No minutes were made available to the public.

16. Between February 2007 and February 2008, one or more of the City of Miami negotiators met with individual City Commissioners to discuss the progress and terms of the negotiations that were ongoing with regard to construction of a baseball stadium and agreements relating thereto.

17. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state's Attorneys General, no one gave the public notice of the meetings between any of the City negotiators and any of the County Commissioners. The meetings were not open to the public. No minutes were made available to the public.

18. During a February 21, 2008 City Commission meeting, the City Mayor acknowledged that he had had extensive and numerous briefings with members of the City Commission regarding the financial aspects of the baseball agreement.

19. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state Attorney Generals, no one gave the public notice of the meetings between the Mayor and any of the City Commissioners. The meetings were not open to the public. No minutes were made available to the public.

20. During a February 21, 2008 *City* Commission meeting, the *County* Mayor acknowledged that the City's and the County's negotiating teams had engaged in "intense and thoughtful negotiations" with the Marlins in which all parties had made substantial compromises, although not identifying what the compromises were.

21. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state Attorney Generals, no one gave the public notice of any meetings between any of the City negotiators, the County's negotiators and the Marlins negotiators. The meetings were not open to the public. No minutes were made available to the public.

22. On February 21, 2008, the Miami-Dade County Board of Commissioners approved the BSA.

23. On February 21, 2008 City of Miami Commission approved on a 4-1 vote the agreement for a baseball stadium to be located at the site of the old Orange Bowl.

24. Between February 2008 and the present, the City's negotiators and the County's negotiators have continued to conduct meetings and hold discussions regarding the plans, proposals and terms of the five agreements related to the BSA, including the CAA, the OA, the PA, the AA, and the NRA.

25. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state Attorney Generals, no one gave the public notice of any of those meetings. The meetings were not open to the public. No minutes were made available to the public.

26. Since February 2007 and continuing to the present, members of the County's negotiating team have met with members of the Board of County Commissioners to discuss the BSA and the progress in negotiation of one or more of its related agreements.

27. However, notwithstanding the clear requirements of the Florida Constitution and Florida Statutes, Florida decisional law, and the opinions of the state's Attorneys General, no one gave the public notice of any of those meetings. The meetings were not open to the public. No minutes were made available to the public.

28. A special meeting of the City Commission was held on February 13, 2009 for the purpose of approving the agreements relating to the BSA. During that meeting, one Commissioner voted against all of the related agreements. He decried the BSA and the related agreements as a "text book City of Miami backroom deal." Another Commissioner requested amendments to the proposals but the Chairman of the City Commission belittled any effort by any Commissioner to alter any term of the proposed deal, stating "You just don't do this at this last minute - where you pop up these things where nobody has had an opportunity to negotiate."

29. The City's flagrant and rampant violations of the citizens' Sunshine rights continued even during the February 13, 2009 special meeting. The Chairman of the Commission declared recesses during the Commission meeting so that members of the negotiating teams of the City, the County and the Marlins could meet and confer. The negotiators left the Commission chamber for the second floor (where the offices of the City's Mayor and Manager are located). No one in the public knows what happened: all negotiations at that time were closed to the public.

30. On information and belief, the Florida Marlins or their associates or affiliates have directly or indirectly arranged, sponsored or held fundraisers for Commission members or members of the negotiating teams.

31. The City published notice of a special meeting of the Miami City Commission to be held on March 4, 2009, again for the purpose of considering and voting upon the agreements. Similarly, the County published notice of a special meeting of the County Commission for March 9, 2009 for the purpose of considering and voting on the five related agreements.

#### COUNT I

32. Plaintiffs reaver and reallege paragraphs 1 through 31.

33. Plaintiffs are in doubt as to their rights and liabilities and seek a declaratory decree by this Court as to same:

A. Plaintiffs contend that all meetings and/or negotiations by or on behalf of the City or the County or both with respect to the matters addressed herein constitute public meetings that are subject to the Sunshine Law.

B. Plaintiffs contend that the Defendants violated the rights of the citizenry by negotiating the terms of the BSA and its related agreements out of the salutary sunlight.

34. Plaintiffs seek a declaration by this Court that:

A. The negotiations conducted thus far by the City and/or the County with respect to the BSA and its related agreements have violated the Sunshine Law.

B. The BSA is void.

C. The BSA's related agreements will be void unless the Defendants accord the citizenry its full rights under the Sunshine Law.

35. If Plaintiffs prevail in this action, they are entitled by statute to an award of attorneys' fees.

WHEREFORE Plaintiffs sue Defendants for a declaratory decree and all relief incident thereto, as well as attorneys' fees and costs.

COUNT II  
EQUITABLE RELIEF

36. Plaintiffs reallege and reaver Paragraphs 1 through 31.

37. The Defendants have conducted meetings or negotiations relating to the Florida Marlins, the proposed baseball stadium, the BSA, or its related agreements for which reasonable, advance notice was not given to the public, which were not open to the public, and for which minutes were not made available to the public, in violation of the Sunshine Law.

38. The clear legal rights of the Plaintiffs under the Sunshine Law have been violated by the matters complained of herein. By law, there is an irrebuttable presumption of irreparable injury that derives from any violation of the Sunshine Law. The Plaintiffs have no remedy at law.

39. Plaintiffs respectfully request that this Court enter a permanent injunction against the City and the County forbidding the City and County from holding or conducting any further meetings or negotiations with respect to the Florida Marlins, the baseball stadium, the BSA, or its related agreements or any matters related or incident thereto unless the City and/or the County (as applicable) have first given reasonable and adequate notice to the public of the proposed meeting or negotiation, have conducted all such meetings or negotiations open to the public, and have made available to the public all minutes of such meetings or negotiations.

WHEREFORE the Plaintiffs sue for a permanent injunction forbidding the City and County from holding or conducting any further meetings or negotiations with respect to the Florida Marlins, the proposed baseball stadium, the BSA, or its related agreements or any matters related or incident thereto unless the City and/or the County (as applicable) have first given reasonable and adequate notice to the public of the proposed meeting or negotiation, have conducted all such meetings or negotiations open to the public, and have made available to the public all minutes of such meetings or negotiations, plus all relief incident thereto, plus attorneys' fees and costs.

Dated: February 25, 2009

Respectfully submitted,

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