

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA**

**T&C ASSET MANAGEMENT LLC, a Colorado  
limited liability company, d/b/a HREC  
DEVELOPMENT RESOURCES,**

Plaintiff,

CASE NO. 10-031391(19)

vs.

Complex Litigation Division

**BROWARD COUNTY, a political subdivision  
of the State of Florida,**

Defendant.

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**FINAL JUDGMENT**

Subsequent to the Court finding a “transaction” occurred, entitling the Plaintiff to an “advisory fee” the court held a bench trial on damages.

The evidence was in conflict and at times the County raised issues relating to the Court’s summary judgment order. Prior to the hearing the Court advised the parties it would consider the issues raised by the County in their motion for reconsideration. The Court has addressed the County’s Motion for Reconsideration under separate order filed contemporaneous with this final judgment.

At the onset the Court recognizes and compliments Tony Rodriguez for Broward County and Glen Waldman for the Plaintiff for their cohesive and passionate presentations of the evidence and outstanding arguments advanced on behalf of their respective clients.

Four witnesses were called in the damages phase of the trial, the corporate representative for the Plaintiff; Broward County's former CFO; Nicki Grossman, Chief of Broward Tourism; and a retained expert for Broward County. The Court is tasked with the same considerations as a jury in determining the credibility, believability and weight to give a witness's testimony.

Particularly compelling was the trial testimony of Michael Geoghegan, Broward County's former Chief Financial Officer and Director of Finance between October 2006 and July 2009.

Although the Court finds all the witnesses who testified to be believable and credible Mr. Geoghegan's unique role with the County as CFO; his internal communications to the County Commission regarding the project; his overall demeanor, knowledge and lack of interest in the outcome of the case was compelling.

Mr. Geoghegan was a central participant and intimately involved in the County's convention center hotel project. He participated in advising the County

Commission; negotiated fiscal matters related to the project; investigated potential sources of funding for the project; and made a variety of miscellaneous but important decisions and recommendations to the Commission regarding the project.

Mr. Geoghegan was clear, straightforward, and unambiguous that HREC's Advisory Fee was not contingent upon a financial closing, the issuance of tax-exempt bonds the undertaking of construction or the completion of it. Tr., p. 196, line 16 to p. 197, line 23 ("I was pretty clear on that."); p. 198, lines 3-12; p. 200, lines 11-15. Mr. Geoghegan corroborated HREC's claim to an Advisory Fee sought in this case. Tr., p. 225, line 13 to p. 226, line 7 ("It was my understanding the role that Mr. Tobin [of HREC] was going to be playing as a transaction advisor, that his job was to bring the developer, the hotel brand, the financing team - - bring a viable project").

Having reconfirmed a "Transaction" occurred and an advisory fee was earned, the Court next examines the damages incurred by and entitlement, if any, to an award in favor of the Plaintiff.

### **CALCULATION OF ADVISORY FEE**

Mr. Tobin, principal for the Plaintiff testified the convention center hotel project was understood by the County Commission and its staff to be pursued only

as a tax-exempt transaction.<sup>1</sup> Tr., p. 80, lines 8-19; p. 81, lines 6-24. Indeed, Mr. Tobin explained that all of the financial structure presentations to the County and/or workshops with the County were based upon a public - - not private - - plan of financing. Tr., p. 83, line 13 to p. 92, line 25; p. 156, lines 4-25; *see also* Plaintiff's Composite Exhibit 4. Consistent with Mr. Tobin, Mr. Geoghegan confirmed that, at all times, the project “. . . centered specifically on a tax-exempt financing” basis.<sup>2</sup> Tr., p. 180, lines 11-21. On or about June 15, 2007, Mr. Geoghegan authored a memorandum to the Board of County Commissioners advising that “. . . for [a] publicly financed transaction . . . HREC would be compensated approximately 2.2 million.” Tr., p. 182, line 17 to p. 185, line 3; *see also* Plaintiff's Exhibit 15.<sup>3</sup> Mrs. Grossman also admitted that, at all times, the public financing of the convention center hotel project was the preferred and most discussed method.

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<sup>1</sup> For its part, the County conceded at trial that the “public financing percentage rate” of 0.7% was applicable to HREC's damages claim. Tr., p. 39, lines 2-7

<sup>2</sup> Mr. Geoghegan confirmed that a privately financed project simply was not viable, and that the County exclusively pursued a publicly financed structure for this project. Tr., p. 188, line 17 to p. 190, line 8; p. 201, lines 2-9. Mr. Geoghegan further confirmed that, as a result of the January 15, 2008 Letter of Intent agreement, the County obligated itself to a public financing. Tr., p. 194, line 3 to p. 195, line 9; *see also* Plaintiff's Exhibit 13.

<sup>3</sup> Mr. Geoghegan undertook due diligence with regard to other consultants' advisory fees paid in connection with, specifically, convention center hotel projects. Tr., p. 185, lines 4-11. Mr. Geoghegan testified that, in addition to his own June 15, 2007 memorandum, he had, on other occasions, advised the County's Commissioners how HREC's Advisory Fee would be calculated. Tr., p. 185, line 25 to p. 187, line 16.

Mr. Tobin testified with regard to the rather simple calculation of the Advisory Fee utilizing the Sources & Uses Table.<sup>4</sup> From the total sources of \$398,155,000 shown in the Table, the "Debt Reserve Fund" in the amount of \$39,213,921 is deducted<sup>5</sup> - - leaving a subtotal of \$358,941,079. That lodestar is then multiplied by 0.7% to arrive at the gross Advisory Fee in the amount of \$2,512,588. Tr., p. 128, line 14 to p. 129, line 11. In order to arrive at the net Advisory Fee in the amount of \$2,232,208, before pre-judgment interest, the parties' agreement further required an offset of HREC's prior hourly fees - - \$280,380 - - paid at the time of the Transaction. Tr., p. 129, line 12 to p. 133, line 23; *see also* Plaintiff's Exhibits 1, 9 and 10.

Finally, Mr. Tobin performed the calculation for pre-judgment interest in the amount of \$308,868. Tr., p.134, line 3 to p. 137, line 22. The Court finds that the calculation of the Advisory Fee provides a reasonable basis to award damages and is supported by competent substantial evidence. *Centex-Rooney Construction Co., Inc. v. Martin County*, 706 So. 2d 20 (Fla. 4<sup>th</sup> DCA 1977), *rehearing den.* March 11, 1998) (recovery of damages not prevented "... where it is clear that substantial

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<sup>4</sup> The Table, Plaintiff's Exhibit 8, shows "... the sources represent[ing] the proceeds from an issuance of bonds" while the "... uses constitute how they are allocated across the project itself." Tr., p. 123, line 17 to p. 125, line 15.

<sup>5</sup> Mr. Tobin further explained that, with regard to the Table, "... financing costs are soft costs" properly included in the calculation. Tr., 125, line 25 to p. 126, line 17. Mr. McGraw agreed with Mr. Tobin on this point. Mr. Tobin further testified that the Debt Reserve Fund is deducted because "... if not used, [it] is either paid back to the investors or in most instances, it's used to defease existing bonds." Tr., p. 127, line 10 to p. 128, line 13.

damages were suffered and there is a reasonable basis in the evidence for the amount awarded.”), quoting *Adams v. Dreyfus Interstate Dev. Corp.*, 352 So. 2d 76, 78 (Fla. 4<sup>th</sup> DCA 1977).

Based upon the foregoing, testimony of the witnesses at trial, and documentary exhibits considered by the Court, competent substantial evidence supports Plaintiff's principal losses of \$2,232,208 which sum represents Plaintiff's net Advisory Fee. Plaintiff is also entitled to an award of pre-judgment interest through February 17, 2012 which sum amounts to \$308, 868.

It is therefore **ADJUDGED**, Plaintiff T & C Asset Management LLC shall recover from Defendant Broward County the sum of \$2,232, 208 on principal, and prejudgment interest in the sum of \$308,868 making a total of \$2,541,076 that shall bear interest at the statutory rate of 4.75% a year for which let execution issue.

The addresses of the parties are:

HREC Development Resources

Attn: Mark Tobin, President

6400 South Fiddler's Green Circle Suite 1730

Greenwood Village, CO 80111

Broward County Governmental Center

Attn: John E. Rodstrom, Jr., Mayor

115 South Andrews Avenue Room 416

Fort Lauderdale, FL 33301

Broward County Administration Office

Attn: Bertha Henry, County Administrator

115 South Andrews Avenue Room 409

Fort Lauderdale, FL 33301

The Court reserves jurisdiction to determine entitlement to attorneys' fees or taxable costs as may be applicable under the parties' agreement or otherwise provided by law.

**DONE and ORDERED** in Fort Lauderdale, Broward County, Florida this

9 day of April, 2012.

**A TRUE COPY**

**APR 09 2012**

  
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**JACK TUTER**  
**Circuit Court Judge**

Copies furnished:

Glenn J. Waldman, Esq.

Tony Rodriguez, Esq.