

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN
AND FOR MARION COUNTY, FLORIDA**

CITY OF OCALA, a Florida municipal corporation,
Plaintiff,

vs.

Case No: 2011-3112-CA-G

**THE SCHOOL BOARD OF MARION COUNTY,
FLORIDA, a political subdivision of the State of
Florida,**
Defendant.

FILED
CIRCUIT CIVIL
2012 FEB 23 PM 4:25
DAVID R. ELLSPERMAN
CLERK CIRCUIT COURT
MARION COUNTY, FL

**ORDER GRANTING DEFENDANT'S EMERGENCY MOTION FOR TEMPORARY
INJUNCTION**

Before the Court is Defendant's Emergency Motion for Temporary Injunction, filed February 14, 2012. Plaintiff filed a Response in Opposition on February 17, 2012, supplemented such response on February 20, 2012, and the matter was heard on February 20, 2012. Having considered the motion, response as supplemented, and other papers filed in the Court's file, heard evidence, testimony, and argument of counsel, and being otherwise informed of the premises, the Court finds as follows:

Defendant moves, pursuant to Florida Rule of Civil Procedure 1.610, to enjoin Plaintiff from discontinuing Defendant's water and electric service while the instant case is pending. At issue in the amended complaint is payment of fees for stormwater and fire service, which are part of the unified utility bill Plaintiff issues to its utility customers. Also included in the unified utility bill are fees for electric and water services. Although such bills are unified, the fees for each particular service are listed in an itemized fashion. It is undisputed that Defendant ceased paying the stormwater and fire service fees.¹ However, Defendant is current in payment of its electric and

¹ The parties have participated in the alternative dispute resolution procedures provided in Chapter 164, Florida Statutes (2011), regarding the fire service fees, but neither party has taken steps to continue the process regarding stormwater fees.

water fees.

Plaintiff seeks to require Defendant to enter into a written agreement for provision of utility services and to require payment of a substantial deposit in the amount of \$724,000.00. Plaintiff threatens discontinuation of utility services as a consequence if Defendant refuses to enter such written agreement and tender the deposit.

By Ordinance 70-686(c), Plaintiff has the authority to discontinue all or some of the utility services if an account becomes delinquent. Ocala, Fl., Code § 70-686(c) (2009). However, no evidence was presented that Defendant has available an alternative utility service provider to the properties receiving the services at issue in this case, and Plaintiff has not pointed to any authority that would require Defendant to enter into a written agreement.²

Evidence and testimony was elicited relating to the parties' respective positions in the underlying lawsuit sufficient for the Court to conclude that each governmental entity appears to be proceeding in good faith in litigation, but seemingly are miscommunicating or not communicating, for reasons not relevant here. Competent evidence was elicited for the findings and rulings herein made.

Elements Considered for Injunctive Relief

For a temporary injunction to issue, a party must show the following: 1) it will suffer irreparable harm unless the status quo is maintained and an adequate remedy at law is unavailable, 2) it is substantially likely to succeed on the merits, 3) the threat of injury to it outweighs any possible harm to the other party, and 4) a temporary injunction will serve the public interest.

Florida High Sch. Athletic Ass'n. v. Melbourne Cent. Catholic High Sch., 867 So. 2d 1281, 1285-86 (Fla. 5th DCA 2004).

Irreparable Harm and Unavailability of Adequate Remedy at Law

Defendant is mandated by the Florida Constitution to provide free public education to

² There is case law suggesting that this very type of contract is not necessary. See *City of Gainesville v. Gainesville Gas & Electric Power Co.*, 62 So. 2d 919, 921-22 (Fla. 1913).

children who live within the City of Ocala (Plaintiff). *See* FL Const. art. 9, § 1. Defendant has shown that interruption of electric and water service to the schools within the City will cause irreparable harm in that discontinuation of those services would harm the health and safety of the students, thus disrupting the operation of those schools. Defendant has further shown that interruption of electric and water service to the ancillary facilities will greatly disrupt its computer systems, which will affect electronic student testing, payroll operations, and accounts payable operations. Citizens have a valid interest in school operations not being disrupted, *see Lieberman v. Marshall*, 236 So. 2d 120, 126 (Fla. 1970), and harm to such interest cannot be adequately remedied at law, *see Gainesville Gas*, 62 So. 2d at 921-22.

Substantial Likelihood of Success on the Merits

Defendant has shown a substantial likelihood of success on the merits of the underlying case. Defendant is substantially likely to be immune from suit to collect stormwater fees. *See City of Gainesville v. State Dep't. of Transp.*, 920 So. 2d 53, 54 (Fla. 1st DCA 2005) (the statutes do not provide a waiver of sovereign immunity for collection of stormwater fees, so without a written agreement, no suit can be maintained for collection of such fees); *see also City of Key West v. Florida Keys Cmty. Coll.*, __ So. 3d __, 2012 WL 126858 (Fla. 3d DCA Jan. 18, 2012) and *City of Clearwater v. Sch. Bd. of Pinellas County*, 17 So. 3d 1287 (Fla. 2d DCA 2009). Defendant is further substantially likely to be immune from suit to collect fire service fees, and perhaps may be exempt from payment of such fees because they are assessed regardless of use under Plaintiff's ordinance.³ *See* Fla. Stat. § 1013.371 (2011). *See also Hernando County Water and Sewer Dist. v. Hernando County Bd. of Pub. Instruction*, 610 So. 2d 6, 8-9 (Fla. 5th DCA 1992) (school board was exempt from an impact or service availability fee under the predecessor to Section 1013.371, Florida Statutes). Further, at this time, Plaintiff has not cited to any authority that its tort claims are not barred by the doctrine of sovereign immunity.

³ A user fee is one that is charged for actual use of services, but Plaintiff's ordinance provides for a fire service fee regardless of use. *See City of Gainesville v. State Dep't. of Transp.*, 778 So. 2d 519, 524 (Fla. 1st DCA 2001); Ocala, Fl. Code § 30-50, *et seq.*

Threatened Injury to Defendant Outweighs Possibility of Injury to Plaintiff

Defendant has shown that interruption of constitutionally-mandated provision of public school education will result if electric and water services are discontinued at the school facilities within the City. Plaintiff has argued that it may be forced to raise utility rates for all of its customers if Defendant does not pay stormwater and fire service fees. Since a temporary injunction simply maintains the status quo while litigation is pending, *see Florida High Sch. Athletic Ass'n.*, 867 So. 2d at 1285-86, Defendant has shown that the threatened imminent injury to the schools outweighs the possibility of higher fees for other utility services at some point in the future. *See Lieberman*, 236 So. 2d at 126. *See generally Ware v. Polk County*, 918 So. 2d 977 (Fla. 2d DCA 2006).

Temporary Injunction Will Serve the Public Interest

Although both parties to this case are public entities, Defendant has established the gravity of the injury to the schools if electric and water services are discontinued. At issue in this case are fees unrelated to electric and water services, and Defendant is current in its payment of electric and water service fees. Plaintiff, by its own ordinance, which uses the “and/or” designation, does not have to discontinue all utility services to a customer simply because fees for one or two particular services are in dispute or have not been paid. *See Ocala, Fl.*, Code § 70-686(c) (2009).

For all of the foregoing considerations, it is **ORDERED**:

1. Defendant’s motion is granted.
2. Plaintiff is hereby mandatorily enjoined from discontinuing electric and water service to the public school facilities within the City of Ocala, so long as Defendant remains current in its payment for electric and water service, and so as not to disrupt Defendant’s constitutional obligation for the provision of free public education. This injunction is effective instantan.
3. This injunction shall remain in place until further order of this Court.

4. No bond shall be required. *See* Fla. R. Civ. P. 1.610; *Lieberman*, 236 So. 2d at 124-25.

IT IS SO ORDERED at the Marion County Judicial Center, Ocala, Florida, this 22nd day of February, 2012.


JACK SINGBUSH
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the following by U.S. Mail this 22nd day of February, 2012:

Patrick G. Gilligan, Esq.
1531 SE 36th Ave.
Ocala, FL 34471

Susan M. Seigle, Esq.
203 NE 1st St.
Gainesville, FL 32601


Judicial Assistant