

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

CIRCUIT CIVIL DIVISION

CASE NO. 14-29339-CA-08

LEWIS J. THALER,
Candidate, Office of Mayor,
City of Sunny Isles Beach, Florida,

Plaintiff,

vs.

MAYOR GEORGE "BUD" SCHOLL, City
of Sunny Isles Beach, Florida; PENELOPE
TOWNSLEY, in her official capacity as
Supervisor of Elections for Miami-Dade
County, Florida, and as a member of the
Canvassing Board; CANVASSING
BOARD OF MIAMI-DADE COUNTY,
FLORIDA, consisting of SHELLEY J.
KRAVITZ, in her official capacity as
County Judge and a substituting member of
the Canvassing Board; and JANE A.
HINES, in her official capacity as City
Clerk, City of Sunny Isles Beach, Florida,

Defendants.

FINAL SUMMARY JUDGMENT
IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFF

THIS CAUSE came before the Court on February 25, 2016 for a hearing on the following

Motions:

1. Plaintiff's Motion for Final Summary Judgment dated August 4, 2015
("Plaintiff's Motion");
2. Defendant Mayor George "Bud" Scholl's Motion for Final Summary Judgment,
dated September 29, 2015;

3. Defendant City Clerk Jane A. Hines' Motion for Summary Judgment, dated September 30, 2015; and

4. Defendant Miami-Dade County Supervisor of Elections Penelope Townsley and the Canvassing Board of Miami-Dade County's Motion for Summary Judgment, dated November 10, 2015 (collectively the "Defendants' Motions").

The Court, having reviewed the parties' motions (and corresponding exhibits), the opposition papers filed in response thereto, and relevant legal authority; having considered the oral arguments of counsel; and being otherwise duly advised in the premises, hereby makes the following factual findings and conclusions of law:

1. Pursuant to the parties' stipulated Agreed Statement of Relevant Facts, filed with this Court on August 4, 2015 and attached hereto, Defendant Mayor George "Bud" Scholl, Plaintiff Lewis J. Thaler, and Alex Amselem ("Amselem") all qualified as candidates for the City of Sunny Isles Beach mayoral race of November 4, 2014 (the "City of Sunny Isles Beach Election").

2. The names of the three candidates for the Office of Mayor were printed on the general election ballot in accordance with Section 101.2512, Florida Statutes.

3. On October 13, 2014, twenty-two (22) days before the City of Sunny Isles Beach Election, candidate Amselem withdrew from the mayoral race.

4. It is not in dispute that the Miami-Dade County Supervisor of Elections followed the Florida Division of Elections guidelines regarding the withdrawal of a candidate and provided voters with notice of Amselem's withdrawal.

5. Specifically, a Notice to Voter was published in The Miami Herald and was posted in privacy booths used at all 25 early voting locations and the booths designated for use at

the City of Sunny Isles Beach precincts on November 4, 2014. The Notice to Voter was also included with the ballots that had not yet been mailed to absentee voters.

6. That Notice to Voter advised voters that “*A vote cast for Alex Amselem will not count.*” Nevertheless, approximately 327 votes were cast for Amselem.

7. These votes were excluded from the Official Certificate issued by the Canvassing Board of Miami-Dade County, which published the results as follows:

George “Bud” Scholl: 1,489 votes

Lewis J. Thaler: 1,309 votes

8. On November 17, 2014, Plaintiff filed its Verified Motion for Emergency Injunctive and Declaratory Relief to Order Preparation of a Run-Off Election Ballot for the City of Sunny Isles Beach Election for Mayor.

9. At a status conference before this Court on January 15, 2015, the parties agreed to resolve this action by filing cross motions for final summary judgment.¹

10. Through the motions for final summary judgment, the parties have asked this Court to determine whether votes cast for the withdrawn mayoral candidate, Alex Amselem, should have been counted, thus entitling Plaintiff Thaler to the injunctive and declaratory relief he seeks in the form of a mandated run-off election.

11. Important to the Court’s analysis of the question presented, is the Florida Supreme Court’s ruling in *McQuagge v. Conrad*, 65 So. 2d 851 (Fla. 1953), which this Court considers controlling in this matter and which contains the facts most similar to the facts before this Court.

¹ On October 1, 2015, Plaintiff requested a special set hearing on its August 4, 2014 Motion, which the Court initially set for hearing on November 23, 2015 but ultimately re-scheduled for hearing on February 25, 2016.

12. The Court agrees with Defendants' interpretation of *McQuagge* and concludes that "knowledge of the voters is material" to determining the treatment of votes cast for a withdrawn candidate. When the electors are provided with notice of a candidate's withdrawal in a manner that allows the Court to find that the electors had knowledge of that withdrawal, votes that are cast for the withdrawn candidate are properly set aside as null and void. *McQuagge*, 65 So. 2d at 853 ("Knowledge of the voters is material and 'when votes are cast for a person known by the voters to be deceased, [such votes] they shall be treated as void and thrown away and are not to be counted in determining the result of the election as regards other candidates.'")

13. This Court's ruling is consistent with the Third District Court of Appeal's decision in *Merrill v. Dade Cnty. Canvassing Bd.*, 300 So. 2d 28 (1974), where the Third DCA applied the standard set forth in *McQuagge* but concluded – based on a set of facts quite distinguishable from the facts before this Court – that there was *not* "sufficient indication that the voters [] knew [the candidate at issue] was either disqualified or ineligible to be elected to the 115th District seat." The court further noted that "after a due consideration of the size of Dade County and the problems of disseminating information to the voters during the course of a campaign, **it cannot adequately be shown** that those who voted for [the candidate at issue] knew she was disqualified, but went ahead and cast their votes for her anyway as a negative expression. *Merrill*, 300 So. 2d at 30 (emphasis supplied).

14. It is clear to this Court that the Notice to Voter, prepared and disseminated in accordance with the State's recommended guidelines and consistent with practice by the Florida Courts, provides the knowledge required by both *McQuagge* and *Merrill*. See, e.g., *Diaz v. Lopez*, No. 15-7661 CA 23 (Fla. 11th Cir. Ct. filed Apr. 20, 2015) ("The Supervisor of Elections is enjoined and required to comply with the State guidelines for disqualified candidates as

submitted in Exhibit A to the Supervisor's Answer.") *aff'd sub nom. Diaz v. Lopez*, 167 So. 3d 455 (Fla. 3d DCA 2015). *See also Cobb v. Thurman*, 957 So. 2d 638, 644 (Fla. 1st DCA 2006) (the practice of providing factual, straightforward notice at the polling location regarding a recent change of events is "essential to ensuring an effective vote"); *Levey v. Dijols*, 990 So. 2d 688 (Fla. 4th DCA 2008) (approving the posting of notice at polling locations to ensure that voters are properly informed and cast a meaningful ballot).

15. Thus, the voters in the Sunny Isles Election had knowledge that "*A vote cast for Alex Amselem will not count.*"

16. Therefore, in the same way that the Supreme Court in *McQuagge* assumed knowledge based upon the prominence of an individual in a small community, this Court finds that knowledge of Amselem's withdrawal can be assumed based on the clear, largely printed Notice to Voter placed in every single voting booth used by electors who cast votes in the 2014 Sunny Isles Election.²

17. Thus, the Court concludes, based on the parties' Agreed Statement of Relevant Facts and the controlling case law of *McQuagge*, that the votes cast for withdrawn candidate Alex Amselem were properly discarded as null and void and further upholds the County Canvassing Board Official Certificate, whereby Defendant Mayor George "Bud" Scholl received more than fifty percent (50%) of the valid vote.

WHEREFORE, IT IS HEREBY **ORDERED** and **ADJUDGED** as follows:

1. Plaintiff's Motion for Final Summary Judgment is **DENIED**.

² Even if this Court were to assume that all 100 absentee ballots were mailed without the Notice to Voter (which is not the case), the Court would nevertheless find that those 100 ballots would not change the result of the election in a manner that would necessitate a runoff election. Consequently, the Court refrains from engaging in further analysis on this point. *See Fla. Stat. § 102.168(3)* (noting that election may only be contested if there is "rejection of a number of legal votes sufficient to change or place in doubt the result of the election").

2. The Defendants' Motions for Final Summary Judgment are **GRANTED** for the reasons set forth above.

3. Final Judgment is hereby entered in favor of the Defendants and against the Plaintiff, who takes nothing by this action and shall go hence without day.

4. This Court reserves jurisdiction to consider any timely filed motions for attorneys' fees and/or costs.

DONE AND ORDERED in Chambers, in Miami-Dade County, Florida, this 15 day of March 2016.



THE HONORABLE JUDITH L. KREEGER
CIRCUIT COURT JUDGE

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