

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO and JULIE H.
HAMILTON,

Plaintiff,

v.

CITY OF BOCA RATON,
FLORIDA and COUNTY OF PALM
BEACH,

Defendants.

**DEFENDANT, CITY OF BOCA RATON'S RESPONSE TO
PLAINTIFFS' BILL OF COSTS**

Defendant, City of Boca Raton ("City"), responds to the Bill of Costs, filed by Plaintiffs, Robert Otto and Julie Hamilton (collectively, "Plaintiffs"), and states:

OVERVIEW

Plaintiffs seek an award of all of their costs, jointly and severally, against both the City and Defendant, Palm Beach County ("County"), even though the plain language of the accepted Offers of Judgment provided for each Defendant to pay only its "pro rata share" of the costs. The City objects to this request because a joint and several imposition of costs would violate the plain language of the terms of the accepted Offers of Judgment. Rather, Plaintiffs' costs should be imposed proportionally based on each Defendant's share of the total \$175,000 judgment, of which the County paid Plaintiffs a total of \$100,000, whereas the City paid a total of \$75,000.

Specifically, on April 6, 2023, this Court entered the Final Judgment in favor of Plaintiffs, following Plaintiffs' acceptance of the City and County's respective Offers of Judgment. *See* ECF Nos. 196, 203. The County paid Plaintiffs a total of \$100,000, and the City paid a total of \$75,000.

Notably, the City and the County (collectively, “Defendants”) offered to pay only their respective, pro rata share of costs accrued to the date in their Offers of Judgment, which Plaintiffs accepted. ECF Nos. 196, 203.

Although the City does not dispute that the specific costs Plaintiffs seek are taxable under 28 U.S.C. § 1920, the City objects to said costs being taxed against the County and City jointly and severally. Instead, costs should be imposed proportionally based upon each Defendants’ proportionate share of the total \$175,000.00 judgment, namely, 3/7ths against the City and 4/7ths against the County. Accordingly, the City respectfully requests that costs be taxed against the County in the amount of \$3,486.36, and that costs be taxed against the City in the amount of \$2,615.08 of the total \$6,101.44 award sought by Plaintiffs in accordance with the terms of the Defendants’ accepted Offers of Judgment.

ARGUMENT

The interpretation of offers of judgment under Rule 68 is guided by the application of traditional contract law principles, with the plain language of the offer being the determining factor. “Courts apply traditional principles of contract law to interpret offers of judgment made under Rule 68.” *Pope v. Lil Abner’s Corp.*, 92 F. Supp. 2d 1327, 1327–28 (S.D. Fla. 2000) (quoting *Johnson v. University College of University of Alabama*, 706 F.2d 1205, 1209 (11th Cir. 1983) (requiring a “meeting of the minds” for acceptance of an offer of judgment)). “The plain language of the offer dictates the result.” *Le v. Univ. of Pennsylvania*, 321 F.3d 403, 409 (3d Cir. 2003). Accordingly, the “default rule” in awarding fees and costs to the prevailing party, advanced by Plaintiffs, does not apply here because the language in the Offers of Judgment controls. *See* Fed. R. Civ. P. 68; *Pope*, 92 F. Supp. 2d at 1327-28; *Johnson*, 706 F.2d 1205. The plain language of Defendants’ Offers of Judgment dictates that costs be imposed only in proportion to the City’s

and County's pro rata shares of the judgment and, therefore, a joint and several award would violate the terms of the Offers.

Further, although both the City's and County's ordinances were ultimately enjoined, Plaintiffs' claim that the injunctions were "meted out in equal parts against both Defendants" is misleading. ECF No. 213-1 at 2. Indeed, the effect of the County's challenged ordinance was broader than that of the City's ordinance, as the latter applied only within the City's jurisdictional limits; the County's ordinance applied to the entire County.¹ Plaintiffs' claims regarding the "primary" and "secondary" relief are also unsupported by the record. Plaintiffs pursued both an injunction and compensatory damages without ever classifying one form of relief versus another as "primary" or "secondary." *Id.*

Although both challenged ordinances were enjoined, the County also paid a larger percentage of the final, monetary judgment than the City. The mere fact that both Defendants agreed to pay costs does not invalidate the plain language in the Offers of Judgment – accepted by Plaintiffs – that the City and County would pay their respective, pro rata portion of costs. *See* Fed. R. Civ. P. 68; *Pope*, 92 F. Supp. 2d at 1327-28; *Johnson*, 706 F.2d 1205. Therefore, Plaintiffs' "equal parts" claim does not reflect either the actual jurisdictional scope of the challenged ordinances, the final judgment, or the plain (controlling) language of the Offers of Judgment.

¹ There are multiple approaches to allocating costs proportionately. In this case, the Plaintiffs challenged the ordinances adopted by both the County (a larger jurisdiction that includes the City) and the City (one of many municipalities within the County). The County ordinance had a county-wide application, whereas the City ordinance was confined to the City's limited jurisdiction. Rather than pro rating costs based upon the relative amount of the judgments, an alternative method could be to pro rate costs based upon the relative population of the City compared to the County. This, of course, would result in the County being allocated nearly all of the costs. The population of the City in 2023 is 94,885 (<https://worldpopulationreview.com/us-cities/boca-raton-fl-population>), and the population of the County is 1,543,809 (*see* <https://worldpopulationreview.com/us-counties/fl/palm-beach-county-population>). A pro ration of costs based upon these population figures would allocate 6.146% of the costs to the City and 93.854% to the County. However, rather than allocate based upon the actual jurisdictional scope of the challenged ordinances, the City is willing to accept a pro rata allocation of 3/7 to the City and 4/7 to the County, based upon the proportionate shares of the judgments.

Alternatively, even if the Court were to deem the language of the Offers of Judgment to be unclear (which it is not), the Court should still apply its discretion and allocate costs based upon equitable principles. Beyond the language of the Offers of Judgment, “[w]hether to impose joint and several liability or apportion costs is ultimately an equitable matter left to a court’s discretion.” *Moore v. Shands Jacksonville Med. Ctr., Inc.*, No. 3:09-CV-298-J-34PDB, 2014 WL 12652475, at *7 (M.D. Fla. Apr. 3, 2014) (citing *In re Paoli R.R. Yard PCB Lit.*, 221 F.3d 449, 469 (3d Cir. 2000) (cited with approval by Eleventh Circuit in *State Farm Fire & Cas. Co. v. Silver Star Health and Rehab*, 739 F.3d 579, 586 (11th Cir. 2013); 10 C. Wright, A. Miller, & M. Kane, *Federal Practice & Procedure*, § 2668, at 243 & n.31 (3d ed. 1998) (collecting cases); *Ferguson v. Bombardier Servs. Corp.*, No. 8:03-cv-539-T-31DAB, 2007 WL 601921, at *7 (M.D. Fla. Feb. 21, 2007) (exercising discretion to apportion costs)). Factors supporting joint and several liability include: joint representation of the non-prevailing parties, common theories of liability or defense among the non-prevailing parties, equal cost attributions, and the unfairness of requiring the prevailing party to collect costs from several sources and bear the risk of non-payment from one or more of them.” *Moore*, 2014 WL 12652475, at *7 (citing *Concord Boat Corp. v. Brunswick Corp.*, 309 F.3d 494, 497 (8th Cir. 2002)). Conversely, factors supporting cost apportionment “include whether the court had consolidated cases on its own initiative, whether costs can be easily disaggregated, and unequal cost attribution.” *Id.* (citing *Paoli*, 221 F.3d at 470–71).

In this case, equity supports apportionment of the costs between the County and the City based on each Defendant’s total contribution to the Final Judgment for the following reasons: both Defendants are governmental entities; each Defendant represented itself; there is no unfairness to the Plaintiff in collecting from each government entity proportionately. *Moore*, 2014 WL 12652475, at *7. While the claims against both Defendants were similar, it is important to note

that two different ordinances were adopted by separate governmental entities with distinct jurisdictions. On the other hand, a relevant factor favoring the apportionment of costs arises from the unequal cost attribution based on the various transcript costs for County hearings and witnesses, versus City witnesses. Therefore, even without the controlling, “pro rata” plain language of the Offers of Judgment, the alternative, equitable approach would also support imposing costs proportionately based on Defendants’ pro rata share of the judgment, and not jointly and severally.

The County paid Plaintiffs \$100,000, while the City paid \$75,000, resulting in a ratio of 4/7ths for the County and 3/7ths for the City in relation to the total payment of \$175,000. Accordingly, based upon the plain language of the Offers of Judgment, as well as equitable principles, the City respectfully requests that the Court tax a total of \$2,615.08 against the City and \$3,486.36 against the County of the total \$6,101.44 cost award sought, reflecting the pro rata allocation between the Defendants.

Dated: May 26, 2023

Respectfully submitted,

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