

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO, et al.,

Plaintiffs,

v.

CITY OF BOCA RATON, FLA., and
COUNTY OF PALM BEACH, FLA.,

Defendants.

REPLY IN SUPPORT OF PLAINTIFFS' BILL OF COSTS

The Court should enter the full amount of taxable costs sought in Plaintiffs' Bill of Costs (dkt. 213), which is unopposed, and should award that amount jointly and severally against Boca Raton ("City") and Palm Beach County ("County"). The Court should reject the City's novel and unsupported argument for cost allocation, for the reasons detailed in Plaintiffs' Memorandum in Support of the Bill of Costs (dkt. 213-1) and the County's response to the Bill of Costs (dkt. 220).

Importantly, the City does not respond to, and therefore concedes, Plaintiffs' showing that the claims on which the City agreed to have Judgment entered included claims for conspiracy against the City and County as joint co-conspirators in a scheme they equally undertook to deprive Plaintiffs of their constitutionally protected rights. (Dkt. 213-1 at 2). As shown by Plaintiffs, and conceded through the City's silence, imposition of costs on a joint and several basis is not only "the default rule" generally, *State Farm Fire & Cas. Co. v. Silver Star Health & Rehab*, 739 F.3d 579, 585–86 (11th Cir. 2013), but also doubly justified where, as here, defendants are alleged to be co-conspirators in a joint conspiracy. *See id.* at 586.

The City misleadingly contends that, in its Offer of Judgment, it only agreed to pay costs "in proportion to the City's ... pro rata share[] **of the judgment.**" (Dkt. 218 at 2-3). However, the actual language (drafted by the City) in the City's Offer of Judgment is that the City will pay the "City's pro rata share of [Plaintiffs'] costs," without any qualification or limitation as to

defendants' monetary proportion of "the judgment." (Dkts. 196-1 at 1; 196-2 at 1). Similarly unavailing are the City's quixotic alternative bases for allocation of costs, such as based on the number of residents or geographical size of the City and the County. (Dkt. 218 at 3 n.1). The City could have included these purported allocation bases in its Offer of Judgment, but did not. Its revisionist efforts should be rejected.

Ultimately, without any limitations or qualifiers providing otherwise, the Court should and must interpret "the City's pro rata share of [Plaintiffs'] costs" in the City's Offer of Judgment in accordance with the default rule for joint and several liability. That is, where there are two tortfeasors who conspired with each other to violate Plaintiffs' civil rights, where each co-conspirator enacted an unlawful ordinance, and where each co-conspirator was enjoined in equal measure from enforcing its unlawful ordinance, the "pro rate share" of each co-conspirator's cost liability is equal, and joint and several liability should be imposed.

Respectfully submitted,

Dated: June 15, 2023

/s/ Horatio G. Mihet

Mathew D. Staver (FL Bar 0701092)

Horatio G. Mihet (FL Bar 026581)

Roger K. Gannam (FL Bar 240450)

LIBERTY COUNSEL

P.O. Box 540774

Orlando, FL 32854

Phone: (407) 875-1776

Email: court@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2023, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs