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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 12(A)(2)

Date: March 1, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R.A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving and Authorizing Settlement Agreement Between Check Casher's Depot, Inc. and Miami-Dade County

R-177-11

RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") authorize settlement of the lawsuit entitled *Check Casher's Depot v. Miami-Dade County d/b/a Miami-Dade Housing Agency and Prestige Contracting Services, LLC.,* Case No. 10-44904 CA 27 according to the terms and conditions specified in the attached Settlement Agreement.

It is important to note that if the County does not approve the Settlement Agreement on or before March 4, 2011, the Settlement Agreement will be null and void and the trial will resume.

Scope

The Settlement Agreement only applies to the Plaintiff in the lawsuit.

Fiscal Impact/Funding Source

The fiscal impact to the County is $19,287.70, plus interest on the principal which will continue to accrue from January 18, 2011 at the legal rate of six percent, for a per diem rate of $2.95, until a settlement check is prepared. The settlement proceeds shall be paid from the Miami-Dade Public Housing Agency's (MDPHA's) Central Office Cost Center funds.

Track Record/Monitor

Not applicable.

Background

On or about March 2, 2010, the County, through MDPHA mistakenly issued a check in the amount of $22,920.22 (the "Check") to Prestige Contracting Services, LLC ("Prestige"), a former vendor of the County. The County did not owe any money to Prestige which had completed work for MDPHA and had been paid in full. The County immediately discovered that the Check should have been paid to another vendor named Prestige Developers and Contractors. On or about March 8, 2010, MDPHA sent a letter notifying Prestige that the Check was sent to them in error. The County also demanded in that letter that Prestige repay the County. Additionally, MDPHA issued a stop payment order to the bank, Wachovia Bank on March 9, 2010. However, by the time the County discovered the error and issued the stop payment, Prestige had taken the Check to Check Casher's Depot, Inc. ("Check Casher's") and cashed it.

Because of the stop payment, the Check was returned to Check Casher's and Check Casher's failed to collect the money it had already paid out to Prestige. On April 8, 2010, Check Casher's sent a letter to the County's Office of Inspector General ("OIG") demanding payment in the amount of $22,920.22 less their "normal service charge." Additionally, Check Casher's attempted to recover the funds from Prestige, who ultimately returned $5,000.00 to Check Casher's in an attempt to partially settle Check Casher's claim.

The OIG conducted an investigation, and according to the OIG's investigation report, Prestige knew that they were not entitled to the money as evidenced by their willingness to repay $5,000.00 to Check Casher's. Although the OIG did not pursue further action against Prestige, the OIG did recommend that MDPHA consider Prestige's actions going forward.

Check Casher's, the Plaintiff in this case, filed a lawsuit against the County and Prestige. Check Casher's alleges that it is a holder in due course entitled to payment on a check issued by the County to Prestige, but never paid by the bank due to the County's stop payment order. A holder in due course is essentially an original or any subsequent holder of a negotiable instrument (check, draft, note, etc.) who has accepted it in good-faith and has exchanged something valuable for it, i.e. money. Check Casher's seeks to recover $17,920.22, plus interest, costs, bank fees, attorney's fees and such other relief to which they believe they are entitled.

The County is pursuing all civil and criminal remedies to recover the money illegally received by Prestige. The County has filed and served upon Prestige a cross claim alleging that Prestige has been unjustly enriched and engaged in civil theft and conversion. The County further seeks to be indemnified by Prestige. In the event the County is successful in the lawsuit, the County would be entitled to three times the value of the check. In addition to the civil claims, MDPHA will take affirmative steps, by commencing debarment proceedings both at the County and federal levels, to ensure that Prestige or its principals do not receive any further County contracts. The County is also pursuing criminal action against Prestige and its principals and has consulted with the police department and the State Attorney's Office.

Notwithstanding these affirmative steps, under Florida law, even though the County issued the check in error, recent court cases have found that the issuer of the check may be liable to the holder in due course, i.e. in this case Check Casher's. Check Casher's has noticed this matter for a non-jury trial on the claims against the County. They have already received a default judgment against Prestige because they did not respond to the lawsuit. However, Check Casher's is willing not to pursue further legal action, if the County agrees to settle this matter. Essentially, the terms of the settlement includes payment of $19,287.70, which also includes court costs and interests. The interest on the principal will continue to accrue from January 18, 2011 at the legal rate of six percent, for a per diem rate of $2.95, until a settlement check is prepared. The County would not be responsible for paying Check Casher's attorney's fees. Additionally, the County and Check Casher's will execute mutual releases. Based on an evaluation of the facts of this case, the law and recent court cases, it is recommended that the Board approve the attached resolution authorizing the County Mayor or the County Mayor's designee to execute the Settlement Agreement.

Attachment

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: March 1, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(2)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

✓ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

✓ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
3-1-11

RESOLUTION NO. R-177-11

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT AND PAYMENT IN THE AMOUNT OF $19,287.70, PLUS INTEREST, TO RESOLVE THE LAWSUIT ENTITLED CHECK CASHER'S DEPOT, INC. V. MIAMI-DADE COUNTY D/B/A MIAMI-DADE HOUSING AGENCY AND PRESTIGE CONTRACTING SERVICES, LLC.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Settlement Agreement and payment of $19,287.70, plus interest on the principal, which will continue to accrue from January 18, 2011 at the legal rate of 6%, for a per diem rate of $2.95, until a settlement check is prepared, to resolve the lawsuit entitled *Check Casher's Depot v. Miami-Dade County d/b/a Miami-Dade Housing Agency and Prestige Contracting Services, LLC.*, Case No. 10-44904 CA 27, in substantially the form attached hereto and made a part hereto; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz**, who moved its adoption. The motion was seconded by Commissioner **Joe A. Martinez** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman **aye**
Audrey M. Edmonson, Vice Chairwoman **absent**

Bruno A. Barreiro	**aye**	Lynda Bell	**aye**
Jose "Pepe" Diaz	**aye**	Carlos A. Gimenez	**absent**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Natacha Seijas	**absent**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of March, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith
Monica Rizo

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

CASE NO. 10-44904 CA 27

CHECK CASHER'S DEPOT, INC., a
Florida Corporation,

Plaintiff,

vs.

MIAMI-DADE COUNTY d/b/a
MIAMI-DADE HOUSING AGENCY,
and PRESTIGE CONTRACTING
SERVICES, LLC, a Florida limited
Liability Company,

Defendants.
_____/

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into as of this ___ day of _____ 2011 (the "Effective Date") by Plaintiff, CHECK CASHER'S DEPOT, INC. ("Check Casher's) and Defendant, MIAMI-DADE COUNTY (the "County")(collectively the "Parties").

WHEREAS, Check Casher's and the County are parties to that certain lawsuit pending in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *Check Casher's Depot, Inc. v. Miami-Dade County d/b/a Miami-Dade Housing Agency and Prestige Contracting Services, LLC*, Case No. 10-44904 CA 27 (the "Lawsuit"), involving that certain check, number 259922, held by Plaintiff, which was issued by the County, drawn upon Wachovia Bank, made payable to Defendant, PRESTIGE CONTRACTING SERVICES, LLC ("Prestige") and cashed by Plaintiff, Check Casher's (the "Check"); and

WHEREAS, the Parties desire to amicably resolve and settle all disputes, claims, controversies, and differences between or amongst each other; and

WHEREAS, the Parties expressly deny any liability to the other Parties; and

WHEREAS, the Parties expressly acknowledge that although the County has agreed to enter into this Agreement with Check Casher's, by doing so the County does not and nor shall it be inferred that the County waives any and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts,

reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity, that the County has against Prestige;

NOW THEREFORE, in consideration and reliance upon the covenants undertaken herein by the Parties including the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The County shall pay Check Casher's the principal amount of $17,920.22 ("Principal"), plus interest at the legal rate of 6% in the amount of $866.48, plus costs in the amount of $501.00, for a total settlement of $19,287.70, plus interest on the Principal which will continue to accrue from January 18, 2011 at the legal rate of 6%, for a per diem rate of $2.95, until a settlement check is prepared (the "Settlement Funds"), within fifteen (15) days of the Effective Date of this Agreement. The Settlement Funds shall be made payable to Legon Ponce and Fodiman, P.A., Trust Account.

2. Within ten (10) business days of clearance of the Settlement Funds, Check Casher's and the County shall execute and file a stipulation for dismissal with prejudice of the Lawsuit.

3. Within ten (10) business days of clearance of the Settlement Funds, Check Casher's and the County shall execute and deliver to counsel for the other Party the releases in the form attached hereto as Exhibits "A," and "B," respectively.

4. The Parties shall each bear their own attorneys' fees and costs, and no Party shall move for an award of attorney's fees and/or court costs, except that if litigation is required to enforce this Agreement as set forth in Paragraph 11 below, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees and costs, if any, for the enforcement of this Agreement.

5. In addition to the conditions set forth in Paragraphs 1, 2 and 3, this Agreement and the Parties' obligations hereunder are contingent upon the final approval of this Agreement by the Miami-Dade Board of County Commission ("Board") , which shall be within the Board's sole discretion. Plaintiff understands that such final approval is an express contingency to the settlement of this matter. However, final approval must occur on or before the 4th day of March, 2011. If the County does not obtain final approval of the Agreement on or before the 4th day of March, 2011, this Agreement shall be null and void. The County must notify Plaintiff of a refusal by the Board to approve this Agreement within five (5) days of said refusal. All discovery and motion practice shall be stayed pending a final approval decision by the Board, or until March 4, 2011. In the event that this matter is scheduled for trial to occur prior to March 4, 2011, the Parties shall move for a continuance of the trial date pending a final approval decision by the Board; if the trial is scheduled after March 4. 2011, the trial date shall remain in place and shall proceed as scheduled, unless this Agreement is timely approved by the Board.

6. The Effective Date of this Agreement shall be the date upon which the County Mayor or the County Mayor's designee executes same, provided that the County Mayor or the County Mayor's designee must execute this Agreement within five (5) days of the approval required by paragraph 5 of this Agreement.

7. The Parties warrant that: (i) they have executed this Agreement with full knowledge of their rights; (ii) they have received independent legal advice from their attorneys with respect to the matters herein set forth and the rights and asserted rights arising out of said matters; and (iii) they have not relied on any statements or representations (other than representations set forth in this Agreement) by any other party or its representatives.

8. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Florida.

9. The Parties agree that any dispute arising out of, or associated with, this Agreement shall be litigated in, and only in, Miami-Dade County, Florida, USA.

10. No waiver or modification shall be binding unless executed in writing by the Parties.

11. The Parties hereby acknowledge that in connection with any claim or dispute arising out of or relating to this Agreement, including any litigation or other proceeding alleging a breach of the terms of this Agreement, the prevailing party or parties shall recover, in addition to damages, costs or equitable relief otherwise recoverable, actual reasonable attorneys' fees and costs incurred by such prevailing party or parties prosecuting or defending such claim or dispute.

12. The Parties have each participated in the drafting and preparation of this Agreement, and this Agreement shall be construed as a whole according to the fair meaning and not for or against any Party.

13. This Agreement constitutes the entire, integrated agreement made by and among the Parties. This Agreement fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements, pertaining to the subject matter hereof.

14. Each of the Parties represents and warrants that it has full and complete authority to enter into and execute this Agreement under the terms set forth above, and subject to the contingencies set forth herein.

15. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement.

For Plaintiff, Check Casher's Depot, Inc.:

LEGON PONCE & FODIMAN, P.A.

By: _____
Todd A. Fodiman, Esq.
Liam Kelly, Esq.
Legon Ponce & Fodiman, P.A.
1111 Brickell Avenue, Suite 2150
Miami, Florida 33131

For Defendant, Miami-Dade County:

R.A. CUEVAS, JR.
MIAMI-DADE COUNTY ATTORNEY

By: _____
Terrence A. Smith, Esq.
Monica Rizo, Esq.
Assistant County Attorneys
Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: _____
GEORGE M. BURGESS
County Manager

EXHIBIT "A"
RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, MIAMI-DADE COUNTY ("First Party"), for and in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by First Party, does hereby remise, release, acquit, satisfy and forever discharge CHECK CASHER'S DEPOT, INC., together with their directors, officers, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to as the "Second Parties"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity, which the First Party ever had, now has, or may have against the Second Parties, from the beginning of the world to the day of this Release; provided, however, that this release is expressly limited to the claims which were asserted or alleged, or which could have been asserted or alleged, in that certain legal action pending between the First Party and Second Parties in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *Check Casher's Depot, Inc. v. Miami-Dade County d/b/a Miami-Dade Housing Agency and Prestige Contracting Services, LLC*, Case No. 10-44904 CA 27.

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Release; that no promise, inducement or agreement not expressed herein has been made to the First Party; that First Party has not assigned any claim against Second Parties to any person; that this Release contains the entire agreement between the parties; and that the terms of this Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day of _____ 2011.

MIAMI-DADE COUNTY

By: _____
GEORGE M. BURGESS
County Manager

_____
Witness

_____
Witness

EXHIBIT "B"
RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, CHECK CASHER'S DEPOT, INC. ("First Party"), for and in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by First Party, does hereby remise, release, acquit, satisfy and forever discharge MIAMI-DADE COUNTY, together with their directors, officers, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to as the "Second Parties"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity, which the First Party ever had, now has, or may have against the Second Parties, from the beginning of the world to the day of this Release; provided, however, that this release is expressly limited to the claims which were asserted or alleged, or which could have been asserted or alleged, in that certain legal action pending between the First Party and Second Parties in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *Check Casher's Depot, Inc. v. Miami-Dade County d/b/a Miami-Dade Housing Agency and Prestige Contracting Services, LLC*, Case No. 10-44904 CA 27.

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Release; that no promise, inducement or agreement not expressed herein has been made to the First Party; that First Party has not assigned any claim against Second Parties to any person; that this Release contains the entire agreement between the parties; and that the terms of this Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 14th day of JAN 2011.

CHECK CASHER'S DEPOT, INC.

Witness

By: _____

Print: ROBERT HULNICK

Witness

As: TREASURER

11