

**IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION**

MARY LOU SMITH
an individual, and
SHARON DENSON,
an individual

Plaintiffs,

vs.

CASE NO.: 08 CA 11315
Division B

TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDERMOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU MCNULTY, an individual

Defendants.

**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS, TRAILER ESTATES
PARK AND RECREATION DISTRICT'S, JONES', VANDERMOLEN'S, AND
SALERNO'S, JURY DEMAND**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and pursuant to Rule 1.140 (f), Florida Rules of Civil Procedure, hereby file this Motion to Strike Defendants, Trailer Estates Park and Recreation District's, Jones', Vandermolen's, and Salerno's Jury Demand and as grounds therefore state as follows:

1. On or about November 26, 2008, the Plaintiffs filed suit against the Trailer Estates Park and Recreation District ("District"), an independent special taxing district, and four individuals including Janet Jones ("Jones"), John Vandermolen ("Vandermolen"), Joseph Salerno

("Salerno"), and Mary Lou McNulty ("McNulty"), who are current and previously elected members of the Board of Trustees that governs the District.

2. The Amended Complaint asserts a four (4) count cause of action against the Defendants for violations of the Public Records and Sunshine Laws, Florida Statutes §§ 119.07 and 286.011, respectively. Specifically, the Amended Complaint seeks declaratory relief as to the rights and obligations of the all of the Defendants to comply with the Section 286.001 Fla. Stat. (Count I); declaratory relief as to the rights and obligations of the District, Vandermolen and McNulty to comply with the Section 119.07, Fla. Stat. (Count II); a writ of mandamus from this Court ordering the District, Jones, Vandermolen, and Salerno to comply with Florida Statutes §§ 119.07 and 286.011 (Count III), and injunctive relief to order the Defendants from violating the Sunshine and Public Records Laws (Count IV).

3. In their answers and affirmative defenses, the District, Jones, Vandermolen, and Salerno demanded a trial by jury. The District's, Jones', Vandermolen's, and Salerno's Demand for Jury Trial failed to specify which Counts in the Amended Complaint they believed were triable by a jury nor did they cite any authority indicating that any of the counts were triable by a jury

4. Chapter 86, Florida Statutes, governs actions for declaratory judgment. In particular, Section 86.071, F.S., provides the following:

When an action under this chapter concerns the determination of an issue of fact, the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending. To settle questions of fact necessary to be determined before judgment can be rendered, the court may direct their submission to a jury. When a declaration of right or the granting of further relief based thereon concerns the determination of issues of fact triable by a jury, the issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict is required or not. Neither this section nor any other section of this chapter shall be construed as requiring a jury to determine issues of fact in chancery actions.

In actions for declaratory relief, the right to a jury trial is limited to issues **traditionally triable by a jury at common law**. *Southern Farm Bureau Cas. Ins. Co. v. Pro Lockshop, Inc.*, 681 So. 2d 840, 841 (Fla. 4th DCA 1996); *see also Baldwin Sod Farms, Inc. v. Corrigan*, 746 So. 2d 1198, 1203-05 (Fla. 4th DCA 1999).

5. In Florida, the right to a jury trial does not extend to causes of action in equity because "the common law in 1845 did not confer a right to jury trial in equity actions." *Lanman Lithotech, Inc. v. Gurwitz*, 478 So. 2d 425, 427 (Fla. 5th DCA 1985) ("the common law in 1845 did not confer a right to jury trial in equity actions [and] Florida's constitutional right to jury trial guarantees a right to trial by jury in those cases in which such right was recognized when Florida's first constitution became effective in 1845"). *See also Hawkins v. Rellim Investment Co.*, 110 So. 350, 351 (Fla. 1926); *Efron v. Milton*, 892 So. 2d 497, 499 (Fla. 3d DCA 2004) (no right to jury trial in equity); *Boyce v. Hort*, 666 So. 2d 972, 973 (Fla. 5th DCA 1996) (no jury trial where claims are within equity jurisdiction).

6. Further, in *Robbins v. Section 3 Property Corp.*, 609 So. 2d 670 (Fla. 3d DCA 1992), the issue of a right to a jury trial was addressed in the context of a tax challenge case. The Court in *Robbins* held that since the **remedies sought were for an injunction and declaratory judgment, which are equitable in nature, the right to a jury trial did not apply**. *See id.* at 672 (emphasis supplied). Further, with specific regard to claims for injunctive relief, there is no right to a jury trial as the right to a jury trial applies only to legal and not to equitable causes of action. *381651 Alberta, Ltd. v. 279298 Alberta, Ltd.*, 675 So. 2d 1385, 1387 (Fla. 4th DCA 1996); *See also Robbins* at 672.

7. **In mandamus cases, issues of fact are tried by the court and not by a jury.** *Graves v. State ex rel. Hampton*, 184 So. 112, 114 (Fla. 1938). In absence of a statute requiring it, a right

of trial by jury does not exist in mandamus cases. *State ex rel. Foster v. Anders*, 184 So. 515, 517 (Fla. 1938).

8. Based on the foregoing, the District is not entitled to a jury trial on the two counts for declaratory relief or the count for injunctive relief due to the equitable nature of the relief sought by the Plaintiffs. Further, the District would not be entitled to a jury trial on the counts for mandamus. Since the right to a jury trial does not apply to any of the counts set forth in the Amended Complaint, accordingly the Plaintiff's request that this Court set the trial in this matter for a non-jury trial.

WHEREFORE, the Plaintiffs respectfully request this Court strike the Defendants', Trailer Estates Park and Recreation District's, Janet Jones', John Vandermolen's and Joseph Salerno's demand for a jury trial and grant such other and further relief as this Court deems reasonable and appropriate.



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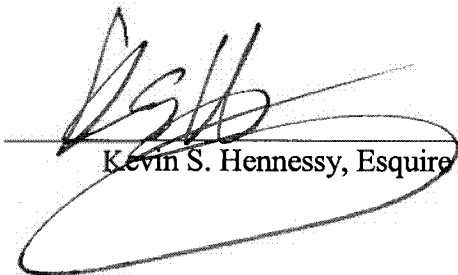
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire**, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, **James D. Dye, Esquire**, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, **Robert E. Turffs, Esquire**, 1444 First Street, Suite B, Sarasota, FL 34236, **Daniel E. Scott, Esquire**, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, **Thomas D. Shults, Esquire**, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by *U.S. First Class Mail*, this 20th day of July, 2009.


Kevin S. Hennessy, Esquire