

IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

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

Plaintiffs,

v.

CASE NO. 2008 CA 11315

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

Defendants.

**MOTION FOR SANCTIONS AGAINST PLAINTIFFS
FOR VIOLATING MEDIATION CONFIDENTIALITY**

COMES NOW Trailer Estates Park and Recreation District (hereinafter referred to as the "District"), pursuant to the provisions of Chapter 44, Florida Statutes, including but not limited to, F.S. 44.406, and the applicable Rules of Florida Civil Procedure including but not limited to Rule 1.420(b) and hereby files the above-referenced Motion and as grounds thereof states:

1. On the 29th day of May, 2009, this Court entered an Order requiring the parties to engage in mediation pursuant to the provisions of the Florida Rules of Civil Procedure and Chapter 44, Florida Statutes. The Order stated that the "rules and procedures set forth in the Florida Rules of Civil Procedure and Chapter 44 Florida Statutes shall apply".

2. Chapter 44, Florida Statutes imposes a strict requirement on the parties to hold all communications made during the course of mediation confidential and to not disclose those communications to anyone who is not a party to the mediation. Chapters 44.403 and 44.405 state,

in pertinent part:

44.403. Mediation Confidentiality and Privilege Act; definitions

As used in ss. 44.401-44.406, the term:

(1) "Mediation communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.

44.405. Confidentiality; privilege; exceptions;

(1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney's fees, and mediator's fees.

3. The parties engaged in mediation as required by the terms of the Court Order. The mediator filed a report of impasse on July 15, 2009.

4. On Sunday July 26, 2009, the newspaper Bradenton Herald published an article in print and on the Internet. A true copy of the Internet version of the article is attached hereto as Exhibit "A". A true copy of the print version of the article is attached hereto as Exhibit "B".

5. The article reports that the Plaintiff Smith sent to the newspaper an e-mail which described communications made during the course of the mediation. The Smith e-mail is quoted in the article as follows:

"It is regrettable that we have had to reach this point," Smith said in an e-mail response sent to the Bradenton Herald. "Mrs. Denson and I reached a mediated settlement with the chairman of the Board of Trustees (who had been elected by the board to be the park spokesperson at the mediation) a few weeks ago. The Board of Trustees refused to accept this mediated agreement, reached by their representative, forcing the matter into the courts and costing even more taxpayer dollars."

6. Smith knowingly and willfully violated of the Mediation Confidentiality Privilege Act and the May 29, 2009 Order of this Court. In her e-mail, Smith states that she and Co-Plaintiff Denson “reached a mediated settlement with the Chairman of the Board of Trustees” during the course of the mediation. As stated above, the mediator filed a report of impasse on July 15, 2009.

7. Trailer Estates believes that Smith was not only acting on her own behalf when she violated the Mediation Confidentiality and Privilege Act and Court Order, but was also acting as the authorized representative or agent of Plaintiff Denson.

8. The violation of the Mediation Act and Court Order by Smith is serious and not subject to an adequate remedy short of striking the pleadings of the Plaintiffs and awarding the attorneys’ fees and costs incurred by Trailer Estates in this matter. Without such relief, Trailer Estates is left in a position where, because of the Mediation Confidentiality rules, it cannot comment upon Smith’s statement contained in the e-mail and published in the newspaper.

9. The revelation of a confidential mediation communication by Plaintiffs exposes Trailer Estates to irreparable prejudice in the minds of the trier of fact. The Bradenton Herald Sunday edition has an estimated readership of 139,300 and its average monthly internet page views is 1,811,850. <http://www.mcclatchy.com/146/story/346.html>. Certainly one reason why the Florida Legislature and courts have deemed it fit to permit the imposition of severe sanctions for violation of mediation confidentiality is the irreparable harm and chilling effect on mediation that a violation can cause.

10. In *Paranzino v. Barnett Bank of South Florida, N.A.*, 690 So. 2d 725 (Fla. 4th DCA 1997) the District Court affirmed a lower court’s imposition of a sanction which struck the pleadings

and dismissed with prejudice the claims of a party who revealed confidential mediation communications to a newspaper. In doing so, the court in *Paranzino* stated:

Where the parties do not effectuate a settlement agreement in accordance with the dictates of rule 1.730(b), the confidentiality afforded to parties involved in mediation proceedings must remain inviolate. *Gordon v. Royal Caribbean Cruises Ltd.*, 641 So. 2d 515, 517 (Fla. 3d DCA 1994). Here, by knowingly breaching the confidentiality provision set forth in the Mediation Report and Agreement by disclosing the settlement offer to the Miami Herald, appellant and her attorney disregarded the applicable statute and rule of civil procedure governing the mediation process, and thus, deliberately violated the court's order setting the matter for mediation. *Id.* at 728.

...

As a result of their actions [in disclosing mediation communications to the newspaper] appellant and her attorney further disregarded the applicable statute and rule of civil procedure governing the mediation process. If the trial court were to allow this willful and deliberate conduct to go unchecked, continued behavior in this vein could have a chilling effect upon the mediation process. *Id.* at 729.

WHEREFORE, Trailer Estates respectfully requests this Honorable Court to strike the pleadings of the Plaintiffs and to dismiss the Plaintiff's claims with prejudice. Trailer Estates further requests that this Court enter judgment against the Plaintiff's for all attorney's fees and costs incurred in this action and such other and further relief as the Court may deem appropriate including, but not limited to, those remedies set forth in F.S. 44.406.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail and facsimile to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, (941) 708-4024, Daniel E. Scott, Esquire, Center Pointe, Suite 408, Sarasota, Florida 34237-6056, (941) 366-6303, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, (941) 953-5736, James D. Dye, Esquire, Dye Deitrick, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, (941) 748-1573, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, (941) 954-7777, on this 28 day of July, 2009.

KIRK ■ PINKERTON, P.A.
50 Central Avenue, Suite 700
Sarasota, FL 34236
Florida Bar No. 363219
Tel: (941) 364-2425
Fax: (941) 364-2490

By: 
Thomas D. Shults, Esquire

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Tuesday, Jul 28, 2009

Posted on Sun, Jul. 26, 2009

Trailer Estates suit set for trial

By CARL MARIO NUDI
cnudi@bradenton.com

MANATEE — Trailer Estates property owners who filed a lawsuit in November will finally get their day in court.

Judge Janette Dunnigan has set a trial date of Sept. 8 for a case involving two Trailer Estates residents who claim the mobile home park's board of trustees is violating Florida's Government in the Sunshine laws.

Mary Lou Smith and Sharon Denson say they filed the lawsuit after repeatedly requesting documents from the governmental agency concerning how rates are set for the marina and parking spaces.

"It is regrettable that we have had to reach this point," Smith said in an e-mail response sent to the Bradenton Herald. "Mrs. Denson and I reached a mediated settlement with the chairman of the Board of Trustees (who had been elected by the board to be the park spokesperson at the mediation) a few weeks ago. The Board of Trustees refused to accept this mediated agreement, reached by their representative, forcing the matter into the courts and costing even more taxpayer dollars."

The trustees of the Trailer Estates Park and Recreational District contend they followed the law.

The board controls an annual budget of about \$1 million.

The district became a governmental body, subject to the state's Sunshine and Open Records laws, when it was established by the Florida Legislature in 1969 as a special taxing district.

Court records show that after six months of court hearings, the parties tried to mediate the dispute June 9, but mediator Gary Larsen reported to the court July 15 "the mediation resulted in an impasse."

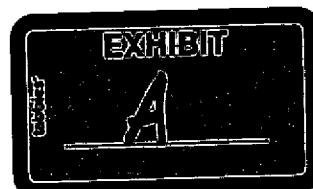
The Trailer Estates board held a closed-door meeting, sometimes called a "shade meeting," July 13 with attorney Mark Barnebey to discuss the litigation, according to minutes posted on the mobile home park's Web site.

After meeting for more than two hours, the board convened a public hearing to consider a mediated settlement, but Barnebey reported that there was no settlement.

Two trustees who were named in the suit as individuals, Janet Jones and Joseph Salerno, could not be reached for comment.

John Vandermolen, another board member named in the suit, said he had no comment.

Mary Lou McNulty, a former board member, also was named in the lawsuit and referred all questions to her attorney, Jim Dye.



"It's an unfortunate situation," Dye said.

"It would be great if this could be resolved without going to trial."

He said going to trial was a waste of the district's funds, but was hopeful a resolution could be achieved without a trial.

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TIFFANY TOMPKINS-CONDIE/ttompkins@bradenton.com

"I think this one had been there for years, living off Muscovy ducks in a nearby pond."

Justin Matthews, *Matthews Wildlife Rescue*



TIFFANY TOMPKINS-CONDIE/ttompkins@bradenton.com

rs from Southern Manatee Fire Rescue help Justin Matthews of Matthews Wildlife Rescue deposit a captured
 irmesse python, which he pulled from a drainage pipe in the area of 51st Avenue and 33rd Street East. It took the
 scue expert about an hour and a half to pull the reptile out of the drain.

Wildlife expert battles 14-foot python inside concrete pipe

TIFFANY TOMPKINS-CONDIE
 and GARY TAYLOR
 Herald Staff

MANATEE — His plan was to pull the python out of a concrete pipe that was 2-by-2. But then he had to get out of the two-foot hole to reach the snake. And the snake turned back on him

Matthews would handle it himself.

Now Justin Matthews the younger, four firefighters and a growing group of spectators stood by and listened — more than an hour into the battle Saturday afternoon and within sight of a Sweetbay Supermarket and a day care center.

When the python's hissing maw and spitting tongue reached four

Matthews Wildlife Rescue, an animal care and educational company, the cowboy-hatted Justin Matthews envisioned a specimen with which to teach people about nature and not to keep pythons as pets.

"I think this one had been there for years, living off Muscovy ducks in a nearby pond," Matthews said.

As a wildlife expert and instructor, Matthews has permits to take py-

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The trustees of the Trailer Estates Park and Recreational District contend they fol-

TRAILER TO 2B

Work

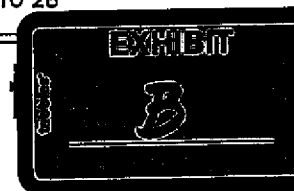




PHOTO PROVIDED
Bank robber shown with them when

TRAILER FROM 1B

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OBITUARIES

Jean Compton-Jones

Jean Compton-Jones 81, died July 23, 2009.

Survived by husband: John; Daughters: Rebecca Morrison and Martha Compton; Son: David Compton; Brother: Robert Dennis and six grandchildren.

Viewing will be Monday at 9-10am with services to follow at Bradenton Funeral Home 5827 14th Street West Bradenton. Burial will be at Skyway Memorial Gardens.

Donna Marie (Dee) Lipinski

Donna Marie (Dee) Lipinski, 84, Homemaker, passed away peacefully on July 23, 2009 in Bradenton of pneumonia.

Dee was born in Grafton, North Dakota to Harry and Ethel Wilson. She met her husband, Stanley (Stan) W. Lipinski, while in grade school; they married on July 11, 1948 and moved to Lakeland in



William Clemmer "Bill" Rhyne

William Clemmer "Bill" Rhyne, 83, of Linville, NC, formerly of

Bradenton, passed away on Saturday, July 11, at Cannon Memorial Hospital, Linville, NC, after a brief illness.

He is survived by his wife of 63 years, Marian; daughters, Linda Rhyne of Charlotte, NC; Candace Blackley and husband, Ron, of Apex, NC; son, Steve Rhyne and wife, Amy, of Asheville, NC; six grandchildren, Heather and Patrick Blackley, and Joshua, Emily, Julia and Abbey Rhyne.

Bill was born on September 17, 1925, in Gastonia, NC, the son of the late Robert Love Rhyne and Annie Mae Clemmer. He was a Navy veteran and served for 2 years in the Pacific. After serving in the military, Bill graduated from NC State University in 1951 with a BS in Rural Sociology.

Bill lived in Bradenton from 1958 to 1964 where



Pamela J. Cordle Allen

Pamela J. Cordle Allen, 58 formerly of Bradenton, passed away after a long illness July 8th, 2009 in Port Charlotte, FL.

She was preceded in death by her husband Mack "Pistol" Allen and nephew Cecil "Burt" Haynes.

She is survived by her sisters Cynthia Coffman, Constance Cordle and brother Michael B. Cordle.

Graveside services will be at 10:00AM Tuesday, August 4th. Burial will be at Memorial Park Funeral Home & Cemetery in Memphis, TN.

Betty Jean Sowders

Betty Jean Sowders, 79, of Owensboro, Kentucky died July 23, 2009.

Survived by daughter, Sheila Lindergren of Bradenton, FL; son, Thomas Lee (Kim) Sowders of Owensboro; six grandchildren; eleven great grandchildren; a brother and two sisters.

Services, 11:00 a.m., July 25 at James H. Davis Fu-

Judy Lee Gooden

Bungalow Antique Shop, Owner, Bradenton, age 61, went to be with the Lord on July 11, 2009.

She died peacefully in her home surrounded by family and friends after a long, hard and courageous battle with Mesothelioma.

Judy was born on December 11, 1947. She lived most of her life in Florida and in Bradenton since 1980. Judy's special gift was taking another person's junk and turning it into a priceless treasure. She was an active member of the Bayside Community Church.

She is survived by her husband, Jackie Gooden and their daughters Jamie and Jena Gooden both of Bradenton.

A celebration of life service will be held at the Manatee Village Historical Park church on Saturday, August 1, 2009, at 9:30am.

In lieu of flowers, donations can be made to Bayside Community



ers is totally innocent of this crime," he said.

Vickers remained in jail on a \$150,000 bond Saturday night.

utors are expected to the family in court this before Judge Pen-

criminal justice can be reached 19.

Almeda is the pres-Pier Regulars, an group of pier fans. he city should con- ing the pier to pre- m damage.

pier was a little t might help the," he said. "When comes, the water so high. The waves at the pier." visitors this week r felt safe on the hat an inspection lp.

tty well worn," said nedy, who is visit- Ocala for a week. o much traffic, I'd hey have to fix it falls apart."