

**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 AND JONES'
REQUESTS FOR ATTORNEY'S FEES
PURSUANT TO CHAPTER 2002-361 OF THE LAWS OF FLORIDA**

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, and hereby file this Motion to Strike Defendants Trailer Estates Park and Recreation District's and Jones' Requests for Attorney's Fees Pursuant to Chapter 2002-361 of the Laws of Florida, and as grounds therefore state as follows:

1. Florida courts follow the “American Rule” that attorney’s fees may only be awarded by the court when authorized by statute or agreement of the parties. *State Farm Fire & Casualty Co. v. Palma*, 629 So.2d 830, 832 (Fla. 1993).

2. In addition, the Florida Supreme Court has held that a claim for attorney’s fees must be pled, whether it is based on statute or contract, and failure to do so constitutes a waiver of the claim. *Stockman v. Downs*, 573 So. 2d 835, 837-38 (Fla. 1991).

3. The Plaintiffs have filed an Amended Complaint against the Trailer Estates Park and Recreation District (“District”), and four individuals including Janet Jones (“Jones”), who is currently an elected member of the Board of Trustees that governs the District, asserting 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.

4. The Plaintiffs do not contest the Defendants’ rights to claim attorney’s fees in this matter under any statute that is appropriate for this proceeding.

5. Defendant Jones has failed to cite to any statutory or contractual provision that would authorize her to an award of attorney’s fees in this matter. In her answer to the Amended Complaint, Defendant Jones stated the following: “Defendant Jones maintains that she is entitled to have her attorney fees paid pursuant to chapter 2002-361, Laws of Florida, sections 15(j) and section 20.”

6. In addition, in its answer to the Amended Complaint, the District sets forth that it “is entitled to an award of attorney’s fees pursuant to Chapter 2002-361, Section 15(j).”

7. Chapter 2002-361 of the Laws of Florida (“Charter”), was enacted by the Florida Legislature to serve as a single, comprehensive special act charter for the District, and a copy of the Charter is attached hereto as Exhibit 1.

8. Section 15(j) of the Charter provides the following “power” to the District’s Board of Trustees:

To recover all costs and reasonable attorney’s fees in addition to other appropriate relief should the trustees be the prevailing party in any litigation, and in any appellate proceedings, **involving the enforcement of this act and/or the deed restrictions** as filed in the Manatee County public records. [Emphasis added.]

9. This Charter provision simply states that the District’s Board of Trustees has the “power” to seek recovery of attorney’s fees under certain circumstances. This language does not create a right or an entitlement to attorney’s fees, but merely provides the authority to seek the recovery of attorney’s fees in the name of the District.

10. Further, this provision relied on by both the District and Jones only discusses the authority to seek recovery of attorney’s fees in the context of enforcement of the District’s Charter or its deed restrictions. Since the Plaintiffs’ Amended Complaint involves the Defendants’ violations of the Public Records and Sunshine Laws and has nothing to do with the enforcement of the District’s Charter or deed restrictions, Section 15(j) of the Charter is clearly not applicable to this proceeding.

11. In addition, the language of Section 15(j) of the Charter is only applicable to the members of the District’s Board of Trustees and not to the District as a distinct entity.

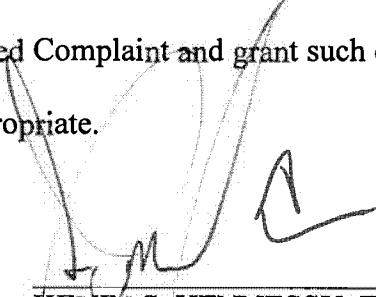
12. Section 20 of the Charter, referenced by Defendant Jones in her answer to the Amended Complaint, provides the following:

Trustees not guilty of malfeasance in office shall be relieved of any personal liability for any acts done by them while holding office in the district; any trustee who is made a party to any action, suit, or proceeding solely by reason of his or her holding office in the district shall be indemnified by the district against reasonable expenses, including attorney’s fees, incurred by him or her in defending such suit, action, or proceeding, except with respect to matters wherein it shall be adjudged in such proceeding that such trustee is liable for negligence or misconduct in the performance of his or her duties.

13. Section 20 of the Charter sets forth certain circumstances under which an individual member of the District's Board of Trustees may be indemnified by the District against reasonable expenses including attorney's fees. However, nothing in this provision specifies any grounds for an individual member of the District's Board of Trustees to seek payment of attorney's fees from another party.

14. Based on the foregoing, the Defendants Trailer Estates Park and Recreation District and Janet Jones are not entitled to an award of attorney's fees pursuant to Section 15(j) of the Charter. In addition, Defendant Janet Jones is not entitled to have her attorney's fees paid by the Plaintiffs pursuant to Section 20 of the Charter.

WHEREFORE, the Plaintiffs respectfully request this Court strike Defendants Trailer Estates Park and Recreation District's and Janet Jones' requests for attorney's fees as set forth in their answers to the Plaintiffs' Amended Complaint and grant such other and further relief as this Court deems to be reasonable and appropriate.



KEVIN S. HENNESSY, ESQUIRE
Florida Bar No. 0602558
MAGGIE D. MOONEY-PORTALE, ESQUIRE
Florida Bar No. 0555924
JENNIFER R. COWAN
Florida Bar No. 0038081
Lewis, Longman & Walker, P.A.
1001 3rd Avenue West, Suite 670
Bradenton, Florida 34205
Telephone (941) 708-4040
Counsel for Plaintiffs

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 4th day of August, 2009.



Jennifer Cowan, Esquire