

**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' RESPONSE IN OPPOSITION TO DEFENDANT
TRAILER ESTATES PARK AND RECREATION DISTRICT'S
MOTION FOR SANCTIONS**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel, and hereby file this Response in Opposition to Defendant Trailer Estates Park and Recreation District's (hereinafter, the "District") Motion for Sanctions. The District's Motion for Sanctions has no basis in law or fact; therefore, an order denying this motion should be entered for the reasons more specifically stated below.

1. On July 28, 2009, the District filed a Motion for Sanctions Against Plaintiffs for Violating Mediation Confidentiality ("Motion"). The District has attached a newspaper article

that appeared in the Bradenton Herald on July 26, 2009, and a corresponding internet version of the same article as exhibits to the Motion. In the Motion the District references a quote from the article attributed to Plaintiff Mary Lou Smith as being a violation of the Mediation Act regarding confidentiality.

2. The specific language from the article cited by the District in its Motion is “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.” The District further refers to the cited language from the article as a “revelation of a confidential mediation communication” that exposes the District to irreparable prejudice in the minds of the trier of fact.

3. However, this statement by Plaintiff Smith was certainly not a “revelation of a confidential mediation communication” as this information was already publicly known prior to her making any statement to the media.

4. Prior to the mediation conference, which was held in this matter on June 9, 2009, the District’s Board of Trustees (“Board”) decided at a public meeting that Martha Brauer, Chairman of the Board (“Chairman”), would be the District’s representative for all proceedings in this case including mediation. This is reflected on Page 5 of the Board’s meeting minutes from February 16, 2009, a copy of which is attached to this Response as Exhibit “A”.

5. Subsequent to the mediation conference, the District on three separate occasions publicly noticed “Special Meetings” to be held on June 18, July 13, and July 29, 2009. The notice for the first meeting was published in the Bradenton Herald on June 11, 2009, and included the following purpose for the meeting: **“PUBLIC HEARING TO CONSIDER**

MEDIATED SETTLEMENT IN THE MATTER OF SMITH AND DENSON vs. TRAILER ESTATES PARK AND RECREATION DISTRICT (2008CA11315)". The notice for the second meeting was published in the Bradenton Herald on July 5, 2009, and for the third meeting on July 22, 2009, with a reference to a **"PUBLIC HEARING TO CONSIDER MEDIATED SETTLEMENT"**. Copies of the three notices for these meetings are attached to this Response as Composite Exhibit "B".

6. Further, the following language appeared as an agenda item under "NEW BUSINESS" for all three of the "Special Meetings" referenced above: **"PUBLIC HEARING TO CONSIDER MEDIATED SETTLEMENT IN THE MATTER OF SMITH AND DENSON vs. TRAILER ESTATES PARK AND RECREATION DISTRICT (2008CA11315)"**. The agendas were published on the District's television station and posted on the District's bulletin boards. Copies of the agendas for all three meetings are attached to this response as Composite Exhibit "C".

7. In addition, the minutes from the District's June 18, 2009, Special Meeting, indicate that Mark Barneby, attorney for the District, "stated that the public hearing part of the meeting should take place even though an agreement has not been signed regarding the lawsuit with Sharon Denson and Mary Lou Smith." [Emphasis added.] A copy of these minutes, which were publicly approved by the District's Board of Trustees on July 6, 2009, is attached hereto as Exhibit "D".

8. On July 16, 2009, Mediator Gary H. Larsen filed his Mediation Report in this case with the Court stating that the mediation had resulted in an impasse.

9. What was "revealed" by the language used by the District in its public meeting notices, agendas and minutes, as well as the Mediation Report is essentially no different than

what was revealed by the quote from Plaintiff Smith, namely that a mediation conference occurred which the Chairman attended on behalf of the District, and a settlement was reached among the parties attending the mediation; however, consideration by the District's Board of Trustees had to occur before a mediated settlement could be finalized, and the Board failed to publically consider the mediated settlement.

10. All facts supporting Plaintiff Smith's statement are a matter of public record disseminated by the District during mediation and prior to Plaintiff Smith's statement appearing in the newspaper or on the internet.

11. Further, pursuant to Section 44.403(1), Florida Statutes, a "mediation communication" is defined as 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".

12. In its Motion, the District incorrectly concludes that the statement by Plaintiff Smith "described communications made during the course of the mediation" when in fact she was merely stating the status of the mediation process between the parties without providing any details regarding the mediation discussions.

13. Therefore, to the extent the District contends that Plaintiff Smith's comments violated mediation confidentiality, the same can be said for the District regarding the language provided in its public meeting notices and the minutes to their meetings as referenced above.

14. The District encourages this Court to impose sanctions on the Plaintiffs including striking their pleadings and dismissing their claims with prejudice for the alleged disclosure of mediation communications and cites to *Paranzino v. Barnett Bank of South Florida, N.A.*, 690 So. 2d 725 (Fla. 4th DCA 1997) in support of its position. In *Paranzino*, the Court took the extreme measures of striking the appellant's pleadings and dismissing the case with prejudice

when the appellant contacted the Miami Herald to discuss their version of the events involved in that case including the mediation. *See id.* at 726. More specifically, the comments made by the appellant in the *Paranzino* case included disclosure of the specific dollar amount offered as a settlement by the opposing party during the mediation conference and statements concerning their motivation for making the settlement offer. *See id.* at 727.

15. In the present case, there is absolutely no indication that Plaintiff Smith did anything other than respond to an inquiry from a reporter that she regretted that the Board did not ratify a settlement proposal that was put before them by the District's designated mediation representative. Plaintiff Smith did not disclose any details regarding any settlement offers discussed between the parties or any motives of the parties. Further, Plaintiff Smith did not provide any details or even generalizations regarding the mediation discussions as to what terms or provisions may or may not have been agreed to during the mediation or were being presented to the Board by its designated representative.

16. For this Court to grant the District's Motion for Sanctions based on the statement made by Plaintiff Smith when essentially the same information was already communicated to the public through the District itself would be wholly unjust.

17. Similarly, the Plaintiffs should not be entitled to strike the District's defenses because of the fact that as a public body it had to publically consider the mediated settlement agreement.

18. Further, for this Court to impose the sanctions of striking the Plaintiffs' pleadings and dismissing the Plaintiffs' claims with prejudice as requested by the District would be unduly harsh. Dismissal with prejudice is the most severe of all sanctions and should be employed only in extreme circumstances. *Neal v. Neal*, 636 So. 2d 810, 812 (Fla. 1st DCA 1994). In addition,

dismissal is inappropriate when the moving party is unable to demonstrate meaningful prejudice. *Hanna v. Indus. Labor Serv., Inc.*, 636 So. 2d 773, 777 (Fla. 1st DCA 1994). Regardless, in this case any information revealed by Plaintiff Smith in her statement was already publicly revealed by the District through its meeting agendas and meeting minutes; therefore, at best the District has failed to demonstrate how it was prejudiced by the actions of Plaintiff Smith. Similarly see *Enterprise Leasing Co. v. Jones*, 789 So. 2d 964, 967-68 (Fla. 2001) where the Supreme Court of Florida held that a presiding judge was not disqualified by receipt of confidential mediation information where no prejudice is demonstrated.

19. Based on the foregoing, the District's Motion for Sanctions should be denied.

WHEREFORE, the Plaintiffs respectfully request that this Court deny the Defendant Trailer Estates Park and Recreation District's Motion for Sanctions Against Plaintiffs for Violating Mediation Confidentiality and grant such other and further relief as this Court deems to be reasonable and appropriate.



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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 *facsimile*, this 5th day of August, 2009.


Kevin S. Hennessy, Esquire