

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. 08 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.

MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION TO STRIKE JURY TRIAL

The jury trial is an essential element of Florida and American jurisprudence as it permits parties to have their factual disputes determined by a group of peers from their community. In *Hollywood, Inc. v. City of Hollywood*, 321 So. 2d 65, 71 (Fla. 1975), the Florida Supreme Court stated:

“Questions as to the right to jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the U.S. and Florida Constitutions.”

Chapter 86 of the Florida Statutes governs declaratory judgments. F.S. 86.071 governs the right to jury trial in declaratory actions and states:

“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.”

In *F.R.W.P., Inc. v. Home Ins. Co.*, 450 So. 2d 914 (Fla. 4th DCA 1984), a case including a claim for declaratory relief, the court held that “[t]he trial court’s denial of appellant’s request for a jury trial on each claim constituted reversible error.” *Id.* at 914-15. The court concluded that the issues presented, including those raised in the declaratory action, entitled FRWP to a jury trial. *Id.* at 915. The court held:

“The issues raised by FRWP’s complaint, the answer filed by Home which raised equitable defenses, Home’s counterclaim reiterating those defenses and the third party action against A-1 Fargo, clearly presented factual questions-including, a determination of the intent of the parties regarding the intended beneficiary when A-1 Fargo procured the fire insurance from Home and whether that intent changed-that should have been resolved by the jury.” *Id.* at 916.

In *Hollywood, Inc.*, the county tax assessor brought an action for equitable and declaratory relief as to whether the city or a corporation owned two miles of ocean-front beach. The city cross claimed against the corporation and the corporation counterclaimed against the city for cancellation of the city’s notice of claim to real estate and for damages for filing an allegedly false notice. The Court found that the city was entitled to a jury trial on the issues of dedication and actual possession, and that denial of the city’s motion for jury trial was an abuse of discretion, because

“The determination of whether a trial judge abused his discretion in denying a demand for jury trial must be decided on a case by case basis; however, due to the extreme lapse between the filings of the pleadings in this case, the fact that amended pleadings were filed raising new issues, and **the apparent lack of prejudice resulting to the Petitioner in granting Respondent a jury trial**, we hold that the trial judge abused his discretion in denying Respondent’s demand for jury trial.” *Id.* at 73 (emphasis added).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, Daniel E. Scott, Esquire, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 6th day of August, 2009.

KIRK ■ PINKERTON, P.A.

50 Central Avenue, Suite 700

Sarasota, FL 34236

Tel: (941) 364-2425

Fax: (941) 364-2490

By: 

Thomas D. Shults, Esquire

Florida Bar No. 363219

Zachary L. Ross, Esquire

Florida Bar No. 0028351