

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

MARY LOU SMITH, et. al.,

Plaintiff,

vs.

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND RECREATION
DISTRICT, et. al.,

Defendants.

**DEFENDANT JANET JONES' MEMORANDUM OF LAW IN SUPPORT OF HER
MOTION TO STRIKE OPEN ENDED PHRASES IN AMENDED COMPLAINT**

In her answer, Defendant Janet Jones moved to strike the open ended phrase “including, but not limited to” contained in paragraphs 37, 37m, 62, and 64 of the Amended Complaint. Those paragraphs allege the conduct about which the Plaintiffs complaint of in this lawsuit.

Defendant Jones’ motion to strike is a matter of fairness to her. In quoting the Florida Supreme Court, the Second District Court of Appeal en banc has explained: “The fundamental concern is one of notice. Modern pleading requirements serve to notify the opposing party of the claims alleged and prevent unfair surprise.” First Protective Ins. Co. v. Featherston, 978 So. 2d 881, 882 (Fla. 2d DCA 2008) (en banc) (quoting Stockman v. Downs, 573 So. 2d 835, 837 (Fla. 1991).

Here, Plaintiffs seek to reserve the right to bring up matters at trial that have not been pled. In fact, Plaintiffs’ counsel has advised undersigned that they intend on raising issues that allegedly occurred *after* the filing of the Amended Complaint. This is improper, as “Florida law clearly holds that a trial court lacks jurisdiction to hear and to determine matters which are not

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and hand delivery this 12th day of August, 2009, to:

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