

**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.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION TO STRIKE DEFENDANTS, TRAILER ESTATES PARK AND
RECREATION DISTRICT'S, JONES', VANDERMOLEN'S, AND SALERNO'S,
JURY DEMAND**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and hereby file this Memorandum of Law in Support of Plaintiffs' Motion to Strike Defendants, Trailer Estates Park and Recreation District's (the "District"), Jones', Vandermolen's, and Salerno's Jury Demand.

The Defendants are not entitled to a jury trial in this matter due to the equitable nature of the relief sought by the Plaintiffs. The Plaintiffs' Amended Complaint asserts 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. Specifically, the Amended Complaint seeks declaratory relief as to the rights and obligations of all of the Defendants to comply with Section 286.001, F.S. (Count I); declaratory relief as to the rights and obligations of the District, Vandermolen and McNulty to comply with the Section 119.07, Fla. Stat. (Count II); a writ of mandamus from this Court ordering the District, Jones, Vandermolen, and Salerno to comply with Florida Statutes §§ 119.07 and 286.011 (Count III); and injunctive relief to order the Defendants from violating the Sunshine and Public Records Laws (Count IV).

There is no right to a jury trial in claims for injunctive relief because the right to a jury trial applies only to legal and not to equitable causes of action. *381651 Alberta, Ltd. v. 279298 Alberta, Ltd.*, 675 So. 2d 1385, 1387 (Fla. 4th DCA 1996). In mandamus cases, issues of fact are tried by the court and not by a jury. *Graves v. State ex rel. Hampton*, 184 So. 112, 114 (Fla. 1938). In absence of a statute requiring it, a right of trial by jury does not exist in mandamus cases. *State ex rel. Foster v. Anders*, 184 So. 515, 517 (Fla. 1938). The Defendants have failed to cite to any legal authority authorizing a jury trial in an action for injunctive relief or a mandamus action.

In addition, as noted by both the Plaintiffs in their Motion to Strike and the District in its Memorandum in Opposition to Plaintiffs' Motion to Strike Jury Trial, Chapter 86, Florida Statutes, governs actions for declaratory judgment. In particular, Section 86.071, F.S., provides the following:

When an action under this chapter concerns the determination of an issue of fact, the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending. 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. Neither this section nor any other section of this chapter shall be construed as requiring a jury to determine issues of fact in chancery actions.

[Emphasis added.]

In support of its position, the District has cited to *Hollywood, Inc. v. City of Hollywood*, 321 So. 2d 65 (Fla. 1975), a case where litigation was initiated when the county tax assessor brought an action for equitable and declaratory relief seeking to determine ownership of a certain tract of land. However, the ultimate ruling by the Court was that the City of Hollywood was entitled to a jury trial on the issues of dedication and actual possession brought in the City's cross-claim against the defendant corporation and had nothing to do with the action for equitable and declaratory relief originally brought by the county tax assessor. *See id.* In addition, the District has cited to *F.R.W.P., Inc. v. Home Ins. Co.*, 450 So. 2d 914 (Fla. 4th DCA 1984), a case involving entitlement to insurance proceeds where a number of legal causes of action and defenses were raised in addition to the declaratory relief sought. Further, the Court in that case identified several factual issues to be resolved including a determination of the intent of the parties and whether that intent had changed. The Court in *F.R.W.P.* held that the legal and equitable matters were sufficiently intertwined as to require resolution by a jury. *See id.* at 916. *But see Davis v. McGahee*, 257 So. 2d 62, 64 (Fla. 1st DCA 1972) (Where the Court held that legal and equitable issues were so intertwined that a jury trial on any of such issues would have been improper and the trial court did not abuse its discretion in denying the demand for a jury trial.)

Further, there are no factual questions identified in the present case that would require submission to a jury as was the situation in *F.R.W.P.* The issues in the present case are determinations that must be made by this Court as to whether the Defendants violated the Sunshine Law or the Public Records Law. It is notable that Section 286.011(3), Florida Statutes,

distinguishes between non-criminal violations of the Sunshine Law (as alleged by the Plaintiffs against the Defendants) and violation of the Sunshine Law that are *knowingly* committed by members of public boards subjecting the violators to criminal penalties. *See Florida v. Foster*, 13 Fla. L. Weekly Supp. 385a (Fla. 17th Cir. Ct. 2005) (Court found that no right to a jury trial was triggered when an individual faced a noncriminal violation of the Sunshine Law.) Similarly, with regard to the Public Records Law, Section 119.10(1)(b), F.S., provides for possible criminal penalties if a public officer *knowingly* violates Section 119.07(1), F.S.

As set forth in the Plaintiff's Motion to Strike Defendants' Jury Demand, in actions for declaratory relief, the right to a jury trial is limited to issues traditionally triable by a jury at common law. *Southern Farm Bureau Cas. Ins. Co. v. Pro Lockshop, Inc.*, 681 So. 2d 840, 841 (Fla. 4th DCA 1996); *see also Baldwin Sod Farms, Inc. v. Corrigan*, 746 So. 2d 1198, 1203-05 (Fla. 4th DCA 1999) ("Under Florida law, whether one is entitled to a jury trial depends upon whether the right was recognized at common law, at the time the Florida Constitution was adopted."). The Defendants have failed to set forth what issues in the present case they assert are triable by a jury. Further, in *Robbins v. Section 3 Property Corp.*, 609 So. 2d 670, 672 (Fla. 3d DCA 1992), the Court held that since the remedies sought were "in the nature of an injunction and a declaratory judgment", the "remedy is equitable in nature; therefore, the right to a jury trial does not apply."

The Defendants have failed to provide any justification for their demand for a jury trial, particularly in light of the equitable nature of the relief sought in the Plaintiffs' Amended Complaint. More specifically, due to the fact that there is no right to a jury trial in cases for injunctive relief and mandamus actions, and that the right to a jury trial is discretionary in an action for declaratory relief only under the circumstances set forth pursuant to Section 86.071,

F.S., it would be appropriate for this Court to deny the Defendants' demand for a jury trial. *See Franklin v. White Egret Condominium, Inc.*, 358 So. 2d 1084, 1088 (Fla. 4th DCA 1978) (Court held that lower court did not err in refusing to grant the defendants' motion for a jury trial when there was no claim or counterclaim made for damages or any other common law issue and in consideration of "the equitable nature of the complaint, any jury trial, if affordable at all, is clearly subject to the discretion of the trial court, and no abuse of discretion is shown.").

Based on the foregoing, the Defendants are not entitled to a jury trial on the two counts for declaratory relief, the count for injunctive relief, or the count for mandamus due to the equitable nature of the relief sought by the Plaintiffs. Since the right to a jury trial does not apply to any of the counts set forth in the Amended Complaint, accordingly the Plaintiff's have requested that this Court keep the trial in this matter on the non-jury docket and strike the Defendants', Trailer Estates Park and Recreation District's, Janet Jones', John Vandermolen's and Joseph Salerno's demand for a jury trial. *See Robbins* at 672; *see also State ex rel. Foster* at 517.

Respectfully submitted,



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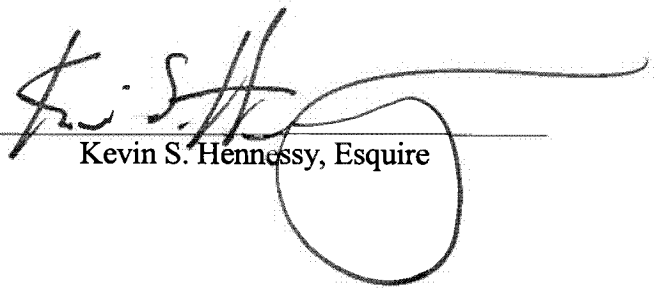
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CERTIFICATE OF SERVICE

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 *U.S. First Class Mail*, this 12TH day of August, 2009.


Kevin S. Hennessy, Esquire