

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.

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R.B. SHORE  
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MANATEE CO. FLORIDA

**ORDER ON MOTION FOR SANCTIONS AGAINST MARY LOU SMITH  
FOR VIOLATING MEDIATION CONFIDENTIALITY**

THIS CAUSE having come before the Court on the above-referenced Motion, the Court having conducted a hearing on the Motion and being otherwise fully advised in the premises, the Court hereby FINDS and ORDERS:

1. On July 24, 2009, Mary Lou Smith (hereinafter referred to as "Smith"), violated the Mediation Confidentiality Privilege Act, F.S. 44.401 et seq., and the May 29, 2009 Stipulated Order of this Court, by disclosing a confidential mediation communication to the Bradenton Herald newspaper. Smith disclosed the confidential mediation communication to the Bradenton Herald in an e-mail dated July 24, 2009, which Smith sent on that date in response to a reporter's e-mail inquiry to her. (See Plaintiff's Exhibit 1). The e-mail was published by the Bradenton Herald on July 26, 2009 in an article concerning this case. The article read, in pertinent part:

"It is regrettable that we have had to reach this point," Smith said in

an e-mail response sent to the Bradenton Herald. "Mrs. Denson and I reached a mediated settlement with the chairman of the Board of Trustees (who had been elected by the board to be the park spokesperson at the mediation) a few weeks ago. The Board of Trustees refused to accept this mediated agreement, reached by their representative, forcing the matter into the courts and costing even more taxpayer dollars."

2. Smith's statement that "Mrs. Denson and I reached a mediated settlement with the chairman of the Board of Trustees. . . a few weeks ago" and that "[t]he Board of Trustees refused to accept this mediated agreement, reached by their representative. . ." constitute a disclosure of confidential mediation communication.

3. It is clear that Smith had the time to contemplate the nature of her e-mail to the newspaper. After receiving Smith's e-mail, the newspaper reporter replied in an e-mail to Smith, "[i]f it's okay with you, I'll use your e-mail as a statement in the story and credit to you via e-mail". Approximately 40 minutes later, Smith replied to the e-mail with her e-mail to the reporter stating, "[t]hat is fine with me". Smith's disclosure of the mediation communication constituted a willful and knowing violation of the confidentiality provisions of Chapter 44, Florida Statutes, and of the Court's May 29, 2009 Order, which was entered pursuant to a Stipulation between the Plaintiffs and the District and which specifically incorporated the provisions of Chapter 44, Florida Statutes.

4. Smith's July 24<sup>th</sup> e-mail also used the disclosure of the mediation communication to denigrate the District Board of Trustees' refusal to accept the mediated settlement agreement by stating "[i]t is regrettable that we have had to reach this point" and that the Board was "forcing the matter into the Court, and costing even more taxpayer dollars".

5. It is also clear that Smith knew that the mediation communications disclosed in her e-mail to the Bradenton Herald would be published to the public. The e-mail was in fact published by the Bradenton Herald in its Sunday, July 26, 2009 edition and on the Bradenton Herald's website.

The Court takes judicial notice pursuant to the District's request, and the Plaintiffs' objection that such notice be limited, that the owner of the Bradenton Herald reports that the Sunday readership of the Bradenton Herald is 139,300, with a Sunday circulation of 50,393, and that the owner of the newspaper further reports that it receives approximately 1,811,850 average monthly page views per month. The Court also takes judicial notice that Smith's e-mail containing the confidential mediation communications was published in the Sunday edition of the Bradenton Herald on July 26, 2009, and was also published on the Bradenton Herald's website that date.

6. The Court rejects Smith's contention that the District waived mediation confidentiality or that Smith's e-mail was in response to the revelation of a confidential mediation communication by the District. The District meeting agendas and notices of publication and meeting minutes filed by Plaintiffs do not, as Smith argues, constitute a disclosure of confidential mediation communications by the District, nor was Smith's e-mail sent in response to such matters.

7. The Court has reviewed *Paranzino v. Barnett Bank of Southwest Florida, N.A.*, 690 So. 2d 725 (Fla. 4<sup>th</sup> DCA 1997) and *Floyd v. St. John's County*, 5 Fla. L. Weekly Supp. 44b (7<sup>th</sup> Jud, Cir. 1998). The Court finds that these cases are distinguishable, insofar as the striking of pleadings is concerned, from the case sub judice. The sanctioned party in *Paranzino* revealed both the existence of a settlement and the terms of the settlement, and the sanctioned party in *Floyd* exhibited a pattern of violating mediation confidentiality rules and orders of the court, as well as making disclosures of certain statements made during the mediation by opposing counsel on the merits of the case.

8. While the Court finds that Smith knowingly and wilfully violated the Mediation Confidentiality and Privilege Act ~~and the Stipulated Order of this Court~~, the Court denies the District's request that the Court strike Smith's pleadings and dismiss her case. The Court will

impose sanctions against Smith by further Order. The Court is concerned that if the District was entitled to a jury trial, that Smith's conduct would cause irreparable harm to the District. The Court believes that any juror or potential juror who read or heard of Smith's comments would be irreparably prejudiced in their ability to serve as a juror. The Court believes that it can put aside the disclosure of the mediation communications and fairly judge the merits of this case during a non-jury trial.

9. Based upon the foregoing, and the matters argued at the hearing on the Motion and the record in this case, the Court grants the Motion for Sanctions against Smith and reserves jurisdiction to determine the sanctions to be imposed by further Order.

DONE and ORDERED this 14 day of August, 2009.



The Hon. Janette Dunnigan  
Circuit Court Judge

cc: Thomas D. Shults, Esquire  
Kevin S. Hennessy, Esquire  
Robert E. Turffs, Esquire  
Daniel E. Scott, Esquire  
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