

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.

**MOTION TO STRIKE OR DISMISS PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR FAILURE TO COMPLY WITH ORDER
PERMITTING AMENDMENT OR MOTION TO DISMISS OR MOTION FOR
MORE DEFINITE STATEMENT**

**I. MOTION TO STRIKE OR DISMISS PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR FAILURE TO COMPLY WITH ORDER PERMITTING
AMENDMENT**

COMES NOW, Defendant, Trailer Estates Park and Recreation District (hereinafter referred to as "Trailer Estates"), by and through undersigned counsel, and hereby moves to strike or dismiss the Second Amended Complaint filed by Plaintiffs, Mary Lou Smith and Sharon Denson, pursuant to Florida Rule of Civil Procedure 1.140, and as grounds states as follows:

1. On August 14, 2009, the Court entered the Order on Defendants' Motion to Strike. In the Order, the Court considers the Motion to Strike as inappropriate, but that a Motion for More Definite Statement is appropriate. Therefore, the Court ordered the

Plaintiffs to file a second amended complaint “which amends and clarifies only paragraphs 37, 37m, 62, 64, and 67 of the Amended Complaint.” A copy of the Order is attached hereto as Exhibit A.

2. On August 24, 2009, the Plaintiffs furnished copies of the Second Amended Complaint to counsel for the Defendants.

3. The Second Amended Complaint fails to comply with the specific order of the Court as it fails to clarify paragraphs 37, 37m, 62, 64, and 67 and it adds additional claims which were not part of the Amended Complaint. Specific examples of the failure to properly amend the Amended Complaint per the Court’s order are as follows:

a. The language of Paragraph 37 has been changed to remove the ambiguous language “including, but not limited to”, but it has been replaced with language stating “specific examples of the Board’s pattern and practice of improper meetings.” The words “pattern and practice” infer that there are more examples of improper meetings than what the Plaintiffs specifically allege against Defendants. Plaintiffs have failed to clarify the allegation as required by the Court’s order.

b. Paragraph 37(f) of the Second Amended Complaint states “During 2006 and 2007, Board members regularly held ‘pre-meetings’ in the District office... .” Without specifying who the alleged Board members were that participated in these “pre-meetings” and without specifying a more definite time at which the alleged “pre-meetings” occurred the Defendants cannot response to this allegation. The individual Defendants cannot determine whether this allegation specifically applies to them or not, and Trailer Estates cannot properly respond because it does not know any facts regarding

the alleged “pre-meetings.” Plaintiffs have failed to clarify the allegation as required by the Court’s order.

c. Paragraph 37(m) of the Second Amended Complaint fails to identify which Trustees allegedly held a meeting outside of the Sunshine. As such, the individual Defendants cannot determine whether or not they must respond to the allegation, and the allegation is too vague that Trailer Estates cannot respond. Plaintiffs have failed to clarify the allegation as required by the Court’s order.

d. Paragraph 37(n) of the Second Amended Complaint amends paragraph 37(m) of the Amended Complaint. While paragraph 37(n) has removed the language “included but are not limited to”, it fails to clarify the vagueness and ambiguity. Paragraph 37(n) broadly alleges that meetings occurred “[d]uring 2008 and 2009 where two or more Board members or Board members-elect, including defendants, were present... .” The individual Defendants cannot determine whether the alleged meetings specifically apply to them or not; therefore, they cannot not respond to this allegation. Moreover, the allegation is too vague and ambiguous for Trailer Estates to respond to each alleged specific meeting which allegedly occurred over a two year period. Plaintiffs have failed to clarify the allegation as required by the Court’s order.

e. Paragraph 37(r) of the Second Amended Complaint includes the language “including but not limited to” when referring to the multiple Board members who allegedly attended several meetings over a three month period. The “including but not limited to language” is also used to refer to the topic of the alleged discussions. The individual Defendants cannot determine whether they need to respond to this allegation, and Trailer Estates does not have facts regarding each alleged meeting to respond

appropriately. Plaintiffs have failed to clarify the allegation as required by the Court's order.

f. Paragraphs 37(k), 37(y), 37(bb), 37(cc), 37(dd), 37(ee) and 37(ff) of the Second Amended Complaint add new allegations of Plaintiffs against Defendants. The allegations fail to identify when the alleged meetings occurred and who allegedly attended the meetings. Therefore, the individual Defendants cannot determine whether these allegations necessitate a response, and Trailer Estates does not know the facts regarding the alleged meetings to respond appropriately. Plaintiffs have failed to clarify the allegation as required by the Court's order.

g. Paragraph 62 of the Second Amended Complaint removes the language "but are not limited to"; however, it stills fails to remove the vagueness and ambiguity because the language "[s]pecific examples ... include, the following:" implies that there are more examples which Plaintiffs have not specifically alleged. Therefore, the Defendants cannot appropriately respond to allegations not included. Plaintiffs have failed to clarify the allegation as required by the Court's order.

h. Paragraph 64 of the Second Amended Complaint removes the language "but are not limited to"; however, it stills fails to remove the vagueness and ambiguity because the language "[e]xamples ... include the following:" implies that there are more examples which Plaintiffs have not specifically alleged. Therefore, the Defendants cannot appropriately respond to allegations not included. Plaintiffs have failed to clarify the allegation as required by the Court's order.

i. Paragraph 67 of the Second Amended Complaint removes the language "but are not limited to"; however, it stills fails to remove the vagueness and

ambiguity because the language “[s]pecific examples ... include the following:” implies that there are more examples which Plaintiffs have not specifically alleged. Therefore, the Defendants cannot appropriately respond to allegations not included. Plaintiffs have failed to clarify the allegation as required by the Court’s order.

j. Paragraph 69 of the Second Amended Complaint adds a new allegation that was not previously alleged in the Amended Complaint. This allegation violates the Court’s order that the Plaintiffs were to only file a second amended complaint “which amends and clarifies only paragraphs 37, 37m, 62, 64 and 67 of the Amended Complaint.”

WHEREFORE, Defendant, Trailer Estates Park and Recreation District, respectfully requests this Honorable Court to strike or dismiss the Second Amended Complaint filed by the Plaintiffs in this matter.

II. MOTION TO DISMISS OR MOTION FOR MORE DEFINITE STATEMENT

COMES NOW, in the alternative to Defendant’s Motion to Strike or Dismiss, Defendant, Trailer Estates Park and Recreation District (hereinafter referred to as “Trailer Estates”), by and through undersigned counsel, and hereby moves to dismiss and, in the alternative, moves for a more definite statement of Plaintiffs’ Second Amended Complaint, pursuant to Florida Rule of Civil Procedure 1.140, and as grounds states as follows:

1. On August 24, 2009, the Plaintiffs furnished copies of the Second Amended Complaint to counsel for the Defendants.
2. The Second Amended Complaint fails to state a cause of action for alleged Sunshine violations and fails to allege ultimate facts which, if proven, would constitute a

Sunshine violation. The allegations therein fail to provide facts regarding the alleged meetings or conversations outside of the Sunshine. Paragraphs 37(a), 37(b), 37(c), 37(d), 37(e), 37(f), 37(k), 37(m), 37(n), 37(o), 37(s), 37(t), 37(u), 37(v), 37(x), 37(y), 37(bb), 37(cc), 37(dd), 37(ee) and 37(ff) fail to state allegations as to with whom specifically conversations took place, or when and where they were held, or what was said by whom-to-whom and in whose presence, or what was done at or as a result of those conversations.

3. In B.M.Z. Corporation v. City of Oakland Park, 415 So. 2d 735 (Fla. 4th DCA 1982), the Court affirmed an order of the trial court dissolving a temporary injunction entered in a Sunshine law case. Id. at 738. In explaining its ruling, the Court stated that the appellant had failed to provide any evidence that any decisions were made in private. Id. The Court was “at a loss to see how the trial court could have determined with whom specifically the conversations took place, or when and where they were held, or what was said by whom-to whom-and [sic] in whose presence, or what was done at or as a result of those conversations.” The present matter involves a motion to dismiss, but the same principles apply. The Plaintiffs have failed to allege any facts regarding the alleged meetings or conversations and what actions, if any, allegedly were taken as a result of those alleged meetings or conversations.

4. F.S. 286.011(1) states:

“All meetings of any board or commission of any state agency or authority or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to taken are declared to be public meetings open to the public at all times, and no resolution, rule or formal action shall be considered binding except as taken or made at such meeting. The board of commission must provide reasonable notice of all such meetings.” (Emphasis added).

For a Sunshine violation, the statute requires: (1) a meeting that is not open to the public; (2) where formal action is taken.

5. Plaintiffs have failed to allege that Trustees of Trailer Estates met outside of the Sunshine in paragraphs 37(b), 37(c), 37(d), 37(i), 37(t), 37(w), and 37(v).

6. Plaintiffs have failed to allege what formal action, if any, was taken as a result of the allegedly private meetings between Trustees of Trailer Estates in paragraphs 37(a), 37(e), 37(f), 37(g), 37(h), 37(j), 37(l), 37(n), 37(o), 37(s), 37(w), 37(x), 37(bb), 37(cc), 37(dd) and 37(ff).

WHEREFORE, Defendant, Trailer Estates Park and Recreation District, respectfully requests this Honorable Court to dismiss the Plaintiffs' Second Amended Complaint and to further award the District attorneys fees and costs. In the alternative, Defendants respectfully request this Honorable Court to enter an order for the Plaintiffs to plead their allegations against Defendants with specificity so that Defendants may respond to the allegations.

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 26th day of August, 2009.

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IN AND FOR MANATEE COUNTY, FLORIDA

MARY LOU SMITH
an individual, and
SHARON DENSON,
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Plaintiffs,

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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.

ORDER ON DEFENDANTS' MOTION TO STRIKE

THIS CAUSE, having come to be heard on Defendants', Trailer Estates Park and Recreation District's, Janet Jones', John Vandermolen's, Joe Salerno's, and Mary Lou McNulty's Motion to Strike and the Court having heard argument of counsel on August 13, 2009, and being otherwise advised in the Premises, ORDERS AND ADJUDGES that:

1) Defendants' Motion to Strike the language in paragraphs 37, 37m, 62, 64 and 67 of the Plaintiffs Amended Complaint "including but not limited to" is denied.

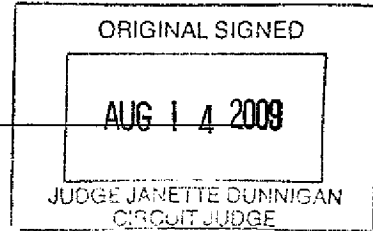
2) The Court considers the Motion to Strike as inappropriate, but that a Motion for More Definite Statement is appropriate and orders the Plaintiffs to file a second amended complaint within 10 days from the date of this order, which amends and clarifies only paragraphs 37, 37m, 62, 64, and 67 of the Amended Complaint. The Defendants shall serve a response to the Amended Complaint within 10 days.



DONE AND ORDERED in Chambers, in Manatee County, Florida this ____ day of August,
2009.

HONORABLE JUDGE JANETTE DUNNIGAN

Circuit Judge



Copies furnished to:

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