

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

MARY LOU SMITH, et al.,

Plaintiffs,

v.

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT, et al.,

Defendants.

**DEFENDANT JONES' MOTION TO STRIKE PLAINTIFFS' SECOND AMENDED
COMPLAINT; ALTERNATIVE MOTION TO DISMISS SECOND AMENDED
COMPLAINT; AND ALTERNATIVE MOTION FOR MORE DEFINITE STATEMENT**

After nine months and twenty-six depositions, Plaintiffs should be in a position by now to inform Defendant Janet Jones (“Ms. Jones”) of the allegations against her. Plaintiffs, however, still have not done that. Plaintiffs’ Second Amended Complaint not only violates the Court’s order requiring a more definite statement, but it continues to violate Ms. Jones’ due process rights to be informed of the charges against her.

Accordingly, Ms. Jones moves to strike Plaintiffs’ Second Amended Complaint and requests the Court to order Plaintiffs to inform Ms. Jones of the following information, as to each alleged Sunshine Law violation against her in this lawsuit:

That on _____ date, Trustee x and Trustee y discussed subject z.

Alternatively, Ms. Jones moves to dismiss Plaintiffs’ Second Amended Complaint, or alternative to that, for the Court to require Plaintiffs to make a more definite statement, again in the format requested above.

Motion to Strike

Ms. Jones joins Defendant Trailer Estate's Motion to Strike. To that motion, Ms. Jones adds:

1. The reason for Ms. Jones' original motion to strike certain phrases in the Amended Complaint was to permit her notice as to those allegations against which she must defend. Plaintiffs' use of the phrase, "including but not limited to" failed to provide meaningful notice, which raises a substantial due process concern. The Court attempted to address that concern in its Order compelling a more definite statement.

2. Instead of clarifying their allegations, Plaintiffs violated the Court's requirements. Plaintiffs' addition of new and vague allegations that provide no notice also raise due process concerns. For instance, in paragraph 37(ff), Plaintiffs allege:

Trustees have repeatedly held meetings that were not open to the public, properly notices, or minutes taken where they discussed allegedly administrative matters.

This is tantamount to alleging, "Defendants violated the Sunshine Law," but such allegation provides no notice as to who committed the violation, when the violation occurred, what the subject matter of the violation, or how many separate violations are being asserted.

3. Many of the other allegations within paragraph 37 also contain this problem. For instance, when Plaintiffs allege in 37(ee) that "Board members met outside of the Sunshine to determine the content of information published in the District's minutes," Ms. Jones is left to guess (a) whether this allegation is against her; (b) when the alleged conduct occurred; (c) with whom she allegedly discussed this matter, if she is a target of this allegation; and (d) what was discussed to keep out/put in the minutes.

4. Moreover, Plaintiffs' failed to remove the "including but not limited to" language, as Paragraph 37(s) contains that language. Again, Ms. Jones is left to guess whether she is alleged to have done something wrong and must defend herself.

5. There are numerous other examples of vague and indefinite allegations, including many which Plaintiffs added for the first time in Plaintiffs' Second Amended Complaint. See ¶¶ 37(k), (y), (bb), (cc), and (dd).

6. Defendant Jones' motion to strike is a matter of fairness to her, as she requests notice of those allegations against which she must defend. "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)).

7. Here, Plaintiffs seek to reserve the right to bring up matters at trial that have not been pled. This is improper, as "Florida law clearly holds that a trial court lacks jurisdiction to hear and to determine matters which are not the subject of proper pleading and notice." Pro-Art Dental Lab, Inc. v. V-Strategic Group, Inc., 986 So. 2d 1244, 1252 (Fla. 2008). Continuing, the Florida Supreme Court explained in Pro-Art Dental that "[t]o allow a court to rule on a matter without proper pleadings and notice is violative of a party's due process rights." Id.

8. Accordingly, Ms. Jones requests that the Court strike the Second Amended Complaint and order Plaintiffs allege, as to each purported Sunshine Law violation against Ms. Jones in this lawsuit, the following information:

That on _____ date, Trustee x and Trustee y discussed subject z.

**Motion to Dismiss Second Amended Complaint and
Alternate Motion for More Definite Statement**

9. Ms. Jones alternatively moves to dismiss Plaintiffs' Second Amended Complaint for failing to state a cause of action. Plaintiffs' Second Amended Complaint sounds in four counts, but only counts 1, 3, and 4 are directed at Ms. Jones and are only for alleged violations of Florida's Sunshine Law, section 286.011, Florida Statutes. The Second Amended Complaint fails to allege ultimate facts of a violation of section 268.011.

10. Count 1. Count 1 seeks a declaratory judgment that certain allegations constitute Sunshine Law violations. Plaintiffs, however, do not allege ultimate facts setting forth the alleged wrongful conduct. The problem with many of the allegations are that they are impossibly vague and are tantamount to alleging that "unnamed board members on unnamed dates spoke concerning unnamed subjects." The Sunshine Law prohibits two or more trustees from communicating outside of a noticed meeting about a matter that is then reasonably foreseeable to come before the board for resolution, rule, or formal action. See § 286.011(1), Fla. Stat.

11. Here, the following paragraphs fail to identify whether Ms. Jones engaged in the conduct: 37(a), (b), (c), (d), (e), (f), (k), (m), (n), (o), (r), (s), (t), (u), (v), (x), (y), (bb), (cc), (dd), (ee), and (ff), 43, and 44. The following paragraphs fail to identify the subject matter of the communication and the matter that was then reasonably foreseeable to come before the Board of Trustees: 37(a), (f), (k), (m), (n), (o), (r), (t), (v), (w), (x), (y), (cc), (dd), (ee), (ff), 43, and 44. Taken together, these allegations fail to provide ultimate facts sufficient to state a cause of action for a violation of section 286.011. Ms. Jones is left to guess what the conduct is and whether she is alleged to have engaged in this undefined conduct.

12. Moreover, Plaintiffs fail to attach the memorandums allegedly authored by Ms. Jones (paragraph 37(w)) about which Plaintiffs seek declaration.

13. Count 3. Count 3 seeks a writ of mandamus issue against Ms. Jones. First, this count must be dismissed because it mixes causes of action for Sunshine Law violations with Public Record violations. Second, this count must be dismissed – or more appropriately, an order to show cause should not issue – because Plaintiffs fail to identify any indisputable ministerial, non-discretionary duty that Ms. Jones is by law required to perform. See Smith v. State, 696 So. 2d 814, 815-16 (Fla. 2d DCA 1997). Mandamus is a common law remedy to compel a person in an official capacity to *perform* an indisputable ministerial duty required by law. Plaintiffs must establish a clear legal right, an indisputable legal duty, and no adequate remedy at law. Plaintiffs have not done so.

14. Plaintiffs' request in relief paragraph B to compel Ms. Jones to attend a public records and sunshine workshop. Leaving aside the fact that Plaintiffs do not accuse Ms. Jones of violating the Public Records Law, Plaintiffs failed to identify anything in the Charter establishing Trailer Estates or elsewhere in Florida law that imposes a legal duty on Ms. Jones to attend workshops. In relief paragraph D, Plaintiffs seek to compel Ms. Jones to pay attorney fees. Again, Plaintiffs cite no provision in the law establishing that legal duty. Finally, in relief paragraph C, Plaintiffs seek to compel Ms. Jones to follow the Sunshine Law, which is tantamount to an injunction, which Plaintiffs request in a separate count. Plaintiffs have not established ministerial, non-discretionary duties that Ms. Jones must perform. Accordingly, no order to show cause should issue and this count dismissed.

15. Count 4. Count 4 seeks an injunction to prohibit multiple issues. Again,

Plaintiffs inappropriately mix Public Records and Sunshine Law allegations in this same count. This Count must be dismissed and Plaintiffs required to separate the causes of action.

16. Alternatively, Ms. Jones moves the Court for a more definite statement. The Second Amended Complaint leaves Ms. Jones to guess at the conduct which Plaintiffs complain violates the Sunshine Law. Due process requires, at a minimum, for Plaintiffs to identify as to each allegation of a Sunshine Law when the violation occurred, the names of the trustees who engaged in the unlawful communication, the subject matter of the discussion, and the identification of the of the resolution, rule, or formal action taken by the Board of Trustees.

WHEREFORE, Ms. Jones requests the Court enter an Order striking Plaintiffs' Second Amended Complaint and requiring Plaintiffs to re-plead and require Plaintiffs to allege, as to each purported Sunshine Law violation against Ms. Jones in this lawsuit, the following information:

That on _____ date, Trustee x and Trustee y discussed subject z.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and hand delivery this 31st day of August, 2009, to:

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