

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 FOR CONTINUANCE OF TRIAL

COMES NOW, Defendant, Trailer Estates Park and Recreation District, by and through undersigned counsel, and hereby moves for a continuance of the trial schedule in the above-reference matter, pursuant to Florida Rule of Civil Procedure 1.460, and as grounds states as follows:

1. On September 8, 2009, Plaintiffs served a copy of the Third Amended Complaint to counsel for Defendants.
2. The Third Amended Complaint adds numerous new allegations to which Defendants had not been provided notice. Paragraph 37 of the Third Amended Complaint adds 65 new sub-paragraphs, extending the lettering of sub-paragraphs from ending in (ff) in the Second Amended Complaint to ending in (ssss) in the Third Amended Complaint. Paragraph 62 of the Third Amended Complaint furthers adds 7 new allegations to those made in paragraph 62 of the Second Amended Complaint.

3. The new allegations occurring after December 1, 2008 should have been contained in a supplemental pleading pursuant to Florida Rule of Civil Procedure 1.190(d). Under Rule 1.190(d), “[u]pon motion of a party [which Plaintiffs did not file] the court may permit that party, upon reasonable notice and upon such terms as are just, to serve a supplemental pleading setting forth transactions or occurrences or events which happened since the date of the pleading sought to be supplemented.” It is unjust for the Plaintiffs to set forth transactions, occurrences and events which have happened since December 1, 2008 in their Third Amended Complaint when said transactions, occurrences and events happened less than one month before trial and which transactions, occurrences and events Defendants did not have notice of until less than one week before the scheduled trial.

4. The parties to this matter have conducted extensive discovery regarding the allegations contained in the Amended Complaint, which was served on Defendants on April 13, 2009. Defendants did not conduct discovery regarding the new allegations contained in the Second Amended Complaint as it was served on Defendants on August 24, 2009 – only four (4) days before the discovery period ended. The addition of new allegations by Plaintiffs against Defendants on September 8, 2009 when the discovery period ended on August 28, 2009 results in extreme prejudice to the Defendants. The Defendants have not conducted discovery regarding these new allegations, and the discovery period has closed.

5. Furthermore, the pleadings in this matter have been re-opened; therefore, the matter is not at issue and cannot be set for trial pursuant to Florida Rule of Civil Procedure 1.440. Rule 1.440 specifically exempts actions to which chapter 51, *Florida*

Statutes, applies. However, the Legislature has not stated that chapter 51, *Florida Statutes*, applies to any of the actions brought by Plaintiffs, unlike actions for possession of a residential and non-residential rental property where the Legislature has entitled landlords to summary procedure provided by chapter 51, *Florida Statutes*. See FLA. STAT. §§ 83.21, 83.59(2). It is reversible error to try a case before it is at issue. *Precision Constructors, Inc. v. Valtec Construction Corp.*, 825 So. 2d 1062 (Fla. 3d DCA 2002).

WHEREFORE, Defendant, Trailer Estates Park and Recreation District, respectfully requests this Honorable Court to continue the trial currently set in this matter.



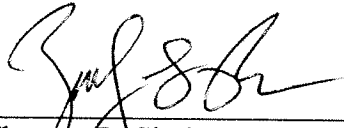
Martha Brauer
Chairman of Board of Trustees
Trailer Estates Park and Recreation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail and facsimile to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, (941) 708-4024, Daniel E. Scott, Esquire, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, Florida 34237, (941) 366-6303, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, (941) 953-5736, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, Florida 34205-7834, (941) 748-1573 and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, Florida 34236, (941) 954-7777, on this 9 day of September, 2009.

KIRK ■ PINKERTON, P.A.
50 Central Avenue, Suite 700
Sarasota, FL 34236
Tel: (941) 364-2425
Fax: (941) 364-2490

By: _____


Thomas D. Shults, Esquire
Florida Bar No. 363219
Zachary L. Ross, Esquire
Florida Bar No. 0028351