

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 JANET JONES'
ANSWER AND AFFIRMATIVE DEFENSES TO THIRD AMENDED COMPLAINT
FILED UNDER COMPULSION OF COURT ORDER**

During the hearing on September 3, 2009, the Court granted Defendants' Motions for More Definite Statement, ruling that Plaintiffs were to file and serve their Third Amended Complaint on or before 10 a.m. on Tuesday, September 8, 2009. The Court instructed Plaintiffs to provide Defendants meaningful notice of the allegations against them, including the trustees alleged to have committed the violation, the date such violation occurred, and the subject matter of the trustees' communication. On two previous occasions, the Court concluded that Plaintiffs' allegations were too indefinite to provide meaningful notice to Defendants.

The Court during the September 3 hearing also directed the Defendants to file and serve an answer to the yet-to-be-filed Third Amended Complaint on or before Thursday, September 10, 2009. The Court appears to have further directed Defendants not to file any type of motion to dismiss or for more definite statement, presumably in an attempt to close the pleadings in order to meet a Monday, September 14, 2009 trial date.

In compliance with the Court's directive, Defendant Janet Jones responds to the Third Amended Complaint below. In doing so, however, Ms. Jones makes clear that she does so only in compliance with Court Order and does not waive her position that the alternate motion to dismiss and strike filed concurrently with this answer is the appropriate response to Plaintiffs' Third Amended Complaint.

VENUE, JURISDICTION AND NATURE OF THE ACTION

1. Without knowledge; therefore denied.
2. Admit only that venue is proper with this Court; deny the remaining allegations within paragraph 2.

ALLEGATIONS COMMON TO ALL COUNTS

3. Without knowledge; therefore denied.
4. Without knowledge; therefore denied.
5. Without knowledge; therefore denied.
6. Admit that Chapter 2002-361 re-codified prior special laws creating the Trailer Estates Park and Recreation District. Otherwise, admit.
7. Admit Board of Trustees is the governing body of Trailer Estates Park and Recreation District; deny the remainder of the allegation.
8. Denied as phrased.
9. Admit Jones is a resident of Trailer Estates; admit she has served on the Board of Trustees since prior to 2005; and admit she was Chairman of the Board of Trustees from January 2007 through December 2008; otherwise denied.

10. Without knowledge; therefore denied.
11. Without knowledge; therefore denied.
12. Without knowledge; therefore denied.
13. Admit only that the Board members and Trailer Estates are subject to Florida's Sunshine Law and the legal requirements set forth in law; other wise denied.
14. Admit only that the Board members and Trailer Estates are subject to Florida's Public Records Law and the legal requirements set forth in law; otherwise denied.
15. This is a legal conclusion; otherwise denied.
16. Admit that Ms. Jones knows she is subject to the Sunshine Law and Public Records Law; without knowledge and therefore denied as to other Board members' knowledge.
17. Without knowledge; therefore denied.
18. Admit there have been presentations concerning the Sunshine Law and Public Records Law; however, deny the balance of paragraph 18.
19. Admit that there have been presentations concerning the Sunshine Law and Public Records Law; however, deny the balance of paragraph 19.
20. Denied.
21. Without knowledge; therefore denied.
22. Denied.

**COUNT I
DECLARATORY JUDGMENT
(as to all Defendants)**

23. Ms. Jones re-alleges her responses in paragraphs 1 through 22 as if fully set forth here.

24. Admit only Plaintiffs purport to bring the declaratory judgement complaint; otherwise denied.
25. Article I, section 24 of the Florida Constitution speaks for itself; otherwise denied.
26. Section 286.011, Florida Statutes, speaks for itself; otherwise denied.
27. Section 286.011(4), Florida Statutes, speaks for itself; otherwise denied.
28. Denied.
29. Denied.
30. Without knowledge; therefore denied.
31. Exhibit 4 speaks for itself; otherwise denied.
32. Denied.
33. Denied.
34. Exhibit 5 speaks for itself; otherwise denied.
35. Denied.
36. Denied.
- 37 . (a) Without knowledge; therefore denied.
- (b) Without knowledge; therefore denied.
- (c) Without knowledge; therefore denied.
- (d) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.
- (e) Without knowledge; therefore denied.
- (f) Without knowledge; therefore denied.
- (g) Without knowledge; therefore denied.

(h) Without knowledge; therefore denied.

(i) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(j) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(k) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(l) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(m) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(n) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(o) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(p) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(q) Without knowledge; therefore denied.

(r) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(s) Without knowledge; therefore denied.

(t) Denied.

(u) Without knowledge; therefore denied.

(v) Denied.

(w) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(x) Denied.

(y) Denied.

(z) Denied.

(aa) Without knowledge; therefore denied.

(bb) Denied.

(cc) Denied.

(dd) Without knowledge; therefore denied.

(ee) Denied.

(ff) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(gg) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(hh) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(ii) Without knowledge; therefore denied.

(jj) Denied.

(kk) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(ll) Denied.

(mm) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(nn) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(oo) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(pp) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(qq) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(rr) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(ss) Denied.

(tt) Denied.

(uu) Denied.

(vv) Without knowledge; therefore denied.

(ww) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(xx) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(yy) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(zz) Denied.

(aaa) Denied.

(bbb) Without knowledge; therefore denied.

(ccc) Without knowledge; therefore denied.

(ddd) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(eee) Denied.

(fff) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(ggg) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(hhh) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(iii) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(jjj) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(kkk) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(lll) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(mmm) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(nnn) Denied.

(ooo) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(ppp) Without knowledge; therefore denied.

(qqq) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(rrr) Without knowledge; therefore denied.

(sss) Denied.

(ttt) Without knowledge; therefore denied.

(uuu) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(vvv) Denied.

(www) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(xxx) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(yyy) Denied.

(zzz) Without knowledge; therefore denied.

(aaaa) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(bbbb) Denied.

(cccc) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(dddd) Without knowledge; therefore denied.

(eeee) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(ffff) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(gggg) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(hhhh) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(iii) Denied.

(jjj) Denied.

(kkkk) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(lll) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(mmmm) This allegation is not directed at Ms. Jones. To the extent Ms. Jones must respond, she states she is without knowledge and therefore it is denied.

(nnn) Denied.

(oooo) This allegation is not directed at Ms. Jones. To the extent Ms.

Jones must respond, she states she is without knowledge and therefore it is denied.

(pppp) Without knowledge; therefore denied.

(qqqq) Without knowledge; therefore denied.

(rrrr) Without knowledge; therefore denied.

(ssss) Without knowledge; therefore denied.

38. Without knowledge; therefore denied.

39. This allegation calls for a legal conclusion; without knowledge; therefore denied.

40. This allegation calls for a legal conclusion; without knowledge; therefore denied.

41. This allegation calls for a legal conclusion; without knowledge; therefore denied.

42. This allegation calls for a legal conclusion; without knowledge; therefore denied.

43. Without knowledge; therefore denied.

44. Without knowledge; therefore denied.

45. Denied that Jones violated the Sunshine Law.

46. Denied.

47. Denied.

48. Without knowledge; therefore denied.

49. Without knowledge; therefore denied.

50. Without knowledge; therefore denied.

51. Denied that Jones violated the Sunshine Law.

All "Wherefore" clauses denied that Plaintiffs are entitled to such relief.

COUNT II
DECLARATORY JUDGMENT
PUBLIC RECORDS
(As to Trailer Estates, Vandermolen, and McNulty)

Count II, comprising paragraphs 52 through 76 is not directed against Defendant Jones and therefore are not responded to except:

....

62. Defendant Jones moves to strike paragraph 62 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

....

64. Defendant Jones moves to strike paragraph 64 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

65. Defendant Jones moves to strike paragraph 65 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within

allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

COUNT III
MANDAMUS FOR BOTH PUBLIC RECORD AND SUNSHINE ALLEGATIONS
(as to Trailer Estates, Jones, Vandermolen, and Salerno)

The Court has not issued an Order to Show Cause requesting any of the Defendants to respond. However, in an abundance of caution, Defendant Jones responds to the mandamus request. Defendant Jones' response does not waive her position that mandamus is not appropriate.

78. Janet Jones reincorporates here her responses to paragraphs 1 through 22, 62, 64 and 65 as if fully set forth here.

79. Without knowledge; therefore denied.

80. Denied.

81. Defendant Jones moves to strike paragraph 81 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

82. Defendant Jones moves to strike paragraph 82 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within

allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

83. Denied.

84. Defendant Jones moves to strike paragraph 65 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

85. Denied.

All “Wherefore” clauses denied that Plaintiffs are entitled to such relief.

COUNT IV - TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
(as to all Defendants)

86. Ms. Jones re-alleges her responses in paragraphs 1 through 22 as if fully set forth here.

87. Without knowledge; therefore denied.

88. Defendant Jones moves to strike paragraph 88 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones

needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

89. Defendant Jones denies that portion of paragraph 89 that alleges purported Sunshine Law violations. Ms. Jones moves to strike the balance of paragraph 89 to the extent it purports to allege Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to the Public Record portion of the paragraph, she states she is without knowledge and therefore denies the balance of this paragraph.

90. Defendant Jones denies that portion of paragraph 90 that alleges purported Sunshine Law violations. Ms. Jones moves to strike the balance of paragraph 90 to the extent it purports to allege Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to the Public Record portion of the paragraph, she states she is without knowledge and therefore denies the balance of this paragraph.

91. Denied.

92. Denied.

93. Defendant Jones moves to strike paragraph 88 in its entirety. This paragraph alleges Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones

needs to respond to this paragraph, she states she is without knowledge and therefore denies the entirety of this paragraph.

94. Denied.

95. This paragraph does not allege any ultimate facts. To the extent it does, it is denied. Ms. Jones moves to strike the balance of paragraph 90 to the extent it purports to allege Public Record violations. Plaintiffs have not sued Ms. Jones for alleged violations of the Public Record law. Accordingly, including allegations of Public Record violations within allegations of Sunshine Law improperly mixes the causes of action. To the extent that Ms. Jones needs to respond to the Public Record portion of the paragraph, she states she is without knowledge and therefore denies the balance of this paragraph.

All “Wherefore” clauses denied that Plaintiffs are entitled to such relief.

Any allegation not specifically admitted is denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Conversations referenced in the Third Amended Complaint were merely administrative matters and not governed by the Sunshine Law.

Second Affirmative Defense

Conversations referenced in the Third Amended Complaint were not matters then reasonably foreseeable to come before the Board/Committee, which are outside the reach of the Sunshine Law.

Third Affirmative Defense

Conversations referenced in the Third Amended Complaint were information gathering for fact-finding purposes, which are outside the reach of the Sunshine Law.

Fourth Affirmative Defense

Conversations referenced in the Third Amended Complaint occurred after Board action, which are outside the reach of the Sunshine Law.

Fifth Affirmative Defense

Plaintiffs, through their inaction, are now estopped from bringing this action under the doctrine of laches.

Sixth Affirmative Defense

Plaintiffs come to this Court with unclean hands and are equitably estopped from complaining of Ms. Jones' conduct.

Seventh Affirmative Defense

Plaintiffs invited and advised that there is no Sunshine Law violation if multiple trustees attended the same (non-Board of Trustees) meeting and therefore they are now estopped from alleging such conduct is a Sunshine Law violation

Eighth Affirmative Defense

The statute of limitations precludes Plaintiffs from proceeding on certain of their allegations.

Ninth Affirmative Defense

Should the Court conclude there is a Sunshine Law violation, such violation was "cured" by subsequent Board of Trustee action.

ATTORNEY FEES

Defendant Jones maintains that she is entitled to have her attorney fees paid pursuant to chapter 2002-361, Laws of Florida, sections 15(j) and section 20 as well as section 286.011(4), Florida Statutes.

JURY TRIAL DEMAND

Janet Jones demands a trial by jury on all matters so triable.

Respectfully submitted,

MATTHEWS, EASTMOORE, HARDY,
CRAUWELS & GARCIA, P.A.

/s/ Hunter W. Carroll

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and First Class U.S. Mail this 10th day of September, 2009, to:

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