

**IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION**

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

Plaintiffs,

vs.

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.

**PLAINTIFFS' MOTION TO STRIKE
TRAILER ESTATES PARK AND RECREATION DISTRICT'S AND JONES'
REQUESTS FOR ATTORNEY'S FEES SET FORTH IN
ANSWERS TO THE THIRD AMENDED COMPLAINT**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and pursuant to Rule 1.140(f), Florida Rules of Civil Procedure, and hereby file this Motion to Strike Trailer Estates Park and Recreation District's and Janet Jones' Requests for Attorney's Fees and Costs Set Forth in Answers to the Third Amended Complaint and as grounds therefore state as follows:

1. In compliance with the Court's Order on September 3, 2009, on September 8, 2009, the Plaintiffs filed a Third Amended Complaint against the Trailer Estates Park and Recreation District ("District"), and four individuals defendants including Janet Jones ("Jones) who is a current member of the Board of Trustees that governs the District. The Complaint

alleges violations of the Public Records and Sunshine Laws, Florida Statutes §§ 119.07 and 286.011, respectively.

2. The Defendants District and Jones filed Answers and Affirmative Defenses to the Third Amended Complaint and pled an entitlement to attorney's fees pursuant to Special Act, Chapter 2002-361, Laws of Florida.

3. Attorney's fees may only be awarded when authorized by statute or agreement of the parties. *State Farm Fire & Casualty Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993); *Stockman v. Downs*, 573 So. 2d 835, 837-38 (Fla. 1991)

4. A motion to strike is the mechanism by which a party should move to strike an inappropriate request for attorneys attorney's that is not based on statute. *See, City of Winter Garden v. State ex rel. Wood*, 311 So.2d 396 (Fla. 4th DCA 1975)(finding the trial court erred by failing to strike a request for attorneys fees that did not have a statutory basis).

5. The Special Act, Chapter 2002-361, Laws of Florida, cited by the Defendants District and Jones in their Answers does not provide a basis for the Defendants' entitlement to attorneys' fees and costs from the Plaintiffs and should be stricken from their respective Answers.

6. Chapter 2002-361 of the Laws of Florida ("Charter") was enacted by the Florida Legislature to serve as a single, comprehensive special act charter for the District. A copy of the Charter is attached hereto as Exhibit 1.

7. Specifically, section 15(j) of the Charter provides the following "power" to the District's Board of Trustees:

To recover all costs and reasonable attorney's fees in addition to other appropriate relief should the trustees be the prevailing party in any litigation, and in any appellate proceedings, **involving the enforcement of this act and/or the deed restrictions** as filed in the Manatee County public records. [Emphasis added.]

8. This Charter provision simply states that the District's Board of Trustees has the "power" to seek recovery of attorney's fees under certain circumstances. The language does not create a right or an entitlement to attorney's fees under any circumstance; it merely provides the authority to seek the recovery of attorney's fees in the name of the District in an action enforcing the Charter or deed restrictions.

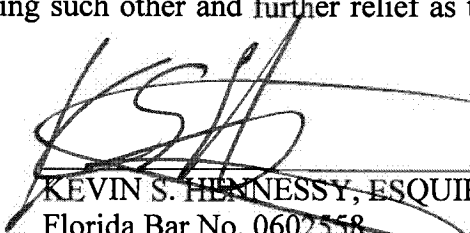
9. The Plaintiffs' Third Amended Complaint involves the Defendants' violations of the Public Records and Sunshine Laws, not enforcement of the District's Charter or deed restrictions. Section 15(j) of the Charter is clearly not applicable to this proceeding and should be stricken from the District's and Jones' Answer to the Third Amended Complaint.

10. Section 20 of the Charter, also referenced by Defendant Jones in her Answer to the Third Amended Complaint, provides the following:

Trustees not guilty of malfeasance in office shall be relieved of any personal liability for any acts done by them while holding office in the district; any trustee who is made a party to any action, suit, or proceeding solely by reason of his or her holding office in the district shall be indemnified by the district against reasonable expenses, including attorney's fees, incurred by him or her in defending such suit, action, or proceeding, except with respect to matters wherein it shall be adjudged in such proceeding that such trustee is liable for negligence or misconduct in the performance of his or her duties.

11. Section 20 of the Charter sets forth certain circumstances under which an individual member of the District's Board of Trustees may be indemnified **by the District** against reasonable expenses including attorney's fees. Nothing in this provision specifies any grounds for an individual member of the District's Board of Trustees to seek payment of attorney's fees *from another party*. Consequently, Section 20 of the Charter does not provide a statutory basis for the Defendant Jones to assert a claim for attorney's fees and this allegation should be stricken from the Answer.

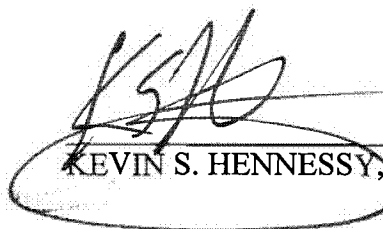
WHEREFORE, the Plaintiffs respectfully request this Court enter and Order striking the Defendants Trailer Estates Park and Recreation District's and Janet Jones' requests for attorney's fees pursuant to Chapter 2002-361, Laws of Florida, as pled in their Answers to the Plaintiffs' Third Amended Complaint and granting such other and further relief as this Court deems to be reasonable and appropriate.



KEVIN S. HENNESSY, ESQUIRE
Florida Bar No. 0602558
MAGGIE D. MOONEY-PORTALE, ESQUIRE
Florida Bar No. 0555924
JENNIFER R. COWAN, ESQUIRE
Florida Bar No. 0038081
Lewis, Longman & Walker, P.A.
1001 3rd Avenue West, Suite 670
Bradenton, Florida 34205
Telephone (941) 708-4040
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire**, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, **James D. Dye, Esquire**, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, **Robert E. Turffs, Esquire**, 1444 First Street, Suite B, Sarasota, FL 34236, **Daniel E. Scott, Esquire**, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, **Thomas D. Shults, Esquire**, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by U.S. Mail, this 11th day of September, 2009.



KEVIN S. HENNESSY, ESQUIRE