

**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 DEFENDANTS,
TRAILER ESTATES PARK AND RECREATION DISTRICT'S,
JONES', VANDERMOLEN'S, AND SALERNO'S, JURY DEMAND**

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, hereby file this Motion to Strike the Defendants', Trailer Estates Park and Recreation District's, Jones', Vandermolen's, and Salerno's Jury Demand and as grounds therefore state as follows:

1. A Motion to Strike is the appropriate method of addressing a demand for a jury

trial. *See, McGoey v. Sun Tobacco, Inc.*, 941 So.2d 474 (Fla. 3d DCA 2006)(affirming the trial court's decision to strike a jury trial when the rights and remedies sought by the plaintiff are equitable in nature).

2. In compliance with the Court's Order rendered 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"), John Vander Molen ("Vander Molen"), Joseph Salerno ("Salerno"), and Mary Lou McNulty ("McNulty") who are current and former members of the Board of Trustees that governs the District.

3. The Third Amended Complaint alleges the same four counts against the Defendants for violations of the Public Records and Sunshine Laws, Florida Statutes §§ 119.07 and 286.011 that were pled in the three prior versions of the complaint. Specifically, the Third Amended Complaint seeks declaratory relief as to the rights and obligations of the all of the Defendants to comply with the Section 286.001 Fla. Stat. (Count I); declaratory relief as to the rights and obligations of the District, Vandermolen and McNulty to comply with the Section 119.07, Fla. Stat. (Count II); a writ of mandamus from this Court ordering the District, Jones, Vandermolen, and Salerno to comply with Florida Statutes §§ 119.07 and 286.011 (Count III), and injunctive relief to order the Defendants from violating the Sunshine and Public Records Laws (Count IV). The causes of actions asserted against the Defendants in the Third Amended Complaint have not changed.

4. Defendants District, Jones, Vander Molen and Salerno filed Answers and Affirmative Defenses to the Third Amended Complaint and each of these Defendants demanded "a trial by jury on the issues so triable."

5. In prior Answers and Motions filed by the Defendants' District, Jones, Vander Molen and Salerno, the Defendants previously demanded a request for a jury trial, and the Plaintiffs' previously moved to strike these demands by motion filed on July 20, 2009.

6. By Order dated August 14, 2009, after a two hour hearing before the Court, this Court struck the Defendants' prior requests for a jury trial. *See*, Plaintiffs' Motion to Strike Demand for Jury Trial dated July 20, 2009 and Order on Plaintiffs' Motion to Strike Demand for Jury Trial, attached hereto as Exhibit 1.

7. The renewed request for a jury demand by Defendants District, Jones, Vander Molen and Salerno is barred by the doctrine of res judicata and/or law of the case. Specifically, the Defendants are barred from raising issues previously considered by this Court on a previous motion. *See, AGB Oil Company. v. Crystal Exploration and Production Company*, 406 So.2d 1165 (Fla. 3d DCA 1981).

8. Robert Turffs, counsel for Joseph Salerno, has informed Plaintiffs' counsel that his client's demand for a jury trial in the Answer to the Third Amended Complaint was a mistake and that he intends to withdraw his request.

9. Based on the foregoing, the Defendants District, Jones, Vander Molen and Salerno are not entitled to a jury trial as requested in their respective Answers to the Third Amended Complaint, accordingly the Plaintiff's request that this Court strike the demand set forth in their Answers.

WHEREFORE, the Plaintiffs respectfully request this Court strike the Defendants', Trailer Estates Park and Recreation District's, Janet Jones', John Vandermolen's and Joseph Salerno's demand for a jury trial set forth in their respective Answers to the Third Amended

Complaint and grant such other and further relief as this Court deems reasonable and appropriate.



KEVIN S. HENNESSY, ESQUIRE

Florida Bar No. 0602558

MAGGIE D. MOONEY-PORTALE, ESQUIRE

Florida Bar No. 0555924

JENNIFER R. COWAN

Florida Bar No. 0038081

Lewis, Longman & Walker, P.A.

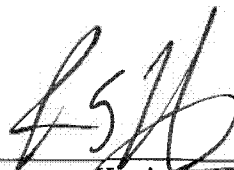
1001 3rd Avenue West, Suite 670

Bradenton, Florida 34205

Telephone (941) 708-4040

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