

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

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R.B. SHORE

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CLERK CIRCUIT COURT
MANATEE CO. FLORIDA

MARY LOU SMITH, et al.,

Plaintiffs,

v.

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT, et al.,

Defendants.

ORDER ON MOTIONS HEARD ON SEPTEMBER 18, 2009

BEFORE THE COURT are numerous motions directed to the Third Amended Complaint and directed to Defendants' Answers and Affirmative Defenses. The Court conducted an omnibus hearing on Friday, September 18, 2009. The Court, having read the motions, memorandums of law, and the file, having conducted a hearing, and being otherwise fully advised in the premises, hereby ORDERS:

Defendants' Motions to Dismiss/For More Definite Statement/Strike

Count 1

1. Paragraphs 37(a) - (f). Plaintiffs clarified that these allegations are not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraphs 37(a), (b), (c), (d), (e), and (f) is GRANTED as to Ms. Jones only.

2. Paragraph 37(g). Ms. Jones' motion to dismiss paragraph 37(g) as to her only is GRANTED. This paragraph is and will remain dismissed unless Plaintiffs can provide the Court and Ms. Jones' counsel legal authority within ten days for the proposition that communications

concerning a collegial board's decision that occurs after the decision can constitute a violation of the Sunshine Law.

3. Paragraph 37(h). Ms. Jones' motion to strike paragraph 37(h) is DENIED. Plaintiffs represented that this paragraph goes to both (1) pattern and practice and (2) specific instances against any of the individual defendants. To the extent this paragraph only asserts a claim against the District for pattern and practice, the District's motion for more definite statement is DENIED. To the extent this paragraph asserts a claim for specific instances against any of the individual defendants, Trailer Estate's motion for definite statement as to paragraph 37(h), joined by all defendants, is GRANTED. In this event, Plaintiffs shall file an addendum that identifies each claimed communication addressed by paragraph 37(h) identifying the individuals participating in the alleged communication, the subject of the alleged communication, and identifying when the alleged communication occurred as close in time as practicable.

4. Paragraph 37(i). Plaintiffs clarified that the reference to ARC members means each member of ARC during those dates. Plaintiffs further stated that this allegation is against Mr. Vandermolen and the District. Mr. Vandermolen is not responsible for the actions of the other ARC members. Accordingly, Mr. Vandermolen's motion to strike paragraph 37(i) is DENIED. The District's motion for more definite statement is DENIED.

5. Paragraph 37(m). Plaintiffs clarified that the reference to ARC members means each member of ARC on that date. Accordingly, Mr. Vandermolen's motion to dismiss paragraph 37(m) is DENIED.

6. Paragraph 37(q). Plaintiffs clarified that this allegation is not directed at Ms. Jones, Mr. Salerno, and Ms. McNulty. Accordingly, Ms. Jones' motion to strike paragraph

37(q), joined by Mr. Salerno and Ms. McNulty is GRANTED as to those three individual Defendants. The District's motion for more definite statement is DENIED. Paragraph 37(q) remains against Mr. Vandermolen and the District.

7. Paragraph 37(u). Ms. Jones' motion to strike paragraph 37(u) is DENIED.

8. Paragraph 37(x). Ms. Jones' motion to dismiss paragraph 37(x) is DENIED. The District's motion for more definite statement as to paragraph 37(x) is DENIED.

9. Paragraph 37(y). Ms. Jones' motion to dismiss paragraph 37(y) is DENIED.

10. Paragraph 37(aa). Plaintiffs clarified that this paragraph concerns the trustees holding office on this date. Accordingly, Ms. Jones' and Mr. Vandermolen's motions to strike paragraph 37(aa) are DENIED.

11. Paragraph 37(ii). Plaintiffs clarified that this allegation is not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraph 37(ii) is GRANTED as to Ms. Jones only.

12. Paragraph 37(rr). Ms. Jones' motion to strike paragraph 37(rr) is DENIED.

13. Paragraph 37(ss). Ms. Jones' motion to dismiss paragraph 37(ss) is DENIED.

14. Paragraph 37(tt). Ms. Jones' motion to strike paragraph 37(tt) is DENIED.

15. Paragraph 37(uu). Plaintiffs clarified this allegation goes to pattern and practice against the District only and not against any individual defendants. Accordingly, Ms. Jones' motion to strike paragraph 37(uu), joined by the other individual defendants, is GRANTED as to the individual Defendants. The District's motion for more definite statement is DENIED.

16. Paragraph 37(vv). Ms. Jones' motion to strike paragraph 37(vv) is DENIED. Mr. Vandermolen's motion to dismiss paragraph 37(vv) is DENIED.

17. Paragraph 37(zz). Ms. Jones' motion to dismiss paragraph 37(zz) is DENIED.

18. Paragraph 37(aaa). The Plaintiffs clarified that this allegation addresses the discussion identified during the depositions of either Bruce Smith or Janet Jones. Accordingly, the District's motion for more definite statement is DENIED.

19. Paragraph 37(ccc). Ms. Jones' motion to strike paragraph 37(ccc) is DENIED.

20. Paragraph 37(fff). Plaintiffs clarified that this allegation is not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraph 37(fff) is GRANTED as to Ms. Jones only.

21. Paragraph 37(rrr). Ms. Jones' motion to strike paragraph 37(rrr) is DENIED.

22. Paragraph 37(ttt). Plaintiffs clarified that this allegation is not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraph 37(ttt) is GRANTED as to Ms. Jones only.

23. Paragraph 37(aaaa). Plaintiffs clarified that this allegation is not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraph 37(aaaa) is GRANTED as to Ms. Jones only.

24. Paragraph 37(cccc). Mr. Vandermolen's motion to dismiss paragraph 37(cccc) is DENIED.

25. Paragraph 37(dddd). Ms. Jones' motion to strike paragraph 37(dddd) is DENIED. The District's oral motion for more definite statement is DENIED.

26. Paragraph 37(llll). Plaintiffs clarified that this allegation is not directed at Ms. Jones. Accordingly, Ms. Jones' motion to strike paragraph 37(llll) is GRANTED as to Ms. Jones only. The District's motion for more definite statement is DENIED as to pattern and practice;

however, the District's motion for more definite statement is GRANTED as to specific violations. With respect to the remaining defendants, to the extent this allegation goes against the remaining defendants for specific instances, Plaintiffs shall file an addendum that identifies each claimed communication addressed by paragraph 37(IIII), identifying the individuals participating in the alleged communication, the subject of the alleged communication, and identifying when the alleged communication occurred as close in time as practicable.

27. Paragraph 37(OOOO). Plaintiffs clarified this allegation goes to pattern and practice against the District only and not against any individual defendants. The District's oral motion for more definite statement is DENIED.

28. Paragraph 37(PPPP). Plaintiffs clarified this allegation goes to pattern and practice against the District only and not against any individual defendants. Accordingly, Ms. Jones' motion to strike paragraph 37(PPPP), joined by the individual defendants is GRANTED as to the individual defendants. The District's motion for more definite statement is DENIED.

29. Paragraph 37(QQQQ). Ms. Jones' motion to strike paragraph 37(QQQQ) is DENIED.

30. Paragraph 37(RRRR). Ms. Jones' motion to strike paragraph 37(RRRR) is treated as a motion for more definite statement, which is joined by all defendants. The Court GRANTS the motion for more definite statement. Plaintiffs shall file an addendum that identifies each claimed communication addressed by paragraph 37(RRRR), identifying the individuals participating in the alleged communication, the subject of the alleged communication, and identifying when the alleged communication occurred as close in time as practicable.

31. Paragraph 37(SSSS). The Plaintiffs clarified that this allegation is from four years prior to the date Plaintiffs filed the original lawsuit until October 30, 2006. As clarified, the

District's motion for more definite statement is DENIED.

32. Paragraph 43. Plaintiffs clarified that paragraph 37 details the specific instances of conduct complained of by Plaintiffs and that paragraph 43 is a general allegation that describes a pattern and practice and does not set forth any new specific allegations. As paragraph 43 is now clarified, Ms. Jones' motion to strike paragraph 43, joined by the other individual defendants, and the District's motion to strike are DENIED.

33. Paragraph 44. Ms. Jones' motion to strike paragraph 44 is treated as a motion for more definite statement, which is joined by all defendants. The Court GRANTS the motion for more definite statement. Plaintiffs shall file an addendum that identifies each claimed communication addressed by paragraph 44, identifying the individuals participating in the alleged communication, the identity(ies) of the alleged liaison(s), the subject of the alleged communication, and identifying when the alleged communication occurred as close in time as practicable.

Count 2

34. Counsel for Plaintiffs clarified that paragraph 69 is to the pattern and practice and does not raise any new allegation not previously referenced in Count 2. Accordingly, the District's oral motion for more definite statement is DENIED unless the Plaintiffs intend to add specific allegations which shall be included in their addenda.

Count 3

35. Counsel for Plaintiffs conceded that mandamus is improper as to the Sunshine allegations and should be limited to the Public Record claims. Accordingly, Ms. Jones' motion to dismiss Count 3, joined by Mr. Vandermolen and Mr. Salerno, is GRANTED as to Ms. Jones

and Mr. Salerno. The motion is GRANTED as to Mr. Vandermolen only to the extent Count 3 includes Sunshine allegations and is DENIED as to Mr. Vandermolen to the extent Count 3 includes Public Record allegations.

Count 4

36. Defendants' motions to dismiss or to require Plaintiffs to separate Sunshine and Public Record allegations into separate counts are DENIED. Plaintiffs are directed to file an addendum that specifically reincorporates previously alleged paragraphs into Count 4.

General Instructions Relating to Third Amended Complaint

37. Any alleged violation occurring on or after the date the Plaintiffs filed their Third Amended Complaint only goes to Count 4 for injunction and the parties will file a stipulation to this effect with the Court.

38. To the extent not previously ruled on by the Court, the Court DENIES any remaining motions to dismiss, strike, or for more definite statement directed to the Third Amended Complaint.

39. The Court vacates all answers filed by the defendants to the Third Amended Complaint.

40. Plaintiffs are directed to file and serve their addenda identified in this Order on or before close of business on October 19, 2009. The Defendants are to file their responsive pleadings to the Third Amended Complaint, including addenda, within twenty days after Plaintiffs serve their addenda.

41. Any allegation stricken by the Court as to any specific defendant(s) does not

require a response by that defendant(s). Plaintiffs will not be permitted to proceed at trial on that stricken allegation against that specific defendant(s). The remaining defendants that are subject to that allegation must file a response.

42. In Defendants affirmative defenses on cure, Defendants must allege such affirmative defenses with the same specificity as Plaintiffs alleged, including identifying the subject matter of the alleged cure and when the alleged cure occurred as close in time as practicable. Thus, Defendant may plead cure generally in response to a general allegation by Plaintiffs.

Plaintiffs' Motion to Strike Jury Demand

43. The Court finds that the allegations in the Third Amended Complaint do not require a jury trial and reiterates the Court's previous ruling on this matter. For purposes of preservation for appellate review, Defendants may plead an entitlement to a jury trial in their Answers to the Third Amended Complaint. Counsel shall then provide the Court with a proposed Order striking the jury trial demand from Defendants' Answers.

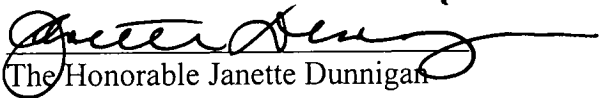
Plaintiffs' Motion to Strike Defendants' Claim for Attorney Fees

44. The Court reserves ruling on Plaintiffs' Motion to Strike Defendants' Claims for Attorney Fees and will address the attorney fee matter after trial. For purposes of preservation for appellate review, Plaintiffs may re-file their motion to strike attorney fees after Defendants file their Answers to the Third Amended Complaint. Counsel shall then provide the Court with a proposed Order reserving ruling on this motion until after trial.

Defendant Salerno's Motion to Bifurcate

45. Mr. Salerno's oral motion to bifurcate the public records and sunshine law issues is DENIED.

DONE and ORDERED in Bradenton, Manatee County, Florida, this 28 day of October, 2009.


The Honorable Janette Dunnigan

cc: Kevin Hennessey / Jennifer Cowan
Tom Shults / Zack Ross
Hunter W. Carroll
Bob Turffs
Dan Scott
Jim Dye