

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

MARY LOU SMITH, et. al.,

Plaintiff,

vs.

Case No. 2008-CA-11315

TRAILER ESTATES PARK AND RECREATION
DISTRICT, et. al.,

Defendants.

**JANET JONES' NOTICE OF FILING
SELECTED PLAINTIFFS' EXHIBITS
IN SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Janet Jones gives notice that on November 5, 2009, she filed with the Court the attached selected plaintiffs' exhibits as identified on their most recent trial exhibit list. These selected plaintiffs' exhibits are being filed in support of Janet Jones' Motion for Partial Summary Judgment and Memorandum of Law in Support, and for such other purposes permitted under the Florida Rules of Civil Procedure or Florida law.

1. Exhibit #57
2. Exhibit #63
3. Exhibit #80
4. Exhibit #93
5. Exhibit #185

Respectfully submitted,

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

/s/ Hunter W. Carroll
Hunter W. Carroll, FB No. 0297630

hcarroll@matthewseastmoore.com
Matthews, Eastmoore, Hardy,
Crauwels & Garcia, P.A.
1777 Main Street, 5th Floor
Sarasota, FL 34236
941-366-8888
941-954-7777 Facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and First Class United States Mail this 5th day of November, 2009, to:

James D. Dye, Esquire
Dye, Deitrich, Ptruff & St. Paul, P.L.
1111 Third Avenue West, Suite 300
Bradenton, FL 34205
jdye@dye-firm.com
Attorney for Defendant, Mary Lou McNulty

Kevin S. Hennessy, Esquire
Lewis, Longman, Walker, P.A.
1001 Third Avenue West., Suite 670
Bradenton, FL 34205
Khennessy@llw-law.com
*Attorney for Plaintiffs, Mary Lou Smith,
and Sharon Denson*

Robert E. Turffs, Esquire
Robert E. Turffs, P.A.
1444 First Street, Suite B
Sarasota, FL 34236
turffs@aol.com
Attorney for Defendant, Joseph Salerno

Daniel E. Scott, Esquire
Daniel E. Scott, P.A.
2033 Main Street, Suite 408
Sarasota, FL 34237
danscott.atty@gte.net
*Attorney for Defendant,
John Vander Molen*

Thomas D. Shults, Esquire
Kirk, Pinkerton, P.A.
50 Central Avenue, Suite 700
Sarasota, FL 34236
tshults@kirkpinkerton.com
*Attorney for Defendant, Trailer Estates Park
and Recreation District*

/s/ Hunter W. Carroll

TRAILER ESTATES PARK & RECREATION DISTRICT

MEMO

TO: Trustees & Residents

FROM: Janet Jones - Chairman *JJ*

DATE: February 12, 2007


Starting Monday, February 19, 2007 at regular meetings resident's comments will be limited to 3 minutes.

This will reduce the length of meetings and attorney expenses. (Residents may present additional written material to the Board.)

Thank you for your cooperation.

Memo 3.doc
February 12, 2007

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TO: Trailer Estates Trustees
FROM: John C. Vander Molen 
SUBJECT: McNeil Fence Case of 6626 New Jersey, Mediated Settlement Agreement
DATE: June 4, 2007

Attached find a copy of the results of the confidential and privileged court ordered mediation session conducted by Mr. Edwin L. Ford, P.A. an Attorney at Law and a Certified Mediator on May 24, 2007. I was in attendance along with Mr. Gaskill our attorney, and Mr. and Mrs. McNeil and their attorney.

In my own terms this is what I understand the agreement contains.

1. This agreement is subject to approval by Board of Trustee Agreement which is anticipated by June 4, 2007 or as soon thereafter as possible and the parties will stipulate to the dismissal of this action, with prejudice (usually considered an adjudication upon the merits and will act as a bar to future action).
2. Mr. McNeil must move the fence in question on the south side of his property outside the four-foot setback no later than September 30, 2007.
3. Each party will bear its own costs and fees.
4. This is a court enforceable agreement.
5. If Mr. McNeil fails to move the fence as stated he would be subject to payments of all of our fees and costs to enforce the above action plus pay to us the sum of \$10,000 in attorney fees and costs that we have already incurred.
6. The agreement becomes a valid and binding agreement under the laws of the State of Florida.
7. If this agreement is not accepted by the Board the agreement will be null and void *ab initio*. (We go back to square one and none of this agreement can be or will be used in the future action).
8. We would then anticipate going to trial on or about September 19, 2007.
9. Our attorney estimated that our legal fees could approach \$25,000 if we go to trial.

Based on the agreement, I was assured that this settlement reconfirms the fact that the Board had the power to enforce deed restrictions and must continue to enforce the restrictions as written without exception. It was said that failure to do so could result in the Board being accused of "selective enforcement" and perhaps lose the ability to enforce restrictions. It was noted that Homeowner Associations and Governing Boards rarely if ever succeed in collection of attorney fees, as it is "just the cost of doing business". However, as written in this agreement is would be "court ordered" that we collect fees and costs if Mr. McNeil fails to move the fence as stipulated. I believe this agreement will achieve our major goal of:

MOVING THE FENCE.

Therefore, I strongly recommend that the Board of Trustees vote to accept this agreement.

Enclosure: McNeil Mediated Settlement Agreement

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

TRAILER ESTATES PARK &
RECREATION DISTRICT,

Plaintiff,

vs.

CASE NO.: 2006-CA-1678

ROBERT W. McNEIL and
BARBARA M. McNEIL,

Defendants.

MEDIATED SETTLEMENT AGREEMENT

May 24, 2007

Having engaged in a confidential and privileged mediation conference on the above-referenced date, the parties hereto agree as follows:

1. **TERMS OF SETTLEMENT.** As consideration for this Mediated Settlement Agreement and conditioned upon approval of this Mediated Settlement Agreement by the Board of Trustees of Plaintiff, Defendants will, by no later than September 30, 2007, move the fence presently situated on the south side of Defendants' property so that it is situated outside the four foot setback. The parties stipulate that, as of the date of this Mediated Settlement Agreement, the only known encroachment into the applicable setbacks on the Defendants' property is the fence on the south side of Defendants' property.

Within ten (10) days of the date of approval of this Mediated Settlement Agreement by the Board of Trustees of Plaintiff which said approval is anticipated by June 4, 2007 or as soon thereafter as possible, the parties will stipulate to the dismissal of this action, with prejudice, each

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party to bear its own costs and fees and the court will be requested to retain jurisdiction of this matter solely for the purpose of enforcing the terms of this Mediated Settlement Agreement.

In the event that the Board of Trustees declines to approve this Mediated Settlement Agreement, then this Mediated Settlement Agreement will be null and void *ab initio*.

2. ENFORCEMENT/PREVAILING PARTY FEES. In the event that any party hereto seeks to enforce this Mediated Settlement Agreement in a court of law or equity, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and court costs, including paralegal fees, incurred in enforcing this Mediated Settlement Agreement through all appeals. If, in any such enforcement action, Plaintiff is deemed to be the prevailing party, then Plaintiff will also be entitled to collect from Defendants the sum of \$10,000.00 in attorneys fees and costs which Plaintiff has expended as of the date of this Mediated Settlement Agreement in addition to any award of attorneys fees and costs for enforcing this Mediated Settlement Agreement.

3. COMPLETE AGREEMENT. This Mediated Settlement Agreement represents the full and complete agreement of the parties hereto relative to the matters addressed herein and may not be modified or altered except by an instrument in writing signed by all parties hereto.

4. FURTHER ACTION/COOPERATION. The parties hereto and their legal counsel agree to cooperate with one another and to assist one another to effectuate the intention of this Mediated Settlement Agreement particularly with regard to the prompt preparation of all reasonably necessary instruments and documents.

5. BINDING AGREEMENT. This Mediated Settlement Agreement is

intended to be a valid and binding agreement under the laws of the State of Florida, effective upon its execution despite the need for any further documentation. By executing this Mediated Settlement Agreement, each party hereto acknowledges that they have read and understand this Mediated Settlement Agreement; that they have freely and voluntarily entered into this Mediated Settlement Agreement; and, that they have been represented in this matter by legal counsel of their own selection or have voluntarily declined said representation.

6. **NO ADMISSIONS.** By executing this Mediated Settlement Agreement, the parties hereto expressly deny liability and acknowledge that this Mediated Settlement Agreement constitutes a good faith compromise of disputed claims and termination of the controversies which have given rise to this Mediated Settlement Agreement.

7. **MISCELLANEOUS.** This Mediated Settlement Agreement shall be interpreted and governed by Florida law. No provision of this Mediated Settlement Agreement shall be construed against a party because of draftsmanship of such provision. Headings herein are for convenience of reference only and shall not effect the interpretation hereof. Genders shall be interchangeable as the context so requires.

8. **COUNTERPARTS/FACSIMILE SIGNATURES.** This Mediated Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Facsimile signatures shall suffice to bind the parties.

9. **MEDIATION FEE.** Mediation fees shall be divided equally between Plaintiff (50%) and Defendant (50%).

TRAILER ESTATES PARK &
RECREATION DISTRICT

By: John Vander Molen
John Vander Molen, authorized
representative of the Board of
Trustees

Jason T. Gaskill
Jason T. Gaskill, Esquire
Attorney for Plaintiff

Robert W. McNeil
Robert W. McNeil

Barbara M. McNeil
Barbara M. McNeil

James J. Spanolios
James J. Spanolios, Esquire
Attorney for Defendants

c:\elf\mediation\general\mediated settlement agreement

TO: Trailer Estates Trustees
FROM: John C. Vander Molen *JCM*
SUBJECT: Release of copies of the Mediated Settlement Agreement of the
Case regarding the McNeil of 6626 New Jersey
DATE: June 4, 2007

I believe the Board of Trustees is entitled to an explanation of why the Settlement Agreement of the McNeil case was not available to them until approximately 2:45 PM Friday June 1, 2007.

My original decision to release the copies of the settlement on Monday June 4, 2007 before this meeting was based on the following information I had available to me.

1. The minutes of the May 7, 2007 Board of Trustees meeting state that Mr. Barnebey said; "We may have to have a meeting outside the Sunshine when John comes back from mediation". This indicated to me the agreement was a confidential matter.
2. A copy of a letter dated May 10, 2007 that our attorney Mr. Jason Gaskill had sent to Janet Jones included information from the mediator and excerpts from. MEDIATION ALTERNATIVES TO JUDICIAL ACTION LAWS OF FLORIDA, CHAPTER 44 section 44.405 regarding Confidentiality; privilege; exceptions.
3. Opening statements by the mediator at the court mandated mediation session and the first sentence in the Settlement which speaks to the "confidential and privileged mediation conference".
4. During a telephone conversation with Mr. Gaskill on May 29, 2007 concerning the early release of the mediation documents he agreed that I should hold the release of the Settlement until the June 4, 2007 Board meeting.

Based on the above I was led to believe that the agreement was not a public record until it was voted on and agreed to by the Board of Trustees and should be held until this meeting.

At approximately 2:10 PM Friday June 1, 2007 I received a telephone call at home from Mr. Barnebey. Mr. Barnebey advised me to provide copies of the Settlement Agreement, which had been provided to Mr. Barnebey earlier in the week, to the other trustees so they may be prepared to vote on the settlement at Monday's meeting. When I pressed for a reason as to what prompted this late action he responded that he felt the Settlement was a public record and therefore should be released. He acknowledged he had received a phone call from a Trustee concerning the release. I then requested that Mr. Barnebey put his decision in writing. His fax was received in the TE office at 2:44PM Friday June 1, 2007.

The office manager and I immediately contacted all the Trustees available and they did pick up or had delivered to them a copy of the settlement before 3:00PM. I placed Mr. Featheringill's copy in the US mail at approximately 3:15 PM June 1, 2007.

John C. Vander Molen

TRAILER ESTATES PARK & RECREATION DISTRICT

MEMO

COPY

TO: – Bruce Smith – Public Relations
FROM: Janet Jones - Chairman *JJ*
DATE: December 7, 2007
SUBJECT: Email

In reference to the email you sent to the Trustees on December 5, 2007 regarding potential problem – casters/no railing/ladder/OSHA; John Vander Molen looked into this and OSHA does not apply to volunteers only to paid employees.

Thank you!

**Joe Salerno
P.O.Box 1510
Onset, MA 02558**

**To: Board of Trustees
From: Joe Salerno
Subject: Documentation Management**

I have seen two presentations of the documentation management program and I was not impressed by either one. I know there has been more discussion on this matter but I would like you to know my feelings.

I have interviewed three office employees, who together have 30 years of service, Yvonne Poirier, Ellie Miller and T.J. Miller. In 30 years they had to make available approximately 7 records.

T.J. said in the last 2 years the additional payroll to make records available has been minimal.

We now have available to us:

1-Office computer with quick books and the information is off site.

2-We have just authorized the purchase of a lap top computer that will have all the same information now on the office computer. With an oncoming disaster this lap top will be taken off site.

3-The new web site is working well, the information will cut down the request for records in the future.

4-We now pay for storage of records, which is very close to our office. We should also consider what records we have to save and what can be discarded.

5-I see no labor savings in the office, we would still need a full time and part time person.

**Joe Salerno
P.O.Box 1510
Onset, MA 02558**

The cost of \$8,000.00 to \$10,000.00 and maybe more plus a service contract of \$1,500.00 per year, in my opinion does not benefit our property owners. I would hope the board would not take any action on this until the fall. I want you to know if I was present and a vote was taken, I would not vote for this program.

Have a great summer, if you're up in Mass, I'll treat you to some great pizzas. I'm looking forward to a busy year.

A handwritten signature in cursive script that reads "Joe Salerno".

Joe Salerno

Oct 10 06 11:32a

p.2

MANATEE COUNTY EASEMENT ENCROACHMENT AGREEMENT

I, Trailer Estates Park e Rec. District
(Please Print)

COPY
9/25/07

as owner of the Fence located at _____
(specify type of encroachment)

P.O. Box 6298 Bradenton FL 34201

agree, on this 12th day of October, 2006, that I will move or replace
said equipment at my own expense in the event that Manatee County or the easement holder ever
deems it necessary to utilize the easement at the above premises. I also agree to release and hold
harmless the easement holder. This agreement shall run with the land. Said property is located
at the following address:

1903 69th Ave W.
Bradenton FL 34207

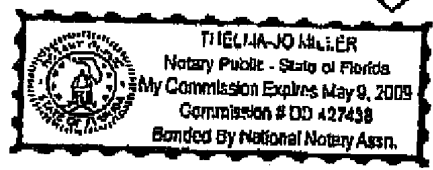
A. Wayne Hamblen
Owner's Signature
Maintenance Trustee

**STATE OF FLORIDA
COUNTY OF MANATEE**

The foregoing instrument was acknowledged before me this 12th day of
October, 2006, by A. Wayne Hamblen - Maintenance
Trustee Who is personally known to me or has produced as identification
_____ and who did/did not take and oath.
(Driver's License)

Notary Public Signature [Signature]

Notary Public Stamp Here



This agreement must be recorded by the property owner with the Clerk of the Circuit Court prior to issuance of a fence permit, or placing the equipment in the easement or obtaining a Certificate of Occupancy, as may be applicable

Rev 07/02/03