

FILED FOR RECORD
R.B. SHORE

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

2010 FEB -8 PM 5: 25

CLERK OF THE 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.,

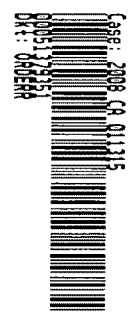
Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
JANET JONES' MOTION FOR PARTIAL SUMMARY JUDGMENT**

BEFORE THE COURT is Janet Jones Motion for Partial Summary Judgment and Memorandum of Support, which bears a November 5, 2009 certificate of service date. The Court conducted a lengthy hearing on this motion on Tuesday, December 22, 2009. The Court, having read the motion and memorandums of law in favor and in opposition, having reviewed the submissions for and against summary judgment, being familiar with this file, having conducted a hearing, and being otherwise fully advised in the premises, hereby ORDERS:

1. The Court grants Defendant Jones summary judgment as noted below on certain of the Sunshine Law violation allegations contained in the Third Amended Complaint as well as Addenda because, viewing the facts in the light most favorable to Plaintiffs, there was no disputed issue of material fact that precludes Defendant Jones' entitlement to judgment as a matter of law.

2. The Court also grants Defendant Jones summary judgment as noted below on



other certain Sunshine Law violation allegations contained in the Third Amended Complaint as well as Addenda because Defendant Jones demonstrated a “cure” based on actions taken subsequent to the complained of violation and, again viewing the facts in the light most favorable to Plaintiffs, there was no disputed issue of material fact that precludes Defendant Jones’ entitlement to judgment as a matter of law. With respect to each allegation where the Court granted summary judgment on the basis of cure, the Court has made no determination at this time whether there was any Sunshine Law violation. Instead, the Court examined whether the subsequent actions constituted a cure if a Sunshine violation were to be found. With respect to each instance where the Court found a cure, the Court will reserve on Plaintiffs’ claim to attorney fees.

3. Allegation 37(s) – hiring of legal counsel in October 2006. The Court GRANTS summary judgment to Defendant Jones regarding allegation 37(s) of the Third Amended Complaint on the basis of cure. The Court finds that each Kirk Pinkerton attorney fee bill that has been brought before the Board of Trustees and voted upon since the initial interview and hiring in 2006 has cured any potential taint of the hiring process.

4. Allegation 37(x) – Ms. Jones’ February 12, 2007 memo. Plaintiffs conceded in their Memorandum in Opposition to Defendant Jones’ Motion for Partial Summary Judgment (“Memorandum in Opposition”) that allegation 37(x) of the Third Amended Complaint “was adequately cured by the extensive and open Board discussion at the properly noticed and broadcast Board meeting on February 19, 2007.” See Memorandum in Opposition p. 24. Accordingly, the Court GRANTS summary judgment to Defendant Jones as to allegation 37(x) of the Third Amended Complaint on the basis of cure.

5. Allegation 37(y) – OSHA memo. The Court DENIES summary judgment to Defendant Jones as to allegation 37(y) of the Third Amended Complaint only because there is an inference that Mr. Vander Molen and Ms. Jones communicated outside the Sunshine.

6. Allegation 37(aa) – McNeil Fence Case. The Court GRANTS summary judgment to Defendant Jones as to allegation 37(aa) of the Third Amended Complaint and finds that “the use of a written report by one commissioner to inform other commissioners of a subject which will be discussed at a public meeting does not violate Florida’s Government in the Sunshine Law[.]” Op. Att’y Gen. Fla. 89-23, 1989 WL 431616 (Apr. 18, 1989). The Court further finds that Mr. John Vander Molen’s memos dated June 4, 2007 are unilateral statements of his intent and do not violate the Sunshine Law. The Court further finds that there is no fact that tends to dispute the statements of Janet Jones that she had no interaction with Mr. Vander Molen on the subject matter of this allegation other than these memos.

7. Allegation 37(rr) – Manatee County Encroachment Agreement. The Court GRANTS summary judgment to Defendant Jones as to allegation 37(rr) of the Third Amended Complaint and finds that there is no evidence to dispute the fact that Ms. Jones was not at any out-of-Sunshine meeting – either Executive Committee or Board of Trustees – that addressed the signing of the Manatee County Encroachment Agreement.

8. Allegation 37(ss) – applicability of section 849.01, Florida Statutes. The Court GRANTS summary judgment to Defendant Jones as to allegation 37(ss) of the Third Amended Complaint and finds that the memo referencing the gambling statute does not affect conduct, policy, or procedure.

9. Allegation 37(zz) – whether certain videos are public records. The Court

GRANTS summary judgment to Defendant Jones as to allegation 37(zz) of the Third Amended Complaint.

10. Allegation 37(aaa) – the potential SAFE committee. The Court DENIES summary judgment to Defendant Jones as to allegation 37(aaa) of the Third Amended Complaint.

11. Allegation 37(bbb) – Mr. Salerno’s May 2008 Memo. Plaintiffs agreed in their Memorandum in Opposition (page 13) that allegation 37(bbb) of the Third Amended Complaint is not directed at Ms. Jones.

12. Allegation 37(eee) and addenda 44ii. – budget questionnaire. The Court GRANTS summary judgment to Defendants Jones as to allegation 37(eee) and that portion of allegation 44, as supplemented by addenda allegation 44ii (located on page 5 of Plaintiffs’ Addenda to Third Amended Complaint, paragraph 7, sub-paragraph ii.) on the basis of cure.

13. Allegation 37(yyy) and addenda 37(tttt). Plaintiffs agreed in their Memorandum in Opposition that allegation 37(yyy) and addenda allegation 37(tttt) (located on page 5 of Plaintiffs’ Addenda to Third Amended Complaint, paragraph 6) are not directed at Ms. Jones.

14. Allegation 37(bbbb) – PP41, PP40, PP13, and Pool Rules. The Court GRANTS summary judgment to Defendant Jones as to allegation 37(bbbb) of the Third Amended Complaint and finds that at the time notice of the Policy and Procedures Committee meeting was posted and publically announced within the park that there was no Sunshine Law violation and the intervening, subsequent election of committee member Martha Brauer as a Trustee-elect three days prior to the committee meeting did not negate the reasonableness of the prior posted notice.

15. Allegation 37(jjjj) and addenda 44i. – Ms. McNulty as Second Vice Chair. The

Court DENIES summary judgment to Ms. Jones as to allegation 37(jjjj) and addenda allegation 44i. (located on page 5 of Plaintiffs' Addenda to Third Amended Complaint, paragraph 7, sub-paragraph I.) as to cure with respect to these allegations.

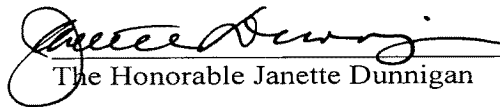
16. Allegation 37(nnnn) – purported discussion of “free internet service.” The Court DENIES summary judgment to Defendant Jones as to allegation 37(nnnn) of the Third Amended Complaint, and the Court further DENIES summary judgment to Defendant Jones as to cure with respect to this allegation.

17. Allegation 37(qqqq) – contents of October 2006 minutes. The Court GRANTS summary judgment as to Defendant Jones as to allegation 37(qqqq) of the Third Amended Complaint.

18. Allegation addenda 44iv. – public records policy. The Court GRANTS summary judgment as to Defendant Jones as to that portion of allegation 44, as supplemented by addenda allegation 44iv (located on page 5 of Plaintiffs' Addenda to Third Amended Complaint, paragraph 7, sub-paragraph iv.) on the basis of cure.

DONE and ORDERED in Bradenton, Manatee County, Florida, this 8 day of January, 2010.

FEB


The Honorable Janette Dunnigan

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