

IN THE CIRCUIT COURT FOR MANATEE COUNTY, FLORIDA

MARY LOU SMITH,  
AN INDIVIDUAL, AND  
SHARON DENSON,  
AN INDIVIDUAL

Plaintiffs,

v.

CASE NO.: 2008-CA-11315

TRAILER ESTATES PARK  
AND RECREATION DISTRICT,  
AN INDEPENDENT SPECIAL  
TAXING DISTRICT, and others,

Defendants.

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NOTICE OF FILING PARTIAL DEPOSITION TRANSCRIPTS IN SUPPORT  
OF DEFENDANT, JOHN VANDER MOLEN'S OBJECTION TO PRODUCTION,  
MOTION FOR PROTECTIVE ORDER AND MEMORANDUM

Defendant, JOHN VANDER MOLEN, by and through his undersigned counsel, file the following partial deposition transcript in support of Defendant's Objection to Production, Motion for Protective Order and Memorandum, and for such other purposes permitted under the Florida Rules of Civil Procedure or Florida Law.

1. Defendant, John Vander Molen, Pgs. 158-165 and Pgs. 170-173.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Kevin Hennessey, Robert E. Turffs, Thomas D. Shults, James D. Dye and Hunter Carroll, by email on February 10, 2010.

DANIEL E. SCOTT, P.A.



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DES/hnl  
wl/LITIGATE/309.00

1 lawsuit, executive session meaning -- meaning a  
2 session that was closed to the public?

3 A I believe Mr. -- the firm of Kirk, Pinkerton  
4 called a shade meeting; is that what you are  
5 referring to?

6 Q Yes, sir. In January of 2009. Did you  
7 attend that shade meeting?

8 A Yes.

9 Q Okay. Do you have a personal computer?

10 A Yes.

11 Q Where do you maintain that computer?

12 A In my home.

13 Q Okay. And do you use that computer to  
14 E-Mail other board members?

15 A No.

16 Q Do you use that computer to do board  
17 business?

18 A I might type some of my own memos.

19 Q Okay. Do you, in fact, utilize E-Mail from  
20 that computer?

21 A Yes.

22 Q Okay. What is your E-Mail address?

23 A Jjvan@tampabay.rr.com.

24 Q Do you use that E-Mail address to  
25 communicate with fellow committee members with regard

1 to committee business?

2 A The ARC Committee when I was on that.

3 Q Yes.

4 A I did, yes.

5 Q Okay. Any other committees?

6 A I believe that's the only committee I've  
7 been on, ARC.

8 Q Okay.

9 A A member of.

10 Q What about your services as a liaison for  
11 the board to those committees, did you utilize your  
12 home computer to communicate with committee members  
13 or the board regarding those actions?

14 A I don't recall that I did, no. I'm not much  
15 of an E-Mailer.

16 Q Okay. What is your practice with regard to  
17 saving or preserving E-Mails?

18 A Almost immediate delete.

19 Q Okay.

20 A I have not a saver on the computer.

21 Q Okay. And when you say, you -- you have a  
22 practice of deleting E-Mails?

23 A I use the current one is Windows Mail, and  
24 if you put it in delete box, when you close that out,  
25 it deletes them all, I guess.

1 Q Okay. And you do that, what, with regard to  
2 E-Mails that you receive?

3 A I receive very few E-Mails.

4 Q Okay. Do you -- do you have a practice of  
5 deleting the E-Mails that you receive?

6 A Yes.

7 Q Do you have a practice of deleting the  
8 E-Mails that you send?

9 A Yes.

10 Q Do you have a practice of deleting your  
11 deleted E-Mails?

12 A I thought the computer did that.

13 Q Okay.

14 A That's why I put it in there.

15 Q Okay. Do you recall receiving direction  
16 from your attorney to provide the district office  
17 with all documents, correspondents, communications,  
18 including E-Mails that deal with district business?

19 MR. SHULTS: What attorney are you referring  
20 to?

21 You said, his attorney.

22 MR. HENNESSY: It would be -- no, the  
23 board's attorney, the --

24 BY MR. HENNESSY:

25 Q It would be Kirk, Pinkerton. Kirk,

1 Pinkerton?

2 A I'm sure in the office we received -- is  
3 that what you are saying, did I receive a document?

4 Q Well, do you recall receiving instructions  
5 from Kirk, Pinkerton to provide the district office  
6 with any district records that might be in your  
7 possession, including E-Mails?

8 A Yes.

9 Q Did you comply with that request?

10 A Yes.

11 Q Did you, in fact, provide them with any  
12 documents?

13 A Are you talking about E-Mail documents; is  
14 that --

15 Q Well, any documents to begin with?

16 A I did not keep a list of what I provided,  
17 it's on record in the office.

18 Q But you provided some documents?

19 A Yes.

20 Q And you say -- when you say, it's on a list,  
21 who made a list or did you provide that?

22 A I said, I don't -- I did not keep a list of  
23 what I gave the office.

24 Q Okay. But do you believe that the -- the  
25 office made a list of what you provided them?

1           A     You would have to ask the office. I'm  
2     sorry.

3           Q     Okay. All right. Did you provide -- in  
4     those documents that you provided to the district  
5     office, were there any E-Mails included?

6           A     I don't remember.

7           Q     Okay. You said that you have a practice of  
8     deleting E-Mails, is that still your practice today?

9           A     Not after I received the letter that said I  
10    shouldn't do that, no.

11          Q     Okay. Have you then been saving those  
12    E-Mails somewhere?

13          A     I'd have to say what E-Mails, because I  
14    don't get them.

15          Q     Okay. All right. So, you don't believe you  
16    received any E-Mails since the date you got the  
17    letter saying, don't delete E-Mails that may be  
18    district related?

19          A     Oh, district related, I don't remember  
20    getting any district related E-Mails.

21          Q     Okay. Okay. I'm going to give you a  
22    Composite Exhibit 16.

23                   (Thereupon, Exhibit Number 16 was marked  
24    for identification by the court reporter.)

25           BY MR. HENNESSY:

1 Q Mr. Vander Molen, I'm giving you a Composite  
2 Exhibit 16, which is a group of E-Mails, and it  
3 indicates that the E-Mail is to Vander Molen, John,  
4 from John Vander Molen, and it has been printed out,  
5 and it would indicate by T. J. Miller. My question  
6 is, are you aware of an E-Mail group that exists  
7 under your name, John Vander Molen at --

8 A An E-Mail group, I'm not sure what --

9 Q It means location where multiple E-Mails  
10 exist under a single heading, and in this case it  
11 would be -- the heading would be John Vander Molen?

12 A I'm still not clear what you're --

13 Q All right. Well, let me ask you a different  
14 question. Do you have -- in addition to your  
15 personal E-Mail, do you have an office E-Mail  
16 address?

17 A No.

18 Q Okay. So, the district doesn't maintain a  
19 separate E-Mail address for you?

20 A No.

21 Q Okay. Then if this document was produced by  
22 T. J. Miller, printed out by T. J. Miller, do you  
23 know how she would have received it?

24 A No.

25 Q Okay. Do you make a practice of sending

1 yourself E-Mails?

2 A Of sending myself E-Mails?

3 Q Yes, sir.

4 A On my computer that happens --

5 Q Okay.

6 A -- because my wife does probably more  
7 computing than I can.

8 Q Well, the first E-Mail says it's a draft of  
9 Trailer Estates Park and Recreation District Board of  
10 Trustees regular meeting, do you know why you would  
11 be receiving draft meeting minutes, and who you would  
12 be receiving them from?

13 A Oh, May 5th, 2008. Oh.

14 Q Yes.

15 A Okay. This recollects now what I think this  
16 is doing --

17 Q Okay.

18 A -- or was doing. Up until, and I'm not sure  
19 of the exact date I stopped, as a service to the  
20 community I was taking board minutes -- minutes home,  
21 scanning them into my computer, and sending them out  
22 to a list of names that my wife maintains when she  
23 does the summer newsletter, it was simply a service  
24 of -- to the community. And I believe that Trailer  
25 Estates, although this to and from confuses me, in

1 fact, I'm not sure I've seen an E-Mail that has the  
2 E-Mail address in parens, that -- maybe that -- is  
3 that how they come through? I guess I don't -- but  
4 as a service to the community we were sending -- and  
5 that's quite a massive list that she maintains, and  
6 allows me to use, and --

7 Q So, you're sending draft minutes out to a  
8 select group of residents in Trailer Estates?

9 A Those that asked for it, yes, that are on  
10 her list. I just do her address book, I don't --

11 Q Okay.

12 A These look like board minutes --

13 Q Yes.

14 A -- available as public records in the  
15 office.

16 Q Okay. Mr. Vander Molen, do you recall  
17 public records requests being made for a data base  
18 that was in the possession of the district, initially  
19 made by my client as -- in her services on one of the  
20 Trailer Estates committees?

21 A I remember at a board meeting a discussion  
22 about -- I thought it was from John Wight who was --  
23 if that's the future planning committee she is  
24 talking about -- that you are referring to, asked  
25 that at a board meeting.

1 Q All right. Mr. Vander Molen, in response to  
2 my request for you to bring documents, you've  
3 produced, I don't know, a half inch thick stack of  
4 documents that you have numbered in the corner in  
5 black pen.

6 A Yes.

7 Q Okay. And those numbers reflect the  
8 requests that I've made on --

9 A 23 items that you've asked for I've  
10 matched --

11 Q Right.

12 A -- that document.

13 Q Okay. So, for example, I see two documents  
14 that reference the number two, so that would be in  
15 response to any and all notes, memos or E-Mails,  
16 which is the second request?

17 A Yes.

18 Q All right. So, to the extent that, for  
19 example, there was nothing listed with the number  
20 one, and nothing listed with the number three, that  
21 would mean you have no documents responsive to those  
22 requests?

23 MR. GILL: Well, let me clarify. That's his  
24 interpretation of what was being asked, which may  
25 not be your interpretation.

1 MR. HENNESSY: Oh, I understand.

2 MR. GILL: Okay. He was trying to be  
3 helpful to himself, not to you. So, if -- if  
4 there's nothing that says it's responsive to  
5 number two, it doesn't mean that nothing in the  
6 stack isn't responsive to number two, he just  
7 doesn't think it's responsive to number two.  
8 Okay. So, with that clarification, yeah, that's  
9 -- that's what the number means in the upper  
10 right hand corner.

11 MR. HENNESSY: Okay. I guess I'll accept  
12 that as a clarification.

13 BY MR. HENNESSY:

14 Q So, I -- I have two documents with the  
15 number two, which appear to be E-Mails. I have one,  
16 two, three, four, five, six Verizon bills, which --

17 A I didn't count.

18 Q -- they have number four on them?

19 A I don't have a count of them, I -- you have  
20 the documents, so --

21 Q I'm looking for your --

22 A -- I'm assuming you can count.

23 Q Yes. I see then one document with the  
24 number eight on it, which would be any and all  
25 documents relating to computer router. I then see

1 one, two documents with the number 15. Appear to be  
2 one page documents dealing with Trailer Estates web  
3 site. I'm just stating this for the record, because  
4 what I'm going to ask you to do is one of two things,  
5 either allow me to keep these documents, make a copy,  
6 and provide the originals to you or ask you to keep  
7 -- give these to your attorney, and ask him to make  
8 me a set of copies of these documents, whichever you  
9 prefer doing.

10 The next I have is one, two single page  
11 documents with the number 18 on them. One multi-page  
12 document with the number 19 on it. One, two page  
13 document with the number 21 on it, which appears to  
14 be an E-Mail.

15 Mr. Vander Molen, do you recall that we  
16 previously provided you a request for production of  
17 documents?

18 A Yes.

19 Q Okay. Served it on your attorney, and he  
20 responded to that request --

21 A Yes.

22 Q -- do you recall that? And in that response  
23 we received a single E-Mail; do you recall that?

24 A No, I don't recall it. I don't have it --  
25 have that -- those documents in front of me.

1 Q Okay. So, you -- do you recall producing  
2 documents to your attorney in response to the request  
3 for production of documents?

4 A Yes.

5 Q Do you recall how many documents you  
6 produced to your attorney?

7 A No.

8 Q Could it be that you produced only one  
9 document to your attorney?

10 A Possible, if you have only one. I'm sorry.  
11 I don't understand, but I --

12 Q Well, what I'm kind of getting at is why I  
13 would have only received one E-Mail at that time, and  
14 now I'm receiving more E-Mails, I'm wondering if you  
15 expanded your search or improved your search somehow?

16 A I don't recall what your specific request  
17 was earlier --

18 Q Uh-huh.

19 A -- I don't know if it was exactly the same  
20 request as now, I don't know that.

21 Q Okay. All right. That's fine.

22 MR. HENNESSY: How do you want to --

23 MR. GILL: I don't care if you want to make  
24 them, give copies to all attorneys of record?

25 MR. HENNESSY: Everybody wants a set of