

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

MARY LOU SMITH, et al.,

Plaintiffs,

Case No. 2008-CA-11315

v.

Division B

TRAILER ESTATES PARK AND
RECREATION DISTRICT, et al.,

Defendants.

**JANET JONES MOTION FOR LEAVE
TO FILE AMENDED EIGHTH AFFIRMATIVE DEFENSE**

Defendant Janet Jones (“Ms. Jones”) moves pursuant to Florida Rule of Civil Procedure 1.190 for leave to file her Amended Eighth Affirmative Defense. In support, Jones states:

1. On November 5, 2009, Ms. Jones filed her Answer and Affirmative Defenses to Plaintiffs’ Third Amended Complaint and Addenda. Included in that was Ms. Jones’ Eighth Affirmative Defense, which specifies the date of meetings that constitute “cure.” Plaintiffs did not file a reply to the cure affirmative defense.
2. On November 9, 2009, Trailer Estates similarly filed its Answer and Affirmative Defenses. Its “cure” affirmative defense contained additional allegations of cure that were not contained within Ms. Jones “cure” affirmative defense. Plaintiffs did not file a reply.
3. On February 12, 2010, Ms. Jones filed her First Amended Eighth Affirmative Defense. In a nutshell with only minor exception, Ms. Jones included the additional “cure” allegations that Trailer Estates identified in its November 9 filing.
4. Essentially, there are only two cure allegations in Ms. Jones’ amended cure that differ somewhat from what Trailer Estates previously did: 37(t) and 37(v). However, those two

differences are explained because, *after* Trailer Estates filed its Answer and Affirmative Defenses, Plaintiffs executed affidavits identifying more specifics of what they claim are violations by these two allegations. Thus, Ms. Jones' amended cure allegations as to 37(t) and 37(v) focused on what Plaintiffs complained of in their newer interrogatory answers.

5. Furthermore, it is worth noting that Ms. Jones' amended cure allegation for 37(t) is the same as her previous cure allegation for 44iv – thus, there is no new information presented.

6. Moreover, Ms. Jones' amended cure allegation for 37(v) – which is an allegation complaining about the adoption of various policies and procedures – references dates contained on the very policies and procedures Plaintiffs complain of. Thus, Plaintiffs by looking at the current forms of those policies and procedures, can tell the dates they were reconsidered. There can be no valid claim of prejudice to Plaintiffs.

7. Permitting Ms. Jones to amend her cure affirmative defense will not prejudice Plaintiffs or delay the trial. Certainly, there is no claim of surprise because the vast majority of Ms. Jones' "new" cure allegations are the same allegations that Trailer Estates previously identified. There will be no delay of the trial, as Plaintiffs previously did not file a reply.

8. Undersigned counsel requested that Plaintiffs consent to Ms. Jones' amended filing; however, Plaintiffs counsel would not consent.

WHEREFORE, Janet Jones requests that the Court enter an Order deeming her Amended Eighth Affirmative Defense filed as of the date it was originally docketed by the Clerk of Court.

Respectfully submitted,

MATTHEWS, EASTMOORE, HARDY,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and First Class U.S. Mail this 19th day of February, 2010, to:

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