

FEB 09 2010

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

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

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
January, 2010.

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ORIGINAL SIGNED
FEB - 8 2010
JUDGE JANETTE DUNNIGAN
The Honorable Janette Dunnigan
CLERK JUDGE

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