

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 SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant Janet Jones (“Ms. Jones”) moves pursuant to Florida Rule of Civil Procedure 1.510 for partial final summary judgment on select counts raised against her by Plaintiffs Mary Lou Smith and Sharon Denson (collectively, “Plaintiffs”).

Plaintiffs in their Third Amended Complaint together with the Addenda raise four counts, although within count one there are nearly multiple separate allegations against Ms. Jones alleging violations of Florida’s Sunshine Law (section 286.011(1), Florida Statutes). There are no Public Record counts against Ms. Jones. This motion only addresses certain of those allegations against Ms. Jones individually.

Ms. Jones is entitled to partial summary judgment because there is no issue of material fact and, as a matter of law, certain of the allegations against her do not establish any violation, and even if they did, such violations have been cured by subsequent action of the Board of Trustees.

A. “Law of the Case” Items

1. **37(ee)**. The Court previously granted Trailer Estates summary judgment on 37(ee) – the alleged May 7, 2007 discussion concerning Mr. Vander Molen’s purported withdrawal of his resignation from ARC. Ms. Jones incorporates here Trailer Estates’ facts and argument cited in its motion.

B. No Specific Allegation

2. **37(vv)**. This allegation states that resident Kay Hislop from 2007-2008 saw Trustees McNulty, Vander Molen, Jones, and Salerno as a regular practice discuss board business outside of the Sunshine. Ms. Hislop, however, in her deposition could not identify any specific topic that any two or more then trustees were discussing prior to a board meeting. (Hislop depo pp. 10:6-20; 18:14-21; 20:7-12). Moreover, Plaintiffs’ in their interrogatory responses states: “The specific business to which this allegation refers is unknown.” (Rog 11/25/2009, ¶10).

While Ms. Hislop’s testimony may impact the issue of injunction, it does not inform as to any allegation. Thus, the Court should grant summary judgment.

C. Alleged lack of minutes

3. **37(w)**. Plaintiffs allege that on January 22, 2007, the Board of Trustees held a workshop but failed to take minutes. This allegation, however, should only be directed at the District as an entity and not any of the individual defendants. Section 286.011 only imposes a duty on the entity to keep minutes and not on any of the individual members. Summary judgment is appropriate where a defendant demonstrates that plaintiff will be unable to prove one essential element of plaintiff’s cause of action. See Shaw v. Tampa Electric, Co., 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007); Della-Donna v. Nova University, Inc., 512 So. 2d 1051, 1055

(Fla. 5th DCA 1987). Here, plaintiffs cannot prove a legal duty *on the individual* to keep minutes. Thus, summary judgment is appropriate here.

4. **37(ppp)**. Plaintiffs allege that on October 24, 2006, the Board of Trustees held a meeting to interview attorney Mark Barnebey but failed to take minutes. Again, this is an inappropriate allegation to the individual defendants and summary judgment should be granted. Additionally, with respect to this allegation, any alleged violation by Ms. Jones individually has been cured with each and every payment by the Board of Trustees to the Kirk Pinkerton law firm since that time. The Court has already granted summary judgment on the basis of cure to a nearly identical allegation – 37(s) relating to the hiring of legal counsel in October 2006.

5. **37(ssss)**. Plaintiffs allege that prior to October 30, 2006, the Board of Trustees held workshop meetings but did not take minutes. Again, this allegation should only be directed at the District. Summary judgment should be granted to Ms. Jones individually.

D. Future Planning Committee

6. **37(dddd)**. This allegation indicates that between March 28, 2006 to April 5, 2006, Future Planning Committee members discussed lot calculations outside of the Sunshine. Plaintiffs' clarified in their Interrogatories that Ms. Jones communicated with Bernie Dent (then a member of the Future Planning Committee). Plaintiffs were unable to identify whether the Future Planning Committee acted on the discussion. Plaintiffs further were unable to identify whether the Trustees acted on the unknown Future Planning Committee's recommendation. Summary judgment is appropriate because Plaintiffs cannot establish all of the elements of a Sunshine Law violation. See Shaw v. Tampa Electric, Co., 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007); Della-Donna v. Nova University, Inc., 512 So. 2d 1051, 1055 (Fla. 5th DCA 1987).

E. Memos

7. **37(z)**. Plaintiffs allege that on August 17, 2007, Ms. Jones and Mr. Bigley “handled” an ARC permit outside the Sunshine. Plaintiffs clarified their allegation in their interrogatory response, indicating this allegation involved an August 17, 2007 memo authored by Ms. Jones an “after-the-fact” permit for a portable carport cover at Mrs. Brush’s property at 6515 Nebraska Avenue.

8. Nothing about the August 17, 2007 memo is a Sunshine Law violation. The memo simply addresses a procedural matter and states “Joe, a letter needs to be sent to the above stating they need to get a permit (after the fact) for the portable car port cover. Then this can be handled thru proper channels.” Nothing in this memo indicates Ms. Jones’ view whether the permit should be granted or not; it simply was a directive to have the proper procedure followed.

9. The Second District has held that board members’ discussions of procedural matters does not constitute a Sunshine Law violation. See Board of County Commissioners of Sarasota County v. Webber, 658 So. 2d 1069, 1072 (Fla. 2d DCA 1995) (procedural discussion about voting process not a violation). Ms. Jones is entitled to summary judgment because the August 17 memo is nothing more than a discussion about procedure.

10. Even if the Court did believe there may be a Sunshine Law violation, any such violation would have been cured by the independent and separate action:

- *October 1, 2007 - discussion at Board of Trustees meeting that ARC meeting would be October 10
- *October 10, 2007 - ARC committee consideration and approval of permit
- *October 15, 2007 - report at Board of Trustees meeting that ARC committee approved permit 4-0.

F. Cure.

11. **37(t)**. Plaintiffs allege that in November 2007 Ms. Jones and Ms. Brauer, both members of the Policy and Procedure Committee, discussed “policies” outside of the Sunshine. Plaintiffs clarified their allegation in their interrogatory response, indicating that this referenced PP24, the public records policy. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and amended PP 24 after the alleged violation, including:

- *November 12, 2007 discussed public records policy
- *December 17, 2007 discussed public records policy
- *January 7, 2008 discussed and adopted public records policy
- *February 16, 2009 discussed public records policy
- *February 23, 2009 discussed public records policy
- *March 16, 2009 discussed and revised public records policy

Note – allegation 37(t) is virtually identical to allegation 44iv, to which the Court has already granted Ms. Jones summary judgment.

12. **37(v)**. Plaintiffs allege that in March 2007, Ms. Jones and Mr. Smith discussed “policies” outside of the Sunshine. Plaintiffs clarified their allegation in their interrogatory response, indicating that this referenced PP3 (interviewing Trustee applicants); PP5(club/organization rules); PP41(organizational chart); and PP53 (audit policy). Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and amended PP 24 after the alleged violation, including:

- PP3 (interviewing Trustee applicants)
 - *April 13, 2009 discussed PP3
 - *April 20, 2009 discussed PP3 changes and adopted revisions
- PP5 (club/organization rules)
 - *November 17, 2008 discussed PP5 and adopted revisions

PP41 (organizational chart)

- *February 11, 2008 discussed organizational charge, chain of command, duties
- *February 15, 2008 Policy and Procedure Committee Meeting – discussed chain of command, trustee duties, and committee issues
- *February 18, 2008 Ms. Jones reported to Trustees that on February 15, the Policies and Procedures Committee met and, with assistance of Attorney Scott Rudacille, worked on the organizational chart
- *November 10, 2008 discussed PP41 and referred back to Committee
- *December 8, 2008 discussed PP41
- *December 15, 2008 discussed PP41 and adopted revisions
- *May 18, 2009 discussed PP41 and adopted revisions

PP53 (audit policy)

- *November 10, 2008 discussed auditor selection (within PP53)
- *November 17, 2008 discussed PP53 and adopted revisions
- *March 9, 2009 discussed PP53
- *March 16, 2009 discussed PP53 and adopted revisions

13. **37(bb)**. Plaintiffs allege that on February 11, 2008, Ms. Salerno discussed with Ms. Jones and Ms. Cole District procedures regarding donations from clubs and funding to clubs. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed club donations and the budget and took action on the budget, including

- *February 18, 2008 discussed donations from clubs and amended budget
- *March 3, 2008 discussed budget
- *March 10, 2008 discussed budget
- *March 17, 2008 (public hearing) discussed budget
- *March 17, 2008 discussed and adopted budget

14. **37(jj)**. Plaintiffs allege that on January 7, 2008, Ms. Jones and Mr. Vander Molen discussed security needs for the District. Plaintiffs clarified their allegation in their interrogatory response, indicating that this referenced “security cameras.” Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed security cameras and authorized security cameras, including:

- *January 7, 2008 discussed a thefts of Trailer Estates property and need for increased security, including resident (non-Trustee) recommending security cameras
- *February 4, 2008 discussed recent vandalism at Trailer Estates
- *February 18, 2008 discussed need for increased security
- *March 3, 2008 discussed proposed budget, including need for security lights and camera. Plaintiff Denson specifically advised Trustees that security camera were needed for marina and storage lot.
- *March 10, 2008 discussed proposed budget
- *March 17, 2008 discussed and approved budget
- *October 6, 2008 discussion of new security camera and how it works

15. **37(II)**. Plaintiffs allege on October 6, 2008, Ms. Jones and Mr. Vander Molen discussed the handling of a deed restriction violation. Plaintiffs clarified their allegation in their interrogatory response, indicating the alleged improper communication occurred in late September or early October concerning a probate matter and the deed restriction involved an underage occupant. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed multiple times the situation involving a putative underage occupant.

- *October 6, 2008 discussed underage occupant at 2012 Iowa, which Trustee Smith moved to refer to attorneys, which motion was tabled until a date certain.
- *October 20, 2008 discussed underage occupant and received information that owner of Iowa Street property engage realtor to sell the house
- *November 10, 2008 discussed underage occupant and consensus achieved to turn over to legal counsel

16. **37(tt)**. Plaintiffs allege on March 21, 2005, unnamed members of the Board of Trustees had a “pre-meeting” and discussed raising the marina and storage lot fees outside of the Sunshine. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and set those marina and storage lot fees, including:

- *March 21, 2005 discussed whether to rescind increase to marina and storage fees
- *March 28, 2005 discussed marina and storage fees; approval of yearly budget
- *June 6, 2005 discussed amending the yearly budget
- *each and every meeting where the yearly budget has been adopted since 2005

17. **37(ccc)**. Plaintiffs allege that in March 2008 unnamed members discussed their personal information contained in the public records that lead to Mr. Vander Molen's direction to redact cell phone information from public records. Plaintiffs clarified that on an unknown date "Defendant Jones communicated with John Vander Molen regarding confidentiality and disclosure of trustees' personal cell phone numbers." Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed redaction of public records and later revised its public records policy, including

- *April 21, 2008 substantial discussion of Future Planning Committee's request for Trailer Estates' database and whether certain sensitive information could be redacted.
- *March 16, 2009 discussed and revised public records policy.

Note: The Court denied Trailer Estates summary judgment on the merits relative to allegations 37(ccc). However, Ms. Jones moves for summary judgment on the basis of cure, which was not addressed or decided by the Court.

18. **37(nnn)**. Plaintiffs allege that in July 2007, Ms. Jones and Mr. Vander Molen discussed marina improvements and bids outside of the Sunshine. Plaintiffs in their interrogatory response were unable to identify when this matter came before the Board of Trustees. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and later ultimately selected a bid relating to improvements at the marina, including:

- *July 16, 2007 discussed whether to build new docks
- *August 6, 2007 discussed marina docks
- *August 13, 2007 discussed repairs to docks and bid

*August 20, 2007 discussed install of new docks on north wall of Marina;
accepted bid from Shoreline Marine Construction company

19. **37(qqq)**. Plaintiffs allege that in March 2008, Mr. Vander Molen singularly instituted a new “page 4” of the public records policy. Alternatively, Plaintiffs allege that unnamed members of the Board of Trustees adopted a new “page 4” outside of the Sunshine. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and amended PP 24 after the alleged violation, including:

- *February 16, 2009 discussed public records policy
- *February 23, 2009 discussed public records policy
- *March 16, 2009 discussed and revised public records policy

Note – this allegation relates to the public records policy, which the Court already granted Ms. Jones summary judgment in allegation 44iv

20. **37(sss)**. Plaintiffs allege that on April 16, 2007, Ms. Jones, Ms. McNulty, Ms. Cole, and Ms. Cushman discussed a disaster plan outside of the Sunshine. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and adopted a disaster plan, including:

- *May 7, 2007 discussed disaster plan.
- *June 25, 2007 discussed a draft of the disaster plan.
- *July 9, 2007 discussed disaster plan; also discussed registered Trailer Estates kitchen with the National Disaster Center
- *July 16, 2007 discussed disaster plan; also approved registering Trailer Estates kitchen with the National Disaster Center.
- *November 5, 2007 discussed disaster preparation.
- *March 24, 2008 presentation of disaster plan and goals
- *April 7, 2008 discussed and adopted disaster plan.

21. **37(vvv)**. Plaintiffs allege that on November 4, 2005, Ms. Jones and Ms. McNulty discussed the future planning survey outside of the Sunshine. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed

the Future Planning survey and answered the questions, including:

*March 6, 2006 Future Planning presented survey and Trsutees answered questions

22. **37(iiii)**. Plaintiffs allege that on February 17, 2009, Ms. Brauer, Ms. Cole, Ms. Jones, Mr. Hoch, and Mr. Salerno discussed and voted on the Trailer Estates' website content outside of the Sunshine. Plaintiffs clarified this to mean only that Ms. Jones and Ms. Brauer discussed (a) pictures from the 85+ party; and (b) Hobby Club information. Summary judgment on the basis of cure is appropriate because by independent and separate action the Board of Trustees discussed and decided on web site/master matters.

*May 11, 2009 discussed re-writing PP47 - webmaster

*May 18, 2009 discussed and approved PP47 webmaster and discussed and approved PP57 Web Administrator / Webmaster Duties

Note: The Court denied Trailer Estates summary judgment on the merits relative to allegations 37(iiii). However, Ms. Jones moves for summary judgment on the basis of cure, which was not addressed or decided by the Court.

CONCLUSION

Defendant Janet Jones is entitled to partial final summary judgment on each of the allegations identified above. This Court should grant summary judgment in Ms. Jones' favor on each of those allegations.

Respectfully submitted,

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