

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,
_____ /

JOHN VANDER MOLEN'S AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant JOHN VANDER MOLEN moves for an amended partial summary judgment relating to the following paragraphs of the plaintiffs' third amended complaint and addendum on the following grounds:

1. ALLEGATIONS IN PARAGRAPH 37(aa) - There is no genuine issue of material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court has ruled in granting partial summary judgment for defendant JANET JONES on February 8, 2010 that defendant VANDER MOLEN'S memos dated June 4, 2007 are unilateral statements of intent and do not violate the Sunshine Law. Further, the court found that defendant VANDER MOLEN had no interaction with defendant JONES regarding the memos.

2. ALLEGATIONS IN PARAGRAPH 37(ee) - Plaintiffs allege in paragraph 37(ee) that JONES and VANDER MOLEN discussed the potential withdrawal of VANDER MOLEN'S resignation from the ARC

committee. Even assuming there was such a discussion, there is no Sunshine Law violation here because the Board of Trustees is not required to act on this matter.

This court ruled in granting a partial summary judgment for defendant JANET JONES on April 30, 2010 that this did not constitute a violation of the Sunshine law.

Whether a resignation is effective upon its submission or whether some authority needs to accept it is a matter controlled by Florida's Constitution. Article X, section 3, Florida Constitution provides in pertinent part that "[v]acancy in office shall occur upon...resignation of the incumbent..." The Florida Supreme Court has held that this provision means that resignation is complete upon the tender of the resignation; no acceptance by an authority is necessary. See Smith v. Brantley, 400 So. 2d 443,448-49 (Fla. 1981) (resignation effective immediately and governor acceptance not required, adopting "American view"). Moreover, nothing in the Charter imposes a legal duty on the Board of Trustees to accept or reject a committee member's resignation letter. Section 11 of that special law only states on this matter that "vacancies occurring in the Board of Trustees for any cause shall be filled for the unexpired term by the remaining trustees..."

There is no occasion for the Board of Trustees to vote on whether to accept an ARC Committee member's resignation, or the putative rescinding of such resignation letter. Assuming that

there was such a discussion between JONES and VANDER MOLEN, the Board of Trustees is not required to act to effectuate the rescinding of such resignation letter. Thus, there is no Sunshine Law violation. See Op. Att'y Gen. Fla. 93-41, 1993 WL 361729 (June 7, 1993) (public officials on same board may discuss matters outside of the sunshine for which no action by the board is required without violating the Sunshine Law.

3. ALLEGATIONS IN PARAGRAPH 37(11) - There is no genuine issue of a material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court ruled in granting partial summary judgment for defendant JANET JONES on April 30, 2010 that the facts do not show a meeting in violation of the Sunshine Law between defendant VANDER MOLEN and defendant JONES.

4. ALLEGATIONS IN PARAGRAPH 37(zz) - There is no genuine issue of a material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court ruled in granting partial summary judgment for defendant JANET JONES on February 8, 2010 that the facts do not show a meeting in violation of the Sunshine Law between defendant VANDER MOLEN and defendant JONES.

5. ALLEGATIONS IN PARAGRAPH 37(hhhh) - There is no genuine issue of a material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court ruled in granting partial summary judgment for defendant TRAILER ESTATES on March 22, 2010 that the facts do not show a meeting in violation of the

Sunshine Law between defendant VANDER MOLEN and defendant BRAUER and cure.

6. ALLEGATIONS IN PARAGRAPH 37(rrrr)(xx) - There is no genuine issue of a material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court ruled in granting partial summary judgment for defendant TRAILER ESTATES on March 22, 2010 that the facts do not show a meeting in violation of the Sunshine Law between defendant VANDER MOLEN and defendant BRAUER and cure.

7. ALLEGATIONS IN PARAGRAPH 44(iv) - There is no genuine issue of a material fact and therefore defendant VANDER MOLEN is entitled to a summary judgment. The court ruled in granting partial summary judgment for defendant JANET JONES on February 8, 2010 that the facts do not show a meeting in violation of the Sunshine Law between defendant VANDER MOLEN, defendant BRAUER and defendant JONES and cure.

8. ALLEGATIONS IN PARAGRAPH 37(y) - Plaintiffs allege in paragraph 37(y) that VANDER MOLEN had discussions outside a noticed meeting to determine whether certain laws applied to the District. The Sunshine Law applies to "meetings...at which official acts are to be taken," and it further provides that "no resolution, rule, or formal action" is binding where the decision is made outside a noticed, public meeting. See § 286.011(1), Fla. Stat. The statute precludes policy decisions from being made outside a noticed, public meeting. Thus, a conversation outside a

noticed, public meeting involving a matter where there is no discretion - and hence, no policy prerogative of the Board - does not violate either the express text of the statute or its intent.

Plaintiffs, in several allegations, allege that VANDER MOLEN violated the Sunshine Law by having a discussion outside a noticed, public meeting to come to various legal determinations. Specifically:

37(y) allegation that VANDER MOLEN, JANET JONES and BRUCE SMITH secretly determined whether OSHA laws applied (see Pltfs. Ex. 80).

That matter, however, involved no discretion on the part of the Board. There is nothing the Board could do to affect whether those items applied. Either OSHA laws apply or they do not.

There is no "official act" or "resolution, rule, or formal action" that Plaintiffs complain of that could be voided. Nor could there be. VANDER MOLEN has conclusively demonstrated the Plaintiffs will not be able to demonstrate all elements of a Sunshine Law violation with respect to allegation 37(y). Summary Judgment is appropriate.

9. ALLEGATIONS IN PARAGRAPH 37(nnnn) - In and before April 2008, the District office had three computers that were hard wired to the server Ethernet cable. (Vander Molen depo 146:9-147:15). Trustee Bruce Smith, without any authorization, had a wireless router installed within the District office. (Vander Molen depo 146:25-148:6). There was no need to have wireless

within the office, as each of the District's computers were hard wired into the server. (Vander Molen depo 147:9-15). In fact, it would only cause problems to the District's existing computers. (Vander Molen depo 147:19-20).

VANDER MOLEN then made the unilateral decision to remove the unapproved router from the District office and to bring the matter before the board. (Vander Molen depo 147:21-148:16). VANDER MOLEN testified that he notified JONES that he was taking the action but that she was not involved in his decision. (149:15-150:22). JONES testified that she did not participate (Jones depo 16:12-14).

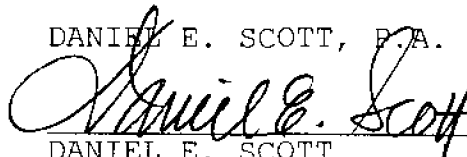
The minutes from the April 21, 2008 Board of Trustees make it clear that the location of this router had nothing to do with whether the Board of Trustees would provide free internet access within the park. (pages 4-5). Those minutes reflect that an administrative task of removing an unapproved installing of the router within the District office was necessary rooted in functionality, security, and cost concerns. (pages 4-5). Those minutes also reflect that the Board should engage in a separate discussion whether to offer free internet service within the District which would also require the involvement of BrightHouse, the contracted cable provider to the District. (pages 4-5).

VANDER MOLEN worked through the summer of 2008 on the matter of whether free internet access could be offered through BrightHouse. (Vander Molen depo 153:5-154:11). Ultimately, the

Board of Trustees workshopped this matter on September 8, 2008. (Minutes, 9-8-2008). Amendments were made as a result of the workshop, and the amended contract with BrightHouse to provide for free wireless internet within an area of the District was approved during the September 15, 2008 meeting. (Minutes, 9/15/2008). Free wireless internet is now provided in an area of the District; however, it is not provided in the District office. (Vander Molen depo 153:6-7, 153:22-154:9, Minutes, 9/15/2008).

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Kevin Hennessey, Robert E. Turfffs, Thomas D. Shults, James D. Dye and Hunter Carroll, by email and mail, on May 19, 2010.

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