

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

MARY LOU SMITH, an individual,
and SHARON DENSON, an individual,

Plaintiffs,

v.

CASE NO. 08 CA 11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDER MOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU McNULTY, an individual,

Defendants.

**TRAILER ESTATES PARK AND RECREATION DISTRICT'S SECOND MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Defendant, Trailer Estates Park and Recreation District ("District"), pursuant to Fla. R. Civ. P. 1.510, moves for Partial Summary Judgment relating to the Plaintiffs' Third Amended Complaint and its Addenda, and as grounds states:

A movant is entitled to summary judgment if the evidence in the record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Estate of Githens v. Maria Manor Nursing Care Center*, 928 So. 2d 1272, 1274 (Fla. 2d DCA 2006). The Court must view every possible inference in favor of the party against whom summary judgment is sought. *Id.*

1. 37(II)- Discussion Regarding Handling Deed Restriction Violations.

The Plaintiffs allege that the District violated the Sunshine Law when on October 6, 2008 Board members discussed the handling of a deed restriction violation outside of an open and

noticed public meeting. The Court previously granted summary judgment to Defendant Janet Jones on this allegation finding that the Board of Trustees cured the violation through subsequent meetings. *See* Order Granting in Part and Denying in Part Janet Jones' Second Motion for Partial Summary Judgment. There is no genuine issue of material fact; therefore the District is entitled to a summary judgment as a matter of law.

2. 37(v)- Discussion Regarding Policies PP3, PP5, PP41, and PP53.

The Plaintiffs allege that the District violated the Sunshine Law when in March, 2007, Board members discussed various policies outside of an open and noticed public meeting. The Court previously granted summary judgment to Defendant Janet Jones on this allegation finding that the Board of Trustees cured the violation through subsequent meetings. *See* Order Granting in Part and Denying in Part Janet Jones' Second Motion for Partial Summary Judgment. There is no genuine issue of material fact; therefore the District is entitled to a summary judgment as a matter of law.

3. 37(z)- Memorandum Regarding ARC Permit.

The Plaintiffs allege that the District violated the Sunshine Law when on August 17, 2007, a Board member, Janet Jones, authored a memo concerning the procedure to receive a permit. The Court previously granted summary judgment to Defendant Janet Jones on this allegation finding that the memo is administrative and procedural in nature and is not a violation of the Sunshine Law. *See* Order Granting in Part and Denying in Part Janet Jones' Second Motion for Partial Summary Judgment. There is no genuine issue of material fact; therefore the District is entitled to a summary judgment as a matter of law.

4. 37(sss)- Discussions Regarding Disaster Plan.

The Plaintiffs allege that the District violated the Sunshine Law when on April 16, 2007, Board members discussed a disaster plan outside of an open and noticed public meeting. The court previously granted summary judgment to Defendant Jones finding that the Board of Trustees cured the violation through subsequent meetings. *See* Order Granting in Part and Denying in Part Janet Jones' Second Motion for Partial Summary Judgment. There is no genuine issue of material fact; therefore the District is entitled to a summary judgment as a matter of law.

5. 37(nnnn)- Determination that free internet service should not be provided.

The Plaintiffs allege that the District violated the Sunshine Law when in April 2008, board members Janet Jones and John Vander Molen met outside of the Sunshine and determined that free internet service should not be offered to the residents of Trailer Estates.

In and before April 2008, the District office had three computers that were hard wired to the server via an 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.

Defendant Vander Molen then made the unilateral decision to remove the unapproved router from the District office and to bring the matter before the District's Board of Trustees ("Board"). (Vander Molen depo 147:21 – 148:16). Defendant Vander Molen testified that he notified Defendant Jones that he was taking the action but that she was not involved in his

decision. (Vander Molen depo 149:15 – 150:22). Defendant Jones testified that she did not participate. (Jones depo 16:12 -14).

The minutes from the April 21, 2008 Board meeting make it clear that the location of this router had nothing to do with whether the Board would provide free internet access within the park. *See* April 21, 2008 Board Meeting Minutes pages 4-5. Those minutes reflect that an administrative task of removing an unapproved installing of the router within the District office was based on functionality, security, and cost concerns. *Id.* 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. *Id.*

Defendant 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 workshopped this matter on September 8, 2008. *See* September 8, 2008 Board Workshop Minutes. Amendments were made as a result of the workshop to the Brighthouse contract that provided for free wireless internet within an area of the District; these amendments were approved at the Board meeting on September 15, 2008. *See* September 15, 2008 Board Meeting Minutes.

The removal of the unauthorized wireless router was an administrative decision that did not require formal board action. *See* FL AGO 81-88; FL AGO 93-41. Alternatively, the removal of the wireless router and provision of free internet service within the District was cured during subsequent Board meetings where these matters were fully discussed in the Sunshine. *See Tolar v. School Board of Liberty County*, 398 So. 2d 427, 428 (Fla. 1981). There is no

genuine issue of material fact; therefore, the District is entitled to summary judgment as a matter of law.

6. Addenda 44(iv)- Liaison Conveyed Information Regarding Public Records Policy

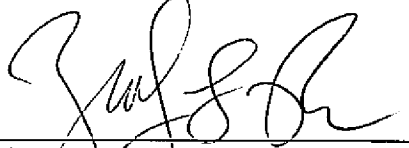
The Plaintiffs allege that in November 2007, a liaison conveyed information between Board members relating to the District's public records policy. The court previously granted summary judgment to Defendant Jones finding that the Board of Trustees cured the violation through subsequent meetings. See Order Granting in Part and Denying in Part Janet Jones' Motion for Partial Summary Judgment. There is no genuine issue of material fact; therefore the District is entitled to a summary judgment as a matter of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, Daniel E. Scott, Esquire, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, Robert E. Turffs, P.A.1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 9th day of June, 2010.

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