

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

1108 ARIOLA, LLC, et al.,

Plaintiffs

vs.

CASE NO: 2004-CA-002290

DIVISION: J

CHRIS JONES, PROPERTY
APPRAISER FOR ESCAMBIA COUNTY,
FLORIDA, and JANET HOLLEY, TAX
COLLECTOR FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND/OR STRIKE**

In the pleading filed by Defendants in response to Plaintiffs' Complaint, the Defendants have moved to dismiss the Complaint or strike certain portions of the Complaint and certain exhibits.

Defendants claim that the Complaint fails to satisfy Fla. R. Civ. P. 1.110, which requires that a complaint contain a "short and plain statement" of the ultimate facts showing that the pleader is entitled to relief. In particular, Defendants claim the Plaintiffs have violated Rule 1.110 by citing certain case law and attaching a copy of the Summary Final Judgment entered by this Court in Bryan v. Bell, Case No: 84-1911.

Defendants also claim that the standard lease agreement for Single Family Residential lessees presently being used by the Santa Rosa Island Authority, a

copy of which Plaintiffs attached as Exhibit "3" to their Complaint, should be stricken.

Intent of Florida Rules of Civil Procedure 1.110 and 1.130

Rule 1.110 was adopted to abolish the technical forms required for the filing of pleadings and motions and other forms for seeking relief. Technicalities are swept aside by the rule. All a complaint needs to "do is to acquaint defendant with the charges so that he may intelligently answer same." Keller v. Eagle Army-Navy Dept. Stores, Inc., 256 So.2d 248 (Fla. 4th DCA 1971).

"The complaint, however, must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged . . . a complaint must 'plead a factual matter sufficient to apprise his adversary of what he is called upon to answer so that the court may, upon proper challenge, determine its legal effect.' " Barrett v. City of Margate, et al., 743 So.2d 1160 (Fla. 4th DCA 1999).

In Amiker v. Mid-Century Insurance Co., 398 So.2d 974 (Fla. 1st DCA 1981), the First District Court of Appeal held that Rule 1.130(a) must be read in conjunction with Rule 1.010, which states that the Florida Rules of Civil Procedure "shall be construed to secure the just, speedy and inexpensive determination of every action." The Court further noted that Rule 1.130(a) does not require attachment of the entire contract, only attachment or incorporation of the contract's material provisions.

Motion to Dismiss

Florida courts have consistently held that when a complaint states a cause of action but fails to do so by short and plain statements of ultimate facts, it cannot be dismissed for failure to state a cause of action but it can be subject to a motion to require compliance with the rule governing claims for relief or motion to strike. See, Barrett v. City of Margate, et al., supra; Thomas v. Pridgen, 549 So.2d 1195 (Fla. 1st DCA 1989); Feller v. Eau Gallie Yacht Basin, Inc., 397 So.2d 1155 (Fla. 5th DCA 1981); Snead Construction Corporation v. Parkway East, Inc., 324 So.2d 206 (Fla. 3rd DCA 1975).

There is no claim by the Defendants, nor could there be, that the Complaint fails to state a cause of action, thus Defendants' motion to dismiss the Complaint on the grounds that it does not state its claims in a "short and plain statement" of the ultimate facts must be denied.

Motion to Strike

As stated above, the proper motion if Defendants believe the Complaint is in violation of Rule 1.110 by failing to state its claims in a "short and plain statement" of the ultimate facts is a motion to strike.

Florida courts have held that any language considered to be in excess of what is required to state a cause of action should simply be treated as surplusage. See, Harrell v. Hess Oil and Chemical Corporation, 287 So.2d 291 (Fla. 1973); Moore v. Boyd, 62 So.2d 427 (Fla. 1952); Balbontin v. Porias, 215 So.2d 732 (Fla. 1968).

The language in paragraphs 6-7, 22-28 and 30 of the Complaint, which Defendants claim is in violation of Rule 1.110, is not in excess of what is required to state Plaintiffs' causes of action.

It is language needed to state a cause of action under Count III of the Complaint in which Plaintiffs pray for judgment estopping Defendants from appraising Plaintiffs' leasehold improvements as real property and from collecting real property taxes on said improvements. The prayer for a judgment of estoppel is based on the doctrines of stare decisis, res judicata, collateral estoppel and judicial estoppel.

It is necessary to cite the issues in the prior cases and the judgments entered in those cases to show that the parties, issues and interests in the cited cases are the same as the parties, issues and interests in this case. Those are ultimate facts fundamental to the relief prayed for in Count III of the Complaint. If Plaintiffs had omitted the language contained in the paragraphs to which Defendants have objected, Defendants would be claiming that the Complaint failed to state a cause of action in Count III.

The language objected to by Defendants was necessary to ensure that the Defendants were fully apprised of what they were being called upon to answer. As evidenced by the Defendants' responsive pleading (their Answer), it is clear that the Complaint accomplished that purpose, that the Defendants understood the Plaintiffs' factual allegations and claims for relief, and that the Complaint adequately stated the causes of action being pursued.

The Summary Final Judgment attached as Exhibit "2" to the Complaint fully apprised the Defendants of this Court's judgment which was affirmed by the First District Court of Appeal in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den. 513 So.2d 1060 (Fla. 1987), and reaffirmed in Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988), which judgment is fundamental to Plaintiffs' Count III based, in part, on stare decisis, res judicata, and collateral estoppel.

In McClurkin v. Parrish Volvo, Inc., 317 So.2d 85 (Fla. 1st DCA 1975), the First District Court of Appeal allowed an exhibit attached to the complaint to be considered even though it was not a required exhibit. As stated by the Court, "[a]lthough the above mentioned rule (Rule 1.130(a)) does not specifically provide for the attachment of such exhibits, neither does it specifically prohibit same."

With regard to Defendants' motion to strike Exhibit "3", the standard lease agreement for single family residential lessees presently being used by the Santa Rosa Island Authority, Plaintiffs attached this exhibit to apprise the Defendants of the exact language to be found in Plaintiffs' leases regarding the material lease provisions listed in paragraph 34 of the Complaint. Rule 1.130(a) allows a copy of those portions of a contract on which an action is being brought to either be incorporated in the pleadings or attached to the pleadings.

When counsel for Plaintiffs took the deposition of Defendant Chris Jones, Defendant Jones stated that he and his senior staff had reviewed all the Pensacola Beach leases (pp. 16 and 17), thus the language in Exhibit "3" is

surely not foreign to the Defendants. Furthermore, at this point, pursuant to Defendant Jones' Request for Production, the Defendants have had an opportunity to inspect all of the Plaintiffs' leases.

Why complain about pleadings and exhibits that reflect the type language contained in the subject leases? Defendants already had reviewed and knew the language contained in the leases before they filed their motion to strike. It is difficult to understand how justice would be served by striking pertinent allegations and material from the Complaint, which was inserted to ensure the Defendants were properly apprised of the causes of action being pursued by Plaintiffs.

The Plaintiffs have simply done what they were required to do under the spirit and intent of Rules 1.110 and 1.130, and that is to fully apprise the Defendants of their causes of action, the factual allegations underlying those causes of action and the relief being sought.

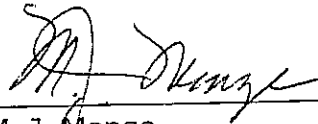
Conclusion

Granting Defendants' Motion to Dismiss and/or Strike the Complaint or portions thereof or exhibits attached to the Complaint, would only serve to prolong this litigation, make the proceedings more expensive and delay justice. Such action would run counter to Rule 1.010 which states that the Florida Rules of Civil Procedure "shall be construed to secure the just, speedy and inexpensive determination of every action."

Plaintiffs respectfully request that Defendants' Motion to Dismiss and/or strike be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing Plaintiffs' Memorandum In Opposition To Defendants' Motion to Dismiss and/or Strike has been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, Tallahassee, FL. 32302, by U.S. mail, this 24th day of October, 2005.



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