

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION
CASE NO.: 2024-010788-CA-01

EILEEN BICABA,

Plaintiff,

vs.

KASSANDRA TIMOTHE, MARY
ESTIMÉ-IRVIN, and PIERRE FRANTZ
CHARLES,

Defendants.

**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S CORRECTED COMPLAINT
WITH INCORPORATED MEMORANDUM OF LAW AND MOTION TO STRIKE
RELIEF REQUEST**

COMES NOW, Defendants, KASSANDRA TIMOTHE (“Timothe”), MARY ESTIMÉ-IRVIN (“Irvin”), and PIERRE FRANTZ CHARLES (“Charles” (collectively “Defendants”), by and through the undersigned counsel, files this Motion to Dismiss EILEEN BICABA (“Plaintiff”) Corrected Complaint’s (“Complaint”) for its failure to state a claim pursuant to Rule 1.110 and Rule 1.110 of the Florida Rules of Civil Procedure and states:

INTRODUCTION & BACKGROUND

Plaintiff initiated this action with the filing of her Complaint on or about June 12, 2024, which asserts two counts. The first count alleges violations of Florida’s Sunshine Law, Section 286.011 against the Defendants, wherein Plaintiff is seeking injunctive relief, namely that the Court issue an injunction, finding the Defendants violated or knowingly violated Florida’s Sunshine law, such that their official actions are null and void, enjoining the Defendants from further violations of Florida’s Sunshine law, and otherwise enforcing the provisions of Fla. Stat.

286.011. The second count alleges violations of the North Miami Charter Citizens' Bill of Rights, Section 9, and is seeking declaratory relief, insofar as the Court issuing a declaratory judgment that Defendants violated or willfully violated Section 9 of the North Miami Charter such that their office or employment is forfeited. As explained more fully below, Plaintiff's Complaint should be dismissed as Plaintiff has failed to adequately plead either cause of action against the Defendants. Plaintiff's Complaint is paramount to a shotgun pleading, in so far as it groups all Defendants together, and does not specify specific allegations against each individual Defendant. Plaintiff's Complaint also fails to allege that two elected officials were conducting public business, a requirement for a violation of the Sunshine Law. Accordingly, this Court must dismiss Plaintiff's Complaint

STANDARD OF LAW

A motion to dismiss is appropriate where the original pleading fails to state a cause of action. Fla. R. Civ. P. 1.140(b)(6). "One of the basic purposes of a motion to dismiss is to test the overall sufficiency of the complaint and to determine whether it states a claim upon which relief can be granted." *Augustine v. Southern Bell*, 91 So. 2d 320, 323 (Fla. 1956). The Court must dismiss a claim when the Court concludes that the allegations and exhibits reveal that the plaintiff is not entitled to relief. *See Jackson Grain Co. v. Kemp*, 177 So. 2d 513, 516 (Fla. 2d DCA 1965). When determining the merits of a motion to dismiss, the court's consideration is limited to the four corners of the complaint, the allegations of which must be accepted as true and considered in the light most favorable to the nonmoving party. *Fixel, Inc. v. Rosenthal & Rosenthal, Inc.*, 842 So. 2d 204 (Fla. 3d DCA 2003). However, "the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1940 (2009).

Moreover, Florida is a fact-pleading jurisdiction. *Continental Baking Co. v. Vincent*, 634 So. 2d 242, 244 (Fla. 5th DCA 1994). To state a cause of action under Florida’s fact-pleading standard, a party must plead more than bare legal conclusions which simply recite the elements of the alleged cause of action. *Horowitz v. Laske*, 855 So. 2d 169, 173 (Fla. 5th DCA 2003). To survive a motion to dismiss, a complaint must contain ultimate facts supporting each element of the alleged cause of action. *See Clark v. Boeing Co.*, 395 So. 2d 1126, 1229 (Fla. 3d DCA 1981); *Woodcock v. Wilcox*, 122 So. 789, 790-91 (Fla. 1929). Mere opinions or legal conclusions unsupported by specific facts are improper and therefore are not presumed true on a motion to dismiss. *Brandon v. Pinellas County*, 141 So. 2d 278, 279 (Fla. 2d DCA 1962).

Florida law requires that “every cause of action, whether derived from statute or common law, is comprised of necessary elements which must be proven for the plaintiff to prevail . . . [t]he complaint 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.” *Barrett v. City of Margate*, 743 So.2d 1160, 1162 (Fla. 4th DCA 1999) (emphasis added); *see Graulau Maldonado v. Orange County Public Library System*, 273 So. 3d 278, 279 (Fla. 5th DCA 2019). “Florida’s pleading rule [1.110(b)(2)] forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort.” *K.R. Exchange Services, Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889, 893 (Fla. 3d DCA 2010) (*quoting Horowitz v. Laske*, 855 So. 2d 169, 172–73 (Fla. 5th DCA 2003)).

MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL

I. Plaintiff’s Complaint fails to comply with Florida Rules of Civil Procedure 1.110

Plaintiff’s Complaint should be dismissed for violation of Rule 1.110 of the Florida Rules of Civil Procedure. Rule 1.110 states that:

(f) Separate Statements. All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. *Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth.*

Fl R. Civ. Pro. 1.110(f) (emphasis added).

Plaintiff's Complaint does not comply with the pleading requirements of the Florida Rules of Civil Procedure 1.110 (f). Plaintiff impermissibly comingles separate and distinct causes of action among the three Defendants. *See* Fla. R. Civ. P. 1.110 (f) ("Each claim founded upon a separate transaction or occurrence [...] shall be stated in a separate count [...] when a separation facilitates the clear presentation of a matter set forth."); *Pratus v. City of Naples*, 807 So.2d 795, 797 (Fla. 2d DCA 2002); *K.R. Exch. Servs., Inc. v. Fuerst Humphrey, Ittleman, PL*, 48 So.3d 889, 893 (Fla. 3d DCA 2010) ("A party should plead each distinct claim in a separate count, rather than plead the various claims against all of the defendants together."). Specifically, the commingling of separate and distinct claims against multiple defendants is prohibited under Florida Law. *See, e.g., Aspssoft, Inc. v. Webclay*, 983 So.2d 761, 767-68 (Fla. 5th DCA 2008); *Collado v. Baroukh*, 226 So.3d 924, 927-8 (Fla. 4th DCA 2017); Rule 1.110(f) of the Florida Rules of Civil Procedure.

Plaintiff's Complaint improperly incorporates claims against multiple Defendants into a single count. Florida courts have regularly found that it is impermissible to comingle separate and distinct causes of action into a single count, even if the claims form the basis of a similar cause of action. *See, Pratus v. City of Naples*, 807 So.2d 795, 797 (Fla. 2d DCA 2002) (holding dismissal was appropriate by a frustrated trial court where plaintiff attempted "lumping" three potential causes of action against multiple defendants in a single count); *Eagletech Communs., Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So.3d 855, 863 (Fla. 4th DCA 2012) (held separate and distinct claims

of fraud were inappropriately comingled warranting dismissal, even though the allegations could support a fraud claim separately); *K.R. Exch. Servs. V. Fuerst, Humphrey, Ittleman, PL*, 48 So.3d 889 (Fla. 3d DCA 20210) (holding the plaintiff failed to comply with Rule 1.110 by failing to separately plead distinct claims in separate counts).

Plaintiff has lumped separate causes of action against the Defendants together, who are undisputedly separate individuals. Because Plaintiff fails to properly plead the causes of action as various, separate, and distinct causes of action, Defendants respectfully request this Court enter an Order dismissing the same, as Plaintiff has failed to plead in accordance with Rule 1.110(f), Florida Rules of Civil Procedure.

II. Plaintiff's Complaint fails to allege necessary elements to establish a Sunshine Law Violation

A Sunshine Law violation occurs when officials "discuss matters on which foreseeable action may be taken by that board or commission in clear violation of the purpose, intent, and spirit of the ... Sunshine Law." *Transparency for Fla. v. City of Port St. Lucie*, 240 So. 3d 780, 784 (Fla. Dist. Ct. App. 2018) (citing *Hough v. Stembridge*, 278 So.2d 288, 289 (Fla. 3d DCA 1973)).

The Sunshine Law, Section 286.011, Florida Statutes, provides as follows:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The Sunshine Law contains three basic requirements for public meetings of collegial bodies, such as the council members for the City of North Miami. First, City council meetings at which official acts are to be taken must be open at all times. § 286.011(1), Fla. Stat. Second, the council

members must provide reasonable notice of such meetings. *Id.* Third, if a City council meeting is held, minutes must be recorded and open for public inspection. § 286.011(2), Fla. Stat. Simply put, the Sunshine Law requires that the public be notified of when a meeting will be held and that such meetings be conducted openly.

The Sunshine Law was enacted “to protect the public from ‘closed door’ politics.” *Wood v. Marston*, 442 So.2d 934, 938 (Fla. 1983). It operates in conjunction with Florida's Public Records Act, section 119.01 et seq., Florida Statutes, to ensure transparency of governmental operations. Here, Plaintiff’s allegations fail to state that officials were engaging in “closed door” politics. Instead, Plaintiff alleges that Defendants had “third party citizens” participating in discussions on their behalf, to try to influence decisions to terminate an individual. However, even if these “third party citizens” were participating in the discussions as alleged, there were never multiple officials involved in any of the discussions. Plaintiff has alleged that only one official was involved in a discussion with a citizen, regarding alleged public business. Therefore, this does not implicate a Sunshine Law violation.

"The [Sunshine] law aims to prevent '[t]he evil of closed door operation of government without permitting public scrutiny and participation,' and if any two or more public officials meet in secret to transact public business, they violate the Sunshine Law. *Transparency for Florida v. City of Port St. Lucie*, 240 So.3d 780, 784 (Fla. 4th DCA 2018) (*quoting City of Miami Beach v. Berns*, 245 So.2d 38, 41 (Fla. 1971)). As Plaintiff’s Complaint is void of allegations that two or more public officials met in secret to transact public business, the first count must be dismissed.

III. The Court Must Strike Plaintiff’s Request for an Injunction enjoining the Defendants from Future Violations of Florida Sunshine Law.

Section 286.011(2), states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. *See Allen v. United Faculty of Miami-Dade College*, 197

So. 3d 604 (Fla. 3d DCA 2016). However, this power is not unlimited. A court cannot issue a blanket order enjoining any violation of the Sunshine Law based upon a finding that the law was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *See Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699-700 (Fla. 1969), *Port Everglades Authority v. International Longshoremen's Association*, Local 1922-1, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995), and *Citizens for Sunshine, Inc. v. Martin County School Board*, 125 So. 3d 184 (Fla. 4th DCA 2013).

Here, Plaintiff's request for relief states "enjoining councilmembers Timothe, Irvin, and Charles from further violations of Florida's Sunshine law." Because the request for relief is not tailored to future violations that bear some resemblance to the past violation, this request for relief must be stricken.

CONCLUSION

Plaintiff's Complaint should be dismissed as Plaintiff has failed to adequately plead either cause of action against the Defendants. Plaintiff's Complaint does not specify specific allegations against each individual defendant. Plaintiff's Complaint also fails to allege necessary elements for a violation of the Sunshine Law, namely that two elected officials were conducting public business at a non-public meeting. As such, Plaintiff's claims are insufficient and Defendants' Motion to Dismiss all counts of Plaintiff's Complaint should be granted.

WHEREFORE, Defendants, KASSANDRA TIMOTHE, MARY ESTIME-IRVIN, AND PIERRE FRANTZ CHARLES. respectfully requests this Honorable Court to enter an Order dismissing all Counts of Plaintiff's Complaint with prejudice and grant them such other relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed for the E-Portal of Florida on this 7th day of August 2024 to all counsel of record.

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