

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

CIRCUIT CIVIL DIVISION

CASE NO. 2015-256 CA 08

MICHAEL A. PIZZI, JR., and
MARY COLLINS,

Plaintiffs,

v.

TOWN OF MIAMI LAKES, FLORIDA,
WAYNE SLATON, and
MARJORIE TEJEDA-CASTILLO, in her
official capacity as Town Clerk, Town of
Miami Lakes, Florida,

Defendants.

**DEFENDANT MARJORIE TEJEDA-CASTILLO'S
CORRECTED MOTION TO DISMISS PLAINTIFFS' VERIFIED
COMPLAINT UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.140(b)¹**

Defendant Marjorie Tejeda-Castillo, in her official capacity as Town Clerk for the Town of Miami Lakes, respectfully moves to dismiss Plaintiffs Michael A. Pizzi, Jr. and Mary Collins's Verified Complaint under Florida Rule of Civil Procedure 1.140(b). In support of this motion, Ms. Tejeda-Castillo states as follows.

I. INTRODUCTION

Plaintiffs, Michael Pizzi, Jr. and Mary Collins, sue Defendants, the Town of Miami Lakes, Wayne Slaton, and Marjorie Tejeda-Castillo, in her capacity as Town Clerk, in a seven-count "Verified Complaint" that contains a wide variety of claims, including those seeking writs

¹ This Corrected Motion is being submitted to remove two minor typographical errors from the previous version.

for *quo warranto* and mandamus and those asking for judgments of ouster and declaratory relief. Throughout the Verified Complaint, however, Plaintiffs fail to identify which counts apply to which defendants – especially for Ms. Tejada-Castillo, who is vaguely mentioned in only 4 of its 117 allegations. All that is clear is that the Verified Complaint lacks sufficient allegations to properly plead any claims against Ms. Tejada-Castillo.

Regardless, under the Verified Complaint’s own allegations, Ms. Tejada-Castillo is the Town Clerk of the Town of Miami Lakes. The Town of Miami Lakes, or the “Town,” has a Charter, which indicates beyond cavil that Ms. Tejada-Castillo has no role in Plaintiffs’ lawsuit. To the contrary, the Town Charter clarifies that Ms. Tejada-Castillo must simply obey the Town’s orders, making any claim against her meaningless.

At the telephonic hearing on January 22, 2015, all parties and the Court seemed to be in agreement that there was no reason for the Clerk to remain as a defendant in this case. Because she has not been dismissed, however, this motion is necessary. Upon review, the Court should dismiss Ms. Tejada-Castillo from this lawsuit, with prejudice.

II. BACKGROUND

Only 4 of the 117 allegations in the Complaint even mention Ms. Tejada-Castillo. The first allegation merely recites that Plaintiffs seek to sue “Town Clerk Marjorie Tejada to perform the purely ministerial function of affixing Michael A. Pizzi, Jr.’s name to the official Town records as Town Mayor and granting him back pay and the emoluments of office.” [Compl. ¶ 7] The second time the Verified Complaint mentions Tejada-Castillo, it states, “Marjorie Tejada-Castillo is the Town Clerk for the Town of Miami Lakes, Florida, and is a Charter officer pursuant to Article III, § 3.6 of the Town Charter.” [Compl. ¶ 18] The third allegation is that the Town Clerk informed Mr. Pizzi that the mayor’s office “was being cleared” by Mayor Slaton and

that Ms. Tejada-Castillo later greeted him. [Compl. ¶ 32] And the final allegation merely requests that this Court issue a writ of mandamus against Ms. Tejada-Castillo. [Compl. ¶ 75] That is the sum total of the allegations against Town Clerk Tejada-Castillo.

Finally, Plaintiffs attach the Town of Miami Lakes Charter to their Verified Complaint and thus incorporate it in their allegations. As the Verified Complaint acknowledges, the Town Clerk's responsibilities are listed in section 3.6 of article III of the Town Charter. In that section, the Town Charter states:

The Town Manager shall appoint the Town Clerk (the "Town Clerk") subject to the approval of the Council. The Town Clerk will give notice of all Council meetings to its members and the public, and shall keep minutes of the Council proceedings. The Town Clerk shall perform such other duties as the Town Manager or the Council may prescribe from time to time. The Town Clerk shall report to the Town Manger. The Town Clerk may be removed by the Town Manager with the approval of the Council.

[App'x to Verified Compl. at 14]

III. LEGAL STANDARD

On a motion to dismiss under Florida Rule of Civil Procedure 1.140(b)(6), a court "must accept the plaintiff's allegations as true and resolve all inferences in the plaintiff's favor." *Miller v. Nelms*, 966 So. 2d 437, 439 (Fla. 2d DCA 2007). Documents attached to a complaint "are encompassed within the four corners of the complaint and must be considered therewith on a motion to dismiss." *Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014).

IV. LEGAL ARGUMENT

Plaintiffs' claims against Ms. Tejada-Castillo are deficient for two separate reasons. First, the Verified Complaint fails to give Ms. Tejada-Castillo any notice of what claims she must respond to. In fact, the Verified Complaint fails to allege any relevant facts at all against Ms.

Tejeda-Castillo. Second, though unclear, it appears that the Verified Complaint raises only one count against Ms. Tejeda-Castillo: the count for writ of mandamus. That claim is wholly inappropriate, for, by the Verified Complaint's own allegations, the Town Clerk lacks any authority to do what Plaintiffs request the Town Clerk to do. For these two reasons, Ms. Tejeda-Castillo's motion to dismiss should be granted, and this Court should dismiss all claims against her with prejudice.

A. Plaintiffs Fail To Give Ms. Tejeda-Castillo Notice of Their Claims Against Her.

"Florida is a fact-pleading jurisdiction." *Horowitz v. Laske*, 855 So. 2d 169, 172 (Fla. 5th DCA 2003). Thus, "a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief," *Louie's Oyster, Inc. v. Villaggio di las Olas, Inc.*, 915 So. 2d 220, 222 (Fla. 4th DCA 2005), and plaintiffs "at the outset of a suit must be compelled to state their pleadings with sufficient particularity for a defense to be prepared," *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instr. Corp.*, 537 So. 2d 561, 563 (Fla. 1988). The Verified Complaint woefully fails to meet these two fundamental obligations.

To begin, the Verified Complaint fails to give Ms. Tejeda-Castillo notice as to what defenses to prepare. It raises seven counts, yet it does not list which counts apply to which Defendant. Accordingly, it is impossible to tell which claims apply to Mayor Slaton, which apply to the Town, and which apply to the Town Clerk.

Moreover, while a complaint "must allege sufficient ultimate facts to show" entitlement to relief, the Verified Complaint does not attempt to meet this burden as to Ms. Tejeda-Castillo. It makes *four* total allegations against the Town Clerk. Two of these are purely legal allegations. [Compl. ¶¶ 7, 75] The other two allegations – that Ms. Tejeda-Castillo is the Miami Lakes Town Clerk and that she once informed Mr. Pizzi that his office was being cleared – do not show

entitlement to relief. [Compl. ¶¶ 18, 32] And they certainly do not show entitlement to relief on seven counts. Because the dearth of factual allegations is insufficient to state claims against Ms. Tejada-Castillo, this Court should dismiss all claims brought against her.

B. Plaintiffs Do Not State a Claim for Mandamus.

“Mandamus is a common law remedy used to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law.” *Bennett v. Clerk of Circuit Court Citrus Cnty.*, 150 So. 3d 277, 278 (Fla. 5th DCA 2014) (per curiam). Mandamus is available to enforce a clearly established right and cannot be used to establish a right. *See Dep’t of Health & Rehab. Servs. v. Harsfield*, 399 So. 2d 1019, 1020 (Fla. 1st DCA 1981) (per curiam). A mandamus petitioner, moreover, must show that the respondent – here the Town Clerk – has “an indisputable legal duty” to act. *Id.* Where a petitioner cannot show that a clerk has an indisputable, ministerial, and legal duty to act as the petitioner requests, mandamus is inappropriate. *See Hales v. State*, 78 So. 3d 654, 655 (Fla. 4th DCA 2012). Here, the Verified Complaint does not allege that Plaintiffs have a clearly established right but rather seeks to establish a right. Similarly, it cannot allege that Town Clerk Tejada-Castillo had a ministerial duty to “restore Michael A. Pizzi, Jr. to the Office of Mayor.” [Compl. ¶ 75]

Initially, through the mandamus action, Plaintiffs do not seek to enforce a clearly established right. They seek, rather, to *establish* a right. The Verified Complaint points at no law, caselaw, or statute that requires back pay or the office of mayor.

Besides, Ms. Tejada-Castillo did not have a ministerial duty to restore Mr. Pizzi to the mayor’s office or repay his salary. Indeed, she lacks the legal authority to do so. After all, the Verified Complaint alleges that the Ms. Tejada-Castillo’s authority stems from the Miami Lakes

Town Charter, and, with regard to restoring mayors, the Town Charter bestows *no* duty upon Ms. Tejada-Castillo. Again, the Town Charter gives the Town Clerk two ministerial duties: giving notice of council meetings and keeping minutes of council meetings. [App'x to Verified Compl. at 14] Neither of those duties relates, at all, to this case's political imbroglio. And those duties do not relate, at all, to Mr. Pizzi's back pay and emoluments of office.

Nor can Plaintiffs cite any legal authority for the proposition that a town or city clerk has the ministerial duty to reappoint or pay a mayor in this situation. Florida Statutes section 112.51, on which Plaintiffs depend, for example, not once mentions the word "clerk." Article IV, Section 7 of the Florida Constitution, on which Plaintiffs also rely, does not mention town or city clerks either. This statute and constitutional provision, therefore, do not clearly establish a ministerial duty on Ms. Tejada-Castillo to reappoint Mr. Pizzi as mayor, a required element of any mandamus proceeding.

Simply put, Plaintiffs do not have a clearly established right vis-à-vis Ms. Tejada-Castillo, and this Court should dismiss the mandamus claim pleaded against her.

C. Ms. Tejada-Castillo Adopts the Other Defendants' Arguments.

As explained above, it is unclear to what extent the Verified Complaint's six other counts apply to Ms. Tejada-Castillo. Moreover, because of what appears to be general agreement that the Town Clerk need not be a defendant in this case at all, it is unnecessary here to discuss the various legal flaws with the other counts in the Complaint. In an excess of caution, however, Ms. Tejada-Castillo adopts and incorporates herein the legal arguments raised by Defendants Wayne Slaton and the Town of Miami Lakes in their motions to dismiss. As those Defendants explain, Plaintiffs' Verified Complaint faces other serious deficiencies that warrant dismissal.

V. CONCLUSION

As Town Clerk, Ms. Tejada-Castillo has no discretion to take any steps that will install one person or another in the office, as she can only comply with instructions given to her by the entities set forth in the Charter or by a court. More importantly to the instant matter, Ms. Tejada-Castillo will comply fully with any orders of this Court, regardless of whether she remains as a named defendant. Quite simply, there is no risk whatsoever that dismissing her from this lawsuit will in any way impede the resolution or the implementation of any Court directives.

For these reasons and the reasons set forth above, the Court should dismiss Marjorie Tejada-Castillo from this case with prejudice.

Dated: January 27, 2015

/s/Murray A. Greenberg
Murray A. Greenberg
Florida Bar No. 111419
mgreenberg@gsgpa.com
Gerald Greenberg
Florida Bar No. 440094
ggreenberg@gsgpa.com
FREDDY FUNES
Florida Bar No. 87932
ffunes@gsgpa.com
Gelber Schachter & Greenberg, P.A.
1441 Brickell Avenue, Suite 1420
Miami, Florida 33131
Telephone: (305) 728-0950
Facsimile: (305) 728-0951

*Counsel for Defendant
Marjorie Tejada-Castillo*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2015, I filed the foregoing using the State of Florida's ePortal Filing System. I further certify that a copy of the foregoing has been served via email through the State of Florida's ePortal Filing System on all counsel of record listed on the Service List below.

/s/Murray A. Greenberg

MURRAY A. GREENBERG

SERVICE LIST

RAUL GASTESI, JR., ESQ.
HAYDEE SERA, ESQ.
GASTESI & ASSOCIATES, P.A.
8105 NW 155th Street
Miami Lakes, FL 33016
Tel: 305-818-9993
rgastesi@gastesi.com
hsera@gastesi.com

Counsel for Town of Miami Lakes

JUAN-CARLOS PLANAS, ESQ.
KURKIN BRANDES, LLP
18851 NE 29th Avenue
Suite 303
Aventura, FL 33180
Tel: 305-929-8500
jcplanas@kb-attorneys.com
rrivera@kb-attorneys.com

Counsel for Town of Miami Lakes

EDWARD R. SHOHAT, ESQ.
JONES WALKER, ESQ.
201 S Biscayne Blvd., Suite 2600
Miami, FL 33131
Tel: 305.679.5700
eshohat@joneswalker.com

Counsel for Michael A. Pizzi, Jr.

RALF R. RODRIGUEZ, ESQ.
PECKAR & ABRAMSON, P.C.
1 S.E. Third Avenue, Suite 3100
Miami, FL 33131
Tel: 305.358.2600
Fax: 305.375.0328
rrodriguez@pecklaw.com

Counsel for Michael A. Pizzi, Jr.

BENEDICT P. KUEHNE, ESQ.
MICHAEL T. DAVIS, ESQ.
LAW OFFICE OF BENEDICT P. KUEHNE, P.A.
100 S.E. 2nd St., Suite 3550
Miami, FL 33131-2154
Tel: 305.789.5989
Fax: 305.789.5987
ben.kuehne@kuehnelaw.com
mdavis@kuehnelaw.com
efiling@kuehnelaw.com

Counsel for Michael A. Pizzi, Jr.

DAVID P. REINER, II, ESQ.
REINER & REINER, P.A.
9100 So. Dadeland Blvd., Suite 901
Miami, FL 33156-7815
Tel: 305.670.8282
Fax: 305.670.8989
dpr@reinerslaw.com

Counsel for Michael A. Pizzi, Jr.

MARK HERRON, ESQ.
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel: 850-222-0270
Fax: 850-558-0659
mherron@lawfl.com

Counsel for Michael A. Pizzi, Jr.

KENT HARRISON ROBBINS, ESQ.
KENT HARRISON ROBBINS
1224 Washington Avenue
Miami Beach, FL 33139
Tel: 305-532-0500
Fax: 305-531-0150
khr@khrlawoffices.com

Counsel for Michael A. Pizzi, Jr.

ELIZABETH HERNANDEZ, ESQ.
GERALD B. COPE JR., ESQ.
VANESSA BERMAN, ESQ.
AKERMAN LLP
One Southeast Third Avenue-25th Floor
Miami, Florida 33131
Tel: 305.374.5600
elizabeth.hernandez@akerman.com
gerald.cope@akerman.com
vanessa.berman@akerman.com

Counsel for Wayne Slaton

/s/Murray A. Greenberg

MURRAY A. GREENBERG