

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

CASE NO.: 2015-256-CA-01 (08)

MICHAEL A. PIZZI, JR. AND MARY COLLINS,  
Plaintiff,  
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.

**TOWN OF MIAMI LAKES' MOTION TO DISMISS**

The Defendant, TOWN OF MIAMI LAKES (hereinafter, "MIAMI LAKES"), by and through its undersigned attorneys, moves to dismiss Plaintiffs' Michael A. Pizzi, Jr. (hereinafter, "PIZZI") and Mary Collins (hereinafter, "COLLINS") Verified Complaint, and in support thereof states as follows:

**INTRODUCTION**

The Plaintiffs, PIZZI and COLLINS, have filed a seven (7) count complaint against MIAMI LAKES, MAYOR WAYNE SLATON<sup>1</sup> (hereinafter, "MAYOR SLATON") and the Town Clerk MARJORIE TEJEDA-CASTILLO<sup>2</sup> (hereinafter, "CLERK") seeking, *inter alia*, MAYOR SLATON'S removal from office and PIZZI'S reinstatement to that office. The Plaintiffs do not have any legally cognizable cause of action to reinstate PIZZI, as once MAYOR SLATON was elected and sworn in as the new Mayor of MIAMI LAKES, PIZZI'S term legally ended. The Florida Supreme Court (hereinafter, "SUPREME COURT"), which technically had the power to reach beyond the Petition filed by PIZZI and order the Governor of the State of Florida (hereinafter, "GOVERNOR") to reinstate him, recognized this fact and did not order the

<sup>1</sup> MIAMI LAKES hereby adopts the Motion to Dismiss filed by Mayor Wayne Slaton.

<sup>2</sup> MIAMI LAKES hereby adopts the Motion to Dismiss filed by Town Clerk Marjorie Tejada-Castillo.

GOVERNOR to do so, reiterating its comments from its Order to Show Cause, specifically stating,

During Petitioner's suspension, the Town held a special election for mayor in accordance with the requirements of its charter. The **permanent replacement mayor** assumed office on October 8, 2013, and **the new mayor's term will run until the next regularly scheduled election in November 2016.**

See SUPREME COURT Order of December 22, 2014 at App'x<sup>3</sup> at 94-96)(**emphasis added**).

The SUPREME COURT would not use such deliberate language if it had been of the opinion that PIZZI was entitled to reinstatement. The SUPREME COURT required only that the GOVERNOR's Executive Order of Suspension of August 6, 2013 be revoked but clearly stated that in accordance with the requirements of the MIAMI LAKES Charter there was a permanent replacement mayor and that the new mayor's term runs until November 2016.

While PIZZI and COLLINS base their action for PIZZI'S reinstatement on F.S. §112.51, they neglect to read the entire statute and only concentrate on subsection (3). Although subsection (3) of F.S. §112.51 states that the GOVERNOR is to reinstate a previously suspended office holder if they are acquitted of the charges that led to the office holder's suspension, the statute goes further than the Plaintiffs wish to acknowledge. PIZZI and COLLINS do not analyze F.S. §112.51 as a whole and conveniently ignore the last sentence of subsection (6), which provides:

If, during the suspension, the term of office of the municipal official expires and a successor is either appointed or elected, such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he or she **shall not** be reinstated.

(emphasis added.)

Once MAYOR SLATON was sworn in as the new Mayor in MIAMI LAKES, PIZZI'S term

---

<sup>3</sup> References to "App'x at \_\_\_" refer to the page of the Appendix attached to the Plaintiffs' Complaint.

expired. It is clear by the language used by the SUPREME COURT that this was crystal clear to them. Now, almost six (6) months after his acquittal on federal public corruption charges, and after he neglected to ask the Supreme Court for reinstatement, PIZZI files the above titled action along with COLLINS.

The relief the Plaintiffs seek from this Court cannot be obtained by the amalgam of causes of action they have filed. Like most extraordinary remedies, *quo warranto* (Count 3) must be pleaded in a form strictly adhering to Florida Rule of Civ. Pro. 1.630, which they have not done. The Plaintiffs face several additional burdens in their Complaint as there are serious deficiencies in their causes of action. First, *quo warranto* will not achieve PIZZI'S requested relief of reinstatement to office, as the Court may not overturn the bona fide election of MAYOR SLATON. Additionally, neither declaratory (Count 1) nor injunctive relief (Count 2) can be used to remove a Mayor who is currently in office who was properly elected by the voters in MIAMI LAKES. Assuming *arguendo* that mandamus (Count 4) is an appropriate cause of action for the relief PIZZI seeks (which it is not), he has failed to include the one person who can reinstate him to office (i.e., the GOVERNOR) as a party to his counts for mandamus, declaratory relief (Count 1) and violation of his due process rights (Count 7). Because all of these counts relate to §112.51, Florida Statutes, PIZZI cannot obtain the relief he requests without naming the GOVERNOR as a party defendant. Finally, while PIZZI and COLLINS attempt to list both judgment of ouster (Count 5) and estoppel (Count 6) as causes of action, they are not recognized causes of action in Florida. Accordingly, all of the Plaintiffs' counts are flawed and this Complaint should be dismissed.

## FACTS

On August 6, 2013, PIZZI, was arrested by Federal Authorities. Compl. ¶ 21. On that day, pursuant to the Federal charges brought against him, the GOVERNOR suspended PIZZI as Mayor of MIAMI LAKES. Compl. ¶ 22. (*See* Governor's Executive Order 13-217 at App'x at 36-37). Upon PIZZI's suspension a vacancy was created in the office of Mayor in accordance with Section 2.5(a) of the MIAMI LAKES Charter. (*See* Charter at App'x at 10). Because more than six (6) months remained in PIZZI's term at the time of his suspension, Section 2.5(c)(iv) of the MIAMI LAKES Charter mandated a special election be held within ninety (90) calendar days following the occurrence of the vacancy to elect a "new Mayor." (*See* Charter at App'x at 11).

Pursuant to Section 2.5(c)(iv) of the Charter, on August 13, 2013, the MIAMI LAKES Town Council passed Resolution 13-1125 calling for a special election on October 1, 2013 to elect a new Mayor. Compl. ¶ 23. (*See* Resolution 13-1125 at App'x at 40-43). The Official Special Election Ballot for the October 1<sup>st</sup> election stated the election was for the office of Mayor and Councilmember. (*See* Official Special Election Ballot at App'x at 50). The ballot was clear that the election was not for a temporary position.

On October 1, 2013, the voters in MIAMI LAKES elected MAYOR SLATON as their **new** Mayor and sworn in shortly thereafter. Compl. ¶ 29. (*See* results of Special Election at App'x at 51). PIZZI was acquitted by a Federal Jury on August 14, 2014. Compl. ¶ 31. A day later, the GOVERNOR issued a statement reasoning that because MIAMI LAKES had elected a **new** Mayor in accordance with its Charter, and the GOVERNOR was not required to revoke the suspension. (*See* Letter of August 15, 2014 at App'x at 89-91).

On August 21, 2014, PIZZI petitioned the SUPREME COURT for a Writ of Mandamus, requesting that the SUPREME COURT order the GOVERNOR to revoke the suspension as per

Florida Statutes §112.51 dealing with the powers of the Governor of Florida to suspend and, in certain cases, reinstate municipal officers. Compl. ¶ 35.

On December 22, 2014, the SUPREME COURT granted PIZZI'S Petition and ordered the GOVERNOR to *revoke* the Executive Order that suspended PIZZI. However, as explained earlier, the SUPREME COURT, referencing the MIAMI LAKES Charter, specifically emphasized that the GOVERNOR was not required to *reinstate* PIZZI to his former municipal office.

On the evening of December 22, 2014, the GOVERNOR issued Executive Order 14-327, effectively revoking Executive Order 13-217 which had originally suspended PIZZI from office. Compl. ¶ 37. In harmony with the Supreme Court's Order of the same date, the GOVERNOR did not reinstate PIZZI to office as that position had already been filled by MAYOR SLATON in accordance with the Town Charter. (*See* Executive Order 14-327 at App'x at 97-98).

### **ARGUMENT**

#### **I. Count 1 (Declaratory Relief), Count 4 (Mandamus), and Count 7 (Violation of Due Process) should be dismissed for failure to name an indispensable party**

PIZZI and COLLINS have failed to name an indispensable party in Count 1 (Declaratory Relief), Count 4 (Mandamus), and Count 7 (Violation of Due Process by Deprivation of Property Right as Applied) of their Complaint. The Plaintiffs have failed to properly plead a case for declaratory relief in Count 1. The Florida Declaratory Judgment Act is remedial in nature and should be broadly construed. *Dep't. of Env'tl. Prot. v. Garcia*, 99 So. 3d 539, 544 (Fla. 3d DCA 2011). In order to properly invoke the jurisdiction of the circuit court, a party seeking declaratory relief must not only show that he or she is in doubt as to the existence or nonexistence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *Id.* While PIZZI claims a right he seeks enforced (i.e., to become Mayor again),

COLLINS has no standing for the declaratory relief requested as she was not suspended and PIZZI fails to specifically state for which statute or code he seeks the Court's declaration. By logical intimation and the wording of the rest of the Complaint, specifically Counts 4 (Mandamus) and 7 (Violation of Due Process by Deprivation of Property Right as Applied), PIZZI is apparently seeking for this Court to declare that Article IV, Section 7 of the Florida Constitution and F.S. § 112.51 require his reinstatement to office. The overall problem with Counts 1, 4 and 7 of PIZZI'S Complaint is that the Complaint fails to properly name an indispensable party for the relief requested in each of those Counts: the GOVERNOR.

Upon his acquittal, PIZZI decided to forgo seeking reinstatement and instead pursued an action for mandamus in the Supreme Court to force the GOVERNOR to revoke his suspension pursuant to F.S. §112.51. PIZZI'S petition for mandamus specifically stated that, at that time, he was not asking the GOVERNOR to reinstate him to office. In an act of irony that should not escape this Court, PIZZI now sues for reinstatement to office and again raises F.S. §112.51 in Counts 1, 4 and 7, yet neglects to include the GOVERNOR as a party. First, PIZZI is incorrect in his assertion that he should be reinstated to office, as a new Mayor has already been elected to that position in accordance with the terms of the MIAMI LAKES Charter, a fact which was emphasized by the Supreme Court in *two* separate Orders (*See* App'x at 94-96) and the GOVERNOR in filings before the Supreme Court. Second, and most importantly, in Counts 1, 4, and 7, PIZZI neglects to include the *only* person who CAN reinstate him under F.S. §112.51: the GOVERNOR.

PIZZI bases the foundation of his argument on his counts for mandamus (Count 4), violation of his due process rights (Count 7) and, to an extent, his count for declaratory relief (Count 1), on the incorrect premise that F.S. §112.51 requires his return to office. PIZZI misreads all of F.S.

§112.51—not only does the statute fail to provide for the relief he seeks as a new permanent Mayor has already been elected in MIAMI LAKES, but, more importantly, the statute requires any reinstatement to office to be done by the GOVERNOR, who removed PIZZI from office to begin with. While the Plaintiffs direct the Count for mandamus against the CLERK, this action is misguided as COLLINS does not have standing to bring an action for mandamus and PIZZI misapplies the statute. F.S. § 112.51 does not give any power to a municipal clerk or even to the Courts to reinstate the office holder that was originally suspended by the GOVERNOR. F.S. §112.51 does not create any cause of action for an official to bring, rather, the statute deals exclusively with the power of the GOVERNOR over such municipal officials.

An “indispensable party” is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action. *Florida Dep't of Revenue v. Cummings*, 930 So. 2d 604 (Fla. 2006). PIZZI may not obtain the relief he seeks without the action of the GOVERNOR, who is the only person able to reinstate him to office under F.S. §112.51. *See Walker v. President of the Senate*, 658 So. 2d 1200 (Fla. 5<sup>th</sup> DCA 1995). PIZZI has failed to name the GOVERNOR as a party defendant in this matter and thus has failed to include an indispensable party needed for the relief he seeks. Failure to name an indispensable party is grounds for dismissal of the counts for declaratory relief, mandamus<sup>4</sup>, and violation of his due process rights. *See Immer v. City of Miami*, 898 So. 2d 258 (Fla. 3<sup>rd</sup> DCA 2005), *City of Hallandale v. Gulfstream Park Racing Ass'n, Inc.*, 440 So. 2d 1328 (Fla. 4<sup>th</sup> DCA 1983). In order for PIZZI to be entitled to any relief that would allow his reinstatement under Counts 1, 4 or t 7, he needed to have included the

---

<sup>4</sup> While PIZZI'S Count for mandamus may not succeed as he can not use mandamus to remove an official that was properly elected and sworn into office (*see State ex rel. Attorney General v. Johnson*, 16 So. 786 (Fla. 1895)), that argument can only be made as part of an Affirmative Defense and subsequent Motion for Summary Judgment, but not in a Motion to Dismiss.

GOVERNOR as an indispensable party. The GOVERNOR is not a named party defendant and thus Counts 1, 4 and 7 of the Complaint should be dismissed.

## **II. Plaintiffs have failed to state a proper claim in Count 2 (Injunctive Relief)**

Count 2 of the Plaintiffs' verified Complaint is a cause of action for injunctive relief. The ultimate relief they seek is the removal of MAYOR SLATON and the reinstatement of PIZZI as Mayor of MIAMI LAKES. Injunctive relief cannot be used to obtain the relief the Plaintiffs seek. Although they are asking this Court to enjoin MAYOR SLATON from acting in his capacity as Mayor of MIAMI LAKES (*see* Compl. ¶ 57), a court cannot enjoin an elected official from carrying out the legal duties of his or her office once that individual has been lawfully elected and sworn into office. Courts have long recognized the sanctity of a certified election and are generally reluctant, if not sometimes powerless, to pierce it. *See State ex rel. Attorney General v. Johnson*, 16 So. 786 (Fla. 1895). Once MAYOR SLATON'S election was certified and he was sworn into office, he became the Mayor. While PIZZI and COLLINS may attempt to undo the election of MAYOR SLATON, they can not enjoin MAYOR SLATON from fulfilling his duties.

Injunctive relief is generally used to preserve the status quo and prevent an action that changes such. *See Millennium Commc'ns & Fulfillment, Inc. v. Office of the Attorney Gen. and Dep't of Legal Affairs*, 761 So. 2d 1256 (Fla. 3rd DCA 2000); *Naegele Outdoor Adver. Co., Inc. v. City of Jacksonville*, 659 So. 2d 1046, 1047 (Fla. 1995). While PIZZI could have sought injunctive relief *before* MAYOR SLATON was elected (relief which would have been denied to PIZZI), once the October 1, 2013 election was certified and MAYOR SLATON took the oath of office, there can be nothing for the Plaintiffs to enjoin. Mandatory injunctions are generally looked upon with disfavor and are seldom granted because of the drastic finality with which they

operate. *Groff G.M.C. Trucks, Inc. v. Driggers*, 101 So. 2d 58, 60 (Fla. 1<sup>st</sup> DCA 1958). While courts may grant a mandatory injunction if the litigant can show irreparable harm (*Id.* at 60), such circumstances are extremely rare. PIZZI was acquitted in August 2014 and waited until January 2015 to file his Complaint seeking reinstatement. Because enjoining MAYOR SLATON from acting as Mayor does not automatically restore PIZZI to office, there is no immediacy of the Plaintiffs' irreparable harm almost six (6) months after PIZZI'S acquittal. Accordingly, Count 2 of the Complaint should be dismissed as it cannot bring the relief the Plaintiffs seek and is beyond the reach of the Court.

**III. PIZZI has improperly pleaded and has failed to state a cause of action in Count 3 (*Quo Warranto*) and Count 5 (Judgment of Ouster)**

PIZZI alone seeks relief in the form of *quo warranto* (Count 3) and judgment of ouster (Count 5), asking this Court to remove MAYOR SLATON from office. Judgment of ouster is not a proper cause of action, but rather a remedy that may be issued by the Court as part of *quo warranto*. Accordingly, Count 5 of the Complaint is improper and must be dismissed.

Most importantly, however, PIZZI'S claim for *quo warranto* (Count 3) does not abide by the form required by Florida Rule of Civil Procedure 1.630. As more elaborately stated in the Motion to Dismiss filed by MAYOR SLATON, which MIAMI LAKES adopts, the Count for *quo warranto* is deficient and should be dismissed. Accordingly, Counts 3 and 5 of the above titled Complaint should be dismissed.

**IV. PIZZI has failed to state a case of action in Count 6 (Estoppel)**

While Count 6 can not apply to COLLINS, PIZZI attempts to set forth an action for estoppel in Count 6 of his Complaint. Estoppel, however, is not a cause of action, but rather an affirmative defense. PIZZI cannot bring forth an affirmative defense in the form of a cause of action. Accordingly, Count 6 (estoppel) of the Complaint must be dismissed.

**CONCLUSION**

PIZZI and COLLINS have failed to name the GOVERNOR as an indispensable party in Counts 1, 4 and 7 of their Complaint. Additionally, COLLINS lacks standing to bring those counts. The Plaintiffs have improperly asked for injunctive relief in Count 2 and do not meet the higher burden for a mandatory injunction. They have pleaded causes of action in Counts 5 (judgment of ouster) and 6 (estoppel) that do not exist. Lastly, Plaintiffs' action in Count 3 for *quo warranto* does not conform to the Florida Rules of Civil Procedure.

**WHEREFORE**, the Defendant, MIAMI LAKES respectfully requests that this Court: dismiss Counts 1, 4 and 7 of the Plaintiffs' Complaint for failure to name an indispensable party; dismiss Count 2 of the Complaint as it can not be used to obtain the relief sought; dismiss Counts 3, 5 and 6 of the Complaint for failure to state a proper cause of action; dismiss COLLINS from this action as she does not have standing; and additionally asks that this Court grant such further relief it deems just and proper.

Respectfully submitted this 27<sup>th</sup> day of January, 2015.

*Counsel for Town of Miami Lakes*  
**GASTESI & ASSOCIATES, P.A.**  
8105 NW 155<sup>th</sup> Street  
Miami Lakes, Florida 33016  
Tel: 305-818-9993 / Fax: 305-818-9997  
E-Mail: [efiling@gastesi.com](mailto:efiling@gastesi.com)

By: /s/ **RAUL GASTESI, JR.**  
**RAUL GASTESI, JR.**  
Florida Bar No.: 825778  
**HAYDEE SERA**  
Florida Bar No.: 70600

*Co-Counsel for Town of Miami Lakes:*  
**KURKIN BRANDES LLP**  
18851 NE 29th Avenue, Suite 303  
Aventura, FL 33180  
Tel: 305-929-8500 / Fax: 305-675-0564  
E-Mail: [jcplanas@kb-attorneys.com](mailto:jcplanas@kb-attorneys.com)  
E-Mail: [rrivera@kb-attorneys.com](mailto:rrivera@kb-attorneys.com)

By: /s/ **JUAN-CARLOS PLANAS**  
**JUAN-CARLOS PLANAS**  
Florida Bar No.: 156167

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that on this 27<sup>th</sup> 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 this 27<sup>th</sup> day of January, 2015 through the State of Florida's ePortal Filing System on all counsel of record listed on the Service List below.

*Counsel for the Plaintiffs:*

**BENEDICT P. KUEHNE**  
**MICHAEL T. DAVIS**  
**LAW OFFICE OF BENEDICT P. KUEHNE, P.A.**  
100 S.E. 2nd St., Suite 3550  
Miami, FL 33131-2154  
Email: ben.kuehne@kuehnelaw.com  
Email: efilings@kuehnelaw.com

*Counsel for the Plaintiffs:*

**RALF R. RODRIGUEZ**  
**PECKAR & ABRAMSON, P.C.**  
1 S.E. Third Avenue, Suite 3100  
Miami, FL 33131  
Email: rrodriguez@pecklaw.com

*Counsel for the Plaintiffs:*

**DAVID P. REINER, II**  
**REINER & REINER, P.A.**  
9100 So. Dadeland Blvd., Suite 901  
Miami, FL 33156-7815  
Email: dpr@reinerslaw.com

*Counsel for the Plaintiffs:*

**MARK HERRON**  
**MESSER CAPARELLO & SELF, P.A.**  
2618 Centennial Place  
Tallahassee, FL 32308-0572  
Email: mherron@lawfla.com

*Counsel for the Plaintiffs:*

**KENT HARRISON ROBBINS**  
1224 Washington Avenue  
Miami Beach, Florida 33139  
Email: khr@khrlawoffices.com

*Counsel for the Plaintiffs:*

**EDWARD R. SHOHAT**  
**JONES WALKER**  
201 S Biscayne Blvd., Suite 2600  
Miami, FL 33131  
Email: ed@sdefense.com  
Email: eshohat@joneswalker.com

*Counsel for Mayor Wayne Slaton:*

**ELIZABETH M. HERNANDEZ**  
**GERALD B. COPE, JR.**  
**AKERMAN LLP**  
One Southeast Third Avenue - 25th Floor  
Miami, Florida 33131-1714  
Email: elizabeth.hernandez@akerman.com  
Email: gerald.cope@akerman.com  
Email: vanessa.berman@akerman.com

*Counsel for Town Clerk, Marjorie Tejada-Castillo:*

**MURRAY A. GREENBERG**  
**GELBER SCHACHTER & GREENBERG, P.A.**  
1441 Brickell Avenue, Suite 1420  
Miami, Florida 33131  
Email: mgreenberg@gsgpa.com

**/s/ Raul Gastesi, Jr.**  
Attorney