IN THE CIRCUIT COURT IN THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
CIVIL DIVISION

CLAY G. COLSON,

Plaintiff,

vs. Case No.: 21-005793-CI

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.
_____/

DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO JOIN INDISPENSABLE PARTIES

Defendant, CITY OF TARPON SPRINGS, FLORIDA (the "City"), by and through its undersigned counsel, which makes its limited appearance for the purpose of filing the instant motion, moves this Court to dismiss Plaintiff's Complaint for failure to join indispensable parties to this lawsuit pursuant to Rule 1.140(b), Fla. R. Civ. P., and in support thereof states:

1. Plaintiff filed a Complaint against the City on December 9, 2021. (Court Docket No. 1)

2. Plaintiff included no other defendants to this action. (Id.)

3. Plaintiff's Complaint appears to be a consistency challenge pursuant to §163.3215, Fla. Stat.

4. Section 163.3215, Fla. Stat., is the exclusive method for an aggrieved or adversely affected party to appeal and challenge the consistency of a development order with a comprehensive plan. §163.3215(1), Fla. Stat.

5. Plaintiff claims Ordinance 2021-15 (hereinafter referred to as "Ordinance") and

Resolution 2021-60 (hereinafter referred to as "Resolution") constitute development orders within the meaning of §163.3164(15), Fla. Stat., and that they are inconsistent with the City's Comprehensive Plan. (Complaint ¶¶ 11 and 12).

6. The Ordinance approved zoning changes and the Preliminary Planned Development for Anclote Harbor Residential Planned Development (hereinafter referred to as "Anclote Harbor").

7. The Resolution approved the Final Development Plan for Anclote Harbor. (Exhibit B).

8. Kamil Salame, Morgan Group Development, LLC, (hereinafter referred to as Morgan Group) is the developer who sought approval to develop Anclote Harbor. (Id.)

9. Plaintiff is asking this Court to declare the Ordinance and Resolution inconsistent with the City's Comprehensive Plan and enjoin the City from further enforcement of the Ordinance and Resolution.

Memorandum of Law

The Morgan Group is an indispensable party and should be named as a defendant in this action. "Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause." Rule 1.210(1), Fla. R. Civ. P. The Ordinance and Resolution authorize Morgan Group's development plan for Anclote Harbor. Plaintiff's request for this Court to declare the Ordinance and Resolution inconsistent with the City's Comprehensive Plan and enjoin further enforcement of both directly affect Morgan Group's interest in the project as such a finding would bring the development to a halt. That is why their presence is necessary for this Court to make a complete determination in this cause.

The City's Comprehensive Zoning and Land Development Code (hereinafter referred to as "Code") applies to all development activity within the City and development cannot begin without authorization pursuant to the requirements of the Code. Tarpon Springs Code of Ordinance App. A §5.01. The developer of a planned development, like the Morgan Group, needs the City to approve its development plan before development can commence. The Code sets forth the requirements for seeking approval of a development plan. Tarpon Springs Code of Ordinances App. A. Art. V. §§80.00 - 82.00. The preliminary plan requires the developer to provide the City with at least twenty-seven details of the development including, but not limited to, drainage and parking details and a survey. Id. at §81.00. The final plan requires the developer to provide the City with at least twenty-three details about the development, including but not limited to, details on the buildings and landscaping and architectural renderings of the development. Id. at §82.00.

The City's approval of Morgan Group's planned development, via the Ordinance and Resolution, are essential to Anclote Harbor because without them development cannot occur. While the City is the entity that approved Morgan Group's development plans, Morgan Group will be the party truly affected by a finding that the Ordinance and Resolution are inconsistent with the City's Comprehensive Plan and that the Ordinance and Resolution are enjoined from further enforcement because those findings would mean the Morgan Group would not have the authority to proceed with Anclote Harbor. Therefore, while §163.3215, Fla. Stat., requires Plaintiff to name the City in his consistency challenge, Rule 1.210, Fla. R. Civ. P, supports adding the Morgan Group as a defendant in this action so that all necessary parties are present for the Court to make a complete determination as to Plaintiff's allegations.

While §163.3215(1), Fla. Stat., requires "the local government that issues the development order…to be named as a respondent in all proceedings under this section" it does not limit Plaintiff's ability to include necessary parties whose interests will be affected by the outcome of the proceeding. "A person whose interests will necessary be affected by a decree is a necessary and indispensable party." Santiago v. Sunset Cove Investments, Inc., 988 So. 2d 10, 14 (Fla. 2d DCA 2008). A "party is materially interested or indispensable when it is impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action". Two Islands Development Corporation v. Clarke, 157 So. 3d 1081, 1084 (Fla. 3d DCA 2015). Since Morgan Group's development of Anclote Harbor is contingent upon the Ordinance and Resolution it is impossible for this court to adjudicate this matter without affecting their interest in same. Therefore, based on Two Islands, Morgan Group should be added as a defendant in this action.

In Two Islands, the court erred when it granted a temporary injunction stopping the building of a sidewalk without adding the owner and developer, whose interests were affected by the injunction, as parties. Id. at 1083. The appellant developed Island Estates, the residential development where appellees were property owners. Id. at 1082. Island Estates was located on the southernmost island of two islands off the coast of Aventura, Florida. Id. at 1082. During the development of Island Estates, a resolution was passed requiring the construction of a sidewalk on the south island if the north island was developed with anything other than single-family homes. Id. After appellant constructed Island Estates, the city approved the development of a luxury condominium project on the northernmost island. Id. Trust No. (hereinafter referred to as "Trust") owned the northernmost island and Prive Developers, LLC (hereinafter "Prive Developers") was the developer of the luxury condominium project. Id. at 1082-1083. Pursuant to the resolution

passed when Island Estates was constructed, the appellants requested a permit from the city to construct the sidewalk. Id. at 1083. At the hearing on appellees' Emergency Motion for Injunction to stop the construction of the sidewalk the court denied appellants' *ore tenus* motion to join Trust and Prive Developers as parties and granted appellees request for an injunction. Id. The trial court erred in its denial of the appellants' *ore tenus* motion because Trust and Prive Developers were indispensable parties. Id.

Because the non-parties development of the luxury condominium project on the north island was contingent upon the appellants building a sidewalk on the south island, the trial court's ruling "prohibit[ing] Appellants from constructing a four-foot paver sidewalk, without giving those whose rights are being interfered with – the owner and developer of the North Island – an opportunity to be heard" was error. Id. "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a complete decree may be made binding upon all parties." Id. at 1084. Since the temporary injunction affected and interfered with the rights of Trust and Prive Developers they were indispensable parties. Id. Furthermore, the trial court erred in granting an injunction which affected the rights of persons not before the court. Id.

Like Two Islands, Plaintiff's request to enjoin the enforcement of the Ordinance and Resolution will directly affect and interfere with the rights of a non-party who is not before the court. Since Morgan Group has a material interest in the Ordinance and Resolution, they, like Prive Developers in Two Islands, should be a party to this action. The Ordinance and Resolution approve Morgan Group's development plan for Anclote Harbor and, pursuant to the Code, without them development cannot occur. Therefore, the Morgan Group is an indispensable party and this case should be dismissed without prejudice unless and until it is made a party, thereby allowing this

Court to make a complete determination of this cause as required by Rule 1.210, Fla. R. Civ. P. Fulmer v. Northern Central Bank, 386 So.2d 856 (Fla. 2d DCA 1980).

WHEREFORE, for the foregoing reasons, the City respectfully requests that this Court dismiss Plaintiff's Complaint for failure to include indispensable parties.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of January, 2022 a true and correct copy of the foregoing was filed with the Clerk of the Circuit Court using the ECF system and sent via U.S. Regular mail to Clay G. Colson, Pro Se, 4318 Joy Drive, Land O Lakes, FL 34637.

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