

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

CLAY G. COLSON,

Plaintiff,

Case No. 21-005793-CI

v.

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.

_____ /

MOTION TO INTERVENE

Morgan Group Development, LLC (“Morgan”), by and through its undersigned counsel, and pursuant to Florida Rules of Civil Procedure 1.230 and 1.210(a), hereby moves the Court for an order permitting Morgan to intervene as party defendant in this action, with full and complete rights to defend against the claim brought by Plaintiff as if Morgan were made an original defendant in this action, in order to protect its substantial interests in the subject matter of this case.

Introduction

1. This land use dispute concerns a challenge to development orders issued by the City of Tarpon Springs County Board of Commissioners (the “Commission”), which allow Morgan to develop a multi-family project on land in the City of Tarpon Springs (“City”) for which Morgan is the contract purchaser and equitable title holder. The subject property (“Property”) is a 64.17 acre parcel located at 42501 U.S. Highway 19 North in Tarpon Springs, east of US 19 N just north of the Pinellas Trail.

2. The Commission -- sitting in its quasi-judicial capacity -- considered and approved four applications by Morgan which together allow Morgan to develop the Property into a multi-family apartment project (“Project”). Plaintiff’s Complaint challenges two of these approvals --

Ordinance 2021-15, which rezoned the Property to RPD Residential Planned Development and approved the Preliminary Development Plan; and Resolution 2021-60, which approved the Final Development Plan for the Property. Collectively, Ordinance 2021-15 and Resolution 2021-60 shall be referred to as the “Development Orders.” These Development Orders are specific entitlements that apply solely to Morgan’s Property, and govern the development thereof.

3. Plaintiff’s Complaint brings a claim pursuant to Section 163.3215(3), Florida Statutes, seeking declaratory relief that the Development Orders are inconsistent with the City’s Comprehensive Plan and accordingly invalid, and seeking injunctive relief preventing the Property from being developed in accordance with the Development Orders.

4. If Plaintiff prevails on his claim, Morgan will not be able to develop its Property in accordance with the Development Orders. If Plaintiff does *not* prevail and the Court allows the Development Orders to stand, the development of the Property may be completed. Morgan should be permitted to intervene as party defendant to Plaintiff’s claims because it is the applicant for the Development Orders and the equitable title holder to the Property and, therefore, is the real party in interest that stands to gain or lose by the outcome of this lawsuit. Whether the Property can be developed as approved is necessarily dependent on the outcome of this action and, accordingly, Morgan has a direct and immediate interest in the outcome of Plaintiff’s claims. Indeed, an adjudication cannot be made without affecting the interests of Morgan. Thus, the intervention should not be limited in any respect -- Morgan should have all rights and remedies available to them in defending this action in accordance with the applicable rules of procedure, statutes, common law, and other applicable constitutional and code provisions.

Legal Standard

5. Florida Rule of Civil Procedure 1.230 provides that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.” In other words, as confirmed by the Author’s Comment to the Rule, “the court has full discretion over intervention, including the extent thereof.” The Author’s Comment to the Rule provides that “[t]he *intervener becomes a party to the action*; he has *the right to litigate on the merits the claim or defense for which he intervenes*. In view of the aim of the rules to allow liberal joinder of parties and claims, the intervener should be permitted to counter-claim, cross-claim, and implead third parties . . . ” (emphasis supplied).

6. An intervenor “may avail himself of any and all arguments which relate to derivation and extent of his own interests, whether or not these matters have been previously asserted by one of the original parties.” *Williams v. Nussbaum*, 419 So.2d 715, 717 n.1 (Fla. 1st DCA 1982). In that sense, “an intervenor is a party for all purposes with the same rights of other parties to the cause.” *Greenhut Const. Co. v. Henry A. Knott, Inc.*, 247 So. 2d 517, 519–20 (Fla. 1st DCA 1971). The intervention rule should be liberally construed. *Grimes v. Walton County*, 591 So. 2d 1091, 1093–94 (Fla. 1st DCA 1992).

7. A person is *entitled* to intervene when such person has an interest in the litigation that is of “such a direct and immediate character that the Intervener will either gain or lose by the direct legal operation and effect of the judgment.” *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918); *Harbor Specialty Ins. Co. v. Schwartz*, 932 So. 2d 383, 386 (Fla. 2d DCA 2006). Moreover, if land subject to a development order is actually owned by certain intervenors, those intervenors

have the absolute right to intervene. *Highwoods DLF EOLA, LLC v. Condo Developer, LLC*, 51 So. 3d 570, 572 (Fla. 5th DCA 2010) (holding trial court abused its discretion by not allowing the property owner to intervene).

8. When a party seeks declaratory relief under Chapter 86, Florida Statutes -- as Plaintiff does in this case -- “all persons may be made parties who have or claim any interest which would be affected by the declaration,” and “no declaration shall prejudice the rights of persons not parties to the proceedings.” Fla. Stat. § 86.091.

9. Further, Florida Rule of Civil Procedure 1.210(a) provides, “All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and *any person may be made a defendant who has or claims an interest adverse to the plaintiff. 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*” (emphasis supplied). Accordingly, the Court has broad discretion in adding parties to the case to ensure parties’ interests are protected and a complete adjudication of the action.

Argument

10. Morgan should be permitted to intervene as a party defendant to this action without limitation. Plaintiff purports to assert a statutory cause of action under Section 163.3215(3), Florida Statutes, challenging the Development Orders as allegedly inconsistent with the County’s Comprehensive Plan, and seeking a declaration invalidating the Development Orders and an injunction preventing development consistent therewith.

11. The outcome sought by Plaintiff is to prevent the development of the Property. There is no question that Morgan (1) has a direct and immediate interest in Plaintiff’s claims, as it will either gain or lose by the outcome thereof; (2) has an interest adverse to Plaintiff, and

Morgan's presence is necessary or proper to a complete determination of this action; and (3) has interests that indisputably will be affected by the adjudication of Plaintiff's claims.

12. Morgan is the contract purchaser of the Property, and therefore holds equitable title to the Property and has standing to litigate matters affecting the Property. *Cain & Bultman, Inc. v. Miss Sam, Inc.*, 409 So. 2d 114, 119 (Fla. 5th DCA 1982). Morgan was also the applicant for the Development Orders, and submitted volumes of documentation and extensive expert witness testimony in support of its application at three days of hearings before the Commission that lasted over 24 hours.

13. As owner/applicant, Morgan has a significant, direct interest in the outcome of Plaintiff's claims. Its ability to develop its Property as planned and approved will necessarily be affected by the Court's judgment. Therefore, Morgan satisfies the long-standing test for intervention set forth in *Morgareidge* and is entitled to intervene as party defendant under Rule 1.230, Rule 1.210(a), and Section 86.091, Florida Statutes. *See also Highwoods DLF EOLA, LLC*, 51 So. 3d 570 (holding that a property owner is entitled to intervene in a rezoning dispute brought by a neighbor if the outcome of the litigation could prohibit the owner from developing its property as approved -- "It is Highwoods which will be *most* directly affected—which *most* directly stands to gain or lose—by the outcome.").

14. In fact, Morgan is a necessary and indispensable party to Plaintiff's claim. The test for an indispensable party is whether it is impossible to *completely adjudicate* the matter without *affecting the interests* of that party. *Two Islands Development Corp. v. Clarke*, 157 So. 3d 1081, 1084 (Fla. 3d DCA 2015). The test for a necessary party is whether the person is *materially interested* in the subject matter and would be *directly affected* by an adjudication of the controversy, and "necessary parties must be made parties in a legal action." *Everette v. Fla. Dep't*

of Children and Families, 961 So. 2d 270, 273 (Fla. 2007); *see also Tobin v. Vasey*, 843 So. 2d 376, 377 (Fla. 2d DCA 2003); *Santiago v. Sunset Cove Investments, Inc.*, 988 So. 2d 10, 14 (Fla. 2d DCA 2008).

15. Morgan meets both of these tests. Plaintiff's Complaint requests a declaration that the Development Orders -- which specifically allow Morgan to develop its Property in a certain manner -- are invalid, and further requests ***injunctive*** relief ***preventing*** the Property from being developed in accordance therewith. It is impossible to adjudicate this matter without affecting Morgan's interests. Likewise, Morgan has a "material interest" in this matter because its real property interests are at stake, and the adjudication here would directly affect those interests.

16. In *Two Islands*, the trial court was reversed when it entered an injunction preventing construction of sidewalks ***adjacent*** to an owner's property development without allowing the ***adjacent*** owner and developer to intervene. 157 So. 3d at 1083-84. The appellate court, finding that the injunction interfered with the owner/developer's property rights in developing the ***adjacent*** property, held the trial court was ***without jurisdiction*** to issue an injunction that would interfere with the rights of those who are not parties to the action, ***and*** that the adjacent owner and developer were ***indispensable*** parties. *Id.* at 1084. Morgan has a much more direct property interest at stake -- in *Two Islands* the issue was sidewalks ***adjacent*** to the owner/developer's property that affected their development, but here it is Morgan's Property ***itself*** which is at issue, and whether or not Morgan can actually develop it in accordance with the Development Orders.

17. In *Al Packer, Inc. v. First Union Nat'l Bank of Florida*, the court held that where an intervenor is an ***indispensable party*** to the action, said intervenor ***has the same status as the main parties to the action and thus has all the same rights and privileges***. 650 So. 2d 165, 166 (Fla. 3d DCA 1995). Because Morgan is an indispensable party, there can be no limitation on its

intervention.

18. Attached hereto as **Composite Exhibit “A”** are trial court orders from other cases involving Section 163.3215 challenges, which allow intervention without limitation.

19. Further, it is without question that in Plaintiff’s action for declaratory and injunctive relief, a ruling in favor of Plaintiff would prejudice the rights of Morgan. Under Section 86.091, Florida Statutes, “No declaration shall prejudice the rights of persons not parties to the proceedings.” Morgan must be made a party defendant under the statute.

20. Accordingly, Morgan should be allowed to intervene and to have all rights and remedies available to it in defending this action in accordance with the applicable rules of procedure, statutes, common law, and other applicable constitutional and code provisions.

WHEREFORE, Morgan Group Development, LLC respectfully requests that the Court enter an Order granting this Motion, as follows:

- (a) allowing Morgan Group Development, LLC to intervene as party defendant to Plaintiff’s claims;
- (b) providing that Morgan Group Development, LLC’s intervention and participation in this proceeding shall not be limited, such that it shall have the full and complete rights and/or remedies of a party defendant to defend this action in accordance with the applicable rules of procedure, statutes, common law, and other applicable constitutional and code provisions; and
- (c) granting such other relief as the Court considers just.

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2022, I electronically filed the foregoing with the Clerk of Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to all counsel of record, and that a true and correct copy of the foregoing has been sent via U.S. Regular Mail to Clay G. Colson, Pro Se, 4318 Joy Drive, Land O' Lakes, FL 34637.

s/ Shane T. Costello

Scott A. McLaren

Florida Bar No. 414816

Florida Bar Certified, Business Litigation
and Civil Trial

scott.mclaren@hwhlaw.com

jaime.schill@hwhlaw.com

Shane T. Costello

Florida Bar No. 068538

Florida Bar Certified, Business Litigation
shane.costello@hwhlaw.com

michelle.ebrada@hwhlaw.com

Ed Armstrong

Florida Bar Number: 349739

ed.armstrong@hwhlaw.com

robyn.moehring@hwhlaw.com

A. Evan Dix

Florida Bar No. 1003435

evan.dix@hwhlaw.com

billie.wallis@hwhlaw.com

Hill, Ward & Henderson, P.A.

101 East Kennedy Blvd., Suite 3700

Tampa, Florida 33602

(813) 221-3900 Business

(813) 221-2900 Facsimile

Attorneys for Morgan Group Development, LLC