

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

CLAY G. COLSON,

CASE NO.: 21-005793-CI

Plaintiff,

v.

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.

**PLAINTIFF'S MOTION FOR REHEARING OF
ORDER DISMISSING THIS ACTION WITH PREJUDICE**

COMES NOW, the Plaintiff, CLAY G. COLSON, and files his Motion for Rehearing of the Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint filed on June 28, 2022 which dismissed this action with prejudice showing:

1. On January 25, 2022, counsel for the Defendant, CITY OF TARPON SPRINGS, filed the Defendant's Motion to Dismiss for Failure to Join Indispensable Parties. Such motion did not seek dismissal with prejudice, but instead, it sought dismissal without prejudice and cited *Fulmer v. Northern Central Bank*, 386 So.2d 856 (Fla. 2d DCA 1980) which holds that it is improper to dismiss an action for failure to join indispensable parties with prejudice. Most importantly, such motion did not cite a single case concerning indispensable parties to an action to challenge the consistency of a development order with a comprehensive plan pursuant to Florida Statutes §163.3215.
2. On May 2, 2022, a hearing was held on such motion.
3. After counsel for the Defendant, CITY, presented its motion, I pointed out that the Second District Court of Appeal's decision in *City of St. Petersburg, v. Marelli*, 728

So.2d 1197 (Fla. 2d DCA 1999) held that a property owner and developer for whom a variance was granted is not an indispensable party, and thus, that such precedent requires denial of the CITY's motion to dismiss. See the transcript of the hearing on such motion held on May 2, 2022 which is attached as Exhibit A.

4. In *City of St. Petersburg, v. Marelli*, 728 So.2d 1197 (Fla. 2d DCA 1999), the court cited *Brigham v. Dade County*, 305 So.2d 756 (Fla.1974), in which the Florida Supreme Court held that a party challenging a zoning regulation change does not have to join the affected property owner who was the applicant for the zoning change because such property owner is not an indispensable party and reversed the lower courts which had dismissed the action for failure to join such property owner.
5. Also, "The Florida Supreme Court has held that in proceedings to review completed administrative action where it is claimed that the essential requirements of law have not been followed, it is not absolutely necessary that interested third parties be joined as respondents." *Tampa Bay Cab Company, Inc. v. Yellow Cab Company of Tampa, Inc.*, 446 So.2d 246, 247 (Fla. 2d DCA 1984) citing *Brigham v. Dade County*, 305 So.2d 756 (Fla. 1975) and *Great American Insurance Co. of New York v. Peters*, 105 Fla. 380, 141 So. 322 (1932).
6. "The real respondent is the tribunal whose judgment is sought to be quashed...." *Brigham* at 757; see also, *Tampa Bay Cab Company, Inc.*, at 247.
7. In spite of my citation to *City of St. Petersburg, v. Marelli* at the hearing on May 2, 2022, Judge Muscarella directed counsel for the CITY to prepare a proposed order granting the motion to dismiss for failing to include an indispensable party with 30 days leave to amend and to send a copy of the proposed order to me. See Exhibit A.

8. However, before I had a chance to receive, review and object to the proposed order prepared by counsel for the CITY, Judge Muscarella signed the proposed order on May 9, 2022, and the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties was filed on May 10, 2022.
9. Such Order provides that the CITY's Motion to Dismiss for Failure to Join Indispensable Parties is granted without prejudice, but then, it provides that failure to file an amended complaint within 30 days shall result in dismissal with prejudice. However, no request to grant the relief of dismissal with prejudice was made in the CITY's motion or at the hearing. See Exhibit A.
10. Such Order also does not explain who the Court considers indispensable parties, but instead, such Order just grants the Defendant CITY's Motion to Dismiss for Failure to Join Indispensable Parties. However, while such Motion mentions both Kamil Salame and Morgan Development Group, LLC, it does not clarify whether one or both are indispensable parties. Moreover, at the hearing on May 2, 2022, counsel for the CITY mentioned both Kamil Salame and Morgan Development Group, LLC, but then asks the Court to require me to add Morgan Development to my amended complaint. See Exhibit A.
11. Furthermore, such Order states that the amended complaint is due within 30 days of the date of the hearing when Judge Muscarella stated that the order should provide 30 days to amend, and as a result, I believed that I would have 30 days from the date that the Order was filed to file an amended complaint. As such Order was filed on May 10, 2022, I believed that pursuant to Judge Muscarella's ruling at the hearing on May 2, 2022, I had

30 days after the Order was filed which was until June 9, 2022 in order to file an amended complaint.

12. As the proposed order prepared by counsel for the CITY does not clearly specify who the Court believes should be added as an indispensable party, is contradictory, did not accurately reflect Judge Muscarella's ruling at the hearing on May 2, 2022, was entered before I received a copy to review and object to, and provides for dismissal with prejudice contrary to the precedent submitted by counsel for the CITY in its motion, on June 8, 2022, I filed my Motion for Reconsideration of Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties requesting the Court to either clarify or vacate such Order, and at the same time, I filed my Motion to Enlarge Time to File an Amended Complaint requesting an additional 20 days from the date of entry of the Court's order on my Motion for Reconsideration of Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties in which to file an amended complaint if necessary.
13. On June 17, 2022, counsel for the CITY filed a Notice which pursuant to Admin. Order No. 2020-012 PA/PI-CIR requested that the Court determine my outstanding motions without a hearing and stating that I had until July 5, 2022 to file my argument and legal memorandum in opposition to the relief requested by counsel for the CITY.
14. As a result of such Notice, I began working on my argument; however, before being able to file my argument and legal memorandum in opposition to the relief requested by counsel for the CITY, I learned that the Court entered Orders on June 27, 2022 which denied my Motion for Reconsideration and my Motion to Enlarge Time to File an Amended Complaint.

15. As such Orders were also confusing, I asked some friends to take a look at them, but I was informed that although the Clerk's office had noted the entry of such Orders on June 28, 2022, such Orders were not posted on the docket by the Clerk's office until July 5, 2022 and the Order Denying my Motion for Reconsideration contained spyware which reported the downloading and opening of such Order to some unknown entities. Apparently, the spyware that was embedded in such Order was the reason that the Clerk's office took over a week to post such Orders on the docket for download by the public.
16. As the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties is contrary to the Second District Court of Appeal's holding in *City of St. Petersburg, v. Marelli*, 728 So.2d 1197 (Fla. 2d DCA 1999) and the Florida Supreme Court's holding in *Brigham v. Dade County*, 305 So.2d 756 (Fla.1974) that a property owner and developer for whom a variance was granted is not an indispensable party to an action to challenge a decision by local government to grant a variance to allow a development, the Court should vacate such Order.
17. As the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties is not clear, is contradictory, did not accurately reflect Judge Muscarella's ruling at the hearing on May 2, 2022, was entered before I received a copy to review and object to, and provides for dismissal with prejudice contrary to the precedent submitted by counsel for the CITY in its motion; as I raised such cause in my Motion for Reconsideration of such Order and my Motion to Enlarge Time to file an Amended Complaint; and as counsel for the CITY filed a Notice which pursuant to Admin. Order No. 2020-012 PA/PI-CIR requested that the Court determine my outstanding motions without a hearing and stating that I had until July 5, 2022 to file

my argument and legal memorandum in opposition to the relief requested by counsel for the CITY, Judge Muscarella should have at least granted my Motions requesting clarification of such Order and enlarging the time in which I could file an Amended Complaint.

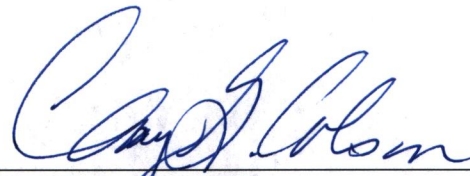
18. Finally, in spite of my citation to *City of St. Petersburg, v. Marelli* at the hearing on May 2, 2022, Judge Muscarella granted the city's motion so quickly that she could not have looked up the case that I cited and did not even appear to consider it. See Exhibit A.
19. A party has the due process right to a full and fair hearing before an impartial judge. See e.g., *Robbins v. Robbins*, 429 So.2d 424 (Fla. 3rd DCA 1983).
20. "Due process requirements must be met." *Id.* at 429 citing, *Shillitani v. United States*, 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966). "A fundamental due process requirement is a hearing, one that may be neither sham nor pretense." *Id.* citing, *Palko v. Connecticut*, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937).
21. As the hearing on May 2, 2022, appeared to be no more than a sham hearing in which the outcome was predetermined, my right to due process was violated, and therefore, both the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties and the Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint which dismissed this action with prejudice should be vacated.

WHEREFORE, for the foregoing reasons, I respectfully request that the Court grant my Motion for Rehearing, vacate or clarify the Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties, vacate the Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint, and grant me at

least an additional 20 days from the date of entry of the Court's order on this Motion in which to file an amended complaint if necessary.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been served by U.S. Mail to Jay Daigneault, Esq. of Trask Daigneault, LLP at 1001 S. Fort Harrison Ave., Suite 201 in Clearwater, FL 33756 on this 12th day of July 2022.



CLAY G. COLSON
4318 Joy Drive
Land O'Lakes, FL 34638
813-601-3391

Exhibit A

1 IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
2 IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
3 CIVIL DIVISION
4

5 CLAY G. COLSON,
6 Plaintiff,

Case No. 21-005793-CI

7 vs.

8 THE CITY OF TARPON SPRINGS, FLORIDA,
9 Defendant.
10 _____ /

11 **PROCEEDINGS HELD TELEPHONICALLY**

12
13 PROCEEDINGS: DEFENDANT'S MOTION TO DISMISS FOR
14 FAILURE TO JOIN INDISPENSABLE PARTIES

15 BEFORE: The Honorable Patricia Muscarella
16 Circuit Court Judge

17 DATE: May 2, 2022
18 11:09 a.m. - 11:24 a.m.

19 REPORTED BY: Annemarie Christodoulou

20 PLACE: Pinellas County Courthouse
21 315 Court Street, 4th Floor
22 Clearwater, Florida 33756

23 _____
24 **MAXA ENTERPRISES, INC.**
25 1275 Cleveland Street
Clearwater, Florida 33755
(727) 441-2404 Fax: (727) 448-0028

1 **APPEARANCES:**

2 JAY DAIGNEAULT, ESQUIRE
3 Trask Daigneault, LLP
4 1001 S. Fort Harrison Avenue, Suite 201
5 Clearwater, Florida 33756
6 Email: jay@cityattorneys.legal
7 Phone: 727-733-0494
8 Counsel for Defendant

9 SHANE T. COSTELLO, ESQUIRE
10 Hill Ward Henderson
11 101 E Kennedy Blvd., Suite 3700
12 Tampa, Florida 33602-5195
13 Email: shane.costello@hwhlaw.com
14 Phone: 813-221-3900
15 Counsel for the Intervener

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18 **ALSO PRESENT:**

19 Clay Colson, pro se

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1 **THE COURT:** This is Clay Colson vs. City of Tarpon
2 Springs. This is defendant's motion to dismiss for
3 failure to join indispensable parties. Who is here on
4 behalf of the plaintiff?

5 **MR. COLSON:** Yes, Your Honor. I'm here.

6 **THE COURT:** Mr. Colson is that you or are you
7 represented?

8 **MR. COLSON:** No, it's me. I represent myself pro
9 se, Your Honor.

10 **THE COURT:** Okay. Great. Thank you. And for the
11 defense?

12 **ATTORNEY DAIGNEAULT:** Good morning, Your Honor.
13 Jay Daigneault on behalf of the City of Tarpon Springs.

14 **THE COURT:** Okay. Thank you. So it's your
15 motion --

16 **THE COURT REPORTER:** And I'm sorry, Your Honor, a
17 court reporter is on the line also.

18 **THE COURT:** Oh, sorry. Who else is on the line?
19 Is there a court reporter?

20 **THE COURT REPORTER:** Yes, Your Honor.

21 (An unknown speaker speaks.)

22 **THE COURT:** I think we have two court reporter's
23 is that right?

24 **UNKNOWN SPEAKER:** Yes.

25 **THE COURT REPORTER:** I am here for Colson vs. City

1 of Tarpon Springs, and I was hired by Mr. Daigneault's
2 office. This is Annemarie with Maxa Enterprises.

3 **THE COURT:** Mr. Colson, did you hire a court
4 reporter?

5 **MR. COSTELLO:** Your Honor, there is an additional
6 appearance. Your Honor, my name is Shane Costello. I
7 represent the intervener. We filed a notice to
8 intervene that is set for hearing, and my office also,
9 I guess, secured a court reporter.

10 **MR. COLSON:** The response to your question, Your
11 Honor. I'm just recording this. I don't have a court
12 reporter.

13 **THE COURT:** It's against all the rules to record
14 anything, Mr. Colson.

15 **MR. COLSON:** Oh, it is?

16 **THE COURT:** Yes. You have to stop and erase what
17 you have now.

18 **MR. COLSON:** I will stop it now.

19 **THE COURT:** And erase whatever you have.

20 **UNKNOWN SPEAKER:** And, Your Honor, this is the
21 court reporter Mr. Costello hired.

22 **THE COURT:** Who is Mr. Costello?

23 **ATTORNEY COSTELLO:** Your Honor, Shane Costello, I
24 just announced my appearance. I'm on behalf of the
25 intervener, Morgan Group Development, we filed a motion

1 to intervene that is connected with the City's motion
2 to dismiss for failure to join an indispensable party.
3 We are that indispensable party. So those are the two
4 matters set for hearing today.

5 **UNKNOWN SPEAKER:** Your Honor, I'm okay with
6 signing off and letting the other court reporter stay
7 on who originally set the motion to dismiss.

8 **ATTORNEY DAIGNEAULT:** That's correct.

9 **THE COURT:** I think that's the proper thing. I
10 never say your name right, Mr. Daigneault. You have to
11 tell me one more time how to say your name.

12 **ATTORNEY DAIGNEAULT:** It's Daigneault, Your Honor.

13 **THE COURT:** Spell it for me phonetically, so I
14 never forget this again.

15 **ATTORNEY DAIGNEAULT:** It's a Great Dane dog and a
16 yo-yo.

17 **THE COURT:** Daigneault. All right. So if you are
18 in agreement for keeping your court reporter and
19 releasing everyone else that would be fine with me.

20 **ATTORNEY DAIGNEAULT:** I think that's fine.
21 Thanks, Your Honor.

22 **THE COURT:** Okay. So the other court reporter is
23 released and will not be recording this at all.

24 **UNKNOWN SPEAKER:** Thank you.

25 **THE COURT:** Okay. Mr. Daigneault, this is your

1 motion. The other motion to intervene was added time
2 permitting. I have an 11:30, and so would you like to
3 proceed.

4 **ATTORNEY DAIGNEAULT:** Yes, Your Honor. Thank you.
5 And I will be brief respecting the Court's time with a
6 second motion that we'd like to have -- be heard in
7 resolving. So in short, Your Honor -- challenge --

8 **THE COURT:** Mr. Daigneault, you are breaking up.
9 I apologize. But I cannot hear you very well.

10 **ATTORNEY DAIGNEAULT:** Is that better?

11 **THE COURT:** That is better. Thank you.

12 **ATTORNEY DAIGNEAULT:** All right. So we're here on
13 two development orders issued by the City regarding the
14 Anclote Harbor residential planned development. The
15 first order is Ordinance Number 2021-15. The second is
16 a Resolution Number 2021-60.

17 These development orders are in service of and
18 paved a way, if you will, for development called
19 Anclote Harbor that is proposed undertaken by Kamil
20 Salame and the Morgan Group Development, LLC, which is
21 the contract purchaser and proposed developer of the
22 development project up in Tarpon Springs.

23 Because they are the contract purchaser, they are
24 very much of a real party of interest in this case as
25 set forth in the City's motion, particularly the Two

1 Island Development case, cannot proceed without them.
2 Their presence is necessary for the Court to make a
3 complete determination of the parties' rights, duties
4 and obligations in the case.

5 So pursuant to Rule 1.210(1), as well as the case
6 law cited within the motion, which includes *Santiago*
7 *vs. Sunset Cove Investments*, and *Two Island Development*
8 *Corporation vs. Clarke*, which I know also that the
9 proposed intervener relies upon in its motion.

10 The intervener and Morgan Development needs to be
11 a party to this case because it's really their rights
12 that are at issue here. Whether these development
13 orders comply with the City's Comprehensive Plan,
14 certainly the City is required to be a party, but due
15 to the contract purchase status and the development
16 proposed by intervener they need to be a party. We had
17 a similar fact pattern in the *Two Islands* case and this
18 case, according to the City, and we argue should be
19 decided similarly.

20 And so for that reason I think we probably should
21 discuss what is the appropriate remedy in the case.
22 The City here has moved for dismissal for failure to
23 join an indispensable party, and I think that dismissal
24 is really the appropriate remedy, wherein the plaintiff
25 would be permitted to amend his complaint to determine

1 whether he wishes to add Morgan Development as the
2 developer, and if he chooses not to the case should not
3 proceed forward.

4 And with that I'm happy to answer any questions
5 that the Court has.

6 **THE COURT:** Thank you, Mr. Daigneault. I'd like
7 to hear -- Mr. Colson, would you like to respond to
8 that?

9 **MR. COLSON:** I would, Your Honor. My complaint is
10 with the City for its failure to do it's due diligence
11 in following its Comprehensive Plan, Land Development
12 Ordinances, and Land Development Codes in granting
13 this, which has nothing to do High Woods -- with the
14 Morgan Group.

15 In the High Wood's case was an appellate review of
16 the City's decision. However, this action is a de novo
17 review of the development under Florida Statutes
18 Section 163.3215(3); and, therefore, as recognized by
19 the court in High Woods the Florida Rules of Appellate
20 Procedure do not apply because this is an action
21 provided by general law and is not an appellate review
22 of Tarpon's decision.

23 Therefore, the Second DCA holding in the *City of*
24 *St. Pete vs. Marelli* and the Florida Supreme Court
25 holding in *Brigham vs. Dade City* -- or Dade County that

1 the property owner is not an indispensable party
2 prohibits Morgan Group's intervention as well requires
3 a denial of Tarpon's motion to dismiss.

4 **THE COURT:** Okay. Thank you. Now I'd like to
5 hear from the intervener.

6 **ATTORNEY COSTELLO:** Yes, Your Honor. We're in
7 agreement with the motion to dismiss for failure to
8 join an indispensable party. As we've laid out in the
9 motion to intervene, Morgan is the contract purchaser,
10 is the equitable titleholder to the property. It is
11 the real party of interest that stands to gain or lose
12 from the outcome of this proceeding.

13 If the Court rules in the plaintiff's favor in
14 this proceeding, Morgan will not be able to complete
15 the development of its property as has been approved by
16 the City. So Morgan certainly meets the test for
17 intervention, which is whether you stand to gain or
18 lose by the outcome of the proceeding.

19 And as Mr. Daigneault argued, Morgan is, in fact,
20 a necessary, or indeed, an indispensable party in this
21 proceeding. The test of an indispensable party is
22 whether it is impossible to completely adjudicate the
23 matter without affecting the interests of that party,
24 the *Two Island* case that Mr. Daigneault cited.

25 Plaintiff in this action, their request for relief

1 would include an injunction preventing the development
2 of my client's property. That most certainly affects
3 my client's interest. Likewise, the test for a
4 necessary party is whether the person is materially
5 interested in the subject matter and would be directly
6 affected by an adjudication, and we certainly would.

7 These clients cannot be adjudicated without
8 affecting Morgan's private property rights and
9 entitlements on the property. And so we would request
10 that Morgan be included in this case as a party
11 defendant.

12 **THE COURT:** Okay. Mr. Colson?

13 **MR. COLSON:** As pointed out earlier, Your Honor,
14 the Morgan Group had nothing to do with the decision
15 rendered by the City of Tarpon Springs, other than
16 applying for it, and the City of Tarpon Springs failed
17 to follow its own rules and regulations in the
18 Comprehensive Plan in issuing that development order.
19 So it's moot whether or not Morgan is going to be
20 affected or not as being the intervener in this.

21 The complaint is strictly about whether or not the
22 City Commission of Tarpon Springs followed its rules
23 and regulations in granting them that order. If they
24 did not do that, then they have no standing.

25 **THE COURT:** Okay. So I am going to grant the

1 motion to dismiss without prejudice.

2 Mr. Colson, you may -- how many days would you
3 like to amend your pleading?

4 **MR. COLSON:** Well, motion to dismiss, I'd like to
5 ask for 30 days to file an amended complaint since I am
6 pro se plaintiff and needs extra time.

7 **THE COURT:** Okay. That's fine with me.

8 Provide an order -- I guess, Mr. Daigneault, would
9 you provide the order? It's your motion. And run it
10 around for everyone.

11 I don't know, Mr. Colson, are you associated in
12 JAWS in some way or would you like hard copies of
13 everything?

14 **MR. COLSON:** Hard copies. I don't have internet
15 access and want everything by U.S. mail, please.

16 **THE COURT:** Okay. So, Mr. Daigneault, would you
17 provide that, run it by Mr. Colson if you can.

18 Do you have email, Mr. Colson?

19 **MR. COLSON:** I do not.

20 **THE COURT:** Okay. So I guess you just send me
21 hard copies with your proposed order, and we will
22 proceed.

23 **MR. COLSON:** Thank you so much, Your Honor.

24 **ATTORNEY DAIGNEAULT:** Your Honor, do you want me
25 to run the order by Mr. Colson for form approval or

1 would you rather that I simply copy him on it and copy
2 to Your Honor as well?

3 **THE COURT:** I don't think it's complicated for a
4 motion to dismiss for failing to include an
5 indispensable party is -- the motion to dismiss is
6 granted, 30 days leave to amend. So I think it's
7 pretty simple. I think a copy to Mr. Colson is fine.

8 **ATTORNEY DAIGNEAULT:** Agreed. Thank you, Your
9 Honor.

10 **THE COURT:** Okay. Anything else for today?

11 **MR. COSTELLO:** No, Your Honor.

12 **ATTORNEY DAIGNEAULT:** No, Your Honor. Thank you
13 for your time.

14 **THE COURT:** Okay. If you need to address the
15 intervener motion that was -- just leave it for now?

16 **MR. COSTELLO:** I don't think it -- Your Honor,
17 this is Shane Costello. I don't think it needs to be
18 addressed given the ruling on the motion to dismiss.
19 Mr. Colson will either need to include Morgan Group as
20 a party defendant in his amended complaint or the
21 action would be dismissed.

22 **THE COURT:** Okay. Thank you, everyone.

23 (The hearing was concluded at
24 11:24 a.m.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Annemarie Christodoulou, Court Reporter,
certify that I was authorized to and did stenographically
report the foregoing proceedings in CLAY G. COLSON vs. THE
CITY OF TARPON SPRINGS, Case Number 21-005793-CI, held on
May 2, 2022 before the Honorable Patricia Muscarella held
telephonically; and that the transcript, pages numbered 1
through 13, inclusive, is a true and complete record of my
stenographic notes.

I further certify that I am not a relative,
employee, attorney, or counsel of any of the parties, nor am
I a relative or employee of any of the parties' attorney or
counsel connected with the action, nor am I financially
interested in the action.

Annemarie Christodoulou

ANNEMARIE CHRISTODOULOU
Court Reporter