

**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 CITY OF TARPON SPRINGS'
RESPONSE TO PLAINTIFF'S MOTION FOR REHEARING OF
ORDER DISMISSING ACTION WITH PREJUDICE**

Defendant, CITY OF TARPON SPRINGS (the "City"), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.530, responds to Plaintiff's Motion for Rehearing of Order Dismissing Action with Prejudice (the "Motion"). The City respectfully requests this Honorable Court deny the Motion and, as grounds therefore, states:

1. On December 9, 2021, Plaintiff filed a Complaint seeking declaratory relief and a permanent injunction alleging that the City's approval of two development orders occurred in violation of the City's Comprehensive Plan.

2. On January 25, 2022, the City filed a Motion to Dismiss for Failure to Join Indispensable Parties. Specifically, the City's motion contended that "Kamil Salame, Morgan Development Group, LLC, (hereinafter referred to as Morgan Group) is the developer who sought approval to develop Anclote Harbor" and that Morgan Group is an indispensable party to the case.

3. On March 3, 2022, Morgan Development Group, LLC filed a Motion to Intervene in the case. The motions were noticed for hearing on May 2, 2022.

4. This Court held a hearing on the motions as scheduled on May 2, 2022. In its written Order Granting Defendant City of Tarpon Springs' Motion to Dismiss for Failure to Join Indispensable Parties dated May 9, 2022 (the "Order"), the court granted the City's motion and gave Petitioner thirty (30) days from the date of the hearing to amend his Complaint. The Court explicitly cautioned that "failure to file an amended Complaint within the thirty (30) days set forth herein shall result in dismissal of the case with prejudice."

5. The thirtieth day was June 1, 2022, but Plaintiff did not file an amended complaint.

6. On June 8, 2022, with no amended complaint having been filed, Plaintiff filed a Motion to Enlarge Time to File an Amended Complaint as well as a Motion for Reconsideration of the Court's May 9th order. In both motions, Plaintiff contended that the May 9 order (1) did not explain who the Court considers indispensable parties; and (2) ran the time to file the amended complaint from the date of the hearing rather than the date of the Order.

7. The Motion to Enlarge Time asserted that Plaintiff "intends to file an amended complaint if the Court does not vacate the Order . . ." and requested an additional twenty days from the date of the Court's order on the motion for reconsideration to file an amended complaint "if necessary."

8. The City responded to the Motion to Enlarge Time on June 15, 2022, arguing therein that, because the time to do so had elapsed, Plaintiff was required to but did not demonstrate excusable neglect in order to enlarge the time to file an amended complaint.

9. On June 27, 2022, this Court entered its Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint, upon which Plaintiff now seeks rehearing. Therein, the Court noted that it directed the Plaintiff to file an amended complaint within thirty days from the date of the hearing and cautioned failure to do so would result in dismissal of the case with

prejudice. Plaintiff did not file an amended complaint and did not establish excusable neglect for his failure to meet the Court's deadline, so the Court denied the motion and dismissed the case with prejudice. The instant Motion followed.

10. Because there are no matters which the Court overlooked or failed to consider, and because the Court made no error in dismissing the action, the Motion should be denied.

ARGUMENT

It is well-established that an order dismissing a complaint with prejudice is a final, appealable order. See e.g. Lanson v. Reid, 314 So.3d 279, 280 (Fla. 3d DCA 2019). Thus, such order is subject to a motion for rehearing pursuant to Fla. R. Civ. P. 1.530. "The purpose of a motion for rehearing is to give the trial court an opportunity to consider matters which it overlooked or failed to consider ... and to correct any error if it becomes convinced that it has erred." Jockey Club III Ass'n, Inc. v. Jockey Club Maint. Ass'n, Inc., 306 So. 3d 185, 194 (Fla. 3d DCA 2020) (citing Francisco v. Victoria Marine Shipping, Inc., 486 So. 2d 1386, 1389 (Fla. 3d DCA 1986)); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981); Elmore v. Palmer First National Bank & Trust Co. of Sarasota, 221 So. 2d 164, 166 (Fla. 2d DCA 1969)). A trial court has "broad discretion to grant rehearing and reconsider its decision in order to correct any errors." Richmond v. State Title & Guar. Co., Inc., 553 So. 2d 1241, 1242 (Fla. 3d DCA 1989).

The Motion *sub judice* merely points out for a third time Plaintiff's belief that the City's Motion to Dismiss for Failure to Join Indispensable Parties should not have been granted and again airs grievances relating to the May 2nd hearing on it. That ground has been covered several times by the Court and Plaintiff advances no cogent reason why it should be revisited.

Moreover, Plaintiff does not address in any way the actual reason stated by the Court for dismissing the action with prejudice. The action was dismissed because Plaintiff failed to file an

amended complaint in the time set by the Court, and then failed to establish excusable neglect for such failure. The reason for dismissal is not addressed at all in the Motion, so there is no basis for the Court to believe that it has overlooked anything or erred in some way. Indeed, dismissal with prejudice is appropriate under the circumstances present here where the May 9 order dismissing the complaint without prejudice specifically and unequivocally cautioned that failure to amend within the time allotted shall result in dismissal of the case with prejudice. See e.g. Gerbino v. Isle of Paradise B, Inc., 149 So.3d 69, 71 (Fla. 4th DCA 2014) (collecting cases).

In the instant Motion, Plaintiff does not identify any matters this Court overlooked or failed to consider, and the Court made no error in dismissing the case. Accordingly, the Motion should be denied.

WHEREFORE, for the reasons stated herein, Defendant, CITY OF TARPON SPRINGS, requests this Court enter an order denying Plaintiff's Motion for Rehearing of Order Dismissing This Action with Prejudice, along with such other relief as the Court deems appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 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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