

**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 SECOND AMENDED 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 Second Amended Motion for Rehearing of Order Dismissing Action with Prejudice filed on August 18, 2022 (the “Motion”). The City respectfully requests this Honorable Court strike or 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"), this 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 seeks rehearing for a third time (the first such motion was filed on July 13, 2022 and the second on July 25). 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 that 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.

10. On July 13, 2022, Plaintiff filed a Motion for Rehearing of Order Dismissing This Action With Prejudice (the June 27 Order), to which the City responded on July 22, 2022. The Court has not ruled upon the motion.

11. On July 25, 2022, Plaintiff filed another motion for rehearing, this time entitled "Plaintiff's Verified Amended Motion for Rehearing of the Order Dismissing this Action with Prejudice." Save for two paragraphs, it was identical to the one filed on July 13.

12. On August 5, 2022, the City responded to the July 25 motion, therein arguing that it should be denied because it was untimely, and because there were no matters which the Court overlooked or failed to consider, and because the Court made no error in dismissing the action. The Court has not ruled upon the motion.

13. Now, for a third time, Plaintiff seeks rehearing on the Court's June 27, 2022 Order and, again, Plaintiff fails to identify any issue the Court overlooked or failed to consider in issuing the Order. Plaintiff's Motion is untimely and without merit, and must be stricken or denied.

ARGUMENT

I. The Motion is untimely filed.

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. A motion for rehearing under the rule must be filed not later than **15** days after the filing of the judgment. Fla. R. Civ. P. 1.530 (b). The rule does not provide for further amendment once a motion has been filed and it

does not permit multiple motions for rehearing. Plaintiff's Verified Amended Motion for Rehearing filed on July 25 was filed **28** days after the Court's June 27 Order. Accordingly, it was untimely. The instant Motion was filed **52** days after the Court's June 27 Order. It is likewise untimely.

Plaintiff contends that, in arguing that these serial motions are untimely, the City has misrepresented the application of Fla. R. Civ. P. 1.530 because the rule "allows amendment of timely motions for rehearing before they are heard." Plaintiff is incorrect because he omits critical language from the relevant text of the rule, which states in full that "[a] timely motion may be amended *to state new grounds in the discretion of the court* at any time before the motion is determined." Fla. R. Civ. P. 1.530 (b) (emphases supplied). Thus, "while a timely motion for rehearing can be amended by leave of court before the motion is determined, 'the trial court has no authority either to permit the filing of any further motion for rehearing beyond the one authorized by Florida Rule of Civil Procedure 1.530, or to extend the time for filing that motion.'" Balmoral Condo. Ass'n v. Grimaldi, 107 So. 3d 1149, 1151–52 (Fla. 3d DCA 2013) (internal citations omitted); see also Matamoros v. Infinity Auto Ins. Co., 177 So.3d 682, 684 (Fla. 3d DCA 2015) (remarking upon and distinguishing under the facts before it the "well-established and unassailable rule that prohibits successive motions for rehearing").

Here, Plaintiff has neither obtained leave of this Court to file any amended motions for rehearing nor stated any new grounds compelling the relief sought even had leave been obtained. The successive motions for rehearing are prohibited and must be stricken or denied.

II. The Motion is without merit.

Assuming *arguendo* the Court reviews the Motion on its merits, it must be denied. "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).

Like the ones preceding it, the Motion merely points out again 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.

Once again, Plaintiff does not substantively 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 within 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).

The record makes clear that Plaintiff’s failure to file an amended complaint had nothing whatsoever to do with excusable neglect or his manufactured confusion over the explicit terms of

the June 27 Order. Plaintiff made the intentional decision that he would file an amended complaint only when and if the Court decided to vacate its order concerning indispensable parties. The consequence of that decision was dismissal with prejudice. The Court has not overlooked or failed to consider any matter in rendering its dismissal, 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 Second Amended 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 26th day of August, 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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