

**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 QUASH PROCESS AND SERVICE OF PROCESS

Defendant, CITY OF TARPON SPRINGS, FLORIDA (the "City"), by and through its undersigned counsel, and appearing for the limited purpose of the instant motion, moves this Court to quash process and the service of process purportedly effected upon the Defendant, and in support thereof states:

1. Plaintiff on December 10, 2021, caused to be served upon the City a Summons and Complaint. (See Exhibit "A," attached hereto). Invoking the Court's subject matter jurisdiction pursuant to § 26.012, Fla. Stat., the Complaint appears to seek declaratory and injunctive relief concerning development orders issued by the City's Board of Commissioners on November 9, 2021.

2. More specifically, Count I of the Complaint seeks the Court's declaration that the development orders are inconsistent with the City's Comprehensive Plan, while Count II asks that that the Court enjoin the City's enforcement of the orders. Nowhere does the Complaint allege that Plaintiff owns the property at issue, that the City unlawfully possesses the property at issue, or that the City has effected a forcible entry onto the property at issue.

3. Despite the lack of such allegations, the Summons served upon the City is entitled “**SUMMONS (PERSONAL SERVICE ON A NATURAL PERSON – Unlawful Detainer).**”

4. The Summons goes on to command the City (which is a municipal corporation, not a natural person as indicated) to serve a written answer and defenses to the Complaint “within **5 DAYS** after service. . .”

5. The Summons is defective for two reasons. First, the City is not a natural person—it is a municipal corporation. Second, the Summons purports to serve the City with a lawsuit for unlawful detainer, a cause of action arising under Chapter 82, Fla. Stat., while the Complaint neither raises Chapter 82 as a legal theory nor pleads facts which could support it. More importantly, the Summons requires the City to respond to the Complaint within five days of service, while Fla. R. Civ. P. 1.140 (a) allots twenty (20) days for a response.

6. “A specific and unequivocal notice of the commencement of litigation is the purpose of service of process.” Kathleen G. Kozinski, P.A. v. Phillips, 126 So.3d 1264, 1268 (Fla. 4th DCA 2013). “A party complaining of an irregular service or return is required to move diligently to effectuate those remedies available [to the party] by our rules of civil procedure lest [the party] suffer the consequences.” Craven v. J.M. Fields, Inc., 226 So.2d 407, 410 (Fla. 4th DCA 1969).

7. Florida courts require that service requirements be strictly followed, and service of process that is not in “substantial compliance” is ineffective to confer personal jurisdiction over the defendant. See e.g. Erection Service, Inc. v. Sims Crane Service, Inc., 379 So.2d 423, 425 (Fla. 2d DCA 1980); Richardson v. Albury, 505 So.2d 521, 522 (Fla. 2d DCA 1987).

8. As set forth herein, the Summons and Complaint served upon the City fail to give it specific and unequivocal notice of the litigation against it. These defects are apparent on the face of the Summons and Complaint and do not require an evidentiary hearing.

9. WHEREFORE, for the foregoing reasons, the City respectfully requests that this Court enter an Order quashing the process issued in this case and its service as indicated herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2021 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.

/s/ Jay Daigneault
Jay Daigneault, Esq.
FBN: 0025859
TRASK DAIGNEAULT, LLP
1001 S. Fort Harrison Avenue, Suite 201
Clearwater, Florida 33756
Ph:727-733-0494 Fax: 727-733-2991
jay@cityattorneys.legal
jennifer@cityattorneys.legal
Attorney for The City of Tarpon Springs, Florida