

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 SECOND AMENDED MOTION FOR REHEARING
OF THE ORDER DISMISSING THIS ACTION WITH PREJUDICE**

COMES NOW, the Plaintiff, CLAY G. COLSON, and files his Verified Amended 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. Contrary to the misrepresentation by counsel for the City of Tarpon Springs, Florida (hereinafter referred to as the City), Florida Rule of Civil Procedure 1.530 allows amendment of timely motions for rehearing before they are heard. See for example, *Adkins v. Burdeshaw*, 220 So.2d 39 (Fla. 1st DCA 1969) and *Taylor v. State*, 140 So.3d 526 (Fla. 2014).
2. Therefore, as the initial Motion for Rehearing which was served on July 12, 2022 and filed on July 13, 2022 seeking rehearing of the Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint filed on June 28, 2022 was timely, and as the Plaintiff's Motions for Rehearing have not been heard, this motion is timely.
3. Due to the misrepresentations of counsel for the City, the Plaintiff has been forced to file this Motion to make sure that the Court does not rely on such misrepresentations in

determining the Plaintiff's Motions for Rehearing, and such motions filed on July 13, 2022 and on July 25, 2022 along with the exhibits attached thereto are incorporated herein by reference.

4. Counsel for the City also misrepresents the propriety of the Court's Order Denying Plaintiff's Motion to Enlarge Time to File an Amended Complaint by falsely claiming that the Plaintiff did not show excusable neglect when in fact the Plaintiff showed that the Court's Order Granting Defendant CITY OF TARPON SPRINGS' Motion to Dismiss for Failure to Join Indispensable Parties entered on May 10, 2022. However, the Plaintiff showed that such Order was vague because it did not name the indispensable parties that the Plaintiff was supposed to join, that such Order which was identical to the proposed order prepared by counsel for the City and was contrary to Judge Muscarella's oral ruling at the hearing, and that such Order was entered without allowing the Plaintiff time to object to entry of such order.
5. When a court adopts a proposed order submitted by counsel which contradicts the court's oral pronouncement, such order should be vacated. See for example, *Cole Taylor Bank, v. Shannon*, 772 So.2d 546 (Fla. 1st DCA 2000) and *Perlow, v. Berg-Perlow*, 875 So.2d 383 (Fla. 2004).
6. It appears that the Court was misled by misrepresentations made by counsel for the City when the Court denied his Motion for Reconsideration of Order Granting Defendant's Motion to Dismiss for Failure to Join Indispensable Parties filed on June 8, 2022.
7. However, the Plaintiff was able to purchase the transcript of the May 2, 2022 hearing and attached it as an Exhibit to the Plaintiff's Motion for Rehearing filed on July 13, 2022 and such Exhibit is incorporated herein by reference. Therefore, the Plaintiff has

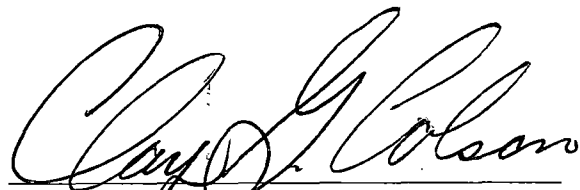
established cause to extend the time to file an amended complaint to name an indispensable party or parties, if necessary.

8. If a motion for rehearing shows that a court's ruling is erroneous, then it should grant a motion for rehearing or at least hold a hearing on the motion for rehearing. See for example, *Brander, v. Stoddard*, 78 So.3d 101 (Fla. 4th DCA 2012).

WHEREFORE, I respectfully request that the Court grant my Motion for Rehearing or grant a hearing on the same, 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 18th day of August 2022.



CLAY G. COLSON
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