

IN THE CIRCUIT COURT OF THE
THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY,
FLORIDA

CASE NO. 16-2014-CA-004578

SWEETWATER BY DEL WEBB MASTER
HOMEOWNERS' ASSOCIATION, INC. a
Not-for-profit corporation ,
Plaintiff

v.

LARRY MURPHREE,
Defendant

DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

COMES NOW, the Defendant, LARRY MURPHREE, by and through the undersigned counsel, hereby files this Motion to Dismiss and states the following:.

BACKGROUND

1. On July 3, 2014 Defendant Murphree was served with a "Verified Complaint for Preliminary Injunctive Relief in Breach of Contract."
2. Count One is for "Preliminary Injunctive Relief" and has already been denied sua sponte by this honorable court.
3. The complaint was filed on behalf of Sweetwater by Del Webb Master Homeowners Association, Inc., by attorney Michelle P. Haines. It was *also* verified by the same person; therefore indicating that *this specific* attorney has *actual knowledge of the material facts*.
4. Sweetwater is a housing complex in South Jacksonville, Florida whose residents consist of mixed adult(s) only and restricts younger adults from living within the community. Mr. Larry Murphree is a veteran that has served in the armed services for six (06) years.

5. The complaint included “Exhibit A”, which is a true and correct composite exhibit of a Confidential Release that was signed in Federal Court case number 12–CV–00153–MMH–JRK; and of which is entitled “Mutual Settlement and Release of Present Claims.”
6. The subject matter of this litigation was the fact that Murphree displayed a single American flag measuring 11” x 18” in a small flowerpot outside on his front porch. The porch area, flag, flower, flowerpot, and the dirt contained therein have existed and continue to exist in this flowerpot and are the subject of the first federal litigation, the second federal litigation, and now this instant case. This litigation now spans four years.
7. The space on the front porch is considered limited common area and is regulated by the HOA and its management.
8. Initially, the HOA contended that the American flag was a foreign object and was regulated in detail by an amended “Rules for Displaying the American Flag.”
9. After the initial settlement agreement was executed, a new set of rules was created so that residents could “properly display a flowerpot.” This new set of rules has been called by many of the residents referred to as the “Larry law.” These rules prohibit displaying a foreign object such as the American flag in the flowerpot.

STANDARD OF REVIEW FOR A MOTION TO DISMISS

10. In ruling on a motion to dismiss, the trial court must confine itself strictly to the allegations within the four corners of the complaint, *Kest v. Nathanson*, 216 So.2d 233, 235 (Fla. 4th DCA 1968); *Pizzi v. Central Bank and Trust Co.*, 250 So.2d 895, 897 (Fla. 1971); *Airport Sign Corp. v. Dade County*, 400 So.2d 828 (Fla. 3d DCA 1981), and must accept the allegations as true. *Popwell v. Abel*, 226 So.2d 418, 420 (Fla. 4th DCA 1969). The Court must also make all reasonable inferences arising out of the allegations in favor of the Plaintiff(s). *Simon v. Tampa Elec. Co.*, 202 So.2d 209, 2011 (Fla. 2d DCA 1967).

The Court may not speculate as to what the true facts may be or what facts may ultimately be proven in the trial of the cause. Lopez-Infante v. Union Cent. Life Ins. Co., 809 So.2d 13, 15 (Fla. 3d DCA 2002); Dunnell v. Malone and Hyde, Inc., 425 So.2d 646, 648 (Fla. 3d DCA 1983).

11. Florida law is well settled that in order to withstand a motion to dismiss, the complaint need only state “ultimate facts sufficient to indicate the existence of a cause of action.” Greenwald v. Triple D Properties, Inc., 424 So.2d 185 (Fla. 4th DCA 1983); *see also* Fla. Rule of Civ. P. 1.110(b)(2) (“pleading which sets forth a claim for relief must state a cause of action and shall contain “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief”). Indeed, if the pleader alleges the necessary elements of the cause of action, the complaint states a cause of action. *See Millerv. Foster*, 686 So.2d 783 (Fla. 4th DCA 1997) (quoting Shadid v. Campbell, 552 So.2d 321, 322 (Fla. 1st DCA 1989)).

FACTS

12. The subject of this litigation is once again the same exact flower, flag, front porch, flowerpot, and dirt contained therein that has now been litigated for third time.
13. The release is a four corners exhibit that was crafted by Plaintiff's counsel that is detailed but clear that neither party may bring a lawsuit “... *Involving or based upon any facts, conduct, activities, transactions, events or occurrences that have or allegedly have existed, occurred, happened, arisen, or transpired at any time from the beginning of the World to the effective date of this release, arising out of, resulting from, or in any way relating to directly or indirectly the lawsuit.*”
14. Plaintiff now argues that the lawsuit involves fines for the improper display of the flowerpot according to the new regulations; and as such has fined Murphree \$1,000.00.

15. The lawsuit mystically assumes that *because* the violation of the new regulation is entitled a “flowerpot regulation”, that the court will *somehow* believe that it is not the *same exact items that were the subject of the release*. The Plaintiff has directly violated the agreement by modifying and abusing the powers of the HOA to find a way to find Mr. Murphree \$100.00 per day; in spite of the release that was signed and executed on April 05, 2012.
16. The Plaintiff has also breached the confidential agreement by publishing the executed settlement agreement in its entirety in this instant case.
17. The complaint is attorney verified and upon information and belief this attorney does not work for or even have actual knowledge of the facts and circumstances but is chosen to verify the complaint for unknown reasons.
18. The complaint also contains numerous issues which are either ministerial in nature *or* confusing as it appears that the numbering isn’t proper or *does not* reallege all the necessary paragraphs.
19. The complaint also attaches exhibits which include liens that are not the subject of this litigation, warning letters and other information that is disparaging and is not directly related to the relief requested; more specifically count two for Breach of Contract.
20. The lawsuit was filed without notice to Defendant’s counsel; *despite* communications that were occurring on a daily basis; and no attempt was made whatsoever to have a hearing on the merits for the request for injunction.
21. The lawsuit specifically count one attempted to prevent Mr. Murphree’s freedom of speech within the capacity of discussing the blatant atrocities which the HOA was committing despite signing the release in 2012.

22. The lawsuit is both *directly and indirectly* related to the HOA's continuing to impose fines upon Mr. Murphree which are for exactly the same issues as was contained in first litigation and in which the releases were signed and settlement reached.

WHEREFORE, the Defendant, respectfully requests this court to enter an order granting Defendant's Motion to Dismiss with Prejudice as it is in direct conflict with the releases that were executed. We also respectfully request that all Defendant's attorney's fees, costs and expenses are reimbursed to Defendant by Plaintiff.

Dated this 28 day of July, 2014.

Respectfully Submitted,

AFFINITY LAW FIRM, P.L.



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CERTIFICATE OF SERVICE

A true and correct copy of this Motion to Dismiss with Prejudice has been served on Michelle Haines, Esquire, via Email Transmission to service@jaxlandlaw.com on this 28 day of July, 2014.


Attorney