

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CASE NO: 2019CA014681XXXX MB AG

CA FLORIDA HOLDINGS, LLC,
Publisher of THE PALM BEACH POST,

Plaintiff,

vs.

DAVE ARONBERG, as State Attorney of
Palm Beach County, Florida, SHARON R. BOCK,
as Clerk & Comptroller, Palm Beach County,
Florida,

Defendants.

**DEFENDANT, SHARON R. BOCK, AS CLERK & COMPTROLLER, PALM BEACH
COUNTY'S MOTION TO DISMISS**

DEFENDANT, Sharon R. Bock, as Clerk & Comptroller, Palm Beach County, pursuant to the Florida Rules of Civil Procedure 1.420, hereby files this Motion to Dismiss the Complaint of Plaintiff, CA Florida Holdings, LLC, Publisher of The Palm Beach Post, and as grounds states as follows:

I. Argument and Standard of Review

a. Plaintiff Fails to State a Cause of Action

To state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief. Florida Rules of Civil Procedure 1.110(b) requires "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." In reviewing an order granting a motion to dismiss for failure to state a cause of action, the Court must accept as true all well-pled allegations in a complaint, and it must draw all reasonable inferences in favor of the

pleader.

Whether a complaint is sufficient to state a cause of action is an issue of law.

W.R. Townsend Contracting, Inc. v. Jensen Civil Construction, Inc., 728 So. 2d 297, 299, (Fla. 1st DCA 1999). When a trial court rules on a motion to dismiss, the trial court is confined to the allegations within the four corners of the Complaint, must accept these allegations as true, and may not speculate as to what the true facts may be or what facts may ultimately be proved in the trial of the cause. See *Al-Hakim v. Holder*, 787 So. 2d 939, 941 (Fla. 2d DCA 2001); *Lopez-Infante v. Union Cent. Life Ins. Co.*, 809 So. 2d 13 (Fla. 3d DCA 2002).

The purpose of a motion to dismiss is to determine whether the plaintiff has alleged a viable cause of action. *Hammons v. Buckeye Cellulose Corp.*, 285 So. 2d 7, 10 (Fla. 1973). In fact, “[d]espite the elemental proposition that on a motion to dismiss for failure to state a cause of action all allegations are taken as true, [a] court will not ‘by inference on inference or speculations supply essential averments that are lacking.’” *Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 1000 (Fla. 3d DCA 1998); see also *Conley v. Shutts & Bowen, P.A.*, 616 So. 2d 523, 524-25 (Fla. 3d DCA 1993).

Taking the facts alleged therein and exhibits attached to the Complaint, Plaintiff failed to state a cause of action against the Clerk, and therefore, the Complaint against the Clerk should be dismissed because under no set of facts can the Plaintiff state a cause of action for which relief can be granted.

COUNT I
(Florida Statutes Section 905.27)

Admittedly, Fla. Stat. § 905.27, sets forth possible exceptions to the disclosure of grand jury testimony. Plaintiff here brings an attempted cause of action under the same statute; however, a review of the statute in question reveals that no cause of action is provided for therein, and therefore, Plaintiff's Complaint must be dismissed as a matter of law.

Moreover, a review of the statute at issue clearly indicates that even if § 905.27, Fla. Stat. provided a basis for an independent cause of action, Plaintiff is barred from access to the records it seeks for the purposes it has set forth as Fla. Stat. § 905.27(2) states:

When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.

Here, despite the clear statutory guidelines for disclosure of grand jury materials in a civil case, Plaintiff is improperly seeking the requested 2006 grand jury materials for the purposes of public disclosure and publication pursuant to the court's inherent authority and supervisory powers over the grand jury. Again, even if Plaintiff properly asserted a cause of action under Fla. Stat. 905.27, the statute unambiguously states that grand jury testimony "can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever", which is distinctly different from Plaintiff's intended purpose for public disclosure of the grand jury evidence. Fla. Stat. § 905.27(2).

CONCLUSION

Here, the Clerk's sole involvement in this action is as the custodian of the record as set forth in section 28.13, Florida Statute. This duty includes keeping grand jury records confidential pursuant to section 905.27, Florida Statute. The Clerk must follow strict statutory guidelines to maintain these record's confidentiality. Further emphasizing the statutory intent of confidentiality, section 905.395 Florida Statute even imposes a penalty for improper disclosure of grand jury proceedings or identity of persons, at the level of a felony of the third degree.

Plaintiff's Complaint is an extensive recitation of the factual background regarding Jeffery Epstein and the testimony and evidence presented to the 2006 grand jury in Palm Beach County,

Florida. However, that recitation fails to state a cause of action for which relief can be granted.

WHEREFORE, based on the foregoing argument and supporting authority, Defendant, Sharon R. Bock, as Clerk & Comptroller, Palm Beach County respectfully prays for the Court to grant this Motion to Dismiss with prejudice, provide direction to the Clerk as needed, and grant such other and further relief as the court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been emailed in compliance with the Florida Rules of Judicial Administration 2.516, on this 13th day of December, 2019, to: Stephen A. Mendelsohn, Esq., Greenberg Traurig, P.A., 5100 Town Center Circle, Suite 400, Boca Raton, FL 33486, email: mendelohns@gtlaw.com and Douglas A. Wyler, Esq., 961687 Gateway Blvd., Suite 201-I, Fernandina Beach, FL 32034, email: jacobsscholzlaw@comcast.net.

Hampton C. Peterson, General Counsel
For Sharon R. Bock, Clerk & Comptroller
Post Office Box 229
West Palm Beach, FL 33402
Telephone: (561) 355-2983
E-service: Clerk_E-service@mypalmbeachclerk.com

BY: *s/Hampton C. Peterson*
Florida Bar No. 331384