

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

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

Plaintiff,

v.

CASE NO.: 19-CA-014681

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

Defendants.

MOTION TO DISMISS

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, by and through the undersigned counsel, hereby files this Motion to Dismiss Plaintiff's Complaint for failure to state a cause of action, and in support thereof states:

MOITION TO DISMISS STANDARD

When confronted with a motion to dismiss, the Court must determine whether the Complaint as phrased within its four corners sufficiently states a cause of action, whereby relief can be granted. Fox v. Professional Wrecker Operations, 801 So. 2d 175, 178 (Fla. 5th DCA 2001). A motion to dismiss tests whether the plaintiff has stated a cause of action. The test for a motion to dismiss under Florida Rule of Civil Procedure 1.140(b) is whether the pleader could prove any set of facts as alleged in the Complaint to support his or her claim. See, Connolly v. Sebeco, Inc., 89 So. 2d 482, 484 (Fla. 1956); Wasua Ins. Co. v. Haynes, 683 So. 2d 1123 (Fla. 4th DCA 1996).

In order to meet this test, "a complaint must allege sufficient ultimate facts to show that a pleader is entitled to relief." W.R. Townsend Contr., Inc. v. Jensen Civ. Constr., Inc., 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (quoting Perry v. Cosgrove, 464 So. 2d 664, 665 (Fla. 2d DCA 1985); Fla. R. Civ. P. 1.110(b)). The court need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party. Id. (citing Response Oncology, Inc.

Party JOINT

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DATE ADMITTED: 9/6/2022

Case No. 2019-CA-014681

Joint Exhibit
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v. Metrahealth Insurance Co., 978 F. Supp. 1052, 1058 (S.D. Fla. 1997)); Oxford Asset Mgmt. v. Jaharis, 297 F.3d 1182, 1188 (11th Cir. 2002) (“[On a motion to dismiss,] the plaintiff’s factual allegations are accepted as true.... However, legal conclusions masquerading as facts will not prevent dismissal.”). To avoid dismissal, a pleading “must allege a cause of action recognized under law” against the defending party. Kislak v. Kreedian, 95 So. 2d 510, 514 (Fla. 1957).

COUNT I
(Florida Statutes Section 905.27)

Plaintiff attempts to assert a cause of action, in the interest of “furthering justice”, under Florida Statute § 905.27; however, a review of the statute in question reveals that no cause of action is provided for therein and consequently Plaintiff’s Complaint must be dismissed as a matter of law. Despite Plaintiff’s 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, Fla. Stat. § 905.27, merely explains the exceptions to the disclosure of grand jury testimony and does not set forth in any way a cause of action upon which to initiate a valid law suit.

Moreover, a review of the statute at issue clearly indicates that even if § 905.27, Fla. Stat. provided a basis for a cause of action, Plaintiff is barred from access to the records it seeks. To wit, in pertinent part, 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 pursuant to the court’s inherent authority and supervisory powers over the grand jury. [See, Complaint ¶¶ 8, 62]. 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).

Finally, it is significant to note that despite Plaintiff's allegations to the contrary, Defendant Aronberg is not in custody or control of the records sought and is therefore not a proper party to this action.

WHEREFORE, based on the foregoing argument and supporting authority, Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, respectfully requests that this Honorable Court grant the instant Motion and dismiss Plaintiff's Complaint with prejudice, and grant Defendant Aronberg all other and further relief deemed just and proper, including attorney's fees and costs for defending this frivolous action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of December, 2019, a copy of the foregoing has been electronically filed with the Florida E-File Portal for e-service on all parties of record herein.

JACOBS SCHOLZ & WYLER, LLC

/s/ *Douglas A. Wyler*

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