

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

SOUTHWIND LAKE HOMEOWNERS
ASSOCIATION, INC.

Plaintiff, 502011CA003066XXXXMBAJ
vs.

O. MICHAEL GRAY,

Defendant.

/

MOTION TO DISMISS COMPLAINT

COMES NOW Defendant O. Michael Gray, (hereinafter "GRAY") by undersigned counsel, and hereby moves to dismiss the complaint and as grounds therefor states:

1. The Plaintiff fails to state a cause of action in that the complaint states that the Defendant has engaged in a "tortuous" [sic] interference with business relationships. No such cause of action exists in Florida or anywhere else and such tortuous use of the English language does not give rise to a cause of action.
2. The Complaint fails to identify any particular cause of action in the caption or anywhere else, and fails to state a cause of action in that it mixes various causes of action together rendering it impossible to determine what is the true cause of action, and failing to identify any cognizable cause of action.
3. The Complaint fails to state a cause of action because it improperly seeks injunctive relief without alleging or providing facts to support its claims of irreparable harm, and without alleging all elements necessary to state a claim for injunctive relief, and seeks such injunctive relief in a count in which it also seeks monetary damages, which negates a claim that there is no legal remedy for the alleged harm it has suffered.

4. Plaintiff seeks a prior restraint on speech which is rarely granted, and cannot be granted due to numerous flaws in the defamation count as described herein, including, but not limited to failing to identify a significant harm which warrants such drastic action.

5. The Complaint seems to seek relief for defamation on behalf of various individuals, none of whom are named plaintiffs and therefore lack standing to claim such relief.

6. Plaintiff fails to state a cause of action because Plaintiff corporation cannot claim harm from defamation involving statements made against individuals, and has otherwise failed to identify any financial harm it has suffered due to Plaintiff's alleged actions.

7. Plaintiff seems to claim damages due to tortious [sic] interference with business relationships, but has failed to allege or present any facts to prove that it has suffered any financial loss as the result of Plaintiff's actions.

8. Plaintiff has failed to state a cause of action for defamation in that it has failed to state with specificity the allegedly defamatory statements that it claims were made by the Defendant, fails to state when they were made, fails to state to whom they were made and whether the statements were made in written or oral form, and fails to state who, if anyone, believed these statements to be true or relied upon them.

9. The Complaint should be dismissed and Defendant should be awarded his reasonable attorney's fees and costs, due to the fact that this lawsuit constitutes bad faith litigation. The driving force behind this lawsuit is board member, Michael Perkins who has a personal relationship with the attorney who filed this lawsuit and who, upon information and belief, convinced this attorney to carry out a personal vendetta against the Defendant to try to intimidate him into remaining silent about wrongdoings within the community, by spending funds belonging to the community to finance this personal feud against one

who only wants to provide important information to the community so that the community can be well informed and can make the best decisions for its future.

10. The lawsuit is frivolous, in that it lacks a substantial basis in law and/or fact. There is no such thing as tortious interference among the recognized causes of action, Associations do not have a claim for damages or injunctive relief against individuals for statements that they have made concerning individual board members, the Association cannot claim tortious interference or any other type of interference against Defendant when it cannot show any financial harm, or any other type of harm, and it is improper to use the services of an attorney paid for by the homeowners of Southwind Lakes, when the Defendant is merely trying to ascertain the truth, and to keep the homeowners informed of the truth so that they can make the best decisions for Southwind Lakes.

11. As described above, this lawsuit was filed by the Plaintiff and upon information and belief was instigated by Board President Michael Perkins in an effort to intimidate and/or silence the Defendant, and to prevent him continuing to speak out, write about and otherwise inform other residents of his Association about vital issues in their community and potential wrongdoing by the Plaintiff, Michael Perkins and others.

12. Accordingly, the lawsuit is prohibited by Fla. Stat. 718.1224, which prohibits Strategic Lawsuits Against Public Participation (Slapp suits) and therefore Defendant Gray is entitled to his reasonable costs and attorney's fees from the Plaintiff and/or from Michael Perkins.

13. The right to free speech, protest and seek redress from government and quasi-government officials is a basic right in this country, and what makes our nation great.

14. The Defendant has retained the undersigned to represent him in this matter and has agreed to pay him a reasonable fee for his services.

15. The Defendant seeks attorney's fees and costs from the Plaintiff, and/or Michael Perkins, the instigator of this lawsuit.

WHEREFORE, Defendant requests that this Honorable Court dismiss the complaint and award the Defendant his reasonable attorney's fees and costs from the Plaintiff and/or Michael Perkins under F.S. 57.105 and due to this bad faith litigation.

I HEREBY CERTIFY that a copy of the foregoing has been sent by U.S. mail this March 14, 2011 to Chris Draper, Esq., Bank of America Centre, 625 N. Flagler Drive, West Palm Beach, Fl. 33401.



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