

IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PASCO
COUNTY, FLORIDA

LACEY EVANS & CHRISTOPHER
EVANS,

CASE NO.: 24-CA-002723

Plaintiffs,

v.

PARADISE LAKES CONDOMINIUM
ASSOCIATION, INC.,

Defendant.

DEFENDANT'S AMENDED MOTION TO DISMISS PLAINTIFFS' COMPLAINT
WITH PREJUDICE*

*(Amended only as to Certification of non-conferral) **

Defendant, PARADISE LAKES CONDOMINIUM ASSOCIATION, INC. (the
"Association"), through undersigned counsel and pursuant to Rule 1.140, Florida Rules of Civil
Procedure, hereby files this Motion to Dismiss in response to Plaintiffs' Complaint, and states as
follows:

STANDARD OF REVIEW

A complaint must be dismissed if its allegations fail to state a cause of action. *See* Fla. R.
Civ. P. 1.140(b). "In order to state a cause of action, a complaint must allege sufficient ultimate
facts to show that the pleader is entitled to relief." *Taylor v. City of Riviera Beach*, 801 So.2d 259,
262 (Fla. 4th DCA 2001) (quotation omitted); *see also Alvarez v. E & A Produce Corp.*, 708 So.2d
997, 999 (Fla. 3d DCA 1998) ("Whether a *prima facie* case has been pled depends on the
sufficiency of the plaintiff's allegations of fact, excluding the bare conclusions of the plaintiff").

Florida's pleading rule "forces counsel to recognize the elements of their cause of action and

determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort." *Horowitz v. Laske*, 855 So. 2d 169, 172-73 (Fla. 5th DCA 2003).

Although the court must accept well-plead factual allegations as true, it need not accept plaintiffs' conclusory allegations and unwarranted deductions of fact. *See Stander v. Dispoz-OProducts, Inc.*, 973 So.2d 603, 605 (Fla. 4th DCA 2008). It "is insufficient to plead opinions, theories, legal conclusions or argument." *Barrett v. City of Margate*, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999). Additionally, a complaint fails to state a cause of action when the plaintiff merely pleads in a conclusory manner and simply tracks the language of a statute or recites the elements of a cause of action. *See Eagle tech Commc'ns, Inc. v. Bryn Mawr Inv. Grp., Inc.*, 79 So.3d 855, 864 (Fla. 3d DCA 2012).

Thus, the issues for trial must be made by the pleadings and show the pleader is entitled to relief. *Provident National Bank v. Thunderbird Associates, Inc.*, 364 So.2d 790 (Fla. 1st DCA 1978); *Havens v. Coast Fla., P.A.*, 117 So. 3d 1179, 1181 (Fla. 2d DCA 2013) (citing Fla. R. Civ. P. 1.110(b)). The purpose of Rule of Civil Procedure 1.110(b)(2) is to "force counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort. *Horowitz*, at 73.

The issues cannot be raised by discovery and while discovery may provide a means of obtaining all relevant facts, a party cannot be burdened with resorting to discovery in order to be apprised of the essentials of the charge being made against them. *Roman v. Warm Mineral Springs, Inc.*, 155 So.2d 183 (Fla. 2d DCA 1963).

A court should dismiss a cause of action with prejudice where amending the complaint would be futile. *See Kalmanson v. Lockett*, 848 So. 2d 374, 381 (Fla. 5th DCA 2003); *Insurance Concepts & Design, Inc. v. HealthPlan Servs., Inc.*, 785 So. 2d 1232, 1236 (Fla. 4th DCA 2001) ("While granting of motions to dismiss with prejudice is generally not favored, it is proper if the pleading cannot be amended to state a cause of action."); *see also Torrey v. Leesburg Regional Med. Ctr.*, 769 So. 2d 1040, 1044 n.4 (Fla. 2000) (holding that amendments should not be permitted where they would be futile); *Posigian v. Am. Reliance Ins. Co.*, 549 So. 2d 751, 753 (Fla. 3d DCA 1989)(same).

MEMORANDUM OF LAW

This case is a “trial de novo” seeking judicial resolution of an election dispute in violation of the Association’s Declaration and Florida Statute 718.112(2)(d) that Plaintiffs originally submitted to the Department of Business and Professional Regulation Division of Florida Condominiums, Timeshares and Mobile Homes (“DBPR”), Case No. 2024-04-9932 (“DBPR Petition”). The DBPR issued a Final Order of Dismissal due to Plaintiffs’ untimely filing¹ as well as an Order Denying Petitioners’ Motion for Rehearing to reconsider the timing of the filing of the DBPR Petition² and Plaintiffs filed this Complaint for “trial de novo.” Since the DBPR declined jurisdiction and did not rule on the merits of Plaintiffs’ DBPR Petition, this Court does not have jurisdiction over this matter. Furthermore, even assuming that Plaintiffs’ trial de novo was properly before this Court, which it is not, Plaintiffs’ Complaint is fatally flawed as they failed to timely challenge the election results pursuant to Fla. Stat. §718.112(2)(d)(4)(c).

¹ Attached to the Complaint as Exhibit C, which is incorporated herein.

² Attached to the Complaint as Exhibit E, which is incorporated herein

1. Lack of Jurisdiction.

Plaintiffs' Complaint cannot serve as the basis for a trial de novo as there was no prior ruling on the election dispute since the DBPR declined jurisdiction over this matter. This lawsuit purports to be a statutory de novo trial of an election dispute, filed pursuant to Fla. Stat. §718.1255(4)(k) which provides that, "... [t]he right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. ..." The Condominium Act's mandate that the Association's alleged failure to "properly conduct elections" is subject to mandatory nonbinding arbitration "[p]rior to the institution of court litigation" conducted by the DBPR. *See* Fla. Stat. §718.1255(1)(b)(1) & (4)(a).

"Any challenge to the election process must be commenced within 60 days after the election results are announced." Fla. Stat. §718.112(2)(d)(4)(c). As outlined in the Final Order of Dismissal, Plaintiffs did not file an election dispute with the DBPR within the time allotted. Once the sixty-day period passed, the DBPR lost jurisdiction to hear and resolve the election dispute. *See Colombo et. al v. Deer Run Prop. Owners Ass'n*, No. 14-03-7312, 2014 WL 6437446, at *1 (Fla. DBPR Arb. Oct. 14, 2014) ("Petitioners have not filed a timely election dispute petition with the Division, depriving the arbitrator of jurisdiction to hear and resolve this dispute"); *see also Alexander et. al v. Hamlet Resident's Ass'n*, No. 17-01-3536, 2017 WL 2445803, at *2 (Fla. DBPR Arb. Apr. 6, 2017) ("Therefore, the election dispute alleged in the petition is time-barred under the statute."); *Dombkowski et. al v. Black Diamond Homeowner's Ass'n*, No. 17-04-6919, 2017 WL 7038337, at *2 (Fla. DBPR Arb. Dec. 5, 2017) (holding petitioner missed deadline for challenging election dispute). Thus, since the sixty-day window had passed and DBPR no longer had jurisdiction over the dispute, Plaintiffs' Petition was never ruled on by the DBPR.

Bacon Family Partners, L.P. v. Apollo Condo. Ass'n, Inc., 852 So. 2d 882, 892-893 (Fla. 2d DCA 2003), is instructive. In *Bacon Family Partners*, a condominium association commenced arbitration against a unit owner, and the owner countersued for damages. See *Id.* at 884. After the owner's claim was denied, the owner moved for a trial de novo. See *Id.* at 886-887. On appeal, the court held that, because the claim was considered and ruled on, it was tried by consent and part of the dispute, entitling the owner to a trial de novo: "[T]he Association tried the issues raised in the Counterclaim by consent before the arbitrator. The arbitrator expressly considered and ruled on the issues raised in the Counterclaim. Therefore, Bacon Family Partners was entitled to request a trial on those issues ...," *Id.* at 890, 893-892.

Here, unlike the owner's claim in *Bacon Family Partners*, Plaintiffs' claim was never tried by consent or ruled on by the arbitrator. Accordingly, since this claim was not tried by consent and because there was never a ruling by the DBPR as to the election dispute, there cannot, as a matter of law, be a trial de novo proceeding. As such, the Complaint cannot serve as the basis for a trial de novo in this Court and must be dismissed with prejudice.

II. Plaintiffs' Claims are Time-Barred.

For the reasons discussed above, Plaintiffs' claim is time-barred because they failed to bring an election dispute before the DBPR within 60 days after the election results were announced. Fla. Stat. §718.112(2)(d)(4)(c) provides:

Any challenge to the election process must be commenced within 60 days after the election results are announced. (Emphasis added).

Rule 61 B-80.110(4), Florida Administrative Code, provides, in relevant part:

(4) "Filing" shall mean actual receipt by the division during normal business hours or by the arbitrator during the course of a hearing. Pleadings including the initial petition or other communications may be filed by regular hard copy or facsimile, and if filed by facsimile, a hard copy of the pleading or other communication need not be filed with the arbitrator; however, the party using facsimile filing bears the burden of ensuring that the pleading or

other correspondence has actually been filed with the arbitrator. If a document is filed via facsimile, the facsimile confirmation sheet shall be evidence of the date on which the division received the document. A facsimile copy is filed within the meaning of this rule when the facsimile copy of the document is received by the division. (emphasis added).

Rule 61 B-80.110(5), Florida Administrative Code, provides”

(5) Any pleading or other document received after 5:00 p.m. shall be deemed to be filed as of 8:00 a.m. on the next regular business day. (emphasis added).

The election results in the case at hand were announced on June 22, 2024. Sixty (60) days after June 22, 2024, is 5:00 PM on August 21, 2024. The DBPR Petition was received by the DBPR via facsimile transmission after the close of business on August 21, 2024 at 7:56 PM.³ The DBPR Petition was then docketed with the DBPR on August 22, 2024, pursuant to Rule 61B-45.010(5), Florida Administrative Code.⁴

After the DBPR declined jurisdiction and issued the Final Order of Dismissal, Plaintiffs filed a Motion for Rehearing making an identical argument to the one found in the Complaint, that the DBPR “miscalculated” the sixty-day deadline from the announcement of the election results. The DBPR denied the motion for rehearing, finding that “it was clear that Petitioners missed the jurisdictional deadline of sixty days from the date the election results by one day.”⁵

In the Complaint, Plaintiffs, yet again, try to argue that the sixty days does not commence until Monday, June 24, 2024, since the election results were announced on a Sunday (June 22, 2024). To support this contention, Plaintiffs here, again, rely on Rule 2.514(a)(4)(A) of the Florida Rules of General Practice & Judicial Administration; however, as addressed by the DBPR, Rule 2.514(a) Fla. R. Gen. Prac. & Jud. Admin. the rule on computation of time applies as follows:

³ See the Order of Dismissal attached to Complaint as Exhibit C.

⁴ *Id.*

⁵

Computing Time. The following rules apply in computing time periods specified in any rule of procedure, local rule, court order, or statute that does not specify a method of computing time. (emphasis added).

Fla. Stat. §718.112(2)(d)(4)(c) is clear as to the “method of computing time” as it unequivocally states that election process challenges “must be commenced within 60 days after the election results are announced.” Because the statute is clear, Plaintiffs’ reliance on Rule 2.514(a)(4)(A) has no applicability here.

Therefore, the election dispute alleged in the Complaint is time-barred under Fla. Stat. §718.112(2)(d)(4)(c). See *Rosemere Homeowners' Ass'n, Inc. v. Homeowners Voting for Recall*, Arb. Case No. 2016-05-5608, Summary Final Order (Jan. 5, 2017) (similar 60-day statute applicable in the homeowners’ association recall context) (citing *Surf Club Condo. Ass'n, Inc. v. Unit Owners Voting for Recall*, Arb. Case No. 2016-04-5718, Final Order of Dismissal (Nov. 9, 2016) (ruling on the same provision that applies in the condominium recall context)). Plaintiffs’ Complaint is fatally flawed as it fails to comply with Fla. Stat. §718.112(2)(d)(4)(c) and must be dismissed with prejudice.

WHEREFORE, the Association respectfully requests that this Court enter an Order dismissing Plaintiffs’ Complaint against the Association with prejudice, and for any other relief deemed just and appropriate.

CERTIFICATION PURSUANT TO FLORIDA RULE OF CIVIL PROCEDURE 1.202(b)

I certify that conferral prior to filing is not required under rule 1.202.

By: /s/ Krysta L. Torok

KRYSTA L. TOROK

Florida Bar No.: 92483

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2025, a true and correct copy of the foregoing was filed with the Clerk of Pasco County by using the Florida Courts e-Filing Portal, which will send an automatic e-mail message to the following parties registered with the e-Filing Portal system: Luis E. Martinez, Esq., Perez Mayoral, P.A., at eperez@pmlawfla.com; lmartinez@pmlawfla.com; nperez@pmlawfla.com, 999 Ponce De Leon Blvd., Suite 705, Coral Gables, FL 33134, (305) 928-1077/(305) 402-6299 (f), Attorney for Plaintiffs, Lacey Evans and Christopher Evans.

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