

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

CIRCUIT CIVIL DIVISION: AG
CASE NO.: 50-2019-CA-014681-XXXX-MB

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

Plaintiff,

v.

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

Defendants.

/

**CLERK OF THE CIRCUIT COURT & COMPTROLLER'S
MOTION FOR SANCTIONS AND MOTION TO TAX FEES AND COSTS**

Defendant, Joseph Abruzzo, in his official capacity as Clerk of the Circuit Court and Comptroller, Palm Beach County ("Clerk"), by and through undersigned counsel and pursuant to Florida Rule of General Practice and Judicial Administration 2.420(i) and Florida Rule of Civil Procedure 1.525, in order to preserve its right to recover public funds expended in responding to the Plaintiff's Motion for Summary Judgment, hereby moves for sanctions, fees, and costs against the Plaintiff CA Florida Holdings, LLC and its counsel Greenberg Traurig, LLP, and in support thereof states:

A. FACTUAL AND PROCEDURAL HISTORY

1. On November 14, 2019, Plaintiff filed a 90-page complaint, inclusive of exhibits, against the Clerk¹ and Dave Aronberg as the State Attorney of Palm Beach County (State

¹ The Complaint was initially filed against Sharon R. Bock in her official capacity as Clerk of the Circuit Court and Comptroller, Palm Beach County. Clerk Abruzzo was sworn into office as Clerk on January 5, 2021.

Attorney) seeking the release of grand jury evidence under Florida Statute s. 905.27(1). *See* Complaint [DE 4].

2. The Clerk, through its then in-house General Counsel, filed a Motion to Dismiss on December 13, 2019 on the basis that the Plaintiff's Complaint failed to state a cause of action. *See* Clerk's Motion to Dismiss [DE 13]. Shortly thereafter, then Chief Judge Marx, *sua sponte*, entered an order setting the Clerk's Motion to Dismiss and the State Attorney's Motion to Dismiss for a hearing on January 24, 2020. *See* Order Setting Hearing on Defendant's Motion to Dismiss dated January 16, 2020 [DE 14]. Days before the motions could be heard, however, the Plaintiff filed its First Amended Complaint on January 17, 2020, which mooted the above hearing.

3. The Plaintiff's First Amended Complaint (the "Amended Complaint") - a 96-page document inclusive of exhibits – sought declaratory relief under Florida Statute 86.011 (Count I) and the release of the records pursuant to Florida Statute section 905.27 (Count II). More specifically, the Amended Complaint sought to declare that under Florida Statute section 905.27(1) the Plaintiff would be entitled access to the "testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" and that the disclosure is appropriate "pursuant to the Court's inherent authority over grand jury proceedings because of the exceptional public interest in the case." *Amended Complaint*, ¶¶ 6, 63, and 70-72. The Amended Complaint further sought that pursuant to Florida Statute section 905.27, in order to further justice, that the Plaintiff should have access to the grand jury testimony.

4. On January 24, 2020, the Clerk filed its Answer to First Amended Complaint and Motion to Dismiss Count II, answering Count I of the Amended Complaint and moving to dismiss Count II again arguing that the Plaintiff failed to state a cause of action for which relief can be granted. *See* Clerk's Answer to First Amended Complaint and Motion to Dismiss Count II [DE

24]. A hearing on the Motion was set for March 24, 2020 and rescheduled for May 6, 2020 and then again for June 3, 2020.

5. On June 8, 2020, the Court dismissed Count II of the Amended Complaint with prejudice. In the Order Granting Defendants Motions to Dismiss Count II of Plaintiff's First Amended Complaint with Prejudice [DE 33] (the "Dismissal Order"), the Court recognized that all the parties conceded that section 905.27 does not contain an express provision for a civil suit or civil liability. *Dismissal Order*, p. 3. Indeed, the Court stated that "[r]eading section 905.27 as creating a private cause of action against the State Attorney and Clerk is, therefore, not only unsupported by the language of section 905.27, but is actually paradoxical to its plain language of the Statute." *Id.*, p. 5 (emphasis added).

6. The Court's Dismissal Order was also clear that the plain language of section 905.27 in its entirety, required the court to look at more than simply the "furthering justice" provision of 905.27(1)(c) and that the intent of the Legislature was to limit, and not facilitate, disclosure of grand jury records. *Id.* The Order further stated that any duty under section 905.27 is one of secrecy and not disclosure. *Id.*

7. Following the issuance of the Dismissal Order, the Plaintiff commenced with discovery by serving its Request for Production of Documents upon the Clerk on July 10, 2020 [DE 36] and, later, its Amended Request for Production of Documents dated July 24, 2020 [DE 37].

8. On October 29, 2020, the Plaintiff filed its Motion to Direct the Clerk of the Court to Unseal the Jeffrey Epstein Grand Jury Files for an Inventory and for An Inventory Report (the "Motion to Unseal"). Based upon the Clerk's discovery responses and conversations with the Clerk's office, the Plaintiff requested that the Clerk be permitted to unseal the Epstein Grand Jury

files and that the Clerk prepare a written inventory of the items in its possession. *Motion to Unseal* [DE 49], ¶¶ 6-7. Importantly, as stated therein, the Clerk did not oppose the Plaintiff's Motion to Unseal. *Id.*, ¶ 10.

9. On April 22, 2021, the Plaintiff filed a 35-page Motion for Summary Judgment, which, again, raised the issue of "furthering justice" and set forth case law from various jurisdictions outside of Florida. Despite this Court's Dismissal Order stating that section 905.27 was designed to preclude disclosure and promote secrecy, the Plaintiff repeated its previous unsuccessful argument and asserted that the Court's inherent authority allowed the Court to order the Clerk to release the grand jury evidence.

10. Due to the length of the Motion for Summary Judgment, the Plaintiff's confusing and confounding legal arguments contained within, the hiring of a new in-house General Counsel for the Clerk's Office, and the transition of newly elected Clerk Abruzzo into office, the Clerk retained outside counsel in order to respond to the Motion for Summary Judgment.² The response filed by the Clerk's outside counsel included an analysis of the proper procedure to seek confidential court records under Florida Rule of General Practice and Judicial Administration 2.420 and questioned the method used by the Plaintiff of initiating an independent lawsuit. Due to the implications of granting a Motion for Summary Judgment under the basis set forth by the Plaintiff, it was imperative that the Clerk provide to the Court the Rule of Procedure under which the records should have been sought as well as the legal basis for such position.

11. In its Final Judgment denying the Motion for Summary Judgment, this Court correctly recharacterized the Plaintiff's Amended Complaint and Motion for Summary Judgment

² This Court recognized and acknowledged in its Final Judgment dated December 20, 2021 that, as a result of the Plaintiff incorrectly filing suit against the Clerk and moving for summary judgment, the Clerk was forced to take an "expanded" role in this proceeding. *See* Final Judgment [DE 78]. p. 3.

as a Motion to Obtain Access to Confidential Court Records under Rule of General Practice and Judicial Administration 2.420(j). *Final Judgment*, p. 3. The Court further analyzed the statute under which the Plaintiff sought to obtain access to the confidential court records and found that the statute's "in furtherance of justice" provision did not provide a basis for the release of the records. *Id.*, pp. 5-9. Moreover, this Court found that its "inherent authority and supervisor powers," as argued by the Plaintiff, does not give it *carte blanche* to ignore legal precedent or statutory mandate and, therefore, was without power to order the release of the records. *Id.*, pp. 9-13. This Court denied the Plaintiff's request for confidential records under Rule of General Practice and Judicial Administration 2.420(j).

B. ARGUMENT

12. Florida Rule of General Practice and Judicial Administration 2.420(i) is instructive for scenarios such as this where an action for confidential information is filed without a legal or factual basis. Specifically, Rule 2.420(i)(3) permits sanctions to be awarded against a party or its attorney if (1) the party or its attorney seeks access to confidential information under subdivision (j) and (2) the court finds after notice and an opportunity to respond, that the party's motion, filing or other activity was not made in good faith and was not supported by a sound legal or factual basis. *See Fla. R. Gen. P. and Jud. Admin. 2.420(i)(3)*.

13. In the instant action, as stated in the Final Judgment, the Plaintiff failed to follow the proper procedure seeking access to confidential records, which thus unnecessarily caused the Clerk to expend public funds to represent its interest and ensure that the proper procedure is used to seek access to confidential court records.

14. Based upon the ruling in the Dismissal Order entered on June 8, 2020, along with the dearth of Florida case law on the topic, and a prior order denying a request to unseal the grand

jury testimony on the basis of the “pursuit of furthering justice” entered in *State of Florida v. Jeffrey Epstein*, No. 50-2006-CF-009454AXXX, Plaintiff’s filing of a Motion for Summary Judgment seeking access to confidential court records was not made in good faith and was not supported by a sound legal or factual basis.

a. The Plaintiff and its counsel knew, at a very minimum, that they did not have a private cause of action against the Clerk on June 8, 2020 – when Chief Judge Marx explicitly warned the Plaintiff that section 905.27 does not create a private cause of action against the Clerk. *See Dismissal Order [DE 33]*, p. 3 (“...not only unsupported by the language of section 905.27, but is actually paradoxical to its plain language of the statute.”). Despite this Court’s clear directive that the instant suit was improperly filed against the Clerk and State Attorney, the Plaintiff and its counsel continued legal proceedings against the Clerk for over a year and a half including the imposition of written discovery, motion practice, and hearings.

b. The Plaintiff’s Motion for Summary Judgment does not cite any Florida case law that would permit the disclosure of the grand jury records under Florida Statute § 905.27 for the purpose of furthering justice.

c. Additionally, more than a year before the Plaintiff filed its Motion for Summary Judgment, the Court in *State of Florida v. Jeffrey Epstein*, No. 50-2006-CF-009454AXXX, denied a request from the State of Florida for the Epstein grand jury testimony on the basis of the pursuit of furthering justice. In her Order Denying the State’s Motion for an Order Unsealing Grand Jury Testimony without Prejudice dated January 14, 2020, then Chief Judge Marx expressly stated that the need for the disclosure of the records “cannot simply [be] public awareness, but must be the furtherance of a specified course of action.” *See* January 14, 2020 Order, pp. 4-5 (emphasis added). Yet, despite this January 14, 2020 Order and the Dismissal Order, the Plaintiff still filed its Motion

for Summary Judgment and raised the same “public interest” argument that had already been previously dispelled.

15. Based upon Plaintiff’s actions, and the actions of its counsel, the Clerk is entitled to be reimbursed the cost of public funds expended in having outside counsel respond to the Motion for Summary Judgment. The request for attorney’s fees and costs is made under both Rule of General Practice and Judicial Administration 2.420(i) as well as Florida Rule of Civil Procedure 1.525 as this Court entered a Final Judgment in this matter. *See* Fla. R. Civ. P. 1.525 (“Any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment...”).

WHEREFORE, based upon the foregoing, Joseph Abruzzo, in his official capacity as Clerk of the Circuit Court and Comptroller, Palm Beach County, respectfully moves this Court to impose sanctions against the Plaintiff and/or its counsel, pursuant to Florida Rule of Judicial Administration 2.420(i) in the amount of public funds that the Clerk had to expend in responding to the Plaintiff’s incorrectly filed Motion for Summary Judgment.

Dated: January 19, 2022

Respectfully submitted,

CLERK OF THE CIRCUIT COURT &
COMPTROLLER, PALM BACH COUNTY

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2022 the foregoing document was furnished upon the following via the Florida ePortal System:

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