

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: 2019-CA-014681

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

Defendants.

/

**DEFENDANT, DAVE ARONBERG, AS STATE ATTORNEY OF PALM BEACH COUNTY,
FLORIDA'S ANSWER TO FIRST AMENDED COMPLAINT
AND MOTION TO DISMISS COUNT II**

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, ("SAO"), by and through the undersigned attorney, hereby answers Count I of the First Amended Complaint of Plaintiff, CA Florida Holdings, LLC, Publisher of The Palm Beach Post ("Post"), and files a Motion to Dismiss Count II, as follows:

JURISDICTION

1. Admitted for jurisdictional purposes.

PARTIES

2. Admitted.

3. Denied that Defendant Aronberg or the Office of the State Attorney for the Fifteenth Judicial Circuit is in possession and/or control of documents that are the subject of this action. Otherwise admitted.

4. Admitted.

INTRODUCTION

5. Paragraph 5 contains the Post's statement of the case and legal arguments to which no

response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 5, and therefore denies the allegations and demands strict proof thereof.

6. Paragraph 6 contains the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO admits only that section 905.27(1)(c), Florida Statute authorizes the disclosure of grand jury proceedings under certain circumstances.

7. Paragraph 7 contains the Palm Beach Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 7, and therefore denies the allegations and demands strict proof thereof.

8. Paragraph 8 sets forth the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 8, and therefore denies the allegations and demands strict proof thereof.

9. Paragraph 8 sets forth the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 9, and therefore denies the allegations and demands strict proof thereof.

FACTUAL BACKGROUND

10. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 10, and therefore denies the allegations and demands strict proof thereof.

A. First Epstein Sex Crimes Investigation, Indictment, and Plea Agreement: 2005-2008.

11. The SAO is without knowledge or information sufficient to form a belief as to the truth

of any factual allegations contained in paragraph 11, and therefore denies the allegations and demands strict proof thereof.

12. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 12, and therefore denies the allegations and demands strict proof thereof.

13. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 13, and therefore denies the allegations and demands strict proof thereof.

14. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 14, and therefore denies the allegations and demands strict proof thereof.

15. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 15, and therefore denies the allegations and demands strict proof thereof.

(1) Police Chief Reiter's Letter to the State Attorney

16. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 16, and therefore denies the allegations and demands strict proof thereof.

17. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 17, and therefore denies the allegations and demands strict proof thereof.

(2) The July 2006 State Grand Jury Presentation

18. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 18, and therefore denies the allegations and demands strict proof thereof.

19. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 19, and therefore denies the allegations and demands strict proof thereof.

20. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 20, and therefore denies the allegations and demands strict proof thereof.

21. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 21, and therefore denies the allegations and demands strict proof thereof.

22. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 22, and therefore denies the allegations and demands strict proof thereof.

(3) The FBI's Investigation and Epstein's Non-Prosecution Agreement with Federal Authorities.

23. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 23, and therefore denies the allegations and demands strict proof thereof.

24. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 24, and therefore denies the allegations and demands strict proof thereof.

25. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 25, and therefore denies the allegations and demands strict proof thereof.

26. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 26, and therefore denies the allegations and demands

strict proof thereof.

27. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 27, and therefore denies the allegations and demands strict proof thereof.

28. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 28, and therefore denies the allegations and demands strict proof thereof.

29. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 29, and therefore denies the allegations and demands strict proof thereof.

30. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 30, and therefore denies the allegations and demands strict proof thereof.

31. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 31, and therefore denies the allegations and demands strict proof thereof.

(4) The Crime Victims' Rights Act Litigation.

32. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 32, and therefore denies the allegations and demands strict proof thereof.

33. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 33, and therefore denies the allegations and demands strict proof thereof.

34. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 34, and therefore denies the allegations and demands

strict proof thereof.

35. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 35, and therefore denies the allegations and demands strict proof thereof.

36. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 36, and therefore denies the allegations and demands strict proof thereof.

37. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 37, and therefore denies the allegations and demands strict proof thereof.

B. Second Epstein Sex Crimes Investigation, Indictment, Suicide: 2019.

38. Admitted.

39. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 39, and therefore denies the allegations and demands strict proof thereof.

40. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 40, and therefore denies the allegations and demands strict proof thereof.

41. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 41, and therefore denies the allegations and demands strict proof thereof.

42. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 42, and therefore denies the allegations and demands strict proof thereof.

43. The SAO is without knowledge or information sufficient to form a belief as to the truth

of any factual allegations contained in paragraph 43, and therefore denies the allegations and demands strict proof thereof.

44. Admitted.

C. The August 27, 2019, SDNY Hearing: Epstein's Victims Speak.

45. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 44, and therefore denies the allegations and demands strict proof thereof.

46. Admitted that United States Senior Judge Richard M. Berman ordered a hearing on August 27, 2019, but the SAO is without knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations contained in paragraph 43, and therefore denies the allegations and demands strict proof thereof.

47. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 47, and therefore denies the allegations and demands strict proof thereof.

48. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 48, and therefore denies the allegations and demands strict proof thereof.

49. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 49, and therefore denies the allegations and demands strict proof thereof.

50. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations paragraph 50, and therefore denies the allegations and demands strict proof thereof.

51. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 51, and therefore denies the allegations and demands

strict proof thereof.

D. The Palm Beach Post's Standing and the Public Interest.

(1) The Palm Beach Post Has Reported Extensively On Epstein's Crimes For Nearly 15 Years.

52. Admitted.

53. Admitted.

54. Admitted that the Post has extensively investigated and reported on the allegations against, the law enforcement investigation of, and the crimes committed by Epstein, but lacks sufficient knowledge to admit or deny any factual allegations remaining in paragraph 54, and therefore denies the allegations and demands strict proof thereof.

55. The SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 55, and therefore denies the allegations and demands strict proof thereof.

(2) The Palm Beach Post's Standing and the Public Interest.

56. Paragraph 56 of the First Amended Complaint contains the Palm Beach Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO admits the press has a constitutional right of access to criminal proceedings, but is without knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations contained in paragraph 56, and therefore denies the allegations and demands strict proof thereof.

57. Paragraph 57 sets forth the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 57, and therefore denies the allegations and demands strict proof thereof.

58. Paragraph 58 sets forth the Post's statement of the case and legal arguments to which

no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 57, and therefore denies the allegations and demands strict proof thereof.

59. Paragraph 59 of the First Amended Complaint contains the Palm Beach Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO admits that Fla. Stat. 905.27 allows a court to make the determination of disclosure but is without knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations contained in paragraph 59, and therefore denies the allegations and demands strict proof thereof.

E. The Court's Jurisdiction and Authority.

(1) The Court's Supervision of the Grand Jury Process and Its Authority to Order Public Disclosure of the Epstein Evidence.

60. Paragraph 60 of the First Amended Complaint contains the Palm Beach Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO admits the press has a constitutional right of access to criminal proceedings, but is without knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations contained in paragraph 60, and therefore denies the allegations and demands strict proof thereof.

61. Admitted.

62. Admitted.

63. Paragraph 63 sets forth the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 63, and therefore denies the allegations and demands strict proof thereof.

64. Paragraph 64 of the First Amended Complaint contains the Palm Beach Post's

statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any remaining factual allegations contained in paragraph 64, and therefore denies the allegations and demands strict proof thereof.

(2) **The Court's Jurisdiction To Declare Rights And Construe Statutes.**

65. Admitted.

66. Admitted.

67. Admitted.

COUNT I

(Declaratory Relief - Florida Stat. Sections 86.011 *et seq.*)

68. The SAO reincorporates and re-alleges its prior answers to paragraphs 1 through 67 above.

69. Admitted.

70. Paragraph 70 contains the Post's statement of the case and legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 70, and therefore denies the allegations and demands strict proof thereof.

71. Admitted that *The Palm Beach Post* is seeking a declaration from this Court but denies the remainder of Paragraph 71.

72. Admitted.

73. Denied.

74. Paragraph 74 contains the Post's legal arguments to which no response is required. To the extent that a response is required, the SAO is without knowledge or information sufficient to form a belief as to the truth of any factual allegations contained in paragraph 74, and therefore denies the allegations and demands strict proof thereof.

MOTION TO DISMISS COUNT II

(Florida Stat. Section 905.27)

Defendant, DAVE ARONBERG, as State Attorney of Palm Beach County, Florida, pursuant to the Florida Rules of Civil Procedure 1.420, hereby files this Motion to Dismiss Count II of Plaintiff's First Amended Complaint for failure to state a cause of action, and in support thereof states:

I. Standard of Review

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. 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).

II. Argument

- a. Neither Defendant Aronberg, nor the Office of the State Attorney for the Fifteenth Judicial Circuit is in possession and/or control of documents that

are the subject of this action.

It is significant to emphasize that despite Plaintiff's allegations to the contrary, Defendant Aronberg and the Office of the State Attorney for the Fifteenth Judicial Circuit are not in custody or control of the records sought herein, and therefore Defendant Aronberg is not a proper party to this action. In fact, Defendant, Sharon R. Bock, as Clerk and Comptroller of Palm Beach County, Florida, admits that it is the custodian in possession of the documents that are the subject of this action.

b. Plaintiff Fails to State a Cause of Action

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 Count II of Plaintiff's First Amended 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, 63]. 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).

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 Count II of Plaintiff's First Amended 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 24th day of January, 2020, 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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