IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

THE BOARD OF TRUSTEES of the CITY OF HOLLYWOOD FIRE FIGHTERS' RETIREMENT SYSTEM, and WILLIAM HUDDLESTON, et. al.
Plaintiffs,

vs.

CITY OF HOLLYWOOD, FLORIDA,
A municipal corporation,
Defendant.
_____/

CASE NO: 12-001000 (05)
consolidated with case no. 12-001005

HON. RICHARD D. EADE

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

THIS CAUSE came before the court on Defendant's Motion to Dismiss Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief. The court having considered the motion, having heard arguments of counsel, and being otherwise duly advised in the premises finds and decides as follows:

Factual Background

On January 12, 2012, The Board of Trustees of the City of Hollywood Fire Fighters Retirement System ("the Fire Trustees") and William Huddleston ("Huddleston") filed a four count Amended Complaint ("the Fire Amended Complaint") (case number 12-001000) against Defendant, City of Hollywood ("the City").[1] Also on January 12, 2011, The Board of Trustees of the City of Hollywood Police Officer Retirement System ("the Police Trustees") and Van Szeto ("Szeto"), filed a three count Amended Complaint ("the Police Amended Complaint") (case number 12-001005) against the City.[2] On April 19, 2012, this Court entered an Order consolidating case number 12-001005 with the instant

[1] For purposes of this Order, the court will only address count I. The Plaintiffs have voluntarily dismissed, without prejudice, counts II and III of the Fire Amended Complaint. Additionally, count IV of the Fire Amended Complaint is the subject of both parties cross motions for summary judgment, which will be the subject of a separate order.

[2] For purposes of this Order, the court will only address count I. The Plaintiffs have voluntarily dismissed, without prejudice, count II of the Police Amended Complaint. Count III of the Police Amended Complaint is the subject of both parties cross motions for summary judgment, which will be the subject of a separate order.

case, 12-001000. Accordingly, the Fire Trustees, the Police Trustees, Huddleston, and Szeto will be collectively referred to as "the Plaintiffs".

According to the allegations of both the Fire Amended Complaint and the Police Amended Complaint, on September 7, 2011, the City of Hollywood City Commission ("the City Commission") adopted several ordinances designed to modify pension benefits for city employees, including police officers and fire fighters. On September 13, 2011, a referendum election was held where the voters of the City considered and approved the ordinances. According to the allegations of the Amended Complaint and attached exhibits, these ordinances modified the pension benefits and collective bargaining agreements of police officers and fire fighters employed by the City. The Plaintiffs seeks declaratory and injunctive relief to determine 1) whether the City violated provisions of its municipal charter and section 101.161, Florida Statutes, by including improper and misleading language on the referendum ballot; and 2) whether the City violated section 106.113, Florida Statutes, when it allegedly used "public funds" for the purposes of "political advertisements" to support the passage of the ordinance.

On May 30, 2012, the City filed a motion to dismiss. In support of dismissal of count I, the City argues that 1) the Plaintiffs fail to state a cause of action for injunctive relief; 2) the Plaintiffs mistakenly allege that Article V of the City's City Charter applies to the subject referendum vote; 3) the requested relief is barred by the doctrine of laches; 4) the allegations of the City's violation of section 106.113, Florida Statutes, fail to state a cause of action; and 5) the allegation that the City violated section 106.113, Florida Statutes, is premature as the Plaintiffs have not exhausted their administrative remedies before the Florida Election Commission.

Motion to Dismiss Standard

The law is well settled that "the function of a motion to dismiss a complaint is to raise a question of law as to the sufficiency of the facts alleged to state a cause of action." *Hitt v. North Broward Hosp.*

Dist., 387 So. 2d 482, 483 (Fla. 4th DCA 1980). "The motion admits as true all well pleaded facts as well as all reasonable inferences arising from those facts." *Id.* "The allegations must be construed in the light most favorable to plaintiffs and the trial court must not speculate what the true facts may be or what will be proved ultimately in trial of the cause." *Id.*

A motion to dismiss is not a substitute for a motion for summary judgment. *Baycon Indus., Inc. v. Shea,* 714 So. 2d 1094 (Fla. 2d DCA 1998). In ruling on a motion to dismiss a complaint, the trial court is confined to consideration of the allegations found in the four corners of the complaint. *Id.* at 1095.

The purpose of a complaint is to advise the defendant of the nature of the cause of action asserted by the plaintiff. *See Kest v. Nathanson,* 216 So. 2d 233 (Fla. 4th DCA 1969). The test for a motion to dismiss for failure to state a cause of action is whether the pleader could prove any set of facts whatsoever in support of the claim. *Wausau Ins. Co. v. Haynes,* 683 So. 2d 1123 (Fla. 4th DCA 1996). If a complaint states a cause of action upon any ground, a motion to dismiss the complaint for failure to state a cause of action should be denied. *Bond v. Koscot Interplanetary, Inc.*, 246 So. 2d 631 (Fla. 4th DCA 1971).

Count I – Failure to Comply With Referendum Approval Requirements

The City first argues that the Plaintiffs have failed to state a cause of action for injunctive relief. Under Florida law,

> To state a cause of action for injunctive relief, a plaintiff must allege ultimate facts, which, if true, would establish (1) irreparable injury (that is, injury which cannot be cured by money damages), (2) a clear legal right, (3) lack of an adequate remedy at law and (4) that the requested injunction would not be contrary to the interest of the public generally.

Weekley v. Pace Assembly Ministries, Inc., 671 So. 2d 220 (Fla. 1st DCA 1996).

A review of both the Fire Amended Complaint and the Police Amended Complaint reveals that the Plaintiffs have failed to allege sufficient ultimate facts to support the aforementioned elements.

Moreover, the Plaintiffs assert separate and distinct causes of action within count I. Specifically, the Plaintiffs seek both an action for injunctive relief and declaratory judgment within count I of both the Fire Amended Complaint and the Police Amended Complaint. Such multifarious pleading is improper. *See Intercapital Funding Corp. v. Gisclair*, 683 So. 2d 530, 533 n.2 (Fla. 4 DCA 1996) ("[M]ultifariousness occurs when distinct and disconnected subjects, matters or causes are joined in the same complaint . . . .") (alteration in original) (citation omitted). Although the court finds that the Fire Amended Complaint and the Police Amended Complaint are deficient for the aforementioned reasons, the court finds it necessary to discuss the remaining arguments set forth by the City in its motion to dismiss.

The City additionally argues that count I is subject to dismissal because it is barred by the doctrine of laches. Laches is an affirmative defense and generally should be asserted in a party's answer. *See* Fla. R. Civ. P. 1.110 (d). However, where the facts supporting laches appear on the face of the pleading, the court may consider the defense of laches at the motion to dismiss stage. *Id.*

> In order to establish the defense of laches, the defendant must prove the following elements: (1) conduct by the defendant that gives rise to the complaint; (2) the plaintiff has not filed suit, despite having knowledge of the defendant's conduct and the opportunity to file suit; (3) lack of knowledge by the defendant that the plaintiff will assert the right upon which the suit is based; and (4) injury or undue prejudice to the defendant.

State, Dept. of Revenue ex rel. Dees v. Petro, 765 So. 2d 792, 793 (Fla. 1st DCA 2000) (citation omitted).

The City contends that count I is barred by the doctrine of laches because the Plaintiffs commenced suit after the referendum election. In the instant case, it is undisputed that the Plaintiffs commenced suit after the referendum election and after the ordinances had been adopted by the City Commission and passed by the electorate in the referendum election. However, under Florida law, there is no time requirement that mandates that an attack on the ballot language come before the election. *Armstrong v. Harris*, 773 So. 2d 7, 20, 25-26 (Fla. 2000). Moreover, being confined to the four corners

of the complaint and attached exhibits, the court finds that the City has not met its burden to support its laches argument at this stage in the proceedings. As such, the City's motion to dismiss count I on the doctrine of laches is denied.

In further support of dismissal, the City argues that count I is subject to dismissal because the alleged violations of section 106.113, Florida Statutes, set forth by the Plaintiffs fail to state a cause of action and/or are otherwise premature as the Plaintiffs have not exhausted their administrative remedies. Section 106.113, Florida Statutes, provides, in pertinent part:

> A local government or a person acting on behalf of local government may not expend or authorize the expenditure of . . . public funds for a political advertisement . . . concerning an issue, referendum, or amendment, including any state question, that is subject to a vote of the electors.

§ 106.113 (2), Fla. Stat.

Although the Plaintiffs adequately allege a cause of action premised on an alleged violation of section 106.113, Florida Statutes, there is no allegation that the Plaintiffs exhausted their administrative remedies before the Florida Election Commission. Specifically, section 106.25, Florida Statutes, provides that the "[j]urisdiction to investigate and determine violations of this chapter . . . is vested in the Florida Elections Commission." 106.113 (1), Fla. Stat. "As a general proposition, the doctrine of exhaustion of administrative remedies precludes judicial intervention where available administrative remedies can afford the relief a litigant seeks." *Norman v. Ambler*, 46 So. 3d 178, 182 n.5 (Fla. 1st DCA 2010). In this case, the Plaintiffs have failed to allege that they have exhausted any administrative remedies they may have. As such, this forms another basis for the court to dismiss count I.

After a careful review of the City's remaining arguments[3], the court finds that such positions may be better suited for summary judgment. *See Baycon Indus., Inc.*, 714 So. 2d at 1094 (noting that a

[3] Specifically, the City's arguments that 1) the Plaintiffs' allegations in count I do not apply to the referendum election in question, and 2) the language contained on the referendum ballot did not, as a matter of law, violate section 101.161, Florida Statutes, or Article V of the City's City Charter.

motion for summary judgment is not a substitute for a motion to dismiss). As such, the court will not address such matters at this time.

Conclusion

For the foregoing reasons, it is hereby

ORDERED that Defendant City's Motion to Dismiss Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief is GRANTED. Count I of the Fire Amended Complaint and Count I of the Police Amended Complaint are DISMISSED WITHOUT PREJUDICE. Plaintiffs shall file a second amended complaint within 20 days of the date of this Order, if so desired.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 4TH of December, 2012.

/S/ Richard D. Eade
RICHARD D. EADE
CIRCUIT COURT JUDGE

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