

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

CASE NO. CACE 15-17333

The CITY OF HOLLYWOOD,
FLORIDA,

Plaintiff,

vs.

The BOARD OF TRUSTEES OF THE
EMPLOYEES RETIREMENT FUND
OF THE CITY OF HOLLYWOOD, and
The BOARD OF TRUSTEES OF THE
CITY OF HOLLYWOOD FIREFIGHTERS
RETIREMENT SYSTEM, and The
BOARD OF TRUSTEES OF THE CITY
OF HOLLYWOOD POLICE OFFICERS
RETIREMENT SYSTEM,

Defendants.

MOTION TO SEVER

Defendant, the BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD FIREFIGHTERS RETIREMENT SYSTEM (“Firefighter Pension Board”) and the BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD POLICE OFFICERS RETIREMENT SYSTEM (“Police Pension Board”) (collectively the “Boards”), file this Motion to Sever¹ pursuant to Rules 1.250(a) and 1.270, Fla. R. Civ. P., and as good cause shown state:

¹ A Motion to Abate and a Motion to Dismiss are being filed contemporaneously with this Motion to Sever.

OVERVIEW

1. Plaintiff, City of Hollywood (“City”), brought suit against the Boards² of Trustees of the City’s three independent retirement systems seeking a declaratory judgment and injunctive relief and recoupment from retirees who have not been named as defendants by the City. The City’s claims lack merit and are otherwise improper.
2. The Boards are separately charged with the responsibility of administering the CITY OF HOLLYWOOD FIREFIGHTERS RETIREMENT SYSTEM (the “Firefighter Plan”), and the CITY OF HOLLYWOOD POLICE OFFICERS RETIREMENT SYSTEM (the “Police Plan”), collectively (the “Plans”).
3. The Firefighter Pension Board and Police Pension Board, who are both represented by undersigned counsel, move to sever and/or bifurcate all three misjoined claims.
4. All three claims are properly “severed and proceeded with separately” under Rule 1.250(a). As a matter of law all three retirement Plans involve separate and distinct Boards, governing ordinances, supplemental benefit provisions, and statutory requirements under Chapters 175 and 185, Fla. Stat.³ Moreover, the City’s allegations erroneously conflate separate and distinct factual matters including, but not limited to the fact that all three retirement Plans implicate different adoption dates and legislative histories, different investment portfolios with different investment performance, different benefit payment dates, different

² A third City pension plan, the Employees Retirement Fund of the City of Hollywood (the “General Employees Plan”), is also named as a defendant. The General Employees Plan is separately represented by its own counsel.

³ Only the Police and Firefighters Plans are governed by Chapters 175 and 185, Florida Statutes.

trustees, different administrators and consultants, different membership and retirees covered by different unions and collective bargaining agreements. Each Board has the independent right to raise separate counterclaims against the City, which is using this lawsuit as an excuse to not properly fund each Plan.

LEGAL STANDARD FOR MOTION TO SEVER

5. Florida courts have long recognized that “[i]f there is a misjoinder, the proper procedure is to sever the claims and to thereafter proceed separately with such thereof as to which the court has jurisdiction....” *A. O. Roberts v. Keystone Trucking Co.*, 259 So. 2d 171, 174 (Fla. 4th DCA 1972) (holding that there was no misjoinder when the claims “arose out of a single transaction or occurrence”).
6. When separate claims are not “inextricably interwoven” they are properly severed. *Coral Way Condo. Invs. v. 21/22 Condo. Ass’n*, 66 So. 3d 1038, 1041 (Fla. 3d DCA 2011) (affirming severance of claims which were not inextricably interwoven). Where the facts and claims are “intertwined” and arise from a single transaction or occurrence severance is less useful and the court has more discretion to permit consolidation. *Bethany Evangelical Church of Miami v. Calandra*, 994 So. 2d 478 (Fla. 3d DCA 2008).
7. Rule 1.250(a) provides that “[a]ny claim against a party may be severed and proceeded with separately.” Likewise, Rule 1.270(b) provides a mechanism for separate trials of separate claims or separate issues. At the same time, Rule 1.270(a) permits joint hearings of matters to avoid unnecessary costs or delay.
8. As a general rule, the trial court retains considerable discretion to sever claims and parties under Rule 1.250 and 1.270. *Rooss v. Mayberry*, 866 So. 2d 174, 176

(Fla. 5th DCA 2004) (recognizing that Rule 1.270(b) allows for bifurcation in furtherance of convenience or to avoid prejudice). This discretion is not unlimited, however.⁴ See *Merchants & Businessmen's Mutual Ins. Co. v. Bennis*, 636 So. 2d 593, 595 (Fla. 4th DCA 1994) (holding that trial court departed from the essential requirements of law in denying severance in insurance declaratory relief action); *Coral Way*, 66 So. 3d 1038 at 1041 (trial court properly severed claims which were not inextricably interwoven).

FACTS ARE DISTINCT, NOT INEXPLICABLY INTERWOVEN

Separate and distinct boards, benefit provisions and membership

9. Each independent Board administers a separate retirement system, which were created at different times, contain different provisions and are governed by separate boards for different employees and retirees.
10. The City itself necessarily concedes these distinctions. See Complaint at ¶8 – ¶10. For example, while the Police Plan's supplemental benefits provision consists in its entirety of a *single* paragraph, the General Plan's supplemental benefits provision consists of *thirteen* separate and very specific paragraphs. Compare Police Plan §33.136(N) with General Plan §33.025(K). Likewise the Plans have entirely separate and distinct legislative histories.⁵

⁴ When a declaratory action is brought under Chapter 86, issues of fact are tried as in other civil actions. § 86.071, Fla. Stat. The right to jury trial is limited to issues traditionally triable by jury at common law, but as to those issues, the trial court has no discretion to deny a requested jury trial in a declaratory action. *Commodore Plaza at Century 21 Condo. Ass'n v. Century 21 Commodore Plaza*, 290 So. 2d 539, 540 (Fla. 3d DCA 1974) (affirming severance of equitable and legal issues when complaint sought declaratory and injunctive relief.)

⁵ The General Plan was adopted in 2002 with amendments in 2005, 2006, and 2007. Complaint at ¶8. By contrast, the Complaint alleges that the Police and Fire Plan supplemental benefits provisions necessarily date back to at least the year 2000. Complaint at ¶12 & ¶13.

11. By contrast, the City concedes that the Firefighter Plan’s supplemental benefits provision consists of *nine* specific and discrete paragraphs, in contrast to the *single* paragraph provision in the Police Plan. *Compare* Firefighter Plan §33.060 with Police Plan §33.136(N). The City further acknowledges that the Firefighter Plan’s supplemental benefits provision dates back to at least the year 2000, with amendments in 2009 and 2011 compared to the newer General Plan. Complaint at ¶9 and ¶12.
12. Each Board has separate trustees, who serve as fiduciaries for a different membership. As is self-evident from their names, the separate Police and Fire Firefighter Plans provide benefits for public safety officers. The General Plan provides benefits to all remaining full-time City employees. General Plan at §33.025(B). For this reason, the respective retirement systems involve separate union memberships, separate collective bargaining agreements and separate trust funds.
13. The compositions and design of the respective boards is also distinct. Unlike the Police or Firefighter Pension Boards, the Assistant City Manager serves as a trustee on the seven-member General Board. Likewise, the City Finance Director is the ex officio treasurer for the General Board. General Plan at §33.025(S)(4). The City Manager appoints two trustees to the General Board, along with two City Commission appointments. General Plan at §33.025(R)(1). The GE Plan is administered by the “Division of Pensions,” which is situated in the Office of the City Manager, who also appoints the Secretary. *Id.* at §33.025 (S)(1). The General

Board is not governed by Chapter 175 or Chapter 185, Fla. Stat., which governs municipal public safety pension plans. §175.041 & §185.03, Fla. Stat. All three Boards separately hold their meetings at times and at different locations, keep separate minutes, and separately employ their own staff and professional consultants.

14. Accordingly, the three Boards have a distinct makeup, not unlike the separate Plan membership, Plan provisions, and legislative histories.

Separate and distinct investments, investment experience, and claims

15. Notwithstanding their separate provisions, legislative histories, trustees and membership, the City's underlying factual allegations are also distinct as it relates to the three separate Plans. All three Boards administer separate investment portfolios with different resulting investment performance, different administrators and consultants.⁶ Moreover, each Board has the independent right to raise separate counterclaims against the City.
16. According to the City's allegations, the General Plan and Firefighter Plan authorized supplemental payments in 2015, but the Police Plan did not. Complaint at ¶17.⁷ The fact that the different Boards have paid different supplemental

⁶ The websites for the three independent Boards are set forth below:

<http://www.hollywoodpolicepensionfund.com/home.asp>
<http://www.hollywoodfirepension.com/index.cfm?section=1>
<http://www.hollywoodfl.org/index.aspx?NID=597>

⁷ The City acknowledges that Firefighter Board paid supplemental benefits eight times between 2000 and 2015 whereas the Police Board paid supplemental benefits twelve times during the same period. Complaint at ¶12 & ¶13. By contrast, the General Board paid supplemental benefits three times between 2004 and 2015. Complaint at ¶11.

benefits at different times is a function of several separate and distinct variables, not limited to each Plan's separate investment performance and Plan provisions.

17. By way of example, the City alleges that the Firefighter Plan has not recovered aggregate investment losses since October 1, 2008. The City makes no such allegation regarding the Police Plan. Complaint at ¶17.⁸ This is yet another example of how the City's allegations and claims are not inexplicably intertwined or interwoven.
18. The City's misjoined claims are properly severed based on the distinct facts appearing on the face of the complaint. The Police and Firefighters Boards are more than happy to provide additional factual support, including affidavits and supplemental filings evidencing the fact that the City's purported claims do not arise out of a single transaction or occurrence and are otherwise separate and distinct.⁹

⁸ As will become clear as this case proceeds, the Police and Fire Firefighter Boards do not concede the accuracy of the City's allegations or the City's purported legal theory. As described in the Board's Motion to Abate, the City's Resolution No. R-2015-214 and other statements cannot be taken at face value.

⁹ Given the pending Motion to Abate, undersigned counsel suggests that supplemental filings would be the most efficient use of resources on this matter.

WHEREFORE Defendants, Board of Trustees of the City of Hollywood Firefighters Retirement System and Board of Trustees of the City of Hollywood Police Officers Retirement System respectfully request this Honorable Court to sever the City's improperly joined claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by electronic mail on this 23rd day of November, 2015, to the Clerk of Court by the e-filing portal system which will send a notice of electronic filing to the following:

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