IN THE CIRCUIT COURT IN THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
CIVIL DIVISION

CLAY G. COLSON,

Plaintiff,

vs. Case No.: 21-005793-CI

THE CITY OF TARPON SPRINGS, FLORIDA,

Defendant.
_____/

DEFENDANT CITY OF TARPON SPRINGS'
RESPONSE TO PLAINTIFF'S MOTION TO ENLARGE TIME
TO FILE AN AMENDED COMPLAINT

Defendant, CITY OF TARPON SPRINGS (the "City"), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.090, responds to Plaintiff's Motion to Enlarge Time to File an Amended Complaint (the "Motion"). The City respectfully requests this Honorable Court deny the Motion and, as grounds therefore, states:

1. On December 9, 2021, Plaintiff filed a Complaint seeking declaratory relief and a permanent injunction alleging that the City's approval of two development orders occurred in violation of the City's Comprehensive Plan.

2. On January 25, 2022, the City filed a Motion to Dismiss for Failure to Join Indispensable Parties. (Filing #142579518). Specifically, the City's motion contended that "Kamil Salame, Morgan Development Group, LLC, (hereinafter referred to as Morgan Group) is the developer who sought approval to develop Anclote Harbor" and that Morgan Group is an indispensable party to the case.

3. On March 3, 2022, Morgan Development Group, LLC filed a Motion to Intervene in the case. (Filing #145187026). (Supp. Appx. at 2, 3). The motions were noticed for hearing on May 2, 2022.

4. This Court held a hearing on the motions as scheduled on May 2, 2022. In its written Order Granting Defendant City of Tarpon Springs' Motion to Dismiss for Failure to Join Indispensable Parties dated May 9, 2022 (the "Order"), the court granted the City's motion and gave Petitioner thirty (30) days from the date of the hearing to amend his Complaint. The Court cautioned that "failure to file an amended Complaint within the thirty (30) days set forth herein shall result in dismissal of the case with prejudice."

5. The thirtieth day was June 1, 2022, but Plaintiff did not and has not filed an amended complaint.

6. On May 31, 2022, Plaintiff filed a Petition with the Second District Court of Appeals pursuant to Fla. R. App. P. 9.100 (d) seeking an order to permit him to record proceedings in the case. Plaintiff filed an affidavit with the Petition acknowledging that Morgan Development Group, LLC was the party alleged by the City to be indispensable to this case. (See Exhibit "A" attached hereto at p. 12, ¶ 6).

7. Nevertheless, on June 8, 2022, Plaintiff filed the instant Motion as well as a Motion for Reconsideration of the Court's May 9th Order. In both motions, Plaintiff contends that the Order (1) does not explain who the Court considers indispensable parties; and (2) runs the time to file the amended complaint from the date of the hearing rather than the date of the Order, and should therefore be reconsidered.

8. The Motion asserts that Plaintiff "intends to file an amended complaint if the Court does not vacate the Order . . ." and requests an additional twenty days from the date of the Court's order on the motion for reconsideration to file an amended complaint "if necessary."

9. The Motion must be denied because Plaintiff has failed to show excusable neglect supporting its late filing.

ARGUMENT

Though Plaintiff does not trouble himself to inform the Court of the standards applicable to the Motion *sub judice*, it is governed by Fla. R. Civ. P. 1.090. Rule 1.090 permits for enlargement of time for acts required to be done by order of a court in two circumstances, both of which require that cause be shown: when a request for enlargement is made ***before*** the expiration of the period prescribed, and when a request is made ***after*** the expiration of such period. Because the instant Motion was made after the expiration of the period prescribed by the Court for Plaintiff to file an amended complaint, Plaintiff was required to show that his failure to meet the Court's deadline was the result of excusable neglect under Fla. R. Civ. P. 1.090 (b) (1) (B). He has not done so, and the Motion must be denied.

The determination of whether a litigant's failure to comply with an order of a court constitutes excusable neglect considers "all of the relevant circumstances, including prejudice to the other party, the reason for the delay, the duration of the delay, and whether the movant acted in good faith." Carter v. Lake Cty., 840 So.2d 1153, 1157 (Fla. 5th DCA 2003) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993)). But "[a] conscious decision not to comply with the requirements of the law does not constitute excusable neglect." Peterson v. Lake Surprise II Condo. Assoc., 118 So.3d 313, 313 (Fla. 3d DCA 2013). Generally, courts are inclined to find excusable neglect "when the error occurs due to a breakdown in the

mechanical or operational practices of the attorney's office equipment or staff," Boudot v. Boudot, 925 So.2d 409, 416 (Fla. 5th DCA 2006) (citing Carter, 840 So.2d at 1158 n.6)), but not when it is based upon misunderstanding or ignorance of the law. Madill v. Rivercrest Community Association, Inc., 273 So.3d 1157, 1160 (Fla. 2d DCA 2019).

Plaintiff's failure to timely file the instant Motion is not the result of excusable neglect. To the contrary, Plaintiff makes clear in the Motion that it was the result of his conscious decision. Plaintiff has determined for himself when he will file an amended complaint and upon what conditions: twenty days following the Court's resolution of his motion for reconsideration, which is itself based upon arguments the Court has already ruled and decided upon. Moreover, the Motion is based upon the manufactured and demonstrably untrue contention that the Court was unclear as to who are indispensable parties. Plaintiff has sworn to the Second DCA that he knew who was identified in the City's Motion to Dismiss for Failure to Join Indispensable Parties, and the Court's Order granted the motion. For Plaintiff to say now that he does not know who the Court meant or that the Court's order does not specifically state as much is pure and simple gamesmanship for the purposes of delaying this case and the development which is at its core. These types of tactics must not be countenanced.

Should Plaintiff contend that he should not need to meet the standards of Rule 1.090 because he is representing himself, the argument must be rejected. The courts have consistently held that *pro se* litigants should be treated no differently or more leniently than litigants represented by counsel. See Millen v. Millen, 122 So.3d 496, 497 (Fla. 3d DCA 2013) ("We first note, '[i]t is a mistake to hold a pro se litigant to a lesser standard than a reasonably competent attorney.'" (quoting Kohn v. City of Miami Beach, 611 So.2d 538, 539 (Fla. 3d DCA 1992))); Anderson v. Sch. Bd. of Seminole Cnty., 830 So.2d 952, 953 (Fla. 5th DCA 2002) ("Pro se litigants, however,

should not be treated differently from litigants in similar situations who are represented by counsel and are charged with knowledge of those rights" (citing Kohn)); Stueber v. Gallagher, 812 So.2d 454, 457 (Fla. 5th DCA 2002) ("In Florida, pro se litigants are bound by the same rules that apply to counsel." (citing Kohn)); Gladstone v. Smith, 729 So.2d 1002, 1004 (Fla. 4th DCA 1999) ("A pro se litigant should not be held to a lesser standard than a reasonably competent attorney because applying a lesser standard would only encourage continued frivolous litigation." In Kohn, the court held that "it is a mistake to hold a pro se litigant to a lesser standard than a reasonably competent attorney" and that "a party's self-representation does not relieve the party of the obligation to comply with any appropriate rules of civil procedure." 611 So.2d at 539–40. The court in Kohn further noted, citing numerous cases from other jurisdictions, that "[c]ourts around the country have likewise recognized that once a party chooses to represent himself he cannot expect favored treatment from the court." 611 So.2d at 540 n. 1.

In sum, Plaintiff's Motion was made after the time set by the Court in its Order for the filing an amended complaint. As such, Plaintiff was required to demonstrate that his failure to file the amended complaint within the time set by the court was the result of excusable neglect. Not only has Plaintiff failed to meet the standard, he has not even tried to do so. The Motion should be denied.

Plaintiff also appears to argue in roundabout fashion that the Motion was filed before the deadline to file the amended complaint because his recollection of the May 2 hearing was that the Court indicated he would have thirty days from the date of the Order rather than the date of the hearing to file the amended complaint. Plaintiff offers no record support for the contention, so the argument must be rejected out of hand.

WHEREFORE, Defendant, CITY OF TARPON SPRINGS, requests this Court enter an order denying Plaintiff's Motion, requiring the immediate filing on an amended complaint, informing Plaintiff again that the failure to comply with the order will result in dismissal with prejudice and, in order to establish early and continuing control of this case and prevent future litigation abuses, holding Plaintiff in contempt for disobeying its May 2, 2022 Order, along with such other relief as the Court deems appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2022 a true and correct copy of the foregoing was filed with the Clerk of the Circuit Court using the ECF system and sent via U.S. Regular mail to Clay G. Colson, Pro Se, 4318 Joy Drive, Land O Lakes, FL 34637.

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