

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

CASE NO: 50-2023-CA-009267-XXXX-MB

CINDY FALCO-DICORRADO,

Plaintiff,

v.

PALM BEACH SHERIFF OFFICE, et al.,

Defendants.

**DEFENDANT CLERK OF THE CIRCUIT COURT & COMPTROLLER,
PALM BEACH COUNTY'S MOTION TO DISMISS AMENDED COMPLAINT**

Defendant, Joseph Abruzzo in his official capacity as the Clerk of the Circuit Court & Comptroller, Palm Beach County ("Clerk"), pursuant to the Florida Rules of Civil Procedure 1.140 and 1.420, hereby files this Motion to Dismiss the Amended Complaint. The Clerk requests dismissal of the Plaintiff's "Amended Claim Complaint" (hereinafter "Amended Complaint") filed on April 12, 2023, as it fails to adhere to the pleading requirements in Florida Rule of Civil Procedure 1.110(f) and fails to state a cause of action for which relief can be granted. Moreover, to the extent that the Amended Complaint states a cause of action, the Plaintiff's claims are otherwise barred due to the Plaintiff's failure to provide pre-suit notice as required under section 768.28, Florida Statutes and by the doctrines of sovereign and judicial immunity.

**A. AMENDED COMPLAINT FAILS TO COMPLY WITH FLORIDA RULE OF CIVIL
PROCEDURE 1.110(f)**

Florida Rule of Civil Procedure 1.110(f) states that "[a]ll averments of claim...shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances...." Fla. R. Civ. P. 1.110(f); *see also Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999) ("It is not permissible for

any litigant to submit a disorganized assortment of allegations and argument in hope that a legal premise will materialize on its own.”).

The Amended Complaint is not made in consecutively numbered paragraphs – rather, it consists of a multi-page recitation of alleged facts with a list of various unenumerated “counts” sandwiched in the middle. The “counts” are not labeled as such and do not reference any underlying facts. Pro se litigants are granted leniency in procedural technicalities; however, they “are not immune from the rules of procedure.” *Id.* at 1162. The current organization of the Amended Complaint makes it impossible for the Clerk to adequately answer the allegations, as the precise allegations being levied against the Clerk in support of each “claim” cannot be deciphered. Accordingly, dismissal of the Amended Complaint is warranted.

B. AMENDED COMPLAINT FAILS TO STATE A CAUSE OF ACTION

To the extent that the Amended Complaint can be considered despite the aforementioned deficiencies, it fails to state a cause of action. A complaint must allege sufficient ultimate facts to show that the plaintiff is entitled to relief. Fla R. Civ. P. 1.110(b). “[D]espite the elemental proposition that on a motion to dismiss for failure to state a cause of action all allegations are taken as true, [a] court will not ‘by inference on inference or speculations supply essential averments that are lacking.’” *Alvarez v. E & A Produce Corp.*, 708 So. 2d 997, 1000 (Fla. 3d DCA 1998) (citation omitted). “The complaint, whether filed by an attorney or pro se litigant, must set forth factual assertions that can be supported by evidence which gives rise to legal liability. **It is insufficient to plead opinions, theories, legal conclusions or argument.**” *Barrett*, 743 So. 2d at 1162-63 (emphasis added).

The Amended Complaint contains only one “count” on page 9 that specifically addresses an alleged action by the Clerk. That said, however, the Amended Complaint also includes multiple

paragraphs on pages 7-8 that appear to be attempts to state various causes of action against “[t]he here-in Accused.” Although it is unclear whether this term encompasses all named Defendants, to the extent that the Clerk is included in this indefinite group, the Amended Complaint does not include sufficient allegations to enable the Clerk to formulate an adequate response. Given the lack of numbering, images of each “claim” have been included below for ease of reference:

1. Allegation of Clerk Not Filing Documents.

The only allegation within the Amended Complaint that specifically addresses some action purportedly taken by the Clerk’s office is as follows:

Circuit Court Clerk, Joseph Abruzzo, has Maliciously & Criminally Conspiratorially “Obstructed Justice”, when he Denied the Constitutional Right, of i: cindy: the woman, to File Paper Documents in This Case, in the related file-folders of the Office of the Clerk of Court.

Am. Compl., p. 9. There are no supporting facts alleged within the Amended Complaint discussing any attempt by Plaintiff to file documents with the Clerk’s office.

To the extent Plaintiff has attempted to state a civil claim of obstruction of justice or civil conspiracy, the Amended Complaint fails to do so. Obstruction of justice is a criminal offence with no accompanying civil cause of action; therefore, no cause of action can be stated. *See* §§ 843.01-.43, Fla. Stat. (2023).

To the extent that the allegations can be construed as setting forth a civil claim for conspiracy, Plaintiff has failed to state a claim. A claim for civil conspiracy must allege: (a) an agreement between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d) damage to plaintiff as a result of the acts done under the conspiracy. *Eagletech Comms., Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 863 (Fla. 4th DCA 2012). "General allegations of conspiracy are inadequate." *World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 799 (Fla. 4th DCA 1999). Plaintiff’s bare

bones allegations fail to satisfy these elements.

The Clerk cannot formulate a response to any alleged failure of the Clerk to accept documents without additional, pled facts. There is no date or date range identified for when this purported denial occurred, no indication of what type of document she attempted to file, and no other details about the alleged event that would enable the Clerk to answer the claim. The Clerk is the custodian of the court files as the clerk of the court, and is also the custodian of the official records for Palm Beach County. It is, thus, further unclear whether the Plaintiff is referencing an attempt to file a document in a court file or an attempt to record a document in the official records. Given the dearth of factual assertions, this paragraph amounts to an improper legal conclusion. Based on the foregoing deficiencies, the Clerk requests that this “count” be dismissed.

2. Alleged Violation of “Oath of Office.”

The Amended Complaint alleges:

More specifically, All of the here-in Accused Public-Servants have here-under Violated the Limited Conditions under which Florida Statute which Governs the “Oath of Office” procedures which they are Constitutionally Obligated to Comply. Specific Statutes here-in involved, are at 876.05, & at 876.09. These Oath Requirements are Applicable to All Constitutional & Elected Officers, & All Employees, of All Cities, Towns, Counties, & other Administrative & Political Sub-Divisions of our State, including our educational system.

Am. Compl., p. 7. This “count” is a legal conclusion with no supporting facts that pertain to the Clerk. Moreover, neither section 876.05 nor section 876.09 of the Florida Statutes creates a private right of action for enforcement regarding any alleged violations of the oath of office. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

3. Allegation of being “Complicit in the Unlawful Search & Seizure.”

The Amended Complaint alleges:

All of the here-in Accused, have here-by become Complicit in the “Unlawful Search & Seizure” of the People & Property here-in described. This was all done in bold-faced, malicious, & coldly brutal Adversity towards the grand principles of Liberty & Justice which have been enshrined in our Florida State Constitution; specifically at Article I, Section 12.

The here-in Accused have similarly & willfully participated in Unlawful Takings & other Criminal Violations of the Principles of Liberty & Justice, as enshrined under the Fourth & Fifth Amendments to our United States Constitution document.

Am. Compl., p. 7. This “count” is a legal conclusion with no supporting facts that pertain to the Clerk. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employee(s) that reasonably relates to a possible cause of action regarding an unlawful search and seizure or an unlawful taking. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

4. Allegation of “Trademark Infringement” and of “Dilution of Trademarks.”

The Amended Complaint alleges:

The here-in Accused have also knowingly received & transferred misappropriated &/or stolen trade-secrets and other forms of intellectual property; they have become guilty of “Trademark Infringement”, & of “Dilution of Trademarks”.

Am. Compl., p. 7. This is a conclusory allegation with no supporting facts that pertain to the Clerk. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employee(s) that reasonably relates to a possible cause of action regarding trademarks. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

5. Allegation of Conspiracy Regarding the Use of “US-Mail System.”

The Amended Complaint alleges:

The here-in Accused have Conspired to Use our US-Mail System, and electronic wires & communications technologies, with their intent to deprive Defendants intangible right to receive honest services; all of which is in Adverse Conflict with 18 USC, sections 1346, & 1349; & also in similar Conflict with Florida Statute 817.034 (1) (a) (b).

Am. Compl., p. 7. Section 817.034 is the Florida Communications Fraud Act, subsection (1) of which is simply the statute's statement of legislative intent. The federal statute that Plaintiff cites, 18 U.S.C. sections 1341-1351, governs mail fraud.

This "count" consists of a conclusory allegation with no supporting facts that pertain to the Clerk. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employees(s) that reasonably relates to mail fraud or any conspiracy related thereto. This "count" fails to meet the required pleading standard for either conspiracy or fraud. First, it is well-settled that allegations of fraud must be pled with such particularity as the circumstances may permit. *Thompson v. Bank of N.Y.*, 862 So. 2d 768, 770 (Fla. 4th DCA 2003); Fla. R. Civ. P. 1.120(b). There are no factual allegations that support this "count," let alone allegations pled with particularity. Second, the elements of a cause of action for civil conspiracy were previously enumerated *supra*. See *Eagletech*, 79 So. 3d at 863. Plaintiff's bare bones allegations in this "count" fail to satisfy the elements of a civil conspiracy claim. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this "count" be dismissed.

6. Allegations of "System & On-Going Course of Criminal Conduct."

The Amended Complaint alleges:

The here-in Accused have here-under Engaged In their Systematic & On-Going Course of Criminal-Conduct; all with their Intent to Defraud the People of this City, County, State, & Nation; & with Intent to Fraudulently Obtain Property from these People, by way of their False Pretenses & False Representations; & through their Willful Misrepresentation of their Intent to Act in the Future. Specific Florida Statutes here Violated are to be found at: 817.034 (3) (d).

Am. Compl., p. 7. Section 817.034 is the Florida Communications Fraud Act; subsection (d) is simply the definition of "scheme to defraud" within that statute.

This "count" consists of a conclusory allegation with no supporting facts that pertain to the Clerk and fails to meet the pleading standard for fraud. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employee(s) that reasonably relates to a cause of action

regarding an ongoing course of criminal conduct, fraud, or misrepresentations. As previously stated *supra*, it is well-settled that allegations of fraud must be pled with such particularity as the circumstances may permit. *Thompson*, 862 So. 2d at 770; Fla. R. Civ. P. 1.120(b). There are no factual allegations that support this “count,” let alone allegations pled with particularity. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

7. Allegations of 42 U.S.C. § 1983 Violation.

The Amended Complaint alleges:

Here-under, the here-in Accused Defendants have Conspired to Criminally Trespass up-on these Co-Plaintiff’s Rights to Property, as Protected by the Laws & Constitutions of our State of Florida, & of our United States of America, all in Adverse Conflict with the Principles of Liberty 7 Justice, as codified in the US-Code, at: 42 USC, sections 1983, 1985; & also in 18 USC, at section 242.

Am. Compl., p. 7. To prove a section 1983 conspiracy, a plaintiff must show that the parties "reached an understanding to deny the plaintiff his or her rights [and] prove an actionable wrong to support the conspiracy." *Bailey v. Bd. of Cty. Comm'rs of Alachua*, 956 F. 2d 1112, 1122 (11th Cir. 1992); *Rowe v. Fort Lauderdale*, 279 F.3d 1271, 1283 (11th Cir. 2002). To state a claim for conspiracy, **it is not enough to simply aver that a conspiracy existed.** *Fullman v. Graddick*, 739 F.2d 553, 556-57 (11th Cir. 1984).

This is a conclusory allegation with no supporting facts that pertain to the Clerk. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employee(s) that reasonably relates to a cause of action regarding a conspiracy. Plaintiff’s mere averment that a conspiracy existed is not enough. *Id.* The Amended Complaint fails to allege any facts to support a claim that the Clerk has violated Plaintiff’s constitutional rights under 42 U.S.C. § 1983. The Amended Complaint fails to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

8. Allegations of “Criminal Conspiracy to Defraud.”

The Amended Complaint alleges:

The here-in Accused Defendants have further here-under Conspired Criminally to De-Fraud our Florida Courts, by & through their multitude of pathological False-Claims & False-Statements; all of which is in Adversarial Conflict with our Florida State Rules of Judicial Procedure, especially at Rule 2.515 (a); & also in Conflict with 18 USC sec 287 and 1001; & also in Conflict with established Procedures for Governing “Oath of Admissions to the Florida Bar”; including the Florida Statutes of 837.02 and 837.06.

Am. Compl., p. 7. This “count” consists of a conclusory allegation with no supporting facts that pertain to the Clerk. Nothing in the Amended Complaint describes any act by the Clerk or Clerk employee(s) that reasonably relates to any fraudulent acts. This “count” fails to meet the required pleading standard for either conspiracy or fraud. First, it is well-settled that allegations of fraud must be pled with such particularity as the circumstances may permit. *Thompson*, 862 So. 2d at 770; Fla. R. Civ. P. 1.120(b). There are no factual allegations that support this “count,” let alone allegations pled with particularity. Second, the elements of a cause of action for civil conspiracy were previously enumerated *supra*. See *Eagletech*, 79 So. 3d at 863. Plaintiff’s bare bones allegations do not satisfy the required elements of a civil conspiracy claim. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

9. Allegation of “Acting Beyond the Limits of their Corporate Franchise.”

The Amended Complaint alleges:

Here-under, All here-in Accused Corrupted Public-Servant Defendants, have been “Acting Beyond the Limits of their Corporate Franchise”, to Serve the Public-Interest; which, here-under, & as a “matter of law”, Removes Their Ability to Claim Any Protections of “Limited Liability”; because, they are In Violation of Doctrines Governing “Ultra Vires”.

Therefore, by & through Their Malicious-Prosecution of these Co-Plaintiffs; Significant Harm & Injury has been made to Our Trademarks, Intellectual Property, & Trade Secrets; because, at least in-part, our reputation & livelihood become directly threatened & endangered by them.

Am. Compl., p. 8. This “count” consists of a conclusory allegation with no supporting facts that pertain to the Clerk. The Clerk is unable to determine what legal theory this cause of action purports

to be brought under to obtain relief against the Clerk. As with the rest of the Amended Complaint, the Plaintiff has not pled any facts describing any act by the Clerk or Clerk employee(s) in support of this claim. Plaintiff has failed to state a cause of action for which relief can be granted. The Clerk requests that this “count” be dismissed.

C. FAILURE TO PROVIDE PRE-SUIT NOTICE REQUIRES DISMISSAL.

To the extent that the Amended Complaint sufficiently states a cause of action, any tort claims that the Plaintiff is attempting to bring must be dismissed for failure to comply with the pre-suit notice requirements of section 768.28, Florida Statutes. That statute provides:

An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality, county, or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing;

§ 768.28(6)(a), Fla. Stat. (2023). This pre-suit notice requirement applies to clerks of court. *Thigpin v. Sun Bank of Ocala*, 458 So. 2d 315 (Fla. 5th DCA 1984) (dismissing suit against clerk for alleged failure to record a mortgage where plaintiff failed to comply with section 768.28(6)). As addressed more fully herein, Plaintiff’s only specific statement as to any act by the Clerk’s office is, like *Thigpin*, an alleged failure to file documents. Plaintiff has failed to allege the performance of the pre-suit notice requirements, a condition precedent to filing suit. Accordingly, the Clerk requests that the Amended Complaint be dismissed.

D. SOVEREIGN IMMUNITY BARS PLAINTIFF’S CLAIMS

To the extent that the Amended Complaint sufficiently states a cause of action, any tort claims that the Plaintiff is attempting to bring are barred by the doctrine of sovereign immunity as provided by Florida law:

The state and its agencies and subdivisions shall be liable for tort claims in the same

manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$200,000 or \$300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature.

§ 768.28(5)(a), Fla. Stat. (2022). According to page 10 of the Amended Complaint, Plaintiff is seeking a “Claim of Damages; aka: Transgression Fees & Punishments” in the amount of “One Million Dollars & Five years in Jail.” Plaintiff has not identified any compensatory damages she has suffered due to any act by the Clerk or Clerk employee(s); therefore, the damages request appears to be solely punitive in nature. Sovereign immunity bars such a request for punitive damages. To the extent this can be construed as a request for compensatory damages, sovereign immunity bars such a request that is over \$200,000. Florida’s limited waiver of sovereign immunity codified in section 768.28(9)(a) is inapplicable, as the Plaintiff has not made the requisite allegations to establish the necessary wanton and willful disregard of human rights, safety, or property. The Clerk requests dismissal of the Amended Complaint based on the doctrine of sovereign immunity.

10. JUDICIAL IMMUNITY BARS PLAINTIFF’S CLAIMS

The only alleged act of the Clerk contained within the Amended Complaint is an alleged failure to file documents. As discussed *supra*, it is unclear whether this alleged act describes a refusal to file court documents or a refusal to record a document in the official records. This ambiguity alone requires dismissal. However, to the extent that the Plaintiff is attempting to allege that the Clerk did not file court documents, the doctrine of judicial immunity applies. In Florida, the clerk is a quasi-judicial officer. *Zoba v. City of Coral Springs*, 189 So. 3d 888, 890 (Fla. 4th DCA

2016) (citing *Fong v. Forman*, 105 So. 3d 650, 652 (Fla. 4th DCA 2013)). The clerk is indisputably the custodian of the court file and is responsible for the filing of documents in court files. The clerk's ministerial acts relating to the filing of such documents thus falls within "the protection afforded by judicial immunity." *Zoba*, 189 So. 3d at 983. The Clerk requests dismissal of the Amended Complaint based on the doctrine of judicial immunity.

In conclusion, the Amended Complaint does not set forth a claim for relief, let alone (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, (2) a short plain statement of the ultimate facts showing that the plaintiff is entitled to relief, or (3) a demand for judgment for the relief to which the plaintiff is entitled. *See* Fla. R. Civ. P. 1.110. To the extent that the Amended Complaint sufficiently states a cause of action, the Plaintiff's claim is barred due to the Plaintiff's failure to provide pre-suit notice as required under section 768.28 and by the doctrines of sovereign and judicial immunity. For these reasons, the Amended Complaint must be dismissed.

WHEREFORE, Defendant, Joseph Abruzzo in his official capacity as the Clerk of the Circuit Court & Comptroller, Palm Beach County, respectfully requests for this Court to grant this Motion to Dismiss the Amended Complaint, dismiss the Amended Complaint, and grant such other and further relief as the court deems proper.

Dated: May 5, 2023

Respectfully submitted,

CLERK OF THE CIRCUIT COURT &
COMPTROLLER, PALM BEACH COUNTY

By: s/ Collin D. Jackson
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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023 the foregoing document was furnished upon the Plaintiff, Cindy Falco-DiCorrado, 316 NW 1st Avenue, Boynton Beach, FL 33435, e-mail: openarmsandopenhearts@hotmail.com; and Assistant Attorney General Christopher Kondziela, Christopher.Kondziela@myfloridalegal.com, Antonia.Gordon@myfloridalegal.com, luisa.deal@myfloridalegal.com; via the Florida e-Portal System.

By: s/ Collin D. Jackson
Collin D. Jackson, Esq.