

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CIVIL ACTION**

WILLIAM G. GAY, and
CATHY P. MOORE,

Plaintiffs,

v.

Case No. 16-004836-CI

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida, TRAVIS PALLADENO, TERRY LISTER,
NANCY HODGES and HOUSH GHOVAEE,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, WILLIAM G. GAY and CATHY P. MOORE (“PLAINTIFFS”), by and through their undersigned counsel, and pursuant to Florida Statutes Chapter 86 and Chapter 119 and §286.011 Fla. Stat., file this Complaint for declaratory judgment against the DEFENDANTS, THE CITY OF MADEIRA BEACH, a municipal government of the State of Florida (hereinafter “CITY”), TRAVIS PALLADENO (“PALLADENO”), TERRY LISTER (“LISTER”), NANCY HODGES (“HODGES”), and HOUSH GHOVAEE (“GHOVAEE”) in their individual capacities and in support thereof states:

1. This is an action for Declaratory Relief over which this court has subject matter jurisdiction pursuant to Florida Statutes Chapter 86, and §286.011 Fla. Stat.

2. Venue is proper in Pinellas County pursuant to Florida Statutes § 47.011, because all of the parties are located in Pinellas County, and because the cause of action accrued in Pinellas County, Florida. § 47.011, Fla. Stat.

3. PLAINTIFFS are residents, citizens and taxpayers in the CITY.

4. PLAINTIFFS have a present, practical need regarding a *bona fide* dispute, about which they are in doubt, regarding the violation of §286.011 Fla. Stat. (the “Sunshine Law”) and Florida Statutes Chapter 119 (the “Public Records Law”) by the CITY, PALLADENO, LISTER, HODGES, and GHOVAEE. There is a justiciable question as to the right of the PLAINTIFFS to request the Court to determine whether the CITY, PALLADENO, LISTER, HODGES, and GHOVAEE violated the Constitutional rights of PLAINTIFFS and of the citizens of the CITY, to wit Article I Sections 24 Florida Constitution.

5. Defendant, CITY, is an incorporated municipality located within Pinellas County, Florida, which operates under a City Charter (the “Charter”).

6. The CITY is governed by four commissioners and a mayor (the “Commission”).

7. Defendant PALLADENO, is the mayor of the CITY.

8. The Commissioners of the CITY are LISTER, HODGES, HOUSH GHOVAEE and Elaine Poe (“Poe”).

COUNT 1

VIOLATION OF SUNSHINE LAW: VOTING BY SECRET BALLOT

9. PLAINTIFFS reallege paragraphs 1 through 8 as fully as set forth herein.

10. Over the last several months, from January to May 2016, the Commission considered the rezoning of two controversial developments, Holiday Isle and Town Center (the “Developments”).

11. The Developments were contingent on the Commission approving the rezoning of the parcels of land on which the Developments would be constructed.

12. Commissioner Pat Shontz (“Shontz”) had a material interest in the Town Center development because she was the seller of the cornerstone piece of property required for the

development.

13. The week before the final hearing of rezoning was scheduled, over 1000 residents (more than two thirds of the number of residents who voted in the previous election) petitioned the CITY to repeal the ordinance which permitted the rezoning. The CITY refused even to consider the petitions.

14. On June 14, 2016, the Commission held a meeting to vote on the final approval of the rezoning of both Developments. The vote was to occur in two stages. The Holiday Isle development was to be voted on first. The Town Center development was to be voted on immediately thereafter.

15. After voting to approve the Holiday Isle development, Commissioner Shontz resigned because she had a material interest in the Town Center developments.

16. This resignation left only three commissioners in the CITY and created a vacancy in District 4 of the CITY (the “Vacancy”).

17. Thereafter, the CITY, without any public meeting, established a deadline of July 1, 2016, for interested persons to file applications to fill the Vacancy. (**Exhibit 1, Page 1**).

18. Applications for the Vacancy (the “Applications”) were submitted to the CITY by three candidates (the “Candidates”), John E. Douthirt (“Douthirt”), Joseph Fala (“Fala”), and GHOVAEE. (**Exhibit 2**)

19. Interestingly, GHOVAEE is a developer in the CITY and developed several projects in the CITY, including the Marriott Courtyard.

20. The Applications required the Candidates to complete Form 1, a financial disclosure statement required by Florida law. Douthirt and Fala completed and signed Form 1.

GHOVAEE did not¹.

21. The CITY distributed the Applications and ballots (the “Ballots”) to fill the Vacancy to Mayor PALLADENO, and Commissioners LISTER, HODGES, and POE.

22. The Ballots listed the three candidates. The instruction to the Commissioners was to fill out the Ballots and, in doing so, they were to list the order of preference. The preferences were to be ranked from 1 to 3 to fill the Vacancy, with 1 being the first choice and 3 being the last choice.

23. Commissioner Poe objected to candidate GHOVAEE being considered because of possible conflicts he may have with the CITY. **(Exhibit 3)**

24. On or before July 7, 2016, PALLADENO, LISTER, and HODGES submitted their Ballots.

25. The Ballots of PALLADENO, LISTER and HODGES listed the Candidates in identical order, GHOVAEE, Fala, Douthirt. Poe listed GHOVAEE last.

26. On July 8, 2016, the CITY reported that GHOVAEE had been selected by the Commission to fill the Vacancy and that he would be sworn in at the Commission meeting to be held on July 12, 2016. **(Exhibit 4)**

27. Prior to the July 12, 2016 Commission meeting, a Special Commission Workshop was scheduled for July 12, 2016 at 4:30 pm.

28. The agenda for the Special Workshop listed item 3 as “Discussion on board of commissioner’s ballot and selection of candidate for District 4 vacancy.” **(Exhibit 5)**

29. At the Special Workshop, the City Manager confirmed that the method by which the Commission voted to fill the Vacancy was as set forth above.

30. The regular Commission meeting was set for 6:00 pm on July 12, 2016,

¹ On July 7, at 1:14 pm, the City Clerk sent the Mayor and Commissioners an email stating that

immediately after the conclusion of the Special Workshop.

31. The first item on the agenda for the regular Commission meeting listed, under Consent Agenda (**Exhibit 6**) the following:

1. BOARD OF COMMISSIONERS DISTRICT 4 APPOINTMENT

CITY CHARTER, ARTICLE II, SECTION 2.2 (3) FILLING OF VACANCIES. ...A VACANCY OF THE OFFICE OF DISTRICT COMMISSIONER ... SHALL BE FILLED WITHIN 30 DAYS OF ITS OCCURRENCE BY A MAJORITY VOTE OF THE REMAINING MEMBERS OF THE BOARD OF COMMISSIONERS...ANY PERSON SELECTED TO FILL SUCH A VACANCY SHALL POSSESS ALL THE QUALIFICATIONS REQUIRED OF A COMMISSION MEMBER BY THIS CHARTER AND BY LAW...THE PERSON SELECTED TO FILL A VACANCY IN THE OFFICE OF DISTRICT COMMISSIONER SHALL SERVE THE UNEXPIRED TERM OF THE OFFICE.

**COMMISSIONER DISTRICT 4
HOUSH GHOVAEE**

32. At that regular Commission meeting on July 12, 2016, after preliminary discussion about the process for filling the Vacancy, GHOVAEE was appointed by PALLADENO, LISTER, and HODGES.

33. Poe dissented from the appointment.

34. The Plaintiffs seek a determination that the CITY, PALLADENO, LISTER and HODGES violated § 286.011 Fla. Stat., known as The Sunshine Law by taking formal action to appoint GHOVAEE to fill the Vacancy by secret ballot without a public meeting.

35. The Sunshine Law requires that all meetings at which the Commission takes official action be open to the public and in the “Sunshine”.

36. If the Commission takes action outside of a public meeting, any such action is invalid and void *ab initio*.

All meetings of any board or commission of any state agency or authority

or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and **no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.** §286.011(1) Fla. Stat. (Emphasis supplied)

37. Despite the fact that GHOVAEE was the only candidate who failed to fill out or even sign the financial disclosure statement known as Form 1, which was left blank PALLADENO, LISTER and HODGES chose him to fill the Vacancy.

38. Since the CITY, PALLADENO, LISTER, and HODGES took action outside of a public meeting to appoint GHOVAEE, they violated the Sunshine Law.

39. The appointment of GHOVAEE to fill the Vacancy was action taken outside of a public meeting by the CITY, PALLADENO, LISTER, and HODGES, his appointment is invalid and void *ab initio*.

40. PLAINTIFFS are entitled to be reimbursed their reasonable attorneys' fees pursuant to Section 286.011(4) Fla. Stat.

WHEREFORE, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY, PALLADENO, LISTER, and HODGES have violated the Florida Sunshine Law as set forth herein, 2) that the Court determine that the appointment of GHOVAEE to fill the vacancy in District 4 of the CITY is invalid and void *ab initio*; and 3) that the Court order the CITY, PALLADENO, LISTER and HODGES to reimburse the Plaintiffs for reasonable attorneys' fees as set forth in The Sunshine Law, including §286.011(4) Fla. Stat. as well as costs of this action.

COUNT 2
VIOLATION OF PUBLIC RECORDS LAW:
REFUSAL TO PROVIDE PUBLIC RECORDS

41. PLAINTIFFS incorporate paragraphs 1 through 8 as though fully set forth herein.
42. Ethics complaints (the “Ethics Complaints”) were filed by citizens of the CITY against the CITY’s elected officials and employees with the Florida Commission on Ethics (the “Ethics Commission”).
43. Initially, the Ethics Complaints were delivered only to the persons charged in the complaints, PAT SHONTZ (“SHONTZ”), FRANK DE SANTIS (“DESANTIS”), CHERYL MCGRADY (“MCGRADY”), and SHANE CRAWFORD (“CRAWFORD”).
44. Each of their respective Ethics Complaints were subsequently delivered to the City and the City Attorney by SHONTZ, CRAWFORD, MCGRADY, and DESANTIS.
45. The CITY filed a claim with its insurance carrier regarding the Ethics Complaints and other matters. The carrier sent coverage letters (the “Coverage Letters”) to the CITY indicating that the carrier would assume the defense of the Ethics Complaints as well as certain legal actions filed against the CITY and its elected officials and employees. The Coverage Letters included matters other than the Ethics Complaints.
46. On July 28, 2016, the City Attorney, THOMAS J. TRASK, ESQ., prepared a memo (the “Memo”) entitled Complaints Filed With Commission on Ethics Regarding City of Madeira Beach Officials (the “Ethics Complaints”). (**Exhibit 7**)
47. The Memo stated that the Florida Commission on Ethics had determined that the Ethics Complaints were deemed to be “sufficient for investigation”. The Memo named SHONTZ, DE SANTIS, MCGRADY, and CRAWFORD as the Madeira Beach employees against whom the Ethics Complaints were filed. In addition, the Memo indicated that a complaint had also been

filed against the mayor, TRAVIS PALLADENO² and Commissioner Poe³.

48. According to the Memo, the Coverage Letters contained a “reservation of rights” provision which the City Attorney advised the Commission could mean that the insurance coverage could cease at any time “should the circumstances warrant”. Furthermore, the Memo warned that the insurance coverage contained “deductibles” of \$5000 per claim and was limited to an aggregate \$100,000 which could be exhausted under the limitations set out in the insurance policy and in the numerous Coverage Letters. Thus, the conclusion of the Memo was that the CITY would have to pay at least \$5000 a claim or \$25,000 of taxpayer dollars to defend the Ethics Complaints and, in addition, would be responsible for any legal fees in excess of \$100,000 paid by the insurance carrier and may be liable for even more fees and costs if the insurance carrier terminated coverage.

49. The Memo was initially distributed to the Mayor, the Commissioners, CRAWFORD and the Assistant City Manager/Finance Director, VINCENT TENAGLIA.

50. On August 8, 2016, the memo was also included in the August 9, 2016 Commission agenda packet (the “Agenda Packet”). The purpose of including the Memo was that, on the agenda for that meeting, the Commission was scheduled to vote on whether to authorize the CITY to pay the legal fees and costs for SHONTZ, DE SANTIS, MCGRADY, and CRAWFORD to defend the Ethics Complaints.

51. Unbeknownst to the public, the City Attorney had disclosed the contents of the Ethics Complaints to PALLADENO, LISTER, HODGES, and GHOVAEE in individual meetings or

² The Memo indicated that there was a complaint filed against PALLADENO, and, to the extent that PALLADENO transmitted the complaint or is entitled to be reimbursed pursuant to the decision the CITY, his claim, ethics complaint, and coverage letter are included in the allegations set forth throughout.

³ The Memo did not disclose how the City Attorney obtained complaints filed against PALLADENO or Poe or how he became aware of the complaints.

discussions prior to the August 9, 2016 Commission meeting. The terms of the Coverage Letters were also discussed in those individual meetings. Thus, in addition to providing non public information to the PALLADENO, LISTER, HODGES, and GHOVAEE, the City Attorney acted as a conduit between them in order for them to decide to authorize the reimbursement of fees.

52. When the Memo was disclosed in the Agenda Packet, PLAINTIFFS, via their counsel, requested the CITY to provide copies of the Ethics Complaints identified in the Memo as well as the Coverage Letters in accordance with §119.07 Fla. Stat. and Chapter 119 Fla. Stat., (the “Public Records Act”). **(Exhibit 8)**

53. A public record is defined as follows:

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency

§119.07(1)(a) Fla. Stat.

54. The Public Records Act requires that

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

§119.011(12) Fla. Stat.

55. The City Attorney advised the PLAINTIFFS that the Ethics Complaints were exempt from disclosure as public records based on §112.324 Fla. Stat. and refused to produce them in accordance with PLAINTIFFS’ demand. **(Exhibit 8)**

56. In fact, the Ethics Complaints were not exempt from disclosure and were public records when they were held by the City and/or City Attorney after delivery by SHONTZ, DE SANTIS,

MCGRADY, and CRAWFORD.

57. §112.324 Fla. Stat. provides only that ethics complaints that are in the possession of the ethics commission or its agents are exempt.

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation **held by the commission or its agents**, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals **held by the commission or its agents**, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

58. Thus, once the Ethics Complaints were delivered to the CITY and the City Attorney by the persons against whom the complaints were filed, they became public records since the Ethics Complaints requested were not those “held by the [Ethics] commission or its agents.”

59. Similarly, when the Coverage Letters were delivered to the CITY they became public records subject to the requirements of Florida Statutes Chapter 119.

60. The CITY and the City Attorney refused to provide the Coverage Letters as well, stating that they were exempt under §112.324 Fla. Stat. since the Coverage Letters “listed the details” of the Ethics Complaints. (**Exhibit 9**)

61. The CITY, therefore, violated the Public Records Act by failing to produce the requested records, i.e. the Ethics Complaints and the Coverage Letters.

62. PLAINTIFFS are entitled to be compensated for reasonable attorneys’ fees pursuant to Chapter 119 Fla. Stat. including but not limited to § 119.071(1)(d)(2) Fla. Stat. because of the

failure of the CITY to comply with the Public Records Act.

63. PLAINTIFFS request that this Honorable Court grant an expedited hearing pursuant to §119.11 Fla. Stat., which states that “Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.”

WHEREFORE, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY has violated The Public Records Act as a result of its refusal to provide the Ethics Complaints to PLAINTIFFS as set forth herein, 2) that the Court determine that the CITY has violated The Public Records Act for its refusal to provide the Coverage Letters to PLAINTIFFS as set forth herein, 3) that the Court grant PLAINTIFFS an immediate hearing on this matter pursuant to §119.11 Fla. Stat., and 4) that the Court order the CITY to reimburse the PLAINTIFFS their reasonable attorneys’ fees as set forth in § 119.071(1)(d)(2) Fla. Stat. as well as costs of this action.

COUNT 3
VIOLATION OF THE SUNSHINE LAW:
COMMISSIONERS MADE DECISION TO DEFEND ETHICS COMPLAINTS
BASED ON NONPUBLIC COMMUNICATIONS AND INFORMATION

64. PLAINTIFFS incorporate paragraphs 1 through 8 and 42 through 63 as though fully set forth herein.

65. In the Memo, the City Attorney opined that public employees are entitled to be reimbursed for legal fees and settlements for “civil actions” provided two mandatory preconditions are present. The complained of actions must meet “the two-prong test of (1) arising out of or in connection with the performance of official duties and (2) serving a public purpose.” (Memo, **Exhibit 7 page 5**)

66. Thus, in order for SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE

CRAWFORD to be entitled to be reimbursed for legal fees, the Commission was required to determine that the allegations of the Ethics Complaints were the result of actions that arose out of or were in connection with the performance of official duties and (2) that those actions served a public purpose

67. In private meetings or discussions with PALLADENO, LISTER, HODGES and GHOVAEE, the City Attorney disclosed the details of the allegations of the Ethics Complaints so that those members of the Commission could make a decision to pay for the legal fees of SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE CRAWFORD at the upcoming Commission meeting.

68. At the August 9, 2016 Commission meeting, the City Attorney discussed the Memo with the Commission members but did not discuss the details of the allegations in the Ethics Complaints and the Coverage Letters which he had previously disclosed to PALLADENO, LISTER, HODGES and GHOVAEE .

69. The City Attorney advised PALLADENO, LISTER, HODGES and GHOVAEE, that they could only base the decision to pay for the legal defense of the Ethics Complaints if they determined that the allegations in each of the Ethics Complaints **arose out of or in connection with the performance of his or her official duties and the duties served a public purpose.**

(Emphasis supplied)

70. PALLADENO, LISTER, HODGES and GHOVAEE, having been briefed on the contents of the Ethics Complaints and the Coverage Letters then voted unanimously to approve the payment of legal fees⁴.

71. At the August 9, 2016 Commission meeting, neither the City Attorney nor

⁴ Commissioner Poe had been excused from the meeting prior to the discussion and the vote on the payment of legal fees and did not vote on the matter.

PALLADENO, LISTER, HODGES or GHOVAEE discussed the content or details of any of the Ethics Complaints before the vote.

72. Neither the City Attorney nor PALLADENO, LISTER, HODGES or GHOVAEE disclosed that they voted to authorize the payment of legal fees based on private discussions concerning the Ethics Complaints and Coverage Letters which were never disclosed to the public.

73. Neither the City Attorney nor PALLADENO, LISTER, HODGES or GHOVAEE disclosed the facts upon which they determined that the Ethics Complaints “arose out of or in connection with the performance of his or her official duties and that the duties served a public purpose.”

74. It is possible that Ethics Complaints and the Coverage Letters may reveal that the decision to authorize the payment of legal fees on behalf of SHONTZ, FRANK DE SANTIS, CHERYL MCGRADY, and SHANE CRAWFORD was not based on the requirement that the reimbursement must be based on Ethics Complaints which “arose out of or in connection with the performance of his or her official duties and that the duties served a public purpose.”

75. The decision to authorize the payment of legal fees by PALLADENO, LISTER, HODGES and GHOVAEE violated the Sunshine Law because it was made outside of a public meeting, **during private meetings or discussions** with the City Attorney, who provided the non public information upon which they based their decision, and also acted as a conduit with those members of the Commission when he advised them about details of the Ethics Complaints.

76. As a result of the Sunshine Law violation, the decision to pay the legal fees for SHONTZ, SANTIS, MCGRADY, and CRAWFORD is invalid and void *ab initio* because “no resolution, rule, or formal action shall be considered binding except as taken or made” at a public meeting.

§286.011(1) Fla. Stat.⁵

77. PLAINTIFFS are entitled to be reimbursed their reasonable attorneys' fees pursuant to the Sunshine Law, including §286.011(4) Fla. Stat.

WHEREFORE, PLAINTIFFS, respectfully request 1) that the Court determine that the CITY, PALLADENO, LISTER, HODGES and GHOVAEE have violated The Sunshine Law as a result of making the decision to authorize payment of legal fees based on the facts set forth herein, 2) that the Court determine that the decision to authorize the CITY to pay for the legal fees of SHONTZ, SANTIS, MCGRADY, and CRAWFORD is invalid and void *ab initio*, because it was not decided in a public meeting, and 3) that the Court order the CITY, PALLADENO, LISTER, HODGES and GHOVAEE to reimburse the Plaintiffs their reasonable attorneys' fees as set forth in the Sunshine Law, including § 286.011(4) Fla. Stat. as well as costs of this action.

CERTIFICATE OF SERVICE

I certify that I have filed this Amended Complaint on August 16, 2016 using Florida's E-Filing Portal, which will electronically serve a copy on Andrew J. Salzman, Esq. and Jeffrey Jensen, Esq. of Unice, Salman, Jensen, P.A., 1815 Little Road, Trinity, FL 34655 at service@unicesalzman.com and asalzman@unicesalzman.com.

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⁵ It is unclear whether the vote to approve the payment of legal fees authorized the payment of legal fees on behalf of any other person. If the Court determines that the vote so authorized, PLAINTIFFS request that the Court determine that authorization to be invalid and void *ab initio* as well.

and

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