IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ASSOCIATION TO PRESERVE THE EATONVILLE COMMUNITY, INC., and BABETTA ROSE LEACH HATLER, Plaintiffs, v. SCHOOL BOARD OF ORANGE COUNTY, FL, Defendant.	Case No.: 2023-CA-005295-O

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS COMPLAINT WITH PREJUDICE

Motion and response filed by Plaintiffs Association to Preserve the Eatonville Community, Inc. and Babetta Rose Leach Hatler ("Plaintiffs"), having heard argument on September 21, 2023, and being otherwise advised in the premises, rules as follows:

(1) Plaintiffs plead opinions, theories, and conclusions that do not state a cause of action for declaratory relief; (2) Plaintiffs lack standing; (3) the use restriction was released by a joint stipulation, an amended settlement agreement, and a deed release; (4) there is no present, actual controversy because the School Board is no longer taking action regarding the Hungerford Property; (5) Plaintiffs failed to comply with the deadlines in the Florida Administrative Procedure Act; (6) the use restriction violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; (7) Plaintiffs have failed to join indispensable parties; (8) Plaintiffs have failed to attach the amended settlement agreement as an exhibit; (9) Plaintiffs have failed to state a cause of action for injunctive relief; and (10) Plaintiffs' claims are a belated attempt to intervene in the 2011 *Allen* Litigation. For the reasons set forth below, the Court **DENIES** the Motion.

MOTION TO DISMISS STANDARD

At the motion to dismiss stage, all well-pleaded allegations are taken as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Bilbrey v. Meyers*, 91 So. 3d 887, 890 (Fla. 5th DCA 2012) (quoting *Ralph v. City of Daytona Beach*, 471 So. 2d 1, 2 (Fla.

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2006-4 v. Meyer, 265 So. 3d 715, 718 (Fla. 2d DCA 2019). Lack of standing must be apparent on the face of the pleading to provide grounds for dismissal. *See* Fla. R. Civ. P. 1.110(d).

Plaintiffs' allegations to not facially demonstrate a lack of standing. Because the School Board's standing argument requires the Court to consider matters beyond the four corners of the First Amended Complaint, it is not appropriately addressed at the motion to dismiss stage.

C. Prior Litigation and Deed Release

The School Board's argument that the joint stipulation, amended settlement agreement, and deed release operate to extinguish the use restriction would require the Court to consider and decide the merits of the case at the motion to dismiss stage. At this point in the proceedings, the Court must assess only whether Plaintiffs have pleaded entitlement to a declaration, and it would be premature to decide which party is entitled to a declaration in its favor on the merits.

D. Present, Actual Controversy

Plaintiffs allege that the School Board has been attempting to sell the Hungerford Property for a prolonged period to a private developer, including most recently in a transaction that was terminated in March 2023. Given the history of attempts to sell the property, the termination of the most recent transaction does not affirmatively and conclusively demonstrate that Plaintiffs cannot establish a present, actual controversy as a matter of law. The Court emphasizes that, at the current stage of the proceedings, it must accept the allegations as true and view them in the light most favorable to Plaintiffs. The denial of the Motion is without prejudice to the School Board asserting the lack of a present, actual controversy at a later stage of the proceedings.

E. Exhaustion of Administrative Remedies

Failure to exhaust administrative remedies, like lack of standing, is an affirmative defense, so that its conclusive application must appear on the face of the First Amended Complaint to

warrant dismissal. *See Wilson v. County of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004). Because Plaintiffs' allegations do not facially demonstrate applicability of this defense, Plaintiffs' alleged failure to exhaust administrative remedies is not an appropriate basis for dismissal.

F. Equal Protection

The alleged invalidity of the use restriction under the Equal Protection Clause is a merits question that is appropriately addressed at a later stage of the proceeding. At this point, the Court is called upon to assess only whether Plaintiffs have pleaded entitlement to a declaration of their rights, and it would be premature for the Court to reach the merits and decide that the School Board is entitled to a declaration in its favor on the merits based on the Equal Protection Clause.

G. Failure to Join Indispensable Parties

The School Board argues that Plaintiffs failed to join three indispensable parties: the Town of Eatonville, the successor trustees of the Hungerford Chapel Trust, and HostDime LLC. Although the failure to join indispensable parties can be addressed on a motion to dismiss in some cases, this is not such a case because the Amended Complaint does not conclusively show that this matter cannot be adjudicated without affecting the rights of the non-parties. *See LeGrande v. Emmanuel*, 889 So. 2d 991, 995-996 (Fla. 3d DCA 2004) (explaining that, while "Rule 1.140 certainly provides that the failure to join indispensable parties may be raised by motion," a pleading should not be dismissed where "it does not conclusively appear from the face of the complaint that [the nonparties] are indispensable parties to [the] action," and the issue should instead be reserved for the defendant to "raise and prove [the] defense by way of an affirmative defense").

H. Failure to Attach Amended Settlement Agreement

Although the amended settlement agreement may be relevant to the School Board's defensive position, it is not a document on which Plaintiffs' cause of action has been brought. For

that reason, Florida Rule of Civil Procedure 1.130(a) does not require dismissal for failure to attach the agreement. *See Nationstar Mortgage, LLC v. McDaniel*, 288 So. 3d 1235, 1237 (Fla. 5th DCA 2020) ("Florida Rule of Civil Procedure 1.130(a) only requires that the documents (or copies thereof) on which the action is brought be attached to the complaint; here, those would be the mortgage and note. Appellant is not suing on the servicing agreement or power of attorney; thus, those documents need not be attached to the complaint." (citation omitted)). *Railey v. Skaggs*, 220 So. 2d 689, 690 (Fla. 3d DCA 1969) (explaining that Rule 1.130(a) "is meant to include those documents upon which an action is being brought," not all potentially material evidence).

I. Supplemental Relief

To the extent that Plaintiffs seek supplemental relief pursuant to Section 86.061, *Florida Statutes*, to enforce the declaratory judgment, they have adequately put the School Board on notice of that claim. *See Hill v. Palm Beach Polo, Inc.*, 805 So. 2d 1014, 1016 (Fla. 4th DCA 2001). As a result, the failure to plead the elements of injunctive relief does not warrant dismissal.

J. Post-Judgment Intervention

The School Board suggests that this action is the equivalent of a post-judgment effort to intervene in the *Allen* litigation, but the School Board does not explain how this argument justifies dismissal for failure to state a cause of action. To the extent that the School Board contends that the particular declaratory relief requested by Plaintiffs is inappropriate or would require joinder of other parties, that argument may be advanced at a later stage of these proceedings.

For the foregoing reasons, the Court **ORDERS AND ADJUDGES**:

(1) The Motion is hereby **DENIED**.

(2) The School Board shall file and serve its answer to the Amended Complaint no later than 21 days from the date of this Order.