

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

VERANDA PARTNERS, LLC, a  
Florida limited liability corporation,

Plaintiff,

vs.

LARRY GILES, individually,

Defendant.

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CASE NO.: 07-CA-2622

JUDGE: Dv. 35 (Whitehead)

**DEFENDANT'S MOTION FOR SANCTIONS**

Defendant, LARRY GILES, (hereinafter "Defendant"), moves this Court to impose sanctions on Plaintiff VERANDA PARTNERS, LLC, a Florida corporation as well as its attorneys, Bogin, Munns & Munns (hereinafter BM&M) in an effort to recover attorney's fees and costs for bad faith litigation in the above-styled case pursuant to § 57.105, *Fla. Stat.* (2007), or alternatively by invoking the inherent authority of the Court. In support, Defendants state:

1. On April 25, 2007, Defendant served a draft copy of this Motion for Sanctions on Plaintiff's counsel pursuant to *Fla. Stat.* §57.105 (2007), which requires the challenged pleading to be "withdrawn or appropriately corrected within 21 days after service of the motion." Plaintiff did not comply.

2. Defendant published an online newspaper, the VERANDA PARK NEWS reporting on issues of public importance. The Plaintiff and its counsel engaged in bad faith and abusive litigation designed solely to use VERANDA's financial might, rather than the correctness of its legal position, to force Mr. Giles into economic submission, to stifle his First Amendment

rights, and to retaliate against GILES for prior interactions with BM&M, which included the filing of a complaint with the Florida Bar.

3. Prior to filing the Complaint, the Plaintiff either knew of the lack of a factual basis for the Complaint or failed to engage in a minimal effort to ascertain the truth of the material facts in the Complaint

4. Prior to filing the Complaint, the Plaintiff either knew of the lack of a legal basis for the complaint or failed to engage in basic legal research regarding the appropriate legal standards for filing and sustaining an action for slander in this state.

5. This litigation is patently frivolous, and so completely void of merit that it has no chance of success.

6. In addition, even if there were facts available to support the Complaint, it was filed in complete contravention of controlling Florida law, and for that reason alone should subject the Plaintiff and Plaintiff's counsel to sanctions.

7. Fla. Stat. § 770.01 states that a plaintiff must, at least five days prior to filing suit, serve written notice upon the defendant, specifying what the plaintiff believes to be false and defamatory. This "[n]otice affords defendants the opportunity to issue a retraction or even to settle the overall conflict, thereby mitigating damages or eliminating litigation altogether." *Laney v. Knight-Ridder Newspapers, Inc.*, 532 F.Supp. 910, 913 (S.D. Fla. 1982) (Interpreting Fla. Stat. § 770.01 to apply to all defamation defendants); *Wagner, Nugent, et. al. v. Flanagan*, 629 So.2d 113 (Fla. 1993) (Chapter 770 applies to "all civil litigants, both public and private, in defamation actions."); *King v. Burris*, 588 F. Supp. 1152 (D. Colo. 1984) (applying Florida law and interpreting Fla. Stat. § 770.01). Compare *Bridges v. Williamson*, 449 So.2d 400, 401 (Fla. 2d DCA 1984) (holding that the source of published defamatory comments is not entitled to the

same pre-suit notice to which the publisher is entitled); *Zelinka v. Americare Healthscan, Inc.*, 763 So.2d 1173 (Fla. 4th DCA 2000) (holding similarly that when comments are posted on an internet bulletin board owned by someone other than the defendant, the defendant is not entitled to protection under Fla. Stat. § 770.01, but the owner of a website who publishes thereupon might be entitled to pre suit notice); *Gifford v. Bruckner*, 568 So.2d 887 (Fla. 2d DCA 1990) (Fla. Stat. § 770.01 does not apply to statements displayed on a banner towed behind an airplane).

8. Although GILES was served with a demand letter, this demand letter did not meet any of the requirements of Fla. Stat. § 770.01. Nevertheless, in order to avoid litigation, GILES complied fully with the demand and took down his website. At that point, VERANDA's interests appeared to have been served.

9. Nevertheless, VERANDA filed this action, with the assistance and complicity of counsel, in what GILES claims is retaliation for a prior bar complaint filed against BM&M. This is discussed in full in GILES motion to disqualify BM&M from the instant action, which was filed on April 23, 2007 and is hereby incorporated by reference.

10. Nothing could be done to cure VERANDA's error except a dismissal of this action. In a similar case, *Orlando Sports Stadium v. Sentinel Star Co.*, 316 So.2d 607 (Fla. 4th DCA 1975), the court held that "[a] cause of action must exist and be complete before an action can be commenced or, as sometimes stated, the existence or non-existence of a cause of action is commonly dependent upon the state of facts existing when the action was begun. As a general rule the plaintiff may not be permitted to cure the defect of non-existence of a cause of action when suit was begun, by amendment of his pleadings to cover subsequently accruing rights."

11. This court should not hesitate to impose sanctions against parties and their counsel where unnecessary fees are incurred in order to respond to frivolous lawsuits. See *Young v. Hector*, 884 So.2d 1025, 1028 (Fla. 3d DCA 2004) (“In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession’s broader duty to the legal system. This broader duty to the administration of justice and the judiciary cannot be forsaken in the name of zealous advocacy or self-interest.”). See also Rule 4-3.1, Fla.R.Prof.Cond.. (“A lawyer shall not bring or defend a proceeding, or assert or controvert and issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.”).

12. The purpose of Florida Statute §57.105 is to discourage baseless claims, stonewall pleadings, and sham appeals in civil litigation by placing the price tag of attorneys fee awards on the losing parties. See *Murphy v. Wisu Properties LTD. et.al.*, 895 So.2d 1088 (Fla. 3d DCA 2004).

13. Given VERANDA and BM&M’s misuse of the judicial system to date, it can only be presumed that both will continue to abuse the litigation process as a forum not to resolve bona-fide legal disputes, but rather as a tool with which to engage in wars of financial attrition against their critics.

14. Accordingly, it is imperative that this Court take action to adequately warn the Plaintiff and Plaintiff’s counsel that such activities are judicially intolerable.

15. Sanctions are not only proper, but required under the law.

16. Other grounds to be argued ORE TENUS.

**WHEREFORE**, Defendant requests the following relief:

a. This Court impose sanctions on Plaintiff and Plaintiff’s Counsel.

- b. This Court award Defendant attorney's fees and costs incurred in the defense of Larry Giles as a party to this case pursuant to § 57.105, *Fla. Stat.*
- c. In the alternative, award Defendant attorney's fees and costs incurred in the defense of Larry Giles as a party to this case pursuant to the inherent authority of the Court to do so.
- d. This Court take any and all other necessary actions that it deems proper in order to prevent further abuse of the judicial system by the Plaintiff and Counsel for the Plaintiff.

**WESTON, GARROU, DEWITT & WALTERS**



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to: John W. Bolanovich, Esq., Attorney for Counterdefendant, Bogin, Munns & Munns, P.A., 2601 Technology Drive, Orlando, Florida 32804, this 25th day of April 2007.

A handwritten signature in black ink, appearing to read "Marc J. Randazza", with a long horizontal flourish extending to the right.

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MARC J. RANDAZZA, ESQ.