

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.

CASE NO.: 07-CA-2622

JUDGE: Dv. 35 (Whitehead)

COUNTERCLAIM

Defendant/Counterclaimant, LARRY GILES, sues Counterdefendant, VERANDA PARTNERS, LLC, and states as follows:

COMMON ALLEGATIONS

1. This is an action for damages in excess of \$15,000.00 exclusive of interest and attorneys' fees.

2. Counterclaimant, LARRY GILES, is a resident of Orlando, Orange County, Florida residing at 7817 Bardmoor Hill Circle, Orlando, Florida 32835.

3. Counterdefendant, VERANDA PARTNERS, LLC, is a corporation engaged in real property development in Orlando, Orange County, Florida and other communities within the Central Florida community.

4. Further, in approximately 2002, Counterdefendant acquired a controlling interest in the MetroWest community in southwestern Orange County. As part of its controlling interest, Counterdefendant operates homeowners associations in MetroWest including the MetroWest Master Homeowners Association, Inc. The Master Homeowners Association operates as an

umbrella organization and includes several other MetroWest homeowners associations, including Homeowners Association MetroWest Unit.

5. Counterclaimant is a resident and is a member of the homeowners association known as Homeowners Association MetroWest Unit 5. Said homeowners association operates in conjunction with the Master Homeowners Association owned and/or operated by VERANDA PARTNERS, LLC.

6. All conditions precedent to the bringing of this counterclaim have been performed, waived or excused.

7. Counterclaimant has engaged the undersigned attorneys to prosecute this action, and has agreed to pay such attorneys a reasonable fee for their services.

COUNT II

VIOLATION OF FLA. STAT. § 720.304(4) – THE ANTI SLAPP STATUTE

8. Counterclaimant incorporates by reference all allegations contained in paragraphs 1 through 6 inclusive.

9. Counterclaimant published an online community newspaper, the VERANDA PARK NEWS.

10. This online community newspaper was aimed at a readership to consist of members of the public, public officials, public employees, prospective and current elected politicians, and other members of the community.

11. This online newspaper was an attempt to petition public officials and institutions to take action regarding matters of political and public importance, and to instruct and inform both the public and elected state and local representatives about the state of affairs in the Counterclaimant's neighborhood.

12. Through this publication, the Counterclaimant has engaged in his constitutional right of free and protected speech to instruct his elected representatives, to petition the government for redress of grievances, and to speak out concerning community issues that directly impact his status as a homeowner in the MetroWest community and, as a member of the homeowners association; Homeowners Association MetroWest Unit 5. Counterclaimant's exercise of free speech has included his opinions on issues concerning the development and operation of the Master Homeowners Association by Counterdefendant, VERANDA PARTNERS, LLC.

13. Counterclaimant has engaged in his constitutional right of free and protected speech to speak out concerning community issues that directly impact his status as a homeowner in the MetroWest community and, as a member of the homeowners association, Homeowners Association MetroWest Unit 5. Counterclaimant's exercise of free speech has included his opinions on issues concerning the development and operation of the Master Homeowners Association by Counterdefendant, VERANDA PARTNERS, LLC.

14. Counterdefendant has wrongfully, intentionally and unlawfully retaliated against Counterclaimant's exercise of his right of fair comment and has attempted to thwart or stifle Counterclaimant's speech by the filing of a SLAPP suit in contravention of Fla. Stat. § 720.304.

15. SLAPP suits are specifically precluded under Florida law and violations are punishable through the awarding of extraordinary and expedited relief. Notwithstanding, in contravention of Florida's anti-SLAPP suit provisions, the Counterdefendant, VERANDA PARTNERS, LLC, has pursued its action against Counterclaimant, in its Complaint filed herein.

16. As a result of Counterdefendant's unlawful and wrongful conduct, Counterclaimant has been damaged by virtue of being subjected to the expenditure of

unnecessary attorneys' fees to defend VERANDA PARTNERS, LLC's, frivolous and specious SLAPP suit action filed against him, has suffered a chilling effect upon his free speech rights, and has been forced to modify his publication of his online newspaper.

17. Pursuant to Fla. Stat. § 768.72 (2006), Counterclaimant specifically reserves his right to amend this pleading to assert entitlement to an award of punitive damages upon the proffer of evidence demonstrating a reasonable basis for recovery of such damages.

WHEREFORE, Counterclaimant, LARRY GILES, requests Judgment for compensatory damages in an amount in excess of \$15,000.00, plus costs, interest (including pre-judgment interest), and attorneys' fees pursuant to § 720.304(4), *Fla.Stat.* (2006), along with such further relief as the court determines just under the circumstances.

COUNT II

ABUSE OF PROCESS

18. Counterclaimant incorporates by reference all allegations contained in paragraphs 1 through 16 herein.

19. The Counterdefendant has made an illegal, improper, or perverted use of the legal process by filing the underlying lawsuit.

20. The Counterdefendant had an ulterior motive or purpose in exercising the illegal, improper or perverted process.

21. The Counterclaimant was injured as a result of defendant's action.

22. On approximately February 10, 2007, Counterclaimant published THE VERANDA PARK NEWS through Onsmart.com Web Hosting (an online service provider), at the web address <http://www.verandaparknews.com>.

23. On this website, the Counterclaimant displayed factual information and mild opinions regarding matters of public and political importance in the MetroWest development.

24. These matters pertained to affairs of government and to issues in the homeowners' association of which the Counterclaimant is a member, and of which the Counterdefendant holds a controlling interest.

25. On February 23, 2007, Counterdefendant, through counsel, drafted correspondence warning Counterclaimant to "discontinue and shutdown the Website." A copy of the correspondence is attached hereto as Counterclaimant's Exhibit No. 1, and incorporated by reference.

26. Further, contained on the abovementioned correspondence, Counterdefendant imposed a deadline for such demanded action – "11:59 p.m. tomorrow, Saturday, February 24, 2007." This correspondence was delivered to Counterclaimant's home, late in the evening on February 23. As a result, given the date attached to the correspondence, Counterdefendant was permitting Counterclaimant, at best, one (1) day for compliance with Counterdefendant's demands.

27. The abovementioned correspondence also threatened legal action in the event that Counterclaimant failed to comply with Counterdefendant's expedited deadline. Specifically, Counterdefendant stated that it "will file the above-referenced lawsuit against you on Monday, February 26, 2007," three (3) days after the date of the abovementioned demand letter.

28. Notwithstanding, Counterclaimant, fearful of the threat of litigation and despite his belief in the truth and non-actionable nature of the information contained in the abovementioned VERANDA PARK NEWS, shut the website down prior to the Counterdefendant's arbitrarily- imposed and unreasonable deadline.

29. Despite the Counterclaimant's complete compliance with the Counterdefendant's unreasonable and unconstitutional demands, the Counterdefendant filed an action for "Slander Per Se" in the Circuit Court, in and for Orange County, Florida, case number 07-CA-2622, against Counterclaimant as a result of the statements described above. A copy of Counterdefendant's Complaint is attached hereto as Counterclaimant's Exhibit No. 2, and incorporated by reference.

30. The filing of the action by the Counterdefendant constitutes an abuse of process in that the action was not filed because Counterdefendant believed the continued posting of Counterclaimant's statements were slanderous, or because Counterdefendant suffered monetary loss as a result of the statements, or because Counterdefendant's reputation had been damaged as a result of the statements. The action was also not filed to redress any damage suffered by the Counterdefendant, or for any other proper purpose. Rather, despite knowing that the publication statements were protected by absolute and qualified privileges, knowing that the conditions precedent to filing a libel suit had not been made, and despite the fact that the Counterclaimant adhered to the demands made in the Counterclaimant's letter of February 23, 2007, Counterdefendant nevertheless filed the action for improper purposes, with ulterior motives, to accomplish certain ends or goals for which the legal process was not designed, namely to:

- a. attack the credibility and reputation of Counterclaimant and his opinions and views;
- b. intimidate Counterclaimant so that he and other individuals and organizations with opinions and views contrary to Counterdefendant's would restrict or terminate their efforts to bring those opinions and views to the attention of the public;
- c. inhibit Counterclaimant's willingness to assist in efforts to advocate in opposition to the fundamental changes

occurring within the MetroWest development, matters of great public importance to the residents and homeowners of the MetroWest community; and

- d. otherwise hamper Counterclaimant's ability and willingness to exercise his constitutional right to freely express his opinions and views and thereby censor his speech.

31. As a direct and proximate cause of Counterdefendant's actions, Counter-plaintiff's ability and willingness to advance his opinions and views have been negatively affected, as has his willingness to petition his public officials for redress of grievances and his willingness to instruct his elected representatives on matters of public importance. Furthermore, the free speech rights of many other individuals have been chilled.

32. Counterdefendant's action in filing its Complaint for an improper purpose was done willfully, maliciously, oppressively, and in conscious disregard of Counterclaimant's constitutional right to free speech.

33. Pursuant to Fla. Stat. § 768.72, Counterclaimant specifically reserves his right to amend this pleading to assert entitlement to an award of punitive damages upon the proffer of evidence demonstrating a reasonable basis for recovery of such damages.

WHEREFORE, Counterclaimant, LARRY GILES, requests Judgment for compensatory and special damages in an amount in excess of \$15,000.00, plus costs, Attorneys fees, interest (including pre-judgment interest) and such further relief as the court determines just under the circumstances.

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 hand delivery to: **John W. Bolanovich, Esq.**, Attorney for Counterdefendant, Bogin, Munns & Munns, P.A., 2601 Technology Drive, Orlando, Florida 32804, this 2d day of April 2007.



MARC J. RANDAZZA, ESQ.