

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 21, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel *MAD*

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please place the attached email, dated October 16, 2018, and attachment in the Documents section of the docket file for Docket No. 20180142-WS. Please let me know if you have any questions.

Margo DuVal

From: Richard A. Harrison <rah@harrisonpa.com>
Sent: Tuesday, October 16, 2018 4:59 PM
To: Margo DuVal; Katheryn White; 'christensen.patty@leg.state.fl.us'; JR Kelly; Keith Hetrick
Cc: Jennifer Crawford; Daniela N. Leavitt; Lisa Ferrara; Johana Nieves; Richard A. Harrison
Subject: RE: FL PSC Docket No. 20180142-WS (Palm Tree Acres Mobile Home Park)
Attachments: 10-15-2018-5-09-36-PM-131841113762356688131841115149547731_CONFORMED-hig....pdf

Mr. Hetrick et al,

Please see the attached order recently entered by the Circuit Court in Pasco County in the ongoing Palm Tree Acres litigation. I have highlighted the conclusion at the end which I'm certain will be of concern to you as an improper incursion by the circuit court into the PSC's exclusive jurisdiction to regulate utilities. Although the early part of the order pays lip service to the PSC's preemptive authority, it then assumes and exercises authority through the "back door" of a "constitutional" question and concludes that the Park has no obligation to use its property to supply water to others (us). That is fundamentally no different than if a court had said that TECO or Duke Energy had no obligation to use its property to supply power to others – once the determination is made that a party is a utility, then it does have an obligation operate as such unless and until the PSC's regulations and applicable provisions of Ch. 367 regarding termination or abandonment of service are complied with.

We are considering immediate appellate options and request that the PSC evaluate the matter as to the jurisdictional issue. We invite the PSC to join us in a writ of prohibition or other appropriate filing to shut down the circuit court's unlawful incursion into the realm of the PSC's exclusive jurisdiction.

Please respond promptly, as we have grave concerns that this order will embolden the Park to now shut down the water and sewer service to the lot owners.

RICHARD A. HARRISON, P.A.
ATTORNEYS AT LAW

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From: Margo DuVal [<mailto:mduval@psc.state.fl.us>]
Sent: Monday, October 15, 2018 5:01 PM
To: Richard A. Harrison; Kathryn White; 'jabobo@lutzbobobob.com'; 'bruce.may@hkclaw.com'; 'christensen.patty@leg.state.fl.us'; JR Kelly
Cc: Jennifer Crawford; Daniela N. Leavitt; Lisa Ferrara; Johana Nieves
Subject: FL PSC Docket No. 20180142-WS (Palm Tree Acres Mobile Home Park)

Good afternoon,

Due to Hurricane Michael, this item has been rescheduled for the next available Commission Conference. The staff recommendation is scheduled to be filed on November 29, 2018, for consideration at the December 11, 2018 Commission Conference.

Sincerely,

Margo A. DuVal
Senior Attorney
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FLORIDA PUBLIC SERVICE COMMISSION
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696

NELSON P. SCHWOB, et al.,
Plaintiffs,

V.

JAMES C. GOSS; EDWARD HEVERAN;
MARGARET E. HEVERAN; and PALM
TREE ACRES MOBILE HOME PARK,
Defendants.

**ORDER GRANTING DEFENDANT’S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

This Cause having come before the Court on Defendant Motion for Partial Summary Judgment, and the Court having considered the motion, the response by the Plaintiffs, and the summary judgment evidence, this Court enters this Order and Judgment as to Count I of Defendants’ Amended Counterclaim:

FINDINGS OF FACT

The Court finds that there is no genuine issue of material fact to the following:

1. The Plaintiffs are fee simple owners of lots within the Palm Tree Acres Mobile Home Park. They also own the mobile home that exists on their respective lots.
2. The Defendant Palm Tree Acres Mobile Home Park (hereinafter “Palm Tree Acres”) owns in fee simple 183 of the 244 lots. These lots are leased to other residents.
3. Palm Tree Acres offers certain amenities to include water and sewer service and access to other recreational areas. These amenities are offered in a single package for a single fee; there is no *a la carte* pricing for any particular amenity.
4. When the Plaintiffs purchased their lots from the developer, there was a deed restriction that required Palm Tree Acres to provide water and sewer service to the Plaintiffs. Subsequent to the Plaintiffs purchasing their lots, Palm Tree Acres purchased the remaining lots from the developer. A predecessor court has adjudicated that these deed restrictions

expired by operation of the Marketable Record Title Act and are no longer in force or effect.

5. There is presently no other written contractual agreement between the Plaintiffs and Palm Tree Acres to provide any amenities, and more specifically, there is no written contractual agreement for Palm Tree Acres to provide water and sewer service to the Plaintiffs. However, for many years, the Plaintiffs had been paying the fee that Palm Tree Acres charged to its other residents for water, sewer, and recreational amenities.
6. The water that is provided to all of the residents of Palm Tree Acres, including the Plaintiffs, is pumped from a well that exists on property owned in fee simple by Palm Tree Acres.

The Court finds that the Plaintiffs and the Defendant Palm Trees Acres Mobile Home Park are in doubt as to the affect of Chapter 367, Fla. Stat.; Article I, § 3, Fla. Const; and Amend. V, U.S. Const. to their rights, obligations, status, or other equitable or legal relations as it pertains the Defendant's actions in discontinuing water and sewer service to the Plaintiffs, and that declaratory judgment is appropriate.

ANALYSIS AND CONCLUSIONS OF LAW

Palm Tree Acres asserts that it has a constitutional right to refuse to use its property for the enjoyment of others, and that, if it chooses to do so, it can discontinue water and sewer service to the Plaintiffs. The Plaintiffs argue that in providing water and sewer service, Palm Tree Acres is a public utility, and §367.165(1), Fla. Stat. prevents a public utility from discontinuing service until certain requirements are satisfied.

This Court previously stated in the August 21, 2017 Order Granting in Part, Denying in Part Defendants' Motion to Dismiss Count 3, etc., that it has no jurisdiction regarding the enforcement of Chapter 367, Florida Statutes. This includes the determination of whether an entity is or is not a utility. See Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990); Fletcher Properties, Inc. v. Florida Public Service Commission, 356 So.2d 289 (Fla. 1978). Assuming, though, that the Court had the jurisdiction to make the threshold finding of whether Palm Tree Acres were a utility and could, therefore, prohibit it from discontinuing service until compliance had be made with §367.165(1), Fla. Stat., this Court is clearly without jurisdiction to

make the evidentiary finding of whether Palm Tree Acres had, in fact, complied. For the same reasons that this Court determined it lacked jurisdiction to regulate the rates charged to provide water and sewer service as requested by the Plaintiffs in Count 3 of its Third Amended Complaint, the Court also has no jurisdiction to regulate the manner in which a utility terminates operations. Therefore, the Court finds that §367.165(1) does not authorize the Court to prohibit termination of water or sewer service, and that authority lies exclusively with the Public Service Commission.

However, the Court does have jurisdiction to make a determination as to constitutional rights. Under this narrow issue, Palm Tree Acres prevails. Property rights are one the most basic rights protected by both the Florida and United States Constitutions. These rights include the ability to use, and not to use, the property as the owner of the property sees fit. The government may impose regulations on how a property is used, and neighboring property owners can seek to enjoin their neighbors from offensive or nuisance use of property. However, the Court is unaware of, and the Plaintiffs have not provided, any authority that the Court can compel a property owner to use its property in a manner solely for the benefit of a neighboring property owner.

Therefore, it is hereby **ORDERED, ADJUDGED, and DECLARED** that the Defendant Palm Tree Acres Mobile Home Park has a right under the Article I, § 3, Fla. Const. and Amend. V, U.S. Const. to refuse to use its property for the benefit of others. This right includes the right to discontinue providing water and sewer service to other property owners. Whether it chooses to exercise that right, is for the Defendant to decide.

DONE and ORDERED in Dade City, Pasco County, Florida this 15 October, 2018.

Electronically Conformed 10/15/2018

Hon. Gregory G. Groger
Circuit Court Judge

CC:
Richard Harrison
J. Allen Bobo
Jody B. Gabel