

IN AND FOR THE THIRTEENTH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR HILLSBOROUGH
COUNTY, FLORIDA – CIVIL DIVISION

DONNA L. PETTIS
LYNDA L. SANCHEZ
GALE L. RATHBONE and,
ANNE MCQUEEN,
Plaintiffs

CASE NO: 20-CA-006289
DIVISION: F

v.

CAROLE BASKIN,
SUSAN BRADSHAW and
KENNETH WAYNE FARR.
Defendants

DEFENDANT KENNETH WAYNE FARR'S
MOTION TO DISMISS COMPLAINT AND FOR PROTECTIVE ORDER
AND JOINDER IN DEFENDANT CAROLE BASKIN'S MOTION TO
DISMISS COMPLAINT AND FOR PROTECTIVE ORDER

NOW COMES, Defendant Kenneth Wayne Farr (“Farr”) by and through his undersigned attorney, pursuant to Fla. R. Civ. P. 1.140(b), and 1.280(c), files Defendant Kenneth Wayne Farr’s Motion to Dismiss Complaint and For Protective Order (“Farr’s Motion”), and requests this Honorable Court dismiss the Complaint for a Pure Bill of Discovery filed by Donna L. Pettis, Lynda L. Sanchez , Gale L. Rathbone and Anne McQueen (collectively, “Plaintiffs”) and for a protective order and in support thereof joins in Defendant Carole Baskin’s Motion to Dismiss Complaint and for Protective Order, and states as follows:

INTRODUCTION

1. On or about August 7, 2020, Plaintiffs filed Plaintiffs' Complaint for a Pure Bill of Discovery ("Plaintiffs' Complaint"). Plaintiffs' Complaint for a Pure Bill of Discovery seeks an order from the Court granting discovery from Defendants, including Defendant Farr, to determine whether the standards of certain vaguely referenced causes of action exist. Plaintiffs' Complaint seeks discovery merely to "determine if they are victims in a criminal case, a civil case, both or neither," and to "gather information regarding the applicability" the doctrines of delayed discovery and equitable estoppel. *See* Complaint ¶¶ 22 and 34.
2. Plaintiffs' Complaint fails to satisfy the pleading requirements of a pure bill of discovery under Florida law. Further, Plaintiffs' Complaint constitutes an impermissible fishing expedition.
3. On or about August 31, 2020, Defendant Baskin filed Defendant Carole Baskin's Motion to Dismiss Complaint and For Protective Order requesting that this Court dismiss Plaintiffs' Complaint, award Defendant Baskin her attorney fees and costs, impose a protective order, and grant such other and further relief as the court may deem just and proper.

4. Defendant Farr joins in Defendant Carole Baskin's Motion to Dismiss Complaint and for Protective Order. Defendant Farr incorporates by reference the allegations, standard of review, law and argument contained in Defendant Carole Baskin's Motion.
5. In addition to and supplementing the allegations and authorities contained within Defendant Carole Baskin's Motion to Dismiss Complaint and for Protective Order, Defendant Farr states the following, reserving the right to supplement.

ARGUMENT

6. A complaint for a pure bill of discovery, while not completely obsolete, is of limited applicability under Florida law. Most discovery can be obtained through standard rules of civil procedure. Further, it is not proper to use a pure bill of discovery to simply gather information regarding the applicability of doctrines or to determine if a cause of action exists or to support causes of action Plaintiffs believe it might have.
7. Plaintiffs' Complaint for a Pure Bill of Discovery is conclusory and non-specific. The Complaint contains few allegations against Defendant Farr. Based on the insufficient allegations contained in the Complaint, it must be dismissed as a matter of law.

8. In paragraph 20 of Plaintiffs' Complaint, Plaintiffs' aver that Defendant Farr was an employee of Mr. Lewis more than twenty-three (23) years ago, and an employee of Defendant Baskin at an unspecified time. Complaint ¶ 20. Without stating any basis for their belief, Plaintiffs suggest that Defendant Farr has some unspecified information regarding Mr. Lewis and his assets/financial interests. Complaint ¶ 20.
9. Plaintiffs allege that discovery is necessary to aid in determining the elements of certain vaguely referenced potential claims, none of which appears to be directed at or against Defendant Farr, other than a vague and conclusory allegation of fraud as to all Defendants. Complaint ¶ 27. No allegations or facts are pled relative to the elements of any cause of action against Defendant Farr. At most, Mr. Farr is referred to as an employee of Defendant Baskin and Mr. Lewis, who might have some knowledge of unspecified relevance. No basis for Plaintiffs' "belief" is set forth in Plaintiffs' Complaint. Plaintiffs do not state how any knowledge that might be possessed by Defendant Farr would relate to the listed claims.
10. In paragraph 36 of Plaintiffs' Complaint, Plaintiffs aver that they have a "good faith basis" to believe that Defendant Farr may have committed fraud and/or may have information about who committed fraud. However, Plaintiffs at no time plead facts showing that alleged "good

faith basis,” or what information Defendant Farr might have concerning fraud (or by whom).

11. In paragraph 38, Plaintiffs suggest they have recently received certain information which they previously had not known. However, Plaintiffs do not plead any examples of that alleged information, or its source.

Defendants are left guessing at what the alleged new information is and how it might be relevant.

12. Beyond these bare allegations, nothing is alleged against Defendant Farr to suggest any cause of action exists against anyone. Plaintiffs allege only that that Plaintiffs need discovery to “gather information regarding the applicability” of the doctrines of “delayed discovery” and “equitable tolling,” and whether any statements/communications “meet the standards” of certain causes of action. Complaint ¶¶ 34, 46.

13. Under Florida law, a complaint for a pure bill of discovery must show that the disclosure of facts which it seeks is necessary to enable the plaintiff to maintain plaintiff’s cause of action in a suit pending or about to be brought in another court, and that the cause of action is legally sufficient. The complaint must also show a present interest of both the plaintiff and the defendant in the subject matter. A complaint may not be maintained by a stranger against a witness. Also, the particular matters as to which

discovery is sought must, be set out clearly and definitely. Further, a plaintiff must set forth the specific facts giving rise to a cause of action by the plaintiff.

14. A pure bill of discovery may not be used as a fishing expedition to determine if a cause of action exists, to substantiate suspected causes of action, or to make a determination that suspected claims are viable. *Kirlin v Green*, 955 So. 2d 28 (3d DCA, 2007). As in *Kirlin*, the Plaintiffs herein already claim to know the causes of action they would pursue. If they believe their allegations to be valid, they may file suit. However, Plaintiffs may not utilize the trial court's resources to go on a pre-suit "fishing expedition" to substantiate their claims.

15. In *Kaplan v Allen, M.D.*, 837 So. 2d 1174 (4th DCA 2003) the personal representative of a decedent filed a complaint for pure bill of discovery against the decedent's former psychiatrist. The discovery sought was specific to the psychiatrist, and the avowed purpose was to determine if there was malpractice on the part of the psychiatrist resulting in the decedent's death. The Court ruled, however, that the complaint failed to demonstrate a cause of action for medical malpractice, and therefore the complaint for pure bill of discovery was properly dismissed. In the present case, while the Plaintiffs suggest a laundry list of causes of action,

Plaintiffs fail to set forth facts which would support the filing of those claims. As a result, under *Kaplan*, the Complaint must be dismissed, because the Plaintiffs have not properly alleged the supposed causes of action for which they seek discovery.

CONCLUSION

16. Plaintiffs' Complaint for a Pure Bill of Discovery is an admitted fishing expedition to determine if a vaguely referenced claim can be brought against Defendants. Plaintiffs' own allegations are that they seek discovery merely to "determine if they are victims in a criminal case, a civil case, both or neither," and to "gather information regarding the applicability" of a doctrine to avoid the applicable statute of limitations. See Complaint para. 22 to 24.

17. Plaintiffs' Complaint for a Pure Bill of Discovery must be dismissed, inclusive without limitation, for the following reasons: (a) Plaintiffs' Complaint is merely speculative and fails to state a cause of action, (b) Plaintiffs are seeking to merely obtain a preview of discovery, (c) any suit by Plaintiffs would clearly be after the expiration of the statute of limitations, (d) Plaintiffs appear to be suing Defendant Farr as a mere third-party witness and there is no claim against Defendant Farr properly

stated, and (e) Plaintiffs have failed to allege satisfaction of conditions precedent to any underlying cause of action.

18. Therefore, based on Plaintiffs' own allegations, Plaintiffs' Complaint for Pure Bill of Discovery must be dismissed as a matter of law.

WHEREFORE, Defendant Kenneth Wayne Farr respectfully requests that the Court dismiss Plaintiffs' Complaint for a Pure Bill of Discovery and award Defendant his costs and attorney fees so wrongfully sustained herein to the fullest extent permitted under Florida law or applicable statute, contract or rule.

Defendant further requests that the Court impose a protective order, and grant such other and further relief as the court may deem just and proper in the premises.

CERTIFICATE OF SERVICE this document was served upon attorney for Plaintiff via ePortal on the date this document was filed with the Court and served via email on September 8, 2020, to attorney John M. Phillips, B.C.C., at jmp@floridajustice.com, and to Craig E. Rothburd, Esq., craig@rothburdpa.com, maria@rothburdpa.com, and David M. Caldevilla, dcaldevilla@dgfirm.com, and serviceclerk@dgfirm.com.

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