

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR COLUMBIA COUNTY, FLORIDA

CASE NO.: 18-000105-CA

ADD HELIUM, LLC, a Delaware Limited Liability
Corporation, and PETER SOTIS, individually,

Plaintiffs,

vs.

INTERNATIONAL ASSOCIATION OF NITROX
DIVERS, INC., a Florida Corporation,

Defendant.

DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

Defendant, by and through its undersigned counsel, pursuant to Fla. R. Civ. P. 1.510, moves this honorable Court for an Order Granting Final Summary Judgment in favor of Defendant, and in support thereof states as follows:

1. Count I of Plaintiffs' Complaint is a declaratory action requesting that this Court enter an order lifting Plaintiffs' suspensions because Defendant allegedly failed to comply with its own standards, procedures and guarantees of due process in suspending Plaintiffs.

2. Count II of Plaintiffs' Complaint is a declaratory action requesting that this Court find that Plaintiffs' suspensions were wrongful and in contravention to Defendant's own Policies and Procedures, and that Plaintiffs' reinstatement is warranted as a matter of law.

3. There is no genuine issue of material fact that the standards and procedures cited by Plaintiffs in their Complaint, which Plaintiffs claim give rise to their cause of action for

declaratory relief, were not the controlling standards and procedures in effect at the time Plaintiff, ADD HELIUM, was placed on a non-teaching status and Plaintiff, PETER SOTIS, was placed on a non-teaching status and subsequently suspended. Accordingly, as there were no due process provisions present in the operative standards and procedures, it is impossible for this Court grant the relief sought by Plaintiffs in their Complaint.

4. There is no genuine issue of material fact that ADD HELIUM was never suspended, as alleged in Plaintiffs' Complaint, and was only placed on a non-teaching status.

5. Declaring Peter Sotis's suspension from IANTD to be wrongful is futile, as Peter Sotis was subsequently permanently expelled from IANTD.

6. As Peter Sotis has been expelled by IANTD, there is no bona fide, actual, present practical need for the declaration that Mr. Sotis was wrongfully suspended, as required this Court to exercise its jurisdiction for declaratory relief.

7. There is no justiciable question for this Court, as Mr. Sotis's suspension was made moot by his subsequent expulsion. Additionally, Mr. Sotis possesses no right to compel IANTD to reinstate him. A declaratory judgment is not appropriate when there is not a bona fide dispute between contending parties that presents a justiciable question. *Spink v. McConnell*, 529 So.2d 813 (Fla. 1st DCA 1988) citing *Bryant v. Gray*, 70 So.2d 581 (Fla. 1954) [wherein the appellant failed to demonstrate a justiciable controversy between herself and the medical examiner as she failed to allege that she had any right to compel the medical examiner to change his opinion expressed in his report as to the cause of death].

8. The declaration should deal with a *present*, ascertained or ascertainable state of facts or *present* controversy as to a state of facts. Here, there is no present controversy regarding Mr. Sotis's suspension from IANTD, as he has been expelled. *Wells v. Wells*, 24 So.3d 579, 583 (Fla. 4th DCA 2009).

9. To be entitled to relief under the Declaratory Judgment Act, the Plaintiffs must show a doubt as to the existence or nonexistence of some right, status, immunity, power or privilege. *M & E Land Co. v. Siegel*, 177 So.2d 769 (Fla. 1st DCA 1965). See also *Wilson v. County of Orange*, 881 So.2d 625 (Fla. 5th DCA 2004). The Standards and Procedure Manual referenced in Plaintiff's Complaint, which was not even in effect at the time of the investigation that led to Peter Sotis's suspension, is not a contract and does not create any right, status, immunity, power or privilege for the Plaintiffs. Additionally, even it was a contract between the parties, a declaratory judgment is not available to settle factual issues bearing on liability under a contract which is clear and unambiguous and which presents no need for its construction. *Abruzzo v. Haller*, 603 So.2d 1338, 1339 (Fla. 1st DCA 1992).

10. Furthermore, the moving party must show he is in doubt as to some right or status and that he is entitled to have such doubt removed. *Id.* Plaintiffs have not asserted any doubts to their rights, nor have they requested that any doubts be removed. Instead, Plaintiffs are requesting that this Court invalidate Defendant's decision regarding Plaintiffs' suspensions and affirmatively reinstate their respective teaching certifications. Such prayers for relief are improper and should be dismissed. (See also *Kelner v. Woody* wherein

the court held that the trial court's decision to dismiss appellant lessor's action for declaratory judgment was proper because the case involved the breach and termination of a lease. Appellants were not in doubt about their rights but were simply uncertain as to what course of action to pursue with respect to the lessee after the lease was breached. The lease was *clear and unambiguous* and only factual issues were to be decided. 399 So.2d 35 (Fla. 3rd DCA 1981); *Tobon v. Am. Sec. Ins. Co.* wherein the plaintiff claimed that the defendant breached an insurance contract by failing to properly investigate the insurance claim. The court dismissed the count for declaratory relief as the *plaintiff failed to identify any provision of the insurance contract in doubt and in need for construction.* *Tobon v. Am. Sec. Ins. Co.* U.S. Southern Dist. of Fla. 2007).

LEGAL STANDARD FOR SUMMARY JUDGMENT

Fla. R. Civ. P. 1.510(c) provides in pertinent part that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." "Summary judgment is appropriate if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *Castleberry v. Edward M Chadbourne Inc.*, 810 So. 2d 1028, 1029 (Fla. 1st DCA 2002). A fact is material when it is "essential to the resolution of the legal questions raised in the case." *Dep't of Env'tl. Reg. v. CP Developers*, 512 So. 2d 258, 261 (Fla. 1st DCA 1987). Courts acknowledge that when "material facts are not in dispute

and a party is entitled to judgment as a matter of law, it is the court's duty to enter summary judgment." *Fernandez v. Haber & Ganguzza, LLP*, 30 So. 3d 644, 646 (Fla. 3d DCA 2010).

SUMMARY JUDGMENT EVIDENCE

Deposition transcript of Luis Pedro taken August 22, 2018. (Doc. 70)

Deposition transcript of Warren Thomas Mount taken August 22, 2018. (Doc. 72)

Deposition transcript of John Jones taken September 20, 2018. (Doc. 69)

IANTD Technical & Overhead Environment Standards & Procedures versions 20.7.0, 20.7.2, and 21.0.1. (To be filed with this Motion)

Plaintiffs' Complaint and attachments. (Doc. 7, pages 8-37)

WHEREFORE, Defendant prays that this Honorable Court grant Defendant's Motion and enter Final Summary Judgment in favor of Defendant.

Respectfully submitted,

BY:

JENNIFER C. BIEWEND

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Defendant's** *Motion For Final Summary Judgment* has been furnished by **Electronic Mail** to: **Neil Bayer, Esquire**, Kennedys Americas LLP, Attorneys for Counter-Plaintiffs, 1395 Brickell Avenue, Suite 610, Miami, Florida 33131 [neil.bayer@kennedyslaw.com], on this 5th day of May, 2019.

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