

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.

ORDER ON DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on July 2, 2019, upon *Defendant's Motion for Final Summary Judgment* filed May 5, 2019, and the Court having heard argument of counsel, having reviewed the pleadings filed herein, and being otherwise fully advised in the premises, makes the following findings:

1. Plaintiffs' Complaint consists of two counts. Count I pleads a declaratory action and prays 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 pleads a declaratory action and prays 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. Defendant submitted the following Summary Judgment evidence: Affidavit of Luis Pedro in Support of Defendant's Motion for Final Summary Judgment, executed April 30, 2019 and filed contemporaneously with Defendant's Motion, in which Mr. Pedro, COO of INTERNATIONAL ASSOCIATION OF NITROX DIVERS ("IANTD") swore and affirmed that the IANTD standards underlying Plaintiff's Complaint were not in effect at the time of Plaintiffs' suspensions, and that Peter Sotis had since been expelled from IANTD; Affidavit of Warren T. Mount in Support of Defendant's Motion for Final Summary Judgment, executed May 1, 2019 and filed contemporaneously with Defendant's Motion, in which Mr. Mount, CEO of IANTD also swore and affirmed that the IANTD standards underlying Plaintiff's Complaint were not in effect at the time of Plaintiffs' suspensions, and that Peter Sotis had since been expelled from IANTD; Deposition transcript of Luis Pedro taken August 22, 2018; Deposition transcript of Warren Thomas Mount taken August 22, 2018; Deposition transcript of John Jones taken September 20, 2018; IANTD Technical & Overhead Environment Standards & Procedures versions 20.7.0, 20.7.2, and 21.0.1.; and Plaintiffs' Complaint and attachments.

4. Plaintiffs submitted no Summary Judgment Evidence to the Court, nor did Plaintiff file a notice identifying any summary judgment evidence, as required by 1.510 Fla. R. Civ. P.

5. There is no genuine issue of material fact that the IANTD Standards and Procedures underlying Plaintiffs' Complaint (version 21.0.1), 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. Plaintiffs failed to submit any evidence rebutting IANTD's Summary Judgment Evidence indicating that the

IANTD Standards and Procedures in effect at the time of Mr. Sotis's suspension did not contain the Quality Assurance section, which included the due process provisions underlying Plaintiffs' Complaint. The Summary Judgment Evidence instead indicated that the Quality Assurance section was added to a later version. Mr. Sotis's suspension letter attached to Plaintiffs' Complaint indicates that he was suspended on March 8, 2017. IANTD corrected the version of the standards they were relying upon for the suspension in a letter to Mr. Sotis the next day, on March 9, 2017, which is also attached to Plaintiffs' Complaint. The Standards referenced in Plaintiff's Complaint, the full version of which was submitted to the Court by Defendant, indicate an effective date of March 23, 2017. A comparison of the version in effect at the time of Mr. Sotis's suspension and the version referenced in Plaintiff's Complaint demonstrate that there were no Quality Assurance or due process provisions present in the version of the standards applicable to Mr. Sotis's suspension. As the Summary Judgment Evidence presented by Defendant demonstrates that there were no Quality Assurance due process provisions present in the operative standards and procedures (version 20.7.0), this Court cannot grant the relief sought by Plaintiffs in their Complaint.

6. 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. Although not submitted to the Court by way of affidavit or other evidence, counsel for Plaintiffs did concede at the hearing on Defendant's Motion that ADD HELIUM had recently gone out of business.

7. Declaring PETER SOTIS's suspension from IANTD to be wrongful is futile, as PETER SOTIS was subsequently permanently expelled from IANTD. 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 for this Court to exercise its jurisdiction for declaratory relief. *Wells v. Wells*, 24 So.3d 579, 583 (Fla. 4th DCA 2009).

8. There is no justiciable question for this Court, as Mr. Sotis's suspension was made moot by his subsequent expulsion. 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).

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 Procedures Manual referenced in Plaintiff's Complaint was not in effect at the time of the investigation that led to Peter Sotis's suspension. Additionally, Plaintiffs presented no evidence to rebut Defendant's argument that the Standards and Procedures Manual was not a contract between the parties; however, even if 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. Counsel for Plaintiffs made various arguments at the summary judgment hearing; however, the arguments were not supported by any Summary Judgment Evidence identified or submitted by Plaintiffs.

11. Plaintiffs argued that Mr. Sotis's expulsion from IANTD that was subsequent to his suspension is somehow integrated into the declaratory action that was pled and Defendant argued

to the contrary, that the expulsion was based on separate and additional grounds not pled in Plaintiffs' Complaint. Plaintiffs neither identified nor submitted any Summary Judgment Evidence to support their argument.

12. Plaintiffs argued that there is a genuine issue of material fact as to whether or not IANTD's Standards and Procedures formed a contract; however, no Summary Judgment Evidence was presented that the Procedures did form a contract, and a doubt as to whether or not the Procedures formed a contract is not what is pled in Plaintiffs' Complaint for Declaratory Relief.

13. In their Response to Defendant's Motion for Final Summary Judgment filed the day before the hearing, Plaintiffs alleged that Defendant's Motion for Final Summary was premature, as discovery was pending. At the hearing, counsel for Plaintiffs noted that the deposition of PETER SOTIS had just occurred the previous day; however, not only was the delay attributable to Mr. Sotis, as this Court had to enter an Order compelling his deposition, Mr. Sotis was able to submit an Affidavit in opposition to Defendant's Motion, but did not do so. Plaintiffs cannot claim that they require the deposition transcript of their own client to oppose summary judgment, when he was freely available to execute an affidavit.

14. At the time of the hearing, there were also a set of interrogatories and a request for production propounded on Defendant that was outstanding, but not yet due. Defendant had objected to responding to the discovery due to its untimeliness and Plaintiffs filed a Motion to Compel. This Court granted Plaintiffs' Motion to Compel, and in its Order denying Defendant's Motion for Reconsideration on the issue, this Court noted that the discovery was untimely by

only few hours. This case, however, has been pending for nearly two years and the Plaintiffs have been afforded a reasonable opportunity to complete discovery prior to the entry of summary judgment. *Villages at Mango Key Homeowners Ass'n. v. Hunter Dev.*, 699 So.2d 337 (Fla. 5th DCA 1997). The Court further finds that Plaintiffs failed to act diligently in seeking discovery and, upon reviewing the pending discovery submitted at the hearing on Defendant's Motion for Final Summary Judgment, the Court finds that the record is clear enough to disclose that further discovery is not needed to develop significant aspects of the case, and that the pending requests would not lead to evidence that would create a genuine issue of material fact. *Colby v. Ellis*, 562 So.2d 356 (Fla. 2nd DCA 1990); *Cong. Park Office II, LLC v. First-Citizens Bank & Trust Co.*, 105 So.3d 602 (Fla. 4th DCA 2013). In *Colby v. Ellis*, the court held that a party does not have an unlimited right to discovery prior to a hearing on a motion for summary judgment and that there comes a time when discovery should end. *Ellis*, 562 So.2d at 357. In that case, there had been three years of litigation, and the court discussed another case that entered summary judgment with pending discovery after eighteen months of litigation. This case has been pending for two years. There is no discovery request pending that would or could rebut the Affidavits of the CEO and COO of IANTD affirming that the standards referenced in Plaintiffs' Complaint were not in effect at the time of Plaintiffs' suspensions, nor rebut what is contained in the standards submitted as evidence, because on their face, the standards indicate that the version in effect did not contain the due process provisions underlying Plaintiffs' Complaint.

15. The cases cited by Plaintiffs' in their Response in opposition to summary judgment that were offered in support of their position that summary judgment is premature are distinguishable from this case. In *UFF DAA, Inc. v. Towne Realty, Inc.*, 666 So.2d 199 (Fla. 5th

DCA 1995), it was the depositions of the corporate officers of the moving party that still needed to be taken by the non-moving party, and there were also motions pending by the non-moving party regarding obtaining the depositions. Here, the deposition taken the day before the hearing was the moving party taking the deposition of the non-moving party. Again, Mr. Sotis did not need the deposition transcript of his own deposition in order to oppose summary judgment. There are no other depositions pending. In *Villages at Mango Key Homeowners Assoc., Inc. v. Hunter Development, Inc.*, 699 So.2d 337 (Fla. 5th DCA 1997), the motion for summary judgment was filed very early in the case. The defendant's answer to the complaint had not even been filed and the court held that the case had not yet been framed by the pleadings. In *Arguelles v. City of Orlando*, 855 So. 2d 1202, 1203 (Fla. 5th DCA 2003), "relevant" discovery was in progress and a deposition of a party was pending.

16. The Court further finds that, in their Complaint, Plaintiffs prayed that this Court lift IANTD's suspensions and reinstate Plaintiffs to IANTD as a matter of law, which is not a remedy available under an action for declaratory relief.

and it is therefore, hereby,

ORDERED AND ADJUDGED that Defendant's *Motion for Final Summary Judgment* is hereby **GRANTED**.

Dated this 12th day of July, 2019.



MARK E. FEAGLE, Circuit Court Judge

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