

**IN THE CIRCUIT COURT FOR THE 11th JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

MUSEUM OF CONTEMPORARY ART, INC.,

Plaintiff,

v.

Case No.: 14-008991 CA (01)

**THE CITY OF NORTH MIAMI,
FLORIDA; LUCIE TONDREAU;
STEPHEN E. JOHNSON;
SCOTT GALVIN; CAROL KEYS;
PHILIPPE BIEN-AIME; and
MARIE STERIL;**

Defendants.

**MOTION TO DISMISS COMPLAINT, STRIKE IMPROPER
DEFENDANT, AND STRIKE REDUNDANT, IMMATERIAL,
IMPERTINENT, AND SCANDALOUS PORTIONS OF COMPLAINT**

COME NOW Defendants, The CITY OF NORTH MIAMI (“CITY”), LUCIE TONDREAU (“TONDREAU”), STEPHEN E. JOHNSON (“JOHNSON”), SCOTT GALVIN (“GALVIN”), PHILIPPE BIEN-AIME (“BIENE-AIME”), and MARIE STERIL (“STERIL”), by and through undersigned counsel and pursuant to Fla. R. Civ. P. 1.140, file this their Motion to Dismiss Complaint. In Support there for, Defendants state as follows.

MOTION TO DISMISS COMPLAINT

1. Plaintiff’s Complaint fails to comply with virtually every basic rule of pleading required by the Florida Rules of Civil Procedure.
2. As to all Counts of the Complaint, Plaintiff fails to allege that it complied with the Florida Constitutional and Statutory requirements of Sovereign Immunity in order to file legal action against a municipality, its elected officials, and employees.

3. The Complaint is technically deficient because the caption fails to identify the capacity of the parties.

4. The Complaint is legally deficient and is brought in the name of an improper party, because while it is filed in the name of the Museum of Contemporary Art (“MOCA”), the allegations of the Complaint are for claims brought specifically by the Board of Trustees of MOCA (“Board”), including claims for “ownership” of the assets of MOCA by the Board, as an entity separate and apart from MOCA itself, as stated in numbered paragraph 26 [the Board (operating through MOCA) owns, protects, and manages the permanent collection].

5. The Complaint is legally deficient because the Board has no identity or existence separate and apart from MOCA, and therefore has no capacity to sue.

6. The Complaint is legally deficient because the Board failed to comply with the default notice provisions of the Management Agreement, which require it to allow the CITY thirty (30) days to cure any claimed defaults.

7. As to all Counts of the Complaint against Defendants, TONDREAU, JOHNSON, GALVIN, BIENE-AIME, and STERIL, Plaintiff’s Complaint is legally deficient in that it fails to allege whether, these individuals are being sued personally, or in their capacity as elected officials, as mayor and council persons of the CITY correspondingly.

8. As to numbered paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43, 44, 45, 46, 55, 62, Plaintiff’s Complaint is legally deficient because it fails to comply with the rules of pleading requiring allegations to be short and plain statements of the facts, in order to allow Defendants to properly respond to the allegations of the Complaint.

9. Plaintiff's Complaint is legally deficient because as to paragraph 24 of the general allegations, Plaintiff fails to attach a complete copy of Exhibit "A".

10. Plaintiff improperly readopts and realleges all fifty (50) general allegations of the Complaint without regard to whether they are an element of each claim. Notably, numbered ¶ 1., which is simply a summary of the claims brought, is readopted and realleged in all Counts.

11. Count I (Breach of Contract) of Plaintiff's Complaint is legally deficient because by improperly readopting and realleging all general allegations it duplicates allegations within the Count.

12. Count I (Breach of Contract) of Plaintiff's Complaint is legally deficient because by improperly readopting and realleging all general allegations it names Defendants not a part of the claim for Breach of Contract against the CITY.

13. Count III (Declaratory Relief) of Plaintiff's Complaint is legally deficient because by improperly readopting and realleging all general allegations it names Defendants not a part of the claim for (Declaratory Relief) against the CITY.

14. Count IV (Declaratory Relief) of Plaintiff's Complaint is legally deficient because by improperly readopting and realleging all general allegations it names Defendants not a part of the claim for Declaratory Relief against the CITY.

15. Count V (Conversion) of Plaintiff's Complaint fails to state a cause of action for Conversion as to the CITY, and as to Defendants, TONDREAU, JOHNSON, GALVIN, BIENE-AIME, and STERIL.

16. Count VI of Plaintiff's Complaint fails to state a cause of action for Tortious Interference, as to the CITY, and as to Defendants, TONDREAU, JOHNSON, GALVIN, BIENE-AIME, and STERIL.

17. Count VII of Plaintiff's Complaint fails to state a cause of action for Civil Conspiracy, and fails to plead the claim with the specificity required for claims that require allegations as to conditions of the mind, as to the CITY, and as to Defendants, TONDREAU, JOHNSON, GALVIN, BIENE-AIME, and STERIL.

18. Count VIII of Plaintiff's Complaint is legally deficient because by improperly readopting and realleging all general allegations it names Defendants not a part of the claim for Defamation against Defendant, TONDREAU.

19. Count VIII of Plaintiff's Complaint fails to state a cause of action for Defamation, against Defendant, TONDREAU.

20. Plaintiff's Complaint is legally deficient because it readopts and realleges ¶ 10. of the general allegations in each Count of the Complaints and makes reference to attorney's fees without alleging any basis for any claim for attorneys' fees.

**MOTION TO STRIKE IMPROPER DEFENDANT,
AND STRIKE REDUNDANT, IMMATERIAL,
IMPERTINENT, AND SCANDALOUS PORTIONS OF COMPLAINT**

21. Plaintiff, improperly names, JOHNSON, as a Defendant in this case despite the fact that he is no longer an employee of the CITY.

22. JOHNSON is not a proper party to this action.

23. In addition to failing to comply with the most basic rules of pleading required by the Florida Rules of Civil Procedure, by among other things, pleading in lengthy storybook

paragraphs and captions that read like media headlines, Plaintiff improperly and repeatedly inserts conclusory allegations and captions that are redundant, immaterial, impertinent, and scandalous, including the following:

1. “D. The City Breaches the Agreement”
2. “E. The Independent Board of Trustees Unanimously Decides to Enter Into Discussions to Collaborate With the Bass Museum of Art Based Upon the City’s Breaches of Its Obligations Under the Agreement”
3. “37. Upon discovering the existence of MOCA’s ongoing discussion with the Bass Museum of Art, the Mayor, City Manager, and City Council staged a public spectacle at the March 11, 2014 City Council Meeting . . .”
4. “38. . . . the Mayor paraded the City’s former mayors before the City Council . . .”
5. “38. . . . The Mayor, City Manager, and City Council attacked the Board . . .”
6. “F. The City Shockingly Attempts to Terminate Board’s Members Instead of Engaging the Board’s Good-Faith Attempts to Resolve the Parties’ Differences By Developing a Plan Whereby MOCA Would Have a Dual Presence in North Miami and Miami Beach”
7. “45. Notwithstanding the public spectacle at the Meeting
8. “46. Shockingly, instead of engaging the Board’s attempts at good-faith negotiations to amicably resolve the parties’ differences . . .

WHEREFORE, Defendants, CITY, TONDREAU, JOHNSON, GALVIN, BIENE-AIME, and STERIL respectfully request this Court enter an Order striking Defendant Johnson from the Complaint and striking redundant, immaterial, impertinent, and scandalous portions of Plaintiff’s Complaint, and any other relief this Court deems just and proper.

Dated: April 28th, 2014

Respectfully Submitted

/s/Olivia S. Benson, Esq.

Olivia S. Benson, Esq.

Florida Bar No.: 0874450

/s/Gilbert K. Squires, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the Motion to Dismiss Complaint, Strike Improper Defendant, and Strike Redundant, Immaterial, Impertinent, and Scandalous Portions of Complaint was sent by electronic mail to **Alan J. Kluger** and **Casey H. Cusick**, at **Kluger, Kaplan, Silverman, Katzen & Levine, P.L.**, 17th Floor Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131, at akluger@klugerkaplan.com and ccusick@klugerkaplan.com on this 28th day of April, 2014.

/s/Olivia S. Benson, Esq.

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/s/Gilbert K. Squires, Esq.

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