

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAY R. CHERNOFF, an individual and in
his capacity as City Commissioner,

Plaintiff,

CASE NO.: 2023-2633-CA-01

v.

CITY OF NORTH MIAMI BEACH, and
COMMISIONER MICHAEL JOSEPH,

Defendants.

**DEFENDANT, COMMISSIONER MICHAEL JOSEPH'S JOINDER WITH
COMMISSIONER MCKENZIE FLEURIMOND'S MOTION TO DISMISS AND FOR
JUDGMENT ON THE PLEADINGS**

Defendant Commissioner Michael Joseph ("Commissioner Joseph") hereby joins with Commissioner McKenzie Fleurimond's ("Commissioner Fleurimond") concurrently filed Motion to Dismiss and moves this Court for judgment on the pleadings dismissing Plaintiff, Jay R. Chernoff's ("Plaintiff") claims for declaratory judgment and injunctive relief. The grounds for both motions are the same: Plaintiff's entire action is improper as this Court cannot exercise jurisdiction to grant the declaratory or injunctive relief requested. Quo warranto is the exclusive remedy to challenge a municipal official's right to their office and, therefore, Plaintiff cannot be permitted to seek relief through the claims pled.

I. Joinder with Commissioner Fleurimond's Motion to Dismiss

Commissioner Joseph joins with his co-Defendant Commissioner Fleurimond's Motion to Dismiss and incorporates such Motion by reference herein. Fla. R. Civ. P. 1.140 provides that "any ground showing that the court lacks jurisdiction of the subject matter may be made at any time."



Consequently, Commissioner Joseph has not waived his right to move to dismiss on the ground that this Court does not have jurisdiction to adjudicate the subject matter. Further, Plaintiff recently amended his complaint and the grounds for dismissal sought through the Motion to Dismiss appear on the face of the pleading. Plaintiff's complaint should be dismissed as the Court is without jurisdictional authority to determine Commissioner Joseph's right to hold his elected office by way of declaratory action or injunction.

II. Motion for Judgment on the Pleadings

A motion for judgment on the pleadings allows the trial court to render judgment as a matter of law prior to trial based solely on the pleadings. *Roman v. Bogle*, 113 So. 3d 1011 (Fla. 5th DCA 2013), *review denied*, 130 So. 3d 691 (Fla. 2013). Granting judgment on the pleadings is proper where the trial court finds that, based on the pleadings, the movant is entitled to judgment as a matter of law. *Cutler v. Aleman*, 701 So. 2d 390 (Fla. 3d DCA 1997). Here, based only on the pleadings, it is clear that Commissioner Joseph is entitled to judgment as a matter of law.

Quo warranto proceedings are “the only proper remedy in cases in which they are available.” *McSween v. State Live Stock Sanitary Bd. of Florida*, 122 So. 239, 244 (Fla. 1929). The four corners of Plaintiff's “Amended Complaint for Declaratory Judgment and Injunctive Relief Requiring the Removal of Michael Joseph as North Miami Beach Commissioner and McKenzie Fleurimond as North Miami Beach Commissioner” conclusively show that Plaintiff seeks to attack both Commissioner Joseph's and Commissioner Fleurimond's right to hold their respective offices through claims for declaratory judgment and injunctive relief. It is settled law that quo warranto proceedings are “the exclusive method of determining the right to hold and exercise a public office”. *Id.* at 244. Therefore, “the right to attack the title of one holding office and discharging duties thereof **cannot be exercised in a court of equity**”. *Id.*

The same is true as to Plaintiff's declaratory action. *See Hajec v. Town of Medley*, 189 So. 2d 835 (Fla. 3d DCA 1966) (affirming dismissal of declaratory action where quo warranto was the proper and exclusive remedy). As quo warranto proceedings are the exclusive remedy to determine the issues raised in Plaintiff's action, Plaintiff has erred in failing to bring his action through the proper legal mechanism and such error is fatal to his claims. *See Swoope v. City of New Smyrna*, 125 So. 371 (Fla. 1929).

Further, as Plaintiff cannot state a valid claim for quo warranto, Commissioner Joseph is entitled to judgment on the pleadings. Quo warranto may only be brought by the Attorney General or, if she or he declines, by a person claiming title to the office. Fla. Stat. § 80.01; *McGhee v. City of Frostproof*, 289 So. 2d 751 (Fla. 2d DCA 1974). Private individuals, such as Chernoff, are not entitled to bring suit seeking a writ of quo warranto challenging a municipal official's right to their office unless (i) the Attorney General expressly declines to bring the challenge on the State's behalf; and (ii) such private individuals claim entitlement to the office. *See Butterworth v. Espey*, 523 So. 2d 1278 (Fla. 2d DCA 1988) (affirming dismissal with prejudice quo warranto claim brought by private citizens seeking to remove school board official from office where private citizens did not claim entitlement to the office that was the subject of their claim). Even if the Attorney General were to decline bringing quo warranto proceedings, Plaintiff cannot claim his entitlement to Commissioner Joseph's office. Plaintiff is already a sitting City Commissioner and, pursuant to Article II, § 5(a) of the Florida Constitution, no person may hold more than one office simultaneously. In summary, Plaintiff was required to bring quo warranto proceedings to properly invoke the jurisdiction of this Court, but failed to do so, and Plaintiff is nonetheless prohibited from bringing the proper proceedings as he cannot establish his right to hold the office he seeks to challenge. Judgment on the pleadings should therefore be entered in Commissioner Joseph's favor.

WHEREFORE, Defendant, Commissioner Michael Joseph respectfully requests that this Court dismiss Plaintiff's Amended Complaint for Declaratory Judgment and Injunctive Relief Requiring the Removal of Michael Joseph as North Miami Beach Commissioner and McKenzie Fleurimond as North Miami Beach Commissioner, grant judgment on the pleadings in Commissioner Michael Joseph's favor, and enter such other and further relief as this Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this **27th day of April, 2023**, on all counsel of record.

By: /s/ Max Eichenblatt
Max Eichenblatt, Esq.