

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FREE AND SOVEREIGN STATE OF
VERACRUZ DE IGNACIO DE LA LLAVE

Plaintiffs,

vs.

ACE REALTY HOLDINGS, LLC, JAVIER
DUARTE, ANA MARIA VELASQUEZ,
NEXXOS REALTY, LLC, INAKI NEGRETE,
VULCAN DYNAMIC REALTY FUND, LP

Defendants.

CIVIL ACTION

CASE NO. 2018-005132-CA-01

DIVISION: (21)

DEFENDANTS', ANA MARIA VELASQUEZ AND NEXXOS REALTY, LLC'S',

**MOTION TO DISMISS FOR FAILURE TO PROPERLY INVOKE THE
JURISDICTION OF THE CIRCUIT COURT OF THE STATE OF FLORIDA AND
MOTION TO STRIKE PARAGRAPH 53 OF THE COMPLAINT;**

AND

**MOTION TO DISMISS FOR FAILURE TO TIMELY SERVE A NAMED PARTY
DEFENDANT WITHIN 120 DAYS PURSUANT TO RULE 1.070(i);**

AND

**MOTION TO DISMISS FOR FAILURE TO JOIN
AN INDISPENSABLE PARTY(S) PURSUANT TO RULE 1.140(b)(7);**

AND

**MOTION TO STRIKE SCANDALOUS ALLEGATIONS IN THE COMPLAINT
PURSUANT TO RULE 1.140(f);**

AND

**MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION
PURSUANT TO RULE 1.140(b)(6) AND RULE 1.110(f);**

AND

**MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION
PURSUANT TO RULE 1.130 FOR FAILURE TO ATTACH ANY WRITTEN
INSTRUMENT OR ADEQUATE PORTION THEREOF**

Defendants, ANA MARIA VELASQUEZ ("VELASQUEZ") and NEXXOS REALTY LLC ("NEXXOS") by and through undersigned counsel, file this *Motion to Dismiss for Failure Properly Invoke the Jurisdiction of the Circuit Court of the State of Florida and Motion to*

Strike Paragraph 53 of the Complaint; and Motion to Dismiss for Failure to Timely Serve a Named Party Defendant within 120 days Pursuant to Rule 1.070(j); and Motion to Dismiss for Failure to Join an Indispensable Party(s) Pursuant to Rule 1.140(b)(7); and Motion to Strike Scandalous Allegations in the Complaint Pursuant to Rule 1.140(f); and Motion to Dismiss for Failure to State a Cause of Action Pursuant to Rule 1.140(b)(6) and Rule 1.110(f); and Motion to Dismiss for Failure to State a Cause of Action Pursuant to Rule 1.130 for Failure to Attach any Written Instrument or Adequate Portion Thereof, and in support thereof state as follows:

Preliminary Statement

The Complaint filed by the Plaintiff, FREE AND SOVEREIGN STATE OF VERACRUZ DE IGNACIO DE LA LLAVE (hereinafter referred to "STATE OF VERACRUZ"), alleges that Defendant, JAVIER DUARTE, ("DUARTE"), the former governor of the Mexican State of Veracruz until 2016, during his term in office was marked by "reports of rampant corruption", and murders, including the "deaths of multiple journalists (17 in total)" and that "...Veracruz as one of the ten most dangerous places on earth to be a journalist". Essentially, it is alleged that Defendant, DUARTE embezzled hundreds of millions of dollars earmarked for social programs which were diverted to a network of phantom companies totaling "...nearly \$3 billion of his state's money which was "...used to make investments and purchase luxury homes and cars ail over the United States." The Complaint alleges he is in custody in Veracruz.

The Complaint does not allege any factual nexus as between Defendants, VELASQUEZ and NEXXOS, and Defendant, DUARTE.

The Complaint does not allege any factual nexus alleged as between Defendants, VELASQUEZ and NEXXOS and Defendant, INAKI NEGRETE ("NEGRETE"), or Defendant, VULCAN DYNAMIC REALTY FUND, LP ("VULCAN").

The Complaint does not allege that the alleged property transactions of Defendant, DUARTE, and Defendants, VELASQUEZ and NEXXOS, are connected by any specific money transfers to the Defendants, VELASQUEZ and NEXXOS, which were alleged to be from embezzled funds or the date or the amount thereof.

The Complaint does not allege that the alleged property transactions attributed to Defendant, VULCAN (which it is alleged had 40 real estate transactions in Florida) are connected or attributed to any parties by or to Defendants, VELASQUEZ and NEXXOS, but rather the Complaint only provides a laundry list of *in rem* defendants as to the *collective* Defendants.

The Complaint does not allege that Defendants, VELASQUEZ and NEXXOS, participated in or had any control, direct or indirect, ownership, officers or partners of entities of Defendant, VULCAN, or any entity that holds title to the subject property.

The Complaint does not allege that Defendants, VELASQUEZ and NEXXOS, participated in or have been directly or indirectly engaged in the business transactions between and among the other named Defendants.

Indeed no transactions are alleged by Plaintiff, STATE OF VERACRUZ, with any specificity that any of the alleged embezzled funds by Defendant, DUARTE, were provided or transferred directly to the Defendants, VELASQUEZ and NEXXOS or that Defendant, VELASQUEZ, had any specific knowledge of the funds.

Plaintiff, STATE OF VERACRUZ, prior to filing the Complaint knew *from the public records* in order to list and identify the subject properties in the Complaint that the entity Defendant, ACE REALTY HOLDINGS, LLC was the purchaser of the singular residential property located at 277 Marinero Court, Goral Gables Florida, but failed to allege any nexus between Defendant, VELASQUEZ and Defendant, ACE REALTY HOLDINGS, LLC.

Plaintiff, STATE OF VERACRUZ, prior to filing the Complaint knew *from the public records* in Florida in order to list and identify the subject properties in the Complaint that there was a designated "closing agent"/attorney for transfer of title listed identified on the filed deed of record and in the exercise of simple minimal due diligence it is known customarily the recipient of the funds for the purchase of residential property is the title agent, the same attorney whose name appears on the recorded title of record, Charles S. Sacher, Esq., so that the title agent is also an *indispensible party* because the title agent was the recipient of all the funds at issue.

Plaintiff, STATE OF VERACRUZ, improperly alleged *in rem* a laundry list of properties and *collective* allegations as against a myriad of the named Defendants and failed to definitively with specificity allege a singular separate allegation as to each property.

Plaintiff, STATE OF VERACRUZ, improperly failed to set forth the separate purchase of properties as separate counts, which renders the Complaint deficient as a matter of law and must be dismissed.

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to Plaintiff, STATE OF VERACRUZ, failing to distinguish the alleged acts of Defendants, VELASQUEZ AND NEXXOS, from the acts of the other named Defendants, or entities, suggesting *collective* acts or *collective* defendants, which renders the Complaint per se deficient and thus must be dismissed as a matter of law.

**MOTION TO DISMISS FOR FAILURE TO PROPERLY INVOKE THE
JURISDICTION OF THE CIRCUIT COURTS OF THE STATE OF FLORIDA AND
MOTION TO STRIKE PARAGRAPH 53**

Florida Rules of Civil Procedure, Rule 1.140(b)(1), specifically provides for a Motion Dismiss for Failure to properly assert the proper jurisdictional amount of Circuit Court, in the State of Florida. Plaintiff seeks damages in "excess of \$75,000.00, exclusive of interest and costs" in ¶53.

53. Plaintiff seeks damages in excess of \$75,000.00, exclusive of interest and costs; however, federal courts lack subject matter over this action, as there is no federal question and there is incomplete diversity of citizenship due to the presence of a defendant who is a resident and citizen of Florida. Removal would thus be improper. No party is asserting any claims arising under the Constitution, treaties, or laws of the United States. Venue is proper in this County as at least one Defendant maintains a principal office here and most of the properties involved are here.

The Circuit Courts of Florida have subject matter jurisdiction over actions at law in which the matter in controversy exceeds \$15,000.00, exclusive of interest, costs, and attorney's fees. *See* art. V, § 20(c)(3), fla. Const.; §§ 26.012(2)(a), 34.01(1)(c) 4., fla. Stat.(2003).

Therefore, this allegation is inconsistent and does not properly invoke the jurisdiction of the circuit courts of the State of Florida, *Foley v. Wilson*, 126 So. 3d 340, 341 (3rd DCA 2013).

The pleading threshold to invoke the subject matter jurisdiction of the circuit court when the complaint is one for money damages is not high. The requirement is merely that the amount claimed must be made "in good faith." *Haueter-Herranz v. Romero*, 975 So.2d 511, 515 (Fla. 2d DCA 2008) (quoting *Grunewald v. Warren*, 655 So.2d 1227, 1229 (Fla. 1st DCA 1995)). The threshold routinely is satisfied in the circuit courts of this state with the general allegation that "This is an action for damages in excess of fifteen thousand (\$15,000) dollars...."

Pursuant to F.R.C.P., Rule 1.140(f), a party may move to strike or the Court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So.2d 762, 769 (Fla. 4th DCA 1972), and therefore, the remainder of the allegations should likewise be stricken, to wit:

"...Federal courts leek (sic) subject matter over this action, as there is no federal question and there is incomplete diversity of citizenship due to the presence of a defendant Who is a resident and citizen of Florida. Removal would thus be improper. No party is asserting any claims arising under the Constitution, treaties, or laws of the United States. Venue is proper in this County as at least one Defendant maintains a principal office here most of the properties involved are here..."

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to Plaintiff, STATE OF VERACRUZ, having failed to comply with Rule 1.140(b)(1), F.R.Civ.P., in that the Complaint fails to provide the proper jurisdictional allegation, and therefore, should be dismissed. Otherwise, Plaintiff having failed to state a cause of action upon which relief can be granted as set forth below, the Court should also dismiss the Complaint and accordingly grant the motion to strike redundant, immaterial, impertinent jurisdictional negatives relating to the U.S. District Court jurisdiction.

**MOTION TO DISMISS FOR FAILURE TO TIMELY SERVE NAMED PARTY
DEFENDANTS WITHIN 120 DAYS PURSUANT TO RULE 1.070(j)**

The Complaint was filed on February 19, 2018, thereafter the Plaintiff has failed to have summons issued or serve any of the named Defendants, including Defendants, VELASQUEZ and NEXXOS.

Defendants, VELASQUEZ and NEXXOS, were notified by a third party sources that they had been named in litigation filed in the Circuit Court of 11th Judicial Circuit. The forgoing was the first notification to Defendants, VELASQUEZ and NEXXOS, that indicated that this litigation was filed of record as against the Defendants, VELASQUEZ and NEXXOS.

Upon retention of counsel, counsel for the Defendants, VELASQUEZ and NEXXOS, filed their Notice of Appearance (copy attached as Exhibit A), which stated that each attorney has been authorized to accept service of process on behalf of Defendants, VELASQUEZ and NEXXOS, and further request that all future pleadings and notices be forwarded to them as counsel for Defendants.

Thereafter, the Plaintiff's failed to effectuate service of process upon the attorneys pursuant to the notification of representation.

Further, through the date of the filing of this Motion, the Plaintiff's have failed to implement service upon the attorneys for Defendants, VELASQUEZ and NEXXOS.

With regard to Defendant, DUARTE, it cannot be seriously argued that the allegations in the Complaint as asserted and alleged that Defendant, DUARTE as the then governor embezzled the funds from Plaintiff, STATE OF VERACRUZ (ultimate facts) for the purchase the real estate in Florida at issue and is now in custody in Veracruz.

It is of no merit that the Plaintiff may suggest to the Court that its allegation in ¶3 that "Each of the Defendants named conspired with Javier Duarte to steal government funds from the State of Veracruz." somehow forgives the Plaintiff from timely serving Defendant, DUARTE, in these proceedings under The Florida Long Arm Statute, which provides in part:

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

As to Defendant, DUARTE, the Complaint need only allege that he engaged in nefarious, tortious conduct, or financial/contractual acts in the State of Florida to qualify for personal jurisdiction under Florida's Long Arm Act. F.S. 48.193. (Acts subjecting person to jurisdiction of Courts of Florida).

A complaint which alleges a statutory basis for long-arm jurisdiction under F.S. 48.193 does not require further pleading or proof of jurisdiction, unless controverted by a motion to dismiss along with evidence tending to show that the jurisdictional allegations are untrue. *See Hyco Manufacturing Co. v. Rotex International Corp.*, 355 So.2d 471 (Fla. 3d DCA 1978); Fla.R.Civ.P. 1.070(i).

Plaintiff's Complaint, albeit inexplicably fails to assert jurisdiction over Defendant, DUARTE, under the Florida's Long Arm Statute, F.S. 48.193(l)(b), committing acts within this state does not require a defendant's physical presence in the forum when the act was committed. *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla 2002); see also *Calder v. Jones* 465 U.S. 783, 790 (1984)(finding minimum contacts were satisfied where a defendant's only contact with the forum state was an intentionally tortious act directed at the forum). The alleged acts alleged in the Complaint committed by Defendant, Duarte constitute minimum contacts.

Therefore, there is not any ostensible factual or legal reason as to why it is necessary to provide in ¶ 6 that "Defendant Javier Duarte is a foreign individual that will be served via the Hague Convention. He is currently jailed in Veracruz." wherein the Plaintiff also "resides" and can be easily served.

The Motion to Dismiss for Failure to invoke Florida's Long Arm Statute Under F.S. 48.193(l)(b), is well taken because Plaintiff, STATE OF VERACRUZ, cannot in good faith assert that Defendant, DUARTE, is avoiding service because Defendant, DUARTE is currently jailed in Veracruz.

Since F.R.C.P. 1.070(j) service must be accomplished within 120 days, and it was not through dilatory tactics or stratagem of the Plaintiff, STATE OF VERACRUZ, Plaintiff has not proceeded in good faith. By dragging anchor, it has deprived Defendants, VELASQUEZ and NEXXOS, of a speedy exit from this litigation; therefore it must be dismissed for failure to timely serve all Defendants.

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to Plaintiff, STATE OF VERACRUZ, having failed to effectuate service on any of the Defendants within 120 days this case should be dismissed.

**MOTION TO DISMISS FOR FAILURE TO JOIN AN
INDISPENSABLE PARTY(S) PURSUANT TO RULE 1.140(b)(7)**

Plaintiff, STATE OF VERACRUZ, knew at all times prior to filing the Complaint, from the public records it researched to identify the subject property(s), that Defendant, VELASQUEZ, was a Florida registered real estate broker only receiving standard commissions from the title real escrow agent, upon closing of the sale of one residential property, which arose from a multiple listing (not the listing of Defendant, VELASQUEZ).

Although the Plaintiff, STATE OF VERACRUZ, sued Defendant, VELASQUEZ, as a participating real estate broker in the sale/purchase of a singular residential property located at 277 Marinero Court, Coral Gables, Florida, Plaintiff, STATE OF VERACRUZ, prior to the filing of the Complaint knew *from the public records* in order to list by simple minimal due diligence it is known customarily that the closing agent is the recipient of the funds for the purchase of residential property, the same attorney whose name appears on the recorded title of record, so that the title agent, Charles S. Sacher, Esq. is also an *indispensable party* because the title agent was the recipient of all the funds at issue.

In the same breath, and same rationale, also indispensable parties would be the Listing Broker, One Sotheby International Realty, which received the split commission upon the sale of the then subject residential property. Cherry picking the Defendant, VELASQUEZ is wholly improper and contrary to the Florida Rules of Civil Procedure and

case law pertaining to indispensable parties.

F.R.Civ.P. Rule 1.140(b), specifically provides for a Motion to Dismiss for Failure to join an Indispensable Party if its applicability is demonstrated on the face of the Complaint or exhibits. *Fariello v. Gavin*, 873 So.2d 1243, 1245 (Fla. 5th DCA 2004). In *GMI, LLC v. Asociacion del Futbol Argentino*, 193 So.3d 60 (3rd DCA 2016), the Court defined the term "indispensable party",

"[A]n indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interests or the interest of another party in the action." *Diaz v. Impex of Doral, Inc.*, 7 So.3d 591, 594 (Fla. 3d DCA 2009); *see also Fla. Dep't of Revenue v. Cummings*, 930 So.2d 604, 607 (Fla.2006)."

The allegations of the Complaint, although vehemently denied, allege:

3. Each of the Defendants named conspired with Javier Duarte to steal government funds from the State of Veracruz. The property listed in rem is just a single example of those purchased with stolen funds all across the United States and the world.

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to Plaintiff, STATE OF VERACRUZ, having failed to comply with Rule 1.140(b)(7), F.R.Civ.P., in that the Complaint fails to join indispensable parties, and therefore, should be dismissed.

**MOTION TO STRIKE SCANDALOUS ALLEGATIONS IN THE COMPLAINT
PURSUANT TO RULE 1.140(f)**

Pursuant to F.R.C.P., Rule 1.140(f), a party may move to strike or the Court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time. *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So.2d 762, 769 (Fla. 4th DCA 1972).

Motion to Strike F.R.C.P. Rule 1.140. a(3) and F.R.C.P. (f)

(3) The service of a motion under this rule, except a motion for judgment on the pleadings or a motion to strike under subdivision (f), alters these periods of time so that if the court denies the motion or postpones its disposition until the trial on the merits, the responsive

pleadings must be served within 10 days after the filing of the court's order or, if the court grants a motion for a more definite statement, the responsive pleadings must be served within 10 days after service of the more definite statement unless a different time is fixed by the court in either case.

The oft cited case of *Phillips v. Choate*, 456 So. 2d 556, 559 (Fla. 4th DCA 1984) has the guidelines for determining Sham pleadings, as quoted below.

"Motion to strike is intended to remedy pleading defects such as redundancy, immateriality, impertinency, scandalous or sham matter. Sham pleadings are those which are inherently false and must have been known by the interposing party to be untrue. 1314 A motion to strike matter as redundant, immaterial or scandalous should only be granted if the **material is wholly irrelevant, can have no bearing on the equities and no influence on the decision.** *Westervelt v. Istokpoga Consol. Subdrainage Dist.*, Fla.1948, 160 Fla. 535, 35 So.2d 641; *Gossett v. Ullendorff*, Fla.1934, 114 Fla. 159, 154 So. 177.
(emphasis supplied)

Sham pleadings are those which are inherently false and must have been known by the interposing party to be untrue. Therefore, the allegations are scandalously, patently untrue and false, and intended to deliberately defame and economically damage Defendants, VELASQUEZ and NEXXOS.

The Court may consider only the legal sufficiency of the allegations, and the allegations set forth in the Complaint herein sounding solely on slanderous, immaterial, unmeritorious, and frivolous allegations, peppered with the history of murders, bribery, political corruption under the terms Defendant, DUARTE, which predated any nexus to Defendants, VELASQUEZ and NEXXOS.

Therefore, the allegations as filed herein each are legally insufficient to state a cause of action as against Defendants, VELASQUEZ and NEXXOS, and the allegations are grossly immaterial, and so wholly irrelevant, without any nexus to Defendants, VELASQUEZ and NEXXOS, which cannot have any bearing on the equities other than an attempt to negatively influence the Court on the decision as to the Defendants, VELASQUEZ and NEXXOS. It is a blatant attempt to *poison the well* as to the

Defendants, VELASQUEZ and NEXXOS.

Motion of Defendant, encompasses Order of Court Prohibiting and Enjoining Pro Se Plaintiff from Republishing Scandalous Allegations and enjoining Plaintiff from making verbally or in writing, by electronic mail or in person, or publishing or republishing, any such allegation implies Defendant, VELASQUEZ, a Florida licensed real estate broker has had any participation whatsoever in the embezzlement or laundry of funds in Florida from the Defendant, DUARTE, to purchase residential property is blatantly a sham pleading.

In *Kohn v. City of Miami Beach*, 611 So.2d 538 (Fla. 3rd DCA 1992) the Third DCA held in a *pro se* case, the rationale as is also applicable herein.

There is simply a point in litigation when defendants are entitled to be relieved from the time, effort, energy, and expense of defending themselves against seemingly vexatious claims. *Feigin v. Hospital Staffing Servs., Inc.*, 569 So.2d 941 (Fla. 4th DCA 1990)

The allegations against Defendants, VELASQUEZ and NEXXOS, are completely irrelevant and immaterial and should be stricken pursuant to F.R.Civ.P. 1.140 (f), which by definition are redundant, immaterial, impertinent or scandalous.

The allegations herein sought to be stricken are wholly irrelevant, prejudicial, and can have no bearing upon the equities or influence upon the decision either as to the relief to be granted or the allowance of costs. See: *Fernandez v. Fernandez*. 54 So.2d 238 (FL 1951); *Westervelt v. Istokpoga Consolidated Sub-Drainage Dist.*, 160 Fla. 535, 35 So.2d 641; *Orange State Oil Co. v. Crosby*, 160 Fla. 664, 36 So.2d 273; *240 *Schupler v. Eastern Mortgage Co.*, 160 Fla. 72, 33 So.2d 586.

Although framed as to a Motion to Strike scandalous allegations from an answer the Florida Supreme Court in *Fernandez*, supra, cited the applicable well travelled rule.

The applicable rule governing the striking of an answer, in whole or in part, is viz.: 'Motion to strike from an answer any part of it which may be deemed to be redundant, impertinent or scandalous is controlled by the rule, which requires the denial of the motion unless the matter sought to be stricken is wholly irrelevant, can have no bearing upon the equities and no influence upon the decision either as to the relief to be granted or the

allowance of costs.' See *Westervelt v. Istokpoga Consolidated Sub-Drainage Dist.*, 160 Fla. 535, 35 So.2d 641; *Orange State Oil Co. v. Crosby*, 160 Fla. 664, 36 So.2d 273; *240 *Schupler v. Eastern Mortgage Co.*, 160 Fla. 72, 33 So.2d 586, and similar cases.

Defendants, VELASQUEZ and NEXXOS, request that this Court enter the appropriate order striking the allegations in the Complaint describing the events in Mexico other than the single reference of use of embezzled funds to purchase properties in Florida. As facially set forth in the Complaint, the allegations are *per se* scandalous. The relief should be granted.

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to Plaintiff, STATE OF VERACRUZ, having failed to comply with Rule 1.110 F.R.Civ.P.(f), and, otherwise, having failed to state a cause of action upon which relief can be granted, the Court should strike the scandalous allegations and also dismiss the Complaint accordingly.

**MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION
PURSUANT TO RULE 1.140(b)(6) AND RULE 1.110(f)**

In considering a Motion to Dismiss, Defendants acknowledge that a trial Court is limited to the four corners of the Complaint, and it must accept all the allegations in the Complaint as true, nonetheless it must state a cause of action upon which relief can be granted. See *Taylor v. City of Riviera Beach*, 801 So.2d 259 (Fla. 4th DCA 2001)

Rule 1.110(f), F.R.Civ.P., states, in part, that "[e]ach claim founded upon a separate transaction or occurrence shall be stated in a separate count when a separation facilitates the clear presentation of the matter set forth."

The Complaint herein fails to factually specify or plead the necessary underlying facts regarding any nexus of Defendants, VELASQUEZ and NEXXOS, to any act of Defendant, DUARTE, with sufficient ultimate facts to show that the pleader is entitled to relief from the Defendants, VELASQUEZ and NEXXOS (*Taylor v. City of Riviera Beach*, supra, 262).

A motion to dismiss tests the legal sufficiency of a complaint to state a cause of action and is not intended to determine issues of ultimate fact." *Roberts v. Children's*

Med. Servs., 751 So.2d 672, 673 (Fla. 2d DCA 2000). And, on a motion to dismiss, “the trial court is limited to consideration of the allegations contained within the four corners of the complaint.” *Swope Rodante*, 85 So.3d at 509 (quoting *Al-Hakim v. Holder*, 787 So.2d 939, 941 (Fla. 2d DCA 2001)).

However, the Complaint filed by Plaintiff, STATE OF VERACRUZ, failed to allege separate transactions or occurrences as distinctly alleged in the Complaint in separate counts, and therefore, the Complaint should be dismissed in that regard alone.

Under Fla. R. Civ. P. 1.110:

(f) Separate Statements. All averments of claim or defense shall be made in consecutively numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. **Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth. (emphasis supplied)**

Also, Defendants, VELASQUEZ and NEXXOS, were not alleged to have been acting as the agent of Defendant, DUARTE, or was paid by the Defendant, DUARTE, or was employed by the Defendant, DUARTE, or knowingly received any alleged embezzled funds directly from Defendant, DUARTE, thus it fails to state a cause of action under any theory as against the Defendant, VELASQUEZ.

The Complaint failed to allege specific participation, violations, or breaches by Defendants, VELASQUEZ and NEXXOS, or specific allegations that Defendants, VELASQUEZ and NEXXOS knowingly received the illicit funds in Florida, or that Defendants, VELASQUEZ and NEXXOS engaged in a scheme with Defendant, DUARTE, thus the Complaint improperly alleges a formulation allegation of a “naked act” in an otherwise customary position as a real estate broker entitled to a commission from the purchase/sale of one residential property.

The Complaint herein merely contains “labels and conclusions” or a formulaic recitation of the extrinsic foreign actions (embezzlement) by Defendant, DUARTE, in Mexico, but fails miserably to connect any such act to Defendants, VELASQUEZ and

NEXXOS.

Defendants, VELASQUEZ and NEXXOS, have a procedural due process right to have adequate notice of the claims being made by Plaintiff, STATE OF VERACRUZ, as against each named Defendant, separately, distinct from act of the other named Defendants, so that Defendants, VELASQUEZ and NEXXOS, can have a meaningful opportunity to defend against only the separate claims alleged against this defendant. *See Borden v. Guardianship of Borden-Moore*, 818 So.2d 604 (Fla. 5th DCA 2002).

To survive a Motion to Dismiss for Failure to State a Cause of Action the factual allegations contained in the Complaint regarding transfer of monies must evince either a fiduciary relationship, or a transaction between the parties, that requires documents and emails, otherwise there is a transparent inadequacy of a legal remedy, and a failure to state a cause of action for relief. *See Chiron v. Isram Wholesale Tours & Travel. Ltd.*, 519 So. 2d 1102, 1103 (Fla. 3d DCA 1988) (affirming dismissal of plaintiff's Amended Complaint for failure to state a cause of action for an accounting).

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to the Plaintiff, STATE OF VERACRUZ, failing to state a cause of action pursuant to Rule 1.140(b)(6) and Rule 1.110(f), this Court enter an order dismissing the Complaint.

**MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION
PURSUANT TO RULE 1.130 FOR FAILURE TO ATTACH ANY WRITTEN
INSTRUMENT OR ADEQUATE PORTION THEREOF**

A complaint based on written instrument does not state a cause of action until the instrument or adequate portion thereof is attached to or incorporated in a pleading in question, F.R.Civ. P. Rule 1.130.

In case of the complaint herein, based on written instruments (deeds), it does not state cause of action until instrument or adequate portion thereof is attached to or incorporated in pleading in question. *Safeco Ins. Co. of America v. Ware*, 401 So.2d 1129 (4th DCA, 1981).

The Complaint alleges forty (40) real estate transactions in Florida and attributes one residential closing to Defendants, VELASQUEZ and NEXXOS, listing same by

reference *in rem* as to the *collective* Defendants. The allegations in the Complaint require attaching the deeds to the Complaint or suffer dismissal of complaint. *Safeco Ins. Co., supra*. Same under the electronic rules of Court could have been easily e-filed but were not. Therefore, dismissal of the Complaint is mandatory.

WHEREFORE, Defendants, VELASQUEZ and NEXXOS, respectfully requests that due to the Plaintiff, STATE OF VERACRUZ, having failed to comply with Rule 1.130 and, otherwise, having failed to state a cause of action upon which relief can be granted, the Court should strike the scandalous allegations and also dismiss the Complaint accordingly.

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered this 2nd day of July, 2018 by e-service to James W. Cusack, Esq., Attorney for Plaintiffs, jwc@jwcusack.com; Anthony G. Buzbee, Esq., Attorney for Plaintiffs, tbuzbee@txattorneys.com; and all other counsel listed on the e-portal service list.

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RIS/rp
7/2/18
Motion to Dismiss

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FREE AND SOVEREIGN STATE OF
VERACRUZ DE IGNACIO DE LA LLAVE

Plaintiffs,

vs.

ACE REALTY HOLDINGS, LLC, JAVIER
DUARTE, ANA MARIA VELASQUEZ,
NEXXOS REALTY, LLC, INAKI NEGRETE,
VULCAN DYNAMIC REALTY FUND, LP

Defendants.

CIVIL ACTION

CASE NO. 2018-005132-CA-01

DIVISION: (21)

NOTICE OF APPEARANCE AND DESIGNATION OF E-MAIL SERVICE ADDRESS

Ronald I. Strauss, Esq. and **Frank A. Rubino, Esq.** file this *Notice of Appearance* of behalf of Defendants, ANA MARIA VELASQUEZ and NEXXOS REALTY, LLC, and each attorney has been authorized to accept service of process on behalf of Defendants, ANA MARIA VELASQUEZ and NEXXOS REALTY, LLC, and further request that all future pleadings and notices be forwarded to them as counsel for Defendants, at the designated e-mail service address of pleadings@ronstrausslaw.com and frank@frankrubino.com.

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered this 18th day of April, 2018 by e-service to James W. Cusack, Esq., Attorney for Plaintiffs, jwc@jwcusack.com; Anthony G. Buzbee, Esq., Attorney for Plaintiffs, tbuzbee@txattorneys.com; and all other counsel listed on the e-portal service list.

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By /s/ Frank A. Rubino

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By /s/ Ronald I. Strauss

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