

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

Louise Delaney, et al
Plaintiffs,

v.

Case No.: 16-CA-439-K

Florida Keys Aqueduct
Authority, et al.,
Defendants.

**ORDER DISMISSING COUNT ONE OF THE AMENDED COMPLAINT
WITHOUT PREJUDICE**

The Defendants having moved for an order dismissing count one of the complaint, without prejudice, in this action on the grounds that the amended complaint does not comply with Fla. R. of Civ. P. 1.110(b)(2), the Court, having examined the record, the applicable law, and being otherwise fully informed in the premises, finds and orders as follows:

Count one of the amended complaint prays for a judgment declaring her rights and obligations pursuant to certain Monroe County ordinances relating to the installation of a county-wide sewer system. Count one clearly alleges a cause of action, but is supported by arguments generally found in the format of a brief or

memorandum. According to the movants, this manner of pleading violates 1.110(b)(2).

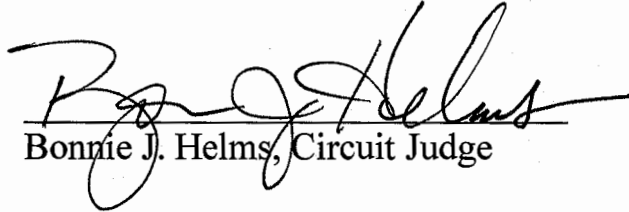
Fla. R. of Civ. P. 1.110(b)(2) provides that a pleading should contain “a short and plain statement of the ultimate facts showing that the pleader is entitled to the relief”. Count one is neither short nor plain and it does not comply with 1.110(b)(2). Therefore, the Court is left to consider the remedy available to the movants.

When presented with a motion to strike an offending pleading, the Courts have generally taken three available paths—dismissal with prejudice, usually reserved for repeated, deficient pleading submissions (*Lutheran Senior Citizens Found. v. Schumacher*, 355 So.2d 861 (Fla. 3rd DCA 1978)), dismissal with leave to amend (*Norton-Griffiths v. Wells Fargo Home Mortg.*, 2011 U.S. Dist. LEXIS 25807), and denial of the motion if the pleading states a cause of action, ignoring surplusage (*Harrell v. Hess Oil & Chemical Corp.*, 287 So.2d 291 (Fla. 1973)).

Here, the Court finds that the amended complaint’s surplusage is of such length and complexity that, though count one states a cause of action, the ultimate facts are too well hidden by, and irretrievably intertwined with, surplusage. The course taken in *Norton-Griffiths, supra*, dismissal with leave to amend, is the appropriate remedy.

WHEREFORE, it is **ORDERED** and **ADJUDGED** that the motion to dismiss count one, with leave to amend, is **GRANTED**. A motion for alternative relief, a motion for a more definite statement, is **DENIED**.

ORDERED in chambers in Key West, Monroe County, this 7th day of December 2016.


Bonnie J. Helms, Circuit Judge

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