

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CIRCUIT CIVIL DIVISION**

NICHOLAS BOLLEA,
Plaintiff,

v.

UCN: 522008CA008133XXCICI
Ref No. 08-8133-CI-20

**JIM COATS, in his Official
Capacity as Sheriff for Pinellas
County,**

Defendant,

v

**MEDIA GENERAL OPERATIONS,
INC, d/b/a *The Tampa Tribune* and
WFLA-TV News Channel 8,**

Intervenor,

v

LINDA BOLLEA,

Intervenor.

ORDER ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

THIS CAUSE came before the Court for hearing on August 6, 2008 on Defendant's Motion for Judgment on the Pleadings. The parties and intervenors were all represented by counsel. A court reporter was present.

The Defendant has moved for a judgment on the pleadings on the basis that the sole question to be answered is whether the audio and video recordings at issue are nonconfidential public records pursuant to Florida's Public Records Act, Chapter 119, Florida Statutes (2007), for which no exemption exists. Defendant argues that no material issues of fact are in dispute and that on the questions of law presented, Defendant is entitled to a judgment on the pleadings. No witnesses were called and no testimony was presented.

Although vigorously debated by counsel, the test for evaluating a motion for judgment on the pleadings is determining whether a cause of action would be established by proving the plaintiff's allegations. All allegations in the complaint are accepted as true and all allegations in

the answer are accepted as false. See *Delgado v J W Courtesy Pontiac GMC-Truck, Inc*, 693 So.2d 602 (Fla. 2d DCA 1997); *Hammond v Decorator's Services, Inc*, 522 So.2d 521 (Fla. 2d DCA 1988); *Wittington Condominium Apartments, Inc, v Braemar Corp*, 313 So.2d 463 (Fla. 4th DCA 1975) (Test is the same as that used in disposing of a motion to dismiss for failure to state a cause of action.).

The motion differs from a motion for summary judgment in that the trial judge may not properly consider requests for admissions, interrogatories and answers thereto, depositions, affidavits and any other documents permitted to be considered by the rule governing summary judgments. *Bradham v Hayes Enterprises, Inc*, 306 So.2d 568 (Fla. 1st DCA 1975). See, *Farag v National Databank Subscriptions, Inc*, 448 So.2d 1098 (Fla. 2d DCA 1984).

The elements of a declaratory judgment cause of action are

- (1) a bona fide, actual, present and practical need for the declaration;
- (2) that the declaration will deal with present, ascertained or ascertainable state of facts, or present controversy as to a state of facts;
- (3) that some immunity, power, privilege or right is dependent upon the facts or the law applicable to the facts;
- (4) that there is some person or persons who have, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law;
- (5) that the antagonistic and adverse interests are all before the court;
- (6) and that the relief sought is not merely the giving of legal advice by the court or the answers to questions propounded from curiosity. *City of Sarasota ex rel Jack Graham, Inc, v Mikos*, 613 So.2d 566 (Fla. 2d DCA 1993).

The test of the sufficiency of a complaint for declaratory action is not whether the complaint shows that plaintiff will succeed in getting a declaration of right in accordance with its theory and contention, but whether Plaintiff is entitled to a declaration of rights at all. *Id.*

Here, Plaintiff has alleged matters sufficient to meet the elements of the declaratory judgment cause of action and thus, it is not clear whether Defendant, the moving party, is entitled to a judgment as a matter of law.

Plaintiff also has pointed out that there is some question of whether a motion for judgment on the pleadings is an appropriate procedural vehicle in a case such as this. In *Spielvogel v Crown Realty Association*, 465 So.2d 532 (Fla. 4th DCA 1984), although the

plaintiff alleged in his complaint that the mortgage was a balloon mortgage under the statute, the trial court subsequently entered a final judgment on the pleadings finding that it was not a balloon mortgage. The appellate court held that such a result could not be reached on defendants' motion for judgment on the pleadings, since the plaintiff's allegation had to be taken as true. Therefore, it is

ORDERED AND ADJUDGED that the Motion for Judgment on the Pleadings is **DENIED**.

DONE AND ORDERED at Clearwater, Pinellas County, Florida this 5th day of September 2008.


TRUE COPY

GEORGE M. JIROTKA
CIRCUIT JUDGE

Copies furnished to:

Jaime B. Eagan, Esq, Associate General Counsel, Pinellas County Sheriff's Office, 10750 Ulmerton Road, Largo, FL 33778 Fax: 727-582-6459

Maegen P Luka, Esq, and Morris Weinberg, Jr, Esq, Zuckerman Spaeder LLP, 101 E Kennedy Blvd, Suite 1200, Tampa, FL 33602 Fax: 813-223-7961

Susan Tillotson Bunch, Esq, and Gregg Thomas, Esq, Thomas & LoCicero PL, 400 N Ashley Drive, Suite 1100, Tampa, FL 33602 Fax: 813-984-3070

A. J. Barranco, Jr, Esq, Barranco & Kircher, PA, Suite 1400, Museum Tower, 150 West Flagler Street, Miami, FL 33130-1783 Fax: 305-371-7021

Erik Matheney, Esq, Hill Ward & Henderson, 3700 Bank of America Plaza, 101 East Kennedy Blvd, Tampa, FL 33602-5195 Fax: 813-221-2900

O. Stephen Thacker, Esq, and John Thacker, Esq, Thacker & Smitherman, 407 South Ewing Avenue, Clearwater, FL 33756 Fax: 727-447-8388