

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-61623 CIV-MARRA

BARRINGTON WILLIAMS, and  
TONYA MOORER,

Plaintiffs,

vs.

TOWN OF SUNSHINE RANCHES,  
Florida, FLORIDA DEPARTMENT OF  
COMMUNITY AFFAIRS, and TOWN  
OF PEMBROKE PARK, Florida,

Defendants.

MAGISTRATE JUDGE SELTZER

RECORDED  
9 FEB 17 PM 4:02  
D.C.

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT TOWN  
OF PEMBROKE PARK'S MOTION TO DISMISS**

Plaintiffs BARRINGTON WILLIAMS and TONYA MOORER by and through undersigned counsel and pursuant to Rule 7.1 of the Local Rules of the Southern District of Florida, files this their Memorandum of law in opposition to Defendant TOWN OF PEMBROKE PARK ("Pembroke Park") Motion to Dismiss the Amended Complaint. For their Response to Pembroke Park's Motion to dismiss, and in addition to the arguments herein, the Plaintiffs adopt, incorporate and restate the arguments and authorities in their Memorandum of Law in Opposition to the Town of Southwest Ranches' Motion to Dismiss, and in their Memorandum of Law in Opposition to the Florida Department of Community Affairs' Motion to Dismiss, already filed with the Court. Accordingly, Plaintiffs state that Pembroke Park's Motion to Dismiss is without merit and must be denied.

37  
/98

## **BACKGROUND**

The Plaintiffs, Williams and Moorer, both black and having income falling within the affordable housing guidelines, and Moorer who is also a parent with a minor child, filed this action, under the Fair Housing Act ("FHA"), and under 42 U.S.C. § 1983, for declaratory and injunctive relief to stop the Town of Southwest Ranches ("Town") from its continuing policy and practice of excluding blacks from residing within its borders, by and through its active practice and policy of preventing the location of affordable housing within its borders. Pembroke Park has knowingly aided and abetted Southwest Ranches in carrying out said discriminatory housing policy by engaging in contractual negotiations with Southwest Ranches for its acceptance of an allotment of Southwest Ranches' affordable housing in exchange for cash. This negotiated contract would have been executed by Pembroke Park's Town Council in December, 2004, but was tabled upon the filing of this action. See Herald article attached as Exhibit 1.

Under Florida law, local governments, such as Southwest Ranches, is obligated to provide for affordable housing; however, Southwest Ranches has frustrated, and continue to frustrate, the development of affordable housing within its borders under the guise that the Town's alleged "unusually high property value" makes affordable housing unfeasible. Based on this fictitious argument, Southwest Ranches, with the advise, consent and approval of the DCA, and with the active and knowing participation of Pembroke Park, perpetuate segregation and the concentration of blacks in certain high impacted areas in Broward County, and preserve Southwest Ranches as a white enclave, in violation of the FHA.

The Plaintiffs have also filed a claim against Southwest Ranches under 42 U.S.C. § 1983, Count II, in which they allege that the Town's pattern and practice in excluding affordable

housing within its borders, while not similarly restricting non-affordable housing, amounts to an impermissible government imposed restriction on the Plaintiffs' fundamental right to own property in a community of their choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

In response to the Amended Complaint, Pembroke Park has filed a motion to dismiss Count I, the FHA claim. The Motion is without merit and should be denied.

### ARGUMENT

Pembroke Park filed its motion to dismiss on two grounds: (1) the dispute is not ripe for adjudication, and (2) the Plaintiffs have no standing. In support of its motion, Pembroke Park relies solely on the fact that it tabled its execution of the negotiated agreement just after it was served with process in this action, and on the arguments raised in Southwest Ranches' separately filed Motion to Dismiss, D.E. 25. Pembroke Park's reliance on its action tabling its execution of the negotiated agreement on account of this suit, *see* attached Exhibit 1, and on Southwest Ranches' Motion to Dismiss is misplaced for the reasons stated in the Plaintiffs' Memorandum of Law in Opposition to Southwest Ranches' Motion to Dismiss, which the Plaintiffs have adopted, reincorporated and restated here. Further, Pembroke Park, like Southwest Ranches, simply argues with, and contests, the allegations in the Amended Complaint, which is not appropriate on a Motion to Dismiss.

Pembroke Park's argument that the matter is not ripe because it has not executed the negotiated contract can be viewed as its affirmative declaration that it will not execute the negotiated contract, in oppose to the Town's decision to table its formal approval and execution pending the outcome of the suit. If this is the Town's position, it must state so affirmatively;

otherwise, the matter is ripe for adjudication.

A. **Standard of Review**

It is well understood that a motion to dismiss is used to test the facial sufficiency of the statement of a claim for relief. *Vernon v. Medical Management Associates of Margate, Inc.*, 912 F.Supp. 1549, 1553 (S.D.Fla. 1996). It is read alongside Rule 8(a), which requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” A motion to dismiss “**is not designed to strike inartistic pleadings or to provide a more definite statement to answer an apparent ambiguity.**” *Vernon v. Medical Management Associates of Margate, Inc.*, *supra*, 912 F.Supp. at 1553. Thus, “the analysis of a motion to dismiss is **limited primarily to the face of the complaint and attachments thereto.**” *Id.* (citing Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1356 at 590-92 (1969) (Wright & Miller)).

The Eleventh Circuit has reiterated that:

the Supreme Court has stated that the ‘accepted rule’ for appraising the sufficiency of a complaint is ‘that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

*Wetzel v. Hoffman*, 928 F.2d 376 (11<sup>th</sup> Cir. 1991) (quoting *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). Accordingly, a complaint should not be dismissed because the plaintiff’s claims fail to support the legal theory he relies upon since the court must determine if the allegations provide for relief on any possible theory. *Robertson v. Johnston*, 376 F.2d 43 (5<sup>th</sup> Cir. 1967).<sup>1</sup> Motions to dismiss are viewed with disfavor and are rarely granted. *Vernon v.*

---

<sup>1</sup>In *Bonner v. Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

*Medical Management Associates of Margate, Inc., supra*, 912 F.Supp. at 1553. Further, a motion to dismiss should be granted **only** when the pleading shows that the plaintiff has no claim. In ruling on a motion to dismiss, the court must accept all allegations in the complaint as true and construe the factual allegations, and their inferences, in light most favorable to the plaintiff.

*Harper v. Thomas*, 988 F.2d 101, 103 (11<sup>th</sup> Cir. 1993).

Similarly, the Supreme Court has instructed that “[f]or purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” *Warth v. Seldin* 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975); *see also Harper v. Thomas*, 988 F.2d 101, 103 (11<sup>th</sup> Cir. 1993).

Viewed against these well established principles, and for the reasons stated below, the DCA’S motion to dismiss should be denied.

**B. The Action is Ripe for adjudication**

The fact that Pembroke Park has tabled formal execution of the negotiated agreement with Southwest Ranches pending the outcome of this suit, *see* attached Exhibit 1, does not divest the Court of jurisdiction to decide the issue, except if, as it appears, Pembroke Park is declaring that it will not execute the negotiated agreement with Southwest Ranches. If this is Pembroke Park’s position, it must state so affirmatively. Until Pembroke Park makes a definitive declaration, the matter is ripe for consideration because Pembroke Park’s decision depends the Court’s ruling. Because the Plaintiffs request declaratory judgment as to the negotiated contract for affordable housing between the Towns, the matter is ripe for adjudication unless one of the parties to the negotiated contract decides to not go forward, which is not the case here.

Further, as Pembroke Park has adopted Southwest Ranches' argument on the issue of ripeness, which argument the Plaintiffs have fully briefed, the Plaintiffs also adopt, incorporate, and restate, here, all the responsive arguments and authorities contained on pages 14-16, of the Plaintiffs' Memorandum of Law in Opposition to Southwest Ranches' Motion to Dismiss. The Plaintiffs also adopt, incorporate, and restate, here, all the responsive arguments and authorities contained on pages 5-10, of the Plaintiffs' Memorandum of Law in Opposition to the Florida Department of Community Affairs' Motion to Dismiss. Based on these arguments and authorities, the Plaintiff states that Pembroke Park's argument that the matter is not ripe for adjudication is without merit and must be rejected.

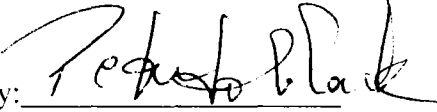
**C. *The Plaintiff's have Standing to maintain the FHA action.***

Pembroke Park has also adopted the arguments and authorities in Southwest Ranches' Motion to Dismiss, D.E. # 25, to support its argument that the Plaintiffs do not have standing. Therefore, the Plaintiffs hereby adopt, incorporate and restate here, the responsive arguments and authorities contained on pages 3-13, of the Plaintiffs' Memorandum of Law in Opposition to Southwest Ranches' Motion to Dismiss, currently pending before the Court; and based thereon, the Plaintiffs state that they have allege standing to maintain the action. Accordingly, Pembroke Park's motion to dismiss for lack of standing should be denied.

FOR THE FOREGOING reasons, the Plaintiffs respectfully request that the Court enter an order Denying DCA'S Motion to Dismiss the Amended Complaint

Respectfully submitted.

LAW OFFICE OF PETER LOBLACK, P.A.  
2835 Hollywood Blvd Ste 300  
Hollywood, FL 33020  
Tel. (954) 620-7200  
Fax (954) 620-7204  
Email: peter.loblack.atty@att.net

By: 

Peter Loblack  
Florida Bar # 876038

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the a true and correct copy of the foregoing was sent by U.S. Mail to Gary C. Rosen, Esq., Becker & Poliakoff, P.A., PO Box 9057, Ft Lauderdale, FL 33310-9057); Christopher J. Ryan, Esq., Ryan & Ryan, LLC., 700 East Dania Beach Blvd., 3<sup>rd</sup> Floor, Dania Beach, FL 33004, and Carol A. Fields, Esq., Office of Florida Attorney General, Civil Litigation Division, 110 SE 6<sup>th</sup> Street, 10<sup>th</sup> Floor, Ft Lauderdale, FL 33301-5000, on this the 17<sup>th</sup> day of February, 2005.

Law Office of Peter Loblack, P.A.

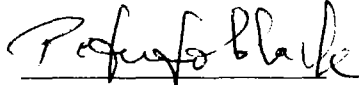
By:   
PETER LOBLACK

Exhibit 1

# The Miami Herald Herald.com

News | Business | Sports | Entertainment | Living | City Guide | Shopping | Jobs | Cars | Homes

## Archives

### Miami Herald, The (FL)

December 9, 2004

**Section:** Broward & State

**Edition:** Broward

**Page:** 1B

### HOUSING DEAL ON LEGAL HOLD

*KEVIN DEUTSCH, [kdeutsch@herald.com](mailto:kdeutsch@herald.com)*

Pembroke Park has put a **housing** deal with Southwest Ranches on hold because of a federal lawsuit charging that the deal would make it harder for poor black people to find **affordable** homes.

Southwest Ranches, which must have 654 **affordable housing** units built by 2025 to meet state requirements, offered to pay a developer and Pembroke Park \$900,000 to build 168 apartments on Hallandale Beach Boulevard and 52nd Avenue.

But the lawsuit threw a wrench in their plans.

Pembroke Park commissioners on Wednesday approved a site plan for the apartments, but for the time being Southwest Ranches is not part of the deal.

"The project is separate from this agreement [with Southwest Ranches]," said Pembroke Park Town Manager Robert Levy.

Town officials say they must get advice from their legal counsel before making a decision on whether to approve the deal with Southwest Ranches.

“Now that it's in litigation, we can't really do too much until we know all the alternatives,” Levy said.

The plan to build more **affordable housing** in Pembroke Park will move forward no matter what, Levy said. Pinnacle Oaks Ltd., a South Florida developer, plans to build the Pinnacle Oaks apartment complex on 71/2 acres owned by Pembroke Park.

The developer has until Dec. 31 to purchase the land from the town for \$1.8 million. Half of that money would come from the Southwest Ranches deal if it is salvaged.

Rent at the Pinnacle Oaks apartment complex would be: \$302 to \$641 for a one-bedroom apartment, \$359 to \$766 for a two-bedroom, and \$411 to \$881 for a three-bedroom, according to Pinnacle.

The proposed deal between Pembroke Park and Southwest Ranches appeared to be close to fruition before attorney Peter Loblack filed the lawsuit on behalf of Barrington Williams, a low-income black man. Williams, who lives in Tamarac, has been looking for other **housing** in Broward County.

Loblack, an African-American attorney from Hollywood, focuses on civil rights and public health law. Frustrated that no one was challenging Southwest Ranches, he said, he decided to file the suit without charging a fee.

The suit claims that the **affordable-housing** deal would perpetuate the segregation of black people who are poor by allowing Southwest Ranches to avoid building **affordable housing** within its own borders. It names as defendants the towns of Southwest Ranches, Pembroke Park and the state.

Florida law requires cities and towns to set aside land for **affordable housing**. If that's not practical, the law allows for a neighboring community to assume the responsibility.