

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN
WEAVER, an individual; et al,

CASE NO: 2012 CA 412

Plaintiffs,

vs.

KEN DETZNER, et al,

Defendants.

_____ /

THE LEAGUE OF WOMEN VOTERS OF
FLORIDA; THE NATIONAL COUNCIL
OF LA RAZA; et al,

CASE NO: 2012 CA 490

Plaintiffs,

vs.

KEN DETZNER, et al,

Defendants.

_____ /

FILED
2014 FEB 11 P 4:44
CLERK OF COURT
LEON COUNTY FLORIDA

**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
ON LEGISLATIVE DEFENDANTS' SEVENTH AFFIRMATIVE DEFENSE**

THIS CASE is before me on motions by the Plaintiff for Partial Summary Judgment as to the Legislative Defendants' Seventh Affirmative Defense, which asserts unclean hands and fraud on the Court. I have considered the Motions, the Response thereto, the written and oral arguments of counsel and the authorities cited. For the reasons set forth below, I grant the Motions.

An affirmative defense presupposes the truth of the allegations in a complaint. It asserts that, even if those allegations are true, the Plaintiffs are still not entitled to the relief requested

based on certain facts. The doctrine of unclean hands may, under certain circumstances, be an affirmative defense where a Plaintiff seeks equitable relief. It follows from the maxim that one who seeks equity must have done equity. He must come into court with clean hands.

Here, the factual basis asserted for the affirmative defense of unclean hands occurred after the claim was filed, specifically, it is alleged that the Plaintiffs submitted a proposed alternative map in support of their Motion for Summary Judgment that was not as represented, i.e., was not drawn in compliance with the constitutionally required criteria, but rather was intentionally partisan in its intent and effect. The Plaintiffs say that even if that is true, it does not constitute an affirmative defense of unclean hands. I agree.

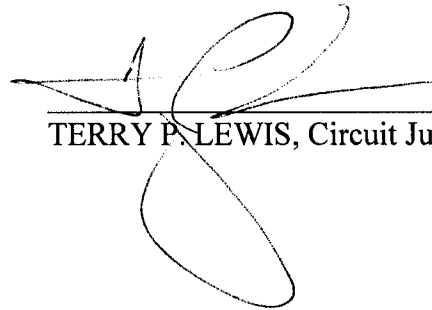
In order for unclean hands to constitute a valid affirmative defense, the factual basis for it must have arisen prior to the claim being filed. It should be something that makes the filing of the claim contrary to fundamental notions of equity and fair dealing. It is not properly based upon action or conduct that occurs during the litigation of the claim itself. To hold otherwise would create an unworkable situation in which pleadings would be subject to amendment throughout the litigation, up and through trial if the Plaintiffs did something that a Defendant thought unfair.

Defendants' alternative theory for their Seventh Affirmative Defense is that Plaintiffs' conduct constitutes fraud on the Court. While conduct on the part of a Plaintiff during the litigation of a case could constitute fraud on the Court and justify a sanction of dismissal, such conduct would not constitute an affirmative defense, a bar to recovery. Rather, it would provide the basis for a range of possible sanctions, to be determined by the Court, based upon a balancing of several factors.

Thus, I conclude that the Plaintiffs are entitled to judgment as a matter of law on the Seventh Affirmative Defense. Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiffs' Motion is granted and Partial Summary Final Judgment is entered in favor of the Plaintiffs as to the Legislative Defendants' Seventh Affirmative Defense.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this 11th day of January, 2014.



TERRY P. LEWIS, Circuit Judge

Copies to:

All Interested Parties