

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

JOEL CHANDLER and
ROBERT CHANDLER

CASE NO: 12-000990 CACE (09)

Plaintiffs,

vs.

HON. DAVID KRATHEN

THE TOWN OF SOUTHWEST RANCHES
CITY COUNCIL and THE TOWN OF
PEMBROKE PINES CITY COUNCIL, public
bodies of the State of Florida,

Defendants.

**ORDER GRANTING DEFENDANT, CITY OF PEMBROKE PINES' MOTION TO
DISMISS VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF, OR IN THE ALTERNATIVE FOR MORE DEFINITIVE STATEMENT**

THIS CAUSE came before the court on Defendant, City of Pembroke Pines' Motion to Dismiss Verified Complaint for Declaratory and Injunctive Relief, or in the Alternative for More Definitive Statement. The court having considered the motion, having heard argument of counsel and being otherwise duly advised in the premises, finds and decides as follows:

On January 12, 2012, the Plaintiffs filed a one-count verified complaint against the Defendants seeking declaratory and injunctive relief. Specifically, Plaintiffs allege that the Defendants violated Florida's Government in the Sunshine Law, Florida Statutes section 286.011 ("the Sunshine Law"), because they were denied admission to a public meeting held by the Defendants. On February 28, 2012, the City of Pembroke Pines ("City") filed its motion to dismiss the verified complaint, or in the alternative, for a more definitive statement.¹ A hearing was held before the court on May 31, 2012.

¹ Defendant Town of Southwest Ranches City Council ("Council") joins in the motion.

A motion to dismiss for failure to state a cause of action admits all well plead facts as true, as well as reasonable inferences that may arise from those facts. *See Wells v. Wells*, 24 So. 3d 579, 582 (Fla. 4th DCA 2009). The standard for determining the sufficiency of a complaint seeking declaratory judgment was established in *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952):

Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; 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; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.

Id. at 639. Further, “[t]he test of the sufficiency of a complaint in a declaratory judgment proceeding is not whether the complaint shows that the plaintiff will succeed in getting a declaration of rights in accordance with his theory and contention, but whether he is entitled to a declaration of rights at all.” *See Wells v. Wells*, 24 So. 3d 579, 583 (Fla. 4th DCA 2009) (citing *Dent v. Belin*, 483 So. 2d 61, 62 (Fla. 1st DCA 1986)).

Plaintiffs seek a declaration that the City violated the Sunshine Law by denying them access to a public meeting after the Plaintiffs declined to complete forms requesting certain information. The court has carefully considered the allegations contained in the complaint. In Florida, every cause of action, whether derived from statute or common law, is comprised of necessary elements which must be proven for the plaintiff to prevail. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999). It is a cardinal rule of pleading that a

complaint be stated simply, in short and plain language. *Id.* (citing Fla. R. Civ. P. 1.110(b)). The complaint must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged. *Id.*

In order for there to be a violation of the Sunshine Law, “a meeting between two or more public officials must take place which is violative of the statute’s spirit, intent, and purpose.” *See Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973). “The obvious intent of the Sunshine Law was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board.” *Id.* It appears to the court that there are no allegations to bring the complaint within the purview of the Sunshine Law. Specifically, Plaintiffs fail to allege that two or more members of either the City or the Council were present at the meeting. Further, the Sunshine Law requires that “[a]ll meetings of any board or commission of any ... municipal corporation ... at which official acts are to be taken are declared to be public meetings.” *See* § 286.011(1), Fla. Stat. Plaintiffs fail to allege that either the City or the Council was to take any official acts at the meeting. Thus, the complaint, as pled, fails to identify the officials that attended the meeting, or any official actions that were to be undertaken, so as to constitute a public meeting as defined by the Sunshine Law.

Finally, the court is concerned that the complaint contains an allegation asserting “that a danger of future violations can be anticipated from the Defendants’ prior conduct.” (Complaint at p. 3). Florida courts dismiss actions for declaratory relief where claims of injury are “based on vague, general fears of possible future harm.” *See State v. Florida Consumer Action Network*, 830 So. 2d 148, 153 (Fla. 1st DCA 2002). As pled, the Plaintiffs fail to allege facts to “make some showing of a real threat of immediate injury, rather than a general, speculative fear of harm that may possibly occur at some time in the indefinite future.” *Id.* at 152. Therefore, dismissal of this action is warranted.

Accordingly, it is hereby:

ORDERED AND ADJUDGED that Defendant, City of Pembroke Pines' Motion to Dismiss Verified Complaint for Declaratory and Injunctive Relief, or in the Alternative for More Definitive Statement is GRANTED without prejudice. Plaintiffs are permitted to file an amended complaint within 20 days from the date of this order, if so desired.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 16 day of July, 2012.

DAVID KRATHEN
JUL 16 2012

A TRUE COPY

DAVID KRATHEN
CIRCUIT COURT JUDGE

Copies to:

Samuel S. Goren, Esq., Goren, Cherof, Doody & Ezrol, P.A., 3099 East Commercial Boulevard, Suite 200, Fort Lauderdale, Florida 33308

Gregg D. Thomas, Esq., Thomas & LoCicero, P.L., 400 N. Ashley Drive, Suite 1100, Tampa, Florida 33602

Keith Poliakoff, Esq., Becker & Poliakoff, Emerald Lake Corporate Park, 3111 Stirling Road, Fort Lauderdale, Florida 33312