

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

VERANDA PARTNERS, LLC, a
Florida limited liability corporation,

Plaintiff,

vs.

LARRY GILES, individually,

Defendant.

CASE NO.: 07-CA-2622

JUDGE: Dv. 33 (Sprinkel)

**DEFENDANT'S VERIFIED MOTION FOR SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM OF LAW**

MOTION

Defendant, LARRY GILES (hereinafter "GILES"), moves this Court for an order granting final summary judgment in favor of GILES and against Plaintiff Veranda Partners (hereinafter "VERANDA" or "Plaintiff") pursuant to *Fla. R. Civ. P.* 1.510, and offers the following in support of this Motion:

1. VERANDA's Complaint and Admissions on file demonstrate that there is no genuine issue of material fact with respect to the elements required to sustain a cause of action for Slander. Accordingly, the Defendant is entitled to summary judgment in his favor.

2. Summary Judgment is particularly appropriate in the instant case, as it directly implicates GILES' fundamental First Amendment rights involving matters of public concern and local politics.

3. Summary adjudication is proper in defamation actions because "the failure to dismiss a [defamation] suit might necessitate long and expensive trial proceedings, which, if not

really warranted,” would themselves have a “chilling effect” on freedom of speech. See, e.g., *Time, Inc. v. McLaney*, 406 F.2d 565, 566 (5th Cir. 1969); *Bon Air Hotel, Inc. v. Time, Inc.*, 426 F.2d 858, 865 (5th Cir. 1970) (“in the First Amendment area, summary procedures are even more essential. The stake here, if harassment succeeds, is free debate.”) *Id* at 865.¹

4. This is clearly so in this case due to the fact that *Fla. Stat.* § 720.304(4) demands a quick resolution of SLAPP suits, which is an appropriate description of this case.

5. Self-censoring is a natural result of harassing defamation actions. *Bon Air Hotel, Inc.*, 426 F.2d at 865. If allowed unchecked, debate on public issues will become less uninhibited, less robust, and less wide open, for self-censorship affecting the whole public is hardly less virulent for being privately administered. *Id*.

6. The Supreme Court defines the “chilling effect” as the “collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it.” *Smith v. California*, 361 U.S. 147, 151 (1959).

7. This chilling effect extends beyond GILES and extends to all residents of Metro West who are likely afraid to discuss matters of importance regarding their community, lest the Plaintiff feign offense in order to squelch any criticism. This raises the stakes with respect to this Court’s support of the public policy of this state, as articulated in *Fla. Stat.* § 720.304(4). GILES is therefore forced to turn to this Court to preserve not only his own rights, but by extension, those of all MetroWest residents who might wish to comment upon how this community is governed.

8. In this circumstance, there is no debate that summary judgment is appropriate,

¹ A chilling effect exists when citizens are apprehensive to exercise their rights to free expression or free association due to the threat of the expense and inconvenience of litigation. See, e.g., *Laird v. Tatum*, 408 U.S. 1, 12–13 (1972); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963) (internal citations omitted). *Thornhill v. Alabama*, 310 U.S. 88, 97–98 (1940) (discussing chilling effect on free speech rights).

and a lengthy trial is prohibited by *Fla. Stat. § 720.304(4)* (2007).

9. In this Motion, GILES argues that *as a matter of law*, the Plaintiff's case is unsupportable. Nevertheless, even assuming, *arguendo*, that the Plaintiff were able to establish any of the *prima facie* elements of a slander case, the statements would be privileged, statements of opinion, and/or rhetorical hyperbole that can never form the basis for a defamation claim.

MEMORANDUM OF LAW

I. INTRODUCTION

The instant slander case arises from a citizen exercising his fundamental right to express his opinion on matters of local political importance. This is not a case where the Defendant incorrectly identified a party who committed a wrongful act, nor is it a case where the so-called wronged party seeks to have the damage to its reputation repaired through monetary damages in this Court. Rather, this is a case where a single entity, VERANDA, has essentially purchased control of a town and has assumed rule by fiat over that town. Control of the Master Homeowner's Association for MetroWest provides VERANDA with virtually unchecked executive powers. VERANDA has the unilateral right to tax (in the form of assessments), to impose its will upon the common areas, hire a private police force, and even impose fines upon the citizens of the town. By exercising these powers under *Fla. Stat. § 720, et. seq.*, VERANDA is a government actor. Since the residents of MetroWest are powerless to vote their governing body out of office, the only avenue remaining for their participation in how they are governed is through speech and protest. VERANDA seeks to unlawfully take that away from them.

While the law may permit VERANDA to rule by fiat in many respects, this permission

does not also grant VERANDA the right to turn MetroWest into a dissent-free dictatorship. All that stands between VERANDA's aspirations of turning MetroWest into a "First Amendment free zone" is this honorable Court.

The Defendant in this case, GILES, has been a resident in MetroWest for several years and has sadly watched his community steadily decline. *See, e.g.*, "New Angels vow to protect Orlando," *Orlando Sentinel*, (April 2, 2007), which can be viewed at: <http://tinyurl.com/2bbwhb>; "Hired guns to patrol streets of MetroWest," *The Sun-Sentinel*, (March 29, 2007), which can be viewed at: <http://tinyurl.com/yvpc4b>; "Victim's mom to run support group," *Orlando Sentinel*, (April 1, 2007), which can be viewed at: <http://tinyurl.com/23vqyl>; "Man Gunned Down On Bike Is County's 19th Homicide Of Year," (March 29, 2007), which can be viewed at: <http://www.local6.com/news/11434878/detail.html>; "Police: Women Dragged By Hair During Robbery," (March 19, 2007), which can be viewed at: <http://www.local6.com/news/11297321/detail.html>; "Gunmen Rob Dunkin Donuts, Customers In MetroWest," (March 12, 2007), which can be viewed at: <http://www.wftv.com/news/11227619/detail.html>. GILES made a decision to get involved by calling attention to the problems in his community. For taking this action, GILES finds himself the victim of an unlawful and unsupported SLAPP suit.

GILES, powerless to stem the steady decline of his community on his own, began publishing the VERANDA PARK NEWS. The content of the VERANDA PARK NEWS encompasses observations of events in the community and critiques of aesthetic issues in the neighborhood. GILES' opinions about MetroWest and its governance are certainly on the mild side. A perfunctory Google® search reveals a multitude of opinions about MetroWest, its decline, and the Plaintiff – most of which are unflattering. *See, e.g.*, "Pine Castle Focuses on Rise in

Crime,” (*Orlando Sentinel*, April 5, 2007), which can be viewed at: <http://tinyurl.com/2chev8>; see also <http://tinyurl.com/2bw74s>; and <http://tinyurl.com/3yzc8a>.

It is unclear which statements in the VERANDA PARK NEWS were deemed by VERANDA to be so offensive that the Plaintiff instructed its counsel to send, via hand delivery, a demand letter in the late evening hours, demanding that GILES’ *entire website* be removed prior to 11:59 PM on February 24, 2007. GILES’ failure to comply with this expedited, unreasonable demand and deadline would, per VERANDA’s demand letter, result in a lawsuit being filed against him by VERANDA on February 26, 2007. GILES firmly believed, and continues to believe, that all of the statements on VERANDA PARK NEWS were and remain true. He also continues to believe, that VERANDA’s demand was unreasonable, overreaching, and legally deficient. Nevertheless, GILES was frightened into submission. Prior to the imposed, expedited deadline, he promptly removed the VERANDA PARK NEWS from the World Wide Web. GILES perceived that this would be an unsatisfying, but expedient resolution to this purported dispute. Sadly, GILES was mistaken, and the instant frivolous lawsuit ensued.

A. The Complaint and Procedural History

On March 9, 2007, VERANDA filed its Complaint against GILES. On Friday, March 30, 2007, GILES retained the undersigned counsel. VERANDA flatly refused to allow an extension of time prior to the April 2 Answer deadline. Accordingly, GILES timely filed his Answer, Counterclaim and initial discovery requests. On April 2, 2007, GILES proffered to VERANDA the former’s First Requests for Admission, attached hereto as Exhibit A. As of the filing of this Motion for Summary Judgment, it has been more than one hundred and twenty (120) days since the Plaintiff was served with GILES’ Requests for Admission. In these four (4) plus months, VERANDA submitted neither a response nor an objection to any request.

In this case, the last day of the thirty (30) day period under which VERANDA was required to answer GILES' Requests for Admission, was May 2, 2007. Discovery in both the case-in-chief and the Counterclaim were stayed on May 4, 2007, for a period expiring on May 14, 2007. VERANDA's sworn, written answers and/or objections were due prior to the May 4, 2007, hearing. Notwithstanding, at no time following May 14, has VERANDA submitted its Answers to GILES' First Requests for Admission.

VERANDA has as a matter of law, admitted all of the items in GILES' Requests for Admissions. *Fla. R. Civ. P. 1.370(a)*.² VERANDA's claims are legally and factually meritless. They were so even in the absence of these legal admissions – but the admissions remove all doubt and mandate immediate final judgment in favor of the Defendant.

II. STANDARD FOR GRANTING SUMMARY JUDGMENT

Summary judgment is appropriate when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. See *Fla. R. Civ. P. 1.510(c)*; see also *Wills v. Sears Roebuck & Co.*, 351 So.2d 29 (Fla. 1977); *Holl v. Talcott*, 191 So.2d 40 (Fla. 1966); *Beck v. Lipkind*, 681 So.2d 794, 795 (Fla. 3rd DCA 1996) (granting motion for summary judgment in favor of defendants in suit for defamation where there were no genuine issues of material fact remaining, and the defendants were entitled to summary judgment as a matter of law).

“It is well-recognized that the non-moving party faced with a summary judgment motion supported by appropriate proof may not rely on bare, conclusory assertions found in the pleadings to create an issue and thus avoid summary judgment. Instead, the party must produce

² Given the fact that VERANDA insisted upon strict adherence to the deadline to file the Answer in this matter, GILES believes VERANDA should be held to the same standards, should VERANDA seek to evade the consequences of its lack of compliance. See Transcript of Hearing, May 14, 2007 at P.13, lines 17-19 (Counsel for VERANDA stating “our clients make the decisions on whether or not to extend deadline extensions, not us.”)

counter-evidence establishing a genuine issue of material fact.” *Bryant v. Shands Teaching Hospital & Clinics, Inc.*, 479 So.2d 165, 168 (Fla. 1st DCA 1985); see also *Landers v. Milton*, 370 So.2d 368 (Fla. 1979).

III. UNDISPUTED FACTS ADMITTED BY VERANDA FOLLOWING ITS FAILURE TO TIMELY RESPOND TO GILES’ FIRST REQUESTS FOR ADMISSION

By virtue of its failure to respond to this request, VERANDA has admitted to each of GILES’ First Requests for Admission. Accordingly, the following facts resulting from these admissions are no longer in dispute in this litigation:

- VERANDA owns a controlling interest in the Metrowest Community, located in Southwest Orlando (hereinafter, “MetroWest”). *See* Request for Admission, No. 1.
- VERANDA’S business interests include engagement in paving activities. *See* Request for Admission, No. 2.
- VERANDA has been able to increase its development of MetroWest through the improvement to, or addition of, local roadways in the area. *See* Request for Admission, No. 3.
- VERANDA has, during the period encompassing February 2002, through the present, dispatched demand letters to other individuals and/or entities threatening legal action for alleged defamation. *See* Request for Admission, No. 4.
- VERANDA’s position as the controlling interest in MetroWest provides it with operational control and influence over the activities of the MetroWest Master Association (hereinafter, “MMA”). *See* Request for Admission, No. 5.
- VERANDA and MMA share one or more common officers, owners, shareholders or directors. *See* Request for Admission, No. 6.
- GILES complied, prior to the imposed deadline, with the demands contained VERANDA’s correspondence dated February 23, 2007. *See* Request for Admission, No. 7.
- VERANDA is unaware of the actual number of people who visited GILES Website, located at www.verandaparknews.com (hereinafter, “*Veranda Park News*”). *See* Request for Admission, No. 8.

- Prior to February 24, 2007, VERANDA was unaware of any individual (aside potentially from GILES and individuals employed by or affiliated with VERANDA), who had visited the *Veranda Park News*. *See* Request for Admission, No. 9.
- VERANDA has availed itself of public incentives and funds to facilitate its development activities. *See* Request for Admission, No. 10.
- VERANDA is a public figure, meaning that VERANDA is embroiled in public controversies involving citizens and governmental agencies of the City of Orlando and other Central Florida communities. *See* Request for Admission, No. 11.
- VERANDA is a public figure in the MMA, a common-ownership and membership community governed by Fla. Stat. § 720, and VERANDA is embroiled in controversies involving members of the common ownership community and its governing membership organization, including (but not limited to) the MMA's Board of Directors. *See* Request for Admission, No. 12.
- VERANDA suffered no actual damages as a direct and proximate result of statements published in the *Veranda Park News*. *See* Request for Admission, No. 13.
- VERANDA received no complaints from members of the public, customers, or potential customers regarding any statements contained in the *Veranda Park News*. *See* Request for Admission, No. 14.
- The statements on the *Veranda Park News* are true or substantially true. *See* Request for Admission, No. 15.
- VERANDA's filing of the instant lawsuit against GILES was calculated to prevent GILES from continued publication of the *Veranda Park News*. *See* Request for Admission, No. 16.
- The instant litigation is a SLAPP Suit. *See* Request for Admission, No. 17.
- The *Veranda Park News* never specifically mentioned VERANDA PARTNERS, LLC by name. *See* Request for Admission, No. 18.

IV. ARGUMENTS

A. **VERANDA Has Admitted All Essential Facts Necessary for a Grant of Summary Judgment**

In the instant case, the last day of the thirty (30) day period under which VERANDA was required to answer GILES' First Requests for Admission, was May 2, 2007. Despite the ten (10) day period wherein discovery in both cases was stayed (May 4, 2007-May 14, 2007), and given the expiration of the period proscribed under Rule 1.370, VERANDA has not attempted, as of the filing of this Motion for Summary Judgment, to secure any type of enlargement of time, not even informally.³

Pursuant to *Fla.R.Civ.P.* 1.370, in a written request for admission, each matter of which an admission is requested must be separately set forth. The matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within thirty (30) days after service of the request. *Greiner Engineering Sciences, Inc. v. Commercial Center Devel. Corp.*, 508 So.2d 525 (Fla. 5th DCA 1987) (failure to respond to request for admission conclusively establishes admissions in the action); *Hooten v. Lake County*, 177 So.2d 696 (Fla. 2d DCA 1965); *Bente v. Nelson*, 156 So.2d 17 (Fla. 2d DCA 1963). When a party fails to respond to requests for admission, each matter therein is deemed admitted and thus conclusively established under *Fla. R. Civ. P.* 1.370, and may properly be relied upon in a motion for summary judgment. *Hanrahan v. Barry*, 363

³ Further, although the court is vested with discretion to permit the untimely filing of answers to a request for admissions, such is limited by the proviso that it not prejudice the opposing party. *Adams v. Freel*, 409 So.2d 1176 (Fla. 5th DCA 1982). In the case-at-bar, GILES would be prejudiced by any such unwarranted largesse toward VERANDA. GILES and his attorneys have drafted this Motion based upon the admissions now made by VERANDA and, in any event, the Admissions are likely undeniable. *Fla. Stat.* 720.304(4) mandates an expedited resolution to SLAPP suits, and allowing unlimited extensions of discovery time would frustrate this law's intent. Finally, given the fact that VERANDA has set the ground rule in this litigation that no extensions of time would be granted, GILES asks this Court to compel the Plaintiff to "live by the sword, die by the sword," and refrain from offering any judicial accommodation of VERANDA's gross failure to adhere to the Discovery rules. *See also* Footnote 1, *supra*.

So.2d 54, 55 (Fla. 3rd DCA 1978); *Fla. R. Civ. P.* 1.510. If the party moved against has admitted facts which preclude it from ever obtaining a judgment in its favor, then there is no necessity for trial, and a summary judgment is proper. *Connolly v. Sebeco, Inc.*, 89 So.2d 482 (Fla. 1956); *Whitney v. Brown*, 588 So.2d 681 (Fla. 3d DCA 1991) (admissions made by a party justify a summary judgment for the other party).

1. **VERANDA's Admissions Can be Solely Relied Upon in Granting GILES' Motion For Summary Judgment**

VERANDA's Complaint fails to allege the content of any purportedly slanderous statement. Rather, it merely makes generalized allegations, which fail to provide any basis for a slander action. *Bryant v. Shands Teaching Hospital & Clinics, Inc.*, 479 So.2d 165, 168 (Fla. 1st DCA 1985) (the non-moving party faced with a summary judgment motion supported by appropriate proof may not rely on bare, conclusory assertions found in the pleadings to create an issue and thus avoid summary judgment); see also *Landers v. Milton*, 370 So.2d 368 (Fla. 1979).

Although the propriety of summary judgment should be apparent on the face of the Complaint, and a motion for judgment on the pleadings may have been a simpler solution to this case, the admissions remove all doubt that this case must be resolved at this time in favor of the Defendant. The Court may properly rely solely upon admissions created as a result of failing to file timely responses to requests for admission in entering summary judgment. *Whack v. Seminole Memorial Hospital, Inc.*, 487 So.2d 1091, 1091-1092 (Fla. 5th DCA 1986) (affirming trial court's refusal to allow late filing of answer to requests for admission and affirming summary judgment based solely on the resulting admissions); *Morgan v. Thomson*, 427 So.2d 1134 (Fla. 5th DCA 1983) (affirming an order of summary judgment based solely on admissions resulting from the failure to file timely response to requests for admission);

Hanrahan v. Barry, 363 So.2d 54, 55 (Fla. 3d DCA 1978) (upholding trial judge's refusal to accept defendant's late response to requests for admission and the resulting admissions were properly relied upon in entering summary judgment).

2. The Admitted Facts Show That There Is No Genuine Issue of Material Fact

The relevant definition of Slander *Per Se* is a false and non-privileged oral communication imputing to another's conduct, characteristics, or a condition incompatible with the proper exercise of his lawful business, trade, profession or office. See *Campbell v. Jacksonville Kennel Club*, 66 So.2d 495, 497 (Fla.1953). The statements must be unprivileged. See also *Randolph v. Beer*, 695 So.2d 401 (Fla. 5th DCA 1997).

The Complaint alleges that GILES, on his website, published statements that essentially led to VERANDA's conclusions that the Defendant intended to say that (a) Plaintiff is an unscrupulous developer, (b) Plaintiff is somehow partnered with the City of Orlando in order to gain an unlawful business advantage, and (c) the Plaintiff owns a paving company and is profiting from improvements being made to the city roads. See Complaint, at ¶ 11.

VERANDA cannot prove Slander *Per Se* if the alleged statements are true. See *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Valencia v. Citibank Int'l.*, 728 So.2d 330 (Fla. 3rd DCA 1999); see also *Cape Publications, Inc. v. Reakes*, 840 So.2d 277, 279-80 (Fla. 5th DCA 2003) ("A plethora of cases exist which proclaim that a required element of defamation is a false statement made about another") (citations omitted). With respect to comments (a), (b), and (c), above, VERANDA admits that any statements on the VERANDA PARK NEWS are true or substantially true. See Request for Admission, No. 15. Thus, the alleged statements are admittedly true, and thus there is no issue of fact to be decided upon.

With respect to comments (a), (b), and (c), above, VERANDA admits that VERANDA suffered no actual damages as a direct and proximate result of statements published in the VERANDA PARK NEWS. *See* Request for Admission, No. 13. Thus, there is no issue of fact regarding damages. As a matter of law, VERANDA cannot recover in an action based on Slander *Per Se* because VERANDA has admitted a lack of any damages. *See Valencia v. Citibank* (defamation requires damages).

With respect to comments (a), (b), and (c), VERANDA admits that the VERANDA PARK NEWS never specifically mentioned VERANDA PARTNERS, LLC by name. *See* Request for Admission, No. 18. Thus, it is undisputed that there was no slander of VERANDA by GILES. If GILES' alleged statements were not directed at VERANDA, there is no defamation of VERANDA. *See Valencia v. Citibank* (Defendant must publish false statements about the Plaintiff to a third party).

With respect to comments (a) and (b), VERANDA admits it is a public figure. Even absent this admission, this Court should take judicial notice of the fact that VERANDA is embroiled in public controversies involving citizens and governmental agencies of the City of Orlando and other Central Florida communities. *See* Request for Admission, No. 11; *see also* "Windermere Residents Bash Revised Development Proposal," Orlando Sentinel (May 8, 2007), which can be located at: <http://www.orlandosentinel.com/news/local/orange/orl-bk-windermere-050807,0,909668.story?coll=orl-home-headlines>; "Goodbye MetroWest – Hello Veranda Park?," Orlando Sentinel (June 21, 2006), which can be located at: <http://www.topix.net/content/trb/3317772429327679787837578456750>; "Windermere Gives Preliminary OK for Main Street Shoppes," Orlando Business Journal (April 2, 2007), which can be located at: www.bizjournals.com/bizspace/charlotte/news_of_note/?sotry_id=1439034;

“From Rags to Riches – High End Developer Gets His Start in the Bayou,” Wes Smith, Orlando Sentinel (2005); “Azzouz Project Goes to Hearing,” Rich McKay, Orlando Sentinel (May 3, 2007); and admits that VERANDA has availed itself of public incentives and funds to facilitate its development activities. *See* Request for Admission, No. 10. Thus, there are no disputed facts as to VERANDA’s interests and business activities in the MetroWest community and with the City of Orlando.

With respect to comment (c), VERANDA admits VERANDA’S business interests include engagement in paving activities (*see* Request for Admission, No. 2); and admits that VERANDA has been able to increase its development of MetroWest through the improvement to, or addition of, local roadways in the area. *See* Request For Admission, No. 3. Even without these admissions, VERANDA cannot seriously contend that, even if false, statements that a company paves roads and profits from this endeavor is capable of a defamatory meaning. *C.f.* *From v. Tallahassee Democrat, Inc.*, 400 So.2d 52, 57 (Fla. 1st DCA 1981); *Morse v. Ripkin*, 707 So.2d 921 (Fla. 4th DCA 1998).

**B. Even without the Admissions, VERANDA’s Complaint is
Void of Legal Reasoning and Factual Support**

To support the claim for Slander *Per Se*, Plaintiff alleges that “Defendant’s false statements imputes [*sic*] to others conduct, characteristics, and/or conditions incompatible with the proper exercise of Plaintiff’s lawful business, trade, and/or profession.” *See* Complaint, at ¶ 21. Plaintiff further claims that these statements, “when considered alone and without innuendo, have (a) negatively impacted Plaintiff’s trustworthiness and character, (b) caused Plaintiff to be subjected to distrust, ridicule, contempt, and disgrace, and (c) injured Plaintiff’s reputation and goodwill in the MetroWest community located in Orlando, Florida.” *See*

Complaint, at ¶ 14.⁴

In this case, such assertions are unsupported. Nevertheless, for the purposes of this section, we shall assume, *arguendo*, that the Defendant made the statements alleged in the Plaintiff's Complaint. Even if the Defendant made such statements, they are pure opinion, and/or rhetorical hyperbole, and are therefore fully protected under the First Amendment to the United States Constitution.

1. The Statements are True

Defamation law does not serve to impose liability for statements that are “merely unflattering, annoying, irksome, or embarrassing or that hurt only the Plaintiff's feelings.” Robert D. Sack, *Sack on Defamation* § 2.4.1 (3d ed. 2005). As a threshold matter, for a statement to be defamatory, it must be a false statement. At this point, the record reflects that statements made by GILES are true. Challenged statements:

1. “Plaintiff is an unscrupulous developer”; *see* Complaint at ¶ 11.
2. “Plaintiff is somehow partnered with the City of Orlando in order to gain an unlawful business advantage”; *see* Complaint at ¶ 11; and
3. “Plaintiff owns a paving company and is profiting from improvements being made to the city roads”; *see* Complaint at ¶ 11.

There is no genuine issue of fact as to the truth of these statements, in fact they are either supported by strong evidence or they have been admitted by the Plaintiff.

⁴ One would think that an action for slander would, at the very least, include a quotation of the allegedly slanderous statements.

2. Even if the statements are not true, they are non-actionable opinion.

The key issue that seems to upset VERANDA is that they have somehow been referred to as “unscrupulous.” While GILES denies that he ever so much as identified the Plaintiff, for the purposes of this Motion we will accept the Plaintiff’s allegations as true.

Accepting all of VERANDA’s allegations as true, the claim that a large development company is “unscrupulous,” is non-actionable opinion. The law is well-settled that expressions of opinion are constitutionally protected. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974) (“under the First Amendment there is no such thing as a false idea”); *Colodny v. Iverson, Yoakum, Papiano & Hatch*, 936 F.Supp 917 (M.D. Fla. 1996); *Smith v. Taylor County Publishing Co.*, 443 So.2d 1042, 1049 (Fla. 1st DCA 1983). If a statement neither expresses nor implies provable fact, it is nothing more than opinion and cannot constitute actionable defamation. See *Tallahassee Democrat, Inc.*, 400 So.2d at 57. To distinguish between expression that is fact or opinion, the Court must examine the complained-of statement “in its totality and the context in which it was uttered or published.” See *Information Control v. Genesis One Computer Corp.*, 611 F.2d 781 (9th Cir. 1980); *McCormick v. Miami Herald Publ’g Co.*, 139 So.2d 197, 200 (Fla. 2d DCA 1962). A “statement is not considered false unless it ‘would have a different effect on the mind of the reader from that which the pleaded truth would have produced.’”

In this case, GILES was commenting on the governance of his community, seeking the support of the public and his leaders (both democratically elected governmental leaders and his homeowners association’s unelected junta) in order to create a groundswell of political action that would bring about change in the community. This is the core value protected by the First Amendment. The purpose of the First Amendment is to ensure the

unfettered exchange of ideas among the American people. See *Roth v. United States*, 354 U.S. 476, 484 (1957). Florida courts have held that the First Amendment requires neither politeness nor fairness. See *Pullam v. Johnson*, 647 So.2d 254, 258 (Fla. 1st DCA 1994).

GILES' use of the word "unscrupulous" was not directed toward the Plaintiff. Perhaps the Plaintiff has a guilty conscience,⁵ but there is no quotation provided that supports the allegation that GILES ever disseminated such an opinion with respect to VERANDA. Nevertheless, even if GILES did, it would not be actionable. See, e.g., *Colodny v. Iverson*, 936 F.Supp. 917 (Defendant's charge that the Plaintiff was a "fraud" was an expression of pure opinion and therefore not legally actionable); see also *Miami Child's World, Inc. v. Sunbeam Television Corp.*, 669 So.2d 336 (Fla. 3rd DCA 1996) (sustaining summary judgment in a defamation case where a reporter's statements constituted pure opinion).

The United States Supreme Court has held, in no uncertain terms, that statements of opinion relating to matters of public concern that do not contain provably false factual statements receive full constitutional protection. See, e.g., *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). The *Milkovich* court held that the Constitution protects "loose, figurative, or hyperbolic language which would negate the impression that the writer was seriously maintaining 'an actual fact about the aggrieved party.'" *Milkovich* at 21. See also, *Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir. 2002), citing *Milkovich*, 497 U.S. at 20. "This provides reassurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our nation...this prediction reflects the 'reality that exaggerated and non-literal commentary have become an integral part of social discourse'" *Id* at 701 (citations omitted).

⁵ Given that the Plaintiff has filed such a frivolous lawsuit, the label cannot be said to be an unfair characterization.

Whether a statement is one of fact or non-actionable opinion/hyperbole is a matter of law for the Court to decide. *Horsley*, 292 F.3d at 703; *Colodny*, 936 F.Supp at 923; *From*, 400 So.2d at 57.

It is a matter of settled Supreme Court precedent that the use of “loose language or undefined slogans” is constitutionally protected. See *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 284 (1974). It is constitutionally unlawful to impose liability in cases where “even the most careless reader must have perceived that the word[s] are] no more than rhetorical hyperbole.” *Greenbelt Co-op. Publ’g Ass’n v. Bressler*, 398 U.S. 6, 13-14 (1970). GILES had a First Amendment right to use loose, figurative language that no reasonable person would believe was a presentation of objective facts. *Ausley*, 292 F.3d at 702. See also *Seropian v. Forman*, 653 So.2d 490, 496 (Fla. 4th DCA 1995) (use of the phrase “influence peddling” is protected rhetorical hyperbole); *Palm Beach Newspapers, Inc. v. Early*, 334 So.2d 50, 53 (Fla. 4th DCA 1976) (calling a Plaintiff “unsuccessful” “unfit to hold office” and accusing a Plaintiff of having his “fingers in the pot” were all protected rhetorical hyperbole). The complained-of statements, even if not true, are nothing more than examples of loose, non-literal language that does not state verifiable facts upon which liability for defamation can be based. There is no provable criteria for scrupulousness or unscrupulousness.

3. The Plaintiff cannot support a claim that GILES acted with the requisite level of fault.

Even if the Court discounts the issues above, VERANDA still loses. Public figures bringing actions for defamation must prove with clear and convincing evidence that the Defendant published false and defamatory statements with actual malice. See, e.g. *Flowers*

v. Carville, 310 F.3d 1118, 1130 (9th Cir. 2002) (actual malice must be proven by clear and convincing evidence).

VERANDA is one of the largest real estate developers in Central Florida, and is the entity which holds complete and total control over the “company town” that is MetroWest. This qualifies this corporation a public figure. See *Gertz*, supra (even a private individual who has achieved a requisite level of notoriety is a public figure); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (a limited public figure is, in essence, someone who “voluntarily place[s] themselves in a position and act[s] in a manner which invite[s] public scrutiny and comment.”); *Sylvester v. American Broadcasting Companies*, 839 F.2d 1491, 1494 (11th Cir. 1988) (citing *Gertz*). Furthermore, the Plaintiff has admitted that it is a public figure. See Requests for Admission, at ¶ 12.

When a motion for summary judgment is brought by a defamation Defendant against a public figure Plaintiff such as VERANDA, summary judgment should be liberally granted. See *Dockery v. Florida Democratic Party*, 799 So.2d 291 (Fla. 2nd DCA 2001); *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986); *Cronley v. Pensacola News-Journal, Inc.*, 561 So.2d 402, 405 (Fla. 1st DCA 1990); *Newton v. Florida Freedom Newspapers, Inc.*, 447 So.2d 906 (Fla. 1st DCA 1984); *Menendez v. Key West Newspaper Corp.*, 293 So.2d 751, 752 (Fla. 3rd DCA 1974).

In order to legally establish any claim for defamation, VERANDA, as a public figure, must not only prove that the statements made by GILES were verifiably false, but VERANDA must do so under the actual malice standard. See *New York Times v. Sullivan*, supra. Actual malice only exists if the Defendant published the defamatory statements with

knowledge of their falsity or if GILES recklessly disregarded the truth or falsity at issue in the statements. See, e.g., *New York Times v. Sullivan*, *supra*; *Gertz*, 418 U.S. at 339.

Since VERANDA is a public figure, to defeat a motion for summary judgment, this corporation which controls MetroWest must present strong record evidence that will be sufficient to convince this Court that a genuine issue of material fact exists which would permit a finder of fact to find by clear and convincing evidence that GILES not only published the alleged statements, but that they identified the Plaintiff, are provably false, capable of a defamatory meaning, and were published with actual malice. See *Lamkin-Asam v. Miami Daily News Inc.*, 408 So.2d 666, 668-69 (Fla. 3d DCA 1981); *Friedgood v. Peters*, 521 So.2d 236, 243 (Fla. 4th DCA 1988). In this case, there is no issue of material fact. In this case, not only has this test not been met, but it could not ever be met even if the facts of this case were stretched to their breaking point.

GILES' website never even mentioned VERANDA as a corporation prior to the filing of this lawsuit. See Declaration of Larry Giles at 7. GILES referred to "Veranda Park," (the Plaintiff, upon taking control of the town, announced plans to change MetroWest's name to this more "upscale" moniker; see "Goodbye MetroWest – Hello Veranda Park?" Orlando Sentinel (June 21, 2006), which can be located at: <http://www.topix.net/content/trb/3317772429327679787837578456750>). This case is no different than if GILES had said that the City of Orlando was "unscrupulous." That a town can be defamed is beyond any stretch of American jurisprudence.

With respect to VERANDA's partnership with the City of Orlando, GILES has in his possession, a copy of an agreement between the City of Orlando and VERANDA, which is a matter of public record. This has been reported on in the media as an "economic

development incentive.” See Jeffrey Billman, “SLAPP Happy,” *Orlando Weekly* (August 9, 2007).

Finally, whether or not VERANDA owns a paving company could certainly not be considered to be defamatory one way or the other. There is no possible defamatory implication enshrined in the alleged statement “Plaintiff owns a paving company and it is profiting from improvements being made to the city roads.” If anything, attributing a profitable business endeavor to the Plaintiff would seem to be complimentary, not defamatory.

V. CONCLUSION

It is this Court’s duty to determine, as a matter of law, whether or not the statements allegedly made by GILES are reasonably capable of a defamatory interpretation. To make this decision, the Court must look at the statements from the perspective of a reasonable person, and how that reasonable person would have interpreted them. See *Jones v. American Broadcasting Companies, Inc.*, 694 F.Supp. 1542 (M.D. Fla. 1988). The Plaintiff has not so much as provided a quotation of the allegedly defamatory statements. Nevertheless, even if GILES were to admit, *arguendo*, that he uttered the complained-of statements, they are either true, or they are non-actionable statements of rhetorical hyperbole or opinion. GILES is entitled to judgment as a matter of law.

WHEREFORE, the Defendant LARRY GILES, respectfully requests this Honorable Court enter Summary Judgment in his favor.

WESTON, GARROU, DEWITT & WALTERS



Marc J. Randazza
Fla. Bar No.: 625566
Derek B. Brett
Fla. Bar No.: 0090750
781 Douglas Avenue
Altamonte Springs, FL 32714
407-975-9150
407-774-6151 (Facsimile)
www.firstamendment.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to: **John W. Bolanovich, Esq.**, Attorney for Plaintiff, Bogin, Munns & Munns, P.A., 2601 Technology Drive, Orlando, Florida 32804, this 21st day of August 2007.



MARC J. RANDAZZA, ESQ.

STATE OF NORTH CAROLINA
COUNTY OF Rockingham

I, LARRY GILES, have read the foregoing Verified Motion for Summary Judgment on 8/21/07 and declare that the factual allegations contained therein in are true and correct.

Larry Giles
LARRY GILES

Affirmed and signed before me on this 21st day of August, 2007 by LARRY GILES.

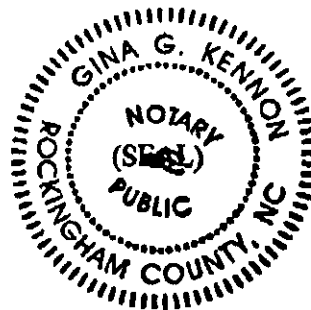
() who is personally known to me, or
() who produced the following identification: FL DL.

LARRY GILES personally appeared before me at the time of notarization, and after being given the oath, signed and acknowledged signing the foregoing Verification in Support of the Verified Motion for Summary Judgment.

NOTARY PUBLIC:

SIGN: Gina G. Kennon

PRINT: Gina G. Kennon
Commission Expiration Date & Commission Number
April 27, 2010



HP LaserJet 3390

Fax Call Report

WGD&W
407-774-6151
Aug-21-2007 8:43AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
717	8/21/2007	8:42:38AM	Receive	336 623 2701	0:19	1	OK

AUG-21-2007 09:34 SECU BRANCH 49 EDEN 336 623 2701 P.01/01

STATE OF NORTH CAROLINA
COUNTY OF Rockingham

I, LARRY GILES, have read the foregoing Verified Motion for Summary Judgment on 8/21/07 and declare that the factual allegations contained therein are true and correct.

Larry Giles
LARRY GILES

Affirmed and signed before me on this 21st day of August, 2007 by LARRY GILES.

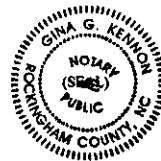
() who is personally known to me, or
(*) who produced the following identification: FL DL.

LARRY GILES personally appeared before me at the time of notarization, and after being given the oath, signed and acknowledged signing the foregoing Verification in Support of the Verified Motion for Summary Judgment.

NOTARY PUBLIC:

SIGN: Gina G. Kennon

PRINT: Gina G. Kennon
Commission Expiration Date & Commission Number
April 27, 2010



**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

VERANDA PARTNERS, LLC, a
Florida limited liability corporation,

Plaintiff/Counterdefendant,

vs.

LARRY GILES, individually,

Defendant/Counterclaimant.

_____ /

CASE NO.: 07-CA-2622

JUDGE: Dv. 35 (Whitehead)

**DEFENDANT/COUNTERCLAIMANT'S
FIRST REQUESTS FOR ADMISSION**

Pursuant to Fla.R.Civ.P. Rule 1.370, Defendant/Counterclaimant LARRY GILES, (hereinafter referred to as "GILES") serves the following requests for admission to Plaintiff/Counterdefendant, VERANDA PARTNERS LLC, a Florida limited liability corporation, (hereinafter referred to as "VERANDA").

PROPOUNDING PARTY: Defendant/Counterclaimant LARRY GILES

RESPONDING PARTY: Plaintiff/Counterdefendant VERANDA PARTNERS, LLC

SET NUMBER: ONE

The above-named Defendant/Counterclaimant requests that the above-named Plaintiff/Counterdefendant, within thirty (30) days after service of this Request, make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

Request Number 1:

Admit that VERANDA owns a controlling interest in the Metrowest Community, located in Southwest Orlando (hereinafter, "Metrowest").

Request Number 2:

Admit that VERANDA's business interests include engagement in paving activities.

Request Number 3:

Admit that VERANDA has been able to increase its development of Metrowest through the improvement to, or addition of, local roadways in the area.

Request Number 4:

Admit that VERANDA has, during the period encompassing February 2002, through the present, dispatched demand letters to other individuals and/or entities threatening legal action for alleged defamation.

Request Number 5:

Admit that VERANDA's position as the controlling interest in Metrowest provides it with operational control and influence over the activities of the Metrowest Master Association (hereinafter, "MMA").

Request Number 6:

Admit that VERANDA and MMA share one or more common officers, owners, shareholders or directors.

Request Number 7:

Admit that GILES complied, prior to the imposed deadline, with the demands contained VERANDA's correspondence dated February 23, 2007.

Request Number 8:

Admit that VERANDA is unaware of the actual number of people who visited GILES Website, located at www.verandaparknews.com (hereinafter, "*Veranda Park News*").

Request Number 9:

Admit that, prior to February 24, 2007, VERANDA was unaware of any individual (aside potentially from GILES and individuals employed by or affiliated with VERANDA), who had visited the *Veranda Park News*.

Request Number 10:

Admit that VERANDA has availed itself of public incentives and funds to facilitate its development activities.

Request Number 11:

Admit that VERANDA is a public figure, meaning that VERANDA is embroiled in public controversies involving citizens and governmental agencies of the City of Orlando and other Central Florida communities.

Request Number 12:

Admit that VERANDA is a public figure in the MMA, a common-ownership and membership community governed by *Fla. Stat. § 720*, and VERANDA is embroiled in controversies involving members of the common ownership community and its governing membership organization, including (but not limited to) the MMA's Board of Directors.

Request Number 13:

Admit that VERANDA suffered no actual damages as a direct and proximate result of statement published in the *Veranda Park News*.

Request Number 14:

Admit that VERANDA received no complaints from members of the public, customers, or potential customers regarding any statements contained in the *Veranda Park News*.

Request Number 15:

Admit that the statements on the *Veranda Park News* are true or substantially true.

Request Number 16:

Admit that VERANDA's filing of the instant lawsuit against GILES was calculated to prevent GILES from continued publication of the *Veranda Park News*.

Request Number 17:

Admit that the instant litigation is a SLAPP Suit.

Request Number 18:

Admit that the *Veranda Park News* never specifically mentioned VERANDA PARTNERS, LLC by name.

WESTON, GARROU, DEWITT & WALTERS



MARC J. RANDAZZA, ESQ.

Fla. Bar No.: 625566

DEREK B. BRETT, ESQ.

Fla. Bar No.: 0090750

Attorneys for Defendant/Counterclaimant

781 Douglas Avenue

Altamonte Springs, FL 32714

407-975-9150

407-774-6151 (Facsimile)

www.FirstAmendment.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to: John W. Bolanovich, Esq., Attorney for Counterdefendant, Bogin, Munns & Munns, P.A., 2601 Technology Drive, Orlando, Florida 32804, this 2d day of April 2007.



MARC J. RANDAZZA, ESQ.