

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

ASSOCIATION TO PRESERVE THE
EATONVILLE COMMUNITY, INC., and
BABETTA ROSE LEACH HATLER,

Plaintiffs,

v.

SCHOOL BOARD OF ORANGE
COUNTY, FL,

Defendant.

Case No.: 2023-CA-005295-O

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Defendant School Board of Orange County, FL's ("the School Board") Motion to Dismiss with prejudice should be denied for the reasons set forth below. This Court should find that Plaintiffs Association to Preserve the Eatonville Community, Inc. ("P.E.C.") and Babetta Rose Leach ("Bea") Hatler have properly stated a cause of action for declaratory judgment and supplemental relief under Florida's Declaratory Judgment Act (Def's Motion, at 7-8, 11-14, 20-22) or otherwise complied with relevant pleading requirements under Florida law (*id.* at 17-19). This Court should also find that Plaintiffs have standing to bring their claims (*id.* at 8-11). The remaining issues presented by Defendant's Motion mischaracterize Plaintiffs' claims (*id.* at 14-16, 22-23) and/or require a determination on the merits (*id.* at 14-17), and therefore do not need resolution as they are not properly before the Court on a Motion to Dismiss.

INTRODUCTION

This case involves a case or controversy over real property ("the Hungerford property") located in the Town of Eatonville, FL, in Orange County that, with the help of charitable donors, was set aside for the education of the Town's children by newly emancipated people seeking to

carve out a future for themselves and their descendants. First Amended Complaint (“F.A.C.”) ¶ 2. Long denied education under the U.S. system of slavery and a segregated school system, the children of Eatonville have attended school on this property since 1897. *Id.* at ¶ 3. The School Board has owned the land since 1951, when it was conveyed by a charitable trust with a deed restriction or restrictive covenant (“the 1951 deed restriction/restrictive covenant”) requiring that the land be used for the purposes of educating Black children. *Id.* at ¶ 4. The School Board has been actively seeking to sell remaining portions of the Hungerford property for more than a decade, including taking actions to attempt to remove the 1951 deed restriction/restrictive covenant. *Id.* at ¶¶ 5-6. This is an action for declaratory judgment under Ch. 86, Fla. Stat., seeking a declaration from this Court as to whether the 1951 deed restriction/restrictive covenant continues to run with the land that makes up the remaining portions of the Hungerford property owned by the School Board (Claim 1) and whether the School Board is complying with its statutory duties related to disposal of school property in connection with its attempts to sell the remaining portions of the Hungerford property (Claim 2).

I. Plaintiffs properly pled a cause of action for declaratory relief.

A. Short and plain statement of the facts.

The School Board’s argument that the Plaintiffs’ Complaint is defectively pled because it “fails to set forth a short plain statement of the ultimate facts upon which Plaintiffs are entitled to relief” should be rejected by the Court because the School Board fails to state the specific relief it seeks from the Court in making this argument, and there is no legal basis for dismissing the First Amended Complaint if that is, in fact, the relief the School Board seeks. *See* Def’s Motion, at 6-7.

“When a complaint states a cause of action but fails to do so by a short and plain statement of the ultimate facts, it cannot be dismissed for failure to state a cause of action[.]”

Feller v. Eau Gallie Yacht Basin, Inc., 397 So. 2d 1155, 1157 (Fla. 5th DCA 1981). Rather, the proper legal remedy is either a motion to require compliance with Fla. R. Civ. P. 1.110 or a motion to strike. *Id.* Even *Barrett*, the case cited by the School Board in support of its argument, goes on to find that dismissing an action with prejudice due to defective pleading is not appropriate unless and until the plaintiff has been given an opportunity to amend. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999). It is only a party's repeated refusal to comply with Rule 1.110, despite court orders to do so, that can justify the dismissal of a complaint with prejudice for failure to make a short and plain statement of the ultimate facts. *See Thomas v. Pridgen*, 549 So. 2d 1195, 1197 (Fla. 1st DCA 1989).

Here, Plaintiffs amended their Complaint once as a matter of right—adding both a new Plaintiff and supplemental facts of events that occurred subsequent to the filing of the initial complaint. Unlike Plaintiffs in *Barrett*, these Plaintiffs have not been previously ordered to amend their Complaint to come into compliance with the “short and plain statement” requirement of Rule 1.110. 743 So. 2d at 1163. Additionally, given the School Board's long and contentious history when it comes to the provision of education on the Hungerford Property, it was necessary for Plaintiffs to set forth the historical context in detail to bring the declaratory relief sought into clear focus for the Court and to provide adequate notice to Defendant of the factual basis for Plaintiffs' claims. For these reasons, dismissal of the Complaint with prejudice for failure to comply with the “short and plain statement” requirement of Rule 1.110 would be improper and counter to the governing law.

B. Plaintiffs properly pled causes of action for declaratory relief.

Defendant's argument that Plaintiffs failed to state a cause of action for declaratory relief fails. Def's Motion at 7-8. As Defendant correctly notes, “[t]he test for sufficiency of a complaint

seeking a declaratory judgment is not whether Plaintiffs will prevail in obtaining their desired outcome, but whether they are entitled to a declaration of rights at all.” *Id.* at 7, *citing Messett v. Cohen*, 741 So. 2d 619 (Fla. 5th DCA 1999). This matter is properly before the Court because Plaintiffs have established the elements required for a declaratory judgment, particularly, whether there is a “bona fide, actual present practical need for the declaration[.]” *See Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 404 (Fla. 1996) (quotations and citations omitted).

Plaintiffs are entitled to declaratory relief because whether the School Board has met its obligations and legal duties related to the disposal of the Hungerford property and the 1951 deed restriction/restrictive covenant is a bona fide, present, actual controversy between the parties. *See* F.A.C. ¶¶ 144, 254, 269. This dispute is based on an ascertainable set of ultimate facts that go to the heart of this litigation. *See id.* at ¶¶ 18-29 (historical background of Hungerford property); ¶¶ 30-60 (School Board’s acquisition of the property & operation of a dual system of public schools segregated by race), ¶¶ 61-110 (prior state court litigation about the 1951 deed restriction/restrictive covenant), ¶¶ 111-121 (2022 Deed Release), ¶¶ 122-180 (School Board’s actions to dispose of Hungerford property, including demolition of the school, and related obligations under state law). This dispute includes whether the 2022 Deed Release (*id.* at Ex. 2) operated to lift the 1951 deed restriction/restrictive covenant (*id.* at Ex. 1).

As long as the School Board holds title to the Hungerford Property and given its history of selling, and attempting to sell the land to private entities, the parties’ interests will remain “actual, present, adverse, and antagonistic,” to one another (F.A.C. ¶¶ 181-228 (Plaintiff P.E.C.’s interests) & ¶¶ 229-247 (Plaintiff Bea Hatler’s interests)). *See Miller v. Miller*, 151 So. 2d 869, 871 (Fla. 2d DCA 1963) (A complaint for declaratory judgment should “clearly allege facts setting out who the

persons are who have or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law[.]”). Because Plaintiffs named the School Board as Defendant, these antagonistic and adverse interests are properly before the Court. *See id.*

II. Plaintiffs have standing to seek declaratory relief.

The School Board’s argument that Plaintiffs lack standing because they have not alleged a cognizable injury is incorrect as a matter of fact and as a matter of law. Def’s Motion, at 8-11. In addressing standing on a motion to dismiss, “the court must look to the four corners of the complaint and accept all well-pled allegations as true.” *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 427 (Fla. 4th DCA 2007). The School Board misconstrues the claims and relief at issue and misstates the applicable standards. Because Plaintiffs bring this action under the Declaratory Judgment Act, neither the “substantially affected” standard applicable to administrative challenges nor the “special injury” standard applicable to taxpayer suits for injunctive relief applies. *See* Def’s Motion, at 9–10.

Instead, “[t]o sustain an action for declaratory relief, Plaintiffs “must demonstrate that [they] ha[ve] a judicially cognizable, bona fide and direct interest in the result sought by the action.” *McNevin v. Baker*, 170 So. 2d 66, 68 (Fla. 2d DCA 1964). The Complaint must allege “specific facts” that indicate Plaintiffs’ “rights or privileges are in doubt or in jeopardy.” *Id.* Both Plaintiffs have alleged specific facts indicating doubt as to the existence of their rights under the 1951 deed restriction/restrictive covenant (Claim 1) and doubt as to Defendant’s compliance with its statutory duties governing disposal of School Board property (Claim 2). F.A.C. ¶¶ 181-228 (P.E.C.’s facts) & 229-247 (Hatler’s facts). The well-pled allegations of the First Amended Complaint demonstrate that Plaintiffs have standing to seek a declaratory judgment on both Counts to establish their rights and the School Board’s correlative duties.

A. The School Board misstates the standard for alleging injury.

1. Plaintiffs are not required to show that they were “substantially affected” by the School Board’s action to satisfy standing.

The School Board’s first argument, that Plaintiffs lack standing to bring an administrative challenge under Fla. Stat. § 120.56, *see* Def’s Motion, at 9 (“assuming for arguments sake” that Plaintiffs raise an administrative claim), is simply irrelevant. This suit is not an administrative challenge to School Board action; it is a suit arising under the Declaratory Judgment Act. *See* F.A.C. ¶ 10; *see also infra* at Section IV. Consequently, the “substantially affected” test governing standing in Administrative Procedure Act suits and associated caselaw the School Board cites are inapposite. *Contra* Def’s Motion, at 9 (citing Fla. Stat. §120.56). All three cases cited involve appeals arising under the Administrative Procedure Act. *See id.* (citing *School Board of Orange County v. Blackford*, 369 So. 2d 689 (1979) (challenging administrative decision concerning school closure); *Ward v. Bd. of Trustees of Internal Improvement Trust Fund*, 651 So. 2d 1236, 1237 (1995) (challenging dock construction rules); *All Risk Corp. of Fla. v. State, Dept. of Labor & Employment Sec.*, 413 So. 2d 1200 (Fla 1st DCA 1982) (challenging workers’ compensation rules).

The School Board’s assertion that Plaintiffs must be current or future students at the Hungerford Property to have standing misses the mark for the same reason. Plaintiffs are not appealing a School Board decision “to open a school, operate a school, the type of school, the closing of a school, or the operation of an illegally segregated school pursuant to § 120.54(2)(a).” The School Board derives this requirement from *Blackford*’s application of the substantially

affected test which does not apply here in a suit for declaratory judgment.¹ See Def’s Motion, at 9 (citing *Blackford*, 369 So. 2d 689).

2. Plaintiffs are not required to show that they suffered a “special injury” to satisfy standing.

The School Board’s next attempt to undercut standing likewise rests on faulty premises. The School Board misapplies the injury requirement in taxpayer injunctive suits to this suit for declaratory judgment, arguing that Plaintiffs must allege a “special injury” to satisfy standing. See Def’s Motion, at 10. To the contrary, Fla. Stat. § 86.021, “which addresses standing to seek a declaratory judgment, contains no requirement that a special injury be established.” *Combs v. City of Naples*, 834 So. 2d 194, 197 (Fla. 2d DCA 2002).

The School Board draws the incorrect “special injury” standard from cases evaluating taxpayer standing to seek injunctive and mandamus relief, even though this is an action for declaratory relief that does not allege taxpayer standing. See Def’s Motion, at 10 (citing *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015) (injunction to prevent city’s lease of public property); *Sch. Bd. of Volusia Cty. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (writ of mandamus prevent school board’s purchase of real property). *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 155 (Fla. 1985) (injunction to prevent illegal competitive bidding process); *Henry L. Doherty & Co. v. Joachim*, 200 So. 238, 252 (Fla. 1941) (injunction to prevent closure of public pathway); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205, 206 (Fla. 1917) (injunction to prevent unlawful government expenditure to construct roads). Those cases are therefore inapposite.

¹ Incidentally, the School Board is incorrect that a plaintiff must be a current or future student to bring an administrative challenge to a school closure. Such a limitation on standing appears nowhere in *Blackford*. Instead, *Blackford* held that plaintiffs, parents of school children, lacked standing because “[students] do not have a right to be seated at a particular desk in a particular room at a particular school”). 369 So. 2d at 691.

B. Both Plaintiffs have suffered injuries sufficient to establish standing to seek a declaration of their rights under the 1951 deed restriction/restrictive covenant and Fla. Stat. § 1013.28.

The purposes of the Declaratory Judgment Act are “to relieve litigants of the common law rule that a declaration of rights cannot be adjudicated unless a right has been violated and to render practical help in ending controversies which have not reached the stage where other legal relief is immediately available.” *X Corp. v. Y Pers.*, 622 So. 2d 1098, 1100 (Fla. 2d DCA 1993). Liberal construction of the Act is necessary to “operate within this sphere of anticipatory and preventative justice,” *id.*, and to “afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations,” *Coal. for Adequacy & Fairness in Sch. Funding*, 680 So. 2d at 404 (quotations and citations omitted).

Plaintiffs meet the standing requirements of Fla. Stat. § 86.021 to seek a declaratory judgment “determin[ing] any question of construction or validity” of the 1951 deed restriction/restrictive covenant and the School Board’s obligations under Fla. Stat. § 1013.28. Both Plaintiffs have alleged specific facts showing, first, that they are “in doubt about [their] rights under [the] deed” and, second, that their “rights, status, or other equitable or legal relations” under Fla. Stat. § 1013.28 are “affected” by the School Board’s non-compliance with that statute. *See* Fla. Stat. § 86.021. These disputes have injured Plaintiffs to a far greater degree than they have injured the general public. And although Plaintiffs do not need to have suffered a special injury to have standing to bring a declaratory judgment, *Combs*, 834 So. 2d at 197, their alleged injuries are indeed different in kind from the injuries suffered by the public at large.

1. Uncertainty as to the validity of the 1951 deed restriction/restrictive covenant injures Plaintiffs to a greater degree than it does the general public.

Count 1 of the Complaint seeks a declaration under Fla. Stat. §§ 86.011 and 86.021 as to the validity of the 1951 deed restriction/restrictive covenant. To allege “doubt” about their rights

under the deed restriction, Plaintiffs must allege an injury “greater in degree than that sustained by the general public” or “that the [deed] restriction was intended for the [their] benefit.” *White v. Metro. Dade Cnty.*, 563 So. 2d 117, 123 (Fla. 3d DCA 1990). Courts have “strictly” construed the “terms of dedications” and “unfailingly guarded against encroachment” of deed restrictions and restrictive covenants that, like the 1951 restriction here, protect land for the public benefit. *See id.* at 123–24 (collecting cases finding violations of deed restrictions limiting land use to public park purposes).²

Here, Plaintiff P.E.C. alleges that uncertainty as to the validity of the 1951 deed restriction/restrictive covenant causes it injury by frustrating its organizational mission and diverting its organizational resources. *See, e.g.*, F.A.C. ¶¶ 224–228, 258–59. Continued uncertainty as to the School Board’s obligations and legal duties with respect to the Hungerford Property—which constitutes 14 percent of Eatonville, *id.* at ¶ 209—will thwart or eliminate the P.E.C.’s organizational mission to preserve the Town’s cultural, historical, and educational resources, *id.* at ¶¶ 182–83, 222, 227–28, and its ability to continue operating nonprofit educational and civic facilities on neighboring properties, *see, e.g., id.* at ¶¶ 189, 193, 197–200, 258; *see Combs*, 834 So. 2d at 197 (non-profit organization whose mission was to protect homeowners living in the vicinity of the subject property had standing to seek declaratory relief).

Furthermore, Plaintiff P.E.C. has already expended considerable resources working on community education and comprehensive planning for the Town, which included hosting a series

² For instance, in *AT & T Wireless Servs. of Fla., Inc. v. WCI Communities, Inc.*, the court held that a deed restriction requiring use of the land “solely for passive park purposes” prohibited a company from building a telecommunications tower there for private profit. 932 So. 2d 251, 255 (Fla. 4th DCA 2005). The court reasoned that operating the tower would “restrict[] access of park lands from the public’s use,” and concluded that [t]he public interest [was] best served by the maintenance of the parks, as dedicated and restricted” *Id.* at 255–56.

of community conversations on principles of land development in historic Eatonville, *id.* at ¶¶ 225–26; *see also id.* at ¶ 192 (“The Hurston Museum is specifically identified as a Town priority in the Eatonville 2018 Comprehensive Plan . . . for the promotion of the historical nature of Black culture to advance Policy”). During the School Board’s most recent attempt to sell the Hungerford property, Plaintiff P.E.C. invested significant time and resources opposing the private developer’s request for zoning changes and comprehensive plan amendments that would have radically and irrevocably altered the use of the Hungerford property and the character of the Town, *id.* at ¶¶ 206, 211 (investment of time and resources) & 213-14 (alterations to property and Town). These allegations establish that Plaintiff P.E.C. has sustained injuries “greater in degree” than any injuries sustained by the general public. *See White*, 563 So. 2d at 123; *see also F.A.C.* ¶ 227 (“P.E.C.’s interest in the Hungerford Property and its future development is . . . greater than the interest of the public at large.”).³

Plaintiff Hatler’s great-great grandparents donated the land for the Hungerford School as a memorial to their late son Robert Hungerford, a physician who treated African American children in the post-Reconstruction South. *See F.A.C.* ¶¶ 230-31. Her ancestors restricted the use of their donation for educational purposes. *Id.* Plaintiff Hatler alleges that uncertainty as to the validity of the 1951 deed restriction/restrictive covenant causes her injury by jeopardizing her “ability to carry forward the Hungerford family’s historical involvement in the educational purposes of the

³ Although decided under a different legal standard, cases involving whether there is standing to enforce provisions in a comprehensive plan provide instructive analogies for determining if Plaintiffs have alleged an interest of a greater degree than the general public. For example, *Stranahan House* found that an organization that has as its mission the protection of a museum as a historical resource demonstrated an injury greater than the general interest in community well-being when it alleged specific harms that it would experience as a neighboring property owner, including negative impacts of the proposed development and failure to adequately protect historical sites. 967 So. 2d at 434. This is a similar type of harm alleged by P.E.C.

Hungerford Property and protect her family’s name.” *Id.* at ¶¶ 260-61. She also alleges that the School Board’s actions threaten to devalue the Hungerford name by threatening Eatonville’s legacy as a beacon of educational innovation for Black youth—a legacy her family was pivotal to building. *Id.* at ¶¶ 242–247. Ms. Hatler’s grandmother and Robert Hungerford’s only daughter, Constance Hungerford Fenske, litigated to prevent the School Board’s takeover of the Hungerford School—the litigation that resulted in the 1951 deed restriction/restrictive covenant at issue in this matter. *Id.* at ¶¶ 232-35. As a direct descendant of these donors and defender of the Hungerford property, Plaintiff Hatler’s interest in resolving the dispute over the validity of the deed restriction/restrictive covenant is “greater in degree” than any injuries sustained by the general public. *See White*, 563 So. 2d at 123.

Thus, both Plaintiffs P.E.C. and Hatler allege injuries sufficient to state a claim for declaratory relief construing the deed restriction/restrictive covenant under Fla. Stat. § 86.021.

2. Uncertainty as to Defendant’s duties under Fla. Stat. § 1013.28 injures Plaintiffs to a greater degree than it does the general public.

Count 2 of the Complaint seeks a declaration under Fla. Stat. §§ 86.011 and 86.021 as to whether the School Board failed to comply with statutory requirements set forth in Fla. Stat. § 1013.28 for disposal of educational property. To establish standing to raise this claim, the First Amended Complaint needs to allege that Plaintiffs’ “rights, status, or other equitable or legal relations are affected by a statute.” Fla. Stat. § 86.021; *see Lyles v. Dade Cnty.*, 123 So. 2d 466, 467–68 (Fla. 3d DCA 1960).

The First Amended Complaint contains numerous, specific allegations that the School Board’s alleged non-compliance with Fla. Stat. § 1013.28 “affect[s]” their rights and other equitable or legal relations. *See, e.g.*, F.A.C. ¶¶ 273–74. Defendant’s alleged non-compliance undermines Plaintiff P.E.C.’s organizational mission to preserve the history and future of

Eatonville and Plaintiff Hatler’s ability to safeguard the Hungerford family’s historical legacy of advancing educational opportunities for Eatonville children. *Id.*; *see supra* II.B.1 (detailing both Plaintiffs’ injuries). These injuries will persist until Plaintiffs obtain a declaration as to whether Defendant has met the prerequisites to disposing of School Board property and, specifically, whether Defendant is permitted to sell the Hungerford property for purposes inconsistent with the Board’s obligations to the public and to the children of Eatonville under the 1951 deed restriction/restrictive covenant. F.A.C. ¶ 269.

Thus, both Plaintiffs P.E.C. and Hatler allege injuries sufficient to state a claim for declaratory relief establishing the School Board’s obligations under Fla. Stat. § 1013.28.

III. Plaintiffs’ claims present a present, actual controversy.

This Court should reject Defendant’s argument that there is no present, actual controversy. Def’s Motion, at 11-14.

A. This Court should find that the legal issue has not been fully resolved by the 2011 *Allen* litigation.

The School Board argues that the legal issue presented in Claim 1 was fully resolved by the 2011 litigation, *Town of Eatonville v. Allen*, 2011-CA-000792-O (Fla. 9th Jud. Cir.). Def’s Motion, at 11-12. The ultimate issue presented by Claim 1—whether the 2022 Deed Release was sufficient to release the 1951 deed restriction/restrictive covenant on the Hungerford property—was never decided by the 2011 *Allen* litigation. *Allen* resulted in a settlement agreement, subsequently amended, that the successor trustees of the Hungerford Chapel Trust would release their interest in the 1951 deed restriction/restrictive covenant. F.A.C. ¶¶ 86-89, 92-94, 97-98, 103. In sum, the only legal issue resolved in the *Allen* litigation is that the successor trustees of the Hungerford Chapel Trust agreed that they would no longer claim an interest in the property—something Plaintiffs contend was clearly resolved back in 1974, when this Court previously

decided the successor trustees had no ongoing interest in enforcement of the deed restriction/restrictive covenant. *Id.* at ¶¶ 63, 114, 117.

The question remains whether the 2022 Deed Release is legally sufficient as a matter of law to remove the 1951 deed release/restrictive covenant. *Id.* ¶¶ 249-54. Plaintiffs contend it is not, because the Hungerford Chapel trustees did not retain a legal interest or right to release that restriction. *Id.* at ¶¶ 117-120. At best, they only retained the authority to eliminate any doubt as to *their* interest. *See id.* at ¶ 114 (“The 2022 Deed Release states that “for avoidance of doubt, this Release of the Hungerford Trust Restrictions is only intended to (and does) release and extinguish the Hungerford Trust Restrictions from the Property[.]”); *see also* F.A.C., Ex. 2. The 2022 Deed Release at minimum is superfluous in its operation, releasing the successor trustees’ interest that clearly no longer existed. *Id.* ¶¶ 63, 117.

Plaintiffs’ First Amended Complaint therefore demonstrates a live case or controversy separate from the *Allen* litigation, and it would be error to dismiss on these grounds. Moreover, what bearing the *Allen* litigation has on these proceedings is a question for the merits and not properly resolved at a motion to dismiss. *See Royal Selections, Inc. v. Fla. Dep’t of Revenue*, 687 So. 2d 893, 894 (Fla. 4th DCA 1997) (motion to dismiss does not resolve the merits of whether a plaintiff is entitled to a declaration in its favor).

B. This Court should reject the School Board’s contention that it is currently taking no action regarding the Hungerford property.

The School Board argues that there is no present, actual controversy because it is taking no action regarding the Hungerford property—either Plaintiffs’ action is too late (*i.e.*, the controversy over the intended sale of the property is all in the past) or too soon (*i.e.*, another sale is not yet in the works). *See* Def’s Motion, at 12-14.

Since 1974, the School Board has been selling off piecemeal parcels of the Hungerford property for profit. F.A.C. ¶ 67. The School Board’s most recent attempt to sell the remaining parcels of the Hungerford property to a private developer ended—not at the School Board’s own behest but by the would-be buyer—on March 31, 2023, just six months ago. *Id.* at ¶ 6. Plaintiff P.E.C. objected to that development and the land use changes that it would have required. *See id.* at ¶¶ 211-14.

Plaintiff P.E.C.’s initial complaint was filed on March 25, 2023, when the sale of the Hungerford property was imminent. The developers terminated the sale contract on March 31, 2023. F.A.C. ¶ 6. This was the latest action taken by the School Board to sell the remaining portions of the Hungerford property, but it has been engaged in such efforts since at least 2010. *Id.* at ¶¶ 67–69, 122-39. One press statement by the School Board indicating that it does not intend to accept new bids for the property at this time after its most recent attempt to sell the property to a private developer does not change that history. *See id.* at ¶ 140. The School Board asserts that it must follow state law procedures prior to undertaking any such sale, Def’s Motion, at 13, but those are the very procedures that Plaintiffs contend were not followed in connection with the most recent proposed sale, F.A.C. ¶¶ 158-175. Under these facts, the controversy has not been “so fully resolved that a judicial determination can have no actual effect.” *See Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (“A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.”)

Plaintiff P.E.C.’s interests will remain adverse to the School Board’s as long as the School Board claims that it has the ability to sell the property to private developers unencumbered by the 1951 deed release/restrictive covenant. *See* F.A.C. ¶¶ 215, 228, 257-59, 273. Plaintiff P.E.C. filed its First Amended Complaint and added Babetta Rose Leach (“Bea”) Hatler as a Plaintiff, on

August 14, 2023. Plaintiff Hatler's interests are adverse to those of the School Board because her family donated and defended the use of the land at issue in this litigation. *See id.* ¶¶ 32, 229-34, 260. When she learned on March 19, 2023, that the School Board planned to sell the Hungerford property, she immediately offered her assistance to Eatonville residents opposed to the sale. *See id.* ¶¶ 241-43. Her ability to carry forward the Hungerford family's historical involvement in the educational purposes of the Hungerford property, along with her ability to preserve her family's legacy, will remain clouded until there is resolution as to whether and how the School Board can dispose of this land. *See id.* ¶¶ 261, 274.

There is no question that there was a present, actual controversy at the time that the initial complaint was filed, and the sale of the property was imminent. *Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994), *as clarified* (Nov. 30, 1994). Although the sale was subsequently cancelled by the decision of the developer to terminate the sales contract, the underlying controversy presented by this lawsuit still remains. Does the 1951 deed restriction/restrictive covenant remain in effect or did the 2022 Deed Release extinguish this restriction? As applied to the facts, what are the School Board's obligations under state law and has it followed those procedures with regard to its intended sale of the property? These are questions of law, as applied to a present, ascertained, or ascertainable set of facts that are proper for resolution through a declaratory action. These facts have already arisen and are not contingent or uncertain. *See Santa Rosa County v. Administration Com'n, Div. of Administrative Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995).

IV. Plaintiffs' claims do not require exhaustion of administrative procedures.

The School Board argues that Plaintiffs failed to comply with appeal deadlines set forth in the Florida Administrative Procedure Act related to the operation or closing of schools. Def's

Motion, at 14-15. First, failure to exhaust administrative remedies is an affirmative defense, not present on the face of the First Amended Complaint and is therefore not a valid basis for dismissal. *Wilson v. County of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004). While Defendant may raise its affirmative defense later, it is not appropriate for resolution on a motion to dismiss. *Id.* Any ruling on Defendant’s affirmative defense must be deferred.

Second, this argument misconstrues Plaintiffs’ claims. Plaintiffs are not, as the School Board contends, “really asking this Court to require the School Board to open and operate a second school on the Hungerford property.” Def’s Motion, at 14. And they are also not challenging the 2009 school closure of the Hungerford property, despite the School Board’s argument that this is the issue “[a]t the heart of their Complaint.” *Id.* at 14.

As previously noted, this suit is not an administrative challenge, *see supra* at Section II.A.1, and the relief Plaintiffs seek is distinguishable from the relief sought in the cases cited by the School Board in its Motion. *See* Def’s Motion, at 14-15. Cases relied on by the School Board are inapposite because they involve administrative appeals and challenges. *Id.* Defendant’s argument that Plaintiffs failed to exhaust administrative remedies does not apply.

V. The School Board’s argument that the 1951 Court-Imposed Use Restriction is Unenforceable is not properly resolved by a Motion to Dismiss.

The School Board repeatedly misstates the relief sought by Plaintiffs to convince the Court that the First Amended Complaint can be dismissed on a question of law, namely, the enforceability of the 1951 deed restriction/restrictive covenant. *See* Def’s Motion, at 16 (“Plaintiffs have asked the Court to enforce the 1951 Court-imposed Use Restriction”; “the Court-imposed Use Restriction became illegal after *Brown* as it required the School Board to operate a segregated school on the Hungerford Property *as desired by Plaintiffs*”; and “Plaintiffs’ Complaint fails to state a cause of action as a matter of law because the relief sought is the enforcement of the illegal

1951 Court-imposed Use Restriction”) (emphasis added) and at 23 (this case would “require the School Board to operate a segregated school on Hungerford property”). Defendant mischaracterizes Plaintiffs’ case. Plaintiffs neither request nor desire to revert back to the School Board’s segregated school system, which necessitated this deed restriction and transfer of the property in 1951, as well as 48 years of litigation that resulted in the School Board operating the Hungerford School under a dual system of education until it was closed in 2009. *See* F.A.C. ¶¶ 48, 55, 58.

Whether the 1951 deed restriction/restrictive covenant runs with the land involves questions of material fact and law that are in dispute and not properly before the Court on a motion to dismiss. *See Meadows Cmty. Ass’n, Inc. v. Russell-Tutty*, 928 So. 2d 1276, 1279 (Fla. 2d DCA 2006) (motion to dismiss is not a motion for summary judgment). In sum, Plaintiffs claim that the Hungerford Chapel Trust successor trustees lacked legal authority; therefore, the 2022 Deed Release which they executed did not release the 1951 deed restriction/restrictive covenant and remains valid and in effect on the portions of the Hungerford Property at issue here. *See* F.A.C. ¶¶ 119-20, 249-50. The School Board contests those claims and instead asserts that the 2022 Deed Release and related settlement agreements operated to lift the 1951 deed restriction/restrictive covenant. *See* Def’s Motion, at 11-12. As Plaintiffs previously stated in this Response, these questions represent a bona fide dispute between the parties based on ultimate facts that are ascertainable and rightfully resolved in this declaratory judgment action. The enforceability of 1951 deed restriction/restrictive covenant is a question for the merits and therefore is not at issue at this time.⁴ *See Messett*, 741 So. 2d at 621.

⁴ At the appropriate juncture, Plaintiffs will make the case that at its inception the 1951 deed restriction/restrictive covenant was not invalidated by *Shelley v. Kraemer*, 334 U.S. 1 (1948).

VI. Plaintiffs did not fail to join indispensable parties.

The School Board argues that Plaintiffs failed to join three indispensable parties: the Town of Eatonville, the successor trustees of the Hungerford Chapel Trust, and HostDime LLC. Def’s Motion, at 17–19. First, the School Board’s affirmative defense of failure to join an indispensable party cannot be resolved at a motion to dismiss, because it does not appear conclusively on the face of the complaint. *LeGrande v. Emmanuel*, 889 So. 2d 991, 995-996 (Fla. 3d DCA 2004). In arguing that there are three indispensable parties, the School Board asserts facts and draws various conclusions that are outside the four corners of the First Amended Complaint. Def’s Motion, at 17-18 (“HostDime LLC has developed the five (5) acre tract with state-of-the-art data center that is nearing a grand opening.”); at 18 (“The three parties to the 2015 Settlement and Amended Settlement Agreement have relied upon it in their actions as to the Hungerford Property over the past eight year [detailing those actions]...the sales price paid to the school Board by Host Dime LLC would be required to be returned and the multi-story data center developed by Host Dime would be required to be removed...[.]”) This is improper for a motion to dismiss. *LeGrande*, 889 So. 2d at 996. This Court should defer consideration of Defendant’s affirmative defense of failure to join indispensable parties until a later time when it can consider these factual allegations outside the four corners of the complaint and weigh evidence. *Turkell-White v. Wells Fargo Bank N.A.*, 273 So. 3d 1021, 1023 (Fla. 4th DCA 2019).

Second, the School Board has not demonstrated that, on the face of the pleadings, there is conclusively a failure to join indispensable parties. “The general rule in equity is that all persons

Obviously, the 1951 deed restriction/restrictive covenant was put in place to benefit Black children within the context of a segregated school system that eventually became unlawful for its separate and unequal provision of schooling by *Brown v. Board of Education*, 347 U.S. 483 (1954). However, this dual system persisted in Orange County until 2010.

materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a *complete decree* may be made binding upon all parties. A party is materially interested or indispensable when it is impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action. *Two Islands Dev. Corp. v. Clarke*, 157 So. 3d 1081, 1084 (Fla. 3d DCA 2015) (internal citations and quotations omitted).

Defendant's arguments about HostDime LLC, bolstered by facts outside the record, appear to relate to land that the School Board previously sold. Plaintiffs' First Amended Complaint specifically deals only with the remaining portions of the Hungerford property that the School Board owns. F.A.C. ¶¶ 7-8. Any parcels of land previously sold by the School Board may be evidence of the School Board's piecemeal profiting off the Hungerford property, but they are not at issue here, so HostDime LLC is not indispensable. The land at issue here is located in Eatonville, but there are no facts put forward by the School Board to support its conclusion that the Town is indispensable. Additionally, the Hungerford Chapel Trust is not indispensable because, as this Court previously decided in 1974, the successor trustees do not have title or interest in the Hungerford property. *Id.* at ¶ 63.

Finally, parties to the *Allen* litigation are not indispensable to this litigation. The School Board's argument as to Eatonville and the Hungerford Chapel Trust is solely grounded in the fact that they were parties to the *Allen* litigation. Def's Motion, at 17-18. As discussed throughout this Response, Plaintiffs are not asking the Court to undo or redo the *Allen* litigation. Plaintiffs set forth the history of the *Allen* litigation as necessary context for how and why the 2022 Deed Release was eventually executed by the successor trustees of the Hungerford Chapel Trust. However, Plaintiffs do not ask this Court to void the settlement agreements in *Allen*. See F.A.C. ¶¶ 249-64.

forIt would be improper for the Court to dismiss the First Amended Complaint at this phase of the proceedings based on relief that Plaintiffs do not seek, especially where the School Board retains the ability to raise this affirmative defense later in the litigation if the facts allow. *See* Fla. R. Civ. P. 1.140(h)(2) (failure to join an indispensable party may be raised by motion for judgment on the pleadings, at trial on merits, a motion under 1.140(b), or in the answer or reply).

The School Board is the only defendant required because this matter centers on property currently owned by the School Board and, as has been previously stated in this Response, whether that property is still encumbered by the 1951 deed restriction/restrictive covenant, notwithstanding the execution of the 2022 Deed Release by the successor trustees of the Hungerford Chapel Trust. F.A.C. ¶¶ 249-64. Because the interests of the School Board and these other entities are separable, this case may be decided on its merits without joining them.⁵ *Hertz Corp. v. Piccolo*, 453 So. 2d 12, 14 n.4 (Fla. 1984) (contrasting indispensable parties from other necessary parties who may have an interest but are not required to be joined).

Alternatively, if this Court determines that other parties are indispensable to the issues presented by this case in Claim 1, Plaintiffs should be given leave to amend the Complaint to join those parties and any dismissal should not be with prejudice.

VII. Dismissal for failure to attach unnecessary documents from the *Allen* litigation to Plaintiffs' First Amended Complaint is improper.

The School Board argues that, under Rule 1.130 of the Florida Rules of Civil Procedure, Plaintiffs' First Amended Complaint must be dismissed for failure to state a cause of action

⁵ Claim 2 solely relates to the School Board's failure to follow state law procedures in disposing of school property. The School Board does not mention this Claim in its argument about indispensable parties, and for good reason: no other party has an interest in that claim. Dismissal of Claim 2 on this basis would therefore be improper.

because Plaintiffs did not “allege, incorporate, or attach any portion of” the 2015 Settlement Agreement and the 2016 Amended Settlement Agreement (together, “the Settlement Agreements”) from the *Allen* lawsuit to the Complaint. Def’s Motion, at 19. The School Board’s argument misses the mark for two reasons. First, Rule 1.130 prohibits the attachment of unnecessary documents, and the Settlement Agreements at issue here do not form the premise of Plaintiffs’ causes of action. Plaintiffs are not asking this Court to interpret the Settlement Agreements or issue any declaratory relief related to those agreements. F.A.C. ¶¶ 248-264 (Claim 1) & ¶¶ 265-277 (Claim 2). Second, even if this Court were to find that attachment of these documents was necessary, Plaintiffs should be permitted to amend the complaint instead of dismissal with prejudice.

Rule 1.130 prohibits Plaintiffs from attaching unnecessary documents to the complaint. The Rule’s mandatory language requires that “[n]o documents shall be unnecessarily annexed as exhibits. The pleadings must contain no unnecessary recitals of deeds, documents, contracts, or other instruments.” Fla. R. Civ. P. 1.130(a) (emphasis added). Because Plaintiffs’ causes of action are not premised on the Settlement Agreements, and because the *Allen* litigation’s documents involve legal issues that are distinct from the instant litigation, Plaintiffs complied with Rule 1.130 by not attaching these unnecessary documents to the First Amended Complaint.

Rule 1.130(a) “by its very words, is meant to include those documents upon which an action is being brought.” *See Railey v. Skaggs*, 220 So. 2d 689, 690 (Fla. 3d DCA 1969). Although Plaintiffs’ First Amended Complaint cites to the *Allen* litigation, *see, e.g.*, F.A.C. ¶¶ 70, 72, 74, *Allen* provides relevant background for the 2022 Deed Release which does form the basis of the dispute, along with the 1951 deed release/restrictive covenant, which were both attached as Exhibits. *See Railey*, 220 So. 2d at 690 (finding no defect under Rule 1.130 for failure to attach a proposed agreement that was material as evidence of abuse of fiduciary power where the cause of

action was premised on the trust instrument); *see also Glen Garron, LLC v. Buchwald*, 210 So. 3d 229, 234 (Fla. 5th DCA 2017) (“For count II, attachment of the note was not required as the foreclosure claim was brought based on the mortgage.”). The only documents Plaintiffs ask the Court to interpret are the 1951 deed restriction/restrictive covenant and the 2022 Deed Release. *See* F.A.C. ¶¶ 249, 250. Both documents were properly attached as Exhibits to Plaintiffs’ First Amended Complaint as required by Rule 1.130. *See* F.A.C., Exs. 1, 2.

Attachment or incorporation of the Settlement Agreements was not required as they are not material to Plaintiffs’ claims. *See Glen Garron*, 210 So. 3d at 233 (Fla. 5th DCA 2017) (“The purpose of [Rule 1.130] is to apprise the defendant of the nature and extent of the cause of action so that the defendant may plead with greater certainty.”) (internal citation and quotation marks omitted). Should this Court disagree and find that the *Allen* Settlement Agreements should have been attached to the pleading, then Plaintiffs should be permitted to amend the complaint because a minor change could easily remedy the issue. *Id.* at 232.

VIII. Plaintiffs did not fail to state a cause of action for injunctive relief, as the First Amended Complaint provides notice that supplemental relief may be requested consistent with procedures in Florida’s Declaratory Judgment Act.

Plaintiffs are not required to “state a cause of action for injunctive relief,” *contra* Def’s Motion, at 20, because this is not a suit for injunctive relief. Rather, it is a suit for declaratory judgment and any supplemental relief the Court may deem proper under Florida Statutes §§ 86.011 and 86.061 (2022). Thus, the issue here is not whether the Complaint “demonstrate[s] a right to a permanent injunction,” *see* Def’s Motion, at 20; it is whether the First Amended Complaint put Defendant on notice that, should the Court issue a declaratory judgment in Plaintiffs’ favor, they may move for supplemental relief to enforce that judgment.

Plaintiffs bring this suit under Florida’s Declaratory Judgment Act. F.A.C. ¶¶ 10–11. As they stated in their First Amended Complaint, they seek both a declaratory judgment and supplemental relief under Florida’s Declaratory Judgment Act. F.A.C. ¶ 11 (citing Fla. Stat. § 86.011 (2022)); *id.* at 41–42 (citing Fla. Stat. § 86.061 (2022)). Under Fla. Stat. § 86.011, Plaintiffs may seek a declaratory judgment and “also demand . . . supplemental relief in the same action.” Fla. Stat. § 86.011. Such “[f]urther relief based on a declaratory judgment may be granted when necessary or proper.” *Id.* § 86.061; *see also City of Miami Beach v. State ex rel. Gerstein*, 242 So. 2d 170, 172–73 (Fla. 3d DCA 1970) (finding that supplemental relief “to make effective the declaratory decree” was “sought under the declaratory decree statute”). Furthermore, supplemental relief may consist of an injunction enforcing the court’s declaration. *Thomas v. Cilbe, Inc.*, 104 So. 2d 397, 401 (Fla. 2d DCA 1958) (explaining that, in a declaratory judgment action, even though “coercive relief is not as a general rule sought,” a court may both determine the rights of parties and enforce them in “the one action”).

Plaintiffs have requested general declaratory relief and subsequent supplemental relief to enforce any ultimate judgement. F.A.C., at ¶¶ 41–42. Specifically, Plaintiffs request this Court enter a supplemental order “restraining the School Board from selling or otherwise disposing of the Hungerford Property until it complies with its legal obligations”). *Id.* The School Board’s discussion of the standards for pleading a right to injunctive relief, *see* Def’s Motion, at 19–23— as opposed to supplemental relief—is therefore wholly irrelevant to this case.

Supplemental relief may be obtained through demand in pleading, Fla. Stat. § 86.011(2) or by subsequent motion, *id.* § 86.061; *see also Lasseter v. Blalock*, 139 So. 2d 726, 729 (Fla. 1st DCA 1962) (reversing grant of supplemental relief where defendant had no notice of the request either in pleadings or by motion). As long as notice is ultimately provided, it is not necessary to

specifically request the supplemental relief in the pleadings. *See Coastal States Life Ins. Co. v. Raphael*, 183 So. 2d 274, 276 (Fla. 3d DCA 1966); *Hill v. Palm Bch. Polo, Inc.*, 805 So. 2d 1014, 1016 (Fla. 4th DCA 2001). And even when supplemental relief is sought in the pleading, relief may not be granted until after declaratory judgment is entered and the party files a motion, providing notice to opposing party. Fla. Stat. § 86.061. Here, Plaintiffs went beyond what Fla. Stat. § 86.061 requires of them by praying for supplemental relief in the First Amended Complaint. F.A.C. at ¶¶ 41–42. The Complaint is therefore consistent with procedures in the Declaratory Judgment Act.

IX. Plaintiffs are not attempting to intervene in the 2011 *Allen* litigation.

Contrary to the School Board’s contention, Plaintiffs are not seeking post-judgment intervention in the *Allen* litigation. Def’s Motion, at 22–23. Thus, the School Board’s citation of the factors for intervention is irrelevant here. Def’s Motion, at 22–23. As discussed, *supra* III.A, the *Allen* litigation provides background for the instant litigation but did not resolve the question presented in Claim 1. As stated, the question presented here, which has never been decided, is whether the 2022 Deed Release in fact removes the 1951 deed restriction/restrictive covenant on those portions of the Hungerford property that the School Board still owns or if, as Plaintiffs contend, the restriction continues to run with the land. Additionally, Claim 2 has no relationship to *Allen*. Plaintiffs are not seeking post-judgment intervention, and the declaration requested does not require this Court to undo any of its previous orders.

CONCLUSION

For these reasons, this Court should deny the School Board’s Motion to Dismiss. Alternatively, if the Court finds that there is any defect with Plaintiffs’ First Amended Complaint, Plaintiffs should be allowed to cure and given leave to amend under Florida’s Rules of Civil

Procedure, which “shall be construed to secure the just, speedy and inexpensive determination of every action.” *See Glen Garron, LLC*, 210 So. 3d at 232.

Dated: September 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Defendant's Motion to Dismiss has been electronically filed with the Orange County Clerk of Court using the E-Filing Portal System and furnished via email this 13th day of September, 2023, to:

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