

**IN THE CIRCUIT COURT
OF THE 19th JUDICIAL CIRCUIT
IN AND FOR
INDIAN COUNTY, FLORIDA**

CASE NO.: 312020CA000 _____ XXXXXX

ASSIGNED DIVISION: CIVIL

DAMIEN H. GILLIAMS,

Plaintiff,

vs.

ED DODD and PAUL CARLISLE,

Defendants.

_____ /

COMPLAINT

COMES NOW DAMIEN H. GILLIAMS, by and through his undersigned counsel, and pursuant to Rules 1.100, 1.430 and 1.630, Fla. R. Civ. P., hereby sues ED DODD and PAUL CARLISLE, and states as follows:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, Damien H. Gilliams, is a duly elected official of the City Council for the City of Sebastian, State of Florida.

2. Defendant, Ed Dodd is a duly elected official of the City Council for the City of Sebastian, State of Florida.

3. Defendant, Paul Carlisle, is the duly appointed City Manager of the City of Sebastian by the City Council of the City of Sebastian, State of Florida.

4. All conditions precedent to raising any claim in the Complaint have been met or waived or any administrative remedies have been exhausted or performing any conditions precedent would have been futile.

5. The Court has jurisdiction over the counter-claim pursuant to Section 26.012(2)(a), Fla. Stats. as the causes of action in this Complaint involve damages greater than \$30,000 exclusive of interest, attorney's fees, and costs.

6. Venue is proper in Indian River County, Florida as the claims or cause(s) of action alleged below arose in Indian River County.

FACTS COMMON TO ALL COUNTS

7. On or about March 18, 2020, the City Council of City of Sebastian held a regularly scheduled meeting. A copy of this meeting is located at:

[https://www.youtube.com/playlist?list=PLGf5SlZySVnvgpqtM5usMoNi_0v-](https://www.youtube.com/playlist?list=PLGf5SlZySVnvgpqtM5usMoNi_0v-ksLTJ)

[ksLTJ](https://www.youtube.com/playlist?list=PLGf5SlZySVnvgpqtM5usMoNi_0v-ksLTJ). All statements made by the Defendants on the video of the March 18, 2020 meeting are incorporated herein.

8. The meeting lasted a mere twenty-nine (29) minutes and was abruptly ended by the Defendant, Ed Dodd, without any explanation as he chaired the City Council meeting, after a negative vote against a certain matter which he favored had failed to pass on the Agenda.

9. On March 17, 2020, the Defendant, Ed Dodd, in his capacity as Mayor of the City of Sebastian, issued a Local Declaration of Emergency. A copy of this Declaration can be found as an exhibit attached in a Complaint filed by Defendants, Ed Dodd and Paul Carlisle, in Case No. 2020-CA-269.

10. This Local Declaration of Emergency was not immediately placed on the March 18, 2020 Agenda before the City Council as a whole, upon which the Plaintiff has not assented to any such Declaration and therefore has standing.

11. The Local Declaration of Emergency was never presented to the City Council for ratification or approval and at all times material to the Complaint, the Local Declaration of Emergency has not been approved by the City Council as a whole in any public meeting under Chapter 286, Fla. Stats.

12. The Local Declaration of Emergency issued by Defendant, Ed Dodd, was done by him under color of his title as Mayor of the City of Sebastian solely for the specific purpose of a “public health emergency” and not the type of emergency contained in Chapter 870, Fla. Stats as referenced in Ordinance Sec. 2-37 of the Sebastian City Code.

13. At the March 18, 2020 meeting, the City Council discussed the status of the upcoming regular scheduled meeting for April 22, 2020 and determined that the meeting was to remain scheduled and a decision would be made several days before the April 22, 2020 scheduled meeting as the Defendants were awaiting any

extensions of the Governor's Declaration of State of Emergency and those applicable Executive Orders with respect to COVID-19.

14. On April 1, 2020, Governor DeSantis issued Executive Order 20-91, which extended stay at home orders for Floridians due to COVID-19 pandemic through April 30, 2020.

15. During the time period between the March 18, 2020 City Council Meeting and the next scheduled regular meeting of the City Council for April 22, 2020, the local newspaper, The Sebastian Daily, issued several news reports that the Plaintiff along with other City Council members were planning to remove the Defendant, Ed Dodd, as Mayor.

16. On April 21, 2020, upon information and belief, the Defendant, Paul Carlisle, contrary to the provisions of Section 286.011, Fla. Stats. began polling the city council members on a vote to cancel the meeting of April 22, 2020.

17. On April 21, 2020 at 11:26 am, Plaintiff wrote an e-mail to the Defendant, Paul Carlisle. that if that appears that the regular meeting is to be cancelled, he was calling a special meeting pursuant to Article II, Sec. 2.12(a) of the Sebastian City Charter and the City Attorney, Manny Anon, Jr. was copied on this e-mail.

18. In response to this e-mail, the Defendant, Paul Carlisle at 11:28 am on April 21, 2020 stated, “I understand and I have expressed the fact that the charter allows you to do that.”

19. Defendant, Paul Carlisle, at 11:58 am the same day then e-mailed the Plaintiff, Damien Gilliams, and Mr. Carlisle stated, “Up till now I have not said who was going to ask for the special meeting but I will have to send them to them.” And on April 22, 2020 at 2:35 pm, the Defendant, Paul Carlisle sent an e-mail to the Plaintiff stating “Based on the consensus of the City Council and the authority granted by the Declaration of Local State of Emergency, I am directing that the meeting of April 22, 2020 be postponed and all items carried forward to the next regularly scheduled meeting.” The Plaintiff objected to this cancellation at 4:43 pm.

20. On the morning of April 24, 2020, the City Clerk, Jeannette Williams, a Charter Officer told the Plaintiff in person while he was at City Hall picking up his mail, when he inquired whether the April 24, 2020 special meeting was set and properly noticed, that she could not tell him if a special meeting was set for April 24, 2022 as she was to not to speak to the Plaintiff.

21. On April 24, 2020, Defendant, Paul Carlisle, then re-contacted the Plaintiff Damien Gilliams via e-mail at 1:55 pm and wrote that the April 24, 2020 meeting was cancelled. The Defendant, Paul Carlisle expressly stated to the Plaintiff,

“Good afternoon,

Pursuant to the Governors emergency declaration and the Declaration of Local State of Emergency signed by Mayor Ed Dodd of the City of Sebastian under Ordinance 2-37 delegating the authority to schedule and cancel meetings to the City Manager.

Therefore the requested meeting scheduled for April 24, 2020 is hereby canceled. Additionally all meetings of the City Council are canceled until the current restrictions are lifted by the Governor.

Thank you”

21. The Plaintiff then immediately contacted the Defendant, Paul Carlisle in an e-mail on April 24, 2020 at 2:00 pm to seek clarification of Mr. Carlisle’s comments contained in the 1:55 pm e-mail. A copy of this e-mail is attached hereto as Exhibit “1” to this Complaint and is incorporated herein.

22. When asked for the clarification, Defendant Paul Carlisle replied at 2:54 pm to the Plaintiff that, “I am in receipt of your request and will take the appropriate actions.”

22. The Defendants had filed suit against the Plaintiff as referenced in paragraph 8 where they had collectively submitted in their factual basis to the Circuit Court that it was Defendant, Ed Dodd who had ordered the cancellation of the April 22, 2020 regular scheduled meeting despite the e-mail of April 24, 2020 where

Defendant Paul Carlisle states that the Local Declaration “delegate[ed] the authority to schedule and cancel meetings to the City Manager”.

23. The lawsuit filed by the Defendants against the Plaintiff referenced in paragraph 8 was filed with the Circuit Court at 12:44 pm on April 24, 2020 all the while Defendant Paul Carlisle e-mailed back to Plaintiff at 2:54 pm as to Plaintiffs continued demands for a special meeting of the City Council be set and said “it will be appropriately handled” as previously referenced in paragraph 22; and to date, both Defendants have knowingly and willfully refused to issue a notice of special meeting called by the Plaintiff in his capacity as a Member of the City Council.

24. The pleadings filed against the Plaintiff by the Defendants, claiming to be acting in their official capacities under the Charter of the City of Sebastian, was their attempt to bring an action to enjoin the Plaintiff in his capacity as a city official and in pertinent part seeks the relief of “enjoining Defendants from taking any actions delegated or reserved to the offices and capacities held by the Plaintiffs” where the Charter grants the Plaintiff the authority of oversight over the Defendants’ administrative activities during a state of emergency regarding public health.

25. At all times material to this Complaint, the Defendants acted *ultra-vires* of their duties as Charter Officers and owe a duty of care and loyalty to the City Council inclusive of the Plaintiff’s office pursuant to the Charter of the City of Sebastian where they have not set a special meeting; transfer delegation of authority

back and forth amongst each other in an arbitrary and capricious manner, and author a lawsuit against the Plaintiff and other City Council Members in order to enjoin the Plaintiff from his enfranchised role as a City Council Member when continued exercise of his public office functions were never delegated to the Defendants as there were no overt acts of violence or imminent threat of such violence within the City Limits of City of Sebastian between March 16, 2020 to April 22, 2020; and regardless, the Governor of the State of Florida had declared a state of emergency to exist.

26. Section 2-37 of the Code of City of Sebastian states, unambiguously and succinctly, that,

(1) In accordance with Section 2.06(b) of the Charter of the City of Sebastian and Chapter 870.043 Florida Statutes, the mayor may in times of public emergency, or imminent threat thereof, declare a state of emergency within the boundaries of the city or in any portion thereof and invoke the provisions of F.S. §§ 870-041—870.047, inclusive, as the same may be renumbered or amended from time to time. The city council may terminate a state of emergency at any time.

(2) a. The city manager shall be responsible for the overall emergency management function of the city, shall prepare and maintain the city's emergency management plan, shall coordinate with Indian River County and shall keep the mayor and the city council advised of any action.

b. The city manager shall utilize any available means to give the public notice of the declaration of a state of emergency and the specific requirements therein.

c. The city manager may issue such orders as are immediately necessary for the protection of life and property; provided, however, that any such orders shall at the earliest practicable time, be presented to the city council for ratification, confirmation, amendment or termination.

(3) If, due to a disaster or emergency, it becomes impossible for the city council to meet at City Hall, the council may meet upon the call of the mayor or any city councilmember at any other place within the city until city hall is sufficiently repaired to resume meetings there. All reasonable attempts must be made to comply with the Sunshine Law and the Public Records Law of the State of Florida.

27. Article II, Section 2.12(a) of the Sebastian City Charter governing the Plaintiffs' conduct states,

The city council shall meet regularly at least once a month at such times and places as the city council may prescribe by resolution. Special meetings of the city council may be held on the call of the mayor or any council member. There shall be at least twenty-four (24) hours advance notice of any special council meeting called and said meetings shall only be held after 5 p.m. If a public emergency exists any council member or charter officer may call a special meeting, and the advance notice

requirement as well as the time restriction shall be waived. All city council meetings shall be public meetings, except as otherwise permitted by law.

28. Article II, Section 2.13 of the Sebastian City Charter states,

To meet a public emergency affecting life, health, property or the public peace, the city council may adopt one (1) or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except an emergency appropriation. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least four (4) members shall be required for adoption. After its adoption, the ordinance shall be posted as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except an emergency appropriation shall automatically stand repealed as of the ninety-first (91st) day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption

of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

29. Section 870.041, Fla. Stats, as referenced in Ordinance Section 2-37, textually reads,

In the event of overt acts of violence, or the imminent threat of such violence, within a county or municipality and the Governor has not declared a state of emergency to exist, local officers shall be empowered to declare such a state of emergency exists in accordance with the provisions of ss. 870.041-870.048.

COUNT I: DECLARATORY JUDGMENT

30. Paragraphs 1 – 29 are realleged.

31. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes and the amount in controversy exceeds \$30,000 exclusive of interest, attorney's fees and costs.

32. There is a bona fide, actual, present practical need for declaration based on the allegations of the Defendants that Ordinance 2-37 permits them to refuse to set a special meeting at the call of a council member of the City.

33. The declaration concerns a present, ascertained or ascertainable state of facts or present controversy as to a state of facts contained in the Complaint at averments 6 - 29 and the Plaintiff further alleges the following additional facts:

a. The City Clerk has been ordered to not file any notice of special meeting unless issued by the Mayor or City Manager.

b. The City Attorney has not drafted any resolution that is substantially like Resolution 2020-17 and Resolution 2020-18 issued by the City of Gulfport, Florida where the city council of that respective jurisdiction delegated authority to the City Manager.

c. The Mayor asserts that he is the military leader of the City and refuses to consult with the City Council.

d. Not all the provisions of Section 870.041 – 870.047, Fla. Stats. have been enacted by either of the Defendants since March 17, 2020.

e. All the provisions of Section 286.011, Fla. Stats. applies to the City Manager as he stands in the shoes of the City Council as he has now asserted to have sole delegated duties of all functions and is conversing with Defendant Ed Dodd.

f. The current State of Emergency in Florida is a man-made disaster as referenced in Section 252.38(2), Fla. Stats., which being a “public health emergency” as defined in Section 381.00315(c), Fla. Stats.

g. The Council did not meet to pass a special resolution of emergency procedures per Section 381.0011(7), Fla. Stats. invoking Emergency Management provisions, primarily Indian River County Plan, and Section 381.0012(5) grants to

the City Council, not the Mayor unilaterally, the authority to then delegate provisions to enforce to the City Manager.

h. The Plaintiff objected to the cancellation of the regular meeting in an e-mail on April 22, 2020 at 4:43 pm to the City Manager. See Exhibit “2” attached hereto and incorporated herein.

34. An immunity, power, privilege or right of the Plaintiff is dependent upon the facts or the law applicable to the facts raised in the Complaint as to whether the Defendants can ignore the Plaintiff’s call for a special meeting during an emergency .

35. Plaintiff has or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law with respect to the enforceability of ordinance Sec. 2-37 of the Code of the City of Sebastian by the Defendants as a shield to ignore the Charter of the City Sebastian at Article II, Sec. 2.12(a), even if a Chapter 870, Fla. Stats. event had occurred within the city limits, although only a Chapter 318 event has arisen, e.g., COVID-19.

36. The antagonistic and adverse interest(s) are all before the court by proper process or class representation because a single council member can call a special meeting such that none of the other council members can be considered adverse.

37. The relief sought is not merely giving of legal advice or the answer to questions propounded for curiosity and is authorized pursuant to *Department of Revenue of State of Fla. v. Markham*, 396 So.2d 1120 (Fla. 1981); *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972), “as a general rule, a public official may only seek a declaratory judgment when he is "willing to perform his duties, but ... prevented from doing so by others."

38. Plaintiff has no adequate remedy at law and the Counter-Plaintiff is without relief except in a court of equity in that there are no administrative remedies available; and if there were administrative remedies, said remedies would have been, or are futile.

39. Plaintiff asks this Court for a declaration of rights and duties as to the alleged transaction between the parties and a determination that under the applicable ordinance recited in the Complaint:

a. Art. II, Sec. 2.12(a) of the City Charter permits the Plaintiff to call a special meeting during the COVID-19 emergency.

b. The Mayor acted *ultra vires* in issuing the Declaration of Local Emergency because the emergency was a public health emergency and not one of acts contained in Chapter 870, Fla. Stats., and further the Governor of the State of Florida had made a declaration of a state of emergency such that Ordinance Sec. 2-37 of the Code of the City of Sebastian is unenforceable against the color of title of Plaintiff's

office to prevent the holding of a special meeting of the City Council during the public health emergency.

c. The City Manager under the color of his office does not have the authority to cancel special meetings called by the Plaintiff under the color of his office because Ordinance Sec. 2-37 of the Code of the City of Sebastian does not apply to a public health emergency as defined in Chapter 381, Fla. Stats.

d. Art. II, Sec. 2.12(a) of the Code of the City of Sebastian does not permit the City Manager or the Mayor to cancel the regularly scheduled meeting for April 22, 2020 and requires a resolution by the City Council made pursuant to Section 286.011, Fla. Stats.

WHEREFORE, Plaintiff, DAMIEN GILLIAMS, asks this Court for a declaration of rights and duties and a determination that the Defendants have infringed on the Plaintiff's color of title of office of council member of the City of Sebastian and that their acts in cancelling the meeting of April 22, 2020 and ignoring or refusing to set a special meeting on the call of the Plaintiff is violative of the Constitution of the State of Florida and the Charter of the City of Sebastian with respect to Plaintiff's duties as a municipal official and color of office and to provide to the Plaintiff supplemental relief pursuant to Section 86.061, Fl. Stats. Additionally, the Plaintiff prays that it be awarded costs of this action, pursuant to

Section 86.081, Florida Statutes and that this cause of action be advanced to a speedy hearing pursuant to Section 86.111, Florida Statutes.

COUNT II: WRIT OF MANDAMUS

40. Paragraphs 1, 3 – 4, 6 – 29, and 33 a - h are realleged.

BASIS FOR INVOKING JURISDICTION

41. This is a cause of action for issuance of an extraordinary writ of mandamus to the Defendant, Paul Carlisle, brought pursuant to 1.630, Fla. R. Civ. P., and this court has jurisdiction pursuant to Article V, Section 5(b) of the Constitution of the State of Florida.

42. The Plaintiff has no adequate remedy at law and has no administrative remedies.

STATE OF THE FACTS

43. In addition to the facts in 7 – 29 and 33 a – h of this Complaint, the Plaintiff states that the Defendant, Paul Carlisle is the ministerial person within the City of Sebastian to see that the Charter provisions are faithfully executed. Art. Sec. 3.04(d) of the Charter of the City of Sebastian.

44. The Plaintiff had objected to the cancellation of the April 22, 2020 regular meeting of the City Council and the Defendant, Paul Carlisle was so informed. See Exhibit “2” attached hereto and incorporated herein.

45. The Defendant, Paul Carlisle, never presented a resolution to the City Council to cancel the regular meeting scheduled on April 22, 2020.

NATURE OF RELIEF SOUGHT

46. The nature of the relief sought is for the Court to issue a writ to compel the Defendant, Paul Carlisle to set a special meeting of the City Council at the call of the Plaintiff, upon twenty-four (24) hours' notice to the public, and that the Defendant is compelled to have the appropriate city employees under his supervision to assist the Plaintiff in setting agenda items for the special meeting of the City Council.

ARGUMENT

47. Plaintiff has the right under the Constitution of the State of Florida at Art. I, Sec. 2, 5, 9, 24 and Art. VIII, Sec. 2(a), to perform his essential function as a city council member and in accordance with Art. II, Sec. 2.12(a) and Art. II, Sec. 2.13 of the Sebastian City Code has the right to call a special meeting during an emergency and to propose any and all emergency ordinances before his fellow council members.

48. The Defendant, Paul Carlisle, knowingly and willfully refuses to set a special meeting of the City Council where the Plaintiff never delegated discretionary authority to the Defendant where no resolution was presented to the City Council.

CONCLUSION

For the foregoing reasons, the Court is respectfully urged to take up this Complaint on an expedited basis and to issue its writ of mandamus as requested together with an award of costs pursuant to Section 57.041, Fla. Stats.

COUNT III: WRIT OF PROHIBITION

49. Paragraphs 1 - 3 – 4, 6 – 29, and 33 a - h and 45 are realleged and the Defendant, Paul Carlisle is joined as an indispensable party as he may be acting under duress and undue influence of the Defendant, Ed Dodd.

BASIS FOR INVOKING JURISDICTION

50. This is a cause of action for issuance of an extraordinary writ of prohibition to the Defendant, Ed Dodd, brought pursuant to 1.630, Fla. R. Civ. P., and this court has jurisdiction pursuant to Article V, Section 5(b) of the Constitution of the State of Florida.

51. The Plaintiff has no adequate remedy at law and has no administrative remedies.

STATE OF THE FACTS

52. In addition to the facts in 7 – 29 and 33 a – h and 45 of this Complaint, the Plaintiff states that the Defendant, Ed Dodd is not the ministerial person within the City of Sebastian to see that the Charter provisions are faithfully executed with

respect to setting a special meeting. Art. Sec. 3.04(d) of the Charter of the City of Sebastian.

53. The Defendant, Ed Dodd, has previously directed the Defendant, Paul Carlisle, to cancel the regular meeting of the City of Sebastian for April 22, 2020.

54. The Defendant, Ed Dodd, has directed the Defendant, Paul Carlisle, to not set any special meetings of the City Council or hold any regular meetings of the City Council, regardless of the call of a special meeting by a council member per Art. II, Sec. 12(a) of the Charter of the City of Sebastian.

55. Pursuant to Ordinance Sec. 2-37(2) c. of the Code of the City of Sebastian, only Defendant, Paul Carlisle “may issue such orders as are immediately necessary for the protection of life and property; provided, however, that any such orders shall at the earliest practicable time, be presented to the city council for ratification, confirmation, amendment or termination”.

56. The Defendant, Ed Dodd, has interfered with the procedural process for the Defendant, Paul Carlisle to present to the city council for confirmation, amendment or termination of his acts.

57. Further, the Defendant’s bully act of unilaterally closing the March 18, 2020 meeting in a huff was indicative of the Defendant’s behavior to interfere with civility and essential operations of the municipal government and administration and peace and good governance and has embarked on a path of violating due process

considerations in an arbitrary and capricious manner as the City Council voted to hear the matter and the Defendant abruptly cancelled the meeting causing substantial damages to citizens of the City of Sebastian when he was furious that the item was slated to be heard later in the meeting. See Exhibit “3” attached hereto and incorporated herein.

58. The Defendant, Ed Dodd, has stated both to the press and in written documents that he is Mayor of the City and can and will make unilateral decisions as Mayor during the state of emergency.

NATURE OF RELIEF SOUGHT

59. The nature of the relief sought is for the Court to issue a writ to prohibit the Defendant, Ed Dodd, from directing the Defendant, Paul Carlisle not to set a special meeting of the City Council at the call of the Plaintiff, upon twenty-four (24) hours’ notice to the public, and that the Defendant is prohibited, during the state of emergency as the all powers have been delegated to the Defendant, Paul Carlisle, per the Defendant himself, to interfere with any city employees under the supervision of the Defendant, Paul Carlisle so the Plaintiff can participate with city staff employees in setting agenda items for the special meeting of the City Council.

ARGUMENT

60. Plaintiff has the right under the Constitution of the State of Florida at Art. I, Sec. 2, 5, 9, 24 and Art. VIII, Sec. 2(a), to perform his essential function as a

city council member and in accordance with Art. II, Sec. 2.12(a) and Art. II, Sec. 2.13 of the Sebastian City Code has the right to call a special meeting during an emergency and to propose any and all emergency ordinances before his fellow council members.

61. The Defendant, Ed Dodd, knowingly and willfully refuses to set a special meeting of the City Council and has ordered that no meetings are to be held.

62. The Defendant, Ed Dodd, has admitted that he has delegated away his authority such that he should no longer interfere with the Charter of the City of Sebastian and especially where the Plaintiff never delegated discretionary authority to the Defendant, Paul Carlisle where no resolution was ever presented to the City Council in the first instance.

63. The Defendant, Ed Dodd, is a tyrant when acting in his capacity as Mayor as he claims he has the power per Ordinance 2-37 to declare a state of emergency and thereafter direct and control the City Manager. That provision in Ordinance has no applicability to the current confirmed coronavirus cases in the State and County but only applies when the citizens of the City of Sebastian are rioting, or military intervention is required to restore public order.

CONCLUSION

For the foregoing reasons, the Court is respectfully urged to take up this Complaint on an expedited basis and to issue its writ of prohibition as requested

together with an award of costs pursuant to Section 57.041, Fla. Stats.

COUNT IV: WRIT OF QUO WARRANTO

64. Paragraphs 1 - 3 – 4, 6 – 29, and 33 a - h and 45, 53 - 56 and 62 are realleged and the Defendant, Paul Carlisle is also joined as an indispensable party as he may be acting in concert with the Defendant, Ed Dodd, via the Declaration of Local State of Emergency unilaterally issued by the Defendant, Ed Dodd, on March 17, 2020 wherein the Plaintiff cannot perform his function as a member of the City Council as Council has been prevented from meeting.

BASIS FOR INVOKING JURISDICTION

65. This is a cause of action for issuance of an extraordinary writ of quo warranto to the Defendants, Ed Dodd, and Defendant, Paul Carlisle, brought pursuant to 1.630, Fla. R. Civ. P., and this court has jurisdiction pursuant to Article V, Section 5(b) of the Constitution of the State of Florida.

66. The Plaintiff has no adequate remedy at law and has no administrative remedies.

STATE OF THE FACTS

67. In addition to the facts in 7 – 29 and 33 a – h and 45, 53 - 56 of this Complaint, the Plaintiff states that the Defendant, Paul Carlisle is not an elected or appointed member of the City Council of the City of Sebastian.

68. The Defendant, Paul Carlisle is not the Mayor of the City of Sebastian.

69. The Defendant, Paul Carlisle has not presented orders at the earliest practicable time to the city council, where the Plaintiff is a member, for ratification, confirmation, amendment or termination including any decision to not hold a special meeting or cancel a special meeting and refuses to do so until the Governor lifts any Executive Order on COVID-19.

70. The Defendant, Ed Dodd, appears to be the Mayor and the emergency declaration of May 17, 2020 is invalid as applied to the COVID-19 public health emergency such that the Plaintiff is entitled to take certain actions in an official capacity including calling for a special meeting and that the Defendants must ensure that the special meeting of the City Council takes place.

NATURE OF RELIEF SOUGHT

71. The nature of the relief sought is for the Court to issue a writ of quo warranto as to the Defendants, Ed Dodd, and Paul Carlisle for acting as *de facto* city government and to permit the Plaintiff, upon twenty-four (24) hours' notice to the public, to sit on the City Council in a special meeting during the public emergency.

ARGUMENT

72. Plaintiff has the right under the Constitution of the State of Florida at Art. I, Sec. 2, 5, 9, 24 and Art. VIII, Sec. 2(a), to perform his essential function as a city council member and in accordance with Art. II, Sec. 2.12(a) and Art. II, Sec. 2.13 of the Sebastian City Code has the right to call a special meeting during an

emergency and to propose any and all emergency ordinances before his fellow council members.

73. The Defendant, Ed Dodd, knowingly and willfully refuses to set a special meeting of the City Council and has ordered that no meetings are to be held and Defendant, Paul Carlisle has acted as his lap dog.

74. The Defendant, Ed Dodd, has admitted that he has delegated away his authority such that he should no longer interfere with the Charter of the City of Sebastian and especially where the Plaintiff never delegated discretionary authority to the Defendant, Paul Carlisle where no resolution was ever presented to the City Council in the first instance.

75. The Defendant, Ed Dodd, in a fascist maneuver has refused to allow the Plaintiff to vote on any resolution to declare a public health emergency and claims he has the power per Ordinance 2-37 to declare a state of emergency and thereafter direct and control the City Manager although then state he has delegated all authority to the City Manager, and he, Defendant, Paul Carlisle refuses to set a special meeting of the council during any emergency despite the Charter permitting same.

CONCLUSION

For the foregoing reasons, the Court is respectfully urged to take up this Complaint on an expedited basis and to issue its writ of quo warranto as requested together with an award of costs pursuant to Section 57.041, Fla. Stats.

COUNT V: CIVIL RIGHTS ACTION

76. Paragraphs 1 – 29, and 33 a - h and 45, 53 - 56 and 62 – 63.

77. This is an action against the Defendants, Ed Dodd and Paul Carlisle (in their official capacity as Mayor and City Manager of the City of Sebastian, respectively) for violation of the Plaintiff's civil rights under 42 U.S.C. §1983.

78. That Defendants had actual or constructive knowledge that the Plaintiff had the right to call a special meeting of the City Council during the state of emergency. The Defendants have knowingly and willfully obstructed the Plaintiff in seeking a special meeting of the City Council by refusing to notice a special meeting to the public and refusing to make any arrangements to conduct such a meeting in violation of the Charter of the City of Sebastian.

79. That Defendants deliberately failed to act to obtain guidance or directives from the City Council as a whole via a resolution or resolutions from the City Council, upon which Plaintiff is a sitting member, invoking emergency management procedures during a public health emergency as the local emergency is not an emergency that arose under the provisions of Section 870.043, Fla. Stats. as specified in Sebastian City Ordinance, Sec. 2-37. Further, the Defendants failed to obtain an opinion from the Attorney General of the State of Florida as to whether invocation Chapter 870, Fla. Stats. applies to the public health code contained at Chapter 381, Fla. Stats., especially where the Secretary of Health for the State of

Florida can direct local law enforcement as well as the Defendants to implement an emergency action plan for public health. Especially see, Section 381.0012(5), Fla. Stats.

80. That the Defendants had a deliberate indifference in failing to promulgate any written policy on the detail and level of any procedures on operating City Council meetings during a public health emergency and that the Defendants have acted arbitrarily and capriciously in preventing the Plaintiff the right under the City Charter to call for a special meeting during times of an emergency; and per the last sentence of Sebastian City Ordinance, Sec. 2-37(a), the City Council has the right to cancel the state of emergency.

81. It is clearly established as a matter of law that it is the policy of the State of Florida to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is also clearly established as a matter of law that the Defendants must assure the continuation of representative government in this state.

82. That the acts or omissions of the Defendant as alleged were all made under color and pretense of statutes, ordinances, regulations, customs and usages

of the City of Sebastian, State of Florida, and by each of the Defendants under the authority of his respective office.

84. That the Defendants' actions thereby deprived the Plaintiff, even if considered minimal by the Defendants, of his rights, privileges and immunities, secured to him by the Constitution of the United States of America, particularly:

a. The right to free speech that is secured by the First and Fourteenth Amendments; and,

b. The right not to be deprived of liberty or property without due process of law secured by the Fifth and Fourteenth Amendments by refusing to set a special meeting of the City Council upon the call of the Plaintiff such that the Plaintiff's color of title has been disenfranchised as a public elected official; and,

c. The right to equal protection secured by the Fourteenth Amendment since the Plaintiff been would not have been subject to an application of ignoring and disregarding the Plaintiff's exercise of his duties and authority under the Charter of the City of Sebastian by the Defendants under similar circumstances such as a hurricane or any other man-made or natural disaster.

88. That as a direct and proximate result of this violation of the Plaintiff's civil rights, there has been irreparable injury to Plaintiff and Plaintiff has suffered mental and emotional anguish, embarrassment, humiliation, anxiety, and pecuniary loss.

WHEREFORE, the Plaintiff, DAMIEN H. GILLIAMS, demands a judgment against the Defendants ED DODD and PAUL CARLISLE, in their official capacity, for compensatory damages to be determined at trial; and award of costs and attorney's fees pursuant to 42 U.S.C. §1988 together with prejudgment interest and any other relief the Court deems meet and just.

DATED this 27th day of April 2020.

s/ Craig M. Rappel

Craig M. Rappel, Esq.
(cmr@rappelhealthlaw.com)
Florida Bar No. 752428
Attorney for Damien H. Gilliams
Rappel Health Law Group, P.L.
601 21st Street
Suite 300
Vero Beach, Florida 32960
Telephone: 772.778.8885

DEMAND FOR JURY TRIAL

The Plaintiff, pursuant to Rule 1.430, Fla. R.Civ.P., hereby demands a jury trial on all issues of fact raised Count V of the Complaint.

s/ Craig M. Rappel

Craig M. Rappel, Esq.
(cmr@rappelhealthlaw.com)
Florida Bar No. 752428
Attorney for Damien H. Gilliams

EXHIBIT “1”

Craig Rappel

From: damio <damio@comcast.net>
Sent: Friday, April 24, 2020 8:25 PM
To: Craig Rappel
Subject: FW: Special Meeting

Sent via the Samsung Galaxy S9, an AT&T 5G Evolution capable smartphone

----- Original message -----

From: pcarlisle@cityofsebastian.org
Date: 4/24/20 2:54 PM (GMT-05:00)
To: damio <damio@comcast.net>
Subject: Special Meeting

I am receipt o f your request and will take the appropriate actions.

Thank you!

Sent from Workspace ONE Boxer

On Apr 24, 2020 2:48 PM, damio <damio@comcast.net> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Paul:

I am in receipt of your e-mail of 1:55 pm cancelling the April 24, 202 meeting. Your e-mail ended with "Additionally all meetings of the City Council are canceled until the current restrictions are lifted by the Governor."

At 2:00 pm I sent an e-mail requesting a special meeting.

That e-mail reads:

Paul:

Last Wednesday I requested a special meeting be set up. I made this request in writing and on phone to you. You failed to make the arrangements to have a special meeting called. I further have attempted to see if a special meeting was set for today with the City Clerk and again, I find that you have not to set a special meeting after my requests.

Now, in accordance with the Charter, at 2.12(a), assuming you believe the Local Declaration delegates to you the decision to hold or cancel meetings, I am demanding that you set a special meeting for Wednesday after 5:00 pm. The purpose of the Special Meeting will be to rescind the improper Declaration and actually re-do it correctly and also issue additional emergency ordinances. I wish you to look at Gulfport, Florida's Resolution for 2020-17 and 2020-18 past on 21

April 2020 as I plan to have similar resolutions prepared so we can act like proper governmental officials. I expect the acting or current City Attorney to be present, if you feel he is still employed, to answer questions on how he could advise the Mayor to sign the famous Local Declaration without having it held at the prior Regular Meeting or call of a special meeting to discuss implementation of emergency operations under a public health emergency.

Any, again, if there is a supposed "emergency", whether or not it was as a result of acts contained in Chapter 870, Florida Statutes, or even a natural disaster or public health crisis, as declared Mr. Dodd, then you are on notice of your Charter Duties that, "If a public emergency exists any council member or charter officer may call a special meeting, and the advance notice requirement as well as the time restriction shall be waived. Wednesday is certainly even more advanced that 24 hour notice and or how notice is given is also relaxed, but notice must be issued, so you are directed by me to set the special meeting at my request under the Charter. I will not permit a catch-22 to exist here for the People where Mr. Dodd declares a Local Emergency and the Council cannot meet to rescind that declaration and then supposedly you are delegated all the authority to block the Council from meeting using Ordinance 2-37. I am sure by now you have read that Ordinance and it specifically reads that "F.S. §§ 870-041—870.047, inclusive" are invoked as well which is a problem when we are facing a public health emergency, not riots and violence.

Please also note that while I plan to get you a detailed proposed Agenda by 4:30 pm, Ordinance Sec. 2-33 states: "At the council meeting, emergency items may be considered by the unanimous decision of the members of the city council present at the meeting." So given the Council is split 3-2 and the other 2 do not bother to show up on Wednesday, there will most likely be additional emergency items due to their lack of participation as to Council matters.

In closing, you are directed to respond to and acknowledge that you with my call under the Charter for a Special Meeting during this Emergency for Wednesday as while I work on an Agenda with my Staff, I will not waste any further time on Charter Officers not executing their mandated duties under the Charter and applicable Ordinances and proceed with all remedies I have available against those that are insubordinate and derelict in performing governmental operations when they are reckless, indifferent or simply ignorant to the City Council as a whole.

So, now, and once and for all, to avoid any and all misunderstandings and avoid any confusion on anyone's part going forward here, I demand that you set the special meeting that I have called for Wednesday in the 2:00 pm e-mail as mandated by the Charter, or once again, please respond in writing by 4:00 pm that you are refusing to follow the Charter as a Charter Officer and you are relying on Ordinance 2-37 as mentioned in your 1:55 pm e-mail cancellation notice which you obviously assert trumps the Charter at 2.12(a) so that this conduct causes the Council from meeting under your alleged emergency authority as City Manager which was only passed to you improperly by a Declaration which was never approved in orders in Council. Preventing public meetings of the City Council even in times of public health emergency is not consistent with how other cities in this State conduct their public affairs. I strongly suggest you reconsider any illusion of good faith belief that you can prevent the City Council from having a special meeting until the Governor lifts the State of Emergency as to COVID-19.

Sincerely, Damien.

Sent via the Samsung Galaxy S9, an AT&T 5G Evolution capable smartphone

EXHIBIT “2”

Craig Rappel

From: DGilliams@cityofsebastian.org
Sent: Sunday, April 26, 2020 7:54 AM
To: Craig Rappel
Subject: Fwd: FW: Illegal cancellation of regular meeting

----- Original Message -----

From: damio <damio@comcast.net>
Date: Wed, April 22, 2020 4:57 PM -0400
To: Damien Gilliams <DGilliams@cityofsebastian.org>
Subject: FW: Illegal cancellation of regular meeting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Sent via the Samsung Galaxy S9, an AT&T 5G Evolution capable smartphone

----- Original message -----

From: damio <damio@comcast.net>
Date: 4/22/20 4:43 PM (GMT-05:00)
To: pcarlisle@cityofsebastian.org
Subject: Illegal cancellation of regular meeting

You are wrong.

2.12(a) of charter requires a monthly meeting period. Cannot cancel because of emergency.

Special Meeting may be called by my council member or officer if emergency. No second is required as not mentioned in Charter.

2.13 requires vote of 4 members to pass ordinance directed to public emergency. So actually it requires 4 members to pass an emergency ordinance that directs handling meetings in emergency. See 2.33 of City Ordinance (Not Charter) that states emergency item can be considered by unanimous consent but that is really directed to a regularly scheduled meeting as directed by the Charter.

Damien

Sent via the Samsung Galaxy S9, an AT&T 5G Evolution capable smartphone

EXHIBIT “3”

April 3, 2020

Mr. Ed Dodd, Mayor
Sebastian City Hall
1225 Main Street
Sebastian, FL 32940

Re: Scozzari Variance Request
Unity of Title application to join 1411 to 1401 Thornhill Lane

Dear Mayor Dodd,

Joseph and Julia Scozzari retained me as counsel to assist them in obtaining approval for the referenced variance. I reviewed the Board of Adjustment Agenda Transmittal for the meeting scheduled on 3/18/2020, along with the Variance Application and Staff Report. Although the City Council meeting commenced on 3/18/2020, it was suspended by you despite a majority vote of three to proceed, prior to the quasi-judicial hearing on my Clients' Request.

I have reviewed the video of the meeting and how it was closed before the scheduled hearing on my Clients' variance application. I have also reviewed the Sebastian, Florida City Charter. The Charter does NOT allow the Mayor to override a majority vote of the board. The Charter states:

"Section 2.06 - Mayor; Vice mayor

(b) Mayor-Duties, general. The mayor shall preside at each meeting of the city council, shall have a vote upon matters before the city council, but shall not possess a veto power."

I have also reviewed the Resolution adopting Robert's Rules of Order. Where Robert's Rules conflicts with the City Charter, the City Charter overrides in the absence of a valid Amendment.

Your unilateral action deprived my Clients of due process. Since you took that action, we are now under a "stay lit home order" until at least May 1. The likelihood of this matter coming before the adjustment board within the next few months is uncertain. Your action may have affected the value of the subject property.

3824 Cragston Street, Melbourne, Florida 32940

Phone: 321-537-3175; Fax: 877-215-1280;

michael@sapournlaw.com

www.lbefloridatnsurancelaw.com

The Law Offices of Michael Sapourn, LLC

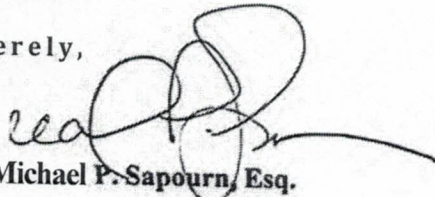
The structure in question is not being used by my Clients for business purposes. Although Mr. Scozzari parks a few trucks with his roofing firm's Jogo on the property, that fact alone does not constitute a business use. Their business shop is located at 415 US Highway 1 in Vero Beach. They use their home address on correspondence because they administer their business there.

The structure was built in the mid-1980s in compliance with the building codes at that time. It is my understanding that the City Clerk cannot find the paperwork associated with permits issued then. Although it is non-conforming under current code, failing to grandfather the structure as built would result in an unnecessary devaluation of the property.

This unnecessary action has cost my Clients attorney's fees and other cost which we intend to pursue.

Please let this letter serve as our request to be re-instated on the Agenda when the next public meeting is scheduled. You may contact me directly for that purpose.

Sincerely,



/s/ Michael P. Sapourn, Esq.

Cc: Councilman Damian Gilliams
Councilman Jim Hill
Councilwoman Pamela Parris
Councilman Charles Mauti
Ms. Jeanette Williams, City Clerk

3824 Cragston Street, Melbourne, Florida 32940
Phone: 321-537-3175; Fax: 877-215-1280;
mtchael@qpournlaw.com
www.Ibeflodd1lo:5'YcauceLaw_yer.com
