IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AG
CASE NO. 50-2019-CA-014681-XXXX-MB

CA FLORIDA HOLDINGS LLC PUBLISHER OF THE PALM BEACH POST,
Plaintiff/Petitioner
vs.
DAVE ARONBERG,
SHARON R BOCK,
Defendant/Respondents.
_____/

ORDER GRANTING DEFENDANTS MOTIONS TO DISMISS COUNT II OF PLAINTIFF'S FIRST AMENDED COMPLAINT WITH PREJUDICE

THIS CAUSE came before the Court on Dave Aronberg, as State Attorney of Palm Beach County's ("State Attorney") and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County's, ("Clerk") respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post's ("The Post") First Amended Complaint (DE## 22, 24). This case is assigned to Division AG, which is currently presided over by the Honorable Donald Hafele. However, the undersigned, as Chief Judge of the Fifteenth Judicial Circuit, presided over the June 3, 2020 hearing on the State Attorney and Clerk's Motions as the Motions implicate records of the Palm Beach County grand jury, over which the Chief Judge presides. *See* § 905.01, Fla. Stat. (2019). After careful consideration of the pleadings and the arguments presented at the hearing, the Court grants the Motions for the following reasons.

Background

The Post is a media outlet which has heavily reported on the 2006 Palm Beach County criminal prosecution of Jeffrey Epstein. Through the instant civil lawsuit, The Post seeks "immediate access to the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury" in Mr. Epstein's case and alleges that both the State Attorney and Clerk are "in possession and/or control of [those] documents." (DE # 17, First Amended Complaint at ¶¶ 3,4, and 77). Specifically, The Post seeks declaratory judgment as to its rights to obtain the grand jury testimony in Mr. Epstein's case from the State Attorney and Clerk (Count I) as well as

judgment against the State Attorney and the Clerk pursuant to section 905.27, Florida Statutes, which sets forth the parameters of grand jury secrecy in Florida. (Count II). Both the State Attorney and the Clerk move to dismiss Count II of The Post's First Amended Complaint, arguing that that section 905.27 does not create a private cause of action. (DE## 22, 24). The Court agrees.

Analysis

"In reviewing a motion to dismiss for failure to state a cause of action, the court must accept the allegations of the complaint as true and construe them in the light most favorable to the plaintiff." *Almarante v. Art Institute of Fort Lauderdale, Inc.*, 921 So. 2d 703, 704-05 (Fla. 4th DCA 2006). The motion should only be granted if the moving party demonstrates that the plaintiff cannot provide any facts that would support a cause of action. *Id.* It follows that if the cause of action alleged is nonexistent under Florida law, dismissal is warranted. *Cummings v. Dawson*, 444 So. 2d 565, 566 (Fla. 1st DCA 1984) (affirming dismissal of cause of action not recognized by Florida law).

Section 905.27, Florida Statutes (2019), is titled "Testimony not to be disclosed, exceptions," and states:

> (1) A grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person appearing before the grand jury shall not disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:
>
> a. Ascertaining whether it is consistent with the testimony given by the witness before the court;
> b. Determining whether the witness is guilty of perjury; or
> c. Furthering justice.
>
> (2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding. When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's

> attorney, and by the latter to his or her legal associates and employees. When such disclosure is ordered by a court pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.
>
> (3) Nothing in this section shall affect the attorney-client relationship. A client shall have the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.
>
> (4) Persons convicted of violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding $5,000, or both.
>
> (5) A violation of this section shall constitute criminal contempt of court.

§ 905.27, Fla. Stat. (2019).

As the State Attorney and Clerk argue and The Post concedes, section 905.27 makes no express provision for a civil suit or civil liability. Nonetheless, The Post maintains that it is entitled to seek the grand jury records via a private cause of action pursuant to the "furthering justice" exception to grand jury secrecy contained in subsection 905.27(1)(c). Therefore, the limited question for this Court's consideration is whether a cause of action under section 905.27 should be judicially implied. *See Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 985 (Fla. 1994).

In advocating that it may maintain a cause of action against the State Attorney and Clerk under section 905.27, The Post urges the Court to examine three factors "(1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any indication, either explicit or implicit, of a legislative intent to create or deny such a remedy; and (3) whether judicial implication is consistent with the underlying purposes of the legislative scheme." (Plaintiff's Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida's Motion to Dismiss Count II of the First Amended Complaint at page 13 (citing *Fischer v. Metcalf*, 543 So. 2d 785 (Fla. 3d DCA 1989)). Within these three factors, The Post recognizes that there is no indication of legislative intent to create a cause of action, but leans heavily on the benefit factor, arguing that the "furthering justice" exception to

grand jury secrecy outlined in section 905.27(1)(c) was meant to benefit the public at large, for which the press acts as a surrogate. The Post's arguments are unpersuasive as to the discrete issue of whether a private cause of action lies in section 905.27.

To begin with, The Post's reliance on the benefit factor is misplaced. Per the Florida Supreme Court's 1994 opinion in *Murthy*, "the question of whether a statute establishes a duty to take precautions to protect or benefit a particular class of persons is no longer determinative on the question of whether a cause of action should be recognized." *Sorenson v. Prof'l Compounding Pharmacists of W. Pa., Inc.*, 191 So. 3d 929 (Fla. 2d DCA 2016) (citing *Murthy*, 644 So. 2d at 985). Instead, "whether a statutory cause of action should be judicially implied is a question of legislative intent." *Horowitz v. Plantation Gen. Hosp. Ltd. P'ship*, 959 So. 2d 176, 182 (Fla. 2007). *See also QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 551 (Fla. 2012) ("Since *Murthy*, we have reaffirmed the principle that whether a statutory cause of action should be judicially implied is a question of legislative intent."); *Universal Prop. & Cas. Ins. Co. v. Loftus*, 276 So. 3d 849, 851 (Fla. 4th DCA 2019).

As is always the case when a court undertakes a legislative intent analysis, the plain language of the statute is the starting, and often ending, point. *See Horowitz*, 959 So. 2d at 182. "When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent." *Loftus*, 276 So. 3d at 851 (Fla. 4th DCA 2019))(quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)). "However, a single part of a statute should not be read in isolation." *Id.* "Instead, 'all parts of a statute must be read together in order to achieve a consistent whole.'" *Id.* (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992)).

As The Post acknowledges, "there is a dearth of legislative history surrounding Section 905.27 and the *The Palm Beach Post* was unable to locate any documents capturing any legislative intent regarding the possibility of a private right of action." (Plaintiff's Opposition to Defendant, Dave Aronberg, As State Attorney of Palm Beach County, Florida's Motion to Dismiss Count II of the First Amended Complaint at page 14). While the lack of any legislative

history indicating an intent to create a private right of action is telling, it is not dispositive as the plain language of the section 905.27 is clear an unambiguous and, therefore, controls. *Horowitz*, 959 So, 2d at 182.

Examining the plain language of section 905.27 in its entirety, which requires the Court to look at more than just the "furthering justice" provision of section 905.27(1)(c) relied on by The Post, it is clear that the intent of the Legislature in passing section 905.27 was to limit, not facilitate, disclosure of grand jury records. In no uncertain terms, the Legislature provided that no "person appearing before the grand jury" may "disclose" testimony or evidence presented except when "required by a court" under certain limited circumstances. § 905.27(1), Fla. Stat. In solidifying that its intent was to prohibit disclosure without court permission, the Legislature provided that disclosure without a court order is a criminal offense. § 905.27(4), Fla. Stat. Therefore, to the extent section 905.27 could be read as imposing a duty on the State Attorney and Clerk, the duty imposed is one of secrecy, not disclosure.

In sum, there is nothing in the text of section 905.27 from which one can deduce that the Legislature contemplated a member of the media, or anyone else for that matter, having a private cause of action to compel the State Attorney and Clerk to disclose grand jury records. Indeed, to the contrary, section 905.27 prohibits the State Attorney and the Clerk (assuming that, as pleaded by The Post, they have the documents) from disclosing the documents without first being ordered to do so by the court.[1] Reading section 905.27 as creating a private cause of action against the State Attorney and Clerk is, therefore, not only unsupported by the language of section 905.27, but is actually paradoxical to its plain language of the statute. As such, this Court lacks the power to construe the unambiguous language of section 905.27 in a way that would extend its express terms and create a cause of action where none exists. "To do so would be an abrogation of legislative power." *Horowitz*, 959 So. 2d 176, 182 (*quoting Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

Conclusion

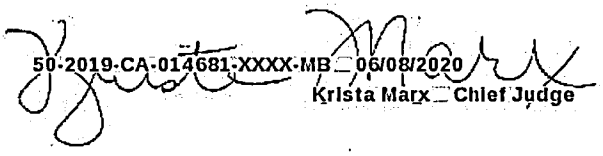
Based on the foregoing, the Court finds Count II of The Post's First Amended Complaint must be dismissed with prejudice as it pursues a nonexistent cause of action under section

905.27. In arriving at this conclusion, the Court does not suggest The Post has no available mechanism to obtain a court order granting it access to the grand jury proceedings. The Court also does not render any opinion as to whether releasing these records is appropriate for the purpose of "furthering justice" within the meaning of section 905.27. Rather, the Court's dismissal of Count II is necessitated by precedent and the simple fact that a civil lawsuit against the State Attorney and Clerk under section 905.27 is not the proper mechanism for The Post to pursue its goal.

Therefore, it is hereby

ORDERED AND ADJUDGED that Dave Aronberg, as State Attorney of Palm Beach County's and Sharon R. Bock, as Clerk & Comptroller of Palm Beach County's, respective Motions to Dismiss Count II of CA Florida Holdings, LLC, Publisher of the Palm Beach Post's First Amended Complaint are **GRANTED** and Count II of Plaintiff's first Amended Complaint is hereby **DISMISSED** with prejudice.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 8th day of June, 2020.



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Krista Marx
Chief Judge

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[1] The Court notes that, if there was a court order directing the State Attorney or the Clerk to disclose records and the State Attorney or the Clerk refused, the remedy for disobeying a court order is contempt or, in some instances, a mandamus proceedings – not a civil lawsuit.

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