

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

LEON COUNTY, a political subdivision
of the State of Florida,

Plaintiff,

Case No.: 2023 CA 002050

vs.

FLORIDA PACE FUNDING AGENCY,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, LEON COUNTY (the “County”), a political subdivision of the State of Florida, hereby sues Defendant, FLORIDA PACE FUNDING AGENCY (“FPFA”), and in support states the following:

NATURE OF THE CASE

1. This lawsuit is brought against FPFA for declaratory and injunctive relief relating to the ability of FPFA—an entity created pursuant to an interlocal agreement between Flagler County and the City of Kissimmee—to operate in Leon County without the County’s agreement and in violation of the Florida Constitution, Chapter 163, Florida Statutes (2022), and the County’s Charter and home rule authority.

JURISDICTION AND VENUE

2. This is an action for declaratory relief brought pursuant to section 86.021, Florida Statutes (2022), which is accompanied by a claim for injunctive relief pursuant to sections 26.012 and 86.061, Florida Statutes (2022).

3. This Court has jurisdiction over this action pursuant to article V, section 5(b), of the Florida Constitution, and sections 26.012 and 86.011, Florida Statutes.

4. Venue is proper in Leon County pursuant to section 47.011, Florida Statutes (2022), because the causes of action accrued in Leon County and pertain to Defendant's conduct and operations in Leon County.

5. On July 11, 2023, the County's Board of County Commissioners unanimously passed Resolution 23-08 finding that FPFA's continued operation within the County under FPFA's asserted independent authority poses an immediate danger to the health, safety, or welfare of the citizens of the County and compromises significant legal rights of the County, and therefore requires immediate action. Accordingly, alternative administrative conflict resolution procedures are inapplicable.

6. All conditions precedent to the filing of this action have been performed, satisfied, or otherwise waived.

PARTIES

7. Leon County is a charter county governed by the Leon County Home Rule Charter, and a political subdivision of the State of Florida.

8. FPFA is an entity created pursuant to an interlocal agreement between Flagler County, Florida, and the City of Kissimmee, Florida. FPFA currently operates pursuant to an Amended and Restated Interlocal Agreement dated February 20, 2017 ("FPFA Amended Interlocal").

GENERAL ALLEGATIONS

A. General background.

9. This case concerns a dispute over the scope of FPFA’s authority to provide improvements for energy efficiency, renewable energy, or wind resistance in Leon County through what is commonly known as the property assessed clean energy (“PACE”) program. Florida’s PACE program is codified in section 163.08, Florida Statutes. PACE programs allow property owners to finance the costs of qualifying improvements to residential and commercial property through a local government.

10. Property owners repay the financed amount through non-ad valorem special assessments collected on their property tax bill each year. Such non-ad valorem special assessments are levied and collected pursuant to section 197.3632, Florida Statutes (2022). § 163.08(4), Fla. Stat.

11. Because they are financed by non-ad valorem special assessments, PACE programs are historically established by local governments with the authority to levy and impose such assessments. PACE programs may be administered by a local government, or by a for-profit or not-for-profit entity on behalf of and acting at the discretion of a local government. § 163.08(6), Fla. Stat.

12. For purposes of section 163.08, “local government” is defined as “a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).” § 163.08(2)(a), Fla. Stat.

13. A “separate legal entity” is created by an interlocal agreement under section 163.01(7), Florida Statutes.

14. Under Chapter 163, interlocal agreements are the legislatively prescribed means by which public agencies of the state may jointly exercise with another public agency a “power, privilege, or authority which such agencies share in common and which each might exercise separately.” §§ 163.01(4), (5), Fla. Stat.

15. Accordingly, section 163.01(7)(b) explicitly states that the authority granted to separate legal entities is limited to the common powers of the entities creating the entity and as specified in the subject interlocal agreement creating the entity.

16. Further, as to Florida’s PACE program, section 163.08 is clear that nothing therein is in derogation or limitation of county and municipal home rule authority: “[t]his section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.” § 163.08(16), Fla. Stat.

17. Thus, section 163.08 does nothing to alter the limitations that section 163.01 places on the power and authority of a separate legal entity created by interlocal agreement or to restrict the home rule authority of counties or municipalities to regulate the operation of PACE programs within their jurisdiction by local government ordinance or resolution.

18. Section 163.08 also does not contain language stating an intention to preempt local home rule powers.

B. FPFA and its relationship with the County.

19. The FPFA Amended Interlocal contemplates that additional local governments may execute the interlocal agreement and thereby join as “Incorporators” of FPFA, or alternatively may elect to become a “Subscribing Local Government” or “Subscriber” by entering a separate interlocal agreement with FPFA termed a “Subscription Agreement.”

20. Leon County is not an Incorporator, Subscribing Local Government, or Subscriber under the FPFA Amended Interlocal.

21. However, on November 9, 2021, the County adopted Resolution 21-56 authorizing FPFA to provide a PACE program in Leon County (subject to compliance with the enumerated consumer protections and additional requirements and limitations contained therein) and providing for an interlocal agreement or other written acknowledgements by FPFA.

22. Further, on September 13, 2022, the County adopted Resolution 22-43 at the request of FPFA to amend Resolution 21-56 to clarify that certain provisions of Resolution 22-43 applied to residential properties, to make other modifications to the enumerated consumer protections, and to include additional requirements and limitations.

23. FPFA indicated it had “no issues” with Resolution 22-43 and at no time communicated to the County any assertion that the County lacked authority under Chapter 163 and home rule to regulate and control operation of a PACE program by FPFA within its jurisdiction, including pursuant to Resolutions 21-56 and 22-43.

24. But, in fact, and unbeknownst to the County, FPFA was at the same time making collateral assertions in a bond validation proceeding in a surreptitious effort to obtain a judgment that FPFA now erroneously asserts ruled on the scope of the County's rights, powers, and authority under Chapter 163 and home rule.

C. The Bond Validation Case.

25. Bond validations under Chapter 75 are a specialized and unique proceeding.

26. "The function of a validation proceeding is merely to settle the basic validity of the securities and the power of the issuing agency to act in the premises. Its objective is to put in repose any question of law or fact affecting the validity of the bonds." *State v. Manatee County. Port Auth.*, 171 So.2d 169, 171 (Fla. 1965).

27. The scope of validation proceedings is accordingly limited to three elements, to: "(1) determine if a public body has the authority to issue the subject bonds; (2) determine if the purpose of the obligation is legal; and (3) ensure that the authorization of the obligation complies with the requirements of law." *State v. City of Port Orange*, 650 So.2d 1, 2 (Fla. 1994).

28. Importantly, these limitations mean that "[i]t was never intended that proceedings instituted under [Chapter 75] to validate governmental securities would be used for the purpose of deciding collateral issues or other issues not going directly to the power to issue the securities and the validity of

the proceedings with relation thereto.” *State v. City of Miami*, 103 So.2d 185, 188 (Fla. 1958).

29. Here, on September 1, 2022 (shortly before the County adopted Resolution 22-43, with which FPFA had no issues), FPFA initiated bond validation proceedings in the action styled, *Florida Pace Funding Agency v. State of Florida, et al.*, 2022-CA-001562 (Fla. 2nd Cir. Ct. October 6, 2022) (hereinafter, the “Bond Validation Case”).

30. FPFA, as plaintiff, named the State of Florida and the following as defendants: “the taxpayers, property owners and citizens of the State of Florida, including nonresidents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the Bonds herein described or to be affected in any way thereby.”

31. Pursuant to section 75.05, FPFA published a notice and order to show cause in Leon County. The County, however, was not advised of the pending proceeding, served with a copy of the complaint, and never had knowledge of the validation proceeding until FPFA informed the County of the validation final judgment after the close of the Bond Validation Case and any appeal period.

32. FPFA’s Complaint in the Bond Validation Case sought to validate \$5,000,000,000 in Florida Pace Funding Agency Revenue Bonds (Qualifying Improvement Finance Program).

33. The Complaint does not reference Leon County’s Resolutions 22-43 or 21-56, or any specific county or municipal ordinance or resolution regarding

operation of the PACE program within their jurisdiction. Rather, it broadly asserts in various formulations that FPFA has the power to operate in every local jurisdiction throughout the state and that those local governments lack the authority or power to regulate or otherwise control FPFA's operation of a PACE program under section 163.08 in any way.

34. The Final Judgment in the Bond Validation Case includes collateral findings that mimic FPFA's Complaint.

35. For example, the Final Judgment states in its forty-seventh paragraph that:

FORTY-SEVENTH. . . . [FPFA] has been imbued by the Legislature with express independent authority to act by general law in all respects to independently exercise concurrently and alternatively all power and authority described as available to [FPFA] under the Charter Agreement and general law, including without limitation, chapters 163, 189 and 197, Florida Statutes. Such express assignment of authority and responsibility . . . **may, at the sole option of [FPFA] in this circumstance, be implemented by [FPFA] to independently, concurrently and non-exclusively serve populations within and outside of the members of the [FPFA] with its qualifying improvement financing program and associated activities in Florida.**

36. And, in its fifty-second paragraph, the Final Judgment states that:

FIFTY-SECOND. . . . [R]egarding the circumstance of [section 163.08, Florida Statutes], **a general purpose local government** may establish its own financing program but **is not authorized to prohibit associated behavior and action by [FPFA]** otherwise expressly allowed by general law, require actions of the [FPFA] prohibited by or fundamentally contrary to general law, provide for or require another way to do the same act to the exclusion of an act expressly authorized by general law, **impose conditions on or otherwise regulate the**

authorized exercise of general law powers by [FPFA], frustrate the accomplishment of compelling state interests specifically articulated as desirous statewide by general law, or provide for different methods for doing a particular act by [FPFA] than the methods set forth by authorizing State legislation.

37. Similarly, the Final Judgment states in its seventy-first paragraph that:

SEVENTY-FIRST. The character of the Bonds and the nature of [FPFA] entitle [FPFA] to proceed in accordance with general law and the provisions of chapter 75 . . . for the purpose of obtaining the Court's determination of the power and authority of [FPFA] . . . **to independently and concurrently transact with property owners without interference or regulation from any other local government concerning the funding and financing of qualifying improvements.**
...

38. FPFA now asserts that it has independent authority to operate in Leon County without an interlocal agreement with the County and without adhering to any County resolution or ordinance regarding operation of a PACE program in Leon County. But any findings of the Bond Validation Case Final Judgment that arguably purport to determine the power and authority of the County are collateral to the validation proceeding, beyond the jurisdiction of this Court under Chapter 75, Florida Statutes, and not binding upon the County.

D. The County and FPFA's present dispute.

39. Almost immediately following entry of the Bond Validation Case Final Judgment, FPFA began operating a PACE program in Leon County in violation of Resolution 22-43. FPFA also began filing liens on property located in Leon County relating to PACE program qualified improvements.

40. On or about January 3, 2023, the County received a letter from FPFA asserting that it has “independent authority” to operate a PACE program in Leon County based on the Bond Validation Case Final Judgment.

41. By letter transmitted June 16, 2023, the County demanded that FPFA cease and desist its operations in violation of Resolution 22-43 and in the absence of an interlocal agreement with the County. The June 16, 2023 letter, also states that:

- i. the Bond Validation Case Final Judgment extends beyond the statutory scope of a bond validation ruling.
- ii. the Bond Validation Case Final Judgment violates the County’s procedural and substantive due process rights because the County was not provided notice.
- iii. the Bond Validation Case Final Judgment is not binding on the County.

42. FPFA contended in a June 30, 2023 response that it has authority under the Final Judgment to operate a PACE program in Leon County and does not need to comply with Resolution 22-43 or any County regulations.

43. On July 11, 2023, the County repealed Resolution 22-43 and withdrew any consent for FPFA to operate its PACE program in Leon County.

44. FPFA continues to operate a PACE program in Leon County.

45. Based on liens filed by FPFA in Leon County, the vast majority of property owners are being charged at least 8.99% interest for terms of 15, 20, or 30 years relating to items such as heat pumps, air conditioning units, and roofs.

46. Based on interest rates charged and terms of financing agreements, the tax bill for subject property owners in Leon County will increase dramatically, in many cases by nearly 100% or more.

47. Contrary to FPFA's assertions, any findings in the Bond Validation Case Final Judgment that purport to determine the power and authority of the County are collateral to the validation proceeding, beyond the jurisdiction of this Court under Chapter 75, Florida Statutes, and not binding upon the County.

48. Furthermore, contrary to FPFA's actions and assertions, nothing in Chapter 163 limits the County's power and authority to preclude FPFA's operation in Leon County or otherwise duly adopt ordinances or resolutions regarding the operation of FPFA's PACE program within its jurisdiction.

COUNT I – DECLARATORY JUDGMENT

49. The County re-alleges and incorporates Paragraphs 1-48 of this Complaint as if fully set forth herein.

50. A bona fide, actual, and present practical need exists for a declaration that all PACE applications and related financing agreements are subject to local government ordinances and resolutions of the County and that FPFA can only operate in Leon County subject to the County's ordinances, resolutions, and an executed Interlocal Agreement between FPFA and the County.

51. The declaration deals with a present, ascertained, or ascertainable state of facts as outlined above. The County is not requesting the Court to offer an advisory opinion or to give its opinion on a hypothetical set of facts.

52. FPFA contends that it can operate, and indeed is currently operating, in Leon County without limitation based on collateral issues purportedly decided in the Bond Validation Case. FPFA's actions put the County's rights, powers, and privileges in doubt, which are dependent upon the law applicable to the facts alleged herein.

53. Based upon FPFA's assertions, the Bond Validation Case Final Judgment, and FPFA's continued operation in Leon County, FPFA and the County have an actual, present, adverse, and antagonistic interest in this matter, in fact or in law.

54. Upon proper process on FPFA, the necessary antagonistic and adverse interests will all be before the Court.

WHEREFORE, the County prays for a final declaratory judgment in its favor and against FPFA:

- i. Declaring that FPFA can only operate a PACE program in Leon County with the County's permission as expressed through an interlocal agreement with the County upon such terms as FPFA and County may mutually agree to;
- ii. Declaring that FPFA's PACE program cannot operate in Leon County unless it also complies with the provisions of applicable County resolutions and ordinances;
- iii. Declaring that all PACE applications and related financing agreements are also subject to the provisions of applicable County ordinances and resolutions;

- iv. Declaring that any findings of the Bond Validation Case Final Judgment that purport to determine the power and authority of the County are collateral to the validation proceeding, beyond the jurisdiction of this Court under Chapter 75, Florida Statutes, and not binding upon the County;
- v. Declaring that the Bond Validation Case Final Judgment does not prohibit the County from enforcing its consumer protection and other home rule powers in Leon County;
- vi. Awarding all applicable interest, costs, and attorney's fees; and
- vii. Granting such supplemental, other, and further relief as the Court may deem just and proper.

COUNT II - INJUNCTIVE RELIEF

55. The County re-alleges and incorporates Paragraphs 1-48 of this Complaint as if fully set forth herein.

56. Pursuant to sections 26.012(3), 86.011(2), and 86.061, Florida Statutes, the County is entitled to an injunction enjoining FPFA from operating a PACE program in Leon County absent an interlocal agreement with the County and compliance with the County's applicable local ordinances and resolutions.

57. The County seeks an injunction against FPFA to en

58. force its police power. Therefore, irreparable harm is presumed and any alternative legal remedy is ignored. Even so, the County is suffering irreparable harm as FPFA's continued operation in Leon County without an Interlocal Agreement with the County violates the Florida Constitution, Chapter

163, Florida Statutes, and the County's Charter and home rule authority. The County has no adequate remedy at law to correct FPFA's unlawful conduct.

59. An injunction will serve the public interest by enforcing general law with respect to the powers given to and reserved for Leon County. The public interest will further be served by preventing FPFA from operating in violation of the Florida Constitution, Chapter 163, Florida Statutes, and the County's Charter and home rule authority.

WHEREFORE, the County prays for a judgment in its favor and against FPFA:

- i. Enjoining FPFA from operating a PACE program in Leon County without the County's permission as expressed through an interlocal agreement with the County upon such terms as FPFA and County may mutually agree to;
- ii. Enjoining FPFA from operating a PACE program in Leon County unless FPFA complies with the provisions of applicable County resolutions and ordinances;
- iii. Awarding all applicable interest, costs, and attorney's fees; and
- iv. Granting such supplemental, other, and further relief as the Court may deem just and proper.

Respectfully submitted this 11th day of August, 2023.

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