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February 28, 2005

Via Federal Express
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Ms. Lyn Shoffstall
Florida Department of State
Division of Corporations
409 E. Gaines Street
Tallahassee, FL 32399

Re: Scripps Research Institute

Dear Ms. Shoffstall,

In response to our conversation of February 23, 2005, please find enclosed a certified copy of the Order Granting Plaintiff's Motion for Summary Judgment entered in The Scripps Research Institute matter. Pursuant to the Court's order, the Florida Department of State, Division of Corporations is directed to dissolve the Defendant "The Scripps Research Institute, Inc." (Corporate No. PO3000128974) and incorporate the Plaintiff "The Scripps Research Institute, a California nonprofit public benefit corporation, d/b/a Scripps Florida, Inc." as "The Scripps Research Institute."

Thank you in advance for your assistance. Please do not hesitate to contact me with any questions or concerns.

Sincerely,


Allyson R. duLac

4020

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

THE SCRIPPS RESEARCH INSTITUTE,
a California nonprofit public benefit corporation,
d/b/a SCRIPPS FLORIDA, INC.,

CIRCUIT CIVIL DIVISION

CASE NO. 502004CA003649XXXXMB

Plaintiff,

vs.

CV

THE SCRIPPS RESEARCH INSTITUTE, INC.,
a Florida corporation,

Defendant.

FILED
FEB 18 PM 1:07
CLERK OF COURT
PALM BEACH COUNTY, FL

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before this Court for hearing on February 11, 2005, on Plaintiff's Motion for Summary Judgment. This Court has reviewed the Motion, the Complaint, Defendant's Objection to the Motion, Defendant's Additional Objection to the Motion, Defendant's Affidavit in Opposition to the Motion, Defendant's Motion to Dismiss, and Plaintiff's Reply Memorandum in support of the Motion. This Court also has heard the parties' arguments, and is otherwise fully advised in the premises.

Findings of Fact

The following material facts exist without genuine issue. Since 1990, Plaintiff has existed as a nonprofit public benefit corporation organized and existing under the laws of the State of California using the name "The Scripps Research Institute." In October, 2003, Governor Jeb Bush announced that Plaintiff had agreed to construct and maintain a major new research facility in Palm Beach County. Through media reports, the announcement became generally known within Palm Beach County. In November, 2003, Virginia T. Scott applied to the Florida Department of State Division of Corporations to incorporate a for-profit corporation under the name "The Scripps Research Institute, Inc.," that corporation being the named Defendant herein. The Division of Corporations approved the application. Plaintiff later applied to incorporate a not-for-profit corporation in Florida under the name "The Scripps Research Institute, Inc." Because of Defendant's prior filing, the Division of Corporations rejected Plaintiff's application. As a result, in January, 2004, Plaintiff applied to incorporate another not-for-profit corporation under the name "The Scripps Research Institute, a California nonprofit public benefit corporation d/b/a Scripps Florida, Inc."

The Parties' Positions

Plaintiff filed this action, seeking a declaration that Plaintiff possesses the right in Florida to incorporate under, and use, the name "The Scripps Research Institute." Plaintiff's action also seeks a court order requiring the Division of Corporations to dissolve Defendant and to make immediately available the name "The Scripps Research Institute." Now before this Court is Plaintiff's motion for summary judgment,

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which argues that the record on file shows that there is no genuine issue as to any material fact and that Plaintiff is entitled to summary judgment as a matter of law.

Defendant opposes the motion on several grounds. First, Defendant argues that, because Plaintiff's Complaint alleges, at paragraph 21, that, "There is a bona fide, actual, justiciable controversy existing between the parties," Plaintiff is admitting that there is a genuine issue of material fact which precludes summary judgment. Defendant next argues that, because Defendant filed a motion to dismiss the Complaint and has not filed an answer to the Complaint, summary judgment would be premature. In support, Defendant primarily relies upon *Burch v. Kibler*, 643 So. 2d 1120 (Fla. 4th DCA 1994). Defendant also argues that, because Plaintiff has not verified the Complaint or the motion for summary judgment or filed an affidavit in support of the motion, while Defendant has filed an affidavit in opposition to the motion, this Court must deny the motion. Defendant further argues that, because Plaintiff is a not-for-profit corporation and Defendant is a for-profit corporation, there is a genuine issue of material fact as to the parties' activities and, therefore, a genuine issue of material fact as to the parties' claims to the name "The Scripps Research Institute, Inc." Defendant also argues that Plaintiff should have proceeded under the Administrative Procedure Act, Chapter 120, Florida Statutes, and that Plaintiff is seeking to violate Defendant's rights to equal protection under the Fourteenth Amendment.

Conclusions of Law

"A party seeking declaratory relief must show: There is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity." *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So. 2d 400, 404 (Fla. 1996).

This Court agrees with Plaintiff that the record on file shows that there is no genuine issue as to any material fact and that Plaintiff is entitled to summary judgment as a matter of law. This Court has taken judicial notice of the records attached as exhibits to the Complaint from the California Department of State and the Florida Department of State and the matters contained therein. See Section 90.202(12), Florida Statutes ("A court may take judicial notice of ... [f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned."). This Court also has taken judicial notice of the fact that, in October 2003, it became generally known within Palm Beach County that Plaintiff had agreed to construct and maintain a major research facility in Palm Beach County. See Section 90.202(11) Florida Statutes ("A court may take judicial notice of ... [f]acts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court."). The record establishes without genuine issue of material fact that the parties' dispute over who is the rightful user of the name "The Scripps Research Institute" satisfies all of the elements required to seek declaratory relief. The record further establishes without genuine issue of material fact that, since 1990, Plaintiff has used the name "The Scripps Research Institute," and that Defendant's preemptive application to the Division of Corporations to incorporate under the name "The Scripps Research Institute" shortly after Plaintiff announced its intent to establish itself in Palm Beach County infringed upon Plaintiff's use of the name "The Scripps Research Institute."

Defendant's argument that Plaintiff's allegation of a "bona fide dispute" is an automatic defeat of summary judgment lacks merit. As stated above, "A party seeking declaratory relief must show there is a bona fide, actual, present practical need for the declaration." *Coalition*, 680 So. 2d at 404; *see also City of Hollywood v. Petrosino*, 864 So. 2d 1175, 1177 (Fla. 4th DCA 2004) ("to prevail in a declaratory judgment action, the following elements had to be present: [1] ... a bona fide, actual, present practical need for the declaration"). Under Defendant's theory, no plaintiff seeking declaratory relief could ever obtain summary judgment because the plaintiff always has to allege a bona fide dispute. Defendant's theory defies the law and common sense.

Also unconvincing is Defendant's argument that this Court should deny the motion for summary judgment because a motion to dismiss remains pending. The Fourth District Court of Appeal case upon which Defendant relies, that is, *Burch*, expressly stated, "a court is *not* procedurally barred from entertaining a motion for summary judgment before an answer is filed." 643 So. 2d at 1121 (italics added here). *See also Slachter v. Abundio Investment Co.*, 566 So. 2d 348, 349 (Fla. 3d DCA 1990) ("a summary judgment may be entered under the Florida Rules of Civil Procedure before a defendant has filed an answer."). The *Burch* court merely held that, if a party moves for summary judgment before an answer is filed, the burden on the movant increases such that "the movant must demonstrate conclusively and to a certainty from the record that the defendant cannot plead or otherwise raise a genuine issue of material fact." 643 So. 2d at 1121 (citations omitted). Here, the exhibits to Plaintiff's Complaint demonstrate conclusively and to a certainty that Plaintiff possesses the rights to the name "The Scripps Research Institute, Inc.," and, therefore, that Defendant cannot plead or otherwise raise a genuine issue of material fact. Although the *Burch* court held that the case before it appeared ill-suited for summary judgment because of "its multitude of intricate and unusual facts," this case involves one basic fact – Plaintiff possessed and used the name first.

This case is more factually similar to *Slachter*. In *Slachter*, the Third District Court of Appeal affirmed a trial court's entry of summary judgment before the defendant filed an answer where the plaintiff's evidence demonstrated conclusively that the plaintiff's title to the property at issue was based on a judgment recorded prior in time to the defendant's mortgage lien. The *Slachter* court reasoned that an earlier recorded judgment takes priority over a later recorded mortgage lien. Although in *Slachter* the plaintiff had filed an affidavit in support of its motion while the defendant did not file any affidavits in opposition, which is opposite from the parties' posture here, that distinction is of no moment. The *Slachter* court expressly based its decision on the fact of which document was recorded first in time. Here, the exhibits to Plaintiff's Complaint demonstrate conclusively that Plaintiff incorporated itself under the name "The Scripps Research Institute" *fourteen years* before Defendant sought to usurp that name.

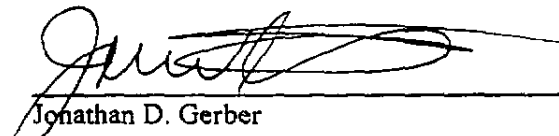
Defendant's argument that Plaintiff's motion must fail because Plaintiff has not verified the Complaint or the motion for summary judgment or filed an affidavit in support of the motion, while Defendant has filed an affidavit in opposition to the motion, ignores the plain language of Florida Rule of Civil Procedure 1.510. Subsection (c) of the Rule states, in pertinent part, "The judgment sought shall be rendered forthwith if the *pleadings*, depositions, answers to interrogatories, and admissions on file together with the *affidavits*, *if any*, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." (italics added here). The Rule unambiguously contemplates the possibility of summary judgment based on pleadings without affidavits, and Plaintiff here supported its pleadings with attached exhibits which contain "[f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned." Section 90.202(12), *supra*. Moreover, subsection (e) of Rule 1.510 states, in pertinent part, that "opposing affidavits ... shall set forth *facts* as would be admissible in evidence." (italics added here). In the instant case, Defendant's representative's affidavit sets forth *no facts*, but instead merely presents the affiant's description

of the procedural history of this case and the affiant's understanding of the legal arguments contained in Defendant's motion to dismiss and written objections to the motion for summary judgment. Defendant's affidavit is simply insufficient as a matter of law.

Further unconvincing is Defendant's next argument that a genuine issue of material fact exists because Plaintiff is a not-for-profit corporation and Defendant is a for-profit corporation. The "profit status" of the entities are wholly irrelevant to the question here, that is, which entity used the name first. *See* Section 617.0401(e), Florida Statutes ("A corporate name ... [m]ust be distinguishable from the names of *all other entities ... organized, registered, or reserved under the laws of this state*, that are on file with the Division of Corporations.") (italics added here). Defendant's remaining arguments, that Plaintiff should have proceeded under the Administrative Procedure Act and that Plaintiff is seeking to violate Defendant's Fourteenth Amendment rights, have no application here because Plaintiff is a private entity, not a state agency.

Based on the foregoing, it is ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED. This Court declares that Plaintiff, The Scripps Research Institute, a California nonprofit public benefit corporation d/b/a Scripps Florida, Inc., possesses the right in Florida to incorporate under, and use, the name "The Scripps Research Institute." This Court also directs the Florida Department of State Division of Corporations to dissolve Defendant The Scripps Research Institute, Inc. (corporate number PO3000128974) and to make immediately available to Plaintiff the name "The Scripps Research Institute." Plaintiff shall present a certified copy of this Order to the Division of Corporations to effectuate this Order.

DONE AND ORDERED at Palm Beach County, Florida, this 18th day of February, 2004.


Jonathan D. Gerber
Circuit Court Judge

Copies furnished to:

Carol Licko and Laura Besvinick, Esqs., Counsel for Plaintiff
Hogan & Hartson, LLP
1111 Brickell Avenue, 19th Floor
Miami, Florida 33131

Brook E. Fisher, Esq., Co-Counsel for Defendant
400 North Flagler Drive, Suite B
West Palm Beach, Florida 33401

Gerald J. D'Ambrosio, Esq., Co-Counsel for Defendant
370 West Camino Gardens Boulevard, Suite 111
Boca Raton, Florida 33432



STATE OF FLORIDA - PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 25th DAY OF February 20 05

SHARON R. BOCK

CLERK & COMPTROLLER

By 
DEPUTY CLERK

Michael S. Collins

GERALD J. D'AMBROSIO, ESQ.
370 W. CAMINO GARDENS BLVD., STE. 111
BOCA RATON, FL 33432
(561) 750-9924 TEL
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TO:
LAURA BIESVINICK, ESQ.

FROM:

Gerald J. D'Ambrosio, Esq.

COMPANY:
Hogan & Harrison L.L.P.

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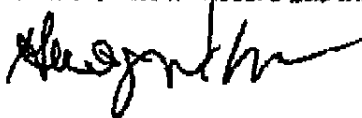
Scripps(CA) v Scripps (TT)

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

The Order you faxed me meets with my approval and I have no objections to you submitting it to the Court to resolve this matter.

Sincerely,



Gerald J. D'Ambrosio
GJD/el

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NUMBER: 04-CA-003649-AB

THE SCRIPPS RESEARCH INSTITUTE,
a California nonprofit public benefit corporation,
d/b/a SCRIPPS FLORIDA, INC.,

Plaintiff,

v.

THE SCRIPPS RESEARCH INSTITUTE, INC.,
a Florida corporation,

Defendant.

AGREED ORDER OF FINAL DECLARATORY JUDGMENT

This matter came before the Court on Plaintiff's Renewed Motion for Summary Judgment, and the Court having considered the motion together with the evidence of record as well as the agreement of the parties, it is hereby

ORDERED and ADJUDGED that:

1. Final judgment be and the same is hereby entered in Plaintiff's favor declaring that (i) the right to incorporate under and use the name "The Scripps Research Institute" belongs exclusively to plaintiff, and (ii) defendant is restrained and enjoined from incorporating under or using plaintiff's name; and

2. Each party shall bear its own attorneys' fees and costs.

3. Hearing set for March 30, 2006, at 8:00 am is CANCELED. (DG)
DONE and ORDERED in Chambers at Palm Beach County, Florida, this 27th day of

March, 2006.


CIRCUIT COURT JUDGE

cc: Laura Besvinick, Esq.
Gerald J. D'Ambrosio, Esq.