

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA.

CASE NO: 2016-CA-000639

CITY OF PALM COAST,

Plaintiff,

vs.

GROUP GOLF OF PALM COAST, LLC,

Defendant.

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**ANSWER AND AFFIRMATIVE DEFENSES**

**COMES NOW**, Defendant, GROUP GOLF OF PALM COAST, LLC, by and through its undersigned counsel, and hereby answers the Plaintiff's Complaint as follows:

1. **ADMITTED** that the Plaintiff's complaint purports to state a cause of action for the foreclosure of Code Enforcement fines, however **DENIED** that the said fines were levied in accordance with Section 2.211(e) of the Palm Coast City Code, §159.17, Florida Statutes, or Chapter 162, Florida Statutes, where the Plaintiff applied a standard promulgated by the Professional Golf Association ("PGA") concerning the grass height at tournament level golf courses, to the Defendant's vacant acreage which has not operated as a golf course in a decade. This standard is contained nowhere in the quoted statutes or municipal code sections, and its application as applied to the Defendant was unconstitutional.

2. The allegations in Paragraph 2 are **ADMITTED** for jurisdictional purposes only.

3. The allegations of Paragraph 3 are **ADMITTED** for jurisdictional purposes, however **DENIED** that any of the quoted municipal code sections or statutes grant the Plaintiff the authority to levy the fine levied in this action, or to foreclose on the same, or that the

Defendant owes the Plaintiff any sum whatsoever.

4. The allegations in Paragraph 4 of the Complaint are **ADMITTED** for jurisdictional purposes only.

5. The allegation in Paragraph 5 of the Plaintiff's Complaint consists merely of reallegation of Paragraph 1 through 4, and accordingly the Defendant realleges its responses to Paragraphs 1 through 4 of the Plaintiff's Complaint.

6. Regarding the allegations in Paragraph 6 of the Plaintiff's Complaint, **ADMITTED** that the Complaint purports to state a cause of action for utility lien foreclosure, however **DENIED** that it states a cause of action upon relief may be granted, or that this action or the Plaintiff's lien generally comports with the requirements of §159.17, Florida Statutes, or §49-76 of the city code of the City of Palm Coast.

7. The Defendant is without sufficient knowledge so as to formulate an opinion or belief as to the allegations contained in Paragraph 7 of the Plaintiff's Complaint, therefore the same are **DENIED**.

8. Regarding the allegations in Paragraph 8 of the Plaintiff's Complaint, it is **ADMITTED** that the Plaintiff filed a Notice of Lien at Book 2073, Page 1004 of the Public Records of Flagler County, Florida, however **DENIED** that the Defendant used the utility services the Plaintiff alleges it used, and **DENIED** as to the validity of the lien.

9. The allegations in Paragraph 9 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

10. The Defendant is without sufficient knowledge as to form an opinion or belief as to the allegations contained in Paragraph 10 of the Plaintiff's Complaint, therefore the same are **DENIED** and the Defendant demands strict proof thereof.

11. The allegations in Paragraph 11 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

12. The allegations in Paragraph 12 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

13. The allegations in Paragraph 13 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

14. The allegations in Paragraph 14 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

15. Paragraph 15 of the Plaintiff's Complaint merely consists of the reallegation of Paragraphs 1 through 4, and accordingly the Defendant realleges and reincorporates its responses to Paragraphs 1 through 4 as previously set forth herein.

16. Concerning the allegations in Paragraph 16 of the Plaintiff's Complaint, the same are **ADMITTED** in part and **DENIED** in part. **ADMITTED** that the Complaint purports to state a claim for lien foreclosure, however **DENIED** that the Plaintiff is entitled to the same, or that the lien is valid, or that the Plaintiff had the authority to assess the purported fines at issue in this cause, and further, **DENIED** that the same are constitutional under the circumstances presented by the Plaintiff.

17. Concerning the allegations in Paragraph 17 of the Plaintiff's Complaint, it is **ADMITTED** that the Plaintiff recorded its purported "Order of Non-Compliance" in the Public Records of Flagler County, Florida, at Book 2087, Page 176, however, **DENIED** that the Defendant's property was not in compliance with the municipal code, and **DENIED** that the Order is valid, or constitutional as applied to the Defendant.

18. The allegations in Paragraph 18 of the Plaintiff's Complaint are **ADMITTED** in part and **DENIED** in part. It is **ADMITTED** that the City recorded an Order Imposing Fine or Lien at Book 2100, Page 891, of the Public Records of Flagler County, Florida, and further recorded a Corrected Order at Book 2113, Page 331 of the Public Records of Flagler County, Florida, however, **DENIED** that either Order is valid, that the fines were properly levied, or that the City's conduct is constitutional as has been applied to the Defendant, and further **DENIED** that the Defendant owes the purported fines.

19. The Defendant is without sufficient knowledge as to formulate an opinion or belief as to the allegations contained in Paragraph 19 of the Plaintiff's Complaint, therefore the same are **DENIED** and the Defendant hereby demands strict proof thereof.

20. Regarding the allegations in Paragraph 20 of the Plaintiff's Complaint, it is **ADMITTED** that §162.07(4), Florida Statutes, says what it says, and speaks for itself. Otherwise, **DENIED**, and the Defendant demands strict proof thereof.

21. The allegations in Paragraph 21 of the Plaintiff's Complaint are **DENIED**, where §162.09(3), Florida Statutes, presumes that the lien was entered, and the underlying fines assessed, in a manner which affords the Defendant due process of law, and that the application of the municipal ordinance giving rise to the alleged violation was constitutional, neither of which is the case here.

22. Regarding the allegations in Paragraph 22 of the Plaintiff's Complaint, **DENIED** that the Defendant owes the Plaintiff any funds at all, and further, **DENIED** that the property is not presently in compliance with the municipal code.

23. The allegations in Paragraph 23 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

24. The allegations in Paragraph 24 of the Plaintiff's Complaint are **DENIED** and the Defendant hereby demands strict proof thereof.

25. The allegations in Paragraph 25 of the Plaintiff's Complaint are **DENIED**, where the City's lien is invalid, and the method and manner in which the fines and lien were assessed did not afford either procedural or substantive due process, nor is the City's conduct constitutional as applied to the Defendant, therefore the Plaintiff has no interest in the subject property.

26. The allegations in Paragraph 26 of the Plaintiff's Complaint are denied, and the Defendant hereby demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE -**  
**THE CITY'S CONDUCT TOWARDS THE DEFENDANT IS**  
**UNCONSTITUTIONAL AS APPLIED.**

Group Golf of Palm Coast, LLC, respectfully submits unto this Honorable Court that the City of Palm CoaSt has violated its right to procedural and substantive due process, by applying standards which are not contained within its municipal code, or within any section or subsection of the Florida Statutes, but which, rather, it obtained from the Professional Golf Association ("PGA") concerning the height of the grass on tournament-level golf courses, and then applied this arbitrary standard which is contained nowhere in either the City's code or any statute, to the Defendant's property, despite the same not having operated as a golf course for a decade. The City's conduct in this regard is arbitrary, capricious, and failed to give adequate notice to the Defendant of what standard was being applied, where the Defendant believed it owned, and in reality the property in fact is, vacant acreage, and not a functioning golf course.

The City is further engaged in selective enforcement against the Defendant, in a manner which is totally and directly inapposite to the fashion in which it treats other real estate developers, including Jim Cullis, the source of the code enforcement complaints which led to the purported fines and lien in this case. While the Plaintiff routinely cites and fines the Defendant for arbitrary and nonsensical violations, such as not cutting the grass to PGA standards, when the property is vacant acreage which has not been a golf course in a decade, it allows the source of these code complaints to maintain a property across the street which contains grass and underbrush extending to a height of three or more feet, and further contains broken down commercial vehicles and multiple other code violations. The Plaintiff has singled the Defendant out at the behest of the Defendant's business competitor, Jim Cullis, who is also the source of the code complaints against the Defendant, and has selectively enforced its municipal codes only against the Defendant, and further, has invented standards not contained within its municipal codes, or within any statute, and arbitrarily applied those to the Defendant's property without any rational basis. The Plaintiff has further failed to give the Defendant adequate notice of what standards were being applied to its property, has failed to give it adequate notice of the alleged code violations, and has failed to give an adequate opportunity to cure the alleged violations before imposing and foreclosing on these purported fines. For all of these reasons, the Plaintiff's actions are unconstitutional as applied to the Defendant's property, and the Plaintiff should be barred from the recovery of the relief which it seeks.

**SECOND AFFIRMATIVE DEFENSE -  
REINCORPORATION OF ALLEGATIONS SET FORTH IN CASE #2016-CA-136**

The Defendant incorporates by reference and realleges as if fully set forth herein the facts, and allegations, set forth in its Complaint in Case #2016-CA-136, filed against the Plaintiff

in this cause, the City of Palm Coast. As set forth in that Complaint, the City's liens are invalid, and the method and practices it used to assess the same did not afford the Defendant either procedural or substantive due process, and are unconstitutional as applied.

**THIRD AFFIRMATIVE DEFENSE -  
LACK OF NOTICE**

The Defendant respectfully submits that the Plaintiff failed to provide it with adequate notice and with adequate opportunity to cure the alleged violations which resulted in the purported code citations and fines now being foreclosed in this action.

**FOURTH AFFIRMATIVE DEFENSE -  
PLAINTIFF'S DEPOSITION OF FINE AND LIEN WAS A *ULTRA VIRES* ACT**

The Defendant respectfully submits that the City acted outside of the scope of its authority under either its own municipal code or the power granted to it by the Florida Legislature, and, only after a citation had already been issued, finding at a code board hearing that the appropriate standard to apply to the Defendant's property was that promulgated by the Professional Golf Association ("PGA") concerning the height of grass on tournament-level golf course fairways and greens. As was well known by the Plaintiff, the Defendant's property is vacant acreage which was formerly a golf course, but which has not operated as a golf course for a decade, nor does it hold any occupational license, business license, county use permit, or other such indicia of being a golf course. The City, in applying a standard promulgated by a non-governmental entity, which is neither binding, nor even advisory, without that standard being set forth anywhere in the City's municipal code, or any state statute, and without otherwise giving the Defendant notice that it intended to apply this standard, acted outside of the scope of its authority. As the direct result thereof, the City's lien and fines are void or voidable, and the Plaintiff should not recover the relief which it seeks.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was duly furnished this 2nd day of February, 2017, to Plaintiff's Counsel; Vivian P. Cocotas, Esq., at: [vcocotas@orlandolaw.net](mailto:vcocotas@orlandolaw.net).

Respectfully submitted,



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