State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 21, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel MD

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please place the attached email, dated November 12, 2018, and attachments in the Documents section of the docket file for Docket No. 20180142-WS. Please let me know if you have any questions.

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

NELSON P. SCHWOB; et al.,

Petitioners,

v.

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Respondents.
_____/

CASE NO.: 2D18- ____
L.T. No.: 2017-CA-1696-ES

PETITION FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY

Petitioners, NELSON P. and BARBARA J. SCHWOB, DARRELL L. and MARTHA K. BIRT; FRANK E. and LINDA J. BROWN; PAUL and SANDRA BROWN; DENNIS M. and CAROL J. COSMO; MARILYN C. MORSE, STEVEN P. CUMMINGS and LAURIE A. CUMMINGS; KAROL FLEMING; SOLANGE GERVAIS; BERND J. and OPAL B. GIERSCHKE; CHARLES H. Sr. and CAROL A. LePAGE; JAMES L. and REBECCA L. MAY; LORI OFFER; ELVIRA PARDO; JAMES A. PASCO; JAMES A. and JOYCE A. PASCO; DAVID L. and KAY J. SMITH; JAMES L. and FRANCES E. SMITH; JAMES E. and MARGO M. SYMONDS; JEANETTE M. TATRO; RICHARD and ARLENE

TAYLOR; ANTHONY A. VARSALONE, JR.; and KATHLEEN R. VALK, by and through their undersigned counsel and pursuant to Fla. R. App. P. 9.030(b)(2), hereby petition for a writ of certiorari to the Circuit Court of the Sixth Judicial Circuit in and for Pasco County reversing the Order Granting Defendant's Motion for Partial Summary Judgment (the "Summary Judgment Order")[1] entered by the trial court on October 15, 2018.

In the Summary Judgment Order, the trial court found that it had jurisdiction to hear the Defendants' purported "constitutional claim" and then, exercising jurisdiction, declared that the Defendants had "the right to discontinue providing water and sewer service" to the Petitioners. The trial court made this ruling despite its previous determination, at the Defendants' insistence, that whether the Defendants must provide water and sewer service to the Petitioners was a matter within the exclusive and preemptive jurisdiction of the Florida Public Service Commission ("PSC").

Basis for Invoking the Jurisdiction of the Court

This petition seeks review of the Summary Judgment Order by which the trial court asserted jurisdiction over a purported "constitutional claim" regarding the water and sewer services currently provided by the Defendants to the

[1] App. 506-508 (Summary Judgment Order).

Petitioners. Contrary to its own prior ruling that matters relating to utility authority and service were within the PSC's exclusive and preemptive jurisdiction, the trial court here exercised jurisdiction and then declared that the Defendants had the right, in their sole discretion, to terminate utility services to the Petitioners at any time. The jurisdiction of this Court is invoked under Fla. R. App. P. 9.030(b)(2). [2]

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[2] Because the trial court has already entered the Summary Judgment Order determining that the Defendants' claim was not within the exclusive jurisdiction of the PSC and declaring the Defendants' "constitutional right" to cease acting as a utility, the Petitioners seek relief by way of a writ of certiorari and not by a writ of prohibition. *See, e.g., English v. McCrary*, 348 So. 2d 293 (Fla. 1977)(purpose of prohibition is to prevent the doing of something, not to undo something already done). Although prohibition has occasionally been utilized to prevent the future enforcement of an order already entered, *see, e.g., City of Boynton Beach v. Ralph and Rosie, Inc*., 976 So. 2d 654 (Fla. 4 DCA 2008), the declaratory nature of the trial court's order in this case does not seem to contemplate any future enforcement activity. Instead, it expressly leaves up to the Defendants the decision whether or not to terminate the existing utility services to the Petitioners. Thus, certiorari appears to be the more appropriate remedy.

Alternatively, however, and pursuant to Fla. R. App. 9.040(c), if the Court determines that prohibition is the appropriate relief then Petitioners request that the Petition be treated as a petition for writ of prohibition. *See Pridgen v. Board of County Commissioners of Orange County*, 389 So. 2d 259, 260 (Fla. 5 DCA 1980)(provisions of Rule 9.040(c) are mandatory); *see, e.g*., *Little v. State*, 111 So. 3d 214 (Fla. 2 DCA 2013)(treating petition for writ of certiorari as petition for writ of prohibition).

Petitioners also note that the Summary Judgment Order does not dispose of all claims against any party and leaves pending other related claims, including Count II of the Defendants' Counterclaim, and is therefore not a partial final judgment within the meaning of Fla. R. App. P. 9.110(k). *Bay & Gulf Laundry Equipment Co. v. Chateau Tower, Inc.*, 484 So. 2d 615 (Fla. 2 DCA 1985).

To obtain certiorari review of an interlocutory order, "the petitioner must establish the following three elements: (1) a departure from the essential requirements of the law; (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal." *Citizens Property Ins. Corp. v. San Perdido Ass'n, Inc.*, 104 So. 3d 344, 351 (Fla. 2012). The last two of these elements are jurisdictional. That is, "before certiorari can be used to review non-final orders, the appellate court must focus on the threshold jurisdictional question: whether there is a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm." *Id., citing Allstate Ins. Co. v. Boecher*, 733 So. 2d 993, 999 (Fla. 1999).

Assuming these jurisdictional requirements are met, the court then determines whether the trial court departed from the essential requirements of the law. *Parkway Bank v. Fort Myers Armature Works, Inc.*, 658 So. 2d 646, 648-49 (Fla. 2 DCA 1995)(explaining that "the grammar of the test places the description of the appellate court's standard of review on the merits before the two threshold tests used to determine jurisdiction").

The Petitioners have properly invoked this Court's certiorari jurisdiction. The trial court's ruling grants the Defendants the absolute authority to terminate

existing water and sewer services to the Petitioners at any time, with or without notice. Such action by the Defendants would result in immediate and irreparable harm to the Petitioners, who have relied for many years on the water and sewer services provided to their lots by the Defendants. It would also potentially create a public health crisis.

Even if the loss of water service could be remedied by the installation of individual wells, the Petitioners would still suffer a complete loss of potable water supply for an extended time. Installation of wells may also be practically infeasible and economically impracticable. The loss of sewer service cannot be remedied at all. The small size of the Petitioners' lots precludes the use of septic systems under applicable health department rules, and there is no available individual sewer connection to the Pasco County system. In short, the trial court's order granting the Defendants the unfettered right to terminate current utility services at any time presents a real and immediate risk of a public health crisis for the Petitioners. It places the Petitioners in jeopardy of complete loss of utility services at any time by unilateral action of the Defendants. Such immediate harm could not be cured by plenary appeal after final judgment in this ongoing and contentious litigation.

The trial court's decision reflects precisely the type of "judicial incursion into the province of the agency" that this Court has repeatedly disapproved and rejected. *Hill Top Developers v. Holiday Pines Service Corp*., 478 So. 2d 368, 371

(Fla. 2 DCA 1985); *see also, Florida Public Service Commission v. Lindahl*, 613 So. 2d 63, 64 (Fla. 2 DCA 1993). If there is even "a colorable claim that the matter under consideration falls within its exclusive jurisdiction," then the PSC must be allowed to act and "the circuit court may not intervene." *Florida Public Service Commission v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990). In this case, there is not only a "colorable claim," there is an *ongoing PSC proceeding* concerning the Defendants' status and obligations as a utility.

The Defendants' claim is fundamentally about its obligation to continue to provide existing utility services to the Petitioners. That is a matter squarely within the exclusive jurisdiction of the PSC, as the trial court had previously determined. By exercising jurisdiction over the claim and then declaring that the Defendants have the unfettered "right" to discontinue utility services, the trial court departed from the essential requirements of the law.

Facts on Which Petitioners Rely

1. The Defendants own and operate the Palm Tree Acres Mobile Home Park in Pasco County.[3]

2. The park consists of approximately 244 lots. The majority are owned by the Defendants and leased to residents.[4]

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[3] App. 337 (Amended Counterclaim at ¶3).

3. The Petitioners, however, own their individual lots in fee simple. There are approximately 20 such lots within the park that are owned in fee simple by others. The Petitioners do not lease either their lots or their mobile homes from the Defendants.[5]

4. Potable water is supplied by the Defendants to the lots within the Park, including those owned by the Petitioners, from wells located on the Defendants property through a distribution system (pumps and pipes) that is owned and operated by the Defendants.[6]

5. The Defendants also own and operate a sanitary sewer system and related lift station that provides sanitary sewer service to each of the lots within the Park, including the lots owned by the Petitioners.[7]

6. Historically, the Petitioners paid a flat monthly fee to the Defendants that covered their utility services as well as the other unregulated amenities and services provided by the Park (roads, lights, maintenance, recreational facilities, etc.).[8]

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[4] App. 337 (Amended Counterclaim at ¶4).
[5] App. 337 (Amended Counterclaim at ¶2).
[6] App. 329 (Defendants' Verified Motion for Partial Summary Judgment at ¶10); App. 377-378 (Transcript, p. 11, line 21 through p. 12, line 3).
[7] App. 329 (Defendants' Verified Motion for Partial Summary Judgment at ¶11); App. 378-379 (Transcript, p.12, line 18 through p.13, line 1).
[8] App. 329 (Defendants' Verified Motion for Partial Summary Judgment at ¶12).

7. This litigation began in the county court in 2014, when one of the Petitioners sought to require the Defendants to provide water and sewer utility services unbundled from the other Park amenities.[9]

8. The case was transferred to the circuit court upon the filing of the Petitioners' Third Amended Complaint.[10]

9. The Third Amended Complaint alleged numerous claims, including a claim for declaratory relief as to the Defendants' obligations to provide water and sewer utility services to the Petitioners.[11]

10. The Defendants moved to dismiss the claim for declaratory relief as to their obligations regarding water and sewer service, alleging that such claims were within the exclusive and preemptive jurisdiction of the PSC.[12]

11. Following a hearing, the trial court agreed and dismissed the Petitioners claim for declaratory relief.[13]

12. The trial court held:

> The Court finds Florida Statute 367.011, Hill Top Developers, and Bryson to be unambiguous and controlling. The Plaintiffs' prayer in Count Three is also

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[9] Schwob v. Palm Tree Acres Mobile Home Park, Pasco County Court Case No. 51-2014-CC-000519-ES.
[10] App. 216 (Order Granting Leave to Amend and Transferring Case).
[11] App. 4-215 (Third Amended Complaint).
[12] App. 217-224 (Motion to Dismiss); App. 366-434 (Transcript of Hearing)
[13] App. 225-232 (Order of Dismissal)

> unambiguous. It seeks the Court to determine whether the Defendants must provide water and sewer service to the Plaintiffs, and the rate that can be charged. Such action by the Court would be precisely the conduct that Hill Top Developers disapproved, and this Court is without jurisdiction.[14]

13. The trial court further found that:

> The Court is also equally without jurisdiction to resolve the question of whether the Defendants can validly claim the 'landlord-tenant' exemption under FS 367.022(5). . . . Plaintiffs contend that the exemption does not apply to the tenancy relationship between Plaintiffs and Defendants because there is no tenancy relationship. . . . Assuming Plaintiffs assertion is correct, the Defendants are most certainly a utility, and FS 367.011(2) vests exclusive jurisdiction with the PSC. Further, the Florida Supreme Court's decision in Bryson made clear that even the question of whether an entity is or is not subject to the PSC jurisdiction, is a question exclusively for the PSC.[15]

14. Based on the trial court's ruling that it lacked jurisdiction, the Petitioners initiated action before the PSC. On March 8, 2018, the PSC issued a Notice of Apparent Violation finding that the Defendants may be operating in violation of the licensing requirements of Ch. 367, Fla. Stat., and also concluding preliminarily that the "landlord-tenant" exemption of Fla. Stat. § 367.022(5) does not apply to the utility services provided by the Defendants to the Petitioners. The

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[14] App. 230.
[15] App. 230-231.

Notice of Apparent Violation gave the Defendants until April 9, 2018, to submit an application for a certificate of authority to operate as a utility.[16] The Defendants failed to do so, and the PSC has now initiated show cause proceedings against them.[17]

15. In the midst of the ongoing PSC proceedings, the Defendants filed an amended counterclaim[18] asserting a "constitutional claim" that they had no obligation to continue to furnish utility services to the Petitioners.[19]

16. Without citing to any specific provision of either the state or federal constitutions, the Defendants asserted broadly that they had "basic constitutionally protected property rights arising from their ownership" of their property.[20]

17. They allege further that "Burdening the [p]roperty with any obligation to supply utility services" to the Petitioners "would unconstitutionally restrict the [p]roperty, and thereby adversely affect its use, marketability and value."[21]

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[16] App. 437-439 (Notice of Apparent Violation).
[17] PSC Docket No. 20180142 (docket available at http://www.psc.state.fl.us/ClerkOffice/DocketDetail?docket=20180142).
[18] App. 337 (Defendants' Amended Counterclaim).
[19] App. 337-341 (Count I – purported "constitutional claim").
[20] App. 339 (Defendants' Amended Counterclaim at ¶13).
[21] App. 339 (Defendants' Amended Counterclaim at ¶15).

18. The Defendants asked the trial court to declare a variety of generic and broadly stated principles of law, as follows: (a) Defendants "are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution"; (b) Defendants "have a constitutional right to use their [p]roperty for any legal purpose or no use at all"; (c) "Any forced use of the [p]roperty for the benefit of [Petitioners] violates [Defendants'] basic constitutional rights"; and (d) Defendants "have no duty to suffer the use of the [p]roperty to supply utility services to the [l]ots would unconstitutionally restrict the [p]roperty, and thereby affect its use, marketability and value."[22]

19. The amended counterclaim does not raise any constitutional challenge to any statutory provision relating to the PSC's authority, nor does name any municipal or other public entity or raise any claim for either direct or inverse condemnation.

20. The Defendants contemporaneously moved for summary judgment on their "constitutional claim,"[23] asserting the same broadly stated principles.[24]

21. Petitioners filed a Notice and Request for Judicial Notice of certain PSC records, including the Notice of Apparent Violation.[25]

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[22] App. 340-341 (prayer for relief in Count I).
[23] App. 328-336 (Defendants' Verified Motion for Partial Summary Judgment).
[24] App. 335.

22. Petitioners filed an answer and defenses to the amended counterclaim.[26] They specifically denied that the trial court had jurisdiction to consider the purported "constitutional claim" because the matter of terminating utility services was within the exclusive jurisdiction of the PSC.[27] They also asserted lack of jurisdiction as a separate defense, along with defenses of equitable estoppel, judicial estoppel, and waiver.[28]

23. Petitioners also filed a response to the summary judgment motion.[29] The response again raises the lack of trial court jurisdiction[30] and reiterates the pertinent defenses.[31]

24. A hearing was held on August 28, 2018.[32]

25. The Summary Judgment Order issued on October 15, 2018.[33]

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[25] App. 435-452 (Notice and Request for Judicial Notice). The Defendants did not object to the request for judicial notice at any time. Moreover, the PSC records and the ongoing PSC proceedings were discussed without objection at the summary judgment hearing. App. 531 (Transcript at p. 21, lines 7-16); App. 540-542 (Transcript at p.30, line 13 through p. 32, line 14).

[26] App. 453-471 (Plaintiffs' Consolidated Answer and Defenses to Amended Counterclaim).

[27] App. 454-456 (Plaintiffs' Consolidated Answer and Defenses to Amended Counterclaim at ¶¶ 1, 17-23).

[28] App. 469-470 (Second, Fifth, Sixth, and Seventh Defenses).

[29] App. 472-508 (Plaintiffs' Response to Defendants' Verified Motion for Partial Summary Judgment).

[30] App. 477-479.

[31] App. 479-484.

[32] App. 509-589 (Notice of Filing with Transcript of Hearing).

26. As reflected in the Summary Judgment Order, the matter on which the trial court was declaring the parties' rights was "Defendant's [sic] actions in discontinuing water and sewer service to Plaintiffs . . . ."[34]

27. The trial court's own analysis similarly crystallizes the issue before it:

> Palm Tree Acres asserts that it has a constitutional right to refuse to use its property for the enjoyment of others, and that, if it chooses to do so, it can discontinue water and sewer service to the Plaintiffs. The Plaintiffs argue that in providing water and sewer service, Palm Tree Acres is a public utility, and §367.165(1), Fla. Stat. prevents a public utility from discontinuing service until certain requirements are satisfied.[35]

28. The trial court acknowledged its own prior ruling that it lacked jurisdiction as well as the applicable provisions of Fla. Stat. §367.165 regarding termination of utility services:

> This Court previously stated in the August 21, 2017 Order Granting in Part, Denying in Part Defendants' Motion to Dismiss Count 3, etc., that it has no jurisdiction regarding the enforcement of Chapter 367, Florida Statutes. This includes the determination of whether an entity is or is not a utility. See Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990); Fletcher Properties, Inc. v. Florida Public Service Commission, 356 So.2d 289 (Fla. 1978). Assuming,

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[33] App. 506-508.
[34] App. 507.
[35] App. 507.

> though, that the Court had the jurisdiction to make the threshold finding of whether Palm Tree Acres were a utility and could, therefore, prohibit it from discontinuing service until compliance had be made with §367.165(1), Fla. Stat., this Court is clearly without jurisdiction to make the evidentiary finding of whether Palm Tree Acres had, in fact, complied. For the same reasons that this Court determined it lacked jurisdiction to regulate the rates charged to provide water and sewer service as requested by the Plaintiffs in Count 3 of its Third Amended Complaint, the Court also has no jurisdiction to regulate the manner in which a utility terminates operations. Therefore, the Court finds that §367.165(1) does not authorize the Court to prohibit termination of water or sewer service, and that authority lies exclusively with the Public Service Commission.[36]

29. Yet, the trial court found that it had jurisdiction over the purported "constitutional claim":

> However, the Court does have jurisdiction to make a determination as to constitutional rights. Under this narrow issue, Palm Tree Acres prevails. Property rights are one the most basic rights protected by both the Florida and United States Constitutions. These rights include the ability to use, and not to use, the property as the owner of the property sees fit. The government may impose regulations on how a property is used, and neighboring property owners can seek to enjoin their neighbors from offensive or nuisance use of property. However, the Court is unaware of, and the Plaintiffs have not provided, any authority that the Court can compel a property owner to use its property in a manner solely for the benefit of a neighboring property owner.[37]

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[36] App. 507-508.
[37] App. 508.

30. The trial court then concluded by finding that the Defendants have "a right under the [sic] Article I, §3, Fla. Const.[38] and Amend. V, U.S. Const. to refuse to use its property for the benefit of others. This includes the right to discontinue providing water and sewer service to other property owners. Whether it chooses to exercise that right, is for the Defendant [sic] to decide."[39]

31. This timely Petition for a Writ of Certiorari followed.

Nature of the Relief Sought

The Petitioners seek an order reversing the Summary Judgment Order and confirming that the Defendants' claim regarding the discontinuation of existing utility services, being a matter of a utility's "authority, service, and rates," is a matter within the exclusive and preemptive jurisdiction of the PSC.

Argument

A. The Defendants' authority to terminate utility services is a matter within the PSC's exclusive jurisdiction

Under Fla. Stat. § 367.011(2), "The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates." That jurisdiction is both exclusive and preemptive. *Hill Top*

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[38] The trial court's reference is an obvious error. Art. I, §3 of the Fla. Const. protects religious liberty. The trial court presumably intended to refer to art. I, §2, which protects property rights.

[39] App. 508.

Developers v. Holiday Pines Service Corp., 478 So. 2d 368, 371 (Fla. 2 DCA 1985); *Florida Public Service Comm'n v. Lindahl*, 613 So. 2d 63, 64 (Fla. 2 DCA 1993). That jurisdiction includes deciding matters regarding its own jurisdiction. *Florida Public Service Comm'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990).

A "utility" is defined as "any person . . . owning, operating, managing, or controlling a system . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation." Fla. Stat. § 367.021(12). As the Defendants have already conceded, providing service to even a single non-exempt customer renders the provider a "utility" under the statutory definition. *P.W. Ventures, Inc. v. Nichols*, 533 So. 2d 281, 282 (Fla. 1988).[40]

The Defendants concede that unless some statutory exemption applies, their furnishing of water and wastewater services to the Petitioners makes them a "utility" subject to PSC regulation. The only exemption ever claimed or offered by the Defendants that would keep them outside the boundaries of the PSC's jurisdiction is the "landlord-tenant" exemption in Fla. Stat. § 367.022(5). As the trial court previously found, the determination of whether or not that exemption applies is also within the exclusive jurisdiction of the PSC.

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[40] App. 392 (Transcript at p. 26, lines 8-16); App. 221-222 (Defendants' Motion to Dismiss at pp. 5-6, *citing PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 282 (Fla. 1988)).

The PSC has now exercised its jurisdiction in the matter. The PSC issued a Notice of Apparent Violation finding that the Defendants may be operating in violation of the licensing requirements of Ch. 367 and also concluding preliminarily that the "landlord-tenant" exemption of Fla. Stat. § 367.022(5) does not apply to the utility services provided by the Defendants to the Plaintiffs.[41] When the Defendants failed to submit an application for a certificate of authority, the PSC initiated show cause proceedings against them. The matter is scheduled to be heard by the PSC at its Commission Conference on December 11, 2018.

In the midst of this ongoing PSC proceeding, the trial court improperly invaded the agency's exclusive jurisdiction to declare that the Defendants could terminate the ongoing utility services to the Petitioners at any time. But for the same reasons that the trial court lacks jurisdiction to determine that the Defendants *must* provide such utility services to the Petitioners, it also lacks jurisdiction to

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[41] The PSC's determination that the landlord-tenant exemption does not apply here is not surprising, given that the agency has previously rejected the same contention under identical circumstances. *In re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service by GEM Estates Water System in Pasco County*, PSC Docket No. 920281-EU, Order No. PSC-92-0746-FOF-WU, 1992 WL 12597081 (Fla. Pub. Serv. Comm'n August 4, 1992)("Because the mobile home owners own their own land, the utility's owners are not landlords. If the utility's owners are not landlords for the customers served by Gem Estates, the landlord-tenant exemption cannot apply.")

determine that the Defendants can *stop* providing those utility services. Having created a utility, the Defendants cannot now simply turn off the service.

The PSC's jurisdiction over "authority, service, and rates" includes jurisdiction over the discontinuation or termination of any utility service. Before a utility can be abandoned, Fla. Stat. § 367.165 requires the operator to give the county and the PSC 60 days' notice of the intent to abandon. Failure to do so is both a violation of Ch. 367 and a first degree misdemeanor. Fla. Stat. § 367.165(1). Upon such notice, the county can petition the circuit court to appoint a receiver to operate the utility system until it can be disposed of "in a manner designed to continue the efficient and effective operation of utility service." Fla. Stat. § 367.165(2). In other words, even if the Defendants wanted to walk away from the utility they created, the utility would continue to operate under a receiver for the Defendants' property until it could be sold to a suitable utility operator. *See also*, Rule 25-30.090, Fla. Admin. Code (Abandonments).

Other PSC regulations control the circumstances under which a utility can substantially change, discontinue, or refuse to provide service to a customer. For example, Rule 25-30.235, Fla. Admin. Code, governs any "substantial change" in "the conditions or character of service." Rule 25-30-250, Fla. Admin. Code, applies to continuity of service and limits a utility's ability to interrupt service. Finally, Rule 25-30.320, Fla. Admin. Code, severely limits the circumstances

under which a utility can refuse to provide service or discontinue to service to a customer. These regulations demonstrate that the termination or discontinuation of utility service is a matter within the PSC's jurisdiction. *See Bryson*, 569 So. 2d at 1255-1256 (Ch. 367 and PSC regulations demonstrate at least a "colorable claim" within the PSC's exclusive jurisdiction).

The trial court actually recognized that it lacked jurisdiction in the matter, expressly finding that it "has no jurisdiction to regulate the manner in which a utility terminates operations."[42] Further, the trial court found that "§367.165(1) does not authorize the Court to prohibit termination of water or sewer service, and that authority lies exclusively with the Public Service Commission."[43] The trial court then erroneously proceeded to decide the very question it acknowledged it had no jurisdiction to decide under the guise of determining a "constitutional right."[44] As discussed below, disguising the issue as some unspecified "constitutional claim" does not vest the trial court with jurisdiction that it concededly lacks.

In exercising jurisdiction and then declaring that the Defendants had the right to terminate ongoing utility services at any time, the trial court "literally cast

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[42] App. 508 (Summary Judgment Order at 3).
[43] *Id*.
[44] *Id*.

itself in the role of the PSC." *Hill Top Developers*, 478 So. 2d at 371. Even worse, it did so in the midst of an ongoing PSC proceeding involving the Defendants. This Court has repeatedly "cautioned the bench against 'judicial incursion into the province of the agency.'" *Lindahl*, 613 So. 2d at 64, *citing Hill Top Developers*, 478 So. 2d at 371. The trial court here failed to heed that caution. Its improper incursion into the exclusive jurisdiction of the PSC must be reversed "to preserve the legislature's allocation of jurisdictional authority between the administrative agency and the general equitable power of the circuit courts." *Lindahl*, 613. So. 2d at 64.

B. Disguising the issue as a "constitutional claim" does not change the nature of the issue – termination of ongoing utility services – so as to vest the trial court with jurisdiction that it concededly lacks.

The Defendants' "constitutional claim" is a transparent attempt to circumvent the lawful jurisdiction of the PSC. Their argument is a disjointed mishmash of constitutional catchphrases drawn from irrelevant cases. It is grounded entirely on the fundamental misconception that the Defendants are being "forced" or "compelled" to provide utility services to the Petitioners. The undisputed facts, however, show that the Defendants willingly chose to build utility systems and to provide utility services to others, and continue to do so presuming that the "landlord-tenant" exemption from PSC regulation would

protect them. Now that their ruse has been revealed, they want to abandon the utility systems that they elected to create to avoid PSC jurisdiction.

As the Defendants concede in their Motion and have never disputed, they own and operate the water and wastewater systems servicing the Plaintiffs' residential lots. "[Defendants] supply water to homeowners of Palm Tree who rent lots . . . The water is distributed . . . through a distribution system owned and operated by [Defendants]."[45] "[Defendants] also operate a sanitary sewer collection system . . . . The sewer collection system and lift station are also owned and operated by [Defendants]."[46] Nobody forced the Defendants to construct their water and wastewater systems servicing the Petitioners' lots. The Defendants have never contended that such is the case, and they do not so contend today.

The Defendants *chose* over many years to construct and improve utility systems and to furnish utility services to the Petitioners and their residential lots. As they have conceded, "Supplying water and sewer services to even one non-exempt customer requires that the provider obtain a PSC certificate."[47] They *continue* to provide those utility services today. They also continue to willfully

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[45] App. 329 (Defendants' Verified Motion for Partial Summary Judgment at ¶10).
[46] App. 329 (Defendants' Verified Motion for Partial Summary Judgment at ¶11).
[47] App. 221-222 (Defendants' Motion to Dismiss at pp. 5-6, *citing PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 282 (Fla. 1988)); App. 392 (Transcript at p. 26, lines 8-16).

defy the PSC. As the Defendants' counsel stated in an earlier hearing, "we don't intend to seek a [PSC] certificate here."[48]

Neither the state nor the Petitioners compelled the Defendants to construct and operate utility systems. But having done so, they cannot now contend that they should be free of the state laws and regulations that govern utilities. It is their own conduct in constructing and operating utility systems that subjects them to PSC jurisdiction. And having subjected themselves to PSC jurisdiction by their conduct, the Defendants cannot now simply abandon that conduct without also complying with any applicable laws and regulations governing utilities. The enforcement of state utility law and regulations does not deprive the Defendants of any constitutionally protected interest.

None of the cases cited by the Defendants in support of their purported "constitutional claim" is remotely relevant to the matter at hand. First, notwithstanding whatever "property rights" the Defendants may have or claim, all real property is subject to the provisions of general law, including most notably zoning and land use laws and regulations. Owning real property does not entitle the owner to use that property in any manner he may desire; any use must be consistent with the applicable law. *Shriners Hospitals for Crippled Children v.*

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[48] App. 383 (Transcript at p. 17, lines 18-19).

Zrillic, 563 So. 2d 64, 68 (Fla. 1990)(even constitutionally protected property rights are not absolute; they are subject to state's inherent power to promote the general welfare through regulations necessary to secure health, safety, and good order).

All real property is subject to valid zoning laws and ordinances, of course. *Ricketts v. Village of Miami Shores*, 232 So. 3d 1095 (Fla. 3 DCA 2017)(upholding against constitutional attack a zoning ordinance prohibiting vegetable garden in front yard of residential property). The Defendants' constitutional right to pursue a lawful business is likewise subject to the power of the state to regulate such activities to protect the general welfare. *Golden v. McCarty*, 337 So. 2d 388 (Fla. 1976)(upholding against constitutional attack state statute regulating the practice of tattooing). In short, there is no constitutional right to be free from general law – in this case, Ch. 367 regulating public utilities. The Defendants have not raised any constitutional challenge to any statute or PSC regulation. They simply do not want to comply with the law.

Second, the Defendants' reliance on eminent domain and inverse condemnation cases and principles is misplaced. No government entity has taken or is taking any property from the Defendants. No Petitioner has entered onto their property; in fact, the opposite is true. The Defendants constructed and operate pipes and connections on or under the Petitioners' lots as a part of their utility

systems. And again, the Defendants have not asserted any claim for a regulatory or other constitutional taking by any governmental entity.

But more fundamentally, this case is not about the Defendants' *property* at all. It is about their *conduct* – specifically, their conduct in operating water and wastewater utility services. It is that *conduct* that subjects the Defendants to regulation by the PSC, and that includes the PSC's regulation of the circumstances under which the Defendants may lawfully abandon, cease to provide or refuse to provide such utility services. The Defendants cannot choose to engage in conduct that subjects them to regulation under state law, and then complain that such regulation affects the use (or non-use) of their property. Again, the Defendants have not asserted any challenge to the constitutionality of the PSC statutes or regulations, either facially or as applied.

The case is also not about any impingement on the Defendants' freedom to contract. As to any amenities that are not subject to PSC regulation, such as the clubhouse or other recreational facilities, any use by the Petitioners is of course a matter of contract unless it is somehow otherwise regulated. *See Sandpiper Homeowners Ass'n, Inc. v. Lake Yale Corp.*, 667 So. 2d 921 (Fla 5 DCA 1996). But as to matters within the PSC's exclusive jurisdiction – water and wastewater utility services – the relationship of the parties is governed by and must comply with the applicable state statutes and regulations. Even if the parties had some prior

contractual agreement regarding the terms or rates of utility service, those matters become subject to the control of the PSC once the PSC asserts jurisdiction. *See Cohee v. Crestridge Utilities Corp*., 324 So. 2d 155, 157 (Fla 2 DCA 1975)(PSC has authority to raise or lower rates established by a pre-existing contract).

C. The Defendants failed to overcome the affirmative defenses of estoppel and waiver with respect to any "constitutional claim," making summary judgment improper.

Summary judgment was also procedurally improper. The Petitioners asserted a number of affirmative defenses to the Defendants' claims regarding the continued provision of utility service. "Once an affirmative defense is raised, the movant has the additional burden of either disproving or establishing the legal insufficiency of the affirmative defense." *Wilson v. Pruette*, 422 So. 2d 351, 352 (Fla. 2 DCA 1982) (quoting *Stewart v. Gore*, 314 So. 2d 10 (Fla. 2 DCA 1975); *Florida Dept. of Agriculture v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5 DCA 1996); *Howdeshell v. First National Bank of Clearwater*, 369 So.2d 432, 433 (Fla. 2d DCA 1979) (stating that "in order to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of such defenses."). In other words, the Defendants in this case "must conclusively refute the factual bases for the defenses or establish that they are legally insufficient." *Coral Wood Page,*

Inc. v. GRE Coral Wood, LP, 71 So. 3d 251, 253 (Fla. 2 DCA 2011) (citing *Morroni v. Household Fin. Corp. III*, 903 So. 2d 311, 312 (Fla. 2 DCA2005).

"Failure to address affirmative defenses prior to granting partial summary judgment constitutes error." *Florida Dept. of Agriculture v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5 DCA 1996) (citing *Board of Trustees of Internal Improvement Trust Fund v. Schindler*, 604 So. 2d 569 (Fla. 2 DCA 1992); *Howdeshell v. First National Bank of Clearwate*r, 369 So. 2d 432, 433 (Fla. 2 DCA 1979). The Defendants failed to address any of Petitioners' defenses in their motion for summary judgment or at the hearing. They certainly did not prove them inadequate or legally insufficient. That alone should have precluded summary judgment. With respect to the "constitutional" claim, the defenses of estoppel and waiver are particularly pertinent.

Petitioners' Sixth Defense raised judicial estoppel. The Defendants previously argued that the matter of "authority, service, and rates" for utility services was within the exclusive jurisdiction of the PSC and obtained judicial relief on that basis. They cannot now argue that the trial court could exercise jurisdiction over such matters. They cannot have things both ways.

"Judicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial . . . proceedings." *Blumberg v. USAA Casualty Ins. Co.*, 790 So. 2d 1061, 1066 (Fla. 2001), *quoting*

Smith v. Avatar Properties, Inc., 714 So. 2d 1103, 1107 (Fla. 5 DCA 1998). The doctrine also applies when a party attempts to take inconsistent positions in the *same* case. "One who assumes a particular position or theory in a case, and secures court action thereby, is judicially estopped in a later phase of the same case . . . from asserting any . . . inconsistent position toward the same parties and subject matter." *Town of Ponce Inlet v. Pacetta, LLC*, 226 So. 3d 303, 312 (Fla. 5 DCA 2017), *quoting In re Adoption of D.P.P.*, 158 So. 3d 633, 639 (Fla. 5 DCA 2014).

The Defendants previously argued that the matters of "authority, service, and rates" regarding their water and wastewater services are exclusively within the jurisdiction of the PSC. The Court agreed, and dismissed the Petitioners' claim for declaratory relief on that basis. Judicial estoppel prevents the Defendants from now arguing that the trial court could exercise jurisdiction over their "authority, services, and rates" as to utility services.

Petitioners' Fifth Defense raised equitable estoppel. Equitable estoppel arises from "words and admissions, or conduct, acts and acquiescence, or all combined causing another person to believe in the existence of a certain state of things." *Palatka Fed. Savings and Loan Ass'n v. Raczowski*, 263 So. 2d 842, 844 (Fla. 1 DCA 1972); *see also, Winans v. Weber*, 979 So. 2d 269, 274-75 (Fla. 2 DCA 2007)(discussing elements of estoppel). By the Defendants' own admission, they operated the water and wastewater utility systems servicing Petitioners' lots

for many years. Whether that was the result of the now invalidated covenants, or their course of conduct, or some contractual understanding, or some combination of those, does not matter. The Petitioners at the time they acquired their lots were led to believe (accurately) that water and wastewater utility services were furnished by the Park to those lots, and after they acquired their lots the Defendants continued to provide and improve those services and to charge the Petitioners in connection with the utilities. Whether the utilities were "included" in some other payment designated as "rent" or, in the case of the wastewater connection charged directly to each lot owner, is not material. These facts and conduct are sufficient to estop the Defendants from now contending that they are not required to furnish utility services.

The Petitioners' Seventh Defense is waiver. Even if the Defendants had, at some historical point in time, some cognizable "constitutional claim," that claim would be subject to general principles of waiver. "Most personal constitutional rights can be waived." *Chames v. DeMayo*, 972 So. 2d 850, 860 (Fla. 2007), *citing In re Amendment to the Rules Regulating the Fla. Bar - Rule 4-1.5(f)(4)(B)*, 939 So. 2d 1032, 1038 (Fla. 2006). Under Florida law, "waiver" is "the intentional relinquishment of a known right, or the voluntary relinquishment of a known right, or conduct which warrants an inference of the relinquishment of a known right." *Arvilla Motel, Inc. v. Shriver*, 889 So. 2d 887, 892 (Fla. 2 DCA 2005).

Even fundamental federal constitutional rights can be waived, as the Supreme Court has recognized for time immemorial. "A person may, by his acts or omission to act, waive a right which he might otherwise have under the constitution of the United States . . . ." *Pierce v. Somerset*, 171 U.S. 641, 648 (1898). Even a criminal defendant "'may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution.'" *United States v. Spalding*, 894 F. 3d 173, 189 (5th Cir. 2018), *citing United States v. Mezzanatto*, 513 U.S. 196, 201 (1995). *See also, Brewer v. Williams*, 430 U.S. 387, 397-98 (1977)(constitutional right to assistance of counsel in criminal case can be waived); *Brady v. United States*, 397 U.S. 742, 747-48 (1970)(constitutional right to jury trial can be waived by entry of guilty plea); *Brookhart v. Janis*, 384 U.S. 1, 3-4 (1966)(constitutional right to confront and cross-examine witnesses can be waived). It necessarily follows, of course, that constitutional rights in the civil context can also be waived. *See, e.g., D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 184-85 (1972)(due process rights to notice and hearing prior to civil judgment can be waived).

There was certainly some point in the past at which the Defendants (or their predecessors in interest) presumably had the right to choose *not* to design, construct, and place into operation their water and wastewater systems servicing the lots in their mobile home park, including the lots that were not owned by them

(although failing to do so would seem fatal to the development of a mobile home park). But they voluntarily chose to do those things, and the Defendants voluntarily purchased the mobile home park property knowing that utility services to the lots owned by others were in place. The Defendants voluntarily improved the systems over the years, connected to the County's wastewater system, and continued to operate these utilities, providing potable water and wastewater disposal to the Petitioners for decades. Their own conduct, taken voluntarily and over the course of years, waives any right they may have one time had to not do these things.

The Defendants failed to address these defenses at the summary judgment hearing. The trial court failed to address them in the Summary Judgment Order. By declaring the Defendants' "constitutional right" to stop providing utility service without considering these defenses, the trial court erred.

Conclusion

The Court should grant certiorari and reverse the Summary Judgment Order, as the termination of ongoing utility service is a matter of "authority, service, and rates" within the exclusive and preemptive jurisdiction of the PSC.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com

RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was furnished by email on November 12, 2018, to:

J. Allen Bobo
Jody B. Gabel
LUTZ, BOBO & TELFAIR, P.A.
2 North Tamiami Trail, Suite 500
Sarasota, FL 34236-5575
jabobo@lutzbobo.com
jbgabel@lutzbobo.com

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with font requirements set forth in Fla. R. App. P. 9.210.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 0602493

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

NELSON P. SCHWOB; et al.,

Petitioners,

v.

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Respondents.
_____/

CASE NO.: 2D18- ____
L.T. No.: 2017-CA-1696-ES

APPENDIX
TO PETITION FOR A WRIT OF CERTIORARI
TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY

RICHARD A. HARRISON
Florida Bar No.: 602493
Richard A. Harrison, P.A.
400 N. Ashley Drive
Suite 2600
Tampa, FL 33602
Phone: 813.712.8757
rah@harrisonpa.com
Attorney for Petitioners

Board Certified in City, County and
Local Government Law

INDEX

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2 North Tamiami Trail, Suite 500
Sarasota, FL 34236-5575
jabobo@lutzbobo.com
jbgabel@lutzbobo.com

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493

Filing # 55554945 E-Filed 04/25/2017 02:37:09 PM

IN THE COUNTY COURT IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB,

Plaintiff,

vs.

CASE NO.: 51-2014-CC-000519-ES
SECTION: D

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

THIRD AMENDED COMPLAINT

Plaintiffs, NELSON P. and BARBARA J. SCHWOB, husband and wife ("Schwob"); DARRELL L. and MARTHA K. BIRT, husband and wife ("Birt"); FRANK E. and LINDA J. BROWN, husband and wife ("F. Brown"); PAUL and SANDRA BROWN, husband and wife ("P. Brown"); DENNIS M. and CAROL J. COSMO ("Cosmo"); MARILYN C. MORSE, STEVEN P. CUMMINGS and LAURIE A. CUMMINGS, joint tenants ("Cummings"); KAROL FLEMING ("Fleming"); SOLANGE GERVAIS ("Gervais"); BERND J. and OPAL B. GIERSCHKE, husband and wife ("Gierschke"); CHARLES H. Sr. and CAROL A. LePAGE, husband and wife ("LePage"); JAMES L. and REBECCA L. MAY, husband and wife ("May"); LORI OFFER ("Offer"); ELVIRA PARDO ("Pardo"); JAMES A. PASCO, individually ("James"); JAMES A. and JOYCE A. PASCO, husband and wife ("Pasco"); DAVID L. and KAY J. SMITH, husband and wife ("D. Smith"); JAMES L. and FRANCES E. SMITH, husband and wife ("J. Smith"); JAMES E. and MARGO M. SYMONDS, husband and wife ("Symonds"); JEANETTE M. TATRO ("Tatro"); RICHARD and ARLENE TAYLOR, husband and wife

("Taylor"); ANTHONY A. VARSALONE, JR. ("Varsalone"); DANA L. DUDLEY and LAUREL L. MATOON, husband and wife ("Dudley"); KATHLEEN R. VALK, ("Valk"); and PALM TREE ACRES SUBDIVISION LANDOWNERS HOMEOWNER'S ASSOCIATION, INC. ("Landowners' Association"), by and through their undersigned counsel, sue the Defendants, JAMES C. GOSS ("Goss"), EDWARD HEVERAN ("E. Heveran"), and MARGARET E. HEVERAN ("M. Heveran"), individually and d/b/a PALM TREE ACRES MOBILE HOME PARK (collectively referred to herein as the "Park Owners"), and allege as follows:

Nature of the Action

1. This is an action for declaratory and injunctive relief and for damages that exceed the sum of $15,000, exclusive of interest, costs and attorney's fees.

The Plaintiffs

2. Schwob is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 75, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 9262, Pages 2661-2662, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 1**. The property is Schwob's homestead.

3. Birt is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 81, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 6846, Pages 488-489, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 2.**

4. F. Brown is the record fee simple owner of that certain real property in Pasco

County, Florida, being summarily described as Lot 69, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 4758, Pages 1530-1532, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 3.**

5. P. Brown is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 77, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 6699, Pages 1927-1929, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 4.**

6. Cosmo is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 26, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8626, Pages 3066-3067, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 5.**

7. Cummings is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 16, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 4666, Pages 907-908, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 6.**

8. Fleming is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 18, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 9116, Pages 420-421, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as

Exhibit 7.

9. Gervais is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 76 and Lot 86, Palm Tree Acres, the full legal descriptions of said property appearing of record in those certain warranty deeds recorded at O.R. Book 8689, Pages 891-892 and O.R. Book 8999, Pages 2338-2340, Official Records of Pasco County, Florida, true and correct copies of which are attached hereto as **Exhibit 8** and **Exhibit 9**, respectively**.**

10. Gierschke is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 51, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8257, Pages 1427-1429, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 10.**

11. LePage is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 63, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 7468, Pages 79-81, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 11.**

12. May is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 5, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8081, Pages 1742-1743, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 12.**

13. Offer is the record fee simple owner of that certain real property in Pasco County,

Florida, being summarily described as Lot 28, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8872, Pages 2172-2176, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 13.**

14. Pardo is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 22, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8835, Pages 251-252, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 14.**

15. James is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 1, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 6990, Pages 1871-1872, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 15.**

16. Pasco is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 38, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8793, Pages 1433-1434, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 16.**

17. D. Smith is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 10, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 5898, Pages 431-433, Official Records of Pasco County, Florida, a true and correct copy of

which is attached hereto as **Exhibit 17.**

18. J. Smith is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 48, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 5079, Pages 210-211, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 18.**

19. Symonds is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 25, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 7963, Pages 211-212, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 19.**

20. Tatro is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 12, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 3894, Pages 1309-1313, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 20.**

21. Taylor is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 78, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8709, Pages 1448-1450, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 21.**

22. Varsalone is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 73, Palm Tree Acres, the full legal

description of said property appearing of record in that certain warranty deed recorded at O.R. Book 8936, Pages 3685-3686, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 22.**

23. Dudley is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 24, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 6816, Pages 1084-1085, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 23.**

24. Valk is the record fee simple owner of that certain real property in Pasco County, Florida, being summarily described as Lot 3, Palm Tree Acres, the full legal description of said property appearing of record in that certain warranty deed recorded at O.R. Book 5409, Pages 1818-1819, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 24.**

25. The foregoing named Plaintiffs are alternatively referred to herein as "Lot Owners." The Lot Owners own their respective lots in fee simple, and pay ad valorem taxes and non-ad valorem assessments for solid waste and stormwater on their respective lots.

26. There is no written agreement between any of the Lot Owners and the Park or between any of the Lot Owners and the Park Owners with respect to the property owned by the Lot Owners.

27. Landowners' Association is a Florida duly and lawfully organized Florida corporation. The Landowners' Association was formed by Lot Owners pursuant to Fla. Stat. §723.0751(1).

28. Plaintiffs have retained the undersigned attorneys and have agreed to pay said

attorneys a reasonable fee for their professional services in this matter.

The Defendants

29. Goss is an individual over the age of eighteen years old.

30. E. Heveran is an individual over the age of eighteen years old.

31. M. Heveran is an individual over the age of eighteen years old.

32. Goss, E. Heveran, and M. Heveran, the Park Owners, own and operate the Palm Tree Acres Mobile Home Park (the "Park") located in Pasco County, Florida, and own the real property within the Park that is not otherwise owned by individual lot owners such as the Plaintiffs. The Park Owners, individually and collectively, are a "mobile home park owner" or "park owner" as defined in Fla. Stat. §723.003(7). They are also, individually and collectively, an "operator of a mobile home park" as defined in Fla. Stat. §723.003(9).

33. The Park is not a separate legal entity, but is owned and operated by the Park Owners, individually and collectively, jointly and severally, and operated under the registered fictitious name "Palm Tree Acres Mobile Home Park," State of Florida Registration Number G92366002977, owned by them.

Palm Tree Acres Mobile Home Park

34. The Park is located at 36006 State Road 54, Zephyrhills, Florida.

35. The Park is licensed as a mobile home park under State of Florida License Number 9174, originally issued on or about January 1, 1986.

36. The Park's existence pre-dates its licensure by the State.

37. The Park Owners acquired their title to the Park by virtue of that certain Warranty Deed dated September 26, 1984, and recorded at O.R. Book 1364, Pages 1927-1932, a true and correct copy of which is attached hereto as **Exhibit 25**, and that Corrective Warranty Deed dated

September 26, 1984, and recorded at O.R. Book 1477, Pages 0673-0680, Official records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 26**.

38. The real property acquired by the Park Owners by virtue of the foregoing transactions excluded Lots 1 through 18, Lot 20, Lots 22 through 29, Lot 31, Lots 33 through 34, Lot 38, Lots 42 through 44, Lots 47 through 49, Lots 51 through 54, Lots 59 through 63, Lot 65, Lots 67 through 70, Lots 72 through 73, a portion of Lot 74, Lots 75 through 81, Lot 85, and Lot 87 of Palm Tree Acres.

39. Although the Park Owners held no legal title to the many lots identified in the next preceding paragraph, they filed with the State of Florida a Prospectus describing a mobile home park that included 244 lots, all of which were purportedly available for rental. A copy of the Prospectus, circa 1986, is attached hereto as **Exhibit 27**.

40. The Park continues to advertise and hold itself out as having approximately 244 lots within the Park. For example, a copy of the description of the Park from the Park's website is attached hereto as **Exhibit 28**.

41. As of today, however, there are approximately 42 lots owned in fee by persons other than the Park Owners, including all of the lots owned by the Lot Owners.

42. The Homeowners Association of Palm Tree Acres Mobile Home Park, Inc. (the "Homeowners Association") is a Florida corporation that was formed on January 1, 1985.

43. Upon information and belief, the Homeowners Association was formed pursuant to Fla. Stat. §723.075 or pursuant to Fla. Stat. Ch. 715, and not pursuant to Fla. Stat. §720.301 - §720.312.

The Park's Demands for "lot rental amount" and Fees and Collection Tactics

44. The Park Owners have demanded, charged, and collected and continue to

demand, charge, and collect the payment of a "lot rental amount" from the Lot Owners, ostensibly under the authority of Fla. Stat. §723.037. This amount is sometimes referred to by the Park Owners as "rent," or "base rent" or a "maintenance fee" by the Park Owners. Copies of the "Ninety Day Notice of Increase in Lot Rental Amount" issued by the Park Owners to the Lot Owners for the calendar years 2013, 2014, 2015, and 2016 are attached hereto as **Composite Exhibit 29.**

45. The Park Owners have also demanded, charged, and collected, and continue to demand, charge, and collect from the Lot Owners "late charges and delinquency fees" for failure to pay the "lot rental amount" or "maintenance fee," also ostensibly under the authority of Ch. 723, Fla. Stat. The Park Owners have demanded such payments from the Lot Owners, have demanded that the Lot Owners surrender their property to the Park Owners, and have demanded that the Lot Owners vacate their property, all under threat of eviction, ostensibly pursuant to Fla. Stat. §723.061. By way of example, copies of the "Demand for Payment of Lot Rental Amount" issued by the Park Owners to Plaintiff F. Brown is attached hereto as **Exhibit 30**.

46. The Park Owners have threatened to file and have in fact filed claims of lien against the property of Lot Owners, ostensibly to secure the payment of unpaid "lot rental amount," "maintenance fees" and other charges.

47. The Park Owners, through their on-site employees and agents, have verbally threatened and harassed Lot Owners by demanding payment of "lot rental amount" and other fees and charges, by telling them that absent payment of such "lot rental amount" and other fees and charges, they or their guests were not entitled to the use of the recreational facilities or other amenities at the Park, and by declaring them and their guests to be "trespassers" if they attempted to use the recreational facilities or other amenities.

Venue and Jurisdiction

48. Venue is proper in Pasco County, because the Plaintiffs reside in Pasco County, Plaintiffs' real property and the Park are all located in Pasco County, the Park Owners are doing business in Pasco County, and the causes of action herein alleged all accrued in Pasco County.

49. The Court has jurisdiction of the Lot Owners' separate and distinct claims for damages pursuant to Fla. Stat. §26.012, as at least some of those claims exceed the amount of $15,000, exclusive of interest, costs, and attorneys' fees.

50. The Court also has jurisdiction of the Plaintiffs' claims for equitable relief pursuant to Fla. Stat. §26.012.

51. The Court has jurisdiction of the Plaintiffs' claims for declaratory relief pursuant to Fla. Stat. §86.011. Pursuant to Fla. Stat. §86.011, "The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed. . . . The court may render declaratory judgments on the existence, or nonexistence: (1) of any immunity, power, privilege, or right; or (2) of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action."

52. Pursuant to Fla. Stat. §86.021, "Any person claiming to be interested or who may be in doubt about his or her rights under a deed, will, contract, or other article, memorandum, or instrument in writing or whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing may have

determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and obtain a declaration of rights, status, or other equitable or legal relations thereunder."

53. Pursuant to Fla. Stat. §86.101, Chapter 86, Fla. Stat. "is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed."

54. Pursuant to Fla. Stat. §86.111, "The existence of another adequate remedy does not preclude a judgment for declaratory relief. . . . The court has power to give as full and complete relief as it would have had if such proceeding had been instituted as an action in chancery."

COUNT 1 – DECLARATORY RELIEF – STATUS OF LOT OWNERS

55. The Lot Owners re-allege Paragraphs 1 through 54 as though fully set forth herein.

56. The Lot Owners are not a "mobile home owner" or "home owner" as defined in Fla. Stat. §723.003(5) because they do not rent or lease their lots; they own their lots in fee simple.

57. The Lot Owners are not parties to any "mobile home lot rental agreement" or "rental agreement" as defined in Fla. Stat. §723.003(4), because they are not a "mobile home owner" as defined in the statute.

58. Pursuant to Fla. Stat. §723.003(2), the term "lot rental amount" means "all financial obligations, except user fees, which are required as a condition of the tenancy."

59. The Lot Owners are not parties to any "tenancy" within the meaning of Ch. 723, Fla. Stat. Fla. Stat. §723.002(1) provides that "The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. This chapter shall not be construed to apply to any other tenancy . . . ." The Lot Owners' mobile homes are not placed upon lots that are offered for rent or lease; they are placed upon lots that are owned in fee simple by the Lot Owners.

60. Because any "lot rental amount" as defined in Fla. Stat. §723.003(2) requires the existence of a "tenancy" within the meaning of Ch. 723, the Lot Owners are not subject to the payment of any "lot rental amount."

61. Ch. 723, Fla. Stat., does not authorize the collection of any "maintenance fee" from the Lot Owners.

62. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of the Lot owners by the Park or the Park Owners.

63. Ch. 723, Fla. Stat., does not authorize the eviction of the Lot Owners for failure to pay any "lot rental amount," "maintenance fee," or other fees or charges. The only authority for eviction found in Ch. 723, Fla. Stat., is Fla. Stat. §723.061, which only applies to a "mobile home owner" as defined in the statute, or to a tenant. The Lot Owners are neither a "mobile home owner," as defined in the statute, nor a tenant. Moreover, Fla. Stat. §723.002(2) enumerates certain provisions of Ch. 723 that apply to "mobile home subdivision developers" and "the owners of lots in mobile home subdivisions." Even if the Lot Owners fell within that subsection, which the Lot Owners do not concede, Fla. Stat. §723.061 regarding eviction is not one of the enumerated sections.

64. The Lot Owners are in doubt as to their legal and financial obligations to the Park and the Park Owners and as to the legal rights of the Park and the Park Owners to demand, charge, and collect payment of "lot rental," "maintenance fees," or other fees and charges, and are entitled to have such doubts removed by the Court.

65. There is a real, present, and immediate dispute between the Lot Owners and the Park and Park Owners.

66. All antagonistic and adverse interests are properly before the Court in this action.

67. There is a bona fide, actual, present, and practical need for declaratory relief.

68. The Lot Owners are entitled to recover their reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, the Lot Owners pray the Court enter a judgment finding, determining, and declaring the legal and financial obligations of the Lot Owners and the legal rights of the Park Owners, awarding the Lot Owners their reasonable attorneys' fees and costs, and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 2– DECLARATORY RELIEF - STATUS OF LANDOWNERS' ASSOCIATION

69. The Lot Owners re-allege Paragraphs 1 through 54 as though fully set forth herein.

70. The Landowners' Association was formed by the Lot Owners to act as their representative in dealings with the Park and the Park Owners.

71. The Park and Park Owners have refused to recognize the Landowners' Association as the bona fide representative of the Lot Owners and other owners of lots.

72. The Lot Owners and the Landowners' Association are in doubt as to the legal

status and rights of the Landowners' Association and are entitled to have such doubts removed by the Court.

73. There is a real, present, and immediate dispute between the Lot Owners and the Landowners' Association, on the one hand, and the Park and the Park Owners, on the other hand.

74. All antagonistic and adverse interests are properly before the Court in this action.

75. There is a bona fide, actual, present, and practical need for declaratory relief.

76. The Lot Owners and the Landowners' Association are entitled to recover their reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, the Lot Owners pray the Court enter a judgment finding, determining, and declaring the legal status and rights of the Landowners' Association with respect to the Lot Owners and the Park Owners, awarding the Landowners' Association and the Lot Owners their reasonable attorneys' fees and costs, and granting such further legal and equitable relief as the Court deems just as proper under the circumstances.

COUNT 3 – DECLARATORY RELIEF – WATER SUPPLY

77. The Lot Owners re-allege Paragraphs 1 through 54 and as though fully set forth herein.

78. The Lot Owners purchased their lots in reliance upon the Park Owners' representations and commitment to furnish potable water to their lots.

79. The Park Owners have supplied and continue to supply potable water to the Lot Owners by means of a water supply system, pumps, pipes, and connections that are owned and operated by the Park Owners.

80. There is no other available public supply of potable water to the Lot Owners.

81. The Lot Owners understand that they are obligated to pay the Park Owners for the

actual cost of water supplied to them and are willing and able to do so.

82. The Park Owners have failed and refused to provide the Lot Owners with any detailed accounting or breakdown of the actual costs of the water supply, or to identify how much of the "lot rental amount" or "maintenance fee" is for water supply, or to otherwise explain the manner in which the charges for any water supply are determined and calculated under the Restrictions or otherwise.

83. The Park Owners have threated the Lot Owners, directly or indirectly, that they may terminate the supply of potable water to the Lot Owners by virtue of the ongoing dispute between them.

84. The Lot Owners are in doubt about their right to receive potable water from the Park Owners and about the amount for which the Park Owners are lawfully entitled to charge them for such potable water, and about the Park Owners right, if any, to cease to supply such potable water to the Lot Owners, and they are entitled to have such doubts removed by the Court.

85. There is a real, present, and immediate dispute between the Lot Owners and the Park Owners as to this matter.

86. All antagonistic and adverse interests are properly before the Court in this action.

87. There is a bona fide, actual, present, and practical need for declaratory relief.

88. The Lot Owners are entitled to recover their reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, the Lot Owners pray the Court enter a judgment finding, determining, and declaring the rights and duties of the Lot Owners and the Park Owners with respect to the potable water supply and the amounts that the Lot Owners can be charged for such water supply, awarding the Lot Owners their reasonable attorneys' fees and costs, and granting such further

legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 4 – DECLARATORY AND INJUNCTIVE RELIEF – DECEPTIVE TRADE PRACTICES

89. The Lot Owners re-allege Paragraphs 1 through 54 as though fully set forth herein.

90. This is an action pursuant to Fla. Stat. §501.211(1) for declaratory and injunctive relief as to the unfair and deceptive acts and practices of the Park Owners.

91. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

92. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUPTA"), Fla. Stat. §501.201 et seq.

93. Pursuant to Fla. Stat. §501.211(1), "Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part."

94. The Lot Owners have been aggrieved by the Park Owners' violations of FDUPTA.

95. The Park Owners' violations of FDUPTA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to the Lot Owners.

96. The Lot Owners have no adequate remedy at law to prevent the ongoing and future violations of FDUPTA by the Park Owners.

WHEREFORE, the Lot Owners pray the Court enter a judgment declaring that the Park Owners have violated and are violating FDUPTA, temporarily and permanently enjoining the Park Owners from committing such unfair and deceptive acts and practices in the operation of the Park, awarding the Lot Owners their reasonable attorneys' fees pursuant to Fla. Stat. §501.211(2) and 501.2105 and Fla. Stat. §723.0861, awarding the Lot Owners the costs of this action, and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 5 – SCHWOB – ACCOUNTING

97. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

98. Schwob has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

99. Schwob contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

100. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Schwob, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Schwob.

101. Schwob is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Schwob prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court,

award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 6 – SCHWOB – UNJUST ENRICHMENT

102. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

103. Schwob has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

104. The Park Owners knew of and voluntarily accepted those benefits.

105. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

106. Schwob is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 7 – SCHWOB – MONEY HAD AND RECEIVED

107. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

108. The Park Owners have received money which they ought to refund to Schwob. The Park Owners received Schwob's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Schwob's status as an elderly person.

109. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Schwob all or some part of the monies had and received by them.

110. Schwob is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 8 – SCHWOB - FDUPTA

111. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

112. This is an action pursuant to Fla. Stat. §501.211.

113. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

114. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

115. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

116. The Park Owners' unfair and deceptive acts and practices have caused Schwob to suffer damages.

117. Schwob is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 9 – BIRT – ACCOUNTING

118. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

119. Birt has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

120. Birt contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

121. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Birt, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Birt.

122. Birt is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Birt prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 10 – BIRT – UNJUST ENRICHMENT

123. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

124. Birt has conferred a benefit upon the Park owners by the payment to them of

amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

125. The Park Owners knew of and voluntarily accepted those benefits.

126. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

127. Birt is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 11 – BIRT – MONEY HAD AND RECEIVED

128. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

129. The Park Owners have received money which they ought to refund to Birt. The Park Owners received Birt's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Birt's status as an elderly person.

130. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Birt all or some part of the monies had and received by them.

131. Birt is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 12 – BIRT - FDUPTA

132. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

133. This is an action pursuant to Fla. Stat. §501.211.

134. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

135. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

136. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

137. The Park Owners' unfair and deceptive acts and practices have caused Birt to suffer damages.

138. Birt is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 13 – F. BROWN – ACCOUNTING

139. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

140. F. Brown has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

141. F. Brown contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

142. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by F. Brown, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to F. Brown.

143. F. Brown is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, F. Brown prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 14 – F. BROWN – UNJUST ENRICHMENT

144. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

145. F. Brown has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

146. The Park Owners knew of and voluntarily accepted those benefits.

147. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

148. F. Brown is entitled to recover his reasonable attorneys' fees from the Park

Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 15 – F. BROWN – MONEY HAD AND RECEIVED

149. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

150. The Park Owners have received money which they ought to refund to F. Brown.

151. The Park Owners received F. Brown's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of F. Brown's status as an elderly person.

152. The circumstances are such that the Park Owners should in all fairness be required to refund or return to F. Brown all or some part of the monies had and received by them.

153. F. Brown is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 16 – F. BROWN - FDUPTA

154. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

155. This is an action pursuant to Fla. Stat. §501.211.

156. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

157. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

158. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

159. The Park Owners' unfair and deceptive acts and practices have caused F. Brown to suffer damages.

160. F. Brown is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 17 – P. BROWN – ACCOUNTING

161. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

162. P. Brown has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

163. P. Brown contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

164. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by P. Brown, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to P. Brown.

165. P. Brown is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, P. Brown prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 18 – P. BROWN – UNJUST ENRICHMENT

166. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

167. P. Brown has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

168. The Park Owners knew of and voluntarily accepted those benefits.

169. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

170. P. Brown is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 19 – P. BROWN – MONEY HAD AND RECEIVED

171. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

172. The Park Owners have received money which they ought to refund to P. Brown.

173. The Park Owners received P. Brown's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of P. Brown's status as an elderly person.

174. The circumstances are such that the Park Owners should in all fairness be required to refund or return to P. Brown all or some part of the monies had and received by them.

175. P. Brown is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 20 – P. BROWN - FDUPTA

176. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

177. This is an action pursuant to Fla. Stat. §501.211.

178. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

179. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act

("FDUTPA"), Fla. Stat. §§501.201 et seq.

180. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

181. The Park Owners' unfair and deceptive acts and practices have caused P. Brown to suffer damages.

182. P. Brown is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 21 – COSMO – ACCOUNTING

183. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

184. Cosmo has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

185. Cosmo contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

186. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Cosmo, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Cosmo.

187. Cosmo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cosmo prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 22 – COSMO – UNJUST ENRICHMENT

188. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

189. Cosmo has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

190. The Park Owners knew of and voluntarily accepted those benefits.

191. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

192. Cosmo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 23 – COSMO – MONEY HAD AND RECEIVED

193. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

194. The Park Owners have received money which they ought to refund to Cosmo.

195. The Park Owners received Cosmo's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Cosmo's status as an elderly person.

196. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Cosmo all or some part of the monies had and received by them.

197. Cosmo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 24 – COSMO - FDUPTA

198. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

199. This is an action pursuant to Fla. Stat. §501.211.

200. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

201. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

202. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees

and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

203. The Park Owners' unfair and deceptive acts and practices have caused Cosmo to suffer damages.

204. Cosmo is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 25 – CUMMINGS – ACCOUNTING

205. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

206. Cummings has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

207. Cummings contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

208. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Cummings, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Cummings.

209. Cummings is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cummings prays the Court will order the Park Owners to furnish an

accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 26 – CUMMINGS – UNJUST ENRICHMENT

210. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

211. Cummings has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

212. The Park Owners knew of and voluntarily accepted those benefits.

213. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

214. Cummings is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 27 – CUMMINGS – MONEY HAD AND RECEIVED

215. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

216. The Park Owners have received money which they ought to refund to Cummings.

217. The Park Owners received Cummings' money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Cummings' status as an elderly person.

218. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Cummings all or some part of the monies had and received by them.

219. Cummings is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 28 – CUMMINGS - FDUPTA

220. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

221. This is an action pursuant to Fla. Stat. §501.211.

222. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

223. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

224. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

225. The Park Owners' unfair and deceptive acts and practices have caused Cummings to suffer damages.

226. Cummings is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 29 – FLEMING – ACCOUNTING

227. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

228. Fleming has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

229. Fleming contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

230. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Fleming, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Fleming.

231. Fleming is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Fleming prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable

relief as the Court deems just and proper under the circumstances.

COUNT 30 – FLEMING – UNJUST ENRICHMENT

232. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

233. Fleming has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

234. The Park Owners knew of and voluntarily accepted those benefits.

235. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

236. Fleming is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 31 – FLEMING – MONEY HAD AND RECEIVED

237. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

238. The Park Owners have received money which they ought to refund to Fleming.

239. The Park Owners received Fleming's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Fleming's status as an elderly person.

240. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Fleming all or some part of the monies had and received by them.

241. Fleming is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 32 – FLEMING - FDUPTA

242. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

243. This is an action pursuant to Fla. Stat. §501.211.

244. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

245. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

246. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

247. The Park Owners' unfair and deceptive acts and practices have caused Fleming to suffer damages.

248. Fleming is entitled to recover damages, plus reasonable attorneys' fees and costs,

pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 33 – GERVAIS – ACCOUNTING

249. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

250. Gervais has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

251. Gervais contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

252. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Gervais, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Gervais.

253. Gervais is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gervais prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 34 – GERVAIS – UNJUST ENRICHMENT

254. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth

herein.

255. Gervais has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

256. The Park Owners knew of and voluntarily accepted those benefits.

257. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

258. Gervais is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 35 – GERVAIS – MONEY HAD AND RECEIVED

259. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

260. The Park Owners have received money which they ought to refund to Gervais.

261. The Park Owners received Gervais's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Gervais's status as an elderly person.

262. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Gervais all or some part of the monies had and received by them.

263. Gervais is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with

prejudgment interest, and attorneys' fees and costs.

COUNT 36 – GERVAIS - FDUPTA

264. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

265. This is an action pursuant to Fla. Stat. §501.211.

266. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

267. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

268. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

269. The Park Owners' unfair and deceptive acts and practices have caused Gervais to suffer damages.

270. Gervais is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 37 – GIERSCHKE – ACCOUNTING

271. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

272. Gierschke has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

273. Gierschke contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

274. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Gierschke, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Gierschke.

275. Gierschke is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gierschke prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 38 – GIERSCHKE – UNJUST ENRICHMENT

276. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

277. Gierschke has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees

and charges.

278. The Park Owners knew of and voluntarily accepted those benefits.

279. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

280. Gierschke is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 39 – GIERSCHKE – MONEY HAD AND RECEIVED

281. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

282. The Park Owners have received money which they ought to refund to Gierschke.

283. The Park Owners received Gierschke's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Gierschke's status as an elderly person.

284. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Gierschke all or some part of the monies had and received by them.

285. Gierschke is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 40 – GIERSCHKE - FDUPTA

286. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

287. This is an action pursuant to Fla. Stat. §501.211.

288. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

289. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

290. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

291. The Park Owners' unfair and deceptive acts and practices have caused Gierschke to suffer damages.

292. Gierschke is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 41 – LePAGE – ACCOUNTING

293. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

294. LePage has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

295. LePage contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

296. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by LePage, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to LePage.

297. LePage is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, LePage prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 42 – LePAGE – UNJUST ENRICHMENT

298. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

299. LePage has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

300. The Park Owners knew of and voluntarily accepted those benefits.

301. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

302. LePage is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 43 – LePAGE – MONEY HAD AND RECEIVED

303. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

304. The Park Owners have received money which they ought to refund to LePage.

305. The Park Owners received LePage's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of LePage's status as an elderly person.

306. The circumstances are such that the Park Owners should in all fairness be required to refund or return to LePage all or some part of the monies had and received by them.

307. LePage is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 44 – LePAGE - FDUPTA

308. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

309. This is an action pursuant to Fla. Stat. §501.211.

310. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

311. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

312. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

313. The Park Owners' unfair and deceptive acts and practices have caused LePage to suffer damages.

314. LePage is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 45 – MAY – ACCOUNTING

315. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

316. May has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

317. May contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

318. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by May, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to May.

319. May is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, May prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 46 – MAY – UNJUST ENRICHMENT

320. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

321. May has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

322. The Park Owners knew of and voluntarily accepted those benefits.

323. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

324. May is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 47 – MAY – MONEY HAD AND RECEIVED

325. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

326. The Park Owners have received money which they ought to refund to May.

327. The Park Owners received May's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of May's status as an elderly person.

328. The circumstances are such that the Park Owners should in all fairness be required to refund or return to May all or some part of the monies had and received by them.

329. May is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 48 – MAY - FDUPTA

330. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

331. This is an action pursuant to Fla. Stat. §501.211.

332. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

333. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive

acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

334. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

335. The Park Owners' unfair and deceptive acts and practices have caused May to suffer damages.

336. May is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 49 – OFFER – ACCOUNTING

337. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

338. Offer has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

339. Offer contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

340. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Offer, the amounts, if any, to which the Park Owners

are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Offer.

341. Offer is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Offer prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 50 – OFFER – UNJUST ENRICHMENT

342. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

343. Offer has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

344. The Park Owners knew of and voluntarily accepted those benefits.

345. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

346. Offer is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 51 – OFFER – MONEY HAD AND RECEIVED

347. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

348. The Park Owners have received money which they ought to refund to Offer.

349. The Park Owners received Offer's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Offer's status as an elderly person.

350. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Offer all or some part of the monies had and received by them.

351. Offer is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 52 – OFFER - FDUPTA

352. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

353. This is an action pursuant to Fla. Stat. §501.211.

354. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

355. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

356. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts

demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

357. The Park Owners' unfair and deceptive acts and practices have caused Offer to suffer damages.

358. Offer is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 53 – PARDO – ACCOUNTING

359. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

360. Pardo has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

361. Pardo contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

362. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Pardo, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Pardo.

363. Pardo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pardo prays the Court will order the Park Owners to furnish an

accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 54 – PARDO – UNJUST ENRICHMENT

364. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

365. Pardo has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

366. The Park Owners knew of and voluntarily accepted those benefits.

367. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

368. Pardo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 55 – PARDO – MONEY HAD AND RECEIVED

369. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

370. The Park Owners have received money which they ought to refund to Pardo.

371. The Park Owners received Pardo's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Pardo's status as an elderly person.

372. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Pardo all or some part of the monies had and received by them.

373. Pardo is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 56 – PARDO - FDUPTA

374. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

375. This is an action pursuant to Fla. Stat. §501.211.

376. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

377. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

378. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

379. The Park Owners' unfair and deceptive acts and practices have caused Pardo to

suffer damages.

380. Pardo is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 57 – JAMES – ACCOUNTING

381. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

382. James has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

383. James contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

384. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by James, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to James.

385. James is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, James prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 58 – JAMES – UNJUST ENRICHMENT

386. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

387. James has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

388. The Park Owners knew of and voluntarily accepted those benefits.

389. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

390. James is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 59 – JAMES – MONEY HAD AND RECEIVED

391. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

392. The Park Owners have received money which they ought to refund to James.

393. The Park Owners received James's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of James's status as an elderly person.

394. The circumstances are such that the Park Owners should in all fairness be required to refund or return to James all or some part of the monies had and received by them.

395. James is entitled to recover his reasonable attorneys' fees from the Park Owners

pursuant to Fla. Stat. §723.0861.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 60 – JAMES - FDUPTA

396. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

397. This is an action pursuant to Fla. Stat. §501.211.

398. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

399. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

400. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

401. The Park Owners' unfair and deceptive acts and practices have caused James to suffer damages.

402. James is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 61 – PASCO – ACCOUNTING

403. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

404. Pasco has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

405. Pasco contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

406. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Pasco, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Pasco.

407. Pasco is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pasco prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 62 – PASCO – UNJUST ENRICHMENT

408. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

409. Pasco has conferred a benefit upon the Park owners by the payment to them of

amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

410. The Park Owners knew of and voluntarily accepted those benefits.

411. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

412. Pasco is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 63 – PASCO – MONEY HAD AND RECEIVED

413. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

414. The Park Owners have received money which they ought to refund to Pasco.

415. The Park Owners received Pasco's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Pasco's status as an elderly person.

416. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Pasco all or some part of the monies had and received by them.

417. Pasco is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 64 – PASCO - FDUPTA

418. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

419. This is an action pursuant to Fla. Stat. §501.211.

420. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

421. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

422. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

423. The Park Owners' unfair and deceptive acts and practices have caused Pasco to suffer damages.

424. Pasco is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 65 – D. SMITH – ACCOUNTING

425. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

426. D. Smith has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

427. D. Smith contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

428. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by D. Smith, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to D. Smith.

429. D. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, D. Smith prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 66 – D. SMITH – UNJUST ENRICHMENT

430. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

431. D. Smith has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and

charges.

432. The Park Owners knew of and voluntarily accepted those benefits.

433. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

434. D. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 67 – D. SMITH – MONEY HAD AND RECEIVED

435. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

436. The Park Owners have received money which they ought to refund to D. Smith.

437. The Park Owners received D. Smith's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of D. Smith's status as an elderly person.

438. The circumstances are such that the Park Owners should in all fairness be required to refund or return to D. Smith all or some part of the monies had and received by them.

439. D. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 68 – D. SMITH - FDUPTA

440. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth

herein.

441. This is an action pursuant to Fla. Stat. §501.211.

442. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

443. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

444. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

445. The Park Owners' unfair and deceptive acts and practices have caused D. Smith to suffer damages.

446. D. Smith is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 69 – J. SMITH – ACCOUNTING

447. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

448. J. Smith has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

449. J. Smith contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

450. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by J. Smith, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to J. Smith.

451. J. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, J. Smith prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 70 – J. SMITH – UNJUST ENRICHMENT

452. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

453. J. Smith has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

454. The Park Owners knew of and voluntarily accepted those benefits.

455. The circumstances are such that it would be inequitable for the Park Owners to

retain those benefits.

456. J. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 71 – J. SMITH – MONEY HAD AND RECEIVED

457. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

458. The Park Owners have received money which they ought to refund to J. Smith.

459. The Park Owners received J. Smith's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of J. Smith's status as an elderly person.

460. The circumstances are such that the Park Owners should in all fairness be required to refund or return to J. Smith all or some part of the monies had and received by them.

461. J. Smith is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 72 – J. SMITH - FDUPTA

462. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

463. This is an action pursuant to Fla. Stat. §501.211.

464. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable

acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

465. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

466. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

467. The Park Owners' unfair and deceptive acts and practices have caused J. Smith to suffer damages.

468. J. Smith is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 73 – SYMONDS – ACCOUNTING

469. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

470. Symonds has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

471. Symonds contends that all or some portion of the amounts demanded, charged,

and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

472. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Symonds, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Symonds.

473. Symonds is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Symonds prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 74 – SYMONDS – UNJUST ENRICHMENT

474. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

475. Symonds has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

476. The Park Owners knew of and voluntarily accepted those benefits.

477. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

478. Symonds is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 75 – SYMONDS – MONEY HAD AND RECEIVED

479. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

480. The Park Owners have received money which they ought to refund to Symonds.

481. The Park Owners received Symonds's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Symonds's status as an elderly person.

482. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Symonds all or some part of the monies had and received by them.

483. Symonds is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 76 – SYMONDS - FDUPTA

484. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

485. This is an action pursuant to Fla. Stat. §501.211.

486. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

487. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park

Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

488. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

489. The Park Owners' unfair and deceptive acts and practices have caused Symonds to suffer damages.

490. Symonds is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 77 – TATRO – ACCOUNTING

491. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

492. Tatro has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

493. Tatro contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

494. Due to the nature and volume of the transactions, an accounting is necessary to

accurately determine the amounts paid by Tatro, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Tatro.

495. Tatro is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Tatro prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 78 – TATRO – UNJUST ENRICHMENT

496. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

497. Tatro has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

498. The Park Owners knew of and voluntarily accepted those benefits.

499. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

500. Tatro is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Tatro demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 79 – TATRO – MONEY HAD AND RECEIVED

501. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth

herein.

502. The Park Owners have received money which they ought to refund to Tatro. The Park Owners received Tatro's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Tatro's status as an elderly person.

503. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Tatro all or some part of the monies had and received by them.

504. Tatro is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Tatro demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 80 – TATRO - FDUPTA

505. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

506. This is an action pursuant to Fla. Stat. §501.211.

507. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

508. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

509. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts

demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

510. The Park Owners' unfair and deceptive acts and practices have caused Tatro to suffer damages.

511. Tatro is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Tatro demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 81 – TAYLOR – ACCOUNTING

512. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

513. Taylor has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

514. Taylor contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

515. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Taylor, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Taylor.

516. Taylor is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Taylor prays the Court will order the Park Owners to furnish an

accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 82 – TAYLOR – UNJUST ENRICHMENT

517. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

518. Taylor has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

519. The Park Owners knew of and voluntarily accepted those benefits.

520. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

521. Taylor is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Taylor demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 83 – TAYLOR – MONEY HAD AND RECEIVED

522. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

523. The Park Owners have received money which they ought to refund to Taylor.

524. The Park Owners received Taylor's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Taylor's status as an

elderly person.

525. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Taylor all or some part of the monies had and received by them.

526. Taylor is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Taylor demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 84 – TAYLOR - FDUPTA

527. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

528. This is an action pursuant to Fla. Stat. §501.211.

529. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

530. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

531. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

532. The Park Owners' unfair and deceptive acts and practices have caused Taylor to suffer damages.

533. Taylor is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Taylor demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 85 – VARSALONE – ACCOUNTING

534. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

535. Varsalone has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

536. Varsalone contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

537. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Varsalone, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Varsalone.

538. Varsalone is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Varsalone prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable

relief as the Court deems just and proper under the circumstances.

COUNT 86 – VARSALONE – UNJUST ENRICHMENT

539. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

540. Varsalone has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

541. The Park Owners knew of and voluntarily accepted those benefits.

542. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

543. Varsalone is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 87 – VARSALONE – MONEY HAD AND RECEIVED

544. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

545. The Park Owners have received money which they ought to refund to Varsalone.

546. The Park Owners received Varsalone's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Varsalone's status as an elderly person.

547. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Varsalone all or some part of the monies had and received by

them.

548. Varsalone is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 88 – VARSALONE - FDUPTA

549. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

550. This is an action pursuant to Fla. Stat. §501.211.

551. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

552. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

553. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

554. The Park Owners' unfair and deceptive acts and practices have caused Varsalone to suffer damages.

555. Varsalone is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 89 – DUDLEY – ACCOUNTING

556. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

557. Dudley has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

558. Dudley contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

559. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Dudley, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Dudley.

560. Dudley is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Dudley prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 90 – DUDLEY – UNJUST ENRICHMENT

561. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth

herein.

562. Dudley has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

563. The Park Owners knew of and voluntarily accepted those benefits.

564. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

565. Dudley is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Dudley demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 91 – DUDLEY – MONEY HAD AND RECEIVED

566. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

567. The Park Owners have received money which they ought to refund to Dudley.

568. The Park Owners received Dudley's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Dudley's status as an elderly person.

569. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Dudley all or some part of the monies had and received by them.

570. Dudley is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Dudley demands judgment against the Park Owners for damages, with

prejudgment interest, and attorneys' fees and costs.

COUNT 92 – DUDLEY - FDUPTA

571. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

572. This is an action pursuant to Fla. Stat. §501.211.

573. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

574. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

575. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

576. The Park Owners' unfair and deceptive acts and practices have caused Dudley to suffer damages.

577. Dudley is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Dudley demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 93 – VALK – ACCOUNTING

578. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

579. Valk has paid to the Park Owners some or all of the amounts demanded by them for "lot rental," "maintenance fees," and other fees and charges.

580. Valk contends that all or some portion of the amounts demanded, charged, and collected from him by the Park Owners is or was not authorized by law or by any agreement between them.

581. Due to the nature and volume of the transactions, an accounting is necessary to accurately determine the amounts paid by Valk, the amounts, if any, to which the Park Owners are or may be lawfully entitled, and the amounts, if any, that ought to be refunded to Valk.

582. Valk is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Valk prays the Court will order the Park Owners to furnish an accounting of all amounts paid on his account over a time period to be determined by the Court, award him his reasonable attorneys' fees and costs, and grant such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 94 – VALK – UNJUST ENRICHMENT

583. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

584. Valk has conferred a benefit upon the Park owners by the payment to them of amounts demanded and charged by them for "lot rental," "maintenance fees," and other fees and charges.

585. The Park Owners knew of and voluntarily accepted those benefits.

586. The circumstances are such that it would be inequitable for the Park Owners to retain those benefits.

587. Valk is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Valk demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 95 – VALK – MONEY HAD AND RECEIVED

588. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

589. The Park Owners have received money which they ought to refund to Valk.

590. The Park Owners received Valk's money through imposition, coercion, unlawful demands, threats and intimidation, and by taking advantage of Valk's status as an elderly person.

591. The circumstances are such that the Park Owners should in all fairness be required to refund or return to Valk all or some part of the monies had and received by them.

592. Valk is entitled to recover his reasonable attorneys' fees from the Park Owners pursuant to Fla. Stat. §723.0861.

WHEREFORE, Valk demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 96 – VALK - FDUPTA

593. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

594. This is an action pursuant to Fla. Stat. §501.211.

595. Pursuant to Fla. Stat. §501.204(1), unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

596. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have engaged in deceptive acts and unfair practices in violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. §§501.201 et seq.

597. These unfair and deceptive acts and practices were likely to mislead Lot Owners acting reasonably under the circumstances to believe that they were obligated to pay the amounts demanded and charged by the Park Owners for "lot rental," "maintenance fees," and other fees and charges, even in the absence of any lawful basis upon which to demand and collect such amounts from the Lot Owners.

598. The Park Owners' unfair and deceptive acts and practices have caused Valk to suffer damages.

599. Valk is entitled to recover damages, plus reasonable attorneys' fees and costs, pursuant to Fla. Stat. §501.211(2) and Fla. Stat. §501.2105.

WHEREFORE, Valk demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 97 – SCHWOB – SLANDER OF TITLE

600. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

601. On or about November 10, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Schwob's homestead property, as

reflected in the instrument recorded at O.R. Book 9283, Page 2624, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 31.**

602. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Schwob's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 970, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 32.**

603. These are falsehoods because there is no legal basis for the claims of lien against Schwob's property, and as such, the disparaging statements are not true in fact.

604. There is no legal basis for a lien against Schwob's property created by any judgment against Schwob.

605. There is no legal basis for a lien against Schwob's property created by equity.

606. There is no legal basis for a lien against Schwob's property created by contract or agreement between the Park Owners and Schwob.

607. There is no legal basis for a lien against Schwob's property created by statute.

608. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Schwob by the Park or the Park Owners.

609. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Schwob by the Park or the Park Owners.

610. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

611. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Schwob.

612. In fact, the falsehoods do play a material and substantial part in inducing others

not to deal with Schwob.

613. The purported liens constitute a cloud upon the title of Schwob's residence.

614. As a result of the Park Owners' false recording of their claims of lien, Schwob has sustained actual damages.

615. As a result of the Park Owners' false recording of their claims of lien, Schwob has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 98 – SCHWOB – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

616. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

617. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

618. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

619. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

620. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

621. The Park Owners knew or should have known the liens were fraudulent.

622. The liens constitute a cloud upon the title to the property.

623. As a result of the Park Owners' wrongful recording of their claim of liens, Schwob has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

624. Pursuant to Fla. Stat. §713.31(c), Schwob is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 99 – SCHWOB – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

625. Schwob re-alleges Paragraphs 1 through 54 as though fully set forth herein.

626. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

627. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

628. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

629. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it

deems necessary or proper, including enjoining the defendant from further violations of this part."

630. Schwob has been aggrieved by the Park Owners' violations of FCCPA.

631. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Schwob.

WHEREFORE, Schwob prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 100 – SCHWOB – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

632. Schwob re-alleges Paragraphs 1 through 2 and 25 through 50 as though fully set forth herein.

633. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

634. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Schwob.

635. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Schwob's homestead property, with knowledge that there is no authority or basis to file such claims.

636. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Schwob with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

637. The Park Owners sent a letter to Schwob dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Schwob received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Schwob to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

638. The Park Owners have threatened Schwob with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

639. Schwob has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

640. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

641. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Schwob is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Schwob is elderly and on a fixed income. The actions of the Park

Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Schwob.

642. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Schwob. The Park Owners represented that they had actual or apparent authority over Schwob and the power to affect Schwob's interests.

643. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Schwob The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

644. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Schwob's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Schwob.

645. The Park Owners' conduct has caused Schwob emotional distress.

646. The emotional distress Schwob suffered was severe.

WHEREFORE, Schwob demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 101 – BIRT – SLANDER OF TITLE

647. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

648. On or about March 18, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Birt's property, as reflected in the instrument recorded at O.R. Book 9162, Page 3531, Official Records of Pasco County, Florida, a

true and correct copy of which is attached hereto as **Exhibit 34.**

649. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Birt's property, as reflected in the instrument recorded at O.R. Book 9380, Page 950, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 35.**

650. These are falsehoods because there is no legal basis for the claims of lien against Birt's property, and as such, the disparaging statements are not true in fact.

651. There is no legal basis for a lien against Birt's property created by any judgment against Birt.

652. There is no legal basis for a lien against Birt's property created by equity.

653. There is no legal basis for a lien against Birt's property created by contract or agreement between the Park Owners and Birt.

654. There is no legal basis for a lien against Birt's property created by statute.

655. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Birt by the Park or the Park Owners.

656. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Birt by the Park or the Park Owners.

657. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

658. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Birt.

659. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Birt.

660. The purported liens constitute a cloud upon the title of Birt's residence.

661. As a result of the Park Owners' false recording of their claims of lien, Birt has sustained actual damages.

662. As a result of the Park Owners' false recording of their claims of lien, Birt has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 102 – BIRT – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

663. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

664. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

665. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

666. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

667. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

668. The Park Owners knew or should have known the liens were fraudulent.

669. The liens constitute a cloud upon the title to the property.

670. As a result of the Park Owners' wrongful recording of their claim of liens, Birt

has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

671. Pursuant to Fla. Stat. §713.31(c), Birt is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 103 – BIRT – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

672. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

673. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

674. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

675. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

676. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

677. Birt has been aggrieved by the Park Owners' violations of FCCPA.

678. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Birt.

WHEREFORE, Birt prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 104 – BIRT – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

679. Birt re-alleges Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

680. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

681. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Birt.

682. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Birt's property, with knowledge that there is no authority or basis to file such claims.

683. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Birt with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous

because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

684. The Park Owners sent a letter to Birt dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Birt received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Birt to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

685. The Park Owners have threatened Birt with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

686. Birt has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

687. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

688. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Birt is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Birt is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Birt.

689. The actions of the Park Owners, directly or indirectly through their employees

and agents, were outrageous because the Park Owners used their position of power over Birt. The Park Owners represented that they had actual or apparent authority over Birt and the power to affect Birt's interests.

690. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Birt The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

691. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Birt's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Birt.

692. The Park Owners' conduct has caused Birt emotional distress.

693. The emotional distress Birt suffered was severe.

WHEREFORE, Birt demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 105 – F. BROWN – SLANDER OF TITLE

694. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

695. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on F. Brown's property, as reflected in the instrument recorded at O.R. Book 9250, Page 3793, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 36.**

696. On June 9, 2016, the Park Owners, by and through James Goss, recorded or

caused to be recorded a false claim of lien on F. Brown's property, as reflected in the instrument recorded at O.R. Book 9380, Page 964, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 37.**

697. These are falsehoods because there is no legal basis for the claims of lien against F. Brown's property, and as such, the disparaging statements are not true in fact.

698. There is no legal basis for a lien against F. Brown's property created by any judgment against F. Brown.

699. There is no legal basis for a lien against F. Brown's property created by equity.

700. There is no legal basis for a lien against F. Brown's property created by contract or agreement between the Park Owners and F. Brown.

701. There is no legal basis for a lien against F. Brown's property created by statute.

702. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of F. Brown by the Park or the Park Owners.

703. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of F. Brown by the Park or the Park Owners.

704. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

705. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with F. Brown.

706. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with F. Brown.

707. The purported liens constitute a cloud upon the title of F. Brown's residence.

708. As a result of the Park Owners' false recording of their claims of lien, F. Brown

has sustained actual damages.

709. As a result of the Park Owners' false recording of their claims of lien, F. Brown has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 106 – F. BROWN – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

710. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

711. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

712. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

713. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

714. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

715. The Park Owners knew or should have known the liens were fraudulent.

716. The liens constitute a cloud upon the title to the property.

717. As a result of the Park Owners' wrongful recording of their claim of liens, F. Brown has sustained damages, including, but not limited to reasonable attorney fees and costs

incurred to remove the clouds upon the title.

718. Pursuant to Fla. Stat. §713.31(c), F. Brown is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 107 – F. BROWN – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

719. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

720. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

721. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

722. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

723. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

724. F. Brown has been aggrieved by the Park Owners' violations of FCCPA.

725. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to F. Brown.

WHEREFORE, F. Brown prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 108 – F. BROWN – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

726. F. Brown re-alleges Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

727. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

728. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from F. Brown.

729. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against F. Brown's property, with knowledge that there is no authority or basis to file such claims.

730. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened F. Brown with eviction from his own property, with knowledge that there

is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

731. The Park Owners sent a letter to F. Brown dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. F. Brown received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce F. Brown to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

732. The Park Owners have threatened F. Brown with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

733. F. Brown has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

734. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

735. The Park Owners, directly or indirectly through their employees and agents, had knowledge that F. Brown is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and F. Brown is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of F. Brown.

736. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over F. Brown. The Park Owners represented that they had actual or apparent authority over F. Brown and the power to affect F. Brown's interests.

737. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from F. Brown The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

738. On multiple occasions, the Park Owners, their agents or employees, have deliberately put F. Brown's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to F. Brown.

739. The Park Owners' conduct has caused F. Brown emotional distress.

740. The emotional distress F. Brown suffered was severe.

WHEREFORE, F. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 109 – P. BROWN – SLANDER OF TITLE

741. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

742. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on P. Brown's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3796, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 38.**

743. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on P. Brown's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 967, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 39.**

744. These are falsehoods because there is no legal basis for the claims of lien against P. Brown's property, and as such, the disparaging statements are not true in fact.

745. There is no legal basis for a lien against P. Brown's property created by any judgment against P. Brown.

746. There is no legal basis for a lien against P. Brown's property created by equity.

747. There is no legal basis for a lien against P. Brown's property created by contract or agreement between the Park Owners and P. Brown.

748. There is no legal basis for a lien against P. Brown's property created by statute.

749. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of P. Brown by the Park or the Park Owners.

750. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of P. Brown by the Park or the Park Owners.

751. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

752. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with P. Brown.

753. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with P. Brown.

754. The purported liens constitute a cloud upon the title of P. Brown's residence.

755. As a result of the Park Owners' false recording of their claims of lien, P. Brown has sustained actual damages.

756. As a result of the Park Owners' false recording of their claims of lien, P. Brown has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 110 – P. BROWN – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

757. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

758. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

759. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

760. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

761. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

762. The Park Owners knew or should have known the liens were fraudulent.

763. The liens constitute a cloud upon the title to the property.

764. As a result of the Park Owners' wrongful recording of their claim of liens, P.

Brown has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

765. Pursuant to Fla. Stat. §713.31(c), P. Brown is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 111 – P. BROWN – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

766. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

767. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

768. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

769. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

770. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this

part."

771. P. Brown has been aggrieved by the Park Owners' violations of FCCPA.

772. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to P. Brown.

WHEREFORE, P. Brown prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 112 – P. BROWN – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

773. P. Brown re-alleges Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

774. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

775. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from P. Brown.

776. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against P. Brown's homestead property, with knowledge that there is no authority or basis to file such claims.

777. The Park Owners, directly or indirectly through their employees and agents, have

repeatedly threatened P. Brown with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

778. The Park Owners sent a letter to P. Brown dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. P. Brown received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce P. Brown to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

779. The Park Owners have threatened P. Brown with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

780. P. Brown has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

781. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

782. The Park Owners, directly or indirectly through their employees and agents, had knowledge that P. Brown is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and P. Brown is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take

advantage of the vulnerability of P. Brown.

783. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over P. Brown. The Park Owners represented that they had actual or apparent authority over P. Brown and the power to affect P. Brown's interests.

784. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from P. Brown The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

785. On multiple occasions, the Park Owners, their agents or employees, have deliberately put P. Brown's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to P. Brown.

786. The Park Owners' conduct has caused P. Brown emotional distress.

787. The emotional distress P. Brown suffered was severe.

WHEREFORE, P. Brown demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 113 – COSMO – SLANDER OF TITLE

788. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

789. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Cosmo's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3787, Official Records of Pasco

County, Florida, a true and correct copy of which is attached hereto as **Exhibit 40.**

790. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Cosmo's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 958, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 41.**

791. These are falsehoods because there is no legal basis for the claims of lien against Cosmo's property, and as such, the disparaging statements are not true in fact.

792. There is no legal basis for a lien against Cosmo's property created by any judgment against Cosmo.

793. There is no legal basis for a lien against Cosmo's property created by equity.

794. There is no legal basis for a lien against Cosmo's property created by contract or agreement between the Park Owners and Cosmo.

795. There is no legal basis for a lien against Cosmo's property created by statute.

796. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Cosmo by the Park or the Park Owners.

797. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Cosmo by the Park or the Park Owners.

798. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

799. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Cosmo.

800. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Cosmo.

801. The purported liens constitute a cloud upon the title of Cosmo's residence.

802. As a result of the Park Owners' false recording of their claims of lien, Cosmo has sustained actual damages.

803. As a result of the Park Owners' false recording of their claims of lien, Cosmo has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 114 – COSMO – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

804. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

805. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

806. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

807. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

808. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

809. The Park Owners knew or should have known the liens were fraudulent.

810. The liens constitute a cloud upon the title to the property.

811. As a result of the Park Owners' wrongful recording of their claim of liens, Cosmo has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

812. Pursuant to Fla. Stat. §713.31(c), Cosmo is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 115 – COSMO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

813. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

814. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

815. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

816. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

817. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it

deems necessary or proper, including enjoining the defendant from further violations of this part."

818. Cosmo has been aggrieved by the Park Owners' violations of FCCPA.

819. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Cosmo.

WHEREFORE, Cosmo prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 116 – COSMO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

820. Cosmo re-alleges Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

821. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

822. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Cosmo.

823. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Cosmo's homestead property, with knowledge that there is no authority or basis to file such claims.

824. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Cosmo with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

825. The Park Owners sent a letter to Cosmo dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Cosmo received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Cosmo to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

826. The Park Owners have threatened Cosmo with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

827. Cosmo has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

828. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

829. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Cosmo is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Cosmo is elderly and on a fixed income. The actions of the Park Owners,

directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Cosmo.

830. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Cosmo. The Park Owners represented that they had actual or apparent authority over Cosmo and the power to affect Cosmo's interests.

831. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Cosmo The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

832. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Cosmo's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Cosmo.

833. The Park Owners' conduct has caused Cosmo emotional distress.

834. The emotional distress Cosmo suffered was severe.

WHEREFORE, Cosmo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 117 – CUMMINGS – SLANDER OF TITLE

835. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

836. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Cummings' homestead property, as

reflected in the instrument recorded at O.R. Book 9250, Page 3784, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 42.**

837. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Cummings' homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 955, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 43.**

838. These are falsehoods because there is no legal basis for the claims of lien against Cummings' property, and as such, the disparaging statements are not true in fact.

839. There is no legal basis for a lien against Cummings' property created by any judgment against Cummings.

840. There is no legal basis for a lien against Cummings' property created by equity.

841. There is no legal basis for a lien against Cummings' property created by contract or agreement between the Park Owners and Cummings.

842. There is no legal basis for a lien against Cummings' property created by statute.

843. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Cummings by the Park or the Park Owners.

844. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Cummings by the Park or the Park Owners.

845. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

846. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Cummings.

847. In fact, the falsehoods do play a material and substantial part in inducing others

not to deal with Cummings.

848. The purported liens constitute a cloud upon the title of Cummings' residence.

849. As a result of the Park Owners' false recording of their claims of lien, Cummings has sustained actual damages.

850. As a result of the Park Owners' false recording of their claims of lien, Cummings has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 118 – CUMMINGS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

851. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

852. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

853. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

854. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

855. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

856. The Park Owners knew or should have known the liens were fraudulent.

857. The liens constitute a cloud upon the title to the property.

858. As a result of the Park Owners' wrongful recording of their claim of liens, Cummings has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

859. Pursuant to Fla. Stat. §713.31(c), Cummings is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 119 – CUMMINGS – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

860. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

861. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

862. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

863. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

864. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the

plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

865. Cummings has been aggrieved by the Park Owners' violations of FCCPA.

866. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Cummings.

WHEREFORE, Cummings prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 120 – CUMMINGS – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

867. Cummings re-alleges Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

868. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

869. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Cummings.

870. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Cummings' homestead property, with knowledge that there is no

authority or basis to file such claims.

871. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Cummings with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

872. The Park Owners sent a letter to Cummings dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Cummings received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Cummings to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

873. The Park Owners have threatened Cummings with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

874. Cummings has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

875. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

876. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Cummings is peculiarly susceptible to emotional distress. Palm Tree Acres is a

"Retirement Park" and Cummings is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Cummings.

877. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Cummings. The Park Owners represented that they had actual or apparent authority over Cummings and the power to affect Cummings' interests.

878. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Cummings The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

879. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Cummings' health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Cummings.

880. The Park Owners' conduct has caused Cummings emotional distress.

881. The emotional distress Cummings suffered was severe.

WHEREFORE, Cummings demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 121 – DUDLEY – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

882. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

883. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive

relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

884. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

885. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

886. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

887. Dudley has been aggrieved by the Park Owners' violations of FCCPA.

888. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Dudley.

WHEREFORE, Dudley prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77

(2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 122 – DUDLEY – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

889. Dudley re-alleges Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

890. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

891. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Dudley.

892. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Dudley with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

893. The Park Owners sent a letter to Dudley dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Dudley received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Dudley to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

894. The Park Owners have threatened Dudley with filing illegal trespassing charges.

The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

895. Dudley has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

896. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

897. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Dudley is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Dudley is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Dudley.

898. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Dudley. The Park Owners represented that they had actual or apparent authority over Dudley and the power to affect Dudley's interests.

899. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Dudley The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

900. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Dudley's health at risk by intentionally not delivering mandatory "Boil Water

Notices" or notices of water shutoffs to Dudley.

901. The Park Owners' conduct has caused Dudley emotional distress.

902. The emotional distress Dudley suffered was severe.

WHEREFORE, Dudley demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 123 – FLEMING – SLANDER OF TITLE

903. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

904. On or about March 8, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Fleming's homestead property, as reflected in the instrument recorded at O.R. Book 9162, Page 3530, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 44.**

905. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Fleming's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 951, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 45.**

906. These are falsehoods because there is no legal basis for the claims of lien against Fleming's property, and as such, the disparaging statements are not true in fact.

907. There is no legal basis for a lien against Fleming's property created by any judgment against Fleming.

908. There is no legal basis for a lien against Fleming's property created by equity.

909. There is no legal basis for a lien against Fleming's property created by contract or agreement between the Park Owners and Fleming.

910. There is no legal basis for a lien against Fleming's property created by statute.

911. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Fleming by the Park or the Park Owners.

912. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Fleming by the Park or the Park Owners.

913. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

914. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Fleming.

915. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Fleming.

916. The purported liens constitute a cloud upon the title of Fleming's residence.

917. As a result of the Park Owners' false recording of their claims of lien, Fleming has sustained actual damages.

918. As a result of the Park Owners' false recording of their claims of lien, Fleming has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 124 – FLEMING – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

919. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

920. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida

Statutes.

921. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

922. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

923. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

924. The Park Owners knew or should have known the liens were fraudulent.

925. The liens constitute a cloud upon the title to the property.

926. As a result of the Park Owners' wrongful recording of their claim of liens, Fleming has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

927. Pursuant to Fla. Stat. §713.31(c), Fleming is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 125 – FLEMING – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

928. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

929. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act

("FCCPA"), Fla. Stat. § 559.55 et seq.

930. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

931. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

932. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

933. Fleming has been aggrieved by the Park Owners' violations of FCCPA.

934. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Fleming.

WHEREFORE, Fleming prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 126 – FLEMING – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

935. Fleming re-alleges Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

936. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

937. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Fleming.

938. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Fleming's homestead property, with knowledge that there is no authority or basis to file such claims.

939. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Fleming with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

940. The Park Owners sent a letter to Fleming dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Fleming received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Fleming to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

941. The Park Owners have threatened Fleming with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

942. Fleming has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

943. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

944. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Fleming is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Fleming is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Fleming.

945. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Fleming. The Park Owners represented that they had actual or apparent authority over Fleming and the power to affect Fleming's interests.

946. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Fleming The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

947. On multiple occasions, the Park Owners, their agents or employees, have

deliberately put Fleming's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Fleming.

948. The Park Owners' conduct has caused Fleming emotional distress.

949. The emotional distress Fleming suffered was severe.

WHEREFORE, Fleming demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 127 – GERVAIS – SLANDER OF TITLE

950. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

951. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Gervais's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3794, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 46.**

952. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Gervais's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 965, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 47.**

953. On or about September 25, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Gervais's property, as reflected in the instrument recorded at O.R. Book 9250, Page 3797, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 48.**

954. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Gervais's property, as reflected in the instrument

recorded at O.R. Book 9380, Page 968, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 49.**

955. These are falsehoods because there is no legal basis for the claims of lien against Gervais's property, and as such, the disparaging statements are not true in fact.

956. There is no legal basis for a lien against Gervais's property created by any judgment against Gervais.

957. There is no legal basis for a lien against Gervais's property created by equity.

958. There is no legal basis for a lien against Gervais's property created by contract or agreement between the Park Owners and Gervais.

959. There is no legal basis for a lien against Gervais's property created by statute.

960. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Gervais by the Park or the Park Owners.

961. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Gervais by the Park or the Park Owners.

962. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

963. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Gervais.

964. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Gervais.

965. The purported liens constitute a cloud upon the title of Gervais's residence.

966. As a result of the Park Owners' false recording of their claims of lien, Gervais has sustained actual damages.

967. As a result of the Park Owners' false recording of their claims of lien, Gervais has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 128 – GERVAIS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

968. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

969. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

970. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

971. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

972. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

973. The Park Owners knew or should have known the liens were fraudulent.

974. The liens constitute a cloud upon the title to the property.

975. As a result of the Park Owners' wrongful recording of their claim of liens, Gervais has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

976. Pursuant to Fla. Stat. §713.31(c), Gervais is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 129 – GERVAIS – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

977. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

978. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

979. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

980. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

981. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

982. Gervais has been aggrieved by the Park Owners' violations of FCCPA.

983. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Gervais.

WHEREFORE, Gervais prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 130 – GERVAIS – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

984. Gervais re-alleges Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

985. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

986. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Gervais.

987. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Gervais's homestead property, with knowledge that there is no authority or basis to file such claims.

988. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Gervais with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous

because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

989. The Park Owners sent a letter to Gervais dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Gervais received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Gervais to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

990. The Park Owners have threatened Gervais with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

991. Gervais has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

992. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

993. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Gervais is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Gervais is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Gervais.

994. The actions of the Park Owners, directly or indirectly through their employees

and agents, were outrageous because the Park Owners used their position of power over Gervais. The Park Owners represented that they had actual or apparent authority over Gervais and the power to affect Gervais's interests.

995. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Gervais The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

996. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Gervais's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Gervais.

997. The Park Owners' conduct has caused Gervais emotional distress.

998. The emotional distress Gervais suffered was severe.

WHEREFORE, Gervais demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 131 – GIERSCHKE – SLANDER OF TITLE

999. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1000. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Gierschke's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3791, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 50.**

1001. On June 9, 2016, the Park Owners, by and through James Goss, recorded or

caused to be recorded a false claim of lien on Gierschke's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 962, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 51.**

1002. These are falsehoods because there is no legal basis for the claims of lien against Gierschke's property, and as such, the disparaging statements are not true in fact.

1003. There is no legal basis for a lien against Gierschke's property created by any judgment against Gierschke.

1004. There is no legal basis for a lien against Gierschke's property created by equity.

1005. There is no legal basis for a lien against Gierschke's property created by contract or agreement between the Park Owners and Gierschke.

1006. There is no legal basis for a lien against Gierschke's property created by statute.

1007. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Gierschke by the Park or the Park Owners.

1008. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Gierschke by the Park or the Park Owners.

1009. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1010. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Gierschke.

1011. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Gierschke.

1012. The purported liens constitute a cloud upon the title of Gierschke's residence.

1013. As a result of the Park Owners' false recording of their claims of lien, Gierschke

has sustained actual damages.

1014. As a result of the Park Owners' false recording of their claims of lien, Gierschke has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 132 – GIERSCHKE – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1015. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1016. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1017. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1018. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1019. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1020. The Park Owners knew or should have known the liens were fraudulent.

1021. The liens constitute a cloud upon the title to the property.

1022. As a result of the Park Owners' wrongful recording of their claim of liens, Gierschke has sustained damages, including, but not limited to reasonable attorney fees and costs

incurred to remove the clouds upon the title.

1023. Pursuant to Fla. Stat. §713.31(c), Gierschke is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 133 – GIERSCHKE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1024. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1025. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1026. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1027. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1028. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1029. Gierschke has been aggrieved by the Park Owners' violations of FCCPA.

1030. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Gierschke.

WHEREFORE, Gierschke prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 134 – GIERSCHKE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1031. Gierschke re-alleges Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1032. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1033. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Gierschke.

1034. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Gierschke's homestead property, with knowledge that there is no authority or basis to file such claims.

1035. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Gierschke with eviction from his own property, with knowledge that there

is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1036. The Park Owners sent a letter to Gierschke dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Gierschke received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Gierschke to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1037. The Park Owners have threatened Gierschke with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1038. Gierschke has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1039. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1040. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Gierschke is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Gierschke is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Gierschke.

1041. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Gierschke. The Park Owners represented that they had actual or apparent authority over Gierschke and the power to affect Gierschke's interests.

1042. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Gierschke The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1043. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Gierschke's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Gierschke.

1044. The Park Owners' conduct has caused Gierschke emotional distress.

1045. The emotional distress Gierschke suffered was severe.

WHEREFORE, Gierschke demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 135 – LePAGE – SLANDER OF TITLE

1046. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1047. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on LePage's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3792, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 52.**

1048. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on LePage's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 963, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 53.**

1049. These are falsehoods because there is no legal basis for the claims of lien against LePage's property, and as such, the disparaging statements are not true in fact.

1050. There is no legal basis for a lien against LePage's property created by any judgment against LePage.

1051. There is no legal basis for a lien against LePage's property created by equity.

1052. There is no legal basis for a lien against LePage's property created by contract or agreement between the Park Owners and LePage.

1053. There is no legal basis for a lien against LePage's property created by statute.

1054. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of LePage by the Park or the Park Owners.

1055. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of LePage by the Park or the Park Owners.

1056. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1057. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with LePage.

1058. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with LePage.

1059. The purported liens constitute a cloud upon the title of LePage's residence.

1060. As a result of the Park Owners' false recording of their claims of lien, LePage has sustained actual damages.

1061. As a result of the Park Owners' false recording of their claims of lien, LePage has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 136 – LePAGE – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1062. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1063. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1064. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1065. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1066. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1067. The Park Owners knew or should have known the liens were fraudulent.

1068. The liens constitute a cloud upon the title to the property.

1069. As a result of the Park Owners' wrongful recording of their claim of liens, LePage

has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1070. Pursuant to Fla. Stat. §713.31(c), LePage is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 137 – LePAGE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1071. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1072. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1073. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1074. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1075. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this

part."

1076. LePage has been aggrieved by the Park Owners' violations of FCCPA.

1077. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to LePage.

WHEREFORE, LePage prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 138 – LePAGE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1078. LePage re-alleges Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1079. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1080. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from LePage.

1081. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against LePage's homestead property, with knowledge that there is no authority or basis to file such claims.

1082. The Park Owners, directly or indirectly through their employees and agents, have

repeatedly threatened LePage with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1083. The Park Owners sent a letter to LePage dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. LePage received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce LePage to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1084. The Park Owners have threatened LePage with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1085. LePage has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1086. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1087. The Park Owners, directly or indirectly through their employees and agents, had knowledge that LePage is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and LePage is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take

advantage of the vulnerability of LePage.

1088. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over LePage. The Park Owners represented that they had actual or apparent authority over LePage and the power to affect LePage's interests.

1089. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from LePage The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1090. On multiple occasions, the Park Owners, their agents or employees, have deliberately put LePage's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to LePage.

1091. The Park Owners' conduct has caused LePage emotional distress.

1092. The emotional distress LePage suffered was severe.

WHEREFORE, LePage demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 139 – MAY – SLANDER OF TITLE

1093. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1094. On or about March 18, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on May's homestead property, as reflected in the instrument recorded at O.R. Book 9162, Page 3533, Official Records of Pasco County,

Florida, a true and correct copy of which is attached hereto as **Exhibit 54.**

1095. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on May's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 948, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 55.**

1096. These are falsehoods because there is no legal basis for the claims of lien against May's property, and as such, the disparaging statements are not true in fact.

1097. There is no legal basis for a lien against May's property created by any judgment against May.

1098. There is no legal basis for a lien against May's property created by equity.

1099. There is no legal basis for a lien against May's property created by contract or agreement between the Park Owners and May.

1100. There is no legal basis for a lien against May's property created by statute.

1101. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of May by the Park or the Park Owners.

1102. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of May by the Park or the Park Owners.

1103. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1104. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with May.

1105. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with May.

1106. The purported liens constitute a cloud upon the title of May's residence.

1107. As a result of the Park Owners' false recording of their claims of lien, May has sustained actual damages.

1108. As a result of the Park Owners' false recording of their claims of lien, May has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 140 – MAY – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1109. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1110. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1111. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1112. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1113. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1114. The Park Owners knew or should have known the liens were fraudulent.

1115. The liens constitute a cloud upon the title to the property.

1116. As a result of the Park Owners' wrongful recording of their claim of liens, May has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1117. Pursuant to Fla. Stat. §713.31(c), May is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 141 – MAY – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1118. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1119. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1120. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1121. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1122. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it

deems necessary or proper, including enjoining the defendant from further violations of this part."

1123. May has been aggrieved by the Park Owners' violations of FCCPA.

1124. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to May.

WHEREFORE, May prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 142 – MAY – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1125. May re-alleges Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1126. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1127. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from May.

1128. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against May's homestead property, with knowledge that there is no authority or basis to file such claims.

1129. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened May with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1130. The Park Owners sent a letter to May dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. May received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce May to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1131. The Park Owners have threatened May with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1132. May has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1133. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1134. The Park Owners, directly or indirectly through their employees and agents, had knowledge that May is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and May is elderly and on a fixed income. The actions of the Park Owners,

directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of May.

1135. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over May. The Park Owners represented that they had actual or apparent authority over May and the power to affect May's interests.

1136. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from May The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1137. On multiple occasions, the Park Owners, their agents or employees, have deliberately put May's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to May.

1138. The Park Owners' conduct has caused May emotional distress.

1139. The emotional distress May suffered was severe.

WHEREFORE, May demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 143 – OFFER – SLANDER OF TITLE

1140. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1141. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Offer's homestead property, as

reflected in the instrument recorded at O.R. Book 9250, Page 3788, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 56.**

1142. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Offer's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 959, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 57.**

1143. These are falsehoods because there is no legal basis for the claims of lien against Offer's property, and as such, the disparaging statements are not true in fact.

1144. There is no legal basis for a lien against Offer's property created by any judgment against Offer.

1145. There is no legal basis for a lien against Offer's property created by equity.

1146. There is no legal basis for a lien against Offer's property created by contract or agreement between the Park Owners and Offer.

1147. There is no legal basis for a lien against Offer's property created by statute.

1148. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Offer by the Park or the Park Owners.

1149. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Offer by the Park or the Park Owners.

1150. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1151. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Offer.

1152. In fact, the falsehoods do play a material and substantial part in inducing others

not to deal with Offer.

1153. The purported liens constitute a cloud upon the title of Offer's residence.

1154. As a result of the Park Owners' false recording of their claims of lien, Offer has sustained actual damages.

1155. As a result of the Park Owners' false recording of their claims of lien, Offer has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 144 – OFFER – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1156. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1157. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1158. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1159. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1160. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1161. The Park Owners knew or should have known the liens were fraudulent.

1162. The liens constitute a cloud upon the title to the property.

1163. As a result of the Park Owners' wrongful recording of their claim of liens, Offer has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1164. Pursuant to Fla. Stat. §713.31(c), Offer is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 145 – OFFER – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1165. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1166. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1167. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1168. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1169. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the

plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1170. Offer has been aggrieved by the Park Owners' violations of FCCPA.

1171. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Offer.

WHEREFORE, Offer prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 146 – OFFER – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1172. Offer re-alleges Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1173. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1174. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Offer.

1175. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Offer's homestead property, with knowledge that there is no authority

or basis to file such claims.

1176. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Offer with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1177. The Park Owners sent a letter to Offer dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Offer received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Offer to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1178. The Park Owners have threatened Offer with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1179. Offer has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1180. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1181. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Offer is peculiarly susceptible to emotional distress. Palm Tree Acres is a

"Retirement Park" and Offer is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Offer.

1182. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Offer. The Park Owners represented that they had actual or apparent authority over Offer and the power to affect Offer's interests.

1183. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Offer The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1184. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Offer's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Offer.

1185. The Park Owners' conduct has caused Offer emotional distress.

1186. The emotional distress Offer suffered was severe.

WHEREFORE, Offer demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 147 – PARDO – SLANDER OF TITLE

1187. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1188. On or about September 2, 2015, the Park Owners, by and through James Goss,

recorded or caused to be recorded a false claim of lien on Pardo's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3785, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 58.**

1189. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Pardo's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 956, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 59.**

1190. These are falsehoods because there is no legal basis for the claims of lien against Pardo's property, and as such, the disparaging statements are not true in fact.

1191. There is no legal basis for a lien against Pardo's property created by any judgment against Pardo.

1192. There is no legal basis for a lien against Pardo's property created by equity.

1193. There is no legal basis for a lien against Pardo's property created by contract or agreement between the Park Owners and Pardo.

1194. There is no legal basis for a lien against Pardo's property created by statute.

1195. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Pardo by the Park or the Park Owners.

1196. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Pardo by the Park or the Park Owners.

1197. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1198. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Pardo.

1199. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Pardo.

1200. The purported liens constitute a cloud upon the title of Pardo's residence.

1201. As a result of the Park Owners' false recording of their claims of lien, Pardo has sustained actual damages.

1202. As a result of the Park Owners' false recording of their claims of lien, Pardo has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 148 – PARDO – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1203. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1204. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1205. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1206. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1207. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1208. The Park Owners knew or should have known the liens were fraudulent.

1209. The liens constitute a cloud upon the title to the property.

1210. As a result of the Park Owners' wrongful recording of their claim of liens, Pardo has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1211. Pursuant to Fla. Stat. §713.31(c), Pardo is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 149 – PARDO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1212. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1213. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1214. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1215. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1216. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the

court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1217. Pardo has been aggrieved by the Park Owners' violations of FCCPA.

1218. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Pardo.

WHEREFORE, Pardo prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 150 – PARDO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1219. Pardo re-alleges Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1220. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1221. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Pardo.

1222. The Park Owners, directly or indirectly through their employees and agents, have

filed multiple liens against Pardo's homestead property, with knowledge that there is no authority or basis to file such claims.

1223. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Pardo with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1224. The Park Owners sent a letter to Pardo dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Pardo received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Pardo to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1225. The Park Owners have threatened Pardo with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1226. Pardo has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1227. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1228. The Park Owners, directly or indirectly through their employees and agents, had

knowledge that Pardo is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Pardo is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Pardo.

1229. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Pardo. The Park Owners represented that they had actual or apparent authority over Pardo and the power to affect Pardo's interests.

1230. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Pardo The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1231. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Pardo's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Pardo.

1232. The Park Owners' conduct has caused Pardo emotional distress.

1233. The emotional distress Pardo suffered was severe.

WHEREFORE, Pardo demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 151 – JAMES – SLANDER OF TITLE

1234. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1235. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on James's property, as reflected in the instrument recorded at O.R. Book 9250, Page 3782, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 60.**

1236. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on James's property, as reflected in the instrument recorded at O.R. Book 9380, Page 953, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 61.**

1237. These are falsehoods because there is no legal basis for the claims of lien against James's property, and as such, the disparaging statements are not true in fact.

1238. There is no legal basis for a lien against James's property created by any judgment against James.

1239. There is no legal basis for a lien against James's property created by equity.

1240. There is no legal basis for a lien against James's property created by contract or agreement between the Park Owners and James.

1241. There is no legal basis for a lien against James's property created by statute.

1242. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of James by the Park or the Park Owners.

1243. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of James by the Park or the Park Owners.

1244. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1245. The Park Owners know or reasonably should know that the public filing of the

liens will likely result in inducing others not to deal with James.

1246. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with James.

1247. The purported liens constitute a cloud upon the title of James's residence.

1248. As a result of the Park Owners' false recording of their claims of lien, James has sustained actual damages.

1249. As a result of the Park Owners' false recording of their claims of lien, James has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 152 – JAMES – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1250. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1251. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1252. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1253. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1254. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no

labor or services relating to any construction or improvements on the subject property.

1255. The Park Owners knew or should have known the liens were fraudulent.

1256. The liens constitute a cloud upon the title to the property.

1257. As a result of the Park Owners' wrongful recording of their claim of liens, James has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1258. Pursuant to Fla. Stat. §713.31(c), James is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 153 – JAMES – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1259. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1260. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1261. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1262. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1263. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any

provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1264. James has been aggrieved by the Park Owners' violations of FCCPA.

1265. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to James.

WHEREFORE, James prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 154 – JAMES – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1266. James re-alleges Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1267. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1268. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from James.

1269. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against James's property, with knowledge that there is no authority or basis to file such claims.

1270. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened James with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1271. The Park Owners sent a letter to James dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. James received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce James to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1272. The Park Owners have threatened James with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1273. James has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1274. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1275. The Park Owners, directly or indirectly through their employees and agents, had knowledge that James is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and James is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of James.

1276. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over James. The Park Owners represented that they had actual or apparent authority over James and the power to affect James's interests.

1277. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from James The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1278. On multiple occasions, the Park Owners, their agents or employees, have deliberately put James's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to James.

1279. The Park Owners' conduct has caused James emotional distress.

1280. The emotional distress James suffered was severe.

WHEREFORE, James demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 155 – PASCO – SLANDER OF TITLE

1281. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth

herein.

1282. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Pasco's property, as reflected in the instrument recorded at O.R. Book 9250, Page 3789, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 62.**

1283. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Pasco's property, as reflected in the instrument recorded at O.R. Book 9380, Page 960, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 63.**

1284. These are falsehoods because there is no legal basis for the claims of lien against Pasco's property, and as such, the disparaging statements are not true in fact.

1285. There is no legal basis for a lien against Pasco's property created by any judgment against Pasco.

1286. There is no legal basis for a lien against Pasco's property created by equity.

1287. There is no legal basis for a lien against Pasco's property created by contract or agreement between the Park Owners and Pasco.

1288. There is no legal basis for a lien against Pasco's property created by statute.

1289. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Pasco by the Park or the Park Owners.

1290. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Pasco by the Park or the Park Owners.

1291. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1292. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Pasco.

1293. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Pasco.

1294. The purported liens constitute a cloud upon the title of Pasco's residence.

1295. As a result of the Park Owners' false recording of their claims of lien, Pasco has sustained actual damages.

1296. As a result of the Park Owners' false recording of their claims of lien, Pasco has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 156 – PASCO – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1297. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1298. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1299. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1300. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1301. Specifically, the claims of lien are fraudulent because there was no contract to

perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1302. The Park Owners knew or should have known the liens were fraudulent.

1303. The liens constitute a cloud upon the title to the property.

1304. As a result of the Park Owners' wrongful recording of their claim of liens, Pasco has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1305. Pursuant to Fla. Stat. §713.31(c), Pasco is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 157 – PASCO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1306. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1307. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1308. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1309. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1310. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1311. Pasco has been aggrieved by the Park Owners' violations of FCCPA.

1312. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Pasco.

WHEREFORE, Pasco prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 158 – PASCO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1313. Pasco re-alleges Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1314. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1315. The Park Owners, directly or indirectly through their employees and agents, have

made calculated use of emotional distress to extort money from Pasco.

1316. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Pasco's property, with knowledge that there is no authority or basis to file such claims.

1317. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Pasco with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1318. The Park Owners sent a letter to Pasco dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Pasco received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Pasco to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1319. The Park Owners have threatened Pasco with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1320. Pasco has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1321. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is

regarded as odious and utterly intolerable in a civilized community.

1322. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Pasco is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Pasco is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Pasco.

1323. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Pasco. The Park Owners represented that they had actual or apparent authority over Pasco and the power to affect Pasco's interests.

1324. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Pasco The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1325. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Pasco's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Pasco.

1326. The Park Owners' conduct has caused Pasco emotional distress.

1327. The emotional distress Pasco suffered was severe.

WHEREFORE, Pasco demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 159 – D. SMITH – SLANDER OF TITLE

1328. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1329. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on D. Smith's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3783, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 64.**

1330. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on D. Smith's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 954, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 65.**

1331. These are falsehoods because there is no legal basis for the claims of lien against D. Smith's property, and as such, the disparaging statements are not true in fact.

1332. There is no legal basis for a lien against D. Smith's property created by any judgment against D. Smith.

1333. There is no legal basis for a lien against D. Smith's property created by equity.

1334. There is no legal basis for a lien against D. Smith's property created by contract or agreement between the Park Owners and D. Smith.

1335. There is no legal basis for a lien against D. Smith's property created by statute.

1336. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of D. Smith by the Park or the Park Owners.

1337. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of D. Smith by the Park or the Park Owners.

1338. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1339. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with D. Smith.

1340. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with D. Smith.

1341. The purported liens constitute a cloud upon the title of D. Smith's residence.

1342. As a result of the Park Owners' false recording of their claims of lien, D. Smith has sustained actual damages.

1343. As a result of the Park Owners' false recording of their claims of lien, D. Smith has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 160 – D. SMITH – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1344. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1345. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1346. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1347. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was

owed money by property owner.

1348. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1349. The Park Owners knew or should have known the liens were fraudulent.

1350. The liens constitute a cloud upon the title to the property.

1351. As a result of the Park Owners' wrongful recording of their claim of liens, D. Smith has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1352. Pursuant to Fla. Stat. §713.31(c), D. Smith is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 161 – D. SMITH – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1353. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1354. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1355. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1356. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park

Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1357. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1358. D. Smith has been aggrieved by the Park Owners' violations of FCCPA.

1359. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to D. Smith.

WHEREFORE, D. Smith prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 162 – D. SMITH – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1360. D. Smith re-alleges Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1361. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior

because they knew or should have known that emotional distress would likely result.

1362. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from D. Smith.

1363. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against D. Smith's homestead property, with knowledge that there is no authority or basis to file such claims.

1364. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened D. Smith with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1365. The Park Owners sent a letter to D. Smith dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. D. Smith received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce D. Smith to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1366. The Park Owners have threatened D. Smith with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1367. D. Smith has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1368. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1369. The Park Owners, directly or indirectly through their employees and agents, had knowledge that D. Smith is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and D. Smith is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of D. Smith.

1370. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over D. Smith. The Park Owners represented that they had actual or apparent authority over D. Smith and the power to affect D. Smith's interests.

1371. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from D. Smith The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1372. On multiple occasions, the Park Owners, their agents or employees, have deliberately put D. Smith's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to D. Smith.

1373. The Park Owners' conduct has caused D. Smith emotional distress.

1374. The emotional distress D. Smith suffered was severe.

WHEREFORE, D. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 163 – J. SMITH – SLANDER OF TITLE

1375. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1376. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on J. Smith's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3790, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 66.**

1377. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on J. Smith's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 961, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 67.**

1378. These are falsehoods because there is no legal basis for the claims of lien against J. Smith's property, and as such, the disparaging statements are not true in fact.

1379. There is no legal basis for a lien against J. Smith's property created by any judgment against J. Smith.

1380. There is no legal basis for a lien against J. Smith's property created by equity.

1381. There is no legal basis for a lien against J. Smith's property created by contract or agreement between the Park Owners and J. Smith.

1382. There is no legal basis for a lien against J. Smith's property created by statute.

1383. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of J. Smith by the Park or the Park Owners.

1384. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of J. Smith by the Park or the Park Owners.

1385. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1386. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with J. Smith.

1387. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with J. Smith.

1388. The purported liens constitute a cloud upon the title of J. Smith's residence.

1389. As a result of the Park Owners' false recording of their claims of lien, J. Smith has sustained actual damages.

1390. As a result of the Park Owners' false recording of their claims of lien, J. Smith has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 164 – J. SMITH – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1391. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1392. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1393. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1394. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1395. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1396. The Park Owners knew or should have known the liens were fraudulent.

1397. The liens constitute a cloud upon the title to the property.

1398. As a result of the Park Owners' wrongful recording of their claim of liens, J. Smith has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1399. Pursuant to Fla. Stat. §713.31(c), J. Smith is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 165 – J. SMITH – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1400. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1401. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1402. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or

has his or her principal place of business or in the county where the alleged violation occurred.

1403. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1404. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1405. J. Smith has been aggrieved by the Park Owners' violations of FCCPA.

1406. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to J. Smith.

WHEREFORE, J. Smith prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 166 – J. SMITH – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1407. J. Smith re-alleges Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1408. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1409. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from J. Smith.

1410. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against J. Smith's homestead property, with knowledge that there is no authority or basis to file such claims.

1411. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened J. Smith with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1412. The Park Owners sent a letter to J. Smith dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. J. Smith received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce J. Smith to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1413. The Park Owners have threatened J. Smith with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1414. J. Smith has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1415. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1416. The Park Owners, directly or indirectly through their employees and agents, had knowledge that J. Smith is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and J. Smith is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of J. Smith.

1417. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over J. Smith. The Park Owners represented that they had actual or apparent authority over J. Smith and the power to affect J. Smith's interests.

1418. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from J. Smith The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1419. On multiple occasions, the Park Owners, their agents or employees, have deliberately put J. Smith's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to J. Smith.

1420. The Park Owners' conduct has caused J. Smith emotional distress.

1421. The emotional distress J. Smith suffered was severe.

WHEREFORE, J. Smith demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 167 – SYMONDS – SLANDER OF TITLE

1422. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1423. On or about September 2, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Symonds's homestead property, as reflected in the instrument recorded at O.R. Book 9250, Page 3786, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 68.**

1424. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Symonds's homestead property, as reflected in the instrument recorded at O.R. Book 9380, Page 957, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 69.**

1425. These are falsehoods because there is no legal basis for the claims of lien against Symonds's property, and as such, the disparaging statements are not true in fact.

1426. There is no legal basis for a lien against Symonds's property created by any judgment against Symonds.

1427. There is no legal basis for a lien against Symonds's property created by equity.

1428. There is no legal basis for a lien against Symonds's property created by contract or agreement between the Park Owners and Symonds.

1429. There is no legal basis for a lien against Symonds's property created by statute.

1430. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property

of Symonds by the Park or the Park Owners.

1431. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Symonds by the Park or the Park Owners.

1432. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1433. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Symonds.

1434. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Symonds.

1435. The purported liens constitute a cloud upon the title of Symonds's residence.

1436. As a result of the Park Owners' false recording of their claims of lien, Symonds has sustained actual damages.

1437. As a result of the Park Owners' false recording of their claims of lien, Symonds has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 168 – SYMONDS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1438. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1439. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida Statutes.

1440. The liens are fraudulent because the underlying claims of the Park Owners do not

support a lien under Chapter 713, Florida Statutes.

1441. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1442. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1443. The Park Owners knew or should have known the liens were fraudulent.

1444. The liens constitute a cloud upon the title to the property.

1445. As a result of the Park Owners' wrongful recording of their claim of liens, Symonds has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1446. Pursuant to Fla. Stat. §713.31(c), Symonds is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 169 – SYMONDS – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1447. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1448. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1449. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a

person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1450. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1451. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1452. Symonds has been aggrieved by the Park Owners' violations of FCCPA.

1453. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Symonds.

WHEREFORE, Symonds prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 170 – SYMONDS – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1454. Symonds re-alleges Paragraphs 1, 19 and 25 through 50 as though fully set forth

herein.

1455. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1456. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Symonds.

1457. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Symonds's homestead property, with knowledge that there is no authority or basis to file such claims.

1458. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Symonds with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1459. The Park Owners sent a letter to Symonds dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Symonds received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Symonds to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1460. The Park Owners have threatened Symonds with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the

Lot Owners will be trespassers if they attempt to enter the Park.

1461. Symonds has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1462. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1463. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Symonds is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Symonds is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Symonds.

1464. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Symonds. The Park Owners represented that they had actual or apparent authority over Symonds and the power to affect Symonds's interests.

1465. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Symonds The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1466. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Symonds's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Symonds.

1467. The Park Owners' conduct has caused Symonds emotional distress.

1468. The emotional distress Symonds suffered was severe.

WHEREFORE, Symonds demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 171 – TATRO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1469. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

1470. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1471. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1472. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1473. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1474. Tatro has been aggrieved by the Park Owners' violations of FCCPA.

1475. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Tatro.

WHEREFORE, Tatro prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 172 – TATRO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1476. Tatro re-alleges Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

1477. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1478. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Tatro.

1479. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Tatro with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1480. The Park Owners sent a letter to Tatro dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Tatro received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Tatro to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1481. The Park Owners have threatened Tatro with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1482. Tatro has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1483. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1484. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Tatro is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Tatro is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Tatro.

1485. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Tatro. The Park Owners represented that they had actual or apparent authority over Tatro and the power to affect Tatro's interests.

1486. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Tatro The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1487. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Tatro's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Tatro.

1488. The Park Owners' conduct has caused Tatro emotional distress.

1489. The emotional distress Tatro suffered was severe.

WHEREFORE, Tatro demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 173 – TAYLOR – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1490. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

1491. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1492. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1493. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt

collection provisions set forth in Fla. Stat. § 559.72.

1494. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1495. Taylor has been aggrieved by the Park Owners' violations of FCCPA.

1496. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Taylor.

WHEREFORE, Taylor prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 174 – TAYLOR – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1497. Taylor re-alleges Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

1498. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1499. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Taylor.

1500. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Taylor with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1501. The Park Owners sent a letter to Taylor dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Taylor received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Taylor to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1502. The Park Owners have threatened Taylor with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1503. Taylor has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1504. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1505. The Park Owners, directly or indirectly through their employees and agents, had

knowledge that Taylor is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Taylor is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Taylor.

1506. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Taylor. The Park Owners represented that they had actual or apparent authority over Taylor and the power to affect Taylor's interests.

1507. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Taylor The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1508. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Taylor's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Taylor.

1509. The Park Owners' conduct has caused Taylor emotional distress.

1510. The emotional distress Taylor suffered was severe.

WHEREFORE, Taylor demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 175 – VALK – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1511. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

1512. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act ("FCCPA"), Fla. Stat. § 559.55 et seq.

1513. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1514. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1515. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1516. Valk has been aggrieved by the Park Owners' violations of FCCPA.

1517. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Valk.

WHEREFORE, Valk prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77

(2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 176 – VALK – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1518. Valk re-alleges Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

1519. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1520. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Valk.

1521. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Valk with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1522. The Park Owners sent a letter to Valk dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Valk received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Valk to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1523. The Park Owners have threatened Valk with filing illegal trespassing charges. The

Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1524. Valk has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1525. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1526. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Valk is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Valk is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Valk.

1527. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Valk. The Park Owners represented that they had actual or apparent authority over Valk and the power to affect Valk's interests.

1528. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Valk The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1529. On multiple occasions, the Park Owners, their agents or employees, have deliberately put Valk's health at risk by intentionally not delivering mandatory "Boil Water

Notices" or notices of water shutoffs to Valk.

1530. The Park Owners' conduct has caused Valk emotional distress.

1531. The emotional distress Valk suffered was severe.

WHEREFORE, Valk demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 177 – VARSALONE – SLANDER OF TITLE

1532. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1533. On or about November 10, 2015, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Varsalone's property, as reflected in the instrument recorded at O.R. Book 9250, Page 3795, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 70.**

1534. On June 9, 2016, the Park Owners, by and through James Goss, recorded or caused to be recorded a false claim of lien on Varsalone's property, as reflected in the instrument recorded at O.R. Book 9380, Page 966, Official Records of Pasco County, Florida, a true and correct copy of which is attached hereto as **Exhibit 71.**

1535. These are falsehoods because there is no legal basis for the claims of lien against Varsalone's property, and as such, the disparaging statements are not true in fact.

1536. There is no legal basis for a lien against Varsalone's property created by any judgment against Varsalone.

1537. There is no legal basis for a lien against Varsalone's property created by equity.

1538. There is no legal basis for a lien against Varsalone's property created by contract or agreement between the Park Owners and Varsalone.

1539. There is no legal basis for a lien against Varsalone's property created by statute.

1540. Ch. 723, Fla. Stat., does not authorize the imposition of any lien upon the property of Varsalone by the Park or the Park Owners.

1541. Ch. 713, Fla. Stat., does not authorize the imposition of any lien upon the property of Varsalone by the Park or the Park Owners.

1542. The falsehoods were published or communicated to a third party when they were publicly recorded and filed in the Pasco County Clerk of Court.

1543. The Park Owners know or reasonably should know that the public filing of the liens will likely result in inducing others not to deal with Varsalone.

1544. In fact, the falsehoods do play a material and substantial part in inducing others not to deal with Varsalone.

1545. The purported liens constitute a cloud upon the title of Varsalone's residence.

1546. As a result of the Park Owners' false recording of their claims of lien, Varsalone has sustained actual damages.

1547. As a result of the Park Owners' false recording of their claims of lien, Varsalone has sustained special damages, including, but not limited to reasonable attorney fees and costs incurred to remove the cloud upon the title.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 178 – VARSALONE – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1548. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1549. The liens are purportedly asserted, filed, and recorded under Ch. 713, Florida

Statutes.

1550. The liens are fraudulent because the underlying claims of the Park Owners do not support a lien under Chapter 713, Florida Statutes.

1551. The liens were fraudulently filed because any services provided by Park Owners cannot support a lien under chapter 713, even if the lienor had a good faith belief that it was owed money by property owner.

1552. Specifically, the claims of lien are fraudulent because there was no contract to perform work forming the basis for any lien and because the Park Owners in fact furnished no labor or services relating to any construction or improvements on the subject property.

1553. The Park Owners knew or should have known the liens were fraudulent.

1554. The liens constitute a cloud upon the title to the property.

1555. As a result of the Park Owners' wrongful recording of their claim of liens, Varsalone has sustained damages, including, but not limited to reasonable attorney fees and costs incurred to remove the clouds upon the title.

1556. Pursuant to Fla. Stat. §713.31(c), Varsalone is entitled to recover reasonable attorneys' fees and costs from the Park Owners.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

COUNT 179 – VARSALONE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1557. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1558. This is an action pursuant to Fla. Stat. § 559.77(2), for damages and injunctive relief as to the Park Owners violations of the Florida Consumer Collection Practices Act

("FCCPA"), Fla. Stat. § 559.55 et seq.

1559. Pursuant to Fla. Stat. § 559.77(1), a debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

1560. By virtue of the acts and practices alleged in Paragraphs 44 through 47, the Park Owners, directly or indirectly through their employees and agents, have violated numerous debt collection provisions set forth in Fla. Stat. § 559.72.

1561. Pursuant to Fla. Stat. § 559.77 (2), "Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow…together with court costs and reasonable attorney's fees incurred by the plaintiff… The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part."

1562. Varsalone has been aggrieved by the Park Owners' violations of FCCPA.

1563. The Park Owners' violations of FCCPA are ongoing and are likely to continue absent relief from this Court, resulting in irreparable harm to Varsalone.

WHEREFORE, Varsalone prays the Count enter a judgment declaring that the Park Owners have violated and are violating FCCPA, temporarily and permanently enjoining the Park Owners from committing such violations of Fla. Stat. § 559.72 in the operation of the Park, awarding actual damages and additional statutory damages, together with court costs and reasonable attorneys' fees incurred by the Lot Owners, and punitive damages pursuant to Fla. Stat. § 559.77 (2), and granting such further legal and equitable relief as the Court deems just and proper under the circumstances.

COUNT 180 – VARSALONE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

1564. Varsalone re-alleges Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1565. The Park Owners, directly or indirectly through their employees and agents, have engaged in conduct that was intentional and reckless. The Park Owners intended their behavior because they knew or should have known that emotional distress would likely result.

1566. The Park Owners, directly or indirectly through their employees and agents, have made calculated use of emotional distress to extort money from Varsalone.

1567. The Park Owners, directly or indirectly through their employees and agents, have filed multiple liens against Varsalone's property, with knowledge that there is no authority or basis to file such claims.

1568. The Park Owners, directly or indirectly through their employees and agents, have repeatedly threatened Varsalone with eviction from his own property, with knowledge that there is no legal basis or authority to do so. These actions go beyond mere threats and are outrageous because the Park Owners, directly or indirectly through their employees and agents, have in fact previously filed an eviction action against at least one of the Lot Owners that is a Plaintiff in this litigation.

1569. The Park Owners sent a letter to Varsalone dated November 29, 2016. A copy of the letter is attached as **Exhibit 33**. Varsalone received the "Letter of Understanding" in the mail on or about December 5, 2016. In this letter, cynically cloaked as a "courtesy" to the Lot Owners, the Park Owners attempted to coerce Varsalone to agree in writing to a number of issues contested in this case, including agreeing with the Park Owners' position that they have no obligation to furnish any utility services to the Lot Owners.

1570. The Park Owners have threatened Varsalone with filing illegal trespassing charges. The Park Owners have stated that they might make the Park into a gated community and that the Lot Owners will be trespassers if they attempt to enter the Park.

1571. Varsalone has been the victim of harassment or verbal attacks by the Park Owners, through their on-site employees and agents.

1572. The Park Owners' conduct, directly or indirectly through their employees and agents, was outrageous. The Park Owners' conduct went beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

1573. The Park Owners, directly or indirectly through their employees and agents, had knowledge that Varsalone is peculiarly susceptible to emotional distress. Palm Tree Acres is a "Retirement Park" and Varsalone is elderly and on a fixed income. The actions of the Park Owners, directly or indirectly through their employees and agents, were designed to and did take advantage of the vulnerability of Varsalone.

1574. The actions of the Park Owners, directly or indirectly through their employees and agents, were outrageous because the Park Owners used their position of power over Varsalone. The Park Owners represented that they had actual or apparent authority over Varsalone and the power to affect Varsalone's interests.

1575. The Park Owners, directly or indirectly through their employees and agents, have used their relationship of authority and control over the utilities to extort money from Varsalone The Park Owners have repeatedly threatened to cut off the only available potable water supply and sanitary sewer service in a cold-hearted, calculated, and deliberate attempt to coerce payment of other sums claimed to be due.

1576. On multiple occasions, the Park Owners, their agents or employees, have

deliberately put Varsalone's health at risk by intentionally not delivering mandatory "Boil Water Notices" or notices of water shutoffs to Varsalone.

1577. The Park Owners' conduct has caused Varsalone emotional distress.

1578. The emotional distress Varsalone suffered was severe.

WHEREFORE, Varsalone demands judgment against the Park Owners for damages, with prejudgment interest, and attorneys' fees and costs.

DEMAND FOR JURY TRIAL

The Plaintiffs and each of them individually hereby demand trial by jury on all matters so triable under applicable law.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
ELIZABETH M. GALBAVY
Florida Bar No.: 72515
Primary Email: emg@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on _____, 2017 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493

IN THE COUNTY COURT FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB,
Plaintiff,

VS.

JAMES C. GOSS; EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MHP
Defendant.

CASE NO. 51-2014-CC-519-ES
Division D

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT AND TO TRANSFER CASE TO CIRCUIT COURT

THIS CAUSE coming before the Court on the Plaintiffs' Motion for Leave to Amend Complaint and to Transfer Case to Circuit Court; and, the Court having heard argument of Counsel; and the Court having reviewed the file and the relevant case law; it is hereby

ORDERED AND ADJUDGED that the Plaintiffs' Motion for Leave to Amend Complaint and to Transfer Case to Circuit Court is GRANTED; it is further

ORDERED AND ADJUDGED that the Plaintiffs shall pay the Clerk's service charge pursuant to Rule 1.060 (c), Florida Rules of Civil Procedure; it is further

ORDERED AND ADJUDGED that upon transfer to Circuit Court, Defendants shall have twenty (20) days to respond to the Third Amended Complaint.

DONE AND ORDERED in Dade City, Pasco County, Florida, this 16 day of May, 2017.

WILLIAM G. SESTAK
County Court Judge

Copies to:
Richard Harrison, Esquire
J. Allen Bobo, Esquire

Filing # 57555461 E-Filed 06/09/2017 01:17:24 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB, et al.,

Plaintiffs,

v.

CASE NO. 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

Pursuant to Rule 1.140, Florida Rules of Civil Procedure, Defendants move to dismiss specified portions of Plaintiffs' Third Amended Complaint. The grounds upon which this motion is based and the substantial matters of law to be argued are as follows:

INTRODUCTION

This is an action by filed by 22 owners of fee simple lots (the "Lots") located within Palm Tree Acres, a ***rental*** mobile home park located in Pasco County (the "Park"). Plaintiffs attach their deeds showing that no Plaintiff purchased their lots from any Defendant.

Originally, Plaintiffs' Lots were governed by recorded covenants (the "Covenants") which could be interpreted to have allowed Plaintiffs to contract with Defendants for utility services and the use of the Park's amenity package.

By an Order On Defendants' Motion For Partial Summary Judgment dated December 8, 2016, Judge William B. Sestak, held that the Covenants "are invalid pursuant to Chapter 712, Florida Statutes," the Marketable Record Title Act. There are no other contracts between the parties.

For over 30 years, Plaintiffs and other fee simple lot owners located within the Park paid a rental fee to use the Park's amenities and for utility and garbage services – as a package of services.

Section 367.022(5), Florida Statutes, allowed Defendants to rent their property and to provide utility services to Plaintiffs without specific compensation for the utilities.

In 2014, Plaintiff Schwob filed a *pro se* action in County Court disavowing any further intention to rent the use of the Park's amenities and asking the Court to order Defendants to provide only utility services to his Lot, and to set the rates for the utility services.

Plaintiff Schwob later secured counsel who added other Plaintiffs to the action. After three (3) years of litigation, Plaintiffs' transferred the action to this Circuit Court, and filed a Third Amended Complaint.

Defendants move to dismiss portions of the Third Amended Complaint.

ARGUMENT

I. This Court Lacks Jurisdiction To Require Defendants To Provide Utility Services And To Determine The Rates For Utility Services As Alleged In Count 3 – The PSC's Jurisdiction On This Issue Is Exclusive, Preemptive And Presumptive.

1. The defense of lack of jurisdiction over the subject matter may be raised at any time. Rule 1.140(h)(2), Florida Rules of Civil Procedure.

2. The gravamen of the Plaintiffs' complaint and demand – that the Court order the Defendants to provide utility services to Plaintiffs' individual, fee simple lots, and to set the rates for those utility services—is within the exclusive province and jurisdiction of the Florida Public Service Commission (the "PSC").

3. Section 367.011, Florida Statutes, gives the PSC "exclusive jurisdiction" over the service and rates for utility services in Pasco County, and whether and to what extent such providers are to be regulated.

> **367.011 Jurisdiction; legislative intent.—**
> (1) This chapter may be cited as the "Water and Wastewater System Regulatory Law."
> (2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.
> (3) The regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(Emphasis Supplied)

4. The PSC's jurisdiction over the right to provide water and wastewater utility services and the rates to be charged is not only "*exclusive*" it is also "*preemptive*" and "*presumptive*." *See, Hilltop Developers v. Holiday Pines Serv. Corp.*, 478 So.2d 368, 370-71 (Fla. 2d DCA 1985)

5. The Florida Supreme Court has confirmed that the exclusive and preemptive jurisdiction of the PSC is subject to special protection. In *Florida Public Service Commission v. Bryson*, 569 So.2d 1253, 1254 (Fla. 1990), a Pinellas County Circuit Judge presided over a request to enjoin the PSC from assuming jurisdiction over a utility issue. The Trial Court granted the injunction and the *PSC moved for a writ of prohibition.* The Florida Supreme Court reversed, and in doing so, emphasized the presumption of PSC jurisdiction over utility services.

> The PSC derives its authority solely from the legislature, which defines the PSC's jurisdiction, duties, and powers. See, e.g., *United Tel. Co. v. Public Serv. Comm'n*, 496 So.2d 116, 118 (Fla.1986). In section 366.04(1) of the Florida Statutes (1987), the legislature granted the PSC exclusive jurisdiction over matters respecting the rates and service of public utilities. . . .

Id.

> The question is who decides whether Falk's complaint is within the PSC's jurisdiction. The PSC argues that it alone is obliged to make that jurisdictional determination, subject to appeal to this Court, and that the circuit court may not intervene. Geller argues that the PSC's own order in In re Sale Of Electricity To Be Resold, Order No. 4874, 34 Fla.Supp. 40 (F.P.S.C.1970), precluded it from asserting jurisdiction.
>
> The PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly.

Id. at 1255.

Thus, the PSC's jurisdiction is "presumptive' and when there is a "colorable claim of exclusive jurisdiction," the "proper vehicle would be by direct appeal to this Court after the PSC has acted." *Id.* at 1256.

6. Similarly, only the PSC can determine rates for utility services. In *Public Service Commission v. Lindahl*, 613 So.2d 63 (Fla. 2d DCA 1993), a group of mobile homeowners sued a utility provider in Pasco County to enjoin it from charging PSC approved rates. The mobile homeowners alleged that the rates conflicted with their deed restrictions. The Circuit Court of Pasco County, Judge Lynn Tepper, entered an emergency temporary injunction, and the PSC moved for reconsideration. *Id.* at 64. Judge Wayne Cobb denied reconsideration, and the PSC appealed. The Second District Court of Appeal held that the PSC's authority to raise or lower utility rates preempts deed restrictions, and stated as follows:

> The core question arising from this dispute is whether the trial court was invested with subject matter jurisdiction to issue the injunction. The "Water and Sewer System Regulatory Law," Chapter 367, Florida Statutes, confers upon the PSC exclusive jurisdiction to fix the rate that regulated utilities, such as Shady Oaks, charge their customers.
>
> . . .
>
> We, of course, reject the view urged by the residents that the 1972 deed restrictions supersede the order of the PSC approving the rate increase. When the PSC issued water and sewer certificates to Shady Oaks in February, 1986, its jurisdiction over the charges for such services was comprehensive. The preexisting deed restrictions were of no moment then and are not now. The PSC's

> authority to raise or lower utility rates, even those established by a contract, is preemptive. *See Cohee v. Crestridge Utilities Corp.*, 324 So.2d 155 (Fla. 2d DCA 1975).

Id.

7. Distilled to its essence, Count 3 of Plaintiffs' Third Amended Complaint asks the Court to order Defendants to provide Plaintiffs water and wastewater utility services and set the rates for the utility services. However, as the above authorities indicate, the Florida Legislature and the Courts have made it clear that the Court lacks the requisite jurisdiction to order the Defendants to provide utility service or to set the rates that Defendants charge for the utility services. The rates for, as well as the provision of water and wastewater services in Pasco County, is under the exclusive, preemptive, and presumptive purview of the PSC. Consequently, Plaintiffs cannot properly demonstrate that the Court has jurisdiction of this pivotal, core issue.

8. Plaintiffs' are merely adjoining landowners who bought fee simple lots within Defendants' rental mobile home park from third party sellers not affiliated with Defendants. The County Court has held that any recorded covenants which may have existed between Plaintiffs and Defendants have been extinguished by The Marketable Record Title Act, Chapter 712, Florida Statutes. It is unclear whether the former covenants required Defendants to provide Plaintiffs utility services, but no contract is alleged to exist between the parties at the time of filing the Third Amended Complaint. While the common law principles require adjoining landowners to grant access to landlocked parcels, no law, rule, principle, or contract requires a landowner to supply utility services to adjoining neighbors.

9. Further, Defendants lack the legal right to supply Plaintiffs utility services. Plaintiffs do not allege that Defendants have a valid PSC Certificate to supply Plaintiffs with water and sewer services. Supplying water and sewer services to even one non-exempt customer

requires that the provider obtain a PSC certificate. *PW Ventures, Inc. v. Nichols*, 533 So.2d 281, 282 (Fla. 1988).

10. Defendants lack the legal authority to supply water and sewer services to Plaintiffs. The basis of virtually every count of Plaintiffs' Third Amended Complaint is invalid.

II. Intentional Infliction Of Emotional Distress – Counts 100, 104, 108, 112, 116, 120, 122, 126, 1390, 134, 138, 142, 146, 150, 154, 158, 162, 166, 170, 172, 174, 176, and 180.

11. As the Second District Court of Appeal indicated in *Gallogly v. Rodriguez*, 970 So.2d 470, 471 (Fla. 2d DCA 2007), to state a cause of action for intentional infliction of emotional distress, it must be shown that:

> (1) The wrongdoer's conduct was intentional or reckless. . .;
>
> (2) the conduct was outrageous. . .;
>
> (3) the conduct caused emotion[al] distress; and
>
> (4) the emotional distress was severe.
>
> *LeGrande v. Emmanuel*, 889 So.2d 991, 994-95 (Fla. 3d DCA 2004) (quoting *Clemente v. Horne*, 707 So.2d 865, 866 (Fla. 3d DCA 1998)). The Restatement of Torts defines the type of outrageous conduct needed to support the second element of the tort:
>
> > It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"
>
> Restatement (Second) of Torts § 46 cmt. d (1965).

Id. at 471.

12. The Circuit Court is the "gatekeeper" for such claims. The Court must evaluate the alleged conduct as objectively as is possible to determine whether it is 'atrocious, and utterly intolerable in a civilized community. *Liberty Mut. Ins. Co. v. Steadman*, 968 So.2d 592, 595-96 (Fla. 2d DCA 2007). Whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a question of law, not a question of fact. *Gandy v. Trans World Computer Tech. Group*, 787 So.2d 116, 119 (Fla. 2d DCA 2001); *Ponton v. Scarfone*, 468 So.2d 1009,1011 (Fla. 2d DCA 1985).

13. Defendants conduct as alleged here does not meet the standard established by Restatement (Second) of Torts § 46 (1965) or the governing cases. For example, Plaintiff Varsalone alleges in Count 180, page 210 that:

a. Defendants filed multiple claims of lien against Varsalone's property (par 1567);
b. Defendants threatened Varsalone with eviction (par. 1568);
c. Defendants sent "cynical" letters to Varsalone (par. 1569);
d. Defendants threatened illegal trespassing charges (par. 1570); and
e. Varsalone suffered unspecified "harassment" and "verbal attacks" (par. 1571).

14. The same allegations are made for all Plaintiffs asserting intentional infliction of emotional distress. Because these allegations do not establish the atrocious, and utterly intolerable conduct requirement as a matter of law, Plaintiffs claims for intentional infliction of emotional distress fail to state a cause of action.

WHEREFORE, Defendants request this Court enter an order dismissing Plaintiff's Third Amended Complaint, and such further relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by email to Richard A. Harrison and Elizabeth M. Galbavy, Richard A. Harrison, P.A., 400 North Ashley Drive, Suite 2600, Tampa, FL 33602, rah@harrisonpa.com, emg@harrisonpa.com and lisa@harrisonpa.com, this 9 day of June, 2017.

J. Allen Bobo
Florida Bar No. 356980
Jody B. Gabel
Florida Bar No. 0008524
LUTZ, BOBO & TELFAIR, P.A.
2 North Tamiami Trail, Suite 500
Sarasota, Florida 34236-5575
Telephone: 877/951-1800
Facsimile: 941/366-1603
jabobo@lutzbobo.com
jbgabel@lutzbobo.com
Attorneys for Defendants

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696-ES

NELSON P. SCHWOB, et al.
Plaintiffs;

v.

JAMES C. GOSS, et al.
Defendants.

ORDER GRANTING IN PART, DENYING IN PART DEFENDANTS' MOTION TO DISMISS COUNTS 3, 100, 104, 108, 112, 116, 120 122, 126, 130, 134, 142, 146, 150, 154, 158, 162, 166, 170, 172, 174, 176 AND ORDER GRANTING PLAINTIFF'S MOTION FOR REFERRAL TO MEDIATION

THIS CAUSE having come before the Court on July 7, 2017 on the Defendants' Motion to Dismiss Counts 3, 100, 104, 108, 112, 116, 120 122, 126, 130, 134, 142, 146, 150, 154, 158, 162, 166, 170, 172, 174, 176 and Plaintiff's Motion for Referral to Mediation and the Court having been fully advised and enters the following order.

For the purpose of reviewing the Defendant's Motion to Dismiss Count Three, the Court accepts as true the following facts contained within the Plaintiff's Third Amended Complaint. Plaintiffs are fee simple owners of their respective lots within the Palm Tree Acres Mobile Home Park. The Defendants own the remaining lots and lease those lots to tenants. The warranty deeds held by the Plaintiffs contain restrictions indicating that water and sewage shall be paid by the individual lot owners directly to Palm Tree Acres, Incorporated. Palm Tree Acres owns and maintains the water and sewer infrastructure, and provides water and sewer services to the tenants. This service is provided as part of a broader amenities package, and is not individually billed based on metered usage. Palm Tree Acres provides this same amenity package to the

Plaintiffs even though the Plaintiffs are not actual tenants. It appears to the Court that Defendants provided this service based upon a belief that the restriction in the deeds held by the Plaintiffs required such. Both parties agree that the deeds held by the Plaintiffs contain the following restrictions:

> 14. If you plan to use the recreation facilities, any or all, you must have a yearly membership to do so...
> 16. Water and sewer shall be paid by the individual lot owners directly to Palm Tree Acres Incorporated.

On December 8, 2016, Pasco County Judge William Sestak, who previously presided over the case in county court, entered summary judgment that these restrictions were unenforceable under the Marketable Record Title Act[1]. Plaintiffs filed its Third Amended Complaint asserting a claim in excess of $15,000, and the matter was transferred to circuit court. Plaintiffs seek in Count Three of its Third Amended Complaint a declaratory judgment of the rights and duties of the Plaintiffs and Defendants with respect to the potable water supply, and the amounts that the Plaintiffs can be charged for such water supply. More specifically in Paragraph 84, the Plaintiffs allege that they are

> in doubt about their right to receive potable water from the Park Owners and about the amount for which the Park Owners are lawfully entitled to charge them for such potable water, and about the Park Owners right, if any, to cease to supply such potable water to the Lot Owners

[1] Florida Statute Chapter 712

In the "Wherefore" clause of Count Three, Plaintiffs seek a declaratory judgment of

> ...the rights and duties of the Lot Owners and the Park Owners with respect to the potable water supply and the amounts that the Lot Owners can be charged for such water supply...

The other counts that are the subject of the Defendants Motion to Dismiss are claims of Intentional Infliction of Emotion Distress. Plaintiffs allege that the Defendants have intentionally and unlawfully demanded payment, filed liens, and threatened to discontinue water and sewer service to the Plaintiffs. Plaintiffs have also moved for an order referring the matter to mediation.

This Court assumes the facts stated within the Third Amended Complaint are true and all reasonable inferences are resolved in favor of the Plaintiff.[2] Based on the allegations contained within Count Three, the Defendants are presently providing, and have historically provided, potable water and sewer service to the Plaintiffs, and it is in reference to this specific relationship that Plaintiffs are seeking this Court's declaration. To put it differently, the Plaintiffs are not seeking a declaration of their rights to potable water and what they should be charged in a general sense from any entity, but specifically from the Defendants. Plaintiffs also seek the Court to enter an order as to what amounts Defendants can charge; in other words, the rate.

Defendants seek to dismiss Count Three on the grounds that exclusive jurisdiction to make such a determination lies with the Florida Public Service Commission (hereinafter "PSC") and not this Court. To support its position that this Court has no jurisdiction, the Defendants cite to Florida Statute 367.011(2), which states that "[t]he Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates." The

[2] Ralph v. City of Daytona Beach, 471 So.2d 1 (FL 1983); Hussey v. Collier County, 158 So.3d 661 (FL 2DCA 2014)

Florida Supreme Court and the Second District Court of Appeal have both held that the trial court is without authority to regulate the manner in which water and sewer services are provided to the public. In Hill Top Developers v. Holiday Pine Service Corp., 478 So.2d 368 (FL 2DCA 1985), a dispute arose over whether a water/sewer utility could collect from its customer (a condominium complex) costs associated with a plant expansion needed to provide service to that customer. See id. at 369. The Public Service Commission was initially involved and set activation rates per condominium unit but did not address whether the utility could charge the customer for costs in expanding the plant. Id. Judgment was entered in favor of the utility, and the issue of the Public Service Commission's exclusive jurisdiction was raised on appeal. Id. at 369-370. The Court concluded that the Public Service Commission's jurisdiction was preemptive and exclusive with respect to service availability and the rates for such service. It further held that the trial court exceeded its authority by "literally casting itself in the role of the PSC," and directed that the complaint be dismissed. Id. at 371.

The Plaintiffs assert in paragraphs 48 through 54 that this Court derives jurisdiction from Florida Statutes Chapter 86. It states that the court has authority to issue a declaratory judgment when a person may be in doubt about his or her rights under a deed, will, contract, etc. and may obtain a declaration of rights, status, or other legal relations. However, where two statutes conflict, the more specific statute prevails as it is considered an exception to the more general statute. Adams v. Culver, 111 So.2d 665 (FL 1959); Floyd v. Bentley, 496 So.2d 862 ("It is a well-settled rule of statutory construction that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in more

general terms"). This Court finds Florida Statute 86.011 and 86.021 to be more general under these circumstances, and that Florida Statutes 367.011(2) to be specific.

Further, this issue is analogous to Florida Public Service Commission v. Bryson, 569 So.2d 1253 (FL 1990). In Bryson, the circuit court issued a temporary injunction, presumably under its general statutory authority to do so, prohibiting the PSC from holding a hearing on whether a party had violated a PSC regulations. That particular matter involved gas services, but the Florida Supreme Court cited to Florida Statute 366.04(1), which contains language nearly identical to the jurisdictional language to that of Florida Statute 367.011(2):

> The Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service....The jurisdiction conferred upon the commission shall be exclusive.

The question then becomes whether the Defendants are a "utility" as that term is defined in Chapter 367. Florida Statute 367.021 (11) defines "utility" as

> a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

Defendants assert that it does not presently meet the definition of utility for the purpose of being subject to the regulation of the PSC because it falls under the FS 367.022 exception. Florida Statute 367.022(5) exempts landlords providing service to its tenants without specific compensation for service. The Defendants argue that if this Court were to grant the relief sought by the Plaintiffs, the effect would be to transform the Palm Tree Acres Mobile Home Park into a utility subject to regulation by the PSC. The Defendants state that for economic reasons and the

impact such regulation would have on the other non-party residents of the Park, it has no interest in subjecting itself to the regulation of the PSC. Plaintiffs argue that the Defendants cannot claim to be exempt from this Court's jurisdiction because of the exclusivity of the PSC jurisdiction found in FS 367.011(2) and simultaneously be exempt from the jurisdiction of the PSC because of FS 367.022(5).

The Court finds Florida Statute 367.011, Hill Top Developers,[3] and Bryson[4] to be unambiguous and controlling. The Plaintiffs prayer in Court Three is also unambiguous. It seeks the Court to determine whether the Defendants must provide water and sewer service to the Plaintiffs, and the rate that can be charged. Such action by the Court would be precisely the conduct that Hill Top Developers disapproved, and this Court is without jurisdiction.

The Court is also equally without jurisdiction to resolve the question of whether the Defendants can validly claim the "landlord-tenant" exemption under FS 367.022(5). Plaintiffs argument that the Defendants cannot both be subject to and exempt from the PSC jurisdiction is compelling but ultimately self-defeating. Plaintiffs contend that the exemption does not apply to the tenancy relationship between the Plaintiffs and Defendants because there is no tenancy relationship. It states that unlike the other residents of the Park, the Plaintiffs own their lots in fee simple and the Defendants are not a landlord with respect to them. Assuming Plaintiffs assertion is correct, the Defendants are most certainly a utility, and FS 367.011(2) vests exclusive jurisdiction with the PSC. Further, the Florida Supreme Court's decision in Bryson made clear that even the question of whether an entity is or is not subject to the PSC jurisdiction, is a question

[3] 478 So.2d 368
[4] 569 So.2d 1253

exclusively for the PSC. It stated that the PSC has the "authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly. 569 So.2d at 1255. Additionally, Bryson holds that where there is any "colorable claim" that the matter falls under the jurisdiction of the PSC, then the PSC's jurisdiction is exclusive. Id. This Court finds that there is at a minimum a "colorable claim" that this matter falls under the jurisdiction of the PSC, and this Court is without jurisdiction. Therefore, this Court must grant the Defendants Motion to Dismiss Count Three with prejudice.

Defendants also seek to dismiss the Intentional Infliction of Emotional Distress counts for failing to state a claim. The elements of a claim of Intentional Infliction of Emotional Distress are:

> (1) The wrongdoer's conduct was intentional or reckless, that is, he intended his behavior when he knew or should have known that emotional distress would likely result;
> (2) the conduct was outrageous, that is, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community;
> (3) the conduct caused emotion distress; and
> (4) the emotional distress was severe.

Gallogly v. Rodriguez, 970 So.2d 470 (FL 2DCA 2007); LeGrande v. Emmanuel, 889 So.2d 991 (FL 3DCA 2004). The Court finds that accepting the allegations contained within the Third Amended Complaint as true and resolving all inferences in favor of the Plaintiffs, the claims of Intentional Infliction of Emotional Distress are sufficiently alleged to survive a Motion to Dismiss and denies Defendants Motion to Dismiss these counts.

Lastly, the Court agrees with the Plaintiff that such a case appropriate for mediation and grants its Motion for Referral to Mediation. A separate Order for Mediation will follow.

IT IS THEREFORE ORDERED and **ADJUDGED** that Defendants' Motion to Dismiss Count Three of the Third Amended Complaint is **GRANTED** with prejudice; Defendant's Motion to Dismiss Counts 100, 104, 108, 112, 116, 120 122, 126, 130, 134, 142, 146, 150, 154, 158, 162, 166, 170, 172, 174, and 176 is **DENIED**; and Plaintiff's Motion for Referral to Mediation is **GRANTED**.

DONE and **ORDERED** in Dade City, Pasco County, Florida this day of August, 2017.

TRUE COPY
Original Signed
AUG 21 2017
GREGORY G. GROGER
CIRCUIT JUDGE

Hon. Gregory G. Groger
Circuit Judge

CC:
Richard A. Harrison, Esq
J. Allen Bobo, Esq.

Filing # 61603329 E-Filed 09/15/2017 05:02:53 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB, et al.,

Plaintiffs,

v.

CASE NO. 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

Pursuant to Rule 1.140, Florida Rules of Civil Procedure, Defendants, James C. Goss, Edward Heveran, Margaret E. Heveran and Palm Tree Acres Mobile Home Park ("Owners"), respond to Plaintiffs' Third Amended Complaint as follows:

1. Admitted.
2. Without knowledge.
3. Without knowledge.
4. Without knowledge.
5. Without knowledge.
6. Without knowledge.
7. Without knowledge.
8. Without knowledge.
9. Without knowledge.
10. Without knowledge.
11. Without knowledge.
12. Without knowledge.

13. Without knowledge.

14. Without knowledge.

15. Without knowledge.

16. Without knowledge.

17. Without knowledge.

18. Without knowledge.

19. Without knowledge.

20. Without knowledge.

21. Without knowledge.

22. Without knowledge.

23. Without knowledge.

24. Without knowledge.

25. Without knowledge.

26. Admitted.

27. Without knowledge.

28. Without knowledge.

29. Admitted.

30. Denied, Mr. Heveran is deceased.

31. Admitted.

32. The allegations contained in the first sentence of paragraph 32 are admitted. Denied that the Park Owners are individually and collectively an "operator of a mobile home park" as defined in Fla. Stat. §723.003(9).

33. Admitted.

34. Admitted.

35. Admitted.

36. Without knowledge.

37. Admitted.

38. Admitted.

39. Admitted that form 402 allowed all lots to receive the Prospectus; otherwise Denied.

40. Denied.

41. Denied.

42. Without knowledge.

43. Without knowledge.

44. Denied.

45. Denied.

46. Admitted liens have been filed; otherwise Denied.

47. Denied.

48. Admitted.

49. Without knowledge.

50. Without knowledge.

51. Admitted.

52. Admitted.

53. Admitted.

54. Admitted.

COUNT 1 – DECLARATORY RELIEF – STATUS OF LOT OWNERS

55. Owners reallege their responses to Paragraphs 1 through 54 as though fully set forth herein.

56. Admitted.

57. Denied.

58. Admitted.

59. Denied.

60. Denied.

61. Denied.

62. Admitted.

63. Denied.

64. Without knowledge.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

COUNT 2 – DECLARATORY RELIEF – STATUS OF LANDOWNERS' ASSOCIATION

69. Owners reallege their responses to Paragraphs 1 through 54 as though fully set forth herein.

70. Without knowledge.

71. Denied.

72. Without knowledge.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

COUNT 4 – DECLARATORY AND INJUNCTIVE RELIEF – DECEPTIVE TRADE PRACTICES

89. Owners reallege their responses to Paragraphs 1 through 54 as though fully set forth herein.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

COUNT 5 – SCHWOB - ACCOUNTING

97. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

98. Denied.

99. Without knowledge

100. Denied.

101. Denied.

COUNT 6 – SCHWOB – UNJUST ENRICHMENT

102. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

COUNT 7 – SCHWOB – MONEY HAD AND RECEIVED

107. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

108. Denied.

109. Denied.

110. Denied.

COUNT 8 – SCHWOB - FDUPTA

111. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

COUNT 9 – BIRT - ACCOUNTING

118. Owners reallege their responses to Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

119. Denied.

120. Without knowledge.

121. Denied.

122. Denied.

COUNT 10 – BIRT – UNJUST ENRICHMENT

123. Owners reallege their responses to Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

COUNT 11 – BIRT – MONEY HAD AN RECEIVED

128. Owners reallege their responses to Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

129. Denied.

130. Denied.

131. Denied.

COUNT 12 – BIRT - FDUPTA

132. Owners reallege their responses to Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

COUNT 13 – F. BROWN - ACCOUNTING

139. Owners reallege their responses to Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

140. Denied.

141. Without knowledge.

142. Denied.

143. Denied.

COUNT 14 – F. BROWN – UNJUST ENRICHMENT

144. Owners reallege their responses to Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

COUNT 15 – F. BROWN – MONEY HAD AND RECEIVED

149. Owners reallege their responses to Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

COUNT 16 – F. BROWN - FDUPTA

154. Owners reallege their responses to Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

COUNT 17 – P. BROWN - ACCOUNTING

161. Owners reallege their responses to Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

162. Denied.

163. Without knowledge.

164. Denied.

165. Denied.

COUNT 18 – P. BROWN – UNJUST ENRICHMENT

166. Owners reallege their responses to Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

COUNT 19 – P. BROWN – MONEY HAD AND RECEIVED

171. Owners reallege their responses to Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

172. Denied.

173. Denied.

174. Denied.

175. Denied.

COUNT 20 – P. BROWN - FDUPTA

176. Owners reallege their responses to Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

182. Denied.

COUNT 21 – COSMO - ACCOUNTING

183. Owners reallege their responses to Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

184. Denied.

185. Without knowledge.

186. Denied.

187. Denied.

COUNT 22 – COSMO – UNJUST ENRICHMENT

188. Owners reallege their responses to Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

189. Denied.

190. Denied.

191. Denied.

192. Denied.

COUNT 23 – COSMO – MONEY HAD AND RECEIVED

193. Owners reallege their responses to Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

COUNT 24 – COSMO - FDUPTA

198. Owners reallege their responses to Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

199. Denied.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

COUNT 25 – CUMMINGS - ACCOUNTING

205. Owners reallege their responses to Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

206. Denied.

207. Without knowledge.

208. Denied.

209. Denied.

COUNT 25 – CUMMINGS – UNJUST ENRICHMENT

210. Owners reallege their responses to Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

211. Denied.

212. Denied.

213. Denied.

214. Denied.

COUNT 27 – CUMMINGS – MONEY HAD AND RECEIVED

215. Owners reallege their responses to Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

216. Denied.

217. Denied.

218. Denied.

219. Denied.

COUNT 28 – CUMMINGS - FDUPTA

220. Owners reallege their responses to Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

221. Denied.

222. Denied.

223. Denied.

224. Denied.

225. Denied.

226. Denied.

COUNT 29 – FLEMING - ACCOUNTING

227. Owners reallege their responses to Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

228. Denied.

229. Without knowledge.

230. Denied.

231. Denied.

COUNT 30 – FLEMING – UNJUST ENRICHMENT

232. Owners reallege their responses to Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

233. Denied.

234. Denied.

235. Denied.

236. Denied.

COUNT 31 – FLEMING – MONEY HAD AND RECEIVED

237. Owners reallege their responses to Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

238. Denied.

239. Denied.

240. Denied.

241. Denied.

COUNT 32 – FLEMING - FDUPTA

242. Owners reallege their responses to Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

243. Denied.

244. Denied.

245. Denied.

246. Denied.

247. Denied.

248. Denied.

COUNT 33 – GERVAIS - ACCOUNTING

249. Owners reallege their responses to Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

250. Denied.

251. Without knowledge.

252. Denied.

253. Denied.

COUNT 34 – GERVAIS – UNJUST ENRICHMENT

254. Owners reallege their responses to Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

255. Denied.

256. Denied.

257. Denied.

258. Denied.

COUNT 35 – GERVAIS – MONEY HAD AND RECEIVED

259. Owners reallege their responses to Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

260. Denied.

261. Denied.

262. Denied.

263. Denied.

COUNT 36 – GERVAIS - FDUPTA

264. Owners reallege their responses to Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

270. Denied.

COUNT 37 – GIERSCHKE - ACCOUNTING

271. Owners reallege their responses to Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

272. Denied.

273. Without knowledge.

274. Denied.

275. Denied.

COUNT 38 GIERSCHKE – UNJUST ENRICHMENT

276. Owners reallege their responses to Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

277. Denied.

278. Denied.

279. Denied.

280. Denied.

COUNT 39 – GIERSCHKE – MONEY HAD AND RECEIVED

281. Owners reallege their responses to Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

282. Denied.

283. Denied.

284. Denied.

285. Denied.

COUNT 40 – GIERSCHKE - FDUPTA

286. Owners reallege their responses to Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

287. Denied.

288. Denied.

289. Denied.

290. Denied.

291. Denied.

292. Denied.

COUNT 41 – LePAGE - ACCOUNTING

293. Owners reallege their responses to Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

294. Denied.

295. Without knowledge.

296. Denied.

297. Denied.

COUNT 42 – LePAGE – UNJUST ENRICHMENT

298. Owners reallege their responses to Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

299. Denied.

300. Denied.

301. Denied.

302. Denied.

COUNT 43 – LePAGE – MONEY HAD AND RECEIVED

303. Owners reallege their responses to Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

304. Denied.

305. Denied.

306. Denied.

307. Denied.

COUNT 44 – LePAGE - FDUPTA

308. Owners reallege their responses to Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

309. Denied.

310. Denied.

311. Denied.

312. Denied.

313. Denied.

314. Denied.

COUNT 45 – MAY - ACCOUNTING

315. Owners reallege their responses to Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

316. Denied.

317. Without knowledge.

318. Denied.

319. Denied.

COUNT 46 – MAY – UNJUST ENRICHMENT

320. Owners reallege their responses to Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

321. Denied.

322. Denied.

323. Denied.

324. Denied.

COUNT 47 – MAY – MONEY HAD AND RECEIVED

325. Owners reallege their responses to Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

326. Denied.

327. Denied.

328. Denied

329. Denied.

COUNT 48 – MAY - FDUPTA

330. Owners reallege their responses to Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

331. Denied.

332. Denied.

333. Denied.

334. Denied.

335. Denied.

336. Denied.

COUNT 49 – OFFER - ACCOUNTING

337. Owners reallege their responses to Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

338. Denied.

339. Without knowledge.

340. Denied.

341. Denied.

COUNT 50 – OFFER – UNJUST ENRICHMENT

342. Owners reallege their responses to Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

343. Denied.

344. Denied.

345. Denied.

346. Denied.

COUNT 51 – OFFER – MONEY HAD AND RECEIVED

347. Owners reallege their responses to Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

348. Denied.

349. Denied.

350. Denied.

351. Denied.

COUNT 52 – OFFER - FDUPTA

352. Owners reallege their responses to Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

353. Denied.

354. Denied.

355. Denied.

356. Denied.

357. Denied.

358. Denied.

COUNT 53 – PARDO - ACCOUNTING

359. Owners reallege their responses to Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

360. Denied.

361. Without knowledge.

362. Denied.

363. Denied.

COUNT 54 – PARDO – UNJUST ENRICHMENT

364. Owners reallege their responses to Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

365. Denied.

366. Denied.

367. Denied.

368. Denied.

COUNT 55 – PARDO – MONEY HAD AND RECEIVED

369. Owners reallege their responses to Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

370. Denied.

371. Denied.

372. Denied.

373. Denied.

COUNT 56 – PARDO - FDUPTA

374. Owners reallege their responses to Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

375. Denied.

376. Denied.

377. Denied.

378. Denied.

379. Denied.

COUNT 57 – JAMES - ACCOUNTING

380. Owners reallege their responses to Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

381. Denied.

382. Without knowledge.

383. Denied.

384. Denied.

385. Denied.

COUNT 58 – JAMES – UNJUST ENRICHMENT

386. Owners reallege their responses to Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

387. Denied.

388. Denied.

389. Denied.

390. Denied.

COUNT 59 – JAMES – MONEY HAD AND RECEIVED

391. Owners reallege their responses to Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

392. Denied.

393. Denied.

394. Denied.

395. Denied.

COUNT 60 – JAMES - FDUPTA

396. Owners reallege their responses to Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

397. Denied.

398. Denied.

399. Denied.

400. Denied.

401. Denied.

402. Denied.

COUNT 61 – PASCO - ACCOUNTING

403. Owners reallege their responses to Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

404. Denied.

405. Without knowledge.

406. Denied.

407. Denied.

COUNT 62 – PASCO – UNJUST ENRICHMENT

408. Owners reallege their responses to Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

409. Denied.

410. Denied.

411. Denied.

412. Denied.

COUNT 63 – PASCO – MONEY HAD AND RECEIVED

413. Owners reallege their responses to Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

414. Denied.

415. Denied.

416. Denied.

417. Denied.

COUNT 64 – PASCO - FDUPTA

418. Owners reallege their responses to Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

419. Denied.

420. Denied.

421. Denied.

422. Denied.

423. Denied.

424. Denied.

COUNT – 65 – D. SMITH - ACCOUNTING

425. Owners reallege their responses to Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

426. Denied.

427. Without knowledge.

428. Denied.

429. Denied.

COUNT 66 – D. SMITH – UNJUST ENRICHMENT

430. Owners reallege their responses to Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

431. Denied.

432. Denied.

433. Denied.

434. Denied.

COUNT 67 – D. SMITH – MONEY HAD AND RECEIVED

435. Owners reallege their responses to Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

436. Denied.

437. Denied.

438. Denied.

439. Denied.

COUNT 68 – D. SMITH - FDUPTA

440. Owners reallege their responses to Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

441. Denied.

442. Denied.

443. Denied.

444. Denied.

445. Denied.

446. Denied.

COUNT 69 – J. SMITH - ACCOUNTING

447. Owners reallege their responses to Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

448. Denied.

449. Without knowledge.

450. Denied.

451. Denied.

COUNT 70 – J. SMITH – UNJUST ENRICHMENT

452. Owners reallege their responses to Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

453. Denied.

454. Denied.

455. Denied.

456. Denied.

COUNT 71 – J. SMITH – MONEY HAD AND RECEIVED

457. Owners reallege their responses to Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

458. Denied.

459. Denied.

460. Denied.

461. Denied.

COUNT 72 – J. SMITH - FDUPTA

462. Owners reallege their responses to Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

463. Denied.

464. Denied.

465. Denied.

466. Denied.

467. Denied.

468. Denied.

COUNT 73 – SYMONDS - ACCOUNTING

469. Owners reallege their responses to Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

470. Denied.

471. Without knowledge.

472. Denied.

473. Denied.

COUNT 74 – SYMONDS – UNJUST ENRICHMENT

474. Owners reallege their responses to Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

475. Denied.

476. Denied.

477. Denied.

478. Denied.

COUNT 75 – SYMONDS – UNJUST ENRICHMENT

479. Owners reallege their responses to Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

480. Denied.

481. Denied.

482. Denied.

483. Denied.

COUNT 76 – SYMONDS - FDUPTA

484. Owners reallege their responses to Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

485. Denied.

486. Denied.

487. Denied.

488. Denied.

489. Denied.

490. Denied.

COUNT 77 – TATRO - ACCOUNTING

491. Owners reallege their responses to Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

492. Denied.

493. Without knowledge.

494. Denied.

495. Denied.

COUNT 78 – TATRO – UNJUST ENRICHMENT

496. Owners reallege their responses to Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

497. Denied.

498. Denied.

499. Denied.

500. Denied.

DOCUNT 79 – TATRO – MONEY HAD AND RECEIVED

501. Owners reallege their responses to Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

502. Denied.

503. Denied.

504. Denied.

COUNT 80 – TATRO - FDUPTA

505. Owners reallege their responses to Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

506. Denied.

507. Denied.

508. Denied.

509. Denied.

510. Denied.

511. Denied.

COUNT 81 – TAYLOR - ACCOUNTING

512. Owners reallege their responses to Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

513. Denied.

514. Without knowledge.

515. Denied.

516. Denied.

COUNT 82 – TAYLOR – UNJUST ENRICHMENT

517. Owners reallege their responses to Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

518. Denied.

519. Denied.

520. Denied.

521. Denied.

COUNT 83 – TAYLOR – MONEY HAD AND RECEIVED

522. Owners reallege their responses to Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

523. Denied.

524. Denied.

525. Denied.

526. Denied.

COUNT 84 – TAYLOR - FDUPTA

527. Owners reallege their responses to Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

528. Denied.

529. Denied.

530. Denied.

531. Denied.

532. Denied.

533. Denied.

COUNT 85 – VARSALONE - ACCOUNTING

534. Owners reallege their responses to Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

535. Denied.

536. Without knowledge.

537. Denied.

538. Denied.

COUNT 86 – VARSALONE – UNJUST ENRICHMENT

539. Owners reallege their responses to Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

540. Denied.

541. Denied.

542. Denied.

543. Denied.

COUNT 87 – VARSALONE – MONEY HAD AND RECEIVED

544. Owners reallege their responses to Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

545. Denied.

546. Denied.

547. Denied.

548. Denied.

COUNT 88 – VARSALONE - FDUPTA

549. Owners reallege their responses to Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

550. Denied.

551. Denied.

552. Denied.

553. Denied.

554. Denied.

555. Denied.

COUNT 89 – DUDLEY - ACCOUNTING

556. Owners reallege their responses to Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

557. Denied.

558. Without knowledge

559. Denied.

560. Denied.

COUNT 90 – DUDLEY – UNJUST ENRICHMENT

561. Owners reallege their responses to Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

562. Denied.

563. Denied.

564. Denied.

565. Denied.

COUNT 91 – DUDLEY – MONEY HAD AND RECEIVED

566. Owners reallege their responses to Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

567. Denied.

568. Denied.

569. Denied.

570. Denied.

COUNT 92 – DUDLEY - FDUPTA

571. Owners reallege their responses to Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

572. Denied.

573. Denied.

574. Denied.

575. Denied.

576. Denied.

577. Denied.

COUNT 93 – VALK - ACCOUNTING

578. Owners reallege their responses to Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

579. Denied.

580. Without knowledge.

581. Denied.

582. Denied.

COUNT 94 – VALK – UNJUST ENRICHMENT

583. Owners reallege their responses to Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

584. Denied.

585. Denied.

586. Denied.

587. Denied.

COUNT 95 – VALK – MONEY HAD AND RECEIVED

588. Owners reallege their responses to Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

589. Denied.

590. Denied.

591. Denied.

592. Denied.

COUNT 96 – VALK - FDUPTA

593. Owners reallege their responses to Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

594. Denied.

595. Denied.

596. Denied.

597. Denied.

598. Denied.

599. Denied.

COUNT 97 – SCHWOB – SLANDER OF TITLE

600. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

601. Denied.

602. Denied

603. Denied

604. Denied

605. Denied

606. Denied

607. Denied

608. Admitted.

609. Denied

610. Denied

611. Denied

612. Denied

613. Denied.

614. Denied.

615. Denied.

COUNT 98 – SCHWOB – FRAUDULENT LIENS UNDER FLA.STAT. § 713.31

616. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

617. Denied.

618. Denied.

619. Denied.

620. Denied.

621. Denied.

622. Denied.

623. Denied.

624. Denied.

COUNT 99 – SCHWOB – VIOLATION OF FLROIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

625. Owners reallege their responses to Paragraphs 1 through 54 as though fully set forth herein.

626. Without knowledge.

627. Admitted.

628. Denied.

629. Denied.

630. Denied.

631. Denied.

COUNT 100 SCHWOB – INTENTIONAL INVLICTION OF EMOTIONAL DISTRESS

632. Owners reallege their responses to Paragraphs 1, 2 and 25 through 50 as though fully set forth herein.

633. Denied.

634. Denied.

635. Denied.

636. Denied.

637. Denied.

638. Denied.

639. Denied.

640. Denied.

641. Denied.

642. Denied.

643. Denied.

644. Denied.

645. Denied.

646. Denied.

COUNT 101 – BIRT – SLANDER OF TITLE

647. Owners reallege Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

648. Denied.

649. Denied.

650. Denied.

651. Denied.

652. Denied.

653. Denied.

654. Denied.

655. Denied.

656. Admitted.

657. Denied.

658. Denied.

659. Denied.

660. Denied.

661. Denied.

662. Denied.

COUNT 102 – BIRT – FRAUDULENT LIENS UNDER FLA.STAT.§ 713.31

663. Owners reallege Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

664. Denied.

665. Denied.

666. Denied.

667. Denied.

668. Denied.

669. Denied.

670. Denied.

671. Denied.

COUNT 103 – BIRT – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

672. Owners reallege Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

673. Without knowledge.

674. Admitted.

675. Denied.

676. Denied.

677. Denied.

678. Denied.

COUNT 104 – BIRT – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

679. Owners reallege Paragraphs 1, 3 and 25 through 50 as though fully set forth herein.

680. Denied.

681. Denied.

682. Denied.

683. Denied.

684. Denied.

685. Denied.

686. Denied.

687. Denied.

688. Denied.

689. Denied.

690. Denied.

691. Denied.

692. Denied.

693. Denied.

COUNT 105 – F. BROWN – SLANDER OF TITLE

694. Owners reallege Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

695. Denied.

696. Denied.

697. Denied.

698. Denied.

699. Denied.

700. Denied.

701. Denied.

702. Admitted.

703. Denied.

704. Denied.

705. Denied.

706. Denied.

707. Denied.

708. Denied.

709. Denied.

COUNT 106 – F. BROWN – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

710. Owners reallege Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

711. Denied.

712. Denied.

713. Denied.

714. Denied.

715. Denied.

716. Denied.

717. Denied.

718. Denied.

COUNT 107 – F. BROWN – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

719. Owners reallege Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

720. Without knowledge.

721. Admitted.

722. Denied.

723. Denied.

724. Denied.

725. Denied.

COUNT 108 –F. BROWN– INTENTIONAL INVLICTION OF EMOTIONAL DISTRESS

726. Owners reallege Paragraphs 1, 4 and 25 through 50 as though fully set forth herein.

727. Denied.

728. Denied.

729. Denied.

730. Denied.

731. Denied.

732. Denied.

733. Denied.

734. Denied.

735. Denied.

736. Denied.

737. Denied.

738. Denied.

739. Denied.

740. Denied.

COUNT 109 – P. BROWN – SLANDER OF TITLE

741. Owners reallege Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

742. Denied.

743. Denied.

744. Denied.

745. Denied.

746. Denied.

747. Denied.

748. Denied.

749. Admitted.

750. Denied.

751. Denied.

752. Denied.

753. Denied.

754. Denied.

755. Denied.

756. Denied.

COUNT 110 – P. BROWN – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

757. Owners reallege Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

758. Denied.

759. Denied.

760. Denied.

761. Denied.

762. Denied.

763. Denied.

764. Denied.

765. Denied.

COUNT 111 – P. BROWN – VIOLATION OF FLROIDA CONSUMER COLLECTION PRACTICES ACT (FCCPA")

766. Owners reallege Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

767. Without knowledge.

768. Admitted.

769. Denied.

770. Denied.

771. Denied.

772. Denied.

COUNT 112 –P. BROWN– INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

773. Owners reallege Paragraphs 1, 5 and 25 through 50 as though fully set forth herein.

774. Denied.

775. Denied.

776. Denied.

777. Denied.

778. Denied.

779. Denied.

780. Denied.

781. Denied.

782. Denied.

783. Denied.

784. Denied.

785. Denied.

786. Denied.

787. Denied.

COUNT 113 – COSMO – SLANDER OF TITLE

788. Owners reallege Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

789. Denied.

790. Denied.

791. Denied.

792. Denied.

793. Denied.

794. Denied.

795. Denied.

796. Admitted.

797. Denied.

798. Denied.

799. Denied.

800. Denied.

801. Denied.

802. Denied.

803. Denied.

COUNT 114 – COSMO – FRAUDULENT LIENS UNDERR FLA. STAT. § 713.31

804. Owners reallege Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

805. Denied.

806. Denied.

807. Denied.

808. Denied.

809. Denied.

810. Denied.

811. Denied.

812. Denied.

COUNT 115 – COSMO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

813. Owners reallege Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

814. Without knowledge.

815. Admitted.

816. Denied.

817. Denied.

818. Denied.

819. Denied.

COUNT 116 – COSMO – INTENTIONAL INVLICTION OF EMOTIONAL DISTRESS

820. Owners reallege Paragraphs 1, 6 and 25 through 50 as though fully set forth herein.

821. Denied.

822. Denied.

823. Denied.

824. Denied.

825. Denied.

826. Denied.

827. Denied.

828. Denied.

829. Denied.

830. Denied.

831. Denied.

832. Denied.

833. Denied.

834. Denied.

COUNT 117 – CUMMINGS – SLANDER OF TITLE

835. Owners reallege Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

836. Denied.

837. Denied.

838. Denied.

839. Denied.

840. Denied.

841. Denied.

842. Denied.

843. Admitted.

844. Denied.

845. Denied.

846. Denied.

847. Denied.

848. Denied.

849. Denied.

850. Denied.

COUNT 118 – CUMMINGS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

851. Owners reallege Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

852. Denied.

853. Denied.

854. Denied.

855. Denied.

856. Denied.

857. Denied.

858. Denied.

859. Denied.

COUNT 119 – CUMMINGS – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

860. Owners reallege Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

861. Without knowledge.

862. Admitted.

863. Denied.

864. Denied.

865. Denied.

866. Denied.

COUNT 120 –CUMMINGS– NTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

867. Owners reallege Paragraphs 1, 7 and 25 through 50 as though fully set forth herein.

868. Denied.

869. Denied.

870. Denied.

871. Denied.

872. Denied.

873. Denied.

874. Denied.

875. Denied.

876. Denied.

877. Denied.

878. Denied.

879. Denied.

880. Denied.

881. Denied.

COUNT 121 – DUDLEY – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

882. Owners reallege Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

883. Without knowledge.

884. Admitted.

885. Denied.

886. Denied.

887. Denied.

888. Denied.

COUNT 122 – DUDLEY – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

889. Owners reallege Paragraphs 1, 23 and 25 through 50 as though fully set forth herein.

890. Denied.

891. Denied.

892. Denied.

893. Denied.

894. Denied.

895. Denied.

896. Denied.

897. Denied.

898. Denied.

899. Denied.

900. Denied.

901. Denied.

902. Denied.

COUNT 123 – FLEMING – SLANDER OF TITLE

903. Owners reallege Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

904. Denied.

905. Denied.

906. Denied.

907. Denied.

908. Denied.

909. Denied.

910. Denied.

911. Admitted.

912. Denied.

913. Denied.

914. Denied.

915. Denied.

916. Denied.

917. Denied.

918. Denied.

COUNT 124 – FLEMING – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

919. Owners reallege Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

920. Denied.

921. Denied.

922. Denied.

923. Denied.

924. Denied.

925. Denied.

926. Denied.

927. Denied.

COUNT 125 – FLEMING – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

928. Owners reallege Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

929. Without knowledge.

930. Admitted.

931. Denied.

932. Denied.

933. Denied.

934. Denied.

COUNT 126 – FLEMING – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

935. Owners reallege Paragraphs 1, 8 and 25 through 50 as though fully set forth herein.

936. Denied.

937. Denied.

938. Denied.

939. Denied.

940. Denied.

941. Denied.

942. Denied.

943. Denied.

944. Denied.

945. Denied.

946. Denied.

947. Denied.

948. Denied.

949. Denied.

COUNT 127 – GERVAIS – SLANDER OF TITLE

950. Owners reallege Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

951. Denied.

952. Denied.

953. Denied.

954. Denied.

955. Denied.

956. Denied.

957. Denied.

958. Denied.

959. Denied.

960. Admitted.

961. Denied.

962. Denied.

963. Denied.

964. Denied.

965. Denied.

966. Denied.

967. Denied.

COUNT 128 – GERVAIS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

968. Owners reallege Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

969. Denied.

970. Denied.

971. Denied.

972. Denied.

973. Denied.

974. Denied.

975. Denied.

976. Denied.

COUNT 129 – GERVAIS – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

977. Owners reallege Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

978. Without knowledge.

979. Admitted.

980. Denied.

981. Denied.

982. Denied.

983. Denied.

COUNT 130 – GERVAIS – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

984. Owners reallege Paragraphs 1, 9 and 25 through 50 as though fully set forth herein.

985. Denied.

986. Denied.

987. Denied.

988. Denied.

989. Denied.

990. Denied.

991. Denied.

992. Denied.

993. Denied.

994. Denied.

995. Denied.

996. Denied.

997. Denied.

998. Denied.

COUNT 131 – GIERSCHKE – SLANDER OF TITLE

999. Owners reallege Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1000. Denied.

1001. Denied.

1002. Denied.

1003. Denied.

1004. Denied.

1005. Denied.

1006. Denied.

1007. Admitted.

1008. Denied.

1009. Denied.

1010. Denied.

1011. Denied.

1012. Denied.

1013. Denied.

1014. Denied.

COUNT 132 – GIERSCHKE – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1015. Owners reallege Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1016. Denied.

1017. Denied.

1018. Denied.

1019. Denied.

1020. Denied.

1021. Denied.

1022. Denied.

1023. Denied.

COUNT 133 – GIERSCHKE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1024. Owners reallege Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1025. Without knowledge.

1026. Admitted.

1027. Denied.

1028. Denied.

1029. Denied.

1030. Denied.

COUNT 134 – GIERSCHKE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1031. Owners reallege Paragraphs 1, 10 and 25 through 50 as though fully set forth herein.

1032. Denied.

1033. Denied.

1034. Denied.

1035. Denied.

1036. Denied.

1037. Denied.

1038. Denied.

1039. Denied.

1040. Denied.

1041. Denied.

1042. Denied.

1043. Denied.

1044. Denied.

1045. Denied.

COUNT 135 – LePAGE – SLANDER OF TITLE

1046. Owners reallege Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1047. Denied.

1048. Denied.

1049. Denied.

1050. Denied.

1051. Denied.

1052. Denied.

1053. Denied.

1054. Admitted.

1055. Denied.

1056. Denied.

1057. Denied.

1058. Denied.

1059. Denied.

1060. Denied.

1061. Denied.

1062. Denied.

1063. Denied.

1064. Denied.

1065. Denied.

1066. Denied.

1067. Denied.

1068. Denied.

1069. Denied.

1070. Denied.

COUNT 137 – LePAGE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1071. Owners reallege Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1072. Without knowledge.

1073. Admitted.

1074. Denied.

1075. Denied.

1076. Denied.

1077. Denied.

COUNT 138 – LePAGE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1078. Owners reallege Paragraphs 1, 11 and 25 through 50 as though fully set forth herein.

1079. Denied.

1080. Denied.

1081. Denied.

1082. Denied.

1083. Denied.

1084. Denied.

1085. Denied.

1086. Denied.

1087. Denied.

1088. Denied.

1089. Denied.

1090. Denied.

1091. Denied.

1092. Denied.

COUNT 139 – MAY – SLANDER OF TITLE

1093. Owners reallege Paragraphs 1, 1 and 25 through 50 as though fully set forth herein.

1094. Denied.

1095. Denied.

1096. Denied.

1097. Denied.

1098. Denied.

1099. Denied.

1100. Denied.

1101. Admitted.

1102. Denied.

1103. Denied.

1104. Denied.

1105. Denied.

1106. Denied.

1107. Denied.

1108. Denied.

COUNT 140 – MAY – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1109. Owners reallege Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1110. Denied.

1111. Denied.

1112. Denied.

1113. Denied.

1114. Denied.

1115. Denied.

1116. Denied.

1117. Denied.

COUNT 141 – MAY – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1118. Owners reallege Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1119. Without knowledge.

1120. Admitted.

1121. Denied.

1122. Denied.

1123. Denied.

1124. Denied.

COUNT 142 – MAY – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1125. Owners reallege Paragraphs 1, 12 and 25 through 50 as though fully set forth herein.

1126. Denied.

1127. Denied.

1128. Denied.

1129. Denied.

1130. Denied.

1131. Denied.

1132. Denied.

1133. Denied.

1134. Denied.

1135. Denied.

1136. Denied.

1137. Denied.

1138. Denied.

1139. Denied.

COUNT 143 – OFFER – SLANDER OF TITLE

1140. Owners reallege Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1141. Denied.

1142. Denied.

1143. Denied.

1144. Denied.

1145. Denied.

1146. Denied.

1147. Denied.

1148. Admitted.

1149. Denied.

1150. Denied.

1151. Denied.

1152. Denied.

1153. Denied.

1154. Denied.

1155. Denied.

COUNT 144 – OFFER – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1156. Owners reallege Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1157. Denied.

1158. Denied.

1159. Denied.

1160. Denied.

1161. Denied.

1162. Denied.

1163. Denied.

1164. Denied.

COUNT 145 – OFFER – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1165. Owners reallege Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1166. Without knowledge.

1167. Admitted.

1168. Denied.

1169. Denied.

1170. Denied.

1171. Denied.

COUNT 146 – OFFER – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1172. Owners reallege Paragraphs 1, 13 and 25 through 50 as though fully set forth herein.

1173. Denied.

1174. Denied.

1175. Denied.

1176. Denied.

1177. Denied.

1178. Denied.

1179. Denied.

1180. Denied.

1181. Denied.

1182. Denied.

1183. Denied.

1184. Denied.

1185. Denied.

1186. Denied.

COUNT 147 – PARDO – SLANDER OF TITLE

1187. Owners reallege Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1188. Denied.

1189. Denied.

1190. Denied.

1191. Denied.

1192. Denied.

1193. Denied.

1194. Denied.

1195. Admitted.

1196. Denied.

1197. Denied.

1198. Denied.

1199. Denied.

1200. Denied.

1201. Denied.

1202. Denied.

COUNT 148 – PARDO – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1203. Owners reallege Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1204. Denied.

1205. Denied.

1206. Denied.

1207. Denied.

1208. Denied.

1209. Denied.

1210. Denied.

1211. Denied.

COUNT 149 – PARDO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1212. Owners reallege Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1213. Without knowledge.

1214. Admitted.

1215. Denied.

1216. Denied.

1217. Denied.

1218. Denied.

COUNT 150 – PARDO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1219. Owners reallege Paragraphs 1, 14 and 25 through 50 as though fully set forth herein.

1220. Denied.

1221. Denied.

1222. Denied.

1223. Denied.

1224. Denied.

1225. Denied.

1226. Denied.

1227. Denied.

1228. Denied.

1229. Denied.

1230. Denied.

1231. Denied.

1232. Denied.

1233. Denied.

COUNT 151 – JAMES – SLANDER OF TITLE

1234. Owners reallege Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1235. Denied.

1236. Denied.

1237. Denied.

1238. Denied.

1239. Denied.

1240. Denied.

1241. Denied.

1242. Admitted.

1243. Denied.

1244. Denied.

1245. Denied.

1246. Denied.

1247. Denied.

1248. Denied.

1249. Denied.

COUNT 152 – JAMES – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1250. Owners reallege Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1251. Denied.

1252. Denied.

1253. Denied.

1254. Denied.

1255. Denied.

1256. Denied.

1257. Denied.

1258. Denied.

COUNT 153 – JAMES – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1259. Owners reallege Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1260. Without knowledge.

1261. Admitted.

1262. Denied.

1263. Denied.

1264. Denied.

1265. Denied.

COUNT 154 – JAMES – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1266. Owners reallege Paragraphs 1, 15 and 25 through 50 as though fully set forth herein.

1267. Denied.

1268. Denied.

1269. Denied.

1270. Denied.

1271. Denied.

1272. Denied.

1273. Denied.

1274. Denied.

1275. Denied.

1276. Denied.

1277. Denied.

1278. Denied.

1279. Denied.

1280. Denied.

COUNT 155 – PASCO – SLANDER OF TITLE

1281. Owners reallege Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1282. Denied.

1283. Denied.

1284. Denied.

1285. Denied.

1286. Denied.

1287. Denied.

1288. Denied.

1289. Admitted.

1290. Denied.

1291. Denied.

1292. Denied.

1293. Denied.

1294. Denied.

1295. Denied.

1296. Denied.

COUNT 156 – PASCO – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1297. Owners reallege Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1298. Denied.

1299. Denied.

1300. Denied.

1301. Denied.

1302. Denied.

1303. Denied.

1304. Denied.

1305. Denied.

COUNT 157 – PASCO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1306. Owners reallege Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1307. Without knowledge.

1308. Admitted.

1309. Denied.

1310. Denied.

1311. Denied.

1312. Denied.

COUNT 158 – PASCO – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1313. Owners reallege Paragraphs 1, 16 and 25 through 50 as though fully set forth herein.

1314. Denied.

1315. Denied.

1316. Denied.

1317. Denied.

1318. Denied.

1319. Denied.

1320. Denied.

1321. Denied.

1322. Denied.

1323. Denied.

1324. Denied.

1325. Denied.

1326. Denied.

1327. Denied.

COUNT 159 – D. SMITH – SLANDER OF TITLE

1328. Owners reallege Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1329. Denied.

1330. Denied.

1331. Denied.

1332. Denied.

1333. Denied.

1334. Denied.

1335. Denied.

1336. Admitted.

1337. Denied.

1338. Denied.

1339. Denied.

1340. Denied.

1341. Denied.

1342. Denied.

1343. Denied.

COUNT 160 – D. SMITH – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1344. Owners reallege Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1345. Denied.

1346. Denied.

1347. Denied.

1348. Denied.

1349. Denied.

1350. Denied.

1351. Denied.

1352. Denied.

COUNT 161 – D. SMITH – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1353. Owners reallege Paragraphs 1, 17 and 25 through 50 as though fully set forth herein.

1354. Without knowledge.

1355. Admitted.

1356. Denied.

1357. Denied.

1358. Denied.

1359. Denied.

COUNT 162 – D. SMITH – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1360. Denied.

1361. Denied.

1362. Denied.

1363. Denied.

1364. Denied.

1365. Denied.

1366. Denied.

1367. Denied.

1368. Denied.

1369. Denied.

1370. Denied.

1371. Denied.

1372. Denied.

1373. Denied.

1374. Denied.

COUNT 163 – J. SMITH – SLANDER OF TITLE

1375. Owners reallege Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1376. Denied.

1377. Denied.

1378. Denied.

1379. Denied.

1380. Denied.

1381. Denied.

1382. Denied.

1383. Admitted.

1384. Denied.

1385. Denied.

1386. Denied.

1387. Denied.

1388. Denied.

1389. Denied.

1390. Denied.

COUNT 164 – J. SMITH – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1391. Owners reallege Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1392. Denied.

1393. Denied.

1394. Denied.

1395. Denied.

1396. Denied.

1397. Denied.

1398. Denied.

1399. Denied.

COUNT 165 – J. SMITH – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1400. Owners reallege Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1401. Without knowledge.

1402. Admitted.

1403. Denied.

1404. Denied.

1405. Denied.

1406. Denied.

COUNT 166 – J. SMITH – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1407. Owners reallege Paragraphs 1, 18 and 25 through 50 as though fully set forth herein.

1408. Denied.

1409. Denied.

1410. Denied.

1411. Denied.

1412. Denied.

1413. Denied.

1414. Denied.

1415. Denied.

1416. Denied.

1417. Denied.

1418. Denied.

1419. Denied.

1420. Denied.

1421. Denied.

COUNT 167 – SYMONDS – SLANDER OF TITLE

1422. Owners reallege Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1423. Denied.

1424. Denied.

1425. Denied.

1426. Denied.

1427. Denied.

1428. Denied.

1429. Denied.

1430. Admitted

1431. Denied.

1432. Denied.

1433. Denied.

1434. Denied.

1435. Denied.

1436. Denied.

1437. Denied.

COUNT 168 – SYMONDS – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1438. Owners reallege Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1439. Denied.

1440. Denied.

1441. Denied.

1442. Denied.

1443. Denied.

1444. Denied.

1445. Denied.

1446. Denied.

COUNT 169 – SYMONDS – VIOLATIO OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1447. Owners reallege Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1448. Without knowledge.

1449. Admitted.

1450. Denied.

1451. Denied.

1452. Denied.

1453. Denied.

COUNT 170 –SYMONDS– INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1454. Owners reallege Paragraphs 1, 19 and 25 through 50 as though fully set forth herein.

1455. Denied.

1456. Denied.

1457. Denied.

1458. Denied.

1459. Denied.

1460. Denied.

1461. Denied.

1462. Denied.

1463. Denied.

1464. Denied.

1465. Denied.

1466. Denied.

1467. Denied.

1468. Denied.

COUNT 171 – TATRO – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1469. Owners reallege Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

1470. Without knowledge.

1471. Admitted.

1472. Denied.

1473. Denied.

1474. Denied.

1475. Denied.

COUNT 172 – TATRO – INTENTONAL INFLICTION OF EMOTIONAL DISTRESS

1476. Owners reallege Paragraphs 1, 20 and 25 through 50 as though fully set forth herein.

1477. Denied.

1478. Denied.

1479. Denied.

1480. Denied.

1481. Denied.

1482. Denied.

1483. Denied.

1484. Denied.

1485. Denied.

1486. Denied.

1487. Denied.

1488. Denied.

1489. Denied.

COUNT 173 – TAYLOR – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1490. Owners reallege Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

1491. Without knowledge.

1492. Admitted.

1493. Denied.

1494. Denied.

1495. Denied.

1496. Denied.

COUNT 174 – TAYLOR – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1497. Owners reallege Paragraphs 1, 21 and 25 through 50 as though fully set forth herein.

1498. Denied.

1499. Denied.

1500. Denied.

1501. Denied.

1502. Denied.

1503. Denied.

1504. Denied.

1505. Denied.

1506. Denied.

1507. Denied.

1508. Denied.

1509. Denied.

1510. Denied.

COUNT 175 – VALK – VIOLAITON OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1511. Owners reallege Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

1512. Without knowledge.

1513. Admitted.

1514. Denied.

1515. Denied.

1516. Denied.

1517. Denied.

COUNT 176 – VALK – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1518. Owners reallege Paragraphs 1, 24 and 25 through 50 as though fully set forth herein.

1519. Denied.

1520. Denied.

1521. Denied.

1522. Denied.

1523. Denied.

1524. Denied.

1525. Denied.

1526. Denied.

1527. Denied.

1528. Denied.

1529. Denied.

1530. Denied.

1531. Denied.

COUNT 177 – VARSALONE – SLANDER OF TITLE

1532. Owners reallege Paragraphs 1, 22 and 25 through 50 as though fully set forth herein

1533. Denied.

1534. Denied.

1535. Denied.

1536. Denied.

1537. Denied.

1538. Denied.

1539. Denied.

1540. Admitted.

1541. Denied.

1542. Denied.

1543. Denied.

1544. Denied.

1545. Denied.

1546. Denied.

1547. Denied.

COUNT 178 – VARSALONE – FRAUDULENT LIENS UNDER FLA. STAT. § 713.31

1548. Owners reallege Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1549. Denied.

1550. Denied.

1551. Denied.

1552. Denied.

1553. Denied.

1554. Denied.

1555. Denied.

1556. Denied.

COUNT 179 – VARSALONE – VIOLATION OF FLORIDA CONSUMER COLLECTION PRACTICES ACT ("FCCPA")

1557. Owners reallege Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1558. Without knowledge.

1559. Admitted.

1560. Denied.

1561. Denied.

1562. Denied.

1563. Denied.

COUNT 180 – VARSALONE – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

1564. Owners reallege Paragraphs 1, 22 and 25 through 50 as though fully set forth herein.

1565. Denied.

1566. Denied.

1567. Denied.

1568. Denied.

1569. Denied.

1570. Denied.

1571. Denied.

1572. Denied.

1573. Denied.

1574. Denied.

1575. Denied.

1576. Denied.

1577. Denied.

1578. Denied.

AFFIRMATIVE DEFENSES

1579. Any claim that Owners must burden its property with the obligation to supply utilities is an unconstitutional restriction on Owners' property.

1580. Plaintiffs' claims are barred by the doctrine of waiver. Plaintiffs moved to the Community, agreed to pay a specified sum as rent for the common areas and for the services offered by Owners. For years Plaintiffs accepted the package of services for a reasonable fee. Plaintiffs' eleventh hour objection to the long-standing custom and practice of the parties is barred by the doctrine of waiver.

1581. Plaintiffs' claims are barred by the doctrine of estoppel. For years, Lot owners, including Plaintiffs, have negotiated along with renting residents to establish the rent payable to

Owners for the common areas and the services offered by Owners. Plaintiffs have accepted the payment obligations without protest. Plaintiffs led Owners to believe that the parties have reached an understanding concerning their respective rights and obligations. Owners relied to their detriment upon these representations. Accordingly, Plaintiffs' claims are barred by the doctrine of estoppel.

1582. Plaintiffs' claims are barred by the statute of limitations.

1583. Plaintiffs' claims are barred by the doctrine of latches.

1584. Plaintiffs' claims are inherently diverse in most respects, requiring that they be severed for the purposes of trial.

1585. Owners' obligations to Plaintiffs under the restrictions and covenants alleged have expired or have been extinguished by the marketable record title act. Owners are no longer bound to provide any services to Plaintiffs. If the services are to be provided, Owners, as the master of their offer, may offer such services in any means or method, at their discretion. Owners are not required to unbundle the services or offer them to individual Plaintiffs on an à la carte basis.

1586. Owners are privileged to offer their services and conduct their business in a way that protects their customers.

1587. Owners demand a setoff for all sums due Owners for Plaintiffs' use of utilities, garbage services and amenities.

1588. Plaintiffs have not dealt in good faith. Plaintiffs continue to accept the services, including water and sewer services, from Owners without remitting any compensation whatsoever. No funds have been placed into the court registry.

1589. The mobile home owners' association identified in paragraph 46 of plaintiffs' complaint is believed to have been incorrectly formed. Both rental mobile homeowners as well

as lot owners were permitted to create and join the association in violation of Section 723.075, *Florida Statutes*.

1590. The lot owners attempt to create a lot owners' association to represent them fails as a matter of law. Pursuant to Chapter 723, *Florida Statutes*, a mobile home subdivision association has extremely limited rights. It does not have the right to represent lot owners in litigation, settlement agreements, negotiations, or other collective bargaining processes.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

COUNT I
OWNERS' CONSTITUTIONAL RIGHTS AS OWNERS OF REAL PROPERTY

1591. **Action**. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes. The amounts in controversy are within the jurisdictional limits of the Circuit Court.

1592. **Plaintiffs.** Plaintiffs are the owners, in fee simple, of lots (collectively, the "Lots") within Palm Tree Acres mobile home park ("Palm Tree").

1593. **Defendants.** Defendants are the Owners and operators of Palm Tree (the "Property"). Owners' title is evidenced by a copy of Owners' Corrective Warranty Deed attached to Plaintiffs' Complaint and recorded in OR Book 1477, pages 0673-0680 of the Public Records of Pasco County, Florida.

1594. **Palm Tree Acres Mobile Home Park.** Palm Tree is a rental mobile home park consisting of approximately 244 lots. Approximately 222 lots are occupied by homeowners who own their mobile homes and lease their respective lots from Owners (collectively, the "Homeowners"). The landlord tenant relationship between Owners and the Homeowners is governed by Chapter 723, Florida Statutes.

1595. **Venue.** Venue is proper in Pasco County, Florida, as Palm Tree is located in Pasco County and the cause of action accrued in Pasco County.

1596. **Plaintiffs' Claims**. Plaintiffs maintain that Owners' Property is burdened to supply utility services to the Lots for an indefinite period of time. Plaintiffs also maintain that Owners' Property must supply utility services to their successors, heirs and assigns. Plaintiffs base their claims, in part, on the fact that Owners have provided utility services to the Lots in the past, and Plaintiffs contend that they have no other reasonable option to obtain utility services.

1597. Plaintiffs further contend that without Owners' supply of utility services, the Lots are not habitable and public health issues will arise from Plaintiffs' occupancy if utility services currently supplied by Owners are discontinued.

1598. No privity of contract exists between Plaintiffs and Owners.

1599. Owners are not present in the chain of title to any Plaintiff's individual Lot. Each Plaintiff purchased his or her Lot from an individual prior owner of the Lots not associated with Owners.

1600. There are no covenants, or restrictions running with the land that are binding upon Plaintiffs and Owners. The former covenants applicable to the Lots attached as Exhibit A, have been extinguished by the Florida Marketable Record Title Act, Chapter 712, Florida Statutes. *See*, Order On Defendants' Motion For Partial Summary Judgment dated December 8, 2016, attached as Exhibit B.

1601. **Owners' Constitutional Claims**. Owners own the Property comprising Palm Tree, in fee simple.

1602. Various improvements exist on the Property including the utility systems used to supply utility services to all Homeowners (the "Utility Systems"). The Utility Systems include, but are not limited to, a well field containing two wells, tanks, pumps, water treatment equipment, controls, a generator, a water distribution system, a sewer collection system, and a lift station.

1603. Owners have basic constitutionally protected property rights arising from their ownership of the Property. Owners maintain that as the fee simple owners of the Property, Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by Article I Section 2 of the Florida Constitution. The most valuable aspect of the ownership of the Property is the right to use it for any lawful purpose, or no use at all. Any infringement on Owners' full and free use of the privately owned Property is a direct limitation on, and diminution of the value of the Property. Any forced use of the Property to supply utility services to neighboring parcels violates Owners' basic constitutional rights.

1604. Property rights are among the most basic substantive rights expressly protected by the Florida Constitution.

1605. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value.

1606. While a landowner may constitutionally be required to suffer access by the owners of a neighboring landlocked parcel, no similar principle requires a landowner to supply utility services to an adjacent landowner who lacks access to the utility services necessary to make the adjacent property habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights to use the Property for any lawful purpose, or no use at all.

1607. There is a bona fide, actual, present practical need for the declaration by the Court concerning these matters.

1608. The request for declaratory relief addresses a present, ascertained or ascertainable state of facts as alleged above.

1609. The parties have, or reasonably may have, an actual, present adverse and antagonistic interest in the subject matter, facts and law alleged.

1610. The antagonistic and adverse interests are all before the Court.

1611. The relief sought by Owners is not merely the giving of legal advice or a request for direction from the Court.

1612. The parties are in doubt about their rights and the obligation of the Property to supply the requested utility services, and are entitled to have those doubts removed.

1613. Only the Circuit Court can adjudicate these constitutional rights. The Florida Public Service Commission lacks the jurisdiction or authority to interpret or determine ownership rights constitutionally guaranteed to the owners of real property by Article I Section 2 of the Florida Constitution.

1614. All conditions necessary for the filing of this action have been fulfilled, otherwise satisfied or waived.

1615. Plaintiffs' persistent claims and alleged rights in Owners' Property constitute clouds upon the title of Owners' Property.

1616. Owners have retained the undersigned law firm to represent them in this action and are obligated to pay a reasonable fee for the undersigned's services. Owners are entitled to an award of their costs and reasonable attorneys' fees for removing the claims and alleged rights.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by Article I Section 2 of the Florida Constitution;

b. Owners have a constitutional right to use their Property for any legal purpose or no use at all;

c. Any forced use of the Property for the benefit of Plaintiffs violates Owners' basic constitutional rights;

d. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value;

e. Owners have no duty to suffer the use of the Property to make the Lots habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights.

f. Owners are entitled to the costs and attorneys' fees incurred to remove Plaintiffs' claims and asserted rights; and,

g. Such other relief as the Court deems appropriate.

COUNT II
OBLIGATION TO SUPPLY WATER

1617. Owners reallege Paragraphs 1591 through 1600 as if fully set forth herein.

1618. All Plaintiffs are alleged in the complaint to be Lot owners.

1619. Owners own the recreational amenities for the Community, as well as the water and sewer systems servicing each Lot.

1620. **The Covenants**. Originally, Owners and each Lot owner were subject to recorded restrictive covenants (the "Covenants") described in the original complaint.

1621. Lot owners are permitted to use the Community's recreational facilities and receive water and sewer services for a fee.

1622. The custom and practice has been for each Lot owner to pay a monthly fee for this package of services.

1623. Owners' obligation under the Covenants to supply any amenities or services have expired or been rendered unenforceable by the marketable record title act, Chapter 712, Florida Statutes (the "Act")

1624. As a result, Owners are no longer obligated to provide any services to the Lot owners, including Plaintiffs.

1625. Some Plaintiffs also may no longer be obligated to accept and pay for services under the Covenants. Their individual obligations may have expired or been rendered unenforceable by the Act. A lot-by-lot, title-by-title examination is required to make this determination.

1626. **Owners Have No Obligation To Unbundle Services**. Recently, some Plaintiffs have failed or refused to pay for any services furnished by Owners, even for the water and sewer services which Owners continue to provide.

1627. Upon information and belief, some or all of these Plaintiffs contend that they may select which of Owners' services they intend to accept. These Plaintiffs argue that Owners must offer their services on an à la carte basis, enabling each individual Plaintiff to select which services, if any, they intend to accept.

1628. Owners disagree with this premise. Owners maintain that they have the right to offer services, if at all, as a package only. A Lot owner may accept the package of services in its entirety, or not at all.

1629. Owners contend that as the "master of their offer," Owners may offer or not offer services in their sole discretion.

1630. Custom and practice has established that the Lot owners have accepted this package arrangement and have negotiated for services only as a package.

1631. No written contracts continue to exist between Owners and any Plaintiff. Owners are not obligated in any respect to supply any services to Plaintiffs.

1632. All Plaintiffs are accepting services from Owners, including water, sewer, and garbage services. Each Plaintiff knows, or should know, that Owners are not offering their services on a free or gratuitous basis.

1633. The parties are in doubt about their rights. The prerequisites for declaratory relief as stated in section 86.021, Florida Statutes, are present.

1634. Owners will offer their services to each Plaintiff only on a package basis. Plaintiffs may take all or nothing.

1635. Plaintiffs contend that Owners must structure their offer as dictated by Plaintiffs, on an individual basis.

1636. Each Plaintiff knew, or should have known, from their purchase of a Lot in the Community, their title documents, as well as a physical inspection of their Lot and its location inside the mobile home park, that services, including water and sewer services, were being supplied by Owners.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Contract principles indicate that the offeror is the master of the offer;

b. Owners may appropriately offer utility services only as part of a package of services and amenities;

c. Owners may condition their offer of services and amenities upon an application and written contract; and

d. Such other relief as the Court deems appropriate.

COUNT III
IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS

1637. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs.

1638. The amount in controversy is within the jurisdictional limits of this Court.

1639. Prior to the institution of this action, Plaintiffs each contracted for and received a package of services and amenities from Owners consisting of access to Owners' amenity

package, utility services and garbage collection. These amenities and services were provided based upon an oral contract with Plaintiffs.

1640. With the filing of this action, Plaintiffs disavowed any contractual relationship with Owners and insisted that Owners must contract with Plaintiffs on Plaintiffs' terms. Owners have refused to do so.

1641. Plaintiffs have continued to use Owners' amenities and services.

1642. Plaintiffs have continued to use Owners' recreation hall, pool, grounds, and shuffleboard courts.

1643. Plaintiffs continue to attend park social and recreational functions.

1644. Plaintiffs have continued to benefit from Owners' management, maintenance and repair of the amenities and services.

1645. Plaintiffs continue to use Owners' garbage collection services.

1646. Plaintiffs also continue to use utilities supplied by Owners.

1647. Plaintiffs impliedly recognized that compensation for the amenities and services was due Owners.

1648. Plaintiffs have been unjustly enriched by the use of Owners' amenities and services.

1649. Plaintiffs owe Owners reasonable compensation for the value of the amenities and services voluntarily received.

WHEREFORE, Owners demand judgment against Plaintiffs for damages, costs and such other relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by email to Richard A. Harrison and Elizabeth M. Galbavy, Richard A. Harrison, P.A., 400 North Ashley Drive, Suite

2600, Tampa, FL 33602, rah@harrisonpa.com, emg@harrisonpa.com and lisa@harrisonpa.com, on this 15th day of September, 2017.

/s/ *J. Allen Bobo*
J. Allen Bobo
Florida Bar No. 356980
Jody B. Gabel
Florida Bar No. 0008524
LUTZ, BOBO & TELFAIR, P.A.
2 North Tamiami Trail, Suite 500
Sarasota, Florida 34236-5575
Telephone: 877/951-1800
Facsimile: 941/366-1603
jabobo@lutzbobo.com
jbgabel@lutzbobo.com
Attorneys for Defendants

3/15/72

316447

FILED FOR RECORD
[illegible]
Nov 30 9 35 AM '72

RESTRICTIONS

STATE OF FLORIDA

COUNTY OF PASCO

KNOW ALL MEN BY THESE PRESENTS, That whereas we, the undersigned PALM TREE ACRES, Inc., a Florida corporation, are the owners in fee simple of certain property located in Pasco County, Florida, to-wit:

> Tracts 8, 9, 24, 25, 40 and 41, Section 16 Township 26 South, Range 21 East of Zephyrhills Colony Company Lands as per plat thereof recorded in Plat Book 2, page 1, public records of Pasco County, Florida.

NOW, THEREFORE WITNESSETH: That the said Owners hereby place the following restrictions on said property, which restrictions shall constitute covenants running with the land:

1. One Mobile Home only to be located on each lot.

2. Mobile Homes must be at least twelve (12) feet wide and fifty (50) feet long or double-width.

3. This park shall be for adults only. No children under the age of 19 can be permanent residents.

4. All pets are to be kept in the [illegible] on a leash.

5. Premises shall be kept in good order; space under coaches shall be enclosed with blocks or aluminum; lawn shall be kept cut.

6. No [illegible].

7. All tanks, clotheslines, bottles, etc., shall be kept in back of coach. Garbage containers should be kept clean, have covers or lids and kept in neat order. Enclosed, preferably with shrubs, small fencing, etc. Clotheslines should be the collapsible umbrella type.

8. No offensive activity of any kind shall be carried on, nor shall anything be done which may be or become a nuisance to the neighborhood. Burning of trash shall not be permitted. Cars cannot be torn down and repaired on said premises.

9. If for any reason you choose to sell, please contact the office and we will work with you to sell.

10. No temporary structures, basements, tents, shacks, garages, or barns shall be placed on lots. One utility building is permitted.

11. All coaches must be set back fifteen (15) feet from front lot line and five (5) feet from side of lot line.

12. No commercial vehicles such as trucks, trailers or similar vehicles shall be parked permanently on any lot in this subdivision. Boats, trailers, and campers shall be parked in our designated area.

13. No children shall be permitted on the shuffleboard courts, or in the pool or recreation building without an adult accompanying them.

[illegible]

EXHIBIT A

14. If you plan to use the recreation facilities, any or all, you must have a yearly membership to do so. This membership also entitles your guests to use the facilities when visiting.

15. Electric bills shall be paid by the individual lot owners directly to Florida Power Corporation.

16. Water and sewage shall be paid by the individual lot owners directly to Palm Tree Acres, Incorporated.

17. You will be provided with an Palm tree and a Conch light. The light you may install yourself or pay to have installed.

18. Concrete or black-top driveways are to be installed within a period of sixty (60) days.

19. Invalidation of any one of these covenants by judgment or court order shall in wise affect any of the other provisions which shall remain in full force and effect.

20. The Owners reserve the right to file subsequent deeds or restrictions regulating the use to which the various unsold lots, plots, or tracts can be put. Owners further reserve the right to waive or to amend these restrictions as pertain to any particular lot, plot or tract.

(Corporate Seal)

IN WITNESS WHEREOF the grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

PALM TREE ACRES, INC.,

ATTEST: R. L. Schanz
Secretary

Signed, sealed and delivered
in the presence of:

Rose E. Schanz

Sue A. Nevil

By: R. L. Schanz
R. L. Schanz
Secretary & Treasurer

Two Witnesses

STATE OF FLORIDA

COUNTY OF PASCO

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared,

R. L. SCHANZ,

well known to me to be the Secretary and Treasurer of the corporation named in the foregoing instrument, and that he severally acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation.

WITNESS my hand and Official Seal in the County and State last aforesaid this 1st day of August, A. D. 1972.

(NOTARIAL SEAL)

3-27-76

Notary Public
My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES MAR. 27, 1976
BONDED THRU GENERAL CASUALTY CO. OF WISCONSIN

IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB,

Plaintiff,

v. CASE NO. 51-2014-CC-000519-ES

PALM TREE ACRES MOBILE HOME PARK,

Defendant.
_____/

ORDER ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter was considered on Defendants' Motion for Partial Summary Judgment (the "Motion"). Upon review of the Motion and incorporated memorandum of law, the memorandum in opposition provided by Plaintiffs, as well as the pleadings and attachments to the pleadings, and having considered the arguments and stipulations of counsel,

IT IS ADJUDGED THAT:

1. Defendants' Motion for Partial Summary Judgment is GRANTED in part.

2. Upon the parties' stipulations and on the record evidence attached to Plaintiffs' Second Amended Complaint, the Court holds that "Restrictions" recorded on August 30, 1972, at OR Book 624, Pages 426-427, in the Public Records of Pasco County, Florida are invalid pursuant to Chapter 712, Florida Statutes.

3. The above reflects the limited ruling of the Court on the Motion.

DONE AND ORDERED in chambers at Dade City, Pasco County, Florida on _____, 2016

SIGNED
DEC 08 2016
_____
Honorable William B. Sestak,
County Court Judge s/WILLIAM G. SESTAK

cc: J. Allen Bobo
Richard A. Harrison

EXHIBIT B

Filing # 73165048 E-Filed 06/06/2018 01:02:19 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB, et al.,

Plaintiffs,

v.

CASE NO. 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

DEFENDANTS' VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to rule 1.510, Florida Rules of Civil Procedure, Defendants, James C. Goss, Edward Heveran, Margaret E. Heveran and Palm Tree Acres Mobile Home Park ("Owners"), move for Partial Summary Judgment against all Plaintiffs on all issues alleged in Plaintiffs' Complaint relating to the provision of utility services to Plaintiffs by Owners and all issues in Count III of Owners' counterclaim. The grounds upon which this motion is based and the substantial matters of law to be argued are as follows:

I. Undisputed Facts:

1. Palm Tree is a rental mobile home park located in Pasco County, Florida.

2. At the time Owners purchased Palm Tree, some of the community's mobile home lots had previously been sold by the original developer to individual purchasers, in fee simple. The lots owned in fee simple shall be referred to as the "Lots."

3. Each Plaintiff purchased a Lot from an original purchaser or a successor owner.

4. Owners were not involved in the sale of any Lot to any Plaintiff.

5. At the time Owners purchased Palm Tree, recorded covenants (the "Covenants") governed the Lots.

6. The Covenants have expired or have been extinguished by the Marketable Record Title Act, Chapter 712, Florida Statutes.

7. No Covenants or contracts currently exist between Owners and any Plaintiff.

8. Plaintiffs are merely adjoining landowners of Owners. Each Plaintiff owns a Lot contiguous to the real property compromising Palm Tree (the "Property").

9. Owners have no interest in the Lots.

10. Owners supply water to homeowners of Palm Tree who rent lots ("Homeowners") from wells located on Owners' Property. The water is distributed to Homeowners through a distribution system owned an operated by Owners.

11. Owners also operate a sanitary sewer collection system serving each Homeowner. The sewer collection system and lift station are also owned and operated by Owners.

12. For over 30 years, each Plaintiff or their predecessors rented access to the amenities, facilities, and services of Palm Tree. Plaintiffs paid a monthly fee for this access which was approximately half of the monthly rent payable by Homeowners. The discounted rent paid by Plaintiffs reflected the fact that they owned their Lots and only rented access to Owners' amenities, facilities, and services. This oral rental agreement allowed Plaintiffs to use the clubhouse, pool, shuffleboard courts, and attend functions of Palm Tree, like any Homeowner. It also gave Plaintiffs access to the services of Palm Tree, including its water and sanitary sewer systems and its garbage collection services, without separate charge.

13. Each Plaintiff has disavowed any continuing rental relationship with Owners or Palm Tree.

14. As a result, Owners disclaim any responsibility to continue supplying water or sewer services to Plaintiffs or the Lots.

II. Argument:

A. No Authority Requires A Landowner To Provide Utility Services To A Neighboring Landowner And To Impose Such An Obligation Would Impair A Landowner's Constitutionally Protected Rights.

15. Owners have basic constitutionally protected property rights arising from their ownership of the Property. "Property rights are among the basic substantive rights expressly protected by the Florida Constitution. *Art. I, § 2, Fla. Const.*" *Dept. of Law Enforcement v. Real Property,* 588 So.2d 957, 964 (Fla. 1991). The "right to exclude others" from privately owned real property is considered a fundamental element of property protected by the Fifth Amendment to the United States Constitution. *See, Lingle v. Chevron, U.S.A. Inc.*, 544 U.S. 528, 539; 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005). As fee simple owners of the Property, Owners are entitled to the full bundle of ownership rights constitutionally guaranteed. This included Owners' rights to use the Property for Owners' benefit, to the exclusion of Plaintiffs.

16. In *Snyder v. Board of County Commissioners of Brevard County*, 595 So.2d 65, 70 (Fla. 5th DCA 1991) *quashed on other grounds,* 627 So.2d 469 (Fla. 1993), the Court explained the scope of constitutionally protected property rights:

> The most valuable aspect of the ownership of property is the right to use it. Any infringement on the owner's full and free use of privately owned property, whether the result of physical limitations or governmentally enacted restrictions, is a direct limitation on, and diminution of, the value of the property and the value of its ownership and accordingly triggers constitutional protections.

17. "Ownership" is defined as, "[t]he right of one or more persons to possess and use a thing to the exclusion of others. The right by which a thing belongs to someone in particular, to the exclusion of all other persons." *See, BLACK'S LAW DICTIONARY*, 1215 (5th ed. 1979).

Owners have the constitutional right to use the Property for any lawful use. *City of Miami v. Schutte*, 262 So.2d 14, 16 (Fla. 3d DCA 1972).

18. *No authority exists in the law requiring a landowner to supply utility services to an adjoining landowner.* Common law principles and Section 704.01, Florida Statutes, may require a landowner to suffer access by a landlocked neighbor when an actual necessity exists. *Hunter v. Marquardt, Inc.,* 549 So.2d 1095, 1097 (Fla. 1st DCA 1989). However, no similar principle requires a landowner to provide his neighbor access to the landowner's utilities.

19. *This action was filed in February 2014. For the 53 months that the action has been pending, Plaintiffs have failed to identify any legal authority which requires Owners as adjoining landowners to furnish Plaintiffs utility services. And, none exists.*

20. One of the most essential sticks in the bundle of property rights is the right to exclude others. *Lucas v. South Carlonia Costal Counsel*, 505 U.S. 1003, 1044, 112 S.Ct. 2886, 2908 (1992). To require a landowner to supply utilities to his neighbor would unconstitutionally remove the most valuable sticks from the bundle, the right to use (or not use) the property during the period of ownership. *See also, St. Johns River Water Management District v. Koontz*, 861 So.2d 1267, 1270 (Fla. 5th DCA 2003), holding that an equally important stick in the bundle of property rights is the right to exclude others from one's property. Whether a landowner is required to permit access to his property by a neighbor, or to permit the neighbor to use utilities serving his property, the result is the same. Valuable, constitutionally protected property rights are lost. Any obligation of Owners to serve Plaintiffs will unconstitutionally impact the use, marketability and value of Owners' Property.

21. Owners have no legal obligation to supply utility services to Plaintiffs or the Lots. Any state or governmental action attempting to impose such a responsibility would violate the Florida Constitution. *Schreiner v. McKenzie Tank Lines, Inc.* 432 So.2d 567, 569 (Fla. 1983).

22. Plaintiffs allege no written instrument signed by Owners permitting Plaintiffs access to Owners' utility systems. Any claim that Plaintiffs have access to utilities is barred by the statute of frauds, Section 725.01, Florida Statutes.

23. The obligation Plaintiffs seek is also perpetual in duration. They demand that utilities be supplied to the Lots *indefinitely* to Plaintiffs *and their successors.* Courts will not enforce perpetual obligations because to do so would create "endless" duties. *See, Collins v. Pic-Town Water Works, Inc.*, 166 So.2d 760, 762 (Fla. 2d DCA 1964) citing *Texas & Pacific Railroad Co. v. City of Marshall*, 136 U.S. 393; 10 S.Ct. 846, 34 L.Ed. 385 (1890).

B. Imposing The Obligation To Provide Utilities Would Unconstitutionally Require Owners To Obtain A Certificate From The Florida Public Service Commission

24. Requiring Owners to supply utility services to Plaintiffs would force Owners to obtain a certificate from the Florida Public Service Commission (the "PSC").

25. Plaintiffs have disavowed any landlord tenant relationship with Owners. Supplying water and sewer services to even one non-exempt customer requires that the provider obtain a PSC certificate. *PW Ventures, Inc. v. Nichols*, 533 So.2d 281, 282 (Fla. 1988). In order to supply utility services to Plaintiffs, Owners must first obtain an original certificate pursuant to Section 367.031, Florida Statutes. The PSC would then determine the rates payable for utility services.

26. The primary business of Palm Tree is the operation of a rental mobile home park. Approximately 224 renting Homeowners are Owners primary customers. Owners may legally

provide utility services to these Homeowners under an *exemption* from PSC regulation contained in Section 367.022(5), Florida Statutes.

> **367.022 Exemptions.—**
> The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:
>
> (5) Landlords providing service to their tenants without specific compensation for the service.

27. Use of this exemption allows Owners to deliver water and sewer services to the renting Homeowners for no separate charge. If Owners are forced to obtain a PSC certificate, they must charge PSC tariff rates. These rates will adversely affect the charges to Homeowners. "The PSC properly requires rigorous cost accounting in every ratemaking case." *Southern States Utilities v. Florida Public Service Commission*, 714 So.2d 1046, 1053 (Fla. 1st DCA 1998). "In the aggregate, rates and charges must assure the utility a fair return on its investment." *Id.* In addition to a fair profit, ratemaking must also consider "debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service." Section 367.081(2)(a), Florida Statutes. None of these factors are currently used by Owners to establish the rents charged to Owners renting Homeowners.

28. Owners' business plan is to avoid these additional charges which would increase the renting Homeowners' monthly expenses in this 55+ community. Owners will take no action to prompt PSC regulation and increase the costs to their primary customers, the renting Homeowners.

29. Plaintiffs individually elected to purchase their Lot with no involvement of Owners. For example, the initial plaintiff, Mr. Schwob testified at pages 16-17 of his deposition:

Page 16

Q. Did the mobile home park have any part of the sales negotiation or the sales process?
A. No, sir.
Q. You negotiated directly with the seller?
A. Yes, sir.
Q. At any time before you closed the transaction did you make contact with the mobile home park?
A. Not that I know of. Not that I remember.
Q. Did anyone make any representations to you from the park?

Page 17

A. No, sir.
Q. When you looked at the lot, did you concern yourself at all with utilities?
A. No, because he had told me that you were paying X number of dollars a month to the park.
Q. Okay. Let's -- we'll get mixed up in our pronouns in a second. He told you?
A. My neighbor.
Q. Okay. So when you were investigating the purchase, you were relying primarily on your neighbor?
A. That's correct. And the owner of the trailer that I was buying.

30. Each Plaintiff independently purchased his or her Lot *inside Palm Tree, without Owners' involvement.* The two most important attributes for residential property – utilities and access – were either ignored, or presumably Plaintiffs enjoyed a lesser purchase price because of these limiting circumstances. The location of the fee simple lots inside the mobile home park was obvious. After purchasing land with no access to utilities, Plaintiffs cannot constitutionally compel the Owners' to supply the missing service.

31. The PSC issues compound Owners' constitutional arguments. Owners are entitled to enjoy, use, or not use their real Property without interference. Plaintiffs would require Owners as their neighbor to shoulder the additional expense and regulatory requirements

associated with operating a regulated utility, because Plaintiffs cannot obtain utility services elsewhere. No property owner can be forced to incur additional costs and obligations because his neighbor made a bad decision in purchasing adjacent property. To impose such a requirement unconstitutionally devalues Owners' property and renders it a servient estate.

III. Requested Summary Judgment Order

Owners request a partial summary judgment order finding that:

a. Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution;

b. Owners have a constitutional right to use their Property for any legal purpose or no use at all;

c. Any forced use of the Property for the benefit of Plaintiffs violates Owners' basic constitutional rights;

d. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value;

e. Owners are entitled to the costs and attorneys' fees incurred to remove Plaintiffs' claims and asserted rights; and,

f. Such other relief as the Court deems appropriate.

VERIFICATION

I am the operator of Palm Tree mobile home park. Under penalty of perjury, I declare that I have read the foregoing Motion for Final Summary Judgment, and the facts alleged in paragraphs 1-14, and 22-30 are true and correct to the best of my knowledge and belief.

Trent Goss

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by email to Richard A. Harrison and Daniella N. Leavitt, Richard A. Harrison, P.A., 400 North Ashley Drive, Suite 2600, Tampa, FL 33602, rah@harrisonpa.com, dnl@harrisonpa.com and lisa@harrisonpa.com, on this 6 day of June, 2018.

J. Allen Bobo
Florida Bar No. 0356980
Jody B. Gabel
Florida Bar No. 0008524
LUTZ, BOBO & TELFAIR, P.A.
2 North Tamiami Trail, Suite 500
Sarasota, Florida 34236-5575
Telephone: 877/951-1800
Facsimile: 941/366-1603
jabobo@lutzbobo.com
jbgabel@lutzbobo.com
Attorneys for Defendants

Filing # 73790327 E-Filed 06/19/2018 03:32:46 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

NELSON P. SCHWOB, et al.,

Plaintiffs,

v.

CASE NO. 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

DEFENDANTS' AMENDED COUNTERCLAIM

Pursuant to Rule 1.190, Florida Rules of Civil Procedure, and this Court's Order entered on May 31, 2018, Defendants, James C. Goss, Edward Heveran, Margaret E. Heveran and Palm Tree Acres Mobile Home Park ("Owners") amend their Counterclaim and allege:

COUNT I
OWNERS' CONSTITUTIONAL RIGHTS AS OWNERS OF REAL PROPERTY

1. **Action**. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes. The amounts in controversy are within the jurisdictional limits of the Circuit Court.

2. **Plaintiffs.** Plaintiffs are the owners, in fee simple, of lots (collectively, the "Lots") within Palm Tree Acres mobile home park ("Palm Tree").

3. **Defendants.** Defendants are the Owners and operators of Palm Tree (the "Property"). Owners' title is evidenced by a copy of Owners' Corrective Warranty Deed attached to Plaintiffs' Complaint and recorded in OR Book 1477, pages 0673-0680 of the Public Records of Pasco County, Florida.

4. **Palm Tree Acres Mobile Home Park.** Palm Tree is a rental mobile home park consisting of approximately 244 lots. Approximately 222 lots are occupied by homeowners who own their mobile homes and lease their respective lots from Owners (collectively, the

"Homeowners"). The landlord tenant relationship between Owners and the Homeowners is governed by Chapter 723, Florida Statutes.

5. **Venue.** Venue is proper in Pasco County, Florida, as Palm Tree is located in Pasco County and the cause of action accrued in Pasco County.

6. **Plaintiffs' Claims**. Plaintiffs maintain that Owners' Property is burdened to supply utility services to the Lots for an indefinite period of time. Plaintiffs also maintain that Owners' Property must supply utility services to their successors, heirs and assigns. Plaintiffs base their claims, in part, on the fact that Owners have provided utility services to the Lots in the past, and Plaintiffs contend that they have no other reasonable option to obtain utility services.

7. Plaintiffs further contend that without Owners' supply of utility services, the Lots are not habitable and public health issues will arise from Plaintiffs' occupancy if utility services currently supplied by Owners are discontinued.

8. No privity of contract exists between Plaintiffs and Owners.

9. Owners are not present in the chain of title to any Plaintiff's individual Lot. Each Plaintiff purchased his or her Lot from an individual prior owner of the Lots not associated with Owners.

10. There are no covenants, or restrictions running with the land that are binding upon Plaintiffs and Owners. The former covenants applicable to the Lots attached as Exhibit A, have been extinguished by the Florida Marketable Record Title Act, Chapter 712, Florida Statutes. *See*, Order On Defendants' Motion For Partial Summary Judgment dated December 8, 2016, attached as Exhibit B.

11. **Owners' Constitutional Claims**. Owners own the Property comprising Palm Tree, in fee simple.

12. Various improvements exist on the Property including the utility systems used to

supply utility services to all Homeowners (the "Utility Systems"). The Utility Systems include, but are not limited to, a well field containing two wells, tanks, pumps, water treatment equipment, controls, a generator, a water distribution system, a sewer collection system, and a lift station.

13. Owners have basic constitutionally protected property rights arising from their ownership of the Property. Owners maintain that as the fee simple owners of the Property, Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution. The most valuable aspect of the ownership of the Property is the right to use it for any lawful purpose, or no use at all. Any infringement on Owners' full and free use of the privately owned Property is a direct limitation on, and diminution of the value of the Property. Any forced use of the Property to supply utility services to neighboring parcels violates Owners' basic constitutional rights.

14. Property rights are among the most basic substantive rights expressly protected by the Florida Constitution.

15. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value.

16. While a landowner may constitutionally be required to suffer access by the owners of a neighboring landlocked parcel, no similar principle requires a landowner to supply utility services to an adjacent landowner who lacks access to the utility services necessary to make the adjacent property habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights to use the Property for any lawful purpose, or no use at all.

17. There is a bona fide, actual, present practical need for the declaration by the Court concerning these matters.

18. The request for declaratory relief addresses a present, ascertained or ascertainable state of facts as alleged above.

19. The parties have, or reasonably may have, an actual, present adverse and antagonistic interest in the subject matter, facts and law alleged.

20. The antagonistic and adverse interests are all before the Court.

21. The relief sought by Owners is not merely the giving of legal advice or a request for direction from the Court.

22. The parties are in doubt about their rights and the obligation of the Property to supply the requested utility services, and are entitled to have those doubts removed.

23. Only the Circuit Court can adjudicate these constitutional rights. The Florida Public Service Commission lacks the jurisdiction or authority to interpret or determine ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution.

24. All conditions necessary for the filing of this action have been fulfilled, otherwise satisfied or waived.

25. Plaintiffs' persistent claims and alleged rights in Owners' Property constitute clouds upon the title of Owners' Property.

26. Owners have retained the undersigned law firm to represent them in this action and are obligated to pay a reasonable fee for the undersigned's services. Owners are entitled to an award of their costs and reasonable attorneys' fees for removing the claims and alleged rights.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution;

b. Owners have a constitutional right to use their Property for any legal purpose or no use at all;

c. Any forced use of the Property for the benefit of Plaintiffs violates Owners' basic constitutional rights;

d. Burdening the Property with any obligation to supply utility services to the Lots would unconstitutionally restrict the Property, and thereby adversely affect its use, marketability and value;

e. Owners have no duty to suffer the use of the Property to make the Lots habitable. Any such burden, requirement, or even governmentally imposed restrictions, infringes upon Owners' constitutionally protected bundle of rights.

f. Owners are entitled to the costs and attorneys' fees incurred to remove Plaintiffs' claims and asserted rights; and,

g. Such other relief as the Court deems appropriate.

COUNT II
OBLIGATION TO SUPPLY WATER AND SEWER

27. Owners reallege Paragraphs 1 through 26 as if fully set forth herein.

28. All Plaintiffs are alleged in the complaint to be Lot owners.

29. Owners own the recreational amenities for the Community, as well as the water and sewer systems servicing each Lot.

30. **The Covenants**. Originally, Owners and each Lot owner were subject to recorded restrictive covenants (the "Covenants") described in the original complaint.

31. Lot owners are permitted to use the Community's recreational facilities and receive water and sewer services for a fee.

32. The custom and practice has been for each Lot owner to pay a monthly fee for this package of services.

33. Owners' obligation under the Covenants to supply any amenities or services have expired or been rendered unenforceable by the marketable record title act, Chapter 712, Florida Statutes (the "Act")

34. As a result, Owners are no longer obligated to provide any services to the Lot owners, including Plaintiffs.

35. Some Plaintiffs also may no longer be obligated to accept and pay for services under the Covenants. Their individual obligations may have expired or been rendered unenforceable by the Act. A lot-by-lot, title-by-title examination is required to make this determination.

36. **Owners Have No Obligation To Unbundle Services**. Recently, some Plaintiffs have failed or refused to pay for any services furnished by Owners, even for the water and sewer services which Owners continue to provide.

37. Upon information and belief, some or all of these Plaintiffs contend that they may select which of Owners' services they intend to accept. These Plaintiffs argue that Owners must offer their services on an à la carte basis, enabling each individual Plaintiff to select which services, if any, they intend to accept.

38. Owners disagree with this premise. Owners maintain that they have the right to offer services, if at all, as a package only. A Lot owner may accept the package of services in its entirety, or not at all.

39. Owners contend that as the "master of their offer," Owners may offer or not offer services in their sole discretion.

40. Custom and practice has established that the Lot owners have accepted this package arrangement and have negotiated for services only as a package.

41. No written contracts continue to exist between Owners and any Plaintiff. Owners are not obligated in any respect to supply any services to Plaintiffs.

42. All Plaintiffs are accepting services from Owners, including water, sewer, and garbage services. Each Plaintiff knows, or should know, that Owners are not offering their services on a free or gratuitous basis.

43. The parties are in doubt about their rights. The prerequisites for declaratory relief as stated in section 86.021, Florida Statutes, are present.

44. Owners will offer their services to each Plaintiff only on a package basis. Plaintiffs may take all or nothing.

45. Plaintiffs contend that Owners must structure their offer as dictated by Plaintiffs, on an individual basis.

46. Each Plaintiff knew, or should have known, from their purchase of a Lot in the Community, their title documents, as well as a physical inspection of their Lot and its location inside the mobile home park, that services, including water and sewer services, were being supplied by Owners.

WHEREFORE, Owners seek a declaratory judgment confirming that:

a. Contract principles indicate that the offeror is the master of the offer;

b. Owners may appropriately offer utility services only as part of a package of services and amenities;

c. Owners may condition their offer of services and amenities upon an application and written contract; and

d. Such other relief as the Court deems appropriate.

COUNT III - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS NELSON P. AND BARBARA J. SCHWOB

47. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Nelson P. Schwob and Barbara J. Schwob ("Schwobs").

48. The amount in controversy is within the jurisdictional limits of this Court.

49. Prior to the institution of this action, Schwobs contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Schwobs.

50. With the filing of this action, Schwobs disavowed any contractual relationship with Owners and insisted that Owners must contract with Schwobs on Schwobs' terms. Owners have refused to do so.

51. Schwobs have continued to use Owners' Amenities and Services.

52. Schwobs have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

53. Schwobs impliedly recognized that compensation for the Amenities and Services was due Owners.

54. Schwobs have been unjustly enriched by the use of Owners' Amenities and Services.

55. Schwobs owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Schwobs for damages, costs and such other relief as the Court deems appropriate.

COUNT IV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS DARRELL L. AND MARTHA K. BIRT

56. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Darrell L. Birt and Martha K. Birt ("Birts").

57. The amount in controversy is within the jurisdictional limits of this Court.

58. Prior to the institution of this action, Birts contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Birts.

59. With the filing of this action, Birts disavowed any contractual relationship with Owners and insisted that Owners must contract with Birts on Birts' terms. Owners have refused to do so.

60. Birts have continued to use Owners' Amenities and Services.

61. Birts have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

62. Birts impliedly recognized that compensation for the Amenities and Services was due Owners.

63. Birts have been unjustly enriched by the use of Owners' Amenities and Services.

64. Birts owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Birts for damages, costs and such other relief as the Court deems appropriate.

COUNT V - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS FRANK E. AND LINDA J. BROWN

65. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Frank E. Brown and Linda J. Brown ("F&L Brown").

66. The amount in controversy is within the jurisdictional limits of this Court.

67. Prior to the institution of this action, F&L Brown contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with F&L Brown.

68. With the filing of this action, F&L Brown disavowed any contractual relationship with Owners and insisted that Owners must contract with F&L Brown on F&L Brown's terms. Owners have refused to do so.

69. F&L Brown have continued to use Owners' Amenities and Services.

70. F&L Brown have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

71. F&L Brown impliedly recognized that compensation for the Amenities and Services was due Owners.

72. F&L Brown have been unjustly enriched by the use of Owners' Amenities and Services.

73. F&L Brown owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against F&L Brown for damages, costs and such other relief as the Court deems appropriate.

COUNT VI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS PAUL AND SANDRA BROWN

74. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Paul Brown and Sandra Brown ("P&S Brown").

75. The amount in controversy is within the jurisdictional limits of this Court.

76. Prior to the institution of this action, P&S Brown contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with P&S Brown.

77. With the filing of this action, P&S Brown disavowed any contractual relationship with Owners and insisted that Owners must contract with P&S Brown on P&S Brown's terms. Owners have refused to do so.

78. P&S Brown have continued to use Owners' Amenities and Services.

79. P&S Brown have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

80. P&S Brown impliedly recognized that compensation for the Amenities and Services was due Owners.

81. P&S Brown have been unjustly enriched by the use of Owners' Amenities and Services.

82. P&S Brown owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against P&S Brown for damages, costs and such other relief as the Court deems appropriate.

COUNT VII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS DENNIS M. AND CAROL J. COSMO

83. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Dennis M. Cosmo and Carol J. Cosmo ("Cosmos").

84. The amount in controversy is within the jurisdictional limits of this Court.

85. Prior to the institution of this action, Cosmos contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Cosmos.

86. With the filing of this action, Cosmos disavowed any contractual relationship with Owners and insisted that Owners must contract with Cosmos on Cosmos' terms. Owners have refused to do so.

87. Cosmos have continued to use Owners' Amenities and Services.

88. Cosmos have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

89. Cosmos impliedly recognized that compensation for the Amenities and Services was due Owners.

90. Cosmos have been unjustly enriched by the use of Owners' Amenities and Services.

91. Cosmos owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Cosmos for damages, costs and such other relief as the Court deems appropriate.

COUNT VIII – IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS MARILYN C. MORSE, STEVEN P. AND LAURIE A. CUMMINGS

92. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Marilyn C. Morse, Steven P. Cummings and Laurie A. Cummings ("Morse-Cummings").

93. The amount in controversy is within the jurisdictional limits of this Court.

94. Prior to the institution of this action, Morse-Cummings contracted for and

received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Morse-Cummings.

95. With the filing of this action, Morse-Cummings disavowed any contractual relationship with Owners and insisted that Owners must contract with Morse-Cummings on Morse-Cummings' terms. Owners have refused to do so.

96. Morse-Cummings have continued to use Owners' Amenities and Services.

97. Morse-Cummings have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

98. Morse-Cummings impliedly recognized that compensation for the Amenities and Services was due Owners.

99. Morse-Cummings have been unjustly enriched by the use of Owners' Amenities and Services.

100. Morse-Cummings owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

101. WHEREFORE, Owners demand judgment against Morse-Cummings for damages, costs and such other relief as the Court deems appropriate.

COUNT IX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF KAROL FLEMING

102. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Karol Fleming ("Fleming").

103. The amount in controversy is within the jurisdictional limits of this Court.

104. Prior to the institution of this action, Fleming contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Fleming.

105. With the filing of this action, Fleming disavowed any contractual relationship with Owners and insisted that Owners must contract with Fleming on Fleming's terms. Owners have refused to do so.

106. Fleming has continued to use Owners' Amenities and Services.

107. Fleming has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

108. Fleming impliedly recognized that compensation for the Amenities and Services was due Owners.

109. Fleming has been unjustly enriched by the use of Owners' Amenities and Services.

110. Fleming owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Fleming for damages, costs and such other relief as the Court deems appropriate.

COUNT X- IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF SOLANGE GERVAIS

111. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Solange Gervais ("Gervais").

112. The amount in controversy is within the jurisdictional limits of this Court.

113. Prior to the institution of this action, Gervais contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Gervais.

114. With the filing of this action, Gervais disavowed any contractual relationship with Owners and insisted that Owners must contract with Gervais on Gervais' terms. Owners have refused to do so.

115. Gervais has continued to use Owners' Amenities and Services.

116. Gervais has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

117. Gervais impliedly recognized that compensation for the Amenities and Services was due Owners.

118. Gervais has been unjustly enriched by the use of Owners' Amenities and Services.

119. Gervais owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Gervais for damages, costs and such other relief as the Court deems appropriate.

COUNT XI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS BERND J. AND OPAL B GIERSCHKE

120. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Bernd J. Gierschke and Opal B. Gierschke ("Gierschkes").

121. The amount in controversy is within the jurisdictional limits of this Court.

122. Prior to the institution of this action, Gierschkes contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Gierschkes.

123. With the filing of this action, Gierschke disavowed any contractual relationship with Owners and insisted that Owners must contract with Gierschkes on Gierschkes' terms. Owners have refused to do so.

124. Gierschkes have continued to use Owners' Amenities and Services.

125. Gierschkes have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

126. Gierschkes impliedly recognized that compensation for the Amenities and Services was due Owners.

127. Gierschkes have been unjustly enriched by the use of Owners' Amenities and Services.

128. Gierschkes owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Gierschkes for damages, costs and such other relief as the Court deems appropriate.

COUNT XII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS CHARLES H. AND CAROL A. LePAGE

129. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Charles H. LePage, Sr. and Carol A. LePage ("LePages").

130. The amount in controversy is within the jurisdictional limits of this Court.

131. Prior to the institution of this action, LePages contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with LePages.

132. With the filing of this action, LePages disavowed any contractual relationship with Owners and insisted that Owners must contract with LePages on LePages' terms. Owners have refused to do so.

133. LePages have continued to use Owners' Amenities and Services.

134. LePages have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

135. LePages impliedly recognized that compensation for the Amenities and Services was due Owners.

136. LePages have been unjustly enriched by the use of Owners' Amenities and Services.

137. LePages owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against LePages for damages, costs and such other relief as the Court deems appropriate.

COUNT XIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES L. AND REBECCA L. MAY

138. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James L. May and Rebecca L. May ("Mays").

139. The amount in controversy is within the jurisdictional limits of this Court.

140. Prior to the institution of this action, Mays contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Mays.

141. With the filing of this action, Mays disavowed any contractual relationship with Owners and insisted that Owners must contract with Mays on Mays' terms. Owners have refused to do so.

142. Mays have continued to use Owners' Amenities and Services.

143. Mays have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

144. Mays impliedly recognized that compensation for the Amenities and Services was due Owners.

145. Mays have been unjustly enriched by the use of Owners' Amenities and Services.

146. Mays owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Mays for damages, costs and such other relief as the Court deems appropriate.

COUNT XIV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
ANDAMENITIES USED BY PLAINTIFF LORI OFFER

147. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Lori Offer ("Offer").

148. The amount in controversy is within the jurisdictional limits of this Court.

149. Prior to the institution of this action, Offer contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage,

amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Offer.

150. With the filing of this action, Offer disavowed any contractual relationship with Owners and insisted that Owners must contract with Offer on Offer's terms. Owners have refused to do so.

151. Offer has continued to use Owners' Amenities and Services.

152. Offer has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

153. Offer impliedly recognized that compensation for the Amenities and Services was due Owners.

154. Offer has been unjustly enriched by the use of Owners' Amenities and Services.

155. Offer owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Offer for damages, costs and such other relief as the Court deems appropriate.

COUNT XV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF ELVIRA PARDO

156. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Elvira Pardo ("Pardo").

157. The amount in controversy is within the jurisdictional limits of this Court.

158. Prior to the institution of this action, Pardo contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Pardo.

159. With the filing of this action, Pardo disavowed any contractual relationship with Owners and insisted that Owners must contract with Pardo on Pardo's terms. Owners have refused to do so.

160. Pardo has continued to use Owners' Amenities and Services.

161. Pardo has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

162. Pardo impliedly recognized that compensation for the Amenities and Services was due Owners.

163. Pardo has been unjustly enriched by the use of Owners' Amenities and Services.

164. Pardo owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Pardo for damages, costs and such other relief as the Court deems appropriate.

COUNT XVI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF JAMES A. PASCO

165. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, James A. Pasco ("Pasco").

166. The amount in controversy is within the jurisdictional limits of this Court.

167. Prior to the institution of this action, Pasco contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Pasco.

168. With the filing of this action, Pasco disavowed any contractual relationship with Owners and insisted that Owners must contract with Pasco on Pasco's terms. Owners have refused to do so.

169. Pasco has continued to use Owners' Amenities and Services.

170. Pasco has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

171. Pasco impliedly recognized that compensation for the Amenities and Services was due Owners.

172. Pasco has been unjustly enriched by the use of Owners' Amenities and Services.

173. Pasco owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Pasco for damages, costs and such other relief as the Court deems appropriate.

COUNT XVII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS JAMES A AND JOYCE A PASCO

174. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James A. Pasco and Joyce A. Pasco ("J&J Pasco").

175. The amount in controversy is within the jurisdictional limits of this Court.

176. Prior to the institution of this action, J&J Pasco contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with J&J Pasco.

177. With the filing of this action, J&J Pasco disavowed any contractual relationship with Owners and insisted that Owners must contract with J&J Pasco on J&J Pasco's terms. Owners have refused to do so.

178. J&J Pasco have continued to use Owners' Amenities and Services.

179. J&J Pasco have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

180. J&J Pasco impliedly recognized that compensation for the Amenities and Services was due Owners.

181. J&J Pasco have been unjustly enriched by the use of Owners' Amenities and Services.

182. J&J Pasco owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against J&J Pasco for damages, costs and such other relief as the Court deems appropriate.

COUNT XVIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DAVID L. AND KAY J. SMITH

183. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, David L. Smith and Kay J. Smith ("D&K Smith").

184. The amount in controversy is within the jurisdictional limits of this Court.

185. Prior to the institution of this action, D&K Smith contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with D&K Smith.

186. With the filing of this action, D&K Smith disavowed any contractual relationship with Owners and insisted that Owners must contract with D&K Smith on D&K Smith's terms. Owners have refused to do so.

187. D&K Smith have continued to use Owners' Amenities and Services.

188. D&K Smith have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

189. D&K Smith impliedly recognized that compensation for the Amenities and Services was due Owners.

190. D&K Smith have been unjustly enriched by the use of Owners' Amenities and Services.

191. D&K Smith owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against D&D Smith for damages, costs and such other relief as the Court deems appropriate.

COUNT XIX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS JAMES L. AND FRANCES E. SMITH

192. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James L. Smith and Frances E. Smith ("J&F Smith").

193. The amount in controversy is within the jurisdictional limits of this Court.

194. Prior to the institution of this action, J&F Smith contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with J&F Smith.

195. With the filing of this action, J&F Smith disavowed any contractual relationship with Owners and insisted that Owners must contract with J&F Smith on J&F Smith's terms. Owners have refused to do so.

196. J&F Smith have continued to use Owners' Amenities and Services.

197. J&F Smith have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

198. J&F Smith impliedly recognized that compensation for the Amenities and Services was due Owners.

199. J&F Smith have been unjustly enriched by the use of Owners' Amenities and Services.

200. J&F Smith owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against J&F Smith for damages, costs and such other relief as the Court deems appropriate.

COUNT XX - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS JAMES E. AND MARGO M. SYMONDS

201. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, James E. Symonds and Margo M. Symonds ("Symonds").

202. The amount in controversy is within the jurisdictional limits of this Court.

203. Prior to the institution of this action, Symonds contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Symonds.

204. With the filing of this action, Symonds disavowed any contractual relationship with Owners and insisted that Owners must contract with Symonds on Symonds' terms. Owners have refused to do so.

205. Symonds have continued to use Owners' Amenities and Services.

206. Symonds have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

207. Symonds impliedly recognized that compensation for the Amenities and Services was due Owners.

208. Symonds have been unjustly enriched by the use of Owners' Amenities and Services.

209. Symonds owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Symonds for damages, costs and such other relief as the Court deems appropriate.

COUNT XXI - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF JEANETTE M. TATRO

210. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Jeanette M. Tatro ("Tatro").

211. The amount in controversy is within the jurisdictional limits of this Court.

212. Prior to the institution of this action, Tatro contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Tatro.

213. With the filing of this action, Tatro disavowed any contractual relationship with Owners and insisted that Owners must contract with Tatro on Tatro's terms. Owners have refused to do so.

214. Tatro has continued to use Owners' Amenities and Services.

215. Tatro has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

216. Tatro impliedly recognized that compensation for the Amenities and Services was due Owners.

217. Tatro has been unjustly enriched by the use of Owners' Amenities and Services.

218. Tatro owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Tatro for damages, costs and such other relief as the Court deems appropriate.

COUNT XXII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFFS RICHARD AND ARLENE TAYLOR

219. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiffs, Richard Taylor and Arlene Taylor ("Taylors").

220. The amount in controversy is within the jurisdictional limits of this Court.

221. Prior to the institution of this action, Taylors contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Taylors.

222. With the filing of this action, Taylors disavowed any contractual relationship with Owners and insisted that Owners must contract with Taylors on Taylors' terms. Owners have refused to do so.

223. Taylors have continued to use Owners' Amenities and Services.

224. Taylors have continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

225. Taylors impliedly recognized that compensation for the Amenities and Services was due Owners.

226. Taylors have been unjustly enriched by the use of Owners' Amenities and Services.

227. Taylors owe Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Taylors for damages, costs and such other relief as the Court deems appropriate.

COUNT XXIII - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES AND
AMENITIES USED BY PLAINTIFF ANTHONY A. VARSALONE, JR.

228. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Anthony A. Varsalone, Jr. ("Varsalone").

229. The amount in controversy is within the jurisdictional limits of this Court.

230. Prior to the institution of this action, Varsalone contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Varsalone.

231. With the filing of this action, Varsalone disavowed any contractual relationship with Owners and insisted that Owners must contract with Varsalone on Varsalone's terms. Owners have refused to do so.

232. Varsalone has continued to use Owners' Amenities and Services.

233. Varsalone has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

234. Varsalone impliedly recognized that compensation for the Amenities and Services was due Owners.

235. Varsalone has been unjustly enriched by the use of Owners' Amenities and Services.

236. Varsalone owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Varsalone for damages, costs and such other relief as the Court deems appropriate.

COUNT XXIV - IMPLIED CONTRACT
RECOVERY OF COMPENSATION FOR SERVICES
AND AMENITIES USED BY PLAINTIFF KATHLEEN R. VALK

237. This is an action to recover the reasonable value of services and amenities voluntarily used by Plaintiff, Kathleen R. Valk ("Valk").

238. The amount in controversy is within the jurisdictional limits of this Court.

239. Prior to the institution of this action, Valk contracted for and received a package of services and amenities from Owners consisting of access to Owners' roads, drainage, amenities, garbage collection service, maintenance and management services (the Amenities and Services"). These Amenities and Services were provided based upon an oral contract with Valk.

240. With the filing of this action, Valk disavowed any contractual relationship with Owners and insisted that Owners must contract with Valk on Valk's terms. Owners have refused to do so.

241. Valk has continued to use Owners' Amenities and Services.

242. Valk has continued to benefit from Owners' management, maintenance and repair of the Amenities and Services.

243. Valk impliedly recognized that compensation for the Amenities and Services was due Owners.

244. Valk has been unjustly enriched by the use of Owners' Amenities and Services.

245. Valk owes Owners reasonable compensation for the value of the Amenities and Services voluntarily received.

WHEREFORE, Owners demand judgment against Valk for damages, costs and such other relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been furnished by email to Richard A. Harrison and Daniella N. Leavitt, Richard A. Harrison, P.A., 400 North Ashley Drive, Suite 2600, Tampa, FL 33602, rah@harrisonpa.com, dnl@harrisonpa.com and lisa@harrisonpa.com, on this 19th day of June, 2018.

J. Allen Bobo
Florida Bar No. 356980
Jody B. Gabel
Florida Bar No. 0008524
LUTZ, BOBO & TELFAIR, P.A.
2 North Tamiami Trail, Suite 500
Sarasota, Florida 34236-5575
Telephone: 877/951-1800
Facsimile: 941/366-1603
jabobo@lutzbobo.com
jbgabel@lutzbobo.com
Attorneys for Defendants

Filing # 76312404 E-Filed 08/11/2018 01:06:23 PM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

NOTICE OF FILING HEARING TRANSCRIPT

Plaintiffs, by and through the undersigned counsel, hereby give Notice of Filing the attached transcript of the hearing which took place on July 7, 2017.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on August 11, 2018 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 2017-CA-19690ES

NELSON P. SCHWOB, ET AL.,
Plaintiffs,

-vs- DIVISION: B

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

TRANSCRIPT OF HEARING PROCEEDINGS

Defendants' Motion to Dismiss
Plaintiffs' Third Amended Complaint
and
Plaintiffs' Motion to Refer Case to Mediation
(Pages 1 - 57)

DATE TAKEN: Friday, July 7, 2017
TIME: 10:00 a.m. - 11:00 a.m.
PLACE: Pasco County Courthouse
38053 Live Oak Avenue
Room 115
Dade City, Florida 33523-3819
BEFORE: Gregory G. Groger,
Circuit Judge

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were stenographically reported by:

LINDA S. BLACKBURN, RPR, CRR, CRC

APPEARANCES:

On behalf of the Plaintiffs:
RICHARD A. HARRISON, PA
400 North Ashley Drive
Suite 2600
Tampa, Florida 33602-4310
813.712.8757
BY: RICHARD A. HARRISON, ESQUIRE
rah@harrisonpa.com

On behalf of the Defendants:
LUTZ BOBO TELFAIR
2 North Tamiami Trail
Suite 500
Sarasota, Florida 34236-5575
941.951.1800
BY: J. ALLEN BOBO, ESQUIRE
jabobo@lutzbobo.com

On behalf of the Defendants:
LUTZ BOBO TELFAIR
2 North Tamiami Trail
Suite 500
Sarasota, Florida 34236-5575
941.951.1800
BY: JODY B. GABEL, ESQUIRE
jbgabel@lutzbobo.com

Thereupon,
the following proceedings began at 10:00 a.m.:

THE COURT: All right. We're here on Nelson Schwob versus Palm Tree Acres Mobile Home Park. My name is Judge Greg Groger. And we're here on -- it's the plaintiffs' motion to refer to mediation and the defendants' motion to dismiss the third amended complaint. That's all.

Was there anything else, Counselors, that was scheduled for today that --

MR. HARRISON: That's what we have for today.

MR. BOBO: Yes, sir.

THE COURT: Okay. For the plaintiff, sir, if you could introduce yourself?

MR. HARRISON: Yes. My name is Richard Harrison. I represent Mr. Schwob and the other plaintiffs. There's a whole group.

THE COURT: Okay. And for the defendant?

MR. BOBO: Your Honor, I'm Allen Bobo, and my partner and I, Jody Gabel, represent all the defendants in the case.

THE COURT: Okay. Before we begin, I want to tell you I took a lot of time the last couple of days going through the files and trying to get

myself up to speed as far as where we've come. So if you'll allow me to kind of regurgitate what I have read --

MR. BOBO: Yes, sir.

THE COURT: -- and where I think we're at so far and I think it may help our hearing today.

What I gathered is initially, Mr. Schwob, is it --

MR. HARRISON: Schwob.

THE COURT: -- Schwob -- filed a pro se complaint against the mobile home park in county court.

MR. HARRISON: Right.

THE COURT: Then he hired you, and you were on the third amended complaint. And in your latest complaint, there was about 180 counts, all various degrees. And you're looking for a declaratory judgment as far as the rights of the landowners, the plaintiff landowners?

MR. HARRISON: Right.

THE COURT: Okay. And some other civil claims in there as well.

The mobile home park has, so far -- well, from what I've been able to gather is Judge Sestak had granted your motion to declare the covenants

regarding the water and sewage as unenforceable.

MR. HARRISON: Correct.

THE COURT: Is that right?

MR. BOBO: Yes, sir.

THE COURT: Okay. And also if I understand correctly, as far as what the facts are is the defendants had purchased the mobile home lots, but not all of them, and the lots that were not purchased are owned by the plaintiffs.

MR. HARRISON: That's correct.

MR. BOBO: That's correct, Your Honor.

THE COURT: Okay. So far, I'm good?

MR. BOBO: You're perfect.

THE COURT: All right. So then -- so what we have today is plaintiff is seeking to refer the case to mediation, and defendant would like me to make a ruling as far as my jurisdiction on the providing water services to plaintiffs before any determination of mediation.

MR. BOBO: Yes, sir.

THE COURT: Am I good so far?

MR. BOBO: Yes, sir.

THE COURT: All right. Not bad for a first week and a half, huh?

MR. BOBO: That's good. This one's sticky.

MR. HARRISON: And it's only taken us three and a half years to get there.

MR. BOBO: This one's kind of sticky, yeah.

THE COURT: Yeah. I knew when I came in, I said this was going to be a coffee hearing.

MR. BOBO: For us, it's Red Bull.

THE COURT: Okay.

MR. HARRISON: We get the prize for the largest complaint on your docket.

THE COURT: Well, in my first week and a half, yeah, you've got it so far.

All right. So what I would like to first cover is the defendants' motion to dismiss and I'd like to hear your argument on those points before we address the motion for mediation.

MR. BOBO: Thank you, Your Honor. And may it please the court, Your Honor.

Here, we had sent copies to --

THE COURT: I've got a copy here.

MR. BOBO: -- the court. I didn't know if you had it still, those. There's two documents that are on this that are the summary judgment motion and the covenants that were not in the original package.

THE COURT: Okay.

MR. BOBO: I've given counsel copies of all the cases a week in advance with -- and they're highlighted.

THE COURT: Okay.

MR. BOBO: Your Honor, you've got the gist of the case. The gravamen of the case has always been, for the last three years, these lot owners attempting to force the mobile home park owner to continue to provide water and sewer services to them.

A little bit about the park. Palm Tree is a rental mobile home park, so the residents, most of the residents, own their homes and they lease their lots from the mobile home park owner. So it's governed by Chapter 723, Florida Statutes, under the Mobile Home Act.

Now, our clients bought this park in 1984. At the time that the park was purchased, it had been subject to kind of a failed development or a failed subdivision attempt, and about 50 of the 244 lots had been sold in a fee simple ownership basis out to other people. So at the time my guy came in, or my guys came in, in 2000 -- or in 1984, about 50 of those lots were owned fee simple.

They came in and started operating the mobile home park. They ultimately converted --

THE COURT: Let me stop you there. When they purchased in 1984, the lots that they purchased, were they vacant and just --

MR. BOBO: Some of them had homes on them. Some of them were unfilled.

THE COURT: Okay.

MR. BOBO: The development was kind of -- was --

THE COURT: Sporadic?

MR. BOBO: -- was moving. Yes, yes.

THE COURT: Okay. All right. Go ahead.

MR. BOBO: So it's a normal, you know, Pasco County mobile home park. It's a 55-plus mobile home park. It's got the normal amenity package for a 55-plus park. It's got a clubhouse and a pool and, you know, common areas and a shuffleboard court, and it's got a system of roads.

So all of this packages of service had been offered not only to the residents of the park, to the rental residents of the park, but also to these fee simple owners of the park.

Counsel's clients, the 22 who own the fee

simple lots, all of those were purchased from the original buyers of these fee simple lots. So, in the court file are the deeds from all of these 22 residents. None of these people bought from the mobile home park --

THE COURT: Okay.

MR. BOBO: -- so the defendants aren't in any of the chains of title in any of these. So these things just ultimately went from the original fee simple owners and they progressed to fee simple owners on down the line without involvement of the mobile home park owner.

So kind of if you picture a mobile home park lot layout, scattered in one section are these little fee simple lots kind of scattered in. They actually bought their lots inside the mobile home park. When they bought, the covenants that are on the top of the package that I just gave the court, the covenants were in existence. They're kind of a set of Mickey Mouse elementary types of covenants. But if you look at page 2, here's what we were originally dancing with.

Under paragraph 14, it says: If you plan to use the recreational facilities, any or all, you must have a yearly membership to do so. The

membership entitle your guests to use the facilities while they're visiting.

And then paragraph 16 said: Water and sewage shall be paid by the individual lot owners directly from [sic] Palm Tree Acres forever.

All right. We looked at those. They weren't very clear. I don't know that we could come to some understanding about what those meant. Arguably, they gave somebody who purchased a lot the right to either get the whole packages of service, including the recreational facilities, or just the water and sewer services. It was kind of unclear what was permitted there.

THE COURT: Let me -- on the copy he gave me, there's -- on paragraph number 16, I can -- just the copy I have is somewhat unclear. So water and --

MR. BOBO: It is on mine too.

THE COURT: -- sewage shall be paid by the individual lot owners directly to Palm Tree, does that say Acres?

MR. BOBO: Acres, yes. And I believe that word is "forever."

THE COURT: Forever?

MR. BOBO: I think that word --

MS. GABEL: I think it's --
MR. BOBO: Anyway, these are --
THE COURT: It doesn't look --
MS. GABEL: It's longer than that.
THE COURT: It doesn't look like "forever."
MR. BOBO: Look at the original one. We were trying to scan those things.
THE COURT: Okay.
MR. BOBO: I'll figure out what that word is.
THE COURT: Either way, whatever that word --
MR. BOBO: They're gone anyway.
THE COURT: Synonym for "forever."
MR. BOBO: Right, right.
THE COURT: All right.
MR. BOBO: Yeah. They're gone anyway or these covenants are -- have deemed -- been deemed expired anyway.
THE COURT: Okay.
MR. BOBO: As far as the water and sewer system is concerned, the defendant park owners own the water and sewer system. Water comes from a series of two wells. It's pumped out of the well, it's pumped into a treatment plant, and then it

goes through the mobile home park in a series of distribution lines, main waters and lateral lines, and it goes to all the lots.

Now, it also goes to the plaintiffs' lots, and they're continuing to get water and sewer services without paying.

THE COURT: Who owns and operates the treatment plant?

MR. BOBO: The mobile home park owner. So it's his responsibility to maintain it, operate it, and provide potable water to his tenants.

THE COURT: Okay. And is there a requirement for licensure through the PSC to do that?

MR. BOBO: No. I'll show you that in a second.

THE COURT: Okay. Go ahead.

MR. BOBO: Then there's a sewer plant and -- I mean there's a sewer system, and the park uses a collection system, its own internal collection system, to collect all the sewer, including from the rental residents, including Mr. Harrison's clients as well, and that goes to a lift station. It's pumped up from a lift station and goes into the Pasco County Regional Utilities

system.

THE COURT: Okay.

MR. BOBO: So sewage disposed of by Pasco County once it leaves the park.

The park is ultimately responsible for maintaining all these facilities, for paying to operate the facilities, and handling any kind of a breakdown that occurs in the facilities, which they are continuing to do today. So for both the rental residents and the plaintiffs in this case, they are continuing to get water. The rental -- the plaintiffs are simply not paying.

Historically, for 30 years, since my client purchased the park, all of this package of -- it was about 50 residents, now it's down to about 22, historically, all of them chose the election you saw in those covenants to get the package of services. So they were paying a monthly fee, a fee less than the rental residents were paying, they paid a monthly fee, and for that monthly fee they got to enjoy free use of the park's facilities, or not free use, they were actually paying to rent the park's facilities. Sometimes that was called rent, sometimes it was called a maintenance fee, it was called other things, but

they were -- they had their lot inside the park, they paid the park owner, and they could go and come, using the park facilities just like everybody else that was a rental resident, and they got water and sewer services. Importantly, there was no separate charge for those water and sewer services. For 30 years, this worked perfectly.

First of all, there was -- it was easy. There was no billing requirement, you know. Everybody could just come and go and use the facilities just the same as everyone else, and the plaintiffs were basically treated like any other renter. The real advantage was that it avoided problems with the Public Service Commission.

In the package that I've given you, if you will look past to the first document that's highlighted like this in the case materials.

THE COURT: Okay.

MR. BOBO: These are the exemptions to Public Service Commission regulation. One of the exemptions that applies is landlords providing service to their tenants without specific compensation for the service.

So we were providing to these lot owners a

package of services, they were renting the right to use our land facilities, and they were getting water and sewer services for no separate charge, just a package fee just like our rental residents got, so we were operating under this particular exemption.

Now, the action was commenced, as you noted, when Mr. Schwob decided that he didn't want the package of services any longer. Mr. Schwob was the first plaintiff. He decided that I don't want to use the rec hall or the pool or the shuffleboard court or any of those facilities any longer, I just want to have water and sewer service to my lot, so he filed a lawsuit.

Judge Sestak looked at the lawsuit, and we pled -- in defense, we pled the Marketable Record Title Act, and he, I think, rightfully said to him, you know, you need to go get counsel for this one, this is too technical for you to use.

He reached out and got Mr. Harrison, good, competent counsel, and Mr. Harrison filed the first amended, the second amended, and the third amended complaint. Somewhere along the line, the other 21 residents joined in and they became the plaintiffs in the action.

You've seen that Judge Sestak issued a summary judgment, because the first issue was the validity of these covenants. Are these covenants still valid? Is there anything that still makes the mobile home park provide water and sewer services to these residents as far as the land action? And you can see that summary judgment order that was entered by the county court saying that the covenants that you saw were extinguished by Florida's Marketable Record Title Act, which basically extinguished covenants after a 30-year time period.

All right. We thought that would likely resolve the action. It did not. We offered to continue to providing -- provide the services, the water and sewer services, as a package basis as it had been historically done for the last 30 years, and -- and that's not worked out. Our position is we cannot provide water and sewer services on a separate basis. It is illegal.

THE COURT: From -- and just so I understand what you're saying, as a stand-alone basis?

MR. BOBO: Yes, sir. As a fee-for-service basis. We cannot provide water and sewer services

as a fee-for-service basis because it's illegal. We simply do not have a Public Service Commission certificate.

THE COURT: Okay.

MR. BOBO: We don't have a -- when you get a Public Service Commission certificate, the PSC grants you authority to provide utility services within a given geographic area. Not only does the PSC do that, the PSC also establishes a rate structure for you providing those utilities.

So we don't have a certificate. We don't have a rate structure. We don't even have meters in this mobile home park.

THE COURT: Okay.

MR. BOBO: So we don't have any billing systems. We have no ability to do this, number one.

Number two, we don't intend to seek a Public Service Commission certificate here. And the reason is simple. We have, like you said, 244 sites, 22 of those sites are the plaintiffs, so we have 222 tenants who get water and sewer as part of rent. If we went through ratemaking with the Public Service Commission, we got a certificate and we went through ratemaking -- we have retained

a Public Service Commission lawyer to make sure that everything that we're arguing is kosher as far as the Public Service Commission rules and regs are concerned, we probably spent 10 grand on this guy -- one thing we can confirm is if we go through ratemaking, by law and by rule, we're going to have to have a rate structure that's going to take into effect things like debt service, working capital, maintenance, depreciation, taxes, legal, accounting.

We're even going to have to impute a profit into that rate structure, so that we're going to have to charge our 222 core rental residents, which is really what our business is, we're going to have to penalize those customers by paying a substantially higher rate if we go through the ratemaking process. We don't intend to do that.

This is about more than 30 years for me doing mobile home parks. I've been through this practice before. It will double, triple, even quadruple the cost of providing water and sewer services if you go through a ratemaking service, and so we don't intend to do it.

We also don't intend to suffer the additional administrative responsibilities

associated with the Public Service Commission, and we don't want to go through the billing responsibilities to try to bill anybody on a separate basis, so that kind of gets to the core of our argument.

You know, you saw from the memorandum, the core of our argument is that the Public Service Commission's jurisdiction over the provision of water and sewer service is exclusive. I mean, it has -- it is exclusive over the authority to provide the utilities, the services provided, and the rate structure.

And we can say what we want, you can -- if you went back and saw all the original pleadings that were filed in the county court, the gist of this case is all about whether the mobile home park owner has a perpetual responsibility to burden its land and to provide water and sewer services to all these individual residents. We asked the court in our motion to dismiss to look at this Count Number 3.

Here's the demand in Count Number 3. They're asking the court to enter a judgment finding and determining and declaring the rights and duties of the lot owners -- the plaintiffs --

and the park owner with respect to the potable water supply, in other words, they're asking the court to affect the service issue, and the amounts that the lot owners can be charged for such water supply, in other words, the rates.

All right. What we're asking the court to do is simply confirm that under a 367 -- 367.011, which is the second thing in this package, this is the jurisdictional statute for the Public Service Commission, the statute says in sub (2) 367.011: The Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, so we're saying the court can't make us provide water and sewer system, only the Public Service Commission can give us that authority, over the service, we don't have to provide service, the only way we can do it is to go through the Public Service Commission, and the rates to be charged, which is exactly what they're asking you to order in Count 3 of the complaint.

Now, the Public Service Commission is -- we said it's exclusive jurisdiction, it's preemptive jurisdiction, but it's also presumptive jurisdiction. And the presumptive is important.

We gave the court several cases,

Your Honor, and the seminal case is this Hill Top Developer case, which is the first one after the statute that you just looked at. Okay. Everything that we provided you is either Supreme Court law or 2nd DCA. So, this Hill Top is kind of the seminal decision. Page 370 is where they discussed with the Supreme Court -- I'm sorry, the 2nd District discusses the preemption doctrine.

THE COURT: Okay.

MR. BOBO: And this preemption doctrine is stated to assure that a legislatively intended allocation of jurisdiction between administrative agencies and the judiciary is maintained without disruption which would flow from judicial intrusion into the province of the agency. And they conclude that -- this is an electric case, but they said that anything that the PSC has jurisdiction over, its jurisdiction is preemptive. The court has no right to step into that ring.

Then when you look on down, we've highlighted in headnote 9 here -- and the reason I -- we highlighted that is in this pleading the court is saying that it should have been pled that the plant facility expansion charge had been approved by the PSC. The failure to plead that

pack -- that fact imposed an infirmity upon the debt claim which ousted the trial court of subject matter jurisdiction to grant a judgment.

All right. There is no pleading anywhere in this monstrous third amended complaint that we have the authority to provide these plaintiffs water or sewer services or a rate structure has been enacted so that we can charge them a rate structure in accordance with the law that has been approved by the administrative agency.

All right. We go from Hill Top, we go to the next case, which is a Supreme Court case. Again, we're dealing here again with electricity in this case. There was a dispute in Pinellas County. A guy who was in a condominium said he was overcharged for electricity and gas. He wanted to bring a claim to recover his overcharges. Judge Bryson used to be a circuit court judge down in Hillsborough County. Judge Bryson enjoined the Public Service Commission from acting. A writ of prohibition was filed against Judge Bryson by the Public Service Commission, and that went to the Florida Supreme Court ultimately.

The court then is looking, when you're dealing -- the court first says that the PSC has

exclusive jurisdiction over utility issues, and then we look to see this presumptive jurisdiction issue comes up again on page 1225 -- or 1255, is the court says the question is who decides whether a particular complaint is within the PSC jurisdiction. The PSC argues that it alone has the right, and obviously the other side is arguing that the circuit court has the right to make that initial determination.

The court says that ultimately it is the Public Service Commission that determines whether it has jurisdiction on anything that is arguably within the ambit of its jurisdiction and the appropriate remedy, if the Public Service Commission was wrong, was for an appellate court then to review the Public Service Commission's actions and determine whether it ultimately had original jurisdiction in the case. And it goes on to say neither the general law nor the constitution provides the circuit court concurrent or cumulative power of direct review over PSC action.

So, again, the PSC is something that's supposed to be within its playing field. The PSC makes the initial determination. If that

determination is wrong, it goes to the appellate court. It bypasses the circuit court altogether. Anything that is arguably within the preemption of the Public Service Commission goes to the commission itself.

Then the greatest caution to the courts over these PSC issues was in the next case, which is, again, another 2nd District Court of Appeals case, and this one arose right out of this county and on very similar facts.

This is the Public Service Commission versus Lindahl case. All right. In Lindahl, the PSC had approved rates for a mobile home park owner to charge in a mobile home park. The tenants of the park claimed that those rates violated a restrictive covenant that had been long ago recorded and it told them that they were going to be able to get water, sewer, and other things for I think it's $300 a year.

When the PSC looked at this, the PSC established a rate structure that was higher than that, the tenants complained, they sued, they came into the Pasco County court and they asked Judge Tepper to enter an injunction enjoining the charging of those rates, and Judge Tepper entered

that injunction.

That was appealed to the 2nd District Court of Appeals, and the 2nd District said there on page 64, the court question arising from this dispute is whether the trial court was invested with subject matter jurisdiction to issue the injunction.

And that had been one of the claims that was pled here.

The court says: We determined in Hill Top Developers that the legislature intended the PSC to have plenary jurisdiction to establish the rates charged by regulated utilities. To preserve the legislature's allocation of jurisdictional authority between the administrative agency and the general equitable power of the circuit courts, we cautioned the bench against judicial intrusion into the province of the agency.

And then they say something that you rarely see in cases. They said: We, again, face judicial interference with the regulatory function and, as we did in Hill Top Developers, condemn the trial court's intrusion into the PSC statutorily delegated responsibility to fix a just, reasonable, and compensatory rate for service

availability. We, of course, reject the view urged by the residents that the 1972 deed restrictions supersede the order of the Public Service Commission approving the rate structure. It says the PSC's authority to raise or lower utility rates, even those established by contract, is preemptive.

Then the only other case that we've provided in advance that affects this issue is this next Supreme Court decision, PW Ventures versus Nichols. That's cited solely for the proposition that, Your Honor, even if we serve one customer who is not our rental resident, just one customer, water and sewer on a fee-paid basis, we're within the jurisdiction of the Public Service Commission.

So we can't serve any of these residents because, right now, they've disavowed any lease arrangement with the park owner. They're telling us that they don't want to use any of our facilities, that they don't want to rent any of our real estate, none of our rec halls, our pools or anything. All they want is stand-alone water sewer and service. We can't do that. The only way we can do that is to go through the Public

Service Commission.

And what we're asking the court is simply to confirm the plain language of the jurisdictional statute which says that the PSC has exclusive jurisdiction over authority, in other words, the legal right to provide water and sewer services, service, the obligation to provide the service, and rates, which is exactly what they're asking the court to order us to do in Count 3 of the complaint. That's what they started doing, that's what they've continued to do now for three years is to make the allegation that, I'm sorry, we bought our lots inside your mobile home park, so, therefore, you forever and a day, you have to continue to provide water and sewer services to us.

We will do it on a package basis so long as we can make an arguable claim that we come under the jurisdiction -- or we come under the exemptions here. But we are not going to provide water and sewer services to them on an individual basis because we do not have a certificate and we are not going to go seek that certificate.

That's where we are.

THE COURT: Okay. Mr. Harrison, what's

your --

MR. HARRISON: Sure. Now --

THE COURT: I think that -- well, first, before you start, what's most troubling to me is this 2nd DCA opinion, the Lindahl one. I mean, there's some pretty strong language there by the DCA that this is an area that I need to be very careful getting myself involved in.

MR. HARRISON: Well, absolutely. And we'll talk -- I want to talk about his cases in a minute.

THE COURT: Yeah.

MR. HARRISON: But let's talk about what has happened here factually, because I think that's important. The facts have not changed one bit in the 30 years that these folks have owned the park. The plaintiffs have always been fee owners of their lots. We've never been anybody's tenant. The park owners have always owned and operated the water and sewer. That hasn't changed, and it's always been operated in the system that Mr. Bobo described to you. It's sort of a unitary system, furnishes all the lots, the rental lots and the fee-owned lots, no separate metering, that's accurate. That has not changed

one bit. That is exactly what's going on today, exactly what's going -- everybody's getting water, everybody's getting sewer under that exact same system. It has not changed.

This claim that the park falls under the exemption for landlord-tenant is apparently what the park has relied on for many years to avoid going to the PSC, but it's problematic on the face of it. It's problematic because how can we be their tenants when we own our lots in fee and we're not leasing our property.

So they come up with this argument that you're leasing the recreational amenities. At one point they even said you're leasing the roads, you're leasing the water pipes. We're not leasing those things. We don't have any of possessory interest in any of those things.

Their conduct for the past 30 years has been under this sort of concocted notion that we're somehow their tenants so that they fall under this exemption.

We've never been their tenants of anything. There's no agreement they can hand you that says we're renting anything from them and there never has been, and that's never changed.

And, frankly, that's an argument that the PSC has seen before. We cited one of those decisions in our response. Mobile home park says we're under the exemption for landlord-tenant, and the PSC says you can't be under the exemption, these people own their lots in fee simple.

So it's a ruse. It's a sham. It's a way to avoid PSC jurisdiction, and that's what they've been happily doing, perhaps with a bunch of senior citizens who don't know any better and didn't care, until somebody decides to say, well, wait a minute, you know, I want to take a look at this system and see what's going on and if I don't want to use all this other stuff, I shouldn't have to pay for it.

But another fact that hasn't really changed, although it's been modified slightly, there's no other public supply of water to these fee-owned lots. While the covenants were in effect, the covenants had a separate covenant in there that said you can't have well and septic on the lots. So while the covenants were in effect, there was no other way for anybody to get potable water except from this system that was in existence.

The covenants are now gone, so that restriction's gone. So, presumably, every one of these fee-owned lots, at least in theory, could go out and seek to put in a private well to supply water. That hasn't happened. Don't know if it's feasible. We don't know if the lots are big enough. There's a lot of other things that go into that. But at this moment, the only available water supply is this system.

Same is true of the sewer. We couldn't do septic tanks while the covenants were in effect because the covenants said no well and septic. We can't do septic tanks even without the covenants being in effect because the lots -- the dimensions of the lots are not large enough to meet Department of Health restrictions for separation, so we couldn't do septic tanks even if we wanted. So there's no available sewer system other than the one that currently exists.

THE COURT: Go ahead.

MR. HARRISON: So the defendants take the position that, yeah, you've been our tenants and we've been under this exemption for all these years. Whether or not that's the way that exemption is supposed to work, I suppose we may

get to at some point or maybe the PSC will get to at some point, but that's been their theory.

And now the question has arisen, well, number one, are you obligated to supply us water; number two, if you're going to supply us water, what rights do we have.

There have been threats in this case that are alleged in the complaint, more than one occasion, where the park owners have said, you know what, we're just going to turn off everybody's water. We're not going to supply your water anymore. Well --

THE COURT: Supply yours? As the plaintiffs' water or --

MR. HARRISON: To the fee owners, to the plaintiffs.

THE COURT: Okay.

MR. HARRISON: Well, when you've got the only available potable water supply, that becomes problematic. When you say I'm cutting off potable water to 20 lots and however many residents that is, that's not a contract dispute anymore, that's not a tort claim anymore, that's a public health issue. You can't cut off the only supply of potable water. But they've talked about doing

that.

So we have a very convoluted set of facts that have been in place for a very long time. These people live there, bought there, in reliance on having a water supply, because it's the only water supply that's ever been and it's the only water supply that's available today. Same with the sewer. There's no other way to do it.

So the park owners say either you go along with our construct that we're exempt or we're illegal and we can't do it.

What we have asked for in Count 3 is for the court to simply declare what the rights are of these lot owners in terms of the existing water supply. It's not a question of whether the court can make them give us water. They're already giving us water. They've been giving us water for 30 years. So we're not coming in saying, Your Honor, you've got to order them to give us water. We're coming in saying, Judge, they've been giving us water for 30 years and now they're threatening to cut the water off. We really need the court to decide whether that can happen or not. That's what this case is about. It's not about ordering somebody who's never done it to

come in and start running a utility.

And if the court determines based on 30 years of history among these parties and lots of historical facts that somebody's going to have to hear at some point that the water supply cannot be terminated to these property owners, if that means that they've got to go get a license from the PSC, it may well mean that in the end, but that's not the question that we're asking you to decide. We're not asking you to tell them to go to the PSC. We're not asking you to tell them to do anything that they're not already doing.

What we're asking the court to do is declare whether or not tomorrow, if they don't want to litigate this issue anymore, they can send out a notice to all these 22 lot owners and say, as of Friday, you have no more water, good luck, have a nice life, because that's what they've threatened to do. That's what the case is with.

So, obviously the court has jurisdiction to grant declaratory relief. Your declaration can take many forms. Your declaration, in the end after you hear all the evidence, may well be, you know what, they don't have any right to do any -- any obligation to do anything. You folks might be

on your own. You might have to go seek out some other way to get water. That's where you might end up.

Your declaration might be, historically, we have a 30-year course of conduct, a 30-year practice, we have reliance, we have history, and we have the very practical consideration that there's no other way to get water and sewer. That's a pretty serious practical consideration.

So, we can't predict what the ultimate decision may be. We can't predict what the court will ultimately declare are the rights as between the parties, but we're certainly entitled to have the court declare them. That's what the case is about.

Every case that they cited to you involves either a currently regulated utility, the one that Mr. Bobo talked about where the PSC had approved a rate and somebody was complaining that they were overcharged, well, if you're a currently regulated utility, your revenues go to the PSC.

Other disputes in these cases involving -- in these cases, it was really no question about the PSC's jurisdiction because in almost every one of them, you had a regulated utility in some

fashion. You had a dispute in the Bryson case of enjoining the PSC from essentially doing what statute says it's supposed to do. So those cases are pretty clear.

There's no case that they've presented to you that looks like our situation. You have a currently unregulated entity seemingly acting like a utility but, at the same time, claiming they're exempt from being licensed.

So, on the one hand, they're telling you, you can't deal with this problem today or in this case because the PSC has jurisdiction at the very same time they're telling you but we're exempt from the PSC's jurisdiction.

Well, they can't have it both ways. If they're exempt, then the court's got to have the ability to declare the rights of the parties. If they're not exempt and it's really something that needs to be regulated by the PSC, well, they ought to go get a PSC license and then we can deal with the PSC. We cannot have a situation where nobody governs their conduct. And that's what they're arguing. We're -- you can't do anything in the circuit court because PSC has exclusive jurisdiction, but, aha, we're exempt, so we're

going to go to the PSC. We're going to operate in this completely unregulated matter. That can't be the right answer.

So at this point we think it is premature to dismiss the claim for declaratory relief. We know the court can declare the rights of the parties. No issue about that. In this context ultimately, after the court hears some evidence, hears some facts, you may decide to defer, you may decide to grant very limited relief, you may decide to declare that they're subject to PSC jurisdiction and somebody ought to go to the PSC, but, we don't think it's appropriate in this case to do that on a motion to dismiss where we've got a 30-year history, we've got reliance, we've got no other available source of water, and we've got people who are telling us, you know, at any moment, if they decide they're irritated with us, they'll just turn off water.

And, again, critically, you can't come in and say the court can't act because of PSC jurisdiction and in the same breath say but we're exempt from PSC jurisdiction.

THE COURT: Give me just one second.

The other part that caused me some concern

is the PW Ventures versus Nichols that says, in my reading it, that a -- it looks like a private entity providing electrical service to a single customer necessarily brought them under the jurisdiction of the PSC as a public utility.

So my initial concern with it is if you -- if you get what you're asking for, does that necessarily transform the mobile home park into a public utility, and if that's -- if that's the case, do I have the authority to require them to become a public utility.

MR. HARRISON: There's no question that the issue resolved in that case, the PW Ventures case, was this question of the meaning of supplying utility service to the public. That's how the issue arose. The company in that case was saying if we've only got one person we supply service to, that's not, quote, the public. The statute says you're subject to utility regulation if you're supplying utility service to the public. So the court in that case said, no, one customer who's not you is sufficient to bring you under PSC jurisdiction. So, one person out there constitutes the public. That's what that case was about.

THE COURT: Yeah.

MR. HARRISON: In this case, again, they're already doing it. So whether or not they're acting as a utility is not something the court has to declare and we're not asking you to declare that or not. That is a de facto determination that perhaps the PSC might make some day, and they may well start looking at this at some point. We're not asking the court to declare that they're a utility. We're asking the court to resolve rights between private property owners based on a historical set of facts.

Now, if the outcome is that we are entitled to continue to receive water because it's the only way we can get water, the result of that ruling might mean that they're now a utility, unless they find some exemption that applies and, as a result, they might be -- they might be required to go to the PSC and become regulated. But it's not the action of the court that turns them into a utility or not.

What they're doing and what we're asking the court to continue to require is exactly what they've been doing for 30 years. So it's not that the court will turn them into a utility. Either

they're a utility or not today. Either that exemption that they're relying on under this sort of concocted idea that you're renting the clubhouse and, therefore, you're our tenant, so, therefore, we're exempt, the courts doesn't have to worry about that. Somebody down the road might decide that that's a bunch of hooey and you're not really exempt, but we're not asking the court to decide that either.

So we're not asking the court to do anything that will change the status of what they're doing or what the legal effect of it is. The legal effect is the legal effect no matter what this court says.

So if the court says these folks are entitled to continue to receive water, no, you cannot turn it off, for a variety of reasons, that may well be the extent of the court's determination. In fact, you may at that point say, and it looks like by virtue of that, you've become subject now to regulation by the PSC, so go apply for a license and let them set the rates. The court may decline to set a price or a rate. But we're not there yet.

The fundamental question is can they take

the position that they're not subject to regulation by anybody. They're exempt from PSC jurisdiction under this theory that they've come up with for 30 years and, at the same time, you can't tell us what we have do in this case, Judge, because that's a matter for the PSC. Something fundamentally flawed with that.

THE COURT: Has there been any contractual arrangement between the -- between your clients and the mobile home park that would establish the -- anything at all that shows this agreement of the mobile home park providing services and amenities or the water and sewage as part of the broader amenity package?

MR. HARRISON: There's no written agreements where any individual lot owner has signed onto anything that looks like a lease or even a contract. And I think the park owner in his deposition even said, no, there's no agreements.

They would, each year, send out a notice that is formatted to sort of follow the requirements of the Mobile Home Act, and it's the same notice that would go to the rental people in the park, that says, okay, under the Mobile Home

Act, we have to tell if you there's going to be a rental increase and here's what we're telling you for the new year. Some years, there were increases. Some years, there weren't. And that form called it varies things. It called it monthly rent. It called it monthly maintenance. It called it three or four different things.

But, again, as to our people who own their lots in fee, it's clearly not rent. It doesn't matter what you call it on a form.

So other than that, other than that once-a-year notice that says for the upcoming year this is how much you're going to have to pay, there's no contracts with our folks, there's no agreements, there's nothing that says you're renting or leasing the amenities. And I'm pretty sure everybody's dug through whatever records they have got at this point. We've been litigating for a few years. Nobody's come up with a contract.

And Mr. Goss, the main party on the other side, the main park owner, said in his deposition, no, there's no leases, there's no agreements, so....

THE COURT: Is there anything in 723 that -- well, never mind. I'll look that up

myself.

If I understand correctly, the covenants that put all this into motion would have expired in what, 2006? Would that be the 30 years from --

MR. HARRISON: I forget what we used as the trigger date for the 30 years.

MR. BOBO: '14. They would have expired in '14.

THE COURT: It would have expired in '14. Okay.

MR. HARRISON: And the other thing about the covenants, although the covenants have that provision that we've looked at that says you're going to pay the park owners for water and sewer, that was always a little bit of a mystery too. Because if you read those covenants carefully, there's nothing in the covenants that says park owner's required to supply water and sewer.

So the obligation to supply water and sewer, wherever it comes from, does not emanate from that those covenants. You could look at those covenants all day long, they're not very long, and nothing in there says park owner will furnish water and sewer.

So we don't think the fact that the

covenants have now been determined to be invalid and that they no longer are in effect really affects that fundamental question. The water was not being provided under the covenants because there's nothing in the covenants that says they have to do that. That's just been a matter of course. When these folks came in and bought a lot, that's what existed.

THE COURT: Okay.

MR. HARRISON: It came with water and sewer.

THE COURT: You have five minutes to respond.

MR. BOBO: Let me -- let me try to blow through this quickly as I can, Your Honor.

THE COURT: Okay.

MR. BOBO: You asked if there was a contract. There is no contract that complies with the statute of frauds.

THE COURT: Okay.

MR. BOBO: So they're asking for a perpetual obligation for the park owner to provide their water and sewer service. There is no written contract that complies with the statute of frauds.

Counsel is correct. We would send out a notice on what we were going to charge you to use our facilities for a year. We would negotiate with the renting residents. We would negotiate with the lot owners. We would come to a number, and that's the number that would be charged on an annual basis.

THE COURT: Well, if anything, they get -- the contract would be what that notice was and the check that was paid.

MR. BOBO: Oral contract for that year, yes.

THE COURT: Okay.

MR. BOBO: You asked if there's anything in 723. No, sir, there's not. Nothing in 723 will govern these fee simple lots. It will not.

THE COURT: Okay.

MR. BOBO: Counsel made an argument that we were never renters. Well, either they were renting the right to use our rec hall and pool and shuffleboard courts or they were getting a license to use them, but for whatever it was, we come down to the fundamental question for today. The fundamental question for today is exactly what counsel just told you, and I wrote it down. He

said, we're asking you to declare what our rights are. We're -- we believe that we have rights to the water.

All right. When you look over at the jurisdictional statute for the Public Service Commission, it says they'll have exclusive jurisdiction over authority, service, and rates.

So, saying that we have rights to the water, at the very least, is either authority or service. And then he also goes on to ask you to set the rates. And that's -- we are falling squarely within the Public Service Commission's regulated authority by what he's just told you he's asking for in Count 3.

They bought these lots. They made an independent decision to buy them. The deeds show that they did not buy them from the park owner. They made their own bed. They decided to buy lots inside a mobile home park.

So counsel argues to you that we've got a 30-year history, that there's reliance, that there's this historical basis of you providing our water services and there are practical considerations here that we don't have anywhere else where we can get water or sewer service.

None of those four things or anything else they've alleged in the complaint overrides the jurisdiction of the Public Service Commission. I don't care if there's a 75-year history of providing water and sewer service. If it's not done in compliance with the Public Service Commission regulation, it is illegal, it's a violation of 367, and only the Public Service Commission has jurisdiction to address that issue.

So these independent considerations, the 30 years, the reliance, the history, we can't get it any other way, none of those things are stated in the chapter to be exemptions for Public Service Commission regulation, and they can't be argued to do so.

You got it absolutely right. You said, if you get what you're asking for, it transforms the mobile home park into a public utility.

If you told us that we have the obligation to forever provide these 22 lots water and sewer services, you've just transferred us and you have just made us a public utility company.

You asked the question do I have any right to make them go get a Public Service Commission certificate, and the answer is no, sir, you do

not.

We have been in this case for three years. Counsel's excellent. I've watched him for three years. I've watched him in the appellate court. He knows what he's doing. If he could find a case that would require us to provide utility services to a neighboring landowner, you would have seen it. At the first five minutes of the argument today, you would have seen it.

THE COURT: One question I've got for you that gives me some pause is the result, is if I -- if I dismiss the count, the public health issue. Is that a -- and this hasn't really been vetted in what I've seen in the responses.

But do any of these people have certain rights under any of the public health statutes or -- that would address this kind of situation?

MR. BOBO: No, sir. First of all, the public health risk argument that he's making does not override Public Service Commission jurisdiction. Number one, it does not.

Number two, Public Service Commission regulations would say if you don't pay for your water and sewer services, you can get it turned off. You might make the argument, but if you turn

off my water and sewer system, then that's a public health issue. But you've got the right under Public Service Commission regulations to turn off water if somebody doesn't pay for it.

They're not paying.

THE COURT: So you're saying because regular utilities --

MR. BOBO: Yeah.

THE COURT: -- have the ability to turn off the water --

MR. BOBO: I'm primarily saying that an argument that if you turn off my water, I have a public health issue, doesn't change the fact that Chapter 367 gives exclusive jurisdiction to the Public Service Commission. The fact that here it makes it convoluted doesn't change the fact that only the Public Service Commission has jurisdiction over authority, service, and rates, which is exactly what he's asking you to affect in Count 3.

And the case law, I think, is clear that even if you get near that sandbox, you have to defer to the PSC.

THE COURT: Okay. I want to move on to the plaintiff's motion for mediation. I'm sorry.

We're kind of running short on time, but I think probably most the issues are kind of overlapped. Let me -- I've read the motion. I don't know that I need to hear much more argument as far as that.

But let's -- let's assume for the moment that I grant your motion to dismiss count, why should I not send the rest of the counts to mediation? I mean, they're the counts of intentional infliction of emotional distress, there are -- and I'll give you a chance to address that, too, but from what I've read in the case law, I'm thinking I'm probably going to have to deny your motion on that unless there's more argument you had to provide on that.

MR. BOBO: The whole thing, I mean the entire dispute in all the individual counts stem from simply the fact that they say we have to provide them water and sewer services, they are no longer paying for it, and then there were debt-related actions after that point to try to recover the charges that they're continuing to run up for a three-year period of time.

They're continuing to get water, sewer, garbage. They're continuing to use the facilities of the park. We got pictures of them all.

THE COURT: Okay.

MR. BOBO: So they're continuing to operate just as they have for the last 30 years without paying.

So, for example, part of the FDUPTA claim is, hey, you're trying -- or you're threatening to cut off water and sewer services to us.

We know we're illegally providing water and sewer services to you. We cut them off, we're complying with the law.

THE COURT: All right. I understand what you're --

MR. BOBO: Everything flows from that one original point.

THE COURT: Okay.

MR. BOBO: It's like big bang theory.

MR. HARRISON: Let me take issue with that.

THE COURT: Go ahead.

MR. HARRISON: No, it doesn't. Whether or not they have any ongoing obligation to continue to supply water and sewer has nothing do with the fact that historically they have done so. And historically, in an effort to collect money -- and let me -- counsel said this three times now, whether or not people are paying is way beyond

anything in the complaint that you can deal with on a motion to dismiss. But since he said it, the facts are that some of these folks are paying. We -- some of our folks are sending a check every month that they're not cashing. They're putting it in a drawer --

THE COURT: Okay.

MR. HARRISON: -- pending the dispute. But that's neither here nor there.

The counts that we have alleged include things like they say you owe us all this money from this water, so they go out and they slap a lien on my clients' property. That's got nothing to do with PSC jurisdiction. Either you've got a valid basis for a lien because you think I owe you money or you don't. Doesn't matter what the PSC says.

Intentional infliction of emotional distress. We've alleged these are all senior citizens, fixed income, some of them are disabled. They're threatening these people, telling them we're going to put up a gate and call you trespassers, all this kind of stuff. Nothing to do with PSC.

So, those are money claims, those are

damages claims, including claims for slander of title and other damages claims. If they're violating -- if they think what they're doing is not a violation of FDUPTA, well, the court can decide that or we can go talk about it in mediation. But I've never seen somebody fight so hard for three years not to go mediate a dispute.

MR. BOBO: Well, I'll give you the offer right now. I mean, here's the mediation: We will continue to provide water and sewer services on a package basis as we have historically done for 30 years. That's it. That's our offer. It's available today. You know, it may be available for a few weeks. That's our offer in mediation. That's what we will do.

We will not go through and get a Public Service Commission certificate. We'll fight that to the end of time.

THE COURT: Okay.

MR. BOBO: So that's the reason why -- and I've said it formally, informally, for three years. We will provide you water and sewer services just like we have been doing. That is going to be our offer in mediation, and the mediation will last five minutes.

MR. HARRISON: Well, that's not how mediation works and that his nothing to do with what about this lien you put on my property.

THE COURT: Yeah. I get it.

I'm going to take it under advisement, and I will -- I'll take it under advisement. I'll enter an order.

Do we have anything else set after this?

MR. BOBO: No, sir.

MR. HARRISON: Nothing -- nothing pending right now.

THE COURT: Okay.

MR. BOBO: Would you like -- can we help at all? Would you like proposed orders or anything from us, Your Honor? I don't know what your practice is or what you'd like.

THE COURT: Well, I honestly haven't figured out what my practice is yet.

Proposed orders from both sides, I think, would be -- would be appropriate, at least so that it will give me an understanding of -- yeah, I'll take proposed orders from both of you. What kind of time frame do you think you can --

MR. BOBO: I mean, at least for our motion to dismiss. I don't know the proposed order on

the motion for mediation --

MR. HARRISON: Mediation's kind of yes or no.

MR. BOBO: That's yes or no, yeah.

THE COURT: Right. Yeah. So I'll just -- I'm more focused on the motion to dismiss, so --

MR. HARRISON: 10 days?

THE COURT: 10 days. Is that --

MR. BOBO: It works for me.

THE COURT: -- good enough time?

MR. BOBO: Yes, sir.

THE COURT: Okay. All right. So --

MS. GABEL: Your Honor?

THE COURT: -- 10 days from today.

Yes, ma'am.

MS. GABEL: Just so -- just so you clear up this one question mark, that word in number 16 of the covenants --

THE COURT: Yes.

MS. GABEL: -- it's "Incorporated." Palm Tree Acres, comma, Incorporated. Because there's a big difference between "forever" and "incorporated."

THE COURT: Incorporated. Yes, there is.

MS. GABEL: Just thought I'd let you know.

THE COURT: Thank you.

MS. GABEL: Sorry about that.

MR. HARRISON: Well, even if it's forever, it's not forever anymore.

MS. GABEL: Well, it's ironic.

THE COURT: Yeah. Okay.

MR. HARRISON: Thank you, Judge.

THE COURT: All right. Thank you.

MR. HARRISON: I'll take the transcript, please.

THE COURT REPORTER: An E-Tran or --

MR. HARRISON: The whole works. Expedite that for me.

THE COURT REPORTER: When do you need it?

MR. HARRISON: What's today?

THE COURT REPORTER: Today is Friday.

MR. HARRISON: Middle of next week, Wednesday.

THE COURT REPORTER: Mr. Bobo, he ordered this.

MR. BOBO: Give me a copy.

THE COURT REPORTER: Do you want an E-Tran?

MR. BOBO: Yes, please.

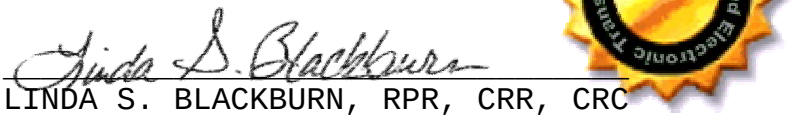
(Thereupon, the proceedings were concluded at 11:00 a.m.)

COURT CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PASCO)

I, LINDA S. BLACKBURN, Registered Professional Court Reporter, Certified Realtime Reporter, and Certified Realtime Captioner, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 11th day of July, 2017.



LINDA S. BLACKBURN, RPR, CRR, CRC

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

NOTICE AND REQUEST FOR COMPULSORY JUDICIAL NOTICE OF PUBLIC SERVICE COMMISSION RECORDS

Plaintiffs, by and through its undersigned counsel and pursuant to Fla. Stat. §§90.202, 90.203, and 90.204, hereby gives notice to all parties and request the Court to take judicial notice of the Notice of Apparent Violation dated March 8, 2018, issued by the Florida Public Service Commission, a certified copy of which is attached to this Notice. The record is self-authenticating under Fla. Stat. §§ 90.902 and 90.955 as a certified copy of a record of the executive branch of state government. Plaintiffs' counsel has conferred with counsel for the Defendants regarding this request, but the Defendants have not responded.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602

Phone: 813-712-8757

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on August 11, 2018, to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON

STATE OF FLORIDA

Public Service Commission

March 8, 2018

via Email, US Mail, and Certified Mail

J. Allen Bobo, Esq.
jabobo@lutzbobo.com
Lutz, Bobo & Telfair, P.A.
2 N. Tamiami Trail, Suite 500
Sarasota, FL 34236-5575

Bruce May, Esq.
bruce.may@hklaw.com
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301-1872

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: Carlotta S Stauffer
CARLOTTA S. STAUFFER, COMMISSION CLERK
(or Office of Commission Clerk designee)

NOTICE OF APPARENT VIOLATION

Re: Apparent Violation of Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and Possible Implementation of Show Cause Proceedings Against Palm Tree Acres Mobile Home Park, pursuant to Section 367.161, Florida Statutes.

Dear Sirs,

Section 367.011, Florida Statutes (F.S.), provides that under Chapter 367, F.S., the Florida Public Service Commission (Commission) shall have exclusive jurisdiction over each water and wastewater utility with respect to its authority, service, and rates. Section 367.021, F.S., defines a water or wastewater utility to include every person, lessee, trustee, or receiver who owns, operates, manages, or controls a system that is providing water or wastewater service to the public for compensation. Pursuant to Section 367.022(5), F.S., "[l]andlords providing service to their tenants without specific compensation for the service" are not subject to regulation by the Commission.

Pursuant to Section 367.031, F.S., each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. Rule 25-30.033, Florida Administrative Code (F.A.C.), provides that an existing system seeking to establish initial rates and charges must file an application for an original certificate in accordance with the procedure set forth in that Rule.

Palm Tree Acres Mobile Home Park (Palm Tree Acres) is not certificated to provide water or wastewater service.

Based on information provided by Palm Tree Acres, Commission staff believes that Palm Tree Acres may be operating in violation of Section 367.031, F.S., and Rule 25-30.033, F.A.C., at is appears that Palm Tree Acres is providing water and wastewater service to the public for compensation without a certificate of authorization from the Commission. Furthermore, it appears that Palm Tree Acres is not exempt from the Commission's jurisdiction under Section 367.022(5), F.S., as Palm Tree Acres appears to be selling water and/or wastewater service to non-tenants for compensation.

Palm Tree Acres and its non-tenant customers recently engaged in discussions to explore alternative service agreement structures that might result in Palm Tree Acres' exemption under Section 367.022, F.S. Commission staff held a noticed meeting on February 23, 2018, for the purpose of discussing the status of this matter. Based on the information provided at that meeting, it is my understanding that Palm Tree Acres and its non-tenant customers have not reached, nor does it appear they will reach, an agreement that provides Palm Tree Acres with the ability to properly claim a valid exemption.

Section 367.161, F.S., provides:

> (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than $5,000, to be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85.
>
> (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.

By this letter, I am requesting that Palm Tree Acres file an application for an original certificate of authorization as an existing system requesting initial rates and charges to provide water and wastewater services, pursuant to Rule 25-30.033, F.A.C., by April 9, 2018. If Palm Tree Acres fails to take appropriate action by April 9, 2018, you are hereby notified that Commission staff will immediately begin enforcement proceedings pursuant to Section 367.161, F.S.

If you have any questions, please contact me at (850) 413-6076 or mduval@psc.state.fl.us.

Sincerely,

Margo A. DuVal
Senior Attorney

MAD
Enclosures

cc: Division of Engineering (Graves, King, Ballinger)
Office of Public Counsel (Patti Christensen, JR Kelly)
Richard Harrison, Esq.

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR COMPLETING EXAMPLE APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR A PROPOSED OR EXISTING SYSTEM REQUESTING INITIAL RATES AND CHARGES

(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and Rule 25-30.033, Florida Administrative Code)

General Information

The attached form is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with Rule 25-30.033, Florida Administrative Code (F.A.C.). Any questions regarding this form should be directed to the Division of Engineering at (850) 413-6910.

Instructions

1. Fill out the attached application form completely and accurately.

2. Complete all the items that apply to your utility. If an item is not applicable, mark it "N.A." Do not leave any items blank.

3. Remit the proper filing fee pursuant to Rule 25-30.020, F.A.C., with the application.

4. Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

5. The completed application, attached exhibits, and the proper filing fee should be mailed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

PSC 1001 (12/15)
Rule 25-30.033, F.A.C.

APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR A PROPOSED OR EXISTING SYSTEM REQUESTING INITIAL RATES AND CHARGES

(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and Rule 25-30.033, Florida Administrative Code)

To: **Office of Commission Clerk**
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The undersigned hereby makes application for original certificate(s) to operate a water ☐ and/or wastewater ☐ utility in _____ County, Florida, and submits the following information:

PART I **APPLICANT INFORMATION**

A) Contact Information for Utility. The utility's name, address, telephone number, Federal Employer Identification Number, and if applicable, fax number, e-mail address, and website address. The utility's name should reflect the business and/or fictitious name(s) registered with the Department of State's Division of Corporations:

_____
Utility Name

_____
Office Street Address

_____
City State Zip Code

_____
Mailing Address (if different from Street Address)

_____
City State Zip Code

( ) - ( ) -
Phone Number Fax Number

_____
Federal Employer Identification Number

E-Mail Address

Website Address

B) The contact information of the authorized representative to contact concerning this application:

Name

Mailing Address

City State Zip Code

( ) - ( ) -

Phone Number Fax Number

E-Mail Address

C) Indicate the nature of the utility's business organization (check one). Provide documentation from the Florida Department of State, Division of Corporations showing the utility's business name and registration/document number for the business, unless operating as a sole proprietor.

☐ Corporation _____ Number

☐ Limited Liability Company _____ Number

☐ Partnership _____ Number

☐ Limited Partnership _____ Number

☐ Limited Liability Partnership _____ Number

☐ Sole Proprietorship

☐ Association
☐ Other (Specify) _____

If the utility is doing business under a fictitious name, provide documentation from the Florida Department of State, Division of Corporations showing the utility's fictitious name and registration number for the fictitious name.

☐ Fictitious Name (d/b/a) _____
Registration Number

D) The name(s), address(es), and percentage of ownership of each entity or person which owns or will own more than 5 percent interest in the utility (use an additional sheet if necessary).

_____
_____
_____
_____

E) The election the business has made under the Internal Revenue Code for taxation purposes.

_____
_____

PART II ORIGINAL CERTIFICATE REQUESTING INITIAL RATES

A) DESCRIPTION OF SERVICE

Exhibit _____ - Provide a statement indicating whether the application is for water, wastewater, or both. If the applicant is applying only for water or wastewater, the statement shall include how the other service is provided.

_____
_____
_____
_____
_____

B) **FINANCIAL ABILITY**

1) Exhibit _____ - Provide a detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided.

2) Exhibit _____ - Provide a list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements.

_____
_____
_____
_____

C) **TECHNICAL ABILITY**

1) Exhibit _____ - Provide the applicant's experience in the water or wastewater industry;

_____
_____
_____
_____

2) Exhibit _____ - Provide the copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3) Exhibit _____- Provide a copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report and secondary water quality standards report; and

4) Exhibit _____- Provide a copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years.

D) NEED FOR SERVICE

1) Exhibit _____ - Provide the following documentation of the need for service in the proposed area:

a) The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial. If the development will be in phases, this information shall be separated by phase;

b) A copy of all requests for service from property owners or developers in areas not currently served;

c) The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service area;

d) Any known land use restrictions, such as environmental restrictions imposed by governmental authorities.

2) Exhibit _____ - Provide the date the applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances applicant began serving.

_____

_____

_____

_____

E) TERRITORY DESCRIPTION, MAPS, AND FACILITIES

1) Exhibit _____ - Provide a legal description of the proposed service area in the format prescribed in Rule 25-30.029, F.A.C.

2) Exhibit _____ - Provide documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. This documentation shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time prescribed in the order granting the certificate.

3) Exhibit _____ - Provide a detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in E-1 above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served.

4) Exhibit _____ - Provide an official county tax assessment map or other map showing township, range, and section, with a scale such as 1" = 200' or 1" = 400', with the proposed territory plotted thereon, consistent with the legal description provided in E-1 above.

5) Exhibit _____ - Provide a description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase.

6) Exhibit _____ - Provide a description of the type of water treatment, wastewater treatment, and method of effluent disposal.

F) PROPOSED TARIFF

Exhibit _____ - Provide a tariff containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. See Rule 25-30.033, F.A.C., for information about water and wastewater tariffs that are available and may be completed by the applicant and included in the application.

G) ACCOUNTING AND RATE INFORMATION

1) Exhibit _____ - Describe the existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the 1996 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated.

2) Exhibit _____ - Provide the existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in documented need for service for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in F-1 above, the schedule provided in G-6 below, and the CIAC guidelines set forth in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase.

3) Exhibit _____ - Provide the current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the 1996 NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase.

4) Exhibit _____ - Provide a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase. A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. Please reference subsection 25-30.033(4), F.A.C., for additional information regarding the accrual of allowance for funds used during construction (AFUDC).

5) Exhibit _____ - Provide a schedule showing how the proposed rates were developed. The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

6) Exhibit _____ - Provide a schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property.

7) Exhibit _____ - Provide a schedule showing how the customer deposits and miscellaneous service charges were developed, including initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.

H) NOTICING REQUIREMENTS

Exhibit _____ - Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

PART III SIGNATURE

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY: _____
Applicant's Signature

_____
Applicant's Name (Printed)

_____
Applicant's Title

_____
Date

367.031 Original certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. 120.569 and 120.57, or the application will be deemed granted.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; s. 1, ch. 85-85; ss. 4, 26, 27, ch. 89-353; s. 4, ch. 91-429; s. 8, ch. 93-35; s. 183, ch. 94-356; s. 3, ch. 96-407; s. 94, ch. 96-410.

25-30.033 Application for Original Certificate of Authorization and Initial Rates and Charges.

(1) Each applicant for an original certificate of authorization and initial rates and charges shall file with the Commission Clerk the information set forth in paragraphs (a) through (q). Form PSC 1001 (12/15), entitled "Application for Original Certificate of Authorization for a Proposed or Existing System Requesting Initial Rates and Charges," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06237, is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with this subsection. This form is also available on the Commission's Web site, www.floridapsc.com.

(a) A filing fee pursuant to paragraph 25-30.020(2)(a), F.A.C.;

(b) Proof of noticing pursuant to Rule 25-30.030, F.A.C.;

(c) The utility's name, address, telephone number, Federal Employer Identification Number, authorized representative, and, if available, email address and fax number;

(d) The nature of the utility's business organization, i.e., corporation, limited liability company, partnership, limited partnership, sole proprietorship, or association. The applicant must provide documentation from the Florida Department of State, Division of Corporations, showing:

1. The utility's business name and registration/document number for the business, unless operating as a sole proprietor, and,

2. The utility's fictitious name and registration number for the fictitious name, if operating under a fictitious name;

(e) The name(s), address(es), and percentage of ownership of each entity or person that owns or will own more than 5 percent interest in the utility;

(f) The election the business has made under the Internal Revenue Code for taxation purposes;

(g) A statement indicating whether the application is for water, wastewater, or both. If the applicant is applying for water or wastewater only, the statement shall include how the other service is provided;

(h) To demonstrate the necessary financial ability of the applicant to provide service to the proposed service area, the applicant shall provide:

1. A detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, which shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided; and,

2. A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements;

(i) To demonstrate the technical ability of the applicant to provide service, the applicant shall provide:

1. A statement of the applicant's experience in the water or wastewater industry;

2. A copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3. A copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report, and secondary standards drinking water report; and,

4. A copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years;

(j) To describe the proposed service area, the applicant shall provide:

1. A legal description of the proposed service area in the format described in Rule 25-30.029, F.A.C.;

2. A detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in subparagraph (j)1. above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served; and,

3. An official county tax assessment map, or other map showing township, range, and section with a scale such as 1'' = 200' or 1'' = 400', with the proposed territory plotted thereon, consistent with the legal description provided in subparagraph (j)1. above;

(k) To demonstrate the need for service in the proposed area, the applicant shall provide:

1. The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers currently being served and anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial. If the development will be in phases, this information shall be separated by phase;

2. A copy of all requests for service from property owners or developers in areas not currently served;

3. The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service; and,

4. Any known land use restrictions, such as environmental restrictions imposed by governmental authorities;

(l) The date applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances the applicant began serving;

(m) Documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time required in the order granting the certificate;

(n) A description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase;

(o) A description of the type of water treatment, wastewater treatment, and method of effluent disposal;

(p) To support the proposed rates and charges, the applicant shall provide:

1. The existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the National Association of Regulatory Utility Commissioners (NARUC) 1996 Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated. If the utility will be built in phases, this shall apply only to the first phase;

2. The existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in subparagraph (l)(k)1. above for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in paragraph (q) below, the schedule provided in subparagraph (l)(p)6. below, and the CIAC guidelines in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase;

3. A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase;

4. The current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase;

5. A schedule showing how the proposed rates were developed;

6. A schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property; and,

7. A schedule showing how the customer deposits and miscellaneous service charges were developed, including

initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.; and,

(q) A tariff containing all rates, classifications, charges, rules, and regulations which shall be consistent with Chapter 25-9, F.A.C. Form PSC 1010 (12/15), entitled "Water Tariff," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06247 and Form PSC 1011 (12/15), entitled "Wastewater Tariff," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06248, are example tariffs that may be completed by the applicant and included in the application. These forms may also be obtained from the Commission's website, www.floridapsc.com.

(2) The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

(3) A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), F.S., unless there is competent substantial evidence supporting the use of a different return on common equity.

(4) Utilities obtaining original certificates of authorization pursuant to this rule are authorized to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to subsection 25-30.116(1), F.A.C.

(a) The applicable AFUDC rate shall be determined as the utility's projected weighted cost of capital as demonstrated in its application for original certificate and initial rates and charges.

(b) A discounted monthly AFUDC rate calculated in accordance with subsection 25-30.116(3), F.A.C., shall be used to insure that the annual AFUDC charged does not exceed authorized levels.

(c) The date the utility shall begin to charge the AFUDC rate shall be the date the certificate of authorization is issued to the utility so that such rate can apply to the initial construction of the utility facilities.

Rulemaking Authority 350.127(2), 367.045(1), 367.121, 367.1213 FS. Law Implemented 367.031, 367.045, 367.1213 FS. History–New 1-27-91, Amended 11-30-93, 1-4-16.

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

PLAINTIFFS' CONSOLIDATED ANSWER AND DEFENSES
TO AMENDED COUNTERCLAIM[1]

Plaintiffs, NELSON P. and BARBARA J. SCHWOB, husband and wife ("Schwob"); DARRELL L. and MARTHA K. BIRT, husband and wife ("Birt"); FRANK E. and LINDA J. BROWN, husband and wife ("F. Brown"); PAUL and SANDRA BROWN, husband and wife ("P. Brown"); DENNIS M. and CAROL J. COSMO ("Cosmo"); MARILYN C. MORSE, STEVEN P. CUMMINGS and LAURIE A. CUMMINGS, joint tenants ("Cummings"); KAROL FLEMING ("Fleming"); SOLANGE GERVAIS ("Gervais"); BERND J. and OPAL B. GIERSCHKE, husband and wife ("Gierschke"); CHARLES H. Sr. and CAROL A. LePAGE, husband and wife ("LePage"); JAMES L. and REBECCA L. MAY, husband and wife ("May"); LORI OFFER ("Offer"); ELVIRA PARDO ("Pardo"); JAMES A. PASCO, individually ("James"); JAMES A. and JOYCE A. PASCO, husband and wife ("Pasco"); DAVID L. and KAY J. SMITH, husband and wife ("D. Smith"); JAMES L. and FRANCES E. SMITH, husband

[1] The answers to Counts I and II are the collective answers of the Plaintiffs to those counts. The answers to Counts III through XXIV are the answers of only the Plaintiffs to whom such counts are directed.

and wife ("J. Smith"); JAMES E. and MARGO M. SYMONDS, husband and wife ("Symonds"); JEANETTE M. TATRO ("Tatro"); RICHARD and ARLENE TAYLOR, husband and wife ("Taylor"); ANTHONY A. VARSALONE, JR. ("Varsalone"); KATHLEEN R. VALK, ("Valk"); and PALM TREE ACRES SUBDIVISION LANDOWNERS HOMEOWNER'S ASSOCIATION, INC. ("Landowners' Association"), by and through their undersigned counsel, hereby responds to the Amended Counterclaim for Declaratory Judgment filed by the Defendants, JAMES C. GOSS ("Goss"), EDWARD HEVERAN ("E. Heveran"), and MARGARET E. HEVERAN ("M. Heveran"), individually and d/b/a PALM TREE ACRES MOBILE HOME PARK (collectively referred to herein as the "Park Owners"), as follows:

COUNT I – OWNERS' CONSTITUTIONAL RIGHTS AS OWNERS OF REAL PROPERTY

1. Admitted that the Park Owners are seeking declaratory relief and that such actions are within the jurisdiction of the circuit court generally under Ch. 86, Fla. Stat.; denied that the Court has subject matter jurisdiction to the extent that the Park Owners' claims are within the exclusive jurisdiction of the Florida Public Service Commission ("PSC").

2. Admitted.

3. Admitted.

4. Admitted, but denied that the relationship between the Park Owners and Palm Tree on the one hand and the Plaintiffs on the other hand is governed by Ch. 723, Fla. Stat.

5. Admitted.

6. Denied.

7. Admitted that without the Park Owners' continued supply of utility services, public health issues will arise, otherwise denied.

8. Admitted that no written contracts exist between Plaintiffs and Park Owners,

otherwise denied.

9. Without knowledge, therefore denied.

10. Admitted to the extent of the December 8, 2016 Order regarding the prior recorded covenants and restrictions; otherwise denied.

11. Admitted, except to the extent that the Plaintiffs are the fee simple owners of their respective lots within Palm Tree.

12. Admitted that various improvements exist, including as generally described in this paragraph; denied that the existing utility systems serve only "Homeowners," as defined in Paragraph 4, because such utility systems also serve the Plaintiffs, who are not "Homeowners" as so defined.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters that are within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

18. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters that are within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

19. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

20. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

21. Denied. Moreover, to the extent the Defendants seek declaratory relief as to

matters within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

22. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters within the exclusive jurisdiction of the PSC, the Court lacks jurisdiction.

23. Denied. Moreover, to the extent the Defendants seek declaratory relief as to matters within the exclusive jurisdiction of the PSC, the Curt lacks jurisdiction and merely recasting such claims as "constitutional claims" does not and cannot defeat the PSC's jurisdiction or confer jurisdiction on the Court that it otherwise lacks.

24. Denied.

25. Denied.

26. Denied.

COUNT II – OBLIGATION TO SUPPLY WATER AND SEWER

27. Plaintiffs reallege their responses in paragraphs 1 through 26.

28. Admitted.

29. Without knowledge, therefore denied.

30. Admitted to the extent of the December 8, 2016 Order regarding the prior recorded covenants and restrictions; otherwise denied.

31. Admitted to the extent of the December 8, 2016 Order regarding the prior recorded covenants and restrictions; otherwise denied.

32. Admitted to the extent of the December 8, 2016 Order regarding the prior recorded covenant sand restrictions; otherwise denied.

33. Admitted to the extent of the December 8, 2016 Order regarding the prior recorded covenants and restrictions; otherwise denied.

34. Admitted to the extent of the December 8, 2016 Order regarding the prior

recorded covenants and restrictions; otherwise denied.

35. Denied.

36. Denied.

37. Denied, as to Defendants' legal argument and mischaracterization of Plaintiffs' position.

38. Without knowledge as to the Park Owners' position; denied as legal argument.

39. Without knowledge as to the Park Owners' contention; denied as legal argument.

40. Denied.

41. Admitted that there are no written contracts between the Park Owners and the Plaintiffs, but otherwise denied. The Defendants' obligations to provide utility services to the Plaintiffs are within the exclusive jurisdiction of the PSC.

42. Admitted that Plaintiffs are receiving water, sewer, and garbage services from the Park Owners, as there is no other option to receive these services. To the extent the Defendants are providing utility services, those activities are within the exclusive jurisdiction of the PSC.

43. Denied.

44. Without knowledge of what the Park Owners will "offer"; denied that the Defendants can act in any manner that is contrary to applicable Florida statutes, rules, and regulations governing utilities.

45. Denied.

46. Denied.

COUNT III – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS NELSON P. AND BARBARA J. SCHWOB

47. Admitted that the Park Owners are seeking to recover for an implied contract, but

denied that the Park Owners are entitled to such relief.

48. Admitted.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

COUNT IV – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DARRELL L. AND MARTHA K. BIRT

56. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

57. Admitted.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

COUNT V – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS FRANK E. AND LINDA J. BROWN

65. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

66. Admitted.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

COUNT VI – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS PAUL AND SANDRA BROWN

74. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

75. Admitted.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

COUNT VII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DENNIS M. AND CAROL J. COSMO

83. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

84. Admitted.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

COUNT VIII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS MARILYN C. MORSE, STEVEN P. AND LAURIE A. CUMMINGS

92. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

93. Admitted.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

COUNT IX – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF KAROL FLEMING

102. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

103. Admitted.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

110. Denied.

COUNT X – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF SOLANGE GERVAIS

111. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

112. Admitted.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

COUNT XI – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS BERND J. AND OPAL B GIERSCHKE

120. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

121. Admitted.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

COUNT XII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS CHARLES H. AND CAROL A. LePAGE

129. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

130. Admitted.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

COUNT XIII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES L. AND REBECCA L. MAY

138. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

139. Admitted.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

COUNT XIV – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF LORI OFFER

147. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

148. Admitted.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

COUNT XV – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF ELVIRA PARDO

156. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

157. Admitted.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

COUNT XVI – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF JAMES A. PASCO

165. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

166. Admitted.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

COUNT XVII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES A AND JOYCE A PASCO

174. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

175. Admitted.

176. Denied.

177. Denied.

178. Denied.

179. Denied.

180. Denied.

181. Denied.

182. Denied.

COUNT XVIII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS DAVID L. AND KAY J. SMITH

183. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

184. Admitted.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

COUNT XIX – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES L. AND FRANCES E. SMITH

192. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

193. Admitted.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

COUNT XX – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS JAMES E. AND MARGO M. SYMONDS

201. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

202. Admitted.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. Denied.

COUNT XXI – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF JEANETTE M. TATRO

210. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

211. Admitted.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Denied.

COUNT XXII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFFS RICHARD AND ARLENE TAYLOR

219. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

220. Admitted.

221. Denied.

222. Denied.

223. Denied.

224. Denied.

225. Denied.

226. Denied.

227. Denied.

COUNT XXIII – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF ANTHONY A. VARSALONE, JR.

228. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

229. Admitted.

230. Denied.

231. Denied.

232. Denied.

233. Denied.

234. Denied.

235. Denied.

236. Denied.

COUNT XXIV – IMPLIED CONTRACT – RECOVERY OF COMPENSATION FOR SERVICES AND AMENITIES USED BY PLAINTIFF KATHLEEN R. VALK

237. Admitted that the Park Owners are seeking to recover for an implied contract, but denied that the Park Owners are entitled to such relief.

238. Admitted.

239. Denied.

240. Denied.

241. Denied.

242. Denied.

243. Denied.

244. Denied.

245. Denied.

DEFENSES

First Defense

As their first defense, the Plaintiffs allege that the claims of Defendants are barred because the claims fail to state a cause of action.

Second Defense

As their second defense, the Plaintiffs allege that the claims of the Defendants are barred for lack of subject matter jurisdiction to the extent the claims or any part of them is within the exclusive jurisdiction of the PSC.

Third Defense

As their third defense, the Plaintiffs allege that the claims of Defendants are barred by the doctrine of laches.

Fourth Defense

As their fourth defense, the Plaintiffs allege that the claims of Defendants are barred by the doctrine of unclean hands. Among other things, the Defendants have been operating an illegal and uncertificated utility for more than 30 years in violation of Florida law.

Fifth Defense

As their fifth defense, the Plaintiffs allege that the claims of Defendants are barred by the doctrine of equitable estoppel. The Defendants elected to construct and operate utility systems to serve as the exclusive utility providers to lots within their mobile home park, have charged the Plaintiffs for such utility services, have charged the Plaintiffs for certain improvements and connections to such utility services, and cannot now contend that they have no obligation to maintain or are free to discontinue such utility services.

Sixth Defense

As their sixth defense, the Plaintiffs allege that the claims of Defendants are barred by the doctrine of judicial estoppel. The Defendants argued in this case that matters pertaining to water and sewer rates and service are within the exclusive jurisdiction of the PSC and the Court, by Order dated August 21, 2017, agreed and dismissed certain claims of the Plaintiffs on that basis. The PSC has since exercised its jurisdiction, issued a Notice of Apparent Violation, and initiated a show cause proceeding, PSC Docket No. 20180142-WS, as to the Defendants' unauthorized and uncertificated utility operations. The Defendants cannot now seek judicial relief from the Court as to matters already determined to be within the exclusive jurisdiction of the PSC.

Seventh Defense

As their seventh defense, the Plaintiffs allege that any "constitutional claim" asserted by the Defendants was waived by them when they voluntarily constructed and began to operate water and sewer utility systems to provide utility services exclusively to residential lots within Palm Tree Acres mobile home park.

Eighth Defense

As their eighth defense, the Plaintiffs allege that all amounts charged or collected by the Defendants from the Plaintiffs for utility services have been and are illegal charges to the extent they were not and are not approved by the PSC in accordance with Florida law. As such, all amounts paid in illegal charges should be disgorged and refunded to the Plaintiffs and enforcement of any alleged contract providing for illegal past, current, or future charges should be denied.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com

Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on August 13, 2018 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
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NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

PLAINTIFFS' RESPONSE TO DEFENDANTS'
VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs, Nelson P. Schwob et al., by and through their undersigned counsel and pursuant to Fla. R. Civ. P. 1.510, hereby respond to the Defendants' Verified Motion for Partial Summary Judgment (the "Motion") and state as follows:

Improper Notice as to Claims Being Addressed in the Motion

A motion for summary judgment "must state with particularity the grounds on which it is based and the substantial matters of law to be argued . . . ." Fla. R. Civ. P. 1.510(c). This requirement "is designed to prevent 'ambush' by allowing the nonmoving party to be prepared for the issues that will be argues at the summary judgment hearing." *City of Cooper City v. Sunshine Wireless Co.*, 654 So. 2d 283, 284 (Fla. 4 DCA 1995). According to the Motion, the claims on which judgment is sought are "all issues alleged in Plaintiffs' Complaint relating to the provision of utility services to Plaintiffs by Owners and all issues in Count III of Owners'

[Defendants'] counterclaim."[1] Whether through carelessness or intentional obfuscation, the Defendants have failed to clearly identify what claims are intended to be addressed by the Motion. They have certainly not stated with particularity the grounds on which the Motion is based.

First, both of the pleadings referred to in the sentence quoted above – "Plaintiffs' Complaint" and "Owners' counterclaim" – have been superseded by more recent pleadings. Plaintiffs served an Amended Complaint on May 28, 2014, a Second Amended Complaint on October 14, 2015, and a Third Amended Complaint on April 25, 2017. The Third Amended Complaint is the current and operative pleading for the Plaintiffs. The Defendants served a Counterclaim with their Answer on November 19, 2015, an Amended Counterclaim on February 4, 2016, and yet another Amended Counterclaim on June 19, 2018.[2] The Second Amended Counterclaim is the operative pleading for the Defendants. An amended pleading that is complete in itself and does not refer to an earlier pleading supersedes the earlier pleading, which "ceases to be a part of the record." *Watkins v. Sims*, 81 Fla. 730, 739-40, 88 So. 764, 767 (1921); *see also, Steele v. Lannon*, 355 So. 2d 190, 191 n.1 (Fla. 2 DCA 1978). It is certainly not too much to ask for a party seeking summary judgment to identify the claims on which judgment is sought by reference to the operative pleadings in the case.

Second, and to compound the confusion, the Defendants make only a vague reference to "all issues alleged . . . relating to the provision of utility services . . . ." Plaintiffs' Third Amended Complaint is 212 pages long with 1578 numbered paragraphs and approximately 500 pages of exhibits. The claims asserted are segregated into 180 separate counts. Count 3 of the Third Amended Complaint, which certainly raised "issues . . . relating to the provision of utility

[1] Motion, p.1.
[2] To avoid confusion, the operative Amended Counterclaim will be referred to as the "Second Amended Counterclaim," even though it is not denominated as such.

services," was dismissed because the Court determined those claims to lie within the exclusive jurisdiction of the Florida Public Service Commission.[3] There is no reason that the Defendants cannot identify, by reference at least to specific remaining counts of the Third Amended Complaint, what "issues" they are asking the Court to determine. Even worse, when the Defendants do refer to a specific count in a pleading, they seem to get it wrong. The Motion purports to seek judgment on "Count III of Owners' counterclaim," but that count in the operative Second Amended Counterclaim is one of 22 identical counts by the Defendants for damages on an implied contract theory. Counts I and II of the Second Amended Counterclaim may be what the Defendants intended their Motion to cover, but that is not what the Motion says.

The Defendants have not merely failed to comply with Rule 1.510(c), but have filed a Motion that utterly confuses the simple matter of identifying the pertinent claims. That is prejudicial to the Plaintiffs and unhelpful to the Court. Given that the Defendants are seeking summary judgment, they should be required to follow the rule and state with particularity the claims or issues on which they seek judgment. On these grounds alone, the Court should deny the Motion without prejudice.

Summary Judgment Evidence Relied On

Under Fla. R. Civ. P. 1.510(c), the Motion "must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ('summary judgment evidence') on which movant relies. The Defendants have failed to identify any such summary judgment evidence in the Motion. The "verification" of the Motion is expressly limited to Paragraphs 1-14 and 22-30, and further applies only to "the facts alleged"

[3] "Order Granting in Part, Denying in Part Defendants' Motion to Dismiss Counts 3, 100, 104, 108, 112, 116, 120, 122, 126, 130, 134, 142, 146, 150, 154, 158, 162, 166, 170, 172, 174, 176 and Order Granting Plaintiff's Motion for Referral to Mediation" dated August 21, 2017. The exclusive and preemptive jurisdiction of the PSC also precludes the Court from acting on the Motion in any manner with respect to utility authority and service, as will be discussed below.

in those paragraphs. Therefore, the court's consideration of the Motion must be confined solely to the verified facts set forth therein.

Plaintiffs hereby identify the following additional summary judgment evidence upon which they rely in opposition to the Motion:

- Deposition of Defendant, James Goss, taken on February 24, 2017
- Affidavit of Trent Goss dated and filed March 23, 2018
- Any matters of which the Court has taken judicial notice in this case, or which are the subject of a pending request for compulsory judicial notice

Summary Judgment Standard and Burden of Proof

"Summary judgment is proper only where the moving party shows conclusively that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251, 253 (Fla. 2 DCA 2011) (quoting *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966)). "The movant has the burden of establishing that no genuine issue of material fact exists." *Wilson v. Pruette*, 422 So.2d 351, 352 (Fla. 2 DCA 1982) (citing *Jones v. Stoutenburgh*, 91 So.2d 299 (Fla. 1956)); *see also, Mejiah v. Rodriguez*, 342 So. 2d 1066, 1067-1068 (Fla. 3 DCA 1977) (explaining that if the existence of genuine issues of material facts or "the possibility of their existence is reflected in the record, or the record even raises the slightest doubt in this respect, the summary judgment must be reversed." (referencing *Furlong v. First National Bank of Hialeah*, 329 So. 2d 406 (Fla. 3 DCA 1976)).

The burden of a party moving for summary judgment is greater, not less, than that of the plaintiff at trial. The burden of the movant in a motion for summary judgment is not simply to show that the facts support his own theory of the case but rather to demonstrate that the facts show that the party moved against cannot prevail." *Mejiah*, 342 So.2d at 1067 (citing *Megdell v.*

Wieder, 327 So. 2d 781 (Fla. 3 DCA 1976)); *see also Smith v. Avis Rent-A-Car System, Inc.*, 297 So. 2d841, 842 (Fla. 2 DCA 1974) (quoting *Visingardi v. Tirone*, 193 So. 2d 601 (Fla. 1966)) (explaining that while in trial the plaintiff may prevail on the basis of a mere preponderance of the evidence, the party moving for summary judgment must show conclusively that no material issues remain for trial). Only upon meeting this burden does the burden of proving the existence of genuine issues of material shift to the opposing party. *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251, 253 (Fla. 2 DCA 2011) (quoting *Deutsch v. Global Fin. Servs., LLC*, 976 So. 2d 680, 682 (Fla. 2 DCA 2008)).

In this case, the Defendants filed the Motion before the Plaintiffs had even answered the Second Amended Counterclaim. When a party moves for summary judgment before all of the responsive pleadings have been filed, the burden of proof becomes even more difficult to overcome. *Statewide Homeowners Solutions, LLC, v. Nationstar Mortgage, LLC*, 182 So. 3d 676, 678 (Fla. 4 DCA 2015); *Dominko v. Wells Fargo Bank, N.A.*, 102 So. 3d 696, 698 (Fla. 4 DCA 2012) (citing *Goncharuk v. HSBC Mortg. Servs., Inc.*, 62 So. 3d 680, 681-682 (Fla. 2 DCA 2011)). In such instances, the burden is on the movant "to make it appear to a certainty that no answer which the [non-moving party] might properly serve could present a genuine issue of fact." *Settecasi v. Board of Public Instruction of Pinellas County*, 156 So. 2d 652, 654 (Fla. 2 DCA 1963).

This means that "the [moving party] must not only establish that no genuine issue of material fact is present in the record as it stands, but also that the [non-moving party] could not raise any genuine issues of material fact if the [non-moving party] were permitted to answer the complaint. The [movant] must essentially anticipate the content of the [non-moving party's] answer and establish that the record would have no genuine issue of material fact even if the

answer were already on file." *Statewide Homeowners Solutions, LLC, v. Nationstar Mortgage, LLC*, 182 So. 3d 676, 678 (Fla. 4 DCA 2015); *Dominko v. Wells Fargo Bank, N.A.*, 102 So. 3d 696, 698 (Fla. 4 DCA 2012)(citing *Goncharuk v. HSBC Mortg. Servs., Inc.*, 62 So. 3d 680, 681-682 (Fla.2 DCA 2011)).

Legal Argument

I. The Court lacks subject matter jurisdiction over the claims raised in the Motion and the Defendants are judicially estopped from now invoking the jurisdiction of the circuit court to the extent the Motion raises matters that the Court has already determined, at the Defendants' insistence, to be within the exclusive jurisdiction of the Public Service Commission ("PSC").

A. Any claims relating to furnishing or ceasing to furnish water and wastewater utility services are within the exclusive jurisdiction of the PSC.

Under Fla. Stat. § 367.011(2), "The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates." That jurisdiction is both exclusive and preemptive. *Hill Top Developers v. Holiday Pines Service Corp*., 478 So. 2d 368, 371 (Fla. 2 DCA 1985); *Public Service Comm'n v. Lindahl*, 613 So. 2d 63, 64 (Fla. 2 DCA 1993). That jurisdiction includes deciding matters regarding its own jurisdiction. *Public Service Comm'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990).

Under Fla. Stat. § 367.021(12), a "utility" is defined as "any person . . . owning, operating, managing, or controlling a system . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation." As the Defendants have already observed in prior filings, providing service to even a single non-exempt customer renders the provider a "utility" under the statutory definition. *P.W. Ventures, Inc. v. Nichols*, 533 So. 2d 281, 282 (Fla. 1988). The Defendants concede that unless some statutory exemption applies, their furnishing of water and wastewater services to the Plaintiffs makes them a "utility" subject to PSC regulation.

The only exemption ever claimed or offered by the Defendants that would keep them outside the boundaries of the PSC's jurisdiction is the "landlord-tenant" exemption in Fla. Stat. § 367.022(5).

The PSC has now exercised its jurisdiction in the matter. On March 8, 2018, the PSC issued a Notice of Apparent Violation finding that the Defendants may operating in violation of the licensing requirements of Ch. 367 and also concluding preliminarily that the "landlord-tenant" exemption of Fla. Stat. § 367.022(5) does not apply to the utility services provided by the Defendants to the Plaintiffs.[4] The Notice of Apparent Violation gave the Defendants until April 9, 2018, to submit an application for a certificate of authority. The Defendants failed to do so, and the PSC has now initiated show cause proceedings against them.[5]

Because the Court lacks jurisdiction to determine that the Defendants *must* provide such utility services to the Plaintiffs, it also lacks jurisdiction to determine that the Defendants *do not have to* provide such services. The PSC's jurisdiction over "authority, service, and rates" includes jurisdiction over the discontinuation or termination of any utility service.

Having created a utility, the Defendants cannot now simply turn off the service. Before a utility can be abandoned, Fla. Stat. § 367.165 requires the operator to give the county and the PSC 60 days' of the intent to abandon. Failure to do so is both a violation of Ch. 367 and a first degree misdemeanor. Fla. Stat. § 367.165(1). Upon such notice, the county can petition the circuit court to appoint a receiver to operate the utility system until it can be disposed of "in a manner designed to continue the efficient and effective operation of utility service." Fla. Stat. § 367.165(2). In other words, even if the Defendants wanted to walk away from the utility, the

[4] The Plaintiffs have separately filed a certified copy of the Notice of Apparent Violation and requested judicial notice be taken of it. A copy is attached hereto as **Exhibit 1**.
[5] PSC Docket No. 20180142-WS. The docket can be viewed at http://www.psc.state.fl.us/ClerkOffice/DocketDetail?docket=20180142

utility would continue to operate under a receiver for the Defendants' property until it could be sold to a suitable utility operator. *See also*, Rule 25-30.090, Fla. Admin. Code (Abandonments).

Other PSC regulations control the circumstances under which a utility can substantially change, discontinue, or refuse to provide service to a customer. For example, Rule 25-30.235, Fla. Admin. Code, governs any "substantial change" in "the conditions or character of service. Rule 25-30-250, Fla. Admin. Code, applies to continuity of service and limits a utility's ability to interrupt service. Finally, Rule 25-30.320, Fla. Admin. Code, severely limits the circumstances under which a utility can refuse to provide service or discontinue to service to a customer. These regulations demonstrate that the termination or discontinuation of utility service is a matter within the PSC's jurisdiction.

B. Because the Defendants sought and obtained a judicial ruling in this case that the PSC's jurisdiction was exclusive and preemptive, they are judicially estopped from now contending otherwise.

The matter of PSC jurisdiction should seem familiar to the Court, as it arose previously in this very case. On June 9, 2017, the Defendants filed a motion to dismiss Count 3 of the Plaintiffs' Third Amended Complaint, which sought declaratory relief as to the Defendants' obligations to provide utility services. The Defendants' motion to dismiss was grounded on Fla. Stat. § 367.011(2)(exclusive PSC jurisdiction "over each utility with respect to its authority, service, and rates") and the cases cited in Section I(A) above. The Defendants argues that "The rates for, as well as the provision of water and wastewater services in Pasco County, is under the exclusive, preemptive, and presumptive purview of the PSC."[6]

A hearing of the Motion to Dismiss was held on July 7, 2017. On August 21, 2017, the Court entered an order dismissing Count 3 of the Third Amended Complaint based on the Court's determination that the matter was within the exclusive jurisdiction of the PSC. The Court

[6] Defendants' Motion to Dismiss filed June 9, 2017, at p.5.

found that it lacked jurisdiction as to the Plaintiffs' claim. "It seeks the Court to determine whether the Defendants must provide water and sewer service to the Plaintiffs, and the rate that can be charged. Such action by the Court would be precisely the conduct that *Hill Top Developers* disapproved, and this Court is without jurisdiction."[7] The Court further found that it lacked jurisdiction as to the Defendants' claim that it was exempt from PSC jurisdiction under the so-called "landlord-tenant exemption" of Fla. Stat. § 367.022(5). "Further, the Florida Supreme Court's decision in *Bryson* made clear that even the question of whether an entity is or is not subject to the PSC jurisdiction, is a question exclusively for the PSC."[8]

Because the Defendants previously argued that the matters of "authority, service, and rates" for water and wastewater utility services to the Plaintiffs are within the exclusive jurisdiction of the PSC and obtained judicial relief on that basis, they are now judicially estopped from arguing that this Court has jurisdiction over the same matters. They cannot have things both ways.

"Judicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial . . . proceedings." *Blumberg v. USAA Casualty Ins. Co.*, 790 So. 2d 1061, 1066 (Fla. 2001), *quoting Smith v. Avatar Properties, Inc.*, 714 So. 2d 1103, 1107 (Fla. 5 DCA 1998). The doctrine also applies when a party attempts to take inconsistent positions in the same case. "One who assumes a particular position or theory in a case, and secures court action thereby, is judicially estopped in a later phase of the same case . . . from asserting any . . . inconsistent position toward the same parties and subject matter." *Town of Ponce Inlet v. Pacetta, LLC*, 226 So. 3d 303, 312 (Fla. 5 DCA 2017), *quoting In re Adoption of D.P.P.*, 158 So. 3d 633, 639 (Fla. 5 DCA 2014).

[7] Order dated August 21, 2017 ("Dismissal Order") at p.6.
[8] Dismissal Order, at pp. 6-7.

The Defendants previously argued that the matters of "authority, service, and rates" regarding their water and wastewater services are exclusively within the jurisdiction of the PSC. The Court agreed, and dismissed Plaintiffs' Count 3 on that basis. Judicial estoppel prevents the Defendants from now arguing that the Court can exercise jurisdiction over their "authority, services, and rates" as to utility services.

C. Labeling the issue a "constitutional claim" does not avoid the PSC's jurisdiction.

The Defendants' "constitutional claim" is nothing more than a transparent attempt to avoid the jurisdiction of the PSC. Their "argument" is nothing more than a disjointed mishmash of constitutional catchphrases drawn from irrelevant cases. It is grounded entirely on the fundamental misconception that the Defendants are being "forced" or "compelled" to provide utility services to the Plaintiffs. The undisputed facts, however, show that the Defendants willingly chose to build utility systems and to provide utility services to the Plaintiffs, and continued to do so under the unilateral assertion of the "landlord-tenant" exemption from PSC regulation. Now that their ruse has been revealed, they want to abandon the utility systems that they elected to create in a misguided attempt to avoid PSC jurisdiction.

As the Defendants concede in their Motion and have never disputed, they own and operate the water and wastewater systems servicing the Plaintiffs' residential lots. "Owners [i.e., the Defendants] supply water to homeowners of Palm Tree who rent lots . . . The water is distributed . . . through a distribution system owned and operated by [Defendants]."[9] "Owners [i.e., the Defendants] also operate a sanitary sewer collection system . . . . The sewer collection system and lift station are also owned and operated by [Defendants]."[10] According to the Defendants, there was some "oral rental agreement" with the Plaintiffs that allowed Plaintiffs to

[9] Motion at ¶10.
[10] Motion at ¶11.

use various non-utility amenities within the mobile home park and "also gave Plaintiffs access to the services of Palm Tree, including its water and sanitary sewer systems . . . ."[11] What is glaringly obvious from these allegations is that nobody forced the Defendants to construct their water and wastewater systems servicing the Plaintiffs' residential lots. The Defendants have never contended that such is the case, and they do not so contend today.

The Defendants *chose* over many years to construct and improve utility systems and to furnish utility services to the Plaintiffs and their residential lots. As they have conceded, "Supplying water and sewer services to even one non-exempt customer requires that the provider obtain a PSC certificate."[12] They *continue* to provide those utility services to the Plaintiffs today. Neither the state nor the Plaintiffs forced the Defendants to construct and operate utility systems. But having done so, they cannot now contend that they should be free of the state laws and regulations that govern utilities. It is their own conduct in constructing and operating utility systems that subjects them to PSC jurisdiction. And having subjected themselves to PSC jurisdiction by their conduct, the Defendants cannot now simply abandon that conduct without also complying with any applicable laws and regulations governing utilities. The enforcement of state utility law and regulations does not deprive the Defendants of any constitutionally protected interest.

Not only have the Defendants grossly mischaracterized the actual legal dispute, but none of the cases cited by the Defendants in support of their purported "constitutional claim" is remotely relevant to the matter at hand. First, notwithstanding whatever "property rights" the Defendants may have or claim, all real property is subject to the provisions of general law,

[11] Motion at ¶12. The Plaintiffs dispute the existence of any such oral agreement, although there may be some contract that can be implied from the conduct of the parties or by necessity.
[12] Defendants' Motion to Dismiss filed June 9, 2017, at pp. 5-6, citing *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 282 (Fla. 1988).

including most notably zoning and land use laws and regulations. Owning real property does not entitle the owner to use that property in any manner he may desire; any use must be consistent with the applicable law. Second, the Defendants' reliance of a variety of eminent domain and inverse condemnation cases and principles is misplaced. No government entity has taken or is taking any property from the Defendants. No Plaintiff has entered onto their property; in fact, the opposite is true. The Defendants constructed and operate pipes and connections on or under the Plaintiffs' lots as a part of their utility systems.

But more fundamentally, this case is not about the Defendants' property at all. It is about their conduct and activity – specifically, their conduct in operating water and wastewater utility services. It is that *conduct* that subjects the Defendants to regulation by the PSC, and that includes the PSC's regulation of the circumstances under which the Defendants may lawfully abandon, cease to provide or refuse to provide such utility services. The Defendants cannot choose to engage in conduct that subjects them to regulation under state law, and then complain that such regulation affects the use (or non-use) of their property. Notably, the Defendants have not asserted any challenge to the constitutionality of the PSC statutes or regulations, either facially or as applied.

The case is also not about any impingement on the Defendants' freedom to contract. As to any amenities that are not subject to PSC regulation (and which are beyond the scope of the current Motion) such as the clubhouse or other recreational facilities, any use by the Plaintiffs is of course a matter of contract unless it is somehow otherwise regulated. *See Sandpiper Homeowners Ass'n, Inc. v. Lake Yale Corp.*, 667 So. 2d 921 (Fla 5 DCA 1996). But as to matters within the PSC's exclusive jurisdiction – water and wastewater utility services – the relationship of the parties is governed by and must comply with the applicable state statutes and

regulations. Even if the parties had some prior contractual agreement regarding the terms or rates of utility service, those matters become subject to the control of the PSC once the PSC asserts jurisdiction. *See Cohee v. Crestridge Utilities Corp*., 324 So. 2d 155, 157 (Fla 2 DCA 1975)(PSC has authority to raise or lower rates established by a pre-existing contract).

II. The Defendants have not disproved or defeated Plaintiffs' affirmative defenses

A. The Defendants bear the burden to disprove or defeat the defenses raised

The Plaintiffs' Answer to the Second Amended Counterclaim includes numerous defenses. "Once an affirmative defense is raised, the movant has the additional burden of either disproving or establishing the legal insufficiency of the affirmative defense." *Wilson v. Pruette*, 422 So. 2d 351, 352 (Fla. 2 DCA 1982) (quoting *Stewart v. Gore*, 314 So. 2d 10 (Fla. 2 DCA 1975); *Florida Dept. of Agriculture v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5 DCA 1996); *Howdeshell v. First National Bank of Clearwater*, 369 So. 2d 432, 433 (Fla. 2d DCA 1979) (stating that "in order to obtain a summary judgment when the defendant asserts affirmative defenses, the plaintiff must either disprove those defenses by evidence or establish the legal insufficiency of such defenses."). In other words, the Defendants in this case "must conclusively refute the factual bases for the defenses or establish that they are legally insufficient." *Coral Wood Page, Inc. v. GRE Coral Wood, LP*, 71 So. 3d 251, 253 (Fla. 2 DCA 2011) (citing *Morroni v. Household Fin. Corp. III*, 903 So. 2d 311, 312 (Fla. 2 DCA2005).

"Failure to address affirmative defenses prior to granting partial summary judgment constitutes error." *Florida Dept. of Agriculture v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5 DCA 1996) (citing *Board of Trustees of Internal Improvement Trust Fund v. Schindler*, 604 So. 2d 569 (Fla. 2 DCA 1992); *Howdeshell v. First National Bank of Clearwate*r, 369 So. 2d 432, 433 (Fla. 2 DCA 1979). The Defendants have failed to address any of Plaintiffs' defenses, much

less proved them inadequate or legally insufficient. Their Motion must be denied on that basis alone.

Plaintiffs' Second Defense raises lack of subject matter jurisdiction based on the exclusive and preemptive jurisdiction of the PSC. The Sixth Defense raises judicial estoppel for related reasons. Both of these legal defenses are addressed in detail above.

Plaintiffs' Fifth Defense raises equitable estoppel. Equitable estoppel arises from "words and admissions, or conduct, acts and acquiescence, or all combined causing another person to believe in the existence of a certain state of things." *Palatka Fed. Savings and Loan Ass'n v. Raczowski*, 263 So. 2d 842, 844 (Fla. 1 DCA 1972); *see also*, *Winans v. Weber*, 979 So. 2d 269, 274-75 (Fla. 2 DCA 2007)(discussing elements of estoppel). By the Defendants' own admission, they operated the water and wastewater utility systems servicing the Plaintiffs' lots for many years. Whether that was the result of the now invalidated covenants, or their course of conduct, or some contractual understanding, or some combination of those, it does not matter. The Plaintiffs at the time they acquired their lots were led to believe (accurately) that water and wastewater utility services were furnished by the Park to those lots, and after they acquired their lots the Defendants continued to provide and improve those services and to charge the Plaintiffs in connection with the utilities. Whether the utilities were "included" in some other payment designated as "rent" or, in the case of the wastewater connection charged directly to each Plaintiff is not material. These facts and conduct are sufficient to estop the Defendants from now contending that they are not required to furnish utility services.

The Seventh Defense is waiver. Even if the Defendants had, at some historical point in time, some cognizable "constitutional claim," that claim would be subject to general principles of waiver. "Most personal constitutional rights can be waived." *Chames v. DeMayo,* 972 So. 2d

850, 860 (Fla. 2007), *citing In re Amendment to the Rules Regulating the Fla. Bar - Rule 4-1.5(f)(4)(B),* 939 So. 2d 1032, 1038 (Fla. 2006). Under Florida law, "waiver" is "the intentional relinquishment of a known right, or the voluntary relinquishment of a known right, or conduct which warrants an inference of the relinquishment of a known right." *Arvilla Motel, Inc. v. Shriver*, 889 So. 2d 887, 892 (Fla. 2 DCA 2005).

Even fundamental federal constitutional rights can be waived, as the Supreme Court has recognized for time immemorial. "A person may, by his acts or omission to act, waive a right which he might otherwise have under the constitution of the United States . . . ." *Pierce v. Somerset*, 171 U.S. 641, 648 (1898). Even a criminal defendant "'may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution.'" *United States v. Spalding*, 894 F. 3d 173, 189 (5th Cir. 2018), *citing United States v. Mezzanatto*, 513 U.S. 196, 201 (1995). *See also, Brewer v. Williams*, 430 U.S. 387, 397-98 (1977)(constitutional right to assistance of counsel in criminal case can be waived); *Brady v. United States*, 397 U.S. 742, 747-48 (1970)(constitutional right to jury trial can be waived by entry of guilty plea); *Brookhart v. Janis*, 384 U.S. 1, 3-4 (1966)(constitutional right to confront and cross-examine witnesses can be waived). It necessarily follows, of course, that constitutional rights in the civil context can also be waived. *See, e.g., D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 184-85 (1972)(due process rights to notice and hearing prior to civil judgment can be waived).

There was certainly some point in the past at which the Defendants (or their predecessors in interest) presumably had the right to choose *not* to design, construct, and place into operation their water and wastewater systems servicing the lots in their mobile home park, including the lots that were not owned by them (although failing to do so would seem fatal to the development

of a mobile home park). But they voluntarily chose to do those things, and the Defendants voluntarily purchased the property knowing that utility services to the lots were in place. Then they voluntarily improved the systems over the years, connected to the County's wastewater system, and continued to operate these utilities, providing potable water and wastewater disposal to the Plaintiffs, for decades. Their own conduct, taken voluntarily and over the course of years, certainly waives any right they may have one time had to not do these things.

Because the Defendants have failed to disprove these defenses, the Motion must be denied.

III. Defendants have not identified any basis for the recovery of their attorney fees

The Defendants assert in the Motion some unspecified and undefined entitlement to the recovery of their attorney fees and costs from the Plaintiffs in connection with the Motion and the subject claims. There is no legal basis upon which they are entitled to recover attorney fees. Florida follows the "American Rule" that attorney fees can be awarded to a litigant only when authorized by a contract or statute. *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985). The Defendants have expressly asserted that there currently are no contracts between the parties and that the only contracts historically were oral agreements by which the Plaintiffs "rented access" to certain amenities. They have not identified any applicable contractual fee shifting provision. Moreover, they have failed to identify any applicable statute that would authorize the attorney fee award that they seek in connection with either their counterclaims ort the Plaintiffs' claims against them.

There is certainly no basis for an award of attorney fees on Defendants' counterclaims. *Price v. Tyler*, 890 So. 2d 246, 251-52 (Fla. 2004). In *Price*, the Florida Supreme Court

expressly held that there is no basis for an award of attorney fees under the general declaratory judgment statutes.

The Defendants' seeming attempt to disguise the matter as some form of a quiet tile action is also unavailing. They assert in the Motion an entitlement to "the costs and attorneys' fees incurred to remove Plaintiffs' claims and asserted rights."[13] First, there are no quiet title claims in this case. The Defendants had previously maintained a quiet title claim in an earlier version of their counterclaim, but that was dismissed by Order dated January 30, 2017, after their counsel abandoned the claim on the record in open court. The Plaintiffs' Third Amended Complaint does not include any claim affecting the title to or asserting any claim against or interest in the Defendants' real property. This is simply no claim against the Defendants' property to be "removed." In any event, even if the matter were somehow cast as a quiet tile action, there is still no basis upon which the court could award attorney fees to the Defendants. As *Price* also expressly held, there is no statutory basis for such an award in a quiet title action. *Price*, 890 So. 2d at 252-53.

Finally, there is no basis for an award of fees under the fee-shifting provision of the Mobile Home Act, Fla. Stat. § 723.068. That statute only applies to actions to enforce the provision of the act. *T&W Developers, Inc. v. Salmonsen*, 31 So. 3d 298, 301 (Fla. 5 DCA 2010). The Defendants' so-called "constitutional claims" are not claims to enforce the Mobile Home Act. None of Plaintiffs' claims are actions seeking enforcement of the Mobile Home Act; indeed, they have a declaratory judgment count and a pending motion for summary judgment seeking a determination that the Mobile Home Act does not even apply to their relationship with the Defendants. None of the claims by any of the parties in this action is to enforce the Mobile Home Act, so Fla. Stat. § 723.068 provides no basis for a fee award.

[13] Motion at p.8, § III(e).

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on August 23, 2018 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493

STATE OF FLORIDA

OFFICE OF THE GENERAL COUNSEL
KEITH C. HETRICK
GENERAL COUNSEL
(850) 413-6199

EXHIBIT 1

Public Service Commission

March 8, 2018

via Email, US Mail, and Certified Mail

J. Allen Bobo, Esq.
jabobo@lutzbobo.com
Lutz, Bobo & Telfair, P.A.
2 N. Tamiami Trail, Suite 500
Sarasota, FL 34236-5575

Bruce May, Esq.
bruce.may@hklaw.com
Holland & Knight LLP
315 S. Calhoun Street, Suite 600
Tallahassee, FL 32301-1872

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT THAT WAS FILED WITH THE FLORIDA PUBLIC SERVICE COMMISSION
BY: Carlotta S Stauffer
CARLOTTA S. STAUFFER, COMMISSION CLERK
(or Office of Commission Clerk designee)

NOTICE OF APPARENT VIOLATION

Re: Apparent Violation of Section 367.031, Florida Statutes, and Rule 25-30.033, Florida Administrative Code, and Possible Implementation of Show Cause Proceedings Against Palm Tree Acres Mobile Home Park, pursuant to Section 367.161, Florida Statutes.

Dear Sirs,

Section 367.011, Florida Statutes (F.S.), provides that under Chapter 367, F.S., the Florida Public Service Commission (Commission) shall have exclusive jurisdiction over each water and wastewater utility with respect to its authority, service, and rates. Section 367.021, F.S., defines a water or wastewater utility to include every person, lessee, trustee, or receiver who owns, operates, manages, or controls a system that is providing water or wastewater service to the public for compensation. Pursuant to Section 367.022(5), F.S., "[l]andlords providing service to their tenants without specific compensation for the service" are not subject to regulation by the Commission.

Pursuant to Section 367.031, F.S., each utility subject to the jurisdiction of the Commission must obtain from the Commission a certificate of authorization to provide water or wastewater service. Rule 25-30.033, Florida Administrative Code (F.A.C.), provides that an existing system seeking to establish initial rates and charges must file an application for an original certificate in accordance with the procedure set forth in that Rule.

Palm Tree Acres Mobile Home Park (Palm Tree Acres) is not certificated to provide water or wastewater service.

Based on information provided by Palm Tree Acres, Commission staff believes that Palm Tree Acres may be operating in violation of Section 367.031, F.S., and Rule 25-30.033, F.A.C., at is appears that Palm Tree Acres is providing water and wastewater service to the public for compensation without a certificate of authorization from the Commission. Furthermore, it appears that Palm Tree Acres is not exempt from the Commission's jurisdiction under Section 367.022(5), F.S., as Palm Tree Acres appears to be selling water and/or wastewater service to non-tenants for compensation.

Palm Tree Acres and its non-tenant customers recently engaged in discussions to explore alternative service agreement structures that might result in Palm Tree Acres' exemption under Section 367.022, F.S. Commission staff held a noticed meeting on February 23, 2018, for the purpose of discussing the status of this matter. Based on the information provided at that meeting, it is my understanding that Palm Tree Acres and its non-tenant customers have not reached, nor does it appear they will reach, an agreement that provides Palm Tree Acres with the ability to properly claim a valid exemption.

Section 367.161, F.S., provides:

> (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than $5,000, to be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory liens under chapter 85.
>
> (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.

By this letter, I am requesting that Palm Tree Acres file an application for an original certificate of authorization as an existing system requesting initial rates and charges to provide water and wastewater services, pursuant to Rule 25-30.033, F.A.C., by April 9, 2018. If Palm Tree Acres fails to take appropriate action by April 9, 2018, you are hereby notified that Commission staff will immediately begin enforcement proceedings pursuant to Section 367.161, F.S.

If you have any questions, please contact me at (850) 413-6076 or mduval@psc.state.fl.us.

Sincerely,

Margo A. DuVal
Senior Attorney

MAD
Enclosures

cc: Division of Engineering (Graves, King, Ballinger)
Office of Public Counsel (Patti Christensen, JR Kelly)
Richard Harrison, Esq.

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR COMPLETING EXAMPLE APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR A PROPOSED OR EXISTING SYSTEM REQUESTING INITIAL RATES AND CHARGES

(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and Rule 25-30.033, Florida Administrative Code)

General Information

The attached form is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with Rule 25-30.033, Florida Administrative Code (F.A.C.). Any questions regarding this form should be directed to the Division of Engineering at (850) 413-6910.

Instructions

1. Fill out the attached application form completely and accurately.

2. Complete all the items that apply to your utility. If an item is not applicable, mark it "N.A." Do not leave any items blank.

3. Remit the proper filing fee pursuant to Rule 25-30.020, F.A.C., with the application.

4. Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

5. The completed application, attached exhibits, and the proper filing fee should be mailed to:

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

PSC 1001 (12/15)
Rule 25-30.033, F.A.C.

APPLICATION FOR ORIGINAL CERTIFICATE OF AUTHORIZATION FOR A PROPOSED OR EXISTING SYSTEM REQUESTING INITIAL RATES AND CHARGES

(Pursuant to Sections 367.031, 367.045, and 367.081, Florida Statutes, and Rule 25-30.033, Florida Administrative Code)

To: **Office of Commission Clerk**
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The undersigned hereby makes application for original certificate(s) to operate a water ☐ and/or wastewater ☐ utility in _____ County, Florida, and submits the following information:

PART I **APPLICANT INFORMATION**

A) Contact Information for Utility. The utility's name, address, telephone number, Federal Employer Identification Number, and if applicable, fax number, e-mail address, and website address. The utility's name should reflect the business and/or fictitious name(s) registered with the Department of State's Division of Corporations:

_____
Utility Name

_____
Office Street Address

_____
City State Zip Code

_____
Mailing Address (if different from Street Address)

_____
City State Zip Code

( ) - ( ) -
Phone Number Fax Number

_____
Federal Employer Identification Number

E-Mail Address

Website Address

B) The contact information of the authorized representative to contact concerning this application:

Name

Mailing Address

City State Zip Code

( ) - ( ) -
Phone Number Fax Number

E-Mail Address

C) Indicate the nature of the utility's business organization (check one). Provide documentation from the Florida Department of State, Division of Corporations showing the utility's business name and registration/document number for the business, unless operating as a sole proprietor.

☐ Corporation _____
Number

☐ Limited Liability Company _____
Number

☐ Partnership _____
Number

☐ Limited Partnership _____
Number

☐ Limited Liability Partnership _____
Number

☐ Sole Proprietorship

☐ Association
☐ Other (Specify) _____

If the utility is doing business under a fictitious name, provide documentation from the Florida Department of State, Division of Corporations showing the utility's fictitious name and registration number for the fictitious name.

☐ Fictitious Name (d/b/a) _____
Registration Number

D) The name(s), address(es), and percentage of ownership of each entity or person which owns or will own more than 5 percent interest in the utility (use an additional sheet if necessary).

_____
_____
_____
_____

E) The election the business has made under the Internal Revenue Code for taxation purposes.

_____
_____

PART II ORIGINAL CERTIFICATE REQUESTING INITIAL RATES

A) DESCRIPTION OF SERVICE

Exhibit _____ - Provide a statement indicating whether the application is for water, wastewater, or both. If the applicant is applying only for water or wastewater, the statement shall include how the other service is provided.

_____
_____
_____
_____
_____

B) **FINANCIAL ABILITY**

1) Exhibit _____ - Provide a detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided.

2) Exhibit _____ - Provide a list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements.

_____
_____
_____
_____

C) **TECHNICAL ABILITY**

1) Exhibit _____ - Provide the applicant's experience in the water or wastewater industry;

_____
_____
_____
_____

2) Exhibit _____ - Provide the copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3) Exhibit _____- Provide a copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report and secondary water quality standards report; and

4) Exhibit _____- Provide a copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years.

D) NEED FOR SERVICE

1) Exhibit _____ - Provide the following documentation of the need for service in the proposed area:

a) The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, commercial. If the development will be in phases, this information shall be separated by phase;

b) A copy of all requests for service from property owners or developers in areas not currently served;

c) The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service area;

d) Any known land use restrictions, such as environmental restrictions imposed by governmental authorities.

2) Exhibit _____ - Provide the date the applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances applicant began serving.

_____

_____

_____

_____

E) TERRITORY DESCRIPTION, MAPS, AND FACILITIES

1) Exhibit _____ - Provide a legal description of the proposed service area in the format prescribed in Rule 25-30.029, F.A.C.

2) Exhibit _____ - Provide documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. This documentation shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time prescribed in the order granting the certificate.

3) Exhibit _____ - Provide a detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in E-1 above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served.

4) Exhibit _____ - Provide an official county tax assessment map or other map showing township, range, and section, with a scale such as 1" = 200' or 1" = 400', with the proposed territory plotted thereon, consistent with the legal description provided in E-1 above.

5) Exhibit _____ - Provide a description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase.

6) Exhibit _____ - Provide a description of the type of water treatment, wastewater treatment, and method of effluent disposal.

F) PROPOSED TARIFF

Exhibit _____ - Provide a tariff containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. See Rule 25-30.033, F.A.C., for information about water and wastewater tariffs that are available and may be completed by the applicant and included in the application.

G) ACCOUNTING AND RATE INFORMATION

1) Exhibit _____ - Describe the existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the 1996 National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated.

2) Exhibit _____ - Provide the existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in documented need for service for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in F-1 above, the schedule provided in G-6 below, and the CIAC guidelines set forth in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase.

3) Exhibit _____ - Provide the current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the 1996 NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase.

4) Exhibit _____ - Provide a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase. A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), Florida Statutes, unless there is competent substantial evidence supporting the use of a different return on common equity. Please reference subsection 25-30.033(4), F.A.C., for additional information regarding the accrual of allowance for funds used during construction (AFUDC).

5) Exhibit _____ - Provide a schedule showing how the proposed rates were developed. The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

6) Exhibit _____ - Provide a schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property.

7) Exhibit _____ - Provide a schedule showing how the customer deposits and miscellaneous service charges were developed, including initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.

H) NOTICING REQUIREMENTS

Exhibit _____ - Provide proof of noticing pursuant to Rule 25-30.030, F.A.C. This may be provided as a late-filed exhibit.

PART III SIGNATURE

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY: _____
Applicant's Signature

_____
Applicant's Name (Printed)

_____
Applicant's Title

_____
Date

367.031 Original certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. 120.569 and 120.57, or the application will be deemed granted.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; s. 1, ch. 85-85; ss. 4, 26, 27, ch. 89-353; s. 4, ch. 91-429; s. 8, ch. 93-35; s. 183, ch. 94-356; s. 3, ch. 96-407; s. 94, ch. 96-410.

25-30.033 Application for Original Certificate of Authorization and Initial Rates and Charges.

(1) Each applicant for an original certificate of authorization and initial rates and charges shall file with the Commission Clerk the information set forth in paragraphs (a) through (q). Form PSC 1001 (12/15), entitled "Application for Original Certificate of Authorization for a Proposed or Existing System Requesting Initial Rates and Charges," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06237, is an example application that may be completed by the applicant and filed with the Office of Commission Clerk to comply with this subsection. This form is also available on the Commission's Web site, www.floridapsc.com.

(a) A filing fee pursuant to paragraph 25-30.020(2)(a), F.A.C.;

(b) Proof of noticing pursuant to Rule 25-30.030, F.A.C.;

(c) The utility's name, address, telephone number, Federal Employer Identification Number, authorized representative, and, if available, email address and fax number;

(d) The nature of the utility's business organization, i.e., corporation, limited liability company, partnership, limited partnership, sole proprietorship, or association. The applicant must provide documentation from the Florida Department of State, Division of Corporations, showing:

1. The utility's business name and registration/document number for the business, unless operating as a sole proprietor, and,

2. The utility's fictitious name and registration number for the fictitious name, if operating under a fictitious name;

(e) The name(s), address(es), and percentage of ownership of each entity or person that owns or will own more than 5 percent interest in the utility;

(f) The election the business has made under the Internal Revenue Code for taxation purposes;

(g) A statement indicating whether the application is for water, wastewater, or both. If the applicant is applying for water or wastewater only, the statement shall include how the other service is provided;

(h) To demonstrate the necessary financial ability of the applicant to provide service to the proposed service area, the applicant shall provide:

1. A detailed financial statement (balance sheet and income statement), audited if available, of the financial condition of the applicant, which shows all assets and liabilities of every kind and character. The financial statements shall be for the preceding calendar or fiscal year. The financial statement shall be prepared in accordance with Rule 25-30.115, F.A.C. If available, a statement of the sources and uses of funds shall also be provided; and,

2. A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the utility and an explanation of the manner and amount of such funding. The list need not include any person or entity holding less than 5 percent ownership interest in the utility. The applicant shall provide copies of any financial agreements between the listed entities and the utility and proof of the listed entities' ability to provide funding, such as financial statements;

(i) To demonstrate the technical ability of the applicant to provide service, the applicant shall provide:

1. A statement of the applicant's experience in the water or wastewater industry;

2. A copy of all current permits from the Department of Environmental Protection (DEP) and the water management district;

3. A copy of the most recent DEP and/or county health department sanitary survey, compliance inspection report, and secondary standards drinking water report; and,

4. A copy of all correspondence with the DEP, county health department, and water management district, including consent orders and warning letters, and the utility's responses to the same, for the past five years;

(j) To describe the proposed service area, the applicant shall provide:

1. A legal description of the proposed service area in the format described in Rule 25-30.029, F.A.C.;

2. A detailed system map showing the existing and proposed lines and treatment facilities, with the territory proposed to be served plotted thereon, consistent with the legal description provided in subparagraph (j)1. above. The map shall be of sufficient scale and detail to enable correlation with the description of the territory proposed to be served; and,

3. An official county tax assessment map, or other map showing township, range, and section with a scale such as 1'' = 200' or 1'' = 400', with the proposed territory plotted thereon, consistent with the legal description provided in subparagraph (j)1. above;

(k) To demonstrate the need for service in the proposed area, the applicant shall provide:

1. The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers currently being served and anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial. If the development will be in phases, this information shall be separated by phase;

2. A copy of all requests for service from property owners or developers in areas not currently served;

3. The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service; and,

4. Any known land use restrictions, such as environmental restrictions imposed by governmental authorities;

(l) The date applicant began or plans to begin serving customers. If already serving customers, a description of when and under what circumstances the applicant began serving;

(m) Documentation of the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. The applicant may submit an unrecorded copy of the instrument granting the utility's right to access and continued use of the land upon which the utility treatment facilities are or will be located, provided the applicant files a recorded copy within the time required in the order granting the certificate;

(n) A description of the separate capacities of the existing and proposed lines and treatment facilities in terms of equivalent residential connections (ERCs) and gallons per day estimated demand per ERC for water and wastewater and the basis for such estimate. If the development will be in phases, this information shall be separated by phase;

(o) A description of the type of water treatment, wastewater treatment, and method of effluent disposal;

(p) To support the proposed rates and charges, the applicant shall provide:

1. The existing and projected cost of the system(s) and associated depreciation by year until design capacity is reached using the National Association of Regulatory Utility Commissioners (NARUC) 1996 Uniform System of Accounts (USOA), which is incorporated by reference in Rule 25-30.115, F.A.C. The applicant shall identify the year that 80 percent of design capacity is anticipated. If the utility will be built in phases, this shall apply only to the first phase;

2. The existing and projected annual contributions-in-aid-of-construction (CIAC) and associated amortization by year including a description of assumptions regarding customer growth projections using the same projections used in subparagraph (l)(k)1. above for the proposed service area. The projected CIAC shall identify cash and property contributions and amortization at 100 percent of design capacity and identify the year when 80 percent of design capacity is anticipated. The projected CIAC shall be consistent with the service availability policy and charges in the proposed tariff provided in paragraph (q) below, the schedule provided in subparagraph (l)(p)6. below, and the CIAC guidelines in Rule 25-30.580, F.A.C. If the utility will be built in phases, this shall apply only to the first phase;

3. A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 80 percent of the design capacity of the system. If the utility will be built in phases, this shall apply only to the first phase;

4. The current annual operating expenses and the projected annual operating expenses at 80 percent of design capacity using the NARUC USOA. If the utility will be built in phases, this shall apply only to the first phase;

5. A schedule showing how the proposed rates were developed;

6. A schedule showing how the proposed service availability policy and charges were developed, including meter installation, main extension, and plant capacity charges, and proposed donated property; and,

7. A schedule showing how the customer deposits and miscellaneous service charges were developed, including

initial connection, normal reconnection, violation reconnection, and premises visit fees, consistent with Rules 25-30.311 and 25-30.460, F.A.C.; and,

(q) A tariff containing all rates, classifications, charges, rules, and regulations which shall be consistent with Chapter 25-9, F.A.C. Form PSC 1010 (12/15), entitled "Water Tariff," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06247 and Form PSC 1011 (12/15), entitled "Wastewater Tariff," which is incorporated by reference in this rule and is available at http://www.flrules.org/Gateway/reference.asp?No=Ref-06248, are example tariffs that may be completed by the applicant and included in the application. These forms may also be obtained from the Commission's website, www.floridapsc.com.

(2) The base facility and usage rate structure (as defined in subsection 25-30.437(6), F.A.C.) shall be utilized for metered service, unless an alternative rate structure is supported by the applicant and authorized by the Commission.

(3) A return on common equity shall be established using the current equity leverage formula established by order of this Commission pursuant to Section 367.081(4), F.S., unless there is competent substantial evidence supporting the use of a different return on common equity.

(4) Utilities obtaining original certificates of authorization pursuant to this rule are authorized to accrue allowance for funds used during construction (AFUDC) for projects found eligible pursuant to subsection 25-30.116(1), F.A.C.

(a) The applicable AFUDC rate shall be determined as the utility's projected weighted cost of capital as demonstrated in its application for original certificate and initial rates and charges.

(b) A discounted monthly AFUDC rate calculated in accordance with subsection 25-30.116(3), F.A.C., shall be used to insure that the annual AFUDC charged does not exceed authorized levels.

(c) The date the utility shall begin to charge the AFUDC rate shall be the date the certificate of authorization is issued to the utility so that such rate can apply to the initial construction of the utility facilities.

Rulemaking Authority 350.127(2), 367.045(1), 367.121, 367.1213 FS. Law Implemented 367.031, 367.045, 367.1213 FS. History–New 1-27-91, Amended 11-30-93, 1-4-16.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696

NELSON P. SCHWOB, et al.,
Plaintiffs,

V.

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; and PALM TREE ACRES MOBILE HOME PARK,
Defendants.

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This Cause having come before the Court on Defendant Motion for Partial Summary Judgment, and the Court having considered the motion, the response by the Plaintiffs, and the summary judgment evidence, this Court enters this Order and Judgment as to Count I of Defendants' Amended Counterclaim:

FINDINGS OF FACT

The Court finds that there is no genuine issue of material fact to the following:

1. The Plaintiffs are fee simple owners of lots within the Palm Tree Acres Mobile Home Park. They also own the mobile home that exists on their respective lots.
2. The Defendant Palm Tree Acres Mobile Home Park (hereinafter "Palm Tree Acres") owns in fee simple 183 of the 244 lots. These lots are leased to other residents.
3. Palm Tree Acres offers certain amenities to include water and sewer service and access to other recreational areas. These amenities are offered in a single package for a single fee; there is no *a la carte* pricing for any particular amenity.
4. When the Plaintiffs purchased their lots from the developer, there was a deed restriction that required Palm Tree Acres to provide water and sewer service to the Plaintiffs. Subsequent to the Plaintiffs purchasing their lots, Palm Tree Acres purchased the remaining lots from the developer. A predecessor court has adjudicated that these deed restrictions

expired by operation of the Marketable Record Title Act and are no longer in force or effect.

5. There is presently no other written contractual agreement between the Plaintiffs and Palm Tree Acres to provide any amenities, and more specifically, there is no written contractual agreement for Palm Tree Acres to provide water and sewer service to the Plaintiffs. However, for many years, the Plaintiffs had been paying the fee that Palm Tree Acres charged to its other residents for water, sewer, and recreational amenities.
6. The water that is provided to all of the residents of Palm Tree Acres, including the Plaintiffs, is pumped from a well that exists on property owned in fee simple by Palm Tree Acres.

The Court finds that the Plaintiffs and the Defendant Palm Trees Acres Mobile Home Park are in doubt as to the affect of Chapter 367, Fla. Stat.; Article I, § 3, Fla. Const; and Amend. V, U.S. Const. to their rights, obligations, status, or other equitable or legal relations as it pertains the Defendant's actions in discontinuing water and sewer service to the Plaintiffs, and that declaratory judgment is appropriate.

ANALYSIS AND CONCLUSIONS OF LAW

Palm Tree Acres asserts that it has a constitutional right to refuse to use its property for the enjoyment of others, and that, if it chooses to do so, it can discontinue water and sewer service to the Plaintiffs. The Plaintiffs argue that in providing water and sewer service, Palm Tree Acres is a public utility, and §367.165(1), Fla. Stat. prevents a public utility from discontinuing service until certain requirements are satisfied.

This Court previously stated in the August 21, 2017 Order Granting in Part, Denying in Part Defendants' Motion to Dismiss Count 3, etc., that it has no jurisdiction regarding the enforcement of Chapter 367, Florida Statutes. This includes the determination of whether an entity is or is not a utility. See Florida Public Service Commission v. Bryson, 569 So.2d 1253 (Fla. 1990); Fletcher Properties, Inc. v. Florida Public Service Commission, 356 So.2d 289 (Fla. 1978). Assuming, though, that the Court had the jurisdiction to make the threshold finding of whether Palm Tree Acres were a utility and could, therefore, prohibit it from discontinuing service until compliance had be made with §367.165(1), Fla. Stat., this Court is clearly without jurisdiction to

make the evidentiary finding of whether Palm Tree Acres had, in fact, complied. For the same reasons that this Court determined it lacked jurisdiction to regulate the rates charged to provide water and sewer service as requested by the Plaintiffs in Count 3 of its Third Amended Complaint, the Court also has no jurisdiction to regulate the manner in which a utility terminates operations. Therefore, the Court finds that §367.165(1) does not authorize the Court to prohibit termination of water or sewer service, and that authority lies exclusively with the Public Service Commission.

However, the Court does have jurisdiction to make a determination as to constitutional rights. Under this narrow issue, Palm Tree Acres prevails. Property rights are one the most basic rights protected by both the Florida and United States Constitutions. These rights include the ability to use, and not to use, the property as the owner of the property sees fit. The government may impose regulations on how a property is used, and neighboring property owners can seek to enjoin their neighbors from offensive or nuisance use of property. However, the Court is unaware of, and the Plaintiffs have not provided, any authority that the Court can compel a property owner to use its property in a manner solely for the benefit of a neighboring property owner.

Therefore, it is hereby **ORDERED, ADJUDGED, and DECLARED** that the Defendant Palm Tree Acres Mobile Home Park has a right under the Article I, § 3, Fla. Const. and Amend. V, U.S. Const. to refuse to use its property for the benefit of others. This right includes the right to discontinue providing water and sewer service to other property owners. Whether it chooses to exercise that right, is for the Defendant to decide.

DONE and ORDERED in Dade City, Pasco County, Florida this 15 October, 2018.

Electronically Conformed 10/15/2018

Hon. Gregory G. Groger
Circuit Court Judge

CC:
Richard Harrison
J. Allen Bobo
Jody B. Gabel

Filing # 80371523 E-Filed 11/06/2018 09:30:30 AM

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION

NELSON P. SCHWOB; et al.,

Plaintiffs,

vs.

CASE NO.: 2017-CA-1696-ES
DIVISION: B

JAMES C. GOSS;
EDWARD HEVERAN;
MARGARET E. HEVERAN; and
PALM TREE ACRES MOBILE
HOME PARK,

Defendants.
_____/

NOTICE OF FILING HEARING TRANSCRIPT

Plaintiffs, by and through the undersigned counsel, hereby give Notice of Filing the attached transcript of the hearing which took place the morning of August 28, 2018.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was furnished by email via the Florida Courts E-Filing Portal on November 6, 2018 to all counsel of record.

s/ Richard A. Harrison
RICHARD A. HARRISON
Florida Bar No.: 602493
Primary Email: rah@harrisonpa.com
Secondary Email: Lisa@harrisonpa.com
DANIELA N. LEAVITT
Florida Bar No.: 70286
Primary Email: dnl@harrisonpa.com
RICHARD A. HARRISON, P.A.
400 N. Ashley Drive, Suite 2600
Tampa, FL 33602
Phone: 813-712-8757

NELSON P. SCHWOB

vs.

JAMES C. GOSS

Hearing before:

JUDGE GREGORY G. GROGER

August 28, 2018

IN THE COUNTY COURT IN AND FOR PASCO COUNTY, FLORIDA
CIVIL DIVISION
CASE NO. 51-2014-CC-000519-ES

NELSON P. SCHWOB,

Plaintiff,

-vs-

JAMES C. GOSS; EDWARD HEVERAN; MARGARET E. HEVERAN; AND PALM TREE ACRES MOBILE HOME PARK,

Defendants.
_____/

TRANSCRIPT OF HEARING PROCEEDINGS
Pages 1 - 63

DATE TAKEN: Tuesday, August 28, 2018
TIME: 10:01 a.m.
PLACE: PASCO COUNTY COURTHOUSE
38053 Live Oak Avenue
Dade City, Florida 33523

BEFORE: HONORABLE GREGORY G. GROGER

Stenographically Reported By:

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR, CLR, NCRA

Realtime Systems Administrator

APPEARANCES:

On behalf of the Plaintiff:
RICHARD A. HARRISON, P.A.
400 North Ashley Drive
Suite 2600
Tampa, Florida 33602
(813) 712-8757
BY: RICHARD A. HARRISON, ESQUIRE
rah@harrisonpa.com
DANIELA N. LEAVITT, ESQUIRE
dnl@harrisonpa.com

On behalf of the Defendants:
LUTZ BOBO & TELFAIR, P.A.
2 North Tamiami Trail
Suite 500
Sarasota, Florida 34236
(941) 951-1800
BY: J. ALLEN BOBO, ESQUIRE
jabobo@lutzbobo.com
JODY B. GABEL, ESQUIRE
jbgabel@lutzbobo.com

I N D E X

E X H I B I T S

(None Marked)

THE COURT: Good morning. Please be seated. Give me just a moment to get logged in here.

MR. BOBO: Yes, sir.

THE COURT: All right. Are we ready to begin?

MR. BOBO: Yes, sir.

THE COURT: Good morning. My name is Judge Greg Groger. We are here on -- the simplest title of the case is Schwob versus Goss. The Case Number's 2017-CA-1696.

If -- Counsel, you want to put your names on the record, please.

MR. HARRISON: Richard Harrison and Daniela Leavitt representing the plaintiffs.

THE COURT: All right. Good morning. And you have some of your clients here with you as well?

MR. HARRISON: Yes. Mr. Schwob is here, and some other plaintiffs are here as well.

Are we expecting more?

There may be more folks who come in.

THE COURT: All right. Very good. And I'll make a note it's Schwob, not Schwab. My apologies.

MR. BOBO: And Your Honor, I'm Alan Bobo. With me is my partner Jody Gabel, and also with me is Trent Goss. Mr. Goss is the operator of the park.

THE COURT: Okay.

MR. BOBO: His father, Jim Goss, is one of the defendants, and Mr. Goss is a white-headed gentleman who might join us in a few minutes. I'm expecting him to come.

THE COURT: All right. Good morning. We have a couple things on our agenda for today. We have -- this morning is noticed the Defendants' Motion for Summary Judgment, and then this afternoon is Plaintiffs' Motion for Summary Judgment.

Do I understand that correctly?

MR. HARRISON: Yes.

MR. BOBO: Yes, sir.

THE COURT: Okay. I've had the opportunity to review the motions and review the responses. Obviously I'm familiar with the case and general facts of the case from our prior hearing. So if that helps you frame your arguments or how you proceed today . . .

MR. BOBO: It does, Your Honor, and I'm

crossing my fingers that we may can get it done in the morning.

THE COURT: We'll see.

MR. BOBO: All right.

THE COURT: All right. You may proceed, Mr. Bobo.

MR. BOBO: Yes, sir. May it please the Court, Your Honor.

Where we are and what's before this Court -- and if you'll permit me just a little bit of historical review on this.

THE COURT: Sure.

MR. BOBO: I know that you are familiar. I know that you've handled several of the cases, but there was a part of the case that kind of predated your involvement, and that dealt with the covenants.

Your Honor, in 1972, there was a set of covenants that were recorded for Palm Tree Mobile Home Park. This is about 14 years before the current defendants bought. Those covenants were recorded in order to govern the relationship between the park developer and the fee-simple lot owners who had purchased some of the lots within the park.

There's a notebook in front of you -- may I approach, Your Honor?

THE COURT: Yes.

MR. BOBO: I may have left one of these covenants in there. I did. It's right here.

THE COURT: Okay.

MR. BOBO: Your Honor, the covenants were, for lack of a better word, Mickey Mouse. They appear to have been prepared by the developer and were recorded in order to govern the relationship between the developer and the lot owners. Now, the material parts of the covenants are on the second page, and they are in paragraphs 14 and 16. And this is a terrible copy. I made this late last night, and I didn't check it before I came, but it's the gist.

14 says: "If you plan to use the recreation facilities, any or all, you must have a yearly membership to do so. This membership also entitles your guests to use the facilities when visiting."

And then 16 says: "Water and sewage shall be paid by the individual lot owners directly to Palm Tree Acres," and there's a word there that I can't see.

But we looked at those covenants and thought, "Okay. What do those covenants mean?" Well, for 40 years, all the residents of the lots that were owned in fee simple took the opportunity to utilize both 14 and 16. So all of them paid a membership fee, and they were granted use of all the amenities, including the water and sewer services, for a single monthly fee.

The defendants bought in about 1984. And at the time the defendants bought -- at the time the defendants bought, the use of the land was a rental mobile home park. Now, over the course of time, some of the fee-simple lots were actually purchased by the park owner, and -- but the ones that remain all continue to rent access to the park's facilities for this monthly fee.

Now, as the affidavits that are on file show, periodically the park owner would negotiate with the homeowners association to set the rents, and they would set the rents not only for the renting residents who rented their sites and owned their own mobile homes, but these periodic negotiations with the homeowners association would also address the second prong of the rents, and that was the rents payable by the lot owners for

them to use the shared facilities of the park and get the water and sewer services.

So that went on for, literally, about 40 years. So life was good. The system seemed to work until one day one of the plaintiffs decided that they didn't like the arrangement.

THE COURT: I just want to --

MR. BOBO: Yes.

THE COURT: I have a quick question -- I want to stop you there --

MR. BOBO: Please.

THE COURT: -- that's relevant to this point.

At the time that the covenants were enacted, which looks like 1972 --

MR. BOBO: Yes.

THE COURT: I haven't done the research on this. I don't know when the Public Service Commission came into -- came into existence or when it took authority on the --

MR. BOBO: A month earlier.

THE COURT: A month later?

MR. BOBO: A month earlier.

THE COURT: A month earlier?

MR. BOBO: Yes, sir. I believe that the

Public Service Commission jurisdiction attached in July of 1972, and the covenants were apparently recorded, from the face of the documents, in August of 1972.

THE COURT: Okay. At that time what was the statutory scheme regarding jurisdiction of the commission regarding water utilities?

MR. BOBO: I don't know.

THE COURT: Okay.

MR. BOBO: I don't know what the 1972 statutes were.

I can tell you this, that when we received the request by the lead plaintiff, only to provide water and sewer services, a couple of the issues immediately came to mind. Number one was the practical issue. We really couldn't do it because this park doesn't have water meters, doesn't have sewer meters. Everybody has paid a monthly fee for a blanket or packages of services, and then they've simply received water and sewer services for no additional charge.

Now -- then we had the legal component of it. The Public Service Commission has an exception in 367.02 (5), which is also in the book -- in the pocket part of your book, Your

Honor, and it's highlighted. Counsel has the same book.

But it says: "The following are not subject to regulation by the commission as a utility, nor are they subject to the provisions of this chapter except as expressly provided."

And then under subsection 5: "Landlords providing service to their tenants without specific compensation for the service."

We've always looked at these exemptions -- and they became self-effectuating years ago, but we've always looked at these exemptions like -- for people like the plaintiffs in the case who continued to rent access to all the facilities of the mobile home park and receive water and sewer services as part of that package arrangement that we qualified for the exemption, because they use the term in subsection 5, "landlords" and "tenants," and in Chapter 723, at least a half dozen occasions the legislature refers to park owners and subdivision developers as landlords and refers to lot owners and mobile home owners as tenants.

So when we received the request initially for only water and sewer services, we thought

practically, number one, we can't do that; and legally, number two, if we don't rent them any part of our mobile home park, how can we possibly comply with the exemption? We would have to be a public utility in order to provide that service.

So at present, we have a group -- and I think we're down to probably about 20 of the plaintiffs who own their homes and their lots within Palm Tree Mobile Home Park. As the Court knows, they say the park owner must provide water and sewer services to them because they claim they can't get those water and sewer services elsewhere.

But Your Honor, make no mistake, they can get water and sewer services, and they can get use of all the other facilities of the park just as the other fee-simple lot owners who aren't plaintiffs in this case do. The -- there are other fee simple lot owners in Palm Tree that are not plaintiffs in this case. They are continuing to get water and sewer services from the park owner. They are continuing to rent the package of service from the park owner, and they get their water and sewer for no separate charge because, even today, there's no water meters or sewer

meters within the park.

So if there is a suggestion made to you that this case is somehow about public health or lack of available services, that's simply untrue. The case is about money. Somebody woke up one day and said, "I don't want to pay the fee for the entire package of services for the park. I just want the water and sewer services."

It is undisputed, both the parties' submissions to the Court today, you know, have indicated that there are no contracts and no covenants between the parties. We have no paper between the parties.

The residents of these lots are sprinkled pretty much in one section of the park, but they're simply our adjoining landowners. They're our neighbors. Their chains of title are addressed in the pleadings, actually made a part of the pleadings before the Court and are appropriate for the Court to consider. You can see from those chains of titles that the defendants didn't sell these lots to these plaintiffs. They weren't involved in the sale situation. In fact, they couldn't have been involved in those sales because the defendants

don't have a real estate license.

So these folks made a personal choice on their own to buy a lot in a rental mobile home park. And I think that they assumed, just like we assumed, that nothing would change; that they would continue to rent all the facilities from the park owner and the park owner would continue to treat them just as any other tenant and provide water and sewer services for no additional charge. And now these 19 want to change -- or 20 want to change the character of the property, and they want to turn the mobile home park into a public utility.

Now, there are issues that are remaining before this Court that aren't involved in the utility issues, and this -- the main one is the constitutional issue that is raised is, simply: Can a landowner be compelled to provide utility services to their neighbor? Is that something that is actionable under the law?

I respectfully suggest that everybody in this room knows the answer to that question. The answer is no, that there is no common-law or statutory authority or requirement, no basis in the law for a neighbor to say to his neighbor,

"Hey, I can't get water and sewer services somewhere else. You've got a great well and a great septic system. Give me use of yours." That doesn't exist if the law.

While a landlord may be required to suffer access from a landlocked neighbor to the rear of his property because there's been a long body of common law to suggest that that is appropriate, there is zero authority that suggests the same thing for utilities.

Now, Florida has codified the common-law way of necessity and even added a component to it. If you look at the book that I have in front of you -- again, Counsel's book is in the same form and highlighted in the same fashion. If you will look at Tab Number 2, Tab Number 2 is Florida's codification of the common-law way of necessity with an added component that is more in line with the modern view.

In Section 704.01, the Court codifies the common-law way of necessity. But as we learned in law school, there are a lot of requirements for that right -- or that way of necessity to apply. So Florida added a subsection 2. And in subsection 2 they said: But if you don't comply

with the old common-law rules and you still need to get to your property, we're going to give you the right to do so as long as you comply with subsection 2.

Now, subsection 2 then followed the more modern trend of the law and said, not only do you have the right of access to your property in the back, it also says in the last sentence, "The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchise cable television service, and any utility service."

So Florida was kind of ahead of the curve. Florida said long ago that if you have a right to get to your property, not only do you have a right to get to your property, you have a right to run utilities to it and be able to use the property for a productive purpose.

If you look at the next tab, 704.04, that simply allows the Court, under appropriate circumstances, to award compensation to the servient estate for that sub 2 use of the land. If you look at what's behind Tab Number 4, you'll see this is the so-called modern view of authority which is in the restatement third of contracts

under Section 2.15, which, if you flip over about three or four pages, you'll see from the comments of the section that the restatement of property adopts this modern trend to say, "Hey, if I've got the right to get to my property in the back, I also have the right to run utility services to it."

But what's the point of all this? While a landowner of the servient estate may be required to submit to access by the dominant estate owner, there is no similar right for the servient to provide services to the owner in the back. In other words, while you can run your utility lines through my easement over to your property, you can't make me provide you with utility services. That doesn't exist in any version of the law. It's not without notice that utility services are required in order to make most profitable -- or most property habitable, yet over the centuries that this easement law has developed, no law has developed which requires a servient estate to actually furnish the utilities to the dominant estate, which raises the constitutional issues that we have here, because for four and a half years, this case has been pending. For four and a

half years, no one's been able to provide any authority suggesting that "Because I bought my lot in your mobile home park, you must provide me water and sewer services because I can't get them elsewhere."

So from the constitutional perspective, we have raised that this is a taking of the property rights. The authorities are unanimous. One thing you can see from the Florida body of property law is that property rights are some of the most protected constitutional rights we see from the court system. And what we're dealing with here is the defendant's property rights. They're operating their property as a mobile home park. They have the right to operate it for any purpose or for no purpose at all.

Part of that mobile home park, Your Honor, is a well field. So we've got this piece of property that's designated for the production of potable water. And that well field then is used to supply water to our renting residents. As the statutes require, it has to be a certain size. As the administrative rules require, it has to be equipped in a certain fashion. But these residents are saying that we must operate that

well field for their benefit, and there's simply no law which requires that.

From a constitutional standpoint, any infringement of a landowner's right to use or to not use their property for any use whatever, as we learned in law school, takes away from the bundle of sticks, takes away from the bundle of sticks of ownership, and diminishes the value of the property. So by them saying to us, "You are going to have to supply us with water and sewer services for whatever duration we suggest," then that is infringed upon our right to both use our property and our rights to sell our property because it's taken away from the value of the property.

Now, they have fought us on two fronts. They filed a complaint here. As the Court knows from the first complaint, they asked the Court to force the defendants to supply utilities to them. Then they even asked the Court to set the rates for those utilities. We moved to dismiss that. The Court correctly ruled that it had no jurisdiction over the authority to supply utility services or the rate structure for those utility services. So that was our motion to dismiss.

Then it's now time for us to respond. We

appropriately filed a counterclaim to assert a constitutional right to the defendant, as they're property owners. Because to do what they demand would require us to change the use of our property to create a public utility so that we can service these 20-some-odd people to the detriment of the 200-something people that now get water and sewer without having to pay Public Service Commission rates.

Only a circuit court can determine our constitutional arguments, Your Honor. Only this court. The Public Service Commission's authority and jurisdiction is expressed by statute by the legislature. There is no question that the Public Service Commission does not have the authority to decide constitutional claims.

So our issue here is simple. Do the defendants have a constitutional right to refuse to provide water and sewer services to a neighboring property owner? We know we have the right to have our property sit idle. The Supreme Court has already determined, too, that for our mobile home park component -- we're not going to do it, but we have the right to shut down the mobile home park. We have the right to close it

because in the Harris versus Martin Regency case, the Court said to prevent a mobile home park owner the right to convert the property from a mobile home park to some other use would offend constitutional rights of a property owner. So we know we have those rights.

They have given you indications -- and you've picked up on it, you know, from the documents quickly -- that there are proceedings pending before the Public Service Commission. And there are. You now, we're going to go fight some of the wars there. Staff has opened a docket, which means that staff has asked the Public Service Commission to issue a notice to show cause why we should not be made to be a public utility. It does a couple things.

First of all, it enhances our Constitution argument because, again, the constitutional argument is it's taking from our bundle of sticks of ownership. So now what they're suggesting that we have to do to satisfy these 20 people and their change of mind after 20 years is now we have to create a public utility for our property.

So we have to suffer the cost, the regulatory red tape, the annual requirements, in

order to service our property. So not only do we have to go through all this process, spend our money to do it, change our property to a public utility, now we have to charge the residents of our park Public Service Commission rates rather than the cheaper rates they get by giving these services through us as a package.

Now, what could the Public Service Commission do with this? We don't know. All we know, it's going to take a bunch of time, and it's going to drag everything out. But the Public Service Commission could find no jurisdiction because there's some very valid arguments that there is no jurisdiction. So that could be one of the issues that could be found from the administrative process.

Secondly, they could find that the exemption that we just gave you applies. Staff, so far, has read this exemption very narrowly and that they have said that "We don't know that you're a landlord, and we don't know that these people are tenants." But then when we look at Chapter 723 Florida Statutes, Chapter 723 refers to park owners and subdivision developers as landlords and lot owners and the mobile home

owners as tenants. And there is no definition of landlord or tenant under Chapter 367 Florida Statute.

If staff reads that exemption, 367.022 sub 5, the way they're arguing it to try to get before the Public Service Commission, they have just excluded all the mobile home parks in the state from that exemption. The Florida Manufactured Housing Association and the Federation of Mobile Home Owners have already weighed in to the Public Service Commission on that issue and we'll probably be fighting that with the Public Service Commission, but that is not your issue. I understand that is not your issue.

But what is the issue here is the constitutional aspects of the claim. Only you can decide that. And actually, the constitutional precepts will override Chapter 367, because if a landlord has no -- I mean, if a property owner has no responsibility to provide utility services to the neighbor from a constitutional perspective, then the government, too, cannot require the landlord to provide those services.

So that is before you, Your Honor. That is

within your jurisdiction and your jurisdiction only. We may end up fighting at the Public Service Commission. We may end up in an appeal before -- of whatever happens in the Public Service Commission before even the Florida Supreme Court, but we're entitled here to have the constitutional issues determined as well.

Now, there's one thing that they said in their response to our summary judgment argument that I believe deserves comment. They tried to avoid the constitutional issues, and they said, "This is not about land use issues, Your Honor. This is not about whether we have the responsibility as a neighbor to provide water and sewer services to our other neighbor. This is about the defendants' conduct. This is about the defendants' conduct. They decided at some point to provide water and sewer services to us, and now they can't stop."

Well, you see why the water and sewer services were provided from the land covenants that were inherited by the defendant. But first of all, you can choose not to perform a regulated activity. Let's say that the Public Service Commission comes back and says subsection 5

doesn't apply to these lot owners. So they don't rent enough of an estate from us to qualify as a landlord or tenant. We have the right not to be regulated. Just like a barber says, "Hey, if I've got to have a license to cut hair, I won't cut hair anymore. I'll just be a dog groomer," you've got the right not to participate in a regulated activity. We would have the right to stop that.

Secondly, when we look directly at their argument, it's the defendants' conduct that counts, what's the conduct? For 40 years, everybody did the same thing. For 40 years, every lot owner that's involved in this proceeding rented the right to use all the facilities of the park for a single monthly fee. You can see the exemption. It looks like it applies. We all felt safe. Their conduct is all that changed. The park owner didn't do anything here.

I'm usually standing before a circuit court somewhere where I've got a park owner that did something that caused the homeowners association or the homeowners to sue. We didn't do anything here. We just woke up one day and several of the lot owners decided that they didn't want to pay for the cost of the facilities anymore, and they

wanted us to parse out the water and sewer services. Well, the parsing out of those water and sewer services not only involved just giving them water and sewer service; now we've got to go through a whole process to become a public utility in order to do that.

So when we focus on the conduct, I'd suggest focus on their conduct. What have they done for 40 years? What changed? They're the ones that changed the circumstance.

So where are we? We're four and a half years into this proceeding. They cannot provide you one scintilla of authority that shows that you've got to provide water and sewer services to your neighbor. It doesn't exist. It clearly takes away from our bundle of rights. Once we kill those covenants, or at least had the Court confirm that those covenants no longer existed because they had expired under MRTA, they're not paying any longer.

So every day that we sit here, they get water and sewer services and they get garbage services from the park. Many of them continue to use the park. Delay is on their side. They want to kick the can. We came before you recently, and

they said, "Judge, we want you to break down these challenges that the park owner's made in his counterclaim and argue them or plead them one at a time for all the different residents." It was a make-work argument, I thought.

You suggested to us at the hearing that, "Well, wait a second, Mr. Bobo. I can see that when there's 20 plaintiffs out there, they may respond to these allegations differently." Well they didn't. All they did was kill a little bit more time because time is on their side. They're continuing to get water and sewer services from us, continuing to get garbage services from us, and they're not paying. So they're happy to drag this out. They're happy to say, "Well, don't do anything, Judge. Let's go to the Public Service Commission. Let's spend another two or three years out there."

Well, we didn't do anything to cause the problem, and I'm suggesting to you that I believe we have a right to have our constitutional challenges determined. The PSC, we'll go fight our PSC wars up there. If it's within their jurisdiction, we'll fight with them in Tallahassee. But from a constitutional

perspective, only this Court can make the decision on whether we have the constitutional right to refuse to provide them utility services.

Thank you, sir.

THE COURT: All right. Thank you, Counsel.

Mr. Harrison.

MR. HARRISON: Yes, sir. So much to say that I'm not sure where I want to start, but we all learned in debate club and in law school that the most important thing in any argument is who gets to frame the argument.

Counsel says the constitutional question is whether a landowner can be compelled to provide utility service to a neighbor. And then he change it slightly, and he said, "No, the constitutional question is whether we've got the constitutional right to refuse to provide utility service to a neighbor."

That's not the question at all. That would be a wonderful constitutional question 40 years ago, when nobody had yet constructed a utility system and run pipes from their property to our property. That's the point at which somebody could say, "I don't have to do that, and I'm not going to."

And at that point in time, I would agree, nobody could force them to do that. That's not where we are, and that's not the constitutional question. The question is, today, where you have a property owner who has constructed and operated a utility and continues to supply water and sewer services to the public, meaning people other than them -- as the Court ruled a year ago, if that's even one person, you're a utility. The question today is, can they just turn it off because they don't want to do it anymore? That's the question today, and that's what the Court should focus on.

Now, let me go back and provide some of the additional context. We were here a year ago. The park moved to dismiss Count 3 of our third amended complaint, and in Count 3 we were asking the Court to say they've got to supply water and tell us how much they can charge, and the Court ruled, "That's not my jurisdiction. That's PSC."

The Court ruled that way because they suggested it. That was their motion to dismiss. They told this Court, "You cannot decide those things." And the Court made two rulings: one, those issues are properly within the jurisdiction of the PSC, and that jurisdiction is exclusively

preempted and we agree.

The second thing the court said is that landlord-tenant exemption that counsel's been talking about, this Court ruled that that issue is also properly decided by the PSC. It is within their jurisdiction. And we agree with that as well. So he can keep arguing about how that landlord-tenant exemption ought to apply, but this Court has already ruled that you can't decide that question. So I'm not sure why we're talking about that. If you couldn't decide it a year ago, you can't decide it today.

Counsel has indicated, correctly, that there is now a case in the PSC. Not surprisingly, after this Court ruled that they, and not the Court, had jurisdiction, the PSC took jurisdiction. And on August 11 of this year, we filed a notice and a request for judicial notice of the notice of apparent violation that was issued by the PSC. And because I suspect we may be visiting some appellate court on all of this at some point, at some point today we'd like the Court to rule on the record that judicial notice is going to be taken of that.

But this is a notice March 8, 2018, to the

park that says, "Based on information provided by Palm Tree Acres, commission staff believes that Palm Tree Acres may be operating in violation of Section 367.031," the PSC statute that says you have to be regulated, "and the accompanying rule, as it appears that Palm Tree Acres is providing water and wastewater service to the public" -- us -- "for compensation without a certificate of authorization. Furthermore, it appears that Palm Tree Acres is not exempt from the commission's jurisdiction under Section 367.0225," the exemption counsel cited -- "as Palm Tree Acres appears to be selling water or wastewater services to non-tenants for compensation."

Now, what that notice of apparent violation says is, "This is what we think right now, and we're giving you some period of time to submit an application to be licensed by the PSC."

The park has not done that, and so the next step in the process is that the PSC has now initiated a show-cause proceeding. The link to that docket is cited in our response. I've got hard copies if the Court would like to see it. But because the park has not submitted an application to be licensed as a utility, the PSC's

moving ahead now to the enforcement stage. And on October 30th, before that scheduled meeting of the Public Service Commission, the staff is going to recommend that a show-cause proceeding be commenced.

So there is really no dispute about where the dividing line is between jurisdiction. I think we're all in agreement on that. The Court said, "I can't decide things about authority to supply water and sewer or about the rates that they can charge. I don't have that jurisdiction. That's the PSC." The PSC apparently agrees and is asserting its jurisdiction over those things. So there's no real dispute about that.

The thing that's interesting is that the same way that the PSC has jurisdiction over the authority to provide utilities services, it also has jurisdiction over a utility's ability to stop providing utility services. And that really, I don't think, is very surprising, given the public interest aspects of utility service. You cannot, contrary to what they're suggesting -- and this is really what they're trying to get you to say -- they can't just turn off the water and sewer because the PSC has regulations about that too.

We cite them in our responsive memorandum.

Rule 25-30.235 -- this is all Florida Administrative Code. This is on page 8 of our responsive memorandum. There's a rule that governs any substantial change in the conditions or character of service. There is a separate rule; Rule 25-30.250 applies to continuity of service, and it limits a utility's ability to interrupt service to its customers. But the one that's really most on target is Rule 25-30.320, which deals with and significantly limits the circumstances under which a utility can refuse to provide service or discontinue service to a customer. And in PSC parlance, that's called abandonment, and you cannot abandon a utility. You cannot simply wake up one day and say, "I choose not to do this anymore." Because you are not a barber providing a hot shave and a haircut, which really doesn't have any public-interest implications. You are a utility governed by the Public Service Commission, which means that you have a franchise from the government to provide service within some exclusive territory. That's what it means to be regulated and licensed by the PSC.

And the PSC rule on abandonment, 25-30.320 Florida Administrative Code, essentially says that if a utility wants to stop being a utility, wants to abandon the operation, it has to give notice to the PSC and notice to the County, and one of those two entities has the right to go to court and to seek the appointment of a receiver to take over the property of the utility and to continue to operate that utility.

So what Chapter 367 and the rules of the PSC really say is, you cannot abandon the utility. The best you can do if you want to be out of the utility business is essentially let a receiver be appointed and sell off that utility to somebody who wants to operate it. You cannot simply turn off the utility.

And at this point, for the same jurisdictional reason that the Court I think correctly said, "I can't tell you that you have to provide water service. Only the PSC might be able to do that," you don't have the jurisdiction to allow them to turn off the utility because that, too, is squarely within the PSC's jurisdiction over authority, service, and rates.

THE COURT: Let me interrupt you. My

question about that is, what is the statutory regulatory scheme for in any other context a customer just doesn't pay the bill?

MR. HARRISON: Well, that's different. Not paying the bill is one of those circumstances in the rules that allows a utility, after it follows certain steps -- and I think -- I think it's essentially a series of notices that have to be provided before you can again turn it off.

But ultimately, yes, if you don't pay your electric bill, you're going to get some notices and you're going to get some notices and you're going to get a warning, "We're going to turn off your service," and that's all because the PSC has rules about how many warnings you have to give somebody. But ultimately, yes, if the customer doesn't pay, the service can be disconnected to that individual customer, and the PSC rules govern that.

Two points about that. One, Counsel says, "These people aren't paying us." But when these folks were sending checks, they weren't cashing the checks. They were holding all the checks because they didn't want to cash our checks. Some people were sending partial payments. Some people

were sending other payments. They didn't cash any of those checks. And if you ask counsel now, he'll tell you, "We've got a box of stale checks that we've never cashed," because they thought cashing the checks would waive some legal position. And I understand why they didn't do it, but if you're not going to take the money when it's offered, you can't come in and say "They're not paying the money. They're doing something wrong."

But even that is governed by PSC rules. There are rules that govern that exact situation: What happens when a customer doesn't pay the bill.

The answer is, if you follow all the PSC procedures and you provide the various notices and warnings that are required and they still don't pay, then ultimately you can turn off the service.

Here's the other point about that, though. If they tried to do that now and follow the PSC's procedures, they have a different problem, which is that they can't tell us how much the water and sewer is because their position throughout these proceedings has been, it's not a separate number; it's included in all this other stuff they say we're renting: access to the clubhouse.

And that raises a whole host of issues because PSC has no jurisdiction over their clubhouse or their streetlights or the swimming pool. They can charge whatever they want for that stuff, and our folks can decide either we're going to pay it or not. And, frankly, the PSC doesn't have anything to say about that.

What the PSC does have to say about is how much they can charge us for water and sewer, and they can't really bill us for that. In fact, they've never sent any of these folks a bill that says "This is what you owe for water and sewer" because they refuse to state a separate amount.

Now, with the PSC having assumed jurisdiction, they can't amount because, of course, the PSC has never approved a rate. They have no approved rate that they can charge us. So it's all a red herring. They came to court a year ago and said, "Judge, leave us alone. This all has to go to the PSC," and now they want you to find a, quote, constitutional way to let them out of exactly what they asked you to do a year ago.

So let me make one more point, and then let's talk about this constitutional issue, whatever it might be exactly, and I have to say,

I'm still not really sure.

Counsel made a point that the Mobile Home Act, Chapter 723, refers to them, the park, as a landlord and lot owners as tenants. That's not quite correct. Chapter 723 was intended primarily to deal with the customary situation where the park owns all the lots and rents them to other people. So you rent a lot, and you put your home on it. Sometimes you rent the lot from the developer and he also rents you a home on it. That's fair. That's good. Because the definition in 723 -- and this leaps ahead a little bit to the afternoon motion, but since it came up, let's deal with it. 723.002 (1) says, "The provisions of this chapter apply to any residential tenancy" -- he's right. There's that word -- "in which a mobile home is placed upon a rented or leased lot in a mobile home park." That's not us. We don't rent or lease lots from them. We own our lots in fee simple. So the statement in 723 about what it covers doesn't apply to us.

And just in case that's not clear enough, the next sentence says, "This chapter shall not be construed to apply to any other tenancy." We don't rent or lease lots from them. We own our

lots. And it's an unusual situation because the statute contemplates two types of parks. The statute defines a mobile home park, and that's a park where the owner owns all the lots and leases them out to people who put a mobile home on it. And the statute defines a mobile home subdivision. A mobile home subdivision is where the lots are owned by people in fee simple, and, really, the developer in that case acts as more of a homeowners association; it supplies amenities, roads, recreational facilities, typically utilities, and it charges a fee a lot like your homeowners association does in a more typical single-family development.

There's nothing in 723 that contemplates and talks about this unusual situation where I think their total park is 240 or 250 lots, and all but 20-something of them are rental lots. And so you've got this odd situation where it's mostly a mobile home park, but then we've got these 20 or so lots that aren't leased lots.

So it's not a tenancy contemplated by Chapter 723, but even that doesn't matter because the Court's already ruled a year ago that this Court is not going to decide if the

landlord-tenant exemption to PSC regulation applies. The PSC's going to decide that. And at least preliminarily, they've said it doesn't apply. So we'll see where that goes. But that's nothing that the Court really needs to be concerned with today.

So let's talk about this constitutional claim. Ordinarily, when someone serves a constitutional claim of some type, you would expect to see in the complaint a clear statement of what the constitutional right is -- my rights under the First Amendment, my rights against an unreasonable search and seizure, my right to religious freedom -- some clear statement of what the right is that they think is being infringed somehow and then some clear description of how that right is being infringed by the parties that they've sued.

And I have to tell you, I really -- having read their amended counterclaim several times over and having heard counsel's argument this morning, I still don't really know what constitutional right they think is being infringed or how it is that we're infringing it. Because when you read through this constitutional claim and their

motion, there's a lot of buzz words in this motion talking about property rights. And counsel even said this morning -- and this is important, because they sort of danced around it in the motion. I was going to get up here and say, "Judge, they've cited a bunch of eminent domain cases to you, and I really don't understand why." And now expressly this morning, Counsel has said, "This is a taking of our property rights."

Well, there's a real problem with that, which is that we're not the government, and only a government agency has the power of eminent domain. Private parties have no power of eminent domain over someone else's property. We're private landowners. We have no eminent domain authority. So if we can't exercise eminent domain directly, we cannot be the subject of an inverse condemnation claim, which is really what they're trying to tell you this is.

We don't have any authority to take their property. We're not asking the Court to take anybody's property. So I was really perplexed reading all these eminent domain cases because we understand that the government can take people's property directly on taking 10 feet of your

property because I want to expand my road, and I have to pay you for it. The government is the only people that can do that: cities, counties, state.

THE COURT: But doesn't that imply that the -- when the Constitution was drafted to give the government that ability with just compensation, that necessarily no one ever had that right before, private or public, and by an act or framing a right to the government to eminent domain gave them a right with just compensation that didn't prior, that didn't exist to anybody.

MR. HARRISON: Well, I'm going to respectfully disagree, and I'm going to have to get a little historical and philosophical because --

THE COURT: That's fine. I appreciate history and philosophy.

MR. HARRISON: The right of eminent domain is part of the fundamental essence of sovereignty. The sovereign inherently has the right of eminent domain, whether anybody says so or not. You don't give permission to the sovereign. The sovereign has that permission by virtue of sovereignty. What the Constitution does is ensure that when

that sovereign power to take private property is exercised, compensation must be paid. It's a distinction, but it's important.

THE COURT: I understand, but there's never been a common-law right for a private landowner to require some other private landowner to do anything.

MR. HARRISON: Correct. And that's not what we're here about. There is no claim in our complaint anywhere that says that's what we're asking you to do. The closest thing to that is the count that you dismissed a year ago because you said we don't have jurisdiction to consider it.

And we're not asking anybody to make them provide utility service. Again, that's the issue they want to frame, and that's not the issue. The facts are that they are doing it. They've been doing it. That's the conduct that we refer to in our response, and it is their conduct constructing a utility system and running pipes from their property to our property and delivering water through those pipes. That's conduct. We didn't make them do that. In fact, I don't even think they did it voluntarily because Mr. Goss's

deposition, which is on file, seems to say that all these utility things were in place when they bought the property. And that would make sense, because if you're going to have a mobile home park, you have to have water and sewer.

None of that is the issue. We're not asking anybody to force anybody to do anything. It is the fact that they're doing it that causes them to be subject to PSC regulation. And once subject to PSC regulation, it means that they can't stop doing it without going through the PSC.

That's the issue, not the hypothetical issue that they would like it to be, which is, if none of this had ever happened and we're just two landowners standing on vacant property and I'm looking out at your property and I say, "I don't want to run that pipe to your property and supply water and you can't make me," if that's where we were, we would agree. That's not where we are. And their legal rights and duties are dictated by where we are today, not where hypothetically two adjoining property owners were 40 or 50 years ago before anybody did anything.

THE COURT: I have another question for you. I apologize for -- I keep interrupting you.

MR. HARRISON: No.

THE COURT: You're kind of on a roll here. My other question is, what about the actual water itself? I mean, that is from -- I guess what's been represented by Mr. Bobo is that the water itself is being pumped from the well that is the property of the park. Granted, I see your point that the infrastructure, the physical pipes going there have long been there and there's no one that can require them to put pipes where pipes didn't exist before, but what is to prevent them from saying "We're not" -- "You're not getting my water? That water is mine"?

MR. HARRISON: Right. Well, the short answer today is, the Public Service Commission. They don't get to say that, the same way that TECO or Florida Power doesn't get to say, "You know what? For our million residents out there that are customers, we have made some business decision that we no longer want to do this anymore. Thank you very much. Goodbye," flip the switch and go home.

The short answer to your question is, the PSC. If they want to abandon the utility services that they currently provide, potable water and

wastewater, the PSC has a process, and they have to go through it. That's the short answer to your question.

So back to this constitutional claim, just to close out the point on this taking issue, a private landowner can never be a defendant in an inverse condemnation claim because it has no eminent domain power. Okay? So if their argument is that somehow application of the Public Service Commission statutes operate to unconstitutionally take or deprive them of property, they need to go sue the Public Service Commission, an agency that has the power of eminent domain.

Whether they call it a direct taking or an inverse taking, inverse condemnation is typically through regulation, and that's really what they seem to be hinting at. But all property -- to get back to the property rights issue, all real property is subject to regulation by the government in some fashion.

So this notion that because I own a piece of property, I've got the constitutional right to do whatever I want with it or to do nothing with it is interesting. It's correct only in the most superficial sense because, of course, all real

property is subject to regulation by the government. The most obvious examples, of course, are zoning and land use.

So if I own a vacant lot in a residential subdivision, I can build a residence on it because it's zoned for residential use. I cannot build a McDonald's on it. And no matter how hard I pound on this dais and demand to exercise my constitutional right to do what I want with my property, I'm not going to get to build a McDonald's on my residential lot in the middle of the neighborhood because property is regulated by the government through zoning and land use.

Activity on your property -- and, again, I keep making this distinction because nobody's taking property from them, and nobody's saying it's their property that makes them subject to regulation. It's their conduct and the activity on the property that makes them subject to the PSC's jurisdiction.

So let's take another example. If I own a vacant piece of property at a busy intersection and I'm right on the corner of two busy roads and there's nothing on my property, I might sit there as a landowner and say, "There's a lot of cars

going by my property, and all those cars need gasoline; so I'm going to get some folks out here. We're going to dig a big hole in the ground, and we're going to stick an underground tank in the ground. Then I'm going to pave it over, and I'm going to put some gasoline-dispensing pumps, and I'll start selling gas to people because I've got the right to do whatever I want with my property."

The Court knows, as everybody in this room knows, that that's utterly ridiculous. The State of Florida is going to pretty quickly come along and say, "Excuse me, sir. You've built a gas station, and we have rules about that. And there's a lot of rules that regulate how you can do this, and you're subject to them because you've chosen to that."

And the property owner might say, "Yep, right, but I've also got the right not to do any of it because I don't want to be subject to your rules. So I'll just rip all this stuff out that I've put in the ground."

And guess what? The State of Florida's going to say to that person, "Can't do that either, because we have rules about how you can take stuff out of the ground because that's a

regulated activity."

So no, you don't get to do whatever you want with your property, and what you choose to do with your property may well subject you to regulation by some government agency. And if what you choose to do is no longer regulated, there might be rules about that too. And that's where we are. That's the issue.

When we look at and we've played out -- we think there are a number of procedural deficiencies in their motion for summary judgment. Those are spelled out in the memorandum in response, but I think this can really come into clear focus when we look at what it is they're asking you to declare on page 8 of their motion. And they're asking for five specific things that they want you to declare.

So presumably they want the Court to write an order that says these things: A, owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution. Well, number one, courts do not issue declaratory judgments announcing abstract principles of law. That's not what the declaratory judgment statute

allows. Declaratory judgments are issued to address a specific set of facts and to declare the rights and duties of specific parties under those specific facts. So we don't issue declaratory judgments to assert black letter principles of law.

If we were going to do that, this statement would be incorrect: Owners are entitled to the full bundle of ownership rights constitutionally guaranteed to the owners of real property by the Florida Constitution. The only way to make that an accurate statement of law would be to go on and say, "subject to all applicable state and local laws and regulations," because, of course, there's lots and lots of laws and regulations that apply to real property.

So, one, the first thing they want you to declare is, not appropriate for declaratory judgment, because we don't declare broad abstract principles of law; and, two, it's fundamentally incorrect.

B, owners have a constitutional right to use their property for any legal purpose or no use at all. Same qualification. The only way that's a correct statement of the law is if you add

"subject to all applicable state and local laws and regulations affecting the property or its use." So, again, we don't declare abstract principles of law. But if we're going to start declaring abstract principles of law they certainly need to be accurate.

C, any forced use of the property for the benefit of plaintiffs violates owner's basic constitutional rights. Well, if they're asking you to declare that that's there's some kind of taking, they've got the wrong parties in the case. This cannot be an inverse condemnation case. It cannot be an eminent domain case because we're not a government agency, and we have no ability to force them to do anything, nor have we ever asked anybody to force them to do anything. Their problem now is they wanted to divest the court of jurisdiction and appropriate for the PSC, and they just don't really like being with the PSC.

Item D of what they would like the Court to declare: Burdening the property -- burdening the property with any obligation to supply utility services to the lots would unconstitutionally restrict the property and thereby adversely affect its use, marketability, and value. That sounds a

lot more like an inverse condemnation claim.

Well, we have no ability to burden their property, and, frankly, neither does this Court. Nobody is burdening their property with any obligation to do anything because, again, it is their conduct in doing certain things that brings them under the PSC's jurisdiction. And once under their PSC's jurisdiction, their ability to stop doing those things is limited by PSC rules. So you can't declare that either.

And all of these things are devoid of any factual context. They don't resolve any specific issue in the case. They're just abstract statements of some principle. In most cases, they're fundamentally incorrect.

Item E, owners are entitled to the costs of attorneys' fees incurred to remove plaintiffs' claims and asserted rights. Well, one, they haven't pled any statutory or contractual basis for attorneys' fees. We all agree there's no contracts in place. They haven't cited any statute. That sounds -- that language removing claims and asserted rights sounds a lot like a quiet title action. But, one, we've not made any claim against the title to their property; and,

two, even if it were a quiet title action, under Florida law there's no basis for fees and costs, and they don't suggest otherwise.

So what this really all comes down to is that a year ago, they came to court and said, "The circuit court cannot exercise jurisdiction over anything related to whether we provide water service or sewer service, utility services, or over what we're allowed to charge these lot owners for those services that we provide." And the Court agreed, issued an order.

The PSC has now assumed jurisdiction. And now by asserting this vague notion of some constitutional claim that seems like it might be a takings claim or seems like it might be something else, what they're really asking you to do is declare that they've got the right to turn off the utility service. That's what they're asking you to fundamentally do. And you don't have jurisdiction to do that, for all the same reasons you determined a year ago that you don't have jurisdiction, because it deals with the authority, service, and rates, all subject to the PSC jurisdiction.

That's, I think, all we need to say on the

substance. There are some procedural issues because they brought this up in the form of a motion for summary judgment. The motion is partially verified. If you look at the verification, it only relates to certain designated paragraphs, 1 to 14 and 22 to 30. They don't cite to any other summary judgment evidence as the rule requires, so your consideration of their motion is limited to those paragraphs that they have verified. They don't cite, didn't give us notice that they're relying on anything else, which is what the rule requires. So your consideration to this motion is really limited to what's in those paragraphs, which don't really get them anywhere.

And there is just no constitutional claim. What right do they say is being violated? They talk about property rights, but we're not doing anything to their property. We've not entered onto their property, which is a classic invasion of somebody's property rights. If the government does it, it's a taking. If a private party enters on to somebody else's property, it's a trespass, and there are remedies.

We've not entered onto their property.

They instructed utility lines from their property onto our property. So it's not an invasion in the physical sense. We haven't invaded their property. It's not any regulatory invasion because we're not a government agency. We don't have -- we don't pass laws. We don't pass ordinances. We don't regulate anything.

So I really have no idea what this supposed constitutional claim is, but if what they really want you to declare -- and this is what I gather when I add up what they're asking you to declare -- is they want the Court to say they can cease the water and utility service. The answer is, the Court lacks jurisdiction for the same reason that it lacked jurisdiction a year ago. Those are matters for the PSC. So let me leave it at that.

THE COURT: All right. Thank you.

Response?

MR. BOBO: I'm not asking you to decide a 367 issue, Your Honor. I believe that you know we know -- we all know we're going to be going to court, we're going to be going to Tallahassee, and we're going to be fighting the 367 issue there.

Let me say this: 367.022 has an exemption

that means it's completely outside the Public Service Commission and the exemption applies to landlords providing service to their tenant without specific compensation for the service.

Chapter 723 of the Florida Statutes, we're going to -- I'll show in a second how absolutely the chapter does apply to them, but I don't think we're going to have time to finish it before the 11:30 hour.

But 723.004 says in subsection 2, "There is hereby expressly preempted to the state all regulation and control of mobile home lot rents in mobile home parks and all those other matters and things relating to the landlord-tenant relationship treated by or falling within the purview of this chapter." The same legislature that used the words "landlord" and "tenant" in the preemption statute of 723 wrote subsection 5 saying landlords providing services to their tenants without specific compensation for those services.

We could very well find, after our year in Tallahassee litigating with the Public Service Commission, that, at the end of the day, the Public Service Commission could find that we are

entitled to provide water and sewer services to our mobile home residents but, for some reason, not the lot owners. At that point in time, we would have two choices: we would either become a public utility or we would turn off their water service. We won't become a public utility.

So our constitutional argument is something we have a right to frame. Counsel seems to suggest that the only constitutional argument that exists is a constitutional argument on inverse condemnation. Or if you look at paragraph 20 of our summary judgment motion, there is our constitutional argument. One of the most essential sticks of the bundle of property rights is the right to exclude others. To require a landlord to supply utilities to his neighbor would unconstitutionally remove the most valuable sticks from the bundle, the right to use or not to use the property during the period of ownership.

Then we go on to express that if you require us to serve these people, you are taking from our bundle of ownership rights, and it is an unconstitutional deprivation of our property rights. He wants to suggest to you that that only exists in inverse condemnation.

Everybody wants to talk about their successes. I'll tell you about a loss. Your Honor, we had a mobile home park in Bradenton called Fairlane Acres, and Fairlane Acres was a park that was built back in the '70s. The 55-plus restrictions under the federal Fair Housing laws went into effect on March 13th, 1989. Most of these mobile home parks that are subdivisions were created long before that time, and they were created by covenants and restrictions much like the ones you've seen here. So for a park to exclude families with children, you had to have 80 percent of the residents that are -- 80 percent of the units that are occupied by one person 55 years of age or older.

So our part of the bar association has struggled -- struggled with how do you make what was formerly an adult mobile home park -- how do you make it comply with the 55-plus exemptions?

I got Fairlane Acres. Fairlane Acres, 704 cites. It had a utility system that served all the residents of the mobile home park. The case law says that to get utilities, you have to sign a contract with the utility owner. So we control the utilities. We're struggling to find a way to

make this a 55-plus park.

I put in the contract for everybody to sign to get utilities that they're subject to our 55-plus restrictions. Four of the residents in that 700-plus-space park contested that. We tried it three times in circuit court and won and went to the Second District Court of Appeals. I lost on a constitutional claim. I lost because Judge Davis said that by me requiring the residents to get water and sewer services to sell their parks only to people who were 55 years of age or older, I had taken from those residents a constitutionally protected bundle -- or stick in the bundle of sticks that preserved their right to sell that property to anybody they want to.

I'm telling you, if -- right now, we're stuck and burdened with these 19 people. We've got another 20 people that we continue to provide water and sewer services to that are lot -- do own their lots, and we're continuing to provide them just as though the covenants continued to exist. But if you make us provide the water and sewer services to them, to these 19, you are taking from our bundle of rights.

Constitutional rights exist outside of

inverse condemnation or adverse condemnation, and that's the rights that we're asserting from you now. If the PSC comes back -- and, again, we'll fight those 367 claims there, but if the PSC comes back and says that sub 5 exemption applies to mobile home owners who rent their lots from us but it doesn't apply to these, we won't become a public utility, and we want to be able to turn off the water at that point.

So we think we framed an appropriate constitutional exemption. Counsel has given you no case, no authority, suggesting that the Public Service Commission has the right to rule on a constitutional claim because none exists.

And then I'll save for the afternoon the remaining part of the argument that's going to address whether Chapter 723 applies. I'll suggest to you that they're just absolutely wrong on that. Thank you, Your Honor.

THE COURT: All right. One question I have -- and I'll give both sides equal opportunities to address it -- is, where does the authority exist to determine whether an entity is or is not a utility? Can I make that decision?

MR. BOBO: I don't think so.

THE COURT: What do you think, Mr. Harrison?

MR. HARRISON: Actually, I think you've already made that decision. You made that decision a year ago because what your order says -- the order that the Court entered a year ago says, "Assuming plaintiffs' assertion is correct" -- our assertion that the landlord-tenant exemption doesn't apply -- "Assuming plaintiffs' assertion is correct, the defendants are most certainly a utility, and Florida Statute 367.0112 vests exclusive jurisdiction with the PSC."

And then in the next sentence the Court says, a year ago, "And that question about whether the exemption applies or doesn't apply is also for the PSC."

So what the Court said a year ago is, remember, they concede, and the law is clear that if you supply a utility service -- in this case, water or sewer -- to even a single person who is not you, that meets the test of being a utility. They cited that case. We cited that case. The Court cited that case. And the Court said, "Yeah, they're supplying water to these 20 or so lots, so they are a utility unless this exemption applies,

and I can't decide if the exemption applies because that goes to the PSC."

So the Court's already made that determination. There is no question that -- and I think Mr. Bobo has conceded -- if that exemption does not apply, they're a utility. There's no question about that.

MR. BOBO: I do not agree with that last statement.

THE COURT: All right. All right. We'll be in -- this will be in recess until 1:30.

MR. HARRISON: Yes, sir.

THE COURT: And we'll address the plaintiffs' motion next. Thank you all.

MR. HARRISON: Thanks, Judge.

THE BAILIFF: All rise.

(Thereupon, the proceedings were concluded at 1:19 p.m.)

COURT CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PASCO)

I, RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR, CLR, NCRA Realtime Systems Administrator, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 5th day of November, 2018.

RHONDA HALL-BREUWET, RDR, CRR, LCR, CCR, FPR, CLR
NCRA Realtime Systems Administrator

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