

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

WALDEN LAKE COMMUNITY
PRESERVATION, INC., a Florida
not-for-profit corporation,

Plaintiff,

Case No. 15-CA-748

v.

Division R

VISIONS GOLF, LLC,

Defendant.

_____ /

DEFENDANT VISION GOLF, LLC'S MOTION FOR SANCTIONS

Pursuant to Section 57.105(1), Florida Statutes, Defendant Visions Golf, LLC respectfully requests this Court to enter an order imposing sanctions, including but not limited to, attorneys' fees against Plaintiff Walden Lake Community Preservation, Inc. ("WLCP"). In support of this motion, Defendant states as follows:

1. Plaintiff Walden Lake Community Preservation, Inc. should be sanctioned under Section 57.105(1), Florida Statutes, because at the time Plaintiff commenced this action (and to date), Plaintiff knew or should have known that the alleged claims asserted in this action were (1) not supported by the material facts necessary to establish such claims, or (2) not supported by an application of then-existing law to those material facts. Plaintiff plainly lacks standing to assert the alleged claims for declaratory relief, injunction and class action certification at the time of filing the Complaint on January 25, 2015. See Defendant Visions Golf, LLC's Motion to Dismiss Complaint filed March 9, 2015.

2. Defendant Visions Golf, LLC served Plaintiff WLCP on May 21, 2015, with a copy of this Motion and advised that Defendant would be filing this Motion unless Plaintiff

withdrew their alleged claims within 21 days of receipt of the letter. To date, Plaintiff has refused to withdraw its alleged claims.

Background

3. Plaintiff WLCP filed a four-count complaint on January 25, 2015, seeking (1) declaratory judgment; (2) temporary injunction; (3) permanent injunction; and (4) class action certification. Plaintiff WLCP asserted that the golf courses owned by Defendant Visions Golf “are encumbered with a mutual negative equitable easements restricting the use of the Walden Lake golf courses to use solely as golf courses.” Complaint at ¶¶ 45, 53.

4. Plaintiff WLCP’s attempt to enforce the alleged mutual negative equitable easements or any other restrictive covenant on behalf of its members is plainly precluded by Florida law. *Palm Point Property Owners’ Ass’n of Charlotte County, Inc. v. Pisarski*, 626 So. 2d 195, 197 (Fla. 1993). None of the homeowners of Walden Lake are parties to this action. No property owner or member of Plaintiff WLCP is identified in the Complaint. Plaintiff WLCP seeks to sue in a representational capacity, but lacks standing.

5. In all four of the counts in the Complaint, Plaintiff WLCP seeks to enforce the restrictive covenants on behalf of unidentified property owners. Complaint ¶¶ 3, 53, 55, 58, 60, 62, 65-67. The Florida Supreme Court has expressly held that the associational standing doctrine does not allow associations or representatives to enforce restrictive covenants. *Palm Point Property Owners’ Ass’n of Charlotte County*, 626 So. 2d at 197. Plaintiff WLCP’s Complaint fails to allege that it owns real property within Walden Lake which is subject to restrictive covenants. Plaintiff lacks standing to sue under Florida law.

6. Further, lack of standing may not be cured retroactively. A plaintiff must have standing at the inception of the case. *Venture Holdings & Acquisitions Group, LLC v. A.I.M.*

Funding Group, LLC, 75 So. 3d 773, 776 (Fla. 4th DCA 2011). A party “is not permitted to establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact.” *McLean v. JP Morgan Chase Bank, N.A.*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012). Thus, Plaintiff WLCP’s lack of standing cannot be cured by amendment of the fatally flawed Complaint.

7. Defendant Visions Golf, LLC’s Motion to Dismiss Complaint has been set for hearing on June 30, 2015.

Fla. Stat. § 57.105

8. Sanctions are sought under Section 57.105, Florida Statutes, which states in relevant part:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing laws to those material facts. However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.

9. The "knew or should have known" standard under Section 57.105(1) requires courts to impose sanctions for any claim the losing party knew or should have known was not supported by the facts or law necessary to establish its viability. In essence, the statute subjects civil litigants to sanctions for asserting any position that does not find substantial support in both fact and law. This standard calls for the imposition of sanctions in any situation in which the court finds the losing attorney or litigant "should have known" that the challenged claim or defense was not "supported" by the facts, or by the application of then-existing law to those facts. Subsection (1) requires the movant to establish that the offending party either "knew" or "should have known" that the claim or defense being challenged was not founded on fact or the applicable law. As such, Section 57.105(1), Florida Statutes, can actually be applied in at least two different situations: 1) where a party (or counsel) has asserted "facts" which cannot be substantiated by the evidence or testimony; or 2) where an otherwise accurate set of facts does not support the particular theory of law to which it is ascribed.

10. The court determines whether the party or its counsel knew or should have known that the claim or defense asserted was not supported by the facts or an application of existing law. *Wendy's of N.E. Fla. Inc., v. Vandergriff*, 865 So. 2d, 520, 523 (Fla. 1st DCA 2003) (citations omitted).

11. Under Section 57.105, the losing party and the losing party's counsel are equally responsible for the payment of fees unless the losing party's counsel has acted in good faith, based upon the factual representations of his or her client. *See Morrone v. State Farm Fire and Cas. Ins. Co.*, 664 So. 2d 972 (Fla. 4th DCA 1995); *Khooury v. Estate of Kashey*, 533 So. 2d 908 (Fla. 3rd DCA 1988).

12. Plaintiff WLCP and its counsel knew or "should have known" that Plaintiff lacks standing and the claims asserted in the Complaint are not supported by the facts, or by the application of Florida law to those facts.

WHEREFORE, Defendant Visions Golf, LLC respectfully requests this Court to enter an order imposing sanctions against Plaintiff WLCP, including but not limited to, an award of attorneys' fees in favor of Defendant and against Plaintiff and its counsel, and retaining jurisdiction to determine the amount of such fees.

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Attorneys for Defendant Visions Golf, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2015, a true and correct copy of the foregoing Motion for Sanctions was served via electronic mail to counsel for Plaintiff, Harley Herman, Esq., (info@hermanandhermanesq.com; harleyhermanesq@yahoo.com hh@hermanandhermanesq.com); Dylan B. Russell, Esq., (Russell@hooverslovacek.com) and Matthew A. Kornhauser, Esq., (Kornhauser@hooverslovacek.com), but not filed with the Court, in accordance with Section 57.105(4), Florida Statutes.

/s Alice R. Huneycutt
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SUPPLEMENTAL CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2015, undersigned counsel has electronically filed the foregoing document with the Clerk of the Court using the Florida Courts E-Portal. Pursuant to Fla. R. Jud. Admin. 2.516, I also certify that the foregoing document has been furnished to all counsel of record or pro se parties identified herein either via transmission of Notices of Service of Court Document generated by the E-Portal or in some other authorized manner for those counsel or parties who are excused from e-mail service.

Harley Herman, Esq., (info@hermanandhermanesq.com, harleyhermanesq@yahoo.com);
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Dylan B. Russell, Esq., (Russell@hooverslovacek.com).

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