

IN THE CIRCUIT COURT OF THE
6TH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

JAMES FICKEN, trustee,
SUNCOAST FIRST TRUST; and
SUNCOAST FIRST TRUST,

Plaintiffs,

vs.

CITY OF DUNEDIN, FLORIDA;
DUNEDIN CODE ENFORCEMENT BOARD;
MICHAEL BOWMAN, in his official capacity as Code
Enforcement Board Chairman; LOWELL SUPLICKI,
in his official capacity as Code Enforcement Board
Vice-Chair; ARLENE GRAHAM, in her official
capacity as a member of the Code Enforcement Board;
KEN CARSON, in his official capacity as a member
of the Code Enforcement Board; WILLIAM
MOTLEY, in his official capacity as a member
of the Code Enforcement Board; DAVE PAULEY,
in his official capacity as a member of the Code
Enforcement Board; and BUNNY DUTTON, in
her official capacity as a member of the Code
Enforcement Board,

Defendants.

PLAINTIFFS' COMPLAINT

I. INTRODUCTION

This lawsuit challenges a municipal code enforcement regime in which a defendant, the City of Dunedin (the "City"), imposes exorbitant fines on its citizens, often without any notice at all, for picayune code violations like having tall grass. One such Dunedin resident, Jim Ficken, had grass over ten inches for about eight weeks last summer while he was out of town settling his mother's estate. Without any warning, he was hit with daily fines totaling over \$29,000. Now,

his inability to pay that sum means that the City is going to take his house. This, the city attorney has touted, is Dunedin's "well-oiled machine" of code enforcement at work.

Indeed, a feature of this well-oiled machine is the City's practice of levying fines of up to \$500 per day for homeowners it deems to be "repeat violators"—a term it loosely uses to describe anyone alleged to have committed a similar code violation in the past five years. Under such a classification, the City claims that it is empowered to commence fines against a homeowner in the amount of \$500 per day without providing any notice whatsoever. Moreover, the City identifies homeowners as "repeat violators," and thus reduces the protections to which they are entitled, without providing them with notice before applying such classification or advising them of the consequences of such a classification. Such a practice violates the Due Process Clauses of both the U.S. and Florida Constitutions.

The City's code enforcement practice results in fines that can reach into the tens of thousands of dollars or more. If a homeowner is unable to pay, the City obtains a lien on the subject property. And if a homeowner can not pay off the lien, the City will foreclose. There is no cap on the fines that can be levied; the City does not consider a homeowner's ability to pay; and the City does not care if the property is occupied by a full-time resident. Such practices violate the Excessive Fines Clauses of both the U.S. and Florida Constitutions.

II. JURISDICTION AND VENUE

1. Plaintiffs Jim Ficken and Suncoast First Trust ("Plaintiffs") bring this civil rights lawsuit pursuant to the Declaratory Judgments Act, Fla. Stat. §§ 86.011–.111, for violations of the Due Process Clauses of both the U.S. and Florida Constitutions and the Excessive Fines Clauses of both the U.S. and Florida Constitutions.

2. Plaintiffs seek declaratory and injunctive relief against the City's decision to impose an aggregate fine of over \$29,000 against Plaintiffs, in violation of the Excessive Fines Clauses of the Eighth Amendment to the U.S. Constitution and Article I, section 17 of the Florida Constitution.

3. Plaintiffs seek declaratory and injunctive relief against the City's decision to foreclose on Plaintiffs' home as a penalty for temporarily having tall grass, in violation of the Excessive Fines Clauses of the Eighth Amendment to the U.S. Constitution and Article I, section 17 of the Florida Constitution.

4. Plaintiffs seek declaratory and injunctive relief against the City's code, insofar as it empowers the City to assess limitless fines, in violation of the Excessive Fines Clauses of the Eighth Amendment to the U.S. Constitution and Article I, section 17 of the Florida Constitution.

5. Plaintiffs seek declaratory and injunctive relief against the City's code, insofar as it empowers the City to assess fines without considering a homeowner's ability to pay and without considering whether the fines are catastrophic in nature or will result in the financial ruin of the homeowner, in violation of the Excessive Fines Clauses of the Eighth Amendment to the U.S. Constitution and Article I, section 17 of the Florida Constitution.

6. Plaintiffs seek declaratory and injunctive relief against the City's unconstitutional practice of commencing fines against so-called "repeat violators" without providing (1) appropriate notice and an opportunity to be heard regarding classification as a "repeat violator" and the consequences of such classification and (2) appropriate notice and an opportunity to be heard regarding an alleged violation before commencing fines against a "repeat violator," in violation of the procedural due process guarantees of both the Fourteenth Amendment to the U.S. Constitution and Article I, section 9 of the Florida Constitution.

7. This Court has jurisdiction under Fla. Stat. §§ 26.012(3), 86.011, and 86.061 and 42 U.S.C. § 1983.

8. Pursuant to Fla. Stat. § 47.011, venue is proper in this circuit because all Defendants reside in Pinellas County, Plaintiffs' causes of action accrued in Pinellas County, and the subject property is located in Pinellas County.

III. PARTIES

9. Plaintiff Suncoast First Trust is a Florida trust and the owner of the subject property, located at 1341 Lady Marion Lane in Dunedin, Florida 34698 (the "House").

10. Plaintiff James Ficken ("Jim") is the resident of the House. Jim is the sole trustee of Suncoast First Trust and an indirect beneficiary of Suncoast First Trust. Though the House is Jim's primary residence, it does not have homestead protection.

11. Jim is 69-years old, has virtually no regular income, and resides by himself in the House. He has never married and has no children.

12. Jim does not have tens of thousands of dollars with which to pay municipal fines for tall grass.

13. The deadlines the City has imposed on Jim—by which he must pay the City the tens of thousands he owes—have all lapsed, and now he is facing imminent foreclosure.

14. Defendant City of Dunedin is a municipality incorporated pursuant to Chapter 165 of the Florida Statutes.

15. Defendant City of Dunedin Code Enforcement Board (the "Board") is a local government code enforcement board appointed and organized under Fla. Stat. §§ 162.01–.13. It is charged with conducting enforcement proceedings for violations of the Dunedin Code. The

Board also provides authorization to the City Attorney to initiate action against code enforcement violators, including foreclosure.

16. Defendant Michael Bowman is the Chairman of the Dunedin Code Enforcement Board. Mr. Bowman is sued in his official capacity.

17. Defendant Lowell Suplicki is the Vice-Chairman of the Dunedin Code Enforcement Board. Mr. Suplicki is sued in his official capacity.

18. Defendant Arlene Graham is a member of the Dunedin Code Enforcement Board. Ms. Graham is sued in her official capacity.

19. Defendant Ken Carson is a member of the Dunedin Code Enforcement Board. Mr. Carson is sued in his official capacity.

20. Defendant William Motley is a member of the Dunedin Code Enforcement Board. Mr. Motley is sued in his official capacity.

21. Defendant Bunny Dutton is a member of the Dunedin Code Enforcement Board. Ms. Dutton is sued in her official capacity.

22. Defendant Dave Pauley is a member of the Dunedin Code Enforcement Board. Mr. Pauley is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. THE CITY OF DUNEDIN, FLORIDA, AND ITS CODE ENFORCEMENT PROCESS

23. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs.

24. As of July 1, 2017, the U.S. Census estimates that the City of Dunedin has a population of approximately 36,545 people, of which approximately 85.8% are adults.¹

25. The City maintains a code enforcement board, the stated purpose of which “is to [help property owners] achieve voluntary compliance” with the City’s various codes.²

26. To that end, the City maintains that its “Code Enforcement Inspectors are happy to work with a [sic] residents and property owners to bring their property into compliance with City codes.”³ The City’s website further advises that “[o]ften a simple phone call can take care of a potential problem, avoiding letters, appearance at a Code Enforcement Board hearing, and fines.”⁴

27. That does not mean that the City is afraid to take aggressive action against noncompliant homeowners. As the city attorney has explained, “you have to have a strong constitution that you understand that we are going to be [fining people] to get the properties in compliance.”⁵

28. If a property is alleged to be noncompliant, a case number is generated, and notice of violation is supposed to be provided to the property owner.

29. The notice of violation is required to state, among other things, the alleged violation and a required compliance date.

30. If a property remains noncompliant upon reinspection at the time of the stated compliance date, a notice of hearing is supposed to be sent to the property owner.

¹ U.S. Census Bureau, *QuickFacts, Dunedin city, Florida* (July 1, 2017), available at <https://www.census.gov/quickfacts/fact/table/dunedincityflorida/PST045217#PST045217>.

² City of Dunedin, *Code Enforcement Division*, available at <https://www.dunedingov.com/city-departments/planning-development/code-enforcement-division>.

³ *Id.*

⁴ City of Dunedin, *Code Enforcement Process Infographic*, available at <https://www.dunedingov.com/home/showdocument?id=10915>.

⁵ Tom Germond, *Dunedin officials take on nuisance properties*, Tampa Bay Newspapers, April 26, 2018, available at https://www.tbnweekly.com/north_county/article_d5fa5700-48aa-11e8-9de0-87fe057cbc9a.html.

31. During the hearing, the Board is supposed to “consider[] all code enforcement violations based on testimony and evidence presented at the hearing by the City *and the Respondent (property owner in violation)*” (emphasis added).⁶

32. If, based on the testimony and evidence, the Board determines that a property is in violation, the Board either sets a new compliance date and/or imposes a daily fine and a date on which the fines will commence.

33. Once a violation has been determined, the Board is authorized to impose a daily fine.

34. The maximum daily fine for a violation of the Dunedin Code of Ordinances by a non-repeat violator is \$250. If a property owner is deemed a “repeat violator,” however, the maximum daily fine for a violation of the Dunedin Code of Ordinances is \$500. *See* Dunedin, Fla., Code of Ordinances Part I, Subpart A, Ch. 22, art. III, § 22-79(d).

35. Moreover, if a property owner is deemed a “repeat violator,” according to the City, such person is not entitled to the same notice requirements described above. Rather, the City claims that it is empowered to commence fines immediately and without any notice whatsoever.

36. The City’s Code of Ordinances defines a “repeat violation” as “a violation of a provision of a code or ordinance by a person who has been previously found by the code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation.” Dunedin, Fla., Code of Ordinances Part I, Subpart A, Ch. 22, art. III, § 22-42.

⁶ City of Dunedin, *Code Enforcement Division*, available at <https://www.dunedingov.com/city-departments/planning-development/code-enforcement-division>.

37. Although the City’s own ordinance requires an adjudication on an alleged violation to be deemed a repeat violator, the City routinely applies the “repeat violator” classification to individuals who were never fined or otherwise subject to traditional enforcement actions.

38. For property owners who are treated as “repeat violators” by the City, fines begin to accrue *immediately* and without any formal determination or adjudication by the Board. A hearing is eventually held on the matter; however, unlike the traditional process, the purpose of the hearing for “repeat violators” is twofold: to determine liability and—rather than setting a compliance date—to calculate the fines that have already begun to accrue.

39. If a code enforcement violation is deemed “irreparable or irreversible,” there is a maximum fine of \$5,000, regardless of whether the property owner is a “repeat violator.”

40. Otherwise, there is no limit to the total amount of fines the city can impose.

41. The City does not consider a property owner’s ability to pay when assessing daily fines.

42. Additionally, despite the City’s purported willingness to work with property owners, the City does not consider requests for fine reconsideration in code enforcement cases involving “repeat violators.” Nothing in the City’s ordinances or Florida statutes establishes that “repeat violators” are forbidden from seeking reconsideration of their fines. But that is the City’s position.

43. The City can, and does, impose daily fines that, when aggregated, reach tens of thousands of dollars. Many of these fines are for violations that have nothing to do with public health or safety, like having grass longer than ten inches.

44. But imposing fines is not the only way the City can achieve its stated goal of bringing properties into compliance. For example, the City is empowered to remedy many code violations and invoice the property owner accordingly. *See* Dunedin, Fla., Code of Ordinances Part I, Subpart A, Ch. 34, art. II, § 34-33(b)(1).

45. Both the mayor and at least one member of the Dunedin City Commission have suggested that such a course of action may be preferable to protracted code enforcement proceedings and fines, specifically for instances in which the alleged infraction is for tall grass.⁷

B. THE CITY’S IMPOSITION OF LIENS AND FORECLOSURES

46. Once a violation has been found and a compliance date has been set by the Board, a property owner must fix the violation or risk additional fines.

47. If a property remains in a state of noncompliance beyond the compliance date set by the Board, the city attorney may seek the issuance of an order of lien against the property.

48. If the underlying violation has been remedied by the time an order of lien is issued, the amount of the lien will be the amount of the fines due when the lien issued, plus interest. If the underlying code violation still exists when an order of lien is issued, the lien is for the amount of the fine when the lien issued, plus the still-accruing daily fine and interest.

49. If a property is brought into compliance but the lien remains unpaid, the City may foreclose on the subject property to collect on the lien. Neither the City’s ordinances nor Florida statutes establish a date by which the City must foreclose on a property to collect on an unpaid lien.

⁷ *See* Minutes of the City Commission Regular Meeting of October 4, 2018, p. 18-9 (Mayor Bujalski “referr[ing] to a photograph . . . and what bothered her was the high grass and five or six years ago the Commission gave carte blanche to staff to mow the grass and charge people”), *available at* http://dunedin.granicus.com/DocumentViewer.php?file=dunedin_702fb4076ed89647edcbfd806cdc9db9.PDF&view=1.

50. Accordingly, the City may wait until the value of a lien exceeds the value of the property before initiating a foreclosure action.

51. Before filing a foreclosure action against a property owner, the city attorney will typically—but is not required to—seek permission from the Board. Thereafter, the city attorney may file the foreclosure action at any time.

52. Following the foreclosure sale, the City is entitled to full payment of the lien, and any remaining surplus is returned to the former property owner. *See Fla. Stat. § 45.032.* If the amount collected via foreclosure is less than the amount owed to the City, the City may initiate a separate action against the former property owner to collect the difference.

C. THE CITY OF DUNEDIN’S CODE ENFORCEMENT REVENUE

53. The City relies on the administration of its code enforcement system as a means for providing revenue for the City’s general fund.

54. Based on information and belief, municipal salaries and expenses are paid with revenue collected from fines.

55. Based on information and belief, the city attorney’s salary is paid, at least in part, with revenue collected from fines and other related assessments such as attorney’s fees stemming from collections efforts.

56. The City attorney has described the City’s code enforcement system as a “well-oiled machine.” Indeed, other city officials have touted code enforcement as “the perfect way to” deal with foreclosed and nuisance properties because it “covers your costs and whatever is left

