



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

070936

TO: Mayor and City Commissioners

DATE: February 25, 2008

FROM: City Attorney


CONSENT

SUBJECT: Building 32606, Inc. a Florida Corporation and Star Garage Corporation, a Florida Corporation vs. First Street Lodging, LLC, a South Carolina limited liability company, and City of Gainesville, a Florida municipal corporation; Alachua County Circuit Court; Case No.: 01-08-CA-438

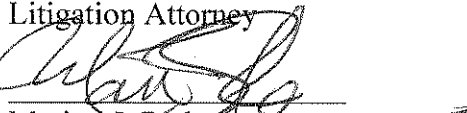
Recommendation: The City Commission authorize the City Attorney and/or Special Counsel if insurance coverage is available, to represent the City in the case styled Building 32606, Inc. a Florida Corporation and Star Garage Corporation, a Florida Corporation vs. First Street Lodging, LLC, a South Carolina limited liability company, and City of Gainesville, a Florida municipal corporation; Case No.: 01-08-CA-438

On February 6, 2008, the City of Gainesville was served with a summons and complaint. The Plaintiff alleges that its sole and exclusive right to use and possess a leased strip adjacent to its building has been violated. The Plaintiff is requesting that the Court void the building permit issued to First Street Lodging by the City and enjoin First Street Lodging from trespassing on the leased strip.

Prepared by:


Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:


Marion J. Radson,
City Attorney

EAW/klm

IN THE CIRCUIT COURT IN THE EIGHTH JUDICIAL CIRCUIT IN AND FOR ALACHUA COUNTY, FLORIDA. FEB -6 PM 3:33

BUILDINGS 32606, INC.,)
a Florida corporation, and)
STAR GARAGE CORPORATION, a)
Florida corporation,)
Plaintiffs,)

CASE NO.: 01-2008-CA-438

DIVISION: K

vs.)

COPY

FIRST STREET LODGING, LLC,)
a South Carolina limited)
liability company, and)
CITY OF GAINESVILLE, a Florida)
municipal corporation,)
Defendants.)

A TRUE COPY
SADIE DAHNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 3:25 PM on the 6 Day
of February 20 08
BY D/S [Signature] AS DEPUTY SHERIFF
O/S [Signature]

S U M M O N S

THE STATE OF FLORIDA:

TO EACH SHERIFF OF THE STATE: You are hereby commanded to serve this Summons and a copy of the Complaint or Petition in this action on Defendant:

CITY OF GAINESVILLE,
a Florida municipal corporation
Please serve: **Pegeen Hanrahan, City Mayor**
200 East University Avenue
Gainesville, Florida

Each Defendant is required to serve written defenses to the Complaint or Petition to **A. BICE HOPE, ESQUIRE**, Plaintiffs' attorney, whose address is **P.O. Box 5217, Gainesville, Florida 32627, (352) 371-2066** within thirty (30) days after service of this Summons on the Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the Complaint or Petition.

WITNESS my hand the Seal of this Court this 31st day of January, 2008.

J.K. "BUDDY" IRBY
As Clerk of said Court



(SEAL)

By: D. Thomas
As Deputy Clerk

"IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PERSONS WITH A DISABILITY WHO NEED ANY ACCOMMODATION IN ORDER TO PARTICIPATE SHOULD CALL JAN PHILLIPS, ADA COORDINATOR, ALACHUA COUNTY COURTHOUSE, 201 EAST UNIVERSITY AVENUE, GAINESVILLE, FL 32601 AT (352) 337-6237 WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE. IF YOU ARE HEARING IMPAIRED CALL (800) 955-8771; IF YOU ARE VOICE IMPAIRED CALL 800-955-8770."

IN THE CIRCUIT COURT OF THE
EIGHTH JUDICIAL CIRCUIT, IN
AND FOR ALACHUA COUNTY,
FLORIDA.

BUILDINGS 32606, INC.,)
a Florida corporation, and)
STAR GARAGE CORPORATION, a)
Florida corporation,)
)
Plaintiffs,)
)
vs.)
)
FIRST STREET LODGING, LLC,)
a South Carolina limited)
liability company, and)
CITY OF GAINESVILLE, a Florida)
municipal corporation,)
)
Defendants.)

CASE NO.: 01-2008-CA-438
DIVISION: K

VERIFIED COMPLAINT

Plaintiffs, BUILDINGS 32606, INC., a Florida corporation, and
STAR GARAGE CORPORATION, a Florida corporation, sue Defendants,
FIRST STREET LODGING, LLC, a South Carolina limited liability
company, and CITY OF GAINESVILLE, a Florida municipal
corporation, and allege:

1. This is an action for temporary and permanent
injunctive relief and for a declaratory judgment under
Chapter 86, Fla. Stats. (2007).
2. Plaintiff, Buildings 32606, Inc., (hereinafter referred
to as "Buildings 32606") is an active Florida
corporation duly authorized and doing business in
Alachua County, Florida, and whose last known post
office address is 3434 S.W. 24th Avenue, Suite "A",
Gainesville, Florida 32607.

3. Plaintiff, Star Garage Corporation, (hereinafter referred to as "Star Garage") is an active Florida corporation duly authorized and doing business in Alachua County, Florida, and whose last known post office address is 3434 S.W. 24th Avenue, Suite "A", Gainesville, Florida 32607.
4. Defendant, First Street Lodging, LLC, (hereinafter referred to as the "First Street Lodging") is a South Carolina limited liability company, which is operating, conducting, engaging in or carrying on business or a business venture in Alachua County, Florida, and whose last known post office address is 25 Woods Lake Road, Suite #600, Greenville, South Carolina 29607.
5. First Street Lodging also owns, uses and possesses real property in Alachua County, Florida, hereinafter more particularly described.
6. Defendant, City of Gainesville, (hereinafter referred to as the "City") is a Florida municipal corporation located in Alachua County, Florida.

7. All of the conditions precedent to the filing of this action have occurred or accrued.
8. Star Garage is the owner of certain real property located in Alachua County, Florida, and which property is more particularly described in the Warranty Deed from Star Garage Legal Center, a Florida general partnership, to Star Garage attached hereto as Exhibit "A", and is hereinafter referred to as "said commercial building".
9. Said commercial building contains approximately 30,000 square feet of offices leased to governmental agencies including the Alachua County Supervisor of Elections and the Guardian Ad Litem program and which tenants employ approximately 75 full time employees at said commercial property. In addition to the said employees, numerous members of the public, vendors, clients and the like visit said commercial building daily during the work week.

10. The main entrance to the said commercial building is on the west side. An estimated 75% of all those employees, members of the public, vendors, clients and the like use the west entrance for ingress and egress to the said commercial building.
11. Adjoining said commercial building to the west is a 20' strip formerly owned by the City of Gainesville (hereinafter referred to as the "City").
12. The City entered into a Lease Agreement dated December 26, 1985 with Star Garage's predecessor-in-interest Star Garage Legal Center, a Florida general partnership. A copy of the Lease Agreement is attached hereto as Exhibit "B" (hereinafter referred to as the "Lease Agreement").
13. The Lease Agreement is effective through December 25, 2035, and all of the rent due through that date was paid in full at the commencement of the lease.

14. The premises covered by the Lease Agreement is an approximate 20' x 200' strip located between said commercial building known as the Star Garage (to the east) and a city parking lot (to the west), said premises hereinafter referred to as the "Leased Strip".
15. Paragraph 4. of the Lease Agreement states as follows:

"BUILDING SERVED. It is contemplated and intended that the leased premises is for the use and benefit of the patrons, occupants and customers of the building located immediately to the east of the leased premises and commonly referred to as the Star Garage."
16. On or about November 22, 2004, Star Garage purchased the said commercial building, and, as part of the preparation for the purchase, the City executed a Consent to Assignment of Lease Agreement between the City of Gainesville and Star Garage Legal Center on November 15, 2004. A copy of the Consent to Assignment of Lease Agreement (hereinafter referred to as the "Consent") is attached hereto as Exhibit "C".
17. The Consent gave the City's approval to assignment of the December 26, 1985 Lease Agreement to Buildings 32606, Inc.

18. Also, as part of this sale transaction, Star Garage Legal Center and Buildings 32606 executed an Assignment of Lease assigning all of the lessee's rights under the December 26, 1985 Lease Agreement to Buildings 32606. A copy of the Assignment of Lease dated November 22, 2004 is attached hereto as Exhibit "D".
19. Star Garage is a third party beneficiary of the Lease Agreement, and the main purpose of the Lease Agreement is to benefit Star Garage's said commercial building.
20. On or about December 19, 2007, the City sold the parking lot to the west of the Leased Strip and the Leased Strip to First Street Lodging. A copy of the Special Warranty Deed evidencing that transaction with a complete legal description of the property conveyed is attached hereto as Exhibit "E".
21. As part of that transaction, the City assigned and First Street Lodging acknowledged and accepted the assignment of the Lease Agreement to/by the Grantee. A copy of the Assignment of Lease is attached hereto as Exhibit "F".

22. First Street Lodging's intention is to immediately build a 6 or 7 story Hampton Inn hotel on the parking lot property portion of the land conveyed to it by the City.
23. First Street Lodging's further intention as shown on its building plans filed with the City is to erect a "temporary construction chainlink fence" on the Leased Strip which would effectively fence off about 16' of the 20' strip so that the said commercial building's tenants and the lessee of the Leased Strip would have no use of the 16' portion of the Leased Strip (see Exhibits "G", "H" and "I" attached hereto).
24. Instead they would be limited to the approximate easterly 4' of the 20' strip which means ingress and egress to the said commercial building's main entrance would be around or over the existing air conditioning compressors, and all existing landscaping on the west side of the said commercial building would have to be removed.

25. The erection of such a "temporary construction chain-link fence" indicates First Street Lodging's intention to use at least 16' of the 20' of the Leased space as a staging area for construction of the 6 or 7 story hotel. The use of the Leased Strip significantly intensifies the intended use of the Leased Strip and multiplies exponentially Buildings 32606's potential liabilities under the Lease Agreement. More specifically, the Leased Strip's use, which Buildings 32606 is required to provide insurance for, will go from a landscaped pedestrian walkway to part of a construction site for a 6 or 7 story building.
26. First Street Lodging's further intention as shown on its building plans is to store its trash immediately west of the Leased Strip's west line and to use the Leased Strip for ingress and egress to the hotel and to haul trash from the hotel to an off-site container (see Exhibits "G", "H" and "I" attached hereto).
27. First Street Lodging has no rights to the present use or possession of the Leased Strip.

28. Rather Buildings 32606 has all rights to the present use and possession of the Leased Strip, which rights shall continue throughout the Lease term through December 25, 2035.
29. Notwithstanding the above, the City has granted First Street Lodging, LLC a building permit showing the fencing, ingress and egress and trash conditions as specified above. Copies of excerpts from the City approved plans are attached hereto as Exhibits "G", "H" and "I".
30. First Street Lodging's planned actions as specified above would have an immediate substantial and irreversible negative impact on Buildings 32606 and on said commercial building. More specifically,
 - A. Buildings 32606 would be totally excluded from possession and use of 80% of the Leased Strip;
 - B. The remaining portions of the Leased Strip are impassable because of the air conditioners and landscaping located thereon;

- C. The said commercial building's main entrance is blocked for all practical purposes and is unuseable;
 - D. This effectively completely deprives the Plaintiffs of use of the Leased Strip
31. The elimination of the use of the said commercial building's main entrance significantly devalues the said commercial building and probably will result in eventual loss of tenants.
32. The facts alleged above constitute irreparable harm which the Plaintiffs are suffering because of the actions of the City and First Street Lodging.
33. Plaintiffs have no adequate remedy of law in that the damages they will suffer over the life of the Lease Agreement (27± years) are not capable of calculation with certainty.
34. There is a bona fide, actual, present, practical need for a declaration of parties respective right to possession and use of the Leased Strip.

35. The above-stated facts are present, ascertained or ascertainable facts or present controversy as to a state of facts.
36. The right of Buildings 32606 to possession and use of the Leased Strip is dependant upon the above-stated facts or the law applicable to those facts.
37. The Plaintiffs have an actual, present interest in whether or not they have exclusive possession and use of the Leased Strip.
38. The Plaintiffs are interested in or may be in doubt as to their rights under the Lease Agreement and how those rights may be affected by the City's ordinances regarding approving building permits and the attempted possession and use of the Leased Strip by First Street Lodging.

WHEREFORE, Plaintiffs, Buildings 32606, Inc. and Star Garage Corporation, respectfully request from the court:

- A. that it take jurisdiction of this cause;
- B. that it declare that portion of the City's building permit which permits First Street Lodging to use the Lease Strip void;

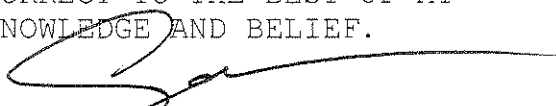
VERIFIED COMPLAINT
Buildings 32606, Inc. and Star Garage Corp.
vs. First Street Lodging, LLC and
City of Gainesville
Case No.: 01-2008-CA-

- C. that it declare that the Plaintiffs have the sole and exclusive right to use and possess the Leased Strip under the terms of the Lease Agreement;
- D. that it enjoin the City of Gainesville for the remaining term of the Lease Agreement from approving any permits or plans involving use of the Leased Strip without Buildings 2606's express approval;
- E. that it temporarily and permanently (for the term of the Lease Agreement); enjoin First Street Lodging from trespassing on the Leased Strip and to immediately remove any personal property First Street Lodging has placed or caused to be placed on the Leased Strip;
- F. that it grant such other and further relief as it finds equitable and just.

VERIFIED COMPLAINT
Buildings 32606, Inc. and Star Garage Corp.
vs. First Street Lodging, LLC and
City of Gainesville
Case No.: 01-2008-CA-

DATED this 31st day of January, 2008.

I HEREBY CERTIFY THE FOREGOING
STATEMENTS ARE TRUE AND
CORRECT TO THE BEST OF MY
KNOWLEDGE AND BELIEF.



Saul Silber, President of
Buildings 32606, Inc. and Star
Garage Corporation

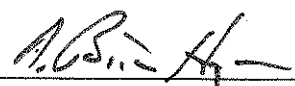
STATE OF FLORIDA:
SS:
COUNTY OF ALACHUA:

I HEREBY CERTIFY that the foregoing instrument was
acknowledged before me this 31st day of January, 2008, by **SAUL
SILBER**, President of Buildings 32606, Inc. and Star Garage
Corporation, Florida corporation, and who is personally known to
me.

NOTARY PUBLIC

SIGN:


State of Florida At Large
Paula Jewett
My Commission Expires: 2/5/2010
My Commission Number: DD500088


A. BICE HOPE, ESQUIRE
Florida Bar No.: 173999
P.O. Box 5217
Gainesville, Florida 32627-5217
Telephone (352) 371-2066
Facsimile (352) 376-2128
Attorney for Plaintiffs

SILBER/COMP_FSL

NOTARY PUBLIC-STATE OF FLORIDA
Paula Jewett
Commission # DD500088
Expires: FEB. 05, 2010
Bonded Thru Atlantic Bonding Co., Inc.