

**LEGISTAR NO.**

**150163**

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

CASE NO.: 01 2015 CA 001159  
DIVISION: CC K

LANARD ISAAC, individually,

Plaintiff,

vs.

OFFICE OF THE CITY ATTORNEY

DUVAL AUTOMOTIVE GAINESVILLE, LLC  
d/b/a MERCEDES-BENZ OF GAINESVILLE,

JUL 14 2015

Defendant,

vs.

RECEIVED

CITY OF GAINESVILLE,

Third-Party Defendant.

**THIRD PARTY SUMMONS**

THE STATE OF FLORIDA:

GREETINGS:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the Third Party Complaint in the above styled cause upon the Third Party Defendant, **CITY OF GAINESVILLE**, d/b/a Ironwood Golf Course, Risk Management, P.O. Box 490, Station 60, Gainesville, FL 32627.

Each third party defendant is hereby required to serve written defenses to said Third Party Complaint or petition on Defendant/Third Party Plaintiff's attorney, whose name and address is:

**JOHN MOFFITT HOWELL, ESQUIRE**  
**O'Neal & Howell, P.A.**  
2700 University Blvd. West, Suite C  
Jacksonville, Florida 32217  
(904) 353-0024

and on Plaintiff's attorney: Gerald D. Schackow, Esquire, 4545 NW 8<sup>th</sup> Avenue, Gainesville, FL 32605 (dana@lawschack.com) within 20 days after service of this summons upon that defendant, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on plaintiff's attorney or immediately thereafter. If a third party defendant fails to do so, a default will be entered against that defendant for the relief demanded in the third party complaint or petition.

*7/14/15 at 9:30 am by  
Stecher*

WITNESS my hand and seal of said Court on \_\_\_\_\_ July 8, 2015.



J.K. Irby, Clerk of Said Court

By: \_\_\_\_\_

As Deputy Clerk

Civil Division

Alachua County Courthouse

201 East University Avenue

Gainesville, Florida 32601

Phone: 352-374-3636

Fax: 352-338-3207

*Carol*

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CASE NO.: 01 2015 CA 001159  
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LANARD ISAAC, individually,

Plaintiff,

vs.

DUVAL AUTOMOTIVE GAINESVILLE, LLC  
d/b/a MERCEDES-BENZ OF GAINESVILLE,

Defendant,

vs.

CITY OF GAINESVILLE,

Third-Party Defendant.

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**ANSWER, AFFIRMATIVE DEFENSES, AND THIRD PARTY COMPLAINT FOR  
INDEMNITY AGAINST CITY OF GAINESVILLE**

ANSWER TO AMENDED COMPLAINT

The Defendant, Duval Automotive Gainesville, LLC d/b/a Mercedes-Benz of Gainesville, by and through its undersigned attorneys, answers the Amended Complaint herein filed, saying:

1. It admits, for jurisdictional purposes only, the averment made in paragraph 1.
2. It further admits the allegations of paragraphs 2, 3, 4, 6, 9, 10, and 13.
3. It also admits that: it was contacted by the Twenty Pearls Foundation, Inc. to see if it wanted to donate a new Mercedes-Benz automobile as a hole-in-one prize, and that it was contacted because it had donated a new Mercedes-Benz hole-in-one prize to this same golf tournament for at least three (3) years prior to the 2014 golf tournament; after being contacted by the Twenty Pearls Foundation, Inc., it accepted the hole-in-one sponsorship for this 2014 charity golf tournament; approximately ten (10) days before the golf tournament, the Gainesville Sun published a newspaper article, which clarified that the prize for a hole-in-one at the golf tournament was to be a new Mercedes-Benz automobile

from this Defendant, and Exhibit "C" is a true and correct copy of the Gainesville Sun newspaper article; and at the time of the subject golf tournament, hole number four (4) had no independent witnesses at the green, no special tees from which all golfers had to tee off from, and there was not a new Mercedes-Benz automobile anywhere in sight.

4. It is without knowledge as to the truth or veracity of those allegations made in paragraphs 7 and 11.

5. It denies each and every, all and singular, the remaining allegations of the Amended Complaint.

#### **FIRST AFFIRMATIVE DEFENSE**

The Amended Complaint fails to state a cause of action against the defendant in this, to wit: there is no allegation in the Amended Complaint that this Defendant, either by word (written or spoken) or deed ever offered to promise a new 2014 CLA 250 Mercedes-Benz automobile to any golf participant who scored a hole-in-one on hole number six (6).

#### **SECOND AFFIRMATIVE DEFENSE**

There was a failure of consideration for the alleged unilateral contract in this, to wit: the offer made by this Defendant was a promise to award a new 2014 CLA 250 Mercedes-Benz automobile to any participant who scored a hole-in-one on hole number four (4), and Plaintiff, Lenard Isaac, never performed or accepted the specified act constituting this Defendant's offer or promise.

#### **THIRD PARTY COMPLAINT FOR INDEMNITY AGAINST CITY OF GAINESVILLE**

Defendant, Duval Automotive Gainesville, LLC, d/b/a Mercedes-Benz of Gainesville (hereinafter "Mercedes-Benz"), sues Third-Party Defendant, City of Gainesville (hereinafter "City"), and alleges:

### General Allegations

1. This is an action for indemnity arising out of breach of express and/or implied contractual obligations and the amount in controversy exceeds the sum of fifteen thousand dollars (\$15,000), exclusive of interest and costs.

2. Plaintiff, Lanard Isaac, has sued Defendant Mercedes-Benz for alleged breach of unilateral contract to award a new Mercedes-Benz automobile as a prize for a hole-in-one during a charity golf tournament at the Ironwood Golf Course in Gainesville, Florida on November 8, 2014. A copy of Plaintiff's Amended Complaint is attached hereto as Exhibit "A", and for the purpose of this third-party action only, the allegations therein and are realleged and incorporated by reference herein.

3. Ironwood Golf Course, formerly a privately owned golf club, has been purchased by and all times material was owned and operated as a public golf course by the City of Gainesville as a private and proprietary function.

4. Mercedes-Benz had agreed to serve as the hole-in-one sponsor for the golf tournament.

5. To that end, just as it had done in years past, it purchased hole-in-one insurance from TSI Sports, Inc. to cover a hole-in-one on hole number 4 (a 165 yard par 3). Also as it had done in the past, on the afternoon before the tournament, Mercedes-Benz delivered a new Mercedes-Benz automobile to the golf course as the hole-in-one prize. In the front seat of the car was a box containing a large sponsor sign provided by TSI (the hole-in-one insurer), indicating that the automobile was the prize for a hole-in-one on hole number 4. Also in the box was paperwork from TSI containing the "Hole-in-One Event Specifications" (also designating hole number 4 as the target hole), the "Tournament Conditions," and the Witness Requirements (all of which documents the City recognized and agreed were the contract documents governing its conduct and operation of the hole-in-one

tournament). Copies of the sign and contract documents provided by TSI are attached hereto as Composite Exhibit "B."

6. At all times material, the City, through its employees at the Ironwood Golf Course, knew that the sign and contract documents provided with the hole-in-one prize indicated that the sponsor, Mercedes-Benz, had designated hole number 4 as the "target" or "prize" hole and had purchased hole-in-one insurance to cover a hole-in-one on that hole.

7. The "Conditions" in the contract documents provided with the prize car specifically stated that any changes within the "Specifications", including particularly any change in the designated "Target Hole", require notification to TSI Sports (the hole-in-one insurer) prior to the start of the tournament (so that the insurance coverage could be adjusted to cover the new "Target Hole").

8. On the day of the tournament, the City, through its agents and employees at the Ironwood Golf Course, unilaterally and without notifying Defendant Mercedes-Benz, decided to set up the hole-in-one tournament so that the target or prize hole was hole number 6 (also a 165 yard par 3) rather than hole number 4. Other than setting up the hole-in-one contest on a hole different from the pre-designated (and insured) "target hole", the City's set-up of the tournament complied with all other tournament specifications and "conditions" as spelled out in the contract documents (such as yardage, number of witnesses, etc.).

9. Defendant was in no way involved in the set-up or conduct of the hole-in-one contest, and had no knowledge that the City had designated hole number 6 instead of hole number 4 as the "prize" hole.

10. During the tournament, Plaintiff scored a hole-in-one on hole number 6.

11. Even though Defendant had nothing to do with setting up the tournament, Plaintiff alleges in his Amended Complaint that because of the way the tournament had been set up, "it appeared to him" (the Plaintiff) that Defendant was giving away a new car to any participant who scored a hole-in-one on hole number 6. Plaintiff further alleges that

because of the way the tournament was set up, it was Defendant's "manifested intent" to offer a new car as the prize for a hole-in-one on hole number 6, and "that as a result of" Defendant's "manifested intent," Defendant "did in fact offer" a new car as a prize for any hole-in-one on hole number 6.

12. Defendant denies that it offered to award a new car as a prize for a hole-in-one on hole number 6 or otherwise breached any alleged unilateral contract.

13. However, if Defendant can somehow be held liable to Plaintiff for the hole-in-one on hole number 6 under the circumstances as set forth hereinabove, Defendant is entitled to full and complete indemnity from the City of Gainesville, for the reasons set forth below.

#### Claim for Indemnity Against City of Gainesville

14. The allegations above are re-alleged and incorporated by reference herein.

15. At all times material, the persons working at Ironwood Golf Course, including Eric Thomas and any others directly involved in setting up the hole-in-one contest on hole number 6, were employees of the City of Gainesville and were acting within the course and scope of said employment.

16. The City had agreed to furnish the situs for the subject charity golf tournament and to set up and operate said tournament.

17. The City expressly or impliedly agreed to set up and conduct the hole-in-one contest in accordance with the specifications and conditions set forth in the contract documents so that any hole-in-one during the tournament would be eligible and qualify for the new car prize, and so that such hole-in-one would also be properly covered by the hole-in-one insurance purchased by Defendant.

18. Under the circumstances, the City owed Defendant an express or implied contractual obligation to set up the hole-in-one contest on the hole which the contract documents had been pre-designated as the "target hole" and on which Defendant had purchased hole-in-one insurance, or alternatively, to notify Defendant of any desired change



In the hole-in-one "target hole" in sufficient time for Defendant to notify TSI and make the necessary change in coverage.

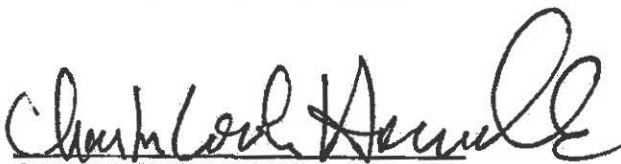
19. The City breached said duty by never notifying Defendant of its intention to utilize hole number 6 as the "target hole" in sufficient time to allow Defendant to make the necessary change in its insurance coverage.

20. Accordingly, if Defendant can be held liable to Plaintiff for breach of a unilateral contract as alleged in the Amended Complaint, Defendant would be entitled to complete indemnity from the City for the City's own breach of its express or implied contractual duty and obligation to Defendant to assure that Defendant had ample prior opportunity to assure coverage for any hole-in-one during the tournament.

21. Defendant requests a trial by jury of all issues so triable under this Third-Party Complaint.

WHEREFORE, Defendant Mercedes-Benz demands judgment against the Third-Party Defendant, City of Gainesville, for damages to the extent Defendant may be held liable to Plaintiff herein, together with its costs and attorney's fees incurred in the defense of Plaintiff's claim.

Respectfully submitted,



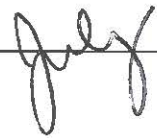
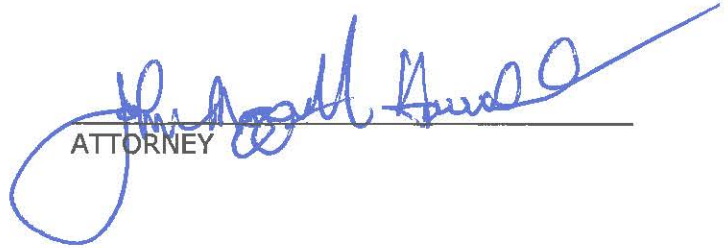
CHARLES COOK HOWELL, III  
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701 Riverside Park Place, Suite 310  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing original has been furnished electronically to Gerald D. Schackow, Esquire, 4545 NW 8<sup>th</sup> Avenue, Gainesville, FL 32605 [dana@lawschack.com](mailto:dana@lawschack.com) by Electronic Mail System on this 8<sup>th</sup> day of July, 2015.

  
  
\_\_\_\_\_  
ATTORNEY

**EXHIBIT "A"**

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

LANARD ISAAC, Individually,

Plaintiff,  
vs.

Case No.: 01 2015 CA 001159  
Division: K

DUVAL AUTOMOTIVE GAINESVILLE, LLC  
d/b/a MERCEDES-BENZ OF GAINESVILLE

Defendant,  
\_\_\_\_\_ /

AMENDED COMPLAINT

Comes now the Plaintiff, LANARD ISAAC, Individually, and sues Defendant, DUVAL AUTOMOTIVE GAINESVILLE, LLC d/b/a MERCEDES-BENZ OF GAINESVILLE, hereinafter referred to as MERCEDES-BENZ, and alleges as follows:

1. This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.
2. That at all times material to this cause of action, the Plaintiff, LANARD ISAAC, was a resident of the state of Florida and *sui juris*.
3. That at all times material to this action, Defendant, MERCEDES-BENZ, was a corporation, authorized to do business in the State of Florida by virtue of a license held by the Secretary of State of the State of Florida, and maintained an office and was doing business in Gainesville, Alachua County, Florida. Additionally, MERCEDES-BENZ has named Joanne A. Ackman as their registered agent, who is located at 701 Riverside Park Place, Suite 310, Jacksonville, Florida 32204.
4. That at all times material to this action, the Twenty Pearls Foundation, Inc. was hosting a charity golf tournament to take place on November 8, 2014 at Ironwood Golf Course. Prior to the date of their golf tournament, this aforementioned charity foundation began seeking



local business sponsors to assist with donations for the charity golf tournament. Said donations for the aforementioned golf tournament included prizes, cash, or services performed at the tournament.

5. Defendant, **MERCEDES-BENZ**, was contacted by the Twenty Pearls Foundation, Inc. to see if it wanted to donate a new Mercedes-Benz automobile as a hole-in-one prize. **MERCEDES-BENZ** was contacted because it had donated a new Mercedes-Benz automobile hole-in-one prize to this same golf tournament for at least three (3) years prior to the 2014 golf tournament. After being contacted, **MERCEDES-BENZ** accepted the hole-in-one sponsorship for this 2014 charity golf tournament. **MERCEDES-BENZ** promised to give a 2014 CLA 250 Mercedes-Benz automobile to any participant of said 2014 charity golf tournament who scored a hole-in-one.

6. That on or about November 8, 2014, the Plaintiff, **LANARD ISAAC**, was a paid participant in the Twenty Pearls Foundation, Inc. charity golf tournament.

7. That in the several months preceding the aforementioned golf tournament, members of the Twenty Pearls Foundation, Inc. placed posters at various locations in the Gainesville area announcing the tournament and the prizes to be awarded for various contests. Included in the posters was an announcement that Defendant, **MERCEDES-BENZ**, would be sponsoring the hole-in-one prize. A true and correct copy of the golf tournament posters are attached hereto as Exhibit "A" and Exhibit "B," and are incorporated herein by reference.

8. That approximately ten (10) days before the aforementioned golf tournament, the Gainesville Sun published a newspaper article, which clarified that the prize for a hole-in-one at the aforementioned golf tournament was to be a new Mercedes-Benz automobile from Defendant, **MERCEDES-BENZ**. A true and correct copy of the Gainesville Sun newspaper article is attached hereto as Exhibit "C" and is incorporated herein by reference.

9. That the stated value of said automobile was listed at \$35,000.00

10. That in addition to these facts, prior to the tournament, **MERCEDES-BENZ** delivered the 2014 CLA 250 Mercedes-Benz automobile to Ironwood Golf Course.

11. That when Plaintiff, **LANARD ISAAC**, arrived and began playing golf at the aforementioned golf tournament on November 8, 2014, it appeared to him that **MERCEDES-BENZ** was giving away a new 2014 CLA 250 Mercedes-Benz automobile to any participant who scored a hole-in-one on hole number six (6), as all of the set-up requirements commonly used to award a hole-in-one prize were fulfilled, including the following:

a. A 2014 CLA 250 Mercedes-Benz automobile was prominently displayed near the tee box on hole number six (6), indicating this to be the hole-in-one prize hole.

b. Two independent witnesses were stationed near the green so as to clearly see the pin and verify if a hole-in-one shot was made on hole number six (6), indicating this to be the hole-in-one prize hole.

c. All of the tees (Ladies, Men, Seniors) were arranged at a distance of 165 yards or more to the hole on hole number six (6), indicating this to be the hole-in-one prize hole.

12. That at that same time, hole number four (4) had no independent witnesses at the green, no special tees from which all golfers had to tee off from, and there was not a new Mercedes-Benz automobile anywhere in sight. There were no signs to indicate that any prize at all was to be given that day for any golfing skill on hole number four (4).

13. That on or about November 8, 2014, during the Twenty Pearls charity golf tournament, the Plaintiff, **LANARD ISAAC**, on hole number six (6) that had a 2014 CLA 250 Mercedes-Benz automobile displayed, and from a tee distance where all golfers were instructed to take their shots, swung his golf club and scored a hole-in-one in front of two independent witnesses on hole number six (6), who were stationed on hole number six (6) to verify if any golfer shot a single shot from pre-arranged tees on hole number six (6) into the number six (6)

hole to score a hole-in-one.

### COUNT I – BREACH OF CONTRACT

For the first count, the Plaintiff, **LANARD ISAAC**, sues the Defendant, **MERCEDES-BENZ**, and alleges:

14. Plaintiff reaffirms and realleges paragraphs one (1) through thirteen (13) of this complaint, as fully as if set forth here, and alleges:

15. That at all times material to this action, the aforementioned posters (Exhibits “A” and “B”), newspaper article (Exhibit “C”), the two independent witnesses on hole number six (6), the arrangement of the tees on hole number six (6), and the appearance of the brand new 2014 CLA 250 automobile on hole number six (6), indicated that Defendant **MERCEDES-BENZ’S** manifested intent was to offer the brand new 2014 CLA 250 automobile to any participant who scored a hole-in-one on hole number six (6).

16. That as a result of Defendant **MERCEDES-BENZ’S** manifested intent, Defendant, **MERCEDES-BENZ**, did in fact offer the brand new 2014 CLA 250 automobile to Plaintiff, **LANARD ISAAC**, so long as he scored a hole-in-one on hole number six (6).

17. That at said time and place, Plaintiff, **LANARD ISAAC**, accepted Defendant, **MERCEDES-BENZ’S**, offer by shooting his shot and scoring a hole-in-one on hole number six (6), thus establishing a valid unilateral contract.

18. The consideration for Defendant, **MERCEDES-BENZ**, in this contract includes free advertisement and publicity, as well as Plaintiff, **LANARD ISAAC’S**, performance and tournament entry fee. The consideration for Plaintiff, **LANARD ISAAC**, in this contract is the brand new 2014 CLA 250 Mercedes-Benz automobile.

19. That on or about November 8, 2014, Plaintiff, **LANARD ISAAC**, performed what was bargained for by Defendant **MERCEDES-BENZ’S** apparent and manifested offer; that being the feat of scoring a hole-in-one on hole number six (6).

20. That on or about November 8, 2014, Defendant, **MERCEDES-BENZ**, breached said contract by refusing to deliver the 2014 CLA 250 Mercedes-Benz automobile, and its title, to Plaintiff, **LANARD ISAAC**. This breach caused Plaintiff to suffer damages.

**WHEREFORE**, Plaintiff, **LANARD ISAAC**, demands compensatory damages for breach of contract in the amount of \$35,000.00, plus prejudgment interest pursuant to Fla. Stat. § 687.01, and such other relief this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, **LANARD ISAAC**, demands a trial by jury of all issues so triable as a matter of right.

Dated this 28<sup>th</sup> day of May, 2015.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Service and E-Mail, this 28<sup>th</sup> day of May, 2015, to:

Charles Cook Howell, III, Esq.  
701 Riverside Park Place, Suite 310  
Jacksonville, FL 32204  
Attorney for Duval Automotive Gainesville, LLC

[chowell@smagcorp.com](mailto:chowell@smagcorp.com)  
[charlie.howell@gmail.com](mailto:charlie.howell@gmail.com)  
[jhowell@ohnjax.com](mailto:jhowell@ohnjax.com)  
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352-335-2272 (Facsimile)  
email: [dana@lawschack.com](mailto:dana@lawschack.com)  
Attorney for the Plaintiffs