

IN THE SUPERIOR COURT OF FORSYTH COUNTY  
STATE OF GEORGIA

MICHAEL D. PECK on Behalf of )  
Himself and All Homeowners )  
Adjacent to Lanier Golf Club )  
f/k/a Canongate on Lanier )  
Golf Club, )

Plaintiff, )

v. )

CIVIL ACTION  
FILE NO. 07CV-2147

LANIER GOLF CLUB, INC., )

Defendant. )

ANSWER AND COUNTERCLAIMS OF LANIER GOLF CLUB, INC.  
TO COMPLAINT IN CLASS ACTION

COMES NOW Defendant LANIER GOLF CLUB, INC. f/k/a Cannongate, Inc., hereinafter ("Lanier Golf") and by and through its counsel of record, answers and responds to the Complaint In Class Action as follows:

FIRST DEFENSE

The allegations of the Complaint fail to state a claim upon which relief may be granted and should be dismissed.

SECOND DEFENSE

The Complaint fails to state a legal theory under which recovery is allowable.

THIRD DEFENSE

The Complaint fails to state sufficient facts to make out a cause of action against Defendant.

FOURTH DEFENSE

Plaintiffs' claims are not ripe.

FIFTH DEFENSE

Plaintiffs have failed to present a justiciable controversy as required by the Declaratory Judgment Act.

SIXTH DEFENSE

Plaintiffs have failed to state a claim under O.C.G.A. § 9-11-23.

SEVENTH DEFENSE

Plaintiffs' Complaint should be dismissed for failure to allege venue in this court.

EIGHTH DEFENSE

As its Eighth Defense, Lanier Golf asserts the following answers to the individual paragraphs of the Complaint.

1.

Lanier Golf admits the allegations contained in paragraph 1 of the Complaint.

2.

Lanier Golf admits the allegations contained in paragraph 2 of the Complaint.

3.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 3 of the Complaint for lack of sufficient

knowledge or information to form a belief as to their truth or falsity and therefore deny same.

4.

To the extent that Plaintiffs state a claim in the Complaint, which Lanier Golf denies, the allegations contained in paragraph 4 are denied.

5.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 5 of the Complaint for lack of sufficient knowledge or information to form a belief as to their truth or falsity and therefore deny same.

6.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 6 of the Complaint for lack of sufficient knowledge or information to form a belief as to their truth or falsity and therefore deny same.

7.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 7 of the Complaint for lack of sufficient knowledge or information to form a belief as to their truth or falsity and therefore deny same.

8.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 8 of the Complaint for lack of sufficient

knowledge or information to form a belief as to their truth or falsity and therefore deny same.

9.

Lanier Golf denies the allegations contained in paragraph 9 of the Complaint.

10.

Lanier Golf denies the allegations contained in paragraph 10 as stated. Lanier Golf is without knowledge or information sufficient to admit or deny the allegation that information on Unicity is difficult to obtain as alleged in footnote 1 to paragraph 10 and therefore denies same. Lanier Golf denies the remaining allegations contained in footnote 1 and asserts that Plaintiff has no basis to "believe" the allegations that Lanier Golf either has or has destroyed any records.

11.

Lanier Golf is without knowledge or information sufficient to admit or deny the allegation contained in paragraph 11 of the Complaint and therefore denies same.

12.

Lanier Golf denies the allegations contained in paragraph 12 of the Complaint.

13.

Lanier Golf denies the allegations contained in paragraph 13 of the Complaint and in footnote no. 3.

14.

Lanier admits that the deed to Canongate Golf Club, Inc. contains a covenant, whereby the Canongate Golf Club, Inc. agreed to cause an 18 hole championship golf course to be constructed on approximately 172 acres, which "may be used solely for the purpose of the operation thereon of a public, semi-private or private golf course" for a maximum period of 8 years from February 20, 1969. Any remaining allegations contained in paragraph 14 are denied.

15.

Lanier Golf denies the allegations contained in paragraph no. 15 of the Complaint.

16.

Lanier Golf denies the allegations contained in paragraph no. 16 of the Complaint.

17.

Lanier Golf denies the allegations contained in paragraph no. 17 of the Complaint as stated.

18.

Lanier Golf admits the allegations contained in paragraph no. 18 of the Complaint as stated.

19.

Lanier Golf denies the allegations contained in paragraph no. 19 of the Complaint as stated.

20.

Lanier Golf denies the allegations contained in paragraph no. 20 of the Complaint as stated.

21.

Lanier Golf admits the allegations contained in paragraph 21 of the Complaint.

22.

Lanier Golf denies the allegations contained in paragraph no. 22 of the Complaint as stated.

23.

Lanier Golf admits the allegations contained in paragraph no. 23 of the Complaint.

24.

Lanier Golf admits the allegations contained in paragraph no. 24 of the Complaint.

25.

Lanier Golf closed the golf course on September 30, 2007. Except for the named Plaintiff Michael Peck, Plaintiff cannot admit nor deny the remaining allegations contained in paragraph no. 25 as they relate to other unnamed would-be Plaintiffs.

26.

Lanier Golf admits the allegations contained in paragraph no. 26 of the Complaint.

27.

Lanier Golf neither admits nor denies the allegations contained in paragraph no. 27 of the Complaint and further states that the Appeal and Verified Complaint for Declaratory Judgment and Mandamus filed against Forsyth County and the Forsyth County Board of Commissioners speaks for itself.

28.

Lanier Golf denies the allegations contained in paragraph no. 28 of the Complaint.

29.

Lanier Golf denies the allegations contained in paragraph no. 29 of the Complaint.

30.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 30 of the Complaint for lack of sufficient knowledge or information to form a belief as to their truth or falsity and therefore deny same.

31.

Lanier Golf can neither admit nor deny the allegations contained in paragraph 31 of the Complaint for lack of sufficient knowledge or information to form a belief as to their truth or falsity and therefore deny same.

32.

Lanier Golf denies the allegations contained in paragraph no. 32 of the Complaint.

33.

Lanier Golf denies the allegations contained in paragraph no. 33 of the Complaint.

34.

Lanier Golf denies the allegations contained in paragraph no. 34 of the Complaint.

35.

Lanier Golf acknowledges that it has defined easement rights on certain properties adjacent to the golf course, but denies the remaining allegations contained in paragraph 35 of the Complaint.

36.

Lanier denies the allegations contained in paragraph no. 36 of the Complaint.

37.

All other allegations not expressly responded to above are hereby denied as if denied with specificity and particularity.

#### **COUNTERCLAIMS**

Subject to and without waiving any defenses alleged herein above, Lanier Golf asserts the following Counterclaims against Plaintiffs as follows:

COUNT I  
SLANDER OF TITLE

1.

Lanier Golf hereby incorporates by reference its responses and allegations set forth hereinabove as if each of said responses and allegations were restated in their entirety.

2.

Plaintiff is subject to the jurisdiction and venue of this Court by virtue of filing this lawsuit.

3.

Lanier Golf is the owner of real property containing approximately 172 acres of land, located in Forsyth County, Georgia known as Lanier Golf Club. (the "Property").

4.

Lanier Golf has entered into a contract with Wellstone, LLC to purchase the Property subject to rezoning.

*See 44-21*

5.

Plaintiffs have made baseless, malicious, and slanderous statements regarding their claim to an implied easement over Lanier Golf's property.

6.

Plaintiffs' claim that it has a vested interest in Lanier Golf's Property is frivolous and has no basis in law or fact.

7.

Lanier Golf has and will suffer special damage as a result of the slanderous statements made by Plaintiffs including diminution in the value of Lanier Golf's Property, which has resulted from Plaintiff's slanderous statements.

*W. D. W.*

**COUNT II**  
**WRONGFUL FILING OF LIS PENDENS**

8.

Lanier Golf hereby incorporates by reference their responses and allegations set forth hereinabove as if each of said responses and allegations were restated in their entirety.

9.

The filing of the Lis Pendens on the property owned by Lanier Golf is baseless, malicious, and without merit.

10.

The filing of the Lis Pendens on the property owned by Lanier Golf constitutes "impugning title to property," within the meaning of the statute permitting an owner of property to maintain an action for libelous or slanderous words falsely and maliciously impugning his title, if damage has accrued to him therefrom.

11.

Lanier Golf has and will suffer special damage as a result of the impugment of its title to the Property and as a result of Plaintiffs' filing of a false lien.

**COUNT III**  
**ABUSIVE LITIGATION**

12.

Lanier Golf hereby incorporates by reference its responses and allegations set forth hereinabove as if each of said responses and allegations were restated in their entirety.

13.

Plaintiffs acted with malice and without substantial justification in the initiation, continuation, or procurement of these civil proceedings.

14.

The acts of Plaintiffs constitute abusive litigation.

15.

Lanier Golf is entitled to an award of its attorneys' fees and costs, pursuant to O.C.G.A. § 9-15-14 and O.C.G.A. § 51-7-80, et seq., incurred in defending against this action and in prosecuting its counterclaims against Plaintiffs.

WHEREFORE Lanier Golf prays as follows:

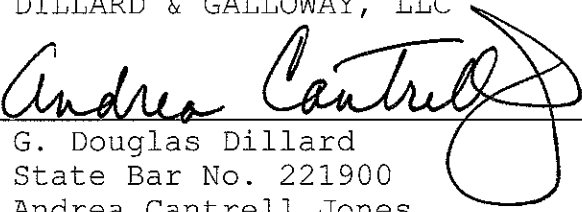
- (a) that the Complaint be dismissed and all relief requested thereunder be denied in its entirety;

- (b) that Lanier Golf be awarded compensatory and punitive damages as a result of Plaintiffs' slander of Lanier Golf's title and false filing of a lis pendens on the Property;
- (c) that Lanier Golf be awarded its attorney's fees and expenses of litigation from Plaintiff; and
- (d) for all other and such relief is appropriate and just.

Respectfully submitted,

DILLARD & GALLOWAY, LLC

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

  
G. Douglas Dillard  
State Bar No. 221900  
Andrea Cantrell Jones  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **ANSWER AND COUNTERCLAIMS OF LANIER GOLF CLUB, INC. TO COMPLAINT IN CLASS ACTION** upon all parties to this matter by depositing a true copy of same in the U. S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Robert P. McFarland, Sr., Esquire  
McFARLAND & McFARLAND, P.C.  
309 Pirkle Ferry Road, Suite B-400  
Cumming, Georgia 30040

This 13 day of November 2007.

  
Andrea Cantrell Jones