Case No. 97031-9

In the Supreme Court of the State of Washington

No. 77635-5-I
Court of Appeals, Division I of the State of Washington

GREENSUN GROUP LLC,

Respondent

vs.

CITY OF BELLEVUE,

Petitioner

RESPONDENT GREENSUN'S ANSWER TO PETITIONER CITY OF BELLEVUE'S PETITION FOR REVIEW

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Introduction

This Court has long held that municipalities and cities may be liable for the tort of intentional interference with a business expectancy when a city commits wrongful acts.

In the wake of Washington State voters' approval of I-502, authorizing the licensed and regulated sale of retail marijuana in the State of Washington, Greensun Group, LLC ("Greensun"), sought to open a retail store in the City of Bellevue. To obtain the right to open, Greensun was confronted with changing zoning regulations, multiple ad hoc rules promulgated by Bellevue city staff without legal authority, and finally a threat of legal action and possible criminal sanctions by Bellevue. Bellevue then denied Greensun a business license, without any authority in the Bellevue City Code to do so, and denied Greensun any right of appeal. Greensun's competitor was allowed almost three months of time to prepare its store for opening.

Now the City asks that this Court revisit its prior precedence and introduce a dramatic shift in the underpinnings of a claim of tortious interference with a business expectancy and exempt municipalities from liability.

Issues Presented for Review

A. Greensun presents no issues for review by this Court.

Statement of the Case

On November 29, 2012, Seth Simpson and David Ahl leased the retail store premises at 10600 Main Street in Bellevue, Washington ("Premises"). CP 12. Simpson and Ahl wanted to open up a retail marijuana store under I-502, which was just passed by Washington State Voters. *Id.* At the time, Simpson and Ahl were involved in medical marijuana operations and felt the Bellevue location was well suited for such an operation. *Id.*

While the Washington State Liquor Control Board, now Liquor and Cannabis Board, ("LCB"), was developing the licensing regulations for retail marijuana stores, Simpson and Ahl planned to operate a patient-to-patient medical marijuana facility at the Premises. CP 656.

Shortly after completing upgrades to the premises, an inspector from Bellevue advised Simpson that they should have obtained a building permit. On January 8, 2013, Simpson submitted a building permit application for the Premises along with plans which showed all interior walls, windows, and doors. CP 657. A Bellevue Building Department official advised that his application was complete and that Bellevue would review it. CP 657. Simpson never received a notice from Bellevue that the application was incomplete or that it was denied. CP 657; *see also* CP 360.

After their building permit application, Bellevue sued Ahl and Simpson over their plans to operate their medical marijuana facility, alleging that the Bellevue City Code did not permit the store from opening. CP 657. Simpson and Ahl abandoned their plans for a medical

marijuana facility and decided to focus their efforts on retail marijuana. *Id.* Shortly after, Simpson's and Ahl's lawyer advised Bellevue of their plans to open a retail marijuana store at the premise under the new State Law. CP 272; CP 277.

When the LCB began taking applications, Ahl and Simpson formed Greensun Group, LLC, for that purpose and applied for a retail marijuana license from the State of Washington. CP 657. By March 1, 2014, the LCB had screened Greensun's application and it was listed as one of the 19 qualified Bellevue applicants. At that time, the LCB had allocated four marijuana retailer licenses for issuance within Bellevue. CP 13-14.

In April 2014, the LCB issued a public memorandum describing the process it would use for issuing licenses under I-502. CP 82. Among other things, the LCB announced it would issue licenses in "batches" and that if there were more license applications than the number allocated for a jurisdiction, a lottery would be conducted to determine which applicants would be allowed complete the licensing process. CP 83.

On May 2, 2014, the LCB conducted a lottery to determine which four of the applicants for marijuana retailer licenses in Bellevue would move to final review and the order of the runners-up. CP 272. Greensun's application was listed as the first runner-up in the lottery. CP 272. High Society, Inc., was ranked among the four applicants who would be granted a license later in July. High Society, however, had improperly identified its store location in its application as the store premises at 10600 Main

Street—which was the same location as Greensun. CP 272. This led to the disqualification of High Society, and Greensun was moved up by the LCB as a finalist. CP 133.

Par 4/Green Theory, was also one of the top four applicants selected in LCB's lottery with a location directly across the street. CP 658. On March 17, 2014, Bellevue City Council had adopted Ordinance No. 6156 which extended its interim zoning ordinance for the regulation of licensed marijuana businesses and added language which stated: "No retail marijuana store may be located within 1,000 feet of any other retail marijuana store." CP 70. There was no reference in this ordinance to licensing by the state as a precondition for the issuance of a business license. *Id.*

In early May 2014, immediately following the initial lottery results, Bellevue city staff announced its first rule under which marijuana license applicants would be "secured" for purposes of applying the 1,000-foot Separation Rule in ordinance. Reilly Pittman, an Associate Planner for Bellevue, emailed High Society and Par 4 and informed them that the applicant who first submitted a complete application for a building permit for its store would be vested in their location under the 1,000-foot separation ordinance. CP 319; CP 332; CP 342. Bellevue also advised High Society that Par 4 had already "locked down" its location under this building permit rule. CP 332.

Seth Simpson met with Reilly Pittman on May 19, 2014, to discuss Greensun's application and soon to be status as a licensee finalist in

Bellevue. CP 848-9; CP 658-659. In that meeting with Simpson, Pittman again advised Greensun that Bellevue would use an applicant's building permit application to determine who would be entitled to open. Pittman then advised Simpson that Par 4 had already "locked down" its location due to a building permit application. *Id.*

Simpson then pointed out to Pittman that Simpson had made a building permit application for Greensun's premises on January 8, 2013, a year before Par 4's application. *Id. See also* CP 902; CP 338-339. Thus under Bellevue's rule, Greensun should have priority over Par 4 in application of the 1,000-foot Separation Rule under the vesting rules Bellevue had announced. Pittman responded that Greensun could not have priority because it had not yet been designated as being among the top four applicants under consideration by the LCB based on the lottery results. *Id.*

Bellevue received Greensun's business license application in May 2014. CP 88. In response to that the business license application, Reilly Pittman sent Greensun a letter dated June 3, 2014, advising Greensun that Bellevue could only approve business license applications for the four retailers selected by the LCB for the four marijuana retail licenses allocated to Bellevue. CP 131. As a result, he advised Greensun that its business license could not be issued at that time. CP 131. Pittman did not cite any provision in the Bellevue City Code or rule which would allow him to withhold this license, nor was a right of appeal communicated. CP 131.

On June 5, 2014, Bellevue received notice from the LCB that Greensun's application moved up to the fourth position in the lottery results for Bellevue. CP 89; CP 133. On June 9, 2014, Bellevue received a Notice of Marijuana Application for Greensun from the LCB. CP 89; CP 136. On June 25, 2014, Bellevue responded to this Notice by approving Greensun as an applicant and approving Greensun's locations. *Id.* No business license was issued to Greensun.

On June 24, 2014—after Greensun had received notice from the LCB that it was a finalist, after the City was aware of Greensun's building permit date, and a mere 13 days before the issuance of the first license—Bellevue staff changed its rule on how an applicant would be vested. In a letter from Catherine Drews, a legal planner in the Development Services Department ("DSD"), the City announced that instead of the previous building permit rule, the entity that would be licensed first by the State would be the "first-in-time" applicant. CP 139. The letter advised the date of the conditional use permit approval letter would be the date for applying the 1,000-foot separation requirement.

On July 7, 2014, the LCB issued its first batch of marijuana retailer licenses, which included licenses for Greensun and Par 4. CP 286-7; CP 289. The LCB staff had been working throughout the holiday weekend to prepare for the issuance of the licenses. On the morning of July 7, 2014, Par 4 received an email from a customer service agent from the LCB including a temporary operating permit letter which would function as a license. CP 473-5. The first copy of this letter had two significant mistakes

on it: First, it was dated July 3, 2014, before the LCB had actually issued any license, and second, it had an incorrect paragraph that described the applicant's responsibility to comply with local zoning ordinances. *Id.* The same customer service agent corrected the date to July 7 and resent the letter the same day and then sent a final version with additional corrections to the language. CP 476-82.

On the afternoon of July 7, 2014, Ahl received an e-mail from a different customer service agent for the LCB with a copy of Greensun's marijuana retailer license with the correct date and language—identical to the final version provided to Par 4. CP 392-4. According to testimony from the LCB, emails from these customer service representatives had no bearing or legal effect on the license date or time. CP 292.

On July 7, 2014, Seth Simpson went to Bellevue City Hall to obtain Greensun's business license from Bellevue. CP 660-1. Simpson met with Catherine Drews and Reilly Pittman and gave them a copy of the receipt from the LCB showing that Greensun had paid its licensing fees. *Id.* He told them that Greensun's retailer marijuana license was being issued as they spoke and that he wanted to pick up its business license. *Id.* Drews cut Simpson off and told him that Bellevue would not issue a business license to Greensun for its marijuana retail store on Main Street because Bellevue would be issuing a business license to Par 4 for its retail marijuana store on Main Street. *Id*. She explained that Bellevue staff determined that Par 4's license had been issued first and in accordance the

first-in-time rule in her letter of June 24, 2014, Par 4 would be entitled to a business license from Bellevue and Greensun would not. *Id.*

Simpson responded that the LCB was issuing its very first batch of licenses simultaneously on July 7, 2014, and Par 4 and Greensun licenses were issued at the same time according to the LCB. *Id*. Drews continued to decline to issue Greensun a business license. *Id.* Drews followed up their meeting with a letter emailed to Greensun at 4:19 pm stating that Bellevue had determined that under the first-in-time rule Par 4 had priority and Greensun would not be given a business license for its store on Main Street. CP 156-7. She ended her letter with a threat of legal action if Greensun opened the store. *Id.*

Through an email at 4:30 pm on July 7, 2014, Greensun's attorney protested that the LCB had made no record of the order in which licenses had been issued and its records show that both Par 4 and Greensun were issued licenses on July 7, 2014, along with 23 other licensees. CP 160. He attached to his email a copy of Greensun's licensing letter dated July 7, 2014. CP 161-2.

In response to Greensun's protests, Assistant City Attorney, Chad R. Barnes, sent a letter dated July 11, 2014, to Hilary Bricken as attorney for Par 4 and Zachary L. Fleet as attorney for Greensun. CP 169-70. The letter opens with an acknowledgment that the client of each attorney is seeking to open a retail marijuana outlet within 1,000 feet of the other and that Bellevue had previously communicated to their clients that Bellevue

will accept the retailer that was first-in-time based on the license issued by the LCB and that each client claims to be first-in-time. *Id.* The letter continues to state:

> The LCB issued a letter to Green Theory on July 3, 2014, which appears to grant Green Theory a marijuana retail license; however, Greensun claims that the letter was issued in error. We have spoken with Assistant Attorney General Kim O'Neal who has informed us that the LCB currently takes the position that the July 3, 2014 letter received by Green Theory was not the actual marijuana retail license despite the language contained in the letter. O'Neal stated that the actual licenses were issued following the July 7, 2014 online notice to both your clients. We asked Ms. O'Neal if the LCB had any way to determine which entity was actually first issued a marijuana license, and she indicated that their system was not set up for such a query.

Id.

In his letter, Barnes invites counsel for the two applicants to send additional information they may have on the issue and ends the letter by stating, "If Bellevue does not receive additional clarity on this issue soon, we will have no choice but to file an action for declaratory injunctive relief against Greensun, Green Theory and the Liquor Control Board." *Id.*

Counsel for both Greensun and Par 4 submitted materials to Barnes. CP 172-191; CP 193-202. Upon receiving Greensun's materials, Barnes forwarded materials from Greensun's counsel to Par 4's counsel with follow-up questions. CP 387. Neither Greensun nor its counsel was included in this communication containing follow up questions to Bricken or provided an opportunity to respond to the questions Barnes raised. *Id.* The answers provided by Bricken were not provided to Greensun's

Counsel. Barnes did not have any further contact with the LCB to obtain further information, nor did he determine why there were multiple letters issued by the LCB or wait for additional documents. CP 582. Rather than seek the declaratory judgment referenced in his letter, Barnes proceeded to meet with other Bellevue staff members to reach a final decision on the issuance of business licenses to Par 4 and Greensun. CP 70.

Bellevue is unclear on how the final decision was made, it appears that Barnes met with Catherine Drews and possibly one other staff member to discuss Greensun and Par 4's business license application. CP 402-4. There are no minutes from this meeting, nor did they indicate whether a vote was taken or who decided that Greensun should not be issued a business license. *Id.* Following the meeting, emails were sent to the various departments instructing City Staff to deny Greensun's business license application. One of these emails was sent to Richard D'Hondt, in Bellevue Finance Office, the office responsible for issuing licenses, instructing him to decline Greensun's business license application. CP 402.

Barnes then wrote Greensun a letter dated July 29, 2014, stating that Greensun's business license application was denied. CP 377. The basis for the decision was that Par 4 was licensed first because an e-mail transmitting Par 4's licensing letter was received by Par 4—1 hour and 56 minutes before Ahl received an e-mail transmitting Greensun's licensing letter from a different customer service agent. *Id*. There was no acknowledgment of the previously communicated fact that the LCB

licensed both at the same time in the first batch. *Id.* The letter ended with a threat of legal action if Greensun attempted to open its retail marijuana store. CP 378.

The undisputed testimony is that Greensun would have opened its retail store on Main Street within one week of the issuance of its marijuana retailer license by the LCB if Bellevue had issued Greensun a business license on or before July 7, 2014. CP 662-3. In July 2014, there was no marijuana retailer located within 1,000 feet of Greensun's store at 10600 Main Street. CP 662.

Greensun brought suit against Bellevue on November 3, 2014, for declaratory and injunctive relief for the issuance of a business license to allow it to operate a store at 10600 Main Street. CP 1. Following the first appeal and the case was remanded, Greensun amended its complaint to include a claim for tortious interference with a business expectancy. CP 603. Following the amended complaint, the parties both moved for summary judgment. Greensun's motion was for partial summary judgment on the issue of liability, reserving for trial the determination of damages. CP 629. Bellevue moved for a dismissal of all claims and declaratory judgment that it had resolved any issues based on a later ordinance adopting the first-in-time rule. CP 629; CP 685. The King County Superior Court denied Greensun's motion and granted Bellevue's motion in full. CP 909. The Court of Appeals issued its decision on March 4, 2019, reversing the trial court and remanding the case for trial. *Greensun Grp., LLC v. City of Bellevue*, 436 P.3d 397 (Wash. Ct. App. 2019).

Argument

I. This case does not involve significant issues of public import within the meaning of RAP.

At its core, this case is about a straightforward application of the existing tort of intentional interference with a business expectancy to the facts of this case. Despite Bellevue's claims, the Court of Appeals applied well established case law in Washington in a consistent and clear manner to determine that there were triable issues of fact in establishing whether or not the City was liable for damages under the tort.

This Court has long held that municipalities may be liable for intentional interference with a business expectancy if the elements of the tort are met. In doing so, the Court explicitly rejected policy arguments made by municipalities that application of this tort liability would have a chilling effect on the ability of municipalities to carry out their assigned duties. In *King v. City of Seattle*, this Court reviewed the question of liability and held:

> The most promising way to correct the abuses, if a community has the political will to correct them, is to provide incentives to the highest officials by imposing liability on the governmental unit. The ranking officials, motivated by threats to their budget, would issue the order that would be necessary to check the abuses in order to avoid having to pay damages.

84 Wn.2d 239, 244, 525 P.2d 228, 232 (1974).

This policy was carried forward when this Court soundly rejected the argument that tort liability for tortious interference would have a

chilling effect on municipalities. *Pleas v. City of Seattle,* 112 Wn.2d 794, 806, 774 P.2d 1158, 1164 (1989).

Ultimately despite Bellevue's obfuscations to the contrary, Greensun's claims are a simple, straightforward application of existing tort law in Washington as developed by this Court. Greensun does not challenge the ability of a city council to enact valid zoning ordinances to regulate the location of marijuana stores. What Greensun does claim, is that after a law or ordinance is adopted, Bellevue is obligated to act fairly, not arbitrarily and capriciously, and within the confines of the authority delegated to them. When a city acts arbitrarily and capriciously or without legal authority to do so, a city may be liable unless the act is privilege.

This approach is well balanced and puts the burden on the plaintiff to prove that some wrongful conduct and the city the opportunity to provide a defense to that wrongful conduct. The Court of Appeals recognized this and did a well-balanced summary of the state of the tort in Washington, including the shifting burdens imposed to arrive at the simple, straightforward conclusion: there is a triable issue of fact to determine if the City is liable for Greensun's Claims.

II. The Court of Appeals correctly identified and applied this Court's precedents on affirmative defenses to a claim for tortious interference with a business expectancy.

Bellevue misrepresents and overextends the Court of Appeals in its arguments that the decision conflicts with the Supreme Court's decision in *Pleas v. City of Seattle*, 112 Wn.2d at 774. No such conflict can be found

and the decision is well in accord with existing Washington State Law. Ultimately, Bellevue conflates affirmative defenses that may privilege its wrongful actions with the elements that Greensun must prove in its case in chief.

First, Bellevue argues that the Court of Appeals "improperly shifting the burden to prove 'good faith' to the defendant as an affirmative defense." *City of Bellevue's Petition for Review* at 15. But this burden shift was explicitly adopted by this Court when it adopted the formulation of tortious interference with a business expectancy in this State.

In *Pleas*, the Court evaluated the tort's development. First, the Court reviewed the tort's formulation in the Restatement (First) of Torts. 112 Wn.2d at 800. Under the first formulation, a plaintiff was required to prove that there was intentional interference with a business expectancy—there was no requirement for the plaintiff to prove an improper purpose or improper means. *Id.* Once the plaintiff demonstrated interference, the burden shifted to the defendant to show that its conduct or interference was justified and not improper. *Id.* The Restatement (Second) of Torts responded to criticism that the formulation of the tort required too little of the plaintiff and added the additional element that the interference was improper as well as intentional. *Id.*

When considering these two versions of the tort in *Pleas*, this Court declined to adopt the position of the Second Restatement of Torts fully and instead followed the Oregon Supreme Court, which it felt was a balanced approach between the two extremes. Specifically, this Court

held: "A cause of action for tortious interference arises from either defendant's pursuit of an improper objective harming plaintiff or the use of wrongful means that in fact cause injury to the plaintiff's contractual or business relationships." *Id.*at 803-804.

In its petition, Bellevue erroneously asserts that the "Court of Appeals here retreated to the First Restatement test." *Bellevue's Petition* at 16. To the contrary, the Court of Appeals carefully considered whether the plaintiff had demonstrated facts to support the fourth element of the tort, namely that defendant had interfered for improper motives **or** by improper means. *Greensun II* included *Pleas* in its analysis and noted that under *Pleas* the court may consider the defendant's arbitrary and capricious actions as evidence of improper means. *Greensun II,* 436 P.3d at 408.

The Court of Appeals then concluded that Greensun had raised a genuine issue of material fact, which should be determined by the fact-finder. *Id.* at 408. Nothing in the decision of the Court of Appeals suggests that on remand Greensun will not have the burden of proving at trial that Bellevue used improper means to interfere with its business expectancies as required under *Pleas.* Likewise, it correctly identified the affirmative defenses that Bellevue will have the burden to raise as an exemption to liability.

III. *Greensun II* correctly analyzes all five elements of a plaintiff's claim for tortious interference with a business expectancy.

Citing established case law, the Court of Appeals correctly stated that Greensun must prove five elements of the tort to prevail:

> (1) the existence of a business expectancy;
> (2) that the defendant had knowledge of that expectancy;
> (3) an intentional interference inducing or causing termination of the expectancy;
> (4) that the defendant interfered for an improper purpose or used improper means; and
> (5) resultant damage.

Id. at 405. The Court of Appeals reviewed the facts presented in the record on the motion for summary judgment by Bellevue and determined that Greensun had presented evidence to prove each element of the tort, when viewing the evidence in a light most favorable to the non-moving party.

a. Greensun has introduced evidence that Bellevue's Actions were intentional and Greensun II correctly interprets the intent element of the tort.

Bellevue misstates *Greensun II* when it asserts that its "formulation of the tort renders it akin to strict liability or, when coupled with the claim that the City's conduct was erroneous, to mere negligence." *Bellevue's Petition* at 12. Greensun has not claimed that Bellevue is strictly liable to it for failing to grant its application for a business license. Nor is there any assertion by Greensun or the Court of Appeals that the Bellevue's liability is based on negligence in failing to issue the business

license. Rather, Greensun has introduced evidence of specific and intentional acts by Bellevue to deny Greensun a business license which satisfies the element.

Bellevue City Code requires that all businesses obtain a business license before commencing business operations and imposes both criminal and civil sanctions on a business owner who operates without a business license. BCC 4.03.025; BCC 20.40.460. The function of the business license, which is technically called a tax registration certificate in the Bellevue City Code, is for the reporting and payment of business taxes due the City. BCC 4.03.220. The City's Department of Finance routinely issues business licenses, but in this case personnel from the Department of Development Services intervened. CP 402. The Court of Appeals found that there were facts to support the element that the interference is an intentional act. The decision of the Court of Appeals in reversing the summary judgment dismissing Greensun's complaint in no way changes the formulation of the tort. Nothing in *Greensun II* mentions a shifting of the burden of proof or suggests that at trial Greensun will not have the burden of proving that the interference with its business expectancy was an intentional act of the City.

Rather than disputing these facts, Bellevue falls back to language from this court in consumer protection act claim. *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288, 300 (1997). The language cited in that case related back to cases involving intent and improper purpose—in essence claims in which the tortfeasor intended to

interfere with a business expectancy but was engaging in otherwise lawful actions. *See Schmerer v. Darcy*, 80 Wn. App. 499, 505, 910 P.2d 498, 502 (1996). In this case, however, we have the opposite: Greensun claims that Bellevue intended to do actions that were arbitrary and capricious and thus in violation of Greensun's rights. Bellevue then makes the conclusory argument that they were acting in good faith, because they said they were acting in good faith and did not intend to interfere. *Bellevue's Petition* at 14. *Greensun II* properly analysis the case law on the subject and the analysis in an improper means case. It properly recognized that Bellevue's good faith defense may be raised, but that there are material issues of fact which require a determination by a jury whether or not Bellevue acted arbitrarily and capriciously or in good faith. 436 P.3d at 409. Rather than a sea change, the Court made a simple application of existing law.

b. Greensun has introduced sufficient evidence of its valid business expectancy and the city has sufficient knowledge and notice of that expectancy.

As discussed in *Greensun II*, Greensun has introduced evidence of its valid business expectancy for its location at 10600 Main Street. 436 P.3d at 405. It provided testimony of Seth Simpson regarding the owners experience operating marijuana retailers, the success of the retailer across the street, and the fact that it was licensed by the state to open as a retailer is undisputed. Bellevue, however, misconstrues existing case law and conflates the two torts to argue that a plaintiff claiming tortious

interference must, in essence, identify every customer that may have bought marijuana at its prospective store.

Greensun II properly rejected this argument and correctly interpreted *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276, 281 (2006). Bellevue relies on *Pac Nw. Shooting Park Ass'n* as the basis that Greensun must identify specific customers before proving a claim. In *Pac Nw. Shooting Park Ass'n*, the plaintiff brought a claim alleging tortious interference with a contract that the plaintiff had with the City it was suing. *Id.* In the complaint, that was the only named contract and there was a generic reference to losses sustained by the Plaintiff. The parties made vague assertions in their pleadings which led to confusion over what issue was before the court. *Id.* In contrast, Greensun has specifically identified the general public, and customers seeking to purchase marijuana as its business expectancy. Greensun supported its claim by introducing sufficient evidence. *Greensun II* at 409.

c. Greensun properly introduced evidence of Bellevue's improper means.

Bellevue argues that the only "improper means" that sustains a claim of tortious interference is an inappropriate "singling out" of an applicant and no other wrongful acts can support a claim. This position is not supported anywhere in the language of *Pleas* or any other case law. In *Pleas*, the Court identified that "Interference can be "wrongful" by reason of a statute or other regulation, or a recognized rule of common law, or an

established standard of trade or profession." *Pleas v. City of Seattle*, 112 Wn.2d at 804. Arbitrary and capricious conduct by governmental officials is, by definition, wrongful interference.

It is a fundamental right of Greensun to be free from such arbitrary and capricious conduct. *Pierce Cty. Sheriff v. Civil Serv. Comm'n of Pierce Cty.,* 98 Wn.2d 690, 694, 658 P.2d 648, 651 (1983). In defense of its actions, Bellevue argues that it was merely acting in good faith and carrying out its duties. But such a defense is appropriately raised an affirmative defense for its acts. Bellevue's own actions in implementing this zoning argument cut against its argument it was simply acting in good faith. Bellevue introduced constantly changing rules up until the last moment and then ignored the communications from the State that advised Bellevue that they were seeking answers that did not exist. CP 169. Ultimately, Bellevue failed to comply with its own code and failed to act in a fair and unbiased manner. Such acts constitute improper means under the definition of the tort in *Pleas*.

Respectfully submitted,

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GREENSUN GROUP LLC, RESPONDENT

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CITY OF BELLEVUE, PETITIONER

SUPREME COURT CAUSE NO. 97031-9

ATTACHMENT to
APPELLANT GREENSUN GROUP LLC
OPENING BRIEF

BCC 20.40.460
BCC 4.03.025
BCC 4.03.220

20.40.460 Violation – Penalty.

A. Any violation of this Code as described in LUC 20.40.450 constitutes a civil violation under Chapter 1.18 BCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates this Code as described in LUC 20.40.450 shall be guilty of a misdemeanor. (Ord. 5876, 5-18-09, § 34; Ord. 4340, 3-16-92, § 2)

4.03.025 Registration/license requirements.

Any person who engages in any business or performs any act which is subject to the provisions of Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC, Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; or Chapter 4.14 BCC, Gambling Tax Code, even if such person is not subject to any tax imposed thereby, shall apply under such rules and regulations as the department may prescribe and, upon approval, receive from the department a registration certificate applicable to all such business engaged in or activity performed.

No person shall engage in any business without being registered in compliance with the provisions of this section except the following:

A. Any farmer who is exempt from the business and occupation tax pursuant to BCC 4.09.090(J); or

B. Any "family" as defined in BCC 4.03.020(E).

C. Any person who performs activities subject to the provisions of Chapter 4.09 BCC and meets the requirements of BCC 4.09.030(L)(4). This exemption does not apply to any person engaged in activities that are subject to the provisions of other chapters of BCC Title 4. (Ord. 5605 § 1, 2005; Ord. 5436 § 1, 2003.)

4.03.220 Unlawful actions – Violation – Penalties.

A. It shall be unlawful for any person liable for fees or taxes under this chapter or Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC, Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; or Chapter 4.14 BCC, Gambling Tax Code:

1. To violate or fail to comply with any of the provisions of this chapter or Chapters 4.04, 4.09, 4.10 or 4.14 BCC or any lawful rule or regulation adopted by the director;

2. To make any false statement on any license application or tax return;

3. To aid or abet any person in any attempt to evade payment of a license fee or tax;

4. To fail to appear or testify in response to a subpoena issued pursuant to the rules of procedure of the office of the hearing examiner;

5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed $5,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed $5,000, or imprisonment not to exceed one year, or both fine and imprisonment. (Ord. 5558 § 8, 2004; Ord. 5436 § 1, 2003.)

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DECLARATION OF SERVICE

EFILED ON MAY 6, 2019 IN THE SUPREME COURT OF THE STATE OF WASHINGTON.

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I, Poonam A. Bora, declare under the penalty of perjury that on May 6, 2019, I caused a true and correct copy of Respondent Greensun's Answer to Petitioner City of Bellevue's Petition for Review to be served via e-mail and on May 7, 2019, via legal messenger, upon and addressed to the following individuals:

Petitioner City of Bellevue
Matthew J. Segal, Jessica A. Skelton,
Jamie L. Lisagor and Athanasios P Papailiou
Pacifica Law Group, LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
206.245.1700 office
matthew.segal@pacificalawgroup.com
jessica.skelton@pacificalawgroup.com
jamie.lisagor@pacificalawgroup.com
athan.papailiou@pacificalawgroup.com

I, Poonam A. Bora, also declare under the penalty of perjury that I filed a true and correct copy of Respondent Greensun's Answer to Petitioner City of Bellevue's Petition for Review with the Clerk of the Supreme Court of the State of Washington by e-filing the said document.

Dated: May 6, 2019, at Kirkland, Washington.

Poonam A. Bora, Paralegal
Davidson, Kilpatric & Krislock, PLLC
520 Kirkland Way, Suite 400
P.O. Box 817
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DAVIDSON, KILPATRIC, KRISLOCK, PLLC

May 06, 2019 - 4:48 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97031-9
Appellate Court Case Title:	Greensun Group LLC v. City of Bellevue
Superior Court Case Number:	14-2-29863-3

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