

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

Plaintiff,

Case No.:

vs.

**POOL COMPANIES, INC. d/b/a  
CARIBBEAN POOL SERVICE AND REPAIRS,**  
a Florida Corporation; and **JOHN HYNES,**  
an Individual

Defendants.

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**COMPLAINT**

COMES NOW the Plaintiff, **OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA** (hereinafter referred to as "the  
Plaintiff"), and sues the Defendants **POOL COMPANIES, INC.**, a Florida Corporation doing  
business as Caribbean Pool Service and Repairs; and **JOHN HYNES**, an Individual and alleges:

**GENERAL ALLEGATIONS**

1. This is an action for restitution, civil fines and penalties, attorneys' fees and costs, and injunctive relief pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2005).

2. This Court has jurisdiction pursuant to the provisions of said statute.

3. The Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act, and is authorized to seek damages, civil fines, penalties, injunctions and other statutory relief.

4. The statutory violations alleged herein occurred in Palm Beach County and the State Attorney has deferred in writing to the jurisdiction of the Office of the Attorney General to bring this action as the enforcing authority.

5. The Plaintiff has conducted an investigation, and the head of the enforcing authority, Attorney General Charles J. Crist, Jr., has determined in writing that an enforcement action serves the public interest.

6. At all times material herein, **POOL COMPANIES, INC.** is and was a Florida Corporation doing business as Caribbean Pool Services and Repair with its principal place of business located in Palm Beach County, Florida.

7. At all times material herein, the Defendant, **JOHN HYNES**, is and was an adult male over the age of twenty-one, and is and was the president of **POOL COMPANIES, INC.**. As such, he owned, managed and/or controlled **POOL COMPANIES, INC.** and its business matters and corporate policies. At all times material herein, **HYNES** exercised his authority as owner of **POOL COMPANIES, INC.** and/or directly participated in the deceptive, unconscionable, and unfair trade practices and activities more fully described herein.

8. At all times material herein, the Defendants, **POOL COMPANIES, INC.** and **JOHN HYNES** engaged in trade or commerce as defined within Section 501.203(8), Fla. Stat. (2005) by

routinely providing pool cleaning and repair services to Palm Beach County consumers who contracted with them.

9. The above referenced customers of **POOL COMPANIES, INC.** are consumers as defined by Section 501.203(7), Fla. Stat. (2005).

10. On or about September 5, 2004, Hurricane Frances came ashore the eastern coast of the state of Florida causing property damage in Palm Beach County, among other counties.

11. On or about September 25, 2004, Hurricane Jeanne came ashore the eastern coast of the state of Florida causing property damage in Palm Beach County, among other counties.

12. Prior to the above referenced hurricanes, **POOL COMPANIES, INC.** had contracted or agreed, either orally or in writing, with its customers to provide pool cleaning services for a specific price as specifically delineated in the company's "Service Outline". Chemicals were included in the price unless the chemical was stabilizer or diatomaceous earth. A copy of an example of the above referenced written contract and "Service Outline" is attached hereto as Exhibit "A".

13. At no time did **POOL COMPANIES, INC.** ever advise its customers that in the event of a hurricane the customers would have to pay an additional charge to have their pools cleaned or chemically balanced.

14. After the above referenced hurricanes **POOL COMPANIES, INC.** sent each of its customers an invoice for a "one time charge", of various amounts as determined by the Defendants, for an alleged "special cleanup" because of the hurricanes. A copy of an example of the invoice is attached as Exhibit "B".

15. Every, or almost every, customer of **POOL COMPANIES, INC.** received one of the

above referenced invoices even if the customer cleaned his or her own pool after the hurricanes or had little or no debris in the pool.

16. As a result of the above referenced invoices, **POOL COMPANIES, INC.** billed an additional Two Hundred Thousand Eight Hundred Forty Dollars and Thirteen Cents (\$200,840.13), and collected approximately One Hundred Seventy Three Thousand Five Hundred Ninety Four Dollars and Fifteen Cents (\$173,594.15) in additional monies beyond what it otherwise would have collected.

17. Under Florida law there is no legal right to enforce payment of pool maintenance services such as those rendered by the Defendants as part of their “special cleanup” by means of a mechanic’s lien.

18. In some instances customers, who refused to pay the invoice for the above referenced “one time charge”, were told by the Defendants that if they did not pay, then a mechanic’s lien would be placed on their homes and that the liens could be foreclosed and the customers’ homes sold.

19. In some instances the Defendants actually recorded mechanic’s liens against the homes of customers who refused to pay the above referenced “one time charge”, thereby clouding the customers’ titles.

### **COUNT I**

### **DECEPTIVE, UNFAIR, AND UNCONSCIONABLE BILLING IN VIOLATION OF**

### **FLORIDA STATUTE 501 PART II**

20. The Plaintiff adopts and re-alleges each and every allegation contained in paragraphs 1 through 16 above as if fully set forth herein.

21. By sending the above referenced invoices for a “one time charge” for an alleged “special cleanup” and demanding payment, **POOL COMPANIES, INC.** engaged in unconscionable, deceptive, and unfair acts and practices in violation of 501.204, Fla. Stat.(2005), which provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

22. The acts and practices of **POOL COMPANIES, INC.** were deceptive, unconscionable and unfair because:

a) any additional or extra services actually provided to consumers, that **POOL COMPANIES, INC.** referred to as “special cleanup”, were services it was already obligated to provide for no additional charge under the existing written or oral contracts, or

b) **POOL COMPANIES, INC.** did not provide any additional or extra service as part of any “special cleanup” above and beyond what it normally provided to a given customer on a regular basis or after a period of excessive rain as is common in South Florida, or

c) if the existing oral or written contracts did not cover the additional or extra services referred to as “special cleanup” by **POOL COMPANIES, INC.**, and the Defendant actually performed services above and beyond what it normally provided a given customer on a regular basis or after a period of excessive rain, then the Defendant failed to obtain the customers’ permission before providing the service, and/or failed to reach an agreement with the customer beforehand regarding price.

23. As a direct and proximate result of the above alleged deceptive, unconscionable, and unfair acts and practices, consumers sustained monetary damages for which restitution is now sought.

24. The above described acts and practices of **POOL COMPANIES, INC.** have injured, and if repeated, will again injure and prejudice the public.

25. **POOL COMPANIES, INC.** willfully engaged in the above acts and practices within the meaning of §501.2075, Fla. Stat.(2005), because it knew or should have know that said acts and practices were unfair or unconscionable.

26. Unless **POOL COMPANIES, INC.** and **JOHN HYNES** are temporarily and permanently enjoined from engaging further in the acts and practices described herein, the continued activities of the Defendants will result in continuing injury to the public. Furthermore, the Plaintiff is entitled to permanent injunctive relief without the necessity of showing that there is an irreparable injury to the public for which there is no adequate remedy at law.

27. At all times material herein, the Defendant **JOHN HYNES** knew or should have known that he and/or **POOL COMPANIES, INC.** were engaging in the unfair, deceptive, and unconscionable acts and practices alleged herein.

28. At all times material herein, the Defendant, **JOHN HYNES** either participated in the unfair, deceptive, and unconscionable acts and practices alleged herein or had the authority to control the conduct of **POOL COMPANIES, INC.**

WHEREFORE, the Plaintiff, **STATE OF FLORIDA DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL**, demands judgment as follows:

A) An order temporarily and permanently enjoining the Defendants and their officers,

agents, servants, employees, and those persons in active concert or participation with them who receive actual or constructive notice of the injunction, from:

- a) Violating the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act (2005);
- b) Assessing any charge to a consumer beyond what is specifically delineated in a written contract, when a written contract or an amendment thereto exists; and
- c) Assessing any charge to a consumer, when the existing agreement is oral, unless that charge is specifically itemized and explained to each consumer in writing before it is incurred, and the consumer is given the option to decline or accept the service.
- B) An order awarding restitution for consumers injured by the Defendants' deceptive, unfair, and unconscionable acts and practices.
- C) An order assessing against the Defendants civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for each violation of Chapter 501, Part II, Florida Statutes in accordance with 501.2075, Fla. Stat.(2005); and Fifteen Thousand Dollars (\$15,000.00) for each violation that victimizes, or attempts to victimize a senior citizen or handicapped person, in accordance with 501.2077, Fla. Stat. (2005),
- D) An order awarding the Plaintiff reasonable attorneys' fees and costs pursuant to 501.2105, Fla. Stat. (2005), and
- E) An order granting such other relief as this Honorable Court deems just and proper.

**COUNT II**

**DECEPTIVE, UNFAIR, AND UNCONSCIONABLE COLLECTION PRACTICES IN**

**VIOLATION OF FLORIDA STATUTE 501 PART II**

29. The Plaintiff adopts and re-alleges each and every allegation contained in paragraphs 1 through 19 above as if fully set forth herein.

30. **POOL COMPANIES, INC.** engaged in deceptive, unconscionable, and unfair billing practices as alleged in paragraphs 21 and 22, and said paragraphs are re-alleged and incorporated as if fully set forth herein.

31. 501.204, Fla. Stat.(2005) provides that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.

32. The Defendants engaged in deceptive, unfair, and unconscionable collection practices in violation of 501.204, Fla. Stat.(2005) by:

a) threatening to place a mechanic's lien on a customer's home if he or she failed or refused to pay the above referenced invoice, and/or

b) leading customers to believe that after the mechanic's lien was in place it would then be foreclosed and the customers' home sold unless payment was received, and/or

c) actually recording mechanics liens against the homes of customers who refused to pay the above referenced invoice, thereby clouding the customers' titles, and not removing the liens until payment was received.

33. As a direct and proximate result of the above alleged deceptive, unconscionable, and unfair acts and practices, consumers sustained monetary damages.



34. The above described acts and practices of the Defendants have injured, and if repeated again, will injure and prejudice the public.

35. The Defendants willfully engaged in the above acts and practices when they knew or should have know that said acts and practices were unfair or unconscionable.

36. Unless **POOL COMPANIES, INC**, and **JOHN HYNES** are temporarily and permanently enjoined from engaging further in the acts and practices described herein, the continued activities of the Defendants will result in continuing injury to the public. Furthermore, the Plaintiff is entitled to permanent injunctive relief without the necessity of showing that there is an irreparable injury to the public for which there is no adequate remedy at law.

37. At all times material herein, the Defendant **JOHN HYNES** knew or should have known that he and/or **POOL COMPANIES, INC.** were engaging in the unfair, deceptive, and unconscionable acts and practices alleged herein.

38. At all times material herein, the Defendant, **JOHN HYNES** either participated in the unfair, deceptive, and unconscionable acts and practices alleged herein or had the authority to control the conduct of **POOL COMPANIES, INC.**

WHEREFORE, the Plaintiff, **STATE OF FLORIDA DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL**, demands judgment as follows:

A) An order temporarily and permanently enjoining the Defendants and their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual or constructive notice of the injunction, from: a)

Violating the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and

Unfair Trade Practices Act (2004) (hereinafter, "FDUTPA"); and

b) placing a mechanic's lien, or threatening to place a mechanic's lien on a consumer's home in an effort to collect payment for pool maintenance services.

B) An order awarding restitution for consumers injured by the Defendants' deceptive, unfair, and unconscionable acts and practices.

C) An order assessing against the Defendants civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for each violation of Chapter 501, Part II, Florida Statutes in accordance with 501.2075, Fla. Stat.; and Fifteen Thousand Dollars (\$15,000.00) for each violation that victimizes, or attempts to victimize a senior citizen or handicapped person, in accordance with 501.2077, Fla. Stat.

D) An order awarding the Plaintiff reasonable attorneys' fees and costs pursuant to 501.2105, Fla. Stat., and

E) An order granting such other relief as this Honorable Court deems just and proper.

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL

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