

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

CASE NO:

PETER BALLANCE,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF GREENACRES,)
 a Florida municipal corporation,)
)
 Defendant.)
 _____/

COMPLAINT

Peter Ballance sues the City of Greenacres and alleges:

Introduction

1. By this action, Mr. Ballance challenges the City of Greenacres’ repeated denial of municipal services to him on the basis of his neurological disability, its refusal to grant him a reasonable accommodation, and its retaliation against him through false arrest, false imprisonment, malicious prosecution and battery for asserting his rights under the Americans With Disabilities Act. 42. U.S.C. § 12132; 28 C.F.R. § 35.104. (hereinafter “the ADA”). Further, because of his disability, he requires assistive technology in the form of an audio recording device, is in doubt as to his rights under Chapter 934, Florida Statutes, and seeks a declaratory judgment allowing him to audio tape record public

officials without their consent while they are engaged in their official duties in public places.

2. This is an action for damages exceeding \$15,000.00, and injunctive and declaratory relief.

3. This Court has jurisdiction over the declaratory judgment claim pursuant to §86.011 Fla. Stat. and for equitable relief pursuant to §34.01(4), Fla. Stat.

4. All material acts and occurrences described herein occurred within Palm Beach County, Florida.

5. Plaintiff has complied with any and all conditions precedent to the filing of this Complaint.

Parties

6. Plaintiff, Peter Ballance, hereinafter referred to as Ballance, is a 63-year-old resident of Palm Beach County and a longtime resident of the City of Greenacres.

7. Defendant, City of Greenacres, hereinafter referred to as the City, is a municipal corporation established and organized under the laws of Florida and is located in Palm Beach County, Florida.

8. The City is a public entity as defined in 42 U.S.C. § 12131(1). It has waived immunity in certain cases under Fla. Stat. §768.28(6).

9. Ballance is a disabled individual within the meaning of the ADA who is a

resident of the City and has repeatedly sought City services and been refused services because of his disabilities. As recently as 2007, the City has denied Plaintiff a reasonable accommodation in the provision of City services and has failed to take steps to ensure that Plaintiff could communicate effectively with City.

The Disability

10. Ballance suffers from a neurologically-based disability known as Asperger's Syndrome, which is one of several autism spectrum disorders. He also has severe anxiety, a memory disorder, and a speech and communication disorder. Ballance has significant impairments in his ability to learn new verbal information, recognize faces, and learn and retain visual and visuo-auditory information. His disabilities mean that Ballance has trouble understanding and remembering spoken conversation.

11. Ballance uses assistive technology devices in order to accommodate his disability in his daily living activities. One of these devices is an audio recording device and another is a speaker phone. Ballance makes a recording of conversations so that he can play them back for himself, assisting his memory and his understanding of the conversations.

The City Denies Ballance Necessary Services, Intentionally Ignores His Needs, and Retaliates Against Him

12. As a citizen of the City of Greenacres, Ballance has repeatedly sought city services, such as police protection and emergency medical assistance. In addition,

Ballance has interacted and continues to interact with the police and code enforcement as these City employees have enforced City ordinances and rules.

13. Ballance has repeatedly given notice to the City and to various City employees of the nature of his disability and the need to accommodate his disability through the use of assistive technology devices. He has orally informed City employees not only of his need to use assistive technology but also of his inability to understand their communications with him and his need for their assistance in communicating more clearly and understandably to him.

14. Ballance wears a small notice on his shirt that alerts people to his disability and his use of assistive technology. Ballance also posts a notice at his home in the City that contains a similar alert.

15. The City, and its employees, have not only refused to accommodate Ballance by providing accommodations of his disability but have intentionally discriminated against Ballance when he has sought to provide his own accommodations through the use of his own assistive technology devices.

16. In August 2005, the police responded to Ballance's call for assistance with a domestic disturbance involving his son and his son's threats to use a weapon. When the police arrived, Ballance orally advised them that he needed to use an audio recording device as an accommodation for his neurological disability. In response, the police refused to give him and/or his family, including Peter's wife Ruth Ballance, their 12-year-old daughter, Emily Ballance, and 16-year-old son, Blake Ballance, services because

Ballance was operating his audio recording device. Despite the serious nature of the allegation, the police stopped speaking to Ballance or his family as long as Ballance had the assistive technology. The police left without making any attempts to ensure the safety of the other family members because of the officers' problem with Ballance's disability accommodation. One of the two officers present that night at Ballance's home was Greenacres Police Officer Sanjeev M. Ramasawmi.

The Arrest, Hospitalization and Prosecution

17. On Thursday, August 11, 2005, while engaged in their official duties, Greenacres Police Officers Ramasawmi and Raul Vallejo appeared in a public space outside of the home of Ballance at 4206 Caesar Circle. When the police began ticketing his car, Mr. Ballance approached them and had a conversation with Officer Ramasawmi. Ballance recorded the conversation on his audio recording device without Ramasawmi's consent and further recorded the interaction through photographs and videotape from devices that Ballance obtained from the house through his family members who were present for the arrest.

18. After Ballance asked Officer Ramasawmi whether the ticket was police retribution for the other night and why he looked mad, the officer responded, "You know what. I still don't want that recording device on." Mr. Ballance stated, "Well, it's on." The officer stated, "It is a third-degree felony. If you want to push it, you can go to jail for it." Mr. Ballance replied, "Well, I am pushing it now." Mr. Ballance started taking pictures showing that the police parked on the same public right-of-way that he parked on

that day and had parked on numerous times before new “no parking” signs were put up. Officer Vallejo sarcastically commented that Ballance should take some pictures of the no-parking signs.

19. Immediately thereafter as Ballance took another picture and while Officer Vallejo was not looking, Officer Ramaswami battered Mr. Ballance by tackling him to the ground, without warning or announcement, and started struggling with a surprised Ballance.

20. The end of this struggle was captured on video by Ballance’s family.

21. As a direct result of injuries and cardiac symptoms suffered by Ballance during this arrest, Ballance was transported to Wellington Regional Hospital for medical treatment. City police would not allow Ballance to use his audio recording device while interacting with the ambulance personnel, nor with the Wellington Regional Hospital personnel. An emergency room physician called Mrs. Ballance at her home and requested that she bring to the hospital Ballance’s audio recording device so that Ballance could better interact with hospital personnel. When Mrs. Ballance arrived at the Wellington Regional Hospital emergency room, a City police officer refused to allow her to leave the audio recording device for Ballance’s use with either the police officer, the doctor or Ballance himself.

22. Ballance was then arrested without a warrant and without probable cause, and incarcerated at the Palm Beach County Jail until his bond was posted.

23. He was initially booked into the jail for Resisting Arrest With Violence, Fla. Stat. § 843.01, a third-degree felony. The state down-filed the charges on September 15, 2005 to Resisting Arrest Without Violence, Fla. Stat. § 843.02, a first-degree misdemeanor.

24. The City's actions on August 11, 2005 were in retaliation for Mr. Ballance exercising his statutory and constitutional rights by using a device to accommodate his disability to openly record a face-to-face conversation with a uniformed, on-duty police officer so Ballance could later recollect this public conversation, on public property, with the police about this traffic ticket issued by the officer as part of his official duties.

25. Mr. Ballance's 16-year-old son Blake Ballance was also arrested August 11, 2005 and taken into police custody for Resisting Arrest Without Violence after he violated a police order by going into his home to get an audio recording device for his father.

26. When Blake was arrested, Greenacres Police Officer William Vaughan reached into Blake's right front pocket and discovered an audio recorder that contained confidential attorney-client discussions of Mr. Ballance but nothing else. (All charges against Blake were dropped.)

27. The criminal prosecution terminated in Ballance's favor when he was found not guilty of Resisting Arrest Without Violence at a jury trial before Palm Beach County Judge Joseph Marx on February 2, 2007.

Continuing Denials of Municipal Services

28. In connection with an ongoing issue with a home repair, the City has cited the Ballances for failing to comply with City's electric codes.

29. The issues relating to the code enforcement problem began in 2001. The City's inspectors and code enforcement officers have refused, and continue to refuse, to speak to Ballance when he uses his audio recording device and also will not speak with Mrs. Ballance when Ballance is present with his audio recording device. As a result, the Ballance family has not been able to understand and correct their building and electrical code problems. Given that one aspect of Ballance's disability is his difficulty understanding new verbal information and visual and auditory learning, Ballance needs additional assistance understanding the building and electrical code problems. Instead, the City has refused to communicate with Ballance in a way that is effective for him, i.e., the use of his audio recording device.

30. The City has refused to provide police protection to the Ballance family when Mr. Ballance has called and asked for assistance. In October 2006 an unknown person was driving around the traffic circle in front of the Ballance home threatening some of the children in the neighborhood, including Mr. Ballance's son. Ballance called the police. After the police arrived on the street, they refused to speak to him and used hand gestures when communicating with him and then they drove off. When other neighbors who do not have the same disability as Ballance called the police about the same issue, the police spoke with and assisted them.

31. The City's policy of refusing to speak to Ballance or aid him in any way has kept Ballance from seeking additional City services, including assisting his wife in seeking medical attention. In March 2007, for example, Mrs. Ballance suffered severe abdominal pain and Mr. Ballance called City paramedics. Because other employees of the City have refused to interact with or speak to Mr. Ballance while using his audio recording device, or have arrested him for using his audio recording device, he did not use his audio recording device out of fear that the paramedics would refuse to treat Mrs. Ballance. As a result, in a very stressful situation, when Ballance's disabilities most affect his abilities to communicate and remember audio-visual information, he was not able to use a device to accommodate his disability.

32. As a result of the City's actions and inactions, Ballance suffered legal damages in the form of incarceration, mental anguish, loss of consortium, detrimental volunteer and professional opportunities, and diminishment of stature in the community.

COUNT I

Violation of the Title II of the ADA Through Intentional Discrimination on the Basis of Disability

33. All allegations of paragraphs 1-32 are realleged as if fully set forth herein.

34. Title II of the ADA, 42 U.S.C. §§12131, *et. seq.*, prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of

the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

35. Ballance is qualified to receive basic City services, just as any other citizen of the City is qualified to receive these services.

36. The City’s refusal to provide services to Ballance violates Title II of the ADA and 28 C.F.R. 35.130 because the City’s actions intentionally discriminate against Plaintiff on the basis of his disabled and handicapped status.

37. Plaintiff has been and continues to be injured by the City’s discriminatory actions.

WHEREFORE, the Plaintiff requests that this Court:

- a. Enter judgment in favor of Plaintiff, declaring that the City violated Title II of the ADA;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from discriminating against Plaintiff on the basis of his disabilities;
- c. Award the Plaintiff nominal, actual and compensatory damages;
- d. Award the Plaintiff their reasonable attorney’s fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count II

**Violation of Title II of the ADA by
Failing to Grant Requested Reasonable Accommodation**

38. The Plaintiff re-alleges paragraphs 1-32 and 37, as if fully set forth herein.

39. The City's actions violate Title II of the ADA and 28 C.F.R. § 35.130(7), because the City has refused to make reasonable accommodations for Plaintiff's disabilities.

40. As set forth above, on a number of occasions Plaintiff has asked for accommodations.

41. The accommodations requested were reasonable.

WHEREFORE, Plaintiff requests that this Court:

a. Enter judgment in favor of Plaintiff, declaring that the City violated Title II of the ADA;

b. Enter a permanent injunction ordering the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them to provide a reasonable accommodation to Plaintiff;

c. Award the Plaintiff nominal, actual and compensatory damages;

d. Award the Plaintiff their reasonable attorney's fees and costs; and

e. Award all further relief that the Court deems proper and necessary.

Count III

Violation of ADA, Title II, by Failing to Ensure Effective Communications

42. The Plaintiff re-alleges paragraphs 1-32 and 37, as if fully set forth herein.

43. The City's actions violate Title II of the ADA and 28 C.F.R. § 35.160 because the City has refused to "take appropriate steps to ensure that communications with . . . members of the public with disabilities are as effective as communications with others."

44. Plaintiff has experienced numerous difficulties communicating with the City and its employees. The City has not taken steps to ensure that Plaintiff was able to effectively communicate with the City and the City has often refused to communicate with Plaintiff at all.

45. Plaintiff is a qualified individual with a disability as defined in 42 U.S.C. § 12131(2) and 28 C.F.R. 35.104 and entitled to the protection of the ADA.

46. The City is a public entity as defined in 42 U.S.C. § 12131(1).

47. Plaintiff has been and continues to be injured by the City's refusal to communicate effectively with him.

WHEREFORE, the Plaintiff requests that this Court:

a. Enter judgment in favor of Plaintiff, declaring that the City violated Title II of the ADA;

b. Enter a permanent injunction ordering the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them to take appropriate steps to ensure that communications with Plaintiff are effective;

c. Award the Plaintiff nominal, actual and compensatory damages;

- d. Award the Plaintiff their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count IV

Declaratory Relief

48. The Plaintiff re-alleges paragraphs 1-32 and 37, as if fully set forth herein.

49. As a result of the City's actions, Plaintiff is in doubt about his rights under Chapter 934, Fla. Stat. and the ADA, as to the validity of the City's actions and refusals to act, and particularly whether public officials performing official duties in public places have a reasonable expectation of privacy such that they can prohibit the tape recording of their oral communications.

50. Plaintiff has a right to obtain a declaration of rights or other equitable or legal relations thereunder.

WHEREFORE, the Plaintiff requests that this Court:

a. Enter judgment declaring that public officials performing official duties in public places do not have a reasonable expectation of privacy such that they can prohibit the tape recording of their oral communications.

Count V

False Arrest

51. The Plaintiff re-alleges paragraphs 1-30 and 37, as if fully set forth herein.

52. On or about August 11, 2005, the City, through its police officers, acting under color of state law and in the course and scope of their duties, arrested Plaintiff against his will without a warrant.

WHEREFORE, the Plaintiff requests that this Court:

a. Award the Plaintiff nominal, actual and compensatory damages.

Count VI

Malicious Prosecution

53. The Plaintiff re-alleges paragraphs 1-30 and 37, as if fully set forth herein.

54. The City caused Plaintiff to be prosecuted for Resisting Arrest Without Violence without probable cause.

55. The City acted with legal malice in instituting this prosecution which is implied by the lack of probable cause.

56. No prosecution of Plaintiff would have occurred but for the actions of City officials acting within the course and scope of their official duties.

57. As a result of this prosecution, Plaintiff was forced to appear at more than numerous court hearings.

58. The prosecution terminated favorably in Plaintiff's favor.

59. In defense of this prosecution, Plaintiff had to spend considerable time and energy in order to defend himself.

Count VII

Battery

60. The Plaintiff re-alleges paragraphs 1-30 and 37, as if fully set forth herein.

61. On August 11, 2005, the City through its police officer touched Plaintiff in an offensive way against his will when it tackled him prior to his arrest.

WHEREFORE, the Plaintiff requests that this Court:

a. Award the Plaintiff nominal, actual and compensatory damages.

Respectfully submitted,

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