

MICHAEL K. JEANES
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----- CASE# CV2017-007833 -----	
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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 MILLENIUM GOLF MANAGEMENT, LLC;
12 Plaintiff,
13 vs.
14 CITY OF TEMPE,
15 Defendants.

16 Case No.
17 **CV2017-007833**
18 **COMPLAINT**
19 (Eligible for Commercial Court)

20 COMES NOW Plaintiff, by and through the undersigned counsel, and for its Complaint
21 against Defendant, alleges as follows:

22 **PARTIES, JURISDICTION AND VENUE**

- 23 1. Plaintiff is an Arizona limited liability company.
24 2. At all times relevant to this Complaint, its headquarters and principal place of operation
25 was Maricopa County, Arizona.
26 3. Defendant is a municipality in Maricopa County, Arizona.
4. The events alleged herein occurred in Maricopa County, Arizona.
5. The contract discussed herein was entered into by the parties in Maricopa County,
Arizona.
6. The damages sought are more than \$10,000.
7. This Court has jurisdiction, and venue in this Court is proper.

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CASE SUMMARY

8. This case has been filed because the City of Tempe used threats and intimidation to usurp control over the golf operations of Tempe's two golf courses in direct contravention of the contract between Tempe and MGM. The actions were completely unjustified and unreasonable. After Tempe's officials prevented the contracted golf professionals from running the operations and implemented ignorant policies, the revenue to both Tempe and MGM from the golf operation plummeted. When this happened, rather than acknowledging the mistake, those same officials refused to allow MGM to do what it had done successfully for over 5 years for the City, and required the operations to continue "as-is." With mounting losses during the prime golf season, they refused to act or get out of the way. Aside from the significant losses to MGM, in the end, these officials cost the City of Tempe over \$247,000 in lost revenue from the golf operation; \$247,000 that Tempe's taxpayers will be required to makeup.

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HISTORICAL BACKGROUND

9. Millenium Golf Management (hereinafter "MGM") was selected by the City of Tempe (hereinafter "Tempe") to provide professional management of its two golf courses, Ken McDonald (hereinafter "KMGC") and Rolling Hills (hereinafter "RHGC"). The contract between Tempe and MGM was executed in 2011. Two primary factors that led MGM to accept the contract and the compensation provisions were (1) the agreement from Tempe that MGM would have wide latitude and freedom in managing all aspects of the golf operation; and (2) that the bonus target would be set such that MGM would have a realistic opportunity to earn it.

10. MGM began on July 1, 2011 to manage the operations at both courses (beginning of Tempe's fiscal year).

1 11. Under the contract, also referenced as RFP 11-129, MGM was authorized and required to
2 manage the day-to-day operations of both golf courses. Tempe received all revenue from tee
3 times, golf car rentals, and the driving ranges. MGM received all other revenues resulting from
4 the golf operation and the restaurants.

5 12. Tempe was responsible for physical maintenance of the golf courses.

6 13. Tempe was responsible for providing the Point-of-Sale system (hereinafter "POS") for
7 the two pro shops which included the "tee sheet" program for entering and tracking all golf
8 reservations and merchandise purchases.

9 14. Tempe was responsible for providing the POS system for the two restaurants.

10 15. In 2011, when MGM assumed control over Tempe's golf courses, the condition of the
11 courses and driving ranges, the condition of the facilities (pro shops and restaurants), the state of
12 the golf car fleet, and the overall reputation and impression of the two courses in the community
13 was obismal. The financial performance of the courses was reflective of those poor conditions.

14 16. MGM worked with Tempe to repair and refurbish the facilities (pro shops and
15 restaurants), improve the condition of the golf courses, improve the condition of the golf car
16 fleets, and improve the condition of the driving ranges in order to transform the customer
17 experience at the golf courses, and begin repairing the image of Tempe golf.

18 17. MGM's philosophy in operating the courses was to make decisions regarding the
19 operations as if it owned everything related to the golf courses. So, irrespective of whether
20 something generated revenue for Tempe or MGM, priorities were set, policies instituted, and
21 decisions made based on their overall benefit to the golf operation.

22 18. MGM's primary goals throughout the time it managed the golf operations were to: (1)
23 provide an excellent overall customer experience; (2) maximize the number of tee times booked
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1 and the revenue generated thereby in greens fees and related; (3) create personal relationships
2 with customers, community organizations, local junior high and high school golf teams, and
3 Arizona golf organizations and professionals to create additional opportunities for enhancing
4 their ability to accomplish goals (1) and (2).

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6 19. MGM's efforts resulted in an immediate turnaround of the state of Tempe's golf
7 operation. Overall revenue from the golf operation increased significantly for 2011-12 compared
8 to 2010-11. MGM maintained this momentum with consistent increases in number of rounds
9 played and revenue collected for Tempe over the next several years. At the same time, MGM
10 provided guidance and recommendations to Tempe on their maintenance operations of the
11 courses which allowed Tempe to reduce the number of employees performing the maintenance
12 from seventeen to five – a significant cost saving for Tempe and its taxpayers.

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14 20. As part of MGM's efforts to increase rounds and revenue at the golf courses, and advance
15 the "Golf Tempe" brand, MGM created the website, golftempeaz.com at its own expense.
16 Through this website, customers could find information and events related to the golf courses
17 and book tee times. The website quickly became the preferred method for golfers to book online
18 tee times for Tempe's golf courses. Between 2012 and 2016, well over 150,000 rounds were
19 booked through golftempeaz.com. Tempe employees were fully aware that MGM had created
20 and were operating the website as MGM had shared the information with the City of Tempe's
21 golf board. In 2012, MGM requested the contract be modified to include reasonable
22 compensation to MGM as payment for the significant benefits Tempe was receiving from
23 MGM's website. Tempe public works and parks departments' leadership agreed compensation
24 should be provided, and made assurances that it would be added into the contract at some point,
25 but asked for that to be deferred until a later time. MGM accepted the assurances, believing them
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1 to be genuine. Additional assurances were made by Tempe officials that compensation would be
2 provided, until in September, 2016 when Tempe employees new to the golf operation stated their
3 refusal to add compensation for the website into the contract. This was done despite the fact that
4 (as discovered later) Tempe had pointed its official Tempe.gov website to golftempeaz.com
5 without the knowledge or approval of MGM. In late November, MGM added a \$1.99 booking
6 fee for rounds booked through golftempeaz.com. After a Tempe employee attempted to book a
7 tee time through the site and saw the \$1.99 booking fee (\$1 less than the \$2.99 then being
8 charged by GolfNow), Tempe officials demanded the booking fee be removed from MGM's
9 owned and managed site or MGM would be declared in breach of RFP 11-129.

11 21. From July, 2011 through May, 2016 MGM had been extremely successful in managing
12 the golf operations for Tempe. Rounds had increased from 97,763 in the 2011-12 fiscal year to
13 111,542 in the 2014-15 fiscal year. Revenue to Tempe had increased from \$2,339,300 in 2011-
14 12 to \$2,758,885 in 2014-15. The 2015-2016 fiscal year was also trending well. In April of 2016,
15 RHGC was completely closed for extensive renovations, leaving only KMGC operating. Despite
16 having only one operating golf course for 2+ months of the 2015-16 fiscal year (and course
17 condition problems discussed below), revenue was still \$2,644,706.

19 22. The contract between MGM and Tempe was renewed and extended in or about June,
20 2016 for three additional fiscal years (2016-17, 2017-18, 2018-19).

22 23. At some point in May, 2016, the Tempe maintenance team at Ken McDonald applied a
23 chemical to the course without communication to MGM; this had never been done previously at
24 either of the Tempe golf courses. As a direct result, the condition of the course deteriorated
25 extremely quickly. The winter grass died long before the summer grass began to come in. The
26 fairways became essentially dirt. Golfers were extremely unhappy with the condition of the

1 course and rounds declined as a result. Several of the leagues at KMGC threatened to move to
2 other courses offering better rates on courses with grass. MGM was able to persuade most of the
3 leagues to stay, but had to offer discounted rates to do so.

4 24. In July, the course conditions had not improved significantly, but summer grass was
5 beginning to come in. The maintenance team then aerified the course, which created more
6 difficulties with getting tee times booked due to the course conditions. So, from June through
7 August, for reasons completely outside MGM's control, and completely within Tempe's control,
8 rounds and revenue were significantly reduced because of poor course conditions.

9 25. MGM continued working with the leagues that had stayed, and planned to move them
10 back to normal rates on September 1st, 2016. MGM also maintained contact with the leagues that
11 had left to get them to return to KMGC.

12 26. Shortly after this time, Tempe officials met with MGM management and raised concerns
13 with MGM for failing to meet budgeted revenue numbers for June, July, and August. The
14 revenue budget was unilaterally set by Tempe without input from MGM. The revenue budget for
15 2016-17 was unrealistic as it was increased over the 2015-16 budget, AND RHGC was not
16 scheduled to officially reopen until late-October!

17 27. Shortly after this meeting, Tempe officials began unreasonably removing MGM's
18 authority, granted by RFP-1129, to manage the golf operations. Tempe officials began dictating
19 specific requirements related to online tee time discounts and what types of incentive or special
20 rates could be offered. MGM warned Tempe that the inability to offer competitive online
21 discounts, or to offer other special rates (student, golf & food combo, re-play, etc.) would have
22 significant and negative impacts on the number of rounds booked and the revenue. Tempe
23 officials disregarded the advice of the experienced golf professionals they had hired to run the
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1 golf operations (who had demonstrated continued success in managing Tempe's golf operation
2 for the past 5+ years) and required MGM to implement the policies or be declared in breach of
3 the contract.

4 28. MGM reluctantly complied with Tempe's demanded policies. The result was precisely
5 what MGM had predicted and online bookings dropped significantly. MGM pleaded with Tempe
6 to allow increased online discounts and the flexibility to manage tee times and rates as they had
7 done very successfully over the past 5+ years. Tempe refused. MGM proposed implementing a
8 matrix of discounts relative to the time of booking. Tempe rejected it. Tempe's required pricing
9 structures resulted in unnecessarily discounting high-demand time slots, while under-discounting
10 (compared to competition) lower-demand time slots. The result was as predicted: fewer rounds
11 sold, and less revenue collected.

12 29. Another significant problem faced by MGM in attempting to work with Tempe to
13 improve rounds and revenue or address issues with the contract, the golf operation, or the
14 working relationship, was that Tempe officials would not respond to MGM's requests or
15 proposals in a timely manner, if at all. MGM was put into the position where the key decisions
16 necessary to manage the daily golf operation had to be approved by Tempe officials, but those
17 officials consistently failed to provide the required approvals or inputs. As rounds and revenue
18 continued to decline under Tempe's dictated policies (as warned), Tempe officials continued to
19 blame MGM yet would not heed MGM's advice. Tempe officials failed to understand that
20 successfully managing the golf operation could not be done through weekly or monthly board
21 meetings; it required day-by-day and even hour-by-hour adjustments, 364 days per year. Or, if
22 they understood that, they were simply unwilling to expend the effort.
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1 30. In January, 2017, Tempe exercised the termination for convenience clause to terminate
2 the contract with MGM as of 6/30/2017.

3 31. Despite the continued and unreasonable interference by Tempe officials into MGM's
4 management of the golf operations, MGM continued to fully execute its duties and obligations
5 under the contract, to the extent Tempe officials would allow, through the end of the contract on
6 June 30, 2017. MGM acted in continued good faith despite the significant and negative impact
7 Tempe's interference had on MGM's revenue.

8 32. MGM filed claims against Tempe with the City Clerk on March 2, 2017 and an updated
9 claim on August 24, 2017 as required by A.R.S. § 12-821.01 for the damages set forth in this
10 complaint.
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12 33. Tempe lost over \$247,000 from the golf operations from October 16, 2016 through June
13 30, 2017 compared to what MGM would have generated for them. MGM lost \$137,000. All
14 losses were the direct result of the policies Tempe officials put into place and refused to alter
15 despite the mounting losses.
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18 **FACTUAL ALLEGATIONS**

19 34. From June, 2011 through December, 2016, Tempe failed to provide, as required, an
20 adequately functional POS system and tee sheet program for either Ken McDonald or Rolling
21 Hills. The hardware and software were unreliable and resulted in the systems being down and/or
22 dropping/losing transactions on a nearly daily basis. Further, the systems, because of their known
23 inadequacies, required frequent "off hours" updates. This required MGM personnel to remain
24 on-site long after the courses had closed. In addition, because of dropped or lost transactions, or
25 transactions that occurred during times the system was down, MGM personnel would have to
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1 manually enter transactions after the fact. The POS/tee sheet system would also regularly go
2 offline, and tee times entered into the system would be lost with no way to recover them. This
3 led to online tee times being booked over the lost "call-in" tee times.

4 35. From 2011 through December, 2016, Tempe failed to provide as required, an adequately
5 functional POS system for the restaurants at Ken McDonald and Rolling Hills. The systems,
6 because of their known inadequacies, required frequent "off hours" updates. This required MGM
7 personnel to remain on-site long after the restaurants had closed. In addition, because of dropped
8 or lost transactions, or transactions that occurred during times the system was down, MGM
9 personnel would have to manually enter transactions after the fact.

10 36. The failings of the POS systems required additional hours and employment costs to
11 MGM. It also required significant additional hours, beyond all reasonable expectations of the
12 scope of work, for MGM management to support the many off-hours requests to work through
13 GolfNow IT support and Tempe IT support in order to reinitialize the POS system.

14 37. Beginning in mid-2012, MGM created at its own expense the website, golftempeaz.com,
15 and put it into operation. Creating and operating a website to promote Tempe golf and allow
16 online bookings was not within the Scope of Work of RFP 11-129. The website provided news
17 and information related to the two golf courses. The website also provided the capability for
18 individuals to book tee times at both golf courses. Customers booking through golftempeaz.com
19 received the added bonus of not being charged a booking fee (GolfNow charged \$2.99 per
20 booking). This website was heavily used by the public and by Tempe officials to book tee times
21 at both golf courses.

22 38. Having demonstrated the website's tremendous benefit to Tempe, MGM requested that
23 Tempe include compensation for MGM to continue to operate the site in the contract. The
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1 contract at that time extended until June 30, 2014. Tempe officials agreed compensation should
2 be provided and would be added into the contract, but requested additional time to add it, which
3 MGM agreed to. MGM continued operating the site, receiving numerous assurance that
4 compensation would be provided. In September, 2016, Tempe officials new to the golf operation
5 stated that compensation would not be provided. In November
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7 39. Beginning in October, 2016, Tempe's Public Works and Parks Departments assumed
8 control of the golf operation. The City eliminated MGM's ability to: (1) fluctuate the golf
9 operating hours based on traffic of golfers and on seasonality of the golf business; (2)
10 dynamically adjust on-line greens fees and specials based on demand, competition, tee times
11 utilization, course conditions, weather conditions, golf market, etc.; and (3) offer incentive rates
12 to golfers in order to increase course utilization and build the customer base (replay rate,
13 food+golf rate, student/university rate, super twilight rate).
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15 40. As a direct result of the City's unreasonable and inexperienced policies, the number of
16 golfers utilizing the golf courses dropped significantly. Tempe continued to require the courses
17 to be operated in the same manner, blatantly disregarding recommendations from MGM (the golf
18 professionals they had hired), through the end of the contract, and despite seeing the significant
19 drop in rounds booked. MGM lost significant revenue and incurred increased labor costs at both
20 facilities due the reduced number of golfers resulting from Tempe's required policies.
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22 41. As a direct result of the City's interference with MGM's ability to operate the Golf
23 facilities according to RFP 11-129, MGM did not earn the bonus specified in the contract for
24 meeting the revenue target for the 2016-17 fiscal year.
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CAUSES OF ACTION

COUNT 1 – BREACH OF CONTRACT

42. Plaintiff alleges paragraphs 1-41 as if fully set forth herein.

43. Defendant breached RFP 11-129 by failing to provide a reliable, functional POS and tee sheet system for the Ken McDonald pro shop as required by § 1, ¶ V of the “SCOPE OF WORK” of RFP 11-129, causing damage to Plaintiff in increased labor cost, and uncompensated work required of MGM management personnel beyond the scope of work contemplated in RFP 11-129.

44. Defendant breached RFP 11-129 by failing to provide a reliable, functional POS and tee sheet system for the Rolling Hills pro shop as required by § 1, ¶ V of the “SCOPE OF WORK” of RFP 11-129, causing damage to Plaintiff in increased labor cost, and uncompensated work required of MGM management personnel beyond the scope of work contemplated in RFP 11-129.

45. Defendant breached RFP 11-129 by failing to provide a reliable, functional POS system for the Ken McDonald restaurant as required by § 1, ¶ V of the “SCOPE OF WORK” of RFP 11-129, causing damage to Plaintiff in increased labor cost, and uncompensated work required of MGM management personnel beyond the scope of work contemplated in RFP 11-129.

46. Defendant breached RFP 11-129 by failing to provide a reliable, functional POS system for the Rolling Hills restaurant as required by § 1, ¶ V of the “SCOPE OF WORK” of RFP 11-129, causing damage to Plaintiff in increased labor cost, and uncompensated work required of MGM management personnel beyond the scope of work contemplated in RFP 11-129.

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COUNT 2 – BREACH OF THE COVENANT OF GOOD

FAITH AND FAIR DEALING

47. Plaintiff alleges paragraphs 1-46 as if fully set forth herein.

48. Defendant breached its covenant of good faith and fair dealing with respect to RFP-1129 by intentionally and unreasonably interfering with and/or preventing Plaintiff from executing its duties, functions, and obligations under the contract causing damage to Plaintiff.

49. Defendant breached its covenant of good faith and fair dealing with respect to RFP-1129 by intentionally and unreasonably raising the golf revenue budget beyond an achievable level to prevent Plaintiff from earning the performance bonus for reaching that target, causing damage to Plaintiff.

COUNT 3 – UNJUST ENRICHMENT

50. Plaintiff alleges paragraphs 1-49 as if fully set forth herein.

51. Defendant promised to compensate Plaintiff for Plaintiff’s continued maintenance and operation of golftempeaz.com and Plaintiff relied on that promise. Defendant had knowledge of the website, received significant value from the website’s operation, and refused to allow Plaintiff to collect fees from those utilizing the website, and it would be inequitable for Defendant to retain those benefits without compensation to Plaintiff.

COUNT 4 – NEGLIGENCE

52. Plaintiff alleges paragraphs 1-51 as if fully set forth herein.

53. After Defendant asserted control over the golf course operations, it failed to exercise reasonable care. When Defendant put itself in the position to dictate the policies and procedures

1 related to greens fees, online discounts, and hours of operation, it did so knowing that MGM
2 relied on the revenues from merchandise and food/beverage sales in the pro shops and
3 restaurants at the two facilities. As such, it owed a duty to MGM to act as a reasonable golf
4 professional in managing those operations. It breached that duty by failing to employ reasonable
5 policies or expend reasonable time and effort in reviewing and adjusting policies to ensure the
6 golf operations functioned at a normal level. Tempe officials breached this duty by failing to (1)
7 implement recommendations of the golf professionals hired to manage the golf operations
8 (MGM); (2) implement the recommendations from GolfNow; (3) seek out and employ
9 recommendations from other golf professions; (4) actually spend time each day at the golf
10 courses to be able to assess and adjust their dictated policies; and/or (5) spend time to properly
11 educate themselves on the requirements and best practices of managing a golf operation. The
12 failure to exercise any of the above was unreasonable as none of the Tempe officials were golf
13 professionals or had direct experience managing the day-to-day operations of a golf facility.
14 Defendant further breached its duty by failing to make reasonable adjustments to their
15 operational dictates even as the golf operation began and continued to suffer month after month.
16 Plaintiff was damaged as a direct result of Defendant's negligent indifference to the declining
17 golf rounds resulting from Defendant's requirements.
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22 **PRAYER**

23 Wherefore, Plaintiff prays for an award of damages as follows:

24 (1) For lost revenue and extra business expenses as a result of Defendant's breach of
25 contract in an amount to be proven at trial;
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1 (2) For lost revenue and extra business expenses as a result of Defendant's breach of
2 the covenant of good faith and fair dealing in an amount to be proven at trial;

3 (3) For compensation for the benefits Defendant received as unjust enrichment in an
4 amount to be proven at trial;

5 (4) For lost revenue, and extra business expenses as a result of Defendant's
6 negligence after asserting control over the golf operations;

7 (5) For an award of Plaintiff's attorneys fees and taxable costs; and

8 (6) For such further relief as the court deems just and proper.
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13 RESPECTFULLY SUBMITTED this 25 day of August, 2017.

14 **COX LAW OFFICE, PLC**

15
16 By /s/ JEFFREY COX
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