

IN THE CIRCUIT COURT FOR NASSAU COUNTY, FLORIDA
CIRCUIT CIVIL NO. _____

RAYONIER INC. and
RAYDIENT LLC,

Plaintiffs,

vs.

MICHAEL S. MULLIN,

Defendant.

COMPLAINT SEEKING INJUNCTIVE RELIEF AND MONETARY DAMAGES

Plaintiffs Rayonier Inc. and Raydient LLC (f/k/a TerraPointe LLC) (collectively “Rayonier”), by and through its undersigned attorneys, files this Complaint against Defendant Michael S. Mullin (“Mullin”), and states as follows:

PARTIES, JURISDICTION AND VENUE

1. This is an action for injunctive relief and monetary damages.
2. Rayonier Inc. is a North Carolina corporation with its principal place of business in Wildlight, Florida.
3. Raydient LLC is a Delaware limited liability company with its principal place of business in Wildlight, Florida.
4. Mullin is, on information and belief, a citizen of Florida and a resident of Nassau County, Florida.
5. This Court has jurisdiction over this dispute pursuant to Fla. Stat. § 26.012(2) because the amount in controversy exceeds \$15,000.

6. Venue is proper in this Court pursuant to Fla. Stat. § 47.011 on the grounds that: (1) Mullin is subject to personal jurisdiction in Nassau County, (2) Mullin is a resident of Nassau County, and (3) substantially all of the events giving rise to this action took place in Nassau County.

FACTS TO SUPPORT THE CAUSES OF ACTION

7. Upon information and belief, at all material times, Mullin has been an attorney licensed to practice law in the State of Florida and a member of the Florida Bar. From 2007 until early 2015, Mullin was engaged in private practice with the law firm of Rogers Towers, P.A. in Jacksonville, Florida. Mullin primarily worked from Rogers Towers' Amelia Island office.

8. While an attorney at Rogers Towers, P.A., Mullin represented Rayonier Inc. and its affiliates, including Raydient LLC, in connection with a large scale, mixed-use development project within what became the East Nassau Community Planning Area ("ENCPA"). Rayonier retained Mullin to represent it in connection with all aspects of the County approval and regulatory process relating to the ENCPA, and he provided legal services to Rayonier on a wide range of matters.

9. In the course and scope of that representation, Mullin often worked directly with Rayonier's senior managers and executives, who were not attorneys, without the direct involvement of Rayonier's in-house attorneys. This representation included legal services in connection with developing, drafting, negotiating and enacting the ENCPA, as well as approval from Nassau County for Rayonier's ENCPA sector plan and associated approvals that enables the development of up to 24,000 residential units and 11 million square feet of nonresidential development on approximately 24,000 acres of Rayonier-owned land. Mullin also represented Rayonier in connection with a related Mobility Fee Agreement. This agreement was executed in

2013 and established the development conditions for transportation-related infrastructure within the ENCPA, such as roads, sidewalks, etc.

10. Following the approval of the ENCPA, including the Mobility Fee Agreement and other initial approvals, Mullin continued to represent Rayonier concerning the various ENCPA approvals and amendments to those approvals, as well as other related applications and submittals before Nassau County that were necessary to gain approval for development of the ENCPA. Indeed, while counsel for Rayonier, Mullin was involved with the drafting of an entirely new section of Nassau County's Land Development Code that specifically addresses the ENCPA. And he is explicitly referenced in the original Mobility Fee Agreement as one of the contacts for Rayonier's affiliates. In short, Mullin's eight year representation of Rayonier and its affiliates consisted of negotiation, drafting and advice concerning the entire regulatory and land use framework necessary to create the ENCPA and to allow development of the 24,000 acres within the ENCPA.

11. At all such times, Mullin served as Rayonier's lawyer and in that capacity was made privy to, and assisted with the development and formulation of, extensive information needed to further that representation and enable Mullin to provide legal counsel to Rayonier regarding the ENCPA. Without limitation, Mullin received and provided to Rayonier and its affiliates confidential and/or attorney client privileged information as to the ENCPA, Mobility Fee Agreement documents, and related land use approvals and matters, including, but not limited to, the following:

- a. The methods by which the approvals and associated development conditions required to construct the development entitlements meet or will ultimately meet Florida and County law.

- b. Rayonier's interpretation and intent as to the applicable Florida and County statutory and regulatory requirements relating to the ENCPA development.
- c. Rayonier's understanding and commitment as to the specifics (e.g. timing, costs, etc.) to satisfy its development conditions, and Mullin's advice as to those commitments.
- d. The advice Mullin provided to Rayonier as to the legal and business risks to the company in the event any interpretation or commitment by Rayonier is ultimately determined by the County and/or other state agency as not consistent with the law or if the County and Rayonier disagree as to the document language.

12. Mullin left Rogers Towers to work as the Nassau County attorney in March 2015. He was later appointed as Interim County Manager effective July 2, 2018. On January 3, 2019, the BOCC voted Mullin as the County Manager.

13. As County Attorney, Interim County Manager and appointed County Manager, Mullin has advised and now advises the County on a variety of matters.

14. In connection with the ongoing development of the ENCPA, disputes have arisen between Rayonier and the County regarding the interpretation of the ENCPA framework, Mobility Fee Agreement and other existing land use approvals and state and local regulations, including disputes relating to whether Rayonier and its affiliates are obligated to construct, fund and maintain public infrastructure (normally the duty and prerogative of the County itself), such as public community and regional park facilities. This dispute concerns the very land use development on which Mullin represented Rayonier for eight years, and involves the very same documents and state and local regulations Mullin developed on Rayonier's behalf during his representation of Rayonier.

15. Rayonier learned that Mullin, on information and belief, at the request of the Board of County Commissioners (“BOCC”), provided advice and counsel to the BOCC concerning these disputes.

16. Mullin has continued his involvement with these matters in his new role. As Interim County Manager and now appointed County Manager, Mullin has additional, substantive decision-making authority regarding the ENCPA, Mobility Fee Agreement and other associated land use approvals and matters.

17. The disputes between Rayonier and the County concerning Rayonier’s duties, rights and obligations under the ENCPA, Mobility Fee Agreement and other associated development submittals and approvals continue as of the date of this filing. Mullin has continued his representation of the County on those matters and has continued to participate in discussions related to the disputes as Interim County Manager and now incoming County Manager.

18. Mullin’s representation as County Attorney and his work as Interim County Manager and now County Manager presents a direct conflict to his prior representation of Rayonier in the same or a substantially related matter.

19. Any actions taken by Mullin to investigate or provide any legal advice to his current client, the County, that may affect Rayonier’s ongoing development rights granted pursuant to the ENCPA are directly adverse to Rayonier’s interests and constitute a conflict as established by Rule 4-1.9 of the Rules of Professional Conduct of the Florida Bar:

A lawyer who has formerly represented a client in a matter must not afterwards:

- (a) Represent another person in the same or a substantially related matter on which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent;

- (b) Use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known; or
- (c) Reveal information relating to the representation except as these rules would permit or require with respect to a client.¹

20. On learning of Mullin's representation of the County with respect to matters on which he previously represented Rayonier, Rayonier immediately demanded that Mullin stop all such representation due to the obvious conflict of interest.

21. Rayonier repeatedly informed Mullin orally and in writing over the course of several months that it would not consent to his representation of Nassau County adversely to its interests in any ENCPA matters.

22. Mullin has refused to cease representing Nassau County with respect to Rayonier's ENCPA project. Indeed, Mullin's transition from County Attorney to County Manager appears to be part of an effort by Mullin to avoid the strictures of his professional obligations so that he can continue to breach his duty of loyalty to Rayonier and its affiliates by continuing to advise and represent Nassau County and the BOCC with respect to the ENCPA.

23. Because the disputes are ongoing, Rayonier's confidential and attorney-client privileged information regarding relevant business issues, risk and reward analyses, and possible negotiating leverage points that Mullin obtained during the course of his nearly eight year representation of Rayonier are likely to be used by Mullin to Rayonier's disadvantage. Indeed, Florida law presumes that Mullin has obtained privileged and confidential communications from Rayonier. And there is a danger that Mullin will use that information to benefit the County and the BOCC to the detriment of Rayonier and its affiliates—his former clients.

¹ Rule 4-1.11 specifically states that Rule 4-1.9 applies to attorneys serving as public officers or employees.

COUNT I –Breach of Fiduciary Duty

24. Rayonier realleges and incorporates Paragraphs 1-23 above as if set forth fully herein.

25. Mullin occupied a special and confidential relationship with Rayonier as its adviser and attorney over the course of almost eight years.

26. Rayonier reposed trust and confidence in Mullin as its adviser and attorney.

27. Mullin knowingly accepted Rayonier's trust and confidence and, as Rayonier's adviser and attorney acted in reliance on that trust and confidence.

28. As a result of the relationship between Mullin and Rayonier, Mullin owed and owes Rayonier fiduciary duties, including but not limited to the duty to (a) act in Rayonier's best interests, (b) not act adversely to Rayonier in connection with matters on which he represented Rayonier and (c) safeguard and not disclose Rayonier's confidential and attorney-client privileged information. In short, as a result of his prior representation of Rayonier, Mullin owes Rayonier a duty of loyalty which continued after his representation ceased in March 2015.

29. Mullin has breached his fiduciary duties to Rayonier in connection with his directly adverse representation of Nassau County as described above.

30. Mullin's breach of his fiduciary duties has caused Rayonier significant monetary damages, including, but not limited to, attorneys' fees and costs incurred in connection with its numerous efforts to secure Mullin's adherence to his professional obligations to Rayonier, as well as, upon information and belief, other direct and consequential damages.

31. All conditions precedent to the maintenance of this action have been obtained or were waived by Mullin.

32. Rayonier has retained Gunster, Yoakley & Stewart, P.A. in connection with the prosecution of this action and is obligated to pay it a reasonable fee for services rendered.

WHEREFORE, Rayonier respectfully requests this Court grant it monetary damages for Michael Mullin's breach of fiduciary duty to Rayonier and grant it any other relief it deems just and appropriate.

COUNT II – Injunctive Relief

33. Rayonier realleges and incorporates Paragraphs 1-23 above as if set forth fully herein.

34. This is an action for temporary and permanent injunction against Mullin to enjoin him from continuing to represent Nassau County in any capacity in matters regarding the ENCPA, including, but not limited to, the Mobility Fee Agreement, the East Nassau Stewardship District, and any other associated land development approvals and matters relating to the ENCPA that are adverse to Rayonier and its affiliates' interests and from divulging any confidential or otherwise privileged information concerning Rayonier and its affiliates that Mullin obtained or created during the course of his representation of Rayonier.

35. Mullin's current representation of Nassau County is the same or substantially related to his prior representation of Rayonier and its affiliates with respect to the ENCPA. And Rayonier and its affiliates have not provided their consent to the materially adverse representation.

36. Rayonier and its affiliates have suffered and will continue to suffer irreparable injury as a result of Mullin's actions and failures to act described in this Complaint. For example, as explained above, Rayonier will be disadvantaged in its efforts before the County to move forward with the ENCPA development as Mullin divulges privileged and confidential

information to the disadvantage of Rayonier, Mullin's former client, and to the advantage of Nassau County, Mullin's current client.

37. Under the circumstances described in this Complaint, Mullin's representation of Nassau County as described above is a direct and prohibited conflict of interest under the Florida Rules of Professional Conduct governing attorneys admitted to practice in Florida and is a clear breach of the fiduciary duties, including the duty of loyalty, owed to Rayonier.

38. As such, there is a substantial likelihood of Rayonier's success on the merits.

39. A temporary and permanent injunction will serve the public interest in protecting the attorney-client privilege, protecting Rayonier's confidential information and upholding the Florida Rules of Professional Conduct.

40. Rayonier has a clear legal right to the relief sought.

41. Rayonier does not have an adequate remedy at law.

42. All conditions precedent to the maintenance of this action have been obtained or have been waived by Mullin.

WHEREFORE, Rayonier respectfully requests that this Court (a) enjoin Michael Mullin from continuing to represent Nassau County and/or its Board of County Commissioners in any capacity in connection with matters regarding the ENCPA that are adverse to Rayonier and its affiliates' interests, (b) enjoin Michael Mullin from divulging privileged communications and confidential information he obtained during his representation of Rayonier, and (c) provide any other relief the Court deems just and appropriate.

DATED this 5th day of February, 2019.

GUNSTER, YOAKLEY & STEWART, P.A.

By /s/ William E. Adams, Jr.

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