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

Case No. 50-2019CA008660XXXXMB AI

B. & B. PROPERTIES, INC., a Florida corporation, and on behalf of all others similarly situated,

Plaintiff,

vs.

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before the Court on Class Representative, B&B PROPERTIES, INC.'s ("B&B"), and Class Plaintiffs' (together referred to as Class Plaintiffs)[1] Motion for Partial Summary Judgment ("Motion") on all counts of the Third Amended Complaint. (D.E. 172). The Court, having reviewed the parties' detailed submissions, having heard extensive oral argument on September 13, 2024, and considering the same, makes the following ruling.

INTRODUCTION

1. The Motion for Partial Summary Judgment asserts that Palm Beach County's policies and procedures of charging and collecting interest and collection agency fees as part of a code enforcement penalty, prior to the County filing a foreclosure action, are improper. Additionally, the Motion claims that the manner in which the County calculates interest and collection agency fees is also improper.

[1] The Court certified this class on November 29, 2022 (D.E. 256), and the Class Certification Order was *Per Curiam* Affirmed. *Palm Beach County v. B&B Properties, Inc.,* 370 So. 3d 655 (Fla. 4th DCA 2023).

2. Class Plaintiffs also seek partial summary judgment that the County's policy and practice of prohibiting any modification hearing once the code enforcement lien is referred to the Office of Management and Budget (OFMB), which Class Plaintiffs claim eliminates any meaningful opportunity to challenge the interest and collection agency charges and their amounts, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. Class Plaintiffs also seek partial summary judgment regarding the County's policy and practice of adding interest and collection agency fees to the code enforcement daily fine, without any legal basis, which Class Plaintiffs claim violates the Excessive Fines Clause of the Eighth and Fourteenth Amendments to the United States Constitution.

4. Class Plaintiffs filed the Motion on May 21, 2024 (D.E. 295). Also, on May 21, 2024, as required by Fla. R. Civ. P. 1.510(c), the Class Plaintiffs filed their Statement of Material Facts ("SOF") (D.E. 296). The County did not file any objection or contradict any of the facts contained in the SOF; nor did the County assert any additional statement of facts that would create a factual dispute. Therefore, pursuant to Rule 1.510(e)(2), the Court will consider the facts contained in Class Plaintiffs' Statement of Material Facts as undisputed for the purposes of the Motion. Since there is no genuine dispute as to any material fact, the Court's determination is solely based on matters of law.

INTEREST CHARGES

5. The County designated Sherry Brown, the Director of the OFMB, as one of its corporate representatives. (SOF 5 & 7). OFMB is the office responsible for collecting debts arising from code enforcement liens. (SOF 6). Ms. Brown confirmed that at all material times, the County's practice and policy was to charge interest on all code enforcement liens and that the County calculates the amount of interest by compounding the interest so that interest is being

charged on interest. (SOF 8 & 9). The County's other designated corporate representative was Ramsay Bulkeley, Executive Director of Planning, Zoning and Building. (SOF 13 & 14). Mr. Bulkeley testified that the County's legal justification for charging interest is Fla. Stat. §162.09(3). (SOF 15).

6. The undisputed facts also establish that on July 13, 2018, the County sent B&B a Statement of Account which reflected that the interest charges owed by B&B were $67,548.27 (SOF 16). It is undisputed that the July 13, 2018, Statement of Account was the County's first notice to B&B that the County was seeking interest charges as part of the code enforcement lien penalty without filing a lawsuit to foreclose the lien. (SOF 17). It is also undisputed that at all pertinent times, Palm Beach County never brought a lawsuit against B&B to foreclose its code enforcement lien, and since 2005, the County has brought only two lawsuits to foreclose a property owner's code enforcement lien. (SOF 19 & 20 and Response to Request for Admissions – D.E. 114 #1). The County further confirmed that B&B's code enforcement lien regarding interest charges was treated no differently than any other code enforcement lien. (SOF 31).

7. Therefore, to determine if the County was justified in charging interest fees as part of a code enforcement penalty, the Court must analyze the text of Fla. Stat. §162.09, which is entitled, "**Administrative fines; costs of repair; liens.**" Section 162.09(1) empowers the County through an enforcement board or a special magistrate to issue daily fines against property owners who fail to correct conditions on their property constituting code violations. Section 162.09(1) also provides that if a code inspector has reason to believe that a violation, or the condition causing the violation, presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the enforcement board or special magistrate may order the County to make all reasonable repairs and charge the violator the reasonable cost for the repairs,

in addition to the daily fine. Absent from Fla. Stat. §162.09(1) is any provision that allows for interest charges to be included as part of the daily fine or cost of reasonable repairs. Significantly, the word "interest" is not found anywhere in this section of the statute.

8. The next section, Fla. Stat. §162.09(2), provides for the amounts of the daily fine as well as specifying the criteria to be used in determining the amount. This section also provides that larger counties by population can adopt an ordinance that gives the code enforcement board or special magistrates authority to impose daily fines in excess of the limits set forth previously. However, similar to Fla. Stat. §162.09(1), Section 162.09(2) contains no authority for interest charges to be included as part of the daily fine or reasonable repair costs. The word "interest" also does not appear in Fla. Stat. §162.09(2).

9. The only section of Fla. Stat. §162.09 that refers to interest is Fla. Stat. §162.09(3), which states in pertinent part:

> After three months from the filing of any such lien which remains unpaid, the enforcement board **may authorize the local government body attorney to foreclose on the lien** or to sue to recover a money judgment for the amount of the lien **plus accrued interest.**[2]

(Emphasis supplied).

10. Focusing on the text of Fla. Stat. §162.09, the Legislature made a distinction by including interest as part of the code violation penalty when a lawsuit is brought but excluding interest charges in §§162.09(1) and 162.09(2), which only authorize a daily fine and repair costs before any lawsuit. This distinction is supported by the principles of statutory construction that guide this Court. In *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021), the Florida Supreme Court referred to the well-established principle of relying on the text of the statute:

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[2] This Court has previously ruled that the County's code enforcement ordinance limits the County to an action to foreclose the lien and does not permit an action for a money judgment. (Order, D.E. 225).

> In determining the meaning of a statute, we adhere to the supremacy-of-the-text principle - a principle recognizing that "[t]he words of a governing text are of paramount concern, and what they convey, in the context, is what the text means."

(Citations omitted).

Regarding the inclusion of interest in conjunction with a lawsuit in Fla. Stat. § 162.09(3) but not including interest anywhere else in Fla. Stat. §162.09, the Florida Supreme Court in *Horowitz v. Plantation General Hospital Limited Partnership*, 959 So. 2d 176, 185 (Fla. 2007), explained the significance of what this means as far as the Legislature's intent:

> ... [w]hen the Legislature includes a requirement in one provision and excludes a similar requirement in a related provision, **it intends a distinction** because the Legislature "'knows how to' accomplish what it has omitted" in a particular statute (quoting *Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000)).

(Emphasis supplied).

The Court cannot ignore the distinction in the language of Fla. Stat. §162.09, which allows interest to be charged when a foreclosure or money judgment lawsuit is brought but excludes any reference to interest in the prior sections, which only allow for a daily fine, and if necessary, repair costs.

11. The Court also finds persuasive the case of *Stratton v. Sarasota County,* 983 So. 2d 51 (Fla. 2d DCA 2008). *Stratton* arose from a code enforcement proceeding in which Sarasota County sought to charge a code violator, in addition to a daily fine and repair/demolition costs, payroll expenses incurred by code enforcement employees who supervised the demolition. *Id.* at 54. Stratton stipulated that the County's liens were valid but challenged the amounts claimed by the County, including these payroll expenses. *Id.* The Second District reviewed Fla. Stat. §162.09 and noted that the statute "limits the County to imposing fines and collecting the repair costs it actually incurs." *Id.* at 54-55. As to the payroll expenses, the court determined that no such remedy was provided for by Fla. Stat. §162.09:

> Nothing in these provisions permits the County to directly pass through the payroll expenses for the time spent by its code enforcement employees to an individual property owner in a code enforcement proceeding.

Id. at 55.

The Second District also determined that Sarasota County had no authority to impose penalties for code enforcement violations that are not authorized by law. The court, relying upon the Florida Constitution, held:

> ...However, the County has no authority to impose penalties that are not authorized by law. *See* ***Art. V., §1, Fla. Const.*** (permitting the legislature to create commissions and administrative bodies and grant them quasi-judicial powers); ***Art. I, §18, Fla. Const.*** **(forbidding administrative bodies from imposing any penalties except as provided by law**); see also Op. Att'y Gen. Fla. 2000-53 (2000). Neither Chapter 162 nor any other statute permits the County to directly pass through its payroll expenses for code enforcement employees' time spent on an individual case. Instead, the County is authorized only to impose fines to recoup these costs. ...

Id. (Emphasis added).

Here, this Court finds that neither Chapter 162 nor any other statute permits the County to include interest charges as part of the code violation penalties unless the interest charges are in conjunction with a foreclosure action.

12. The County claims that it is entitled to charge interest as part of the daily fine because Fla. Stat. §162.09 does not expressly prohibit counties from charging interest when no lawsuit is brought. The County argues that if any penalty for code enforcement is not "expressly prohibited," that penalty should be allowed. However, if that position were correct, then the court in *Stratton* would have allowed Sarasota County to charge payroll expenses, since Fla. Stat. §162.09 does not "expressly prohibit" payroll expenses. Further, the County's position directly conflicts with Article 1, §18 of the Florida Constitution, which limits administrative bodies to imposing only those penalties that are provided by law, which means by an act of the legislature. In *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982), the court addressed

whether a charter county has the authority to enact a valid ordinance that permits the county's consumer protection board (an administrative body) to impose a civil penalty for violation of the board's cease and desist orders. *Id.* at 1147. The Florida Attorney General had issued an opinion that Broward County did not have this authority. *See* Attorney General Opinion 079-109 (December 18, 1979). The Fourth District, relying upon Article I, §18 of the Florida Constitution, agreed with the Attorney General:

> The opinion of the Attorney General 079-109 referred to above holds that as originally enacted[,] the Broward County Consumer Protection Code violates **Article I, Section 18 of the Florida Constitution because it authorizes an administrative agency to impose a penalty without such authority being "provided by law." The Attorney General points out that that the phrase "provided by law" as used in the Constitution means as provided by an act of the legislature.** The consumer code in question, having been enacted by a charter county by ordinance, could not measure up to that requirement. **We agree with the Attorney General's opinion** and hold that the provision of the code authorizing the assessment of penalties was unconstitutional and thus unenforceable when written.

Id. at 1147-1148. (Emphasis supplied).

Similarly, in *City of Miami Beach v. Nichols*, 314 So. 3d 313, 316 (Fla. 3d DCA 2020), a code enforcement case, the court determined that Article 1, §18 of the Florida Constitution prohibited the City of Miami Beach from imposing daily fines in excess of the amounts permitted by Fla. Stat. §162.09:

> "Under our state constitution, [n]o administrative agency…shall impose a sentence of imprisonment **nor shall it impose any other penalty except as provided by law." Art. I, §18, Fla. Const. "[T]he phrase 'as provided by law' means by an act of the legislature.**' "

Holzendorf v. Bell, 606 So. 2d 645, 648 (Fla. 1st DCA 1992) (Citation omitted; emphasis supplied).

Therefore, based on Article 1, §18 of Florida's Constitution as well as the cases cited herein, the Court must reject the County's position that it can impose any such penalty that is not "expressly prohibited." Instead, the Court is persuaded by the reasoning of these cases and by the

holding of the Florida Supreme Court in *Thayer v. State,* 335 So. 2d 815, 817 (Fla. 1976), which directly conflicts with the County's position:

> It is of course a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. **Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned**.

(Emphasis added).

13. The County further argues that it is not bound by the provisions of Fla. Stat. §162.09, since the County can enact by ordinance its own code enforcement system and exempt itself from the provisions of Chapter 162, Florida Statutes. The County cites the example of Miami-Dade County, which did, in fact, adopt an alternative code enforcement system and specifically exempted itself from the provisions of Chapter 162. Miami-Dade County's ordinance, Section 2-319, is entitled, "**Exemption from Chapter 162, Florida Statutes**." The ordinance states: "Miami-Dade County shall be exempt from the provisions of Chapter 162, Florida Statutes, to the extent that said chapter relates to any code which is or may be adopted or enforced on a County-wide basis, specifically including but not limited to State codes enforced by the County...." However, this is not what Palm Beach County did. There is no Palm Beach County ordinance that exempts Palm Beach County from the provisions of Chapter 162, Florida Statutes. In fact, Palm Beach County has specifically adopted Fla. Stat. §162.01 - §162.13. Palm Beach County's code enforcement ordinance, Article 10 of the ULDC, states in Chapter A:

> **The provisions of this code shall be enforced by: (1) the code enforcement special master pursuant to the authority granted by F.S. §162.01 et seq. as may be amended. ...**

(Emphasis supplied). Fla. Stat. §162.01 incorporates §§ 162.01 through 162.13. Accordingly, the County determined that it would enforce its code enforcement ordinance pursuant to the provisions of Fla. Stat. §§ 162.01 through 162.13.

Further, a review of the County's code enforcement ordinance, Article 10 ULDC, demonstrates that the County follows the same procedures set forth in Fla. Stat. §162.09. Section 3 of the County's ordinance, entitled **Administrative Fines; Costs; Liens**, provides for a daily fine, and if the violation is determined to affect public health, safety or welfare, the County can make the necessary repairs and charge the violator. Section 3 also specifies the amounts of the daily fine and the criteria that the special magistrate should consider in imposing the fines. However, most importantly, and similar to Fla. Stat. §162.09(3), the only reference to interest charges in the County's ordinance is in **Section 3(F)**, entitled **Foreclosure**, which states:

> After three months from the filing of any such lien which remains unpaid, PBC **may** foreclose the lien in the same manner as mortgage liens are foreclosed. Such liens shall bear interest at the rate allowable by law from the date of compliance set forth in the recorded order acknowledging compliance....

(Emphasis supplied).

Unlike Miami-Dade County, Palm Beach County did not exempt itself from Fla. Stat. §162.09 but chose to adopt the provisions of Fla. Stat. §§162.01 - 162.13 as a basis for its code enforcement ordinance. In *City of Tampa v. Braxton,* 616 So. 2d 554, 556 (Fla. 2d DCA 1993), the court determined that once a county or municipality adopted Fla. Stat. §162.09, it could only enforce its ordinance by imposing the penalties provided for by the statute. As the court explained:

> The gist of the City's appeal is that it is entitled to a different remedy than is provided by statute. **We conclude that once the City opted for a code enforcement board under Chapter 162, it was prohibited by Article I, §18 of the State Constitution to enforce its ordinance by any other manner except that described in §162....**

(Emphasis supplied).

Therefore, considering the text of Fla. Stat. §162.09, and guided by the principles of statutory construction and the limits imposed on counties by Article I, §18 of the Florida Constitution, along with the case law referred to herein, the Court finds that the County has no

authority to charge and collect interest fees as part of a code enforcement penalty, prior to filing a foreclosure action, and thus the Motion as it relates to interest charges is granted.

CALCULATION OF INTEREST

14. It is undisputed that the County calculates the amount of interest by compounding the interest so that interest is being charged on interest. (SOF 9). The County has not provided any authority to justify compounding interest. Neither Fla. Stat. §162.09 nor any other statute allows for compounding interest. The Court finds that the County has no authority to compound interest on code enforcement violations, and therefore, that portion of the Motion is granted. *See Joseph Arrigo Motor Co. v. Lasserre,* 678 So. 2d 396 (Fla. 1st DCA 1996); *Kendall Healthcare Group v. Madrigal*, 271 So. 3d 1120 (Fla. 3d DCA 2019).

COLLECTION AGENCY FEES

15. Neither Fla. Stat. §162.09 nor the County's ordinance, Article 10 ULDC, authorizes the County to charge and collect collection agency fees as part of a code enforcement penalty. The County claims that its legal justification for charging and collecting collection agency fees is Fla. Stat. §938.35. (SOF 21). Chapter 938 is entitled **Court Costs**, and Fla. Stat. §938.35 is entitled **Collection of Court Related Financial Obligations**. The title to a statute's chapter reflects the Legislature's intent. *See Horowitz v. Plantation General Hospital*, 959 So. 2d at 182 (citing *City of Boca Raton v. State*, 595 So. 2d 25, 29 n.3. (Fla. 1992). Thus, the legislative intent in adopting Chapter 938, Florida Statutes, was in reference to **court costs**, and Fla. Stat. §938.35 is limited to **court related financial obligations**. This is also consistent with Fla. Stat. §938.31, entitled **Incorporation by Reference**, which explains the purpose of Chapter 938, Florida Statutes, which is incorporated into Fla. Stat. §938.35:

> **The purpose of this chapter is to facilitate uniform imposition and collection of court costs throughout the state...**and, to this end, a reference to this chapter or to

> any section subdivision within this chapter constitutes a general reference under the doctrine of incorporation by reference.

(Emphasis added).

Therefore, the Court finds that Fla. Stat. §938.35 relates solely to the imposition and collection of court costs. Otherwise, Fla. Stat. §938.31 would be meaningless. A cardinal rule of statutory interpretation is that courts should avoid interpretations that would render any statute meaningless. *White v. Auto Zone Investment Corp.*, 345 So. 3d 284 (Fla 3d DCA 2022) (citing *Forsythe v. Long Boat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 456 (Fla. 1992)). "Where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." *Forsythe* at 455.

16. The Legislature's use of the language "courts costs" and "court related financial obligations" to describe Chapter 938 and Fla. Stat. §938.35 is significant, because Article 5, §1 of Florida's Constitution defines what is meant by Florida courts:

> The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. **No other courts may be established by the state, any political subdivision or any municipality.**

(Emphasis supplied).

A code enforcement proceeding is not a court proceeding. It is an administrative proceeding, and the costs and financial obligations derived therefrom would be administrative costs and administrative financial obligations. *See Sarasota County v. National City Bank of Cleveland, Ohio*, 902 So. 2d 233, 234 (Fla. 2d DCA 2005). Both Fla. Stat. §162.09 and Article 10 ULDC refer to the code enforcement daily fines as administrative fines rather than court fines. The County's argument that Fla. Stat. §938.35 covers collection agency fees as part of the code enforcement penalty would require the Court to extend Chapter 938 to include administrative costs. The Court would have to ignore the title of Chapter 938, the text of §§938.31 and 938.35,

and the definition of "Courts" set forth in Article 5, Section 1 of the Florida Constitution. The Court would also have to ignore the fact that Chapters 900-985 all concern "Criminal Procedure and Corrections" and do not concern administrative proceedings such as code enforcement. Further, the County's argument conflicts with the well-established principle that judges lack the power "to construe an unambiguous statute in a way which would extend, modify, or *limit* its express terms or its *reasonable and obvious implications*. To do so would be an abrogation of legislative power." *Horowitz*, 959 So. 2d at 182 (emphasis in original) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)); *see also Brown v. State*, 263 So. 3d 48, 50 (Fla. 4th DCA 2018).

Therefore, the Court rules that the County is not justified to charge or collect collection agency fees as part of a penalty for code violations unless the County files a lawsuit against the code violator and the collection agency fees are determined to be "court costs."

THE COUNTY'S STATUTE OF LIMITATIONS DEFENSE

18. In opposing the Class Plaintiffs' procedural due process claims, the County raises the affirmative defense of statute of limitations. (*See* Answer and Affirmative Defenses to the Third Amended Complaint – First Affirmative Defense (D.E. 193, p. 12). The County has the burden of proving its affirmative defense. *Custer Med. Ctr. v. United Auto Ins. Co.,* 62 So. 3d 1086, 1097 (Fla. 2010). The statute of limitations governing claims brought pursuant to 42 U.S.C. §1983 is four years. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1188 (11th Cir. 1999). The statute of limitations for Section 1983 actions begins to run when "the facts which would support a cause of action are apparent or should be apparent to a person with reasonable prudent regard for his or her rights." *Foudy v. Indian River County Sheriff's Office,* 845 F.3d 117, 112-113 (11th Cir. 2017). Further, the United States Supreme Court has held that Section 1983 claims accrue "when

the [plaintiff] has 'a complete and present cause of action.'" *Wallace v. Kato*, 549 U.S. 384, 388 (2007).

19. The County argues that the statute of limitations began to run on March 7, 2007, and relies on the language in the Order Imposing Fine/Lien issued to B&B, which the County claims notified B&B that it would be charged collection agency fees and which states:

> NOTE: If this lien is not satisfied withing ninety (90) days of the date the lien is recorded, it will be referred to the Office of Financial Management for referral to a collection agency. No modification requests will be accepted, and **you will be responsible for any collection fees incurred by the County**.

(Emphasis added).

However, this "NOTE" only advises B&B that it will be responsible for collection agency fees ***if*** the County incurs these fees in the future. No collection agency fees were incurred as of March 7, 2007. This Court previously rejected the County's argument that the statute of limitations begins to run on March 7, 2007, when it found:

> **However, this "NOTE"** only **refers to collection agency fees, if any, that B&B will be responsible for if there are any collection agency fees in the future.** Further, it is not apparent from the "NOTE" that the County would impose collection agency fees against B&B without first filing a court action, and for an amount more than what it paid to its collection agent.

(Order Denying Motion to Dismiss, D.E 192, p.3). (Emphasis added.)

24. Additionally, the undisputed facts also negate the County's statute of limitations defense. It is undisputed that it was in May of 2018 that the County first incurred collection agency fees, when the County received proceeds of $44,761.60, which were paid by B&B at a tax deed sale of cross-attached property owned by B&B. (SOF 22 and 23). On June 12, 2018, the County paid collection agency fees of $7,146.01. (SOF 23 and 24). The first time the County notified B&B that any collection agency fees were incurred was when the County sent B&B a Statement of Account dated July 13, 2018. (SOF 40).

These undisputed facts establish that it was not until July of 2018 that B&B first learned that it now owed collection agency fees, the amount of the collection agency fees, and that it was being charged collection agency fees without the County having filed a lawsuit, and thus it had now suffered a legal injury.

26. A closely related issue to when the statute of limitations begins to run, is the legal requirement of standing. In *Southam v. Red Wing Shoe Co.*, 343 So. 3d 106, 109 (Fla. 4th DCA 2022), the Fourth District explained that in order to have standing to bring a lawsuit, there must be a real controversy as to the issue or issues presented, which has caused an injury that is concrete, actual or imminent. *Id.* A purely illegal action that does not result in any harm does not confer standing. *Id* at 110. Instead, to achieve standing, one must allege some threatened or actual injury resulting from the putatively illegal action. *Id.* The Court in *Southam* cited *Muransky* v. *Godiva Chocolatier, Inc.,* 979 F.3d 917, 920 (11th Cir. 2020), which held that a party does not have standing to sue when it pleads only the mere violation of a statute. *Southam* at 108. Standing does exist, however, when a plaintiff has actually been charged with an alleged illegal fee. *Id.* at 110 (citing *Olen Props. Corp. v. Moss,* 981 So. 2d 515, 517 (Fla. 4th DCA 2008) (quoting *Linda RS v. Richard D.* 410 U.S. 614 (1973)). Before B&B was notified that the County was improperly seeking to charge and collect interest and collection agency fees, it would not have had standing to bring a claim. However, in July of 2018, when the County sent B&B the Statement of Account, without having filed a lawsuit, which charged interest and collection agency fees, B&B would then have standing to bring a cause of action, and the statute of limitations would begin to run. To rule otherwise would require B&B to be prescient that at some time in the future the County would improperly seek to charge and collect interest and collection agency fees.

27. Finally, Fla. Stat. §95.031(1), as the Court previously noted, governs when a cause of action begins to run and states that "**[a] cause of action accrues when the last element constituting the cause of action occurs.**" (D.E. 192, p. 4). (Emphasis added). Here, the undisputed facts establish that the last element constituting a cause of action for the Section 1983 claims was in July of 2018 when the County notified B&B, through the Statement of Account, that it was charging $22,413.66 in collection agency fees and $67,548.27 in interest charges as part of the code enforcement lien. The Court previously ruled that this is when B & B had a "complete and present cause of action enabling B & B to assert its Section 1983 claim. *See Foudy, supra* and *Wallace, supra."* (D.E. 192 p.4). Therefore, the Court finds that the statute of limitations for B & B to assert a Section 1983 claim began to run on July 13, 2018, and since the original complaint was filed on July 1, 2019, the statute of limitations affirmative defense fails.[3] (D.E. 2)

FLA. STAT. §162.11 RIGHT TO APPEAL

28. The County also raises as an affirmative defense that B&B failed to appeal the Order Imposing Fine/Lien pursuant to Fla. Stat. §162.11. (D.E. 193, pp. 12-13). However, Fla. Stat. §162.11 limits the subject matter for any appeal. The statute reads:

> **162.11 Appeals** – An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but **shall be limited to appellate review of the record created before the enforcement board.** An appeal shall be filed within (30) days of the execution of the order to be appealed.

[3]The County's statute of limitations affirmative defense only refers to Class Plaintiffs' procedural due process claims and not their claim for declaratory judgment (D.E. 193, p. 12). Similar to the Section 1983 discussion above, a declaratory judgment is only permissible when a party can show a real, actual and bona fide injury that needs to be presently resolved between adverse parties. *See Riverside Avenue Property, LLC v. 1661 Riverside Condo. Ass'n, Inc.*, 325 So. 3d 997, 1000 (Fla. 1st DCA 2021). The mere possibility of damages for a legal injury is not sufficient for a declaratory judgment action. *See Apthorp v. Detzner*, 162 So. 3d at 240, 241. Similar to the Section 1983 action, until July of 2018, there was no real, actual, or legal injury of which B&B would have been aware to bring a declaratory judgment action to contest the interest charges, collection agency fees, and the amounts of these charges.

Crucial to this order, the Class Plaintiffs are not challenging the record before the special master, nor are they challenging the code violation, the imposition of the daily fine, or the amount of the fine. (SOF 53). The limited appellate review of Fla. Stat §162.11 would not permit an appeal based on interest charges being sought by the County in violation of Florida Statute §162.09(3) without having filed a foreclosure action, or the County seeking collection agency fees that are not court costs or were not incurred or paid until many years after the Order Imposing Fine/Lien was issued. The Court previously addressed this issue and made the following determination:

> The cases relied upon by the County on this issue relate to challenges to the evidence at the code violation hearing before the Special Magistrate, *see Lindbloom v. Manatee County,* 808 F.App'x 745, 750 (11th Cir. 2020) or to the amount of the daily fine. *See Innova Investment Group, LLC v. Village of Key Biscayne,* 2020 W.L. 6781821 (S.D. Fla. November 18, 2020). The County cites no cases where the Plaintiff was *not* challenging the record below or the amount of the daily fine. Here, B&B… makes no challenge to the record below or the amount of the fine and challenges only the imposition of interest charges and collection agency fees not authorized by law.

(D.E. 192 at p. 6).

29. The County has not cited any case where a party was challenging the imposition of interest or collection agency fees without a municipality or county having first filed a lawsuit, which is the issue herein. In the cases cited by the County, the code violator was challenging the amount of the daily fine or the record below. The County cites *Innova Investment Group v. Village of Key Biscayne*, supra, and *Ficken v. City of Dunedin, Florida,* 2021 WL 161048 (N.D. Fla. April 26, 2021). However, *Innova Investment Group* challenged the amount of the daily fine, which was $4,000 per day. Similarly, in *Ficken,* the code violator contested the daily fine of $500 per day, and the finding that the code violator was a repeat offender. *Id.* at *4. These issues were clearly part of the record below that could have and should have been appealed. The issues that the Class Plaintiffs have raised were not appealable under Fla. Stat. § 162.11. None of the cases cited by

the County or its references to other counties or municipalities and their practices, concern Palm Beach County's Ordinance, Article 10 of the ULDC, which is the ordinance before the Court, or any instance where the imposition of interest fees or collection agency fees without first filing a lawsuit was challenged or at issue. Therefore, the Court finds that there is no basis for the affirmative defense that B&B failed to appeal the Order Imposing Fine/Line pursuant to Fla. Stat. §162.11.

30. The County also raises as an affirmative defense that since there are adequate state remedies to assert the Class Plaintiffs' claims, a Section 1983 action is not allowed, (D.E. 193, p. 12), citing in support thereof, *Safety Harbor Powers* v. *City of Safety Harbor, Florida,* 2024 W.L. 3400278 (M.D. Fla. July 12, 2024). However, this principle only applies when a plaintiff challenges a random and unauthorized act. It does not apply when a plaintiff claims a lack of procedural due process based on the County's established policy and practice. It is undisputed that the County's customary policy and practice is to charge interest and collection agency fees without filing a lawsuit. (SOF 19 and 20).

These principles are explained in *Woodward v. Andrus*, 419 F.3d 348, 351 (5th Cir. 2005). In *Woodward*, the district court dismissed the due process claim based upon the *Parratt/Hudson* doctrine that a state actor's random and unauthorized deprivation of a plaintiff's property does not result in a violation of procedural due process rights if the state provides an adequate post-deprivation remedy. *Id.* at 351. (citations omitted). The court explained that this doctrine does not apply when the procedural due process claim is based on a county's established policy and procedure:

> Where a municipal officer operates pursuant to a local custom or procedure, the *Parratt/Hudson* doctrine is inapposite: actions in accordance with an 'official policy' under *Monell* can hardly be labeled 'random and unauthorized.' As this court noted, where employees are acting in accord with customary procedures, the

> 'random and unauthorized' element required for the application of the *Parratt/Hudson* doctrine is simply not met." (Citations omitted). ... **For the aforementioned reasons, charging fees in excess of state statute, or charging fees not authorized by state statute is the official policy... As a result, Andrus' actions were not random or unauthorized. ...**
>
> *Woodward* has also shown the requisite state actor participation needed to state a due process claim. For the reasons already stated, *Woodward* has also established that Andrus' conduct was the custom or practice of the local municipality. **Thus, *Woodward* has established that she was deprived of her property without due process of law through the custom or practice of a state agent acting under the color of state law.**

Id. at 353-354. (Emphasis added).

Here, the Class Plaintiffs challenge the County's official policy and practice, not some random or some unauthorized act, so, like in *Woodward*, the *Parratt/Hudson* doctrine does not apply. Therefore, the Court finds that the availability of state remedies is not a defense to the Class Plaintiffs' §1983 cause of action.

THE EXCESSIVE FINE CLAUSE UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS

31. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., Amdt. 8. The purpose of the Eighth Amendment is "to prevent the government from abusing its powers to punish." *Austin v. United States*, 509 U.S. 602, 607 (1993). Further, the United States Supreme Court in *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019) incorporated the excessive fine clause of the Eighth Amendment to the states through the Fourteenth Amendment. The Excessive Fines Clause "limits the government's power to extract payments whether in cash or in kind 'as punishment for some offense." *Id.*

In *Beatty v. Gilman*, 718 F. Supp. 3d 166 (D. Conn. 2024) the court explained the relationship between the Cruel and Unusual Punishment Clause and the Excessive Fines Clause.

The court pointed out that the Cruel and Unusual Punishment Clause does not allow the government to impose a punishment that is more than the maximum sentence established by an authorizing statute. *Id.* at 191-192. Therefore, a sentence of incarceration that exceeds the statutory maximum has traditionally been viewed as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment. *See Ford v. Moore*, 296 F.3d 1035, 1037 n.6. (11th Cir. 2002). The court then explained how the principles of the Cruel and Unusual Punishment Clause applies to the Excessive Fines Clause:

> **What is true for the Cruel and Unusual Punishments Clause is also true for the Excessive Fines Clause. ...**
>
> **...But when the government seeks to punish by extracting payment of a fine greater than what is allowed by the statute that authorizes the government to impose the fine, then the government has no legitimate penological justification for its action.**

Beatty, 718 F. Supp. at 192. (Emphasis added; citations omitted).

32. Importantly, in *Robson 200 v City of Lakeland, Florida,* 593 F. Supp 3d 1110 (M.D. Fla. 2022), the Court found that the Excessive Fines Clause of the Eighth Amendment applies to code enforcement fines. The court pointed out that payments to the government constitute a fine within the meaning of the Eighth Amendment when "it can only be explained as serving in part to punish." *Id.* at 1119 (citing *Austin v United States,* 509 U.S. at 610). In *Robson*, the City of Lakeland imposed a code enforcement fine pursuant to Fla. Stat. §162.09, and the Court found that the purpose of the fine was punishment for violating the City's Land Development Code. *Id.* at 1115, 1119, 1122-1123. As the court pointed out, "Because neither party contends that the fines under the LDC are anything other than punishment (as opposed to tax revenue, administrative fees, restitution, etc.), the Court assumes that the City imposed these civil fines with a punitive purpose." *Id.* at 1119. Similarly, the County's purpose for imposing code enforcement fines based on Fla.

Stat. §162.09 and Article 10 ULDC, would also include a "punitive purpose" to punish property owners for not correcting the code violations.

33. In *Beatty, supra*, the state sought to impose costs on defendants greater than the amounts authorized by statute. The Court held that what is true for the Eighth Amendment's Cruel and Unusual Punishments Clause is true for the Excessive Fines Clause and there is no legal justification for the state's imposition of costs greater than the amounts authorized by statute, thereby rendering the costs, by their nature, disproportionate to the offense. Therefore, applying the principles of the Eighth Amendment herein, the County was authorized to impose the daily fine of $50,600 against B & B but was not authorized to include more than $90,000 of interest and collection agency fees. This lack of any legislative authority to charge interest and collection agency fees results in a violation of the Eighth Amendment's Excessive Fine Clause.

The Court grants the Class Plaintiffs' Motion for Partial Summary Judgment relating to the violation of the Eighth Amendment to the United States Constitution.

CONCLUSION

It Is Ordered and Adjudged that B&B and the Class Plaintiffs' Motion for Partial Summary Judgment on all counts is GRANTED. As for the matters and arguments not addressed above, they are Denied.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida on this 8th day of November 2024.

G. JOSEPH CURLEY, JR., CIRCUIT COURT JUDGE

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