

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street, Room 256 Denver, CO 80202 (720) 865-8301	DATE FILED: March 25, 2019 12:09 PM FILING ID: 300A1AD670920 CASE NUMBER: 2019CV31165
Plaintiff: EVERGREEN ALLIANCE GOLF LIMITED, L.P., a Delaware limited partnership, d/b/a ARCIS GOLF, v. Defendants: THE CITY AND COUNTY OF DENVER, COLORADO, a municipal corporation of the State of Colorado.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case No.: Division:
<i>Attorneys for Plaintiff Evergreen Alliance Golf Limited, L.P. d/b/a Arcis Golf</i> Mikaela V. Rivera, #34085 Darrell G. Waas, #10003 Jennifer Lake, #53141 WAAS CAMPBELL RIVERA JOHNSON & VELASQUEZ LLP 1350 17 th Street, Suite 450 Denver, CO 80202 Telephone: (720) 351-4700 Facsimile: (720) 351-4745 rivera@wcrlegal.com waas@wcrlegal.com lake@wcrlegal.com	
COMPLAINT	

Evergreen Alliance Golf Limited, L.P. d/b/a Arcis Golf, for its Complaint against the Defendants, states and alleges as follows:

1. Evergreen Alliance Golf Limited, L.P. d/b/a Arcis Golf (“Arcis”) is a Delaware limited partnership with its principal place of business in Dallas, Texas. Arcis conducts business in the City and County of Denver at 4141 E. 35th Avenue, Denver, CO 80207.
2. The City and County of Denver, Colorado is a municipal corporation of the State of Colorado.

3. Venue is proper in this Court under C.R.C.P. 98 because the Trust and Arcis conduct business within the City and County of Denver, and the subject matter of this action affects real property located in the City and County of Denver, Colorado.

GENERAL ALLEGATIONS

4. Arcis leases the land commonly known as the Park Hill Golf Course (“Leased Premises” or “Park Hill Golf Course”).

5. Clayton Early Learning, as Trustee of the George W. Clayton Trust and f/k/a The Clayton Foundation (the “Trust”) is the landlord.

6. The Lease Agreement, dated December 23, 1998, was originally entered into by and between the Trust and American Golf Corporation and has been amended three times (“Lease”).

7. Arcis received assignment of the Lease from American Golf Corporation on April 7, 2008.

8. The Initial Term of the Lease was 20 years. Arcis exercised the first option to extend, which extends the term for five years. Arcis has a second five year option, which if exercised, would extend the Term of the lease until January 1, 2029.

9. Under the terms of the Lease, Arcis is the only entity legally entitled to possession of the property. Thus, Arcis has exclusive possession of the Park Hill Golf Course.

10. The Park Hill Golf Course is approximately 155 acres.

11. On January 2, 2018, the City and County of Denver (the “City”) adopted an ordinance authorizing the City to acquire no more than 90 acres of the Park Hill Golf Course to construct storm water detention and related facilities.

12. The City did not file a condemnation action or otherwise commence condemnation proceedings. Instead, the City and the Trust entered into an Agreement for Immediate Possession on or around July 1, 2018 (“Possession Agreement”).

13. Neither the City nor the Trust consulted Arcis prior to entering into the Possession Agreement.

14. Arcis did not and has not consented to the Possession Agreement or to the City’s possession or occupation of any portion of the Park Hill Golf Course.

15. Upon learning of the Possession Agreement, Arcis contacted the City and the Trust in an attempt to discuss the ramifications of the City’s proposed project on the continuing operations, and how to plan for ongoing maintenance of the Park Hill Golf Course.

16. Starting in August 2018, Arcis expressed concern about maintenance of the portion of the remaining golf course not under construction, restoring functionality to the irrigation system during construction, the timing of construction, when the full golf course might be reopened for play and numerous other issues related to the costs and requirements to maintain the remainder land.

17. Arcis made several requests to the City to be involved in planning for closure of the Park Hill Golf Course during construction.

18. After months of ignoring Arcis' requests, on November 13, 2018, the Trust and the City met with Arcis. At that meeting, the Trust expressed that it did not want Arcis to operate any portion of the Park Hill Golf Course during construction. The City indicated the City would work with Arcis and potentially assume some of the maintenance obligations on the remainder of the Park Hill Golf Course during construction.

19. However, on or about January 2, 2019, before Arcis, the Trust and the City could agree to any terms related to maintenance or possession of the property, the City took possession of approximately 35 acres of the Park Hill Golf Course currently being leased by Arcis, installed perimeter fencing around a portion of the Park Hill Golf Course and begun preparations to commence construction of its drainage improvement project.

20. Since January 1, 2019, Arcis has been excluded from 35 acres of the Leased Premises.

21. The City's occupation includes at least 4 of the 18 holes of the Park Hill Golf Course, making the operation of a full, 18-hole golf course impossible.

22. Even though Arcis has been unable to operate the full golf course, the Trust continues to hold Arcis responsible for the maintenance of the Park Hill Golf Course. Thus, even though the entire golf course is closed for play because of the City's occupation and Arcis is receiving no revenue from golf, it continues to incur substantial expenses related to its lease of the course and its ongoing obligation to maintain the golf course.

23. Upon information and belief, the City's construction activities will irreparably change the nature of the property and irreparably harm Arcis.

24. Arcis has conveyed to the City on numerous occasions that it has not granted permission for the City to occupy any portion of the Leased Premises.

FIRST CLAIM FOR RELIEF
(Inverse Condemnation)

25. The allegations in paragraphs 1 through 24 above are incorporated herein.

26. The City has taken a portion of the premises leased by Arcis by an agreement with the property owner. The City has never received permission from Arcis to enter the land despite Arcis leasehold estate of the property.

27. The City has substantially deprived Arcis of the use of 35 acres of the Leased Premises.

28. The City has taken the property for an ostensible public purpose – storm drainage improvements.

29. The City has not paid compensation for its taking.

30. The City has the power of eminent domain but has refused to exercise it.

SECOND CLAIM FOR RELIEF
(Declaratory Relief- City)

31. The allegations in paragraphs 1 through 30 above are incorporated herein.

32. The City's occupation of 35 acres of the Park Hill Golf Course constitutes a deprivation of Arcis's use of the Leased Premises and its property rights.

33. Arcis, as the tenant, is the only entity legally entitled to possession of that property.

34. Arcis has not given the City or the Trust permission to occupy the property.

35. The City has asserted it does not require Arcis's permission to occupy the property.

THIRD CLAIM FOR RELIEF
(Injunctive Relief)

36. The allegations in paragraphs 1 through 35 above are incorporated herein.

37. The City has no right to possession of any portion of the Park Hill Golf Course and Arcis is entitled to the quiet enjoyment of the Park Hill Golf Course

38. The City's occupation has excluded Arcis from occupation of 35 acres of the Lease Premises, which has harmed Arcis.

39. When the City begins demolition of the occupied area, it will immediately damage and render useless the irrigation system for the whole property which will make it impossible for Arcis to maintain the area of the leased premises not taken by the City.

40. A danger of real, immediate and irreparable injury exists that may be prevented by injunctive relief and no plain, speedy and adequate remedy at law is available to prevent a continued use of the Leased Premises by the City.

41. An injunction will not disserve the public interest and the public interest favors the injunction to prevent taking without commencement of condemnation proceedings or payment of compensation.

42. Arcis is therefore entitled to an injunction preventing the City from using any portion of the Park Hill Golf Course at this time.

WHEREFORE, Plaintiff requests that judgment enter in its favor and against Defendants for just compensation, damages and, for its costs and attorneys' fees, and for such other and further relief this Court deems just and proper.

Respectfully submitted this 25th day of March, 2019.

WAAS CAMPBELL RIVERA JOHNSON &
VELASQUEZ LLP

By: /s/ Mikaela V. Rivera

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