

**RESPONDENTS APPENDIX
TABLE OF CONTENTS**

Defendant’s Requested Jury Instructions
Nos. 6, 7, 10 (February 14, 2018)..... 1a

Jury Instructions as Read by Judge Roby
(February 14, 2018)..... 8a

Email from Ed Fielding to Maggy Hurchalla
(January 12, 2013)..... 17a

Email from Maggy Hurchalla to Sarah Heard
(September 9, 2012)..... 19a

**DEFENDANT'S REQUESTED
JURY INSTRUCTIONS 6, 7, 10
(FEBRUARY 14, 2018)**

IN THE CIRCUIT COURT OF THE
19th JUDICIAL CIRCUIT IN AND FOR
MARTIN COUNTY, FLORIDA

LAKE POINT PHASE I, LLC, and
LAKE POINT PHASE II, LLC,
Florida Limited Liability Companies,

Plaintiffs,

v.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, a Public Corporation of the State of
Florida; MARTIN COUNTY, a Political Subdivision
of the State of Florida; and MAGGY HURCHALLA,

Defendants.

Case No. 2013-001321-CA

Defendant, MAGGY HURCHALLA, requests the Court to instruct the jury in accordance with the instructions attached hereto.

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By /s/ Virginia P. Sherlock
Florida Bar No. 893544

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery and through the Florida Courts E-Filing Portal to: ETHAN J. LOEB, ESQ., JOHN P. TASSO, ESQ., DAN BISHOP, ESQ., CHRISTINA CARLSON DODDS, ESQ., E. COLIN THOMPSON, ESQ. counsel for Plaintiffs, at ethanl@smolkerbartlett.com, Susanm@smolkerbarlett.com, jont@smolkerbartlett.com, cynthiam@smolkerbartlett.com, dbishop@bishoplondon.com, ColinT@smolkerbartlett.com, cdodds61@gmail.com this 5th day of February, 2018.

/s/ Virginia P. Sherlock

**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 6:
SUMMARY OF CLAIMS AND DEFENSES**

The claims and defenses in this case are as follows.

Lake Point claims that Mrs. Hurchalla wrongfully interfered with the Interlocal Agreement between the South Florida Water Management District and Martin County and that her conduct caused a breach or breaches of the agreement which harmed Lake Point.

Mrs. Hurchalla denies that she wrongfully interfered with the agreement. She claims she has a constitutional right to free speech and to communicate with public officials about a matter of public interest so long as her sole motivation was not to harm the Plaintiffs.

She also denies that the Interlocal Agreement was breached or that she caused any breach.

Mrs. Hurchalla has asserted certain defenses, including failure of the Plaintiffs to mitigate their losses because they took no action to prevent any breach of contract or to reduce their damages.

The parties must prove all claims and defenses by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.

See Florida Standard Jury Instructions in Civil Cases 408.2 (modified)

Denied Over Objection

**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 7:
TORTIOUS INTERFERENCE WITH A
CONTRACT NOT TERMINABLE AT WILL**

The issues for you to decide on Lake Point's claim against Mrs. Hurchalla are whether Mrs. Hurchalla wrongly or unjustifiably interfered with the Interlocal Agreement and, if so, whether such wrongful interference caused a material breach which was the legal cause of damage to Lake Point.

A person interferes with a contract between two or more other persons if he or she induces or otherwise causes one of the parties to materially breach or refuse to perform the contract. Intentional interference with another person's contract is improper unless there is legal justification for the conduct.

Interference is intentional if the person interfering knows of the contract with which he or she is interfering, knows he or she is interfering for an improper purpose, and desires to interfere or knows that interference is substantially certain to occur as a result of his or her action.

Interference is not wrongful or unjustified if the person interfering has an interest that he or she has a duty or right to protect. A citizen exercising a First Amendment right to free speech or to petition government for redress of grievances has a qualified privilege to speak with government representatives to express an opinion or concern about a matter of public interest. When a person contacts her governmental representatives, her conduct is protected from claims such as tortious interference with a contract

Res.App.5a

so long as her sole motivating factor was not to cause harm to the party who claims to be damaged.

Wrongful interference with a contract is a cause of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing a material breach that results in damage, so that it can reasonably be said that, but for the interference with the complaining party's contract, the damage would not have occurred.

In order to be regarded as a legal cause of damage, the interference with contract need not be the only cause. Interference with a party's contract may be a legal cause of damage even though it operates in combination with other causes if the interference with a party's contract contributes substantially to producing such damage.

If the greater weight of the evidence does not support Lake Point's claim of tortious interference with the Interlocal Agreement, then your verdict should be for Mrs. Hurchalla. However, if the greater weight of the evidence supports Lake Point's claim, then you shall consider Mrs. Hurchalla's defenses.

See Florida Standard Jury Instructions in Civil Cases 408.4; 408.5 (modified-Notes 2, 3); 408.6 (modified); Nodar v. Galbreath, 462 So.2d 803, 810-11 (Fla. 1984); McCurdy v. Collis, 508 So.2d 380, 383 (Fla. 1st DCA 1987)

Denied Over Objection

**DEFENDANT'S PROPOSED
JURY INSTRUCTION NO. 10:
FIRST AMENDMENT PRIVILEGE**

On the issue of privilege, I instruct you that so long as one does not speak with express malice, which I shall explain in a moment, a private citizen such as Mrs. Hurchalla is privileged and permitted to make a statement to her County Commissioners, other governmental bodies, or government employees about a project such as Lake Point.

The privilege applies even if a statement is untrue if the statement was made to a political authority regarding a matter of public concern and if the statement was not made with express malice.

This is called a qualified privilege, that is, the privilege to communicate with government representatives is not absolute but exists when the person exercising the privilege does so without express malice.

If you find that Mrs. Hurchalla made statements to a political authority regarding matters of public concern, then you should decide whether, as Lake Point claims, Mrs. Hurchalla made the statements with express malice.

Express malice exists when someone makes a false statement with the sole purpose of gratifying one's ill will or if the person has hostility and intent to harm the other rather than to advance and protect an interest involving a matter of public concern.

If the greater weight of the evidence shows that Mrs. Hurchalla had a qualified privilege in communicating with local government officials, then your verdict should be for Mrs. Hurchalla on Lake Point's

Res.App.7a

claim of tortious interference with the Interlocal Agreement.

See Florida Standard Jury Instructions in Civil Cases 405.9 (modified); *Nodar v. Galbreath*, 462 So.2d 803, 810-11 (Fla. 1984); *McCurdy v. Collis*, 508 So.2d 380, 383 (Fla. 1st DCA 1987).

Denied Over Objection

**JURY INSTRUCTIONS
AS READ BY JUDGE ROBY
(FEBRUARY 14, 2018)**

**INSTRUCTIONS NO. 1:
SUMMARY OF CLAIMS AND CONTENTIONS**

The claims and defenses in this case are as follows. Lake Point claims that Hurchalla intentionally interfered with the Interlocal Agreement between Lake Point, the South Florida Water Management District, and Martin County (the “Interlocal Agreement”), causing harm to Lake Point.

Hurchalla denies Lake Point’s claim and defends that her conduct is protected by her First Amendment right to petition the government.

The parties must prove all claims and defenses by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

You are hereby instructed that Lake Point is a party to the Interlocal Agreement.

**INSTRUCTION NO. 2:
FAILURE TO MAINTAIN EVIDENCE
OR KEEP A RECORD**

If you find that Hurchalla deleted or otherwise caused various emails between her and Martin County Commissioners to be unavailable, while they were within Hurchalla's possession, custody, or control; and the emails would have been material in deciding the disputed issues in this case; then you may, but are not required to, infer that this evidence would have been unfavorable to Hurchalla. You may consider this, together with other evidence, in determining the issues of the case.

**INSTRUCTION NO. 3:
TORTIOUS INTERFERENCE**

The issues for you to decide on Lake Point's claim against Hurchalla are whether Hurchalla intentionally interfered with the Interlocal Agreement between Lake Point, Martin County, and the South Florida Water Management District, and if so, whether such interference was a legal cause of damage to Lake Point.

A person interferes with a contract between two or more other persons if he or she induces or otherwise causes one of them to breach or refuse to perform the contract.

Intentional interference with another person's contract is improper. Interference is intentional if the person interfering knows of the contract with which he or she is interfering, knows he or she is interfering, and desires to interfere or knows that interference is substantially certain to occur as a result of his or her action.

Interference with a contract is a cause of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so that it can reasonably be said that, but for the interference with a contract, the damage would not have occurred. In order to be regarded as a legal cause of damage, the interference with contract need not be the only cause. Interference with a contract may be a legal cause of damage even though it operates in combination with the act of another or some other cause if the interference with contract contributes substantially to producing such damage.

If the greater weight of the evidence does not support Lake Point's claim, then your verdict should

be for Hurchalla. However, if the greater weight of the evidence supports Lake Point's claim, then your verdict should be for Lake Point, unless you find that the interference was proper based on Hurchalla's defense of a First Amendment right to petition the government.

Hurchalla claims as a defense that the First Amendment gives her the privilege to freely petition the government on matters of public concern. You must render your verdict in favor of Hurchalla on Lake Point's tortious interference claim if you find that Hurchalla used proper methods to attempt to influence Martin County, and that her motive for petitioning Martin County was not primarily to harm Lake Point. However, deliberate misrepresentations of fact are not considered to be a proper method.

If the greater weight of the evidence does not support the defense of Hurchalla and the greater weight of evidence supports Lake Point's claim, then you should consider the issue of damages.

**INSTRUCTION NO. 4:
DAMAGES**

If you find for Hurchalla, you will not consider the matter of damages. But, if you find for Lake Point, you should award Lake Point an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Lake Point for the damage that was caused by the intentional interference.

To be entitled to recover lost profits, Lake Point must prove both of the following:

1. Hurchalla's actions caused Lake Point to lose profits; and
2. Lake Point can establish the amount of its lost profits with reasonable certainty. For Lake Point to establish the amount of its lost profits with reasonable certainty, it must prove that a reasonable person would be satisfied that the amount of lost profits that Lake Point may be entitled to recover is not simply the result of speculation or guessing. Instead, Lake Point must prove that there is some standard by which the amount of lost profits may be established. Lake Point does not have to be able to prove that the amount of lost profits can be calculated with mathematical precision as long as it has shown there is a reasonable basis for determining the amount of the loss.

**INSTRUCTION NO. 5:
CREDIBILITY OF WITNESSES**

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness considered in the light of all the evidence in the case and in the light of your own experience and common sense.

Some of the testimony before you was in the form of opinions about certain technical subjects by expert witnesses. You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the qualifications, knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all other evidence in the case.

**INSTRUCTION NO. 6:
CLOSING INSTRUCTIONS**

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or any other reference materials. Do not investigate the case or conduct any experiments. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blot, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions.

Res.App.15a

Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as a

Res.App.16a

foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. After you answer the questions, the form tells you what to do next. I will now read the form to you:

(read form of verdict)

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict and finish filling out the verdict form, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.

**EMAIL FROM ED FIELDING
TO MAGGY HURCHALLA
(JANUARY 12, 2013)**

From: 'Ed Fielding' <evf7660@gmail.com>
To: Maggy Hurchalla<mhurchalla@hotmail.com>
Sent: Saturday, January 12, 2013 1:41 PM
Subject: Re: mess

Maggy, hope it is a most enjoyable trip. Thanks for your observations. Ed

On Sat, Jan 12, 2013 at 11:31 AM, Maggy Hurchalla <mhurchalla@hotmail.com> wrote:

Lake Point mess.

Lake Pt is on the agenda Tuesday to accept \$44,000 they should have given you for the "environmental fund"

DON'T DO IT!

If you accept the money it can be argued that the Interlocal agreement with SFWMD and the County is in effect.

IT IS NOT.

Most simply, it does not go into effect until the property is transferred.

The property has not been transferred.

INSTEAD ask staff to bring back an agenda item terminating the Interlocal agreement.

The agreement does not do what the county was promised:

Res.App.18a

- it does not require the owner to build anything
- it does not guarantee any benefits to the county
- it appears to declare the the [sic] project a “county public works project.” It is not and cannot qualify under the comp plan. Place the comp plan exception in the record.

Avoid discussion of other issues. Don't complicate things. Just set up a meeting to legally void that contract.

After that has been done staff can be directed to continue to follow up on violations of the county rules for the Lake Pt. SD.

DON'T issue any cease and desist on the mining. Get the contract canceled and wait for staff to come back.

Doug will scream that you are missing an opportunity to save the river and giving up money due the county. Engineering will back him up. Donaldson is Doug's man. Simply point out this is a badly drawn contract that does not protect the county. After it is voided, if the SFWMD and the owner can come back with a contract that does benefit Martin County, we can negotiate a new contract.

I will be home Monday evening 287-0478

Going to Ecuador Wednesday.

Deep Rockpit

**EMAIL FROM MAGGY HURCHALLA
TO SARAH HEARD
(SEPTEMBER 9, 2012)**

From: Sarah Heard
To: Sarah Heard
Subject: FW: Water
Date: Sunday, September 09, 2012 2:34:59 PM

owner of Lakepoint Ranch?

----Forwarded Message----

From: Maggy Hurchalla <mhurchalla@hotmail.com>
To: Sarah Heard <pockethouse@yahoo.com>
Sent: Sunday, September 9, 2012 11:07 AM
Subject: water

Ask staff
and cc, Melisa Meeker, Kevin Powers, PBPost,
Stuart News

Eng and GMD,

Can someone tell me what's going on here? (see PBPost article below on Lindeman proposing to sell Martin County water to West Palm Beach.)

Correct me where I'm wrong, but it was my understanding that:

1. Martin County allowed the developer to destroy wetlands because this was a county drainage project. It was supposed to help CERP. It was never mentioned that this was a private project to sell Martin County water to Palm Beach County

2. The land was to be deeded to Martin County and the SFWMD.

Res.App.20a

3. The 700 acre preserve was to be deeded to Martin County within a year. Has It been?

4. After initially claiming that the rockpit had unique geology like the Palm Beach Aggregate rockpits, the WMD and the applicant agreed that it was not a water storage reservoir. It is a hole in the ground that fills up with water from the shallow aquifer. It is across SR 76 from the St. Lucie Canal so whenever canal levels are higher than the reservoir level, seepage, through the aquifer will make water levels the same in the rockpit and the canal. Seepage will also balance levels if the rockpit has higher water levels than the canal.

5. Because the aquifer surrounding the rockpit is porous, whenever water is pumped into it, it will seep out to the canal and the surrounding aquifer.

6. The developer was to deed the preserve area to Martin County, create a flow through marsh to recirculate water from the canal through the rockpit and marsh and back into the canal and give the District an easement to connect to L8. Besides digging up rock and selling it, has anything else been done?

7. The District was supporting the project because it allowed a connection of the St. Lucie Canal and the L8 canal and could provide low flows to the Loxahatchee when the St. Lucie Canal had excess water. There were no modeling studies to show how often the St. Lucie Canal would be discharging excess water when the Loxahatchee needed water.

8. It was not mentioned that the L8 connection also allowed increased water flows to Palm Beach County from Lake Okeechobee when the Lake was too low to flow through Palm Beach County connections.

Res.App.21a

When the Lake is above 15ft, the locks at Port Mayaca are closed and the Lake is cut off from the St. Lucie Canal. When the Lake is 15ft or below, the Port Mayaca locks are open and the St. Lucie Canal is basically an extension of Lake Okeechobee.

9. It is not clear what water the rockpit owner proposes to sell.

- Is it to be withdrawn from the surrounding aquifer and by seepage from the St. Lucie Canal?
- Is it to be pumped from the St. Lucie Canal?
- Will this source be used only when the St. Lucie Canal is discharging at the St. Lucie Locks? How often does that happen and does it ever happen when West Palm Beach needs water?
- Will the source be a direct connection to Lake Okeechobee when the Lake is at or below 15 ft? Have additional withdrawals from the Lake been permitted by the SFWMD? Have they been included in CERP calculations?

10. The rockpit was supposed to pay a per cubic yard fee to Martin County. Have we monitored digging? Do we know the current dimensions of the rockpit and how much fill was removed? What is the rate per yard Martin County receives and how much have we been paid so far?

11. Have wetlands been destroyed? How many acres? What mitigation has taken place?