

No. 2016-CI-05446

CITY OF SAN ANTONIO	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	
	§	
236 DEERWOOD LLC, ROBERTO P. GONZALEZ, GEORGE GARZA AND THE PLACE AND PREMISES AT 236 DEERWOOD, SAN ANTONIO, BEXAR COUNTY, TEXAS	§ § § § § §	<u>57th</u> JUDICIAL DISTRICT BEXAR COUNTY, TEXAS

**PLAINTIFF’S SECOND AMENDED PETITION FOR TEMPORARY AND
PERMANENT INJUNCTION – IN PERSONAM AND IN REM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the City of San Antonio (“City”), Plaintiff in this Cause, and files this Second Amended Petition complaining of 236 DEERWOOD LLC, ROBERTO P. GONZALEZ, GEORGE GARZA, and the property and premises located at 236 DEERWOOD DR., San Antonio, Bexar County, Texas, defendants herein. In support of this action, Plaintiff would show the Court the following:

I. DISCOVERY CONTROL PLAN AND REQUEST FOR DISCLOSURE

Plaintiff intends to conduct discovery under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, defendants are requested to disclose, within fifty (50) days of service of this request, the information or materials described in Rule 194.2(a)-(c) and Rule 194.3(e)-(i).

II. PARTIES

Plaintiff **CITY OF SAN ANTONIO** is a Texas home rule municipal corporation, created and existing in accordance with Article XI, Section 5 of the Texas Constitution. Plaintiff's principal offices are at 100 Military Plaza, City Hall, San Antonio, Texas 78205.

Defendant **236 DEERWOOD LLC** is a Texas Corporation who may be served in accordance with the Texas Rules of Civil Procedure by and through its attorney of record:

Orlando Lopez
Lopez Scott, LLC
3707 N. St. Mary's Street, Suite 200
San Antonio, Texas 78212

Defendant **GEORGE GARZA** is an individual who may be served in accordance with the Texas Rules of Civil Procedure by and through his attorney of record:

Orlando Lopez
Lopez Scott, LLC
3707 N. St. Mary's Street, Suite 200
San Antonio, Texas 78212

III. JURISDICTION AND VENUE

Plaintiff, by and through its City Attorney, is duly authorized by the Texas Local Government Code § 54.012 to bring and prosecute these causes of action to enjoin and have abated those health and safety violations declared to be a public nuisance and to have the place and premises which occupy the real estate known by the street address of 236 Deerwood Dr., in San Antonio, Bexar County, Texas be cured of all listed defects.

Pursuant to Civil Practice and Remedies Code, §6.002, no bond is required of Plaintiff. Further, Plaintiff need not plead specific harm or inadequacy of legal remedy.

IV. REAL PROPERTY DESCRIPTION

The real property made the basis of this suit is described as *NCB 8695 BLK B LOT 35-38, 46, 47 & N 105 FT OF 25*, within the City of San Antonio, Bexar County, Texas. Said real property is more commonly known as 236 Deerwood Dr, San Antonio, Texas (hereinafter “property”).

V. CAUSE OF ACTION

Pursuant to Chapter 54, TEXAS LOCAL GOVERNMENT CODE, Plaintiff seeks to have the aforementioned property and the illegal code violations found thereon declared a public nuisance. Plaintiff seeks to enjoin defendants from allowing said code violations to continue without abatement on the property.

Plaintiff seeks injunctive relief whereby the declared nuisances are abated, tenants of the property relocated, and the property ordered repaired within 60 days.

VI. FACTS

Since October 2014 and continuing to the present, the property has been a public nuisance pursuant to Chapter 54, Texas Local Government Code. Defendants have continually and knowingly maintained a place which poses a *substantial* threat to persons or property.

The owner and manager were allowed the opportunity to cure these defects in **October of 2014** and failed to take any of the measures agreed upon to avoid the filing of the instant lawsuit.

Specifically, Plaintiff alleges that the following violations of the City of San Antonio Code of Ordinances have not been cured by the defendants:

	CODE VIOLATIONS		
(1)	10/29/14	Outside placement, trash, debris throughout property	SAPMC 302.1
(2)	10/29/14	Electrical system hazards	SAPMC 604.3

CODE VIOLATIONS

(3)	10/29/14	Outside placement, trash, debris throughout property	SAPMC 302.1
(4)	10/29/14	Electrical system hazards	SAPMC 604.3
(5)	10/29/14	Water heating facilities inadequate	SAPMC 505.4
(6)	10/29/14	Missing smoke alarms	SAPMC 703.2
(7)	10/29/14	Infestation of insects and rodents	SAPMC 309.1
(8)	10/29/14	Improperly installed plumbing fixtures	SAPMC 504.1
(9)	10/29/14	Interior surfaces in disrepair	SAPMC 305.3
(10)	10/29/14	Lack of means of egress	SAPMC 702.2
(11)	10/29/14	Rodent harborage	SAPMC 302.5
(12)	10/29/15	Accessory structure – broken door, trash, rubbish, broken glass	SAPMC 302.7
(13)	10/29/14	#2 Building – deteriorated structural members	SAPMC 304.4
(14)	10/29/14	Broken windows and door frames	SAPMC 304.13
(15)	10/29/14	#1 Building – deteriorated handrails and guardrails	SAPMC 304.12
(16)	11/12/14	Trash	SAPMC 302.1
(17)	11/12/14	Rubbish	SAPMC 308.1
(18)	11/12/14	High Weeds	SAPMC 302.4
(19)	11/12/14	Illegal Outside Placement	SAPMC 302.1
(20)	11/12/14	Rodent Harborage	SAPMC 302.5
(21)	11/12/14	Eroded soil	SAPMC 302.2
(22)	11/12/14	Driveway pot holes	SAPMC 302.3
(23)	11/12/14	Unsecured vacant units	
(24)	11/12/14	Lack of egress lighting	SAPMC 604.3

CODE VIOLATIONS

(25)	11/12/14	Broken Windows	SAPMC 304.13.1
(26)	11/12/14	Infestation of bees and roaches	SAPMC 309.1
(27)	11/12/14	Exterior walls are cracked	SAPMC 304.6
(28)	11/12/14	Exterior walls have holes	SAPMC 304.6
(29)	11/12/14	Torn carpeting	SAPMC 305.4
(30)	11/12/14	Flooring tiles are cracked	SAPMC 305.4
(31)	11/12/14	Damaged interior doors	SAPMC 305.3
(32)	11/12/14	Missing or non-working smoke alarms	SAPMC 703.2
(33)	11/12/14	Damaged interior surfaces	SAPMC 305.3
(34)	11/12/14	Deteriorated exterior surfaces	SAPMC 304.6
(35)	11/12/14	Lack of weatherproofing	SAPMC 304.2
(36)	11/12/14	Deteriorated structural members	SAPMC 304.4
(37)	11/12/14	Lack of proper ventilation	SAPMC 403.1
(38)	11/12/14	Accumulation of animal waste	SAPMC 302.1
(39)	11/12/14	Fly breeding	SAPMC 302.1
(40)	11/12/14	Blocked emergency rescue openings	SAPMC 702.4
(41)	11/12/14	Improper installation of plumbing fixtures	SAPMC 501.2
(42)	11/12/14	Water leaks	SAPMC 501.2
(43)	11/12/14	Missing plumbing fixtures	SAPMC 504.1
(44)	11/12/14	Exterior doors not weather tight	SAPMC 304.13
(45)	11/12/14	Missing door hardware	SAPMC 305.6
(46)	11/12/14	Exposed electrical conductors	SAPMC 604.3

CODE VIOLATIONS

(47)	11/12/14	Electrical system hazards	SAPMC 604.3
(48)	11/12/14	Inadequate water temperature	SAPMC 505.4
(49)	11/12/14	Unsanitary flooring	SAPMC 305.1
(50)	08/12/15	Boarded up and blocked escape openings	SAPMC 702.4
(51)	08/12/15	Locked doors – HASP lock	SAPMC 702.3
(52)	08/12/15	Mechanical appliances not in good working order	SAPMC 603.1
(53)	08/12/15	Non-openable window	SAPMC 403.1
(54)	08/12/15	Uneven walking surface/missing & cracked surface cover	SAPMC 305.4
(55)	08/12/15	Open windows without insect screen	SAPMC 304.14
(56)	08/12/15	Boarded/blocked windows	SAPMC 702.4
(57)	08/12/15	Roof and drainage deterioration	SAPMC 304.7
(58)	08/12/15	Exterior walls – holes, breaks, loose materials	SAPMC 304.6
(59)	08/12/15	Lack of protective treatment – exterior surface	SAPMC 304.2
(60)	08/12/15	Sidewalks, driveways, and retaining walls deteriorated, eroding soil, potholes	SAPMC 302.3
(61)	08/12/15	Lack of weather protection	SAPMC 304.2
(62)	08/12/15	Deteriorated sidewalks and driveways	SAPMC 302.3
(63)	08/12/15	Locked doors – lack of means of egress	SAPMC 702.3
(64)	08/12/15	Deteriorated mechanical appliances	SAPMC 603.1
(65)	08/12/15	Non-openable windows	SAPMC 403.1
(66)	08/12/15	Stairs and walking surfaces unsound and in need of repair	SAPMC 305.4
(67)	08/12/15	Inoperable emergency escape and rescue openings	SAPMC 702.4

CODE VIOLATIONS

(68)	08/12/15	Non-openable window	SAPMC 403.1
(69)	08/12/15	Holes, rotting exterior walls	SAPMC 304.6
(70)	08/12/15	Lack of ventilation	SAPMC 403.2
(71)	05/03/16	Exposed electrical wires	SAPMC 604.3
(72)	05/03/16	Missing sheetrock	SAPMC 305.3
(73)	05/03/16	Peeling paint	SAPMC 305.3
(74)	05/03/16	Holes in bedroom wall	SAPMC 305.3
(75)	05/03/16	Loose bathroom tiles	SAPMC 305.4
(76)	05/03/16	Lack of air vent	SAPMC 403.2
(77)	05/03/16	No smoke detectors	SAPMC 703.2
(78)	05/03/16	Stagnant water in living area	SAPMC 305.1
(79)	05/03/16	Missing light cover	SAPMC 604.3
(80)	05/03/16	Loose toilet	SAPMC 504.1
(81)	05/03/16	Exposed bathroom light fixture	SAPMC 604.3
(82)	05/03/16	Exposed outdoor electrical fixture	SAPMC 604.3
(83)	05/03/16	Kitchen sink leak, toilet running	SAPMC 504.1
(84)	05/03/16	No smoke alarms	SAPMC 703.2
(85)	05/03/16	Exposed electrical front outside fixtures	SAPMC 604.3
(86)	05/03/16	Failure to obtain general repair permit	City Code 10-6 (a)
(87)	05/03/16	Broken front window	SAPMC 304.13.1
(88)	05/03/16	Fascia board lacks weather protection	SAPMC 304.2

CODE VIOLATIONS

(89)	05/03/16	Broken window	SAPMC 304.13.1
(90)	05/03/16	Rear light bulb spliced with extension cord	SAPMC 604.3
(91)	05/03/16	Exposed receptacles	SAPMC 604.3
(92)	05/03/16	No address on units	SAPMC 304.3
(93)	05/03/16	Broken outdoor fixtures	SAPMC 604.3
(94)	05/03/16	Electrical plates missing	SAPMC 604.3
(95)	05/03/16	Exposed electrical system	SAPMC 604.3
(96)	05/03/16	Outside placement	SAPMC 302.1
(97)	05/03/16	Double cylinder lock	SAPMC 702.4
(98)	05/03/16	Missing sheetrock	SAPMC 305.3
(99)	05/03/16	Mold	SAPMC 305.3
(100)	05/03/16	Missing door weather stripping	SAPMC 304.13
(101)	05/03/16	No smoke alarms	SAPMC 703.2
(102)	05/03/16	Exposed electrical system	SAPMC 604.3
(103)	05/03/16	Failure to have bedroom lock hardware	SAPMC 305.6
(104)	05/03/16	Bathroom fails to lock	SAPMC 3-5.6
(105)	05/03/16	Insufficient water heat	SAPMC 505.4
(106)	05/03/16	Leaking faucet	SAPMC 504.1
(107)	05/03/16	Illegal use of extension cords	SAPMC 604.3
(108)	05/03/16	Exposed electrical circuit breaker	SAPMC 604.3
(109)	05/03/16	Exposed pipes	SAPMC
(110)	05/03/16	Exposed wiring	SAPMC 604.3

CODE VIOLATIONS			
(111)	05/03/16	Missing light fixture	SAPMC 605.2
(112)	05/03/16	Lacking weather stripping	SAPMC 304.13
(113)	05/03/16	Missing vent cover	SAPMC 403.2
(114)	05/03/16	Broken light fixture	SAPMC 604.3
(115)	05/03/16	Holes in interior walls	SAPMC 305.3
(116)	05/03/16	Dead receptacle	SAPMC 604.2

VII. REQUEST FOR CIVIL PENALTIES

Pursuant to Chapter 54.017, in a suit against an owner or the owner's representative with control over the premises, the City may recover civil penalties in the amount of \$1,000.00 per day per code violation. The City tenders its demand for, and prays that this court grant unto it, that a civil penalty to be levied against the Defendants in the sum of \$1,000.00 per day and per violation, from the date that they or their agents were issued notice of the same and until the resolution of this suit. The City further prays that the court grant this penalty against the Defendants, personally and individually, jointly and severably, as permitted under the law.

VIII. REQUEST FOR TEMPORARY INJUNCTION

Plaintiff requests the Court to set its petition for temporary injunction for a hearing and after hearing, issue a temporary injunction against defendants. Plaintiff asks the Court to order defendants to begin the process of abating all code violations listed above. Plaintiff asks the Court to set reasonable requirements to prevent the use of the property as a public nuisance.

It is probable Plaintiff will prevail after a trial on the merits because defendants' property is a public nuisance and poses a *substantial* threat to public life and safety. Plaintiff's residents will suffer imminent and irreparable injury if the Court does not grant the requested temporary

injunction because the safety and health hazards occurring on the property pose a *substantial* threat to the life and safety of any persons on or near the property.

Plaintiff has no adequate remedy at law because the damage to human life and property is incalculable. Plaintiff requests to have bond waived by the Court pursuant to Civil Practice and Remedies Code, §6.002.

IX. REQUEST FOR PERMANENT INJUNCTION

Plaintiff asks the Court set its request for a permanent injunction for a full trial on the merits and, after trial, issue a permanent injunction against defendants.

X. PRAYER

Unless enjoined to cease and desist, defendants will continue indefinitely to allow violations of the City's Code of Ordinances to occur on the premises of 236 Deerwood Dr., San Antonio, Bexar County, Texas.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court issue a temporary injunction after hearing, and permanent injunction after full trial on the merits, enjoining defendants, defendants' agents, servants, employees, assigns, successors in interest, and any other persons in privity with defendants to:

TEMPORARY INJUNCTION

- (1) Immediately cease and desist from maintaining, participating, and/or tolerating the public nuisance pursuant to Chapter 54, Texas Local Government Code.
- (2) Require defendants to immediately commence abating the health and safety code violations posing a substantial threat to the citizens of the City pursuant to Chapter 54, Texas Local Government Code.
- (3) Include any other reasonable requirements to prevent the use or maintenance of the place as a common nuisance.

PERMANENT INJUNCTION

- (1) Declare the property located at 236 Deerwood Dr., Bexar County, Texas to be a public nuisance pursuant to Chapter 54, Texas Local Government Code;
- (2) Issue a Permanent Injunction permanently enjoining defendants, defendants' agents, servants, employees, assigns, successors in interest, and any other persons in privity:
 - (a) To abate the public nuisance within 60 days;
 - (b) To close and secure the property until all code violations have been abated; and
 - (c) To relocate all tenants prior to completed repairs.
- (3) Revoke the certificate of occupancy issued to defendant and defendant property and premises until all code deficiencies are cured and the property no longer poses a health and safety threat to its residents to the complete and full satisfaction of the Development Services Department;
- (4) Award City costs of relocating defendants' tenants should defendants fail to do so;
- (5) Award the City such civil penalties pursuant to Chapter 54.017 that are to be calculated and determined by the fact-finders at the termination of this case;
- (6) Order any other reasonable requirements to prevent the use or maintenance of the place as a *public nuisance*;
- (7) Grant such other relief, in law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
401 S. Frio
San Antonio, Texas 78207

/S/ Savita Rai

SAVITA RAI
Assistant City Attorney
Texas Bar Number: 24013368
SAMUEL C.W. ADAMS
Texas Bar Number: 24003680
Assistant City Attorney
Telephone Number: (210) 207-7154
Fax Number: (210) 207-7358

Attorneys for Plaintiff, CITY OF SAN ANTONIO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on November 22, 2016:

ORLANDO R. LOPEZ
LOPEZ SCOTT, L.L.C.
3707 N. St. Mary's Street, Suite 200
San Antonio, Texas 78212
Telephone: 210.472.2100
Telecopier: 210.472.2101

CMRRR and/or ESERVE

Hand Delivery

Facsimile

/S/ Savita Rai

SAVITA RAI