

CAUSE NO. ~~2012~~ 64814

THE STATE OF TEXAS  
Plaintiff

IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

DAVID J. HESTOR  
AND THE PREMISES  
LOCATED AT 7304 EAST FREEWAY,  
HARRIS COUNTY, TEXAS IN REM  
Defendants

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 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR ABATEMENT OF COMMON NUISANCE, APPLICATION FOR A TEMPORARY INJUNCTION, PERMANENT INJUNCTION, AND REQUEST FOR DISCLOSURE**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Harris County Attorney Vince Ryan brings this suit on behalf of the State of Texas (State), Plaintiff-Petitioner (Plaintiff), to enjoin and abate a common nuisance.<sup>1</sup> The State complains that the Defendant is operating an establishment for the purpose of gambling and gambling promotion at the building located at 7304 East Freeway, Baytown, Texas 77521. The building located at 7304 East Freeway is owned by Defendant David J. Hestor.

**PARTIES**

1. The **State of Texas** is the Plaintiff, represented by Harris County Attorney Vince Ryan. The State is exempt from bond and court costs.<sup>2</sup>
2. The Defendant, **David J. Hestor**, is the property owner of the building located at 7304 East Freeway, Baytown, Texas 77521, may be served process at 9719 Stonebridge Lake Dr, Tomball, Texas 77375-3278.

**FILED**  
Chris Daniel  
District Clerk  
OCT 31 2012

<sup>1</sup> Tex. Civ. Prac. & Rem. Code § 125.002(a) & § 125.064.

<sup>2</sup> Tex. Civ. Prac. & Rem. Code § 6.001.

Time: \_\_\_\_\_  
Harris County, Texas  
By \_\_\_\_\_  
Deputy

### DISCOVERY CONTROL PLAN

3. The State moves the Court to issue an Order under Tex. R. Civ. P 190.4, setting the temporary injunction hearing as soon as possible after the defendants are served. And the State asks the Court to issue a docket control order under Tex. Civ. Prac. & Rem. Code § 125.045 – to prevent the continued use or maintenance of the place as a nuisance.

### JURISDICTION AND VENUE

4. This Court has subject matter and personal jurisdiction under Tex. Civ. Prac. & Rem. Code § 125.002(a). The Defendant is maintaining the property as a common nuisance.

5. Venue is proper.<sup>3</sup> The real property at issue is located in Harris County, Texas.

### STATEMENT OF FACTS

6. Harris County Sheriff Adrian Garcia's Office has conducted several gambling investigations, seized evidence at this unlawful establishment, and made arrests of individuals for possession of gambling devices/equipment numerous times since April, 2009—in violation of Chapter 47 of the Texas Penal Code. The last investigation occurred in August of 2012. Such arrests and violations listed below constitute a common nuisance under Tex. Civ. Prac. & Rem. Code § 125.0015(a) (5):

- Offense Report 09-45964: On May 7, 2009, officers seized 59 gambling devices, cash, a .40 caliber Smith and Wesson semi-automatic handgun, .40 caliber bullets, 7 video surveillance cameras, computers, cash and other evidence. 3 individuals were charged with Possession of Gambling Devices and 1 person was also charged with Keeping a Gambling Place.
- Offense Report 11-126970: September 29, 2011, officers seized 72 gambling devices, cash, and other evidence. 2 individuals were charged with Possession of Gambling Devices/Equipment.
- Offense Report 12-28871: March 27, 2012 officers executed a search warrant and seized 68 gambling devices, cash and other evidence. 2 individuals were charged with Possession of Gambling Devices.

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<sup>3</sup> Tex. Civ. Prac. & Rem. Code § 15.016 & § 125.002(a).

- Offense Report 12-107039: August 5, 2012 officers seized 67 gambling devices, cash and other evidence.

7. The general reputation of this place will also show the existence of this common nuisance.<sup>4</sup>

8. The frequency of the violations described above is prima facie evidence that the Defendant collectively and knowingly tolerates gambling.<sup>5</sup>

9. “[A] person who maintains a place to which persons habitually go . . . and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.”<sup>6</sup> The building located at 7304 East Freeway, Baytown, Texas 77521 constitutes a common nuisance within the meaning of Tex. Civ. Prac. & Rem. Code § 125.001 et seq.

#### REQUEST FOR TEMPORARY INJUNCTIVE RELIEF

10. The building located at 7304 East Freeway, Baytown, Texas 77521 is knowingly maintained as a place where people go to participate in gambling in violation of the Texas Penal Code. As such the property constitutes a common nuisance as defined by Section 125.0015(a) of the Texas Civil Practice & Remedies Code.

11. Defendant has failed or refused to abate the nuisance. Defendant is likely to continue to maintain the property as a common nuisance unless restrained by an injunctive order of the Court.

12. Unless the Defendant is enjoined from maintaining the property as a common nuisance, the citizens of Harris County, Texas will suffer irreparable harm. The State of Texas

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<sup>4</sup> Tex. Civ. Prac. & Rem. Code § 125.004(c).

<sup>5</sup> *Id* at subsection (a).

<sup>6</sup> Tex. Civ. Prac. & Rem. Code § 125.0015(a).

has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance.

13. The consequences of the above-described unlawful activities at the property, as well as the foreseeable resulting criminal activity associated with these acts, would proximately cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed, and inconvenienced in the use of any premises surrounding the property.

14. The State requests a temporary injunction. And if, after notice and a hearing, the Court determines that the State is likely to succeed on this suit to abate a common nuisance, the Court shall order reasonable requirements to prevent the use and maintenance of the place as a nuisance and require the Defendant to execute a bond. Tex. Civ. Prac. & Rem. Code Ann. § 125.045(a). The bond must be payable to the STATE OF TEXAS at Harris County; be in the amount set by the Court, but no less than \$5,000 nor more than \$10,000; have sufficient sureties approved by the Court; and be conditioned that the Defendant will not knowingly allow a common nuisance to exist at that place.

15. If the Defendant violates any condition of the bond or any injunctive order by this Court, the Harris County Attorney Vince Ryan shall sue on the bond in the name of the State; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond, plus cost and attorney fees, should be ordered forfeited to Harris County, Texas, the originating entity. Subsequent to the bond forfeiture, the Court shall order the place where the nuisance exists closed for one year from the date of the order of bond forfeiture.<sup>7</sup> In addition, the Court may impose the laundry list of sanctions under § 125.045(b); including

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<sup>7</sup> Tex. Civ. Prac. & Rem. Code § 125.003(a) & (b).

cutting off utilities to the place, revoking the occupancy permit, prohibit access through public streets or alleys, limit hours of operation, or any other legal remedy available.

#### REQUEST FOR PERMANENT INJUNCTIVE RELIEF

16. Additionally, the State seeks permanent injunctive relief.

17. If final judgment favors the State, the Court shall grant a permanent injunction ordering the Defendant to abate the nuisance and be forever enjoined from maintaining or participating in the common nuisance existing on the property. The Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

18. A person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:<sup>8</sup>

- a. fine of not less than \$1,000 or more than \$10,000;
- b. confinement in jail for a term of not less than 10 or more than 30 days;
- c. both a fine and confinement.

#### ATTORNEY'S FEES

19. To litigate this case, it was necessary for the State of Texas to secure the services of Harris County Attorney Vince Ryan's Office. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. §125.003, the State requests that Defendants be liable for reasonable attorney fees, investigative costs, witness fees, court costs, and any other reasonable expenses incurred.

#### VERIFICATION

20. Plaintiff is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein. Tex. Civ. Prac. & Rem. Code § 125.002(a).

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<sup>8</sup> Tex. Civ. Prac. & Rem. Code § 125.002(d).

REQUEST FOR DISCLOSURE

21. Plaintiff requests that the Defendant disclose, within 50 days of service of this request, the information or material described in Tex. R. Civ. P. 194.2.

PRAYER

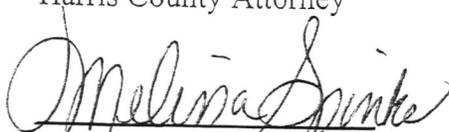
The State of Texas, plaintiff-petitioner, respectfully asks that:

22. After notice and a hearing on a request for a temporary injunction, the State asks the Court to order Defendant to execute a bond payable to the STATE OF TEXAS at Harris County; be in the amount set by the Court, but not less than \$5,000, nor more than \$10,000; have sufficient sureties approved by the Court; and be conditioned that the Defendant will not knowingly maintain a common nuisance to exist at 7304 East Freeway, Baytown, Texas 77521.

23. Upon final judgment, the Plaintiff asks for court costs, costs of suit, costs of investigation, witness fees, deposition fees, reasonable attorney's fees, and all other relief to which plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN  
Harris County Attorney



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