

2014-06812 / Court: 055
No. 2014 -

HARRIS COUNTY, TEXAS
Plaintiff

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IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

WEST TEN DEVELOPMENT, L.P. and
I.W.W. REALTY, L.L.C.,
Defendants

_____ **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS AND REQUEST FOR DISCLOSURE

Plaintiff, Harris County, Texas, files this Original Petition and Application for Temporary and Permanent Injunction, complaining of Defendants, West Ten Development, L.P. and I.W.W. Realty, L.L.C. for the following reasons:

1. DISCOVERY

1.1 Plaintiff 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. Plaintiff asks the Court to issue a docket control order to prevent the continued use or maintenance of the place in violation of the Harris County Fire Marshal Orders.

2. AUTHORITY

2.1 This action is brought by Harris County under Section 343.013 of the Texas Health and Safety Code and Section 352.016 of the Texas Local Government Code, contending Defendants' operation of Funplex endangers the public health and safety, due to violations of several Harris County Fire Marshal Orders.

3. DEFENDANTS

3.1 Defendant West Ten Development, L.P. is the record owner of Funplex, 13700 Beechnut, Houston, Texas 77083 and may be served by serving its registered agent for service of process, Lloyd Moody, at 9215 Solon Road, Ste., D-1, Houston, Texas 77064.

3.2 Defendant I.W.W. Realty, L.L.C. is the General Partner of West Ten Development, L.P. and may be served by serving its registered agent for service of process, Lloyd Moody, at 9215 Solon Road, Ste., D-1, Houston, Texas 77064.

4. JURISDICTION AND VENUE

4.1 This court has jurisdiction and venue is proper in Harris County because the violations and events establishing this action occurred in Harris County, Texas, and the Defendants conduct business in Harris County, Texas. See Tex. Health & Safety Code § 343.013(a),(b); Tex. Civ. Prac. & Rem. Code §15.002(a)(1).

5. ACTS OF AGENTS

5.1 When alleged that Defendants did any act, it is meant that Defendants performed or participated in the act, or Defendants' officers, agents or employees performed or participated in the act for and under the authority of the Defendants.

6. SPECIFIC FACTUAL ALLEGATIONS

6.1 Defendants own and operate Funplex in the unincorporated area of Harris County at 13700 Beechnut, Houston, Texas 77083.

6.2 Funplex is a large indoor entertainment and family center, sprawling over five acres under one roof with activities such as bowling, skating, go-karts, a two-story playport, a Ferris Wheel and other rides, bumper cars, movie theatres, churches and more.

6.3 The Harris County Fire Marshal has inspected Funplex frequently and identified numerous fire and life safety hazards, including but not limited to:

- a non-functioning fire detection alarm system;
- blocked emergency exit doors;
- non-functioning emergency exit doors;
- blocked sprinkler heads which cannot function properly;
- electrical hazards;
- overloaded electrical circuits;
- non-functioning cooking suppression systems;
- exit passageway blocked by debris and storage;
- fire lanes blocked by new construction projects;

- a fire suppression system which was undetermined if properly maintained.

6.4 Due to the life and safety hazards, the Harris County Fire Marshal reduced the occupancy limit to 299 and issued 28 Harris County Fire Marshal Orders to Funplex, directing them to correct the violations.

6.5 Defendants allow patrons to use flares inside Funplex.

6.6 Defendants operate the International Office Bar inside Funplex without a Fire Marshal's Certificate of Occupancy.

6.7 Defendants and Defendants' employees use the second floor areas of Funplex for residential purposes absent fire escapes or a proper fire alarm system in place.

6.8 Defendants are remodeling the first floor public areas and constructing a third-floor residential build out without the proper permits.

6.9 Funplex exceeded the occupancy limit of 299 for a New Year's Eve Party on December 31, 2013, and intends on hosting a large public event on February 14, 2014 that will exceed occupancy limits and pose a serious threat of safety to the public because of the multiple violations found by the Harris County Fire Marshal's Office.

7. STATUTES AND REGULATIONS VIOLATED

7.1 Section 352.016 of the Texas Local Government Code provides that in the interest of safety and fire prevention, the county fire marshal may inspect for fire or life safety hazards any structure, appurtenance, fixture, or real property located within 500 feet of a structure, appurtenance, or fixture. *See* Tex. Loc. Gov't Code § 352.016(b).

7.2 If the marshal determines a fire or life safety hazard, the marshal may order the owner or occupant of the premises to correct the hazardous situation. *Id.*

7.3 Section 343.011 of the Texas Health and Safety Code provides that a person may not cause, permit, or allow a public nuisance. *See* Tex. Health & Safety Code § 343.011(b).

7.4 The term “public nuisance” is defined in Section 343.011 of the Health and Safety Code and includes, “maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because... it constitutes a fire hazard.” *See* Tex. Health & Safety Code § 343.011(c)(5).

7.5 Section 343.013 of the Texas Health and Safety Code provides that a county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county. *See* Tex. Health & Safety Code § 343.013(a).

7.6 A county may sue under Subsection (a) of Section 343.013 of the Texas Health and Safety Code. *See* Tex. Health & Safety Code § 343.013(b).

8. VIOLATIONS

8.1 Investigators from the Harris County Fire Marshal’s Office have inspected the Defendants’ operations at Funplex and found numerous violations as described in Exhibit A.

8.2 Funplex has been issued 28 Harris County Fire Marshal Orders pertaining to the fire and life safety hazards identified at Funplex. *See* Exhibit A.

8.3 Because of the continued violations and failure to comply with Harris County Fire Marshal Orders, the Harris County Fire Marshal has reduced the Funplex occupancy limit to 299.

8.4 Defendants know of the fire and life safety hazards that exist at Funplex as evidenced by the 28 Harris County Fire Marshal Orders. Each day that Funplex refuses to comply with the Harris County Fire Marshal Orders and still opens its doors for business, innocent members of the public are placed in an unsafe environment.

9. INJUNCTIVE RELIEF

9.1 Plaintiff is entitled to injunctive relief from Defendants’ continuing violations of Harris County Fire Marshal Orders that endanger public health and safety for patrons of Funplex at 13700 Beechnut, Houston, Texas 77083.

9.2 Under Texas Health and Safety Code § 343.013, this Court may grant Plaintiff an injunction to prevent, restrain, abate, or otherwise remedy a public nuisance that the facts warrant.

9.3 Plaintiff seeks temporary injunctive relief to direct Defendants to comply with the Harris County Fire Marshal Orders and ensure Defendants do not commit further violations of the Section 343.013 of the Texas Health and Safety Code and Section 352.016 of the Texas Local Government Code. Plaintiff further requests that the Court order the foregoing to be accomplished by a date certain.

9.4 Plaintiff also seeks permanent injunctive relief to ensure Defendants do not commit future violations of Section 343.013 of the Texas Health and Safety Code and Section 352.016 of the Texas Local Government Code, and.

10. COSTS OF EFFECTING COMPLIANCE

10.1 If this honorable Court grants the injunction, Plaintiff requests that the Court award the Plaintiff reasonable attorney's fees and court costs, as authorized by Section 343.013(b) of the Texas Health and Safety Code.

11. TRIAL BY JURY

11.1 Plaintiff requests a jury trial.

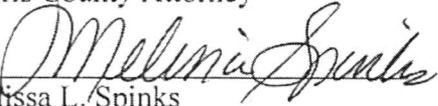
12. PRAYER

Plaintiff prays:

1. that the Court issue a show cause order requiring Defendants to appear before the Court to show why it should not be enjoined from further violation of the laws of Texas, as set out;
2. that citation issue in due form of law against Defendants;
3. that upon final trial a permanent injunction should issue against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;
4. that upon final trial in this cause, the Court grant Plaintiff costs of effecting compliance and
5. the Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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