

STATE OF TEXAS  
Plaintiff

v.

RODEO SQUARE APARTMENTS LP  
AND THE REAL PROPERTY KNOWN  
AS 6700 DAIRY ASHFORD, 12770  
RODEO SQUARE, 6771 WEST  
BRANCH, 6700 WEST BRANCH,  
THE MINT APARTMENTS  
Defendants

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IN THE \_\_\_\_\_ DISTRICT COURT  
OF HARRIS COUNTY, TEXAS

**FILED**  
Chris Daniel  
District Clerk  
APR 26 2013  
Time \_\_\_\_\_  
By \_\_\_\_\_

61 JUDICIAL DISTRICT

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

NOW COMES THE STATE OF TEXAS, Plaintiff, by and through Harris County Attorney Vince Ryan, complaining that Defendants, Rodeo Square Apartments LP, And the Real Property Known as 6700 Dairy Ashford, 12770 Rodeo Square, 6771 West Branch, 6700 West Branch, The Mint Apartments, all herein referred to as ("Defendants"), are causing a common nuisance by habitually harboring criminal activity including multiple aggravated robberies and aggravated assaults in violation of Chapter 125 of the Texas Civil Practice and Remedies Code.

Plaintiff seeks temporary and permanent injunctions to abate the common nuisance, court costs, attorney's fees and penalties, and herein files this its Original Petition for Abatement of Common Nuisance, Application for Temporary and Permanent Injunctions and Request for Disclosure, and in support of this action would show the following:

## I. Discovery Control Plan

1. The State intends for this case to be governed as a Level II Discovery Plan in accordance with Rule 190.3 of the Texas Rules of Civil Procedure.

## II. Parties

2. Plaintiff is the State of Texas, appearing and proceeding by and through Harris County and the Harris County Attorney's Office in accordance with Texas Civ. Prac. & Rem Code Ann. § 125.002 (Vernon 2011).

3. Defendant Rodeo Square Apartments, LP is an apartment complex located at 6700 Dairy Ashford, 12770 Rodeo Square, 6771 West Branch, 6700 West Branch. It can be served by serving its registered agent, Susan Stubblefield at 13151 Emily Road, Suite 250, Dallas, Texas 75240.

4. Defendant, the Real Property Known as 6700 Dairy Ashford, The Mint Apartments, is an apartment complex located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Vernon 2011). Service is requested on the owners of the property, all Defendants as named in this suit.

5. Defendant, the Real Property Known as 12770 Rodeo Square, The Mint Apartments, is an apartment complex located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Vernon 2011). Service is requested on the owners of the property, all Defendants as named in this suit.

6. Defendant, the Real Property Known as 6700 West Branch, The Mint Apartments,

is an apartment complex located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Vernon 2011)). Service is requested on the owners of the property, all Defendants as named in this suit.

7. Defendant, the Real Property Known as 6771 West Branch, The Mint Apartments is an apartment complex located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ. Prac. & Rem. Code Ann. § 125.002(b) (Vernon 2011)). Service is requested on the owners of the property, all Defendants as named in this suit.

### III. Jurisdiction and Venue

8. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code Annotated §125.002(a) (Vernon 2011) for the reasons that the property made the basis of this cause is being maintained as a common nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

9. Venue of this cause is proper in this court, based on Texas Civil Practice & Remedies Code Annotated § 15.016 (Vernon 2002). More particularly, Section 125.002 (a) of the Texas Civil Practices & Remedies Code prescribes mandatory venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist. Section 15.016 of the Texas Civil Practice & Remedies Code provides that an action for which venue is made mandatory by a statute shall be brought in the county required under the statute. The property upon which the Defendants are maintaining a common nuisance is located in Harris County, Texas.

IV. Statutory Basis for Suit  
a. common nuisance – habitual criminal activity

10. Tex. Civ. Prac. & Rem. Code Ann. §125.0015(a) states that “[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The “purposes’ that give rise to a Chapter 125 nuisance are as follows:

- (1) Discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) Reckless discharge of a firearm as prohibited by the Penal Code;
- (3) Engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- (4) Delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481 of the Health and Safety Code;
- (5) Gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
- (6) Prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- (7) Compelling prostitution as prohibited by the Penal Code;
- (8) Commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;
- (9) Aggravated assault as described by Section 22.02 of the Penal Code;
- (10) Sexual assault as described by Section 22.011 of the Penal Code;
- (11) Aggravated sexual assault as described by Section 22.021 of the Penal Code;
- (12) Robbery as described in Section 29.01 of the Penal Code;
- (13) Aggravated robbery as described by Section 29.03 of the Penal Code;

- (14) Unlawfully carrying a weapon as described by Section 46.02 of the Penal Code;
- (15) Murder as described by Section 19.02 of the Penal Code;
- (16) Capital murder as described by Section 19.03 of the Penal Code;
- (17) Continuous sexual abuse of a young child or children as described by Section 21.02 of the Penal Code;
- (18) Massage therapy or other massage services in violation of Chapter 455 of the Occupations Code.
- (19) Employing a minor at a sexually oriented business as defined by Section 243.002, Local Government Code;
- (20) Trafficking of persons as described by Section 20A.02, Penal Code;
- (21) Sexual conduct or performance by a child as described by Section 43.25, Penal Code; or
- (22) Employment harmful to a child as described by Section 43.251, Penal Code.

Section 125.0015(a) (1)-(22).

11. Tex. Civ. Prac. & Rem. Code Ann. §125.0015(b) states that “[a] person maintains a common nuisance if the person maintains a multiunit residential property to which persons habitually go to commit acts listed in Subsection (a) and knowingly tolerates the acts and furthermore fails to make reasonable attempts to abate the acts.” The Mint Apartments has approximately 500 units with approximately 800 residents. It is located next to Elsik and Hastings High Schools.

12. Section 125.004(a) provides that “[p]roof that and activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated the activity.” Section 125.004(b) states that “[e]vidence

that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to the act that occurred.”

13. Between April 2011 and April 2013, there were approximately 2000 calls for police assistance to The Mint. During this time there were ten aggravated assaults, three aggravated robberies, three robberies, five possessions of a controlled substance, six deliveries of a controlled substance, one unlawfully carrying a weapon and two discharge of a firearm in a public place. Several of these crimes, as well as, other crimes that occurred on the property that met section 125.061(3) of the Civil Practice & Remedies Code as set out above have been identified by Houston Police officers as gang-related.

14. The general reputation of this place will also show the existence of this common nuisance.<sup>1</sup>

15. Defendants have knowingly tolerated this Chapter 125 activity and have allowed such activity to occur habitually on the property. In light of the foregoing, as a matter of law, the Property constitutes a common nuisance within the meaning of Chapter 125.

#### V. Grounds for Suit

16. Based on Tex. R. Civ. P. 58, Plaintiff hereby adopts by reference the foregoing factual allegations set forth in Section IV of this original petition and incorporates them as the factual basis in support of the legal grounds for this action, as set forth below.

17. The Texas Civil Practice & Remedies Codes authorizes suit to enjoin and abate a common nuisance under Section 125.002.

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<sup>1</sup> Tex. Civ. Prac. & Rem. Code § 125.004(c).

18. Defendants have knowingly maintained a place to which persons habitually engage in activities such as aggravated robbery and aggravated assault in violation of the law. The Defendant Property, therefore, is a common nuisance as defined by Section 125.0015 (a) of the Texas Civil Practice & Remedies Code.

#### VI. Request for Temporary Injunctive Relief

19. Defendants have failed or refused to abate the common nuisance. Defendants are likely to continue to maintain the property as a common nuisance unless restrained by an injunctive order of the court.

20. Unless Defendants are enjoined from maintaining the property as a common nuisance, irreparable harm will be suffered by the citizens of Houston and Harris County, Texas. Plaintiff has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance.

21. 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.

22. In accordance with Tex. Civ. Prac.& Rem. Code Ann. § 125.045(a) (Vernon Supp.2011), if, after notice and hearing on a request by a plaintiff for a temporary injunction, a court determines that the plaintiff is likely to succeed on the merits in a suit brought under Section 125.002 (Suit to Abate Common Nuisance), the court shall require that each Defendant execute a bond. 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.

23. Based on section 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the plaintiff, the court shall grant an injunction ordering Defendants to abate the nuisance and be 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.

21. Because the plaintiff brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against the Defendants, according to Section 125.002(b) and (e) of the Texas Civil Practice & Remedies Code.

24. Pursuant to section 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this court be violated, suit upon the bond in the name of the State of Texas should be allowed; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to Harris County, Texas, the originating entity. The place where the nuisance exists should be ordered closed for one year from the date of the order of bond forfeiture.

25. In accordance with Tex.Civ.Prac. & Rem. Code Ann. § 125.002(d) for a common nuisance and a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:

- 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.

26. In accordance with Tex.Civ.Prac & Rem. Code Ann. § 125.045(b) (Vernon Supp.2011), if a defendant violates the temporary or permanent injunction, the court may order a political subdivision to:

a. discontinue the furnishing of utility services to the place at which the nuisance exists;

b. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

c. revoke the certificate of occupancy of the place;

d. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;

e. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law:

f. order a landlord to terminate a tenant's lease if:

1. the landlord and the tenant are parties to the suit; and

2. the tenant has violated a condition of the injunctive order; or

g. order any other legal remedy available under the laws of the state.

#### VII. Request for Permanent Injunctive Relief

27. Additionally, the Plaintiff seeks permanent injunctive relief.

28. As alleged above, The Mint is knowingly maintained as a place to which persons habitually go and engage in aggravated offenses involving injury and/or a weapon and

drug offenses. And as such, the property constitutes a common nuisance under section 125.0015 of the Texas Civil Practice & Remedies Code.

29. Defendants have failed or refused to abate the nuisance. Defendants are likely to continue to maintain and use, and be party to the maintenance and use of The Mint as a common nuisance unless restrained by an injunctive order of this Court.

30. Unless defendants are enjoined from maintaining and using The Mint as a common nuisance, irreparable harm will be suffered by the citizens of Houston and Harris County, Texas. Plaintiff has no other adequate remedy at law to prevent the continued maintenance and use of the property as a common nuisance.

31. The consequences of the above-described unlawful activities at The Mint, 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 Mint.

32. Based on section 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the plaintiff, the court must order that The Mint be closed for one year after the date of the judgment.

33. Because the plaintiff brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against the Defendants.

#### VIII. Attorney's Fees

34. It was necessary to secure the services of an assistant Harris County attorney, to litigate this cause of action to enjoin and abate the common nuisance being maintained on the property. Based on sections 125.003(b) and 125.068 of the Texas Civil Practice &

Remedies Code, Plaintiff requests the Defendants be ordered to pay reasonable attorney's fees and costs, including investigative costs, witness fees, court costs and deposition fees.

#### IX. Verification

35. Pursuant to Section 125.002 of the Texas Civil Practice & Remedies Code, the 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.

#### X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

36. After notice and a hearing on a request for a temporary injunction, the court order Defendants, Rodeo Square Apartments LP, And the Real Property Known as 6700 Dairy Ashford, 12770 Rodeo Square, 6771 West Branch, 6700 West Branch, The Mint Apartments, or any other person with an interest in the property 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 Defendants will not knowingly maintain a common nuisance to exist at that place;

37. If the court determines that Defendants, Rodeo Square Apartments LP, And the Real Property Known as 6700 Dairy Ashford, 12770 Rodeo Square, 6771 West Branch, 6700 West Branch, The Mint Apartments, are maintaining a common nuisance at the property, the court may render any order allowed by law as necessary to abate the common nuisance pursuant to Sections 125.046 of the Texas Civil Practice and Remedies Code;

38. Upon a showing by the Plaintiff that any temporary or permanent injunctive order by this court has been violated, the person in violation of said order be subject to the following sentences for civil contempt.

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

39. Upon showing that any Defendant has failed to cease and desist from creating and maintaining a common nuisance at the property within a time allowed by the court, Harris County, the City of Houston, or any other political subdivision having jurisdiction over Defendant property, may:

1. discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;
2. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;
3. revoke the certificate of occupancy of the place;
4. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
5. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law;
6. order a landlord to terminate a tenant's lease if:

- a. the landlord and the tenant are parties to the suit; and
- b. the tenant has violated a condition of the injunctive order; or

7. order any other legal remedy available under the laws of the state.

40. If, upon final hearing, the court finds in favor of the Plaintiff that a common nuisance exists at The Mint, the court shall order that the property be closed for one year after the date of judgment;

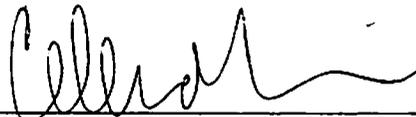
41. The judgment of this court be a judgment *in rem* against the property, as well as against the Defendants; and

40. Upon final hearing, Plaintiff has judgment against Defendants, Rodeo Square Apartments LP, And the Real Property Known as 6700 Dairy Ashford, 12770 Rodeo Square, 6771 West Branch, 6700 West Branch, The Mint Apartments for:

1. court costs
2. costs of suit;
3. cost of investigation;
4. witness fees and deposition fees;
5. reasonable attorney's fees; and
6. such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN  
Harris County Attorney 99999939



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