

NO. D-1-GV-07-002134

STATE OF TEXAS

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

MANUEL J. MONTEMAYOR, dba
MG JOINT VENTURE

353 JUDICIAL DISTRICT

Filed in the District Court
of Travis County, Texas

OCT 11 2007
AL
Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, by and through its Attorney General, Greg Abbott, on behalf of the people of Texas, files this original petition, and for cause of action would show the following:

Discovery Control Plan

1.1. Pursuant to TEX. R. CIV. P. 190, Plaintiff intends that discovery in this case be conducted under Level 2.

Parties and Service

2.1. Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General pursuant to LOCAL GOV'T CODE § 232.037.

2.2. Defendant Manuel J. Montemayor is a resident of Cameron County, and may be served with process at 344 Honey Drive, Brownsville, Texas 78520, or wherever he may be found.

Jurisdiction and Venue

3.1. This Court has jurisdiction over this suit pursuant to TEX. CONST. art. V, § 8, and LOCAL GOV'T CODE § 232.037.

3.2. Venue is proper in Travis County pursuant to LOCAL GOV'T CODE § 232.035(f).

Authority

4.1. This suit seeks to enjoin certain unlawful acts of the Defendant, and seeks the assessment of civil penalties, attorney's fees, costs of investigation, and court costs.

4.2. No filing fee or other security for costs is required of the State. CIV. PRAC. & REM. CODE § 6.001.

4.3. LOCAL GOV'T CODE, Chapter 232, Subchapter B ("Subchapter B"), applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county located within 50 miles of an international border. Land is considered to be in the jurisdiction of a county if the land is located in the county, and outside the corporate limits of municipalities. LOCAL GOV'T CODE § 232.022.

4.4. Cameron County is located within 50 miles of the international border dividing the United States and Mexico.

4.5. LOCAL GOV'T CODE § 232.023(a) provides that a subdivider of rural land in a Subchapter B county must have a plat of the subdivision prepared. A subdivision of a tract includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

4.6. LOCAL GOV'T CODE § 232.037(a) provides that the Attorney General may take any action necessary in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;

(2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;

(3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and

(4) require platting or replatting under Section 232.040.

Background on Tierra Linda Gardens Subdivision

5.1. The residential subdivision that is the subject of this lawsuit is identified as Tierra Linda Gardens. It is located in Cameron County on the south side of Papaya Drive, east of the intersection of Papaya Drive and Old Alice Road, south of Highway 100, near Los Fresnos, Texas.

5.2. Defendant has subdivided the subject land into twenty-six lots, all of which are approximately one half acre in size and are intended primarily for residential use. Defendant has not applied to obtain plat approval for Tierra Linda Gardens from the Cameron County Commissioners Court.

5.3. As set out below, Defendant Manuel J. Montemayor violated Subchapter B of Chapter 232 of the LOCAL GOV'T CODE.

Violation 1 Sale of Lots in a Subdivision Not Legally Platted

6.1. LOCAL GOV'T CODE § 232.035(a) contains the following prohibition:

A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

6.2. LOCAL GOV'T CODE § 232.031(a) contains the following prohibition:

A subdivider may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

6.3. On May 27, 2004, Defendant sold lot number 11, Block 1, in Tierra Linda Gardens to Dolores Garcia, for a purchase price of \$15,000.00. On information and belief, Defendant has sold other lots in Tierra Linda Gardens.

6.4. At the time of these lot sales, Tierra Linda Gardens was not legally platted as required by LOCAL GOV'T CODE, Chapter 232, Subchapter B. Prior to the sale of each of these lots, Defendant had not obtained subdivision plat approval from Cameron County in violation of LOCAL GOV'T CODE §§ 232.035(a) and 232.031(a).

Violation 2
Failure to Install or Bond Sewer Service Facilities

7.1. LOCAL GOV'T CODE § 232.027 contains the following requirements:

(a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final plat approval of a plat under Section 232.024, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the FDIC. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

7.2. Sections 3.4 and 3.5 of the Model Rules (codified at 31 Texas Administrative Code §§ 364.54 and 364.55) set out detailed requirements for financial guarantees applicable to water and wastewater facilities.

7.3. LOCAL GOV'T CODE § 232.040(b) provides that a lot in a subdivision may not be sold if the lot lacks water and sewer services required by Subchapter B.

7.4. Prior to the sale of lots, Defendant failed to install sewer service facilities in Tierra Linda Gardens, and failed to comply with the legal requirements of LOCAL GOV'T CODE § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure installation of sewer service facilities. Defendant's sale of lots in Tierra Linda Gardens without complying with the "build it or bond it" sewer service requirements violated § 232.027 and § 232.040(b).

Violation 3
Failure to Install or Bond Water Service Facilities

8.1. LOCAL GOV'T CODE § 232.027 requires that water service facilities serving each lot be installed at the time of final plat approval, or in the alternative, a bond or other approved financial guarantee be posted to ensure the installation of water service facilities.

8.2. Prior to the sale of lots, Defendant failed to install water service facilities in Tierra Linda Gardens, and failed to comply with the legal requirements of LOCAL GOV'T CODE § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure water service to each lot.

8.3. Defendant's sale of lots in Tierra Linda Gardens without complying with the "build it or bond it" water service requirements violated § 232.027 and § 232.040(b).

Injunctive Relief

9.1. Pursuant to LOCAL GOV'T CODE § 232.037, the State requests that the Defendant be ordered to appear and show cause why a temporary injunction should not be issued by the Court. Upon hearing, the State requests that the Defendant be temporarily enjoined from subdividing, advertising, and selling property in violation of LOCAL GOV'T CODE, Chapter 232, Subchapter B.

9.2 The State further requests that Defendant be temporarily enjoined to complete one of the following two compliance options for Tierra Linda Gardens, at Defendant's choosing:

Option 1. Refund of Deposits, Payments made and Cancellation of Subdivision.

Within thirty days of the signing of the temporary injunction by the Court, Defendant shall mail or hand-deliver to each of the lot purchasers a letter explaining that the "Lot Reservation/Sales Agreement" is canceled and the deposit and all payments made will be returned, and enclose a certified or cashier's check containing the amounts identified and verified as owed. Also within thirty days, Defendant shall mail to David Preister, Assistant Attorney General, copies of all correspondence and checks as evidence of compliance.

Option 2. Platting of Subdivision. Within thirty days of the signing of the temporary injunction by the Court, Defendant shall apply to the Cameron County Department of Engineering for approval of a subdivision plat in accordance with LOCAL GOV'T CODE, Chapter 232, Subchapter B and the applicable Model Subdivision Rules. For lots already sold or otherwise under a sales contract, Defendant shall install or have installed water and sewage facilities meeting minimum state standards as described in the Model Subdivision Rules. For all unsold lots, Defendant shall submit to the Cameron County Department of Engineering financial assurance for the installation of water and sewer facilities meeting minimum state standards in the form of a bond, letter of credit, or other financial assurance authorized by the Model Subdivision Rules.

9.3 The State requests that upon final trial on the merits, Defendant be permanently enjoined from subdividing, advertising, and selling property in violation of LOCAL GOV'T CODE, Chapter 232, Subchapter B and the Model Subdivision Rules, and that the Court order such additional injunctive relief as warranted by the facts.

Civil Penalties

10.1. LOCAL GOV'T CODE § 232.035(d) provides that a subdivider or agent who sells a lot in a subdivision that has not been legally platted "is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed." The State hereby requests that this Court assess a civil penalty within the statutory range against Defendant for each of the lot sales prior to the subdivision plat approval by Cameron County.

Attorney's Fees and Costs

11.1. The State requests recovery of its attorney's fees expended in the prosecution of this case from Defendant as authorized by LOCAL GOV'T CODE § 232.035(c), (d), and § 232.037(a)(3), and GOVT. CODE § 402.006(c).

11.2. The State requests recovery of its costs of investigation and court costs expended in the prosecution of this case from Defendant as authorized by LOCAL GOV'T CODE § 232.035(c), (d), and § 232.037(a)(3), and GOVT. CODE § 402.006(c).

Prayer for Relief

ACCORDINGLY, the State respectfully requests:

1. That temporary and permanent injunctive relief be granted as requested in this petition;
2. That civil penalties be assessed as requested in this petition;

3. That the State recover its attorney's fees, costs of investigation, and court costs in this case; and

4. That the State be granted all other relief to which it is entitled.

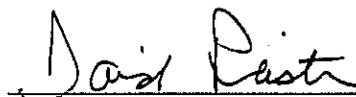
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

KAREN W. KORNEILL
Assistant Attorney General
Chief, Natural Resources Division



DAVID PREISTER
State Bar No. 16245800
Assistant Attorney General

Natural Resources Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS

AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY OF TRAVIS }

BEFORE ME, the undersigned authority, on this day personally appeared Audon Gutierrez, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

“My name is Audon Gutierrez. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. This affidavit is made on my personal knowledge and the statements herein are true and correct.

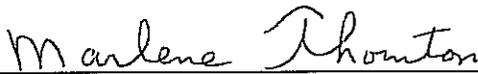
I am an investigator for the State of Texas. My duties include reviewing subdivision plat applications and investigating compliance with state and county residential subdivision requirements.

I have carefully reviewed the factual allegations in Sections 5.1 through 8.3 of the attached *Plaintiff's Original Petition and Application for Temporary Injunction*. The factual allegations contained therein are true and correct.”



AUDON GUTIERREZ

SWORN TO and SUBSCRIBED before me by Audon Gutierrez on the 10th day of October, 2007.



Notary Public in and for the State of Texas

My commission expires: _____

