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May 20, 2010

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Via: Hand-Delivery

Manuel Gutierrez
District Clerk
Webb County Justice Center
1110 Victoria, 2nd Floor
Laredo, Texas 78040

MANUEL GUTIERREZ
 2010 MAY 20 PM 3:52
 WEBB COUNTY, TEXAS
 BY _____ DEPUTY

Re: *State of Texas, and Webb County, Texas vs.
Alfonso Ruiz and Margarita Palacios*

Dear Mr. Gutierrez:

With reference to the above styled and numbered cause, enclosed herewith please find an original and three (3) copies of Plaintiffs' Original Petition. Please file the original and return one file-marked copy to the undersigned.

Also please issue citations for the two Defendants as stated in the Petition.

As you know, pursuant to Tex. Civ. Prac. & Rem. Code §6.001 we are exempt from a filing fee or other security for costs.

Thanking you in advance for the courtesy given this matter, I remain

Best regards,


 Enrique Pellegrin
 Asst. County Attorney

CAUSE NO. 2010 CV Q000 884 D3

STATE OF TEXAS, and
WEBB COUNTY, TEXAS

Plaintiffs,

v.

ALFONSO RUIZ and
MARGARITA PALACIOS

Defendants

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IN THE DISTRICT COURT

341 JUDICIAL DISTRICT

WEBB COUNTY, TEXAS

MANUEL GUTIERREZ
CLERK OF DISTRICT COURT
2010 MAY 20 PM 3:52
FILED
WEBB COUNTY, TEXAS
BY DEPUTY

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, the State of Texas ("State"), by and through the Attorney General, on behalf of the people of Texas, and Webb County, Texas ("County"), by and through its County Attorney, and file this their Plaintiffs' Original Petition, and for cause of action would respectfully show:

I.

DISCOVERY

1.1 The Plaintiffs will conduct discovery under the Level 2 Discovery Control Plan.

TEX. R. CIV.P. 190

II.

PARTIES AND SERVICE

2.1 Plaintiff, the State of Texas, is authorized to bring this suit through its Attorney General pursuant to TEX. LOCAL GOV'T CODE §232.037 and TEX. WATER CODE §§16.353 and 16.354.

2.2 Plaintiff, Webb County is authorized to bring this suit pursuant to TEX. LOCAL GOV'T CODE §232.037 and TEX. WATER CODE § 16.353.

2.3 Defendant **Alfonso Ruiz**, is an individual who can be served with process at Hwy 359 Rt. 3, Box 26-H, located in Webb County, Texas, 78043.

2.4 Defendant **Margarita Palacios**, is an individual who can be served with process at 1717 Pinechase, Apt 93, located in Harris County, Houston, Texas 77055.

III.

JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this suit pursuant to TEX. CONST. ART. V, § 8 and TEX. LOCAL GOV'T CODE § 232.037. Venue is proper in Webb County, pursuant to TEX. LOCAL GOV'T CODE §232.035(f).

IV.

AUTHORITY

4.1 This suit seeks to enjoin certain unlawful acts of the Defendants 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 Plaintiffs. TEX. CIV. PRAC. & REM. CODE § 6.001.

4.3 TEX. 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 the county if the land is located in the county, and outside the corporate limits of municipalities. TEX. LOCAL GOV'T CODE §232.022.

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

4.5 Tex. 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 TEX, LOCAL GOV'T CODE § 232.031. provides that:

(a) Except as provided by Subsection (d), 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.

(b) Not later than the 30th day after the date a lot is sold, a subdivider shall record with the county clerk all sales contracts, including the attached disclosure statement required by Section 232.033, leases, and any other documents that convey an interest in the subdivided land.

(c) A document filed under Subsection (b) is a public record.

4.7 TEX LOCAL GOV'T CODE §232.037(a) provides that the Attorney General or a County Attorney 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

V.

BACKGROUND ON LOT 60, TANQUESITOS SUBDIVISION

5.1 The property that is the subject of this lawsuit (hereinafter "Property") is the Surface of Tract 60, containing 2.6095 acres, "Tanquesitos" South acres, as recorded in Volume 5, Page 67 of Plat Records of Webb County, Texas.

5.2 Defendant Margarita Palacios sold the above described property to Defendant Alfonso Ruiz by Contract for Deed dated May 27, 2005 and has a final maturity date of November 1, 2012 and thereby has an interest in said land.

5.3 Defendant Alfonso Ruiz has subdivided Lot 60 into eleven (11) lots and erected buildings for lease, which are intended for residential use.

5.4 Defendants have not applied to obtain plat approval for the Property from the Webb County Commissioners Court. The lots and Property further lack water and sewer utilities.

5.5 As set out below, Defendants violated Subchapter B of chapter 232 of TEX.LOCAL GOV'T CODE.

VI.

VIOLATION 1: LEASE OF LOTS NOT LEGALLY PLATTED

6.1 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 commissioner's court in accordance with Section 232.024.

6.2 In 2008, Mr. Alfonso Ruiz leased land, more specifically a residence to Juan Mendoza, and wife, Maria Mendoza, located on said referenced Tract 60, Tanquesitos Subdivision said lessees are still residing on said leased premises;

6.3 In 2008, Mr. Alfonso Ruiz leased land, more specifically a residence to Maria Guadalupe Limas and Roberto Sanchez, such leased premises is located on Tract 60, Tanquesitos subdivision and lessees are still residing on said leased premises;

6.4 In 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Christina Robles and Veronica Magana, such leased premises is located on Tract 60, Tanquesitos subdivision and lessees are still residing on said leased premises;

6.5 In 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Julia Ollervidez, such leased premise is located on Tract 60, Tanquesitos subdivision and said lessee is still residing on said leased premises;

6.6 On or about August, 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Julia Maribel Garcia, such leased premise is located on Tract 60, Tanquesitos subdivision and said lessee is still residing on said leased premises;

6.7 On or about September, 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Isamar Rivera and Juan Benito Lopez such leased premises is located on Tract 60, Tanquesitos subdivision and said lessee is still residing on said leased premises;

6.8 On or about December, 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Gabriela Garza and Luis Ricardo Sanchez , such leased premises is located on Tract 60, Tanquesitos subdivision and said lessee is still residing on said leased premises;

6.9 On or about September, 2009, Mr. Alfonso Ruiz leased land, more specifically a residence to Tania Montanez and Luis Cordero , such leased premises is located on Tract 60, Tanquesitos subdivision and said lessee is still residing on said leased premises;

6.10 In 2009, Alfonso Ruiz leased land, more specifically a residence to person unknown, such leased premises is located on Tract 60, Tanquesitos subdivision and said unknown lessee is still residing on said leased premises.

6.11 At all times of the lease of these residences, the lots were not legally platted as required by LOCAL GOV'T CODE, Chapter 232, subchapter G. Prior to the lease of these lots, Defendants had not obtained subdivision plat approval from Webb County in violation of LOCAL GOV'T CODE §§ 232.035(a) AND 232.031(a).

VII.

VIOLATION 2: PUBLIC HEALTH NUISANCE

7.1 Pursuant to LOCAL GOV'T CODE §232.035(b), a subdivider may not cause, suffer, allow or permit any part of a subdivision over which he has control or a right of ingress or egress to become a Public health nuisance, as defined by HEALTH & SAFETY CODE §341.011.

7.2 Defendant Ruiz has violated this prohibition. He has leased the residences to his subdivision without first providing minimum state standard water and wastewater facilities. As a result, untreated human sewage is openly discharged and drinking water is distributed in an unsanitary manner. These conditions constitute a public health nuisance that has been caused, suffered, allowed and permitted by Defendant Ruiz

VIII.

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/lease of the Properties, Defendant failed to install water service facilities at the Properties, and failed to comply with the legal requirements of LOCAL GOV'T CODE §232.027.

IX.

INJUNCTIVE RELIEF

9.1 Pursuant to LOCAL GOV'T CODE § 232.037, the State and Webb County request that upon final trial on the merits, the Defendants be permanently enjoined as follows regarding the Tract 60, Tanquesitos Subdivision, and such additional injunctive relief warranted by the facts.

A. New Leases or Sales. Defendants shall immediately cease and desist from any new or additional leases or sales of lots or residences.

B. Platting of Subdivision. Within thirty days after the date the Court signs this Injunction; Defendants shall apply to the Webb County Planning Department for approval of a subdivision plat in accordance with LOCAL GOV'T CODE, Chapter 232, Subchapter B and the applicable Model Subdivision Rules. Defendants shall diligently pursue approval of the plat and take any further action required to secure approval.

C. Water and Sewer Service. Within thirty days after the date the Court signs this Injunction, Defendants shall install or have installed water and sewage facilities meeting minimum state standards as described in the Model Subdivision Rules.

D. Funds to be Deposited in Court Registry. Beginning on the date the Court signs this Injunction, all payments owed to Defendant Ruiz by lessees and all payments owed to Defendant Margarita Palacios by Defendant Ruiz, shall be deposited into the registry of the Court as they become due until Defendant(s) both obtain a plat for Tract 60 and installs or has installed water and sewer facilities at the Tract 60 Tanquesitos Subdivision, meeting the minimum state standards as described in the Model Subdivision Rules. No funds may be disbursed from this Court registry account absent a prior written order of the Court.

X.

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 or that has become a public health nuisance "is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed." The State requests that this Court assess civil penalties within the statutory range against Defendants for each of the lot leased.

XI.

ATTORNEY'S FEES AND COSTS

11.1 The State and Webb County request recovery of their attorney's fees expended in the prosecution of this case 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 and Webb County request recovery of their costs of investigation and court costs expended in the prosecution of this case as authorized by LOCAL GOV'T CODE § 232.035 (c), (d), and § 232.037(a)(3), and GOV'T CODE § 402.006(c).

XII.

REQUEST FOR DISCLOSURE

12.1 Pursuant to Texas Rule of Civil Procedure 194, the State requests that Defendants disclose, within 50 days of service of this request, the information and material described in Rule 194.2.

PRAYER FOR RELIEF

ACCORDINGLY, the State and Webb County respectfully request:

1. That 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 and Webb County recover their attorney's fees, costs of investigation, and court costs in this case; and
4. That the State and Webb County be granted all other relief to which they are entitled.

Respectfully submitted,

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BY: 

ENRIQUE PELLEGIN
State Bar No.15371600
Assistant County Attorney

ATTORNEYS FOR WEBB COUNTY,
TEXAS

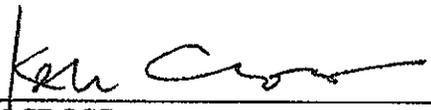
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AFFIDAVIT

STATE OF TEXAS }
 }
COUNTY WEBB }

BEFORE ME, the undersigned authority, on this day personally appeared Claudina Liendo a person whose identity is know to me. After I administered an oath to her, upon her oath, she said:

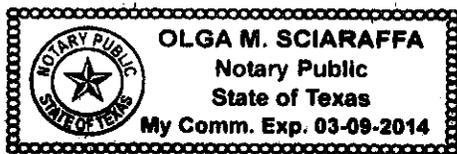
"My name is Claudina Liendo. I am over the age of eighteen years, of sound mind, and capable of making this affidavit. I make this affidavit on the basis of my personal knowledge and facts I determined upon my investigation of this matter. The statements herein are true and correct.

I am an investigator for the County of Webb, state of Texas. My duties include reviewing subdivision plats and investigating compliance with state and county residential subdivision requirements. In connection with my duties I have personally inspected the subdivided land that is the subject of the attached petition, and I have personally reviewed documents and interviewed individuals regarding same.

I have carefully reviewed the factual allegations in Parts 5 and 6 of the attached Original Petition and Request for Disclosure. Those factual allegations are true and correct."

Claudina Liendo
CLAUDINA LIENDO

SWORN TO and SUBSCRIBED before me by Claudina Liendo on the 20 day of May, 2010.



Olga M. Sciarauffa
Notary Public in and for the State of Texas

My commission Expires: _____