

CAUSE NO.

THE STATE OF TEXAS AND	§	
HARRIS COUNTY, TEXAS	§	IN THE DISTRICT COURT
Plaintiffs	§	
	§	
v.	§	
	§	
95 SUNNYWOOD LLC, MARK	§	HARRIS COUNTY, TEXAS
PERALES, MARIBEL RUVALCABA,	§	
ASHLEY VELASQUEZ AND	§	
VERONICA BARRERA	§	
Defendants	§	____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION FOR ABATEMENT OF A COMMON NUISANCE,
ENFORCEMENT OF THE HARRIS COUNTY GAME ROOM REGULATIONS,
APPLICATION FOR A TEMPORARY RESTRAINING ORDER, TEMPORARY AND
PERMANENT INJUNCTIONS, AND REQUEST FOR DISCLOSURE

To the Honorable Judge of Said Court:

Plaintiffs, the State of Texas, and Harris County, Texas by and through Attorney Vince Ryan, bring this action against 95 Sunnywood LLC, Mark Perales, Maribel Ruvalcaba, Ashley Velasquez, Veronica Barrera and the real property known as 2118 Maurine Street, Houston, Texas 77039 *in rem*, (“Defendants”) seeking to abate a common nuisance and seeking enforcement of the Harris County Game Room Regulations (“Regulations”). Defendants own, operate, and maintain and unlicensed game room housed in a metal building located at 2118 Maurine St. (“Property”). Investigative reports reveal that illegal gambling and other nuisance activity is taking place on the property. Based on this habitual criminal activity, Defendants are in violation of Chapter 125 of the Texas Civil Practice and Remedies Code (“CPRC”) and the Regulations. Plaintiffs seek a temporary restraining order and temporary and permanent injunctions to abate the nuisances. In support thereof, Plaintiffs would show the following:

I. DISCOVERY CONTROL PLAN

1.1 Plaintiffs intend to conduct discovery under Level 2 described in Rule 190.3 of the Texas Rules of Civil Procedure

II. PARTIES

2.1 Plaintiffs are the State of Texas and Harris County, Texas appearing and proceeding by and through the Harris County Attorney, Vince Ryan, and the Harris County Attorney's Office, in accordance with Section 234.137 of the Texas Local Government Code.

2.2 95 Sunnywood LLC is the owner of the property located at 2118 Maurine Street, Houston, Texas 77039. 95 Sunnywood LLC can be served by serving their registered agent Susan Goldstraw at 5855 Sovereign Dr., Ste. D108, Houston, Texas 77036 or wherever she can be found.

2.3 Mark Perales is an "Operator" of the illegal and unpermitted "Game Room" as that term is defined by the Regulations located at 2118 Maurine Street, Houston, Texas 77039. Perales may be served at 2230 Brea Crest, Houston, Texas 77093 or anywhere he may be found.

2.4 Maribel Ruvalcaba is an "Operator" of the illegal and unpermitted "Game Room" as that term is defined by the Regulations located at 2118 Maurine Street, Houston, Texas 77039. Ruvalcaba may be served at 7901 Amelia Rd. #106, Houston, Texas 77055 or anywhere she may be found.

2.5 Ashley Velasquez is an "Operator" of the illegal and unpermitted "Game Room" as that term is defined by the Regulations located at 2118 Maurine Street, Houston, Texas 77039. Velasquez may be served at 9843 Blaine Lake Dr., Houston, Texas 77086 or anywhere she may be found.

2.6 Veronica Barrera is an “Operator” of the illegal and unpermitted “Game Room” as that term is defined by the Regulations located at 2118 Maurine Street, Houston, Texas 77039. Barrera may be served at 326 Dale St., Houston, Texas 77060 or anywhere she may be found.

III. JURISDICTION

3.1 This Court has subject-matter jurisdiction pursuant to Section 234.137 of the Texas Local Government Code. This Court has personal jurisdiction over each Defendant because the alleged actions which give rise to this suit all occurred in Texas.

3.2 This enforcement action is brought by Harris County Attorney Vince Ryan, through the Harris County Attorney’s Office in the name of the State of Texas to enjoin and abate a common nuisance pursuant to Sections 125.001-125.047 of the CPRC. Verification of the petition or proof of personal injury need not be shown by the State under Section 125.002(a) of the CPRC.

3.3 The court has subject-matter jurisdiction and personal jurisdiction over this case under Section 125.002(a) of the CPRC.

IV. VENUE

4.1 Venue is proper pursuant to Section 234.133 of the Texas Local Government Code. The real property at issue is located in Harris County, Texas. Also, the underlying events occurred in Harris County, Texas.

V. FACTS

5.1 95 Sunnywood LLC owns the property located at 2118 Maurine Street, Houston, Texas 77039.¹

5.2 On December 4, 2018, the Harris County Sheriff’s Office conducted a compliance inspection at the Property. Upon entering the Property, Deputies observed thirty-four (34) eight

¹ See Exhibit A: Warranty deed for 2118 Maurine Street, Houston, Texas 77039.

liner machines. Deputies spoke to the attendant who advised that they Property did not have a permit to operate a game room. The attendant was arrested and charged with Operating a Game Room Without a Permit.

5.3 On February 4, 2019, Harris County Sheriff Deputies were called to the Property for a report of an aggravated robbery. The complainant, Mark Perales, informed deputies that he lives on the Property and works in the parking lot of the game room from midnight to 6:00am. Perales reported that at approximately 5am, he was attacked by three males with firearms. Perales stated he was blindfolded, kidnapped, beaten and robbed at gunpoint. Perales was able to get away from the suspects by jumping out of a moving vehicle onto oncoming traffic wearing no clothes. Perales reported that he lives on the Property and works at the game room. Perales identified Maribel Ruvalcaba as an employee and security guard at the game room. Deputies spoke with Maribel Ruvalcaba and confirmed that she was an employee at the game room and in charge of opening and closing the business. Deputies also spoke with customers of the game room who stated they were paid in cash for their winnings at the unlicensed game room. Ashley Velasquez was identified as a game room employee who admitted to handling the money for pay outs at the game room. Velasquez and Ruvalcaba were arrested for a game room violation.²

5.4 During their investigation of Deputies observed thirty-four (34) amusement redemption machines and customers playing the games. The game room is not permitted by the Harris County Sheriff's Office to operate.³

5.5 Deputies spoke with Maribel Ruvalcaba and confirmed that she was an employee at the game room and in charge of opening and closing the business. Deputies also spoke with

² See Exhibit B: Maribel Ruvalcaba Criminal Complaint & Exhibit C: Ashley Velasquez Criminal Complaint

³ See Exhibit D: Affidavit of Lt. Robert Spurgeon.

customers of the game room who stated they were paid in cash for their winnings at the unlicensed game room.

5.6 Despite this dangerous and illegal activity, the game room located at 2118 Maurine continues to operate. As recently as April 5, 2019, the Harris County Sheriff's Office determined that the game room on the property is still open for business in violation of the Regulations and Chapter 125 of the CPRC. Sheriff's Deputies arrested Veronica Barrera for operating the game room without a permit on this date.⁴

5.7 Defendants, 95 Sunnywood LLC, Mark Perales, Maribel Ruvalcaba, Ashley Velasquez, Veronica Barrera and the real property known as 2118 Maurine Street, Houston, Texas 77039 *in rem* continue to maintain a nuisance on the property and have failed to abate it.

VI. CIVIL PENALTIES

6.1 Under Chapter 234 of the Local Government Code, a person commits an offense and is subject to civil penalties if they operate a Game Room in violation of a Regulation adopted under Section 234.133.

6.2 The Harris County Commissioners Court adopted the Regulations pursuant to Chapter 234 of the Local Government Code on December 17, 2013. These Regulations were amended on September 1, 2015.⁵

VII. CAUSES OF ACTION

Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph.

A. COMMON NUISANCE PURSUANT TO CHAPTER 125 OF THE CIVIL PRACTICE AND REMEDIES CODE.

⁴ See Exhibit E: Veronica Barrera Criminal Complaint.

⁵ See Exhibit F: Harris County Game Room Regulations.

7.1 Section 125.0015(a) of the Texas Civil Practice and Remedies Code 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.” Gambling, gambling promotion or communication gambling information in violation of the Penal Code gives rise to a Chapter 125 nuisance. Additionally, robbery and aggravated robbery as described by Section 29.03 also give rise to a Chapter 125 nuisance.

7.2 Section 125.004(a) of the Texas Civil Practice and Remedies Code provides that “[p]roof that an 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) of the Texas Civil Practice and Remedies Code 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.” Evidence of the general reputation of the place involved is admissible to show the existence of the nuisance according to Section 125.004(c).

7.3 Simply put, Defendants own, operate and maintain the Property as a common nuisance. Evidence clearly shows that patrons go to the Property for the sole purpose of illegal gambling. This illegal activity has recently led to an aggravated robbery. The Property is located in a residential neighborhood making it a safety hazard for the residents living nearby.

7.4 Defendants have knowingly tolerated this Chapter 125 activity and have allowed such activity to occur habitually on the property. In keeping with Section 125.002(h) of the Texas Civil Practice and Remedies Code, the State of Texas considered the failure of Defendants

to promptly notify the appropriate law enforcement agency of the occurrence of such criminal acts at the Property and to cooperate with law enforcement investigations of criminal acts at this tract of land. Accordingly, the general reputation of game room located on the property is that it is a nuisance.

B. VIOLATIONS OF THE HARRIS COUNTY GAME ROOM REGULATIONS.

7.5 Under Subsection 2.1(a) of the Regulations, “[i]t shall be unlawful for a Person to Operate a Game Room, use a Game Room, or maintain a Game Room in Harris County that has not been issued a permit pursuant to these Regulations. A Person who violates this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.”

7.6 As stated above, on at least two occasions, Defendants operated the Unknown Game Room without a permit issued pursuant to the Regulations. As such, Plaintiff is entitled to recover a civil penalty not to exceed \$10,000 per violation.

7.7 Under Subsection 3.12(a) of the Regulations, “It shall be unlawful for a Game Room to keep, exhibit, operate, display, or maintain any gambling device that is prohibited by the constitution of this state or Chapter 47 of the Texas Penal Code, GAMBLING.”

7.8 Additionally, Subsection 3.12(b) states, “a civil penalty not to exceed \$10,000 shall be placed on a Person who Operates a Game Room for any machine described in Subsection 1.4(a) (1)-(2) located in the Game Room that is being used and/or has been used for illegal gambling.”

7.9 Subsection 3.12(c) goes on to state, “If a law enforcement agency determines through an investigation(s) that a Game Room was in operation violating Chapter 47 of the Texas Penal Code, then every machine described in Subsection 1.4(a) (1)-(2) located in the

Game Room shall be considered in violation of this Subsection. A Person who Operates a Game Room in violation of this Subsection shall be assessed a civil penalty not to exceed \$10,000 per violation. Each day a violation occurs or continues to occur is considered a separate violation.”

VIII. TEMPORARY RESTRAINING ORDER

8.1 Prior to the hearing on Plaintiff’s Application for a Temporary Restraining Order, Defendants, 95 Sunnywood LLC and the real property known as 2118 Maurine Street, Houston, Texas 77039 *in rem* were provided written notice of the hearing.

8.2 The facts noted above show the ongoing harm is imminent and will cause irreparable injury due to the criminal acts being a danger to the public. Because of the ongoing illegal activity, an *ex parte* temporary restraining order against Defendants 95 Sunnywood LLC, Mark Perales, Maribel Ruvalcaba, Ashley Velasquez, Veronica Barrera and the real property known as 2118 Maurine Street, Houston, Texas 77039 *in rem* is warranted to prevent continuing harm to the community which would occur should the Court require service of this lawsuit and a notice of hearing.

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

8.4 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.

IX. TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

9.1 In accordance with Section 125.045(a) of Texas Civil Practice and Remedies Code, 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 Defendants execute a bond. The bond must be 1) payable to the STATE OF TEXAS at Harris County, 2) be in the amount set by the court, but no less than \$5,000 nor more than \$10,000, 3) have sufficient sureties approved by the court, 4) and be conditioned that the defendant will not knowingly allow a common nuisance to exist at that place.

9.2 Based on section 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the State of Texas, 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.

9.3 Because the State of Texas 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.

9.4 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.

9.5 In accordance with Section 125.002(d) of Texas Civil Practice and Remedies Code, 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.

9.6 In accordance with Section 125.045(b) of the Texas Civil Practice and Remedies Code Annotated, 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:
 - i. the landlord and the tenant are parties to the suit, and
 - ii. the tenant has violated a condition of the injunctive order; or
- g. order any other legal remedy available under the laws of the state.
- h. Any other legal remedy available under the laws of the State.

9.7 Section 234.137 of the Texas Local Government Code authorizes a County to sue in district court for an injunction to prohibit the violation or threatened violation of a regulation adopted under Section 234.133 of the Texas Local Government Code.

9.8 Illicit game rooms are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, gambling offenses, weapon offenses, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, and litter.

9.9 Defendants knowingly operate an illicit and unpermitted Game Room and are in violation of the Harris County Game Room Regulations. Defendants have failed or refused to prohibit the violations and are likely to continue to maintain the property as an illicit and unpermitted Game Room unless restrained by an injunctive order of the Court requiring them to comply with the Harris County Game Room Regulations.

9.10 Unless Defendants are enjoined from maintaining the property as an illicit game room, the citizens of Harris County, Texas will suffer irreparable harm. Harris County has no other adequate remedy at law to prevent continued maintenance of the property as an illicit Game Room.

9.11 Pursuant to Section 234.137 of the Texas Local Government, if final judgment favors the Plaintiff as to Defendants' violations of the Regulations, the Court shall grant a permanent injunction to prohibit the violation or threatened violation of the Harris County Game Room Regulations. Further, the Court may include in its order reasonable requirements to prevent the use of maintenance of the place as an illicit game room.

X. ATTORNEY'S FEES

10.1 To litigate this lawsuit, it is necessary for the Plaintiff to secure the services of Harris County Attorney Vince Ryan's Office. Plaintiff requests that the Defendants be adjudged jointly and severally liable for the Harris County Attorney's reasonable attorney's fees, investigative costs, witness fees, court costs, and any other reasonable expenses incurred in bringing this lawsuit.⁶

10.2 Plaintiff requests that the Defendants be adjudged liable for the Harris County Attorney's expenses, including reasonable attorney fees, in locating and effecting service of process on the Defendants.⁷

XI. REQUEST FOR DISCLOSURE

11.1 In accordance with Rule 194 of the Texas Rules of Civil Procedure, Harris County, Texas requests that each Defendant disclose within fifty (50) days of service of this Petition, the information described in Rule 194.2.

XII. JURY DEMAND

12.1 Plaintiff demands a jury trial.

PRAYER

For these reasons, Plaintiff requests that the Court 1) issue citation for Defendants to appear and answer, 2) grant Plaintiff's request for a temporary restraining order; 3) grant Plaintiff's request for temporary and permanent injunctive relief after a hearing, and 4) that Plaintiff be awarded a judgement against Defendants, jointly and severally for the following:

- a. Civil penalties in the amount of \$10,000 per violation of the Regulations;
- b. Court costs;
- c. Costs of suit;

⁶ Tex. Loc. Gov't Code § 234.137.

⁷ Tex. Bus. & Com. Code Ann. § 71.201.

- d. Costs of investigation;
- e. Witness fees;
- f. Deposition fees;
- g. Reasonable attorney's fees; and
- h. All other relief to which Harris County, Texas is entitled.

Respectfully submitted,

VINCE RYAN
Harris County Attorney

/s/ Celena Vinson
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ATTORNEYS FOR PLAINTIFF



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this April 10, 2019

Certified Document Number: 84733675 Total Pages: 13

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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