

NO. 2017-1543-4

Maxine Barton

CITY OF LACY LAKEVIEW,
A HOME RULE MUNICIPAL
CORPORATION

V.

KRISTI BASS

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IN THE DISTRICT COURT

MCLENNAN COUNTY, TEXAS

170 TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION, APPLICATION FOR TEMPORARY
AND PERMANENT INJUNCTION, AND
REQUEST FOR DISCLOSURE**

Plaintiff, **CITY OF LACY LAKEVIEW**, a Home Rule municipal corporation ("*Plaintiff*" or the "*City*") files this Original Verified Petition and Application for Temporary and Permanent Injunctions against **KRISTI BASS** ("*Defendant*" or "*Defendant Bass*") and shows the Court as follows:

DISCOVERY LEVEL & JURISDICTION

1. Plaintiff seeks non-monetary relief, more specifically, a temporary and permanent injunction preventing Defendant from further violation of the zoning regulations in Lacy Lakeview.
 2. Plaintiff intends that discovery in this matter be conducted under Level III.
 3. This action involves enforcement of Plaintiff's duly approved and enacted ordinances.
- Plaintiff has been authorized by statute and its Home Rule Charter to bring this action.

PARTIES

4. Plaintiff, **CITY OF LACY LAKEVIEW, TEXAS** is a Home Rule municipal corporation duly chartered under the laws of the State of Texas and is located in McLennan County, Texas.
5. Defendant, **KRISTI BASS** is an individual residing in McLennan County, State of Texas and may be served with citation at: *3525 Sturgis Lane, Waco, Texas 76708*.

VENUE

6. Venue of this lawsuit is proper in McLennan County, Texas because this is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred. Specifically, this matter involves the enforcement of the Zoning Ordinance of the City of Lacy Lakeview, a Home Rule city located in McLennan County, Texas. It is also the county of residence of Defendant and concerns the use of real estate located in McLennan County.

FACTS

7. In July or August 2016 Defendant Kristi Bass purchased 16.43 acres located at 123 Spring Creek, Lacy Lakeview in McLennan County, Texas. The recording of a deed of trust was filed on August 8, 2016. Defendant Kristi Bass purchased the property from Todd and Lexia Meek, which included a structure now known as “the Barndominium,” which had been recently renovated on the popular HGTV television show “Fixer Upper.”

8. By at least late July 2016 Defendant Kristi Bass had placed an advertisement for the Barndominium on VRBO.COM (Vacation Rentals by Owner) offering rental of the Barndominium on a daily basis, with a two (2) day minimum rental. The advertisement noted the home’s recent appearance on HGTV’s “Fixer Upper,” and also specified that the home had never been occupied, remaining almost identical to what potential renters might have seen on the popular television show.

9. Almost immediately, residents began to voice concerns about the operation of a Short Term Rental/Vacation Rental (“STR”) property in an area zoned for purely residential use. In and prior to August 2016, the City’s Zoning Ordinance did not allow or permit the operation of STR’s in residential districts. On August 25, 2016 the City Council held a public hearing regarding Defendant’s application for the required Specific Use Permit (“SUP”) for the Barndominium property. Approximately 40 members of the community were present at the meeting and 18 residents spoke in opposition to the issuance of the permit. The only individual to speak in favor of the permit was the

Defendant herself. The City Council determined the ordinance in effect at the time not only prohibited STR's, it did not allow the issuance of an SUP. The City Council then decided that a new ordinance governing Bed and Breakfasts and other STR properties was needed before they could grant or deny the Defendant's SUP. Defendant Bass' application for SUP was tabled until an amendment to the Zoning Ordinance could be considered that would allow for an SUP to be granted if the City Council determined it should be. At that August meeting Defendant Bass was advised by the City that she would be in violation of the City's existing Zoning Ordinance if she attempted to operate or rent the Barndominium out as a STR unless and until the ordinance was amended to provide for STR's in Lacy Lakeview and she was then granted and SUP to operate one.

10. Defendant Bass continued to operate her business after the August 25, 2016 council meeting in clear violation of the City Council's decision to table her SUP application until a new ordinance could be drafted. Multiple neighborhood residents contacted the Lacy Lakeview Police Department during and after the weekend of September 2-4, 2016, to file complaints about renters staying on Defendant's property.

11. On October 18, 2016 the City Council considered and passed an ordinance amending the City's existing Zoning Ordinance regarding STR properties. In the same meeting the Council voted to deny Defendant her SUP, meaning that Defendant Bass would continue to be in violation of the City's Zoning Ordinance if she continued to operate the Barndominium as a short-term rental property. Defendant chose to ignore the City of Lacy Lakeview's Zoning Ordinance and denial of her SUP application and continued to rent the Barndominium out to short-term renters.

12. On or about February 14, 2017, the City Council for the City considered a second application for SUP from Defendant Bass. She again requested that the City Council allow her permission to operate a STR in the residential district in which the Barndominium is located. As part of her application she also requested to be able to use the Barndominium as a wedding venue. The

City Council conducted a public hearing to allow citizens to express their opinions about the application and its appropriateness. Numerous citizens attended the hearing and voiced their opposition. The City Council, in its regular business meeting, declined to grant the SUP. Thus, Defendant Bass was again on notice that if she continued to operate the Barndominium as a STR she would continue to violate the City's Zoning Ordinance.

13. Defendant's Barndominium page on VRBO.com reflects (and has for months reflected) that guests rented the property in October, November, and December of 2016, and February, March, and April of 2017. The availability calendar on VRBO.com shows bookings have already been made for May, July, August and September of 2017 in continuing violation of Lacy Lakeview zoning ordinance. Defendant Bass has shown by her conduct that she not only has ignored, but intends to continue to ignore the City's Zoning Ordinance, which does not permit her operation of the STR. Defendant has also shown by her conduct that she has no regard for the decisions or the authority of the City Council. Her blatant disregard for the City Council's authority to enact and have enforced the City's ordinances has necessitated the filing of this suit.

CAUSE OF ACTION

14. The City of Lacy Lakeview seeks enforcement of its ordinances and its City Council's decisions regarding the denial of Defendant Krisi Bass' SUP applications. Defendant Bass has and continues to violate the City's Zoning Ordinance. The City's Zoning Ordinance provides that the City may initiate and pursue appropriate action to restrain and prevent any act in violation of the Zoning Ordinance. (See Section 42 of the City of Lacy Lakeview's Zoning Ordinance) The City seeks to enforce its ordinances through temporary and permanent injunctions to restrain and prevent further use and rental of the property at 123 Spring Creek in Lacy Lakeview, Texas or any other non-permitted property in the City. Without the extraordinary relief of injunction, Defendant Bass will continue to knowingly and willingly disregard the authority of the City and its City Council.

REQUEST FOR TEMPORARY INJUNCTION

15. Plaintiff seeks temporary injunctive relief from this Court. Defendant Kristi Bass has consistently refused to refrain from advertising and renting out the property in violation of the City of Lacy Lakeview Zoning Ordinance, and amendments thereto. Defendant Bass has also shown that she is willing to disregard the City Council's decisions, essentially challenging the City Council's authority. Accordingly, Plaintiffs seek an order from this Court directing Defendant Bass to take down any advertisements for any short-term rental properties in Lacy Lakeview that have not been granted a Specific Use Permit, including the Barndominium located at 123 Spring Creek Drive in Lacy Lakeview. Plaintiff also seeks an order from the Court enjoining Defendant Bass from operating the Barndominium located at 123 Spring Creek Drive as a STR and ordering her to immediately cease and desist from so operating until further order of this Court.

16. Defendant Bass has shown that she is unwilling to follow the ordinances and regulations of the City of Lacy Lakeview. Allowance of further refusal by the Defendant will make enforcement impossible in the future and will require the City of Lacy Lakeview and its Police Department to respond to continued complaints from neighbors. As demonstrated above, Plaintiff has shown a probable right to recovery and has demonstrated imminent, irreparable injury would occur but for the issuance of a Temporary Injunction. Plaintiff has no adequate remedy at law. Plaintiff is willing to post an appropriate temporary injunction bond, pursuant to Texas Civil Procedure Rule 680 et seq. and Texas Civil Practice and Remedies Code Section 65.001 et seq.

REQUEST FOR PERMANENT INJUNCTION

17. Plaintiff incorporates the allegations in paragraphs 14 -15 above and asks the Court to set its application for permanent injunction for a final hearing and, after the hearing, issue a permanent injunction against Defendant Kristi Bass, preventing her from further rental of any property, including

the Barndominium located at 123 Spring Creek Drive in Lacy-Lakeview, in violation of the City's ordinances and regulations.

PRAYER

WHEREFORE, Plaintiff, **City of Lacy Lakeview**, asks that Defendant Kristi Bass be cited to appear and answer and that on hearing or final trial, Plaintiff have judgment against Defendant as follows:

- A. After a hearing, Defendant Kristi Bass be temporarily enjoined from rental of the Barndominium, whether as a STR or otherwise, pending a final hearing on the merits;
- B. After a final hearing on the merits, Defendant Bass be permanently enjoined from operating the Barndominium as a STR or other business and from further rental of any property in violation of the ordinances and regulations of the City of Lacy Lakeview;
- C. Costs of Court;
- D. Such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

PAKIS, GIOTES, PAGE & BURLESON, P.C.

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By: 

DAVID N. DEACONSON

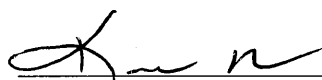
Bar Card No. 05673400

City Attorney for City of Lacy Lakeview, Texas

VERIFICATION

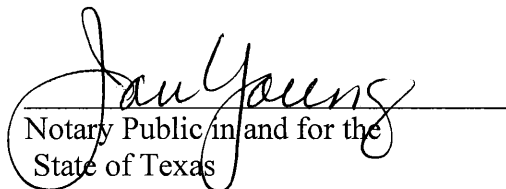
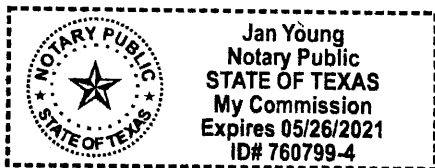
STATE OF TEXAS §
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COUNTY OF McLENNAN §

On this day, personally appeared before me Keith Bond, City Manager for the City of Lacy Lakeview, Texas who after being duly sworn, stated under oath that he is over the age of 18 years, competent to testify, and is the duly appointed City Manager for the City of Lacy Lakeview, Texas. He further stated that he has read the above Plaintiff's Original Verified Petition, Application for Temporary and Permanent Injunction, and Request for Disclosure, and that the facts contained under the "FACTS" heading are within his personal knowledge and are true and correct.



Keith Bond, City Manager

SWORN TO AND SUBSCRIBED BEFORE ME, by the said Keith Bond, on the 9th day of May, 2017.



Notary Public in and for the
State of Texas