

LM

Filed in The District Court
of Travis County, Texas

FEB 07 2008

Cause No. D-1-GV-07-002134

At 1:49 p.m. M.
Amalia Rodriguez-Mendoza, Clerk

STATE OF TEXAS,

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

Plaintiff,

v.

TRAVIS COUNTY, TEXAS

MANUEL J. MONTEMAYOR d/b/a,
MG JOINT VENTURE

Defendant.

353rd JUDICIAL DISTRICT

DEFAULT JUDGMENT AND PERMANENT INJUNCTION

ON THIS DAY CAME TO BE HEARD the above-entitled and numbered cause. Plaintiff is the State of Texas ("State"), acting by and through the Attorney General. Defendant is Manuel J. Montemayor d/b/a MG Joint Venture ("Montemayor"). The State announced ready for trial. Montemayor, although having been duly and legally cited to appear and answer herein, failed to appear and answer, and wholly made default.

The State sued Manuel Montemayor to enforce Subchapter B of Chapter 232 of the Texas Local Government Code. The State's suit sought injunctive relief, civil penalties, attorney's fees, and court costs.

The Court, having considered the pleadings, evidence, and argument, is of the opinion that it has jurisdiction over the parties and subject matter of this case and that the State is entitled to injunctive relief and to recover from Montemayor civil penalties, attorney's fees, and court costs.

THE COURT THEREFORE FINDS THAT:

1. The State filed its Original Petition and Application for Temporary Injunction (“the State’s Original Petition”) on October 11, 2007. All facts alleged in the State’s Original Petition have been admitted by Montemayor’s failure to appear or answer herein.

2. Citation was issued on October 11, 2007 and again on November 13, 2007.

3. Montemayor was served with citation and a copy of the State’s Original Petition through substituted service by delivery to a person at his place of work on November 14, 2007.

4. The citation and proof of service have been on file with the clerk of the court at least ten days, excluding the day of filing and today, as required by Rule 107 of the Texas Rules of Civil Procedure.

5. The deadline for Montemayor to file an answer was December 10, 2007. Montemayor failed to file an answer or any pleading constituting an answer, and has not entered an appearance in this cause. Montemayor is not a member of the armed forces. Plaintiff filed a Soldiers’ and Sailors’ Affidavit with the papers in the cause.

6. Montemayor’s last known address is 344 Honey Drive, Brownsville, Cameron County, Texas. Plaintiff filed a Certificate of Last Known Address with the papers in this cause.

7. Montemayor owns property located in Cameron County, Texas on the south side of Papaya Drive, east of intersection of Papaya Drive and Old Alice Road, south of

Highway 100, near Los Fresnos, Texas, (“ the Property”).

8. 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. The subdivision is known as Tierra Linda Gardens. Defendant has not obtained plat approval for Tierra Linda Gardens from the Cameron County Commissioners Court.

9. 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. Defendant has sold two other lots in Tierra Linda Gardens.

10. At the time of the three 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 lot, Defendant had not obtained subdivision plat approval from Cameron County in violation of Local Gov’t Code §§ 232.035(a) and 232.031(a).

11. Prior to the sale of lots, Defendant failed to install water and 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 water and sewer service facilities. Defendant’s sale of lots in Tierra Linda Gardens without complying with the “build it or bond it” water and sewer service requirements violated § 232.027 and § 232.040(b) of the Local Gov’t Code.

12. The State is entitled to civil penalties and injunctive relief for violations of Local Gov’t Code §§ 232.035(a), 232.031(a), 232.027 and 232.040(b) pursuant to Local

Gov't Code § 232.035(c) and (d), and § 232.037(a)(3).

13. The State is entitled to recover from Montemayor its reasonable attorney's fees, investigative fees, and court costs expended in the prosecution of this case. Local Gov't Code § 232.035(c), (d), and § 232.037(a)(3), and Gov't Code Ann. § 402.006(c).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT immediately upon notice of this Default Judgment, Defendant Manuel J. Montemayor, his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with it or who receive actual notice of this order, are hereby permanently **enjoined** from subdividing, advertising, and selling property in violation of Tex. Local Gov't Code, Chapter 232, Subchapter B.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the Clerk of this Court shall issue a Writ of Permanent Injunction against Manuel J. Montemayor, his officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with it, as set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the State of Texas shall have and recover from Defendant Manuel J. Montemayor, the following:

1. The sum of THIRTY THOUSAND DOLLARS (\$30,000.00) in civil penalties;
2. The sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY DOLLARS (\$7,650.00) in attorney's fees;
3. Should Defendant Montemayor fail to timely pay the amounts due and owing under this Judgment, the State is awarded TWO THOUSAND DOLLARS (\$2,000.00) in attorney's fees for proceedings to collect judgment in this case,

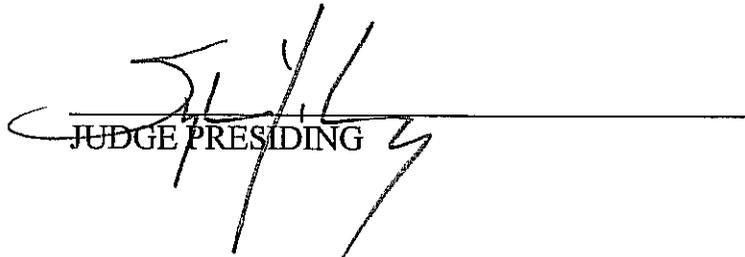
if necessary;

4. All costs of court incurred through the date of this judgment; and,
5. Post-judgment interest at the legal rate of 7.25 percent per annum from the date of this judgment until paid.
6. All payments required by this Judgment shall be made by check payable to the State of Texas, bearing reference number 072473416, and delivered to the attention of Chief, Natural Resources Division, Office of the Attorney General, P.O. Box 12548 Capitol Station, Austin, Texas 78711, within thirty (30) days of the signing of this judgment by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

1. The effective date of this judgment is the date it is signed by the Court;
2. Execution shall issue for all monies awarded herein;
3. The State of Texas is allowed such writs and processes as may be necessary in the enforcement and collection of this judgment;
4. This Default Judgment and Permanent Injunction finally disposes of all claims and all parties; and,
5. The Court orders execution to issue for this judgment.

SIGNED this 7th day of February, 2008.


JUDGE PRESIDING

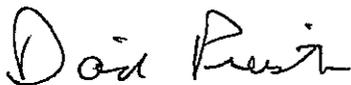
APPROVED BY:

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

KAREN W. KORNELL
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
(512) 463-2012 (telephone)
(512) 320-0052 (telecopier)

ATTORNEYS FOR PLAINTIFF
STATE OF TEXAS