IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI

RICHARD BAUMHOFF,)
)
STEVEN MCCLANAHAN,)
)
Plaintiffs,)
) Case. No.:
v.)
) Division:
CITY OF ST. LOUIS,)
)
Serve:)
1200 Market St., City Hall, Room. 200)
St. Louis, MO 63103)
) **JURY TRIAL DEMANDED**
JOHN DOE,) **ON FACTUAL ISSUES**
)
Serve:)
Tent between sidewalk and tree walk)
in front of S. Spring Avenue 63116)
)
JANE ROE,)
)
Serve:)
Tent between sidewalk and tree walk)
in front of S. Spring Avenue 63116)
)
Defendants)

PETITION FOR DAMAGES FOR INVERSE CONDEMNATION BASED ON PRIVATE NUISANCE, AND FOR MANDATORY PERMANENT INJUNCTIVE RELIEF TO ABATE PUBLIC NUISANCE

Plaintiffs Steven McClanahan and Richard Baumhoff, by counsel W. Bevis Schock and Erich Vieth, state for their Petition for Damages against the City of St. Louis, John Doe, and Jane Roe for Inverse Condemnation Based on Private Nuisance, and for Rule 92 Mandatory Permanent Injunctive Relief to Abate Public Nuisance:

INTRODUCTION

1. Plaintiffs live in South St. Louis. For over three years John Doe and Jane Roe have lived in a makeshift tent in front of Plaintiffs' house. Plaintiffs have often complained to City officials, asking the City to remove Doe and Roe, all without effect. Doe and Roe's presence, and the City's acquiescence, create private and public nuisance. Plaintiffs seek damages under private nuisance doctrine for inverse condemnation from the City, and under public nuisance doctrine seek Permanent Mandatory Injunctive Relief to Doe and Roe to not live there and to the City to not let them live there. [1]

PARTIES

2. Plaintiffs Steven McClanahan and Richard Baumhoff are individuals. They reside in the City of St. Louis at 3749 S. Spring Avenue 63116, ("the house"). They own the house jointly.

3. Defendant City of St. Louis ("the City"), is a properly formed and functioning Charter City in the State of Missouri.

4. The City has the power of eminent domain.

5. John Doe and Jane Roe are individuals who live in a tent between the sidewalk and tree walk in front of S. Spring Avenue 63116.

[1] Under Missouri law, inverse condemnation is the exclusive remedy when private property is taken or damaged without compensation as a result of a nuisance operated by an entity that has the power of eminent domain. *Miller v. City of Wentzville*, 371 S.W.3d 54, 57 (Mo.Ct.App.2012). *Scott Fam. Properties, LP v. Missouri Highway & Transportation Comm'n*, 190 F. Supp. 3d 864, 869 (E.D. Mo. 2016).

6. On information and belief Doe and Roe are Sudanese. Plaintiffs have observed them seemingly understanding the English language, but Plaintiffs are unaware of the true level of their English language skills.

7. Doe and Roe appeared with their tent in front of Plaintiffs' house approximately the fall of 2020.

8. Despite reasonable efforts Plaintiffs do not know the identity of Doe and Roe.

9. Once they are served their identity will be discoverable, and the person's names may be substituted in the suit pursuant to Rule 52.13.

JURISDICTION AND VENUE

10. This Circuit Court of the City of St. Louis is a court of general jurisdiction and therefore this court has jurisdiction over this case, which is an action for inverse condemnation and for Mandatory Injunctive Relief.

11. All relevant events have occurred in the City of St. Louis, and therefore venue is proper in this court.

JURY DEMAND

12. Plaintiffs demand a jury trial on all issues of fact.[2]

FACTS

Doe and Roe in Front of Plaintiffs' House

13. The City owns the sidewalk and tree walk, (the strip between the sidewalk and the curb), in front of Plaintiffs' house.

[2] In a nuisance case the "questions of whether a use is 'unreasonable' and whether it 'substantially' impairs the rights of another to use his or her property are particularly fact intensive and, therefore, best suited for jury resolution". *Rosenfeld v. Thoele*, 28 S.W.3d 446, 450 (Mo. Ct. App. 2000)

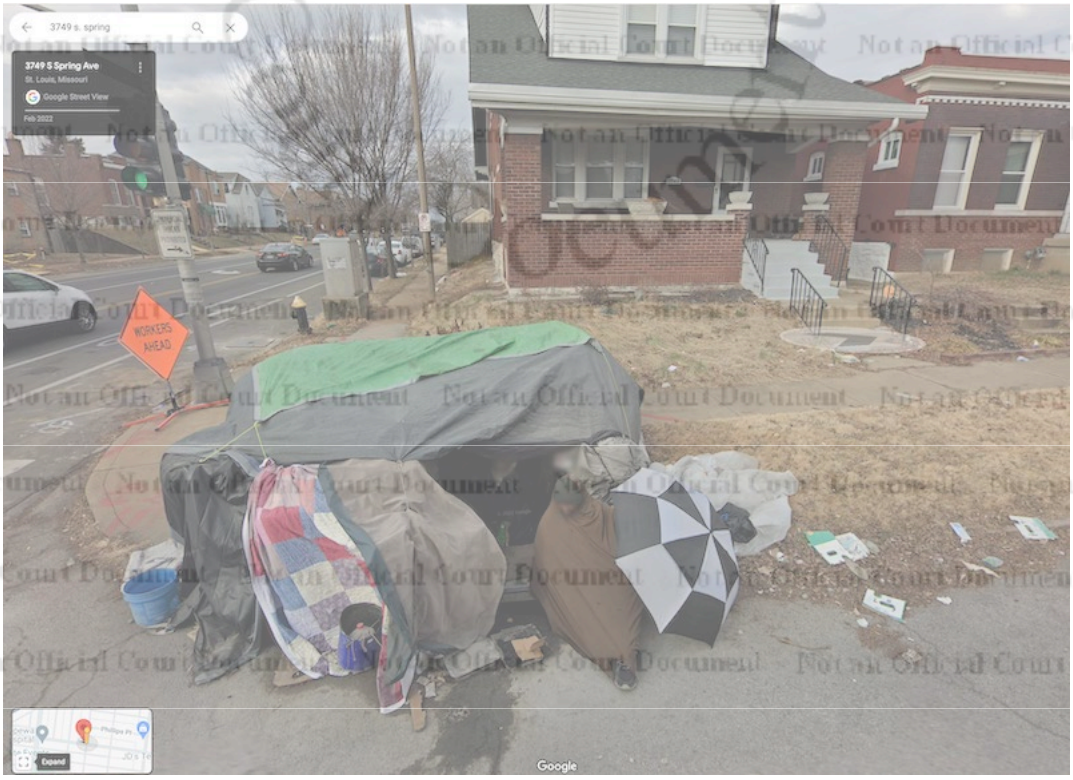
14. For the approximate three-year period before the filing of this case two persons, identity unknown to Plaintiffs and referred to herein as "John Doe" and "Jane Roe," have spent most of each day and night in a homemade tent mostly on the tree walk but also on a portion of the sidewalk in front of the house.

15. The area where the tent is located is just north of the northwest corner of Spring and Chippewa.

16. The size of the tent is approximately 10 feet by 10 feet.

17. The tent is made out of old pieces of canvas and plastic tarp, in some places stitched and/or tied together. It is held up by grocery carts and other items of a similar nature, many of which are inside the tent and thus unknown to Plaintiffs.

18. The following image depicts the tent:



19. On inference Doe and Roe keep their tangible personal property in the tent. (Hereafter "tent" shall mean the tent itself and Doe and Roe's tangible personal property in the tent).

20. Doe and Roe occasionally emerge from the tent to walk in the neighborhood, beg, purchase items at neighboring businesses, and engage in other activities unknown to Plaintiffs.

21. A storm sewer intake drain is located under Doe and Roe's tent.

22. The tent covers the sidewalk handicapped ramp to the intersection.

23. Plaintiffs' neighbors have seen Roe and Doe straddling over the sewer, using it as a toilet.

24. Doe and Roe's use of the storm sewer as a toilet causes a public health hazard.

25. Doe and Roe's tent partially blocks the sidewalk, thereby preventing the public and those seeking entry into the house from using the entire sidewalk at that location.

26. Noxious odors emerge from Doe and Roe's tent.

27. On information and belief, Doe and Roe use heaters and cook stoves inside the tent. Those heaters and cook stoves create a risk of fire and Doe and Roe's asphyxiation.

28. Doe and Roe leave litter and refuse outside their tent, which violates the City Code, §§ 11.02.365.A (governing refuse), and 11.18.020 (governing litter).

29. Plaintiffs cannot fulfill their City Code § 11.18.060 duty to pick up litter on the sidewalk in front of their house because the litter is partially in and partially out of the tent, and Plaintiffs fear approaching the tent.

30. Doe and Roe occasionally emerge from the tent to wash themselves. Doe wraps a towel around his waist but then exposes himself when switching from towel to clothes.

31. Plaintiff's home is wholly unsalable due to the presence of Doe and Roe and their homemade tent.

32. While Plaintiffs still live in the home, the home has no value in the marketplace.

33. Doe and Roe have occasionally encountered Plaintiffs and on some occasions Doe and Roe have become aggressive with Plaintiffs and screamed at Plaintiffs and at other people. Plaintiffs heard Roe and Doe yelling 6 – 12 times per month throughout 2023.

34. Plaintiffs have heard Doe and Roe scream even when they are inside their house.

35. Plaintiffs are scared of Doe and Roe due to their unpredictability.

36. Plaintiffs' fear of Doe and Roe is reasonable.

37. Plaintiffs no longer use their front porch and front yard because of the noxious odors emanating from the tent (including the smell of excrement) and because of the presence of Doe and Roe.

38. Plaintiffs generally do not mow their front lawn because of the presence of Doe and Roe.

39. Plaintiffs park their cars only in back because of the presence of Doe and Roe.

40. Plaintiffs do not use their front walk because of the presence of Doe and Roe.

41. Plaintiffs direct their guests not to use Plaintiffs' front walk for the same reason.

42. When Plaintiffs have guests arriving they must watch for their arrival out of fear for their guests' safety.

43. People in the neighborhood often walk in Plaintiffs' yard to circumvent the tent, which blocks the sidewalk.

44. Trash and food debris can often be seen around the tent.

45. Plaintiffs have seen rats at and near the tent at least six times.

Doe and Roe, and the City's Failure to Remove Them Creates Public and Private Nuisance

46. The presence of Doe and Roe and the tent has created a public and private nuisance.

47. The City's failure to remove Doe and Roe has created a public and private nuisance.

Numerous Requests and Complaints to City – No Action by City

48. On numerous occasions Plaintiffs have complained to the City about the presence of Doe and Roe and the tent.

49. Very soon after Doe and Roe erected their tent Plaintiffs complained to the Citizen Service Bureau via Tweets. Plaintiffs kept sending those Tweets over the ensuing years.

50. The City never responded to the tweets.

51. At one point a health department official appeared and said he had been checking on Doe and Roe on a regular basis. As the conversation continued Plaintiffs mentioned there were two people in the tent, and the official acted surprised and said he did not know that.

52. Starting soon after Doe and Roe erected their tent Plaintiffs have made at least five calls to the police non-emergency number, but Plaintiffs have never received a response.

53. Plaintiffs have spoken orally to the beat cops in the neighborhood.

54. On Christmas 2022 two detectives came to Plaintiffs' house and Plaintiffs expressed dissatisfaction with the circumstances, but asked for the police to wait to remove Doe and Roe because it was extremely cold. Plaintiffs never heard from the police again.

55. There were many emails in the fall of 2023 between Plaintiffs and Alderman Daniela Velazquez, Director of Operations, (Mayor's Office) Susan Cross, and Mayor Tishaura Jones.

56. City officials have promised to remove Doe and Roe and the tent, but the City has taken no action to remove Doe and Roe and their tent.

City's Own Code Makes the Conduct of Doe and Roe a Nuisance

57. City Code. 11.25.010 reads:

> Every continuing act or thing done, made, permitted, allowed or continued on any property, public or private, by any person or legal entity, their agents or servants or any person or legal entity who aids or abets therein, to the damage or injury of

> the inhabitants of the City or a substantial part thereof, shall be deemed a public nuisance unless otherwise provided for in this Code. City Code. 11.25.010

58. Thus, under the City's own laws Doe and Roe are a public nuisance.

59. Further, under 11.58.210:

> Any unclean, stinking, foul, defective or filthy drain, ditch, tank or gutter, or any leaking, broken slop, garbage or manure boxes, or receptacles of like character whenever found within the limits of the City, shall be deemed a nuisance.

60. Further, under 11.58.270:

> Any unclean, stinking, foul, defective or filthy drain, ditch, tank or gutter, or any leaking, broken slop, garbage or manure boxes, or receptacles of like character whenever found within the limits of the City, shall be deemed a nuisance.

61. Under that code section, the City itself is causing public nuisance because it is permitting this situation.

62. Under 11.58.170 the City Counselor has authority to bring an action to abate a nuisance, but the City Counselor has not done so.

CAUSATION

63. The City's conduct has caused Plaintiffs' damages in that the City's failure to act is the proximate and efficient cause of the creation of the nuisance which is the source of the damages.[3]

64. The presence of Doe and Roe and their tent in front of the house is not a sequence of conditions but is the result of the City's failure to act to remove them.[4]

65. The City has proved its ability to remove persons in tents from public property, because when Kamala Harris visited St. Louis in 2023 the City removed the homeless and their

[3] *City of St. Louis v. Varahi, Inc.*, 39 S.W.3d 531, 537 (Mo. Ct. App. 2001)
[4] *City of St. Louis v. Varahi, Inc.*, 39 S.W.3d 531, 537 (Mo. Ct. App. 2001)

tents from the area around City Hall where those people were doing the same things Doe and Roe are doing.

66. In conversations between Plaintiffs and police officers, officers have stated that the instruction to leave Doe and Roe and their tent in place has come from the Mayor.

DAMAGES

67. The presence of Doe and Roe and their tent is temporary, only in the sense that they can be removed.

68. Plaintiffs have suffered a reduction in the useable value of their property throughout the time the City has allowed Doe and Roe and their tent to remain in front of the house, and that element of damages is continuing.[5]

PRIVATE NUISANCE
IMPAIRMENT OF USE OF PLAINTIFFS' PEACEFUL ENJOYMENT OF PROPERTY, UNREASONABLE, UNUSUAL OR UNNATURAL MANNER

69. The presence of Doe and Roe and their tent impairs Plaintiffs' right to the peaceful enjoyment of their property.

70. In allowing Doe and Roe and their tent to remain in front of the house, the city is using its property, the sidewalk and the tree walk in an unreasonable, unusual or unnatural manner.[6]

NO FORMAL PROCEDURE FOR COMPLAINTS, NOTHING TO EXHAUST

71. There is no formal administrative procedure for demanding that the City take action to remove Doe and Roe and their tent.

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[5] *Frank v. Environmental Sanitation Management, Inc.,* 687 S.W.2d 876, 879–80 (Mo. banc 1985).

[6] *Frank v. Environmental Sanitation Management, Inc.,* 687 S.W.2d 876, 879–80 (Mo. banc 1985).

72. There is therefore no formal administrative procedure for Plaintiffs to exhaust to pursue the removal of Doe and Roe and their tent.

PUBLIC NUISANCE - MANDATORY INJUNCTIVE RELIEF

73. Plaintiffs' neighbors are negatively impacted by Doe and Roe and their tent in the same manner as are the Plaintiffs.

74. Plaintiffs' nevertheless have a special injury to themselves because it is they who cannot use their front walk or front porch, who cannot sell their home for fair market value, and who must park in the back. Plaintiffs therefore have standing to bring an action for private nuisance.[7]

75. In failing to remove Doe and Roe and their tent the City has omitted performing a duty which the common good, public decency, or morals, and/or the public right to life, health, and the use of property requires.[8]

76. The City's allowance of Doe and Roe and their tent to remain in front of the house is:

a. An offense against the public order and economy of the state and violates the public's right to life, health, and the use of property, while, at the same time it annoys, injures, endangers, renders insecure, interferes with, or obstructs the rights or property of the whole community, or the neighborhood, or of a considerable number of persons.[9]

b. An unreasonable interference with a right common to the general public, including the right to unfettered use of the sidewalk at the location of the tent, the

[7] *Grommet v. St. Louis Cnty.*, 680 S.W.2d 246, 252 (Mo. Ct. App. 1984), citing *Lademan v. Lamb Construction Co.,* 297 S.W. 184, 186[3, 4] (Mo.App.1927).
[8] *City of St. Louis v. Varahi, Inc.*, 39 S.W.3d 531, 535 (Mo. Ct. App. 2001).
[9] *City of Greenwood v. Martin Marietta Materials, Inc.,* 299 S.W.3d 606, 616 (Mo. App. W.D. 2009)

right to be free of noxious odors, and the right to enjoyment of neighboring residential and commercial property.[10]

c. An unreasonable interference with the public's safety, peace, morals or convenience.[11]

77. Doe and Roe and their tent are located in a public place, a place where the public is likely to congregate, a place where the public has a right to go, and a place where the public is likely to come into contact with the nuisance.[12]

78. Every citizen has the right to travel on the sidewalk.[13]

79. The City's failure to remove Doe and Roe and their tent interferes with rights common to the general public.[14]

80. The doing of complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice.[15]

81. Ordering the City to remove Doe and Roe and their tent would prevent injustice.

NO SOVEREIGN IMMUNITY

82. Pursuant to the constitutional command that property not be taken without just compensation, the City is not entitled to sovereign immunity.[16]

COUNT I – PRIVATE NUISANCE AGAINST CITY OF ST. LOUIS

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[10] *Varahi, Inc.,* 39 S.W.3d at 536; *see also City of Kansas City v. New York-Kansas Bldg. Assocs., L.P.,* 96 S.W.3d 846, 857 (Mo. App. W.D. 2002).
[11] *City of Greenwood v. Martin Marietta Materials, Inc.,* 299 S.W.3d 606, 616 (Mo. App. W.D. 2009)
[12] *State ex rel. Schmitt v. Henson*, 604 S.W.3d 793, 800 (Mo. Ct. App. 2020).
[13] *State by Major ex rel. Hopkins v. Excelsior Powder Mfg. Co.,* 259 Mo. 254, 169 S.W. 267, 273 (1914);
[14] Restatement (Second) of Torts, 821(b)(1).
[15] *Doe v. Merritt*, 261 S.W.3d 672, 675 (Mo. Ct. App. 2008).
[16] *Tierney v. Planned Indus. Expansion Auth. of Kansas City*, 742 S.W.2d 146, 155 (Mo. 1987)

83. Plaintiffs incorporate all prior paragraphs.

84. *First*, Plaintiffs use their property as a residence, and

85. *Second*, the City of St. Louis allows Doe and Roe and their tent to remain in front of Plaintiffs' residence, and

86. *Third*, the presence of Doe and Roe, the odors, the public health issues, the blockage of access, the inability to use the front porch and front walk, and the inability to mow the lawn, and all other inconveniences, disruptions and health hazards suffered by Plaintiffs as described above substantially impair Plaintiffs' use of their property, and.

87. *Fourth*, such use by the City of St. Louis of its property is unreasonable.

88. That Plaintiffs have thereby been damaged by their amount of inconvenience and injury is presumed.[17]

WHEREFORE, Plaintiffs pray for judgment for damages against the City of St. Louis for inverse condemnation based on nuisance, for costs, such other orders as the court finds to be just, meet and reasonable.

COUNT II – PUBLIC NUISANCE – MANDATORY INJUNCTIVE RELIEF AGAINST CITY OF ST. LOUIS
REQUEST FOR JUDGMENT ORDERING CITY TO NOT ALLOW DOE AND ROE TO REMAIN

89. Plaintiffs incorporate all prior paragraphs.

90. Doe and Roe and their tent, and their tangible personal property in the tent, are on land owned by the City.

91. Doe and Roe are possessing land where the tent is erected.

[17] MAI 22.06, Committee Comment E, nominal damages need not be pled, *Wallace v. Grasso*, 119 S.W. 3d 567 (Mo.App. 2003).

92. Doe and Roe and their tent, and their tangible personal property in the tent, are a public nuisance.

93. The City has the power to prohibit Doe and Roe from living in the tent in front of Plaintiffs' house.

94. Because the harm caused by Doe and Roe is on-going and cannot be redressed in an action for damages, and irreparable damage is probable over time, there is a need for immediate action.[18]

95. A Rule 92 order in mandatory injunction to the City to cease allowing Doe and Roe to live in their tent in front of Plaintiffs' house would be appropriate.[19] [20]

96. Plaintiffs presume that if the Court requires Doe and Roe to move that the City will offer alternative shelter, and will properly care for Doe and Roe's tangible personal property, all as discussed in *Frank v. City of St. Louis*, 458 F. Supp. 3d 1090 (E.D. Mo. 2020) – a case with the opposite fact in that it was a suit by the homeless to prevent forced relocation during covid.

WHEREFORE, Plaintiffs pray the court to conclude that Doe and Roe and their tent, and their tangible personal property in the tent are a public nuisance, to grant mandatory injunctive

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[18] *Worlledge v. City of Greenwood*, 627 S.W.2d 328 (Mo. Ct. App. W.D. 1982)

[19] Plaintiffs acknowledge that on January 12, 2024 the United States Supreme Court accepted certiorari in Grant's Pass v. Johnson, 23-175, for which the question presented is: Does the enforcement of generally applicable laws regulating camping on public property constitute "cruel and unusual punishment" prohibited by the Eighth Amendment?

[20] *Am. C.L. Union of Missouri v. Ashcroft*, 577 S.W.3d 881, 897 (Mo. Ct. App. 2019) stated "'in those states where the same court is vested with both legal and equitable jurisdiction (Missouri is such) there is very little difference in its practical results between proceedings in mandamus and by mandatory injunction....' (quoting 7 McQuillin's Muncipal Corp. (2d Ed.) section 1975). 'Mandatory injunction may be invoked to compel the undoing of something wrongfully done.'" *Id.* at 926-27 (citing 32 C.J. 23; *Walther v. Cape Girardeau*, 149 S.W. 36 (Mo. App. St. L. Dist. 1912); *Place v. Union Township*, 66 S.W.2d 584 (Mo. App. Spring. Dist. 1934)'"

relief and order the City of St. Louis to not allow Doe and Roe to live in their tent in the vicinity of Plaintiffs' house, for costs, and to make such other orders as the court finds to be just, meet and reasonable.

COUNT III – PUBLIC NUISANCE – MANDATORY INJUNCTIVE RELIEF AGAINST DOE AND ROE
REQUEST FOR JUDGMENT ORDERING DOE AND ROE NOT TO REMAIN

97. Plaintiffs incorporate all prior paragraphs.

98. Doe and Roe are a public nuisance.

99. Property ownership is not a prerequisite to nuisance liability and thus this claim may be made against Doe and Roe.[21]

100. Because the harm caused by Doe and Roe is on-going and cannot be redressed in an action for damages, and irreparable damage is probable over time, there is a need for immediate action.[22]

101. A mandatory injunctive order under Rule 92 to Doe and Roe to not live in their tent from in front of Plaintiffs' house would be appropriate Mandatory Injunctive Relief.

WHEREFORE, Plaintiffs pray the court to conclude that Doe and Roe and their tent, and their tangible personal property in the tent, are a public nuisance, to grant mandatory injunctive relief and order Doe and Roe to not live in their tent in in the vicinity of Plaintiffs' house, for costs, and to make such other orders as the court finds to be just, meet and reasonable.

Respectfully Submitted,

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[21] *City of Greenwood v. Martin Marietta Materials, Inc.*, 299 S.W.3d 606, 617 (Mo. Ct. App. 2009), (citation omitted).
[22] *Worlledge v. City of Greenwood*, 627 S.W.2d 328 (Mo. Ct. App. W.D. 1982)

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