

JERRY PATTERSON, COMMISSIONER,
TEXAS GENERAL LAND OFFICE

Plaintiff,

v.

CITY OF DENTON, TEXAS,

Defendant.

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IN THE 53RD DISTRICT COURT

OF

TRAVIS COUNTY, TEXAS

**MOTION TO TRANSFER VENUE,
SPECIAL EXCEPTIONS AND ORIGINAL ANSWER
OF DEFENDANTS THE CITY OF DENTON, TEXAS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant City of Denton, Texas (“City” or “Denton”) and files its Motion to Transfer Venue of this action to Denton County, Texas pursuant to Rule 86 of the Texas Rules of Civil Procedure. Subject to and without waiver of such Motion to Transfer Venue, the City also files its Original Answer and Special Exceptions to Plaintiffs’ Original Petition and respectfully shows the Court as follows:

I.

SUMMARY OF GROUNDS FOR MOTION TO TRANSFER VENUE

Plaintiff’s suit concerns mineral interests in public lands located in Denton, Texas. Plaintiff is the manager of those interests. Plaintiff asserts that an ordinance passed by citizens of Denton banning hydraulic fracturing in Denton (the “Initiative Ordinance”) unlawfully encumbers those mineral interests. Plaintiff seeks a permanent injunction prohibiting the City from enforcing the Initiative Ordinance against Plaintiff’s mineral interests in Denton. Plaintiff brought this suit in Travis County, Texas but does not cite to any specific statutory provision upon which it relies to establish venue for this case in Travis County. The City asserts that

Travis County is not a proper county for venue for the claims asserted by Plaintiff in this case. The City further asserts that venue of this dispute is mandatory in Denton County, Texas and the case should be transferred to that county.

Venue is mandatory in Denton County, Texas because the primary relief sought by Plaintiff in its suit is a permanent injunction against Denton's enforcement of an Initiative Ordinance. Texas Civil Practice and Remedies Code § 65.023(a) provides that mandatory venue for a case seeking injunctive relief is in the county where the Defendant resides. Since the City resides in Denton County, mandatory venue over this suit lies in Denton County.

Further, Plaintiff's claims arise from its property interests in Denton County, Texas. Specifically, Plaintiff claims that its mineral interest in state-owned lands located in the City are allegedly being encumbered by the Initiative Ordinance. Texas Civil Practice and Remedies Code § 15.011 provides that mandatory venue for a suit affecting real property interests, such as this suit, lies in the county in which the real property at issue is located. For this additional reason, venue for this suit is mandatory in Denton County, Texas.

For the foregoing reasons, mandatory venue for this lawsuit lies in Denton County, Texas and venue is improper in Travis County, Texas. Accordingly, Defendant asserts that a transfer of venue to Denton County is required by Texas law and should be granted by this Court.

II.

FACTS SUPPORTING MOTION TO TRANSFER VENUE

1. The City is a home rule city located in Denton County, Texas. (Pet. ¶ 1.2).
2. Plaintiff asserts that it is responsible for managing public lands included in the Texas Public School Fund, including the mineral interests associated with those lands. The

portion of those lands that are the subject of this suit are located in Denton, Texas. (Pet. ¶¶4.6 – 4.8).¹

3. On November 4, 2014, the citizens of Denton voted to enact the Initiative Ordinance which bans hydraulic fracturing operations within the City’s boundaries. The Initiative Ordinance is what Plaintiff challenges and refers to as the “Prohibition” in its Petition.

4. On November 5, 2014, Plaintiff filed its Original Petition and Application for Permanent Injunction (the “Petition”).

5. Paragraph 6.1 of the Petition states:

VI. INJUNCTIVE RELIEF

6.1 The Prohibition will affect Plaintiff’s existing oil and gas leases, which provide much needed revenues to the PSF and to other state entities. Unless restrained, GLO lands will be subject to enforcement of the Prohibition by the City of Denton, at great cost to the State of Texas. There is no adequate remedy at law.

(Pet. ¶ 6.1) (emphasis added).

6. Additionally, Paragraph 4.10 of the Petition states:

4.10 The Prohibition purports to make hydraulic fracturing undertaken on GLO lands unlawful and, as a consequence, would cost the PSF and other state entities millions of dollars in lost revenues. The Prohibition against hydraulic fracturing will completely destroy the value of the school kids’ minerals.

(Pet. ¶ 4.10).

¹ The City requests the Court to take judicial notice of the contents of Plaintiff’s Original Petition on file with the Court.

III.

ARGUMENT AND AUTHORITIES

A. **Venue is Mandatory in Denton County for all of Plaintiff's Claims for Injunctive Relief.**

Section 65.023(a) of the Texas Civil Practice and Remedies Code ("Section 65.023(a)") provides:

- (a) Except as provided by Subsection (b), a writ of injunction against a party who is a resident of this state shall be tried in a district or county court in the county in which the party is domiciled. If the writ is granted against more than one party, it may be tried in the proper court of the county in which either party is domiciled.
- (b) A writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered.

Tex. Civ. Prac. & Rem. Code Ann. § 65.023 (West 2014).

Texas courts have held that when injunctive relief is the primary relief requested in the petition, Section 65.023(a) determines venue. *In re Continental Airlines, Inc.*, 988 S.W.2d 733, 736 (Tex. 1998); *Billings v. Concordia Heritage Ass'n*, 960 S.W.2d 688, 693 (Tex. App.—El Paso 1997, pet. denied). While the Petition contains claims for declaratory relief, the primary relief sought is an injunction against the City's enforcement of the Initiative Ordinance. Specifically, Plaintiff's Petition alleges that a permanent injunction is required against the City because Plaintiff has no adequate remedy at law. (Pet. ¶ 6.1) Under similar circumstances where a Plaintiff has requested declaratory relief that would not be effective without an injunction, Texas courts have found that the requests for injunction are the primary relief sought in the lawsuit for purposes of venue. *See In re Dole Food Company, Inc.*, 256 S.W.3d 851, 854, (Tex. App.—Beaumont 2008, no pet.) ("[I]n cases where plaintiff alleges it has no adequate

remedy at law and hence is entitled to injunctive relief, plaintiff has chosen equitable relief as his primary remedy and venue is controlled by the injunction statute.”).

Based on the foregoing authorities, the primary purpose of Plaintiff’s suit is to enjoin the enforcement of the Initiative Ordinance and, therefore, mandatory venue for this suit lies in Denton County pursuant to Section 65.023(a).

B. Venue is Mandatory in Denton County for Plaintiff’s Claims of Alleged Encumbrances on the Property of its Members Located in Denton County.

Section 15.011 of the Texas Civil Practice and Remedies Code (“Section 15.011”) provides:

Actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or part of the property is located.

Tex. Civ. Prac. & Rem. Code Ann. § 15.011.

Courts look to the essence of the dispute to determine whether it involves an interest in real property. *See In re Applied Chem. Magnesias Corp.*, 206 S.W.3d 114, 119 (Tex. 2006). . Courts have applied this rationale in the context of rights concerning mineral estates. *Id.* at 116-19. *See Bracewell v. Fair*, 638 S.W.2d 612, 615 (Tex. App. —Houston [1st Dist.] 1982, no writ) (once it is demonstrated that a court’s judgment would have some effect on an interest in real property, then the venue of the suit is properly fixed under Section 15.011).

In this case, Plaintiff claims that the Initiative Ordinance unlawfully encumbers the mineral interests of its members located in Denton County, Texas. Therefore, based on the foregoing authorities, this suit contains claims concerning the encumbrance of real property that must be brought in Denton County pursuant to Section 15.011.

IV.

RELIEF SOUGHT

For the foregoing reasons, venue over this suit is mandatory in Denton County, Texas and venue of this action is not proper in Travis County, Texas. Accordingly, the City respectfully requests that this case be transferred to Denton County, Texas for further disposition.

WHEREFORE, PREMISES CONSIDERED, the City respectfully requests that this Motion to Transfer Venue be granted in its entirety; that this action be transferred to Denton County, Texas; that all costs and attorneys' fees associated herewith and incurred by Defendants be assessed against Plaintiff, and for such other and further relief to which Defendant may be justly entitled.

V.

ORIGINAL ANSWER AND SPECIAL EXCEPTIONS

The City, subject to and without waiver of its Motion to Transfer Venue filed with the Court, files its Special Exceptions and Original Answer to Plaintiff's Original Petition as follows:

1. Special Exceptions

Defendant specially excepts to paragraph 5.3 of the Petition, and Plaintiff's Original Petition in its entirety, wherein Plaintiff asserts that the actions of the City are arbitrary, capricious, unreasonable and in violation of statutory and constitutional provisions. Neither paragraph 5.3, nor the Petition as a whole, identify what actions of the City are being referred to; how such actions are allegedly arbitrary, unreasonable or capricious; or which statutes and constitutional provisions have allegedly been violated by the City – while Article I, Section 16 addresses *ex post facto* laws and laws impairing the obligations of contracts, the Petition fails to identify how the City's alleged actions conflict with that constitutional provision, or how such

alleged actions are arbitrary, capricious, or unreasonable pursuant to that constitutional provision. Accordingly, paragraph 5.3 and the Petition as a whole fail to meet the fair notice requirements of the Texas Rules of Civil Procedure relating to that claim and the City requests the Court to order Plaintiff to replead this claim to meet those fair notice requirements.

2. General Denial

The City exercises the right granted to it by law to file a general denial and, therefore, the City denies each and every, all and singular, the material allegations contained in Plaintiff's Original Petition and demands strict proof thereof.

3. Affirmative Defenses

By way of further answer, if such be necessary, the City would show that the hydraulic fracturing activities that are the subject of the Initiative Ordinance have occurred throughout the City of Denton overlaying the Barnett Shale. Those activities have caused conditions that are subversive of public order and constitute an obstruction of public rights of the community as a whole. Such conditions include, but are not limited to, noise, increased heavy truck traffic, liquid spills, vibrations and other offensive results of the hydraulic fracturing process that have affected the entire Denton Community. Those conditions, all of which are associated with hydraulic fracturing, constitute a public nuisance which may be abated and future occurrences prevented by the City under its regulatory powers and are not subject to preemption as alleged by Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by way of its lawsuit, that Plaintiff's claims against the City be dismissed, that the City be awarded its costs and attorneys' fees and for such other and further relief to which the City may be justly entitled.

Respectfully submitted,

/s/ Terry D. Morgan

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Attorneys for Denton

CITY OF DENTON, TEXAS

STATE OF TEXAS §
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COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared George Campbell who being first duly sworn stated under oath that:

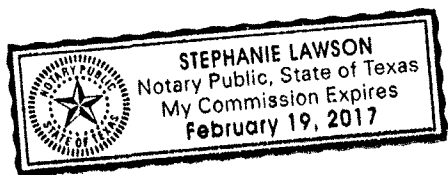
1. My name is George Campbell. I am the City Manager of Defendant in the above-referenced case. I am over the age of twenty-one (21) years of age, have never been convicted of a felony or crime of moral turpitude and am competent and qualified to make this Affidavit.

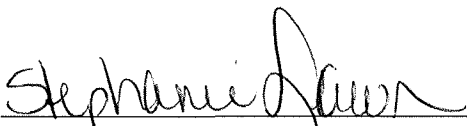
2. I have read the above and foregoing Motion to Transfer Venue and, based upon my personal knowledge; verify that the allegations contained in paragraphs II.1 and II.3 are true and correct.



George Campbell

SUBSCRIBED AND SWORN TO BEFORE ME by the said George Campbell on this the 26th day of December 2014.





Notary Public in and for the State of Texas

CERTIFICATE OF CONFERENCE

On December 1, 2014, the undersigned counsel for Defendant personally conferred by telephone with counsel for Plaintiff in which there was a substantive discussion concerning the merits of Defendant's Motion to Transfer Venue. Despite best efforts, the counsel were unable to resolve the matters presented in the Motion to Transfer Venue which remains opposed. Accordingly, Defendant's Motion to Transfer Venue is submitted for the Court's determination.

/s/ Terry D. Morgan

Terry D. Morgan

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following attorneys via the method indicated below, pursuant to Rule 21a of the Texas Rules of Civil Procedure, on this the 1st day of December 2014.

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Via E-Service

/s/ Terry D. Morgan

Terry D. Morgan