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FILED
MAR 24 2016
FRESNO SUPERIOR COURT
By _____ DEPUTY

16CECG00919
CFL
Civil Complaint filed
243386

Filed By Fax

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

THE CITY OF FRESNO, a municipal corporation,

Plaintiff,

v.

GUADALUPE P. FERNANDEZ, and DOES 1 through 50, INCLUSIVE,

Defendants.

Case No. 16 CE CG 0 0 9 1 9

COMPLAINT FOR:
(1) TEMPORARY RESTRAINING ORDER
(2) PRELIMINARY INJUNCTION;
(3) PERMANENT INJUNCTION;
(4) VIOLATION OF FRESNO MUNICIPAL CODE; AND
(5) MAINTAINING A CONTINUING PUBLIC NUISANCE
(6) APPOINTMENT OF RECEIVER

Plaintiff CITY OF FRESNO alleges:

1. Plaintiff CITY OF FRESNO ("City") is, and at all times herein mentioned was, a charter municipal corporation, duly organized and existing under and by virtue of the Constitution of the State of California.

2. City is informed and believes and thereon alleges that Defendant GUADALUPE P. FERNANDEZ and DOES 1 through 50 (collectively "Defendants") are, and at all times mentioned herein were, the record Owners and operators of the real property, 4551 E. Clay Ave., Fresno, California, (the "Subject Property"), APN 454-071-20 which contains six apartment units.

3. Defendants DOES 1 through 50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to City. When their true names and capacities are ascertained, City will amend this complaint by inserting their true names and capacities herein. City is informed and believes and hereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences, conditions and/or violations herein alleged.

4. Wherever in this Complaint reference is made to any act of Defendants, such allegations shall be deemed to mean Defendants(s) or his, her, or its officers, agents, managers, representatives, employees, did or authorized such acts while actively engaged in the operation, management, direction or control of the affairs of Defendant while acting within the course and scope of their duties.

STATEMENT OF FACTS

5. The City is informed and believes that the Subject Property is currently used as a 6 unit apartment complex. This location is zoned for R-3, medium density multiple family residential, as specified in the City of Fresno's General Plan for Land Use.

6. The Subject Property has been cited for numerous Building Code Violations, which Defendants have failed to timely and adequately correct.

BUILDING/MUNICIPAL CODE VIOLATIONS

7. On January 27, 2016, City inspected the Subject Property for building/municipal code violations. On or about February 8, 2016, the City served Defendants with a Notice and Order pursuant to Fresno Municipal Code ("FMC") § 11-414 notifying Defendants of numerous violations of the FMC and requiring all corrections be completed by February 26, 2016. These violations include: (a) compromised structural roof members; (b) wood rot throughout the structure; (c) lack of adequate heating; (d) the presence of vermin including rats and roaches; (e) clogged sewer lines; (f) and damages to plumbing fixtures including toilets; (g) and pervasive water damage, all of which seriously affect the health and safety of the motel. A true and correct copy of the Notice and Order, including photographs taken during the site inspection on January 27, 2016, are attached hereto as Exhibit "A".

8. On February 8, 2016, the Defendants were given a Notice and Order that a Certificate of Existence of a Dangerous Building regarding the Subject Property would be filed by February 26, 2016,

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with the County Recorder's Office.

9. On February 23, 2016, the City re-inspected the Subject Property and determined that little or no progress had been made as far as repairs to units, and the property continued to maintain the violations addressed in the Notice and Order of February 8, 2016. Administrative citations were issued on February 23, 2016 and March 7, 2016 for the ongoing violations at the Subject Property. A true and correct copy of all Administrative Citations issued on February 23, 2016 and March 7, 2016 are attached hereto as Exhibit "B".

FIRST CAUSE OF ACTION

(Violation of City's Municipal Code)

10. City realleges and incorporates paragraphs 1 through 9 above, as though fully set forth herein.

11. Fresno Municipal Code ("FMC"), Chapter 11, Article 1, Section 101 contains the City's Building Code that regulates the construction of building and structures within the City. FMC, Chapter 11, Article 1, Section 107 contains the Fresno Plumbing Code that regulates the installation and maintenance of plumbing within the City. FMC, Chapter 11, Article 3, contains the City's Housing Regulations that regulates substandard buildings within the City and provides the City with authority to abate conditions within substandard buildings. FMC, Chapter 11, Article 4, sets forth the City's Dangerous Building Ordinance that provides the City with the authority to require responsible parties, including property owners to correct conditions that make certain buildings dangerous. The City adopted all of these ordinances to promote the health, safety and general welfare of the public.

12. The following conditions existed at the Subject Property as of the date of the filing of the original complaint and violate the Fresno Municipal Code:

12.1 Rubbish, junk, including but not limited to garbage, scrap metal and lumber on the property in violation of FMC § 10-605(a).

12.2 Overgrown, uncontrolled landscaping which creates a fire hazard, obstruction to traffic or otherwise a blight to the neighborhood in violation of FMC § 10-605(i).

12.3 Maintenance of walls and fences in an unorderly condition in violation of FMC § 15-2009(D).

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12.4 Failing to permanently maintain landscape elements in good growing condition in violation of FMC §15-2311.

12.5 Construction of an unpermitted water heater and garage conversion without obtaining a building permit in violation of FMC §§11-308, 11-101, and 15-5021, California Building Code ("CBC") § 105.1.

12.6 Maintenance of structural component of building without weather protection in violation of FMC §11-317(b) and Health and Safety Code ("H&S") § 17920.3.

12.7 Failure to maintain wooden structures on buildings with protection from termite damage and decay in violation of FMC § 11-317(c) and H&S § 17920.3.

12.8 Failure to provide under floor ventilation in violation of FMC §§ 11-308, 11-101 and CBC §1203.3.1.

12.9 Failure to maintain adequate crawl spaces in violation of FMC §§ 11-308, 11-101 and CBC § 1209.1.

12.10 Failure to provide adequate heating facilities in violation of FMC § 11-319(a) and H&S § 17920.3.

12.11 Failure to install and maintain all electrical equipment, wiring and appliances in a safe manner and in an approved fashion in violation of FMC § 11-319(a) and H&S § 17920.3.

12.12 Failure to provide adequate fire resistant construction materials and appropriate fire extinguishing systems in violation of FMC § 11-323 and H&S § 17920.3.

12.13 Failure to provide and install smoke alarms in accordance with UL217 which violates FMC § 11-323 and California Residential Code ("CRC") § 314.1.

12.14 Failure to install and maintain single or multiple station smoke alarms in violation of FMC §§ 11-323, 11-101 and CBC § 907.2.11.2.

12.15 Failure to maintain and repair sidewalk area on portion of premises fronting the public street in violation of FMC § 13-217.

12.16 Failure to submit plans, specifications, and drawings prior to the commencement of work in violation of FMC §§ 11-324, 11-107 and California Plumbing Code ("CPC") § 105.1.

12.17 Failure to obtain permits for all plumbing installations which were altered repaired or renovated in violation of FMC §§ 11-324, 11-107 and CPC § 101.6.

12.18 Maintaining damaged plumbing and drainage systems in an unsanitary and unsafe operating condition in violation of FMC §§ 11-324, 11-107 and CPC § 101.7.

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12.19 Failure to obtain a permit for the removal, replacement, or installation of a water heater in violation of FMC §§ 11-324, 11-107 and CPC § 502.1.

12.20 Failure to maintain storage type water heaters and hot water heaters in a manner mandated by nationally recognized standards for such devices and failure to provide a combination of temperature and pressure relief valves in violation of FMC §§ 11-324, 11-107 and CPC § 505.2.

13. True and correct copies of the sections of the Fresno Municipal Code, California Fire Code, California Building Code, California Electrical Code, California Plumbing Code and California Health & Safety Code cited above are attached as Exhibit "C" and incorporated by reference.

14. Defendants have been notified of the FMC violations. The City had ordered Defendats to correct these conditions. However, Defendants have not corrected the violations, nor have they indicated to City an intention to permanently correct these violations. Therefore, City is informed and believes and thereon alleges that Defendants will continue to maintain the Subject Property in violation of the FMC to the detriment of the public's health, safety and welfare.

SECOND CAUSE OF ACTION

(Continuing Public Nuisance)

15. Plaintiff realleges and incorporates paragraphs 1 through 15 as if set forth herein.

16. California Government Code § 38771 authorized the Fresno City Council, by ordinance, to declare what constitutes a nuisance.

17. Defendants have caused and/or continue to maintain a public nuisance at the Subject Property as described in paragraphs 20.1 through 20.28.

18. Defendants' use of the Subject Property is a continuing public nuisance as defined in California Civil Code §§ 3479 and 3480.

19. The Subject Property continues to pose an immediate serious danger to the community because of the following conditions, included but not limited to the following: compromised structural roof members, wood rot throughout the structure, lack of adequate heating, the presence of vermin including rats and roaches, clogged sewer lines, damaged plumbing fixtures including toilets, pervasive water damage, and lack of functioning smoke alarms.

20. Defendants have been notified of the nuisance on the Subject Property.

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21. Defendants have not corrected the violations nor have they indicated to the City an intention to permanently correct these violations. Therefore, City is informed and believes and thereon alleges that Defendants will continue to maintain the property in the above-described condition, perpetuating the imminent hazard to the public's health, safety and welfare.

22. The City has no adequate remedy at law.

23. City is informed and believes and thereon alleges that Defendants will not correct these violations or abate the nuisance within a reasonable time. If it becomes necessary for the City to correct the violations or abate the nuisance, City will incur substantial costs. As part of its prayer, City requests recovery of its' costs to correct these violations or abate the nuisance and establish a prior lien on the property for recovery of such costs.

WHEREFORE, Plaintiff City prays as follows:

1. That the Subject Property and the conditions existing thereon be declared a violation of the Fresno Municipal Code.

2. That the Subject Property and the conditions existing thereon be declared a public nuisance under Fresno Municipal Code.

3. That the Subject Property be declared a continuing public nuisance and a violation of California Civil Code sections 3479 and 3480.

4. That Defendants be permanently enjoined from maintaining the violations of the Fresno Municipal Code.

5. That Defendants be permanently enjoined from maintaining the continuing public nuisances on the Subject Property.

6. That Defendants be ordered to abate all conditions which cause violations and/or the nuisance within sixty days from order of this Court, or alternatively, that Plaintiff City of Fresno or its contractors be authorized to abate said conditions from the Subject Property and recover costs from the Defendants;

7. That Defendants be ordered to pay all relocation costs including moving costs for current tenants on the premises. That Plaintiff City of Fresno recovers costs of suit from Defendants including reasonable attorney fees under California Government Code 38773.5 and FMC Chapter 1, Article 6;

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8. The Court issue a temporary restraining order and preliminary injunction prohibiting Defendants from maintaining the aforementioned conditions on Subject Property;

9. That recordation of an abstract of judgment in this case constitutes a prior lien over any lien that may be held on the Subject Property by any Defendant to this action; and

10. For such other and further relief as the court deems proper.

11. Appoint a receiver for the Subject Property, who may be authorized to correct conditions, refurbish, and/or sell or demolish the Subject Property as may be appropriate; and that the costs and fees of the recorder be paid from income from the Subject Property, proceeds of sale (as a first lien), and/or Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: March 24, 2016

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