

Plaintiffs may not restrict or regulate the use of public streets. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

2. Special Exception to Light and Air Complaints. Defendants specially except to Paragraphs 25, 31, 34 and 35 because the allegations regarding obstruction and inability to maintain light and air, even if true, do not state a cause of action as to a building otherwise permitted by private real property law, public land use regulations and governmental permitting requirements, and does not give rise to a cause of action for nuisance. Defendants request that the Court sustain this special exception and that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

3. Special Exception to Aesthetic Complaints. Defendants specially except to the allegations contained in Paragraphs 25, 28, 31, 34, and 35 because they are aesthetic complaints and emotional reactions to the future existence of a building permitted under private real property law, public land use regulations and governmental permitting requirements, and which may not be considered by any fact finder in a nuisance action, nor give rise to a cause of action for nuisance. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

4. Special Exception to Request for Injunction Against the Project. Defendants specially except to any request for injunction based upon Paragraphs 21 - 25 because an

injunction (temporary or permanent) is not proper under Texas nuisance law to prevent a permanent nuisance in-fact alleged to be the future existence of a building which is otherwise permitted by private real property law, public land use regulations and governmental permitting requirements. Plaintiffs' remedy upon any finding that the future existence of an otherwise legally allowable building is, simply by its future existence, a permanent nuisance-in-fact, is limited to monetary damages. Defendants' claim for injunctive relief is a thinly veiled attempt for either i) private nuisance zoning, or ii) an implied easement or covenant of light and air, neither of which is recognized in Texas. Defendants have no private real property rights to limit development of the Project. The City of Houston has no public land use regulations to prevent development of the Project, and in fact, has issued approval for all required permits. Defendants request that the Court sustain this special exception and enter its order that the allegations in the cited Paragraphs, to the extent that they are not stricken in response to the previous special exceptions, are not to be considered in support of any request for injunctive relief and that any request for injunction to prevent the existence of the Project (as compared to conduct by Defendants in the construction of the Project) be stricken.

5. Special Exception to Construction Related Complaints as Speculative, Anticipatory and Not Ripe. Defendants specially except to the allegations contained in Paragraphs 26, 27, 29 and 35 because they are speculative, premature and not ripe for consideration by this Court. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

6. Special Exception to Tree Complaints. Defendants specially except to Paragraph 28 because the trees in question are located on land which is legally owned by Defendant 1717 Bissonnet, LLC (record title owner of the land where the Project will be constructed). Under the well settled "strips and gores" doctrine, in Texas, when a deed conveys land abutting a public street, it passes title to the center of the right-of-way, even if the description in the deed omits the right of-way boundary, unless a contrary conveyance is expressed in plain, unequivocal terms. To the extent anyone other than Defendant 1717 Bissonnet, LLC has rights to limit their removal of those trees, it is the City of Houston, which has already approved the permit for the removal of those trees. Defendants may not restrict the removal of any trees on Defendant 1717 Bissonnet, LLC's land or any trees otherwise previously approved for removal by the jurisdictional public authority under any applicable cause of action, including nuisance. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraph be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

II.

ORIGINAL ANSWER

7. General Denial. Subject to and without waiving the foregoing Special Exceptions, Defendants hereby deny each and every, all and singular, the allegations contained in Plaintiffs' Original Petition demanding strict proof thereof by a preponderance of the evidence in accordance with the laws of the State of Texas.

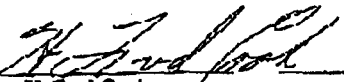
8. Objection to Claims against Non-owner Defendants. Defendants Buckhead Investment Partners, Inc. (never an owner of the real property in dispute) and Maryland Manor Associates, Inc. (a former owner of the real property in dispute) specifically deny that they are

proper parties to this suit because neither of them owns the real property on which the Project is to be constructed. The owner of the real property is 1717 Bissonnet, LLC, pursuant to General Warranty Deed recorded August 8, 2012 under Harris County Clerk's file no. 20120359366. 1717 Bissonnet, LLC should be the sole defendant in this suit. Defendants Buckhead Investment Partners, Inc. and Maryland Manor Associates, Inc. request that the Court dismiss them from this case, or, alternatively, that Plaintiffs be required to amend the Petition within 15 days to omit them, and that, if Plaintiffs fail or refuse to amend within that time, they be dismissed.

WHEREFORE, Defendants pray that the foregoing Special Exceptions set forth herein be GRANTED, that the related claims and causes of action asserted in Plaintiff's cause of action asserted in the Petition be stricken or denied with prejudice of re-filing of same, that Defendants Buckhead Investment Partners, Inc. and Maryland Manor Associates, Inc. be dismissed, and that Defendants have such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

WILSON, CRIBBS & GOREN, P.C.

By: 

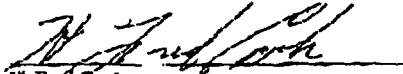
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

On this 27th day of May, 2013, a copy of this document was served by Certified Mail, Return Receipt Requested, and/or via facsimile to the following:

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