

v. City of Houston, in the United State District Court for the Southern District of Texas- Houston Division, which was settled and all City of Houston approvals for permits for access to the Project from public streets were thereafter issued. 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 of the Petition and to Paragraphs 28, 40 and 41 of the Amended Petition 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 of the Petition and to Paragraphs 28, 31, 40 and 41 of the Amended Petition 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.

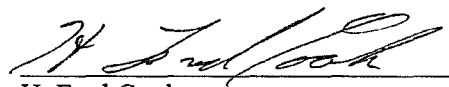
4. Special Exception to Request for Injunction Against the Project. Defendants specially except to any request for injunction based upon Paragraphs 21 – 25 of the Petition and to Paragraphs 24 – 28 of the Amended Petition because an injunction (temporary or permanent) is not proper under Texas nuisance 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

CERTIFICATE OF SERVICE

On this 5th day of June, 2013, a true and correct copy of the foregoing was forwarded to all counsel of record via certified mail, return receipt requested and/or via facsimile to the following:

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H. Fred Cook