

No. 2012-30982-211

RICHARD K. AND SUSAN D. ARMEY;
BAR RR RANCHES, LLC AND ITS OWNERS,
REX AND RENDA TILLERSON;
RICHARD AND KRYSTAL VERA;
CARLOS AND HELEN RIVERO;
MONTE AND CHARLEY LUKOV; AND
BRAD AND JANE TEEL,

Plaintiffs,

v.

BARTONVILLE WATER SUPPLY CORPORATION;
JIM LEGGIERI, ITS GENERAL MANAGER; AND
ITS BOARD OF DIRECTORS,
PATRICK McDONALD, LARRY KAUFMAN,
SUSAN CRAWFORD, MICHAEL PAULSON,
DAVID MOORE, DEAN WHITE, AND
ROBERT STEGMAIER,

Defendants.

IN THE DISTRICT COURT OF

FILED
2012 APR 15 PM 4:05

DENTON COUNTY, TEXAS

393RD JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Come Now RICHARD K. AND SUSAN D. ARMEY, BAR RR RANCHES, L.L.C. AND IT'S OWNERS, REX AND RENDA TILLERSON, RICHARD AND KRYSTAL VERA, CARLOS AND HELEN RIVERO, MONTE AND CHARLEY LUKOV, AND BRAD AND JANE TEEL, Plaintiffs, complaining of BARTONVILLE WATER SUPPLY CORPORATION, JIM LEGGIERI, ITS GENERAL MANAGER AND ITS BOARD OF DIRECTORS PATRICK McDONALD, LARRY

KAUFMAN, SUSAN CRAWFORD, MICHAEL PAULSON, DAVID MOORE, DEAN WHITE AND ROBERT STEGMAIER, Defendants and respectfully show the court.

I.

PARTIES

1.01 Plaintiffs Richard K. and Susan D. Armey are homeowners in Bartonville, Texas and their mailing address is P.O. Box 271123, Flower Mound, Texas 75027. Their 78-acre homestead has a fair market value in excess of \$2 million.¹ The Armey's ultimate highest and best use of their property is for a subdivision development of luxury homes similar to those in the vicinity on minimum 2 acre tracts.

1.02 Plaintiff Bar RR Ranches, L.L.C. sues through its member/owners Rex and Renda Tillerson. Bar RR is a large horse ranch located immediately adjacent to the BWSC property in question. Bar RR has a fair market value in excess of \$5 million. It is improved with homes, barns, and a state of the art horse training facility. Bar RR's ultimate highest and best use is of their property is for development of luxury homes on minimum 2 acre tracts.

1.03 Plaintiffs Richard and Krystal Vera are homeowners in Bartonville, Texas and reside at 1096 Roadrunner Road. Their homestead has a fair market value in excess of \$1,900,000.

¹ All values are based on 2012 Denton Central Appraisal District Values

1.04 Plaintiffs Carlos and Helen Rivero are homeowners in Bartonville, Texas and reside at 1089 Roadrunner Road. Their homestead has a fair market value in excess of \$1,500,000.

1.05 Plaintiffs Monte and Charley Lukov are homeowners in Bartonville, Texas and reside at 1064 Roadrunner Road. Their homestead has a fair market value in excess of \$1 million.

1.06 Plaintiffs Brad and Jane Teel are homeowners in Bartonville, Texas and reside at 838 Dove Creek Road. Their homestead has a fair market value in excess of \$1 million.

1.07 Defendant Bartonville Water Supply Corporation ("BWSC") is a non-profit corporation located at 1911 East Jeter Rd, Bartonville, TX 76226. Said Defendant has answered suit and is before this court for all purposes.

1.08 Defendant Jim Leggieri is the General Manager of Bartonville Water Supply Corporation. Said Defendant has answered suit and is before this court for all purposes. Leggieri is sued in both his representative and individual capacities.

1.09 Defendants Patrick McDonald, Larry Kaufman, Susan Crawford, Michael Paulson, David Moore, Dean White and Robert Stegmaier are members of BWSC's Board of Directors. Said Defendants have answered suit and are before this court for all purposes.

II.

JURISDICTION AND VENUE

2.01 This court has jurisdiction because Plaintiffs seek declaratory and injunctive relief, and sue for inverse condemnation of real property located in Denton County, Texas, nuisance, fraud, negligent misrepresentation and injunctive relief and the damages far exceed the minimum jurisdictional limits of this court.

2.02 Venue is mandatory in Denton County because this is a suit for damages to real property located in Denton County, Texas. Tex. Civ. Prac. & Rem. Code § 15.011. Venue is proper because all significant matters occurred in Denton County, and because the Defendant has its principal place of business in Denton County, Texas.

2.03 Plaintiffs request that Discovery be conducted under Level 3, pursuant to Rule 190.4 TEX. R. CIV. PROC.

III.

FACTS

3.01 Plaintiffs are owners of homes and real property in the Town of Bartonville, Texas. These are luxury properties worth multiple millions of dollars. Each of the homeowners built or purchased their homes in Bartonville to live in an upscale community free of industrial properties, tall buildings, and other structures that might devalue their properties and adversely impact the rural lifestyle they sought to enjoy.

3.02 Each of these homeowners selected Bartonville because the Town had adopted zoning and other ordinances calculated to prevent undesirable development not in character with their neighborhood and the zoning of their properties.

3.03 Before purchasing their acreage and home, the Armeys noticed that BWSC owned approximately 4.75 acres immediately adjacent to their property. They were concerned that BWSC might build a high rise water tower or other objectionable structure on its property and resolved not to purchase the property if there was any possibility of such construction occurring. The acreage they considered buying was expensive, and they resolved not to purchase the property if BWSC intended or had the right to build a high-rise water tower or other structure on its 4.75 acres, which would affect the fair market value of their property or interfere with its quiet use and enjoyment.

3.04. The Armeys made inquiry with the Town of Bartonville as to the zoning of the BWSC property and any intended use. The BWSC property is zoned

RE-2, which limits its use to residential construction on minimum 2-acre tracts. All of the Plaintiffs' properties are zoned RE-2 or RE-5 (residential minimum five acres). The Town showed them documents that indicated that BWSC had represented to the Town that they were intending only to construct a low-rise water tank. The proposed low-rise tank would sit below the tree line and be virtually unnoticeable from the Arme y property. BWSC had made filings with the Town of Bartonville including drawings and photographs of other properties having similar uses to that intended for the 4.75 acres. These filings demonstrated that the intended use would consist of a low-rise tank that would be shielded by the existing trees and would not be a threat to their property, as to either its market value or its intended use as a quiet, bucolic home in the country. In the 2001 application of BWSC for a specific use permit, signed by Defendant Leggieri the proposed use of the property was "Public Water Supply Pump/Storage Station Site." It was noted in that application that no specific use permit would be granted unless certain conditions were met. Among these conditions was that the use "would not be detrimental to or endanger the public health, safety, morals, **comfort**, or general welfare." Also "that the uses, values, and enjoyment of **other property in the neighborhood for purposes already permitted** shall be in no foreseeable manner **substantially impaired or diminished** by the . . . specific use." Further, "that the . . . specific use will not impede the normal and orderly **development and improvement of the surrounding property** for uses permitted in the district." (Emphasis added). The photos supplied by BWSC to show what type improvements

were intended showed only a low-rise pressure tank and a low-rise storage tank, and a small one-story building. Leggieri specifically represented to the Town and its citizens on more than one occasion that the property would not be used for a high-rise water tower.

3.05. In the Letter of Intent to the Town of Bartonville dated August 13, 2001 BWSC and Leggieri stated: “As you review the enclosed information . . . some items may be designated “NO” as a result of our not having actual design plans. . . . However, I have included photos of our most recent pump station (1990’s-1999) for your review. . . BWSC will comply with all the town’s requirements as plans for the project develop or sooner if needed.” Later in the LOI BWSC states: “Although required by the . . . [Texas Natural Resources Code] to be fenced, **the heavily wooded surroundings will provide additional natural facility screening from the future residents while providing and meeting a vital community service/need.**” (Emphasis added).

3.06. Richard Armev wanted further satisfaction and inquired of BWSC its intentions. Jim Leggieri, General Manager of BWSC told Armev that BWSC was going to build only a low-rise storage tank and pressure tank on the property and would never build a high-rise tower on the approximately 4.75 acre tract. Armev told Leggieri that he did not want to buy his proposed homestead only to find out that BWSC would construct a high-rise tower, and if there was any chance whatsoever Armev would buy another tract. Leggieri assured Armev that BWSC would under no circumstances build a high-rise tower. Having been assured by both

the Town and BWSC that there would be no high-rise tower built, the Armeys purchased their tract and proceeded to make extensive improvements. The Armeys relied upon Leggieri's representations in the scope of his employment with BWSC and upon the representations of the Town of Bartonville as specified in its zoning ordinance.

3.07. In addition to the representations that BWSC and Leggieri made to Armeys and the Town of Bartonville that BWSC would not construct a high rise tower, Leggieri appeared in a public forum in front of numerous witnesses and represented that BWSC would only construct a low rise tank², and would under no circumstances build a high rise water tower. 4

3.08. In approximately 2009, Rex Tillerson was approached by BWSC requesting that Tillerson, on behalf of Bar RR Ranches, LLC, agree to permit BWSC to erect a chain link fence rather than a solid wall to enclose BWSC's property. At that meeting, BWSC represented to Tillerson and his employee that BWSC intended to construct only a pump house and low rise tanks similar to the ones on Jeter Road.

3.09. Each of the other homeowner plaintiffs purchased and improved their properties relying on the Town's zoning ordinance. Some Plaintiffs also relied on public promises and representations of BWSC and Leggieri that only a low-rise

² The height of the proposed low-rise tank would have been 36 feet, only one foot higher than the maximum allowed by the residential zoning. In addition to exceeding the height of the original proposal almost 4.5 times, the 160 foot high rise will be topped by a huge sphere. Unless mature Sequoias are imported from the northwest no trees will screen this eyesore.

water tank would be built. None of the plaintiffs would have proceeded to build or buy their luxury homes where located had they known that a high-rise tower would be built. Arney would not have purchased his property but for the promises and representations of BWSC and Leggieri. All the plaintiffs relied upon these representations to their detriment.

3.10. To add insult to injury Leggieri later made public statements that BWSC intended all along to build a high-rise tower on the property.

3.11. When the Town refused to issue BWSC a conditional use permit for the high rise water tower, which will have a capacity of **750,000 gallons** and will loom over the Plaintiffs properties at a height of **160 feet**—the equivalent of a 16 story building--BWSC sued the Town for a Declaratory Judgment and Mandamus requiring the permit to be issued. BWSC filed a second suit for a Writ of Certiorari to require the Town of Bartonville to issue a building permit for construction of the tower.

3.12. The Defendants have commenced construction and have erected a super structure to an alarming height in defiance of the law. They have gambled that once constructed, however illegally, this court will consider it is a *fait accompli* for which the only remedy, if any will be damages. Plaintiffs assert that the tower constitutes a public and private nuisance, for which the proper remedy is abatement by removing the offending structure by means of a mandatory permanent injunction.

3.13. This monstrosity will mock the purpose of the Bartonville zoning ordinance, the primary purpose of which is to protect the citizens and their property from uses “detrimental to or endanger[ing] the public health, safety, morals, **comfort**, or general welfare;” from “uses which substantially impair and diminish the uses, values, and enjoyment of other property in the neighborhood for purposes already permitted.” The impact of the low rise structures originally represented would have been greatly diminished by the heavily wooded surroundings, but both man and nature are inadequate to lessen the adverse impact of the 160-foot tower under construction.

4

4

IV.

First Cause of Action—Temporary Injunction

(All Plaintiffs v. All Defendants)

4.01. Plaintiffs incorporate by reference all previous paragraphs. Plaintiffs request a mandatory and prohibitory injunction against all Defendants, requiring Defendants to dismantle the water tower and preventing them from ever building another elevated water storage tank at this location.

4.02. Defendant BWSC is proceeding to construct the 160-foot water tower.

4.03. By constructing the water tower in direct violation of the Town of Batonville's zoning ordinance designed for the purpose of protecting Plaintiffs, and their properties from uses destructive and detrimental to the neighborhood, Defendants by their conduct threaten irreparable harm to Plaintiffs property values and Plaintiffs rights to the quiet use and enjoyment of their properties.

4.04 Plaintiffs have been and will continue to be damaged and injured by Defendants' conduct unless Defendants are restrained and enjoined, and they have no legal remedy sufficient to protect their interests because even though the damages might compensate them for their diminished property values, damages cannot compensate fully for the substantial interference with Plaintiffs' use and enjoyment of their land by causing unreasonable discomfort and annoyance to persons of ordinary sensibilities, and damages cannot fully compensate plaintiffs for the emotional harm they have sustained from the deprivation of the enjoyment of

their property because of fear, apprehension, offense, loss of peace of mind, visual blight or other similar acts or circumstances.

4.05. The Plaintiffs have been and will continue to be damaged and injured by the Defendants' conduct unless the Defendants are restrained and enjoined.

4.06. The Plaintiffs have no adequate remedy at law for the injuries just described. The injuries and losses are continuing. The property and rights owned by Plaintiffs are unique and irreplaceable so that it will be impossible to measure accurately in monetary terms the damages caused by Defendants' conduct. The losses to the Plaintiffs from the Defendants' conduct are likely to exceed the financial worth of the Defendants to prevent any adequate compensation to the Plaintiffs, even if money damages were sufficient remedy. ³

4.07. On December 7, 2012, the Hon. L. Dee Shipman heard and denied Plaintiff's Application for Temporary Restraining Order. The Judge ordered this case be transferred to the 393rd District Court, and ordered that the \$200,000 bond posted in the litigation between the Town of Bartonville and BWSC shall cover and apply to these proceedings. In order to preserve the status quo of the property and rights of the Plaintiff during the pendency of this action, the Defendants should be cited to appear and show cause why they should not be temporarily restrained and enjoined during the pendency of this action from erecting and continuing to erect

³ Supposedly, Defendant BWSC has \$6 million in cash assets. Plaintiffs assert that their losses far exceed this amount.

the 16 story tower in the midst of their residential neighborhood where zoning forbids the erection of any structure in excess of 35 feet.

4.08. Upon final trial of this cause the defendants should be permanently restrained and enjoined from ever constructing on said property any water tower save and except the low rise storage tank and related structures originally represented, such improvements to be no higher than the 36 feet originally represented, and such construction to be surrounded by an appropriate fence and shielded from view by the existing trees on the property. Plaintiffs' pray for a mandatory injunction requiring the Defendants to dismantle and remove at their sole cost the high-rise tower, or so much of it as has been completed.

V.

Second Cause of Action—Permanent Injunction

(All Plaintiffs v. All Defendants)

5.01. Plaintiffs incorporate by reference all previous paragraphs. Plaintiffs request a mandatory and prohibitory injunction against all Defendants, requiring Defendants to dismantle the water tower and preventing them from ever building another elevated water storage tank at this location.

5.02. Defendant BWSC is proceeding to construct the 160-foot water tower.

5.03. By constructing the water tower in direct violation of the Town of Batonville's zoning ordinance designed for the purpose of protecting Plaintiffs and their properties from uses destructive and detrimental to the neighborhood, Defendants by their conduct threaten irreparable harm to Plaintiffs property values and Plaintiffs rights to the quiet use and enjoyment of their properties. Moreover, Defendant BWSC's tower is both a public and a private nuisance for which damages are not an adequate legal remedy.

5.04 Plaintiffs have been and will continue to be damaged and injured by Defendants' conduct unless Defendants are restrained and enjoined, and they have no legal remedy sufficient to protect their interests because even though the damages might compensate them for their diminished property values, damages cannot compensate fully for the substantial interference with Plaintiffs' use and enjoyment of their land by causing unreasonable discomfort and annoyance to persons of ordinary sensibilities, and damages cannot fully compensate plaintiffs for

the emotional harm they have sustained from the deprivation of the enjoyment of their property because of fear, apprehension, offense, loss of peace of mind, visual blight or other similar acts or circumstances.

5.05. The Plaintiffs have been and will continue to be damaged and injured by the Defendants' conduct unless the Defendants are restrained and enjoined.

5.06. The Plaintiffs have no adequate remedy at law for the injuries just described. The injuries and losses are continuing. The property and rights owned by Plaintiffs are unique and irreplaceable so that it will be impossible to measure accurately in monetary terms the damages caused by Defendants' conduct. The losses to the Plaintiffs from the Defendants' conduct are likely to exceed the financial worth of the Defendants to prevent any adequate compensation to the Plaintiffs, even if money damages were sufficient remedy. ⁴

5.07. Upon final trial of this cause the defendants should be permanently restrained and enjoined from ever constructing on said property any water tower save and except the low rise storage tank and related structures originally represented, such improvements to be no higher than the 36 feet originally represented, and such construction to be surrounded by an appropriate fence and shielded from view by the existing trees on the property. Plaintiffs' pray for a mandatory injunction requiring the Defendants to dismantle and remove at their

⁴ Supposedly, Defendant BWSC has \$6 million in cash assets. Plaintiffs assert that their losses far exceed this amount.

sole cost the high-rise tower, or so much of it as has been completed at the time of trial.

VI.

Third Cause of Action—Nuisance/Abatement

(All Plaintiffs v. BWSC)

6.01. Plaintiffs incorporate by reference all previous paragraphs.

6.02 The 160-foot high-rise tower located directly adjacent to the Arme y and Bar RR property and in close proximity to the other plaintiffs' properties is a Nuisance as that term is defined under the law of the State of Texas. The BWSC tower constitutes a substantial interference with the Plaintiffs' use and enjoyment of their land by causing unreasonable discomfort and annoyance to persons of ordinary sensibilities, including the Plaintiffs. Each of the Plaintiffs have sustained emotional harm from the deprivation of the enjoyment of his or her property by fear, apprehension, offense, loss of peace of mind or other similar acts or circumstances. Defendants intentionally and unreasonably erected the water tower in total disregard for the surrounding properties. In the alternative, defendants construction of a water tower in this location is abnormal and out of place for the surroundings. In the alternative, defendants acted with negligence, recklessness, gross negligence, and malice when locating and constructing the water tower.

6.03. This interference with the Plaintiffs' use and enjoyment of their property is a Nuisance Per Se because the same is being constructed in direct violation of the zoning ordinances of the Town of Bartonville, and is thus unlawful.

The Plaintiffs' are citizens of the Town and are entitled to the protection of its laws. Plaintiffs are entitled to sue to enforce those laws. BWSC apparently believes that it is exempt or immune from the enforcement of those laws. Even if this were true—and it is not—the exemption from enforcement does not make the actions of BWSC lawful, and the construction of the BWSC tower in violation of the law makes it a nuisance per se.

6.04. The construction of the water tower will create a constant and unbearable nuisance to those that live next to it. A water tower will have lights on at all hours of the night, traffic to and from the tower at unknown and unreasonable hours, noise from mechanical and electrical equipment needed to maintain and operate the water tower, and creates an unsafe and attractive nuisance to the children of the area. Furthermore, water towers can create an attractive nesting spot for invasive species of bird and other animals. These animals will defile Plaintiffs properties if the water tower is left to stand. Further, upon information and belief, BWSC will lease or sell rights to third parties for the location of antennas and cell towers. Furthermore, upon information and belief, BWSC will sell water to oil and gas explorers for fracking shale formations leading to traffic with heavy trucks on FM 407, creating a noise nuisance and traffic hazards.

6.05. Alternatively, the BWSC tower is a nuisance in fact. Since it is a structure that is capable of disassembly⁵ it may be abated by removal from the four

⁵ BWSC has so admitted in that it has posted a \$200,000 bond as security to pay for the dismantling the tower if the Town's appeal, now pending, is successful.

acres upon which it stands. Alternatively, if the nuisance is not susceptible to abatement the Plaintiffs are entitled to recover damages.

6.06. Plaintiffs seek complete and total abatement of the nuisance by removal of the tower. They seek in addition damages incurred from the time the construction began until the removal of the tower, such damages being the diminished market value of their property and compensation for the loss of the quiet enjoyment of their properties and emotional damages above alleged.

6.07. Alternatively, if the court should rule that Plaintiffs are not entitled to abatement of the nuisance, Plaintiffs sue for the permanent diminution of the fair market value of their properties^s, and for their emotional damages past and future.

VII.

Fourth Cause of Action—Inverse Condemnation

(All Plaintiffs v. BWSC)

7.01. Plaintiffs incorporate by reference all previous paragraphs. Plaintiffs are each the owners of land zoned residential located in the Town of Bartonville.

7.02. Defendant BWSC is a non-profit corporation created under Texas law. Its business is supplying water to its residential and rural member customers. BWSC is not a part of State or Municipal government, but it has been granted extremely limited powers of eminent domain. Although BWSC has not physically entered upon Plaintiff's property, it has done so constructively by exercising what it claims to be its right—despite the zoning and building ordinances of the Town of Bartonville—to use its property in a manner contrary to those ordinances and to the detriment of Plaintiffs. This conduct has constructively taken and damaged Plaintiffs' property contrary to Article 1 Sec. 17 of the Texas Constitution by taking and damaging their property without paying adequate compensation. This constitutes an in inverse condemnation of plaintiffs' property for which plaintiffs are entitled to receive compensation. Moreover, this taking of plaintiffs' property was done in bad faith and by fraud, entitling the plaintiffs to compensation. See *Westgate Limited Ltd. v. State*, 843 S.W.2d 448 (Tex. 1992). The Armeys and other plaintiffs, acting in reliance on the repeated false, bad faith representations of BWSC and Leggieri, spent large sums of money in the purchase and improvement of their properties. They would have gone elsewhere to purchase a similar property

not threatened by a high-rise water tower if those false representations had not been made.

7.03. Plaintiffs are entitled to recover the diminished fair market value of their property under their inverse condemnation claims.

VIII.

Fifth Cause of Action—Negligent Misrepresentation

(All Plaintiffs v. BWSC and Defendant Leggieri)

8.01. Plaintiffs incorporate by reference all previous paragraphs.

8.02. Plaintiffs herein assert a common law cause of action for negligent misrepresentation against Defendant BWSC.

8.03. During its permitting with the Town of Bartonville, BWSC represented to the Town of Bartonville that it would build only a ground level water tank on the subject property. In fact, BWSC's plan was at all times to build a 16-story water tower. Plaintiffs are a class of people who BWSC knew or should have known would rely on the misrepresentation.

8.04. BWSC's misrepresentation to the Town constitutes supplying false information for the guidance of others, to wit, the citizens of the Town of Bartonville.

8.05. BWSC did not exercise reasonable care or competence in communicating its intention to build a ground-level water tank when in fact it intended to build a 16-story monstrosity.

8.06. Plaintiffs herein each exercised due care before purchasing their respective properties. In doing so, each Plaintiff contacted the Town of Bartonville to determine what BWSC intended to do with the subject Property. The Town unwittingly spread BWSC's misinformation to Plaintiffs. Plaintiffs in turn justifiably relied on that representation when purchasing their property.

8.07. BWSC's negligent misrepresentation proximately caused Plaintiffs injury by negatively impacting the value of their properties and creating a nuisance. Plaintiffs seek benefit of the bargain damages. In the alternative, Plaintiffs seek reliance damages.

8.08. BWSC's negligent misrepresentation was so egregious that it rises to the level of gross negligence, recklessness, and malice, entitling Plaintiffs to recover exemplary damages.

4

4

IX.

Sixth Cause of Action—Common Law Fraud

(Richard K. and Susan D. Armev v. BWSC and Defendant Leggieri)

9.01. Plaintiffs Richard K. and Susan D. Armev assert a cause of action against BWSC for Common Law Fraud. Plaintiffs incorporate by reference all previous paragraphs.

9.02. When investigating whether or not to purchase his property, Richard Armev spoke directly with Jim Leggieri, BWSC's General Manager. Leggieri, acting in the scope and course of his employment with BWSC, told Armev that BWSC intended to build only a ground level water tank and would under no circumstances build a high-rise tower on the property in question. This false misrepresentation was made several times. This representation was false, as BWSC intended all along to build a 16-story water tower.

9.03. Relying on Leggieri's misrepresentation, Armev reasonably believed there would be no problem with a ground level tank. They personally inspected BWSC's other ground level tanks at Leggieri's suggestion. The Armevs purchased their property in direct reliance on Leggieri's statements.

9.04. Leggieri and BWSC made a material, false representation to Plaintiff Armev, namely that it would only build a ground level tank, and would not build a high-rise tower on the subject property.

9.05. When Leggieri and BWSC made this material, false representation, it knew it was false or, in the alternative, made the misrepresentation recklessly, as a positive assertion, and without knowledge of its truth.

9.06. BWSC intended that Armeys rely on its misrepresentation.

9.07. Armeys relied on BWSC's misrepresentation.

9.08. Armeys are now injured by that misrepresentation because BWSC is instead building a 16-story water tower, causing actual damages to the Armeys by damaging or destroying their right to quiet enjoyment of their property causing great emotional harm and by permanently damaging and destroying the fair market value of their property. The Armeys seek benefit of the bargain damages. In the alternative, the Armeys seek reliance damages.

9.09. The actions and conduct of Leggieri and BWSC were reckless, grossly negligent, and malicious. The Armeys are entitled to recover exemplary damages in an amount sufficient to punish the defendants for their conduct in proportion to their actual and consequential damages.

PRAYER AND JURY DEMAND

Actual and Consequential Damages: All Plaintiffs for all causes of action have sustained actual and consequential damages in the cumulative maximum amount of \$40 million, not including any award of exemplary damages a finder of fact may award at final trial.

Exemplary Damages: All Plaintiffs are entitled to recover exemplary damages in an amount fairly in proportion to the actual and consequential damages sustained, and in an amount sufficient to punish Defendants for their reckless, grossly negligent, and malicious conduct, and to warn others of the consequences of such conduct.

Temporary Injunction: Plaintiffs pray that this court issue a temporary injunction pending trial on the merits restraining and enjoining the Defendant Bartonville Water Supply Corporation, its successors and assigns, its General Manager, its Board of Directors, its agents, servants, contractors and subcontractors, and all others working in concert with them from constructing or continuing to construct the high-rise water tower in question pending final trial on the merits of this case.

Final Trial–Injunction: Plaintiffs pray further that upon final trial it have and recover a permanent injunction restraining and enjoining the Defendant Bartonville Water Supply Corporation, its successors and assigns, its General Manager, its Board of Directors, its agents, servants, contractors and subcontractors, and all others working in concert with them from ever constructing on said property any

water tower save and except the low rise storage tank and related structures originally represented, such improvements to be no higher than the 36 feet originally represented, and such construction to be surrounded by an appropriate fence and shielded from view by the existing trees on the property. Plaintiffs' pray for a mandatory injunction requiring the Defendants to dismantle and remove at their sole cost the high-rise tower, or so much of it as has been completed.

Final Trial—Nuisance and Abatement. Plaintiffs further pray for judgment that the high rise tower as proposed and erected is a nuisance per se, or alternatively a nuisance in fact, and that such nuisance be abated by its complete removal as set forth in plaintiffs plea for a permanent injunction; Plaintiffs further pray for recovery of the diminished market value of their property from the time of initial construction until full abatement, and for their emotional damages incurred from the inception of construction until full abatement; Plaintiffs further pray that in the event the court does not grant abatement that they recover the permanent diminished fair market value of their property, and that they recover their emotional damages in the past and in the future.

Final Trial—Inverse Condemnation: Plaintiffs further pray for judgment that the Defendants conduct constitutes an inverse condemnation of their properties, and awarding damages in the amount of the diminished fair market value of their properties.

Final Trial- Negligent Misrepresentation: Plaintiffs pray that they be awarded damages for the negligent misrepresentations made by Leggieri and BWSC.

Final Trial-Fraud: The Armeys pray that they be awarded actual and exemplary damages against Leggieri and BWSC for their fraudulent misrepresentations.

Jury Demand: Plaintiffs demand trial by jury of all fact issues upon which they are entitled to a jury under the Constitution and laws of the State of Texas.

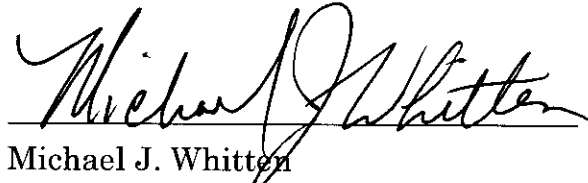
Court Costs and General Relief: Plaintiffs pray that they recover their costs of court herein expended and have such other and further relief, in law or in equity, to which they may justly be entitled.

4

4

Respectfully submitted,

Michael J. Whitten & Associates, P.C.
218 N. Elm Street
Denton, Texas 76201
(940) 383-1618
FAX: (940) 898-0196
Email: michael@whittenlawfirm.com

A handwritten signature in cursive script, reading "Michael J. Whitten", written over a horizontal line.

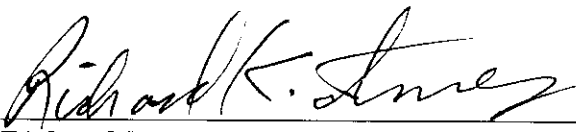
Michael J. Whitten
State Bar No. 2139200
Adam T. Whitten
State Bar No. 24077199
Attorneys for Plaintiffs

4

4


VERIFICATION

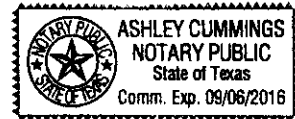
On this 15th day of March, 2013, personally appeared RICHARD K. ARMEY, who being by me duly sworn stated that he is a Plaintiff in the above case, that he has read the above and foregoing Plaintiffs' Second Amended Petition, that he has personal knowledge of the facts alleged therein, and that each allegation of fact is true and correct.



Richard K. Armey

SWORN TO AND SUBSCRIBED BEFORE ME on this 15th day of March, 2013, to certify which witness my hand and seal of office.


Notary Public, State of Texas




Certificate of Service

A true and correct copy of the above and foregoing document has been forwarded pursuant to Rule 21a of the Texas Rules of Civil Procedure on this 15th day of March, 2013 to the following:

Sent via Regular Mail:

Samuel B. Burke
Wood, Thacker & Weatherly, P.C.
400 W. Oak St.
Ste. 310
Denton, Texas 76201
Tel. (940) 565-6565
Fax. (940) 566-6673



MICHAEL J. WHITTEN