

CAUSE NO. _____

MARK S. WOLFE, in his Official	§	IN THE DISTRICT COURT
Capacity as Texas State Historic	§	
Preservation Officer,	§	
Plaintiff	§	
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
MAX BOWEN, MAX BOWEN	§	
ENTERPRISES and JUAN HIJO	§	
INVESTMENTS, LTD,	§	
Defendants	§	GALVESTON COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND TEMPORARY AND
PERMANENT INJUNCTIVE RELIEF AND REQUESTS FOR DISCLOSURES**

Mark S. Wolfe, in his Official Capacity as Texas State Historic Preservation Officer, files his Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief and Requests for Disclosures, and would show the Court as follows:

I. DISCOVERY

1. Plaintiff intends that discovery be conducted under Level 2 and affirmatively pleads that it seeks injunctive relief.

II. PARTIES

2. Mark S. Wolfe is the Executive Director of the Texas Historical Commission and the Texas State Historic Preservation Officer, designated as such by the Governor of Texas on October 9, 2009, pursuant to Tex. Gov’t Code § 442.004(k) (West 2009). Mr. Wolfe brings this lawsuit in his official capacity as Texas State Historic Preservation Officer. His address is 1511 Colorado Street, Austin, Travis County, Texas

78701.

3. Defendant Max Bowen, a natural person, may be served at 2990 U.S. Highway 287 S., Quanah, Hardeman County, Texas 79252-7224. Defendant Max Bowen Enterprises is believed to be a Texas sole proprietorship, also known as Max Bowen Enterprise, also known as Max Bowen Limited Partnership, a Texas Limited Partnership cancelled by the Secretary of State, also known as Max Bowen, individual, and as general partner of Max Bowen Limited Partnership. Defendant Max Bowen Enterprises may be served at its principal place of business at 12450 Highway 3, Webster, Harris County, Texas 77598-1542. These defendants are collectively referred to as “Bowen.”

4. Defendant Juan Hijo Investments, Ltd, also known as Juan-Hijo Investments, Ltd., is a domestic limited partnership whose principal office is 16055 Space Center Blvd., Ste. 190, Houston, Harris County, Texas 77062. It may be served through its agent for service of process, Jennifer J. Bowers, whose address is 16055 Space Center Blvd., Ste. 190, Houston, Harris County, Texas 77062. This defendant is referred to as “Hijo.”

III. VENUE

5. Venue is mandatory in Galveston County under Tex. Civ. Prac. & Rem. Code § 15.011 (West 2010) because this is a suit to recover damages to real property.

IV. FACTS

6. Fort Crockett was established in Galveston in 1903 as a coastal artillery installation of the U.S. Army. Various tracts were added to the military reservation until

it extended from 43rd Street to 57th Street and from Avenue Q to the seawall. During World War Two, the Fort served as a prisoner of war compound. Fort Crockett was decommissioned in 1946 and declared surplus in 1953. In 1956, the senior officers' quarters, some of the structures at issue here, were transferred to the U.S. Coast Guard. The remainder of the property was transferred to the General Services Administration ("GSA") for sale. The senior officers' quarters remained in the custody of the Coast Guard until 1996, when it was transferred to the GSA as surplus property.

7. On or about November 7, 2000, Defendant Bowen and Rio Grande Royalty Company, Inc. purchased from the GSA a portion of Fort Crockett of approximately 6.401 acres (the "Property"), further described in the legal description in the Deed Without Warranty (the "Deed") attached to this pleading as Exhibit 1 and incorporated into this pleading as if fully set forth herein. Defendant Hijo is, on information and belief, the successor in interest to Rio Grande Royalty Company, Inc.

8. The Property contains nine buildings that were used as officer housing at Fort Crockett while it was in use by the Army and subsequently by the Coast Guard. Five of the buildings were built in 1910 and four were built in the late 1930s. When viewed alongside remaining Fort Crockett structures and gun batteries, these officer quarters are a significant reminder of the fort's mission through World War II, and provide passersby with a sense of the overall post's size, and its role in the history of Galveston, Texas and the United States. The design of the officer quarters is an extension of the overall style and scale of the buildings at Fort Crockett, and they delineate the historic fort's easternmost boundary. The

buildings share similar characteristics, and despite years of neglect, they retain a good degree of integrity, creating a cohesive residential setting and a distinguishable example of coastal military housing.

V. CAUSES OF ACTION

9. The Deed, at page 9, contains the following restrictive covenants in favor of the SHPO, made applicable to the Defendants by its terms:

CERCLA NOTICES, COVENANTS AND RESERVATIONS

(i) The structures situated on said Property will be preserved and maintained in accordance with plans approved in writing by the Texas State Historic Preservation Officer (SHPO), Texas Historical Commission, Post Office Box 12276, Austin, TX 78711.

(ii) No physical or structural changes or changes in color or surfacing will be made to the exterior of the structures and architecturally or historically significant interior features as determined by the SHPO without the written approval of the SHPO.

10. Plaintiff Mark S. Wolfe (“Wolfe”), the Texas State Historic Preservation Officer (“SHPO”), may enforce the above restrictions through suit to enjoin such violations or for damages as provided in subsection (iii) of the Deed at page 9:

(iii) In the event of violation of the above restrictions, the United States General Services Administration (GSA) or the SHPO may institute a suit to enjoin such violation or for damages by reason of any breach thereof.

11. Defendants Bowen and Hijo are in violation of the above provisions for the following reasons:

a. They have failed to preserve and maintain the structures on the property as specifically required by the Deed, allowing the structures to deteriorate, causing damages to the interests of the SHPO.

b. They have refused to submit a plan for the preservation and maintenance of the structures on the property, in spite of repeated requests for a plan submitted to them by the

SHPO and the Texas Historical Commission.

c. They have indicated intent to demolish the structures without approval of the SHPO or the concurrence of the Advisory Council on Historic Preservation (“ACHP”), a federal agency, in violation of subsection (iv) of the covenants.

12. The obligations of Defendants Bowen and Hijo are contractual obligations voluntarily and willingly entered into by Defendants and are enforceable by this Court. Rather than meet their obligations under the deed, Defendants have intentionally engaged in a pattern and practice of demolition by neglect or de facto demolition of the structures on the Property.

13. All conditions precedent have been performed or have occurred.

VI. REMEDIES

A. Application for Temporary Restraining Order

14. Plaintiff’s application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code § 65.011(5), which provides that an injunction may issue to prevent irreparable injury to real or personal property. The Defendants have twice threatened irreparable injury to real property, i.e., the demolition of historic structures on the Property. Demolition of these buildings may be permitted only with the express consent of the SHPO and the concurrence of the ACHP.

15. Plaintiff asks the Court to issue a temporary restraining order to prevent the Defendants from taking any action to damage or destroy the structures on the Property.

16. It is probable that plaintiff will recover from defendant after a trial on the merits because Defendants are in clear violation of the deed covenants.

17. If plaintiff’s application is not granted, harm is imminent because Defendants have threatened to demolish the buildings without consent of the Commission or ACHP.

18. The harm that will result if the temporary restraining order is not issued is irreparable because if these historic buildings are demolished, it will be impossible to restore them.

19. Since injunction is authorized under Tex. Civ. Prac. & Rem. Code § 65.011(5), Plaintiff is not required to plead or show that it has no adequate remedy at law.

20. Plaintiff is an appointed official of the State of Texas, suing in his official capacity, and is not required to post bond. Tex. Civ. Prac. & Rem. Code § 6.001; *Vibber v. Unauthorized Practice Committee*, 575 S.W.2d 88 (Tex.Civ.App.–Hous. [14 Dist.] 1978, no writ).

B. Request for Temporary Injunction

21. Plaintiff asks the Court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against defendant.

22. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39. Defendants are the record owners of the Property.

C. Request for Permanent Injunction

23. Plaintiff asks the Court for a permanent injunction barring Defendants from damaging or demolishing the Property. In addition, Plaintiff asks the Court to issue an injunction to enforce the requirement to preserve and maintain the Property in accordance with an approved plan. If Defendants will not submit or agree to a plan for preservation and maintenance of the Property, the Court should impose a plan on Defendants.

24. Plaintiff asks the Court to set his request for a permanent injunction for a

full trial on the merits and, after the trial, issue a permanent injunction against the Defendants.

D. Request for Damages.

25. In the alternative, if Defendants will not provide for the preservation and maintenance of the Property, Plaintiff asks the Court to impose damages on the Defendants in an amount sufficient to pay for the maintenance and restoration of the Property. The Property and the structures on it should be restored to the condition they were in when the Property was transferred to the Defendants on November 7, 2000.

VIII. REQUESTS FOR DISCLOSURE

2. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (l).

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Wolfe prays for the following relief:

A. That the Court issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants Bowen and Hijo from damaging or demolishing the structures on the Property;

B. That the Court issue a permanent injunction requiring Defendants to preserve and maintain the structures on the Property in accordance with an approved plan.

C. That Defendants be ordered to pay damages in an amount sufficient to

restore the Property to the condition it was in at the time it was transferred to the Defendants or their predecessors;

D. That upon the final hearing in this case, the court grant attorney's fees and court costs to Plaintiff; and

E. That Plaintiff be awarded all such other and further relief, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

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ATTORNEYS FOR MARK S. WOLFE,
In His Official Capacity as Texas State
Historic Preservation Officer

CAUSE NO. _____

**MARK S. WOLFE, in his Official
Capacity as Texas State Historic
Preservation Officer,
Plaintiff**

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IN THE DISTRICT COURT

v.

____ **JUDICIAL DISTRICT**

**MAX BOWEN, MAX BOWEN
ENTERPRISES and JUAN HIJO
INVESTMENTS, LTD,
Defendants**

GALVESTON COUNTY, TEXAS

VERIFICATION

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day, personally appeared Mark S. Wolfe, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said he read the foregoing Plaintiff's Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief and Requests for Disclosures and that the facts stated in it are within his personal knowledge and are true and correct.

Mark S. Wolfe

SUBSCRIBED AND SWORN to before me on this the ____ day of _____,
2011.

Notary Public in and for the
State of Texas