

RANGER AIRFIELD MAINTENANCE FOUNDATION,

Plaintiff,

v.

CITY OF RANGER, a Texas Municipal Corporation,

Defendant.

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IN THE DISTRICT COURT OF

____ JUDICIAL DISTRICT

EASTLAND COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Ranger Airfield Maintenance Foundation (the "Foundation") files this Original Petition against Defendant City of Ranger, a Texas Municipal Corporation (the "City" or "Defendant"), and respectfully shows the Court as follows:

I. INTRODUCTION

This is a case about a City and its officials who have refused to honor contractual commitments to a non-profit organization that has been serving the City's residents for years. After entering into an express contractual agreement to convey ownership of the Ranger Airport and Airport Property to the Foundation, the City is now refusing to honor its contract and is refusing to convey ownership of the property to the Foundation. The City's refusal to honor its contractual commitment to the Foundation has caused the Foundation to suffer significant damages. Accordingly, the Foundation was forced to bring this lawsuit against the City.

II. DISCOVERY LEVEL

1. Discovery in this matter will be conducted under Level 3 of the Texas Rules of Civil Procedure. In accordance with Rule 47 of the Texas Rules of Civil Procedure, the Foundation

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Tessa Culverhouse
District Clerk
Eastland County, Texas

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states that at this time, it is currently seeking specific performance of the City's obligations under a contract involving real property and monetary relief of over \$250,000 but not more than \$1,000,000.

III. PARTIES

2. Plaintiff Ranger Airfield Maintenance Foundation is a non-profit corporation who maintains its principal place of business in Ranger, Texas.

3. ~~Defendant City of Ranger is a Texas Municipal Corporation in Eastland County, Texas. The City of Ranger may be served with process through its mayor, John Casey, its clerk, Somer Lee, or its secretary, Savannah Fortenberry, at 400 W. Main Street, Ranger, Texas 76470, or wherever they may be found.~~

IV. VENUE AND JURISDICTION

4. The Court has subject matter jurisdiction over this lawsuit because no other court has exclusive jurisdiction of the subject matter of these causes, and the amount in controversy exceeds this Court's minimum jurisdictional requirements.

5. Venue is proper in Eastland County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because Eastland County is the county in which all, or a substantial part of, the events or omissions giving rise to the Foundation's claims occurred. Additionally, venue is proper in Eastland County pursuant to Texas Civil Practice and Remedies Code § 15.011 because this is a suit concerning real property or an interest in real property and Eastland County is the county in which all or part of the property is located. Further, venue is proper in Eastland County, Texas pursuant to the December 4, 2018 Lease Agreement between the parties.

V. FACTUAL BACKGROUND

A. The Foundation.

6. The Foundation is a non-profit organization dedicated to rehabilitating, restoring, preserving, and supporting the historic grass airfield located in Ranger, Texas. A vital part of the City of Ranger for over a decade, the Foundation and its team of dedicated volunteers have spent over a decade serving the City and its residents through their work preserving and maintaining the Ranger Airfield (work the City itself admittedly cannot afford to do).

B. The City Enters into a Lease Agreement and Subsequent Amendment with the Foundation.

7. To further these preservation efforts (and because the City cannot afford to preserve the airfield on its own), the Foundation and the City entered into that certain December 4, 2018 Lease Agreement (the "Lease") for 81 acres of land that comprises the Ranger Municipal Airport. See the December 4, 2018 Lease Agreement, attached as Exhibit A; see also the Survey of the Ranger Municipal Airport, attached hereto as Exhibit B.

8. The purpose of the Lease was to provide the Foundation a right to use and occupy the Ranger Airport in exchange for the Foundation's agreement to maintain and preserve the airfield. The Lease was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

9. The City and the Foundation operated under the Lease for several years without issue. After the Lease was signed, the Foundation made major improvements to the airfield property at no cost to the City. Subsequently, on or around January 31, 2022, the Foundation and the City entered into that certain First Amendment to the Lease Agreement (the "Amendment"). See the January 31, 2022 First Amendment to the Lease Agreement, attached hereto as Exhibit C.

10. The purpose of the Amendment was to allow the Foundation the right to purchase the Ranger Airport in exchange for certain improvements to the Airport and the Foundation's continued work to maintain the property as an airfield and to restore and maintain the City's historic 1928 hangar. The City's historical 1928 hangar would remain the property of the City under the Amendment, but the Foundation would fund and provide a much-needed restoration to the hangar. Restoration of the City's historical hangar is work the City cannot afford to do itself. The Foundation's agreement to restore the historical hangar for the City was more than sufficient consideration for the Amendment.

11. Through the Amendment, the City expressly represented that it "desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements." *See id.* (emphasis added). Specifically, the City agreed that:

1. **Additional Hangars.** Lessee shall permit not less than three (3) new, vintage-style appearance aircraft hangars to be constructed on Airport property by approved third parties. Lessee also agrees to sublease to each third party constructing a new hangar, a lot of land in the dimensions of the newly constructed hangar. Said lots will be sold/transferred to private ownership upon execution of Section 3 below. The aforementioned third parties are subject to approval by Lessee, and that approval cannot be unreasonably withheld.

2. **1928 Hangar.** Lessee shall restore Lessor's 60'x60' 1928 hangar to its historical 1928 size and appearance.

3. **Purchase Option.** Upon completion of Sections 1 & 2 above and subject to adherence to all provisions that are required under Texas Department of Transportation Airport Division, Lessor shall convey to Lessee the Airport and Airport Property as set out in Exhibit "A" attached hereto and incorporated herein. Airport Property shall include Airport land, rights, fixtures, and appurtenances, but shall not include the approximately 80'x80' lot of land upon which the City's 1928 hangar. Such hangar shall continue to serve as the Leased Premises under the Lease between Lessor and Lessee. Conveyance shall be under a Special Warranty Deed with an automatic right of reversion outlined in 4 below.

See Ex. C, ¶¶ 1-3.

12. The Amendment further contained the following right of reversion:

4. Right of Reverter. Under the terms of the Special Warranty Deed, Lessee is granted the Airport and Airport Property to facilitate development of the property around the Airport with personally owned hangars. Subject to the Special Warranty Deed, Lessee agrees that the Airport's current runways and infield will not be developed, and no currently existing runway (longest being Runway 1/19, 3400 feet) will be shortened more than 25% in length or in any way permanently closed. If any of these events occur, Lessee's right of ownership to the runways and the infield shall automatically revert to Lessor.

See id., ¶ 4.

13. Over the course of four City meetings spanning ninety-eight days, the Amendment was unanimously approved and authorized by the City Commissioners and signed by the Mayor.

C. **The Foundation Relies on the City's Express Representations to its Detriment; the City Breaches its Contracts.**

14. Relying on the City's representation that it desired to convey ownership of the Airport to the Foundation, the Foundation went to work fulfilling its contractual obligations to the City. Specifically, as was required under the Amendment, the Foundation found approved third parties who were willing to build not less than three (3) new, vintage-style appearance aircraft hangars on the Ranger Airport property. *See* Ex. C, ¶ 1. Further, the Foundation raised over \$200,000 in funds to restore the City's existing 1928 hangar to its historical size and appearance.

Id., ¶ 2.

15. In short, the Foundation was ready, willing, and able to fulfill all of its contractual obligations and conditions under the Amendment and has already provided much needed value to the City.

16. In exchange for these efforts, the City expressly agreed to "convey...the Airport and Airport Property" to the Foundation. *Id.*, ¶ 3. Rather than live up to its promises, however, the City has refused to honor its commitments. Specifically, the City has refused to allow those third parties to construct the necessary vintage-style hangars on the Airport Property and has refused to convey the Airport Property to the Foundation as was required under the Amendment once the

three hangars and restoration of the City's historic hangar was completed. Instead, the City has disregarded its contract with the Foundation, has sought to impose additional restrictions upon the Foundation that were not part of the written agreement, and is seeking additional consideration from the Foundation as an additional condition to the agreement.

17. Even worse, the very same City officials who approved the Lease and the Amendment (and encouraged the Foundation to raise over \$200,000 to support the restoration of City property) are now interfering with the Lease and blocking the Foundation's attempts to construct and sublease new hangars on the premises. The City's refusal to honor its contractual commitments to the Foundation have caused the Foundation to suffer significant damages.

18. In sum, the City has refused to honor its contractual commitment to the Foundation. The City's actions are wrongful and are a breach of the Amendment. If the City does not cease its wrongful behavior, the Foundation will lose crucial contracts and will suffer irreparable injury.

VI. CAUSES OF ACTION¹

COUNT 1: Breach of Contract.

19. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

20. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it "desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements."

21. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

¹ To the extent necessary, the Foundation pleads each and every cause of action herein in the alternative.

22. The Foundation fully performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has failed to comply with its obligations under the Amendment.

23. The City materially breached the Amendment by failing to comply with the conditions of the Amendment, including without limitation.

24. As a direct and proximate result of the City's breach of the Amendment, the Foundation seeks specific performance of the City's obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys' fees incurred.

25. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271.

26. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 2: Anticipatory Breach of Contract.

27. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

28. The Foundation and City entered into a valid, enforceable contract (*i.e.* the Amendment) whereby the City expressly represented that it "desire[d] to *convey ownership* of the Airport to [the Foundation] upon the satisfaction of certain improvements."

29. The Amendment constitutes a valid and binding contract between the Foundation, on the one hand, and the City, on the other.

30. The Foundation performed its obligations and satisfied all conditions precedent under the Amendment. The City, however, has absolutely repudiated its obligations under the Amendment. Specifically, the City repudiated its obligations under the Amendment by refusing to allow those third parties to construct the necessary vintage-style hangars on the Airport Property thus refusing to convey the Airport Property to the Foundation as was required under the Amendment. The City has further repudiated its obligations under the Amendment by disregarding its contract with the Foundation, seeking to impose additional restrictions upon the Foundation that were not part of the written agreement, and seeking additional consideration from the Foundation as an additional condition to the agreement.

31. The City's repudiation was without just excuse and the Foundation has been damaged as a result.

32. As a direct and proximate result of the City's anticipatory breach of the Amendment, the Foundation seeks specific performance of the City's obligations under the Amendment and damages in an amount to be determined at trial, in addition to court costs and attorneys' fees incurred.

33. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this anticipatory breach of contract claim because the City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of this claim.

34. Attorneys' Fees. The Foundation is entitled to recover reasonable attorneys' fees under Chapter 38 of the Texas Civil Practice & Remedies Code, because this suit is for anticipatory

breach of a written contract. The Foundation has retained counsel, who presented the Foundation's claims to the City. The Foundation is entitled to an award of reasonable attorneys' fees in an amount to be proven at trial.

COUNT 3: Declaratory Judgment.

35. The Foundation realleges and incorporates by reference the preceding paragraphs for all purposes, the same as if set forth herein.

36. Pursuant to the Texas Uniform Declaratory Judgment Act and Chapter 37 of the Texas Civil Practice and Remedies Code, this Court is able to declare the rights, status, and other legal relations of the parties to this action with respect the Agreement.

37. A real and present controversy exists between the Foundation and the City regarding the interpretation of the Amendment and whether the City is obligated to convey ownership of the Ranger Airport and Airport Property to the Foundation.

38. Pursuant to the Texas Uniform Declaratory Judgment Act, the Foundation seeks a declaration from the Court that: (i) the Amendment is a valid and binding agreement; (ii) the Foundation has met all conditions precedent under the Amendment; (iii) the City is obligated to convey ownership of the Ranger Airport and the Airport Property to the Foundation upon the completion of certain improvements; (iv) Section 1 of the Amendment does not require the Foundation to seek City approval prior to entering into the necessary leases and subleases with third parties for three vintage style airport hangars; and (v) the City is not entitled to receive any further consideration from the Foundation in exchange for the City's conveyance of the Airport and Airport Property.

39. Pursuant to Texas Government Code § 271.152, the City has waived sovereign immunity to this suit for the purpose of adjudicating this declaratory judgment claim because the

City entered into a contract with the Foundation that is subject to Texas Government Code § 271 and that contract forms the basis of the Foundation's claim.

40. Pursuant to Texas Civil Practice and Remedies Code § 37.009, the Foundation is entitled to recover its reasonable and necessary attorneys' fees and costs from the City.

VII. CONDITIONS PRECEDENT

41. All conditions precedent to the Foundation's claims for relief have been performed or have occurred.

VIII. REQUEST FOR RELIEF

The Foundation respectfully requests that this Court, upon final disposition of this matter, enter judgment against the City for the following relief:

(A) Compensatory damages in an amount to be determined at trial;

(B) Any other damages, including consequential and special damages;

(C) Specific performance of the City's obligations under the Sections 1 and 2 of the Amendment;

(D) A declaratory judgment that: (i) the Amendment is a valid and binding agreement; (ii) the Foundation has met all conditions precedent under the Amendment; (iii) the City is obligated to convey ownership of the Ranger Airport and the Airport Property to the Foundation upon the completion of certain improvements; (iv) Section 1 of the Amendment does not require the Foundation to seek City approval prior to entering into the necessary leases and subleases with third parties for three vintage style airport hangars; and (v) the City is not entitled to receive any further consideration from the Foundation in exchange for the City's conveyance of the Airport and Airport Property;

(E) Pre-judgment and Post-judgment interest on all sums at the maximum rate allowed by law;

(F) The Foundation's reasonable attorneys' fees and expenses incurred in the filing and prosecution of this action;

(G) All costs of court;

(H) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and

(I) Such other relief to which is Court deems the Foundation is justly entitled.

Dated: December 30, 2022

Respectfully submitted,

/s/ Schyler P. Parker

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