

CAUSE NO. DC-23-16845

DALLAS SHORT-TERM RENTAL	§	IN THE DISTRICT COURT
ALLIANCE, SAMMY AFLALO,	§	
VERA ELKINS, DANIELLE	§	
LINDSEY, and DENISE LOWRY,	§	
	§	
<i>Plaintiffs,</i>	§	DALLAS COUNTY, TEXAS
	§	
v.	§	
	§	
CITY OF DALLAS,	§	
	§	
<i>Defendant.</i>	§	95th JUDICIAL DISTRICT

~~PROPOSED~~ TEMPORARY INJUNCTION ORDER

On December 1, 2023, this Court heard Plaintiffs Dallas Short Term Rental Alliance (“DSTRA”), Sammy Aflalo, Vera Elkins, Danielle Lindsey, & Denise Lowry’s (collectively, “Plaintiffs”) Application for Temporary Injunctive Relief against Defendant City of Dallas (the “City”). The Court considered Plaintiffs’ application, evidence presented at the hearing, and the written and oral arguments of counsel. The Court finds that Plaintiffs have met their burden to establish that they have a probable right of recovery on their causes of action against the City of Dallas, on the finding of the facts as set forth below. The Court further finds the Court must enjoin the City from enforcing the STR Ordinances to prevent imminent and irreparable harm.

Based on the evidence presented at the hearing on Plaintiffs’ application for temporary injunction, Plaintiffs have a substantial likelihood of success on the merits of each of their causes of action, as described below.

The City of Dallas has enacted certain ordinances¹ that seek to regulate short-term rentals (“STRs”) within city limits. Plaintiffs presented evidence that short-term rentals have been a vibrant industry in Dallas for decades. Short-term rentals are generally defined as rentals of property for less than 30 days. Commonly known today as “AirBnb,” “VRBO,” or “HomeAway,” for the online platforms that facilitate them, Plaintiffs presented evidence that STRs provide temporary lodging for a variety of guests: out-of-state visitors traveling to Dallas for weddings, concerts, to see family members who are hospitalized, or local Dallas citizens who are briefly dislodged from their residence for construction or an emergency. Plaintiffs presented evidence that STRs provide needed housing for people who prefer to stay in a home rather than a hotel.

Plaintiffs presented evidence that Plaintiffs recognized the need for this important kind of temporary housing, and along with thousands of other STR owners and operators in Dallas, Plaintiffs purchased and established single family residences for the purpose of operating STRs. Specifically, Plaintiff Dallas Short Term Rental Alliance (“DSTRA”) is a non-profit organization with a mission to educate STR owners on laws and best practices for effective and harmonious operations within their communities, promoting reasonable and effective legislation that allows unencumbered operation of reasonably operated STRs, and to leverage the resources of the STR community to boost economic growth and prosperity.

¹ The relevant ordinances are Dallas, Texas, City Code § 51-4.216.1, 51A-4.110, 51A-4.121, 51A-4.124, 51A-4.125, 51A-4.126, 51A-4.727, and 51A-4.205 (2023) (“Zoning Ordinance”); Dallas, Texas, City Code § 27-30, 42B, (2023) (“Registration Ordinance”).

The other plaintiffs—Sammy Aflalo, Vera Elkins, Danielle Lindsey, and Denise Lowry (collectively, “Homeowners”)—are members of DSTRA. (“DSTRA” and “Homeowners” are referred to collectively, “Plaintiffs”). Plaintiffs presented evidence that each of them lawfully operates an STR or STR-related business within the City. They have invested hundreds of thousands of dollars, excluding mortgages which exceed millions of dollars, into the STR industry in Dallas.

Capitalizing on the booming industry, Plaintiffs presented evidence that at least as early as October 2019, the City began collecting Hotel Occupancy Taxes (“HOT Taxes”) from STRs and even established an online registration portal to help STR owners to register their STR properties with the City. Plaintiffs presented evidence that the City has collected over \$3.4 million in tax revenue from STRs this year alone, and nearly \$10 million since 2019. Plaintiffs presented evidence that STR owners, including Plaintiffs, faithfully paid those HOT taxes to the City, just to be informed of the City’s new ban against STRs in residential areas.

Plaintiffs presented evidence that the legal environment for STRs changed on June 14, 2023, when the City Council enacted two new laws. The first, called the Zoning Ordinance, defined a new land-use category called “[s]hort-term rental lodging,” and banned that use from areas zoned for single-family residential use. Plaintiffs presented evidence that the Zoning Ordinance will ban approximately 95 percent of STRs within City limits.

The Court considered the City’s studies, specifically the June 2023 study, that the City claims it relied on in enacting the STR Ordinances. Plaintiffs presented evidence

regarding the City's alleged governmental interests, including concerns that appear to be centered around a small number of "nuisance" properties, the City's apparent concern regarding the lack of affordable housing in the City, complaints from members of the Dallas community, preventing excessive traffic, noise, and density, and other broad and undefined interests regarding life, health, safety, and welfare. Plaintiffs presented evidence that the June 2023 study is ~~unreliable~~ ^{not conclusive} (indeed, that study's authors caution ~~against reliance on it~~), and ~~grossly~~ ^{grossly} overestimates the associated concerns with STRs that the City claims are the basis for its governmental interests. Plaintiffs thus presented evidence that the STR Ordinances do not rationally relate to the claimed governmental interests based on any available data. Plaintiffs also presented evidence that the City's claimed interests about housing, "neighborhood character" and the like are unquantified and unquantifiable, and that the City does not know how much improvement the Ordinances will actually achieve in those areas – if any.

Plaintiffs presented evidence that as soon as December 13, 2023, STRs will only be allowed where other "lodging" is permitted – specifically, in areas zoned for multi-family residences, hotels or commercial properties. And Plaintiffs further established that those STRs are subject to another new law – the Registration Ordinance – that imposes several oppressive regulations on those few remaining STRs.

In summary, Plaintiffs have presented competent evidence as to each and every element of their causes of action:

- a. Plaintiffs are likely to prevail on their due course of law claim because the

STR Ordinances are likely unconstitutionally oppressive in light of the alleged government interests. The right to conduct STR activity is a vested right in Texas that is a component of home ownership. It appears likely that the City cannot show that the STR Ordinances are rationally related to deterring nuisances, and in any event, nuisance ordinances that already exist in the Dallas City Code could be enforced to prevent any nuisance violation.² It further appears likely that the STR Ordinances are not rationally related to increasing affordability of housing in Dallas, and the City's other stated interests do not appear connected to the overly broad and excessively detailed regulations in the Registration Ordinance.

- b. Plaintiffs are likely to prevail on their takings claim because the STR Ordinances are likely a regulatory taking. A regulatory taking occurs when the government's regulations impact the value of a property without just compensation. It appears likely that the STR Ordinances constitute a taking of Plaintiffs property, particularly those properties that were acquired and improved upon for the purpose of operating an STR, in that they can no longer engage in the STR activity which they have a vested right to conduct

² Dallas, Texas, City Code § 27-17 (Public Safety Nuisance); 27-11 (Minimum Property Standards); 107.6 of the Dallas Fire Code (Overcrowding); 7A-18 (Duty to Maintain Premises Free From Litter); 18-13 (Growth to Certain Height Prohibited); 30-1 (Loud and Disturbing Noises and Vibrations); 30-4 (Loudspeakers and Amplifiers); 51 and 51A ("Parking").

under Texas law.

- c. Plaintiffs are likely to prevail on their claim that the STR Ordinances are unconstitutionally retroactive. The Texas Constitution protects the reliance interests of its citizens by preventing the government from, such as here, banning an industry that citizens have invested in. Plaintiffs are likely to establish that they relied on the minimally nature of the STR industry (reflecting the status of STR activity as a vested property right under Texas law), coupled with the payment of hotel occupancy taxes to the State of Texas and the City of Dallas (and the City's encouragement of and acceptance of same), and in reliance on the ability to operate STRs, Plaintiffs did so and invested millions of dollars into their businesses.
- d. Plaintiffs are likely to prevail on their equal protection claim. Plaintiffs are likely to show that STR owners and Dallas homeowners are similarly situated. Specifically, Plaintiffs are likely to prevail on their claim that the City unconstitutionally discriminates against STR owners and operators because there is ~~no~~ ^{not sufficient} evidence that STRs cause excessive traffic, noise, density, or other nuisances that the City claims justify the STR Ordinances. Further, Plaintiffs are likely to prevail on its claim that the Registration Ordinances unconstitutional discriminates against STR owners with disparate and punitive fines that Dallas homeowners are not subject to for

the same or similar code violations. Additionally, as to all such classifications, the City has not established that any term of the Registration Ordinance is sufficiently tailored to support a compelling state interest to satisfy strict scrutiny, since those classifications all burden the fundamental vested right in Texas law to engage in STR activity as a homeowner.

- e. Plaintiffs are likely to prevail on their claim that the Ordinances violate the Zoning Enabling Act. That Act limits local zoning power and purposes as to residential use. Tex. Loc. Gov't Code §§ 211.003-004. The Zoning Ordinance exceeds those limits because it is a ban on residential use, not a restriction (remembering that STR activity is a vested property right as a component of home ownership). As to both Ordinances, the City failed to articulate a claimed interest with a specific connection to any particular grant of authority in the Act, and in particular the claimed interests about "housing stock" and the like are not referenced in the Act at all. Accordingly, as a matter of law, the Ordinances are void and unenforceable.
- f. Plaintiffs are likely to prevail on their claim that the Ordinance violate the so-called "Death Star Act," enacted in the last legislative session as HB 2127, and codified in relevant part of section 1.004 of the Property Code. The Court notes that this law is presently the valid and enforceable law of Texas, and that the City will have received any required notice of this claim by the

time of trial on the merits. The Court concludes that sections 92.001, 92.002, 92.010, and 92.153 of the Property Code, when construed in the full context of applicable Texas law (including established rights under property law and the HOT Tax provisions of the Texas Tax Code), show the Legislature's intent to occupy the field of STR regulation and thus cause the Ordinances to be preempted and unenforceable under HB 2127.

Unless the City is enjoined from enforcing the STR Ordinances, there is a substantial risk of probable, imminent, and irreparable injuries to Plaintiffs because Plaintiffs, and the vast majority of other STR owners in Dallas, will immediately lose the ability to lease their property for less than 30 days.

These injuries are probable given that the City intends to enforce the Zoning Ordinance as of December 13, 2023, and the Zoning Ordinance is a complete ban on any STR within a single-family zoned area.

These injuries are imminent because enforcement is set to begin within the next two weeks, and enforcement of the STR Ordinances will cause irreparable injury because violations of constitutional rights are inherently irreparable, and the destruction of a person's business (and therefore, livelihoods) is a sufficient and well-recognized justification for equitable relief. There is no adequate remedy at law because it will be impossible to quantify the near decade of investments Plaintiffs made in their STR businesses, including the hiring of employees, acquisition of numerous properties, and

improvements on those properties made in reliance on the City's representations that STRs were and are a lawful business.

The injuries to Plaintiffs resulting from the City's enforcement of the Ordinances outweighs any damage that this Temporary Injunction, if any, may cause to the City.

This injunction will not disserve the public interest. To the contrary, it is in accord with Texas public policy to protect and preserve the constitutional rights of property owners in Texas, and to prevent government overreach.

The Court hereby ENJOINS the City of Dallas from any enforcement of the Zoning Ordinance and Registration Ordinance. This order does not bar the enforcement of registration, taxation, and general anti-nuisance laws that were in effect before the enactment of those Ordinances.

This temporary injunction shall remain in effect through trial, except upon further order of this Court.

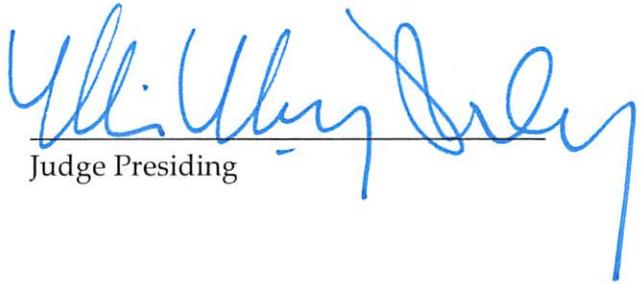
This temporary injunction shall be effective upon Plaintiffs' filing of a bond depositing the amount of ~~\$1,000~~ ^{\$3,500.- (P)}. The Court will allow the Clerk of Court to accept a personal, company, insurer, or law firm check. The Clerk of Court shall, on the filing by Plaintiffs of the check, bond, or cash in lieu of bond, and on approving same as required by the law, issue a writ of injunction conforming with the law and the terms of this temporary injunction.

It is further **ORDERED** that this case be set for trial on the merits beginning on

June 3, 2024 at 9:00am in the 95th Judicial District Court of
Dallas County, Texas.

The City of Dallas is hereby notified that violation of this Order by the City, its officers, agents, attorneys, servants, employees and/or by any person acting in active concert of participation with the City and who receives actual notice of this Order, may be subject to contempt proceedings.

SIGNED AND ENTERED at 9:00 a.m./p.m. on this 6th day of
Dec., 2023.



Judge Presiding