

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WINDHOVER, INC. AND	)	
JACQUELINE GRAY,	)	
	)	
Plaintiffs,	)	Cause No. 07-cv-881 ERW
	)	
v.	)	
	)	
CITY OF VALLEY PARK, MISSOURI,	)	
	)	
Defendant.	)	

**PLAINTIFFS' STATEMENT OF
UNCONTROVERTED MATERIAL FACTS**

Pursuant to L.R. 7-4.01(E), Plaintiffs Windhover, Inc. and Jacqueline Gray hereby submit the following statement of uncontroverted material facts in support of their motion for summary judgment.

1. The City of Valley Park is a City of the fourth class located in St. Louis County, Missouri. (Def's Statement of Uncontroverted Material Facts (Doc. No. 55) at 1.)
2. On July 17, 2006, the City enacted Ordinance No. 1708, entitled, "AN ORDINANCE RELATING TO ILLEGAL IMMIGRATION WITHIN THE CITY OF VALLEY PARK, MO." (Ex. A.)
3. Ordinance No. 1708 imposed penalties on any business that "aids or abets illegal aliens or illegal immigration" and on any person who "allows an illegal alien to use, rent or lease their property." (*Id.* at Section Two.)

4. As to any business that violated the ordinance, Ordinance No. 1708 purported to deny it “approval of a business permit, the renewal of a business permit, [and] city contracts or grants for a period not less than five (5) years from its last offense.” (*Id.*)

5. On September 22, 2006, Plaintiff Gray and others filed a Petition for Declaratory and Injunctive Relief in the Circuit Court of Saint Louis County, *Reynolds v. City of Valley Park*, No. 06-CC-3802, alleging that Ordinance No. 1708 violated state and federal law. (Ex. B.)

6. The *Reynolds* petition alleged that Ordinance No. 1708 violated Missouri statute Mo.R.S. § 79.470. (*Id.*)

7. On September 25, 2006, the Missouri state court entered a temporary restraining order enjoining the enforcement of Ordinance No. 1708. (*Reynolds v. City of Valley Park*, No. 06-CC-3802, Temporary Restraining Order (Sept. 25, 2006), Ex. C.)

8. On September 26, 2006, the City enacted Ordinance No. 1715, which was entitled, “AN ORDINANCE REPEALING SECTIONS ONE, TWO, THREE[,] AND FOUR OF ORDINANCE NO. 1708 RELATING TO ILLEGAL IMMIGRATION WITHIN THE CITY OF VALLEY PARK, MO, AND ENACTING A NEW ORDINANCE IN LIEU THEREOF RELATING TO THE EMPLOYMENT OF AND HARBORING OF ILLEGAL ALIENS WITHIN THE CITY OF VALLEY PARK, MO.” (Ord. No. 1715, Ex. D.)

9. Ordinance No. 1715 purported to repeal Ordinance No. 1708 and enact in its place new regulations that prohibited the provision of employment or housing to an “illegal alien” or “unlawful worker.” (*Id.*)

10. Ordinance No. 1715 purported to penalize any landlord who leased property to an “illegal” immigrant or any business that employed an “unlawful worker.” (*Id.* at Section Four, Subsection A, Section Five, Subsection A.)

11. With respect to businesses, Ordinance No. 1715 purported to make it “unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the City.” (*Id.* at Section Four, Subsection A.)

12. Ordinance No. 1715 provided that enforcement actions would be initiated by a written complaint to the Valley Park Code Enforcement Office, which would then within three days demand from the business entity “identity information” regarding any person alleged to be an unlawful worker. The business would have three days to provide the information or its business license would be suspended. (*Id.* at Section Four, Subsection B.)

13. Ordinance No. 1715 provided that “[t]he Valley Park Enforcement Office shall suspend the business license of any business entity which fails to correct a violation of this section within three (3) business days after notification of the violation by the Valley Park Enforcement Office.” (*Id.* at Section Four, Subsection B.(4).)

14. The suspension would last until one day after a legal representative of the business entity submits a sworn affidavit attesting that the violation has ended. (*Id.* at Section Four, Subsection B.(6).)

15. On September 27, 2006, Gray and the other plaintiffs filed an Amended Petition challenging Ordinance No. 1715. (Ex. E.)

16. An Amended Temporary Restraining order was entered on September 27, 2006, enjoining the enforcement of both Ordinance Nos. 1708 and 1715. (*Reynolds v. City of Valley Park*, No. 06-CC-3802, Amended Temporary Restraining Order (Sept. 27, 2006), Ex. F.)

17. On February 14, 2007, the City enacted Ordinance No. 1721. (Ex. G.)

18. Ordinance No. 1721 was directed to landlords and to the rental of dwellings to persons “unlawfully present in the United States.” (*Id.* at Section Two.)

19. On February 14, 2007, the City enacted Ordinance No. 1722. (Ex. H.)

20. Ordinance No. 1722 was directed to business entities. (*Id.* at Section Four.)

21. The content of Sections Two, Three and Four of Ordinance No. 1722 is the same as the content of Sections Two, Three and Four of Ordinance No. 1715, respectively, except that: (1) Ordinance No. 1722 removes subsection E. from Section Two, which addresses the “harboring of illegal aliens”; (2) Ordinance No. 1722 (at least as amended) adds the word “knowingly” to the first line of Section Four, Subsection A; and (3) Ordinance No. 1722 (at least as amended) removes the words “solely or primarily” from the first line of Section Four, Subsection B.(2). (Ex. D; Ex. H.)

22. Section Four, Subsection B.(4) of Ordinance No. 1722 provides as follows: “The Valley Park Enforcement Office shall suspend the business license of any business entity which fails to correct a violation of this section within three (3) business days after notification of the violation by the Valley Park Enforcement Office.” (Ex. H at Section Four, Subsection B.(4).)

23. The content of Section Four, Subsection B.(4) of Ordinance No. 1722 is identical to the content of Section Four, Subsection B.(4) of Ordinance No. 1715. (Ex. D; Ex. H.)

24. Prior to the enactment of Ordinance No. 1736, Section Seven of Ordinance No. 1722 provided: “This Ordinance shall become effective from and after its passage and upon approval by the Mayor and upon “the termination of any restraining orders or injunctions now in force in Cause 06CC-3802, now pending in St. Louis County, Missouri, in Division 13.” (Ex. H, at Section Seven.)

25. On March 1, 2007, the Judge Wallace held a hearing in Cause 06CC-3802. (Ex. I.)

26. During the March 1, 2007 hearing in Cause 06CC-3802, the court received oral argument and testimony regarding: (1) whether the issue regarding the validity Ordinance No. 1708 and Ordinance No. 1715 had been rendered moot by the enactment of Ordinance No. 1721 and/or Ordinance No. 1722; and (2) the plaintiffs' motion for judgment on the pleadings. (Ex. I at 5.)

27. The transcript of the March 1, 2007 hearing in Cause 06CC-3802 reflects that Ordinance No. 1722 was expressly discussed during the hearing. (*Id.* at 35, 37, 41, 44-47, 49, 50, 51, 56, 58, 84, 87, 90.)

28. A copy of Ordinance No. 1722 was submitted to the court during the March 1, 2007 hearing in Cause 06CC-3802 as a hearing exhibit. (*Id.* at 35.)

29. At the March 1, 2007 hearing Cause 06CC-3802, the counsel for the City, Eric Martin, testified as follows: Q: "I want to make sure you're in agreement, that 1722 dealing with employment is virtually identical to 1715 in terms of regarding employment?" A: "There were some amendments made and the amendments included making prospective only in its application, and I believe an appellate process was set forth." Q: "But the substance is virtually identical?" A: "yes, sir." (*Id.* at 49.)

30. In oral argument at the March 1, 2007 hearing in Cause 06CC-3802, counsel for the City stated: "So what we have to do is determine if there's a similarity between the new ordinance 1721 and the landlord tenant provisions in 1708 and 1715. The employment provisions have not been changed in any of the statutes and I would not represent to the Court that there is a substantial change in the employment provisions." (*Id.* at 14.)

31. On March 12, 2007, the Circuit Court in Cause 06CC-3802 issued its Findings of Fact, Conclusions of Law, Order and Judgment ("Judgment"). (Ex. J.)

32. In its March 12, 2007 Judgment, the Circuit Court in Cause 06CC-3802 ruled that “the temporary restraining orders enjoining enforcement of Ordinance No. 1708 and Ordinance No. 1715 are hereby made permanent.” (*Id.* at 8.)

33. In its March 12, 2007 Judgment, the Circuit Court in Cause 06CC-3802 held:

Without deciding whether Defendant City of Valley Park has effectively repealed Ordinance No. 1708 and Ordinance No. 1715, . . . the Court finds the new ordinances [Ordinance No. 1721 and Ordinance No. 1722] are “sufficiently similar” to the old ordinances in that they are aimed at the same people and conduct and include some of the same penalties. Given that the substance of the new ordinances is the same, the Court concludes the challenged conduct will continue.

((*Id.* at 5, ¶ 2.)

34. In its March 12, 2007 Judgment, the Circuit Court in Cause 06CC-3802 further held:

Ordinance No. 1715 conflicts with Mo.R. Stat. § 79.470 . . . by forcing a business to forego a business permit, or renewal of a business permit, for a period of “not less than five (5) years.” These types of penalties are not authorized by the governing statute. In addition, the monetary value of such penalties exceeds the \$500 maximum fine authorized by Missouri law for an ordinance violation under Mo.R. Stat. § 79.470.

(*Id.* at 6-7, ¶10.)

35. In its March 12, 2007 Judgment, the Circuit Court in Cause 06CC-3802 further held:

This Court finds and concludes the penalty provisions of Ordinance No. 1709 and Ordinance No. 1715 are invalid due to conflicts with Missouri state law, leaving the remaining provisions ineffectual due to lack of any means of redress. Accordingly, the Ordinances are void in their entirety.

(*Id.* at 7, ¶13.)

36. Jacqueline Gray and Windhover, Inc., were plaintiffs in *Reynolds v. City of Valley Park*, No. 06-CC-3802.

37. The City of Valley Park was a defendant in *Reynolds v. City of Valley Park*, No. 06-CC-3802.

38. On March 14, 2007, Jacqueline Gray instituted this action in state court by filing a Petition for Declaratory and Injunctive Relief (“Petition”). (Ex. K.)

39. Among other things, the Petition in this matter asserted that the penalty provisions of Ordinance No. 1722 exceeded that authorized by Mo.R.S. § 79.740. (*Id.* at ¶ 27.a.)

40. The Petition in this matter also asserted that the City was estopped from enforcing Ordinance No. 1722 under principles of *res judicata* and collateral estoppel. (*Id.* at ¶ 27.b.)

41. On April 12, 2007, Plaintiff in this matter filed an Amended Petition of Declaratory and Injunctive Relief (“Amended Petition”) in this matter in state court, joining Windhover, Inc. as Plaintiff. (Ex. L.)

42. Among other things, the Amended Petition asserts that the penalty provisions of Ordinance No. 1722 exceeded that authorized by Mo.R.S. § 79.740. (*Id.* at ¶ 29.a.)

43. The Amended Petition in this matter also asserted that the City was estopped from enforcing Ordinance No. 1722 under principles of *res judicata* and collateral estoppel. (*Id.* at ¶ 29.b.) .

44. On April 20, 2007, the City filed a notice of appeal with respect Cause 06CC-3802 in the Missouri Court of Appeals. (Ex. M.)

45. In the August 10, 2007 status conference before this Court, counsel for the City stated:

The Reynolds I case, . . . the one that’s on appeal in state court, is an issue that was ordered by the St. Louis County Court, and that order that was adjudicated by the St. Louis County Court does not in any way concern Ordinance 1722. It does not mention 1722.

* * *

[Plaintiffs] chose to go to the Judge and ask for a ruling on the now repealed, and we thought moot, ordinance. The Judge nevertheless agreed to rule on the repealed ordinance, and so the appeal that's currently in the Missouri State Courts in an appeal that focuses on the question of mootness and whether the Judge properly ruled.

* * *

Nothing in the Judge's order in the state court refers to 1722, . . . nor could it be construed to refer to 1722.

* * *

[T]he appeal centers on the mootness of the Trial Court's ruling, not about any of the substantive issues before this Court[.]

(Ex. N at 8-9.)

46. The City has represented that on August 20, 2007, it enacted Ordinance No. 1736, which purports to make Ordinance No. 1722 immediately effective. (Ex. O.)

Dated: August 29, 2007

Respectfully submitted,

/s/ Daniel J. Hurtado

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on Defendant's counsel of record, listed below, by operation of the Court's ECF/CM system on August 29, 2007.

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