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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

HERIBERTA CONTRERAS
GRANADOS,

Plaintiff,

v.

CITY OF ONTARIO,

Defendant.

Case No.

COMPLAINT

(Violations of the Eighth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983; Article I, § 16 of the Oregon Constitution, Uniform Declaratory Judgments Act, ORS 28.020)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. For the past several years, defendant the City of Ontario, Oregon (“Ontario” or “the City”) has adopted a policy of vigorously enforcing its municipal code against local homeowners, for minor property infractions such as allowing too many weeds to grow or not

disposing of a vehicle the City has deemed to be “junk.” In doing so, Ontario has failed to follow its own policies and procedures around nuisance abatement notices. It does not give residents a meaningful opportunity to challenge the imposition of the fines or abate the underlying conditions, and it rapidly and arbitrarily increases the fees to exponential degrees. The City promptly then converts these fines to property liens.

2. As a result of these policies and procedures, Ontario residents may quickly find they owe many thousands of dollars they cannot afford. Some residents subject to Ontario’s nuisance abatement procedures owe more in property-related fines than their property is worth.

3. Ontario’s approach to nuisance abatement violates the Excessive Fines clauses of both the federal and state constitutions, as well as the Fourteenth Amendment’s Due Process Clause.

4. Plaintiff Heriberta Contreras Granados is a resident and property owner in Ontario who was fined more than \$10,000 for alleged violations of the city’s municipal code. Ms. Contreras Granados, who does not live on the subject property, worked diligently to remedy the violations as soon as she received notice of them. Despite her efforts, and despite the fact that she is extremely low-income, the City of Ontario placed a lien of nearly \$10,000 on her property.

JURISDICTION

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), as plaintiff’s claims arise under the Eighth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983. The Court has supplemental jurisdiction over plaintiff’s other claims pursuant to 28 U.S.C. § 1367, because such claims are so related to plaintiff’s federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

VENUE

6. Venue is proper pursuant to 28 U.S.C. § 1391 because defendant is a resident of this District, and a substantial part of the events or omissions giving rise to this lawsuit occurred here.

PARTIES

7. Defendant the City of Ontario is a city in eastern Oregon, with a population of approximately 11,600.

8. Plaintiff Heriberta Contreras Granados is a resident of and property owner in Ontario.

FACTUAL ALLEGATIONS

I. Ontario's Municipal Code Regarding Property-Related Nuisances

9. Chapter 7 of Ontario's Municipal Code ("OMC") authorizes the City to take action to address property-related nuisances.

10. OMC 7-1-2 defines "nuisance" broadly. Nuisance includes "[a]n accumulation of decomposed animal or vegetable matter, garbage, rubbish, manure, offal, ashes, discarded containers, waste, paper, debris, trash, hay, grass, straw, weeds, litter, rags or other refuse matter or substance which by itself or in conjunction with other substance is deleterious to public health or comfort, or is unsightly or emits an offensive odor." OMC 7-1-2(C).

11. "Nuisance" also includes "[w]eeds, grass, wild blackberry bushes or brush in excess of ten inches (10") above grade" and various specific "noxious weeds." OMC 7-1-2(L)-(M).

12. "Junk" and "Other Nontrash Items" are also potential "nuisances." OMC 7-1-2(P)-(Q).

13. "[I]tems of personal property" – including "used indoor furniture" – may be nuisances if stored outdoors. OMC 7-1-2(O).

14. The City’s nuisance abatement process begins when it issues an abatement notice, which provides 10 days to comply. OMC 1-15-9(A).

15. Prior to the issuance of an abatement notice, the City’s enforcement officer may, but is not required to, “pursue such attempts as are reasonable in light of the circumstances to secure voluntary correction of the violation.” OMC 1-15-9(B).

16. The nuisance abatement notice must include various information, including required corrective action, and “[a] short and plain statement of the matters asserted or charged.” OMC 1-15-9(D)(2).

17. Although the recipient of a nuisance abatement notice has 10 days to comply, she has 15 days to appeal the abatement notice, by filing an appeal notice with the City Recorder. OMC 1-15-11(A).

18. There are four bases on which to appeal an abatement notice: “(a)The abatement notice was issued in violation of, or is inconsistent with, the Code; (b)The abatement notice was issued in violation of, or is inconsistent with a rule; (c)The abatement notice is not supported by a factual basis; or (d)The abatement notice is in violation of other applicable federal, state or local law.” OMC 1-15-11(B)(3).

19. A property owner must pay a \$250 fee to appeal, refundable only if the owner prevails. OMC 1-15-11(C).

20. Failure to appeal, or to file a timely appeal, waives all rights to challenge the abatement notice. OMC 1-15-11(D).

21. A strong majority of homeowners who receive nuisance abatement notices from the City do not appeal.

22. Once it establishes the existence of a nuisance, typically because the homeowner did not challenge the abatement notice, the City “may cause the nuisance to be abated and may make efforts toward the elimination or ease of future abatements by such means as spraying, debris removal and leveling of land.” OMC 7-1-4(C)(1).

23. The City may then assess the actual costs it incurred in such abatement, including “incidental expenses” such as personnel time, debris removal, and notice-sending. OMC 7-1-4(E).

24. The City imposes a “minimum administrative fee of not less than one hundred dollars (\$100.00) . . . for each abatement notice issued.” OMC 7-1-4(E)(1).

25. The costs of abatement result in a property lien if not paid within 30 days, at which point interest begins to accrue at 6% annually. The City may also send the account to a private collections agency. OMC 7-1-4(E)(2), (3), (5).

26. “If the person, responsible [sic] objects to the cost of the abatement as indicated, he may file a notice of objection with the City Manager or his designee not more than ten (10) days from the date of the notice. Objections shall be heard by the City Manager or designee and shall be limited to the question of whether the amount of the abatement assessment is reasonable.” OMC 7-1-4(E)(1)(d).

27. In addition to imposing the costs of abatement, the City can pursue other remedies such as “an injunction, mandamus or other appropriate proceeding in Circuit Court to prevent, enjoin temporarily or permanently, or abate any nuisances” with prevailing party fees to the City only. OMC 7-1-5.

28. Violations may be subject to civil penalties in addition to abatement costs. These penalties are supposed to reflect the seriousness of the violation, the existence of prior violations, and attempts at compliance. OMC 1-15-15.

29. Second or subsequent nuisance violations by the same person are subject to an “assessment of an administrative fee, regardless if the second or subsequent violations are corrected. If the same real property has had two (2) or more abatement notices in a single calendar year, the City may assess a civil penalty immediately . . . and serve the notice of civil penalty with the abatement notice.” OMC 1-15-9(F).

30. City guidelines require enforcement officers to return seven days after imposing a penalty to assess progress with abatement. If the nuisance remains, the city may impose additional fines for each day following the original nuisance determination. These penalties are supposed to be $\frac{1}{4}$ of the original fine times seven, the number of days since the officer's last inspection and invoice.

II. Ontario's De Facto Policies Regarding Nuisance Abatement

31. Despite the limited procedural safeguards set forth in the Ontario Municipal Code and city policy, the City engages in de facto policies regarding nuisance abatement that leave low-income homeowners beset with debt they cannot afford.

32. The City's nuisance abatement notices are consistently vague and fail to specify the issue or matter purportedly requiring abatement. The notices often simply cite the code provision the homeowner is violating, without explaining what about the property is in violation.

33. These vague notices fail to put homeowners on notice of what they need to do to avoid nuisance abatement costs, fines, and penalties.

34. The City consistently fails to serve homeowners with the abatement notice in the manner set forth above in the OMC.

35. In addition, the City declines to check in on properties deemed to have nuisance issues regularly. Then, it retroactively imposes daily fines that quickly skyrocket.

36. Just as the initial notices of abatement are unspecific, so too are the City's correspondence purporting to identify costs of nuisance abatement.

37. Although the OMC is clearly aimed at empowering the City to impose its actual costs of nuisance abatement, the City's de facto policy is to engage in no corrective action, instead imposing increasingly steep fines and penalties on property owners.

38. As a result, many low-income homeowners in Ontario owe tens of thousands of dollars in nuisance abatement fees and fines, even though the City has taken no substantive steps to abate the nuisance. Sometimes, homeowners owe more than their property is worth.

39. Ontario's own mayor Riley Hill successfully sued the City to reverse a \$500 nuisance fine imposed on his company Eldorado Investments, Inc.

40. In recent months, the City imposed a moratorium pursuant to which it will not impose fines greater than \$100 while it is reviewing its code enforcement system. It has convened an ad hoc committee to review the City's practices.

41. Yet, despite this moratorium, many Ontario homeowners still owe large sums to the City, and are subject to property liens, because of the City's approach to nuisance abatement.

42. The City has imposed nearly \$1 million in unpaid nuisance abatement fines and penalties in the past four years. A City representative has publicly acknowledged that most of this debt is uncollectible.

III. Plaintiff Heriberta Contreras Granados

43. Heriberta Contreras Granados has lived in Ontario for 16 years.

44. Ms. Contreras Granados, who is 50 years old, communicates almost exclusively in Spanish. She can speak and read very little English and relies on others, such as her daughter, to assist with interpretation.

45. Ms. Contreras Granados is extremely low-income. She lives with her daughter.

46. Together with her husband, Ms. Contreras Granados owns a house and real property located at 248 SE 1st Street in Ontario.

47. Ms. Contreras Granados and her husband separated in 2018. Neither of them lived at 248 SE 1st Street in Ontario after separating, including when the fines were assessed. She intended to move into the house after her husband returned to Mexico, but she was advised that the roof did not look safe and required repair. At the time of the events giving rise to this complaint, she believed the property was vacant.

48. Unbeknownst to Ms. Contreras Granados, her husband allowed some people to stay in an RV on the property.

A. Ontario Issues the First Set of Civil Penalties.

49. The City assessed an initial set of civil penalties against Ms. Contreras Granados' property on February 21, 2020. The notice of penalties alleged various violations of city code provisions.

50. The City used a fine matrix to determine the level of fine for each alleged violation. The matrix considered three factors: the severity of the violation (minor, moderate, or major); whether there had been prior, similar violations; and whether the City had previously sent any letters documenting the violations. The maximum per-violation fine amount was \$1,500.

51. For example, the notice alleges "outdoor storage of personal property," and the matrix indicates this was classified as a "major violation" that "has definite risk to public health, safety, or welfare." The notice states that there had been a "prior same violation" and that the City had sent two letters about the violation. The fine imposed for this violation was \$1,000.

52. As another example, the notice alleges "outdoor storage of non-trash items," also classified a "major violation," with "prior related violations" and two letters from the City. The fine imposed for this violation was \$750.

53. The notice does not explain how the violations of "outdoor storage of personal property" and "outdoor storage of non-trash items" are different. The notice also does not provide factual specifics regarding the alleged violations. For example, the City assessed a penalty of \$450 for "attractive nuisance," but does not provide any information about what the attractive nuisance was.

54. The notice also alleges "debris" (\$1,000), "iceboxes/freezers" (\$750), "weeds/grass over 10" tall" (\$500), and "storage of vehicles and parts" (\$500).

55. The sum of these fines is \$4,950. In all, the City assessed \$3,950 in civil penalties apparently based off the field math of the enforcement officer.

56. Ms. Contreras Granados did not receive any letters about the alleged civil code violations prior to the notice of civil penalties.

57. Ms. Contreras Granados did not timely receive the February 21, 2020, notice of civil penalties.

B. Ontario Issues the Second Set of Civil Penalties.

58. The City of Ontario assessed a second set of civil penalties on March 4, 2020.

59. The City used a revised fine matrix, which set the fine level based on the severity of the violation; whether the property owner had taken any mitigation steps; and whether there were prior related violations. The maximum per-violation fine increased to \$2,000.

60. For example, the notice alleged “outside storage of personal property,” classified as a “major violation.” It further asserted “refusal to take mitigation steps” and “prior same violation.” The fine imposed for this violation was \$2,000.

61. The notice also alleged “attractive nuisance” (\$300), “debris” (\$2,000), “iceboxes/fridges” (\$1,000), “weeds over 10” tall” (\$500), “noxious weeds” (\$1,000), “junk vehicles” (\$500), and “outside storage of non-trash items” (\$500).

62. In all, the City assessed \$7,800 in civil penalties.

63. Ms. Contreras Granados did not receive any letters about the alleged civil code violations prior to the notice of civil penalties.

64. Ms. Contreras Granados did not timely receive the notice of civil penalties.

C. When Ms. Contreras Belatedly Learned About the Fines, She Worked Diligently to Remedy the Violations.

65. In approximately March or April 2020, Ms. Contreras Granados first learned about the civil penalties when she finally obtained copies of the notices. The people staying at the property contacted Ms. Granados to tell her about the notices only after they had received two or three notices.

66. Ms. Contreras Granados, who does not read English, did not understand the notices.

67. She visited the Ontario Police Department to ask for help interpreting the notices. Staff at the police department told her that the civil fines had been assessed because the people living on the property had too much stuff piled up outside.

68. Ms. Contreras Granados explained that she did not live on the property, was not aware that anyone was staying on the property, and had not been involved with the property at all since her separation from her husband. Staff at the police department told her that because her name was on the property, it was her responsibility to clean it up.

69. Ms. Contreras Granados worked with her daughter and brother to clean up the property. She then returned to the police department to notify them that the property had been cleaned.

70. A code enforcement officer visited the property and told Ms. Contreras Granados that there were still violations. For example, he pointed out a weed that she had missed.

71. Ms. Contreras Granados and her family made multiple additional attempts to clean the property to the satisfaction of code enforcement officers.

72. She asked about an appeal, but the police told her she would have to file with the Malheur County Circuit Court in Vale, Oregon. At that time, the circuit court was closed due to COVID-19.

D. The City Placed Liens Totaling \$9,950 on Ms. Contreras Granados' Property.

73. On April 2, 2020, the City placed a lien on Ms. Contreras Granados' property for \$3,950, the full amount of the February 21 civil penalties.

74. On June 17, 2020, the City placed a second lien on Ms. Contreras Granados' property for \$6,000. Notes in the City's internal system indicate that the lien was reduced to \$6,000 from \$7,800 because the property was "in compliance above and beyond."

E. The City's Civil Penalty Scheme Has Harmed Ms. Contreras Granados.

75. The lien has decreased the value of the property, Ms. Contreras Granados' only asset.

76. The lien impedes Ms. Contreras Granados' ability to sell the property. Her brother is interested in purchasing the property, but only after the lien has been resolved.

77. The imposition of civil penalties has caused Ms. Contreras Granados serious stress, anxiety, and sleeplessness. She is extremely worried about the lien because City officials told her it could cause her to lose the property. She wants to protect the property, her only asset, but she does not have \$10,000 to pay off the debt.

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 – Fourteenth Amendment – Procedural Due Process

78. Plaintiff incorporates by reference the preceding paragraphs.

79. The Fourteenth Amendment of the U.S. Constitution prohibits the deprivation of property, including money, without due process of law.

80. As described above, the City is imposing fees and penalties on homeowners for property-related nuisances without providing constitutionally sufficient notice or a meaningful opportunity to be heard, in violation of the Fourteenth Amendment, causing plaintiff resulting injuries.

81. The City's conduct described above was malicious, wanton, or oppressive.

82. As described above, plaintiff is entitled to an award of economic and non-economic damages, as well as punitive damages, against defendant in an amount to be determined at trial.

83. Plaintiff is further entitled to her attorney fees and litigation expenses/costs pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Eighth Amendment – Excessive Fines

84. Plaintiff incorporates by reference the preceding paragraphs.

85. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines.

86. As described above, the City's initial fines for nuisance abatement are, systematically, grossly disproportionate to the purported nuisance at issue. In addition, the subsequent civil penalties resulting from noncompliance with abatement notices are also grossly disproportionate for the conduct they seek to punish. The City's imposition of such initial fines and subsequent penalties violate the Eighth Amendment of the U.S. Constitution, causing plaintiff resulting injuries.

87. As described above, plaintiff is entitled to an award of economic and non-economic damages, as well as punitive damages, against defendant in an amount to be determined at trial.

88. Plaintiff is further entitled to her attorney fees and litigation expenses/costs pursuant to 42 U.S.C. 1988.

THIRD CLAIM FOR RELIEF

Uniform Declaratory Judgments Act – Oregon Constitution, Article I, § 16 – Excessive Fines

89. Plaintiff incorporates by reference the preceding paragraphs.

90. Article I, § 16 of the Oregon Constitution prohibits the imposition of excessive fines.

91. As described above, the City's initial fines for nuisance abatement are, systematically, grossly disproportionate to the purported nuisance at issue. In addition, the subsequent civil penalties resulting from noncompliance with abatement notices are also grossly

disproportionate for the conduct they seek to punish. The City's imposition of such initial fines and subsequent penalties violate the Oregon Constitution, causing plaintiff resulting injuries.

92. Plaintiff is entitled to a declaration that the City's nuisance abatement procedures are unlawful as well as other supplemental relief under ORS 28.080.

DEMAND FOR JURY TRIAL

93. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

Based on the above, plaintiff prays for the following relief:

- a. A declaration that the City's nuisance abatement policies and procedures violate the United States Constitution and/or the Oregon Constitution;
- b. Restitution of all amounts paid to the City based on the imposition of nuisance abatement fines the past two years;
- c. Economic and non-economic damages;
- d. Plaintiff's reasonable attorney fees and costs; and
- e. All other relief the Court deems equitable and just.

DATED: 12/3/21

s/ Emily Teplin Fox

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