

HEARING
April 29, 2024

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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 2023-62583

AZAEEL SEPULVEDA) IN THE DISTRICT COURT
vs.) HARRIS COUNTY, TEXAS
CITY OF PASADENA, TEXAS, ET.)
AL.) 190TH JUDICIAL DISTRICT

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On the 29th day of April, 2024, the following
proceedings came on to be held in the above-titled and
numbered cause before the **HONORABLE BEAU ALAN MILLER**,
Judge Presiding, held in Houston, Harris County,
Texas. Proceedings reported by computerized stenotype
machine.

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A P P E A R A N C E S

Ms. Diana Simpson
INSTITUTE FOR JUSTICE
901 North Glebe Road, Suite 900
Arlington, VA 22203
Telephone: (703) 682-9320
E-mail: diana.simpson@ij.org
Attorney for Plaintiff

Mr. Arif Panju
SBOT NO. 24070380
INSTITUTE FOR JUSTICE
816 Congress Avenue, Suite 970
Austin, TX 78701
Telephone: (512) 480-5936
E-mail: apanju@ij.org
Attorney for Plaintiff

Mr. Justin Pearson
INSTITUTE FOR JUSTICE
2 South Biscayne Blvd., Suite 3180
Miami, FL 33131
Telephone: (305) 721-1600
E-mail: jpearson@ij.org
Attorney for Plaintiff

Mr. William S. Helfand
SBOT NO. 09388250
Mr. Justin Pfeiffer
LEWIS BRISBOIS BISGAARD & SMITH, LLP
24 Greenway Plaza, Suite 1400
Houston, TX 77046
Telephone: (713) 659-6767
E-mail: bill.helfand@lewisbrisbois.com
Attorney for Defendant

Mr. Jay Dale
CITY OF PASADENA
Telephone: (713) 475-5515

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1
2 THE COURT: Okay. Let's go on the
3 record in Cause No. 2023-62583, *Sepulveda versus City*
4 *of Pasadena*.

5 Counsel, make your appearances.

6 MS. SIMPSON: Diana Simpson on behalf of
7 Azael Sepulveda, along with Arif Panju and Justin
8 Pearson.

9 MR. HELFAND: Bill Helfand and Justin
10 Pfeiffer, along with the city attorney, Jay Dale.

11 THE COURT: Okay. We're back here on a
12 plea to the jurisdiction, but sort of a status updated
13 as far as immediate settlement agreement and what
14 actions are being taken to -- to resolve this issue so
15 that we can just move past this.

16 And I've asked the city attorney to --
17 to make his presence, which is great. Thank you,
18 welcome.

19 And we're going through, there's a
20 letter that was given to me. I guess it's filed, too?

21 MR. HELFAND: It's not filed,
22 Your Honor. We -- we sent it in accordance with
23 Your Honor's instructions that we confer in advance of
24 coming back here.

25 THE COURT: Now that I've seen it, it

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1 needs to get filed on the record.

2 MR. HELFAND: I'll file it, Judge.

3 THE COURT: And matching that was also
4 the mediated settlement agreement in Case
5 No. 2021-80180.

6 Okay. So we were talking about the
7 various requirements of the mediated settlement
8 agreement and those articulated in the letter that's
9 yet to be filed.

10 So specifically No. 1, which is the
11 engineering drawings that provide for seven parking
12 spaces. I would assume that they -- he still has to
13 comply with the local ordinances as well?

14 MS. SIMPSON: So Your Honor, it's --
15 it's the city council approved the settlement
16 agreement. And the settlement agreement --

17 THE COURT: I know, which is why they
18 filed a plea to the jurisdiction, and that's why I'm
19 looking at the city attorney and saying, I don't think
20 if you file a mediated settlement agreement, it gets
21 you out of responsibility for follow -- following
22 through with the agreement. I think it'd be really
23 bad public policy for a city or whatever entity to
24 enter into a settlement agreement to get out of a case
25 and then turn back around and say, We're not going to

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1 do it because we're immune.

2 So on those basis, you agree with me,
3 right?

4 MR. DALE: Yes, sir.

5 THE COURT: I mean, I think that any
6 agreement that the City of Pasadena would enter into
7 making this argument in this court would be -- cause
8 great reluctance on anybody else to enter into an
9 agreement in the future, right?

10 MR. DALE: Sure.

11 THE COURT: So I'm going to deny this
12 plea jurisdiction.

13 Are you going to withdraw this plea to
14 the jurisdiction. Are you going to withdraw the plea
15 to the jurisdiction?

16 MR. HELFAND: I'm not going to withdraw
17 it, Your Honor, but do appreciate the Court were to
18 enter an order denying it.

19 THE COURT: I'm going to deny it because
20 I think you are in agreement that it's a bad public
21 policy as well --

22 MR. DALE: Well --

23 THE COURT: -- so...

24 MR. DALE: I just would qualify that
25 slightly, Your Honor. It's just an issue of following

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1 the ordinance of the City.

2 THE COURT: Well, no, that's -- but
3 we're back to that now, right? So the plea to the
4 jurisdiction was that the Court has no jurisdiction
5 because the City is immune from certain agreements, I
6 guess. And what -- what they are saying is that in
7 this case, a mediated settlement agreement by --
8 entered into by the City of Pasadena, that y'all
9 weren't going to honor because you're immune from
10 that.

11 MR. HELFAND: That's not our position.
12 Our position is the City intends to honor it as
13 written, but the Plaintiff hasn't complied with his
14 obligations under the agreement.

15 THE COURT: That's what you're telling
16 me now. It wasn't what I was told last time. That's
17 why I'm denying the plea to the jurisdiction because
18 you -- the Court has jurisdiction because you-all
19 entered in an agreement.

20 MR. HELFAND: I understand the Court's
21 ruling. Thank you, Judge.

22 THE COURT: Okay. So let's move
23 forward.

24 MS. SIMPSON: So Your Honor, the -- our
25 client submitted a site plan application. And under

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1 the City Code, that is the first step in a certificate
2 of occupancy application. And the reason that he
3 submitted that is to get the City's approval before he
4 goes out and spends the money to pave all of this
5 property and add the bollards, which they're all
6 considerable expenses, and he's a -- he's an
7 entrepreneur. He's trying to make ends meet while
8 having to pay for a mortgage and a lease to -- to
9 basically operate at -- at two places while this
10 dispute has been pending.

11 And so he -- he submitted the site plan
12 application, including engineering -- engineering
13 drawings, the whole nine yards. He then gets a
14 response from the City that says, We're going to deny
15 this for reasons that are already included in the
16 settlement agreement that we would actually grant it
17 for, right? So -- so you can't have those seven spots
18 because they conflict with our drive aisle width and
19 our setback requirements.

20 And we reached a settlement agreement
21 that said we could have seven spots. And so if the
22 City was concerned about drive aisle width and setback
23 requirements, then it shouldn't have put that in the
24 settlement agreement to begin with. It shouldn't have
25 then later tried to shoehorn in these extra

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1 requirements through the certificate of occupancy
2 application.

3 He's just going through the -- the --
4 the provisions of the code that say, first step, site
5 plan application. If the site plan application hasn't
6 been approved, he can't submit a certificate of
7 occupancy application. That's under Section 28-66 of
8 the City Code. And so he's done the first step.

9 The City has said no. And the City has
10 said no for reasons that conflict with the settlement
11 agreement. There was quite a bit of back and forth
12 between us before we came back and -- and filed a
13 petition asking the Court for relief under this breach
14 and for the -- the new constitutional claims.

15 *THE COURT:* My understanding of this
16 is -- we've had this hearing, like, a week or two ago,
17 and I've had a lot of cases since then. Was that he
18 originally wanted 10 spots, right? And he -- he
19 reduced it down to seven; is that right?

20 *MS. SIMPSON:* So originally -- this
21 property had been used as an auto -- an auto machine
22 shop for about 30 years. A long amount of time. Give
23 or take on those years. And it had just five spots,
24 and there -- this was not a problem for all of those
25 years. He then buys the property, and the City says,

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1 Actually, you need to add 23 more spots in order to
2 comply with our parking requirements.

3 Well, 23 spots doesn't physically fit.
4 It is -- it is actually impossible to comply with.
5 And so there was quite a bit of back and forth with
6 the City at that point. The City then stopped
7 responding to his -- his attorney's e-mails, and that
8 wasn't -- that wasn't us at the time. But he -- he
9 then filed a case bringing due course of the law,
10 equal protection and a procedural due process claim
11 saying, Look, I'm just trying to open. The City won't
12 let me.

13 We then won that case and reached the
14 settlement agreement that said you can open with
15 seven spots. And seven spots, he's willing to do
16 that. You know, it's still more than was fine for --
17 for many, many years. It's more than he needs for his
18 own business, but he's willing to -- to do that
19 because he just wants to open. He doesn't want to
20 continue fighting with the City about, you know,
21 exactly how many spots are there. He just wants to
22 open and - and operate his auto machine -- or his --
23 his auto repair shop at an auto machine shop's
24 previous location.

25 *THE COURT:* But I don't read in this

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1 mediated settlement agreement, it doesn't seem like
2 that would -- just paragraph (a) of 1 doesn't get him
3 out of the other requirements of the ordinances. That
4 if you're going to -- if you're going to make these
5 spots, then it has to apply to the other parts of the
6 ordinances, right? It doesn't except the ordinances
7 out there. It's -- it's -- I think it's 7 versus 23
8 versus 5. Is there a problem with -- with complying
9 with the city ordinance?

10 *MS. SIMPSON:* They're physically
11 impossible to do. It is not possible to have the
12 parking spots and the drive aisle width that the City
13 is demanding and the setback. In addition, the
14 setback requirement, which is also part of the City
15 Code, conflicts with the settlement agreement because
16 the settlement agreement says it has to be paved from
17 property line to the shed. You can't have it be paved
18 from the property line to the shed and also have
19 setback.

20 *THE COURT:* So there's an impossibility
21 situation. Does that make sense --

22 *MR. HELFAND:* No, Judge --

23 *THE COURT:* -- to you-all?

24 *MR. HELFAND:* -- we're kind of venturing
25 into an area here where you're hearing allegations,

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1 not evidence. And I -- I -- I --

2 *THE COURT:* Right.

3 *MR. HELFAND:* -- want to be clear that
4 that's good advocacy, but it's not accurate.

5 Let me start with the fact that one --
6 one says that the agreement is, the City will issue a
7 certificate of occupancy upon completion of the
8 following conditions. And I think if we've
9 established anything, Plaintiff's counsel has
10 admitted, none of those conditions have been completed
11 as required under the agreement.

12 If -- if the argument now is it's
13 impossible to do something, but to the extent the
14 agreement's enforceable against the City, it's
15 enforceable against the Plaintiff, and he made that
16 agreement. First of all, it's not impossible. But
17 it's not -- it's not something that the Plaintiff can
18 now say, Well, I made an agreement, but I knew all
19 along I couldn't do it.

20 In fact, the requirement to pave the
21 property is -- it does not create an issue of
22 impossibility. He can go pave it. But he hasn't even
23 created the seven parking spots. He hasn't created a
24 situation in which cars parked on the property are not
25 backing out into the right-of-way, which is obviously

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1 an ordinance that's important to safety. He's not
2 paved -- he's not paved the -- the floor of the shed
3 with concrete that I'm aware of. And he hasn't put
4 any bollards out there. That's just number one.

5 I mean, here's what I want to be clear,
6 Judge, and to the extent that the Court finds reason
7 to deny the plea based upon the existence of the
8 agreement, I won't quarrel with Your Honor's ruling.
9 That's Your Honor's ruling. I respect that. I may
10 disagree with it, but I may -- I certainly respect
11 Your Honor's authority to make the ruling.

12 But this agreement was written to track
13 the ordinances that are required to open this
14 property; in other words, the reason the city council
15 approved it was because it was represented to council.
16 I know that this is not going to require any
17 significant deviation from the same ordinances that
18 apply to everyone else.

19 And so what Mr. Sepulveda is saying is,
20 I agreed to comply with the City's ordinances. But
21 now as counsel's saying, I haven't done that yet. But
22 I still want to sue over that.

23 *THE COURT:* I think she's saying it's
24 impossible to do it, and that the mediated settlement
25 agreement takes them out of the ordinances. What's --

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1 what's required to pass a city ordinance?

2 *MR. HELFAND:* Well, it depends on which
3 ordinance we're talking about, Judge, but 1(a)
4 through (d) are required under the ordinance. The
5 landscaping ordinance is under No. 2.

6 *THE COURT:* No, just generally speaking,
7 what's the legislative process for passing the
8 ordinance?

9 *MR. HELFAND:* Oh, well, I'm sorry. So
10 an individual complies with the requirements of the
11 ordinance, and then they ask for an inspection from --

12 *THE COURT:* No, no, no. Even more
13 basic. I want to pass Ordinance No. 1 that says X.

14 *MR. HELFAND:* Right.

15 *THE COURT:* Right? How does -- how do
16 you pass that ordinance?

17 *MR. HELFAND:* Oh, you mean to enact the
18 ordinance? Oh, right. It's presented to council.
19 it's -- there's a public posting of the intent to
20 consider passing an ordinance. It's presented to
21 council. It requires generally two readings, except
22 in the case of an emergency, and none of these are an
23 emergency. And council considers that, obviously, and
24 then must vote in open session by majority twice to
25 enact the ordinance. That's under the City's Charter.

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1 Not all cities require a two-reading.

2 THE COURT: Okay. Okay. That's for my
3 own. I mean, I've got whatever, but -- so how do
4 they -- I assume that process wasn't followed when
5 they adopted the agreement?

6 MR. HELFAND: Yes, the agreement
7 required the same thing.

8 THE COURT: The same thing?

9 MR. HELFAND: Yes, Judge. And it had to
10 be posted. It had to be read.

11 Were there two readings for the
12 ordinance?

13 Yes. I mean, everything City Council
14 Pasadena does under the charter with the exception of
15 an emergency requires two readings and two votes.

16 THE COURT: So then there is no
17 impossibility, then, in this argument because -- I
18 don't know. I'm making arguments for you-all, but I'm
19 trying to get my head around how...

20 MS. SIMPSON: So can I respond on the
21 impossibility point, Your Honor?

22 THE COURT: Yeah.

23 MS. SIMPSON: So it's not that the
24 settlement agreement is impossible to comply with.
25 It's that the City's new gloss on the settlement

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1 agreement is impossible to comply with. He can add
2 these seven parking spots. They physically fit. It's
3 possible. It's more than enough that he needs for his
4 business, and it's more than enough that existed
5 before. It's that the City is now requiring new
6 things on top of the settlement agreement that then
7 make it impossible.

8 And so I -- I -- my friend here just
9 said that -- that there's something about the
10 landscaping requirements that are impossible, and I
11 admit that I don't fully understand what -- what is
12 impossible with those. But it's not that the
13 settlement agreement is impossible, it's that the
14 City's new interpretations are.

15 And the reason that we haven't -- he
16 hasn't physically paved this property yet is because
17 he wanted to get the site plan approved first and then
18 the certificate of occupancy approved because that is
19 the order of things in the City so that he could do
20 those things before he spends tens of thousands of
21 dollars paving the property for the City to then turn
22 around and say, as they're doing now, There's not
23 enough drive aisle. You can't do this.

24 *THE COURT:* I hear you.

25 *MR. HELFAND:* May I respond, Judge?

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1 THE COURT: Yes.

2 MR. HELFAND: First of all, counsel must
3 have misheard me. I didn't say there's any
4 impossibility under this agreement at all. And if
5 Mr. Sepulveda would do the things that he contracted
6 to do, the City says and they stand by their
7 willingness to grant a certificate of occupancy.
8 Plaintiff's counsel raised impossibility under 1(b).
9 I said that's not impossible. I -- I said -- when I
10 misunderstood the Court's question in terms of what
11 Mr. Sepulveda does -- must do, one of those things is
12 also, not -- not violate the landscaping requirement.

13 Let -- let me make one thing very clear,
14 though, right now. Counsel is 100 percent incorrect
15 about the order of things. Whether it's in the city
16 of Houston, the city of Pasadena, West University
17 Place, Southside Place, Hedwig Village, the
18 certificate of occupancy is the last thing that is
19 granted. One must do the work that's authorized under
20 the permits, the engineering drawings and the
21 construction permits. They get permission to do the
22 work. They do the work. And then only when they've
23 completed the work do they call an inspector out and
24 say, Look, it's all done. Grant me a certificate of
25 occupancy.

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1 THE COURT: But isn't there another
2 thing that comes before that, like a conditional
3 granting of the -- of the occupancies, right?

4 MR. HELFAND: There's no certificate of
5 occupancy, but there are preliminary inspections. So
6 in other words, if somebody's putting in a foundation,
7 like a slab foundation, somebody has to come out and
8 approve the plumbing and electrical that runs under
9 the foundation before the foundation can be poured.
10 So there are preliminary determinations that this is
11 in accordance with the plumbing plan and the City's
12 Code for plumbing.

13 That's less than an issue here. But
14 what Mr. Sepulveda's counsel just said was, he wants a
15 certificate of occupancy, then he'll go do this work.
16 Nobody gets that. And that's not what he agreed to.
17 It actually said, he gets a certificate of occupancy
18 upon completion of the following conditions.

19 THE COURT: So now that I've ruled on
20 the plea, there's nothing before me, mechanism to do
21 anything. So this becomes more of a mediation kind of
22 thing. Is there anything that we can do to resolve
23 this without spending more money by the City and by
24 him and effectuate the settlement agreement in the
25 spirit of getting thing -- getting things done?

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1 MR. HELFAND: Well, I will take anything
2 that Mr. Sepulveda proposes back to council. But I
3 anticipate, just to be completely transparent, that
4 council is going to say, We at least want compliance
5 with what we both agreed to.

6 But if -- if Mr. Sepulveda has a new
7 proposal, all he has to do is send it along to me.
8 I'm happy to take it to council.

9 THE COURT: Can we -- can we round up
10 the -- the people who have to approve it all, and
11 you-all go out one time and just see what would work?

12 MR. HELFAND: Well, they can come to a
13 council meeting, but all council meetings -- any time
14 there's a quorum, council will have to be in a public
15 session.

16 THE COURT: No, but, I mean, like the
17 engineers and the folks that have to sign off on the
18 certificates.

19 MR. HELFAND: Oh, well, that -- so
20 that's all private. The code inspection people can
21 sit with engineers and say, That looks right if -- if
22 you decide to do it.

23 Again, if it doesn't require a change
24 from the current agreement, then we don't have to get
25 council involved.

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1 MS. SIMPSON: The challenge is that the
2 City's requirements are a change from the -- from the
3 settlement agreement. And this is a perfect issue for
4 resolution and discovery because one of the City's
5 officials who is kind of driving a lot of this, she's
6 a named Defendant in the case. She was described at
7 the temporary injunction hearing in the last case as
8 not credible.

9 And this is -- this is frustrating. Oz
10 doesn't want to just fight with the City for years and
11 years and years. He just wants to open. And the fact
12 is, we have a settlement agreement that says that he
13 can open if he completes these four conditions. And
14 so we submitted the site plan to make sure that the
15 City would agree to these four conditions before he
16 spends the money. And now the City is saying, We
17 won't agree to these four conditions. There are
18 actually additional ones. And there's all these other
19 extra things.

20 And so to the extent that this fight is
21 continuing over allegations and over fact issues, it's
22 a perfect issue for discovery. You know, I -- I would
23 like to kind of reraise the -- the points we made at
24 the last hearing that instead of issuing an order
25 denying the plea to the jurisdiction today, we would

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1 appreciate if the Court would hold onto that decision
2 until summary judgment is filed because the City, last
3 time they -- they appealed. They took an
4 interlocutory appeal and then sat on it for
5 nine months and that harmed Oz. And I suspect that
6 something similar will happen this time.

7 *THE COURT:* Well, on the record, you
8 have the city attorney saying that they should honor
9 the agreement no matter what. And --

10 *MS. SIMPSON:* We have a settlement
11 agreement that's signed by the City.

12 *THE COURT:* I understand, but it takes
13 him out of the plea to the jurisdiction.

14 *MR. HELFAND:* Well, Judge, just so we're
15 clear. I don't think the city attorney said that
16 they'll honor the agreement no matter what.

17 *THE COURT:* Well, no matter what, but
18 that -- but the plea to the jurisdiction would not be
19 pursued because the City should not be in a position
20 where it's not going to honor --

21 *MR. HELFAND:* Well, no, the City is not
22 committed to not pursuing the plea to the
23 jurisdiction, Your Honor. The City is going to
24 plea -- pursue a plea to the jurisdiction. And with
25 all due respect to counsel's suggestion, the Court

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1 doesn't have discretion to hold the plea to the
2 jurisdiction.

3 *THE COURT:* Do you know why courts don't
4 rule on things for a long time?

5 *MR. HELFAND:* I -- I do, Judge, but the
6 Court can't authorize --

7 *THE COURT:* Do you know how many courts
8 wait months to rule on things all the time?

9 *MR. HELFAND:* If the Court chooses to do
10 that, I understand, Your Honor. That'll be the
11 Court's decision. But Judge, the Court is not
12 authorized to engage in the exercise of jurisdiction
13 while a plea to the jurisdiction is pending.

14 *MS. SIMPSON:* Respectfully, *Patel* and
15 *Bland* and several other cases from the Texas Supreme
16 Court handled cases doing that exact same thing.

17 *MR. HELFAND:* I'd -- I'd rather not have
18 that fight, but if that's what the Plaintiffs want to
19 have, then we can do that, Judge.

20 But -- but let me suggest this in the
21 interest of resolution back to the Court's suggestion.

22 I keep hearing that the City's changed the
23 conditions. I don't have anything from the Plaintiffs
24 showing me documents identifying a change in
25 condition. But if Plaintiff's counsel will send those

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1 to me, I'm happy to look at that because the City
2 isn't changing the condition. That's one thing I can
3 commit to the Court.

4 *THE COURT:* Well, I think the city
5 attorney is on the record of saying that it's going to
6 follow through with its agreements. And not
7 necessarily that this agreement has changed, but I
8 would think that a plea to the jurisdiction by the
9 City on this agreement would be really bad public
10 policy.

11 *MR. HELFAND:* Understood, Judge.

12 *THE COURT:* And I think he said it would
13 be, right?

14 *MR. DALE:* Judge, I just have one
15 comment. Their design, they -- they want to back all
16 the cars out into the right-of-way. That's how they
17 want to exit the parking, and that's just unsafe.

18 *MR. HELFAND:* That's just one example of
19 the --

20 *THE COURT:* Then how did -- so I don't
21 have any engineering drawings in front of me. I don't
22 have -- I don't have that kind of stuff. But was
23 there another way that was contemplated in the
24 mediation settlement agreement -- or in the settlement
25 that suggests that there could be other ways of

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1 handling the parking?

2 *MR. HELFAND:* It was contemplated,
3 Judge. It's in the agreement. It's -- it's that he
4 will pave certain portions of the property, and that
5 he will create parking that does not -- it
6 specifically says, No cars parked on the property will
7 be backed into the right-of-way.

8 *THE COURT:* Well, it is there.

9 *MS. SIMPSON:* So the right-of-way issue,
10 Your Honor, I think is an interpretation of the phrase
11 *right-of-way*. The settlement agreement does not
12 define right-of-way. And as I said, for many years,
13 this property was used with fewer parking spots than
14 the City is currently requiring and not with extra
15 land that doesn't currently exist. It was this exact
16 lot.

17 *THE COURT:* So I think I can take
18 judicial notice of what right-of-way means.

19 *MR. HELFAND:* Texas law defines
20 right-of-way, Your Honor.

21 *THE COURT:* And that if you're backing
22 up into a street that's going this way, then that's a
23 really bad idea.

24 *MS. SIMPSON:* You don't have to. Just
25 to be clear, Your Honor. You don't have to back up

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1 into the street in order to get off of this property.
2 There is a -- there's a street, and then there's land,
3 and then there's -- you can back up without backing
4 out into the street. Again, these are all fact issues
5 that are -- that are, I think, great for discovery.

6 *THE COURT:* Okay. So your position is
7 you're going to file an appeal of the plea to the
8 jurisdiction, and you're going to stay the case until
9 whenever?

10 *MR. HELFAND:* Well, I don't stay the
11 case. Judge. Statute stays the case. But yes, that's
12 my instruction from city council. If the court denies
13 the plea, to take an interlocutory appeal.

14 *THE COURT:* Okay. That seems like a lot
15 of wasted time and money and a bad public policy
16 decision on the City that the city attorney's already
17 agreed to, but that's your position. I think that's
18 really unfortunate for everybody involved.

19 *MR. HELFAND:* I understand, Judge. Lots
20 of people feel uncomfortable with governmental
21 immunity, but it is an important tenet in law.

22 *THE COURT:* Well, the real unfortunate
23 part is that if a governmental immunity -- government
24 entity enters into an agreement, and then hides behind
25 maybe to not actually enforce or actually help the

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1 enforcement of the agreement that it itself entered
2 into. So --

3 *MR. HELFAND:* I understand the Court's
4 take. I would offer this.

5 *THE COURT:* That's not the take, that's
6 what you're saying.

7 *MR. HELFAND:* No, Judge. What I'm
8 saying is, if that man complied with that agreement,
9 he doesn't need a lawsuit. He's filed a lawsuit
10 because of exactly what his lawyer said --

11 *THE COURT:* I think there -- there are
12 fact issues involved here as far as how it happens.
13 And what I'm trying to do is get to a resolution of
14 that. What you're saying in the plea to the
15 jurisdiction is you don't have to abide by the
16 settlement agreement.

17 *MR. HELFAND:* No, Judge. Not saying --

18 *THE COURT:* Well, that's what your plea
19 to the jurisdiction says. It says, Judge, you have no
20 right, no jurisdiction in order to enforce an
21 agreement that we ourselves entered into. In fact, we
22 made almost a public ordinance out of it because he
23 complied with the public ordinance's way of doing it.
24 You have two --

25 *MR. HELFAND:* Well, every -- every

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1 council action requires the same action.

2 THE COURT: Well, I'll -- I'll let that
3 be.

4 MR. HELFAND: But I do want to be clear,
5 Judge, that the City's position is, Mr. Sepulveda
6 doesn't need a lawsuit to effect the settlement
7 agreement.

8 THE COURT: Well, I don't know, but they
9 filed one here because of disagreements. This is
10 where you come to work out disagreements. Where else
11 do you think they should go to work out disagreements?

12 MR. HELFAND: He -- he should comply
13 with the agreement, and then he can open the business.

14 THE COURT: Well, that goes both ways,
15 and I can't rule on that because I don't have that in
16 front of me.

17 MR. HELFAND: I understand.

18 THE COURT: But by trying to appeal the
19 Court's decision on a plea to the jurisdiction, which
20 I think is interesting, you're going to hold that
21 resolution. You're going to hold all that up which is
22 really unfortunate, I think, both for the City and for
23 the Plaintiff's part. And I think it's really bad
24 public policy.

25 MR. HELFAND: Except, Judge, that I

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1 will -- I will offer this. First of all, it's an
2 expedited appeal. Second of all, it was the pendency
3 of that appeal that resulted in this last settlement
4 agreement. So that doesn't mean we can't resolve this
5 issue.

6 *THE COURT:* Whether it's expedited or
7 not doesn't mean it's bad public policy or not.

8 *MR. HELFAND:* I respect the Court's
9 opinion.

10 *THE COURT:* And if -- if people get out
11 there hearing that the City of Pasadena is not willing
12 to actually let its agreements be litigated in court
13 and have immunity behind that, then I think there may
14 be an issue with somebody entering an agreement with
15 the City to do anything. But that's up to you-all.
16 You make those decisions. And I hope that wiser minds
17 come out ahead, but I really hope you-all can figure
18 this out.

19 But I don't think -- I think both
20 parties have to probably give way here and get a
21 resolution which is why I think that you get the
22 people that have to sign off on the permits and the
23 lawyers out there and figure out the best way to do
24 this. I don't think anyone can stand here and be too
25 bullyish on where the positions are. I mean, this is

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1 not the first time this has -- this has been done by
2 anybody, probably.

3 So why don't -- my recommendation is
4 that you get the people that have to approve off on
5 the permits and the city engineer out there. You guys
6 get out there with your own engineer and figure out
7 how to execute a plan.

8 *MR. HELFAND:* We can do that, Judge.
9 And we can do that while an appeal is pending.

10 *MS. SIMPSON:* We can also do that if
11 the -- if this Court doesn't issue a decision right
12 away on the plea to the jurisdiction which, as I said,
13 is common. I'm just -- my concern is that the City
14 will do what it did last time, that it'll take
15 nine months. Not file anything with the appellate
16 court. Not respond to the appellate court's orders
17 asking for a response. Not file the reporter's
18 record.

19 Meanwhile, Oz is accumulating at least
20 \$1500 a month in damages. And he can't enforce
21 anything, can't do anything in the trial court that --
22 that has jurisdiction.

23 *MR. HELFAND:* Well, Judge, just to be
24 clear because that's an inappropriate, pejorative
25 statement. The City didn't pursue the appeal because

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1 the parties reached an agreement.

2 *THE COURT:* I remember that.

3 We're going to do -- do you agree to a
4 court order requiring your engineers to be out there
5 with her engineer or his engineer?

6 *MR. HELFAND:* I -- I can't agree to that
7 without council's approval, Your Honor.

8 *THE COURT:* Everything takes council's
9 approval?

10 *MR. HELFAND:* No, but something like
11 that will.

12 *THE COURT:* Really?

13 *MR. HELFAND:* Yes, Judge.

14 *MR. DALE:* A resolution like this.

15 *MR. HELFAND:* It's going to require a
16 resolution of the City.

17 *THE COURT:* To have its own engineer
18 with the permitting people meet her engineer to
19 effectuate the mediated settlement agreement, that
20 takes council approval?

21 *MR. HELFAND:* We can agree to meet. I
22 can't agree to an order requiring that.

23 *THE COURT:* I don't have high hopes in
24 you-all not doing something without an order. The
25 council has to agree to my order?

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1 MR. HELFAND: No, the council has to
2 authorize me to agree to an order. Your Honor can
3 make an order if you deem it appropriate --

4 THE COURT: What power do you have here?

5 MR. HELFAND: I have power to represent
6 my client just like any other entity. I have to -- I
7 have to talk to the entity to make a decision. So
8 does the city attorney.

9 But Judge, why don't you give us -- give
10 us a chance to do that. As I've said, if counsel will
11 show me what she thinks has changed, I will talk to
12 the City promptly. If --

13 THE COURT: You -- you have by Friday at
14 2 o'clock to propose an agreed order on how to
15 effectuate this.

16 MR. HELFAND: Judge, I will not have the
17 ability to enter into an agreed order by Friday --

18 THE COURT: When -- when will the powers
19 that be at the City of Pasadena be able to do that?

20 MR. HELFAND: We'll need a council
21 meeting which is next...

22 MR. DALE: First Tuesday. First and
23 third Tuesday of the month.

24 THE COURT: So how long do you need?

25 MR. HELFAND: Well, I'm going -- I have

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1 a vacation letter on file, Judge. I'm going to be out
2 of the country from May 6th to May 18th.

3 THE COURT: And he can't do it?

4 MR. HELFAND: Probably council is going
5 to want to hear from me, but I certainly can try it.

6 MR. DALE: We meet before then.

7 THE COURT: What?

8 MR. DALE: We -- we have a meeting that
9 week for -- for the 6th.

10 MR. HELFAND: I'm not here the 6th. I
11 mean, the city attorney can appear. If they want to
12 hear from me, I won't be able to be there.

13 THE COURT: Well, hopefully the city
14 attorney who's the elected attorney for the City will
15 be able to do what he needs to do and is appointed --

16 MR. HELFAND: He's the appointed city
17 attorney.

18 THE COURT: Or their own appointed city
19 attorney will be able to do that.

20 MR. HELFAND: Right. Well, we can
21 certainly give it a try.

22 THE COURT: I hope so.

23 Anything else?

24 MR. DALE: Judge, I had one comment.
25 Just to give some context. We had prior litigation,

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1 and we had the -- the mediated settlement agreement.
2 And we paid in settlement 10,000. And we assumed --
3 we didn't direct it in the mediated settlement
4 agreement to be used for parking spaces' development.
5 And it -- you know, as far as I know, that money
6 hadn't gone towards that endeavor. It's a little
7 disappointing.

8 MR. HELFAND: Well, what Mr. Sepulveda
9 decided to do with the money obviously is his choice,
10 but he made agreements to do certain things to the
11 property that he's acknowledged he hasn't done.

12 THE COURT: Yeah, it hasn't gone -- it
13 didn't go into the settlement agreement how he's
14 supposed to do or not do something.

15 MR. HELFAND: Right.

16 THE COURT: So okay. Well, so May 6th.
17 So when should I hear from you-all?

18 MR. HELFAND: Council meeting is May?

19 MR. PFEIFFER: 7th.

20 MR. HELFAND: I'm sorry?

21 MR. PFEIFFER: 7th.

22 MR. HELFAND: So the council meeting is
23 May 7th. If Mr. Dale can get a response, then we'll
24 process that by the follow -- by the following Friday.
25 If the answer is you can't get a response because

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1 council wants to talk.

2 I mean, the -- the thing is, I'm hired
3 because I have expertise in this area. It's not
4 something the city attorney generally deals with. But
5 council can talk to Mr. Dale, and obviously they can
6 direct Mr. Dale if they choose to. And we'll -- we'll
7 be able to tell you one way or the other by that
8 Friday whether the council wants me to come see them.

9 *THE COURT:* What day is that? What day
10 is -- the day that you think you can give me a --

11 *MR. HELFAND:* The 6th is a Monday.
12 The 11th, I think? The 10th.

13 *MS. SIMPSON:* I'd have to check with Oz,
14 but I suspect we could at least have an answer.

15 *THE COURT:* We just -- I just want an
16 agreement of a site inspection in order to figure out
17 what permits and how -- mainly what the drawing needs
18 to be in order to effectuate the settlement agreement.

19 *MR. HELFAND:* Well, Judge, we can do
20 that. The only way I -- the only way I need council
21 approval is to enter -- to sign off on an agreed
22 order. I'm happy to meet counsel out there with
23 representatives of the City.

24 *THE COURT:* Why don't I just -- I'm just
25 going to put an order in place requiring you-all to do

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1 that.

2 *MR. HELFAND:* As long as it's not listed
3 as an agreed order, Your Honor. I think it exceeds
4 the Court's jurisdiction.

5 *THE COURT:* I'm just going to put an
6 order in place requiring you to do that.

7 *MR. HELFAND:* I think it exceeds the
8 Court's -- I want to be clear. It exceeds the Court's
9 jurisdiction having denied the plea, but I understand
10 the Court's intent.

11 *THE COURT:* I may enter the -- the plea
12 order after that.

13 *MR. HELFAND:* I understand.

14 *MS. SIMPSON:* Your Honor, on the -- on
15 the topic of disclosure -- or on the topic of
16 discovery, I suppose, the City has not provided
17 initial disclosures to us, nor have they responded to
18 our discovery requests. They filed a motion for a
19 protective order raising the same arguments that they
20 did in their -- their plea to the jurisdiction. I'd
21 like to orally move for a motion to compel.
22 Alternative, I'd be happy to --

23 *THE COURT:* Well, you've got to comply
24 with the rule.

25 *MR. HELFAND:* I -- I am in compliance

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1 with the rule, Your Honor.

2 THE COURT: You've served your
3 disclosures?

4 MR. HELFAND: I'm sorry?

5 THE COURT: You've served disclosures?

6 MR. HELFAND: No, we filed a motion for
7 protective order, Your Honor, in light of the City's
8 immunity.

9 And -- and with all due respect, Judge,
10 when the Court starts authorizing discovery -- first
11 of all, there's no such thing as an oral motion in our
12 courts. Secondly, when the Court starts denying --
13 ordering discovery in a case where there's a claim of
14 immunity, the Court clearly exceeds its jurisdiction.

15 THE COURT: There are things called oral
16 motions. And the Court many times grants those
17 motions, and many times it's done by the parties'
18 consent. So I'm not sure where you're getting that
19 from.

20 MR. HELFAND: Well, not in accordance
21 with the local rules or the district code. But I
22 understand. The judicial district requires advanced
23 notice of a hearing.

24 THE COURT: Yes, it does. Called due
25 process, but we do oral orders all the time.

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1 MR. HELFAND: Oh, I understand oral --

2 THE COURT: Oral --

3 MR. HELFAND: -- orders, Judge.

4 THE COURT: -- and oral -- oral motions
5 all the time with counsel present, and usually they're
6 agreed to when we do it.

7 Well, there's nothing else I can do
8 here. I do think it's disappointing that -- that the
9 City takes some of its positions it's taking. But
10 that's not up to me.

11 MR. HELFAND: I understand --

12 THE COURT: That's very, very sad in
13 some respects. But anyway, there it is.

14 So off the record. You're excused.

15 MR. HELFAND: Thank you, Judge.

16 (Adjourned)

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STATE OF TEXAS

COUNTY OF HARRIS

I, MyThuy Cieslar, Official Court Reporter in and for the 190th District Court of Harris, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

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MyThuy Cieslar
CSR, RDR, CRR, CRC
Texas CSR 5763
Official Court Reporter
190th District Court
201 Caroline, Suite 1204
Houston, Texas 77002
Expiration: 10/31/24
mythuy_cieslar@justex.net

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apanju@ij.org

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William Scott Helfand	9388250	bill.helfand@lewisbrisbois.com	5/2/2024 3:46:14 PM	SENT
Justin Pfeiffer	24091473	Justin.Pfeiffer@lewisbrisbois.com	5/2/2024 3:46:14 PM	SENT
Dawn Garrard		Dawn.Garrard@lewisbrisbois.com	5/2/2024 3:46:14 PM	SENT
Arif Panju		apanju@ij.org	5/2/2024 3:46:14 PM	SENT
Diana Simpson		diana.simpson@ij.org	5/2/2024 3:46:14 PM	SENT
Justin Pearson		jpearson@ij.org	5/2/2024 3:46:14 PM	SENT
Rocio Rivera		rocio.rivera@lewisbrisbois.com	5/2/2024 3:46:14 PM	SENT
Molly Hanis		mhanis@ij.org	5/2/2024 3:46:14 PM	SENT
Lou Russell		lrussell@mcfarlandpllc.com	5/2/2024 3:46:14 PM	SENT
Charles McFarland		cmcfarland@mcfarlandpllc.com	5/2/2024 3:46:14 PM	SENT
Marie Harlan		mharlan@mcfarlandpllc.com	5/2/2024 3:46:14 PM	SENT
Emily Connaway		econnaway@mcfarlandpllc.com	5/2/2024 3:46:14 PM	SENT
Lamisa I.Chowdhury		lamisa.chowdhury@lewisbrisbois.com	5/2/2024 3:46:14 PM	SENT
Thazin Htet		thtet@mcfarlandpllc.com	5/2/2024 3:46:14 PM	SENT
Gretchen Embrey		gembrey@ij.org	5/2/2024 3:46:14 PM	SENT