

CAUSE NO. _____

**LAND GUARDIAN INCORPORATED,
and AYMAN JARRAH**

V.

**CLIFFORD KITTEN FAMILY LIMITED
PARTNERSHIP, INC., and DARRIN
WINNER**

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

____ **JUDICIAL DISTRICT**

ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Land Guardian Incorporated (“LGI”) and Ayman Jarrah (“Jarrah”) and files their Original Petition and Application for Injunctive Relief against Clifford Kitten Family Limited Partnership (Kitten), and Darrin Winner (“Winner”).

A. DISCOVERY AND DAMAGES

1. Plaintiffs intend to conduct discovery under level 2 of Rule 190 of the TEXAS CIVIL RULES OF CIVIL PROCEDURE and affirmatively pleads that it seeks injunctive relief as well as monetary relief aggregating more than \$1,000,000, excluding costs, prejudgment interest, and attorneys fees.

B. PARTIES

2. Plaintiff Land Guardian Incorporated is a Texas corporation with a principal place of business in Harris County, Texas.

3. Plaintiff Ayman Jarrah is an individual residing in Harris County, Texas and may be served with process through his attorney of record.

4. Defendant Clifford Kitten Family Limited Partnership is a Texas Limited Partnership whose registered office is 21212 Northwest Freeway Suite 305 Cypress, TX 77429. Clifford Kitten may be served with process at the registered office listed above, or where found.

5. Defendant Darrin Winner is an individual residing in Harris County who may be served through delivery of process to his address at 1014 Saulnier St., Houston, TX 77019 or at his place of business ERA Lone Star Realty, 25435 FM 2978 Road, Tomball, TX 77357.

C. JURISDICTION AND VENUE

6. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court. Venue is proper pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE § 15.002 because: (1) a substantial part of the events giving rise to LGI's claim occurred in Harris County; (2) the subject property is located in Harris County. Venue is also mandatory in Harris County as this suit involves a landlord and tenant for a lease of real property which is located in Harris County. *Id.* at 15.0115.

D. FACTS

7. This case involves a dispute over the provisions of a commercial lease of real property. On or about March 4, 2013, Defendant Kitten, as lessor, entered into a lease agreement (the "Lease") with LGI, as lessee, with Ayman Jarrah listed as guarantor, for the property located at 2400 Brazos Street, Harris County, Texas (the "Premises"). A true and correct copy of the Lease is attached hereto as Exhibit "A". The original term of the Lease was for sixty (60) months commencing on April 1, 2013 and expiring on March 31, 2018 ("Initial Term").

8. LGI also has an option to renew the lease, which it intends to exercise in the future as permitted by the lease terms, for an additional terms of sixty (60) months ("Renewal Term").

9. Defendant Darrin Winner is a 10% shareholder and officer in LGI, but is also romantically involved and in a business relationship with the landlord, Kitten.

10. Kitten and Winner approached LGI about purchasing the bar business which operates on the Premises, The Gaslamp, but the parties were not able to come to an agreement for the sale and purchase of the business.

11. Shortly after the failed negotiations between the parties, Winner and Kitten began their attempts to force Plaintiffs out of the Gaslamp in order to take it by force. Winner recently filed a lawsuit alleging various frivolous and meritless claims against Ayman Jarrah, the 90% shareholder of LGI. Winner also took control of a parking lot operated by the business in further retaliation.

12. Now, as relevant to this suit, on October 30, 2015, Kitten sent a demand letter through his attorney to LGI alleging multiple defaults, and providing thirty (30) days to cure. The lease provides such a default notice and opportunity to cure is required prior to remedies such as lockout or eviction.

13. Winner and Kitten are conspiring to cause a default and breach so as to take LGI's business which they were not able to negotiate a deal to purchase. Winner, as a shareholder and officer, participated in the business and was aware of the very claims that he and Kitten now assert as alleged defaults. Winner is double dealing, violating his duty of loyalty to the corporation, looking for his self interest rather than the corporation, tortuously interfering with a contract, and conspiring with Kitten to bring about a default so as to seize LGI's lease and business wrongfully. Kitten has an agreement with Winner to facilitate a default, and to force LGI out of the lease so that they can run a similar bar business from the Premises and/or take the Gaslamp as a going concern without paying a just and fair price. Both Winner and Kitten are

estopped from alleging a default they have participated in, have acquiesced in the business affairs which they now allege are defaults, and have waived all such alleged defaults.

14. Specifically, Kitten alleges the following defaults in the attached letter attached as Exhibit B:

a. Tenant constructed a porch or patio in front of the premises but did not comply with the notice provisions of the Lease, obtain Landlord's consent, or construct the improvement to comply with applicable Codes and regulations. See Lease, Article V and Section 10.03.

b. Tenant breached its covenant not to use the Premises or conduct its business in a safe, careful, and lawful manner. The TABC suspended Tenant's license to conduct business for serving alcohol to an intoxicated person and several individuals are accusing Tenant of unlawful discrimination. See Lease, Section 6.02.

c. Tenant failed to comply with "all current or future laws, statutes, ordinances, rules, regulations, or orders of any federal, state, municipal, or other governmental agency having jurisdiction over and relating to the use and occupancy of the Premises." The TABC suspended Tenant's license to conduct business for serving alcohol to an intoxicated person and several individuals are accusing Tenant of unlawful discrimination. See Lease, Section 6.04.

d. Tenant failed to "keep and maintain the Premises (including but not limited to any plate glass windows located in the Premises,...) in good order, condition and repair..." when it failed to repair the broken window at the Premises. See Lease, Section 10.02.

15. The letter specifically threatens a declaration of the lease in default in the event LGI is unable to cure the alleged defaults referenced above and an exercise of all remedies available. Exhibit B.

16. Thus, in order to maintain the status quo, LGI asks the Court for a TRO and injunction pending a declaratory judgment hearing wherein the Court is asked to find that there is no default and that the lease is in full effect. LGI also asks for damages relating to the tortious acts of defendants in conspiring to acquire the lease by unlawful means. Defendants' outrageous and unconscionable conduct have caused personal injuries to Ayman Jarrah in the form of emotional distress and Defendants have also deliberately put him in a position where he cannot sell the business due to their conspiracy to take it for themselves, while they work towards the common goal of taking ownership of the property on the Premises and business located therein through their concerted effort to cause a default and breach of the lease through their own actions.

E. DECLARATORY JUDGMENT

17. Sections A to D above are incorporated by reference herein for all purposes. Pursuant to Section 37.001, *et. seq.* of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, Plaintiffs hereby assert a claim for declaratory judgment against Defendants. An actual controversy currently exists between Plaintiff and Defendants concerning the parties respective rights under the Lease. Plaintiff respectfully requests the Court to construe the Lease and to determine the parties' rights thereunder as follows:

(1) Plaintiff seeks a declaration that the notice provision of the Lease Article V Section 10.03. does not by its own terms require notice for building on public property which is owned, leased, and permitted by the City of Houston, and only, at most, applies to such actions on the

Premises leased and owned by Kitten, accordingly there is no default as the patio is on City of Houston property, not the Premises;

(2) Plaintiff seeks a declaration that the lease term to “conduct its business in a safe, careful, and lawful manner” and “all current or future laws, statutes, ordinances, rules, regulations, or orders of any federal, state, municipal, or other governmental agency having jurisdiction over and relating to the use and occupancy of the Premises” is first, only referenced in section 19.02 of the lease which pertains to health, safety, and occupational hazards such as fire code, capacity limitations for occupancy, hazardous materials, etc. rather than activities related to the running of the business and so there is no default as the lease is construed against the drafter, Kitten in this case. In the alternative, such terms are ambiguous as to such meaning as the terms are undefined and should be construed against Kitten, the drafter, so as to avoid an inequitable, unjust, and unconscionable result such as forfeiture. Further, even if Defendants construction of the Lease were valid, default would require an actual adjudication and/or finding of liability or guilt rather than a mere allegation. Plaintiffs are currently contesting the allegations and engaged in adjudicatory proceedings as to each. As such, the allegation of default is not ripe and cannot sustain a default under its own terms;

(3) Plaintiff seeks a declaration that the Lease is not in default or breach, but rather remains in full force and effect;

(4) Plaintiffs seek such other declarations of rights and legal relations as may be necessary.

18. Plaintiffs request the Court to award reasonable and necessary attorneys’ fees as are equitable and just pursuant to Section 37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE in an amount of \$10,000.00 for causing this action to be filed and TRO and injunction to

be pursued due to the threat of imminent lockout and eviction from the premises which would destroy LGI's business

F. CONSPIRACY

19. Sections A to E above are incorporated by reference herein for all purposes. Plaintiffs allege that Defendants conspired in bringing about a default thereby to cause a breach in the Lease with Plaintiffs in order to acquire the premises they previously failed to negotiate a purchase by way of force the coordinated exercise of remedies in the lease.

20. Defendants' conspiracy has damaged Plaintiffs in an amount in excess of the jurisdictional limits of this Court for which Plaintiffs now sue and has caused emotional distress, interference with contract, attorneys fees to be incurred, and other damages.

F. SPECIFIC PERFORMANCE

21. Plaintiffs also sue for specific performance of the Lease terms so as LGI may have the benefit of the Lease contract for the term and renewal term, at its option.

G. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

22. Sections A to F above are incorporated by reference herein for all purposes. The conduct of Defendants, as alleged above, has been undertaken with malice and with specific intent to injure Plaintiffs' use and enjoyment of the Premises and frustrate the purpose of Plaintiffs' business. Defendants have affirmative duties to Plaintiffs pursuant to the Lease not to interfere with LGI's use and enjoyment of the Premises and, therefore, not to injure or harm Plaintiffs' existing business relationships, including Plaintiffs' existing business relationships with customers. The intentional conduct of Defendants as set out above breached their duties to Plaintiffs under the Lease and under applicable principles of good faith and fair dealing, rendering said acts tortious. In addition, Winner has breached fiduciary duties owed to the

corporation in seeking to obtain the entire business venture for himself. Plaintiffs have been damaged as a direct result of the intentional conduct of Defendants in interfering with Plaintiffs existing and prospective business relations entitling Plaintiffs to damages for said torts. In addition, such actions were committed knowingly and intentionally by Defendants for the purpose of damaging Plaintiffs business. Consequently, Plaintiffs are entitled to recover exemplary damages from Defendants for which Plaintiffs also sue.

H. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23. Sections A to G above are incorporated by reference herein for all purposes. Defendants acted intentionally and recklessly in wrongfully filing a frivolous lawsuit, threatening default and eviction/lockout, parking lot interference, and other actions which have been calculated to constructively evict Plaintiffs from the Premises and/or cause Jarrah so much distress as to force him to choose to walk away from the business he built rather than fight his own shareholder and officer and his landlord who are actively conspiring together to take over the business on multiple fronts. The Defendants' actions constitute extreme and outrageous conduct that goes beyond all possible bounds of decency and must be regarded as utterly intolerable in any civilized community, especially Harris County. Plaintiff Jarrah has suffered severe emotional distress as a result of being threatened with the prospect of imminently losing his business and personal property. Defendants' conduct has proximately caused the Plaintiff Jarrah severe mental anguish, unreasonable suffering and loss of earning capacity as a result of Defendants' intentional interference with Plaintiff's use and enjoyment of the Premises. Plaintiffs have accordingly suffered damages in a sum in excess of the jurisdictional limits of this Court, plus all attorneys' fees incurred by Plaintiffs in this matter. In addition, such outrageous and extreme actions were committed by Defendants for the purpose of damaging Plaintiffs'

person and business. Consequently, Plaintiffs are entitled to recover exemplary damages from Defendants for which Plaintiffs also sue.

I. ATTORNEYS FEES

24. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs of this Original Petition as if set forth herein at length.

25. Plaintiffs are entitled to recovery of attorney's fees pursuant to Chapter 37 and 38 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and the PROPERTY CODE.

L. JURY DEMAND

26. Plaintiffs demand a jury trial and tender the appropriate fee with this Original Petition.

M. CONDITIONS PRECEDENT

27. All conditions precedent to Plaintiffs claim for relief have been performed or have occurred.

N. REQUESTS FOR DISCLOSURE

28. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiffs request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

O. APPLICATION FOR INJUNCTIVE RELIEF

29. Sections A to N above are incorporated by reference herein for all purposes. As a direct and proximate result of Defendants' conduct as described above, Plaintiffs stand to suffer irreparable injury if injunctive relief is not granted in Plaintiffs favor and against Defendants.

30. Specifically, Plaintiffs would show that Defendants have threatened to imminently evict Plaintiffs based on false allegations of default. Plaintiffs business, the Gaslamp,

is in great jeopardy in that Plaintiffs in such an event, Plaintiffs would not be able to conduct business. Plaintiffs, therefore, stand to lose many, if not most, of its customers as the result of Defendants' unlawful acts. The total loss to Plaintiffs cannot be accurately measured and unless Defendants' conduct is controlled by the equitable powers of this Court, these losses will occur and after such happens will continue to mount with each passing day that Plaintiffs are locked out. Plaintiffs have reason to believe that Defendants, unless judicially restrained, will act according to their very specific threat that by November 30, they will evict Plaintiffs and therefore deny Plaintiffs the right to conduct business, accomplishing their conspiracy to wrongfully obtain the business for themselves.

31. It is probable that Plaintiffs will recover from Defendants after a trial on the merits because the evidence will show: (1) that there is no default, as alleged, after the Court provides a declaratory judgment regarding the construction of the lease terms; (2) Defendants are actively engaged in a conspiracy to obtain the bar through the use of a scheme involving an attach on multiple fronts by Winner and Kitten; (3) Defendants waived, acquiesced, and approved the very defaults they now allege and cannot rely on such for a basis of default as they are estopped from doing so; (4) the lease is still valid and in effect.

32. For the harm and damage done to Plaintiffs, and for the harm and damage that will continue but for the intervention of this Court, Plaintiffs have no adequate remedy at law. Such damages are continuing, and to a large degree, incalculable. If Plaintiffs waits until the trial on the merits of this cause, the damages inflicted upon Plaintiffs by Defendants would permanently and severely impact Plaintiffs person and business.

33. By reason of the acts set out above, Plaintiffs are suffering and continue to suffer great and irreparable injury to the business and property for which they have no adequate remedy

at law. Plaintiffs have reasonable grounds to believe that, unless Defendants are immediately restrained from doing so, they will evict Plaintiffs, solicit Plaintiffs' customers and discredit Plaintiffs to said customers in order to take possession of the business and Premises as a going concern. More importantly, Plaintiffs, by not having possession of the Premises, will lose the Gaslamp business, to their detriment, and have no funds with which to bring this suit or defend a similar proceeding at that time.

34. In addition, Plaintiffs have reasonable grounds to believe that unless all Defendants are enjoined from doing so, these Defendants will spend, waste, conceal, or otherwise dispose of funds or assets which they have obtained from their unlawful dispossession of the Premises from Plaintiffs and will dissipate the assets, sell and auction the possession. Thus, Plaintiffs ask the Court to maintain the status quo while the terms of the lease and the allegation of default, along with the accompanying torts, are litigated.

35. Plaintiffs ask for an Order restraining Defendants and their agents, officers, directors, employees, and anyone else acting or purporting to act on said Defendants' behalf from taking certain actions, *to wit*:

(1) from evicting or locking out, or exercising any other remedy for an alleged default, so as to dispossessing Plaintiffs, and agents, officers, directors, employees of the Premises;

(2) from acting in any way that interferes with Plaintiffs' use and enjoyment of the Premises;

(3) from interfering with or endeavoring to entice away from Plaintiffs any customer, client, or any other person, firm, or corporation with whom Plaintiffs deals;

(4) from any additional actions which further the alleged conspiracy to obtain the Premises through the concerted effort of the parties.

Upon the Court scheduling a hearing requiring Defendants to appear and show cause why a temporary injunction should not be issued, a temporary injunction should be issued prohibiting such activities by said Defendants until the time of trial.

36. Plaintiffs further requests that, upon final trial, a permanent injunction be issued that prohibits Defendants from engaging in such acts.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that:

1. Defendants be cited to appear and show cause and that upon hearing, a temporary injunction be issued enjoining said Defendants:

(1) from evicting or locking out, or exercising any other remedy for an alleged default, so as to dispossessing Plaintiff, his agents, officers, directors, employees of the Premises;

(2) from acting in any way that interferes with Plaintiff's use and enjoyment of the Premises;

(3) from interfering with or endeavoring to entice away from Plaintiff any customer, client, or any other person, firm, or corporation with whom Plaintiff deals;

(4) from any additional actions which further the alleged conspiracy to obtain the Premises through the concerted effort of the parties.

2. A permanent injunction be ordered on final trial of this cause enjoining Defendants from committing the acts listed herein;

3. Judgment be rendered against Defendants for a sum in excess of the jurisdictional limits of the Court for declaratory judgment, conspiracy, specific performance, tortious interference with contractual relations, and intentional infliction of emotional distress;

4. An award of reasonable attorneys' fees to be made to Plaintiff;
5. Defendants be required to pay pre-judgment interest;
6. Defendants be required to pay post-judgment interest;
7. Defendants be required to pay all costs of Court; and
8. For such other and further relief, at law or in equity, to which Plaintiff may show itself to be justly entitled whether pled or unpled.

Respectfully Submitted,

By: /s/ Tim R. Sutherland

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