

Cause No. _____

ELLA PARK TERRACE CIVIC CLUB § IN THE DISTRICT COURT OF
 §
V. § HARRIS COUNTY, TEXAS
 §
JOSE M. GALLEGOS § _____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION FOR
DAMAGES TO LAND AND FOR INJUNCTIVE RELIEF

TO THE HONORABLE COURT:

Plaintiff, Ella Park Terrace Civic Club, complains of Jose M. Gallegos,
Defendant, and for cause of action would show:

I. Discovery Level

Plaintiff pleads that discovery should be conducted in accordance with Civil
Procedure Rule 109.3.

II. Parties

Plaintiff, Ella Park Terrace Civic Club (the "Civic Club"), is a civic association
representing property owners, and whose board members are property owners, in the Ella
Park Terrace subdivision, all of whom reside in Houston, Harris County, Texas.

Defendant, Jose M. Gallegos, is an individual residing in Houston, Harris County,
Texas and may be served with service of process at 1150 W. 22nd St., Unit A, Houston,
Texas 77008, or wherever he may be found.

III. Facts

The Civic Club is composed of owners of property within the Ella Park Terrace
subdivision located in Houston, Harris County, Texas.

Defendant, Jose M. Gallegos (Gallegos), is the owner of real property located in
Houston, Harris County, Texas and adjoining plaintiffs' property.

IV. Cause of Action

The property owned by Gallegos has been altered such that the topography of the land has diverted the natural flow of diffuse surface water across Gallegos' land, allowing and causing the water to stream onto and over plaintiffs' property. Specifically, the natural flow was altered and diverted by Gallegos increasing the height of the land and failing to provide a retaining wall, or taking any other measure to prevent the flooding of plaintiffs' property.

The consequence of the diversion of water onto multiple lots within the Ella Park Terrace subdivision and the numerous years it has been continuing without any attempt on the part of Gallegos to correct the issue, rises to the level of a public nuisance. Gallegos has failed and continues to fail to prevent the flooding of the adjoining property or to remedy the situation by providing barriers to the flooding or any other remedy.

The Civic Club seeks the assistance from the City of Houston in prosecuting these claims against Gallegos because the City of Houston has committed time, money and effort to improve drainage throughout the City. Failure to recognize the public nature of this drainage issue in the Ella Park Terrace subdivision and seek redress would be counter productive to the efforts of the City in remedying the drainage issues that face the City of Houston.

The conduct of Gallegos described above constitutes negligence and is the proximate cause of the harm sustained by plaintiffs.

Pleading in the alternative and without waiving the foregoing, the conduct of Gallegos created and allows the premises owned by defendant to constitute a nuisance which is the proximate cause of the harm sustained by plaintiffs.

Pleading in the alternative and without waiving the foregoing, the conduct of Gallegos constitutes a trespass onto plaintiffs' property, proximately causing the harm sustained by plaintiffs.

V. Damages

As a direct result of the conduct of Gallegos, plaintiffs' property has sustained permanent harm that cannot be repaired or otherwise corrected, with a resulting diminution in the reasonable fair market of plaintiffs' property as well as the reasonable and necessary costs to be incurred to protect against the harm resulting from defendant's conduct.

VI. Injunctive Relief

Unless defendant is restrained and enjoined from maintaining the conduct described in this petition, plaintiffs will continue to suffer the harm set out above, for which plaintiffs have no adequate remedy at law. Plaintiff asks this court, following final trial of this cause, to permanently enjoin defendant from such conduct and order defendant, Jose M. Gallegos, to construct a barrier to prevent the water from migrating to the adjoining properties.

VII. Prayer

WHEREFORE, plaintiff requests that defendant, Jose M. Gallegos, be cited to appear and answer herein and that upon final trial, plaintiffs have judgment against defendant, Jose M. Gallegos, for the recovery of damages in an amount within the jurisdictional limits of the court, together with interest as allowed by law; that defendant be permanently enjoined from diverting water to adjoining properties and ordered to

construct a barrier to prevent such migration; and that plaintiffs have such other and further relief to which plaintiff is entitled.

Respectfully submitted,

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