

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR MANATEE COUNTY, FLORIDA

CITY OF ANNA MARIA, FLORIDA,

Plaintiff,

v.

CASE NO.:

MANGOES ON MAGNOLIA, LLC,
a Florida limited liability company,

Defendant.

_____ /

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

COMES NOW the Plaintiff, CITY OF ANNA MARIA, FLORIDA, and files this Verified Complaint against Defendant, MANGOES ON MAGNOLIA, LLC, a Florida limited liability company, and states:

PRELIMINARY STATEMENT

1. This is an action for injunctive relief, seeking to judicially declare the vacation rental property located at 313 Magnolia Avenue, Anna Maria, Florida 34216, that is owned by the Defendant (hereinafter the “Subject Property”) to be a public nuisance because of five (5) egregious noise violations in the short period of nine (9) months, and to close such public nuisance as a short term rental for a period of one year. Such action is necessary to protect the public health, safety and welfare of the citizens of and visitors to the City of Anna Maria.

JURISDICTION AND VENUE

2. This is an action for injunctive relief over which this Court has jurisdiction pursuant to Article V, Section 5(b), Florida Constitution.

3. Venue properly lies in Manatee County, Florida pursuant to Section 47.011, Florida Statutes (2022), because the subject matter and property at issue in this action are located in

Manatee County, Florida, and the Defendant, MANGOES ON MAGNOLIA, LLC does business in Manatee County, Florida.

GENERAL ALLEGATIONS

4. Plaintiff, CITY OF ANNA MARIA, FLORIDA (“City”) is a municipality of the State of Florida located in Manatee County, Florida.

5. Defendant MANGOES ON MAGNOLIA, LLC (“Mangoes”) is a Florida limited liability company that owns real property within the City and Manatee County, Florida, located at 313 Magnolia Avenue, Anna Maria, Florida 34216, more particularly described on the attached Exhibit “A” (“Subject Property”).

6. Plaintiff restates and incorporates herein by reference the allegations set forth in paragraphs 1 through 3 above.

7. Sec. 26-92, of the City Code of the City of Anna Maria, entitled “Prohibited acts” provides:

Sec. 26-92. Prohibited acts.

(a) Noise disturbance. Notwithstanding any other provision of this article, and in addition thereto, it shall be unlawful for any person to make or continue, or cause or permit, through actions or inactions, any noise disturbance, as defined in section 26-86, or any violation of pool, spa, hot tub quiet hours, as provided in section 26-90. The owner, tenant, occupant, guest, property manager and agent of the property at which the violation occurs shall each be separately liable for any noise disturbance caused by tenant(s), occupant(s), and/or guest(s), and such owner, tenant, occupant, property manager, and agent shall be deemed violator(s) hereunder. [Emphasis supplied.]

8. Section 26-90 of the Anna Maria Code of Ordinances provides:

“Swimming pools, spas and hot tubs may be utilized at any time of day or night; provided, however, no noise shall be generated from such use or related to such use that can be heard beyond the property lines of the property on which the pool, spa or hot tub is located, between the hours of 10:00 p.m. and 8:00 a.m. the next day. Generation of such noise during such prohibited hours shall be considered to be a violation of pool, spa, hot tub quiet hours.”

9. On May 18, 2022, after hearing sworn testimony of numerous witnesses and after hearing the arguments of the city code officer and owners of the Subject Property, the City of Anna Maria Special Magistrate (the “Special Magistrate”) issued an order (the “Final Order”) finding that the Subject Property was in violation of Section 26-90, “Pool, Spa, Hot Tub Quiet Hours,” of the Anna Maria Code of Ordinances on June 5, 2021, August 28, 2021, October 9, 2021, October 22, 2021, and March 16, 2022 (the “Violations”). A true and correct copy of the Final Order is attached hereto as Exhibit “B”. A transcript of the above-described hearing is attached hereto as Exhibit “C”.

10. Section 26-95 of the Anna Maria Code of Ordinances provides, in pertinent part:

“(2) No provisions of this article shall be construed to impair the city or any other person from bringing any common law, equitable or statutory cause of action, or other legal remedy for injury or damage arising from any violation of this article. As an additional remedy, any noise disturbance shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by proceedings in a court of competent jurisdiction for injunction, both temporary and permanent, and for such other relief as is proper under the circumstances. The city is hereby authorized to bring any such action authorized in this Code on its behalf or on behalf of the general public.

“(4) Three or more violations occurring at the same premises within any rolling twelve-month period shall be deemed prima facie evidence that the premises is a public nuisance and subject to being temporarily and/or permanently enjoined pursuant to subsection (2) above.” (emphasis supplied).

Subject Property/Defendants’ Failure to Comply/Need for Injunctive Relief

11. The Subject Property is the location of a “vacation rental” as defined pursuant to Section 108-3 of the Anna Maria Code of Ordinances.

12. Pursuant to Section 108-21 of the Anna Maria Code of Ordinances, all vacation rental owners must register their vacation rentals with the City of Anna Maria using forms

promulgated by the City. A true and correct copy of the Subject Property's registration for use as a vacation rental (the "Vacation Rental Registration") is attached hereto as Exhibit "D".

13. Section 108-3 of the Anna Maria Code of Ordinances states, in pertinent part:

"The following terms as used in this chapter are defined as set forth hereinafter:

"Transient public lodging establishments means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

"Vacation rental is collectively a vacation rental as defined under Florida Statutes, and any transient public lodging establishment that does not have on-site management, which is located in the single family and/or two-family residential dwelling zoning districts of the City of Anna Maria."

(emphasis in original). Thus, the transient occupancy of single-family or two-family residences is a hallmark of the "vacation rental" property use.

14. The Violations at the Subject Property are related to the use of the Subject Property as a vacation rental and the transient occupancy of tenants at the Subject Property.

15. During the year of 2021, the City of Anna Maria began receiving noise complaints from residents in the area of the Subject Property regarding loud noises coming from the Subject Property late in the night and in the wee hours of the morning. During this time, the Subject Property was being used as a vacation rental as defined pursuant to Section 108-21 of the Anna Maria Code of Ordinances.

16. Upon investigating the noise complaints at the Subject Property, Manatee County Sheriff's Office deputies observed that the noise emanating from the Subject Property was generated by transient occupants (i.e., vacation-rental tenants) of the Subject Property, was in

violation of the provisions of the Anna Maria City Code, and as a result, the Sheriff's Office deputies issued written violations of the Anna Maria Code of Ordinances.

17. At the hearing before the Special Magistrate on May 18, 2022, neighbors who live on each side of the Subject Property testified that the loud noises repeatedly emanating from the Subject Property in the middle of the night were disruptive to their sleep and that the neighbors had been repeatedly awakened from sleep due to the loud noises coming from the Subject Property even though such neighbors each had hurricane resistant windows that were closed at the times of the disturbances.

18. These continued intermittent violations are not amenable to normal code enforcement processes which consist of running daily fines until "compliance" is met. In the instant case, the Subject Property would "come into compliance" once the loud noises cease for the night, but then would go out of compliance the next time that loud noises began to emanate from the property during the ordinance defined "quiet hours".

19. As a result, the mere imposition of fines through the normal code enforcement process is not a sufficient mechanism to compel compliance with the Anna Maria Code of Ordinances, and the City of Anna Maria has no reasonable expectation of being able to abate the violations on the Subject Property now and into the future to prevent further violations which significantly negatively impact the quality of life of the residents of the affected residences in proximity to the Subject Property.

20. In matters relating to the enforcement of city and county ordinances, "[t]he issuance of a temporary injunction is generally supported by showing (1) irreparable harm and the unavailability of an adequate remedy at law; (2) a substantial likelihood of success on the merits; (3) a threatened injury to the petitioner that outweighs any possible harm to the respondent; and

(4) that the granting of the injunction will not disserve the public interest.” *Polk County v. Mitchell*, 931 So. 2d 922, 926 (Fla. 2d DCA 2006).

21. “Where a government seeks an injunction in order to enforce its police power, the first element is established; that is ‘any alternative legal remedy is ignored and irreparable harm is presumed.’” *Id.*, citing *Metro-Dade County v. O’Brien*, 660 So. 2d 364, 365 (Fla. 3d DCA 1995).

22. Upon presentation of evidence that a Defendant is violating an ordinance, a local government Plaintiff demonstrates a substantial likelihood of success on the merits in permanently enjoining a defendant from future violations. *Polk County*, 931 So. 2d at 926.

23. As of the present date, Defendant and the Subject Property remain in intermittent and repeated violation of Section 26-90 of the Anna Maria Code of Ordinances, and therefore Plaintiff City of Anna Maria has a substantial likelihood of success on the merits in temporarily and permanently enjoining Defendant from future violations.

24. Pursuant to Florida Rule of Civil Procedure 1.610, “[w]hen any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof, the court may require or dispense with a bond, with or without surety, and conditioned in the same manner, having due regard for the public interest.”

25. The public interest favors the enforcement of ordinances protecting health, safety, and welfare and eliminating public nuisances, and accordingly Plaintiff City of Anna Maria requests that this Honorable Court dispense with a bond in this matter.

26. All conditions precedent to the relief requested herein have been performed or have occurred.

WHEREFORE, Plaintiff demands judgment and relief as follows:

a. That this Honorable Court find the Subject Property to be a public nuisance.

b. That this Honorable Court temporarily and permanently enjoin, for a period of one year, the use of the Subject Property as a “vacation rental” as defined pursuant to Section 108-3 of the Anna Maria Code of Ordinances.

c. That the Court retain jurisdiction of this action to enforce the aforementioned injunction by all available means, including but not limited to the contempt power of this Honorable Court, and to make any and all further orders and judgments that may be necessary and proper.

d. That the Court grant such other and full relief as it may deem just and proper.

Respectfully Submitted,

/s/ Gretchen R. H. Vose

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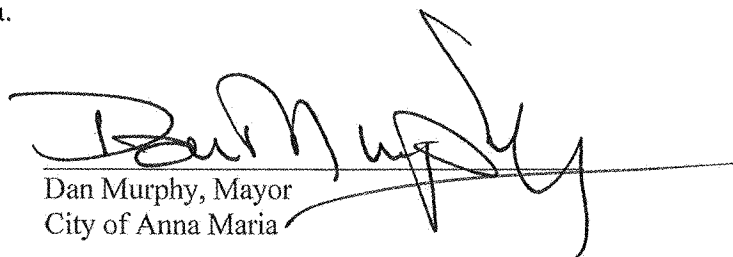
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VERIFICATION

I, Dan Murphy, am the Mayor for the City of Anna Maria, Florida. Under penalty of perjury, I declare that I have read the forgoing Complaint, and I hereby verify that the facts set forth above are true and correct to the best of my knowledge and belief based on my personal knowledge and the business records of the City of Anna Maria.

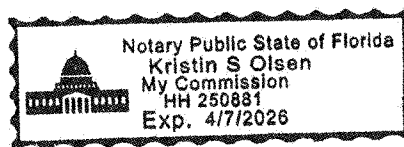

Dan Murphy, Mayor
City of Anna Maria

SWORN AND SUBSCRIBED before me this 8 day of June, 2022.


NOTARY PUBLIC

My Commission Expires:

4/7/2026



Dated this 8th day of June, 2022.

/s/ Gretchen R. H. Vose
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