IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

1. LESSIE BENNINGFIELD RANDLE, Tulsa Race Massacre Survivor, 2. VIOLA FLETCHER, Tulsa Race Massacre Survivor, 3. HUGHES VAN ELLISS, SR., Tulsa Race Massacre Survivor, 4. HISTORIC VERNON A.M.E. CHURCH, INC., a domestic not-for-profit corporation, 5. LAUREL STRADFORD, great-granddaughter of J.B. Stradford, 6. ELLOUISE COCHRANE-PRICE, daughter of Clarence Rowland and cousin of Dick Rowland, 7. TEDRA WILLIAMS, granddaughter of Wess Young, 8. DON M. ADAMS, nephew and next friend of Dr. A.C. Jackson, 9. DON W. ADAMS, great-grandson of Attorney H.A. Guess, 10. STEPHEN WILLIAMS, grandson of A.J. Smitherman, 11. THE TULSA AFRICAN ANCESTRAL SOCIETY, an unincorporated association, Plaintiffs, v. 1. CITY OF TULSA, a municipal corporation,	Case No.: CV-2020-01179 Judge Caroline Wall

2. TULSA REGIONAL CHAMBER, a domestic not-for-profit corporation,

3. TULSA DEVELOPMENT AUTHORITY,

4. TULSA METROPOLITAN AREA PLANNING COMMISSION,

5. BOARD OF COUNTY COMMISSIONERS FOR TULSA COUNTY, OKLAHOMA,

6. VIC REGALADO, IN HIS OFFICIAL CAPACITY AS SHERIFF OF TULSA COUNTY,

7. OKLAHOMA MILITARY DEPARTMENT,

Defendants.

PLAINTIFFS' OPPOSITION IN RESPONSE TO DEFENDANT TULSA DEVELOPMENT AUTHORITY'S MOTION TO DISMISS

TABLE OF CONTENTS AND AUTHORITIES

Plaintiffs hereby submit this Brief in Opposition to the Motion to Dismiss filed by Defendant Tulsa Development Authority (the "TDA"). This opposition is one of six opposition briefs filed by Plaintiffs on June 1, 2021 (the "June 1 Oppositions") in response to the seven motions to dismiss filed by Defendants on March 12, 2021 (the "March 12 Motions"). Plaintiffs respectfully refer the Court to Plaintiffs' Opposition to State of Oklahoma's Motion to Dismiss to an overall introduction to the June 1 Oppositions and a chart which shows where responses to arguments made in the March 12 Motions are responded to in the June 1 Oppositions.

INTRODUCTION

The TDA argues that the Court should dismiss the Petition under 12 O.S. § 2012(B)(1) and/or 12 O.S. § 2012(B)(6). Because each of the TDA's theories for dismissal fail, as addressed herein, the Court should deny the TDA's Motion to Dismiss.

ARGUMENT

I. The TDA Contributed to the Ongoing Public Nuisance

The Petition adequately alleges that the TDA caused and has failed to abate the ongoing public nuisance in Black Tulsa. As is alleged, a through-line can be drawn from the Massacre's first shots on May 31, 1921, to the destitute conditions faced by Black Tulsa today. Pet.[1] ¶¶ 1, 159, 171, 173-174. In the middle of that through-line, and continuing to this day, the TDA's actions have exacerbated the already dismal conditions in Black Tulsa caused by the Massacre, and both the Petition, and the historical record substantiate Plaintiffs' allegations.

[1] "Pet." refers to the First Petition filed February 2, 2021.

Plaintiffs have not alleged "broad, conclusory, and unsupported allegations[,]" TDA Mot.[2] 9, about the TDA's responsibility in the ongoing public nuisance. To the contrary, Plaintiffs were quite specific as it relates to the TDA's actions. The Tulsa Urban Renewal Authority (the "TURA") was the successor entity of the TDA. The TURA implemented the construction of the "Crosstown Expressway" which ran "straight through the core of the main Greenwood business district." Pet. ¶ 144. This project enabled the TURA and the other Defendants to "further their longstanding goal…to eject the Black Tulsans from their prime downtown Tulsa real estate to less desirable, less valuable, and less viable areas in North Tulsa." Pet. ¶ 144. The TURA and other Defendants implemented these discriminatory policies by forcing Black Tulsans off their property without fair-market compensation, Pet. ¶ 147, pushing them into "ghetto" conditions in low-incoming housing projects concentrated in North Tulsa, Pet. ¶152.

The Urban Renewal Program contributed to the nuisance conditions in Greenwood and North Tulsa, exacerbating "the Defendant-created disparities in wealth, education, policing, housing, poverty and health outcomes in Tulsa." Pet. ¶ 149. The execution and implementation of the program by the TURA caused the requisite special injury to Plaintiffs required under Oklahoma law. *McKay v. City of Enid*, 1910 OK 143, ¶ 12, 109 P. 520, 522.

The Petition details an egregious example, as the Urban Renewal Program, enforced by the TURA, caused the direct loss of property of Plaintiff Lessie Benningfield Randle ("Mother Randle"). Pet. Ex. 1, 39: 11-23, 40:9-13. Contrary to the TDA's misguided reading of the Petition, Mother Randle's special injury has been sufficiently pleaded, and a clearer

[2] "TDA Mot." refers to Defendant Tulsa Development Authority's Motion to Dismiss Plaintiffs' First Amended Petition filed March 15, 2021.

example of a direct harm caused by the TDA could not be more recognizable or plainly stated by Mother Randle's own words; Mother Randle acknowledged her home was taken by the TURA and is now a private, white-owned business. *Id*.

The TDA next claims that any acts or omissions which they caused are not the direct and proximate cause of Plaintiffs' injuries. TDA Mot. 11. This position is unsupported by Oklahoma law. First, the TDA demands specificity on causation and special injury that is not required at this stage of the litigation. The Petition must not be dismissed unless it is "*beyond any doubt* that the litigant can prove *no* set of facts which would entitle relief." (emphasis in original) *Frazier v. Bryan Mem'l Hosp. Auth.*, 1989 OK 73, ¶ 13, 775 P.2d 281, 287; *accord Gens v. Casady Sch.*, 2008 OK 5, ¶ 8, 177 P.3d 565, 569. The TDA next suggests that it cannot be linked to the public nuisance because it did not exist at the time of the Massacre and that the Petition discounts intervening or supervening causes of harm to Plaintiffs. TDA Mot. 11. It is not Plaintiffs' burden to prove causation or to disprove the existence of any supervening cause at the pleading stage. *See R.I. Ins. Co. of Providence, R.I. v. Glass*, 1928 OK 279, ¶¶ 16-18, 267 P. 840, 841 (finding that the existence of an intervening cause of a fire in connection with an insurance claim was a question of fact for the jury). Nevertheless, to insulate a primary actor from liability, a supervening cause "must be (1) independent of the original act, (2) adequate of itself to establish the result and (3) the occurrence cannot be reasonably foreseeable to the original actor." *See Graham v. Keuchel*, 1993 OK 6, ¶ 9, 847 P. 2d 342, 348. Defendants do not, and cannot, point to any intervening or supervening causes of North Tulsa's dilapidation since the Massacre.

Even if it was required at this stage to demonstrate causation, Plaintiffs are not required to prove Defendant's responsibility for the original nuisance. *See Safeway Stores, Inc. v.*

Billings, 1959 OK 8, ¶ 7, 335 P.2d 636, 640 (holding that an owner of a property abutting a public nuisance may be liable "for an injury arising out of the use by him of his property which creates or maintains a dangerous condition or obstruction to the public").

Critically, the TDA's stature as a quasi-municipal entity places upon it the *duty* to abate the public nuisance that endangers the public safety. *Cummings v. Lobsitz*, 1914 OK 382, ¶¶ 0-1, 142 P. 993, 994. Whether it is called the TURA or the TDA, Oklahoma law is clear that, upon taking control of or neglecting an ongoing nuisance, a party may incur liability by failing to abate it. *See* 50 O.S. § 5 ("Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by the former . . . is liable therefor in the same manner as the one who first created it."). *See also Union Tex. Petroleum Corp. v. Jackson*, 1995 OK CIV APP 63, ¶ 30, 909 P.2d 131, 143 (holding that a public nuisance claim against successor-operator could be litigated if subsequent environmental study demonstrated successor-operator could have removed environmental pollution caused by its predecessor).

In order to avoid overburdening the Court with duplicative and overlapping arguments, Plaintiffs adopt and incorporate herein the arguments made by Plaintiffs in their Opposition to Chamber Nuisance MTD, at §§ I(A)-(C) in further support of their argument on nuisance.

II. The GTCA is Inapplicable and Cannot Be the Basis for a Dismissal

The TDA argues that the Court must dismiss this action under 12 O.S. § 2012(B)(1) ("lack of jurisdiction over subject matter") because Plaintiffs' did not comply with the notice provisions and prescribed limitations of Oklahoma's Governmental Tort Claims Act, 51 O.S. §§ 151 *et seq.* (the "GTCA"). *See* TDA Mot. 2-4 (citing 51 O.S. §§ 156-157). The TDA alleges that compliance with the notice provisions of the GTCA was necessary because both of

Plaintiffs' claims—public nuisance and unjust enrichment—are governed by the GTCA. TDA Mot. 4.

The TDA further alleges that even had the notice requirements been satisfied, Plaintiffs' claims should be dismissed under 12 O.S. § 2012(B)(6) for failure to state a permissible claim given the tort liability immunity the GTCA provides to the state (and its political subdivisions) (1) for acts of its employees outside their scope of employment; and (2) under several enumerated exemptions where the State has not consented to be sued. TDA Mot. 4-6.

Neither argument provides basis for dismissal, because (1) the GTCA has no bearing on claims for the equitable relief that Plaintiffs seek and (2) Plaintiffs' claims are not "torts" under the GTCA. Thus, both the TDA's § 2012(B)(1) and § 2012(B)(6) arguments fail because the GTCA is wholly inapplicable to Plaintiffs' claims. To avoid overburdening the Court with duplicative and overlapping arguments, Plaintiffs adopt and incorporate herein the arguments made by Plaintiffs in their Opposition to City/TMAPC MTD, at §§ II(A)-(D), in further support.

III. The Doctrine of Laches Provides No Basis for Dismissal

Lastly, the TDA argues that Plaintiffs' claims are barred under the doctrine of laches. TDA Mot. 7 ("Plaintiffs cannot show that there was no unreasonable delay in asserting their claims."). This argument is unavailing because (1) the laches doctrine does not apply in public nuisance actions, but even if the doctrine could be invoked (2) the TDA fails to establish a laches defense. To avoid overburdening the Court with duplicative and overlapping arguments, Plaintiffs adopt and incorporate herein the arguments made by Plaintiffs in their Opposition to City/TMAPC MTD, at §§ I(A)-(B) in further support.

CONCLUSION

For the reasons set forth herein, the Court should deny the TDA's Motion to Dismiss the Petition, allowing discovery to proceed and allowing the parties to build a complete record on which the Court can address each of the issues presented by Plaintiffs' claims. In the alternative, the Court should grant Plaintiffs leave to amend to cure any defect in the Petition.[3] Plaintiffs also request oral argument be heard on this motion.

Respectfully submitted,

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[3] As set forth more fully in Plaintiffs' Opposition to the State of Oklahoma's Motion to Dismiss, if the Court grants any or all of Defendants' motions, the Court has a mandatory duty to grant Plaintiffs leave to amend the Petition if the defect can be remedied. 12 O.S. § 2012(G) ("[o]n granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied . . ."); *Kelly v. Abbott*, 1989 OK 124, ¶ 6, 781 P.2d 1188, 1190 ("Because the statute provides that the trial court 'shall' grant leave to amend if the defect can be remedied, the duty is mandatory.").

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June 2021, I served the foregoing by email and U.S. Mail to the following:

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