

COPY

No. D-1-GN-07-000715

RONALD A. TORREY,
Plaintiff,

v.

THE CITY OF AUSTIN,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

PETITION IN INTERVENTION OF TEXAS DISPOSAL SYSTEMS, INC.

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now Intervenor Texas Disposal Systems, Inc. (hereinafter "Intervenor" or "Texas Disposal") and files this Petition in Intervention, and would respectfully show as follows:

I. DISCOVERY, PARTIES, AND VENUE.

1. Plaintiff has pleaded that discovery in this matter shall be conducted under Level 2, TEX. R. CIV. P. 190.3, and has affirmatively pleaded for injunctive relief

2. Plaintiff Ronald A. Torrey ("Plaintiff" or "Captain Hook") is a resident of Travis County who operates Captain Hook-Austin, Inc. a private refuse hauling company. A copy of this Petition in Intervention will be forwarded to Plaintiff's attorney of record, Leonard W. Woods, Davis & Wilkerson, P.C., P.O. Box 2283, Austin, Texas 78768.

3. Defendant City of Austin ("Defendant" or the "City") has appeared through its counsel, David Allan Smith, City Attorney, and Dana K. Johnson, Assistant City Attorney, City of Austin Law Department, P.O. Box 1546, Austin, Texas 78767-1546. A copy of this Petition in Intervention will be forwarded to the City's attorney of record.

Filed in The District Court
of Travis County, Texas

BP SEP 15 2008 4:20
At: Amalia Rodriguez-Mendoza, Clerk

4. Intervenor Texas Disposal is a corporation organized under the laws of the State of Texas. Texas Disposal operates a private refuse hauling company doing business, among other places, in the City of Austin. Captain Hook, in its Original Petition for Declaratory Judgment and Request for Injunctive Relief, has identified Texas Disposal as a party that “may have or claim an interest that would be affected by the outcome of this action.” Original Petition ¶ 5.

II. THE ORIGINAL LAWSUIT.

5. On March 9, 2007, Captain Hook filed Original Petition for Declaratory Judgment and Request for Injunctive Relief (“Original Lawsuit”). In the Original Lawsuit, Captain Hook claims that a municipal ordinance of the City is unconstitutional.

6. Specifically, in the Original Lawsuit, Captain Hook contends that a licensing system for private refuse haulers (codified in Austin City Code, Title 15, Utility Regulations, at Chapter 15-6, Solid Waste Services), constitutes an improper and impermissible occupation tax.

7. In the Original Lawsuit, Captain Hook seeks a declaration that the licensing system is unconstitutional under article VIII, § 1(f) of the Texas Constitution. Captain Hook also prays for an injunction against enforcement of the licensing system.

III. INTERVENOR’S INTEREST.

8. Texas Disposal operates the same type of business as Captain Hook and is subject to the same licensing system that Captain Hook claims is unconstitutional in this case. Texas Disposal’s interests will be affected by this litigation. A ruling that the licensing system is unconstitutional would prejudice Texas Disposal, particularly if it is replaced with a franchise system.

9. Captain Hook, in the Original Lawsuit, states affirmatively that Texas Disposal is a party that “may have or claim an interest that would be affected by the outcome of this action.” Original Petition ¶ 5.

10. Texas Disposal disagrees with Captain Hook’s legal position in this case. Texas Disposal believes that the licensing system as it is being administered is constitutional and proper.

11. Texas Disposal believes that the City may not have the motive to zealously defend the constitutionality of the licensing system. This belief is based in part on the City’s agreement to abate this lawsuit while the City considers replacing the challenged licensing system with a franchise fee scheme. This agreement is evidenced in a Rule 11 agreement between the parties dated June 16, 2008, a copy of which is attached hereto as Exhibit A. Texas Disposal is opposed to a franchise fee scheme. Thus, Texas Disposal’s intervention is necessary to assure proper defense of the claim.

12. Texas Disposal’s presence in this lawsuit will not complicate the case by an excessive multiplication of the issues. Texas Disposal does not seek to raise any issue that is not already raised by Captain Hook’s Original Lawsuit. Texas Disposal simply seeks to have the licensing system as it is being administered declared to be constitutional.

13. To the extent that the City is not actively defending the constitutionality and propriety of the licensing system, Texas Disposal’s intervention is essential to effectively protect its interest.

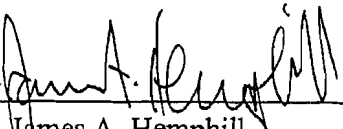
IV. CONCLUSION AND PRAYER.

WHEREFORE, Intervenor Texas Disposal Systems, Inc. requests that the Court grant its

intervention and hold that the licensing system challenged by Plaintiff is constitutional, and that Intervenor further be awarded its costs of suit and such other and further relief to which Intervenor is justly entitled.

Respectfully submitted,

GRAVES DOUGHERTY HEARON &
MOODY, A Professional Corporation
401 Congress Avenue, Suite 2200
Austin, Texas 78701

By 
James A. Hemphill
State Bar No. 00787674
(512) 480-5762; (512) 536-9907 – Fax

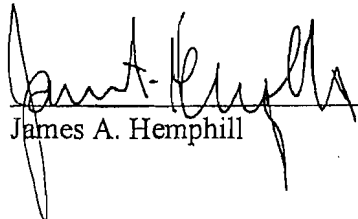
ATTORNEYS FOR INTERVENOR
TEXAS DISPOSAL SYSTEMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on this 15th day of September 2008, to the following:

Leonard W. Woods
Davis & Wilkerson, P.C.
P.O. Box 2283
Austin, Texas 78768
via certified mail, return receipt requested

David Allan Smith, City Attorney
Dana K. Johnson, Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
via certified mail, return receipt requested


James A. Hemphill