

**IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI**

Windhover, Inc., and Jacqueline Gray,	)	
	)	
Plaintiffs,	)	Division 18
	)	
v.	)	Cause No. 07-CC-1103
	)	
City of Valley Park, Missouri,	)	
	)	
Defendant.	)	

**AMENDED PETITION FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Windhover, Inc. and Jacqueline Gray, for their amended petition against Defendant City of Valley Park, Missouri, state as follows:

**PRELIMINARY STATEMENT**

1. This action is brought pursuant to the Declaratory Judgment Act, Mo.R.Stat. § 527.010, *et seq.* and Missouri Supreme Court Rule 87, to seek a declaration of Plaintiffs’ “rights, status, and other legal relations” with respect to Valley Park Ordinance No. 1721, as amended by Valley Park Ordinance Nos. 1723 and 1725 (together “Ordinance 1721”), and Valley Park Ordinance No. 1722, as amended by Ordinance 1724 (together “Ordinance 1722”). The challenged ordinances purport to regulate immigration within the City of Valley Park. Plaintiffs seek a preliminary and permanent injunction restraining enforcement of those provisions.

2. Ordinances 1721 and 1722 are an attempt to circumvent this Court’s March 12, 2007 permanent injunction restraining the enforcement of anti-immigrant Ordinance No. 1708 and Ordinance No. 1715. Like the permanently enjoined ordinances, Ordinances 1721 and 1722 are aimed at usurping the federal government’s exclusive power to regulate immigration and are

aimed in particular at immigrants of Hispanic origin. Ordinance 1721 denies an occupancy permit to any prospective tenant who is an “alien unlawfully present in the United States.” Ordinance 1722 purports to penalize businesses who employ “illegal aliens.” Public comments by the mayor of Valley Park strongly suggest that those ordinances are motivated by racial animus toward Mexican immigrants in particular. The ordinances and their predecessors have caused, or threaten to cause, landlords and businesses to engage in racial profiling and violate federal anti-discrimination laws. The ordinances threaten to cause the Plaintiffs to lose business by delaying or preventing them from obtaining occupancy permits for potential tenants, and threaten to subject the Plaintiffs to enforcement actions by the City without due process. Ordinances 1721 and 1722 should be enjoined.

### **PARTIES**

3. Plaintiff Windhover, Inc. (“Windhover”) is a Missouri corporation with its principal place of business in Valley Park, Missouri. Windhover owns rental units in the City of Valley Park.

4. Plaintiff Jacqueline Gray is an adult citizen and resident of the City of Valley Park in the State of Missouri. Jacqueline Gray is the sole owner and principal of Windhover, Inc.

5. Defendant City of Valley Park is a City of the fourth class located in St. Louis County, Missouri.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction of this action pursuant to Art. 5, § 14 of the Missouri Constitution.

7. Venue is proper in this Court pursuant to Mo.R.Stat. § 508.010.2(1).

## **FACTUAL ALLEGATIONS**

8. Windhover owned rental units in Valley Park at the time Valley Park Ordinances 1721 and 1722 were enacted.

9. Windhover's ability to rent its Valley Park rental units in the future and the marketability of its rental units should it determine to sell them are hampered and interfered with by Valley Park Ordinance 1721.

10. Windhover is a "business entity" as that term is defined in Valley Park Ordinance 1722. Ordinance 1722 would require the Plaintiffs to investigate and determine the immigration status of any person it hires or contracts to perform work on its properties, and, because Plaintiffs do not know how to determine a person's immigration status, would subject them to the enforcement provisions of Ordinance 1722.

11. Plaintiffs have legally protected interests that are threatened or violated by the unconstitutional acts of the City of Valley Park.

## **BACKGROUND**

12. On July 17, 2006, the City of Valley Park, Missouri passed Ordinance No. 1708 ("Ordinance 1708"), entitled "An Ordinance Relating to Illegal Immigration Within the City of Valley Park, Mo.," which ordinance sought to regulate federal immigration matters. *See* Exhibit A. In particular, Ordinance 1708 purported to penalize any landlord or business who leased property to or employed an "illegal alien."

13. On September 22, 2006, Plaintiff Gray and others<sup>1</sup> filed suit in the Circuit Court for the County of St. Louis alleging that Ordinance No. 1708 violated Missouri state law as well as federal law.

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<sup>1</sup> In addition to Plaintiff Gray, Stephanie Reynolds, Florence Streeter and the Metropolitan St. Louis Equal Housing Opportunity Council were named plaintiffs in the September 22, 2006

14. On September 25, 2006, Circuit Court Judge Barbara W. Wallace entered a Temporary Restraining Order enjoining enforcement of Ordinance 1708.

15. On September 26, 2006, the City of Valley Park, Missouri enacted Ordinance No. 1715 (“Ordinance 1715”), entitled “An Ordinance Repealing Sections One, Two, Three and Four of Ordinance No. 1708 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of and Harboring of Illegal Aliens Within the City of Valley Park, MO.” *See* Exhibit B. Among other things, Ordinance 1715 removed an “English-only” provision that was included in Ordinance 1708, but still purported to penalize any landlord or business who leased property to or employed an “illegal alien.”

16. On September 27, 2006, Judge Wallace entered an Amended Temporary Restraining Order enjoining the enforcement of Ordinance 1715.

17. On February 14, 2007, during the pendency of the action before Judge Wallace, the City of Valley Park, Missouri enacted Ordinance 1721 entitled “An Ordinance Repealing Section 510.020 Subsection 103.6.1 Of The Property Maintenance Code Relating To Inspections And Occupancy Permits And Enacting A New Ordinance In Lieu Thereof Relating To The Same Subject Matter,” which, like Ordinance 1715, seeks to regulate immigration matters, specifically, the rental of dwellings to aliens unlawfully in the United States. *See* Exhibit C. Ordinance 1721 requires landlords to obtain from each prospective tenant information regarding the “names, ages, citizenships, and relationships for each proposed occupant, together with such identifying information that shall be required by the City.” Exhibit C, Section Two. The landlord then must apply for an occupancy permit. *Id.* The Building Commissioner shall not issue an occupancy

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suit. The case was captioned *Reynolds, et al., v. City of Valley Park, et al.*, and docketed in this Court as Cause No. 06-CC-3802 in Division No. 13.

permit if it is determined that “any alien unlawfully present in the United States is a proposed occupant[.]” *Id.* Thus, under no circumstances will an occupancy permit be issued unless and until the City either determines that no proposed occupant is an “alien unlawfully in the United States” or concludes that it is unable to make that determination. *Id.* Ordinance 1721 initially provided that it would become effective upon, among other things, “the termination of any restraining order or injunction which [was then] in force in Cause No. 06-CC-3802[.]” *Id.* at 2, Section Three.

18. On February 14, 2007, the City of Valley Park, Missouri also enacted Ordinance 1722, entitled “An Ordinance Repealing Ordinance No. 1715 Relating to Illegal Immigration Within the City of Valley Park, MO, and Enacting a New Ordinance in Lieu Thereof Relating to the Employment of Illegal Aliens Within the City of Valley Park, Mo.[.]” which seeks to regulate immigration matters, specifically, the employment of illegal aliens. *See* Exhibit D. Ordinance 1722 provides that “[i]t is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or in part in the City.” *Id.* at 3, Section Four, A. It provides that an enforcement action may be initiated against a business entity by means of a complaint submitted by any resident of Valley Park alleging that the business entity is in violation of the Ordinance. *Id.* at 4. The business entity will then have 3 days in which to provide “identity information . . . regarding any persons alleged to be unlawful workers.” *Id.* Any business entity that does not provide the information requested by the City with 3 days or who does not correct a violation of the Ordinance within 3 days of being notified of a violation, shall have its business license suspended. *Id.*

19. On February 14, 2007, the City of Valley Park, Missouri further enacted Ordinance No. 1723, entitled “An Ordinance Amending Bill 1866, Proposed Ordinance 1721, Pertaining to the Property Maintenance Code Relating to Inspections and Occupancy Permits by Clarifying Section Two and Section Three Thereof.” *See* Exhibit E. Ordinance No. 1723 amended Ordinance 1721 to expressly reference Ordinance 1722 with respect to the requirement that the Valley Park Building Commission not issue an occupancy permit if “any alien unlawfully present in the United States is a proposed occupant[.]” Ex. E, Section One.

20. On February 14, 2007, the City of Valley Park, Missouri further enacted Ordinance No. 1724, entitled “An Ordinance Amending Bill 1867, Proposed Ordinance 1722, Pertaining to the Employment of Illegal Aliens by Adding Language to Section Seven Thereof Clarifying the Effective Date,” which Ordinance amended Ordinance 1722 so that it would not become effective until “the termination of any restraining orders or injunctions which [were then] in force in Cause No. 06-CC-3802[.]” *See* Exhibit F.

21. On February 27, 2007, the City of Valley Park, Missouri enacted ordinance No. 1725, entitled “An Ordinance Amending Ordinance 1723 Pertaining to the Effective Dates of the Property Maintenance Code Providing that the Enforcement of Ordinance 1721 Shall Become Effective Immediately,” which ordinance amended Ordinance 1723, which in turn had amended Ordinance 1721, to make Ordinance 1721 effective and enforceable immediately. *See* Exhibit G.

22. On March 12, 2007, Circuit Court Judge Barbara W. Wallace ordered that the temporary restraining orders enjoining enforcement of Ordinance No. 1708 and Ordinance No. 1715 be made permanent. *See* Exhibit H.

23. On March 14, 2007, Plaintiff Gray initiated this action by filing a Petition for Declaratory and Injunctive Relief seeking an order enjoining the enforcement of the newly

enacted Ordinance 1721 and Ordinance 1722.<sup>2</sup> Plaintiffs file this Amended Petition for Declaratory and Injunctive Relief to join Windhover as a Plaintiff and add additional causes of action.

### **FEDERAL REGULATION OF IMMIGRATION**

24. The power to regulate immigration is an exclusively Federal power that derives from the Constitution's grant to the Federal government of the power to “establish a uniform Rule of Naturalization,” U.S. Const. art. I, § 8, cl. 4., and to “regulate Commerce with foreign Nations.” *Id.*, cl. 3.

25. Pursuant to its exclusive power over matters of immigration, the Federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a given individual may enter, stay in, and work in the United States.

26. In addition to provisions that directly regulate immigrants’ entry and conduct, the Federal immigration laws also include provisions directed at other classes of individuals, such as those who employ or assist immigrants. Thus, the comprehensive Federal immigration scheme includes sanctions, documentation, and anti-discrimination provisions directly applicable to employers, as well as a criminal and civil scheme applicable to those who assist individuals who are not lawfully in the United States.

27. The laws, procedures, and policies created by the Federal government regulate immigration and confer rights in a careful balance reflecting the national interest.

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<sup>2</sup> As noted above, Ordinance 1722 does not become effective under its own terms until “the termination of any restraining orders or injunctions now in force [as of February 14, 2007] in Cause No. 06-CC-3802[.]” Plaintiffs challenge Ordinance 1722 in this Amended Petition to the extent that: (1) Ordinance 1724 is construed as making 1722 effective upon the termination of the preliminary injunction in Cause No. 06-CC-3802; and/or (2) the permanent injunction in Cause No. 06-CC-3802 is vacated on appeal or on remand.

## CAUSES OF ACTION

28. Valley Park Ordinance 1721 is void and unenforceable because:

a. It violates the Supremacy Clause of the Constitution of the United States.

U.S. Const. art VI, cl. 2. The power to regulate immigration vests exclusively in the federal government. Ordinance 1721 encroaches on the federal government's exclusive power to regulate immigration, legislates in a field that is completely occupied by the federal government, and conflicts with federal laws, regulations, policies, and objectives;

b. It conflicts with and violates the Fair Housing Act, 42 U.S.C. § 3601, *et seq.* The Fair Housing Act prohibits housing practices based on, *inter alia.*, race, color, and national origin, including refusing to rent based on the race, color, or national origin of a prospective tenant. 42 U.S.C. §3604. By delaying the occupancy of all prospective tenants pending the issuance of an occupancy permit, and creating the risk that the landlord will be required to repeat the process with another prospective tenant if an occupancy permit is denied, Ordinance 1721 places landlords in the untenable position of choosing between violating the Fair Housing Act by rejecting prospective tenants who appear to be of Hispanic heritage, or leaving their rental units unoccupied for the indefinite period during which a the City of Valley Park attempts to determine whether prospective tenants are lawfully present in the United States;

c. It is preempted by the Fair Housing Act. In the manner described, *supra.*, Ordinance 1721 stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Fair Housing Act;

d. It violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. It creates an impermissible alienage classification. Further, it has a discriminatory impact on persons of Hispanic heritage, and, on information and belief, its enactment was motivated by racial animus toward persons of Hispanic heritage; and



e. It violates Plaintiffs' due process rights under the Fourteenth Amendment to the Constitution of the United States, in that it deprives Plaintiffs of potential business and of the value of their property by causing unreasonable and unjustified delays in attempting to obtain occupancy permits.

29. Valley Park Ordinance 1722 is void and unenforceable because:

a. Its penalty provision exceeds that authorized by Mo.R.Stat. § 79.470;

b. It is not meaningfully different from Valley Park Ordinance No. 1715, which was declared void and permanently enjoined by the Honorable Barbara W. Wallace on March 12, 2007. Therefore, the City of Valley Park is estopped from enforcing the law under the principles of res judicata and collateral estoppel;

c. It violates the Supremacy Clause of the Constitution of the United States, U.S. Const. art VI, cl. 2, and conflicts with, violates, and is preempted by the Immigration Reform and Control Act of 1986. The power to regulate immigration vests exclusively in the federal government. Valley Park Ordinance 1722 encroaches on the federal government's exclusive power to regulate immigration, legislates in a field that is completely occupied by the federal government, and conflicts with federal laws, regulations, policies, and objectives;

d. It violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. It creates an impermissible alienage classification. Further, it has a discriminatory impact on persons of Hispanic heritage, and, on information and belief, its enactment was motivated by racial animus toward persons of Hispanic heritage; and

e. It violates Plaintiffs' due process rights under the Fourteenth Amendment to the Constitution of the United States, in that it subjects the Plaintiffs to being deprived of their business without providing any standards or guidance for compliance. Plaintiffs have no way of

determining the immigration status of a prospective employee or contractor, and are at risk of violating other laws by attempting to do so.

WHEREFORE, Plaintiffs pray that this Court: (1) grant a declaratory judgment in Plaintiffs' favor and against Defendant that Ordinances 1721 and 1722 are void; (2) grant preliminary and permanent injunctive relief enjoining Defendant from enforcing Ordinances 1721 and 1722, or any ordinance that is substantially the same in content as Ordinances 1721 and 1722; (3) award Plaintiffs the costs of this action, including reasonable attorneys' fees to the extent provided for by law; and (4) grant such other or further relief as is just and proper.

Dated: April 12, 2007

Respectfully submitted,

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\*<sup>1</sup> Not admitted in Missouri, motion for admission pro hac vice to be filed upon receiving Rule 6.01(m) receipt from Supreme Court.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Amended Petition for Declaratory and Injunctive Relief was forwarded via facsimile and hand-delivery on this 12th day of April, 2007 to:

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