

CAUSE NO. D-1GN-08-000511

A. and LESLIE J. BOLLIER, § IN THE DISTRICT COURT OF

§

Plaintiffs, §

§

§

§

Filed in The District Court
of Travis County, Texas

JUN 10 2009 PR

AM 9:00 AM
Amalia Rodriguez-Mendoza, Clerk

v. § TRAVIS COUNTY, TEXAS

§

§

AUSTIN GURDWARA SAHIB, INC. d/b/a §

AUSTIN GURDWARA SAHIB, §

§

Defendant. § 353RD JUDICIAL DISTRICT

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above captioned cause came on for trial before the Court without a jury on March 9, 2009. All parties and their attorneys were present. After considering the pleadings, the evidence, the arguments and briefs from counsel, the Court, in response to a request from Plaintiff, makes the findings of fact and conclusion of law as follows:

1. Defendant has owned the property (the "**Property**") described as Lot 29, Bee Caves West subdivision (the "**Subdivision**"), a subdivision in Travis County, Texas recorded in Volume 75, Page 8 of the Travis County Plat Records since before April 2003.
2. The Property is subject to restrictive covenants (the "**Restrictive Covenants**") that restrict the use of the Property to residential purposes (the "**Use Restriction**"), and that further provide that no buildings, with exceptions not relevant, shall be erected other than single family dwellings (the "**Structure Restriction**").
3. For a period in excess of four years prior to the filing of suit in this case, Defendant has openly and continuously used the Property and improvements thereon for the conduct of religious assembly services in violation of the Use Restriction of the Restrictive Covenants.
4. For a period in excess of four years prior to the filing of suit by Plaintiffs in this case, Defendant has

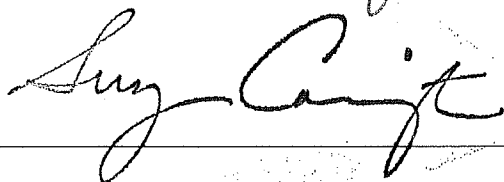
constructed and continuously maintained parking facilities and other permanent improvements on the Property in connection with its religious assembly services in violation of the Structure Restriction of the Restrictive Covenants.

5. A reasonably prudent person should have known of Defendant's violation of both the Use and the Structure Restrictions of the Restrictive Covenants.
6. Plaintiffs and their predecessors in interest in the property in the Subdivision owned by Plaintiffs had constructive notice of Defendant's violation of both the Use and Structure Restrictions of the Restrictive Covenants.
7. Plaintiffs and their predecessors in interest in Plaintiffs' property in the Subdivision waived their right to enforce the Use and Structure Restrictions of the Restrictive Covenants.
8. Defendant's violation of both the Use and the Structure Restrictions was substantial.
9. In 2007 Defendant commenced construction of a new structure on the Property to be used in the conduct of its religious assembly services (the "**New Temple**").
10. The use to be made of the New Temple is not or will not be substantially different in its effect on properties in the Subdivision, including Plaintiffs' property, than the violation of the Use Restriction maintained by Defendant on the Property since more than four years prior to the filing of suit in this case.
11. The New Temple is not or will not be substantially different in its effect on properties in the Subdivision, including the Plaintiff's property, than the violation of the Structure Restriction comprised of the improvements on the Property present since more than four years prior to the filing of suit in this case.
12. The prior violations by Defendant of the Use and Structure Restrictions are not insignificant or insubstantial when compared to the proposed structure and use of the New Temple.
13. Plaintiffs engaged in inequitable conduct in connection with Defendant's use of its Property, including the following acts: Plaintiff Leslie Bollier accused Defendant's agents of selfish and devious conduct for the purpose of discouraging support for an amendment of the Restrictive Covenants to allow Defendant's religious assembly use; Plaintiff Leslie Bollier summoned the police to detain Defendant's agents by falsely reporting to the police that Defendant's agents were driving around the Subdivision in vehicles without license plates and terrorizing the residents of the Subdivision when such agents were visiting residents for the purpose of discussing an amendment of the Restrictive Covenants; and Plaintiff Leslie Bollier encouraged a nonresidential use of property in the Subdivision.
14. An insubstantial level of evidence and presentation of argument was made by any of the parties in connection with the prosecution and defense of Defendant's defamation counterclaim, independent of the evidence and argument in connection with Defendant's defense based on the doctrine of unclean hands.
15. Defendant suffered no actual damages as a result of any statements made by Plaintiff, Leslie Bollier.

CONCLUSIONS OF LAW

1. Plaintiffs' claims for injunctive relief with regard to Defendant's existing use of the Property and existing improvements on the Property are barred by limitations.
2. Plaintiffs' claims for injunctive relief with regard to Defendant's New Temple and use thereof are barred by limitations.
3. Plaintiffs' claims for injunctive relief are barred by the doctrine of unclean hands.
4. Plaintiffs' are not entitled to recover attorney's fees.
5. Defendant is not entitled to recover damages on its claim for defamation.
6. Plaintiffs and their predecessors in interest in Plaintiffs' property in the Subdivision waived their right to enforce the Use and Structure Restrictions of the Restrictive Covenants.
7. Defendant is entitled to eighty percent of its costs of court, and Plaintiffs are entitled to 20% of their costs of court.

Signed this th 10 day of June, 2009.



Suzanne Covington, Presiding Judge