

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

KEVIN POLITE,)
EUNICE ELISE YOUNG,)
)
Plaintiffs,) Civil Action
v.) No. _____
)
)
CITY OF DECATUR, GEORGIA,)
)
Defendant.)

SUMMONS

TO THE ABOVE NAMED DEFENDANT: CITY OF DECATUR, GEORGIA.

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

JOHN D. ANDRLE
COBB, OLSON & ANDRLE, LLC
500 SUGAR MILL RD.
ATLANTA, GA 30350

an answer to the complaint which is herewith sewed upon you, within 30 days after service of this summons upon you, or if service by publication within 60 days of judges order of publication, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This _____ day of _____, 2014.

Linda Carter
Clerk of Superior Court

By _____
Deputy Clerk

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Defendant.)

VERIFIED COMPLAINT

COME NOW, the Plaintiffs, Kevin Polite¹ and Eunice Elise Young², in the above-named and stated matter and set forth their Verified Complaint, showing this Court as follows:

INTRODUCTION: PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Kevin Polite is a resident of the State of Georgia and resides at 1460 Deerwood Drive, Decatur, Georgia 30030.

2.

Plaintiff Eunice Elise Young is a resident of the State of Georgia and resides at 2578 Midway Road, Decatur, Georgia 30030.

¹ A copy of Mr. Polite's verification is attached. The original will be filed with the Court as soon as possible

² Ms. Young's verification will also be filed as soon as possible.

3.

Defendant City of Decatur, Georgia (hereinafter, the "City") may be properly served with legal process through its Mayor, Jim Baskett, and its Council, Kecia Cunningham, Fred Boykin, Patti Garrett and Scott Drake, all at 509 N. McDonough St, Decatur, Ga 30031.

4.

Defendant is subject to the jurisdiction of this Court.

5.

Venue is proper in this Court because the Defendant City is located within DeKalb County and the action involves the annexation of land that is located within DeKalb County.

FACTS COMMON TO ALL COUNTS

6.

At all times relevant to this action, Plaintiff Young has been a resident of one of the five residential homes subject to a purported July, 2013 annexation by the City along Midway Road in DeKalb County, Georgia.

7.

The five residential homes that were purportedly annexed by the City in July, 2013 have the street addresses of: (1) 2578 Midway Road, Decatur, Ga 30030, (2) 2586 Midway Road, Decatur, Ga 30030, (3) 2596 Midway Road, Decatur, Ga 30030, (4) 2604 Midway Road, Decatur, Ga 30030 and (5) 2612 Midway Road,

Decatur, Ga 30030 (collectively referred to as the "Midway Properties").

8.

2578 Midway Road, Decatur, Ga 30030 has a parcel id number of 15 215 02 039 ("Lot 39").

9.

2586 Midway Road, Decatur, Ga 30030 has a parcel id number of 15 215 02 009 ("Lot 9").

10.

2596 Midway Road, Decatur, Ga 30030 has a parcel id number of 15 215 02 010 (Lot "10").

11.

2604 Midway Road, Decatur, Ga 30030 has a parcel id number of 15 215 02 011 (Lot "11").

12.

2612 Midway Road, Decatur, Ga 30030 has a parcel id number of 15 215 02 012 (Lot "12").

13.

The Midway Properties, with lot identification for each of the five (5) parcels, are collectively referred to as the "Subject Property" on the map attached hereto as Exhibit "A".

14.

At all times relevant to this action, Plaintiff Polite has been a resident of property near and/or adjacent to the property

annexed by the City.

15.

The City purportedly annexed the Midway Properties in 2013, with an effective date for the annexation on or around June 1, 2013, without a proper vote of all the legal record title holders/owners of the Midway Properties pursuant to the authority granted by O.C.G.A. section 36-36-20 *et seq.*, which provides for the procedure of annexation under the method of annexation commonly referred to as the "100 Percent Method".

16.

The 100 Percent Method of annexation can only be used to annex contiguous areas. O.C.G.A. section 36-36-20.

17.

The 100 Percent Method of annexation can only be initiated upon "the written and signed application of all of the owners of all of the land". O.C.G.A. section 36-36-21.

18.

Upon information and belief, the application associated with the Midway Properties annexation failed to contain the written signature of all the record title holders and/or owners of the Midway Properties.

19.

The legal owner of Lot 11 from October 18, 2005 through July 21, 2013 was Leon O. Bruggeman ("Bruggeman"). See true and

accurate copies of recorded October 18, 2005 Warranty Deed conveying Lot 11 to Bruggeman and recorded July 22, 2013 Warranty Deed conveying Lot 11 from Bruggeman, attached collectively hereto as Exhibit "B".

20.

Upon information and belief, submission of the application for annexation of the Midway Properties by the City occurred on or around August 20, 2012. See August 20, 2012 correspondence, attached hereto as Exhibit "C".

21.

Bruggeman was required to execute and sign the application for annexation regarding the Midway Properties as Lot 11 was one of the properties included in the application.

22.

Bruggeman's signature is not present on the signatory page attached to the application for annexation of the Midway Properties despite Bruggeman being the record title holder of Lot 11 at the time of submission of the application. See Exhibit "D".

23.

The only signature present on the application for annexation of the Midway Properties is possibly that of Catharina Zuidervaart Bruggeman a/k/a Catharine Zuidervaart ("Zuidervaart").

24.

Upon information and belief, Zuidervaart is the wife of Bruggeman.

25.

Zuidervaart is not the legal and/or record title holder for Lot 11.

26.

On October 22, 2014, Peggy Merriss, City Manager of Decatur (hereinafter, "Merriss"), stated that Bruggeman consented **verbally** to have the application for the annexation of the Midway Properties by the City executed by Zuidervaart. See October 22, 2014 correspondence from Merriss, attached hereto as Exhibit "E".

27.

The signature on the application for annexation of the Midway Properties by the City associated with 2604 Midway Road does not indicate that it was made on behalf of Bruggeman or in any agency capacity for him.

28.

The signature on the application for the annexation of the Midway Properties by the City associated with 2604 Midway Road reflects, if anything, only the authority and consent of the actual signatory.

29.

The Midway Properties were purportedly annexed by the City on or before June 10, 2013 (the "2013 Annexation") with an effective date for the annexation of July 1, 2013. See Exhibit "E".

30.

Because of the illegal annexation, Plaintiff Young has sustained substantial, immediate and irreparable harm as a result of the City's actions.

31.

Plaintiff Young continues to pay taxes to the City since 2013 solely based on the wrongful annexation.

32.

The illegal annexation of the Midway Properties results in "an existing corporate" limit adjacent and/or near the residential property of Plaintiff Polite.

33.

An attempted annexation of the residential property owned by Plaintiff Polite based on the new expanded (and erroneous) corporate limit of the City is an immediate concern and ripe matter.

Count 1:

Action to Declare the Annexation of the Midway Properties Null and Void for Violation of O.C.G.A. section 36-36-20 et seq.

34.

Plaintiffs repeat and incorporate by reference herein the allegations in paragraphs 1 through 33 of this Petition.

35.

The 2012 application for annexation of the Midway Properties failed to include the signature of the record title holder of Lot 11 at the time of the application. See Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E.

36.

The City's 2012 application for annexation of the Midway Properties was done pursuant only to the 100 Percent Method. See Exhibit "C".

37.

Because the City failed to secure and obtain an application conforming with the procedures for annexation pursuant O.C.G.A. section 36-36-21, the 2013 Annexation was legally deficient.

38.

Plaintiffs show that an actual justiciable controversy exists between the parties as to the disputed annexation of the Midway Properties.

WHEREFORE, Plaintiffs requests under Count 1 of their

Petition that the Court declare that the annexation of the Midway Properties is null and void.

COUNT 2:

ATTORNEY'S FEES AND EXPENSES

39.

Paragraphs 1-38 of this Complaint are incorporated herein by this reference.

40.

Defendant has acted in bad faith, has been stubbornly litigious, and has caused Plaintiffs unnecessary trouble and expense.

41.

Ante litem notice pursuant to O.C.G.A section 36-33-5 is not applicable as that statute merely applies to "tort claims regarding personal injury or property damage" and not to other types of claims." Greater Atlanta Homebuilders Ass'n, Inc. v. City of McDonough, 322 Ga. App. 627, 629 (2013).

42.

Defendants are therefore liable to pay Plaintiffs' reasonable attorney's fees and expenses of litigation in an amount to be proved at trial, jointly and severally, pursuant to O.C.G.A. § 13-6-11, in addition to all other damages and costs provided by law.

THEREFORE, Plaintiffs pray that this Court grant the following relief:

- (1) That summons and process issue, and that all Defendants be required to appear and answer before this Court;
- (2) That a jury of twelve (12) persons be empaneled to hear and adjudicate Plaintiff's claims herein;
- (3) That the Court declare the annexation of the Midway Properties is null and void;
- (4) That the Court issue a preliminary injunction ordering the Defendant to maintain the status quo by staying the annexation of Midway Properties until the conclusion of the suit;
- (5) That the Court issue a permanent injunction ordering Defendant that any future attempts to annex the Midway Properties may not be done so pursuant to O.C.G.A. section 36-36-20 *et seq.*;
- (6) That the Court issue a preliminary injunction prohibiting Defendant from any further annexation of unincorporated areas predicated on the corporate limits resulting from the disputed Midway Properties annexation until the conclusion of the suit;
- (7) That the Court issue a permanent injunction

prohibiting Defendant from any further annexation of unincorporated areas predicated on the corporate limits resulting from the disputed Midway Properties annexation until the conclusion of the suit;

- (8) That the Court issue a permanent mandatory injunction ordering Defendant to return to Plaintiff Young all taxes that she has paid as a result of the illegal annexation of the Midway Properties.
- (9) Award Plaintiffs their reasonable costs and expenses, including attorney's fees, that they have incurred in prosecuting this Action as allowed by O.C.G.A. section 13-6-11; and
- (10) That the Court grant such other and further relief as is deemed just, proper, and equitable.

This ____ day of _____, 2014.

COBB, OLSON & ANDRLE, LLC

By: _____
John D. Andrle
Georgia Bar No. 488330
Attorneys for Plaintiffs

500 Sugar Mill Rd.
Atlanta, Ga 30350

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VERIFICATION

STATE OF _____

COUNTY OF _____

COMES NOW, before the undersigned officer duly authorized by law to administer oaths, and after being duly sworn, Kevin Polite gives this Verification, and states that the facts contained in the within and foregoing Complaint are true and correct, to the best of his knowledge, information, and belief.

Kevin Polite
Affiant

Sworn to and subscribed
before me this ____ day of
_____, 2014.

Notary Public
My commission expires:

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VERIFICATION

STATE OF _____

COUNTY OF _____

COMES NOW, before the undersigned officer duly authorized by law to administer oaths, and after being duly sworn, Eunice Elise Young gives this Verification, and states that the facts contained in the within and foregoing Complaint are true and correct, to the best of his knowledge, information, and belief.

 Eunice Elise Young
 Affiant

Sworn to and subscribed
before me this ____ day of
_____, 2014.

 Notary Public
 My commission expires: