

CAUSE NO. 2018-58037

YAHIA ZARIR
Plaintiff,

v.

DRUSILLA W. BENNETT
Defendant/3rd Party Plaintiff

v.

RUTH M. KENDALL and
KEVIN KENDALL
3rd Party Defendants,

v.

RPG INVESTMENTS LLC,
Intervenor.

§ IN THE DISTRICT COURT

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OF HARRIS COUNTY, TEXAS

215TH JUDICIAL DISTRICT

RPG INVESTMENTS LLC'S PLEA IN INTERVENTION

COMES NOW, RPG Investments, LLC ("RPG"), a non-party, and files this, its Plea in Intervention in the above-styled and numbered cause between Plaintiff, Yahia Zarir ("Zarir"), and Defendant, Drusilla W. Bennett, ("Bennett") and 3rd Party Defendants, Ruth M. Kendall and Kevin Kendall (the "Kendalls") and respectfully shows the Court as follows:

I. SUMMARY

1. At the time of filing her Original Petition, Plaintiff, Yahia Zarir was the record title holder of the real property located at 0 Ennis Street, Houston, Texas (the "RPG Property") by virtue of a Deed under Order of Sale in Tax Suits recorded on October 4, 2016 at Instrument Number RP-2016-447797 of the Official Public Records of Harris County, Texas.

2. On December 3, 2019, RPG Investments LLC acquired title to the RPG Property

by virtue of a Deed under Order of Sale in Tax Suits recorded on January 6, 2020 at Instrument Number RP-2020-6191 of the Official Public Records of Harris County, Texas, which describes the Property with particularity as:

A TRACT OR PARCEL OF LAND OUT OF LOTS 7, 8 AND 9 IN BLOCK 6 OF LINCOLN PARK ADDITION, A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1A, PAGE 125 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS; BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN HARRIS COUNTY CLERK'S FILE NUMBER 20060129875 ALSO KNOWN AS TRACTS 7, 8 & 9B, BLOCK 6 OF LINCOLN PARK BY THE HARRIS COUNTY APPRAISAL DISTRICT.

3. RPG brings this Plea in Intervention to protect its interest the Property.

II. PARTIES

4. RPG is a Texas limited liability corporation.
5. Plaintiff, Yahia Zarir, is an individual residing in Harris County, Texas who has appeared herein by virtue of Plaintiff's Original Petition.
6. Defendant, Drusilla W. Bennett, is an individual residing in Harris County, Texas who has appeared herein by virtue of the Original Answer of Drusilla W. Bennett.
7. Third Party Defendant, Ruth M. Kendall is an individual residing in Harris County, Texas who has appeared herein by virtue of Third-Party Defendants' Original Answer to Third Party Petition.
8. Third Party Defendant, Kevin Kendall is an individual residing in Harris County, Texas who has appeared herein by virtue of Third-Party Defendants' Original Answer to Third Party Petition.

III. DISCOVERY LEVEL

9. RPG intends to conduct discovery in accordance with a Level 2 discovery control plan under Texas Rule of Civil Procedure 190.3.

IV. JURISDICTION, VENUE AND STATEMENT OF RELIEF SOUGHT

10. The Court has subject-matter jurisdiction over this Plea in Intervention because the amount in controversy exceeds this Court's minimum jurisdictional requirements. The damages sought are within the jurisdictional limits of the Court.

11. Venue of the Plea in Intervention is proper in Harris County, Texas pursuant to Texas Civil Practices & Remedies Code §15.062.

12. RPG seeks monetary relief of \$100,000 or less and non-monetary relief.

V. FACTUAL BACKGROUND

13. On June 28, 2011, effective July 15, 2011, the Federal Home Loan Mortgage Corporation, acting by and through Chicago Title Insurance Company D/B/A Servicelink, as Attorney-in-Fact, by Power of Attorney recorded October 19, 2006 at Harris County Clerk's File No. 20060136648, as grantor conveyed to Drusilla W. Bennett, as grantee that certain tract of land containing 3,943 square feet and being the south 64.54 feet of Lot 10, 11 and a portion of the south 64.54 feet of Lot 9, in Block 6 of Lincoln Park Addition, a subdivision of Lot No. 87 of the J.S. Holman Survey in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 1, Page 125 of the Map Records of Harris County, Texas, said 3,943 square feet being more particularly described by metes and bounds attached to that certain Special Warranty Deed filed for record on July 19, 2011 under Clerk's File No. 20110295750 of the Official Public Records of Harris County, Texas. This property is commonly known as 5124 Ennis, Houston, Texas. The *Bennett Property*.

14. By Special Warranty Deed dated June 29, 2011, FANNIE MAE a/k/a FEDERAL NATIONAL MORTGAGE ASSOCIATION, by and through its Attorney-in-Fact, Brice, Vander, Linden & Wernick, P.C. as grantor in favor of Ruth M. Kendall and Kevin Kendall, as grantees that certain tract of land containing 6,131 square feet and being the north 60.46 feet of Lots 8, 9,

10 and 11 and a portion of Lot 7, all in Block 6 of Lincoln Park Addition, a subdivision of Lot No. 87 of the J.S. Holman Survey in Harris County, Texas, according to the Map or Plat thereof recorded in Volume 1, Page 125 of the Map Records of Harris County, Texas, said 6,131 square feet being more particularly described by metes and bounds attached to that certain Special Warranty Deed filed for record on July 7, 2011 under Clerk's File No. 20110277627 of the Official Public Records of Harris County, Texas. This property is commonly known as 5120 Ennis, Houston, Texas. The *Kendall Property*.

15. The Kendall Property is situated at the corner of Ennis and Wichita Streets and continues along Wichita Street.

16. The Bennett Property sits adjacent to the Kendall Property along Ennis Street.

17. The RPG Property lies adjacent to and behind the Bennett Property.

18. Access to the RPG Property from Ennis Street is blocked by the Bennett Property.

19. Access to the RPG Property from Wichita Street is blocked by the Kendall Property.

20. Thus, the RPG Property is landlocked with no access to public streets via an easement or any other means that would not require RPG to trespass upon the Kendall or Bennett Properties.

21. Unity of ownership existed as to the Property: the Bennett and Kendall properties were once part of a single tract of land owned by Marjorie Simpson. That single tract of land was subdivided to create the Bennett and Kendall properties. The RPG Property is the remainder.

VI. LEAVE TO INTERVENE

22. Under Rule 60 of the Texas Rules of Civil Procedure, "[a]ny party may intervene by filing a pleading..." Intervention is proper so long as the intervenor satisfies certain requirements. The intervenor must have an interest in the lawsuit. *See Guaranty Fed. Sav. Bank*

v. Horseshoe Operating Co., 793 S.W.2d 652, 657 (Tex. 1990). That interest must be a justiciable interest, not merely contingent or remote. *See id.*; *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982). Also, the intervenor's interest must arise from the same transaction or occurrence and have common questions of law or fact with the original claim. TEX. R. CIV. P. 40(a). Finally, it is an abuse of discretion not to allow intervention where the "intervention will not complicate the case by an excessive multiplication of the issues and the intervention is almost essential to protect the intervenor's interest." *Guaranty Fed. Sav. Bank*, 793 S.W.2d at 657.

23. Here, RPG clearly has a justiciable interest in the lawsuit. RPG's interest in this suit as the current owner of the Property implicates roughly identical interests as the Plaintiff and former owner of the property Yahia Zarir.

24. RPG's interest relates to the same transactions, occurrences or issues addressed in Plaintiff's Original Petition. The Court's judgment regarding each of those transactions, occurrences or issues will have a direct and substantial impact on RPG's interest in the Property. Moreover, for the same reasons, intervention here will not complicate the case by an excessive multiplication of the issues.

25. Finally, intervention is essential to protect RPG's interest in the Property.

VII. CAUSES OF ACTION

COUNT 1 – Easement by Necessity as to the Bennett Property

26. RPG incorporates herein by reference as if fully set forth verbatim, the paragraphs above.

27. RPG would show: 1) A unity of ownership between the RPG Property and Bennett Property prior to severance; 2) the requested access is not a matter of convenience, and 3) the necessity existed at the time that the two properties were severed.

28. The requested easement is not a matter of convenience, but to provide RPG with

legally permissible access to the RPG Property.

29. The necessity of an easement existed at the moment that the Property was severed from the Bennett property and the necessity of an easement exists as of the date of the filing of this pleading.

COUNT 2 – Easement by Necessity as to the Kendall Property

30. RPG repeats and incorporates herein by reference as if set forth fully verbatim, the paragraphs above. RPG pleads Count 2 in addition to and as an alternative as to Count 1.

31. RPG would show: 1) A unity of ownership between the RPG Property and the Kendall property prior to severance; 2) the requested access is not a matter of convenience; and 3) the necessity existed at the time that the two properties were severed.

32. The requested easement is not a matter of convenience, but to provide RPG with legally permissible access to the Property.

33. The necessity of an easement existed at the moment that the Property was severed from the Bennett property and the necessity of an easement exists as of the date of the filing of this pleading.

COUNT 3 – Declaratory Judgment

34. RPG repeats and incorporates herein by reference as if set forth fully verbatim, the paragraphs above.

35. There exists a genuine uncertainty between the parties herein that would be terminated by the granting of declaratory judgment. RPG is bringing this action pursuant to TEX. CIV. PRAC. & REM. CODE § 37.001-37.011, for a declaration that RPG is equitably entitled to an access easement over either the Bennett property or Kendall property. RPG requests that the Court determine which property – the Bennett property or Kendall property – should properly be identified as the servient estate over which an access easement connecting the Property to a public

road shall run.

36. Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, request is made for all costs and reasonable and necessary attorney's fees incurred by RPG as the Court deems equitable and just.

37. All conditions precedent to Intervenor's claims for relief have been performed or have occurred.

PRAYER FOR RELIEF

For the reasons set forth herein, RPG respectfully requests that RPG be awarded the following relief:

- a. Leave to intervene in the above styled lawsuit;
- b. As an alternative to the relief requested in section c; Judgment granting an Easement by Necessity with same running over the Bennett property;
- c. As an alternative to the relief requested in section b Judgment granting an Easement by Necessity with same running over the Kendall property;
- d. A declaratory Judgment be granted as requested herein;
- e. Attorneys' fees; and
- f. Such other and further relief, at law or in equity, to which RPG may show itself entitled.

Respectfully submitted,

BARRY & SEWART, PLLC

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ATTORNEYS FOR RPG Investments LLC

Unofficial Copy Office of Marilyn Burgess District Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February 2020, a true copy of the foregoing was served on all parties and/or counsel of record via eFileTexas.gov:

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