

12-Person Jury

Return Date: No return date scheduled
Hearing Date: 9/10/2020 10:00 AM - 10:00 AM
Courtroom Number: 2601
Location: District 1 Court
Cook County, IL

FILED
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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
9223465

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DANIEL MORENO, on behalf of himself and all)
others similarly situated,)

Plaintiff,)

v.)

No. 2020CH04132

HILCO REDEVELOPMENT, LLC d/b/a HILCO)
REDEVELOPMENT PARTNERS; HRE)
CRAWFORD, LLC; and HRP EXCHANGE)
55, LLC,)

Defendants.)

CLASS ACTION COMPLAINT

NOW COMES plaintiff Daniel Moreno, individually and on behalf of all those similarly situated, by and through his attorneys, Miner, Barnhill & Galland, P.C., and hereby complains of defendants, Hilco Redevelopment, LLC, d/b/a Hilco Redevelopment Partners; HRE Crawford, LLC; and HRP Exchange 55, LLC (collectively, “defendants”) and states as follows:

SUMMARY OF THE CASE

1. On April 11, 2020, defendants demolished a 95-year-old smokestack at the old Crawford Coal Plant causing an enormous toxic dust plume to invade, envelope, and spread across the Little Village neighborhood of Chicago, Illinois, a predominantly Latino neighborhood. As a result of the demolition, on an otherwise beautiful Easter weekend, residents, already under a shelter-in-place order because of the COVID-19 pandemic, have been plagued with nuisance-level discomforts (shortness of breath, cough, difficulty breathing, worry, sleep loss, headaches) in their own homes, their properties were covered with toxic dust, and

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they generally have been impeded from using and enjoying their property, including their outdoor spaces.

2. Plaintiff is a Little Village resident who brings this class action for damages and injunctive relief under Illinois common law nuisance, negligence and trespass.

3. Plaintiff seeks lost-use-and-enjoyment damages to vindicate private property rights and injunctive relief.

4. Plaintiff alleges that defendants were negligent, created a nuisance, and trespassed on residents' properties by failing to exercise the reasonable care that would have prevented the toxic dust plume and avoided class-area harm. The dust and discomforts experienced throughout the class area, as well as the toxic exposure caused by the dust plume, were all foreseeable. Defendants knew or should have known they would occur.

5. Defendants' conduct was reckless.

6. Compensatory damages and injunctive relief in the form of remediation are warranted to redress the harms defendants caused the residents to suffer and to deter similar conduct in the future.

PARTIES

7. Plaintiff Daniel Moreno seeks to represent all residents of the Little Village area that were affected by the toxic dust plume released by the April 11, 2020 demolition.

8. Plaintiff Moreno has resided in Little Village for decades, including on April 11, 2020 and thereafter.

9. Defendant Hilco Redevelopment, LLC d/b/a Hilco Redevelopment Partners is an Illinois company engaged in the business of acquiring and redeveloping real estate, including the redevelopment of the Crawford Coal Power Plant property into a warehouse and distribution

center. Defendant Hilco Redevelopment, LLC, a Delaware limited liability company, has its principal office at 5 Revere Dr., Ste. 206, Northbrook, Illinois 60062.

10. Defendant HRE Crawford LLC, a Delaware limited liability company, has its principal office at 5 Revere Dr., Ste. 206, Northbrook, Illinois 60062.

11. On information and belief, HRE Crawford LLC, itself another entity owned, managed, or affiliated with Hilco Redevelopment LLC, was formed specifically to participate in the redevelopment of the Crawford Coal Power Plant site. In filings with the State of Illinois and the Chicago Department of Public Health, Defendant HRE Crawford LLC is listed as the site's owner.

12. Defendant HRP Exchange 55 LLC, a Delaware limited liability company, has its principal office at 5 Revere Dr., Ste. 206, Northbrook, Illinois 60062.

13. On information and belief, HRP Exchange 55 LLC is also a subsidiary, affiliate, or partner of Hilco Redevelopment, also formed specifically to participate in the redevelopment of the Crawford Power Plant. In the March 2020 permit for work at the Crawford Coal Plant, HRP Exchange 55 LLC is listed as the owner of the site.

14. As developers and/or owners of the Crawford Coal Plant site, defendant Hilco Redevelopment LLC, defendant HRE Crawford, LLC, and defendant HRP Exchange 55, LLC were responsible for and participated in the Crawford smokestack demolition on April 11, 2020.

JURISDICTION AND VENUE

15. This Court has jurisdiction over all defendants because they are domiciled and have their principal places of business in Illinois, and do regular and continuous business in Cook County, Illinois.

16. Plaintiff currently resides and is domiciled in Cook County, Illinois.

17. Venue is proper pursuant to 735 ILCS 5/2-101 because defendants' principal places of business are located in Chicago and Northbrook, Illinois.

FACTUAL ALLEGATIONS

18. In 2017, defendants acquired the Crawford Coal Plant with plans to redevelop it into a warehouse and distribution center. As part of that plan, defendants planned to demolish, and then have worked collectively to demolish the Plant (including its smokestack) and redevelop the site. Hilco Redevelopment LLC's website states:

HRP plans to construct a modern, 1 million square foot logistics facility on the 70 acre site that will be known as "Exchange 55". As part of the new development, HRP has commenced the remediation and demolition of the existing structures.

19. On Thursday, April 9, 2020, in connection with the redevelopment plan, the City issued a permit to Hilco Redevelopment LLC and its contractors for the demolition of the Crawford Coal Plant smokestack to commence two days later, on the morning of Saturday, April 11, 2020.

20. The permit required defendants to take sufficient and appropriate measures to minimize the release of toxic matter from the demolition in order to protect Little Village residents. A demolition and mitigation plan that would have done so was submitted to City officials.

21. The only notice of the demolition defendants gave was issued on April 9, 2020, less than two days before the demolition, and was only given to some Little Village residents. It assured the residents that there would be "extensive dust control and mitigation efforts, including a variety of watering techniques such as water trucks, water cannons, and direct-driving misting systems." It did not notify them that the demolition would, or could, put the residents at risk of exposure to toxic dust and particulate matter harmful to their health.

22. During its operation, like other coal-fired power plants, the Crawford Plant smokestack had emitted many toxic pollutants, including mercury, sulfur dioxide, nitrogen oxides, and particulate matter.

23. Particulate matter -- both large and fine -- is a known irritant and a nuisance whose health effects are well established. According to the United States Environmental Protection Agency (U.S. EPA), exposure to particulate matter is linked to irritation of the respiratory airways, coughing, difficulty breathing, aggravated asthma, decreased lung function, and even premature death.¹ According to the Illinois Environmental Protection Agency (ILEPA), particulates exposure is associated with increased respiratory and cardiopulmonary disease and cancer.²

24. Defendants knew or should have known of the health risks described above, and that the smokestack's demolition could release the same toxins and particulates into the surrounding air, including into the Little Village neighborhood.

25. Despite this knowledge, the demolition proceeded on the morning of Saturday, April 11, 2020; but the mitigation plan was not followed.

26. As the smokestack fell, an enormous dust cloud erupted.

27. The cloud consisted of large and fine particulate matter made up, on information and belief, of a mixture of heavy metals and other toxic substances.

28. The dust cloud traveled from the plant, enveloping thousands of residents and their properties.

¹ <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>

² <https://www2.illinois.gov/epa/topics/air-quality/air-quality-reports/Documents/2018%20Annual%20Air%20Quality%20Report%20Final.pdf>

29. According to City of Chicago Mayor, Lori Lightfoot:

All of us were assured that there was a very specific plan, that there would be water on site, and that they would be using the water before, during and after to make sure that a dust cloud didn't migrate off site. Obviously, that didn't happen. My understanding is Hilco has now acknowledged that they did not follow the plan that they had told us and I think told the alderman. If we had known, obviously, that they weren't going to do what they said they were going to do, we wouldn't have allowed this to go forward.³

30. Mayor Lightfoot further stated that she wants "cars cleaned, I want streets swept, I want houses to be cleaned of the dust that's settled. That's the charge I've given to my team and Hilco is going to have to own responsibility for that."⁴

31. Defendant Hilco Redevelopment, LLC CEO Roberto Perez, admitted to, and apologized for, causing "anxiety and fear" throughout the class area.⁵

32. Plaintiff Moreno lives in Little Village northwest of the demolition site. Unaware on April 11, 2020, that the demolition was scheduled to take place that morning, he was outside on his property during the day performing yard and other work, and breathed in toxic and harmful particulates from defendants' smokestack demolition.

33. Plaintiff Moreno is asthmatic, but his asthma had been controlled without an inhaler for many years. After breathing in the particulates on April 11, 2020, he suffered a severe asthma flare up -- his first in several years -- and burning eyes. He subsequently suffered from shortness of breath, coughing, and irritated respiratory passages. He was uncomfortable working outside on his property and delayed or eliminated all unnecessary outside activity such as mowing his lawn. His incessant cough made him uncomfortable at his job, where it attracted

³ <https://www.chicagotribune.com/news/ct-chicago-little-village-hilco-dust-20200413-mcnvpun67fa6hftphonipdrmea-story.html>

⁴ *Id.*

⁵ <https://www.fox32chicago.com/news/company-apologizes-for-massive-dust-cloud-in-little-village-after-demolition>

unwanted attention from co-workers during this COVID-19 pandemic and caused him fear of not being called into work because of the cough. He worried over what he has been exposed to because of the demolition.

34. Residents throughout the class area suffered the same effects.

35. Illinois Attorney General Kwame Raoul filed a Complaint for Injunctive Relief and Civil Penalties in this Court on May 5, 2020. (*People of the State of Illinois, ex rel. Kwame Raoul v. Hilco Redevelopment LLC 6, et al.*, No. 2020-CH-04076.) According to the Complaint, residents reported asthmatic responses and other respiratory distress, pain breathing, and anxiety and fear as a result of the felling of the smokestack.

36. The Attorney General's lawsuit seeks injunctive relief and remediation. It does not seek the private damages plaintiff seeks here for the Little Village residents, whom plaintiff submits cannot be required to bear the brunt of defendants' wrongful conduct without fair compensation.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this class action complaint pursuant to 735 ILCS 5/2-801 on behalf of himself and all individuals who resided within the reach of the plume released by the demolition on April 11, 2020. He seeks lost-use-and-enjoyment damages for himself and the class, and appropriate injunctive relief.

38. The requirements for class certification in this case are met:

a. Numerosity

This class is so numerous that joinder of all members would be impracticable. Tens of thousands of people live in Little Village. Many hundreds, if not thousands, of those residents

lived within the toxic and harmful plume of the demolition. Class certification would be substantially more practical than joinder.

b. Commonality

Common questions of law and fact exist as to all members of the class, including, but not limited to:

- i. whether defendants were negligent in their demolition of the smokestack;
- ii. whether defendants violated permits issued by the City of Chicago or other regulators and associated promises to protect the Crawford site's neighbors;
- iii. whether defendants caused a toxic dust plume to inundate the residential area surrounding the site, interfering with the residents' use and enjoyment of their properties;
- iv. whether defendants' dust plume created nuisance conditions at the residents' properties; and
- v. whether defendants trespassed on those properties by deposition of toxic and harmful dust.

Numerous important common questions of law and fact exist; and they will predominate over any questions pertaining to individual members.

c. Adequacy

Plaintiff Moreno will fairly and adequately protect the interests of the entire class in securing just compensation for the harms the demolition caused. He has no interests adverse to any members of the class. His intent is to prosecute this case on behalf of all class members, not just himself. And he has engaged class-action counsel with decades of class-action experience and successes, including specific knowledge and experience in handling environmental nuisance class-action lawsuits, with lawyer and paralegal staff who possess written and spoken proficiency in Spanish.

d. Fair and Efficient Adjudication of the Controversy

This class action is an appropriate method for the fair and efficient adjudication of the controversy. It asserts claims in negligence, nuisance, and trespass for potentially thousands of residents seeking damages to compensate them for the lost use and enjoyment they suffered at their properties, which claims the residents have insufficient resources to vindicate on their own. Common issues will predominate over any individual ones. A class action is the only efficient and effective method for adjudicating this matter.

**COUNT I
NEGLIGENCE**

39. Plaintiff repeats and realleges the allegations set forth above.

40. Defendants had a duty to Little Village residents to exercise ordinary care to prevent foreseeable interference -- here, by the release of a toxic and harmful dust plume -- with the residents' use and enjoyment of their properties.

41. Defendants breached said duty to exercise ordinary care in a dangerous and negligent manner so as to interfere with residents' ability to use and enjoy their properties.

Specifically, defendants breached their duty as follows:

- (a) failed to give adequate notice of the demolition and the toxic nature of the likely releases;
- (b) failed to follow the approved plan for demolition;
- (c) failed to plan for and/or employ sufficient and appropriate dust mitigation techniques;
- (d) allowed enormous amounts of particulate matter and other toxins to envelope the community;
- (e) generally failed to control the emissions of particulate matter from their property; and/or
- (f) were otherwise negligent.

42. As a direct and proximate result of defendants' negligence, plaintiff Moreno and the class suffered unacceptable and unreasonable interference with their rights to use and enjoy their properties, interference they should not be required to suffer without compensation.

43. Plaintiff accordingly seeks money damages for the lost use and enjoyment caused by defendants' conduct and an injunction requiring defendants to remediate the resulting contamination at or threatening their properties and for other appropriate injunctive relief.

WHEREFORE, plaintiff demands judgment against defendants in an amount in excess of \$50,000, as shall represent fair and just compensation.

**COUNT II
NUISANCE**

44. Plaintiff repeats and realleges the allegations set forth above.

45. At all times relevant hereto, defendants knew that demolition of the smokestack could result in toxic releases, including particulate matter, migrating from defendants' property to neighboring Little Village properties.

46. As a direct and proximate result of the demolition, toxic releases, including particulate matter, did invade and cause contamination of plaintiff's and his neighbors' properties. The invasion was both substantial and unreasonable.

47. As a direct and proximate result of defendants' negligence, plaintiff Moreno and the class suffered unacceptable and unreasonable interference with their rights to use and enjoy their properties, interference they should not be required to suffer without compensation.

48. Plaintiff accordingly seeks money damages for the lost use and enjoyment caused by defendants' conduct and an injunction requiring defendants to remediate the resulting contamination at or threatening their properties and for other appropriate injunctive relief.

WHEREFORE, plaintiff demands judgment against defendants in an amount in excess of \$50,000, as shall represent fair and just compensation.

**COUNT III
TRESPASS**

49. Plaintiff repeats and realleges the allegations set forth above.

50. Defendants have trespassed through unlawful, unauthorized, and wrongful entry and damage to plaintiff's land by depositing airborne particulate matter on the plaintiff's and his neighbors' properties without their permission or invitation.

51. Defendants were aware of the trespass they were causing.

52. The trespass has caused actual and substantial damage to the plaintiff's and his neighbors' properties, and has interfered with the plaintiff's and his neighbors' exclusive possession of their properties.

53. The trespass is continuing and ongoing.

54. Defendants' interference with plaintiff's and his neighbors' possessory rights was unreasonable and foreseeable.

55. As a direct and proximate result of the trespass, plaintiff and his neighbors sustained and will continue to sustain a loss of ability to use and enjoy their properties.

56. As a direct and proximate result of defendants' negligence, plaintiff Moreno and the class suffered unacceptable and unreasonable interference with their rights to use and enjoy their properties, interference they should not be required to suffer without compensation.

57. Plaintiff accordingly seeks money damages for the lost use and enjoyment caused by defendants' conduct and an injunction requiring defendants to remediate the resulting contamination at or threatening their properties and for other appropriate injunctive relief.

WHEREFORE, plaintiff demands judgment against defendants in an amount in excess of \$50,000, as shall represent fair and just compensation.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

/s/ Scott A. Entin
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