

Notice sent: Final Interlocutory None

DC BK11311 PG8

Filed in The District Court  
of Travis County, Texas

Disp Parties: All

Disp code: CVD / CLS 4611

Redact pgs:       

Judge OLN Clerk DP

CAUSE NO. D-1-GV-05-004526

NOV 01 2011 JA

At 1:37 p.m.  
Amalia Rodriguez Mendoza Clerk

CITY OF AUSTIN,  
Plaintiff/Counter-Defendant,

VS.

TRUDY'S TEXAS STAR, INC.  
d/b/a SOUTH CONGRESS CAFÉ  
Defendant/Counter-Plaintiff.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201<sup>st</sup> JUDICIAL DISTRICT

### FINAL JUDGMENT

On August 8, 2011, the Court called this case for trial. Plaintiff/Counter-Defendant City of Austin ("City") appeared by designated representative in person and through counsel and announced ready for trial. Defendant/Counter-Plaintiff Trudy's Texas Star, Inc. d/b/a South Congress Café ("Trudy's") appeared by designated representative in person and through counsel and announced ready for trial. Jury was waived and all matters in controversy, legal and factual, were submitted to the Court for its determination. The Court heard the evidence and arguments of counsel and hereby enters judgment in favor of Trudy's as set forth below.

After considering the pleadings, the testimony and other evidence, post trial letter briefing by the parties and all arguments of counsel, the Court hereby finds, declares, orders and adjudges as follows:

1. Trudy's is entitled to and is hereby GRANTED DECLARATORY JUDGMENT on Trudy's claim for a declaratory judgment under Chapter 37 of the Texas Civil Practices and Remedies Code (the "Declaratory Judgments Act") as follows:

- a. The City's "rescission" of its approval of Trudy's Site Plan (the "Site Plan") submitted as part of Trudy's Site Plan Application (as may have been amended from time to time) pertaining to 1600 South Congress Avenue,



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Austin, Texas (and 1800 South Congress Avenue relative to off-site parking) (collectively the "Project") was not permitted under the City's Development Code and is declared to be *ultra vires*, void *ab initio*, and ineffective. The City's May 17, 2006, approval of the Site Plan is deemed to have never been rescinded.

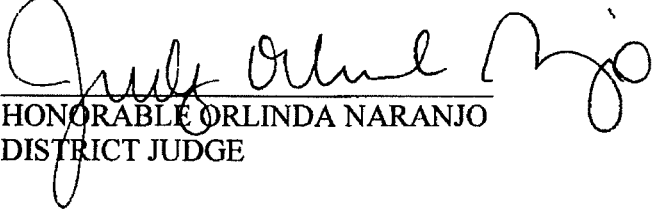
- b. Any violation of the Rule 11 Agreement by Trudy's is excused by the City's prior material breach of the Rule 11 Agreement.
  - c. The condition precedent set forth in the Rule 11 Agreement to the City's rights to pursue the claims asserted herein by the City did not occur, and the City's claims for breach of contract and the relief requested are hereby denied;
  - d. The City has waived immunity from suit and immunity from liability pertaining to Trudy's claims asserted herein and to the relief awarded to Trudy's herein.
2. Trudy's is entitled to and is hereby GRANTED JUDGMENT on Trudy's cause of action against the City for BREACH OF CONTRACT pertaining to the City's material breach of the Rule 11 Agreement and is HEREBY AWARDED JUDGMENT against the City for SPECIFIC PERFORMANCE of the Rule 11 Agreement and the Court hereby ORDERS the City to perform all of its obligations under the Rule 11 Agreement.
  3. The Court ORDERS that the parties shall be deemed to be in the same place that they were prior to the purported rescission of the Site Plan wherein Trudy's is deemed to still have an approved Site Plan and all deadlines under the Rule 11 Agreement are hereby extended to June 2, 2012.

4. Pursuant to the Court's power under the Declaratory Judgments Act, the Court finds that Trudy's is also entitled to recover from the City \$359,918.75 in reasonable and necessary attorneys' fees and costs of Court through the date this Judgment is entered. More specifically, Trudy's requested attorneys' fees and costs based on the Court's authority to award the same under the Declaratory Judgments Act, and Trudy's offered evidence of its reasonable and necessary attorneys' fees and costs. The Court finds that Trudy's incurred reasonable and necessary attorneys' fees and costs in the amount of \$359,918.75 through trial, and per the Declaratory Judgments Act the Court hereby GRANTS JUDGMENT to Trudy's against the City that Trudy's recover said \$359,918.75 in reasonable and necessary attorneys' fees and costs of Court through this date.
5. In addition, Trudy's is conditionally awarded the following amounts of attorneys' fees in the event of the following occurrences: (1) <sup>2</sup>\$5,000 — in the event that the City files but does not succeed on any post-judgment motion; (2) \$15,000 — in the event the City files Notice of Appeal to the Court of Appeals and does not ultimately succeed in a reversal of the Final Judgment; (3) 5,000 — in the event that a Petition for Review is filed in the Supreme Court, and the City does not ultimately succeed in a reversal of the Final Judgment; (4) \$5,000 — in the event the Supreme Court requires full briefing, and the City does not ultimately succeed in the reversal of the Final Judgment.
6. The Court further ORDERS that Trudy's have and recover from the City post-judgment interest on the full amount of the attorneys' fees awarded in the Final Judgment, calculated at the compound rate of 5.00% per annum. On all amounts

except for the conditional awards of attorney's fees, the post-judgment interest will accrue from the date of this Final Judgment until the Judgment is fully satisfied. Post-judgment interest shall begin accruing on any conditional award of attorney's fees on the date that the "triggering event" (i.e., a post-judgment motion, notice of appeal, or petition for review) is filed.

7. Therefore, the Court further ORDERS that the City take NOTHING as to all claims and causes of action asserted in this cause against Trudy's.
8. The Court further hereby directs and ORDERS that all writs, execution and processes necessary for the enforcement of this Judgment and the collection of the amounts awarded herein shall issue.
9. All relief requested in this cause that is not expressly awarded herein is expressly DENIED. This disposes of all claims, controversies, and parties involved herein and this is a FINAL JUDGMENT and is appealable.

IT IS SO ORDERED on this 1 day of November, 2011.

  
HONORABLE ORLANDA NARANJO  
DISTRICT JUDGE

Approved as to form:

\_\_\_\_\_  
Eric Taube  
Attorney for Trudy's Texas Star, Inc. d/b/a South Congress Cafe

\_\_\_\_\_  
Patricia L. Link  
Attorney for the City of Austin

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Patricia L. Link

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**ORLINDA NARANJO**  
Judge  
(512) 854-4023



**JULIO DE LA LLATA**  
Staff Attorney  
(512) 854-4029

**DIANA CAFUCHINO**  
Court Operations Officer  
(512) 854-4023

**419TH DISTRICT COURT**

HEMAN MARION SWEATT TRAVIS COUNTY COURTHOUSE  
P. O. BOX 1748  
AUSTIN, TEXAS 78767  
FAX: (512) 854-2224

**ALICIA RACANELLI**  
Official Court Reporter  
(512) 854-4028

**STEPHANIE WILLIAMS**  
Court Clerk  
(512) 854-5854

November 1, 2011

**Via Facsimile (512) 974-6490**

Patricia Link / Meitra Farhadi  
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Assistant City Attorneys  
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Austin, Texas 78767

**Via Facsimile (512) 472-5248**

Eric Taube / Neal Meinzer  
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100 Congress Ave  
Austin, Texas 78723

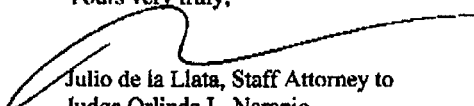
**Re: Cause No. D-1-GV-05-004526; City of Austin v. Trudy's Texas Star Inc. d/b/a South Congress Café, in the 201<sup>st</sup> Judicial District, Travis County, Texas.**

Dear Counsel,

Enclosed is a file-stamped copy of the Court's Final Judgment. The Judgment has been signed by the Court and filed with the District Clerk's Office.

If you have any questions on this matter you may contact me at (512) 854-4029

Yours very truly,

  
Julio de la Llata, Staff Attorney to  
Judge Orlinda L. Naranjo  
419th District Court, Travis County, Texas

Enclosed (6)

xc: Ms. Amalia Rodriguez-Mendoza, District Clerk

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE NOV-01-2011 \*\*\*\*\* TIME 13:53 \*\*\*\*\*

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-TRAVIS CO. DIST. JDGS. -

\*\*\*\*\* -TRAVIS CO D.J. - \*\*\*\*\* 5128542224- \*\*\*\*\*

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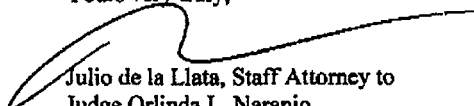
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