

FILED

Oct 17 2017

U.S. COURT OF
FEDERAL CLAIMS

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DAVID AND CHEERY YOUNG, KELLY AND JENNIFER CUSIMANO, DOUGLAS BELISLE, DILLON ZHANG AND TRACY NG, WILLIAM M. LACROIX, PEI-YIN LIAO, YU-YI CHUANG, WISAM CHAN, YI-AN CHEN, ALLEN LING CHANG AND PEI-CHUAN LEE, JOHNNY CHEN AND CINDY LIN, FRANK AND ELENAOR MOLER, ELAINE R. BOYER, DANIEL H. CHEN AND MARGARET C. LEE, JOSEPHINE'S DAY SPA & SALON, INC.

CASE NO.: **17-1545 L**

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW, Plaintiffs David and Cheery Young, Kelly and Jennifer Cusimano, Douglas Belisle, Dillon Zhang and Tracy Ng, William M. LaCroix, Pei-yin Liao, Yu-yi Chuang, Wisam Chan, Yi-an Chen, Allen Ling Chang and Pei-chuan Lee, Johnny Chen and Cindy Lin, Frank and Eleanor Moler, Elaine R. Boyer, Daniel H. Chen and Margaret C. Lee, and Josephine's Day Spa & Salon, Inc. (hereinafter "Plaintiffs"), and bring this action against the United States of America (hereinafter "Defendant").

I. PARTIES

1. Plaintiffs David and Cheery Young are residents of Houston, Harris County, Texas.
2. Plaintiffs Kelly and Jennifer Cusimano are residents of Houston, Harris County, Texas.
3. Plaintiff Douglas Belisle is a resident of Houston, Harris County, Texas.
4. Plaintiffs Dillon Zhang and Tracy Ng are residents of Houston, Harris County, Texas.

5. Plaintiff William M. LaCroix is a resident of Houston, Harris County, Texas.
6. Plaintiff Pei-yin Liao is a resident of Houston, Harris County, Texas.
7. Plaintiff Yu-yi Chuang is a resident of Houston, Harris County, Texas.
8. Plaintiff Wisam Chan is a resident of Houston, Harris County, Texas.
9. Plaintiff Yi-an Chen is a resident of Houston, Harris County, Texas.
10. Plaintiffs Allen Ling Chang and Pei-chuan Lee are residents of Houston, Harris County, Texas.
11. Plaintiffs Johnny Chen and Cindy Lin are residents of Houston, Harris County, Texas.
12. Plaintiffs Frank and Eleanor Moler are residents of Houston, Harris County, Texas.
13. Plaintiff Elaine R. Boyer is a resident of Houston, Harris County, Texas.
14. Plaintiffs Daniel H. Chen and Margaret C. Lee are residents of Houston, Harris County, Texas.
15. Plaintiff Josephine's Day Spa & Salon, Inc. does business in Houston, Harris County, Texas.
16. Defendant United States of America (acting through its branch, the U.S. Army Corps of Engineers) can be served through the National Courts Section, Commercial Litigation Branch, Civil Division U.S. Department of Justice, Washington, DC 20530; telephone: 202-514-7300.

II. JURISDICTION

17. This Court has federal question jurisdiction over this case under 28 U.S.C. § 1491(a)(1), as this action seeks monetary compensation from the United States under the Fifth Amendment to the U.S. Constitution.
18. The Defendant, along with its branch – United States Army Corps of Engineers – have consented to venue in the Court of Federal Claims for the claim being brought herein.

III. PREVIOUS LAWSUITS

19. Plaintiffs have not filed any other lawsuits in state or federal court dealing with the same or similar facts involved in this action.

IV. FACTUAL ALLEGATIONS

A. Introduction

20. This is a case concerning the effects of Hurricane Harvey, one of the most severe storm events in recent history, and the damages caused by the Defendant which amounts to a “taking” under the Fifth Amendment of the United States Constitution.

21. Hurricane Harvey made landfall in Southeast Texas in late August of 2017, and brought substantial precipitation throughout the region.¹ During this time period, Defendant United States of America, acting through its agent the U.S. Army Corps of Engineers (“USACE”), decided to release the accumulating stormwater downstream into the Buffalo Bayou waterway, to relieve the stress of two reservoirs – Addicks and Barker – and to control the flooding downstream. In so doing, the Defendant purposefully caused numerous homes and properties along Buffalo Bayou to flood and retain this additional stormwater, in order to prevent flooding of other properties downstream.

22. Plaintiffs are a group of home and business owners who have properties located along Buffalo Bayou, whose homes and businesses did not flood from Hurricane Harvey itself. Instead, Plaintiffs’ homes and businesses were flooded after Defendant released stormwater from the Addicks and Barker reservoirs. Because Defendant’s action resulted in a “taking” under the Fifth Amendment of the U.S. Constitution, the Plaintiffs hereby file this complaint to request “just compensation” as provided by the Constitution.

¹ It has been reported that Hurricane Harvey dropped 51.88 inches of rain in the Houston area.

23. The facts of the Plaintiffs' case are set forth below.

B. August 25, 2017

24. On August 25, 2017, Hurricane Harvey made landfall in Southeast Texas. Weather reporting agencies and the state and local governments already predicted that Hurricane Harvey would bring substantial rainfall and flooding.

25. In the later part of August 25, Harvey gradually moved toward Houston and its surrounding areas, bringing about substantial rainfall. During this time, stormwater began to accumulate in much of southeast Texas. Two reservoirs owned and operated by the USACE in west Houston – Addicks and Barker reservoirs – started to collect stormwater.

26. The Addicks and Barker reservoirs are part of a flood control system, and were designed specifically to protect downtown Houston from catastrophic flooding. They control the flow of water in the largest waterway in Houston – the Buffalo Bayou – which runs through the city from west to east, and drains into the Galveston bay.

27. Addicks and Barker were designed as dry reservoirs, whereas the dams stay wide open and water is allowed to flow freely until heavy rainfall. Once the system's flood gauges reach certain levels, the dams' floodgates close, and they begin to fill to prevent the overflow of uncontrollable water in the Buffalo Bayou.

C. August 26, 2017

28. There was little rain or wind in the morning of Saturday, August 26 and throughout the day. However, by the night of August 26, 2017, the rain returned and quickly intensified, and multiple areas of the City of Houston and Harris County soon went underwater.

29. Nonetheless, at this time, the Plaintiffs' homes and business properties were still intact and dry.

D. August 27, 2017

30. From Saturday, August 26 to Sunday, August 27, Harvey unleashed significant rain throughout Houston and Harris County.

31. On August 27, 2017, the USACE announced its plan to release stormwater from the Addicks and Barker reservoirs. It explained that it had decided to: "...release intermittent amounts of water from both Addicks and Barker reservoirs to reduce the risk to the Houston metropolitan area."

E. The Release

32. According to the USACE, it first released the accumulating stormwater at 11:36 p.m. on August 27, 2017.²

33. At first, the USACE opened the floodgates slowly. It then increased the release to 6,300 cubic feet of water per second (cfs) from Addicks, and 7,500 cfs from Barker, flooding the Buffalo Bayou watershed and numerous homes and properties downstream, sacrificing those areas in order to preserve downtown Houston and other properties.

34. As both reservoir gates opened and released stormwater into Buffalo Bayou, adjacent neighborhoods and roadways that were not otherwise flooded became inundated with water. It has been estimated that at least 3,000 homes near the Addicks reservoir and 1,000 homes near Barker were flooded.

F. The Aftermath

35. Following the release by USACE, Plaintiffs' properties were inundated with floodwater for the next two weeks,³ ousting them from their homes and destroying their furniture, cars and other personal property.

² The USACE initially announced that it was going to release stormwater at 2:00 a.m. on August 28, 2017. Per its announcement, however, the water released occurred in the late evening of August 27.

36. Plaintiffs suffered significant losses as a result, with their homes destroyed, their properties devalued and uninhabitable, and their businesses devastated. Plaintiffs will need to expend significant resources to repair and rebuild their homes and businesses.

37. Further, due to the abrupt nature of the USACE's action, Plaintiffs were unable to mitigate or avoid the damage to their homes and business from the stormwater release. In fact, many of the Plaintiffs were never made aware of the USACE's decision (to release) until they were being evacuated from their homes in waist-deep water.

38. The USACE knew its decision would cause flooding to neighborhoods along and near Buffalo Bayou.

39. While the release of water from Addicks and Barker was aimed to protect downtown and other parts of Houston from greater damage, Plaintiffs are now disproportionality burdened by Defendant's intentional flooding of their private properties and, therefore, seek just compensation.

G. The Plaintiffs

40. Plaintiffs are a group of individuals and businesses who suffered damages as a direct and proximate result of the Defendant's decision to release stormwater downstream into Buffalo Bayou. Plaintiffs' homes and businesses did not receive flooding from Hurricane Harvey. Instead, their properties were flooded and damaged as a proximate result of the USACE's decision to release stormwater.

41. Plaintiffs David and Cheery Young are homeowners who reside in Houston, Texas. Their property is located at 14926 Carolcrest Dr., Houston, TX 77079.

³ On September 9, 2017, USACE announced that it had slowed down the release from the two reservoirs.

42. Plaintiffs Kelly and Jennifer Cusimano are homeowners who reside in Houston, Texas. Their property is located at 310 Pinesap Dr., Houston, TX 77079.

43. Plaintiff Douglas Belisle is a homeowner who resides in Houston, Texas. His property is located at 15138 Turkey Creek Dr., Houston, TX 77024.

44. Plaintiffs Dillon Zhang and Tracy Ng are homeowners who reside in Houston, Texas. Their property is located at 830 Threadneedle St., #216, Houston, TX 77079.

45. Plaintiff William M. LaCroix is a homeowner who resides in Houston, Texas. His property is located at 15189 Kimberley Ct., Houston, TX 77079.

46. Plaintiff Pei-yin Liao is a homeowner who resides in Houston, Texas. Her property is located at 12707 Boheme Drive, #510, Houston, TX 77024.

47. Plaintiff Yu-yi Chuang is a homeowner who resides in Houston, Texas. Her property is located at 12707 Boheme Drive, #705, Houston, TX 77024.

48. Plaintiff Wisam Chan is a homeowner who resides in Houston, Texas. His property is located at 12707 Boheme Drive, #707, Houston, TX 77024.

49. Plaintiffs Yi-an Chen, is a homeowner who resides in Houston, Texas. His property is located at 12707 Boheme Drive, #106, Houston, TX 77024.

50. Plaintiffs Allen Ling Chang and Pei-chuan Lee are homeowners who reside in Houston, Texas. Their property is located at 12707 Boheme Drive, #1705, Houston, TX 77024.

51. Plaintiffs Johnny Chen and Cindy Lin are homeowners who reside in Houston, Texas. Their property is located at 9306 Briar Forest Dr., Houston, TX 77063.

52. Plaintiffs Frank and Eleanor Moler are residents of Houston, Harris County, Texas. Their property is located at 12139 Gladewick Dr., Houston, TX 77077.

53. Plaintiff Elaine R. Boyer is a resident of Houston, Harris County, Texas. Her property is located at 535 Kickerillo Dr., Houston, TX 77079.

54. Plaintiffs Daniel H. Chen and Margaret C. Lee are residents of Houston, Harris County, Texas. Their property is located at 656 North Eldridge Pkwy, Houston, TX 77079.

55. Plaintiff Josephine's Day Spa & Salon, Inc. is a business located in Houston, Texas, and operates its business at 1127 Eldridge Parkway, #1008, Houston, TX 77077.

V. CAUSE OF ACTION
TAKING PURSUANT TO THE FIFTH AMENDMENT
TO THE U.S. CONSTITUTION

56. Plaintiffs incorporate the foregoing allegations as fully set forth herein.

57. The Fifth Amendment to the United States Constitution prohibits the Government from taking private property for public use without just compensation. It provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Amend. V.

58. Plaintiffs as property owners have a legally-protectable property interest in their homes and businesses located along the Buffalo Bayou. Their properties were taken and sacrificed when the Defendant released the stormwater, starting on August 27, 2017.

59. Plaintiffs had distinct, reasonable, and investment-backed expectations in the properties made the basis of this suit.

60. As a direct and proximate result of the Defendant's decision to release water from the Addicks and Barker reservoirs on August 27, 2017, Plaintiffs' homes, businesses, and other

private properties were flooded, which deprived Plaintiffs of the use, occupancy, and enjoyment of their homes and property.

61. Defendant's conduct described above constitutes a taking of Plaintiffs' private property. The intentional discharge of water from Addicks and Barker reservoirs also caused permanent damage to their private property that will cost significant sums to repair and replace. Plaintiffs' private property would not have otherwise flooded but for the USACE's decision to discharge water from the Addicks and Barker reservoirs.

62. The USACE's decision to discharge water from the Addicks and Barker reservoirs was for the furtherance of a public use. The Defendant admitted and acknowledged that its actions were necessary to protect others from greater flooding. Defendant made the decision to discharge water from the Addicks and Barker reservoirs intentionally and with knowledge that it would cause Plaintiffs' property to flood, causing significant damages, and depriving Plaintiffs of the right to use, occupy, and enjoy the property. The taking of Plaintiffs' property was a foreseeable and predictable result of Defendant's conduct.

63. Plaintiffs have not been fully and justly compensated for the taking of their properties. Defendant's conduct constitutes a taking of Plaintiffs' private real and personal property without just compensation.

64. The Fifth Amendment is intended to prevent the public from burdening one individual, such as Plaintiffs, with the costs of furthering public interest.

65. Therefore, Plaintiffs now file this action and seek just compensation for the temporary and permanent takings of their homes and other property in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Defendant be cited to appear and answer herein, and upon final trial of this cause, the Court issue judgment that Plaintiffs have and recover against Defendants:

- a) actual damages and the award of just compensation to the Plaintiffs;
- b) a declaration that the Defendant's action as referenced above constitutes a Taking under the Fifth Amendment to the U.S. Constitution;
- c) pre-judgment and post-judgment interest at the highest legal rate;
- d) legally-available reasonable and necessary attorneys' fees;
- e) costs and litigation expenses; and
- f) all other relief, general and special, legal and equitable, to which Plaintiffs are justly entitled.

RESPECTFULLY SUBMITTED,

McGEHEE ★ CHANG, BARNES, LANDGRAF

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