

CAUSE NO. _____

FC WP BUILDING LLC,

Plaintiff,

v.

HEADINGTON REALTY AND CAPITAL
LLC

Defendant.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff FC WP Building LLC (“Plaintiff” or “Forest City”) files this Original Petition and Request for Declaratory and Injunctive Relief against Headington Realty and Capital, LLC (“Headington”) and would show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery in this case under Level 3 of Texas Rules of Civil Procedure because the issues in dispute are complex and the claims will be better resolved in accordance with a discovery plan specifically tailored by the Court for the disposition of this case.

**II.
PARTIES**

2. Forest City is a diversified real estate management and development company and through its affiliate FC WP Building LLC, a Texas Limited Liability Company, is the owner of the historic Wilson Building in Downtown Dallas.

3. Headington is a real estate management and development company which owns certain real property immediately adjacent to the Wilson Building. Headington is a Texas Limited Liability Company and may be served with citation through its registered agent for service of

process, Michael E. Tregoning, at its registered office, 2711 N. Haskell Avenue, Suite 2800, Dallas, Texas 75204.

III.
JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over the case because the diminished market value of the historic Wilson Building, threatened by the nuisance described below, is within the jurisdictional limits of the Court.

5. Venue is proper in Dallas County under Section 15.011 of The Civil Practice and Remedies Code because permanent damage to the historic Wilson Building is threatened, and the Wilson Building is located in Dallas County.

IV.
FACTS

6. Since 2008, Forest City has been the owner of certain real property located in Downtown Dallas known as the “Wilson Building”. Originally constructed in 1904, the Wilson Building was converted in 1999 from office and retail space into 143 loft apartments for residential use. Because public TIF funds were used to help finance the conversion project, the City of Dallas and its citizens have an interest in preserving the Wilson Building.

7. Consistent with this public interest, the Wilson Building has been on the National Register of Historic Places since 1979.

8. In 2012, Headington purchased certain real property immediately adjacent to the Wilson Building.

9. In a post-acquisition discussion, Headington told Forest City that it intended to build a retail structure on the property immediately adjacent to the Wilson Building, and that the proposed building would be 3 stories in height.

10. Based on this “neighborly” advice, Forest City concluded that the proposed development was not likely to interfere in any substantial way with Forest City’s use and enjoyment of the Wilson Building as rental property for residential use.

11. Sometime thereafter, Headington revealed its true plans for the adjacent property, which included two extra stories added to the proposed retail structure (from three stories to five), and setback from the west wall of the Wilson Building of only five feet.

12. The two extra stories increasing the height of the proposed retail structure, when coupled with a setback of only five feet, would block almost entirely the air, light, and view available to a number of rental apartments in the Wilson Building, and thereby, substantially impairing Forest City’s use and enjoyment of the property.

V.

NUISANCE AND PERMANENT DAMAGE TO PROPERTY

13. Headington’s proposed use of the adjacent property to construct a retail structure will constitute a nuisance and will substantially and unreasonably interfere with Forest City’s use and enjoyment of the historic Wilson Building. Headington’s actions are intentional and Headington knows that its proposed development will cause damage to the Wilson Building. At least eight apartments in the Wilson Building will be denied almost all access to air, light, and view by the proposed development, and the damage resulting from this substantial and unreasonable interference will cause permanent damage to the Wilson Building and thereby significantly diminish the market value of the property.

14. In developing the property adjacent to the Wilson Building, Headington had a legal duty to avoid interfering with Forest City’s use and enjoyment of the Wilson Building, the proposed development constitutes a breach of that duty, and the resulting market value damages

will be proximately caused by the proposed development. These market value damages are unliquidated and, as is referenced above, are within the jurisdictional limits of the Court.

VI.
DECLARATORY RELIEF

15. Forest City asks the Court to declare that the development proposed by Headington is a nuisance, will substantially and unreasonably interfere with Forest City's use and enjoyment of the Wilson Building, and will cause permanent damage to the Wilson Building.

VII.
INJUNCTIVE RELIEF

16. Forest City seeks injunctive relief that Headington be prohibited from interfering now, or in the future, with Forest City's use and enjoyment of the historic Wilson Building and particularly from the described nuisance which will block almost entirely the air, light, and view available to a number of rental apartments and thereby, permanently damage the Wilson Building.

VIII.
JURY DEMAND

17. Forest City demands a trial by Jury and tenders the appropriate fee with this Original Petition.

IX.
REQUEST FOR DISCLOSURE

18. Under Texas Rules of Civil Procedure 194, Forest City requests that Headington disclose the information or material detailed in Rule 194.2 fifty (50) days from the date of service of this Original Petition or at such other time and place ordered by the Court.

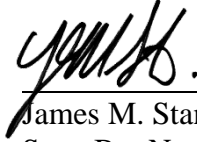
X.
PRAYER

19. Wherefore Forest City requests relief for the causes of action described above as follows:

- a. That Forest City recover market value damages against Headington for the permanent damage to the Wilson Building;
- b. That Headington shall not unreasonably interfere with Forest City's use and enjoyment of the Wilson Building;
- c. Pre judgment and post judgment interest;
- d. That the Court declare that Forest City is entitled to the continued use and enjoyment of the Wilson Building free from the nuisance threatened by Headington's proposed development of property adjacent to the Wilson Building;
- e. Court costs;
- f. Attorney's fees; and
- g. All other relief to which Forest City is entitled.

DATED: July 8, 2015.

Respectfully submitted,



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