

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.

ZENAIDA “SANDY” MARTINEZ,

Plaintiff,

vs.

CITY OF LANTANA, FLORIDA;
LANTANA CODE ENFORCEMENT
DEPARTMENT; LANTANA CODE
ENFORCEMENT DEPARTMENT
SPECIAL MAGISTRATE,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

This lawsuit challenges municipal code enforcement fines in excess of \$165,000 for trivial code violations—primarily the condition of a residential driveway and the arrangement of the vehicles parked on it.

Sandy Martinez bought her house in Lantana in 2004. To make things work financially, Sandy shares the residence with her mother, her older sister, and her three kids, two of whom are also adults. Together, the four of them—Sandy, her sister, and her two adult children—share the traditional burdens of maintaining a household. But having four working adults in a single-family home means having four drivers, on four different schedules, who all need a place to park. That often meant that there were four cars parked in their driveway. This arrangement resulted in the outer wheels of each car extending slightly beyond the side edge of the

driveway—partially onto a walkway on one side and onto a grassy area on the other. But parking on one’s own front yard space, even a tiny bit, is illegal in Lantana.

So the City fined Sandy—\$250 *per day*. All told, when combined with fines for two other similarly trivial code enforcement cases, Sandy owes the City over \$165,000. That is almost four times more than Sandy earns in an entire year. And it is a sum that Sandy cannot afford to pay. Sandy filed this constitutional challenge, alleging that the City’s fines of \$165,000 violate the Excessive Fines Clause of the Florida Constitution.

II. JURISDICTION AND VENUE

1. Plaintiff Zenaida “Sandy” Martinez (“Sandy”) brings this civil rights lawsuit pursuant to the Declaratory Judgments Act, Fla. Stat. §§ 86.011–.111, for violations of the Excessive Fines and Due Process Clauses of the Florida Constitution.

2. Sandy seeks declaratory and injunctive relief against Lantana (“the City”) for its imposition of code enforcement fines in the aggregate amount of \$165,250, in violation of Article I, section 17 of the Florida Constitution.

3. Sandy seeks declaratory and injunctive relief against the City for its imposition of code enforcement fines without considering a homeowner’s ability to pay and without considering whether the fines are catastrophic in nature or will result in the financial ruin of the homeowner, in violation of Article I, section 17 of the Florida Constitution.

4. Sandy seeks declaratory and injunctive relief from the application of Chapter 2, article iv, section 2-55 of the Town of Lantana Code of Ordinances, insofar as it empowers the City to assess limitless fines, in violation of Article I, section 9 of the Florida Constitution.

5. Sandy seeks declaratory and injunctive relief from the application of Chapter 162, Florida Statutes, insofar as it empowers the City to pass ordinances enabling it to assess limitless fines, in violation of Article I, section 9 of the Florida Constitution.

6. Sandy seeks declaratory and injunctive relief against the City for its imposition of code enforcement fines in the amount of \$165,250, in violation of Article I, section 9 of the Florida Constitution.

7. This Court has jurisdiction under Fla. Stat. §§ 26.012(3), 86.011.

8. Pursuant to Fla. Stat. § 47.011, venue is proper in this circuit because all Defendants reside in Palm Beach County, Sandy’s causes of action accrued in Palm Beach County, and the subject property is located in Palm Beach County.

III. PARTIES

9. Plaintiff Zenaida “Sandy” Martinez (“Sandy”) is the sole owner of the subject property, located at 1202 West Ocean Avenue in Lantana, Florida 33462 (“the Home”).

10. Sandy resides in the Home with her sister, her mother, and her three children—Chris, 18; Brianna, 25; and Delilah, 1.

11. Sandy is an hourly employee at an outpatient health facility, where she works to help cancer patients secure insurance coverage for the treatment provided there.

12. Sandy earns \$20.60 per hour, before taxes. For an eight-hour shift, that equates to \$164.80, almost \$100 *less* than the daily fine amount for the most severe fines at issue in this lawsuit.

13. Sandy and her family live paycheck-to-paycheck. Each member of the household works and contributes however they can.

14. Defendant City of Lantana, Florida is a municipality incorporated pursuant to Chapter 165 of the Florida Statutes.

15. Defendant City of Lantana Code Enforcement Department is a local government code enforcement entity appointed and organized under Chapter 162 of the Florida Statutes. It is tasked with investigating and enforcing the City’s code of ordinances. The Code Enforcement Department is not managed or administered by a code enforcement board. Rather, the Town Council provides authorization for a Special Magistrate to conduct enforcement proceedings and impose fines related to alleged violations of the City’s code of ordinances.

16. Defendant Special Magistrate of the Lantana Code Enforcement Department is appointed by the City of Lantana Code Enforcement Department. Among other responsibilities, the Special Magistrate is tasked with the administration of code enforcement hearings, presiding over code enforcement cases and determining whether an alleged violation has occurred. The Special Magistrate, upon entering findings of fact or conclusions of law, is also responsible for the determination and imposition of monetary fines, which are assessed at his or her discretion. Additionally, the Special Magistrate presides over requests for fine reductions, which are resolved at his or her discretion. The Special Magistrate is sued in his or her official capacity.

IV. FACTUAL ALLEGATIONS

A. THE CITY’S CODE ENFORCEMENT APPARATUS AND FLORIDA STATUTES, CHAPTER 162.

17. The City declares that the purpose of its code enforcement apparatus is to “promote, protect and improve the health, safety and welfare of the citizens of Lantana, Florida, by providing an equitable, expeditious, effective and inexpensive method of enforcing the . . . codes of the town.” Town of Lantana, Florida Code of Ordinances, Chapter 2, art. iv., sec. 2-46.

18. The City establishes an administrative framework for how code enforcement cases must be initiated, considered and resolved. *See* Town of Lantana, Florida Code of Ordinances, Chapter 2, art. iv.

19. The City is permitted to structure its code enforcement apparatus in any manner that is “not otherwise in conflict with . . . the local government code enforcement boards act, F.S. Ch. 162, as such now exist[s] or may hereafter be amended.” *Id.* at sec. 2-52.

20. In other words, Chapter 162, Florida Statutes, provides the basic framework for how localities may structure their code enforcement regimes and establishes some requirements and limitations to guide how local code enforcement may be administered.

21. The City permits fines for code enforcement violations of up to \$250 per day for a first-time offense or \$500 per day for a repeat violation.

22. The City’s daily fine amounts are consistent with the daily fine amounts provided in Chapter 162, Florida Statutes, which also permits fines for code enforcement violations of up to \$250 per day for a first-time offense or \$500 per day for a repeat violation.

23. Nothing in the City’s code of ordinances empowers the City or its agents or entities to exercise any powers not within the scope of authority authorized by state statute. Likewise, nothing in the City’s code of ordinances empowers the City or its agents or entities to violate any provision of the Florida Constitution.

24. Nothing in Chapter 162, Florida Statutes, empowers the City to violate any provision of the Florida Constitution.

25. The City’s code of ordinances does not include a cap on daily fines. Accordingly, fines for small violations in the City can (and do) accrue until they exceed tens or even hundreds of thousands of dollars.

26. Chapter 162, Florida Statutes, also does not include a cap on daily fines in municipal code enforcement cases. Accordingly, fines for small municipal code violations can (and do) accrue until they exceed tens or hundreds of thousands of dollars.

27. Once a fine has been imposed, the City presumes that a property remains in a state of noncompliance until a homeowner requests a compliance check and a code enforcement officer confirms that the violation has been remedied.

28. If a property owner forgets or otherwise fails to request a compliance check, daily fines will continue to accrue—even if the property has been brought into compliance.

29. Nothing in the City's code of ordinances establishes that fines must continue until a homeowner requests a compliance check and a code enforcement officer confirms that the violation has been remedied.

30. Nothing in Chapter 162, Florida Statutes, establishes that fines must continue until a homeowner requests a compliance check and a code enforcement officer confirms that the violation has been remedied.

B. THE CITY'S TWO EARLIER CODE ENFORCEMENT ACTIONS AGAINST SANDY MARTINEZ.

31. Sandy's debt to the City is the result of three violations of the City's code of ordinances.

32. First, in Case No. CE13-1116, Sandy was fined \$75 per day for having cracks in her driveway. The issue was minor and purely cosmetic, but Sandy did not have the time or money to fix it right away.

33. As a result, in Case No. CE13-1116, Sandy incurred fines of \$75 for 215 straight days, for cracks in her driveway, for a total amount of \$16,125—far greater than the cost of an entirely new driveway.

34. Interest on the fines is still accruing in Case No. CE13-1116.

35. Second, in Case No. CE15-0426, Sandy was fined \$125 per day for having a downed fence.

36. Residential properties are not required to have fences in Lantana and repairing them can be expensive. However, because the fence fell as a result of a major storm, Sandy was able to make an insurance claim to secure the money necessary to repair the fence. But because the claim took some time to process, Sandy did not fix it right away. Once Sandy received the insurance money, she fixed the fence.

37. As a result, in case No. CE15-0426, Sandy incurred fines of \$125 for 379 straight days, for having a downed fence after a storm, for a total amount of \$47,375—several times the cost of the repair and substantially more than the cost of a completely new fence.

38. Interest on the fines is still accruing in Case No. CE15-0426.

C. THE CITY’S CASE AGAINST SANDY FOR PARKING HER OWN CARS IN HER OWN DRIVEWAY.

39. Finally, in Case No. CE19-0918, Sandy was fined \$250 per day for illegally parking her family’s own cars in her own driveway.

40. Each of the cars belongs to a working adult who resides in the house. Each of the cars is operable, insured, and is the only way its owner can reliably get to and from work or school.

41. There is no curb to park alongside, and the roadways in front of and beside the house are only wide enough to handle two-way neighborhood traffic. Therefore, parking in the street is not an option because the street is not designed to accommodate that. If Sandy were to park in the street, she would completely block an entire lane of the roadway. That would be illegal and unsafe.

42. Additionally, parking in such a way that a vehicle covers or extends over the sidewalk is illegal.

43. In fact, Sandy has been previously ticketed by the City for parking a car in such a way as to partially block the sidewalk.

44. Sandy is not sure whether parking on the swale is allowed or would result in other code violations. Even assuming parking on the swale is allowed, Sandy has safety concerns about parking there. The Home sits on a corner lot at West Ocean Avenue and South 12th Street, which is a busy four-way intersection. But there are no stop signs to slow the east-west traffic on West Ocean Avenue, and as a consequence, there are regularly accidents at the intersection. Sandy does not want to park in the swale out of fear that her cars will be damaged.

45. The only safe, sensible way to park the cars is by arranging them in the driveway with the sides of the cars extending partially onto the the grass and/or walkway.

46. Given all of the legal and practical restrictions on where Sandy can park, the reality is that when everyone is home, it is impossible to park without putting the cars in harm's way or risking violating city ordinances.

47. Thankfully, the neighbors do not complain and have never asked Sandy to be more mindful about how she parks. The neighbors understand that Sandy and her family members need to be able to get to work and school.

48. Although the neighbors never complained, Sandy had been cited before by the City for parking on her own grass. She almost always resolved the issue right away.

49. In Case No. CE19-0918, the case from which the bulk of the fines at issue in this case originate, Sandy was cited on or about May 6, 2019, for “[v]ehicles parked on unapproved surface/grass/walkway” under Section 6-30 (a-3) of the Lantana Code of Ordinances.

50. Because of Sandy's earlier infractions, Sandy was treated as a "repeat violator" under the City's ordinances in Case No. CE19-0918.

51. The matter was heard on or about June 20, 2019, and Sandy was deemed to be in violation. A fine was imposed in the amount of \$11,500 for the already-running violation, with an addition \$250 daily fine ordered to be imposed for every day until compliance was reached.

52. Sandy was notified by mail of the outcome and got the Home into compliance, at which time she sought a compliance inspection.

53. Sandy attempted to contact officials to have a code enforcement officer come to the Home for a compliance check in the illegal parking case.

54. But getting code enforcement officials on the phone and to Sandy's property was fruitless. And because Sandy is, like most people, primarily focused on maintaining her career and raising her family, she eventually forgot about the issue with the code enforcement department.

55. However, the fines against Sandy for the still-open parking violation continued to run at a daily rate of \$250.

56. Nobody told Sandy about the ongoing fines. Instead, she only learned of the fines when she attempted to refinance the Home. Ironically, the purpose of refinancing the Home was to extract enough equity to put in a new driveway. However, refinancing became impossible once lenders learned that Sandy owed so much to the City.

57. Sandy sent an email to a City official asking how she could owe so much money for one violation—at the time \$98,500. "What could I have possibly done for a fine to be that high?" she asked.

58. In an email dated June 16, 2020, Jennifer Sweeten, an administrative assistant with the City, advised Sandy that “[f]or case CE19-0918, a daily fine of \$250/day was running from May 2019 until today. While I was reviewing the cases, I noticed the fines were still accruing and I asked a code officer to go out and re-inspect the property. He noted the property was in compliance and stopped the fines as of today. (Generally, it is the property owner’s responsibility to call for a reinspection after they achieve compliance.)”

59. But Sandy *had* called to request a compliance check. Later that same day, Sandy responded to Ms. Sweeten’s email: “There’s no way I went a whole year without notifying somebody,” she said. “That’s crazy.”

60. Nevertheless, the City imposed fines against Sandy every day for over a year based purely on the unverified assumption that the Home was not in compliance.

61. In sum, in case No. CE19-0918, Sandy incurred fines of \$250 for 407 straight days, for parking cars partially on her own grass, for a total amount of \$101,750—nearly four times her annual income.

62. Interest on the fines is still accruing in Case No. CE19-0918.

D. SANDY CANNOT AFFORD TO PAY THE FINES IMPOSED BY THE CITY.

63. Sandy is now fully in compliance and has not had any new cases opened against her. But she still owes the City \$165,250.

64. Sandy does not have \$165,250 with which to pay off municipal fines.

65. For perspective, Sandy earns less than \$43,000 annually. After paying her mortgage, bills, and basic living expenses, there is nothing left. She lives paycheck-to-paycheck.

66. Sandy does not own other real estate properties and her retirement savings amount to only a small fraction of what she owes the City. And Sandy does not have wealthy friends and family who can loan her six-figure sums.

67. For Sandy, the City's fines of \$165,250 are financially crippling.

68. Sandy went to a fine reduction hearing on August 20, 2020, where the City offered Sandy a settlement of \$25,000. If Sandy did not pay within roughly three months, by December 18, 2020, the City advised that the full amount of the fines would be reinstated.

69. Sandy accepted the City's settlement in the hopes that she could somehow come up with the money.

70. By that point, Sandy's goal was to simply pay her fines and sell her house so that she could leave Lantana—and its code enforcement practices—behind for good.

71. In the end, even the City's "settlement" of \$25,000 still required Sandy to come up with a far greater sum than she had immediate access to.

72. Thus, Sandy did not pay the settlement sum within the three-month period the City gave her.

73. As a result, the three-month deadline to pay the settlement has now lapsed, and the fines have been reinstated at their original amount of \$165,250.

74. Interest is still accruing on Sandy's fines.

75. Sandy would still like to sell the Home to get out of Lantana and escape its abusive code enforcement. Except she cannot afford to do that.

76. The only way for Sandy to ever hope to come up with \$165,250 would be to sell the Home altogether.

77. But Sandy cannot realistically expect to sell the Home and still have enough money to find a new place to live. That is because even if Sandy could sell the Home, she would have to pay off both the mortgage and her debts to the City.

78. That is not a legitimate possibility. The reality is that Sandy would never realize nearly enough profit from the sale of the Home to pay both her mortgage and the City's fines. In fact, even if Sandy sold her home for top dollar, she still would not have enough money left over to pay off more than a small fraction of her debt to the City. Thus, if Sandy were to sell the Home, there is no scenario in which she would not be both still indebted to the City and without the money to buy something else.

79. But for the City's fines against her, Sandy would sell her house and leave Lantana.

80. However, as a result of the City's fines against her, Sandy is stuck with the Home, paying down a mortgage on a property that she wants to sell but literally cannot afford to.

81. Sandy understands that she cannot realistically hope to ever pay the fines she owes. But as long as Sandy maintains the Home's homestead-exemption classification, under Florida law, the City cannot foreclose on the Home to collect.

82. Given Sandy's career and current income, she will be unable to move for many years, if ever. If she moves, she will owe so much money that she will be unable to start anew anywhere else. She cannot seek a job anywhere not in driving distance of her current home. When she is older, she will not be able to retire at a different residence. The crippling fines she faces trap Sandy in a place she wants to leave.

83. Once Sandy passes away, however, the City will be able to foreclose on the Home to collect on the unpaid fines.

84. But because Sandy can never hope to fully pay, the Home eventually will be lost to foreclosure—even if Sandy has paid off her mortgage.

85. Thus, but for the City’s fines against her, Sandy would be able to pass the Home to her children upon her death as long as she continues to pay her mortgage. However, as a result of the fines against her, Sandy’s children will not inherit the Home.

E. THE CITY’S FINES ARE GROSSLY DISPROPORTIONATE TO THE OFFENSES FOR WHICH THEY WERE ASSESSED AND “SHOCK THE CONSCIENCE.”

86. A cracked driveway does not present a legitimate threat to the health and safety of the general public in Lantana.

87. A broken fence does not present a legitimate threat to the health and safety of the general public in Lantana.

88. Parking more cars on a driveway than its space can technically fully accommodate is not a legitimate threat to the health and safety of the general public in Lantana.

89. Sandy’s property has never been the subject of a complaint by an abutting neighbor.

90. Sandy’s house is not an eyesore in its current condition. Rather, its appearance is generally consistent with that of the other houses in its working-class neighborhood.

91. The City’s fine of \$16,125 for a cracked driveway, a violation which is unrelated to health and safety, is grossly disproportionate to the offense and shocks the conscience.

92. The City’s fine of \$47,375 for a broken fence, a violation which is unrelated to health and safety, is grossly disproportionate to the offense and shocks the conscience.

93. The City’s fine of \$101,750 for parking cars partially on one’s own grass, a violation which is unrelated to health and safety, is grossly disproportionate to the offense and shocks the conscience.

94. Taken together, the City's fines of \$165,250 for code violations which are each unrelated to health and safety is grossly disproportionate to the respective offenses and shocks the conscience.

V. CAUSES OF ACTION

A. COUNT ONE – EXCESSIVE FINES UNDER THE FLORIDA CONSTITUTION:

95. Plaintiff re-alleges and incorporates by reference the factual allegations contained in Paragraphs 1 and 7–94 as if fully set forth herein.

96. Section 17 of the Florida Constitution's Declaration of Rights provides that "[e]xcessive fines . . . are forbidden."

97. The Excessive Fines Clause of the Florida Constitution necessarily prohibits the imposition of monetary fines that are disproportionate to the offense for which they are imposed. The City's aggregate fines of over \$165,000 are disproportionate to the minor offenses of having a cracked driveway, a downed fence, and parking on one's own grass, and thus violate the Excessive Fines Clause of the Florida Constitution.

98. The excessive fines clause of the Florida Constitution further prohibits the imposition of monetary fines that shock the conscience. The City's aggregate fines of over \$165,000 for having a cracked driveway, a downed fence, and parking on one's own grass shock the conscience and thus violate the Excessive Fines Clause of the Florida Constitution.

99. The Excessive Fines Clause of the Florida Constitution prohibits the imposition of fines or penalties that do not take into consideration an alleged offender's individual circumstances or ability to pay.

100. On its face and as applied, the City's imposition of fines of over \$165,000 and its disregard of both Sandy's individual circumstances and her ability to pay violate the Excessive Fines Clause of the Florida Constitution.

101. Unless the City is enjoined from collecting fines from Sandy that violate her right to be free from excessive fines, Sandy will continue to suffer irreparable harm.

102. Sandy has no other remedy by which to prevent or minimize this continuing irreparable harm to her constitutional rights.

B. COUNT TWO – SUBSTANTIVE DUE PROCESS UNDER THE FLORIDA CONSTITUTION:

103. Plaintiff re-alleges and incorporates by reference the factual allegations contained in Paragraphs 1 and 7–94 as if fully set forth herein.

104. The Due Process Clause of Article I, section 9, of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.”

105. The Due Process Clause provides substantive guarantees regarding the inherent and fundamental fairness of laws and ordinances and prohibits the imposition of laws and ordinances that are irrational, arbitrary, unreasonable, discriminatory, and oppressive.

106. The Due Process Clause of the Florida Constitution thus prohibits the imposition of fines or penalties that are limitless in nature because such fines are irrational, arbitrary, unreasonable, discriminatory, and oppressive.

107. The specific fines at issue in this matter violate the Due Process Clause of the Florida Constitution because they are irrational, arbitrary, unreasonable, discriminatory, and oppressive.

108. Additionally, as applied, Chapter 2, article iv, section 2-55 of the Town of Lantana Code of Ordinances violates the Due Process Clause of the Florida Constitution to the extent that it establishes a system of limitless fines that led to the imposition of the specific fines at issue in this matter.

109. Finally, Chapter 162, Florida Statutes, establishes basic parameters for how municipal code enforcement may operate. Therefore, as applied, Chapter 162 violates the Due Process Clause of the Florida Constitution to the extent it empowered the City to establish a system of limitless fines that led to the imposition of the specific fines at issue in this matter.

VI. PRAYER FOR RELIEF

Plaintiff respectfully requests that the Court grant the following relief:

A. A declaratory judgment that the City's imposition of total fines in the amount of \$165,250 (plus interest) for the offenses of having a cracked driveway, a downed fence, and parking on one's own grass, constitute an excessive fine in violation of the Excessive Fines Clause of the Florida Constitution;

B. A declaratory judgment that the City's failure to consider Sandy's individual financial circumstances and her ability to pay constitutes a violation of the Excessive Fines Clause of the Florida Constitution;

C. A declaratory judgment that the City's imposition of fines that are financially crippling and completely unpayable constitutes a violation of the Excessive Fines Clause of the Florida Constitution;

D. A declaratory judgment that Chapter 2, article iv, section 2-55 of the Town of Lantana Code of Ordinances violates the Due Process Clause of the Florida Constitution, insofar as it empowered the City to impose the limitless fines at issue in this case;

E. A declaratory judgment that Chapter 162.09, Florida Statutes, violates the Due Process Clause of the Florida Constitution, insofar as it empowered the City to impose the limitless fines at issue in this case;

F. A preliminary and permanent injunction prohibiting the City from pursuing fines or enforcing fines against Sandy in the amount of \$165,250 (plus interest);

G. A preliminary and permanent injunction prohibiting the City from imposing or attempting to enforce liens attached to the Home in the amount of \$165,250 (plus interest);

H. A judgment ordering the City to dissolve any liens attached to the Home in the amount of \$165,250 (plus interest);

I. One dollar in nominal damages;

J. Reasonable costs and attorneys' fees; and

K. Such other legal or equitable relief as this Court may deem just and proper.

Dated this 25th day of February, 2021.

Respectfully submitted,

By: /s/ Ari S. Bargil
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