

**IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA**

**WILL WILKINS, and NOVUS  
HOMES, LLC, an Oklahoma  
Limited Liability Company, and  
CECILIA WILKINS, and W3  
DEVELOPMENT, LLC, an Oklahoma  
Limited Liability Company,**  
  
**Plaintiffs,**

**vs.**

**TULSA DEVELOPMENT  
AUTHORITY, a.k.a. TULSA URBAN  
RENEWAL AUTHORITY, an  
Oklahoma Corporation, and the  
CITY OF TULSA,**  
  
**Defendants.**

**Case No. CJ-2008-5713  
Judge J. Michael Gassett**

**FIRST AMENDED PETITION**

The Plaintiffs, WILL WILKINS and NOVUS HOMES, LLC, and CECILIA WILKINS, and W3 DEVELOPMENT, LLC, (“Plaintiffs”), for their First Amended Petition and causes of action against the Defendants, the TULSA DEVELOPMENT AUTHORITY (the “TDA”), also known as the Tulsa Urban Renewal Authority, and the CITY OF TULSA, allege and state as follows:

**Parties, Jurisdiction, and Venue**

1. Plaintiff Will Wilkins is an individual and a resident of the County of Tulsa, State of Oklahoma, and is the sole owner and managing member of Novus Homes, LLC.
2. Plaintiff Novus Homes, LLC, is an Oklahoma Limited Liability Company in good standing, with its principal place of business located in Tulsa County, with a general purpose of real estate development.

3. Plaintiff Cecilia Wilkins is an individual and a resident of the County of Tulsa, State of Oklahoma, and is the sole owner and managing member of W3 Development, LLC.

4. Plaintiff W3 Development, LLC, is an Oklahoma Limited Liability Company in good standing, with its principal place of business located in Tulsa County, with a general purpose of real estate development.

5. Defendant Tulsa Development Authority (“TDA”), also known as Tulsa Urban Renewal Authority, is an Oklahoma "public body corporate" created pursuant to 11 O.S. § 38-107(A), with its principal place of business in Tulsa County, and with principal officers (“Commissioners”) residing in Tulsa County, and may sue or be sued pursuant to 11 O.S. § 38-107(A).

6. Defendant City of Tulsa is a municipality, which has incorporated as a city in accordance with the laws of Oklahoma.

7. All of the facts and matters complained of herein occurred in the City of Tulsa, County of Tulsa, State of Oklahoma.

8. Venue is proper in Tulsa County pursuant to, *inter alia*, 12 O.S. § 134, and 51 O.S. § 163.

### **Background**

9. The TDA was created in accordance with, and is subject to, the Urban Renewal Act. 11 O.S. § 38-101 *et seq.*

10. The TDA is operated by a Board of Commissioners consisting of five appointed members. 11 O.S. § 38-107(B). The TDA is assisted by the City of Tulsa’s Economic and Real Estate Development Division, and other City staff on occasion.

11. The powers of the TDA “shall be exercised by the Commissioners thereof.” 11 O.S. § 38-107(E).

12. The TDA has statutory authority to purchase and sell real property as part of its enumerated power to carry out “urban renewal projects.” 11 O.S. § 38-114(A). The TDA has the specific authority to convey real property to private parties and/or redevelopment corporations.<sup>1</sup> *Id.* Such contracts for the lease or sale of property should

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<sup>1</sup> The TDA is not a public trust and is not subject to the competitive bidding requirements of 60 O.S. § 176.

be entered into pursuant to “reasonable negotiating procedures as may be prescribed by the municipal governing body.” *Id.*

13. The TDA is subject to the Oklahoma Open Meetings Act (25 O.S. § 301, et seq.) because it is by definition a “public body.” 25 O.S. § 304(1).

14. The TDA is subject to the “provisions of the general corporation law” pursuant to 11 O.S. § 38-117(D).

15. Under general corporations law, a board of directors of a corporation passes resolutions in order to authorize the appropriate persons to carry out actions on behalf of the corporation. *See e.g.*, Am Jur Corporations § 259.

16. Because the TDA is subject to general corporation law and the Urban Renewal Act contains no contradictory provision concerning the ability of the commissioners of the TDA to authorize actions on its behalf, the adopting of resolutions is the appropriate means by which to initiate action on behalf of the TDA.

17. Beginning in late fall, 2007, Leon Davis, Jr., Director of Real Estate and Economic Development for the City of Tulsa, while acting on behalf of the TDA, actively marketed to Plaintiffs a particular piece of TDA-owned property -- the east half of the block between Archer and Elgin, consisting of approximately 42,000 square feet of property, also known as Lots 1, 2, and 3, Block 44, Original Town, now City of Tulsa, Tulsa County (the "Property") -- for a price of \$460,000.00.

18. Prior to this dialogue between the parties, the TDA had been unable to sell the Property despite ongoing efforts.

19. In response to Leon Davis’s marketing, Plaintiffs submitted a “Development Proposal” to the TDA on January 2, 2008, proposing to purchase, and commence a mixed-used redevelopment of, the Property.

20. Plaintiffs’ specific plans for the subject Property included a mixed-use development consisting of street-level retail and 40-plus high-end residential loft units with adequate off-street parking.

21. On January 10, 2008, the TDA passed Resolution No. 5423 (the “First Resolution”) establishing a 90-day “exclusive negotiation period” between Novus Homes, LLC (“Novus”) and W3 Development, LLC, to “explore the possibility of entering into a successful purchase and redevelopment contract” for the Property.

22. Just after the First Resolution, Plaintiffs informed the TDA of their plan to incur significant development expenses in reliance upon the First Resolution and their previous communications with the TDA. Plaintiffs asked the TDA if signatures were needed to memorialize the agreement articulated in the Resolution, for the purpose of protecting Plaintiff. Mr. Davis, acting on behalf of the TDA, responded in writing that a signature “is not required” because the Resolution was “executed by the Chair and Executive Director.”

23. In reliance upon this Resolution and Mr. Davis’s assurances, Plaintiffs expended more time and money pursuing and developing the architectural, engineering, financing, and marketing plans for the project, remained in regular communications with the TDA and/or Mr. Davis, and presented specific plans and progress reports to the TDA and/or Mr. Davis.

24. On April 17, 2008, the TDA passed Resolution No. 5443 (the “Second Resolution”) granting “an extension of time until September 4, 2008, to complete negotiations for a redevelopment contract” with Plaintiffs. In the Second Resolution, the TDA also directed its staff to “proceed with the negotiation of a definitive contract for purchase and redevelopment” provided that Novus “can supply satisfactory evidence of an acceptable commercial site plan and the availability of financial resources necessary to said redevelopment.”

25. During this same time period, the City of Tulsa was separately engaged in efforts to move the Tulsa Drillers baseball stadium to a new location in the “East Village” area of downtown Tulsa. This relocation effort failed, and the City of Tulsa redirected its stadium relocation efforts to a site adjacent to the Property.

26. On May 22, 2008, Leon Davis alerted Plaintiffs of a potential problem with the project, informing them in writing that they suddenly “have a lot to discuss” and requesting a prompt meeting.

27. On May 23, 2008, Tulsa Mayor Kathy Taylor publicly announced that she had secured private donors to fund a new downtown baseball stadium, after plans to build a publicly owned stadium in the downtown area known as “East Village” fell through.

28. On May 23, 2008, the TDA and other officials with whom Plaintiffs had been in regular and ongoing negotiations and communications suddenly ceased negotiations and communications with Plaintiffs.

29. On May 28, 2008, TDA staff stated that they had been involved in meetings for several weeks with City staff and private citizens interested in partnering with the City to redevelop the subject Property themselves in conjunction with a new downtown baseball stadium.

30. Beginning in late May, 2008, City of Tulsa Mayor Kathy Taylor began inserting herself into TDA operations related to this downtown Tulsa location, without TDA approval. The TDA viewed Mayor Taylor's interference as "irregular," and TDA Commissioners were "concerned" and "surprised" by her "irregular" interference in their operations. *See, e.g.*, Transcript of Deposition of TDA Commissioner John Clayman, Tulsa County District Court Case No. CJ-2008-5713, at pp. 40-48 (November 11, 2008).

31. Mayor Taylor was, without consulting or obtaining approval from the TDA, personally renegotiating and amending existing TDA contracts, conveying TDA-owned properties in exchange for properties the City of Tulsa and the eventual Tulsa Stadium Trust<sup>2</sup> desired, and influencing existing TDA relationships, all to enable the City of Tulsa and the Tulsa Stadium Trust to procure the real property necessary for the proposed new downtown baseball stadium and surrounding development.

32. Mayor Taylor's actions were in violation of O.S. §11 38-107, whereby powers of the Urban Renewal Authority (TDA) "shall be exercised by the commissioners thereof."

33. On June 17, 2008, City of Tulsa employee Hurst Swiggart informed Plaintiffs that the City of Tulsa had confiscated the TDA file related to the subject Property.

34. On June 18, 2008, the Tulsa World reported that the new site for the potential new downtown baseball stadium would be in the "Brady District" (the area in which the subject Property also is located) but that Mayor Taylor "stopped short of outlining the exact spot, saying the city has not secured the necessary land."

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<sup>2</sup> Mayor Taylor is one of nine trustees of the Tulsa Stadium Trust.

35. On June 25, 2008, Mayor Taylor publicly revealed the exact site for the proposed new downtown stadium district, which included the stadium and developments adjacent to the stadium. The proposed development area adjacent to the stadium encompassed the subject Property. Mayor Taylor reported that “investors have expressed an interest in being a part of” this development, which included the Property, demonstrating that the City had engaged in significant discussions with developers regarding the sale and redevelopment of the Property during the exclusive negotiating period.

36. On Friday, June 27, 2008, Mayor Taylor gave a public presentation of conceptual images of the proposed downtown stadium district, which encompassed the subject Property. The images were prepared by HOK Sport, Inc., an international sports architecture firm, demonstrating that city officials had been developing plans for this area for a significant amount of time during the exclusive negotiating period. These plans were for a mixed-use development very similar to the development plans Plaintiffs had already presented.

37. Throughout June and early July of 2008, Mayor Taylor and other City officials stated to various third parties that Plaintiffs will not be allowed to proceed with their redevelopment of the subject Property. Neither Defendant informed Plaintiffs of this.

38. On July 9, 2008, Leon Davis sent an e-mail to Plaintiffs, with copies to the five TDA commissioners and the TDA attorney. The e-mail, which Davis wrote was “as advised by the board,” contained a new list of 20 specific and irregular demands which Plaintiffs’ plan, for the first time, suddenly had to satisfy.

39. At a meeting between Plaintiffs and the TDA one day prior to this e-mail, TDA Commissioner George Shahadi stated that he did not know any new “standards” the Plaintiffs’ “plan has to meet before we started talking about contracts.” This comment demonstrates that the 20 standards were created in an impromptu manner, for the strategic purpose of protecting TDA in this dispute, on July 8 and or 9.

40. On July 18, 2008, Plaintiffs submitted a standard TDA real estate contract to the TDA, to which the TDA never responded.

41. On August 6, 2008, Plaintiffs received a letter from the TDA in which the TDA informed Plaintiffs that the TDA was ceasing negotiations and unilaterally canceling the Second Resolution and all promises inherent therein. In this letter, the TDA stated: “After all, the city has the right of eminent domain and can take whatever properties become necessary for its municipal purposes.”

42. On August 7, 2008, the TDA voted to unilaterally terminate the existing exclusive negotiation period, as well as the then-governing Second Resolution. Three of the five TDA Commissioners voted in favor of termination, while the other two abstained.

43. On August 14, 2008, Plaintiffs sued the TDA.

44. In the course of discovery, Plaintiffs learned of the City of Tulsa’s actions interference with the prospective economic advantage of the Plaintiffs and the exclusive negotiating agreement between Plaintiffs and the TDA, and of the City’s negligence.

45. On December 23, 2008, Plaintiffs sent lawful notice of its tort claim to the City of Tulsa pursuant to the Oklahoma Governmental Tort Claims Act, 51 O.S. §§ 151-200. The City acknowledged receipt of said notice via letter dated December 29, 2008.

46. The City of Tulsa did not approve Plaintiffs’ claim within 90 days, or ask for an extension of time, thus allowing Plaintiffs to bring this court action pursuant to 51 O.S. § 157.

**First Claim for Relief:  
Breach of Contract (vs. TDA)**

47. Plaintiffs incorporate the allegations of Paragraphs 1 through 46 as set forth herein.

48. This claim is brought against the TDA.

49. Plaintiffs and the TDA entered into an agreement to engage in exclusive negotiations with each other to enter into a contract for the purchase and redevelopment of the subject Property.

50. The exclusive negotiating agreement originally took effect on January 10, 2008, for a 90-day period. On April 17, 2008, the exclusive negotiating period was extended until September 4, 2008.

51. The TDA breached this agreement by failing to negotiate exclusively with Plaintiffs, by failing to negotiate genuinely with Plaintiffs, by negotiating with other

parties during the term of this agreement, and by unilaterally revoking or terminating the agreement.

52. As a direct result of the TDA's breach, Plaintiffs have suffered actual damages in an amount in excess of \$10,000.00.

**Second Claim for Relief:  
Breach of Duty of Good Faith and Fair Dealing (vs. TDA)**

53. Plaintiffs incorporate the allegations of Paragraphs 1 through 52 as set forth herein.

54. This claim is brought against the TDA.

55. Every contract in Oklahoma contains an implied duty of good faith and fair dealing. *See e.g. Gens v. Casady School*, 2008 OK 5, 177 P.3d 565, 570. In other words, "every contract carries an implicit and mutual covenant by the parties to act toward each other in good faith." *Doyle v. Kelly*, 1990 OK 119, 801 P.2d 717, 718-19.

56. As part of the duty of good faith and fair dealing, parties to a contract impliedly promise not to do anything that will destroy or injure the other party's right to receive the fruits of the contract. Under Oklahoma law, each party has an affirmative duty to try to bring a contract to completion.

57. In this matter, the TDA passed its First Resolution to "explore the possibility of entering into a successful purchase and redevelopment contract" with Plaintiffs, and then a Second Resolution to extend time "to complete negotiations [with Plaintiffs] for a redevelopment contract." Further, the Second Resolution directed TDA staff to "proceed with the negotiation of a definitive contract [with Plaintiffs] for purchase and redevelopment."

58. The TDA breached its duty to act in good faith and fair dealing in its negotiations with Plaintiffs.

59. The TDA failed to attempt in good faith to bring a contract with Plaintiffs to completion.

60. As a direct result of the TDA's breach, Plaintiffs have suffered actual damages in an amount in excess of \$10,000.00.



**Third Claim for Relief:  
Promissory Estoppel (vs. TDA)**

61. Plaintiffs incorporate the allegations of Paragraphs 1 through 60 as set forth herein.

62. This claim is brought against the TDA.

63. The actions and statements of the TDA constituted a clear and unambiguous promise to exclusively negotiate with the Plaintiffs to enter into a contract for the purchase and redevelopment of the subject Property.

64. It was foreseeable by the TDA that Plaintiffs would rely upon this promise.

65. Plaintiffs did rely upon this promise to their detriment, spending in excess of the minimum jurisdictional requirement (\$10,000.00) in reliance upon the TDA's promise.

66. Plaintiffs can only avoid hardship and unfairness by the enforcement of the promise.

67. Plaintiffs' claim for promissory estoppel is recognized under Oklahoma common law. *See e.g. Russell v. Board of County Commissioners, Carter County*, 1997 OK 80, ¶ 27, 952 P.2d 492, 503.

**Fourth Claim for Relief:  
Negligence (vs. TDA)**

68. Plaintiffs incorporate the allegations of Paragraphs 1 through 67 as set forth herein.

69. This claim is brought against the TDA.

70. The TDA owed Plaintiffs the duty of ordinary care in exercising its obligations which accompanied the agreement and relationship between the parties.

71. The TDA breached its duty of ordinary care owed to Plaintiffs by allowing the City of Tulsa to interfere with Plaintiffs' development opportunity and contractual rights, without taking any steps to prevent the damage or inform Plaintiffs of the City of Tulsa's actions.

72. As a result of the TDA's negligence, Plaintiffs suffered damages in excess of \$10,000.00.

**Fifth Claim for Relief:  
Intentional Interference With Prospective Economic Advantage (vs. City)**

73. Plaintiffs incorporate the allegations of Paragraphs 1 through 72 as set forth herein.

74. This claim is brought against the City of Tulsa.

75. Plaintiffs had a valid business relationship with the TDA and a valid expectancy of economic advantage as a result of this relationship.

76. The City of Tulsa had actual knowledge of this relationship and expectancy.

77. The City of Tulsa intentionally interfered with this relationship, inducing or otherwise causing the termination of this relationship.

78. The actions of the City of Tulsa caused the TDA to not perform its obligations under its exclusive negotiating agreement with Plaintiffs.

79. As a direct result of the City of Tulsa's interference, Plaintiffs have suffered actual damages in an amount in excess of \$10,000.00.

**Sixth Claim for Relief:  
Tortious Interference With Contract (vs. City)**

80. Plaintiffs incorporate the allegations of Paragraphs 1 through 79 as set forth herein.

81. This claim is brought against the City of Tulsa.

82. Plaintiffs had a contractual or business right arising from its exclusive negotiating agreement with the TDA.

83. The City of Tulsa wrongfully interfered with the contract between Plaintiffs and the TDA.

84. The City of Tulsa's interference was not justified, privileged, or excusable.

85. The City of Tulsa's interference proximately caused Plaintiffs to suffer actual damages in an amount in excess of \$10,000.00.

**Seventh Claim for Relief:  
Negligence (vs. City)**

86. Plaintiffs incorporate the allegations of Paragraphs 1 through 85 as set forth herein.

87. This claim is brought against the City of Tulsa.

88. The City of Tulsa was aware of the agreement and relationship between the TDA and Plaintiffs.

89. The City of Tulsa acted on behalf of the TDA in actions directly related to and affecting the development project being pursued by Plaintiffs in conjunction with their agreement with the TDA.

90. The City of Tulsa was aware that its actions could affect the rights and interests of Plaintiffs.

91. The City of Tulsa had a duty to Plaintiffs to exercise ordinary care to avoid causing foreseeable undue injury to Plaintiffs.

92. The City of Tulsa breached its duty of ordinary care owed to Plaintiffs.

93. As a direct result of the City of Tulsa's breach of duty, Plaintiffs suffered actual damages in an amount in excess of \$10,000.00.

WHEREFORE, Plaintiffs request relief against Defendants as requested herein, judgment against Defendants in an amount in excess of Ten Thousand Dollars (\$10,000), interest, costs, reasonable attorney's fees, and all other and further relief as the court deems just and proper.

Respectfully submitted,

By \_\_\_\_\_  
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ATTORNEY FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

This is to certify that on this \_\_\_\_ day of April, 2009, a true and correct copy of the above and foregoing was sent via first-class mail, with postage prepaid thereon, to:

Jot Hartley  
117 W. Delaware, P.O. Box 553  
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Attorney for Defendant TDA

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\_\_\_\_\_  
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