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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division _____

WARD-MEADE NEIGHBORHOOD
IMPROVEMENT ASSOCIATION (N.I.A.),
a corporation,

PLAINTIFF,

vs.

Case No. 2018 -CV- _____

SOUTHSIDE CHRISTIAN PALACE CHURCH
W.R. PORTEE EVANGELISTIC WORLD
OUTREACH, INC., a corporation,

DEFENDANT,

PETITION

(Filed pursuant to Chapter 60 of K.S.A.)

COMES NOW the Plaintiff, and for cause of action against the Defendant, states and alleges as follows:

I. Parties and Jurisdiction

1. Plaintiff, Ward-Meade Neighborhood Improvement Association (hereinafter, "N.I.A." or "Plaintiff") is a not-for-profit corporation organized under the laws of the state of Kansas, and

having its principal place of business located in Shawnee County, Kansas.

2. Defendant, Southside Christian Palace Church W.R. Portee Evangelistic World Outreach, Inc. (hereinafter, "Southside Church" or "Defendant"), on information and belief, is a not-for-profit church organized under the laws of the state of California, is headquartered in Los Angeles, California, and may be served with process according the instructions contained in the praecipe for summons filed herein.

3. The Court has jurisdiction over the Defendant, in that the Defendant is the owner of real property located in Shawnee County, Kansas, commonly known as the Sumner School, and legally described as follows:

The South Half of Lot 82 and all of Lots 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, and 108 on Western Avenue; AND Lot 83, EXCEPT the North 7 ½ feet thereof, and all of Lots 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, and 107, all on Taylor Street, in the City of Topeka, Shawnee County, Kansas, along with the vacated alley lying between the South 7 ½ feet of Lot 99, and all of Lots 101, 103, 105, and 107 on Taylor Street, and the South 7 ½ feet of Lot 100 and all of Lots 102, 104, 106, and 108 on Western Avenue, in the City of Topeka, Shawnee County, Kansas,

The Sumner Elementary School is located at 330 SW Western Avenue, Topeka, Kansas, and is within the boundaries of the N.I.A., which also enjoys certain rights under restrictions found in the deed conveying the property to Southside Church, as will be further described below.

II. Factual Statement

4. Sumner Elementary School was formerly a grade school located in the Ward-Meade neighborhood. On November 6, 1991, the School was placed on the National Register of Historic Places. The School was involved in the *Brown v. Board of Education* case of Topeka in 1954. Linda Brown's father, Oliver Brown, attempted to enroll her at the Sumner School, because the family lived nearby, but he was rejected by the Topeka Board of Education, thus

forcing Linda Brown to attend the all-black Monroe School, which was farther away from her home. Oliver Brown then joined the class action lawsuit against the Topeka Board of Education that was eventually heard before the Supreme Court.

5. The School was constructed in 1936 as a part of the Federal Emergency Administration of Public Works, a New Deal program. The School was designed in the Art Deco style by Thomas W. Williamson, and has an unusual amount of stone detailing. Mr. Williamson was also the architect for Topeka High School, the Jayhawk Hotel and Theater, Curtis Junior High School, and Fire Station No. 2, all being in Topeka, Kansas.

6. Monroe Elementary School, the segregated school that Linda Brown attended, closed in 1975, and was held privately for a number of years before being purchased in 1991 by The Trust for Public Land. Because Sumner School was still in use at the time as a grade school, and Monroe was not, Monroe was selected on October 26, 1992 to house the Brown v. Board of Education National Historic Site, the official commemorative location operated for the public by the National Park Service.

7. Sumner School closed in 1996. Ironically, it was one of eight schools closed as part of a local desegregation plan to satisfy the original *Brown* case which was re-opened in the 1980's and not closed until 1999. The building was initially purchased by the Topeka & Shawnee County Public Library, which used it as a storage facility. The City of Topeka purchased the building from the library in 2002, hoping to rehabilitate it, but City was unable to allocate the necessary funds. On September 11, 2002, the City entered into a Declaration of Historic Preservation Covenant with the State of Kansas Historic Preservation Office, Exhibit 1 to this Petition, for which the City received an historic preservation grant. The Covenant provided, among other things, at paragraph 3, that the City would not undertake or permit to be

undertaken any activity on the property which would affect the structural integrity or the architectural appearance of the property, without the express prior consent of the State of Kansas, by written permission signed by a fully authorized representative thereof, and that the City would take appropriate measures to protect the site against willful damage or vandalism. "Appropriate measures" were defined in the covenant "to include whatever means are necessary to maintain the National Registry eligibility for the property." The Covenant also required the City "to assume the cost of continued maintenance and repair of the property so as to preserve the architectural, historical, and/or archeological integrity and its materials for ____ (*sic*) years in order to protect those qualities that made the property eligible for listing on the National Register of Historic Places."

8. Failing to obtain sufficient funds to rehabilitate the School, the City then tried to sell the property, but found no buyers. The City even considered demolishing the building. As a consequence, in May 2008, The National Trust for Historic Preservation listed the building on their list of America's Most Endangered Places.

9. The City chose to auction the School to the public in January 2009. Two bidders appeared at the auction: Zaire Thomas, a pastor with True Foundation World Outreach Ministries in Los Angeles, California, and the Topeka-based Community First, Inc., headed by Sandra Lassiter. Following the sale to Mr. Thomas, the highest bidder for \$89,000.00, he stated that he and his wife, MaryBeth Thomas, planned to offer programs at the building in areas that included employment education, counseling, entrepreneurship and the arts, as well as a 24-hour day care center. However, Mr. Thomas acknowledged on the day after the auction that the deed holder for the property would eventually become Archbishop W.R. Portee, pastor of Southside Christian Palace in Los Angeles, defendant herein.

10. On Tuesday, February 3, 2009, the Topeka City Council voted 6 to 1, with two abstentions, to approve the sale to Mr. Thomas. "I can absolutely assure you that we will not let the neighborhood down," Mr. Thomas told the council before the vote.

11. The City closed the sale to Mr. Thomas on March 6, 2009, when a deed transferring the School to Mr. Thomas was recorded with the Shawnee County Register of Deeds (Exhibit 2). Less than three months, later, on June, 2, 2009, a deed was recorded at the Register of Deeds transferring the property from Zaire M. Thomas and his wife, MaryBeth Thomas, to Southside Christian Palace Church W.R. Portee Evangelistic World Outreach, Inc., defendant herein (Exhibit 3).

12. On July 18, 2009, Bishop Portee traveled to Topeka to inspect the School. Mr. Portee stated that he planned to bring the School back into the spotlight as a keystone of the civil rights struggle, and that the result would be more flattering than previous attempts: his plans called for Sumner to be opened to the public as a community center and human rights memorial after renovation in 2010. During the Topeka visit, he told reporters that "I believe we can make this place a catalyst for inspiration and hope for people. I want to involve the whole community and people beyond Topeka." In discussing the initial involvement of Zaire Thomas, Mr. Portee stated that he was shocked to learn that Sumner was available for bidding. He stated that Mr. Thomas, a local minister overseeing a branch of Mr. Portee's church, found the building while driving around Topeka looking for vacant sites that might be rehabilitated for a community center. Mr. Thomas forwarded the Sumner information to Mr. Portee, unaware of its past. "I said, 'Get it!'" Mr. Portee, a former civil rights activist, recalled. "'Bid on it!' I knew instantly we had to save that building." Why Mr. Portee or his organization did not bid on the School at the auction, rather than Mr. Thomas, is not known to Plaintiff.

13. In the conveyance of the School to Mr. Thomas, the deed included three restrictions, as shown by Exhibit 2:

a. "Buyer understands and agrees that the subject property is subject to a certain historic preservation covenant as set forth in City of Topeka Contract No. 32398, as set forth in Book 3694, Page 60, incorporated by reference as if fully set forth herein. Buyer understands that the proposed use shall be subject to and require consideration of the Kansas State Historic Preservation Officer (KSHPO) and may require consent of the appropriate individual from the U.S. Department of the Interior;

b. The Buyer agrees an exhibit and visitor area will be placed within the Lobby entrance on the Southwest Side of the existing building on the subject property which will commemorate the Historic Sumner and Monroe Schools and be available to the public during normal hours of operation. Public tours of the building shall be available upon reasonable request. A deed restriction shall run with the land and shall be recorded upon closing describing the land as being available to the public for educational purposes subject to the Buyer's use of the property; and

c. Buyer, at no cost, shall make a meeting space available to accommodate the Ward-Meade Neighborhood Improvement Association or its successors. Said meeting space shall be utilized for neighborhood meetings and shall be subject to the Buyer's use of the subject property. Written request for meeting space must be made by prior notice and must be held at a reasonable time.

III. First Claim for Relief: Violation of the First Deed Restriction

14. Plaintiff incorporates herein the factual allegations as set forth above as though fully set forth in this First Claim for Relief.

15. On information and belief, Plaintiff alleges and states that Defendant has repeatedly

violated the First Deed Restriction which incorporated the requirement of the Historic Preservation Covenant into the deed conveyance. The School has been boarded up for a number of years since the acquisition of the School by Defendant. At the time of purchase, utilities were on at the School and the facility was in usable condition, although certainly in need of rehabilitation. Since that time, utilities have been disconnected. Defendant has allowed vandalism to occur at the school on numerous occasions because the School is unoccupied and not secure. At least one fire has occurred at the building, due to intentional acts of destruction perpetrated by unknown persons who have gained access to the School due to Defendant's failure to secure the School. On information and believe, Plaintiff alleges that the School has been the subject of several building code violations which required invention by the Topeka Code Enforcement office. On information and belief, Plaintiff alleges that historic artifacts within the School have been damaged, destroyed, or stolen. The iconic weather vane on the South tower of the School was removed or stolen in September 2017, but mysteriously reappeared after news reports of the removal and complaints by members of the Plaintiff. The community center promised by Mr. Thomas, Mr. Portee, and Defendant was never opened. No discernable use has been made of the School by Defendant since it was purchased in June 2009.

16. As a result of these acts, omissions, and failures on the part of Defendant, including any unknown occurrences which will be established by Plaintiff through the course of discovery in this case, Plaintiff alleges and states that Defendant is in total violation of the first Deed Restriction which required compliance with the Historic Preservation Covenant of September 12, 2002, including but not limited to: failure to maintain the School so as to preserve its architectural, historical, and archeological integrity; failure to prevent activity on the School property which has affected the structural integrity and the architectural appearance of the

building; and disuse and neglect of the School.

17. Plaintiff, having an interest in the School on account of the deed restrictions contained in the original deed of the property by the City of Topeka, has been damaged as a result of the described acts and omissions of the Defendant, with the failure to comply with the first Deed Restriction resulting in deterioration and loss of value of the property which has directly impacted the property values of members of the Plaintiff N.I.A. Further, the acts and omissions of the Defendant have jeopardized the historic value of the School and its place in the history of the United States Civil Rights Movement.

18. Plaintiff requests that the Court award damages to the N.I.A. and against the Defendant according to proof.

19. Plaintiff requests that the Court enjoin the Defendant from further and continuing violations of the first Deed Restriction.

20. Plaintiff requests that the Court order strict compliance with all of the provisions of the first Deed Restriction.

IV. Second Claim for Relief: Violation of the Second Deed Restriction

21. Plaintiff incorporates herein the factual allegations as set forth above as though fully set forth in this Second Claim for Relief.

22. On information and belief Plaintiff alleges and states that Defendant has repeatedly and continuously violated the Second Deed Restriction which requires Defendant to create and maintain a visitor area commemorating the Historic Sumner and Monroe Schools, which area is to be available to the public during regular business hours for educational purposes.

23. In the almost nine years since Defendant acquired the School, Defendant has never complied with this Deed Restriction requirement. Although the Defendant has occasionally

allowed the School to be open for tours, these have occurred infrequently and not been generally open to the public. No visitor area was ever created. No commemoration of the Sumner School and Monroe School has ever been undertaken. Repeated requests b Plaintiff to Defendant to allow public access to the School have been denied by Defendant on the grounds that the School is "unsafe," with this statement proving the violation of the first Deed Restriction as alleged above. Defendant recently denied access to the School when a group of individuals from Georgia State University, which is investigating whether Sumner should be nominated to become a UNESCO World Heritage Site, where denied access to the School, despite prior written requests to be allowed access, were denied by Defendant on account of the School being "unsafe."

24. Plaintiff, having an interest in the School on account of the deed restrictions contained in the original deed of the property by the City of Topeka, has been damaged as a result of the described acts and omissions of the Defendant, with the failure to comply with the second Deed Restriction having a direct and detrimental impact on the ability of the Plaintiff and the Public as a whole to utilize the School for historic commemoration that the first Deed Restriction Requires. Further, these acts and omissions of the Defendant have jeopardized the historic value of the School and its place in the history of the United States Civil Rights Movement.

25. Plaintiff requests that the Court award damages to the NIA and against the Defendant according to proof.

26. Plaintiff requests that the Court enjoin the Defendant from further and continuing violations of the second Deed Restriction.

27. Plaintiff requests that the Court order strict compliance with all of the provisions of

the second Deed Restriction.

V. Third Claim for Relief: Violation of the Third Deed Restriction

28. Plaintiff incorporates herein the factual allegations as set forth above as though fully set forth in this Third Claim for Relief.

29. Defendant has repeatedly violated the Third Deed Restriction which requires Defendant to allow the Plaintiff NIA to hold its monthly meetings at the School.

30. Plaintiff has made repeated requests to Defendant to be allowed to have its meetings at the School, which requests have either been completely ignored or with a response from Defendant stating that the School is "unsafe."

31. Plaintiff has been required to make other arrangements for its monthly meetings, since Defendant has failed and refused to comply with the third deed restriction.

32. Plaintiff, having an interest in the School on account of the deed restrictions contained in the original deed of the property by the City of Topeka, has been damaged as a result of the described acts and omissions of the Defendant, with the failure to comply with the third Deed Restriction having a direct and detrimental impact on the ability of the Plaintiff to utilize the School as the third Deed Restriction requires.

33. Plaintiff requests that the Court award damages to the NIA and against the Defendant according to proof.

34. Plaintiff requests that the Court enjoin the Defendant from further and continuing violations of the second Deed Restriction.

35. Plaintiff requests that the Court order strict compliance with all of the provisions of the third Deed Restriction.

VI. Fourth Claim for Relief: Maintaining a Nuisance

36. Plaintiff incorporates herein the factual allegations as set forth above as though fully set forth in this Fourth Claim for Relief.

37. The failure of the Defendant to comply with the Deed Restrictions, to comply with the Historic Preservation Covenant, to maintain the School so as to prevent deterioration, damage, and destruction, prevent vandalism by keeping the School secure, and to comply with the City of Topeka property and building codes as set forth in detail above in this Petition, constitutes the creation and maintenance of a nuisance, both public and private.

38. Plaintiff, having an interest in the School on account of the deed restrictions contained in the original deed of the property by the City of Topeka, and its members being landowners of property adjoining the School, have been damaged as a result of the described acts and omissions of the Defendant, and with the failure to comply with the first Deed Restriction resulting in deterioration and loss of value of the School which has directly impacted the property values of members of the Plaintiff N.I.A. Further, the acts and omissions of the Defendant have jeopardized the historic value of the School and its place in the history of the United States Civil Rights Movement.

39. Plaintiff requests that the Court award damages to the N.I.A. and against the Defendant according to proof.

40. Plaintiff requests that the Court enjoin the Defendant from further and continuing maintenance of a public and private nuisance through its acts and omissions, described above, as they pertain to Sumner School.

41. Plaintiff requests that the Court order strict compliance with all of the provisions of the Deed Restrictions and with all applicable City of Topeka property and building codes so as to prevent the continuation of a public and private nuisance.

WHEREFORE, Plaintiff prays for judgment against the Defendant herein, for damages according to proof for any and all past and future losses sustained by Plaintiff on account of Defendant's violations as described herein, in an amount of damages in excess of Seventy-five Thousand Dollars (\$75,000.00), for a temporary restraining order and both temporary and permanent injunctions enjoining and prohibiting further deed restriction violations, for a temporary restraining order and temporary and permanent injunctions for the Defendant's creation and maintenance of a public and private nuisance, for costs and expenses herein, and for such other and further relief as the Court deems just and equitable.

s/ Paul D. Post
PAUL D. POST
Attorney for Plaintiff