

16-0137CV

CAUSE NO. _____

JAMES FREDRICK MILES,

Plaintiff,

vs.

**TEXAS CENTRAL RAILROAD &
INFRASTRUCTURE, INC.,**

Defendant.

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IN THE 8^{7TH} DISTRICT COURT

LEON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DECLARATORY RELIEF

Plaintiff James Fredrick Miles ("Plaintiff") files this Original Petition and Request for Declaratory Relief against Defendant Texas Central Railroad and Infrastructure, Inc. ("TCRI" or "Defendant") as follows:

PARTIES

1. Plaintiff is an individual who resides at 3302 County Road 347, Jewett, Texas 75846.
2. Defendant TCRI is a Texas corporation. TCRI may be served with process through its registered agent CSC-Lawyers, Inc., at 211 East 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter because the declaratory relief sought concerns the rights and obligations of the parties under Texas statutes and Defendant is a Texas corporation.
4. Venue is proper in Leon County, Texas because a substantial part of the events giving rise to Plaintiff's claims occurred in Leon County, Texas, and the real property that is the subject of this action is located in Leon County, Texas.

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DISCOVERY AND RULE 47 STATEMENT

5. Discovery should be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure. Plaintiff seeks non-monetary relief in the form of a declaratory judgment, together with attorney's fees and costs.

FACTUAL BACKGROUND

6. Plaintiff owns approximately 600 acres of land located in Leon County, Texas (the "Property"). Plaintiff and his family have owned and enjoyed the Property for around 100 years.

7. Upon information and belief, TCRI is an affiliate of Texas Central Railway, LLC ("TCR"). TCR intends to construct and operate a high-speed railroad between Dallas and Houston ("High-Speed Rail") using the power of eminent domain to acquire private property along the route when necessary.

8. In November 2015, TCRI mailed a letter and Survey Permission Form ("Consent Form") to Plaintiff's residence, requesting Plaintiff's signature on the form. A copy of the Consent Form is attached as Exhibit A. TCRI subsequently sent representatives to Plaintiff's residence in further attempts to obtain Plaintiff's signature on the Consent Form.

9. Through the Consent Form, TCRI seeks right of entry upon Plaintiff's Property to conduct an unlimited series of surveys along with other invasive and non-invasive procedures. TCRI claims these surveys and procedures are necessary to evaluate potential routes for the High-Speed Rail. However, the Consent Form does not reference any Texas statute or other authority granting TCRI right of entry, nor does it identify TCRI as a railroad, a corporation chartered to operate an electric railway, or any other entity with eminent domain authority.

10. Assuming that TCRI is seeking right of entry as a railroad, TEX. TRANS. CODE §112.051 governs TCRI's rights during this pre-condemnation stage. TEX. TRANS. CODE §112.051(a) limits pre-condemnation activities on private land to "an examination and survey for the company's proposed railway, to be performed as necessary to select the most advantageous route." TEX. TRANS. CODE §112.051(c) states further that "[e]xcept for the purposes of performing a *lineal survey*, a railroad company may not enter on private real property" until the company agrees with and pays the owner of the property all damages that may be caused to the property by the condemnation. (Emphasis added).

11. Assuming, alternatively, that TCRI is seeking right of entry as a corporation chartered with the intent to construct and operate an electric railway, TEX. TRANS. CODE §131.013 governs TCRI's pre-condemnation rights. TEX. TRANS. CODE §131.013(a) limits pre-condemnation activities on private land to "an examination and survey of its proposed railway made as necessary to select the most advantageous route."

12. In contrast to the limited rights granted by TEX. TRANS. CODE §§112.051 and 131.013, TCRI seeks to perform the following:

"surveys that include but are not limited to, lineal surveys, the characterization of land as to: property ownership, topographic, geologic, and hydrologic features, and biological and cultural resources evaluations, which may involve soil boring and sampling with small equipment."

These requested survey activities and procedures reach far beyond any reasonable interpretation of TEX. TRANS. CODE §§112.051 and 131.013.

13. There is a stark difference between locating and describing boundaries through a lineal survey, and conducting invasive soil borings. Soil borings require the use of drilling

equipment on land clear of brush and other obstacles, and usually involve the drilling of a number of holes in grid patterns. Consequently, with the broad grant of authority requested by TCRI, it could cut down trees, clear brush, or drill numerous holes in grid patterns. In addition, the Consent Form expands the scope even more using the phrase "include but not limited to." With that phrase, there is virtually no limitation on what procedures TCRI may perform on Plaintiffs' Property.

14. In addition, the requested survey is overbroad because it would allow TCRI to extend its permission to enter Plaintiff's Property to an unlimited number of unnamed persons, affiliates and entities. Although TCRI is the only entity specified in the Consent Form, the permission applies to TCRI's "successors, assigns, and affiliates, and their respective agents, employees, contractors, third-party contractors, and designees." If TCRI is allowed to extend its requested right of entry to unnamed affiliates and entities, there will be virtually no limitation as to what other persons or entities are allowed to enter Plaintiff's Property.¹

15. The controversy over TCRI's requested right of entry is ripe for determination. The underlying facts are sufficiently developed, and Plaintiff is likely to suffer an injury if the controversy is not resolved. TCRI is attempting to enter Plaintiff's Property to conduct unauthorized, unlawful activities. Plaintiff has invoked his right to refuse entry upon his Property and has refused to sign the Consent Form. It is well-settled procedure that under these circumstances, where a property owner refuses a condemnor's requested right of entry to conduct a pre-condemnation survey, the condemnor will seek a temporary restraining order or temporary

¹ Although the exact nature of their relationship remains unclear, there are apparently several entities involved in the High-Speed Rail. TCR was named as the sponsor of the High-Speed Rail in a report issued by the Federal Railroad Administration ("FRA"), but in a separate public notice the FRA named Texas Central High-Speed Railway, LLC as the sponsor of the project. Meanwhile, Texas Central Partners, LLC is listed as the name of the company on the official website.

injunction to obtain right of entry, based on the landowner's refusal to sign a consent form. In fact, TCRI's representatives have told landowners that legal action will ensue if consent is refused. As such, the threat of harm to Plaintiff is direct and immediate.

PRESERVATION STATEMENT REGARDING RIGHT TO OPPOSE EMINENT DOMAIN AUTHORITY

16. In this Petition, Plaintiff is challenging only TCRI's right of entry upon Plaintiff's Property to conduct the surveys and procedures described in the Consent Form. Plaintiff is not yet challenging TCRI's (or its affiliates') condemnation authority. Plaintiff specifically reserves and does not waive the right to challenge any alleged condemnation authority in this or subsequent proceedings.

COUNT ONE—RIGHT TO DECLARATORY RELIEF

17. An actual and justiciable controversy exists as to whether TCRI has the right to enter, under the auspices of court authority, Plaintiff's Property to conduct the pre-condemnation surveys and procedures set forth in the Consent Form. Accordingly, Plaintiff seeks a judgment in accordance with Chapter 37 of the Texas Civil Practice and Remedies Code in order to resolve this controversy. Plaintiff seeks a declaration concerning the parties' rights, status, and obligations with respect to TCRI's requested right of entry onto Plaintiff's Property including, but not limited to, an order declaring that TCRI's Consent Form exceeds the scope of survey activities granted by TEX. TRANS. CODE §§112.051 and 131.013.

ATTORNEY'S FEES—RIGHT TO DECLARATORY RELIEF

18. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, Plaintiff is entitled to recover his reasonable and necessary attorney's fees for the investigation and prosecution of this action, including all trials and appeals.

PRAYER

Plaintiff respectfully requests judgment declaring the rights of the parties with respect to TCRI's requested entry upon Plaintiff's Property, as more fully set forth above. Plaintiff further requests recovery of his attorney's fees and costs incurred in the investigation and prosecution of this action. Finally, Plaintiff requests all other and further relief to which he is entitled.

Respectfully submitted,

/s/ Blake L. Beckham

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ATTORNEYS FOR PLAINTIFF

Exhibit A

SURVEY PERMISSION FORM

Please retain this copy of the Survey Permission Form for your records and return the personalized copy in the self-addressed stamped envelope provide.

I/We (Grantor) hereby grant permission to TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC., (Grantee) its successors, assigns, and affiliates, and their respective agents, employees, contractors, third-party contractors, and designees (Grantee Parties) to enter upon my/our land for the purpose of performing surveys that include, but are not limited to, lineal surveys, the characterization of land as to: property ownership, topographic, geologic, and hydrologic features, and biological and cultural resources evaluations, which may involve soil boring and sampling with small equipment (the "Surveys"). Nearly all Survey activities are non-intrusive and may be accomplished with simple surface access. Any disturbance will be minimal, and any area that is disturbed shall be immediately restored to substantially the same conditions in which it existed prior to the disturbance. The Surveys are being conducted to evaluate potential routes of a proposed high-speed rail project and the data obtained may be used to support required governmental reviews.

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. agrees that Grantee and Grantee Parties will conduct themselves in a workmanlike manner and agrees to pay for any and all actual physical damages to property, crops and fences that are caused by the Surveys or Grantee's activities on the Property. Gates shall be closed upon entry and exit. Surveys will be confined to a narrow corridor and Grantee and Grantee Parties will not wander to other parts of your property, other than to ascertain boundary corners.

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. does hereby agree to indemnify and hold Grantor harmless from any and all losses, damages, claims, demands and suits (and reasonable costs and expenses incidental thereto, including court costs and attorney's fees, but excluding consequential damages) that Grantor may incur (collectively, "Claims") to the Property, and/or any injuries to or death of any person resulting from Grantee's Survey activities on the Property, unless such loss, damages, injury or death results from the negligent or intentional acts or omissions of Grantor or any of Grantor's agents, employees, contractors, representatives or invitees.

Survey Permission Granted

Survey Permission Denied

X _____
Signature of Person Granting Permission to Survey

Printed Name of Person Granting Permission to Survey

Mailing Address: _____

Phone: _____

Cell Phone: _____

Is there a tenant or anyone else we need to contact concerning the property?

Tenant Name: _____ Address: _____ Phone: _____

Tract Features (check all that apply):

- | | | | |
|--|---|--|---|
| <input type="checkbox"/> Water Wells | <input type="checkbox"/> Springs | <input type="checkbox"/> Oil / Gas Wells | <input type="checkbox"/> Livestock on Tract |
| <input type="checkbox"/> Planted Crops | <input type="checkbox"/> Residence(s) on Tract | <input type="checkbox"/> Active Mining on Tract | <input type="checkbox"/> Power Lines / Structures |
| <input type="checkbox"/> Mining Leases or Planned Mining | <input type="checkbox"/> Existing Access Roads from Public Road | <input type="checkbox"/> Saturated Soil Conditions | <input type="checkbox"/> Property Corner Markers |
| <input type="checkbox"/> Biological Features | <input type="checkbox"/> Water Features | | |
| <input type="checkbox"/> Cemetery / Other Cultural Features (Describe) _____ | | | |
| <input type="checkbox"/> Other (Specify) _____ | | | |

Property Information:

The following instructions apply to surveys done on my property:

Agent Comments: _____

Right-of-Way Agent Printed Name: _____ Date: _____