

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. _____

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
)
JUAN CARLOS SAINZ;)
SIRAMAD TRUJILLO-SAINZ;)
VICTOR ORTEGA;)
NARINEDAT ROY;)
SAINZ HOMES LLC;)
SION HOME’S BUILDERS LLC; and)
SION HOMES LLC,)
)
Defendants.)
_____)

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, at the request of the Secretary of the United States Department of the Army acting through the United States Army Corps of Engineers (“Corps”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under sections 301(a) and 404(s) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a) and 1344(s), to obtain injunctive relief, civil penalties, and other appropriate relief against seven persons (four individuals and three companies) for failing to comply with a permit issued by the Corps, and for discharging pollutants without complying with that permit.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to sections 309(b), (d) and 404(s) of the CWA, 33 U.S.C. §§ 1319(b), (d) and 1344(s), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in the Southern District of Florida pursuant to section 309(b) and 404(s) of the CWA, 33 U.S.C. §§ 1319(b) and 1344(s), and 28 U.S.C. §§ 1391(b) and (c), because Defendants reside or conduct business in this District; the activities and waters regulated by the CWA are located in this District; and the claims alleged in this Complaint arose in this District.

4. The United States has provided notice of the commencement of this action to the State of Florida.

PARTIES

5. Plaintiff in this case is the United States of America, and the United States Department of Justice is authorized to bring this action pursuant to sections 404(s) and 506 of the CWA, 33 U.S.C. §§ 1344(s) and 1366, and 28 U.S.C. §§ 516 and 519.

6. Defendants in this case include four individuals: Juan Carlos Sainz, Siramad Trujillo-Sainz, Victor Ortega, and Narinedat Roy.

7. Defendant Juan Carlos Sainz resides or conducts business in Miami-Dade County, Florida. He is married to Defendant Siramad Trujillo-Sainz, and he is a manager of Defendant Sainz Homes LLC. Previously, he was employed by or closely associated with Defendant Sion Home's Builders LLC.

8. Defendant Siramad Trujillo-Sainz resides in Miami-Dade County, Florida. She is married to Defendant Juan Carlos Sainz. It will likely be shown, after a reasonable opportunity

for further investigation or discovery, that she is employed by or closely associated with Defendant Sainz Homes LLC. Previously, she was employed by Miami-Dade County, Florida's Department of Environmental Resources Management ("DERM").

9. Defendant Victor Ortega resides or conducts business in Miami-Dade County, Florida. He is a manager of Defendant Sion Home's Builders LLC, and of Defendant Sion Homes LLC.

10. Defendant Narinedat Roy resides or conducts business in Miami-Dade or Broward County, Florida. He is a manager of Defendant Sion Home's Builders LLC.

11. Defendants in this case also include three limited liability companies organized under Florida law: Sainz Homes LLC, Sion Home's Builders LLC, and Sion Homes LLC.

12. Defendant Sainz Homes LLC has an office located at 2423 SW 147 Avenue #179, Miami, Florida, 33185.

13. Defendants Sion Home's Builders LLC and Sion Homes LLC share an office located at 2233 SW 153 Path, Miami, Florida, 33185.

STATUTORY AND REGULATORY BACKGROUND

14. Section 101(a) of the CWA, 33 U.S.C. § 1251(a), provides that "[t]he objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" except, *inter alia*, as in compliance with a permit issued by the Corps pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

16. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include, *inter alia*, "individual," "corporation," and "partnership."

17. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.”

18. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include dredged or fill material such as “dredged spoil,” “biological materials,” “rock,” “sand,” and “cellar dirt.”

19. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

20. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

21. 33 C.F.R. § 328.3(a)(1), (5) and (7) define “waters of the United States” to include, *inter alia*: waters that are currently used, were used in the past, or may be susceptible for use in interstate or foreign commerce (“traditional navigable waters”); tributaries of traditional navigable waters; and wetlands adjacent to traditional navigable waters or their tributaries.

22. 33 C.F.R. § 328.3(b) defines “wetlands” as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

23. 33 C.F.R. § 328.3(c) defines “adjacent” as “bordering, contiguous, or neighboring.”

24. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), authorizes the Corps to issue permits for the discharge of dredged or fill material into navigable waters at specified sites.

25. Once issued, CWA section 404 permits have the force of law.

26. Section 404(s) of the CWA, 33 U.S.C. § 1344(s), authorizes the commencement of a civil action for appropriate relief against any person who violates any condition or limitation set forth in a permit issued by the Corps under section 404 of the CWA, 33 U.S.C. § 1344.

27. Section 404(s) of the CWA, 33 U.S.C. § 1344(s), further provides that any person who violates any condition or limitation set forth in a permit issued by the Corps under section 404 of the CWA, 33 U.S.C. § 1344, shall be subject to a civil penalty.

28. Each day that a person remains in violation of any condition or limitation set forth in a permit issued by the Corps under section 404 of the CWA, 33 U.S.C. § 1344, constitutes an additional and continuing violation of that permit.

29. Liability for violating any condition or limitation set forth in a permit issued by the Corps under section 404 of the CWA, 33 U.S.C. § 1344, is strict and joint and several.

30. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief against any person who violates section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging dredged or fill material without complying with a permit issued by the Corps pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

31. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates section 301(a) of the CWA, 33 U.S.C. § 1311(a), shall be subject to a civil penalty.

32. Each day that unpermitted dredged or fill material remains in navigable waters constitutes an additional and continuing violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

33. Liability for violating section 301(a) of the CWA, 33 U.S.C. § 1311(a), is strict and joint and several.

GENERALLY APPLICABLE ALLEGATIONS

34. At or near the corner of Southwest 22nd Street and 144th Avenue, Section 10, Township 54 South, and Range 39 East, Miami-Dade County, Florida is a housing development project originally known as the “Mansions at Sion.”

35. In early 2006, the Corps received an application from Defendant Victor Ortega seeking authorization to discharge dredged or fill material into navigable waters (specifically, adjacent wetlands) in conjunction with constructing the Mansions at Sion.

36. The Corps assigned file number SAJ-2006-570 to the application.

37. On or about March 16, 2006, the Corps acted on the application by issuing a permit pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

38. Exhibit 1 to this Complaint is a true and correct copy of the permit (enclosures omitted).

39. The permit is addressed as follows:

Mansions at Sion
c/o Victor Ortega
Sion Home Builders, LLC
2233 Southwest 153 Path
Miami, Florida 33185

40. The permit has the following condition or limitation: “Prior to the start of construction, the permittee will provide to the Miami-Dade County Freshwater Wetland Mitigation Trust Fund, 33 S.W. 2nd Ave., 4th Fl., Miami, FL 33130, a monetary mitigation fee to compensate for 9.283 acres of wetlands impacts.”

41. The permit specifies that the mitigation fee is \$426,874.29.

42. At the time of the permit application and issuance, Defendants Victor Ortega and Narinedat Roy were managers of Defendant Sion Home’s Builders LLC.

43. At the time of the permit application and issuance, Defendant Juan Carlos Sainz was employed by or closely associated with Defendant Sion Home's Builders LLC or other entities connected with the Mansions at Sion.

44. On or about March 17, 2006, Defendant Siramad Trujillo-Sainz wrote a letter regarding the Mansions at Sion.

45. Exhibit 2 to this Complaint is a true and correct copy of the letter.

46. The letter is addressed as follows:

Sion Home's Builders LLC
2233 SW 153 Path
Miami, FL 33185

47. At the time of the March 17, 2006 letter, Defendant Siramad Trujillo-Sainz was employed by DERM (i.e., Miami-Dade County's Department of Environmental Resources Management).

48. DERM's responsibilities include, *inter alia*, receiving monetary mitigation fees on behalf of the Miami-Dade County Freshwater Wetland Mitigation Trust Fund.

49. At the time of the March 17, 2006 letter, Defendant Siramad Trujillo-Sainz was not married and identified herself as Siramad Trujillo.

50. The March 17, 2006 letter states: "On March 10, 2006 and March 17, 2006, mitigation payments in the amount of \$222,482.96 and \$204,391.33 respectively were received by this office from Sion Home's Builders, LLC. This Department has received a total payment of \$426,874.29."

51. "[T]his office" and "[t]his Department" are references to DERM.

52. The statement in the March 17, 2006 letter that DERM had received a mitigation payment in the amount of \$204,391.33 was correct; on or about March 17, 2006, DERM did, in

fact, receive a mitigation payment in the amount of \$204,391.33 in the form of a check signed by Defendant Juan Carlos Sainz and drawn from a Colonial Bank account attributed to “Sion Home’s Builders.”

53. The statement in the March 17, 2006 letter that DERM had received a mitigation payment in the amount of \$222,482.96 was incorrect; neither on March 17, 2006 nor at any time before January 28, 2015 did DERM receive a mitigation payment in the amount of \$222,482.96 from Defendant Sion Home’s Builders LLC, Defendant Juan Carlos Sainz, or any other Defendant or person pertaining to the Mansions at Sion.

54. On or about September 15, 2006, Defendant Siramad Trujillo-Sainz’s employment with DERM terminated.

55. On or about November 9, 2006, Defendant Juan Carlos Sainz and Defendant Siramad Trujillo-Sainz married.

56. After issuance of the permit, construction of the Mansions at Sion began.

57. As of at least June 2014, construction activities continued to occur on at least one lot of the housing development originally known as the Mansions at Sion.

58. Defendant Sainz Homes LLC, managed by Defendant Juan Carlos Sainz, is conducting such construction or owns or controls the lot.

59. On November 19, 2014, the United States notified Defendants that it was prepared to file a complaint for injunctive relief, civil penalties, and other appropriate relief regarding (a) Defendants’ past, present, and ongoing violations of a CWA permit issued by the Corps; and (b) Defendants’ past, present, and ongoing violations of the CWA’s prohibition on discharging pollutants except as in compliance with a permit.

60. On January 28, 2015, Defendants Juan Carlos Sainz, Siramad Trujillo-Sainz, and Sainz Homes LLC paid the \$222,482.96 mitigation fee to DERM on behalf of the Miami-Dade County Freshwater Wetland Mitigation Trust Fund.

COUNT ONE: VIOLATIONS OF THE PERMIT

61. The United States incorporates by reference the allegations set forth in paragraphs 1 to 60 above.

62. On each and every day since construction of the Mansions at Sion began, and continuing through January 28, 2015, a condition or limitation of the permit issued by the Corps, i.e., full payment of the mitigation fee, had not been satisfied.

63. On each and every day since construction of the Mansions at Sion began, and continuing through January 28, 2015, the permit had been violated.

64. These violations are attributable to Defendants.

65. Defendants constitute the permittee; or the permittee's successor; or stand in the shoes of the permittee; or by reason of their position with the permittee had the responsibility and authority to prevent in the first instance, or promptly to correct, violations and failed to do so; or conspired with a person who by reason of his position with the permittee had the responsibility and authority to prevent in the first instance, or promptly to correct, violations and failed to do so.

66. Defendant Siramad Trujillo-Sainz, by stating that DERM had received a total mitigation fee payment of \$426,874.29 when, in fact, DERM had received a mitigation fee payment of only \$204,391.33, created an inaccurate record of compliance by the Mansions at Sion.

67. It will likely be shown, after a reasonable opportunity for further investigation or discovery, that Defendant Juan Carlos Sainz conspired with Defendant Siramad Trujillo-Sainz to create an inaccurate record of compliance by the Mansions at Sion.

68. It will likely be shown, after a reasonable opportunity for further investigation or discovery, that Defendants Juan Carlos Sainz and Siramad Trujillo-Sainz knew when they were creating a record of compliance by the Mansions at Sion that such record was inaccurate.

69. It will likely be shown, after a reasonable opportunity for further investigation or discovery, that Defendants Juan Carlos Sainz and Siramad Trujillo-Sainz created an inaccurate record of compliance by the Mansions at Sion for purposes that included concealing from regulators violations of the permit.

70. Following an audit in 2013, DERM discovered that the record of compliance by the Mansions at Sion was inaccurate; i.e., that DERM had not previously received the \$222,482.96 mitigation fee payment.

71. Defendants are persons who have violated a condition or limitation of a permit issued by the Corps pursuant to section 404 of the CWA, 33 U.S.C. § 1344.

72. Defendants are strictly and jointly and severally liable for injunctive relief, civil penalties, and other appropriate relief under section 404(s) of the CWA, 33 U.S.C. § 1344(s).

COUNT TWO: UNPERMITTED DISCHARGES OF POLLUTANTS

73. The United States incorporates by references the allegations set forth in paragraphs 1 to 72 above.

74. During the construction of the Mansions at Sion, pollutants (specifically, dredged or fill material) were added from discernible, defined, and discrete conveyances into approximately 9.283 acres of navigable waters (specifically, adjacent wetlands).

75. Defendants planned, conducted, contracted for, supervised, controlled, aided and abetted, conspired to cause, or had the ability but failed to stop the activities referenced in paragraph 74 above.

76. Prior to January 28, 2015, none of the activities alleged in paragraph 74 above complied with section 404 of the CWA, 33 U.S.C. § 1344, because at no time prior to January 28, 2015 was each and every condition or limitation of a permit issued by the Corps satisfied.

77. Defendants violated section 301(a) of the CWA, 33 U.S.C. § 1311(a).

78. Defendants are strictly and jointly and severally liable for injunctive relief, civil penalties, and other appropriate relief under section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that the Court order the following relief:

Enjoin Defendants to *either* restore the navigable waters they filled to their pre-fill condition *or* tender to DERM, on behalf of the Miami-Dade County Freshwater Wetland Mitigation Trust Fund, interest in the amount of \$30,276 on the \$222,482.96 mitigation fee that was due to be paid on March 17, 2006 but was not paid until January 28, 2015;

Assess civil penalties against Defendants and in favor of the United States pursuant to sections 309(d) and 404(s) of the CWA, 33 U.S.C. §§ 1319(d) and 1344(s), for violations of the permit and the CWA;

Award the United States costs and disbursements in this action; and

Grant the United States such other relief as the Court may deem appropriate, just or proper.

Respectfully submitted,

JOHN C. CRUDEN
Assistant Attorney General

Dated: March 27, 2015

___/s/ Andrew J. Doyle, Trial Attorney____
Florida Bar No. 84948
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
(202) 514-4427 (p)
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andrew.doyle@usdoj.gov

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benjamin.s.johnson@usace.army.mil

Attorneys for the United States of America

Attachments:

Exhibit 1 to the Complaint: Permit dated March 16, 2006

Exhibit 2 to the Complaint: Letter of March 17, 2006

**Exhibit 1 to the Complaint:
Permit dated March 16, 2006**



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
Miami Regulatory Office
11420 N. Kendall Drive, Suite 104
Miami, Florida 33176

Regulatory Division
South Permits Branch
Miami Regulatory Office
2006-570 (GP-MLC)

MAR 16 2006

Mansions at Sion
c/o Victor Ortega
Sion Home Builders, LLC
2233 Southwest 153 Path
Miami, Florida 33185

Dear Permittee:

Reference is made to your joint permit application received January 27, 2006, regarding the placement of fill in 9.283 acres of jurisdictional freshwater wetlands. The project "Mansions at Sion" is located along Southwest 144th Avenue, west of the canal, between theoretical Southwest 22 Street and theoretical Southwest 23rd Terrace within the Bird Drive Wetland Basin, in Section 10, Township 54 South, Range 39 East, Miami-Dade County, Florida. (folios #30-4910-003-0420, #30-4910-003-0430 & #30-4910-003-0440)

The proposed work is authorized by General Permit SAJ-74, a copy of which is enclosed for your information and use. You are authorized to proceed with the project in accordance with the enclosed drawings subject to ALL conditions of the permit. The Special and General Conditions are also found at

http://www.saj.usace.army.mil/permit/permitting/general_permits/saj_74.pdf

If the work is authorized after the fact, no further work may be undertaken and you should contact this office, regarding any future actions. A determination of the status of the General Permit will be made and you will be advised. If the General Permit has been reissued with no substantive change(s), a request for an extension of your previous authorization will be considered. If the General Permit has not been reissued or was reissued with new conditions, a new application and drawings may need to be submitted for further review.

The following site-specific special conditions are required in addition to those found on the attached SAJ-74 list of Special Conditions:

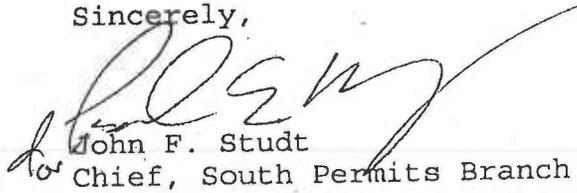
1. Prior to the start of construction, the permittee will provide to the Miami-Dade County Freshwater Wetland Mitigation Trust Fund, 33 S.W. 2nd Ave., 4th Fl., Miami, FL 33130, a monetary mitigation fee to compensate for 9.283 acres of wetlands impacts. The permittee agrees to submit \$426,874.29 to the above-referenced agency, which may credit one-third (\$142,291.43) to the Special Area Management Committee and provide the remaining two-thirds (\$284,582.86) to The National Park Foundation benefiting the Hole-in-the-Donut Restoration Area.
2. During construction, there must be no storage of construction materials, equipment, or debris on any adjacent properties.
3. Please contact the Miami Field Office at least 24 hours prior to the beginning of construction.

Please write your Department of the Army permit number on your check or money order. Proof of payment will be made to the U.S. Army Corps of Engineers, Regulatory Division, Enforcement Branch, Attention: Ms. Lisa Abernathy, Post Office Box 4970, Jacksonville, Florida 32232-0019, fax 904-232-1684, telephone 904-232-2070, and to US Army Corps of Engineers, Attn: Ms. Megan Clouser, 11420 North Kendall Drive, Suite 104, Miami, Florida 33176.

Point of contact for the correspondence is Megan Clouser at the letterhead address above or by telephone at 305-526-7182.

Thank you for your cooperation with our permit program.

Sincerely,


John F. Studt
Chief, South Permits Branch

Enclosure

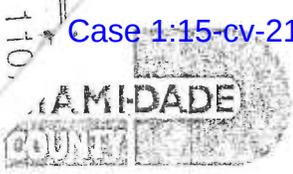
CF: CESAJ-RD-PE

The National Park Foundation
Attn: Loleta Thomas
11 Dupont Circle Northwest, Suite 600
Washington, D.C. 20036-1224

Everglades & Dry Tortugas National Park
Attn: Craig Smith
40001 State Road 9336
Homestead, FL 33034

Department of Environmental Resources Management
Wetlands Section - 4th Floor
33 S.W. 2nd Ave.
Miami, FL 33130

**Exhibit 2 to the Complaint:
Letter of March 17, 2006**



miamidade.gov

- ADA Coordination
- Agenda Coordination
- Art in Public Places
- Audit and Management Services
- Aviation
- Building Code Compliance
- Building
- Business Development
- Capital Improvements
- Citizen's Independent Transportation Trust
- Communications
- Community Action Agency
- Community & Economic Development
- Community Relations
- Consumer Services
- Corrections & Rehabilitation
- Countywide Healthcare Planning
- Cultural Affairs
- Elections
- Emergency Management
- Employee Relations
- Enterprise Technology Services
- Environmental Resources Management
- Fair Employment Practices
- Finance
- Fire Rescue
- General Services Administration
- Historic Preservation
- Homeless Trust
- Housing Agency
- Housing Finance Authority
- Human Services
- Independent Review Panel
- International Trade Consortium
- Juvenile Assessment Center
- Medical Examiner
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement Management
- Property Appraiser
- Public Library System
- Public Works
- Safe Neighborhood Parks
- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Urban Revitalization Task Force
- Vizcaya Museum and Gardens
- Water and Sewer

March 17, 2006

Sion Home's Builders LLC
2233 SW 153 Path
Miami, FL 33185

Re: Mitigation, Permit, Application and Bird Drive Basin Fee Payment for the properties located at approximately approx. SW 144 AVE & 22 ST in Section 10, Township 54 South, Range 39 East, Miami-Dade County, Florida (Folios # 30-4910-003-0420, -0430, and - 0440) DERM File FW 91-078.

Dear Sir or Madam:

On March 10, 2006 and on March 17, 2006, mitigation payments in the amounts of \$222,482.96 and \$204,391.33 respectively were received by this office from Sion Home's Builders LLC. This Department has received a total payment of \$426,874.29.

Sincerely,


Siramad Trujillo, Biologist II
Wetland Resources Section

Dominique E. ...