

IN THE STATE COURT OF BULLOCH COUNTY
 STATE OF GEORGIA

Michael Gatto and Katherine Gatto, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
v.)	NO. STCV2016000167
)	
City of Statesboro, Georgia, et al.,)	
)	
Defendants.)	

DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

COME NOW the City of Statesboro (the “City”) and Sue Starling, in her official capacity as City Clerk (“Starling”) (hereinafter “Defendants”), by and through their counsel, and, pursuant to O.C.G.A. § 9-11-56(b) and the Uniform Superior Court Rule 6.5, and respectfully move this Court for entry of summary judgment in their favor and against Plaintiffs. Each of Plaintiffs’ claims should be dismissed based upon undisputed material facts and as a matter of law. In support of this Motion, Defendants rely upon the following: (1) Memorandum of Law in Support of the City’s Motion for Summary Judgment Pursuant to the Doctrine of Sovereign Immunity; (2) Memorandum of Law in Support of Defendants’ Motion for Summary Judgment on Plaintiffs’ Negligence Claims; (3) Memorandum of Law in Support of Defendants Motion for Summary Judgment on Plaintiffs’ Nuisance and Damages Claims; (4) Defendants’ Statement of Theories of Recovery and Material Facts as to Which There is No Genuine Dispute and all evidence supporting such Undisputed Facts, Exhibits and Attachments; and (5) all other record evidence in this matter. Defendants would further show the following:

1. Defendants are entitled to summary judgment on Plaintiffs’ negligence claims because: (a) the City is entitled to sovereign immunity; (b) Plaintiffs’ *ante litem* notice failed to place the City on proper notice of the negligence claims set forth in the third amended complaint; (c) Sue

Starling is entitled to qualified or official immunity from such claims in her individual capacity; (d) the City may not be held liable under O.C.G.A. § 36-33-2 for failing to perform an act it is not statutorily required to perform; (e) Plaintiffs' claims are barred by the public duty doctrine; and (f) no act or omission of the Defendants was the proximate cause of the Decedent's death.

2. Defendants are entitled to summary judgment on Plaintiffs' nuisance claim because: (a) the City is entitled to sovereign immunity; (b) Plaintiffs' *ante litem* notice failed to place the City on proper notice of the nuisance claim set forth in the third amended complaint; (c) as an individual, Sue Starling cannot be held liable under a public nuisance theory as a matter of law and, to the extent she could be, she is otherwise entitled to qualified or official immunity from such claims in her individual capacity; (d) the City may not be held liable under O.C.G.A. § 36-33-2 for failing to perform an act it is not statutorily required to perform; (e) the City did not maintain, create, cause, or control any alleged nuisance at the University Plaza Establishments; (f) Plaintiffs have failed to establish that Rude Rudy's or the other University Plaza Establishments constituted a public or private nuisance; (g) Defendants had neither a duty nor an ability to revoke occupational tax certificates; and (h) no act or omission was the proximate cause of the Decedent's death.

3. Defendants are entitled to summary judgment on Plaintiffs' O.C.G.A. § 13-6-11 claim because: (a) such a claim is derivative and cannot survive to the extent the underlying tort claims are dismissed; (b) there is no evidence that the Defendants acted in bad faith, have been stubbornly litigious, or caused the Plaintiffs unnecessary trouble or expense; and (c) no Georgia case has ever found that a City may be held liable for allegedly creating or maintaining a nuisance on private property owned or leased by another.

4. Defendants are entitled to summary judgment on Plaintiffs' claim for damages associated with the Decedent's "conscious pain and suffering" because no evidence exists to support such a claim.

WHEREFORE, Defendants respectfully request this Court Grant their Motion in its entirety and dismiss the claims and enter judgment in favor of the Defendants and against the Plaintiffs.

Respectfully submitted this the 30th day of August, 2018.

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