IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DANIELLE BARRANI; KADRI BARRANI; LIESA COVEY; SCOTT EVANS; JIM GRISLEY; JUAN GUTIERREZ; CLOTILDE HOUCHON; DAVID IBARRA; and RANDY TOPHAM, individuals and Utah entities, **Plaintiffs,** **vs.** **SALT LAKE CITY, a Utah municipal corporation,** **Defendant.**	**MEMORANDUM DECISION** **CASE NO. 230907360** **Judge Andrew H. Stone**

This matter came before the Court for a hearing on March 14, 2024, in connection with defendant Salt Lake City's (the "City") Motion to Dismiss the plaintiffs' Verified Complaint. At the conclusion of the hearing, the Court took the matter under advisement. The Court now rules as stated herein.

The. Plaintiffs reside or work in various parts of downtown Salt Lake City.[1] They allege that the City has chosen to allow "the unsheltered to engage in public camping" and that this amounts to "a public nuisance for which the City is liable." Id.[2]

The plaintiffs' First Cause of Action is "public nuisance" under Utah Code Annotated § 76-10-803. "The elements of public nuisance are (1) unlawfully doing any act or omitting to perform any duty, (2) which act or omission renders three or more persons insecure in life or the use of property, (3) the plaintiff suffers damages different from those of society at large, (4) the defendant caused or is responsible for the nuisance, and (5) if Defendant's conduct does not violate any specific public nuisance provision, then their conduct must also be shown to be unreasonable." (Verified Complaint at para. 62) (citing Erickson v. Sorensen, 877 P.2d 144, 148–49 (Utah App. 1994); Whaley v. Park City Mun. Corp., 190 P.3d 1, 6 (Utah App. 2008)). This Action asserts that public encampments are unlawful under the SLC Municipal Code and that in allowing the

[11] Two plaintiffs reside on 800 East between 300 and 400 South. One plaintiff lives near the Gateway district. Another has a business between 400 and 500 West on 600 South, near Pioneer Park. Another has a business in the Ballpark neighborhood. One has a business on West 200 South, another a property on East 200 South, and one a business on the 1000 block of State Street. Complaint, ¶¶1-9. It is significant that the plaintiffs claim a "special relationship" with the City based on proximity to City property, but claim interests in widely disparate parts of the City.

[2] Without minimizing the harms Plaintiffs allege they have suffered, the Court also acknowledges that it is problematic to refer to unsheltered people as constituting a "nuisance." The Court uses that terminology in its legal sense for purposes of analyzing Plaintiffs' claims against the City.

encampments to exist, the City is "unlawfully ... omitting to perform any duty." Utah Code Ann. § 76-10-803.

The Second Cause of Action is for "private nuisance" under Utah Code Annotated §78B-6-1101(1). Paragraph 84 of the Verified Complaint lists the elements of a private nuisance claim: (1) a substantial invasion in the private use and enjoyment of land, (2) caused by defendants or for which defendants are responsible, and (3) the invasion is either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable. Whaley, 190 P.3d at 9. Private nuisance claims do not require that the defendant's actions be unlawful. Id.

In Paragraph 91 of the Verified Complaint, the plaintiffs allege that "[t]he City further has a general duty to enforce its ordinances and to protect the life, liberty, and property of the citizens, and a specific duty to abate nuisances, and its failure to act is intentional conduct." (Verified Complaint ¶ 91). The plaintiffs suggest that the City could create "a managed campsite" or require "unsheltered individuals to utilize available emergency shelter beds and available supportive, rapid, and transitional housing units." (Complaint at ¶ 93).

The plaintiffs ask this Court to enter a preliminary and permanent injunction directing the City to "immediately to take all steps necessary to abate the nuisance" or for the Court to issue "a writ of mandamus requiring [the City] to abate the public nuisances on its streets, sidewalks, easements, and parks." (Verified Complaint at ¶¶ 26-27).

The City's Motion to Dismiss argues that the plaintiffs' claims are barred by Utah's public duty doctrine and present non-justiciable political questions. The Motion then turns to the requested relief, which the City argues is improper because it cannot be compelled to carry out discretionary functions. The relief requested would also, in the City's view, substantially impact the rights of non-party unsheltered individuals. Finally, the City argues that the plaintiffs cannot state claims for public and private nuisance.

The Court first considers the threshold issue of whether the public duty doctrine acts as a bar to the plaintiffs' public and private nuisance claims. In Cope v. Utah Valley State Coll., 2014 UT 53, ¶ 12, 342 P.3d 243, 248, the Utah Supreme Court indicated that "[w]hen determining whether a government actor owes a duty of care to a plaintiff, . . . courts must evaluate whether the public duty doctrine dictates that an individual may not enforce a public duty in tort. Under this doctrine, 'a plaintiff cannot recover for the breach of a duty owed to the general public, but must show that a duty is owed to him or her as an individual.'" (citations omitted).

In Webb v. University of Utah, 2005 UT 80, ¶ 11, 125 P.3d 906, the court explained the public policy underlying the public duty doctrine: "As a matter of public policy, we do not expose governmental actors to tort liability for all mishaps that may befall the public in the course of conducting their duties. Day v. State, 1999 UT 46, ¶ 10, 980 P.2d 1171. Doing otherwise would have the likely effect of reducing the pool of potential public servants. Our search for sound public policy has led us, however, to decide that governmental actors should be answerable in tort when

their negligent conduct causes injury to persons who stand so far apart from the general public that we can describe them as having a special relationship to the governmental actor. Id. ¶¶ 12–13."

The Day case, which is cited in Webb, identifies four circumstances in which a special relationship may arise: "(1) [when] a statute intend[s] to protect a specific class of persons of which the plaintiff is a member from a particular type of harm; (2) when a government agent undertakes specific action to protect a person or property; (3) [when] governmental actions ... reasonably induce detrimental reliance by a member of the public; and (4) under certain circumstances, when the agency has actual custody of the plaintiff or of a third person who causes harm to the plaintiff." Day v. State ex rel. Utah Dep't of Pub. Safety, 1999 UT 46, ¶ 13, 980 P.2d 1171, *accord* Webb, 2005 UT 80, ¶ 25, 125 P.3d 906; Gabriel v. Salt Lake City Corp., 2001 UT App 277, ¶ 17, 34 P.3d 234. None of these specific exceptions apply under the allegations of the Complaint here.

The City's Motion argues that the plaintiffs' claims are entirely based on duties owed to all members of the general public. As noted above, the Verified Complaint alleges that the City is breaching its duty to enforce a variety of Ordinances, including by allowing encampments to be erected on public land and easements fronting the plaintiffs' property. (Verified Complaint ¶ 13). The plaintiffs also allege public drug use and property damage:

> Plaintiffs have individually experienced first-hand the consequences of the nuisance that the City has created: their windows have been broken, some have been robbed, and some have even been attacked and held hostage in their businesses along with their customers and employees. The police response is always inadequate.

(Verified Complaint ¶¶ 15-19, 24).

The City argues that the plaintiffs' nuisance claims are aimed at the prevention of crime and unlawful acts. Such claims, the City argues, implicate "a general duty" owed "to all members of the public." The City's opening brief cites a number of Utah appellate opinions which recognize that "police or fire protection" are quintessential public duties, and a governmental actor's discharge of these duties cannot be the basis of a claim. (Motion at p. 6) (citations omitted).

During oral argument, plaintiffs' counsel argued that their claims go beyond illegal activity and encompass other harms such as odor and obstruction of walkways. Yet, their Paragraph 24 allegations convey that the inadequacy of police protection and enforcement is their primary context.[3]

Further, while the plaintiffs' Verified Complaint alleges a "general duty" owed by the City, their Opposition states that "the public duty does not apply at all because the City is committing a tort for which a private party would be liable." (Opp. 3). The difference, of course, is that requiring

[3] Most of the harms alleged to have been suffered by Plaintiffs appear to have actually occurred on Plaintiffs' properties. (See Complaint, ¶¶ 16-19, 27-30, 33-39, 41, 44, 46, 51, 53-56.) This sounds more like trespass or other claims against human actors rather than a nuisance. Fundamentally, the inference to be made by the Complaint is that the City's failure to enforce anti-camping ordinances makes these crimes by third parties occurring on Plaintiffs' properties more likely. Whether this actually amounts to a legal nuisance when the wrongs do not occur on defendants' properties is a question that has not yet been addressed in briefing. For purposes of this motion, the Court accepts the inference, and accepts that witnessing other illegal acts actually occurring on City property (e.g. camps, drug use, sexual activity) might constitute nuisance.

a private landowner to prohibit camping on its land is fundamentally different than doing the same with respect to a city's public spaces: the private landowner's ultimate remedy is to call the police; the city is the police.[4] The argument, however, frames the primary legal issue posed by the plaintiffs, namely whether the public duty doctrine applies to the tort of nuisance.

Under the plaintiffs' theory, "[a]s long as the Plaintiffs have standing to bring a public or private nuisance claim, that establishes that the City has a duty to them specifically in the same way that other private landowners have duties to nearby landowners and residents." (Opp. at p. 3). They posit that "[t]here is complete overlap between the public duty doctrine and public nuisance law; public nuisance law is just a more specific application of the public duty doctrine. So if the 'special injury' requirement for public nuisance is met, so is the 'special relationship' or 'special duty' requirement to defeat the public duty doctrine." (Opp. at p. 4).[5]

This theory rests on the premise that the City owes a special duty to a "set of people" impacted by the negative consequences of encampments because their property adjoins City land. (Opp. at p. 3). The Opposition asserts that this class of persons is defined as "those who own, live, or work on property adjoining the particular City lands at issue." Id. As discussed below, the

[4] A private owner might also fence off private space. The City's public spaces referenced in the Complaint (see e.g.¶¶. 13, 28, 40, 42, 43, 49 and 63) are by definition open to the public.

[5] There are apparent parallels between the special injury requirement for public nuisance and the special relationship exception to the public duty doctrine. The Court disagrees, however, that they are identical. Analysis here under the public duty doctrine is sufficient to reject the Plaintiffs' claims.

plaintiffs do not explain how these factors distinguish this class of persons from any another citizen of the City. They do not delineate geographic proximity or the special injury required for entry into this select club. There are no clear parameters to the special relationship and consequent duty being alleged by the plaintiffs.

During the hearing, the Court inquired of plaintiffs' counsel whether the plaintiffs were seeking a holding that the public duty doctrine does not apply to nuisance claims. Counsel responded that indeed, the doctrine does not apply to any situation where the City or State has a tort duty. The Court further inquired as to how this position squared with Lamarr v. Utah State Dep't of Transp., 828 P.2d 535, 540 (Utah Ct. App. 1992), which specifically applied the public duty doctrine in the factual context of unsheltered individuals.

In Lamarr, the plaintiff ("Lamarr") argued that the City owed him a duty to "control" the transient population beneath an overpass. Id. at 538. The Utah Court of Appeals upheld the trial court's decision that under the public duty doctrine, the City owed no such duty to Lamarr. The court concluded that Lamarr had "failed to establish the City owed him any duty of care beyond that owed the general public. There is no evidence in the record the City had any reason to distinguish Lamarr from the general public." Id. at 540. Lamarr reiterated that under the public duty doctrine, "a duty to all is a duty to none." Id. at 538 (quoting Rollins v. Petersen, 813 P.2d 1156, 1165 (Utah 1991)).

Both in their briefing and in response to the Court's inquiry, the plaintiffs seek to contrast Lamarr by suggesting that the evidence in that case indicated that the City had no reason to know of Lamarr or to distinguish him from the general public, while here, the plaintiffs' proximity to the City's land distinguishes them from the general public. (Opp. at p. 4). Counsel reiterated that the City is aware of the adjacent landowners and thus, arguably, owes them a duty of care beyond that owed to the general public.

At the outset, the Court rejects the plaintiffs' premise that so long as a plaintiff has standing to bring a nuisance claim, the shield of the public duty doctrine becomes inapplicable. When a government actor is alleged to owe a duty of care to a plaintiff, the Court is tasked with evaluating whether a public duty is implicated in tort. The City is correct that this is true of negligence and there is no reason it would not also be true in nuisance claims.

The Court is likewise unpersuaded by the plaintiffs' assertion that the doctrine is abrogated with respect to "public nuisance" under Utah Code Annotated § 76-10-803. While an element of this statute is "omitting to perform any duty," this language must be accorded with the general premise that "a duty to all is a duty to none." As the Court noted during the hearing, bringing a public nuisance claim against a government actor does not exempt the plaintiffs from showing that a duty is owed to them individually. The plaintiffs have failed to allege facts supporting such a duty in this case.

Specifically, the Court rules that like Lamarr, the plaintiffs here have failed to establish that the City owes them a special duty to remedy or "control" unsheltered encampments beyond that owed to the general public. The plaintiffs happen to live or work near public ways where encampments have occurred, but this proximity does not mean that they have incurred a special injury or that they "stand so far apart from the general public that we can describe them as having a special relationship to the governmental actor." Webb, 2005 UT at ¶ 11. The City is effectively an adjoining landowner to every resident of the City. Everyone "adjoins" City sidewalks, roads, parks, medians, etc. And in a more removed sense, everyone adjoins the specific encampments pleaded in the Verified Complaint. Anyone living in or travelling through the City is likely to encounter unsheltered people and their encampments, albeit they might experience these conditions in different degrees. But the facts pled showing that plaintiffs have a higher likelihood of such encounters and impacts are a quantitative matter—they do not allege any qualitative difference in their situations such that they can be considered to be in a different class than other city residents and visitors. The effects of permitting the unsheltered population to establish encampments, with its allegedly attendant crime and unsanitary conditions, are not limited to the specific proximity of the plaintiffs' homes and businesses.

Even the Verified Complaint at Paragraph 91 pleads a "general duty" owed by the City to enforce its ordinances. It is this general duty, as it pertains to encampments, which could theoretically extend to homeowners in the Avenues, Sugarhouse, or Ninth and Ninth

neighborhoods who encounter unsheltered individuals roaming their neighborhood or to a merchant at City Creek Center or Gateway who complains that the City's inaction has led to an uptick in shoplifting. There is nothing special or particular about the location of the plaintiffs' specific properties. There is nothing to distinguish them or the nebulous "set of people" referenced in the Opposition from the general public.

The Ordinances at issue are enforceable City-wide and are not limited to areas historically affected by unsheltered camping. Encampments can be migratory and enforcement in one area could displace the problem to other parts of the City. Because the City is effectively everyone's neighbor, its duty to enforce Ordinances pertaining to public urination, disorderly conduct, camping on public ground, sidewalk obstruction and loitering is owed to everyone. All members of the public, regardless of their proximity to the actual encampments, are potentially impacted by the negative consequences of encampments and, under the public duty doctrine, the City's duty to all of them is a duty to none. Proximity (of some unspecified degree) alone does not create a special relationship.

Further, by asserting in Paragraph 93 that the City could create "a managed campsite" or require "unsheltered individuals to utilize available emergency shelter beds and available supportive, rapid, and transitional housing units," the plaintiffs are implicitly invoking the City's

police powers to remedy existing conditions.[6] The same can be said of the allegations in Paragraph 24 of inadequate police response. These are core duties which the plaintiffs seek to have the City discharge, directly pertaining to police protection and law enforcement to prevent illegal activity. As the City's Motion correctly points out, these are quintessential public duties. (Motion at p. 6). Any given member of the public might complain about how a city allocates its resources, and many such complaints could be articulated under the broad umbrella of nuisance law. The public duty doctrine places limits on when such complaints may be litigated in the courts as opposed to the ballot box.

Ultimately, the Court concludes that under Lamarr and consistent with the various Utah appellate cases cited in the City's briefing, the plaintiffs have failed to allege that the City breached a duty owed specifically to them, rather than duty owed to the public at large, or that there existed a special relationship between them and the City. The City owed no duty to the plaintiffs

[6] In argument and briefing, Plaintiffs were somewhat coy about what they expect the City to do to remedy the problem, insisting they were not dictating any particular executive action. This raises two additional problems with Plaintiffs' claim. First, plaintiffs' prayer that the City "take all steps necessary to abate the nuisance" fails to plead any "specified relief" as required under Rule 8 of the Utah Rules of Civil Procedure. The City is entitled to notice as to what specific actions the plaintiffs want the City to take or not take, beyond "make it stop." Second, enlisting the Court to fashion the "steps necessary to abate the nuisance," as plaintiffs propose, would amount to an unwarranted intrusion on the executive branch's chosen approach to the problem. The public duty doctrine is intended to leave such debates in the political branches by barring their litigation under tort theories.

individually apart from its general duty to enforce laws and to protect the public. Under these circumstances, the plaintiffs' claims are barred.

Based on the foregoing, the Court grants the City's Motion to Dismiss on the basis that the plaintiffs' claims are barred by the public duty doctrine. Accordingly, the case is dismissed, with prejudice. The hearing set for the motion for preliminary injunction is stricken. No further order is necessary.

Dated this 27th day of March, 2024.

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

ANDREW H. STONE
DISTRICT COURT JUDGE