

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

GARDBERG'S FURNITURE, INC.,)
 HOT WHEELZ, INC., SPHERION, INC.,)
 MRS. WHEAT'S TREATS, INC.,)
 WHISTLE STOP RESTAURANT, INC.,)
 KNOT JUST BEADS, INC., AUTRY)
 GREER & SON'S, INC., (d.b.a. as FOOD)
 TIGER), TP CROCKMIERS, INC.,)
 TOP SHINE CARWASH AND)
 DETAIL, INC., and M & A)
 STUDIOS, INC.)

Plaintiffs,)

vs.)

Civil Action No. CV08-0266

CITY OF MOBILE; VOLKERT CONSTRUCTION SERVICES, INC., FICTITIOUS DEFENDANTS No. 1, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation or other legal entity which undertook, had a duty and/or were responsible for creating a nuisance and/or trespass made basis of this complaint;
 No. 2, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation or other legal entity which undertook, had a duty and/or were responsible for overseeing the sewer construction on Florida Street made basis of this complaint;
 No. 3, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation, department within the said corporation or other legal entity (which in addition to those individuals and entities described above) whose negligence, wantonness, or other wrongful conduct contributed to cause the occurrence made the basis of this lawsuit;
 No. 4, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation or other legal entity who or which provided any insurance coverage, of whatever kind or character, to any of the named or fictitious Defendants herein;
 No. 5, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation or other legal entity who or which is/are the successor in interest of any Defendant named or described herein;
 No. 6, whether singular or plural, that entity or those entities intending to refer to that person, firm, corporation or other legal entity who or which is/are the predecessor to any Defendant named or described herein;
 No. 7, those persons, firms, corporations or other legal entities that breached a legal duty owed to the Plaintiff whether in tort, contract, equity or statutory violation thereby proximately causing her injuries;
 No. 8, those persons, firms, corporations or other legal entities that voluntarily undertook a legal duty and breached that legal duty thereby proximately causing the injuries of the Plaintiff;

Plaintiffs aver that the identities of the fictitious party Defendants herein are otherwise unknown to Plaintiffs at this time or, if their names are known to Plaintiffs at this time their

identifies as proper party Defendants are not known to Plaintiffs at this time, and their true names will be substituted by amendment when ascertained.
Defendant(s).

COMPLAINT & PETITION FOR PRELIMINARY INJUNCTION

COME NOW, Plaintiffs, by through undersigned counsel, and respectfully request that this Honorable Court enter a preliminary injunction against all Defendants, jointly and severally; and as grounds therefore, shows unto the Court the following:

GENERAL AVERMENTS

1. Plaintiff, Gardberg's Furniture Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Gardberg's Furniture Inc. operates its business on Florida Street in Mobile, Alabama.
2. Hot Wheelz Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Hot Wheelz Inc. operates its business on Florida Street in Mobile, Alabama.
3. Spherion Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Spherion operates its business on Florida Street in Mobile, Alabama.
4. Mrs. Wheat's Treats Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Mrs. Wheat's Treats Inc. operates its business on Florida Street in Mobile, Alabama.
5. Whistle Stop Restaurant Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County. Whistle Stop Restaurant Inc. operates its business on Florida Street in Mobile, Alabama.
6. Autry Greer & Son's Inc., d.b.a. as "Food Tiger" is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Autry Greer & Son's Inc., d.b.a. as "Food Tiger" operates one of its businesses on Florida Street in Mobile, Alabama.
7. Knot Just Beads Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Knot Just Beads Inc. operates its business on Florida Street in Mobile, Alabama.

8. TP Crockmiers Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. TP Crockmiers Inc. operates its business on Florida Street in Mobile, Alabama.
9. Top Shine Car Wash & Detail Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. Top Shine Car Wash & Detail Inc. operates its business on Florida Street in Mobile, Alabama.
10. M & A Studios Inc. is a lawful corporation licensed to do business in the State of Alabama and is a resident of Mobile County, Alabama. M & A Studios Inc. operates its business on Florida Street in Mobile, Alabama.
11. The Defendant, City of Mobile, a municipality or other legal entity, was under a legal duty "whether by contract, common law or statutory law", to maintain the roadway of Florida Street.
12. Defendant, Volkert Construction Inc., is a lawful corporation conducting business in Mobile County, Alabama.
13. The Plaintiff avers that the identities of the fictitious party Defendants which are identified in the style of the complaint or otherwise unknown to the Plaintiff at this time and if there names are known to the Plaintiffs their identities as the proper party Defendants are not known to the Plaintiffs at this time and their true names will be substituted by amendment.
14. The Plaintiffs has fulfilled the statutory requisite of §11-47-190 and §11-47-192.

COUNT ONE

TRESPASS

15. Plaintiffs restate and incorporate in this Count the factual allegations of each and every preceding paragraph of this complaint as if fully set forth herein.
16. Defendants, City of Mobile, Volkert construction and fictitious Defendants number one (1) through eight (8)¹ voluntarily undertook a duty to repair and/or

¹ Defendants, City of Mobile, Volkert Construction services Inc. and fictitious defendants numbers one (1) through eight (8) will hereinafter be collectively referred to as "Defendants" unless otherwise referred too.

- maintain the water and sewage system in or around Florida Street within the corporal limits of the City of Mobile.
17. The maintenance and/or construction instituted by the Defendants have caused and is causing irreparable damage to the property rights of the Plaintiffs.
 18. The Defendants have committed the tort of trespass against the Plaintiffs by intentionally placing upon their property, to-wit: dirt, debris, particulate matter, decayed pipe, equipment, construction materials and other unknown materials upon the land of the Plaintiffs thereby causing damage to the property of the Plaintiffs and preventing the Plaintiffs' customers being able to access their respective businesses.
 19. The trespass is continuous in nature in that some of the above-described material and equipment remain on the Plaintiffs' private property.
 20. The Plaintiffs collectively aver that as a proximate result of the Defendants trespass that their property and businesses have suffered and continue to suffer in which they should be compensated for in the form of both compensatory and punitive damages, the amount of which to be determined by a jury.
 21. The Plaintiffs collectively aver that as a proximate result of the Defendants trespass that their property and businesses have suffered and continue to suffer irreparable injury in which money damages alone cannot adequately compensate and therefore requests that this Honorable Court issue a preliminary injunction, preventing the Defendants from continuing their trespass.

COUNT TWO

NUISANCE


22. Plaintiffs restate and incorporate in this Count the factual allegations of each and every preceding paragraph of this complaint as if fully set forth herein.
 23. Defendants, City of Mobile, Volkert construction and fictitious Defendants number one (1) through eight (8) voluntarily undertook a duty to repair and/or maintain the water and sewage system in or around Florida Street within the corporal limits of the City of Mobile.
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24. The Defendants created a nuisance by placing large deposits of dust, dirt, construction waste, decayed pipe and construction equipment upon the Plaintiffs' land, physically preventing their customers from being able to enter their respective businesses, to such an extent that it interferes with the Plaintiffs' use and enjoyment of their property as well as their trade and/or lawful business rights.
25. The Defendants created a nuisance by placing large deposits of dust, dirt, construction waste, decayed pipe and construction equipment upon Florida Street, thus, completely blocking passage, both pedestrian and vehicular traffic, on Florida Street. Thus, traffic is unable to move, in either direction, from Dauphin Street to Airport Boulevard. Defendants refused to open one (1) lane of traffic.
26. The Defendants created a nuisance by intentionally refusing passage, both pedestrian and vehicular traffic, on Florida Street. Traffic is unable to move, in either direction, from Dauphin Street to Airport Boulevard.
27. The nuisance created by Defendants, months ago, still exists and is continuing in nature in that Florida Street remains closed and that some quantity of the above described equipment and materials remain on the Plaintiffs' land and portions of the Plaintiffs' land continue to be blocked.
28. Defendants should be restrained from continuing torturous conduct that continually interferes with the Plaintiffs use and enjoyment of their property, trade and/or business rights.
29. The Plaintiffs collectively aver that as a proximate result of the Defendants creation of a nuisance that their property and businesses have suffered and continue to suffer in which they should be compensated for their loss of enjoyment and permanent damage to their property in the form of both compensatory and punitive damages, the amount of which to be determined by a ~~jury~~ bench trial.
30. The Plaintiffs collectively aver that as a proximate result of the Defendants creation of a nuisance that their businesses have suffered and continue to suffer irreparable injury in which money damages alone cannot adequately compensate; and therefore requests that this Honorable Court issue a preliminary injunction,

causing the Defendants to immediately abate their nuisance.

WHEREFORE, above premises considered, Plaintiffs demand judgment against the Defendants for compensatory and punitive damages in an amount to be determined by the trier of fact, a ^{Bench} jury of their peers, plus court costs and interest. In addition, Plaintiffs, respectfully requests that this Honorable Court, after conducting an evidentiary hearing, enter a Preliminary Injunction against the Defendants:

- a.) Forbidding Defendants from completely closing Florida Street and requiring Defendants to open and keep open at least one (1) lane of traffic;
- b.) To abate any and all nuisance(s) created by the Defendants that prevents and restricts the use and enjoyment of their property;
- c.) Preventing the Defendants from trespassing upon the Plaintiffs' property and upon the property rights of the Plaintiffs.

BY: 
 H. CHASE DEARMAN (DEA032)
 Attorney for Plaintiffs

FILED
 CLERK OF DISTRICT COURT
 MOBILE, ALABAMA
 FEB 11 2008
 1 PM 3:40

OF COUNSEL:

DEARMAN LAW FIRM P.C.
 Attorneys at Law
 50 Saint Emanuel Street
 Mobile, Alabama 36602
 Phone: (251) 445-6997
 Facsimile: (251) 445-6996

DEFENDANTS MAY BE SERVED AS FOLLOWS:

CITY OF MOBILE
 c/o Glenda Morgan
 City of Mobile Clerk

(VIA PERSONAL SERVICE)

205 Government Street
Mobile, Alabama 36602
VOLKERT CONSTRUCTION SERVICES INC. (VIA PERSONAL SERVICE)
Magaret C. Hancken
3809 Moffett Road
Mobile, Alabama 36607