

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



Southern Cross Financial, LLC )  
Plaintiff )  
v. )  
City of Atlanta, Georgia, a municipal )  
Corporation )  
Defendant )

Civil Action No. 2012 CV 215858

ORIGINAL

COMPLAINT

Comes now Southern Cross Financial, LLC, by and through counsel, and for its Complaint against the City of Atlanta, Georgia, shows the Court as follows:

1.

This lawsuit arises out of the City of Atlanta's maintenance of a continuing trespass and continuing nuisance on real property owned by Southern Cross Financial, LLC. The City of Atlanta has been notified of same and has failed and refused to cease the trespass or to abate the nuisance even after notice of same.

2.

Southern Cross Financial, LLC is a Georgia limited liability company, duly registered with the State of Georgia, capable of suing and being sued. It is the owner of real property more particularly described as Parcels 48, 91, 89, 59, 87 and 79 of the 247<sup>th</sup> Land Lot of the 17<sup>th</sup> Land District of Fulton County, Georgia. These parcels include tax parcels: 17-0247-0001-030-3; 17-0247-0001-091-5; 17-0242-0001-048-5; 17-247-0001-079 under the present system of numbering and are more particularly described in a deed to Southern Cross recorded at Deed Book 50498, Pages 113-16 with the Fulton County Clerk of Superior Court (hereinafter the "Subject Property").

3.

The City of Atlanta is a Georgia municipal corporation capable of suing and being sued. It owns and operates a landfill immediately adjacent to the Subject Property (the "Baby Gun Club Landfill") which encroaches and continues to encroach upon the Subject Property. It may be served with summons and process by serving the honorable Mayor Kasim Reed at his office located at 55 Trinity Avenue, Atlanta, Fulton County, Georgia.

4.

Venue and jurisdiction are proper in this Court.

5.

The City buried and is maintaining on Plaintiffs' property solid waste and other garbage. Upon information and belief, such solid waste and other garbage originates from the city-operated and maintained landfill which adjoins the Subject Property. Surveys of the encroachment indicate that the area of the Subject Property so affected exceeds three acres with an average depth of 50 feet and the total volume of garbage estimated to exceed 207,906 cubic yards.

6.

The actions of the City in maintaining and continuing the above-described encroachment constitute a continuing trespass and continuing nuisance. Such trespass and nuisance are without authority, permission or right granted by the Plaintiff.

7.

The above described continuing trespass and continuing nuisance are abatable.

8.

The City could and should abate the nuisance and cease the trespass.

9.

The actions of the City are causing hurt, inconvenience and annoyance to Southern Cross Financial.

10.

The actions of the City are illegal and violate state and local laws regarding the siting, platting, planning, disclosure, operation and closure of all landfills including any municipal landfill. Such illegality makes the nuisance a nuisance *per se*.

11.

The actions of the City have damaged Plaintiff and are continuing to damage Plaintiff each day such nuisance and trespass are allowed to continue.

12.

Demand has been made that the City abate the nuisance and cease the trespass which demand the City has ignored and refused. The City of Atlanta Mayor and Council have been furnished with ante-litem notice but have failed and refused to respond.

13.

The actions of the City are and have been stubbornly litigious, in bad faith and have needlessly cause the Plaintiff to have to resort to litigation to protect its rights.

14.

The Plaintiff has been forced to engage the services of the undersigned in order to assert its interests and protect its rights.

15.

Such actions have damaged Plaintiff in an amount to be proven at trial.

16.

Plaintiff is entitled to recover of the City those damages which are proven at trial including actual and special damages.

17.

Plaintiff is entitled to recover of City for the hurt, inconvenience and annoyance occasioned by the City's failure to abate the nuisance and to cease the trespass as determined by the enlightened conscience of the jury.

18.

Plaintiff is entitled to recover of the City, pursuant to O.C.G.A. § 9-15-14 and § 13-6-11, its expenses of litigation including its actual attorney fees.

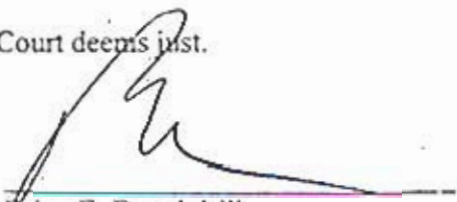
WHEREFORE, having fully set forth its Complaint against Defendant, Plaintiff prays this Court:

1. Cause summons and process to issue and require the City to respond as required by law;
2. Empanel a jury to try all questions of fact;
3. Find and adjudge in Plaintiff's favor and against Defendant on all counts;
4. Award Plaintiff its damages as are proven at trial and determined by the enlightened conscience of a jury;

5. Award Plaintiff its expenses of litigation including its actual attorney fees;
6. Award Plaintiff such further and other relief as this Court deems just.

This 5<sup>th</sup> day of June, 2012.

ROBERTS & DAUGHDRILL, P.C.  
15 Lenox Pointe NE, Suite A  
Atlanta, Georgia 30324  
Tele: 404-477-5414



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Brian E. Daughdrill  
Georgia Bar No. 205760

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TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

Brian E. Daughdrill, Esq.  
ROBERTS & DAUGHDRILL, P.C.  
15 Lenox Pointe NE, Suite A  
Atlanta, Georgia 30324

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 5<sup>th</sup> day of June, 2012.

  
Clerk/Deputy of Fulton County Superior Court