

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FILEZ, LLC and]	
PABLO GILL,]	CIVIL ACTION FILE
]	
PLAINTIFFS,]	NO. 2015 CV267425
]	
v.]	
]	
CITY OF ATLANTA]	
]	
DEFENDANT.]	

=====

COMPLAINT

NOW COME FILEZ, LLC and PABLO GILL, Plaintiffs herein, and file this, their Complaint against CITY OF ATLANTA, Defendant herein, and respectfully show the Court as follows:

PARTIES AND JURISDICTION

1.

Defendant City of Atlanta is a Georgia municipality that is located in Fulton County in the State of Georgia and regularly conducts business in the State of Georgia. Service may be made upon the City of Atlanta by serving a copy of the Complaint and Summons upon Mayor Kasim Reed at 55 Trinity Avenue SW, Atlanta, Georgia 30303.

2.

Plaintiff Pablo Gill (hereinafter“Plaintiff Gill”) resides at 2188 Alvin Drive, Atlanta, Fulton County, Georgia 30014.

3.

Plaintiff Filez, LLC (hereinafter "Plaintiff Filez") is a Mississippi limited liability corporation lawfully conducting business within the state of Georgia. Plaintiff Filez submits to the jurisdiction of this Court.

4.

Jurisdiction and venue is are proper in this Court.

5.

At all times relevant hereto, the City of Atlanta operated, controlled, inspected, maintained and/or managed the streets and sidewalks on or near the Plaintiffs' residential neighborhood in Northwest Atlanta, including, but not limited to Gun Club Drive, Sizemore Road, Mack Drive, Ajax Drive, and Alvin Drive.

6.

At the time of the subject incidents, the road maintenance and solid waste crews' uniforms and the vehicles used for road maintenance bore the seal of the City of Atlanta.

7.

Plaintiffs caused an ante litem notice and demand for compensation to be served on Defendant on or about May 19, 2015 in accordance with O.C.G.A. § 36-33-5. To date, Defendant has not responded to Plaintiffs' ante litem notice and statutory demand.

8.

All statutory conditions precedent to filing suit against Defendant have been satisfied by Plaintiffs.

BACKGROUND

9.

Plaintiff Filez LLC is the owner of several properties within the City of Atlanta including: parcel 17 024700010584 on Alvin Drive, parcel 17 024700010493 on Mack Drive; parcel 17 024700030152 on Sizemore Road; parcel 17 024800130217 at 1157 Gun Club Drive; parcel 17 24800130266 at 1167 Gun Club Drive; parcel 17 024700031036 at 1350 Sizemore Road; parcel 17 024700010501 at 2181 Mack Drive; parcel 17 024700010410 at 2182 Mack Drive; parcel 17 024600050557 at 2262 Ajax Drive; and parcel 17 024700020310 at 2285 Alvin Drive.

10.

Pablo Gill is the owner of property and the home located in the same neighborhood, at 2188 Alvin Drive, Atlanta, GA, parcel 17 024700010188.

11.

The neighborhood of Plaintiffs' properties has been subject to continuous illegal dumping for several years, leaving large amounts of trash, furniture, tires and other obstructions in the streets and sidewalks.

12.

At all times pertinent hereto, the City of Atlanta had a nondelegable duty to maintain Gun Club Drive, Sizemore Road, Mack Drive, Ajax Drive and Alvin Drive within the limits of the City of Atlanta in a condition that was safe for the traveling public, including Plaintiffs.

13.

During the time of his ownership of properties in the neighborhood, Filez LLC's owner Jerry Brow has continuously notified the City of Atlanta about the illegal dumping on the neighborhood's streets and sidewalks. Mr. Brow continuously forwarded photographs of the

conditions to various representatives of the City of Atlanta in requests for service. These photos provided the City of Atlanta notice (although regularly scheduled sanitation operations also provided notice of the conditions) of thousands of tires, large furniture and piles of trash and debris in the neighborhood streets. Mr. Brow and Mr. Gill have also held in-person meetings with City of Atlanta personnel and officers of various departments .

14.

The City of Atlanta continuously allowed the conditions to remain for an unreasonable time beyond Plaintiffs' notices. City of Atlanta solid waste and other employees frequently drive past the obstructions; push them off to the side of the road and cover them with fill dirt; and push them on Plaintiffs' properties. This has cause blight to the Plaintiffs' neighborhood and loss of use and enjoyment of their respective properties.

15.

Plaintiffs made several efforts to use and enjoy their respective properties including attempting to rent and sell the properties for profit. However, due to the aforementioned blighted conditions, the marketability of the properties was diminished as potential renters and investors often encountered large amounts of trash on the streets, overgrowth on all of the streets from not being maintained, lack of adequate stop signs and street signs, numerous burned out homes, abandoned homes with doors and windows broken out.

16.

In addition to frequent failures to remedy the street obstructions in a timely manner, the City of Atlanta causes further damage to Plaintiffs' properties during its street maintenance activities. For several years, the City of Atlanta's Department of Public Works has trespassed and caused damage to Plaintiffs by continuing to sweep litter and debris onto their respective properties during street sweeping outings, as well as pushing large illegally dumped objects onto

private properties. In effect, by Defendant's negligent performance of its duty to maintain reasonable safe conditions, it has caused further nuisance.

COUNT 1 - NUISANCE

17.

Plaintiffs re-allege and incorporate herein the allegations contained in paragraphs 1 through 16 above as if fully restated.

18.

Plaintiffs were using the public streets and sidewalks within the law at the time of the incident.

19.

Defendant owed a nondelegable duty of reasonable care in keeping the streets and sidewalks safe for individuals such as Plaintiffs.

20.

Defendant was negligent in maintaining hazards on the roadway, in failing to remove the hazard from the road, in failing to take adequate measures to protect individuals from the defective roadway and in failing to keep the roadways safe for individuals.

21.

Defendant's negligence in maintaining this continuing **nuisance** was the proximate cause of Plaintiffs' injuries.

22.

Defendant was negligent in failing to adopt appropriate policies and procedures to make sure that inspections and maintenance were performed properly and in failing to train its employees concerning adequate procedures for maintaining the roadway.

COUNT 2 - NEGLIGENCE

23.

Plaintiffs reallege and incorporate herein the allegations contained in paragraphs 1 through 22 above as if fully restated.

24.

Defendant was engaged in ministerial functions in maintaining the streets to keep them safe for travel.

25.

Defendant was negligent in creating a hazard on the roadway, in failing to remove the hazard from the road, in failing to take adequate measures to protect individuals from the defective roadway and in failing to keep the roadways safe for individuals.

26.

Defendant's negligence in failing to maintain reasonably safe roadways is the proximate cause of Plaintiffs' injuries.

27.

As a direct and proximate result of the combined acts of negligence and nuisances committed by Defendant as set forth above, Plaintiffs were injured and damaged as hereinafter set forth:

They were caused to suffer loss of use and enjoyment of it's property;

They were caused to suffer discomfort, loss of peace of mind, unhappiness, and annoyance;

They were caused to suffer clean up costs and efforts;

They were caused to suffer lost rental profits; and

They were caused to suffer diminished market value of their respective properties.

LITIGATION EXPENSES

28.

The reports of the unreasonably hazardous conditions, city official's investigations and statements of witnesses and the parties reflect that Defendant City of Atlanta negligently maintained the streets and sidewalks that are the subject of this lawsuit and thereafter caused a continuing nuisance upon the negligent maintenance of said conditions. Therefore, no bona fide controversy exists as to liability.

29.

Plaintiffs have made several attempts to mitigate and resolve this claim without initiating a lawsuit and incurring unnecessary litigation expenses. However, Defendant has refused to resolve this matter amicably. Defendant's conduct in forcing Plaintiffs to litigate this matter constitutes stubborn litigiousness, which supports a claim for litigation expenses and attorneys' fees pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

That Plaintiffs recover compensatory damages in an amount to be determined at trial;

That Plaintiffs recover nominal damages in an amount to be determined at trial;

That Plaintiffs recover all costs of this litigation, including attorney fees; and

That Plaintiffs have such other and further relief as is just and proper.

This _____ day of October, 2015.

DEFENDER LEGAL

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