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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS
THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2023-001454
CIVIL ACTION NO. 2020-CP-00356

Ron Christmas,

APPELLANT,

versus

County of Georgetown, City of Georgetown, and
South Carolina Department of Transportation,

RESPONDENTS.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)	CASE NO.: 2020-CP-22-00356

Ron Christmas,)
)
Plaintiff,)
)
v.)
)
County of Georgetown; City of Georgetown;)
Green Wave Contracting, Inc.; South Carolina)
Department of Transportation; and John Doe)
2-10,)
)
Defendants.)

AMENDED SUMMONS

(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 415 Mill Street, Mt. Pleasant, South Carolina 29464, within fifteen (15) days after the date of such service, exclusive of the day of service. If you fail to answer the Amended Complaint within the above-described time, judgment by default will be rendered against you for the relief demanded in the Complaint.

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December 7, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN)	CASE NO.: 2020-CP-22-00356
)	
Ron Christmas,)	
)	
Plaintiff,)	
)	AMENDED COMPLAINT
v.)	
)	(Jury Trial Demanded)
)	
County of Georgetown; City of Georgetown;)	
Green Wave Contracting, Inc.; South Carolina)	
Department of Transportation; and John Doe)	
2-10,)	
)	
Defendants.)	

Plaintiff, Ron Christmas, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff Ron Christmas is a citizen of Georgetown County, South Carolina, and is the owner of property and a home located at 101 Greenwich Drive, Georgetown, South Carolina 29440.

2. Plaintiff purchased the above-described real property in or around **2002**.

3. This case concerns a series of improvements made in recent years to East Bay Park and adjacent areas, including the adjacent perimeter land areas, Morgan Park, and the boat landing and parking, **and the unintended results of the improvements and fill** (hereinafter, collectively, the “Project”).

4. Defendant County of Georgetown (“the County”) is a governmental entity. Upon information and belief, at all times relevant to this action, the County planned, approved, implemented, executed, and controlled the Project.

5. Defendant City of Georgetown (“the City”) is a governmental entity. Upon information and belief, at all times relevant to this action, the City was, and is, responsible for the maintenance and repair of the drainage pipes along Greenwich Drive and is the owner of the Project.

6. **Defendant South Carolina Department of Transportation (“DOT”), previously identified as John Doe No. 1, is a governmental entity or a division of a governmental entity. Upon information and belief, at all times relevant to this action, DOT owns the roads at and adjacent to the intersection of Front Street and Greenwich Drive.**

7. **Defendants County and City have taken the position that the matters complained of herein cannot be properly addressed without the involvement and cooperation of DOT.**

8. **Defendants County and City have taken the position that the road defects complained of herein are the responsibility of DOT.**

9. **Defendants County and City have taken the position that the road defects complained of herein cannot be fixed without the cooperation and involvement of DOT.**

10. Defendant Green Wave Contracting, Inc. (“Green Wave”) is a corporation organized under the laws of the State of South Carolina. At all times relevant to this action, Green Wave was engaged in the business of general contracting/construction in Georgetown County, South Carolina.

11. Upon information and belief, Green Wave served as the general contractor for part of the Project.

12. Upon information and belief, John Doe Defendants 2-10 are other who were involved in the planning, approval, implementation, execution, and maintenance of the Project, though the addresses and identities of these John Doe Defendants 2-10 are unknown at this time.

13. This Honorable Court has jurisdiction over all subject matter alleged herein, over all parties hereto, and venue is proper in this forum.

FACTUAL ALLEGATIONS

14. On or around July 11, 2006, the County leased the East Bay Park property from the City of Georgetown for a term of twenty (20) years and subject to renewal on an annual basis.

15. The lease agreement included “land, facilities, recreational equipment, and *improvements* located within the confines of East Bay Park and circled by Greenwich Drive, Front Street, and East Bay Street in the City of Georgetown” (emphasis added).

16. **In approximately 2016, the City and County planned improvements (“the Project”), including filling, raising, improving, and reconstructing the Project.**

17. **Construction of the known improvements began in 2017; the County constructed six (6) new tennis courts and accessories; and the City constructed the new raised, paved walking path, ball fields, boat ramp parking, and accessories.**

18. Defendants raised the Project substantially above the previous existing grade, causing excessive flooding onto Plaintiff’s property.

19. The Project has altered the course of, and increased the amount of, surface water flooding onto Plaintiff’s property.

20. The Project has altered the natural flow of waters, causing increased flooding onto Plaintiff’s property.

21. The Project execution and flooding have damaged and lowered Greenwich Drive, causing additional flooding.

22. The storm water drainage system(s) along Greenwich Drive have not been maintained by the City. As a result, the drainage pipes back-up, back fill, and fail to manage the waters that are damaging Greenwich Drive and Plaintiff's property. As of recently, the storm water drainage system facilitates the intrusion of river waters more often than it facilitates the discharge of storm waters.

23. **DOT has failed to maintain the roads at and adjacent to the intersection of Front Street and Greenwich Drive, which have subsided and are permitting increased tidal flooding.**

24. The cumulative and combined effect of the foregoing is an ever, worsening flooding condition at and near the intersection of Greenwich Drive **and Front Street**, and further deterioration, including subsidence caused by wet dry cycles, to nearby properties.

25. The excessive flooding onto Plaintiff's property has severely damaged Plaintiff's property and has adversely affected the property value.

26. As a direct and proximate result of Defendants' acts and omissions, Plaintiff is being harmed by the excessive flooding onto his property.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligence/Gross Negligence as to all Defendants)

27. The previous allegations of the Complaint are realleged and asserted as if restated verbatim herein.

28. It was reasonably foreseeable to Defendants that its aforementioned positive, overt, and aggressive actions, omissions, and misconduct would result in damages to the Plaintiff. The Defendants owed a duty to Plaintiff to conduct themselves in a manner that would not cause injury

to Plaintiff. The Defendants had actual or constructive notice of the damaging nature and/or defectiveness of their actions, inactions, and conduct.

29. The injuries and damages incurred by Plaintiff were proximately caused by the careless, negligent, grossly negligent, willful, wanton, reckless, consciously indifferent, and unlawful acts of the Defendants in the following particulars:

- a) raising the Project substantially above the previous existing grade, causing excessive flooding onto Plaintiff's property;
- b) altering the course of, and increasing the amount of, surface water flooding onto Plaintiff's property;
- c) altering the natural flow of waters, causing increased flooding onto Plaintiff's property;
- d) in failing to take such action as a reasonable and prudent person would do to prevent excessive flooding;
- e) in failing to properly operate and maintain the storm water drainage systems; and
- f) in all other particulars revealed during the discovery process or resulting trial.

30. One or more of the above actions were in violation of industry standards, the rules of regulatory agencies, and the laws and common law of the State of South Carolina.

31. As a direct and proximate result of Defendants' negligence as described above, Plaintiff has suffered and continues to suffer damages to be determined by a jury.

FOR A SECOND CAUSE OF ACTION AGAINST GREEN WAVE AND JOHN DOE 2-10
(Nuisance as to Green Wave Contracting)

32. The previous allegations of the Complaint are realleged and asserted as if restated verbatim herein.

33. By the aforementioned actions the Defendants created conditions that caused and are causing damage to the Plaintiff's property on a continuing and reoccurring basis.

34. Defendants created a condition tending to both cause damage to Plaintiff's property and create a danger of future damage.

35. In light of the conditions thereby created, Defendants' use of the property cannot be considered lawful or reasonable, but rather constitute a nuisance. The Defendants' conduct has hurt, inconvenienced, damaged, or otherwise essentially interfered and interferes with the land of the Plaintiff, and the Defendants' conduct has substantially interfered with the Plaintiff's use and enjoyment of property.

36. The Defendants' conduct in continuing to allow the conditions or nuisance to continue with full knowledge that it would severely damage the Plaintiff is outrageous and reckless.

37. This nuisance will continue until the Defendants are compelled to abate the nuisance by performing sufficient remedial corrective and clean-up activities to restore the Plaintiff's property and the surrounding area to their natural state and perform ongoing maintenance of the system in the future.

38. This nuisance has resulted in the deterioration and devaluation of the Plaintiff's property.

39. That as a direct and proximate result of the Defendants' nuisance, Plaintiff has suffered and continue to suffer actual damages, and should be compensated in an amount and manner to be determined at trial.

FOR A THIRD CAUSE OF ACTION AGAINST GREEN WAVE AND JOHN DOE 2-10
(Trespass as to Green Wave Contracting)

40. The previous allegations of the Complaint are realleged and asserted as if restated verbatim herein.

41. The Defendants foregoing activities have forced water onto Plaintiff's land, which is a trespass to his property.

42. Defendants intended, knew, or had substantial reason to know that their aforesaid actions would cause excessive water to physically intrude upon Plaintiff's property in a manner in which it did not naturally do.

43. That the aforesaid actions of the Defendants amounted to a deliberate physical invasion, interference with, intermeddling of, injury to, and a taking of Plaintiff's property and property rights for a substantial period of time tantamount to a continuous taking or damaging of Plaintiff's property.

44. The unwarranted entries complained of in this lawsuit resulting from the Defendants' actions or omissions were not sanctioned or permitted by Plaintiff at any time.

45. These invasions of the Plaintiff's property have resulted in the deterioration and devaluation of the Plaintiff's property. Further, the invasions have interfered with the Plaintiff's right to exclusive, peaceful possession of his property.

46. That as a direct and proximate result of Defendants' negligence, nuisance, and trespass, the Plaintiff has suffered both actual and punitive damages in an amount to be determined by the Triers of Fact, together with the costs and interest, and the attorney fees incurred in this action.

FOR A FOURTH CAUSE OF ACTION AGAINST THE COUNTY AND THE CITY
(Inverse Condemnation as to City, County, and DOT)

47. The previous allegations of the Complaint are realleged and asserted as if restated verbatim herein.

48. The South Carolina Constitution and state law prohibit Defendants from taking Plaintiff's private property for a public use without payment of just compensation.

49. Upon information and belief, Defendants' actions above described constitute the taking of Plaintiff's private property for a public use without just compensation.

50. The result of the foregoing affirmative acts was a taking of Plaintiff's property for public use.

51. As a result of Defendants' inverse condemnation, Plaintiff has suffered an ascertainable damage to his property and have incurred legal costs and other expenses and damages.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Injunction as to all Defendants)

52. The previous allegations of the complaint are realleged and asserted as if restated verbatim herein.

53. The influx of flooding caused by the Defendants' acts and omissions has caused and will continue to cause Plaintiff irreparable harm in the form of ongoing and continued flooding of his property.

54. Based on the foregoing allegations, Plaintiff has demonstrated that he is likely to succeed in his claims.

55. Plaintiff does not have an adequate remedy at law for the foregoing misfeasance, malfeasance, and non-feasance by Defendants.

56. Plaintiff is entitled to mandatory temporary and permanent injunctive relief, ordering Defendants to remove all fill and raised areas from the Project, and to repair Greenwich Drive and adjacent storm water drainage systems.

FOR A SIXTH CAUSE OF ACTION
(Violation of South Carolina Code § 5-31-450 against City and County)

57. The previous allegations of the Complaint are realleged and asserted as if restated verbatim herein.

58. Defendants failed or refused to carry out the provisions of Section 5-31-450 of the South Carolina Code by failing to provide sufficient drainage for surface water, thus failing to prevent the passage of such water onto Plaintiff's property. As a direct result of Defendants' violation of Section 5-31-450 of the South Carolina Code, Plaintiff has suffered actual damages.

WHEREFORE, Plaintiff demands a trial by jury and prays judgment against all Defendants for actual damages; diminution of value; costs of suit; temporary and permanent injunction; and granting such further relief as the Court deems just and proper. Plaintiff additionally seeks an award of punitive damages against Green Wave and prejudgment interest.

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RESPONDENTS.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Respondent, South Carolina Department of Transportation, do hereby certify that I have this date served the foregoing Supplemental Record on Appeal by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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TRANSPORTATION**

Dated: January 6, 2025.