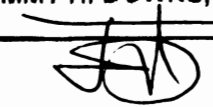


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

AUG 09 2024

BENTON HOUSING ASSOCIATES LIMITED )  
PARTNERSHIP, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF BENTON, ARKANSAS; CITY OF )  
BRYANT, ARKANSAS; SALINE COUNTY, )  
ARKANSAS; and JOHN DOES 1-10 )  
 )  
Defendants. )

TAMMY H. DOWNS, CLERK  
By:  DEP CLERK

Case No. 4:24-cv-679-BSM

**COMPLAINT**

Plaintiff, Benton Housing Associates Limited Partnership (“Benton Housing”), for its Complaint against Defendants, the City of Benton, Arkansas; the City of Bryant, Arkansas; Saline County, Arkansas, and John Does 1-10 (collectively, “Defendants”), allege and state as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, Benton Housing, is a limited partnership organized and existing under the laws of Arkansas, with its principal place of business in Barling, Arkansas. It is thus a citizen of and domiciled in Sebastian County, Arkansas.

2. At all relevant times, Benton Housing has been the owner and manager of an apartment complex located at 6101 Alcoa Road, Benton, Arkansas, formerly known as Chapel Ridge of Benton, but now known as Revive Benton Apartments (“Revive Benton Apartments”).

3. Defendant, the City of Benton, is a municipal corporation located in Saline County, Arkansas, authorized under Article 12 of the Arkansas Constitution and subject to the limits and grants of power thereof.

This case assigned to District Judge Miller  
and to Magistrate Judge Moore

4. Defendant, the City of Bryant, is a municipal corporation located in Saline County, Arkansas, authorized under Article 12 of the Arkansas Constitution and subject to the limits and grants of power thereof.

5. Defendant, Saline County, Arkansas is a county of the State of Arkansas whose county seat is the city of Benton, Arkansas (the “County”).

6. All true names and capacities, whether individual, corporate, governmental, or otherwise, of Defendants, John Doe 1 through 10, collectively, are unknown to Benton Housing at this time. Benton Housing is informed and believes that John Does 1 through 10 may also be responsible for the events and actions that caused or contributed to Benton Housing’s injuries by increasing the flow of water within the subject basin.

7. This Court has personal jurisdiction over Defendants because (upon information and belief) all are citizens and residents of Arkansas and are or have been engaged in extensive activities within the state out of which the present case arises. This Court has subject matter jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1331 (federal question jurisdiction). The Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a), because any state law claims Benton Housing has asserted form part of the same case or controversy under Article III of the United States Constitution as Benton Housing’s constitutional and federal law claims.

8. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2), because (1) all known Defendants are residents of this district and state; and (2) all or a substantial part of the acts or omissions giving rise to Benton Housing’s claims occurred in Saline County, Arkansas.

#### **GENERAL STATEMENT OF FACTS**

9. Alcoa Road is a main vehicle artery connecting areas of the City of Benton to major interstates. As the population of the Benton area has increased, so has the traffic on Alcoa Road.

Alcoa Road and its related structures are owned, operated, and maintained by the City of Benton and are public projects designed for the purpose of transporting large amounts of vehicle traffic in and around Benton, Arkansas. On or about September 13, 2016, Defendant, the City of Benton, entered into an agreement with Weaver-Bailey Contractors, Inc. (“Weaver-Bailey”) for the widening of Alcoa Road (the “Alcoa Road Project”) to respond to increased traffic.

10. Weaver-Bailey began work on the Alcoa Road Project in either late 2016 or early 2017 and was completed in December of 2018. The work included, but was not limited to, grading, cutting, filling, removing, and designing the Alcoa Road and its related drainage facilities in a way that substantially increased water runoff directly onto the Revive Benton Apartments property. Further, as a result of the Alcoa Road Project, certain drainage and natural retention facilities (created by older storm water facilities), such as culverts and levies were or were not removed, altered, enlarged, or disturbed. This substantially affected and/or increased water flows near the Revive Benton Apartments and surrounding areas.

11. Since the construction of the Revive Benton Apartments, Defendants also graded, cut, filled, and otherwise designed, permitted, approved, and constructed land, buildings, and parking lots to drain substantially increased water runoff directly downstream onto the Revive Benton Apartments and allowed debris to impede the flow of water downstream (herein after referred to as “Debris”). Defendants acts also: (a) contained no structures for detention or attenuation of water runoff; (b) altered the natural wide and diffuse water flow over heavily vegetated and stabilized ground; (c) greatly increased the water runoff amount and velocity by increasing the impervious area with concrete, asphalt, and buildings; (d) accelerated the water flow; and (e) concentrated the runoff onto the Revive Benton Apartments (hereinafter collectively referred to as “Detrimental Runoff”).

12. As a result of the Alcoa Road Project, Debris, Detrimental Runoff, increased upstream development, and the lack of improvements downstream, the areas in and around the Revive Benton Apartments lacked adequate structural, drainage, flood prevention, and other features to maintain the historic water runoff levels, thereby resulting in a large flooding event at the Revive Benton Apartments on several occasions, most recently of which occurred on July 8, 2024. Photo evidence of this flood was published in the local news along with an article detailing the events residents of the Revive Benton Apartments experienced that night (*See Exhibit 1*):



13. The floods caused substantial damage to real and personal property at the Revive Benton Apartments on each occasion.

14. For each occurrence, Benton Housing was required to spend large amounts of money to inspect, replace, restore, remediate, and salvage its property, as well as to remove water from the flooded areas.

15. Additionally, during construction of the Revive Benton Apartments, Benton Housing had installed a “stone creek” to direct water into two structures under Shady Trail (the

road due east of the Revive Benton Apartments). However, this stone creek has been dramatically overburdened due to the City of Benton's allowance of upstream development and the Alcoa Road Project without proper structures and facilities to handle the increased runoff onto Benton Housing's property resulting from such development. Similarly, the City of Bryant and Saline County's lack of maintenance on the downstream channel has exacerbated the issue, leading to significant erosion and flooding on Benton Housing's property. Consequently, Benton Housing faces ongoing water management challenges that threaten the integrity and safety of the Revive Benton Apartments.

16. Benton Housing's representatives have met and communicated with the City of Benton, the City of Bryant, and Saline County on multiple times to try to work out a solution for this situation, but the City of Benton, the City of Bryant, and Saline County have failed and/or refused to implement the steps necessary to correct the problem.

17. There is a substantial risk that similar flooding will recur if the conditions that caused the floods are not remedied. These conditions pose an ongoing and constant risk of immediate and substantial harm to Benton Housing and will continue to do so unless the Court intervenes.

18. In September 2023, McClelland Consulting Engineers, Inc. conducted an analysis of the floodplain limits before and after the Alcoa Road widening and The Manors development, located just north of the Revive Benton Apartments. This analysis was utilized by the City of Benton to address the incremental impacts that occurred. The report admits that the Alcoa Road Project and the new northern development, both approved and permitted by the City of Benton, directly floods the Revive Benton Apartments. As a result, culvert improvements were installed under Shady Trail Road that the City of Benton represented would stop the flooding events;

however, it is clear that these improvements failed to address the flooding issues still affecting the site.

19. Further engineering analyses have also revealed that a significant contributing factor to the flooding is the condition and capacity of the downstream drainage facility (or the lack of such facilities) that fall within the jurisdiction of the City of Bryant and/or the County. During heavy rains, these Defendants' failure to properly grade, maintain, and/or improve drainage facilities near and below Shady Trail Road creates a tailwater effect, which causes water runoff to back up onto Benton Housing's property and flood certain apartment buildings.

20. These floods have displaced families from their housing and have forced them to scramble to find new housing, which has sometimes required them to place their children in new school districts without any opportunity to plan or prepare for such a move.

21. Benton Housing filed a previous Complaint (Number) that was dismissed without prejudice based upon the City of Benton's assurances and promises that the flooding issues would be remedied by the City. Unfortunately, the City of Benton has failed to successfully implement and complete itself, and/or with the help of others, the necessary remedial measures to stop the flooding of the apartments.

**FIRST CLAIM FOR RELIEF**  
**Inverse Condemnation/Unconstitutional Taking**  
**(Against The City of Benton, The City of Bryant, and The County)**

22. Benton Housing adopts and realleges every paragraph above as if set forth verbatim herein.

23. At all times relevant, Benton Housing has been the owner of real property situated at 6101 Alcoa Road, Benton, Arkansas.

24. The Alcoa Road Project, Debris, Detrimental Runoff, and increased upstream development, along with the overwhelming runoff from upstream sources (approved and allowed by the Defendants), has caused substantial damage to real and personal property and rendered the property unusable without just compensation in violation of the Arkansas and United States Constitutions.

25. Moreover, the ongoing and easily repeatable nature of this problem runs the risk of Benton Housing being unable to acquire and/or maintain insurance for the Revive Benton Apartments due to the fact that the property continues to flood with every significant rainstorm despite Benton's representation that it would fix the problem. The inability to ensure the Revive Benton Apartments due to continuously flooding would force Benton Housing to cease operations and close the apartments permanently, thereby depriving Benton Housing of its lawful property rights and economic use.

26. The flood-causing actions by the City of Benton, City of Bryant, and The County constitute a taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution, thereby entitling Benton Housing to just compensation.

**SECOND CLAIM FOR RELIEF**

**Violation of Due Process**

**(Against The City of Benton, The City of Bryant, and The County)**

27. Benton Housing adopts and realleges every paragraph above as if set forth verbatim herein.

28. The Alcoa Road improvements, Debris, Detrimental Runoff, increased upstream development, lack of improvements downstream, works constructed and maintained by the City of Benton, works inadequately constructed by the City of Bryant and the County effectively deprive Benton Housing of its property rights without procedural or substantive due process, in

violation of the Fifth and Fourteenth Amendments of the United States Constitution. Thus, the City of Benton, City of Bryant, and the County are liable to Benton Housing under federal law, including but not limited to 42 U.S.C. § 1983.

**THIRD CLAIM FOR RELIEF**  
**Strict Liability**  
**(Against All Defendants)**

29. Benton Housing adopts and realleges every paragraph above as if set forth verbatim herein.

30. Defendants, in designing and constructing Alcoa Road and/or their upstream properties, Debris, Detrimental Runoff, increased upstream development, and lack of improvements downstream have caused their land and/or the topsoil to be graded, disturbed, contoured, and substantially modified for the purpose of building roads, buildings, parking lots, and other improvements.

31. Because of the Defendants' actions, strict liability is imposed.

32. Benton Housing has suffered actual damages due to substantial flooding. The flooding damaged real and personal property and required Benton Housing to spend substantial sums to repair and remediate the flooded premises.

33. Benton Housing has suffered and will continue to suffer damages caused by continued flooding. As a result there will be an increasing cost to use and maintenance, and operation of the Revive Benton Apartments.

**FOURTH CLAIM FOR RELIEF**  
**Nuisance**  
**(Against All Defendants)**

34. Benton Housing adopts and realleges every paragraph above as if set forth verbatim herein.



35. At all times relevant, the City of Benton owned, maintained, operated, supervised, managed, constructed, designed, and controlled Alcoa Road and the Alcoa Road Project. The City of Benton had knowledge and/or notice that structures on Alcoa Road existed in a dangerous condition, specifically including but not limited to: existing outlet pipes or culverts with inadequate capacity and reliability; damaged, altered, and/or insufficient levies; lack of additional outlets, pumps, or other methods to more quickly draw down flood water and to enable adequate drainage; inadequate size and structural integrity of drainage and flood prevention structures; insufficient sloping and embankments around Alcoa Road; and inadequate supervision of the Alcoa Road project to prevent flooding.

36. The Defendants have failed within a reasonable time to remedy such dangerous conditions or otherwise take steps necessary to protect the public.

37. Additionally, despite having knowledge and/or notice, the Defendants and its employees and agents—acting within the course and scope of their employment—failed to take steps necessary to protect the public, including but not limited to: failure to undertake adequate inspections; failing to disclose to Benton Housing accurate and timely information regarding the dangerous conditions, most specifically the increased potential for flooding; failing to provide warnings to the public regarding the imminent flood danger; and failure to develop and implement adequate flood action plans to reasonably protect property.

38. John Does 1 through 10, as the owners and/or operators of surrounding properties, have constructed and maintained improvements and conditions that have contributed to and exacerbated the damages Benton Housing has suffered, including by increasing the amount of water that flows onto Benton Housing's property and overwhelms the existing flood prevention structures. These surrounding developments were approved and permitted by the Defendants, and

the Defendants have the responsibility for any damaging effects they have caused to Revive Benton Apartments.

39. Defendants' failures are the legal and proximate cause of the damages to Benton Housing herein alleged. Accordingly, Benton Housing has suffered injury and damage to both real and personal property.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Benton Housing Associates Limited Partnership, respectfully prays for the following relief:

- (a) An award of just compensation for the unconstitutional taking of Benton Housing's property in an amount to be determined by the jury at trial;
- (b) An award of actual damages in an amount to be determined by the jury at trial;
- (c) An award of punitive damages;
- (d) A permanent injunction requiring Defendants to cease and desist from any future maintenance of a nuisance and compelling Defendants to abate the conditions creating and/or contributing to the ongoing nuisance affecting Benton Housing's property, including: (1) channel improvements upstream of Shady Trail by upsizing the existing channel adjacent northerly to the Revive Benton Apartments to 25 feet wide for the capacity requirement; (2) channel improvements upstream of Shady Trail Road by upsizing the existing channel adjacent southerly and easterly to the Revive Benton Apartments to 14 feet wide for the capacity requirement; (3) add four additional 10'x4' RCB's to the existing culvert system under Shady Trail Road or re-grade/engineer Shady Trail Road to allow for overflow while protecting the apartment site; and (4) grading and engineering channel improvements downstream of Shady Trail Road to provide adequate capacity and eliminate the tailwater issues limiting the existing and proposed culvert's efficiency.
- (e) An award of Benton Housing's attorney fees and costs, if appropriate; and
- (f) All such other relief that the Court deems just and appropriate, at law or in equity.

Respectfully submitted,



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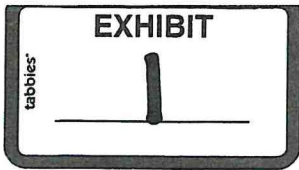
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**ATTORNEYS FOR PLAINTIFF**

**JURY TRIAL DEMANDED.**

924597/16453



Benton tenants cleaning up after flood waters sweep through their apartments

# Benton tenants cleaning up after flood waters sweep through their apartments

by Emma AllenTue, July 9th 2024 at 5:42 PM  
Updated Tue, July 9th 2024 at 10:16 PM



*Benton tenants cleaning up after flood waters sweep through their apartments (Picture courtesy: Bradlee Jones, tenant at Revive Benton Apartments)*



TOPICS: [FLOOD](#) [WATER](#) [JONES](#) [APARTMENT](#) [TENANTS](#) [CLEANING](#) [DAMAGE](#) [BENTON](#)

BENTON (KATV) — Tenants at Revive Benton Apartments are cleaning up the damage that was left after high flood waters came into their parking lot, leaking into some of the units.

Bradlee Jones, a tenant, said he returned home Monday thinking it would be a regular night.

Jones said he noticed it was raining quite hard.

"I get in the shower, hop out, and all of a sudden I see water flowing into my bedroom." Jones said.

Little did he know, multiple feet of water were flowing right outside his window.

Benton tenants cleaning up after flood waters sweep through their apartments

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"At first I thought, wait what is going on? I almost opened the door. I was like wait a minute, that is probably a lot of water. I looked out the window and it was just like that picture I showed you, it was just rushing by. It was crazy," Jones said.

The water was so tall, he had to find another way out of his apartment.

"I climbed out that window," Jones said. "A police officer came by and knocked on the window, he opened it up and just popped it out real quick. I stepped out so I did not have to open the door because if we opened the door, it would have definitely made it worse."

Jones said when inches of water started to come through his door, he immediately went and unplugged everything he could think of.

"I was wading through water the whole night basically just trying to figure out what to do. I was putting all of my card collections and stuff up on top of the counters," Jones said.

Benton tenants cleaning up after flood waters sweep through their apartments

"I know I have got a really nice little gaming laptop that was at least \$2,000 that was sitting under my bed that is ruined."

Now his next step is to clean what was brought in by the flood waters.

"It was murky water. It was bad. After I swept most of the water out there was a whole bunch of dirt and like mud basically in there." Jones said.

 [READ THE COMMENTS \(1\)](#)

A tenant living at the complex told KATV they believe the flooding happened because one of the drainage holes might have been clogged.