

**IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
CIVIL DIVISION**

**CEDAR LAKE ESTATES, LLC
ROBERT DUNN
JOHN BELDEN
JEFF EVANS**

PLAINTIFFS

v.

CASE NO. _____

LERUSS HOLDINGS LLC

DEFENDANT

ORIGINAL COMPLAINT

Plaintiffs Cedar Lake Estates, LLC; Robert Dunn; John Belden; and Jeff Evans (hereinafter collectively "landowner plaintiffs") by and through their attorneys McMath Woods, P.A., for their complaint against defendant Leruss Holdings LLC ("defendant"), state and allege as follows:

INTRODUCTION

This cause of action is brought for equitable relief as well as monetary damages resulting from the defendant's actions in developing its land in such a manner as to cause unnecessary damage to landowner plaintiffs' land in violation of Arkansas law. In Arkansas, a landowner has no right to divert stormwater, silt and sediment onto the lands of another. Here, defendant has undertaken alterations to its lands adjacent to land owned by landowner plaintiffs without exercising due care and in such a manner as to cause unnecessary injuries and damages to landowner plaintiffs, and has diverted substantial amounts of stormwater, silt and sediment onto the lands of landowner plaintiffs, thus giving rise to this cause of action.

PARTIES

1. Plaintiff Cedar Lake Estates LLC was at all times relevant to this Complaint, an Arkansas limited liability company registered to do business in the state of Arkansas. The primary business and asset of Cedar Lake Estates, LLC, is a neighborhood pond commonly referred to as Richmond Pond.
2. Plaintiff Robert Dunn was at all times relevant to this complaint a citizen and resident of Lonoke County, Arkansas, residing at 104 Watercrest South, Austin, Arkansas 72007.
3. Plaintiff John Belden was at all times relevant to this complaint a citizen and resident of Lonoke County, Arkansas, residing at 116 Watercrest South, Austin, Arkansas 72007.
4. Plaintiff Jeff Evans was at all times relevant to this complaint a citizen and resident of Lonoke County, Arkansas, residing at 105 Watercrest South, Austin, Arkansas 72007.
5. Defendant Leruss Holdings LLC was at all times relevant to this Complaint an Arkansas limited liability company registered to do business in the state of Arkansas. Leruss Holding LLC's registered agent for service is Robert Lercher and its principal place of business is 609 Swinging Bridge Road, Beebe, Arkansas 72012. Upon information and belief, Mr. Nathan Pruss is the owner and organizer of Defendant Leruss Holdings LLC.
6. This Court has jurisdiction over this matter. This Court is the court of proper venue pursuant to Ark. Code Ann. § 16-60-101.

FACTUAL BACKGROUND

7. Landowner plaintiffs own and reside on various real properties located in the Cedar Lake Estates neighborhood in Lonoke County, Arkansas.
8. Cedar Lake Estates LLC maintains and manages Richmond Pond, an approximately 7-acre pond located in the Cedar Lake Estates community in Austin, Arkansas. The pond is an area of

use and enjoyment for the entire neighborhood. Property owners fish and spend time on and around the pond.

9. Defendant purchased land adjacent to landowner plaintiffs' property on or around early 2022. This property is commonly known as the Stagecoach Meadows community in Austin, Arkansas.

10. In February 2022, defendant presented and had approved a preliminary plat, and following final approval of the plat in late February 2022, defendant began construction of its properties and construction continues through the current date. This construction included clearing trees and native vegetation, earth moving and leveling dirt, and other disturbance of the native vegetation and earth.

11. Based upon documents submitted to the Arkansas Department of Environmental Quality, construction activity began on or around February 12, 2022. Since that date, defendant has failed to implement proper stormwater detention, silt fencing, and sediment controls, resulting in trespass and damage to landowner plaintiffs' properties.

12. In December 2022, sediment, silt, and increased runoff from defendant's construction project began polluting Richmond Pond. This runoff and sediment continues to fill Richmond Pond to the current date.

13. On or around December 2022, a landowner in the Cedar Lake Estates neighborhood approached Mr. Nathan Pruss, and asked him about the increased stormwater, sediment, and silt running into Richmond Pond. Mr. Pruss responded, "Go ahead and sue me." Mr. Pruss has shown a reckless and blatant disregard for the damage and impact defendant's development has had on landowner plaintiffs' properties.

14. On December 20, 2022, the Arkansas Department of Energy and Environment,

Environmental Quality Division (hereinafter "ADEQ"), performed an inspection on defendant's property, and found the following violations:

Offsite tracking of sediment was present on Main Street at the site entrance. Furthermore, sediment is being discharged from the outfall of the sediment basin. Failure to properly maintain BMPs violates Part II.A.4.I.1 and Part II.B.17 of the permit. Additionally, the discharged sediment appears likely to cause pollution to the waters of the state in violation of the Arkansas Water and Air Pollution Control Act A.C.A. § 8-4-217 (a)(2).

Proper outlet structures are not in place for the sediment basin. Failure to install proper outlet structures for sediment basins is in violation of Part I.B.13.F. of the permit. Furthermore, sediment Inspection Report: Stagecoach Meadows, AFIN: 43-03629, Permit #: ARR157310 Inspection Report Page 3 of 21 basins must be designed and installed in accordance with Part II.A.4.I.3.a. of the permit.

Velocity dissipation devices are not installed in places where required. Failure to install velocity dissipation devices where they are needed is in violation of Part II.A.4.I.3.b. of the permit.

15. The inspection report was completed on February 23, 2023 and sent to defendant.

However, defendant continues to fail to implement appropriate stormwater best management practices.

16. Even after being cited by ADEQ, defendant continues to fail to implement appropriate stormwater best management practices, which resulted in continued damage and trespass onto landowner plaintiffs' properties.

17. Specifically, around June 2023, after continued development of defendants' property and continued disturbing of the native land, earthmoving as part of the construction activities, and failure to implement appropriate stormwater best management practices, stormwater runoff, silt, and sediment began flooding the properties of plaintiffs Robert Dunn, John Belden, and Jeff Evans.

18. Since on or around June 2023, during routine rainfall, a river of mud consisting of stormwater, disturbed dirt, sediment, and silt, flows through the properties of plaintiffs Robert

Dunn, John Belden, and Jeff Evans. This runoff ultimately runs into a creek that flows through the Cedar Lake Estates properties.

19. Additionally, the increased stormwater, silt, and sediment washed out plaintiff Jeff Evans' driveway and caused his septic tank to overflow in his yard.

20. As a result, on or around May 5, 2023, plaintiff Jeff Evans was forced to employ the services of septic tank specialists to remedy the damage caused by defendant.

21. Additionally, on or around June 5, 2024, plaintiff Jeff Evans was forced to repair and replace his driveway after it washed out, leaving him no access to his residence via his driveway.

22. The continued flooding and trespass due to defendant's construction activities has also caused damage to plaintiff John Belden's driveway and yard, and plaintiff Robert Dunn's driveway and yard.

23. Defendant's failure to implement appropriate stormwater best management practices has resulted in excessive amounts of silt, sediment, and flooding into landowner plaintiffs' streams and pond.

24. Continuing to date, defendant's development of its real property has caused, without landowner plaintiffs' permission and consent, excessive amounts of silt, sediment and flooding to continually discharge onto and through landowner plaintiffs' property with sufficient force and volume to result in contamination of the pond and streams located on the property with sediment, silt and turbid water, rendering them unsuitable for recreational use and enjoyment.

25. Development upon defendant's property has caused extensive and unnecessary damage to the landowner plaintiffs that consists of but is not limited to repeated stormwater, silt and sediment

migration in the ponds and streams on landowner plaintiffs' properties.

26. Such flooding and silt migration has caused a significant adverse impact upon the appearance, habitability, use, enjoyment and value of landowner plaintiffs' property.

27. Landowner plaintiffs have demanded defendant cease the conduct destroying landowner plaintiffs' property and to date defendant has refused.

COUNT ONE: DAMAGE TO REAL PROPERTY

28. Landowner plaintiffs incorporate herein by reference the contents of paragraphs 1 through 27 of landowner plaintiffs' complaint as if set out word for word.

29. Defendant's conduct in altering their lands adjacent to landowner plaintiffs' land in such a manner as to cause unnecessary injuries and damage to landowner plaintiffs, violates landowner plaintiffs' property rights and is therefore actionable as an injury to real property.

COUNT TWO: NEGLIGENCE

30. Landowner plaintiffs incorporate herein by reference the contents of paragraphs 1 through 30 of landowner plaintiffs' complaint as if set out word for word.

31. At all times relevant to hereto, defendant was bound by a duty of ordinary care in developing its property with respect to the impact of such development on landowner plaintiffs' property and preventing unnecessary injury or damage to landowner plaintiffs' adjoining property.

32. Defendant has breached its duty by engaging in development activity both upon and adjacent to plaintiffs' property that proximately caused unnecessary injury and damage to the landowner plaintiffs' property.

33. The negligence of defendant includes, without limitation:

(a) Failing to properly maintain and implement erosion and sediment controls;

- (b) Failing to properly install and maintain those engineering controls;
- (c) Failing to comply with applicable regulations and requirements;
- (d) Failing to obtain necessary regulatory approval and/or failing to comply with any permits issued by governmental authorities.

34. The defendant's negligence proximately caused unnecessary damage to plaintiffs' properties and plaintiffs including, but not limited to, excess surface water, erosion, flooding, silt migration, destruction of plants and vegetation, contamination of existing ponds and streams, impacts to aquatic resources, and other visible, undesirable changes and effects that have adversely affected the appearance, habitability, use, enjoyment, and value of landowner plaintiffs' properties.

COUNT THREE: TRESPASS

35. Landowner plaintiffs incorporate herein by reference the contents of paragraphs 1 through 36 of landowner plaintiffs' Complaint as if set out word for word.

36. The actions of defendant described above constitute a trespass, both actual and constructive, upon the landowner plaintiffs' property by causing detrimental adverse impact thereon by its actions while on such property and by its development upon adjoining property as described in detail herein.

37. Such trespass caused damage to landowner plaintiffs' property including but not limited to excess surface water, erosion, flooding, deposits of silt and sediment, destruction of plants and vegetation and other visible, undesirable changes and effects that have adversely affected the appearance, habitability, use, and value of plaintiffs' property.

38. Defendant's trespass is continuing in nature, and injunctive relief is appropriate.

COUNT FOUR: PRIVATE NUISANCE

39. Landowner plaintiffs incorporate herein by reference the contents of paragraphs 1 through 39 of landowner plaintiffs' Complaint as if set out word for word.

40. A private nuisance is conduct by one landowner which unreasonably interferes with another landowner plaintiffs' use and enjoyment of their land. To constitute a nuisance, the resulting injury to nearby property and residents or to the public must be certain, substantial and beyond speculation and conjecture.

41. Defendant's conduct as described above constitutes a private nuisance.

RELIEF REQUESTED

42. Landowner plaintiffs are entitled to injunctive relief against defendant to require it to modify the development of its property and construct appropriate features that will retain or convey surface water away from its property in such a manner as to not increase the volume and velocity of surface water that flows from defendant's property onto plaintiffs' property and resulting in unnecessary damage thereto. Landowner plaintiffs are also entitled to compensatory damages, including, without limitation, the expense associated with correcting flooding, silt and sediment problems proximately caused by defendant's conduct.

43. Landowner plaintiffs are also entitled to compensatory damages for the loss of use and enjoyment of their property, and other vegetation and wildlife destroyed as a result of defendant's wrongful conduct, the costs associated with removing silt, sediment and all other visible, undesirable changes and effects that have adversely affected the appearance, habitability, use, and value of plaintiffs' property.

44. Defendant knew, or should have known, in light of the surrounding circumstances, that its conduct would naturally and probably result in injury or damage to landowner plaintiffs and yet it continued its conduct with malice or in reckless disregard of the consequences from which malice may be inferred. Accordingly, landowner plaintiffs are entitled to an award of punitive or exemplary damages.

45. Landowner plaintiffs demand a trial by jury on any and all issues for which equitable relief is not available.

WHEREFORE, landowner plaintiffs pray that the Court award them all relief to which they are entitled including an injunction to prohibit defendant from causing unnecessary harm to the landowner plaintiffs' property and to repair the harm it has caused, or in the alternative, compensatory damages sufficient to allow plaintiffs to remedy the harm caused by defendant's conduct, a judgment for all actual damages that the plaintiffs have incurred, punitive damages, costs incurred, attorney's fees, and all other just and proper relief that the Court may order.

Respectfully submitted,

/s/ Timothy J. Giattina

Timothy J. Giattina
McMath Woods P.A.
711 W. 3rd Street
Little Rock, Arkansas 72201
tim@mcmathlaw.com
Attorney for Plaintiffs