



this Complaint, adult individuals and residents of 1 Campview Drive, North Little Rock, Arkansas, 72170. The Joint Revocable Trust of Danny Looper and Cheryl Looper dated December 17, 1999 is the record owner of the property where the Loopers reside and that is the subject of this lawsuit. Danny and Cheryl Looper are the sole trustees of the Joint Revocable Trust of Danny Looper and Cheryl Looper dated December 17, 1999.

2. Defendant Billy Stain Construction, LLC is an Arkansas Limited Liability Corporation in good standing that does business and owns real property in Pulaski County, Arkansas. Defendant's principal address is 14 Buddy Lane, Conway, Arkansas 72032. Defendant's registered agent for service is Billy Stain and he can be served at 12711 Macarthur Boulevard, North Little Rock, Arkansas 72118.

3. 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**

4. Plaintiffs own and reside on real property at 1 Campview Drive, North Little Rock, Arkansas, 72170 (hereafter the "plaintiff's property"). The Looper property is described as follows:

Description Tract 10, Woodland Valley:

Part of the NW 1/2, Section 24, T-3-N, R-12-W, Pulaski County, Arkansas, more particularly described as follows: Commence at the Northwest corner of said Section 24; run thence South 2 degrees 05 minutes East along the West line thereof a distance 590 feet to the Point of Beginning; thence North 79 degrees 25 minutes East a distance of 524.1 feet; thence South 47 degrees 32 minutes East a distance of 497.8 feet; thence South 59 degrees 36 minutes East a distance of 296.2 feet; thence South 77 degrees 51 minutes East a distance of 237.3 feet; thence South 86 degrees 14 minutes East a distance of 221 feet; thence North 88 degrees 09 minutes East a distance of 494.7 feet; thence South 63 degrees 55 minutes East a distance of 680.8 feet; thence South 0 degrees 30 minutes East a distance of 412.8 feet; thence North 89 degrees 26 minutes East a distance of 48.5 feet; thence South 2 degrees 11 minutes East a distance of 863.3 feet to the Southeast corner of said NW 1/4, Section 24; thence South 89 degrees 14 minutes West a distance of 2,706.9 feet to the

Southwest corner of said NW ¼, Section 24; thence North 2 degrees 05 minutes West a distance of 2,050 feet to the Point of Beginning and containing 105.7 acres, more or less.

5. Plaintiffs purchased this 79-acre parcel of land approximately 39 years ago. When they first visited the property, the pond was a major attraction. For the entire time they have lived there, this pond has been the central feature of their use and enjoyment of the land. They built their home next to it and have enjoyed fishing, boating and swimming with their children, then grandchildren and until recently, their great grandchildren.
6. Defendant purchased subject properties adjacent to plaintiff's property on or around March 26, 2021.
7. Defendant began construction of its properties in late 2021 and construction continues through the current date. Starting in or around December 2022, defendant's actions began diverting substantial amounts of stormwater, silt, and sediment onto plaintiffs' property.
8. The below aerial view of plaintiffs' property from September 2021 shows plaintiffs' pond prior to defendant's actions impacting it:



9. Contrast this with the following aerial view from January 2023, showing the pond after defendant's actions impacted it:



10. On June 2, 2023, the Arkansas Department of Energy and Environment, Environmental Quality Division, performed an inspection on defendant's property, and found the following violations:

1. Billy Stain Construction, LLC is operating a large construction site without a Construction Stormwater General Permit (ARR150000) in violation of the Arkansas Water and Air Pollution Control Act (A.C.A. § 8-4-217(b)(1)). Bent Tree Estates Phase II is a residential subdivision consisting of approximately 53 individual lots spanning approximately 16.82 acres. A complete Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and permit application fee should be submitted immediately to the Office of Water Quality Permits Branch. Information regarding the submittal of the necessary documentation and fee is available at: <https://www.adeq.state.ar.us/water/permits/npdes/stormwater/>. If you have any questions regarding the submittal of the required documentation please contact the Office of Water Quality Permits Branch at 501-682-0737.

2. Stormwater Best Management Practices (BMPs) were not installed along the

perimeter of the construction lots to prevent sediment from running into the roads and storm drain inlets. A large amount of sediment was located at the base of the hill near 17313 Crooked Oak Dr. A silt fence was erected at the end of Creaking Cedar Dr. but it was not installed properly to capture sediment. Failure to implement appropriate stormwater BMPs to reduce or eliminate sediment migration from the site and into waters of the state would also be in violation of the Arkansas Water and Air Pollution Control Act (A.C.A. § 8-4-217(a)(1) or (a)(2)).

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

12. Continuing to date, defendant's development of its real property has caused, without plaintiffs' permission and consent, excessive amounts of silt, sediment and flooding to continually discharge onto and through 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.

13. Development upon defendant's property has caused extensive and unnecessary damage to the Loooper property that consists of but is not limited to repeated stormwater, silt and sediment migration in the ponds and streams on plaintiffs' property.

14. Such flooding and silt migration has caused a significant adverse impact upon the appearance, habitability, use, and value of the Loooper property, including, without limitation, causing damage.

15. Plaintiffs have repeatedly demanded defendant cease the conduct destroying plaintiffs' property and to date defendant has refused.

#### **COUNT ONE: DAMAGE TO REAL PROPERTY**

16. Plaintiffs incorporate herein by reference the contents of paragraphs 1 through 15 of plaintiffs' Complaint as if set out word for word.

17. Defendant's conduct in altering their lands adjacent to plaintiffs' land in such a manner as to



cause unnecessary injuries and damages to plaintiffs, violates plaintiffs' property rights and is therefore actionable as an injury to real property.

### **COUNT TWO: NEGLIGENCE**

18. Plaintiffs incorporate herein by reference the contents of paragraphs 1 through 17 of plaintiffs' Complaint as if set out word for word.

19. 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 the plaintiffs' property and preventing unnecessary injury or damage to plaintiffs' adjoining property.

20. 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 plaintiffs' property.

21. 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.

22. The defendant's negligence proximately caused unnecessary damage to plaintiffs' property 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, and value of plaintiffs' property.

### **COUNT THREE: TRESPASS**

23. Plaintiffs incorporate herein by reference the contents of paragraphs 1 through 22 of

plaintiffs' Complaint as if set out word for word.

24. The actions of defendant described above constitute a trespass, both actual and constructive, upon the 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.

25. Such trespass caused damage to 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.

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

#### **COUNT FOUR: PRIVATE NUISANCE**

27. Plaintiffs incorporate herein by reference the contents of paragraphs 1 through 26 of plaintiffs' Complaint as if set out word for word.

28. A private nuisance is conduct by one landowner which unreasonably interferes with another landowner's use and enjoyment of his 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.

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

#### **RELIEF REQUESTED**

30. Plaintiffs are entitled to injunctive relief against defendant to require it to modify the development of its parcel 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 the Loper property and resulting in

unnecessary damage thereto. 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.

31. 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.

32. 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 plaintiffs and yet it continued its conduct with malice or in reckless disregard of the consequences from which malice may be inferred. Accordingly, plaintiffs are entitled to an award of punitive or exemplary damages.

33. Plaintiffs demand a trial by jury on any and all issues for which equitable relief is not available.

WHEREFORE, 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 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. 3<sup>rd</sup> Street  
Little Rock, Arkansas 72201  
[tim@mcmathlaw.com](mailto:tim@mcmathlaw.com)  
*Attorney for Plaintiffs*

VERIFICATION

The undersigned hereby states on oath that the foregoing is true and correct to the best of his knowledge, information, and belief.



Danny Looper, Individually and as Co-Trustee of the Joint Revocable Trust as Danny Looper and Cheryl Looper dated December 17, 1999

STATE OF ARKANSAS     )  
  ) ss.  
COUNTY OF PULASKI    )

Subscribed and sworn before me this 22 of February, 2024.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7-9-31

