

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
_____ **DIVISION**

**TODD JAY MIZE, TRUSTEE OF JAMES HOWARD MIZE
AND PATRICIA DEAN MIZE JOINT REVOCABLE TRUST**

PLAINTIFF

v.

No. _____

ARKANSAS COMPOSITES, INC.;
WASTE WATER MANAGEMENT, INC.; and
ALAN MCENTIRE

DEFENDANTS

COMPLAINT

COMES NOW, Todd Jay Mize, trustee of the James Howard Mize and Patricia Dean Mize Revocable Trust, by and through his attorneys, Hyden, Miron & Foster, PLLC, and for his Complaint, states:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Todd Jay Mize, trustee of James Howard Mize and Patricia Dean Mize Revocable Trust (the “Mize Trust”), is a resident of Faulkner County, Arkansas. The Mize Trust owns real property, which is at issue in this case in Faulkner County, Arkansas.

2. Defendant, Arkansas Composites, Inc. (“Arkansas Composites”), is an Arkansas Corporation and may be served through its registered agent for service of process, Alan McEntire, 218 Otto Road, Vilonia, Arkansas 72173. Upon information and belief McEntire is also an owner of Arkansas Composites,

3. Defendant, Waste Water Management, Inc. (“Waste Water Management”), is an Arkansas Corporation and may be served through its registered agent for service of process, Alan McEntire, 218 Otto Road, Vilonia, Arkansas 72173.

4. Defendant, Alan McEntire, is the owner and operator of Waste Water Management and is a resident of Faulkner County, Arkansas.

5. This Court has subject matter jurisdiction over this case pursuant to Amendment 80 of the Arkansas Constitution and Ark. Code Ann. § 16-13-201. The Court has personal jurisdiction over the Defendants under Ark. Code Ann. § 16-4-101.

6. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-101.

II. FACTS

7. Plaintiff Mize Trust owns 80 acres on the southwest corner of Rooster Road and Highway 286, which is situated north of Lake Conway in Faulkner County.

8. Separate Defendant Arkansas Composites owns 40 acres on the northeast corner of Rooster Road and Highway 286, which is situated north of Lake Conway.

9. Upon information and belief, Separate Defendant Alan McEntire formed Separate Defendant Arkansas Composites for the purpose of developing a 154-home subdivision known as Oak Springs Subdivision.

10. Separate Defendant Arkansas Composite is developing 40 acres known as the Oak Springs Subdivision.

11. The Oak Springs Subdivision is located in the natural watershed of Lake Conway, a lake owned by the Arkansas Game and Fish Commission.

12. Upon information and belief, Separate Defendant Arkansas Composites is building new homes in the Oak Springs Subdivision in conjunction with Rausch Coleman Homes.

13. Upon information and belief, Separate Defendant Arkansas Composites and its owners conveyed two acres of the 40-acre tract it owns to Separate Defendant Waste Water Management for the construction of a wastewater treatment plant for the 154-development known as Oaks Springs Subdivision.

14. Separate Defendant Waste Water Management applied for a permit to construct a wastewater treatment plant permit with Arkansas Division of Environmental Quality (“ADEQ”) on January 27, 2021. *See* Exhibit 1 attached hereto and incorporated herein by reference.

15. Upon information and belief, the person responsible for the operation of the wastewater treatment plant constructed by Separate Defendant Waste Water Management is Separate Defendant Alan McEntire. *See* Exhibit 2 attached hereto and incorporated herein by reference.

16. Separate Defendant Waste Water Management proposes to construct and utilize a 0.04158 million gallons per day (“MGD”) wastewater treatment plant on the northeast corner of Rooster Road and Highway 286 for the Oaks Springs Subdivision. *See* Exhibit 1.

17. Defendants propose that the wastewater treatment plant discharge its wastewater effluent into a small, ephemeral unnamed tributary that runs through the Mize Trust Property and then discharge the wastewater effluent into Lake Conway. *Id.*

18. Except for a periodic storm water flow, the effluent discharge from the wastewater treatment plant owned and operated by or for the benefit of Defendants would

constitute the majority of flow of the unnamed tributary on and through the Mize Trust Property and would be stagnant at most times.

19. The discharge of the wastewater effluent from the Oak Springs Subdivision's sewage treatment plant will cause or contribute to contamination and degradation of the unnamed tributary on and through the Mize Trust Property affecting the health and safety of persons living on that property as well as their pets and livestock.

20. The discharge of the wastewater effluent from the Oak Springs Subdivision's sewage treatment plant will cause or contribute to the possible contamination of Lake Conway.

21. On July 25, 2022, the Arkansas Division of Environmental Quality issued Separate Defendant Waste Water Management a construction permit to construct the wastewater treatment plant for the Oak Springs Subdivision. *See* Exhibit 3.

22. Defendants have not sought permission from the Mize Trust to discharge its wastewater effluent on the Mize Trust Property nor do Defendants have a permit, license, easement, or any other legal right to discharge its wastewater effluent on the Mize Trust Property.

24. The issuance of the permit to construct a wastewater treatment plant by the Arkansas Division of Environmental Quality does not "preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable state law or regulation under the authority preserved by Section 510 of the Clean Water Act" or "convey any property rights of any sort, or any exclusive privileges, nor does it any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations." *See* Exhibit 3, Page 2 of Part III.

25. Discharging wastewater effluent on the Mize Trust Property will cause irreparable harm to the use and value of the property.

III. NUISANCE

26. The allegations contained in each of the paragraphs above are incorporated restated as if set out verbatim herein.

27. Defendants Arkansas Composites, Waste Water Management, and Alan McEntire are constructing or have constructed a wastewater sewage treatment plant for the Oak Springs Subdivision that will discharge its wastewater effluent onto the Mize Trust Property.

28. The invasion of Defendants' wastewater effluent will substantially and unreasonably interfere with the Mize Trust's use and enjoyment of its property.

29. Defendants Arkansas Composites, Waste Water Management, and Alan McEntire are causing or allowing or will cause or allow wastewater effluent to invade the interests of the Mize Trust in its Property which will damage its property when Oak Springs Subdivision is fully developed.

30. The wastewater effluent diverted onto the Mize Trust Property substantially and unreasonably interferes with its peaceful, quiet, and undisturbed use and enjoyment of its property.

31. The conduct of Defendants Arkansas Composites, Waste Water Management, and Alan McEntire was intentional in that they knew or should have known that damage to the Mize Trust Property is substantially certain.

32. The wrongful conduct of Defendants Arkansas Composites, Waste Water Management, and Alan McEntire is the legal cause of the invasion of the rights of the Mize Trust.

33 The Mize Trust will be irreparably harmed if Defendants Arkansas Composites, Waste Water, and Alan McEntire are allowed to discharge the wastewater effluent from the Oak Springs Subdivision onto its property.

IV. TRESPASS

34. The allegations contained in each of the paragraphs above are incorporated restated as if set out verbatim herein.

35. The Mize Trust is the owner of property that will be damaged by Defendants Arkansas Composites, Waste Water Management, and Alan McEntire proposed discharge of wastewater effluent onto and across its property.

36. Defendants Arkansas Composites, Waste Water Management, and Alan McEntire will intentionally cause wastewater effluent to be discharged onto the Mize Trust Property.

37. The Mize Trust did not license or authorize Defendants Arkansas Composites, Waste Water Management, and Alan McEntire to intentionally cause the discharge of wastewater effluent to be discharged onto its property.

38. By unlawfully causing wastewater effluent to be discharged onto the Mize Trust Property, Defendants Arkansas Composites, Waste Water Management, and Alan McEntire are or will be trespassing and encroaching upon the Mize Trust Property, and wrongfully interfering with and disturbing the rightful possession, use and enjoyment of its Property.

39. The Mize Trust are entitled to damages for Defendants Arkansas Composites, Waste Water Management, and Alan McEntire's trespass and unlawful encroachment upon its property, and for Defendants Arkansas Composites, Waste Water Management, and Alan McEntire's wrongful interference with its right to use and enjoy its Property.

40. Defendants Arkansas Composites, Waste Water Management, and Alan McEntire are aware that the discharge of wastewater effluent onto the Mize Trust Property will damage its property but chose to do nothing.

41. The Mize Trust will be irreparably harmed if Defendants Arkansas Composites, Waste Water Management, and Alan McEntire are allowed to discharge the wastewater effluent from the Oak Springs Subdivision onto its property.

**COUNT V
DECLARATORY JUDGMENT**

42. The allegations contained in each of the paragraphs above are incorporated restated as if set out verbatim herein.

43. The Mize Trust has legally protected rights to rightful possession, use, and enjoyment of its Property.

44. Defendants' decision to discharge wastewater effluent from the Oak Springs Subdivision onto the Mize Trust Property violates and interferes with its rightful possession, use, and enjoyment of its Property.

45. A declaratory judgment action "seeks to avoid uncertainty and insecurity with respect to rights, status, and other legal relations" under a statute, municipal ordinance, contract, or franchise. *City of Fort Smith v. Didicom Towers, Inc.*, 362 Ark. 469, 474, 209 S.W.3d 344, 348 (2005); *see also* Ark. Code Ann. 16-111-102.

46. Defendants do not have authorization, license, permit, or invitation to discharge wastewater effluent on the Mize Trust Property.

45. Defendants' discharge of wastewater effluent from the Oak Springs Subdivision is an impermissible use of the Mize Trust Property.

47. Defendants have no right or authority to use the Mize Trust Property for the purpose of discharging wastewater effluent from the Oak Springs Subdivision.

COUNT VI
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

48. The allegations contained in each of the paragraphs above are incorporated restated as if set out verbatim herein.

49. The Mize Trust seeks a temporary restraining order pursuant to Rule 65 of the Arkansas Rules of Civil Procedure against the Defendants to prevent the violation of its right to the peaceful, quiet, and undisturbed use and enjoyment of its property and to protect health and safety of persons living on that property as well as their pets and livestock.

50. In the absence of injunctive relief, the Mize Trust will suffer irreparable harm by being denied its right to the peaceful, quiet, and undisturbed use and enjoyment of its property. Additionally, the health and safety of persons living on that property as well as their pets and livestock will be irreparably harmed in the absence of injunctive relief.

32. The Mize Trust has a reasonable probability of success on the merits of their claims against Defendants Arkansas Composites, Waste Water Management, and Alan McEntire for the violation of its right to the peaceful, quiet, and undisturbed use and enjoyment of its property.

33. Pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, this Court is authorized to issue a mandatory Temporary Restraining Order to retrain and prevent Defendants Arkansas Composites, Waste Water Management, and Alan McEntire from discharging wastewater effluent from the Oak Springs Subdivision

43. The Mize Trust demands a jury trial in this matter.

WHEREFORE, without wavier of other rights Plaintiff may have or assert at a later date, Plaintiff prays that the Court grant the following relief in its favor and against Defendants:

a. Entry of judgment against Defendants in favor of Plaintiff for each count alleged in this Complaint;

b. Entry of an injunction that immediately stays from discharging wastewater effluent onto Plaintiff's property; *and*

c. All other relief the Court deems just or proper.

HYDEN, MIRON & FOSTER, PLLC

Respectfully submitted,

/s/ Philip Miron

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VERIFICATION

STATE OF Arkansas)

)

COUNTY OF Saukneto)

I, Todd Jay Mize, trustee of the James Howard Mize and Patricia Dean Mize Revocable Trust, Plaintiff herein, after first being duly sworn upon oath state that the facts and allegations contained in the above and foregoing are as I verily believe.

Todd Jay Mize

Todd Jay Mize, trustee of the James Howard Mize and Patricia Dean Mize Revocable Trust

SUBSCRIBED AND SWORN to before me on this 16th day of August, 2024.

Rachelle N Miller

NOTARY PUBLIC

My Commission Expires:

4/1/2026

