

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO
7325 South Potomac Street
Centennial, CO 80112

Plaintiff: SOUTHPARK HOMEOWNERS ASSOCIATION
NUMBER 2, a Colorado nonprofit organization

Defendant: CITY OF ENGLEWOOD

Plaintiff's Attorneys:

Craig, S. Nuss, #17935
BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC
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Case No. 2015CV31748

Div.: 402

FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiff, Southpark Homeowners Association, Number 2 (the "Association"), through its Board of Directors and its attorneys, BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC, complains against the Defendant as follows:

1. This action involves a residential common interest community known as "Southpark" created pursuant to Colorado's Nonprofit Act, and located in Arapahoe County, Colorado. Southpark contains common property owned and controlled by the Association.
2. The Plaintiff is the Association, a Colorado nonprofit corporation acting through its Board of Directors.
3. The Defendant is the City of Englewood, a Home Rule Municipality located in Arapahoe County, Colorado.
4. The Association was created pursuant to the "Articles of Incorporation of Southpark Homeowners Association Number 2" dated February 5, 1982.
5. At all times material to this First Amended Complaint, the Defendant acted through his, her, or its officers, directors, employees, agents and other representatives or third-parties and, as such, each is vicariously liable for the conduct of such officers, directors, employees, agents and other representatives and third-parties.

6. This Court has personal jurisdiction over the Defendant because: (a) it is a resident of the State of Colorado; (b) it did business in the State of Colorado at times material to this action; (c) it purposefully availed itself of the rights and privileges of the State of Colorado at times material to this action; and/or (d) it committed the tortious or other wrongful acts and omissions described in this First Amended Complaint, with resulting, injury, damages, loss or other consequences in the State of Colorado.

7. This Court has subject matter jurisdiction over this matter and the controversies described herein.

8. Venue is proper in Arapahoe County because: (a) the real property which is the subject of this action is located in Arapahoe County; (b) and/or some of the tortious or other wrongful conduct described elsewhere in this First Amended Complaint occurred in and/or had consequences and caused injury, damages or losses in, Arapahoe County.

9. The Association does not concede the applicability of the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, *et seq.*), but has complied with C.R.S. § 24-10-109 to the extent applicable here.

10. The McLellan Reservoir (“reservoir”) is immediately adjacent to the Association’s residential lots and common property.

11. In June 2014, the Association’s soils and forensic engineering consultants determined that water from the reservoir is seeping into the soils beyond the reservoir, including into the Association’s common property.

12. The seeping water has caused damage to various parts of the Southpark community, including, but not limited to, the supporting and surrounding soils, retaining walls, landscaping and other elements of the Southpark common property, and has impaired the lateral and vertical support of these elements of the Association’s common property.

13. As a result of this excessive moisture seeping from the reservoir, certain portions of the Southpark community adjacent to Mineral Avenue are not grossly and surficially stable.

14. This circumstance constitutes an unreasonably and inherently dangerous condition to the residents of the Southpark community and to the Association’s property.

15. The City of Englewood owns, controls, operates and maintains the reservoir, which is a public water facility. The reservoir is used as a source of water for the City of Englewood.

16. If the Defendant is entitled to the limited protections afforded by C.R.S. § 24-10-101, *et seq.*, Plaintiff’s claims fall within an exception to immunity because, upon information and belief, water from the reservoir is seeping due to reckless, negligent and/or otherwise

inadequate maintenance and/or operation of the reservoir, which is a public water facility pursuant to C.R.S. § 24-10-103(5.7).

17. As a result of Defendant's wrongful acts or omissions, the Association has suffered injury to its property, including, but not limited to, its soils, landscaping and other common property.

18. Upon information and belief, the above-described water seepage and infiltration, for which the Defendant is legally liable, have caused and continue to cause the Association actual property damage and/or other losses, consequential damage to, and the loss of use of, various elements of the Southpark community common property, diminished value, past and future repair and mitigation expenses, and litigation costs, among other damages, injuries and losses.

FIRST CLAIM FOR RELIEF
(Negligence Resulting in Property Damage)

19. The Association incorporates the foregoing paragraphs herein.

20. Defendant owned, occupied, controlled, maintained, or conducted activities on the premises of the McLellan reservoir.

21. A dangerous condition exists on the premises of the McLellan reservoir which creates an unreasonable risk of injury, damage, or loss to the Association's property.

22. This condition was created by Defendant and/or was reasonably foreseeable because of Defendant's operation and maintenance methods as to the McLellan reservoir.

23. Upon information and belief, Defendant has known of the seeping condition of the reservoir for some period of time, but has failed to correct the condition.

24. Defendant was negligent because it failed to use reasonable care in the operation, management, or maintenance of the McLellan reservoir, or with respect to the operation of its business on the premises of the McLellan reservoir, and/or it failed to correct the seeping condition.

25. Defendant's negligence has damaged Plaintiff's common property, causing resultant and consequential and other damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Trespass)

26. The Association incorporates the foregoing paragraphs herein.

27. The Plaintiff Association is the lawful owner of the Southpark community common property.

28. Defendant, by its acts or omissions, caused seeping water from the McLellan reservoir to enter upon portions of the Southpark community common property owned and controlled by the Association.

29. The leaking water caused physical damage to the Southpark community common property owned by the Association.

30. Defendant's above-described acts and omissions have caused Plaintiff damages and losses in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Injunctive Relief)

31. The Association incorporates the foregoing paragraphs herein.

32. As a result if Defendant's above-described acts and omissions, Plaintiff is sustaining ongoing, continuing, and irreparable injury.

33. Defendant's above-described acts and omissions have resulted in a continuing trespass.

34. Unless injunctive relief is granted, Plaintiff will continue to sustain irreparable injury.

35. Plaintiff has no plain, speedy, or adequate remedy at law, and therefore prays for injunctive relief directing Defendant to maintain or repair the McLellan reservoir in a manner so as to prevent water seeping onto Plaintiff's property.

PRAYERS FOR RELIEF

WHEREFORE, the Association requests that judgment enter against the Defendant on its behalf:

1. For injunctive relief directing Defendant to maintain or repair the McLellan reservoir in a manner so as to prevent water seeping onto Plaintiff's property;

2. For the Association's actual damages, costs of suit, fees of experts, including engineering and construction experts, and pre- and post- judgment interest as permitted by law;

3. For the cost of repairing Plaintiff's property to a reasonably good condition;

4. For the costs and expenses incurred for storage charges and cleaning costs incurred as a result of such repairs, if any;

5. For loss of the quiet use and enjoyment of the property at issue arising from the injury to the property and any required investigation and repair efforts; and

6. For forensic investigation and analysis costs, including engineering fees and inspection and testing costs.

THE ASSOCIATION DEMANDS TRIAL BY A JURY OF ALL ISSUES SO TRIABLE

Dated this 18th day of July, 2016.

Respectfully submitted,

BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC

/s/ Craig S. Nuss

Craig S. Nuss, No. 17935

Original signature on file with Plaintiff's counsel

Plaintiff's Address:

Southpark Homeowners Association Number 2
2850 West Long Drive,
Littleton, CO 80120

Your filing has been successfully submitted to the court. Your filing is not considered final

Filing Information:

Filing ID: 5C1AED0B2E8F5
Court Location: Arapahoe County
Case Number: [2015CV031748](#)
Case Caption: Southpark Homeowners Association No 2 v. City Of Englewood et al
Authorized Date: 07/18/2016 10:27 AM
Submitted By: Shawna Carlson

Filing Party(ies):

Party	Type	Status	Attorney
Southpark Homeowners Association No 2	Plaintiff	Active	Craig S Nuss (Burg Simpson Eldredge Hersh and Jar

Documents:

Document ID	Document	Title	Statu
A10B0E63B7297	Complaint - Amended	First Amended Complaint and Jury Demand	\$0.00

Service:

Party	Type	Attorney	Organization	M
City of Englewood	Defendant	Jay Andrew Nathan	Nathan Dumm and Mayer PC	E-
City of Englewood	Defendant	Nicholas Poppe	Nathan Dumm and Mayer PC	E-
City of Englewood	Defendant	Timothy R. Fiene	Nathan Dumm and Mayer PC	E-

Submission Options:

Note To Clerk: N/A
Authorizer: Craig S Nuss Esq.
Submit Options: Submit to the court and serve selected parties.

Billing Information:

Statutory Filing Fees: \$0.00
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