

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

LEROY LOSCAR,

Plaintiff,

vs.

Civil Action No. 14-C-905

CASTLE VENTURES II, LLC,
a West Virginia corporation;

CTL ENGINEERING OF WEST VIRGINIA, INC.,
a West Virginia corporation;

THE PHOENIX GROUP, INC.,
a West Virginia corporation;

COLLIER FOUNDATION SYSTEMS, INC.,
a Pennsylvania corporation;

EMPIRE BUILDERS, INC.,
a West Virginia corporation;

MICHAEL L. CASTLE, JR.;

J.D. SOLLON;

JONATHAN L. PERRY,

Defendants.

COMPLAINT

GENERAL ALLEGATIONS

1. Leroy Loscar (hereinafter referred to as "Plaintiff") is a 46 year old citizen and resident of Parkersburg, Wood County, West Virginia. Specifically, Plaintiff resides at 403 11th Street, Parkersburg, West Virginia 26101.

2. Defendant Castle Ventures II, LLC, (hereinafter referred to in the group "Defendants") is a West Virginia corporation, which has its principal place of business in Morgantown, West Virginia, and which does business in Monongalia County, West Virginia.

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CIRCUIT COURT

3. Defendant CTL Engineering of West Virginia, Inc., (hereinafter referred to in the group "Defendants") is a West Virginia corporation, which has its principal place of business in Morgantown, West Virginia, and which does business in Monongalia County, West Virginia.
4. Defendant The Phoenix Group, Inc., (hereinafter referred to in the group "Defendants") is a West Virginia corporation, which has its principal place of business in Morgantown, West Virginia, and which does business in Monongalia County, West Virginia.
5. Defendant Collier Foundation Systems, Inc., (hereinafter referred to in the group "Defendants") is a Pennsylvania corporation, which has its principal place of business in Heidelberg, Pennsylvania, and which does business in Wood County, West Virginia.
6. Defendant Empire Builders, Inc., (hereinafter referred to in the group "Defendants") is a West Virginia corporation, which has its principal place of business in Parkersburg, West Virginia, and which does business in Wood County, West Virginia.
7. Defendant Michael L. Castle, Jr., (hereinafter referred to in the group "Defendants") is a citizen of West Virginia, residing in Monongalia County, West Virginia.
8. Upon information and belief, Defendant J.D. Sollon, (hereinafter referred to in the group "Defendants") is a citizen and resident of West Virginia.
9. Upon information and belief, Defendant Jonathan L. Perry, (hereinafter referred to in the group "Defendants") is a citizen and resident of West Virginia.
10. Plaintiff brings this action for: (1) recovery of damages for injury to Plaintiff's residence and real property caused by Defendants' trespass; (2) recovery of damages for injury to Plaintiff's residence and real property caused by Defendants' private nuisance; (3) recovery of damages for the diminution in value to Plaintiff's residence and real property due to the

Defendants' trespass and private nuisance; (4) recovery of damages for Plaintiff's serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation stemming from Defendants' trespass and private nuisance; and (5) recovery of damages for severe and permanent injury, disfigurement, disability, pain and suffering sustained as a result of Defendants' negligence.

11. Upon information and belief, Defendants, individually and collectively, have engaged in, supervised, directed, or advised, various demolition, excavation, and construction operations (hereinafter "operations") on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property. Specifically, these operations involved the "Avery Court" residential complex located in Parkersburg, Wood County, West Virginia.

12. As a result of Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property, various dusts, soils, fungi, debris and other materials were disturbed, agitated, unearthed, and otherwise generated.

13. By conducting operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property, Defendants have directly and proximately caused the invasion, intrusion, and accumulation of various dusts, soils, fungi, debris and other materials into/onto Plaintiff's residence and real property.

14. On January 1, 2013, Plaintiff was admitted to Camden Clark Medical Center in Parkersburg, West Virginia, with un-diagnosable confusion and left side facial droop. On January 3, 2013, he was transferred to The Ohio State University Wexner Medical Center in Columbus, Ohio, where he was diagnosed with venous sinus thrombosis and invasive zygomycosis (hereinafter also referred to as "mucormycosis").

15. Mucormycosis is an infection caused by organisms that belong to a group of fungi called mucoromycotina. These fungi are typically found in the soil and in association with decaying organic matter, such as leaves, compost piles, or rotten wood. Mucormycosis most commonly affects the sinuses or lungs. Most human infections follow inhalation of fungal spores that have been released into the air.

16. As a direct and proximate result of Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property, Plaintiff became exposed to various dusts, soils, fungi, debris and other materials generated and emanating therefrom, including mucoromycotina and zygomycota, and thereby developed mucormycosis.

17. As a result of Plaintiff's development of mucormycosis, as aforesaid, Plaintiff was severely and permanently injured, disfigured, disabled, and damaged, as is set forth more fully below.

18. Plaintiff has suffered serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation stemming from the invasion of his residence and real property by various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property.

19. The invasion, intrusion, and accumulation of various dusts, soils, fungi, debris and other materials in/on Plaintiff's residence and real property caused temporary and permanent damage to Plaintiff's property, unreasonable interference with the use and enjoyment of his property, and, as a result of which, the value, value of use and/or the rental value of the property has been reduced.

JURISDICTION AND VENUE

20. The defendants are amenable to jurisdiction before the courts of West Virginia by virtue of the fact that they are either citizens and residents of West Virginia, and/or to the extent they maintain minimum contacts with and/or conduct systematic business in West Virginia such that jurisdiction over the defendants is consistent with traditional notions of fair play and substantial justice, and/or to the extent they are otherwise amenable to jurisdiction in accordance with West Virginia's Long Arm Statutes.

21. There is not complete diversity of citizenship in this action. There is no federal question at issue pursuant to 28 U.S.C. §1441(b). Plaintiff is not asserting any claim against any defendant who was acting under any officer of the United States or any agency thereof, or person acting under him or her, for any act under color of such office, or against defendant during any time period when its facility was a federal enclave.

22. Venue is proper before this Court pursuant to W.Va. Code § 56-1-1(a)(2), because: (1) Defendant Castle Ventures II, LLC has a principal office located in Monongalia County, West Virginia; (2) Defendant Michael Castle, Jr., principal officer of Castle Ventures II, LLC, resides in Monongalia County, West Virginia; (3) Defendant CTL Engineering of West Virginia, Inc. has a principal office located in Monongalia County, West Virginia; and (4) Defendant The Phoenix Group, Inc. has a principal office located in Monongalia County, West Virginia. Furthermore, West Virginia courts apply the venue-giving defendant principle, whereby, once venue is proper for one defendant, it is proper for all other defendants subject to process. Therefore, venue in Monongalia County is proper for all Defendants.

**COUNT I
(TRESPASS)**

23. The foregoing allegations are re-alleged and incorporated herein as appropriate.

24. As a direct and proximate result of the foregoing conduct of Defendants, various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' demolition, excavation, and construction operations (hereinafter "operations") entered upon, accumulated upon, and physically invaded Plaintiff's residence and real property.

25. Plaintiff did not consent to the various dusts, soils, fungi, debris and other materials from Defendants' operations invading, intruding, and affecting his residence and real property.

26. As a direct and proximate result of the Defendants' operations, Plaintiff's residence and real property have been damaged by the invasion, intrusion and accumulation of dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations, which caused temporary and permanent damage to the property, unreasonable interference with the use and enjoyment of the property, and, as a result of which, the value, value of use and/or the rental value of the property has been reduced for which Plaintiff is entitled to recovery in this action.

27. Plaintiff has suffered serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation stemming from the trespass committed on his residence and real property by the various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property for which Plaintiff is entitled to recovery in this action.

28. The Defendants' actions which resulted in trespass upon Plaintiff's residence and real property were negligent, grossly negligent, willful, wanton, reckless and conducted with a conscious disregard for the rights and safety of Plaintiff, and caused temporary and permanent harm to Plaintiff's residence and real property, as well as serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation to Plaintiff, entitling him to compensatory, exemplary, and punitive relief.

**COUNT II
(PRIVATE NUISANCE)**

29. The foregoing allegations are re-alleged and incorporated herein as appropriate.

30. Defendants' engagement in, advisement on, or supervision of, various demolition, excavation, and construction operations (hereinafter "operations") on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property and the resulting invasion of various dusts, soils, fungi, debris and other materials generated and emanating therefrom onto Plaintiff's property, was a substantial and unreasonable interference with the private use and enjoyment of Plaintiff's land.

31. Defendants had a duty to minimize and/or prevent the aforementioned dusts, soils, fungi, debris, and other materials generated and emanating from their operations from invading, intruding, and accumulating in/upon Plaintiffs' residence and real property.

32. The Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property, and the resulting invasion of various dusts, soils, fungi, debris, and other materials generated and emanating therefrom onto Plaintiff's property, unreasonably and substantially interfered with the private use and enjoyment of Plaintiff's property such that it has caused temporary and permanent damage to the property,

exposed Plaintiff to various dusts, soils, fungi, debris and other materials, and, as a result of which, the value, value of use and/or the rental value of the property has been reduced for which Plaintiff is entitled to recovery in this action.

33. Plaintiff has suffered serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation stemming from the nuisance committed on his residence and real property by the various dusts, soils, fungi, debris, and other materials generated and emanating from Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property for which Plaintiff is entitled to recovery in this action.

34. The Defendants' actions which resulted in nuisance upon Plaintiff's residence and real property were negligent, grossly negligent, willful, wanton, reckless and conducted with a conscious disregard for the rights and safety of Plaintiff, and caused temporary and permanent harm to Plaintiff's residence and real property, as well as serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation to Plaintiff, entitling him to compensatory, exemplary, and punitive relief.

COUNT III (NEGLIGENCE)

35. The foregoing allegations are re-alleged and incorporated herein as appropriate.

36. The Defendants, and each of them, were under a duty to refrain from unreasonably interfering with the rights of the Plaintiff to quiet enjoyment of his property and to refrain from injuriously affecting Plaintiff's health and safety. However, in violation of said duty, Defendants negligently, willfully, wantonly, and recklessly committed one or more of the following acts or omissions:

- a. Failed to adequately engage in, advise, or supervise various demolition, excavation, and construction operations (hereinafter "operations") on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property;
- b. Released, disturbed, agitated, unearthed, and otherwise generated various dusts, soils, fungi, debris and other materials, including mucoromycotina and zygomycota;
- c. Caused the aforementioned materials to damage, invade, intrude, and accumulate upon Plaintiff's residence and real property, despite actually knowing or failing to reasonably anticipate that such an outcome would occur;
- d. Caused Plaintiff to be exposed to various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations, including mucoromycotina and zygomycota, thereby causing Plaintiff's development of mucormycosis;
- e. Continued operations although Defendants knew, or in the exercise of reasonable care should have known, that the site might contain the aforementioned dusts, soils, fungi, debris and other materials generated and emanating therefrom;
- f. Continued operations although Defendants knew, or in the exercise of reasonable care should have known, that Plaintiff's residence and personal property were being damaged, invaded, and intruded upon by the aforementioned dusts, soils, fungi, debris, and other materials generated and emanating therefrom;
- g. Failed to properly test, inspect and/or monitor their operations site for various fungi, including mucoromycotina and zygomycota, when defendants first knew, or in the exercise of reasonable care should have known, that the site might contain such fungi;
- h. Failed to properly monitor the levels, amounts, and concentration of the aforementioned dusts, soils, fungi, debris, and other materials generated and emanating from their operations;
- i. Failed to make any effort, take any measures, or take any adequate measures, to minimize and/or prevent the damage, invasion, and intrusion of Plaintiff's residence and real property by various dusts, soils, fungi, debris, and other materials generated and emanating from Defendants' operations;

- j. Failed to inform or otherwise warn Plaintiff that the dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations might contain hazardous fungi or other contaminants and of the risk to human health resulting from exposure to the various dusts, soils, fungi, debris and other materials from Defendants' operations when Defendants first knew, or in the exercise of reasonable care should have known, that the site might contain such fungi or contaminants; and
- k. Failed to promptly and properly remove or arrange for the removal of the various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations from Plaintiff's residence and real property when Defendants knew, or in the exercise of reasonable care should have known, that Plaintiff's residence and real property were damaged, invaded, and intruded.

37. As a direct and proximate result thereof, Plaintiff became exposed to various dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations, including mucoromycotina and zygomycota, and thereby developed mucormycosis. The mucormycosis caused Plaintiff to experience severe and permanent injury, disfigurement, disability, and damage.

38. As a direct and proximate result thereof, Plaintiff's residence and real property have been damaged by the invasion, intrusion, and accumulation of dusts, soils, fungi, debris and other materials generated and emanating from Defendants' operations, which caused temporary and permanent damage to the property, unreasonable interference with the use and enjoyment of the property, and, as a result of which, the value, value of use and/or the rental value of the property has been reduced.

39. Plaintiff has suffered serious sickness, substantial bodily harm, personal injury, annoyance, inconvenience, and aggravation stemming from the trespass and nuisance negligently committed on his residence and real property by the various dusts, soils, fungi, debris, and other

materials generated and emanating from Defendants' operations on properties adjacent to, and in the immediate vicinity of, Plaintiff's residence and real property.

40. As a direct and proximate result of each wrongful and tortious act of Defendants as described herein, Plaintiff developed mucormycosis, and has further sustained the following damages, injuries, and losses:

- a. Severe and permanently disabling personal injuries as well as psychological injuries;
- b. Medical bills in an amount presently undetermined and future medical bills;
- c. Loss of future earning capacity and benefits;
- d. Lost household services and future lost household services;
- e. Extreme physical pain and suffering, past and future;
- f. Extreme mental anguish and suffering, past and future;
- g. Loss of capacity to enjoy life and engage in normal activities, past and future;
- h. Annoyance and inconvenience, humiliation, embarrassment, and aggravation, past and future;
- i. A greatly reduced life expectancy, extreme anxiousness, and fear of death;
- j. Permanent disfigurement;
- k. Loss of his left eye;
- l. Loss of his palate;
- m. Cavernous sinus thrombophlebitis;
- n. Dysphagia;
- o. Acute renal failure;

- p. Acute sinusitis;
- q. Ophthalmoplegia;
- r. Sepsis;
- s. Brain abscess;
- t. Pulmonary edema;
- u. Pleural effusion;
- v. Acute respiratory failure with hypoxia;
- w. Delirium;
- x. Hypokalemia;
- y. Normocytic anemia; and
- z. Property damage including, but not limited to, installation of drainage, cleanup, and repairs to the premise.

PUNITIVE DAMAGES

41. The acts, omission, and/or conduct of Defendants as described herein, were willful, wanton, and malicious and/or reckless and/or done with criminal indifference to the civil rights of others, specifically including Plaintiff Leroy Loscar, and warrant the assessment of punitive damages.

42. Punitive damages are justified to punish Defendants for their willful, wanton, malicious, and reckless behavior which caused and/or contributed to the injuries of Plaintiff.

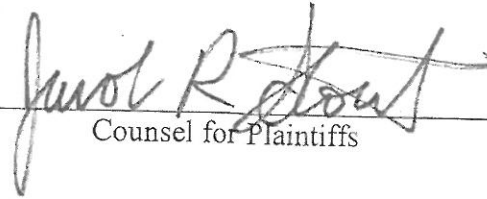
43. Punitive damages will further serve to deter these Defendants and other reckless companies/individuals from conducting business in West Virginia in this manner and profiting from such reprehensible conduct.

WHEREFORE, Plaintiff demands compensatory damages from all Defendants, jointly and severally, in an amount to be determined by the trier of fact, as well as an award of punitive damages against all defendants above, in an amount to be determined by the trier of fact. Plaintiff further demands prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

**LEROY LOSCAR,
PLAINTIFF**

By: _____


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