

IN THE CIRCUIT COURT OF                      COUNTY, MISSISSIPPI

, PLAINTIFFS

V.    CAUSE NO.

, DEFENDANTS

COMPLAINT

Plaintiffs,                      and                      , Mississippi corporations with their principal places of business in                      ,                      County, Mississippi, file this their suit against Defendants,                      and                      .

Parties and Venue

1.                      Plaintiffs are Mississippi corporations with their principal offices in                      ,                      County, Mississippi.

2.                      is a Mississippi corporation having its principal place of business in                      ,                      Mississippi, and may be served with process by serving its agent for process,                      ,                      Mississippi .                      and are adult resident citizens of                      , Mississippi, who may be served with process at                      .

3.                      This cause of action arises out of a contract to be performed in                      County, Mississippi, and a tort which occurred in said county.

4.                      In                      ,                      was the general contractor for the construction of                      between                      and                      in                      , Mississippi.                      , a real estate developer, owned                      acres located on                      in                      County, Mississippi, which required filling to a certain elevation to be commercially developed.                      contacted                      and requested that                      allow it to use the property to dump construction debris, but                      declined, stating that the property was to be developed as a retail center, which would preclude the use of such fill materials as construction debris.

5.                      and                      executed a Letter Agreement under date of                      ,                      , Exhibit A attached, which provided that                      , in consideration of an ownership interest, would fill the property to the agreed elevation by                      ,                      with soil materials which would "contain no construction debris or refuse." Subsequently, the parties entered into a Limited Partnership Agreement dated                      ,                      , a copy of which is attached as Exhibit B.

6. Said Limited Partnership Agreement specified that the Partnership was organized to "own, improve, and hold for investment or development certain real property to be contributed to the partnership by the General Partner" ( ) and that the fill material would "consist solely of native soil materials and not include any type of construction debris or refuse."

7. Shortly after the execution of said letter, commenced filling the property, but, unknown to , , and caused land to be filled with construction debris, broken concrete pavement, broken asphalt pavement, steel reinforcing bars, bridge members, timbers, bricks, tree stumps, and other unsuitable material, which made the land completely unfit for economical commercial development of any kind. Said Defendants fraudulently caused said improper construction debris to be covered with soil material, thus concealing said gross, wanton, and intentional breach of contract in order fraudulently to induce to accept said performance.

8. deliberately used land as a dump for the tons of construction debris generated as a result of performance of its contract for the construction of the new Project from to . Said illegal, unauthorized and fraudulent misuse of property not only destroyed the ability of to develop the property in an economically feasible manner, but also resulted in huge savings for in its cost of completing said highway construction project by eliminating the need to purchase dumping privileges for unwanted construction debris and avoiding potentially expensive longer hauls to sites where the debris from said construction project could be legally dumped.

9. and falsely represented to that had properly completed its duties under the Limited Partnership Agreement; and, relying on said representation, paid \$ to in consideration of release of its rights in the Partnership property.

10. Further relying on assurances of performance, and believing that had completed the performance, purchased acres on the corner of said property from and entered a lease with requiring to build a building and parking lot to the specifications of said tenant on said acre tract.

11. As a result of tests conducted by soil engineers employed by said tenant, and first became aware of the concealed construction debris buried on the site and, accordingly, were required to completely excavate the building site at its own expense and, to date, has expended approximately \$ to do so. Additionally, said tenant has made demand on for substantial unspecified expenses incurred by said tenant rectifying the problems in the fill caused by the construction debris in the tenant's parking lot area. Also, as a direct and proximate result of the actions of Defendants, the value of remaining property has been reduced by at least (\$ ). The curative work required to be done resulted in a delay of five months in opening the store, which resulted in a loss of approximately \$ rent to date. Said fill condition also caused substantial questions to be raised as to the suitability of the remaining site for development, thus resulting in further damages to . Negotiations with other prospective tenants have been terminated or suspended due to uncertainty as to the condition of the site and the cost of curative action necessary to render said site suitable for commercial development. The resultant inability of and to pursue further development caused additional damages.

12. , and personally, fraudulently and, with intent to deceive , deliberately placed, or caused to be placed, the organic material, rubble, broken concrete pavement, broken asphalt pavement, steel reinforcing bars, bridge members, timbers, bricks and other unacceptable materials on property and concealed their actions from . Said fraudulent concealment was done with the intent to defraud into believing that was properly performing its duties under the Letter Agreement and the Limited Partnership Agreement, so that would not require Defendants to cease said flagrant destruction of property values, and to believe that it had completed its contract with and thus to obtain the compensation it claimed was due under its agreement with . , acting in reliance on said fraudulent concealment, failed to stop Defendants from the continued dumping on its land and also executed a release under the terms of which paid \$ in exchange for its interest in the land. If had been aware of the condition of said soil, it would not have executed said release and paid said \$ .

13. Defendants knew full well that their actions in using valuable commercial property on as a dumpsite for their construction debris would substantially destroy the commercial value of said property. Not only is the soil rendered too unstable for construction, but the presence of tons of chunks of concrete and other debris prevent the economical construction of foundations, utility lines, streets, parking areas and other excavation required by a commercial development. Said wanton and deliberate destruction of the value of property, along with the intentional and fraudulent concealment thereof, constitutes a separate tort for which Defendants are liable in actual and punitive damages.

## COUNT I

### Breach of Contract

14. , under the Letter Agreement attached as Exhibit A and the Limited Partnership Agreement attached as Exhibit B, had a duty to fill land with native soil materials only and not with construction debris or refuse. deliberately and intentionally breached its agreement and did, in fact, place tons of construction debris on the said land. As a direct and proximate result of said breach of contract, has been damaged in the amount of not less than \$ .

Wherefore, demands judgment against for all damages suffered as a result of said breach of contract in the sum of at least \$ , plus prejudgment interest and costs.

## COUNT II

### Intentional Tort

15. , and fraudulently, deliberately, intentionally, and with actual malice destroyed the value of land by burying and concealing large amounts of construction debris and refuse on said land which rendered it unsuitable for commercial development without the expenditure of large sums of money for rectification. Said , and fraudulently and with the intent to deceive Plaintiffs, then caused said construction debris to be concealed from and its agents. Said unauthorized and concealed placing of construction debris on said property without their consent constitutes a trespass and

was accompanied by such flagrant, malicious and outrageous conduct as to constitute a separate and independent tort for which said Defendants are liable for actual damages in the amount of (\$ ) and punitive damages in the same amount, (\$ ).

### COUNT III

#### Breach of Fiduciary Duty

16. As a result of the execution of Exhibits A and B, and the trust and confidence placed in in the joint development of the property as partners, owed a fiduciary duty to in this matter. concealed, deliberate, and malicious destruction of the value of property for its own gain constitutes a breach of said fiduciary duty, for which is liable for actual and punitive damages.

### COUNT IV

#### Damages and Indemnity for Curative Work

17. As a direct and proximate result of their wrongful actions herein, Defendants jointly and severally are liable to indemnify for its expenses to date for the curative work on said acre tract in the amount of Dollars (\$) and for any further payments it may be required to make to for curative work on said soil, which is estimated to be Dollars (\$ ). In the alternative, Defendants are liable to for indemnity to for all expenses which incurred in said curative work.