

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

vs.

NO.

COMPLAINT

COMES NOW, , and files its Complaint against as follows:

1. is a corporation whose principal place of business is , Post Office Box , .

2. is a Mississippi corporation which can be served with process by serving , or any officer, managing agent or general agent of , , , MS .

3. This is a lawsuit seeking specific performance and a declaratory judgment. This Court has jurisdiction over the subject matter of this action.

4. Venue is proper in this Court under Miss. Code Ann. § 11-5-1.

BACKGROUND

5. On , , filed a Complaint for Declaratory and Injunctive Relief against County and the County Board of Supervisors. In that action, asserted that proposed development west of and County's plan to increase the size of a culvert under from inches to inches would cause a substantial increase in the amount of water flowing into a drainage ditch behind 's store.

6. In that action, sought an injunction prohibiting County from increasing the size of the culvert and prohibiting any substantial increase in the volume of water through such culvert. also sought an injunction prohibiting the temporary "closing" of a portion of until the realigned portion of the road is open for travel.

7. On , , , and filed a Motion to Intervene in that action on the grounds that their proposed development west of would be delayed or stopped if the relief sought by in its Complaint was granted. The Motion to Intervene was not noticed for hearing because the disputes between and regarding drainage through the inch culvert and the "closing" of were settled. has dismissed its Complaint in that litigation.

COUNT I

8. During _____, _____, and _____ agreed to settle their disputes regarding the "closing" of _____ and drainage through the _____ inch culvert by _____ paying \$ _____ to be utilized in enlarging the drainage ditch along the back of _____'s property of the intersection of _____ and _____.

9. In consideration thereof, _____ to release all claims relating to, arising out of or connected with _____'s claim that _____ cannot be closed prior to the time the new road is fit for travel and all claims, other than third party claims, relating to, arising out of or connected with water which flows or is otherwise discharged through the _____ inch culvert to be installed by _____ County under _____.

10. Thereafter, _____ was "closed" even though the new road was not yet fit for travel. Further, the _____ inch culvert under _____ was replaced with a _____ inch culvert.

11. Consistent with the settlement, _____'s counsel forwarded to _____'s counsel a draft of the settlement agreement on _____, _____ (Exhibit "1"). In response thereto, _____'s counsel advised that the language in the settlement agreement was satisfactory with three exceptions. First, _____ was not willing to dismiss with prejudice its claims against _____ County unless the County agreed to dismiss with prejudice its counter-claim that _____ breached its promise to contribute \$ _____ to the County toward the upgrade of _____. Otherwise, _____ County had to be deleted from the settlement agreement. Second, a provision should be added to the settlement agreement to reflect that _____ would not materially alter its drainage plans in light of this settlement. Third, the release should be modified to exclude potential drainage claims by persons other than _____.

12. On _____, _____, _____'s counsel forwarded to _____'s counsel a letter and revised draft of the settlement agreement reflecting the language changes suggested by _____ and requesting that _____'s counsel add the appropriate limitation regarding third party drainage claims consistent with the parties' agreement. (Exhibit "2")

13. When _____'s counsel did not receive the final settlement agreement from _____'s counsel, a letter dated _____, _____, was sent to _____'s counsel reconfirming the parties' settlement and requesting that the revised settlement agreement be forwarded as soon as possible. (Exhibit "3").

14. On _____, _____, _____ advised that it could not settle its claims with _____.

15. By letter dated _____, _____, _____'s counsel was advised that _____ remained ready to perform its obligations under the settlement and that the plans for enlarging the ditch should be promptly implemented to avoid unnecessary damage and inconvenience to all parties. (Exhibit "4").

16. _____'s refusal to perform its obligations under the settlement constitutes a breach thereof entitling _____ to specific performance because the subject of such settlement is unique and its remedies at law are insufficient.

17. has breached the settlement to enlarge the ditch on the belief that such course of action would provide with the opportunity at a later date to file an injunction lawsuit against during the construction of grocery store.

18. Such a course of action is calculated to unduly and unnecessarily delay and disrupt development in furtherance of 's ongoing efforts to prevent grocery store competition in County. Under such circumstances, the equitable remedy of specific performance to prevent an unjust result is proper. Further, this Court should declare that the settlement is valid.

COUNT II

19. The disputes between and regarding the closing of and drainage through the inch culvert have been settled. However, should this Court find that such settlement cannot be proven by , pleads alternatively as follows:

20. During the parties' settlement negotiations, and agreed that the drainage ditch along the back of 's property was presently inadequate to accommodate the present flow of water from the higher elevations , and of 's property and that the ditch would even be less accommodating after the development was constructed on the higher elevations west of .

21. and also agreed that the solution to the problem was to enlarge the ditch so that it could accommodate the present flow and anticipated flow of water through the culvert. and dispute which party is legally responsible for the cost of enlarging such ditch.

22. By letter dated , , was advised that the plans for enlarging the ditch should be promptly implemented so as to avoid unnecessary damage and inconvenience to all parties (Exhibit "4").

23. Despite request and the parties' agreement that the ditch needs to be enlarged, has refused to commence enlargement of the ditch.

24. refuses to enlarge the ditch now because of its belief that if it does so, it would have no basis upon which it could delay the opening of the grocery store. has indicated that it desires to wait until has made progress on the construction of its grocery store before attempting to obtain an injunction against . wrongfully believes that such course of action will enable it to delay from opening its grocery store.

25. There is an actual dispute between and regarding who is legally responsible for the cost of enlarging the ditch. This legal issue is vital to the controversy and susceptible of authoritative resolution so as to make declaratory relief proper.

26. Such declaratory relief would prevent from purposely delaying resolution of this matter in an attempt to delay construction of development. Alternatively, this Court should declare responsibility for enlarging the ditch as between the parties.

COUNT III

27. has asserted that proposed development with the anticipated increase in water through the inch culvert under will constitute a public nuisance, private nuisance, trespass and unlawful taking.

28. proposed grocery store is located on elevations significantly higher than the elevation of 's grocery store. is developing its property in a reasonable manner. As part of this development, is taking reasonable steps to insure that , as the owner of the lower property, is not inequitably burdened by water.

29. is entitled to a declaration that its actions in reasonably developing its property do not constitute either a public or private nuisance, trespass or unlawful taking of 's property.

30. There is an actual dispute between and regarding rights to develop its property. This issue is vital to the controversy and susceptible of authoritative resolution so as to make declaratory relief proper.

31. Such declaratory relief would prevent from purposely delaying resolution of this matter in an attempt to delay construction of development.

WHEREFORE, requests that this Court enter an order: (1) requiring to specifically perform its obligations under the settlement and declare that such settlement is valid; (2) alternatively, declaring that has no responsibility for the costs of enlarging the ditch behind 's property or declare responsibility for such costs as between the parties; (3) declaring that actions in developing its property do not constitute a public or private nuisance, trespass or unlawful taking; (4) awarding its reasonable costs and attorneys fees in bringing this action; and (5) granting such other relief as this Court deems just and appropriate.

DATED this the day of , 20 .

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for