

FILED
NOV 29 2021
CIRCUIT COURT CLERK
D.C.

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

BALMORAL SHOPPING CENTER, LLC,

Plaintiff,

vs.

No. CF-4731-21, Div VII

CITY OF MEMPHIS, a Municipal,
Corporation, and SHELBY COUNTY
BOARD OF EDUCATION.

JURY DEMANDED

Defendants.

COMPLAINT

COMES NOW, the Plaintiff, Balmoral Shopping Center, (hereinafter "Balmoral" or "the Plaintiff"), by and through its counsel of record, Glassman, Wyatt, Tuttle & Cox, P.C., and files this Complaint for nuisance, writ of mandamus, inverse condemnation, negligence and gross negligence and would respectfully show unto this Honorable Court the following:

PARTIES

1. Plaintiff is a Tennessee corporation with its principal place of business in Germantown, Tennessee.
2. Defendant City of Memphis, Tennessee ("the City") is a municipal corporation and may be served with process at 125 N. Main, Room 336, Memphis, TN 38103.
3. Defendant Shelby County Board of Education ("the Board") is a duly appointed administrative body and may be served with process at 160 S Hollywood St #324, Memphis, TN 38112.

JURISDICTION

4. Venue is properly situated in Shelby County, Tennessee, pursuant to Tenn. Code Ann. § 20–4–101 et. seq, as the events giving rise to this Complaint occurred in Shelby County, Tennessee.

5. This Court has general jurisdiction of this matter pursuant to Tenn. Code Ann. § 16–10–101 et. seq.

FACTS

6. Plaintiff owns the Balmoral Shopping Center located at 6100 Quince Rd, Memphis, TN 38119 (“the Property”). See aerial photo marked as “Exhibit 1.”

7. Ridgeway High School is located at 2009 Ridgeway Rd, Memphis, TN 38119. See Exhibit 1.

8. Balmoral Shopping Center is located .1 miles from Ridgeway High School. See Exhibit 1.

9. For several years, twice a day, one hundred eighty days a year, foot and vehicular traffic from Ridgeway High School has poured into the Balmoral Shopping Center.

10. During these times, parents picking up children from Ridgeway High School park their vehicles in the Balmoral Shopping Center parking lot blocking other traffic, driveways, and parking spaces.

11. The pickup/drop off traffic from Ridgeway High School causes congestion in the Balmoral Shopping Center parking lot, such that customers, emergency vehicles, and/or any other persons wanting to enter the property are unable or troubled to do so. With the cars present to pickup or drop off on the property of the plaintiff against the direction of the property owner,

substantial number of school young adults enter on the plaintiff's property to meet their transportation.

12. Plaintiff, in an attempt to deter or reduce the damages being suffered, has erected fencing around parts of the property to prevent loitering and has put up signage saying, "NO STUDENT DROP OFF OR PICK-UP" in numerous places upon the property. The Shelby County District Attorney General has provided signage for the plaintiff to place on the property to deter or prohibit the actions complained of herein with no effect.



13. Plaintiff has hired security companies to police access to the property and coordinate the flow of traffic to no avail. Without the support of the City of Memphis police, such actions are to no avail. At this point security guard companies can offer no assistance to the plaintiff and indicate they can offer no solution as long as the traffic flow of people and cars is not deterred.

14. All of Plaintiff's attempts to curb the foot and vehicular traffic from Ridgeway High School have been unsuccessful causing daily ongoing damage to the plaintiff directly and indirectly and even to the point of a member of the property management team for the plaintiff being arrested for attempting to record license plate numbers of cars trespassing on the property at issue. There have been numerous fights on the Property involving students loitering/waiting for pickup or being dropped off for school. Tenants of Balmoral Shopping Center have had confrontations with parents and students. The students and cars "take over" the shopping center and the parking lot.



15. Memphis Police Department has been contacted many many times regarding the traffic and trespassing, but has now stopped coming to the Property, despite calls from Plaintiff and the tenants of the Property.

16. Plaintiff has attempted for years to work with officials from the City and the Board to deter and or stop the trespassing traffic and students upon their property to no avail and with no meaningful effort by the defendants. The defendant Board representative, the Principal of the Ridgeway High School, refuses to sit and discuss the situation and try to work out a solution if the plaintiff attends with a lawyer. One such meeting with the Principal and the Shelby County Attorney General was set and canceled by the Board and at present same refuses to meet and discuss this situation like rational adults.

17. Simple measures by the defendants could deter and/or prohibit the flow of students and automobiles upon the property at issue.

18. Defendants City and the Board have allowed the unmitigated overflow of foot and vehicular traffic to continue onto the Property at issue and refused to use personnel on the school property to deter and or prohibit the flow of students and automobiles.

19. Ridgeway High School contains more than ample space with egress and ingress to allow for the drop off and/or pick-up of school children. See Exhibit 1.

20. Defendants City and the Board refuse to use school property for such purposes and instead allow the continued overflow of traffic onto the Property at issue causing continued damage to the plaintiff even as of the filing of this complaint. Within days of filing of this complaint there was a major fight on the subject property in front of the Little Caesar's tenant. The person who was ganged up upon by other students and suffered a "beat down" has threatened to return and use a weapon to damage the tenants and their property.

21. Plaintiff has been damaged by the City and the Board's intentional actions and/or inaction.

22. Plaintiff has been unable to attract new tenants and the Property's market value has decreased due to the failure to act and/or neglect on the part of the defendants.

CAUSES OF ACTION

I. NUISANCE

23. Plaintiff reincorporates the allegations contained in paragraphs 1-22 as though set forth verbatim herein.

24. Defendant Board owes a duty to Plaintiff to use Defendant Board's property in a way that does not disturb the ordinary and free use (quiet possession) of Plaintiff's property.

25. Defendant Board has breached this duty.

26. Such breach is a direct and proximate cause of Plaintiff's injuries/damages as set forth herein, including but not limited to the inability to attract new tenants, make improvements to the Property, and the decrease in the Property's market value.

II. INVERSE CONDEMNATION

27. Plaintiff reincorporates the allegations contained in paragraphs 1-26 as though set forth verbatim herein.

28. Plaintiff has suffered a direct and substantial interference with the beneficial use and enjoyment of the Balmoral Shopping Center (quiet possession).

29. The interference is repeated and not just occasional.

30. The interference with Balmoral Shopping Center has been caused by the intentional actions and/or inactions of the Defendant(s) City and Board.

31. The interference with Balmoral Shopping Center has resulted in a substantial loss of market value and rentability for/of the Property.

III. WRIT OF MANDAMUS

32. Plaintiff reincorporates the allegations contained in paragraphs 1-31 as though set forth verbatim herein.

33. The Defendants City and Board owe the Plaintiff a ministerial duty to provide for the safe and orderly drop off and pick up of students at Ridgeway High School, who are required by law to attend school in the State of Tennessee (quiet possession).

34. Defendants have breached this duty.

35. Defendants' breach is a direct and proximate cause of Plaintiff's injuries and damages as set forth herein, including but not limited to the inability to attract new tenants, make improvements to the Property and the decrease in the Property's market value.

IV. NEGLIGENCE

36. Plaintiff reincorporates the allegations contained in paragraphs 1-35 as though set forth verbatim herein.

37. Defendants City and Board owe the Plaintiff a duty to provide for the safe and orderly drop off and pick up of students at Ridgeway High School, who are required by law to attend school in the State of Tennessee, so that the drop off and pick up of students does not occur in an unsafe and disorderly manner on Plaintiff's private property (quiet possession).

38. Defendants' failure to provide for the safe and orderly drop off and pick up of students at Ridgeway High School, has created a dangerous condition, which has damaged the Plaintiff as described herein.

39. It was reasonably foreseeable that the ongoing continuing dangerous condition created by the Defendants' failure to provide for the safe and orderly drop off and pick up of students at Ridgeway High School would harm neighboring businesses, especially Plaintiff's.

40. Defendants had notice of the dangerous and defective condition described herein on an ongoing continuing basis for an extended period of time.

41. But for the dangerous and defective condition described herein, Plaintiff would not have suffered the harm described herein.

V. GROSS NEGLIGENCE

42. Plaintiff reincorporates the allegations contained in paragraphs 1-41 as though set forth verbatim herein.

43. Defendants' knowledge of the ongoing continuing dangerous condition created by their intentional failure to provide for the safe and orderly drop off and pick up of students at Ridgeway High School, their intentional refusal to take any steps to deter such action and their intentional and knowing failure to remediate the condition after repeated notices (even to the point of the Shelby County Attorney General asking to place signage for that office on the property) demonstrates conscious indifference for the consequences and a reckless disregard for Plaintiff's right to the quiet possession/ operation of its commercial property, free from trespass.

44. Defendants' breach of their duty to Plaintiff to provide for the safe and orderly drop off and pick up of students at Ridgeway High School is and continues to be willful and reckless, as Defendants know and have known of the consequences for Plaintiff, as described herein.

45. The reckless, intentional and grossly negligent acts and omissions by Defendants in failing to provide for the safe and orderly drop off and pick up of students at Ridgeway High School entitles Plaintiff to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, the Plaintiff, Balmoral Shopping Center, respectfully prays:

1. That this court issue a Temporary and Permanent Injunction prohibiting the ongoing continued intentional acts of the Defendants that have and are causing continued damages as outlined herein.
2. That Plaintiff be awarded compensatory damages in the amount of Five Million Dollars (\$5,000,000.00);
3. That Plaintiff be awarded punitive damages in an amount to be determined;
4. That Plaintiff be awarded post-judgment interest as allowed by law;
5. That a jury be empaneled to try the issues when joined; and
6. That Plaintiff be awarded such further relief as the Court may deem just and equitable.

Respectfully submitted,

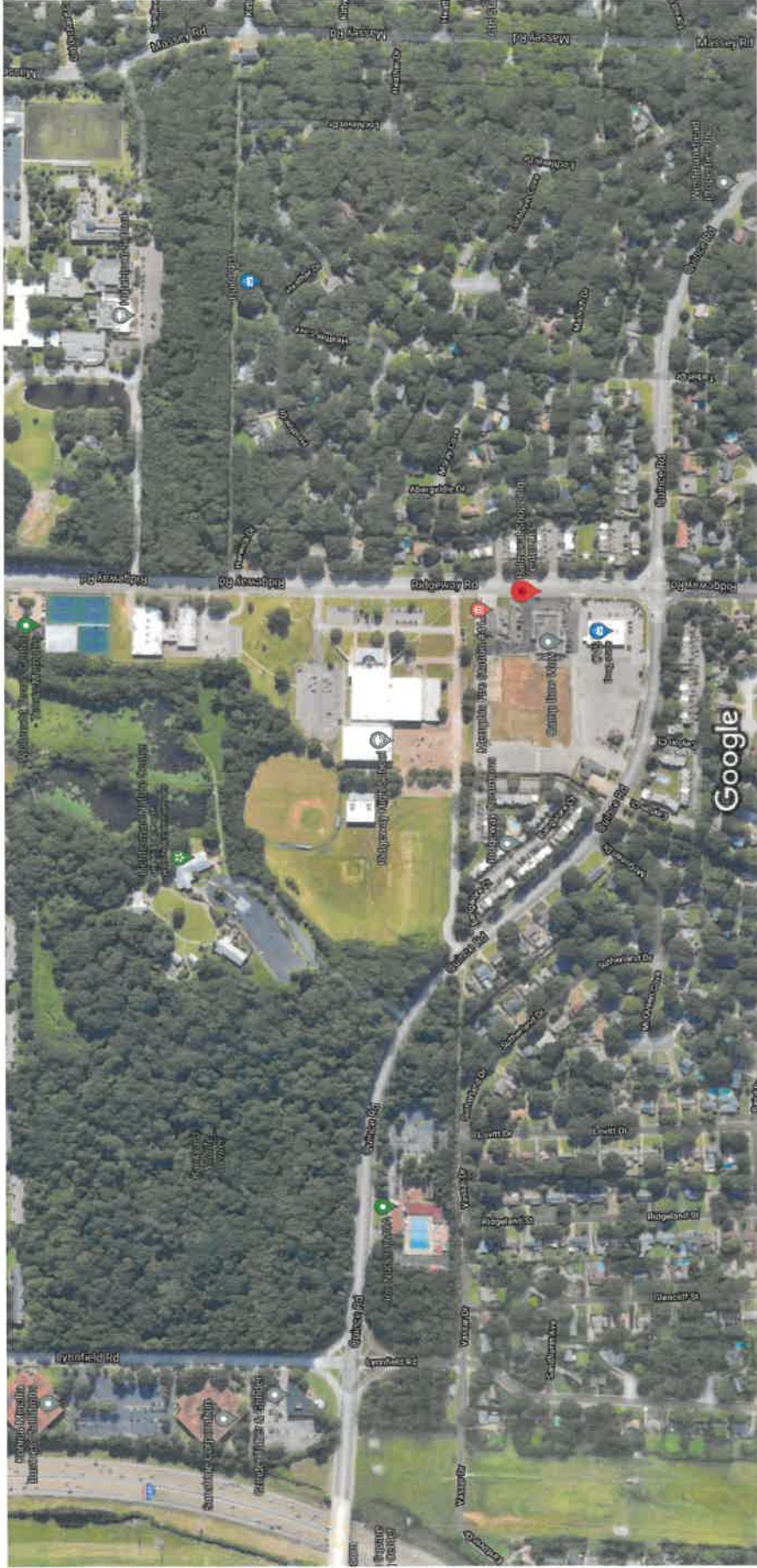
GLASSMAN, WYATT, TUTTLE & COX P.C.

By: /s/ Richard Glassman

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EXHIBIT 1

Google Maps Balmoral Shopping Center LLC



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