

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT ARKANSAS
FILED

MAR 30 2015

BY CHRIS R. JOHNSON, CLERK
DEPUTY CLERK
PLAINTIFF

CARL JOHNSON and
JUSTIN JOHNSON

VS.

CASE NO. 15-4033

CITY OF NASHVILLE, A MUNICIPAL CORPORATION;
JERRY HARWEL, FIRE MARSHAL; TOMCO, INC.;
MIKE REESE, FORMER MAYOR OF THE CITY OF
NASHVILLE; BILLY RAY JONES, MAYOR OF CITY
OF NASHVILLE, FREDDY BROWN, MATT SMITH,
JACKIE HARWELL, NICK DAVIS, MONICA CLARK,
VIVIAN WRIGHT, JIMMIE LOU KIRKPATRICK, KAY
GATHRIGHT, JAMES PARKER, CAROL MITCHELL,
ANDY ANDERSON, MIKE MILUM, IN THEIR OFFICIAL
CAPACITY AS CITY COUNSEL MEMBERS OF CITY OF
NASHVILLE

DEFENDANTS

COMPLAINT

Comes Plaintiffs, Carl Johnson and Justin Johnson (“Plaintiffs” or “Johnsons”), by and through their attorneys, Hosto & Buchan, PLLC, for their Complaint against Defendants, and states:

Parties

1. Plaintiff, Carl Johnson, is a resident of the state of Arizona who has a one-half ownership interest in the property located at 216 N. Main Street in Nashville, Arkansas. Mr. Johnson is owner and proprietor of a business formerly known as “Collectible Corner” which was, before the events referred to herein, located at 216 N. Main Street, Nashville, Arkansas.

2. Plaintiff, Justin Johnson, is an adult resident of the [state] who has a one-half ownership interest in the property located at 216 N. Main Street in Nashville, Arkansas.

3. Defendant, City of Nashville (the “City”), is a political subdivision of the state of Arkansas. The City is a municipal corporation organized and existing under the laws of the state of Arkansas and is located in Howard County.

4. Defendant, Jerry Harwell, is the Fire Chief and Fire Marshall of the City of Nashville.

5. Defendant, TOMCO, Inc. is and has been at all times stated herein, a corporation doing business in Arkansas located in Howard County, with its registered agent of service being George Steele, 102 North Main, Nashville, Arkansas.

6. Defendant, Bill Ray Jones, is the duly elected Mayor of the City of Nashville.

7. Defendant, Michael Reese, is the immediate predecessor of Defendant Jones as Mayor of the City of Nashville.

8. Defendants, Freddy Brown, Matt Smith, Nick Davis, Monica Clark, Jackie Harwell, Vivian Wright, Jimmie Lou Kirkpatrick, Kay Gathright, James Parker, Carol Mitchell, Andy Anderson, and Mike Milum, were elected City Counsel of the City of Nashville at the time of the events described in the Complaint.

9. All Defendants were, at the time of the occurrences described herein, acting under color of authority of Arkansas law.

Jurisdiction

10. Jurisdiction is conferred by the First, Second, Fourth and Fifth Amendment to the Constitution of the United States, as made applicable by the Fourteenth Amendment thereto and 42 U.S.C. § 1983 and 28 U.S.C. § 1343.

11. This is also a proceeding for a declaratory judgment and injunctive relieve pursuant to the provisions of 28 U.S.C. §§ 2201 and 2202 to determine the legal rights and relations of and between respective parties.

12. The conditions complained of herein invoke customs, policies or procedures of the City Government of Nashville Arkansas which affect ownership of and the quiet enjoyment of real and personal property by the citizens of the city and are, in absence of relief sought herein, capable of repetition yet evading review and thus necessitating exercise of declaratory and injunctive power of this Court.

Factual Background

13. Since on or about November 2008, Plaintiff, Justin Johnson, has owned the following described property: Lot 18 and South 5 feet of Lot 17 of Block 5 of Nashville, Howard County, Arkansas. The street address of the property was 216 N. Main Street, Nashville, Arkansas.

14. Since on or about November 2008, Plaintiff, Carl Johnson, has operated Collectible Corner at 216 North Main Street located at 216 N. Main Street, Nashville Arkansas. Mr. Johnson also owned a one-half interest in the real property described in paragraph 13.

15. At approximately 4:15 p.m. on August 26, 2010, a fire started at an area in the rear of Humble Mercantile building located at 214 N. Main Street, Nashville, Arkansas.

16. It took the Nashville Volunteer Fire Department, with the assistance of ten volunteer fire departments from neighboring towns, approximately five hours to extinguish the fire.

17. The fire spread to Asian Image Salon at 210 N. Main Street.

18. The fire spread to Plaintiffs' property at 214 N. Main Street, but Plaintiffs' property only suffered minor fire damage.

19. The Nashville Fire Chief and Fire Marshall, Jerry Harwell, made the decision, pursuant to a standing policy or custom established by Defendant City of Nashville, to demolish Plaintiffs' property without notice to Plaintiffs or without determining the structural soundness of the Plaintiffs' building, causing Plaintiffs' building and inventory of antiques and collectibles within the building to be destroyed.

20. Christian Construction Company inspected the contents of the building after demolition and concluded that only 15% of the items contained smoke or water damage.

21. Plaintiffs were away from their home in San Antonio, Texas when the fire occurred. After being informed of the fire, Plaintiff Carl Johnson contacted the Nashville Fire Department and was assured that his building would not be demolished.

22. During the time the fire was being extinguished in the adjacent building and immediately thereafter, family and friends of Plaintiffs were prepared to cover the store windows with plywood, and appealed to the fire department officials to allow recovery of the Plaintiffs' inventory prior to demolition.

23. Plaintiffs' family and friends were told by the fire officials not to interfere and to clear away. They were not able to salvage any items from the store before Fire Chief/Marshall Harwell ordered the walls of the building to be pulled down by Defendant TOMCO, Inc. Defendant City of Nashville did not inspect the inside of the building or attempt to correct any conditions short of demolition.

Section 1983 Claim

24. Plaintiffs incorporate by reference the allegations in Paragraphs 1 through 23 of this Complaint.

25. Pursuant to 42 U.S.C. § 1983, the above stated civil rights violations are contrary to Plaintiffs' due process and equal protection rights, in accordance with the Fifth and Fourteenth Amendments to the United States Constitution, and to Plaintiffs' right against "unreasonable searches and seizure" under the Fourth Amendment, and are actionable against Defendants, individually, jointly and severally, acting under color of law.

26. As a proximate result of the violation of Plaintiffs' constitutional rights, Plaintiffs have received injuries and have been damaged as set forth below.

27. At the time Plaintiffs' building was razed, firefighters had extinguished the fire and the building did not constitute a threat to public safety. Defendant City of Nashville, acting through the separate Defendants who implemented the policies and customs, abused their discretion and made the decision complained of, was deliberately indifferent to the Four, Fifth, and Fourteen Amendment rights of Plaintiffs including, but not limited to the Right to Due Process, in ordering the demolition of Plaintiffs' building.

28. The demolition of Plaintiffs' building and the destruction of the contents of the building was not necessary to protect the public safety, health, or welfare. The walls of Plaintiffs' building were structurally stable at the time of the demolition of the building, and just 15% of the contents of the Plaintiffs' building sustained water or smoke damage. Witnesses at the scene attempted to explain to Defendant Jerry Harwell that the building was structurally sound and all it needed was a new roof. However, in his rush to demolish the building,

Defendant Jerry Harwell needlessly prevented persons at the scene from boarding up the windows and safeguarding Plaintiffs' property outside and inside the building.

29. Defendants' rush decision to demolish Plaintiffs' building violated Plaintiffs' right to procedural due process, contrary to the 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendment. Defendants' actions were directly contrary to the assurance given by both police and fire officials to Plaintiff Carl Johnson that his building would not be demolished. After these assurances, Defendant City of Nashville made no attempt to communicate with Plaintiffs prior to the demolition.

30. Pursuant to 42 U.S.C. § 1983, Defendant City of Nashville's demolition of Plaintiffs' building and the destruction of the contents of that building, constituted a "seizure" of their property within the meaning of the Fourth and Fourteenth Amendment. Defendant City of Nashville's "seizure" was the result of Defendant Jerry Harwell's unreasonable authorization of the building's removal after the emergency condition had passed.

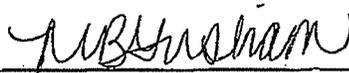
31. Defendant City of Nashville violated Plaintiffs' right to equal protection of the laws under 42 U.S.C. § 1983 and the Fourteenth Amendment. By authorizing the removal of Plaintiffs' property after the impending peril had passed, Defendant City of Nashville was deliberately indifferent and perpetuated a policy likely to injure citizens similarly situated in the future.

31. Plaintiff demands a jury trial on all issues of law.

WHEREFORE, Plaintiffs request a Declaratory Judgment that the demolition of Plaintiffs' building and destruction of the building's contents without prior notice and an opportunity to be heard is a violation of due process and equal protection and was deliberately indifferent in violation to 42 U.S.C. § 983 and the Fifth and Fourteenth Amendments and

constitutes a "seizure" with the meaning of the Fourth Amendment; for an Injunction Prohibiting future perpetuation of the Policies and Customs complained of; Plaintiffs further seek judgment against Defendants, jointly and severally, in the amount of \$224,985.00 as the replacement costs of the building and \$927,320.00 as the fair market value of Plaintiffs' inventory; for attorney's fees and costs and for such other relief as the Court deems proper.

Carl Johnson and Justin Johnson

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