

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS
CIVIL DIVISION 3

2018 JUL -9 PM 3:43
POPE COUNTY AR
DIANE M. BOUT
CIRCUIT CLERK
PLAINTIFF

FILED

ROZAN DOLLAR, Individually;

vs. CASE NO. 58-CIV-18-4405

**PILGRIM'S PRIDE CORPORATION individually and d/b/a
PREMIUM PROTEIN PRODUCTS, ATKINS TRUCKING
INTERNATIONAL, INC., EDMOND JOE PEAK, JR.
individually and d/b/a Peak Crane,
EDMOND JOE PEAK, III, TAMMY PEAK,
AND JOHN DOES 1-9 and JANE DOES 1-4.**

DEFENDANTS

COMPLAINT

Comes now Rozan Dollar, individually, and brings this Complaint against the Defendants herein for illegal dumping of solid waste on, and damages to her ownership interest in real property located in Pope County, Arkansas. This action is brought pursuant to Ark. Code Ann. 8-6-206, Ark. Code Ann. 8-6-505, Ark Code Ann. 16-118-107(a)(1), and the doctrines of negligence, trespass, waste, and civil conspiracy. Based on the forgoing, Plaintiff states as follows:

PARTIES JURISDICTION AND VENUE

1. This complaint deals with the outrageous and illegal dumping of solid waste on,

and damages to, real property owned by the Plaintiff which is located in Sections 12 and 11, Township 6 North, Range 19 West, Pope County, Arkansas. The two distinct dump sites are situated on contiguous properties hereafter referred to as Site #2 and Site #1. Site #2 is situated on approximately 445 acres to which the Estate of Virginia Peak holds absolute fee simple title. Site #1 is situated on approximately 80 acres in which the Estate of Virginia Peak and Plaintiff Rozan Dollar each own an undivided 20% interest and in which Separate Defendant Edmond Joe Peak Jr. owns a 20% undivided interest.

2. That Virginia Peak is a 96 year old well-known citizen of Pope County Arkansas who, on the basis of advanced dementia, has been under the care of various guardians appointed by the Circuit Court of Pope County, Probate Division, since the filing of this action. Plaintiff Rozan Dollar previously served as the Ward's guardian of the person and estate, continues to serve as her guardian of the person, and is a co-owner of Site #1 in her individual capacity. Clay McCall, Esq., a respected local attorney practicing in Pope County, Arkansas, was substituted by the Probate Court as guardian of the Ward's estate.

3. That upon information and belief, Defendant Pilgrim's Pride Corporation (hereafter "Pilgrim's Pride") is headquartered in Colorado. It is a foreign corporation licensed to do business in the State of Arkansas, specifically as relevant to the instant case, in Russellville, Pope County, Arkansas. At the time of the alleged events in this complaint occurred, Pilgrim's Pride owned and operated the Premium Protein Products plant in Russellville (locally known, and hereafter referred to as, "the Rendering Plant"). Pilgrim's Pride consented and/or conspired with Defendants to divert and dump un-rendered and defectively rendered solid animal waste and inorganic refuse to/on the Rozan Dollar's property from the Rendering Plant and to cover up

that conduct during the course of a subsequent investigation by ADEQ. Pilgrim's Pride may be served with summons upon its registered agent at Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, AR 72201.

4. The Defendant, Atkins Trucking International, Inc. (Atkins Trucking) is an Arkansas corporation. That upon information and belief, Atkins Trucking International, Inc., hauled the un-rendered solid animal and inorganic waste from the Rendering Plant to the Plaintiff's real property. Atkins Trucking may be served with summons upon its registered agent Robbie Schmoll at 202 SE 6th Street, Atkins, AR 72823.

5. That upon information and belief, separate Defendant, Edmond Joe Peak, Jr., is an Arkansas resident domiciled in Pope County, Arkansas. He may be served with summons at 6101 SR 105 S., Atkins, AR 72823. Defendant, Edmond Joe Peak, Jr., is a joint owner of real property (Site #1) in Pope County, Arkansas with the Rozan Dollar. That upon information and belief, the Defendant Edmond Joe Peak, Jr., entered into an agreement with Pilgrim's Pride at the Rendering Plant, located in Pope County to receive solid waste from the facility. Further, Edmond Joe Peak, Jr. released or directed the release of un-rendered and/or defectively rendered solid waste on the Plaintiff Dollar's property using the equipment of his wholly owned d/b/a, Peak Crane, and did so both directly and through the permissive use of Peak Crane's equipment for profit and/or in the normal course of Peak Crane's business, by separate defendants Edmond Joe Peak, III and Tammy Peak. Defendant, Edmond Joe Peak, Jr., acted in concert and participation with all Defendants to illegally release or direct the release of un-rendered and defectively rendered solid waste on Site 1.

6. That upon information and belief, separate Defendant, Edmond Joe Peak, III, is an

Arkansas Resident domiciled in Pope County, Arkansas. Defendant, Edmond Joe Peak, III, may be served with summons at 6101 SR 105 S., Atkins, AR 72823. Defendant, Edmond Joe Peak, III, acted in concert and participation with all Defendants, to release or direct the release of un-rendered and defectively rendered solid animal waste on Site 1 and did so directly and through the permissive use of Peak Crane's equipment for profit and/or in the normal course of Peak Crane's business.

7. That upon information and belief, separate Defendant, Tammy Peak, is an Arkansas Resident domiciled in Pope County, Arkansas. Defendant, Tammy Peak, may be served with summons at 6101 SR 105 S., Atkins, AR 72823. Defendant, Tammy Peak, acted in concert and participation with all Defendants to release or direct the release of un-rendered and defectively rendered solid waste on Site 1 as well as to attempt to cover up the forgoing during a subsequent investigation by ADEQ. Defendant Tammy Peak conducted such activity both directly (and on behalf of her employers, Defendant Pilgrims and its successors) and through the permissive use of Peak Crane's equipment for Peak Crane's profit and/or in the normal course of Peak Crane's business. At all times relevant to this complaint Tammy Peak was or is an employee of the Rendering Plant both under the ownership of Defendant Pilgrim's Pride Corporation and its successors. All acts set forth herein by Tammy Peak were carried out within the course and scope of her employment at the Rendering Plant under Defendant Pilgrims and its successors.

8. Defendants John Does 1 and 2 are additional officers, agents and/or representatives of Defendant Atkins Trucking International Inc., but whose identity are not specifically known at this time, who engaged in illegal dumping of solid waste material on the

Plaintiff's real property.

9. John Doe 3 is alleged to be the owner of the solid waste which was transported by Defendant Atkins International Trucking, Inc. and dumped on Plaintiff's property

10. Defendants John Does 4-9 are additional individuals or entities directly or indirectly engaged in the scheme to transport and dump solid waste and debris on an unpermitted site which was owned by the Plaintiff.

11. Defendants Jane Does 1-4, whose identities are not known at this time, are additional agents, representatives, and/or employees of Pilgrim's Pride or its affiliates and/or Edmond Joe Peak, Jr. who directed, communicated, paid for and/or facilitated the Defendants Atkins Trucking, Edmond Joe Peak, Jr., Tammy Peak, and Edmond Joe Peak, III, in the dumping of un-rendered or defectively rendered solid waste on the Plaintiff's real property.

12. That this Court has subject matter jurisdiction over this action pursuant to Arkansas law, including without limitation Ark. Code Ann. 16-13-201.

13. That this Court has personal jurisdiction over Atkins Trucking International Inc., Edmond Joe Peak, Jr., Tammy Peak, Edmond Joe Peak, III, and Pilgrim's Pride Corporation or its parent company because they reside in Arkansas and/or regularly do business in Pope County, Arkansas, including the business at issue in this lawsuit. Further, virtually all of the material conduct giving rise to liability alleged herein, as well as the damages directly and proximately flowing therefrom, occurred in Pope County, Arkansas.

FACTS

14. Plaintiff adopts and restates the allegations contained in paragraphs 1-13 as if stated verbatim.

15. This Complaint involves the Defendants illegal dumping of solid animal waste, refuse, and inorganic material on the real property owned by the Plaintiff.

16. During the years of 2014 through 2015, Defendant Atkins Trucking obtained animal waste including, but not limited to: chicken bones, feathers, skin, carcasses, and other portions of rotting, diseased, and/or dead animals from or at the direction of Defendants Pilgrim's Pride and their Rendering Plant in Russellville Arkansas. These were parts of the animals that were not rendered or otherwise processed after the death of such animals together with other inorganic debris such as rubber, plastic, metal, and chains.

17. The Defendants Atkins International Trucking, Inc., Edmond Joe Peak, Jr., Tammy Peak, and Edmond Joe Peak, III, obtained such animal matter and debris through and from, or as a diversion from, the Rendering Plant in Russellville, Pope County, Arkansas and at the direction of Defendant Pilgrims.

18. Defendant Atkins Trucking, was instructed by Defendants Edmond Joe Peak, Jr., Tammy Peak, Edmond Joe Peak, III, and Pilgrim's Pride to haul such solid waste to the Plaintiff's property in order to dump the animal waste and debris on the real property owned by the Plaintiff, despite actual knowledge that Defendants did not hold a permit to do so.

19. That upon information and belief, Defendants Tammy Peak, Edmond Joe Peak, Jr., Edmond Joe Peak, III, and Atkins Trucking conspired with Defendant Pilgrim's Pride to bring material from the Rendering Plant to land owned by the Plaintiff for disposal thereon. Further, the Defendants Tammy Peak, Edmond Joe Peak, Jr. (both individually and on behalf of his d/b/a Peak Crane), Edmond Joe Peak, III, and Atkins Trucking received monies, payments or other remuneration from both Pilgrim's Pride, as well as one and other, as part of their concerted

and conspired efforts to profit from the use of the Plaintiff's land as an unpermitted and illegal dumping site.

20. That upon information and belief, Defendant Pilgrim's Pride, knew the character, content, and nature of the solid waste it was distributing and/or diverting from the Rendering Plant, to be dumped by Defendants Tammy Peak, Edmond Joe Peak, Jr. (both individually and on behalf of his d/b/a Peak Crane), Atkins Trucking, and Edmond Joe Peak, III on the Plaintiff's land. *Pilgrim's Pride and all other Defendants were fully aware that this dumping was blatantly illegal, that it would drastically impair the use and enjoyment of the property, and that Pilgrim's Pride did not possess a permit to engage in this illegal dumping on Plaintiff's property, much less have the Plaintiff's permission. Indeed, this illegal dumping was orchestrated occurred during a period when the Rendering Plant was receiving dozens of complaints from the Arkansas Department of Environmental Quality, the City of Russellville, and countless private citizens regarding its conduct...and yet Pilgrim's Pride did it anyway as opposed to facing the consequences of their own inability to safely, responsibly, and legally operate the Rendering Plant in Russellville and Pope County.*

21. Defendant's Pilgrim's Pride, Atkins Trucking, Tammy Peak, Edmond Joe Peak, Jr. (both individually and on behalf of his d/b/a Peak Crane), and Edmond Joe Peak, III, knew or should have known the content and nature of the material they dumped on the Plaintiff's property was unpermitted, unwelcome, and subject to removal as the illegal dumping of solid waste.

22. That upon information and belief, Defendant Pilgrim's Pride, Tammy Peak, Edmond Joe Peak, Jr. (both individually and on behalf of his d/b/a Peak Crane), and Edmond Joe

Peak, III, arranged with Defendant Atkins Trucking to distribute the material from the Rendering Plant to the real property owned by the Plaintiffs. Neither the Ward, Plaintiff Dollar, nor the Guardian of the Ward ever granted, nor would any sane person ever grant, Defendants permission to the dump the putrid solid waste in question on the Plaintiff's real property under the circumstances at issue.

23. That upon information and belief, once the material from the Rendering Plant was delivered, Defendants Tammy Peak, Edmond Joe Peak, Jr. (both individually and on behalf of his d/b/a Peak Crane), and/or Edmond Joe Peak, III, removed the material from the truck, owned and operated by the Defendant Atkins Trucking, and released it on the land owned by the Plaintiff.

24. That upon information and belief, all Defendants acted in concert with regard to the dumping of the un-rendered solid animal waste on the property of the Plaintiff.

25. The Defendants knew or should have known that the real property owned by the Plaintiff was not a permitted solid waste disposal site for the solid waste in question.

26. The Defendants did not have, and knew they did not have, a permit from the Arkansas Department of Environmental Quality (Hereinafter ADEQ) to dump said waste on the Plaintiff's property.

27. Defendants knew or should have known that they did not have authority from the State of Arkansas, Pope County, Arkansas, the Ward, the Guardian, or Plaintiff Dollar to allow the Defendants to illegally dump solid waste on an un-permitted site.

28. Upon information and belief, all conduct of Tammy Peak which gives rise to her liability was conducted within the course and scope of her employment at the Rendering Plant

with Defendant Pilgrim's Pride and her continued employment with its successor.

29. Defendants illegally dumped a minimum of 6,170 tons of solid waste on Site #1 and a minimum of 2887 tons of solid waste on Site #2.

30. Such waste material has caused damage to the real property by polluting the real property with excess concentrations of nitrogen and ammonia together with inorganic debris, and inhibiting and in many cases precluding growth altogether as is abundantly obvious even to the naked eye. Perhaps most damningly, the noxious odors generated by Defendants' illegal dumping were *catastrophic* at the time of the dumping and even now, over three years later, turning over a small shovel-full of dirt in many areas of the dump sites *continues to produce highly noxious odors*.

31. The removal of the illegally dumped material to a permitted landfill, and its replacement with clean fill dirt will require a qualified contractor and Plaintiff Dollar is entitled to cost necessary to affect that removal and replacement on Site 1. Accordingly, Plaintiff Dollar hereby asserts her right to have this illegally dumped solid waste removed and demands such damages for the cost of removal against Defendants.

32. In addition, even after and in addition to the costs of removal set forth above, the Defendants have damaged the fair market value of the real property based upon Plaintiff's ongoing obligation to disclose its use as an illegal dumping site for the Rendering Plant. Because of the perceived threat of a potential environmental hazard and the toxic reputation and stigma attached to the Rendering Plant and its refuse, the fair market value has decreased on such real property, even upon complete removal of the illegally dumped waste, and Plaintiff Dollar claims damages in an amount equal to this diminution in sale value in an amount to be proved at

trial.

33. That following and/or during the illegal dumping giving rise to this Complaint and damages set forth above, the Defendants were notified by the Arkansas Department of Environmental Quality (Herein after ADEQ) that they were in violation Ark. Code Ann. 8-6-205 for illegally dumping solid waste on an unpermitted dump site on the Ward's property.

34. That the Defendants admitted to ADEQ, both directly and through their agent, ECCI, that they had dumped solid waste on the Plaintiff's property without a permit in response to ADEQ's notification.

35. In responding to ADEQ, Defendants falsely (and as set forth below criminally) represented that all that all they had illegally dumped on the Plaintiff's property was a limited amount of "out-of-spec meal" (i.e. post-rendered product not suitable for the Rendering Plant's buyers). Upon information and belief, this was an intentional falsehood. This conduct by Defendants, both individually and in concert, meets the elements of host of felonies under Arkansas criminal and civil statutory law.

COUNT I-TRESPASS

AGAINST DEFENDANTS PILGRIMS PRIDE, ATKINS TRUCKING, TAMMY PEAK, AND EDMOND JOE PEAK, III AS TO SITE 1.

36. Plaintiffs adopt and restates the allegations contained in all other paragraphs herein as if stated verbatim.

37. That Defendants, as specifically defined under this Count, physically invaded Plaintiffs' real property and dumped unpermitted solid waste thereon without Plaintiff's permission, consent, or any other legal authority.

38. That as a direct and proximate result of the trespass, Plaintiff sustained damages

in an amount to be proven at trial.

COUNT II-NEGLIGENCE

**AGAINST DEFENDANTS PILGRIMS PRIDE, ATKINS TRUCKING, TAMMY PEAK,
AND EDMOND JOE PEAK, III AS TO SITE 1.**

39. Plaintiffs adopt and restates the allegations contained in all other paragraphs herein as if stated verbatim.

40. That Defendants, as specifically defined under this Count, owed a duty to Plaintiff and Plaintiffs property to use ordinary care and follow applicable law in their disposal of solid waste material.

41. That Defendants violated said duty of care and were negligent, by dumping solid waste on Plaintiffs property.

42. That Defendants knew or should have known, that they did not have permission to dump said solid waste on Plaintiff's real property; that Plaintiff's property was not a permitted dump site; and that the dumping would cause damage to the real property.

43. That as a direct and proximate result of negligence of the Defendants, Plaintiff sustained damages in an amount to be proven at trial. .

COUNT III-VIOLATION OF THE ARKANSAS SOLID WASTE MANAGEMENT ACT

AGAINST ALL DEFENDANTS AS TO SITE 1

44. Plaintiff adopts and restates the allegations contained in all other paragraphs herein as if stated verbatim.

45. That there was in force and effect at the time of the illegal dumping of solid waste on Plaintiff's property the Arkansas Solid Waste Management Act. Ark. Code Ann. 8-6-201, et. seq.

46. That the Arkansas Solid Waste Management Act provides a private right of action for any person adversely affected by a violation of the act. Ark. Code Ann. 8-6-206.

47. That said act states it shall be illegal for any person: “(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the department” Ark. Code Ann. 8-6-205.

48. That Plaintiff’s real property was not a permitted solid waste disposal site.

49. That Defendants, as specifically defined under this Count, did not have Plaintiff’s consent to use Plaintiff’s property for a solid waste disposal site.

50. That Defendants violated the ASWMA as a matter of law by dumping solid waste as defined by the statute on Plaintiff’s property without a permit.

51. That as a direct and proximate result of all Defendants’ dumping of solid waste on Plaintiff’s real property, the Plaintiff Rozan Dollar sustained damages to her property in an amount to be proven at trial.

COUNT IV - CIVIL CONSPIRACY

AGAINST ALL DEFENDANTS AS TO SITE 1

52. Plaintiff adopts and restates the allegations contained in all other paragraphs herein as *if stated verbatim*.

53. Each of the Defendants collectively and intentionally combined and cooperated to accomplish the unlawful and/or immoral acts set forth herein which resulted in injury to Plaintiff and her property.

54. Moreover, irrespective of the illegal and immoral nature of the end-results of Defendants activities set forth herein, each of the Defendants collectively and intentionally

combined and cooperated to accomplish those end-results by unlawful, oppressive or immoral means which resulted in injury to Plaintiff and her property.

COUNT V - CRIMINAL FELONY LIABILITY

AGAINST ALL DEFENDANTS AS TO SITE 1

55. Plaintiff adopts and restates the allegations contained in all other paragraphs herein as if stated verbatim.

56. Under Arkansas law, any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.

57. The burden of proof for showing conduct that constituted a felony is a preponderance of the evidence and the person who is injured or damaged is entitled to recover costs and attorney's fees for the prosecution of the action.

58. In the case at bar, Defendants' outrageous conduct as set forth herein, and as will be extensively and publicly documented and proven at trial, constitutes a host of felonies under Arkansas law including but not limited to:

(i) Through the course of activities prohibited by [The Arkansas Solid Waste Act] purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property. The same constituting a felony under **Ark. Code Ann. § 8-6-204 (2)(a)(ii)**;

(ii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under [The Arkansas Solid Waste Act], or falsify, tamper with, or render inaccurate any monitoring device, testing method, or record required to be maintained under [The Arkansas Solid Waste Act]. The same constituting a felony under **Ark. Code Ann. § 8-6-204 (2)(a)(iii)**;

(iii) Conspiring to commit a felony offense under **Ark. Code Ann. § 8-6-204** such that each of the Defendants herein agreed with one and other to either (1) engaged in conduct that constitutes a felony under **Ark. Code Ann. § 8-6-204** and/or (2) aided in the planning or commission of that felony, and/or (3) engaged in a overt act in pursuance of the conspiracy. The same constituting felony conspiracy to dump solid waste under **Ark. Code Ann. § 8-7-204(g)(2) and Ark. Code Ann. § 5-3-401.**

59. As a result of the forgoing, Plaintiff Dollar is entitled to her compensatory damages as prayed for herein from all Defendants, an imposition of punitive damage as prayed for herein against Defendant Pilgrim's Pride, and, pursuant to Ark. Code Ann. 16-118-107(a)(1), reimbursement of her attorney's fees and costs.

COUNT VI - WASTE

AGAINST DEFENDANT EDMOND JOE PEAK, JR. AS TO SITE 1

60. Plaintiff adopts and restates the allegations contained in all other paragraphs herein as if stated verbatim.

61. That separate Defendant Edmond Joe Peak, Jr. is a co-tenant in common with the Plaintiff in Site #1.

62. That separate Defendant Edmond Joe Peak, Jr committed waste by intentionally allowing, facilitating and/or conducting the illegal dumping solid and hazardous waste on Site #1 to the determinant of Plaintiff and her undivided interests therein.

63. That as a direct and proximate result of acts of Edmond Joe Peak, Jr. Plaintiff sustained damages as set forth herein.

COUNT VII - PUNITIVE DAMAGES

AGAINST DEFENDANT PILGRIMS PRIDE ONLY AS TO SITE 1

64. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as fully as if set forth herein.

65. The disturbing, intolerable and sanctionable acts set forth herein by Separate Defendant Pilgrim's Pride were conducted in a manner that this Separate Defendants knew or ought to have known, in light of the surrounding circumstances, would naturally and probably result in injury or damage and continued in said conduct with malice and/or in reckless disregard of the consequences, from which malice may be inferred. Punitive damages are warranted both to punish this particular Defendant for its unconscionable behavior and, equally as important, to deter this pattern of deceptive, dangerous, outrageous and intolerable conduct by not only Pilgrim's Pride but all other corporate entities in this State that find it more profitable, and by extension preferable, to abuse the citizens of this State rather than to act as the law, and for that matter basic tenants of morality, require. Accordingly, Plaintiffs pray for imposition of punitive damages against Separate Defendant Pilgrim's Pride in an amount equal to five times the amount of compensatory damages awarded by the Jury so as to meet the twin purposes of punitive damages under Arkansas law: punishment and deterrence. Plaintiffs submit that punitive damages are uniquely necessary to ensure corporate dumpers like the Rendering Plant are monetarily incentivized (to the extent monetary punishment appears to be the only effective incentive) to cease this type of abusive and outrageous conduct against the communities which they have victimized out of desire for profit.

FRAUDULENT CONCEALMENT

66. Plaintiffs hereby incorporate by reference the preceding paragraphs of this Complaint as fully as if set forth herein.

67. That the Defendants herein have committed positive acts of fraud, so furtively planned and secretly executed as to keep the plaintiff's cause of action concealed.

68. That the Defendants have concealed their conduct from the Plaintiff Dollar and have made false representations to the ADEQ in furtherance of their concealment of their conduct from the Plaintiff Dollar.

69. That any applicable statute of limitation to any cause of action herein should be tolled by doctrine of fraudulent concealment.

PRAYER FOR RELIEF

Wherefore, the Plaintiff Rozan Dollar prays for judgment awarding

- (A) Compensatory and punitive damages against Defendants for the conduct and claims set forth herein in amounts to be proven at trial but in excess of that required for federal diversity jurisdiction.
- (B) An award of Attorney fees for the prosecution of this matter and/or as otherwise allowed by Arkansas law and the statutes set forth herein;
- (C) An award of costs,
- (D) An award of pre-judgment interest, and post-judgment interest at the maximum rates allowed by Arkansas law; and
- (E) A trial by jury on all causes of action and elements of damages herein alleged.

Respectfully submitted,

VAN KLEEF AND VAUGHN

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A handwritten signature in black ink, appearing to read "Braden R. Vaughn", written over a horizontal line.

Braden R. Vaughn, AR BAR #2014-146