



AlaFile E-Notice

63-CV-2009-900184.00

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

SUSAN TURNER v. CHATHAM OIL COMPANY, INC. ET AL
63-CV-2009-900184.00

The following complaint was FILED on 3/19/2009 2:48:14 PM

Notice Date: 3/19/2009 2:48:14 PM

MAGARIA HAMNER BOBO
CIRCUIT COURT CLERK
TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL 35401

205-349-3870
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**COVER SHEET
CIRCUIT COURT - CIVIL CASE**
(Not For Domestic Relations Cases)

Case Number:
63-CV-200

Date of Filing:
03/19/2009



ELECTRONICALLY FILED
3/19/2009 2:48 PM
CV-2009-900184.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

GENERAL INFORMATION

IN THE CIRCUIT OF TUSCALOOSA COUNTY, ALABAMA
SUSAN TURNER v. CHATHAM OIL COMPANY, INC. ET AL

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other

NATURE OF SUIT:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonnes
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: _____

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP-Contempt of Court
- CONT-Contract/Ejection/Writ of Seizure
- TOCN - Conversion
- EQND- Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division
- CVUD-Eviction Appeal/Unlawful Detainer
- FORJ-Foreign Judgment
- FORF-Fruits of Crime Forfeiture
- MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB-Protection From Abuse
- FELA-Railroad/Seaman (FELA)
- RPRO-Real Property
- WTEG-Will/Trust/Estate/Guardianship/Conservatorship
- COMP-Workers' Compensation
- CVXX-Miscellaneous Circuit Civil Case

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

ORIGIN: F INITIAL FILING A APPEAL FROM DISTRICT COURT O OTHER
R REMANDED T TRANSFERRED FROM OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? Yes No

RELIEF REQUESTED: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE: ROB102 3/19/2009 2:45:19 PM /s Alyce S. Robertson

MEDIATION REQUESTED: Yes No Undecided

4. Fictitious defendants A through C are those individuals, partnerships, sole proprietorships, corporations or other entities, which are the commercial landlords of Speedmart Fuel Center No. 206.

5. Fictitious defendants D through F are those individuals, partnerships, sole proprietorships, corporations, or other entities, which own(ed) or operate(d) Speedmart Fuel Center No. 206.

6. Fictitious defendants G through I are those individuals, partnerships, sole proprietorships, corporations, or other entities, which own any part or portion of the UST system, or any of its component parts, located at Speedmart Fuel Center No. 206.

7. Fictitious defendants J through L are those individuals, partnerships, sole proprietorships, corporations, or other entities, which sold, designed and/or manufactured the UST system, or any of its component parts, located at Speedmart Fuel Center No. 206.

8. Fictitious defendants M through O are those individuals, partnerships, sole proprietorships, corporations, or other entities, which installed the UST system, or any of its component parts, located at Speedmart Fuel Center No. 206.

9. Fictitious defendants P through R are those individuals, partnerships, sole proprietorships, corporations or other entities responsible for periodic inspection and/or maintenance of the USTs, or any of its component parts, located at Speedmart Fuel Center No. 206.

10. Fictitious defendants S through U are those individuals, partnerships, sole proprietorships, corporations, or other entities, which performed any repair work or rehabilitation on the USTs, or any of its component parts, located at Speedmart Fuel Center No. 206.

11. Fictitious defendants V through X are those individuals, partnerships, sole proprietorships, corporations, or other entities, which wholesaled, produced, manufactured, refined, or furnished gasoline or other petroleum-based products for the UST system located at Speedmart Fuel Center No. 206.

12. The amount in controversy is greater than the minimum jurisdictional limits of this Court.

STATEMENT OF FACTS

13. Plaintiff Susan Turner is the owner of certain real property located on University Boulevard East, in Tuscaloosa County, Alabama.

14. Speedmart Fuel Center No. 206 is a convenience store/service station retailing in gasoline motor fuels and is located at 3850 University Boulevard East, Tuscaloosa, Alabama.

15. On or about June 13, 1998, the Alabama Department of Environmental Management (ADEM) was notified that one or more of the USTs and the equipment related thereto at Speedmart Fuel Center No. 206 site had incurred a leak. Defendant Chatham Oil Company, Inc. owned Speedmart Fuel Center No. 206 and the UST equipment at the Speedmart Fuel Center No. 206 site at the time of this leak.

16. Upon information and belief, ADEM has recently been notified of a new, additional leak in one or more of the USTs and equipment related thereto at Speedmart No.206. Defendant Chatham Oil Company Inc. owned the UST equipment at the Speedmart Fuel Center No. 206 at the time of this leak.

17. The gasoline constituents released from the USTs at Speedmart Fuel Center No. 206 contaminated the soil and groundwater beneath Speedmart Fuel Center No. 206.

18. On or about August 2007, Plaintiff Susan Turner and her husband Tracy Turner noticed a strong gasoline odor on her property. They also noted a gasoline-type sheen on standing surface water on the property. The Turners contacted ADEM for assistance.

19. ADEM instructed the environmental contractor on the site to take samples from Plaintiff's property.

20. Monitoring wells were subsequently installed on Plaintiff's property. Samples collected from these wells show that that gasoline has contaminated Plaintiff's soil, surface water, and groundwater.

21. Analytical results of samples collected from Plaintiff's property reveal the presence of Benzene, Ethyl Benzene, Xylene, and MTBE.

22. The levels of Benzene and MTBE detected on Plaintiff's property exceed the Maximum Contaminant Level (MCL) for these chemicals.

23. Defendants' actions have caused or contributed to the substantial and permanent loss of value of Plaintiff's property, and have caused the Plaintiff to sustain other damages as hereinafter alleged.

COUNT ONE
NEGLIGENCE

24. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth fully herein.

25. At all relevant times, the Defendants had a duty to ensure that the petroleum products in the underground storage tanks located at Speedmart Fuel Center No. 206 would not contaminate, by leakage, seepage, migration or otherwise, the soils and groundwater beneath neighboring property, including the Plaintiff's property. Such duty included an obligation to adequately install, monitor, inspect, test, evaluate, assess, repair and maintain the underground

storage tank system located at Speedmart Fuel Center No. 206 and all component of the underground storage tank system. Further, having sustained such leakage, the Defendants had a duty to promptly discover same, determine the extent of its spread, remediate the contamination and prevent its migration to nearby property.

26. Defendants breached this duty by failing to ensure that the petroleum products in the underground storage tanks located at Speedmart Fuel Center No. 206 did not leak and migrate onto nearby property, including the Plaintiff's property. Defendants failed to adequately install, monitor, inspect, test, evaluate, assess, repair and/or maintain the underground storage tank system located at the former Speedmart Fuel Center No. 206, thereby failing to prevent the underground storage tank system from sustaining leakage. Defendants further breached their duty by failing to determine in a timely fashion that the underground storage tank system had sustained damage and was in fact leaking and by continuing to cause or allow the delivery of gasoline to tanks they knew or had reason to know might be leaking. Further, Defendants breached their duty of care in failing to take adequate, reasonable and sufficient steps to promptly cleanup the contamination and to prevent its continuing spread and migration onto the Plaintiff's property.

27. Defendants knew or should have known that as a result of their failure to act with requisite due care, substantial quantities of petroleum hydrocarbons would be and were discharged into the soil and groundwater on the Plaintiff's property. Defendants also knew or should have known that such releases created an unreasonable danger and risk injury to the Plaintiff's property. Despite such knowledge, Defendants negligently, willfully, wantonly, wrongfully and/or with gross and reckless disregard for the consequences of the leakage of

petroleum from the underground storage tank system, failed to take effective action to prevent, detect, or correct such conditions.

28. As a direct and proximate result of Defendants' conduct, the gasoline releases described above have and continue to contaminate and pollute the soil and groundwater on the Plaintiff's property.

29. As a direct and proximate result of said contamination present upon Plaintiff's property, Plaintiff has been caused to suffer diminution in market value of her property; loss of use and enjoyment of her property, loss of rental value, mental anguish, and loss of business profits.

COUNT TWO
WANTONNESS AND/OR GROSS NEGLIGENCE

30. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth fully herein.

31. Defendants' actions constitute wanton conduct and gross negligence. Defendants' actions involved such entire want of care as could only have resulted from actual, conscious, or reckless indifference to the health, safety and rights of the Plaintiff. Therefore, the Plaintiff seeks punitive damages, in such amounts as the jury, in its discretion, should see fit to award.

COUNT THREE
TRESPASS

32. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth fully herein.

33. The above described conduct and actions of Defendants have caused and continue to cause the unauthorized and wrongful invasion and trespass by petroleum contamination of the

Plaintiff's property. This unauthorized and wrongful invasion has caused Plaintiff's property to suffer a loss of value, and has interfered with the Plaintiff's possession and use of her property.

34. Defendants knew or should have known that failure to adequately install, monitor, inspect, test, evaluate, assess, repair and maintain the underground storage tank system located at the former Speedmart Fuel Center No. 206, would result in the leakage of petroleum hydrocarbons onto the Plaintiff's property, creating a serious risk of damage to the Plaintiff and her property. Despite said knowledge, Defendants deliberately, willfully, wantonly and with gross and reckless disregard for the rights of the Plaintiff failed to take the necessary actions to prevent the trespass of contaminants onto the Plaintiff's property.

35. As a direct and proximate result of Defendants' acts and omissions in causing and allowing the unauthorized petroleum hydrocarbons to enter and trespass onto the property of Plaintiff, such property has been contaminated and polluted. As a result, Plaintiff has been caused to suffer diminution in market value of her property; loss of use and possession of her property; loss of rental value; mental anguish and lost business profits.

COUNT FOUR
NUISANCE

36. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth fully herein.

37. Defendants have installed and maintained the subject underground storage tank system in a manner that unreasonably and substantially interferes with Plaintiff's use, benefit and enjoyment of her property. Defendants have caused the contamination of Plaintiff's property and interference with the beneficial use and enjoyment of the Plaintiff's property because Defendants, by their negligent, reckless, willful and wanton acts and omission as set forth above, have caused and permitted petroleum contaminants to be discharged from the underground

storage tank system onto the Plaintiff's property, contaminating the soil and groundwater thereunder. This contamination has caused a material loss of value to Plaintiff's property and has caused monitoring and recovery wells to be drilled and used on the Plaintiff's property. Defendants knew or should have known that their conduct, as set forth above, would and has unreasonably and seriously interfered with the ordinary comfort, use and enjoyment of Plaintiff's property.

38. As a direct and proximate result of Defendants' acts and omissions creating the above-described nuisance, Plaintiff's property have been and are being contaminated and polluted. As a result of the contamination and pollution of Plaintiff's property, Plaintiff's have been caused to suffer diminution in market value, loss of use, comfort and enjoyment of his property and loss of rental value.

COUNT FIVE
STRICT LIABILITY

39. Plaintiff re-alleges all preceding paragraphs of this Complaint as if set forth fully herein.

40. At all relevant times, Defendant Chatham Oil Company, Inc. has owned, maintained, and provided gasoline to the underground storage tanks at Speedmart Fuel Center No. 206. The petroleum products leaked from the underground storage tanks in such a manner that the contaminants discharged therefrom, including *inter alia*, benzene, toluene, ethylbenzene, xylene, and MTBE would be likely to contaminate and pollute Plaintiff's property and would impact adversely on the safety, value, use and enjoyment of Plaintiff's property.

41. The storage and distribution of gasoline and other petroleum products in an underground storage tank system located in a residential and commercial area, without sufficient monitoring and other equipment to immediately detect and contain leakage, together with the

knowledge of the potential of the underground storage tank system to corrode and leak over a period of years, and the failure to perform immediate and aggressive remedial activity to contain and clean up contaminated soil and groundwater, as well as the failure to fully determine the extent of the contamination, is an abnormally dangerous activity.

42. As a direct and proximate result of the leakage of petroleum hydrocarbons from the underground storage tanks located at Speedmart Fuel Center No. 206, Plaintiff's soil and groundwater has been and continues to be contaminated and polluted. Such contamination and pollution was caused by Defendants' activities, including without limitation, the abnormally dangerous activities of storing gasoline and other petroleum products in underground storage tanks, without adequate monitoring equipment and failing to act to promptly discover the existence or location of a leak or spill that is releasing petroleum products in the soil and groundwater, thereby contaminating Plaintiff's property.

43. As a result of the contamination of Plaintiff's property, the use and value of such property for current and future economic purposes has materially and substantially decreased.

PRAYER FOR DAMAGES

44. Plaintiff requests a trial by jury on each claim to which they are so entitled.

WHEREFORE, Plaintiff demands judgment against the Defendants for:

- a. Damages for diminution in market value of Plaintiff's real and personal property;
- b. Damages for loss of use, loss of rental value, inconvenience, annoyance, and related costs, plus interest, as may be incurred by Plaintiff in connection with the contamination;
- c. Damages related to any present or future costs or expenses associated with the cleanup and remediation of the Plaintiff's real and personal property;
- d. Damages for mental anguish;

- e. Punitive damages in such amount as may be found proper and just under the facts and circumstances of this case as determined by the jury;
- f. Pre-judgment and post-judgment interest as provided by law;
- g. Attorney's fees as provided by law; and
- h. Such other and further relief to which Plaintiff may justly be entitled

PLAINTIFF REQUESTS A TRIAL BY JURY

Respectfully submitted,

/s/ Alyce S. Robertson _____
RHON E. JONES (JON093)
CHRISTOPHER D. BOUTWELL (BOU016)
ALYCE S. ROBERTSON (ROB102)
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