

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

McELYEA PROPERTIES, LLC

PLAINTIFF

VS.

NO. \_\_\_\_\_

MIDARK HOUSES LLC

DEFENDANT

**COMPLAINT**

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For its Complaint against Defendant, Midark Houses LLC, Plaintiff, McElyea Properties, LLC, states:

1. Plaintiff is an Arkansas limited liability company in good standing with its principal place of business in Faulkner County, Arkansas.

2. Defendant is an Arkansas limited liability company in good standing with its principal office in this State at the time of the events and omissions giving rise to this cause of action in Pulaski County, Arkansas.

3. This Court has jurisdiction over the subject matter of, and parties to, this action, and venue is proper pursuant to Ark. Code Ann. §16-60-101(a)(2)(B).

4. At all times pertinent to this Complaint, Plaintiff owned a residence and five acres of real property situated at 209 Round Mountain Road in White County, Arkansas ("McElyea Property"), approximately 1.4 miles west of the intersection of Highway 5 and Round Mountain Road, at the foot of the hill on which Defendant was developing a subdivision (the "Subdivision").

5. Beginning on an unknown date and continuing until at least mid-July, 2025, Defendant cleared and graded land required for the development of the Subdivision and removed trees, natural soils and plant life, increasing the volume of

storm water, sediment, mud and silt runoff from the Subdivision downhill directly into and around the McElyea Property.

6. Defendant wholly failed to control or contain the runoff of water, sediment, silt and mud caused by the development of the Subdivision and failed to maintain a silt fence or other erosion control measures, with the direct and proximate result that the McElyea Property, including the residence situated thereon, was flooded with an unprecedented volume of water, mud, silt and various contaminants mixed therein.

7. Defendant developed the Subdivision in such a way as to increase the total volume of surface water flowing onto the McElyea Property and to discharge such surface water upon the McElyea Property in a manner different in volume and course from its natural flow, to the substantial damage of Plaintiff.

8. On or about May 30, 2025, the Arkansas Department of Environmental Quality ("ADEQ") conducted an evaluation of the Subdivision and cited Defendant for developing the Subdivision without the required permits and for placing waste on the McElyea Property and, further, directed Defendant to obtain a construction storm water, sediment, mud and silt permit, establish and maintain a silt fence and other erosion control measures and cease and eliminate the discharge of waste and pollutants from the Subdivision.

COUNT I  
**NEGLIGENCE**

9. Plaintiff repleads paragraphs 1 through 8 hereof as paragraph 9 of this Complaint.

10. Defendant owed a duty to Plaintiff as a down gradient property owner to use ordinary care in the management, handling, storage, diversion and discharge of storm water, sediment, mud and silt on or crossing the Subdivision and to not negligently manage, handle, dispose, divert or release such storm water, sediment, mud and silt so as to allow it to harm Plaintiff.

11. Defendant failed to exercise ordinary care, and was negligent, in the management handling, storage, diversion and discharge of storm water, sediment, mud and silt entering and crossing the Subdivision, as follows:

(a) Improperly designing, constructing and managing a storm water, sediment, mud and silt runoff disposal system in a manner that Defendant knew or should have known would cause excessive volumes and velocities of water to migrate to and adversely affect the McElyea Property.

(b) Failing to adequately monitor and prevent the releasing, discharging and/or disposing of storm water, sediment, mud and silt from the Subdivision in volumes and velocities that Defendant knew or should have known would cause harm to the McElyea Property.

(c) Failing to take measures to abate, remediate or otherwise prevent the aforementioned discharge of storm water, sediment, mud and silt in large volumes and high velocities from the Subdivision when Defendant knew or should have known that such discharges would adversely affect and were adversely affecting the McElyea Property.

12. Defendant's negligent acts and omissions, as hereinbefore alleged, are the direct and proximate cause of damages sustained by Plaintiff.

13. Plaintiff has incurred costs in the amount of \$33,666.40 to repair and remediate damage to the McElyea Property.

14. Demand has been made upon Defendant for payment of Plaintiff's damages in the amount of \$33,666.40 and such demand has been ignored and refused.

15. Plaintiff is entitled to judgment against Defendant in the amount of \$33,666.40, together with its costs, attorney's fees and all further relief to which it may be entitled.

16. All conditions precedent to the initiation of this litigation have been satisfied or waived.

COUNT II  
**PRIVATE NUISANCE**

17. Plaintiff repleads paragraphs 1 through 8 hereof as paragraph 17 of this Complaint.

18. A landowner may not use or improve his land in such a way as to increase the total volume of surface water which flows from it to adjacent property, or to discharge it or any part of it upon such property in a manner different in volume or course from its natural flow, to the substantial damage of the owner of that property. Defendant, by alteration of the natural drainage of storm water on and across the Subdivision, caused such storm water to be released from the Subdivision onto the McElyea Property, causing substantial damage to the McElyea Property.

19. The conduct of the Defendant as described herein unreasonably interfered with the peaceful, quiet and undisturbed use and enjoyment of the McElyea Property by Plaintiff.

20. Defendant's acts and omissions, as hereinbefore alleged, constitute a private nuisance which caused substantial damages to the McElyea Property.

21. Plaintiff has incurred costs in the amount of \$33,666.40 to repair and remediate damage to the McElyea Property.

22. Demand has been made upon Defendant for payment of Plaintiff's damages in the amount of \$33,666.40 and such demand has been ignored and refused.

23. Plaintiff is entitled to judgment against Defendant in the amount of \$33,666.40, together with its costs, attorney's fees and all further relief to which it may be entitled.

24. All conditions precedent to the initiation of this litigation have been satisfied or waived.

#### JURY DEMAND

25. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff, McElyea Properties, LLC, prays for relief against Defendant, Midark Houses LLC, as follows:

(1) Pursuant to Count I, judgment against Defendant, Midark Houses LLC, in the amount of \$33,666.40, together with pre-judgment and post-judgment interest as allowed by law and its attorney's fees and costs;

(2) Pursuant to Count II, judgment against Defendant, Midark Houses LLC, in the amount of \$33,666.40, together with pre-judgment and post-judgment interest as allowed by law and its attorney's fees and costs; and

(3) Any and all further relief to which it may be entitled.

