

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

**PAUL ROBERTS AND PENNY BUCHANAN,
AS HUSBAND AND WIFE**

PLAINTIFFS

VS.

CASE NO.: 6:26-cv-06135-JTS

CITY OF HOT SPRINGS, ARKANSAS

DEFENDANT

COMPLAINT

COME NOW, the Plaintiffs, Paul Roberts and Penny Buchanan, as husband and wife, by and through their attorney, Josh Q. Hurst, and for their Complaint against the Defendant, City of Hot Springs, Arkansas, herein, they state and allege:

PARTIES

1. The Plaintiffs are residents of Hot Springs, Garland County, Arkansas.
2. That the Defendant, Hot Springs, Arkansas, is a City of the first class organized under Arkansas law with the capacity to sue and be sued, A.C.A. § 14-54-101.

JURISDICTION

3. That jurisdiction in this Court is based upon Federal question jurisdiction. 28 U.S.C. § 1331. There is also supplemental jurisdiction over the State law causes. Venue is proper in the Western District of Arkansas, Hot Springs Division. 28 U.S.C. § 1391(b).

STATEMENT OF FACTS

4. That in 2019, the Plaintiffs purchased real property at 209 Little Mazarn Road, Hot Springs, Arkansas.
5. That said property consists of approximately 13 acres.

6. That since purchasing said property, the Plaintiffs have continually improved the property, including, but not limited to, constructing a pond.
7. That sometime after the Plaintiffs purchased their property, the City of Hot Springs purchased a section of real property adjacent to the Plaintiffs', and began to construct a water treatment facility.
8. That the Defendant, in fact, constructed said water treatment facility, and it appears to the Plaintiffs to be in operation.
9. That since the Defendant constructed said water treatment facility, they have directed specific water flow from the treatment facility directly onto the Plaintiffs' property.
10. That particularly after a heavy rain, a high volume of water is directed from the Defendant's water treatment facility onto the Plaintiffs' property, causing severe damage to the Plaintiffs' home, pool, and pond.
11. That the water directed from the Defendant's facility onto the Plaintiffs' property is causing massive erosion and is likely going to cause the levee to the Plaintiffs' pond to erode and collapse, causing massive damage.
12. That the Plaintiffs have attempted everything in their power to do to address this issue with the Defendant, including but not limited to, contacting individuals employed by the City of Hot Springs to investigate.
13. That the Plaintiffs have had conversations with agents of the City of Hot Springs, and have, in fact, shown them the damage caused by the water runoff.
14. That agents for the City have made comments to the Plaintiffs that they recognize the damage that is being caused, but as of the filing of Plaintiffs'

Complaint, the Defendants have failed and willfully refused to remedy the problem.

COUNT I

NEGLIGENCE

15. The Plaintiffs reincorporate paragraphs 1 through 14 by reference.
16. This claim is brought under Arkansas Common Law.
17. The Defendant, the City of Hot Springs, Arkansas, owed a duty to use ordinary care to the Plaintiffs to ensure that their property was not harmed by the construction and/or function of the water treatment facility, and the Defendant breached that duty of care by failing by specifically directing water flow from the facility on to the Plaintiffs' property, causing massive erosion.
18. The Plaintiffs have in fact suffered damage, and that damage was proximately caused by the City of Hot Springs.
19. The Plaintiffs seek and the Defendant therefore owe them all remedies allowed to them by law, including award of actual, compensatory, and punitive damages, as well as any and all fees and costs associated therewith.

COUNT II

VIOLATION OF CONSTITUTIONALLY PROTECTED RIGHTS

20. The Plaintiffs reincorporate paragraphs 1 through 19 by reference.
21. That due to the fact that the Defendant has specifically and intentionally directed their water flow from their water facility onto the Plaintiffs' property, the Plaintiffs are unable to have use and enjoyment of their real property.

22. The City of Hot Springs is using the Plaintiffs' property and has failed to pay the Plaintiffs any amount of money for this use.

23. That the Fifth Amendment to the Constitution prohibits the government from taking property of a citizen without just compensation.

24. As of the filing of this Complaint, the Defendant, the City of Hot Springs, has failed to compensate the Plaintiffs while using their property as a runoff site for their wastewater.

COUNT III

DAMAGES

25. As a result of the injuries suffered by the Plaintiffs, the Defendant is liable to the Plaintiffs for the aforementioned losses. The Plaintiffs have also been forced to hire the undersigned counsel to prosecute these claims, and owe them reasonable attorney's fees, which should also be recovered against the Defendant.

26. The Plaintiffs' damages exceed \$75,000.00

WHEREFORE, the Plaintiffs, Paul Roberts and Penny Buchanan, as husband and wife, pray for judgment against the Defendant, the City of Hot Springs, for all remedies available to them under applicable law, including compensatory damages, actual damages, nominal damages, putative damages, an award of their attorney's fees, an award of their reasonable expert witness fees, litigation expenses, and other cost as provided by law, including pre judgment and post judgment interest; and all other just and proper relief to which they may be entitled.

Respectfully submitted,
Paul Roberts and
Penny Buchanan, **Plaintiffs**

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