

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT,  
IN AND FOR DUVAL COUNTY, FLORIDA

LARUE AND LORI ELLIS,  
Husband and wife;

Plaintiff,

v.

CASE NO: 2015-CA-1413  
DIVISION: CV-B

THE CITY OF JACKSONVILLE,  
*et al.*

Defendants.

\_\_\_\_\_ /

**SECOND AMENDED VERIFIED COMPLAINT**

Plaintiffs, LaRue C. Ellis and Lori W. Ellis, amend their complaint to sue Defendants, City of Jacksonville, Florida, a municipal corporation, St. Johns River Water Management District, and CDM Smith, Inc., and say:

**GENERAL ALLEGATIONS**

**The Parties**

1. Plaintiffs are the owners of certain real property located at 2194 San Pablo Road South, Jacksonville in Duval County, Florida, more particularly described on Exhibit "A" attached to the Complaint and reincorporated as if attached hereto (the "Property"); which property is the site of their home, now under construction.

2. Defendant, City of Jacksonville, Florida (the "City"), is a municipal corporation established and existing under the Laws and a Charter of the State of Florida, which owns the real property more particularly described as: that portion of a drainage outfall, commonly known as the Sandalwood Canal, lying between the easterly right-of-way line of Hodges Boulevard and the easterly right-of-way of San Pablo Road. The canal exists in a City right-of-way from Hodges

Boulevard to a point East of Osprey Point Drive West where it enters various easements as it meanders to San Pablo Road.

3. Defendant, St. Johns River Water Management District (“SJRWMD”), is a water management district for the State of Florida. No relief is sought in this Second Amended Complaint against the SJRWMD, but it is included as a necessary party to this litigation.

4. Defendant, CDM Smith, Inc. f/k/a Camp Dresser & McKee, Inc. (“CDM”), is a foreign corporation registered and authorized to do business in the State of Florida.

5. Venue is appropriate in Duval County, Florida as all of the actions complained of herein took place in Duval County, Florida.

#### **The Property**

6. Plaintiffs acquired the Property, which is the subject matter of this lawsuit, to build their home and domicile in 1997.

7. The Property is located adjacent to and north of Hogpen Creek, on the west side of San Pablo Road. Approximately 1.51 acres of the 2.95 acre Property is defined as a saltwater marsh.

8. At the time Plaintiffs acquired their Property, they possessed and used the following rights:

- a. To be free from trespass.
- b. To quiet enjoyment.
- c. To livability, in that their home would function for its purpose, being a residence.

#### **The Improvements**

9. The Sandalwood Canal is a man-made storm water conveyance ditch that was

constructed sometime in the 1950s to provide drainage for upstream development and on property owned by the City.

10. At the time Plaintiffs acquired the Property, the City owned and operated the Sandalwood Canal, which transported surface water from upstream development through an open outfall into the Hogpen Creek marsh.

11. From the outfall at the Hogpen Creek marsh, the Sandalwood Canal takes a meandering path through the marsh and crosses the Property before joining with Hogpen Creek just west of San Pablo Road.

12. On information and belief, from 2007-2011, the City undertook improvements to a 2,100 lineal feet section of the Sandalwood Canal and concurrently widened Hodges Boulevard between Beach Boulevard and Atlantic Boulevard (collectively the "Improvements").

13. At a time presently unknown, additional improvements may have been made to Kernan Blvd.

14. Defendant CDM was retained by the City as the professional consultant for those Improvements to provide engineering services.

15. The Improvements increased the flow capacity and velocity into the Sandalwood Canal, which flow is exacerbated by the value engineering that revised the designs so that only three of the original four canal weirs were constructed. Additionally, it is believed that at least one, and possibly more, of the weirs is not performing as designed.

16. Furthermore, the Improvements resulted in the direct discharge of storm water from the southern section of the Hodges Blvd. alignment, from Beach Boulevard into the Sandalwood Canal. Previously, that storm water had drained into roadside swales/ditches, which allowed for storage, percolation and attenuation of storm water. The Improvements, therefore, diverted surface

water from Hodges Blvd. into the Sandalwood Canal, which also increased the downstream discharge volume and flow velocity onto the Property.

17. In 2011, Plaintiffs had a sheet pile retaining wall installed above the safe upland line elevation of 2.7 ft. NGVD in order to prevent erosion around the foundation of the proposed home so as to comply with the Florida Building Code slope requirements. See Exhibit "B" attached to the Complaint and reincorporated as if attached hereto.

18. In May 2012, due to continuing erosion from the diverted surface water from the improvements, a segment of the retaining wall was undermined and ultimately collapsed. See Exhibit "C" attached to the Complaint and reincorporated as if attached hereto.

19. Further, in May 2012, the diverted surface water resulted in the erosion and loss of significant portions of the stream bank adjacent to the upland portion of the Property and also to the shoreline of Plaintiffs' island within the channel on the Property.

20. Due to this substantial erosion, on or about July 2014, Plaintiffs commissioned an engineering report to determine its cause.

21. On or about July 2014, Plaintiffs were informed by their expert that the erosion was due to the diverted surface waters created by the Improvements. Facts supporting these damages include but are not limited to:

- A. The widening of Hodges Blvd. (Beach Blvd. to Sandalwood Canal) has resulted in an increase in directly connected impervious area, which results in an increase in stormwater runoff volume.
- B. The elimination of roadside swales/ditches (Beach Blvd. to Sandalwood Canal), and the replacement with curb and gutter with storm sewer, has resulted in the loss of storage and attenuation of storm water, as well as a decrease in the time of concentration which likely results in greater peak flow velocities. A side by side comparison of the December 2007 view of the roadway project under construction with the roadside swales on the east and then in June 2011 after the Improvements project shows the complete elimination of the swales.
- C. The redesign of the Sandalwood Canal cross section has resulted in greater

conveyance capacity, as a result of straightening the channel and reducing Manning's friction coefficient, leading to higher flow velocities.

- D. The easternmost raised canal weir was never constructed. Failure to construct this weir has likely resulted in higher flow velocities in the downstream channel.
- E. The raised canal weir which was constructed directly east of Hodges Road has been observed to flow almost constantly, with a resulting reduction in upstream storage, and a decrease in the ability to attenuate peak storm discharge rates.
- F. The Sandalwood treatment facility (i.e., borrow pit) was designed to store 4 ft of water per the CDM computer model but the reality is that this system operates with only 1 to 1.5 ft of storage which is significant considering the area of the borrow pit is over 27 acres.

22. Plaintiffs have provided proper notice of this action to the City and SJRWMD in accordance with Section 768.28, Florida Statutes and Section 112.201 et seq. Jacksonville Municipal Code to the City and to the Department of Financial Services, Division of Risk Management.

23. Plaintiffs have complied with all conditions precedent or the Defendants have waived the same.

**COUNT I**  
**(Trespass By The City)**

24. Paragraphs 1-23 are realleged and incorporated herein by reference.

25. Plaintiffs are in lawful possession of their Property, which is being eroded continuously due to the City's improper diversion of surface water.

26. The City has intentionally or negligently caused surface water to be diverted from Hodges Boulevard to enter and remain on the lands of Plaintiffs.

27. Plaintiffs have not licensed or authorized the City to do so.

28. By unlawfully causing surface water to be diverted onto Plaintiffs Property, the City is continuously trespassing and encroaching upon Plaintiffs' Property and is wrongfully

interfering with and disturbing the rightful possession, use and enjoyment of the Property by Plaintiffs.

29. The City is and has previously been aware that the diversion of surface water is damaging Plaintiffs' property.

30. Plaintiffs are entitled to damages for the City's trespass and unlawful encroachment upon Plaintiffs' property and for the City's wrongful interference with Plaintiffs' right to use and enjoy their property.

31. In addition, the Plaintiffs have suffered damages and will suffer future damages in excess of \$15,000.00 for the loss of their retaining wall, island and the costs of installing a bulkhead to prevent further erosion and damage to their property, including the fact that they cannot continue building their house on the Property under the current circumstances.

32. Plaintiffs are entitled to their attorney's fees under applicable Florida law.

WHEREFORE, Plaintiffs demand judgment against the City for compensatory damages, special damages, pre and post judgment interest, costs and any such further relief the Court deems appropriate.

**COUNT II**  
**(Private Nuisance Against The City)**

33. Paragraphs 1-23 are realleged and incorporated herein by reference.

34. The City authorized, funded, constructed and operated a surface water system that results in the diversion of excess surface water flowing off of the lands of the City and invading the interests of Plaintiffs.

35. The City's diversion of surface water has caused excess water to invade the Plaintiffs' Property resulting in erosion of the Plaintiffs' property.

36. This erosion substantially and unreasonably interferes with the Plaintiffs' use and

enjoyment of their Property.

37. The conduct of the City was intentional in that it knew that the damage to the Plaintiffs was resulting or was substantially certain to result from the diversion of surface water due to the Improvements.

38. The conduct of the City in diverting the surface water onto the Plaintiffs' Property was unreasonable and wrongful.

39. The wrongful conduct of the City is the legal cause of the invasion of the Plaintiffs' rights.

40. Plaintiffs have no adequate remedy at law for future inundation of improperly diverted storm water and damage to the Plaintiffs' property.

41. Until the inundation of the surface water ceases, damage to the Plaintiffs' Property will continue.

42. The continuing nature of the Defendants' acts would necessitate a separate action by Plaintiffs for damages for each act and would subject Plaintiffs, Defendants and this Court to the expense, annoyance and inconvenience of a multiplicity of suits.

43. For these reasons, the diversion of surface waters onto the Plaintiffs' property caused by the City causes irreparable injury to the Plaintiffs.

44. Plaintiffs are entitled to an injunction prohibiting the City from continuing to engage in practices that invade and damage the Plaintiffs' property.

45. Plaintiffs are entitled to recover the damages they have suffered due to the City's wrongful interference with Plaintiffs' right to use and enjoy their property and to enjoin such further nuisance by the City.

46. Plaintiffs are entitled to their attorney's fees under applicable Florida law.

WHEREFORE, Plaintiffs demand judgment against the City for compensatory damages, special damages, pre and post judgment interest, costs, and an injunction be entered against the City ordering the City to abate this nuisance and any such further relief the Court deems appropriate.

**COUNT III**  
**(Public Nuisance against the City and SJRWMD)**

47. This is an action in the alternative to Counts I and II for injunctive relief pursuant to Fla. Stat. 373.433.

48. Paragraphs 1-23 are realleged and incorporated herein by reference.

49. SJRWMD is included as a necessary party for this Count. However, due to the settlement agreement with SJRWMD, no relief is sought against SJRWMD.

50. Chapter 373.433, of the Florida Statutes provides that,

Any storm water management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such storm water management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen.

51. Chapter 373.433 further provides that, “[t]he governing board or the department shall be a necessary party to any such suit.” SJRWMD permitted this system and under Chapter 373.433, Florida Statutes, is a necessary party to this action.

52. The City has permitted, funded or overseen the construction of the Improvements and under Chapter 373.433, Florida Statutes, is a necessary party to this action.

53. Under Florida law, the City is required to exercise reasonable care and may not cause damage to downstream landowners or establish a nuisance. Thus, these violations of Florida law are declared public nuisances by section 373.433, Florida Statutes.

54. The surface water diverted from the Improvements are in violation of the laws of Florida by allowing excess waters to exit the City's property, which is adversely impacting environmental resources and offsite land uses.

55. The City has created a public nuisance by their wrongful actions.

56. Chapter 373.433, Florida Statutes, does not require a showing of special injury by Plaintiffs, however, Plaintiffs have suffered and are suffering special injury as the City's actions have caused physical harm to Plaintiffs' property.

57. Plaintiffs are entitled to enjoin such further nuisance by the City.

58. Plaintiffs are entitled to their attorney's fees under applicable Florida law, including but not limited to Chapter 373.136, and 403.412, Florida Statutes, against the City.

WHEREFORE, Plaintiffs demand an injunction be entered against the City ordering the City to abate this nuisance and any such further relief the Court deems appropriate.

#### **COUNT IV**

#### **(Professional Negligence in the Design of the Improvements against CDM)**

59. This is an action for damages in excess of \$30,000.00 exclusive of pre judgment interest and costs against CDM.

60. Paragraphs 1-23 are realleged and incorporated herein by reference.

61. CDM participated in the design, development and engineering of the Improvements and was responsible for properly engineering the Improvements pursuant to all statutes, rules and regulations of the State of Florida, including all no-rise requirements.

62. At the time of the design, development and engineering of the Improvements, CDM knew or in the exercise of due care should have known, that there was a great likelihood of damage to the property downstream of the Improvements due to CDM's design in that there was an increase in volume and/or flow through the Sandalwood Canal due to the Improvements.

63. Therefore, CDM had a duty to downstream owners, such as Plaintiffs, to design, develop and engineer the Improvements in a way that there would not be an increase in surface water diverted onto Plaintiffs' Property.

64. At the time of the design, development and engineering of the Improvements, CDM knew or in the exercise of due care should have known, that its design would result in an increase in volume and/or flow through the Sandalwood Canal thereby damaging the property of downstream owners.

65. CDM negligently provided its services to the City by providing a design for the Improvements that increased the surface water that was diverted onto Plaintiffs' Property instead of providing a no-rise design that did not increase the flow of surface water onto Plaintiffs' Property.

66. As a direct and proximate result of the negligently, defective and improper design of the Improvements, Plaintiffs' Property has been damaged due to excessive erosion, which damage is a continuing harm.

67. The damages alleged in this Complaint are damages of a continuing and progressive nature, and for that reason Plaintiffs request leave to amend this Complaint at the time of trial to include any further damages that may occur subsequent to the filing of this Complaint.

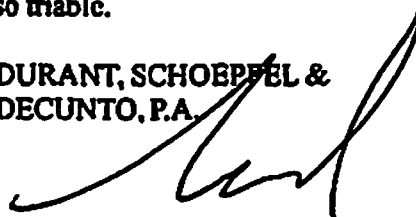
68. As of the filing of this Complaint, Plaintiffs have no knowledge as to the extent to which the damages alleged in this Complaint can be repaired, and therefore, ask leave to amend this Complaint to include reasonable costs of repair as soon as those costs have been ascertained.

69. Due to CDM's negligence, Plaintiffs have been forced to bring claims against the City and SJRWMD. Plaintiffs are entitled to their attorneys' fees and costs incurred in litigating those claims from Defendants as special damages pursuant to the wrongful act doctrine.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial as to all claims so triable.

DURANT, SCHOEPPEL &  
DECUNTO, P.A.



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**VERIFICATION**

Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.



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LaKue Ellis



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Lori Ellis

**CERTIFICATE OF SERVICE**

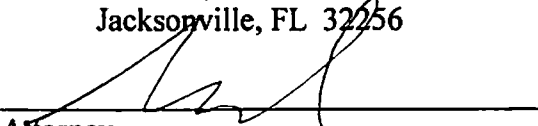
I HEREBY CERTIFY that on November 2, 2021, I electronically filed the foregoing with the Clerk of the Court and electronically served the same on Trisha D. Bowles, Esquire at [tbowles@coj.net](mailto:tbowles@coj.net), [asegobin@coj.net](mailto:asegobin@coj.net), *Attorney for City of Jacksonville, Florida*, Thomas I. Mayton, Jr., Esquire and Steven J. Kahn, Esquire at [tmayton@sjrwmd.com](mailto:tmayton@sjrwmd.com), [skahn@sjrwmd.com](mailto:skahn@sjrwmd.com), [kdrigger@sjrwmd.com](mailto:kdrigger@sjrwmd.com), *Attorney for St. Johns River Water Management District*, Ross D. Ginsberg, Esquire, Cindy Duque Bonilla, Esquire, at [RGinsberg@wwhgd.com](mailto:RGinsberg@wwhgd.com) and [CBonilla@wwhgd.com](mailto:CBonilla@wwhgd.com), *Attorneys for CDM Smith, Inc. and Thomas Nichols*, through the Statewide E-Filing Portal, if available, or by email directly.

I further certify that, on the date noted above, a true and correct copy of the foregoing was delivered by e-mail or U.S. Mail to the following parties who are not registered participants of the Statewide E-Filing Portal:

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