

Nebraska Judicial Branch

Case Summary

In the District Court of LANCASTER County
 The Case ID is CI 19 0001847
 JJ Hooligans LLC v. Jefferey J Fredrick
 The Honorable Susan Strong, presiding.
 Classification: Injunctions
 Filed on 06/07/2019
 This case is Open as of 06/07/2019

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE JJ Hooligans LLC 311 N. 8th Street Lincoln NE 68508	Susan M Napolitano 6940 O Street, Ste 400 Lincoln NE 68510 402-466-8444
Defendant ACTIVE Jefferey J Fredrick c/o Blake Austin Law Firm LLP 301 S 13th St, Ste 101 Lincoln NE 68508	William G Blake The Cornhusker Plaza 301 S 13th St, Ste 101 Lincoln NE 68508 402-480-7003
Defendant ACTIVE Gould Family LLC 2550 Country Road A Valparaiso NE 68065	Michael L Moran 1350 Woodmen Tower 1700 Farnam St Omaha NE 68102 402-348-0900
Defendant ACTIVE Red Herring Concepts LLC c/o Anthony W Young, Reg Agent 6844 Wildrye Rd Lincoln NE 68521 Alias is Leabelly	

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	06/07/2019	\$35.00
Plaintiff	Filing Fee - State	06/07/2019	\$1.00
Plaintiff	Automation Fee	06/07/2019	\$8.00
Plaintiff	NSC Education Fee	06/07/2019	\$1.00
Plaintiff	Dispute Resolution Fee	06/07/2019	\$0.75
Plaintiff	Indigent Defense Fee	06/07/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	06/07/2019	\$1.00
Plaintiff	J.R.F.	06/07/2019	\$6.00
Plaintiff	Filing Fee-JRF	06/07/2019	\$6.00
Plaintiff	Legal Aid/Services Fund	06/07/2019	\$6.25

Incurring By	Account	Date	Amount
Plaintiff	Complete Record	06/07/2019	\$15.00

Financial Activity

No trust money is held by the court
 Fee/Fine held by the court is \$83.00

Payments Made to the Court

Receipt	Type	Date	For	Amount
701564	Electronic Trans	06/10/2019	JJ Hooligans LLC	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

Register of Actions

06/20/2019 Entry of Appearance
 This action initiated by party Gould Family LLC

Michael L Moran & Connor W Orr
 Image ID N19171THWD02

06/19/2019 Notice-Hearing
 This action initiated by party JJ Hooligans LLC
 7-1-19/4:00/36
 Image ID N19170QHID02

06/12/2019 Voluntary Appearance
 This action initiated by party Jefferey J Fredrick
 Image ID N19163LCQD02

(cr)

06/12/2019 Notice-Hearing
 This action initiated by party JJ Hooligans LLC
 6-19-19/1:30/36

Image ID N19163K00D02

06/10/2019 Summons Issued on Red Herring Concepts LLC
The document number is 00574424
E-MAILED: susan@jsberrylaw.com
Image ID D00574424D02

06/10/2019 Summons Issued on Gould Family LLC
The document number is 00574423
E-MAILED: susan@jsberrylaw.com
Image ID D00574423D02

06/10/2019 Summons Issued on Gould Family LLC
The document number is 00574422
E-MAILED: susan@jsberrylaw.com
Image ID D00574422D02

06/10/2019 Summons Issued on Jefferey J Fredrick
The document number is 00574421
E-MAILED: susan@jsberrylaw.com
Image ID D00574421D02

06/07/2019 Complaint-Praecipe
This action initiated by party JJ Hooligans LLC
Image ID N191581WUD02

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

J.J. HOOLIGAN'S, LLC)	CASE CI-19-_____
a Nebraska Limited Liability Company)	
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR INJUNCTION
)	BREACH OF LEASE
JEFFREY J. FREDRICK,)	INTENTIONAL INTERFERENCE
an individual, and)	WITH A BUSINESS
)	
GOULD FAMILY, LLC,)	
a Nebraska Limited Liability Company,)	
and)	
)	
RED HERRING CONCEPTS, LLC)	
d/b/a LEADBELLY,)	
a Nebraska Limited Liability Company,)	
)	
Defendants.)	

COMES NOW, Plaintiff, J.J. Hooligan's, LLC, by and through its attorney, Susan M. Napolitano and states the following claims:

1. Plaintiff, J.J. Hooligan's, LLC, is owned as a Nebraska Limited Liability Company by James Waterbury (hereinafter, "Waterbury") and Jason Ortmeier (hereinafter, "Ortmeier") and is located at 311 N. 8th Street, Lincoln, Lancaster County, Nebraska 68508 (hereinafter, "J.J. Hooligans").

2. Defendant, Jefferey J. Fredrick (hereinafter "Fredrick") is a resident of Lancaster County, Nebraska and is the owner of the real estate in which J.J. Hooligans is located at 311 N. 8th Street in Lincoln, Lancaster County, Nebraska 68508, legally described at Lot 2 of Bucks Subdivision and part of Lot 11, Original Block 31, Lincoln, Lancaster County, Nebraska 68508 (hereinafter, "Fredrick Property")

3. Defendant, Gould Family, LLC is a Nebraska Limited Liability Company (hereinafter "Gould") and is the owner of property at 301 N. 8th Street, Lincoln, Lancaster County, Nebraska 68508, legally described as Lot 3 of Bucks Subdivision and part of Lot 11, Original Block 31, Lincoln, Lancaster County, Nebraska (hereinafter "Gould Property"). The Gould Property abuts the Fredrick Property immediately to the south of the Fredrick Property, with adjoining walls.

4. Defendant Red Herring Concepts, LLC is a Nebraska Limited Liability Company doing business as Leadbelly and is the current tenant of the first floor of the Gould Property.

5. Michael Martin, Tony Young, and Wendy Young own Red Herring Concepts, LLC which owns and operates a restaurant and bar on the first floor of the Gould Property, doing business as Leadbelly (hereinafter "Leadbelly").

6. J.J. Hooligans has been located on the basement level of the Fredrick Property for several years and has established a consistent client base.

7. Leadbelly is operated on the main level of the adjacent Gould Property.

8. The kitchen drain facilities and bathroom facilities in Leadbelly are located against the north wall of the Gould Property and are immediately adjacent to the south wall of the Fredrick Property.

9. On or around July of 2018, Plaintiff noticed large amounts of water, contaminated with food, grease, soap, and other debris, leaking into their leased space through the wall that borders the Gould Property.

10. The leakage has consistently rendered approximately 900 square feet of J.J. Hooligan's leased space untenable for nearly 12 months.

11. In July of 2018, Waterbury and Ortmeier determined that the water appeared to be coming from the sewer lines of the Gould Property because of the location of the entry points and because it flowed into J.J. Hooligan's space every time Leadbelly's restaurant was busy. On days Leadbelly was not busy or closed, there was little to no water infiltration.

12. In July of 2018, Waterbury and Ortmeier immediately informed their landlord, Fredrick, but Fredrick did not take steps to find the source of the water, repair the leak, or restore the premises to a tenantable condition. Each time the water came in, Waterbury and Ortmeier informed Fredrick that their business was suffering, their property was damaged, and asked him to take action to stop the leakage. Each time, Fredrick ignored them.

13. Around the same time, Waterbury and Ortmeier informed the owners of Leadbelly that their sewer water was draining into J.J. Hooligans and causing J.J. Hooligans to lose business and suffer property damage.

14. The owners of Leadbelly refused to take any action, denied that Leadbelly's sewer was the source of the leaking water, and took no steps to inspect or repair their sewer lines.

15. Upon information and belief, the owners of the Gould Property were aware that Waterbury and Ortmeier had complained to the owners of Leadbelly about water leaking from the Gould Property's sewer lines into the Fredrick Property from Leadbelly, but Gould did nothing to address the leak.

16. After several months, much lost revenue, significant personal property damage, and no action from Fredrick, Gould, or Leadbelly, Waterbury and Ortmeier realized that the responsible parties were not willing to take action.

17. On February 1, 2019, Waterbury and Ortmeier authorized their lawyer to send a letter to their landlord, Fredrick, demanding that the repairs be made or contact be made with her by a date certain to arrange for repairs. Mr. Fredrick did not respond by the specified date.

18. In February of 2019, Waterbury and Ortmeier hired King Little, a structural engineer, to come inspect the leakage. The structural engineer confirmed that the leakage was most likely coming from Leadbelly in the Gould Property and that it indeed was sewer water, not rainwater. Fredrick and his lawyer attended this walk through and discussed the findings with the structural engineer.

19. Since July of 2018, all Defendants knew or should have known that serious plumbing issues were causing sewer water from Leadbelly to enter J.J. Hooligan's leased space, causing property damage, driving away customers, and financially harming J.J. Hooligans.

20. To keep their business open, Waterbury and Ortmeier have been forced to spend at least three hours each day nearly every day of the week vacuuming the sewer water from their carpeting, running large industrial fans and dehumidifiers, and attempting to mitigate the foul smell caused by sewer water.

21. The space leased by J.J. Hooligans from Fredrick has been flooded daily by Defendants Gould and Leadbelly for nearly 12 months to date. The most recent date

of Gould and Leadbelly flooding J.J. Hooligans with Leadbelly sewer waste is the day this Complaint is filed, June 7, 2019.

22. Upon information and belief, Defendants have ordered no solutions to remedy the problem to date.

23. Upon inspection and investigation in February of 2018, Fredrick agreed that the water infiltration problem into J.J. Hooligans is the result of poor wastewater drainage from Leadbelly from the kitchen wastewater and/or bathroom wastewater in Leadbelly, such that the wastewater does not enter the sanitary sewer system, but rather runs onto the ground and seeps down and under the foundation of Plaintiff's property and then enters the lower level space occupied by J.J. Hooligan's.

24. The sewer water Leadbelly has been discharging into J.J. Hooligan's space is of a sufficient amount to damage the floors, creating a potential hazard for people wishing to patronize J.J. Hooligans, and causing significant unpleasant odors.

25. The operators of J.J. Hooligans have made numerous demands upon all Defendants to cease and desist in allowing Leadbelly's sewer wastewater to be disposed of in the manner described above.

26. Upon information and belief, in February or March of 2019, Defendant Fredrick has demanded that Defendant Gould and Defendant Leadbelly cease and desist from allowing their wastewater to be disposed of in the manner described above.

27. Despite the demands of Fredrick and J.J. Hooligans, Defendants Gould and Leadbelly have failed to cease and desist allowing their wastewater to flow into J.J. Hooligans, nor have they taken steps to correct the situation and to properly dispose of their wastewater.

28. The wastewater disposal problem in Leadbelly is frequent enough to be almost continuous, and is a continuing trespass and nuisance, for which Plaintiff is irreparably harmed and for which Plaintiff has no adequate remedy at law.

FIRST CLAIM—INJUNCTIVE RELIEF

29 Plaintiff incorporates paragraphs 1-28 as though fully set forth herein.

30. Plaintiff has no adequate remedy other than an injunction because Plaintiff does not own either building involved and therefore cannot fully investigate or order repairs to resolve the sewer water leakage.

31. Plaintiff has suffered reputation harm, financial harm, and if this issue is not repaired before football season, Plaintiff will suffer truly irreparable harm in the absence of an injunction.

32. When the matter goes to trial, evidence will show that Plaintiff has attempted to move all Defendants to take reasonable actions repeatedly to save Plaintiff's business and Defendants have repeatedly failed to take reasonable actions to stop Leadbelly's sewer water from entering J.J. Hooligans.

33. Plaintiff's business has been subject to daily flooding from Leadbelly for nearly 12 months and has suffered significant financial harm as a result. The burden on Plaintiff to keep its business from suffering further harm far outweighs the burden on Gould and Leadbelly to shut off its water until it can make the repairs necessary to properly dispose of their sewer water.

34. Plaintiff prays that the Court enter injunctive relief, ordering Defendants Gould and Leadbelly to immediately cease and desist from allowing its wastewater to drain in the described manner and ordering Defendants to shut off water in the Gould

Property until they are able to make repairs to their plumbing and wastewater disposal system as needed to properly dispose of such water in the City sanitary sewer system.

35. Plaintiff further prays that the Court enter a Temporary Injunction to provide such immediate injunctive relief, and that permanent injunction be issued after trial of the matter, with the costs to be paid by Defendants and that the Court enter such further relief as may be equitable and just.

SECOND CLAIM—BREACH OF LEASE

36. Plaintiff incorporates paragraphs 1-35 as though fully set forth herein.

37. Plaintiff entered into a valid Lease Agreement with Fredrick on July 1, 2018 (hereinafter "Lease").

38. In Paragraph 9 of the Lease Agreement, it is Fredrick's responsibility to keep and maintain all exterior and structural parts of the building, including the walls, floor, and foundation.

39. Under Paragraph 26 of the Lease, Fredrick had 30 days to remedy this default by fixing the water infiltration and reimbursing the tenants for their out of pocket expenses and losses incurred as a result of the breach.

40. Fredrick failed to take appropriate necessary action to uphold his duties under the Lease.

41. As a result, Plaintiffs have suffered significant property loss, loss of business income, damage to the reputation of the business, attorney fees, engineer fees, and other costs associated with mitigating their damages and forcing Fredrick and other Defendants to act.

42. Plaintiff prays the Court order Fredrick to compensate Plaintiff for all damages caused by his failure of duties under the Lease, such damages to be proven at trial, along with an award of Plaintiff's attorney fees, costs, and any other remedy the court deems just.

THIRD CLAIM—TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY

43. Plaintiff incorporates paragraphs 1-42 as though fully set forth herein.

44. J.J. Hooligans has a valid business relationship with its customers and a valid expectancy that repeat customers would remain repeat customers;

45. Defendants all knew about the relationship or expectancy J.J. Hooligans has and knew that the sewer water leaking into J.J. Hooligans would cause foreseeable damages and impact its ability to serve and retain customers.

46. Defendants interfered with the relationship or expectancy intentionally and without justification by knowingly discharging sewer water from Leadbelly into J.J. Hooligans for nearly 12 months after learning of the problem.

47. Defendants' interference caused a significant loss of customers who could not tolerate the smell of the sewer water, caused negative on-line reviews about the smell at J.J. Hooligans; and has caused financial damages through property damage, lost customers, lost revenue, the expenses of clean up, and the costs associated with mitigating damages and taking legal action to remedy the interference, all such damages to be determined at trial.

WHEREFORE, Plaintiff prays that this Court enter injunctive relief, ordering Defendants Gould and Leadbelly to immediately cease and desist from allowing its wastewater to drain in the described manner and ordering Defendants to shut off water

in the Gould Property until they are able to make repairs to their plumbing and wastewater disposal system as needed to properly dispose of such water in the City sanitary sewer system. Plaintiff further prays that this Court enter a Temporary Injunction to provide such immediate injunctive relief, and that permanent injunction be issued after trial of the matter, with the costs to be paid by Defendants Gould and Leadbelly. Plaintiff prays that this Court will hold all Defendants jointly and severally liable for all damages Plaintiff has suffered as a result of Defendant Fredrick's breaches and all Defendants' tortious interference, and that this Court enter such further relief as may be equitable and just.

Dated this 7th day of June, 2019.

J.J. HOOLIGANS, LLC, Plaintiff

/s/ Susan M. Napolitano
Susan M. Napolitano, #23437
BERRY LAW FIRM
6940 O Street, Suite 400
Lincoln, Nebraska 68510
(402) 466-8444
susan@jsberrylaw.com

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

J.J. HOOLIGANS,
a Nebraska Limited Liability Company)

Plaintiff,)

vs.)

JEFFREY J. FREDRICK,
an individual, and)

GOULD FAMILY, LLC,
a Nebraska Limited Liability Company,)
and)

RED HERRING CONCEPTS, LLC)
d/b/a LEADBELLY,)
a Nebraska Limited Liability Company,)

Defendants.)

CASE CI - _____

PRAECIPE FOR SUMMONS

TO THE CLERK OF THE COURT:

Please issue summons in this action to serve by certified mail with return receipt and deliver it to the undersigned attorney for service upon Defendants:

Jeffery Fredrick
Through his attorney, William Blake
Blake Austin Law Firm, LLP
The Cornhusker Plaza
301 South 13th Street, Suite 101
Lincoln, NE 68508
wblake@blakeaustinlaw.com

Gould Family, LLC
2550 Country Road A
Valparaiso, Nebraska, 68065

Gould Family, LLC registered agent, DDLG Business Services Inc.
9500 W. Dodge Road, Ste 100
Omaha, Nebraska, 68114

Red Herring Concepts, LLC d/b/a Leadbelly
Registered Agent: Anthony W. Young
6844 Wildrye Road
Lincoln, Nebraska 68521

Dated this 7th day of June, 2019.

J.J. HOOLIGANS, LLC, Plaintiff

/s/ Susan M. Napolitano
Susan M. Napolitano, #23437
BERRY LAW FIRM
6940 O Street, Suite 400
Lincoln, Nebraska 68510
(402) 466-8444
susan@jsberrylaw.com