

**IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA**

GREATER OMAHA PACKING
COMPANY, INC., GREATER OMAHA
EXPRESS, LLC, and GREATER
OMAHA LEASING COMPANY, LLC,

CASE NO. CI 16-_____

COMPLAINT AND JURY DEMAND

Plaintiffs,

v.

ST. FRANCIS OF ASSISI CHURCH,
ARCHDIOCESE OF OMAHA, and
CITY OF OMAHA,

Defendants.

COMES NOW Plaintiffs Greater Omaha Packing Company, Inc., Greater Omaha Express, LLC, and Greater Omaha Leasing Company, LLC, through the undersigned counsel of record and for their Complaint and Jury Demand state the following:

THE PARTIES

1. Plaintiff Greater Omaha Packing Company, Inc. is a Nebraska company with its principal place of business at 3001 L Street, Omaha, Nebraska 68107.

2. Plaintiff Greater Omaha Express, LLC is a Nebraska company with its principal place of business at 3001 L Street, Omaha, Nebraska 68107.

3. Plaintiff Greater Omaha Leasing, LLC is a Nebraska company with its principal place of business at 3001 L Street, Omaha, Nebraska 68107.

4. Defendant Saint Francis of Assisi Church is a non-profit entity with its principal place of business located at 4513 South 32nd Street, Omaha, NE 68107. Defendant Archdiocese of Omaha is a non-profit entity with its principal place of business at 100 North 62nd Street, Omaha, Nebraska 68132. (Defendant Saint Francis of

Assisi Church and Defendant Archdiocese of Omaha are collectively referred to as “Defendant SFAC”).

5. Defendant City of Omaha (“Defendant City”) is a political subdivision of the State of Nebraska with its principal place of business at 1819 Farnam Street, Omaha, Nebraska 68183.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this lawsuit pursuant to Neb. Rev. Stat. § 24-302 because there is an actual and justiciable controversy between the parties to this lawsuit.

7. Venue is proper in Douglas County, Nebraska pursuant to Neb. Rev. Stat. § 25-403.01 because a substantial part of the events that gives rise to the above-captioned lawsuit took place in that County.

8. Pursuant to the Political Subdivision Tort Claims Acts, Neb. Rev. Stat. § 13-901 to 13-926, Plaintiffs provided a Notice of Claim to Defendant City within the time required by Nebraska statute.

9. Defendant City did not act upon Plaintiffs’ claim within six months the Notice of Claim being submitted to Defendant City of Omaha.

10. After six months of the Notice of Claim being submitted to Defendant City, Plaintiffs notified Defendant City of Omaha in writing that Plaintiffs had withdrawn their claim.

11. Plaintiffs have complied with all requirements within the Political Subdivision Tort Claims Act, Neb. Rev. Stat. § 13-901 to 13-926, to bringing this claim against Defendant City.

BACKGROUND

12. Plaintiffs are the owners of the real property located at 4626 Dahlman Avenue, Omaha, Nebraska 68107 (“Plaintiffs’ Property”).

13. Defendant SFAC is the owner of property located at 4513 South 32nd Street (“Defendant SFAC’s Property”). Defendant SFAC has made improvements to its Property, which affect the discharge of surface water from Defendant SFAC’s Property.

14. Defendant City is the owner of a Right-of-Way (“ROW”) located north of the intersection of 31st Street and K Street. Defendant City’s ROW is located directly between Plaintiffs’ Property and Defendant SFAC’s Property. Defendant City has made improvements to its ROW, which affect the discharge of surface water from Defendant City’s ROW.

15. In 2014, including but not limited to the month of June 2014 and throughout the summer thereafter, in Omaha, including the area around the parties three Properties, experienced heavy rains.

16. Runoff from the heavy rains experienced in 2014 flowed from Defendant SFAC’s Property and Defendant City’s ROW onto Plaintiffs’ Property, causing major sinkholes to form in the hill to the west of Plaintiffs’ Property and causing sediment laden runoff to make its way onto Plaintiffs’ Property and depositing large quantities of mud on Plaintiffs’ Property.

FIRST CAUSE OF ACTION – NEGLIGENCE - SFAC

17. Plaintiffs incorporate by reference ¶¶ 1-16 as if fully set forth herein.

18. Defendant SFAC had a duty to act reasonable and in a careful manner and without negligence in connection with its construction and maintenance of the

improvements made on its Property relating to the discharge of surface water from Defendant SFAC's Property onto Plaintiffs' Property.

19. Defendant SFAC was negligent by failing to act in a reasonable and careful manner in constructing and maintaining the improvements made to its Property relating to the discharge of surface water from Defendant SFAC's Property onto Plaintiffs' Property, to wit:

a. Failing to clear debris from the drainage improvements constructed on Defendant SFAC's Property;

b. Constructing a drainage channel on its property with insufficient positive slope needed to divert the amount of draining water created by the concrete parking lot into the drainage channel Defendant SFAC constructed on its Property;

c. Otherwise unreasonably, carelessly, and negligently constructing and maintaining the drainage improvements constructed on Defendant SFAC's Property.

20. Defendant SFAC's negligence was a proximate cause of the excessive amounts of water that drained onto Plaintiffs' Property.

21. Defendant SFAC's negligence was a proximate cause of the damage sustained to Plaintiffs' Property.

22. As a result of Defendant SFAC's negligence, Plaintiffs sustained damages totaling at least \$17,873.23, including but not limited to the cost of repair of the erosion issue and the clean up costs of Plaintiffs' facility due to the run off.

SECOND CAUSE OF ACTION – NEGLIGENCE - CITY

23. Plaintiffs incorporate by reference ¶¶ 1-22 as if fully set forth herein.

24. Defendant City had a duty to act reasonable and in a careful manner and without negligence in connection with its construction and maintenance of the improvements made on its ROW relating to the discharge of surface water from Defendant City's ROW onto Plaintiffs' Property.

25. Defendant City was negligent by failing to act in a reasonable and careful manner in constructing and maintaining the improvements made to its ROW relating to the discharge of surface water from Defendant City's ROW onto Plaintiffs' Property, to wit:

a. Failing to clear debris from the drainage improvements constructed on Defendant City's ROW;

b. Constructing a drainage facilities on its ROW inadequate to divert the amount of draining water passing across Defendant City's ROW onto Plaintiffs' Property;

c. Otherwise unreasonably, carelessly, and negligently constructing and maintaining the drainage improvements constructed on Defendant City's ROW.

26. Defendant City's negligence was a proximate cause of the excessive amounts of water that drained onto Plaintiffs' Property.

27. Defendant City's negligence was a proximate cause of the damage sustained to Plaintiffs' Property.

28. As a result of Defendant City's negligence, Plaintiffs sustained damages totaling at least \$17,873.23, including but not limited to the cost of repair of the erosion issue and the clean up costs of Plaintiffs' facility due to the run off.

THIRD CAUSE OF ACTION – UNJUST ENRICHMENT - CITY

29. Plaintiffs incorporate by reference ¶¶ 1-28 as if set forth herein.

30. As part of the repair work after the damage sustained to Plaintiffs' Property, Plaintiffs coordinated and paid for repairs to sink holes in Defendant City's ROW.

31. Defendant City has received the benefit of Plaintiffs' services, specifically the repair work to Defendants' ROW.

32. Plaintiffs have demanded payment for the costs of these repairs to Defendants' ROW.

33. It would be inequitable and unjust for Defendant City to retain the benefit of the repairs performed by Plaintiff without making payment for same.

WHEREFORE, Plaintiffs pray for entry of a judgment against Defendant SFAC and Defendant City and in favor of Plaintiffs for the recovery of damages in an amount to be proven at trial, but no less than \$17,873.23, for the recovery of prejudgment interest at the statutory rate, for their costs incurred in bringing this action, and for all other and further relief the court deems just and equitable.

JURY DEMAND


Plaintiffs demand a trial by jury as to all issues triable to a jury in this action and request that the trial be held in Douglas County, Nebraska.

DATED this 17th day of May, 2016.

Respectfully submitted,

GREATER OMAHA PACKING
COMPANY, INC. GREATER OMAHA
EXPRESS, LLC, and GREATER OMAHA
LEASING COMPANY, LLC, Plaintiffs.

By: _____


Michael F. Coyle, #18299
Robert W. Futhey, #24620
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102
402-341-6000
ATTORNEYS FOR PLAINTIFFS

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PRAECIPE FOR SUMMONS

Plaintiffs,

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ST. FRANCIS OF ASSISI CHURCH,
ARCHDIOCESE OF OMAHA, and
CITY OF OMAHA,

Defendants.

TO THE CLERK OF SAID COURT:

Please issue summons for service by certified mail upon:

St. Francis of Assisi Church
4513 South 32nd Street
Omaha, NE 68107

GREATER OMAHA PACKING
COMPANY, INC. GREATER OMAHA
EXPRESS, LLC, and GREATER OMAHA
LEASING COMPANY, LLC, Plaintiffs.

By: /s/ Robert W. Futhey #24620
Michael F. Coyle, #18299
Robert W. Futhey, #24620
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Please issue summons for service by certified mail upon:

St. Francis of Assisi Church
c/o Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle #300
Omaha, NE 68114

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Defendants.

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Please issue summons for service by certified mail upon:

Archdiocese of Omaha
100 North 62nd Street
Omaha, NE 68132

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