

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521 (970) 494-3500	DATE FILED: November 10, 2017 12:55 PM FILING ID: FF4949B297BB2 CASE NUMBER: 2017CV30947
Plaintiff: DICKINSON LAND & CATTLE CO, LLC, a Colorado limited liability company v. Defendants: GARY K. DEJOHN, Sr., an individual, and DEJOHN HOUSEMOVING, INC., a Colorado corporation	COURT USE ONLY
Attorneys for Plaintiff: Richard LiPuma, #17892; Joseph Carbon, #42072 <i>LiPuma Law Associates, llc</i> 1635 Foxtrail Drive, Loveland, CO 80538 Telephone: (970) 776-3292; Facsimile: (970) 674-9535 E-mail: rich@rlipuma.com; joe@rlipuma.com	Case Number: 2017 CV _____ Division/Courtroom:
COMPLAINT FOR INJUNCTION, DAMAGES AND OTHER RELIEF	

Plaintiff Dickinson Land & Cattle Co, LLC, by and through its attorneys, *LiPuma Law Associates, llc*, for its Complaint against the defendants, Gary K. DeJohn, Sr. and DeJohn Housemoving, Inc., alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Dickinson Land & Cattle Co, LLC (“Dickinson”) is a Colorado limited liability company, in good standing, with its principal place of business in Larimer County at 6875 North County Road 9, Loveland, Colorado 80538.
2. Defendant Gary K. DeJohn, Sr., is an individual residing in Weld County at 1860 23rd Avenue, Greeley, Colorado 80634. Upon information and belief, DeJohn is the sole owner of Defendant Dejohn Housemoving, Inc.
3. Defendant DeJohn Housemoving, Inc., is a Colorado corporation with its principal place of business located at 1860 23rd Avenue, Greeley, Colorado 80634. (Defendants are collectively referred to herein as “DeJohn”)
4. This Court has jurisdiction of the matters asserted in this action pursuant to the Colorado Constitution, Article 6, Section 9(1), Rule 65, C.R.C.P., and §13-1-124(1)(b), C.R.S.
5. Venue is appropriate pursuant to Rule 98(a) and (c)(5), C.R.C.P.

GENERAL ALLEGATIONS

6. Dickinson owns a dairy farm in unincorporated Larimer County, located at 6875 North County Road 9, Loveland, Colorado 80538 (the “Property” or “Land”).
7. DeJohn is engaged in the business of lifting, transporting, and re-positioning homes from one location to another.
8. On September 1, 2017, DeJohn approached Dickinson employee, Martin Enriquez, and inquired whether DeJohn could temporarily store some telephone poles on the Property. Dickinson agreed, as there was already a small stockpile of old telephone poles stored on the Property.
9. DeJohn returned to the Property, not with telephone poles as represented, but with a truck and tractor-trailer towing a single family residential structure (the “House”).
10. Understandably confused, owner Michelle Dickinson approached DeJohn to clarify his intentions regarding the House. DeJohn stated that the City of Loveland had required him to remove the structure from within city limits by Labor Day (September 4, 2017) and assured Dickinson that he would return on September 5, 2017 to retrieve the House. Dickinson reluctantly agreed to temporary storage of the truck, tractor-trailer, and House on the Property.
11. DeJohn did not return or retrieve the truck, tractor-trailer, or House. DeJohn fraudulently concealed his intent to leave the truck, trailer and House on Dickinson’s Land.
12. Dickinson contacted DeJohn numerous times to demand removal. Each time, DeJohn fraudulently represented that he was in the process of removing the House, but he nevertheless failed and refused to remove it. The truck, trailer and House remain on Dickinson’s Property today.
13. On September 6, 2017, the Community Development Division of the Larimer County Code Compliance Department warned Dickinson in writing that storage of DeJohn’s House violates the Larimer County Land Use Code and Building Code. Dickinson was further warned that failure to take immediate corrective action would result in enforcement proceedings and other legal action against Dickinson.
14. Upon further investigation, Dickinson discovered that: DeJohn’s House previously was stored on other real property located in Loveland, Colorado; DeJohn had been cited by the City of Loveland for six (6) counts of trespass associated with the House; DeJohn pleaded guilty to all six counts on April 6, 2017, and was sentenced to 120 days in jail; and DeJohn’s jail sentence was suspended upon his payment of restitution and agreement to commit no further violations for a period of one year. DeJohn fraudulently concealed from Dickinson the past history concerning the House.

15. Dickinson also discovered that the House is a health hazard and was constructed with asbestos-containing materials. As part of DeJohn's criminal sentencing, he was ordered to abate asbestos in the House within 30 days of April 6, 2017. An asbestos abatement review date was set for May 8, 2017. DeJohn was further ordered to remove the asbestos-abated House from the its previous location within 45 days and a Removal Review date was set for May 22, 2017. DeJohn has never completed the asbestos abatement or complied with the other orders entered against him. Instead, he moved the House to three different locations within the City of Loveland before most recently moving the house to the Dickinson Property. DeJohn fraudulently concealed the hazardous nature of the structure from Dickinson, the history of orders for abatement, and that he had moved the House from place to place to avoid his legal obligations.

16. Prior to moving the House onto Dickinson's land, DeJohn served three months in the Larimer County Detention Center for his continuing violations. This also was fraudulently concealed from Dickinson.

17. The Colorado Department of Public Health and Environment has inspected the House and determined that it may not be moved again until the asbestos contaminated material is removed by a licensed abatement contractor. On October 5, 2017, Dickinson received a quote in excess of \$100,000 to complete asbestos abatement of the House.

18. In addition to Larimer County land use and building code violations, Dickinson's dairy cows and general farming operations have been subjected to abnormally dangerous risks caused by storage of the asbestos contaminated House on the Dickinson Property.

19. Without a Court Order for immediate abatement, destruction and removal of the House from Dickinson's property, Dickinson will suffer real, immediate, and irreparable injuries.

FIRST CAUSE OF ACTION –TRESPASS

20. Plaintiff incorporates the preceding allegations as though fully restated here.
21. Dickinson owns real property situated in Larimer County.
22. DeJohn intentionally entered and remained upon Dickinson's Land.
23. DeJohn entered and remained on Dickinson's Land without consent.
24. DeJohns' trespasses have caused Dickinson to suffer damages, and damages will continue to accrue in the future.
25. DeJohn's trespasses were committed with fraudulent and malicious intent.

WHEREFORE, Plaintiff Dickinson Land & Cattle Co, LLC, respectfully prays for entry of judgment for trespass against Defendants Gary DeJohn and DeJohn Housemoving, Inc., jointly and severally, in an amount sufficient to compensate Dickinson for its past and future losses and damages, plus punitive damages, pre-judgment interest, post-judgment interest, costs, attorneys' fees, injunctive relief, and for such other and further relief as the Court deems proper.

SECOND CAUSE OF ACTION - PRIVATE NUISANCE

26. Plaintiff incorporates the preceding allegations as though fully restated here.

27. DeJohn intentionally and unreasonably placed a House requiring asbestos abatement upon Dickinson's property.

28. The contaminated House constitutes a substantial and abnormal invasion of Dickinson's use and enjoyment of its Property.

29. The interference with Dickinson's use and enjoyment of its Property caused by the contaminated House is offensive, annoying, and inconvenient.

30. DeJohn knows that such offensive invasion and interference was the result of, or was substantially certain to result from, his intentional conduct.

31. Dickinson notified DeJohn that an invasion interfering with the use and enjoyment of its Property was occurring, but DeJohn has continued the offensive conduct by failing and refusing to remove the contaminated House.

32. DeJohn has caused damage to Dickinson's Property.

33. DeJohns' intentional, substantial, abnormal invasion has caused Dickinson to suffer damages and will cause Dickinson to suffer damages in the future.

WHEREFORE, Plaintiff Dickinson Land & Cattle Co, LLC, respectfully prays for entry of judgment for private nuisance against Defendants Gary DeJohn and DeJohn Housemoving, Inc., jointly and severally, in an amount sufficient to compensate Dickinson for its past and future losses and damages, plus punitive damages, pre-judgment interest, post-judgment interest, costs, attorneys' fees, injunctive relief, and for such other and further relief as the Court deems proper.

THIRD CAUSE OF ACTION - FRAUD

34. Plaintiff incorporates the preceding allegations as though fully restated here.

35. DeJohn made false and fraudulent representations concerning material facts with reckless disregard for Dickinson's rights, as specifically described above.

36. Also, as described with specificity above, DeJohn fraudulently concealed material facts and information from Dickinson that in equity and good conscience should have been disclosed.

37. DeJohn knew that his representations to Dickinson were false, and that he was fraudulently omitting disclosure of material facts that in equity and good conscience should have been disclosed.

38. Dickinson had no knowledge of the material existing facts, or of DeJohn's actual intentions when he placed a contaminated House upon her Property.

39. DeJohn intended for Dickinson to rely on his false and fraudulent representations and omissions, and DeJohn's false and fraudulent representations and omissions were intended to induce Dickinson to act to its detriment.

40. Dickinson did rely to its detriment on DeJohn's false and fraudulent representations and omissions, and Dickinson has suffered damages and will continue to suffer damages in the future.

WHEREFORE, Plaintiff Dickinson Land & Cattle Co, LLC, respectfully prays for entry of judgment for fraud against Defendants Gary DeJohn and DeJohn Housemoving, Inc., jointly and severally, for damages, future damages, punitive damages, pre-judgment interest, post-judgment interest, costs, attorneys' fees, injunctive relief, and for such other and further relief as the Court deems proper.

FOURTH CAUSE OF ACTION – ABANDONMENT

41. Plaintiff incorporates the preceding allegations as though fully restated here.

42. DeJohn abandoned his truck, tractor-trailer and the House on Dickinson's Property.

43. By his conduct in refusing to retrieve the truck, trailer and House under the circumstances, DeJohn's abandonment of property was knowing and intentional.

44. Dickinson is entitled to take possession, control and ownership of the abandoned property so that Dickinson can immediately abate any asbestos hazard, destroy the contaminated House, and sell the truck and tractor-trailer to partially offset its expenses in doing so.

WHEREFORE, Plaintiff Dickinson Land & Cattle Co, LLC, respectfully prays for entry of a Decree in equity that the truck, tractor-trailer and House were knowingly and intentionally abandoned, and that Dickinson shall have title to the truck, trailer and House, and full authority

to abate asbestos, destroy or otherwise dispose of the House, and sell the truck and tractor-trailer in its own sole discretion to offset costs.

FIFTH CAUSE OF ACTION – INJUNCTION

45. Plaintiff incorporates the preceding allegations as though fully restated here.

46. DeJohn's trespasses and other wrongful conduct threaten real, immediate, and irreparable injury to Dickinson.

47. A permanent mandatory injunction is required to compel DeJohn to immediately abate asbestos, then remove the hazardous structure from Dickinson's property, and to fully restore Dickinson's property to its prior condition.

48. A preliminary injunction is necessary to protect Dickinson from suffering irreparable injury during the pendency of this action.

49. Dickinson is likely to prevail at a trial on the merits of her action for injunctive relief.

50. There is no other plain, speedy, and adequate remedy at law.

51. The balance of equities favors injunctive relief.

52. There will be no disservice to the public interest if injunctive relief is granted.

53. Dickinson had a hazard-free dairy farm prior to DeJohn's trespass, and mandatory injunctive relief is necessary to preserve that status quo pending further proceedings herein.

54. In the event DeJohn fails or refuses to immediately abate asbestos, remove the House, and restore the Dickinson farm to its original condition, Dickinson is entitled to injunctive relief enjoining the defendants from interfering or asserting any rights whatsoever that would prevent Dickinson from immediately undertaking asbestos abatement, destroying or otherwise disposing of the House, and selling the truck and tractor-trailer to offset the cost of abatement and destruction of the hazardous object.

WHEREFORE, Plaintiff Dickinson Land & Cattle Co, LLC, respectfully prays for entry of a preliminary injunction, and ultimately a permanent injunction, mandating that Gary DeJohn and DeJohn Housemoving, Inc., must immediately abate asbestos, remove the house, and restore Dickinson's dairy farm, and, if defendants fail to complete these tasks immediately, enjoining Defendants from interfering with Dickinson's right to immediately abate asbestos, destroy and dispose of the House, and sell the truck and tractor-trailer to offset its damages.

Dated: November 7, 2017.

Respectfully submitted,

LiPuma Law Associates, llc

/s/ Joseph Carbon

Joseph Carbon, #42072
Richard LiPuma, #17892
Attorneys for Plaintiff

Plaintiffs' Address:

Michelle Dickinson
Dickinson Land & Cattle Co, LLC
6875 N. Co. Rd. 9
Loveland, CO 80538