

**IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA**

e-Filed in Office  
Tammie Mosley  
Clerk of Superior Court  
Chatham County  
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Reviewer: JN

MBM Developments, LLC

Plaintiff

CIVIL ACTION

Case No:

v.

SPCV22-00842-KA

D & A Distribution, LLC, and  
Savannah Mall Realty Holding, LLC

Defendants

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**COMPLAINT FOR PRIVATE NUISANCE**

Comes now, Plaintiff MBM Developments, LLC, an Iowa limited liability company (“MBM”), and sues D & A Distribution, LLC, a Georgia limited liability company (“D&A”) and Savannah Mall Realty Holding, LLC, a Georgia limited liability company (“SMRH”), and says:

1. MBM owns real property within the Savannah Mall located at 14045 Abercorn St., Savannah, Chatham County, Georgia, 31419. Specifically, MBM owns Unit 1 within the Savannah Mall, which

mall is a condominium property. Unit 1 is also known as Suite 1503 for mailing purposes.

2. Unit 1 is the first floor of a two-story section of the Savannah Mall.
3. Directly above MBM's Unit 1 is real property owned by SMRH.
4. On information and belief, the real property footprint directly above MBM's Unit 1 is a mirror or near mirror image of Unit 1, and is known on the Savannah Mall Condominium Plat as Unit 2. The real property directly above MBM's Unit 1 also has a truck loading dock at ground level to the side of Unit 1, with access to the space above Unit 1 by way of a freight elevator. The real property directly above MBM's Unit 1, along with the loading docks and elevator, is referred to hereinafter as the "OFFENDING PROPERTY".
5. MBM, a commercial property investor and landlord, has a lease with a call center services business.
6. The nature of a call center business necessitates hundreds of employees be able to concentrate, not be distracted by continuous loud noise and vibrations, and not have continuous loud noises in the background during telephone calls with clients and customers.

Further the nature of a call center business requires frequent daily meetings of employees to be conducted in a professional office environment free of continuous loud noises and vibrations.

7. Beginning in early July 2022, employees within MBM's Unit 1 began complaining of excessive loud noises and vibrations emanating from the OFFENDING PROPERTY.
8. The noises are best described as bowling balls being dropped and rolled along the floor of the OFFENDING PROPERTY, or fighter jets, which also causes vibrations to be felt within MBM's Unit 1, which noises and vibration are near constant, and are accompanied by loud noise from the continual operation of the freight elevator. Additionally, tractor trailer traffic to and from the loading dock accessed via the parking area for employees within MBM's Unit 1 has dramatically increased to a volume not intended for this Business-Commercial district, which has created a life-threatening safety situation. Collectively, these noises and vibrations and risks constitute a nuisance to MBM.

9. Inquiry by MBM revealed that at some point prior to early July 2022, SMRH leased the OFFENDING PROPERTY to D&A.
10. On information and belief, D&A is engaged in warehousing storage, delivery, and freight business, including but not limited to Controlled Substances. What MBM knows for sure is that the business of D&A involves the constant movement of freight into, within, and without the OFFENDING SPACE, with equipment sufficiently loaded to vibrate the MBM office spaces and emanate near constant loud and distracting noises consistent with a freight moving business.
11. The OFFENDING PROPERTY is under the control of both D&A as tenant conducting the warehousing, delivery, and freight moving business, and SMRH as the landlord and owner of the property allowing the conducting of a warehousing, delivery, and freight moving business on the floor above MBM.
12. As the OFFERING PROPERTY is under the control of D & A and SMRH, D&A and SMRH are the cause of the nuisance.

13. In addition to the noise and vibration nuisance, the OFFENDING PROPERTY is also a nuisance where the OFFENDING PROPERTY:

- a. Is being used in violation of the applicable zoning ordinances. The OFFENDING PROPERTY is zoned for Business Commercial use (B-C). The OFFENDING PROPERTY's business is both a Remote dry storage warehouse and a Wholesaling and assessor warehousing business. As such, the warehousing activities are in violation of zoning restrictions which limit the space for such activities to a maximum of 7,500 sq. ft. The OFFENDING PROPERTY is believed to be approximately 50,000 sq. ft.. Further, the warehousing activities are in violation of zoning restrictions where the warehouse shipping and docking facility does not abut a collector or greater classified street. The OFFENDING PROPERTY abuts the parking lot used for employees and invitees within MBM's Unit 1.

b. Is being used in violation of the Declaration of Covenants, Easements, and Restrictions declared by SMRH recorded September 1, 2021, to apply to property including the OFFENDING PROPERTY, which Declaration prohibits “An operation primarily used as a storage warehouse...” and prohibits “operation which is unlawful, a nuisance (public or private) or hazardous.”.

c. Is being operated in violation of the Declaration of Condominium for Savannah Mall Condominium recorded September 8, 2021, which provides:

i. **12. Use Restrictions (c) Unreasonable Interference.**

“No Person shall permit or engage in any activity in or from a Unit of the Common Elements which, in the reasonable judgment of the Board, creates obnoxious odors or unreasonable levels of noise or vibration, or otherwise constitutes an unreasonable annoyance to the Owners, occupants, or invitees of the Units, or which unreasonably interferes with the peaceful

possession and permitted use of the Condominium by the Owners, occupants, and invitees of the Units.

ii. **12. Use Restrictions (h) Nuisance.** “No Person shall make use of any Unit or any portion of the Condominium in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of any Unit or that constitutes, in the Boards opinion, a nuisance.

iii. **EXHIBIT “B” List of Exclusive and Prohibited Uses. ....**”no portion of the Condominium shall be used for any other following purposes:...4. An operation primarily used as a storage warehouse operation...28. No operation which is unlawful, a nuisance (public or private) or hazardous.”.

14. As a result of the nuisance being caused by D&A and SMRH, MBM is damaged.

15. MBM is damaged by the loss of use and enjoyment of its property, and a reduced value of its property.
16. MBM has complained of the nuisance to both D&A and SMRH, yet the nuisance continues.
17. MBM demands an Order enjoining the nuisance, past and future compensation for the loss of use and enjoyment of MBM's property, compensation for the reduced value of MBM's property should the nuisance not be abated, and an award of MBM's reasonable attorney's fees and costs in having to bring this nuisance action.

Respectfully submitted this 5<sup>th</sup> day of August, 2022.

**BEDARD LAW GROUP, P.C.**

*/s/John H. Bedard, Jr.*\_\_\_\_\_

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