

STRAUSS & FROST, LLC
ATTORNEYS AT LAW
1132 CONYERS STREET, S.E.
COVINGTON, GEORGIA 30014

COPY

MAILING ADDRESS:
POST OFFICE BOX 1103
COVINGTON, GA 30015

JOHN L. STRAUSS
BRYAN H FROST

TELEPHONE: 770-787-5020
FACSIMILE: 770-784-0576
johnstrauss@strausslawoffice.com

November 19, 2013

Honorable Keith Ellis
Chairman, Newton County
Board of Commissioners
Historic Courthouse
1124 Clark Street
Covington, GA 30014

Re: Ante Litem Notice
My Client: Billy Durden d/b/a Durden's Lawn Maintenance

Dear Chairman Ellis:

I hope you are well.

This letter is being submitted to you in your official capacity as an Ante Litem Notice.

As you know, Mr. Durden was awarded a 5-year contract for Lawn Maintenance Services by vote of the Newton County Board of Commissioner's at its meeting that occurred on February 5, 2013. Thereafter, Mr. Durden met with Mr. Tommy Craig to finalize the written contract itself, and it is my understanding that the final version of the contract was submitted to you for your execution. It is unknown whether in fact the document was in fact executed by you.

Notwithstanding the foregoing, purportedly at a specially-called meeting that occurred on February 26, 2013, the Board decided to revoke the contract that it had previously awarded to Mr. Durden. The action was apparently based upon slanderous misinformation that was both promulgated and received by various County employees and officials. The effect of this false information was to interfere with the contractual relationship between Mr. Durden and Newton County, Georgia. The misinformation also caused substantial harm to Mr. Durden, his business, and his reputation.

Claims Under Terminated Contract

According to correspondence from Mr. John Middleton to Mr. Durden, dated March 13, 2013, the County terminated Mr. Durden's existing contract "for cause" based upon his alleged failure to maintain a business license, which alleged failure itself allegedly constituted a violation of Section 9(b)(2) of Mr. Durden's contract with the County. However, it should be noted that Mr. Durden did not in fact breach the quoted provision of the contract for several reasons (of which Mr. Tommy Craig is probably aware notwithstanding Mr. Middleton's claim to the contrary).

First, from what I can thus far tell, Newton County lacks any authority to even issue a Business License. A County can only issue a Business License if the County actually regulates the particular industry that is being licensed. I am unaware of any steps that have ever been taken by Newton County to regulate any landscaping operators in Newton County. Consequently, Mr. Durden's alleged failure to renew his Business License would not be unlawful. (See Chapter 13 of Title 48 of the O.C.G.A.)

Second, even if Newton County's "license" requirements were deemed instead to be an "Occupational Tax" notwithstanding the inaccurate nomenclature used by the County, it is at this point unclear to me whether Newton County has ever implemented such a taxing system. The only reference I can find within Newton County's Code that is published on its website is Section 2-001. However, that Code Section does not in fact implement an Occupational Tax; rather, that section authorizes the Board to implement a system of regulation or taxation. I have asked for all ordinances dealing with a business license or occupation tax certificate, but the time for producing the same has not yet arrived. If no subsequent taxing ordinance were enacted, the Newton County Taxation is also unlawful (and would be for the many businesses who have been paying the same). In any event, however, assuming that Newton's taxing scheme is properly enacted, the tax would not in fact be due until March 15th, according to Newton's website (which would be comparable to the April 15th date for the I.R.S.), and consequently, because Mr. Durden's tax was paid prior to that date, he was not in violation of the "law" – assuming, of course, that such a "law" exists.

Third, there has been at least one well-publicized occasion of a long-term contractor with Newton County who – for decades, reportedly – did not pay the City of Covington Occupational Tax, and yet the County took no action with respect to that contractor's contract.

For all of the above reasons, as well as a few other, the termination of Mr. Durden's contract with the County cannot be deemed a "for cause" termination. Therefore, under the terms of the contract, the termination would, at best, be a "termination of convenience." However, the County failed to comply with the provisions of the contract with respect to such terminations. The County was required to provide 90 days notice of termination, which it failed

to do. Additionally, because the termination was at best a termination for the County's convenience, the County would owe Mr. Durden a severance of two months pay under the contract. Consequently, under the County's "best case" scenario, the County would owe Mr. Durden for five (5) months under the contract, which equals **\$41,026.25**.

If this matter proceeds to litigation, and if Mr. Durden prevails, under the Paragraph 13(e) of the contract, then Mr. Durden would likewise be entitled to attorney's fees, costs, and litigation expenses. Additionally, Mr. Durden would be entitled to pre-judgment interest upon this liquidated amount.

Claims for Breach of Future Contract

Of course, Mr. Durden also possesses a claim that he had been properly awarded a 5-year contract, which award has been unlawfully revoked by the County. This revocation apparently occurred because of outside and undue influence from a third-party competitor, as well as a result of the aforementioned false and slanderous statements. Mr. Durden intends to pursue a claim for that unlawful revocation as well, but at this point, we are still calculating the applicable damages associated with that claim, which damages will not be able to be liquidated until discovery is completed. But for purpose of this Notice, please assume the value of this claim will be **\$300,000.00**.

Claims for Slander, Slander Per Se, Libel, Libel Per Se, Interference with Contractual Relations

Mr. Durden had dedicated his entire business toward satisfying the County's landscaping needs – at times, making great sacrifices to do, and even performing services for free or at discounted rates to assist the County in its budgetary crisis. He focused upon that service exclusively, and now that he has been "stabbed in the back" by certain individuals, he has no business; he has no livelihood. He is in the process now of losing his home and everything he owns. For the reasons stated above, the County has chosen to destroy that livelihood based upon misinformation promulgated by certain individuals and a misapplication of the County's own ordinances and regulations. Accordingly, Mr. Durden intends to pursue the above-identified claims for the tortious acts of the County's employees and any other third parties involved.

Although the value of these claims would in part be determined by the enlightened conscience of a jury, for purposes of this demand, the value of these claims equals **\$1,000,000.00**.

Responsible Parties/Potential Respondents

Paragraph 13(g) of the Contract between Mr. Durden and the County requires that notice be given as to the potential parties to an action to be filed by Mr. Durden. It is likely that this provision of the Contract is unenforceable, but nevertheless, the potential defendants of whom

Mr. Durden is presently aware include: Newton County, Georgia; the individual members of the Newton County Board of Commissioners, including you, its Chairman; John Middleton; G & G Landscape Management Group; and Gary Campbell. Additional defendants may become known as discovery progresses.

Resolution of Claims

On behalf of Mr. Durden, I thank you Chairman Ellis for your acceptance of this Ante Litem Notice. Although we are prepared to pursue litigation at the earliest possible date, we would nevertheless also consider an alternate mechanism to resolve Mr. Durden's claims. In the meantime, we will await the County's response.

Sincerely yours,

STRAUSS & FROST, LLC

A handwritten signature in dark ink, appearing to be 'JL Strauss', written over a horizontal line.

By: John L. Strauss

JLS

cc: Mr. Billy Durden
Mr. Tommy Craig (via email)