

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JEAN KALONJI, and)
ANGELICA KALONJI,)

Plaintiffs,)

v.)

CIVIL ACTION CASE NO.

SERGEANT KENNETH KENT, in his)
Individual Capacity,)

1:13-CV-3723

DEPUTY DARRELL ODOM, in his)
Individual Capacity,)

ROBERT CANOLES,)
and BRANDON CANOLES,)

Defendants.)

**VERIFIED ANSWER AND DEFENSES OF DEFENDANTS ROBERT
CANOLES AND BRANDEN CANOLES**

COME NOW, Robert Canoles and Branden Canoles (erroneously referenced in the Verified Complaint as Brandon Canoles), named as defendants (hereinafter referred to as “these defendants” or “the Canoles”) in this civil lawsuit, and together file and serve their Verified Answer to Plaintiffs’ Verified Complaint, whereof they show the Court as follows:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state a claim against these defendants upon which relief can be granted.

SECOND DEFENSE

The Canoles were at all times within that degree of care required by law; therefore, Plaintiffs can have no recovery against these Defendants.

THIRD DEFENSE

The alleged acts and omissions of these defendants were not the proximate cause or the cause in fact of some or all of the damages alleged by Plaintiffs, and therefore Plaintiffs can have no recovery against these Defendants.

FOURTH DEFENSE

Any alleged injury or damage asserted by Plaintiffs was not caused by any act of these Defendants but was, instead, proximately caused, solely or in part, by the acts or omissions of other parties or entities over which the Canoles exercised neither control nor right of control.

FIFTH DEFENSE

These Defendants assert that this Court lacks personal jurisdiction over the Canoles.

SIXTH DEFENSE

These Defendants assert that at no time did they act with malice, recklessness or willfulness toward Plaintiffs. At all times, these Defendants acted with the good faith belief with regard to the facts which supported their conduct.

SEVENTH DEFENSE

These Defendants assert that Plaintiffs are not entitled to the requested relief.

LAST DEFENSE

The Canoles respond to the individual paragraphs of Plaintiffs' Verified Complaint as follows:

I. THE PARTIES

1.

These Defendants admit only that Plaintiffs presently reside at 1419 Lower River Road, Covington, Georgia 30016, and that Plaintiffs are next door neighbors to Defendant Robert Canoles. These Defendants respond that they are without sufficient information or knowledge to admit or deny the remainder of the averments in paragraph 1 and put Plaintiffs on strict proof of same.

2.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 2 and put Plaintiffs on strict proof of same.

3.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 3 and put Plaintiffs on strict proof of same.

4.

These Defendants admit the averments set forth in paragraph 4.

5.

These Defendants admit the averments set forth in paragraph 5.

II. JURISDICTION AND VENUE

6.

Paragraph 6 is a jurisdictional statement that requires no response from these Defendants. To the extent that a response is required, these Defendants deny that this Court has jurisdiction or venue over Plaintiffs' claims against them.

III. FACTS

7.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 6 of Plaintiffs' Verified Complaint.

8.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 8 and put Plaintiffs on strict proof of same.

9.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 9 and put Plaintiffs on strict proof of same.

10.

These Defendants deny that the "For Sale" sign had been removed from the property at issue prior to their arrival on April 19, 2012. These Defendants further respond that they are without sufficient information or knowledge to admit or deny the remainder of the averments set forth in paragraph 10 of the Complaint, and put Plaintiffs on strict proof of same.

11.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 11 and put Plaintiffs on strict proof of same.

12.

These Defendants deny the second sentence of paragraph 12. These Defendants further respond that they are without sufficient information or knowledge to admit or deny the remainder of the averments set forth in paragraph 12 of the Complaint, and put Plaintiffs on strict proof of same.

13.

Paragraph 13 is admitted.

14.

These Defendants admit only that Robert Canoles was carrying an unloaded AR-15 rifle with a flashlight attached, and that Branden Canoles was carrying an unloaded .22 caliber rifle, and that together they investigated what they perceived to be an unlawful break-in occurring on the neighboring property. These Defendants deny the remainder of the averments set forth in paragraph 14.

15.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 15 and put Plaintiffs on strict proof of same.

16.

These Defendants deny the averments set forth in paragraph 16.

17.

These Defendants deny the averments set forth in paragraph 17.

18.

These Defendants deny the averments set forth in paragraph 18.

19.

These Defendants deny the averments set forth in paragraph 19.

20.

These Defendants deny the first sentence set forth in paragraph 20. These Defendants further respond that they are without sufficient information or knowledge to admit or deny the remainder of the averments set forth in paragraph 20 of the Complaint, and put Plaintiffs on strict proof of same.

21.

These Defendants admit only that Officer Odom requested that the Canoles place their rifles on the ground and stand in place, that the Canoles complied, and that at some point thereafter Defendant Odom or Defendant Kent placed the Plaintiffs in handcuffs. These Defendants deny the remainder of the averments set forth in paragraph 21.

22.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 22 and put Plaintiffs on strict proof of same.

23.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 23 and put Plaintiffs on strict proof of same.

24.

The Canoles lack sufficient information or knowledge to admit or deny the averments in paragraph 24, and therefore the averments are denied.

25.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 24 and put Plaintiffs on strict proof of same.

26.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 26 and put Plaintiffs on strict proof of same.

27.

These Defendants admit the averments set forth in paragraph 27.

28.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 28 and put Plaintiffs on strict proof of same.

29.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 29 and put Plaintiffs on strict proof of same.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION: TRESPASS AGAINST DEFENDANTS
ROBERT AND BRANDON CANOLES

30.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 29 of Plaintiffs' Verified Complaint.

31.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 31 and put Plaintiffs on strict proof of same.

32.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 32 and put Plaintiffs on strict proof of same.

33.

These Defendants deny the averments set forth in paragraph 33.

34.

These Defendants deny the averments set forth in paragraph 34.

SECOND CAUSE OF ACTION: FALSE IMPRISONMENT AGAINST
DEFENDANTS ROBERT AND BRANDON CANOLES

35.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 34 of Plaintiffs' Verified Complaint.

36.

These Defendants deny the averments set forth in paragraph 36.

37.

These Defendants deny the averments set forth in paragraph 37.

38.

These Defendants deny the averments set forth in paragraph 38.

39.

These Defendants deny the averments set forth in paragraph 39.

THIRD CAUSE OF ACTION: ASSAULT AGAINST DEFENDANTS
ROBERT AND BRANDON CANOLES

40.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 39 of Plaintiffs' Verified Complaint.

41.

These Defendants deny the averments set forth in paragraph 41.

42.

These Defendants deny the averments set forth in paragraph 42.

43.

These Defendants deny the averments set forth in paragraph 43.

THIRD CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' FOURTH
AMENDMENT RIGHTS BY DEFENDANTS ODOM AND KENT

44.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 43 of Plaintiffs' Verified Complaint.

45.

These Defendants deny the averments set forth in paragraph 45.

46.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 46 and put Plaintiffs on strict proof of same.

47.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 47 and put Plaintiffs on strict proof of same.

48.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 48 and put Plaintiffs on strict proof of same.

49.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 49 and put Plaintiffs on strict proof of same.

50.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 50 and put Plaintiffs on strict proof of same.

51.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 51 and put Plaintiffs on strict proof of same.

52.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 52 and put Plaintiffs on strict proof of same.

53.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 53 and put Plaintiffs on strict proof of same.

54.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 54 and put Plaintiffs on strict proof of same.

55.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 55 and put Plaintiffs on strict proof of same.

FOURTH CAUSE OF ACTION: VIOLATION OF PLAINTIFFS'
FOURTH AMENDMENT RIGHTS BY DEFENDANTS
ODOM AND KENT

56.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 55 of Plaintiffs' Verified Complaint.

57.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 57 and put Plaintiffs on strict proof of same.

58.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 58 and put Plaintiffs on strict proof of same.

59.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 59 and put Plaintiffs on strict proof of same.

60.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 60 and put Plaintiffs on strict proof of same.

61.

These Defendants respond that they are without sufficient information or knowledge to admit or deny the averments in paragraph 61 and put Plaintiffs on strict proof of same.

FIFTH CAUSE OF ACTION: PUNITIVE DAMAGES

62.

These Defendants incorporate by reference as if fully set forth herein their responses to paragraphs 1 through 61 of Plaintiffs' Verified Complaint.

63.

These Defendants deny the averments set forth in paragraph 63.

64.

These Defendants deny the averments set forth in paragraph 64.

In response to that unnumbered paragraph beginning with "WHEREFORE" of the Complaint, these Defendants deny that Plaintiffs are entitled to any judgment or other form of relief in any sum, form, fashion or amount whatsoever. These Defendants deny that they are liable to Plaintiffs.

Any and all allegations set forth in the Verified Complaint which have not been admitted, denied, or otherwise addressed are hereby expressly denied.

WHEREFORE, having answered all allegations of the Complaint, and having shown that Plaintiffs have no right of recovery, these Defendants pray that they be discharged without liability or obligation to Plaintiffs, that judgment be entered in their favor, and that all costs be cast upon the Plaintiffs.

THE LAW OFFICE OF MARK E. BERGESON

By: /s/ Mark E. Bergeson

Mark E. Bergeson

GA Bar No. 054320

Attorney for Defendants Robert Canoles and
Branden Canoles

3400 Peachtree Road, N.E., Suite 1300

Atlanta, Georgia 30326

Tel: 404-841-8280; Fax: 404-841-8705

Email: mark.bergeson@sa-trial.com

LOCAL RULE CERTIFICATION

The undersigned counsel attests that this document was prepared in Times New Roman 14-point font in compliance with Local Rule 5.1.

This 16th day of January, 2014.

LAW OFFICE OF MARK E. BERGESON

By: /s/ Mark E. Bergeson

Mark E. Bergeson

Georgia Bar No. 054320

Attorney for Defendants Robert Canoles and
Branden Canoles

3400 Peachtree Road, N.E., Suite 1300
Atlanta, GA 30326
Tel: 404-841-8280
Mark.Bergeson@SA-Trial.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day electronically filed the VERIFIED ANSWER AND DEFENSES OF DEFENDANTS ROBERT CANOLES AND BRANDEN CANOLES with the Clerk of Court using the CM/ECF. I also certify that I have served a copy of the within and foregoing upon all parties in this matter by depositing a true copy of same in the U.S. mail, with proper postage prepaid and addressed as follows:

Jeremy E. Citron, Esq.
Thomas R. Mondelli, Esq.
150 E. Ponce de Leon Avenue
Suite 235
Decatur, Georgia 30030

This 16th day of January, 2014.

LAW OFFICE OF MARK E. BERGESON

By: /s/ Mark E. Bergeson
Mark E. Bergeson
Georgia Bar No. 054320
Attorney for Defendants Robert Canoles and
Branden Canoles

3400 Peachtree Road, N.E., Suite 1300
Atlanta, GA 30326
Tel: 404-841-8280
Mark.Bergeson@SA-Trial.com

Robert S. Canoles Jr.
ROBERT CANOLES

Sworn to and subscribed before me

This 10th day of January, 2014.

Megan Phares Reid
NOTARY PUBLIC

My commission expires on November 20, 2017.

Megan Phares Reid
Official Seal
Notary Public
Rockdale County
State of Georgia

Branden Canoles
BRANDEN CANOLES

Sworn to and subscribed before me

This 10th day of January, 2014.

Megan Phares Reid
NOTARY PUBLIC

My commission expires on November 20, 2017.

Megan Phares Reid
Official Seal
Notary Public
Rockdale County
State of Georgia