

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Property Damage

MOAC Mall Holdings, LLC,
d/b/a Mall of America,

Plaintiff,

v.

Black Lives Matter Minneapolis, Miski
Noor, Michael McDowell, Lena Gardner,
Kandace Montgomery, John Doe 1, John
Doe 2, John Doe 3, and John Doe 4,

Defendants.

Court File No.: _____

**VERIFIED
COMPLAINT**

Plaintiff MOAC Mall Holdings, LLC d/b/a Mall of America for its Verified Complaint against Defendants Black Lives Matter, Miski Noor, Michael McDowell, Lena Gardner, Kandace Montgomery, John Doe 1, John Doe 2, John Doe 3, and John Doe 4, states and alleges as follows:

PARTIES

1. Plaintiff MOAC Mall Holdings, LLC d/b/a Mall of America (“Mall of America”) is a Delaware limited liability company with its principal place of business in Bloomington, Minn.

2. Defendant Black Lives Matter Minneapolis (“BLM”) is an unincorporated organization operating in Minneapolis, Minn.

3. Upon information and belief, Miski Noor is a resident of Minneapolis, Minn. Noor is identified as a leader of BLM in an ABC News article dated December 17, 2015 and spoke in the article about the demonstration planned for December 23, 2015 on behalf of BLM. A true and correct copy of the article is attached as Exhibit 1.

4. Upon information and belief, Michael McDowell is a resident of Minneapolis, Minn. McDowell is identified as a leader of BLM in a KARE 11 article dated November 19, 2015, and he spoke to Fox 9 News on December 17, 2015 on behalf of BLM with respect to the demonstration planned for December 23, 2015. True and correct copies of these news articles are attached as Exhibit 2 and 3.

5. Upon information and belief, Lena Gardner is a resident of Minneapolis, Minn. Gardner is identified as a leader of BLM in a KARE 11 article dated November 19, 2015.

6. Upon information and belief, Kandace Montgomery is a resident of Minneapolis, Minn. Montgomery is identified as a leader of BLM in a KARE 11 article dated November 19, 2015. Montgomery spoke on WCCO radio on December 17, 2015 encouraging people to attend the BLM demonstration planned for December 23, 2015.

7. John Does 1-4 are the remaining four leaders of BLM, whose names currently are unknown to Mall of America. The KARE 11 article dated November 19, 2015 states that BLM has eight current leaders, but only three are identified by name in the article.

8. This matter is properly venued in Hennepin County as the real property at issue in this trespass action is located in Hennepin County, Minnesota.

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

9. Mall of America owns and operates a private, 4.2 million square foot commercial retail and entertainment complex with more than 520 stores, 50 restaurants, and a seven-acre amusement park located at 60 E Broadway, Bloomington, Minn. (“MOA Premises”).

10. As a private retail center, according to its Promotional Events Handbook, Mall of America “prohibits all forms of protest, demonstration, public debate and speech aimed at organizing political or social groups” at MOA Premises.

11. In December 2014, Mall of America personnel learned that BLM intended to hold a demonstration at MOA Premises on December 20, 2014, one of the busiest shopping days of the entire year.

12. On December 12, 2014, MOA management sent a letter to several leaders of BLM, including McDowell, which informed BLM demonstration organizers that MOA: (1) is a private commercial retail center; (2) prohibits “all forms of protest, demonstration and public debate,” “including political activity aimed at organizing political or social groups”; and (3) has consistently enforced that policy over the years. The letter also stated that any attempt to conduct an unauthorized protest at MOA Premises would subject demonstrators to removal from MOA Premises and potential arrest by the Bloomington Police Department. (December 12, 2014 letter from MOA Management Team to Michael McDowell, Mica Grimm, and Nicholas Espinosa. A true and correct copy of the December 12, 2014 letter is attached as Exhibit 4.)

13. On December 20, 2014, approximately 1,000 to 1,500 people attended a BLM demonstration on the east side of MOA Premises. Montgomery and McDowell are both known to have attended the demonstration. Order and Mem. Opinion on Defs.’ Mots. to Dismiss and Am. Scheduling Order, *State v. Montgomery et al.*, No. 27-CR-15-1304 (Hennepin Co. Dist. Ct. Nov. 10, 2015) (“Nov. 10 Order”) A true and correct copy of the Nov. 10 Order is attached as Exhibit 5.

14. Attendees of the demonstration were informed that they were trespassing and were escorted off MOA Premises. A number of demonstrators were arrested and charged with trespass. Criminal trespassing charges remain pending against a number of demonstrators. (Nov. 10 Order, p. 15.)

15. The December 20, 2014 demonstration caused irreparable harm to Mall of America, its tenants, and their employees in a number of ways. First, the demonstration interfered with Mall

of America's rights to its property and to control activities on its property, and with its right and ability to conduct its business.

16. Next, Mall of America, and many of its retailers and other tenants saw reduced numbers of guests and reduced sales numbers because a portion of the mall was forced to close during the demonstration. Traffic counts for the number of cars entering Mall of America's ramps showed that the number of vehicles entering on December 20, 2014 was down approximately 15 percent compared to statistics for the previous five years for the Saturday before Christmas—which translates into an estimated 24,000 guests who did not visit Mall of America on that date. This affected Mall of America's tenants—numerous retailers reported double digit decreases in sales on the date of the demonstration, and one of the family attractions reported that its attendance dropped by 50 percent. The sales lost to Mall of America and its tenants are difficult, if not impossible, to quantify, and the lost shoppers are unlikely to return to Mall of America at a later time, particularly at the very end of the holiday shopping season—instead, they are likely to spend their money at stores at places other than the mall.

17. In addition, the demonstration and the partial shutdown of Mall of America necessitated by the demonstration caused an incalculable loss to Mall of America's goodwill with its guests.

18. Finally, the more than 15,000 people employed by Mall of America and its tenants were negatively affected, as many of those employees depend upon commissions, tips, or bonuses that were reduced due to the decrease in the number of attending guests and the shutdown of many stores in the mall during the demonstration.

19. On July 25, 2015, more than forty people held another unauthorized demonstration at MOA Premises on behalf of Black Lives Matter Minneapolis. (BLM Facebook Post, dated July 25. A true and correct copy of the July 25 BLM Facebook Post is attached as Exhibit 6.) Mall of

America did not give permission for this demonstration to be held, as it violated Mall of America policy.

20. In November 2015, in ruling on motions to dismiss various criminal charges brought against participants in the December 2014 demonstration, the Hennepin County District Court concluded that MOA is private property, not a public forum, and that the BLM demonstrators did not have a right to engage in demonstrations at MOA Premises. The Court ruled that “no citizen and no group possesses a constitutional right under either the United State or Minnesota Constitution to conduct political demonstrations at the MOA over the express objection of MOA ownership and management.” (Nov. 10 Order, p. 126.)

21. On December 17, 2015, BLM announced that it intended to hold a demonstration, entitled #BlackXmas2: #Justice4Jamar at Mall of America’s East Rotunda on December 23, 2015 at 1 p.m. (BLM Facebook Post, dated December 17. A true and correct copy of the Dec. 17 Facebook Post is attached as Exhibit 7.) The demonstration has been announced on BLM’s Facebook page and through its Twitter account. BLM’s Facebook page encourages people who want to attend the demonstration to join a text group in order to get updates about the event. (*Id.*) As of the time of filing of this Complaint, more than 4,400 people have been invited, more than 300 people have indicated that they intend to attend the demonstration, and 550 have indicated they are interested in attending. (*Id.*) BLM leaders, including Defendants, have made multiple media appearances encouraging people to attend the demonstration.

22. On December 18, 2015, Mall of America management wrote to BLM leaders, including Noor, McDowell, Montgomery, and Gardner, stating that MOA Premises are private property and prohibiting the demonstration on MOA Premises. Mall of America Management informed BLM leaders that anyone demonstrating at MOA Premises would be trespassing and would be removed from the property. (December 18, 2015 letter from Mall of America

Management to Noor, McDowell, Montgomery, and Gardner. A true and correct copy of the December 18, 2015 letter is attached as Exhibit 8.)

23. BLM acknowledged on its Facebook page that the demonstration was not authorized by Mall of America, and that Mall of America was attempting to “shut down” the protest. (BLM Facebook Post, dated December 17.)

24. Mall of America has never given permission to BLM or any of its members to demonstrate at the property and has consistently informed BLM and its members that its demonstrations are not allowed at the property and constitute unauthorized and unlawful trespasses.

25. If the BlackXmas2 demonstration is allowed to proceed, Mall of America, its tenants, and their employees, will again experience interference with their property rights, their right and ability to conduct their business, a loss of guests, lost sales, loss of goodwill, and loss of earnings in amounts that are difficult, if not impossible, to compute.

COUNT I: TRESPASS

26. Plaintiff realleges all previous paragraphs as if fully stated herein.

27. Mall of America owns MOA Premises.

28. Defendants intentionally and without permission have entered MOA Premises and held two demonstrations on the property even though they were informed that their entry and demonstration violated Mall of America’s policies and was not allowed.

29. Defendants have indicated that they intend to again enter MOA Premises and hold a demonstration on December 23, 2015, even though they have been informed that their entry and demonstration violate Mall of America’s policies and are not allowed. Defendants are likely to continue to hold future protests at MOA Premises unless they are enjoined from doing so.

30. By entering and demonstrating on MOA Premises without permission, Defendants are interfering with Mall of America’s possession of the property.

31. In addition, Mall of America is entitled to equitable relief because money damages cannot fully compensate it for the interference with its right to possession of its property, the interference with its right and ability to conduct its business, a loss of guests, lost sales, loss of goodwill, and loss of earnings

32. Accordingly, Mall of America seeks a temporary restraining order and permanent injunctive relief prohibiting Defendants from demonstrating at MOA Premises.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Entering a temporary restraining order and permanent injunction:
 - a. Prohibiting Defendants, their agents, and all persons in active concert or participation with them from engaging in any demonstration on MOA Premises without the express, written permission of Mall of America;
 - b. Prohibiting Defendants, their agents, and all persons in active concert or participation with them from soliciting or encouraging others to engage in any demonstration on MOA Premises without the express, written permission of Mall of America;
 - c. Ordering Defendants and their agents to delete and take down any online materials, including posts on Facebook, messages on Twitter, and online messages in any other form, that solicit or encourage others to engage in any demonstration on MOA Premises on December 23, 2015 or that provide information about the planned demonstration on MOA Premises on December 23, 2015;
 - d. Ordering Defendants and their agents to immediately post on the BLM Facebook page, to send a message through the BLM Twitter account, and to send a

message to BLM's text group informing potential demonstrators that the planned demonstration at MOA Premises on December 23, 2015 has been canceled; and

- e. Ordering Defendants and their agents to immediately post on the BLM Facebook page a copy of any order issued by this Court granting Mall of America's motion for temporary restraining order or granting permanent injunctive relief.

2. Awarding Plaintiff such other and further relief as this Court may deem just and equitable under the circumstances.

Dated: December 18, 2015

GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.

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ATTORNEYS FOR PLAINTIFF
MOAC MALL HOLDINGS, LLC,
D/B/A MALL OF AMERICA

VERIFICATION

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Rich Hoge, being first duly sworn, state that I am the Executive Vice President of Operations for Mall of America; Mall of America is the Plaintiff in the foregoing Verified Amended Complaint; I have read the Verified Amended Complaint and know the contents thereof; and the factual allegations are true to the best of my knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

s/Rich Hoge
Rich Hoge

Subscribed and sworn to before me
this 18th day of December, 2015

s/Amy L. Grandy
NOTARY PUBLIC

My commission expires: Jan. 31, 2017

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