

23SV271

A - ROBERT D. ALEXANDER
JUL 31, 2023 03:48 PM

Carrie W. Thomas

Carrie W. Thomas, Clerk
Jackson County, Georgia

IN THE STATE COURT OF JACKSON COUNTY
STATE OF GEORGIA

METRO SITE INC.,

Plaintiff,

vs.,

**SK BATTERY AMERICA, INC.,
TOM GRAY, and JOE HARDISON,**

Defendants.

CIVIL ACTION
FILE NO.:

Jury Trial Demanded

VERIFIED COMPLAINT FOR DAMAGES

This is a case about a foreign company that ignored the risk of harm posed by its illegal and intentional dumping of hazardous materials into a roll-off container it knew was bound for a public recycling facility. The company's disregard for a known risk led to the total destruction of a local recycling business. This tort action is brought to recover damages caused by intentional misconduct, and to prevent this illegal dumping of hazardous waste from ever happening again.

By way of background, Defendant SK Battery America, Inc. manufactures pouch-cell lithium-ion batteries (LIBs).¹ The LIBs are sold to Ford for its F-150 Lightning truck, and to Volkswagen for its ID.4 electric vehicle. SK Battery America, Inc. has a Gigafactory in Commerce Georgia. SK Battery America Inc. is a global leader in battery manufacturing for electric vehicles.

¹ LIBs are hazardous material under 49 CFR 171-180 and subject to DOT's Hazardous Materials Regulations and identified as UN 3480.

Metro Site, Inc. is a local recycling and disposal company that has been recycling the non-hazardous waste generated by SK Battery America, Inc., for the past three years. SK Battery America, Inc. regularly dumped its non-hazardous waste into large roll-off containers, which were then transported to Metro Site, Inc.'s facility. SK Battery America, Inc. knew that it should never send LIBs to a recycling facility, such as Metro Site, Inc., because, not only are the LIBs non-recyclable, but they also contain hazardous chemicals that can easily catch fire and explode. SK Battery America, Inc. repeatedly promised and assured Metro Site Inc. that the waste that it sent would not contain LIBs. SK Battery America, Inc. broke that promise, and, in doing so, placed Metro Site, Inc.'s business and employees at risk of harm.

The risk came to fruition on July 14, 2023, when SK Battery America, Inc. intentionally sent Metro Site, Inc. a load of waste that contained hazardous pouch cell LIBs hidden within the pile. SK Battery America, Inc. provided a false manifest for the load that misrepresented the load's contents – that being the hidden pouch cell LIBs. As Metro Site, Inc. processed the load, a violent fire broke out. Despite attempts to extinguish the flames, the fire consumed Metro Site, Inc.'s facility, destroying its business and causing life-altering economic loss.

Predictably, a joint investigation into the root cause of the fire revealed not one, but several LIBs hidden within the waste pile that SK Battery America, Inc. had sent to Metro Site, Inc. Although SK Battery may describe the fire as having “some other origin,” there can be no dispute that its LIB's—which never should have been sent to Metro Site in the first instance—caused the fire. SK Battery America, Inc.'s actions constitute willful trespass, breach of contract, and improper dumping, and a substantial punitive damages award is required to deter SK Battery's persistent misconduct.

Plaintiff, Metro Site, Inc., brings this lawsuit against Defendant SK Battery America, Inc., and Defendants Tom Gray and Joe Hardison.² Plaintiff asks the jury to place Plaintiff Metro Site, Inc., back to the financial and physical condition it was in, on Thursday, July 13, 2023, to compensate Plaintiff for all losses that have and will continue to accrue, and to punish SK Battery of America, Inc., for illegally and intentionally dumping its pouch cell LIBs into a roll-off container headed to Plaintiff's facility.³ Plaintiff summarizes its case as follows:

Count (1) *Trespass*

In a trespass case, every act which unlawfully interferes with a private property owner's absolute right to enjoy its property is a tort for which an action shall lie. This count pleads an intentional act by Defendant SK Battery America, Inc., to dump a pouch cell LIB into a non-hazardous roll-off container that SK Battery America, Inc., knew would be taken to Plaintiff's facility. Plaintiff has the burden of showing, more likely than not, that Defendant SK Battery America, Inc., dumped pouch cell LIBs into a non-hazardous roll-off it knew would be taken to Plaintiff's facility and this intentional act of dumping caused the Plaintiff harm.

Count (2) *Negligence*

A responsible manufacturer of hazardous material would take steps to prevent its product from harming Plaintiff. Plaintiff will prove, more likely than not (among other negligent acts), that Defendant SK Battery America, Inc.'s negligence and negligent misrepresentations caused Plaintiff to suffer damages.

²Defendant **Tom Gray** is the plant manager, and this litigation is brought against him in his executive capacity as an employee. Defendant **Joe Hardison** is the operations manager, and this litigation is brought against him in his executive capacity as an employee. These individual Defendants are residents of the State of Georgia.

³O.C.G.A. § 16-7-53 states: anyone who dumps egregious litter in any quantity shall be guilty of a felony and be imprisoned for five (5) years). O.C.G.A. § 16-7-52 states: "It shall be unlawful for any person to intentionally dump egregious litter: (3) In or on any private property". Egregious litter is defined as "hazardous waste" dumped for a commercial purpose. See O.C.G.A. § 16-7-51. Jackson County has an ordinance prohibiting industrial waste from being dumped into a roll-off container. Jackson County Ordinance "Refuse Control". § 32-56.

Count (3) Breach of Contract

Plaintiff shows that Defendant SK Battery America, Inc., assured Plaintiff that it would not dump pouch cell LIBs into a roll-off bound for Plaintiff's facility. Plaintiff relied on this agreement. Defendant SK Battery of America, Inc., did not live up to this promise and assurance, and as a result, Defendant SK Battery of America, Inc., now owes Plaintiff for the destruction and shutdown of Plaintiff's facility and all other damages flowing from same.

Count (4) Punitive damages

Punitive damages are authorized upon clear and convincing evidence, as here, that Defendant SK Battery America, Inc.'s actions show entire want of care which gives rise to the presumption of conscious indifference to consequences. Plaintiff has the burden of clear and convincing evidence to show Defendant SK Battery America, Inc., knew the following: that LIBs were dangerous; that dumping pouch cell LIBs into a non-hazardous roll-off was a high-risk act; that dumping pouch cell LIBs into a non-hazardous roll-off was illegal; that fires would result from the improper and illegal dumping of pouch cell LIBs; that it is illegal to dump hazardous material in this manner; and that prior to July 14, 2023, the illegal and improper dumping of pouch cell LIBs occurred more than once *after* Defendant SK Battery America, Inc., promised to prevent this conduct from ever happening again.

The following photographs demonstrate some of the permanent catastrophic harm suffered by Plaintiff:





FACTUAL BACKGROUND

1. Plaintiff Metro Site, Inc., is a recycling facility that receives construction and demolition debris, along with waste from customers who often manufacture, create, or sell commercial goods.
2. Plaintiff's facility is located at 169 Industrial Park Blvd., Commerce, GA 30529, less than three miles from SK Battery America, Inc.'s facility located in Commerce, Georgia

3. Plaintiff's facility is not permitted, designed, or allowed to receive pouch cell LIBs.
4. On Friday, July 14, 2023, Defendant SK Battery America, Inc., illegally dumped charged pouch cell LIBs into a non-hazardous roll-off container it knew was bound for Plaintiff's facility.
5. Predictably, the roll-off container was delivered to Plaintiff's facility (shown above) where a fire ignited and violently destroyed Plaintiff's facility.
6. A post-fire inspection located more than one charged pouch cell LIB manufactured by Defendant SK Battery America, Inc.
7. An investigation into the root cause of the fire was promptly initiated, and a joint examination of the scene uncovered the presence of pouch cell LIBs manufactured by Defendant SK Battery America, Inc., within the burnt debris.
8. Defendant SK Battery America, Inc., has "cradle-to-the-grave" responsibility for this hazardous material,⁴ yet somehow charged pouch cell LIBs were not accounted for, went missing, and were illegally dumped into a non-hazardous roll-off container.

Evidence found during post-fire inspection included the following:

⁴ "Cradle-to the- grave" responsibility involves five (5) specific stages: Generation, Transportation, Treatment, Storage, and Disposal. "Disposal" is the final stage, meaning what the "grave" refers to. This comes when the hazardous waste is safely and legally disposed of by dumping the hazardous waste in the appropriate places that are designed and intended to handle and accept hazardous waste, which keeps our environment and the public safe from the destruction of property and any hazardous effects from the waste. The final stage of the process is to make sure the landfill will accept the type of waste, the amount, and that a facility is properly licensed to handle the waste. Plaintiff's facility and the Banks County land fill is not the proper place for disposal of hazardous charged pouch cell LIBs – and Defendant SK Battery America, Inc., knew this.



PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff, Metro Site, Inc., is a construction and debris recycling facility, with its principal place of business located at 169 Industrial Park Blvd., Commerce, Banks County, GA 30529. Plaintiff submits to the jurisdiction and venue of the State Court of Jackson County for purposes of this litigation.

2.

Defendant, SK Battery America, Inc., is a lawfully registered foreign for-profit corporation licensed to do business in the State of Georgia with its principal office located at 1760 Steve Reynolds Industrial Pkwy., Commerce, Jackson County, Georgia, 30529. Defendant SK Battery America, Inc., may be properly served with this *Complaint, Notice of Inspection, Notice of ESI search, First Request for Admissions; First Interrogatories; First Request to Produce Documents, Notice of Deposition(s), Notice of Inspection, Notice of Continued Preservation of Evidence, and Notice of*

30(b)5,6 *Deposition(s)* through Registered Agent C T Corporation System, 289 S Culver St, Lawrenceville, GA 30046. This Defendant is subject to the jurisdiction and venue of this court.

3.

Defendant SK Battery America, Inc., is a real party in interest, is properly named and is a proper party to this action. No other corporate company, partnership, or business entity has any liability, any interest in, or needs to be joined as a proper party. Once a copy of this *Complaint* and *Summons* are served upon Defendant SK Battery America, Inc., it will be properly served in this civil action.

4.

Once Defendant SK Battery America, Inc., has been properly served with a copy of the *Complaint* and *Summons*, this Defendant will have no defense as to the sufficiency of service or sufficiency of process in this civil action. This Defendant should not blame or apportion fault to any non-party to this action, including Roll-Off Systems, Inc.

5.

Defendant Tom Gray, at all times relevant to this action, was the plant manager for Defendant SK Battery America, Inc.'s plant located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Jackson County, Georgia, 30529. At all times, this Defendant was working within the course and scope of his employment. Defendant Tom Gray, plant manager, may be served at his place of business at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529. This Defendant is a resident of Georgia and is subject to the jurisdiction and venue of this court.

6.

Tom Gray is a real party in interest and is properly named and a proper party to this action. Once a copy of this *Complaint* and *Summons* are served upon Defendant Tom Gray, he will be properly served in this civil action.

7.

Once Defendant Tom Gray has been properly served with a copy of the *Complaint* and *Summons*, Defendant Tom Gray will have no defense as to the sufficiency of service or sufficiency of process in this civil action. This Defendant should not blame or apportion fault to any non-party to this action, including Roll-Off Systems, Inc.

8.

Defendant Joe Hardison, at all times relevant to this action, was the operations manager for SK Battery America, Inc.'s plant located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Jackson County, Georgia, 30529. At all times, this Defendant was working within the course and scope of his employment. Defendant Joe Hardison, operations manager, may be served at his place of business at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529. This Defendant is a resident of Georgia and is subject to the jurisdiction and venue of this court.

9.

Joe Hardison is a real party in interest and is properly named and is a proper party to this action. Once a copy of this *Complaint* and *Summons* is served upon Defendant Joe Hardison, he will be properly served in this civil action.

10.

Once Defendant Joe Hardison has been properly served with a copy of the *Complaint* and *Summons*, Defendant Tom Gray will have no defense as to the sufficiency of service or sufficiency of process in this civil action. This Defendant should not blame or apportion fault to any non-party to this action, including Roll-Off Systems, Inc.

11.

Plaintiff consents to the electronic service of the pleadings as is allowed by O.C.G.A. § 9-11-5(f), and therefore, has placed an e-mail address below the signature block of this Complaint. According to O.C.G.A. § 9-11-45(a)(1)(B), Plaintiff agrees that its attorneys who are listed in the pleadings may issue and sign subpoenas for persons sought to be deposed in this action so long as the attorneys follow State Disciplinary Board Advisory Opinion No. 40 by providing deposition notices for each person on whom a subpoena is served. Plaintiff's counsel elects to participate in electronic filing and receive all notices electronically.

12.

Defendants are notified that should this matter go into default, a hearing and trial will be held in their absence, without a jury, after the expiration of 45 days. At this hearing, Plaintiff will move the Court for a verdict against Defendants in open Court. All discovery responses must be provided timely, and if they are not, defenses and objections may be waived and Requests to Admit will be deemed admitted.

OPERATIVE FACTS

13.

Before July 14, 2023, Defendant SK Battery America, Inc., allowed its agent, Roll-Off Systems, Inc., to place roll-off containers at said Defendant's manufacturing facility located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529, to store and transport dumped "non-hazardous industrial manufacturing waste".

14.

Defendant SK Battery America, Inc.'s agent, Roll-Off Systems Inc., would pick up the non-hazardous roll-off container(s) from Defendant SK Battery America, Inc.'s manufacturing facility located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529, and deliver the roll-off containers to Plaintiff's

facility, Metro Site Inc., located at 169 Industrial Park Blvd., Banks County, Georgia.

15.

At all times relevant to this action, Defendant SK Battery America, Inc., knew its agent, Roll-Off Systems, Inc., could not, would not, and did not consent or agree to allow dumped “hazardous industrial waste”, known as pouch cell LIBs, to be disposed of or placed in the roll-off containers.

16.

At all times relevant to this action Defendant SK Battery of America, Inc., knew and understood that its agent, Roll-Off Systems, Inc., could not, would not, and did not consent to transporting dumped “hazardous industrial waste,” known as pouch cell LIBs, in the roll-off containers.

17.

At all times relevant to this action Defendant SK Battery of America, Inc., knew and understood that Plaintiff Metro Site, Inc., could not, would not, and did not consent to receive dumped “hazardous industrial waste” known as pouch cell LIBs, (whether such pouch cell LIBs were charged or de-energized) in the roll-off containers.

18.

At all times relevant to this action, Defendant SK Battery America, Inc., agreed not to dump (or mix) pouch cell LIBs (whether charged or de-energized) with non-hazardous manufacturing industrial waste.

19.

At all times relevant, and on July 14, 2023, Defendant SK Battery America, Inc., knew its agent, Roll-Off Systems, Inc., was transporting “non-hazardous industrial manufacturing waste” from 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529, to Plaintiff’s facility located at 169 Industrial Park Blvd., Commerce, Banks County, Georgia.

Agreement to Reimburse Damages

20.

Prior to July 14, 2023, Defendant SK Battery America, Inc., promised to “ensure” that no pouch cell LIBs were dumped (or mixed) in the roll-off containers or mixed in with its industrial waste. Specifically, Defendant SK Battery America, Inc., promised Plaintiff that:

- a. It would implement strict policies to “ensure” no pouch cell LIBs were placed in the roll-off containers or mixed in with its industrial waste.
- b. It would specifically train and assign competent employees to sort, isolate, segregate, and make certain pouch cell LIBs were not dumped in the roll-off containers or mixed in with its industrial waste.
- c. It would pay Metro Site Inc., \$1,000 per hour for each hour Plaintiff’s facility remained closed, due to dumping pouch cell LIBs.
- d. It would pay for all repairs to Plaintiff’s facility if damaged from the dumping of pouch cell LIBs.

21.

Defendant SK Battery America, Inc., after the promises and assurances outlined in ¶ 20 were made and conveyed to Plaintiff, did pay for the shutdown of Plaintiff’s facility on one occasion prior to July 14, 2023. A photo below provides evidence of such payment from Defendant SK Battery America, Inc.’s agent, Roll-Off Systems, Inc., who was paid by Defendant SK Battery America, Inc., in compliance with the agreement referred to above in ¶ 20:

- or ratification of Defendant SK Battery of America, Inc.; and
- c. The act was done in the normal course and scope of employment of said Defendant SK Battery of America, Inc.'s officers, agents, servants, employees, or representatives.

Other Similar Incident (OSI)

24.

The promises made in ¶ 20 by Defendant SK Battery America, Inc., were made *after* SK Battery America, Inc., admitted guilt for illegally dumping charged pouch cell LIBs in a prior roll-off delivered to Plaintiff's facility located at 169 Industrial Park Blvd., Commerce, GA 30529. It was after six (6) other similar instances of this illegal dumping by Defendant SK Battery America, Inc., that Defendant SK Battery America, Inc., made the promises pled in ¶ 20. Each time a pouch cell battery, LIB, was dumped and delivered to Plaintiff's facility, Defendant SK Battery America, Inc., would send a team of employees to recover and remove the LIBs from Plaintiff's facility. A photograph below illustrates just one such prior occurrence:



Cause and Origin

25.

On July 20, 2023, Plaintiff Metro Site, Inc., and Defendant SK Battery America, Inc., conducted a joint inspection to uncover and document the root cause and origin of the fire that occurred at Plaintiff's facility on July 14, 2023.

26.

On July 20, 2023, representatives from Defendant SK Battery America, Inc., and Plaintiff Metro Site, Inc., met to sift through and examine the fire debris. As shown in the photo below, the specific area where the fire originated was cordoned off for further examination, as part of the investigation:



27.

Within minutes of beginning the joint inspection, pouch cell LIBs were found in the burnt trash pile.

28.

Pouch cell LIBs were documented, collected, and secured in a container with quick dry granular, before being locked in a secure storage box for safety and security reasons. As shown in the photo below, these pouch cell LIBs were subsequently handed over to Lab Tech (David Schauble) for transfer to Safe Lab.



Containment Actions / Immediate Comments – Cont.



29.

Based on the investigation conducted, the fire outbreak was caused by the illegal dumping of charged pouch cell LIBs, into a roll-off container taken to Plaintiff's facility located at 169 Industrial Park Blvd., Commerce, GA 30529.

COUNT 1 *TRESPASS*

30.

Defendant SK Battery America, Inc.'s illegal dumping of its pouch cell LIBs violated the Plaintiff's right to exclusive possession of its property. Plaintiff now shows:

- a. Defendant SK Battery of America, Inc., willfully and intentionally caused dangerous, combustible, and hazardous material to be delivered to Plaintiff's property.
- b. The illegal dumping of pouch cell LIBs by Defendant SK Battery America, Inc., into roll-off containers bound for Plaintiff's facility at 169 Industrial Park Blvd., Commerce, GA 30529, which was not sanctioned or permitted by Plaintiff.
- c. The illegal dumping by Defendant SK Battery America, Inc., resulted in the destruction of the Plaintiff's property and the improvements thereon.
- d. Defendant SK Battery America, Inc.'s delivery of illegal, dangerous, and combustible hazardous material to Plaintiff's property constitutes a trespass within the meaning of O.C.G.A. § 51-9-1.

31.

As a direct and proximate result of Defendant SK Battery America, Inc.'s actions, Plaintiff's property has been damaged, and Plaintiff should be compensated in an amount and manner to be determined at trial.

COUNT 2 *NEGLIGENCE*

32.

Defendant SK Battery of America, Inc., as a manufacturer of the uncovered hazardous pouch cell LIBs, had several duties, including the following (from cradle to the grave):

- a. As a responsible manufacturer to care for and maintain control over pouch cells (*a.k.a.* hazardous material) in a manner that does not injure the property of others.
- b. As a responsible manufacturer to competently create, train, and implement quality control policies.
- c. As a responsible manufacturer to prohibit illegal dumping of its product, pouch cell LIBs, into a roll-off container, knowing it would be delivered to Plaintiff's facility located at 169 Industrial Park Blvd., Commerce, GA 30529.
- d. As a responsible manufacturer to not violate Georgia law, O.C.G.A. § 16-7-53 and Jackson County Code of Ordinances § 32-56.⁶

33.

Prior to July 14, 2023, Plaintiff notified Defendant SK Battery America, Inc., of Plaintiff's concerns about the illegal dumping and delivery of charged pouch cell LIBs to Plaintiff's property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529.

34.

In response to Plaintiff's concerns and prior to July 14, 2023, Defendant SK Battery America, Inc., made assurances to Plaintiff that measures would be taken to prevent the illegal dumping and delivery of charged pouch cell LIBs to Plaintiff's

⁶ Attached hereto is a copy of O.C.G.A. § 16-7-53 and Jackson County Code of Ordinances Section 32-56.

property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529.

35.

Defendant SK Battery America, Inc., assured Plaintiff that proactive, preventative measures would be put in place and that there would be no further illegal dumping and delivery of charged pouch cell LIBs to Plaintiff's property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529.

36.

The assurances and promises made by Defendant SK Battery America, Inc., to Plaintiff, prior to July 14, 2023, proved to be false and misleading.

37.

It was foreseeable that Plaintiff would rely on Defendant SK Battery America, Inc.'s false and misleading promises and assurances.

38.

It was reasonable for Plaintiff to rely on Defendant SK Battery America, Inc.'s false and misleading promises and assurances.

39.

As a result of the false and misleading promises and assurances made by Defendant SK Battery America, Inc., which Plaintiff reasonably relied on, Plaintiff has suffered economic injuries and damages, proximately resulting from such reliance.

40.

As a result of Defendant SK Battery America, Inc.'s negligent misrepresentations and the failure to abide by its assurances and promises, Plaintiff has suffered economic injuries and damages, in an amount to be determined at trial.

41.

Defendant Tom Gray, as plant manager of Defendant SK Battery America, Inc.'s facility located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529, had the ultimate responsibility to ensure that Defendant SK Battery America, Inc.'s assurances to Plaintiff that measures would be taken to prevent the illegal dumping and delivery of charged pouch cell LIBs to Plaintiff's property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529, were in fact met and complied with.

42.

Defendant Joe Hardison, as the operations manager of Defendant SK Battery America, Inc.'s facility located at 1760 Steve Reynolds Industrial Pkwy, Commerce, Ga. 30529, also had a responsibility to ensure that Defendant SK Battery America, Inc.'s assurances to Plaintiff that measures would be taken to prevent the illegal dumping and delivery of charged pouch cell LIBs to Plaintiff's property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529, were in fact met and complied with.

43.

As a direct and proximate result of the Defendants' actions, Plaintiff and its property have been damaged, and Plaintiff continues to incur damages. As a result, Plaintiff should be compensated for all damages provided under Georgia law, in an amount and manner to be determined at trial.

COUNT 3: *BREACH OF CONTRACT*

44.

Defendant SK Battery America, Inc.'s actions of illegally dumping and delivering said charged pouch cell LIBs to Plaintiff's facility, and its failure to abide by said Defendant's agreement and promises to pay Plaintiff damages, as set forth in ¶ 20, constitutes a breach of contract.

45.

Despite Defendant SK Battery America, Inc.'s agreement and promises to pay Plaintiff damages as set forth in ¶ 20, said Defendant refuses to:

- a. Pay Plaintiff Metro Site Inc., the agreed-upon \$1,000 per hour when Plaintiff's facility is non-operational from shut down on July 14, 2023, when Defendant SK Battery America, Inc., dumped and caused hazardous and charged pouch cell LIBs to be delivered to Plaintiff's facility at 169 Industrial Park Blvd., Commerce, GA 30529.
- b. Pay for the damages suffered by Plaintiff as a result of Defendant SK Battery America, Inc., dumping and causing hazardous and charged pouch cell LIBs to be delivered to Plaintiff's facility at 169 Industrial Park Blvd., Commerce, GA 30529.

46.

As a direct and proximate result of the Defendants' actions, Plaintiff and its property have been damaged, and Plaintiff should be compensated in an amount and manner to be determined at trial.

COUNT 4: *UNCAPPED PUNITIVE DAMAGES AGAINST DEFENDANT SK BATTERY AMERICA, INC.*

47.

Plaintiff will show Defendant SK Battery America, Inc., acted with reckless disregard for the safety and wellbeing of the public, including Plaintiff Metro Site, Inc., and its employees and property:

- a. Defendant SK Battery America, Inc.'s misconduct was willful and wanton, as defined under O.C.G.A. § 51.12-5.1, and showed an entire want of care which would raise the presumption of conscious indifference to consequences, in that it illegally dumped charged pouch cell LIBs in a roll-off container it knew was bound for

Plaintiff's property and the physical facility located at 169 Industrial Park Blvd., Commerce, GA 30529.

- b. Before July 14, 2023, Defendant SK Battery America, Inc., had dumped charged pouch cell LIBs into roll-off container(s) that its agent, Roll-Off Systems, Inc., was hired to dispose of and deliver to Plaintiff's facility located at 169 Industrial Park Blvd., Commerce, GA 30529.
- c. Before July 14, 2023, Defendant SK Battery America, Inc., knew the charged pouch cell LIBs that were dumped into roll-off container(s) were capable of ignition.
- d. Before July 14, 2023, Defendant SK Battery America, Inc., did provide sufficient training to its employees before giving them the responsibilities of handling and disposing of the subject charged pouch cell LIBs. Such conduct warrants the imposition of punitive damages against Defendant SK Battery America, Inc.
- e. Defendant SK Battery America, Inc., knew that it was foreseeable that the damage that had been caused to Plaintiff's property and the other damages that Plaintiff has suffered and will continue to incur, would result from said Defendant's actions.
- f. Defendant SK Battery America, Inc., intended the results that were foreseeable to said Defendant. What is foreseeable can be avoided; refusing to avoid the foreseeable makes the conduct irrefutably intentional.
- g. During the process of manufacturing and disposing of the hazardous pouch cell LIBs, Defendant SK Battery America, Inc., knew that its activities were causing the delivery of illegal,

dangerous, and combustible hazardous material to Plaintiff's property.

- h. Defendant SK Battery America, Inc., knowing the prior problems, refused to take precautions and actions that would prevent the delivery of illegal, dangerous, and combustible hazardous material to Plaintiff's property.
- i. Defendant SK Battery America, Inc.'s conduct has been wanton and reckless and manifests a conscious indifference to the damaging consequences now suffered by Plaintiff.

48.

Defendant SK Battery America, Inc.'s conduct as above described, warrants and demands the imposition of punitive damages against said Defendant according to O.C.G.A. § 51-12-5.1, in an amount to be determined at trial without limitation or cap.

Miscellaneous

49.

This action is timely filed and served on Defendants.

50.

Defendant SK Battery America, Inc., should accept all liability for dumping a hazardous pouch cell LIB into the roll-off container that it knew would be delivered to Plaintiff's facility on July 14, 2023.

51.

Defendant SK Battery America, Inc., should accept all responsibility for all damages resulting from the illegal dumping of a pouch cell LIB into the roll-off container that it knew would be delivered to Plaintiff's facility on July 14, 2023.

Attorney fees

52.

Plaintiff shows that Defendant SK Battery America, Inc., acted in bad faith in the underlying transaction, and as such, Plaintiff is entitled to a recovery of attorney's fees and expenses of litigation under O.C.G.A. § 13-6-11.

53.

Plaintiff is also entitled to recover its attorney's fees and expenses of litigation based on Defendant SK Battery America, Inc.'s breach of contract as set for in ¶ 20, and Defendant SK Battery America, Inc.'s breach of its assurances, prior to July 14, 2023, not to dump pouch cell LIBs into the roll-off container that it knew would be delivered to Plaintiff's facility on July 14, 2023.

54.

There is no bona fide dispute as to Defendant SK Battery America, Inc.'s responsibility for the underlying bad faith actions involving the illegal dumping of hazardous pouch cell LIBs into the roll-off container that it knew would be delivered to Plaintiff's facility on July 14, 2023.

55.

There is no bona fide dispute that Defendant SK Battery America, Inc., is liable to Plaintiff pursuant to multiple theories. There is no dispute that Plaintiff has been harmed, and in the event, Defendant SK Battery America, Inc., denies responsibility for same, Plaintiff is entitled to recover all its expenses of litigation, including reasonable attorneys' fees, according to provisions of O.C.G.A. §§ 9-11-68(e) and 13-6-11.

Motion For Sanctions Where Spoliation Has Occurred

56.

On Saturday, July 15, 2023, Plaintiff hand-delivered a spoliation letter and notice to preserve evidence.⁷ The Defendant is obligated to safeguard crucial evidence that Plaintiff intends to use at trial. This evidence comprises all materials obtained from any other similar incident (OSI) both before and after July 14, 2023. In the event of lost or misplaced vital evidence, Defendant SK Battery America, Inc.'s *Answer* and *Defenses* should be struck, after consideration of lesser sanctions. Moreover, it is imperative for the jury to be instructed that this critical evidence was in the possession of Defendant SK Battery America, Inc., but was subsequently lost or destroyed, depriving Plaintiff of critical evidence that would have been harmful to the defenses of Defendant SK Battery America, Inc., This instruction should be delivered before opening statements and at the commencement of jury deliberations.

57.

Plaintiff shows that in the event Defendant SK Battery America, Inc., has lost, destroyed, or misplaced favorable evidence, dumped pouch cell LIBs, notes, video, emails, and photographs, the Court should grant and enter appropriate sanctions and fashion the appropriate remedy, as the evidence is developed. In the event Defendant SK Battery America, Inc., has lost, destroyed, misplaced, or allowed evidence to become unavailable, said Defendant should be sanctioned for said conduct, including striking of said Defendant's *Answer*; or the jury should be given a jury charge on the principle that the evidence would have been favorable to Plaintiff's case. This Court should also create and fashion the appropriate sanctions and remedies for such spoliation, as the evidence is developed. Plaintiff will move the Court for a hearing on a *Motion for Sanctions Due to Spoliation, where spoliation has occurred*, to address

⁷ See attached letter.

the appropriate sanction of striking the *Answer* of Defendant SK Battery America, Inc., after first considering alternative remedies.

WHEREFORE, Plaintiff respectfully prays:

(A) That process and summons issue as required by law, requiring Defendants to appear and answer Plaintiff's Complaint;

(B) That service be had upon Defendants as provided by law;

(C) That Plaintiff have a trial by jury;

(D) That a judgment be entered against Defendants to compensate Plaintiff fully and completely for all damages compensable under the law, in the amount not less than \$26,568,198.60;

(E) That Plaintiff have and recover all damages for all losses compensable under Georgia law;

(F) That uncapped punitive damages be imposed against Defendant SK Battery America, Inc. in such amount as the jury concludes are sufficient to deter Defendant SK Battery America, Inc. from the kind of wrongdoing described herein, which Plaintiff submits should be in an amount exceeding three times the compensatory damages in the amount of \$26,568,198.60;

(G) That, for reasons stated above, Plaintiff have and recover its costs of litigation, including reasonable attorney's fees, according to the provisions of O.C.G.A §§ 9-11-68(e) and 13-6-11;

(H) That all costs be cast against Defendant SK Battery America, Inc.;

(I) That in the event Defendant SK Battery America, Inc., has caused or allowed the spoliation of evidence, that said Defendant be sanctioned for the spoliation of evidence;

(J) That in the event any Defendant does not Answer this Complaint, all facts alleged should be deemed admitted in Plaintiff's favor against that Defendant;

(K) That Plaintiff have a default judgment in open court or chambers on the 46th day after service upon each Defendant, should that Defendant fail to timely file an Answer;

(L) That Plaintiff be allowed to inspect the premises, and electronic server of Defendant SK Battery America Inc.; and

(M) That Plaintiff have such other and further relief to which Plaintiff may be entitled to, as the Court shall deem just and appropriate

RESPECTFULLY SUBMITTED this 30th day of July, 2023.

McDONALD & CODY, LLC

By: /s/ Gus McDonald

GUS MCDONALD

GA State Bar No.: 488795

P. GERALD CODY, JR.

GA State Bar No.: 172765

BO HATCHETT

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By: /s/ L. Allyn Stockton, Jr.

L. ALLYN STOCKTON, Jr.

Georgia State Bar No.: 682909

191 South Main Street
Clayton, Georgia 30525

Counsel for Plaintiff

STATE COURT OF JACKSON COUNTY

STATE OF GEORGIA

METRO SITE INC.,

Plaintiff,

vs.,

SK BATTERY AMERICA, INC.,
TOM GRAY, and JOE HARDISON,

Defendants.

CIVIL ACTION
FILE NO.:

*Verification by Plaintiff's Corp. Rep
Metro Site Inc.*

Verification by Plaintiff's Corporate Representative

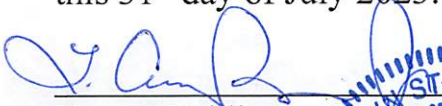
Comes now Plaintiff and verifies the above paragraphs in this Complaint are true and correct.

Plaintiff having been sworn this 30th day of July 2023.



SCOTT LEDFORD
Secretary, Metro Site Inc.
Corporate Representative

Sworn to and subscribed before me
this 31st day of July 2023.


Notary Public

My Commission Expires



**Jackson County Code
of Ordinances Section
32-56.**

Sec. 32-56. - Industrial waste.

The following types of waste shall be classified as industrial waste and shall not be accepted for disposal:

(1) Industrial waste.

(2) Hazardous refuse.

(Code 2005, § 66-55; Ord. of 6-13-2000(1), § 7.1)

O.C.G.A. § 16-7-53

West's Code of Georgia Annotated
Title 16. Crimes and Offenses (Refs & Annos)
Chapter 7. Damage to and Intrusion upon Property (Refs & Annos)
Article 2. Criminal Trespass and Damage to Property (Refs & Annos)
Part 3. Egregious Litter Control (Refs & Annos)

Ga. Code Ann., § 16-7-53

§ 16-7-53. Dumping egregious litter; violations

Effective: July 1, 2006

Currentness

(a) Any person who intentionally dumps egregious litter in violation of Code Section 16-7-52 in an amount not exceeding 500 pounds in weight or 100 cubic feet in volume which is not biomedical waste, hazardous waste, or a hazardous substance and not for commercial purposes shall be guilty of a misdemeanor of a high and aggravated nature. For purposes of this subsection, each day a continuing violation occurs shall constitute a separate violation.

(b) Any person who intentionally dumps egregious litter in violation of Code Section 16-7-52 in an amount exceeding 500 pounds in weight or 100 cubic feet in volume which is not biomedical waste, hazardous waste, or a hazardous substance and not for commercial purposes shall upon the first offense be guilty of a misdemeanor of a high and aggravated nature. Upon the second and each subsequent offense such person shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000.00 for each violation or imprisoned for not more than five years, or both; provided, however, that the portion of any term of imprisonment exceeding two years shall be probated conditioned upon payment of a fine imposed under this subsection. For purposes of this subsection, each day a continuing violation occurs shall constitute a separate violation.

(c) Any person who intentionally dumps egregious litter in violation of Code Section 16-7-52 in any quantity if the substance is biomedical waste, hazardous waste, or a hazardous substance or if the dumping is for commercial purposes shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$25,000.00 for each violation or imprisoned for not more than five years, or both; provided, however, that the portion of any term of imprisonment exceeding two years shall be probated conditioned upon payment of a fine imposed under this subsection. For purposes of this subsection, each day a continuing violation occurs shall constitute a separate violation.

(d) In addition to the penalties provided in subsections (a) and (b) of this Code section, the court may order the violator to remove or render harmless any egregious litter dumped in violation of Code Section 16-7-52, repair or restore property damaged by or pay damages resulting from such dumping, or perform public service related to the removal of illegally dumped egregious litter or to the restoration of an area polluted by such substance.

(e)(1) The court shall cause to be published a notice of conviction for each person convicted of violating any provision of this Code section. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of a nonresident, in the legal organ of the county in which the person was convicted. Such notice of conviction shall contain the name and address of the convicted person; date, time, and place of arrest; and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed the cost of publication of such notice, and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

Credits

Laws 1993, p. 496, § 2; Laws 2006, Act 538, § 2-2, eff. July 1, 2006.

Ga. Code Ann., § 16-7-53, GA ST § 16-7-53

The statutes and Constitution are current through legislation passed at the 2023 Regular Session of the Georgia General Assembly. Some sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.