

Law Bulletin
Information Network



**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

TALBOTT ASSOCIATES, L.P., an Illinois)
limited partnership and NORTHSTAR LAND)
TRUST COMPANY as successor trustee of Trust)
Agreement Dated January 16, 1985 and known as)
TRUST NO. 27362,) No.

Plaintiffs,

v.

TRIAL BY JURY DEMANDED

FIRST ELYSIAN PROPERTIES, LLC, a)
Delaware limited liability company, GOLUB)
AND COMPANY, LLC an Illinois limited)
liability company, and JAMES McHUGH)
CONSTRUCTION CO., an Illinois corporation,)

Defendants.

2010L009263
CALENDAR/ROOM C
TIME 00:00
Property Damage

COMPLAINT

Plaintiffs TALBOTT ASSOCIATES, L.P. (“Talbot”) and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and known as TRUST NO. 27362 (“Northstar” or the “Land Trust” and with Talbot collectively, “Plaintiffs”), by and through their counsel, Wildman, Harrold, Allen & Dixon LLP, for their Complaint against defendants FIRST ELYSIAN PROPERTIES, LLC (“First Elysian”), GOLUB AND COMPANY, LLC (“Golub”) and JAMES McHUGH CONSTRUCTION CO. (“McHugh”) (First Elysian, Golub and McHugh collectively, “Defendants”), allege as follows:

NATURE OF ACTION

1. At all times material and relevant hereto, Talbot has done business as the Talbot Hotel (hereafter “Talbot Hotel”). Talbot Hotel is located at 20 East Delaware Place, Chicago, Illinois (the “Land Trust Real Estate”), and the Land Trust was and is the fee title owner of the Land Trust Real Estate.

2. There was a construction project on property immediately to the north of the Talbott Hotel that was completed in or about early 2010. As detailed herein, the construction project was undertaken by all of the Defendants upon real estate owned by First Elysian.

3. Almost immediately after this construction project began and continuing throughout its duration, Defendants unlawfully physically invaded and interfered with Talbott's hotel operation in the Land Trust Real Estate and damaged the Land Trust Real Estate by and among other matters, severe noise, vibration, dust, fumes, debris, refuse, dropped and splattered construction materials and obstruction of the alley and delivery and loading areas used by Talbott.

THE PARTIES

4. Talbott was and is at all times relevant and material hereto an Illinois limited partnership with its principal place of business in Cook County, Illinois.

5. Northstar is the successor trustee to Cosmopolitan Bank and Trust, as successor trustee to the Cosmopolitan National Bank of Chicago, as trustee under trust agreement dated January 16, 1985 and known as Trust No. 27362. The Land Trust was and is at all times relevant and material hereto the owner of fee title to the Land Trust Real Estate.

6. Upon information and belief, First Elysian was at all times relevant and material hereto and is a Delaware limited liability company. Upon information and belief, First Elysian does business in Cook County, Illinois, including construction and subsequent operation of the newly-constructed Elysian Hotel, which is located at 11 East Walton Street, Chicago, Illinois (the "11 East Walton Building") and by owning the 11 East Walton Building and the Elysian Hotel.

7. Upon information and belief, Golub is an Illinois limited liability company that at all times relevant and material hereto did and does business in Cook County, Illinois. Upon

information and belief, Golub is a real estate developer and was the project manager for the construction of the 11 East Walton Building.

8. Upon information and belief, McHugh was at all times relevant and material hereto an Illinois corporation that conducted business in Cook County, Illinois. Upon information and belief, McHugh was the general contractor for the construction of the 11 East Walton Building. Hereafter, the construction of the 11 East Walton Building is referred to as the **“Elysian Construction Project.”**

9. Accordingly, jurisdiction and venue exist in Cook County, Illinois over Plaintiffs and Defendants pursuant to 735 ILCS 5/2-209 and 735 ILCS 5/2-101, respectively.

TALBOTTS' BUSINESS OPERATIONS

10. The Talbott Hotel is an upscale, AAA-rated four diamond, one hundred forty-nine (149) room boutique hotel, with guest rooms on floors ranging from fine hotel rooms to spacious suites and several conference rooms located, among other places, along its north side at street level and above.

11. Keeping the Talbott Hotel building well maintained and in good repair and free of severe noise, vibration, dust, fumes, debris, refuse, dropped and splattered construction materials was necessary and vital to Talbott's business operations, which should have been known to the First Elysian, at a minimum, and to all of the Defendants, since the Elysian Hotel was also intended to be a high-end and first class hotel.

12. Critical to Talbott's hotel operations as a first class hotel, is the ability to load the many deliveries that come to the hotel and to unload materials that leave the hotel through an entrance off the alley that is adjacent to the hotel. For such deliveries, Talbott has historically used the alley adjacent to the hotel and that is between the hotel and 11 East Walton Building. This entrance is also the Talbott's employee entrance. Because the only other entrance to the

hotel is through the front lobby, the inability to use the alley loading area means that deliveries and hotel employees must share the lobby entrance with guests, which is not compatible with a hotel of the stature of the Talbott Hotel.

13. In addition to spending money to rent rooms or conference rooms, it is typical for Talbott's guests to spend monies for other services provided by the hotel, including without limitation, room service, bar, restaurant, sidewalk café, valet parking and expenditures on various other items and amenities offered by Talbott.

THE ELYSIAN CONSTRUCTION PROJECT

14. Upon information and belief, in or about August 2006, the Defendants began the Elysian Construction Project. Upon information and belief, Golub was the project manager for the Elysian Construction Project and McHugh performed, under Golub and First Elysian's supervision, the construction work.

15. The Elysian Construction Project took place immediately north of the Talbott Hotel.

16. Almost immediately after the Elysian Construction Project began, and continuing until the termination of the Elysian Construction Project in early 2010, Talbott encountered problems with its hotel building and operations as a result of the Defendants' negligent and/or intentional misconduct.

17. Specifically, during the Elysian Construction Project, the Defendants negligently, unreasonably and intentionally would routinely commence construction work prior to 8:00 a.m., and continued such work unabated past 8:00 p.m. Such off-hour work also occurred on weekends. This construction work was immediately across from the northern bank of guest and conference rooms in the Talbott Hotel and would create a tremendous amount of noise and vibration.

18. Throughout the Elysian Construction Project, the Defendants negligently, unreasonably and intentionally allowed or caused construction materials, to fall upon the Talbott Hotel, physically damaging the building, and endangering the health and welfare of Talbott's guests, employees and the public in general.

19. In or about May 2008, directly above the delivery/employee entrance to the Talbott Hotel, there was a blow-out of wet cement from the Elysian Construction Project site. As a result, an employee of the restaurant in the Talbott Hotel who was entering the hotel building's employee entrance at the time was covered with wet cement. From that point on, to ensure the safety of its employees and business visitors who would usually use the alley delivery/employee entrance, Talbott was forced to close its delivery/employee entrance, leaving the front door of the hotel building as the only available entrance to everyone, including guests, visitors, employees, sales and maintenance people and delivery people. These obstructions also caused the loading zone directly in front of the Talbott Hotel, where hotel guests load and unload, frequently to be blocked with delivery trucks.

20. In addition to the danger presented by falling construction materials, throughout the Elysian Construction Project, the Defendants negligently, unreasonably and intentionally obstructed with construction equipment and machinery and with rubbish and refuse, the alley and loading areas between the Talbott Hotel and the 11 East Walton Building, as well as the sidewalks abutting the Talbott Hotel. Such obstructions further impeded deliveries to the Talbott Hotel and interfered with its hotel operations.

21. Accordingly, to the detriment of Talbott's hotel operations, as a result of the Defendants' misconduct in the Elysian Construction Project, the entrance to the hotel lobby was shared by guests, sales and maintenance people, vendors making deliveries to the hotel and by

Talbott's employees. Further interfering with Talbott's operations, certain deliveries, which were too large to be made through the lobby, required vendors or Talbott's employees to carry the deliveries by hand into the hotel through the alley from a nearby street.

22. Throughout the Elysian Construction Project, the Defendants negligently, unreasonably and intentionally caused dust and fumes resulting from the construction to penetrate the Talbott Hotel building.

23. Throughout the Elysian Construction Project, the Defendants splattered unknown materials on the surface of the northern, eastern and western walls of the Talbott Hotel building, including the bricks, windows and window frames, which require chemical cleaning of the bricks for removal. The windows and window frames of the building cannot be cleaned or repaired and need to be entirely replaced as a result of the splatter of these unknown materials.

24. Throughout the Elysian Construction Project, the Defendants splattered unknown materials on the surface of the roof of the Talbott Hotel building. Talbott was required to have its employees take time from their normal tasks and frequently check the roof for such materials and damages to the roof and then, if possible, to clean or to otherwise patch the roof as a result of these splattered materials.

25. Such noise, vibration, dust, fumes, dropped and splattered construction materials and obstruction of Talbott's loading areas in turn, interfered with and impeded the Talbott's ability to rent guest accommodations and conference rooms along the north wall and abutting the Elysian Construction Project or otherwise caused the Talbott to provide refunds, free upgrades or gift certificates to guests or to move guests to other rooms at no charge to them. Throughout the course of the Elysian Construction Project, Talbott received numerous complaints from clients who had rented rooms and demanded a return of their money as a result of the noise, vibrations,

dust and fumes created by the Elysian Construction Project. Talbott was required to accommodate these requests and reimbursed funds to these guests to try and maintain positive impressions and protect the excellent reputation of the hotel which had been built over many years of investment of time, effort and money.

26. Throughout the course of the Elysian Construction Project, numerous guests who had reservations with the Talbott cut short or cancelled their reservations as a result of the noise, vibrations, dust and fumes created by the Elysian Construction Project.

27. Throughout the course of the Elysian Construction Project, Talbott lost numerous prospective guests who indicated that, after inspecting the rooms, they would not stay at the Talbott Hotel as a result of the Elysian Construction Project.

28. Further, the disruptions and problems caused by the Elysian Construction Project were widely reported in industry media outlets such as Trip Advisor, Orbitz and Hotels.com, all of which are important sources of Talbott customers.

COUNT I
(Res Ipsa Loquitur)

29. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 28 above as and for their allegations in Paragraph 29.

30. Defendants, acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, were in sole and exclusive control and management of the Elysian Construction Project.

31. It is incumbent upon every real estate property owner, as well as contractors and developers, to maintain their property and to perform all construction work thereon in a responsible manner that does not harm the real estate and rights of the neighbors and to anticipate and to guard against performing construction work in a manner that so harms

neighbors. Defendants owed this duty of care to those entities, including Plaintiffs, whose real estate was adjacent to the Elysian Construction Project.

32. Defendants, whose work on the Elysian Construction Project, was adjacent to the Talbott Hotel and the Land Trust Real Estate, knew or in the exercise of reasonable care, should have known that their physical invasion as aforesaid would be physically offensive to the senses, would interfere with a neighboring hotel's operations and would substantially impair Talbott's use and enjoyment of the Talbott Hotel and the Land Trust Real Estate.

33. The physical invasion of the Talbott Hotel and the Land Trust Real Estate throughout the duration of the Elysian Construction Project as aforesaid, by and through severe noise, vibration, dust, fumes, debris, refuse, dropped and splattered construction materials and obstruction of Talbott's loading areas including in the alley shared with the 11 East Walton Building caused by the Elysian Construction Project ordinarily would not have happened if those in control, the Defendants, had exercised reasonable care.

34. Defendants' negligence in its physical invasion of the Talbott Hotel and the Land Trust Real Estate proximately caused damage to Plaintiffs to the extent that there are costs for repairs to and cleanup of the Talbott Hotel and the Land Trust Real Estate, there was interference with deliveries to the hotel, there was lost employee time to construction-related cleanup and monitoring the building's roof and exterior walls, there was lost revenues resulting from the interference in Talbott's ability to rent guest and conference rooms and related expenditures by guests over the course of the Elysian Construction Project, as well as from reimbursements, upgrades, gift certificates made to guests as a result of the Elysian Construction Project and other damages in an amount to be proven at trial.

WHEREFORE, plaintiffs TALBOTT ASSOCIATES, L.P. and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and known as TRUST NO. 27362, pray for judgment in their favor and against defendants FIRST ELYSIAN PROPERTIES, LLC, GOLUB AND COMPANY, LLC, and JAMES McHUGH CONSTRUCTION CO., and granting the following relief:

- (A) Damages in excess of the jurisdictional amount of this Court, to wit \$50,000.00, plus interest;
- (B) Costs of suit; and
- (C) Such other relief as the Court deems just and proper.

**COUNT II
(Negligence)**

35. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 28 above as and for their allegations in Paragraph 35.

36. Defendants, acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, physically invaded the Talbott Hotel and the Land Trust Real Estate throughout the duration of the Elysian Construction Project as aforesaid, by and through severe noise, vibration, dust, fumes, debris, refuse, dropped and splattered construction materials and obstruction of Talbott's loading areas including in the alley shared with the 11 East Walton Building caused by the Elysian Construction Project.

37. Defendants' physical invasion of the Talbott Hotel and Land Trust Real Estate resulted from Defendants' negligent conduct.

38. It is incumbent upon every real estate property owner, as well as contractors and developers to maintain their property and to perform all construction work thereon in a responsible manner that does not harm the real estate and rights of the neighbors and to

anticipate and to guard against performing construction work in a manner that so harms neighbors. Defendants owed this duty of care to those entities, including Plaintiffs, whose real estate was adjacent to the Elysian Construction Project.

39. Defendants, whose work on the Elysian Construction Project was adjacent to the Talbott Hotel and the Land Trust Real Estate, knew or in the exercise of reasonable care, should have known that their physical invasion as aforesaid would be physically offensive to the senses, would interfere with a neighboring hotel's operations and would substantially impair Talbott's use and enjoyment of the Talbott Hotel and the Land Trust Real Estate.

40. Defendants' negligence in its physical invasion of the Talbott Hotel and the Land Trust Real Estate proximately caused damage to Plaintiffs to the extent that there are costs for repairs to and cleanup of the Talbott Hotel and the Land Trust Real Estate, there was interference with deliveries to the hotel, there was lost employee time to construction-related cleanup and monitoring the building's roof and exterior walls, there was lost revenues resulting from the interference in Talbott's ability to rent guest and conference rooms and related expenditures by guests over the course of the Elysian Construction Project, as well as from reimbursements, upgrades, gift certificates made to guests as a result of the Elysian Construction Project and other damages in an amount to be proven at trial.

WHEREFORE, plaintiffs TALBOTT ASSOCIATES, L.P. and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and known as TRUST NO. 27362, pray for judgment in their favor and against defendants FIRST ELYSIAN PROPERTIES, LLC, GOLUB AND COMPANY, LLC and JAMES McHUGH CONSTRUCTION CO., and granting the following relief:

- (A) Damages in excess of the jurisdictional amount of this Court, to wit \$50,000.00, plus interest;
- (B) Costs of suit; and
- (C) Such other relief as the Court deems just and proper.

**COUNT III
(Nuisance)**

41. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 28 above as and for their allegations in Paragraph 41.

42. Defendants physically invaded the Talbott Hotel and the Land Trust Real Estate throughout the Elysian Construction Project as aforesaid, by and through severe noise, vibration, dust, fumes, debris, refuse and dropped and splattered construction materials.

43. Defendants' physical invasion of the Talbott Hotel and the Land Trust Real Estate resulted from Defendants' negligent and unreasonable conduct.

44. Defendants' physical invasion was physically offensive to the senses and substantially impaired Plaintiffs' use and enjoyment of the hotel operations and the Land Trust Real Estate.

45. Defendants' physical invasion of the Talbott Hotel and the Land Trust Real Estate proximately caused damage to Plaintiffs to the extent that there are costs for repairs to and cleanup of the Talbott Hotel and the Land Trust Real Estate, there was interference with deliveries to the hotel, there was lost employee time to construction-related cleanup and monitoring the building's roof and exterior walls, there was lost revenues resulting from the interference in Talbott's ability to rent guest and conference rooms and related expenditures by guests over the course of the Elysian Construction Project, as well as from reimbursements,

upgrades, gift certificates made to guests as a result of the Elysian Construction Project and other damages in an amount to be proven at trial.

WHEREFORE, plaintiffs TALBOTT ASSOCIATES, L.P. and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and known as TRUST NO. 27362, pray for judgment in their favor and against defendants FIRST ELYSIAN PROPERTIES, LLC, GOLUB AND COMPANY, LLC and JAMES McHUGH CONSTRUCTION CO., and granting the following relief:

- (A) Damages in excess of the jurisdictional amount of this Court, to wit \$50,000.00, plus interest;
- (B) Costs of suit; and
- (C) Such other relief as the Court deems just and proper.

**COUNT IV
(Trespass)**

46. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 28 above as and for their allegations in Paragraph 46.

47. Defendants unlawfully and with force physically invaded and entered upon the Talbott Hotel building and the Land Trust Real Estate throughout the Elysian Construction Project as aforesaid, by and through severe noise, vibration, dust, fumes, debris, refuse, dropped and splattered construction materials and obstruction of Talbott's loading areas including in the alley shared with the 11 East Walton Building caused by the Elysian Construction Project.

48. Defendants' physical invasion and encroachment of the Talbott Hotel and the Land Trust Real Estate during the Elysian Construction Project was an intentional, voluntary, willful and wrongful intrusion upon the Talbott Hotel building, and was knowingly proceeded without Plaintiffs' consent, permission or invitation.

49. The Elysian Construction Project constituted intentional, wrongful and knowing interferences and trespasses upon Plaintiffs' rights.

50. Defendants' intentional, willful and wrongful intrusion upon the Talbott Hotel and the Land Trust Real Estate proximately caused damage to Plaintiffs to the extent that there are costs for repairs to and cleanup of the Talbott Hotel and the Land Trust Real Estate, there was interference with deliveries to the hotel, there was lost employee time to construction-related cleanup and monitoring the building's roof and exterior walls, there was lost revenues resulting from the interference in Talbott's ability to rent guest and conference rooms and related expenditures by guests over the course of the Elysian Construction Project, as well as from reimbursements, upgrades, gift certificates made to guests as a result of the Elysian Construction Project and other damages in an amount to be proven at trial.

WHEREFORE, plaintiffs TALBOTT ASSOCIATES, L.P. and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and known as TRUST NO. 27362, pray for judgment in their favor and against defendants FIRST ELYSIAN PROPERTIES, LLC, GOLUB AND COMPANY, LLC and JAMES McHUGH CONSTRUCTION CO., and granting the following relief:

- (A) Damages in excess of the jurisdictional amount of this Court, to wit \$50,000.00, plus interest;
- (B) Punitive damages in an appropriate amount;
- (C) Attorneys' fees;
- (D) Costs of suit; and
- (E) Such other relief as the Court deems just and proper.

COUNT V
(Tortious Interference With Prospective Economic Advantage)

51. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 28 above as and for their allegations in Paragraph 51.

52. As it had prior to the Elysian Construction Project, throughout the course of the Elysian Construction Project, Talbott had a reasonable expectation of entering into valid business relationships with persons seeking to rent guest or conference rooms on the north end of the Talbott Hotel building.

53. Defendants had knowledge that Talbott operated a hotel, and therefore, had knowledge that Talbott had such an expectancy of entering into valid business relationships with persons seeking to rent guest or conference rooms at the Talbott Hotel.

54. By and through their negligent, unreasonable and intentional conduct as aforesaid in the Elysian Construction Project, Defendants purposefully interfered with Talbott's expectancy and prevented Talbott's expectancy from ripening into valid business relationships with prospective guests.

55. Throughout the course of the Elysian Construction Project, Defendants' purposeful conduct impeded Talbott's hotel operations, including its ability to rent guest rooms and conference rooms, and, as such, proximately caused damages to Talbott to the extent that it lost revenues resulting from the interference in its ability to rent guest and conference rooms over the course of the Elysian Construction Project, as well as from reimbursements, upgrades, gift certificates made to guests as a result of the Elysian Construction Project and other damages in an amount to be proven at trial.

WHEREFORE, plaintiffs TALBOTT ASSOCIATES, L.P. and NORTHSTAR LAND TRUST COMPANY as successor trustee of Trust Agreement Dated January 16, 1985 and

known as TRUST NO. 27362, pray for judgment in their favor and against defendants FIRST ELYSIAN PROPERTIES, LLC, GOLUB AND COMPANY, LLC and JAMES McHUGH CONSTRUCTION CO., and granting the following relief:

- (A) Damages in excess of the jurisdictional amount of this Court, to wit \$50,000.00, plus interest;
- (B) Costs of suit; and
- (C) Such other relief as the Court deems just and proper.

Dated: August 12, 2010

Respectfully submitted,

**TALBOTT ASSOCIATES, L.P. and
NORTHSTAR LAND TRUST COMPANY as
successor trustee of Trust Agreement Dated
January 16, 1985 and known as TRUST NO.
27362**

By: _____

One of Their Attorneys

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