

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

CLEVELAND VAN PRICE, III, and)	
MELISSA PRICE)	
)	
Plaintiffs)	
)	Case No.
v.)	
)	
CITY OF EAST RIDGE, and OFFICER TIM ALLISON,)	
In his official capacity as an agent for City of East Ridge)	
and his individual capacity)	
)	
Defendants)	

NOTICE OF REMOVAL

Come Defendants, City of East Ridge, Tennessee, and Officer Tim Allison, individually and as an employee of the City of East Ridge, Tennessee (hereinafter collectively “Defendants”), through their respective attorneys, pursuant to 28 U.S.C. §1441 and 28 U.S.C. §1446, and file this Notice of Removal. As grounds therefore, the Defendants would show as follows:

I.

That Plaintiffs filed their Complaint against the Defendants on or about January 29, 2018, in the Circuit Court of Hamilton County, Tennessee, Docket No. 18-CV-179..

II.

That a Summons and a copy of the Complaint were sent to Defendant, City of East Ridge, Tennessee on or about January 29, 2018.

That Defendant, Tim Allison, received notice of the Complaint on or about February 9, 2018.

III.

That Plaintiffs have brought this matter pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988.

That Plaintiffs have alleged violations and deprivations of their rights secured by the

Fourteenth Amendment to the United States Constitution.

IV.

That, pursuant to 28 U.S.C. §1441 and 28 U.S.C. §1446, the Defendants are entitled to remove this case to federal court.

V.

That according to the Plaintiffs' Complaint, this case involves events which occurred in East Ridge, Hamilton County, Tennessee.

That this Court is the District Court for the district embracing Hamilton County, Tennessee.

That, pursuant to 28 U.S.C. §1331, this Court has jurisdiction and venue over this case.

VI.

That all Defendants consent to this removal as is evidenced by the signatures of their attorneys hereon.

VII.

That a copy of the Summons and a copy of the Complaint which were sent to Defendant, City of East Ridge, Tennessee, are attached hereto as Exhibit A.

Defendant, Tim Allison, was given notice of the Complaint on February 9, 2018.

That Exhibit A constitutes all the process and all the pleadings which have been filed in this case.

VIII.

That this Notice is filed within thirty (30) days after service of process or notice to Defendants of the Summons and Complaint on or to the Defendants.

IX.

That the Defendants expressly reserve the right to raise all defenses and all objections in this case after this case has been removed to this Court.

WHEREFORE, the Defendants pray that the above-referenced cause of action be removed from the Circuit Court of Hamilton County, Tennessee, to the United States District Court for the Eastern District of Tennessee, at Chattanooga.

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Attorneys for Defendant,
Tim Allison

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February 2018 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 27th day of February, 2018.

Robinson, Smith & Wells

By: s /Ronald D. Wells

cc: Robin R. Flores, Attorney
4110-A Brainerd Rd.
Chattanooga, TN 37411
Attorney for Plaintiffs

dlw/020818/RDW/erprice.notice of removal.federal court

State of Tennessee

Serve

In the Circuit Court of Hamilton County

Cleveland Van Prie, III, and
Melissa Prie Plaintiff

FILED IN OFFICE

2018 JAN 29 PM 12:31

No. 18CV179 CLERK

City of East Ridge, Officer Tim Auker
Defendant

BY (LMV) DC

SUMMONS

TO: city manager Scott Millerz for
City of East Ridge 1517 Tomkins Avenue
Defendant Address East Ridge, TN 37412

Defendant Address

Defendant Address

You are hereby summoned to answer and make defense to a bill of complaint which has been filed in the Circuit Court of Hamilton County, Tennessee in the above styled case. Your defense to this complaint must be filed in the office of the Circuit Court Clerk Hamilton County, Tennessee on or before thirty (30) days after service of this summons upon you. If you fail to do so, judgement default will be taken against you for the relief demanded in the complaint.

WITNESSED and Issued this 29th day of January, 2018

CIRCUIT COURT OF HAMILTON COUNTY
500 COURTHOUSE
625 GEORGIA AVENUE
CHATTANOOGA, TENNESSEE 37402
423/209-6700

Larry L. Henry, Circuit Court Clerk

By J. V. [Signature] DC.
Deputy Circuit Court Clerk

Attorneys for Plaintiff Robin R. Flores
Attorney at Law
4110-A Brainerd Rd.
Chatt, TN 37411
Address

Plaintiff's Address

Received this _____ day of _____, 20____

/S/ _____ Deputy Sheriff

ADA COORDINATOR, FOR ASSISTANCE CALL (209-7500)

DEFENDANT
COPY

CIRCUIT COURT FOR HAMILTON COUNTY
State of Tennessee

FILED IN OFFICE

2018 JAN 29 PM 12:31

LARRY L. HENRY, CLERK

CLEVELAND VAN PRICE, III, and

MELISSA PRICE,

Plaintiffs,

~v~

CITY OF EAST RIDGE, and

OFFICER TIM ALLISON,

In his official capacity as an
agent for City of East Ridge
and in his individual capacity,

Defendants.

No. 18C179 BY LMV DC

JURY DEMAND

COMPLAINT

PLAINTIFFS, for their causes of action, will show the Court:

Introduction:

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988 to redress the deprivation of rights secured to Plaintiffs by the Fourteenth Amendment to the United States Constitution, for violations of the Plaintiffs' rights under the Commerce Clause and the Privileges or Immunities Clause of the Fourteenth Amendment to the Constitution and for violations of the common laws of the State of Tennessee by the defendants and further brought by Plaintiffs pursuant to the Tennessee Governmental Tort Liability Act.

2. Plaintiffs aver that the individually named defendant, Officer Tim Allison ("Allison"), acted as a police officer and agent of the City of East Ridge ("City") and was at all times relevant to this matter acting under color of law and under color of his office with the City.

3. Plaintiffs maintain that Allison and unnamed fellow City police officers committed these violations, further set forth herein, as a result of policies, customs, practices, and/or procedures of the City, or in the alternative with the acquiescence of and condoned by the City Manager of the City: Scott Miller.

4. In addition, Plaintiffs aver that Allison's acts and omissions in concert with unnamed fellow City police officers subjected the Plaintiffs to mental anguish, emotional distress, and loss of income, good will, and business relationships.

Jurisdiction and Venue:

5. This is an action to redress the deprivation of rights secured to Plaintiffs by the Fourteenth Amendment of the United States Constitution and for violations of the Plaintiffs' rights under the Commerce Clause and the Privileges or Immunities Clause of the Fourteenth Amendment to the Constitution of the United States Constitution and for violations of Tennessee common law. Thus, as to the § 1983 claims, this Court is vested with original jurisdiction pursuant to the authority stated in Haywood v. Drown, 556 U.S. 729 (2009) and Poling v. Goins, 713 S.W.2d 305, 306 (Tenn. 1986). This Court is vested with original jurisdiction over Plaintiffs' state claims pursuant to TENN. CODE ANN. § 16-10-101, et seq.

6. Venue is proper in this Court pursuant to TENN. CODE ANN. § 20-4-102. All acts complained of occurred within Hamilton County.

- a. Plaintiffs are residents of Hamilton County, Tennessee.
- b. To the best of Plaintiffs' knowledge Allison is a resident of Hamilton County, Tennessee.
- c. City is a political sub-division of the State of Tennessee.

The Parties:

7. At all times relevant to this cause of action, Plaintiffs were citizens of the United States and residents and citizens of the State of Tennessee.

8. At all times relevant to this cause of action, the City was a political sub-division of the State of Tennessee organized and existing under the laws of the State of Tennessee.

- a. The City finances its police department, and the City provides rules and regulations for the operation of the police department.
- b. The City provides oversight of the hiring, training, discipline, and retention of all personnel in its police department.
- c. The City is responsible for the hiring, training, discipline, and retention of all personnel in its police department.
- d. The City is responsible for the creation and enactment of its City Ordinances and for policies and Ordinances that provide for any pre and post-deprivation procedures for all persons who engage in any type of business within its corporate limits and who are subject to the acts of the City and its agents in "shutting down" such businesses.

9. At all times relevant to this cause of action, the City is responsible for the creation and maintenance of its police department, which is a law enforcement agency created under Tennessee state law and regulated by the laws of the State of Tennessee as to:

- a. The training and certification of its police officer employees.

10. Plaintiffs sue the City in its governmental and corporate capacities.

11. At all times relevant to this cause of action, Allison was employed by the City and acted under the color of law, statute, ordinance, regulation, custom, or usage and operated under color of his office. In addition:

- a. At all times relevant to this cause of action, Allison acted in his official capacities as agent, servant, and employee, as defined under TENN. CODE ANN. § 29-20-102, for the City.
- b. Plaintiffs sue Allison in his individual and official capacities.

Factual Basis:

12. Plaintiffs operated a business within the corporate limits of the City engaged in the sale to the public of goods (food and drink, including alcoholic beverages) that moved through the interstate stream of commerce.

13. Plaintiffs eventually operated the business under the name, End Zone Bar and Grill (herein before and after, “business”).

14. Plaintiffs’ business constituted a major part of their livelihood and ability to earn incomes.

15. Plaintiffs operated their business on property they rented through Walldorf Property Management (“Walldorf”).

16. Adjacent to Plaintiffs’ business were parking lots and other properties that were in no way under any responsibility of the Plaintiffs.

17. Plaintiffs operated on the property by way of an initial commercial lease, which later become a month-to-month “holdover” lease agreement with Walldorf.

18. Plaintiffs obtained all the licenses necessary to engage in their business, including licenses and/or permits from the State of Tennessee, Hamilton County, and the City to operate the business.

- a. Such licenses and/or permits were necessary for the Plaintiffs to engage in and operate their business.

19. At no time prior to the claims set forth against the City did the State of Tennessee and Hamilton County take any action whatsoever to revoke the licenses and permits held by Plaintiffs to operate their business.

20. At no time did the City ever take any action against the Plaintiffs to revoke or rescind any license and/or permit issued by the City to the Plaintiffs.

a. This includes any pre-deprivation hearing upon notice.

21. The City never took action against Plaintiffs by way of service of any writ or other notice that gave Plaintiffs notification that the City desired to shut down the Plaintiffs' business operations nor did the City ever give Plaintiffs notice of any reasons or basis to shut down the Plaintiffs' business operations or any opportunity to be heard on any such notice.

22. At no time did the City ever undertake any action in any court of law, or before any tribunal such as the East Ridge Beer Board or the State Alcoholic Beverage Commission of any nature to have Plaintiffs' business operation declared a nuisance, or enjoin Plaintiffs' from operating the business, or to revoke any licenses and permits issued by the State of Tennessee, Hamilton County, or the City.

23. The East Ridge Beer Board ("The Board") regulates beer sales & issues beer permits in the City of East Ridge.

24. The Board can also levy fines for violations.

25. At no time did the Board levy any fines against Plaintiffs for any reason, or take any other such actions through any regulatory entity or any tribunal against the Plaintiffs for any reason to "shut down" the Plaintiffs' business.

26. At no time after the eventual shut-down of Plaintiffs' business did the Defendants provide to the Plaintiffs any ability to have a post-deprivation hearing to challenge the Defendants' actions as described and set forth herein.

27. Plaintiffs initially operated their business as one that catered to a broader demographic and mostly to white patrons as a "family" restaurant.

28. The City Fire Department held its 2015 Christmas Party at the business in addition to allowing City police officers to eat with a discounted rate.

29. Plaintiffs allowed the City police officers' discounts because Van was a former law enforcement officer for Hamilton County, Tennessee.

30. However, Plaintiffs had trouble making enough money to stay current on many debts, including the rents of the property leased from Walldorf.

31. In an effort to stay open and current on their financial obligations, Plaintiffs changed their business model sometime in November 2016 from catering to a mostly white demographic "family restaurant" to one that catered to "white bikers" such as the Double Knuckle Motorcycle Club and when that change did not work, Plaintiffs changed their business model to one that catered to a mostly African-American or black demographic clientele.

32. The Double Knuckle Motorcycle Club is an organization associated with the Outlaw Motorcycle Club, a criminal organization. However, at no time while Plaintiffs operated the business as a "biker bar" did the City, Allison, or any of the City's agents take the actions as set forth in this Complaint once the Plaintiffs switched their business model to one that catered to a mostly African-American or black demographic clientele.

33. Within a matter of about one month of the change to a mostly African-American or black demographic clientele, Plaintiffs' volume of patronage increased and Plaintiffs caught up with all delinquent rents and other debts, and they began to see a profit.

34. At no time until the involvement of the City and its police officers, further detailed herein, did Walldorf take action to evict Plaintiffs based upon non-payment of rents or any other reason.

35. Starting about the first of February 2017, and only after the Plaintiffs changed their business model to a mostly African-American or black demographic clientele, the City, through its officers, including Allison, began a series of constant harassing interactions with the Plaintiffs and the Plaintiffs' black patrons on the property of the Plaintiffs' business.

36. The City, through its officers and Allison, began to make multiple false claims of criminal activity that occurred off the business property as the fault of Plaintiffs or made false claims that the said activity occurred on the business property.

37. The City, through Allison, made a false claim that black patrons were gang members.

38. Allison was the main individual actor that persistently and consistently harassed Plaintiffs' patrons on the business property under such false pretexts as observing "criminal behavior."

39. One example occurred on 3-8-2017 when Allison approached Melissa as she was on the property standing at the front door ("3-8-2017 Incident").

40. Allison claimed he "heard" gunshots coming from the business property.

41. At no such time did any gunfire emanate from the business property.

42. Allison asked Melissa if she heard any gunfire, and she replied she didn't hear any.

43. Allison became agitated and angry, accused Melissa of lying and stepped toward her with his fist balled up, placing Melissa in fear of injury.

44. East Ridge Officer Zack Fultz told Allison to "step off," and Allison eventually complied.

45. Allison has made statements to a member of News Channel 12 that he was "fixing to shut this bitch down" referencing the Plaintiffs' business.

46. On or about April 5, 2017, in an attempt to cooperate with the City to address any concerns the City had with the business, Van had met with City Manager Scott Miller ("Miller") and City police Chief JR Reed ("Reed") in an attempt to hire City police officers as security to augment the private security officers Plaintiffs had already in place.

47. Miller said that he could shut Plaintiffs' business down if he wanted to do so, and he indicated to Van that he himself ("Miller") could not be a patron of Plaintiffs' business because of the type of people Plaintiffs serve.

48. The City's form of government is a City Council with a "weak" mayor with Miller, as the City Manager handling the day-to-day operations of the City.

49. On May 27, 2017, rather than take action in court or through the City's own Beer Board, or by way of any other action through proper notice and opportunity to be heard, Officers David Harding and other City officers arrived at the business while Plaintiffs were preparing to open for business.

50. These officers claimed that the Plaintiffs' "state license" had expired, and the officers were there to "shut down" the business. The officers did not have any officer or agent of

the State of Tennessee with them, nor did the same City officers have any authority to “shut down” the business based upon an expired “state license.”

51. These officers had only some vague “instruction” to “shut down” the Plaintiffs’ business based upon an “expired state license.” The same officers had no lawful writ or any other lawful orders or injunctions issued by any tribunal of any nature to support their claims and actions.

52. In addition, these same officers had no direct information that the State of Tennessee, the entity who would have control over the “state license” had revoked or otherwise rescinded the Plaintiff’s “state license.”

53. All other licenses held by the Plaintiffs to operate the business were proper and in order, and the officers contacted “**command staff**” for further instructions whereupon they allowed Plaintiffs to “remain in operation until June 14, 2017.”

54. Officer Hardin noted in a report of the May 27, 2017 encounter that “The EndZone was still scheduled to lose their lease at the end of the month, however, legal action may be pending.”

55. Officer Harding was correct as to the scheduled loss of the lease in that the City had “leaned” on Walldorf to terminate the lease agreement with Plaintiffs.

56. Melissa along with witness Deborah Lauer went to Hamilton County General Sessions Court sometime in May 2017 on a detainer action filed by Walldorf. It was during this action, while in a conversation outside of the General Sessions Court courtroom that counsel for Walldorf (Brad Weeks) told Melissa that the City police was “breathing down my neck to get you shut down because of the different type of clientele you brought to the establishment.” This was the only reason given by Walldorf.

57. Indeed, City officer Greg Beck ("Beck") was present with a folder Beck claimed contained 16 complaints for 2 months prior to the court encounter, which never happened.

58. Neither the City nor Beck nor any other agent for the City was a party to the detainer action.

59. As a result of the interference by the City in the business relationship between Plaintiffs and Walldorf, the Plaintiffs had to shut down their business and look for another location to rent.

60. In their attempts to operate their business, the Plaintiffs arrived at the City of Chattanooga Police Department on January 10, 2018 to apply for permits to re-open their business.

61. While there, Chattanooga Police Officer John Collins approached Plaintiffs and told them that if Plaintiffs operated their business in the same manner as they did in East Ridge that he would shut Plaintiffs down "in 2.2 seconds."

62. John Collins told Plaintiffs that East Ridge officers told him that Plaintiffs refused to "cooperate with police," and that was part of the basis for his comments to Plaintiffs.

63. As a direct and proximate result of the acts and omissions stated herein and the actions of the City, its various police officers, and Allison's continued harassment of Plaintiffs' patrons, Plaintiffs have lost income, lost a good business relationship with Walldorf, lost customer good will and patronage, and rendered the final three months of Plaintiffs' business to drop nearly half of what Plaintiffs were making.

64. As a direct and proximate result of the acts and omissions stated herein and the actions of the City, its various police officers, and Allison's continued harassment of Plaintiffs' patrons, Plaintiffs lost a valuable business relationship with Waldorff.

65. As a direct and proximate result of the acts and omissions of Allison in regard to the 3-8-2017 Incident, Melissa suffered mental anguish.

Causes of action:

Count One:
Violation of Civil Rights Under
Color of Law 42 U.S.C. §1983 –
Retaliatory Regulation and Interference
with Plaintiffs' Participation
in Interstate Commerce (Commerce Clause)

66. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers Allison and the other officers not sued in this matter acted without lawful authority when they interfered into and with the Plaintiffs' ability to participate in the interstate stream of Commerce with people of their own choice, and was the direct and proximate cause of the Plaintiffs' damages.

- a. The acts of Miller and Reed as stated herein was the direct participation of policy makers for the City into the deprivations claimed herein.
- b. The lack of any pre-deprivation hearing allowed the individual non-law enforcement defendants to force the Plaintiffs out of their business without the Due Process of Law.
- c. The lack of any ability for the Plaintiffs to seek relief from the City by any notice of exactly why the Defendants acted as they did in this matter constituted a deliberate lack of post-deprivation hearings with the City and thus deprived Plaintiffs of the Due Process of Law.
- d. The interference with the Plaintiffs' ability to engage in interstate stream of Commerce by the interference with the business relationship with Waldorff deprived Plaintiffs' of the Due Process of Law.

67. Plaintiffs sue Allison and the City under this Count.

Count Two:
Violation of Civil Rights Under
Color of Law 42 U.S.C. §1983 –
Deprivation of Procedural
Due Process (14th Amend)

68. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers the acts and omissions of the City, Allison, and the individual officers of the City constituted a deprivation of the Plaintiffs' right secured under the Fourteenth Amendment of the United States Constitution to be apprised of notice and an opportunity to be heard in a meaningful time and place both before the deprivations stated herein and after.

69. The City's lack of clear policy and procedures in its ability to have its police officer agents simply "shut this bitch down" as stated by Allison and as described herein allows its said agents to act with impunity and arbitrarily.

70. The City's said lack of clear policy and procedures and the direct participation of Miller and Reed was the driving force behind the deprivations stated in this Complaint, constituted deliberate indifference to the rights of the Plaintiffs to engage in interstate commerce, and was the direct and proximate cause of the Plaintiffs' damages.

71. Plaintiffs sue the City under this Count.

Count Three:
Violation of Civil Rights Under
Color of Law 42 U.S.C. §1983 –
Interference with Plaintiffs' Participation
in Contracts (Privileges or Immunities)

72. The individual non-defendant law enforcement officers and Allison relied upon vague Ordinances to interfere with and close down the Plaintiffs' ability to participate in Contracts.

- a. Consequently, Plaintiffs aver the opaque nature of the regulations and Ordinances serve no legitimate governmental purpose, was the driving force behind the acts of the individual non-law enforcement defendants and allowed the arbitrary actions and as stated in this Complaint.
- b. Consequently, the individual non-defendant law enforcement officers and Allison have violated the Plaintiffs' rights secured to the Plaintiffs under the Privileges or Immunities Clause of the Fourteenth Amendment to the Constitution, by the individual non-defendant law enforcement officers and Allison's interference with the Plaintiffs' right to actively engage in the interstate stream of commerce by operating a business of their choice and to engage in contracts.
- c. The lack of any pre-deprivation hearing allowed the individual non-defendant law enforcement officers and Allison to force the Plaintiffs out of their business without the Due Process of Law, and the lack of any ability to seek a post-deprivation hearing also deprived the Plaintiffs of Due Process of Law.

Count Four:
Tortious Interference with
Business Relationship.

73. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers the acts and omissions of the City, Allison, and the individual officers of the City constituted an interference with the Plaintiffs' daily business relationships with their African-American clientele and was the direct and proximate cause of the Plaintiffs' damages.

74. The acts and omissions of the City, Beck, and the other unnamed City police officers at the court hearing stated herein constituted an interference with the Plaintiffs' daily business relationship with Waldorff and was the direct and proximate cause of the Plaintiffs' damages.

75. Plaintiffs sue Allison and the City under this Count.

Count Five:
Assault

76. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers the acts of Allison in the 3-8-2017 Incident against Melissa placed her in fear for her safety and was the direct and proximate cause of Melissa's mental anguish.

77. Melissa sues Allison and the City under this Count.

Count Six:
Negligence

78. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers that the City has failed to train Allison (and the other individual officers not named in this matter by identified as Beck and the many other who participated in the deprivations described herein) on the proper manner and scope in which to enforce City Ordinances in regard to "shutting down" a business. This failure is the direct and proximate cause of the Plaintiffs' pecuniary and actual losses and Plaintiffs' loss of goodwill and loss of the business relationship with Waldorff.

79. Plaintiffs sue the City under this Count.

Count Seven:
Civil Conspiracy

80. Plaintiffs incorporate fully all averments stated in this Complaint as if fully set out herein and avers the acts and omissions of Allison with the unnamed individual police officers constituted a civil conspiracy and were the direct and proximate cause of the Plaintiffs' damages and thus Allison is liable in his individual capacity.

WHEREFORE, the Plaintiffs demand judgment against the defendants and request the following relief:

A. The Court to enter judgment against all defendants and to award Plaintiffs compensatory damages in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000).

B. The Court to enter judgment against Allison and to award Plaintiffs punitive damages in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000);

C. That the Court enjoins the defendants from further enforcement of any Ordinances possibly used by the individual defendants against the Plaintiffs until the City makes clarifications of the Ordinances and enacts clear pre-deprivation and post-deprivation procedures for citizens or anyone who engages in business within East Ridge to be able to address any actions such as set forth herein.


D. Any other relief the Court may deem fit and proper;

E. Any other relief the Court may deem fit and proper pursuant to 42 U.S.C. §1988,
and

F. Allow a jury trial on all issues.

Respectfully submitted,

By:



ROBIN RUBEN FLORES

TENN. BPR #20751

GA. STATE BAR #200745

Counsel for Plaintiffs

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