



## AlaFile E-Notice

11-CV-2018-900431.00

Judge: BRIAN P HOWELL

To: DEAN MICHAEL GREGORY  
mdean@ago.state.al.us

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

STATE OF ALABAMA ET AL V. AMERICAN PLUMBING AND SEPTIC SERVICE, LLC E  
11-CV-2018-900431.00

The following matter was FILED on 8/15/2018 10:22:21 AM

**D001 AMERICAN PLUMBING AND SEPTIC SERVICE, LLC**

**D003 PESNELL RICHARD JOSHUA**

EMERGENCY MOTION FOR CLAIRFICATION

[Filer: NOVAK TABOR ROBERT III]

Notice Date: 8/15/2018 10:22:21 AM

KIM MCCARSON  
CIRCUIT COURT CLERK  
CALHOUN COUNTY, ALABAMA  
25 WEST 11TH STREET  
ANNISTON, AL, 36201

256-231-1750  
Kim.McCarson@alacourt.gov



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CIRCUIT COURT OF  
CALHOUN COUNTY, ALABAMA  
KIM MCCARSON, CLERK

**STATE OF ALABAMA**

Revised 3/5/08

Cas

Unified Judicial System

11-CALHOUN

 District Court
  Circuit Court

CV21

 STATE OF ALABAMA ET AL V. AMERICAN  
PLUMBING AND SEPTIC SERVICE, LLC E
**CIVIL MOTION COVER SHEET**
 Name of Filing Party: D001 - AMERICAN PLUMBING AND SEPTIC  
SERVICE, LLC  
D003 - PESNELL RICHARD JOSHUA

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

 TABOR R. NOVAK III  
100 BROOKWOOD PLACE, 7TH FLOOR  
BIRMINGHAM, AL 35209

Attorney Bar No.: NOV003

 Oral Arguments Requested
**TYPE OF MOTION****Motions Requiring Fee**

- Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion  
(i.e. Summary Judgment, Judgment on the Pleadings,  
or other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative  
Summary Judgment (\$50.00)  
Renewed Dispositive Motion (Summary  
Judgment, Judgment on the Pleadings, or other  
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56 (\$50.00)
- Motion to Intervene (\$297.00)
- Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.

 Local Court Costs \$ 0 \_\_\_\_\_
**Motions Not Requiring Fee**

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other Emergency Motion for Clairification  
pursuant to Rule N/A (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously  
with this motion an Affidavit of Substantial Hardship or if you  
are filing on behalf of an agency or department of the State,  
county, or municipal government. (Pursuant to §6-5-1 Code  
of Alabama (1975), governmental entities are exempt from  
prepayment of filing fees)

 Date:  
8/15/2018 10:19:21 AM

 Signature of Attorney or Party  
/s/ TABOR R. NOVAK III

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



3. RJP does business as Major League Restoration (“Major League”), has two W-2 employees and also utilizes two full-time independent contractors. (Pesnell Aff. at ¶ 3). Stephen R. Beard is the general manager of Major League. Major League is engaged in the restoration business, primarily involving tearing out, deodorizing, drying and treating water damaged materials in residential houses and commercial buildings. *Id.*

4. As Major League’s general manager, Mr. Beard handles the company’s day-to-day operations. *Id.* at ¶ 4. Mr. Pesnell has never been involved in determining the scope of work on any particular project or the performance of work under any contract and has never been involved in the pricing of any work or negotiating with customers regarding work to be performed. *Id.* Mr. Pesnell has never been involved in collection of any amounts owed for work Major League has performed and has never been involved in customer service discussions with any customers. *Id.*

5. Rule 65(d)(1) of the *Alabama Rules of Civil Procedure* provides, in part, “Every order granting a restraining order shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained...” ALA. R. CIV. P. 65(d)(1). Here, the specific act or acts as defined in the TRO include: “engaging in business as a supplier, servicer or any other type of skilled trade including but not limited to plumbing, gas fitting, electrical, liquefied petroleum gas, onsite waste water, septic, remodeling, or construction, in any consumer transaction in the State of Alabama.” Doc. 22 at § II(A).

6. Major League does not perform plumbing, gas fitting, electrical, liquefied petroleum gas, on-site waste water, septic, or traditional remodeling or construction work. *Id.* at ¶ 5. The majority of the work involves restoration of water damage to structures. *Id.*

7. RJP is listed on the website of the Alabama Secretary of State and Richard Joshua Pesnell is identified as the Registered Agent for service of process. The fact that Mr. Pesnell is the sole member of this company has been available to the State of Alabama since the entity was formed. The fact that the State did not name RJP or Major League is as a defendant in this case and the fact that neither is referenced in the Court's TRO leaves these Defendants to believe that the Court does not intend for Major League, its employees or independent contractors to be subject to the TRO.

8. The application of the TRO to Major League will serve no legitimate purpose; rather, it will result in four other citizens of Calhoun County becoming unemployed and out of work.

9. Defendants provided a copy of the Court's TRO to Major League and Major League will not perform any work until the Court rules on this emergency motion.

WHEREFORE, the Defendants respectfully request the Court to clarify its TRO and to confirm that Major League and its employees and independent contractors are not bound by provisions of that Order.

Respectfully submitted,

/s/ Tabor R. Novak III

Tabor R. Novak III (ASB-3580-B60N)

J. Scott Dickens (DIC023)

STARNES DAVIS FLORIE LLP

100 Brookwood Place, 7<sup>th</sup> Floor

Birmingham, AL 35209

*tnovak@starneslaw.com*

*sdickens@starneslaw.com*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2018, I electronically filed the foregoing with the Clerk of the Court using the Ala-File system to the following:

Noel S. Barnes  
 Michael G. Dean  
 Assistant Attorneys General  
 Office of the Attorney General  
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/s/ Tabor R. Novak III

Tabor R. Novak III (ASB-3580-B60N)



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# EXHIBIT A

**AFFIDAVIT OF RICHARD JOSHUA PESNELL**

STATE OF ALABAMA )

COUNTY OF CALHOUN )

Before me, the undersigned Notary Public, in and for said county and state, personally appeared Richard Joshua Pesnell who, after being duly sworn by me under oath, states as follows:

1. My name is Richard Joshua (“Josh”) Pesnell. I am over the age of nineteen (19) years and have personal information regarding matters stated herein. I am a resident of the State of Alabama.

2. I am the sole member of American Plumbing and Septic Service, LLC. I am also the sole member of RJP Industries, LLC (“RJP”), which is a limited liability company organized on February 22, 2018 and existing under the laws of the State of Alabama.

3. RJP does business as Major League Restoration (“Major League”), which has two W-2 employees and also utilizes two full-time independent contractors. Stephen Beard is the general manager of Major League. Major League is engaged in the restoration business, primarily involving tearing out, deodorizing, drying and treating water damaged materials in residential houses and commercial buildings.

4. Mr. Beard handles Major League’s day-to-day operations. I have never been involved in determining the scope of work on any particular project or the performance of work under any contract. I have never been involved the pricing of any



work or negotiating with customers regarding work to be performed. I have never been involved in collection of any amounts owed for work Major League performed and I have never been involved in customer service discussions with any customers.

5. Major League does not perform plumbing, gas fitting, electrical, liquefied petroleum gas, on-site waste water, septic, or traditional remodeling or construction work. The majority of the work involves restoration of water damage to structures.

FURTHER AFFIANT SAITH NOT.

Dated this the 15<sup>th</sup> day of August, 2018.

  
RICHARD JOSHUA PESNELL

STATE OF ALABAMA            )  
  )  
COUNTY OF CALHOUN        )



I, Kathy D. Findley in and for said County and State, hereby certify that Richard Joshua Pesnell, whose name is signed to the foregoing and who is known to me, sworn and subscribed before me this day, that being informed of the contents thereof, voluntarily executed the same on the day of its date.

Given under my hand and seal this the 15<sup>th</sup> day of August, 2018.

(SEAL)

  
Notary Public

My Commission Expires: 2/3/2019