



AlaFile E-Notice

11-CV-2018-900431.00

Judge: BRIAN P HOWELL

To: BARNES NOEL STEVEN
nbarnes@ago.state.al.us

NOTICE OF ELECTRONIC FILING

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 9/4/2018 3:02:25 PM

D001 AMERICAN PLUMBING AND SEPTIC SERVICE, LLC

D002 AMERICAN PLUMBING AND SEPTIC SERVICE, LLC

D004 PESNELL JESSICA

D005 PESNELL RICHARD G

D003 PESNELL RICHARD JOSHUA

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND APPOINTMENT OF RECEIVER

[Filer: STIFF LUTHER GRAVES III]

Notice Date: 9/4/2018 3:02:25 PM

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

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

IN THE CIRCUIT COURT OF CALHOUN COUNTY, ALABAMA

STATE OF ALABAMA,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN PLUMBING AND)
 SEPTIC SERVICE, LLC, et al.,)
)
 Defendants.)

CIVIL ACTION NO.:
11-CV-2018-900431.00

OPPOSITION TO MOTION FOR LIVE TESTIMONY

Defendants, American Plumbing and Septic Service, LLC, American Drain Cleaning & Plumbing Service, Richard J. Pesnell (Josh Pesnell), Jessica Pesnell, and Richard G. Pesnell (collectively, Defendants) hereby give notice of their opposition to the State of Alabama’s motion for live testimony, filed on August 31, 2018 on the following grounds:

1. As set forth in Defendants’ Motion to Accept Filings or, Alternatively, to Continue Hearing, Defendants do not object to the timeliness of Plaintiff’s request for live testimony. (*See* Doc. 183, ¶ 10).

2. With the original Complaint, the State filed Affidavits from thirty-one (31) individuals detailing their complaints about plumbing and septic services performed by employees of American Plumbing. Based upon these Affidavits and *ex parte* arguments of the State of Alabama, this Court has issued a temporary restraining order which, for all practical purposes, has forced the company to cease all business operations.

3. The Defendants have requested that this Court dissolve the TRO and deny the State's application for a preliminary injunction. A hearing on the preliminary injunction issues is scheduled for September 6 at 1:30 p.m.

4. In its Order of August 3, 2018, the Court indicated that absent special circumstances not present here, the preliminary injunction issues would be decided on the basis of the Affidavits of record.

5. On Friday, August 31, 2018, the State filed a motion asking for permission to call thirty-nine (39) witnesses for "live" testimony at the hearing. The State has not demonstrated any compelling need or necessity for live testimony. Based upon the Affidavits of record, testimony of the proposed witnesses will provide evidence which is merely cumulative of the alleged facts set forth in the Affidavits of record.

6. Further, the proposed live testimony, at the most, will be offered to support one of the four fundamental prerequisites for the issuance of preliminary injunctive relief – namely, the State's likelihood of success on the merits. While Defendants dispute many of the allegations of the customers, there is ample evidence of record from which the Court can decide the likely outcome of the underlying cases.

7. The hearing as to the preliminary injunction issues is scheduled to begin at 1:30 p.m. on Thursday, September 6. There is insufficient time to accommodate the testimony of the proposed witnesses.

8. The State's motion, as amended, includes a request for live testimony by Defendants Josh and Jessica Pesnell. Said individuals are not owners of American

Plumbing, have no decision-making authority in the company, and did not perform any of the work at issue in the Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request the Court to deny the motion for live testimony, and to hear the legal issues and arguments of counsel on the pending issues as currently scheduled.

/s/ L. Graves Stiff, III

L. Graves Stiff, III

Tabor R. Novak III

J. Scott Dickens

Starnes Davis Florie LLP

100 Brookwood Place, Seventh Floor

Birmingham, Alabama 35209

Telephone: (205) 868-6000

Fax: (205) 868-6099

E-mail: gstiff@starneslaw.com

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on the following parties or attorneys of record by filing same via Alafile, this the 4th day of September, 2018:

Noel S. Barnes
 Michael G. Dean
 Assistant Attorneys General
 501 Washington Avenue
 Montgomery, AL 36104
nbarnes@ago.state.al.us
mdean@ago.state.al.us

Matt Bledsoe
 Assistant Attorney General
 Office of the Attorney General
 501 Washington Avenue
 Montgomery, AL 36104
mbledsoe@ago.state.al.us

T. Cameron McEwen
 General Counsel
 Alabama Plumbers & Gas Fitters
 Examining Board
 11 W. Oxmoor Road #104
 Birmingham, AL 35209
Cameron.mcewen@fsb.alabama.gov

Hendon B. Coody
 Attorney at Law, LLC
 P.O. Box 104
 Montgomery, AL 36101-0104
hendonbcoody@earthlink.net

Dillon Bullard
 Assistant General Counsel
 Alabama Department of Health
 The RSA Tower
 201 Monroe Street
 Montgomery, AL 36104
Dillon.bullard@adph.state.al.us

/s/ L. Graves Stiff, III

 L. Graves Stiff, III