

Losing Tenants To 'Loud Screeching Noises,' Worthing Files \$25M Suit

Developers of a \$52M West Atlanta luxury apartment complex are suing contractors of a tunneling project at Bellwood Quarry for millions of dollars in potentially lost rent as some of its residents flee from round-the-clock drilling.

Westside Ventures LLC — an entity of The Worthing Cos. and a majority partner — sued H.J. Russell & Co. and two of its partners over city ordinance noise violations from tunneling work at the City of Atlanta's future reservoir in Bellwood Quarry. The \$300M, five-mile long tunnel project, named Westside Reservoir Park, is expected to connect the Hemphill Water Treatment Plant and the Chattahoochee River.

In the suit, filed with the Fulton County Superior Court on July 26, Worthing alleges the digging (by an \$11M machine newly dubbed Driller Mike) is in excess of 65 decibels, much louder than allowed by noise variance permits, and produces vibrations that are affecting residents at Worthing's Westside Heights apartment project.

“Defendants are engaging in round-the-clock, seven-day-a-week drilling activities immediately next door to [Worthing's] new apartment complex. Indeed, within 35 feet of a number of the residences,” Worthing officials stated in the suit. “Defendants are operating two 50-foot-tall drilling rigs and multiple generators and other construction equipment which create a constant noise and with periodic loud screeching noises and clanking of equipment, all in violation of the city’s noise ordinance.”

Worthing is seeking an injunction against the construction activity, financial recovery of at least \$5M in lost revenue, and at least \$20M in punitive damages and attorney fees.

Worthing said in the lawsuit the damage is already being felt by the owners, which includes a majority investment interest from the California Public Employees' Retirement System (CalSTERS). The 282-unit apartment complex at 903 Huff Road, just off Howell Mill Road and facing the Hemphill Reservoir, has \$17M in investor equity as well as a \$35M construction loan. It was completed earlier this year.

“Revenues from the leasing of Westside Heights [are] critical to repay the loan, to preserve and enhance the equity investment of the owners, and make payments to retirees covered by the majority owner's pension funds,” Worthing stated in the lawsuit.

“The continuing sound nuisance is having a disastrous effect on our client's ability to lease apartments. Our client has already faced cancellations of signed leases and has had clients move out. Much of Westside Heights is uninhabitable,” according to the lawsuit. “Our damages currently are approximately \$1M. We have estimated that its damages will be in the \$3.5-\$4M range through February 2018, which is how long we understand the drilling will continue.”

Worthing alleges the contractors have undertaken what was described as “only the feeblest of sound mitigation measures” to garner more profit on the reservoir construction project.

Aside from H.J. Russell, other defendants include partners on the reservoir project, Vermont-based PC Construction and Atkinson Construction, a division of Colorado-based Clark Construction Co. Officials from all three firms did not return calls seeking comment.

But the firm contended Worthing's noise violation claims were incorrect in a July 13 letter from PC Construction Senior Project Manager Robert Huie to Worthing's attorney, Atlanta-based ***Robbins Ross Alloy Belinfante Littlefield*** member ***Richard Robbins***.

“As discussed at the meeting, your letter includes numerous inaccuracies and is founded on baseless assumptions. It offers no evidence to support the vague allegations of purported damages. Many of those issues were discussed during the meeting, however, no further support for the unfounded allegations was offered,” Huie stated in the letter, which was filed in the lawsuit. “As explained at the meeting, PCR is operating in compliance with its contract with the city and all permits and allowed variances. PCR will continue to operate as contracted and as directed by the city.”

The Westside Reservoir Park project is transforming a former granite quarry that closed in 2007 into a new reservoir for the city that will stow more than 2 billion gallons of water, enough to provide Atlanta residents with water for 30 days in the event the Chattahoochee becomes unusable. The area surrounding the reservoir is being turned into a new city park, one larger than Piedmont Park and connected to the BeltLine. The quarry has been featured in television shows and movies in recent years, including "The Walking Dead" and "Stranger Things."

City of Atlanta spokeswoman Jewanna Gaither declined to comment since the city is not a party to the lawsuit.

“As you can imagine, it is not a great way to start a brand-new apartment complex,” Robbins said. “[Westside Heights] is really beautiful. And if they ever stopped the damned drilling, it'd be idyllic.”

Westside Heights includes a pool with palm trees, a gym, a rooftop social lounge and a “grab-n-go” breakfast and coffee bar, according to Curbed. Rents start at \$1,300/month for a 600 SF one-bedroom unit and go up to \$2,600/month for some two-bedroom units, according to that story.

For any developer delivering a new multifamily product, initial leasing is critical for its success, Patterson Real Estate Advisory Group founder Lance Patterson said. Patterson said his comments were in general and not specific to Worthing or its lawsuit.

“I think it's very important they do well out of the gate,” he said. “If you don't get off to a good start, then a lot of things that nobody likes begins to happen.”

Worthing asserted its project could suffer more than the lost rents thus far in the lawsuit.

“The damage to our client may well be far larger if this matter is not resolved soon. The inability to generate revenue from leasing activities makes it very likely our client will violate their loan covenants. That could result in financial disaster for not only our client but its parent company, and damages would be well north of \$10M,” officials stated in the lawsuit.

Robbins also questioned the veracity of the city-issued permits that allow for certain levels of noise. In the lawsuit, Robbins alleges the contractors failed to disclose all the information typically needed for a noise permit. Yet the city

still approved them, he said.

“Needless to say there's a high frustration level and we continue to hope that the city comes in and takes charge and gets this resolved,” he said. “This is a situation that cries out for the city to get this taken care of sooner rather than later.”

After a hearing on Aug. 1, a judge granted extra time to both the contractors and the city to resolve the dispute, Robbins said.

"We remain skeptical they will do so and that the city will take the appropriate action," Robbins said in an email. "We fully intend to add the city to the lawsuit if they refuse to ensure their contractors comply with the noise ordinance. Our client supports the project, but insists that city contractors comply with the law and protect the rights of owners of a major new apartment development in the city."

For more information, please contact Richard Robbins or Jason Alloy.