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September 12, 1993

Mr. Leslie Steen
Clerk of the Court
Supreme Court of Arkansas
625 Marshall Street
Little Rock, AR 72201

RE: O. Julius Bananberry v. Dionysius Hipp
Case No. 93-4005

Dear Mr. Steen:

Please file the enclosed appellant's brief in the above
referenced case.

Thank you for your time and assistance in this matter.

Sincerely,

Myron Lerner
Attorney at Law

ML/dmc

cc: Ms Jacqueline Hyde
Hon. N. Decisive

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPPI

DEFENDANT

COMPLAINT

Comes the plaintiff, O. Julius Bananaberry, by and through his attorneys, Cheatham and Howe, and for his Complaint against the defendant, Dionysius Hipp, states:

1. The plaintiff and the defendant are individual residents of Pulaski County, Arkansas, and this incident occurred in Pulaski County, Arkansas. This is the proper venue for this action.

2. On or about _____, at approximately _____, the defendant created an eyesore at the home at #9 Gottrocks Lane. As a result of the defendant's intentional misconduct, the plaintiff suffered injuries as more specifically described herein.

3. The defendant has created an eyesore by the following acts which were a proximate cause of the damages sustained by the plaintiff. Specific acts of negligence include, but are not limited to, the following:

- a) Failing to maintain his premises in good repair;
- b) Failing to keep his lawn mowed;
- c) Painting slogans on his house;
- d) Digging a large ditch on his property and failing to cover it;
- e) Placing the burned-out hulks of military vehicles on display on his front lawn;

f) Otherwise failing to exercise ordinary care under the circumstances.

4. As a result of the defendant's intentional misconduct, the plaintiff loss of sleep, emotional distress, humiliation, anxiety, and a loss of the value of personal property.

WHEREFORE, the plaintiff prays for a judgment against the defendant in an amount adequate to compensate him for the injuries and damages he has sustained and which amount exceeds the current minimum requirement for federal court jurisdiction in diversity of citizenship cases. The plaintiff further prays for costs, interest and all other just and proper relief to which he may be entitled. The plaintiff prays for a jury trial.

RESPECTFULLY SUBMITTED,

MYRON LERNER
Attorney at Law
Arkansas Bar No. 989823-90

CHEATHAM AND HOWE
Attorneys at Law
Humongous National Bank Building
Suite 2500
Capitol and Main Streets
Little Rock, AR 72211
(501)555-1212

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPP

DEFENDANT

ANSWER

Comes the Defendant, Dionysius Hipp, by and through his attorneys, Runne, Laquelle, and Hyde, and for his answer hereby states:

1. Defendant admits that the Plaintiff and Defendant are individual residents of Pulaski County, Arkansas.

2. Defendant denies that Defendant has created an eye-sore at his home at #9 Gottrocks Lane, Little Rock, Arkansas. Defendant affirmatively states that he has created a work of art, beautiful to behold, and breath taking in its significance to the plight of modern man.

3. Defendant denies all remaining allegations in Plaintiff's complaint.

WHEREFORE, Defendant prays that the complaint filed herein against him be denied, that this cause of action be dismissed,

for costs herein expended, and for any and all other proper relief.

RESPECTFULLY SUBMITTED,

Jacqueline Hyde
Attorney at Law
Arkansas Bar No. 874450-30

RUNNE, LAQUELLE, AND HYDE
2398 15th Street
Little Rock, AR 72211
(501)555-0002

CERTIFICATE OF SERVICE

I, Jacqueline Hyde, do hereby certify that a copy of the avbove and foregoing has been furnished to the Plaintiffs by mailing a copy of same to Myron Lerner, CHEATHAM AND HOWE, Humongous National Bank Building, Suite 2500, Capitol and Main Streets, Little Rock, AR 72211, on this _____ day of _____, 1993, with postage prepaid.

Jacqueline Hyde

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPPI

DEFENDANT

JUDGMENT

On this ____ day of _____, 1993, this cause came on to be heard, plaintiffs, O. Julius and Ethel Bananberry, Elspeth Bluenose and Saxon Heights Country Club, appearing in person and by their attorneys, _____ and the defendant, Dionsysius Hipp, appearing in person and by his attorney, _____, and all parties being prepared for trial, a jury composed of twelve members of the regular panel of petit jurors of this Court was selected, empaneled and sworn according to law to try the issues of fact arising in this case. After hearing all of the evidence introduced, the instructions of the Court and the arguments of counsel, the jury retired to consider its verdict and after deliberating thereon, returned the following verdict:

"We, the Jury, find for the Defendant, Dionysius Hipp.

/s/Abby Hoffman, Foreman"

IT IS, THEREFORE, BY THE COURT CONSIDERED, ORDERED AND
ADJUDGED that the complaint of the Plaintiff is dismissed with
prejudice.

CIRCUIT JUDGE

DATE

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPP

DEFENDANT

NOTICE OF APPEAL

1. The plaintiff, O. Julius Bananberry, by and through his attorneys, Cheatham and Howe, hereby gives notice of his appeal to the Supreme Court of Arkansas from judgment in favor of Dionysius Hipp, Defendant, against O. Julius Bananberry, Plaintiff, entered on _____.

2. Appellant hereby designates the entire record and all proceedings, exhibits, evidence and documents introduced into evidence to be contained in the record on appeal.

3. The transcript has been ordered from Sheba Shaft, whose address is Pulaski County Courthouse, Third and Center Street, Little Rock, Arkansas 72001, the reporter of the proceedings in this case.

4. The appeal is taken to the Supreme Court of Arkansas pursuant to Rule 29, subsection (o) of the Rules of the Supreme Court because it involves the interpretation of the law of torts.

Filed this _____ day of _____, 1993.

RESPECTFULLY SUBMITTED,

MYRON LERNER
Attorney at Law
Arkansas Bar No. 9898223-90

CHEATHAM AND HOWE
Attorneys at Law
Humongous National Bank Building
Suite 2500
Capitol and Main Streets
Little Rock, AR 72211
(501)555-1212

CERTIFICATE OF SERVICE

I, Myron Lerner, do hereby certify that a copy of the avbove and foregoing has been furnished to the Defendant by mailing a copy of same to Jacqueline Hyde, RUNNE, LAQUELLE, AND HYDE, 2398 15th Street, Little Rock, AR 72211, on this _____ day of _____, 1993, with postage prepaid.

Myron Lerner

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPP

DEFENDANT

MOTION FOR EXTENSION OF TIME
TO FILE RECORD ON APPEAL

Come the plaintiff, by and through his attorneys, Cheatham and Howe, and for his motion for extension of time to file the record on appeal, state:

1. The plaintiff has designated the transcript of the hearing and oral arguments in this matter as part of the record in this case.
2. That testimony was stenographically reported.
3. Plaintiff ordered the transcript from Sheba Shaft, the court reporter, on _____.
4. Plaintiff has been informed by the court reporter that the transcription of the testimony cannot be completed by the date this transcript is due, which date is _____, due to her involvement in a capital murder trial.
5. An extension is necessary for the inclusion in the record of the proceedings stenographically reported.

WHEREFORE, upon request of Sheba Shaft, the court reporter, plaintiff moves for an extension of time for an additional _____

days, until _____, for the filing of the record in this matter.

RESPECTFULLY SUBMITTED,

MYRON LERNER
Attorney at Law
Arkansas Bar No. 989823-90

CHEATHAM AND HOWE
Attorneys at Law
Humongous National Bank Building
Suite 2500
Capitol and Main Streets
Little Rock, AR 72211
(501) 555-1212

CERTIFICATE OF SERVICE

I, Myron Lerner, do hereby certify that a copy of the above and foregoing has been furnished to the Defendant by mailing a copy of same to Jacqueline Hyde, RUNNE, LAQUELLE, AND HYDE, 2398 15th Street, Little Rock, AR 72211, on this _____ day of _____, 1993, with postage prepaid.

Myron Lerner

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

O. JULIUS BANANABERRY

PLAINTIFF

VS.

NO. 93-7734

DIONYSIUS HIPPI

DEFENDANT

ORDER

On this _____ day of _____, 1993, comes on to be heard the motion of the plaintiff for an extension of time to file the record in this matter. The court finds that the plaintiff designated proceedings that were stenographically reported, that the plaintiff has ordered the court reporter's transcript of that evidence, and that the court reporter cannot prepare the transcript of this testimony by the date that this record must be filed with the Supreme Court.

WHEREFORE, the court finds that the plaintiff's motion for extension of time should be granted, and hereby grants the plaintiff an additional _____ days, until _____, to file this record on appeal.

IT IS SO ORDERED.

CIRCUIT JUDGE

DATE

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
NINTH DIVISION

O. JULIUS BANANABERRY

PLAINTIFF

V.

NO. 89-6880

DIONYSIUS HIPPI

DEFENDANT

JURY TRIAL

BE IT REMEMBERED, that on the day of , 1992, before the
HONORABLE N. DECISIVE, the above styled matter came on for trial by
jury with counsel appearing as follows:

APPEARANCES:

MR. MYRON LERNER, Esq., Cheatham & Howe, Humongous National
Bank Building, Suite 2500, Capitol and Main Streets,
Little Rock, AR 72211

* * * On Behalf of the Plaintiff * * *

MS. JACQUELINE HYDE, Esq., Runne, Laquelle & Hyde, 2398 15th
Street, Little Rock, AR 72211.

* * * On Behalf of the Defendant * * *

PROCEEDINGS

THE COURT: You may call your first witness.

MR. LERNER: I call the Plaintiff, Julius Bananaberry.

O. JULIUS BANANABERRY,

having been called by and on behalf of the plaintiff, and having been duly sworn, was examined and testified as follows:

BY MR. LERNER:

Q. Mr. Bananaberry, could you state your full name for the record, please?

A. O. Julius Bananaberry.

Q. Where do you live, Mr. Bananaberry.

A. I live at #7 Gottrocks Lane, Little Rock, AR

Q. And what do you do for a living, Mr. Bananaberry.

A. I inherited a large fortune, my great grandfather was a robber barron.

Q. How long have you lived at #7 Gottrocks Lane?

A. Since 1965.

Q. Is Gottrocks Lane in a subdivision?

A. Yes, Saxon Heights. It is the most exclusive neighborhood in Little Rock. or at least it was.

Q. Who are your next door neighbors.

A. On my left is Elspeth Bluenose, and on my right is now Dionysius Hipp.

Q. On your right, that would be #9 Gottrocks Lane?

A. That's correct.

Q. How long has Mr. Hipp lived there?

A. He moved in about six months ago, after his book hit the New York Times best seller list.

Q. What was the name of his book.

A. Anarchy in Action.

Q. What was the condition of the home at #9 Gottrocks Lane at the time Mr. Hipp bought it?

A. It was in excellent condition. It was kept up in fine style by the prior owner.

Q. Who was the prior owner?

A. The Emir of Kuwait.

Q. And after Mr. Hipp bought the house, what was its condition?

A. Mr. Hipp totally destroyed the home. He has not had the lawn mowed or the shrubbery trimmed since he moved in. It is as if he does not even have a gardner. He has destroyed some of the statues. He has spray painted slogans on the walls of his home. Some of the slogans are quite disgusting, and a few of them do not even use proper English.

Q. Please go on.

A. Then he began to place junk on his front lawn. He has covered the front lawn with tanks, partially disassembled military vehicles, blood covered mannequins, and an ambulance. He has caused several small explosions and fires. He has burned down several of the trees. There is a large ditch from the sidewalk almost all the way back to the servants' quarters. I don't believe he even has any servants, but there are some derelicts living there.

Q. How do you know they are derelicts?

A. They smell like derelicts.

Q. Please go on.

A. He has placed loudspeakers in the trees, and we hear sounds of warfare at least once a week. He has thrown loud and boisterous parties at which shabbily dressed persons have gotten intoxicated. There have been civil disorders. On one occasion two groups showed up to protest one Sunday afternoon. A riot ensued, and we had to call the police. The street was blocked, and I missed my tee time.

Q. What is the condition of the property today.

A. Usually it looks like something one might see on C.N.N. from Bosnia or Lebanon, except there are not so many foreigners, and the graffiti is in English--regrettably. Perhaps some of the things he writes would not offend so much if they were in Serbo-Croatian. However, when he throws his parties, it is worse. I saw a man in his underwear standing on the roof of the main house shouting, "I am God!"

Q. I would like to show you some photographs which have been marked for identification only as Plaintiffs' Exhibits 1-A through 1-R and ask you if you can identify these photographs.

A. Yes, sir, I can. Exhibits 1-A through 1-D are photographs of the home before Mr. Hipp moved in. The lady in the chador covered from head to toe out by the swimming pool is one of the Emir's wives.

Q. And the rest of the photographs.

A. They depict the house as it appears today.

Q. Are these photographs a fair and accurate representation of the condition of the premises today?

A. Yes, they are.

MR. LERNER: I would like to move for the admission of Plaintiff's Exhibits 1-A through 1-R.

THE COURT: Any objection?

MS. HYDE: No objection.

THE COURT: They may be received.

MR. LERNER: I have no further questions of this witness.

CROSS EXAMINATION BY MS. HYDE.

Q. What is your full name.

MR. LERNER: May we approach the bench?

(Thereupon the following discussion was had at the bench between counsel and the court.)

MR. LERNER: Mr. Bananaberry's parents were a bit eccentric. To mention his first name would unnecessarily embarrass him.

THE COURT: What is his first name?

MR. LERNER: Orange.

THE COURT: Ms. Hyde.

MS. HYDE: I'm sorry I asked. I withdraw the question.

(Thereupon, the following proceedings continued in open court.)

Q. Mr. Bananaberry, what would you say your property is worth today?

A. About two point seven five million dollars.

Q. And what was it worth when Mr. Hipp moved in.

A. Around the same.

Q. So you have not had any loss of value in your property?

A. Well, nobody would buy it right now.

Q. And it's not for sale, is it?

A. It will be if I lose this case.

Q. Thank you Mr. Bananaberry.

THE COURT: You may step down, Mr. Bananaberry. Please return to your seat at the table.

MR. BANANABERRY: Thank you, your honor.

THE COURT: Call your next witness.

MR. LERNER: I call Mrs. Elspeth Bluenose.

MRS. ELSPETH BLUENOSE

having been called by and on behalf of the plaintiff, and having been duly sworn, was examined and testified as follows:

BY MR. LERNER:

Q. Could you tell the jury your name?

A. Oh, yes, I suppose I could do that.

Q. Please do so.

A. Oh, all right, I see. My name is Elspeth Bluenose.

Q. And where do you live, Mrs. Bluenose?

A. I live at # 5 Gottrocks Lane.

Q. Who lives next door to you?

A. Well, next door is Mr. Bananaberry.

Q. And on the other side of Mr. Bananaberry's house.

A. It would be Mr. Hipp. I can't pronounce his first name.

Q. I'd like you to direct your attention to Mr. Hipp's house.

Can you describe it for us?

A. Well, it's a wreck, that's what it is. He has broken cars on the front lawn, and a tank, and there are really dirty words painted on his house. And he doesn't mow his lawn, and there are dead bodies of people all around. He makes a lot of noise, and listens to the most awful music. And I thought those other people that lived there before were unusual. He's even worse.

Q. Have there been any problems at that house?

A. They have wild parties. And did you know, they had the most awful riot over there. I think they're Fabians or something. And they drink too much, and they leave their bottles out on the ground. And there was a half-naked man on the front lawn one day handing out cans of beer.

Q. Can you identify that man?

A. No. I was too shocked to look. All he was wearing was one of those string bikinis. When I turned away, he shouted, "Don't look, Elspeth!"

Q. Could it have been Mr. Hipp?

A. No, he was different looking. He didn't have a beard. I think they're atheists.

Q. Has the noise from Mr. Hipp's home ever bothered you?

A. Yes. Quite a bit.

MR. LERNER: Your witness.

CROSS EXAMINATION BY MS. HYDE:

Q. Mrs. Bluenose, has Mr. Hipp caused any decrease in the fair market value of your home?

A. What?

Q. Is your house worth less than it was before he moved in?

A. Why, sure it is. People don't want to live in a neighborhood with riff-raff.

Q. How much less is your house worth?

A. I don't know.

Q. You couldn't put a figure on it?

A. No, of course not. Without Mr. Hipp, we have a nice neighborhood. I think he's a loonie.

Q. No further questions.

THE COURT: Any redirect?

MR. LERNER: No, your honor.

THE COURT: Call your next witness.

MR. LERNER: I call Dick Tracy.

MR. RICHARD TRACY:

having been called by and on behalf of the plaintiff, and having been duly sworn, was examined and testified as follows:

BY MR. LERNER:

Q. Please state your name for us.

A. I'm Dick Tracy.

Q. What do you do for a living, Mr. Tracy?

A. I'm a detective with the Little Rock Police Department.

Q. Are you familiar with the Saxon Heights neighborhood.

A. Yes, I am.

Q. Please tell the jury a little bit about that neighborhood.

A. Well, it's very exclusive. It's the richest neighborhood in town. It has the nicest houses, the largest yards. It is also,

MR. LERNER: Plaintiff rests, Your honor.

THE COURT: Call your first witness, Ms. Hyde

MS. HYDE: I call the Defendant, Mr. Hipp.

MR. HIPPI: Cool.

DIONYSIUS HIPPI

having been called by and on behalf of the defendant and having been duly sworn, was examined and testified as follows:

BY MS HYDE:

Q. Please state your name for the record, please, sir.

A. My name is Dionysius Hipp.

Q. And what do you do for a living, Mr. Hipp.

A. I'm a professional revolutionary.

Q. You are the author of Anarchy in Action?

A. Yes. It's a good book. It's available at better bookstores everywhere. It was on the New York Times Best Seller List for seventeen weeks, and Mel Brooks is thinking about bringing out a movie version of it.

Q. Mr. Hipp, you have heard the witnesses here describe your front yard.

A. I have.

Q. And is that description accurate?

A. It is accurate in the sense that the Mona Lisa is a picture of a woman. It is accurate in the sense that the great pyramids in Egypt are tombs and the Sphinx is a lawn decoration. It is accurate in the sense that the Venus de Milo is a broken statue. Their description leaves out the fundamental artistic message, as

well as several of the major features of the yard. For instance, they fail to note the juxtaposition of the dead pigs and the plastic pink flamingo. They disregard the Viet Cong flag flying from the third tree from the submarine. They did not see the whole, they saw parts. They cannot see the message. They cannot hear the song. Reality and life pass them by as they focus on details.

Q. Mr. Hipp, why did you create this work of art in Saxon Heights.

A. It is the idle rich with their dry, dull, tea party and cocktail lives who must above all come face to face with the absurdity and utter senselessness of what the military industrial complex has done with our lives, the very fabric of our being. Also, I wanted attention. I am sending a message and it must be heard.

MS. HYDE: No further questions.

CROSS EXAMINATION BY MR. LERNER:

Q. Do you have any concern that your so-called work of art may do serious damage to the property values, as well as the mental well being, of your neighbors.

A. No.

Q. Did you inform any of your neighbors that you planned to erect this display?

A. No.

Q. Why not.

A. I didn't care. The message must be heard. We must put aside

MS. HYDE: I call Humbolt Humbolt.

MR. LERNER: May we approach the bench.

THE COURT: Yes, please approach.

MR. LERNER: At this time I must object to the testimony of Mr. Humbolt. Mr. Humbolt is an alleged art critic, but the evidence will show he has no formal training in art. Second, his testimony has no relevance. The mere fact that there may be some artistic merit in Mr. Hipp's display does not constitute a defense to our cause of action under the law. That property is zoned residential, and the content of the message or the artistic merit of the display just does not matter. Therefore I object to Mr. Humbolt's testimony on two bases. It is utterly irrelevant and Mr. Humbolt is not qualified by education or experience to be an art critic.

MS. HYDE: As the court knows, it is our contention that the fact that this display has artistic merit is relevant and admissible on the question whether this constitutes a public nuisance or an eyesore. As to Mr. Humbolt's qualifications, we concede that he has no formal education, but he will testify that he is the regular art critic for The Underground Daily, an underground newspaper circulated in Washington D.C., New York City, Chicago, San Francisco, Fort Smith, and other major metropolitan areas. He has devoted his life to the study of art, especially alternative art, and he is very knowledgeable on that subject. He has received a grant from the National Endowment for the Arts.

THE COURT: I'll allow him to testify, but make sure you lay the foundation for his qualifications before he gives any opinions.

MR. LERNER: As the court will recall, at the end of my case I moved for a directed verdict. The court withheld ruling on my motion until the defendant's evidence was submitted. The defendant's evidence has now been presented, the defendant has rested, and at this time I renew my motion for a directed verdict. The evidence as to the condition of Mr. Hipp's house is not only uncontroverted, but admitted by defendant. It is plaintiff's position that the evidence shows a public and private nuisance as a matter of law and we are entitled to a verdict on that issue.

THE COURT: Response.

MS. HYDE: Nonsense.

THE COURT: Motion denied.