

COMMONWEALTH OF KENTUCKY  
FLOYD CIRCUIT COURT  
DIVISION NO. I  
CIVIL ACTION NO. 09-CI-01137

CHRISTOPHER HOWARD HAMBY

PLAINTIFF

VS.

**FIRST AMENDED COMPLAINT**

UNKNOWN AGENTS OF BANK OF  
AMERICA and  
BANK OF AMERICA

and

A1 PRESERVATION, INC.  
142 Meadow View Way  
Georgetown, Kentucky 40324

RICHARD A. SPURGEON, Individually  
142 Meadow View Way  
Georgetown, Kentucky 40324

DEFENDANTS

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Comes the Plaintiff, by counsel, and for his First Amended Complaint, states as follows:

1. The Plaintiff states that he owns a residence and real property which is located on 81 Elm Street in Wheelwright, Floyd County, Kentucky.
2. The Defendant Bank of America is an out of state banking corporation who does business in the Commonwealth of Kentucky. Unknown Agents of Bank of America are the unknown individuals who while working as agents for the Defendant committed the tortious acts that are described in this complaint.

3. The Defendants A1 Preservation and Richard Spurgeon own and operate A1 Preservation, Inc., which is a Kentucky Corporation. It is believed that these Defendants were acting as agents for the Defendant Bank of America and that all of the Defendants wrongfully participated in the actions described elsewhere in this complaint.

4. The Plaintiff states that he does not have any relationship with the Defendant Bank of America, including any type of mortgage agreement.

5. The Plaintiff states that the Defendants had no legal right to come upon his property either express, implied, or otherwise.

6. The Plaintiff states that on October 5, 2009, unknown agents of the Defendants Bank of America and A1 Preservation committed the tort of trespass and other state law tortious activities by coming onto the Plaintiff's property and causing the locks on the door to be changed. The Defendants also caused physical damage to the Plaintiff's property when they entered into the Plaintiff's property and caused winterization chemicals to be placed into the plumbing at the Plaintiff's residence, and cut various lines within the residence. (See photographs attached to original Complaint).

7. On October 14, 2009, the Plaintiff went to his home located on 81 Elm Street in the Wheelwright area of Floyd County, Kentucky to receive some of his belongings. At 9:30 p.m. on this date the Plaintiff noticed that the locks were changed and there was a note stuck on the door.

On October 15, 2009, at approximately 8:06 a.m., the Plaintiff called the phone number which was attached to the note that had been fastened to his door. The phone number was 1-800-285-6000. At that point, the Plaintiff talked to someone who referred him to "loss and mitigation." The number given was 1-877-776-5842 ext. 52701.

Thereafter, the Plaintiff's mother, Rucilla Hamby, spoke with an individual named Louise who said that without the loan number there was nothing she could do. The Plaintiff's mother at that point tried to explain to her that her son "had no account with Bank of America" and that his loan and his mortgage was "through First Guaranty Bank." At that point, the individual who worked for Bank of America told the Plaintiff's mother, "We are sorry that we can't help you because you have no account with Bank of America" and then hung up the phone. The Plaintiff's mother then called the number back that was on the note left on the door and spoke again to representative of Bank of America. An individual who identified herself as "Crystal" then put the Plaintiff's mother on hold for approximately 25 minutes. The Plaintiff's mother then called Bank of America back and spoke to an Ann Williamson. Once again, the Plaintiff's mother was put on hold for about 10 minutes. A lady who identified herself as Ann Williamson was then given the Plaintiff's phone number and said she would call back. The Plaintiff nor his mother ever heard back from Ms. Williamson despite her promises to do so.

8. During the same time period, the Plaintiff's mother also called Bank of America at 8:50 a.m. Rucilla Hamby was kept on hold for 15 minutes, and then talked to a Company Service Representative. The Company Service Representative, who identified herself as Ann Williamson said she didn't know who the plaintiff's mother was talking about. The plaintiff's mother asked to speak to a supervisor. She then put the plaintiff's mother on hold for approximately 40 minutes. Thereafter, the plaintiff's mother spoke with a Christina at 9:50 a.m., and was advised that she would receive a call back from Bank of America. Thereafter, Christina called back and inquired if the Plaintiff had been contacted by the one that changed the locks. Rucilla Hamby responded they had not. Thereafter, the Plaintiff was told that he would hear

from somebody within 72 hours. At that point, the Plaintiff had advised that he couldn't be locked out of his house for 72 hours. The Plaintiff was then told that he "could hire a locksmith" and submit a bill to Bank of America.

9. Thereafter, the Plaintiff called back and asked to speak to Crystal, and was advised "there was no Crystal." The Plaintiff's mother then spoke with a Maria Murrell, who also kept the Plaintiff on hold for approximately 20 minutes. The Plaintiff once again gave her the same information he had given to other Bank of America employees. During one of these phone conversations, the plaintiff's mother was advised by a Bank of America employee that "why would they repossess your son's home if he owes us nothing?"

10. The actions of the Defendant(s) constitute a nuisance in that the Plaintiff could not utilize and enjoy his property due to the actions of the Defendant(s).

11. The Defendants also caused other internal damage to the Plaintiff's house, thus constituting a trespass to chattel. The Plaintiff was not able to access his home until December 10, 2009.

12. In conversations the Plaintiff had with various agents of the Defendant(s), they acknowledged that they wrongfully entered onto his property, and damaged his property, due to the erroneous belief that his property was in default, and subject to repossession.

13. The Plaintiff states that the Defendant's actions in coming on to the property, damaging the property, and in their reckless disregard in trying to remedy the wrongs are all actionable and the Plaintiff is entitled to receive punitive damages due to the defendants' reckless regard of the plaintiff's rights.

14. The Plaintiff also seeks compensation for the repair of the damages done to his house by the Defendants and any and all other relief deemed appropriate.

15. The Plaintiff further states that he was seeking to rent or sell the property during the time period in question and has been unable to do so due to the wrongful actions of the Defendants as previously described in this complaint.

16. The plaintiff also asserts claims for defamation, libel and false light in that due to the actions of the defendants that numerous individuals throughout the communications described in the Complaint and Amended Complaint were led to believe that the plaintiff had not paid his lawful obligations, and was trying to unlawfully keep possession of his home.

WHEREFORE, the Plaintiff seeks relief as follows:

1. Judgment against all Defendants.
2. Compensatory damages as previously described in this complaint, including punitive damages for the reckless disregard that the Defendants have caused, as well as compensation for the plaintiff's suffering humiliation and embarrassment.
3. Trial by jury.
4. Any and all other relief deemed appropriate, including attorney fees and interest on any judgment rendered herein.

RESPECTFULLY SUBMITTED,

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NED PILLERSDORF  
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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was served via mail delivery to: HON. LAUREN CROSBY, Corporate Plaza, 771 Corporate Drive, Suite 905, Lexington, Kentucky 40503; HON. BYRON E. LEET and HON. PATRICK J. MARTINEZ, Wyatt, Tarrant & Combs, LLP, 500 West Jefferson Street, Suite 2800, Louisville, Kentucky 40202; HON. MICKEY WEBSTER, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, Kentucky 40507-1746; and the original to the CLERK, Floyd Circuit Court, Floyd County Justice Center, 127 South Lake Drive, Prestonsburg, Kentucky 41653; this the \_\_\_\_ day of February, 2010.

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NED PILLERSDORF