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Kim Windle James

Kim Windle James, Clerk
Chattooga County, Georgia

**IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA**

THE TOWN OF LYERLY, GEORGIA,

Plaintiff,

v.

3M COMPANY, et al.,

Defendants.

CIVIL ACTION FILE NO.:
24SCA4052

**ORDER ON DEFENDANTS' MOTIONS TO DISMISS THE TOWN OF
LYERLY, GEORGIA'S AMENDED COMPLAINT**

This is a water-pollution case. Pending before the Court are Motions to Dismiss the Town of Lyerly, Georgia's ("Lyerly") Amended Complaint, filed by Defendants 3M Company, Inc. ("3M"); E.I. DuPont de Nemours and Company, DuPont de Nemours, Inc., The Chemours Company, The Chemours Company FC, LLC, and Corteva, Inc. (collectively "DuPont"); Daikin America, Inc. ("Daikin"); and Aladdin Manufacturing Corporation, Mohawk Carpet, LLC, and Mohawk Industries, Inc. (collectively "Mohawk").

The Court held a hearing on January 16, 2025, during which all parties were represented by counsels. After a review of the verified pleadings, motions, and briefs of the parties and after considering the oral arguments, the Court hereby denies the Defendants' Motions to Dismiss Lyerly's Amended Complaint.

BACKGROUND

In this action, the Town of Lyerly, Georgia, claims that toxic per- and poly-fluoralkyl substances (“PFAS”) have invaded its drinking water supply. (Lyerly Am. Compl. ¶¶ 1–13.) Lyerly alleges that this contamination was caused and/or contributed to by 3M, DuPont, Daikin (collectively “PFAS Manufacturers” or, as the Defendants would have it, “PFAS Suppliers”) and Mohawk (a “PFAS User”). *Id.* ¶¶ 31–54. Lyerly asserts claims for negligence, nuisance, trespass, wantonness, and violation of the Georgia Water Quality Control Act (O.C.G.A. § 12-5-51) against each Defendant. *Id.* ¶¶ 114–165. Lyerly seeks compensatory and punitive damages, injunctive relief, attorneys’ fees, costs, and expenses of litigation. *See id.*

Lyerly alleges that the PFAS Manufacturers have, for several decades, supplied various products containing PFAS to Mohawk’s carpet manufacturing plants in Georgia. *Id.* ¶¶ 31–51. The PFAS Manufacturers allegedly knew or had reason to know that products supplied to Mohawk were persistent, bioaccumulative, and toxic, and that these “forever” chemicals would eventually discharge to the environment in Mohawk’s wastewater and stormwater, ultimately “passing through” the town’s conventional wastewater and drinking water treatment systems. *Id.* ¶¶ 7–11, 56–84.

Lyerly further alleges that Mohawk became aware of the environmental and human health hazards associated with PFAS, yet Mohawk continued to use products containing PFAS—supplied by the PFAS Manufacturers—in its manufacturing processes. *Id.* ¶¶ 7–11, 50–54, 79–84. According to Lyerly, Mohawk has for years caused these chemicals to be discharged into Lyerly’s drinking water supply in violation of Mohawk’s permits. *Id.* ¶¶ 9–10, 28, 50–54, 81. The Town of Lyerly claims that the introduction of PFAS into its

drinking water treatment systems requires Lyerly “to upgrade to costly and sophisticated new treatment technologies in order to remove Defendants’ PFAS from its drinking water.” *Id.* ¶¶ 12–13.

The PFAS Manufacturers and Mohawk filed Motions to Dismiss Lyerly’s Amended Complaint, Lyerly filed an Omnibus Response in Opposition, and Defendants filed Replies in Support, culminating with the January 16, 2025 motion to dismiss hearing.

STANDARD ON MOTION TO DISMISS

“Georgia is a notice pleading jurisdiction. . . . It must be remembered that the objective of the [Civil Practice Act] is to avoid technicalities and to require only a short and plain statement of the claim that will give the defendant fair notice of what the claim is and a general indication of the type of litigation involved; the discovery process bears the burden of filling in details.” *Atlanta Women’s Specialists, LLC v. Trabue*, 310 Ga. 331, 333 (2020); *see also* O.C.G.A. § 9-11-8(e) (“Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.”).

“A motion to dismiss for failure to state a claim should not be granted unless: (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.” *Mbigi v. Wells Fargo Home Mortg.*, 336 Ga. App. 316, 316 (2016). At this stage, “it is immaterial whether a pleading states conclusions or facts as long as fair notice is given, and the statement of claim is short and plain. The true test is whether the pleading gives fair notice

and states the elements of the claim plainly and succinctly, and not whether as an abstract matter it states conclusion or facts.” *Carley v. Lewis*, 221 Ga. App. 540, 541 (1996).

ANALYSIS AND RULING

I. Negligence

Each of the Defendants argue that Lyerly has not sufficiently alleged one or more elements needed to state a claim for negligence. For the reasons that follow, the Court finds that Lyerly has sufficiently alleged a claim for negligence under Georgia law.

1. Duty

“A legal duty sufficient to support liability in negligence is either a duty imposed by a valid statutory enactment of the legislature or a duty imposed by a recognized common law principle declared in the reported decisions of our appellate courts.” *Cabrera v. Ellis*, 358 Ga. App. 396, 398 (2021); *see also* O.C.G.A. § 51-1-6. Under Georgia common law, “neither duty nor negligence exists in a vacuum.” *Sims v. Am. Cas. Co.*, 131 Ga. App. 461, 468, *aff’d sub nom. Providence Washington Ins. Co. v. Sims*, 232 Ga. 787 (1974). There are “[c]ertain duties . . . inherent in human society,” such as “the duty to so handle [one’s] affairs or conduct [one’s] business and control the material forces with which [one] deals as not to injure the person or property of [others].” *Id.* This is the general principle that “[e]very person owes a duty to exercise ordinary care not to injure others, whether they stand in a contractual relationship to him or not.” *See, e.g., Hand v. Harrison*, 99 Ga. App. 429, 429 (1959).

While it is true that there is no “general legal duty to all the world not to subject others to an unreasonable risk of harm,” *see Dep’t of Lab. v. McConnell*, 305 Ga. 812, 816

(2019) (cleaned up), it is also true that “the legal duty to exercise ordinary care arises from the foreseeable, unreasonable risk of harm from such conduct,” *Hodges v. Putzel Elec. Contractors*, 260 Ga. App. 590, 594 (2003). Therefore, to establish a legal duty under Georgia law, “[i]t is sufficient if, in ordinary prudence, [the defendant] might have foreseen that some injury would result from his act or omission, and that consequences of a generally injurious nature might result.” *Sims*, 131 Ga. App. at 468.

For the reasons set forth below, the Court finds that all of the Defendants owed the Town of Lyerly a legal duty sufficient to state a negligence cause of action.

Mohawk

Based upon the allegations of Lyerly’s Amended Complaint, Mohawk owed Lyerly legal duties under both the common law and Georgia statutes.

Under the common law, Mohawk owes a “duty to exercise ordinary care” not to cause injury to *foreseeable* third parties. *See Hand*, 99 Ga. App. at 429; *Hodges*, 260 Ga. App. at 594. This is not a “general legal duty to all the world,” *see McConnell*, 305 Ga. at 815, but the application of “ordinary diligence” to those who may be foreseeably harmed by a lack thereof. The Town of Lyerly alleges just that:

The PFAS Users knew or should have known that PFAS are harmful to human health and the environment, and that their PFAS-contaminated waste streams would invade and persist in the environment, groundwater and Plaintiff’s drinking water supply. The PFAS Users have known or should have known that the release of PFAS into the environment through wastewater, stormwater, and other discharges is prohibited by the PFAS Users’ operative permits and applicable state and local laws and regulations.

* * *

Upon information and belief, the PFAS Users continued to purchase, use, and discharge PFOA and products containing or degrading into PFOA with full

knowledge that the substances had been withdrawn by 3M due to environmental and potential health risks to the public.

* * *

Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, to exercise reasonable care in their manufacturing procedures and waste-handling and disposal operations to prevent the discharge of toxic PFAS chemicals into the Plaintiff's water supply, water treatment plant, and related property.

Defendants owed a duty to Plaintiff, as well as to all persons whom Defendants' PFAS might foreseeably harm, to comply with permits, to comply with state and local laws and regulations, and to prevent the discharge of PFAS into the Plaintiff's water supply and related property.

(See Lyerly Am. Compl. ¶¶ 53, 76.)

Moreover, the Court finds that Mohawk is subject to duties imposed by Georgia statutes and regulations. For instance, the Georgia Water Quality Control Act ("GWQCA") imposes civil liability on those who "intentionally . . . cause[] or permit[] any . . . industrial wastes . . . or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution" O.C.G.A. § 12-5-51. The Town of Lyerly alleges that Mohawk intentionally caused PFAS-contaminated wastewater to be discharged into groundwater and ultimately the Town's own water supply. (See Lyerly Am. Compl. ¶¶ 9–11, 51–54.)

Likewise, regulations promulgated under the GWQCA state that "[a]ny person who violates any provision of the Act, any rule promulgated and adopted pursuant thereto, or any term, condition, schedule of compliance or other requirement contained in a permit issued pursuant to the Act shall be subject to enforcement proceedings pursuant to the Act."

391-3-6-.08(11); 391-3-6-.15(13); 391-3-6-.16(14). This too creates legal duties, which the Town of Lyerly alleges Mohawk is subject to and has violated. (Lyerly Am. Compl. ¶ 116.)¹

For these reasons, the Court finds that Lyerly has sufficiently pleaded legal duties against Mohawk.

The PFAS Manufacturers

The Court likewise finds that Lyerly has adequately alleged legal duties owed by the PFAS Manufacturers. As with Mohawk, the PFAS Manufacturers owe a “duty to exercise ordinary care” not to cause injury to foreseeable third parties. *See Hand*, 99 Ga. App. at 429; *Hodges*, 260 Ga. App. at 594.

As recognized by other courts in similar PFAS pollution cases, this general principle has been applied specifically in the context of the manufacture and supply of dangerous products through the Restatement (Second) of Torts § 389, which Georgia appellate courts have adopted²:

One who supplies directly or through a third person a chattel for another’s use, knowing or having reason to know that the chattel is unlikely to be made reasonably safe before being put to a use which the supplier should expect it to be put, is subject to liability for physical harm caused by such use to those whom the supplier should expect to use the chattel or to be endangered by its

¹ While not necessary to the Court’s ruling, the Court also notes that multiple judges have found, on nearly identical facts as this case, legal duties imposed under Georgia law to manufacturers allegedly discharging PFAS in their wastewater. *See, e.g., Parris v. 3M Co.*, 595 F. Supp. 3d 1288, 1331 (N.D. Ga. 2022); *Johnson v. 3M*, 563 F. Supp. 3d 1253, 1322–23 (N.D. Ga. 2021), *aff’d sub nom. Johnson v. 3M Co.*, 55 F.4th 1304 (11th Cir. 2022)); *The City of Rome, Georgia v. 3M Company, et al.*, No. 19-CV-02405, at 7 (Floyd Cty., Ga. Sup. Ct., Dec. 17, 2020); *The City of Calhoun, Georgia v. 3M Company, et al.*, No. 24-CV-73929 (Gordon Cty., Ga. Sup. Ct., Oct. 30, 2024).

² *See, e.g., Greenway v. Peabody Int’l Corp.*, 163 Ga. App. 698, 703 (1982); *Ogletree v. Navistar International Transportation Corp.*, 194 Ga. App. 41 (1989), *overruled on other grounds by Weatherby v. Honda Motor Co., Ltd.*, 195 Ga. App. 169 (1990)).

probable use, and who are ignorant of the dangerous character of the chattel or whose knowledge thereof does not make them contributorily negligent, although the supplier has informed the other for whose use the chattel is supplied of its dangerous character.

Parris, 595 F. Supp. 3d at 1328 (quoting Restatement (Second) of Torts § 389 (Am. L. Inst. 1965)); *see also Beam v. Omark Indus., Inc.*, 143 Ga. App. 142, 147 (1977) (discussing duties owed by “a supplier or distributor of a potentially dangerous product”). The analysis of this issue by the *Parris* court applies in equal force to this case:

[A] duty arose where the Manufacturing Defendants continuously supplied PFAS to Mount Vernon with knowledge that the chemicals were unlikely to be made reasonably safe in their regular use and could foreseeably contaminate surface waters and downstream water supplies. The following allegations in the Complaint support the imposition of a legal duty here: the Manufacturing Defendants (1) have known for decades that PFAS are toxic and persistent in humans and other animals, (2) have long been aware that conventional wastewater treatment processes are ineffective, resulting in PFAS discharges to surface waters and accumulation in sewage sludge, and (3) notwithstanding these known risks of harm, have supplied PFAS to Mount Vernon without taking necessary precautions to prevent PFAS from contaminating surface waters such as Raccoon Creek and municipal water supplies. In the Court’s view, these allegations are not equivalent to a general duty to prevent harm to all the world, but make out a well-established duty under Georgia law with a limited geographic scope.

Parris, 595 F. Supp. 3d at 1330 (internal citations omitted).³

Here, Lyerly’s allegations are likewise sufficient to make out such a duty:

The PFAS Manufacturers have known for years that PFAS are harmful to human health and resistant to degradation or filtration by conventional treatment systems. The PFAS Manufacturers had full knowledge that the

³ The Court acknowledges that another federal judge in Georgia found that PFAS manufacturers did not owe a legal duty to ratepayers of a public water system in *Johnson v. 3M*, 563 F. Supp. 3d 1253 (N.D. Ga. 2021). While that may be the case in a ratepayer lawsuit, the Court finds that the reasoning of *Parris* and other courts that have held that PFAS manufacturers owe a duty to those who may be foreseeably harmed by their failure to act with reasonable care is more persuasive on the facts of the present action.

PFAS they manufactured and supplied to industrial users would invade the environment and surrounding areas from where Plaintiff collects its drinking water via wastewater effluent and other discharges and ultimately contaminate the Plaintiff's drinking water supply.

(Lyerly Am. Compl. ¶ 43.)

As with Lyerly's claims against Mohawk, these allegations do not seek to impose a "general legal duty to all the world," but are instead limited to those discrete few who the Defendants could have reasonably foreseen causing injury to. *See Parris*, 595 F. Supp. 3d at 1330 ("In the Court's view, these allegations are not equivalent to a general duty to prevent harm to all the world, but make out a well-established duty under Georgia law with a limited geographic scope.").

Finally, although not necessary to the Court's conclusions, the Court notes that trial courts both within Georgia and in other jurisdictions have found similar duties owed by PFAS manufacturers in water pollution cases. *See, e.g., The City of Calhoun, Georgia v. 3M Company, et al.*, No. 24-CV-73929 (Gordon Cty., Ga. Sup. Ct., Oct. 30, 2024); *The City of Rome, Georgia v. 3M Company, et al.*, No. 19-CV-02405 (Floyd Cty., Ga. Sup. Ct., April 5, 2022); *Weirton Area Water Bd. v. 3M Co.*, No. 5:20-CV-102, 2020 WL 7479974 *3–5 (N.D.W. Va. Dec. 18, 2020); *Utilities Board of Tuskegee v. 3M Company, Inc.*, No. 2:22-CV-420-WKW, 2023 WL 1870912 (M.D. Ala. Feb. 9, 2023); *Ryan v. Greif, Inc.*, 708 F. Supp. 3d 148, 167–68 (D. Mass. 2023); *Zimmerman v. 3M Co.*, 542 F. Supp. 3d 673, 681 (W.D. Mich. 2021); *Weatherford v. E.I. Dupont de Nemours & Co.*, No. 4:22-CV-01427-RBH, 2023 WL 11015357, at *3–4 (D.S.C. Sept. 27, 2023); *Menkes v. 3M Co.*, No. CV 17-0573, 2018 WL 2298620, at *5 (E.D. Pa. May 21, 2018).

The Court therefore finds that Lyerly has sufficiently alleged a legal duty owed to it by the PFAS Manufacturers.

2. Breach

It appears that 3M alone argues that, even if a duty of care was owed to Lyerly, there was no breach of that duty as a matter of law. The Court finds this argument unpersuasive. First, breach of duty is almost always a question of fact for the jury to decide. *See Leo v. Waffle House, Inc.*, 298 Ga. App. 838, 840 (2009). Second, Lyerly's Amended Complaint goes beyond fair notice and provides factual allegations from which a jury could find a breach of legal duties. (*See generally* Lyerly Am. Compl. ¶¶ 55–89.)

3. Causation

The PFAS Manufacturing Defendants also assert that Lyerly has not sufficiently alleged either “but for” or proximate causation. However, questions of causation and foreseeability generally involve issues of fact better left to the discretion of the jury. *See Ogletree v. Navistar Int'l Transp. Corp.*, 245 Ga. App. 1, 3 (2000) (“As a general rule, issues of causation are for the jury to resolve and should not be determined by a trial court as a matter of law except in plain and undisputed cases.”).

Moreover, Lyerly has put forward enough factual allegations on the issue of causation to survive the pleading stage. Specifically, Lyerly alleges that the PFAS Manufacturers sold products containing PFAS to Mohawk for use in Mohawk's carpet manufacturing plants in Georgia. (Lyerly Am. Compl. ¶¶ 8–9, 41–42, 45–51.) Lyerly alleges that Mohawk discharged this same PFAS into groundwater that ultimately contaminates Lyerly's drinking water supply. *Id.* ¶¶ 51–54. Lyerly further alleges that the

PFAS Manufacturers knew or should have known that Mohawk’s ordinary manufacturing processes would result in the discharge of PFAS-contaminated wastewater to nearby water supplies, like Lyerly’s, and cause environmental harm. *Id.* ¶¶ 8, 10, 13, 42–43, 79–83.

On these factual allegations, the Court finds that a jury could conclude that the PFAS Manufacturers have both factually and legally caused the PFAS pollution that Lyerly complains of in this case. As a result, the Court denies the PFAS Manufacturers’ motions to dismiss Lyerly’s Amended Complaint on the basis of lacking causation.⁴

II. Nuisance

The Defendants raise three arguments to dismiss Lyerly’s nuisance claim. First, Daikin argues that it cannot be held liable under nuisance because Lyerly did not allege that it acted unlawfully or in an unsuitable location. Second, each Defendant argues that they lacked the requisite control over—or did not have the legal right to abate—the alleged nuisance. Finally, the PFAS Manufacturers argue that Lyerly cannot pursue both a private and public nuisance claim. The Court is not persuaded by these arguments and finds that Lyerly has sufficiently stated a claim for nuisance under Georgia law.

1. Lawfulness of Defendants’ Conduct

Under Georgia law, “[a] nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it

⁴ Once again, the Court notes the rulings of federal courts on nearly identical issues. *See, e.g., Parris*, 595 F. Supp. 3d at 1333; *In re Aqueous Film-Forming Foams Prod. Liab. Litig.*, No. 2:18-CV-3487-RMG, 2023 WL 3550505, at *1–2 (D.S.C. May 18, 2023); *Utilities Board of Tuskegee*, 2023 WL 1870912, at *11–12; *Ryan*, 708 F. Supp. 3d at 167–68; *Lonsk v. Middlesex Water Co.*, No. 21CV19808 (EP) (ESK), 2022 WL 16552921, at *5–6 (D.N.J. Oct. 31, 2022); *Middlesex Water Co. v. 3M Co.*, No. 18CV15366 (EP) (ESK), 2022 WL 16552920, at *5–6 (D.N.J. Oct. 31, 2022).

from being a nuisance.” O.C.G.A. § 41-1-1. As explained in *Sumitomo Corp. of Am. v. Deal*, “an act, though lawful in itself, becomes a nuisance when conducted in an illegal manner to the hurt, inconvenience, or damage of another.” 256 Ga. App. 703, 708 (2002). Moreover, “[a] condition may be illegal when it is objectionable only on grounds of causing ‘hurt or inconvenience,’ *i.e.*, when it is a nuisance.” *Id.* Lyerly’s Amended Complaint plainly alleges that the Defendants’ conduct has caused Lyerly hurt and inconvenience. (See Lyerly Am. Compl. ¶¶ 124, 132.) This is sufficient to state a claim for nuisance under Georgia law.

Lyerly also alleges that each of the Defendants has violated the GWQCA by “intentionally or negligently causing or permitting . . . industrial wastes . . . or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution. . . .” (See Lyerly Am. Compl. ¶ 159) (quoting O.C.G.A. § 12-5-51); *see also* O.C.G.A. § 12-5-29 (“Water pollution unlawful”); O.C.G.A. §§ 12-5-52–53 (establishing civil and criminal penalties for violation of GWQCA). Therefore, even if Defendants were correct that “unlawful action” is a prerequisite to a nuisance claim, Lyerly has sufficiently alleged such action.

2. Control over the Cause of the Harm

Under Georgia law, “[t]he essential element of nuisance is control over the cause of the harm. The tortfeasor must be either the cause or a concurrent cause of the creation, continuance, or maintenance of the nuisance.” *Grinold v. Farist*, 284 Ga. App. 120, 122 (2007); *Sumitomo Corp.*, 256 Ga. App. at 707. Ownership or possession of property is not necessary; rather, the critical inquiry is whether the defendant had a “legal right” to abate

the nuisance. *See Johnson*, 563 F. Supp. 3d at 1336–37 (collecting cases); *Parris*, 595 F. Supp. 3d at 1341–42 (same).

Here, Lyerly’s allegations pass muster under Georgia’s notice pleading standards, which simply require a “short and plain statement of the claim that will give the defendant fair notice of what the claim is and a general indication of the type of litigation involved.” *Atlanta Women’s Specialists*, 310 Ga. at 333. Lyerly alleges that its PFAS pollution would not exist but for (1) the PFAS Manufacturers’ sale of products containing PFAS, with knowledge that these compounds would adversely impact downstream water systems’ drinking water, and (2) Mohawk’s use and discharge of products containing PFAS, with knowledge that these compounds would adversely impact Lyerly’s drinking water. (*See, e.g., Lyerly Am. Compl.* ¶¶ 8–13, 41–44, 50–54, 79–84.) This is sufficient, at this stage, to find that Lyerly has alleged that the Defendants had “control over the cause of the harm.” *See Grinold*, 284 Ga. App. at 122; *Sumitomo Corp.*, 256 Ga. App. at 707.

Each Defendant’s “control over the cause of the harm” is further demonstrated by the fact that each Defendant had the right to abate its contribution to the alleged nuisance: it could stop selling, using, accepting, or discharging PFAS-containing products; it could implement or require the installation of treatment systems sufficient to remove PFAS from the carpet manufacturers’ wastewater; or it could even warn downstream users and provide funding for treatment systems capable of removing PFAS. *See, e.g., Johnson*, 563 F. Supp. 3d at 1343–44. (“[H]ere, the [Supplier Defendants] clearly had a legal right to abate the nuisance—for example, by refusing to sell their chemicals to manufacturers until those manufacturers established and complied with proper disposal methods.”); *Parris*, 595 F.

Supp. 3d at 1342–43 (“The Manufacturing Defendants and Mount Vernon could thus be liable, at a minimum, for continuing or maintaining the nuisance given that they have a legal right to abate the PFAS pollution but have failed to take appropriate remedial steps in the Plaintiff’s view..”).

Finally, the Defendants have not cited—and the Court is unaware of—any Georgia cases that have dismissed a nuisance claim at the pleading stage due to a so-called “lack of control.”⁵ This further supports the Court’s conclusion that, at the very least, the issue of control involves fact questions inappropriate for dismissal at this early stage.

3. Lyerly’s Public and Private Nuisance Claims

The PFAS Manufacturers lastly argue that Lyerly cannot pursue both public and private nuisance claims in this case. According to the Defendants, if there is a nuisance in this case, it must be a public nuisance rather than a private one.

It is true that O.C.G.A. § 41-1-2 states that “[n]uisances are either public or private.” However, Georgia law does not require that Lyerly choose between alternative theories at this early stage of litigation. *See Martin v. Brown*, 222 Ga. App. 566, 567, 474 S.E.2d 742, 744 (1996) (“[I]f the complaint sufficiently raises possible theories of recovery, it should not be dismissed.”). To the contrary, plaintiffs are ordinarily permitted to proceed all the

⁵ To the contrary, Lyerly has provided the Court with opinions from several courts that have faced these same arguments in similar PFAS pollution cases, all of which permitted the plaintiffs’ nuisance claims to proceed. *See, e.g., Johnson*, 563 F. Supp. 3d at 1343–44; *Parris*, 595 F. Supp. 3d at 1342–43; *The City of Calhoun, Georgia v. 3M Company, et al.*, No. 24-CV-73929 (Gordon Cty., Ga. Sup. Ct., Oct. 30, 2024).

way to trial on alternative theories of recovery. *Osprey Cove Real Estate, LLC v. Towerview Construction, LLC*, 343 Ga. App. 436, 442–43 (2017).⁶

Upon review of the factual allegations contained in Lyerly's Amended Complaint, the Court finds that Lyerly has sufficiently stated a claim for both public and private nuisance under Georgia law. As a result, the Court denies Defendants' motions to dismiss Lyerly's nuisance claims.

III. Trespass

The Defendants also raise several arguments against Lyerly's trespass claim. For the reasons set forth below, the Court finds that Lyerly has stated a claim for trespass under Georgia law and Defendants' motions to dismiss are denied.

Under Georgia law, a trespasser includes anyone “who, though peacefully or by mistake, wrongfully enters upon property owned or occupied by another.” *Woodstone Townhouses, LLC v. S. Fiber Worx, LLC*, 358 Ga. App. 516, 521–22 (2021). Therefore, to state a claim for trespass, all Lyerly must allege is that the Defendants' voluntary and intentional acts caused a wrongful invasion of Lyerly's property rights. *See Lanier v. Burnette*, 245 Ga. App. 566, 570 (2000). Georgia courts have recognized that a property owner may bring a trespass claim “against one who contaminates his property with a hazardous substance.” *Sprayberry Crossing P'ship v. Phenix Supply Co.*, 274 Ga. App. 364,

⁶ For these same reasons, the Court also declines to dismiss Lyerly's trespass claim on the grounds that it is duplicative of Lyerly's nuisance. *See* 3M Mot. Dismiss, p.15–17.

365 (2005) (citing *Hoffman v. Atlanta Gas Light Co.*, 206 Ga. App. 727, 728 (1992); *Shealy v. Unified Govt. of Athens–Clarke County*, 244 Ga. App. 853, 858–859 (2000)).

Lyerly’s factual allegations make out such a claim for trespass. In particular, Lyerly alleges that the “Defendants’ intentional acts in manufacturing, supplying, using, and/or discharging PFAS and/or products and waste containing or degrading into PFAS, with full knowledge that these toxins would contaminate Plaintiff’s water supply, caused an invasion of Plaintiff’s possessory interest in its property by Defendants’ chemicals, which has affected and is affecting Plaintiff’s interest in the exclusive possession of its property.” (Lyerly Am. Compl. ¶ 141.) On these allegations, which the Court must take as true at this stage, Lyerly’s trespass claim survives the pleading stage.

The Court is likewise unconvinced by the Defendants’ arguments in support of dismissal. 3M and Daikin argue that Lyerly did not adequately plead “intentional acts” sufficient to state a claim for trespass. (3M Mot. Dismiss, p.16; Daikin Mot. Dismiss, p.15-16.) Yet, this is exactly what Lyerly has alleged. (Lyerly Am. Compl. ¶ 141) (alleging “Defendants’ intentional acts . . . caused an invasion of Plaintiff’s possessory interest in its property”)

The Defendants also argue that Lyerly did not allege “direct infringement” of Lyerly’s property rights by the Defendants’ wrongful conduct. (*See, e.g., Mohawk Mot. Dismiss*, p.12) (citing *Ga.-Pac. Consumer Prods., LP v. Ratner*, 345 Ga. App. 434, 444 (2018)). Again, taking Lyerly’s allegations as true, the Court cannot conclude at this early stage that Lyerly “could not possibly introduce evidence within the framework of the complaint sufficient to” establish the elements of a trespass claim. *See Mbigi*, 336 Ga. App.

at 316. Moreover, the Defendants have not identified any Georgia case law requiring the dismissal of trespass claims at the pleading stage due to inadequate allegations of “direct infringement” or “wrongful conduct.”

Based on the foregoing, the Court declines to dismiss Lyerly’s trespass claim.

IV. The Georgia Water Quality Control Act

Each Defendant moves for dismissal of Lyerly’s claims under the GWQCA for various reasons. For the reasons that follow, the Court finds that Lyerly has sufficiently stated a claim under the GWQCA.

1. Lyerly’s Standing under the GWQCA

3M and DuPont argue that Lyerly cannot bring a claim under the GWQCA because it is not a political subdivision of the State of Georgia, citing a concurring opinion of the Georgia Supreme Court in support. (3M Mot. Dismiss, p.17 (citing *City of Thomaston v. Bridges*, 264 Ga. 4, 8 (1994) (Carley, J., concurring specially)).) While the Court notes Justice Carley’s concurrence in *Bridges*, other majority opinions have recognized that municipal corporations, including townships, are political subdivisions of the State. *See, e.g., Spence v. Rowell*, 213 Ga. 145, 148 (1957). Moreover, Lyerly alleges that it is a political subdivision of the State of Georgia, *see* Lyerly Am. Compl. ¶ 164, and the Defendants do not dispute that political subdivisions are authorized to pursue a claim under the GWQCA. The Court therefore finds that, as a “political subdivision of the State,” the Town of Lyerly has standing to pursue a claim under the GWQCA.

2. Liability of Indirect Dischargers under the GWQCA

The PFAS Manufacturers next argue that they cannot be held liable under the GWQCA because there are no allegations that they themselves spilled, discharged, or deposited any PFAS into Georgia waters. The Court does not read the GWQCA so narrowly as to cover only direct discharges. *See Parris*, 595 F. Supp. 3d at 1334.

The plain language of the GWQCA states, in relevant part, that liability may ensue for “[a]ny person who intentionally or negligently causes or permits any . . . industrial wastes . . . or other substance or substances to be spilled, discharged, or deposited in the waters of the state.” O.C.G.A. § 12-5-51(a) (emphasis added). If the Defendants were correct that this provision applies only to those who *directly* spill, discharge, or deposit such substances, then the “causes or permits” language of the statute would be rendered superfluous. The Court declines to interpret the GWQCA in such a manner.

Because Lyerly has alleged that the Defendants intentionally or negligently caused PFAS to be discharged into waters of the State through their manufacture and sale of PFAS-containing products, with knowledge that these chemicals would resist degradation and enter the environment through their customers’ standard manufacturing processes and cause Lyerly harm, Lyerly has sufficiently stated a claim under the GWQCA.

3. Mohawk’s Permits Do Not Warrant Dismissal of Lyerly’s GWQCA Claim

Mohawk argues that there can be no violation of the GWQCA because it complied with permits issued under the GWQCA. At this stage, the Court cannot adopt Mohawk’s assumption that it was, in fact, complying with its permits by discharging PFAS to the environment via wastewater and stormwater. Not only would such a finding require the

Court to resolve potentially complex factual issues—namely the import of certain permit conditions—at such a preliminary stage in the case, but doing so would also require that the Court credit Defendants’ legal arguments over Lyerly’s properly pleaded factual allegations. (*See, e.g.*, Lyerly Am. Compl. ¶ 53) (alleging that the Mohawk has “known or should have known that the release of PFAS into the environment through wastewater, stormwater, and other discharges is prohibited by [its] permits and applicable state and local laws and regulations). The Court declines to wade into these factual issues at this stage and finds that Lyerly’s allegations of unpermitted and unauthorized discharges of PFAS set forth a claim under the GWQCA.

4. Lyerly’s Damages are Recoverable Under the GWQCA

Mohawk’s final argument is that Lyerly’s GWQCA claim cannot survive because its claimed damages are not related to cleaning up substances from “waters of the state.” Lyerly responds that the GWQCA does not, as Mohawk contends, limit damages to cleaning up “waters of the state.” The Court agrees with Lyerly.

Under the plain language of the GWQCA, Lyerly may recover “any and all costs, expenses, and injuries occasioned by . . . spills, discharges, or deposits” of pollutants. *See* O.C.G.A. § 12-5-51 (emphasis added). These damages are explicitly “not [to] be limited to” just those costs association with “cleaning up and abating such spills, discharges, or deposits.” *See id.* Because Lyerly alleges that its damages were “occasioned by [Mohawk’s] . . . discharges or deposits” of PFAS, the Court declines to rule as a matter of law that they are not recoverable under the GWQCA. *See id.*

V. The Free Public Services Doctrine

Mohawk also argues that Lyerly's claims should be dismissed under Georgia's Free Public Services doctrine. Under this doctrine, local governments "cannot recover the costs of carrying out public services from a tortfeasor whose conduct caused the need for the services" unless there is "specific statutory authorization or damage to government-owned property." *Walker Cnty. v. Tri-State Crematory*, 284 Ga. App. 34, 37 (2007). "The primary rationale behind the doctrine is 'that state legislatures establish local governments to provide core services for the public and pay for these services by spreading the costs to all citizens through taxation.'" *Id.* (quoting *Baker v. Smith & Wesson Corp.*, No. Civ. A. 99C-09-283-FS, 2002 WL 31741522, at *5 (Del. Super. Ct. Nov. 27, 2002)).

The Free Public Services doctrine does not apply here for two reasons. First, Lyerly's drinking water services are neither "free" nor "public" within the meaning of the Free Public Services doctrine. In Georgia, "the supplying of water by a city to its inhabitants for compensation is not an act in its governmental capacity but it does so in a private capacity." *McCrary Eng'g Corp. v. City of Bowdon*, 170 Ga. App. 462, 465 (1984); *see also City of Atlanta v. Harbor Grove Apartments, LLC*, 308 Ga. App. 57, 59 (2011) (citation omitted) ("Further, it is well settled that by operating a waterworks, the City is engaged in a private nongovernmental business."). Lyerly's drinking water services are provided only to those customers who pay a fee in exchange for the service, not to the public at large "by spreading the costs to all citizens through taxation"—the hallmark of the Free Public Services doctrine. *See Walker Cnty.*, 284 Ga. App. at 37. As a result, the Free Public Services doctrine does not apply in this case.

Second, even if the Free Public Services doctrine did apply, two exceptions are present: (1) “specific statutory authorization,” and (2) “damage to government-owned property.” *Walker Cnty.*, 284 Ga. App. at 37. First, the Town of Lyerly is specifically authorized to bring this action under the GWQCA to recover “any and all costs, expenses, and injuries occasioned by” the discharge or deposit of pollutants in its water. *See* O.C.G.A. § 12-5-51. Second, Lyerly alleges damages to government-owned property, including its water treatment plant and the water itself that Lyerly provides to the public as drinking water. (*See, e.g.*, Lyerly Am. Compl. ¶¶ 130–133 (alleging damage to Lyerly’s property).) As a result, Lyerly meets both exceptions to the Free Public Services doctrine.

VI. State Preemption

Mohawk alone argues that Lyerly should be preempted from asserting its claims in this case because the State of Georgia already regulates Mohawk’s discharge of pollutants under the GWQCA. However, the GWQCA plainly states that common law rights of action are not preempted:

Nothing in this article shall be construed to alter or abridge any right of action existing in law or equity, civil or criminal, nor shall any provision of this article be construed to prevent any person, as a riparian owner or otherwise, from exercising his rights to suppress nuisances or to abate any pollution.

O.C.G.A. § 12-5-46. The GWQCA even authorizes political subdivisions of the State, like the Lyerly, to bring claims like those asserted in this case. *See* O.C.G.A. § 12-5-51(a) (creating private right of action for political subdivisions of the State). As explained above, the Court finds that Lyerly has adequately set forth a claim under the GWQCA. For these reasons, the Court declines to dismiss this action on the grounds of state preemption.

VII. Punitive Damages and Attorneys' Fees

It is the “rare case” that attorneys’ fees and punitive damages are subject to dismissal as a matter of law. *See Brito v. Gomez L. Grp., LLC*, 289 Ga. App. 625, 628 (2008); *Whitaker Farms, LLC v. Fitzgerald Fruit Farms, LLC*, 347 Ga. App. 381, 387, 389 (2018). The Court finds that, under Georgia’s notice pleading standards, Lyerly has more than set forth claims for attorneys’ fees and punitive damages. Because the Court declines to dismiss Lyerly’s underlying tort claims, its claims for punitive damages and attorneys’ fees also survive dismissal.

VIII. In Conclusion

Whether the legislature of Georgia some day decides to insulate PFAS suppliers or users from civil liability is for that branch of government to decide and for the executive branch to enact. As of now, the question at this initial stage of whether the Plaintiff has stated a claim against these multiple Defendants remains within the auspices of the judicial branch, and in this instant case, before this court. Therefore, this court must consider the current state of affairs in Chattooga County and the laws of Georgia as they now exist and the Amended Complaint of the Plaintiff and the Answers of the Defendants, not what the legislative or executive branch might conceivably do.

What appears from the pleadings and the arguments is that the Plaintiff has stated not just one cognizable claim but several, and each defendant has denied the Plaintiff’s averments; interestingly in so denying, each defendant has also either implicitly or explicitly pointed a finger toward the other defendant. The defendants have not persuaded this Court that this Plaintiff has simply failed to state a cognizable plain and simple claim.

Whether, at some later date after discovery has been completed, this case may be dismissed on a motion for summary judgment is not before this court. At this juncture, we are at a very early stage of litigation, and this Court finds that the Plaintiff's Amended Complaint gives fair notice and states the elements of the claim plainly and succinctly.

FOR THE FOREGOING REASONS, THE COURT DENIES THE DEFENDANTS' MOTIONS TO DISMISS.

IT IS SO ORDERED this 24th day of March 2025.



Hon. John R. Dennis, Judge
Chattooga County State Court

Order Prepared and Presented By:

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