

2025CA4052

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Kim Winkle James

Kim Winkle 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.

Case No. 24SCA4052

MOHAWK’S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Pursuant to O.C.G.A. § 9-11-12(b), Defendants Aladdin Manufacturing Corporation, Mohawk Carpet, LLC, and Mohawk Industries, Inc. (collectively “Mohawk”)¹ respectfully submit this Motion to Dismiss Plaintiff Town of Lyerly’s (“Lyerly”) First Amended Complaint.

INTRODUCTION

Lyerly seeks to hold Mohawk—a Georgia-based flooring manufacturer—liable for contamination of Lyerly’s water sources with per- and poly-fluoroalkyl substances (“PFAS”), which are chemicals that were developed, manufactured, and sold by Mohawk’s co-defendants (the “Chemical Manufacturers”), and which have never been regulated by the Georgia Environmental Protection Division (“Georgia EPD”) in Mohawk’s wastewater permits. There are numerous flaws in Lyerly’s strained theory of liability. And, for each of those independent reasons, dismissal is warranted as to Mohawk.

¹ Mohawk states at the outset that Mohawk Industries, Inc. and Mohawk Carpet, LLC are not proper parties to this action. Aladdin Manufacturing Corporation owns and operates manufacturing facilities in Georgia. Mohawk Industries, Inc. and Mohawk Carpet, LLC are holding companies that do not own or operate any manufacturing assets.

To begin, Georgia’s public services doctrine prohibits a municipality from suing to recover the costs of carrying out public services, which include the costs of cleaning up contamination and treating and providing water to citizens. The costs of those public services necessarily implicate fiscal policy, such that the legislature should address those costs—not the courts. Separately, given that the State of Georgia has enacted comprehensive statutes and regulations governing permits for wastewater discharges under the Georgia Water Quality Control Act (“GWQCA”), the GWQCA preempts Lyerly’s lawsuit, which seeks to hold Mohawk liable for its wastewater discharges conducted under its permits.

In addition to those defects, which mandate dismissal of the Amended Complaint in its entirety, each cause of action asserted in the Amended Complaint also fails in light of the conduct of the Chemical Manufacturers and the Georgia EPD. For example, Mohawk owed no negligence duty to Lyerly and did not control any nuisance when—according to Lyerly’s own allegations—the Chemical Manufacturers had “full knowledge of their products’ pernicious effects and likelihood of causing pollution to [Lyerly’s] water supply,” but they “actively concealed and withheld [that] information from . . . [their] customers” like Mohawk. Likewise, Mohawk did not commit any trespass or violate the GWQCA when the permits issued to Mohawk by the Georgia EPD pursuant to the GWQCA did not limit PFAS in any way, shape, or form. Finally, Lyerly’s remaining claims for punitive damages and attorneys’ fees must be dismissed for similar reasons.

Lyerly very well may have an actionable claim against someone for the alleged PFAS contamination, but it’s not against Mohawk. Lyerly—and the Court—should look to those defendants that developed, manufactured, and sold PFAS, who did not operate under lawful permits (like Mohawk did), and who concealed the “pernicious effects” of PFAS from the world.

FACTUAL BACKGROUND

Lyerly is a municipality that draws water from two wells, treats that water, and then provides drinking water to citizens of Chattooga County. Am. Compl. ¶¶ 25-26, 100. According to Lyerly, those wells have been contaminated with PFAS, which are synthetic chemicals used to impart oil, water, and stain resistant qualities to various products. *Id.* ¶¶ 55, 101, 105. Lyerly alleges that PFAS are “persistent in the environment, bio-accumulative in humans and animals, and toxic” and that its “water treatment plant . . . is incapable of removing PFAS.” *Id.* ¶¶ 3, 113.

As Lyerly acknowledges, PFAS were “created” by the Chemical Manufacturers, including 3M and DuPont. *Id.* ¶ 8. Lyerly also alleges the Chemical Manufacturers’ “full knowledge of their products’ pernicious effects and likelihood of causing pollution to [Lyerly’s] water supply.” *Id.* For example, “3M and DuPont began studying the toxicity of PFOS and PFOA [two types of PFAS] as early as the 1950s and 1960s.” *Id.* ¶ 62. Then, “[b]y the 1970s, 3M and DuPont were aware that their products persisted indefinitely in the environment,” and “[b]y the 1980s and 1990s, 3M and DuPont were fully aware that PFOS and PFOA were toxic and . . . that conventional treatment methods were ineffective at removing these pollutants.” *Id.* ¶¶ 63, 65. Importantly, Lyerly does not allege that the Chemical Manufacturers shared this superior knowledge with Mohawk. To the contrary, Lyerly affirmatively alleges that the Chemical Manufacturers “actively concealed and withheld [this] information from . . . [their] customers,” which include Mohawk. *Id.* ¶ 8.

According to the allegations of the Amended Complaint, Mohawk used the Chemical Manufacturers’ PFAS-containing products in its carpet manufacturing process—albeit without knowledge of the PFAS and certainly without knowledge of their allegedly harmful characteristics. *See id.* ¶¶ 8-9, 51. Then, pursuant to their permits issued by the Georgia EPD and wastewater

treatment facilities, Mohawk allegedly discharged its wastewater either through its outfalls or to those wastewater treatment facilities. *See id.* ¶¶ 42, 53, 102. However, as shown in the permits attached to Mohawk’s Answer to the Amended Complaint,² those permits did not limit PFAS in Mohawk’s wastewater discharges. *See* Answer, Ex. A. For example, as set out in the below chart, the permit that the Georgia EPD issued to Mohawk for the facility in Lyerly sets “Discharge Limitations” for fecal coliform, oil and grease, ammonia-nitrogen, phosphorous, sulfide, and phenols—but not PFAS. *See id.*

Effluent Characteristics (Units)	Discharge Limitations				Monitoring Requirements ²		
	Mass Based (lbs/day)		Concentration Based (mg/L)		Measurement Frequency	Sample Type	Sample Location
	Daily Avg.	Daily Max.	Daily Avg.	Daily Max.			
BOD ₅	400	600	--	--	1/Week	Grab	Final Effluent
Chemical Oxygen Demand	9,230	18,460	--	--	1/Week	Grab	Final Effluent
Total Suspended Solids	1,602	3,205	--	--	1/Week	Grab	Final Effluent
Oil & Grease ¹	--	--	10	15	1/Week	Grab	Final Effluent
Fecal Coliform ⁴ (#/100 mL)	--	--	Report ⁴	Report ⁴	1/Week	Grab	Final Effluent
Ammonia-Nitrogen ⁵	--	--	10	15	1/Month	Grab	Final Effluent
Total Kjeldahl Nitrogen ⁵	--	--	Report	Report	1/Month	Grab	Final Effluent
Organic Nitrogen ⁵	--	--	Report	Report	1/Month	Grab	Final Effluent
Nitrate/Nitrite ⁵	--	--	Report	Report	1/Month	Grab	Final Effluent
Total Phosphorus ^{6,7}	78	78	--	--	1/Month	Grab	Final Effluent
Ortho Phosphorus ⁶	--	--	Report	Report	1/Month	Grab	Final Effluent
Total Residual Chlorine	--	--	--	0.23	1/Month	Grab	Final Effluent
Dissolved Oxygen	--	--	5.0 Daily Minimum	--	1/Week	Grab	Final Effluent
Sulfide	10	20	--	--	1/Quarter	Grab	Final Effluent
Total Chromium	5	10	--	--	1/Quarter	Grab	Final Effluent
Phenols	5	9.35	--	--	1/Quarter	Grab	Final Effluent
Color (admi units)	--	--	Report	Report	1/Quarter	Grab	Final Effluent

Despite the fact that the Chemical Manufacturers “actively concealed” the harms of PFAS from Mohawk, and notwithstanding the reality that Mohawk was permitted to discharge its wastewater without any PFAS limitations, Lyerly added Mohawk to its case, along with the Chemical Manufacturers, asserting claims for negligence, public nuisance, private nuisance,

² The Court may consider exhibits attached to Mohawk’s Answer in ruling on this Motion to Dismiss. *See Babalola v. HSBC Bank, USA, N.A.*, 324 Ga. App. 750, 750 (2013).

trespass, violation of the GWQCA, wantonness and punitive damages, and attorneys' fees and expenses of litigation. *See* Am. Compl. ¶¶ 114-65.

LEGAL STANDARD

When ruling on a motion to dismiss, “a trial court is required to consider [the plaintiff’s] factual allegations to be true,” but it “is not required to accept the legal conclusions the [plaintiff] suggests that those facts dictate.” *Bankston v. RES-GA Twelve, LLC*, 334 Ga. App. 302, 304 (2015) (citation omitted). Further, a plaintiff may “plead himself out of court by revealing a state of facts which affirmatively shows that there is no liability on the defendant.” *Tavistock Freebirds LLC v. Coca-Cola Co.*, 366 Ga. App. 443, 449 (2023).

ARGUMENT

Lyerly seeks to hold Mohawk liable for negligence, public nuisance, private nuisance, trespass, violation of the GWQCA, wantonness and punitive damages, and attorneys' fees and expenses of litigation. All of these claims fail as a matter of law.

I. The Public Services Doctrine Precludes Lyerly from Recovering Damages from Mohawk Under Any Tort Theory.

Under the public services doctrine, Georgia law precludes a municipality from suing to “recover the costs of carrying out public services from a tortfeasor whose conduct caused the need for the services,” unless the municipality can show “specific statutory authorization or damages to government-owned property.” *Walker County v. Tri-State Crematory*, 284 Ga. App. 34, 36-37 (2007). For example, a city cannot sue a negligent driver for services rendered by the fire department in responding to a car accident, *see Incorporated Village of Garden City v. Zambardino*, 95 N.Y.S.3d 718, 719 (N.Y. App. Term. 2019), or sue a negligent natural gas company for emergency services arising out of natural gas line explosion, *see City of Pittsburgh v. Equitable Gas Co.*, 512 A.2d 83, 84 (Pa. Commw. Ct. 1986). The doctrine recognizes that “the

question of whether the costs of providing the public service should be spread among all taxpayers or reallocated in some other manner necessarily implicates fiscal policy, and, therefore, falls within the special purview of the legislature,” not the courts. *Tri-State Crematory*, 284 Ga. App. at 39.

Here, Lyerly seeks to recover the costs that it has incurred or may incur in cleaning up its water supply, which runs straight into the teeth of the public services doctrine. *See, e.g.*, Am. Compl. ¶ 12 (“[B]ecause of the PFAS pollution that Defendants have caused, Plaintiff must find a way to remove these harmful chemicals from its water[.]”). This case is controlled by *Tri-State Crematory*, in which the Georgia Court of Appeals held that a local government cannot recover the “costs it incurred in performing the public services of cleaning up” a particular site. *See Tri-State Crematory*, 284 Ga. App. at 37. There, like Lyerly’s claim here, the county’s claim “necessarily implicate[d] fiscal policy, a matter best left to ‘the legislature and its public deliberative processes, rather than the court.’” *Id.*³ Because Lyerly is seeking to recover the costs incurred in treating and providing water to its citizens, those activities are quintessential “public services” falling squarely within the scope of the public services doctrine. Indeed, the Georgia Constitution expressly enumerates the “[d]evelopment, storage, treatment, purification, and distribution of water” as a power granted to municipalities, similar to the power to provide various other public services, like public housing, public transportation, and police and fire protection. Ga. Const. Art. IX, § 2, ¶ III.

Neither of the two exceptions to the public services doctrine—damage to government-owned property or specific statutory authorization—applies here. First, Lyerly does not plead

³ Recent legislative action on PFAS underscores the point. For instance, pursuant to the Bipartisan Infrastructure Law, the federal government recently dedicated \$9 billion to help local governments like Lyerly treat drinking water impacted by PFAS. *See* Final PFAS National Primary Drinking Water Regulation, EPA (April 2024), https://www.epa.gov/system/files/documents/2024-04/pfas-npdwr-presentation_4.9.24_overview.pdf.

damage to any town-owned property. To the extent Lyerly alleges that Mohawk's wastewater or any surface water or groundwater contains PFAS, that is not damage to property *owned by Lyerly*. See Am. Compl. ¶ 52 ("Industrial wastewater discharged in the past and/or currently from the PFAS Users' manufacturing facilities contains high levels of PFAS[.]"); *id.* ¶ 161 (alleging contamination of "groundwater and the Conasauga Aquifer"). And, to the extent Lyerly alleges that it is "required to upgrade to costly and sophisticated new treatment technologies," its current facility is not *damaged*—it just allegedly "does not have the treatment technology necessary to remove PFAS." *Id.* ¶ 13. Second, Lyerly does not identify any statute that specifically authorizes its claims. While Lyerly does assert a claim under the GWQCA (Am. Compl. ¶¶ 158-65), this claim fails for the reasons set forth in Section VI.

II. Lyerly's Claims Against Mohawk Are Preempted by the GWQCA.

Not only are Lyerly's claims precluded by the public services doctrine, but they are also preempted by the comprehensive state regulation of water discharges. Under "[t]he doctrine of state preemption," "state law may preempt local law expressly, by implication, or by conflict." *Franklin County v. Fieldale Farms Corp.*, 270 Ga. 272, 273-74 (1998). The doctrine arises from the "uniformity clause" of the Georgia Constitution, which states that "[l]aws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law." *Id.* at 274-75. Stated another way, "once the [state] legislature entered a field by enacting a general law, that field must thereafter be reserved exclusively to general legislation and could not be open to special or local laws." *Id.* at 274.

Although the state preemption doctrine is typically applied when "statutes of the state legislature control over county [or city] ordinances," the doctrine also bars "lawsuit[s]" that tread on "the governmental power and authority of Georgia's General Assembly." *Sturm, Ruger & Co.*

v. City of Atlanta, 253 Ga. App. 713, 717 (2002). In *Sturm*, the City of Atlanta brought tort claims against several gun manufacturers, and the trial court denied the gun manufacturers’ motion to dismiss. *See id.* at 713-14. On appeal, the Court of Appeals held that the trial court “erred in not dismissing” the City of Atlanta’s lawsuit. *Id.* at 719. The Court of Appeals agreed with the State of Georgia that “under Georgia’s Constitution and laws, it alone has the power to regulate the manufacture, sale, distribution, and promotion of firearms and this lawsuit [was] an attempt by the City to usurp the governmental power and authority of Georgia’s General Assembly.” *Id.* at 717. The Court of Appeals observed that “preemption [could] be inferred from the comprehensive nature of the statutes regulating firearms in Georgia.” *Id.* at 718. Accordingly, the City of Atlanta could not “punish conduct which the State, through its regulatory and statutory scheme, expressly allows and licenses” and thus could “not attempt to usurp that power, whether by litigation or regulation.” *Id.* at 719.

Relevant here, the Georgia Supreme Court has already held that the GWQCA preempts local government action. *See Franklin County*, 270 Ga. at 275-78. In *Franklin County*, the plaintiff received a permit from the Georgia EPD to land apply sludge generated from wastewater on the plaintiff’s farm. *Id.* at 273. Franklin County then passed an ordinance regulating the disposal of waste, and the plaintiff challenged the ordinance as preempted by the GWQCA. *Id.* The Supreme Court agreed with the plaintiff and held that the GWQCA “preempts the county’s ordinance by implication.” *Id.* at 278. The Supreme Court reasoned that “[t]he Georgia Water Quality Control Act gives *state government* the responsibility for establishing and maintaining water quality” and that “[p]reemption may be inferred generally from the comprehensive nature of [the GWQCA] and its implementing regulations.” *Id.* at 275-76 (emphasis added).

While the permits in *Franklin County* involved the land application of sludge, the same principles of preemption apply to wastewater discharge permits in light of the comprehensive nature of the GWQCA’s regulation of such permits. *See, e.g.*, O.C.G.A. § 12-5-30(a) (“Any person who owns or operates a facility of any type . . . which results or will result in the discharge of pollutants from a point source into the waters of the state shall obtain from the director a permit to make such discharge.”); O.C.G.A. § 12-5-23(a)(1)(H) (providing for regulations governing “the application for and the issuance or revocation of pretreatment permits for the discharge of any pollutant into a publicly owned treatment works and then into the waters of the state”).⁴

Accordingly, through its comprehensive statutory and regulatory scheme set out in the GWQCA and the regulations enacted thereunder, the State of Georgia has sole authority over wastewater discharge permits. As such, the GWQCA preempts lawsuits like the present one that seek to usurp that authority by challenging Mohawk’s conduct under those permits. The Court must therefore dismiss Lyerly’s Amended Complaint against Mohawk in full.

III. The Court Should Dismiss Lyerly’s Negligence Claim Against Mohawk for Failure to Plead a Legally Cognizable Duty.

Moving on to the merits of Lyerly’s negligence claim, Lyerly has failed to adequately allege the first element of this claim. It must allege an actionable duty because “the threshold issue in a negligence action is whether and to what extent the defendant owes a legal duty to the plaintiff.” *Sheaffer v. Marriott Int’l, Inc.*, 349 Ga. App. 338, 340 (2019). “This issue is a question of law” and, “[i]n the absence of a legally cognizable duty, there can be no fault or negligence.” *Id.*

⁴ *Franklin County* involved a local ordinance rather than a lawsuit by a local government, but that is a distinction without a difference. The state preemption doctrine bars all attempts by local governments—“whether by *litigation or regulation*”—to tread on the State’s authority. *Sturm*, 253 Ga. App. at 719 (emphasis added).

Lyerly's negligence claim suggests that Mohawk breached amorphous duties that it owed to anyone "whom Defendants' PFAS might foreseeably harm." Am. Compl. ¶ 114-22. That theory of duty is premised solely on foreseeability. But, regardless of whether the factual allegations in the Amended Complaint establish that Lyerly's alleged injuries were foreseeable to Mohawk (they do not), Lyerly's theory is incorrect as a matter of law.

Under Georgia law, "mere foreseeability" of a potential harm is not enough to establish a legal duty. *CSX Transp., Inc. v. Williams*, 278 Ga. 888, 890 (2005). Stated another way, foreseeability is a limitation on negligence duties, not a basis to find a duty. *See Maynard v. Snapchat, Inc.*, 313 Ga. 533, 537 n.3 (2022). That's why the Georgia Supreme Court has held that there is no "general legal duty 'to all the world not to subject [others] to an unreasonable risk of harm.'" *Dep't of Labor v. McConnell*, 305 Ga. 812, 816 (2019). Instead, "[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." *Sheaffer*, 349 Ga. App. at 340 (internal quotation marks and citation omitted).

Lyerly has not identified such a duty here. At most, Lyerly alleges that Mohawk had a vague duty to avoid foreseeable harm in its use of the Chemical Manufacturers' PFAS products and its discharge of the resulting wastewater. But there are two fatal problems with that purported duty. First, on the front end, according to Lyerly's own allegations, the Chemical Manufacturers had "full knowledge of their products' pernicious effects and likelihood of causing pollution to [Lyerly's] water supply," but they "actively concealed and withheld [that] information from . . . [their] customers," which include Mohawk. Am. Compl. ¶ 8. One cannot foresee that which one does not know. As such, Mohawk did not and could not have had any duty with respect to the

Chemical Manufacturers' PFAS products when Mohawk was kept in the dark about those chemicals.

Second, on the back end, Mohawk's permits did not limit PFAS in any way. *See* Answer, Ex. A. Mohawk had a defined set of responsibilities imposed by state permit with respect to its wastewater. Mohawk had no duty to remove PFAS from its wastewater discharges when the Georgia EPD did not limit those chemicals. To be sure, Lyerly alleges in conclusory fashion that "the release of PFAS . . . is prohibited by [Mohawk's] operative permits." Am. Compl. ¶ 53. But the Court "is not required to accept [that] legal conclusion[]" as true. *Bankston*, 334 Ga. App. at 304. Moreover, that bald assertion is belied by the permits themselves, which—as shown by the exemplar permits attached to Mohawk's Answer and highlighted above—***did not limit PFAS***. And "allegations in pleadings must yield to contradictory facts shown in the exhibits attached thereto." *Kennedy v. Schultz*, 105 Ga. App. 522, 523 (1962); *see also Black v. Franklin Credit Mgmt. Corp.*, 2024 Ga. Super. LEXIS 52, at *4 (Ga. Super. Ct. Feb. 2, 2024) (granting motion to dismiss when "allegation[s] contained in the Complaint [were] directly contradicted by the exhibits incorporated into Defendant's Answer").

IV. Lyerly's Nuisance Claims Fail Because Mohawk Did Not Control the Nuisance or Have a Legal Right to Abate the Nuisance.

Lyerly asserts claims for public nuisance and private nuisance based on alleged "contamination of the environment and groundwater in Chattooga County" and alleged "contamination of the water at [Lyerly's] intake site, water treatment plant, and related property." Am. Compl. ¶¶ 123-37. Under Georgia law, "[t]he essential element of nuisance is control over the cause of the harm." *Grinold v. Farist*, 284 Ga. App. 120, 122 (2007) (quoting *Fielder v. Rice Constr. Co.*, 239 Ga. App. 362, 366 (1999)); *see also City of Toccoa v. Pittman*, 286 Ga. App. 213, 216 (2007) ("An essential issue in a nuisance case is whether the defendant's actions constituted

such exercise of control or acceptance so as to establish a duty on the part of the defendant to adequately maintain the cause of the nuisance.”). Along the same lines, the plaintiff must allege that the defendant had a legal right to abate the nuisance. *See Corp. of Mercer Univ. v. Nat’l Gypsum Co.*, Civ. A. No. 85-126-3-MAC, 1986 WL 12447, at *5-7 (M.D. Ga. Mar. 9, 1986) (“Mercer’s inability to allege that the defendants had a legal right to abate the nuisance is fatal to its nuisance claim.”) (citing *Bodin v. Gill*, 216 Ga. 467 (1960)).

Here, Lyerly fails to adequately allege that Mohawk itself controlled the nuisance and had a legal right to abate the nuisance. According to Lyerly, the purported nuisance arose from the following chain of events: the Chemical Manufacturers “created and sold” PFAS products to Mohawk; the Chemical Manufacturers had “full knowledge of their products’ pernicious effects and likelihood of causing pollution to Plaintiff’s water supply,” but they “actively concealed and withheld [that] information from . . . [their] customers,” which include Mohawk; and Mohawk applied the Chemical Manufacturers’ PFAS products to its carpets and then discharged its wastewater in accordance with its permits, which do not limit PFAS. Am. Compl. ¶¶ 8-9; Answer, Ex. A. Under these allegations, Mohawk could not and did not control the nuisance when the Chemical Manufacturers designed and sold the PFAS products and actively concealed its dangers from Mohawk and when the Georgia EPD did not limit PFAS in Mohawk’s permits.

V. The Court Should Dismiss Lyerly’s Trespass Claim Because Mohawk Did Not “Directly” Infringe Lyerly’s Property Rights and Did Not Have a Duty to Terminate Any Purported Trespass.

Lyerly asserts that the alleged PFAS contamination amounts to a trespass of both its “property used to serve its water customers” and “its water supply.” Am. Compl. ¶¶ 138-47. But there are two problems with this claim that warrant dismissal as to Mohawk. First, unlike nuisance, trespass requires “a *direct* infringement of [Lyerly’s] right of property” by Mohawk. *Ga.-Pac.*

Consumer Prods., LP v. Ratner, 345 Ga. App. 434, 444 (2018) (emphasis in original). In the Amended Complaint, Lyerly alleges no act by Mohawk that **directly** infringed on its property rights by using PFAS in its manufacturing process or in the way it discharged its wastewater. To the contrary, the Amended Complaint’s own allegations acknowledge that Mohawk discharged its wastewater either “directly” to wastewater treatment plants or into the environment—not directly to Lyerly’s wells. Am. Compl. ¶¶ 42, 102. Because any alleged infringement of Lyerly’s property rights by Mohawk was not “direct,” there can be no act of trespass by Mohawk. *See Ga.-Pac. Consumer Prods.*, 345 Ga. App. at 444.

Second, Plaintiffs allege a continuing trespass but do not allege that Mohawk “ha[d] a legal right and [was] under a legal duty to terminate the cause of the injuries sustained.” *See Briggs & Stratton Corp. v. Concrete Sales & Servs., Inc.*, 971 F. Supp. 566, 573 (M.D. Ga. 1997) (citing *Bodin v. Gill*, 216 Ga. 467 (1960)); *see also* Am. Compl. ¶¶ 138-47. As explained above with respect to Lyerly’s nuisance claims, the allegations in the Amended Complaint (construed in the light most favorable to Lyerly) show that Mohawk was not under a legal duty to terminate its wastewater discharges—particularly when the Chemical Manufacturers concealed the dangers of PFAS from Mohawk and when the Georgia EPD did not limit PFAS in Mohawk’s permits.

VI. Lyerly’s GWQCA Claim Fails Because Mohawk Complied with Its Permits and Lyerly Does Not Seek to Remediate the “Waters of the State.”

The GWQCA “gives state government the responsibility for establishing and maintaining water quality.” *Franklin County*, 270 Ga. at 275; *see also* O.C.G.A. § 12-5-21. It sets forth a comprehensive permitting scheme, *see, e.g.*, O.C.G.A. § 12-5-30, and it “implement[s] Georgia’s obligations under the [Clean Water Act], including administering the NPDES program for point sources and establishing the State’s water quality standards,” *City of Guyton v. Barrow*, 305 Ga.

799, 807 (2019). Lyerly asserts a claim under the civil liability section of the GWQCA, which provides:

Any person who intentionally or negligently causes or permits any sewage, industrial wastes, or other wastes, oil, scum, floating debris, or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution as defined by this article, shall be liable in damages to the state and any political subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits.

O.C.G.A. § 12-5-51; *see* Am. Compl. ¶ 159. This claim fails for two key reasons.

First, the GWQCA does not extend liability to defendants operating under lawful permits. *See Save America's Vital Env't, Inc. v. Butz*, 347 F. Supp. 521, 522 (N.D. Ga. 1972) (noting that the GWQCA “prohibits the discharge of harmful or toxic materials in Georgia waters **without a permit**”) (emphasis added); *Jones Creek Invs., LLC v. Columbia County*, No. CV 111-174, 2013 WL 12141348, at *2 (S.D. Ga. Dec. 23, 2013) (“GWQCA prevents the discharge of pollutants from point sources into waters of the state **without a permit**.”) (citing O.C.G.A. § 12-5-30) (emphasis added); *In Re: James P. Campbell, III and Sydney Station Farms, Inc.*, No. OSAH-DNR-EPD-WQ-AH 10-95, 1996 WL 226069, at *8 (Ga. Bd. Nat. Res. Apr. 30, 1996) (“The Act makes an **exception for dischargers that are permitted** by an authorized permitting authority.”). Here, “[p]ursuant to the Georgia Water Quality Control Act,” the Georgia EPD issued permits to Mohawk, which—as set out in the permits attached to Mohawk’s Answer—plainly did not contain any discharge limit, monitoring requirement, or any other guideline relating to PFAS. *See* Answer, Ex. A. Because Mohawk complied with its permits, it cannot be held liable under the GWQCA.

Second, the GWQCA provides only for the recovery of costs and expenses incurred in cleaning up substances “spilled, discharged, or deposited **in the waters of the state**.” O.C.G.A. § 12-5-51 (emphasis added). Lyerly, however, has not cleaned up substances in the “waters of the state” and does not claim that it will. Lyerly instead seeks damages associated with the removal

of PFAS *from its own water*. See Am. Compl. ¶ 13 (“Plaintiff will be required to upgrade to costly and sophisticated new treatment technologies in order to remove Defendants’ PFAS from its drinking water[.]”). Because Lyerly does not seek to remediate pollution in the waters of the state, the damages it seeks are not the kind of pollution cleanup costs contemplated by the GWQCA.

VII. The Court Should Dismiss Lyerly’s Derivative Claims for Wantonness and Punitive Damages and for Attorneys’ Fees.

Finally, the Court should dismiss Lyerly’s derivative claims for wantonness and punitive damages and for attorneys’ fees and expenses of litigation. See Am. Compl. ¶¶ 148-57. These claims should be dismissed because all of Lyerly’s underlying claims fail as a matter of law. See *Sparra v. Deutsche Bank Nat’l Tr. Co.*, 336 Ga. App. 418, 422-23 (2016) (holding that plaintiff “is not entitled to either” punitive damages or attorneys’ fees when it “fail[s] to state a claim upon which relief could be granted with respect to [its] substantive claims for relief”). But, even if there is a valid underlying claim to which Lyerly’s derivative claims against Mohawk could attach, the derivative claims should be dismissed for failure to state a claim.

With regard to punitive damages, Lyerly fails to allege facts demonstrating that Mohawk in particular “showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.” O.C.G.A. § 51-12-5.1(b). Lyerly’s allegations against Mohawk stand in stark contrast to the allegations against the Chemical Manufacturers. For example, according to Lyerly, since at least “the 1970s, 3M and DuPont were aware that their [PFAS] products persisted indefinitely in the environment,” but “the two companies actively hid their findings from regulators and the general public.” Am. Compl. ¶¶ 63, 65. Similarly, the Chemical Manufacturers “actively concealed and withheld information from . . . customers” like Mohawk. *Id.* ¶ 8. There are no similar specific allegations with respect to Mohawk’s knowledge or conduct.

Moreover, Mohawk complied with its permits, which did not limit PFAS. *See Answer, Ex. A.* Under Georgia law, “compliance with the law” tends to “show that there is no clear and convincing evidence of ‘willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences.’” *Stone Man Inc. v. Green*, 263 Ga. 470, 472 (1993) (quoting *Gen. Refractories Co. v. Rogers*, 240 Ga. 228, 230 (1977)). Against this backdrop, Lyerly cannot seek punitive damages from Mohawk, and thus the Court should dismiss the claim for punitive damages against Mohawk.

For the same reasons, Lyerly is not entitled to fees and expenses under O.C.G.A. § 13-6-11. Such fees and expenses may be awarded only “where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense.” O.C.G.A. § 13-6-11. The Amended Complaint does not provide a factual basis to find any bad faith or stubborn litigiousness on Mohawk’s part. Instead, the Amended Complaint simply alleges in conclusory fashion that “Defendants have acted in bad faith, have been stubbornly litigious, and have caused Plaintiff unnecessary trouble and expense.” Am. Compl. ¶ 157. That boilerplate allegation is insufficient under Georgia law.

CONCLUSION

For the foregoing reasons, Mohawk respectfully requests that the Court dismiss Lyerly’s First Amended Complaint against Mohawk.

Respectfully submitted this 29th day of August, 2024.

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Manufacturing Corporation, Mohawk Carpet,
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**IN THE STATE COURT OF CHATTOOGA COUNTY
STATE OF GEORGIA**

THE TOWN OF LYERLY, GEORGIA,

Plaintiff,

v.

3M COMPANY, et al.,

Defendants.

Case No. 24SCA4052

CERTIFICATE OF SERVICE

This is to certify that I have caused a true and correct copy of the foregoing document to be served upon all counsel of record by filing same with the PeachCourt e-filing system, which automatically notifies counsel of record in the PeachCourt e-filing system.

This 29th day of August, 2024.

/s/ Andrew A. Roberts

Andrew A. Roberts

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