

IN THE CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

Foster D. Arnett, Jr., Knox County )  
Clerk, in his official capacity, and )  
Foster D. Arnett, Jr., individually, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Public Building Authority of the )  
County of Knox and the City of )  
Knoxville; and Knox County, )  
Tennessee, )  
 )  
Defendants. )

No. \_\_\_\_\_

JURY DEMANDED

VERIFIED COMPLAINT

Comes the Plaintiff, by and through counsel, and for cause of action against the Defendants would show:

PARTIES/JURISDICTION

1. Plaintiff Foster D. Arnett, Jr. is a citizen and resident of Knox County, Tennessee.
2. Plaintiff Foster D. Arnett, Jr. is, and at all times material to this Complaint was, the elected County Clerk of Knox County, Tennessee.
3. Defendant Knox County, Tennessee is a governmental entity created and existing in the State of Tennessee and can be served through its agent for service of process: Richard Armstrong, Knox County Law Director, at 400 Main Street, Suite 612, Knoxville, Tennessee 37902.

4. Defendant Public Building Authority of the County of Knox and the City of Knoxville ("PBA") is a Tennessee nonprofit corporation and a public instrumentality of Knox County, Tennessee pursuant to the Public Building Authorities Act of 1971, T.C.A. § 12-10-101 *et seq.*, with its principal office located at 400 West Main Street, Suite M22, Knoxville, Tennessee 37902. Defendant PBA may be served with process through its registered agent for service of process: Dale E. Smith, 400 West Main Street, Suite M22, Knoxville, Tennessee 37902.

5. Upon information and belief, Defendant Knox County, Tennessee owns the Old Knox County Courthouse, located at 300 Main Street, Knoxville, Tennessee 37902.

6. Defendant PBA manages and maintains the Old Knox County Courthouse on behalf of Defendant Knox County, Tennessee.

7. All matters complained of herein are occurring or have occurred in Knox County, Tennessee, and therefore jurisdiction and venue in this Court are proper.

#### **BACKGROUND/FACTS**

8. Plaintiff was duly elected as Knox County Clerk in August 2008.

9. Prior to Plaintiff's election as Knox County Clerk and dating back numerous decades, Defendant PBA assigned a suite of offices to the Knox County Clerk at various locations in the Old Knox County Courthouse.

10. Upon information and belief and well before Plaintiff was elected as Knox County Clerk, Defendant PBA entered into an agreement with the Knox County Clerk wherein the Knox County Clerk pays monthly rent out of the County Clerk's budget to

Defendant PBA for use of the suite of offices located in various locations in the Old Knox County Courthouse.

11. On each and every month since Plaintiff's election as Knox County Clerk, he has paid rent to Defendant PBA for his suite of offices in the Old Knox County Courthouse.

12. As already noted herein, Plaintiff's office is and at all times material to this Complaint was located in the Old Knox County Courthouse.

13. Members of the public routinely interact with the Knox County Clerk's Office at the Old Knox County Courthouse in order to, *inter alia*, renew driver's licenses, renew vehicle registration, and obtain marriage licenses.

14. Beginning in or around April 2012, Defendant PBA renovated and restored all 253 windows of the Old Knox County Courthouse.

15. Upon information and belief, mold spores, toxic mold spores and/or other toxins contained in the Old Knox County Courthouse were released during the course of Defendant PBA's renovation and restoration of the windows at the Old Knox County Courthouse.

16. Upon information and belief, at the time of the renovation/restoration Defendant PBA failed to isolate or otherwise contain the mold, toxic mold, and/or other toxins that were released during the restoration of the windows of the Old Knox County Courthouse.

17. Upon information and belief, as a result of Defendant PBA's failure to isolate or otherwise properly contain the mold, toxic mold, and/or other toxins within

the Old Knox County Courthouse during the course of that Defendant's restoration of the windows for same, Defendant PBA created and/or allowed to continue unabated a hazardous environment within the Old Knox County Courthouse that has caused significant medical problems for Plaintiff and others who work in the building and poses a significant danger to the health of Plaintiff, Plaintiff's employees and members of the public conducting business at the Old Knox County Courthouse.

18. Defendant PBA's restoration and renovation of the windows of the Old Knox County Courthouse made that building "airtight." In addition, numerous leaks and moisture occurred and existed in the walls of the Courthouse prior to the restoration of the windows and/or are currently occurring in the walls of the Courthouse. The cumulative effect of these conditions creates an environment conducive for the growth of toxic mold.

19. On or about January 24, 2014, Geosyntec Consultants performed a mold inspection at the request of Defendant PBA "in rooms of the Old Courthouse selected by PBA." Geosyntec did not recommend mold abatement but cautioned that "the possibility exists that mold may be present in areas that were not examined or sampled."

20. On February 21, 2014, Dr. Ty Prince <sup>1</sup>, Plaintiff's physician for purposes of allergy and sinus treatment, visited Plaintiff's office at the Old Knox County

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<sup>1</sup> Dr. Prince is board certified in Internal Medicine, Allergy and Immunology and is a specialist in adult, adolescent and pediatric allergy, asthma and clinical immunology. He is a Fellow of the American College of Allergy, Asthma and Immunology and a past President of the Tennessee Society of Allergy, Asthma and Immunology. He has performed extensive testing on the growth of mold in buildings and

Courthouse because of Plaintiff's continuing complaints about sinus and allergy problems. Dr. Prince noticed "a strong odor of mildew" and noted that the lack of ventilation and carpeting glued to concrete created "the perfect environment for mold to grow."

21. Dr. Prince informed Plaintiff that he believed his sinus and allergy problems were being caused by his exposure to mold and/or toxic mold in his suite of offices at the Old Knox County Courthouse.

22. Plaintiff complained on numerous occasions to Defendant PBA's agents and/or officers that mold and/or toxic mold existed in his suite of offices. However, Defendant PBA represented there was no unsafe condition and took no effective action upon receipt of this information to remediate the presence of mold, toxic mold, and/or other toxins in Plaintiff's suite of offices.

23. Plaintiff's physical health continued to deteriorate and eventually Dr. Prince referred Plaintiff to Dr. John Callison at the University of Tennessee Heart Lung Vascular Institute for further tests and evaluations.

24. Based on those tests and his own evaluations, Dr. Prince concluded that Plaintiff's continued exposure to mold, toxic mold, and/or other toxins "appears to have led to the development of bronchial asthma which has the potential to be life-threatening."

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its causative effects on the health of persons exposed to such mold. Dr. Prince is one of the nation's leading experts on diagnosing health problems resulting from toxic mold exposure.

25. Based on Plaintiff's numerous and continuing complaints of toxic mold in his suite of offices, on or about November 26, 2014, agents for Defendant PBA moved some of Plaintiff's furniture out of his office and placed it approximately five to six feet away from his office and represented to Plaintiff that leaving the furniture in the hallway for four days would "remove any mold from his office."

26. Defendant PBA's actions in removing Plaintiff's furniture from his office and placing it in the hallway for four days had no effect in removing the mold, toxic mold, and/or other toxins contained in his office and said action does not constitute mold remediation under any applicable standard of care. Rather, this was an attempt by Defendant PBA to continue to lead Plaintiff to believe the situation was safe.

27. Based on Plaintiff's continuing and unending complaints and his deteriorating health, Defendant PBA had another round of mold testing performed. However, it did not conduct mold testing wherein it sought to determine actual live mold spore counts.

28. In any event, the vast majority of Defendant PBA's testing stated that the mold present was "within acceptable limits." However, Defendant PBA's own testing revealed the presence of mold within Plaintiff's suite of offices and it suggested a remediation plan wherein Plaintiff's air conditioning unit would be removed and replaced.

29. Defendant PBA recently removed the air conditioning unit from Plaintiff's suite of offices but failed to isolate the mold contained within that unit by use of negative air or other proper containment techniques. This substandard remediation

likely exacerbated the mold problem and created higher levels of mold spores in the air. As a result of Defendant PBA's actions, one of the employees of the Knox County Clerk's office had to leave that day because of the substandard attempt at remediation which caused her to become dizzy, nauseated and concerned for her health and that of her unborn child. In addition, numerous other employees complained of the odor which was exacerbated by Defendant PBA's actions but those employees did not leave early.

30. To date, Defendants have continuously represented to Plaintiff that any mold present in Plaintiff's offices in the Old Knox County Courthouse is "within acceptable limits" and that it is safe for his health as well as the health and welfare of the employees of the Clerk's office as well as the public.

31. On January 24, 2015, Plaintiff endeavored to have his own testing conducted on the office suite wherein Plaintiff's office is located using Indoor Air Quality Specialists, Inc. At that time, ten air and surface samples were taken and thereafter sent to Assured Bio Labs, LLC for testing. The live spore counts from the lab report obtained from the January 24 samples demonstrably indicate that Plaintiff's suite of offices is contaminated with toxic levels of the mold *Aspergillus*.

32. *Aspergillus* is a highly toxic mold and upon information and belief is one of the two most hazardous molds in existence. Health problems caused by exposure to *Aspergillus* are well-documented.

33. The mold inspection and remediation expert retained by Plaintiff to determine levels of toxic mold in Plaintiff's suite of offices informed Plaintiff that it is



his opinion to a reasonable degree of certainty that substantial levels of toxic mold are live and growing in the walls of the Old Knox County Courthouse. He also believes there is a strong likelihood that live toxic mold exists and is growing in the drop ceilings and under the existing carpet in Plaintiff's suite of offices.

34. Plaintiff's expert believes it is also likely that live toxic mold is growing in other areas of the Old Knox County Courthouse but as no testing has been performed the extent of same is currently unknown. Plaintiff's expert recommends that the Old Knox County Courthouse be tested throughout in order to determine the extent of the mold problem so a proper remediation plan can be put into existence.

**COUNT I  
COMPLAINT FOR DECLARATORY JUDGMENT**

35. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. An Oral lease exists between the parties. Pursuant to Tenn. R. Civ. P. 57 and T.C.A. § 29-14-101 *et seq.*, Plaintiff would have this Court declare an oral lease agreement exists between the Knox County Clerk's Office and Defendant PBA which requires, in part, that Defendant PBA provide Plaintiff and his employees as well as the public with a Knox County Clerk's office space free from toxic mold and other toxins. Further that there is an implied warranty of habitability and that the Defendants have breached this warranty.



37. Plaintiff would further have this Court declare that Plaintiff has standing in his official capacity to bring claims of breach of contract and breach of warranty and nuisance against Defendant PBA.

38. Plaintiff would further have this Court declare that Plaintiff is entitled to payment of reasonable attorneys' fees out of Knox County's general fund for attorneys' fees and costs incurred by Plaintiff in his official capacity in bringing this suit in order to carry out his official duties and functions as Knox County Clerk properly.

39. In the alternative, Plaintiff would have this Court declare that Plaintiff is allowed to withhold the monthly rent from Defendant PBA in order to pay Plaintiff's attorneys' fees and costs until the toxic mold in Plaintiff's suite of offices is properly remediated.

40. As an additional alternative, Plaintiff would have this Court declare that Plaintiff has the right to use funds ordinarily paid to Knox County by the Knox County Clerk to pay his reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff prays that this Court declare:

1. That a contract exists between Plaintiff in his official capacity as Knox County Clerk and Defendant PBA for lease of the Knox County Clerk's office suites in the Old Knox County Courthouse;

2. That Plaintiff has the right as Knox County Clerk to bring suit in his official capacity against Defendant PBA for breach of the lease contract breach of implied warranty and nuisance; and

3. That Plaintiff has the right to pay reasonable attorneys' fees and costs from Knox County's general fund, from monthly rent withheld from Defendant PBA, or from funds ordinarily paid to Knox County by the Knox County Clerk.

**COUNT II  
BREACH OF CONTRACT**

41. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. As previously noted, Plaintiff, in his official capacity, pays monthly rent to Defendant PBA.

43. In any contract for the rent of office space, there is an implied warranty that such space will be free from toxic mold and/or other environmental hazards that would endanger the health and safety of those working therein.

44. Since completion of the window restoration project at the Old Knox County Courthouse, mold, toxic mold, and/or other toxins have grown and currently exist in Plaintiff's suite of offices.

45. Plaintiff has made numerous requests for Defendant PBA to remediate the toxic mold in a manner within the generally accepted standard of care required for toxic mold remediation.<sup>2</sup>

46. Defendant PBA has refused to remediate the mold in such a fashion and continues to this day to represent to Plaintiff either there is no mold present or any mold present in Plaintiff's suite of offices is "within acceptable limits" and thus that the

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<sup>2</sup> Specifically, Plaintiff made numerous requests to agents and/or officers of Defendant PBA to "do something about the mold" and to "get rid of it."

Clerk's offices are safe and would not be the source of any ill health effects or potential danger to Plaintiff, the employees of the Clerk's office or the public.

47. The presence of mold, toxic mold, and/or other toxins at the Old Knox County Courthouse has interfered and continues to interfere with Plaintiff's performance of his official duties because it is causing him and his employees substantial health problems and is a risk and danger to the Plaintiff, the employees of the Clerk's office and the public.

48. As a direct result of the presence of mold, toxic mold, and/or other toxins in the Old Knox County Courthouse, Plaintiff has suffered continuing health problems, including his diagnosis of bronchial asthma.

49. As a direct result of the presence of mold, toxic mold, and/or other toxins in the Old Knox County Courthouse, employees of the Knox County Clerk's Office have experienced health problems which upon information and belief are caused by the presence of said mold.

49. Therefore, Plaintiff, in his official capacity as Knox County Clerk, sues Defendant PBA for breach of the aforementioned contract and breach of implied warranty and seeks to have this Court order Defendant PBA to remediate the mold in accordance with a remediation plan designed by Plaintiff's expert after extensive testing is performed on the entire Courthouse and/or such further and other relief as will make the Clerk's office safe.

**COUNT III  
NUISANCE**

50. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. The presence of mold, toxic mold, and/or other toxins at the Old Knox County Courthouse has caused Plaintiff significant health problems and poses a continuing substantial risk to the health of Plaintiff, Plaintiff's employees and the public.

52. The presence of mold, toxic mold, and/or other toxins at the Old Knox County Courthouse has interfered and continues to interfere with Plaintiff's performance of his official duties as Knox County Clerk.

53. The presence of mold, toxic mold, and/or other toxins at the Old Knox County Courthouse constitutes a nuisance which has endangered, continues to endanger and/or threatens to endanger the health of Plaintiff, Plaintiff's employees and members of the public.

54. Therefore, Plaintiff, in his official capacity as Knox County Clerk, sues Defendant PBA for nuisance and seeks to have this Court order Defendant PBA to remediate the mold in accordance with a remediation plan designed by Plaintiff's expert after proper testing is performed on the Courthouse including the Clerk's office or such other proper and appropriate remediation so as to provide a safe environment for the protection of the Clerk, the employees of the Clerk's office and the Public.

**COUNT IV  
PREMISES LIABILITY/TENNESSEE GOVERNMENTAL TORT LIABILITY**

55. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Plaintiff, in his individual capacity, brings this premises liability cause of action against Defendant Knox County and Defendant PBA based on his personal injury as a result of exposure to toxic mold in his suite of offices in the Old Knox County Courthouse.

57. As previously noted, upon information and belief, Defendant Knox County owns the Old Knox County Courthouse and Defendant PBA occupies and manages same.

58. The presence of toxic mold and/or other toxins in Plaintiff's suite of offices at the Old Knox County Courthouse constitutes a hazardous and dangerous condition of which Defendant PBA had actual notice and of which Defendant Knox County has actual and/or constructive notice, thereby satisfying the notice requirement of a premises liability action under the Tennessee Governmental Tort Liability Act.

59. Neither Defendant has taken any action to remediate this hazardous and dangerous condition within the generally accepted standard of care for mold remediation.

60. As a direct and proximate result of Defendants' failure to properly remediate the toxic mold in Plaintiff's suite of offices in the Old Knox County Courthouse, Plaintiff has suffered and continues to suffer serious health problems,

including chronic mold syndrome, bronchial asthma, nose bleeds, severe coughing fits that occur almost daily, dizziness, and inability to sleep. Plaintiff has incurred significant medical expenses in treating these health problems and will continue to incur pain and suffering as well as medical expenses and.

61. Therefore, Plaintiff, in his individual capacity, sues both Defendants for the full measure of damages available under Tennessee law and the Tennessee Governmental Tort Liability Act for his personal injuries herein described.

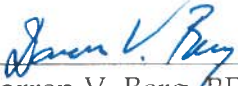
**PRAYER FOR RELIEF**

WHEREFORE, premises considered, Plaintiff respectfully requests that this Honorable Court grant him the following relief:

- a. Issue process, requiring the Defendants to answer this Complaint;
- b. Empanel a jury to try this cause;
- c. Enter an Order requiring Defendant Knox County to move Plaintiff and the employees of the Knox County Clerk's Office to a safe work location immediately; thereafter, to enter an Order requiring the Defendants to abate the mold, toxic mold and/or other toxin nuisance;
- d. Award Plaintiff reasonable attorneys' fees for the causes of action brought in Plaintiff's official capacity;
- e. Award Plaintiff the full measure of damages available under Tennessee law for Plaintiff's personal injury, premises liability action in an amount to be determined at trial;
- f. Award costs of this action including discretionary costs; and

g. Award such other or further relief as may be set out in this complaint or as otherwise available at law or equity to which Plaintiff may be entitled.

Respectfully submitted this 20<sup>th</sup> day of February, 2015.

  
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Darren V. Berg, BPR# 023505  
Butler, Vines and Babb, PLLC  
Attorney for Plaintiff  
2701 Kingston Pike  
P.O. Box 2649  
Knoxville, TN 37901-2649  
(865) 637-3531

COST BOND

We the undersigned acknowledge ourselves as Surety for costs of the clerk adjudged in this matter.

BUTLER, VINES & BABB, PLLC

By:   
\_\_\_\_\_  
Attorney




VERIFICATION

STATE OF TENNESSEE            )  
                                                  )  
COUNTY OF KNOX                )

I, Foster D. Arnett, Jr., have read the foregoing Verified Complaint and aver that the factual allegations contained therein, except where expressly stated otherwise, are within my personal knowledge and are true and correct.

  
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Foster D. Arnett, Jr

SWORN AND SUBSCRIBED TO BEFORE ME  
on this 20<sup>th</sup> day of February, 2015, to certify  
which witness my hand and seal.

  
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

