

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA**

Case No.: \_\_\_\_\_

BRYAN S. STREETMAN,

Plaintiffs,

v.

PHILIP LOWE and  
SARAH THOMPSON-LOWE

Defendants.

---

**COMPLAINT**

BRYAN S. STREETMAN, Plaintiff herein, through counsel, files this Complaint against PHILIP LOWE and SARAH THOMPSON-LOWE, Defendants herein, and alleges:

**PARTIES**

1. Plaintiff, BRYAN S. STREETMAN, an individual residing at 25 Collingwood Lane, Palm Coast, Florida, is over the age of 18 years and is otherwise *sui juris*.
2. Defendant, PHILIP LOWE, an individual residing at 29 Collingwood Lane, Palm Coast, Florida, is over the age of 18 and is otherwise *sui juris*.
3. Defendant, SARAH THOMPSON-LOWE, an individual residing at 29 Collingwood Lane, Palm Coast, Florida, is over the age of 18 and is otherwise *sui juris*.
4. The Defendants, PHILIP LOWE and SARAH THOMPSON-LOWE, are married.

**JURISDICTIONAL STATEMENT**

5. This action is subject to the jurisdiction of this Court under Florida Statutes § 26.012 because it involves an action seeking equitable relief (i.e., injunction).

## VENUE

6. Venue in Flagler County, Florida is proper in this action under Florida Statute § 47.051 because Flagler County is where the Defendants reside.

## FACTS IN SUPPORT OF CLAIMS

7. The Plaintiff and Defendants are next-door neighbors on Collingwood Lane, Palm Coast, Florida, with each of their respective properties backing onto a salt water canal.

8. Both Plaintiff and Defendants own double lots measuring approximately 127 feet deep by 89 feet wide. All other lots in the immediate vicinity on Collingwood Lane are single lots meaning they are approximately 44 feet wide. All lots in the neighborhood are in a zoned for residential purposes only.

9. Plaintiff purchased the 25 Collingwood Lane property at or around September 2013, and has continuously resided there since that time. Plaintiff chose this property due to its quiet, idyllic beauty and proximity to the Atlantic Ocean.

10. Each January, in an attempt to attract purple martins, Defendants erect a series of birdhouses or bird gourds atop metal poles around their dock at the end of their backyard. The poles and gourds are typically removed each fall.

11. During the first two years of Plaintiff's residency on Collingwood Lane, Defendants' activities did little to attract the purple martins; however, by the spring and summer of 2015, Plaintiff began to notice an unusually high volume of bird activity in the area.

12. Plaintiff was able to determine that the birds were coming from the neighboring property where they were being housed and fed in the bird gourds on Defendants' dock.

13. On information and belief, Plaintiff avers that Defendants are seeking to and have succeeded in attracting an entire colony on purple martins to their yard.

14. Plaintiff estimates there to be well over 100 hundred birds living on Defendant's property each migratory season.

15. Purple martins are known as a particularly loud and vocal species. True to form, the purple martins living in the bird gourds on Defendants' property constantly fly over and around Plaintiff's property squawking, chirping, and screeching every day from sunrise to sunset.

16. The resulting commotion makes it impossible to sleep in past sunrise, or take naps in the afternoon and, generally, destroys the quietude and serenity of the neighborhood along the canal. Despite his proximity to the ocean, from January through September Plaintiff is unable to hear the ocean over the noise of the purple martins. These conditions have caused anxiety, insomnia, exhaustion, and stress in Plaintiff.

17. Additionally, the birds constantly defecate over Plaintiff's lanai, pool, patio furniture and, on some occasions, Plaintiff himself, making it incredibly costly and difficult to enjoy the outdoor beauty and tranquility associated with living on a salt-water canal.

18. The continuous noise and unrelenting aerial assault from the purple martins constitutes a serious discomfort, distress, and inconvenience to Plaintiff, and would constitute a serious discomfort, distress, and inconvenience to any person of normal sensibilities.

19. In August 2015, Plaintiff approached the Defendant, PHILIP LOWE, about the number of birds living at or around his property. Specifically, Plaintiff stated the sheer number of birds and related noise were damaging his patio furniture, pool, hot tub and cover, and preventing him from using or enjoying his property. Plaintiff requested that some of the bird gourds be removed, to which Defendant responded saying that the birds are protected, and he intends to attract as many of them as possible. During this altercation, the Defendant, PHILIP LOWE, became so belligerent that Plaintiff had to call the police, who issued a no-trespass order against

said Defendant.

20. In 2016, with the assistance of counsel, Plaintiff tried to resolve the issues related to the numerous bird gourds and related bird activity stemming from Defendants' property. Plaintiff was not successful in his efforts.

21. Last year, Defendants erected and maintained approximately 24 bird gourds set atop eight poles in groups of three. This year Plaintiff has counted approximately 44 bird gourds set atop metal poles along the Defendants' dock.

22. The numbers metal poles and gourds create an eyesore along the canal.

23. The constant noise and defecation from the purple martins has caused and continues to cause Plaintiff serious annoyance and discomfort, in addition to mental and physical distress. The presence of these birds in their current numbers will, if permitted to continue, cause serious and irreparable injury to the comfort of any person of normal sensibilities occupying Plaintiff's residence.

24. On information and belief, Plaintiff avers that the owner of a property across the canal is having difficulty selling her lot because of the bird gourds on the Defendants' property. Correspondingly, Plaintiff avers his property has suffered a similar diminution in value.

25. Plaintiff has employed The Law Office of Ryan Mitchell, PLLC for representation in this action, and has agreed to pay a reasonable attorney fee.

26. All conditions precedent to the filing of this action had been performed, satisfied, or otherwise waived.

**COUNT I**  
**PRIVATE NUISANCE**

27. Plaintiff adopts by reference, as if set out fully and completely in this Count, the following statements of this Complaint: Paragraphs 1 through 26.

28. This is an action for private nuisance.

29. By virtue of his ownership and residency, Plaintiff has a possessory interest in the property located at 25 Collingwood Lane, Palm Coast, Florida.

30. Given the residential nature of the neighborhood and proximity of the houses along Collingwood Lane, Defendants' maintenance of the bird gourds on their dock constitutes an unreasonable use of their property.

31. Defendants' maintenance of the bird gourds on their property has and continues to interfere with Plaintiff's use and enjoyment of his property. Said interference has resulted in unreasonable and substantial harm to Plaintiff in the following manner:

a. Defendants' activities have affected Plaintiff's mental wellbeing leading to insomnia, anxiety, exhaustion, and stress;

b. Defendants' activities have damaged Plaintiff's personal property, including but not limited to, lawn furniture and hot tub cover, and have created unsanitary conditions in Plaintiff's pool and lanai;

c. Defendant's activities have prevented Plaintiff from enjoying the serenity and peacefulness of his property along the canal; and

d. Defendants' activities have decreased the desirability of his lot and caused a corresponding diminution in value.

32. Defendants' activities are the direct and proximate cause of the damages suffered by Plaintiff.

33. At all times material hereto, Defendants have conducted themselves with total disregard of Plaintiff's right to use and enjoy his property.

34. Removing the bird gourds would present little inconvenience to Defendant, while

keeping them would cause great harm to Plaintiff.

**WHEREFORE**, Plaintiff respectfully prays for entry of a judgment against Defendant as follows:

- A. That the Court enter a preliminary and permanent injunction against Defendants causing them to immediately remove the poles and gourds, and be forever enjoined from setting them up either on their own property or any neighboring property;
- B. That the Court award compensatory and special damages according to proof at the time of trial or entry of judgment;
- C. That the Court award costs of suit as incurred in this action; and
- D. The Court award any other and further relief as this Honorable Court may deem just and appropriate.

Respectfully Submitted,

/s/ Ryan Mitchell

Ryan Mitchell, Esquire

FBN: 0062034

The Law Office of Ryan Mitchell, PLLC

Attorney for Plaintiff

7463 Conroy Windermere Rd., Suite A

Orlando, FL, 32835

Telephone: (407) 601-6941

Fax: (407) 601-5982

Email: [ryan@lormpllc.com](mailto:ryan@lormpllc.com)