

CAUSE NO. D-1-GN-23-001981

905, LTD., AND NELSEN, INC. D/B/A	§	IN THE DISTRICT COURT
NELSEN PARTNERS,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	345TH JUDICIAL DISTRICT
	§	
H. DALTON WALLACE, AND	§	
909 CONGRESS, LTD.,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

FINAL JUDGMENT

On May 20, 2025, this case was called to trial. Plaintiffs 905, Ltd. and Nelsen, Inc. d/b/a Nelsen Partners appeared in person and through their attorneys and announced ready for trial. Defendants H. Dalton Wallace and 909 Congress, Ltd., appeared in person and through their attorneys and announced ready for trial.

After a jury was impaneled and sworn, it heard the evidence and arguments of counsel. On May 27, 2025, the jury reached a verdict. In response to the Charge of the Court, the jury made findings that the Court received, filed, and entered of record. The questions submitted to the jury and the jury's findings, which have been filed with the clerk and are attached as Exhibit A to Plaintiffs' motion for entry of judgment, are incorporated by reference as if fully set out here.

The Court finds and holds that it has jurisdiction of the parties and the subject matter of this case. All matters in controversy relating to the entry of judgment have been submitted and heard by the Court. In this judgment the following definitions shall apply:

1. "Nelsen Partners" means Plaintiff Nelsen, Inc., doing business as Nelsen Partners.
2. "Plaintiffs" means Nelsen Partners and 905, Ltd.

3. The “Property” means the building located at 905 Congress Avenue in Austin, Texas, which is also known as the Mutual Building.

4. The “Granberry Building” means the building located at 907 Congress Avenue in Austin, Texas.

PLAINTIFFS’ PRE-FIRE NEGLIGENCE CLAIM

During the trial, the Court and the jury heard evidence that related to Plaintiffs’ negligence claim as it relates to damages suffered before the fire. Questions No. 1 and No. 2 in the Charge of the Court submitted the pre-fire negligence claims as simple negligence and as premises liability. The jury answered “yes” to both Questions No. 1 and No. 2 and determined that H. Dalton Wallace and 909 Congress, Ltd. were negligent and proximately caused the injury to the Property before the fire in March 2023. The jury also answered Question No. 3 of the Court’s Jury Charge to apportion fault and determined that H. Dalton Wallace was 90% responsible for the injury to the Property before the fire and 909 Congress Ltd. was 10% responsible. The jury also answered Question No. 4 of the Court’s Jury Charge and determined that the amount of money that was reasonable and necessary in Travis County, Texas, to repair, fix, or restore the Property due to damages suffered before the fire in March 2023 was \$25,000. Because the jury apportioned more than 50% responsibility for these damages to H. Dalton Wallace, he is jointly and severally liable for the entire amount of these damages. Tex. Civ. Prac. & Rem. Code §33.013(b)(1).

Based on the evidence presented at trial, and the jury’s findings, the Court RENDERS JUDGMENT for Plaintiffs against H. Dalton Wallace in the amount of \$25,000 and against 909 Congress, Ltd. in the amount of \$2,500, for damages to the Property before the March 2023 fire.

PLAINTIFFS’ NEGLIGENCE AND TRESPASS CLAIMS DUE TO THE FIRE

During the trial, the Court and the jury also heard evidence that related to Plaintiffs’

negligence and trespass claims as they relate to damages suffered because of the fire.

As it had done with the pre-fire negligence claim, the Charge of the Court in Questions No. 5 and No. 6 submitted the negligence claim relating to damages from the fire as both simple negligence and premises liability. The jury answered “yes” to both Questions No. 5 and No. 6 and determined that H. Dalton Wallace and 909 Congress, Ltd. and responsible third party John Banks were negligent and proximately caused injury to the Property due the fire in March 2023. The jury also answered Question No. 7 of the Court’s Jury Charge and apportioned fault that H. Dalton Wallace was 25% responsible for the injury to the Property, 909 Congress Ltd. was 25% responsible, and John Banks was 50% responsible.

As for Plaintiffs’ trespass claims, the jury answered Question No. 10 of the Court’s Jury Charge and determined H. Dalton Wallace, 909 Congress, Ltd. and responsible third party John Banks committed trespass on the Property. The jury also answered Question No. 11 of the Charge apportioning fault and determined that H. Dalton Wallace was 40% responsible for the damage caused to the Property, 909 Congress Ltd. was 20% responsible and John Banks was 40% responsible.

As for Plaintiffs’ claims for damages, the jury answered Question No. 8 of the Court’s Jury Charge and determined that the amount of money that was reasonable and necessary in Travis County, Texas, to repair, fix, or restore the Property due to damages because of the fire in March 2023 was \$4,378,393.10 as to 905 Ltd., and zero as to Nelsen Partners, and the amount of money that was reasonable and necessary to compensate Plaintiffs for the loss of use of the Property during the time reasonably required to repair the property was \$1,345,091.00 as to 905, Ltd., and \$759,153.88 as to Nelsen Partners. The jury also answered Question No. 9 of the Court’s Jury Charge and determined that the difference in market value of the Property

immediately before and immediately after the fire in March 2023 was \$4,378,393.10. Before the case was submitted to the jury, the parties stipulated that the fire-related damages found by the jury in response to Question 8 would apply to both the negligence and trespass claims.

Plaintiffs have elected the remedy of trespass in connection with the damages suffered as a result of the fire in March 2023. Because neither H. Dalton Wallace nor 909 Congress, Ltd. was apportioned more than 50% fault, the judgment against them will be reduced according to each defendant's percentage of responsibility. Tex. Civ. Prac. & Rem. Code §33.013(a). Accordingly, based on the evidence presented at trial, and the findings made by the jury at trial, the Court **RENDERS JUDGMENT** for Plaintiffs against Defendant H. Dalton Wallace in the amount of \$2,593,055.19 and against Defendant 909 Congress, Ltd. in the amount of \$1,296,527.60, based on damages to the Property due to the fire in March 2023.

PLAINTIFFS' DECLARATORY JUDGMENT CLAIM

During the course of the trial, the Court heard evidence that related to Plaintiff's declaratory judgment claim, as set forth in Paragraph 34 of Plaintiffs' Second Amended Petition. Based on the evidence presented at trial, the Court finds that Plaintiffs are entitled to a declaratory judgment for those requested declarations, and those requests are granted.

Accordingly, the Court **RENDERS JUDGMENT** that (1) the adjoining wall on the north side of the Mutual Building and south side of the Granberry Building is a Party Wall, erected on portions of both 905 Ltd.'s and 909 Congress Ltd's properties; (2) 905 Ltd., as successor-in-title to the Mutual Building holds an easement in and to the portions of the Party Wall that are situated on 909 Congress Ltd.'s property for purposes of support; (3) during their respective ownership, H. Dalton Wallace and 909 Congress, Ltd. owed rights and duties in connection with the Party Wall Agreement, including the obligation to keep and maintain the portions of the Party Wall that are situated on their property; (4) 909 Congress Ltd. and/or H. Dalton Wallace

are responsible to pay 50% of the costs to repair ordinary wear and tear related to the Party Wall (in addition to any damages caused by 909 Congress's and/or H. Dalton Wallace's intentional conduct or negligence); (5) 905 Ltd. may take necessary steps to repair and maintain the Party Wall, including installing permanent bracing (that is, constructed internally within 905 Congress) or other supports on 909 Congress Ltd.'s property to help support the Party Wall; (6) 905 Ltd. has the rights of ingress and egress on 909 Congress Ltd.'s property for purposes of protecting and maintaining its easement in the Party Wall; (7) H. Dalton Wallace and/or 909 Congress Ltd. are obligated to repay 905 Ltd. for no less than 50% of costs associated with the maintenance and repair of the Party Wall; and (8) any failure of H. Dalton Wallace and/or 909 Congress Ltd. to repay 905 Ltd. for their share of damages or repair costs to the Party Wall will result in an equitable lien in favor of 905 Limited on the Granberry Building property. Each of the foregoing rights apply to 905, Ltd.'s and 909 Congress, Ltd.'s successors and/or assigns unless and until the Party Wall agreement is modified by mutual agreement of the parties or the Party Wall is destroyed.

PLAINTIFFS' CLAIM FOR ATTORNEYS' FEES

During the trial, the Court heard evidence on the amount, reasonableness, and necessity of the attorneys' fees sought by Plaintiffs in connection with its declaratory judgment claim. At the conclusion of the trial, the jury answered Question No. 14 of the Charge of the Court and determined that Plaintiffs had incurred reasonable and necessary attorneys' fees in the amount of \$272,653.40. The jury also determined that Plaintiffs should be awarded \$50,000 for representation through appeal to the court of appeals, \$30,000 for representation for review in the Supreme Court of Texas, \$20,000 for representation at the merits briefing stage in the Supreme Court of Texas, and \$20,000 for representation through oral argument and the completion of proceedings in the Supreme Court of Texas. The Court finds that it is equitable and just to award

attorney's fees in the sums the jury found to be reasonable and necessary.

Accordingly, the Court RENDERS JUDGMENT that Plaintiffs are entitled to an award of attorneys' fees against Defendants, jointly and severally, as follows:

1. For representation in the trial court: \$272,63.40;
2. \$50,000 for representation through appeal to the court of appeals;
3. \$30,000 for representation at the petition for review in the Supreme Court of Texas;
4. \$20,000 for representation at the merits briefing stage in the Supreme Court of Texas; and
5. \$20,000 for representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

The awards of appellate fees are conditioned on Plaintiffs being successful in any appeal or petition before the Court of Appeals or the Texas Supreme Court of any related declaration, attorneys' fees, or interest, on which Plaintiffs has prevailed in the District Court.

PRE- AND POST-JUDGMENT INTEREST

All sums awarded in this judgment shall bear pre-judgment interest at the judgment rate of 7.5% (simple interest), and post-judgment interest at the judgment rate of 7.5% (compounded annually). *See* Tex. Fin. Code §§ 304.003, 304.005, 304.103, 304.104.

PREVIOUS ORDERS INCORPORATED IN FINAL JUDGMENT

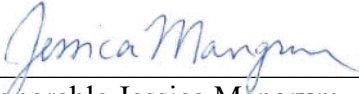
All previous Orders of the Court are incorporated into this Final Judgment.

This Final Judgment disposes of all claims between the parties. This is the final, appealable judgment in this cause. Relief requested by a party but not granted herein, or by a prior ruling, is denied. All writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.

Court costs are awarded to Plaintiffs against Defendants. The Court orders that execution

may issue to enforce this Final Judgment.

Signed and entered on : July 11, 2025.



Honorable Jessica Mangrum
Presiding District Judge