IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC, Plaintiffs, vs. Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC, Defendants.	)	C. A. No. 2020-CP-39-00266 **ORDER ON POST TRIAL MOTIONS**

In this lawsuit, the Plaintiffs sought damages for nuisance *per se* and negligence arising out of Defendants' excavation of property in August 2018, and asserted claims for acquiescence and prescriptive easement of disputed area between the parties' adjoining property. The disputed property is a portion of a gravel drive that runs along the western boundary of the Plaintiffs' property and gravel turn-around area located up a steep hill and at the rear of the Plaintiffs' property and is adjacent to the Plaintiffs' "back building" (the back building is used for Plaintiffs' business, to prepare, paint, and shelter vehicles before and after they have been painted). The Plaintiffs contended that this drive and turn-around area are the only means of vehicular access to the Plaintiffs' back building and had been in use by Plaintiffs and their predecessors in title for many years. Plaintiffs further contended that the Defendants do not use this gravel drive nor the turn-around area.

The case went to trial on May 23, 2022 and after four days the jury returned the following verdict on May 26, 2022: on the nuisance *per se* cause of action, in favor of the Plaintiffs for $28,000 actual damages; on the negligence cause of action, in favor of the Plaintiffs for

$168,000; on the acquiescence cause of action, in favor of the Plaintiffs; and on the prescriptive easement cause of action, in favor of the Plaintiffs.

Post-trial Motions Filed

Following the jury verdict, the Court granted the parties 10 days to make any post-trial motions as provided for in Rule 50, SCRCP. The Defendants timely filed post-trial motions for the following relief: 1) JNOV; (2) New Trial; and (3) Equitable Determination and Modification of Damages. Plaintiffs also filed post-trial motions requesting the Court issue an Order implementing the findings of the jury, granting permanent injunctive relief ordering the Defendants to abate the nuisance, and making permanent the injunctive relief ordered under the Temporary Restraining Order.

After careful consideration, the Court denies Defendants' Motions on all causes of action and grants Plaintiffs' Post-Trial Motions as set forth below.

Nuisance *Per se*

First, the Court will address the nuisance *per se* cause of action and resulting jury verdict against Defendants in the amount of $28,000.

The standard for JNOV or New Trial are found in Rule 50(b), SCRCP:

> Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict... A motion for new trial may be joined with this motion...

South Carolina Courts have ruled, "[w]hen ruling on a JNOV motion, the trial court is required to view the evidence and inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012). "If more than one reasonable inference can be

drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury. *Id.*, (quoting *Chaney v. Burgess*, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965). "In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). "When considering a JNOV, 'neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.'" *Id.* "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Id.*

The jury initially had completed the verdict form finding in favor of the Plaintiffs on the nuisance *per se* and the negligence causes of action but initially filled in "$0" as the damages for nuisance *per se* and "$196,000" as the damages for negligence. The Court addressed the jury regarding the inconsistency, explaining that it would need to return to the jury room to complete the verdict form in accordance with the jury charges that had been given. The jury had been provided with copies of the relevant portions of the charges in writing.

As the Court of Appeals summarized in *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 724 (Ct. App. 1996):

> A trial court is vested with very limited power to correct a jury verdict which is defective in form, but which in substance clearly and definitely expresses the jury's intentions.

The jury returned within ten minutes, reducing the $196,000 award for negligence by $28,000 and awarded $28,000 for nuisance *per se*. The outcome is well within a reasonable decision. The total amount awarded was approximately 2/3 of the amount of damages Plaintiffs had sought. The jury had deliberated for quite some time and even though the jury took a few minutes to correct the verdict form, the Court cannot "draw any unwarranted conclusions from the brevity of the deliberations." *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 636, 529 S.E.2d

758 (2000). There was sufficient evidence presented, viewed in the light most favorable to Plaintiffs, to support the jury's finding of nuisance *per se*, and an award of damages for $28,000. This Court does not have the authority to decide credibility issues or to resolve conflicts in the testimony.

Next, the Court will address Defendants' claim that Plaintiffs did not present any evidence of a nuisance *per se*, which requires a showing that a condition is "dangerous at all times and under all circumstances to life, health, or property." *Suddeth v. Knight*, 280 S.C. 540, 545, 314 S.E.2d 11, 14 (Ct. App. 1984).

Defendants rely on a list of cases based on "mere fears of the plaintiff" to argue that Plaintiffs' cause of action for nuisance *per se* was not supported by the evidence. However, Plaintiffs presented sufficient evidence to support the jury's verdict through several witnesses. Mr. and Mrs. Click, their expert witness David Hall, and witnesses Chris Danner and Chris Eleazer all testified about existing damage since the excavation. Plaintiffs presented photographic evidence of the changes in the condition of the driveway, the gravel turn-around area, and the back building. There was evidence of new and extended cracks in the floor, the floor becoming uneven, and movement of the cement block exterior wall. Also, evidence was presented that the ground outside (referred to as the "grassy area") had dropped over time since the excavation. Photographic evidence also showed the extreme angle of the cuts into the embankment and the subsequent erosion of the embankment.

Next, Defendants claim "No evidence was presented that the excavation performed on the Thomas Property is dangerous 'at all times and under all circumstances'" citing *Suddeth.* The *Suddeth* case held that the question of whether or not a nuisance has become dangerous to property is for the jury. *Id.* 280 S.C. at 545-546, 314 S.E.2d at 15. In *Suddeth*, the defendant

constructed a ditch and drainage system causing surface waters to collect and cast in concentrated form upon Suddeth's land and blocked a water course thereby causing the ponding of water on Suddeth's property. Relying upon *Deason v. Southern Railroad Company*, 142 S.C. 328, 140 S.E. 575 (1927) the Court of Appeals held that the question of whether or not the nuisance had become dangerous at all times and under all circumstances to life, health or property was for the jury. If the ponding of water is sufficient to create a question of fact as to a nuisance becoming "dangerous at all times and under all circumstances to life, health, or property," then evidence regarding the result of digging a steep embankment that has endangered the Click's home and business is sufficient to support the verdict.

Plaintiffs presented sufficient evidence for the jury to conclude that the excavation has resulted in the property becoming dangerous "at all times and under all circumstances." Geotechnical testing, obtained by Plaintiffs' expert, David Hall, P.E., was sufficient for the jury to conclude that the excavation in the area towards the top of the Click gravel driveway had an insufficient factor of safety, being at best 1.16, compared to the recommended minimum of 1.5. This industry standard meets the definition of nuisance *per se*. Since Defendants' expert, Paul Miller, did not dispute that Global Stability Analysis as the accepted industry standard, the jury could reasonably conclude that the condition was dangerous to the property at all times and under all circumstances.

Further, the Plaintiffs presented testimony and photographic evidence regarding new and increased cracking in the back building after the excavation, compared to before the excavation, cracking to the outside wall of the building, and the dropping of the outside grassy area. The evidence was sufficient for the jury to find that conditions existed on the Click property that met the definition of nuisance *per se*.

Mr. and Mrs. Click and David Hall testified that the gravel driveway adjacent to where the excavation work was completed has limited the Plaintiffs' access to the back building since the excavation. From this testimony, the jury could conclude that large trucks were no longer able to be safely transported up the driveway and worked on due to the instability of the driveway. The determination of damages may depend, to some extent, on the consideration of contingent events when a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss. *Pope v. First Heritage Communities Inc.* 395 S.C. 404, 434, 717 S.E.2d 765, 781 (Ct. App. 2011). The jury could rely upon David Hall's testimony that he agreed with the decision to limit the use of the back building by no longer working on large vehicles, due to the instability of the driveway. This Court cannot disturb the finding of nuisance *per se*, since the evidence and inferences drawn therefrom support the verdict. Defendants' motions regarding nuisance *per se* are denied.

Defendants Motions as to Negligence

As to the verdict for negligence, Defendants assert several grounds for the basis for JNOV and/or New Trial. First, Defendants argue that Plaintiffs presented no evidence of damages resulting from the excavation work performed on the Thomas Property. Whether Defendants acted negligently in the way the performed the excavation was a question for the jury and there was sufficient evidence to support the jury's finding in this regard.

The Court has found that Plaintiffs presented sufficient evidence for the jury to find erosion at the property and changes in and around the back building caused by the excavation. Mr. Click testified about utilities under the ground that were impacted, requiring repair, and additional maintenance expenses he had incurred since the excavation, and the need to stop doing the repair and body work to large trucks which were unsafe to transport up and down the

gravel driveway. Therefore, the jury's conclusions that the Thomas excavation caused significant damage to Plaintiffs and the verdicts awarding damages for negligence were not without evidentiary support.

Defendants' Motions as to Acquiescence

Defendants next assert that Plaintiffs' claim of acquiescence must fail because Plaintiffs provided no evidence that any owners of the Thomas or Click Properties ever agreed the true boundary line was such that the driveway and turn-around area were on the Click Property.

The Court disagrees. The jury was presented with sufficient evidence to conclude otherwise. Plaintiffs' witnesses who previously owned the Click property, Mark Smith and Bradley Dobson, testified in detail about their use of the gravel driveway and turn-around area, essentially using these areas as though they owned them. Dobson had personal knowledge of this use by his predecessors, the Rameys, as he worked with them in their cabinet shop prior to buying the property in 1996. The conduct of the prior owners, consistent over the years, was sufficient to support the jury's verdict that the assent to a different boundary line has been established.

Testimony that the prior owners of the adjoining Thomas Property - Wallace Merck, Greg Porter, and Jimmy Watkins - did not use these areas, was sufficient for the jury to find acquiescence by the Defendants to the true boundary line:

> [I]f a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interest[s] are affected. His silence is acquiescence and it estops him.

Jordan v. Judy, 413 S.C. 341, 348-349, 776 S.E.2d 96, 101 (Ct. App. 2015) (quoting *McClintic v. Davis*, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955).

There was testimony sufficient for the jury to conclude that silence supported acquiescence. There was testimony that Watkins came once to the Click property, in 2015 when the Clicks were renters, walked around looking at the premises, but was silent about the concrete slab and awnings in the turn-around area. The jury was presented with sufficient evidence to support its conclusion that Watkins acted inconsistently with his rights by remaining silent.

The evidence supports that Watkins' silence in 2015 may have encouraged Mr. Click to purchase the property two years later in 2017. The jury could conclude that the owners' silence over the many years supports its finding that there was acquiescence to the use of the gravel turn-around area and entire upper portion of the driveway. "If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one." *See Gardner v. Mozingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987) quoting *Klapman v. Hook*, 200 S.C. 51, 32 S.E.2d 882 (1945); *Kirkland v. Gross*, 286 S.C. 193, 332 S.E.2d 546 (Ct. App. 1985).

There also was evidence that the turn-around area and the entire gravel driveway were recognized as a result of the topography of the land, were exclusively used by the current and previous owners of the Click Property, and were treated as the boundary by the predecessor owners of the Click and Thomas properties. An acquiescence cause of action is not founded on whether or not prior owners were ignorant about where the boundary was described in a deed or drawn on a plat, but on the consistent course of conduct over time by the predecessor owners as to the boundary.

Finally, there was sufficient evidence for the jury to conclude acquiescence was proven based on the testimony and documentary evidence defining the new boundary. Plaintiffs'

witnesses described their use of the driveway and turn-around area prior to the excavation in August 2018. The 1996 Ramey Boundary Survey (Plaintiff's Trial Exhibit 8) also outlined the area of use that the Rameys had enjoyed and that subsequent owners Dobson, Smith, and Click continued to use for access to the back building. The area, as it presently exists, is documented by David Hall's "S-1" drawing (Plaintiffs' Trial Exhibit 42). The Court concludes there was sufficient evidence presented to the jury to support the verdict of acquiescence.

Defendants Motions as to Prescriptive Easement

Defendants assert that the evidence showed that the prior owners of the Thomas Property gave permission to owners and renters of the Click Property to use the turn-around area. Defendants contend that the evidence showed the use was based on permission, thus defeating the claim for prescriptive easement. However, the Plaintiffs presented sufficient evidence to support the jury's verdict in favor of the Plaintiffs on this cause of action. The Plaintiffs presented testimony of Plaintiffs' predecessor owners and the Clicks that they did not seek or receive permission to use the gravel turn-around area and entire gravel driveway, and therefore these areas were adversely used.

Defendants argued that Plaintiffs did not establish "hostility" in their manner of use. The proper standard is not "hostility," but the use must be open, notorious, continuous, and uninterrupted. "Notorious" generally means that the use is actually known to the owner or is widely known in the neighborhood. *Simmons v. Berkeley Elec. Corp. Inc.*, 419 S.C. 223, 234, 797 S.E.2d 387, 392 (2016). *See Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997). Consistent with the "notorious" use was the testimony of Mr. Click's act of pouring the slab and adding three awnings at different times to the turn-around area, with no objections from Watkins, Porter, or Thomas. Plaintiffs met their burden (by clear and

convincing evidence) that the use was open, notorious, continuous, and uninterrupted. The burden then shifted to Defendants to rebut the presumption. In finding for Plaintiffs, the jury found that Defendants failed to rebut the presumption. *See Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941).

The years of use by Dobson, Smith, and Click are allowed to be "tacked" together in order to satisfy the 20-year requirement. *See Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997); *Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 857 S.E.2d 16 (S.C. App. 2021). "When it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Simmons v. Berkeley Electric Co-op., Inc.*, 419 S.C. 223, 797 S.E.2d 387, 390 (2016). Bradley Dobson's testimony established his ownership and use of the Click property since 1996, 24 years before this lawsuit was filed, and he also had personal knowledge of and testified about the use by the Rameys, his predecessor in title. He testified that his use was without permission and thus adverse to the ownership of the Thomas property. He further testified that he sold the Click property to Mark Smith in 2005. Smith testified his use was also without permission and was adverse; Smith then testified that he sold the property to Mr. Click in 2017 (who titled the property in the name of his business, Click Properties LLC), and he testified that he continued to use the gravel turn-around area and upper part of the gravel driveway in an adverse manner. Therefore, the jury was presented with sufficient evidence to reject Defendants' claim of use based on permission.

Defendants next argue that the Court's evidentiary ruling on admissibility of "alleged interactions and altercations between Mr. Click and Mr. Thomas" was violated during the direct testimony of Plaintiffs' witness, Chris Eleazer. Prior to the start of trial, the Court ruled it would

exclude Plaintiffs' testimony related to Mr. Thomas's use of a knife and expressions of wanting to cut off Mr. Click's head and various threats. The Court allowed testimony concerning Mr. Thomas's intention to dig until Mr. Click's building fell in.

Eleazer was asked about his observations regarding weapons when he was present observing the active excavation work. This question was not improper or covered by the Court's previous ruling because it was not about "alleged interactions and altercations between Mr. Click and Mr. Thomas" as Defendants themselves stated in their Post-Trial Motions. The question was about Eleazer's interactions, not Click's. Further, Defendants did not seek a curative instruction. The request that a new trial should be granted on this basis is denied.

Acquiescence and Prescriptive Easement are not Inconsistent

Defendants assert that the verdicts of acquiescence and prescriptive easement are incompatible. Defendants did not assert that Plaintiffs must elect one over the other, only that the jurors were "confused" and therefore a new trial should be granted. The jury's findings that both acquiescence and prescriptive easement were proven are not inconsistent verdicts. The law of prescriptive easement and acquiescence are not at odds with one another.[1] Although these theories have different effects, they share common elements of proof. Prescriptive easement focuses primarily on the actions of the party seeking to establish the easement. *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169-170 (2015). The only consideration to be given to the actions of the Defendants is whether permission has been given for the use. Plaintiffs and their predecessors in title testified that they had neither requested nor received permission to use the

[1] Other courts have similarly held that the law of adverse possession is not at odds with the law of acquiescence. See *Kipka v Fountain*, 499 N.W.2d 363 (Mich. Ct. App. 1993); *Houston v Mint Group, LLC*, 968 N.W.2d 9 (Mich. Ct. App. 2021). Adverse possession is akin to "adverse easement," or prescriptive easement.

contested area. There was no testimony from the Defendants or their predecessors to the contrary.

Under South Carolina law, property owners may acquiesce to a new property boundary. "A disputed boundary line can be established by acquiescence of the parties." *Kirkland v. Gross*, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct.App.1985). Plaintiffs presented evidence that the property at issue was recognized as a result of the topography of the land. The only testimony is that the owners of both parcels treated the boundary of the property as that created by the slope of the land and the gravel driveway and turn-around area depicted on the 1996 Betty Ramey survey. The element of "mutual agreement" that must be shown to establish acquiescence does not require an explicitly voiced agreement of where on a plat the boundary line is shown. In acquiescence cases, the boundary line in a plat or deed (unless erroneously rendered in such instruments) is going to differ from the boundary acquiesced to over a period of time by mutual conduct. Plaintiffs presented sufficient evidence to allow the jury to conclude that the Defendants' silence and treatment of the now disputed area as part of the Click Property constituted acquiescence. *See Jordan v. Judy*, 413 S.C. 341, 348-349, 776 S.E.2d 96, 101 (Ct. App. 2015).

The jury's finding as to prescriptive easement and acquiescence are therefore consistent and this finding is supported by evidence that over the course of time, the silence of the Defendants and their predecessors and their treatment of the property, constituted acquiescence whether prescriptive easement and acquiescence are inconsistent or not, the practical effect is the same. The jury found that Plaintiffs were entitled to the disputed property, whether by way of prescriptive easement or acquiescence.

Modification of Damages

Plaintiffs presented evidence of damages in the amount of $296,000. The jury returned a verdict in the total amount of $196,000. Therefore, the Court finds there was no overlap of damages or double damages. Expert David Hall, P.E. testified that the driveway is now in a state of imminent failure. He testified that it was a prudent decision for Mr. Click to limit heavier equipment on the driveway and near the edge of the embankment. Mr. Click testified they had to sell their RV because it was no longer safe to keep it, due to the instability caused by the excavated embankment, which was unstable and therefore unsafe. Therefore, the Plaintiffs presented sufficient evidence to support the damages assessed by the jury and the Court finds no basis to disturb the jury's verdict.

Defendants characterize the verdict as being an award of future damages. However, Plaintiffs asked to be compensated for damages that had already occurred: three weeks of loss of business (large vehicles), expenses of special driveway maintenance, septic tank, sewer line and waterline repairs, and loss of fair market value of the back building (total damages sought was approximately $296,000). Therefore, sufficient evidence was presented for the jury to award actual damages based on damages sustained by the Plaintiffs as of the time of trial.

Issuance of Equitable Relief

Plaintiffs brought an action to quiet title and have requested that the Court issue an Order to implement the findings of the jury. The jury found in favor of the Plaintiffs as to acquiescence. I find that the testimony and the documentary evidence presented at trial defined the boundary that was acquiesced to between the properties as the gravel drive and turn around area shown on the 1996 Boundary Survey for Betty M. Ramey (PL Trial Exhibit 8) and, as it presently exists, by David Hall's "S-1" drawing (Plaintiffs' Trial Exhibit 42).

Plaintiffs' testimony confirmed that a significant portion of the turn-around area as depicted on the Ramey Survey was excavated by Defendants and that if the new boundary line were to be located all the way to the westernmost edge of the turn-around area as it was depicted on the Ramey Survey, the result would transfer a portion of Defendants' back parking lot to Plaintiffs. Plaintiffs indicated that they were not seeking that outcome and instead sought what remains of the turnaround.

The Court therefore Orders that the Plaintiffs are entitled to the full extent of the gravel drive and existing portion of the turn around area as shown on the 1996 Ramey Boundary Survey (Plaintiffs' Trial Exhibit 8) and as current location as shown by the overlay on the Survey drawn by Plaintiff's expert, David Hall (Plaintiffs' Trial Exhibit 42). In its Motion, the Plaintiffs assert that they are entitled to a deed from the Defendants covering this Order, but that was not sought in the Complaint, nor does the Court find that to be an appropriate remedy under acquiescence or prescriptive easement.

Abatement of the Continuing Nuisance

Plaintiffs have also moved the Court for an Order requiring Defendants to construct a retaining wall between the two parcels to abate the erosion caused by the Defendants' excavation.[2] When the existence of a nuisance has been established by the verdict of a jury, the party injured is entitled as a matter of right to an injunction to prevent its continuance. *Dill v. Dance Freight Lines*, 247 S.C. 159, 146 S.E.2d 574 (1996).

The jury found in Plaintiffs' favor on nuisance *per se* and awarded damages in the amount of $28,000 in response to the Court's charge that nuisance was "anything which causes hurt, inconvenience or damages to the lands or tenements of another; anything which interferes with the enjoyment of life or property" and that for "for actual damages, you may consider any

[2] Plaintiffs requested this relief in Paragraph 26 of their Complaint.

lost income or expenses caused by the Defendants' actions."

Testimony was presented by Plaintiffs' expert witness, David Hall, that erosion was continuing on the Click property and recommended a concrete retaining wall to abate this erosion. Lay testimony by Mr. and Mrs. Click, Chris Eleazer, and Chris Danner, and photographic evidence was presented that continuing erosion is occurring on the property and there is continuing impact on the building based on enlarged and new cracks and the dropping of the ground in the grassy area beside the building.

In their Motion, the Plaintiffs seek a permanent injunction requiring Defendants to abate the continuing nuisance *per se* by "hiring a qualified civil engineering company and/or other qualified erosion control and retaining wall design and installation company...acceptable to Plaintiffs, at Defendants' expense, to design and install an appropriate erosion control, to include a retaining wall and/or other recommended erosion control methods to prevent ongoing damage to Plaintiffs' property." In its Complaint, the Plaintiffs asserted that "the erosion will continue unless an appropriate retaining wall is erected and seek damages sufficient for the erection of a retaining wall or for an order from this Court that Defendants be required to construct an appropriate retaining wall to mitigate the significant and on-going damage to the Click property." At this juncture, the Court must consider the appropriate remedy in light of the jury's finding for the Plaintiffs on the nuisance *per se* cause of action.

In support of its argument for injunctive relief requiring the Defendants to build a retaining wall, the Plaintiffs cite the Supreme Court's decision in *Dill v. Dance Freight Lines*, 247 S.C. 159 (S.C. Sup Ct 1966). In that case, the Plaintiff obtained a verdict for nuisance and the Court stated that it was well settled that "when the existence of a nuisance has been established by the verdict of a jury, the party injured in entitled as a matter of right to an

injunction to prevent its continuance." *Dill*, at 163 (citing *Threatt v. Brewer Mining Co.*, 49 S.C. 95. In that case, the Plaintiff established a nuisance by the Defendant who in operating his trucking business caused red dust to continuously blanketing plaintiff's property. In *Dill*, the lower Court issued an Order, affirmed by the Supreme Court, that "enjoins the defendant from operating its terminal in such a manner as to continually and frequently cause the dust complained of to be cast upon the property of the Plaintiff. The Defendant is perfectly free to operate its terminal and is, of course, free to devise its own means to prevent damaging the plaintiff in the future." *Dill*, at 165. In *Dill*, the Court issued a "prohibitory" injunction, but it was up to the party to determine how to comply with the Order.

In following the dictates of *Dill*, this Court hereby Orders that Defendants are enjoined to abate the nuisance and that take such action to avoid any further damage to the Plaintiffs' property. As stated in *Dill* at 165, the Defendants are "free to devise [their] own means to prevent damaging the plaintiff in the future." To accomplish this, it may be necessary for the Defendants to construct a retaining wall designed by a civil engineer as proposed by the Plaintiffs, but the Defendants are charged with the task of taking whatever steps necessary to accomplish the abatement of the nuisance and failure to do so will be a violation of the Court's Order.

Thirteenth Juror

Although Defendants failed to raise the 13th Juror Doctrine in their motion, they did address it in oral argument. Under the 13th Juror Doctrine, a trial judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. *Norton v. Norfolk S. Ry. Co.,* 350 S.C. 473, 479, 567 S.E.2d 851, 854 (2002). The Court finds that the verdict is not inconsistent, nor does it reflect confusion. The two-page verdict form was clear and presented without

objection. The jury also had a copy of the Court's charge on the various causes of action and their elements and the burden of proof. Therefore, no warrant for a New Trial under the 13th Juror Doctrine exists and the Motion is respectfully denied.

Issuance of Permanent Injunctions

Finally, Plaintiffs have moved for an Order of the Court keeping in place the Temporary Injunction until all post-trial motions and any appeals are final, and then be made permanent. The Court hereby adopts the previous Order of this Court granting Plaintiffs' Motion for Temporary Injunction and finds that it is appropriate under the findings made therein. (See Order of Judge Perry H. Gravely issued May 8, 2020) Therefore, the Court orders as follows:

1) Defendant[s] shall not construct a fence or obstruction of any kind or take any action which would restrict Plaintiff's use of the gravel drive or turn-around area;

2) Defendant[s] shall not take any action on its property which would damage Plaintiff's property, the building, the gravel drive, or the turn-around area; and

3) Both parties and their respective agents and representatives shall refrain from harassing the other party, their employees and/or customers.

Therefore, the Order of the Court is set forth herein.

IT IS SO ORDERED.

E- signature of Judge Perry H. Gravely to follow

Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc , defendant, et al

Case Number: 2020CP3900266

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755