THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS
The Honorable Doyet A. Early, III

Unpublished Opinion No. 2012-UP-207488 (S.C. Ct. App. Filed February, 13, 2013)

I. Lehr Brisbin,.....Petitioner,

v.

Aiken Electric Cooerpative, Inc., and Gary Stooksbury and Carolina Tree Care Inc., of North America,..... Defendant

To Whom Aiken Electric Cooerpative, Inc., and Gary Stooksbury are Respondents.

APPENDIX

Mark J. Devine Esquire
The Law Office of Mark J. Devine
PO Box 21283
Charleston, SC 29413
(843) 789-4586
Attorney for Petitioner

Other Counsel of Record:
Pope D. Johnson, Esquire
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Columbia, S.C. 29211

Donnell Jennings, Esq.
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Columbia, SC 29202

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Case No: 10-CP-02-02981

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
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I. LEHR BRISBIN,)
)
PLAINTIFF)
)
vs.)
)
AIKEN ELECTRIC)
COOPERATIVE, INC.,)
&)
GARY L. STOOKSBURY)
&)
CAROLINA TREE CARE INC.,)
OF NORTH AMERICA)
)
DEFENDANTS)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 10-CP-02-02981

AMMENDED SUMMONS FOR RELIEF

(AMENDED COMPLAINT SERVED)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Lee Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 13th day of January, 2011.
C.C.P.&G.S. Aiken County, S.C.
Deputy Clerk

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscriber at his office at P. O. Box 2008, Aiken, South Carolina 29802 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief requested to include judgment by default.

LAW OFFICES OF DEVINE & HOOVER, LLC

Attorney for Plaintiff
Mark J. Devine
PO Box 2008, Aiken, SC 29802
Tel: 803 648 3900

January 5th, 2011
Aiken, South Carolina

FILED 1/6 2011
Lee Godard
C.C.P.&G.S. 2:30PM
Deputy Clerk

(2)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CASE NO: 10-CP-02-02981
	)	
	)	
I. LEHR BRISBIN,	)	
	)	
PLAINTIFF	)	AMENDED COMPLAINT
	)	
vs.	)	(JURY TRIAL DEMANDED)
	)	
AIKEN ELECTRIC	)	
COOPERATIVE, INC,	)	
&	)	
GARY L. STOOKSBURY	)	
&	)	
CAROLINA TREE CARE INC,.	)	
OF NORTH AMERICA	)	
	)	
DEFENDANTS	)	
	)	

THE PLAINTIFF RESPECTFULLY SHOWS THAT:

1. He is a resident of Aiken County, South Carolina.

2. That the Defendant, Aiken Electric Cooperative, Inc., (AEC) is an entity licensed by the state of South Carolina with offices located in Aiken County.

3. That the Defendant, Gary L. Stooksbury (Stooksbury) is the Chief Executive Officer for the Defendant, Aiken Electric Cooperative, Inc., and is a resident of Aiken County, South Carolina.

4. That the Defendant, Carolina Tree Care, Inc. of North America, (CTC) is an entity licensed by the state of South Carolina with offices located in Concord, North Carolina.

5. That the Plaintiff is the owner of certain lands located in Aiken County, South Carolina and being more particularly described as follows:

FILED 1/6 2011
Lisa Ledford
C.C.C.P.&G.S.
2:20PM
Deputy Clerk

(3)

ALL that certain piece, parcel or lot of land, situate, lying, and being in the County of Aiken, State of South Carolina, in the Southeastern Section of New Ellenton, containing 3.92 acres, more or less, located and bounded and measuring as follows: NORTH by other property of Brisbin, 400 feet; EAST by Pineview Avenue, 388.5 feet; SOUTH by property of Fry, 423 feet and WEST by other property of Grantors, 441.4 feet. Said land being more fully described on a plat prepared for Dr. I. L. Brisbin by Don W. Taylor, R.L.S., dated March 10, 1976; and

ALL that certain piece, parcel or lot of land, containing 3.86 acres, more or less, situate, lying and being Southeast of the Town of New Ellenton in Aiken County, South Carolina, and being shown and designated on a plat made for I.L. Brisbin, Jr. By Don W. Taylor, R.L.S., dated September 10, 1970, and recorded in Misc. Book 169 at Page 61, Records of Aiken County. Said lot is bounded and measures according to said plat as follows: on the NORTH by lands of K.E. Merriett, formerly Mixons, and measuring thereon 800 feet; On the EAST by Long Street and measuring thereon 210 feet; on the SOUTH by lands of I. L. Brisbin, Jr., formerly Mixons, and measuring thereon 800 feet, and on the WEST by the right of way of South Carolina Highway # 19 and measuring thereon 210 feet. Being a portion of the premises conveyed to L. C. Mixon, et al, by deed of Joseph Eways recorded in Title book 379 at Page 503, Records of Aiken County; and

ALL that certain piece, parcel or tract of land, containing ten (10) acres, more or less, situate, lying and being Southeast of the Town of New Ellenton in Aiken County, South Carolina, and being more fully shown on a plat made for I. L. Brisbin, Jr. By Don W. Taylor, R.L.S., dated April 11, 1970, and recorded in Misc. Book 164 at Page

285, Records of Aiken County. Said tract is bounded and measures according to said plat as follows: On the NORTH by lands, now or formerly of Mixon, and measuring thereon 800 feet; On the EAST by Long Street and measuring thereon 544.5 feet; on the SOUTH by lands now or formerly of Mixon and measuring thereon 800 feet and on the WEST by right of way of S.C. Highway # 19 and measuring thereon 544.5 feet. Being a portion of the lands conveyed to L.C. Mixon, et al, by deed of Joseph Eways recorded in Title Book 379 at page 503, records of Aiken County, South Carolina.

6. That the Defendant-(AEC) holds an easement across certain portions of the Plaintiff's land.

7. That the easement permits the Defendant (AEC) to run power lines and to place poles upon the Plaintiff's land and to clear such vegetation as might obstruct or interfere with the lines and poles.

FIRST CAUSE OF ACTION

(NEGLIGENCE)

8. Paragraphs 1 through 7 are realleged.

9. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment and duties, negligently, maliciously, and recklessly came upon the Plaintiff's land and negligently and recklessly destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

10. That the destruction as aforesaid clearly exceeded the scope of the easement.

11. That as a proximate result of the acts of negligence, maliciousness and recklessness as aforesaid, the Plaintiff has suffered actual damages in that:

A. Trees, plants, property and scientific research projects belonging to the Plaintiff have been destroyed.

B. Scientific research projects have been damaged and destroyed.

C. The Plaintiff has suffered inconvenience.

D. The lands belonging to the Plaintiff have been damaged and as a result, the land has decreased in value.

12. That prior to the destructive acts that were carried out, the Defendants had been made aware of the nature of the Plaintiff's property and its use.

13. That the Plaintiff is entitled to a judgment against the Defendant's that this Court and Jury finds just for actual and punitive damages.

SECOND CAUSE OF ACTION

(TRESPASS TO LAND)

14. Paragraphs 1 through 13 are realleged.

15. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment, intentionally came upon the Plaintiff's land and negligently, maliciously, and recklessly destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

16. That the destruction as aforesaid clearly exceeded the scope of the easement and constituted an intentional trespass to the Plaintiff's land.

17. That prior to the destructive acts that were carried out, the Defendants had been made aware of the nature of the Plaintiff's property and its use and the scope of the easement.

18. That the Defendant's intentional trespass to the Plaintiff's land is an invasion of the Plaintiff's right to use and enjoy his land.

19. That the Defendant's should be found strictly liable for the intentional trespass to the Plaintiff's land and the Plaintiff is entitled to a judgment against the Defendant's that this Court and Jury finds just for actual and punitive damages.

THIRD CAUSE OF ACTION

(INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE)

20. Paragraphs 1 through 19 are realleged.

21. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment and duties, negligently, maliciously, and recklessly came upon the Plaintiff's land and intentionally, negligently, and recklessly destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

22. That the destruction as aforesaid clearly exceeded the scope of the easement.

23. That as a proximate result of the acts of intentional trespass, negligence, maliciousness and recklessness as aforesaid, the Plaintiff has suffered actual damages in that:

A. Trees, plants, property and scientific research projects belonging to the Plaintiff have been destroyed.

B. Scientific research projects have been damaged and destroyed.

C. The Plaintiff has suffered inconvenience.

D. The lands belonging to the Plaintiff have been damaged and as a result, the land has decreased in value and the land cannot be used for economic purposes such as but not limited to farming.

24. That prior to the destructive acts that were carried out, the Defendants had been made aware of the nature of the Plaintiff's property and its use.

25. That the Plaintiff is entitled to a judgment against the Defendant's that this Court and Jury finds just for actual and punitive damages.

FOURTH CAUSE OF ACTION

(BREACH OF CONTRACT)

26. Paragraphs 1 through 25 are realleged.

27. The Plaintiff and Defendant (AEC) entered into an agreement whereby the Plaintiff was asked to sign an Aiken Membership Card which according to the Defendant (AEC) was evidence that the Plaintiff agreed to the terms and scope of the Defendant's (AEC) easement.

28. That the Plaintiff was never shown the Defendant's (AEC) terms as it relates to the easement.

29. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment and duties, negligently, maliciously, and recklessly came upon the Plaintiff's land and intentionally, negligently, and recklessly destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

30. The actions aforesaid constitute a breach of the agreement between the Plaintiff and the Defendant (AEC) and the Plaintiff is entitled to have the Defendant (AEC) declared to be in breach of the contract and agreement made with the Plaintiff.

31. That because of the Defendant's (AEC) breach of contract and agreement with the Plaintiff, the Defendant (AEC) and the Defendant's (AEC) agents and servants should only enter onto his property after the Defendant (AEC) consults with him and his attorney(s) in order to establish what activity the Defendant (AEC) and the Defendant's (AEC) agents and servants would undertake on his land.

FIFTH CAUSE OF ACTION

(EQUITABLE RESCISSION)

32. Paragraphs 1 through 31 are realleged

33. The Plaintiff and Defendant (AEC) entered into an agreement whereby the Plaintiff was asked to sign an Aiken Membership Card which according to the Defendant (AEC) was evidence that the Plaintiff agreed to the terms and scope of the Defendant's easement.

34. That the Plaintiff was never shown the Defendant's (AEC) terms as it relates to the easement.

35. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment and duties, intentionally, negligently, maliciously, and recklessly came upon the Plaintiff's land and intentionally, negligently, maliciously, and recklessly destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

36. The actions aforesaid constitute a substantial and fundamental breach of the contract and agreement between the Plaintiff and the Defendant (AEC) and the Plaintiff is entitled to have the Defendant (AEC) declared to be in breach of the contract and agreement made with the Plaintiff.

37. That because of the Defendant's (AEC) breach of contract and agreement with the Plaintiff, the contact and agreement should be abrogated and a new agreement and contract equitably made to reflect the following:

A. That the Defendant (AEC) will agree to never again enter upon the Plaintiff's property located on Highway 19, south of New Ellenton, without first consulting with him and his attorney(s) in order to establish in writing exactly what kind of activity the Defendant's (AEC) and the Defendant's (AEC) agents and servants would undertake on his land.

B. Such activity would only involve the clearing and removal of those parts of trees that are demonstrably interfering or might soon come to interfere with the Defendant's (AEC) power lines, and/or limit the ability of the Defendant (AEC) and the Defendant's (AEC) agents and servants to the power line in the case of an emergency

C. That the Defendant's (AEC) and the Defendant's (AEC) agents and servants treatment of vegetation and other environmental resources under the power line crossing the Plaintiff's land would confirm to the Defendant's (AEC) already established and published guidelines for wildlife food resources.

SIXTH CAUSE OF ACTION

(INJUNCTION)

38. Paragraphs 1 through 37 are realleged.

39. That the Defendant (AEC) and it's agents (CTC) and servants (CTC) who were acting in the scope of their employment came upon the Plaintiff's land and destroyed trees, plants, scientific research projects, vegetation and property belonging to the Plaintiff.

40. That the destruction as aforesaid clearly exceeded the scope of the easement. The actions of the Defendant's was selectively discriminatory and not in the bounds of reasonableness.

41. That prior to the destructive acts that were carried out, the Defendants had been made aware of the nature of the Plaintiff's property and its use.

42. This Court has the inherent power to do what is reasonable and just to the fullest extent possible and therefore should order the Defendant (AEC) and all of the Defendant's (AEC) agents and servants to be temporary and permanently enjoined from coming onto the property, except under the following circumstances:

A. That the Defendant (AEC) will agree to never again enter upon the Plaintiff's property located on Highway 19, south of New Ellenton, without first consulting with him and his attorney(s) in order to establish in writing exactly what kind of activity the Defendant's (AEC) and the Defendant's (AEC) agents and servants would undertake on his land.

B. Such activity would only involve the clearing and removal of those parts of trees that are demonstrably interfering or might soon come to interfere with the Defendant's (AEC) power lines, and/or limit the ability of the Defendant (AEC) and the Defendant's (AEC) agents and servants to the power line in the case of an emergency

C. That the Defendant (AEC) and the Defendant's (AEC) agents and servants treatment of vegetation and other environmental resources under the power line crossing the Plaintiff's land would confirm to the Defendant's (AEC) already established and published guidelines for wildlife food resources.

WHEREFORE the Plaintiff prays:

1. As to the First Cause of Action, for judgment against the Defendant for actual damages and punitive damages in such amount as the Court and jury may find just.

2. As to the Second Cause of Action for judgment against the Defendant for actual damages and punitive damages in such amount as the Court and jury may find just.

3. As to the Third Cause of Action for judgment against the Defendant for actual damages and punitive damages in such amount as the Court and Jury may find just

4. As to the Fourth Cause of action for the Defendant (AEC) to be declared to be in breach of contract and order the relief as set for in this Cause of Action.

5. As to the Fifth Cause of Action, for the Defendant (AEC) to be declared to be in breach of contract and order the equitable relief as set for in this Cause of Action.

6. As to the Sixth Cause of Action, Order the Defendant (AEC) and the Defendant's (AEC) agents and servants to be temporary and permanently restrained as set forth.

7. That the Defendant's to be responsible for all of the Plaintiff's attorney fees and costs associated with this action.

8. That the court grant any other relief that is deemed just and equitable.

LAW OFFICES OF DEVINE & HOOVER, LLC.

BY _____

MARK J. DEVINE
ATTORNEY FOR THE PLAINTIFF
PO BOX 2008
AIKEN, SC 29802
TEL: 803 648 3900

January 5th, 2011
Aiken, South Carolina

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STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF AIKEN)

PERSONALLY appeared before me, the Plaintiff who being first duly sworn, deposes and says that he has read the foregoing Amended Complaint and that the matters contained therein are true of his own knowledge except for those matters based upon information and belief, and as to those he verily believes them to be true.

I. Lehr Brisbin Jr.
I. LEHR BRISBIN

Sworn to and Subscribed before me

this 5th day of January, 2011

Notary Public for South Carolina

My Commission Expires: 11/07/2016.

FILED 1/6 2011
Lisa Sedard
C.C.C.P.&G.S.
2:20PM
Deputy Clerk

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STATE OF SOUTH CAROLINA)) COUNTY OF AIKEN)	IN THE COURT OF COMMON PLEAS
I. Lehr Brisbin,)) Plaintiff,)) vs.)) Aiken Electric Cooperative, Inc.,) Gary L. Stooksbury, and Carolina) Tree Company, Inc.,)) Defendants.))	Civil Action No. 2010-CP-02-02981 **ANSWER TO AMENDED COMPLAINT BY DEFENDANTS AIKEN ELECTRIC COOPERATIVE, INC. AND GARY L. STOOKSBURY**

Defendants Aiken Electric Cooperative, Inc. and Gary L. Stooksbury answer the Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. That these defendants deny each and every allegation of the Amended Complaint not hereinafter specifically admitted.

2. That the allegations of paragraph 1 are admitted upon information and belief.

3. That, in response to the allegations of paragraph 2 and 3, these defendants admit only that Aiken Electric Cooperative, Inc. is a member owned, non-profit electric cooperative with offices located in Aiken County and that Gary L. Stooksbury is the Chief Executive Officer of Aiken Electric Cooperative, Inc. and is a resident of Aiken County, South Carolina.

4. That the allegations of paragraph 4 are denied.

5. That the allegations of paragraph 5 are admitted upon information and belief.

6. That the allegations of paragraphs 6 and 7 are admitted; that further answering, these defendants would show that the easement held by Aiken Electric Cooperative, Inc. is broader that as alleged in paragraph 7 of the Complaint.

7. That the allegations of paragraphs 1 through 6 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 8.

8. That the allegations of paragraphs 9, 10, 11, 12 and 13 are denied.

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9. That the allegations of paragraphs 1 through 8 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 14.

10. That the allegations of paragraphs 15, 16, 17, 18 and 19 are denied.

11. That the allegations of paragraphs 1 through 10 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 20.

12. That the allegations of paragraphs 21, 22, 23, 24 and 25 are denied.

13. That the allegations of paragraphs 1 through 12 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 26.

14. That in response to the allegations of paragraphs 27, these defendants admit only that the plaintiff, like any member, signed an Aiken membership card in order to become a member of Aiken Electric Cooperative, Inc.

15. That the allegations of paragraphs 28, 29, 30 and 31 are denied.

16. That the allegations of paragraphs 1 through 15 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 32.

17. That in response to the allegations of paragraph 33, these defendants admit only that the plaintiff, like all other members, was required to sign an Aiken membership card in order to become a member of Aiken Electric Cooperative, Inc.

18. That the allegations of paragraphs 34, 35, 36 and 37 are denied.

19. That the allegations of paragraphs 1 through 18 hereof are realleged and incorporated herein by reference in response to the allegations of paragraph 38.

20. That the allegations of paragraphs 39, 40, 41 and 42 and the remaining allegations of the Amended Complaint are denied.

FOR A SECOND DEFENSE

21. That the Amended Complaint fails to state facts sufficient to constitute a cause of action against the defendants and therefore should be dismissed.

FOR A THIRD DEFENSE

22. That the Amended Complaint contains no allegations against Defendant Gary L. Stooksbury and no causes of action are asserted against him and the Complaint therefore fails to state facts sufficient to constitute a cause of action against him and should be dismissed.

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FOR A FOURTH DEFENSE

23. Upon information and belief, the plaintiff's Amended Complaint is or may be barred by the three year statute of limitations.

WHEREFORE, having answered, these defendants demand that the Amended Complaint against them be dismissed and for such other and further relief as may be just and proper.

Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211-1209
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for Defendants Aiken Electric Cooperative, Inc. and Gary L. Stooksbury

Columbia, South Carolina
January 24, 2011

#3

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
I. Lehr Brisbin,	)	Civil Action No. 2010-CP-02-02981
Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Aiken Electric Cooperative, Inc., Gary L. Stooksbury, and Carolina Tree Company, Inc.,	)	
Defendants.	)	

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Mark J. Devine, attorney for the Plaintiff, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 25th day of January, 2011.

COUNSEL SERVED:
Mark J. Devine, Esquire
Law Offices of Devine & Hoover, LLC
P.O. Box 2008
Aiken, SC 29802

PLEADINGS:
Answer to Amended Complaint by Defendants Aiken Electric Cooperative, Inc. and Gary L. Stooksbury

Sherry W. Wise

Sherry W. Wise

(6)

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

I. LEHR BRISBIN,)

PLAINTIFF)

vs.)

AIKEN ELECTRIC)
COOPERATIVE, INC,)
&)
GARY L. STOOKSBURY)
&)
CAROLINA TREE CARE INC.,)
OF NORTH AMERICA)

DEFENDANTS)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 10-CP-02-02981

REPLY TO ANSWER TO AMENDED COMPLAINT

The Plaintiff, I. Lehr Brisbin, respectfully shows by way of Reply:

1. Except as is hereinafter admitted, qualified or explained, the Plaintiff denies each and every allegation of the Defendant's Answer to the Amended Complaint.

AS TO THE FIRST, SECOND, THIRD and FOURTH DEFENSES

2. As to paragraphs 1 through 23 of the Defendant's Answer, Paragraphs 1 through 42 of the Amended Complaint are realleged.

WHEREFORE, the Plaintiff demands that the defenses in the Defendant's Answer be dismissed and that the Plaintiff be awarded judgment as prayed for in the Amended Complaint.

LAW OFFICES OF DEVINE & HOOVER, LLC

Attorney for Plaintiff
Mark J. Devine
PO Box 2008, Aiken, SC 29802
Tel: 803 648 3900

January 26th, 2011

Aiken, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
I. Lehr Brisbin,)	Civil Action Number: 2010-CP-02-02981
)	
Plaintiff,)	**AMENDED**
)	**ANSWER OF CAROLINA TREE CARE**
vs.)	**TO THE AMENDED COMPLAINT**
)	**(JURY TRIAL DEMANDED)**
)	
Aiken Electric Cooperative, Inc.,)	
Gary L. Stooksbury and)	
Carolina Tree Care, Inc. of North)	
America,)	
)	
Defendants.)	
)	

Defendant Carolina Tree Care, Inc. of North America ("Defendant"), answering the Amended Complaint of the Plaintiff, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

1. It denies each and every allegation of the Amended Complaint not hereinafter specifically admitted, explained or qualified below.

2. It demands a jury trial as to all issues of fact.

3. It admits, upon current information and belief, the allegations contained in paragraph 1 of the Amended Complaint.

4. It admits, upon current information and belief, the allegations contained in paragraph 2 of the Amended Complaint.

5. It admits, upon current information and belief, the allegations contained in paragraph 3 of the Amended Complaint.

6. Regarding the allegations contained in paragraph 4 of the Amended Complaint, it only admits that it is a corporation organized and existing under the laws of the State of North Carolina and that is does business in the State of South Carolina.

6. It does not have sufficient current information so as to form a belief concerning the allegations contained in paragraph 5 of the Amended Complaint and, on that basis, denies the same.

7. It does not have sufficient current information so as to form a belief concerning the allegations contained in paragraph 6 of the Amended Complaint and, on that basis, denies the same.

8. It does not have sufficient current information so as to form a belief concerning the allegations contained in paragraph 7 of the Amended Complaint and, on that basis, denies the same.

9. It denies as stated the allegations contained in paragraph 8 of the Amended Complaint.

10. It denies the allegations contained in paragraph 9 of the Amended Complaint.

11. It denies the allegations contained in paragraph 10 of the Amended Complaint.

12. It denies the allegations contained in paragraph 9 of the Amended Complaint.

13. It denies the allegations contained in paragraph 10 of the Amended Complaint.

14. It denies the allegations contained in paragraph 11 of the Amended Complaint, including all subparts.

15. It denies the allegations contained in paragraph 12 of the Amended Complaint.

16. It denies the allegations contained in paragraph 13 of the Amended Complaint.

17. It denies the allegations contained in paragraph 14 of the Amended Complaint.

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18. It denies the allegations contained in paragraph 15 of the Amended Complaint.

19. It denies the allegations contained in paragraph 16 of the Amended Complaint.

20. It denies the allegations contained in paragraph 17 of the Amended Complaint.

21. It denies the allegations contained in paragraph 18 of the Amended Complaint.

22. It denies the allegations contained in paragraph 17 of the Amended Complaint.

23. It denies the allegations contained in paragraph 18 of the Amended Complaint.

24. It denies the allegations contained in paragraph 19 of the Amended Complaint.

25. It denies the allegations contained in paragraph 20 of the Amended Complaint.

26. It denies the allegations contained in paragraph 21 of the Amended Complaint.

27. It denies the allegations contained in paragraph 22 of the Amended Complaint.

28. It denies the allegations contained in paragraph 23 of the Amended Complaint, including all subparts.

29. It denies the allegations contained in paragraph 24 of the Amended Complaint.

30. It denies the allegations contained in paragraph 25 of the Amended Complaint.

31. It denies the allegations contained in paragraph 26 of the Amended Complaint.

32. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 27 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

33. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 28 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

34. It denies the allegations contained in paragraph 29 of the Amended Complaint.

35. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 30 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

36. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 31 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

37. It denies the allegations contained in paragraph 32 of the Amended Complaint.

38. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 33 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

39. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 34 of the Amended Complaint that are directed at another defendant and, on that basis, denies the same.

40. It denies the allegations contained in paragraph 35 of the Amended Complaint.

41. It denies the allegations contained in paragraph 36 of the Amended Complaint.

42. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 37 of the Amended Complaint, including each subpart, which are directed at another defendant and, on that basis, denies the same.

43. It denies the allegations contained in paragraph 38 of the Amended Complaint.

44. It denies the allegations contained in paragraph 39 of the Amended Complaint.

45. It denies the allegations contained in paragraph 40 of the Amended Complaint.

46. It denies the allegations contained in paragraph 41 of the Amended Complaint.

47. It does not have sufficient current information so as to form a belief regarding the allegations contained in paragraph 42 of the Amended Complaint, including each subpart, which are directed at another defendant and, on that basis, denies the same.

48. It denies Plaintiff is entitled to the relief sought in the prayer for relief.

FOR A SECOND DEFENSE

49. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SECOND DEFENSE THERETO, Defendant alleges the Amended Complaint fails in whole or in part to state facts sufficient to constitute a cause of action and, therefore, this action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Comparative Negligence)

50. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A THIRD DEFENSE THERETO, Defendant would further state any injuries or damages sustained by the Plaintiff were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness ("negligence") of Plaintiff, combining, concurring and contributing with the negligence of this Defendant, if any, without which contributory negligence, the Plaintiff's alleged injuries and damages would not have been incurred or sustained. Should the negligence of Plaintiff be determined to be greater than that of this Defendant, if any, Plaintiff is entitled to no recovery. Should the negligence of Plaintiff be determined to be not greater than that of this Defendant, if any, Plaintiff's recovery is to be reduced by the percentage of Plaintiff's fault.

FOR A FOURTH DEFENSE

51. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FOURTH DEFENSE THERETO, Defendant submits the injuries and damages for which

Plaintiff seeks recovery were due to and proximately caused by the intervening negligence, recklessness, willfulness, wantonness, and fault of a party or parties other than this Defendant. Such intervening negligence, recklessness, willfulness, wantonness, and fault were the sole cause of the injuries and damages for which Plaintiff seeks recovery and, therefore, Plaintiff may not recover against this Defendant.

FOR A FIFTH DEFENSE

52. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A FIFTH DEFENSE THERETO, Defendant alleges the injuries and damages for which Plaintiff seeks recovery were due to and proximately caused by the sole negligence, recklessness, willfulness, wantonness, and fault of third parties for whom Defendant is not liable. Therefore, the acts or fault of third parties are the real, efficient and proximate cause of the injuries for which Plaintiff seeks recovery, and, therefore, Plaintiff cannot recover against this Defendant.

FOR A SIXTH DEFENSE

53. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SIXTH DEFENSE THERETO, Defendant submits it may be entitled to a setoff or credit for any amount paid to Plaintiff by any third party as compensation for the injuries and damages for which Plaintiff seeks recovery.

FOR A SEVENTH DEFENSE

54. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A SEVENTH DEFENSE THERETO, Defendant denies Plaintiff's claim for punitive damages. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

(a) The judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;

(d) The juror's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government.

FOR AN EIGHTH DEFENSE

55. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN EIGHTH DEFENSE THERETO, an award of punitive damages is prayed for in the Amended Complaint. Defendant contends that there is not evidence sufficient to create a jury issue on punitive damages as to this Defendant. Defendant also contends that any award of punitive damages against it in this case would be unconstitutional, and the statutes allegedly authorizing punitive damages are unconstitutional on their face and as applied in this case as it would violate the equal protection, due process clause and excessive fines of the United States Constitution

(U.S. Const. Amends. V, VIII, and XIV) and Article I, Section 3 of the South Carolina Constitution, for the following reasons, among others:

a. The statutes, and the court decisions interpreting the statutes, fail to notify individuals of the nature of the offense for which they may be liable for punitive damages and they fail to limit the award of punitive damages to the degree of reprehensibility of the Defendant's misconduct; the disparity between the harm (or potential harm) suffered by the Plaintiff and the punitive damages award; and the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

b. The statutes, and the court decisions interpreting the statutes, fail to inform judges and juries of the nature of the offenses for which punitive damages can be awarded.

c. The statutes, and the court decisions interpreting the statutes, fail to provide any constitutional standard or means of calculating the amount of punitive damages to be awarded.

d. The statutes, and the court decisions interpreting the statutes, allow persons to repeatedly be put in jeopardy of paying for the same offense; *See State Farm Mutual Automobile Insurance Co. v. Campbell, et al.*, 123 S. Ct. 1513, 2003 U.S. Lexis 2713, 1523 (2003) ("Punishment on these bases creates the possibility of multiple punitive damages awards for the same conduct.").

e. To the extent the award of punitive damages are criminal or quasi-criminal in nature, they are not awarded upon proof beyond a reasonable doubt, contrary to due process of law; *State Farm Mutual Automobile Insurance Co. v. Campbell, et al.*, 123 U.S. at 1526 ("Great care must be taken to avoid use of the civil process to assess criminal penalties that can be

imposed only after the heightened protections of a criminal trial have been observed, including, of course, its higher standards of proof.").

f. The statutes, and the court decisions interpreting the statutes, permit the award of excessive punitive damages without relationship to the public safety, health or welfare said to be served by punitive damages. *State Farm Mutual Automobile Insurance Co. v. Campbell, et al.*, 2003 U.S. LEXIS 2713, 123 U.S. 1513 at 1519, 1520 ("The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.").

g. To the extent the trier of fact is permitted to consider the Defendant's net worth, wealth or financial condition in awarding punitive damages or in calculating such an award, punitive damages awards violate the due process and equal protection clauses of the United States and South Carolina Constitutions. *State Farm Mut. Auto. Ins. Co. v. Inez Preece Campbell*, 2003 U.S. LEXIS 2713, 123 S. Ct. 1513, at 1525 (2003) ("The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award."); *State Farm Mut. Auto. Ins. Co. v. Inez Preece Campbell*, 123 S. Ct. at 1520, quoting *Honda Motor Co. v. Oberg*, 512 US 415 at 432 (1994) ("We have admonished that 'punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences.'").

h. The statutes, and the court decisions interpreting the statutes, fail to place a limit on the amount of punitive damages to be awarded.

i. The statutes, and the court decisions interpreting the statutes, fail to provide adequate post-verdict processes and standards for review by the trial court and also fail to provide adequate appellate review procedures so as to adequately protect due process rights; *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 121 S. Ct. 1678 (2001).

j. The statutes, and the court decisions interpreting the statutes, permit the award of punitive damages without reasonable relationship to the civil or criminal penalties that could be imposed for comparable misconduct in other cases.

k. The statutes, and the court decisions interpreting the statutes, fail to limit the award of punitive damages to criminal or intentional behavior.

l. The statutes, and the court decisions interpreting the statutes, fail to limit the award of punitive damages to what is reasonably required to vindicate this State's legitimate interests in punishment and deterrence for conduct having an impact on the citizens of South Carolina; *See State Farm Mutual Automobile Insurance Co. v. Campbell, et al.*, 123 S. Ct. 1513, 2003 U.S. Lexis 2713, 1522 (2003) (holding that as a general rule, a state does not have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 572 (1996) (stating "a state may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' . . . conduct in other States"); *White v. Ford Motor Company, et al.*, 312 F.3d 998, 1020 (9th Cir. 2002) (holding that extraterritorial conduct is admissible for its bearing on degree of reprehensibility, but that the jury must be limited to punitive damages reasonably required to vindicate that state's legitimate interests in punishment and deterrence, if any, and are prohibited from imposing punitive damages to protect people or punish harm outside of the state); *Geressy v. Digital Equip. Corp.*, 950 F. Supp. 519, 521-22

(E.D. N.Y. 1997) (noting that punitive damages are limited by "principle of our federal system that state legislation, state policy, and judicial development of state law can only be directed at activity within the state.").

m. The statutes, and the court decisions interpreting the statutes, fail to ensure the award of punitive damages is both reasonable and proportional to the amount of harm to the Plaintiff and to the general damages recovered. *See, State Farm Mutual Automobile Insurance Co. v. Campbell, et al.*, 123 S. Ct. 1513, 2003 U.S. Lexis 2713, 32 (2003) (stating that few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process).

FOR A NINTH DEFENSE

56. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A NINTH DEFENSE THERETO, Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage as alleged in the Amended Complaint, and gives notice of its intent to assert any further affirmative defenses that its information gathering process may indicate is supported by fact and law. These defenses may include, but are not limited to, a defense that any applicable statute, contract, release, covenant, and the doctrine of laches bar the action in whole or in part. Defendant thus reserves the right to amend this Answer and assert such defenses.

FOR A TENTH DEFENSE

57. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS A TENTH DEFENSE THERETO, Defendant pleads the affirmative defense of release. See Exhibit A

attached hereto.

FOR AN ELEVENTH DEFENSE

57. FURTHER ANSWERING THE AMENDED COMPLAINT AND AS AN ELEVENTH DEFENSE THERETO, Defendant, upon current information and belief, asserts that the claims asserted in the Amended Complaint are barred by the applicable statute of limitations.

WHEREFORE, having fully answered, Defendant prays the herein Amended Complaint be dismissed with costs, attorney's fees and for such other and further relief as this Court deems just and proper.

TURNER PADGET GRAHAM & LANEY, PA

By: _____

Donnell G. Jennings
1901 Main Street, 17th Floor
Post Office Box 1473
Columbia, South Carolina 29202
(803) 227-4215
djennings@turnerpadget.com

ATTORNEYS FOR DEFENDANT CAROLINA TREE CARE, INC. OF NORTH AMERICA

Columbia, South Carolina
March 9, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
I. Lehr Brisbin,	)	Civil Action Number: 2010-CP-02-02981
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
	)	
Aiken Electric Cooperative, Inc.,	)	
Gary L. Stooksbury and	)	
Carolina Tree Care, Inc. of North America,	)	
	)	
Defendants.	)	

I, Lucy C. Sipes, an employee of the Law Firm of Turner, Padget, Graham & Laney, P.A., do hereby certify that one copy of the foregoing **Amended Answer of Carolina Tree Care to the Amended Complaint** was duly served upon counsel of record by depositing a copy of same in the United States Mail at Columbia, South Carolina, on the **10th day of March, 2011**, with first class postage properly affixed and addressed as follows:

Mark J. Devine, Esquire
P.O. Box 2008
Aiken, SC 29802

Pope D. Johnson, Esquire
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211-1209

Lucy C. Sipes

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

I. LEHR BRISBIN,)

PLAINTIFF)

vs.)

AIKEN ELECTRIC)
COOPERATIVE, INC,)
&)
GARY L. STOOKSBURY)
&)
CAROLINA TREE CARE INC.,)
OF NORTH AMERICA)

DEFENDANTS)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 10-CP-02-02981

REPLY TO ANSWER TO AMENDED COMPLAINT

The Plaintiff, I. Lehr Brisbin, respectfully shows by way of Reply to the Defendant's (Carolina Tree Care) Answer to the Amended Complaint:

1. Except as is hereinafter admitted, qualified or explained, the Plaintiff denies each and every allegation of the Defendant's Answer to the Amended Complaint.

AS TO THE FIRST, SECOND, THIRD and FOURTH DEFENSES

2. As to paragraphs 1 through 56 of the Defendant's Answer, Paragraphs 1 through 42 of the Amended Complaint are realleged.

WHEREFORE, the Plaintiff demands that the defenses in the Defendant's Answer be dismissed and that the Plaintiff be awarded judgment as prayed for in the Amended Complaint.

LAW OFFICES OF DEVINE & HOOVER, LLC

Attorney for Plaintiff
Mark J. Devine
PO Box 2008, Aiken, SC 29802
Tel: 803 648 3900

March 17th, 2011

Aiken, South Carolina

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STATE OF SOUTH CAROLINA)) COUNTY OF AIKEN)	IN THE COURT OF COMMON PLEAS
I. Lehr Brisbin,)) Plaintiff,)) vs.)) Aiken Electric Cooperative, Inc.,) Gary L. Stooksbury, and Carolina) Tree Company, Inc.,)) Defendants.))	Civil Action No. 2010-CP-02-02981 **DEFENDANTS AIKEN ELECTRIC COOPERATIVE, INC. AND GARY L. STOOKSBURY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: THE PLAINTIFF and his attorney, MARK J. DEVINE

YOU WILL PLEASE TAKE NOTICE that Defendants Aiken Electric Cooperative, Inc. and Gary L. Stooksbury hereby move for summary judgment upon the grounds that the Complaint fails to state facts sufficient to constitute a cause of action against these defendants and these defendants are entitled to judgment as a matter of law. The Affidavits of Dan Garman and Bryan Boatwright are submitted in support of this motion.

Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211-1209
803-799-9791
803-253-6084 (fax)
pdjohnson@johnsonbarnette.com
Attorney for Defendants Aiken Electric Cooperative, Inc. and Gary L. Stooksbury

Columbia, South Carolina
March 8, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

CASE NO: 2010-CP-02-02981

I. Lehr Birsbin,

PLAINTIFF,

vs.

PLAINTIFF'S RESPONSE TO DEFENDANT AIKEN ELECTRIC COOPERTAIVE'S MOTION FOR SUMMARY JUDGMENT

Aiken Electric Cooperative, Inc., Gary L. Stooksbury, and Carolina Tree Company, Inc.

DEFENDANT.

The Plaintiff through his undersigned counsel submits the attached affidavits and exhibits to support his contention that the Defendant's request for summary judgment be denied.

ATTORNEY FOR THE PLAINTIFF

Mark J. Devine
Post Office Box 2008
Aiken, South Carolina 29802

October 17th, 2011
Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 18 2011 7:45

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Anita Knowles
Deputy Clerk

37

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
)
I. LEHR BRISBIN,)
)
PLAINTIFF)
)
vs.)
)
AIKEN ELECTRIC)
COOPERATIVE, INC,)
&)
GARY L. STOOKSBURY)
&)
CAROLINA TREE CARE INC.,)
OF NORTH AMERICA)
)
DEFENDANTS)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 10-CP-02-02981

AFFIDAVIT OF
I LEHR BRISBIN

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 18 2011

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.

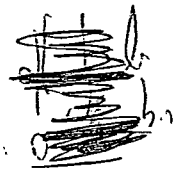
Anita Knowlin
Deputy Clerk

PERSONALLY APPEARED BEFORE ME, I. Lehr. Brisbin, who being duly sworn,

deposes and says:

1. In December 2007 personnel of the Aiken Electric Cooperative (AEC) and their contractors entered my property located on the east side of South Carolina Highway 19, south of the town of New Ellenton, for the purpose of maintaining their claimed easement beneath a power line running along the western boundary of my property, along the east side of Highway 19. This entry was similar to that undertaken by the AEC on some undetermined date in August, 1981 and again in September, 2000. Legal action taken by me in 1981-1982 resulted in extensive discussions between me and AEC personnel and the eventual payment to me of a cash settlement of my claim against the AEC for compensation for what I claimed and documented to be excessive and unnecessary vegetation/habitat destruction under this same power line.

2. In the year 2000, as a result of the discussions and settlement agreed upon in 1981-1982 (see above), power line maintenance activities were now preceded by discussions between myself and AEC personnel, culminating in a meeting on September 25, 2000, at the AEC headquarters offices. This meeting was between myself and a number of AEC staff, particularly including two individuals now involved in this present (2010-2011) civil action, namely Bryan Boatwright and Gary Stooksbury. At this meeting it was agreed that, as I requested during 1981-982, power line maintenance activities on my property would consist only of the topping and hand-pruning/ "side limbing" of any trees and/or branches growing within five feet of the actual power lines



or utility poles, and/or which otherwise posed a danger to the wires as a result of the potential to fall or be blown into these wires during a storm. It was further agreed at this meeting that no emergent woody growth and/or other ground-cover vegetation under the power line would be damaged or removed unless it could reasonably be expected to pose a barrier to the entry and free-movement of AEC vehicles under the power line in the event of an electrical maintenance emergency.

3. Consequentially, all power line maintenance activities conducted on my property in 2000 were performed successfully without any vehicular access to my property itself, and a faulty power pole on my property was in fact even changed-out from outside my property fence, using power equipment and vehicles parked outside of my boundary fence, along the shoulder of Highway 19. The only access to my property during all of these 2000 right-of-way maintenance and power-pole changing activities were by individuals working as tree-climbers (performing limb-pruning) and/or ground crew supporting the pole changing. The absence of heavy vehicular access to the habitat beneath this power line was of critical importance because of the potential of such vehicles to negatively impact research being conducted in this habitat. This research concerned: (1) a study of the movement and behavior of resident box turtles on this property, (2) a study of the ecology of nesting birds using the area of the right-of-way, and (3) the use of training "corridors" cut in the low herbaceous vegetation beneath the power line for research into the behavioral capabilities of tracking and scent-discriminating law enforcement dogs. All of this research had been described at great length in a letter from me, dated April 14, 1982, to the late Tom Craig, Manager of Special Services for the AEC. A copy of this letter was also provided to the present defendants in response to their request for discovery in connection with this present action. It was my presumption that the completely satisfactory nature of the power line maintenance undertaken on my property in 2000 was a result of my interactions with/claims against the AEC in 1981-1982, resulting in the AEC's monetary payment to me in April, 1984 in compensation for damages caused by their excessive and unnecessary vegetation/habitat damage in 1981, as described above.

4. The above background explains why at some time during the fall of 2007, when I was notified (I think by Bryan Boatwright) that it was time to once again conduct power line maintenance activities on my property, I presumed that it would be done in the same satisfactory manner of hand-trimming and limb removal as was done in 2000 (see above). My belief in this regard was strengthened by the fact that at least two AEC staff (Boatwright and Stooksbury) had been at our meeting on September 25, 2000, which resulted in the later satisfactory and non-destructive hand-maintenance conducted by AEC later that year. As a result, I readily agreed to meet Boatwright on my property during the mid-morning of December 2007 and that moreover, our recent installation of a new vehicular access gate on the eastern side of our property would allow them to bring some of their vehicles onto the property to make it easier for them to undertake what I presumed would be a repeat of their 2000 activities. As a result of my being delayed with other commitments, Boatwright and his crew were met shortly after 10:00 a.m. by my wife, Donna, who had a key to the eastern-side vehicular access gate. However, when Boatwright told her that they now intended, contrary to their actions in 2000, to

completely mow/bush-hog the vegetation under the power line to ground level, and apply a herbicide to the vegetation, she immediately reported this to me by telephone, and I immediately consulted with my attorney, Mr. Mark Devine, an associate in the Law Offices of Mr. John Harte. Mr. Devine immediately drafted a letter to Boatwright, dated December 2007, referring to the above-outlined past history and indicating our position of disputing their right to conduct unnecessary ground-level mowing and herbicide application. When I arrived at my property with this letter, hostility immediately escalated on the part of Boatwright who phoned his superiors (presumably) at the AEC offices and then announced that they since they were now inside my fence they were going to proceed with the ground-level mowing and herbicide application, regardless of what I and my attorney thought. I then tried to ascertain just which areas were going to be mowed right then but was ordered away from the area right-of-way (I think by Boatwright).

5. The conflict escalated as my wife began photographic and video-tape documentation of the AEC activities and called law-enforcement officers to come to the property (which they did) to help maintain order. She also called a local (Augusta) television station which later sent a film crew and reporter to the property, to document these activities. My wife can better testify to the timing and nature of any personal interchanges which occurred during this period with AEC and contractor personnel.

6. It should be noted that in response to our request for discovery, the AEC submitted information and sworn affidavits by their personnel which describe facts that are absolutely untrue and which can be proved to be untrue by the sworn testimony of me and my wife, as well as by photographic and video evidence. It is for this reason if nothing else then, that I would like to be able to show in open court and for the public record, by the use of sworn testimony and other evidence including but not limited to photography and video-tapes, that many of these responses provided as sworn testimony by AEC personnel are absolutely untrue. In addition however, I would like to be able to show that the activities undertaken on my property by the AEC at that time, were both unnecessary and unjustified on several grounds:

a. The actions taken in December 2007 bore no reasonable or logical relationship in any way, to either the issue of eliminating any real or potential safety hazards to the power transmission lines in this right-of-way or to the issue of providing AEC access to their power lines, power poles or other equipment in the event of an emergency. The low-growing grasses, shrubbery and vines which were destroyed by mowing and/or herbicide application would never have grown to a height or density where they would ever (a)reached the overhead power lines, or (b) impeded access to the power line by any emergency repair vehicle or maintenance crews, and in fact,

b. Many if not most of the vegetative species destroyed by the AEC on my property (e.g. honeysuckle) has been identified by the AEC as species of vegetation whose growth under power lines is to be encouraged for its value as a potential wildlife food and ground cover to help prevent erosion. Such vegetative species are named in literature

distributed by the AEC encouraging the propagation of such vegetation as part of its "Power for Wildlife" program. The selective removal of such vegetation on my property thus represents a specific violation of its own published guidelines for right-of-way habitat management under its power lines.

c. The mowing and herbicide application to low grasses and shrubs (less than18-24 inches in height) and other herbaceous vegetation moreover represents a case of selective and discriminatory treatment of the right-of-way on my property vs. that of my immediate neighbor to the south. On that property, a large growth of pampas grass, standing over five-feet tall, under the AEC power lines was not mowed flat to the ground and no herbicide was applied to any part of the right-of-way on that neighboring property. On numerous occasions, AEC personnel have told me that their power line maintenance activities must be equitable and fair to all property owners. This clearly was not the case in December 2007 where a large patch of pampas grass was left unmowed and no herbicide application was made to any part of the right-of-way on the property immediately adjoining mine to the south. The AEC mowing and herbicide application all stopped and were not continued beyond my property line. I can also, by simply driving-through other neighborhoods and properties near mine, find numerous other examples of vegetation such a woody azalea bushes, flowering dogwoods, rose bushes etc. that were left unmowed and were not subjected to herbicide treatment even though they were located beneath AEC power lines.

7. Finally, even though an extensive description of the research activities being undertaken by me on my property, and a summary of how these activities were negatively impacted by AEC power line maintenance activities in 1981 were detailed in a letter written by me to the AEC's Manager for Special Services on April 14,1982 (with a copy of this letter and its attached descriptions being provided recently to the defendants as part of their discovery request), and even though as a result of the changed manner in which the AEC then conducted its power line maintenance activities in the year 2000, these agreed-upon changes in maintenance activities were then again ignored by the AEC in December 2007 resulting once again, in negative impacts of an even more severe nature than in 1981 (since a herbicide was now also sprayed on my property against my objection). It is especially important to note that for the herbicide used, "Garlon-4 Ultra" (Dow AgroSciences), there is no published information, to the best of my knowledge, in the peer-reviewed scientific literature, concerning the effects of this chemical upon reptiles such as the box turtles being studied on my property.

8. Besides the potential negative impacts of the herbicide application and ground-level mowing on the box turtle studies, negative impacts can also be expected and indeed have by now actually been experienced with my studies involving the specialty training of tracking and scent-discriminating abilities of bloodhounds and other law-enforcement dogs – an activity which has, in the past, generated considerable income for me and my research program support. This income is chiefly in the form of consultant and expert

witness fees received by me for consulting and courtroom testimony describing the research which I had been conducting on this property over the years.

9. As in the case of the box turtle studies, this work with the law-enforcement dogs has now been hampered in significant ways by the needless, discriminatory, unreasonable and unjustified power line maintenance activities of the AEC on my property on the dates indicated above

SUMMARY OF AFFIDAVIT IN OPPOSITION TO THE SUMMARY JUDGMENT MOTION

A. The activities conducted by AEC in December 2007 on my property violated their own published guidelines " for their Power for Wildlife program" with regard to the kinds of low-growing vegetation which they encourage for use as ground cover under their power-lines, but which, they selectively mowed and destroyed with herbicide on my property. The destruction of this vegetation was in no way related to any issue of safety or access to the right-of-way since this vegetation could never grow up and interfere with the power-lines nor could it impede access to their power-lines.

B. The action on my property by AEC was selectively discriminatory in that the mowing and herbicide application on my property was not undertaken on an adjoining property and on many other properties where power lines are managed by the AEC property.

C. The above points were made clear to AEC personnel while they were on my property by way of a letter from my attorney as well as by personal discussions with my wife and I. The letter from my attorney which revealed previous cases of interaction between AEC and myself in which AEC agreed with my position and made arrangements to respect these considerations during previous maintenance of the same power-line in the year 2000.

D. The use and enjoyment of my property was severely curtailed as well as the ecological quality which has always formed the basis of our use and enjoyment of that land and its value for my scientific research.

I. LEHR. BRISBIN

Sworn to and Subscribed before me

This 5th day of August, 2011

Notary Public for South Carolina

My Commission Expires On: 11-7-2016

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CASE NO: 10-CP-02-02981
	)	
	)	
I. LEHR BRISBIN,	)	
	)	
PLAINTIFF	)	**AFFIDAVIT OF**
	)	**DONNA B. BRISBIN**
VS.	)	
	)	
AIKEN ELECTRIC	)	
COOPERATIVE, INC,	)	
&	)	
GARY L. STOOKSBURY	)	
&	)	
CAROLINA TREE CARE INC.,	)	
OF NORTH AMERICA	)	
	)	
DEFENDANTS	)	
	)	

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 18 2011

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.

Anita Knowles
Deputy Clerk

PERSONALLY APPEARED BEFORE ME, Donna B. Brisbin, who being duly sworn, deposes and says:

1. On or about, December 10, 2007, at approximately 10:15 a. m., I arrived at our property in New Ellenton to find trucks and wood chippers lined along the northbound lane of Highway 19. In addition, the far right lane of Highway 19 had been blocked to traffic.

2. I met with Bryan Boatwright who wanted to know where my husband was. I advised him that he was on his way. He said he had just called and there was no answer. I explained to him that my husband did not answer the phone because he was driving. Boatwright seemed irritated and stated that the meeting was scheduled for 10:00 a. m.

3. Initially, Boatwright wanted to take down our fence that borders the highway. I refused this idea. This was an older fence and would most likely be unsafe if removed. I told him that I had installed gates and could allow them access to the property via these gates.

4. After the tree service supervisor looked at the area, I was advised that a ten-foot path through the pasture would need to be cut in order to accommodate the large equipment. I signed a release for such.

5. Before cutting began, Paul Randall of the tree service, Bryan Boatwright, and I, agreed to leaving a two foot buffer on the fence line to maintain the privacy and security of the property. The security was necessary to prevent children from the school across the street from entering the property and to prevent the dogs maintained on the property from exiting the property.

6. They had already begun cutting in the agreed upon manner when my husband arrived with letter from our attorney referring to the year 2000 settlement agreement between AEC and my husband and denial of their usage of herbicide on our property. They had previously reached a settlement agreement that year concerning future trimming and removal of trees and vegetation that suited both parties.

7. I tried to mediate the situation between my husband and Boatwright by convincing my husband to allow them to continue what they were doing per our agreement as long as they would agree to no herbicide. When my husband brought up the former AEC employee who had been involved in the meetings and agreements previously entered into by AEC with my husband, Boatwright informed him that the man was no longer there and that their prior agreement meant nothing.

8. Boatwright told me that our deal was off, that if they were "going to be sued, they would be sued for doing a good job and that they would bush hog a 10 foot wide path under the lines. At that time, I informed him that we would sue them if they did so and that I would name him personally in the suit.

9. In addition, I advised Paul Randall not to spray the herbicide on our property, and if they did, we would sue them as well. I even suggested that they could cut back a few feet further onto our property in exchange for leaving the buffer on the fence line.

10. I did attempt to call Gary Stooksbury of AEC, but was told he was "in a meeting" and was transferred to Dan Garmon. I asked that he direct Boatwright to continue with the gentleman's agreement we had originally entered into that morning and to not spray the herbicide until the issue could be resolved or we could mutually agree on another type of herbicide. Garmon was unpleasant, unprofessional, and suggested that I was the one who did not want to resolve the situation.

11. He said he would make the call to Boatwright. I have no evidence to show that he did, but nothing changed Boatwright's manner or his direction to the work crew.

12. At some point, Randall told me that Boatwright had called law enforcement. I, in turn, called the Aiken County Sheriff's Office (ACSO), and requested a deputy, preferably one that had experience in such disputes.

13. Johnny Hamilton (now deceased Police Chief of New Ellenton) heard the call and responded on his own. Hamilton read the letter, spoke with Boatwright, and asked some

questions. I did hear Boatwright tell him that the letter was from an attorney and had no bearing on his work.

14. Deputy McCord answered the call and had no clue as to what to do. Hamilton informed him that if he told Boatwright to leave the property that he would have too, however, he was too afraid of being sued himself, and refused to do so. I never threatened to sue the deputy.

15. Once the law enforcement officers left, I retrieved a camera from my car and began taking pictures. The crew told me that OSHA forbade me to be in the area while they worked. I suggested that they stop while I took photos and they did.

16. Later in the day, I asked Paul Randall what time they were scheduled to stop. He informed me that they were told to quit at dark. I told him not to bother to return the next day, as the gate would be padlocked. At that point, he implored me not to do so, stating that Boatwright would tear my fence down.

17. That evening, after the crew had left, my husband and I were walking the property and a cable truck showed up wanting access. It seems the tree company had cut a cable line. I did not lock my gate that night because I did not want the fence torn down. The following day, a separate crew from AEC greeted me at the driveway to the property located on Pineview Drive. They advised that they were replacing the power pole located on the property that supplies power to our buildings. This is unrelated to the power lines on Highway 19. They needed to take down a small section of fence and I allowed it. They replaced the fence satisfactorily. Since that time, I have placed a gate there for that purpose.

18. In the meantime, the tree crew and Boatwright were continuing with their cutting. Later in the afternoon, I saw employees beginning to spray the herbicide onto our property. I objected, but they refused to stop. I called Channel 6 News. A cameraman and reporter Joy Howe came out and filmed this. In addition, I did some video of my own. The crew did stop spraying when they saw that they were being filmed.

19. Despite the fact that the tree company was an agent for AEC, Paul Randall, told my husband and I that he was trying to leave as much of a buffer as he could without Boatwright objecting. He seemed sympathetic to our situation, but clearly was in no position to say anything. Upon his leave taking, I did advise Boatwright to expect us to file suit. My husband and our attorneys have attempted to resolve this issue once and for all with AEC. However, they have refused to acknowledge our attempts at compromise for the past almost four years now.

20. An in person attempt was made recently between counsel, Gary Stookesbury, my husband and myself to allegedly work through this matter. However, AEC refuses to make any concession that they intentionally caused unnecessary devastation to our property or to attempt to resolve this matter with respect to nature, our property, or to us.

21. The10 foot swath that they cut into our property was left covered in debris and rendered useless to us and our dogs. Prior to the destruction caused by AEC, we were able to maintain a walking pathway mown regularly with a large riding lawnmower with a cutting blade of approximately 52 inches wide, and used to make a minimum of two passes and more in some areas. This pathway was part of a trail system on the property used for the training of tracking dogs, primarily bloodhounds. We have yet to be able to use the property as we once did due to the actions of AEC. In fact, we were unable to walk on it after their destruction. In addition, the lack of a sufficient buffer has created a public nuisance. It has allowed children from the school across the street to enter the property and created an area from which our dogs and livestock could easily escape.

22. Recently, we found the fence had been cut, allowing anyone entrance to our property, as well as would have allowed the escape of our dogs and other farm animals onto the highway and causing a danger to drivers. After this discovery, we have undertaken the expense of having that section of fence replaced with privacy fencing.

23. AEC entered onto our property, violated our trust, the property itself, and created a mess, with no regard to our rights as property owners or concern for the public interest.

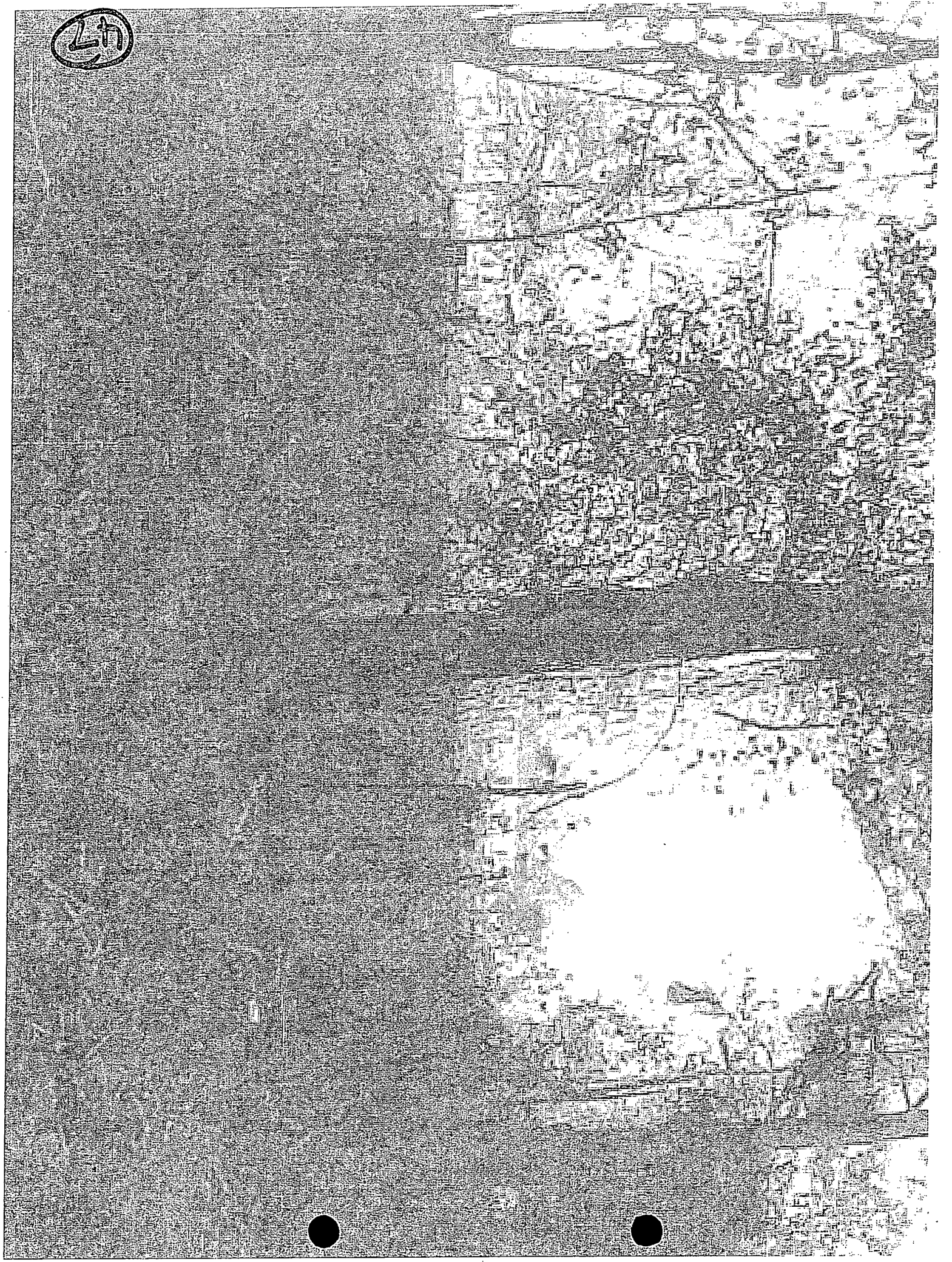
DONNA B. BRISBIN

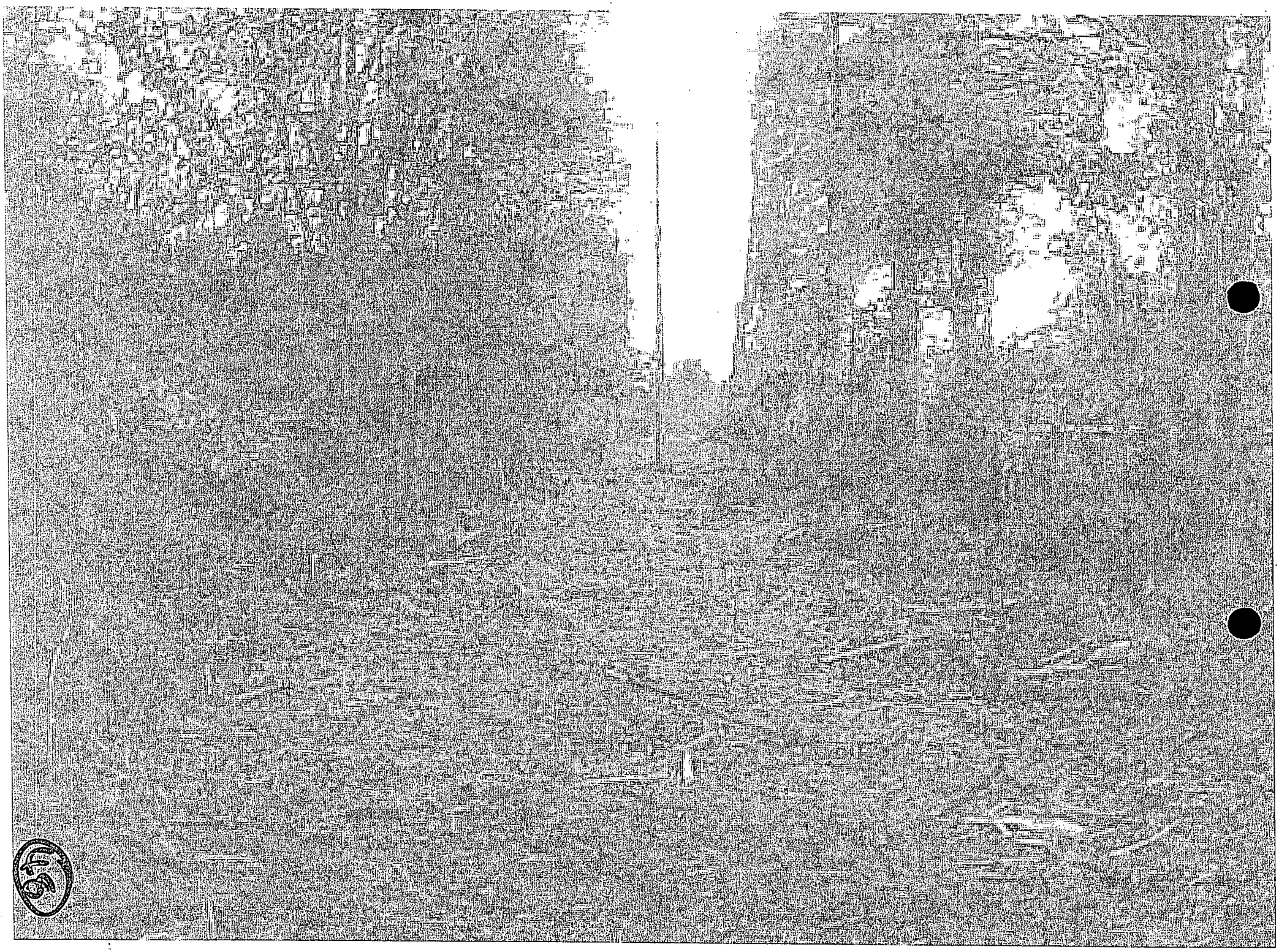
Sworn to and Subscribed before me

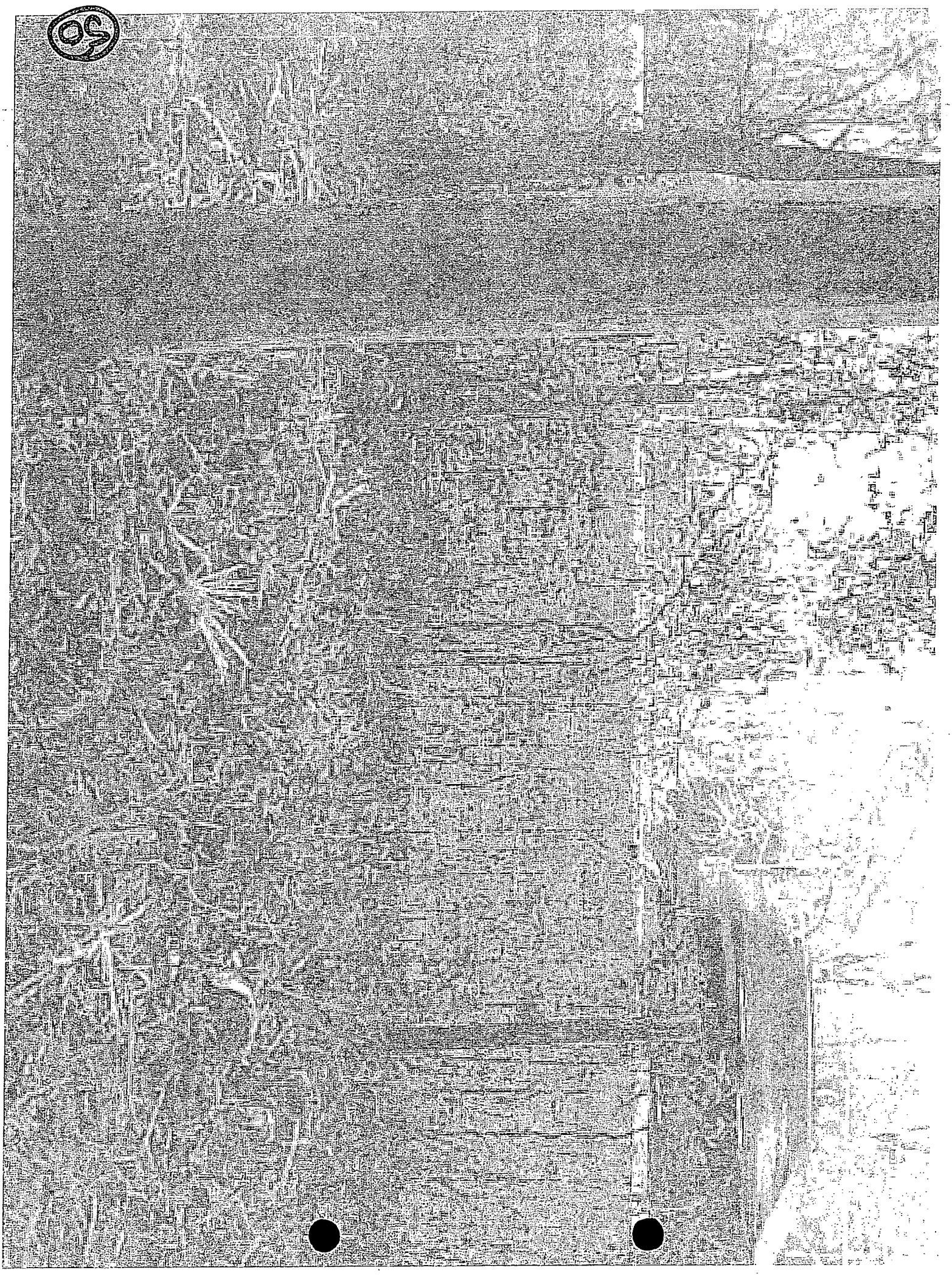
This 5th day of August, 2011

Notary Public for South Carolina

My Commission Expires On: 11/07/2016







STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

I. Lehr Brisbin,)
)
Plaintiff,)
)
vs.)
)
Aiken Electric Cooperative, Inc.,)
Gary L. Stooksbury, and Carolina)
Tree Company, Inc.,)
)
Defendants.)

Civil Action No. 2010-CP-02-02981

ORDER

FILED 12.12.2011
Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

This matter came before the Court on November 7, 2011 for a hearing on Defendant Aiken Electric Cooperative, Inc.'s ("Aiken Electric") motion for summary judgment and motion to compel. Present at the hearing were Pope D. Johnson, III, attorney for Aiken Electric Cooperative, Inc., Mark J. Devine, attorney for the plaintiff, and Virginia W. Williams, attorney for Carolina Tree Company, Inc. For the reasons stated herein, I find that Aiken Electric's motion should be granted.

This action arises out of the manner in which Aiken Electric, through its right-of-way contractor, Carolina Tree Company, Inc. cleared its right-of-way on the plaintiff's property. The plaintiff, a retired senior research scientist with the Savannah Research Ecology Laboratory of the University of Georgia, has alleged causes of action for negligence, trespass to land, interference with prospective economic advantage, breach of contract, equitable rescission and injunction. Aiken Electric moved for summary judgment upon the grounds that the Complaint failed to state facts sufficient to constitute a cause of action

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

DEC 12 2011

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.

Anita Knoepfle
Deputy Clerk

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against Aiken Electric and supported its motion with the two affidavits and the plaintiff's Answers to Interrogatories. The plaintiff submitted his affidavit and his wife's affidavit in opposition to the motion for summary judgment.

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Plaintiff's counsel asserted that it was premature to consider summary judgment since discovery was not complete. However, counsel only objected generally and failed to identify any facts that further discovery would reveal that would affect whether summary judgment should be granted. Therefore, I find that it is appropriate to consider and rule on Aiken Electric's motion for summary judgment.

The affidavits submitted by Aiken Electric state that: (1) Aiken Electric's line, which crosses the plaintiff's property, was placed in service in 1951 and been there continuously since that time; (2) Aiken Electric's procedure for clearing a right-of-way is to bush hog the right-of-way to a 25 foot width and then use herbicides applied to tree stumps to prevent regeneration; (3) the right-of-way clearing on the plaintiff's property was done in a manner consistent with the manner in which Aiken Electric performs its right-of-way clearings; and (4) the right-of-way clearing complied with the requirements of the RUS specification for right-of-way clearing as set forth in Bulletin 1728F-804, Section M.

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The plaintiff, in his affidavit, stated that: (1) the dispute over the manner in which the right-of-way was maintained began in 1981-1982; (2) in the year 2000, an agreement was reached with Aiken Electric regarding the manner in which the right-of-way would be maintained on his property; and (3) the right-of-way clearing in 2007 was not in accordance with that agreement. The plaintiff also stated that the manner in which the right-of-way was cleared negatively impacted his study regarding the specialty training of tracking and scent discriminating abilities of bloodhounds and other law enforcement dogs and hampered his box turtle studies. His wife's affidavit outlined the circumstances of the right-of-way clearing.

Normally, an affidavit from a party that an agreement was reached in 2000 regarding the manner in which the right-of-way would be cleared and that agreement was breached would be sufficient to defeat a motion for summary judgment. However, that is not the case here given the allegations of the Amended Complaint and the Plaintiff's Answers to Interrogatories.

First of all, the plaintiff's Amended Complaint does not contain any reference to a contract or agreement made in 2000. There is no mention whatsoever of an alleged agreement in 2000 and a breach of this agreement. Instead, the plaintiff's causes of action for breach of contract and equitable rescission relate to whether the Aiken Electric membership card was an agreement and if so, what impact the membership card had on the terms and scope of Aiken Electric's right-of-way. Nowhere in his Amended Complaint does the plaintiff refer to a contract or agreement made in 2000.

In addition thereto, the plaintiff's Answers to Interrogatories establish that the plaintiff has not suffered any monetary damages as a result of the matters alleged in the Amended Complaint. Aiken Electric served the standard state court interrogatory, asking the plaintiff to set forth an itemized statement of all damages claimed to have been sustained by the party. In response, the plaintiff answered that the damages "cannot be measured and directly quantifiable monetary terms". He further stated:

> "A specific dollar value cannot be usefully associated with the damage/hindrance imposed upon either the bird nest-box or research or other studies of the movement and behavior of the eastern box turtles (Terrapene carolina carolina) on this property. Similarly, the dollar value of the impacts upon on-going studies of scent-following bloodhounds and other law enforcement canines which are based on the repetitive use of long established "scent corridors" which have now been mechanically destroyed and/or chemically contaminated/compromised through the use of the 'Garlon 4 Ultra' herbicide under the AEC power lines, as described above, cannot be quantified."

In Interrogatory 6, Aiken Electric asked the plaintiff to identify with specificity the destroyed trees, plants, scientific research projects, vegetation and property belonging to the plaintiff that is referred to in paragraph 21 of the complaint and set forth the value of each such item that was allegedly destroyed. The plaintiff submitted a lengthy, rambling response to this interrogatory, but he did not identify or set forth the value of any item that was allegedly destroyed.

It is elementary that damage is necessary to establish causes of action for negligence, breach of contract, and interference with prospective economic advantage. *J. T. Raggerly v. CSX Transp., Inc,* 370 S.C. 362, 635 S.E.2d 97 (2006) (elements of a negligence cause of action are (1) a duty owed (2) breach of duty by negligent act or omission and (3) proximately resulting damage). *Branche Builders, Inc. v. Coggins,* 386

S.C. 43, 686 S.E.2d 200 (2009) (elements for breach of contract are the existence of a contract, its breach and damages caused by the breach). *Limited Educational Distributors, LLC v. Educational Testing Service*, 350 S.C. 7, 564 S.E.2d 324 (Ct. App. 2002) (elements of the cause of action for interference with prospective contractual relations is (1) the intentional interference with plaintiff's potential contractual relations, (2) for an improper purpose by improper means, and (3) causing injury to the plaintiff).

While it is true that a plaintiff who proves a defendant has trespassed on his property can recover nominal damages, plaintiff's Amended Complaint seeks to recover actual and punitive damages for trespass, not nominal damages. Furthermore, the plaintiff's affidavits do not describe a trespass or genuine issue of fact as to whether a trespass occurred. In fact, his wife's affidavit confirms that she gave defendants' personnel access to the property "via these gates".

The absence of any damages was further confirmed by the Court's exchange with the plaintiff's attorney. During the hearing, the Court asked the plaintiff's counsel whether he could identify any actual damage suffered by the plaintiff as a result of the matters referred in the Amended Complaint, and counsel candidly admitted that he could not. Since the plaintiff has no actual damages, summary judgment should be granted as to these causes of action.

The cause of action for interference with prospective economic advantage fails for an additional reason. In order to establish a claim for intentional interference with prospective economic advantage, the economic advantage or prospective contractual relation, it must be shown that there is a prospective contractual relation is more than a

mere hope that there is a reasonable probability that contractual relation would be realized and that the agreement must be a close certainty. Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil 2002* §33-2. The plaintiff's answer to Interrogatory 7, which asked the plaintiff to identify with specificity and describe in full any prospective economic advantage that constituted a basis for the cause of action, establishes that there was no contractual relation that was likely to be realized and no agreement that was a close certainty. His answer stated:

> "Although Dr. Brisbin has now retired as a Senior Research Scientist with the Savannah River Ecology Laboratory of the University of Georgia, his ability to generate supplemental income through the awarding of research grants continues through his appointment as Senior Research Scientist Emeritus with the university. This appointment and in addition his ability to continue to be awarded research grants and supplemental income as an expert witness and legal consultant in the area of canine olfaction and law enforcement, is dependent on h is continuing ability to publish research articles in the peer-reviewed scientific literature and/or make presentations at professional and scientific meetings. As revealed by the provided copies of Dr. Brisbin's extended resume and briefer canine-focused resume, his wildlife research plus canine training and research activities basic to just such published research and/or professional presentations continue to rely on work that takes place on the property which was compromised by excessive and unnecessary right-of-way destruction and contamination with herbicide treatment."

I also find that there is no genuine issue of fact relating to the claim for equitable rescission. There is no evidence, by affidavit or otherwise, that Aiken Electric has relied upon the Aiken Membership Card as a basis for determining the terms and scope of its right-of-way and that the Membership Card should be rescinded. Rescission is an undoing of a contract from the beginning, as if the contract had never existed. *Ellie, Inc. v. Miccihi*, 358 S.C. 78, 594 S.E.2d 485 (ct. App. 2009). A breach of contract claim warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose

of the contract. *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143, 382 S.E.2d. 915, 917 (1989). Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties. *Id.* at 143-44, 382 S.E.2d at 917. In the absence of fraud, rescission is appropriate only if both parties can be returned to the status quo prior to the contract. *King v. Oxford,* 282 S.C. 307, 313, 318 S.E.2d 125, 129 (Ctd. App. 1984). There is simply no evidence to support a claim for equitable rescission.

I also find there is no genuine issue of fact relating to the claim for an injunction. Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits and an inadequate remedy at law. *Roark v. Combined Util. Comm's,* 290 S.C. 437, 351 S.E.2d 168 (Ct. App. 1986). Since the plaintiff has no quantifiable damages, he cannot demonstrate irreparable harm and no showing has been made of a likelihood of success on the merits.

Aiken Electric has met its threshold burden of establishing the absence of a genuine issue of material fact for trial. The plaintiff has failed to identify any genuine issue of material fact for trial. Therefore, I find that Aiken Electric's motion for summary judgment should be granted. I find that it is unnecessary to determine whether the plaintiff's affidavit, which refers to a contract that is not even referenced in the Amended Complaint, was filed in bad faith. It is also unnecessary to hear and consider Aiken Electric's motion to compel other discovery since its motion for summary judgment is being granted. Accordingly,

IT IS ORDERED that Aiken Electric's motion for summary judgment be and the same hereby is granted and judgment is hereby entered in favor of Aiken Electric Cooperative, Inc.

AND IT IS SO ORDERED.

Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

South Carolina

12-3, 2011

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP0202981

I Lehr Brisbin *vs.* Aiken Electric Cooperative Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 12th day of December, 2011.

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the 12th day of December, 2011, and a copy mailed first class this 12th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Mark John Devine P. O.Box 2008 Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope D. Johnson III Johnson & Barnett P.O. Drawer 11209 Columbia, SC 29211-1209
Donnell G. Jennings Turner Padget Graham & Laney, PA P.O. Box 1473 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [illegible]
Liz Godard - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CASE NO: 2010-CP-02-02981
	)	
I. LEHR BRISBIN	)	
	)	
PLAINTIFF,	)	MOTION TO ALTER OR AMEND
	)	THE JUDGMENT PURSUANT TO
vs.	)	RULE 59(e) SCRCP
	)	
AIKEN ELECTRIC COOPERATIVE, INC GARY L. STOOKSBURY, AND CAROLINA TREE COMPANY, INC.,	)	
	)	
DEFENDANT,	)	
	)	

COURT OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this:

DEC 20 2011

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.

Anita Knowles
Deputy Clerk

TO: The above named Defendant (Aiken Electric Cooperative, Inc., and Gary L. Stooksbury) and his council of record, Pope D. Johnson, III, Esq., and the Honorable Doyet A. Early, III.

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof upon you exclusive of the date of service upon you or as soon thereafter as counsel may be heard, the Plaintiff, will move before the Honorable Doyet A. Early, III, Judge of the Second Judicial Circuit Court of Common Please at the Aiken County Courthouse, Aiken, South Carolina, for an Order pursuant to Rule 59 (e) SCRCP altering and amending the Order filed on December 12, 2011. Specifically:

1. That the Defendant herein was granted summary judgment; and
2. That under the evidence and testimony presented, the Defendant's motion for summary judgment should have been denied

WHEREAS, the Plaintiff Prays that:

1. That the order referenced herein is altered and amended to reflect that the Defendant's motion for summary judgment be denied in the entirety.

COPY
ORIGINAL FILED

DEC 20 2011

AIKEN COUNTY
CLERK OF COURT
64

I certify that consultation would serve no useful purpose.

I SO MOVE,

Mark J. Devine
Attorney for the Plaintiff

December 19, 2011
Aiken, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
I. LEHR BRISBIN,)
)
PLAINTIFF)
)
vs.)
)
AIKEN ELECTRIC)
COOPERATIVE, INC,)
&)
GARY L. STOOKSBURY)
&)
CAROLINA TREE CARE INC.,)
OF NORTH AMERICA)
)
DEFENDANTS)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
CASE NO: 10-CP-02-02981

ORDER by CONSENT

FILED 1-24-2012 12
Liz Godard 4:30
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

A motion for Summary Judgment filed on behalf of the Defendant (Carolina Tree Care Inc., of North America) was scheduled to be heard on January 9, 2012. Counsel for the Defendant (Carolina Tree Care Inc., of North America) and the Plaintiff have advised this Court that they have agreed to continue the Defendant's motion and take their part of their case from the court docket pursuant to Rule 40 (j) of the South Carolina Rules of Civil Procedure based on the Plaintiff's pending motion to alter or amend and any potential appeal against the Defendant (Aiken Electric Cooperative, Inc).

The Hon. Doyet A. Early, III

Jan 12 ,2012

WE CONSENT

Mark J. Devine, Esq.,
Counsel for the Plaintiff

Donnell G. Jennings, Esq.
Counsel for Defendant
Authorized to sign on counsel's behalf

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 24 2012

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Anita Knoepfle
Deputy Clerk

66

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP0202981

I Lehr Brisbin *vs.* Aiken Electric Cooperative Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 24th day of January, 2012.

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the 24th day of January, 2012, and a copy mailed first class this 24th day of January, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Mark John Devine P. O.Box 2008 Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope D. Johnson III Johnson & Barnett P.O. Drawer 11209 Columbia, SC 29211-1209
Donnell G. Jennings Turner Padget Graham & Laney, PA P.O. Box 1473 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by CARNOEPPEL

Liz Godard - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

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I. Lehr Brisbin, [redacted] Plaintiff,	)	Civil Action No. 2[redacted]-CP-02-02981
vs.	)	ORDER DENYING MOTION TO RECONSIDER
Aiken Electric Cooperative, Inc., Gary L. Stooksbury, and Carolina Tree Company, Inc., Defendants.	)	FILED: 1.26.12 Lisa Boland C.C.C.P.&G.S. Anita Knoepke Deputy Clerk

By an Order dated December 5, 2011, the defendant's motion for summary judgment was granted.

On December 20, 2011, the plaintiff filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. The motion stated the following:

> "1. That the defendant herein was granted summary judgment; and
>
> 2. That under the evidence and testimony presented, the defendant's motion for summary judgment should have been denied.
>
> WHEREAS, the plaintiff prays that:
>
> 1. That the order referenced herein is altered or amended to reflect that the defendant's motion for summary judgment be denied in its entirety."

Plaintiff's counsel did not submit a memorandum with the motion.

Upon the call of the motion, the plaintiff argued that summary judgment should not be entered with respect to the claim for an injunction since the conduct of the defendant, in spraying herbicide, interfered with the plaintiff's research that he was conducting on the

DAE #1

time for discovery prior to considering and ruling on the motion for summary judgment. The plaintiff also argued generally that summary judgment should not be granted as to the other causes of action.

The defendant argued that the Court should not consider the plaintiff's motion as it lacked the particularity and failed to state with particularity the grounds of the motion, as required by Rule 7(b)(1), SCRCP. In response, the plaintiff asserted that the similarly worded motion was deemed to be sufficient in the case of *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2009). In the *Camp* case, the issue was whether the filing of the motion for reconsideration, which was allegedly a deficient motion, tolled the time for filing the appeal. The Supreme Court found that the motion was adequate to stay the time for the appeal. Further, the Court stated the following:

> "Rule 7(b)(1), SCRCP, requires that motions 'shall state with particularity the grounds therefore, and shall set forth the relief or order sought.' The particularity requirement 'is to be read flexibly in 'recognition of the peculiar circumstances of the case." *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir. 1996) (quoting *Registration Control Sys., Inc. v. Compusystems, Inc.*, 922 F.2d 805, 808 (Fed. Cir. 1990)). 'By requiring notice to the court and the opposing party of the basis for the motion, Rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring 'that the court can comprenend the basis of the motion and deal with it fairly." *Calderon v. Kansas Dept. of Soc. And Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999) (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §1192 at 42 (2d ed. 1990)). Therefore, when a motion is challenged for a lack of particularity, the court should ask 'whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly." *Registration Control*, 922 F.2d at 807-08 (quoting 5 Wright & Miller, *Federal Practice and Procedure* §1192 at 42). 'The particularity requirement should not be applied in an overly technical fashion when the purpose behind the rule is not jeopardized.' *Andreas v. Volkswagen of Am., Inc.*, 336

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peculiar circumstances of each case, we do not believe applying the particularity requirement in an overly technical fashion in this case would serve the purpose behind the rule. Applying an overly technical analysis in this instance would not reduce prejudice to either party nor would it assure the court that it would be able to deal with the motion fairly. In our view, neither party was prejudiced by Father's motion for reconsideration, and it appears from the record the court was able to both comprehend the motion and deal with it fairly. The trial court's order denying Father's motion for reconsideration stated that 'based on the arguments of counsel' the motion was denied. Hence, neither party was prejudiced, and the court dealt with the motion fairly.

CONCLUSION

When neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical reading of the rules does not serve the purpose of Rule 7(b)(1), SCRCP. For these reasons, we reverse the court of appeals decision and hold Father's motion for reconsideration tolled the time for filing a notice of appeal."

The Complaint here has involved multiple causes of action and multiple issues. The plaintiff's motion does not identify any particular basis for reconsidering this Court's Order dated December 5, 2011. The plaintiff's motion does not provide notice to the defendant of the grounds for reconsideration and causes the Court to have to grope to determine what issues, if any, are raised by the motion. Nevertheless, the Court will attempt to deal fairly with the motion for reconsideration based upon the argument that was made by the plaintiff at the hearing.

The plaintiff argued that summary judgment should not have been granted on the claim for injunctive relief since the plaintiff was seeking an injunction to prevent the use of herbicides on his property. However, I find that there is no genuine issue of fact relating to the claim for an injunction. To obtain an injunction, a party must demonstrate irreparable

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property is burdened by the defendant's right-of-way. Defendant followed its standard clearing procedures on the plaintiff's property. Plaintiff offered no evidence to the contrary. The plaintiff has no quantifiable damages and cannot demonstrate irreparable harm. Since his property is burdened by the easement and right-of-way of the defendant, and there is nothing to show that the defendant cleared the right-of-way on his property differently from the clearing on other properties that were being cleared at the same time, no showing was made as to the likelihood of success on the merits.

The plaintiff's counsel also argued that there were Fourth Circuit Court of Appeals decisions that established what he called a rule of reason. Plaintiff's counsel argued that this rule of reason somehow applied here. The Court does not recall that that rule of reason was raised at the hearing when the motion was considered originally. A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to judgment but was not. *Dixon v. Dixon,* 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005). Nevertheless, considering the argument, it affords plaintiff no relief. Plaintiff's counsel did not provide copies of any Fourth Circuit Court of Appeals decision and did not provide any specific citation. The so-called rule of reason is not an element in any cause of action that has been asserted.

The plaintiff also argued generally that summary judgment should not have been granted as to the other causes of action. However, such a general argument is insufficient. The plaintiff has pointed to no valid reason why summary judgment should not have been

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prior to the motion for summary judgment being heard. However, Rule 56(f), SCRCP, provides the procedure that is to be followed in the event a party opposing a motion for summary judgment cannot provide by affidavit facts essential to justify his opposition. In such an event, the party is obligated to provide affidavits with the reasons why he cannot present facts essential to justify his opposition to the motion and provide evidence as to such facts which are present but unavailable to him at the time of the hearing. The plaintiff filed no such affidavits. Furthermore, the motion was granted based upon the plaintiff's failure to provide sufficient facts himself to create a genuine issue of material fact. The causes of action for breach of contract, interference with prospective contractual relations, and negligence all require proof of damages, and the plaintiff's own answers to interrogatories confirm that he does not have any quantifiable damages. The cause of action for trespass cannot be maintained since the affidavit of the plaintiff's wife confirms that she gave the defendant's personnel access to the property (via the gates). The cause of action for interference with prospective economic advantage also fails for the reason that the plaintiff himself has failed to show that there was a contractual relationship that was likely to be realized but was lost and that the agreement was a close certainty. The same is true with the claim for equitable rescission. The plaintiff offered no evidence, by affidavit or otherwise, that the Aiken Electric Cooperative relied upon the membership card as the basis for determining the terms and scope of his easements such that the membership card should be rescinded. Instead, the defendant relied upon the fact that its line had been in

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RUS Specification for right-of-way clearing as set forth in Bulletin 1728F-804, Section M. Accordingly,

IT IS ORDERED that the plaintiff's motion for reconsideration be and the same hereby is denied.

AND IT IS SO ORDERED.

Doyet A. Early, III
Presiding Judge, Second Judicial Circuit

Aiken, South Carolina
January 23rd, 2013

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 26th day of January, 2012.

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 26th day of January, 2012, and a copy mailed first class this 26th day of January, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Mark John Devine P. O.Box 2008 Aiken, SC 29802

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope D. Johnson III Johnson & Barnett P.O. Drawer 11209 Columbia, SC 29211-1209
Donnell G. Jennings Turner Padget Graham & Laney, PA P.O. Box 1473 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [illegible]

Liz Godard - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

I. Lehr Brisbin,)
)
Plaintiff,)
)
vs.)
)
Aiken Electric Cooperative, Inc.,)
Gary L. Stooksbury, and Carolina)
Tree Company, Inc.,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-02-02981

AFFIDAVIT OF DAN GARMAN, P.E.

PERSONALLY APPEARED BEFORE ME, Dan Garman, who being duly sworn, deposes and says:

1. I am Dan Garman, P.E. I am employed by Aiken Electric Cooperative, Inc. as Vice President of Operations. I have been employed by Aiken Electric Cooperative, Inc. for 13 years. I make this affidavit based upon my personal review of the business records of Aiken Electric Cooperative, Inc.

2. Based upon my review of the business records of Aiken Electric Cooperative, Inc., which records are maintained in the ordinary course of business, the Cooperative's line that crosses the plaintiff's property was in service in 1951 and has been there continuously since that time.

3. I am familiar with the manner in which the right-of-way was cleared on the plaintiff's property. Aiken Electric Cooperative, Inc.'s procedure for clearing such right-of-ways is to bushhog the right-of-way to a 20 foot width and then use herbicides, applied to tree stumps, to prevent regeneration.

SWORN TO AND SUBSCRIBED BEFORE ME
this 3rd day of March, 2011

Lynn O. West
Notary Public for South Carolina

My Commission Expires: 5/30/2011

Dan Garman
Dan Garman

LYNN O. WEST NOTARY PUBLIC SOUTH CAROLINA

Lynn O. West
NOTARY PUBLIC
State of South Carolina
My Commission Expires
May 30, 2011

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STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

I. Lehr Brisbin,)
)
Plaintiff,)
)
vs.)
)
Aiken Electric Cooperative, Inc.,)
Gary L. Stooksbury, and Carolina)
Tree Company, Inc.,)
)
Defendants.)
)

Civil Action No. 2010-CP-02-02981

AFFIDAVIT OF BRYAN BOATWRIGHT

PERSONALLY APPEARED BEFORE ME, Bryan Boatwright, who being duly sworn, deposes and says:

1. I am Bryan Boatwright. I am employed by Aiken Electric Cooperative, Inc. as a right-of-way supervisor. I have been employed by Aiken Electric Cooperative, Inc. for 24 years.

2. I met with the plaintiff prior to and during the right-of-way clearing that occurred on the plaintiff's property in December 2007. I talked with the plaintiff prior to the work being commenced and during the period when the right-of-way clearing was being done. Paul Randall, a supervisor with Carolina Tree Company, Inc., was also present for certain of the conversations.

3. During the time the work was being done, the New Ellenton Chief of Police, Johnny Hamilton, came on site and spoke with me, even though the plaintiff's property is not within the city limits. An Aiken County Deputy also showed up and spoke with me as did representatives from Channel 12. I also saw a man on site who was identified by another person on site as being John Hart. At one point during the work, the plaintiff squatted and spread papers on the ground and stated that he was not going to move regardless of the danger from the bushhog which was being used for the right-of-way clearing process. However, ultimately he did move.

4. The right-of-way clearing that was done on the plaintiff's property was consistent with the manner in which Aiken Electric Cooperative, Inc. performs right-of-way clearing and complied with the requirements with the RUS specifications for right-of-way clearing as set forth in Bulletin 1728F-804, Section M. A 20 foot wide right-of-way was bushhogged. Herbicide was used only on cut stumps to prevent regeneration.

SWORN TO AND SUBSCRIBED BEFORE ME

this 3rd day of March, 2011

Lynn O. West

Notary Public for South Carolina

My Commission Expires: 5/30/2011

Bryan Boatwright

Bryan Boatwright

LYNN O. WEST NOTARY PUBLIC SOUTH CAROLINA

Lynn O. West
NOTARY PUBLIC
State of South Carolina
My Commission Expires
May 30, 2011

STATE OF SOUTH CAROLINA COUNTY OF AIKEN I. LEHR BRISBIN, PLAINTIFF vs. AIKEN ELECTRIC COOPERATIVE, INC, & GARY L. STOOKSBURY & CAROLINA TREE CARE INC. OF NORTH AMERICA DEFENDANTS	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO: 10-CP-02-02981 Plaintiff Responses to Defendant's First Set of Interrogatories and First Set of Request for Production

INTERROGATORIES

1. Donna Brisbin
I. Lehr Brisbin
Paul Randall-Carolina Tree
Assistant to Paul Randall-Name and address to be supplemented once the name has been fully ascertained.
Brian Boatwright-Aiken Electric
Dan Garmon VP-Aiken Electric
Deputy McCloud-Aiken Co. S.O.
Joy Howe and her cameraman of Channel 6 News.

2. Please see discs enclosed.

3. The damages which have been sustained cannot be measured in directly quantifiable monetary terms. Rather they were and still continue to be in the form of rendering certain portions of the plaintiff's lands and established field research facilities, which have long been used for previously well-established and ongoing canine training and canine behavioral and ecological research activities, useless for such purposes for varying periods of time. The exact nature and extent of these damages were described at length in previous correspondence, with attachments, dated April 14, 1982 between I.Lehr Brisbin and the late Mr. Tom Craig, who was

at that time the Manager for Special Services of the Aiken Electric Cooperative (AEC). See **Exhibit 1**

The damages occurring during power line right-of-way maintenance activities on the property of I.Lehr Brisbin on December 2007 were similar to those described in the above-cited correspondence except that no additional mature trees were removed as compared to the 1982 incident but naturally-established herbaceous ground cover was even more completely destroyed than in the case of the 2007 land-clearing incident. This removed/destroyed ground cover included long-established natural stands of growth of native herbaceous plant species that are well-known to provide valuable food and cover for native wildlife, and include, among other species: broom sedge (*Andropogon viginicus*), wire grass (*Andropogon stricta*), narrow-leaved panic grass (*Panicum angustifolium*), cut-grass (*Leersia* spp.), lespedeza (*Lespedeza* spp.), Japanese honeysuckle (*Lonicera japonica*), and yellow Jessamine (*Gelsemium sempervirens*), the South Carolina state flower. It should be particularly noted that none of these low-growing weedy species are capable of growing over 1-1.5m in height and thus have no potential whatsoever to interfere with either overhead power transmission lines or the ability of power company transmission-line maintenance vehicles to move freely along established power line right-of-ways in which these species may be growing.

In point of fact the Aiken Electric Cooperative's "Power for Wildlife" program specifically encourages the growth of a number of these above-named species along their power line *rights-of-way. Nevertheless these valuable wildlife food species were systematically destroyed* either mechanically or by application of the "Garlon 4 Ultra" herbicide in the AEC right-of-way on the Brisbin property in question.

The removal/destruction of the above-described herbaceous ground-cover vegetation, decreased the safety and usefulness of the ground cover beneath the AEC power lines on the Brisbin land as wildlife habitat for avian species which might nest on the property and thus be useful as subjects for banding/behavioral studies as described in the above-mentioned correspondence (and attachments thereto) between Dr. Brisbin and the late Mr. Tom Craig, Manager for Special Services of the AEC. In addition, it rendered this herbaceous ground cover beneath the overhead wires useless, if not possibly dangerous/toxic for use in on-going systematic training and research concerning the capabilities of man-trailing bloodhounds and other breeds of law-enforcement canines. This work is also explained in the above-referenced correspondence with the late Mr. Craig, and references appended thereto.

A specific dollar value cannot be usefully associated with the damage/hindrance imposed upon either the bird nest-box or research, or other studies of the movement and behavior of eastern box turtles (*Terrapene carolina carolina*) on this property. Similarly, the dollar value of the impacts upon on-going studies of scent-following bloodhounds and other law-enforcement canines which are based on the repetitive use of long-established "scent corridors" which have now been mechanically destroyed and/or chemically contaminated/compromised through the use of the "Garlon 4 Ultra" herbicide under the AEC power lines, as described above, can not be quantified. However, the provided income tax returns indicate the supplementary income which Dr. Brisbin has been able to generate through testimony concerning the results of "scent corridor" research which had been conducted in the low-growing herbaceous vegetation beneath the AEC power lines and which were either destroyed or otherwise rendered useless for either herbivore (domestic goat) grazing or law enforcement canine training/research in land beneath this power line.

It should be noted moreover, that after the above-described issues were established in negotiations with the ADEC in 1982, a useful working understanding was established by which the AEC subsequently was able to maintain its power lines free and clear of interference from trees and/or intruding branches on this property through the selective removal of only those particular trees and branches which actually posed a specific threat to the power line wires themselves, while leaving the all-important ground cover and herbaceous vegetation under the wires undisturbed. This procedure was successfully undertaken in the fall of 2000 following most amicable meetings between Dr. Brisbin and Gary Stooksbury, Bill Smith and Brian Boatwright all of the AEC. Following this meeting, the AEC conducted a clearly successful clearing and removal of all offending trees/branches from the right-of-way on this property, without the necessity of bringing any trucks on to the property, and this even included the changing-out of a power pole on this property from outside the property's western boundary fence (from along the eastern shoulder of South Carolina Highway-19). It was indeed Dr. Brisbin's hope and expectation that this same respect for the integrity of the herbaceous ground cover within the right-of-way would be observed when he authorized the entry of AEC trucks onto his property in December, 2007, through a newly-established vehicle access gate in his eastern boundary fence.. Sadly however, this was not to be and not only was herbaceous ground cover crushed and destroyed by the intruding vehicle, but unauthorized spraying of the "Garlon 4 Ultra" herbicide on vegetation in this sensitive area of great importance to Dr. Brisbin's on-going research and dog-training activities. The Plaintiff reserves the right to supplement this response as a later date as to the nominal and actual damages suffered by the Plaintiff.

4. None at this time. However, Dr. Brisbin reserves the right however, to call expert witnesses who would present explanatory and supportive testimony if such should subsequently prove necessary.

5. All witnesses listed in question one have sufficient knowledge to testify as to all aspects of the occurrence at issue regarding December 2007.

6. A description of the destroyed/compromised environmental resources and research at issue in this complaint are essentially identical to those described in detail earlier as Appendices: A, (A-1), (A-2), (A-3), and (A-4) appended to a letter dated April 14, 1982 from Dr. I.Lehr Brisbin to the late Mr. Tom Craig, Manager for Special Services of the Aiken Electric Cooperative. **See Exhibit 1** In the case of the present complaint however, none of the trees or larger woody vegetation described in these documents were any longer in existence. The removal/destruction of these trees and woody vegetation was compensated for under the terms of a settlement previously reach between the AEC and Dr. Brisbin later in 1982. With this exception, the destruction of the herbaceous vegetative cover, wildlife food species and vegetation used to create "olfactory corridors" for dog training, as described in the above attachments to the letter of April 14, 1982, and the attendant negative impacts of these activities upon ongoing wildlife conservation/research and canine behavioral studies were the same in December, 2007, with the exception of the added negative impact in 2007 of the application of the "Garlon 4 Ultra" herbicide, as described above under Item # 3 above. Otherwise, the negative impacts of the AEC

activities on this property in December, 2007 are as described in Item # 3 above, and consist of removal, poisoning or otherwise destruction of herbaceous vegetative ground cover, including some of the very same species promoted as being of value as wildlife cover and food resources under the AEC's "Power for Wildlife" Incentive Grant Program.
Scientific research projects destroyed or compromised by the actions of the AEC in December, 2007 are further described in the appendices (as listed above) attached to the letter of April 14, 1982 sent to the late Mr. Tom Craig of the AEC. These research projects are further described in published research articles listed in the provided full resume of Dr. Brisbin, and in the briefer resume focused solely on canine behavioral and law-enforcement studies.

7. Although Dr. Brisbin has now retired as a Senior Research Scientist with the Savannah River Ecology Laboratory of the University of Georgia, his ability to generate supplemental income through the awarding of research grants continues through his appointment as Senior Research Scientist Emeritus with the university. This appointment and in addition his ability to continue to be awarded research grants and supplemental income as an expert witness and legal consultant in the area of canine olfaction and law enforcement, is dependent on his continuing ability to publish research articles in the peer-reviewed scientific literature and/or make presentations at professional and scientific meetings. As revealed by the provided copies of Dr. Brisbin's extended resume and briefer canine-focused resume, his wildlife research plus canine training and research activities basic to just such published research and/or professional presentations continue to rely on work that takes place on the property which was compromised by excessive and unnecessary right-of-way destruction and contamination with herbicide treatment.

8. The property in question is described extensively in the letter dated April 14, 1982, from Dr. I.L. Brisbin to the late Mr. Tom Craig, Manager for Special Services of the AEC, along with the detailed appendices provided with that letter. **See Exhibit 1**

REQUEST TO PRODUCTION

1. See discs enclosed. Plaintiff reserves the right to supplement this response to include the Channel 6, video.

2. None.

3. Please see responses made in interrogatories and **Exhibit 1.**

4. See Exhibit 2.

5. None. Plaintiff reserves the right to supplement this response at a later time.

6. Please refer to responses to interrogatories, **Exhibit 1** and **Exhibit 3**.

7. See Tom Craig Letter-And attached appendices (**Exhibit 1**) and discs submitted.

LAW OFFICES OF DEVINE & HOOVER, LLC.

BY _____

MARK J. DEVINE
ATTORNEY FOR THE PLAINTIFF
PO BOX 2008
AIKEN, SC 29802
TEL: 803 648 3900

February 21st, 2011
Aiken, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

VERIFICATION

PERSONALLY appeared before me, the Plaintiff who being first duly sworn, deposes and says that he has read the foregoing responses to the Defendant's First Set of Interrogatories and First Set to Request to Produce Documents that the matters contained therein are true of his own knowledge except for those matters based upon information and belief, and as to those he verily believes them to be true.

I. LEHR BRISBIN

Sworn to and Subscribed before me

this 21st day of February, 2011

Notary Public for South Carolina

My Commission Expires: 11/07/2016

and maintained the right-of-way ever since. The other affidavit simply reflects that the manner in which this right-of-way was being maintained and cut at the time in question was consistent with how right-of-ways are cut and maintained.

THE COURT: All right. I do not have either affidavits up here or any affidavit.

MR. JOHNSON: Do you have the motion? It should be attached to the motion, Your Honor.

THE COURT: I have an affidavit of Bryan Boatwright.

MR. JOHNSON: Yes, sir.

THE COURT: And Dan Garmin.

MR. JOHNSON: Correct.

THE COURT: All right. Where is the plaintiff's affidavit? Was it filed?

MR. DEVINE: It was, Judge.

THE COURT: Let me hold it. I don't see it. All right. Go ahead.

MR. JOHNSON: Your Honor, the plaintiff filed a counter affidavit which in paragraph two he maintains that there was an agreement beginning in 2000 between the parties as to how the right-of-way on his property would be maintained and cut and he alleges that we did not comply with that agreement. Now, ordinarily normally that would be sufficient to sustain -- to defeat a summary

THE COURT: Well, it says right here in his answer to number seven it says, This appointment seemed to research scientist and in addition his ability to continue to be awarded research grants, speculative and supplemental income as an expert witness and legal consultant -- I assume in the future speculative -- of K-9 -- somebody help me -- O-L-F-A-C-T-I-O-N and law enforcement is dependent on his continuing ability to publish research articles.

Mr. Divine, you want to help me with this one?

MR. DEVINE: Thank you, Your Honor. If it please the court. Your Honor, this land at issue is out in the New Ellenton area. Just so the court is aware of actually what Dr. Brisbin does research-wise on this piece of property and his affidavit at paragraph three emphasizes that he researches the movement and behavior of resident box turtles and he also studies the ecology of nesting birds and he also is in the research and study of tracking and scent-discriminating law enforcement dogs.

Dr. Brisbin and the Aiken Electric Co-Op have had, unfortunately, over the last 20-something years rather an unfortunate history of where is the scope of this right-of-way, what is supposed to happen in the course of Aiken Co-Op's dealing. Back in the 80's this issue raised its ugly head when Mr. Harte was practicing law. He was

able to come to some understanding and agreement with the Aiken Co-Op at that time.

The problem we have at the moment, Judge, is -- and why we feel that summary judgment should not be granted at this time, we don't have all discovery that is complete at the moment. We're still waiting for the discovery from Carolina Tree Company. We've got a scheduling order that's about to come into full force and effect. We haven't done any depositions yet, Judge, as it stands at the moment, and also I believe that Carolina Tree Company have said their discovery or the Aiken Co-Op have served their discovery on Carolina Tree Company -- that hasn't been completed at this point, Judge.

I believe if you reviewed the affidavits at your invitation, Judge, as to Dr. Brisbin and his wife Donna Brisbin you'll see that there are some issues here that we cannot resolve at this particular point. The discovery responses from Aiken Co-Op -- the interrogatory responses -- the majority of them say, no, at this point cannot answer those type of responses whereas Dr. Brisbin, he can answer those questions.

THE COURT: Well, Mr. Devine, if I tried this case this morning non-jury right here and I asked you what are your damages, what would they be?

MR. DEVINE: At this point, Judge, we don't have an

answer to that.

THE COURT: Very well. Anything else? Anything in response?

MR. JOHNSON: No, Your Honor.

THE COURT: All right. Prepare me orders within 15 days. Thank you.

(End of Transcript of Record.)

MR. DEVINE: I did not file a memo.

THE COURT: All right. I'll listen to you then. This is the one about the right-of-way and your client is a biologist or chemist or engineer or some professional.

MR. DEVINE: He is a senior research scientist at the Savannah River Site, Judge.

THE COURT: He claimed he was -- the right-of-way was sprayed with some type of pesticides or herbicides that killed the foliage and destroyed your client's ability to research the feral dog and his ability to smell and box turtles.

MR. DEVINE: That's correct, Judge.

THE COURT: Don't laugh. That's what was alleged. and I asked you at that hearing, Mr. Devine, please tell me what your damages are. I forgot what your response was.

MR. DEVINE: At this time, Judge -- Well, at that hearing I said that they could not be quantified or ascertained at that time, Judge.

THE COURT: Very well.

MR. DEVINE: Your Honor, if it pleases the court. In Dr. Brisbin's complaint he asks also for an injunction against the power company. Your Honor, we had submitted Mr. Johnson's motion and affidavit from Dr. Brisbin regarding that particular day in December when the power

company came on there. There is no specific agreement or should I say there is an understanding between the power company and Dr. Brisbin as to what they can do and not do on his property, and, Your Honor, his affidavit set forth was that during meetings that went back in the early 80's -- and this has been an ongoing problem with the power company -- that what they agreed to do would be that there would be topping and hand-pruning and side-limbing of any trees or branches grown within five feet of the actual power lines.

On that particular day, Judge, he unfortunately came back and there was herbicide that was spread over the particular property at issue. It destroyed certain corridors. He calls them scent corridors where he uses that for research for K-9 sniffing dogs, et cetera. That's all in his affidavit. Your Honor, there are cases in the fourth circuit that talk about the rule of reasonableness when the power companies go on to a private person's property when there is herbicides at issue.

We would certainly ask, Judge, that you take that rule of reasonableness into consideration and the fact that if there are no damages that we stick to that at this point and we're not go to forward with any depositions or develop our case on that issue and then we would ask that at least that particular cause of action stays.

THE COURT: You want an injunction?

MR. DEVINE: Yes, Your Honor, as we go forward onto that particular issue, and also, Judge, Ms. Brisbin -- She also submitted an affidavit.

THE COURT: Ms. Brisbin?

MR. DEVINE: Ms. Brisbin was there that day -- regarding the herbicide and we submitted pictures of the destruction, the swarth of what actually occurred that particular day. Judge, so if there are no damages that can be ascertained our remedy would be an injunction. What we are concerned about with his research project -- projects -- that we need some confined language with the power company that this particular action won't happen again.

Also, Judge, you know, we ask for depositions. That has not been -- that obviously has not occurred because of the grant of summary judgment. There is still discovery out there between Carolina Company and the Aiken Electric Co-Op; so we'd ask that those other causes of action at this time are also dismissed so we can develop our case accordingly. Thank you.

THE COURT: Mr. Johnson? Why should I not let him move forward with his injunctive relief cause of action?

MR. JOHNSON: Well, Your Honor, he's here on a motion for reconsideration. I don't believe his motion is

CERTIFICATION OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

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Tab 2

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

The Honorable Doyet A. Early, III

Case Number: 10 -CP-02-02981

I. LEHR BRISBIN — Appellant

Versus

AIKEN ELECTRIC COOPERATIVE, INC.,
AND GARY STOOKSBURY
AND CAROLINA TREE CARE INC.,
OF NORTH AMERICA — Respondent

FINAL BRIEF OF APPELLANT

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Statement of the Issues on Appeal

1. Did the Trial Court Err in Granting the Defendant's Motion for Summary Judgment.

2. Did The Trial Court Err in Granting the Defendant's (Aiken Electric Motion for Summary Judgment as to the Appellant's Request for an Injunction

Statement of the Case

The Appellant is a senior research scientist and owner of property located at New Ellenton, South Carolina where he conducts research in the movement and behavior of box turtles, research in the ecology of nesting birds and research into the behavioral capabilities of tracking and scent discriminating law enforcement dogs. The Defendant, Aiken Electric Cooperative (AEC) and their contractors, (Carolina Tree Care of North America) entered the Appellant's property in December 2007 for the purpose of maintaining AEC's claimed easement beneath a power line. Gary L. Stooksbury is AEC's chief executive officer.

The Appellant has encountered prior problems with AEC's power line maintenance procedures on his New Ellenton property and one incident resulted in a settlement between the parties.

The Appellant filed a civil action against the Defendant's due to the Appellant being informed that the activities performed in December 2007 on his property was discriminatory, unreasonable and unjustified which consequently, detrimentally affected the Appellant's research activities.

Before all discovery was completed, the trial court judge granted AEC's and Gary L. Stooksbury's motion for summary judgment. A Motion to Alter or Amend the order as to summary judgment was timely filed on the Appellant's behalf to which the trial court judge denied.

An Order by Consent was entered into between counsel for the Appellant and counsel for the Defendant, Carolina Tree Care, Inc., of North America (CTC) which took

CTC's case from the court docket pursuant to Rule 40 (j) SCRCP based on a pending appeal against AEC.

A Notice of Appeal was ultimately filed against the Defendant, AEC and Gary L. Stooksbury.

Standard of Review

When reviewing the trial court's decision to grant summary judgment, an appellate court applies the same standard applied by the circuit court. See, Lanham v. Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

Argument:

A. The Trial Court Erred in Granting the Defendant's (Aiken Electric Cooperative, Inc., and Gary L. Stooksbury) Motion for Summary Judgment

Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. See Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases applying the preponderance of the evidence burden of proof, the non-moving party in only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. See Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. See, David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery. See, Dawkins v. Fields, 354 S.C. 58, 69. 580 S.E.2d 433, 439 (2003). Summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that that there is no genuine issue as to any material fact. See, Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

The appellant respectfully asserts that the trial court should not have granted the Defendant's motion for summary judgment. Counsel for the Appellant informed the trial court that all discovery had not been completed, that depositions had not been undertaken and that Carolina Tree Company's discovery request to Aiken Electric Cooperative, Inc. and Gary L. Stooksbury (AEC) had not been answered by AEC. Counsel for the Appellant informed the trial court that summary judgment should not have been granted as the Appellant did not have a full and fair opportunity to complete discovery and consequently, did not have a fair opportunity to develop his case. (R. P. 86). (R. P. 90).

Counsel for AEC repeatedly requested that summary judgment should be granted because the Appellant could not demonstrate monetary damages. The trial court judge at the November 7, 2011 hearing questioned counsel for the Appellant as follows:

Q. If I tried this case this morning non-jury right here and I asked you what are your damages, what would they be?

A. At this point Judge, we don't have an answer to that.

The Court: All right, prepare me orders within 15 days.

(R. P. 86-87).

The trial court judge would not let counsel for the Appellant argue the issue as to the Plaintiff's request for an injunction against AEC and all of the causes of action set-forth in the Appellant's amended complaint. (R. P. 86-87).

The fact that damages could not be ascertained or quantified at the November 7, 2011 hearing should not be grounds for the granting of summary judgment. The Appellant alleged that AEC intentionally trespassed onto his land at issue. If trespass is

proved, the Plaintiff is entitled to some damages, if only nominal. See Norvell v. Thompson, 20 S.C.L (2 Hill) 470, 471 (1834). Actual damages need not be shown if the facts otherwise justify an award of punitive damages. Where there has been a willful trespass but no substantial damages has been shown to have resulted therefrom, a verdict for punitive damages alone will stand, since it will be presumed that nominal damages, incapable of admeasurement, have been merged in the punitive damages." See Hinson v. A.T. Sistare Constr. Co., 236 S.C. 125, 134, 113 S.E.2d 341, 345 (1960).

The Appellant has not had a full and fair opportunity to develop his case by way of discovery to include but not limited to depositions so that damages could be ascertained. The Appellant has not had a full and fair opportunity to develop his case by way of discovery to include but not limited to depositions so that he can continue to move forward with his causes of action set-forth in the Appellant's amended complaint. The Appellant respectfully requests that this court find that the granting of summary judgment in favor of AEC was an error of law and that he be allowed the opportunity to further develop his case at hand.

B. The Trial Court Erred in Granting the Defendant's (Aiken Electric Cooperative, Inc., and Gary L. Stooksbury) Motion for Summary Judgment as a Genuine Issue of Fact Existed as to the Appellant's Request for an Injunction

In cases applying the preponderance of the evidence burden of proof, the non-moving party in only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. See Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn

from the evidence in the light most favorable to the non-moving party. See, David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Where a legal remedy is inadequate or unavailable, a court may enjoin the trespasser. See Charleston Joint Venture v. McPherson, 308 S.C. 145, 417 S.E.2d 544 (1992). The power of the court to grant an injunction is in equity. Doe v. South Carolina Med. Malpractice Liability Joint Underwriting Ass'n, 347 S.C. 642, 557 S.E.2d 670 (2001). The court will reserve its equitable powers for situations when there is no adequate remedy at law. Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119 (1989). The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. Calcutt v. Calcutt, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984). In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case. Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950). For an injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law. Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 603 S.E.2d 905 (2004). A power company must not inflict unnecessary damage to the land nor may its exercise of its rights unreasonably increase the burden placed on the servient tenement. Any removal must be done in a reasonable manner. See, C/R TV, Inc v. Shannondale, Inc 27 F.3d 104 United States Court of Appeals for the Fourth Circuit (1994).

Counsel for the Appellant argued that if damages could not be quantified then a review of the record indicated that there was a genuine issue of material fact as to the issue of the injunction due to AEC exceeding the scope of AEC's power-line maintenance. (R. P. 89)

Counsel for the Plaintiff invited this Court's attention to the Plaintiff's affidavit, the Plaintiff's wife's affidavit and picture attachments that were presented to this Court at the prior hearing for summary judgment. (R. P. 37-55) (R. P. 90) and (R. P. 37-55). The trial court judge acknowledged that he had the Appellant's affidavit filed on October 18, 2011. (R. P. 84).

It is the Appellant's opinion that a genuine issue of material fact existed as to the cause of action for the injunction against AEC. AEC's contention was that they were following their correct right-of way procedures for maintaining their power lines on the Appellant's property. However, the Appellant's Response to Motion for Summary Judgment filed October 18, 2011 demonstrated that there was a genuine issue of material fact as to the issue of the injunction. Furthermore, the Appellant's and the Appellant's wife's affidavits stated as follows:

A. The Appellant attested to the fact that power line maintenance activities on his property would consist only of the topping and hand-pruning/ "side limbing" of any trees and/or branches growing within five feet of the actual power lines or utility poles, and/or which otherwise posed a danger to the wires as a result of the potential to fall or be blown into these wires during a storm.

B. The Appellant attested that it was further agreed at this meeting that no emergent woody growth and/or other ground-cover vegetation under the power line would be damaged or removed unless it could reasonably be expected to pose a barrier to

the entry and free-movement of AEC vehicles under the power line in the event of an electrical maintenance emergency.

C. The Appellant's attested that the activities conducted in December 2007 violated their guidelines due to AEC selectively mowing and destroying with herbicide, low-growing vegetation, which was in no way related to any issue of safety or access to the right-of-way since this vegetation could never grow up and interfere with the power-lines nor could it impede access to the power-lines.

D. The Appellant attested that his use and enjoyment of his property and his scientific research was severely curtailed due to AEC's activities.

E. The Appellant's wife attested that a 10 foot swath was cut into their property which left their property covered in debris and rendered the property useless to the Appellant and his wife and their dogs.

F. The Appellant's wife attested that the Appellant and she have yet to be able to use the property as they once did due to the actions of AEC and the AEC's actions have allowed children from the school across the street to enter the property and created an area from which the Appellant's dogs and livestock could easily escape.

(R. P. 38-55).

An injunction would prevent further harm to the Appellant's research activities, and his use and enjoyment of his property and for AEC to keep in the bounds of reasonableness as to their right-of-way maintenance.

The evidence submitted by the Appellant was enough for the Appellant to withstand AEC's motion for summary judgment as to the request for an injunction. The Appellant

respectfully requests that his cause of action as to an injunction should proceed in order for his rights to be protected to which a balancing of the equities would be in the Appellant's favor.

Conclusion

The Appellant respectfully requests that this court find that the trial court erred in granting AEC's motion for summary judgment.

Respectfully submitted,

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June 6, 2012

Certificate of Counsel

The undersigned certifies that this Final Brief complies with the SCARC

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June 7, 2012

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TABLE OF AUTHORITIES

STATEMENT OF THE CASE

The Appellant commenced this action on December 9, 2010 by the filing of a Summons and Complaint. The action arises out of the cutting and clearing of a right-of-way across the Appellant's property. On or about January 13, 2011, the Appellant filed an Amended Summons and Amended Complaint. In the Amended Complaint, he asserted the following causes of action:

1. Negligence
2. Trespass to Land
3. Interference with Prospective Economic Advantage
4. Breach of Contract
5. Equitable Rescission
6. Injunction

On or about January 24, 2011, Defendants Aiken Electric Cooperative, Inc. and Gary Stooksbury ("Aiken Electric") filed their Answer. On or about January 27, 2011, the Appellant filed a Reply.[1]

On or about March 8, 2011, Aiken Electric filed a motion for summary judgment made upon grounds that the Complaint failed to state facts sufficient to constitute a cause of action and submitted the Affidavits of Dan Garman and Bryan Boatwright in support thereof. On or about October 18, 2011, the Appellant filed and served his affidavit and the affidavit of his wife.

Aiken Electric's motion for summary judgment was heard by the Honorable Doyet A. Early, III on November 7, 2011. By an Order dated December 12, 2011, Judge Early granted summary

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[1]No reference is made to Carolina Tree Company, Inc. of North Carolina which is not a party to this appeal.

judgment in favor of Aiken Electric.

On or about December 20, 2011, the Appellant filed a motion to alter or amend judgment pursuant to Rule 59(e) as follows:

> "1. That the Defendant herein was granted summary judgment; and
> 2. That under the evidence and testimony presented, the Defendant's motion for summary judgment should have been denied."

Judge Early held a hearing on the motion to reconsider on January 9, 2012. By an Order dated January 26, 2012, Judge Early denied the motion to reconsider.

On February 6, 2012, this Notice of Appeal was filed.

I.

THE APPELLANT FAILED TO COMPLY WITH THE REQUIREMENTS OF RULE 56, SCRCP AND IS THEREFORE NOT ENTITLED TO RELIEF.

At the hearing on November 7, 2011, the only argument made by Appellant's counsel was as follows:

> "Mr. Divine, you want to help me with this one?
> MR. DEVINE: Thank you, Your Honor. If it please the court. Your Honor, this land at issue is out in the New Ellenton area. Just so the court is aware of actually what Dr. Brisbin does research wise on this piece of property and his affidavit at paragraph three emphasizes that he researches the movement and behavior of resident box turtles and he also studies the ecology of nesting birds and he also is in the research and study of tracking and scent-discriminating law enforcement dogs.
> Dr. Brisbin and the Aiken Electric Co-Op have had, unfortunately, over the last 20-something years, rather an unfortunate history of where is the scope of this right-of-way, what is supposed to happen in the course of Aiken Co-Op's dealing. Back in the 80's this issue raised its ugly head when Mr. Harte was practicing law. He was able to come to some understanding and agreement with the Aiken Co-Op at that time.
> The problem we have at the moment, Judge, is – and why we feel that summary judgment should not be granted at thsi time, we don't have all discovery that is complete at the moment. We're still waiting for the discovery from Carolina

Tree Company. We've got a scheduling order that's about to come into full force and effect. We haven't done any depositions yet, Judge, as it stands at the moment, and also I believe that Carolina Tree Company have said their discovery or the Aiken Co-Op have served their discovery on Carolina Tree Company – that hasn't been completed at this point, Judge.

I believe if you reviewed the affidavits at your invitation, Judge, as to Dr. Brisbin and his wife Donna Brisbin you'll see that there are some issues here that we cannot resolve at this particular point. The discovery responses from Aiken Co-Op – the interrogatory responses – the majority of them say, no, at this point cannot answer those type of responses whereas Dr. Brisbin, he can answer those questions.

THE COURT: Well, Mr. Devine, if I tried this case this morning non-jury right here and I asked you what are your damages, what would they be?

MR. DEVINE: At this point, Judge, we don't have an answer to that.

THE COURT: Very well. Anything else? Anything in response?

MR. JOHNSON: No, Your Honor." (R. p. 85, line 10-R. p. 87, line 4)

Rule 56(f), SCRCP makes it clear that a lawyer can simply not show up at a hearing and defeat a summary judgment motion by making a general, non-specific argument that discovery is needed. Rule 56(f) provides as follows:

> "When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."

Here, neither the Appellant nor his counsel filed an affidavit that the Appellant could not for reasons stated therein present by affidavit facts essential to justify opposition to the motion. Rule 56(f) is clear and unambiguous. Rule 56(f) is binding on litigants and the court as well. All Judge Early did was apply the plain language of Rule 56(f), as he should have. Accordingly, his decision should be affirmed.

II.

THE APPELLANT FAILED TO DEMONSTRATE BY AFFIDAVIT OR OTHERWISE THAT THE LIKELIHOOD OF FURTHER DISCOVERY WOULD UNCOVER ADDITIONAL RELEVANT EVIDENCE AND THE APPELLANT IS THEREFORE NOT ENTITLED TO RELIEF.

The Appellant's counsel, at the hearing before Judge Early on November 7, 2011, only argued that "we don't have all discovery that is complete at this moment". He argued that a co-defendant's discovery had not yet been answered by Aiken Electric but identified no specific discovery that he had pending or needed to discovery that would create a question of fact and defeat Aiken Electric's motion for summary judgment.

It has long been the law in South Carolina that if the non-moving party seeks to avoid summary judgment on the basis that discovery is not complete, the non-moving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a "fishing expedition". *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

In considering this issue, it should be noted that Judge Early found that the Appellant had no damages as confirmed by his interrogatory answers. This was in part a basis for his decision to grant summary judgment. Judge Early found:

> "In addition thereto, the plaintiff's Answers to Interrogatories establish that the plaintiff has not suffered any monetary damages as a result of the matters alleged in the Amended Complaint. Aiken Electric served the standard state court interrogatory, asking the plaintiff to set forth an itemized statement of all damages claimed to have been sustained by the party. In response, the plaintiff answered that the damages "cannot be measured and directly quantifiable monetary terms". He further stated:
>
> > "A specific dollar value cannot be usefully associated with the damage/hindrance imposed upon either the bird nest-box or

research or other studies of the movement and behavior of the eastern box turtles (Terrapene carolina carolina) on this property. Similarly, the dollar value of the impacts upon on-going studies of scent-following bloodhounds and other law enforcement canines which are based on the repetitive use of long established "scent corridors" which have now been mechanically destroyed and/or chemically contaminated/compromised through the use of the 'Garlon 4 Ultra' herbicide under the AEC power lines, as described above, cannot be quantified."

In Interrogatory 6, Aiken Electric asked the plaintiff to identify with specificity the destroyed trees, plants, scientific research projects, vegetation and property belonging to the plaintiff that is referred to in paragraph 21 of the complaint and set forth the value of each such item that was allegedly destroyed. The plaintiff submitted a lengthy, rambling response to this interrogatory, but he did not identify or set forth the value of any item that was allegedly destroyed." (R. p. 58).

Since the Appellant had no damages, he had no viable cause of action. Additional discovery, whatever it might be, would not cure this defect.

Since the Appellant failed to demonstrate a likelihood that further discovery would uncover additional relevant evidence creating a question of fact, he is not entitled to relief in this appeal.

III.

CONTRARY TO APPELLANT'S ARGUMENT, THE NOVEMBER 7, 2011 HEARING TRANSCRIPT ESTABLISHES THAT JUDGE EARLY DID NOT LIMIT APPELLANT'S COUNSEL FROM ARGUING ANY ISSUE AT THE HEARING AND APPELLANT IS NOT ENTITLED TO RELIEF UPON THIS GROUND.

In his brief, the Appellant has made the following argument in his brief to this Court::

"Counsel for AEC repeatedly requested that summary judgment should be granted because the Appellant could not demonstrate monetary damages. The trial court judge at the November 7, 2011 hearing questioned counsel for the Appellant as follows:

Q: If I tried this case this morning non-jury right here and I asked you what are your damages, what would they be?

A: At this point Judge, we don't have an answer to that.
The Court: All right, prepare me orders within 15 days. (R. P. 86-87)
The trial court judge would not let counsel for the Appellant argue the issue as to the Plaintiff's request for an injunction against AEC and all of the causes of action set-forth in the Appellant's amended complaint. (R. P. 86-87)" Appellant's Brief, page 5.

However, this argument cannot avail the Appellant. The Appellant has mis-quoted the transcript and omitted the relevant portion. The transcript actually states the following:

"THE COURT: Well, Mr. Devine, if I tried this case this morning non-jury right here and I asked you what are your damages, what would they be?
MR. DEVINE: At this point, Judge, we don't' have an answer to that.
THE COURT: Very well. Anything else? Anything in response?
MR. JOHNSON: No, Your Honor." (R. p. 86, line 22-R. p. 87, line 6).

As the transcript establishes, Judge Early specifically asked whether there was anything else to be argued or anything to be argued in response. Appellant's counsel made no further argument.

It is unfair to the Judge to argue that he cut off or shut down argument when he did not do so. It is misleading to mis-quote the record and make an argument based thereon. Appellant is not entitled to relief upon this ground.

IV.
APPELLANT'S ARGUMENT THAT THERE WAS A GENUINE ISSUE OF MATERIAL FACT AS TO THE ISSUE OF INJUNCTION DUE AIKEN ELECTRIC EXCEEDING THE SCOPE OF AIKEN ELECTRIC'S POWER LINE MAINTENANCE AND THAT HE WAS ENTITLED TO INJUNCTIVE RELIEF WAS NOT MADE AT THE NOVEMBER 7, 2011 HEARING AND IS NOT PRESERVED FOR REVIEW.

The Appellant, on page 8 of his brief, has argued as follows:

"Counsel for the Appellant argued that if damages could not be quantified then a review of the record indicated that there was a genuine issue of material fact as to the issue of the injunction due to AEC exceeding the scope of AEC's power-line maintenance. (R. P. 89)" Appellant's Brief, page 8.

> It is the Appellant's opinion that a genuine issue of material fact existed as to the cause of action for the injunction against AEC. AEC's contention was that they were following their correct right-of-way procedures for maintaining their power lines on the Appellant's property. However, the Appellant's Response to Motion for Summary Judgment filed October 18, 2011 demonstrated that there was a genuine issue of material fact as to the issue of the injunction." Appellant's Brief, page 8.

However, this argument was not made at the hearing on November 7, 2011. It is settled law that an issue cannot be raised for the first time in a motion to reconsider. *Johnson v. Sonoco Products Company*, 381 S.C. 172, 672 S.E.2d 567 (2009) ("Sonoco further challenges the authority of the circuit court to award interest and assess the ten percent penalty under Section 42-9-90 of the South Carolina Code (1976). Sonoco contends such an award rests exclusively in the Workers' Compensation Commission. We find this issue is not preserved. The issue first appears in Sonoco's motion seeking reconsideration of the circuit court's December 20, 2006 order. An issue may not be raised for the first time in a motion to reconsider.") ("Further, because the transcript of the proceeding below is omitted from the record, it appears the first time Commercial Credit made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review.")

Since this issue was not raised and argued at the November 7, 2011 hearing, it is not preserved for review.

V.

EVEN IF THE APPELLANT'S ARGUMENT REGARDING INJUNCTIVE RELIEF WERE PRESERVED FOR REVIEW, THIS ARGUMENT, FOR THE REASONS STATED BY JUDGE EARLY, IS INSUFFICIENT TO DEFEAT SUMMARY JUDGMENT.

The Appellant's argument regarding injunctive relief was made for the first time at hearing on his motion to reconsider on January 9, 2012. (R. pp. 88-89).

Judge Early addressed and correctly decided this issue in his Order dated January 23, 2012.

> "The plaintiff argued that summary judgment should not have been granted on the claim for injunctive relief since the plaintiff was seeking an injunction to prevent the use of herbicides on his property. However, I find that there is no genuine issue of fact relating to the claim for an injunction. To obtain an injunction, a party must demonstrate irreparable harm, the likelihood of success on the merits, and an inadequate remedy at law. *Roark v. Combined Util. Comm's.*, 290 S.C. 437, 351 S.E.2d 168 (Ct. App. 1986). Here, the plaintiff's property is burdened by the defendant's right-of-way. Defendant followed its standard clearing procedures on the plaintiff's property. Plaintiff offered no evidence to the contrary. The plaintiff has no quantifiable damages and cannot demonstrate irreparable harm. Since his property is burdened by the easement and right-of-way of the defendant, and there is nothing to show that the defendant cleared the right-of-way on his property differently from the clearing on other properties that were being cleared at the same time, no showing was made as to the likelihood of success on the merits."

CONCLUSION

This action was commenced on December 9, 2010 and the motion for summary judgment was not heard until almost 11 months later. Aiken Electric's motion for summary judgment was pending from March 8, 2011 until it was heard on November 7, 2011, some 8 months. Obviously, there was plenty of time to take discovery and plenty of notice of the summary judgment motion and issues raised thereby. Although Appellant's counsel argued that further discovery was needed, Appellant's counsel did not identify any pending or proposed discovery that would yield relevant evidence and create genuine issue of material fact. Counsel made a general, non-specific argument

that additional discovery was needed. This does not cut it. The requirements and mandates set forth in Rule 56 are not mere empty noise. Holdings of the South Carolina Supreme Court which are set above are not mere empty noise. Judge Early did exactly what a judge should do. He followed and applied the law. This Court should now do likewise and affirm.

Respectfully submitted,

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June 13, 2012

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

Honorable Doyet A. Early, III

Civil Action No. 10-CP-02-02981

I. Lehr Brisbin, ... Appellant

vs.

Aiken Electric Cooperative, Inc., Gary W. Stooksbury and
Carolina Tree Care, Inc. of North America

OF WHOM:
Aiken Electric Cooperative, Inc. is ..... Respondent

PROOF OF SERVICE

I, Susan J. Mondello, of Johnson & Barnette, LLP, hereby certify that I have served the Initial Brief of Respondent by mailing a copy of same, postage prepaid and return address clearly indicated, to the attorney for the Appellant, Mark J. Devine, Law Offices of Mark J. Devine, P.O. Box 2008, Aiken, SC 29802 on the 13th day of June, 2012.

Susan J. Mondello

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

Honorable Doyet A. Early, III

Civil Action No. 10-CP-02-02981

I. Lehr Brisbin, ... Appellant

vs.

Aiken Electric Cooperative, Inc., Gary W. Stooksbury and
Carolina Tree Care, Inc. of North America

OF WHOM:
Aiken Electric Cooperative, Inc. and Gary W. Stooksbury are ..... Respondents

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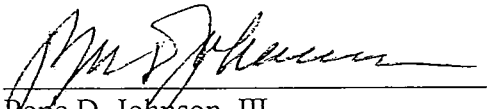
CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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June 13, 2012

Tab 4

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

I. Lehr Brisbin, Appellant,

v.

Aiken Electric Cooperative, Inc., Gary L. Stooksbury, and Carolina Tree Company, Inc., Defendants,

Of whom Aiken Electric Cooperative, Inc. and Gary L. Stooksbury are the Respondents.

Appellate Case No. 2012-207488

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-069
Heard January 15, 2013 – Filed February 13, 2013

AFFIRMED

Mark John Devine, of The Law Office of Mark J. Devine, of Aiken, for Appellant.

Pope D. Johnson, III, of Johnson & Barnette, LLP, of Columbia, and Donnell G. Jennings, of Turner Padget Graham & Laney, PA, of Columbia, for Respondents.

PER CURIAM: I. Lehr Brisbin appeals the trial court's grant of summary judgment in favor of Aiken Electric Cooperative, Inc. (AEC), and Gary Stooksbury (collectively Respondents). Brisbin contends the trial court erred in finding he did not present any damages to sustain his causes of action. He further maintains the trial court erred in failing to grant his request for an injunction. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in granting summary judgment in favor of Respondents because Brisbin did not have a full and fair opportunity to complete discovery: *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438-39 (2003) ("In reviewing the grant of a summary judgment motion, [this] [c]ourt applies the same standard as the trial court under Rule 56(c), SCRCP: 'summary judgment is proper when there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" (quoting *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991))); *id.* at 69, 580 S.E.2d at 439 ("In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." (citing *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545)); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." (citing *Dawkins*, 354 S.C. at 71, 580 S.E.2d at 439-40)); *Clark v. Greenville Cnty.*, 313 S.C. 205, 208, 437 S.E.2d 117, 118 (1993) ("Bald allegations of diminution in property value are insufficient to create a genuine issue of fact regarding damages absent any competent evidence showing the existence, amount, or causation of damages." (citing *Baughman*, 306 S.C. at 117, 410 S.E.2d at 546)).

2. As to whether the trial court erred in failing to grant injunctive relief: *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

AFFIRMED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

Tab 5

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

The Honorable Doyet A. Early, III

Case Number: 10 -CP-02-02981

I. LEHR BRISBIN **Appellant**

Versus

AIKEN ELECTRIC COOPERATIVE, INC.,
AND GARY STOOKSBURY **Respondent**
AND CAROLINA TREE CARE INC.,
OF NORTH AMERICA

PETITION FOR REHEARING

That the Appellant, I. Lehr Brisbin respectfully petitions the South Carolina Court of Appeals for a rehearing. The Appellant respectfully requests that the Court of Appeals review the Brief and Record of Appeal previously submitted and the appellant's brief and grant a rehearing on the following grounds:

1. That a genuine issue of material fact existed as to the facts and circumstances surrounding the appellant's case.
2. That there is a genuine issue of material fact as to the issue of an injunction and the issue of damages.

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Tab 6

The South Carolina Court of Appeals

I. Lehr Brisbin, Appellant,

v.

Aiken Electric Cooperative, Inc., Gary L. Stooksbury, and Carolina Tree Company, Inc., Defendants,

Of whom Aiken Electric Cooperative, Inc. and Gary L. Stooksbury are the Respondents.

Appellate Case No. 2012-207488

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr. J.

J.

J.

Columbia, South Carolina

cc:
Donnell G. Jennings
Mark John Devine

Pope D. Johnson, III

FILED

April 19, 2013