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Oct 23 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, and
The Honorable Alex Kinlaw, Jr., Circuit Court Judges

Appellate Case No. 2022-001499
Trial Court Case No. 2020-CP-39-00266

Click Properties, LLC and Hyper Formance, LLC,.....Respondents,

v.

Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC.....Appellants.

AMENDED RECORD ON APPEAL
VOLUME I

Bradford N. Martin, Esq. (SC Bar # 3658)
Laura W.H. Teer, Esq. (SC Bar #16698)
Gwendolyn G. Martin, Esq. (SC Bar # 11897)
Bradford Neal Martin & Associates, PA
P.O. Box 10410
Greenville, SC 29603
(864) 552-9990
bmartin@bnmlaw.com
lteer@bnmlaw.com
gmartin@bnmlaw.com

Attorneys for Respondents

Scarlet B. Moore, Esq. (SC Bar # 72534)
P.O. Box 17615
Greenville, SC 29606
(864) 214-5805
(864) 752-0630 (FAX)
Scarlet28@msn.com

Attorney for Appellants

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper	)	
Formance, LLC,	)	
	)	ORDER
Plaintiffs,	)	
	)	
Vs.	)	
	)	2020-CP-39-00266
Thomas SC Properties, LLC and All-Tech	)	
Tire and Auto Repair, LLC,	)	
	)	
Defendants	)	
	)	

This matter comes before the Court upon Plaintiff's Motion for a Temporary Injunction and Defendant's Motion to Dismiss. This Motion was heard on April 30, 2020 and was conducted pursuant to the Order of the S.C. Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended- hereinafter "Emergency Order"). The parties consented to holding the hearing via video conference with a Court Reporter.

The Motion for Temporary Injunction by the Plaintiff was filed on February 27, 2020 and served on the Defendant on March 2, 2020. The property in dispute is a gravel drive that runs along the western boundary of the Plaintiff's property and gravel turn-around area that is located at the rear of the Plaintiff's property and is adjacent to the Plaintiff's "back building" (the back building is used for Plaintiff's business- to shelter cars before and after they have been painted). The Plaintiff contends that this gravel drive and gravel turn-around area are the only means of vehicular access to the Plaintiff's back building. Plaintiff's use of this gravel drive and turn-around encroaches on Defendant's property, but Plaintiff and his predecessors have been using the property in this way for many years. Further, the continued use of the property is necessary for a major portion of the Plaintiff's business. To grant a temporary injunction, the applicant must

establish 3 factors: (1) irreparable harm; (2) likelihood of success on the merits; and, (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The Court addresses these issues as follows: (1) Based on the Plaintiff's affidavit, the failure to grant this injunction could result in a substantial decline in business, which by itself is not a basis for a Temporary Injunction. However, when this result is combined with the challenges of the current coronavirus crisis, it could result in the closure of the business. *See Peek v. Spartanburg Reg'L Healthcare System*, 626 S.E.2d 34, 367 S.C. 450 (S.C. App. 2005). Therefore, the Court finds that irreparable harm has been established. (2) While determining an applicant's likelihood of success is always a difficult analysis at this stage, the Plaintiff has presented significant factors to show that it has a likelihood of success and the Court finds them sufficient for this analysis. (3) If the Plaintiff's business were to close due to the inability to use the drive and turn-around, then the plaintiff could lose customers and good will of his business and it would not be possible to determine damages in that instance. Therefore, the Plaintiff has established that it does not have an adequate remedy at law. Accordingly, the Court finds that the Plaintiff has established the 3 elements required for a Temporary Injunction.

The additional test of balancing the equities lends more support for granting the Temporary Injunction. According to the South Carolina Supreme Court, the trial 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." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The Plaintiff has been using the property in issue for many years and according to the Plaintiff's owner, a major portion of its business is dependent on the ability to use this gravel drive and turn-around area. On the other hand, the Defendant does not use this

gravel drive nor the turn-around, and it is unrefuted that the defendant's predecessors in title allowed the Plaintiff and its predecessors to use the property in this way. Therefore, maintaining the status quo allows the Plaintiff to continue using the land as it has been used in the past during the pendency of this action, while not causing any significant "inconvenience [or] damage" to the Defendant.

Based on these factors, the Court grants the Plaintiff's Motion for Temporary Injunction as follows:

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

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

3) The Court further directs that both parties and their respective agents and representatives restrain from harassing the other party, their employees and customers.

This Order shall go in effect upon the Plaintiff's posting of security in the amount of \$2,500 as provided by SCRCF 65(c). The Court finds that this amount is sufficient to cover any "costs and damages" which the Defendant would suffer for improper injunctive relief.

The Court has also considered the Defendant's Motion to Dismiss pursuant to SCRCF 12(b)(6). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *HHHunt Corp. v. Town of Lexington*, 699 S.E.2d 699, 703 (S.C. App. 2010). "The trial court . . . must presume all well pled facts to be true." *Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39, 44 (S.C. App. 2010). The Court finds that the various causes of action have been properly pled and Defendant's Motion is denied.

Further, the Court would direct the parties to participate in meaningful mediation as soon as possible and that the case be scheduled for trial at the earliest possible date consistent with the South Carolina Rules of Civil Procedure.

Signature page of Judge Perry H. Gravely to follow



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Temporary Injunction

So Ordered

s/ Honorable Perry H. Gravely, #2755

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IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	ORDER
	)	DENYING DEFENDANTS'
vs.	)	MOTION TO REMOVE
	)	TEMPORARY INJUNCTION
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	AND
	)	DENYING DEFENDANTS'
	)	MOTION TO AMEND ANSWER
Defendants.	)	
	)	

This matter came before the Court via remote communication technology (Webex) on March 30, 2022, for a hearing on Defendants' Motions to Amend their Answer and Remove Temporary Injunction. Bradford Neal Martin, Esq. and Gwendolyn G. Martin, Esq. appeared on behalf of Plaintiffs. Emily O'Brian, Esq. appeared on behalf of Defendants. The Court has reviewed the relevant pleadings, memoranda, previous order, and affidavits. For the reasons set forth below, the Motions are DENIED.

Defendants' Motion to Remove Temporary Injunction

This case involves a property dispute regarding the boundary line for 3668 Calhoun Memorial Highway in Easley and the use of a gravel turn-around to access a portion of the specialty vehicle repair and restoration business of Plaintiff, Hyper Formance, LLC (the "Back Building"). The rear of Plaintiffs' property is not accessible from the northern or eastern boundaries. The southern boundary of the property is accessed by entering from U.S. Highway 123. A gravel driveway runs along the western boundary leading to the Back Building, with a gravel turn-around area at the rear of the property and adjacent to the Back Building. Plaintiffs allege that the gravel turn-around area which is accessed using their gravel driveway is the only means of vehicular access to the Back Building.

Plaintiffs allege that Defendant, Thomas SC Properties, LLC, the adjoining landowner along its western boundary, negligently excavated the Thomas Property. Plaintiffs further allege this excavation has caused significant erosion and other harm to Plaintiffs' property. Plaintiff filed a Motion for a Preliminary Injunction which was argued before the Honorable Perry H. Gravely, who granted the injunction by Order filed May 8, 2020.

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The May 8, 2020 Temporary Injunction was granted based upon three factors: (1) irreparable harm; (2) likelihood of success on the merits; and (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The Temporary Injunction was entered for "the pendency of this action." (Court Order dated May 8, 2020, p. 3). Defendants did not file a Rule 52(b) or 59(e) Motion to Alter or Amend the May 8, 2020 Order.

Defendants argue that a change in circumstances has occurred which entitles Defendants to a lifting of the Temporary Injunction. After a review of the Affidavits of Jonathan Thomas (both from 2020 and 2022) and Robert Brent Click, I find no evidence of a change in circumstances that would support lifting the Temporary Injunction less than two months before the scheduled trial date for this case.

I further agree with the finding in the May 8, 2020 Order that because a large portion of Plaintiffs' business is dependent on the ability to use the gravel turn-around, and on the other hand, the Defendants do not use the turn-around area, the potential harm to Plaintiffs if the Temporary Injunction is lifted is great while no significant damage will result to Defendants if the Temporary Injunction remains in place.

Therefore, Defendants' Motion to Remove the Temporary Injunction is denied. I further find that if this case is not reached for trial during at the May 23, 2022 term of court, any additional issues regarding the Temporary Injunction can be properly addressed by Judge Gravely. Plaintiffs' Response in Opposition to Defendants' Motion to Remove the Temporary Injunction seeks attorneys' fees for the filing of a frivolous motion, pursuant to Rule 65(f)(2), SCRPC. This issue is reserved for determination by the Trial Court.

Defendants' Motion to Amend Answer

Rule 15(a), SCRPC, sets forth the standard for granting motions to amend. It provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

The grant or denial of a motion to amend is within the Court's discretion. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.").

This case has been pending for two years and is scheduled to be tried during the May 23, 2022 Term. I find that a counterclaim at this late stage of litigation would be prejudicial to Plaintiffs. I further find that such an amendment would be futile in that it would prolong litigation and would not serve the ends of justice, especially considering that Plaintiffs' Third Cause of Action already requests a Declaratory Judgment to Quiet Title as to the common property line of the parties. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

Rule 7(b)(1), SCRCF, is substantially similar to its Federal counterpart, Rule 7(b)(1), FRCP. *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (Ct. App. 2008). "[A] motion that fails to state any grounds for relief . . . is insufficient under Rule 7(b)(1)." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1240 (10th Cir. 2006). Defendants' own Motion and Memorandum establish that the Counterclaim adds nothing to the case and is unnecessary because "the issues set forth in Defendants' Counterclaim are already set to be adjudicated as part of Plaintiffs' claims."

There are no grounds stated that show with "particularity" why amendment at this late stage should be granted. The particularity requirement "is to be read flexibly in recognition of the peculiar circumstances of the case." *Lucey v. Meyer*, 401 S.C. 122, 131, 736 S.E.2d 274, 279 (S.C. App. 2012) quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996).

IT IS HEREBY ORDERED THAT Defendants' Motion to Remove the Temporary Injunction is hereby DENIED and Defendants' Motion to Amend its Answer is hereby DENIED.

The Honorable Alex Kinlaw
Presiding Judge

_____, South Carolina This ____ day of _____, 2022



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

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IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	ORDER
	)	DENYING DEFENDANTS'
vs.	)	MOTION TO REMOVE
	)	TEMPORARY INJUNCTION
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	AND
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The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The May 8, 2020 Temporary Injunction was granted based upon three factors: (1) irreparable harm; (2) likelihood of success on the merits; and (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The Temporary Injunction was entered for "the pendency of this action." (Court Order dated May 8, 2020, p. 3). Defendants did not file a Rule 52(b) or 59(e) Motion to Alter or Amend the May 8, 2020 Order.

Defendants argue that a change in circumstances has occurred which entitles Defendants to a lifting of the Temporary Injunction. After a review of the Affidavits of Jonathan Thomas (both from 2020 and 2022) and Robert Brent Click, I find no evidence of a change in circumstances that would support lifting the Temporary Injunction less than two months before the scheduled trial date for this case.

I further agree with the finding in the May 8, 2020 Order that because a large portion of Plaintiffs' business is dependent on the ability to use the gravel turn-around, and on the other hand, the Defendants do not use the turn-around area, the potential harm to Plaintiffs if the Temporary Injunction is lifted is great while no significant damage will result to Defendants if the Temporary Injunction remains in place.

Therefore, Defendants' Motion to Remove the Temporary Injunction is denied. I further find that if this case is not reached for trial during at the May 23, 2022 term of court, any additional issues regarding the Temporary Injunction can be properly addressed by Judge Gravely. Plaintiffs' Response in Opposition to Defendants' Motion to Remove the Temporary Injunction seeks attorneys' fees for the filing of a frivolous motion, pursuant to Rule 65(f)(2), SCRPC. This issue is reserved for determination by the Trial Court.

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A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

The grant or denial of a motion to amend is within the Court's discretion. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion.").

This case has been pending for two years and is scheduled to be tried during the May 23, 2022 Term. I find that a counterclaim at this late stage of litigation would be prejudicial to Plaintiffs. I further find that such an amendment would be futile in that it would prolong litigation and would not serve the ends of justice, especially considering that Plaintiffs' Third Cause of Action already requests a Declaratory Judgment to Quiet Title as to the common property line of the parties. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

Rule 7(b)(1), SCRCF, is substantially similar to its Federal counterpart, Rule 7(b)(1), FRCP. *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (Ct. App. 2008). "[A] motion that fails to state any grounds for relief . . . is insufficient under Rule 7(b)(1)." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1240 (10th Cir. 2006). Defendants' own Motion and Memorandum establish that the Counterclaim adds nothing to the case and is unnecessary because "the issues set forth in Defendants' Counterclaim are already set to be adjudicated as part of Plaintiffs' claims."

There are no grounds stated that show with "particularity" why amendment at this late stage should be granted. The particularity requirement "is to be read flexibly in recognition of the peculiar circumstances of the case." *Lucey v. Meyer*, 401 S.C. 122, 131, 736 S.E.2d 274, 279 (S.C. App. 2012) quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996).

IT IS HEREBY ORDERED THAT Defendants' Motion to Remove the Temporary Injunction is hereby DENIED and Defendants' Motion to Amend its Answer is hereby DENIED.

The Honorable Alex Kinlaw
Presiding Judge

_____, South Carolina This ____ day of _____, 2022



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Temporary Injunction

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2022-04-26 17:06:24 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3900266

Click Properties, Llc et al
PLAINTIFF(S)

Thomas Sc Properties Llc et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

IN REGARDS TO THE JURY TRIAL THAT CONCLUDED MAY 26, 2022 WITH A JURY VERDICT IN FAVOR OF THE PLAINTIFF ON VARIOUS CAUSES OF ACTION, ALL POST TRIAL MOTIONS WILL NEED TO BE FILED BY WITHIN 10 DAYS OF THE VERDICT. IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/03/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2022-06-03 09:41:36 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3900266

Click Properties, Llc et al
PLAINTIFF(S)

Thomas Sc Properties Llc et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

IN REGARDS TO THE JURY TRIAL THAT CONCLUDED MAY 26, 2022 WITH A JURY VERDICT IN FAVOR OF THE PLAINTIFF ON VARIOUS CAUSES OF ACTION, ALL POST TRIAL MOTIONS WILL NEED TO BE FILED BY WITHIN 10 DAYS OF THE VERDICT. IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/03/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Pickens Common Pleas

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So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2022-06-03 09:41:36 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Pickens
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP3900266

Click Properties, Llc et al
PLAINTIFF(S)

Thomas Sc Properties Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 (formal order to follow) ☒ Statement of Judgment by the Court:

See Page 2

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/04/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Defendants filed a Motion for Summary Judgment as to all causes of action and the Motion was heard on May 23, 2022, just prior to the start of the case.

At the onset of the hearing, Plaintiffs' counsel asserted that it was not going forward on the cause of action for its 7th cause of action for a declaratory judgment for easement by necessity and that it was not pursuing a claim for adverse possession.

After review of the briefs and argument of counsel, the Court denied the Motion for Summary Judgment as to the following causes of action: (1) nuisance per se; (2) negligence; (3) declaratory judgment-quiet title; (4) declaratory judgment-acquiescence; (5) declaratory judgment-prescriptive easement. The Motion as to the 8th Cause of action for injunction was held in abeyance pending the outcome of the trial. As to each of these causes of action, the Court found that there was a genuine issue of material fact and the Defendants' Motion is respectfully denied and the Plaintiffs would be entitled to proceed to trial on these issues.

As to the cause of action for declaratory judgment for easement by estoppel, the Court finds that Summary Judgment is warranted. The elements of Easement by estoppel are as follows: "(1) conduct that amounts to a false representation or concealment of material facts, or, at least that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; (3) knowledge, actual or constructive, of the real facts." Paine Gayle Properties, LLC v. CSX Transp., Inc., 400 S.C. 568 (2012). The evidence shows that the Defendants did not acquire their property until May 2018 and began taking action that clearly led the Plaintiffs know that they were not going to let them use this property. Further, the filed plat from 1996 clearly showed that a good portion of the driveway in question was on the Defendants' property. Considering all evidence and reasonable inference in light most favorable to Plaintiff, the Court finds that there is no genuine issue of material fact as to this cause of action and Defendants are entitled to judgment as a matter of law. Therefore, the Court grants Defendants' Motion for Summary Judgment as to the equitable estoppel cause of action.

It is so ordered.



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2022-06-04 07:21:57 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

Click Properties, LLC and Hyper Formance,
LLC,

2020-CP-39-00266

Plaintiffs,

vs.

ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER

Thomas SC Properties, LLC and All-Tech Tire
and Auto Repair, LLC,

Defendants.

The Court having thoroughly reviewed the Defendant's Motion to Reconsider in the above referenced matter, finds nothing that would alter, amend or modify the Court's prior Order dated April 7, 2022.

Greenville, South Carolina
June 13, 2022

Alex Kinlaw Jr.
Circuit Court Judge



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2022-06-29 13:21:28 page 2 of 2

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

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

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

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

Post-trial Motions Filed

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

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

Nuisance *Per se*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants Motions as to Negligence

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

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

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

Defendants' Motions as to Acquiescence

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

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

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

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

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

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

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

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

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

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

Defendants Motions as to Prescriptive Easement

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

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

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

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

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

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

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

Acquiescence and Prescriptive Easement are not Inconsistent

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

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

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

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

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

Modification of Damages

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

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

Issuance of Equitable Relief

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

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

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

Abatement of the Continuing Nuisance

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

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

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

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

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

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

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

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

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

Thirteenth Juror

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

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

Issuance of Permanent Injunctions

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

- 1) Defendant[s] shall not construct a fence or obstruction of any kind or take any action which would restrict Plaintiff's use of the gravel drive or turn-around area;
- 2) Defendant[s] shall not take any action on its property which would damage Plaintiff's property, the building, the gravel drive, or the turn-around area; and
- 3) Both parties and their respective agents and representatives shall refrain from harassing the other party, their employees and/or customers.

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

IT IS SO ORDERED.

E- signature of Judge Perry H. Gravely to follow



Pickens Common Pleas

Case Caption: Click Properties, Llc , plaintiff, et al VS Thomas Sc Properties Llc ,
defendant, et al
Case Number: 2020CP3900266
Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2022-09-20 18:16:50 page 18 of 18

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	FOR THE 13 th JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	C/A No. 2020-CP-39-_____
	)	
Plaintiffs,	)	SUMMONS
vs.	)	
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
_____	)	

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at 201 West McBee Avenue, Suite 302, Post Office Box 10410, Greenville, South Carolina 29603, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

February 26, 2020

s/Bradford N. Martin
 Bradford N. Martin, Esq. (SC Bar No. 3658)
 Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, P.A.
 Post Office Box 10410
 Greenville, South Carolina 29603
 864.552.9990
 864.552.9992 (facsimile)
bmartin@bnmlaw.com

**ATTORNEYS FOR CLICK PROPERTIES, LLC
 AND HYPER FORMANCE, LLC**

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-_____
	)	
Plaintiffs,	)	
	)	
vs.	)	VERIFIED COMPLAINT
	)	
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	JURY TRIAL REQUESTED
	)	
Defendants.	)	
_____	)	

The Plaintiffs, complaining of Defendants, would respectfully show to the Court:

INTRODUCTION

1. Brent Click, as a 23-year old, began his first effort, with his wife Shelly Click, to start their own business in 2013, forming Hyper Formance, LLC and leasing commercial property located at 3668 Calhoun Memorial Highway in Easley, South Carolina (the “Leased Property”). Brent and Shelly wanted to create a specialty metal fabrication and vehicle restoration business (the “Business”). Brent and Shelly, as first-time business owners, have invested virtually all their time and resources into the Business and into maintaining the land and the building on the Leased Property, which eventually, along with a second building on the same parcel, was purchased. Furthermore, they have developed an excellent reputation in this specialty business, serving customers from all over the country.

2. From the beginning of the lease, Brent understood that the Leased Property included, along the western boundary, both the entire upper portion of the gravel driveway and the gravel turn-around area leading into the only vehicular entrance to the building on the Leased Property. Upon leasing the property, Brent immediately began using the gravel driveway and turn-

around area without complaint from the adjoining landowner to the west. In fact, the man claiming to be the adjoining landowner (who also appeared to be in charge of All-Tech Auto, the business operating there) helped Brent apply additional gravel to the turn-around and driveway area in 2013.

3. There are two buildings on the parcel that Click Properties, LLC eventually purchased (the “Click Property”). The front building, which Hyper Formance, LLC had not leased prior to purchasing the Click Property, is now used as the body shop, including custom renovation work (the “Front Building”). The building on the back portion of the parcel, which was part of the Leased Property, contains a paint booth and related paint shop equipment (the “Back Building”). The two buildings are situated in such a way that the upper portion of the gravel driveway and the turn-around area are necessary for vehicular access to the Back Building.

4. The parties and prior landowners in the chains of title have, for years, comported themselves such that by their actions they recognized that the property line along the western boundary of the Click Property and the adjoining property to the west was located so as to include the entire gravel driveway and turn-around area within the portion of the land that is the Click Property.

5. In October of 2014, Brent erected a carport, attached to the Back Building and adjacent to the gravel turn-around area, so that prep work prior to putting vehicles into the paint booth could be done in a dry area, with no complaint from the adjoining landowner.

6. Eventually, the business known as All-Tech Auto was replaced by Defendant All-Tech Tire and Auto Repairs, LLC (“All-Tech”) as the tenant on the adjoining property.

7. Brent purchased the Click Property from his landlord on February 10, 2017, and conveyed the Click Property to his new single-member limited liability company, Click Properties, LLC, on March 2, 2017.

8. Brent understood at the time he purchased the Click Property that the upper portion of the gravel driveway and turn-around area were in existence and were in use by the prior owners and/or their tenants since at least 1996.

9. Brent and Shelly sold their personal residence in April 2018 and moved into the commercial buildings on the Click Property so they could devote more resources to the Business and reduce personal expenses.

10. Defendant Thomas SC Properties, LLC purchased the adjoining property to the west of the Click Property on May 23, 2018 (the "Thomas Property").

11. Upon information and belief, All-Tech and Thomas SC Properties, LLC are related entities under common ownership.

12. Tensions developed as Defendants and their employees, at Defendants' direction, began a series of harassing activities towards Plaintiffs and Brent and Shelly Click, including parking on the lower portion of the gravel driveway in a manner blocking access to the Business.

13. The harassment has continued to the point that Brent and Shelly changed their working hours and often operate the Business during overnight hours, when possible, to avoid contact with the employees of Defendants and to avoid leaving the Click Property unattended.

14. When Brent erected a gate to prevent the harassing activity by Defendants, the gate was removed from the hinges repeatedly by Defendants and their employees so All-Tech could use the Plaintiffs' driveway.

15. In August of 2018, Defendant Thomas SC Properties, LLC negligently excavated the Thomas Property, causing severe erosion that has greatly compromised the stability of the soil on the Click Property and is causing the walls and foundation of the Back Building to crack. The erosion is continuing and is expected to encroach onto the Click Property, where it will eventually

cut off access to the Back Building and continue to damage the Back Building.

16. Defendants have threatened to erect a fence along the upper portion of the gravel driveway and turn-around area in such a manner as to completely block Plaintiffs from accessing the Back Building on the Click Property, and now have begun installation of a fence on a portion of Defendants' property.

THE PARTIES

17. Plaintiff Click Properties, LLC is a South Carolina limited liability company, doing business in Pickens County, South Carolina and leases the Click Property to Hyper Formance, LLC.

18. Plaintiff Hyper Formance, LLC is a South Carolina limited liability company, doing business in Pickens County, South Carolina and leases the Click Property from Click Properties, LLC.

19. Defendant Thomas SC Properties, LLC is a South Carolina limited liability company, doing business in Pickens County, South Carolina.

20. Defendant All-Tech Tire and Auto Repair, LLC is a South Carolina limited liability company, doing business in Pickens County, South Carolina.

JURISDICTION AND VENUE

21. All parties and matters herein are within the jurisdiction of this Court.

22. This action involves damage to real property located in Pickens County, South Carolina, and therefore venue is proper in Pickens County.

FOR A FIRST CAUSE OF ACTION **(Nuisance per se)**

23. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

24. Defendants excavated the Thomas Property in such a manner as to damage the stability of the soil on Plaintiffs' property. This excavation was unreasonable, intentional and/or reckless, and continues to interfere with Plaintiffs' use and enjoyment of their property.

25. Defendants' excavation is the proximate cause of the resulting damage to structures located on the Click Property and the proximate cause of the interference with Plaintiffs' use and enjoyment of their property.

26. Plaintiffs are informed and believe that the erosion will continue unless an appropriate retaining wall is erected and seek damages sufficient for the erection of a retaining wall or for an order from this Court that Defendants be required to construct an appropriate retaining wall to mitigate the significant and on-going damage to the Click Property.

27. Plaintiffs are informed and believe that Defendants are liable for actual and punitive damages arising out of Defendants' unreasonable, intentional and/or reckless excavation of the Adjoining Thomas Property in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
(Negligence)

28. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

29. Defendants owed a duty of care when excavating the Thomas Property not to harm others and not to unreasonably interfere with the rights of adjoining landowners to peaceably enjoy the Click Property.

30. Defendants, in total disregard for its neighbors, intentionally excavated the Thomas Property in a way to cause significant damage to both the soil and the structures located on the Click Property.

31. Further, Plaintiffs are informed and believe that Defendants' negligent excavation caused and will continue to cause erosion of the Click Property and will cause Plaintiffs to lose access to a portion of the Click Property.

32. Defendants negligently, carelessly, willfully, recklessly, wantonly and/or grossly negligently breached their duty to Plaintiffs in one or more of the following particulars:

- a. By failing to adequately ensure that the Defendants' excavation on the Thomas Property did not do any damage to adjoining properties;
- b. By failing to properly supervise the excavation of its premises;
- c. By failing to take adequate measures to protect adjoining property owners from reasonably foreseeable harm;
- d. By failing to install a retaining wall to prohibit the damage to adjoining property; and
- e. By failing to exercise due care under the circumstances.

33. As a direct and proximate result, Plaintiffs have been damaged, thereby and therefore entitled to actual and punitive damages in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
**(Declaratory Judgment –
Quiet Title)**

34. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

35. This cause of action seeks a declaratory judgment for the purpose of determining a question of actual controversy between the Parties.

36. Plaintiffs are informed and believe that they are entitled to an order of this Court quieting title to the lands of the parties by declaring the common property line of the parties'

subject properties to include as part of in the Click Property the entire gravel driveway and turn-around area shown on the 1996 Boundary Survey for Betty M. Ramey and recorded in the Pickens County Register of Deeds Office at Book 56, Page 534, a copy of which is attached hereto as Exhibit A.

FOR A FOURTH CAUSE OF ACTION
**(Declaratory Judgment-
Acquiescence)**

37. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

38. This cause of action seeks a declaratory judgment for the purpose of determining a question of actual controversy between the Parties.

39. Plaintiff Click Properties, LLC seeks a determination of its rights and legal relations with Defendant SC Thomas Properties, LLC as to the western boundary of the Click Property.

40. The respective owners of the subject properties recognized the ownership and use of the entire gravel drive and turn-around by the owner of the property described herein as the Click Property, beginning at least as early as the 1996 Plat recorded in the public record at Deed Book 56, page 334.

41. Defendant is precluded from claiming the boundary line thus recognized and acquiesced in is not the true one.

42. Therefore, Plaintiffs seek a determination from the Court that Defendants acquiesced in that the western boundary of the Click Property encompasses the entire gravel driveway and turn-around area shown on the 1996 Boundary Survey for Betty M. Ramey and recorded in the Pickens County deed office at Book 56, Page 534.

FOR A FIFTH CAUSE OF ACTION
**(Declaratory Judgment-
Prescriptive Easement)**

43. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

44. This cause of action seeks a declaratory judgment for the purpose of determining a question of actual controversy between the Parties.

45. In the alternative, Plaintiffs request the Court to order that Plaintiffs have an unfettered prescriptive easement over and across the entire gravel driveway and turn-around area.

46. Plaintiffs and its predecessors have enjoyed the continued and uninterrupted use and enjoyment of the right for a period of twenty years or longer, such use being shown on the 1996 Boundary Survey for Betty M. Ramey, and thereby established on or before 1996.

47. Defendants claim that this use is adverse to its rights.

48. Plaintiffs seek a determination from the Court that their western boundary encompasses the entire gravel driveway and turn-around area shown on the 1996 Boundary Survey for Betty M. Ramey and recorded in the Pickens County deed office at Book 56, Page 534.

FOR A SIXTH CAUSE OF ACTION
**(Declaratory Judgment –
Easement by Estoppel)**

49. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

50. This cause of action seeks a declaratory judgment for the purpose of determining a question of actual controversy between the Parties.

51. Plaintiffs are informed and believe that, in the alternative, Defendants should be estopped from denying access to said gravel driveway and turn-around area so that Plaintiffs can continue to access their business in the Back Building, as they have done for years.

FOR A SEVENTH CAUSE OF ACTION
**(Declaratory Judgment –
Easement by Necessity)**

52. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

53. This cause of action seeks a declaratory judgment for the purpose of determining a question of actual controversy between the Parties.

54. Plaintiffs are informed and believe that, in the alternative, Plaintiffs are entitled to an Order of the Court that Plaintiffs have an unfettered easement by necessity over and across the gravel driveway and turn-around area to grant access to Plaintiffs' Back Building on the Click Property from which Plaintiffs derive a substantial portion of their business revenues in and without which Plaintiff's Back Building would be rendered unusable for its intended and long-established purpose.

FOR AN EIGHTH CAUSE OF ACTION
(Injunction)

55. The allegations of the previous paragraphs not inconsistent are incorporated herein by reference.

56. Defendants have threatened to place a fence across the property in question which fence they know will block the access to Plaintiffs' Back Building.

57. Plaintiffs will suffer irreparable damage in the loss of customers and customer goodwill if an injunction is not granted.

58. Plaintiffs request a temporary and permanent injunction enjoining the Defendants from erecting a fence or other barrier across the Click Property or otherwise disturbing access to the Click Property in such a way as to prevent Plaintiffs from having access to the Back Building.

59. Plaintiff further requests a temporary and permanent injunction enjoining the Defendants from further excavating the Thomas Property in a manner that will cause damage to the Click Property.

WHEREFORE, Plaintiffs pray:

- A. For judgment against the Defendants in a sum to be determined by a jury for both actual and punitive damages and the costs of this action;
- B. For a declaratory judgment establishing the western boundary of the Click Property to include the entire gravel driveway and turn-around area as shown on the Boundary Survey for Betty M. Ramey or, in the alternative, that Plaintiff Click Properties, LLC have a permanent easement running with the land across such area;
- C. For a Temporary Restraining Order and/or injunction, both preliminarily and permanently, prohibiting Defendants from erecting any barrier blocking Plaintiffs' access to the Back Building; and
- D. For such other and further relief the Court may deem just and proper.

February 26, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

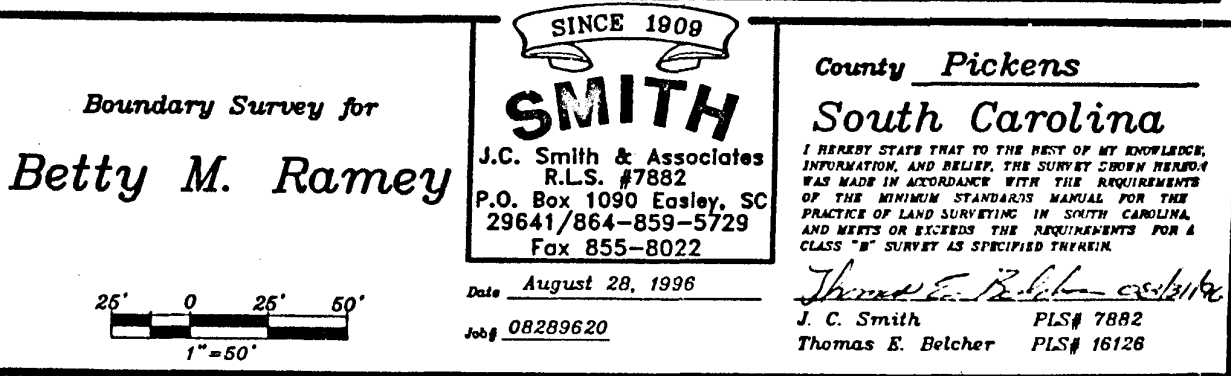
Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

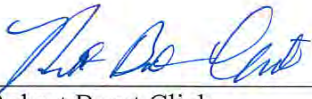
**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

BOOK 54 PAGE 334



IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP 39-_____
	)	
Plaintiffs,	)	
	)	
vs.	)	VERIFICATION
	)	
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
_____	)	

PERSONALLY appeared before me Robert Brent Click, who, first being duty sworn, says under oath that he has read the foregoing Verified Complaint, that the contents thereof are true of his own knowledge, except those matters alleged upon information and belief, and, as to those matters, he believes them to be true.



Robert Brent Click

AFFIRMED THIS

26th day of February, 2020



Notary Public for South Carolina
My Commission Expires 03.23.23

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

ANSWER
(JURY TRIAL DEMANDED)

Defendants Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC (“Defendants”) answer the Complaint of Plaintiff as follows:

1. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraphs 1, 2, and 3 of the Plaintiffs' Complaint and therefore deny the same.
2. Defendants deny the allegations contained in paragraph 4 and demand strict proof thereof.
3. Defendants deny the allegations contained in paragraph 5 and demand strict proof thereof.
4. Defendants admit the allegations contained in paragraph 6 of the Plaintiffs' Complaint.
5. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 7 of the Plaintiffs' Complaint and therefore deny the same.
6. Defendants deny the allegations contained in paragraph 8 and demand strict proof thereof.
7. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 9 of the Plaintiffs' Complaint and therefore deny the same.
8. Defendants admit the allegations contained in paragraphs 10 and 11 of the Plaintiffs' Complaint.

9. Defendants deny the allegations contained in paragraph 12 and demand strict proof thereof.

10. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 13 of the Plaintiffs' Complaint and therefore deny the same.

11. Defendants deny the allegations contained in paragraph 14 - 16 and demands strict proof thereof.

12. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 17 of the Plaintiffs' Complaint and therefore deny the same.

13. Defendants lack sufficient information or knowledge to either admit or deny the allegations contained in paragraph 18 of the Plaintiffs' Complaint and therefore deny the same.

14. Defendant admits the allegations contained in paragraphs 19 – 22 of the Plaintiffs' Complaint.

15. With regard to paragraph 23, Defendants' crave reference to its responses previously plead.

16. Defendants deny the allegations contained in paragraphs 24 – 27 of the Plaintiffs' Complaint and demand strict proof thereof.

17. With regard to paragraph 28, Defendants crave reference to its responses previously plead.

18. Defendants deny the allegations contained in paragraphs 29 – 33, including all sub-sections contained therein, and demand strict proof thereof.

19. With regard to paragraph 34, Defendants crave reference to its responses previously plead.

20. Defendants deny the allegations contained in paragraphs 35 and 36 of the Plaintiffs' Complaint and demand strict proof thereof.

21. With regard to paragraph 37, Defendants crave reference to its responses previously plead.

22. Defendants deny the allegations contained in paragraphs 38 – 42 of the Plaintiffs' Complaint and demand strict proof thereof.

23. With regard to paragraph 43 Defendants crave reference to its responses previously plead.

24. Defendants deny the allegations contained in paragraphs 44 – 48 of the Plaintiffs' Complaint and demand strict proof thereof.

25. With regard to paragraph 49, Defendants crave reference to its responses previously plead.

26. Defendants deny the allegations contained in paragraphs 50 and 51 of the Plaintiffs' Complaint and demand strict proof thereof.

27. With regard to paragraph 52, Defendants crave reference to its responses previously plead.

28. Defendants deny the allegations contained in paragraphs 53 and 54 of the Plaintiffs' Complaint and demand strict proof thereof.

29. With regard to paragraph 55, Defendants crave reference to its responses previously plead.

30. Defendants deny the allegations contained in paragraphs 56 – 59 of the Plaintiffs' Complaint and demand strict proof thereof.

31. In response to the paragraph beginning "WHEREFORE" immediately following Paragraph 59 of the Complaint, Defendants admits that Plaintiffs seek various forms of relief, but deny that Plaintiffs are entitled to any relief whatsoever and demand strict proof thereof.

AFFIRMATIVE DEFENSES

32. Plaintiffs fail to state a claim against Defendants upon which relief may be granted.

33. Plaintiffs claims against Defendants are barred by the doctrines of estoppel, acquiescence, consent, release, unclean hands and/or waiver.

34. Plaintiffs' claims are barred by accord and satisfaction.

35. Plaintiffs' injuries were the result of an intervening or superseding cause or the acts or omissions of third parties, over which Defendants had no responsibility or control and for which Defendants may not be held liable.

36. Defendants hereby assert the defense of setoff.
37. There is no legal basis for Plaintiffs' request for attorney's fees.
38. Plaintiffs failed to mitigate damages.
39. Plaintiffs' claims are barred by Plaintiffs' own contributory negligence and/or comparative fault. To the extent Plaintiffs were comparatively negligent, Plaintiffs' recovery should be reduced by the percentage of fault allocated to Plaintiffs.
40. Plaintiffs cannot recover for mental pain and suffering, emotional distress, or similar damages, if any, in that there is no fixed, objective and/or clear and consistent standard under South Carolina law for ascertaining the amount thereof, such that any award of said damages against Defendants would violate the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section III of the South Carolina Constitution, which prohibit deprivation of life, liberty, or property, except by due process.
41. To the extent Plaintiffs are asserting claims for punitive damages, Plaintiffs' claims for punitive damages against Defendants cannot be upheld to the extent they are in violation of any law passed by the United States Congress or the South Carolina Legislature limiting awards of punitive damages or the amount of such damages, including, but not limited to, exceed S.C. Code Ann. § 15-32-530.
42. To the extent Plaintiffs are asserting claims for punitive damages, Plaintiffs claims for punitive damages are barred, in whole or in part, to the extent an award of any such punitive damages would be violative of the holdings of, and/or standards set forth in, *BMW of North Am. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996); *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S. Ct. 1678, 149 L. Ed. 2d 674 (2001); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d

585 (2003); and any subsequently entered opinions of the United States Supreme Court addressing punitive damages.

Defendants demand a trial by jury on all issues so triable.

Respectfully submitted this 22nd day of May, 2020.

/s/ Molly Cash
Emily O'Brian (SC Bar #101824)
Beau B. Brogdon (SC Bar #103803)
Molly Cash (SC Bar #103152)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
beau@campbellteague.com
molly@campbellteague.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following individuals on May 22, 2020 by Notice of Electronic Filing:

Bradford Neal Martin
Post Office Box 10410
Greenville, SC 29603

May 22, 2020

/s/ Beau B. Brogdon
Beau Brogdon, Esq.

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39- _____
Plaintiffs,	)	
	)	
vs.	)	MOTION FOR TEMPORARY
	)	RESTRAINING ORDER AND/OR
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	PRELIMINARY INJUNCTION
	)	
Defendants.	)	
_____	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Plaintiffs, will move before the Presiding Judge of the Court of Common Pleas in Pickens County, South Carolina, at such place and time as the Court may designate, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, for a Temporary Restraining Order and/or Preliminary Injunction to enjoin the Defendants, up to and including a final decision on the merits, as follows:

1. Restraining and enjoining Defendants or any other person or entity, in like manner, who are in active concert or participation with the Defendants from erecting a fence, wall, or barrier on the real property of SC Thomas Properties, LLC, or between the real properties of Thomas SC Properties, LLC, and Click Properties, LLC, located on Calhoun Memorial Highway, Easley, South Carolina, or in such a manner as to obstruct vehicular access to the building located at the rear portion of the real property owned by Click Properties, LLC; and

2. Restraining and enjoining Defendants, or any other person or entity, in like manner, who are in active concert or participation with the Defendants from engaging in harassing activities on the real property of the Plaintiffs, or towards Hyper Formance, LLC's owners, Brent Click and

Shelly Click, in such a way as to interfere with their business operations on the real property;

3. Restraining and enjoining Defendants, or any other person or entity, in like manner, who are in active concert or participation with the Defendants from excavating Defendants' property in such a manner to cause continued damage due to severe and rapid erosion to Plaintiffs' real property and improvements thereon; and

4. Restraining and enjoining Defendants from any and all other harmful acts by either Defendant as the Court deems appropriate to enjoin by the granting of Injunctive Relief.

This Motion is based upon the facts that:

1. Plaintiffs have a reasonable probability of success on the merits;
2. Plaintiffs will be irreparably injured by denial of relief;
3. The granting of this preliminary relief will not result in greater harm to the non-moving parties; and
4. The granting of the preliminary relief will be in the public interest.

As shown with greater specificity in the Verified Complaint, the Memorandum in Support, and the Affidavit of Robert Brent Click attached hereto as Exhibit A and filed herewith, Plaintiffs satisfy the requirements for injunctive relief under South Carolina law. Therefore, a Temporary Restraining Order and/or Preliminary Injunction are necessary and appropriate to preserve the status quo pending the judicial resolution of the causes of action specified in the Verified Complaint filed herewith.

Thus, through its Verified Complaint and the Affidavit of Robert Brent Click, Plaintiffs have adequately demonstrated that immediate intervention is necessary from this Court in order to prevent the continued, deliberate, and wanton unlawful conduct of Defendants that is threatening the existence of the business operations of Plaintiffs and Plaintiffs' owners, Brent and Shelly Click.

Accordingly, a Temporary Restraining Order and/or Preliminary Injunction is appropriate pending a trial on the merits.

February 26, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39- _____
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
3. In 2013, when I was 23 years old, my wife Shelly Click and I started our own business, Hyper Formance, LLC.
4. Hyper Formance, LLC leased a building on the back portion of a parcel of real property located at 3668 Calhoun Memorial Highway (the "Leased Property") for the purpose of operating a specialty metal fabrication and vehicle restoration business (the "Business").
5. The building on the Leased Property was used to house a paint booth and the equipment to prepare customers' vehicles for painting and was also used as a body shop (the "Back Building"). The Back Building has only one entrance and there is no other possible means of entrance by vehicles into the paint booth or any other

portion of the Back Building.

6. As a first-time business owner, from the start of the Business, Shelly and I have invested more than standard “full time” work hours into the Business. We work seven days each week, devoting virtually all of our non-sleeping time to the Business.
7. I understood that the Leased Property included both the entire gravel driveway and the gravel turn-around area located along its western boundary and therefore used these areas to get my customers’ vehicles into the Back Building. It was clear from visual observation, based on the physical condition of these areas, that my landlord and previous property owners (and/or tenants) had also used the entire gravel driveway and turn-around area to take vehicles into the second building. I never received a complaint from the adjoining landowner to the west about my use of these areas, and was never informed by the adjoining landowner that a portion of the gravel driveway and turn-around area were not part of the Leased Property. In fact, the person claiming to be the adjoining landowner who operated an auto repair shop there, called “All Tech Auto,” helped me apply additional gravel to the turn-around area in 2013.
8. The Back Building is situated on the parcel in such a way that the gravel driveway and turn-around area provide the only means of vehicular access to the Back Building.
9. In October of 2014, I erected a carport attached to the Back Building and adjacent to the gravel turn-around area with no complaint or comment from the adjoining landowner.
10. At some point in 2014, the “All Tech Auto” business was replaced by Defendant

All-Tech Tire and Auto Repairs, LLC (“All-Tech”), operating an auto repair business as tenant on the adjoining landowner’s property, which is to the west of the Leased Property.

11. I purchased from my landlord the parcel that included both the Leased Property and Back Building, and another building at the front of the parcel (the “Front Building”) on February 10, 2017 (the “Click Property”). A short time later, on March 2, 2017, I transferred title to Click Properties, LLC which is a South Carolina limited liability company and I own a 100% interest.
12. At the time I purchased the Click Property from my landlord, I understood that all of the gravel driveway and turn-around area had been used by my landlord and previous property owners (and/or tenants) to access the Back Building, just as I had done as a tenant, since at least 1996. Approximately 50% of the Business revenues are derived from the Back Building.
13. Shelly and I sold our house and moved onto the Click Property so we could devote all of our resources and time to the Business.
14. The adjoining property to the west of the Click Property was purchased by Defendant Thomas SC Properties, LLC on May 23, 2018 (the “Thomas Property”). Upon information and belief, the owner of Thomas SC Properties, LLC and the owner of All-Tech are the same individual, J.T. Thomas.
15. Tensions developed when employees of All-Tech began a series of harassing activities towards Shelly and me, including parking on the gravel driveway in a manner designed to block our access to the Business.
16. The harassment has continued to the point that Shelly and I have changed our

working hours to operate overnight, when possible, to avoid contact with the employees and owner of All-Tech.

17. When I erected a gate on the lower portion of the Click Property to prevent the harassing activity, the gate was repeatedly removed from the hinges by All-Tech employees.
18. In August of 2018, Defendant Thomas SC Properties, LLC excavated the Thomas Property in an extreme way that has caused serious erosion, by removing approximately fourteen (14) 22-ton dump truck loads of dirt, per day, for approximately five days, changing the back portion of the Thomas Property from a tree-covered hill to a flat area, a reduction in elevation of approximately 15 feet. This erosion has significantly decreased the stability of the soil on the Click Property and is causing the walls and foundation of the Back Building to crack. The significant erosion is continuing and eventually will encroach onto the Click Property to an extent that it will cause the gravel driveway to collapse and will cut off access to the Back Building and cause the foundation to further sink. I am informed and believe that a retaining wall is necessary to be installed on the Thomas Property in order to prevent additional damage to the Click property.

FURTHER AFFIANT SAYETH NOT.

Robert Brent Click

SWORN TO before me this 26th
 day of February, 2020.

 Notary Public for South Carolina
 My Commission Expires 2/23

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	IN THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39- 00266
	)	
Plaintiffs,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR TEMPORARY
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	RESTRAINING ORDER AND/OR
	)	PRELIMINARY INJUNCTION
	)	
Defendants.	)	
	)	

I. INTRODUCTION

Brent Click is a young, first-time business owner. He and his wife, Shelly, have put **everything** they have - time and money - into starting and growing their business, even selling their home and moving into a body shop building located on the business property. Brent began leasing property located at 3668 Calhoun Memorial Highway in Easley in 2013, for the purpose of operating Hyper Formance, LLC, a specialty vehicle repair and restoration business (the “Business”). Brent and Shelly have no employees and do all the labor themselves on their customers’ vehicles. The land has two buildings, one located behind the other, with the front building housing the body shop (“Front Building”) and the back building housing the paint booth and paint shop equipment (“Back Building”). The land is not accessible from the northern or eastern boundaries. The southern boundary of the property is accessed by entering from U.S. Highway 123. A gravel driveway runs along the western boundary leading to the Back Building, with a gravel turn-around area at the rear of the property and adjacent to the Back Building. Use of the gravel driveway and turn-around area is the only means of vehicular access to the Back Building.

When Brent leased the property and also when he later purchased the property, he understood that the property included the entire gravel driveway and turn-around area and always used this area in the operation of the Business, without complaint or comment from the adjoining landowner. Brent's understanding was reasonable, as there was no other way to bring customers' vehicles into the Back Building. Visually it was obvious this gullied-out turn-around area had been in use for many years to access the Back Building. In fact, the person claiming to be the adjoining landowner (who operated the auto repair shop next door, to the west) helped Brent apply additional gravel to the turn-around area in 2013. In reality, the property lines for the surrounding parcels do not accurately reflect the manner in which each of the properties has long been used by the landowners and their tenants.

The Back Building is used for painting vehicles, the paint shop revenues accounting for approximately 50% of Plaintiff Hyper Formance's revenues. In 2014, Brent erected a carport attached to the Back Building and adjacent to the gravel turn-around area to shelter vehicles before and after painting. Again, he had no complaint or comment from the adjoining landowner.

Brent developed a thriving business and purchased the property (hereinafter, the "Click Property") from his landlord in 2017 for \$140,000¹. As young and inexperienced business owners, Brent and Shelly were unable to secure bank financing. Brent's purchase was therefore owner-financed by the landlord. It was only after Brent had a disagreement with Jonathan "JT" Thomas ("Thomas"), the new tenant on the adjoining property to the west, who later purchased that property in 2018 (the "Thomas Property"), that a dispute arose regarding Plaintiffs' use of the upper portion of the gravel driveway and the gravel

¹ The leased property included only the Back Building. The purchase of the entire parcel included purchase of the Front Building, providing a place for the body shop operations.

turn-around area. There soon began a series of escalating events which have culminated in Thomas recently demanding that Plaintiffs remove the carport and the beginning of construction of a fence by Defendants to completely eliminate Plaintiffs' access to the only entrance to the Back Building. Defendant All-Tech's employees began harassing Brent and Shelly. As young business owners without the resources to move to another location, Brent and Shelly shifted their working hours, often working all night and taking turns to sleep a few hours during the day, in an effort to avoid contact with All-Tech's employees. Brent and Shelly believed when the dispute began that they could avoid conflict with Thomas until they had sufficiently paid down their start-up costs to be able to afford to relocate to another property. Circumstances have instead escalated to a point that Plaintiffs need the assistance of the Court to prevent Defendants' actions from causing complete destruction of the Business.

In August of 2018, Thomas negligently excavated the Thomas Property in a sudden and extreme manner, using non-professionals to excavate the entire back portion of the Thomas Property digging up and hauling away approximately fourteen (14) 22-ton dump truck loads of dirt, per day, for approximately five (5) days. Brent was alarmed and objected to Thomas, fearing the huge quantity of dirt removal would negatively impact the Click Property by causing damaging erosion. The erosion has in fact occurred and harmed the Click Property to the point that intervention by this Court is necessary. This erosion is expected to continue over time, encroaching even more onto the Click Property and cutting off access to the painting facility in the Back Building.

In recent weeks, Thomas has measured for the installation of a fence designed solely to cut off Plaintiffs' access to the upper portion of the gravel driveway and gravel

turn-around area to prevent Brent and Shelly from operating the Business. Absent the requested relief, Brent and Shelly will lose the ability to operate approximately 50% of the Business and will lose the ability to complete current projects and future projects already contracted for. Therefore, a temporary restraining order or preliminary injunction is necessary.

ARGUMENTS

A. Standard for Granting Temporary Restraining Order or Preliminary Injunction.

Rule 65 of the South Carolina Rules of Civil Procedure permits a party to seek injunctive relief if it believes it will suffer irreparable harm or injury during the pendency of the action. The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973).

An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). The applicant must establish three elements:

- (1) he will suffer immediate, irreparable harm without the injunction;
- (2) he has a likelihood of success on the merits; and
- (3) he has no adequate remedy at law.

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

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. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

B. The Injunction is necessary to protect Plaintiff's rights

If the motion is denied, Hyper Formance will lose the ability to complete existing customer projects and will have to turn down other projects if it cannot complete the painting phase of the work. It is unlikely to survive a revenue reduction of 50%.

The standard in South Carolina is that the "injunction is reasonably necessary to protect the legal rights pending in the litigation." (emphasis added) *Levine v. Spartanburg Regional Services District, Inc.*, 367 S.C. 458, 626 S.E.2d 38, 41 (Ct. App. 2005); *County of Richland v. Simpkins*, 348 S.C. 64, 69, 560 S.E.2d 902, 904 (Ct. App. 2002). When seeking an injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present a fair question to raise as to the existence of such right. *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E.2d 705, 710, (1912).

Other appellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill. See *Peek v. Spartanburg Reg'L Healthcare System*, 626 S.E.2d 34, 367 S.C. 450 (S.C. App. 2005); *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) ("Loss of business goodwill or loss that is not easily

calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction."). Therefore, Plaintiffs have shown irreparable harm.

C. Plaintiff has a likelihood of success on the merits

1. Nuisance

If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with the lawful use and enjoyment of the property of others, it will constitute a nuisance. *LeFurgy v. Long Cove Club Owners Ass'n, Inc.*, 443 S.E.2d 577, 313 S.C. 555 (S.C. App. 1994). A proprietor excavating on his own premises is liable for damages done to the adjacent owner's soil. *See Bailey v. Gray*, 53 S.C. 518, 31 S.E. 354 (1898). Plaintiffs have additionally suffered cracks in the walls and foundation of the Back Building and the carport is beginning to pull away from the building due to the shifting soil. Plaintiffs have, therefore, shown a likelihood of success as to their nuisance claim.

2. Negligence

Defendants owed a duty to Plaintiffs not to excavate on the Thomas Property in a manner that would cause damage to the Click Property. *See Bailey v. Gray*, 53 S.C. 518, 31 S.E. 354 (1898). Defendants breached their duty by excavating in such an extreme and sudden way that Defendants created substantial erosion that has caused the soil on the Click Property to become unstable. The Back Building on the Click Property has been damaged by the shifting earth. Plaintiffs have, therefore, shown a likelihood of success as to their negligence claim.

3. Declaratory Judgment

a. Acquiescence

The parties have acquiesced to the inclusion of the upper portion of the gravel drive and the gravel turn-around area in the Click Property. The turn-around was being used by the former owner of this parcel of property prior to August 28, 1996, as evidenced on the Boundary Survey of Betty M. Ramey filed in the Pickens County Register of Deeds Office² and attached hereto as Exhibit A. Plaintiffs have used this area from the time that Brent and Hyper Formance began renting the property in 2013 to the present. Defendant, Thomas SC Properties, LLC, is precluded from denying this is the boundary line. See *Gardner v. Mozingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987) (“If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced un is not the true one.”)

The length of time required to establish acquiescence is usually that prescribed by the statute of limitations. *Knox v. Bogan*, 322 S.C. 64, 72, 472 S.E.2d 43, 48 (Ct. App. 1996). However, acquiescence can be established even if the period of time is very short; acquiescence need not continue for the period necessary to establish adverse possession. *McClintic v. Davis*, 228 S.C. 378, 384, 90 S.E.2d 364, 366 (1955).

b. Prescriptive Easement

If the Court were to find the parties have not acquiesced to the boundary, then in the alternative, there is a prescriptive easement. An easement may arise by grant, from necessity, or by prescription. *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817

² Book 56 at Page 334.

(Ct. App. 2012). A prescriptive easement is established by the conduct of the dominant tenement owner. *Boyd v. BellSouth Tel. Tel. Co.*, 369 S.C. 410, 419, 633 S.E.2d 136, 141 (2006). To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right. *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

The use of the gravel turn-around is shown on the 1996 Boundary Survey for Betty M. Ramey. The turn-around is only accessible by the gravel drive located on the Click Property. Defendants have recently claimed that this use is adverse to their rights and have threatened to erect a fence to cut off access to the turn-around and, thereby to eliminate completely Plaintiffs' access to the Back Building. The erection of the fence has already begun along another boundary of the Thomas Property.

D. There is no Adequate Remedy at Law

Injunctive relief is warranted because an award of monetary damages will not repair the damage to Hyper Formance, LLC for the loss of revenues and goodwill caused by Defendants' actions which **imminently** threaten to eliminate Plaintiffs' access to the Back Building where approximately 50% of Hyper Formance's revenues are created. Hyper Formance's customer base has been established over many years and the work Plaintiff performs takes months to complete. New business is obtained based on Hyper Formance maintaining an excellent reputation for competently and timely completing specialty restoration work. If Defendants' actions are not stopped, Defendant will cause Plaintiff Hyper Formance and Click Properties, LLC to suffer imminent substantial injury and a future injury of uncertain and incalculable magnitude.

III. CONCLUSION

Plaintiffs have proven the elements necessary for this Court to issue a Temporary Restraining Order and/or Preliminary Injunction. Accordingly, Plaintiffs respectfully request the Court to grant a Temporary Restraining Order and/or Preliminary Injunction prohibiting Defendants from erecting a fence or other barrier along the western border of the Click Property in a manner that blocks access to the upper gravel driveway and gravel turn-around area or any structures on the Click Property. Plaintiffs additionally respectfully request the Court to grant a Temporary Restraining Order and/or Preliminary Injunction prohibiting Defendants from further excavating the Thomas Property in a manner that causes continued damage to the Click Property.

February 26, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

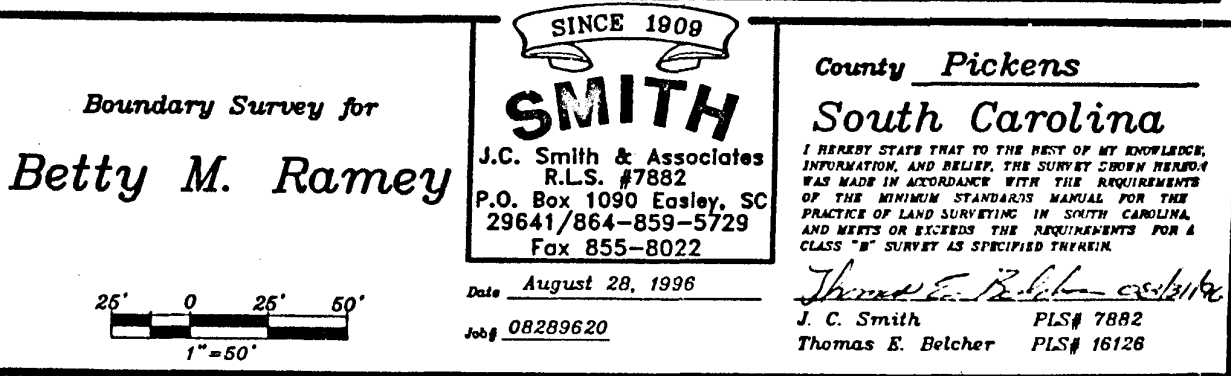
Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES,
LLC AND HYPER FORMANCE, LLC**

BOOK 54 PAGE 334



STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON
PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

MOTION TO DISMISS

COME NOW Defendants, by and through undersigned counsel, and pursuant to S.C.R.C.P. 12(b)(6), hereby move to dismiss Plaintiffs' claims for failure to state a claim upon which relief may be granted. This motion is supported by the South Carolina Rules of Civil Procedure, applicable statutes and case law, and such other supporting memoranda, authority, and/or attachments as are filed or presented before or at the hearing on this Motion.

CAMPBELL TEAGUE LLC

/s/ Beau B. Brogdon

Emily O'Brian (SC Bar #101824)

Beau B. Brogdon (SC Bar #103803)

Molly Cash (SC Bar #103152)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

molly@campbellteague.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing document was served upon the following individuals by Notice of Electronic Filing in the above-captioned matter.

Brad N. Martin
Laura W.H. Teer
Braford Neal Martin & Associates, P.A.
Post Office Box 10410
Greenville, South Carolina 29603
bmartin@bnmlaw.com
lteer@bnmlaw.com

/s/ Beau B. Brogdon, Esq.
Counsel of Record

March 30, 2020
DATE

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' OBJECTION AND
	)	RESPONSE TO DEFENDANTS
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	MOTION TO DISMISS
	)	
Defendants.	)	
	)	

Defendants were served with the Complaint in the above matter on February 27, 2020. On March 30th, they filed a Motion to Dismiss which provides no grounds and states only that it is brought pursuant to Rule 12(b)(6). Any motion that is filed is required to "state with particularity the grounds therefor". See Rule 7(b)(1), SCRCPP.

Rule 7(b)(1) is substantially similar to its federal counterpart, Rule 7(b)(1), FRCP. *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (Ct. App. 2008). "[A] motion that fails to state any grounds for relief . . . is insufficient under Rule 7(b)(1)." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236 (10th Cir. 2006).

The particularity requirement "is to be read flexibly in recognition of the peculiar circumstances of the case." *Lucey v. Meyer*, 401 S.C. 122, 131, 736 S.E.2d 274, 279 (S.C. App. 2012) quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996). "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 comprehend the basis of the motion and deal with it fairly." *Id.* quoting *Calderon v. Kansas Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir.1999).

Plaintiffs are prejudiced in its ability to respond to the motion as it contains no grounds and they would be unfairly surprised by arguments raised at the hearing for the first time. This Court is likewise unable to deal with the Motion fairly.

Because Defendants have presented no grounds for their Motion and Plaintiffs would be prejudiced by having to defend against such a motion, Plaintiffs respectfully request that the Court dismiss Defendant's Motion to Dismiss.

April 27, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON
PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

Affidavit of Johnathan Thomas

PERSONALLY APPEARED before me, the undersigned, who being duly sworn,
deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
3. I began working at 3670 Calhoun Memorial Hwy, Greenville, SC 29611 in 2014 (hereinafter, the “Thomas Property”), when my father-in-law was leasing the property from Jimmy Watkins.
4. The Thomas Property is adjacent to 3668 Calhoun Memorial Highway (hereinafter, the “Click Property”).
5. Upon information and belief, the prior owners of the Thomas property and the Click property, for the sake of convenience, used one gravel driveway to access the upper portion of both properties. However, upon information and belief, owners and lessors of both properties recognized the property lines as shown in both the 1996 survey (Exhibit A to the Complaint) and the 2020 survey (Exhibit 1).

6. The majority of the gravel driveway is on the Click property, while the upper portion and a larger gravel area (herein, the “Turn-around area”) is on the Thomas property.

7. In or about 2016, Defendants erected awnings extending onto the Thomas Property.

8. After erecting the awning, Brent Click and his wife Shelly began harassing the lessors of the Thomas Property.

9. Upon information and belief, the former owner of the Thomas Property, Jimmy Watkins, told Brent Click that if he did not get along with the lessors of the Thomas Property that he would erect a fence along his property line, which includes most of the turn-around area.

10. Upon information and belief, when Plaintiffs purchased the Click Property in 2017, Plaintiffs were informed that the property line excluded the turn-around area.

11. In May 2018, I purchased the Thomas Property in the name of Thomas SC Properties, LLC, of which I own a 100% interest. During the purchase process, it was confirmed that the turn-around area was almost entirely on my property, as shown on both surveys (Exhibit A to the Complaint; Exhibit 1).

12. Understanding the property lines of the Thomas and Click properties, Plaintiffs and I continued to use gravel driveway to both access the upper portions of both our properties.

13. Over time, Plaintiffs began strictly enforcing their property line, interfering with my business by harassing us if customers entered via Plaintiffs’ driveway or if

customer vehicles were parked even slightly over the line. Plaintiffs also blocked me from using the gravel driveway.

14. In or about 2018, Plaintiffs erected a gate on the lower portion of the Click Property, preventing myself and Defendants from accessing the upper portion of the Thomas Property. Despite multiple requests, Click refused to allow access to the upper part of the Thomas Property through the gravel driveway, as has been used for years.

15. Because of Click's refusal to let me and my business use the gravel driveway, I had to find a new way to access the upper portion of my property. I constructed a new driveway on my property to access the upper portion of my own property, including leveling out the upper parking lot of my property. I was unable to level the entirety of my property because of the presence of Plaintiffs' possessions on my property. My business incurred significant expenses to have this work done.

16. Plaintiffs made no comment regarding the construction and grading work that was done on my property.

17. Further, since my purchase of the Thomas Property, my business, my staff, and myself have been constantly harassed by Brent and Shelly Click. In fact, they have yelled profanity at me and threatened me for walking on my *own* property.

18. Because of Plaintiffs' refusal to allow me to use their property, Click and his wife's harassing behavior, and my inability to complete my construction of the upper lot project due to Plaintiffs' possessions on my property, I reiterated to Click that he could no longer use my property.

19. Click has consistently refused to remove his possessions (including awnings, vehicles, and trailers) from my property, despite multiple warnings from myself and the prior owner of the Thomas Property.

20. Click continues to trespass on my property, using my property to store his vehicles and trailers. Based on my observations, Plaintiffs' use of my property in the turn-around area is primarily for storage of stationary items, not vehicular access to Plaintiffs' Back Building. This can be seen in the photos attached as Exhibit 2.

21. Upon information and belief, Plaintiffs can create a driveway to access the Back Building on the Click property without encroachment onto my own property and/or otherwise rearrange use of the Click property to continue business operations without using my property. It is purely for convenience that Plaintiffs assert they must use the turn-around area.

FURTHER AFFIANT SAYETH NOT.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.


Jonathan Thomas

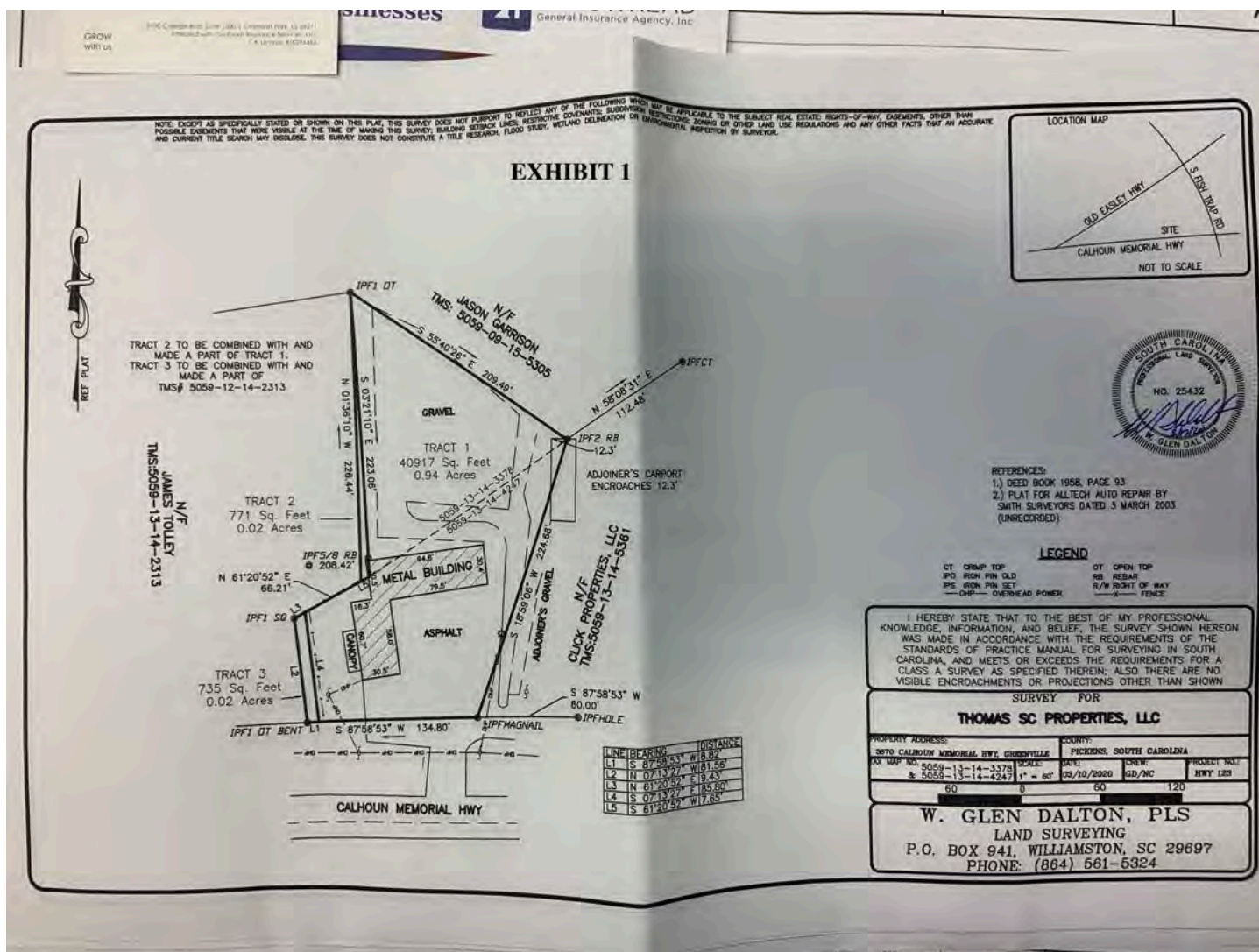




EXHIBIT 2





STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION**

Introduction

This case is about Plaintiffs' efforts to acquire Defendants' property through unsupported assertions of an easement. Plaintiffs' are using this motion for preliminary injunction to take away Defendants' legal rights to Defendants' *own* property—attempting to prevent Defendants from accessing and using their own property and seeking for Plaintiffs to be able to use Defendants' property without compensation throughout the pendency of this litigation. In short, it is more convenient for Plaintiffs not to have to move their stuff off of Defendants' property, but that does not give Plaintiffs any right to Defendants' property or to an injunction. Plaintiffs' request for a preliminary injunction is entirely improper, does not meet the required standard, and thus the motion should be denied.

Legal Standard

“An injunction is a **drastic** remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (emphasis added).

“The plaintiff’s complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50–51, 674 S.E.2d 505, 508 (Ct. App. 2009), *citing Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct.App.2005); *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). A party seeking injunctive relief “must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Denman v. City of Columbia*, 387 S.C. 131, 140–41, 691 S.E.2d 465, 470 (2010) (internal citations and quotation marks omitted). “Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.” *Peek*, 367 S.C. at 455, 626 S.E.2d at 36–37. The Court also must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

Argument

1. Plaintiffs cannot demonstrate irreparable harm.

It is a fundamental principle that economic loss alone is insufficient to show irreparable harm. *See, e.g., Prof’l Wiring Installers, Inc. v. Sims*, No. 2008-UP-173, 2008 WL 9840409, at *3 (S.C. Ct. App. Mar. 12, 2008) (“Generally, pure economic loss is not sufficient to satisfy the requirement of showing an irreparable harm where an adequate remedy is available at law.”) The “harm” Plaintiffs’ speculate will occur is loss of business for not being able to complete paint work for customers. This is pure

economic loss. Even Plaintiffs' themselves have asserted that such loss would be a calculable percentage of total revenue, not an unknown quantity.

However, Plaintiffs cannot even make a showing that any harm will occur without an injunction. First, as shown in the photos attached as Exhibit 2 to Thomas' Affidavit, Plaintiffs are not actually using the turn-around area for vehicular access to the back building. Instead, Plaintiffs are using Defendants' property to *park* various items, without compensating Defendants. Preventing Plaintiffs from continuing to use Defendants' property for free storage does not threaten Plaintiffs' business.

Even assuming *arguendo* that harm would result if an injunction were not granted, the harm necessarily cannot be irreparable if it is avoidable. Plaintiffs can avoid or limit any disruption to their business in multiple ways without continuing to trespass on Defendants' property. As shown in Exhibit A to the Complaint, there is significant space between the property line and Plaintiffs' buildings where the parties can create additional driving areas on their own properties. Plaintiffs may also be able to shift the paint booth to a different bay or area of the Back Building to which they have access without using Defendants' property, thus continuing their business operations. As litigants, Plaintiffs have a duty to mitigate their damages by making any needed changes to continue business operations.¹ Thus, Plaintiffs cannot show that enjoining Defendants is reasonably necessary to prevent the alleged economic loss.

Finally, the alleged irreparable harm is only related to one element of the requested relief—namely preventing Defendants from erecting a fence on what Plaintiffs admit is

¹ Thomas similarly had to reconfigure his operations, at his own expense, when Plaintiffs cut him off from using the gravel driveway.

Defendants' own property. Plaintiffs have not asserted an irreparable harm that is tied to their other requests. Plaintiffs final request to enjoin Defendants from "all other harmful acts" is vague, unlimited in scope, and inappropriate for an injunction.

2. Plaintiffs cannot show a likelihood of success on the merits, particularly where the merits require proof by clear and convincing evidence.

As demonstrated in Defendants' Motion to Dismiss and supporting memorandum, Plaintiffs' claims do not meet even the required pleadings standards, much less demonstrate a likelihood of success on the merits. The survey at Exhibit A to the Complaint and testimony in Thomas' Affidavit² show that there is no dispute regarding where the property line is located and that the turn-around area is on Thomas' side of that line. Thus, Plaintiffs' claims for adverse possession and acquiescence immediately fail. Plaintiffs' have not used Thomas' property without permission for a period of 20 years, and thus there is no easement by estoppel. And Plaintiffs' cannot show an easement by necessity as there has been no unity of title, severance of the same, or necessity at the time of the severance. At the end of the day, this case is about two neighbors who mutually used each other's property knowing where the lines were, but when Plaintiffs began restricting access to their property, they unreasonably refused to accept Defendants doing the same. There is no easement or right Plaintiffs have to Defendants property.

² It is also important to note that while on a Motion to Dismiss, Plaintiffs' allegations must be taken as true, the same is not true in this Court's consideration of an injunction and Plaintiffs' likelihood of success. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36–37 (Ct. App. 2005) ("[T]he court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.), *holding modified on other grounds by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

Plaintiffs' nuisance per se and negligence claims are similarly unsupported. Plaintiffs' buildings are a significant distance from the property lines and from the area of excavation. Plaintiffs even admit that the gravel driveway on Plaintiffs' property, which is the closest item to the excavated area, remains intact and entirely usable. Plaintiffs' blind assertions of potential future damage is not sufficient to satisfy a clear and convincing evidence standard and cannot support enjoining Defendants from using their land as they see fit.

3. Plaintiff cannot show the absence of an adequate remedy at law.

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). Monetary damages are a legal remedy available to Plaintiffs, which they may seek for any loss suffered. Because there is an adequate legal remedy, the drastic remedy of an injunction is inappropriate.

4. A balancing of the equities weighs in favor of Defendants, the owners of the property as demonstrated by Plaintiffs' own survey.

Plaintiffs' injunction seeks to prevent Defendants from taking certain actions on Defendants' own property. This is inappropriate for injunctive relief as Plaintiffs have not proven that the property is theirs or that they otherwise have any legal interest in Defendants' property whatsoever. In fact, both Exhibit A to Plaintiffs' Complaint and Plaintiffs' own language in requesting the injunction illustrate that the turn-around area is clearly on Defendants' property. To take Defendants rights away to their own property

based on unsupported allegations by Plaintiff would be overreaching and inequitable. Further, the real property Plaintiffs' purport to claim is in dispute is not going anywhere (unlike personal property that could be removed or disposed of), so an injunction is not necessary to ensure its existence during the pendency of litigation. Additionally, the specific terms of injunctive relief requested by Plaintiffs' Motion is vague, unlimited in scope, and would impose a *substantial* burden on Defendants to comply. Subjecting Defendants to such a broad injunction, particularly at this stage of litigation, would be inequitable.

Conclusion

There is not sufficient cause to take away Defendants' rights to their own property through a preliminary injunction. Plaintiffs' have not shown irreparable harm, likelihood of success on the merits, inadequate remedy at law, or that it is equitable to let Plaintiffs' control Defendants' property.

Therefore, for the reasons set forth above and pursuant to South Carolina Rules of Civil Procedure 65, applicable statutes and case law, and such other supporting arguments as may be presented at the hearing on this matter, Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction should be denied in its entirety.

CAMPBELL TEAGUE LLC

/s/ Emily O'Brian

Emily O'Brian (SC Bar #101824)
Beau B. Brogdon (SC Bar #103803)
Molly Cash (SC Bar #103152)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
beau@campbellteague.com
molly@campbellteague.com
Attorneys for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS

INTRODUCTION

This matter is before the Court on the Motion to Dismiss made by Defendants' Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC ("Thomas") pursuant to S.C.R.C.P. 12(b)(6) for failure to state a claim upon which relief may be granted. Thomas respectfully submit this memorandum in support of the foregoing motion.

STATEMENT OF FACTS

Click Properties, LLC and Hyper Formance, LLC ("Plaintiffs") and Thomas own adjacent parcels of commercial property outside of Easley, South Carolina. (Complaint ¶ 1). Plaintiffs purchased its parcel on February 10, 2017 and Thomas purchased its parcel on May 23, 2018. (Complaint ¶ 7, 10). Both properties were purchased subject to a boundary survey of record (the "1996 Survey"). (Complaint ¶ 36; Exhibit A). The 1996 Survey shows the precise location of a common property line that runs through a portion of a gravel driveway and wraps around a turn-around area belonging exclusively to Thomas. *Id.* In August of 2018, Thomas excavated a portion of his land to build an additional driveway. (Complaint ¶ 1). Over a year and a half later, Plaintiffs'

filed a summons and complaint (the “Complaint”) alleging damage caused by excavation performed on Thomas’s private property and a property interest in Thomas’s land. In response, Thomas asserts that the entirety of Plaintiffs’ Complaint must be dismissed pursuant to Rule 12(b)(6), of the South Carolina Rules of Civil Procedure for failure to state any claims upon which relief may be granted.

STANDARD OF REVIEW

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *HHHunt Corp. v. Town of Lexington*, 699 S.E.2d 699, 703 (S.C. App. 2010). “The trial court . . . must presume all well pled facts to be true.” *Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39, 44 (S.C. App. 2010). However, this presumption does not apply to conclusory factual allegations. *See Jones v. Gilstrap*, 343 S.E.2d 646, 648 (S.C. App. 1986).

ARGUMENT

I. PLAINTIFFS’ NUISANCE CLAIM FAILS FOR TWO REASONS: PLAINTIFFS HAVE NOT PROPERLY ALLEGED THE ELEMENTS OF A CLAIM FOR NUISANCE AND NUISANCE IS NOT AN APPROPRIATE CAUSE OF ACTION.

a. Plaintiffs fail to articulate how the alleged nuisance interfered with Plaintiffs’ use and enjoyment.

To establish a nuisance claim, a plaintiff must prove: (1) a substantial and unreasonable interference (2) with the use and enjoyment of his land (3) proximately caused by the interference of a defendant. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (2001). It is not enough to merely allege a harm and an interference with a plaintiff’s use or enjoyment; a plaintiff must articulate *how* the alleged nuisance interferes with the plaintiff’s use and enjoyment. *Chestnut v. Avx Corp.*, 776 S.E.2d 82, 85 n. 5 (S.C. 2015) (holding that the plaintiffs’ allegation of contamination is insufficient without articulation of how the contamination interfered with the

plaintiffs' use and enjoyment of their properties). Further, "every annoyance or disturbance of a landowner from the use made of property by a neighbor does not constitute a nuisance." *LeFurgy v. Long Cove Club Owners Assn., Inc.*, 313 S.C. 555 (S.C. Ct. App. 1994).

Here, Plaintiffs allege that excavation caused erosion and damaged to structures on Plaintiffs' property. (Complaint ¶ 24-26). However, Plaintiffs fail to state the extent of the damage or how the alleged damage and erosion interfered with Plaintiffs' use or enjoyment of the property. On the contrary, Plaintiffs' factual allegations specify that the erosion did not encroach on Plaintiffs' property and suggest that Plaintiffs have continued to use and enjoy their property since the excavation in August of 2018. (Complaint ¶15). Accordingly, Plaintiffs nuisance claim must be dismissed because it fails to state legal or factual basis for a nuisance action.

b. Nuisance is not an appropriate cause of action for the alleged harm.

Nuisance is not an appropriate cause of action for excavation damages. Unlike the tort of nuisance, South Carolina courts recognize negligence as an appropriate cause of action in circumstances involving a single instance property damage due to excavation.¹ In *Contos Metracas v. Jamison Morris*, the Supreme Court of South Carolina held, "[t]he general law is well settled that a proprietor excavating on his own premises is liable for damages done to the adjacent owner's soil... [and] no action lies against such excavator except upon allegation and proof of negligence." 81 S.C. 488 (S.C. 1908) (*See also, Bailey v. Gray*, 53 S.C. 518, 31 S.E., 354). Similarly, in *Wallace v. A. H. Guion Company*, the Supreme Court of South Carolina held that negligence was an appropriate cause of action for a claim involving concussion and vibration damage caused by the defendant while engaged in excavating a ditch. 237 S.C. 349 (S.C. 1960). Here, Plaintiffs allege damage to property caused by a single excavation job. (Complaint ¶ 23-27). Accordingly,

Plaintiffs' nuisance claim should be dismissed because nuisance is not an appropriate cause of action to address property damage due to a single instance excavation.¹

II. PLAINTIFFS' NEGLIGENCE CLAIM FAILS BECAUSE THE COMPLAINT DOES NOT ALLEGE A DUTY OF CARE AND DOES NOT MEET SOUTH CAROLINA PLEADING STANDARDS.

a. Plaintiffs fail to allege a duty of care.

Plaintiffs fail to allege an actionable duty of care under South Carolina law. To establish a claim for negligence, a plaintiff must prove: 1) a duty of care owed by the defendant to the plaintiff, 2) a breach of that duty, and 3) damage. *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Id.* "In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002). "If there is no duty, the defendant is entitled to judgment as a matter of law"² and "[a]n affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some special circumstance." *Rayfield v. S.C. Dep't of Corr.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988).³ Here, Plaintiffs allege that Thomas owed a duty "not to harm others and not to unreasonably interfere with the rights of adjoining landowners." (Complaint ¶ 29). This is not an actionable duty of care under South Carolina law. Also, Plaintiffs allege specific breaches without identification of the legal duties that were breached. (Complaint ¶ 32). For example, Plaintiffs allege that Thomas "failed to properly

¹ Unlike a tort of negligence, nuisance law provides for injunctive relief in order to protect a landowner's right to the use and enjoyment of property, suggesting that nuisance and negligence are intended to address two different types of harm.

² *Simmons v. Tuomey Regional Med. Ctr.*, 341 S.C. 32, 533 S.E.2d 312 (2000).

³ See also, *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (2000) (A duty of care is "the obligation to conform to a particular standard of conduct toward another").

supervise the excavation of its premises” but fail to state to a legal standard or basis on which a landowner owes a legal duty to supervise activities on the landowner’s private premises. (Complaint ¶ 32(b)). Likewise, Plaintiffs fail to identify an actionable basis for protective, preventative or cautionary duties owed to Plaintiffs in subparagraphs (a), (c), (d) or (e) of Paragraph 32 of the Complaint. To allow Plaintiffs’ negligence claim to succeed would be to affirm a myriad of non-existent legal duties. Accordingly, Plaintiffs’ negligence claim must be dismissed.

b. Plaintiffs’ Complaint fails to meet South Carolina pleading standards.

Plaintiffs’ claim for negligence falls below the legal standard for pleadings in South Carolina. It is well settled that “even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient.” *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986). Here, Plaintiffs allege that Thomas failed to protect against “reasonably foreseeable harm” but fail to identify the specific harm or articulate how the harm was foreseeable. (Complaint ¶ 32(c)). Similarly, Plaintiffs allege that the excavation on Thomas’s property caused “significant damage” and “erosion” to Plaintiffs’ but fail to specify the nature, degree, or specific location of the damage. (Complaint ¶ 30-31) Plaintiffs’ allegations are not only conclusory, they are contradictory. Plaintiffs allege in Paragraph 15 that erosion is “expected” to encroach onto Plaintiffs’ property and allege in Paragraph 31 that the excavation already caused erosion to Plaintiffs’ property. In short, Plaintiffs’ negligence claim is unsupported by any specific or consistent facts upon which any defendant could reasonably be put on notice and therefore should be dismissed with prejudice.

III. PLAINTIFFS QUIET TITLE CLAIM IS NOT ACTIONABLE BECAUSE THE COMPLAINT DOES NOT ALLEGE A CLAIM OF TITLE.

A quiet title claim requires a basis upon which a title should be quieted.⁴ Here, Plaintiffs petition the Court to “quiet title” by redrawing the common property line. Specifically, Plaintiffs ask the Court to transfer from Thomas to Plaintiffs title to a portion of a driveway and turnaround area shown in a survey attached to the Complaint (the “1996 Survey”). (Complaint ¶ 36) Rather than bolster Plaintiffs’ claim, the 1996 Survey shows that both parties purchased their respective properties with actual and constructive notice of the common property line. Plaintiffs’ quiet title claim is devoid of a justiciable controversy and should be dismissed with prejudice.⁵

IV. PLAINTIFFS’ ACQUIESCENCE CLAIM IS NOT ACTIONABLE BECAUSE THE COMPLAINT DOES NOT ALLEGE THE ELEMENTS OF A CLAIM FOR TITLE BY ACQUIESCENCE.

Plaintiffs seek to obtain title to a driveway and turnaround area by through a claim of mutual acquiescence. Acquiescence requires mutual intent to agree to particular property line “[a]bsent recognition by both [parties] that a particular line constituted the true property line, a new boundary [can] not be established by acquiescence.” *Croft v. Sanders*, 283 S.C. 507, 510 (S.C. Ct. App. 1984) (rejecting plaintiff’s argument that a fence constituted a particular property line and finding that the parties’ establishment of a marker between adjacent properties did not prove intent to establish a new boundary line). Here, Plaintiffs’ claim to the “entire gravel drive and turnaround” is not a claim to a property line, much less a particular property line. (Complaint ¶ 42).

⁴ *Uxbridge Co. v. Poppenheim et al*, 135 S.C. 26, 29 (S.C. 1926) (“Equity will not entertain an action simply to settle and fix a boundary line between adjoining owners, unless the plaintiff’s complaint discloses some feature of equitable cognizance, as, for instance, fraud or misconduct on the part of an adjoining landowner, by reason of which a confusion or obliteration of the boundary line has resulted; mutual mistake of the adjoining owners; the neglect of a duty founded upon the relationship of the parties; the practical certainty of a multiplicity of suits growing out of the confusion or uncertainty; and the inadequacy of a remedy at law”).

⁵ *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985) (holding that to claim declaratory relief, a party must demonstrate a justiciable controversy).

Further, Plaintiffs fail to identify the predecessors in interest who acquiesced to a new property line or describe what actions evidence an intent to relocate the common property line. (Complaint ¶ 40). South Carolina courts have categorically rejected such claims of acquiescence on the basis that “[a] landowner . . . is not required to battle successfully for his rights... if the principle of prescription be attributed solely to the acquiescence of the servient owner”, as in the present case. *Pittman v. Lowther*, 363 S.C. 47 (S.C. 2005).⁶ Accordingly, Plaintiffs’ acquiescence claim should be dismissed with prejudice.

V. PLAINTIFFS’ PRESCRIPTIVE EASEMENT CLAIM FAILS BECAUSE THE COMPLAINT DOES NOT ALLEGE HOSTILITY FOR THE STATUTORY PERIOD.

Plaintiffs prescriptive easement claim should be dismissed because Plaintiffs fail to allege the proper elements of a claim for to a prescriptive easement. “To establish an easement by prescription, a party must show the following: (1) the continued and uninterrupted use or enjoyment of a right for a full period of twenty years, (2) the identity of the thing enjoyed, and (3) that the use or enjoyment was adverse or under a claim of right.” *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568 (2012). To establish adversity, a plaintiff must prove “that the use of such disputed area was adverse for the full period of twenty years.” *Babb v. Harrison*, 220 S.C. 20, 66 S.E.2d 457 (1951). Here, Plaintiffs’ allege entitlement to a prescriptive easement over Thomas’s property because Plaintiffs and its predecessors have used the property for a period of at least twenty years and “Defendants claim this is adverse to their rights.” (Complaint ¶ 46-47). Plaintiffs’ claim must be dismissed because the Complaint fails to allege any adversity prior to the

⁶“A landowner . . . is not required to battle successfully for his rights. It is enough if he asserts them to the other party by an overt act, which, if the easement existed, would be a cause of action. Such an assertion interrupts the would-be dominant owner’s impression of acquiescence, and the growth in his mind of a fixed association of ideas; or, if the principle of prescription be attributed solely to the acquiescence of the servient owner, it shows that acquiescence was not a fact”.

filing of this action, much less the statutory period of twenty years. Further, the Complaint to allege the identity of the thing enjoyed or the uninterrupted use of the property in such a way as to indicate anything other than ordinary permissive. (Complaint ¶ 43-48). Accordingly, Plaintiffs' prescriptive easement claim must be dismissed.

VI. PLAINTIFFS' EASEMENT BY ESTOPPEL CLAIM MUST BE DISMISSED BECAUSE THE COMPLAINT DOES NOT ALLEGE ANY ELEMENTS OF A CLAIM FOR EASEMENT BY ESTOPPEL.

Plaintiffs' claim that Thomas should be estopped from denying Plaintiffs' access to Thomas's land so that Plaintiffs can "continue to access their business in the Back Building." (Complaint ¶ 51). To establish a claim for easement by estoppel, "the party claiming estoppel must show the following elements as to the party sought to be estopped: (1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert, (2) intention, or at least expectation, that such conduct shall be acted on by the other party, and (3) knowledge, actual or constructive, of the real facts." *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568 (2012) (See also, *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410 (2006)). Here, Plaintiffs' Complaint fails to allege a single element necessary to establish a claim for easement by estoppel. (Complaint ¶ 49-51). Accordingly, Plaintiffs' claim should be dismissed.

VII. PLAINTIFFS' EASEMENT BY NECESSITY CLAIM MUST BE DISMISSED BECAUSE THE COMPLAINT DOES NOT ALLEGE THE ELEMENTS TO ESTABLISH AN EASEMENT BY NECESSITY.

Plaintiffs claim entitlement to an easement by necessity over Thomas's land to access a building from which Plaintiffs' derive business revenue. (Complaint ¶ 54) In South Carolina, "[t]he

party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity.” *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410 (2006). Here, Plaintiffs’ fail to allege unity of title and severance of title. Concerning the element of necessity, Plaintiff’s claim of necessity for revenue purposes does not meet the legal standard for necessity because Plaintiffs’ fail to allege the existence of the necessity at the time of severance. (Complaint ¶ 54). In *Boyd v. Bellsouth*, the Supreme Court of South Carolina found that “[T]he necessity element of easement by necessity must exist at the time of the severance and the party claiming the right to an easement must not create the necessity when it would not otherwise exist.” *Id.* at 418. Plaintiffs claim should be dismissed because Plaintiffs fail to allege the elements required to establish a claim for an easement by necessity.

CONCLUSION

Plaintiffs’ Complaint fails to state any claims upon which relief may be granted. Therefore, for the reasons set forth above and pursuant to South Carolina Rules of Civil Procedure 12(b)(6), applicable statutes and case law, and such other supporting arguments as may be presented at the hearing on this matter, Plaintiffs’ Complaint should be dismissed in its entirety.

CAMPBELL TEAGUE LLC

/s/ Molly Cash

Emily O’Brian (SC Bar #101824)
 Beau B. Brogdon (SC Bar #103803)
 Molly Cash (SC Bar #103152)
 16 W. North St.
 Greenville, South Carolina 29601
 Tel: (864) 326-4186
 emily@campbellteague.com
 beau@campbellteague.com
 molly@campbellteague.com
Attorneys for Defendants

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' MEMORANDUM IN
	)	RESPONSE TO DEFENDANTS'
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	MEMORANDUM IN SUPPORT OF ITS
	)	MOTION TO DISMISS
	)	
Defendants.	)	
	)	

I. INTRODUCTION

Brent Click began leasing property located at 3668 Calhoun Memorial Highway in Easley in 2013, for the purpose of operating Hyper Formance, LLC, a specialty vehicle repair and restoration business. The land has two buildings, one located behind the other, with the front building housing the body shop ("Front Building") and the back building housing the paint booth and paint shop equipment ("Back Building").

The land is not accessible from the northern or eastern boundaries. The southern boundary of the property is accessed by entering from U.S. Highway 123. A gravel driveway runs along the western boundary leading to the Back Building, with a gravel turn-around area at the rear of the property and adjacent to the Back Building. Use of the gravel driveway and turn-around area is the only means of vehicular access to the Back Building. Visually it was obvious this gullied-out turn-around area had been in use for many years to access the Back Building.

Brent has always used this area in the operation of the Business, without complaint or comment from the adjoining landowner. In fact, the person claiming to be the adjoining landowner (who operated the auto repair shop next door, to the west) helped Brent apply additional gravel to the turn-around area in 2013.

In 2014, Brent erected a carport attached to the Back Building and adjacent to the gravel turn-around area to shelter vehicles before and after painting. Again, he had no complaint or comment from the adjoining landowner. It was only after Brent had a disagreement with Jonathan Thomas, the new tenant on the adjoining property to the west, who later purchased that property in 2018, that a dispute arose regarding Plaintiffs' use of the upper portion of the gravel driveway and the gravel turn-around area. There soon began a series of escalating events which have culminated in Thomas recently demanding that Plaintiffs remove the carport and the beginning of construction of a fence by Defendants to completely eliminate Plaintiffs' access to the only entrance to the Back Building.

II. STANDARD

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). To ensure substantial justice to the parties, the pleadings must be liberally construed. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).¹

"A 12(b)(6)[SCRCP] motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'"

" Id. (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). "The question is

¹ If the court finds the complaint fails "to state facts sufficient to constitute a cause of action" under Rule 12(b)(6), it should give Plaintiffs an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal. See *Foman v. Davis*, 371 U.S. 178, 179, 182, 83 S.Ct. 227, 228, 230, 9 L.Ed.2d 222, 224, 226 (1962) (where a complaint is dismissed "for failure to state a claim upon which relief might be granted," leave to amend the complaint "should, as the rules require, be 'freely given' " (quoting Rule 15(a), Fed. R. Civ. P.)); *Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988) (holding "Dockside should have been given leave to amend its complaint" before it was finally dismissed pursuant to Rule 12(b), SCRCP (citing *Foman*, 371 U.S. at 182)). Rule 15(a)"strongly favors amendments and the court is encouraged to freely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).

whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.*

III. ARGUMENTS

A. Plaintiffs Have Properly Pled a Cause of Action for Nuisance

In South Carolina "anything" working inconvenience or damage, or interfering with the enjoyment of life or property is a nuisance. *See Strong v. Winn-Dixie Stores, Inc.*, 240 S.C. 244, 125 S.E.2d 628, 632 (1962). If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with the lawful use and enjoyment of the property of others, it will constitute a nuisance. *LeFurgy v. Long Cove Club Owners Ass'n, Inc.*, 443 S.E.2d 577, 313 S.C. 555 (Ct. App. 1994).

Plaintiffs have alleged that Defendants' excavation caused erosion which is advancing towards their property, has decreased the stability of the soil on their property, and has caused damage to structures on the property. (Complaint ¶¶ 15, 24-25). *Chestnut v. Avx Corp.*, 413 S.C. 224, 776 S.E.2d 82 (2015) is readily distinguishable for the present case. In *Chestnut*, despite the lack of contamination on Appellants' properties, they claim that their properties are in such close proximity to the contaminated area that their property values have been "affected or devalued." The S.C. Supreme Court declined to recognize such damages. *Id.*

Plaintiffs are not required to plead the extent of damages in their Complaint as argued by Defendants. "[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRCPP]." *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct.App.2000).

Negligence is not, as suggested by Defendants, the sole cause of action for damages done to an adjacent owner's land by excavation on a landowner's own premises. Defendants

misrepresent the holding in *Contos, et al. v. Jamison, et al.* The South Carolina Supreme Court held in that case:

The general law is well settled that a proprietor excavating on his own premises is liable for damages done to the adjacent owner's soil if in its natural condition, whether damage results from negligence or not; but when buildings or other improvements are erected upon the soil, and its natural condition is thus altered, no action lies against such excavator except upon allegation and proof of negligence.

Contos, et al. v. Jamison, et al., 81 S.C. 488, 62 S.E. 867, 868 (1908) citing, *Bailey v. Gray*, 53 S.C. 518, 31 S.E. 354 (1898).

Wallace v. A. H. Guion & Co., 237 S.C. 349, 117 S.E.2d 359 (1960) is likewise inapplicable. The Supreme Court found in this blasting case:

The general rule of the blasting cases is stated in 35 C.J.S. (1960 Ed.) Explosives § 8a, pp. 275-277, as follows: 'Under what has been called the rule of absolute or strict liability, one lawfully engaged in blasting operations is, according to the weight of authority, liable without regard to the question of whether or not he has been negligent, whereby his acts in casting rocks or other debris on adjoining or neighboring premises or highways he causes direct damage to property or causes direct injury to persons thereon. He is also, under the rule more generally adopted, liable for consequential injuries occasioned by concussion or vibration to property or for consequential injuries occasioned by concussion or vibration to persons, without the actual casting of material; nor is the rule restricted in application to instances where the blasting is a nuisance per se or where the property is contiguous or adjoining.'

Id., 117 S.E.2d at 361. The Court rejected the need to allege and prove negligence in such a case. *Id.* at 359.

Plaintiffs have sufficiently pled a cause of action for nuisance and Defendants' Motion to Dismiss should be denied.

B. Plaintiffs Have Properly Pled a Cause of Action for Negligence

Plaintiffs allege that Defendants owed them a duty not to excavate their own property in such a manner as to cause damage to Plaintiffs' property. (Complaint ¶ 29). It has long been held in South Carolina that a landowner owes a duty to adjoining landowners not to excavate his own property in such a manner that it damages either the soil on adjacent property or structures upon

that property. *See Bailey v. Gray*, 53 S.C. 518, 31 S.E. 354 (1898). Plaintiffs have alleged this duty of care and that it was breached by Defendants. (Complaint ¶ 15)² Therefore, Defendants' Motion to Dismiss should be denied.

Plaintiffs are not required to establish the "nature, degree, or specific location of the damage" as argued by Defendants. Rule 8(a), SCRPC requires:

A pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief

"The purpose of a pleading is fair notice to the opponent and the court." *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). General damages, that is, those which naturally, logically, and necessarily result from the breach of contract or injury, do not have to be specially pleaded; but may be proved under a general allegation of damages. *Kline Iron & Steel Co. v. Superior Trucking Co., Inc.*, 201 S.E.2d 388, 261 S.C. 542 (S.C. 1973).

Plaintiffs' pleadings provided fair notice to Defendants of its allegations and the Court should deny their Motion to Dismiss.

C. Plaintiffs Properly Alleged an Action to Quiet Title

Disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title, actions for injunctions and declaratory judgment actions. *Knox v. Bogan*, 472 S.E.2d 43, 322 S.C. 64 (Ct. App. 1996). The South Carolina Supreme Court in *Uxbridge Co. v. Poppenheim*, 135 S.C. 26, 31, 133 S.E. 461, 462 (1926), cited by Defendants, found the appellant was entitled to equitable relief because appellant's only possibly remedy was through a court in equity.

² Plaintiffs' pleadings are not inconsistent. Paragraph 15 sets forth the fact that Defendants' excavation on its own property has caused erosion which has undermined the stability of the soil on Plaintiff's property. Paragraph 31 alleges that the erosion will continue until it reaches Plaintiffs' property directly.

Plaintiffs have alleged the theories of acquiescence and easement and are asking for a determination of the boundaries of the property or, in the alternative, their right to the use of the property. Plaintiffs have properly requested a declaratory judgment to quiet title and Defendants' Motion to Dismiss should be denied.

D. Plaintiffs' Cause of Action for Acquiescence is Properly Pled

"If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one." *Gardner v. Mozingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987). Plaintiffs have alleged a particular property line between the adjacent properties:

The parties and prior landowners in the chains of title have, for years, comported themselves such that by their actions they recognized that the property line along the western boundary of the Click Property and the adjoining property to the west was located so as to include the entire gravel driveway and turn-around area within the portion of the land that is the Click Property.

(Complaint ¶ 4).

Defendants have not cited any case for their proposition that Plaintiffs' Complaint is insufficient unless it identifies with particularity any predecessors in interest who acquiesced to the property line. Defendants rely upon *Pittman v. Lowther*, 363 S.C. 47, 610 S.E.2d 479 (2005), however, the S.C. Supreme Court did not address in that case when a pleading alleging acquiescence was sufficient. Nor did the Court address whether acquiescence of a servient owner was sufficient. The Court addressed only what actions were sufficient to interrupt the prescriptive period. Whether Defendants took such actions goes to the merits of the case and is not a matter to be determined on a motion to dismiss. Therefore, Defendants' Motion should be denied.

E. Plaintiffs' Properly Pled Prescriptive Easement

Defendants confuse what Plaintiffs may be required to prove at trial with what they are required to plead in their Complaint. To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse or under claim of right. *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

Plaintiffs plead prescriptive easement as an alternative cause of action. They allege in Paragraph 46 that they or their predecessors have enjoyed access to the now disputed property for 20 years or longer. "[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016) quoting *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917). The Complaint attaches the 1996 Boundary Survey for Betty M. Ramey which shows that the area in question was located outside of the property boundary and being used by the property purchased by Click.

Therefore, Defendants' Motion to Dismiss should be denied.

F. Plaintiffs' Cause of Action for Easement by Estoppel is Properly Pled

"If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced un is not the true one." See *Gardner v. Mozingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987).

To establish a claim for easement by equitable estoppel, the party claiming estoppel must show the following elements as to the party sought to be estopped: (1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the

impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006). These elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other party's prejudicial change in position. See *O'Cain v. O'Cain*, 322 S.C. 551, 557–59, 473 S.E.2d 460, 464–65 (Ct.App.1996) (holding that a landowner was equitably estopped from denying the use of a driveway on his property by an adjoining landowner when the first landowner remained silent during the second landowner's construction of the driveway and improvements to land to which the driveway led). Plaintiffs incorporated their cause of action for acquiescence by reference into the cause of action for easement by estoppel. (Complaint ¶ 49). Plaintiffs alleged that they used the now disputed area without objection from the time they first arrived on the property, including when Brent added additional gravel to the area with the assistance of the adjacent tenant. (Complaint ¶ 2). Plaintiffs have alleged the elements of estoppel through the silence of Defendants and their predecessors. The Court should, therefore, deny Defendant's Motion to Dismiss.

G. Plaintiffs Have Properly Pled Easement by Necessity

South Carolina has long recognized the acquisition of an easement of right of way over another's land, by necessity. See *Brasington v. Williams*, 143 S.C. 223, 238, 141 S.E. 375, 380 (1927). Plaintiffs have pled unity and severance of title. The Complaint attaches the 1996 Boundary Survey for Betty M. Ramey which shows that the area in question was located outside of the property boundary and being used by the property purchased by Click. It is clear that the area in question was owned by Wallace G. Merck before it was severed for use by the adjacent landowner. It is also clear that the necessity existed at the time of severance because the turn-

around cannot otherwise be accessed from Click's property. Therefore, Defendants' Motion to Dismiss should be denied.

IV. CONCLUSION

Plaintiffs have properly alleged causes of action regarding their right to the now disputed gravel areas and the damage caused to their property by Defendants' excavation and respectfully request that the Court deny Defendants' Motion to Dismiss.

April 28, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-0266
	)	
Plaintiffs,	)	
	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. I reaffirm the contents of my Affidavit dated February 26, 2020 and make this Supplemental Affidavit to respond to claims made by the Defendants and their owner, Jonathan Thomas, in his Affidavit (referred to as the "JT Affidavit").
2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
3. Regarding **use of the gravel driveway** (response to JT Affidavit ¶5, 6, 12), it is not true that my gravel driveway was a common or shared driveway for both properties. The gravel driveway has never been shared with Thomas or any prior business that leased the Thomas property during the time I either leased or owned the property. I was never informed that before my ownership or my earlier lease that the driveway was considered a shared or common driveway.

4. Prior to purchasing the Thomas Property it was leased by Greg Grissinger who did not use the gravel driveway or Turnaround area. After Thomas purchased the Thomas property, he did not use the gravel driveway, and he did not use the Turnaround area.
5. Regarding **the Turnaround area** (response to JT Affidavit ¶¶6, 7, 8), my landlord, Mark Smith, leased me the gravel driveway, Turnaround area, and Back Building, on January 15, 2013. I believe the Turnaround area has been in continuous use to access the Back Building, based on its well-worn appearance and its being right at the Back Building (and lack of any other access). I am informed and believe the Back Building was constructed approximately 40 years ago. Mark Smith never told me that he did not own the Turnaround area that he was leasing to me. I was the only user of the Turnaround area, no one else claimed rights to it until Thomas bought the Thomas property.
6. Regarding **use of the Turnaround area** by prior owners and their tenants of the two properties (response to JT Affidavit ¶¶ 6, 10), I am informed and believe that my landlord, Mark Smith, and his tenants used the Turnaround area as if it was their property. There was no other way of vehicular access to the Back Building, which was built with garage doors, showing it was intended that vehicles be able to enter the building. Based on prior and continuing use by others for many years and the explanation I was given at my closing on the property, I understand and believe that as the owner of the Click Property (through my LLC), I am legally entitled to a right of undisturbed use of the Turnaround area.

7. The **awnings** (or carport, which includes concrete pads) were added on October 23, 2014 while I was leasing from Mark Smith. I first asked permission and not only did Mark Smith approve the awnings and concrete pads, Greg Grissinger, the person I thought owned the building next door, and father-in-law of Thomas, helped me put in the concrete pads. Greg never said anything about me not having the right to do this. When Thomas took over his father-in-law's business in 2014, he said nothing to indicate I did not have rights to the Turnaround area.
8. Thomas' claim that I am only storing cars in the Turnaround area is false. The paint shop is in the Back Building. Preparation of cars for painting is done under the awning. They are being worked on, not just stored there.
9. Thomas's claim of **harassment** by my wife Shelly and me (response to JT Affidavit ¶ 8, 17, 18), is outrageous because Thomas and his employees started harassing us when he was just a tenant on the property. Thomas and his employees have continued to engage in extreme harassment of Shelly and me to the point I do not believe it safe to leave our property unattended. Thomas's first intimidating act against me happened right after he took over running his father-in-law's business. I went over with a box of doughnuts for him and his employees to congratulate him on taking over the business. Thomas pulled a knife on me and held it to my throat. Thomas's employees shout at my wife calling her profane and derogatory names for a female, which made her very fearful. She cannot not easily escape the tormenting behavior when she is outside. We live in the shop buildings, and Shelly is afraid to leave the property unguarded, due to the serious threats we have received.

10. From the time I first leased the Click property, I have tried to be a friendly and helpful neighbor. My efforts have not been reciprocated. In another shocking display of Thomas's callousness, when I saw a fire at 4:15 a.m. on his property (I often work through the entire night), I called Thomas and the Sheriff's Department, put out the fire, and detained the trespasser who lit the fire, which spread due to the oil-soaked ground. The Sheriff took the trespasser home when Thomas decided not to press charges. Thomas said to me "Don't expect a thank you. If it had been your building, I would have watched it burn." He has told me he dreams of cutting my head off.
11. Regarding **what I was told when I purchased the Click Property** (Response to JT Affidavit ¶ 10, 11), after my closing was finished, I was handed an old plat and I asked the seller and closing attorney if I could be blocked from the building and both of them assured me I had a right of access to use the Turnaround.
12. Regarding **Jimmy Watkins** (in response to JT Affidavit ¶9), who I later found out was the true owner of the property Greg Grissinger was leasing, I went to see Mr. Watkins prior to April 2018 to see if there was a solution for helping ease tensions with Thomas. The extreme harassment by Thomas and his employees concerned me and I wanted to get Jimmy Watkins' advise on how Thomas and I could get along better. To my complete surprise, Watkins told me he could "build a fence" on the property line. I objected and informed him I had a right to use the Turnaround. Watkins did not deny my right to the Turnaround area, but said that regardless of any rights, he would build a fence if Thomas and I could not get along.

13. Regarding the claim that I **blocked the gravel driveway** (Response to JT Affidavit ¶13, 14, 15, 18), I put up the first gate to the driveway in 2015 and before that (from 2013) blocked it with a car for safety and liability reasons. From the first month I rented the property, I was concerned about my customers trying to walk or drive up the steep, uneven gravel driveway and possibly getting hurt, and I preferred they leave their cars at the bottom of the driveway. Thomas never used the gravel driveway except one time when his employees put three cars back up in the woods. My blocking my driveway had nothing to do with Thomas, if he wasn't there, I would still have a gate.
14. Without use of the Turnaround area, there is **literally no other access** to get a vehicle into the Back Building (response to JT Affidavit ¶21). (See Exhibits A, B and C.) There is a retaining wall on the land between the back of the front building and the side of the Back Building, and the amount of land is too narrow for an entrance. (Exhibit B) The retaining wall cannot support vehicles being driven over it. The opposite side of the building is on the property line and provides no possible way of access. (Exhibit C).
15. Regarding Thomas's construction and grading work, and the claim I made "no comment" about it (response to JT Affidavit ¶16), Thomas's excavation concerned me greatly. I called him numerous times and asked many questions, such as if he had a plan, did he have a permit, and how much dirt was he intending to remove. I also contacted South Carolina Soil and Water, the County Building Commission, the Sheriff's Department and Fire Department. Thomas left large fires unattended in the evening, and the Fire Department came twice to put out the fires. He was

digging so close to my property and removing such a large quantity of dirt that I was worried about the erosion of my land and building, which has happened.

16. There have been no **“multiple warnings”** from Thomas or the prior owner of the Thomas property to remove my possessions. (Response to JT Affidavit ¶19, 20). When I received a Certified Letter dated January 24, 2020, demanding that I remove my property and Thomas started installing a fence, I asked the Court to protect my right to use the Turnaround area and compensate me for Defendants’ negligent excavation that has damaged and continues to damage my property.
17. I am requesting the Court to intervene to stop Thomas’s immediate threat to build a fence in the Turnaround area, which would make the Back Building completely inaccessible by vehicles, which would bring my paint shop business to an end. The paint shop is approximately 50% of the business income. If the Temporary Restraining Order is not granted and Thomas is allowed to put up a fence, I will go out of business completely, which I am informed and believe is Thomas’s goal since he has repeatedly threatened to ruin me and destroy my business.

FURTHER AFFIANT SAYETH NOT.



Robert Brent Click

SWORN TO before me this 29th
day of April, 2020.


Notary Public for South Carolina
My Commission Expires 12/31/22

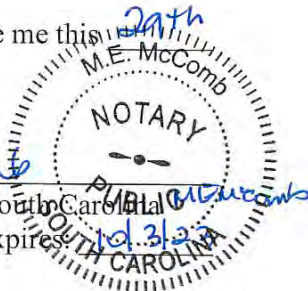


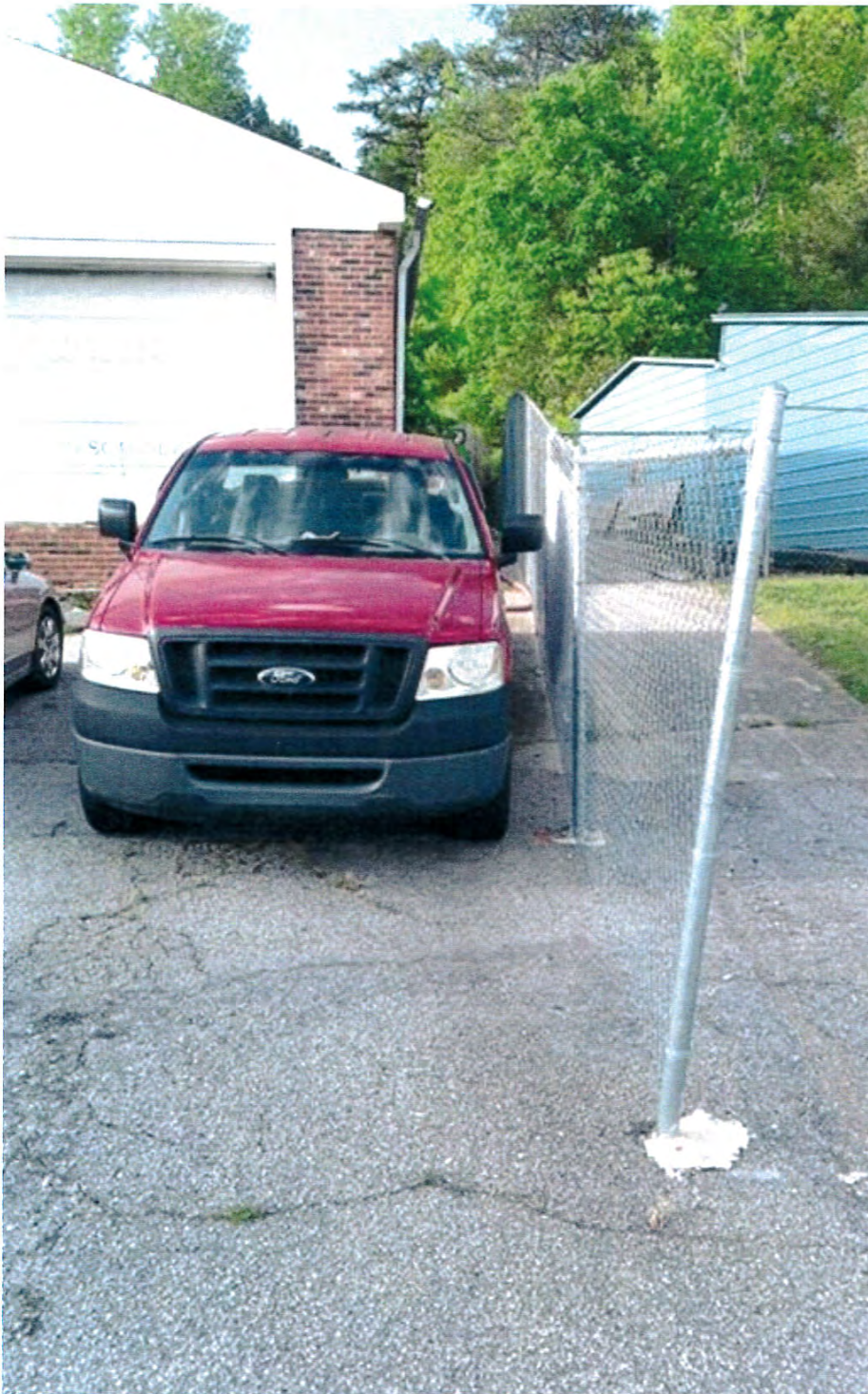
Exhibit A



Exhibit B



Exhibit C



IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' REPLY TO
	)	DEFENDANTS' RESPONSE
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	TO ITS MOTION FOR TEMPORARY
	)	RESTRAINING ORDER AND/OR
	)	PRELIMINARY INJUNCTION
Defendants.	)	
_____	)	

INTRODUCTION

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). Defendants are seeking to change the status quo after more than 20 years out of spite for the Plaintiffs.

The topography of these two adjacent lots determined their use by their respective owners as early as 1996. The elevation difference between the two lots along Click's western boundary made the gravel Turnaround accessible only from Click's property, by a gravel driveway, even after Defendants excavated their property to create a parking lot behind their building. (Exhibit A to Click's Supplemental Affidavit)

It is disingenuous for Defendants to argue that Brent should have allowed them to use his gravel driveway, the only access to his back building, for the many vehicles of Thomas' customers, especially when the gravel Turnaround is bordered by a precipice. (Exhibit A to Click's Supplemental Affidavit). Defendants were parking cars on the gravel driveway to keep Brent from accessing his own buildings. Defendants now want to build a spite fence designed only to cause Plaintiffs to lose their ability to perform their business.

ARGUMENTS

I. PLAINTIFFS HAVE DEMONSTRATED THEY WILL SUFFER IRREPARABLE HARM

The loss of access to the back building would cause irreparable harm to Plaintiffs. Defendants cite *Professional Wiring Installers, Inc. v. Sims*, Opinion No. 2008-UP-173 (S.C. App. 3/12/2008) for the proposition that economic loss alone is insufficient to show irreparable harm but omit the next statement of the Court of Appeals:

However, this Court has recognized an irreparable harm where economic loss threatens the plaintiff's business as a whole.

Id. citing Peek v. Spartanburg Regional Healthcare System, 367 S.C. 450, 455-56, 626 S.E.2d 34, 37 (Ct. App. 2005) (holding "the complete loss of a professional practice can be an irreparable harm").

Thomas's claim that Brent is using the Turnaround area merely to store vehicles is false.¹ Vehicles that are being prepared for painting or that are drying are placed under the awnings as part of the painting process. (Click Supplemental Affidavit) It is not possible to create alternative access to the back building. As shown by the photographs attached to Click's Supplemental Affidavit, there is no access to the rear of the property along the east. Additionally, even if a door was installed on the southern side of the back building, there is inadequate space between the buildings for a vehicle to turn to enter. (Exhibits B and C to Click's Supplemental Affidavit)

Defendants incorrectly argue that Plaintiffs have alleged irreparable harm as to only one element of their requested relief. Plaintiffs have alleged that continued erosion will cause them to lose access to the back building as it cuts off the access provided by the gravel drive on Plaintiff's property. Additional excavation would hasten this process, causing irreparable harm to the business.

¹ Thomas' affidavit is not notarized and, therefore, is not a proper affidavit.

The Court should, therefore, grant Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction.

II. PLAINTIFFS HAVE SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiffs have properly pled their causes of action, as set forth in their Response to Defendants' Motion to Dismiss. Plaintiffs have shown a likelihood of success regarding their right to own or access the gravel Turnaround area. Defendants and their predecessors did not object to Plaintiffs use of the Turnaround, even when he added additional gravel, installed a concrete pad, and installed awnings on the western side of the back building.

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

Jordan v. Judy, 413 S.C. 341, 348, 776 S.E.2d 96, 100 (Ct. App. 2015) *quoting* *McClintic v. Davis*, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955) (internal quotation marks omitted).

Contrary to Defendants' contention, Exhibit A to the Complaint shows that the gravel area is contemplated either as belonging to Click or providing him with an easement. Exhibit A to the Complaint also shows that the gravel area has been used by the owners of Click's current property for more than 20 years.

The excavation has destabilized the soil under Plaintiffs' property. No efforts were taken to prevent erosion. (See Exhibit A to Click's Supplemental Affidavit) Brent has testified that the walls and foundation of his rear building began to crack after the excavation. Additionally, the soil is continuing to erode beneath his property, making the gravel drive less stable. The erosion will eventually remove a portion of the gravel drive itself. Plaintiffs therefore request the Court grant their Motion for Temporary Restraining Order or Preliminary Injunction.

III. THERE IS NO ADEQUATE REMEDY AT LAW

The recent pandemic has demonstrated that the payment of money to a business does not alleviate the damage caused by a loss of customers. Hyper Formance is a specialty business that relies on word of mouth to attract customers. If Brent cannot paint customer cars, he loses his paint only customers and the customers for whom he was performing both restoration and paint work. Those customers are then unlikely to use him again or to refer other customers. *See Simmons v. Quixtar, Inc.*, No. 2007 WL 3256244 (E.D. Tex. 2007) (granting preliminary injunction where Plaintiffs would have no adequate remedy at law because "they will lose business and goodwill, which are immeasurable through money damages").

IV. ANY BALANCING OF EQUITIES FAVORS THE PLAINTIFFS

The requirement of "balancing the equities" is neither necessary nor appropriate in a preliminary injunction case, where the three requirements (irreparable harm, success on merits, and inadequate remedy at law) are well established and clearly delineate the burden of proof and of persuasion. *Poynter Invs. Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

If it is necessary to balance the equities in the present case, they favor the Plaintiffs. Defendants do not utilize the gravel Turnaround. Brent has been using the Turnaround and it is vital to his business. Therefore, Defendants are not damaged by refraining from using the gravel Turnaround or from being prohibited from blocking Brent from using the Turnaround.

Defendants have not alleged a present need for additional excavation and are not inconvenienced or damaged by refraining from additional excavation at this time. Plaintiffs, by contrast, have already been damaged by Defendants' excavation and are experiencing cracking in the walls and foundation of one building and erosion under their property. Additional excavation

would worsen the problem. Finally, Defendants are not damaged by refraining from harassing the Plaintiffs.

CONCLUSION

Plaintiffs' business has been built around the understanding that they had the right to use the gravel area to access the back building. Defendants should be enjoined from building a spite fence for the sole purpose of damaging Plaintiffs' business.

Defendants should also be enjoined from further excavating the property in a manner that will damage Plaintiffs property and from harassing the Plaintiffs.

April 29, 2020

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, P.A.

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
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COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
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Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	MOTION TO AMEND ANSWER TO
	)	ADD COUNTERCLAIM
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
_____	)	

COME NOW Defendants Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC (“Defendants”) by and through their undersigned counsel, and hereby moves this Court for leave to file the attached Counterclaim (“Exhibit A”), stating as follows:

MOTION TO AMEND ANSWER TO ADD COUNTERCLAIM

1. Plaintiffs, Click Properties, LLC and Hyper Formance, LLC, (“Plaintiffs”) filed this action on February 27, 2020, in part seeking declaratory judgment regarding the property boundary line between Plaintiffs and Defendants.
2. Plaintiffs’ Motion for Temporary Injunction and Defendants’ Motion to Dismiss were heard on April 30, 2020, and, subsequently, Defendants timely answered on May 22, 2020.
3. The Parties have since engaged in discovery, including discovery related to the property boundary.
4. Based on the evidence and in order to assure full adjudication of the issues between the Parties, Defendants now seek to amend their Answer to add a counterclaim pursuant to S.C. Code Ann. § 15-53-10, et seq., the Uniform Declaratory Judgments Act.

5. Defendants' request to amend is not made with the intent to delay as discovery has already been conducted on all issues raised by Defendants' Counterclaim. Thus, leave to amend should be freely given in accordance with South Carolina Rule of Civil Procedure 15.

6. Further, such amendment will not prejudice Plaintiffs as the issues set forth in Defendants' Counterclaim are already set to be adjudicated as part of Plaintiffs' claims.

WHEREFORE, Defendants respectfully request that this Court grant leave to file the Counterclaim attached hereto as Exhibit A.

Respectfully submitted this 23rd day of February, 2022.

CAMPBELL TEAGUE LLC

/s/ Emily O'Brian

Emily O'Brian (SC Bar #101824)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
Attorney for Defendants

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AMENDED ANSWER ADDING
	)	COUNTERCLAIM
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
_____	)	

COME NOW Defendants Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC (“Defendants”) amend their Answer to include the following Counterclaim:

FOR A FIRST COUNTERCLAIM
Declaratory Judgement

1. Defendants incorporate and reallege all preceding paragraphs in their May 22, 2020 Answer as if fully restated verbatim herein.
2. This claim is brought pursuant to S.C. Code Ann. § 15-53-10, et seq., the Uniform Declaratory Judgments Act.
3. Plaintiffs have asserted claims to Defendants’ property. Thus, there is a justiciable controversy between the Parties such that it is necessary now to determine the rights of the Parties with regard to the location of the shared property boundary line between the Parties, rights to the gravel turnaround area located on Defendants’ property, and Defendants’ rights to use of the driveways off of Calhoun Memorial Hwy to access its property.

WHEREFORE, Defendants respectfully request an order declaring:

- A. The property boundary between the Parties' properties is as shown on the survey recorded in the Pickens County Plat Book 56 at Page 334;
- B. Plaintiffs do not have any right, whether by easement or otherwise, to the gravel turnaround area located on Defendants' property; and
- C. The rights of the respective Parties to use of driveways off of Calhoun Memorial Hwy is an equitable manner.

Respectfully submitted this 23rd day of February, 2022.

CAMPBELL TEAGUE LLC

/s/ Emily O'Brian

Emily O'Brian (SC Bar #101824)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
Attorney for Defendants

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	MOTION TO REMOVE TEMPORARY
	)	INJUNCTION
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
	)	

Nearly two years ago, Plaintiffs petitioned this Court for a Temporary Injunction, in part restricting Defendants' ability to use the gravel turn-around area located on Defendants' own property and instead permitting Plaintiffs to use the turn-around area at no cost. Plaintiffs asserted that using the turn-around area was necessary to their business because without being able to use that space, Plaintiffs would not be able to drive vehicles into their paint shop. Based on this representation, this Court ruled in Plaintiffs' favor. *However, Plaintiffs are not using the turn-around area for vehicular access to their paint shop.* Plaintiffs are using this area of Defendants' property for storage of various items. Consequently, Defendants respectfully request this Court remove its order that Defendants do not restrict Plaintiffs' use of the turn-around area. Plaintiffs should not be able to block Defendants from their own property so Plaintiffs can use it as free, personal storage.

Factual and Procedural Background

Plaintiffs and Defendants run businesses on adjoining properties. Along the Western border of Plaintiffs' property runs a gravel driveway leading to Plaintiffs' Back Building. (See Exhibit A to Complaint.) At the top left of the gravel driveway is a gravel

turn-around area which is located on Defendants' property. (*Id.*) At the beginning of 2020, Defendants determined they would incorporate the turn-around area into parking for its own business use. Plaintiffs objected and filed this lawsuit and a Motion for Temporary Injunction to prevent Defendants from using their own property as they desired.

Plaintiffs asserted that Defendants should be enjoined from keeping Plaintiffs off Defendants' own property, particularly the turn-around area. As support for this claim, Plaintiffs asserted that the turn-around area was the "only means of vehicular access to the Back Building." (2020.02.27 Pls Memo in Supp. TRO, p.1). Plaintiffs further stated that absent a TRO they would "lose the ability to operate approximately 50% of the Business." (*Id.* at p.4).

Defendants represented to this Court that Plaintiffs' argument was insincere, asserting that Plaintiffs true goal was to be able to use Defendants' property without compensation throughout the pendency of this litigation. Plaintiffs' use of the property was simply to *park* various items, not to use as the sole method for vehicular access to the Back Building. In short, it was more convenient for Plaintiffs not to have to move their stuff off of Defendants' property.

Plaintiffs countered, writing "Thomas's claim that Brent is using the Turnaround area merely to store vehicles is false. Vehicles that are being prepared for painting or that are drying are placed under the awnings as part of the painting process." (2020.04.29 Pls Reply, p.2). Plaintiffs doubled down, providing a sworn affidavit stating, "Without use of the Turnaround area, there is **literally no other access** to get a vehicle into the Back Building." (2020.04.29 Click Affidavit, Para. 14) (emphasis in original).

Based on the information Plaintiffs provided to it, this Court determined that Plaintiffs' use of the turn-around area was necessary for a major portion of Plaintiffs' business. This Court issued an Order dated May 8, 2020, in part preventing Defendants from restricting Plaintiffs' use of the turn-around area.

Since May 2020, Plaintiffs' use of the turn-around area has continued, but Plaintiffs have used the area for parking of various items, not vehicular maneuvering.

Legal Standard

"An injunction is a **drastic** remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (emphasis added).

"The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50–51, 674 S.E.2d 505, 508 (Ct. App. 2009), *citing Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct.App.2005); *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). A party seeking injunctive relief "must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140–41, 691 S.E.2d 465, 470 (2010) (internal citations and quotation marks omitted). "Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief." *Peek*, 367 S.C. at 455, 626 S.E.2d at 36–37. The Court also

must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

Argument

Plaintiffs have used the turn-around area, located on Defendants' property, for storage of various items, not the maneuvering of vehicles. This is inconsistent with representations made to this Court and undermines the support this Court relied on in granting Plaintiffs' original motion for temporary injunction. As such, the injunction preventing Defendants from claiming and using their own property should be removed.

1. Allowing Defendants to prevent Plaintiffs from using *Defendants'* property for free storage does not threaten Plaintiffs' business.

In their original motion, Plaintiffs asserted that the turn-around area was critical to its business because that was the only way for Plaintiffs to access their Back Building, used as a paint shop. This Court based its grant of an injunction in Plaintiffs' favor on this representation. Plaintiffs, however, have not used the turn-around area for driving vehicles in and out of the Back Building. Instead, Plaintiffs have used the area as parking and storage. With items parked in the turn-around area, Plaintiffs cannot use the area to maneuver vehicles and thus has either (i) found a different way to access the Back Building without using the turn-around area or (ii) has been able to reconfigure their business so as not to need to maneuver vehicles into the Back Building.

Plaintiffs previously argued that "Thomas's claim that Brent is using the Turnaround area merely to store vehicles is false." (2020.04.29 Pls Reply, p.2). However, Plaintiffs' explanation for this statement was incongruent—"Vehicles that are being

prepared for painting or that are drying are placed under the awnings as part of the painting process.” (2020.04.29 Pls Reply, p.2). This explanation fails to address the use of the *turn-around area*, only noting Plaintiffs’ use of the space under the awnings (notably for parking rather than passage of vehicles). Further the pictures attached hereto as Exhibit A show that Plaintiffs clearly *do* use the turn-around area for parking and storage. The substantial equipment placed on the turn-around area is not simply cars waiting to be painted.

Whether Plaintiffs have found a different way to access the Back Building without use of the turn-around area or such use of the turn-around area was never in fact needed, an injunction continuing to block Defendants from doing what they wish with their own property is not justified. Clearly, not being able to drive vehicles on the turn-around area does not irreparably harm Plaintiffs. It is merely more convenient for Plaintiffs to be able to use Defendants’ property for storage.

2. As Plaintiffs’ cannot show irreparable harm, the injunction should be removed.

A showing of irreparable harm is a critical element for obtaining an injunction. The showing of irreparable harm is particularly important in this case as the current injunctions prevent Defendants from using their own property, instead essentially turning over the property to Plaintiffs. Plaintiffs asserted that without using the turn-around area for vehicular access to the Back Building, the company would suffer irreparable harm by going out of business. Plaintiffs have since used the area for storage and not vehicular access to the Back Building, and Plaintiffs have not gone out of business. The Plaintiffs do not need the turn-around area to prevent going out of business and, therefore, cannot make a showing of irreparable harm necessary to maintain this injunction.

Conclusion

Therefore, for the reasons set forth above and in Defendants' prior briefing on this matter and pursuant to South Carolina Rules of Civil Procedure 65, applicable statutes and case law, and such other supporting arguments as may be presented at the hearing on this matter, Defendants respectfully request that this Court's injunction be removed. More particularly, Defendants request that there be no restriction on Defendants' ability to prevent Plaintiffs from using Defendants' property.

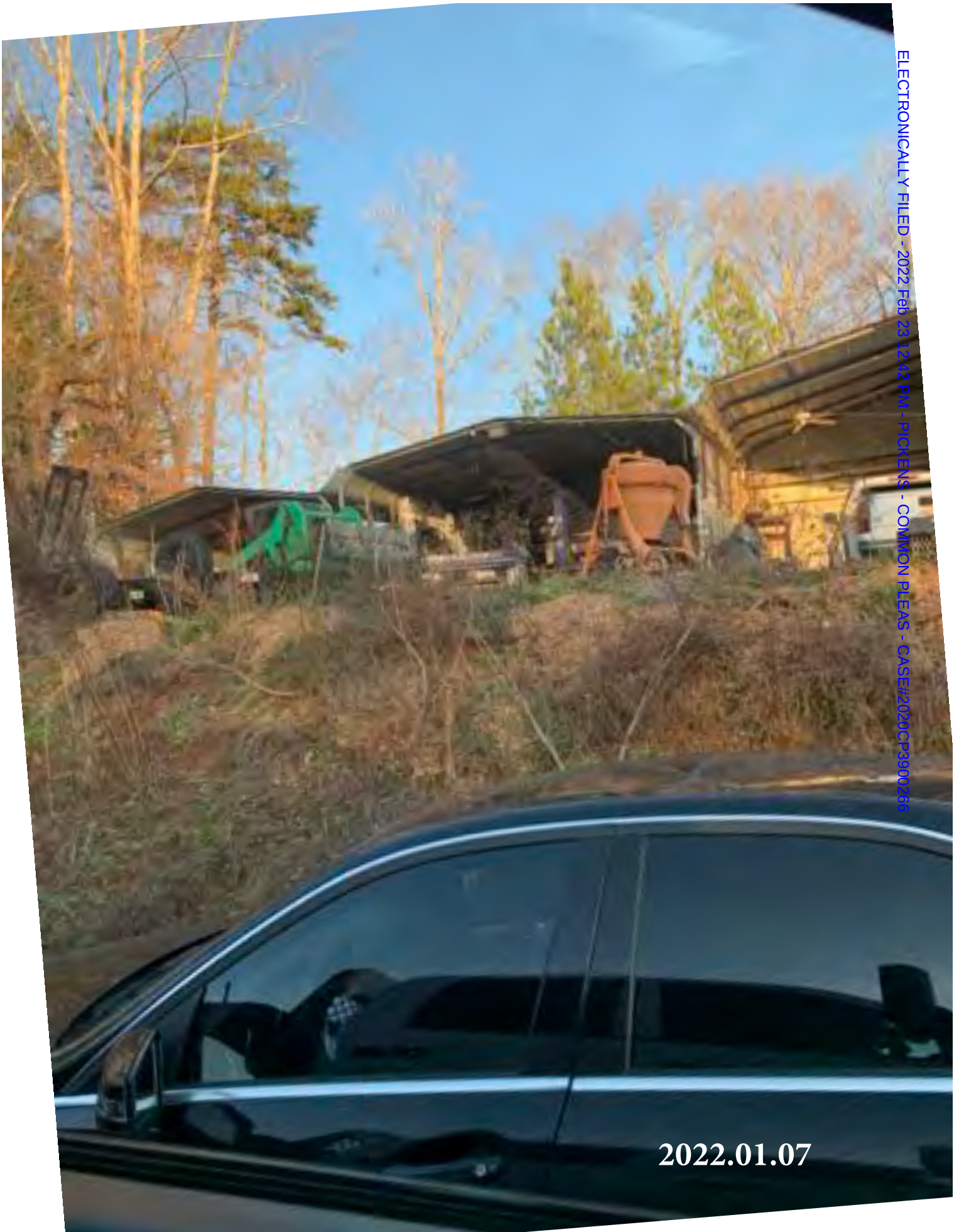
Respectfully submitted this 23rd day of February, 2022.

CAMPBELL TEAGUE LLC

/s/ Emily O'Brian

Emily O'Brian (SC Bar #101824)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
Attorney for Defendants

EXHIBIT A
Photographs



2022.01.07





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2020.03.16



2020.05.14





2022.01.06



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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON
PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

Affidavit of Johnathan Thomas

PERSONALLY APPEARED before me, the undersigned, who being duly sworn,
deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for
matters stated upon information and belief, I have personal knowledge of the facts
contained in this Affidavit.

2. I am the owner of 3670 Calhoun Memorial Hwy, Greenville, SC 29611
(hereinafter, the "Thomas Property") and have owned the property since May 2018.

3. The Thomas Property is adjacent to 3668 Calhoun Memorial Highway
(hereinafter, the "Click Property").

4. Upon information and belief, the prior owners of the Thomas property and
the Click property, for the sake of convenience, used one gravel driveway to access the
upper portion of both properties. However, upon information and belief, owners and lessors
of both properties recognized the property lines as shown in both the 1996 survey (Exhibit
A to the Complaint) and the 2020 survey (Exhibit 1 to my 2020.04.27 Affidavit).

5. The majority of the gravel driveway is on the Click property, while the upper portion and a larger gravel area (herein, the “Turn-around area”) is on the Thomas property.

6. In early 2020, I decided to incorporate the turn-around area into parking for my own business use. Therefore, I instructed Click to remove his personal items and equipment from my property. Click has consistently refused to remove his possessions (including awnings, vehicles, and trailers) from my property.

7. Plaintiffs objected to removing his items from my property, filed this lawsuit, and petitioned this Court for a Temporary Injunction, asserting that using the turn-around area was necessary to their business and that the turn-around area was the only means of vehicular access to the Back Building (which I vigorously contested).

8. Since the Temporary Injunction was issued, Click has continued to use the turn-around area for storage of items, vehicles, and equipment.

9. Over the two-year period since Plaintiffs’ Temporary Injunction was granted, I have observed Plaintiffs’ use the turn-around area of my property primarily for parking and storage of stationary items.

10. With items parked in the turn-around area, Plaintiffs cannot simultaneously use the area to maneuver vehicles or as vehicular access to their Back Building.

11. These items that I have observed and taken photographs of parked in the turn-around area are not merely vehicles being prepared for painting or that are drying. They also are not solely parked under the awnings.

12. Further, I have consistently observed over the last two years these items parked on the turn-around area. Based on my observations, these are not items that are

frequently moved around, temporarily placed there, or otherwise being shifted from their storage positions frequently. Rather, these items consistently take up space and block the use of the turn-around area for any other activities.

13. Photographs of the turn-around area showing the parking and storage of primarily stationary items over time are attached to Defendants' Motion to Remove Temporary Injunction as Exhibit A.

FURTHER AFFIANT SAYETH NOT.


Jonathan Thomas

Sworn and subscribed before me

this 17 day of March, 2022



Notary Public for South Carolina

My commission expires: 10/29/2028

[SEAL]



IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	BRADLEY S. DOBSON
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. I have personal knowledge of the facts contained in this Affidavit.
3. On April 16, 1998, Tammy M. Dobson and I bought from Betty M. Ramey real estate with two buildings located on US Highway 123 in Pickens County. I have reviewed this deed to refresh my memory. The street address of this property is 3668 Calhoun Memorial Highway, Greenville, SC 29611. In this Affidavit, I will call this property "3668 Calhoun Memorial."
4. Tammy and I used 3668 Calhoun Memorial for our cabinet shop business. The cabinet shop was in the building nearest to US Highway 123 (the "Front Building") and the building up the hill at the back of the property (the "Back Building") is where we stored our lumber and other supplies.
5. When Tammy and I bought 3668 Calhoun Memorial, the next door property on the western side (3670 Calhoun Memorial Highway) was owned by Wallace Merck.

There was a gravel driveway between 3668 Calhoun Memorial and Mr. Merck's adjoining property, which I will call the "Next Door Property".

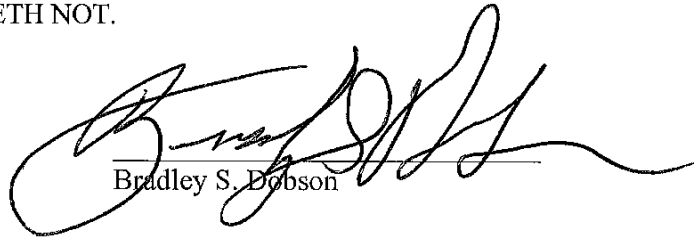
6. The gravel driveway started near Highway 123 at the side of my Front Building, and at the top of the gravel driveway there was a wider gravel turnaround area that went all the way to the side edge of the Back Building. The Back Building had a garage door for cars and trucks to come into the building, which was there when we bought 3668 Calhoun Memorial. The only way to bring a car or truck inside the Back Building would have been to use the gravel turnaround area.
7. Mrs. Ramey had a plat prepared in 1996 that was filed with the official public records of the property. This plat showed the gravel driveway and turnaround area were partly on the Next Door Property.
8. I routinely used the gravel driveway and gravel turnaround area to drive my truck up the hill to the Back Building. I drove my lumber and anything else that was heavy to and from the Back Building. I recently reviewed Mrs. Ramey's plat, and it shows the gravel driveway and gravel turnaround area by a dotted line and the drawing is the same as the area I routinely used during my ownership of 3668 Calhoun Memorial.
9. When Tammy and I bought 3668 Calhoun Memorial, the physical condition of the driveway/turnaround made it obvious that during Mrs. Ramey's ownership, the gravel driveway/turnaround area had been used to drive to and from the Back Building. There was no other access to the Back Building.
10. During my ownership I also performed upkeep of the gravel driveway and turnaround area by buying and spreading a mixture of asphalt millings and gravel throughout the entire gravel driveway and turnaround area.

11. During mine and Tammy's ownership, to the best of my knowledge, Mr. Merck saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me he thought the driveway/turnaround area was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/turnaround area.
12. Mr. Merck sold the Next Door Property to Greg Porter during the time Tammy and I owned 3668 Calhoun Memorial. During our ownership, to the best of my knowledge, Mr. Porter saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me that the property was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/turnaround area.
13. Mr. Porter sold the Next Door Property to Jimmy Watkins during the time Tammy and I owned 3668 Calhoun Memorial. During our ownership, to the best of my knowledge, Mr. Watkins saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me that the property was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/ turnaround area.
14. Tammy and I sold 3668 Calhoun Memorial to Mark Smith in 2005.
15. My use of the gravel driveway/turnaround area was not based on receiving permission from the owners of the Adjoining Property to use the driveway/turnaround area. I used it without asking for permission because it was obvious that the driveway/turnaround already was in use to get to the Back Building before I owned 3668 Calhoun Memorial. This was the only access to the back of the property and the Back Building by car or truck and was used that way by the

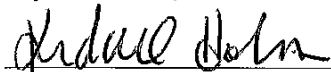
prior owner, which I personally saw during the month or so when I was considering buying the property. The Ramey's cabinet shop was in the Back Building and they and their customers parked in the turnaround area. Also, based on visual observation of the location and condition of the driveway/turnaround and the Back Building, it was clear that there had been long continuous use of the driveway/turnaround by the prior owner of 3668 Calhoun Memorial.

16. I never once thought during all those years that I did not have the legal right to use the driveway/turnaround area.

FURTHER AFFIANT SAYETH NOT.


Bradley S. Dobson

SWORN TO before me this 8th
day of March, 2022.

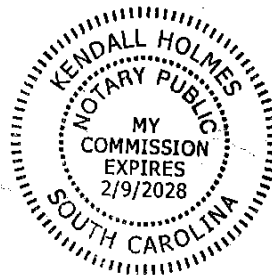


Notary Public for South Carolina

Printed Name of Notary:

Kendall Holmes

My Commission Expires: 2/9/2028



IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I have owned 3668 Calhoun Memorial Highway, Greenville, South Carolina (the "Click Property") since February 10, 2017, which is used to operate Hyper Formance, LLC, a body and machine shop owned by my wife Shelly and me.
3. The adjoining property to the west, located at 3670 Calhoun Memorial Highway, has been owned by Defendants since May 2018. In August 2018, Defendants' owner Jonathan Thomas did his own excavation of Defendants' property (see photos A and B) that has caused significant damage to the Click Property. Defendants also decided to block my use of a gravel turn-around area that Hyper Formance had always used and, upon information and belief, that prior owners of the Click Property had used going back to 1978. Therefore, I had to file this lawsuit

and ask for an Injunction.

4. The only entrance (or possible way of entrance) by vehicle into the building that houses my paint booth (the "Back Building") is through the gravel turn-around area. The paint booth is essential for our body and machine shop, which are not possible without a paint booth. I paid approximately \$30,000 for the paint booth, which was custom spec'ed for and assembled in the Back Building (see Photo C) and has been in the Back Building since shortly after I bought the Click Property.
5. Upon information and belief, prior owners of the Click Property used the turn-around area continuously, openly, and as their own property. (See Affidavit of Bradley S. Dobson dated March 8, 2022).
6. Shelly and I use the paint booth just as much now as when the Temporary Injunction was granted and have continuously used the paint booth since the Temporary Injunction was granted. All paint booth work is done after Defendants close All-Tech and Mr. Thomas and his employees leave for the day or on days when they are closed for business. Shelly and I first had to change the paint booth schedule when Defendants' excavation (see Photos D and E) was done in August 2018. So much dust was in the air we could only paint at night. When we started painting again in the daytime, Defendants' employees, obviously for sport, would drive cars into Defendants' dusty parking lot, driving round and round (making "donuts") and driving up the hill towards my property spinning the wheels, intentionally stirring up huge dust clouds that were drawn through the paint filters into the paint booth, which must be maintained as a sterile environment. This damaged the paint work Shelly and I had performed. This damage required excessive additional work, typically adding 20% more time. We went back to using the paint booth only at

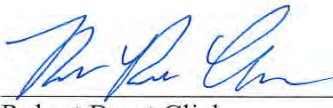
night and on days when All Tech is closed and this is true to the present time, because this harassment was so damaging. This is why Jonathan Thomas never sees us using the paint booth because if he knows we are painting he is going to mess with us. The paint booth is required for all body work and for almost all parts work.

7. The paint booth work is done in batches, on average three times per week. Items in the turn-around area are moved before we transport the vehicles and parts to the paint booth. Vehicles going into the paint booth usually are not drivable or have been disassembled (see Photo F) and must be loaded onto a trailer (see Photo G) and trucked up the gravel driveway, through the turn-around to the Back Building's overhead doors and offloaded into the paint booth (See Photo H). Parts usually require transport on a large pallet by truck and trailer, or in the truck bed, or by bobcat and placed into the paint booth. Due to the angle needed to enter the paint booth, the turn-around area is absolutely necessary for access.
8. I have reviewed the 14 photos that Defendants submitted and the use of the turn-around area is no different in those photos from the ways we have always used the turn-around area, including for storage, parking, and having other stationary items in the turn-around (see Photos I through L). We are complying with the Judge's Order because what we do now is what we have always done before, the status quo. Some of the items shown in Defendants' photos are not even in the turn-around area. There are three customer vehicles that have been at the Back Building since before the Temporary Injunction. These are under Defendants' carports. My trailers are left in the turn-round due to problems with repeated vandalism of my trailers by Defendants' employees when I leave them down the hill in the front parking lot. For many months I have placed several items, such as the attachment to the bobcat

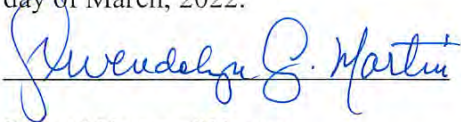
and the cement mixer, close to the excavated embankment to try to mitigate the ongoing erosion caused by Defendants' excavation, by slowing the flow of water over the embankment.

9. I face the same devastating loss of business income as I did at the previous injunction hearing if I am not allowed to continue to use the gravel turn-around area.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

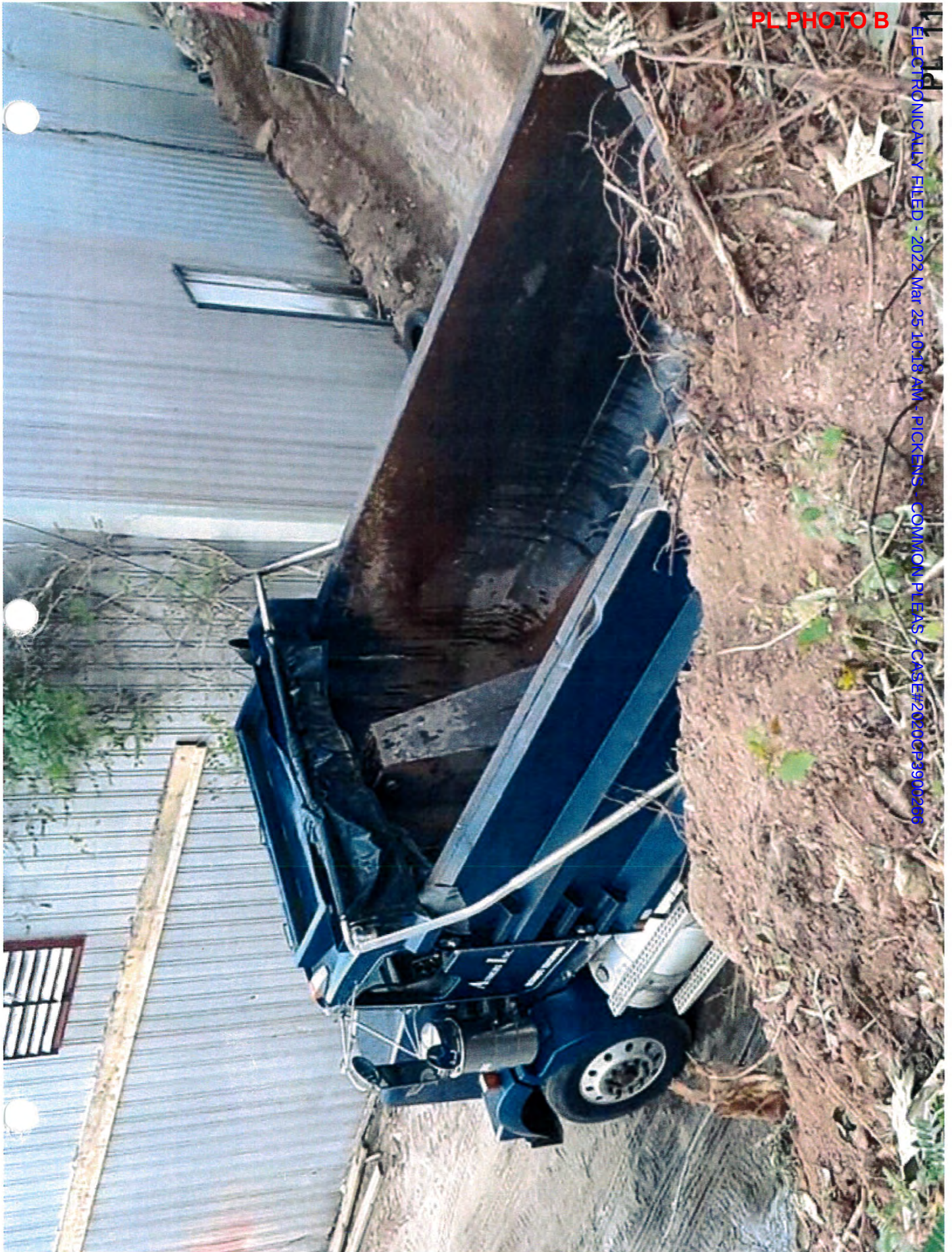
SWORN TO before me this 24th
day of March, 2022.



Printed Name of Notary:

Gwendolyn G. Martin
Notary Public for South Carolina
My Commission Expires: 05/29/2029
[Seal]





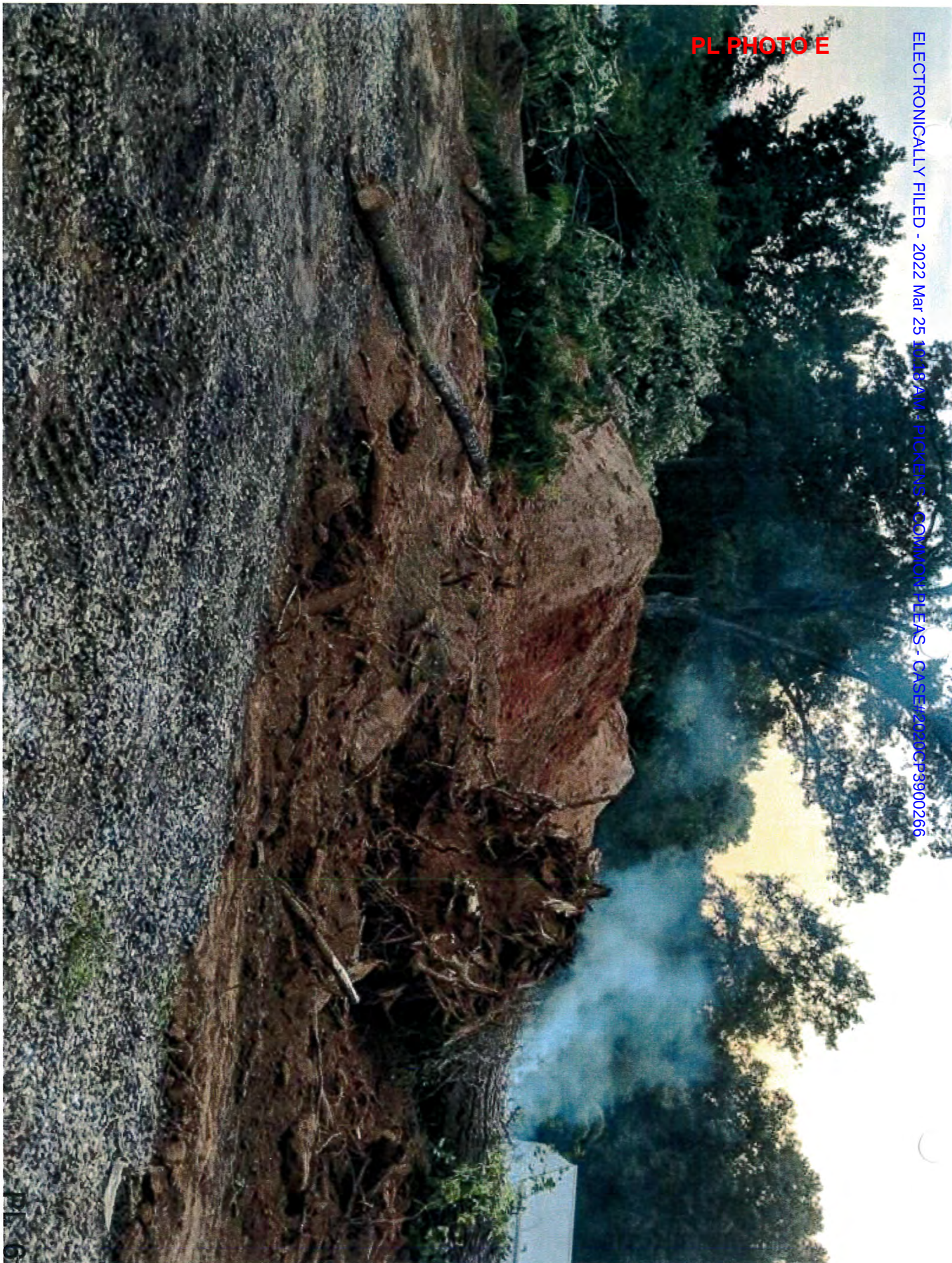
PL PHOTO B

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PL PHOTO E



PL 6

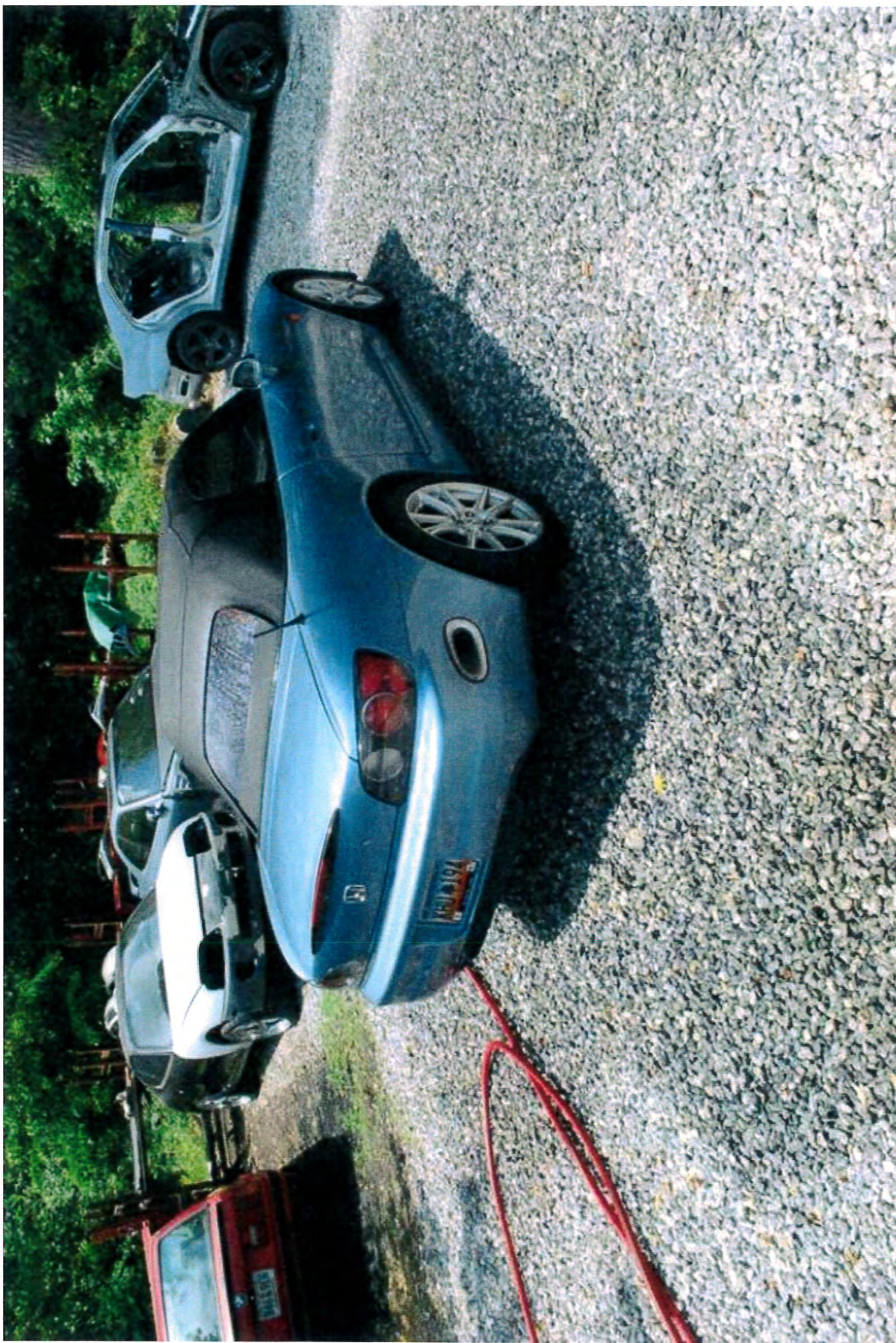






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PL PHOTO I



PL PHOTO J





PL PHOTO L



IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' RESPONSE IN
	)	OPPOSITION TO DEFENDANTS'
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	MOTION TO REMOVE
	)	TEMPORARY INJUNCTION
	)	
Defendants.	)	
	)	

Defendants' Motion to Remove Temporary Injunction is completely without merit and is a veiled attempt to give Defendants a second bite at the apple. Judge Gravely's Order is sound, fair, and in force until trial. To attempt to remove it right before trial is not only unfair, but disingenuous.

I. Judge Gravely has Already Ruled on These Issues

Judge Gravely properly analyzed the three factors for granting an injunction: (1) irreparable harm; (2) likelihood of success on the merits; and (3) no adequate remedy at law. Irreparable harm was found by the threat to Plaintiffs' business. Defendants' cutting off access to the turn-around area remains a threat, even though Defendants, who have no access to Plaintiffs' business, seem to think otherwise. Judge Gravely entered an Order to protect the "status quo" which was to be for "the pendency of this action" (Court Order dated May 8, 2020, p. 3) and that Defendants must refrain from harassing Plaintiffs, which they have defiantly violated (Click Affidavit ¶¶ 6, 8) - so much so that Plaintiffs' use of their paint booth in their Back Building has had to be done only at night or on days while Defendants are gone from their premises.

Judge Gravely also found that Plaintiffs have a likelihood of success on the merits. The Court further found:

...the Plaintiff has presented significant factors to show that it has a likelihood of success... The Plaintiff has been using the property in issue for many years... Therefore, maintaining the status quo allows the Plaintiff to continue using the land as it has been used in the past... (Court Order p. 2, 3).

Therefore, this frivolous Motion should be dismissed, with costs and attorneys fees awarded to Plaintiffs as provided by Rule 65(f)(2), SCRCP.

II. No Change in Circumstances has Occurred

No change in circumstances has occurred, and the necessity for the Temporary Injunction exists now more than ever, as described in the Affidavit of Robert Brent Click dated March 24, 2022 (the “Click Affidavit”). Defendants’ claim that Plaintiffs no longer use the turn-around area to access the paint booth is absolutely untrue. Plaintiffs regularly and routinely use the paint booth as an integral part of their business operations, which remains necessary for the survival of Hyper Formance, LLC and without which Plaintiffs will be irreparably harmed. (Click Affidavit (¶¶ 6, 7, 9). The painting must be done when Defendants are not present at their All Tech business and, as needed, items that need to be moved by Plaintiffs in order to transport through the turn-around area are moved when the paint booth is being used. (Click Affidavit ¶¶ 6, 7). The presence of equipment, vehicles, and other stationary items complies with the Court Order, as detailed in the Click Affidavit. Therefore, Plaintiffs are in fact routinely using the turn-around area for vehicle access to the paint shop. Judge Gravely issued an Order to maintain the status quo during the pendency of this litigation and that is what is being maintained.

III. Plaintiffs are Forced to Protect the Turn-around Area

In addition, some items in the turn-around are used to mitigate the changed direction of water flow caused by Defendants’ 2018 excavation of the embankment which is at issue in this lawsuit (Click Affidavit ¶ 8) and to protect certain items of Plaintiffs’ property from ongoing

vandalism by Defendants' employees (Click Affidavit ¶ 8) (which violates the Temporary Injunction by Defendant).

IV. Judge Gravely Placed No Restrictions Upon Plaintiffs' Use of the Turn-around Area

Nowhere does the Court Order state that Plaintiffs are strictly limited in their use of the turn-around area to driving vehicles into and out of the paint booth, but making no other use of the turn-around area. To the contrary, Judge Gravely determined:

The Plaintiff has been using the property in issue for many years and according to the Plaintiffs' owner, a major portion of its business is dependent on the ability to use the gravel drive and turn-around area. On the other hand, the Defendant does not use this gravel drive nor the turn-around, and it is unrefuted that the Defendant's predecessors in title allowed the Plaintiff and its predecessors to use the property in this way. Therefore, maintaining the status quo allows the Plaintiff to continue using the land as it has been used in the past during the pendency of this action, while not causing any significant "inconvenience [or] damage" to the Defendant." (Court Order page 2–3).

Plaintiffs' Affidavits presented to the Court for its Motion for Temporary Restraining Order and/or Injunction filed February 27, 2020 clearly evidenced their robust use of the turn-around area to operate the business. Therefore, this use was known to Judge Gravely and was not prohibited by the granted Temporary Injunction. Judge Gravely fully protected the existing "status quo."

V. Conclusion

This Court therefore has strong reasons to leave the Temporary Injunction granted by Judge Gravely undisturbed. No change in circumstances has occurred and the status quo is being maintained. Judge Gravely's ruling was intended to be in place for the pendency of this action. The Defendants' excavation has destabilized the soil under Plaintiffs' property, the soil is continuing to erode beneath Plaintiffs' property, and Plaintiffs continue to do what they can to mitigate the effects. This case is expected to be called for trial the week of May 23, 2022 and this

Motion to change the status quo so drastically and so shortly prior to the merits of the trial of the entire case should not be granted by this Court.

Respectfully submitted,

March 25, 2022

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, PA

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	PLAINTIFFS' RESPONSE IN
vs.	)	OPPOSITION TO DEFENDANTS'
	)	MOTION TO AMEND ANSWER TO
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	ADD A COUNTERCLAIM
	)	
	)	
Defendants.	)	
_____	)	

Defendants, after more than two years, and at the 11th hour, seek a counterclaim against Brent and his company. Brent respectfully requests the last minute Motion be denied.

Rule 15(a), SCRCPP, sets forth the standard for granting motions to amend. It provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party (emphasis added).

The grant or denial of a motion to amend is within the Court's discretion. *See Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019). ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion."). Thus, it is in the power of this Court to deny this Motion, which is both prejudicial and futile.

Justice does not require amendment of Defendants' Answer to affirmatively assert a counterclaim. Plaintiffs' Third Cause of Action already requests a Declaratory Judgment to Quiet Title as to the common property line of the parties. It also already requests this Court to grant

Brent a permanent right to use the entire gravel driveway and turn-around area. Therefore, there is no reason for Defendants at the last minute to add a Counterclaim.

Defendants' Motion is prejudicial to Plaintiffs, as it unfavorably seeks to make Brent look like a Defendant in front of the jury.

Besides being prejudicial, this Counterclaim is unnecessary, and thus futile. This Court may deny a motion to amend if it would be futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' ... it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012). This Motion is futile because the proposed Counterclaim does not add anything to the case and is completely unnecessary.

Rule 7(b)(1), SCRCP, is substantially similar to its Federal counterpart, Rule 7(b)(1), FRCP. *Camp v. Camp*, 662 S.E.2d 458, 378 S.C. 237 (Ct. App. 2008). "[A] motion that fails to state any grounds for relief . . . is insufficient under Rule 7(b)(1)." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236 (10th Cir. 2006). Defendants' own Motion establishes that the Counterclaim adds nothing to the case and is unnecessary because "the issues set forth in Defendants' Counterclaim are already set to be adjudicated as part of Plaintiffs' claims."

There are no grounds stated that show with "particularity" why amendment at this late stage should be granted. Therefore, Plaintiffs are prejudiced in its ability to respond to the Motion as it contains no ground stated with particularity and they would be unfairly surprised by arguments raised at the hearing for the first time. This Court is likewise unable to deal with the Motion fairly. Finally, it is a veiled attempt to transform Plaintiffs into Defendants before the jury.

The particularity requirement "is to be read flexibly in recognition of the peculiar circumstances of the case." *Lucey v. Meyer*, 401 S.C. 122, 131, 736 S.E.2d 274, 279 (S.C. App.

2012) quoting *Cambridge Plating Co., Inc. v. Napco, Inc.*, 85 F.3d 752, 760 (1st Cir.1996). “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 comprehend the basis of the motion and deal with it fairly.” *Id.* quoting *Calderon v. Kansas Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir.1999).

In conclusion, Plaintiffs respectfully request that the Court dismiss Defendants’ Motion to Amend Answer To Add Counterclaim.

Respectfully submitted,

March 25, 2022

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, PA

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON
PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**Defendants' Motion for
Reconsideration**

MOTION FOR RECONSIDERATION

COME NOW Defendants, by and through their undersigned counsel, and respectfully move for reconsideration of the Court's April 7, 2022 Order under Rule 59(e) of the South Carolina Rules of Civil Procedure. The Order contains errors of law and fact as set forth more fully herein. Primarily, the Order fails to comply with South Carolina Rule of Civil Procedure 15, which favors amendment of pleadings as long as the party opposing the amendment does not make a showing of prejudice. Here, no prejudice has been shown to Plaintiffs that could justify the denial of Defendants' Motion.

PROCEDURAL BACKGROUND

On February 27, 2020, Plaintiffs filed the above captioned lawsuit, in part seeking declaratory judgment regarding the property boundary line between Plaintiffs and Defendants. The Parties engaged in discovery, including discovery related to the property boundary. Through the course of discovery, Defendants considered that in order to ensure the Court could fully adjudicate and grant relief on all issues between the Parties, a counterclaim for declaratory judgment was appropriate. On February 23, 2022, Defendants

filed a Motion to Amend their Answer pursuant to South Carolina Rule of Civil Procedure 15 to add the declaratory judgment counterclaim. The proposed counterclaim was attached as Exhibit A to the Motion. This Motion was heard on March 30, 2022 before the Honorable Judge Alex Kinlaw, Jr. and ruled on in this Court's April 7, 2022 Order (the "Order"). In the Order, the Court denied Defendants' Motion to Amend. Defendants now respectfully request this Court to reconsider.

ARGUMENT

The South Carolina Rules of Civil Procedure not only authorize but also require that leave to amend pleadings be freely given when "justice so requires and [doing so] does not prejudice any other party." SCRCP 15(a). "While the rule is universal that the action of the trial court as to matters within its judicial discretion will not be disturbed unless erroneously exercised, this does not give the trial judge an entirely free hand in what might be termed discretionary matters." *Page v. N. Carolina Mut. Life Ins. Co.*, 207 S.C. 277, 283, 35 S.E.2d 716, 718 (1945).

Here, the counterclaim Defendants request to add is one for declaratory judgment, seeking a determination of the rights of the Parties with regard to the location of the shared property boundary line. (See Counterclaim, ¶3). The remedies Defendants seek are mirror image of those requested by Plaintiffs; the counterclaim does not require new discovery or additional preparations before trial. (See Counterclaim.). Defendants' request to amend is made for the sole purpose of ensuring that the Court has full authority to resolve the disputes between the Parties related to the property boundary.

In addition to the plain text of SCRCP 15, case law also favors the granting of motions to amend. *See, e.g., Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276,

286, 607 S.E.2d 711, 717 (Ct. App. 2005) (“This rule strongly favors amendments and the court is encouraged to freely grant leave to amend.”) (citing *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)). “The party opposing the amendment has the burden of establishing prejudice.” *Parker*, 362 S.C. at 286, 607 S.E.2d at 716–17 (Ct. App. 2005) (citing *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993); *Pruitt v. Bowers*, 330 S.C.483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998)). Therefore, the burden is on Plaintiffs to show they would be prejudiced by the amendment.

Here, the only assertion of prejudice Plaintiffs made is that the counterclaim “unfavorably seeks to make Brent look like a Defendant in front of the jury.” (2022.03.25 Pls Response in Opp., p. 2). First, while there are factual issues that are to be decided by the jury as the finder of fact, it is the Court acting in equity that would grant any relief related to Defendants’ counterclaim. The Court is certainly sophisticated enough to make a lawful determination without regard to labels of the parties. Second, this is not the type of prejudice contemplated by SCRPC 15. “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Parker*, 362 S.C. at 286, 607 S.E.2d at 716 (Ct. App. 2005) (citing *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999); *City of North Myrtle Beach v. Lewis–Davis*, 360 S.C. at 232, 599 S.E.2d at 465). Again, as claims related to the property boundary are already being adjudicated, there are not new issues raised by the counterclaim.

In the Order, the Court indicated concern regarding the timing of the Motion. However, South Carolina law is clear that delay in filing does not bar amendment. *See Potomac Leasing Co. v. Bone*, 294 S.C. 494, 497 (noting there is no time limit for making

a motion to amend and that such a motion may be made even at the time of trial). Further, because no additional discovery is needed to adjudicate the counterclaim, amendment would not prolong litigation in any way.

The Order also contemplates that the counterclaim would be futile. Only a conclusory argument regarding futility was offered by Plaintiffs without a showing that the counterclaim, if added, would be dismissed. Such conclusory, self-serving statements by Plaintiff's counsel fail to meet his burden.

Finally, counsel for Plaintiffs argued that the Motion to Amend in and of itself was not stated with particularity and did not state grounds for relief. (See 2022.03.25 Pls Response in Opp., p. 2). These arguments were not addressed at the hearing and are completely unfounded. The Motion complies with SCRCP 7.

THEREFORE, Defendants respectfully request that this Court reconsider its April 7, 2022 Order and GRANT Defendants' Motion to Amend.

CAMPBELL TEAGUE LLC

s/ Emily K. O'Brian
Emily O'Brian (SC Bar #101824)
Beau Brogdon (SC Bar #103803)
16 W. North St.
Greenville, South Carolina 29601
Tel: (864) 326-4186
emily@campbellteague.com
beau@campbellteague.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on April 14, 2022 by email:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

/S/ EMILY O'BRIAN

ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

COME NOW Defendants, by and through their undersigned counsel, and for their Motion for Summary Judgment state as follows:

Plaintiffs made a bad investment. Plaintiffs purchased the property at 3668 Calhoun Memorial Highway, Greenville, South Carolina in 2017 without conducting an inspection, without confirming property boundaries, and without a plan on how they could use the property for their business. Plaintiffs now seek to resolve their own bad investment by clawing for *Defendants'* property and trying to get *Defendants* to pay for problems with Plaintiffs' buildings. But Plaintiffs have not provided evidence that supports their claims against Defendants and, on the eve of trial, bald assertions are no longer sufficient. Therefore, Defendants move for summary judgment on all claims pursuant to South Carolina Rule of Civil Procedure 56 and seeks attorneys' fees and costs associated with defending this baseless lawsuit.

More specifically, Plaintiffs causes of action fail for the following reasons:

1. Nuisance *per se* requires a showing of a condition that is "dangerous at all times and under all circumstances." *Suddeth v. Knight*, 280 S.C. 540, 545, 314 S.E.2d 11, 14

(Ct.App.1984). Plaintiffs' daily use of their property over the past three and a half years shows there is no evidence of such a condition.

2. Nuisance *per se* and negligence both require a showing of damages. Here, Plaintiffs have no evidence of damages resulting from the excavation work performed on the Thomas Property as the cracks in the building they point to were there *years* before the excavation work occurred.
3. Acquiescence requires a mutual intent to agree to a particular property line that is inconsistent with the recorded plat. Plaintiffs have provided absolutely no evidence that any owners of the Thomas or Click Properties—including Brent Click himself—ever agreed to a property line different than the recorded plat.
4. Because Plaintiffs' use of any portion of the Thomas Property was permissive and permissive use defeats the establishment of the element of adversity as a matter of law, Plaintiffs' claims for adverse possession and prescriptive easement fail.
5. Plaintiffs have not asserted the existence of a false representation or concealment of material fact by Defendants that would support the grant of an easement by estoppel.
6. Plaintiffs have no claim for an easement by necessity as there is no evidence of necessity at the time the property was severed as the property fronts a public road.
7. Because all Plaintiffs' other claims fail as a matter of law, there is no basis for injunctive relief.

Defendants are entitled to summary judgment on all claims because Plaintiffs have failed to carry their burden of producing evidence to support their claims. This Court should dismiss Plaintiffs' baseless claims and further sanction Plaintiffs for maintenance of this frivolous lawsuit and award Defendants their attorneys' fees and costs.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable statutes and case law, and such other supporting memoranda, authority, and/or attachments as are filed or presented before or at the hearing on this Motion.

Respectfully submitted this 29th day of April, 2022.

CAMPBELL TEAGUE LLC

/s/ Beau Brogdon

Emily O'Brian (SC Bar #101824)

Beau Brogdon (SC Bar #103803)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

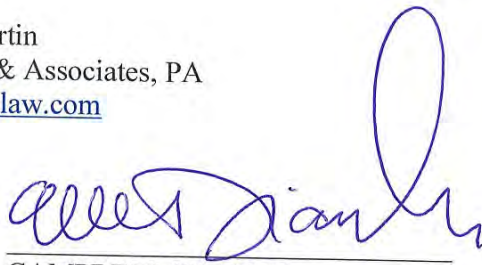
Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on April 29, 2022 by email:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

4/29/2022
DATE


CAMPBELL TEAGUE
Elee Diamaduros, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs made a bad investment. Plaintiffs purchased the property at 3668 Calhoun Memorial Highway, Greenville, South Carolina in 2017 without conducting an inspection, without confirming property boundaries, and without a plan on how they could use the property for their business. Plaintiffs now seek to resolve their own bad investment by clawing for *Defendants'* property and trying to get *Defendants* to pay for problems with Plaintiffs' buildings. But Plaintiffs have not provided evidence that supports their claims against Defendants and, on the eve of trial, bald assertions are no longer sufficient. Therefore, Defendants move for summary judgment on all claims pursuant to South Carolina Rule of Civil Procedure 56 and seek attorneys' fees and costs associated with defending this baseless lawsuit.

Uncontested Facts

Plaintiffs and Defendants own adjacent parcels of commercial property. (See attached Exhibit 1, 2022.03.25 Aff. of Brent Click, ¶¶ 2 & 3.) The property at 3668 Calhoun Memorial Highway—the “Click Property”—was purchased by Brent Click on February 10, 2017 and later transferred to Click Properties, LLC. (*Id.* at ¶2.) Thomas SC

Properties, LLC, purchased 3670 Calhoun Memorial Highway—the “Thomas Property”—on May 23, 2018. (*Id.* at ¶3.) Both properties were purchased subject to a boundary survey of record (the “1996 Survey”). (See attached Exhibit 2, which is Exhibit A to Verified Complaint. See also Complaint ¶ 36.) The 1996 Survey shows the precise location of the common property line between the properties. (Exhibit 2.)

In August of 2018, Thomas excavated a portion of his land to build a driveway and parking area. (Exhibit 1, ¶3.) The excavation and grading work that was performed is demonstrated in a topography map created by Plaintiffs’ expert.¹ (See attached Exhibit 3.) There are two slopes along the eastern boundary of the Thomas Property. Plaintiffs’ expert, David Hall, has submitted documentation that the slope at the back of the property (furthest from the highway) is stable.² (See attached Exhibit 4.) Mr. Hall has also provided a cross-section of the slope toward the front of the property (closest to the highway) showing where alleged failure of the slope could occur in the future. (See attached Exhibit 5.) The area where this cross-section shows potential failure of the front slope is at least 10 feet from the property line and approximately 40 feet away from Plaintiffs’ building. *Id.*

Over a year and a half after the excavation work was completed, Plaintiffs filed this lawsuit alleging two basic categories of claims—(i) claims for damage caused by the excavation performed on Thomas’ land and (ii) claims asserting a property interest in Thomas’ private property. (See Plaintiffs’ Complaint.) More particularly, Plaintiffs alleged

¹ Defendants do not concede that the topography map is accurate or admissible at trial. However, for purposes of this Motion, Defendants cite to the map for demonstrative purposes and to show that even taking the evidence in the light most favorable to Plaintiffs, Plaintiffs’ claims still fail and thus summary judgment for Defendants is appropriate.

² Defendants contest the data Mr. Hall has relied upon and make no concession as to the admissibility of Mr. Hall’s testimony or conclusions. However, for purposes of this Motion, Defendants cite to Mr. Hall’s conclusions solely to show that even taking the evidence in the light most favorable to Plaintiffs, Plaintiffs’ claims still fail and thus summary judgment for Defendants is appropriate.

causes of action for the following: (1) nuisance per se; (2) negligence; (3) declaratory judgment- quiet title; (4) declaratory judgment- acquiescence; (5) declaratory judgment- prescriptive easement; (6) declaratory judgment- easement by estoppel; (7) declaratory judgment- easement by necessity; and (8) injunction. (*Id.*)

Pursuant to the Parties' scheduling agreement, discovery ended on April 22, 2022. Thus, Plaintiffs have had two years to obtain and provide evidence of their claims. Plaintiffs are unable to carry their burden.

Standard of Review

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Fleming v. Rose*, 567 S.E.2d 857, 860 (S.C. 2002). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Id.* "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *NationsBank v. Scott Farm*, 465 S.E.2d 98, 100 (S.C. App. 1995). "Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings." *Id.* The trial court must avoid making findings of fact that are inconsistent with a party's admission in its pleadings. *See Bates v. City of Columbia*, 391 S.E.2d 733, 734 (S.C. App. 1990) (holding that trial court erred in making factual findings contrary to admissions in pleadings).

Argument

I. There is no viable cause of action for nuisance *per se* as Plaintiffs have not presented evidence that there exists a condition that is “dangerous at all times and under all circumstances.”

The test for determining the existence of a nuisance *per se* in South Carolina is “whether the nuisance has become dangerous at all times and under all circumstances to life, health, or property.” *Suddeth v. Knight*, 280 S.C. 540, 545, 314 S.E.2d 11, 14 (Ct.App.1984); Black's Law Dictionary 1094 (7th ed.1999) (a nuisance *per se* is an interference so severe that it would constitute a nuisance under any circumstances). In a 1994 article, Bradford W. Wyche, Esq. noted that only one case in South Carolina history had found an activity to be a nuisance *per se*. Wyche, Bradford W. (1994) "A Guide to the Common Law of Nuisance in South Carolina," South Carolina Law Review: Vol. 45 : Iss. 2, Article 5, p. 350. (available at <https://scholarcommons.sc.edu/sclr/vol45/iss2/5>). Nearly 30 years later, there are no additional reported cases finding a nuisance *per se*.³

In this case, Plaintiffs assert that Defendants’ excavation work that was done in August 2018 is a nuisance *per se*. (See Complaint, Count 1.) However, there is no evidence that the excavation performed on the Thomas Property is dangerous “at all times and under all circumstances.” Brent Click and his wife Shelly both testified that they have continued to use the gravel driveway adjacent to where the excavation work was completed on a regular basis to access the back building and the apartment inside it. (See attached Exhibit 6, Transcript of Deposition of Brent Click, p. 15; Exhibit 7, Transcript of Deposition of

³ There are reported cases considering the related concept of strict liability in the nuisance context, but the only activity that has been found to support strict liability is blasting. See *Wallace v. A.H. Guion & Co.*, 237 S.C. 349, 117 S.E.2d 359 (1960); but see *Hatfield v. Atlas Enterprises, Inc.*, 274 S.C. 247, 262 S.E.2d 900 (1980) (refusing to apply the abnormally dangerous activities doctrine to fireworks manufacturers and distributors); *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993) (noting the court was not inclined to find handling hazardous waste subject to strict liability).

Shelly Click, p. 50). Over three years after the excavation work was done, Plaintiffs have no evidence of danger under all circumstances from the grading.

Plaintiffs' own expert—David Hall—provided a report on April 22, 2022 that showed the slope that was graded at the back of the Thomas Property is safe and stable. While Mr. Hall alleges that the front slope is unsafe, the cross-section diagram he submitted shows that the potential area of slope failure is 40 feet away from Plaintiffs' buildings and 10 feet away from the property line. (See attached Exhibit 5.) This certainly cannot demonstrate a nuisance that is “dangerous at all times and under all circumstances to life, health, or property.” *Suddeth*, 280 S.C. at 545, 314 S.E.2d at 14.

Additionally, Mr. Hall could not testify that the slope was currently failing, only that it could fail in the future. (See attached Exhibit 8, Transcript of Deposition of David Hall, pp. 26:3-15, 27:13-15) (“Now, impending failure doesn’t mean it’s going to fail in a week, two weeks, two years. We don’t know.”) South Carolina nuisance law further elaborates that “mere fears of the plaintiff” are insufficient to support a cause of action for nuisance. *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885). There are no reported cases in South Carolina where a plaintiff has successfully made a showing of anticipatory nuisance. See *Welborn*, 247 S.C. 554, 148 S.E.2d 375 (denying injunctive relief against proposed automobile wrecking service); *Strong*, 240 S.C. 244, 125 S.E.2d 628 (denying injunctive relief against proposed grocery store); *Moss v. South Carolina State Highway Dep't*, 223 S.C. 282, 75 S.E.2d 462 (1953) (refusing to issue temporary restraining order against relocation of highway); *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885) (stating that “mere fears of the plaintiff” are insufficient basis for nuisance action); *Roach v. Combined Util. Comm'n*, 290 S.C. 437, 351 S.E.2d 168 (Ct. App. 1986) (denying

injunctive relief against proposed sewage treatment plant); *Charleston Comm. for Safe Water v. Commissioners of Pub. Works*, 286 S.C. 10, 331 S.E.2d 371 (Ct. App. 1985) (holding that plaintiff failed to meet burden of showing that proposed fluoridation of city's water supply would constitute a nuisance). Thus, as a matter of law, Plaintiffs' claim for nuisance *per se* cannot survive based on speculation of potential future failure of the front slope.

II. Plaintiffs have no evidence of damages resulting from the excavation work performed on the Thomas Property.

Plaintiffs assert that the excavation work on the Thomas Property in 2018 caused damages to the back building of the Click Property. To support this theory, Plaintiffs point to cracks in the floor of the back building and cracks in the cement block wall. However, Plaintiffs cannot link these cracks to the excavation work performed on the Thomas Property.

Greg Porter and Jessie Lingerfelt have both provided affidavits affirming that the cracks in the floor of the back building were there even before Click purchased the property. (See attached Exhibits 9 and 10.) Plaintiffs have no contradictory evidence. Mr. Hall has no personal knowledge of when the cracks occurred. (Exhibit 8, p. 46). He relies solely on Mr. Click's testimony and a blurry photograph. (*Id.* at p. 13: 59:20-60:18) and attached photo "PL 105".) Shelly Click testified that damages were on the opposite side of the back building from where the excavation took place. (Exhibit 7, p. 50:10-51:4.) No inspection was conducted of the Click Property prior to Plaintiffs' purchase of it which could show the condition of the slab prior to the excavation. (Exhibit 6, pp. 50:22-51:8.)

And Plaintiffs cannot defeat summary judgment with a self-serving affidavit by Brent Click.

Additionally, it defies logic that the cracks in the back building were caused by the excavation work. Along the western side of the back building on the Click Property, Mr. Click had a concrete slab poured in October 2014. (Exhibit 6, p.31.) This slab is between the area of excavation and the back building. Civil engineer Paul Mills examined the outside slab and observed no cracking in it. (See attached Exhibit 11.) If the excavation work had caused damage to the inside floor of the back building, it also would have caused damage to the closer outside slab. (*Id.*) Thus, Plaintiffs have no evidence of damages that arose after the excavation work nor do Plaintiffs have any evidence that would link the alleged damages to the excavation.

Even if this Court finds that there is some scintilla of evidence to support Plaintiffs claims for damages, there is no credible evidence of the value of the alleged damages. In discovery, Defendants asked for an itemization of damages, the value of such damages, and an explanation as to how and by whom the amount was calculated. (See attached Exhibit 12.) Plaintiffs responded that Brent Click could testify as to the current value and diminution in value of the Click Property. (*Id.*) Mr. Click is not an appraiser and has no real estate experience. He cannot speculate as to the value of his property based on some other unknown and unidentified “industrial properties” that have come on the market at some point after 2017. Thus, there is no admissible evidence as to the value of the damages Plaintiffs allege.

“In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial” and may not “simply

rest on mere allegations or denials contained in the pleadings.” *NationsBank*, 465 S.E.2d at 100 (S.C. App. 1995). As Plaintiffs cannot make these evidentiary showings of damages and proximate cause, their nuisance *per se* and negligence claims fail as a matter of law. *See, e.g. Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001) (damages and proximate cause are required elements of negligence claim); *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (2001) (nuisance requires a showing of interference with the use and enjoyment of plaintiff’s property proximately caused by the defendant).

III. Plaintiffs’ claim of acquiescence fails because Plaintiffs have provided no evidence that any owners of the Thomas or Click Properties ever agreed the true boundary line was such that the turn-around area was on the Click Property.

Acquiescence is a very particular claim and requires a mutual intent to agree to a particular property line. “Absent recognition by both [parties] that a particular line constituted the true property line, a new boundary [can] not be established by acquiescence.” *Croft v. Sanders*, 283 S.C. 507, 510 (S.C. Ct. App. 1984) (rejecting plaintiff’s argument that a fence constituted a particular property line and finding that the parties’ establishment of a marker between adjacent properties did not prove intent to establish a new boundary line). Acquiescence by one party is not sufficient. *Pittman v. Lowther*, 363 S.C. 47 (S.C. 2005) (noting that a landowner “is not required to battle successfully for his rights... if the principle of prescription be attributed solely to the acquiescence of the servient owner”).

Here, Plaintiffs have provided absolutely no evidence that any owners of the Thomas or Click Properties—including Brent Click himself—ever agreed that the boundary line was anywhere other than that shown on the 1996 Plat. Mr. Click testified that he was given the 1996 Plat after he closed on the property and that Mark Smith, the

prior owner, affirmed the property lines conveyed in the Plat. (Exhibit 6, p. 54.) Further, Mr. Click had surveyors come out to his property after he purchased it and locate the property pins, which were as shown on the 1996 Plat. (*Id.* at 58.) Mr. Click then informed Mr. Thomas of where the property lines were, in accordance with the 1996 Plat. (*Id.* at 98-99.) Finally, Mr. Click testified that Jimmy Watkins, prior owner of the Thomas Property, specifically acknowledged the location of the property line, which was consistent with the placement shown on the 1996 Plat. (*Id.* at 59:11-17.) Plaintiffs have no basis to assert that there was acquiescence by the parties to a different property line, and without that specific evidence, Plaintiffs' claim for acquiescence cannot stand.

IV. Because Plaintiffs' use of any portion of the Thomas Property was permissive, Plaintiffs' claims for adverse possession and prescriptive easement fail as a matter of law.

South Carolina law is "well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse or under a claim of right." *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015). *See also Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 586, 735 S.E.2d 528, 538 (Ct. App. 2012) (quoting *Williamson* and recognizing that a claimant's permissive use of landowner's property cannot begin to ripen into a prescriptive easement until the claimant makes a distinct and positive assertion of right hostile to the landowner); *Horry Cnty. v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993) (holding evidence, which established that use of property was permissive, showed use of property was not adverse); *Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) (stating that permissive use of property "stamps the character of the use as not having been adverse, or under claim of right"); *see also* 12 S.C. Jur. *Easements* § 10 (Supp. 2015) ("Use

with the permission of the owner is not adverse.”). “Stated another way, when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights.” *Bundy v. Shirley*, 412 S.C. at 310, 772 S.E.2d at 173.

Prior owners of the Thomas Property allowed owners and renters of the Click Property to use the turn-around area. (See Exhibits 9 and 10.) Because the use of the area was permissive, there can be no claim of adversity or hostility. Thus, Plaintiffs’ claims for adverse possession and prescriptive easement fail as a matter of law.

V. Plaintiffs have made no evidentiary showing of an easement by estoppel.

To establish a claim for easement by estoppel, “the party claiming estoppel must show the following elements as to the party sought to be estopped: (1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert, (2) intention, or at least expectation, that such conduct shall be acted on by the other party, and (3) knowledge, actual or constructive, of the real facts.” *Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568 (2012). *See also Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410 (2006)). Plaintiffs have not provided any evidence of a false representation or concealment of material facts by Defendants. In fact, even Plaintiffs’ Complaint does not allege such conduct. Therefore, the claim must be dismissed.

VI. Plaintiffs have no claim for an easement by necessity as there is no evidence of necessity at the time the property was severed as the property fronts a public road.

Easements by necessity typically arise where a property is subdivided and one lot has no way to access a road without passing over the property of another. *See, e.g., Kennedy v. Bedenbaugh*, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002) (“To establish unity of title...petitioners have to show that their land-locked tract and respondent's tract were, at one time, owned by the same owner.”) (internal citations omitted). In South Carolina, “[t]he party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity.” *Boyd v. Bellsouth Telephone Telegraph Co., Inc.*, 369 S.C. 410 (2006). “[T]he necessity element of easement by necessity must exist at the time of the severance and the party claiming the right to an easement must not create the necessity when it would not otherwise exist.” *Id.* at 418. Here, Plaintiffs have not provided evidence of any of these elements. Plaintiffs’ property fronts a public road so there is no necessity of use of the Thomas Property.

VII. Because all Plaintiffs’ other claims fail as a matter of law, there is no basis for injunctive relief.

Plaintiffs do not have evidence sufficient to make a claim to Thomas SC Properties, LLC’s private property. Therefore, there is no basis for this Court to enter an order for injunction restricting Defendants’ use of the Thomas Property. Defendants further seek compensation for Plaintiffs’ use of the Thomas Property during the pendency of this litigation.

VIII. Defendants are entitled to attorneys’ fees and costs for defending against Plaintiffs’ baseless claims.

Plaintiffs have asserted throughout this litigation that they have evidence sufficient to support their claims. However, with the close of discovery and final exchange of

interrogatory responses and documents, it is obvious that no such evidence exists, nor has it ever. Defendants have borne a significant financial burden in defending against Plaintiffs' unsupported allegations and strongly believe that sanctions are not only appropriate in this case but also necessary to discourage such frivolous filings.

Conclusion

Defendants are entitled to summary judgment on all claims because Plaintiffs have failed to carry their burden of producing evidence to support their claims. Plaintiffs made a bad investment. But they cannot correct for their bad investment by stealing Defendants' property or requiring Defendants to pay for repairs to their faulty buildings. Plaintiffs' claims against Defendants are baseless and should be dismissed. This Court should further sanction Plaintiffs' for maintenance of this frivolous lawsuit and award Defendants their attorneys' fees and costs.

Respectfully submitted this 29th day of April, 2022.

CAMPBELL TEAGUE LLC

/s/ Beau Brogdon

Emily O'Brian (SC Bar #101824)

Beau Brogdon (SC Bar #103803)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on April 29, 2022 by email:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

4/29/2022
DATE

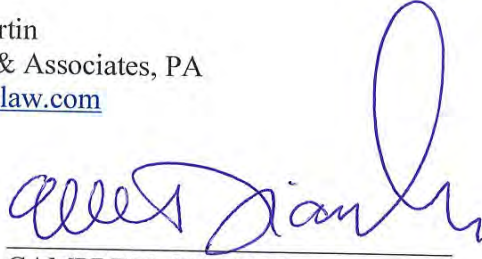

CAMPBELL TEAGUE
Elee Diamaduros, Paralegal

Exhibit 1

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I have owned 3668 Calhoun Memorial Highway, Greenville, South Carolina (the "Click Property") since February 10, 2017, which is used to operate Hyper Formance, LLC, a body and machine shop owned by my wife Shelly and me.
3. The adjoining property to the west, located at 3670 Calhoun Memorial Highway, has been owned by Defendants since May 2018. In August 2018, Defendants' owner Jonathan Thomas did his own excavation of Defendants' property (see photos A and B) that has caused significant damage to the Click Property. Defendants also decided to block my use of a gravel turn-around area that Hyper Formance had always used and, upon information and belief, that prior owners of the Click Property had used going back to 1978. Therefore, I had to file this lawsuit

and ask for an Injunction.

4. The only entrance (or possible way of entrance) by vehicle into the building that houses my paint booth (the "Back Building") is through the gravel turn-around area. The paint booth is essential for our body and machine shop, which are not possible without a paint booth. I paid approximately \$30,000 for the paint booth, which was custom spec'ed for and assembled in the Back Building (see Photo C) and has been in the Back Building since shortly after I bought the Click Property.
5. Upon information and belief, prior owners of the Click Property used the turn-around area continuously, openly, and as their own property. (See Affidavit of Bradley S. Dobson dated March 8, 2022).
6. Shelly and I use the paint booth just as much now as when the Temporary Injunction was granted and have continuously used the paint booth since the Temporary Injunction was granted. All paint booth work is done after Defendants close All-Tech and Mr. Thomas and his employees leave for the day or on days when they are closed for business. Shelly and I first had to change the paint booth schedule when Defendants' excavation (see Photos D and E) was done in August 2018. So much dust was in the air we could only paint at night. When we started painting again in the daytime, Defendants' employees, obviously for sport, would drive cars into Defendants' dusty parking lot, driving round and round (making "donuts") and driving up the hill towards my property spinning the wheels, intentionally stirring up huge dust clouds that were drawn through the paint filters into the paint booth, which must be maintained as a sterile environment. This damaged the paint work Shelly and I had performed. This damage required excessive additional work, typically adding 20% more time. We went back to using the paint booth only at

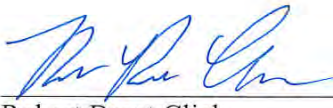
night and on days when All Tech is closed and this is true to the present time, because this harassment was so damaging. This is why Jonathan Thomas never sees us using the paint booth because if he knows we are painting he is going to mess with us. The paint booth is required for all body work and for almost all parts work.

7. The paint booth work is done in batches, on average three times per week. Items in the turn-around area are moved before we transport the vehicles and parts to the paint booth. Vehicles going into the paint booth usually are not drivable or have been disassembled (see Photo F) and must be loaded onto a trailer (see Photo G) and trucked up the gravel driveway, through the turn-around to the Back Building's overhead doors and offloaded into the paint booth (See Photo H). Parts usually require transport on a large pallet by truck and trailer, or in the truck bed, or by bobcat and placed into the paint booth. Due to the angle needed to enter the paint booth, the turn-around area is absolutely necessary for access.
8. I have reviewed the 14 photos that Defendants submitted and the use of the turn-around area is no different in those photos from the ways we have always used the turn-around area, including for storage, parking, and having other stationary items in the turn-around (see Photos I through L). We are complying with the Judge's Order because what we do now is what we have always done before, the status quo. Some of the items shown in Defendants' photos are not even in the turn-around area. There are three customer vehicles that have been at the Back Building since before the Temporary Injunction. These are under Defendants' carports. My trailers are left in the turn-round due to problems with repeated vandalism of my trailers by Defendants' employees when I leave them down the hill in the front parking lot. For many months I have placed several items, such as the attachment to the bobcat

and the cement mixer, close to the excavated embankment to try to mitigate the ongoing erosion caused by Defendants' excavation, by slowing the flow of water over the embankment.

9. I face the same devastating loss of business income as I did at the previous injunction hearing if I am not allowed to continue to use the gravel turn-around area.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

SWORN TO before me this 24th
day of March, 2022.



Printed Name of Notary:

Gwendolyn G. Martin
Notary Public for South Carolina
My Commission Expires: 05/29/2029
[Seal]

Exhibit 2

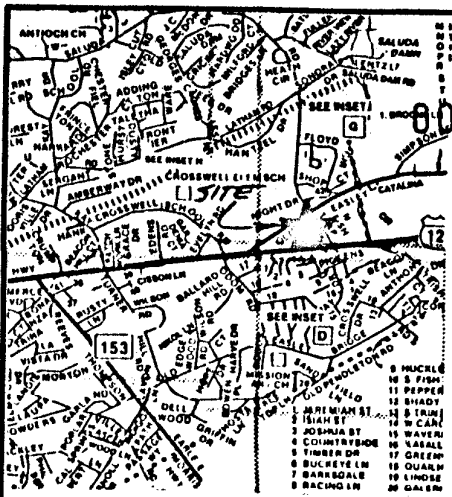
RECEIVED ELECTRONICALLY FILED - 2022 APR 27 12:43 PM - PICKENS - COMMON FILEAS - CASE#2020013900263

He shall stand at the latter day upon the earth

BOOK 34 PAGE 334

PICKENS CO.
REGISTER OF DEEDS
500 Smith
98 APR 21 PM 12:12

808040



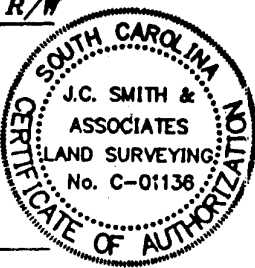
Total Area
18637 Sq. Ft.
0.428 Ac.

Frank R. Garrison Estate

Wallace G. Merck
Ref Plat By This Firm
Dated 06-28-94

Holcraft Inc.

U.S. Hwy. No. 123

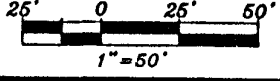


NOTE: THE RIGHTS OF WAY INFORMATION WAS OBTAINED BY PHONE CONVERSATIONS WITH SCDOT & PICKENS COUNTY OF WHICH DOCUMENTATION WAS NOT RECEIVED BY THIS FIRM. FOR DOCUMENTATION, CONTACT THE PICKENS COUNTY OFFICE OF THE S.C.D.O.T.
REFERENCE IS HEREBY MADE TO A PLAT BY THIS FIRM DATED MAY 20, 1996.
ALSO, SEE DEED BOOKS 12-C PG. 91 AND 12-W PG. 442, AND PLATS FOR JOHN COBB BY THIS FIRM DATED 11-29-85 AND 11-01-71.
ACREAGE & PROPERTY ARE SUBJECT TO ANY AND ALL RIGHTS OF WAY AND EASEMENTS OF RECORD OR ON THE GROUND.

Boundary Survey for
Betty M. Ramey

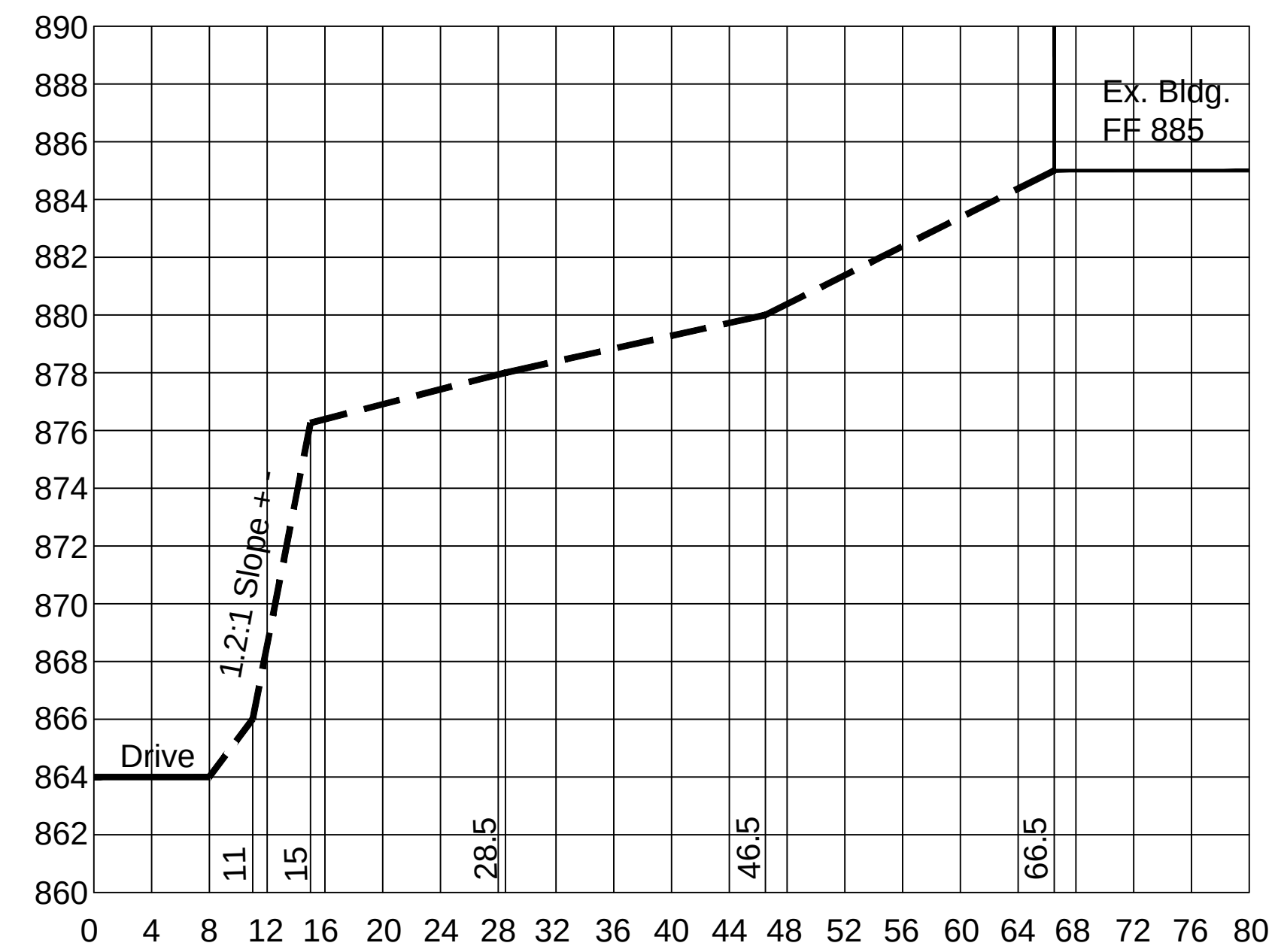
SINCE 1909
SMITH
J.C. Smith & Associates
R.L.S. #7882
P.O. Box 1090 Easley, SC
29641/864-859-5729
Fax 855-8022

County Pickens
South Carolina
I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.
Thomas E. Belcher
J. C. Smith PLS# 7882
Thomas E. Belcher PLS# 16128

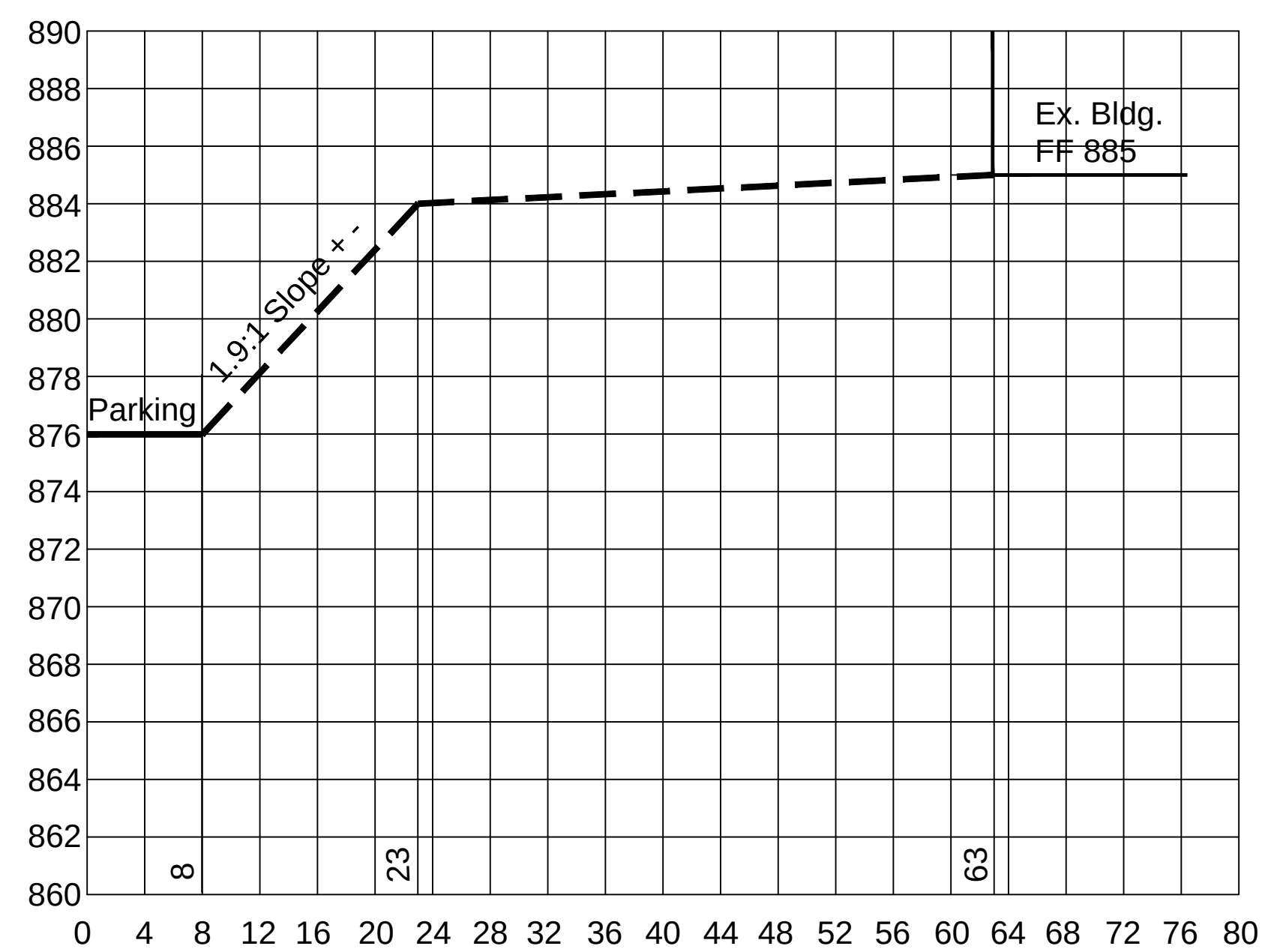


Date August 28, 1996
Job# 08289620

Exhibit 3



Section A-A
SCALE VERT. 1" = 5'
HOR. 1" = 10'



Section B-B
SCALE VERT. 1" = 5'
HOR. 1" = 10'

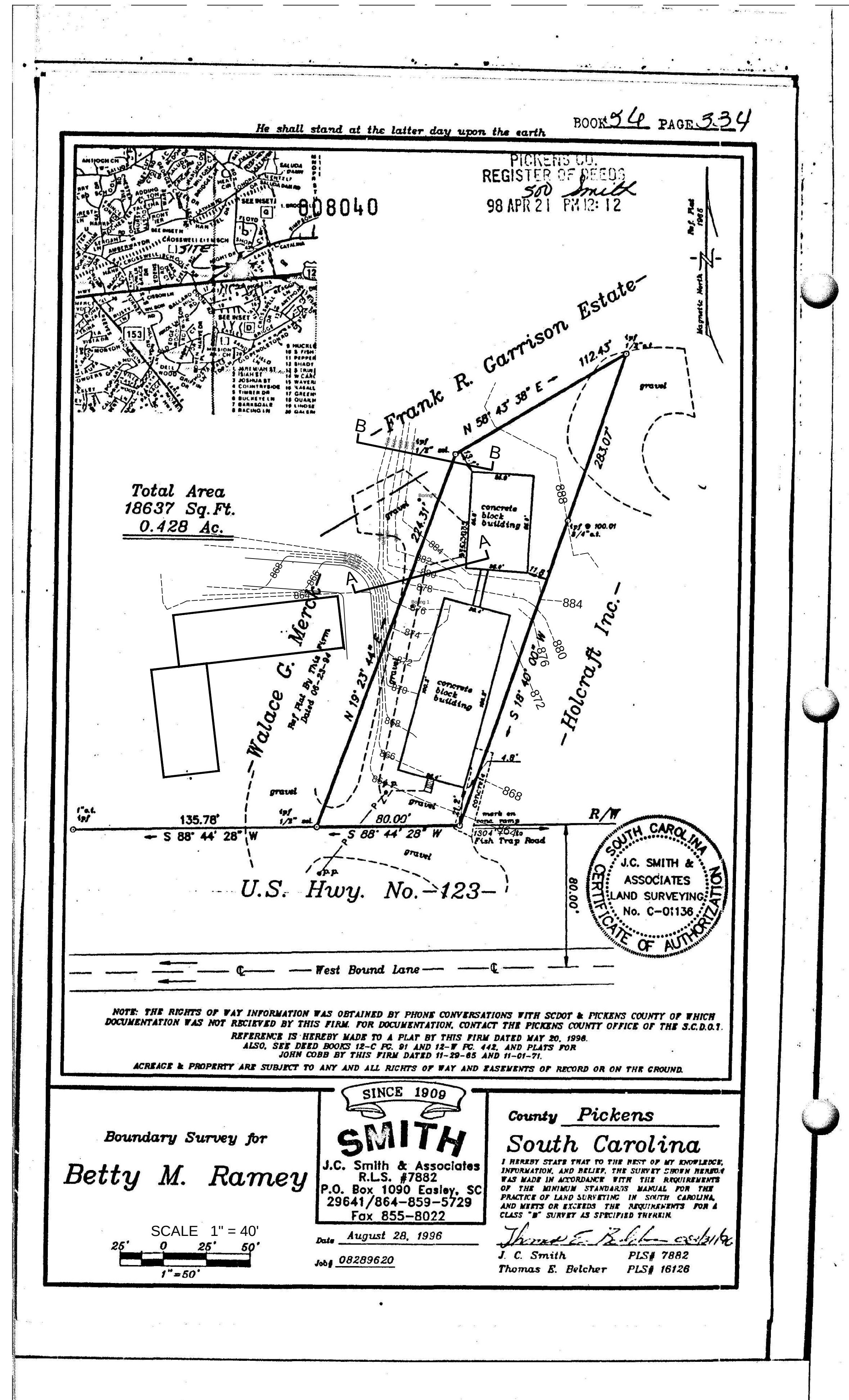


Exhibit 4

Hyperperformance Slope Stability Summary
3668 Calhoun Memorial Highway (see Attached Figure 1)
Easley, SC
BLE Project No. J22-17614-01

BLE drilled two soil test borings at this site on April 7, 2022. Boring B-1 is located near Section A-A as identified on Sheet S-1 provided by Mr. David Hall (see Attached Figure 2). Boring B-2 is located near Section B-B on Sheet S-1. Boring B-1 encountered residual soils consisting generally of firm to dense slightly silty fine to coarse sand. Boring B-1 encountered partially weathered rock at a depth of 23 feet and auger refusal at a depth of 25 feet. Boring B-2 encountered residual soils consisting generally of very stiff fine to medium sandy clay, dense clayey fine to medium sand and firm to very dense silty fine to medium sand. Boring B-2 encountered auger refusal at a depth of 27 feet. Groundwater was not encountered in the borings. Visual inspection of the undisturbed soil samples from boring B-1 indicates the sands appear to be lightly cemented. BLE conducted slope stability analyses at the two cross-sections identified by Mr. Hall.

Estimating Shear Strength and Seismic Parameters:

Testing performed in boring B-1 indicates the soils within the upper ten feet exhibited an average standard penetration test N-value of 19 blows per foot. Soils at a depth greater than ten feet exhibited an average N-value of 57 blows per foot. Published documentation¹ that estimates the angle of internal friction (ϕ) from N-values suggests that the soils in the upper ten feet of boring B-1 would have an angle of internal friction of approximately 32°. Soil at a depth greater than ten feet would have an approximate angle of internal friction of 42°.

Following a similar procedure for boring B-2 indicates the soil within the upper ten feet would have an angle of internal friction of approximately 35°. Soil at a depth greater than ten feet would have an approximate angle of internal friction of approximately 41°.

We attempted to conduct pocket penetrometer testing on undisturbed samples collected from boring B-1. However, the lightly cemented samples were very brittle and failed before completion of the pocket penetrometer test. Based on our experience and a review of published documentation², we estimate the lightly cemented sands would exhibit an apparent cohesion of approximately 100 psf at each location (borings B-1 and B-2).

As a result of the borings, our experience on similar projects and the cited references, the following soil parameters were used for the slope stability analyses.

¹ Foundation Engineering by Peck, Hanson and Thornburn; 2nd Ed; Figure 19.5 p.310

² Journal of Geotechnical and Geoenvironmental Engineering; October 2009; Volume 135, No. 10 p.1359
Geotechnical Properties of Cemented Sands in Steep Slopes by Collins and Sitar.

Boring	Depth	Angle of Internal Friction	Cohesion	Unit Weight
B-1	0 to 10 feet	32°	100 psf	125 pcf
	> 10 feet	42°	100 psf	130 pcf
B-2	0 to 10 feet	35°	100 psf	125 pcf
	> 10 feet	41°	100 psf	130 pcf

We referenced the ASCE Hazards report to evaluate the design seismic loading that could be expected at this site. Based on ASCE 7, a horizontal seismic load of 0.12g was utilized to evaluate the stability of the embankment under seismic loading conditions.

As part of the stability analyses, we conducted a sensitivity analysis to evaluate variations in cohesion on the global slope stability. The previously referenced article from the Journal of Geotechnical and Geoenvironmental Engineering (JGGE) makes the following conclusions.

- Cohesion and tensile strength should not be overly relied upon to prevent failure, especially if exposed to water.
- Cliffs composed of weakly cemented soils are likely to be more dependent on their frictional component.
- All strength parameters in cemented sands (excluding friction angle) decrease upon wetting by up to 100 percent for weakly cemented sand.

Evaluation:

The face of the embankment is exposed to precipitation and would therefore be subject to a loss of apparent cohesion. Based on the JGGE conclusions referenced above and the fact that the embankment is exposed to precipitation, we performed the stability analyses assuming the cohesion ranged from 0 psf to 100 psf. The resulting factors of safety with respect to slope stability are presented in the following table.

Section	Boring	Factor of Safety Range (see note)		Recommended Minimum FS	
		Static	Seismic	Static	Seismic
A-A	B-1	0.79 to 1.16	0.73 to 1.05	1.5	>1.0
B-B	B-2	1.75 to 2.57	1.30 to 2.01		

Note: The minimum computed factor of safety for each scenario is based on a cohesion of 0 psf and the maximum computed factor of safety is based on a cohesion of 100 psf.

The lower end of the range of safety factors represents the conditions near the face of the slope due to a loss of apparent cohesion as a result of exposure to precipitation. The higher end of the range represents conditions deeper in the embankment where the apparent cohesion has not been impacted by precipitation. Based on this analysis, the steep slope at Section A-A has an insufficient factor of safety

with respect to global slope stability for both the static case and during seismic loading. The flatter slope at Section B-B exhibits a satisfactory factor of safety under both static and seismic loading conditions.

Attached for your reference are the following documents:

- Figure 1 – Site Location Map
- Figure 2 – Boring Location Plan
- Boring Logs
- Slope Stability Plots and accompanying Sensitivity Plot
- Article referenced from JGGE

A handwritten signature in blue ink, appearing to read 'William Mathews', with a stylized, flowing script.

William A. Mathews, P.E.

Chief Engineer – Bunnell-Lammons Engineering, Inc.

Licensed SC #14039

Exhibit 5

Title: Hyper Formance LLC - Section A-A
Comments: Calhoun Memorial Highway
Directory: Z:\Geotechnical Projects\17614-01 Hyper Formance - 3668 Calhoun Memorial Hwy\Autolocate - Post Drilling - Sensitivity Analysis for Cohesion.gz
Date: 4/13/2022
Time: 2:35:36 PM

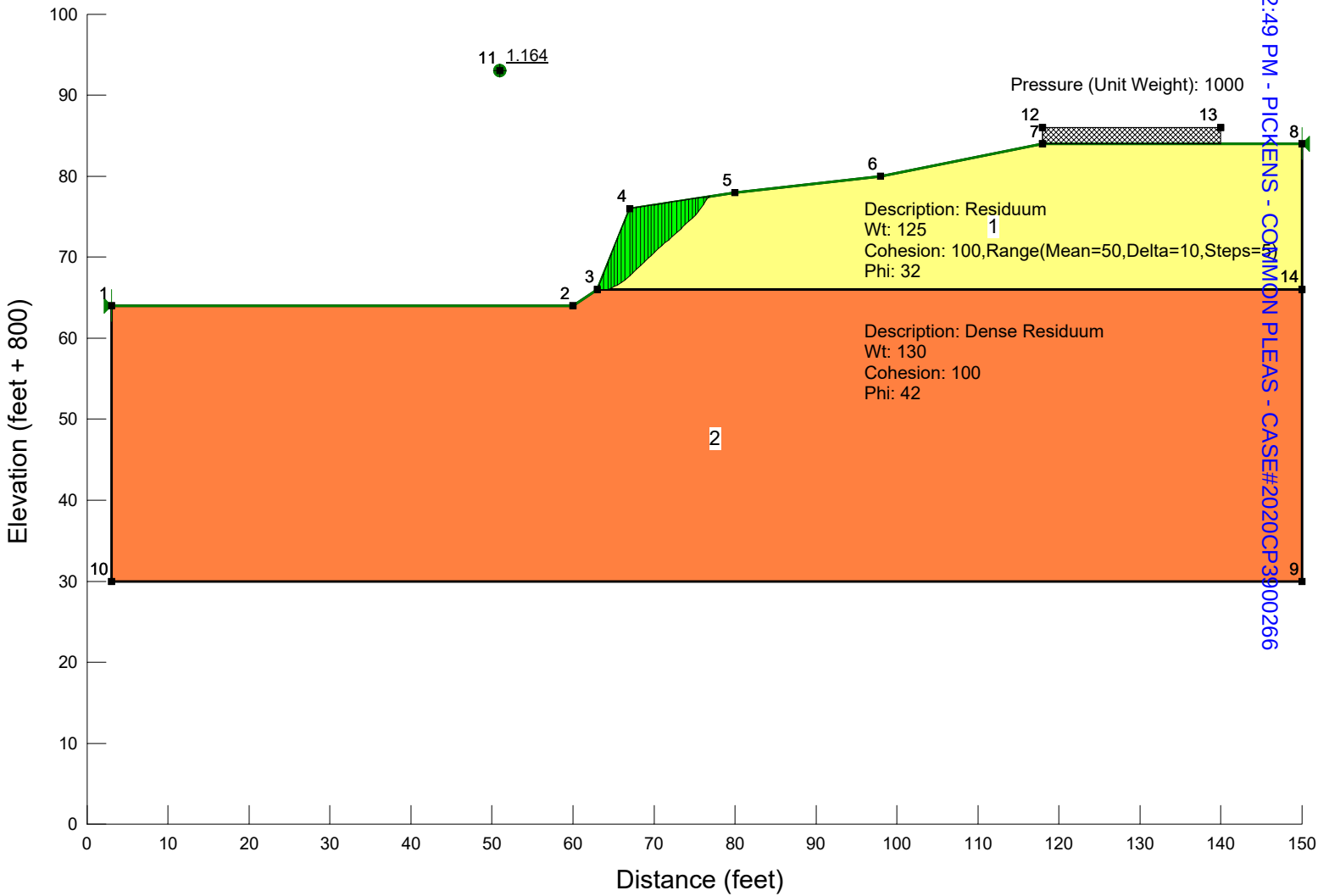


Exhibit 6

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

- - -

CLICK PROPERTIES, LLC,	:	Case No.
and HYPER FORMANCE, LLC,	:	2020-CP-39-00266
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
THOMAS SC PROPERTIES, et al.	:	
	:	
Defendant.	:	

RULE 30(B)(6) DEPOSITION OF CLICK PROPERTIES, LLC,
and HYPER FORMANCE, LLC, by ROBERT BRENT CLICK

DATE TAKEN: Tuesday, September 22, 2020

TIME BEGAN: 10:01 a.m.

TIME ENDED: 12:36 p.m.

LOCATION: Given Remotely

REPORTED BY: Karen Kidwell, RMR, CRR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 REMOTE APPEARANCES:

2
3 CAMPBELL TEAGUE, LLC
4 BY: EMILY O'BRIAN, ESQ.
5 16 West North Street
6 Greenville, SC 29601
7 864.326.4186
8 emily@campbellteague.com
9 Representing the Plaintiffs
10

11 BRADFORD NEAL MARTIN & ASSOCIATES
12 BY: BRADFORD NEAL MARTIN, ESQ.
13 201 West McBee Avenue
14 #302
15 Greenville, SC 29601
16 864.552.9990
17 bmartin@bnmlaw.com
18 Representing the Defendant
19
20
21
22
23
24
25

I N D E X

WITNESS/EXAMINATION	Page
ROBERT BRENT CLICK	
By Ms. O'Brian	5

E X H I B I T S

Number	Description	Page
Exhibit 1	Plat of Boundary Survey for Betty M. Ramey, PL 49	19
Exhibit 2	Colored photograph of 3668 Calhoun Memorial Highway, PL 39	43
Exhibit 3	9/3/2018 Letter, Timothy Garr to S. Allan Hill, Re: Click Properties, LLC and Thomas SC Properties, LLC, PL 36	78

1 and companies we deal with.

2 Q. Okay. So you recreate parts that are no
3 longer available. Do you also do, I guess, just
4 normal body work for --

5 A. Yes.

6 Q. -- for vehicles?

7 A. We also make new things to solve problems
8 for people with . . .

9 Q. Okay. And then do you also have a paint
10 shop?

11 A. Yes, ma'am. That's where the upper
12 building is.

13 Q. Okay. What percentage of your revenue
14 would you say is kind of allocated to you -- to each
15 of these items that we just discussed? The
16 recreating part, no longer available? Creating new
17 things to solve problems? The body work and the
18 paint shop?

19 A. Well, everything has to go through the
20 paint shop to be finished. You know, you can't ship
21 a bare-metal something. So everything -- all things
22 use both buildings.

23 The bodywork this year has really slowed
24 down, just because of not as many people driving, not
25 as many people getting in collisions, and there's a

1 property that you were leasing?

2 A. Yes, ma'am. We put concrete in front of
3 the upper building, and we put up three carports.

4 Q. Okay. So this was a concrete pad in place
5 of some of the gravel?

6 A. Yeah, to cut down on the dirt and
7 everything, to keep it from coming into the paint
8 booth.

9 Q. Okay. And when was that concrete pad put
10 in?

11 A. October 25th, 2014.

12 Q. Okay. And was the adjoining landowner
13 aware that you were putting in that concrete pad?

14 A. Greg Grissinger, who said that he owned
15 the property next door, came up, and I had never done
16 a large concrete pour before. And he came up and
17 said, "You're going to need to put more stakes here.
18 Your wood form's wrong here and here."

19 He was very knowledgeable in construction
20 and -- and helped with it.

21 Q. Okay. Do you know what the dimensions of
22 that concrete pad are?

23 A. It was 14 feet by 24 feet. It was
24 14 inches thick.

25 Q. Is the 24, does that run along the length

1 the road, it looks like it's part of the property.
2 And when you've been there a number of years using
3 it, and no one around you has said anything about it,
4 you think, "Okay, this is just part of it."

5 Q. And I understand what you're saying, from
6 your perspective there. I guess I'm trying to figure
7 out, did Mr. Smith tell you anything specifically
8 about the use of that turnaround area, or how it was
9 related to the property that you were buying?

10 A. It was a right-to-use.

11 Q. Did he ever show you any written agreement
12 to that effect?

13 A. I hadn't seen a property plat yet, so I
14 didn't know where the property lines were. So there
15 was no reason to ask.

16 Q. And he didn't specifically bring that up?

17 A. No, ma'am.

18 Q. Okay. Did you have any real estate agents
19 involved in this transaction, or was it just between
20 you and Mr. Smith?

21 A. Just between Mr. Smith and I.

22 Q. What due diligence, if any, did you go
23 through before purchasing the property?

24 A. Checked out the buildings.

25 Q. Did you have an inspector come out?

1 A. I mean, honestly, I asked Greg.

2 Q. Okay. So Greg came and looked at the
3 buildings?

4 A. Yeah.

5 Q. I'm assuming, since it was just your
6 neighbor that you asked, he didn't have any formal
7 reports or anything like that?

8 A. No, no.

9 Q. What did he tell you after he looked over
10 the buildings?

11 A. To actually replace the lights in the
12 lower building, because they're old, and they're
13 going to burn a lot of electricity.

14 Q. Did he say anything else about the
15 building?

16 A. No.

17 Q. Did you have anyone else take a look at
18 the buildings, or do any kind of inspections for you?

19 A. I got the keys to the lower building
20 before I bought it, and we checked it out. I had a
21 couple friends that are in the same kind of thing,
22 unofficial reports, and just -- look at this and look
23 at that. Look at the roof. The roof and stuff was
24 replaced in 2012. And I think I just wanted to make
25 sure it was still a good roof.

1 A. No.

2 Q. Did the attorneys show you a survey for
3 the property?

4 A. I -- in the paperwork that was handed
5 after the closing, they had the plat in there. And I
6 pulled it out, and I asked Mark Smith, and I said,
7 "Hey, look at this 13.1 feet over here." I was like,
8 I said, "Is this a problem?"

9 And he says, "Oh, no, we've always had the
10 right to use that turnaround. You don't have to
11 worry about it. It won't ever be an issue."

12 And the closing attorney nodded along.

13 Q. Okay. Did the closing attorney provide
14 you with any advice before you signed the closing
15 papers?

16 A. No.

17 Q. No. Did they go over the survey or any
18 property lines or anything of that nature with you?

19 A. No, I was handed the plat after the
20 closing.

21 Q. Okay. And you said you had looked at the
22 plat. You were in the room with the closing attorney
23 and with Mark Smith?

24 A. Yes, ma'am.

25 Q. And did the attorney make any specific

1 comments about the use of the turnaround area?

2 A. No, ma'am.

3 Q. And Mark Smith just said that it was fine;
4 you could use that turnaround area?

5 A. He said there was a right to use it.

6 Q. Okay.

7 A. The attorney nodded along with him, so --
8 and that was when we were still sitting at the table,
9 yes.

10 Q. Okay. Did either Mark Smith or the
11 attorney make any representations about there being a
12 written agreement to use that turnaround area?

13 A. I -- Mark Smith made it seem like it
14 wasn't an issue. And he -- yeah, he just -- he said
15 there was a right to use it.

16 Q. But there were no documents that -- that
17 he said he had about it?

18 A. He said he did. And still to this day
19 even, he thinks he does, so . . .

20 Even the last time I talked to him, he
21 said, "I had something." So . . .

22 Q. But he hasn't shown that to you at any
23 point?

24 A. Not yet.

25 Q. Did he comment about who he thought that

1 A. Yes, ma'am.

2 Q. -- did the survey -- they did an updated
3 survey for you?

4 A. Well, they just uncovered the pins.

5 Q. Okay. So they did not create a new
6 survey?

7 A. They told me that wasn't needed, and the
8 pins were still there, and it would all be fine.

9 Q. Do you recall about when they did that,
10 about how long after you purchased the property?

11 A. It was within a couple months. I had just
12 bought a building, so my focus was moving equipment,
13 getting things wired, lights, and such.

14 Q. Sure. After the Smith Company came out
15 and took a look and uncovered those pins for you,
16 what conversations, if any, did you have about the
17 property line?

18 A. I think that's when I found out that Greg
19 Grissinger didn't actually own that property next
20 door.

21 Q. How did you find that out?

22 A. I don't remember exactly, but that's when
23 I found out who Jimmy Watkins was.

24 Q. Okay. And who was Jim Watkins?

25 A. Jimmy Watkins was the owner of the

1 property before Jonathan.

2 Q. Did you ever talk with Jimmy Watkins?

3 A. Yes. I had had problems with Jonathan in
4 the past, with, you know, some -- some of his
5 actions. And I had gone down and talked to Jimmy
6 Watkins, to say, "Hey, you know, the guy that's
7 renting from you is being aggressive and violent, and
8 what can I -- can you help smooth this over, make
9 this easier? I'm here to work, not -- not mess with
10 that sort of stuff."

11 So -- and so I went and talked with
12 Mr. Watkins. And -- and he said, "Oh, well, if you
13 guys can't get along, just put a fence up down the
14 whole property line, and keep Jonathan off your
15 property. And unfortunately that'll probably also
16 block you up the top of the hill, from that area you
17 use."

18 Q. When was that conversation with
19 Mr. Watkins, about?

20 A. It was after 2017, but it was -- or I
21 think it was closer to -- I stopped by and talked to
22 him a few times, like, you know, just kind of feeling
23 him out a little bit. Because he was on the way to
24 work, and I'd see his door open, and walk into his
25 little shop and say "Hey," bring doughnuts and stuff,

1 all up for us, before we're all too starving for
2 lunch. If that works.

3 MR. MARTIN: Fair enough.

4 MS. O'BRIAN: Go off the record, Karen.

5 COURT REPORTER: Off the record.

6 (A recess transpired from 12:19 p.m. until
7 12:26 p.m.)

8 BY MS. O'BRIAN:

9 Q. All right, Mr. Click, I just want to
10 clarify a few things. If -- has Mr. Thomas always
11 maintained that the turnaround area is on his
12 property?

13 A. After he -- after -- hmm. He didn't know
14 where the property lines were until I showed him.

15 Q. And when was that?

16 A. After I bought it, before he bought it.

17 Q. And you showed him the property lines that
18 were on the 1996 plat?

19 A. Yes.

20 Q. That we've been looking at, marked as
21 Exhibit 1?

22 A. Uh-huh.

23 Q. Is that a "yes"? Is that a "yes"? Sorry,
24 I need a verbal answer, just for the court reporter.

25 A. He rented before then. And he had -- so

1 up until that point, he didn't know where the
2 property lines were. And he didn't even know how
3 close to his own property was to the other property
4 and how much of that property behind him he was even
5 using that wasn't his, so.

6 Q. Okay. Did -- so Mr. Thomas never agreed
7 that the turnaround area was actually on your
8 property, correct?

9 A. No, he never agreed it was on my property,
10 but he never said it wasn't my right to use. Not
11 until the digging started.

12 Q. Okay. Did anyone --

13 A. The letter.

14 Q. Did anyone, through your course of dealing
15 from the lease to the purchase, and even to now,
16 anyone that you spoke to ever dispute that the
17 boundary line was somewhere other than what's drawn
18 on that 1996 plat?

19 A. Say that again?

20 Q. Did anyone, from the time of your lease
21 through your purchase and then your current use of
22 the property, did anyone ever say that the boundary
23 line was somewhere other than what's drawn on that
24 1996 plat?

25 A. Greg Grissinger, who we thought owned it.

Exhibit 7

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

- - -

CLICK PROPERTIES, LLC,	:	Case No.
and HYPER FORMANCE, LLC,	:	2020-CP-39-00266
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
THOMAS SC PROPERTIES, et al.	:	
	:	
Defendant.	:	

DEPOSITION OF SHELLEY LEANNE CLICK

DATE TAKEN: Wednesday, September 23, 2020

TIME BEGAN: 9:57 a.m.

TIME ENDED: 11:30 a.m.

LOCATION: Given Remotely

REPORTED BY: Karen Kidwell, RMR, CRR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 REMOTE APPEARANCES:

2
3 CAMPBELL TEAGUE, LLC
4 BY: EMILY O'BRIAN, ESQ.
5 16 West North Street
6 Greenville, SC 29601
7 864.326.4186
8 emily@campbellteague.com
9 Representing the Plaintiffs
10

11 BRADFORD NEAL MARTIN & ASSOCIATES
12 BY: BRADFORD NEAL MARTIN, ESQ.
13 201 West McBee Avenue
14 #302
15 Greenville, SC 29601
16 864.552.9990
17 bmartin@bnmlaw.com
18 Representing the Defendant
19
20
21
22
23
24
25

I N D E X

WITNESS/EXAMINATION	Page
SHELLY LEANNE CLICK	
By Ms. O'Brian	4

E X H I B I T S

Number	Description	Page
Exhibit 1	Plat of Boundary Survey for Betty M. Ramey, PL 49	11
Exhibit 2	Colored photograph of 3668 Calhoun Memorial Highway, PL 39	12

1 much sooner after the excavation than these recent
2 cracks I've noticed outside the building. So
3 probably -- probably in the springtime, the beginning
4 of spring, I noticed these -- these cracks in the
5 floor start to get worse.

6 Q. Of 2020?

7 A. Yes, ma'am.

8 Q. Okay. Any other cracks or damages that
9 you've seen inside the building?

10 A. In our apartment area, I've actually
11 noticed some cracks by the tops of the walls and
12 eaves. I told you that the outside of the building I
13 noticed in the duck area had a long crack to it that
14 was growing. So in the apartment, which is -- the
15 apartment is kind of close to the duck area, if you
16 go inside. It's hard to describe, from -- again,
17 from an aerial viewpoint. But I've noticed cracks
18 inside the apartment kind of near the tops of the
19 eaves, towards the back of the apartment.

20 Q. Okay. And your apartment, again, is --
21 we're looking from that aerial view, looking at
22 Exhibit 2. It's kind of at the bottom right of that
23 back building; is that correct?

24 A. Yes, ma'am. The bottom -- bottom right.

25 Q. Okay. And so the duck area would be right

1 outside of that, kind of between the front and back
2 buildings; is that right?

3 A. Yeah. It's a fairly small area, yeah,
4 right outside.

5 Q. Okay. Any other items that you've
6 observed, inside or outside, related to the building
7 itself?

8 A. Any other areas in regards to damage? Is
9 that what you mean?

10 Q. Yes.

11 A. Damages? I've noticed -- actually, in
12 regards to the hill outside, I've noticed significant
13 parts of the hill falling away. We've actually been
14 taking photos of this erosion that's been occurring
15 since the excavation.

16 Q. Okay. And I want to talk about the
17 erosion and the -- you mentioned the turnaround area
18 as well. I want to talk about both of those. But in
19 relation to the actual structure itself, of the back
20 building, have you seen any other cracks or damages
21 there?

22 A. Not that I can recall right now, at the
23 moment.

24 Q. Okay. So tell me a little bit more -- you
25 mentioned damage to the turnaround area. Tell me

Exhibit 8

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

CLICK PROPERTIES, LLC and)
HYPER FORMANCE, LLC,)
 Plaintiffs,)
 vs.)
THOMAS SC PROPERTIES, LLC)
and ALL-TECH TIRE and AUTO))
REPAIR, LLC,)
 Defendants.)

D E P O S I T I O N

WITNESS: WILLIAM DAVID HALL
DATE: March 23, 2022
TIME: 9:57 a.m.
LOCATION: Campbell Teague
 16 West North Street
 Greenville, South Carolina
REPORTED BY: Treaa Hix

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2
3 BRADFORD N. MARTIN, Esquire
4 GWENDOLYN G. MARTIN, Esquire
5 Bradford Neal Martin & Associates, PA
6 Post Office Box 10410 (29605)
7 201 West McBee Avenue
8 Suite 302
9 Greenville, South Carolina 29601
10 pmccomb@bnmlaw.com

11 Attorney for the Plaintiffs,
12

13 EMILY O'BRIAN, Esquire
14 Campbell Teague
15 16 West North Street
16 Greenville, South Carolina 29601
17 elee@campbellteague.com

18 Attorney for the Defendants.
19

20 ALSO ATTENDING: Brent Click and Elee Diamaduros, paralegal to
21 Emily O'Brian.
22
23
24
25

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(Defendant's Exhibits One through Six were marked prior to the commencement of the deposition.)	

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 this green part is what is coming off. Does that mean
2 it's actively eroding from the embankment or --

3 A. No, the model is just predicting failure.

4 Q. Okay.

5 A. And what that part in front he's saying with that model
6 is that's -- that is -- will be the first material that
7 comes down if there's a failure.

8 Q. Okay.

9 A. And so it's predicting the amount of encroachment onto
10 the neighbor that would occur if there was a failure.
11 Now, that might not be a cataclysmic failure and 30
12 feet comes off, it could --

13 Q. Okay.

14 A. -- because he says it's an impending failure. But --
15 but likely it would be a progression of failure.

16 Q. Okay. And he talks about in his email the -- well, let
17 me just follow-up on what you said. You said that he
18 talks about an impending failure. What do you mean by
19 that in your profession?

20 A. If the factor of safety for an embankment is one point
21 five -- one point five or above, no -- no failure
22 likely. I mean things can happen, but that's the
23 cutoff where it's safe.

24 Q. Okay.

25 A. But anything below one point five the embankment is not

1 safe. Now, not safe means it could fail at anytime.
2 It's -- when I stood on the top of that area where the
3 parking is getting shots, it appears to me that all of
4 the top soil on the top of that has -- has -- is
5 starting to slide down off the property, which would
6 substantiate the fact that trees have moved because
7 they're going with that top soil. There's weathered
8 rock in there. It's got a granular layer. All
9 weathered rock has granular layer above it, and then
10 top soil and overburden soil on top of that. That's
11 what comes. And so they've been cleaning up material
12 that's been coming down on their side. And I -- I
13 think that's the source. Now, impending doesn't mean
14 it's going to fail in a week, two weeks, two years. We
15 don't know. He's saying that it's not safe. There's
16 evidence that there is material coming off of that
17 embankment that's being cleaned up. And so I think
18 what he -- I'll let him answer what he thinks from
19 impending.

20 Q. Okay.

21 A. But for me that means that we could have a failure at
22 anytime based on the factor of safety of that
23 embankment.

24 Q. And when you said "failure" you mean the soil could
25 come off of the embankment? Or what exactly are you

1 looking just at how the property lays today, can you
2 say whether that embankment has an impact on Click's
3 back building?

4 A. There is evidence that there is cracking and movement
5 that has occurred. And I'm relying on the testimony of
6 the Click -- on Brent Click and the photographs that
7 I've seen, and what I've seen with my own eyes that
8 there has been an impact on that building. Now,
9 whether that's -- there's been an impact on the
10 building.

11 Q. Now, when you say "there's been an impact on the
12 building," do you mean that the embankment and the
13 excavation has impacted it or that there has been some
14 settlement and we don't know what factor has caused
15 that settlement, or that cracking?

16 A. Well, my opinion is that the removal of the material
17 has led to failure on Brent's side, problems on his
18 side. More testing and analysis would have to be done
19 to determine things that we don't know today.

20 Q. What do you mean by that? What additional information
21 would you need to get to or to support your
22 conclusions?

23 A. We need borings. We need additional survey work, which
24 would give us true locations of the buildings in
25 relation to the embankment. Where the property line

1 A. I do not.

2 Q. Okay. Do you know what the tolerance of that concrete
3 slab is as far as the equipment and things that Mr.
4 Click uses in his business?

5 A. I don't.

6 Q. Okay. Is it possible that some of the equipment that's
7 used, especially some of the heavier equipment, could
8 impact the cracking on the floors?

9 A. Possibly, but I believe all -- most of that stuff is
10 down in the first building. And this is more of a
11 paint -- a gigantic paint booth --

12 Q. Okay.

13 A. -- and so it's -- it's not the same kind of loading.

14 Q. Okay. Do you know what the property was used for
15 before Mr. Click purchased it?

16 A. No, ma'am.

17 Q. Do you know how that might have impacted the stability
18 of the foundation?

19 A. No.

20 Q. And like you said you weren't able to observe the
21 building before the excavation work was done; right?

22 A. I -- I've relied on that photo. It's a pretty good
23 photo that I was provided that showed when he was
24 cleaning that building up, the condition that existed
25 at that time --

1 Q. Okay.

2 A. -- when that photo was made. And that's probably 2013
3 I think is when he moved into that building and started
4 leasing it.

5 Q. Okay. The photo that you're talking about, David, is
6 that plaintiffs' 105?

7 A. Yes.

8 Q. Okay. And that's included in Defendant's Exhibit One
9 that we provided to you?

10 A. Yes.

11 Q. All right. Did you have an electronic version of that
12 photo to look at, or was it just the print-off?

13 A. Just -- just the print-off.

14 Q. Okay. So does this -- does plaintiffs' 105 as
15 presented to you today in Defendant's Exhibit One, is
16 that the same quality of photo that you were able to
17 look at?

18 A. Yes.

19 Q. Okay. All right. Turning back to Defendant's Exhibit
20 Four, plaintiffs' 160, can you tell us what this photo
21 is?

22 A. Yes, in the front of the upper building on the
23 southwest corner there is a piece of concrete that is
24 -- is a curb for a concrete slab on the inside that's
25 covered by one of the awnings, and I took this photo

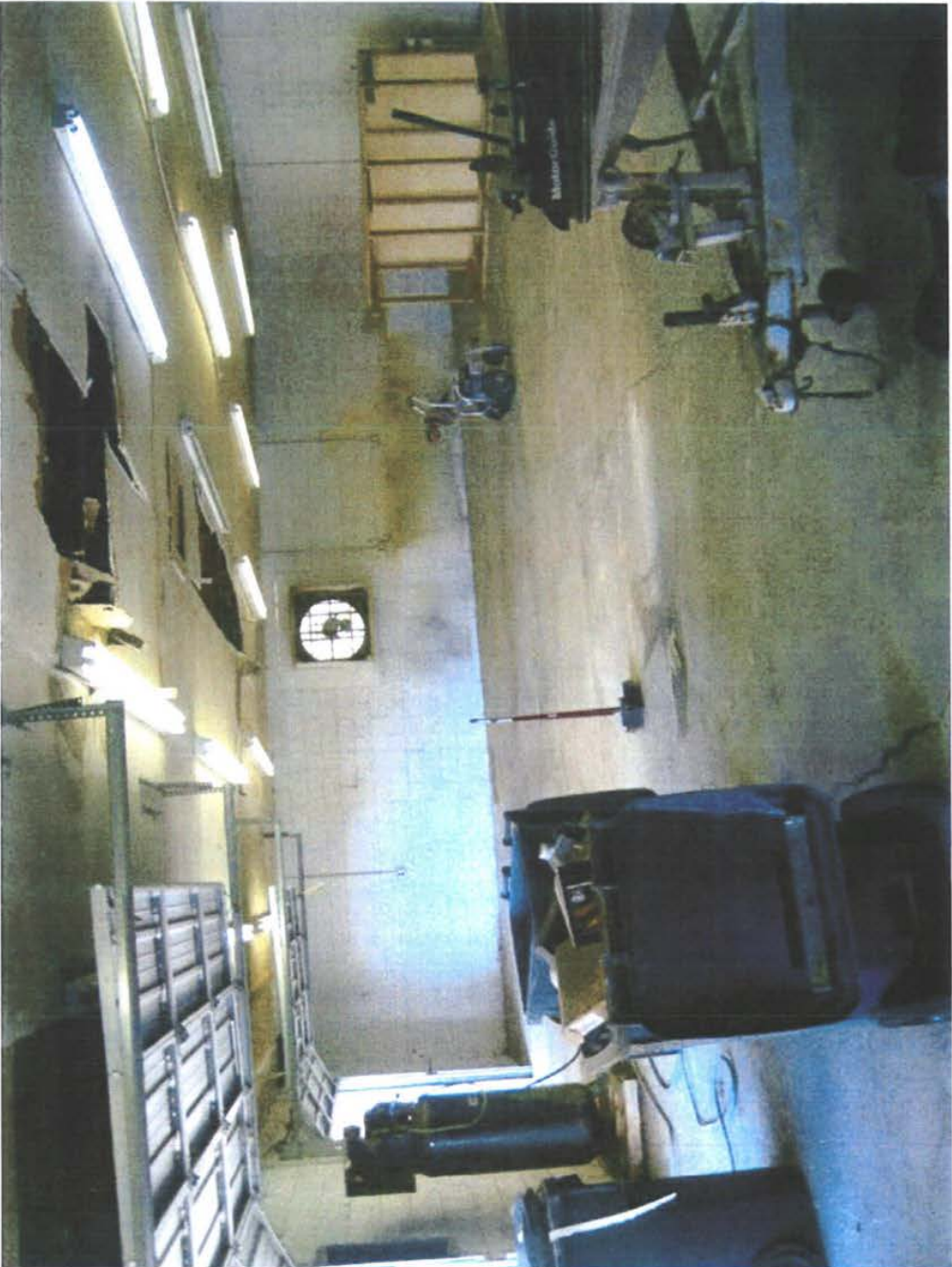


Exhibit 9

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

Affidavit of Greg Porter

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I am the prior owner of 3670 Calhoun Memorial Hwy, Greenville, SC 29611 (hereinafter, the "Thomas Property") and owned the property from 2003-2004.
3. I am the current owner of 3664 Calhoun Memorial Hwy, Greenville, SC 29611 (hereinafter, the "Porter Property") and have owned that property since about 2005.
4. The Thomas Property is adjacent to 3668 Calhoun Memorial Highway (hereinafter, the "Click Property").
5. The Click Property is adjacent to the Porter Property.
6. During my ownership of the Thomas property, for the sake of convenience, all owners and/or lessees of the Thomas and Click properties used one gravel driveway to access the

upper portion of both properties. The owners and lessees also used the front driveways and parking lots on agreeable terms as well.

7. These owners and lessees were on agreeable terms and understood that they were using each other's properties with permission to access their own. There was no formal or written agreement to do this, it was simply a neighborly agreement because everyone got along.

8. I own approximately 50 acres of land in this area, but when given the opportunity to purchase the Click Property, I did not.

9. I did not purchase the property because the back building was in bad shape with cracks in the floors, and it had foundational issues. I also realized that a retaining wall was needed on the Click Property to stop foundation problems from progressing in the back building.

10. In addition, I have currently put up a fence between the Porter Property and the Click Property because I was worried about the owner of the Click Property encroaching on my property.

11. I do not know of any owners or lessors who gave permission to encroach and build on the Thomas Property.

FURTHER AFFIANT SAYETH NOT.

Eleni-Conalee Diamaduros

Greg Porter
Greg Porter

Sworn and subscribed before me

this 14 day of April, 2022.

Notary Public for South Carolina

My commission expires:

10/29/2028

[SEAL]



Exhibit 10

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

Affidavit of Jessie Lingerfelt

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.

2. Around 2001, I rented the back building located on 3668 Calhoun Memorial Hwy, Greenville, SC 29611 (hereinafter, the "Click Property") for a few years.

3. I used the back building of this property as a shop for building cabinets and countertops.

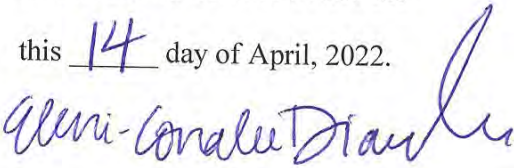
4. This property is adjacent to 3670 Calhoun Memorial Hwy, Greenville, SC 29611 (hereinafter, the "Thomas Property").

5. When I rented this building, it had many problems. It would hold water in areas. The floors were uneven, and there were cracks in the floor. I would have to use levelers for my tables to work on so that they were stable on the uneven floor. I had to be careful of where I placed certain items because water would run, and then settle to stand, after it rained.

FURTHER AFFIANT SAYETH NOT.


Jessie Lingerfelt

Sworn and subscribed before me

this 14 day of April, 2022.


Notary Public for South Carolina

My commission expires: 10/29/2028

[SEAL]



Exhibit 11

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

Affidavit of Paul Mills, P.E.

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.

2. I received my Bachelor of Science in Civil Engineering from the University of North Carolina, am a licensed professional engineer in North Carolina and South Carolina, and have over twenty-three years of civil engineering design experience and four years of construction management experience. I am currently a Senior Project Manager at Site Design, Inc.

3. I visited the properties located at 3670 and 3668 Calhoun Memorial Highway, Pickens County, South Carolina on April 18, 2022.

4. Based on my professional knowledge and experience as well as the site inspection and review of materials in this case, it is my opinion that the grading work performed by Jonathan Thomas on his property has not affected Brent Click's property and is unlikely to do so in the future.

5. I observed minor cracking in the CMU block wall of the back building on Click's property. This building is at its closest point 13 feet from the property line, and an additional 25 feet from the grading. All grading work was done on Thomas' property. The excavation and grading work done was outside the cone of influence for the back building and thus could not have caused this damage.

6. Additionally, I understand that Click claims there are cracks in the slab of the back building. I was able to observe the concrete slab outside the back building, which is closer to the property line and the grading work than the inside slab. I understand that the outside slab is newer than the CMU building, but has still been in place since before the grading work was performed. I did not observe cracks in the outside slab. If the cracks in the inside slab were caused by the grading work on the Thomas property, I would expect to see cracks or movement in the outside slab as well.

7. I understand that the grading work was performed by Thomas in late 2018. It is now three and a half years later, and it is my understanding that there has not been any abrupt failure of the slope during that time. Based on my observations and professional experience, the slope as it currently exists is not at risk for immediate or abrupt failure.

FURTHER AFFIANT SAYETH NOT.



Paul Mills, P.E.

Sworn and subscribed before me

this 28th day of April, 2022.

Notary Public for South Carolina

My commission expires: 1-19-2027 [SEAL]



Exhibit 12

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' FIFTH
	)	SUPPLEMENTAL RESPONSES TO
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	DEFENDANTS' FIRST SET OF
	)	INTERROGATORIES
Defendants.	)	
	)	

Plaintiffs, Click Properties, LLC and Hyper Formance, LLC, hereby supplement their Responses to Defendants' First Set of Interrogatories as follows:

10. Identify and itemize each damage that you are seeking in this lawsuit, including in your answer the following: the amount of loss or damage; the date it occurred; the reason it occurred; the way the amount was calculated, and any and all persons who aided and participated in making the calculation; and all documents which support this itemization and calculation of damages.

RESPONSE:

Amount of Loss or Damage:

- a. A retaining wall is required to prevent further erosion to Plaintiffs' property and further damage to Plaintiffs' back building. Plaintiffs' expert, David Hall, is expected to testify that the cost of the retaining wall is expected to be \$80,000, including design, grading, backfilling, and installation.
- b. Plaintiffs' expert is expected to testify regarding removal of lateral support of the Click Property and that eventually the erosion will cut off Plaintiffs' ability to access the back building. Therefore, Plaintiffs' damages include the cost to move. Hyper Formance's machinery requires specialized rigging and movers. The cost to move including hiring a rigger, wiring, set up and preparation of the machines for moving \$40,000.00.
- c. The value of the Click Property has been significantly impacted by excavation on the adjacent Thomas Property. Brent Click, as owner of the Click Property, will testify that the current value of the Click Property, in the absence of the damages caused by Defendants, would be \$275,000.00. Mr. Click will testify that the diminution in value caused by Defendants' negligent excavation which has impacted and continues to

impact the gravel driveway and will cause eventual loss of the back building, has reduced the value of the Click Property by one-third (1/3), to \$192,500.00.

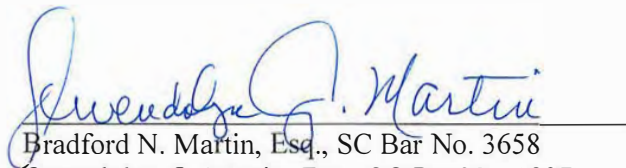
Date Damage Occurred: Beginning in August 2018 and continuing to the present and will continue until appropriate retaining wall is installed.

Reason it Occurred: Defendants' improper excavation has compromised the stability of Plaintiffs' property and back building to such an extent that it has caused, and continues to cause, erosion and damage to Plaintiffs' property and has caused the walls and foundation of Plaintiffs' back building to crack, which damage is evident from a visual examination and is continuing. See Plaintiffs' Second Supplemental Response to Defendants' Third Set of Interrogatories, Items 2 and 3(a).

The way amount was calculated and persons aiding in calculation: Cost of retaining wall calculated by David Hall based on his professional expertise and knowledge of standard professional fees for design and labor for grading, installation, and backfilling, and costs of materials. Cost of moving to new location calculated by Brent Click based on several years of experience moving production machinery, utilizing Advanced Rigging & Machinery Movers, to and from the Click Property. Brent Click's opinion concerning the value of the property and diminution in value is based on his familiarity with similar industrial properties that have come on the market subsequent to his purchase of the Click Property. There are unique characteristics of the Click Property, including the extra thickness of the floors in the front and back buildings, 3-phase electrical in both buildings, and the significantly high drive-by traffic count.

April 22, 2022

Respectfully submitted,



Bradford N. Martin, Esq., SC Bar No. 3658

Gwendolyn G. Martin, Esq., SC Bar No. 1897

Laura W. H. Teer, Esq., SC Bar No. 16698

BRADFORD NEAL MARTIN & ASSOCIATES, PA

Post Office Box 10410

Greenville, South Carolina 29603

(864) 552-9990

ATTORNEYS FOR PLAINTIFFS

CLICK PROPERTIES, LLC and

HYPER FORMANCE, LLC

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' MOTIONS IN
*LIMINE***

COME NOW Defendants, by and through their undersigned counsel, and for their Motions *in Limine* state as follows:

In order to ensure that trial of this action proceeds smoothly and efficiently, Defendants move to exclude certain testimony and evidence in accordance with the South Carolina Rules of Evidence. More specifically:

- A. Evidence regarding certain alleged interactions between the parties unrelated to the causes of action alleged must be excluded as irrelevant and more prejudicial than probative.
- B. Evidence regarding any property boundary dispute or adverse use of the Thomas Property prior to October 19, 1998 must be excluded under the doctrine of *res judicata*.
- C. Plaintiffs' proffered expert, David Hall, should not be permitted to testify because the scientific testimony he offers is unreliable.
- D. Mr. Click's lay witness testimony as to the value of his property must be limited only to that of which he personally has knowledge.

This motion is supported by the South Carolina Rules of Civil Procedure, applicable statutes and case law, and such other supporting memoranda, authority, and/or attachments as are filed or presented before or at the hearing on this Motion.

Respectfully submitted this 9th day of May, 2022.

CAMPBELL TEAGUE LLC

/s/ Beau Brogdon

Emily O'Brian (SC Bar #101824)

Beau Brogdon (SC Bar #103803)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

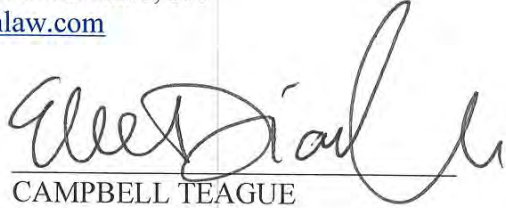
Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on May 9, 2022 by email:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

5/9/2022
DATE


CAMPBELL TEAGUE
Elee Diamaduros, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTIONS *IN LIMINE***

Plaintiffs and Defendants own adjacent parcels of commercial property. (See attached Exhibit 1, 2022.03.25 Aff. of Brent Click, ¶¶ 2 & 3). Brent Click purchased the property at 3668 Calhoun Memorial Highway (the “Click Property”) on February 10, 2017 then transferred it to Click Properties, LLC. (*Id.* at ¶2). Thomas SC Properties, LLC purchased 3670 Calhoun Memorial Highway (the “Thomas Property”) on May 23, 2018. (*Id.* at ¶3).

In August of 2018, Thomas excavated a portion of his land to build a driveway and parking area. (Exhibit 1, ¶3). Over a year and a half after the excavation work was completed, Plaintiffs filed this lawsuit alleging two basic categories of claims—(i) claims for damage caused by the excavation performed on Thomas’s land and (ii) claims asserting a property interest in Thomas’s private property. (See Plaintiffs’ Complaint). More particularly, Plaintiffs alleged causes of action for the following: (1) nuisance per se; (2) negligence; (3) declaratory judgment- quiet title; (4) declaratory judgment- acquiescence; (5) declaratory judgment- prescriptive easement; (6) declaratory judgment- easement by estoppel; (7) declaratory judgment- easement by necessity; and (8) injunction. (*Id.*).

In order to ensure that trial of this action proceeds smoothly and efficiently, Defendants move to exclude certain testimony and evidence in accordance with the South Carolina Rules of Evidence.

A. EVIDENCE REGARDING CERTAIN ALLEGED INTERACTIONS BETWEEN THE PARTIES UNRELATED TO THE CAUSES OF ACTION ALLEGED MUST BE EXCLUDED AS IRRELEVANT AND MORE PREJUDICIAL THAN PROBATIVE.

Throughout the course of this litigation, Plaintiffs, by and through Brent Click, have made claims regarding behaviors of Jonathan Thomas and employees of Defendants. These include unsupported claims of surveillance, yelling at Mr. Click and his wife, vandalism, and stirring up dust to affect the paint jobs performed by Plaintiffs. (See attached Exhibit 2, Deposition of Brent Click, pp. 84-87.) Mr. Click has also asserted that the first time he met Mr. Thomas, Mr. Thomas threatened him with a knife. (Exhibit 2, pp.83-84.) Defendants anticipate that Plaintiffs will attempt to offer such evidence at trial of this case. However, the above-mentioned allegations have no tendency to make the existence of any material fact relating to Plaintiffs' various claims more or less probable. As such, this irrelevant evidence must be excluded.

1. Legal Standard

For evidence to be relevant, and thus admissible, it must tend to make a consequential fact in determining Plaintiffs' claims more or less probable than without the evidence. See SCRE 401, 402. Additionally, otherwise relevant evidence should be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. See SCRE 403.

2. Argument

Plaintiffs' lawsuit relates to the boundary between the Thomas and Click Properties and damages Plaintiffs allege they incurred because of excavation work on the Thomas Property. Evidence of the altercation and the alleged conduct of Thomas's employees is entirely irrelevant as it does not tend to make *any* consequential fact related to Plaintiffs' claims more or less probable than without the evidence. For example, with regard to the altercation, Click alleges that the first time he met Thomas that Thomas threatened him with a knife. (Exhibit 2, pp. 83-84.) Thomas vigorously contests Click's account and contends that Click came onto Thomas' property in an uproar about some tires the wind blew from Thomas' property into one of the vehicles Click was painting. After Click referenced putting on boxing gloves and advanced in a threatening manner towards Thomas, Thomas pulled out a pocket knife and the argument deescalated. No matter the recounting of the altercation, how it happened and the circumstances surrounding it have *nothing* to do with the property boundary or excavation work. Therefore, testimony regarding this altercation should be excluded.

Moreover, even if the Court found this evidence has some probative value in relation to Plaintiffs' claims, the probative value is *substantially* outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. See SCRE 403. Therefore, Defendants respectfully request that the Court preclude Plaintiffs from offering such evidence, testamentary or otherwise, on the grounds that it is wholly irrelevant, unfairly prejudicial, likely to confuse the issues, and likely to mislead the jury.

B. EVIDENCE REGARDING ANY PROPERTY BOUNDARY DISPUTE OR ADVERSE USE OF THE THOMAS PROEPRTY PRIOR TO OCTOBER 19, 1998 MUST BE EXCLUDED UNDER THE DOCTRINE OF RES JUDICATA.

On November 7, 1997, Betty Ramey (former owner of the Click Property) sued Wallace Merck (the former owner of the Thomas Property) for adverse possession and to quiet title related to the two properties. (See attached Exhibit 3.) The parties to the 1997 Lawsuit resolved their dispute, and on October 19, 1998, they entered a Stipulation of Dismissal. (See attached Exhibit 4.) The dismissal was with prejudice and explicitly stated that “the matter is determined to be *res judicata*.” *Id.* As a result of this quiet title action, Betty Ramey sold the Click Property with the boundaries as defined in the 1996 survey. (See attached Exhibit 4.)

Defendants therefore move *in limine* requesting this Court to exclude evidence of actions of the former property owners, including any agreements they had regarding the property boundary location, their use of the properties, or any claims of adverse possession of portions of the Thomas Property. As a consequence, any allegations of privity to show adverse possession and/or use of the Thomas Property by owners of the Click Property must be cut off as of October 19, 1998.

1. Legal Standard

“The doctrine of *res judicata* provides that final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were or could have been raised in that action.” *Venture Engineering, Inc. v. Tishman Construction Co. of South Carolina*, 360 S.C. 156, 162, 600 S.E.2d 547, 550 (2004) (quoting *In re S.N.A. Nut Co.*, 215 B.R. 1004, 1008 (1997)). To establish *res judicata*, one “must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” *Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

2. Argument

Plaintiffs should be precluded from relitigating the claims that Betty Ramey brought or could have brought in 1997 Lawsuit. That case that was dismissed with prejudice October 19, 1998 under the doctrine of *res judicata*. The elements to show *res judicata* are clear:

- (1) Plaintiffs are in privity with Betty Ramey and Defendants are in privity with Wallace Merck, John Cobb and Cobb Sales Company, Inc.;
- (2) The subject matter of the 1997 action consisted of the boundary line and the rights to use of the Thomas Property; and
- (3) The dismissal of the 1997 Lawsuit served as a final adjudication of the issues regarding the actions Betty Ramey brought or could have brought in the suit.

Thus, as of October 19, 1998, no dispute existed as to the property boundary lines and there was no surviving claim of adverse possession or use. Therefore, evidence prior to October 19, 1998 must be excluded as those issues cannot be relitigated.

C. PLAINTIFFS' PROFFERED EXPERT, DAVID HALL, SHOULD NOT BE PERMITTED TO TESTIFY BECAUSE THE SCIENTIFIC TESTIMONY HE OFFERS IS UNRELIABLE.

At the deposition of David Hall, the most consistent answer provided was that he did not have enough information to make certain conclusions. Therefore, Defendants move to exclude testimony on these issues.

1. Legal Standard

Expert testimony is governed by South Carolina Rules of Evidence 701-705. To determine whether expert testimony is admissible at trial, the court must consider (1) whether the subject matter is beyond the ordinary knowledge of a jury, (2) whether the proposed expert has the

necessary knowledge and skills to qualify as an expert, and (3) whether the substance of the expert testimony is reliable. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74–75, 735 S.E.2d 650, 655–56 (2012) (citing *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009)). In *Graves*, the court further clarified that scientific testimony must be assessed as follows:

(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.

Id. at 74, 735 S.E.2d at 655 (quoting *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999)). “Thus, while a challenge to an opinion's reliability generally goes to weight and not admissibility, this ‘familiar evidentiary mantra’ may not be invoked until the circuit court has vetted its reliability in the first instance and deemed the testimony admissible.” *Id.* at 75, 735 S.E.2d at 656.

In this case, the proffered testimony of Plaintiffs’ proposed expert, David Hall, does not meet the reliability standards required. The underlying facts and data that Mr. Hall relies upon for his conclusions are unreliable, mere conjecture, and are not derived from properly applied scientific methods.

Mr. Hall relies heavily on factor of safety calculations performed by Bill Matthews of Bunnell-Lammons Engineering (See attached Exhibit 5, Deposition of David Hall, pp. 16:6-17:11). However, Mr. Hall admits that Mr. Matthews needed additional information—borings and a “very detailed survey”—to conduct his analysis. (*Id.* at pp. 20:25-21:12). Mr. Matthews was able to have borings conducted, but his latest report notes that he was still unable to complete the pocket penetrometer test and therefore he still makes assumptions to conduct his calculations. (See attached Exhibit 6, PL 166.) Discovery has closed and no other testing has been done.

Additionally, while an expert certainly can rely on the information and opinions of others, here Mr. Hall is essentially serving as a mouth-piece for Mr. Matthews. Mr. Matthews was never

disclosed in discovery as a potential witness. Thus allowing his analysis and conclusions to come in through Mr. Hall without the ability to vet Mr. Matthews' qualifications, processes, and overall reliability of his analysis would be unfairly prejudicial to Defendants. For example, when questioned about what Mr. Matthews looked at when visiting the Click and Thomas Properties, Mr. Hall responded, "Bill would have to answer that question." (Exhibit 5, p 23:2-5). Therefore, the work performed by Mr. Matthews should be excluded as the standard for providing expert testimony as articulated in *Graves* above cannot be met.

With regard to the work performed by Mr. Matthews, Mr. Hall testified that he does not know where the property line is in relation to the cross section provided (*Id.* at p. 24:14-22), does not know what the different colors on the cross section indicate (*Id.* at p. 25:10-17), cannot testify as to what Mr. Matthews' conclusion of an "impending failure" actually means (*Id.* at pp.26:17-27:19), and does not know the scientific parameters/degree of certainty of Mr. Matthews' factor of safety calculations (*Id.* at p.37:2-20). The only work Mr. Hall did himself was some survey work (*Id.* at pp.37:21-38:10), but with regard to that work, Mr. Hall states that he would need to have more precise data (*Id.* at p.39:8-23). He further admits he does not know the distance from the excavation work to Click's building (*Id.* at 42:15-20) and that he would need to conduct more analysis to determine the area of impact from the excavation work (*Id.* at pp. 42:21-43:19).

Mr. Hall further admits that there are a number of reasons the concrete slab in Click's back building could be cracking, but then concludes without *any* reasoning that the excavation work done by Thomas accelerated the cracking. (*Id.* at pp.17:22-18:5). Later, Mr. Hall admitted that he needed additional information to make firm conclusions. (*Id.* at pp.45:24-47:18). Therefore, based on Mr. Hall's own admissions, his analysis does not meet the required reliability standards to be admissible. Defendants ask that such unreliable evidence be excluded.

In addition to the above limitations on reliability of Mr. Hall's analysis, Mr. Hall's testimony must be also limited only to what he is able to opine on within his field of expertise and based on the available scientific evidence. Accordingly, Mr. Hall cannot testify regarding the prior use of the properties (*Id.* at pp.68:20-72:4), whether a permit was required in this particular case for Thomas to perform the excavation work that he did (*Id.* at p.73:7-10), or the quantification of Plaintiffs' alleged damages (*Id.* at 73:13-18).

D. MR. CLICK'S LAY WITNESS TESTIMONY AS TO THE VALUE OF HIS PROPERTY MUST BE LIMITED ONLY TO THAT OF WHICH HE PERSONALLY HAS KNOWLEDGE.

Lay witness testimony is appropriately limited by South Carolina Rule of Evidence 701, which states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training.

"Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.*

"Ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert." *Barton v. Superior Motors, Inc.*, 309 S.C. 491, 494, 424 S.E.2d 524, 526 (Ct. App. 1992). However, this general proposition does not suddenly enable a property owner to become an expert in the field of appraisals or commercial real estate comparisons. Indeed, commercial real estate valuation and

pricing is widely known to require more specialized analysis and competency than that required to evaluate residential real estate or the personal property (car) at issue in *Barton*. Thus, Mr. Click's testimony regarding the value of the alleged damages to his property must be limited to that which is based on his *own* knowledge of his property, the percentage of the property allegedly damaged, and the impact on his use. In other words, his testimony must still be "rationally based on the perception of the witness." SCRE 701.

South Carolina law does provide that if the property owner so completely lacks knowledge as to the value of the property that the property owners' testimony is worthless, then such testimony can be excluded. *Barton*, 309 S.C. at 494, 424 S.E.2d at 526. Here, Mr. Click cannot testify beyond his own personal knowledge. Thus, any evidence offered by Mr. Click beyond his own property—such as the current real estate market, other commercial properties on the market, values of other comparable commercial properties, features that are valued in the market—must be excluded. He is not an appraiser nor a real estate agent, and he does not otherwise have the requisite knowledge or experience to be qualified as an expert in such areas. Thus, he cannot offer speculative testimony beyond his own knowledge of his own property. Evidence of damages is not permitted to be based on conjecture, guess, or speculation. *Whisenant*, 277 S.C. at 13, 281 S.E.2d at 796.

Respectfully submitted this 9th day of May, 2022.

CAMPBELL TEAGUE LLC

/s/ Beau Brogdon

Emily O'Brian (SC Bar #101824)

Beau Brogdon (SC Bar #103803)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on May 9, 2022 by email:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

5/9/2022
DATE

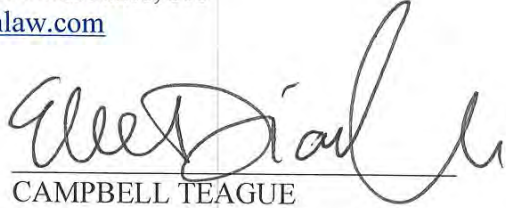

CAMPBELL TEAGUE
Elee Diamaduros, Paralegal

Exhibit 1

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I have owned 3668 Calhoun Memorial Highway, Greenville, South Carolina (the "Click Property") since February 10, 2017, which is used to operate Hyper Formance, LLC, a body and machine shop owned by my wife Shelly and me.
3. The adjoining property to the west, located at 3670 Calhoun Memorial Highway, has been owned by Defendants since May 2018. In August 2018, Defendants' owner Jonathan Thomas did his own excavation of Defendants' property (see photos A and B) that has caused significant damage to the Click Property. Defendants also decided to block my use of a gravel turn-around area that Hyper Formance had always used and, upon information and belief, that prior owners of the Click Property had used going back to 1978. Therefore, I had to file this lawsuit

and ask for an Injunction.

4. The only entrance (or possible way of entrance) by vehicle into the building that houses my paint booth (the "Back Building") is through the gravel turn-around area. The paint booth is essential for our body and machine shop, which are not possible without a paint booth. I paid approximately \$30,000 for the paint booth, which was custom spec'ed for and assembled in the Back Building (see Photo C) and has been in the Back Building since shortly after I bought the Click Property.
5. Upon information and belief, prior owners of the Click Property used the turn-around area continuously, openly, and as their own property. (See Affidavit of Bradley S. Dobson dated March 8, 2022).
6. Shelly and I use the paint booth just as much now as when the Temporary Injunction was granted and have continuously used the paint booth since the Temporary Injunction was granted. All paint booth work is done after Defendants close All-Tech and Mr. Thomas and his employees leave for the day or on days when they are closed for business. Shelly and I first had to change the paint booth schedule when Defendants' excavation (see Photos D and E) was done in August 2018. So much dust was in the air we could only paint at night. When we started painting again in the daytime, Defendants' employees, obviously for sport, would drive cars into Defendants' dusty parking lot, driving round and round (making "donuts") and driving up the hill towards my property spinning the wheels, intentionally stirring up huge dust clouds that were drawn through the paint filters into the paint booth, which must be maintained as a sterile environment. This damaged the paint work Shelly and I had performed. This damage required excessive additional work, typically adding 20% more time. We went back to using the paint booth only at

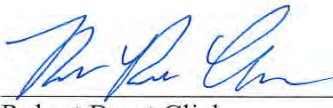
night and on days when All Tech is closed and this is true to the present time, because this harassment was so damaging. This is why Jonathan Thomas never sees us using the paint booth because if he knows we are painting he is going to mess with us. The paint booth is required for all body work and for almost all parts work.

7. The paint booth work is done in batches, on average three times per week. Items in the turn-around area are moved before we transport the vehicles and parts to the paint booth. Vehicles going into the paint booth usually are not drivable or have been disassembled (see Photo F) and must be loaded onto a trailer (see Photo G) and trucked up the gravel driveway, through the turn-around to the Back Building's overhead doors and offloaded into the paint booth (See Photo H). Parts usually require transport on a large pallet by truck and trailer, or in the truck bed, or by bobcat and placed into the paint booth. Due to the angle needed to enter the paint booth, the turn-around area is absolutely necessary for access.
8. I have reviewed the 14 photos that Defendants submitted and the use of the turn-around area is no different in those photos from the ways we have always used the turn-around area, including for storage, parking, and having other stationary items in the turn-around (see Photos I through L). We are complying with the Judge's Order because what we do now is what we have always done before, the status quo. Some of the items shown in Defendants' photos are not even in the turn-around area. There are three customer vehicles that have been at the Back Building since before the Temporary Injunction. These are under Defendants' carports. My trailers are left in the turn-round due to problems with repeated vandalism of my trailers by Defendants' employees when I leave them down the hill in the front parking lot. For many months I have placed several items, such as the attachment to the bobcat

and the cement mixer, close to the excavated embankment to try to mitigate the ongoing erosion caused by Defendants' excavation, by slowing the flow of water over the embankment.

9. I face the same devastating loss of business income as I did at the previous injunction hearing if I am not allowed to continue to use the gravel turn-around area.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

SWORN TO before me this 24th
day of March, 2022.



Printed Name of Notary:

Gwendolyn G. Martin
Notary Public for South Carolina
My Commission Expires: 05/29/2029
[Seal]

Exhibit 2

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

- - -

CLICK PROPERTIES, LLC,	:	Case No.
and HYPER FORMANCE, LLC,	:	2020-CP-39-00266
Plaintiffs,	:	
vs.	:	
THOMAS SC PROPERTIES, et al.	:	
Defendant.	:	

RULE 30(B)(6) DEPOSITION OF CLICK PROPERTIES, LLC,
and HYPER FORMANCE, LLC, by ROBERT BRENT CLICK

DATE TAKEN: Tuesday, September 22, 2020

TIME BEGAN: 10:01 a.m.

TIME ENDED: 12:36 p.m.

LOCATION: Given Remotely

REPORTED BY: Karen Kidwell, RMR, CRR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 REMOTE APPEARANCES:

2
3 CAMPBELL TEAGUE, LLC
4 BY: EMILY O'BRIAN, ESQ.
5 16 West North Street
6 Greenville, SC 29601
7 864.326.4186
8 emily@campbellteague.com
9 Representing the Plaintiffs
10
11

12 BRADFORD NEAL MARTIN & ASSOCIATES
13 BY: BRADFORD NEAL MARTIN, ESQ.
14 201 West McBee Avenue
15 #302
16 Greenville, SC 29601
17 864.552.9990
18 bmartin@bnmlaw.com
19 Representing the Defendant
20
21
22
23
24
25

I N D E X

WITNESS/EXAMINATION	Page
ROBERT BRENT CLICK	
By Ms. O'Brian	5

E X H I B I T S

Number	Description	Page
Exhibit 1	Plat of Boundary Survey for Betty M. Ramey, PL 49	19
Exhibit 2	Colored photograph of 3668 Calhoun Memorial Highway, PL 39	43
Exhibit 3	9/3/2018 Letter, Timothy Garr to S. Allan Hill, Re: Click Properties, LLC and Thomas SC Properties, LLC, PL 36	78

1 Q. Do you know if he ever -- if Mr. Hill ever
2 had any discussions with counsel for Mr. Thomas?

3 A. I am -- I never heard anything.

4 Q. All right. So Mr. Hill didn't -- have any
5 of those conversations?

6 A. I said, "Why would I buy something I
7 already had the right to use, and why would I buy
8 something that's going to erode away very quickly?"

9 Q. And so the -- in the letter, again, they
10 talk about items of yours that are on the Thomas
11 property. Did you ever move those items?

12 A. No, ma'am.

13 Q. Okay. I want to back up a little bit and
14 talk a little bit more about your -- the relationship
15 with Mr. Thomas and with All-Tech that your business
16 has had. We spoke earlier, and you said that you had
17 approached Jimmy Watkins because relations with
18 Mr. Thomas were not good. Tell me a little bit more
19 about that, and what was going on between the two of
20 you.

21 A. J.T. had just been always very aggressive
22 toward us.

23 Q. How so?

24 A. The day I met him, he pulled a knife on
25 me.

1 Q. How did that happen?

2 A. I brought doughnuts over, and I said,
3 "Hey, your father-in-law said you're taking over over
4 here. I came to introduce myself. I have a little
5 shop next door."

6 And he held a knife to my throat: "I want
7 to let you know who's in charge around here, and I'm
8 not going to take any shit," and et cetera and
9 et cetera. And he went on about how he was head dog.
10 And I just --

11 Q. I'm sorry. Go ahead.

12 A. You go ahead.

13 Q. You had never met Jonathan before then?

14 A. No, no. It was quite a reaction to
15 meeting somebody new.

16 Q. What -- what, if any, issues did you have
17 after that?

18 A. Just kind of -- there would be -- I work a
19 lot of hours to begin with. And I would keep an eye
20 on his property. And back when Greg was there, it
21 was a great little thing, because he was a very
22 early, early morning person, and I liked -- I liked
23 working more in the cooler evenings.

24 And so we kept an eye on each other's
25 property. And when J.T. took over, that stopped. So

1 it was -- it was very stark change.

2 Q. Did you ever confront J.T. or any of his
3 employees?

4 A. Many times. J.T. would get his employees
5 to -- he wouldn't want to -- after a while, he
6 realized like, "Oh, I shouldn't be continually
7 messing with him." So he would get his employees to
8 mess with my wife and I.

9 Q. What do you mean by continually messing
10 with you? What was going on?

11 A. You know, like if we left our gate open,
12 they would park a car up on the hill sideways, so we
13 couldn't move cars in between our two shops. A lot
14 of things like that. They would do burnouts through
15 our parking lot. They would back into our vehicles
16 and then just drive off, and they were doing it in
17 other customer vehicles, so there wasn't anything we
18 could do about it.

19 And they would -- my wife would be walking
20 up and down the hill, and they would mutter and yell
21 things at her. And -- why would somebody on their
22 first day of work start messing with the neighbor
23 unless they were told previously to do so?

24 Q. And how did you and your wife respond?

25 A. We ignored it for as best we could. A

1 couple times it did get to us. I mean, it was -- it
2 was consistent, and it was daily. And it was -- it
3 was pretty terrible.

4 Q. And you said that a few times that it got
5 to you. What did -- what did you do in response?

6 A. I would get angry.

7 Q. And would you yell at Mr. Thomas or his
8 employees?

9 A. I always directed it at Mr. Thomas. I was
10 like, like "You're telling people to do this. Stop
11 this. Just leave us alone. Let us work. You know.
12 Don't you have better things to do?"

13 Q. Did you ever make any threats to
14 Mr. Thomas or his employees?

15 A. No.

16 Q. Did you ever make any threats about his
17 business?

18 A. No.

19 Q. Did you ever make any posts on Facebook on
20 behalf of the companies regarding Mr. Thomas's
21 business?

22 A. Personally, like they kept parking on my
23 grass in front, and then I put some wooden posts in
24 there, and I took a picture of it, and I said, "This
25 is going to stop those guys from using my -- parking

1 the cars all over the grass."

2 Because they would fill up the entire
3 front property of ours with cars, and people that --
4 people that came over to our shop noted the
5 aggression from them. And so it was a -- very much a
6 thing.

7 Q. Did you ever make comments to any of his
8 customers?

9 A. His customers are always on our property.
10 And what happens is I go down there; I say, "Hey, can
11 you please move? I need to use my property. I need
12 to get out. I need to go run errands."

13 And oftentimes they would -- if they're
14 rude to me, like, "I'm waiting on -- I'm waiting on
15 somebody next door."

16 "Okay, well, I understand that. But can
17 you use their driveway next time?"

18 And then sometimes they come back and
19 they're like -- they'll snap back at you, "I'm --
20 I'll only be here 30 more minutes." And I was
21 like -- well, at that point, I'll be rude and say, "I
22 don't really give a care. And you can get off my
23 property." At that point, I would be rude.

24 Q. Okay. I want to talk about the damages
25 that you've alleged in this lawsuit. And it looks

Exhibit 3

87-CP-39- 856

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	CASE NUMBER _____
Betty M. Ramey,	)	
	)	
Plaintiff,	)	
VS.	)	COMPLAINT
	)	(Non-jury)
Wallace G. Merck, John C. Cobb, Cobb Sales	)	
Company, Inc.,	)	
	)	
Defendants.	)	
_____	)	

FOR A FIRST CAUSE OF ACTION

Plaintiff would show unto the Court as follows:

1. Plaintiff is a citizen and resident of the County of Pickens, State of South Carolina, and this matter involves real property located in the County of Pickens, State of South Carolina.
2. Plaintiff is informed and believes that Defendants Wallace G. Merck and John C. Cobb are citizens and residents of the County of Pickens, State of South Carolina.
3. Plaintiff is informed and believes that Cobb Sales Company and Cobb Sales Company, Inc., are one and the same entity, and, in any event, are businesses organized and existing under the laws of the State of South Carolina and doing business in the County of Pickens, State of South Carolina.
4. Plaintiff is informed and believes that this Court has jurisdiction of the subject matter and parties to this action.

5. By Deed dated May 1, 1969, recorded in the Book 11V at Page 389 in the RMC Office for Pickens County, South Carolina, Cobb Sales Company received title to certain real property described in said deed, a portion of which property is the subject matter of this action.

6. Thereafter, by deed dated January 31, 1970, and recorded in Deed Book 12C at Page 91, Cobb Sales Company conveyed unto Major R. Ramey certain real property as described in said deed, a copy of which is attached hereto and incorporated herein by reference.

7. Subsequently, by deed dated October 8, 1974, recorded in Deed Book 12W at Page 442, M. R. Ramey ostensibly obtained title to a 15 foot wide strip of property, which strip was a portion of the property previously conveyed into Cobb Sales Company. This deed, however, was executed by Defendant John C. Cobb, individually and not Cobb Sales Company.

8. Major R. Ramey, also known as M. R. Ramey, thereafter died on October 21, 1994, devising such real property to his wife, Plaintiff herein, as evidenced by Pickens County Probate file 94ES3900537. The Personal Representative of the Estate of M. R. Ramey conveyed to Plaintiff herein by Deed of Distribution dated March 21, 1995, and recorded in Deed Book 296 at page 103 the property heretofore conveyed to Major R. Ramey and M. R. Ramey by deeds previously referred to which deeds were recorded in Deed Book 12C at Page 91 and Deed Book 12W at Page 442.

9. Plaintiff is informed and believes that Cobb Sales Company intended to convey to Major R. Ramey, also known as M. R. Ramey, property shown on plat of property prepared by John C. Smith, registered land surveyor, which plat is dated November 1, 1971, a copy of which plat is attached hereto and incorporated by reference. Said plat shows a .359 acre tract with an additional strip to the west of said tract.

10. By deed recorded on December 31, 1985 in Deed Book 14S at Page 997, Cobb Sales Company, Inc., conveyed unto Defendant Wallace G. Merck a portion of property described in said deed, a copy of which deed is attached hereto and incorporated here by reference. The description in said deed does not match the metes and bounds of the survey to which it refers, but purports to overlap the property conveyed to Major R. Ramey in Deed Book 12W at Page 442.

11. Plaintiff is informed and believes that Cobb Sales Company and Cobb Sales Company, Inc. are the same entity and both are the alter ego of John C. Cobb who executed all of the deeds referred to herein. John C. Cobb executed the deed to M. R. Ramey recorded in Deed Book 12W at Page 442 in his individual capacity, inadvertently, but intended to convey it for the corporation.

12. Plaintiff would show that her predecessor in title occupied and used as his own the property shown on a more recent plat dated August 28, 1996, entitled "Boundary Survey for Betty M. Ramey," and that Defendant Wallace G. Merck has known and acquiesced in Plaintiff's predecessor's use of such property

13. Plaintiff is informed and believes that title to subject property described and shown on the most recent plat should be quieted in her to the exclusion to all others based on the previous grantor's intent to convey subject property to her predecessor in title.

FOR A SECOND CAUSE OF ACTION

ADVERSE POSSESSION

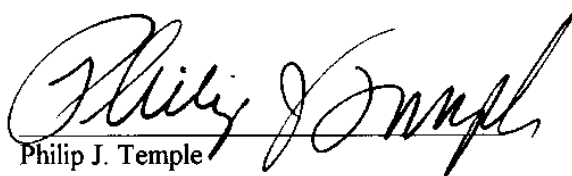
1. All the preceding allegations not inconsistent herewith are incorporated herein by reference as though set forth herein below.

2. The use by Plaintiff's predecessor in title of the property described and shown on the most recent plat referred to hereinabove was adverse to the possession of any and all others in the following particulars: (a) It was continuous from the date he received title to subject property as alleged herein above; (b) It was hostile to all others claiming an interest in subject property; (c) It was open and known to all others on or in surrounding properties; (d) It was notorious in that the surrounding property owners knew the boundaries to which Plaintiff's predecessor in title claimed ownership; and (e) It was exclusive to himself and to no others.

3. Plaintiff is informed and believes that title to subject property shown on the most recent plat referred to hereinabove should be quieted in her pursuant to the adverse possession of Plaintiff's predecessor in title.

WHEREFORE, Plaintiff prays that this Court would quiet the title in her name alone and for such other and further relief as this Court shall deem just and proper.

Temple, Mann, Briggs & Hill



Philip J. Temple
S.C. Bar No.: 5504
205 East Broad Street
Greenville, SC 29601
(864) 242-4995

Attorneys for the Plaintiff, Betty M. Ramey

Greenville, South Carolina

November 7, 1997

Exhibit 4

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
C.A. NO. 97-CP39-856

Betty M. Ramey,)
Plaintiff,)

STIPULATION OF DISMISSAL

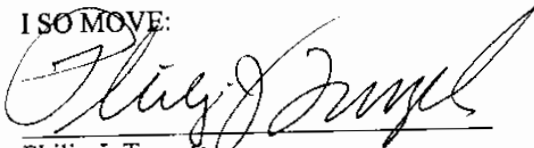
v.)

Wallace G. Merck, John C. Cobb,)
Cobb Sales Company, Inc.)
Defendants,)

The undersigned attorney for the Plaintiff, by and with the consent of counsel for the Defendant, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, hereby gives notice of the dismissal of the Summons and Complaint in the above-captioned action, with prejudice. Defendants counsel, by his consent, hereby stipulates to the dismissal of the Summons and Complaint, with prejudice, and the matter is determined to be res. judicata.

October 19, 1998

I SO MOVE:



Philip J. Temple
Temple, Mann, Briggs & Hill
205 East Broad St.
Greenville, SC 29601
Attorney for the Plaintiff

I CONSENT:



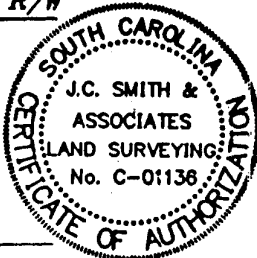
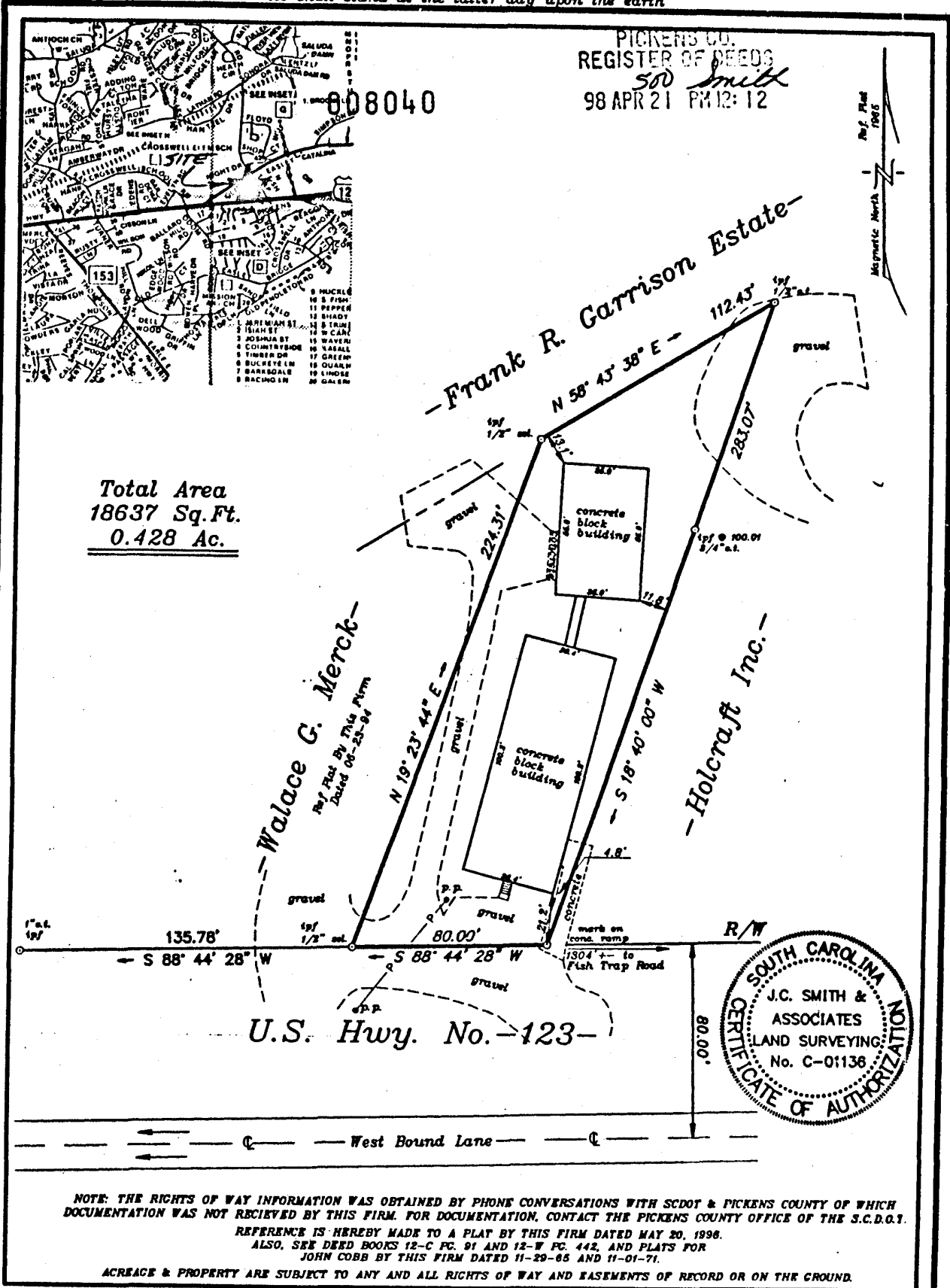
William A. Robinson
Robinson Law Firm, P.A.
P.O. Box 738
Easley, SC 29641-0738
Attorney for the Defendants

OCT 30 1 31 PM '98
OLIVER A. REATY
CLERK OF COURT
PICKENS, SC

FILED FROM COMINGALLY FILED - 2022 OCT 23 02:11 PM - PICKENS COUNTY - COMMUNICATIONS - CASE# 202200433002285

He shall stand at the latter day upon the earth

BOOK 34 PAGE 334



Boundary Survey for

Betty M. Ramey

SINCE 1909

SMITH

J.C. Smith & Associates
R.L.S. #7882
P.O. Box 1090 Easley, SC
29641/864-859-5729
Fax 855-8022

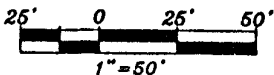
County Pickens

South Carolina

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

Thomas E. Belcher 08/28/96

J. C. Smith PLS# 7882
Thomas E. Belcher PLS# 16128



STATE TAX 195.00
COUNTY TAX 22.50
EXEMPT _____

BOOK 444 PAGE 202

OLSON, SMITH, JORDAN & COX, P.A.
Post Office Box 1026
Easley, South Carolina 29641

TITLE TO REAL ESTATE
STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

KNOW ALL MEN BY THESE PRESENTS:

That I, BETTY M. RAMEY, in the State aforesaid, in consideration of the sum of SEVENTY-FIVE THOUSAND AND NO/100THS (\$75,000.00) DOLLARS to the grantor in hand paid at and before the sealing of these presents by the grantees, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said BRADLEY S. DOBSON AND TAMMY M. DOBSON, their heirs and assigns forever:

ALL that certain piece, parcel or tract of land situate lying and being in the State of South Carolina, County of Pickens, containing 0.428 acres as shown on plat for Betty M. Ramey, prepared by J. C. Smith & Associates Surveyors, dated August 28, 1996, and, with reference to said plat, being more particularly described as having the following measurements and boundaries, to-wit:

BEGINNING on a point on the Northern side of US Highway No. 123, at the common corner of the herein described Tract and other property of Wallace G. Merck, thence running along the common line of said Tracts N. 19-23-44 E. 224.31 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of the Frank R. Garrison Estate N. 58-43-38 E. 112.43 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of Holcraft, Inc., S. 18-40-00 W. 283.07 feet to a point on the Northern side of US Highway No. 123; thence running along the Northern side of said US Highway No. 123 S. 88-44-28 W. 80.00 feet to the point of beginning.

008043
PICKENS CO.
REGISTER OF DEEDS
JAN 21 11:15 AM '22

400 PAGE 203

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to those certain restrictions recorded in Deed Book 12-C, at Page 91 in the R/D Office for Pickens County, South Carolina.

This being the same property conveyed to Betty M. Ramey by Deed of Distribution from the Estate of Major Redmond Ramey, dated 3/21/95 and recorded in Deed Book 296, at Page 103, in the R/D Office for Pickens County, South Carolina. Also see Quitclaim Deed from Wallace G. Merck, et.al. to Betty M. Ramey, dated 3/19/98 and recorded in Deed Book 422, at Page 198 in the R/D Office for Pickens County, South Carolina.

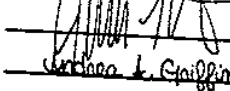
TOGETHER with all and Singular the Rights, Members, Hereditments and Appurtenances to the said premises, belonging, or in anywise incident or appertaining.

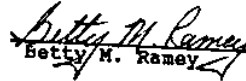
TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantees hereinabove named, and their heirs and assigns forever.

And the grantor does hereby bind the grantor and the grantor's Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the grantees hereinabove named, and the grantee's Heirs and Assigns against the grantor and the grantor's Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's hand and seal this 16th day of April in the year of our Lord One Thousand Nine Hundred and Ninety Eight.

Signed, Sealed And Delivered
in the presence of


William L. Griffin

 L.S.
Betty M. Ramey

448 PAGE 204

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

AFFIDAVIT OF PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within written deed, and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 16th day of April, 1998.

Jordan L. Griffin

Notary Public for South Carolina
My Commission Expires: 10/24/99

Grantee Address: 3608 Calhoun Memorial Hwy.
Greenville, SC 29611

TMS No.: L13-00-168A

JIMMY McCOLLUM, Tax Assessor
222 McDaniel Ave., B-8
PICKENS, SC 29671

Exhibit 5

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

CLICK PROPERTIES, LLC and)
HYPER FORMANCE, LLC,)
 Plaintiffs,)
 vs.)
THOMAS SC PROPERTIES, LLC)
and ALL-TECH TIRE and AUTO))
REPAIR, LLC,)
 Defendants.)

D E P O S I T I O N

WITNESS: WILLIAM DAVID HALL
DATE: March 23, 2022
TIME: 9:57 a.m.
LOCATION: Campbell Teague
 16 West North Street
 Greenville, South Carolina
REPORTED BY: Treasa Hix

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2
3 BRADFORD N. MARTIN, Esquire
4 GWENDOLYN G. MARTIN, Esquire
5 Bradford Neal Martin & Associates, PA
6 Post Office Box 10410 (29605)
7 201 West McBee Avenue
8 Suite 302
9 Greenville, South Carolina 29601
10 pmccomb@bnmlaw.com

11 Attorney for the Plaintiffs,
12

13 EMILY O'BRIAN, Esquire
14 Campbell Teague
15 16 West North Street
16 Greenville, South Carolina 29601
17 elee@campbellteague.com

18 Attorney for the Defendants.
19

20 ALSO ATTENDING: Brent Click and Elee Diamaduros, paralegal to
21 Emily O'Brian.
22
23
24
25

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Stipulations, Non-Waiver and Oath.....	4
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EXHIBITS

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DEFENDANT'S EXHIBIT NUMBER FIVE, Betty Ramey Boundary, Survey, 1 Page.....	9
DEFENDANT'S EXHIBIT NUMBER SIX, Miscellaneous Photographs, 21 Pages.....	62
(Defendant's Exhibits One through Six were marked prior to the commencement of the deposition.)	

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 MR. MARTIN:

2 I think that's boring.

3 EXAMINATION RESUMED BY MS. O'BRIAN:

4 Q. All right. Can you tell us what your opinion is to
5 this point?

6 A. Well, I brought Bill Matthews on of Bunnell-Lammons
7 Engineering as a site civil engineer. I can't know
8 everything about everything. My clients think I do.
9 But what has happened over time is things have gotten
10 more and more specialized and retaining walls that I
11 used to design, nobody builds anymore. They don't
12 build reinforced concrete walls. They build MSE walls,
13 so all of these products and materials have changed.
14 So there are people that are experts in pieces of what
15 I'm trying to do for a client.

16 Q. Sure.

17 A. Bunnell-Lammons is -- they are geotechnical engineers,
18 they're environmental engineers, and so they do
19 something called "global stability analysis."

20 Q. Okay.

21 A. And they can take a cross section of an embankment
22 survey information, plug it into a model and determine
23 what the factor of safety is on that embankment. So I
24 had that done. That came back that it was one point
25 one factor of safety. The standard for a safe wall is

1 one point five, not one point one. He provided me a
2 static test where it's just sitting there, and an
3 earthquake or a seismic run and it dropped to point
4 seven, I think it was, or point nine. And then he
5 concluded -- his opinion was that the wall is -- is in
6 an impending failure state. Meaning it's not stable
7 because the factor of safety is under one point five.
8 And I've -- I relied on that to -- that and other
9 things to arrive at an opinion that -- that this --
10 this embankment needs to be stabilized to protect the
11 adjacent property.

12 Q. Okay.

13 A. And -- and them too. Because if there was a failure --
14 a big failure of that wall they would be impacted as
15 well as the adjacent property.

16 Q. Okay. Have you analyzed what, if any, impact that
17 excavation has had to this point on Mr. Click's
18 property?

19 A. Well, there are clearly evidences in that upper
20 building of deterioration in terms of cracks in the
21 floor. There are a lot more than was in that photo
22 that you referred to earlier when he moved in. There
23 some differential settlement on those cracks, meaning
24 the slab is probably dropping. And it -- it can only
25 drop -- and there are a number of reasons it could

1 drop, but that building's been there, according to the
2 -- the photo records since 1978, and so whatever --
3 what -- what's been done has accelerated the cracking.
4 And so my conclusion is that this excavation has
5 accelerated the cracking in that building. But -- but
6 really the most important thing is the access to that
7 building if there was a failure to that embankment, Mr.
8 Click would not have access to that building --

9 Q. Okay.

10 A. -- because it would -- it would -- a failure would go
11 out into that gravel drive that serves his property in
12 the back.

13 Q. Okay. And I want to kind of take each of those in
14 part. Let's focus on the embankment itself to start
15 with, and then we can kind of delve more into the
16 building and what you observed related to that. As far
17 as the embankment itself you said that you have relied
18 on an opinion from Bill Matthews; is that right?

19 A. I've relied on his analysis and what he concluded, yes.
20 (Introduction of DEFENDANT'S EXHIBIT-NUMBER-TWO.)

21 Q. Okay. And I'm going to hand you what's been marked as
22 Defendant's Exhibit Two. If you'll take a look at
23 that. Is that what you received --

24 MR. MARTIN:

25 Defendant's Exhibit Two? Okay.

1 Q. Okay. So besides these three exhibits, plaintiffs' 131
2 through plaintiffs' 133, what else did you provide to
3 Bill Matthews?

4 A. We had conversations but no other documents.

5 Q. Okay. And what did you share with him in those
6 conversations?

7 A. Well, I met him at the site --

8 Q. Okay.

9 A. -- and we walked the site, stood at the base of the
10 embankment, and on top of the embankment, went in the
11 buildings, and all I was doing was providing with him
12 with an opportunity like I had to look at it and make
13 his own assessment.

14 Q. Okay.

15 A. That day he said "I'm -- I'm very concerned that --
16 that this -- when an analysis is done that this is not
17 going to meet the factor of safety." But he's basing
18 that on the steepness of the embankment.

19 Q. Okay.

20 A. And at that time when we thought it was in one to one
21 range, which nobody does embankments in one to one
22 range unless they're a long way away from where there's
23 activity and if it fail, it doesn't matter. And that
24 happens sometimes. And so that was just his gut feel.
25 But we were going to get some borings done. We were

1 going to have a very detailed survey done. And two --
2 two things are going on right now, you can't get
3 anybody to do borings because they're so backed up.
4 You can't -- can hardly get a surveyor unless you've
5 got four months to wait on them, so I went out and did
6 some survey work and created these exhibits. And Bill,
7 as he says in this report -- this preliminary report he
8 says that he's relying on his -- what he generally sees
9 in environments like this, he's making some
10 assumptions. Those would have to be tested with --
11 with geotechnical data when and if we can get a driller
12 out there to drill a couple of holes.

13 Q. Okay. All right. And looking back at the original
14 survey just so we can kind of make sure we're all
15 talking about the same thing here, when you're talking
16 about the embankment that you were analyzing, is that
17 the embankment to the left side of this gravel driveway
18 (refers to Defendant's Exhibit Number Five)?

19 A. That's showing both. It's that and at the top it
20 created a flat place to park cars. There's about an
21 eight foot embankment up there -- six to eight feet.
22 This one is the big one, it's over twelve feet in one
23 -- one spot, so.

24 Q. Okay.

25 A. A big one and little one just looking at both of those.

1 Q. Okay. Just helps with some clarity for all of us. All
2 right. So when you and Bill went out and looked at the
3 properties, were you primarily focused on the
4 embankment or was he looking at all of it as well?

5 A. Bill would have to answer that question.

6 Q. Okay.

7 A. I had him there to look primarily at the embankment,
8 but we looked at everything.

9 Q. Okay. And the email that you received back, that
10 plaintiffs' 128, is that Bill's analysis of the
11 embankment?

12 A. That's a summary of his analysis based on the two pages
13 that follow.

14 Q. Okay. All right. Can you explain for me a little bit
15 what his analysis was and what he was looking at?

16 A. Well, his -- his -- his modeling -- this global
17 stability model requires that you put in data, and that
18 data is the height, the steepness of the embankment.
19 What, if anything, is above that embankment, that could
20 an affect on that embankment. And so then he -- then
21 he makes selections on friction and something called a
22 "phi angle" and all of this technical data for removing
23 the soil in -- in certain conditions. And he plugs all
24 of that into his model and it produces this, which is
25 one thirty.

1 Q. Okay.

2 A. It -- it produces this. And these colors all have
3 meaning, meaning that some of it is coming off quickly.
4 There's a zone where the movement is leading to this
5 coming off. And then there's a total effect of that
6 condition. So that's what this is meant to do is give
7 us a visual picture of what could happen. What's
8 affected by that wall and using the data that he
9 plugged into this model.

10 Q. Okay. So if I am looking at this graph -- and I'm the
11 first to admit I'm not an engineer, but if I'm looking
12 at this, is this a cross section of that embankment?

13 A. Right.

14 Q. Okay. And so we're looking at -- to the left here that
15 lower portion would be the Thomas property; correct?

16 A. Correct.

17 Q. And then this upper portion somewhere along here is
18 where it becomes the Click property?

19 A. Right.

20 Q. Do you have where the property line is in relation to
21 this cross section?

22 A. No, I don't.

23 Q. Okay. And do you know what -- or does it matter what
24 point on that embankment this cross section was taken?
25 So I can clarify a little bit.

1 A. Well, I -- I -- I have not plotted for Bill where the
2 property line is. That could be added to that. It's
3 just not on there.

4 Q. Okay. And when we're looking on this survey and the
5 dotted line here for the gravel driveway and then the
6 property line here, do you know where along this gravel
7 driveway we're looking at this cross section?

8 A. Close to where the gravel drive intersects the property
9 line.

10 Q. Okay. Okay. All right. And you said that each of
11 these different shadings, so there's a dark green, a
12 red, a yellow, an orange, that those have different
13 meanings. Do you have a key for that?

14 A. I do not.

15 Q. Okay. Do you know what each of those means, or does
16 Bill have that information?

17 A. Bill has that information, but the orange -- the orange
18 or the part in the middle is -- is what's called the
19 "slip plane" and the -- the material in front of it is
20 coming off. And then the area behind it is affected by
21 the failure of the material in front of it. So that's
22 -- it's a progression. But -- but I can -- I can get
23 that key and so that I can explain that.

24 Q. Okay. Since we don't have that right in front of us
25 now, if we can just kind of talk through. So you said

1 this green part is what is coming off. Does that mean
2 it's actively eroding from the embankment or --

3 A. No, the model is just predicting failure.

4 Q. Okay.

5 A. And what that part in front he's saying with that model
6 is that's -- that is -- will be the first material that
7 comes down if there's a failure.

8 Q. Okay.

9 A. And so it's predicting the amount of encroachment onto
10 the neighbor that would occur if there was a failure.
11 Now, that might not be a cataclysmic failure and 30
12 feet comes off, it could --

13 Q. Okay.

14 A. -- because he says it's an impending failure. But --
15 but likely it would be a progression of failure.

16 Q. Okay. And he talks about in his email the -- well, let
17 me just follow-up on what you said. You said that he
18 talks about an impending failure. What do you mean by
19 that in your profession?

20 A. If the factor of safety for an embankment is one point
21 five -- one point five or above, no -- no failure
22 likely. I mean things can happen, but that's the
23 cutoff where it's safe.

24 Q. Okay.

25 A. But anything below one point five the embankment is not

1 safe. Now, not safe means it could fail at anytime.
2 It's -- when I stood on the top of that area where the
3 parking is getting shots, it appears to me that all of
4 the top soil on the top of that has -- has -- is
5 starting to slide down off the property, which would
6 substantiate the fact that trees have moved because
7 they're going with that top soil. There's weathered
8 rock in there. It's got a granular layer. All
9 weathered rock has granular layer above it, and then
10 top soil and overburden soil on top of that. That's
11 what comes. And so they've been cleaning up material
12 that's been coming down on their side. And I -- I
13 think that's the source. Now, impending doesn't mean
14 it's going to fail in a week, two weeks, two years. We
15 don't know. He's saying that it's not safe. There's
16 evidence that there is material coming off of that
17 embankment that's being cleaned up. And so I think
18 what he -- I'll let him answer what he thinks from
19 impending.

20 Q. Okay.

21 A. But for me that means that we could have a failure at
22 anytime based on the factor of safety of that
23 embankment.

24 Q. And when you said "failure" you mean the soil could
25 come off of the embankment? Or what exactly are you

1 A. I think that's right.

2 Q. Is that all that this graph shows, or does it give
3 additional information that the untrained eye like mine
4 is missing?

5 A. No, he's using this to determine a factor of safety, so
6 that's the other part of this. Where those two lines
7 intersect is the factor of safety.

8 Q. Okay. That's present on the embankment?

9 A. Correct.

10 Q. Okay. So that's where he came up with the 1.108 factor
11 of safety?

12 A. Yes, ma'am.

13 Q. Okay. And so this plot shows if you change any of
14 those assumptions, the phi angle or the material
15 cohesion, that would change the factor of safety?

16 A. Correct.

17 Q. Okay. Do you know -- and you may not since Bill's the
18 one that performed this, but do you know what degree of
19 certainty those assumptions are that he made?

20 A. No, Bill would have to answer that question.

21 Q. Okay. Okay. We talked a lot about this email that
22 Bill sent and the graphs that he attached, did you do
23 any other analysis yourself on the embankment?

24 A. I got enough survey shots to be able to determine what
25 the exact angle of that was.

1 Q. Okay. Is that something that you provided to --

2 A. Well --

3 Q. -- Bill?

4 A. Yes. One point two to one. There are places that's
5 steeper than that. It's -- there's places that's one
6 to one.

7 Q. Okay. And so that's talking about the slope of the
8 embankment.

9 A. (Nods head.)

10 Q. Okay.

11 COURT REPORTER:

12 And that's a "yes"? You nodded your head. I'm sorry.
13 That's a "yes"?

14 MR. HALL:

15 Yes.

16 COURT REPORTER:

17 Thank you.

18 EXAMINATION RESUMED BY MS. O'BRIAN:

19 Q. Just for the record making sure we've gotten an answer
20 there. Okay. Do you have the results of your
21 surveying and what those slopes were along the
22 embankment?

23 A. I -- I do. Those are not in this exhibit because I was
24 really after what this embankment was at the top. But
25 I've -- I've plotted that in the CAD file.

1 Q. Okay.

2 A. I have not produced that yet.

3 Q. Okay. All right. And this plaintiffs' 131, is this
4 showing the topography laid over top of the Betty Ramey
5 survey? It's in that same packet of materials. I
6 think it was the document you were just looking at.

7 A. Yes.

8 Q. So those are the topography lines that we see. They
9 are labeled it looks like 864 up to 883?

10 A. Yes, ma'am.

11 Q. Okay. And so that shows where the embankment is in
12 relation to the property line; is that right?

13 A. Yes, generally that's right. More survey information
14 we could tie that down closer.

15 Q. Okay. You say "generally that's right," what makes you
16 hesitant in whether these are placed correctly in
17 relation to the property line?

18 A. This property line needs to be surveyed on the ground
19 and to get paint marks or stakes. Then you could
20 measure over and determine exactly the top of that
21 embankment was.

22 Q. Okay.

23 A. We've not done that.

24 Q. Okay. When you were out there did you see the stake at
25 this front left corner of the Mr. Click's property?

1 material that's sitting on it. So, yes, it makes a
2 difference.

3 Q. Okay. What do you mean by the overburden? Can you
4 explain that for a layman over here?

5 A. It -- it was 12 feet tall, but when you get to the top
6 of the wall and you continue to walk toward the
7 plaintiff's property line and you're -- you're
8 continuing to rise and so maybe it's four feet -- three
9 to four feet more that you go up and as you go up
10 gravel drive that gets to be more, that makes a
11 difference in the model.

12 Q. Okay.

13 A. If we cut more cross sections we -- that -- that would
14 be made evident.

15 Q. Okay. All right. Do you know from where this cross
16 section was -- and we can talk, I guess, about the
17 crown of the embankment there for a point of reference.
18 Do you know about how far from that crown to the corner
19 of Mr. Click's building?

20 A. I do not. I didn't not label that.

21 Q. Okay. Would you agree with me that there's some area
22 -- and I don't know what it is and you may be able to
23 explain this as part of your answer. There's some area
24 where you get a certain distance away from the
25 embankment, and the embankment doesn't have impact or

1 not as much impact on whatever's going on that distance
2 away?

3 A. I think generally that's true, but you have to look at
4 the specific of the data you collect at a specific
5 location to determine that.

6 Q. Okay. Based on the data that you collected here can
7 you tell us how far the impact area of this embankment
8 is?

9 A. Well, I think some more analysis would have to be done.
10 Typically 40 -- well, I'll -- I'll just answer that. I
11 think more analysis need done to answer that question.

12 Q. Okay. So at this point you don't feel comfortable
13 making a statement as to that area's impact?

14 A. Well, you're asking me a specific question: what's that
15 distance? I don't know that till I do more analysis.

16 Q. Okay. And that analysis would involve measurements or
17 anything else that would be needed?

18 A. Measurements, borings, getting true specific numbers to
19 put in the model, then we can make that determination.

20 Q. Okay. And, again, I acknowledge that I'm not an
21 engineer but I'm going to try and kind of delve into
22 that a little bit. We spoke with another engineer who
23 indicated that there is something called a "cone of
24 influence" that you look off of from buildings for
25 example to see what is in the cone of influence away

1 material moves it you -- you lose a lateral force and
2 that -- that just moves back, so it would require more
3 analysis.

4 Q. Okay. You talked a couple of times, and I think I
5 understand it but I want to make sure, about kind of
6 the progressive nature of the erosion or the shifting
7 of the embankment. So right now, of course, we can
8 only look at the conditions as they exist; right?

9 A. Right.

10 Q. Okay. And that's what these models, and graphs, and
11 data are based on; correct --

12 A. Correct.

13 Q. -- is how it stands today?

14 A. (Nods head.)

15 Q. Okay.

16 A. Right.

17 Q. And what you're saying, and please correct me if I'm
18 wrong, is that as that shifts then it could lead to an
19 impact further away from the embankment?

20 A. It will lead to an impact further away from the
21 embankment.

22 Q. Okay. As --

23 A. As you lose lateral support.

24 Q. Okay. From the static position where -- assuming that
25 today's static. That it is not moving and we are

1 looking just at how the property lays today, can you
2 say whether that embankment has an impact on Click's
3 back building?

4 A. There is evidence that there is cracking and movement
5 that has occurred. And I'm relying on the testimony of
6 the Click -- on Brent Click and the photographs that
7 I've seen, and what I've seen with my own eyes that
8 there has been an impact on that building. Now,
9 whether that's -- there's been an impact on the
10 building.

11 Q. Now, when you say "there's been an impact on the
12 building," do you mean that the embankment and the
13 excavation has impacted it or that there has been some
14 settlement and we don't know what factor has caused
15 that settlement, or that cracking?

16 A. Well, my opinion is that the removal of the material
17 has led to failure on Brent's side, problems on his
18 side. More testing and analysis would have to be done
19 to determine things that we don't know today.

20 Q. What do you mean by that? What additional information
21 would you need to get to or to support your
22 conclusions?

23 A. We need borings. We need additional survey work, which
24 would give us true locations of the buildings in
25 relation to the embankment. Where the property line

1 is, that -- that's what I'm talking about.

2 Q. Okay.

3 A. More data.

4 Q. Okay. And, David, we talked earlier that you have not
5 been involved with either of these properties before
6 being retained in this case; is that right?

7 A. That's correct.

8 Q. Okay. You never had a chance to see Mr. Click's
9 building prior to the excavation?

10 A. Only in photos.

11 Q. Okay. So the only information that you have from
12 before the excavation is the photos that you received
13 and Mr. Click's testimony?

14 A. Correct.

15 Q. Okay. And so then, of course, you weren't able to do
16 any testings on the site prior to the excavation
17 either?

18 A. No.

19 Q. Okay. And so the first time you said you visited the
20 site was in 2021 after the excavation had been
21 completed; is that right?

22 A. That's correct.

23 Q. Have you visited the site multiple times?

24 A. I have. I made a trip there with Bill Matthews. I
25 went back the other day to get -- collect some more

1 A. Right.

2 Q. Okay. Did you look at any maps between 1976 and the
3 present day one that you created?

4 A. No. And, again, I'm not sure that that tells me a
5 whole lot because the contour really was so big. It's
6 -- it's ten feet, so there's a lot less contour lines
7 and it doesn't pick up --

8 Q. Okay.

9 A. -- things very well.

10 Q. Besides those USGS maps that you referenced did you
11 have any other surveys or topography maps that you
12 referenced?

13 A. No.

14 Q. Okay. David, I want to just kind of clarify, I guess,
15 the scope of what you've been asked to opine on in this
16 particular case. Have you been asked to analyze or
17 give an opinion on the use of the two properties over a
18 period of time?

19 A. I -- I don't understand that question.

20 Q. Okay. So in this case some of the claims that the
21 plaintiffs have made relate to how the two properties
22 are used, how the gravel driveway is used, how the
23 turnaround area is used, and how they have historically
24 been used by Mr. Click, Mr. Thomas, and prior owners of
25 the property. Have you been asked to opine related to

1 any of that?

2 A. No, but I have an opinion about that.

3 Q. Okay. And what is your opinion about that?

4 A. Well, South Carolina state law is clear and there's
5 certain standards that have been set for how long a
6 piece of property is in use. If a property owner -- if
7 you're using their property, if they've said "Get off
8 my property" -- and there -- I've been involved in
9 these cases before and this seems to meet those
10 requirements in my opinion because the property has
11 been in use since 1978 much like it is today, but now
12 that's a problem.

13 Q. And what facts and information are you basing that
14 opinion on?

15 A. These aerial photos from the '70s and forward.

16 Q. Okay. Did you talk to any prior owners of either
17 property?

18 A. No.

19 Q. Did you talk to Mr. Thomas at all?

20 A. Probably said hello to him in the parking lot, but
21 that's all.

22 Q. Okay. But you didn't talk to him about the use of the
23 properties or property lines involved?

24 A. No. No, I wasn't asked to do that.

25 Q. Okay. Have you done any other investigation into the

1 property records or historic use of the properties to
2 come up with that opinion?

3 A. Well, the -- I've -- I've looked at prior surveys of
4 both properties, at least the recorded surveys. And
5 the survey produced that never was recorded, I've --
6 I've seen that in the exhibits. But that -- that's all
7 I've done. But -- but for both properties to determine
8 this property line it goes skewedwise, it's skewed
9 most of the time, it doesn't do that. I mean just -- I
10 -- from my own benefit I've tried to determine the
11 validity of that property line while looking at
12 properties, deeds on both sides.

13 Q. Okay. And in looking at Exhibit Five, the survey we've
14 been referencing today, does that show the property
15 line as you found it to be?

16 A. Yeah. As in my father was a surveyor until he was 88
17 years and I've surveyed. And so I've been with him and
18 we've done a lot of surveying, and there are
19 differences not only in the bearing and distance with
20 -- but the bearing, but the distance but they are minor
21 and -- but that they're not exactly the same. In old
22 surveys typically they aren't. There wasn't anything
23 unusual that I found.

24 Q. Okay. Again, just to clarify from your review the
25 property lines that are shown on this Defendant's

1 Exhibit Five are --

2 A. Yeah, I --

3 Q. -- accurate?

4 A. I -- I believe that to be accurate, yes.

5 Q. All right. Have you been asked to opine or have you
6 come to an opinion about the excavation work that was
7 done, and how it was done, and whether that work was
8 reasonably done or not?

9 A. No, I asked the question: did they have a grading
10 permit to do that work? And I was told that they did
11 not. That in my world is a big deal. You don't move
12 dirt without a plan -- an approved plan and a permit.
13 And apparently they -- that work was done without the
14 benefit of that. Now, that -- that's all I know about
15 that.

16 Q. Okay. Now, you said you've been working in Greenville
17 County and the surrounding areas for 29 plus years; is
18 that right?

19 A. No, 42.

20 Q. Or forty -- okay.

21 A. Forty-two years.

22 Q. And so have you done work with Pickens County before?

23 A. I have.

24 Q. And are you familiar with their permitting process?

25 A. Yes, I am.

1 Q. Okay. Regarding that permitting process have you -- do
2 you know what they require a permit for with regard to
3 excavation work?

4 A. If you take a stump out of the ground you need a
5 grading permit. They just -- they consider stump
6 removal a land disturbing activity. So there are
7 plenty of people that cut trees, move stumps, and they
8 get a Notice of Violation. To my knowledge no Notice
9 of Violation was issued. I don't know why not, because
10 I've seen them issue violations for a lot less than
11 this, but. No, they have real strict requirements. If
12 you -- if you move dirt you have to have a grading
13 permit.

14 Q. And which department in Pickens County does that go
15 through?

16 A. Stormwater.

17 Q. Okay. So it's the Pickens County Stormwater
18 Department?

19 A. Right. And what's that little lady's name? Ferguson.
20 She's tough. She's only about this tall (gestures
21 height). She's been there a long, long time and I know
22 exactly what she requires. Scottie Ferguson.

23 Q. Okay.

24 A. That's her name. Pickens County Stormwater.

25 Q. Okay. Are there any other Pickens County departments

1 that would be involved in that permitting process?

2 A. Yes, if you went through the permitting process it
3 would be reviewed by Zoning even though -- and this
4 property is zoned, but it has some unzoned parts on the
5 property and different rules apply. But it would be
6 looked at by Stormwater and Zoning.

7 Q. Okay. Did you talk with anybody at Pickens County
8 about this property or that excavation work that was
9 done?

10 A. Nope.

11 Q. Okay. We talked a little bit about the cracking in the
12 back building on Mr. Click's property that you
13 referenced. Have you been asked or have you developed
14 an opinion as to the quantification of any damages to
15 Mr. Click's property?

16 A. No, I've not been asked to quantify anything. I just
17 -- I'm of the opinion that the excavation work has led
18 to damage on his building.

19 Q. Okay.

20 A. And -- and really not being able to use his driveway
21 for what he previously used it for.

22 MS. O'BRIAN:

23 I don't have any further questions for the witness at
24 this time.

25 MR. MARTIN:

Exhibit 6

Hyperformance Slope Stability Summary
3668 Calhoun Memorial Highway (see Attached Figure 1)
Easley, SC
BLE Project No. J22-17614-01

BLE drilled two soil test borings at this site on April 7, 2022. Boring B-1 is located near Section A-A as identified on Sheet S-1 provided by Mr. David Hall (see Attached Figure 2). Boring B-2 is located near Section B-B on Sheet S-1. Boring B-1 encountered residual soils consisting generally of firm to dense slightly silty fine to coarse sand. Boring B-1 encountered partially weathered rock at a depth of 23 feet and auger refusal at a depth of 25 feet. Boring B-2 encountered residual soils consisting generally of very stiff fine to medium sandy clay, dense clayey fine to medium sand and firm to very dense silty fine to medium sand. Boring B-2 encountered auger refusal at a depth of 27 feet. Groundwater was not encountered in the borings. Visual inspection of the undisturbed soil samples from boring B-1 indicates the sands appear to be lightly cemented. BLE conducted slope stability analyses at the two cross-sections identified by Mr. Hall.

Estimating Shear Strength and Seismic Parameters:

Testing performed in boring B-1 indicates the soils within the upper ten feet exhibited an average standard penetration test N-value of 19 blows per foot. Soils at a depth greater than ten feet exhibited an average N-value of 57 blows per foot. Published documentation¹ that estimates the angle of internal friction (ϕ) from N-values suggests that the soils in the upper ten feet of boring B-1 would have an angle of internal friction of approximately 32°. Soil at a depth greater than ten feet would have an approximate angle of internal friction of 42°.

Following a similar procedure for boring B-2 indicates the soil within the upper ten feet would have an angle of internal friction of approximately 35°. Soil at a depth greater than ten feet would have an approximate angle of internal friction of approximately 41°.

We attempted to conduct pocket penetrometer testing on undisturbed samples collected from boring B-1. However, the lightly cemented samples were very brittle and failed before completion of the pocket penetrometer test. Based on our experience and a review of published documentation², we estimate the lightly cemented sands would exhibit an apparent cohesion of approximately 100 psf at each location (borings B-1 and B-2).

As a result of the borings, our experience on similar projects and the cited references, the following soil parameters were used for the slope stability analyses.

¹ Foundation Engineering by Peck, Hanson and Thornburn; 2nd Ed; Figure 19.5 p.310

² Journal of Geotechnical and Geoenvironmental Engineering; October 2009; Volume 135, No. 10 p.1359
Geotechnical Properties of Cemented Sands in Steep Slopes by Collins and Sitar.

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS MOTIONS IN LIMINE
	)	TO EXCLUDE TESTIMONY OF
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	CERTAIN WITNESSES
	)	
	)	
Defendants.	)	
_____	)	

TO: EMILY O'BRIAN, ESQ., GEORGE CAMPBELL, ESQ., BEAU BROGDON, ESQ, ATTORNEYS FOR DEFENDANTS AND TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, hereby moves before the Presiding Trial Judge *in limine* for an Order or ruling as follows:

Prohibiting Defendants from offering expert testimony from Andrew Sherard.

A. Plaintiffs are Prejudiced by the Presentation of Cumulative Testimony

1. The Parties had agreed that the Discovery deadline was April 15, 2022. Defendants' attorney informed Plaintiffs' counsel on April 13, 2022 that his expert, Mr. Sherard, would not be available for trial due to travel out of the country. Defendants did not request to take the *de benne esse* deposition of Mr. Sherard, but instead asked to extend the Discovery deadline to April 22, 2022 "to work on a solution to our expert." As an

accommodation to Defendants' attorney, Plaintiffs' counsel agreed to the one week extension. Defendants' were provided access to the Click property on April 18, 2022 after the original April 15, 2022 Discovery deadline expired, and visited the site with Paul Mills, P.E., their new expert witness.

2. Defendants counsel stated in their April 22, 2022 Supplemental Discovery they may call both Mr. Sherard (via Electronic Remote Control Technology) and Mr. Mills as expert witnesses. On May 5, 2022 Defendants' counsel advised that it did plan to call both Mr. Mills and Mr. Sherard at the trial of the case.

3. It would be prejudicial to Plaintiffs if Defendants are allowed to present cumulative testimony from Mr. Sherard and Mr. Mills regarding the same subject matter and based on the same evidence. (See Defendants' Third Supplemental Responses to Plaintiff's First Set of Interrogatories and Requests for Production, Number 4 identifying identical areas of testimony for both experts) Rule 403, SCRE, allows evidence to be excluded if its probative value is outweighed by considerations of needless presentation of cumulative evidence.

B. Plaintiffs are Prejudiced by the Appearance of Defendants' Expert by Remote Communication Technology

1. SCAR 612, along with S.Ct. Order 2021-09-21.01 permits the Court to deny the use of Electronic Remote Communication Technology based upon the Court's discretion. There is no allegation that the use of Electronic

Remote Communication Technology is necessary for safety concerns due to the pandemic. It would be unfair to Plaintiffs under the circumstances described above for Defendants to present the cumulative testimony of two expert witnesses, as the jury may put more weight on the testimony of two witnesses.

2. Mr. Sherard's appearance on a TV or computer screen is a disadvantage to Plaintiffs during cross examination.
3. The testimony of Mr. Sherard and Mr. Mills would be duplicative.
4. There is not sufficient justification under the circumstances to allow Electronic Remote Communication Technology to be used.

Respectfully submitted,

May 9, 2022

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Gwendolyn G. Martin, Esq. (SC Bar No. 1897)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, PA

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

COME NOW Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC, Defendants, by and through their undersigned counsel, and for their Supplement to their Memorandum in Support of Motion for Summary Judgment, state as follows:

1. Defendants filed their Motion for Summary Judgment and Memorandum in Support of the Motion for Summary Judgment on April 29, 2022.
2. On May 9, 2022, in preparation for trial, Defendants discovered the Plaintiffs', Hyper Formance LLC, YouTube channel. Counsel viewed a YouTube video that was uploaded in approximately 2014, a full eight years ago.
3. Upon information and belief, this YouTube video was uploaded and posted by Hyper Formance LLC. The full video can be found at the following link, and is also included in its entirety along with screenshots as Exhibits 1 and 2:
<https://www.youtube.com/watch?v=o1xCPYmONLU&lc=Ugzev1v4hCRs3Woi8mF4AaABAg>. (See Exhibit 1).

4. This YouTube video and accompanying screenshots were supplemented in response to Plaintiffs' Request for Production of Documents. The screenshots of the YouTube video were taken for efficiency purposes. (See Exhibit 2).
5. In the S.C.R.C.P. Rule 30(b)(6) deposition of Hyper Formance, LLC, taken on September 22, 2020, Brent Click, testifying on behalf of Hyper Formance LLC, stated that Hyper Formance, LLC was incorporated in January 2013 and originally operated from the upper building at 3668 Calhoun Memorial Highway (See Exhibit 3).
6. In response to questions asked regarding issues that needed repair or maintenance, foundation issues, or cracks in the buildings at that time, Mr. Click stated that there were no issues prior to the digging by Defendants, which remains vehemently denied (See Exhibit 3).
7. Upon review of this YouTube video, it is abundantly clear that extensive and noticeable cracking in the floor/foundation was present inside of the upper building of Mr. Click's property *prior* to Defendants' excavation work, which began in 2018 (See Exhibit 1, Exhibit 2).
8. This Supplement is intended to supplement Defendants' Memorandum in Support of its Motion for Summary Judgment, specifically bolstering Defendants' arguments in Section I and II of the Memorandum, further proving there are no genuine issues of material fact such that Plaintiffs' claims for Nuisance Per Se and Negligence survive summary judgment by this Court.

Respectfully submitted this 13th day of May, 2022.

CAMPBELL TEAGUE LLC

/s/ Beau Brogdon

Emily O'Brian (SC Bar #101824)

Beau Brogdon (SC Bar #103803)

16 W. North St.

Greenville, South Carolina 29601

Tel: (864) 326-4186

emily@campbellteague.com

beau@campbellteague.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on May 13, 2022 by Notice of Electronic Filing:

Brad Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com

5/13/2022
DATE

/s/ Beau Brogdon
CAMPBELL TEAGUE
Beau Brogdon

EXHIBIT 1

<https://www.youtube.com/watch?v=o1xCPYmONLU&lc=Ugzv1v4hCRs3Woi8mF4AaAB>

EXHIBIT 2



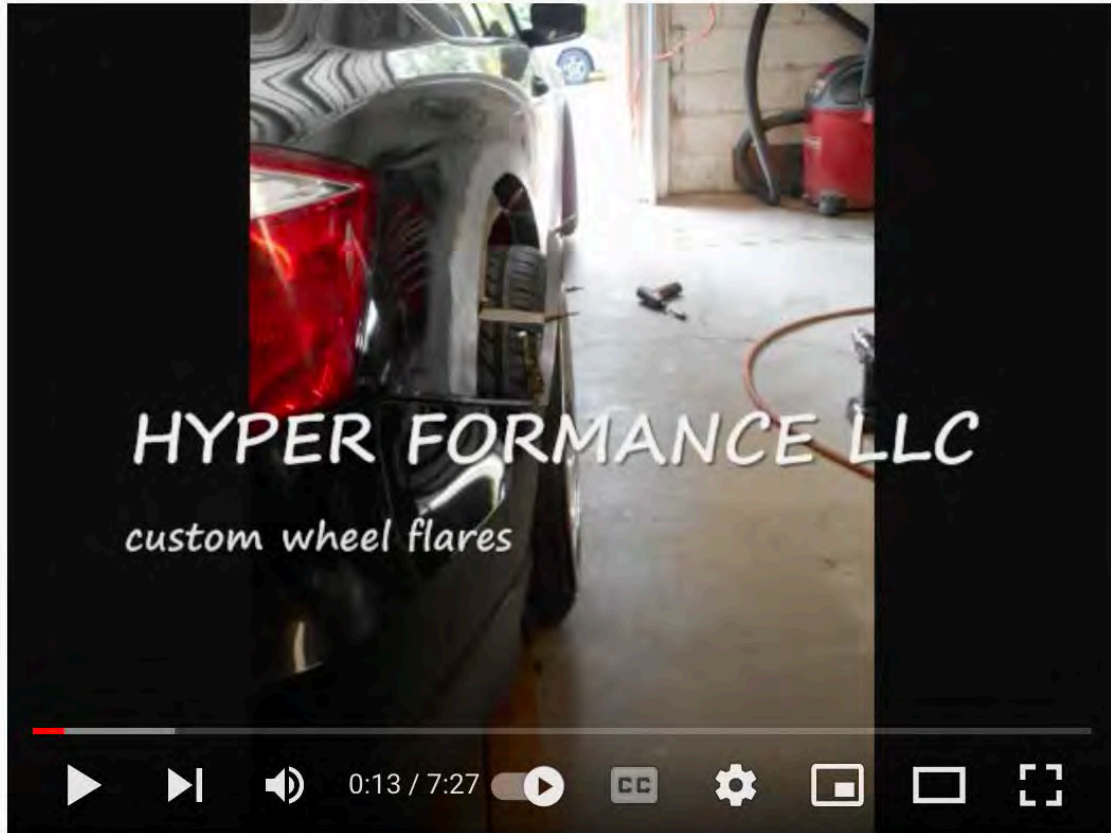
Hyper Formance fender flares

136K views · 8 years ago

 HYPER FORMANCE LLC

made a short vid of making a set of rear flares for one of our good customers. Located in greenville sc. Song is by Darude "music" ...

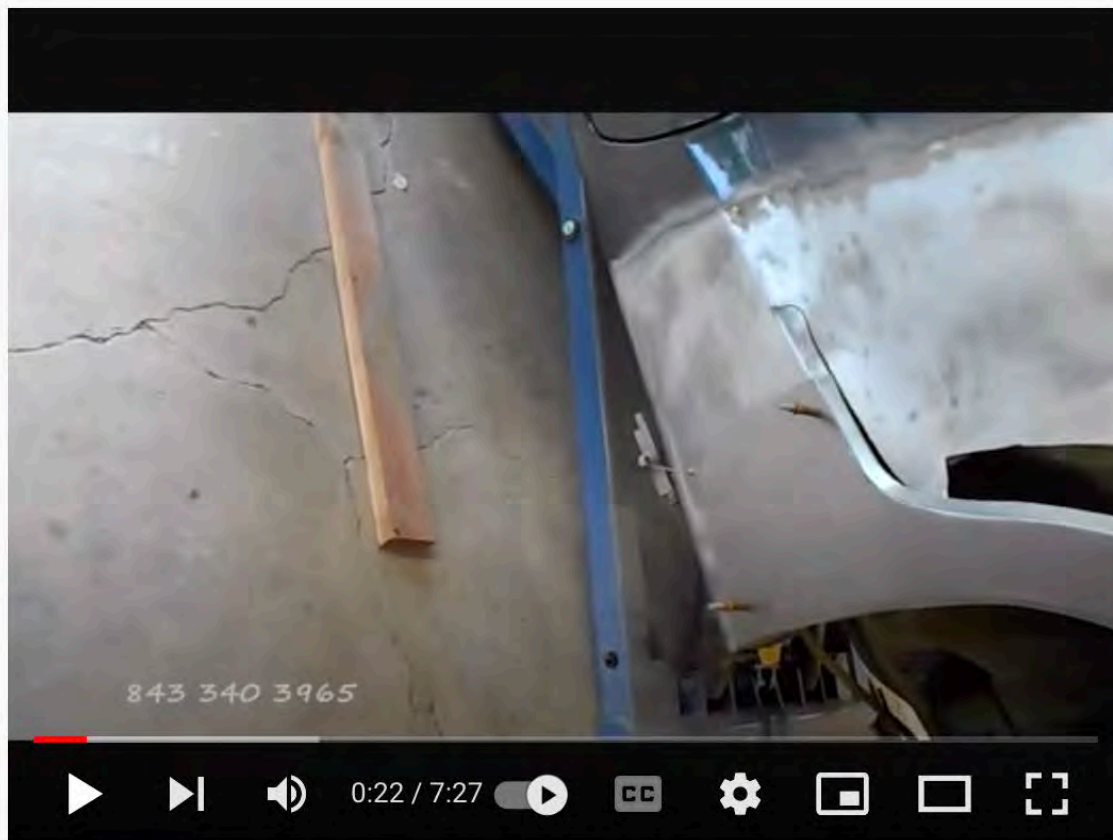
Thomas_000173



Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

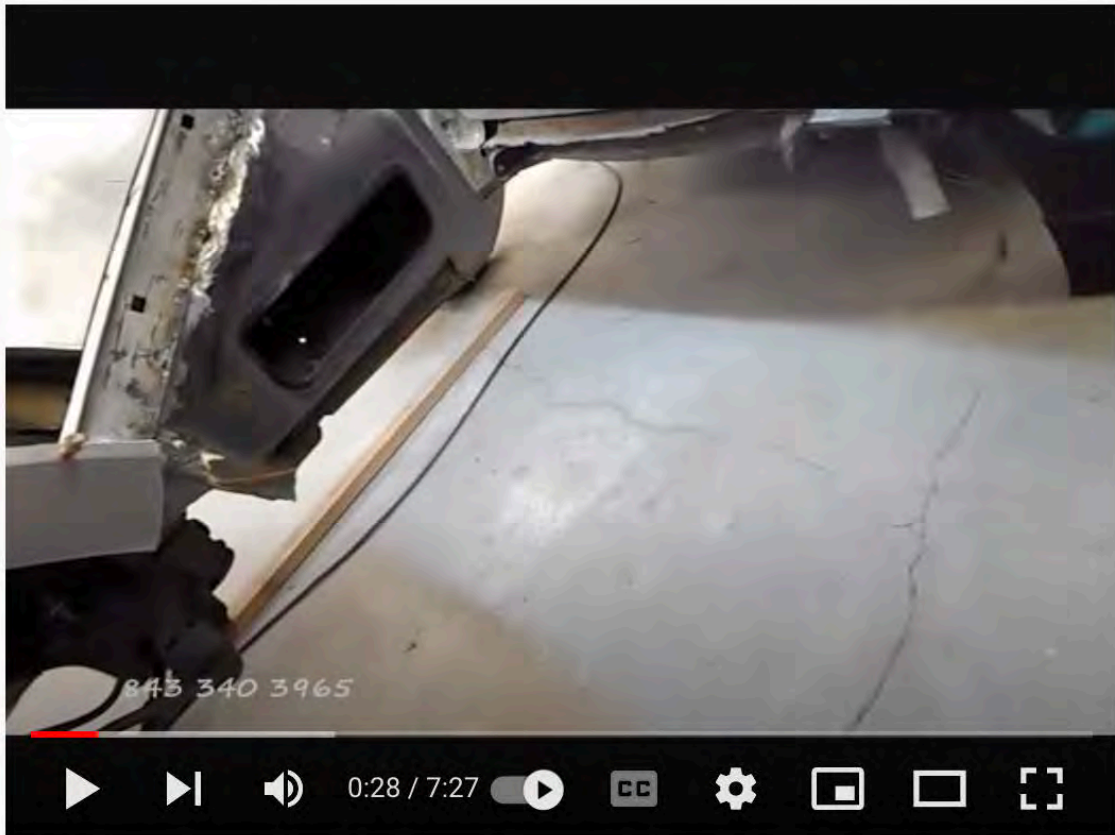
Thomas_000174



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000175



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000176



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000177



Hyper Formance fender flares

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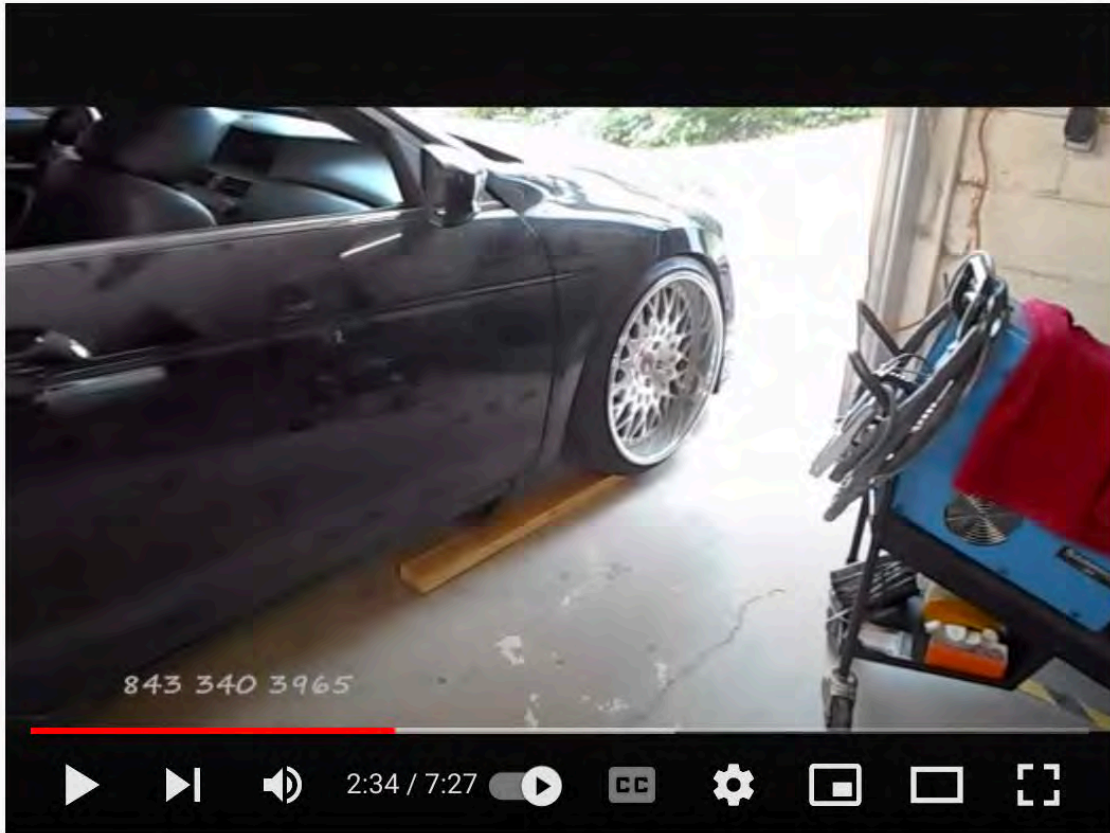
Thomas_000178



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000179



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

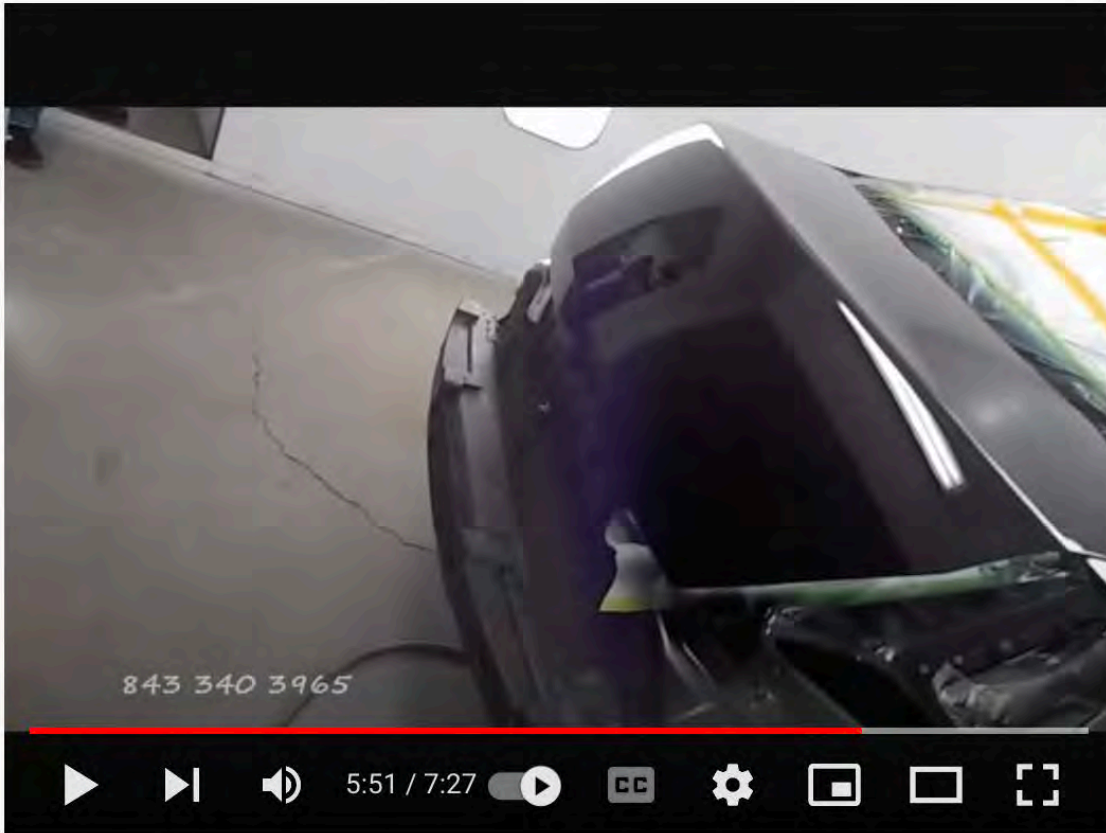
Thomas_000180



Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

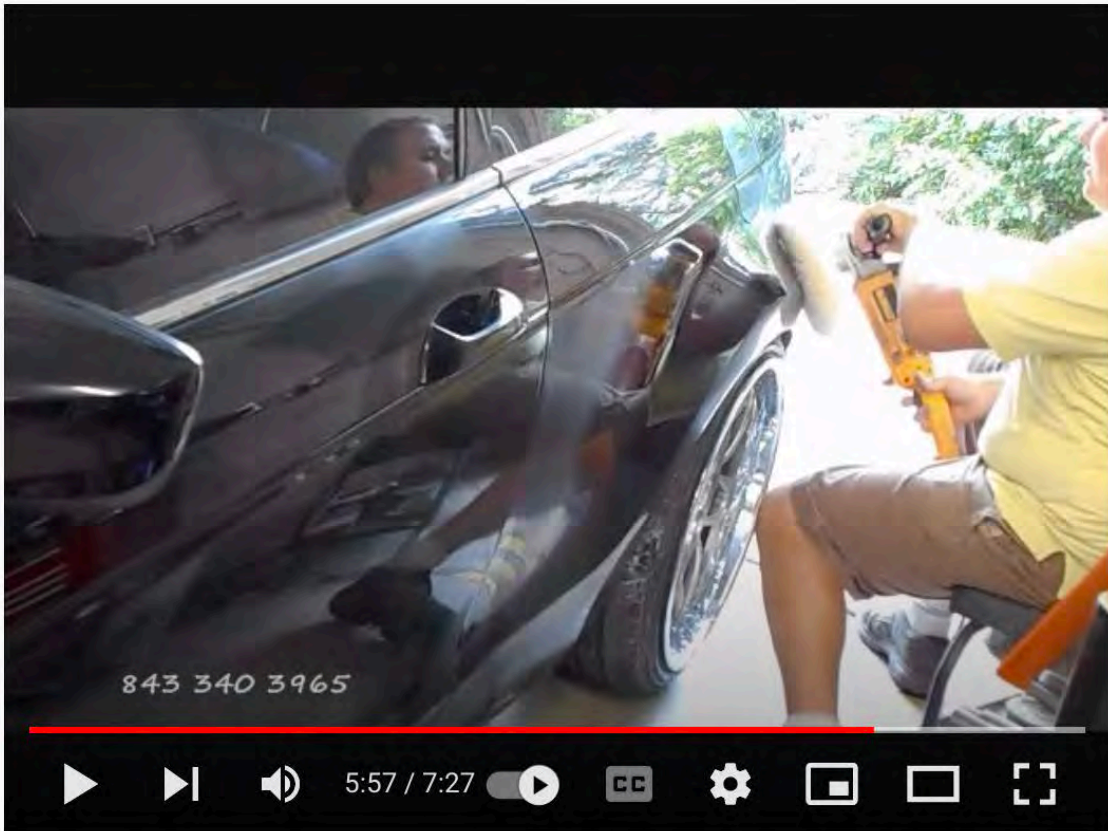
Thomas_000181



Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

Thomas_000182



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000183



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000184



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000185



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000186



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas_000187

EXHIBIT 3

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

- - -

CLICK PROPERTIES, LLC,	:	Case No.
and HYPER FORMANCE, LLC,	:	2020-CP-39-00266
Plaintiffs,	:	
vs.	:	
THOMAS SC PROPERTIES, et al.	:	
Defendant.	:	

RULE 30(B)(6) DEPOSITION OF CLICK PROPERTIES, LLC,
and HYPER FORMANCE, LLC, by ROBERT BRENT CLICK

DATE TAKEN: Tuesday, September 22, 2020

TIME BEGAN: 10:01 a.m.

TIME ENDED: 12:36 p.m.

LOCATION: Given Remotely

REPORTED BY: Karen Kidwell, RMR, CRR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 REMOTE APPEARANCES:

2
3 CAMPBELL TEAGUE, LLC
4 BY: EMILY O'BRIAN, ESQ.
5 16 West North Street
6 Greenville, SC 29601
7 864.326.4186
8 emily@campbellteague.com
9 Representing the Plaintiffs
10

11 BRADFORD NEAL MARTIN & ASSOCIATES
12 BY: BRADFORD NEAL MARTIN, ESQ.
13 201 West McBee Avenue
14 #302
15 Greenville, SC 29601
16 864.552.9990
17 bmartin@bnmlaw.com
18 Representing the Defendant
19
20
21
22
23
24
25

I N D E X

WITNESS/EXAMINATION	Page
ROBERT BRENT CLICK	
By Ms. O'Brian	5

E X H I B I T S

Number	Description	Page
Exhibit 1	Plat of Boundary Survey for Betty M. Ramey, PL 49	19
Exhibit 2	Colored photograph of 3668 Calhoun Memorial Highway, PL 39	43
Exhibit 3	9/3/2018 Letter, Timothy Garr to S. Allan Hill, Re: Click Properties, LLC and Thomas SC Properties, LLC, PL 36	78

1 A. I went to Greenville Tech.

2 Q. Okay. And what degree or certifications
3 did you earn from Greenville Tech?

4 A. I didn't finish anything.

5 Q. What were you going for?

6 A. Engineering.

7 Q. Okay. And do you have any licenses or
8 anything outside of that?

9 A. I have my typical EPA permitting for the
10 painting and other things we do at our business.

11 Q. Okay. All right. Tell me a little bit
12 about Hyper Formance. When was it incorporated?

13 A. January of 2013.

14 Q. Okay. And who are its members?

15 A. My wife and I.

16 Q. And what are your percentage ownership?

17 A. 51 percent my wife and 49 percent me.

18 Q. And what assets are held by Hyper
19 Formance?

20 A. Our property and our machines.

21 Q. Okay. And what liabilities does Hyper
22 Formance have?

23 A. Two machine loans and our mortgage.

24 Q. Okay. And what are those machines?

25 A. Metal cutting machines.

1 Q. Okay. And what -- what are the operations
2 of Hyper Formance?

3 A. We -- we build and make things. We
4 restore old cars. We remake body panels. We
5 reengineer lost stuff, and just -- if it's metal, if
6 it's -- yeah.

7 Q. Okay. All right. And how long has Hyper
8 Formance been in operation? Since it was
9 incorporated?

10 A. Yes.

11 Q. And where did you operate from originally?

12 A. The upper building at the -- the 3668
13 Calhoun Memorial Highway.

14 Q. We'll talk just a little bit about the
15 background of Click Properties, LLC. When was that
16 incorporated?

17 A. When we bought the building.

18 Q. Okay. Was that in 2017?

19 A. Yes.

20 Q. Okay. And who are the members of Click
21 Properties LLC?

22 A. Just myself.

23 Q. What assets are held by Click Properties?

24 A. I guess -- the building? Yeah.

25 Q. Okay. So you said a minute ago that Hyper

1 our -- that we purchased and we started using in
2 2017. And then there's the upper building that we
3 have used since 2013 when we rented. Then there's a
4 big hill up the side of it with a gravel driveway,
5 and there's a big turnaround at the top, so we can
6 use the upper building.

7 Q. Okay. As far as -- let's just talk about
8 the lower building, to start. How do you have access
9 to that building?

10 A. I have doors in the front, and I have
11 doors on both sides, even though you can't use the
12 one side.

13 Q. Okay. And as far as vehicular access,
14 does it have access straight out to the highway?

15 A. Well, I mean, yes, through the parking
16 lot.

17 Q. Okay. There's a parking lot and driveway
18 that goes to Calhoun Memorial Highway?

19 A. Yes, ma'am.

20 Q. And is that access on your property, or is
21 it on someone else's property?

22 A. Well, it's definitely in the right-of-way,
23 because you can look on the plat and see.

24 Q. Okay. So it's in that U.S. Highway 123
25 right-of-way, is where your driveway is?

1 that you're working on to the back building?

2 A. Yes, ma'am.

3 Q. You said that you started your lease of
4 the property in 2013; is that right?

5 A. Yes, ma'am.

6 Q. Okay. And what portion of the property
7 did you lease then?

8 A. Just the back building on the hill.

9 Q. And who did you lease that from?

10 A. Mark Smith.

11 Q. And what did Mr. Smith tell you about the
12 property and its usage when you were entering that
13 lease?

14 A. That the gravel area at the top that was
15 the turnaround was how you got into the building. It
16 was mine to use.

17 Q. Okay. Did he say that it was part of the
18 property, or just that you could use it?

19 A. It was -- he owned the property. When you
20 look at the property from the road, it looks like
21 it's very clearly part of it. So there -- it was --
22 it was -- if you use the word "right," or -- yeah, I
23 guess so.

24 Q. I'm sorry. He used the --

25 A. He used where there was the -- the right

1 Q. And did you talk about the property at all
2 when he was helping you with that gravel? Or what
3 was that exchange?

4 A. He told me he owned the lower shop. And
5 he helped me spread the gravel around the turnaround.
6 Gravel sinks in the ground, and you need to replace
7 it every now and then.

8 Q. You said that was at the beginning of your
9 lease terms, so around 2013?

10 A. Yes, ma'am.

11 Q. So he knew that you were using that gravel
12 turnaround area?

13 A. Yes, ma'am.

14 Q. Did you ever have a discussion about whose
15 property specifically that was on?

16 A. No, ma'am, but it was really made -- acted
17 like it was part of the part that I was renting. It
18 was -- I kept cars on every day, and I used it every
19 day, so . . .

20 Q. Okay. But you and Mr. Grissinger did not
21 have a discussion about the property boundary line?

22 A. Not -- no, ma'am.

23 Q. Okay. You said you were leasing the back
24 building. What was going on in the front building at
25 the time?

1 Q. And how old were the buildings on that
2 property? Do you know?

3 A. I wasn't there when they were built, but I
4 believe the bottom one was built in '57, and the
5 upper one I believe was in the late '70s or
6 early '80s.

7 Q. Okay.

8 A. No later than '81, I think, though.

9 Q. Because of the age of those buildings, did
10 you have any issues with either one of them that you
11 had to repair or maintain?

12 A. No. They're block buildings. They're
13 pretty -- they're pretty robust.

14 Q. Did you ever have any foundation issues
15 with either one of them?

16 A. No, ma'am.

17 Q. Any cracks along the block buildings that
18 you've noticed during the term of your lease?

19 A. Not before the digging.

20 Q. Okay. I want to talk about your purchase
21 of that property. We talked about the lease period.
22 You said you purchased the property around 2017?

23 A. Yes, ma'am.

24 Q. You purchased it from Mark Smith?

25 A. Yes, ma'am.

1 same amount of cars that you see in this picture were
2 already out around there in the little half
3 semi-circle of the gravel turnaround.

4 Even had a Clemson rowboat there at the
5 time, and those are about 60 feet long, so it was
6 well sticking in the shop and out the door and across
7 the turnaround.

8 Q. Okay. After you purchased the property
9 from Mr. Smith, did the structures on the property
10 change at all?

11 A. No, ma'am.

12 Q. Okay. And at that point you had access
13 now to the front building. Is that when you moved
14 the bodyshop work to the front building?

15 A. I moved the metal part of the bodyshop
16 work, all my metal machines down there.

17 Q. Okay.

18 A. And we did put a door in the side of the
19 building, the lower building, so that way I could
20 walk between the two buildings and leave the front of
21 the shop locked up.

22 Q. Okay. And the back portion -- the back
23 building, then, remained the paint shop?

24 A. Exactly the way it is. We just took some
25 heavy machines out of it.

1 believe that is pinched in some way, because we're
2 having a slower flush rate and having harder time
3 using the upper toilet.

4 Q. Okay. Besides the slower flush rate, has
5 it caused any damage? Has it backed up or flowed
6 into your house -- or your apartment, or anything
7 like that?

8 A. No. It just backs up, and -- you know, we
9 know how to deal with plumbing. So we've been very
10 cautious and careful of this. We had the water
11 company come out and turn over the water meter,
12 because it was mounted sideways, so that we can
13 easier get to the switches and the levers that turn
14 off to the upper building, for whenever this hill
15 does collapse and it takes out the utilities with it.

16 Q. Okay. Any other impacts to your business
17 or your use of the property?

18 A. Oh, yeah. I mean, I can't take on as many
19 cars, because I can't leave them in the lower parking
20 lot, because they'll be hit by All-Tech customers.
21 And I can't have them up the hill, because that area
22 is now missing.

23 Oh. There are also cracks in the upper
24 building.

25 Q. Tell me a little bit about the cracks and

1 when you first noticed those.

2 A. Well, they're all in the direction of the
3 main excavation, where that 36-foot dropoff was. Now
4 it's like a 29-foot or something, just to show how
5 much the ground has slumped.

6 This is -- I just shoot it with a little
7 laser measure tool I had. I've used the same one
8 consistently, so. But the corner of the building, on
9 that side, is getting crack lines down, and that
10 corner of the building is dropping away.

11 Q. Okay. Let's look at that Exhibit 2. And
12 if you can kind of describe for me where this -- the
13 cracking is, from that picture.

14 A. Bottom left of the upper building.

15 Do you have a picture of this with the
16 excavation done already?

17 Q. I don't believe so. Let's just -- we can
18 just use this one as --

19 A. Okay.

20 Q. -- a reference point, for ease.

21 A. Well, where the -- coming off the center
22 line, the back line of Jonathan's property, about,
23 you know, 3 feet from the blue line, that entire area
24 in between the two is dug out, straight down,
25 30-something feet. So the corner that is directly in

1 line with that main excavation corner is the main
2 corner seeing the cracks and the separations.

3 Q. Has anybody besides yourself and your wife
4 come out to take a look at those cracks and
5 separations?

6 A. Yes.

7 Q. Who has done so?

8 A. Some -- the people that we had to come out
9 and look at it for the . . .

10 Q. You don't know the name of who came out?

11 A. No, I don't have that information right
12 here in front of me.

13 Q. Okay. Was that arranged by you or by your
14 attorneys?

15 A. Attorneys.

16 Q. Okay. And do you know if you've received
17 any feedback from them, or written reports about what
18 they saw?

19 A. Not that I know of.

20 Q. Did you speak with whoever it was that
21 came out to look?

22 A. Yes.

23 Q. Okay. And what did you -- what was your
24 interaction with them?

25 A. I showed them where the excavation was,

1 where the cracks were, where the dirt was slumping.
2 And told them what it used to look like and what has
3 changed.

4 Q. Did they make any comments to you at the
5 time?

6 A. No.

7 Q. Mr. Click, I know right now, because of
8 the carports, that you can't obviously drive straight
9 through the carports. If the carports are removed,
10 do you have enough room to turn into that back
11 building?

12 A. No, ma'am.

13 Q. What property beyond the boundary line are
14 you continuing to use to this day?

15 A. In regards to which boundary line?

16 Q. The boundary line between your property
17 and Mr. Thomas' property. And we're looking -- we
18 can again look at Exhibit 2. And I know, as you
19 said, that there's been some excavation since then,
20 so it does look a little bit different right now.

21 But what of that property on Mr. Thomas's
22 side of the line have you continued to use?

23 A. You see the car -- the truck parked
24 against the back, backed in, parked perpendicular to
25 the highway and parallel to the building in front of

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' RESPONSE IN
	)	OPPOSITION TO DEFENDANTS'
	)	MOTION FOR SUMMARY
	)	JUDGMENT
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	
_____	)	

INTRODUCTION

A significant difference in elevation existed between the Click and Thomas properties even before the negligent excavation.¹ As often happens, the geography of the land served to create a natural boundary that was recognized by the landowners. This visual boundary was furthered by the placement of a gravel driveway and turnaround that followed the contour of the properties and served only the Click property, due to the steep slope. For more than twenty years, the property was treated in this manner without dispute. It was only when the current owner of the Thomas property developed significant animus against the Plaintiffs that any questions arose regarding the boundary or the use of the gravel turnaround and entire gravel driveway by the owner of the Click property.

Defendants then negligently excavated the Thomas property along the boundary, causing severe damage to the Click property and its back building. Plaintiffs have presented a genuine

¹ The terms Click and Thomas properties include the ownership of the properties by predecessors as well as the current owners.

issue of material fact for a jury as to nuisance, negligence, the boundary line, prescriptive easement, easement by estoppel, and acquiescence.²

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCp. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). “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.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009).

In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Id.* At 330, 673 S.E.2d at 803. In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence. *Id.* at 330–31, 673 S.E.2d at 803.

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112 410 S.E.2d 537, 543 (1990) quoting *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975).

² Plaintiffs are withdrawing their claim for easement by necessity.

ARGUMENTS

I. PLAINTIFFS HAVE PRESENTED A GENUINE ISSUE OF MATERIAL FACT REGARDING NUISANCE

Defendants cite the case of *Suddeth v. Knight*, 280 S.C. 540, 314 S.E.2d 11 (Ct. App. 1984), but fail to disclose the actual holding of the case: that the question of whether or not a nuisance³ has become dangerous is for the jury. 280 S.C. at 45-46, 314 S.E.2d at 15. Knight constructed a ditch and drainage system causing surface waters to collect and cast in concentrated form upon Suddeth's land. Further, Suddeth contended that Knight blocked a water course thereby causing the ponding of water on his property which constituted a nuisance.

In *Suddeth*, the Court of Appeals relied upon the case of *Deason v. Southern Railroad Company*, 142 S.C. 328, 140 S.E. 575 (1927) and held:

Deason involved a factual situation where the Railroad Company closed a ditch and raised an embankment which caused water to pond on an uphill landowner's land. The Court, in affirming a jury verdict for the landowner, said that the question of whether or not the nuisance had become dangerous at all times and under all circumstances to life, health or property was for the jury.

Suddeth, 280 S.C. at 545, 314 S.E.2d at 14. The South Carolina Supreme Court in *Deason* noted that questions regarding nuisance per se were "peculiarly a question for the jury." 140 S.E. at 578. If the ponding of water is sufficient to create a question of fact of a nuisance becoming "dangerous at all times and under all circumstances to life, health, or property", then digging a 36-foot steep

³ In South Carolina, "[a] nuisance is anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property." *Strong v. Winn-Dixie Stores, Inc.*, 240 S.C. 244, 253, 125 S.E.2d 628, 632, (1962). "If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with the lawful use and enjoyment of the property of others, it will constitute a nuisance." *LeFurgy v. Long Cone Club Owners Ass'n, Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 579 (Ct. App. 1994).

drop off endangering a neighbor's home and business is as well.⁴ (Ex. E., Brent Click deposition, p. 92, ll. 2-7).⁵

Defendants also overlook the fact that a nuisance is “anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property.” *Neal v. Darby*, 282 S.C. 277, 285, 318 S.E.2d 18, 23 (Ct. App. 1984). In the alternative, Plaintiffs assert nuisance *per accidens*. A nuisance *per accidens* is an act, occupation or structure which is not a nuisance per se, but which may become a nuisance by reason of circumstances, location or surrounding. *Id.*⁶ This is a matter for the jury to decide.

II. PLAINTIFFS HAVE PRESENTED A GENUINE ISSUE OF MATERIAL FACT AS TO DAMAGES CAUSED BY DEFENDANTS’ NUISANCE AND NEGLIGENCE

“The nonmoving party ‘is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). There is sufficient evidence in the record to show the continuing damage from the nuisance caused by Defendants’ actions.⁷

Plaintiffs’ civil engineering expert, David Hall, makes it clear that Thomas’s layman’s excavation was at a dangerously unsafe angle that removed the lateral support previously enjoyed by the Click property. (Ex. B, Hall Deposition, p. 32, ll. 7-18). Rule 703, SCRE, allows an expert giving an opinion to rely on facts or data that are not admitted in evidence or even admissible into evidence. *Wright v. Hiester Constr. Co.*, 389 S.C. 504, 523, 698 S.E.2d 822, 832 (Ct. App. 2010) (citing *Jones v. Doe*, 372 S.C. 53, 62, 640 S.E.2d 514, 519 (Ct. App. 2006)).

⁴ The Supreme Court reversed the Court of Appeals in a nuisance per se case, holding it was a question for the jury. *Lucas v. Rawl Family Ltd. Ptrship.*, 359 S.C. 505, 598 S.E.2d 712 (2004).

⁵ “Well, they’re all in the direction of the main excavation, where that 36-foot drop off was. Now it’s like a 29-foot or something, just to show how much the ground has slumped.”

⁶ Plaintiffs allege that Defendants excavated in such a manner as to damage the stability of the soil on their property. The Complaint as a whole put Defendants on notice of a nuisance cause of action, whether per se or per *accidens*. See *Shirley’s Iron Works, Inc. v. City of Union*, 397 S.C. 584, 726 S.E.2d 208 (Ct. App. 2010).

⁷ The determination of damages may depend to some extent on the consideration of contingent events if a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss. *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 434, 717 S.E.2d 765, 781 (Ct. App. 2011).

Geotechnical testing has substantiated that the excavation near the area towards the top of the Click driveway has created a dangerous instability. Plaintiffs' expert, David Hall, P.E. attests as follows:

The excavation performed on the Thomas Property has caused a permanent impact on the Click Property by removing the lateral support of the Click property and has created an impending failure state at the location identified as B-1 in the BLE April 13, 2022 report. Although there has not been an abrupt failure of the embankment at this time, the Global Stability Analysis predicts that such failure will occur and the excavated embankment in its current state poses a safety risk.

(Ex. A, May 4, 2022 Affidavit of David Hall, ¶6).

Hall testified that travel up the hill over that area is not safe. (Ex. B, Hall Deposition, p. 29, 11. 3-15). Eventually, Brent and Shelly will lose access to the back building due to the damage caused by Thomas. (Ex. B, Hall Deposition, p. 17, l. 16- p. 18, l. 12). The apartment where they live is also in the back building. Ex. C, (Shelly Click Deposition, p. 28, l. 24 – p. 29, l. 1).

Finally, Chris Danner (Ex. D, Affidavit of Chris Danner), Shelly Click (Ex. C, Shelly Click Deposition, p. 45, l. 20- p. 55, l. 18), and Brent Click will testify that his back building has continued to show evidence of negative impact from the excavation performed by Thomas. Plaintiffs have become limited in the work they can perform because the property cannot safely support large vehicles at the gravel turn-around. Following the excavation, Plaintiffs have experienced plumbing problems and cracking in the back building. (Ex. E, Brent Click Deposition, p. 88, l. 4- p. 93, l. 2; Ex. F, May 13, 2022 Affidavit of Brent Click).

Defendants argument that a 2014 video showing small cracks on the concrete floor means Plaintiffs' causes of action for nuisance or negligence fail as a matter of law is without merit, because Plaintiffs do not claim there were no cracks in the concrete floor of this older building. The back building has a block foundation with a separately poured floor. (Ex. F, May 13, 2022 Affidavit of Brent Click, ¶4) Brent was asked in his deposition about the condition of the foundation, not the floor, prior to the excavation, and his answer was about the foundation. (Ex.

E, Brent Click 30(b)(6) Deposition, p. 48, ll. 9-19; *See also* Ex. F, May 13, 2022 Affidavit of Brent Click, ¶4 on difference between floor and foundation and Ex. A to the Affidavit). Plaintiffs' have not claimed the floors in this older building had been free of any cracks. The cracks that were present in the floor before the excavation were of the type expected for a building of that age and construction, the Plaintiffs have observed that cracks have increased significantly since the excavation. (Ex. C, Shelly Click Deposition, p. 49, l. 4-p. 50, l. 7; Ex. F, May 13, 2022 Affidavit of Brent Click, ¶5).

As the owner of the property, Brent is competent to testify as to its value and as to his loss. *See Seaboard Coast Line R. R. v. Harrelson*, 262 S.C. 43, 202 S.E.2d 4 (1974) (a landowner, who is familiar with his property and its value, is allowed to give his estimate as to the value of the land and damages thereto, even though he is not an expert); *State v. Brown*, 402 S.C. 119, 131, 740 S.E.2d 493, 499 (2013) ("Unless it affirmatively appears that the owner does not know the market value of his property, it is generally held that he is competent to testify as to its value even though his knowledge on the subject would not qualify him as a witness were he not the owner.")

Plaintiffs have certainly presented a genuine issue of material fact for a jury as to damages.

III. PLAINTIFFS HAVE PRESENTED A GENUINE ISSUES OF MATERIAL FACT AS TO CAUSATION

Proximate cause requires proof of (1) causation in fact and (2) legal cause. *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993).

Causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence." *Bramlette v. Charter-Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990). Brent Click has testified that he did not experience erosion or settling of his building prior to the excavation. (Ex. E, Brent Click Deposition, p. 48, ll. 9-19).

David Hall, P.E., Plaintiff's expert witness has testified the excavation has caused shifting and cracking in the back building and will eventually cut off access to the building. (Ex. B, Hall Deposition, p. 17, l. 16- p. 18, l. 12). Mr. Hall has also attested that: "There is a likelihood, to a reasonable degree of engineering certainty, that the embankment will collapse and . . . when the failure occurs the Clicks will lose access to the back building and the utilities under the gravel driveway on the Click property will likely be impacted." (Ex. A, May 4, 2022 Affidavit of David Hall, ¶5). Defendants have presented no evidence that the soil on the Click property was unstable prior to the excavation. Therefore, Plaintiffs have presented a genuine issue of material fact for the jury.

Legal cause is proved by establishing foreseeability, i.e., that the injury occurred as a natural and probable consequence of the defendant's negligence. *Id.* at 72, 393 S.E.2d at 916. Although foreseeability of some injury from an act or omission is a prerequisite to the plaintiff establishing proximate cause, it is not necessary for the defendant to have contemplated the particular event which occurred. *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990). Rather, it is sufficient if the defendant should have foreseen that his negligence would probably cause injury to someone. *Id.* It is certainly foreseeable that excavation at an extreme slope along the boundary of Plaintiffs' property could cause injury to the property.

Normally, proximate cause is a question of fact for the jury, and it may be proved by direct or circumstantial evidence. *J.T. Baggerly v. Csx Transp., Inc.*, 635 S.E.2d 97, 370 S.C. 362 (2006). Sufficient evidence has been presented for the issue of causation to go to the jury.

IV. PLAINTIFFS HAVE PRESENTED SUFFICIENT EVIDENCE TO PROVE THE ELEMENTS OF A PRESCRIPTIVE EASEMENT

There is no question that the gravel driveway and turnaround area have been used since the late 90s by the Click property alone. The Betty M. Ramey plat from 1996 clearly and unequivocally

shows the location of the gravel driveway and turnaround area were already in use and served the building at the back of the Click property.

The elements for a prescriptive easement are: 1) continuous on the use or enjoyment of the right for a period of 20 years; 2) the identity of the thing enjoyed; and 3) use or enjoyment which is either adverse or under claim of right. *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

There is sufficient evidence to show the continuous and uninterrupted use and enjoyment of the driveway and turnaround since at least 1996. This meets the requirements of showing this use for over 20 years. Brent and his predecessors in title, Bradley Dobson and Mark Smith, have clearly and unequivocally enjoyed the use openly, notoriously, continuously and uninterrupted, in derogation of another's rights, for the full period of 20 years. (Ex. G, March 8, 2022 Affidavit of Bradley Dobson; Ex. H, Tammy Lyda Affidavit; Ex. I, Mark Smith Affidavit; Ex. J, February 26, 200 Affidavit of Brent Click). The combination of use by multiple owners is allowed. *Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 857 S.E.2d 16 (Ct. App. 2021); *see also Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997) ("A party may 'tack' the period of use of prior owners in order to satisfy the 20-year requirement.").

There is no question as to the identity of the thing enjoyed as the driveway and turnaround are depicted on the 1996 plat of Betty Ramey (Ex. K) and were continuously used by Dobson, Smith, and Click. (Ex. G, March 8, 2022 Affidavit of Bradley Dobson; Ex. I, Mark Smith Affidavit; Ex. J, February 26, 2020 Affidavit of Brent Click).

Finally, the use or enjoyment has been adverse. Bradley Dobson's Affidavit establishes his ownership of the Click property since 1998, 22 years before this lawsuit was filed. (Ex. G, March 8, 2022 Affidavit of Bradley Dobson). His use was without permission and thus adverse to the ownership of the Thomas property.

Dobson sold the Click property to Mark Smith in 2005. Smith's use was also without permission and was adverse. (Ex. I, Mark Smith Affidavit). Smith sold to the property to Brent Click in 2017 (subsequently titled in the name of Click's business, Click Properties, LLC), who continues to use it in an adverse manner. (Ex. J, February 26, 2020 Affidavit of Brent Click). "[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016). Therefore, a presumption arises that the use of the driveway and turnaround area has been adverse.

With respect to the issue of permission, Dobson, Smith, and Click all state that they did not seek or receive permission. (Ex. G, March 8, 2022 Affidavit of Bradley Dobson; Ex. I, Mark Smith Affidavit; Ex. J, February 26, 2020 Affidavit of Brent Click). They state they used the property as if it were their own. This creates a question of fact for the jury to decide.⁸ The presumption is not rebutted merely by the use of the property by others, as exclusivity of use is not required to establish a prescriptive easement.⁹

Finally, silence is not "permission" that would defeat a prescriptive easement: a more affirmative act is required or there could never be a cause of action for prescriptive easement. As the South Carolina Supreme Court noted, "the asking and obtaining of permission . . . stamps the character of the use as not having been adverse." *Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917). Brent Click and his predecessors have testified that they neither sought nor obtained permission to use the disputed property. Therefore, Defendants' Motion for Summary Judgment should be denied.

⁸ Conflicting testimony at trial regarding permissive use creates a question of fact to be decided by the decision maker. *Enmark Stations, supra*, 433 S.C. at 161-162, 957 S.E.2d at 26.

⁹ "A thorough review of the extensive law of a prescriptive easement in our State finds there is no requirement of exclusivity of use to establish a prescriptive easement." *Kelley v. Snyder*, 396 S.C. 564, 572, 722 S.E.2d 813, 817 (2012) (citing *Jones v. Daley*, 363 S.C. 319, 317, 609 S.E.2d 597, 00 (Ct. App. 2005)).

**V. PLAINTIFFS HAVE PRESENTED SUFFICIENT EVIDENCE FOR
EASEMENT BY ESTOPPEL TO SURVIVE SUMMARY JUDGMENT**

The elements for easement by equitable estoppel are: (1) conduct that amounts to a false representation or concealment of material facts, or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

These elements may be satisfied by the silence of the party to be estopped when that party has actual knowledge of the other party's prejudicial change in position. *See O'Cain v. O'Cain*, 322 S.C. 551, 557–59, 473 S.E.2d 460, 464–65 (Ct.App.1996) (holding that a landowner was equitably estopped from denying the use of a driveway on his property by an adjoining landowner when the first landowner remained silent during the second landowner's construction of the driveway and improvements to land to which the driveway led).

The predecessors in ownership to the Thomas property never asserted that the gravel driveway and turnaround could not be used, in their entirety, by the Click property. In fact, Greg Grissinger, the father-in-law of Thomas, claimed he owned the (Thomas) property and literally helped pour the concrete slabs for the awnings. (Ex. E, Brent Click Deposition, p. 31, ll. 14-20). Further, in January 2015, Mr. Watkins, owner of the Thomas property at the time, came to the Click property where he saw the concrete slab Click had installed, and made no objection. (Ex. E, Brent Click Deposition, p. 61, l. 3- p. 63, l. 7).

Plaintiffs relied upon the silence of Defendants and their predecessors in purchasing and improving the property for their business. Defendants were aware of Plaintiffs change in position in developing their business and are now estopped from claiming Plaintiffs cannot use the property

at issue. There are sufficient questions of material facts to show easement by estoppel and Defendants' Motion for Summary Judgment should be denied.

VI. PLAINTIFFS HAVE PROVIDED SUFFICIENT EVIDENCE ON THE ISSUE OF ACQUIESCENCE

“If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one.” *See Gardner v. Mozingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987).

The boundary line was recognized as a result of the topography of the land and treated as the boundary by the Click and Thomas properties. Bradley Dobson, an owner of the Click property from 1998 to 2005, supports this acquiescence in his Affidavit. (Ex. G, March 8, 2022 Affidavit of Bradley Dobson). Mark Smith concurs in his Affidavit, when his ownership began in 2005. (Ex. I, Mark Smith Affidavit). Brent Click confirms that the owners of the Thomas property mutually recognized and acquiesced. (Ex. E, Brent Click Deposition, p. 28, ll. 17-25; p. 29, ll. 14-19). Therefore, sufficient evidence has been presented for the jury to decide, and thus defeat Summary Judgment.

VII. PLAINTIFFS, NOT DEFENDANTS ARE ENTITLED TO SANCTIONS

Defendants mischaracterize disputed claims as “frivolous claims”. Litigation occurs because parties interpret the facts and the law differently. The provisions of the Frivolous Claims Act “shall not apply where an attorney . . . establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous” S.C. Code Ann. § 15–36–10(J). As set forth above, Plaintiffs have a good faith basis for their claims. The Court has already decided that a likelihood of success on the merits existed to impose a temporary injunction (Order granting

TRO filed May 8, 2020) and a second judge has determined that the injunction should remain in place until trial. (Order denying Motion to Remove TRO filed April 7, 2022).

If sanctions are warranted in this case, it is against the Defendants. Defendants filed a Motion to Remove the Temporary Injunction claiming Plaintiffs were no longer using the gravel turn-around to gain access to the paint booth inside the back building, when it was Defendants' own actions that forced Plaintiffs to use the back building at night when Defendants were not present. (Ex. L, March 24, 2022 Affidavit of Brent Click). Plaintiffs believe the purpose of that Motion was to harass them into dismissing their case. Plaintiffs requested the Court award attorneys' fees and costs as a sanction for Defendants' misuse of the court process at that time. Judge Kinlaw deferred ruling on awarding sanctions until the case is heard by the trial judge. Since this Motion will most likely be heard by the trial judge, Plaintiffs respectfully request an order of attorney's fees and costs.

CONCLUSION

Plaintiffs have suffered significant injury due to the outrageous behavior of the Defendants when they created a 36 foot drop that has caused, and continues to cause, damage to their property and back building which includes their home. Plaintiffs have also suffered significant damage by the ongoing harassment by Defendants in an attempt to intimidate Plaintiffs to move. Plaintiffs respectfully request the Court deny Defendants' Motion for Summary Judgment, allow the case to go to trial, and afford it reasonable attorney's fees and costs.

Respectfully submitted,

May 17, 2022

s/Bradford N. Martin

Bradford N. Martin, Esq. (SC Bar No. 3658)

Gwendolyn G. Martin, Esq. (SC Bar No. 1897)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

Bradford Neal Martin & Associates, PA

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	WILLIAM DAVID HALL, P.E.
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants,	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I received my Bachelor of Science in Civil Engineering from Clemson University. I have held registrations in multiple states as a licensed Professional Engineer, and currently I am a licensed Professional Engineer in South Carolina. I have 42 years of civil engineering experience. I am currently the Civil Department Manager at H2L Engineering in Greenville, South Carolina. Prior to joining H2L, I operated my own civil engineering firm, Hall Engineering, Inc., and managed civil engineering site design projects across the southeast. My areas of expertise include preparation of site development plans including grading, retaining walls, storm drainage, utilities, and details required for construction of commercial and residential projects.

3. I conducted a site investigation at 3668 and 3670 Calhoun Memorial Highway, Pickens County, South Carolina, with site visits made on June 3, 2021, December 10, 2021, March 15, 2022 and April 7, 2022. I investigated the potential impact, if any, of soil removal in August 2018 by the owner of 3670 Calhoun Memorial Highway (the "Thomas Property") that altered the steepness of the slope of an embankment between the two properties.
4. I engaged the services of Bunnell Lammons Engineers/BLE, geotechnical engineers, to conduct a Global Stability Analysis of the Click property. BLE's preliminary report was later refined by borings drilled on April 7, 2022 and a soils analysis by BLE. BLE drilled at two locations I selected at the site, identified as boring B-1 and boring B-2. See Figure 2 (PL 173). The April 13, 2022 BLE analysis of the collected samples evaluated the stability of the embankment under static and seismic loading conditions. The flatter slope at B-2 has a satisfactory factor of safety under both static and seismic loading conditions, an improved result compared to the preliminary study. However, the steep slope at B-1 has an insufficient factor of safety for both the static case and seismic loading conditions.
5. In my professional opinion, to a reasonable degree of engineering certainty, the embankment between the two properties has been shown to be unsafe, having at best a 1.16 factor of safety at B-1. There is a likelihood, to a reasonable degree of engineering certainty, that the embankment will collapse and result in further damage to the Click property. The embankment's failure zone for the static case is depicted in colors in the drawing identified as PL 173. In my professional opinion, when the failure occurs the Clicks will lose access to the back building and the utilities under the gravel driveway on the Click property will likely be impacted. BLE's methodology, analysis and

conclusions support the likelihood of damage to Click's back building based on evidence of differential settlement. BLE's analysis notes that the face of the embankment is exposed to weather and therefore will continue to lose cohesion. The topsoil is sliding off the embankment. The grading and soil removal performed on the adjacent Thomas property removed the lateral support of the Click Property and has impacted, and will continue to impact, the Click Property. Therefore, a retaining wall is necessary to prevent ongoing damage to the Click Property through further erosion, and to restore safety to the embankment. In my professional opinion, the expected cost of the retaining wall, including design, grading, backfilling, and installation is \$80,000.00, based on my own calculations and expertise, based on installation of a concrete retaining wall.

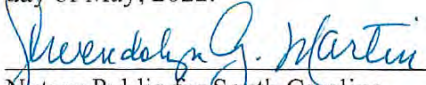
6. Based on my professional knowledge and experience, multiple site visits, review of materials in this case, including the reported observations of the property owner, Brent Click, and the preliminary and final BLE reports, it is my professional opinion that the excavation performed on the Thomas property has negatively impacted the safety of the Click property which impact is likely to continue over time. Based on my professional experience, the fact that an abrupt failure has not taken place does not mean the area is safe. The excavation performed on the Thomas Property has caused a permanent impact on the Click property by removing the lateral support of the Click Property and has created an impending failure state at the location identified as B-1 in the BLE April 13, 2022 report. Although there has not been an abrupt failure of the embankment at this time, the Global Stability Analysis predicts that such failure will occur and the excavated embankment in its current state poses a safety risk.

FURTHER AFFIANT SAYETH NOT.



William David Hall, P.E.

SWORN TO before me this 14th
day of May, 2022.



Notary Public for South Carolina
Printed Name of Notary:

Gwendolyn G. Martin
My Commission Expires: 05.29.2029

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

CLICK PROPERTIES, LLC and) C.A. No. 2020-CP-39-00266

HYPER FORMANCE, LLC,)

Plaintiffs,)

vs.)

THOMAS SC PROPERTIES, LLC)

and ALL-TECH TIRE and AUTO)

REPAIR, LLC,)

Defendants.)

D E P O S I T I O N

WITNESS: WILLIAM DAVID HALL

DATE: March 23, 2022

TIME: 9:57 a.m.

LOCATION: Campbell Teague
16 West North Street
Greenville, South Carolina

REPORTED BY: Treasa Hix

LEGAL EAGLE

Post Office Box 5682
Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

1 one point five, not one point one. He provided me a
2 static test where it's just sitting there, and an
3 earthquake or a seismic run and it dropped to point
4 seven, I think it was, or point nine. And then he
5 concluded -- his opinion was that the wall is -- is in
6 an impending failure state. Meaning it's not stable
7 because the factor of safety is under one point five.
8 And I've -- I relied on that to -- that and other
9 things to arrive at an opinion that -- that this --
10 this embankment needs to be stabilized to protect the
11 adjacent property.

12 Q. Okay.

13 A. And -- and them too. Because if there was a failure --
14 a big failure of that wall they would be impacted as
15 well as the adjacent property.

16 Q. Okay. Have you analyzed what, if any, impact that
17 excavation has had to this point on Mr. Click's
18 property?

19 A. Well, there are clearly evidences in that upper
20 building of deterioration in terms of cracks in the
21 floor. There are a lot more than was in that photo
22 that you referred to earlier when he moved in. There
23 some differential settlement on those cracks, meaning
24 the slab is probably dropping. And it -- it can only
25 drop -- and there are a number of reasons it could

1 drop, but that building's been there, according to the
2 -- the photo records since 1978, and so whatever --
3 what -- what's been done has accelerated the cracking.
4 And so my conclusion is that this excavation has
5 accelerated the cracking in that building. But -- but
6 really the most important thing is the access to that
7 building if there was a failure to that embankment, Mr.
8 Click would not have access to that building --

9 Q. Okay.

10 A. -- because it would -- it would -- a failure would go
11 out into that gravel drive that serves his property in
12 the back.

13 Q. Okay. And I want to kind of take each of those in
14 part. Let's focus on the embankment itself to start
15 with, and then we can kind of delve more into the
16 building and what you observed related to that. As far
17 as the embankment itself you said that you have relied
18 on an opinion from Bill Matthews; is that right?

19 A. I've relied on his analysis and what he concluded, yes.
20 (Introduction of DEFENDANT'S EXHIBIT-NUMBER-TWO.)

21 Q. Okay. And I'm going to hand you what's been marked as
22 Defendant's Exhibit Two. If you'll take a look at
23 that. Is that what you received --

24 MR. MARTIN:

25 Defendant's Exhibit Two? Okay.

1 accepted norm of one point five there could be failure.
2 It's not a safe condition.

3 Q. Okay. Does that mean it's not safe to walk on? It's
4 not safe to drive a tractor-trailer on? Any --

5 A. I wouldn't drive a tractor-trailer above there on that
6 gravel trail. I mean, I think, the owner right -- I
7 mean, I think, he's made the right decision. He
8 doesn't drive heavy vehicles up and down that gravel
9 drive because he's afraid that his vehicle might end up
10 in the top of that building. So, yeah, it will -- it
11 is -- it has limited what he's able to take up and down
12 that drive. But that's his decision based on whether
13 it's safe or not for him and taking vehicles up and
14 down that road. Now, I -- I agree with that based on
15 this analysis and my looking at the site.

16 Q. Okay. And Bill references in here static or seismic
17 loading. What is he talking about there?

18 A. Static is the condition it is right now. Seismic
19 loading is if we had an earthquake.

20 Q. Okay.

21 A. 'Cause we're in an earthquake zone, and so you design
22 structurally to that earthquake zone. So it's a
23 condition where there's an earthquake what would be the
24 factor of safety of that wall, and it's -- it's always
25 less --

1 A. Twelve --

2 Q. -- section --

3 A. Twelve or thirteen feet.

4 Q. Okay. What does that mean once you're kind of out of
5 the zone that's colored here, as far as the safety of
6 the property and how it's affected by the embankment?

7 A. Well, I -- I don't -- I -- I think if -- if there was a
8 failure that went back 12 or 13 feet, this property
9 wouldn't be usable. Because if you're on the edge of a
10 failure you -- you -- you could run the model again and
11 it's just going to continue to move back into the
12 embankment. If the material moves in front -- this
13 excavation removed the lateral support that this
14 property was -- was enjoined. The lateral support.
15 Nothing was moving. It was removed, there's been some
16 movement. You remove more material, same thing's going
17 to be true for what remains until some sort of
18 permanent fix is applied.

19 Q. Okay.

20 A. So it -- it's hard to say if all this slid down and
21 that happened to be only two or three feet onto Brent's
22 property. The -- the plaintiff's property, then it --
23 or however it works out. I mean that's -- that line is
24 changing so it's not really fair to say that. It could
25 be as much as a ten feet on him. It could be as little

EXHIBIT C

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

3 - - -
4 CLICK PROPERTIES, LLC, : Case No.
5 and HYPER FORMANCE, LLC, : 2020-CP-39-00266
6 Plaintiffs, :
7 vs. :
8 THOMAS SC PROPERTIES, et al. :
9 Defendant. :
10
11

12 DEPOSITION OF SHELLEY LEANNE CLICK

13
14 DATE TAKEN: Wednesday, September 23, 2020
15 TIME BEGAN: 9:57 a.m.
16 TIME ENDED: 11:30 a.m.
17 LOCATION: Given Remotely
18 REPORTED BY: Karen Kidwell, RMR, CRR
19 EVERYWORD, INC.
20 P.O. Box 1459
21 Columbia, South Carolina 29202
22 803-212-0012
23
24
25

1 tell me if you don't know -- about how much increase
2 to your revenue did you have?

3 A. I do not know specific numbers in regards
4 to revenue, but I do know that my husband keeps very
5 good records of everything coming in, and everything
6 gets filed away and -- receiptwise. And we have
7 boxes labeled and invoices are all properly
8 documented and saved.

9 Q. Okay. So tell me, now that you have the
10 full property, how do you use the two buildings?
11 What's the purpose of each one?

12 A. The bottom building, or the lower
13 building, is primarily the metal shop. And then the
14 top building, or back building, is primarily the
15 paint and body shop.

16 Q. What, if any, large machinery do you use
17 in your operations?

18 A. We use milling machines and CNC machines.
19 And those are primarily in the lower shop, but we
20 also have some heavy equipment in the back building
21 as well.

22 Q. What type of heavy equipment do you have
23 in the back building?

24 A. We have a paint booth, and we have a
25 sandblasting cabinet, and also our own personal

1 apartment is in the back building.

2 Q. The paint booth and the sandblasting
3 cabinet, I want to talk about each of those, just
4 because I don't have extensive experience with either
5 of those. Can you describe for me what the paint
6 booth consists of?

7 A. The paint booth is -- it's essentially a
8 bunch of metal panels. And we also have an air duct
9 system that's attached to that. And it's a big --
10 big filters that filters the air through, so when
11 you're painting, you need a lot of air circulation.

12 And so that was actually installed when we
13 were leasing. So 2013, we got a big paint booth
14 installed in the back building. Use it almost daily.

15 Q. Is that -- and again, this is just because
16 I'm not familiar with it. Is it something that's
17 fully enclosed?

18 A. It's -- yes, ma'am. It's a fully enclosed
19 paint booth.

20 Q. Okay. So you walk in a door, or an access
21 point, to go into the paint booth?

22 A. Yes. You have two doors in front that
23 swivel open so the vehicle can go into it, and then
24 there's a little door in the back that the painter
25 goes in and out of, to access inside -- or the

1 11:03 a.m.)

2 BY MS. O'BRIAN:

3 Q. All right. Ms. Click, did you talk with
4 Mr. Martin or anyone else about the pending question
5 while we were on break?

6 A. No, ma'am.

7 Q. Did you talk with Mr. Martin or anybody
8 else about your testimony to this point?

9 A. No, ma'am.

10 Q. Did you talk with Mr. Martin or anyone
11 else about potential future questions?

12 A. No, ma'am.

13 MS. O'BRIAN: Okay. Karen, if you
14 wouldn't mind reading back that question for us,
15 please.

16 (Whereupon the Court Reporter read the
17 previous question.)

18 THE WITNESS: Yes, ma'am.

19 BY MS. O'BRIAN:

20 Q. What damages have you observed?

21 A. I have observed various cracks inside and
22 outside the building, inside the eaves, on the walls,
23 on the floor, and outside, near the gutter-type area.
24 And also along the outside of the building. Just new
25 cracks, some of them fairly large cracks.

1 Q. And which building are you referring to?

2 A. I'm referring to the back building and the
3 turnaround area.

4 Q. The back building and the turnaround area,
5 you said?

6 A. The cracks have been observed in the back
7 building, and I've also observed damage to the hill
8 and to the turnaround area.

9 Q. Okay. All right. Let's focus on the back
10 building, and then I do want to follow up on the
11 turnaround area and what you've seen there. So the
12 back building, where have you seen these cracks?

13 A. In the -- I'm sorry?

14 Q. Sorry. I was going to try and make it a
15 little bit easier. If we're looking at that
16 Exhibit 2, so we've got that aerial view, can you
17 describe for us where you've seen those cracks?

18 A. I've seen various large, long cracks along
19 the outside of the building, the -- if you're looking
20 at it from up top, it's -- we call it "the duck
21 area," but that's not -- it's -- it's a little
22 penned-in area on the left side of the building. So
23 where -- there aren't any doors, but there's a gutter
24 at the front of it, and along the side of the
25 building I have noticed fairly long cracks. And then

1 also by the gutter, where the gutter area is, on the
2 corner side of the building, I've noticed some cracks
3 near the very tops of the gutter, where it meets the
4 top of the gutter.

5 Q. Okay. You said "the duck area"?

6 A. "Duck area." I have pet ducks.

7 Q. Okay. And is that towards the back -- or
8 I guess if we're talking kind of up and down on that
9 back building, is it at the top or towards the
10 bottom?

11 A. I guess you'd say it's towards the bottom.
12 Again, you're looking at it from above, so.

13 Q. Right.

14 A. Yeah, that's where I've noticed the most
15 significant long cracks. But that's just for the
16 outside of the building. I've also noticed
17 significant cracks inside, regarding the floor and
18 some of the eaves on the tops of the -- of the walls.

19 Q. Okay. And I want to follow up on what
20 you've seen inside. But just focusing on outside for
21 right now, so that I can keep it straight.

22 A. Yes.

23 Q. You said that you've seen some cracks by
24 the gutter at the corner of the building. Is that
25 the top left corner or the bottom left corner?

1 A. I believe it's -- it's the top -- the top
2 left, I've noticed some significant cracks.

3 Q. Had you noticed those cracks before the
4 excavation occurred?

5 A. No, ma'am.

6 Q. And do you recall -- I know I walk by my
7 house and don't pay attention to everything on it all
8 the time. Had you paid attention to those areas
9 prior to the excavation?

10 A. Yes, ma'am. I actually spend a good bit
11 of time by that area because of where I check on my
12 ducks. They eat and kind of forage right outside
13 that area, and it's not always very safe for them,
14 because of a lot of predatory birds, like hawks, that
15 will fly overhead. So I'll check on them, and I'll
16 usually stand right by the gutter to check on them.

17 So I look at that area -- and it's right
18 by the spigot. We have a water spigot there as well.
19 So I spend a good bit of time in that specific area,
20 so I would notice a change.

21 Q. Okay. And about when did you notice these
22 cracks that you said in relation to that excavation
23 timing?

24 A. After the excavation. So probably fairly
25 recently, I've -- I've noticed them just kind of grow

1 larger. So probably within the past two months, two
2 or three months, I've noticed cracks appearing and
3 growing.

4 Q. Okay. I want to switch, then, to talking
5 about the inside of the building and the issues that
6 you mentioned inside. Can you describe those for me?

7 A. So the cracks I've noticed inside
8 regarding the floor, near where we have a door frame.
9 I told you before that the back shop has two parts to
10 it. One part's the paint booth. The other part is
11 the apartment and the sandblasting cabinet and all
12 that.

13 So we've got a door, actually, that you
14 can open to get to access -- it's pretty much fully
15 enclosed, the paint booth, but we do have one door I
16 open that I can get into one area. And so the frame
17 is actually kind of moved and tilted a bit. And I've
18 noticed cracks right by the door frame on the floor,
19 the concrete floor. And these cracks have -- I've
20 noticed a significant change, and the shift, and the
21 feel of it. Because I walk over that floor all the
22 time, so I've definitely noticed a change.

23 Q. And when did you notice -- when did you
24 first notice that change?

25 A. I noticed it after the excavation, but

1 much sooner after the excavation than these recent
2 cracks I've noticed outside the building. So
3 probably -- probably in the springtime, the beginning
4 of spring, I noticed these -- these cracks in the
5 floor start to get worse.

6 Q. Of 2020?

7 A. Yes, ma'am.

8 Q. Okay. Any other cracks or damages that
9 you've seen inside the building?

10 A. In our apartment area, I've actually
11 noticed some cracks by the tops of the walls and
12 eaves. I told you that the outside of the building I
13 noticed in the duck area had a long crack to it that
14 was growing. So in the apartment, which is -- the
15 apartment is kind of close to the duck area, if you
16 go inside. It's hard to describe, from -- again,
17 from an aerial viewpoint. But I've noticed cracks
18 inside the apartment kind of near the tops of the
19 eaves, towards the back of the apartment.

20 Q. Okay. And your apartment, again, is --
21 we're looking from that aerial view, looking at
22 Exhibit 2. It's kind of at the bottom right of that
23 back building; is that correct?

24 A. Yes, ma'am. The bottom -- bottom right.

25 Q. Okay. And so the duck area would be right

1 outside of that, kind of between the front and back
2 buildings; is that right?

3 A. Yeah. It's a fairly small area, yeah,
4 right outside.

5 Q. Okay. Any other items that you've
6 observed, inside or outside, related to the building
7 itself?

8 A. Any other areas in regards to damage? Is
9 that what you mean?

10 Q. Yes.

11 A. Damages? I've noticed -- actually, in
12 regards to the hill outside, I've noticed significant
13 parts of the hill falling away. We've actually been
14 taking photos of this erosion that's been occurring
15 since the excavation.

16 Q. Okay. And I want to talk about the
17 erosion and the -- you mentioned the turnaround area
18 as well. I want to talk about both of those. But in
19 relation to the actual structure itself, of the back
20 building, have you seen any other cracks or damages
21 there?

22 A. Not that I can recall right now, at the
23 moment.

24 Q. Okay. So tell me a little bit more -- you
25 mentioned damage to the turnaround area. Tell me

1 about that.

2 A. So a significant amount of the soil, of
3 the actual hill itself, has been breaking away,
4 falling away, getting washed away by water, by rain.
5 Because we get, certain parts of the year, a
6 significant amount of rain, as I told you before,
7 will wash our gravel. So we have to re-lay the
8 gravel on the hill. But this has been significant
9 amount to the structural integrity of the hill that's
10 been falling away. So the soil, the grass, even some
11 smaller shrubbery and trees have been falling away
12 since the excavation.

13 Q. Okay. How far -- I'm trying to figure out
14 the easiest way to describe this. Again, if you're
15 looking at Exhibit 2, we've got the turnaround area,
16 the top there, and the gravel driveway, then
17 extending from the turnaround area towards the
18 highway. About how far down that gravel driveway has
19 the erosion extended?

20 A. The erosion has been most significant in
21 the turnaround area, so the very top of the hill,
22 where the majority of the digging, where it comes to
23 a 90-degree angle in some points, that's where the --
24 a significant amount of the dirt has fallen away, is
25 towards the top turnaround area. But we have also

1 had a significant amount of erosion and damage
2 further down the hill, where we have silk trees. We
3 actually moved -- had to move some of our silk trees
4 to try and help with the erosion, because so much of
5 it was getting washed away.

6 Q. And where are those silk trees?

7 A. The silk trees are a little bit further
8 down from the back -- from the very back of the
9 turnaround. So there's -- the silk trees are very,
10 very close to the turnaround area. They kind of
11 start -- again, aerial point of view, hard to see
12 from that. But from the turnaround area, we have
13 some silk trees, and then they just kind of go all
14 down the line. And we've had kind of just -- it
15 trickling and falling away all down the line.

16 Q. Do those silk trees extend past the front
17 of that back building?

18 A. Past the front of the back building?

19 Q. Yes.

20 A. We might -- we might have a few that go
21 past the front, but the majority of them are -- are
22 further back.

23 Q. Okay. Have you been able to use the
24 gravel driveway as normal?

25 A. Well, we -- no. Because a significant

1 amount of it was dug away during the excavation, so
2 we haven't been able to bring heavy vehicles up to
3 the top and park them. We used to -- whenever we
4 were leasing, we actually had a limo up there for a
5 little while, and we worked on some Clemson rowboats.
6 So that -- rowboats take up a great deal of space.
7 So, no, we have not been able to use it in the same
8 way prior to the excavation.

9 Q. Okay. And I want to make sure that -- for
10 my understanding, that I'm distinguishing correctly.
11 The gravel driveway, as kind of the access, versus
12 the turnaround area, which was the larger gravel area
13 outside of the back building, has this impacted the
14 gravel driveway area itself, or just the turnaround
15 area?

16 A. I would say it's impacted the majority of
17 the hill, the majority of the turnaround area and --
18 and the driveway, just because of how much has washed
19 away, and how we're not able to do work on big
20 extensive heavy vehicles anymore. They can no longer
21 drive all the way up the driveway, so we have to do
22 them further out front, in -- either in -- park them
23 in the lower building, or possibly even in the
24 parking lot. But we usually just pull vehicles into
25 the lower shop now.

1 Q. Okay. And with those larger, heavier
2 vehicles that you're talking about, is it because you
3 don't have room up on the hill in that turnaround
4 area?

5 A. It's not only because we don't have room,
6 but it's also because it's not safe, because of the
7 weight, the amount of weight and pressure that would
8 be on that now -- what's the word -- unstructured
9 area. It wouldn't be safe to bring heavy vehicles up
10 there anymore.

11 Q. Okay. Can you drive vehicles -- cars,
12 trucks, SUVs, that type of thing -- up and down the
13 gravel driveway, as you used to?

14 A. We can bring them a certain way up. But
15 when it gets to the turnaround area, to where the
16 majority of the harsh digging and excavating has been
17 done, we cannot drag anything heavy across that area,
18 no.

19 Q. The gravel driveway that runs beside the
20 front building, you're still able to use that part,
21 correct?

22 A. The small section of -- that hasn't been
23 dug into, yes, we can still use that area.

24 Q. Okay. To your knowledge, has anybody come
25 out to look at these cracks that you were talking

EXHIBIT D

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	CHRIS DANNER
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. I have personal knowledge of the facts contained in this Affidavit.
2. I work in product development for a large industrial tool company in Travelers Rest, South Carolina. In my job, I develop relationships with automotive and machine shops and have them test product prototypes to get their feedback. For that purpose, I first called on Brent and Shelly Click at Hyper Formance, LLC in mid-year 2017.
3. Hyper Formance is located at 3668 Calhoun Memorial Highway just outside of Easley (the "Click Property"). I am very familiar with the Click Property because of frequent visits over the past five years, usually twice a month, sometimes weekly.
4. I was present at the Click Property during several days in August 2018 when the excavation was done at 3670 Calhoun Memorial (the "Thomas Property"). Many

truckloads of dirt were removed and I remember that the embankment between the two properties was cut with an extreme slope close to a 90 degree angle. I did not see any erosion control being used.

5. This affidavit addresses areas on the Click property based on location of property pins, and does not include the gravel turnaround area.
6. Since the time of the Thomas excavation I have seen the deterioration of the condition of the Click Property, both inside and outside the back building and along the entire gravel driveway, which is not as steep as it was prior to the excavation. It is sloping toward the excavated embankment.
7. The grassy area between the back building and front building has settled. Before the excavation I never hesitated to drive my truck up the gravel driveway and park in a flat part of the grassy area (the duck pen is at the other end). Because the flat part has settled significantly, I no longer park in that area and I no longer use the gravel driveway.
8. Even though the gravel driveway has settled and is no longer as steep as before the excavation, I have observed that rainwater runs rapidly and excessively down the gravel driveway, to the point it comes into the front building, which I had never seen happen before the excavation.
9. I have seen obvious deterioration in the concrete floor of the back building's prep room since the excavation. Before the excavation I used the door between the prep room and the paint booth room many times, it opened and closed easily, but later the floor beneath the bottom of the door shifted until the door could not be opened and closed due to no longer clearing the floor beneath.

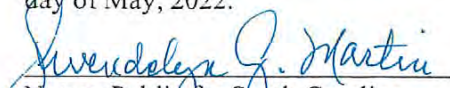
10. I remember when Brent Click first installed a row of cabinets in the paint prep room, they were level with no gaps, now they are uneven with irregular gaps because the floor beneath has shifted, and I can see that the right end of the cabinets is sinking, which is towards the Thomas excavation.
11. There are two cracks in the prep room floor that have become noticeably larger, one shows a drop that measures .55 of an inch. Before the Thomas excavation I remember it was common to see vehicles in the prep room being easily moved by just one person using dollies, because the floor was smooth, I believe it would be a struggle now to move a vehicle by using dollies because of the large cracks.
12. Recently I was in the prep room and placed a level on the work table and on the countertop of the cabinets, the level showed that the area of the prep room floor towards the Thomas excavation is lower.
13. The ground outside the back building has settled where the grassy area beside the carport foundation has dropped dramatically. Previous to the excavation I know that the ground was close to level with the carport foundation, because this is just a few steps from where I used to park and I would step directly onto the carport foundation; now it is a drop of about 12 inches. Farther along the carport foundation towards the duck pen, prior to the excavation it was a small step down to the ground, now it is about 10 inches more to step down from the carport foundation to the ground.

14. I have spent a lot of time in the prep room over the past five years and remember that prior to the excavation, when I would see Shelly Click doing wet sanding the water flowed out the opening of the garage doors. Now when water is poured on the same area of the floor it pools and then runs towards the Thomas excavation.

FURTHER THE AFFIANT SAYETH NOT.


Chris Danner

SWORN TO before me this 10th
day of May, 2022.


Notary Public for South Carolina
Printed Name of Notary:

Gwendolyn G. Martin
My Commission Expires: 05.29.2029

EXHIBIT E

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 2 COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

3 - - -
 4 CLICK PROPERTIES, LLC, : Case No.
 5 and HYPER FORMANCE, LLC, : 2020-CP-39-00266
 6 Plaintiffs, :
 7 vs. :
 8 THOMAS SC PROPERTIES, et al. :
 9 Defendant. :
 10
 11

12 RULE 30(B)(6) DEPOSITION OF CLICK PROPERTIES, LLC,
 13 and HYPER FORMANCE, LLC, by ROBERT BRENT CLICK

14 DATE TAKEN: Tuesday, September 22, 2020
 15 TIME BEGAN: 10:01 a.m.
 16 TIME ENDED: 12:36 p.m.
 17 LOCATION: Given Remotely
 18 REPORTED BY: Karen Kidwell, RMR, CRR
 19 EVERYWORD, INC.
 20 P.O. Box 1459
 21 Columbia, South Carolina 29202
 22 803-212-0012
 23
 24
 25

1 A. In the front building.

2 Q. Okay. And during the lease term that you
3 were only using the back building, did you have those
4 machines as well?

5 A. I had one of them.

6 Q. Okay. So you had that, and you also had
7 your paint shop set up in the back building?

8 A. Yes, ma'am.

9 Q. And you used -- how did you use the
10 property during the term of your lease?

11 A. We put up some carports in front of the
12 paint booth to control the dirt and dust in front of
13 it. And we -- and we had the cars in the gravel
14 turnaround, and we would -- and we only -- didn't
15 have a lot of room in the shop, so we'd pull them in,
16 work on them, put them back out there in the gravel.

17 Q. Okay. And did Mr. Grissinger -- did he
18 ever use the gravel driveway or turnaround area, to
19 your knowledge?

20 A. No, ma'am.

21 Q. Did he ever talk with you about the gravel
22 turnaround area or driveway?

23 A. When we first started renting, he came up
24 and brought his tractor and helped me spread more
25 gravel.

1 Q. And did you talk about the property at all
2 when he was helping you with that gravel? Or what
3 was that exchange?

4 A. He told me he owned the lower shop. And
5 he helped me spread the gravel around the turnaround.
6 Gravel sinks in the ground, and you need to replace
7 it every now and then.

8 Q. You said that was at the beginning of your
9 lease terms, so around 2013?

10 A. Yes, ma'am.

11 Q. So he knew that you were using that gravel
12 turnaround area?

13 A. Yes, ma'am.

14 Q. Did you ever have a discussion about whose
15 property specifically that was on?

16 A. No, ma'am, but it was really made -- acted
17 like it was part of the part that I was renting. It
18 was -- I kept cars on every day, and I used it every
19 day, so . . .

20 Q. Okay. But you and Mr. Grissinger did not
21 have a discussion about the property boundary line?

22 A. Not -- no, ma'am.

23 Q. Okay. You said you were leasing the back
24 building. What was going on in the front building at
25 the time?

1 property that you were leasing?

2 A. Yes, ma'am. We put concrete in front of
3 the upper building, and we put up three carports.

4 Q. Okay. So this was a concrete pad in place
5 of some of the gravel?

6 A. Yeah, to cut down on the dirt and
7 everything, to keep it from coming into the paint
8 booth.

9 Q. Okay. And when was that concrete pad put
10 in?

11 A. October 25th, 2014.

12 Q. Okay. And was the adjoining landowner
13 aware that you were putting in that concrete pad?

14 A. Greg Grissinger, who said that he owned
15 the property next door, came up, and I had never done
16 a large concrete pour before. And he came up and
17 said, "You're going to need to put more stakes here.
18 Your wood form's wrong here and here."

19 He was very knowledgeable in construction
20 and -- and helped with it.

21 Q. Okay. Do you know what the dimensions of
22 that concrete pad are?

23 A. It was 14 feet by 24 feet. It was
24 14 inches thick.

25 Q. Is the 24, does that run along the length

1 Q. And how old were the buildings on that
2 property? Do you know?

3 A. I wasn't there when they were built, but I
4 believe the bottom one was built in '57, and the
5 upper one I believe was in the late '70s or
6 early '80s.

7 Q. Okay.

8 A. No later than '81, I think, though.

9 Q. Because of the age of those buildings, did
10 you have any issues with either one of them that you
11 had to repair or maintain?

12 A. No. They're block buildings. They're
13 pretty -- they're pretty robust.

14 Q. Did you ever have any foundation issues
15 with either one of them?

16 A. No, ma'am.

17 Q. Any cracks along the block buildings that
18 you've noticed during the term of your lease?

19 A. Not before the digging.

20 Q. Okay. I want to talk about your purchase
21 of that property. We talked about the lease period.
22 You said you purchased the property around 2017?

23 A. Yes, ma'am.

24 Q. You purchased it from Mark Smith?

25 A. Yes, ma'am.

1 be worth it for you to try to get along with my
2 tenant." So --

3 Q. Okay. Did he acknowledge that there was
4 any right to use that turnaround area?

5 A. From the way he worded a few things, he
6 made it seem like I had -- he didn't tell me to ever
7 get off. And actually, when I met Jimmy Watkins, my
8 wife instantly recognized him as somebody who had
9 come in and walked around the shop, later in 2014,
10 after we had put up the -- probably closer to
11 January, so it was 2015.

12 He walked in the shop with someone else,
13 and walked in, walked around. My wife was like, "Hi,
14 can I help you?"

15 I mean, you walk all the way up a gravel
16 hill to walk into a shop, you obviously know where
17 you're going. And we're like, "Hi, can we help you?"

18 And he was -- he walked around, looked at
19 all of the machines, looked at our paint booth,
20 looked at all of our safety equipment and stuff. I
21 thought he was -- I thought he was with the County,
22 so I let him walk around, just from the way that he
23 was looking at the specifics on the -- like the --
24 you know, the fire extinguishers. The way he was
25 looking at things, I thought he was with the County

1 or something. I didn't see an official vehicle,
2 because he had walked up the hill.

3 And then he walked out, without saying a
4 single word, and walked down to his vehicle and left.
5 And then I was like, "Who was that? I guess we're
6 not in trouble for anything."

7 So -- and then later, when I found out who
8 Jimmy Watkins was, and I stopped and introduced
9 myself, I instantly -- well, my wife instantly
10 recognized him as the guy that had walked in our shop
11 and walked around. And once she reminded me of that,
12 I realized it was the same guy as well, from years
13 before.

14 Q. Okay. Did -- when you had that
15 conversation with him, a little bit later, about
16 Jonathan Thomas, did he ever make any specific
17 statement that "Yes, you do have the right to use
18 that turnaround area"?

19 A. He didn't affirm it in a direct sentence,
20 but he didn't say I couldn't be up there.

21 Q. And from walking around the property and
22 from owning adjacent property, he knew that you were
23 using part of that property, correct?

24 A. Oh, very clearly. The concrete was
25 already up, and the carports were already up, and the

1 same amount of cars that you see in this picture were
2 already out around there in the little half
3 semi-circle of the gravel turnaround.

4 Even had a Clemson rowboat there at the
5 time, and those are about 60 feet long, so it was
6 well sticking in the shop and out the door and across
7 the turnaround.

8 Q. Okay. After you purchased the property
9 from Mr. Smith, did the structures on the property
10 change at all?

11 A. No, ma'am.

12 Q. Okay. And at that point you had access
13 now to the front building. Is that when you moved
14 the bodyshop work to the front building?

15 A. I moved the metal part of the bodyshop
16 work, all my metal machines down there.

17 Q. Okay.

18 A. And we did put a door in the side of the
19 building, the lower building, so that way I could
20 walk between the two buildings and leave the front of
21 the shop locked up.

22 Q. Okay. And the back portion -- the back
23 building, then, remained the paint shop?

24 A. Exactly the way it is. We just took some
25 heavy machines out of it.

1 like in your complaint, those are primarily related
2 to the excavation. Is that right?

3 A. Yes.

4 Q. Have you still been able to use the front
5 and back buildings as before the excavation?

6 A. No, because a lot of the turnaround is dug
7 away.

8 Q. Okay. How has that impacted your use of
9 the property?

10 A. I have to watch what size vehicles I take
11 on, so make sure I can still get them into the upper
12 building.

13 Q. Do you know approximately kind of what
14 that limit is for you?

15 A. If it doesn't drive, which is nearly
16 everything we work on -- because, you know, we take
17 things apart when we work on them -- I have to be
18 very -- make sure the car has good functioning
19 brakes, good stopping ability and stuff, and we can
20 move it around safely, because before, we just pulled
21 it up the hill. We turned it around in the parking
22 lot and stick it in. And it was an even, flat grade
23 there in front of the shop, and it was a slight
24 uphill on the other side, and then we had the shop.
25 So it was pretty stable.

1 Now, as this is all eroding, this is all
2 becoming a downhill slant into the parking lot next
3 door. So I have to be very careful about moving
4 things around up on top of the hill, because gravity
5 wants to take it off the edge.

6 Q. You said it limits the size of vehicles
7 that you can take up there. Can you take large SUVs,
8 or are you talking trucks that you can't get up
9 there? What's the limitation there?

10 A. Well, like, more like the length of
11 things, like the Clemson rowboats and stuff, I've had
12 to stop doing those. I used to do all the repairs on
13 their carbon-fiber monocoque rowboats. And so I've
14 stopped doing those, just because they don't -- if I
15 have those up there, there's not any room to move
16 around at all. And they're -- you know, because the
17 length of it, you have to hang it over the edge, and
18 it's not safe to be around.

19 Q. But as far as cars, trucks, those types of
20 vehicles, have there been any limitations?

21 A. I had to sell my RV, because we got that,
22 and we were fixing it up. And once we had to leave
23 it in the lower parking lot, it was being hit by
24 All-Tech customers and employees, and so we sold
25 that, because it was just -- there was no -- it was

1 no longer room to keep it, and keep it safe, because
2 of -- if they respected our parking lot, it would be
3 fine, but they didn't.

4 Q. Okay. Any other interference with your --
5 your use of the property, or any changes that you've
6 had to make how to you use the property since the
7 excavation?

8 A. I can't park cars up there anymore. I
9 don't even want to leave them up there, because I
10 don't want the weight on the hill. Occasionally I do
11 have a vehicle up there, but if it's a heavy
12 rainstorm or something coming, I make sure I get as
13 much weight off the top of the hill as possible, just
14 trying to prevent a catastrophic collapse of dirt
15 onto Mr. -- Jonathan's building.

16 Q. Okay. Any other impacts on your business
17 operations?

18 A. Lately there's been some plumbing issues.

19 Q. How so?

20 A. So the dirt hill is sliding. There's a
21 very clear amount of area that is starting to depress
22 from the dirt underneath it being washed away. And
23 this is where the utilities to the upper building
24 are -- are all ran. And obviously the largest and
25 most easily crushed pipe is the sewer line. And I

1 believe that is pinched in some way, because we're
2 having a slower flush rate and having harder time
3 using the upper toilet.

4 Q. Okay. Besides the slower flush rate, has
5 it caused any damage? Has it backed up or flowed
6 into your house -- or your apartment, or anything
7 like that?

8 A. No. It just backs up, and -- you know, we
9 know how to deal with plumbing. So we've been very
10 cautious and careful of this. We had the water
11 company come out and turn over the water meter,
12 because it was mounted sideways, so that we can
13 easier get to the switches and the levers that turn
14 off to the upper building, for whenever this hill
15 does collapse and it takes out the utilities with it.

16 Q. Okay. Any other impacts to your business
17 or your use of the property?

18 A. Oh, yeah. I mean, I can't take on as many
19 cars, because I can't leave them in the lower parking
20 lot, because they'll be hit by All-Tech customers.
21 And I can't have them up the hill, because that area
22 is now missing.

23 Oh. There are also cracks in the upper
24 building.

25 Q. Tell me a little bit about the cracks and

1 when you first noticed those.

2 A. Well, they're all in the direction of the
3 main excavation, where that 36-foot dropoff was. Now
4 it's like a 29-foot or something, just to show how
5 much the ground has slumped.

6 This is -- I just shoot it with a little
7 laser measure tool I had. I've used the same one
8 consistently, so. But the corner of the building, on
9 that side, is getting crack lines down, and that
10 corner of the building is dropping away.

11 Q. Okay. Let's look at that Exhibit 2. And
12 if you can kind of describe for me where this -- the
13 cracking is, from that picture.

14 A. Bottom left of the upper building.
15 Do you have a picture of this with the
16 excavation done already?

17 Q. I don't believe so. Let's just -- we can
18 just use this one as --

19 A. Okay.

20 Q. -- a reference point, for ease.

21 A. Well, where the -- coming off the center
22 line, the back line of Jonathan's property, about,
23 you know, 3 feet from the blue line, that entire area
24 in between the two is dug out, straight down,
25 30-something feet. So the corner that is directly in

1 line with that main excavation corner is the main
2 corner seeing the cracks and the separations.

3 Q. Has anybody besides yourself and your wife
4 come out to take a look at those cracks and
5 separations?

6 A. Yes.

7 Q. Who has done so?

8 A. Some -- the people that we had to come out
9 and look at it for the . . .

10 Q. You don't know the name of who came out?

11 A. No, I don't have that information right
12 here in front of me.

13 Q. Okay. Was that arranged by you or by your
14 attorneys?

15 A. Attorneys.

16 Q. Okay. And do you know if you've received
17 any feedback from them, or written reports about what
18 they saw?

19 A. Not that I know of.

20 Q. Did you speak with whoever it was that
21 came out to look?

22 A. Yes.

23 Q. Okay. And what did you -- what was your
24 interaction with them?

25 A. I showed them where the excavation was,

EXHIBIT F

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. I have personal knowledge of the facts contained in this Affidavit.
2. I am co-owner (with my wife Shelly Click) of Hyper Formance, LLC, a body and machine shop located at 3668 Calhoun Memorial Highway. This property has a front and a back building and is owned by Click Properties, LLC (the "Click Property"). I am owner of Click Properties, LLC.
3. This affidavit responds to the supplemental discovery produced by Defendants on May 10, 2022, the Affidavit of Paul Mills, P.E. submitted with Defendants Motion for Summary Judgment and the harassment evidence Defendants attempt to exclude by their Motion in Limine.
4. Defendants produced screen shots from a Hyper Formance You Tube video publicly posted in 2013 that show some cracks in the concrete floor of the back building. In my deposition testimony I was not asked about cracks in the floor. My answer "No, ma'am ... Not before the digging" responds to the question about cracks in the foundation.

(30(b)(6) Deposition p. 48, lines 9-19). The floor (slab) is not the foundation of this building, the foundation is the walls (the blocks). The slab (concrete floor) would have been poured after the foundation was built in this older type construction. The Exhibit A attached to this affidavit illustrates this older type of construction where the slab is not the foundation.

5. There were some existing cracks in the concrete floor; I have not claimed the floor had no cracks, but before the Thomas excavation the existing cracks were not a problem and were not getting worse. After the excavation more cracks have developed, existing cracks have gotten larger, and the foundation has split and tilted toward the Thomas excavation.
6. I have carefully compared the screen shots from the 2013 video (Thomas 000174-000184) to the current condition of the concrete floor and took photos of the same areas, attached as Exhibit B. Thomas 000174, 000177 and 000180 show the same area, when compared to the current photo (PL 202), now there are an expanded number of cracks and an elevation change, and Thomas 000174 shows how flat the area was in 2013. Thomas 000175, when compared to the current photo (PL 203), shows now the cracks have widened, with more height difference, and the board on the floor in the 2013 screen shot shows how flat the floor was in 2013. Thomas 000176 and 000178 show the same small crack, when compared to the current photo (PL 204), now there is significant chip-out and the floor is more elevated. Thomas 000179 shows a small crack, when compared to the current photo (PL 205), the area now has a large crack. Thomas 000181 does not show a crack, that is the leg of the camera monopod. Thomas 000182, when compared to the current photo (PL 206) shows now the crack continues to the wall and is T'ing off in several

directions. Thomas 000183 and 000184 shows the line across the concrete at the end of the building's floor and beginning of the building's apron, not a crack. The height direction across the control joint on the apron, shown by the level in the current photo (PL 207) is proof of the erosion in the distance of the Thomas excavation.

7. Paul Mills, P.E., Defendants' expert, visited the outside of the back building on April 18, 2022. He did not enter the building, but concluded: "I did not observe cracks in the outside slab. If the cracks in the inside slab were caused by the grading work on the Thomas property, I would expect to see cracks or movement in the outside slab as well." In response, the outside slab was poured in 2014 to a strength to support a car lift, has special concrete that contains fiber, is reinforced with \$800 worth of rebar and a layer of wire mesh, is 14 inches thick under the car lift and 10 inches thick everywhere else, and contains 11.5 yards total quantity of concrete. The inside slab (concrete floor) does not contain fiber (based on 1970s construction), is thinner and a larger surface area, therefore more susceptible to ground movement and settling than the outside slab.
8. The outside carport foundation is even more robust than the outside slab, and is closest to the Thomas excavation, and it shows a crack (PL 208). A 2013 photo of the paint booth floor (Exhibit C to Brent Click Affidavit filed 03.25.22 and PL 209) shows minor cracks, and recent photos of the paint booth floor (PL 210, PL 211) show extensive cracks. Existing cracks in the prep room floor have developed into large, deep cracks (PL 212, PL 213, PL 214), and one is "shelved" and measures .55 of an inch. The condition of the outside block wall facing towards the highway has gotten worse since the excavation, showing "step out" (PL 215). The grassy area between the back building and the back of the front building has dropped

significantly. The once buried carport foundation is exposed and subsequent to the Thomas excavation, the excess concrete at the end has fallen away (PL 216). The ground here has dropped approximately 12 inches. A gap shows separation between the building and the carport foundation that I added in 2015 (PL 217). An enlarged crack outside the apartment door inside the back building has developed that is parallel to the direction of the Thomas excavation (PL 218).

9. In January 2014, when Thomas took over All-Tech from his father-in-law, I brought him a dozen donuts to welcome him to the neighborhood. He took the donuts, placed them on the car beside him, then turned around and pulled a knife, grabbing the back of my head, and holding the knife to my throat. His threat included that he was going to be “top dog around here all the time.”
10. Then, in the early summer of 2017, I grilled a bunch of burgers and hot dogs, and invited the guys that worked in the neighboring shops for lunch. Thomas walked up like he was going to thank me, but instead cocked his head and told me he has dreams of cutting my head off.
11. In August of 2018, Shelly and I came back from boating at the lake late one afternoon and found that Thomas had removed our gate from the bottom of the hill and driven an excavator up the hill. I walked up to where Thomas was standing under his carport and asked him “what is going on?” Thomas responded with words along the lines of “Man, I slept great last night... want to know why?... I had my favorite dream where I get to cut your giant head off with a tiny knife and the smaller the knife the better I sleep,” and then he strolled down the hill.
12. Several days later, Thomas started digging away the embankment between the two properties, and I was very concerned about the safety of what he was planning to

do. I went to Thomas's office and asked what was his plan, whether he had called "811" (to locate underground utilities). Thomas's bizarre response was to laugh and say words along the following lines: "I'm going to dig until your building falls, and when it does, I'm going to build a shop where yours is now and put my boat and four wheelers in it." He had his excavation plan drawn out on a whiteboard with a giant "X" over my back building and then he erased it and drew another square to show where his new building would be. When I left, Thomas was laughing.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

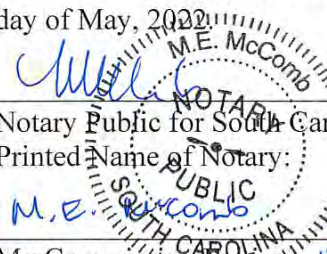
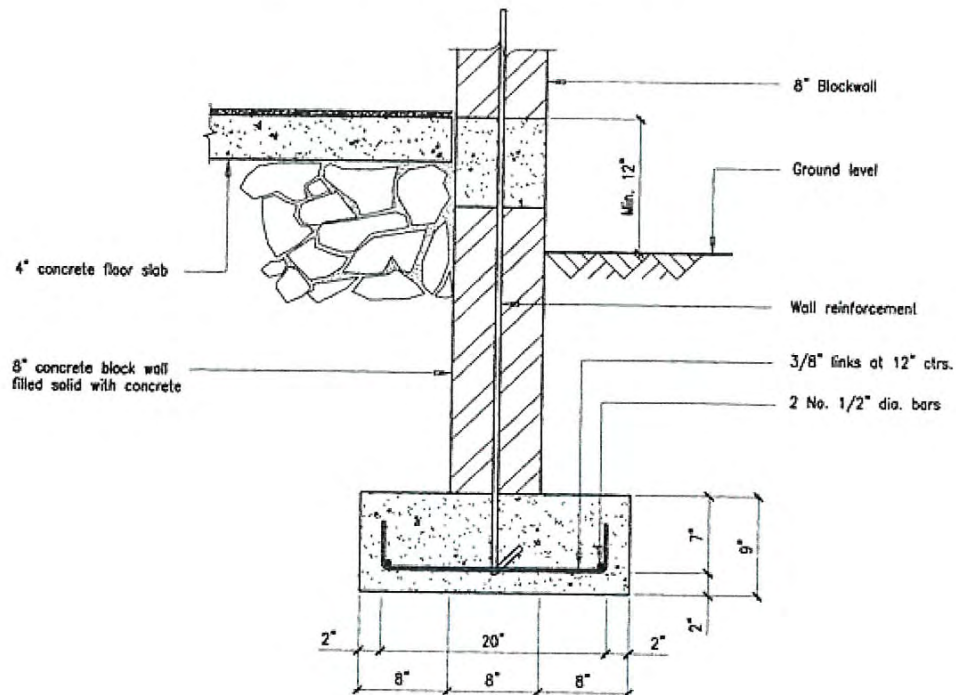
SWORN TO before me this 13th
day of May, 2022.

Notary Public for South Carolina
Printed Name of Notary:
M.E. McComb
My Commission Expires: 10.3.23

EXHIBIT A

[Materials and measurements may differ]



[Photo for illustration purposes – not the Click building]



EX. F

ELECTRONICALLY FILED - 2022 MAY 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP4900266



PL 202













PL PHOTO C



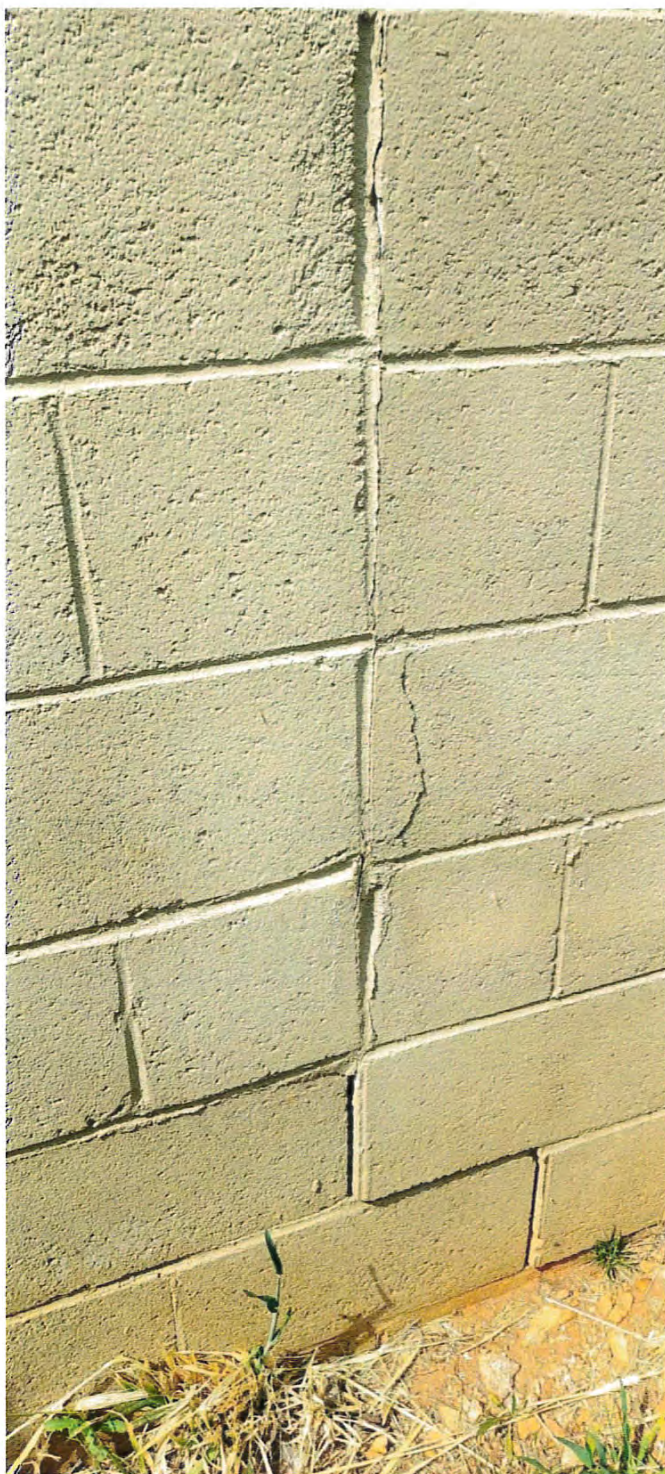
















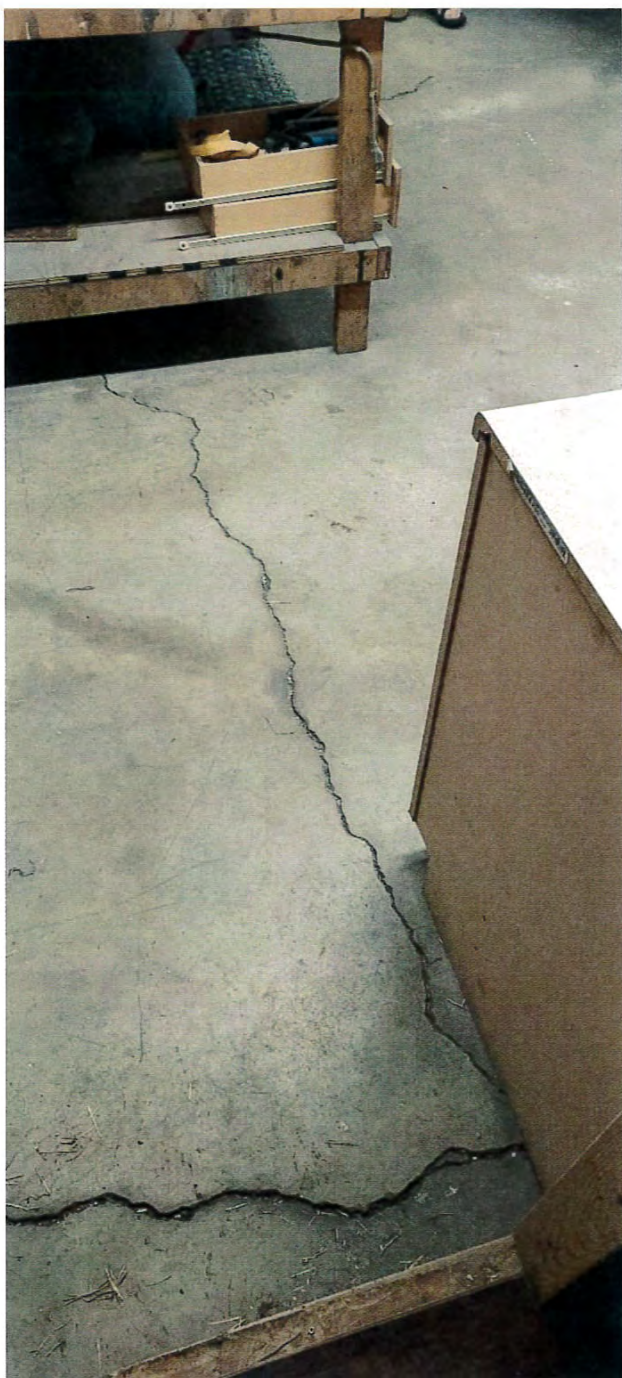


EXHIBIT G

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	BRADLEY S. DOBSON
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. I have personal knowledge of the facts contained in this Affidavit.
3. On April 16, 1998, Tammy M. Dobson and I bought from Betty M. Ramey real estate with two buildings located on US Highway 123 in Pickens County. I have reviewed this deed to refresh my memory. The street address of this property is 3668 Calhoun Memorial Highway, Greenville, SC 29611. In this Affidavit, I will call this property "3668 Calhoun Memorial."
4. Tammy and I used 3668 Calhoun Memorial for our cabinet shop business. The cabinet shop was in the building nearest to US Highway 123 (the "Front Building") and the building up the hill at the back of the property (the "Back Building") is where we stored our lumber and other supplies.
5. When Tammy and I bought 3668 Calhoun Memorial, the next door property on the western side (3670 Calhoun Memorial Highway) was owned by Wallace Merck.

There was a gravel driveway between 3668 Calhoun Memorial and Mr. Merck's adjoining property, which I will call the "Next Door Property".

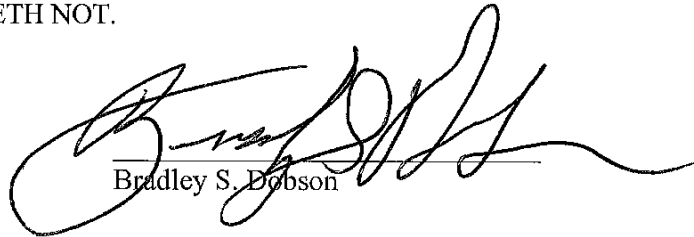
6. The gravel driveway started near Highway 123 at the side of my Front Building, and at the top of the gravel driveway there was a wider gravel turnaround area that went all the way to the side edge of the Back Building. The Back Building had a garage door for cars and trucks to come into the building, which was there when we bought 3668 Calhoun Memorial. The only way to bring a car or truck inside the Back Building would have been to use the gravel turnaround area.
7. Mrs. Ramey had a plat prepared in 1996 that was filed with the official public records of the property. This plat showed the gravel driveway and turnaround area were partly on the Next Door Property.
8. I routinely used the gravel driveway and gravel turnaround area to drive my truck up the hill to the Back Building. I drove my lumber and anything else that was heavy to and from the Back Building. I recently reviewed Mrs. Ramey's plat, and it shows the gravel driveway and gravel turnaround area by a dotted line and the drawing is the same as the area I routinely used during my ownership of 3668 Calhoun Memorial.
9. When Tammy and I bought 3668 Calhoun Memorial, the physical condition of the driveway/turnaround made it obvious that during Mrs. Ramey's ownership, the gravel driveway/turnaround area had been used to drive to and from the Back Building. There was no other access to the Back Building.
10. During my ownership I also performed upkeep of the gravel driveway and turnaround area by buying and spreading a mixture of asphalt millings and gravel throughout the entire gravel driveway and turnaround area.

11. During mine and Tammy's ownership, to the best of my knowledge, Mr. Merck saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me he thought the driveway/turnaround area was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/turnaround area.
12. Mr. Merck sold the Next Door Property to Greg Porter during the time Tammy and I owned 3668 Calhoun Memorial. During our ownership, to the best of my knowledge, Mr. Porter saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me that the property was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/turnaround area.
13. Mr. Porter sold the Next Door Property to Jimmy Watkins during the time Tammy and I owned 3668 Calhoun Memorial. During our ownership, to the best of my knowledge, Mr. Watkins saw me using the gravel driveway/turnaround area when he owned the Next Door Property. He never complained or told me that the property was his, or that I could not use it or do the upkeep on it. To the best of my knowledge, he did not use or perform any upkeep on the driveway/ turnaround area.
14. Tammy and I sold 3668 Calhoun Memorial to Mark Smith in 2005.
15. My use of the gravel driveway/turnaround area was not based on receiving permission from the owners of the Adjoining Property to use the driveway/turnaround area. I used it without asking for permission because it was obvious that the driveway/turnaround already was in use to get to the Back Building before I owned 3668 Calhoun Memorial. This was the only access to the back of the property and the Back Building by car or truck and was used that way by the

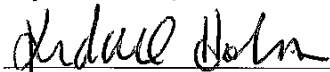
prior owner, which I personally saw during the month or so when I was considering buying the property. The Ramey's cabinet shop was in the Back Building and they and their customers parked in the turnaround area. Also, based on visual observation of the location and condition of the driveway/turnaround and the Back Building, it was clear that there had been long continuous use of the driveway/turnaround by the prior owner of 3668 Calhoun Memorial.

16. I never once thought during all those years that I did not have the legal right to use the driveway/turnaround area.

FURTHER AFFIANT SAYETH NOT.


Bradley S. Dobson

SWORN TO before me this 8th
day of March, 2022.



Notary Public for South Carolina

Printed Name of Notary:

Kendall Holmes

My Commission Expires: 2/9/2028

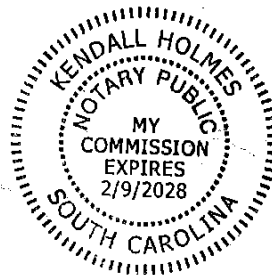


EXHIBIT H

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	TAMMY M. LYDA
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. I have personal knowledge of the facts contained in this Affidavit.
3. On April 16, 1998, Bradley S. Dobson ("Brad") and I bought property located on US Highway 123 from Betty M. Ramey, and its street address was 3668 Calhoun Memorial Highway, Greenville, SC ("3668 Calhoun Memorial"). At that time I went by the name Tammy M. Dobson.
4. Brad and I put our cabinet shop in the front building (close to US Highway 123) (the "Front Building") and our lumber and extra materials were stored in the building at the back of the property (the "Back Building").
5. The property next door (to the west) was owned by Wallace Merck, who I remember quite well because he had a successful Hollywood career. A gravel driveway was between Wallace's property and ours, which went up a hill to the

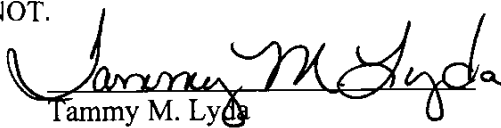
Back Building. A gravel turnaround area at the Back Building provided parking for the Back Building.

6. I was aware that some portion of the turnaround area was located on Wallace's property next door.
7. Brad routinely used the gravel driveway to reach the turnaround area with lumber and other material we stored in the Back Building. We fully used the entire turnaround area like it was ours to reach the Back Building to store and remove items from there.
8. From the physical condition of the driveway and turnaround, and the location of the Back Building, it was clear that these areas had been routinely used by the prior owner to have access to the Back Building by car or truck, and there was no other access to the Back Building by car or truck.
9. I remember that Brad took care of the gravel driveway and turnaround area by adding a gravel mixture from time to time, and none of the owners of the property next door ever did anything to maintain the gravel driveway or turnaround.
10. Wallace Merck never complained about our use of the driveway/turnaround or told us these areas were his, or said we could not use these areas or could not do upkeep on these areas, it was never mentioned at all. He himself did not use the gravel drive/turnaround.
11. After Wallace Merck sold the property next door to Greg Porter, we continued to use the driveway/turnaround area. To the best of my knowledge, Mr. Porter would have observed that Brad routinely used the gravel driveway/turnaround area. He never complained or told us that the property was his, or that we could not use it or

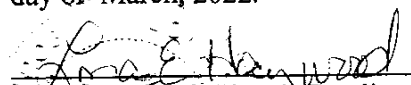
could not do upkeep on it. To the best of my knowledge, Mr. Porter did not use or perform any upkeep on the driveway/turnaround area.

12. After Mr. Porter sold the property next door to Jimmy Watkins, we continued to use the driveway/turnaround area. To the best of my knowledge, Mr. Watkins would have observed that Brad routinely used the gravel driveway/turnaround area. He never complained or told us that the property was his, or that we could not use it or could not do upkeep on it. To the best of my knowledge, Mr. Watkins did not use or perform any upkeep on the driveway/turnaround.
13. Brad and I sold 3668 Calhoun Memorial to Mark Smith in 2005.
14. Our use of the gravel driveway/turnaround area was not based on receiving permission from any of the owners of the property next door to use the driveway/turnaround area. We used it without asking for permission because it was obvious that the driveway/turnaround already was in use to get to the Back Building before we owned 3668 Calhoun Memorial. This was the only access to the back of the property and the Back Building by car or truck and was used that way by the prior owner, which I personally saw during the month or so when we were considering buying the property. The Ramey's cabinet shop was in the Back Building and they and their customers parked in the turnaround area. Based on visual observation of the location and condition of the driveway/turnaround and the Back Building, it was clear that there had been long continuous use of the driveway/turnaround by the prior owner of 3668 Calhoun Memorial.
15. I never once thought during all those years that Brad and I did not have the legal right to use the driveway/turnaround area.

FURTHER AFFIANT SAYETH NOT.


Tammy M. Lyda

SWORN TO before me this 10th
day of March, 2022.


Notary Public for South Carolina
Printed Name of Notary:

My Commission Expires
My Commission Expires: **September 22, 2024**

EXHIBIT I

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	MARK SMITH
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I am the prior owner of 3668 Calhoun Memorial Highway, Greenville, SC, which I bought from Bradley Dobson in 2005 and sold to Brent Click in 2017. This property has one building at the front near Calhoun Memorial (the "Front Building") and a second building at the back of the property (the "Back Building").
3. I used the Back Building at 3668 Calhoun Memorial for my body shop business and sometimes leased the Front Building.
4. The adjacent property located at 3670 Calhoun Memorial Highway, to the west of 3668 Calhoun Memorial, was owned by Jimmy Watkins during the time I owned 3668 Calhoun Memorial.
5. Upon information and belief, I understand that Jimmy Watkins and Greg Porter recently gave Affidavits claiming that the floor of the Back Building was in bad shape,



was caving in, and had foundation problems back when Bradley Dobson wanted to sell the property. I bought the property from Bradley Dobson, and I know what condition the Back Building was in at that time, and it is absolutely untrue that the building was in "bad shape" or that the floor was "caving in" or that there were foundation problems. I would not have bought 3668 Calhoun Memorial if the Back Building had these problems. There were some old cracks that were normal for a building of that age and construction, but the foundation was stable and new cracks were not appearing.

6. The Back Building and the grassy area between it and the Front Building were on a hill. After I bought 3668 Calhoun Memorial, I wanted to improve the property's value for the future. During my ownership, I painted the buildings, put on two roofs, and had a retaining wall installed between the two buildings. Because of the steep hill and closeness of the two buildings, I wanted to make sure the ground in that area and the Back Building would continue to be stable for many years into the future. I had not seen any evidence of instability before having the retaining wall installed. Upon information and belief, I understand that Greg Porter claims he knew a retaining wall was needed between the two buildings back when Bradley Dobson owned the property. Mr. Porter may have believed, as I did, that a retaining wall between the two buildings was a good idea to make sure the steep hill and the Back Building continued to be stable, but it is not true that there was instability with the Back Building or the hill between the two buildings at the time I bought the property.
7. There is a gravel driveway between 3668 Calhoun Memorial and 3670 Calhoun Memorial that goes up the hill to a wider gravel turnaround area located on the western side of the Back Building, which provided my access to the Back Building and to bring vehicles into the Back Building through its garage doors. I moved to



a new location when my business became too large for the available space at 3668 Calhoun Memorial. In 2013 I leased the Back Building to Brent Click for his Hyper Formance business under an oral lease that included the right to use the gravel turnaround area and entire gravel driveway.

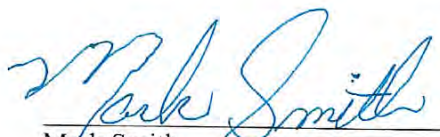
8. During my ownership of 3668 Calhoun Memorial, I knew that a portion of the gravel turnaround area and a portion of the top of the gravel driveway were on the other side of the shared boundary line of 3668 and 3670 Calhoun Memorial. I knew this because the gravel driveway and turnaround area are shown by dotted lines on the Betty M. Ramey plat I received when I bought 3668 Calhoun Memorial, which is attached to this Affidavit. I was not concerned in the least with being able to use the entire gravel turnaround and entire gravel driveway because, upon information and belief, Bradley Dobson had consistently used those same areas during his ownership. I regularly and openly used these same areas and this is why I told Brent Click, when he was leasing from me in 2013, that his lease included use of these same areas.
9. When Brent bought 3668 Calhoun Memorial from me in 2017 and he saw the Betty M. Ramey plat at the closing, he asked about the way the gravel driveway and turnaround were shown on the plat. Because of my open and ongoing use of these areas for so many years, I believed that Brent as the new owner would have the right to continue to use the entire driveway and turnaround area.
10. I never asked Jimmy Watkins, owner of 3670 Calhoun Memorial, for permission to use the part of the turnaround and driveway that were on 3670 Calhoun Memorial, and Jimmy Watkins never gave me permission. I just used these areas as if they were my property. From time to time I added gravel to the area at my expense. It would have



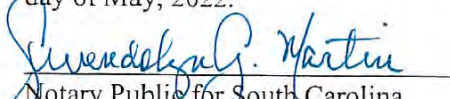
been obvious to the owner of 3670 Calhoun Memorial that I was using these areas regularly and openly to get access to the Back Building. These areas were well-worn from what appeared to be many years of prior use, based on the location and condition of the gravel driveway and turnaround, and what I used were the same areas shown by the dotted lines on the Betty Ramey plat attached to this Affidavit. To the best of my knowledge, Jimmy Watkins did not use or perform any upkeep on the gravel driveway or the turnaround area.

11. Upon information and belief, I understand that Jimmy Watkins has claimed that Brent Click started causing trouble when he bought 3668 Calhoun Memorial and caused a change in the "neighborly and friendly manner" of prior owners and lessees. I have had regular in-person contact with Brent Click since 2013. He was a good tenant and in my experience with him, he has always been reliable, hard working, and friendly. The description of Brent Click given by Jimmy Watkins does not come anywhere close to my personal experience with Brent Click over the past nine years.

FURTHER AFFIANT SAYETH NOT.


Mark Smith

SWORN TO before me this 4th
day of May, 2022.


Notary Public for South Carolina
Printed Name of Notary:

Gwendolyn G. Martin
My Commission Expires: 05/29/2029

ATTACHMENT

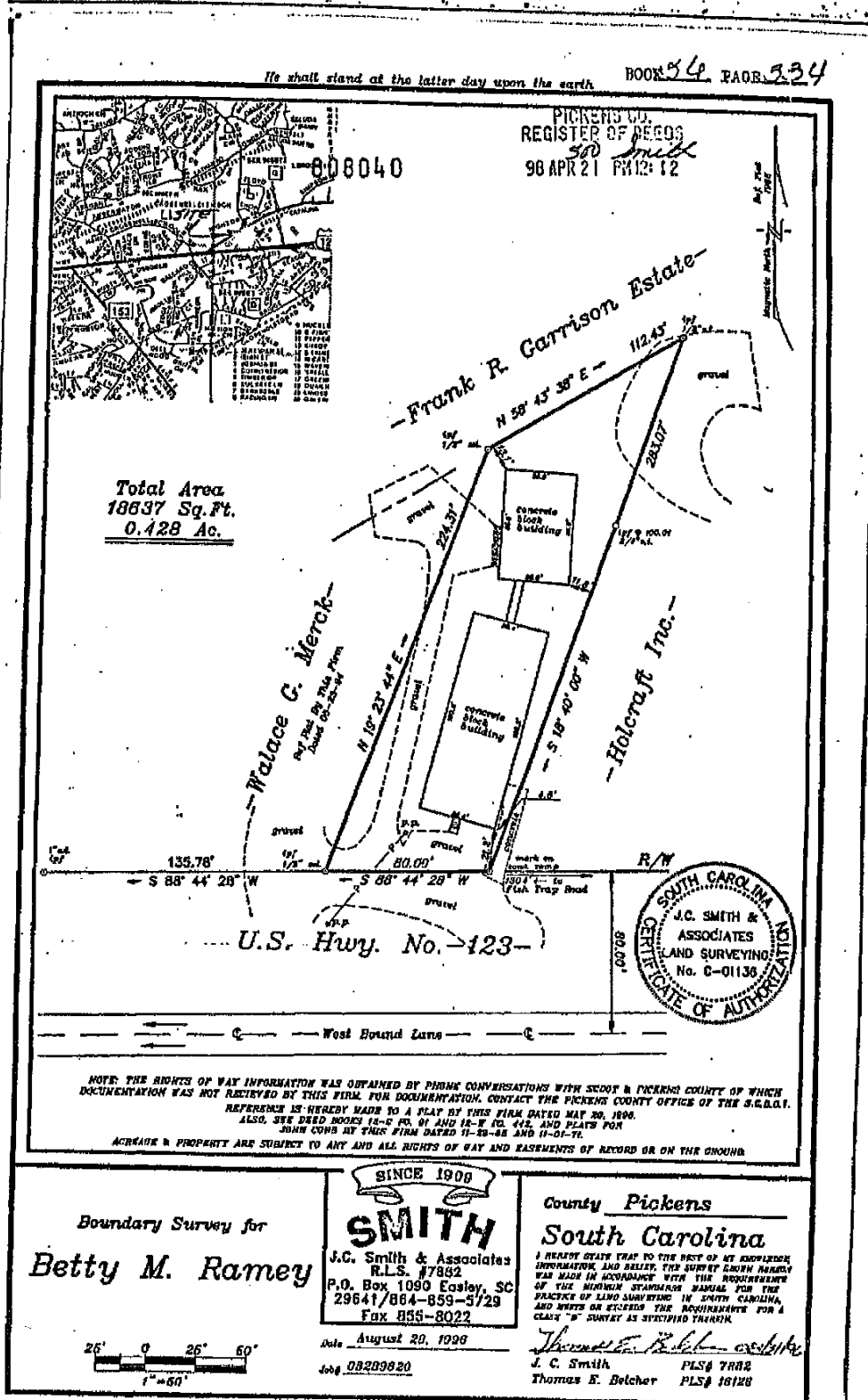


EXHIBIT J

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39- _____
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
3. In 2013, when I was 23 years old, my wife Shelly Click and I started our own business, Hyper Formance, LLC.
4. Hyper Formance, LLC leased a building on the back portion of a parcel of real property located at 3668 Calhoun Memorial Highway (the "Leased Property") for the purpose of operating a specialty metal fabrication and vehicle restoration business (the "Business").
5. The building on the Leased Property was used to house a paint booth and the equipment to prepare customers' vehicles for painting and was also used as a body shop (the "Back Building"). The Back Building has only one entrance and there is no other possible means of entrance by vehicles into the paint booth or any other

portion of the Back Building.

6. As a first-time business owner, from the start of the Business, Shelly and I have invested more than standard “full time” work hours into the Business. We work seven days each week, devoting virtually all of our non-sleeping time to the Business.
7. I understood that the Leased Property included both the entire gravel driveway and the gravel turn-around area located along its western boundary and therefore used these areas to get my customers’ vehicles into the Back Building. It was clear from visual observation, based on the physical condition of these areas, that my landlord and previous property owners (and/or tenants) had also used the entire gravel driveway and turn-around area to take vehicles into the second building. I never received a complaint from the adjoining landowner to the west about my use of these areas, and was never informed by the adjoining landowner that a portion of the gravel driveway and turn-around area were not part of the Leased Property. In fact, the person claiming to be the adjoining landowner who operated an auto repair shop there, called “All Tech Auto,” helped me apply additional gravel to the turn-around area in 2013.
8. The Back Building is situated on the parcel in such a way that the gravel driveway and turn-around area provide the only means of vehicular access to the Back Building.
9. In October of 2014, I erected a carport attached to the Back Building and adjacent to the gravel turn-around area with no complaint or comment from the adjoining landowner.
10. At some point in 2014, the “All Tech Auto” business was replaced by Defendant

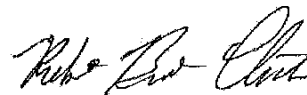
All-Tech Tire and Auto Repairs, LLC ("All-Tech"), operating an auto repair business as tenant on the adjoining landowner's property, which is to the west of the Leased Property.

11. I purchased from my landlord the parcel that included both the Leased Property and Back Building, and another building at the front of the parcel (the "Front Building") on February 10, 2017 (the "Click Property"). A short time later, on March 2, 2017, I transferred title to Click Properties, LLC which is a South Carolina limited liability company and I own a 100% interest.
12. At the time I purchased the Click Property from my landlord, I understood that all of the gravel driveway and turn-around area had been used by my landlord and previous property owners (and/or tenants) to access the Back Building, just as I had done as a tenant, since at least 1996. Approximately 50% of the Business revenues are derived from the Back Building.
13. Shelly and I sold our house and moved onto the Click Property so we could devote all of our resources and time to the Business.
14. The adjoining property to the west of the Click Property was purchased by Defendant Thomas SC Properties, LLC on May 23, 2018 (the "Thomas Property"). Upon information and belief, the owner of Thomas SC Properties, LLC and the owner of All-Tech are the same individual, J.T. Thomas.
15. Tensions developed when employees of All-Tech began a series of harassing activities towards Shelly and me, including parking on the gravel driveway in a manner designed to block our access to the Business.
16. The harassment has continued to the point that Shelly and I have changed our

working hours to operate overnight, when possible, to avoid contact with the employees and owner of All-Tech.

17. When I erected a gate on the lower portion of the Click Property to prevent the harassing activity, the gate was repeatedly removed from the hinges by All-Tech employees.
18. In August of 2018, Defendant Thomas SC Properties, LLC excavated the Thomas Property in an extreme way that has caused serious erosion, by removing approximately fourteen (14) 22-ton dump truck loads of dirt, per day, for approximately five days, changing the back portion of the Thomas Property from a tree-covered hill to a flat area, a reduction in elevation of approximately 15 feet. This erosion has significantly decreased the stability of the soil on the Click Property and is causing the walls and foundation of the Back Building to crack. The significant erosion is continuing and eventually will encroach onto the Click Property to an extent that it will cause the gravel driveway to collapse and will cut off access to the Back Building and cause the foundation to further sink. I am informed and believe that a retaining wall is necessary to be installed on the Thomas Property in order to prevent additional damage to the Click property.

FURTHER AFFIANT SAYETH NOT.



Robert Brent Click

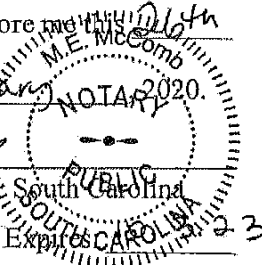
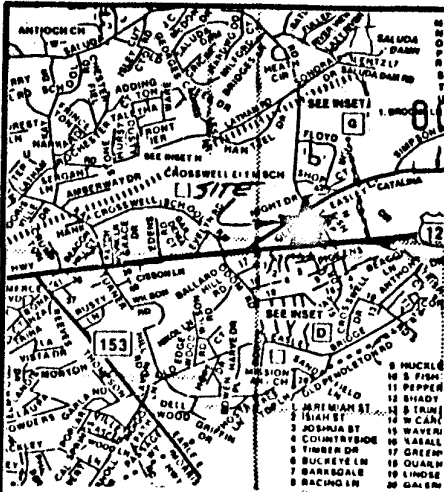
SWORN TO before me this 21st
day of February, 2020.

Notary Public for South Carolina
My Commission Expires

EXHIBIT K

He shall stand at the latter day upon the earth

BOOK 34 PAGE 334



PICKENS CO.
REGISTER OF DEEDS
500 Smith
98 APR 21 PM 12:12

808040

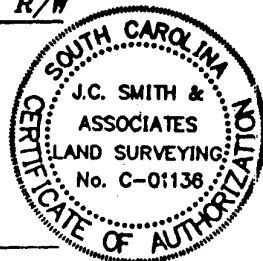
Total Area
18637 Sq. Ft.
0.428 Ac.

Frank R. Garrison Estate

Wallace G. Merck
Ref Plat By This Firm
Dated 06-28-94

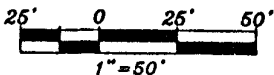
Holcraft Inc.

U.S. Hwy. No. 123



NOTE: THE RIGHTS OF WAY INFORMATION WAS OBTAINED BY PHONE CONVERSATIONS WITH SCDOT & PICKENS COUNTY OF WHICH DOCUMENTATION WAS NOT RECEIVED BY THIS FIRM. FOR DOCUMENTATION, CONTACT THE PICKENS COUNTY OFFICE OF THE S.C.D.O.T.
REFERENCE IS HEREBY MADE TO A PLAT BY THIS FIRM DATED MAY 20, 1996.
ALSO, SEE DEED BOOKS 12-C PG. 91 AND 12-W PG. 442, AND PLATS FOR JOHN COBB BY THIS FIRM DATED 11-29-85 AND 11-01-71.
ACREAGE & PROPERTY ARE SUBJECT TO ANY AND ALL RIGHTS OF WAY AND EASEMENTS OF RECORD OR ON THE GROUND.

Boundary Survey for
Betty M. Ramey



SINCE 1909
SMITH
J.C. Smith & Associates
R.L.S. #7882
P.O. Box 1090 Easley, SC
29641/864-859-5729
Fax 855-8022

Date August 28, 1996
Job# 08289620

County Pickens
South Carolina

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

Thomas E. Belcher *es/1616*
J. C. Smith PLS# 7882
Thomas E. Belcher PLS# 16126

EXHIBIT L

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I have owned 3668 Calhoun Memorial Highway, Greenville, South Carolina (the "Click Property") since February 10, 2017, which is used to operate Hyper Formance, LLC, a body and machine shop owned by my wife Shelly and me.
3. The adjoining property to the west, located at 3670 Calhoun Memorial Highway, has been owned by Defendants since May 2018. In August 2018, Defendants' owner Jonathan Thomas did his own excavation of Defendants' property (see photos A and B) that has caused significant damage to the Click Property. Defendants also decided to block my use of a gravel turn-around area that Hyper Formance had always used and, upon information and belief, that prior owners of the Click Property had used going back to 1978. Therefore, I had to file this lawsuit

and ask for an Injunction.

4. The only entrance (or possible way of entrance) by vehicle into the building that houses my paint booth (the “Back Building”) is through the gravel turn-around area. The paint booth is essential for our body and machine shop, which are not possible without a paint booth. I paid approximately \$30,000 for the paint booth, which was custom spec’ed for and assembled in the Back Building (see Photo C) and has been in the Back Building since shortly after I bought the Click Property.
5. Upon information and belief, prior owners of the Click Property used the turn-around area continuously, openly, and as their own property. (See Affidavit of Bradley S. Dobson dated March 8, 2022).
6. Shelly and I use the paint booth just as much now as when the Temporary Injunction was granted and have continuously used the paint booth since the Temporary Injunction was granted. All paint booth work is done after Defendants close All-Tech and Mr. Thomas and his employees leave for the day or on days when they are closed for business. Shelly and I first had to change the paint booth schedule when Defendants’ excavation (see Photos D and E) was done in August 2018. So much dust was in the air we could only paint at night. When we started painting again in the daytime, Defendants’ employees, obviously for sport, would drive cars into Defendants’ dusty parking lot, driving round and round (making “donuts”) and driving up the hill towards my property spinning the wheels, intentionally stirring up huge dust clouds that were drawn through the paint filters into the paint booth, which must be maintained as a sterile environment. This damaged the paint work Shelly and I had performed. This damage required excessive additional work, typically adding 20% more time. We went back to using the paint booth only at

night and on days when All Tech is closed and this is true to the present time, because this harassment was so damaging. This is why Jonathan Thomas never sees us using the paint booth because if he knows we are painting he is going to mess with us. The paint booth is required for all body work and for almost all parts work.

7. The paint booth work is done in batches, on average three times per week. Items in the turn-around area are moved before we transport the vehicles and parts to the paint booth. Vehicles going into the paint booth usually are not drivable or have been disassembled (see Photo F) and must be loaded onto a trailer (see Photo G) and trucked up the gravel driveway, through the turn-around to the Back Building's overhead doors and offloaded into the paint booth (See Photo H). Parts usually require transport on a large pallet by truck and trailer, or in the truck bed, or by bobcat and placed into the paint booth. Due to the angle needed to enter the paint booth, the turn-around area is absolutely necessary for access.
8. I have reviewed the 14 photos that Defendants submitted and the use of the turn-around area is no different in those photos from the ways we have always used the turn-around area, including for storage, parking, and having other stationary items in the turn-around (see Photos I through L). We are complying with the Judge's Order because what we do now is what we have always done before, the status quo. Some of the items shown in Defendants' photos are not even in the turn-around area. There are three customer vehicles that have been at the Back Building since before the Temporary Injunction. These are under Defendants' carports. My trailers are left in the turn-round due to problems with repeated vandalism of my trailers by Defendants' employees when I leave them down the hill in the front parking lot. For many months I have placed several items, such as the attachment to the bobcat

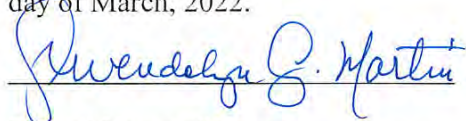
and the cement mixer, close to the excavated embankment to try to mitigate the ongoing erosion caused by Defendants' excavation, by slowing the flow of water over the embankment.

9. I face the same devastating loss of business income as I did at the previous injunction hearing if I am not allowed to continue to use the gravel turn-around area.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

SWORN TO before me this 24th
day of March, 2022.



Printed Name of Notary:

Gwendolyn G. Martin

Notary Public for South Carolina

My Commission Expires: 05/29/2029

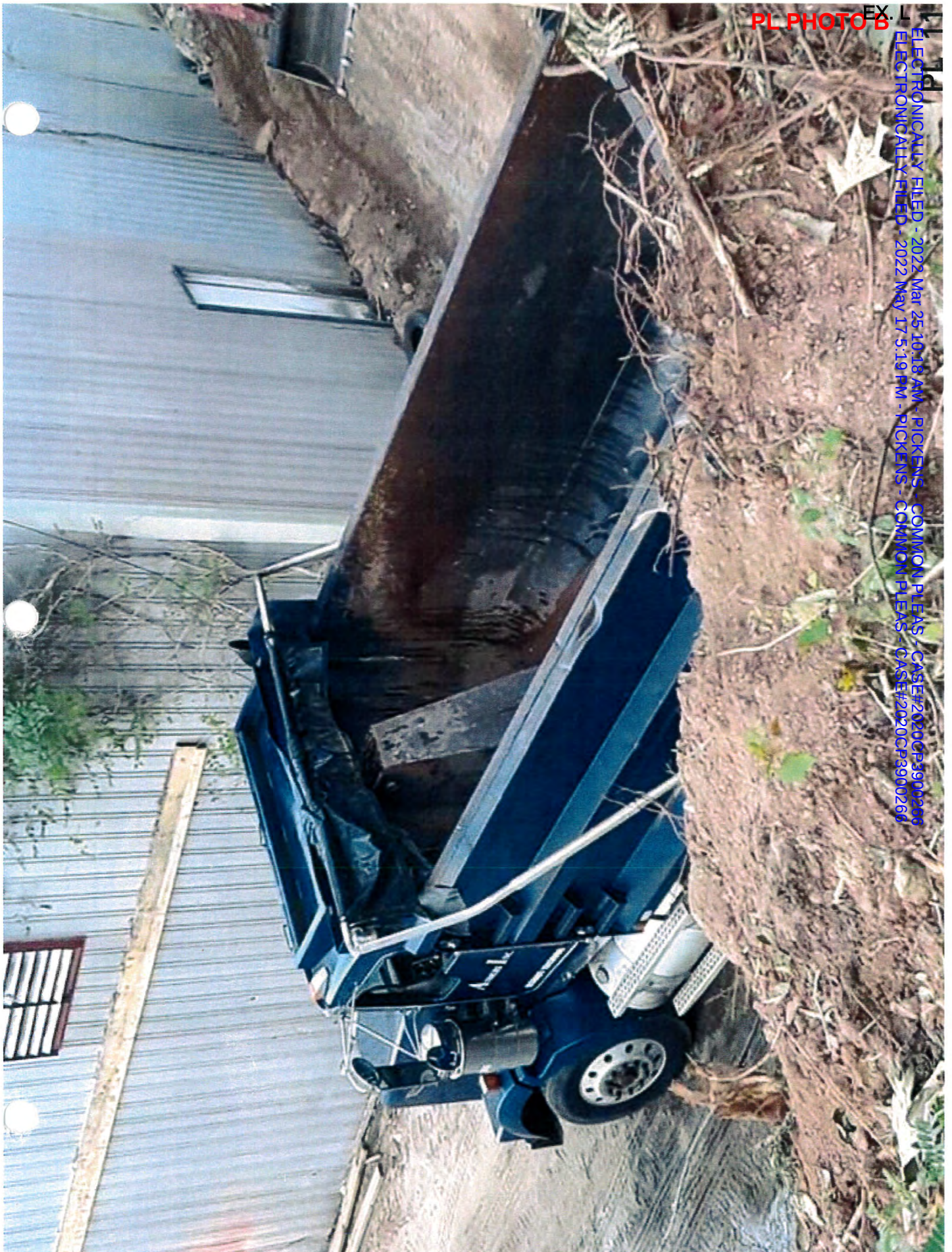
[Seal]

PL PHOTO A

EX. L
ELECTRONICALLY FILED - 2022 Mar 25 10:18 AM - PICKENS - COMMON PLEAS - CASE#2020CP3900266
ELECTRONICALLY FILED - 2022 May 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266



Thomas_000036



PL PHOTO B EX

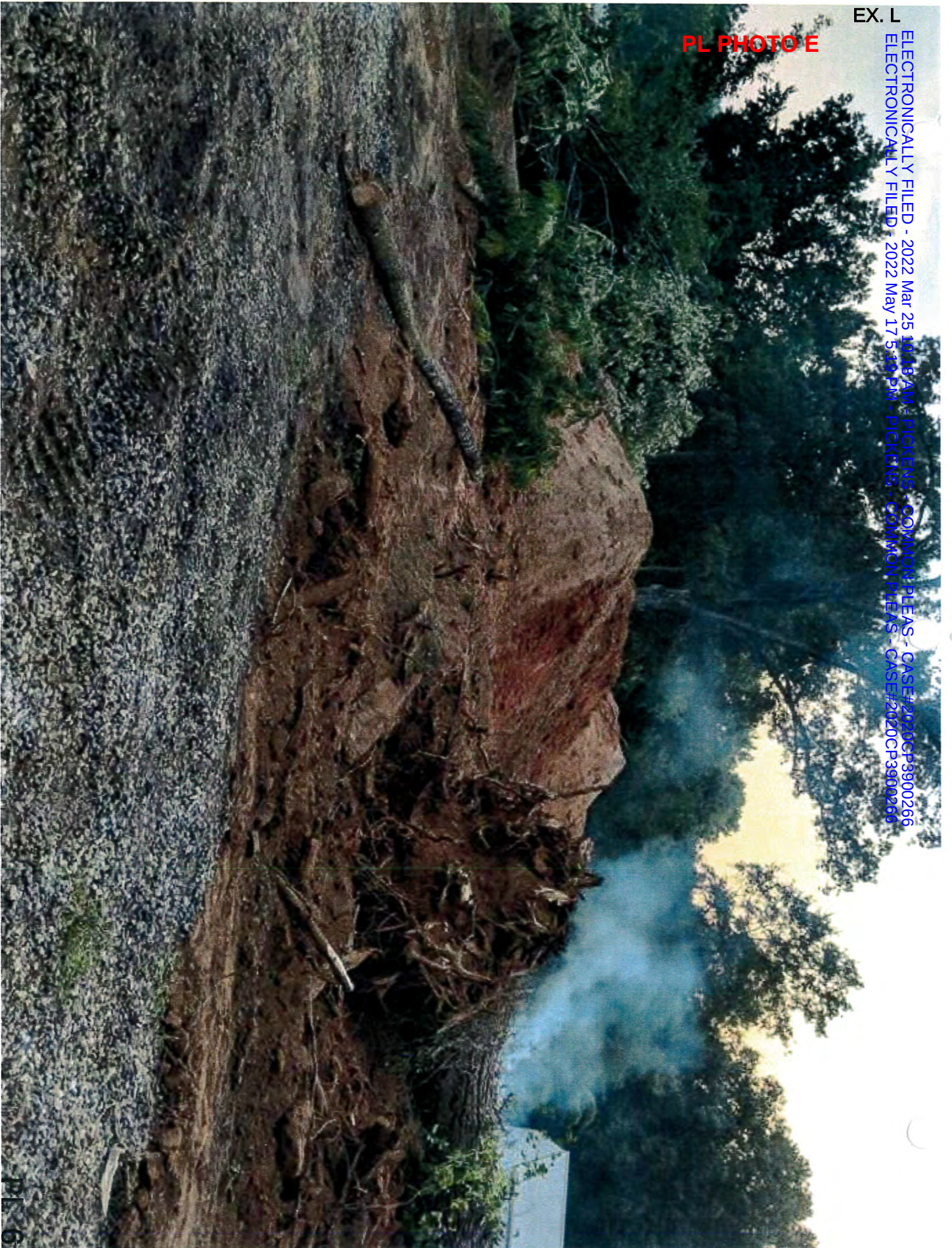
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ELECTRONICALLY FILED - 2022 MAY 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266



ELECTRONICALLY FILED - 2022 Mar 25 10:18 AM - PICKENS - COMMON PLEAS - CASE#2020CP3900266
ELECTRONICALLY FILED - 2022 May 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266



PL PHOTO E



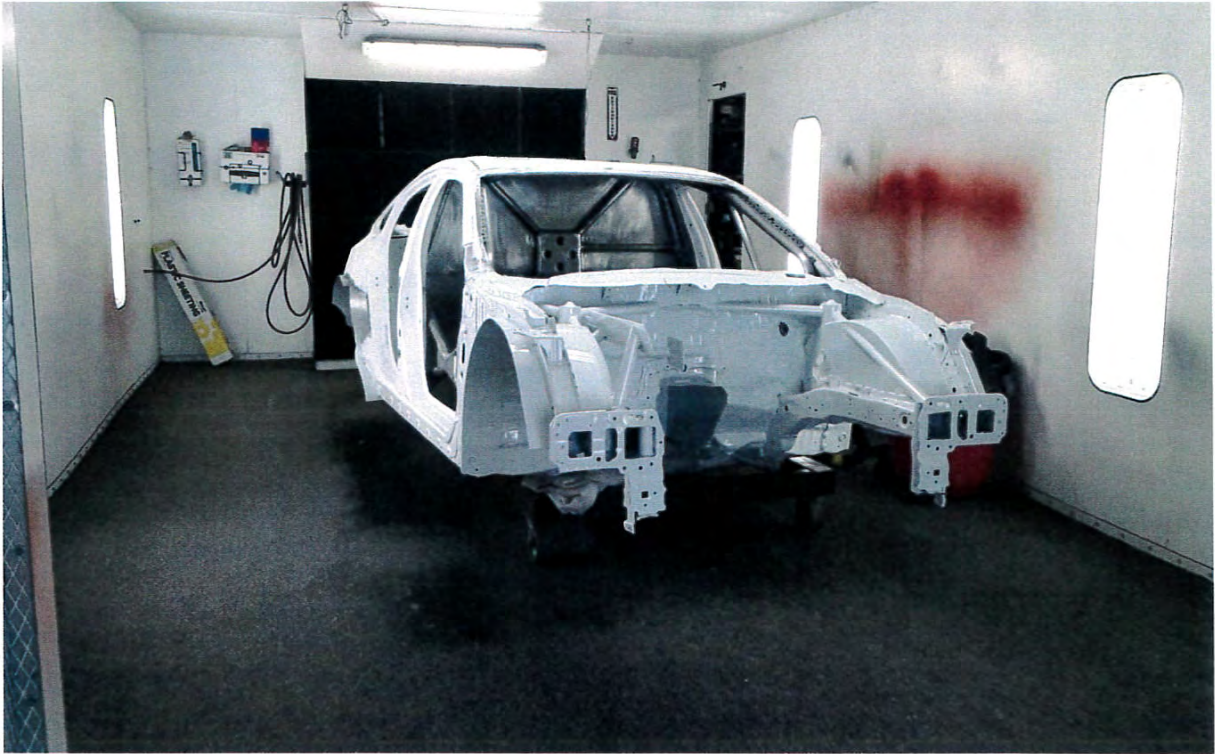
PL 6

PL PHOTO F



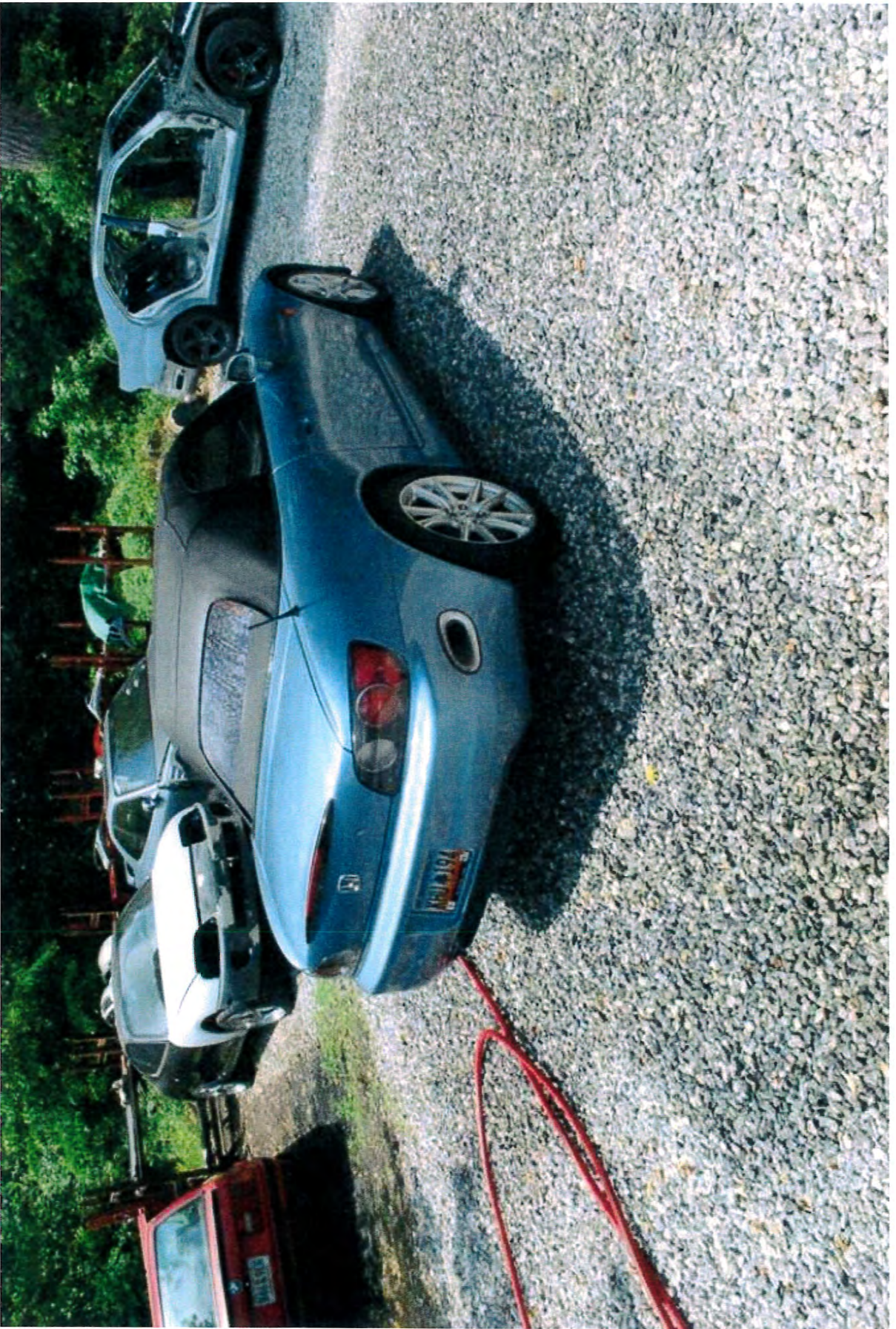


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ELECTRONICALLY FILED - 2022 May 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266



ELECTRONICALLY FILED - 2022 Mar 25 10:18 AM - PICKENS - COMMON PLEAS - CASE#2020CP3900266
ELECTRONICALLY FILED - 2022 May 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266

719
ELECTRONICALLY FILED - 2022 Mar 25 10:18 AM - PICKENS - COMMON PLEAS - CASE#2020CP3900266
ELECTRONICALLY FILED - 2022 May 17 5:19 PM - PICKENS - COMMON PLEAS - CASE#2020CP3900266



PL PHOTO J





PL PHOTO L

