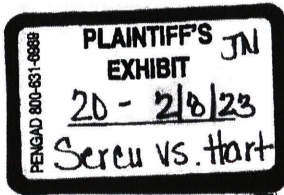




EX. 15

PENGAD 800-631-8888
PLAINTIFF'S JN
EXHIBIT
15 - 2/8/23
Sereu vs. Hart

PENGAD 800-631-8888
PLAINTIFF'S JN
EXHIBIT
19 - 2/8/23
Sereu vs. Hart



ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS
2014 JUL 17 A 11: 32013-CP-32-02975

CARL ANTHONY THOMPSON,
Plaintiff,

BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

vs.

JAMES GERALDO SERCU, ET AL.,
Defendants.

ORDER REGARDING
TEMPORARY INJUNCTION
AND RESTRAINING ORDER

WPC
#1

The plaintiff seeks a temporary injunction and restraining order against the defendants. The motion is granted in part and denied in part. Until further order of the court, the defendants are enjoined from damaging or destroying any of the concrete driveway or putting up any obstacles over the driveway. The defendants are not permitted to put a gate blocking the entrance or any other area along the concrete driveway. They may put a sign, professionally done, that notifies the public that the driveway is a private drive, but cannot inhibit the plaintiff or his legitimate invitees from having access to the plaintiff's property. The defendants are further temporarily restrained from damaging or destroying any structure erected as part of the driveway projects, including the brick columns, unless they pose a safety hazard. The request for a temporary restraining order seeking to restrict the defendants from carrying or firing weapons on their property is denied. The motion to temporarily enjoin the defendants from diverting water onto the plaintiff's property is denied. The request to order the defendants Hart from removing a plywood sign is denied, at this stage. The plaintiff must post a bond in the amount of \$5,000, surety.

In *Strategic Resources Company, et al. v. BCS Life Insurance Company, et al.*, 367 S.C. 540, 627 S.E.2d 687 (2006), the Supreme Court of South Carolina stated the following:

The power of the court to grant an injunction is in equity. *Doe v. South Carolina Med. Malpractice Liability Joint Underwriting Ass'n*, 347 S.C. 642, 557 S.E.2d

670 (2001). The court will reserve its equitable powers for situations when there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n*, 298 S.C. 179, 379 S.E.2d 119 (1989). The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct.App.1984). The remedy of an injunction is a drastic one and ought to be applied with caution. *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950). In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case. *Id.*

For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004).

Granting injunctive relief is always done with great caution, and the situation here clearly is one that mandates caution and recognition that the remedy is drastic. It is with such recognition that the court nonetheless determines that a temporary injunction must issue as to some of the matters raised herein.

WML
#2

At the outset, the defendants Hart object to the imposition of an injunction based on their belief that the Complaint only seeks to recover from them in contract. The court does not read the pleadings that narrowly. There are many equitable issues raised, and the declaratory judgment cause of action seeks determinations that will necessarily involve decisions about the rights and responsibilities of the Harts. The objection on this ground is denied.

The parties are neighbors in a lakefront community. When the plaintiff purchased his property, the residence being constructed thereon was about 70 percent complete. The other neighbors had not begun residing in their houses.

Access to the plaintiff's property was given by easement (the "old easement") that was delineated on a plat of The Woods at Lake Murray, dated April 7, 2008. Four lots are shown on that plat, which appears to be subdividing the easternmost section of a point or peninsula. The

entire area is not particularly large. The largest lot is slightly over three-fourths of an acre, and that includes sections covered by an easement.

The easement is designated to be on Lot 1 (the property of the Harts) for the benefit of Lot 2 (the plaintiff's property). It runs down the western property line of an adjoining tract from Woods Point Road along a strip, 20 feet in width, in a straight line angling to the east, then it turns at an angle of slightly more than 45 degrees, running across Lot 1 for 99.34 feet along the southern property line of Lot 3 (the property of Mr. Sercu), and ends at the property of the plaintiff. Though Mr. Sercu's lot extends to Woods Point Road, it appears that Mr. Sercu also used that strip for access to his property.

The turn in the old easement is at the southwestern corner of the Sercu lot. It is a rather sharp angle, particularly for turning boat trailers or construction trailers.

WMC #3
The plaintiff approached his neighbors about making modifications and improvements to the access. The proposal involved putting in a concrete driveway that was serpentine in shape, running partially in and partially outside of the old easement. Where it extends outside the lines of the old easement, the concrete driveway is on property of Mr. Sercu. Other improvements in the project involved putting a boat storage area near the entry point of the old easement, and installing landscaping and irrigation. An architectural rendering of the project was prepared at the request of the plaintiff.

The facts recited above are largely undisputed.

At least one meeting was held among the neighbors to discuss going forward with the project after the drawings and bids were received. It took place in the roadway and was attended by the plaintiff, Mr. Hart, Mr. Sercu, and Mr. Lawson. There is a dispute about what transpired at the meeting and after the meeting. It is agreed that the plaintiff showed the plans to the others and advised them that the projected cost was around \$68,000. The Harts claim that they clearly told the plaintiff and others that they were not going to participate in the project.

No written contract was ever prepared among these neighbors regarding this project. No written easements were obtained or recorded.

The plaintiff went ahead with the construction. The Harts did not pay any portion. The court's understanding of the evidence is that Mr. Sercu paid his portion and Mr. Lawson was only asked to pay a reduced portion because he does not need to utilize the new access, only the boat storage area. The plaintiff paid roughly two-thirds of the cost of the project.

Mr. Hart, Mr. Thompson, and Mr. Lawson testified at the hearing. The court's understanding of the evidence is that the owners of all four of the lots used the boat storage area and that the new driveway was used for access to the three lots that needed access along the old easement. Use of the new boat storage area blocked the entrance of the old easement. So, for about a year after the project was put in, the entrance of the old easement was not usable and the parties used the new driveway, which extended in and outside the lines of the old easement.

W.H.L.
#4

Then, a dispute arose. Mr. Hart testified that he never agreed to allow the project to be done. He stated in his testimony, however, that he did not raise an objection to it at the time. He indicated that the plaintiff had constructed brick columns on the old easement and that they cause problems with turning into the driveway with a trailer. He testified that workers of the plaintiff could not get through the columns, so they drove through the middle of the Harts' front yard and destroyed bushes and damaged irrigation sprinklers. He states that visitors to the plaintiff's house have parked in the drive and blocked it. He testified that the plaintiff has done all sorts of spiteful and unsettling things. He claims that the plaintiff has spied into the Harts' home and installed cameras to record the neighbors around their pool. He asserts that the plaintiff repeatedly complains to the entity in control of the lake, SCE&G, in an attempt to cause problems for the neighbors. Mr. Hart indicated that the only time that there are problems with peaceful enjoyment of his property is when the plaintiff is on the plaintiff's property. According to Mr. Hart, he and the other neighbors have had excellent relationships with people who have made use of the plaintiff's home. The defendants are not seeking a temporary injunction, however.

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Mr. Hart also testified that there is another subdivision being constructed in the area, which has caused increased traffic. He said that people began driving down the driveway to go to the lake, apparently thinking it was a public road, or not caring whether or not it was.

Mr. Hart admits that he installed a gate to block the driveway. He claims that the construction of the gate had nothing to do with the plaintiff, but that it was done to prevent unwanted traffic coming through the private drive and onto his family's private property. There was a demand made for notice of the use of the driveway. Mr. Hart testified that all anyone had to do to go through the gate was to lift a latch. Mr. Thompson destroyed the gate.

At some point after the dispute arose, some of the neighbors (the Harts, Mr. Sercu, and Mr. Lawson) entered into an agreement for an easement along the old and new driveway. They did not include the plaintiff. None of these defendants really have any need for the new driveway after the point where it turns to go to the plaintiff's property, though it runs along the southern boundary of Mr. Sercu's property.

WPC
#5

Mr. Hart began removing sections of the concrete driveway, but not on the portion that the defendants need to use. It appears that Mr. Hart is removing every other section of the concrete along the expansion joints. All of these removed sections are within the old 20-foot-wide easement. No one has contested that the plaintiff has an easement over that section for ingress and egress. So, Mr. Hart is destroying portions of the concrete drive, but only on the part that the Harts, Mr. Sercu, and Mr. Lawson do not need.

He testified repeatedly that the reason for the removal of the concrete is that he and his wife decided that they want to return the property to a more natural state, and that he intends to remove all of the concrete eventually. He intends to do the work himself, though he has put those efforts on hold because he is scheduled for back surgery in about two weeks. He never testified about any specifics for his intended construction, nor provided a timetable for the revisions. In fact, it is apparent that he does not know when he might be able to return the property to a more natural state. He testified that he has put chunks of the concrete back in the areas where sections

are removed. He claims that this provides the plaintiff with suitable access. The photos of those sections, with the concrete chunks in them, appear to be somewhat like putting rip-rap rock into ten-foot sections of a driveway. While the court has seen smooth concrete separated by grass used for attractive and functional paving, and the court has seen broken brick or river rock used for a more naturally appearing driveway, the court is unaware of anyone ever installing a rip-rap driveway. Mr. Thompson testified credibly that the driveway is not suitable for a vehicle that sits low to the ground.

Mr. Hart also admits that he has partially destroyed the brick columns that were put up by the plaintiff. Mr. Sercu installed a brick column near the turn in the drive, which inhibits the ability to turn at that point, particularly with trailers. The court does not recall any testimony about destruction of the column put up by Mr. Sercu.

W.P.M.
#6

Mr. Hart's primary position is that he is limiting his demolition to what is on his private property, and he repeatedly stated that he can do whatever he wants on his property, as long as he does not interfere with the plaintiff's right of access. The problem with that assertion is that Mr. Hart is unilaterally deciding what interferes or does not interfere with the plaintiff's right of access. He does have legal title to the strip of land where the concrete is being destroyed, but it is subject to an easement. The easement vests rights in the plaintiff, and Mr. Hart is only partially correct in his assessment of the scope of his property rights. The destruction of the concrete is not being done for any maintenance purpose or because the concrete poses any hazard. He has not discussed any of his proposed changes with the plaintiff. He has not given any timetable for the completion. He destroyed sections of a functioning driveway, and only began doing that after the new driveway had been in place for about a year after it was completed and after he had poured a rather extensive concrete pad near his house. Photos of the neighborhood show a rather large amount of concrete in an attractive subdivision. The chunks of concrete cannot realistically be said to provide as suitable a means of access as the smooth concrete did, and would be troubling for anyone to attempt to traverse in most passenger vehicles. An affidavit to that effect

was submitted in support of the motion, and the photos back up that position. The Harts are asserting that the concrete removal is purely for purposes of aesthetics.

The issue before the court is a temporary injunction, so the assessment is limited at this point to the standard applicable to temporary relief. Ultimately, a fact finder will decide whether the removal is being done for legitimate purposes. At this point, the court finds no justifiable basis for further destruction of the concrete pending the outcome of this litigation.

As for the brick columns, Mr. Hart admits to partially destroying the columns that were built at Mr. Thompson's direction. While there may be legitimate traffic-related reasons for removing the columns, particularly since they are in a state of partial deconstruction and may also form a safety risk in their current state, the temporary ruling requested of the court should not be the ultimate determination of the propriety of their destruction. Columns are routinely used to designate driveways, but they are not essential to access, and they may limit access. Based on what was presented to the court, there is no basis upon which to order their further destruction on a temporary basis. Until the rights and responsibilities of the parties are determined, there should be no further destruction of the columns.

WPAE
#7

Testimony was presented about water being diverted onto the plaintiff's property. There has not been a sufficient showing of likelihood of success on the merits in this regard to allow the court to determine whether anything related to diversion of water should be temporarily enjoined.

In response to the alleged voyeurism of the plaintiff, Mr. Hart admits that he took sheets of plywood and placed them so that they block the plaintiff's ability to see certain portions of the Harts' property. He then painted the letters "PERV" on one of the sections of plywood. During cross-examination, he admitted that the intent of that wording is to accuse Mr. Thompson of being a pervert. In fact, Mr. Hart said rather emphatically that Mr. Thompson is a pervert. The court finds that this may involve first amendment rights, though it certainly may result in institution of other causes of action, including defamation. At this point, there has not been a sufficient showing of likelihood of success on the merits to enable the court to enjoin the

continued placement of this sign. So, while it is difficult to envision how the continued placement of that wording on a sign can serve any useful purpose, the court declines to issue an injunction on a temporary basis.

Another claim of exercising a constitutional right relates to the use of firearms by the defendants. The testimony presented was that the defendants keep and use firearms on their property. They claim that they do it in a responsible way. Insufficient evidence was presented, through testimony or affidavit, to support a determination that an injunction can be issued on a temporary basis. The law prohibits pointing or presenting a firearm, as well as other actions related to firearms. There has been an insufficient showing that any threats involving firearms cannot be handled through contacting law enforcement officials.

As for the likelihood of success on the merits of the issues that are enjoined, the plaintiff has a vested property right through the old easement, and it is not the defendant's prerogative to decide unilaterally the critical aspects of the use of the easement, without the plaintiff's express permission or through litigation or consultation. There are also substantial equitable considerations that mitigate in the plaintiff's favor. Here, decisions have been made, such as when to have the pavement torn up; how long the plaintiff will be without the use of a smooth surface for a driveway; and, what form the easement will ultimately take. It cannot be ignored that the ingress, egress, and parking configuration existed for at least a year and was constructed primarily at the expense of the plaintiff. While the court acknowledges that rights related to real estate fall within the restrictions of the statute of frauds, and that it was unwise to construct this project without written approval, there are equitable principles in play that at least meet the requirement of creating a likelihood of success by the plaintiff on the merits of the issues related to the construction project.

The court finds that the plaintiff has established a danger of irreparable harm and an inadequate remedy at law. It is true that many of his claims are compensable by damages, but he is currently in a posture where he has a clearly-defined easement, which was paved, and the

W.P.C.
#8

defendant Hart has unilaterally destroyed the pavement, leaving his access in an unacceptable state for an indefinite period. The plaintiff is being deprived of his property rights. The defendants have given each other rights over the new pavement, and the plaintiff was the person who paid for most of that pavement that is being utilized by the defendants. A fact finder may decide in the defendants' favor, and their situations are not all identical. The standard here is likelihood, and the court finds a likelihood that the plaintiff will prevail on equitable grounds for creating access rights.

Granting an injunction requires the court to balance the equities. In doing so, it is obvious that the defendants knew, at a minimum, that the better course of action required obtaining clear permission from the plaintiff before beginning destruction of the driveway and blocking it. Without having such permission, they embarked upon removal of improvements on the property, denying or limiting access, and commencing activities that destroyed relatively expensive construction. Whether the defendants ultimately prevail or not, such a course of action was unnecessary and risky. The other major equitable consideration is that failing to maintain the status quo clearly exacerbates the plaintiff's situation. He is attempting to sell his property. All of these parties would do well to assist him in that regard. It is not credible to assert that the marketability of his property is not reduced by a partially destroyed driveway, partially destroyed columns, and signs indicating a running feud in the neighborhood.

The court has balanced the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendants. In the court's view, as drastic as injunctive relief can be, it seems most consistent with justice and equity under the circumstances to issue a temporary restraining order on the issues delineated above.

Rule 65, SCRCR provides that a bond is required. The court finds that the result of this order does little more than maintain the status quo. The defendants are not attempting to sell their properties, and the portions of the driveway and the columns that are partially destroyed do not affect their basic access. Since the plaintiff clearly has the right of access along the old easement,

W.P.M.
#9

and there is so much overlap between the old easement and the new driveway, the only apparent potential restriction upon the defendants' rights that this injunction might cause seems to be the inability to place a gate at the entrance to restrict entry by the general public. Since that should be effectively handled by placement of a professionally created sign, the court finds that the only anticipated loss that might be occasioned by the imposition of this order would be the cost of that sign and some minor inconvenience for alleged trespass across portions of some of the defendants' properties. Mr. Sercu has already granted the neighbors, other than the plaintiff, the right to travel over the section of the property that has the new driveway. If the defendants prevail, the amount of \$5,000 should more than compensate for any losses that this temporary order might create. The court requires a \$5,000 bond to be posted in order for the injunction to take effect.

If the matter is not resolved in a timely fashion, the defendants may seek to have these issues, including the issue of bond, revisited.

WPK
#10

THEREFORE, IT IS ORDERED that, until further order of the court, the defendants are enjoined from damaging or destroying any of the concrete driveway or putting up any obstacles over the driveway. The defendants are not permitted to put a gate blocking the entrance or any other area along the concrete driveway. They may put a sign, professionally done, that notifies the public that the driveway is a private drive, but cannot inhibit or restrict the plaintiff or his legitimate invitees from having unfettered access to the plaintiff's property across the new driveway and the old easement. The defendants are further temporarily restrained from damaging or destroying any structure erected as part of the driveway projects, including the old brick columns, unless they pose a safety hazard.

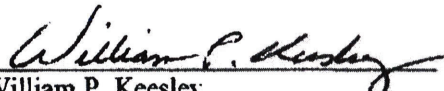
IT IS FURTHER ORDERED that the request for a temporary restraining order seeking to restrict the defendants from carrying or firing weapons on their property is denied.

IT IS FURTHER ORDERED that the motion to temporarily enjoin the defendants from diverting water onto the plaintiff's property is denied.

IT IS FURTHER ORDERED that the request to order the defendants Hart from removing a plywood sign is denied, at this stage.

IT IS FURTHER ORDERED that the plaintiff must post a bond in the amount of \$5,000, surety.

AND IT IS SO ORDERED.


William P. Keesley
Judge

July 15, 2014

#11

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP3202975

Carl Anthony Thompson

James Geraldo Sercu
 Terry Wise

Douglas S Hart
 Philip Lawson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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. See Page 2 for additional information.
- 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: _____
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

7/18/2014

Date

For Clerk of Court Office Use Only

FILED

This judgment was entered on **18th of July 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **18th of July 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

D. Cravens Ravenel PO Box 8057 Columbia, SC 29202

James Geraldo Sercu
466 Woods Point Road Gilbert, SC 29054
Philip Lawson
468 Woods Point Road Gilbert, SC 29054
Jack Bradley Baker
403 E. Main St., Ste. E Lexington, SC 29072
James Randall Davis
PO Box 489 Lexington, SC 29071-0489

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
