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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

G. D. Morgan, Circuit Court Judge

Case No. 2020-CP-39-00266
Appellate Case No. 2024-000870

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

-v-

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

INITIAL BRIEF OF RESPONDENTS-APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE2

STATEMENT OF THE FACTS7

ARGUMENT27

 I. STANDARD OF REVIEW27

 II. THE COURT ERRED IN FINDING CLICK IN CONTEMPT OF THE
 SEPTEMBER 21, 2022 ORDER.28

 A. The Lower Court Erred in Finding that Click’s Efforts to
 Document All-Tech’s Harassment was Evidence of Harassment28

 B. The Court’s Order Erred in finding Click Harassed Thomas
 when it was Required to Respond to All-Techs’ Harassment31

 C. The Lower Court Erred in Finding Click Violated the September 2022
 Order When the Only Evidence was that All-Tech and not Click
 Blocked Necessary Access35

 i. Click is not blocking All-Tech’s highway access.....35

 ii. All-Tech does not have a right of way across Click’s property36

 D. There was no Clear and Convincing Evidence that the Placement
 of a ‘No Parking’ Sign on Click’s Property to Dissuade All-Tech
 from Continuously Parking cars on the Click Property or Blocking
 Click’s Access to the Highway was a Form of Harassment39

 E. There was no Clear and Convincing Evidence that the Towing of
 Vehicles on Click’s Property was Willful Harassment.....39

 F. The Actions of Third Parties are not Clear and Convincing Evidence of
 Willful Acts by Click40

 G. There was no Clear and Convincing Evidence that Click Trespassed on
 the All-Tech Property in an Effort to Harass All-Tech.....41

H. There was no Clear and Convincing Evidence that Click Filed Unnecessary Complaints.....	41
I. There is no Clear and Convincing Evidence the Clicks Harassed All-Tech or its Customers.....	43
J. Only All-Tech Obtained a Trespass Warrant.....	43
III. THE LOWER COURT ERRED IN FAILING TO FIND ALL-TECH VIOLATED THE ABATEMENT ORDER.....	43
CONCLUSION.....	45

TABLE OF AUTHORITIES

Cases

Abate v. Abate, 377 S.C. 548, 660 S.E.2d 515 (Ct. App. 2008).....28

Anonymous v. State Bd. of Med. Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998)28, 35

Baltimore & Ohio R. Co. v. United States, 298 U.S. 349 (1936).....30

Brasington v. Shannon, 288 S.C. 183, 341 S.E.2d 130 (1986).....28

Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596,
567 S.E.2d 514 (Ct. App. 2002).....27, 28, 29, 36, 40

Eaddy v. Oliver, 345 S.C. 39, 545 S.E.2d 830 (Ct. App. 2001).....28

Henderson v. Henderson, 298 S.C. 190, 379 S.E.2d 125 (1989).....28

Kershaw v. Burns, 91 S.C. 129, 74 S.E. 378 (1912)37

Morgan v. United States, 304 U.S. 1 (1936)30

Noojin v. Noojin, 417 S.C. 300, 789 S.E.2d 769 (Ct. App. 2016)28

Peeler v. Spartan Radiocasting, Inc., 324 S.C. 261, 478 S.E.2d 282 (1996)28

State v. Bevilacqua, 316 S.C. 122, 447 S.E.2d 213 (Ct. App. 1994))28, 29

*Stone v. Reddix-Small*s, 295 S.C. 514, 369 S.E.2d 840 (1988).....28

Taylor v. Taylor, 434 S.C. 307, 863 S.E.2d 335 (Ct. App. 2021).....27

Townsend v. Townsend, 356 S.C. 70, 587 S.E.2d 118 (Ct.App.2003).....28

Truax v. Corrigan, 257 U.S. 312, 3324 (1921).....30

Welchel v. Boyter, 260 S.C. 418, 196 S.E.2d 496 (1973).....29

Statutes

S.C. Code § 16-11-420.....32

S.C. Code § 16-11-760.....38

Other Authorities

Black’s Law Dictionary (10th ed. 2014).....31

STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN FINDING RESPONDENTS-APPELLANTS' ACTIONS AMOUNTED TO WILLFUL DISOBEDIENCE OF AN ORDER OF THE COURT?
- II. DID THE LOWER COURT DEPRIVE RESPONDENTS-APPELLANTS OF ELEMENTS OF DUE PROCESS BY FINDING RECORDING OF WRONGFUL ACTS VIOLATED THE SEPTEMBER 21, 2022 ORDER?
- III. DID THE LOWER COURT ERR IN FINDING RESPONDENTS-APPELLANTS WILLFULLY VIOLATED THE SEPTEMBER 21, 2022 ORDER WHEN THEY DEFENDED THEMSELVES AND THEIR PROPERTY?
- IV. DID THE LOWER COURT ERR IN FINDING RESPONDENTS-APPELLANTS WILLFULLY VIOLATED THE SEPTEMBER 21, 2022 ORDER WHEN THEY WERE PROVOKED?
- V. DID THE LOWER COURT ERR IN FAILING TO FIND IN THE OCTOBER 1, 2024 ORDER THAT APPELLANTS-RESPONDENTS CONTINUED TO VIOLATE THE SEPTEMBER 21, 2022 BY FAILING TO ABATE THE NUISANCE?

STATEMENT OF THE CASE

Respondents-Appellants (jointly referred to as “Click”) commenced the underlying action with a Complaint filed February 27, 2020 alleging, among other things, that All-Tech excavated the embankment shared with Click in a manner that caused serious erosion and damages to the Click Property. (R.). Appellants-Respondents (jointly referred to as “All-Tech”) filed a Motion to Dismiss, which was denied by Order filed May 8, 2020, and answered on May 22, 2020. (R.).

The matter was tried before a jury May 23-26, 2022 and a verdict rendered for \$196,000 finding All-Tech responsible for nuisance, negligence, acquiescence, and prescriptive easement. (R.). Post-trial motions were filed by all parties and the lower court issued an order on September 21, 2022. (R.). The order affirmed the jury verdict and further granted injunctive relief requiring All-Tech to abate the nuisance to the Click Property and prohibiting either party from harassing the other.

All-Tech appealed to the South Carolina Court of Appeals arguing the circuit court erred in denying their motions (1) to amend their answer; (2) to dismiss; (3) for summary judgment; (4) for directed verdict; and (5) to reconsider. The Court of Appeals unanimously affirmed the lower court in its Opinion filed March 12, 2025. A petition for rehearing was filed by All-Tech on March 27, 2025.

All-Tech’s Motion to Stay the September 21, 2022 Order

All-Tech filed a motion to stay the order pending appeal of the underlying action on December 9, 2022 (R.) and an amended motion to stay on February 16, 2023. (R.). Click filed a memorandum in opposition on February 28, 2023 (R.) and a supplemental memorandum on

March 24, 2023. (R.) All-Tech filed a memorandum in support the same day. (R.). Click filed a reply to All-Tech's memorandum on March 27, 2023. (R.).

A hearing was held March 29, 2023 before the Honorable Perry H. Gravely and an order was issued on April 21, 2023 staying the monetary judgment, but required All-Tech to stop the erosion pending appeal. (R.).

Click's Motions for Rule to Show Cause

Click filed a motion for a rule to show cause with supporting affidavits on December 13, 2022 alleging All-Tech violated the September 21, 2022 order by failing to stop the erosion and by harassing Brent and Shelly Click (R.), to which All-Tech filed a response on February 10, 2023 (R.) and amended responses on February 16th and 17th. (R.).

Click filed a memorandum in support with supplemental affidavits on February 28, 2023. (R.). All-Tech filed a response the same day. (R.).

A hearing was held before the Honorable G.D. Morgan, Jr. on March 3, 2023. The lower court held the matter in abeyance pending Judge Gravely's ruling on the motion to stay. (R.).

The second supplemental affidavit of Brent Click was filed April 19, 2023 alleging continuing erosion and harassment. (R.). Click filed an amended motion for rule to show cause on September 22, 2023 with the third supplemental affidavit of Brent Click, again alleging continuing erosion and harassment. (R.). A second amended motion and fourth supplemental affidavit of Click were filed October 4, 2023. (R.).

All-Tech filed a motion to dismiss on October 4, 2023 (R.) to which Click filed a reply on November 13th. (R.). All-Tech filed a supplemental memorandum in support of its motion on November 20, 2023.

Click filed a third amended motion for emergency rule to show cause and fifth supplemental affidavit of Brent Click on November 2, 2023 alleging continuing erosion and harassment (R.). The sixth supplemental affidavit of Brent Click was filed on November 8th. (R.). All-Tech filed a response on November 20, 2023 (R.) and exhibits on December 21, 2023. (R.).

Click filed the Seventh Supplemental Affidavit of Brent Click on December 27, 2023.

Judge Morgan reconvened the hearing on the rule to show cause after Judge Gravely denied the stay of the requirement to stop the erosion and additionally heard the amended rules to show cause motions on December 28, 2023.

Click filed a motion to reopen the record and eighth supplemental affidavit of Brent Click on January 29, 2024 alleging continuing erosion and harassment. (R.). All-Tech filed a response on February 9, 2024 (R.) and Click filed a reply to the response and ninth supplemental affidavit of Brent Click on February 15, 2024. (R.).

The lower court issued an order on March 1, 2024 finding All-Tech in contempt for failing to stop the erosion and harassment and awarded Click \$37,905. (R.). All-Tech filed a motion to reconsider March 8, 2024. (R.). Click filed a reply to the motion on March 12, 2024. (R.). The lower court denied the motion to reconsider by order filed April 9, 2024. (R.).

Click filed a motion to alter or amend the April 9 order as to attorney fees on April 15, 2024 (R.) to which All-Tech filed a response on April 19th. (R.) Click filed a reply on April 22, 2024. (R.)

The lower court denied All-Tech's motion to reconsider by order filed April 26, 2024. The lower court denied the motion to alter or amend as to attorney fees by form order filed May 22, 2024. (R.)

Motion for Temporary Restraining Order

Click filed a motion for temporary restraining order and memorandum in support on February 8, 2024 seeking relief from continuing harassment. (R.). The lower court issued a form 4 order on February 12, 2024 granting the temporary restraining order and requiring All-Tech to locate its retaining wall so it would not cause further damage to the Click Property. (R.).

All-Tech filed a response to the motion for TRO on February 14, 2024 (R.) and Click filed a reply memorandum in support on February 15, 2024. (R.). The tenth supplemental affidavit of Brent Click was filed February 16, 2024 alleging continuing erosion and harassment. (R.). All-Tech filed an amended response to the motion on February 15th. (R.).

A hearing was held on the temporary restraining order on February 16, 2024. All-Tech filed a request to keep the record open on February 16, 2024. (R.). The Affidavit of Jonathan Thomas was filed February 19, 2024. (R.). All-Tech filed a memorandum in response to the motion for TRO on February 27, 2024. Click filed a reply to the response on February 28th. (R.). Click's motion was granted by order filed March 1, 2024, preventing All-Tech from building the wall immediately adjacent to the embankment where it would cause damage to the Click Property. (R.).

All-Tech's Motion to Stay the March 1, 2024 Order

All-Tech filed a motion to stay or for supersedeas on July 30, 2024 as to the March 1, 2024 order. (R.). The lower court had already denied the request for reconsideration in its April 26, 2024 order. (R.).

All-Tech's Appeal of the March 1, 2024 Contempt Order

All-Tech filed a notice of appeal from the March 1, 2024 and April 26, 2024 orders on May 27, 2024.

All-Tech's Motion for Rule to Show Cause and Click's Emergency Motion for Rule to Show Cause

All-Tech filed a motion for rule to show cause as to contempt and supporting affidavit of Jonathan Thomas on June 19, 2024.

Click filed an emergency motion for rule to show cause and supporting affidavit on July 8, 2024, alleging continuing erosion and harassment. Click filed a memorandum in support on August 6, 2024 along with supporting affidavits.¹ (R.) All-Tech filed a response to Click's motion, as well as affidavits and exhibits, on August 6, 2024. (R.)²

All-Tech filed an objection to Click's affidavits and supplemental filings in support of its motion on August 8, 2024. (R.)³ Click filed a reply memorandum (R.) and supplemental affidavits in support of its motion on August 8, 2024. (R.)⁴

All-Tech filed supplemental objections (R.), exhibits for the hearing (R.), a supplemental affidavit of Jonathan Thomas (R.) on August 9, 2024 and supplemental exhibits on August 12, 2024 (R.). Click filed supplemental exhibits on August 13th. (R.)

A hearing was held August 9, 2024 on the rules to show cause and an order was issued on October 1, 2024 finding all parties in contempt and sanctioning the parties in the amount of \$10,000 for All-Tech and \$10,000 for Click. (R.) Click filed a motion to reconsider on October 10, 2024 (R.) to which All-Tech replied on October 17th. (R.) All-Tech filed a motion to

¹ Click filed the Third Affidavit of Shelly Click (R.), Twelfth Affidavit of Brent Click (R.), and Affidavit of David Hall (R.).

² The filings included the Affidavits of Greg Grissinger (R.), Drake Ivester (R.), Derrick Stewart (R.), David Roquette (R.), Connor Ferrell (R.), Brian Standard (R.), Missy Thomas (R.), Meghan Thomas (R.), Chester Lee Stokes (R.), and Tommy Hood (R.). All-Tech additionally filed records from the Greenville County Sheriff's Office (R.) as well as a deed from Cobb Sales Company (R.).

³ The filings included records from the Pickens County Sheriff's Office (R.), Supplemental Affidavit of Greg Grissinger (R.), Affidavit of Rob McRae (R.), and supplemental records from the Greenville County Sheriff's Office (R.).

⁴ Including the Supplemental Affidavit of David Hall (R.), and Thirteenth Supplemental Affidavit of Brent Click (R.).

reconsider on October 15th (R.) and Click replied October 16th. (R.) The lower court issued an order on October 18, 2024 denying both motions. (R.)

All-Tech and Click both filed notices of appeal on November 18, 2024.

STATEMENT OF THE FACTS

Brent and Shelly Click are the owners of Hyper Formance, LLC (an auto body and machine shop) and Click Properties, LLC.

Brent and Shelly work and live on the property located at 3668 Calhoun Memorial Highway (the "Click Property"). (R.)

The Click Property slopes up steeply from the Highway. An embankment runs along the majority of the western side of the Click Property directly adjacent to the property owned by Thomas SC Properties, LLC ("All-Tech Property" 3670 Calhoun Memorial Highway). The Click property contains two buildings, one located in front of the other. A gravel drive and turn around along the western side of the property provide the sole access to the back building.

In August of 2018, All-Tech, an auto repair shop, negligently excavated the portion of the All-Tech Property adjacent to the embankment, digging a DIY 90°, 30+ foot high cliff in places and hauling away approximately fourteen (14) 22-ton dump truck loads of dirt, per day, for approximately five (5) days. (R.) This caused significant destabilization of the Click's back building and driveway, and tremendous damaging erosion. (R.)

Click filed suit on February 27, 2020 seeking to require All-Tech to abate the nuisance, among other relief. (R.). The lower court issued a temporary restraining order and injunction on May 8, 2020 prohibiting the blocking of access to the Back Building. (R.). The order also included an injunction prohibiting harassment by All-Tech and their agents. (R.).

All-Tech attempted to remove the TRO and injunction, which was denied by a second circuit judge by order of April 7, 2022. (R.). Trial took place in May of 2022. The jury found in favor of Click on their causes of action for negligence, nuisance, acquiescence, and prescriptive easement, and awarded Click \$196,000. The jury verdict awarded Click ownership of the driveway and turnaround. Both parties filed post-trial motions and on September 21, 2022, the Hon. Perry H. Gravely issued his order upholding the jury verdict, awarding equitable relief, and requiring All-Tech to abate the continuing erosion. (R.). The court also granted an injunction and ruled:

...this Court hereby orders that Defendants are enjoined to abate the nuisance and to take such action to avoid any further damage to the Plaintiffs' property... 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.

(R.).

The court further ordered:

- 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.

(R.).

Unfortunately, All-Tech's response has been a systematic effort to harass Brent and Shelly in every manner possible. All-Tech initially refused to take any steps to abate the nuisance caused by the negligent excavation until October of 2023 and then took improper and/or inadequate

measures and instead built their own driveway on May of 2024 to access the rear of the All-Tech property.

Contempt issues were heard March 3, 2023; December 28, 2023; and August 9, 2024 before the Honorable G.D. Morgan, Jr. All-Tech has appealed the March 1, 2024 order issued after the first two hearings, finding All-Tech in contempt and awarding sanctions. All parties have appealed the October 1, 2024 order issued after the August 9, 2024 hearing. The appeals have been consolidated. The lower court's March 1, 2024 order references events occurring prior to the first order, therefore, a recitation of all relevant facts is in order.

All-Tech's Actions Leading up to the March 3, 2023 Rule to Show Cause Hearing

Harassment

After losing at trial, Thomas and employees of All-Tech increased their harassment of Brent and Shelly Click. (December 12, 2022 Affidavit of Shelly Click, ¶ 2) Their behavior has been relentless and has resulted in both emotional distress and loss of business income for the Clicks.

This systematic harassment is demonstrated by All-Tech employees routinely walking across the front of the Click Property five to ten times a day in an effort to trigger the motion sensor chime, knowing Brent or Shelly would have to exit the shop to see if a customer had arrived. (March 3, 2023 hearing, p. 42, l. 25-p. 44, l. 15). Shelly became a particular target of several of the All-Tech employees who apparently thought that, as a woman, she would be more easily intimidated than Brent. All-Tech employees increased their activity on the Click Property when they knew Shelly was there alone or if she was outside without Brent. (December 12, 2022 Affidavit of Shelly Click, ¶ 3, February 28, 2023 Affidavit of Shelly Click, ¶ 8; March 3, 2023 hearing, p. 130, ll. 17-22).

In addition to threats, All-Tech attempted to demean and humiliate Brent personally and in the community. On February 24, 2023, Shelly Click informed Brent she had observed All-Tech employees who appeared to be operating a drone in an attempt to chase their pet ducks. (February 28, 2023 Affidavit of Shelly Click, ¶ 10; March 3, 2023 hearing, p. 133, l. 12-p. 135, l. 5). Brent recalled hearing a buzzing noise while he was using the outdoor shower. Later that day when Brent was outside on his property, All-Tech employee Stokes began dancing and making phallic signs indicating Brent had been filmed while in the shower. (February 28, 2023 Affidavit of Brent Click, ¶ 42, March 3, 2023 hearing, p. 90, ll. 3-17).

Brent was turned away from businesses where he had not previously experienced a problem because he had been reported, presumably by All-Tech employees, to them as a thief. (March 3, 2023 hearing, p. 87, l. 2- p. 88, l. 25).

All-Tech also attempted to intimidate other individuals who came to the Click Property to have work done. Colin Spector testified at the March 3, 2023 hearing that All-Tech employees would leave their work stations to stare at him in a menacing manner whenever he was on the Click Property. (March 3, 2023 hearing, p. 147, l. 25-p. 148, l. 12).

Blocking Access to the Highway

All-Tech's improper excavation made it unsafe for Click to park trucks, trailers, or large equipment on their gravel driveway. (R. August 5, 2024 Affidavit of David Hall, ¶ 23). As a result, Click was required to park his equipment, including his truck and trailer in the parking lot in front of his lower building. (R. , March 3, 2023 hearing, p. 48, ll. 10-14).

Both the Thomas and Click properties abut Calhoun Memorial Highway (also known as Highway 123). The highway provides the only means of access. Highway 123 is a divided four-lane highway with a median that allows exit onto the Highway from the Click and Thomas

properties in one direction only. The property lines for the Click property are not perpendicular to Highway 123 but rather form a rhombus, with the short side abutting the Highway and the property lines slanted to the east, away from the All-Tech Property. The configuration of the property lines places the two driveways connecting the Click Property to the Highway outside of the property lines, in whole or in part.

The Click parking lot has paved access to the western driveway to allow access onto the Highway. Click is routinely required to exit to the west, using the All-Tech driveway, in order to avoid a dangerous attempt to back a trailer onto the Highway. The driveway is actually owned by the South Carolina Highway Department as a part of their 80-foot easement.

All-Tech began parking vehicles on the Click property and as close to the Click property line as possible in a manner designed to prevent Click from exiting onto Highway 123 via the western driveway that accessed the All-Tech parking lot. (February 28, 2023 Affidavit of Brent Click, ¶¶ 20, 23; March 3, 2023 hearing, p. 44, l. 16-p. 46, l. 18; Ex. I to hearing).

All-Tech additionally called the Pickens County Sheriff's office to report Brent and Shelly as trespassing on the grounds they were exiting onto the Highway from the All-Tech driveway, despite the fact this is the right-of-way available for general public use and part of the South Carolina Highway Department right-of-way. (February 28, 2023 Affidavit of Brent Click, ¶ 25).

Vandalism

Brent Click experienced vandalism to his vehicles on a regular basis since the litigation was filed. (R. Exs. A-C to March 3, 2023 hearing). All-Tech employees positioned cars they were working on close to the Click Property which gave them access to the Click vehicles without being seen on security cameras. (R. , March 3, 2023 hearing, p. 51, ll. 11-19).

The vandalism included screws in tires on multiple occasions. Screws of the same size and finish would appear again and again in tires after repair despite the vehicle not having been driven in the interim. (December 12, 2022 Affidavit of Brent Click, ¶ 25; March 3, 2023 hearing, p. 47, l. 5- p. 50, l. 14). In addition to screws in the tires, Brent often found the safety latch connecting the trailer to his truck had been unhooked. (March 3, 2023 hearing, p. 50, l. 15-p. 52, l. 3).

During the week of December 5th, 2022 Brent was driving his maroon Chevrolet truck when he had difficulty steering. (Id., ¶ 23). Upon inspection, Brent discovered a bolt had been loosened. (Id., March 3, 2023 hearing, p. 52, l. 14-p. 54, l. 6; p. 56, l. 23-p. 58, l. 2). This could only be done by crawling under the truck, hidden from the security cameras. (R. March 3, 2023 hearing, p. 53, ll. 8-17).

In January of 2023, the brake line on Brent's white GMC truck was loosened causing a loss of brake fluid. (February 28, 2023 Affidavit of Brent Click, ¶ 33; March 3, 2023 hearing, p. 58, l. 24-p. 60, l. 13) The vandalism to the Click vehicles not only caused damage but made them extremely dangerous to operate on the Highway.

Theft of the Click Truck

This escalated to the theft of Click's truck, trailer, and bobcat from the Click Property. A 2004 Ford F250, gooseneck trailer and bobcat track loader belonging to Click were stolen on October 18, 2022. (December 12, 2022 Affidavit of Brent Click, ¶ 5, March 3, 2023 hearing, p. 62, l. 20-p. 67, l. 7). Brent testified that prior to the theft he observed All-Tech employees writing down the VIN numbers of the trucks and taking photos of the VIN numbers and license tags.⁵

⁵ A repair shop like All-Tech can use the vehicle VIN to order a duplicate key. (R. , March 3, 2023 hearing, p. 61, ll. 8-13).

(December 12, 2022 Affidavit of Brent Click, ¶ 3; March 3, 2023 hearing, p. 60, l. 23-p. 61, l. 24, Ex. D to hearing). Following this incident, Brent found on multiple occasions that his trucks had been unlocked and the glove boxes and receipt clipboards gone through. (December 12, 2022 Affidavit of Brent Click, ¶ 4).

The speed at which the truck was entered and started during the theft, as shown on security footage, suggested the truck was accessed with a key. (Id., ¶ 6; Ex. G. to March 3, 2023 hearing). Brent testified there was no broken glass at the scene following the theft. (Id.). That fact, coupled with the speed of the theft shown on the surveillance footage, indicated access to the truck with a key.

Brent was able to track the bobcat and trailer after the theft through a GPS tracker on the bobcat. (Id. ¶ 13, March 3, 2023 hearing, p. 75, l. 21-p. 76, l. 5). The truck was not with the trailer when it was recovered the next morning. (Id.). The glass on the bobcat was scratched with screwdrivers, the door handles were damaged, all visible wires had been severed and the auxiliary lights pried from the bobcat. (Id., ¶ 14; March 3, 2023 hearing, p. 77, l. 21-p. 79, l. 2). There was also evidence someone had urinated on the bobcat and the metal name plates on the trailer. (Id. ¶ 14, March 3, 2023 hearing, p. 78, ll. 14-20). The wiring for the trailer's brakes and lighting were also severed and the safety equipment and tools had been taken from the trailer. (Id., ¶ 15, March 3, 2023 hearing, p. 79, ll. 14-23). The theft of an older truck while vandalizing and abandoning the more valuable bobcat and trailer indicated a personal animus towards Brent rather than an attempt to steal equipment. Brent additionally testified he saw All-Tech employee Ivester's brother driving the truck after the theft. (March 3, 2023 hearing, p. 83, ll. 4-13; p. 84, l. 24-p. 85, l. 3). (R. March 3, 2023 hearing, p. 190, ll. 18-20).

The truck was recovered four months later close to the home of All-Tech employee Ivester's father. (February 28, 2023 Affidavit of Brent Click, ¶ 49; March 3, 2023 hearing, p. 82, l. 7-p. 83, l. 2) The passenger side door of the truck had been shot repeatedly and almost all components in the cab had been broken or shot. (February 28, 2023 Affidavit of Brent Click, ¶ 54, March 3, 2023 hearing, p. 85, ll. 4-19; Ex. F. to hearing) The truck was covered in paint on both the interior and the exterior. (February 28, 2023 Affidavit of Brent Click, ¶ 55, March 3, 2023 hearing, p. 86, ll. 5-9) Welded on the front bumper was "TTGF". (February 28, 2023 Affidavit of Brent Click, ¶ 55) All-Tech employee Ivester had previously used the phrase "trying to get f*****d" when trying to provoke a fight with Brent. (February 28, 2023 Affidavit of Brent Click, ¶ 55, March 3, 2023 hearing, p. 85, l. 21-p. 86, l. 4) Later that same month an acquaintance told Brent, unprompted, that he was sorry to see what Ivester had done to his truck. (February 28, 2023 Affidavit of Brent Click, ¶ 56)

Physical Threats

All-Tech employees also threatened physical violence against Brent and Shelly. All-Tech employees made threatening hand-to-the-throat gestures when they saw Brent on his property. (February 28, 2023 Affidavit of Brent Click, ¶ 39; March 3, 2023 hearing, p. 100, ll. 12-24). All-Tech owner Thomas would walk across the Click property towards Brent in a threatening manner and then turn away at the last second. (February 28, 2023 Affidavit of Brent Click, ¶ 31). Thomas would also making a cutting gesture on his throat in a threatening manner. (March 3, 2023 hearing, p. 100, ll. 17-20).

In October of 2022, All-Tech employee Ivester rushed Brent and Shelly multiple times with a screwdriver, only to veer off at the last second and mutter threats. (February 28, 2023

Affidavit of Brent Click, ¶ 20; December 12, 2022 Affidavit of Shelly Click, ¶ 4, March 3, 2023 hearing, p. 141, l. 21-p. 42, l. 12)

On February 10, 2023 All-Tech employee Standard was following Shelly along the property line. When Shelly asked what she could do for him, he went inside All-Tech and back out with what appeared to be a gun in the front pocket of his hoodie. Standard then sat in a car parked on the Click Property line playing with the gun in his lap. (February 28, 2023 Affidavit of Brent Click, ¶ 40; March 3, 2023 hearing, p. 130, l. 23-p. 133, l. 10)

Failure to abate the nuisance

All-Tech failed to install as much as a silt fence to abate the nuisance. Thomas admitted in his February 16, 2023 Affidavit that he took no action from September until December 14, 2022 regarding potential steps to abate the nuisance. (The Rule was filed on December 12th). (R., Thomas Affidavit, pp. 2-3). He then admitted that he allowed more than a month to pass before he received a drawing with a plan that would “not help Plaintiffs’ building.” (Thomas Affidavit p. 3). He further admitted that “it does not make any sense to spend money on a building that someone else will own.” (Thomas Affidavit p. 4).

Click’s expert, David Hall, testified that an engineer designed retaining wall is necessary to prevent ongoing damage to the Click Property through continued erosion and to restore safety to the embankment. (May 4, 2022 Affidavit of David Hall, ¶ 5; May 12, 2022 Affidavit of David Hall, ¶ 12).

Brent testified to the continuing damages as a result of the vandalism, the loss of business, and the damage to his property as a result of the ongoing erosion. (R.).

All-Tech's Continued Violation of the September 2022 Order Between March 2023 and December 2023

Judge Morgan took the matter under advisement pending a ruling by Judge Gravely on All-Tech's motion to stay. (March 3, 2023 hearing, p. 193, ll. 1-5).

Unfortunately, the harassment of Brent and Shelly Click continued after the March 2023 hearing.

Continuing Vandalism

Click also experienced continuing vandalism of vehicles and equipment. On August 22, 2023, an individual on the All-Tech Property parked a car on the Click Property between two trucks belonging to Click. (September 22, 2023 Affidavit of Brent Click, ¶ 4). This was done in the presence of other All-Tech employees. (R.). Brent and Shelly left the property for the afternoon. (September 22, 2023 Affidavit of Brent Click, ¶ 4). Upon returning at about 9:00 p.m., Brent noticed a well accumulated puddle of transmission fluid under his red Ford truck. (Id.). Upon inspection, he discovered the transmission line had been cut. (Id.; R. December 28, 2023 hearing). The front right wheel on the maroon Chevrolet truck (which had been parked next to the car), had a new screw directly on top of the tire. (Id., ¶ 5). The screw did not have any scratches on it, so it is also evident the maroon truck had not been driven with this screw exposed.

Two days later, on August 24, 2023, Brent went to drive the maroon Chevrolet truck and discovered the air-conditioning system was not working. (September 22, 2023 Affidavit of Brent Click, ¶ 6; R. December 28, 2023 hearing). Upon inspection, it was determined that the air-conditioning line had been bent down and the valve was destroyed. (September 22, 2023 Affidavit of Brent Click, ¶ 6; R. December 28, 2023 hearing). It was clear that All-Tech was involved in the vandalism because when Brent went to drive the truck, an employee of All-Tech waved his

hand in front of his face like, “it is hot!” indicating they knew the air conditioning system had been tampered with. (Id.).

The wiring was cut on the Click’s new compactor. (September 22, 2023 Affidavit of Brent Click, ¶ 7; R. December 28, 2023 hearing). On September 5, 2023, there was a power outage, making the security cameras on the Click Property inoperable. When the power was restored, Brent found his lift had a cut in the reservoir and that a fuel line had been ripped off. (September 22, 2023 Affidavit of Brent Click, ¶ 8; R. December 28, 2023 hearing).

On Saturday, November 4, 2023, Brent transported a bobcat t76 to a worksite. (November 8, 2023 Affidavit of Brent Click, ¶ 4; R. December 28, 2023 hearing). When he arrived, he noticed fluid pouring from the bobcat, the bucket sensor was not working, and the low fluid light was on. (November 8, 2023 Affidavit of Brent Click, ¶ 5). He observed that the hydraulic lines were punctured, and the sensor line was cleanly cut. (Id.; R. December 28, 2023 hearing). Brent had performed work with this machine the prior Saturday, October 28th, and it was fully functional. (November 8, 2023 Affidavit of Brent Click, ¶ 6). On Thursday, November 2nd, just two days prior to Brent’s discovery of the vandalism, he had prepared the machine for the upcoming job, including greasing the joints, and checking the fluid. (November 8, 2023 Affidavit of Brent Click, ¶ 7). There were no punctures or cut lines at that time and no fluid came out when he test-ran the machine. (Id.; R. December 28, 2023 hearing). On Friday, November 3rd, the bobcat was parked close to the gate and in the lot for a portion of the day, when it would have been accessible to All-Tech employees. (Id. ¶ 8).

Brent observed Thomas and several employees mocking him and his wife as they were loading their maroon Chevy truck to leave for a job on December 23, 2023. (December 27, 2023 Affidavit of Brent Click, ¶ 4; R. December 28, 2023 hearing). Brent noticed the driver’s side door,

which had previously been locked, was now unlocked. (December 27, 2023 Affidavit of Brent Click, ¶ 6). The truck, which had driven fine two days before would not start. Brent lifted the hood and saw the wiring harness had been pulled from its mounts. (Id. ¶¶ 7-8; R. December 28, 2023 hearing).

Because the maroon truck was damaged, Brent took the white GMC truck instead. (December 27, 2023 Affidavit of Brent Click, ¶ 8). Brent had just entered the highway when the GMC began to overheat. Brent checked the engine and saw the coolant hose clamp had been repositioned to allow coolant to blow out of the bottom of the radiator. (Id. ¶ 9; R. December 28, 2023 hearing).

On the return trip from the jobsite, Brent noticed one of the trailer lights was out and found a metal wire had been placed over the taillight plug. (December 27, 2023 Affidavit of Brent Click, ¶ 12). Brent was only able to drive a few more miles before a tire blew out. Inspection of the remaining tires showed marks as if they had been cut. (Id. ¶ 13).

When Brent returned and inspected the maroon truck, he discovered the lower skid plate was missing. This plate would have to be removed to reach the engine from underneath the truck. (Id. ¶ 14). Brent also discovered all the safety pins had been removed from the steering system and a bolt had been loosened. (Id. ¶ 15). The ground strap for the battery had been removed and the alternator unplugged. (Id., ¶¶ 16-17). Once the truck was running, it began to smoke. The gas tank read as full, where it had previously been $\frac{3}{4}$ full. This indicated water had been added to the gas tank. (Id. ¶ 18; R. December 28, 2023 hearing).

On December 27, 2023, Brent and Shelly were leaving their shop when they noticed Thomas and other All-Tech employees pointing at their Prius and laughing. As they began driving, they saw white smoke coming from the car. Again the fuel gauge indicated more fuel

than was previously in the car indicating water had been added to this gas tank as well. (December 27, 2023 Affidavit of Brent Click, ¶ 21).

Additional Evidence Regarding the Stolen Truck

Brent also obtained additional information regarding his stolen truck when he observed Ivester (an All-Tech employee) come from the rear of the All-Tech building on September 1, 2023, and hand a trailer hitch to Thomas. (October 3, 2023 Affidavit of Brent Click, ¶ 4; R. December 28, 2023 hearing). Brent was able to see the hitch more closely when Thomas's truck was later parked across the street. (October 3, 2023 Affidavit of Brent Click, ¶ 4). Brent recognized the hitch as the one that was inside his stolen truck in October 2022 due to the distinctive welding pattern used when he had modified the hitch with a welded cross bar several years earlier. (Id.; R. December 28, 2023 hearing).

Continued Physical Threats

On March 17, 2023, All-Tech employee Standard fired a gun towards the Click Property in the presence of the owner, Thomas. (April 19, 2023 Affidavit of Brent Click, ¶ 5; R. December 28, 2023 hearing).

On March 21, 2023 Brent was with a potential customer who was test driving a car for sale when they had to stop for a truck that was turning around in the road. When they stopped, All-Tech employee Ivester suddenly appeared and rushed towards the car brandishing a gun. (R. ; April 19, 2023 Affidavit of Brent Click, ¶ 6). The customer quickly drove around the truck and used the shoulder to escape. (April 19, 2023 Affidavit of Brent Click, ¶ 6; R. December 28, 2023).

On April 17, 2023 Brent observed Standard bragging to other All-Tech employees about shooting towards the Click Property. (April 19, 2023 Affidavit of Brent Click ¶ 9). All-Tech

employee Ivester began using hand gestures to imitate flying drones and acted out the events that occurred when he rushed towards Brent and his customer with a gun on March 21st. (Id.).

It became common for All-Tech employees to carry pistols on the All-Tech property and to brandish them when Brent or Shelly were in view. (April 19, 2023 Affidavit of Brent Click, ¶ 7). Two employees of All-Tech threatened to put Brent and Shelly “in the ground” in front of one of their customers. (October 3, 2023 Affidavit of Brent Click, ¶ 16; R. December 28, 2023 hearing). All-Tech employee Stokes also began spending an increasing amount of time menacingly watching Shelly as she went about her daily business. (November 2, 2023 Affidavit of Brent Click, ¶ 7; R. December 28, 2023 hearing).

On October 31, 2023 Stokes came across the All-Tech parking lot towards Brent, yelling and waving his arms. (Id., ¶ 8; R. December 28, 2023 hearing). Stokes informed Brent that the Pickens County Sheriff’s Department worked for him now and that he “can’t make them do sh*t.” He also stated that the police wanted to arrest Brent because they work for All-Tech and that Brent was going to go to jail “for being a little b**ch.” Brent did not respond. (Id.).

All-Tech’s Continued Blocking of Highway Access

All-Tech continued to block Click’s ability to safely access Highway 123. (November 2, 2023 Affidavit of Brent Click, ¶ 6; R. December 28, 2023 hearing). On October 30, 2023 Stokes blocked Brent’s truck with his van. (November 2, 2023 Affidavit of Brent Click, ¶ 4). When Brent photographed the van, Stokes approached him. (Id., ¶ 5). Brent explained the van was on the Click Property and he would have it towed. Stokes threatened to kill Brent if he had it towed. (Id.; R. December 28, 2023 hearing).

Improper Attempts at Excavation

In October of 2023 All-Tech again attempted to excavate the embankment without a permit and instructed workers to remove soil from the Click Property. (October 3, 2023 Affidavit of Brent Click, ¶ 9; R. December 28, 2023 hearing). This attempt was made despite Click prevailing on their acquiescence action. A Pickens County Sheriff Office arrived and agreed that a permit was needed before digging could begin. (October 3, 2023 Affidavit of Brent Click, ¶ 12; R. December 28, 2023 hearing). All-Tech obtained a permit on November 15, 2023 but did not begin construction. (R. ; December 28, 2023 hearing).

All-Tech's attempt to place the wall such that additional excavation of the Click Property would be required

All-Tech's permit application included a drawing of the retaining wall prepared by Tommy Hood Engineering. (R.). The drawing required, as Hood confirmed at the December 28, 2023 hearing, that no surcharge load or upslope incline of backfill was allowed within 10 feet of the wall. (R. December 28, 2023 hearing). Since Click's driveway was within the 10' area, no use by trucks or cars could be used.

All-Tech began digging into the hill that is part of the Click Property on February 8, 2024. The excavated area would place the footings, and therefore the retaining wall, less than 10 feet from the Click driveway, preventing them from using their property. (R. ; February 16, 2024 hearing, p. 51, ll. 10-21).

Click was required to file a TRO, which was heard on February 16, 2024. The lower court granted the TRO and required All-Tech to comply with the design requirements they had submitted to the Pickens County Planning Department. (R.).

Brent testified to his continuing damages as a result of the vandalism, theft, and continued harassment. (R. March 3, 2023 hearing, p. 94, l. 10-p. 96, l.10; December 9, 2023 hearing).

All-Tech's Actions Between the December 28 2023 Hearing and August 9, 2024 Hearings on the Rules to Show Cause

All-Tech never ceased its attempts to harass Brent and Shelly or to sabotage their trucks and business. Shelly observed All-Tech employee Standard motion an Amazon driver to All-Tech when he arrived at Hyper Formance on January 26, 2024. (January 29, 2024 Affidavit of Shelly Click, ¶ 3). Shelly asked the Amazon driver if the package was for them and he went and retrieved it from All-Tech. (Id. ¶ 4). Shelly was informed All-Tech had directed all packages to be delivered to All-Tech claiming the businesses were the same. (Id. ¶ 5).

Brent testified that All-Tech employees routinely blasted an air horn at him and his wife. (July 8, 2024 Affidavit of Brent Click, ¶ 36; August 5, 2024 Affidavit of Brent Click, ¶ 23).

Brent observed a drone being flown across the Click Property to frighten his pet ducks the afternoon of the February 16, 2024 hearing on the TRO. He also observed the drone attempt to enter his lower building. (August 9, 2024, p. 118, l. 15-p. 199. l. 24). This was the second such incident involving a drone. (Id.). Brent observed Thomas and several All-Tech employees in the All-Tech parking lot. When Brent came out of his shop to investigate the drone immediately flew back towards All-Tech. Brent had purchased special shot-gun shells that use a net to disable a drone after he had been filmed taking a shower. He retrieved the gun with the shells and kept it by his side in case he needed to defend his pets or his property. He was careful not to aim towards the All-Tech Property or its employees. (R. August 9, 2024 hearing, p. 119, l. 25-p. 121, l. 22).

On February 15, 2024, Brent overheard Thomas tell his counsel that he would not stop harassing Brent and Shelly stating, "He's about to leave. He's looking at other buildings. We are

about to run them out.” (February 16, 2024 Affidavit of Brent Click, ¶¶ 2-3). The same day Brent noticed Stokes looking towards the shop and laughing as an officer approached. The officer had been called anonymously about ducks that had been reported as mistreated and abandoned. (February 16, 2024 Affidavit of Brent Click, ¶ 5). Brent was able to show the officer that the ducks were in good health and had an appropriate living area, after which the officer left. (Id. ¶¶ 6-8).

True to his word, Thomas and the All-Tech employees continued to harass Brent and Shelly, now with an apparent goal to provoke a reaction so they could report them to the police or file their own motion for contempt. It was only after All-Tech was found in contempt that they brought a rule to show cause against Click in June of 2024.

In March of 2024 All-Tech employees were shouting at Shelly about how funny it would be when someone raped her. (August 5, 2024 Affidavit of Shelly Click, ¶ 2). Despite being intimidated, Shelly tried to act like she wasn’t bothered and gave them the middle finger. (Id.). All-Tech presented only her reaction in court in an effort to say she was harassing the All-Tech employees. (R. June 19, 2024 Affidavit of Jonathan Thomas, second ¶ 9).

On May 20, 2024, Thomas’ wife parked in front of, and blocked, Brent’s truck and began speaking to him in a crude manner, including statements of a sexual nature. (August 9, 2024 hearing, p. 142, l. 12- p. 143, l. 11). Brent filmed the incident to record what was occurring. (Id. p. 174, ll. 21-25). Brent admitted that he responded to her goading statements about Shelly having sex with Thomas with some factual statements about the lawsuit. (Id. p. 177, ll. 4-7). Brent’s reaction to the exchange started by Thomas’ wife was not harassment.

On June 28, 2024 Brent went to leave his property on his motorcycle when All-Tech employee Stokes gave him the middle finger. (July 8, 2024 of Brent Click, ¶ 15). When he returned the gesture, Stokes charged towards him and Brent had to put the motorcycle on it side to keep the

bike between himself and Stokes, who was now on the Click Property. (Id.; August 9, 2024 hearing, p. 123, ll. 4-25). Thomas was motioning for Brent to come over (August 9, 2024 hearing, p. 124, ll. 13-15), in what was later seen to be an effort to film him on the property so he could file a trespass report with the police. Brent was unable to pull the motorcycle back up the embankment and All-Tech had blocked Brent's access to Highway 123 so he drove in front of the parked cars and exited the lot. (Id. ¶ 16). All-Tech then filed a police report and had Brent arrested claiming Brent trespassed on the property. (July 8, 2024 of Brent Click, ¶11). This was not a willful trespass but rather an attempt to escape an escalating situation through the available avenue.

Brent testified that he continued to be blocked from exiting the property, including on March 15, 2024; May 20, 2024; June 4, 2024; June 10, 2024; and on multiple occasions by Stokes. (July 8, 2024 of Brent Click, ¶ 34; August 9, 2024 hearing, p. 115, l. 8-p. 117, l. 12). All-Tech would on occasion block both driveways preventing any vehicles from entering or exiting. (July 8, 2024 Affidavit of Brent Click, ¶ 33).

All-Tech Builds a Driveway to its Back Parking Lot

All-Tech resumed digging for the retaining wall over Memorial Day Weekend in 2024 despite the fact that its permit had expired. (July 8, 2024 of Brent Click, ¶ 19). All-Tech ignored the requirements of its own engineer and constructed an inclined driveway between the retaining wall and the embankment of the Click Property despite the fact the engineering plan stated there was to be no surcharge load within 10 feet of the wall. (R. Pl. Ex. 10 to August 9, 2024 hearing; August 9, 2024 hearing p. 71, ll. 20-22). Thomas admitted the structural fill was not tested by a geotechnical engineer as called for in the wall plan prepared by his own expert. (Pl. Ex. 10 to August 9, 2024 hearing; August 9, 2024 hearing, p. 69, ll. 13-23).

All-Tech's engineer (Hood) testified in December of 2023 that the location of Brent's driveway within 10 feet of the wall would not comply with the design. (R. December 23, 2023 hearing). This was reiterated by Click's expert, David Hall, at the February 2024 hearing. (R. February 16, 2024 hearing, p. 51, ll. 5-7, p. 55, ll. 1-7). All-Tech was therefore aware it could not use Hood's design to build a driveway beside the wall. They proceeded to build the non-compliant driveway anyway.

When All-Tech started digging directly into the embankment that supports Brent's gravel driveway (and owned now by Brent), Brent asked to see the supporting permit and engineering drawings. (August 5, 2024 Affidavit of Brent Click, ¶ 17). None were provided. (Id.). Alarmed that All-Tech's actions were causing additional damage to his property, Brent called the Pickens County Sheriff's Office so they could determine if a proper permit had been obtained. (Id.). This digging did cause Brent to suffer new damage to his back building and the cliff next to his gravel driveway. (August 9, 2024 hearing, p. 132, l. 7-p. 136, l. 5; ¶ 20; August 5, 2024 Aff. of David Hall).

Vandalism

On February 9, 2024, Brent left his property in the white GMC truck, with the trailer attached. As he entered the highway, the truck went into neutral and he was unable to put it into gear. (February 14, 2024 Affidavit of Brent Click, ¶ 2). The truck rolled to a stop and Brent was able to climb underneath to discover the nut on the shifter bolt had been loosened. (Id. ¶ 2).

The vandalism also included customer cars. On February 13, 2024, Click had completed repairs on a Toyota Highlander for a customer. (Id. ¶ 3). Brent observed Thomas watching him and smiling. (Id. ¶ 4). Brent then observed a gel-like substance bubbling on the car. (Id. ¶ 5). When Brent went to wipe the substance from the car, his skin began burning. (Id. ¶ 7). Brent did not have

any similar substances on the property for business or personal purposes. (Id. ¶ 9). The substance was not observed on other equipment in the area or generally on the ground, indicating it was not part of a wider weather phenomena. (Id. ¶ 8). The substance was not present on the roof of the Highlander or the side facing away from the All-Tech Property, indicating it was flung onto the car from a low angle from the direction of the All-Tech Property. (Id. ¶ 12).

Click continued to have screws placed in the tires of its vehicles, finding them on April 29th, May 16th and 17th. (July 8, 2024 Affidavit of Brent Click, ¶ 30). The screws were always found on weekdays, never on weekends when trucks driven to job sites and All-Tech was closed. Additionally, the screws were always located on the outside edge of the tire towards the front of the truck, which is the end parked closest to the All-Tech Property. (July 8, 2024 Affidavit of Brent Click, ¶ 32).

On July 1, 2024 the Click's maroon truck was vandalized again. The driver's side handle and inner panel were broken and the ignition was damaged. (August 5, 2024 Affidavit of Brent Click, ¶ 27).

On July 25, 2024 there was a gash on one of the tires of the white GMC truck. (Id. ¶ 28). On August 8, the GMC truck would not start. When Brent inspected the truck, he discovered water had been added to the gas tank. (August 9, 2023 hearing, p. 112, l. 7-p. 113, l. 5).

The Physical Threats Escalate to an Attempted Shooting

Brent testified that on March 26, 2024 Stokes was standing on the Click Property yelling about killing Brent. (July 8, 2024 Affidavit of Brent Click, ¶ 35).

Brent testified that on May 29, 2024 and again on June 3, 2024, All-Tech employee Standard threatened him by intentionally lifting his shirt to show he had a gun. (July 8, 2024 Affidavit of Brent Click, ¶ 37).

The physical threats against Brent escalated until July 2, 2024, when shots were fired at Brent at close range while he was riding his motorcycle. (July 8, 2024 Affidavit of Brent Click, ¶¶ 6-8). Brent was approached by a red Durango from behind. (Id. ¶ 6). The Durango began chasing Brent at a high rate of speed. (Id., ¶ 6; R. August 9, 2024 hearing, p. 93, l. 14-p. 94, l. 1). The Durango was so close at one point that Brent's license plate was over part of the bumper of the Durango. (R. August 9, 2024 transcript, p. 91, ll. 20-24). Brent swerved to escape the Durango. (August 9, 2024 hearing, p. 94, ll. 6-11). As the Durango began to pass Brent, he heard a loud bang and turned to face the barrel of a gun outside the driver's side window. (Id., ¶ 7; R. August 9, 2024 hearing, p. 94, ll. 19-24). Brent applied his brakes and the gun fired directly in front of his face, inches away. (Id.).

Brent was able to see the shooter briefly and observed a bracelet like that he had seen an All-Tech employee, Stokes, wear. (Id. ¶ 8; R. August 9, 2024 hearing, p. 94, l. 23-p. 95, l. 5). He also observed a shirt the same color and style as that worn by All-Tech employees. (August 9, 2024 hearing, p. 95, ll. 8-14). Stokes approached Brent after the shooting and said he would never be able to prove it was him, prior to Brent making the event generally known. (August 9, 2024 hearing, p. 100, ll. 108).

Brent testified to his continuing damages as a result of All-Tech's actions. (R. August 9, 2024 hearing, p. 137, l. 1-p. 138, l. 24).

ARGUMENT

I. STANDARD OF REVIEW

"[C]ontempt is an extreme measure; this power vested in the court is not lightly asserted." *Taylor v. Taylor*, 434 S.C. 307, 317, 863 S.E.2d 335, 340 (Ct. App. 2021). "A determination of contempt ordinarily resides in the sound discretion of the trial judge." *Cheap-O's Truck Stop*,

Inc. v. Cloyd, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994)). “On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion.” *Stone v. Reddix-Small*s, 295 S.C. 514, 516, 369 S.E.2d 840, 840 (1988). “An abuse of discretion occurs either when the court is controlled by some error of law or where the order, based upon findings of fact, lacks evidentiary support.” *Townsend v. Townsend*, 356 S.C. 70, 73, 587 S.E.2d 118, 119 (Ct.App.2003).

II. THE COURT ERRED IN FINDING CLICK IN CONTEMPT OF THE SEPTEMBER 21, 2022 ORDER

“In an action for contempt, the burden of proof is on the moving party.” *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986). “A party seeking a contempt finding for violation of a court order must show the order's existence and facts establishing the other party did not comply with the order.” *Noojin v. Noojin*, 417 S.C. 300, 306, 789 S.E.2d 769, 772 (Ct. App. 2016) (quoting *Abate v. Abate*, 377 S.C. 548, 553, 660 S.E.2d 515, 518 (Ct. App. 2008)).

Contempt must be shown by clear and convincing evidence. “Clear and convincing” evidence is an intermediate degree of proof “which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established.” *Anonymous v. State Bd. of Med. Examiners*, 329 S.C. 371, 375 n. 2, 496 S.E.2d 17, 18 n. 2 (1998); accord *Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 261, 266 n. 4, 478 S.E.2d 282, 283 n. 4 (1996).

“Once the movant makes a *prima facie* showing by pleading an order and demonstrating noncompliance, ‘the burden shifts to the respondent to establish his defense and inability to comply.’” *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001) (quoting *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)).

A. The Lower Court Erred in Finding that Click's Efforts to Document All-Tech's Harassment was Evidence of Harassment

"[C]ontempt results from willful disobedience of a court order; ... before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217). "A willful act is ... one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *Cloyd* 350 S.C. at 607-08, 567 S.E.2d at 520 (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217).

The lower court's October 1, 2024 order found:

Based on this evidence, the Court finds that, by clear and convincing evidence, both the Plaintiffs and Defendants have each proven certain allegations on the issue of harassment and have therefore violated the prior orders to refrain from harassing the other, including shouting at and insulting each other, using drones, trespassing, obtaining trespass warrants, making unwarranted gestures, blocking access to each other's property, filming and taking pictures of the other, filing unnecessary complaints, blasting horns, towing vehicles, placing no parking signs and having verbal altercations. The conduct of both parties shows a constant and continuous pattern of violating the Court's prior orders.

Brent's attempt to document the harassment taking place is not a willful violation of the September 21, 2022 order. The order does not prohibit either party from documenting damaging activity by the other party. Because this activity is not clearly proscribed, it cannot constitute contempt. "One may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do." *Welchel v. Boyter*, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973). The language of the commands must be clear and certain rather than implied. 17 Am.Jur. (2d), Contempt, Sec. 52 (1964).

The lower court's October 1st order has a potential chilling effect on Brent's exercise of his right to present evidence in court and to defend himself against his accusers. "The due process clause requires that every man shall have the protection of his day in court." *Truax v. Corrigan*, 257 U.S. 312, 324 (1921). It has long been held that the right to present evidence is essential to the fair hearing required by the Due Process Clause. *See, e.g., Morgan v. United States*, 304 U.S. 1, 18 (1936); *Baltimore & Ohio R. Co. v. United States*, 298 U.S. 349, 368—369 (1936).

Brent Click testified that he and his wife recorded activity when All-Tech employees were harassing them, or if an incident occurred like the drone appearing over their property, to try and document the incident. (August 9, 2023 hearing, p. 139, ll. 13-21). Brent testified that on one occasion he took a photograph to document an incident where Greg Grissinger, Jr was yelling at him from the All-Tech Property, threatening them with physical violence, and patting his hoodie where the outline of a pistol was visible. (*Id.*, p. 145, l. 15- p. 146, l. 15). On another occasion, Thomas' wife pulled up, blocking Brent, and immediately began yelling at him and walked towards him onto the Click Property. He recorded the incident. (*Id.*, p. 142, l. 12- p. 143, l. 11; p. 177, l. 16- p. 178, l. 2).

Brent also testified that he recorded events in which he was concerned that All-Tech may accuse him of causing damage to the All-Tech Property. This occurred when Brent observed unknown people wrongfully putting items in the All-Tech dumpster. He initially recorded to document he was not on the property. (*Id.*, p. 139, l. 25-p. 140, l. 25; August 8, 2024 Affidavit of Brent Click, ¶ 3). He continued recording when the individuals starting shouting the same crude statements used by Thomas in order to capture the interaction. (August 9, 2024 hearing, p. 140, ll. 3-14, 22-25). He was not aware this was Thomas' daughter and her boyfriend. (*Id.*, p. 140, ll. 15-18).

The lower court's October 1, 2024 order notes All-Tech accused Click of recording Thomas and the people he had excavating Brent's hard won embankment on February 8, 2024. (R. Affidavit of Jonathan Thomas filed June 19, 2024, ¶ 8) This is the activity which the lower court enjoined following the February 16, 2024 TRO hearing. (R. , March 1, 2024 order) Finding Click is in contempt of the September 21st order if he attempts to document injurious behavior by All-Tech is a violation of Click's due process rights.

The lower court also notes All-Tech accuses Click of trespassing while taking these pictures because he came to the edge of the embankment between the properties. (R. Affidavit of Jonathan Thomas filed June 19, 2024, ¶ 8) This property was awarded to Click as a result of the 2022 trial. This finding has been upheld by the lower court's September 21st order and the recent March 12, 2025 Opinion of this Court. (R.)

The lower court's order has a chilling effect on Click's exercise of its due process rights as it cites as a basis for the contempt finding the fact that Click recorded activity of All-Tech employees that may serve as evidence of All-Tech's actions against Click or as a defense to allegations made by All-Tech.

B. The Lower Court Erred in Finding Click Harassed All-Tech When it was Required to Respond to All-Tech's Harassment

The lower court erred in finding Click willfully disobeyed the September 21st order when they were acting to defend themselves and their property.

Harassment is defined as “[w]ords, conduct, or action (usu[ally] repeated or persistent) . . . directed at a specific person, [that] annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation.” Black’s Law Dictionary (10th ed. 2014).

Brent and Shelly Click live and work on their property giving them no respite from the attacks by All-Tech employees.⁶ The evidence demonstrates that All-Tech and Thomas have constantly and systematically provoked Brent and Shelly Click: their vehicles have been vandalized numerous times (13 times between the December 28, 2023 and August 9, 2024 hearings, not including the numerous times screws were placed in tires);⁷ their truck, trailer, and bobcat were stolen and vandalized;⁸ customer vehicles have been vandalized;⁹ their pets have been threatened;¹⁰ Brent has been filmed while showering;¹¹ their business has been damaged; and they have been physically threatened.¹² These events escalated until a gun was fired point-blank at Brent while he was escaping at high speed on his motorcycle.¹³

S.C. Code § 16-11-420 recognizes that a person's home is his castle and that it is proper for citizens to protect themselves, their families, and others from attackers without fear of prosecution or civil action. The clear and convincing evidence shows that Brent and Shelly have not instigated actions against All-Tech employees but rather have reacted to repeated harassment. For example, the lower court's October 2024 order notes All-Tech alleged Brent waived his hand

⁶ R. March 3, 2023 hearing, p. 125, ll. 14-23.

⁷ R. Brent testified to examples of the vandalism experienced. March 2, 2023 hearing, p. 47, l. 5-p. 50, l. 14, p. 50, l. 15- p. 58, l. 2; September 22, 2023 Affidavit of Brent Click, ¶¶ 4-7; October 3, 2023 Affidavit of Brent Click, ¶ 4; November 8, 2023 Affidavit of Brent Click, ¶¶ 5-8; December 27, 2023 Affidavit of Brent Click, ¶ 4, 6, 7-9, 12-18, 21; February 14, 2024 Affidavit of Brent Click, ¶¶ 2-5, 7-9; July 8, 2024 Affidavit of Brent Click, ¶¶ 30, 32; August 5, 2024 Affidavit of Brent Click, ¶ 27-28.

⁸ R. March 3, 2023 hearing, p. 62, l. 20-p. 67, l. 7; p. 77, l. 21- p. 79, l. 2; p. 78, ll. 14-20; p. 79, ll. 14-23; p. 85, ll. 4 -p. 86, l. 4.

⁹ February 14, 2024 Affidavit of Brent Click.

¹⁰ R. July 8, 2024 Affidavit of Brent Click, ¶ 4; August 9, 2024 hearing, p. 119, ll. 2-22. Not only were their pet ducks and geese under physical threat, Animal Control was contacted and falsely told the birds had been abandoned. (R. February 16, 2024 Affidavit of Brent Click).

¹¹ February 28, 2023 Affidavit of Brent Click, ¶ 42; August 9, 2024 hearing, p. 118, ll. 22-25; p. 171, l. 11-p. 172, l. 6.

¹² December 12, 2022 Affidavit of Brent Click ¶ 20; February 28, 2023 Affidavit of Brent Click, ¶ 31; November 2, 2023 Affidavit of Brent Click; July 8, 2024 Affidavit of Brent Click, ¶¶ 6-9, 15-16, 35, 37; August 9, 2024 hearing, p. 92, ll. 11-23; p. 146, ll. 1-7.

¹³ August 9, 2024 hearing, p. 92, l. 9- p. 96, l. 6.

in an “L” shape but does not note that Brent testified this was in response to Thomas taunting him. (August 5, 2024 Affidavit of Brent Click, ¶ 11).

Perhaps the most egregious example is All-Tech employees telling Shelly Click that it will be funny when she is raped and then attempting to goad her into a response so they can record it and claim she was harassing them. (August 5, 2024 Affidavit of Shelly Click; August 9, 2024 hearing, p. 128, l. 25-p. 130, l. 9; July 8, 2024 Affidavit of Brent Click, ¶ 4)

Unlike All-Tech employees, neither Brent nor Shelly brandished weapons in an attempt to intimidate their neighbors.¹⁴ Brent testified he bought anti-drone shotgun shells only in response to the drone harassment of his pets and being filmed while taking a shower. (August 5, 2024 Affidavit of Brent Click, ¶ 9; August 9, 2024 hearing, p. 119, l. 12-p. 120, l. 11; p. 166, ll. 8-19). He was careful not to point his gun towards any All-Tech employees or the Thomas Property. (R. August 9, 2024 hearing, p. 121, ll. 7-22). Brent denied that he ever shot the gun. (August 5, 2024 Affidavit of Brent Click, ¶ 9).

When All-Tech started digging directly into the cliff that supports Brent’s gravel driveway and turnaround during the 2024 Memorial Day weekend, Brent asked to see the supporting permit and engineering drawings. None were provided.¹⁵ Alarmed that All-Tech’s actions were causing additional damage to his property Brent called the Pickens County Sheriff’s Office. Again, Brent was acting only to protect his property and in fact this digging caused new damage to the back building and Click Property. (11th Supp. Aff. of Brent Click, ¶ 20; August 5, 2024 Aff. of David Hall).

¹⁴ Brent denies that he even made a shooting gesture at Thomas with his hand. (August 8, 2024 Affidavit of Brent Click, ¶ 20).

¹⁵ Instead, All-Tech relied upon a previous permit dated November 15, 2023, which expired on May 13, 2024, prior to the start of digging done during the Memorial Day weekend. (Click August 5, 2024 memorandum in support of its Motion, Ex. G).

The lower court's October 1, 2024 order notes All-Tech stated the Pickens County permit office came by in response to a complaint about the retaining wall leaning and being poorly constructed. All-Tech was ordered to abate the erosion it caused when it excavated the embankment adjacent to the Click Property. (R. , September 21, 2022 order) All-Tech attempted to dig without a permit (R. , October 3, 2023 Affidavit of Brent Click, ¶ 12; R. December 28, 2023 hearing) and then attempted to place a retaining wall in a location which would necessitate removal of a portion of the Click Property. (R. , February 16, 2024 hearing, p. 40, ll. 7-12). It was not harassment for Click to request the Pickens County Planning Office to inspect the retaining wall constructed by All-Tech when the wall appeared to be leaning and once again did not comply with the design requirements of All-Tech's engineer. (R. August 5, 2024 Affidavit of David Hall; August 8, 2024 Affidavit of David Hall). To find this activity constitutes contempt would prevent Click from enforcing the rights provided to it by the order.

On May 24th, Brent heard one of All-Tech's customers ask Thomas if he was building a retaining wall. Thomas answered no, he was building a new driveway to his back parking lot. (July 8, 2024 Affidavit of Brent Click, ¶ 23). Brent was aware that the retaining wall designed by engineer Hood was not intended to support a surcharge load within 10 feet of the wall and, therefore, could not be used as a driveway. This use without additional support would continue to cause damage to his property. Brent admitted he responded in frustration when Thomas asked if he "liked what [Thomas] was doing". (August 5, 2024 Affidavit of Brent Click, ¶¶ 16-17). Brent denied they made racial comments towards anyone. (August 8, 2024 Affidavit of Brent Click, ¶ 7.i.). This response did not amount to harassment of Thomas and was uttered as Brent was attempting to defend his property against further damage.

C. The Lower Court Erred in Finding Click Violated the September 2022 Order When the Only Evidence was that All-Tech and not Click Blocked Necessary Access

i. Click was not blocking All-Tech's highway access

The evidence presented to the lower court showed that Click was not blocking All-Tech's ability to access either Highway 123 or the All-Tech property. Click's property line is not perpendicular to Highway 123 but rather is angled towards the east. (R. , Affidavit of Joe Laws, Ex. A). All-Tech has direct access from Highway 123 onto its property however, Click is required to access a portion of the highway right away to enter and exit its property. (*Id.*).

Click is prevented from parking on its gravel driveway and turn around as a result of All-Tech's excavation. (R. August 9, 2024 hearing, p. 137, ll. 4-11; August 5, 2024 Affidavit of David Hall, ¶ 23). Click's Property has a small, paved parking area in which all vehicles and trailers must now be parked due to the unsafe nature of his driveway and turnaround. The direction of the divided Highway means that Click can enter its property from the Highway through his eastern access but often needs to exit through the western access to avoid the dangerous maneuver of backing a large trailer into a busy Highway. (July 8, 2024 Affidavit of Brent Click, ¶ 33).

The location of Click's vehicles does not block All-Tech's ingress or egress to the highway. Brent denied that he parked on All-Tech's property or blocked it as alleged in the Affidavit of Thomas filed June 19, 2024, ¶ R. Affidavit of Thomas filed June 19, 2024, 17. (R. August 5, 2024 Affidavit of Brent Click, ¶ 18). Thomas' bald statement without more is not clear and convincing evidence "which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established." *State Bd. of Med. Examiners, supra* 329 S.C. at 375 n. 2, 496 S.E.2d at 18 n. 2 . Similarly, Thomas produced no evidence in support of his statement that a customer

parked in the All-Tech lot while speaking with the Clicks and the Clicks did not ask him to move. Brent denied any recollection of this occurring. (August 5, 2024 Affidavit of Brent Click, ¶ 12).

In contrast, All-Tech employees routinely park directly in front of Click's vehicles preventing them from accessing the highway. Brent testified to numerous occasions where All-Tech employees parked directly in front of him to prevent him from exiting onto Highway 123 and presented photographic evidence. (July 8, 2024 Affidavit of Brent Click ¶¶ 33-34; August 9, 2024 hearing, p. 115, l. 8- p. 117, l. 12). The lower court's order notes one allegation by All-Tech that Brent responded rudely in asking Thomas to move cars that were blocking him. (R. , Order p. 3) It is not clear and convincing evidence of harassment by Click that he responded rudely on one occasion to being prevented from safely exiting his home and business on an almost daily basis.

ii. All-Tech does not have an easement across Click's property

The location of Click's vehicles on its own property when it cannot park them on the gravel driveway, and they are not preventing All-Tech from entering or exiting its property, is not harassment.

All-Tech does not have an easement across the Click Property. This issue was never raised before the lower court prior to the contempt hearing and is not addressed in any court order. Therefore, it cannot be a grounds for contempt. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002).

Further, the deed by which the All-Tech property was obtained from the prior owner does not reference it having a right of way over the adjacent property owned by Click. (R. , Pl. Ex. 14 to August 9, 2024 hearing). Likewise, the 2017 deed from the prior owner to Click has no reference to a right of way encumbering the Click Property for the benefit of the All-Tech Property.

(R. Pl. Ex. 15 to August 9, 2024 hearing). Therefore, there is no deed to either All-Tech or Click granting a right of way for All-Tech to drive through the front of the Click Property.

Cobb Sales owned both properties before subdividing in 1970. At that time Cobb Sales deeded the parcel now owned by Click to Major Ramey. There was no access to Highway 123 on the western part of the Cobb Sales property (later to become the Thomas Property) at that time. (R. Pl. Ex. 16 to August 9, 2024 hearing). In the deed to Ramey, Cobb Sales reserved to itself and its successors a right of way to have access to Hwy. 123 over the parcel that is now the Click Property. (Def. Ex. 16 to the August 9, 2024 hearing). The All-Tech Property later had its own access to Highway 123 (R. Pl. Ex. 17 to August 9, 2024 hearing). Therefore, the need for this “appurtenant” right no longer existed. Furthermore, Cobb Sales reserved the right-of-way only for itself and any potential successor entities. The South Carolina Secretary of State records show Cobb Sales never merged with another entity and dissolved through forfeiture on February 6, 2009. (Pl. Ex. 18 to August 9, 2024 hearing).

Finally, South Carolina law is clear that for a right of way to continue to be “appurtenant,” it is required that the right of way must be “essentially necessary” for the enjoyment of the land claiming the right of way; and once that is no longer true, any such right of way that existed is no longer recognized (or only recognized as in gross). As stated in the South Carolina Supreme Court case of *Kershaw v. Burns*:

. . . the nature of the easement is not to be determined solely by the language of the deed granting it; But the question whether the right of way is in gross or appurtenant to the land is dependent upon the facts of the particular case.

91 S.C. 129, 133, 74 S.E. 378, 379 (1912).

In that case, Kershaw claimed an easement over an alleyway. The Supreme Court defined an easement “in gross” as a mere personal privilege, which ends with the person who may have

acquired it. Therefore, an “appurtenant” easement is necessary for the enjoyment of the land: it therefore passes with the land. The Supreme Court concluded that the alley way was not essential for Kershaw to enjoy his land, since he had other access to the street: it was not appurtenant.

When Cobb Sales deeded the parcel to Ramey, it needed to reserve a right of way to itself to reach Highway 123. However, direct highway access was later created on the Thomas Property and Thomas no longer needed a right of way over the Click property to enjoy it by having a means of egress onto Highway 123. Therefore, South Carolina law recognizes that this claimed “easement appurtenant” fails, because no “essential necessity” to continue its use exists.

The South Carolina Department of Transportation (“SCDOT”) has an 80 feet right of way along the front of the Click and Thomas Properties, obtained in 1942. (Pl. Ex. 7 to August 9, 2024 hearing, August 8, 2024 Affidavit of Joe D. Laws, III, P.E. on behalf of SCDOT, ¶6.a. and Exhibit B to Affidavit). For all property within the SCDOT right of way, SCDOT holds the “dominant estate.” (Id., Laws Aff. ¶6.b.) No easement or right of way is allowed to be deeded or otherwise granted over property that is within the SCDOT right of way easement. (Id., Laws Aff. ¶6.e.). Therefore, the 1970 Deed from Cobb Sales Company to Ramey purporting to grant a right of way in favor of the Thomas Property across the front of the Click Property is not enforceable. Further, all portions of the All-Tech driveway that are within the SCDOT right of way are for public use (Id., Laws Aff. ¶6.d.), and that includes the blocked use by Click. (*See also* Id., Exhibit A to Laws Affidavit).

D. There was no Clear and Convincing Evidence that the Placement of a 'No Parking' Sign on Click's Property to Dissuade All-Tech from Continuously Parking Cars on the Click Property or Blocking Click's Access to the Highway was a Form of Harassment

The lower court erred to the extent it found clear and convincing evidence that Click placed no parking signs on his property in an effort to harass All-Tech.

Property owners have a right to post no parking signs on their property. S.C. Code § 16-11-760. Click presented evidence of All-Tech repeatedly parking in a manner to block their vehicles from exiting onto Highway 123. (July 8, 2024 Affidavit of Brent Click, ¶¶ 33-34; R. August 9, 2024 hearing, p. 115, l. 8- p. 117, l. 12) Viewing Exhibit A to Thomas' Supplemental Affidavit (R.) in conjunction with Exhibit A to Laws' Affidavit (R.) demonstrates that cars parked on a portion of the asphalt in the parking lot used by All-Tech are actually on Click's property. Thomas admitted that the No Parking sign was located on the Click Property. (August 9, 2024 hearing p. 50, l. 23-p. 51, l. 6).

E. There was no Clear and Convincing Evidence that the Towing of Vehicles on Click's Property was Willful Harassment

The lower court erred to the extent it found Click harassed All-Tech by having vehicles towed that were located on the Click Property.

Despite the fact that All-Tech blocked Click's ability to exit onto Highway 123 on an almost daily basis, Brent only called a towing company on two occasions when a vehicle was clearly parked on his property and blocking his egress onto Highway 123. (R. August 5, 2024 Affidavit of Brent Click, ¶¶ 4-5).

A vehicle was only towed on one occasion. (Id., ¶ 4) Brent testified the vehicle was parked on the Click Property and was towed because it was parked directly in front of a No Parking sign and blocking Click from entering onto Highway 123. (Id.). Thomas did not see the vehicle before

it was towed and could not refute the car's placement or that it was preventing Click from exiting its property. (August 9, 2024 hearing, p. 49, l. 19-24)

On one other occasion, Click called to have a car towed that was parked on the Click Property and blocking access to Highway 123. (August 5, 2024 Affidavit of Brent Click, ¶ 5). Thomas was contacted by the tow company. (June 19, 2024 Affidavit of Thomas ¶ 5). Thomas moved the car and it was not towed. (August 5, 2025 Affidavit of Brent Click, ¶ 5).

F. The Actions of Third Parties are not Clear and Convincing Evidence of Willful Acts by Click

All-Tech alleges that Click had equipment removed from his building and the third party moving company parked in a manner that disrupted the flow of traffic on the Thomas Property. Brent testified that he made arrangements to clear his parking lot so MEI Rigging would be able to move the equipment from his lower building and was unaware that they had parked on the Thomas Property. (R. , August 9, 2024 hearing, p. 143, l. 12-p. 145, l.11) Contempt requires an intentional act by Click. *Cloyd, supra*, at 607-08, 567 S.E.2d at 520. All-Tech did admit that MEI moved their trucks when asked and did not have any evidence that Click instructed them to park on the All-Tech property. (R. August 9, 2024 hearing, p. 52, l. 12-p. 53, l. 5).

Likewise, Thomas' statement that he noticed tracks from equipment going through the All-Tech parking lot and up the side of the hill between the two properties is not clear and convincing evidence of a willful act by the Clicks. Brent testified the tracks were not made by equipment he owned and that he did not know who made the tracks. (August 5, 2024 Affidavit of Brent Click, ¶ 19) All-Tech did not witness anyone driving across the property. (R. Affidavit of Jonathan Thomas filed June 19, 2024, ¶ 18).

G. There was no Clear and Convincing Evidence that Click Trespassed on the All-Tech Property in an Effort to Harass All-Tech

The lower court erred to the extent it found Click harassed All-Tech by trespassing on the All-Tech Property. Click presented evidence that it did not willfully trespass across the All-Tech Property.

As set forth above, Click did not trespass on All-Tech's property in using the right of way to access Highway 123. Additionally, Click did not harass All-Tech on June 28, 2024 when Brent was forced to drive across a portion of the All-Tech Property to exit onto Highway 123. Brent testified he was taking a scooter he had bought as a present for his wife into the shop when he was taunted by All-Tech employees. (July 8, 2024 of Brent Click, ¶ 14). Brent later went to leave his property on his motorcycle when All-Tech employee Stokes gave him the middle finger. (Id. ¶ 15). When he returned the gesture, Stokes charged towards him and he had to put the motorcycle on it side on the embankment and jump off to keep the bike between himself and Stokes, who was now on the Click Property. (Id.).

Thomas was motioning for Brent to come over to him on the Thomas Property. (Id. ¶ 16). Brent was unable to pull the motorcycle back up the embankment. (Id. ¶ 16). All-Tech had blocked Brent's access to Highway 123 so he drove in front of the parked cars and exited the lot. (Id. ¶ 16). All-Tech then filed a police report claiming Brent trespassed on the property and subsequently had Brent arrested for trespassing. (July 8, 2024 of Brent Click, ¶11).

H. There was no Clear and Convincing Evidence that Click Filed Unnecessary Complaints

The lower court does not define what it considers to be unnecessary complaints. The lower court is infringing on Click's constitutional rights to the extent it finds Brent cannot file legal documents when All-Tech is in contempt of the September 2022 order or that it cannot contact the

Pickens County Planning Department when All-Tech is digging without a permit or in a manner that will damage the Click Property.

If the lower court is referring to complaints to the Pickens County Sheriff's Office, Brent testified he has made increasingly limited use of the Sheriff's Office (R. , August 9, 2024 hearing, p. 98, ll. 11-23) while All-Tech have made increasing reports in an attempt to have Brent and Shelly arrested. (R. , July 8, 2024 of Brent Click, ¶¶ 10-12). The lower court's order notes All-Tech stated the Pickens County Sheriff's Office came out while they were digging over Memorial Day Weekend in 2025. (June 19, 2024 Affidavit of Jonathan Thomas, ¶ 16).

Brent testified that he contacted the Sheriff's Office after All-Tech refused to show him their permit to dig. All-Tech had already caused extensive damage to the Click Property as a result of the original excavation and had attempted to dig improperly on two occasions after the September 21st order. It was not harassment for Brent to ask the Sheriff's Office to confirm the excavation was being conducted in response to a proper permit. (August 5, 2024 Affidavit of Brent Click, ¶ 17). Once again, it is a violation of the Click's due process rights if it is not able to report concerning activity to the Sheriff's Office given the long history of improper and injurious DIY excavation activities by All-Tech.

This is also another example of All-Tech's attempt to goad Click into a response so All-Tech can file a complaint. Brent testified that Thomas was not using the property line awarded to Click at trial when he was instructing his workers where to dig. (August 5, 2024 Affidavit of Brent Click, ¶ 16). When Thomas asked Brent, "do you like what I'm doing?", Brent responded in frustration. (August 5, 2024 Affidavit of Brent Click, ¶¶ 16, 17). All-Tech claims that Brent's response was harassment and also that it was harassment for Brent to ask the Sheriff's Office to become involved so that he could avoid further interaction with All-Tech. The court's contempt

power is not meant to require the Clicks to either accept whatever abuse All-Tech chooses to heap upon them or be faced with contempt.

I. There is no Clear and Convincing Evidence the Clicks Harassed All-Tech or its Customers

Brent and Shelly Click testified in response to the allegation that she began yelling at an All-Tech customer who was leaning on her truck, that she did ask him to wait on All-Tech's property and his response was he began shouting rude comments at her. (August 5, 2024 Affidavit of Shelly Click, ¶ 1; August 5, 2024 Affidavit of Brent Click, ¶ 1; August 8, 2024 Affidavit of Brent Click, ¶¶ 4-5).

J. Only All-Tech Obtained a Trespass Warrant

The only evidence in the record is that All-Tech created a situation to draw Brent onto the property and then contacted the Sheriff's Office to have Brent arrested for trespassing. (July 8, 2024 of Brent Click, ¶¶ 11, 15-16; August 9, 2024 hearing, p. 123, ll. 4-25, p. 124, ll. 13-15).

III. THE LOWER COURT ERRED IN FAILING TO FIND ALL-TECH VIOLATED THE ABATEMENT ORDER

All-Tech was ordered to abate the erosion nuisance they caused to the Click Property. (R.). Instead they built a driveway to their back parking lot that does not meet the requirements established by their own expert. All-Tech was aware of the requirements as they were discussed in detail at the December 28, 2023 and February 16, 2024 hearings. (R. , December 28, 2023 hearing, testimony of Hood; R. February 16, 2023 hearing, testimony of David Hall). Thomas asked Hood in January of 2023 if he could use the wall detail to build a driveway and was informed it could not be used for that purpose. (R. , Ex. A to Click's August 8, 2024 Reply to All-Tech's Response to Rule to Show Cause).

David Hall, Click's expert, testified All-Tech did not build the retaining wall in accordance with the design plans prepared by its engineer Hood. (August 5, 2024 Affidavit of David Hall). Hall conducted a site visit on August 1, 2024. (August 5, 2024 Affidavit of David Hall, ¶ 3). The Hood engineering detail stated, "do not operate any heavy equipment near the retaining wall." (R. Pl. Ex. 10 to August 9, 2024 hearing). Hall testified, "[t]his indicates that the wall is not designed for live loads. As installed, vehicles travel near the wall going up and down the ramp that was created. The wall is not designed for this condition." (August 5, 2024 Affidavit of David Hall, ¶ 11).

Hood also testified that he "observed that a sloped driveway has been constructed between the retaining wall and the Click property and that the driveway is being actively used. This creates a live surcharge load within 10 feet of the wall which the Hood Detail provides the wall is not designed to bear." (Id., ¶ 13; Pl. Ex. 10 August 9, 2024 hearing). Hall also confirmed Brent's observation that the wall was leaning away from the driveway. (August 5, 2024 Affidavit of David Hall, ¶ 16; August 8, 2024 Affidavit of David Hall, ¶ 12). His opinion was that the condition could worsen, because live loads were being applied, causing the wall to fail. (Id.).

Hall concluded the retaining wall did not provide stabilization for the entire embankment (Id., ¶ 18) and that the embankment on the Click Property remained in an unsafe condition and continued likely to fail. (Id., ¶ 19). His opinion was based on the manner in which the retaining wall was constructed, the placement of the wall, the use of live loads adjacent to the wall which was not designed to withstand such loads, visual sluffing of soil, overburden and vegetation movement above the embankment, building and utility issues, and the global stability analysis. (Id.). Hall testified that in addition to the construction issues, the wall needed to be higher to properly abate the nuisance. (August 8, 2024 Affidavit of David Hall, ¶ 14).

Hall also testified that the Click Property was continuing to shift towards the All-Tech Property. (Id., ¶ 21). Brent testified that he has continued to suffer damage as a result of the erosion. (R. , August 9, 2024 hearing, p. 137, l. 1-p. 138, l. 24). Therefore, Click presented clear and convincing evidence that All-Tech wanted to build a driveway to access their upper parking lot and did so despite knowing that the retaining wall they were building was not designed to accommodate those live loads and would not abate the erosion nuisance caused by the DIY 2020 excavation.

CONCLUSION

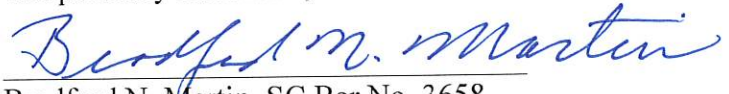
Click did not willfully violate the September 21, 2022 order. Brent and Shelly have been subjected to continuous harassment from All-Tech that has escalated damage to their property and physical threats, including threatened rape and attempted shooting. Because they live and work on the property, they have no escape.

The Clicks have attempted to protect themselves and their property by documenting All-Tech's actions and protecting themselves and their pets when necessary. They have filed Rules to Show cause with the lower court in an effort to curtail All-Tech's escalating behavior. It is a violation of their constitutional rights for the lower court to find that such acts are willful contempt. The clear and convincing evidence is that All-Tech has been the instigators since 2020 and that only on rare occasions after years of torment have the Clicks responded when provoked.

The Clicks, therefore, respectfully ask that this Court reverse the October 1, 2024 order of the lower court finding them in contempt.

March 31, 2025

Respectfully submitted,



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