

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-2444

Stow Away Storage, LLC,

George W. Sisson, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- 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 _____

JULIE C. ARKISTRONG
 CLERK OF COURT
 2013 DEC 11 PM 12:14
 FILED

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: **The Court DENIES Defendant George W. Sisson, et al.'s Motion to Reconsider filed on December 6, 2013.**

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)
N/A		\$

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.

[Signature]
 Circuit Court Judge

2117
 Judge Code

12/10/13
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Stow Away Storage, LLC,)
 Plaintiff,)
 vs.)
)
 George W. Sisson, 4.0, LLC, The Sisson)
 Foundation Limited Partnership, Sweetgrass)
 Hardware, Inc., and Timarand, Inc.,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: P.O. Box 1254 Charleston, SC 29402 Phone: (843) 577-0660 Fax (843) 577-6843 E-mail: dsinkler@warren-sinkler.com Other:	Defendant's Attorney: Maria Kiehling Brees, Bar No. 76799 Address: 652 Coleman Boulevard, Suite 200 Mt. Pleasant, SC 29464 Phone: (843) 856-4488 Fax (843) 856-0613 E-mail: maria.kiehling@buistbyars.com Other:
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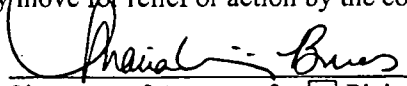
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Reconsider Pursuant to Rule 59(e) SCRCP
 Estimated Time Needed: 20 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby ~~move~~ for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

December 4, 2013
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00
 EXEMPT (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

property by whatever means that are reasonably necessary. The Order does not adequately address the requirements necessary to determine if an increased volume of traffic as a result of the License Agreement materially increased the scope of the easement and the burden on the servient estate. The Order also disregards the specific language in the easement which contemplates the rights of the Grantee to assign its rights, regardless of the material burden on the servient estate.

The standard applied to limiting the extension of "...an easement for the benefit of a particular piece of land from being extended to other tracts of land 'is to prevent an increase of the burden upon the servient estate.'" *Rhett v. Gray*, 736 S.E.2d 873, 882-883, 401 S.C. 478, 496 (Ct. App. 2012). "However, when the reason does not exist, the rule does not apply." *Rhett*, 736 S.E.2d at 883, 401 S.C. at 496. The Court relied on the personal opinion of an employee of the Plaintiff to determine if there was an increase in traffic affecting the easement. The Plaintiff's employee provided results from two random days in 2013 of counts for vehicles entering and exiting via the easement. The Plaintiff provided no information as to vehicle counts from prior years affecting the easement nor was there any determination of a vehicle's destination based on the use of the easement.

The Order in this matter does not apply a thorough analysis of a potential burden on the servient estate. "When no significant change has occurred in the use of the easement from that contemplated when it was created...the mere addition of other land to the dominant estate does not constitute an overburden or misuse of the easement." *Rhett*, 736 S.E.2d at 883, 401 S.C. at 496, citing *Carbone v. Vigliotti*, 222 Conn. 216, 610 A.2d 565, 569 (1992).

The Court disregards the specific language of the Easement Agreement that address assignment of the Grantee's rights under the Agreement. The Agreement clearly states that

False -
relied on testimony
of Shatgrass's owner

"...the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable." (Access Easement and Abandonment of Encroachment Permit, dated October 17, 2000, recorded in Book U358 at Page 109, Charleston County RMC). The intention of the Plaintiff and the Defendant Sisson is contained within the four corners of the Agreement. See *Rhett*, 736 S.E.2d at 880, 401 S.C. at 491. The Court ignores the language of the Easement Agreement although the document contemplates any potential assignment on its face shall not be deemed a burden on the servient estate.

The Motion will be supported by all memoranda, briefs, and other documentation to be submitted to the Court prior to the hearing.

Pursuant to Rule 11 SCRCP, counsel certifies that consultation would serve no useful purpose.

Please be present to defend if so minded.

BUIST, BYARS & TAYLOR, LLC



G. Hamlin O'Kelley, III

S.C. Bar No. 15491

Maria Kiehling Brees

S.C. Bar No. 76799

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Attorneys for the Defendants

Mt. Pleasant, South Carolina


12/14, 2013

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was served on the following by depositing the same in the U.S. Mail, postage prepaid, at the following address on this the 4th day of December, 2013.

The Honorable J.C. Nicholson, Jr.
Presiding Judge for the Ninth Judicial Circuit
100 Broad Street, Suite 106
Charleston, SC 29401

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402



Maria Kiehling Brees

Motion to Reconsider



652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

December 4, 2013

MARIA KIEHLING BREES
ASSOCIATE ATTORNEY
maria.kiehling@buistbyars.com

Via U.S. Mail

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Stow Away Storage, LLC v. George W. Sisson, et al.
Civil Action No. 2011-CP-10-2444
File No. 2011040021

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of the Defendants' Notice of Motion and Motion to Reconsider Pursuant to Rule 59(e) SCRPC along with the appropriate motion coversheet. Please also find enclosed our firm's check in the amount of \$25.00 for the motion filing fee. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

By copy of this letter, I am serving the same upon the Honorable J.C. Nicholson, Jr. and G. Dana Sinkler, Esq., counsel for the Plaintiff. Should you have any questions or concerns, please do not hesitate to contact me. With kind regards, I remain

Yours very truly,

A handwritten signature in black ink, appearing to read 'MKB'.

Maria Kiehling Brees

Enclosures

cc: (w/ encls) The Hon. J.C. Nicholson, Jr.
G. Dana Sinkler, Esq.

12/6/13