

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444

72539

RECEIVED

JUN 18 2014

SC Court of Appeals

Stow Away Storage, LLC.....Respondent

vs.

George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardward, Inc., and Timarand, Inc.,

of Whom

George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, and Sweetgrass Hardward, Inc., are.....Appellants.

Motion to Add an Additional Party

Shortly after Judge Nicholson issued his Order of November 22, 2013, the Respondent Stow Away Storage, LLC, sold its property to MSC MTP, LLC, a Delaware limited liability company, and entered into an Assignment of Claims, a copy of which is attached hereto.

The terms of the Assignment of Claims provide for obligations of both parties with respect to the pending appeal of this case and, pursuant to the provisions of SCRCF Rule 25(c), the Respondent Stow Away Storage, LLC does hereby move this honorable

Court for an Order adding an additional party Respondent to this action, the purchaser of Respondent's property and assignee of claims, MSC MTP, LLC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Dana Sinkler", written over a horizontal line.

G. Dana Sinkler
S.C. Bar No. 5138
171 Church Street, Suite 340
Charleston, SC 29401
(843) 937-0228

Attorney for Respondent

Charleston, SC

June 16, 2014

COPY

ASSIGNMENT OF CLAIMS AND AGREEMENT

THIS ASSIGNMENT OF CLAIMS AND AGREEMENT (this "Assignment") is made as of the 24th day of January, 2014 (the "Effective Date"), by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company ("Assignor"), and MSC MTP, LLC, a Delaware limited liability company ("Assignee"). Assignor and Assignee may be referred to collectively herein as the "Parties" and each may be referred to individually as a "Party".

WITNESSETH:

WHEREAS, Assignor is the plaintiff in that certain civil action captioned "*Stow Away Storage, LLC vs. George W. Sisson, et al.*" filed on April 4, 2011 in the Court of Common Pleas in Charleston County, South Carolina (the "Court") and bearing Civil Action No. 2011-CP-10-2444 (the "Action," which term shall include any appeals thereof);

WHEREAS, the Action involves, among other things, damages incurred by Assignor related to an easement associated with certain real property then-owned by Assignor located in Charleston County, South Carolina (the "Property"), said Property being more fully described on Exhibit A attached hereto; and

WHEREAS, the Court has entered a certain Order dated November 25, 2013 in favor of Assignor, but has not yet determined the amount of damages and attorneys' fees that are to be paid to Assignor by the named defendants (the "Defendants") in the Action; and

WHEREAS, the Defendants have filed an appeal of the Court's Order and Assignor has moved to remand the case for a determination of damages and attorneys' fees by the trial judge; and

WHEREAS, by that certain deed dated contemporaneously herewith, Assignee has acquired the Property (the "Acquisition") from Assignor; and

WHEREAS, subject to the terms and conditions contained hereinbelow, in connection with the Acquisition, Assignee desires that Assignor assign to Assignee all of Assignor's right, title and interest in and to all claims, causes of action, rights, and remedies, whether arising at law, in equity, under recorded instrument, under statute, or otherwise, which are or could be asserted in the Action, or which otherwise relate to the easement or facts which are the subject of such Action (the "Assigned Claims").

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment of Claims. Subject to the terms and conditions contained in this Agreement, Assignor hereby assigns to Assignee the Assigned Claims on the terms set forth in this Assignment. Assignee shall henceforth be entitled to assert and pursue the Action and the Assigned Claims in its own name with Assignor as a party to the Action. If Assignee is successful in

recovering any Damages (as hereinafter defined) and/or any portion of the Assigned Claims from one or more of the Defendants, Assignee shall be entitled to the portion of the Damages (as hereinafter defined) which relate to the time period following the Effective Date (as hereinafter defined), subject, however, to the Priority Rule (as hereinafter defined). Accordingly, Assignor shall be entitled to all Damages which relate to the time period prior to the Effective Date (including, without limitation, pursuant to the Priority Rule), and Assignee shall be required to account to Assignor for any such proceeds. From the Effective Date forward, Assignee shall diligently and in good faith pursue the Action to recover Damages from Defendants (subject to the terms of Section 5 below). Assignor shall cooperate fully in Assignee's pursuit of the Action and the Assigned Claims, shall promptly provide all information reasonably requested by Assignee, and shall not engage in any act or omission which would undermine the validity of the Assigned Claims or Assignee's right to pursue or recover such Assigned Claims. Assignee covenants that it will not engage in any act or omission which would undermine the validity of Assignor's right to pursue or recover Damages which relate to the time period prior to the Effective Date. Assignor covenants, warrants and certifies that it has not assigned the Assigned Claims to any third person, and that Assignor has all right and authority necessary to make a binding assignment of the Assigned Claims. Notwithstanding any of the foregoing to the contrary, Assignor shall remain a party to the Action since Assignor is deemed to be a real party in interest. Assignor hereby agrees that it shall, on request of Assignee, cooperate with Assignee in pursuing the Action and Assigned Claims (at Assignee's sole cost and expense). Assignor agrees that all monetary proceeds, attorneys' fees and litigation costs, including any attorney's fees and costs associated with any appeals, any punitive damages, other amounts and other damages (collectively, "Damages") which (i) relate to the time period following the Effective Date and (ii) are recovered on the Assigned Claims shall be and remain the property of Assignee, irrespective of whether the Assigned Claims are enforced in the name of Assignor or Assignee, subject, however, to the Priority Rule. Assignee agrees that all Damages which (i) relate to the time period prior to the Effective Date and (ii) are recovered in the Action on the Assigned Claims (including, without limitation, pursuant to the Priority Rule) shall be and remain the property of Assignor, irrespective of whether the Assigned Claims are enforced in the name of Assignor or Assignee.

As used herein, the "Priority Rule" shall mean that, irrespective of the period of time to which such Damages relate, (i) the first \$12,500.00 of monetary damages (herein, "Priority Payment No. 1") awarded as a result of the Action pursuant to the Assigned Claims shall be the solely the property of Assignor and (ii) the first \$12,500.00 of attorney's fees (herein, "Priority Payment No. 2") awarded as a result of the Action pursuant to the Assigned Claims shall be solely the property of Assignor; and that any other attorney's fees awarded as a remedy pursuant to the Assigned Claims shall be divided pro rata between Assignor and Assignee based on remaining outstanding legal fee amounts. By way of example only, if Assignor's legal fees in connection with the Assigned Claims are \$25,000.00; Assignee's legal fees in connection with the Assigned Claims are \$25,000.00; and a total of only \$27,500.00 of legal fees are awarded by the court in connection with the Assigned Claims, then Assignor would be first be entitled to Priority Payment No. 2; and of the remaining \$15,000.00 of legal fees awarded, Assignor would be entitled to \$7,500.00 and Assignee would be entitled to \$7,500.00 (after Assignor has been paid Priority Payment No. 2).

2. Indemnification Relating to Prior Costs and Expenses. Except as may be otherwise expressly provided herein, Assignor shall indemnify, protect, defend and hold Assignee harmless from and against any and all costs and expenses (including, without limitation, reasonable attorneys'

fees) with respect to any obligations, liabilities, matters or occurrences related to, arising out of or connected with the Action to the extent that the same accrued or occurred on or before the Effective Date. Except as may be otherwise expressly provided herein, Assignee shall indemnify, protect, defend and hold Assignor harmless from and against any and all costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any obligations, liabilities, matters or occurrences related to, arising out of or connected with the Assigned Claims to the extent that the same accrued or occurred after the Effective Date.

3. Substitution of Parties; Further Assurances. Assignor agrees that on request by Assignee, that it will consent to an order adding Assignee as party plaintiff in the Action, and to execute such other documents and pleadings as may be reasonably necessary for such addition and/or to give effect to the terms of this Assignment. Notwithstanding the foregoing, Assignor and Assignee acknowledge and agree that should Assignor, Assignee or its counsel reasonably determine that Assignor should remain a named plaintiff in the Action in order for either Assignor or Assignee to continue to pursue the recovery of Damages as they relate to the time period prior to the Effective Date, Assignor shall have the right to do so (in which case, to the extent required by applicable law, the assignment made hereunder shall be deemed made on a non-exclusive basis). In the event Assignor makes such election, Assignor and Assignee agree that (i) Assignor shall take any and all action necessary to ensure that Assignee is added as a named plaintiff to the Action, (ii) each Party shall cooperate fully in the other's pursuit of the Assigned Claims and Damages, shall promptly provide all information reasonably requested by the other Party, and shall not engage in any act or omission which would undermine the validity of the Assigned Claims or the other Party's right to pursue or recover on such Assigned Claims, (iii) the Parties shall each pay their respective costs and attorneys' fees associated with the Action and (iv) if the Parties are successful in recovering any Damages, (A) Assignee shall only be entitled to the portion of the Damages which relate to the time period following the Effective Date (subject to the Priority Rule), and (B) Assignor shall be entitled to the portion of the Damages which relate to the time period prior to the Effective Date (including, without limitation, pursuant to the Priority Rule) and a pro rata portion of Assignor's expenses after the Effective Date.

4. Counsel. Assignor agrees that on request it will consent to the representation of Assignee in the Action by Assignor's existing counsel in the Action, and Assignor agrees to waive any conflicts of interest or confidentiality restrictions necessary to allow for such representation. Assignee agrees to retain Assignor's existing counsel in the Action, and agrees to waive any conflicts of interest or confidentiality restrictions necessary to allow for such representation.

5. No Duty by Assignee; Dismissal or Compromise. Notwithstanding this Assignment or any provision herein to the contrary, Assignee agrees to pursue in good faith the Action and the Assigned Claims for a period of no less than one (1) year after the Effective Date. After such one (1) year period, Assignee shall have no further such obligation and Assignee may dismiss, compromise, or release the Action and the Assigned Claims on such terms as Assignee in its sole and absolute discretion deems appropriate, without liability to Assignor. Notwithstanding the above, should Assignee determine that it no longer wishes to pursue the Action or Assigned Claims, it shall so notify Assignor in writing. In such event, Assignor shall have fifteen (15) days to request in writing that Assignee continue to pursue the same on Assignor's behalf (the "Assignor Request"). If Assignee timely receives the Assignor Request, Assignee hereby agrees that it shall (at Assignor's sole cost and expense) take such action as may be necessary to enforce the Assigned Claims (at

Assignor's sole cost and expense), and otherwise cooperate with Assignor in pursuing the Assigned Claims (at Assignor's sole cost and expense). In the event Assignee determines it no longer wishes to pursue the Action or Assigned Claims and Assignor timely provides the Assignor Request, Assignee agrees that all Damages recovered on the Assigned Claims applicable to the period from and after the Assignor Request shall be the property of Assignor, irrespective of whether the Assigned Claims are enforced in the name of Assignor or Assignee.

6. Effect of Recovery. Assignor shall not be entitled to any increase in or adjustment to the consideration paid or payable to Assignor by Assignee in connection with the Acquisition as a result of any recovery by Assignee on the Assigned Claims.

7. Benefit. This Assignment shall apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns. This Assignment is not intended and shall not be interpreted to confer a benefit on any other person or entity, and there shall be no third-party beneficiaries of this Assignment.

8. Amendments. This Assignment may be modified, amended or supplemented only by a written instrument signed by both Parties.

9. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Assignment, (i) the Parties may execute and exchange counterparts of the signature pages and (ii) facsimile signatures and/or signed copies transmitted by electronic mail shall be deemed originals.

10. Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

11. Severability. In the event that any provision or part of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect.


12. Effective Date. The Effective Date of this Agreement shall be the date on which the last of the parties hereto has executed this Agreement.

[Signatures of Parties on Following Page]

IN WITNESS WHEREOF, the Parties have caused this Assignment to be executed by persons duly empowered to bind the Parties to perform their respective obligations hereunder the day and year first above written.

ASSIGNOR:

STOW AWAY STORAGE, LLC, a South Carolina limited liability company

By: 
Name: ELWOOD III
Title: MEMBER
Date: 1-27-2014

ASSIGNEE:

MSC MTP, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____



IN WITNESS WHEREOF, the Parties have caused this Assignment to be executed by persons duly empowered to bind the Parties to perform their respective obligations hereunder the day and year first above written.

ASSIGNOR:

STOW AWAY STORAGE, LLC, a South Carolina limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

MSC MTP, LLC, a Delaware limited liability company

By: Wesley G. Carter
Name: WESLEY G. CARTER
Title: CFO

EXHIBIT A

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land situate, lying and being in Christ Church Parish, County of Charleston, State of South Carolina, measuring and containing 8.82 acres, more or less, and shown and designated as TMS 580-00-00-016 233,566 sq.ft. 5.36 acres and TMS 598-00-00-024 150,693 sq.ft. 3.46 acres, on a plat entitled, "PLAT OF THE ABANDONMENT OF PROPERTY LINES BETWEEN TWO TRACTS CONTAINING 7.33 ACRES HIGHLANDS OWNED BY: STOW AWAY STORAGE, LLC CHRIST CHURCH PARISH CHARLESTON COUNTY, SOUTH CAROLINA," by Thomas & Hutton Engineering Co., dated November 22, 1999 and recorded in the RMC Office for Charleston County in Plat Book ED at Page 788. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444

Stow Away Storage, LLC.....Respondent

vs.

George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,

of Whom

George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, and Sweetgrass Hardware, Inc., are.....Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Add Additional Party on G. Hamlin O'Kelley, III, attorney for Appellants, by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 2014, addressed as follows:

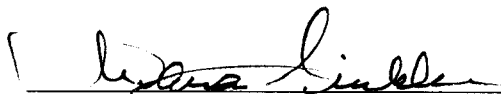
G. Hamlin O'Kelley, III, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
Attorney for Appellants

RECEIVED

JUN 18 2014

SC Court of Appeals

June 16, 2014



G. Dana Sinkler

G. DANA SINKLER
ATTORNEY AT LAW
171 CHURCH STREET, SUITE 340
CHARLESTON, SC 29401

June 16, 2014

Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

Re: Stow Away Storage, LLC, Respondent v. George W. Sisson et al.,
Appellants
C.A. No.: 2011-CP-10-2444

Dear Ms. Kitchings:

I am enclosing herewith the original and seven copies of a Motion to Add an Additional Party being filed on behalf of Respondent Stow Away Storage, LLC. Also enclosed are the filing fee, the Proof of Service, and a return envelope.

Please file the documents and return our stamped copies in the return envelope.

Yours very truly,



G. Dana Sinkler

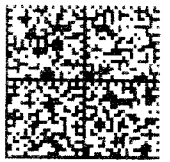
GDS/jd
Enclosures
cc: G. Hamlin O'Kelley, III, Esq.

RECEIVED
JUN 18 2014
SC Court of Appeals

G. Dana Sinkler
P.O. Box 1254
Charleston, SC 29402



Priority Mail
ComBasPrice



UNITED STATES
02 1F
0003166
MAILED F

RECEIVED

JUN 18 2014

SC Court of Appeals

Hon. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211-1629

