

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-05336
Appellate Case No. 2017-001130

RECEIVED

JUN 30 2017

SC Court of Appeals

Tom Efland, ...Appellant,

v.

Randy L. Mills and Richland County, ...Respondents.

MOTION TO DISMISS APPEAL

Respondent Randy L. Mills (hereafter "Mills") moves to dismiss the appeal by Appellant Tom Efland (hereafter "Efland"). In support of his motion, Mills will show:

1. This is an appeal from an order which granted Mills' Motion for Judgment on the Pleadings.
2. This action was filed on September 1, 2016. Mills filed and served an Answer and Counterclaim on October 18, 2016. **Exhibit 1.** The following day, Mills also filed and served a Motion for Judgment on the Pleadings. **Exhibit 2.**
3. On December 15, 2016, the parties were notified that a hearing on the Motion for Judgment on the Pleadings would be heard on January 5, 2017, and "ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW by Wednesday December 29, 2016." (emphasis in original). **Exhibit 3.**

4. Mills submitted a proposed order in advance of the hearing. **Exhibit 4.** Efland did not.
5. At the conclusion of the hearing on January 5, 2017, counsel for Efland requested an opportunity to submit a memorandum of law. He was given ten days to do so.
6. Efland's lawyer emailed the trial judge thirteen days later on January 18, 2017, stating "I owe you a proposed order in this case" and requesting an extension of time to send the proposed order until January 30, 2017. **Exhibit 5.** The trial judge (through his law clerk) advised the extension would be granted if opposing counsel consented, but Mills' counsel objected to the extension of time and explained the reasons for the objection. *Id.*
7. The request for extension was two days late when made; the deadline for submitting the memorandum in opposition from Efland's lawyer had already expired on January 16, 2017. Efland's counsel seemed to acknowledge his request came after the expired deadline, since it stated that Efland's counsel "owe[d]" the trial judge an order.
8. Late on January 18, 2017, Efland's lawyer submitted a "proposed order/memorandum" to the hearing judge. Besides being two days late, the submission consisted of a memorandum, not a "proposed order/memorandum" as stated in the email and not the nature of submission the trial judge had permitted to be filed within 10 days of the hearing. **Exhibit 6.** Mills filed a reply memorandum the same day. *Id.*
9. In addition to being a memorandum rather than an order from Efland's counsel, the memorandum discussed a Motion to Dismiss. Defendant Richland County had filed a motion to dismiss, but Mills had not. The 10-day grace period that Efland's counsel was given at the January 5, 2017 hearing related to a proposed order addressing Mills' Motion for Judgment on the Pleadings. *See Exhibit 3.*

10. On January 19, 2017, the trial judge's law clerk communicated with Efland's counsel via email, indicating that no proposed order had been enclosed, that only a memorandum had been received, and indicated a proposed order would be expected that day. **Exhibit 7.**
11. Ignoring the law clerk's instructions regarding the same-day (January 19, 2017) deadline for a proposed order, Efland's counsel submitted a proposed order via email a full 15 days later, on February 3, 2017. Mills' counsel again objected to the submission. **Exhibit 8.**
12. The trial judge issued an order granting Mills' Motion for Judgment on the Pleadings on April 14, 2017. (Notice of Appeal, on file). The effect of the trial judge's order was to dismiss Efland's claims against Mills, but Mills' claims against Efland (counterclaims) remained pending. Mills' counsel then served Efland's Counsel with Requests for Production as to those pending counterclaims on April 18, 2017.
13. Efland's counsel filed a Notice of Appeal on May 18, 2017. (Notice of Appeal, on file).
14. Efland's counsel did not file a Motion for Reconsideration pursuant to Rule 59(e), SCRCP, prior to filing the appeal.
15. Efland's counsel did not timely serve any response to the Request to Produce served on May 18, 2017. Mills' counsel consulted with Efland's counsel in an attempt to resolve that failure to respond, as required by Rule 11, SCRCP, in an effort to avoid the necessity of filing a motion to compel. **Exhibit 9.** The response from Efland's counsel via email was "We are on appeal." *Id.*
16. Mills' counsel then replied and pointed out that the discovery propounded related only to the counterclaims, which remained undisturbed or affected by the pending appeal.

Efland's counsel has not responded as of the date of filing of this motion. Mills' counsel filed and served a Motion to Compel on June 9, 2017.

17. Efland's counsel has ordered the transcript of arguments before the trial judge which occurred on January 5, 2017. However, the transcript was merely argument of counsel, and is not necessary for consideration of this appeal. As such, upon information and belief, the transcript has been ordered solely to delay resolution of these proceedings. Even if not intentional, the only practical effect of waiting on the transcript is to produce unnecessary delay.

DISCUSSION

I. No issues have been preserved for review.

Efland did not file any opposition to the Motion for Judgment on the Pleadings. Despite numerous late filings made with complete disregarding for established deadlines, Efland still did not cite any law in opposition to Mills' Motion for Judgment on the Pleadings.¹ Nor was a Motion for Reconsideration ever filed pursuant to Rule 59(e), SCRCP. As a result, he has preserved no issues for consideration by this Court on appeal, having failed to raise any before the trial court, and then doubling down on that failure by not seeking reconsideration on any issue on which the Court based its decision.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the [circuit court] to be preserved for review." *Wilder Corporation v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); "Matters not argued to or ruled on by the

¹ Efland's memorandum and proposed order cited three cases, none of which addressed the standard for Judgment on the Pleadings. **Exhibit 10 AND 11.** The third citation in the proposed order, *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (Ct. App. 200) did not stand for the legal proposition for which it was cited, and had no application in a proceeding for Judgment on the Pleadings.

[circuit court] are not preserved for review.” *Doe v. S.B.M.*, 327 S.C. 352, 356-57, 488 S.E.2d 878, 881 (Ct. App. 1997). “A party must file [a Rule 59(e), SCRCF] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Department of Transportation*, 361 S.C. 9, 24, 602 S.E.2d 7762, 780 (2004); An issue not addressed in the trial court’s final order is not preserved when the appellant does not file a motion under Rule 59(e) seeking a ruling on the issue. *Hancock v. Wal-Mart Stores Inc.*, 355 S.C. 168, 171, 584 S.E.2d 398, 399 (Ct. App. 2003).

II. Appeal has been undertaken and continued for improper purposes.

On information and belief, this appeal was taken solely for purposes of delay. These parties have been in litigation dating back to 2005, spread among separate actions. In the most recent action, Mills won a judgment against Efland in the amount of \$60,000. **Exhibit 1 ¶¶ 20.** Efland attempted to set aside that judgment, but the circuit court ruled that Efland had waited too long to seek relief from the court. *Id.* at ¶32. The judgment was paid only after collection proceedings had initiated and Efland’s house was scheduled to be sold to satisfy the judgment.

Mills currently has his house up for sale, and on information and belief, Efland both filed the underlying action, and appealed the adverse decision, solely for purposes of interfering with the sale of Mills’ home. *See* discussion *supra*, and **Exhibit 1 ¶ 37.** The manner in which the appeal has been handled, including the insistence upon now waiting for a transcript of a hearing held in January 2017, despite the passage of months of time in which the transcript could have been ordered while memorandums were being prepared and a final order was anticipated, further indicates a motive and strategy of delay, not fair resolution of legitimate legal disputes.

The numerous violations of the rules and orders of the Court by Efland leading up to the trial court’s decision do not indicate that this matter is being litigated in good faith. Continuing in

that trend is Efland's refusal to engage in discovery in the on the pending counterclaims, which are unrelated to the now-dismissed claim brought by Efland, despite the clear authority allowing those claims to proceed. Rule 205, SCACR ("Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."). All indications are that the appeal is being leveraged, with no appropriate or legal basis for doing so, to achieve delay and thereby disrupt the ability of Mills to sell his home.

There was no legal basis for this lawsuit to have been brought, no legal basis for this appeal, and now no potential relief to Efland because he has not preserved any issues for consideration.

For the reasons set forth above, Mills moves this Honorable Court for an order dismissing this appeal. Mills objects to the granting of any extensions for response to this motion. He reserves the right to separately seek an award of attorney's fees pursuant to Rule 269 and/or Rule 222, SCACR.

Respectfully submitted,



Desa Ballard

Harvey M. Watson III

BALLARD & WATSON

Post Office Box 6338

West Columbia, SC 29171

Telephone 803.796.9299

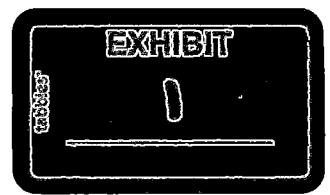
Facsimile 803.796.1066

desab@desaballard.com

harvey@desballard.com

ATTORNEYS FOR RESPONDENT MILLS

June 29, 2017



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2016-CP-40-05336

Tom Efland,)

Plaintiff,)

ANSWER AND COUNTERCLAIM

Vs.)

Randy L. Mills and Richland County,)

Defendants.)

RICHLAND COUNTY
FILED
2016 OCT 18 PM 1:31
JEANNETTE W. MURPHY
C.C.P. & G.S.

Defendant Randy L. Mills (hereafter "Mills") denies the claim for relief as set forth in the complaint in this matter, and would respond as follows:

FIRST DEFENSE
(General and Specific Denials)

1. Each and every allegation not specifically admitted herein expressly denied.
2. Paragraphs 1 and 2 are admitted.
3. Paragraph 3 is denied to the extent it states or infers that the subject matter of this action is real property, although it is admitted the real property referenced is located in Richland County, SC.
4. Paragraph 4 is admitted.
5. Paragraph 5 is denied as stated, although Mills does own property on Tiger Paw Lane, not Tiger *Paul* Lane as referenced in the complaint.
6. Paragraphs 6, and 7 are admitted. Further answering Paragraph 7, Mills would show that all easements existed and were of record prior to his purchase of the property. Mills would further show that the easement fronting his property was a required easement by necessity as a result of the subdivision of previously intact property, and is necessary to provide public road frontage to Mills' property.

7. Paragraph 8 is denied, as Plaintiff Efland (hereinafter "Efland") includes in his prayer for relief a request for damages, and is thus not merely seeking a determination of the parties' rights as alleged.
8. Mills lacks sufficient knowledge to admit or deny the factual allegations that can be gleaned from Paragraph 9, and therefore denies same, as Paragraph 9 fails to define the ambiguous reference to "easement road."
9. Paragraph 10 is merely a sentence fragment, neither declarative nor comprehensible, and is therefore denied. Further responding, Mills would show only that Richland County has maintained the easement on several occasions during Mills' ownership of the property, and upon information and belief, Richland County was willing to accept the road as a public road. However, Efland objected and refused to allow the road to be made public unless Mills dropped the prior 2008 lawsuit, which did not occur.
10. Paragraphs 11, 12 and 13 are denied. Further answering paragraph 11 and 12, Mills would show that he has maintained the road in front of his home since he purchased the property, and has also maintained the road in front of adjoining property to maintain its accessibility and use. Mills also uses his driveway for ingress and egress to his property, and has done so since prior to the most recent lawsuit between the parties in 2008.
11. Paragraph 14 is admitted insofar as it states the "the property on either side of the driveway belongs to Plaintiff." The remaining portion of Paragraph 14 is denied.
12. Paragraphs 15, 16, 17, and 18 are denied.
13. Paragraph 19 merely repeats and incorporates prior allegations, and to the extent any response is required, Mills also repeats and incorporates his prior responses set forth in response to the restated allegations.
14. Paragraphs 20, 21, 22, 23, 24, 25 and 26 are denied.
15. Paragraph 27 merely repeats and incorporates prior allegations, and to the extent any response is required, Mills also repeats and incorporates his prior responses set forth in response to the restated allegations.
16. Paragraphs 28, 29 and 30 are denied.

17. Paragraph 31 merely repeats and incorporates prior allegations, and to the extent any response is required, Mills also repeats and incorporates his prior responses set forth in response to the restated allegations.
18. Paragraphs 32 and 33 are denied.

SECOND DEFENSE

(Issue Preclusion and Collateral Estoppel)

19. Each and every paragraph set forth above is incorporated as if repeated herein verbatim, where relevant.
20. Each and every issue embraced by this litigation, whether express or implied, has been fully adjudicated, determined, and finalized when Efland was found to be liable to Mills in the amount of \$60,000.00. Such judgment was eventually paid after a sale of Efland's property was scheduled in aid of execution of the judgment.
21. The first lawsuit, Randy Mills v. Thomas D. Eflund Jr., Case No. 2005-CP-40-04535, was filed in 2005. In his *pro se* answer and amended answer in that 2005 action, the latter of which is attached and made a part of this pleading as **Exhibit A**, Efland asserted that:
 - (a) Mills had leased property from Efland beginning in October, 2001 known as "the bottom land on the eastern side of the old creek bed" for five years for the purpose of keeping Mills' horses... (Paragraph 3).
 - (b) Mills "proceeded to fence in and seed bottom land that had remained under cultivation for in excess of 50 years..." *Id.*
 - (c) Mills "installed an illegal septic system over the objections of [Efland]." *Id.*
 - (d) "Despite being told that the bottom land flooded..." *Id.*
 - (e) "Upon flooding of the bottom land..." *Id.*
 - (f) "[B]uilt or caused to be built a culvert that would not meet the flood load for a ground path he intended to be a road all in a location [Plaintiff] had requested not be used..." *Id.*
 - (g) Mills "opened up a road into [Mills'] property unauthorized over and across the lands of [Efland] all without permission or easement." *Id.*

- (h) After Thanksgiving 2003, Mills committed "acts of vandalism including but not limited to causing a drastic increase of water flow onto the [Efland's] property polluted with horse manure and destroying a well." *Id.*
 - (i) Mills "has created a Nuisance to [Efland] by drastically altering water flow onto [Efland's] land causing damage that has and will in the future cost great sums to rectify and has lowered the value of his property." Paragraph 24.
 - (j) Mills "placed horse manure on his property in such a manner as to cause water flow onto [Efland's] property to be polluted." Paragraph 25.
 - (k) Mills "with out permission or easement, trespassed and continues to do so onto the property of [Efland] adjoining the road to the leased property by cutting trees and opening another driveway to his property when he has a usable specific easement in another location." Paragraph 28.¹
22. On or about October 17, 2006, the 2005 action was "dismissed without prejudice." A copy of the order is attached as **Exhibit B** and incorporated herein in full.
23. The second action between these parties, Mills v. Efland, Case No. 2008-CP-40-00876, was filed on or about February 5, 2008.
24. In his Answer and Counterclaim, Plaintiff asserted many of the same allegations, some verbatim, which were set forth in his Answer in the 2005 complaint. A copy of that pleading is attached as **Exhibit C** and incorporated herein in full.
25. Mills filed a Reply to Efland's counterclaim in that action on or about March 3, 2009, as a result of which the issues set forth in Efland's counterclaim were fully joined. A copy of that pleading is attached as **Exhibit D** and incorporated herein in full.
26. Efland was deposed in the 2008 litigation. A copy of the transcript of his deposition is attached hereto as **Exhibit E** and incorporated herein in full.
27. Via counsel, the parties to that 2008 action agreed to binding arbitration.

¹ The original Answer and Counterclaim further claimed that Mills had "intentionally inflicted great emotional distress upon [Efland] by his actions..." See Paragraph 31 of the original Answer.

28. The subsequent decision of the arbitrator dated June 23, 2015, found in favor of Mills, awarding him judgment against Efland in the amount of \$60,000. A copy of the Award of Arbitrator filed on or about July 6, 2015 is attached hereto as **Exhibit F** and incorporated herein in full.
29. All of the issues raised in this current action were arbitrated and finally decided in the 2008 litigation as a result of the Award of Arbitrator.
30. Judgment was entered in favor of Mills against Efland on or about July 6, 2015. A copy of the Judgment is attached hereto as **Exhibit G** and incorporated herein.
31. On or about July 20, 2015, Efland, through counsel, made a "motion to remand" the matter to the arbitrator alleging "[t]he Arbitrator simply failed to deal with any of the issues raised in the Counterclaims of the [Efland]. Before this Award becomes final those issues should be resolved." A copy of the Motion to Remand is attached hereto as **Exhibit H** and incorporated herein.
32. On or about December 16, 2015, Circuit Court Judge DeAndre Benjamin denied Efland's Motion to Remand, concluding and finding that Efland had failed to seek relief in a timely manner and was barred from proceeding to further litigate his counterclaims. Judge Benjamin's order is attached hereto as **Exhibit I** and incorporated herein.
33. Richland County Sheriff Leon Lott issued a Notice of Sheriff's Sale to occur on August 1, 2016 to sell a piece of real estate owned by Efland in Richland County, identified by TMS# R04400-01-06, to satisfy the judgment Mills held against Efland. A copy of the Notice of Sheriff's Sale is attached hereto as **Exhibit J** and incorporated herein.
34. On or about July 28, 2016, Mills' judgment against Efland was satisfied and paid in full. A copy of the Satisfaction of Judgment is attached hereto as **Exhibit K** and incorporated herein.
35. On or about September 1, 2016, Efland filed this action, omitting any reference to the prior litigation, the prior judgment, the award of the arbitrator, his payment of that judgment to Mills, and failing to notify the court that all issues raised in this litigation have been raised, litigated, and adjudicated previously.
36. The filing of this action is an abuse of process, in bad faith, retaliatory, an assertion of meritless claims, and is thus intended solely to harass and financially injure Mills.

37. Plaintiff's complaint should be dismissed on the basis of issue preclusion, and Mills prays for an order granting that relief.

THIRD DEFENSE AND FIRST COUNTERCLAIM
(Abuse of Process)

35. Each and every paragraph set forth above is incorporated as if repeated herein verbatim, where relevant.
36. Mills has listed his real property adjacent to the Plaintiff for sale in an attempt to remove himself and his family from the proximity of the Plaintiff.
37. On information and belief, the filing and pursuit of this action was a willful action intentionally taken in furtherance of illegitimate ulterior purposes, to wit: intentionally inhibit the sale of Mills' property, reduce its marketability and/or value, harassment of Mills, retaliation for receipt of a lawful judgment in the 2008 litigation, depletion and denial of the use of damages received from Plaintiff by Mills as a result of that prior judgment, and retribution for the embarrassment² of Efland and his counsel as a result of that judgment.
38. On information and belief, those and other improper collateral advantages were the sole or paramount reason Plaintiff initiated this action.
39. On information and belief, by way of further abuse of process, the lengthy delay in the resolution of the 2008 lawsuit was the proximate result of stalling tactics employed by Plaintiff and his counsel, including providing false information to the Court as to counsel's availability for hearings on one or more occasions.
40. As a direct and proximate result of the multiple instances of abuse of process undertaken by Plaintiff, individually and with the assistance of his counsel, Mills has sustained actual and consequential damages including but not limited to, increased attorney's fees, delay, loss of time, and injury to business, property, and financial standing.

² Mills is confident all issues raised in the 2005 and 2008 lawsuits, including counterclaims, were fully and finally addressed and ruled on by the arbitrator. As such, he is informed and believes the procedural delay and error in filing the "Motion to Remand" out of time, as noted in the December 2016 order denying the same, was without prejudicial effect attributable to Plaintiff or his counsel. Nevertheless, Mills believes Plaintiff and his counsel were embarrassed by the order denying their motion partly on that basis.

41. Mills' damages are liquidated in part, and unliquidated in part, and will continue to accrue as this action proceeds. He prays for an award of actual and consequential damages in an amount to be determined by the trier of fact at the date upon which this matter is concluded.
42. Upon information and belief, the actions of the Plaintiff, which continue through every aspect of this litigation as long as it remains pending and even afterwards, are not proper in the regular conduct of such proceedings.
43. Further, upon information and belief, those actions are knowingly wrongful, made with an intent to cause harm to Mills, and are malicious, which justifies an award of punitive damages.
44. On information and belief, Plaintiff has the financial capacity to respond to an award of punitive damages.
45. On information and belief, an award of punitive damages in favor of Mills against Plaintiff is warranted and Mills prays for same in an amount to be determined by the trier of fact, in an amount sufficient to penalize Plaintiff and deter similar conduct in the future.

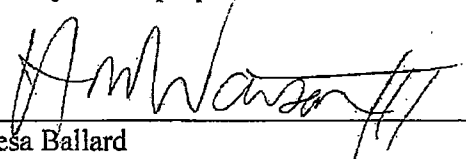
FOURTH DEFENSE AND SECOND COUNTERCLAIM
(Declaratory Judgment)

46. Each and every paragraph set forth above is incorporated as if repeated herein verbatim, where relevant.
47. This cause of action requests declaratory relief pursuant to the South Carolina Declaratory Judgment Act, S.C.Code. Ann. Section 15-53-10 *et seq.*, and is made necessary by the filing of this action by Plaintiff.
48. The easement which adjoins Mills' road is an easement created by deed, by prescription, and by necessity. The easement is appurtenant and runs with the land.
49. The easement was in existence at the time that Mills purchased his property.
50. As the owner of the easement, Mills has the right to enjoyment of the easement as necessary for the use of his property.
51. Any restriction on the right of access over the easement for the owner of the residential property now owned by Mills would diminish the value of Mills' property.

52. In his prayer for relief in this action, Plaintiff asserts his intent to interfere with Mills' use and enjoyment of the easement by placing restrictions on it, and/or placing a nuisance along the easement, either of which action would diminish the value of the property.
53. Mills seeks a declaration that the circumstances existing here and now between Mills' property, which holds a dominant easement over Plaintiff's property, is such that Plaintiff has no right to interfere with the right of ingress and egress across to and from Mills' land by fencing or gating the easement or parking vehicles on or adjacent to the easement so as to diminish the value of the property and interfere with its use by Mills and/or his successor and assigns

Wherefore, having fully set forth his response to the complaint herein, Mills moves for an order:

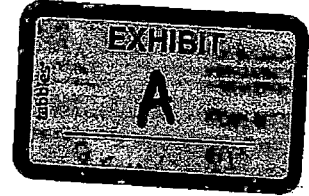
1. Denying the relief sought by Plaintiff in full;
2. Awarding Mills actual and punitive damages against Plaintiff in an amount to be determined by the finder of fact;
3. Granting a declaration that Plaintiff has no right to interfere with the right of ingress and egress across to and from Mills' land by fencing or gating the easement or parking vehicles on or adjacent to the easement so as to diminish the value of the property and/or interfere with its use by Mills and/or his successor and assigns;
4. Awarding Mills judgment against Plaintiff for costs as maybe permitted by law; and
5. Such other and further relief as the court deems just and proper.


Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

October 18, 2016

ATTORNEYS FOR DEFENDANT MILLS



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Case No# 2005 CP4004535

Randy Mills,
Plaintiff)

vs.)

Thomas D. Efland, Jr.
Defendant)

**AMENDED
ANSWER AND COUNTERCLAIM**

The Defendant, Thomas D. Efland, Jr., Answering the Plaintiff's Complaint and by way of Counterclaim, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

- 1) Denies each and every allegation of the Complaint not hereinafter specifically admitted and demands strict proof thereof.
- 2) Upon information and/or belief, Defendant admits Paragraphs 1, 2, and 3 of the Complaint and so much of Paragraph 4 and 5 as alleges that Defendant is a neighbor attorney. Defendant has as a neighbor discussed minor legal issues with Plaintiff and performed minor legal services for Plaintiff but has never been retained by Plaintiff, received any payment from Plaintiff and specifically denies that at the time of the issues involved in the Complaint, was Plaintiff's attorney. Defendant denies he ever acted as attorney to Plaintiff in connection with any matter relating to this litigation.
- 3) On or about October, 2001 Plaintiff inquired about the purchase of land and was told no but that he could lease the property known as "the bottom land on the eastern side of the old creek bed" for 5 years at one dollar per year to keep his horses on , but that such usage would be equal to the Defendants. Defendant, in order to protect himself

promptly provided a simple lease to Plaintiff. Plaintiff requested certain changes involving the number of horses which Defendant complied with. The lease as provided to the Court in Plaintiff's Complaint was executed January 31, 2002.

Plaintiff proceeded to fence in and seed bottom land that had remained under cultivation for in excess of 50 years and requested that he be allowed to build shelter for his horses. Without defendant's approval, Plaintiff cleared and leveled land not in the leased bottom and built a barn that did not comply with permits and may have to be made to comply. Plaintiff installed an illegal septic system over the objections of Defendant.

Despite being told that the bottom land flooded, Plaintiff installed or caused to be installed a shoddy electric fence and connected it directly and without proper safety devices to the Power Company lines, stealing the power. Upon flooding of the bottom land, much of the fence had to be repaired on several occasions and had to be removed by Defendant.

Plaintiff further built or caused to be built a culvert that would not meet the flood load for a ground path he intended to be a road all in a location Defendant had requested not be used and further had constructed above ground power lines when Plaintiff and Defendant had agreed to underground construction.

Contrary to the terms of the lease, Plaintiff from the outset attempted to deny equal usage of the bottom land to the Defendant and his family. Plaintiff further proceeded to attempt control of property not in the leased bottom, specifically the entrance road which goes to Defendant's hobby shop and a River Cabin and trails adjoining the leased property.

The Plaintiff borrowed a utility trailer from Defendant and seriously damaged it through overload while transporting fence material.

The River Cabin burned on July 26, 2003 and was investigated by the State Law Enforcement Division who declared it Arson.

On or about the same time Plaintiff attempted to cut trees on Defendants property adjoining the access to the Leased property and opened up a road into Plaintiff's property unauthorized over and across the lands of Defendant all without permission or easement.

Plaintiff expressed the desire to house his horses on his own land adjoining that of Defendant and inquired about moving installations from the leased premises.

On Thanksgiving of 2003, Plaintiff harassed Defendants's family during Thanksgiving Dinner leading Defendant to send a Notice to Vacate due to breach of Lease. Plaintiff has pursued a continuing pattern of harassment of Defendant and his family and friends together with acts of vandalism including but not limited to causing a drastic increase of water flow on to Defendants property polluted with horse manure and destroying a well. During Christmas week of 2003 Plaintiff moved his horses.

AS TO THE SECOND CAUSE OF ACTION

- 4) Re-alleges the allegations contained above.
- 5) Denies the allegations of Paragraphs 8 and 9.

AS TO THE THIRD CAUSE OF ACTION

- 6) Re-alleges the allegations contained above.
- 7) Denies the allegations of Paragraphs 10 and 11.

AS TO THE FOURTH CAUSE OF ACTION

- 8) Re-alleges the allegations contained above.
- 9) Admits so much of Paragraph 13 that alleges to the written contract between the parties but denies the remaining allegations of Paragraphs 12, 13 and 14.

AS TO THE FIFTH CAUSE OF ACTION

- 10) Re-alleges the allegations contained above.
- 11) Denies the allegations of Paragraphs 15, 16, 17 and 18.

FOR A SECOND DEFENSE

(Written Contract)

- 12) Defendant hereby incorporates the above paragraphs, not inconsistent with the following:
- 13) On or about January 31, 2002 Plaintiff and Defendant entered into a Contract of Lease with a right of first refusal to purchase certain bottom land belonging to Defendant.
- 14) The contract is simple and in plain English and was negotiated for over a period in excess of 30 days.
- 15) Plaintiff, a self professed successful businessman represented by other attorneys knowingly entered into the Contract and should be held strictly to it's written terms. No allegation of amendment from either party has been made.

FOR A THIRD DEFENSE

(Failure to State a Cause of Action)

- 16) Defendant hereby incorporates the above Paragraphs, not inconsistent with the following:
- 17) Plaintiff has failed to state facts sufficient to constitute a Cause of Action against Defendant.
- 18) Furthermore, Plaintiff's Complaint alleges fraud and misrepresentation, but fails to set forth, with specificity, the specific elements and facts upon which the allegations are based.

19) Therefore, Defendant believes that Plaintiff's Complaint should be dismissed and believes he is entitled to relief under any and all of his Counterclaims.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

20) Re-alleges the allegations contained above.

21) That Plaintiff breached the Contract of January 31, 2002 in the following particulars:

- a) Constructed building on other than the leased land.
 - b) Constructed building specifically not allowed by County building office.
 - c) Constructed illegal septic tank facilities.
 - d) Took other illegal actions on the premises.
 - e) Harassed the Efland family during the term of the lease and prevented their use.
- 22) Defendant has been damaged by the breach of said contract in that he has and will continue to spend time and/or money removing the illegally constructed building, septic tank, and other items from the premises or correct them to permissible county standards all at great cost to himself.

FOR A FIFTH DEFENSE AND BY WAY COUNTERCLAIM

(Nuisance)

23) Re-alleges the allegations contained above.

24) Plaintiff has created a Nuisance to Defendant by drastically altering water flow onto Defendant's land causing damage that has and will in the future cost great sums to rectify and has lowered the value of his property.

- 25) Plaintiff has placed horse manure on his property in such a manner as to cause water flow onto Defendants property to be polluted.
- 26) Through Negligence, gross negligence, and/or reckless disregard for Defendant, Plaintiff has continued this Nuisance

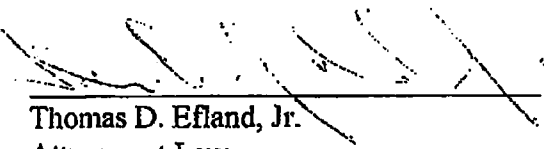
FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Trespass)

- 27) Re-alleges the allegations contained above.
- 28) Plaintiff has, with out permission or easement, trespassed and continues to do so onto the property of Defendant adjoining the road to the leased property by cutting trees and opening another driveway to his property when he has a usable specific easement in another location and Plaintiff has further destroyed other property of Defendant all of which has or will cause Defendant to expend great amounts of time and/or money to correct.
- 29) Defendants property value has been lowered.

WHEREFORE, having fully answered the Complaint, the Defendant requests that the Court inquire into the matters set forth herein and dismiss the Plaintiff's Complaint with prejudice, award such damages as the Court deems equitable and just and issue its Order of Injunction against Plaintiff's continuing Trespass over and upon property of Defendant.

3/21/06
Date


Thomas D. Efland, Jr.
Attorney at Law
PO Box 1752
Irmo, SC 29063
803-781-1420

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT
Case No# 2005 CP4004535

Randy Mills,)
Plaintiff)

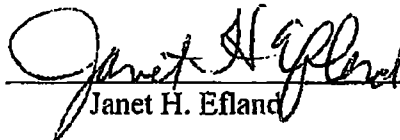
vs.)
Thomas D. Efland, Jr.)
Defendant)

AFFIDAVIT OF SERVICE BY
U. S. MAIL

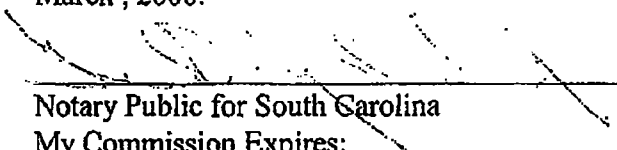
The below signed hereby swears that she has served the enclosed Amended Answer and Counterclaim on Plaintiff by depositing a copy of each in the United States Mail, Postage properly affixed and addressed to:

Douglas N. Truslow
PO Box 1465
Columbia, SC 29202

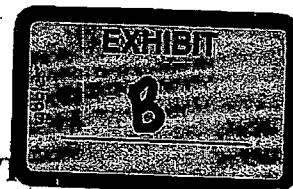
on the 21st of March 2006.


Janet H. Efland

Sworn to before me this 21 day of
March, 2006.


Notary Public for South Carolina
My Commission Expires:

FORM 4



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

Randy Mills

JUDGMENT IN A CIVIL

CASE NO. 2005-CP-40-4535

Thomas D. Eiland, Jr.

PLAINTIFF(S)

DEFENDANT(S)

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(g) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dismissed without prejudice.

Dated at Columbia, South Carolina, this 10th day of October, 2006.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 17 day of OCT, 2006 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas N. Truflow

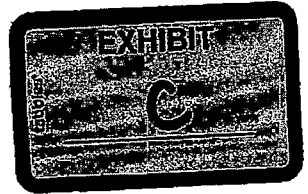
S. Janie Moore

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

S/ BARBARA A. SCOTT

CLERK OF COURT



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Randy Mills,)
Plaintiff,)
vs.)
Thomas D. Efland, Jr.,)
Defendant.)

C.A. No.: 2008-CP-40-00876

ANSWER AND COUNTERCLAIM

The Defendant above-named Answer the Complaint of the Plaintiff herein and Counterclaims as follows:

FOR A FIRST DEFENSE

1. The Defendant hereby denies each and every allegation set forth in the Complaint except for those allegations hereinafter specifically admitted, qualified, or explained.

2. Upon information and/or belief, Defendant admits paragraphs 1, 2 and 3 of the Complaint and so much of paragraph 4 and 5 as alleges that Defendant is a neighbor attorney. Defendant has as a neighbor discussed minor legal issues with Plaintiff and performed minor legal services for Plaintiff but has never been retained by Plaintiff, received any payment from Plaintiff and specifically denies that at the time of the issues involved in the Complaint, was Plaintiff's attorney. Defendant denies he ever acted as attorney to Plaintiff in connection with any matter relating to this litigation.

3. On or about October, 2001 Plaintiff inquired about the purchase of land and was told no but that he could lease the property known as "the bottom land on the eastern side of the creek bed" for 5 years at one dollar per year to keep his horses on, but that such usage would be

I

equal to the Defendants. Defendant, in order to protect himself promptly provided a simple lease to Plaintiff. Plaintiff requested certain charges involving the number of horses which Defendant complied with. The lease as provided to the Court in Plaintiff's Complaint was executed January 31, 2002.

Plaintiff proceeded to fence in and seed bottom land that had remained under cultivation for in excess of 50 years and requested that he be allowed to build shelter for his horses. Without Defendant's approval, Plaintiff cleared and leveled land not in the leased bottom and built a barn that did not comply with permits and may have to be made to comply. Plaintiff installed an illegal septic system over the objections of Defendant.

Despite being told that the bottom land flooded, Plaintiff installed or caused to be installed a shoddy electric fence and connected it directly and without proper safety devices to the power company lines, stealing the power. Upon flooding of the bottom land, much of the fence had to be repaired on several occasions and had to be removed by Defendant.

Plaintiff further built or caused to be built a culvert that would not meet the flood load for a ground path he intended to be a road all in a location Defendant had requested not be used and further had constructed above ground power lines when Plaintiff and Defendant had agreed to underground construction.

Contrary to the terms of the lease, Plaintiff from the outset attempted to deny equal usage of the bottom land to the Defendant and his family. Plaintiff further proceeded to attempt control of property not in the leased bottom, specifically the entrance road which goes to Defendants hobby shop and river cabin and trails adjoining the leased property.

The Plaintiff borrowed a utility trailer from Defendant and seriously damaged it through overload while transporting fence material.

1

The river cabin burned on July 26, 2003 and was investigated by the State Law Enforcement Division who declared it Arson.

On or about the same time Plaintiff attempted to cut trees on Defendant's property adjoining the access to the leased property and opened up a road into Plaintiff's property unauthorized over and across the lands of Defendant all without permission or easement.

Plaintiff expressed the desire to house his horses on his own land adjoining that of Defendant and inquired about moving installations from the leased premises.

On Thanksgiving of 2003, Plaintiff harassed Defendant's family during Thanksgiving Dinner leading Defendant to send a Notice to Vacate due to breach of lease. Plaintiff has pursued a continuing pattern of harassment of Defendant and his family and friends together with acts of vandalism including but not limited to causing a drastic increase of water flow on Defendant's property polluted with horse manure and destroying a well. During Christmas week of 2003 Plaintiff moved his horses.

FOR A SECOND DEFENSE

4. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

5. Denies the allegations of paragraph 8 and 9.

FOR A THIRD DEFENSE

6. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

7. Denies the allegations of paragraph 10 and 11.

FOR A FOURTH DEFENSE

8. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

9. Admits so much of paragraph 13 that alleges to the written contract between the parties but denies the remaining allegations of paragraph 12, 13 and 14.

FOR A FIFTH DEFENSE

10. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

11. Denies the allegations of paragraph 15, 16, 17 and 18.

FOR A SIXTH DEFENSE
AND BY WAY OF COUNTERCLAIM

12. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

13. On or about January 31, 2002, Plaintiff and Defendant entered into a contract of lease with a right of first refusal to purchase certain bottom land belonging to Defendant.

14. The contract is simple and in plain English and was negotiated for over a period in excess of 30 days.

15. Plaintiff, a self professed successful businessman represented by other attorneys, knowingly entered into the contract and should be held strictly to its written terms. No allegation of amendment from either party has been made.

FOR A SEVENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

16. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

17. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant.

18. Furthermore, Plaintiff's Complaint alleges fraud and misrepresentation, but fails to set forth, with specificity, the specific elements and facts upon which the allegations are based.

19. Therefore, Defendant believes that Plaintiff's Complaint should be dismissed and believes he is entitled to relief under any and all of his Counterclaims.

FOR A EIGHTH DEFENSE
AND BY WAY OF COUNTERCLAIM

20. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

21. Plaintiff breached the contract of January 31, 2002, in the following particulars:

- a. Constructed building on other than the leased land;
- b. Constructed building specifically not allowed by County building office;
- c. Constructed illegal septic tank facilities;
- d. Took other illegal actions on the premises; and
- e. Harassed the Efland family during the term of the lease and prevented their use.

22. Defendant has been damaged by the breach of said contract in that he has and will continue to spend time and/or money removing the illegally constructed building, septic tank and other items from the premises or correct them to permissible County standards all at a great cost to himself.

FOR A NINTH DEFENSE
AND BY WAY OF COUNTERCLAIM

23. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

24. Plaintiff has created a nuisance to Defendant by drastically altering water flow onto Defendant's land causing damage that has and will in the future cost great sums to rectify and has lowered the value of his property.

25. Plaintiff has placed horse manure on his property in such a manner as to cause water flow onto Defendant's property to be polluted.

26. Through negligence, gross negligence and/or reckless disregard for Defendant, Plaintiff has continued this nuisance.

FOR A TENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

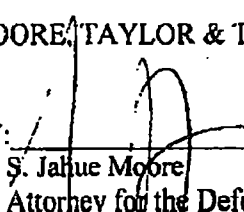
27. The Defendant hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

28. Plaintiff has, without permission or easement, trespassed and continues to do so onto the property of Defendant adjoining the road to the leased property by cutting trees and opening another driveway to his property when he has a usable specific easement in another location and Plaintiff has further destroyed other property of Defendant all of which has or will cause Defendant to expend great amounts of time and/or money to correct.

29. Defendant's property value has been lowered.

WHEREFORE, having fully answered the Complaint, the Defendant requests that the Court inquire into the matters set forth herein and dismiss the Plaintiff's Complaint with prejudice, award such damages as the Court deems equitable and just and issue its Order of injunction against the Plaintiff's continuing trespass over and upon property of Defendant.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore
Attorney for the Defendant
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
February 6, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

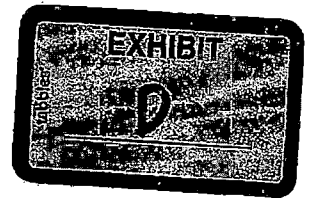
AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me S. Jahue Moore who, on oath, says that he is the attorney for the Defendant in this action; and that he has this day effected service of the **ANSWER AND COUNTERCLAIM** upon the attorney for the Plaintiff, by placing a copy of said **ANSWER AND COUNTERCLAIM** in an envelope in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

Douglas N. Truslow, Esquire
Attorney at Law
P. O. Box 1465
Columbia, SC 29202

S. Jahue Moore

SWORN to before me this 1st
day of February, 2009.
[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-31-2018



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Docket No: 2008-CP-40-00876
RANDY MILLS,	)	
	)	
Plaintiff,	)	
	)	REPLY
vs.	)	
	)	
THOMAS D. EFLAND, JR.,	)	
	)	
Defendant.	)	
_____	)	

Subject to the within Motion to Dismiss or strike filed contemporaneously, the Plaintiff replies to the Answer and Counterclaim of Defendant as follows:

1. Plaintiff denies all allegations of the Answer and Counterclaim inconsistent with the Complaint and reiterates and incorporates by reference herein the allegations of the Complaint.

AS A FIRST DEFENSE TO THE SIXTH DEFENSE AND COUNTERCLAIM

2. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
3. Defendant has failed to state a cause of action upon which relief may be granted.

AS A SECOND DEFENSE TO THE SIXTH DEFENSE AND COUNTERCLAIM

4. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
5. Paragraphs twelve (12), thirteen (13), fourteen (14) and fifteen (15) are denied as alleged and strict proof thereof is demanded.

AS A FIRST DEFENSE TO THE SEVENTH DEFENSE AND COUNTERCLAIM

6. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
7. Defendant has failed to state a cause of action upon which relief may be granted.

AS A SECOND DEFENSE TO THE SEVENTH DEFENSE AND COUNTERCLAIM

8. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
9. Paragraphs sixteen (16), seventeen (17), eighteen (18), and nineteen (19) are denied as alleged and strict proof thereof is demanded.

AS A FIRST DEFENSE TO THE EIGHTH DEFENSE AND COUNTERCLAIM

10. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
11. Defendant has failed to state a cause of action upon which relief may be granted.

AS A SECOND DEFENSE TO THE EIGHTH DEFENSE AND COUNTERCLAIM

12. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
13. Paragraphs twenty (20), twenty-one (21), and twenty-two (22) are denied as alleged.

AS A FIRST DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

14. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
15. Defendant has failed to state a cause of action upon which relief may be granted.

AS A SECOND DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

16. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
17. Paragraphs twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26) are denied as alleged.

AS TO A THIRD DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

18. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
19. Plaintiff pleads the "common enemy rule" as a complete bar to Defendant's claims.

AS A FOURTH DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

20. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
21. Plaintiff alleges and pleads contributory and/or comparative negligence as an alternate and/or supplemental defense to Defendant's claim(s) in that Defendant could have easily prevented damage, if any, by properly and lawfully maintaining his property.

AS A FIFTH DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

22. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
23. Plaintiff alternatively alleges and pleads assumption of the risk, consent and coming to the nuisance, if any, as a defense and bar to Defendant's claim(s).

AS A SIXTH DEFENSE TO THE NINTH DEFENSE AND COUNTERCLAIM

24. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.

25. Plaintiff alternatively alleges and pleads preemption as a defense and bar to Defendant's claim(s) in that there are in place regulatory and governmental remedies and schemes available that would preempt Defendant's claims if Plaintiff were indeed engaged in unlawful or improper conduct.

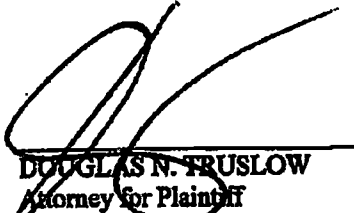
AS A FIRST DEFENSE TO THE TENTH DEFENSE AND COUNTERCLAIM

26. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
27. Defendant has failed to state a cause of action upon which relief may be granted.

AS A SECOND DEFENSE TO THE TENTH DEFENSE AND COUNTERCLAIM

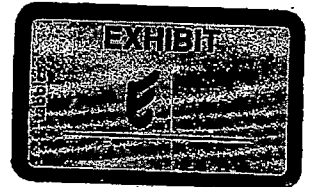
28. Each and every allegation not specifically admitted is denied and Plaintiff realleges and incorporates by reference all of the allegations of his Complaint as fully as if repeated verbatim herein.
29. Paragraphs twenty-seven (27), twenty-eight (28), and twenty-nine (29) are denied as alleged. Further, Plaintiff alleges consent as a defense.

WHEREFORE, having fully set forth his Reply herein, Plaintiff prays that this Court dismiss Defendant's Counterclaim, with costs, and grant Plaintiff the relief requested in his Complaint.


DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, SC 29202
(803) 256-6276
fax (803) 256-7659

Columbia, South Carolina

3/3, 2009



1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) C/A No. 2005-CP-40-04535
3 Randy Mills,
4 Plaintiff,
5 vs.
6 Thomas D. Efland, Jr.,
7 Defendant.

8
9 **DEPOSITION OF THOMAS D. EFLAND, JR.**

10 **June 16, 2006**
11 **2:00 P.M.**

12 Deposition taken upon oral examination on behalf of the Plaintiff
13 at the law offices of Moore, Taylor & Thomas, 1700 Sunset Boulevard,
14 West Columbia, South Carolina, before Annette L. Almond, Court
Reporter and Notary Public, in and for the State of South Carolina, and
taken pursuant to Notice and/or Agreement of Counsel.

15 **A P P E A R A N C E S**

16 Counsel for Plaintiff: Douglas N. Truslow, Esquire
Suite B-102
17 914 Richland Street
18 Columbia, S. C. 29201

19 Counsel for Defendant: S. Jahue Moore, Esquire
Barry Thompson, Esquire
20 Moore, Taylor & Thomas
1700 Sunset Boulevard
21 West Columbia, S. C. 29169

22 Annette L. Almond
Court Reporter
23 P.O. Box 4861
West Columbia, S. C. 29171

24 Also Appearing:
25 Randy Mills

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO TRANSCRIPT

	Pages
Stipulations.....	3
Direct Examination by Mr. Truslow.....	3 - 111
Notary Certification.....	112 - 113

EXHIBITS

Plaintiff's Exhibit #1 - Copy of Letter, December 2, 2003	99
Plaintiff's Exhibit #2 - Copy of Letter, December 10, 2003	99
Plaintiff's Exhibit #3 - Copy of Letter, December 15, 2003	99
Plaintiff's Exhibit #4 - Copy of Letter, December 18, 2003	99
Plaintiff's Exhibit #5 - Copy of Letter, December 19, 2003	99
Plaintiff's Exhibit #6 - Copy of Letter, December 19, 2003	99

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STIPULATIONS

It is stipulated and agreed to by and between counsel for the respective parties hereto that this deposition is being taken pursuant to Rule 30 of the South Carolina Circuit Court Rules of Civil Procedure, and that all objections, except as to the form of the questions, are reserved until the time of trial;

It is further stipulated that the reading and signing of the deposition by the witness has been waived by the witness;

**WHEREUPON,
THE WITNESS, THOMAS D. EFLAND, JR., FIRST
HAVING BEEN DULY SWORN BY ME, TESTIFIED AS
FOLLOWS:**

DIRECT EXAMINATION BY

MR. TRUSLOW:

Q: Have you ever taken a deposition?
A: Have I ever taken a deposition?
Q: Yes.
A: Yes.
Q: Okay, have you ever had your deposition taken before?
A: Yes.
Q: In what kind of cases have you had your deposition taken?
A: A company that I owned, a textile lawsuit.
Q: Okay. Anything—
A: Corporation.
Q: Okay. Anything other than that?

1 A: Taken my deposition?
2 Q: Yeah.
3 A: No.
4 Q: Where was that case litigated?
5 A: It never was litigated; it was settled. It was Lexington County.
6 Q: It was a lawsuit though because there was a deposition?
7 A: That's correct.
8 Q: The case was in Lexington County?
9 A: That's correct.
10 Q: And were you the plaintiff or were you the defendant?
11 A: You know, it might have been in Richland County, I don't
12 remember. The deposition was held in Lexington County, but I
13 don't remember.
14 Q: Okay, who were the parties?
15 A: The parties were Safe Quip, Incorporated versus some textile
16 manufacturing company that manufactured cloth.
17 Q: You were suing somebody?
18 A: Well, the company. I wasn't, but the company that I owned was,
19 yes.
20 Q: Okay. Your company was the plaintiff?
21 A: That's correct.
22 Q: And about how long ago was that?
23 A: Fifteen to twenty years ago.
24 Q: Okay. This is my first opportunity to get to know you, get to
25 know about you, so I'm going to ask you some questions that

1 might be deemed a little personal and I apologize---

2 A: Sure.

3 Q: —but this deposition isn't going beyond here. What is your age?

4 A: Fifty-eight.

5 Q: And when did you, where did you go to undergraduate school?

6 A: Clemson.

7 Q: I'm sorry. When was that?

8 A: I finished there in '73.

9 Q: And after that, just give me your work history.

10 A: I went to USC Law School, I finished there in '76.

11 Q: All right.

12 A: I practiced with an elderly lawyer, John Hydrick, on Sunset

13 Boulevard. I bought the franchises for CarQuest Auto Parts in

14 the Columbia area, put in three of those stores, practiced law part

15 time and managed those stores. I sold those stores in, I'm

16 guessing, about '82 or '83, and I had another business that started

17 somewhere thereabouts, something called Safe Quip and it was a

18 manufacturer of fire retardant safety materials and garments and

19 catalogue and magazine and phone sales. I continued what I was

20 doing and ran that. Also, my wife had a part of running that one,

21 and that was just a cut and sew operation with about thirty

22 sewing machines. I ran that until about '94. My wife had breast

23 cancer thereabouts and there was no way that I could do

24 everything I was doing, so I sold that business and concentrated

25 just on law in the Irmo area because my children were young and

1 out in that area, and pretty much that's what I've done ever since.
2 Q: Okay. Before Clemson, you grew up in the Irmo area, is that
3 correct?
4 A: No, I grew up in Clemson.
5 Q: You grew up in Clemson?
6 A: Uh-huh.
7 Q: And when did you move to—Did you move to the Columbia
8 area, if you will, when you went to law school?
9 A: That's correct.
10 Q: Okay. So you grew up in the Clemson area?
11 A: Uh-huh.
12 Q: Hence, we had Tiger Paw Lane?
13 A: Absolutely.
14 Q: Then, what did you do after high school?
15 A: I went to Presbyterian College briefly. I was from a small
16 county, Pickens, and Vietnam was going on and I deemed it that I
17 probably should join something before I got drafted into
18 something, so I joined the Navy and spent four years in the Navy,
19 got out in the first of '70, went to Clemson.
20 Q: When did you join the Navy?
21 A: In '66, I would say.
22 Q: All right, '66 to '70 you were in the Navy?
23 A: That's correct.
24 Q: All right. And then went to Clemson?
25 A: That's correct.

1 Q: Okay.

2 A: Well, I went a semester or something like that to Anderson Junior
3 College to get my feet back wet and then transferred to Clemson.

4 Q: Okay. All right. What did you do in the Navy?

5 A: Underwater weapons.

6 Q: Anything else?

7 A: No, that was mainly just a school system. I went through
8 everything from UDT training to basic electricity and electronics,
9 underwater weapons school, one thing and another, and then
10 spent about two years in Japan, based in Japan doing certain
11 things that UDT does.

12 Q: Okay. You said underwater weapons. I don't know what that is.
13 Is that like, you're not in the SEALs. What are you?

14 A: At that time, since World War Two up until then you had UDT,
15 underwater demolition teams, and you had underwater weapons,
16 which is mines and torpedoes and anything that can go boom
17 under water, and the SEALs derived from that, but at that time
18 the SEALs were another step and you had to have been in four
19 years before you could become a SEAL. I think everything has
20 been done away with now, that's what I see on TV, and you just
21 go through the same basic training and become a SEAL. SEAL
22 stands for sea, air and land and they penetrated whereas we didn't
23 penetrate.

24 Q: Okay. So I guess as a part of your training you learned about
25 explosives, underwater demolition—

1 A: Uh-huh.
2 Q: —electronics, you learned how to—
3 A: That's right, how to blow things up.
4 Q: —blow things up remotely from offsite timed?
5 A: Yeah, most of what I—Yeah, I guess so.
6 Q: Okay. What was your rank when you left the Navy?
7 A: I was what they call a E-4 and I had made E-5 but I didn't chose
8 to stay long enough to accept it.
9 Q: Got you. So you were a E-4 when you left?
10 A: Yes.
11 Q: All right. Where is your wife from?
12 A: She is a Marine Corp brat.
13 Q: Okay.
14 A: Various bases everywhere. She went to Brookland Cayce High
15 School when her father retired here.
16 Q: Okay. Where did you all meet?
17 A: Here in Columbia.
18 Q: Okay. So relatives that the two of you would have in this area,
19 and I'm thinking in terms of a jury, would they be in Richland
20 County, Lexington County, where would they be?
21 A: Currently, we don't have any relatives in Richland or Lexington
22 County.
23 Q: Okay.
24 A: Her mother, after her father passed away, moved to Myrtle Beach
25 and lives there and her brothers and sister all finished these high

1 schools around here and are scattered around.

2 Q: All right.

3 A: Charleston, Charlotte.

4 Q: All right. I already know the answer to this but do you have any

5 criminal record? Have you ever been arrested for anything?

6 A: No, not unless you count—

7 Q: I'm not talking about traffic.

8 A: A traffic ticket one time when I was in law school and I didn't

9 have the money to put up the bond, so they carried you in back

10 then.

11 Q: What was that for?

12 A: Speeding.

13 Q: Okay, nothing other than speeding?

14 A: Two point speeding is what it finally was.

15 Q: Nothing more than a two point speeding?

16 A: No.

17 Q: Okay. All right. Now, I'm going to jump ahead a little bit,

18 jumping around, but I just want to get to where I want to be. As

19 far as your assertion that Randy Mills burned down something on

20 your property, what is, I want to know what all your proof is.

21 A: Basically I think my proof is circumstantial.

22 Q: All right.

23 A: And it's basically the stories that he told us immediately after

24 that, the story that he told my wife, evidently before we talked to

25 him after we found that it had burned down.

1 Q: All right. All right, I don't want to deal with basically. I want to
2 know everything. When we finish here today, will you agree
3 with me you'll try to tell me everything that—
4 A: You ask the questions and I'll try to answer them.
5 Q: Okay. —that you think is significant. Well, my question is
6 describe all proof you have that Randy burned down your, I think
7 you called it a river cabin?
8 A: I just told you it was circumstantial and it's based on the things
9 he said.
10 Q: Okay. All right, is that all you have to say?
11 A: Well, pretty much.
12 Q: Well tell me what circumstantial evidence you have. I'm not
13 trying to quibble with you. I don't want to know quote unquote
14 "pretty much what he said." I want to know everything that you
15 would testify to and what other witnesses would testify to.
16 A: Well, I think that I would testify to the fact that we weren't
17 getting along very well, that he was pretty mad because he
18 wanted to buy the place down there and my wife had told him in
19 the field a week or two before that it absolutely wasn't for sale.
20 Q: Okay.
21 A: And that he was upset about all of the four wheelers that went
22 down beside his pasture and to this cabin, and he particularly
23 didn't like the kids. He'd bragged about he had set twig traps up
24 in the woods behind the barn to see where the kids were coming
25 from and he thought they were coming from a neighborhood over

1 on the other side. We had fish parties and one thing and another
2 at the cabin and he made it clear he didn't like those goings on.
3 He particularly didn't like a friend of mine who had carte blanc
4 permission to use the river down there and the cabin, and that
5 was a guy named Talbert Turner. He evidently didn't like at that
6 point, although I think it was hot and cold, the guy that had
7 helped him a good bit which was fellow named Mike Suchey,
8 who also had permission to use the cabin and anything down
9 there that he wanted to. We, I think, usually invited, in fact I
10 think he came to one of them, Randy down to the cabin when
11 we'd have a fish fry or deer fry or whatever. I'm not a hunter and
12 I'm not a fisherman much, but these guys are and they'd collect
13 the stuff and have a fry down there. He particular didn't want
14 anybody anywhere down near there at all. He was pretty mad at
15 the fact that we unequivocally said we weren't going to sell
16 anything down there.

17 Q: When you said anywhere near there, are you talking about near
18 the barn and pasture?

19 A: Well, you've probably looked at some maps. Obviously the
20 pasture is on the river, the barn is behind it, there's kind of a
21 ditch or creek or something between that and the cabin. I would
22 guestimate the cabin was about, I don't know, I'm guessing
23 maybe fifty feet, somewhere along in there, off of the pasture,
24 maybe even closer than that.

25 Q: I'm trying to understand. Did he not want people near the cabin

1 or he didn't want people near his barn?

2 A: He didn't want anybody down there at all. Well it wasn't his
3 barn and it wasn't his pasture, but he didn't want anybody down
4 there at all. He got upset when they even came down towards the
5 shop which was on the way down to the cabin and to the barn.

6 Q: All right.

7 A: He wanted to put a chain across that road and I said sure but I
8 was going to give Talbert and some others keys and he didn't like
9 that idea, and I said there has to be a path built around it for the
10 four wheelers and golf carts to come around it, and he kind of got
11 mad and said well there's not much need to chain it. He tried to
12 keep track of everybody that came down towards my shop. One
13 day a kid that has standing permission in the neighborhood, a
14 number of them do, to come in the shop and use the air
15 compressors to fill up their four wheeler tires or something, and
16 he called me kind of like he had caught them doing something.
17 Of course, that wasn't the case; they had that permission. In any
18 case, we have a son who is a racer and we went off racing one
19 weekend on like Friday, maybe Thursday, I don't know when we
20 left, and before we had left, we had burned some boxes and stuff
21 out front, so, you know, beside the shop, so I knew we had done
22 that, that will come into play a little later. But, in any case, when
23 we left that Thursday or Friday, we went to a race. I'm thinking
24 it was probably about North Carolina, and the race was on a
25 Saturday night and we finish about midnight or so, and I'm pretty

1 much big on driving home, so we drove home. I don't really
2 remember exactly what time we got home but it was probably
3 about two or three or four in the morning. When we got out of
4 the truck, we smelled heavy smoke, and as I remember, we saw
5 some ash around, but we definitely smelled heavy smoke, and
6 this was at the shop which is the start of the entrance to both the
7 cabin and the barn, but I didn't worry too much about it because I
8 knew we had burned some boxes a couple of days ago and it was
9 right beside where we parked the truck. So we got out, got our
10 stuff and went in the house and went to sleep. It was my wife
11 and my son, me and a fellow that helped us a lot at that time on
12 the race car that now works for Ralph's Racing.

13 Q: So all of you all had, you, your wife and your son weren't at your
14 house?

15 A: No, we got back—

16 Q: How about your daughter?

17 A: No, she goes to Georgia Tech. She was probably at school.

18 Q: All right.

19 A: In any case, when we got home, went to bed and it was two,
20 three, four o'clock in the morning, something like that. Nothing
21 seemed in ordinary. You know, we'd been talking. Your
22 adrenalin kind of stays up for that three or four hour ride home
23 from wherever we were. We got up real late the next day, and
24 I'm wanting to say sometime around noon-ish. I don't know
25 exactly when Danny and Thad got up. Thad decided, Thad

1 Mitchell is his name, he decided to spend the night there instead
2 of going home. He lives, well until his mother died, he lived
3 about a mile away. In any case, we got up and—You said tell
4 you what other people have said, so my wife evidently, with my
5 son, got him up and they went down to the rig, which is a big
6 truck and big trailer and all , and started getting out the food and
7 the drinks and the things that we carry, to put them in the
8 refrigerator, and Randy evidently came along and they had a
9 conversation that she related to me was rather an unusual
10 conversation, but in any case, she and I were sitting in the house
11 and we started watching, I think a race or something, it's what we
12 do on a lot of Sundays, and Danny and Thad went and got the
13 four wheeler and all the kids were out there playing on the four
14 wheelers and all on most of the land. They went and got the four
15 wheeler and started riding it around, and directly they came in,
16 I'm wanting to say it was late afternoon, but they came in and
17 said the river cabin burned down, and both of us were rather
18 surprised. So we got in our golf cart and went down to the river
19 cabin, and the river cabin obviously had burned down. The river
20 cabin was, the ground was warm, very warm. The fire hadn't
21 obviously been that long ago. We all talked about it. Our
22 bedroom overlooks the cabin and I would guestimate it's maybe,
23 just purely guessing, maybe 1200 feet away, something like that,
24 maybe a little less. I'd say less than that. But it overlooks that.
25 There's trees there but we don't use, we don't close, we've got

1 glass doors and stuff with no blinds because of the way we sit.
2 It's private overlooking the river, so, you know, there was not
3 much need to have blinds or anything. We know that there was
4 no glow or anything when we came in. We couldn't believe we
5 could have slept through the fire, but it looked a little older than
6 that, just our inexperienced way of looking at it. So we decided
7 to get in the golf cart and ride around and see if anybody knew
8 anything about it. Well, we went to Randy's house first because
9 he was our closest neighbor. There's another one down closer
10 but that house was being built.

11 Q: Carroll Daily?

12 A: Carroll Daily. So we went to Randy's house and basically pulled
13 up to this front door on the golf cart and we sat in the golf cart
14 and he came to the front door, and we said, "Randy, the river
15 cabin burned down. Do you know anything about it?" And he
16 started into this long drawn out tale about, and I've known Randy
17 for a year or two, this struck me as awfully odd, but this long tale
18 about well, I was down, I went down to it yesterday morning
19 because the hurricane might come. And it's true, there had been
20 a hurricane or tropical depression or something off the coast that
21 might hit us pretty hard. When those storms hit us pretty hard,
22 the bottom floods and the creek that the road goes over to the
23 barn floods and it had a couple or three times that year, as I
24 remember. Each time Talbert Turner would bring a canoe and
25 leave it so Randy could get to the barn to feed the horses.

1 Several times when it flooded Danny and I went down there and
2 fed the horses. But in any case, he says, he started into this well I
3 went down to the barn yesterday morning to see if there was a
4 canoe or a boat down there. Well, we always kept canoes and
5 boats down there, but, of course, the one that he had been using
6 was the one Talbert Turner would bring up. In any case, he said
7 the cabin was fine, and then he continues and he says, and he
8 gave a long straight spill, he said, "The cabin was fine and," he
9 said, "I went down there to mow," and he said, "and I mowed all
10 day and the cabin was fine." He said, "And I mowed until about
11 4:30 and the cabin was fine," and he says—I mean four, I'm
12 sorry. And he said, "About four, I went to the house and
13 collected my mother and we were going to take my girlfriend,"
14 and I can't remember her name but I think it might have been
15 Denise or something like that, "and go out and eat." And he said,
16 "So I went out to my truck," and he always parked outside and he
17 likes to use his telephone outside, so he said, "I went outside to
18 my telephone and I called for reservations and," he said, "that
19 was after four and," he said, "wasn't anything going on." He
20 said, "I went up to the house about four and there wasn't
21 anything going on." We didn't say a word during all this. It was
22 just a litany of of just kind of surprising to us, and he said, "We
23 went to dinner somewhere about 4:30 and," said, "I got back with
24 my girlfriend, dropped my mother off about ten or ten thirty."
25 I'm going to say Denise. I can't remember if that was it. "And I

1 got in the truck and rode down to the cabin, I mean the barn, we
2 wanted to see if the river had risen from the rain." We didn't get
3 any rain, by the way, but the storm missed us, but it can hit other
4 places and make the river rise, so he wanted to see if the river had
5 risen. He says, "Opened the first gate and we rode out into the
6 pasture and down to the river." Now this is a pretty good ride,
7 but it would be close to the cabin but if you followed the path he
8 had to the next gate at the river, it would be right beside it. You
9 know, it wouldn't be very far from the cabin at all, and he said
10 that the cabin was fine and, you know, so he said he left and went
11 home and he didn't really know anything about it. After we
12 left—

13 Q: That was on Saturday?

14 A: That was—Do what?

15 Q: It would have been Saturday night?

16 A: That would have been Saturday night about 10, 10:30, according
17 to him.

18 Q: Okay. I didn't mean to interrupt you.

19 A: That's okay. So, at that point, we left there and I really wasn't
20 thinking too much except man this was a big litany of
21 explanation on his part. So, then my wife said, "You know, this
22 morning something weird happened." And I said, "What?" Or
23 earlier in the afternoon when we got up. Said, "We were down
24 there getting the stuff out of the trailer and Randy drove by and
25 he stopped and told me that exact same story, only just leaving

1 out that the cabin was fine, but he said he went down to the
2 cabin." And I don't know that Randy ever went down to the
3 cabin by himself before, but maybe, maybe not. In any case, we
4 decided to see if anybody else knew anything. Carroll Daily
5 wasn't there working on his house. It was Sunday, getting dark
6 by that time, so we went to Keith Johnson's. Keith Johnson lives
7 right beside Randy, and Keith is a lieutenant at SLED. At that
8 time he was, I think he was in charge of narcotics for SLED.
9 And he and his wife are good friends of ours. We had actually
10 been neighbors in an old neighborhood before we both moved
11 out there. So I told Keith the cabin had burned down, and said do
12 you know anything about it, and he said, "No, but," he said, "last
13 night," This would have been Sunday, so yeah, "last night," he
14 said"—He's got a barbecue thing out beside his house
15 overlooking the river. He said, "Last night we were having a
16 bunch of law enforcement and friends over." He said, "My
17 brother,"--- who is, at that time was a deputy in Lexington
18 County. I think he's a deputy in Richland County now.—"came
19 over at about four o'clock to help me get set up and start getting
20 ready to cook, and, "he said, "while we were setting up and about
21 the same time the first person came," —And I'd also point out
22 something, Keith doesn't drink at all. So, you know, he wasn't
23 sitting out there drinking, and he's very meticulous in his details.
24 He said, "Before the first person came, we started getting some
25 ash up here, and" he said, "it was between 4 and 4:30," and he

1 points to it and it was all over the place. Now I'll back track a
2 little bit. There was no ash on my truck, but there was ash all
3 around my shop that next day, so my truck had been put there
4 after the ash arrived. In any case, he said, "There was ash in the
5 air, and," he said, "it must have been about 4:20 or 4:30," as I
6 remember what he said. You'd have to ask him for closer. "We
7 heard some booms that sounded like muffled black powder, like
8 something exploding." So I said, well—Well, he continued. He
9 said, "I figured maybe Carroll Daily was burning construction
10 trash and," he said, "we didn't worry about it too much, but" he
11 said, "now there's ash everywhere." He said, "we saw ash all
12 over the place today." And so that pretty much pinpointed the
13 fire at around 4 or 4:30, somewhere in that neighborhood. All
14 right, in any case, he asked me what I was going to do, if I was
15 going to call the sheriff's department or something, and I said,
16 "No, it might have been lightening, it could have been anything.
17 It's put out, I don't see any reason to do that." And he kept on
18 me and he persuaded me that well let the arson people at SLED
19 look at it, so I said, "Okay, if you want to do that, that's fine.
20 There's nothing I can do about it right now." So the next
21 morning the arson people with SLED showed up, and there was
22 two guys. I don't remember whether they both were there at
23 exactly the same time but there were two of them.

24 Q: Why was SLED doing that rather than say the sheriff's
25 department?

1 A: Because I didn't call the sheriff's department and Keith is pretty
2 high up in SLED and he said why don't we just let out, he said,
3 "We live out here." He said, "It bothers me that it could have
4 been something like arson." He said, "Can we let the SLED
5 people look at it and just see what they say?" And so I said,
6 "Okay, that's fine." So, in any case, the two SLED people
7 showed up. One of them had a dog and was the type person that
8 actually is the expert in investigating fires. The other one was
9 like an investigator. I don't know what his specialties are, so I
10 doubt it, but I'm not positive of that. So, in any case, the one that
11 is the actual person investigating arson went down there and he
12 poked around the fire a good bit, felt the ground. I don't know,
13 we just kind of stood back and watched. He went down to the
14 river and looked at the river, he looked all around it and he fished
15 out pieces of a canoe that had been under the cabin, and after a
16 couple of hours, he took a bunch of pictures and after a couple of
17 hours, he said this is arson, and, of course, I didn't, you know, I
18 was beginning to suspect that too, but we said how do you know,
19 and, of course, that's an education in itself when you listen to one
20 of those guys. He pointed out the tin. He could tell by the
21 discoloration of the tin of where the fire started. He described the
22 cabin to a T, he described where the electrical was, he showed me
23 the electrical. He said it didn't start here cause there's no hot
24 spot. He said, he described the cabin, like I said, and he said,
25 "This is where it started. What was here? A porch or

1 something?" And I said yeah. And he said, "Well, it started
2 under this porch." And he could tell this by the tin and by the
3 ground and there had been a canoe under there and he traced
4 parts of the canoe from the part that didn't exist anymore to some
5 melted parts. In any case, he said, "And I've checked, there's
6 nothing else with any of the trees. It didn't come from the wiring
7 in the cabin." He said, "There was no wiring anywhere near
8 where this fire started," and I said, "That's correct," because
9 there wasn't. And he said, "And I've looked at the river and
10 there's no footprints or anything coming up from the river." So
11 there was talk about a little bucket under there that had been one
12 of these things, I forget the name of the stuff that you keep
13 mosquitos away with.

14 Q: Citronella maybe?

15 A: Yeah, that's what it was. And he kicked that bucket around and
16 one thing and another. Anyway, that's what he declared, so they
17 basically assigned an investigator to it, and when we got back up
18 to my shop, where they have left all their vehicles, they walked
19 down there to it, they had left all their vehicles, and I said, "Well,
20 who do you think did this?" And I don't remember whether it
21 was Keith Johnson or the other investigator said, "Who do you
22 think?" And I said, and I had told them the story of what Randy
23 had said. I said probably Randy and they said that's what we
24 think. So later one of them said, "He's not only our only suspect,
25 our chief suspect, he's our only suspect."

1 Q: Who said that?
2 A: One of the SLED people but I don't remember which one.
3 Q: Was Keith Johnson there?
4 A: Yeah, I'm sure he was.
5 Q: Okay.
6 A: In any case, I, as an attorney, realize criminally that there's not
7 enough in that to go for something beyond a reasonable doubt.
8 On a lesser standard like could be in a civil case, I feel like there
9 might be. In any case, I had decided, even though things went
10 consistently wrong between Randy and I, that probably I wasn't
11 going to do anything until he made a move. I just decided I
12 wouldn't, you know, if this thing could blow over, that was the
13 best deal for the neighborhood because it sort of had the whole
14 neighborhood involved in this thing, but once it didn't blow over,
15 that's the way we feel and that's the way we see things.
16 Q: Do you have any other evidence?
17 A: I don't know, I'd have to think about it.
18 Q: Well, take all the time you need. I need to know now.
19 A: I'll get back to you within a week because I don't know right
20 now. I hadn't thought more thoroughly.
21 Q: Is there anything right now that you can think of that is
22 significant?
23 A: Right now, I'd have to think about it.
24 Q: Well, you've been noticed for your deposition for a long time and
25 you've had time to think about it. Is there anything that you can

1 think of at this point that is significant, right now?
2 A: I answered your question.
3 Q: What is your answer? You can't think of anything right now?
4 A: I said I would have to think about it further. If I think of
5 something, I will be sure that you know.
6 Q: Now, did you ever get any kind of SLED report?
7 A: No, I don't think I ever asked for one.
8 Q: Did you ever get any photographs?
9 A: No, but they took a lot of them.
10 Q: Okay.
11 A: I assume I could get that stuff if I wanted it.
12 Q: I guess both sides could. I'm just asking if either side at this
13 point has any of—
14 A: Not to my knowledge. That's kind of one of those things I said
15 I'd have to think about it, you know. I assume I could go get that
16 kind of stuff. I imagine it's public record.
17 Q: Okay.
18 A: But I really haven't asked for any of it.
19 Q: Did Keith Johnson say anything else other than, about this fire,
20 other than what you've related that you can recall at this time?
21 A: Keith and I are friends, we talk a lot. I don't know, we've talked
22 about this and a lot of other stuff going on out there a lot.
23 Q: What has he said?
24 A: I don't remember specifically right now anything he said. It's
25 just a lot of things in general.

1 Q: Did he communicate anything that this SLED arson investigator
2 had done or found?
3 A: Not to my knowledge, no.
4 Q: But he's pretty much out of it?
5 A: Yeah, well, he, he has an interest in this thing in other aspects,
6 too, but yeah, I guess so. I don't, I don't know that we really
7 ever talked to him much anymore about it specifically.
8 Q: What interest does Keith Johnson have in this?
9 A: Well, I don't think, he's, he's got an interest in Randy evidently,
10 particularly his wife. According to Keith and his wife, they don't
11 get along the best over horses and manure and horse flies and one
12 thing and another around their place. So I don't know much
13 more about it than that.
14 Q: Okay, So has Mr. And Mrs. Johnson pretty much kept that to
15 themselves about any issues they have or have they shared that
16 information with you?
17 A: I think they pretty much keep most of that to themselves.
18 Q: Okay. Have you talked to Mrs. Johnson? Did she say she had a
19 problem with Mr. Mills?
20 A: She can't stand the manure and the horse flies, and I think she
21 told me that he was putting manure right on the lot line or
22 something which was very close to their yard.
23 Q: Okay.
24 A: She wasn't happy about that. I saw it one day. It looked like a
25 dam of the stuff built down the fence line, but evidently horses

1 generate a lot of manure, judging from what was left at the barn
2 and I guess he's got to do something with it.

3 Q: Okay. Has there been any kind of vandalism or anything in the
4 neighborhood that you're aware of?

5 A: Nothing down at our neighborhood at all, with one possible
6 exception. I don't even know where the keys are to our house. I
7 don't think we have keys to it, not to my knowledge. We've
8 never locked it. I don't know whether others lock their houses or
9 not. I know that the Johnsons don't lock theirs because she does
10 some work for my son, computer work for my son, and we've
11 gone in there a number of times to pick up tapes and stuff, so,
12 you know, it's to where everybody feels safe. There's no,
13 nothing has ever been missing from the shop in years of not
14 locking it. Everybody, including Randy, up until then always had
15 permission to just go in there and if they wanted to use anything,
16 to use it, and I know Randy did. You know, he borrowed a weed
17 whacker and some stuff. Other people do the same thing and it
18 always generally shows back up. Now we had a spout up from
19 there with some guy that finally got caught in Chapin broke into
20 some houses out there and he wasn't from around there and I
21 think he hauled off a gun safe and some things like that. The
22 only other thing that I'm aware of is when Carroll Daily's house
23 was being built I think the kids, it wasn't my son, it was some
24 younger kids out there evidently was shooting some paint balls or
25 something and hit one of his walls and he wasn't happy about it,

1 but that's all I know about.

2 Q: Okay. Anything other than that that you're aware of?

3 A: Not that I'm aware of.

4 Q: No other vandalism of any kind?

5 A: Not that I'm aware of.

6 Q: Okay. Your boat that you had under your river, I'm going to call

7 it a river cabin, was it chained or was it not chained?

8 A: Not chained. I don't think it was chained. If it had been chained,

9 Talbert Turner would have chained it. Now, I suspect that it was

10 tied because water will come up and we don't want it floating off,

11 but to this day, I think there's three or four boats down there, and

12 I was down there the other day and I didn't see any chains on

13 anything and there were motors on them all.

14 Q: Did you build anything back?

15 A: No.

16 Q: Okay. The river cabin, I'm using that word because I really don't

17 know what it is, I think those might be your words.

18 A: Probably.

19 Q: The river cabin, how many square—Was it as big as this office?

20 A: I think it was, I think it was 24 by 24 with one-third of it being a

21 porch.

22 Q: When was it built?

23 A: Well, we started building it—Well, I've had that place out there

24 since the 70s sometime. We started building it soon after we got

25 out there, clearing for it, and it was, it was not really even a

1 cabin. It was just some poles and a floor that we cooked on and
2 then it got built more and it got built more and it kind of evolved
3 through the years and became a place that, for some years while
4 we didn't live out there, we'd go down there and spend the
5 nights, but I guess in the last three or four or five years before it
6 burned down, matter of fact since we moved back out there in '94
7 or so, I don't think anybody ever really spent a night in it. When
8 we first put it out there, it was way out in the boondocks, there
9 was no road to it. We had a little path that you could take a golf
10 cart on and it was mainly built out of stuff that we would just
11 haul down there on the golf cart.

12 Q: Was it built to code? Was there a building permit? Maybe I
13 ought to start off there.

14 A: Oh, I'm sure there was no building permit on it.

15 Q: All right, explain why not.

16 A: Because there isn't.

17 Q: Were you required to get a building permit to build there?

18 A: I have no idea.

19 Q: Were you permitted, allowed to build within the area without a
20 building—

21 A: I have no idea. Back in that day and time, it was all farm country
22 out there, there was no developments, and when people wanted to
23 build sheds or shacks, they did it.

24 Q: I understand that, but I mean, would you have been required?

25 A: I have no idea. I don't know what the rules were in the 80s.

1 Q: Okay, I understood you at some point in time held yourself out as
2 being a real estate lawyer. Is that correct?
3 A: That's what I do, is real estate law.
4 Q: All right, and you're telling me you don't know whether this was
5 permitted or not?
6 A: I don't know much about the permits except the one that I got for
7 my house and my swimming pool and my shop.
8 Q: Okay.
9 A: And that was in the 90s and the 2000s.
10 Q: Okay. So to build your—Is it two houses? You said what?
11 A: No.
12 Q: I didn't hear you, I'm sorry.
13 A: I got a permit in—You know, I don't know whether there was
14 any need for permits back then or not because I don't even think I
15 had to have a permit to put a mobile home out there about that
16 time that we put it out there. I really don't know. But, in any
17 case, I don't think we had to have a permit to even do that. I
18 think we just did it and then we had to go down and get one of
19 those little sticker things for the window. I really don't know;
20 it's been almost thirty years.
21 Q: What's a sticker thing?
22 A: Mobile homes have some kind of little round registration thing to
23 get them on the tax books, I reckon.
24 Q: All right.
25 A: But I know this thing—Tax record-wise, I don't know. I assume

1 they had it on the tax records because they showed it on, they
2 show it, and always have, on their maps and they charge me for
3 two or three or four buildings, I don't know. But I never got a
4 permit for anything until maybe '89, I built a metal building and
5 got a permit.

6 Q: Okay. It's a river cabin within—So the river cabin doesn't show
7 up on tax maps?

8 A: No, it does.

9 Q: Oh, it does?

10 A: I assume it does.

11 Q: Okay.

12 A: I've really never checked but I know my tax bill shows more
13 outbuildings than I had, than I thought I had, so I figured that was
14 one of them.

15 Q: Okay. All right, is it within the flood plain?

16 A: Oh, yeah.

17 Q: Does it flood?

18 A: The ground under it floods, but it was built about four or five feet
19 off the ground. The only time it really ever got up to its floor
20 was in Hugo, which was what, '87, something like that.

21 Q: Was it sheetrocked?

22 A: No.

23 Q: Just bare walls?

24 A: Yeah, basically. It was just some poles in the ground, wood floor
25 and tin roof.

1 Q: Okay, was it just sub-flooring down, or did you put a formal floor
2 in?
3 A: No formal floor.
4 Q: Okay. Air conditioning?
5 A: Huh-uh.
6 Q: Plumbing?
7 A: It had a motor home john in it, hooked, a tank out of a motor
8 home or camper type thing, and that had a metal thing around it
9 and we had a little cart that fit it and when it would get full, we
10 would back up to that and take it up and put it in our septic tank.
11 Q: Did you have a well?
12 A: No. This thing was way out there when we first built and we
13 used a little generator for some lights and a 12-volt battery and a
14 little pump and we'd drop the pump in the river when we were
15 there to run the john off of, and when I built my house in '94 I
16 think, when we were putting in the water, I ran an underground
17 electrical line down to it, 60 amps, so that we could pull the lights
18 and things we were pulling off the generator. The only thing we
19 ever pulled was some lights and a radio and we ran a water line
20 down to it.
21 Q: Where did the water come from?
22 A: Those are still there.
23 Q: Where did the water come from?
24 A: From my house.
25 Q: Okay. I don't know how to ask this question, but was that legal,

1 I mean to run the electrical? It doesn't matter, frankly.
2 A: I assume so.
3 Q: Do you have to, before you can run electricity from your house
4 down there, would you have to get some kind of permit from the
5 county or any kind of inspection or anything like that?
6 A: I wouldn't think so. It would be like putting in a wire out to
7 some lights you put outside or post. You're acting like the expert
8 on this, so I'll take your word for it, but I don't know.
9 Q: I'm not trying to act like an expert.
10 A: When somebody puts in an electrical line, they just put in an
11 electrical line.
12 Q: Okay. Who put it in?
13 A: I did.
14 Q: Are you an electrician?
15 A: When I was going to—Well, right after I got out of the Navy and
16 before I started to school, I went to work for Duke Power as a
17 construction electrician and held a Class B construction
18 electrician's license. Am I an electrician now? No, but I do
19 probably know a lot about it.
20 Q: How long did you work for—Who was it? For Duke?
21 A: Duke Power.
22 Q: How long did you work for Duke?
23 A: Probably about six or eight months, I don't remember.
24 Q: Okay. So you got out of the Navy and went to work for Duke,
25 and then went to college?

- 1 A: Yeah.
- 2 Q: Okay. All right. Any other reason that you can think of at this
3 point in time to believe that Randy was the one that burned your
4 river cabin, other than what you've told us?
- 5 A: I'd have to think about that. Right at the present I haven't
6 thought of any others, but could be.
- 7 Q: Okay. Did any of the kids, to your knowledge, did any of the
8 kids in the neighborhood or anyone ever break into any houses in
9 the area?
- 10 A: I don't know of any. I don't think I know of any.
- 11 Q: Did anybody ever break into Carroll Daily's house?
- 12 A: Certainly not while he was living there. During construction, I
13 heard him complain about some people went in there and he had
14 cameras set up evidently, but we saw parties there all the time on
15 his building. It's a regular monstrosity thing. I don't know. I'm
16 sure people went in. I went in and out of it while it was being
17 built.
- 18 Q: That's a normal thing, isn't it?
- 19 A: But I don't consider that breaking in.
- 20 Q: No,. I understand. I mean that's a normal thing, a house was
21 under construction, it's open, to look around to see what's being
22 done. What kind of neighbor is Carroll Daily? Do you all get
23 along good, bad?
- 24 A: I consider we get along.
- 25 Q: You used the word monstrosity. That didn't seem to be a—

1 A: It's a seven thousand square foot house that looks like an Ascot
2 House. It's brick, it's got gables and all, and it's built out on the
3 river overlooking the river where typically people have built
4 things like Randy lives in and things like I live in and things like
5 Keith Johnson lives in, that are more rustic and individual and are
6 different, you know.

7 Q: I got you.

8 A: And his is more of a—

9 Q: It stands out?

10 A: It kind of might look—I'd hate to tell him this, but I think it kind
11 of looks a little out of place out there, but it's a nice house, it's a
12 big house, it's like, I don't know, somewhere around seven
13 thousand square feet I think he said---

14 Q: All right.

15 A: For two people to live in. It's just big. As far as getting along
16 with him, I think I get along with him fine. I had to give him
17 easement rights to get in there.

18 Q: Okay. You all have never had any cross words or anything?

19 A: Not to my knowledge.

20 Q: Okay. All right, let me move on to something else. I'm trying to
21 figure out the barn deal, what happened and what went wrong.

22 A: It was a very simple deal. I felt sorry for Randy, he wanted to
23 keep his horses somewhere, he was going back and forth to
24 Camden, he had his mother there living with him. It's a place
25 that we had let somebody farm ever since I've owned it. To the

1 best of my knowledge, it's been farmed over a hundred years. I
2 told Randy, after he asked me to sell it and I said I wouldn't, that
3 I'd never sold any river property and didn't intend to. I asked
4 him, I decided that if he wanted to keep his horses there, I could.
5 The guy had it made. You know, he had them right there besides
6 him, he would have got along easy, you know, he had a big
7 benefit.

8 Q: Okay. How did you acquire this land?

9 A: Bought it from a guy that it had been in his family a couple
10 hundred years, I think, back in '76, somewhere along in there.

11 Q: So you had just gotten out of law school?

12 A: Yes.

13 Q: How many acres is it?

14 A: Well, it was on a 20-acre more or less deed because it was never
15 officially surveyed. I don't really know but I think it's probably
16 around 22 or 23, 24 acres, something like that.

17 Q: I got you.

18 A: It was what was left. He offered it—He died some years ago, but
19 it was what was left. All he had was a daughter and she had
20 married away and it was what was left of a big tract and he
21 offered it to kinfolks of his first, and I think there were only two
22 of us that bought any of it that weren't kin to him.

23 Q: Okay, so you bought that in the 70s and you're saying it was
24 farmed. Are you talking about for agriculture crops?

25 A: Yes.

1 Q: Like what?

2 A: Over the years, there's been everything in it, from soybeans to
3 corn to cotton to everything under the sun.

4 Q: Okay.

5 A: Some years it flooded and would wipe it out. All of the bottom
6 lands were done that way.

7 Q: Okay. In, say, the year that Randy, two years before Randy built
8 his barn, or the barn down there, was it being farmed?

9 A: Absolutely.

10 Q: For profit or for deer, planting for wildlife, or what?

11 A: No. I assume it was for profit. A fellow named Brett Hipp had
12 planted it. When I first got it, when I first bought it from a guy
13 named Harmon Derrick, his family had planted it forever, and he
14 had gotten old, so he was letting a guy named Shealy, and I can't
15 remember Shealy's first name, but he was letting a guy named
16 Shealy plant it and there was other parts to that bottom, too.
17 Shealy was planting it all. When I first bought it, Shealy called
18 me and he was rather upset. He said, "You're not going to throw
19 me out, are you?" And I said, "No, absolutely. You know, I
20 want to keep it down, I don't want it to grow up." I had another
21 one that was being farmed right then that surrounded where the
22 cabin was and I let that grow up and it looks like a forest now and
23 it hasn't been planted for 35 or 40 years, but it was a total field at
24 that point.

25 Q: You mean where your river cabin is?

1 A: Yeah.
2 Q: Okay.
3 A: But Shealy didn't want to go around there.
4 Q: Over the ditch?
5 A: Yeah. And so there was a ford and a place to get around but he
6 didn't want to do that one and I thought someday I might build
7 there anyway, so we just kind of let that one grow up, but we
8 wanted to keep the other one down, so he planted it and I don't
9 remember how long but sometime in ten or fifteen years ago he
10 decided that he was evidently getting too old to do it, or for
11 whatever reason, he didn't do it anymore. There was a fellow
12 that I had known when he was in high school that lives out there,
13 named Brett Hipp. His father owns some land right across from
14 me, and Brett works for SCE&G and farms on the side and he's
15 now got most of the bottoms out there, and I assume he makes
16 money at it. I don't know why he'd keep doing it if he doesn't,
17 but he did it up until the year Randy got it. Now the previous
18 year, I think when Randy got it it had cotton in it, I'm not sure,
19 but they'd plow it always in the spring time, and then after they
20 harvested, bramble bushes or whatever, some things that grow up
21 in fields grew up down there. Now I don't think the cotton crop,
22 I believe it was cotton that was in it, I don't think it got harvested
23 the year before. I think it flooded and ruined the thing.
24 Q: So it had been about two years since it had been planted?
25 A: No, it was planted the year before he went in there.

1 Q: Okay, and a spring crop had been planted?
2 A: Yes, right.
3 Q: And then it was allowed to lay fallow over the year. They either
4 didn't make a crop or—
5 A: It didn't make a crop for whatever reason, and so Randy went in
6 there that next year. It wasn't planted that year.
7 Q: So how did you all go about negotiating this deal for him to have,
8 I'm going to call it pasture and barn for simplicity. If you want
9 to use some other term—
10 A: He asked could he keep his horses down there. He asked could
11 he buy it and I said no, and after my wife and I talked about it,
12 because she rode some horses on military bases and liked horses
13 anyway, and she'd wanted one down there, and I don't know, I
14 had always been insistent they were too much trouble and I didn't
15 want to put one down there, so she and I talked about it and she
16 said, I said, "Well, why don't we just let Randy use it then," and
17 she said, "It will be okay with me, but I want it so if I can get a
18 horse, I want one down there, too." I said, "Okay, we'll talk to
19 him about it," So we invited him and his mother to our house to
20 eat and, of course, his horses were staying in Camden and he
21 either had two or he was fixing to get a second one right then. I
22 think he had two. And we told him that if he wanted to put up a
23 fence and a shed down there, that he could keep horses down
24 there, and, of course, he jumped right smack in the middle of that,
25 that suited him fine. We loosely talked about the river and the

1 fact that there could be water from the river and whatever, and so
2 that's basically the whole way it got started.

3 Q: Okay. So the way it got started is he approached you about—
4 A: Buying the land.

5 Q: —about buying it, and you said you wouldn't sell it but you
6 would let him use it?

7 A: Well, that's what happened, evolved over a period of time.

8 Q: Okay. Did anything in the meantime happen?
9 A: As what?

10 Q: Relating to it. I mean negotiation-wise, for example.
11 A: Wasn't any negotiations about it.

12 Q: Okay. So whose idea was it to draw, I'm going to use the word
13 lease? Was there a lease on this and whose idea was it?

14 A: Well, what happened was I told him that he could use the thing
15 and it must have been a week or two after that he had us up to his
16 house for something, and he had these elaborate plans from
17 Morton Pole Building and some pictures and all of some fancy
18 barns, and I said well, you know, in my mind all you need is what
19 I had envisioned was just a few poles and a tin roof and I had
20 even offered to help him build a shed to keep the, so the horses
21 could get out of the weather or whatever, and we briefly talked
22 about it flooding. I don't think he really believed me, but I told
23 him it flooded, and so he says well, I can take them up towards
24 my house or whatever, and I said it doesn't go very far, you
25 know, when it floods, but we briefly talked about the flooding,

1 and he had all these elaborate plans for this building and I said,
2 "Well, Randy, if you build all that kind of stuff, it's going to cost
3 a lot of money," and he had some figures which I really don't
4 remember right now but he said that it was costing him X number
5 of dollars to keep these horses in Camden and he was having to
6 go back and forth, and so I said, "Well, I'll tell you what, I'll just
7 co-lease it to you, lease it to you and we'll keep rights and I want
8 a horse there, too, and we'll do it for five years for a dollar a
9 year," and he said something like that would suit him fine
10 because whatever he was paying in Camden he could afford to
11 spend some money, and he made some comment right then about
12 and you know me—It was over a hot tub issue and he said, "You
13 know me, I like the Cadillac of things," and I said, "Well,
14 whatever, and I'll do a little lease because you're going to have to
15 pay the taxes on whatever—

16 Q: Improvements?

17 A: —improvements on it and we'll do it for five years and then
18 we'll just see what happens." And that's basically the way the
19 thing evolved. I don't remember exactly when that conversation
20 took place, but in any case, he moved in just immediately with a
21 tractor and started to work. A big green tractor showed up. He
22 didn't start to work but a big green tractor showed up and I came
23 home and trees were going down and tractor work was going on,
24 and I said, "Whoa." So I went and drew up that little lease,
25 mainly because I needed some liability protection if that's what

1 he was going to do, and gave it to him, and that's where it all got
2 started.

3 Q: Okay. You said a big green tractor, are you talking about a John
4 Deere tractor?

5 A: I don't know what brand it was but it was green. It was a
6 backhoe from Sunbelt Rentals.

7 Q: Well, that's what I was trying to figure out, the difference
8 between, when I think of a green tractor, I think of John Deere.
9 You're not talking about a tractor; you're talking about earth
10 moving equipment?

11 A: A backhoe.

12 Q: A backhoe.

13 A: From Sunbelt Rental.

14 Q: Okay. That will be green.

15 A: And some guy operating the thing for him.

16 Q: Okay. All right, did they ever do any work for you with the
17 backhoe?

18 A: No. He told me when the backhoe was down there that, a guy
19 named James Pierce was operating it, and Randy told me he had
20 that thing rented for a month and if I wanted to use the tractor
21 any, I could.

22 Q: The backhoe?

23 A: The backhoe, right. It's just a tractor with a thing on the back
24 and a bucket on the front, and, of course, I know how to operate
25 one of those, so I used it with its lights a couple of times at night

1 and cleaned out behind one of my buildings with it.
2 Q: Okay. Which was okay with Randy?
3 A: Well, he told me I could use it.
4 Q: Sure. Okay. Did the other gentleman you mentioned, did he do
5 any work on your property?
6 A: Well, everything that was done was done on my property,
7 obviously.
8 Q: Other than the—I didn't state that very well. Other than that area
9 where the barn and pasture were going.
10 A: With the tractor?
11 Q: Yes.
12 A: I don't think so.
13 Q: With the backhoe, I mean.
14 A: With the backhoe. I don't think so. He worked the road over all
15 the way down, but that was part of the, you know, that evolved
16 between me and Randy. Randy asked could he work that road
17 over and I said yes.
18 Q: Okay.
19 A: I did the work behind the building with the tractor. I don't think
20 James ever did anything for me with the tractor, that I can
21 remember.
22 Q: How long had you and Randy been neighbors at that point in
23 time?
24 A: I don't remember. I'm thinking he bought that house sometime
25 around 2000, but I, in my files and notes I have copies of the

1 deeds, I guess I could find out, but, you know, I don't remember
2 right offhand.

3 Q: Okay. Had you all gotten along well up until that point?

4 A: Yeah, I think so. You know, I didn't have any problems until
5 that point. There were only two little incidents that I'm aware of,
6 one, he and—He asked me something about a hot tub one time,
7 but this was like a, one he had bought, it's like a multi- billion
8 dollar hot tub or something and so he evidently made some deal
9 with his other neighbor, Keith Johnson, to build it and Keith was
10 going to build something overlooking the river and put this hot
11 tub that belonged to him on it. I don't know what happened to
12 that relationship but Keith told me says that, when he heard that I
13 was making a deal on the barn, he related that I had to get out of
14 that with the hot tub, I didn't want to get involved with him on
15 anything, and you're making a mistake to get into any kind of
16 business deal with him, but it didn't matter, I told him that I had
17 gotten to know him, trusted him and that was fine. The only
18 other—I don't think, I don't guess there was any other problem,
19 that I can think of.

20 Q: Okay. Had you ever—

21 A: But I don't think I would have let him use the bottom if I had.

22 Q: I didn't think so. Okay. It doesn't matter whether he got paid for
23 it or not; had Randy ever done any work for you or had you ever
24 done any work for him from a professional point of view or from
25 in his skills. I understand he sprays, so did he trade out anything

1 for you? Which is okay—
2 A: I've never traded out anything with Randy under any condition
3 whatsoever ever at all, for anything. I answered some questions
4 for him. He was involved in some kind of lawsuit and it sounded
5 like an ambulance chasing lawyer to me, I don't know who it
6 was, but it might have been you, who knows, but in any case, he
7 kept asking me questions about that thing and I kind of stayed
8 away from that. He had a wife who probably was his girlfriend at
9 that time, he was having some trouble with her, with her father
10 over something, I don't remember what, and I think I wrote a
11 letter one time, but I did it for her. As far as paying, no; as far as
12 trade, no. There was never any talk about any of that. As far as
13 him spraying, he told my wife one time that he sprays. What he
14 claimed to do was, he said he made a lot of money. In fact, he
15 related it in a letter one time that he's a real successful business
16 man, and he said he sprayed some kind of chemicals and a lot of
17 times it would be left over in his tank and he said could he spray
18 the bottom, and we said by all means, because we'd been
19 working at getting that. And I'll point out something--- where he
20 sprayed wasn't even on our property; it was on Carroll Daily's
21 property. Carroll finally took a tractor and chopped it all out of
22 the way and it gives us a lot better view of the river. To my
23 knowledge, I don't think he sprayed on our property at all, except
24 around the barn or whatever when he was doing the horses.
25 Q: Okay. Did he spray around your shed, your shop?

1 A: Not to my knowledge, but he could have. I don't know that.
2 Q: Okay.
3 A: I don't have any idea. Never was any deal with me.
4 Q: Okay. You indicated you had a permit for your shop when you
5 constructed it.
6 A: We did.
7 Q: Has it got a bathroom in there, or nothing like that? Okay. You
8 have to go up to your house, I guess, if you want to go?
9 A: Or use a tree out back.
10 Q: I got you. I got you. Did you and Randy's wife get along?
11 A: As far as I was concerned, we did. The first time I ever heard
12 that we didn't was some letter he wrote, or you wrote, I don't
13 remember one or the other, but as far as I was concerned we did.
14 Q: Okay.
15 A: Teased each other about Carolina-Clemson football extensively.
16 Q: Okay. So did you ever do work for just out of the goodness of
17 your heart for Randy? I'm talking about legal work. And the
18 same thing for him, did he ever do things for you just to help you
19 out?
20 A: Oh, he absolutely did things for me. He came down there and
21 pulled something that was stuck out with his truck, a motor home
22 I think it was. He came down there and helped me lift some stuff
23 I couldn't handle because he is a weight lifter. Absolutely that
24 kind of stuff and all. And I did the same thing for him, or I like
25 to think I did. Some girlfriend of his, some girlfriend of his got

1 stuck up there one night and he called me and wanted to know if
2 we could bring a charger up or something and get her out. He
3 loaned me a truck to go pick up a race car one time. I took his
4 truck, when he was having some kind of attack and having to
5 take Coumadin, down to get the front brakes worked on.
6 Q: Okay, normal neighborly type things that people do for one
7 another?
8 A: That's the way I saw it, yeah.
9 Q: Did you ever do any legal work for him?
10 A: It depends on what you consider legal work. I definitely wrote a
11 letter or two on his behalf, looked at some stuff for him. One
12 time he was making an addition to his house and he wanted me to
13 come up and look at it, he was unhappy about it, and he usually
14 was unhappy with anybody that did any work for him, but I
15 looked at it and he was going after the builder he had made some
16 deal with because that builder was building things crooked or
17 something and he'd come home and run the crew off for smoking
18 marijuana, it strikes me, on the site and he got a big bill for it and
19 he said he wasn't going to pay that bill, and, and I never really
20 heard anything else about that until—I wondered what all
21 happened to that, but I never heard anything else about it until I
22 got a letter from an attorney that escapes my mind which one it
23 was, over in Lexington and a copy of a release for Randy to sign,
24 so I called Randy up and asked him about it and he said yeah, he
25 said he had worked it out with his preacher and the other guy or

1 something, and so I looked it over and I said it looks fine to me
2 and had him sign it, so, you know, and mailed it back, so I'm sure
3 that was legal work. After he and his wife split, he brought in
4 some, or I don't know who brought it in because they didn't
5 bring it in to me, they brought it in Janet, but needed some deed
6 reversals. He had had some lawyer do a family trust and he just
7 wanted to know if we could draft some deeds and put it back in
8 his name, and we did and gave them to him. He asked about
9 other things that I didn't do. He had some, a contract in the
10 mountains or something that the contract had gone sour on and I
11 made some phone calls and couldn't find anybody at any of the
12 addresses he gave me. I just kind of told him that there wasn't
13 anything there in that, and he said well, if you can do anything,
14 you can have it, but, you know, it wasn't something I decided to
15 do anything about. What else? He brought a whole stack of stuff
16 by before the deal on the barn soured and wanted me to do estate
17 planning for him, and I told him I really didn't do that, and as a
18 matter of fact, I think your office picked all of that stuff up. We
19 never did anything on it.

20 Q: Okay. So—

21 A: I did him favors, he did me favors. He wanted to buy a Jaguar
22 we had and I said fine and we just kind of did it on a shake and
23 he was going to pay me a certain amount of money and I went on
24 and signed the title to him.

25 Q: When was that?

1 A: I don't remember the year.
2 Q: Before the barn or after the barn situation?
3 A: What part of the barn situation?
4 Q: When you all entered into the agreement?
5 A: It was probably--Well it was definitely before the Thanksgiving
6 that soured the barn totally.
7 Q: Okay.
8 A: But it was after the barn was there.
9 Q: Okay. You all had a deal for a Jaguar?
10 A: Uh-huh.
11 Q: And you signed the title over? Did he pay you or did he not pay
12 you?
13 A: He never really paid me all of it, but I had signed the title over to
14 him. He came into my office after the, I wasn't there, but he
15 came into my office after the cabin burned down and SLED
16 agents were there and all and left a check for \$500.00 and that's
17 the last that he's paid on it.
18 Q: What year was the Jaguar?
19 A: I don't remember.
20 Q: Did it run?
21 A: It was one my wife had driven and he wanted it for a girlfriend he
22 had at that time, wanted to surprise her with it or whatever,
23 wanted to paint it and restore it and all of that, and I can't
24 remember exactly, when you say did it run, yeah, it obviously ran
25 because I drove it with him following me to the body shop, but it

1 hadn't been run in probably a year or something like that.
2 Q: What year was it?
3 A: I don't remember.
4 Q: Did you all have a bill of sale or anything like that?
5 A: Just signed the title over to him.
6 Q: You didn't put anything on the title as far as—
7 A: No.
8 Q: —the contract terms?
9 A: No.
10 Q: Okay. So if we could go back to the legal work, the legal work
11 that you may have done for him, review the lease?
12 A: Yeah.
13 Q: You wrote a letter. I guess that was a collection type letter?
14 A: No. I really did that for his wife. You're talking about the one
15 on the flower boxes or floating flower boxes or something like
16 that?
17 Q: I don't know.
18 A: I don't even know, I don't know either, to be honest with you,
19 but it was something about floating flower boxes.
20 Q: You wrote it for either he or his wife, you wrote a letter of some
21 type and you and I can't recall any of the details.
22 A: To her daddy or whatever. Her daddy and maybe her brother, I
23 can't remember.
24 Q: And then there was something where he consulted with you
25 about some house construction, where he kicked a contractor out

1 because of the marijuana?
2 A: That was the same thing.
3 Q: And that resulted in the release?
4 A: Yes, six months later or something like that.
5 Q: And then there were some deeds that you had—You prepared
6 deeds for him?
7 A: No, we just copied the ones he brought in and reverse changed
8 the name. It was something he had deeded out to somebody—
9 Q: Yeah.
10 A: —or deeded out to a family trust or to his wife or something like
11 that and he needed it brought back into his name.
12 Q: So you never did any estate planning?
13 A: No.
14 Q: Never formed any family partnerships or anything of that nature?
15 A: No. Some other lawyer did all that for him.
16 Q: Okay. All right, so that's all the legal work that you did, what
17 you've talked about, that you can recall?
18 A: That's all I can remember, yeah.
19 Q: All right.
20 A: He always asked a lot of questions, and I've never—
21 Q: That comes with being a lawyer, doesn't it?
22 A: Yeah, I've never really run into a problem with any of that
23 before. I guess I've always heard about those problems at
24 seminars, like the rest of us, but I usually just don't—
25 Q: Do you need to take a break? This isn't an endurance contest.

1 A: I'm fine.
2 Q: Okay. So I want to talk about this lease that your, in your law
3 office, you have a secretary, paralegal, legal assistant?
4 A: I have my wife. She serves in those capacities.
5 Q: Okay. And is she a paralegal, is she a legal assistant, or is she
6 just helping you because she's your wife?
7 A: What do you call a legal assistant?
8 Q: I would think of somebody with some kind of credentials or
9 background of doing the work.
10 A: She has nothing except ten years of doing the work for me.
11 Q: Okay. Well, I think that would probably qualify. Not a paralegal
12 and no degree in law?
13 A: That's correct.
14 Q: What is her degree in? Or maybe I'll re-state that. Does she
15 have a college degree?
16 A: Yeah.
17 Q: Where did she go to college?
18 A: Georgia Southern.
19 Q: Okay. Four year degree?
20 A: Yeah.
21 Q: Okay, that's all. I don't need to go into that.
22 A: I'm not positive, to be honest with you. Something in secretary
23 education or special ed or something.
24 Q: All right.
25 A: I've never really paid much attention to it.

1 Q: All right, do you hold yourself out as being a real estate lawyer?
2 A: Absolutely.
3 Q: I was looking at the, at the—
4 A: I'm a closing lawyer.
5 Q: All right. —the lease in this case.
6 A: Very simple, very straight forward, written to protect me and so
7 that there wouldn't be any legalese involved in the thing.
8 Q: Okay. I'm not trying to be at all insulting, please don't take it
9 that way.
10 A: You've already said what you said about it, but go ahead.
11 Q: But having said that, I've never seen a lease drafted by a lawyer
12 with so many errors in it. What's, what's, can you explain it?
13 A: I don't know what errors you're talking about.
14 Q: Do you know what a lessor is?
15 A: Are they typographical type errors?
16 Q: Do you know how to spell the word lessor?
17 A: Probably. How is it spelled there?
18 Q: The wrong way.
19 A: How is that?
20 Q: L-e-a-s-s-o-r.
21 A: Yeah, that obviously would be wrong. Does that bother you?
22 Q: Well—
23 MR. MOORE: No, no, no, no, no, you
24 answer his question.
25 Q: What bothers me is that there are so many problems, and you

1 may not agree, and that's your right.

2 A: I don't know. I would have dictated the thing and let Janet type
3 it.

4 Q: Okay. As a real estate lawyer, I'm sure you've got leases in your
5 office. Why didn't you just use a lease?

6 A: Because this was a simple agreement just to protect me and that's
7 what I did. I didn't want a long, really making a formal lease per
8 se. It was a dollar a year for him to have certain responsibilities
9 and us to share usage down there, just something that says.

10 Q: Well, I'm going to disagree with you. I'm not trying to argue but
11 I'm trying to figure something out. I'm looking at the lease
12 premises is the portion of the property quote, "is the portion of
13 the property on the eastern side of the old creek bed known as the
14 bottom land." There was no more—Did you feel that there was
15 no more need for a description other than that?

16 A: No, everybody pretty much knows what the bottom land is down
17 there.

18 Q: All right.

19 A: For something like to keep horses on, we weren't going to survey
20 it—

21 Q: I understand.

22 A: —and create a formal lease on it.

23 Q: I understand. The next one, it says: "The term of this lease is for
24 five years renewable thereafter as a month to month lease," and I
25 was reading that as it is verbatim. There's no, there's no comma

1 and no punctuation between the words five year, five years and
2 then renewable. So the way I'm reading this is it says it's for five
3 years renewable and it doesn't have a comma after renewable
4 either, so it appears to be it's five years renewable. This is a
5 lease, a five year, so it would be ten years, thereafter as a month
6 to month lease.

7 A: Well—

8 Q: What is it? I'm trying to—

9 A: That's the way you're interpreting it.

10 Q: Okay.

11 A: That's not the way I interpreted it.

12 Q: Okay. And again, I'm not trying to argue with you, I'm trying to
13 figure out where you're coming from and what you—

14 A: I interpret it as a five year lease and thereafter month to month.

15 Q: Okay.

16 A: But I really didn't have any intentions—

17 Q: Okay. Why did you not, after the word five years, this term, the
18 term of this lease is for five years, why didn't, why did you use
19 the word renewable, and the second part of that is why didn't you
20 just put a comma after years, if you intended this just to be five
21 years and then going month to month?

22 A: I don't know. I think it's perfectly clear.

23 Q: Okay.

24 A: I don't think that's what our argument is about either.

25 Q: Okay. I'm just trying to figure out what, what's going on here

1 because I'm—
2 A: I think you can read it and understand it.
3 Q: Well, would you agree with me that, you know, that reasonable
4 people could disagree as to this—
5 A: No, I think reasonable people—
6 Q: If I could finish.
7 A: Certainly.
8 Q: —that one person might read this as being five years comma
9 renewable thereafter, but there isn't a comma, five years comma
10 renewable thereafter as a month to month lease, and someone else
11 may read it five years renewable comma thereafter as a month to
12 month lease? Couldn't reasonable people look at that different
13 ways?
14 A: I don't think there's any comma there and I don't believe there's
15 any disagreement. But you can put it before all the reasonable
16 people you want to and they'll interpret it just like it's intended to
17 be interpreted.
18 Q: All right. Okay, going down to number six, and I'm assuming
19 this is just a typo, it says, and I'm reading, quote: "Turned over to
20 the lessor," and again, lessor is spelled wrong but I don't know if
21 that's significant for what we're talking about, "at the end of this
22 lease I good condition." Is that suppose to be in good condition?
23 It just has a capital I.
24 A: Yes, that's what it means.
25 Q: That's suppose to be in?

1 A: Right.

2 Q: Okay. The next one says: "The Efland Family shall maintain
3 equal rights to the premises during the term of the lease." Did
4 you know that Randy was going to build a barn and have pasture
5 for horses?

6 A: I certainly knew he was going to have a pasture for horses, and
7 you might notice in there that it says that we would be able to
8 keep horses in there, too, if we wanted to.

9 Q: I do. I'm going to lead into that.

10 A: Okay.

11 Q: Okay, the reason I say that—

12 A: I say I knew that. Now as far as the barn, no, at that point I really
13 didn't understand what he was going to build. I thought he was
14 going to have a shed.

15 Q: Okay. The reason I'm asking this is because it says that and, you
16 know, I told you I like to be pretty straight up and tell you what
17 my thinking is. I'd suggest to you that that isn't very well
18 written, but you have to maybe look at the intent of the parties,
19 which is the Efland Family shall maintain equal rights to the
20 premises during the terms of the lease. With the understanding
21 that, that this was going to, this bottom land if you will, was
22 going to be used for horses, what does the word equal rights,
23 what did that mean to you? Did it mean for the use of a horse or
24 could you run a race track down there, or what—

25 A: I think equal rights speaks for itself, and what it says is what it

1 means.

2 Q: Okay. Well, what did it mean to you?

3 A: That we had equal rights down there. As a matter of fact, we
4 even required Randy to put a fence down near the river, a gate
5 down near the river so we can still access the river through the
6 pasture.

7 Q: I understand that, but when it says equal rights, does that mean
8 for the use of horses or could you use it for a race track, could
9 you use it for—

10 A: I would assume equal rights means whatever people think equal
11 rights do, but I would also think that in reasonableness people
12 knew we were going to keep horses in there—

13 Q: Okay.

14 A: —we might keep a horse in there and that we did other things
15 down there. I'd also point out to you that Randy had this thing
16 for over a month to examine. I assume he ran it by you. Were
17 you his lawyer then? If you were, I would assume you read it.

18 Q: Well, I wasn't, but I'm not—

19 A: Okay.

20 Q: —I'm not the witness here. There are, when we use the word
21 equal rights, there could be uses that would be inconsistent with
22 having horses, such as a race track, a repair shop, or—

23 A: I would think that's true. —

24 Q: So was it your anticipation if you all wanted to walk around out
25 there, wanted to have horses down there, that that's what it meant

1 by equal rights?

2 A: Absolutely. We'd always played down there. My kids had
3 played down there, we ran little airplanes and various and sundry
4 things down there. We continued to do it without his
5 complaining—

6 Q: Well, let's talk about that. When you're talking about equal
7 rights, does it mean you could do things that would be
8 inconsistent with having horses?

9 A: I would assume I could do almost anything. It said equal rights.

10 Q: Okay.

11 A: We didn't even define how big this pasture was going to be, you
12 notice, as you pointed out.

13 Q: I did note that.

14 A: We didn't, we just loosely said the bottom land.

15 Q: I just think about things like having, you mentioned airplanes. A
16 RC airplane that's, you know, they're real loud and you've got
17 horses and it would be, seems to me that would be inconsistent
18 with the use of the property.

19 A: I don't know what you consider real loud and I don't know what
20 you consider inconsistent. The fact is we did those things, even
21 when the horses were down there, with his mother down there.
22 She watched and enjoyed it. My son got along famously with his
23 mother. She cooked him cakes. Matter of fact, the last one that
24 she cooked him was the one was when the river cabin burned
25 down. We took one with us that weekend that she cooked him

1 with some kind of, I don't know what it was, something like a
2 pineapple upside down cake that he liked, but in any case, she
3 was there all day long, she observed what was going on, didn't
4 seem to be any complaints about it. We never did anything
5 consistent. Yeah, there's ways to respect people and there are
6 things and we never did anything in any way that would endanger
7 his horses in any method or scare them in any way.

8 Q: But did you ever ride four wheelers, or—
9 A: Absolutely.

10 Q: —did children ride four wheelers in the pasture where the horses
11 were?
12 A: Not when they were in it, but absolutely, golf carts. Matter of
13 fact, his golf cart, too. At times our golf cart and his mother's
14 golf cart were out there at the same time.

15 Q: Okay. Do you have a four wheeler?
16 A: Absolutely.

17 Q: What kind is it?
18 A: It's a Yamaha 250 cc.

19 Q: Okay, so it's different from a golf cart.
20 A: That's absolutely right. We have that and a golf cart.

21 Q: Okay. Do your son's friends have four wheelers?
22 A: Absolutely. Everybody out there seems to.

23 Q: Did they ride in the pasture with your son on four wheelers?
24 A: To my knowledge, nobody's four wheeler was in the pasture. Of
25 course, I can't speak for ever and ever, but nobody's four wheeler

1 was in the pasture with the exception of my son's four wheeler as
2 long as the horses were down there, ever. Now, I won't swear
3 that that didn't happen. They might have transported a boat
4 across there with a four wheeler, and I know that when the
5 pasture was being built and it was trying to be sodded, some kids
6 came down there, and I'm really not sure who they were, but
7 some kids came down there on four wheelers and rode around
8 because—Well, some adults, too. Everybody out there has four
9 wheelers, but some of them rode around on the four wheelers and
10 Randy was upset because he was trying to sod that ground up
11 there and I said I would try to see that that didn't happen, too,
12 and I told my son not to take that four wheeler in there because
13 we were trying to get the grass growing. Now, I don't think any
14 four wheelers were ever in there other than that and other than
15 our four wheeler and our four wheeler was definitely in and out
16 of there a good bit.

*throw it
forward
to it*

17 Q: Okay.

18 A: For the entire time.

19 Q: Okay. You mentioned having an RC airplane, remote control
20 airplane?

21 A: No, it wasn't really a—No, when I said that I didn't intend to say
22 that.

23 Q: Okay. Maybe I'm mistaken, I apologize.

24 A: I'm not sure what, I'm not sure about the terminology of remote
25 control. About the time the pasture was being built, and before

1 the pasture was built, we had some kind of little airplane and it
2 was a battery powered thing and it would fly, but I don't think
3 you could really control it but I'm really not sure how it worked.
4 My son had the thing.

5 Q: Was it powered with gasoline or was it—

6 A: No, it was like household batteries.

7 Q: Okay. How about a little race car?

8 A: Oh, absolutely, we've got a radio controlled little cars that run on
9 the ground.

10 Q: And does that operate on electricity or gasoline, or do you know?

11 A: He had both. He's had three or four of them. I think he's had
12 both gasoline and electric ones.

13 Q: Do you still have them?

14 A: I imagine. He doesn't really play with those things anymore.
15 He's sort of, he's almost 18, but—

16 Q: I understand.

17 A: —but I imagine those things are still around there.

18 Q: Okay. All right. Is that one noisy, the gasoline operated one?

19 A: Well, it depends on how you define noise. I've got a friend that's
20 a real estate appraiser, and Randy's Harley would be so loud a
21 noise he would be calling the cops every night, and I've got other
22 people like us that noise doesn't bother at all, so I don't know
23 how you define noise.

24 Q: You've got race cars?

25 A: Yeah. I don't know how you'd define noise. I suppose how you

1 define noise.

2 Q: Okay.

3 MR. TRUSLOW: I'm Doug Truslow.

4 MR. THOMPSON: I'm Barry Thompson.

5 MR. TRUSLOW: Nice to see you.

6 Q: Are you still okay, or do you need a break?

7 A: No, I'm fine.

8 Q: All right, well then, okay, we were talking about having a radio

9 controlled, gasoline powered race car.

10 A: Yeah, you asked if they were noisy.

11 Q: And you and I were talking I think when Barry came in that

12 that's a relative term. Some people think a Harley is noisy, some

13 people think it's music; some people think race cars are noisy,

14 some people think it's music. Is that more or less correct?

15 A: That's essentially right.

16 Q: But was Randy, for example, riding a motorcycle around the

17 horses?

18 A: No.

19 Q: Okay. Your race cars, were they around the horses?

20 A: No.

21 Q: Now the gasoline powered, remote controlled race car, was it

22 ever run in the pasture where the horses were, to your

23 knowledge?

24 A: No.

25 Q: Why do you say that?

1 A: There were no horses in the pasture at any time it was run.
2 Q: Okay, are you certain about that?
3 A: I'm positive about that.
4 Q: How do you know that?
5 A: My son told me it hadn't.
6 Q: Okay. All right.
7 A: The airplane was run in there while the horses were in there.
8 Q: Okay. What did he say about that?
9 A: Nothing. I was there with him, so was Randy's mother.
10 Q: Okay. Well, that was a battery controlled though?
11 A: Uh-huh.
12 Q: I'm talking about gasoline powered, something that might be
13 loud, and I understand you have a very nice son, I'm not trying to
14 be critical, I'm trying to find out what your thinking is. The
15 reason that you say that your son never had the radio controlled,
16 gasoline powered race car in the pasture when the horses were
17 there is because that's what he told you?
18 A: That's correct.
19 MR. THOMPSON: Object to the form.
20 Q: Okay. And was that the only reason? He's your son.
21 A: Well, I watched a lot.
22 Q: Okay. But I understand—
23 A: You know something? The radio, the gasoline powered car was
24 broken and in the shop over at Lexington during almost all the
25 time that the horses even were there, excluding that Thanksgiving

1 Day that resulted in Randy calling the police and my telling him
2 to leave, and that particular day, that was Thanksgiving, and I
3 went down there and watched while that car was being run and
4 there were no horses out, and I don't think that little car, because
5 I paid for the repair job in Lexington, I don't think it had even
6 been runable in a year previous to that.

7 Q: Is it your testimony that you or your son had a gasoline powered,
8 radio controlled car that you ran or that he ran in the pasture on
9 Thanksgiving Day?

10 A: Yes, it is.

11 Q: And it's your testimony that the horses were in the barn but not
12 in the pasture, or the horses weren't there at all?

13 A: They were in the barn.

14 Q: All right. And your testimony is you were with him the entire
15 time?

16 A: No, I never said that.

17 Q: All right, what did you say?

18 A: I said that I walked down there several times, I watched while
19 they were running that car. I never said that I was there all day
20 long.

21 Q: Who is they?

22 A: My son and two guys that were guest of ours for dinner. One of
23 them is Russ Owen, the other one is Thad Mitchell.

24 Q: All right.

25 A: They're in their mid-twenties.

1 Q: Okay. You said that this, if I understood you correctly, that this
2 gasoline powered, remote controlled car was in the shop for a
3 year?
4 A: No, but I think it was broken for about a year, my son would
5 know that better than I, and it was in the shop a long time, a shop
6 over in Lexington.
7 Q: Where was it?
8 A: It's across from Addy Dodge, but I don't remember the name of
9 the little shop. It didn't seem like they could ever get it running.
10 It was there a considerable amount of time and I paid for it to be
11 fixed. I went over there with him one time about it.
12 Q: Okay. What medium did you use to pay for it? Did you use a
13 credit card, cash, check?
14 A: For what?
15 Q: To pay for the repairs.
16 A: No, I just gave Danny cash I reckon. I don't really know, but I'm
17 sure, I'm assuming I gave him cash.
18 Q: Did he pick it up or did you pick it up?
19 A: I don't really remember. It strikes me that I went—I went there
20 one time. I think it was, I think he had carried it, got it back and
21 it wouldn't run and we went back again and I went with him, and
22 then eventually he got it back, but again, you'd probably have to
23 ask him those questions because I don't remember.
24 Q: Okay. What I was trying to do is get a time frame of when this,
25 when this gasoline powered, remote controlled car would have

1 been—
2 A: I think you'd have to ask him.
3 Q: Okay. Well, I don't know that I want to ask a child—
4 A: He's not a child.
5 Q: He's 17?
6 A: He's 17 now. He'll be 18 in a couple of months.
7 Q: All right.
8 A: And he will be a witness anyway. If you'd like to ask him, I'd
9 suggest you do it.
10 Q: All right. Paragraph seven of the lease says that: "The Efland
11 Family shall maintain equal rights to the premises during the term
12 of the lease." And paragraph twelve says: "No accompanied
13 guest or third parties shall be allowed on the premises by the
14 lessee." Lessee is spelled wrong again, but that's not significant
15 for the purposes of this.
16 A: That's correct. That was Randy.
17 Q: Well, my question is this. It talks about equal rights. Does that
18 mean that you, that you could have, allow people on the premises
19 where the horses and the barn were without you or one of your
20 family members being present?
21 A: I assume it did.
22 Q: So that if you wanted to allow anybody in the neighborhood—
23 A: He knew up-front that all the neighbors used all of that area down
24 there.
25 Q: So if I can finish my question. Is it correct that if you wanted to

1 let the entire neighborhood go down into the area within the
2 fence where the barn and the horses were, that they could do that
3 and he wouldn't have any say-so? Is that your testimony?

4 MR. THOMPSON: Object to the form.

5 Answer the question.

6 A: Basically yes.

7 Q: All right.

8 A: This is not a neighborhood where there is ten thousand people
9 living in it. There's only a handful of houses, a handful of
10 people, all of which we all know, probably all of which had been
11 friends of Randy and at parties at his house, because when he
12 first came there he promptly invited everybody to two or three
13 parties at his house, and none of which, other than Talbert Turner
14 that I knew at the time that he might not get along with.

15 Q: Okay.

16 A: We didn't envision anything changing from the way that it was
17 working, at least I didn't.

18 Q: You're not a smoker, are you?

19 A: No.

20 Q: How about any of your friends, are any of them smokers? People
21 that would come down to the river cabin or come down to the
22 pasture.

23 A: Not to my knowledge. It's possible. Now when he was building
24 the barn—

25 Q: I'm not talking about when he was building.

1 A: Well, the building was most of the time this was going on, so
2 anybody that would have been there could have been there right
3 up to the end with the pretense of building on the barn because it
4 never got finished. I remember some smokers but I don't
5 remember who. It seems like the guy that he hired as an
6 electrician might have been, but I can't remember for sure.

7 Q: Okay. I'm thinking about, you mentioned somebody named
8 Talbert and somebody I can't remember what the other man's
9 name was right now, but two of your friends that come down to
10 the river.

11 A: Talbert is not a smoker.

12 Q: And there was another one.

13 A: I'm pretty sure. Keith Johnson. He's not a smoker I know.

14 Q: I believe I've got his name here.

15 A: Thad Mitchell and the guys that help me periodically on the race
16 car is Thad Mitchell and Ross Owen, but I know neither one of
17 them smoke. I don't really know of any that smoke.

18 Q: That's good. I'll think of the man's name in a minute. You
19 mentioned it once before, but I thought I had it written down but
20 I don't. It was somebody that you said was friends of Randy or
21 they'd had a falling out.

22 A: Mike Suchey?

23 Q: Suchey, Mike Suchey.

24 A: I don't know whether Mike smokes or not. I don't have any idea.

25 Q: Okay. Let me ask you this. Would it be reasonable, given a barn

1 with horses—

2 MR. THOMPSON: Object to the form. Go
3 ahead.

4 Q: —in your mind, for Randy to object to people smoking around
5 the horses? Would that be reasonable?

6 A: I can't, I probably would have objected if I had seen anybody
7 smoking around that, you know. I don't know of anybody that
8 was smoking around, but if I had seen somebody smoking around
9 the barn, I probably would have objected to it.

10 Q: Okay.

11 A: I don't like smoking and I don't tend to get along well with
12 people that do smoke and I don't allow it in the house. When we
13 have a party, I don't even make provision for it.

14 Q: Okay. For your house, I'm just curious, that's the reason why
15 I'm asking this, do you have a well for your house?

16 A: Yeah. I owned some land adjoining to that and had a mobile
17 home on it, had a well put in on it back in the 70s, and when I
18 built my house and applied for the permit, I listed that well.

19 Q: Okay.

20 A: And we ran the water, a big water line from that well to my
21 house. Later, I sold that little piece of land and put in the deed a
22 provision that I still use the water from the well, and it's my
23 understanding, as a result of what I believe to be Randy making a
24 complaint on the well out there without knowing what he was
25 doing and the guy coming out, that well that's kind of a

1 grandfather clause.

2 Q: Okay, so you—

3 A: If that's what you're driving at.

4 Q: Well, what I was trying to figure out, whether you had a, I'm

5 going to call it a residential well or was it an agriculture well.

6 A: It's a deep well.

7 Q: Okay. Okay, so you got a permit for that?

8 A: I don't know, when it was put in in the 70s, it was put in by a

9 well company and I assume it was put in with all the correct

10 credentials.

11 Q: The county doesn't care.

12 A: I don't know. You're telling me that.

13 Q: All right, I'm saying it's a question. I assume the county doesn't

14 care, there's no big deal and we can, that's the end of that

15 subject?

16 A: I never heard a word about it.

17 Q: Okay.

18 A: Other than somebody made one of these little anonymous

19 complaints—

20 Q: Okay.

21 A: —and the guy that came out from the county led me to believe it

22 was a neighbor of mine in a log house but he couldn't name who,

23 and we talked about it and I showed him how it was done, and he

24 said, "Well, that's probably grand fathered.

25 Q: Okay.

1 A: I don't know whether any of that to be the truth. I've never
2 investigated, no expert on it, that's the way I did it, that's the way
3 it's done.

4 Q: All right. Let me go back to the barn. Randy is building the
5 barn. We're at the point where Randy is building the barn, he's
6 put in—There's electricity going down there, isn't there?

7 A: Well, that's about where all of the problem started, which was
8 right to begin with.

9 Q: Okay.

10 A: Randy asked me to sign a building permit sometime early on, so I
11 did. He described what he wanted to build. And as I told you
12 earlier, we'd already had the discussion between, about doing
13 things in the Cadillac way and the Morton Building people, and
14 what I envisioned and what he was now talking about were two
15 different things, but I signed his building permit for him and he
16 had told me, he said he wanted to put a well in. I said, well, you
17 know, we talked about the water coming from the river for the
18 horses, and he said well, he had talked with, it strikes me it was
19 some people at Clemson or some place that knew about horses
20 and that that water wasn't the best for them. He wanted to put a
21 well in for it. Well, we had a little problem because it would
22 require electricity. He did some checking on the electricity and
23 they were going to have to run a line down the road by my shop.
24 Now we had put electricity into my shop with a different way and
25 it had a separate meter on it and there were no lines in there, and I

1 finally said well, you can run the line but it's going to have to be
2 underground. I don't know, you know, I'm not having, we're
3 very green people, extremely more so than you'd ever believe,
4 and I'm not having the trees and bushes cut down, so it's got to
5 be underground and you can go ahead and run the line out there
6 so that you can put your well in. Well, the next thing I knew is I
7 came home one day and the power company was out there, had
8 already chopped some trees and had flags all over the things and
9 I stopped them, and so they called their supervisor, a Mid
10 Carolina guy, and I said I'm not having this cut out along here
11 period. So he explained to me that it was going to cost Randy a
12 fortune if they tried to run this thing underground, and I think
13 where it entered a flood plain down near the pasture there were
14 some problems also. So finally I agreed that they could run it
15 overhead but they couldn't cut trees or anything. There was a
16 very minimum they showed me exactly what they needed to cut
17 to snake it through, and I agreed and they were quick to point out
18 that we could have loss of power pretty easily in storms, and I
19 said well, we'll just have to live with that but we're not cutting
20 power lines in here, so they put the power line in. I never really
21 was asked for permits or signing or anything after that, but a well
22 got put in, so I assume it was permitted, I really don't know.

23 Q: Did you sign a permit?

24 A: No. Not to my knowledge, I didn't.

25 Q: Okay. All right, let me just make sure and then we'll go on. You

1 signed the building permit to allow the—
2 A: I signed a building permit, yes.
3 Q: —for the barn to be built?
4 A: And classified it to be a barn with a well.
5 Q: Okay. And that answers that about the well. A septic tank—
6 A: Is that all you have to have for a well? I didn't know if that was
7 true or not.
8 Q: Well, actually, there are a couple other things, but I—
9 A: I thought there was. I read in the paper about some laws about
10 the wells, but I don't know what's involved in getting a well, but
11 I was never asked beyond that to do anything.
12 Q: I do, but I'm not under, I'm not being deposed.
13 A: I understand.
14 Q: A septic tank, was there ever a septic tank put in?
15 A: Yeah, and I asked specifically about that because I was a little
16 upset about that one. I went down there and the barn was built in
17 kind of an L-shape and there was a big hole being dug in the
18 ground and some kind of plastic half-moon thing being put in,
19 and I hadn't been down there in a day or two, hadn't seen that
20 thing, and I started asking about it, and I don't remember who
21 was there but they explained to me it was something called an
22 experimental system, which evidently is just a word they use to
23 describe it because it's evidently allowed to be put in a lot of
24 places, and I asked specifically was there a permit to put that
25 thing in and the fellow putting it in told me no, but it didn't make

1 any difference, so he and I had a few words and I went away. I
2 decided not to mess with it, but there's something suppose to be a
3 septic tank in there. Now later I asked a friend of mine about
4 this experimental system and he said yeah, he had one at his
5 house and described it but it would have been much more
6 expensive than whatever this was. The other thing, I never really
7 thought anything more about that until I went down to the county
8 and got a copy of the building permit for the barn to see just
9 exactly what was permitted, and the building permit had been
10 changed and my initials or name or something on it forged and
11 accepted as a shed only, and then things began to make sense to
12 me. So when I inquired where the barn was, it was in a flood
13 zone also, and, although I would imagine it really isn't if you did
14 an accurate survey, but the county records showed it in a flood
15 zone, and so therefore, the county would not permit anything but
16 a roof type shed there. The permit had been changed from what I
17 had originally signed and somebody's initials and other people
18 had signed on it and voided over what I did. In any case, at that
19 point, I realized that, I realized what really had happened and that
20 most of the stuff was just put in bogus, and I realized why the
21 inspections, I pulled the inspection permits, I mean the
22 inspector's receipts and looked at them at that point, too, and
23 when the barn was built, it was—Well, you'd have to go back to
24 how it got where it is first. That was a different discrepancy, but
25 aside from that, skipping that, you may want to ask about that,

1 but some jacklegs had borrowed some equipment from the guy
2 they worked for on weekdays, evidently, and come down there
3 and drilled some holes to put a pole type structure up, and they
4 brought in a lot of little concrete pills to go under the poles, and
5 I'd had a pole building or two, three of them as a matter of fact,
6 built, so I was familiar with what had to be done, and you have to
7 dig these holes, and it's kind of a farce if you ask me, but the
8 inspector has to come out, and he did because he signed the thing
9 on it, and look at the holes and see that there's a concrete thing,
10 which is the footing, before you really stand the poles up and
11 concrete them in. Well, not all the holes were there that the barn
12 was going to be, but they had put enough in to make it look like a
13 thing to get the inspection. So I went down there the next day
14 and there were no pills in some of the holes, and they were busy
15 putting the—

16 Q: Pills?

17 A: Yeah, these concrete—

18 Q: Piers?

19 A: —footings.

20 Q: Okay.

21 A: I call them pills. It's a concrete piece about that big. So, they
22 weren't in the holes, and I asked the guy that was putting it
23 up—Randy wasn't around—and I asked the guy that was putting
24 it up, and he said oh, there's plenty of rock down there to hold it,
25 we don't need to do that, and he continued to do it. Well, I

1 wasn't really going to stop them, but that didn't look like the
2 right way to me. The concrete things are still down there to this
3 day that were suppose to go under them. So they put their poles
4 up and they put a roof on the thing. Well, another problem
5 happened on the roof. At that time I went to Randy, I said, you
6 know, because I had an interest in those things. It was going to
7 become mine some day and I didn't want it to be shoddily built
8 or fall in or whatever, and they hadn't framed it right. So I raised
9 enough cane about that to where he went back down there and
10 had them frame the corners right on it, and they put this roof on
11 it. Well, the permit was tacked to, I'm wanting to say it was to a
12 temporary power pole that I put him in because I had a temporary
13 power pole, a construction pole, and I put that in for him and
14 wired it right so that it would get inspected and he could get
15 temporary electricity, something I know how to do. So, the
16 permit was there, and I just assumed, I guess, that each part
17 would be inspected, but what turns out was he had just gotten,
18 and evidently he knew this, he'd just gotten the permit to put this
19 shed roof in for equipment. He did that, had it inspected, which
20 means he could get his final on that and then he went on about
21 building his barn after the inspectors had gone away. This was a
22 place where nobody else is going to come around or ask any
23 questions or look anyway. So after that, the so-called septic tank
24 thing went in, concrete went in, he commenced to putting
25 plywood on the sides of it, and what not.

1 Q: Okay.

2 A: So the thing is pretty much a bogus structure the way it's built.

3 We hadn't done anything, I don't really know where you stand

4 on something like that. Probably nowhere, the county probably

5 doesn't care anymore, but that's my guess.

6 Q: Do you have, you mentioned getting or reviewing documents

7 with the county. Do you have those documents?

8 A: Yeah, they're—

9 Q: Have they been produced?

10 A: I have no idea. You'd have to ask my attorneys.

11 Q: Okay. Where are those records? You say they're in—Do you

12 have a file on this?

13 A: No, everything was given to Jake Moore.

14 Q: Okay, so you don't have anything else?

15 A: I have nothing.

16 Q: Okay. I don't believe I have those, but we can deal with those on

17 another occasion.

18 A: I'm sure he can find them.

19 Q: I don't think I have them yet. All right, so—

20 A: They're also a public record, I'd add. You can go down and get

21 them real easy.

22 Q: It sounded to me like, from what you said, that you were, on a

23 pretty regular basis, that you were down there where the barn and

24 the pasture were since you had a vested interest in the property?

25 A: Absolutely.

1 Q: And I think you said that you had some objection to some shoddy
2 work and asked that it be re-done?
3 A: Yeah. Well, it wasn't framed right.
4 Q: Okay.
5 A: We had a lot of discussions about a lot of things in there. There
6 was a lot of it I just didn't understand why it was being done that
7 way.
8 Q: And when you said we had a lot of discussions, you're talking
9 about you and Randy?
10 A: Yes.
11 Q: What did you all discuss?
12 A: Well, one of the things we discussed was why the barn was there
13 anyway. I hadn't been down there in a couple of days and, of
14 course, what I had done and had envisioned doing was loaning
15 him the bottom pasture to keep his horses in and I figured he
16 needed a shed down there. Well, there's bluff land behind that
17 pasture, and I mean bluff land.
18 Q: I understand.
19 A: And it's not considered part of the bottoms, and everybody out
20 there knows the bottoms. The bottom land is what's specified in
21 this contract; nothing about any other land, and I came in one day
22 and all the trees were gone, and it had probably been two or three
23 days since I had been there, and James Pierce, a guy that he hired,
24 worked at weird times, but I came in and they had carved into the
25 side of this up higher where I recognized that it probably never

1 would flood and already had the trees down and already had it
2 carved and I was a little upset about that. I hadn't envisioned
3 that. I wanted most of that left in its natural state up there. Some
4 day one of my kids might want to build in there and I'm not sure
5 they can anymore, but.

6 Q: Why is that?

7 A: I don't much think that I can subdivide under the current laws.
8 For a long time, we kind of had an exception that, in the county,
9 that, even without the fifty foot right-of-way or two shared, a
10 flagpole system that's used to subdivide all around back to a kept
11 county road, that there was an exception. I don't know whether it
12 was a formal exception or just whether we just kind of did it in
13 the county, but family members could go ahead and put it on
14 family pieces of land. Now, it's my understanding that that's all
15 changed now and that family members are going to have to
16 comply also to put anything in, but in any case, I don't think it
17 could have been subdivided. That's my understanding on the
18 thing. But when I saw this, it kind of irked me and I had some
19 words with Randy about it going up there, and he said well, I got
20 to have a place to get my horses out if the river floods, and I kind
21 of acquiesced as I did on everything and I shouldn't have from
22 the very start when things started irking me but I just kind of did-

23 --

24 Q: Okay.

25 A: —and let it go. And so that's how the thing got to be where it

1 got to be.

2 Q: All right.

3 A: Which was not contemplated to be in the bottom land that was

4 the leased property.

5 Q: Okay. Just to put a cap on this and then I can move on, you and

6 Randy entered into a lease. Then Randy started or either did it or

7 had people come fix up the area where the pasture would be and

8 constructed the barn where it is and you were seeing it, not every

9 day but almost every day?

10 A: Regularly.

11 Q: And you were involved if there was something that you saw that

12 you didn't like, you'd tell Randy about it and you all would work

13 it out?

14 A: That, plus I helped a lot, you know.

15 Q: What were you doing?

16 A: Various and sundry things, whatever, whatever I could to help

17 him. You know, I put the temporary power structure in on the

18 thing.

19 Q: Okay. All right, I don't know how else to ask it but to say it like

20 this. What went south? What problems did you have?

21 A: Well, the problems started right to begin with. The problems

22 started with chaining the road down to my shop, and then the

23 problem started with his complaining about the people going

24 down there constantly.

25 Q: Okay.

1 A: I think that the reason why he really dropped the chain idea when
2 I told him yeah, go ahead and do it but I was giving keys to
3 certain people and we had the path around for the four wheelers
4 and golf cart, but I just noticed that the chain started being down.
5 I think what really happened is that he had people that he'd sent
6 down there, this, that and the other, to do various and sundry
7 things and I think that's what really happened to the chain, and
8 then I think one of Carroll Daily's people, while they were
9 building their house, backed over one of the poles and that was
10 kind of the end of them.

11 Q: Okay, but I mean, what went—That really didn't answer my
12 question. I was trying to figure out what went south between you
13 and Randy.

14 A: What went south—

15 Q: I'm trying to figure out how you all got to this point, two
16 neighbors got to the point—

17 A: What went south, pure and simple—

18 Q: —where they were involved in a lawsuit.

19 A: What went south, pure and simple, when I've got company and
20 having Thanksgiving dinner and somebody sends a policeman to
21 my house, that's the end of the relationship. It probably is with
22 you and anybody else, too. But I'm a professional person and
23 somebody doesn't send a deputy. He may live his life that way.
24 The deputies were out there on numerous times before that to his
25 house for whatever. We saw them there two or three times. But I

1 don't live like that and nobody is sending a deputy out to my
2 house during Thanksgiving dinner period. End of the story.
3 Q: All right, I'm having—
4 A: That ended it right there.
5 Q: Okay. And I appreciate you telling me that, but there's, I've still
6 got a little bit of disconnect and I don't know whether you did.
7 You said that, and I'm not trying to make light of this. I
8 understand what you're saying and I can tell you're upset. I was
9 asking you what went south and you said, I said what you got to
10 the point where two neighbors were fighting and you said when
11 the deputy came to my house.
12 A: That's true.
13 Q: All right. Fill me in. I mean, I'm missing some details. How did
14 the deputy come to your house, what happened, what was the
15 problem?
16 A: The deputy knocked on the door. Well, we were having
17 Thanksgiving dinner and the phone rang. We have a policy at
18 my house that one of the kids answers the phone, and if we're
19 eating, we tell them we're eating, have to discuss it later, or
20 whatever. We don't interfere.
21 Q: Okay.
22 A: Okay, so my daughter, who was home from college—I didn't
23 even remember it until just now that she was home from college.
24 Well, it was Thanksgiving, so that would have made sense that
25 she would have been there, but she answered the phone and it

1 evidently was Randy, and she told Randy that we were eating,
2 and evidently, according to her, Randy got loud and obnoxious,
3 and I don't know, and she said well we're eating, I'm sorry. I
4 heard that part of it, and I don't know whether she might have
5 hung up on him, although I kind of doubt she did, or he hung up
6 on her, but in any case, she came back to the table and she said,
7 "That was Randy and he was just ranting and raving about
8 something." So the phone rang again right after that and I said,
9 "I'll get it." I answered the phone and it was Randy and he said,
10 "There's been four wheelers in the field." And I said, "Yeah, I
11 know. Danny and two friends were down there today." And he
12 says, "Well, I don't want four wheelers in the field." And I said,
13 "Well, Randy, we've always had that four wheeler in the field
14 and they're not tearing up anything." And he just rant and raved,
15 and I also knew the horses weren't out. So in any case, I said, "I
16 am not going to talk about this right now, Randy." So, you
17 know, he started, he kept ranting and raving, and you'd have to
18 know Randy, he's capable of doing that. So I basically hung up
19 on him and we sat down and ate. We'd been eating, we finished,
20 we'd gotten up and we were waiting for dessert and a deputy
21 showed up, and this is on Thanksgiving, and he was dragging his
22 daddy-in-law with him because evidently he'd been called to
23 make this call and he'd been at Thanksgiving dinner, and he said
24 that we've got a complaint that your son is harassing horses and
25 tearing up fields or something, and I said oh, no, my son hasn't

1 torn up anything or harassed any horses. I said, "If you're talking
2 about down there at the barn, I own it, we have the right to do
3 what we want. End of story."
4 Q: Okay.
5 A: And he left.
6 Q: Okay.
7 A: That was pretty much it. I had just, you know, a lot of this other
8 stuff had just kind of been bugging me, but that was it.
9 Q: All right.
10 A: Nobody was going to do that.
11 Q: Okay.
12 A: And he was told we were eating.
13 Q: Okay. Now—
14 A: That's the end of the story.
15 Q: Okay. Now you've connected the dots for me and I understand
16 where you're coming from. I didn't understand all of it until that,
17 what you were saying. Let me ask you, there's nothing wrong
18 with it, but were you drinking at the time?
19 A: Absolutely not.
20 Q: Do you drink?
21 A: Occasionally. Not very much.
22 Q: Okay. Your testimony is you had not been drinking that night?
23 A: No. Now maybe we had wine with dinner, I don't know that.
24 Sometimes we drink—
25 Q: Well, wine is drinking. I mean, do you drink that?

1 A: You're right.
2 Q: Okay.
3 A: Maybe we had wine with dinner, I can't tell you whether we did
4 or not.
5 Q: I've had clients in the past that said man, I wasn't drinking, all I
6 had was beer.
7 A: I understand where you're coming from—
8 Q: Okay.
9 A: —and I'm going to say that maybe we had wine for dinner, I
10 don't remember.
11 Q: Okay.
12 A: But appreciably drinking, no.
13 Q: I don't mean, I don't mean—
14 A: If we had had wine for dinner, that's what it would have been.
15 Q: I don't mean were you drunk. I asking you had you been
16 drinking some alcoholic beverage.
17 A: I don't get drunk, but if—I don't actually drink very much. But
18 if we did, it was wine at dinner.
19 Q: All right.
20 A: My daughter and son were underage; they would not have been
21 drinking anything, even the wine, if we had had wine.
22 Q: I understand.
23 A: And I don't know; sometimes we have wine.
24 Q: Okay. Did you and the deputy have harsh words—
25 A: No.

1 Q: —were they pleasant? What was—
2 A: I wasn't real pleasant. I just told him that it was mine and that
3 was the end of the story.
4 Q: Did you curse at all?
5 A: Not to my knowledge.
6 Q: Okay. So is it your testimony it was pretty much just a straight—
7 A: To was a straight—
8 Q: —conversation?
9 A: —this is mine, we have the rights to do things, like I'm telling
10 you now, almost in the same tone, and that's the way it is.
11 Q: Okay.
12 A: And I had watched what went on down there a good bit during
13 the day anyway.
14 Q: All right. So as I understand it, at the time when the police came,
15 that was, as far as you were concerned, that was pretty much the
16 end of it, between your relationship between you and Randy?
17 A: Yeah. As a matter of fact, the next day I went to see Steve
18 Griffey, who lives out there. At that time he was a lieutenant on
19 the Richland County Sheriff's Department, he's a captain now,
20 and I said, "Look. I want to show you something." And so we
21 went down there and I got Danny to come down there with the
22 four wheeler and recreate exactly what went on when they went
23 down there and the way they went down there and the parts I
24 might not have seen and everything. Steve and I looked at it.
25 Randy brought some cameras up there, and the deputy mentioned

1 something about cameras. Well, I don't think the camera showed
2 anything. If they did, show me. Evidently you can't. But we
3 wondered what in the world could have possibly shown up, so we
4 looked to see where the cameras were, and when you go down
5 there, the only thing I can figure that he might have got upset
6 about is when you go down there you cross the creek and you go
7 beside the barn and through the gate and out into the pasture, and
8 the horses had some little port holes or something to look out.
9 The horses were real friendly, the horses liked my son a lot and
10 immediately came to him regardless of what he was on. His
11 mother had worked all that out. In any case—
12 Q: His mother, how—
13 A: Randy's mother had worked with Danny a lot on the horses.
14 Q: Okay.
15 A: So, in any case, when we crossed that thing, I said, "Now show
16 me exactly, show me---
17 Q: Crossed the thing, what is the thing?
18 A: The culvert.
19 Q: Culvert?
20 A: Yes, the culvert for the creek.
21 Q: All right.
22 A: When we crossed it, I said, "Show me and Steve Griffey exactly
23 what happened." Well, the track was there, you know, because
24 he had been shoveling manure out the sides of the stalls, so there
25 was manure there, and he says well Ross and Thad—Now I'm

1 not exactly positive which one of them was riding the four
2 wheeler and which one of them was running the little radio car,
3 but they drove the radio controlled car from the shop on that little
4 road and they were going to pass the four wheeler, so the four
5 wheeler pulled onto the little bank and the barn is above the little
6 bank and there was the track, so he put the four wheeler right
7 back in the same track and took the little radio controlled car out.
8 The reason why we did this is because we were looking at the
9 cameras because I knew that couldn't be true, you know, so we
10 were just studying what could have set this off in his mind. So
11 we went on out in the pasture and we came back and I told Steve,
12 I said, "Now you are on camera." So in the meantime we were
13 looking at the horses and Steve remarked, "The horses are kind
14 of enjoying this." You know, both of them had their heads out of
15 the barn up on the hill watching what was going on. Of course,
16 they knew Danny.

17 Q: Okay. So let me see if I understand. On Thanksgiving Day,
18 Danny and two of his friends had four wheelers in—

19 A: Had one four wheeler.

20 Q: One four wheeler, okay. I was going to ask whether it was one
21 four wheeler or three. Three boys, or three young men, one four
22 wheeler and one gasoline powered remote controlled race car of
23 some kind that were in the pasture where the horses were?

24 A: No, sir.

25 Q: All right. Explain it to me.

1 A: You know good and well that that wasn't so.
2 Q: Explain it to me.
3 A: I have explained it to you three times.
4 Q: Well, I'm not understanding what you're saying.
5 A: Well, I think you need to listen. There was never a four wheeler
6 that day, a four wheeler or a radio controlled car in that pasture
7 with any horses. Period, end of the story. They were in the barn
8 where they lived. They were almost always in the barn.
9 Q: The horses were in the barn?
10 A: That's correct.
11 Q: Where were the race, where was the race car and where was the
12 four wheeler?
13 A: There was no race car.
14 Q: Well, what was it?
15 A: A radio controlled little four wheeler.
16 Q: All right, the radio controlled four wheeler.
17 A: Right.
18 Q: And that's the gasoline powered one, right?
19 A: That's correct.
20 Q: Was it ever in the pasture?
21 A: Yes.
22 Q: Was the four wheeler in the pasture?
23 A: Yes.
24 Q: Okay, now I understand.
25 A: You should.

1 Q: Okay. And did you go back that next day, on Saturday, with the
2 radio controlled gasoline powered four wheeler and the four
3 wheeler into the pasture?
4 A: I don't know that it was Saturday. I don't know what day
5 following, you know. I'm not sure—
6 Q: Friday after Thanksgiving.
7 A: Yeah, I'm not sure but it was some day after Thanksgiving.
8 Q: All right.
9 A: And we went back down there with the four wheeler and we had
10 the radio control car, a little radio control thing, but I don't
11 remember exactly what order or how we did it and I'm not sure
12 whether we went out into the pasture. I know we went toward
13 the pasture. I think we might have gone in it but I'm not positive.
14 Q: Okay. After that—
15 A: The horses were not out then either; they were in the barn.
16 Q: All right, after those two days, did the, did anyone ever take four
17 wheelers, a four wheeler or four wheelers, and or the remote
18 controlled gasoline powered four wheeler into the pasture?
19 A: Not to my knowledge.
20 Q: Okay.
21 A: Now when you say after, not to my knowledge up until the time
22 Randy moved out.
23 Q: Okay.
24 A: I don't think they did.
25 Q: Okay. All right, did you ever tell Randy that you were going to

1 either permit it or not permit it?

2 MR. THOMPSON: Object to form. Answer
3 the question.

4 Q: I think this is one objection that probably is a good one. I'm
5 talking about going into the pasture. Did you ever tell your son
6 to either go into the pasture or take the remote control gasoline
7 powered four wheeler into the pasture?

8 A: No.

9 Q: You didn't tell him to do it or not do it, or you told him not to?

10 A: I never told him to do it.

11 Q: Okay. Did you ever tell him not to do it?

12 A: When are you talking about exactly?

13 Q: At any point in time.

14 A: Yeah, I told him not to last week, because it had rained down
15 there and I didn't want the grass tore up.

16 Q: Okay, since before Randy left?

17 A: Before Randy left?

18 Q: Yeah.

19 A: Okay, are you talking about from Thanksgiving through
20 Christmas when he left?

21 Q: Right.

22 A: Basically I told my son during that period of time, last
23 Thanksgiving, I said, "Stay away from Randy. I'm going to take
24 care of this situation. Don't go down there right now." So a lot
25 of that was out of fear, obviously his size and the fact that SLED

1 said he had a gun permit and he had bragged about having a gun
2 permit, on and on and on, but I just decided the best thing to do
3 was to stay away from there right then and let me take care of the
4 situation, so that's what I told him, and to my knowledge, again
5 you'd have to ask him, he nor the car, the car was broken again
6 right after that. I think it got broken that day or the next day, but
7 in any case, and I think it's broken now, if we still have it, if he
8 hasn't thrown it away. But in any case, I would imagine he did
9 what I told him because he is that kind of kid. Now, aside from
10 that, yeah, I told Randy specifically during—Randy later told me
11 he was leaving and we had a discussion about that, but sometimes
12 towards Christmas Randy wanted to stay there another six
13 months or whatever and he wanted to have exclusive use and
14 none of my family were to come down there is what he told me,
15 and I said, "We're not doing that. This is our back yard basically
16 and the kids play down there and they'll be out of school
17 December whatever for Christmas vacation and I'm not going to
18 keep them out after that." And he pitched up then and I said,
19 "Well, why don't we work this damn thing out somehow. Why
20 don't we get a mediator or something. You pick one and I'll go
21 along with it." And so he did and I did, but then when the
22 mediator couldn't meet with us—Steve Dennis, by the way.
23 When he couldn't meet with us until—I'd have to look in this file
24 to be sure about all this on date-wise. He couldn't meet with us
25 until between Christmas and New Years. I told Randy, I said,

1 "I'll keep Danny out," or I told Steve Dennis I'll keep Danny out
2 until this thing is met, but then that day or the next day Randy
3 cancelled, he said he had other things he had to do. So when he
4 did, I told him that, or my wife told him, I didn't, that the deals
5 were off, the kids had the rights to be in there, we had the rights
6 to equal use and we were going to use it.

7 Q: Okay. Did you and Randy have a discussion about him leaving
8 and the circumstances under which he was going to be leaving?

9 A: Yeah. He came down there I'd say, I'd say sometime in
10 November, but I'm really not sure when, and Danny and I were
11 in the shop and he wanted to talk to me, and he said, "When you
12 have some time this next week," and I said, "Fine, I've got some
13 time right now." So we went out and I sat on a trailer and he
14 stood there beside it and he started into this thing about I built all
15 that stuff down there in a portable fashion so that I could remove
16 it, and I had seen a bunch of flags and stuff go up in his yard
17 before this Thanksgiving thing basically, ties around trees. I
18 didn't know what he was going to do. He obviously had made
19 some kind of plans to do something. He said, "I built all that
20 stuff so I could remove it." And, of course, it degenerated into an
21 argument about two or three things, but he said, I said, "Well, I
22 don't know, I don't know about that," you know whether he was
23 going to remove it or not, and that was kind of the end of that
24 story right there, but a week later I think it was or two weeks later
25 after I'd thought about it, I wrote him a letter, which you

1 probably have a copy of, that said you had asked about removing
2 certain things, present a plan to me, I wouldn't hold you up from
3 doing it. Okay, in any case, that was one of the things we talked
4 about. The second thing we talked about and one of the real
5 reasons why he came down there was he was upset because I had
6 stopped a crew from cutting trees on my property along the road,
7 and I had also stopped the phone company from putting a phone
8 line in, and he jumped all over me and said if I had some
9 problems with the things he was doing, I should see him, and I
10 said well neither time were you around, you know, and I had to
11 stop those tree people because they were cutting right then and
12 there and they had already cut trees on my property and I wanted
13 it stopped, in no uncertain terms. When the guy mouthed off to
14 me, I said look—You know, his boss wasn't there. It was two
15 young guys, Mexicans or whatever they were, and I said, "You'd
16 better take what I'm saying to heart. Do not come across this
17 property line. Call your boss and find out what you're doing,"
18 and he said, "Well, I've been told to do so and so." I said, "I
19 don't care what you were told to do. This is my property line.
20 Do not come over it. You'd better get your boss out here. I'm
21 warning you." So, he did. His boss strung a line down there and
22 said don't go over that, and their work continued. In any case,
23 Randy was upset that I had stopped them. The phone company---
24 Randy decided to put cameras in down at the river. Obviously,
25 he came to me, he said, "Tom, you want to go in with me and

1 let's put cameras everywhere?" Well, first of all, I'm a real
2 private person, but second of all, if he wanted to put cameras in,
3 that was fine, SLED had already put cameras on my place but I
4 couldn't tell him. They said I'm not to tell him that I got cameras
5 on it. I think I did tell him anyway, but they already had cameras
6 on mine. So I said, "No, I don't want any part of that." So this
7 phone line was putting cameras in. Well, we'd already had a
8 disagreement, as we talked about earlier, about the power lines
9 through the trees. A phone line would run under that and that
10 would be a lot lower to the ground, and that was a real problem
11 because I bring a truck and a trailer in there. I also got a front
12 end loader, tractor and some other stuff, and that wasn't going to
13 be there.

14 Q: You have a front end loader?

15 A: Yeah.

16 Q: Okay.

17 A: That wasn't going to be there.

18 Q: Where do you keep that?

19 A: Down there.

20 MR. THOMPSON: Can we go off the record
21 just a second?

22 (WENT OFF RECORD.)

23 (BACK ON RECORD.)

24 DIRECT EXAMINATION CONTINUED BY

25 MR. TRUSLOW:

Deposition of Thomas D. Efland, Jr.

1 Q: You wrote a letter on December the 2nd, 2003 to Randy Mills
2 indicating that this, quote, "This is your official notice that you
3 are in breach of your Lease Agreement." The second paragraph
4 says: "You have thirty days to vacate the premises, after which I
5 will apply to Courts for an Order of Eviction." On what basis
6 were you going to try to have him evicted?
7 A: On denying us equal use of the property down there.
8 Q: And how was he denying you equal access?
9 A: I've explained all that to you.
10 Q: All right, explain it to me so I'll understand, or explain it again.
11 A: You'll have to ask specifically.
12 Q: I did. What specifically did he do that was in breach of the Lease
13 Agreement?
14 A: Denied us equal use. That's—
15 Q: And how did he deny you equal access? How did he do it?
16 A: He tried to keep us from using it.
17 Q: You're saying that what he did was asked the police to come talk
18 to you?
19 A: That's correct.
20 MR. THOMPSON: Object to the form.
21 Q: What else did he do besides ask the police to talk to you?
22 A: I have no idea; you'd have to ask him.
23 Q: Well, I'm asking you.
24 A: I understand that, but I don't know.
25 Q: You don't know?

1 A: You'd have to ask him.
2 Q: So the---
3 A: I wrote the letter; that's the way interpreted it.
4 Q: Okay. So all you've said so far is that the way you contend that
5 he breached the lease was by having the police officer come talk
6 to you or attempt to talk to you about the horses being harassed?
7 A: That's what you're saying; I don't know.
8 Q: What do you say?
9 A: I'm saying the police officer came to my house during
10 Thanksgiving dinner about us doing things we were entitled to do
11 in our field.
12 Q: And what did the officer do to you?
13 A: It doesn't make much difference.
14 Q: What did the officer do to you, is what I asked?
15 A: He interrupted my dinner. Do you understand that?
16 Q: Okay, I do understand that. Is that all that happened?
17 A: He interrupted my---
18 Q: You're saying that you all---
19 A: And Randy also interrupted my dinner---
20 Q: If I can finish. If I can finish.
21 MR. THOMPSON: You all need to let each
22 other finish.
23 Q: Well, if he'll answer the question. You've said that Randy is the
24 basis for you saying that Randy breached the lease was because
25 he interrupted your dinner?

1 A: That's part of it, yeah.
2 Q: All right, what is the rest of it?
3 A: A police officer came to my house.
4 Q: What's the rest of it?
5 A: I answered it.
6 MR. THOMPSON: Object to form.
7 Q: Is there anything else?
8 A: I answered your question.
9 Q: Is there anything else?
10 MR. THOMPSON: Object to the form.
11 Q: That calls for a yes or a no.
12 A: I don't know, I'd have to think about it. Let me read my letter.
13 Q: All right.
14 A: Are you submitting that letter?
15 Q: You're the one that wrote it.
16 A: I understand I wrote it. Are you submitting it into evidence here?
17 Do you have a question?
18 Q: I asked a question and you asked to see the document. You can
19 answer my question now. Go ahead.
20 A: What's your question?
21 Q: My question was, is there anything else, other than what you've
22 said?
23 A: Obviously there was a lot of bad blood between us, but I think
24 this makes it perfectly clear and answers your question.
25 Q: So there's nothing else?

1 A: I said Lease Agreement (copy attached). More specifically, my
2 family has equal rights to the premises and your harassment
3 during our Thanksgiving dinner was unacceptable.
4 Q: My question is, is there anything else that you based or rely upon
5 in claiming there was a breach of your lease, other than what
6 you've said? Anything else.
7 A: I put my reasons right in the letter.
8 Q: It's a simple question. Is there anything else?
9 A: I don't know of anything else. I put it right there.
10 Q: Okay. Did you get a, did you receive the original of this letter,
11 and this is dated December the 10th. I think what I'm going to do
12 is probably keep these.
13 A: Yes.
14 Q: All right.
15 MR. THOMPSON: For the record, can you
16 identify—
17 MR. TRUSLOW: Pardon me?
18 MR. THOMPSON: Can you identify what
19 this is?
20 MR. TRUSLOW: Yes, I did. I said did you
21 receive this letter dated December, or the original of this
22 letter dated December 10, 2003 from Randy Mills, and he
23 said yes. And what I'll do is, to make it easy, I'll mark
24 these. I'm probably going to keep these but we can have
25 copies. The December 2nd, 2003 letter that he said he

1 signed, he meaning Mr. Efland signed, I'll just mark this as
2 Plaintiff's Exhibit 1, and this one will be Plaintiff's Exhibit
3 2.

4 (Copy of letter dated December 2, 2003 marked as Plaintiff's
5 Exhibit #1.

6 (Copy of letter dated December 10, 2003 marked as Plaintiff's
7 Exhibit #2.)

8 MR. THOMPSON: Can we go off the record
9 for just a second?

10 MR. TRUSLOW: Sure.

11 (WENT OFF RECORD.)

12 (BACK ON RECORD.)

13 MR. TRUSLOW: You might just go ahead
14 and do about six of them. We might as well mark, go
15 ahead and do these because we're already dealing off of the
16 same—

17 (Copy of Letter dated December 15, 2003 marked as
18 Plaintiff's Exhibit #3.

19 Copy of Letter dated December 18, 2003 marked as
20 Plaintiff's Exhibit #4.

21 Copy of Letter dated December 19, 2003 marked as
22 Plaintiff's Exhibit #5.

23 Copy of Letter dated December 19, 2003 marked as
24 Plaintiff's Exhibit #6.)

25 **DIRECT EXAMINATION CONTINUED BY**

1 **MR. TRUSLOW:**
2 Q: I'm going to show you what's already marked as Exhibits 3, 4, 5
3 and 6 and ask you if these are copies of correspondence that took
4 place between you and Mr. Mills?
5 A: Yes, all of those, correct, correspondence.
6 Q: Okay. Did he ever write quote "little anonymous letters of
7 harassment against you, your clients, and your friends."
8 A; I believe he did.
9 Q: Who did he write those to?
10 A: He wrote one while I was representing Mike Suchey to—Well,
11 he left it on some neighbors' doorsteps to try to interfere with a
12 house sale deal. I feel like from my investigation he wrote it,
13 let's put it that way.
14 Q: What did the letter say?
15 A: Basically pointed out—Jake has a copy of it; I don't mind you
16 having it. I don't remember exactly, but it was trying to, the gist
17 of it was trying to queer a deal on Mike Suchey's house sale.
18 Q: Okay. This may seem like a disconnect but it's not. About the
19 time you had the discussion with Randy subsequent to that
20 Thanksgiving visit you had from the police, somewhere around
21 that time, did you ever have, did you ever sell any real estate of
22 significance? I'm thinking there might have been a Koger or
23 Kroger.
24 A: I was part owner in a limited liability company that owned the
25 land, six acres of the land on the deal at the corner of Kennerly

- 1 and Broad River where Publix went into and I sold that land.
- 2 Q: The Publix?
- 3 A: Right.
- 4 Q: Okay. What was your percentage of ownership?
- 5 A: Fifty per cent.
- 6 Q: Okay. Did you ever indicate to Randy that you made a million
- 7 dollars off of the deal?
- 8 A: Sure didn't.
- 9 Q: Did you ever indicate that you had made any money off of that?
- 10 A: Randy and I talked about a lot of things and we talked repeatedly
- 11 about that place up there over the three years that we knew each
- 12 other and that that was going on, and I imagine he knew the
- 13 entire deal.
- 14 Q: Okay.
- 15 A: It would have been my feeling that he would have.
- 16 Q: Why? Why would he have known the entire deal?
- 17 A: Because we talked about things like that.
- 18 Q: Okay.
- 19 A: He told me things about him and he knew that I owned that land
- 20 up there.
- 21 Q: Okay. There's nothing wrong with that. I'm just trying to—
- 22 A: I understand.
- 23 Q: —find out some things.
- 24 A: I understand.
- 25 Q: Did you ever indicate to Randy that you had sold that land where

1 I think you said it was a Publix?
2 A: He knew that we had a contract on it. He knew that we had a
3 contract before that on it, I'm sure.
4 Q: Did you tell him how much money you had made, or were
5 expected to make?
6 A: Not to my knowledge. But I'm sure I told him that Publix was
7 spending millions of dollars up there, which I'm sure they did.
8 Q: Okay.
9 A: There were like three or four different owners in that thing.
10 Q: Was it a limited liability corporation?
11 A: The six acres that I was a part of was.
12 Q: Okay.
13 A: Some of the others was owned by estates and the Sheriff's
14 Association and one thing and another but they weren't part of
15 our corporation.
16 Q: Did the six acres that you were involved in, did sell for more than
17 a million dollars?
18 A: Huh-uh.
19 Q: Okay. Less than a million dollars?
20 A: Uh-huh.
21 Q: All right, going to something else. The driveway dispute you're
22 having with Randy.
23 A: The what?
24 Q: The driveway dispute.
25 A: Okay.

1 Q: Can you explain that to me in terms that I will understand? I'm
2 not a real estate lawyer but—
3 A: Yes.
4 Q: —I think I understand what the deal is, but if you can explain it
5 to me, I'd appreciate it.
6 A: You want me to explain it to you?
7 Q: What your claim is, what the dispute is.
8 A: Which driveway exactly are you talking about?
9 Q: Whichever one you've sued him over. There's a claim of a
10 continuing trespass, I'm trying to figure out what it is.
11 A: I gave an easement to the people that built his house, a very
12 specific easement. I think I sent you a copy of it, as a matter of
13 fact. An easement for access to that house over my property and
14 for the entrance to that house to be at a certain place and for the,
15 for me to have the rights to move that easement under certain
16 conditions if I wanted to.
17 Q: All right.
18 A: You have to ask me a question. That was the easement.
19 Q: I was asking you to explain what the controversy was, what your
20 contention is, what did Randy do?
21 A: I don't have any contention. Randy came in and cut another
22 driveway someplace he did not have an easement.
23 Q: Who drew the easement?
24 A: I forget his name, but it's an attorney over in Lexington going up
25 the hill on US 1 towards the new courthouse.

1 Q: Culberson?
2 A: Culberson.
3 Q: Are you and he on good terms?
4 A: I never met him but once in my life.
5 Q: Okay. So there was an easement that was drafted and you signed
6 it?
7 A: Basically. He and I discussed it over the phone and what its
8 terms would be.
9 Q: You agree that the terms—You can look at the recorded easement
10 and see what the terms are. They're clear on their face?
11 A: They appear to be to me.
12 Q: You understand them?
13 A: Yes.
14 Q: Do you think a reasonable person would understand them and
15 would know what they were?
16 A: Maybe, maybe not. Legalese, I don't know, after you explain it
17 to a reasonable person, they probably would, but things that are
18 drafted in legalese some people don't understand.
19 Q: All right. As it relates to that easement, you're saying that Randy
20 put in another driveway?
21 A: That's correct.
22 Q: And you're saying under the easement he was not allowed to
23 have another driveway?
24 A: That's correct.
25 Q: Is it your contention that he's only allowed to have one means of

1 ingress?

2 A: I don't know what he's allowed to have, but he cuts across my
3 property to do it. He's not allowed to come over my property and
4 cut my trees; nowhere in the world is he.

5 Q: Is it your contention under the easement that he's not allowed to
6 have a second access to the, for ingress and egress to his
7 property?

8 A: He's not allowed to come over my property and cut my trees.

9 Q: Well, if he's got an easement he may.

10 A: He has a specific easement in a specific place. And it was
11 utilized.

12 Q: Okay. And that's the only place where there's an easement—

13 A: That is correct.

14 Q: —where the driveway is.

15 A: You mean an easement that I've given?

16 Q: Yes.

17 A: Yeah, off of that road that's correct.

18 Q: Is there, is it your contention that there is no further, that he can
19 only have one place to come across and that's it, under the
20 easement?

21 A: I don't know what he can have, but he can't come across my land
22 and cut my trees.

23 Q: Okay.

24 A: He has an easement.

25 Q: If I can have just a minute to speak to him.

1 **(WENT OFF RECORD.)**

2 **(BACK ON RECORD.)**

3 **DIRECT EXAMINATION CONTINUED BY**

4 **MR. TRUSLOW:**

5 Q: This was the easement involving the Johnsons, correct?

6 A: Uh-huh.

7 Q: The Johnsons owned the home where Mr. Mills lived?

8 A: That's correct.

9 Q: And he bought from them. And you provided an easement to the
10 Johnsons?

11 A: That's correct.

12 Q: All right. And I'm just going to show you this. It's actually four
13 pages. Is this the easement in question? I don't need to identify
14 it. I think we can all agree that this is it.

15 A: Yes.

16 Q: All right.

17 A: He may want to read this.

18 Q: That's fine, go ahead. I think you've got a copy of it. This was
19 in our Responses. The easement says it's for ingress and egress,
20 and in paragraph number one on page one it says that "this is an
21 easement of ingress and egress over and across the existing
22 gravel road as shown in an existing plat of Efland's property
23 described thereon as a twenty foot wide private road," and I've
24 quoted on the copy here, but it indicates that "Efland reserves the
25 right to relocate the course of this easement for ingress and egress

1 in the future. Any such relocation shall be to Richland County
2 standards and deeded to Richland County." Have you deeded, do
3 you intend to deed over to Richland County the easement?
4 A: I have on some property but not on this property.
5 Q: Is it your intent to do that?
6 A: No.
7 Q: Okay. Now it says that "The easement is granted here and shall
8 be perpetual and shall run with the land, the benefit thereof
9 accruing to Jerry L. Johnson and Sharon Johnson, their heirs,
10 successors and assigns."
11 A: That's correct.
12 Q: And Mr. Mills is their assigned or successor?
13 A: That's correct.
14 Q: Okay. I don't, I don't see, in looking at the easement, where it is,
15 Is it along this strip here where it says Thomas Efland here, now
16 or formerly Efland, and then this is, what I'm pointing to I think
17 is the Johnsons' property. Does the easement run from corner to
18 corner?
19 A: It runs on the existing dirt road.
20 Q: All right.
21 A: Approximately twenty feet in width.
22 Q: All right. So does that allow them access to their property?
23 A: If it doesn't, they're in trouble, aren't they?
24 Q: Could be.
25 A: You really want me to read it to you? I mean, you've read it,

1 you're an attorney. You want me to read it to you?

2 Q: No, you don't need to read it to me.

3 A: Well, it lays out specifically where it is, what the easement is,
4 what the road is, and where it enters their property.

5 Q: All right. That's, so it's pretty clear, you would agree that it's
6 clear on its face?

7 A: It looks to me like it is.

8 Q: All right. When was the, when was the circle drive—I think it's
9 a circle drive that you object to? Is that correct?

10 A: No, I object to an entrance, another entrance being cut across my
11 property.

12 Q: Okay. When was that cut in?

13 A: Mainly, it's kind of a long, drawn out affair, but mainly it was cut
14 in in sometime October, November, December of the year of
15 everything, all these letters, whatever the dates are.

16 Q: 2003?

17 A: 2003. I came home one day—Of course, I work for a living, so
18 I'm not out there all the time, but Mike Suchey, who I had known
19 in the past but he was a friend of Randy's, I knew him when I
20 saw him that I recognized him but I couldn't quite place who he
21 was until he told me who he was. He was a friend of Randy's,
22 and he was on a backhoe. Now this was probably, this was when
23 Randy was married to his wife, and he had cut down all the trees
24 where this thing went in and was leveling out land there, and I
25 stopped and asked him what he was doing. He says well, Randy

1 has bought a pontoon and wants a place to keep the pontoon boat.
2 So I said well it's not—Again maybe you can take Mike
3 Suchey's deposition and find out whatever you want to find out,
4 but, but it's not exactly Randy's property. All my trees were
5 down and everything. I asked Randy about it and he said he just
6 wanted a place to back his pontoon boat in. Well, basically he
7 had cut a swath in my property. So he kept his pontoon boat
8 there and later he sold his pontoon boat and got rid of that wife.
9 Evidently she'd wanted the pontoon boat and he was wanting to
10 move into other things, and occasionally he burned rubbish there
11 and sometimes he would drive into there, but there was really no
12 circular drive.

13 Q: Okay. Well, when did he—

14 A: One time I told him that, I said, you know, you ought to build
15 you a circular drive because you can do it off of the right-of-way
16 up there, and obviously what I was referring to, and I sent you a
17 letter to that effect also, was county right-of-way which ended at
18 his property and those actually adjoined his property, and that's
19 the reason I said a few months ago I guess he could build his
20 circular driveway but he doesn't have to cut around on my,
21 doesn't have to cut trees and enter on my property to do it. In
22 any case, when I got out there and the fellows were cutting and
23 clearing land that day, they'd already opened this thing up big
24 time and cut all the trees that went along there, and I guess Randy
25 just took it upon himself he was going to use that as a circular

1 drive to his house. I told him he didn't have that right one day
2 when he and I were arguing and he told me he was going to do it
3 if he wanted to do it and there was nothing I could do about it.
4 Q: Okay, so he went ahead and finished putting it in, is that right?
5 A: Yeah.
6 Q: And you didn't make, couldn't see fit to make a claim at that
7 time?
8 A: Well, all of this, it depends on what you consider claim at that
9 time, and I told him I didn't want it there, told you I didn't want
10 it there. As far as the legal claim, I think I've already told you
11 that I had decided not to start this action, but you guys decided to
12 start it.
13 Q: Have you and I ever talked besides just introducing ourselves at
14 a—
15 A: I don't think so, other than letters.
16 Q: Okay. The reason I was asking is you were talking about us
17 talking and actually—
18 A: I said I told you, and that meant all inclusive. That could be
19 letters or anyway under the sun.
20 Q: Okay.
21 A: But communications.
22 Q: Okay, all right. I just wanted to make clear that any
23 communications that you and I have had were by letter.
24 A: That's correct.
25 Q: Or on the record in court? Is that correct?

1 A: I assume, if you call mediation court.

2 Q: No, not mediation. Do you remember appearing before a judge
3 in court?

4 A: Oh, yeah.

5 Q: That's all I was referring to. Okay, appreciate it.

6 A: No problem.

7 MR. THOMPSON: I have no questions.

8 **FURTHER THE DEPONENT SAITH NOT AT 5 P.M.**

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **STATE OF SOUTH CAROLINA) NOTARY CERTIFICATION**
2 **COUNTY OF LEXINGTON)**
3

4 I, Annette L. Almond, Court Reporter and Notary Public, in
5 and for the State of South Carolina, hereby certify that I did have
6 Thomas D. Efland, Jr to appear before me in the law offices of
7 Moore, Taylor & Thomas, 1700 Sunset Boulevard, West
8 Columbia, South Carolina commencing at 2 O'clock P.M. on
9 the 16th day of June, 2006;

10 I further certify that the witness was duly sworn by me and
11 cautioned to speak the truth, the whole truth, and nothing but the
12 truth;

13 I further certify that I recorded this testimony on tape and
14 by stenomask, that the tapes were reduced to typewriting by me
15 personally and that the foregoing transcript containing pages One
16 (1) through One Hundred Eleven (111) is a true, accurate and
17 complete transcript of the testimony given to the best of my skill
18 and ability;

19 I further certify that the reading and signing of the
20 deposition by the witness has been waived by the witness and
21 counsel for both parties;

22 I further certify that I have properly packaged, sealed and
23 delivered the original of this deposition to Douglas N. Truslow,
24 Attorney, to be retained by him and filed with the court at the
25 time of trial;

1 I further certify that I am not of counsel or kin to any of the
2 parties to this cause of action nor am I interested in any manner
3 in its outcome.
4

5 I here unto set my hand and seal this 6th day of July, 2006.
6
7

8 
9

10 Annette L. Almond

11 Notary Public for South Carolina

12 My Commission Expires: 6/12/2013

13 West Columbia, S. C.

14 July 6, 2006
15
16
17
18
19
20
21
22
23
24
25

Thomas D. Efland, Jr.
ATTORNEY AT LAW
7715 Suite A St. Andrews Road
Irmo, South Carolina

Certified Circuit Court
Mediator and Arbitrator
Fax - 803-781-1432

803-781-1420

Please Reply to:
Post Office Box 1752
Irmo, South Carolina 29063-1752

December 2, 2003

Mr. Randy Mills
129 Tiger Paw Lane
Irmo, SC 29063



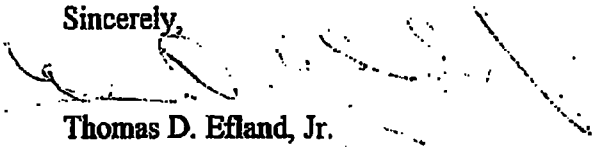
Dear Randy:

This is official notice to you that you are in breach of your Lease Agreement (copy attached). More specifically my family has equal rights to the premises and your harassment during our Thanksgiving dinner was unacceptable.

You have 30 days to vacate the premises after which I will apply to the Courts for an Order of Eviction.

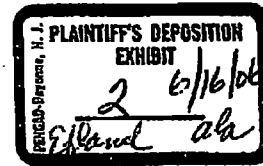
You previously stated that you had made improvements in a manner so that they could be removed. Please present a plan for such a removal to included what you wish to remove within 10 days hereof. I have no interest in horses so I will work with you reasonably in allowing some removal if timely presented to me.

Sincerely,


Thomas D. Efland, Jr.
Attorney at Law

TDE/jhe
Enc

December 10, 2003



Dear Tom:

In reference to your letter dated December 2, 2003, I am disappointed that our professional and personal relationship has deteriorated to this point, but since you are apparently unwilling to discuss matters with me face to face (or even by phone), I have no choice but to write back.

As far as being in breach of our lease, I categorically deny it, but doubt that it would do any good to explain my reasons here. Likewise, I deny that I have ever harassed you or your family and in fact it is my mother and I who simply want to live in peace without being harassed. Most importantly, I do not want my horses harassed or subjected to unreasonable and/or unsafe conditions.

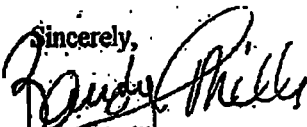
Regardless of which of us is correct, it is now abundantly clear that you are not going to sell me the land where my horses are kept despite your earlier promises to lease the property to me with an option to buy. And, it is even clearer that you want me off the land as soon as possible. To that end, I am being forced to make arrangements to board my horses elsewhere – but it is going to take approximately 90 to 120 days, depending on various alternatives that may be available. Until that time, I would ask that you respect my privacy, as well as the health and safety of my horses. This would include refraining from riding the four-wheeler in the pasture or adjacent to the barn, not placing oil filters and other debris in the pasture or doing anything else to harm the horses. Please note that for purposes of this letter, I am not accusing you of anything... I simply want to be left alone and for my horses to be left in peace until they can have an orderly transition.

Without making an exhaustive list of items I will take, I would say that I will not lay waste to the property and I will certainly leave it in better shape than it was in before I began construction. I plan to take the well pump (leaving the piping and the plumbing), the outside lights and surveillance equipment, the fencing, and the oak lumber. Please give me some of your thoughts.

Again, I give you my word in writing that I will leave the property in good shape when I leave.

Tom, I could not end this letter without telling you that quite frankly I feel a tremendous sense of loss and betrayal. Not only have you been a neighbor whom I tried to help at every instance, but you have been my attorney and I relied and depended on you as my attorney in business matters, family trusts, in real estate related issues, and in these circumstances, involving our lease and an option to buy, I feel like you have let me down and have taken advantage of your position as my attorney. I have spent more than \$50,000.00 improving the property, exclusive of labor. How do you propose to deal with that issue?

Sincerely,


Randy Mills

December 15, 2003



Dear Tom:

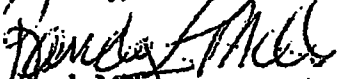
I am frustrated that you are unwilling to discuss this matter with me face to face, but since you insist on letter writing, I suppose this is my only option. I am reminded, however, of the old adage of getting in a letter writing battle with someone who buys ink by the barrel (or makes a living writing letters everyday such as an attorney), so I will try to be brief, unemotional, and to the point. As you certainly know, we have a major disagreement involving the area in which the pasture and barn are located, and you insist (and have said to me) that you have told and are going to tell your teenage son again that he and his friends have equal access to this property and can use it for any purposes they see fit, including, among other things, a race track for four-wheelers. I've tried to reasonably and rationally discuss this with you several times now and in return all I seem to get are profane, very emotional responses in which you say that you approve of your son's conduct. As well, you have made threats to evict me now that I have incurred substantial expenses for improvements to the property, in reliance on your word as my neighbor and attorney.

Most recently, I have found your son again harassing the horses with his radio controlled car. Not only is this dangerous for your son, but it is extraordinarily dangerous for the horses and anyone who may handle the horses. This radio controlled race car is gasoline operated, very loud and it petrifies the horses. What makes it more of a problem is that your son was observed with the key that I had provided you. Your son was then observed disabling the electric fencing so that he could go inside the pasture where he started chasing the horses with his radio controlled car. I want to stress that this gasoline powered car is a very loud toy and your son is and has been doing irreparable damage to the horses and destroys the peaceable use of the property for its intended use. This is in addition to the times that he has harassed the horses around the pasture and in the barn area with his four-wheeler. I realize that boys will be boys, but the situation is untenable. Why can't we just reason together instead of arguing about something that should be very simple and easy to resolve?

Again, I hope that you are not just attempting to drive me off of the property for selfish motives now that I have made all of these improvements to the property but it certainly has that appearance.

Please advise me as to how you propose to deal with these issues involving harassment of the horses.

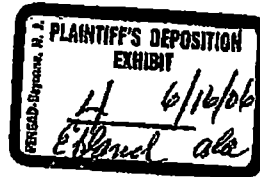
Sincerely,


Randy Mills

P.S. Tom, I prepared this letter before getting your call today and while I appreciate the call I am still frustrated that you have refused my request that you direct your son to stop hurting the horses.

732-2073 Ph

December 18, 2003



Dear Tom:

I am writing to follow up on your call regarding mediation.

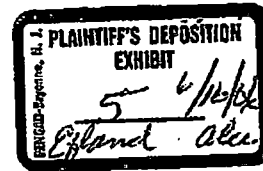
First, I am encouraged that you called. Hopefully this will be a positive step towards opening up the line of communication and resolving our differences. We are neighbors and we owe it to everyone around us to get along. It's the proper thing to do. This will also confirm that I am willing to have Judge Dennis assist us even though I understand you have some type of personal or professional relationship with him... it is immaterial to me in that I am told he is a person of the highest integrity. That said, I do appreciate Judge Dennis' disclosure of the relationship and I am not the least bit concerned (though I wished you had disclosed it).

Now, to a matter of more concern to me - you said that you would not even consider advising your son to stop harming the horses unless I agreed to have Judge Dennis mediate on or before December 18. I have said I was willing to mediate and allowed you to try to set up the meeting. You then called and said Judge Dennis could not do it before December 29th and I can't do it on the 29th or 30th. Anytime in January is fine. My concern is - what assurances can I get that my horses will be safe and/or not harassed until we get this situation mediated? Again, I am willing to mediate - the Judge just can't accommodate the deadline you have set and I hope you understand that I have to be concerned about the safety of my horses. Please advise.

Sincerely,

A handwritten signature in blue ink that reads "Randy Mills". The signature is stylized with a large, sweeping "R" and "M". Below the signature, the name "Randy Mills" is printed in a small, sans-serif font.

December 19, 2003



Dear Mr. Efland:

I received a telephone call this date from your wife, Janet, (who works in your office) that "all deals are off", that there will be mediation, along with other statements that would set-forth no useful purpose. I understood that if I could not mediate this December 29, 2003, there would be no attempt to resolve our differences.

I want to stress that I was willing to address all issues immediately (before December 29 and 30th). I simply cannot do this on December 29, 2003 or December 30, 2003. I would also like to do this on a day other than Christmas Eve or Christmas Day, although I am eager to resolve our differences.

On Janet's statements, I presume, that you are proceeding with an eviction action. May I ask exactly how have I violated the lease?

In conclusion, I have been willing to mediate before December 29th, but the mediator was unable to do so. Then his next available time was January 12th. I feel I have been doing my part and acting in good faith.

I still fail to understand why you are unwilling to sit down face to face and work out our problems. I feel like you should do this.

Sincerely,

Randy L. Mills

P. S. Since preparing this letter, I received your dated letter of December 19, 2003. I stress that I have breached no agreement or contract. The security cameras exist for the protection and safety of my horses and personal property. Obviously, I would not have incurred such an expense had it not been necessary. The safety of my horses are of the utmost importance.

I felt that this was a threat, and besides, it was impossible to get the case mediated on such short notice. Regarding the locks, you have a key and have since the locks went on. Again, I want to work out our differences, but I am unable to conclude this matter on the 29th or 30th.

Cc: Judge Dennis

Thomas D. Efland, Jr.
ATTORNEY AT LAW
7715 Suite A St. Andrews Road
Irmo, South Carolina

Certified Circuit Court
Mediator and Arbitrator
Fax - 803-781-1432

803-781-1420

Please Reply to:
Post Office Box 1752
Irmo, South Carolina 29063-1752

December 19, 2003

Mr. Randy Mills
129 Tiger Paw Lane
Irmo, SC 29063



Dear Randy:

Sorry that you have reneged on your acceptance yesterday, by phone, of mediation on the 29th. You had led me to believe that settling our issue was very important to you but you had to see clients most days before Christmas. I had told Judge Dennis that my family would not even go across the stream bed subject to our mediation on the 29th.

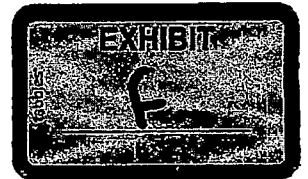
I hereby withdraw that promise as you have reneged on the mediation of the 29th. My family will exercise equal rights to the property. Specifically you should remove any locks that inhibit our access and eliminate any cameras that infringe upon my families privacy.

My family, including my son, has in no way ever harassed or harmed your horses, and we are not particularly interested in maintaining any relationship with you.

Be advised that our letter requesting that you vacate the premisses due to breach of contract still applies.

Sincerely,
Thomas D. Efland, Jr.
By *Thomas D. Efland, Jr.*
Thomas D. Efland, Jr.
Attorney at Law

TDE/jhe
Enc
cc Judge Dennis



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Randy Mills,

Plaintiff,

-vs-

Thomas D. Efland, Jr.,

Defendant.

DOCKET NO.: 2008-CP-40-00876

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been chosen by the parties and having duly heard and fully considered all the evidence, **FIND** and **AWARD** as follows:

This matter ostensibly involves the breach of a lease by the Lessor (the Defendant in the case) and owner of "the bottom land," the leased property. The Plaintiff is the Lessee. The issues and proof, however, go well beyond any "arms-length" contractual dispute. Without going into the evidentiary detail, it is clear that both the Plaintiff and the Defendant entered into the lease arrangement with understandings well beyond, and outside, the scope of the terms of the Lease Agreement: the Plaintiff thinking that he would eventually be buying the property; the Defendant thinking that his and his family's use of the property was unrestricted.

One thing is certain from the evidence and the record: namely, that the Plaintiff spent an enormous sum of money on the land to "construct a fence, barn and related facilities in which to house horses" (see paragraph 4 of the Lease Agreement). The tape I ran on the invoices submitted as exhibits by the Plaintiff ran to well over \$150,000.00. This is by no means a measure of the Plaintiff's damages. For one thing, it is not always clear from the invoices what the expense is for. The invoices appear to

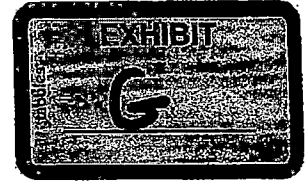
encompass any and all monies spent by the Plaintiff to house and care for his horses, and not just for improvements. For another, there is the real question of whether it was reasonable, given the parameters of the Lease Agreement, the 5-year term, and the right of first refusal which was a part of the agreement, for the Plaintiff to incur these expenses. Finally, on this issue, the Defendant has claims related to what he contends are the shoddy construction of the barn and fencing; thus, calling into question the value of the improvements.

The facts show that the Defendant noticed the Plaintiff by correspondence of December 3, 2003, that he had breached the lease and was expected to vacate the property in thirty (30) days; this he did as instructed. However, the Plaintiff's breach has not been proven by a preponderance of the evidence. In my view, the lease provision upon which the Defendant relies to establish the breach (see paragraph 7 of the Lease Agreement) was not violated by the actions of the Plaintiff. This being the case, the Plaintiff was wrongfully evicted, or did not get the benefit of his bargain. Either way, he incurred damages as a result, whether one characterizes them as contractual for the remaining term of the Lease Agreement or as equitable for the value of the improvements. I find for the Plaintiff in the amount of Sixty Thousand and No/100 Dollars (\$60,000.00).

This Award is in full settlement of all claims submitted in this arbitration.


Walter B. Todd, Jr.
Arbitrator

Date: June 23, 2015..



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS OF
	)	THE FIFTH JUDICIAL CIRCUIT
	)	
<u>RANDY MILLS</u>	)	CASE NO. 2008-CP-40-00876
PLAINTIFF(S)	)	
	)	
VS.	)	TRANSCRIPT OF JUDGMENT
	)	
<u>THOMAS D. EFLAND, JR.</u>	)	
DEFENDANT(S).	)	

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, filed in the Court of Common Pleas of the State and County aforesaid, judgment was entered against THOMAS D. EFLAND, JR. the defendant in the action, on the 6th day of July, 2015, plus costs and fees as applicable*. Attorneys of record are Douglas N. Truslow, representing the plaintiff, and S. Jahue Moore, Sr., representing the defendant.

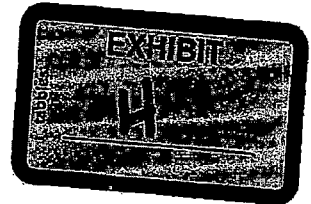
FURTHER, NOTICE IS GIVEN that interest will accrue from the date of entry of judgment, July 6, 2015.

Amount of judgment:	\$ 60,000
Costs and fees*:	
Attorney's fees	\$
Court Costs/Filing Fees	\$
Other :	\$
Total Amount of Judgment:	\$ 60,000

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

Granville W. McBride, Jr.
Clerk of Court of Richland County

Date: 3/21/16



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Randy Mills,
☐ Plaintiff

C/A #2008-CP-40-00876

v.

Thomas D. Eiland, Jr.,
☒ Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party

<u>name, S.C. Bar no. and address of plaintiff's attorney</u> Douglas N. Truslow P.O. Box 1465 Columbia, SC 29202 telephone: (803) 256-6276 fax: (803) 256-7659 e-mail: other:		<u>name, S.C. Bar no. and address of defendant's attorney</u> S. Jahue Moore S.C. Bar No. 4063 P. O. Box 5709 West Columbia, SC 29171 telephone: (803) 796-9160 fax: (803) 791-8410 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>Motion to Rehear</u>		Court Reporter Needed: YES / NO	
Estimated Time Needed:		Court Reporter Needed: YES / NO	
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for Plaintiff/ Defendant		Date submitted: <u>July 20, 2015</u>	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: <u>\$25.00</u> ☐ 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: _____ (print name)		<u>DATE FILED</u>	
☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Randy Mills,)
)
Plaintiff,)
)
vs.)
)
Thomas D. Efland, Jr.,)
)
Defendant.)
_____)

C.A. No.: 2008-CP-40-00876

NOTICE OF MOTION TO REMAND

TO: DOUGLAS N. TRUSLOW, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as counsel can be heard, the undersigned, as counsel for the Defendant, will move before the Court for an Order remanding this matter to the Arbitrator.

The basis for this Motion is that the Arbitrator did not issue an opinion as to all of the issues contained in the Complaint and the Counterclaim.

There are major issues dealing with rights of way; property ownership; and access which are before the Court and were referred to the Arbitrator.

The Arbitration Award is totally silent as to any of these.

The Arbitrator simply failed to deal with any of the issues raised in the Counterclaims of the Defendant. Before this Award becomes final those issues should be resolved.

MOORE TAYLOR LAW FIRM, P.A.

BY: _____

S. Janie Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

Attorney for the Defendant

West Columbia, South Carolina
July 20, 2015

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

FORM 4

JUDGMENT IN A CIVIL

CASE NUMBER: 2008CP4000876

Randy Mills

Thomas D. Efland Jr.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ 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 _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: Motion denied. (see attached order)

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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

Circuit Court Judge HB

Judge Code 2161

Date 12-15-15

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Dec, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of Dec, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas Neal Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)

S. Jahue Moore

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court Janette W. McBride

SCANNED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
RANDY MILLS,) Docket No: 2008-CP-40-00876
Plaintiff,)
vs.)
THOMAS D. EFLAND, JR.,)
Defendant.)

ORDER

RICHLAND COUNTY
FILED
2015 DEC 16 PM 3:29
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER COMES BEFORE THE COURT pursuant Defendant's
"Motion to Remand" dated July 20, 2015.

For the reasons set forth below, Defendant's Motion is denied.

It is undisputed that (a) the within case was placed on the jury trial roster in early December 2009; (b) on December 16, 2009 Defendant requested a continuance (which was apparently not granted by the Court); (c) the parties agreed to submit the matter to binding arbitration on December 28, 2009; (d) on June 23, 2015, the Arbitrator issued his decision and award; (e) Defendant did not file a Motion to Reconsider or an appeal, and (f) on July 20, 2015, Defendant filed in this Court a Motion to Remand.

The award appears proper in form and format. Moreover, having consented to binding arbitration (and without a transcript being needed), there is no justiciable issue before this Court. Even if Defendant had legitimate claims, Defendant has been untimely. There is no jurisdiction for the Court to grant the relief Defendant seeks.

Now, therefore, Defendant's Motion to Remand is DENIED.

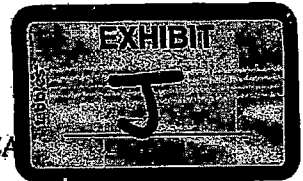
AND IT IS SO ORDERED.


~~JOHN SEE~~ DeAndrea Benjamin
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

12-14, 2015

SCANNED



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

NOTICE OF SHERIFF'S SALE

2008-CP-40-00876

Randy Mills

Plaintiff,

vs.

Thomas D. Efland, Jr.

Defendant

An Execution Against Property issued by the Court of Common Pleas for the County and State aforesaid for satisfaction of judgment docketed in said County on the 2nd day of March, 2016 in favor of the Plaintiff(s) and against the Defendant in the above entitled case for the sum of \$61,858.55 plus costs, has directed and caused the Sheriff of Richland County to levy upon the following described real property:

TMS #R04400-01-26

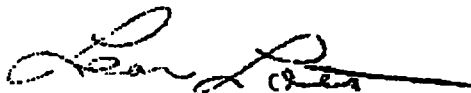
150 Tiger Paw Lane

Said Property will be sold at Public Auction to the highest bidder in Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina on the 1st day of August, 2016 immediately following the Master in Equity sale. Terms of Sale will be for cash. Minimum bid for the property must be in the amount of the Homestead Exemption, if applicable, and no bid less than that amount may be accepted. The property will be sold subject to all liens and/or encumbrances:

1. Taxes for 2015 were taxes paid in the amount of \$1,239.20.
2. This certificate is limited to matters disclosed by the records filed, and properly indexed, in the Office of the Register of Deeds or the Clerk of Court's Office for the County in which the property is located and exception is made to any matters or defects which are not disclosed by an examination of said records.
3. Any law, ordinance, and governmental regulation (including but not limited to truth in lending and consumer protection laws, building and zoning ordinances, floodway and flood plain determinations) restricting or regulating the character, use dimension, or location of any improvements now or hereafter erected on the land or prohibiting a separation in ownership or a reduction in the dimensions or area of a land or the effect of any violation of such law, ordinance, or governmental regulation, of determination.
4. Judgments and proceeding filed only in Federal Court. (Note: Upon the filing of a petition in Bankruptcy title to real estate of the bankrupt vests in the Trustee in Bankruptcy and notice thereof is not required to be filed in records of the County records; also, federal condemnation proceedings may vest property in the United States and notice thereof is not required to be filed in the county records).

5. Water and sewerage charges from any municipal authority, or public service district or private utility, unrecorded in the Office of the Register of Deeds or Clerk of Court's Office.
6. The completeness and accuracy of the county assessor's, auditors, and treasurer's record.
7. The possibility that additional taxes will be assessed under the rollback provision of Section 12-43-220 of the Code of Laws of South Carolina, 1976, as amended.
8. Judgment 2008-CP-40-876 Mills V Efland.
9. Restrictions as contained in Book R662 at page 1092.
10. Ingress/Egress Easement as recorded in Books D115 Page 979, Book 145 Page 584, Book 675 page 707.
11. Termination of Book 145 Page 584 recorded in Book 675 Page 719.
12. Easement to Richland County in Book D1262 at page 702.
13. Encroachment Agreement recorded in Book 662 at page 1092.
14. View Et. Recorded I Book 675 at page 713.
15. Such state of facts as would be disclosed by an accurate survey and inspection of the premises.

A deposit of five percent (5%) of the bid price must be posted at the time of sale. Sale will be subject to Upset Bidding, which shall conclude in Courtroom 2-D, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina at 11:00 A.M. on the 31st day of August, 2016.



Leon Lott
Richland County Sheriff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Randy Mills, Plaintiff

vs.

Thomas D. Eiland, Jr., Defendant(s)

IN THE COURT OF COMMON PLEAS

NOTICE OF LEVY

JR # 2008CP4000876

TO THE DEFENDANT(S) ABOVE NAMED. PLEASE TAKE NOTICE:

PURSUANT TO THE AUTHORITY AND DIRECTION OF AN EXECUTION to me directed in the above entitled matter issued out of THE COURT OF COMMON PLEAS for the county and state aforesaid on the 2nd day of 3/2/2016, I have this day, for purpose of satisfaction of said judgment levied upon the following described real personal property:

TMS# R04400-01-26
150 TIGER PAW LANE

UNLESS PAYMENT OF SAID JUDGMENT IS MADE WITHIN FIVE (5) DAYS FROM THE DATE OF SERVICE OF THIS NOTICE, I WILL PROCEED TO SELL THE PROPERTY ABOVE DESCRIBED FOR THE SATISFACTION OF SAID JUDGMENT(S) AND COST.

LEVIED THIS THE 7th DAY OF July, 2016 .AD

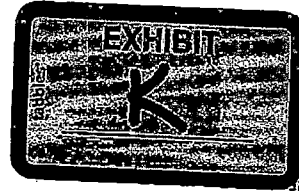
3:23pm

JUDGMENT AMOUNT DUE: \$61,858.55 Plus Interest and Cost of Sale


Sheriff, RICHLAND COUNTY SOUTH CAROLINA

J. Finch, Sergeant
PHONE:(803) 576-3159

MOORE | TAYLOR
LAW FIRM



S. Jahue Moore*
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley*
Sheila McNair Robinson
Christian G. Spradley
C. David Sawyer, Jr.
William H. Edwards
Stanley L. Myers
Jane H. Downey*
S. Jahue Moore, Jr.
John C. Bradley, Jr.
Melissa K. Moore
William B. Fortino
Ralph Nichols Riley, Jr.
Amber Cary Fulmer
Sarah Taylor Cassidy
Gregory R. Close
Robert D. Hazel
OF COUNSEL
Billy C. Coleman
RETIRED

July 28, 2016

RE: Randy Mills v. Thomas D. Efland, Jr.
C.A. No.: 2008-CP-40-00876
Our File No.: W060128/SJM

The undersigned hereby acknowledges receipt of the cashiers check in the amount of \$67,588.20, check number 18001790 with regard to the above-referenced file.

July 28, 2016
(Date)

[Signature]
(Signature)
Douglas R. Tucker
(Please print name)

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171

TEL 803.796.9160 FAX 803.791.8410 www.mooretaylorlaw.com

*Member of American Board of Trial Advocates *Fellow of the American Academy of Matrimonial Lawyers *Certified Specialist in Bankruptcy & Debtor/Creditor Law

Mills reimbursement breakdown:

60,000.00	Judgment
10.00	Clerk fee
25.00	RCSD filing fee
1,823.55	RCSD fee for the execution
500.00	RCSD advertising fee
512.00	Mark Smith title search
4,717.65	Interest through 7-28
67,588.20	total

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Randy Mills,

Plaintiff,

vs.

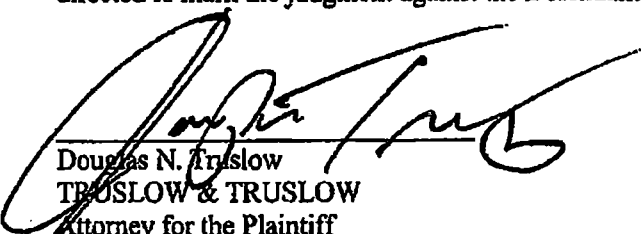
Thomas D. Efland, Jr.,

Defendant.

C.A. No.: 2008-CP-40-00876

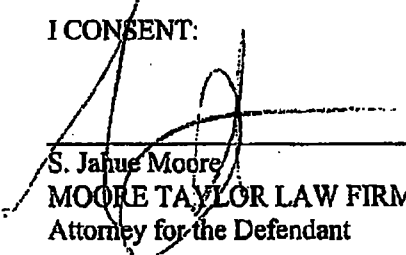
SATISFACTION OF JUDGMENT

The judgment in this case is hereby paid and fully satisfied. The Clerk of this Court is directed to mark the judgment against the Defendant paid and satisfied in full.

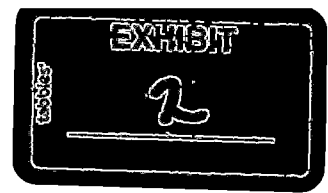


Douglas N. Truslow
TRUSLOW & TRUSLOW
Attorney for the Plaintiff

I CONSENT:



S. Jahue Moore
MOORE TAYLOR LAW FIRM, P.A.
Attorney for the Defendant



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Case No. 2016-CP-40-05336

Tom Efland,)

Plaintiff,)

**MOTION FOR JUDGMENT ON THE
PLEADINGS AS TO PLAINTIFF'S CLAIMS**

Vs.)

Randy L. Mills and Richland County,)

Defendants.)

Defendant Randy L. Mills (hereafter "Mills") moves for judgment on the pleadings pursuant to Rule 12(c), SCRPC. Mills would show:

RICHLAND COUNTY
FILED
2016 OCT 21 PM 1:51
JEANNETTE W. HARRIS
C.C.P. & G.

1. Each and every issue embraced by this litigation, whether express or implied, has been fully adjudicated, determined, and finalized, with Plaintiff Efland (hereinafter "Efland") found to be liable to Mills in the amount of \$60,000, which judgment was eventually paid after a sale of Efland's property was scheduled in aid of execution of the judgment.
2. The first lawsuit, Randy Mills v. Thomas D. Eflund Jr., Case No. 2005-CP-40-04535 was filed in 2005. In his *pro se* amended answer in the 2005 action (attached to the answer and incorporated therein as **Exhibit A** and made a part of that pleading), Efland asserted that:
 - (a) Mills had leased property from Efland beginning in October, 2001 known as "the bottom land on the eastern side of the old creek bed" for five years for the purpose of keeping Mills' horses..." (Paragraph 3).
 - (b) Mills "proceeded to fence in and seed bottom land that had remained under cultivation for in excess of 50 years..." *Id.*
 - (c) Mills "installed an illegal septic system over the objections of [Efland.]." *Id.*

- (d) "Despite being told that the bottom land flooded..." *Id.*
 - (e) "Upon flooding of the bottom land..." *Id.*
 - (f) [B]uilt or caused to be built a culvert that would not meet the flood load for a ground path he intended to be a road all in a location [Efland] had requested not be used... " *Id.*
 - (g) Mills "opened up a road into [Mills'] property unauthorized over and across the lands of [Efland] all without permission or easement. *Id.*
 - (h) At Thanksgiving 2003, "[Mills]. . . causing a drastic increase of water flow onto the [Efland's] property polluted with horse manure and destroying a well." *Id.*
 - (i) Mills "has created a Nuisance to [Efland] by drastically altering water flow onto [Efland's] land causing damage that has and will in the future cost great sums to rectify and has lowered the value of his property." Paragraph 24.
 - (j) Mills "placed horse manure on his property in such a manner as to cause water flow onto [Efland's] property to be polluted. Paragraph 25.
 - (k) Mills "with out permission or easement, trespassed and continues to do so onto the property of [Efland] adjoining the road to the leased property by cutting trees and opening another driveway to his property when he has a usable specific easement in another location." Paragraph 28.¹
3. On or about October 17, 2006, the 2005 action was "dismissed without prejudice." **Exhibit B**, attached to the answer and incorporated herein and made a part of that pleading.
4. The second action between these parties, Mills v. Efland, Case No. 2008-CP-40-00876, was filed on or about February 5, 2008.

¹ The original Answer and Counterclaim further claimed that Mills had "intentionally inflicted great emotional distress upon [Efland] by his actions..." See Paragraph 31 of the original Answer.

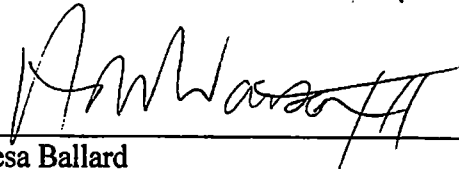
5. In his answer and counterclaim, Efland asserted many of the same allegations, some verbatim, which were set forth in his answer in the 2005 complaint. **Exhibit C** to the answer which is incorporated by reference and made a part of that pleading.
6. Mills filed a Reply to Efland's counterclaim on or about March 3, 2009, as a result of which the issues set forth in Efland's counterclaim were fully joined. **Exhibit D** to the answer which is attached thereto and incorporated by reference and made a part of that pleading.
7. Efland was deposed in the 2008 litigation. A copy of the transcript of his deposition is attached to the answer and incorporated therein as **Exhibit E** and made a part of that pleading.
8. The parties, through counsel, agreed to binding arbitration in the 2008 case. The award of arbitrator filed on or about July 6, 2015 found in favor of Mills and awarded Mills judgment against Efland in the amount of \$60,000. A copy of the Award of Arbitrator is attached to the answer as **Exhibit F** and incorporated therein by reference and made a part of that pleading.
9. All of the issues raised in this action were arbitrated and finally decided in the 2008 litigation as a result of the Award of Arbitrator.
10. Judgment was entered in favor of Mills against Efland on or about July 6, 2015. A copy of the Judgment is attached to the answer and incorporated therein by reference as **Exhibit G** and made a part of that pleading.
11. On or about July 20, 2015, Efland, through counsel, made a motion to remand the matter to the arbitrator alleging "[t]he Arbitrator simply failed to deal with any of the issues

raised in the Counterclaims of [Efland]. Before this Award becomes final those issues should be resolved.” A copy of the Motion to Remand is attached to the answer and incorporated by reference as **Exhibit H**, and made a part of that pleading.

12. On or about December 16, 2015, Circuit Court Judge DeAndre Benjamin denied Efland’s Motion to Remand, concluding and finding that Efland had failed to seek relief in a timely manner and was barred from proceeding to litigate his counterclaims. Judge Benjamin’s order is attached to the answer and incorporated therein as **Exhibit I** and made a part of that pleading.
13. Richland County Sheriff Leon Lott issued a Notice of Sheriff’s Sale to occur on August 1, 2016 to sell a piece of real estate owned by Efland in Richland County, identified by TMS# R04400-01-06 in order to satisfy the judgment Mills held against Efland. A copy of the Notice of Sheriff’s Sale is attached to the answer and incorporated by reference as **Exhibit J** and made a part of that pleading.
14. On or about July 28, 2016, Mills’ judgment against Efland was satisfied and paid in full. A copy of the Satisfaction of Judgment is attached to the answer and incorporated therein as **Exhibit K** and made a part of that pleading.
15. On or about September 1, 2016, Efland filed this action, omitting any reference to the prior litigation, the prior judgment, the award of the arbitrator, his payment of judgment to Mills, and failing to notify the court that all issues raised in this litigation have been adjudicated and the filing of this action is an abuse of process.

16. All issues raised in this litigation have been adjudicated and the filing of this action is an abuse of process and in bad faith, is retaliatory and is intended to harass and financially injure Mills.
17. The instant complaint contains no allegations not already fully adjudicated in the prior litigation, with the exception of an allegation regarding the blowing of leaves from one property, as to which this Court can take judicial notice is an act of nature.

Wherefore, having fully set forth the grounds for the relief sought, Defendant Mills moves for dismissal of Plaintiff Efland's claims against him, and for such other relief as may be appropriate. Mills reserves the right to seek further relief after the court's ruling, pursuant to applicable court rule or statute as may be warranted.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

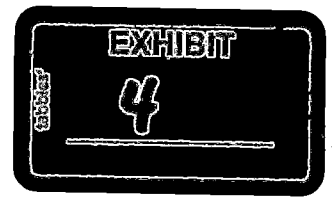
ATTORNEYS FOR DEFENDANT MILLS

October 19, 2016

Sheila Wright

From: RichlandRostersNOREPLY@rcgov.us
Sent: Thursday, December 15, 2016 4:29 PM
To: Mitchell Willoughby
Cc: henleya@rcgov.us
Subject: Motion "MFJOPL-Motion for Judgment on the Pleadings" for Case "2016CP4005336-Tom Efland vs Randy Mills , defendant, et al" was added to a Motions Roster for 1/5/2017 at 2:00 PM

RESCHEDULED MOTIONS HEARINGThe above referenced case is scheduled for a Motion Hearing before Judge L. Casey Manning in Courtroom 2C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. **ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday December 29, 2016** FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK:to mailto:cmanninglc@sccourts.org



From: [Desa Ballard](#)
To: [Manning, L. Casey](#); manninglc@sccourts.org
Cc: jake@mttlaw.com
Subject: Eflund v. Mills, Case No. 2016-CP-40-05336 (2:00 pm January 5, 2017).
Date: Wednesday, January 04, 2017 5:03:00 PM
Attachments: [Proposed order.pdf](#)

Judge Manning and Christian:

Attached in PDF format is a proposed order grants Defendant's Motion for Judgment on the Pleadings, which is scheduled to be heard before Judge Manning tomorrow at 2:00 pm. I will bring a hard copy of the proposed order with me.

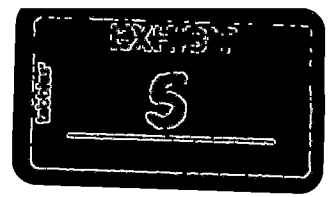
I look forward to seeing you then.

By copy of this email, I am providing the proposed order to opposing counsel as well.

db

Desa Ballard
Ballard & Watson, Attorneys at Law
226 State Street, West Columbia, SC 29169
Post Office Box 6338, West Columbia, SC 29171
Office phone: 803.796.9299
Office facsimile: 803.796.1066
Email: desab@desaballard.com

Web: www.desaballard.com



From: Desa Ballard
To: Mitchell Willoughby; Manning, L. Casey Law Clerk (John Waites)
Cc: Andrew DAntoni; Jake Moore; Angel J. Robinson-Jones; Diane Corley
Bcc: Randy L. Mills (randylmillsusa@gmail.com); Elizabeth "Beth" Cogan (beth@desaballard.com)
Subject: RE: Efland v Mills C.A. 2016-CP-40-05336
Date: Wednesday, January 18, 2017 11:56:00 AM
Attachments: image001.png

I understood Mr. Moore was going to submit a memo of law, not a proposed order. Both memos and/or proposed orders were due the week BEFORE the hearing. Richland County and Mr. Mills complied with the requirement to furnish the memos/proposed orders in advance. Mr. Moore did not. I normally do not object to reasonable continuances, but in light of the several delays in this matter already, (and the pattern of delays in the prior two actions in which these parties litigated against one another, most of which were attributable to Mr. Moore – which led to more than 8 years of litigation between them), I cannot agree to an extension.

Desa Ballard

From: Mitchell Willoughby [mailto:MWilloughby@Willoughbyhoefer.com]
Sent: Wednesday, January 18, 2017 11:35 AM
To: Manning, L. Casey Law Clerk (John Waites) <CManningLC@sccourts.org>
Cc: Desa Ballard <Desab@desaballard.com>; Andrew DAntoni <ADAntoni@Willoughbyhoefer.com>; Jake Moore <jake@mttlaw.com>; Angel J. Robinson-Jones <angel@mttlaw.com>; Diane Corley <diane@mttlaw.com>
Subject: RE: Efland v Mills C.A. 2016-CP-40-05336

John:

On behalf of Richland County, we consent to the requested extension of time. If any additional information is required, please advise. With warmest regards,

Mitch

Mitchell Willoughby, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202
Telephone #: (803) 252-3300
Facsimile #: (803) 256-8062
E-mail address: mwilloughby@willoughbyhoefer.com

From: Manning, L. Casey Law Clerk (John Waites) [mailto:CManningLC@sccourts.org]
Sent: Wednesday, January 18, 2017 11:23 AM
To: Diane Corley <diane@mttlaw.com>
Cc: desab@desaballard.com; Mitchell Willoughby <MWilloughby@Willoughbyhoefer.com>; Andrew

DAntoni <ADAntoni@Willoughbyhoefer.com>; Jake Moore <jake@mttlaw.com>; Angel J. Robinson-Jones <angel@mttlaw.com>

Subject: RE: Efland v Mills C.A. 2016-CP-40-05336

Jake:

If all parties consent to this extension then Judge Manning is fine with it. If there is any opposition to this extension, then Judge Manning request that you have the proposed order in by tomorrow. Please contact the parties and let me know. Thank you.

Christian Waites
Law Clerk to the Honorable L. Casey Manning
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1774
Fax: (803) 576-1744

From: Diane Corley [<mailto:diane@mttlaw.com>]

Sent: Wednesday, January 18, 2017 10:16 AM

To: Manning, L. Casey Law Clerk (John Waites) <CManningLC@sccourts.org>

Cc: desab@desaballard.com; mwilloughby@willoughbyhoefer.com;

adantoni@willoughbyhoefer.com; Jake Moore <jake@mttlaw.com>; Angel J. Robinson-Jones <angel@mttlaw.com>

Subject: RE: Efland v Mills C.A. 2016-CP-40-05336

Good Morning Judge Manning:

I owe you a proposed order in this case. If I could have until Monday, January 30th to have the proposed order to you, I would greatly appreciate it. I have been tied up with Stanley in an emergency case which has just come in.

Thank you.

Jake



1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
Tel.: (803) 796-9160
Fax: (803) 791-8410

Moore Taylor Law Firm, P.A.

1700 Sunset Blvd.
Post Office Box 5709
West Columbia, SC 29171
Phone: 803-796-9160
Fax: 803-791-8410

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



**Beth Cogan**

---

**From:** Angel J. Robinson-Jones <angel@mttlaw.com>  
**Sent:** Wednesday, January 18, 2017 4:55 PM  
**To:** CManningLC@sccourts.org  
**Cc:** Desa Ballard; mwilloughby@willoughbyhoefer.com; adantoni@willoughbyhoefer.com; Jake Moore; Angel J. Robinson-Jones; Diane Corley  
**Subject:** Memorandum - Tom Efland v. Randy Mills and Richland County C.A. No.: 2016CP4005336  
**Attachments:** Memorandum - Tom Efland v. Randy Mills and Richland County.pdf

Christian,

You will please find attached the proposed order/memorandum by Jake Moore for the above referenced matter. If there is anything else that you need, please let me know.

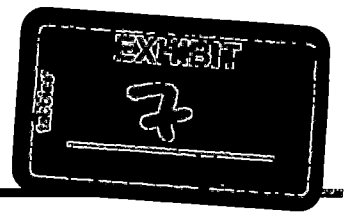
Thank you.

Angel Robinson-Jones  
Legal Assistant to S. Jahue Moore



1700 Sunset Boulevard  
P.O. Box 5709  
West Columbia, SC 29171  
Tel.: (803) 796-9160 ext. 145  
Fax: (803) 791-8410  
mooretaylorlaw.com

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.



**Beth Cogan**

**From:** Manning, L. Casey Law Clerk (John Waites) <CManningLC@sccourts.org>  
**Sent:** Thursday, January 19, 2017 9:11 AM  
**To:** Angel J. Robinson-Jones  
**Cc:** Desa Ballard; mwilloughby@willoughbyhoefer.com; adantoni@willoughbyhoefer.com; Jake Moore; Diane Corley  
**Subject:** RE: Memorandum - Tom Efland v. Randy Mills and Richland County C.A. No.: 2016CP4005336

**AmicusFileIds:** 1983  
**AmicusFileName:** Mills, Randy  
**AmicusId:** 343239  
**AmicusStatus:** Saved

Ms. Robinson-Jones:

I see the memorandum attached. I do not see the proposed order. Let me know if the proposed order is coming later today or if you can attach it and send it over this morning. Thanks!

Christian Waites  
Law Clerk to the Honorable L. Casey Manning  
Fifth Judicial Circuit  
Richland County Judicial Center  
1701 Main Street, Room 214  
Columbia, SC 29201  
Office: (803) 576-1774  
Fax: (803) 576-1744

---

**From:** Angel J. Robinson-Jones [mailto:angel@mttlaw.com]  
**Sent:** Wednesday, January 18, 2017 4:55 PM  
**To:** Manning, L. Casey Law Clerk (John Waites)  
**Cc:** desab@desaballard.com; mwilloughby@willoughbyhoefer.com; adantoni@willoughbyhoefer.com; Jake Moore ; Angel J. Robinson-Jones ; Diane Corley  
**Subject:** Memorandum - Tom Efland v. Randy Mills and Richland County C.A. No.: 2016CP4005336

Christian,

You will please find attached the proposed order/memorandum by Jake Moore for the above referenced matter. If there is anything else that you need, please let me know.

Thank you.

Angel Robinson-Jones  
Legal Assistant to S. Jahue Moore

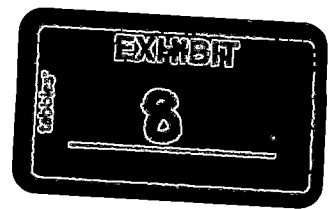


1700 Sunset Boulevard

**P.O. Box 5709**  
**West Columbia, SC 29171**  
**Tel.: (803) 796-9160 ext. 145**  
**Fax: (803) 791-8410**  
**mooretaylorlaw.com**

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



From: [Desa Ballard](#)
To: [Angel J. Robinson-Jones](#); [CManningLC@sccourts.org](#); [mwilloughby@willoughbyhoefer.com](#); [adantoni@willoughbyhoefer.com](#)
Cc: [Jake Moore](#); [tomefland@gmail.com](#); [Beth Cogan](#)
Bcc: [Randy L. Mills \(randylmillsusa@gmail.com\)](#)
Subject: RE: Proposed Order - Efland v. Mills
Date: Tuesday, February 07, 2017 9:35:00 AM

Obviously we object to consideration of this order which, at this point, is about two months late.

db

From: Angel J. Robinson-Jones [mailto:angel@mttlaw.com]
Sent: Friday, February 03, 2017 3:35 PM
To: [CManningLC@sccourts.org](#); [mwilloughby@willoughbyhoefer.com](#); [Desa Ballard](#) <Desab@desaballard.com>; [adantoni@willoughbyhoefer.com](#)
Cc: [Jake Moore](#) <jake@mttlaw.com>; [tomefland@gmail.com](#)
Subject: Proposed Order - Efland v. Mills

Everyone,

Please find attached the proposed Order from Jake in the above referenced matter. If there is anything else that is needed, please let me know.

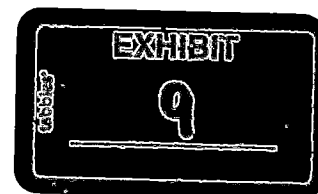
Thank you.

Angel Robinson-Jones
Legal Assistant to S. Jahue Moore



1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
Tel.: (803) 796-9160 ext. 145
Fax: (803) 791-8410
mooretaylorlaw.com

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.



From: Desa Ballard
To: "Jake Moore"
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: RE: Efland v Mills
Date: Wednesday, May 24, 2017 3:47:00 PM

Yes, but your appeal does not affect my claims. Are you not going to answer?

Desa Ballard

From: Jake Moore [mailto:jake@mttlaw.com]
Sent: Wednesday, May 24, 2017 3:45 PM
To: Desa Ballard <desab@desaballard.com>
Subject: RE: Efland v Mills

We are on appeal

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Wednesday, May 24, 2017 3:46 PM
To: Jake Moore
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Efland v Mills

Dear Jake:

Your discovery response were due last Friday. Please consider this a consultation pursuant to Rule 11.

I will file a motion to compel if we don't hear from you by Monday.

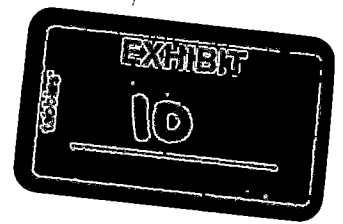
Thanks so much.

Desa Ballard

Moore Taylor Law Firm, P.A.
1700 Sunset Blvd.
Post Office Box 5709
West Columbia, SC 29171
Phone: 803-796-9160
Fax: 803-791-8410

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this

communication in error, please notify us immediately by e-mail, and delete the original message.



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Tom Efland,)
)
Plaintiff,)
)
vs.)
)
Randy L. Mills and Richland County,)
)
Defendants.)
_____)

C.A. No.: 2016-CP-40-05336

MEMORANDUM

This is a case filed by Tom Efland against Randy L. Mills and Richland County. Mr. Efland and Mr. Mills are neighbors. There has been significant litigation between Mr. Mills and Mr. Efland which was to have decided all of the issues. It is alleged the matter was heard by mediator Walt Todd who did not decide the counterclaims which were referred to him.

The court has before it the Order of Mr. Todd. Reading the Order of Mr. Todd, it is apparent he never decided the counterclaims of Mr. Efland which were referred to him for handling. Counsel for the Defendants point to non-specific portions of Mr. Todd's ruling in an effort to convince the court Mr. Todd has actually ruled. Mr. Todd never ruled on the counterclaims. At best, it is unclear as to whether or not Mr. Todd ever ruled on the issues which were placed before him.

The matter is presently before the court on a Motion to Dismiss. What was or was not decided by Mr. Todd is unclear. In any event, what is presently before the court involves a question as to what to do with an action which has been referred when there are allegations which allege an incomplete decision. There is no law indicating an action in this regard is subject to a Motion to Dismiss.

In passing on a Motion to Dismiss, the court must take all of the allegation of the Plaintiff

as true (*Brown v. Investment Management & Research Inc.*, 323 S.C. 395, 475 S.E. 2d 754, 756, 1996). The court is not to look outside the pleading and the court is not to consider extraneous matters. (*Overcash v. SCE&G Co.*, 364 S.C. 569, 614 S.E. 2d 619, 620, 2005)

Our law recognizes all cases should be decided on their merits. When a matter is properly litigated, it should be ruled upon and decided. (*Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E. 2d 543, 546, 2000)

There is no way this court can decide looking at what has been presented that Mr. Todd has ever ruled on the Plaintiff's claims. Thus, the court can either allow this matter to continue; refer the matter back to Mr. Todd for clarification; or send the matter on to trial.

All of the parties agree the issues contained in the Complaint were to have been decided by Mr. Todd. As it is unclear as to whether or not Mr. Todd ruled on the counterclaims, the matter should be referred back to him for clarification as to the ruling he has made. Mr. Todd should be free to declare the matter decided or to rule upon the counterclaims as he sees fit. There is no way the court in the interest of justice could at this point in good conscious simply dismiss the action based upon what is before the court.

Richland County moves to dismiss not on the issues related to the arbitration but, rather, it takes the position the Complaint does not state a cause of action against the county. Reviewing the Complaint, the county's position does not appear meritorious.

The first cause of action in the Complaint contains a claim as to declaratory judgement. Plaintiff seeks a declaration that the easement road is not public and does not belong to Richland County. Thus, there is legitimately presented to the court a question appropriate for declaratory relief as to what the various rights and responsibilities are as to the access road which is the subject of the action.

Paragraph 18 of the Complaint clearly seeks a declaratory judgement wherein the court is asked to declare the rights of the parties one to another. The court is also asked to declare that the road is not a public roadway. Thus, a cause of action for declaratory relief is properly set forth against the county and the issue as to the ownership and rights and responsibilities in regard to the road are appropriately before the court.

CONCLUSION

Based on the foregoing, the court should refer the matter to arbitrator Todd for clarification and determination as to the counterclaims. Mr. Todd should either ruled he has decided the counterclaims; modify his Order in regard to the counterclaims; or advise the court he chooses not to decide the counterclaims so they may be heard at this time.

As to Richland County, the cause of action for declaratory relief is viable and should be heard. The declaratory judgement action should not be heard until Mr. Todd issues his Order clarifying the intent of his ruling on the arbitration.

Respectfully submitted,

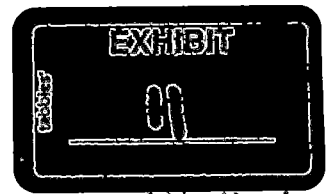
MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. J. Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
January 18, 2017



February 3, 2017

VIA E-MAIL: cmanninglc@sccourts.org

The Honorable L. Casey Manning
P.O. Box 192
1701 Main Street, Room 214
Columbia, SC 29202-0192

RE: Tom Efland v. Randy L. Mills and Richland County
C.A. No.: 2016-CP-40-05336

Dear Your Honor:

It is my understanding the court has requested an Order from us in this matter. I do thank you for your consideration. As always, it has been an honor to appear before you.

You will please find enclosed a copy of a Proposed Order we have prepared. If anything further is needed from us, please let me know.

Yours very truly,

S. Jahue Moore

SJM:arj

Enclosures

cc w/encl.: Mitchell Willoughby via e-mail: mwilloughby@willoughbyhoefer.com

Desa Ballard via e-mail: desab@desaballard.com

S. Jahue Moore[†]
J. Mark Taylor^{*†}
C. Vance Stricklin, Jr.
James Edward Bradley[†]
Sheila McNair Robinson
Christian G. Spradley
C. David Sawyer, Jr.
William H. Edwards
Stanley L. Myers
Jane H. Downey^{*}
S. Jahue Moore, Jr.
John C. Bradley, Jr.
Melissa K. Moore
William B. Fortino
Ralph Nichols Riley, Jr.
Amber Cary Fulmer
Sarah Taylor Cassidy

Robert D. Hazel
OF COUNSEL
Billy C. Coleman
RETIRED

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171

TEL 803.796.9160 FAX 803.791.8410 www.mooretaylorlaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

Tom Efland,) C.A. No.: 2016-CP-40-05336
Plaintiff,)
vs.) **ORDER**
Randy L. Mills and Richland County,)
Defendants.)

This matter is before the court pursuant to a Motion to Dismiss. The Plaintiff is a resident of Richland County. Randy Mills also resides in Richland County. Plaintiff and Defendant are neighbors. The county has been made a party simply to have the rights regarding a road declared. The parties need a declaration as to whether the road is a public road or a private road.

In the Motion to Dismiss, Randy Mills, the Defendant, alleges this matter has been heard by mediator Walt Todd. Mr. Todd was referred a previous case and he issued an opinion. It is impossible for the court to tell at this point as to whether or not he actually considered the Counterclaims which are similar to or identical to the allegations in the Complaint against Mr. Mills.

The court has reviewed the findings of Mr. Todd. Reading the Order of Mr. Todd, it does not appear he ever decided the Counterclaims of Mr. Efland which were referred to him for handling. There are some non-specific portions of Mr. Todd's ruling which the Defendant claims demonstrate he has ruled. The court disagrees. Reading Mr. Todd's report, he appears he never ruled on the Counterclaims which make up the Complaint in this case. At best, it is unclear as to whether or not Mr. Todd ever ruled on the issues which were placed before him in the nature of a Counterclaim.

The court is presented with somewhat of an unique question. In this case, it appears the arbitrator did not issue a full and complete opinion. Reading his ruling, it does not appear Mr. Todd ever actually ruled upon the Counterclaims which are now the subject of the Complaint before the court.

There is no law which would indicate an undecided action is subject to a Motion to Dismiss. The court does have before a very unique question as to what should be done when an arbitrator does not rule on certain issues placed before him. There is certainly nothing in the law declaring a dismissal is in order in cases of this nature.

In passing on a Motion to Dismiss, the court must take all the allegations of the Plaintiff as true (*Brown v. Investment Management & Research, Inc.*, 323 S.C. 395, 475 S.E. 2d 754, 756, 1996). The court is not to look outside the pleadings and the court is not to consider extraneous matters. (*Overcash v. SCE&G Co.*, 364 S.C. 569, 614 S.E. 2d 619, 620, 2005)

Our law recognizes all cases should be decided on their merits. When a matter is properly litigated, it should be ruled upon and decided. (*Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E. 2d 543, 546, 2000)

I find Mr. Todd never ruled on the Plaintiff's claims which are the subject of this action. The matter was referred to Mr. Todd as an arbitrator who was to rule with finality.

All of the parties agree the issues contained in the Complaint, except the issues related to Richland County, were to have been decided by Mr. Todd. As the issues have been previously referred to Mr. Todd, I find and conclude the issues between the Plaintiff and Mr. Mills should be referred back to Mr. Todd for a clarification as to his Order. If Mr. Todd has indeed ruled, he can say so. If he neglected to rule on the case in its entirety, then he should take such actions as are necessary in order to properly rule on the allegations set forth in this Complaint which were set

forth as a Counterclaim in the previous action. There is no way the court in the interest of justice can at this point in good conscience simply dismiss the action.

As to Richland County, the Motion to Dismiss must be denied. All Plaintiff's seeks is a declaration of his rights as to a small portion of road in the county. Whether or not the road is public is a matter ripe for litigation. This action should be stayed against Richland County until such time as Mr. Todd rules on the allegations in the Complaint.

I find and conclude the issues between Plaintiff and Defendant should be referred back to attorney Walter B. Todd. Mr. Todd shall either reconvene his arbitration hearing or rule on the Plaintiff's Complaint as a supplemental order to those matters previously referred to him.

Upon a ruling by Mr. Todd, the Clerk of Court shall record his arbitration award as a judgement of this court. Thereafter, the declaratory judgement action pending in this case against Richland County shall be heard.

AND IT SO ORDERED.

The Honorable L. Casey Manning

_____, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-05336.
Appellate Case No. 2017-001130

Tom Efland, ...Appellant,

v.

Randy L. Mills and Richland County, ... Respondents.

CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on June 29, 2017, I served a copy of the **Motion to Dismiss Appeal**, in the above-captioned case on the following individuals by U.S. Mail, with sufficient first-class postage affixed, and addressed as follows:

S. Jahue Moore, Esquire
Moore Taylor
Post Office Box 5709
West Columbia, South Carolina 29171

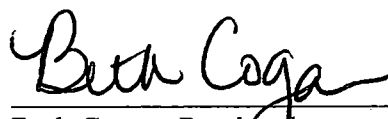
Mitchell Willoughby, Esquire
Andrew D'Antoni, Esquire
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202

RECEIVED

JUN 30 2017

SC Court of Appeals

June 29, 2017



Beth Cogan, Paralegal



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

June 29, 2017

Via U.S. Mail

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

Re: *Tom Efland v. Randy L. Mills and Richland County*
Appellate Case No.: 2017-001130

Dear Ms. Kitchings:

Enclosed for filing with your office is an original and one copy of the **Motion to Dismiss Appeal** for the above-referenced matter. Also enclosed is a check for \$25.00 for the filing fee. Please have your office file the original and return the filed copy via our self-addressed stamped envelope that is provided. If you have any questions please do not hesitate to call.

With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal
beth@desaballard.com

cc: Via U.S. Mail
S. Jahue Moore, Esquire
Mitchell Willoughby, Esquire
Randy L. Mills (via email)

RECEIVED

JUN 30 2017

SC Court of Appeals



UNITED STATES POSTAGE



02 1P

\$ 023.75⁰

0001838218 JUN 29 2017

MAILED FROM ZIP CODE 29170

BALLARD & WATSON, ATTORNEYS AT LAW
226 STATE STREET
WEST COLUMBIA, SC 29169

To:

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