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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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SC Court of Appeals

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

Case No. 2011-CP-10-2444
Appellate Case No. 2017-001221

Stow Away Storage, LLC and
MSC MTP, LLC,

Appellants,

v.

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

Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

A. **Did the trial judge err in finding that Appellant was not entitled to attorney's fees under the principle of equitable indemnification, because Respondent Sisson's breach of contract placed Appellant in litigation with a third party, Sweetgrass Hardware?**

B. **Did the trial judge err in finding that there was no evidence presented to warrant punitive damages against Sweetgrass, when in fact there was clear and convincing evidence of willfulness on the part of Defendants?**

C. **Did the trial judge err in failing to award lost rent, when damage to property is properly measured as such?**

STATEMENT OF THE CASE

This is an appeal from the circuit court's *Order on Damages*, filed on April 14, 2017. On April 4, 2011, Appellant Stow Away Storage, LLC ("Stow Away") filed its Complaint against Respondents, seeking declaratory judgment, injunction, and actual and punitive damages, and alleging causes of action for tortious interference with contract against Respondent Sweetgrass Hardware, Inc. ("Sweetgrass Hardware" and "Sweetgrass"), and breach of contract and equitable indemnity against Respondents Sisson, 4.0 LLC, and Sisson Foundation. Respondents Sisson, 4.0 LLC, Sisson Foundation, and Sweetgrass Hardware filed their Answer on April 29, 2011, alleging counterclaims against Appellant for breach of contract and tortious interference with contract. The Respondent Timarand was adjudged to be in default on August 16, 2011 by Order of the Chief Administrative Judge for the Ninth Judicial Circuit.

The case came to trial on August 14, 2013 before the Honorable J.C. Nicholson, Jr. Judge Nicholson bifurcated the trial, deciding the legal issues but reserving the issue of damages for a later hearing. In an Order dated November 22, 2013, Judge Nicholson found in favor of Stow Away.

Respondents filed their Notice of Appeal on January 14, 2014. On December 23, 2014, Stow Away's property was sold to MSC MTP LLC, and the Court of Appeals issued an Order adding that entity as a party Appellant. (Order of the SC Court of Appeals, dated September 24, 2014). The Appeal was heard on October 15, 2015. In an Unpublished Opinion, filed January 13, 2016, the Court of Appeals affirmed Judge Nicholson's Order and remanded the case to the Circuit Court for further proceedings.

This case again came before Judge Nicholson for a hearing on damages on November 6, 2016. On April 14, 2017, Judge Nicholson filed an Order on Damages, granting damages to Stow Away for the amount it expended to halt the crossing of the easement, but denying Stow Away's claim for actual damages in the amount of $13,124.00, denying Stow Away's claim for attorneys' fees in the amount of $97,692.30, and denying Stow Away's claim for punitive damages.

Stow Away filed a Motion pursuant to Rule 59, SCRCP, on April 21, 2017; Judge Nicholson denied that Motion in an Order filed on May 5, 2017.

Stow Away served and filed its Notice of Appeal on May 19, 2017.

STATEMENT OF FACTS

The following facts are undisputed, having been stipulated to at trial by the parties: This case concerns an appurtenant Access Easement granted by the Appellant, Stow Away Storage, LLC, to the Respondent, George W. Sisson ("Sisson"), on October 17, 2000,

involving property on Highway 17 at its intersection with Porcher Drive in Mt. Pleasant, South Carolina.[1] In exchange for the Access Easement, Sisson agreed to "abandon and terminate any rights [Sisson] may have to access U.S. Highway 17 by any means other than the Access Easement."[2] (Order of Judge J.C. Nicholson, Jr., 11/22/13, pp.1, 5-6; Complaint, ¶ 11-14, Exhibit 2). Under the terms of the easement agreement, Sisson could access his property (the dominant estate) by crossing Stow Away's property (the servient estate.) (Order, p. 5-6).

Seven years after Appellant granted the Access Easement to Sisson, the Respondent Sweetgrass Hardware entered into a 20 year lease of a parcel adjacent to Sisson's property; the leased parcel was owned by Respondent Timarand. Timarand had approached Stow Away a few months before leasing the parcel, requesting an extension of Sisson's easement for access to the parcel that was ultimately leased by Sweetgrass. (Order p.6; Complaint ¶ 15).[3] Stow Away did not ever agree to extend the easement to the parcel leased by Sweetgrass. (Id.)

Sweetgrass renovated and enlarged a commercial building on its leased parcel and opened it for business as a hardware store. (Order p. 7). Sweetgrass Hardware allowed

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[1] For a helpful visual representation of the property discussed herein, please see the tax map attached as Exhibit 1 to Stow Away's Memorandum in Support of its Motion for Temporary Injunction and Motion for Partial Summary Judgement and Permanent Injunction, filed February 7, 2013.

[2] When it granted an encroachment permit by Stow Away for access to Highway 17, the South Carolina Department of Transportation ("SCDOT") required that Sisson abandon the approach previously used by him to access Highway 17. (Order of Nicholson, 11/22/13, p. 5, ¶10).

[3] Timarand's proposed sketch of the extension is attached to the Complaint as Exhibit 3.

and encouraged[4] its customers to use Sisson's pre-existing access to Highway 17 for ingress to and egress from the store, in blatant disregard of Sisson's agreement with Stow Away to abandon that access, which abandonment was required by the SCDOT. (Order p. 5, ¶ 10; p. 7). The SCDOT eventually shut off the pre-existing access, whereupon the customers of Sweetgrass Hardware began using the easement granted by Stow Away to Sisson, despite the fact that Stow Away had not agreed to Timarand's proposed extension. (Order pp. 7-8). After objections by Stow Away to the use of the easement by Sweetgrass customers, Sweetgrass secured a License Agreement from Sisson, in which Sisson purported to grant Sweetgrass Hardware store customers the right to continue use of the easement across Stow Away's property, despite language in both the Access Easement and the License Agreement prohibiting it. (Order pp. 8-9). After its many protests to Sisson and Sweetgrass went unheeded, Stow Away filed suit on April 12, 2011.

This matter came before the Court in a trial before The Honorable J.C. Nicholson, Jr., on August 14, 2013. At the outset of the trial, counsel for the Defendants stipulated that the allegations of paragraphs 1-29 of Stow Away's Complaint were admitted and constitute the facts on which the case should be considered. (Order p. 2). In an Order dated November 22, 2013, Judge Nicholson found in favor of Stow Away. Judge Nicholson concluded that the greatly increased volume of vehicular traffic[5] "materially

[4] As part of its construction of the hardware store, Sweetgrass built an entry arch for its customers' use, which entry arch contemplated access from Highway 17 via the access that Sisson had agreed with Stow Away to abandon. (Order of Judge Nicholson, November 25, 2013, p.7).

[5] At trial, the general manager of Stow Away Storage testified that hundreds of cars per day crossed Stow Away's property, bound for Sweetgrass Hardware, and that the addition by Sweetgrass of a satellite branch of the U.S. Post Office inside the hardware store increased traffic "exponentially." (Transcript of the August 14, 2013 trial proceedings, pp. 51:19-54:5).

increased the scope of the easement and the burden on the servient estate, thus, expanding the dominant estate in violation of the Easement Agreement between Plaintiff and Defendant Sisson and the law of South Carolina." (Id. p. 11).

The Court of Appeals affirmed Judge Nicholson's Order, declaring: "If an easement is appurtenant to a particular parcel of land, any extension thereof to other parcels is a misuse of the easement." (Unpublished Opinion No. 2016-UP-014, filed January 13, 2016, *citing Rhett v. Gray*, 401 S.C. 478 at 494, 736 S.E.2d. 873 at 881 (Ct. App. 2012). The Court of Appeals remanded the case to the Circuit Court for further proceedings. (Id.)

This case again came before Judge Nicholson for a hearing on damages on November 6, 2016. On April 14, 2017, Judge Nicholson filed an Order on Damages, granting damages to Stow Away for the amount it expended to halt the crossing of the easement by Sweetgrass customers, but denying Stow Away's claim for actual damages in the amount of $13,124.00 for use of the easement by Sweetgrass, denying Stow Away's claim for attorney's fees in the amount of $97,692.30, and denying Stow Away's claim for punitive damages.

This appeal stems from Judge Nicholson's Order on Damages of April 14, 2017.

STANDARD OF REVIEW

This appeal involves error in an action for equitable indemnification. As such, it should be reviewed *de novo*, and the appellate court has jurisdiction to find facts in accordance with its own view of the evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d. 773 (1976). This Court should also review the trial court's decision on punitive damages *de novo*, because it involves the application of the

law to stipulated and undisputed facts. *WDW Properties v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000).

ARGUMENT

I. The Circuit Court's failure to award attorneys' fees was erroneous because Appellant incurred its attorneys' fees in a dispute with a third party as a consequence of Respondent Sisson's breach of contract.

Under the doctrine of equitable indemnification, attorneys' fees are properly recovered as damages where a plaintiff becomes involved in a legal dispute with a third party because of a breach of contract by the defendant. Those are the facts of this case, and attorneys' fees ought to have been awarded by the trial court.

Appellant Stow Away and Respondent Sisson entered into a contract, whereby Stow Away granted to Sisson an appurtenant easement across its property, for the purpose of accessing Sisson's property. Subsequently, Sisson allowed a third party, Sweetgrass Hardware, to use the easement across Stow Away's property to access its non-appurtenant parcel. The Circuit Court and the Court of Appeals held that Sisson breached his contract with Stow Away by allowing Sweetgrass and its customers to use the easement. (Order, 11/22/13, p. 11; Unpublished Opinion No. 2016-UP-014, filed January 13, 2016). Having found that Sisson violated the Easement Agreement "and the law of South Carolina," the Circuit Court erred when it failed to award the attorneys' fees accumulated by Stow Away—over the course of seven years of litigation—in defending its property and contract rights against a third party. Under the established doctrine of equitable indemnity, Respondent Sisson is liable to Stow Away for the attorneys' fees that arose as a natural consequence of Sisson's breach of the Easement Agreement.

The seminal case on equitable indemnity in South Carolina is *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971). In that case, the Supreme Court sought to determine "whether the appellants, in the absence of an express contract of indemnity, are entitled to recover their costs and attorneys' fees incurred in the successful defense of this action under an implied contract, or because they were put to the necessity of defending themselves against the lessees' claim by the tortious conduct of the contractor, or by his breach of contract." *Id.* at 709.

In reaching its decision that attorneys' fees were proper damages, the *Addy* Court quoted: "It is generally held that where the wrongful act of the defendant has involved the plaintiff in litigation with others or placed him in such relation with others as makes it necessary to incur expense to protect his interest, such costs and expenses, including attorneys' fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages." *Id., quoting* 22 Am.Jur.(2d), *Damages*, Section 166, pages 235-236. The Court outlined three elements that must be met in order to recover attorneys' fees: "(1) that the plaintiff had become involved in a legal dispute...because of a breach of contract by the defendant...; (2) that the dispute was with a third party—not with the defendant; and (3) that the plaintiff incurred attorneys' fees connected with that dispute." *Id.*

Stow Away's dispute with Sweetgrass meets each of the elements required by the Court in *Addy*. Attorneys' fees are proper damages here because: (1) Stow Away became involved in a legal dispute because of Sisson's breach of contract in seeking to extend the easement to a non-appurtenant parcel; (2) that dispute was with a third party, Sweetgrass Hardware and its customers; and (3) Stow Away incurred attorneys' fees in seeking to

defend its property against the unwarranted, daily entry of hundreds of Sweetgrass Hardware store customers.

Again, the Supreme Court considered equitable indemnification and affirmed the award of attorneys' fees as proper damages in *Town of Winnsboro v. Wiedmann-Singleton, Inc.* 307 S.C. 128, 414 S.E.2d 118 (1992). The Court summarized South Carolina law: "The damages which can be claimed under equitable indemnity may include...attorney fees and cost which proximately result from the at-fault party's breach of contract." *Id.* at 130, 120. The expenses a party incurs in litigation with others because of the wrongful acts of the defendant "should be treated as the legal consequences of the original act." *Id.* at 131, 120, *quoting McGaw v. Acker, Merrall & Condit Co.*, 111 Md. 153, 73 A. 731 (Md. 1909).

In the case at hand, Respondent Sisson wrongfully granted to Respondent Sweetgrass Hardware the right to use Sisson's easement across Appellant Stow Away's property; in doing so, Sisson disregarded language in the contract and the law of easements in South Carolina, which prohibits the extension of an appurtenant easement to a non-appurtenant parcel. Sisson's unlawful action resulted in hundreds of additional vehicles crossing Stow Away's land on their way to Sweetgrass Hardware store. Stow Away objected to the use of the abandoned access and the easement by Sweetgrass customers, including in letters and phone calls to both Sisson and Sweetgrass. Order 11/25/13, p. 8; Complaint ¶ 20-24, and *Exhibit* 8. When both parties ignored Stow Away's objections and persisted in encouraging Sweetgrass customers to cross Stow Away's property, Stow Away was forced to bring a lawsuit against Sweetgrass, among others, to protect its interest. Respondent Sweetgrass Hardware brought counterclaims against Stow Away,

which Stow Away was obligated to defend. (*Answer and Counterclaim of the Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership and Sweetgrass Hardware, Inc.*, filed 5/2/2011, pp. 6-10). The trial court ultimately held that Sisson's action of granting the use of the easement to Sweetgrass Hardware and its customers "materially increased the scope of the easement and the burden on the servient estate, thus, expanding the dominant estate in violation of the Easement Agreement between Plaintiff and Defendant Sisson and the law in South Carolina." (*Order*, November 22, 2013, p. 11). This Court affirmed that holding. (Unpublished Opinion No. 2016-UP-014).

The Supreme Court observed in *Winnsboro* that a special relationship must exist between the parties in order to sustain a claim for equitable indemnity. "[A] sufficient relationship exists [for indemnification] when the at-fault party's negligence or breach of contract is directed at the non-faulting party and the non-faulting party incurs attorney fees and costs in defending itself against the other's conduct." 307 S.C. at 132, 414 S.E.2d at 121. Here, a sufficient special relationship exists for indemnification in that there was a contract between Sisson and Stow Away, in which Sisson abandoned his previous access to Highway 17 in exchange for the right to an easement across Stow Away's property. Sisson breached that contract, first when he attempted to permit Sweetgrass to use his abandoned access, and again when he purported to grant a license to use the easement to Sweetgrass. This breach of contract by Sisson ultimately resulted in Stow Away having to incur expenses, including but not limited to legal expenses, to defend its property against Sweetgrass Hardware's use. "If the attorneys' fees were incurred as a result of a breach of contract between plaintiff and defendant, **the defendant will be deemed to have contemplated that his breach might cause plaintiff to seek legal services in his dispute**

with the third party." *Addy v. Bolton*, at 710, *quoting* 22 Am.Jur. (2d). Damages, Section 166 (emphasis added).

A contract for indemnification must be implied under the facts of this case, allowing Appellant to recover from Respondent Sisson for the costs and fees it incurred when Sisson's actions left it with no choice but to bring a lawsuit to protect its interests, as well as for the cost incurred in defending itself against Sweetgrass Hardware's counterclaims. "The very nature of equitable indemnification is that a contract for indemnity is unnecessary. **Recovery is allowed when as a result of defendant's breach of contract or tortious activity the plaintiff is required to either defend itself or bring an action against a third party.**" *Winnsboro* at 132, 121 (emphasis added).

Because the facts of this case meet all the elements required by the South Carolina Supreme Court for the award of attorneys' fees and costs under the principle of equitable indemnification, the Trial Court erred in denying those damages to the Appellant.

II. When it made numerous findings of fact demonstrating Respondent Sweetgrass Hardware's reckless disregard for the rights of Appellant, the Circuit Court erred in denying punitive damages against Sweetgrass for its tortious interference with the easement agreement between Stow Away and Sisson.

Stow Away brought a cause of action against Sweetgrass Hardware for its tortious interference with the easement agreement between Stow Away and Sisson. (Complaint, pp. 10-11). In denying punitive damages to Stow Away, the Trial Court stated: "the Defendants were acting on their interpretation of the easement and the License Agreement without any willful, wanton, or reckless actions on their part." (Order on Damages, 4/22/17, p.4). The preponderance of the evidence, however, demonstrates to the contrary: Sweetgrass Hardware acted willfully, and with conscious disregard for the rights of Stow

Away, when it sought to give access to its store, to hundreds of its customers daily, across Stow Away's property. Because Paragraphs 1-29 of the Complaint were admitted as the undisputed facts of this case, this Court is free to review whether the trial court properly applied the law to those facts, without deference to the lower court. *JK Const. v. Regional Sewer Authority*, 336 S.C. 162 at 166, 519 S.E.2d 561 (1999).

The Trial Court, in its Order dated November 22, 2013, set forth the undisputed facts which clearly reveal Respondent Sweetgrass Hardware's reckless disregard for the rights of Stow Away. A few months before Sweetgrass leased the property on which it built its store, the owner of that property (Respondent Timarand) approached Stow Away about the possibility of extending Sisson's easement for access to what was to become the hardware store. (*Order*, 11/22/13, p. 6, ¶ 15; Complaint Exhibit 3). Timarand's proposed extension would have given access to its parcel for potential customers traveling on Highway 17 South. However, Stow Away did not agree to the extension. *Id.* Thus, when Sweetgrass leased the parcel from Timarand, it did so with the knowledge that the property had access to Highway 17 North (not South), and only to the **east** of Sisson's property. (*Id.*, p. 6-7, ¶ 16-17). Nonetheless, in the course of preparing its leased property for use as a hardware store, Sweetgrass constructed a gate to the **west** of its property line and Sisson's, encouraging its customers to enter the store from the access to Highway 17 that Sisson had agreed to abandon in his contract with Stow Away, as had been required by the SCDOT. (*Id.*, p. 7, ¶ 19-20).

The SCDOT sent a letter to Sweetgrass, informing the store that it would be barricading that unpermitted access, and also admonishing Sweetgrass that Stow Away would not permit access to the store from its driveway. (*Order*, 11/22/13, p.7, ¶ 21-22;

Complaint Exhibit 7, *Letter from SCDOT to Royall*, July 21, 2008). SCDOT then erected barriers extinguishing that access by Sweetgrass customers. (*Id.* ¶ 22). Thereupon—over Stow Away's many objections, with knowledge of the terms of the easement agreement between Stow Away and Sisson, and with reckless disregard for Stow Away's property rights—Sweetgrass and its hundreds of customers began crossing Stow Away's property to access the hardware store.[6] (*Id.*, p. 8, ¶ 23-29.) This unsanctioned use of Stow Away's property went on for 68 months.

Sweetgrass was conscious that it was interfering with and violating the terms of the Easement Agreement between Stow Away and Sisson. (*Id.*, p.8, ¶ 24-27). The easement agreement is on its face described as an "Access Easement for Sissons Property," and grants an appurtenant easement, burdening Stow Away's property and benefiting Sisson. A stated condition of the easement agreement was that Sisson would "abandon

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[6] In a letter to Sweetgrass Hardware, Inc., counsel for Stow Away stated:

> In April of this year, someone caused the "Dirt Driveway" to be paved and it is presently being used to accommodate customers of Sweetgrass by providing them ingress and egress to the hardware store in violation of Mr. Sisson's agreement with Stow Away.
>
> By letter dated July 21, 2008, Richard L. Turner, P.E., Resident Maintenance Engineer with the SCDOT, sent Mr. John Royall a letter advising that the location of the unpermitted paved access that your business is presently using is dangerous to the traveling public and will be removed. **The letter also advised Mr. Royall that Stow Away, which has the only permitted access point at this signalized intersection, will not allow access from its driveway**, and he was asked to discontinue the use of the unpermitted driveway.
>
> This letter is to advise you that unless you immediately discontinue the use of the unpermitted driveway and close your access to it, Stow Away will institute an action against Sweetgrass for injunctive relief and all costs and expenses associated therewith.

Complaint, Exhibit 8, Letter of G. Dana Sinker to Mr. Frank Fletcher, Sweetgrass Hardware, Inc., dated 8/20/2008 (emphasis added).

and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement." (Complaint, ¶ 11-4, Exhibit 2). Timarand had attempted to have the easement extended, and Stow Away refused. Sweetgrass rented from Timarand with the knowledge that its store would not have access across Stow Away's property or from Sisson's abandoned access point. Yet, Sweetgrass nonetheless constructed an entryway arch, inviting its customers to access the store first from Sisson's abandoned access and then across Stow Away's land.

"The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights." *Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958). The Respondents' disregard for the easement agreement between Sisson and Stow Away demonstrates their reckless disregard for Stow Away's property rights. Furthermore, a person of ordinary reason and prudence would have been conscious that the addition of a substantial number of customers' cars per day to an access road across another person's property—for which permission to use had been denied—was an invasion of the plaintiff's rights.

The trial court's finding of law, that "the increased volume of vehicular traffic...materially increased the scope of the easement and the burden on the servient estate," as well as the facts as stipulated by the Respondents, unquestionably support an award of punitive damages. The undisputed evidence clearly show that Sweetgrass acted willfully, with consciousness of its wrongdoing, and with reckless disregard for Stow

Away's property and contract rights. Therefore, punitive damages are warranted, and the Circuit Court's failure to award them is clearly erroneous.

III. The value of the rent of the easement should have been awarded by the Circuit Court as proper damages.

For the six years that Sisson purported to allow Sweetgrass and its customers to unlawfully use the easement to access the hardware store, they did so as if it were their right to intrude upon Stow Away's property, and without any compensation to Stow Away for the use of its land. In so doing, Sweetgrass benefitted greatly from the influx of hundreds of customers per day, while Stow Away was burdened with the upkeep and maintenance of road and landscaping damaged by uncontemplated users.

The cost that ought to have been incurred by Sweetgrass for the use of Stow Away's land for 68 months should be awarded to Stow Away as damages for tortious interference with contract by Sweetgrass and/or for breach of contract by Sisson. Under either cause of action, the award of lost rent would be proper.

a. Sisson justly owes Stow Away lost rent as damages for his breach of the easement agreement.

Damages recoverable for a breach of contract are those which follow as a natural consequence of the breach, and are such that should be within the contemplation of the parties as arising as a result of the breach. When Sisson sought to allow hundreds of customers a day to cross the servient estate on their way to an unrelated parcel, in breach of his appurtenant easement agreement with Stow Away, Sisson should have reasonably contemplated that such breach would result in damage to Stow Away's property. Stow Away submitted a report, prepared by an expert in the appraisal of commercial real estate in Mount Pleasant, South Carolina. (*Order on Damages*, 4/14/17, Exhibit 1). The expert

concluded that the damage to the property could properly be calculated as the fair market value of the rent that could have been charged for the use of the easement, which amounted to $13,124.00. The law of real property is in accord that damage to land may be measured in terms of lost rent. *Peoples Federal Savings and Loan Ass'n of South Carolina v. Resources Planning Corp.*, 358 S.C. 460, 596 S.E.2d 51 (2004). The Circuit Court erred when it failed to allow Stow Away to recover that amount as damages.

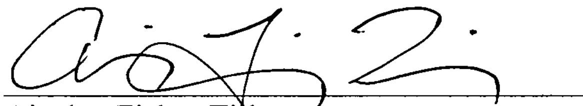
b. Sweetgrass justly owes Stow Away lost rent as damages for its intentional interference with contract.

Sweetgrass used Stow Away's property for six years without compensation, benefitting daily from the many customers which accessed its hardware store by means of Stow Away's land. This daily, uncompensated use amounts to unjust enrichment. As such, and for the reasons set forth above, the judgment of the lower court should be reversed so as to allow Stow Away to collect the $13,124.00 in rent, which its expert estimated that it could fairly have collected from Sweetgrass for the use of the easement.

CONCLUSION

The trial court's failure to award both attorneys' fees and lost rent to the Appellant was error of law, and its *Order on Damages* as to those issues must be reversed by this Court. Furthermore, because the undisputed facts of this case clearly and convincingly demonstrate reckless disregard on the part of Respondent Sweetgrass for the property rights of Appellant, the Appellant respectfully requests that the trial court's denial of punitive damages would be reversed.

Respectfully submitted,



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