STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

RECEIVED
JAN 25 2018
SC Court of Appeals

Appellate Case No. 2017-001130

Tom Efland..... Appellant,

vs.

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

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Tom Efland, Plaintiff, vs. Randy L. Mills and Richland County, Defendants.	)	C/A. No. 2016-CP-40-05336 **ORDER GRANTING MOTION TO DISMISS AS TO RICHLAND COUNTY**

RICHLAND COUNTY FILED
2017 APR 14 PM 1:12
JEANNETTE W. WALKER
C.C.P., G.S.

THIS MATTER comes before this Court upon Motion of Defendant Richland County ("Richland County") to dismiss this action as to Richland County pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and for failure to articulate an actual, justiciable controversy as to Richland County. For the reasons set forth hereinbelow Richland County's Motion is GRANTED.

GOVERNING LAW

To survive dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the allegations contained in the complaint must state a valid claim for relief. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247–48 (2007). "A trial judge ... may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." *Flateau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003).

Further, as a threshold matter, "[a] plaintiff ***must*** allege an actual controversy...." in the complaint. *Energy Research Found. v. Waddell*, 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988) (emphasis added). Even where plaintiff seeks declaratory judgment, declaring the rights of the parties to one another, an "actual controversy" must exist with respect to the defendant. *Power v.*

McNair, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970) ("[T]he existence of an actual controversy is essential to jurisdiction to render a declaratory judgment."). An actual controversy exists where the complaint articulates "a ***definite assertion of legal rights*** and a ***positive legal duty with respect thereto***, which are ***denied by the adverse party***." *Id.*, 255 S.C. at 153-154, 177 S.E.2d at 553 (articulating the "elements necessary to constitute a justiciable controversy" for purposes of declaratory judgment) (emphasis added).

ANALYSIS

The pleadings in this case show that this matter arises out of a long-standing private dispute between neighboring private property owners, Plaintiff Tom Efland and Defendant Randy L. Mills, relating to the use of and activities on certain property at or near Tiger Paw Lane in the County of Richland, South Carolina.[1] Richland County has not been the subject of any complaint or allegation of wrongdoing relating to this private dispute. Nor is it the subject of any allegation of wrongdoing in this case.

Only a single reference as to Richland County can be found in the Complaint. At Paragraph 9 under Plaintiff's First Cause of Action, the Complaint states "[t]he easement road is not a public road and does not belong to ***Richland County***." (emphasis added). Plaintiff's First Cause of Action thereafter seeks, in relevant part as to Richland County, a declaratory judgment, "declaring the road to not be a public roadway." (Compl. ¶ 18). No further references or allegations as to Richland County exist in the Complaint. The Court finds that this mere single reference to Richland County in the Complaint fails to state facts sufficient to constitute a cause of action or valid claim for relief as to Richland County, as recognized by Rules 8(a) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

[1] The property-related disputes between Plaintiff Tom Efland and Defendant Randy L. Mills date back at least to 2005. *See Randy Mills v. Thomas D. Efland Jr.*, C/A No. 2005-CP-40-04535.

Nor is this single reference as to Richland County in the Complaint sufficient to invoke the Court's jurisdiction as to Richland County under the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.* *Power,* 255 S.C. at 153, 177 S.E.2d at 552 (stating "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment" and setting forth elements of an "actual controversy"); *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 81, 742 S.E.2d 371, 374 (2013) ("[I]t is fundamental that the Declaratory Judgments Act does not eliminate the case-or-controversy requirement.") (citing *Power supra* with approval). Indeed, our Supreme Court has cautioned against using declaratory judgments as a vehicle to "fish" for "legal advice" or obtain favorable opinions "to be used if and when occasion might arise." *City of Columbia v. Sanders*, 231 S.C. 61, 68, 97 S.E.2d 210, 213 (1957).

Based upon the foregoing and the pleadings, motions, and arguments of counsel, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**

(1) That Richland County's Motion to Dismiss is GRANTED;

(2) That this case should be and hereby is dismissed, with prejudice, as to Richland County;

(3) That Richland County's dismissal, with prejudice, from this action should not be construed and is not intended to, nor does it, relinquish, waive, prejudice, or in any way diminish any rights or interests Richland County may have in or to any public or county-owned or maintained property, right-of-way, or easement, including, without limitation, any easements over a portion of Tiger Paw Lane.

AND IT IS SO ORDERED

L Casey Manning

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit

This 14 Day of ~~January~~ April, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2016-CP-40-05336
	)	
Tom Efland,	)	
	)	**ORDER GRANTING:**
Plaintiff,	)	**MOTION FOR JUDGMENT ON THE**
	)	**PLEADINGS AS TO PLAINTIFF'S CLAIMS**
Vs.	)	
	)	
Randy L. Mills and Richland County,	)	
	)	
Defendants.	)	
	)	

RICHLAND COUNTY FILED
2017 APR 14 PM 2:
JEANETTE W. WALKER C.C.P. & G.S.

Defendant Randy L. Mills (hereafter "Mills") moved for judgment on the pleadings pursuant to Rule 12(c), SCRCP. The matter was initiated by a complaint ostensibly seeking a declaratory judgment (Paragraph 8 of complaint). However, the complaint sought damages for alleged violation of an easement. Mills answered, and submitted as part of his answer a number of exhibits which were incorporated into his answer pursuant to Rule 10(c), SCRCP. The matter was therefore presented as a motion for judgment on the pleadings, rather than summary judgment. The motion is granted.

A motion for judgment on the pleadings should be considered on the basis of the allegations of the complaint, which, for purposes of the motion, are presumed to be true. Home Builders Association of South Carolina v. School District No. 2 of Dorchester County, 405 S.C. 458, 748 S.E.2d 230 (2013). Normally when documents beyond the complaint are introduced, the matter would be construed as one for summary judgment. . Preferred Research Inc. v. Reeve, 292 S.C. 545, 357 S.E.2d 489 (Ct.App. 1987). However, because the defendant incorporated the documents into his answer and made them a part of the pleading itself pursuant to Rule 10(c), SCRCP, the motion can be considered as one to dismiss and the Court can address both the complaint and the answer, with exhibits in deciding the legal issues presented. *See* Gregory v. Gregory, 292 S.C.

587, 358 S.E.2d 147 (Ct.App. 1987). In addition, the Court can take judicial notice of its own files upon request of a party. Rule 201(d), SC Rules of Evidence.

Based on a review of the complaint and the answer with exhibits, as well as reference to the Court's own files, these parties have previously litigated a number of issues which arose after the current plaintiff Efland may or may not have agreed to sell some real property to the current defendant Mills. In the prior case, Randy Mills v. Thomas D. Eflund Jr., Case No. 2005-CP-40-04535 was filed in 2005, the plaintiff Mills sought compensation for construction of improvements he had made on real property that was owned by the then defendant Eflund. After an answer and counterclaim, that action was dismissed without prejudice.

The action was refiled in 2008 as Mills v. Efland, Case No. 2008-CP-40-00876. In that action, defendant Eflund counterclaimed raising many of the same counterclaims from the first action. All of Eflund's counterclaims related to the dispute over use of the road/easement and Mill's use of the property that Mills had expected to purchase and on which he had constructed improvements. **Exhibit C** to the answer which is incorporated by reference and made a part of that pleading.

The 2008 action was fully litigated and the parties agreed to binding arbitration. 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. The award did not specifically address the counterclaims. A copy of the Award of Arbitrator is attached to the answer as **Exhibit F.** Judgment was entered in favor of Mills against Efland on or about July 6, 2015.

On or about July 20, 2015, Efland, through counsel, made a motion to remand the 2008 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." On

or about December 16, 2015, 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. After supplemental proceedings, Eflund paid Mills the judgment awarded, which was recompense for the construction work that Mills had done on the real estate that he had expected to purchase before Eflund declined to sell. Satisfaction of judgment was filed in July, 2016, approximately one year after Judge Benjamin ruled that Eflund had waited too long to seek additional relief for the counterclaims he had asserted in the 2008 action.

The instant action was filed in September, 2016. It does not mention the prior litigation at all. The complaint reads as if this is a new dispute, not previously addressed by the courts. Upon review, however, it is clear that the issues raised in this action are virtually identical to the issues which were previously raised by Eflund in the 2005 and 2008 action and which were decided adversely to him by the arbitrator.

Collateral estoppel "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Kunst v. Loree, 404 S.C. 649, 653, 746 S.E.2d 360 (Ct.App. 2013) (internal citations omitted). The terms "issue preclusion" and "claim preclusion" (both of which are elements of *res judicata*) are often used interchangeably, but they are different. Crestwood Golf Club Inc. v. Potter, 328 S.C. 201, 493 S.E>2d 826, 845 (Ct.App. 1997) (internal citations omitted). "Issue preclusion only bar relitigation of particular issues actually litigated and decided in the prior suit . . . Claim preclusion. . . bars plaintiffs from pursuing successive suits where the claim litigated was or could have been litigated." *Id. See also* Zurcher v. Bilton, 379 S.C. 132, 666 S.E.2d 224 (2008).

Both doctrines apply here and bar Eflund's suit. Eflund claimed by counterclaim in both the 2005 and the 2008 action that Mills had trespassed on the easement and had otherwise abused his right of access the easement, all in defense of Mills' claim against him. The arbitrator necessarily decided these issues adversely to Eflund. Even if he had not, Eflund waited too long, per Judge Benjamin, to ask for the matter to be resubmitted to the arbitrator. Judge Benjamin's order is the law of the case and this court cannot disagree with her conclusion on that issue.

This court understands the precedent that judgment on the pleadings is a "drastic" remedy, but it is warranted in this case. Home Builders Association of South Carolina, *supra*. For the reasons set forth above, Defendant's motion for judgment on the pleadings is granted and plaintiff's claims are dismissed with prejudice.

It is so ordered.

L. Casey Manning
Circuit Court Judge

April 14, 2014

January 5, 2017

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	Case No. 2016-CP-40-05336
Tom Efland, Plaintiff, Vs. Randy L. Mills and Richland County, Defendants.	**ANSWER AND COUNTERCLAIM**

RICHLAND COUNTY FILED
2016 OCT 18 PM 1:31
JEANNETTE W. McBRIDE 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 embarrassment[2] 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.

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ATTORNEYS FOR DEFENDANT MILLS

October 18, 2016



STATE OF SOUTH CAROLINA	)	
	)	IN THE CIRCUIT COURT FOR THE
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
		Case No# 2005 CP4004535
Randy Mills,	)	
Plaintiff	)	AMENDED
	)	ANSWER AND COUNTERCLAIM
vs.	)	
Thomas D. Efland, Jr.	)	
Defendant	)	
	)	

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 defendants 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 devises 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 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 valuc 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.

3/21/17
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:

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIV

CASE NO. 2005-CP-40-4535

Randy Mills

PLAINTIFF(S)

Thomas D Eftland, Jr.

DEFENDANT(S)

RICHLAND COUNTY FILED
2006 OCT 17 AM 9:34
BARBARA A. SCOTT
C.C.C. & S.C.

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(j) 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 16th day of October, 2006.

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. Truslow

ATTORNEY(S) FOR THE PLAINTIFF(S)

S. Jahue Moore

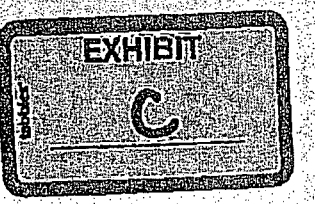
ATTORNEY(S) FOR THE DEFENDANT(S)

s/BARBARA A. SCOTT

CLERK OF COURT

SCRCP APP-24

SCRCP FORM 4 (Revised 5/00)



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Randy Mills,	)	C.A. No.: 2008-CP-40-00876
Plaintiff,	)	
vs.	)	ANSWER AND COUNTERCLAIM
Thomas D. Efland, Jr.,	)	
Defendant.	)	

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

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.

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 Compliant, 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: _____

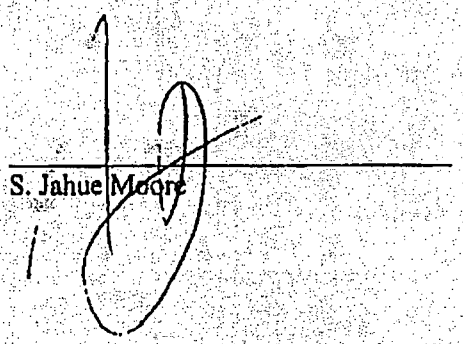
S. Jahue Moore
Attorney for the Defendant
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

West Columbia, South Carolina
February 6, 2009

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT OF SERVICE BY MAIL**
COUNTY OF LEXINGTON)

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 17th
day of February, 2009.

(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



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No. 2005-CP-40-04535

Randy Mills,

Plaintiff,

vs.

Thomas D. Efland, Jr.,

Defendant.

DEPOSITION OF THOMAS D. EFLAND, JR.
****
June 16, 2006
2:00 P.M.

Deposition taken upon oral examination on behalf of the Plaintiff at the law offices of Moore, Taylor & Thomas, 1700 Sunset Boulevard, 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.

APPEARANCES

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

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

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

Also Appearing:
Randy Mills

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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

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?

A: Taken my deposition?
Q: Yeah.
A: No.
Q: Where was that case litigated?
A: It never was litigated; it was settled. It was Lexington County.
Q: It was a lawsuit though because there was a deposition?
A: That's correct.
Q: The case was in Lexington County?
A: That's correct.
Q: And were you the plaintiff or were you the defendant?
A: You know, it might have been in Richland County, I don't remember. The deposition was held in Lexington County, but I don't remember.
Q: Okay, who were the parties?
A: The parties were Safe Quip, Incorporated versus some textile manufacturing company that manufactured cloth.
Q: You were suing somebody?
A: Well, the company. I wasn't, but the company that I owned was, yes.
Q: Okay. Your company was the plaintiff?
A: That's correct.
Q: And about how long ago was that?
A: Fifteen to twenty years ago.
Q: Okay. This is my first opportunity to get to know you, get to know about you, so I'm going to ask you some questions that

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

A: Sure.

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

A: Fifty-eight.

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

A: Clemson.

Q: I'm sorry. When was that?

A: I finished there in '73.

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

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

Q: All right.

A: I practiced with an elderly lawyer, John Hydrick, on Sunset Boulevard. I bought the franchises for CarQuest Auto Parts in the Columbia area, put in three of those stores, practiced law part time and managed those stores. I sold those stores in, I'm guessing, about '82 or '83, and I had another business that started somewhere thereabouts, something called Safe Quip and it was a manufacturer of fire retardant safety materials and garments and catalogue and magazine and phone sales. I continued what I was doing and ran that. Also, my wife had a part of running that one, and that was just a cut and sew operation with about thirty sewing machines. I ran that until about '94. My wife had breast cancer thereabouts and there was no way that I could do everything I was doing, so I sold that business and concentrated just on law in the Irmo area because my children were young and

out in that area, and pretty much that's what I've done ever since.

Q: Okay. Before Clemson, you grew up in the Irmo area, is that correct?

A: No, I grew up in Clemson.

Q: You grew up in Clemson?

A: Uh-huh.

Q: And when did you move to—Did you move to the Columbia area, if you will, when you went to law school?

A: That's correct.

Q: Okay. So you grew up in the Clemson area?

A: Uh-huh.

Q: Hence, we had Tiger Paw Lane?

A: Absolutely.

Q: Then, what did you do after high school?

A: I went to Presbyterian College briefly. I was from a small county, Pickens, and Vietnam was going on and I deemed it that I probably should join something before I got drafted into something, so I joined the Navy and spent four years in the Navy, got out in the first of '70, went to Clemson.

Q: When did you join the Navy?

A: In '66, I would say.

Q: All right, '66 to '70 you were in the Navy?

A: That's correct.

Q: All right. And then went to Clemson?

A: That's correct.

Q: Okay.
A: Well, I went a semester or something like that to Anderson Junior College to get my feet back wet and then transferred to Clemson.
Q: Okay. All right. What did you do in the Navy?
A: Underwater weapons.
Q: Anything else?
A: No, that was mainly just a school system. I went through everything from UDT training to basic electricity and electronics, underwater weapons school, one thing and another, and then spent about two years in Japan, based in Japan doing certain things that UDT does.
Q: Okay. You said underwater weapons. I don't know what that is. Is that like, you're not in the SEALS. What are you?
A: At that time, since World War Two up until then you had UDT, underwater demolition teams, and you had underwater weapons, which is mines and torpedoes and anything that can go boom under water, and the SEALS derived from that, but at that time the SEALS were another step and you had to have been in four years before you could become a SEAL. I think everything has been done away with now, that's what I see on TV, and you just go through the same basic training and become a SEAL. SEAL stands for sea, air and land and they penetrated whereas we didn't penetrate.
Q: Okay. So I guess as a part of your training you learned about explosives, underwater demolition—

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

schools around here and are scattered around.

Q: All right.

A: Charleston, Charlotte.

Q: All right. I already know the answer to this but do you have any criminal record? Have you ever been arrested for anything?

A: No, not unless you count—

Q: I'm not talking about traffic.

A: A traffic ticket one time when I was in law school and I didn't have the money to put up the bond, so they carried you in back then.

Q: What was that for?

A: Speeding.

Q: Okay, nothing other than speeding?

A: Two point speeding is what it finally was.

Q: Nothing more than a two point speeding?

A: No.

Q: Okay. All right. Now, I'm going to jump ahead a little bit, jumping around, but I just want to get to where I want to be. As far as your assertion that Randy Mills burned down something on your property, what is, I want to know what all your proof is.

A: Basically I think my proof is circumstantial.

Q: All right.

A: And it's basically the stories that he told us immediately after that, the story that he told my wife, evidently before we talked to him after we found that it had burned down.

Q: All right. All right, I don't want to deal with basically. I want to know everything. When we finish here today, will you agree with me you'll try to tell me everything that—

A: You ask the questions and I'll try to answer them.

Q: Okay. —that you think is significant. Well, my question is describe all proof you have that Randy burned down your, I think you called it a river cabin?

A: I just told you it was circumstantial and it's based on the things he said.

Q: Okay. All right, is that all you have to say?

A: Well, pretty much.

Q: Well tell me what circumstantial evidence you have. I'm not trying to quibble with you. I don't want to know quote unquote "pretty much what he said." I want to know everything that you would testify to and what other witnesses would testify to.

A: Well, I think that I would testify to the fact that we weren't getting along very well, that he was pretty mad because he wanted to buy the place down there and my wife had told him in the field a week or two before that it absolutely wasn't for sale.

Q: Okay.

A: And that he was upset about all of the four wheelers that went down beside his pasture and to this cabin, and he particularly didn't like the kids. He'd bragged about he had set twig traps up in the woods behind the barn to see where the kids were coming from and he thought they were coming from a neighborhood over

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

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

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

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

or he didn't want people near his barn?

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

Q: All right.

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

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

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

A: No, we got back—

Q: How about your daughter?

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

Q: All right.

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

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

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

Q: Carroll Daily?

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

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

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

Q: That was on Saturday?

A: That was—Do what?

Q: It would have been Saturday night?

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

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

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

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

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

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

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

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

Q: Citronella maybe?

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

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

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

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

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

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

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

but that's all I know about.
Q: Okay. Anything other than that that you're aware of?
A: Not that I'm aware of.
Q: No other vandalism of any kind?
A: Not that I'm aware of.
Q: Okay. Your boat that you had under your river, I'm going to call it a river cabin, was it chained or was it not chained?
A: Not chained. I don't think it was chained. If it had been chained, Talbert Turner would have chained it. Now, I suspect that it was tied because water will come up and we don't want it floating off, but to this day, I think there's three or four boats down there, and I was down there the other day and I didn't see any chains on anything and there were motors on them all.
Q: Did you build anything back?
A: No.
Q: Okay. The river cabin, I'm using that word because I really don't know what it is, I think those might be your words.
A: Probably.
Q: The river cabin, how many square—Was it as big as this office?
A: I think it was, I think it was 24 by 24 with one-third of it being a porch.
Q: When was it built?
A: Well, we started building it—Well, I've had that place out there since the 70s sometime. We started building it soon after we got out there, clearing for it, and it was, it was not really even a

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

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

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

Q: All right, explain why not.

A: Because there isn't.

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

A: I have no idea.

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

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

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

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

Q: Okay, I understood you at some point in time held yourself out as being a real estate lawyer. Is that correct?

A: That's what I do, is real estate law.

Q: All right, and you're telling me you don't know whether this was permitted or not?

A: I don't know much about the permits except the one that I got for my house and my swimming pool and my shop.

Q: Okay.

A: And that was in the 90s and the 2000s.

Q: Okay. So to build your—Is it two houses? You said what?

A: No.

Q: I didn't hear you, I'm sorry.

A: I got a permit in—You know, I don't know whether there was any need for permits back then or not because I don't even think I had to have a permit to put a mobile home out there about that time that we put it out there. I really don't know. But, in any case, I don't think we had to have a permit to even do that. I think we just did it and then we had to go down and get one of those little sticker things for the window. I really don't know; it's been almost thirty years.

Q: What's a sticker thing?

A: Mobile homes have some kind of little round registration thing to get them on the tax books, I reckon.

Q: All right.

A: But I know this thing—Tax record-wise, I don't know. I assume

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

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

A: No, it does.

Q: Oh, it does?

A: I assume it does.

Q: Okay.

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

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

A: Oh, yeah.

Q: Does it flood?

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

Q: Was it sheetrocked?

A: No.

Q: Just bare walls?

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

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

I mean to run the electrical? It doesn't matter, frankly.

A: I assume so.

Q: Do you have to, before you can run electricity from your house down there, would you have to get some kind of permit from the county or any kind of inspection or anything like that?

A: I wouldn't think so. It would be like putting in a wire out to some lights you put outside or post. You're acting like the expert on this, so I'll take your word for it, but I don't know.

Q: I'm not trying to act like an expert.

A: When somebody puts in an electrical line, they just put in an electrical line.

Q: Okay. Who put it in?

A: I did.

Q: Are you an electrician?

A: When I was going to—Well, right after I got out of the Navy and before I started to school, I went to work for Duke Power as a construction electrician and held a Class B construction electrician's license. Am I an electrician now? No, but I do probably know a lot about it.

Q: How long did you work for—Who was it? For Duke?

A: Duke Power.

Q: How long did you work for Duke?

A: Probably about six or eight months, I don't remember.

Q: Okay. So you got out of the Navy and went to work for Duke, and then went to college?

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

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

Q: I got you.

A: And his is more of a—

Q: It stands out?

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

Q: All right.

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

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

A: Not to my knowledge.

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

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

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

Q: Okay. How did you acquire this land?

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

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

A: Yes.

Q: How many acres is it?

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

Q: I got you.

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

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

A: Yes.

Q: Like what?
A: Over the years, there's been everything in it, from soybeans to corn to cotton to everything under the sun.
Q: Okay.
A: Some years it flooded and would wipe it out. All of the bottom lands were done that way.
Q: Okay. In, say, the year that Randy, two years before Randy built his barn, or the barn down there, was it being farmed?
A: Absolutely.
Q: For profit or for deer, planting for wildlife, or what?
A: No. I assume it was for profit. A fellow named Brett Hipp had planted it. When I first got it, when I first bought it from a guy named Harmon Derrick, his family had planted it forever, and he had gotten old, so he was letting a guy named Shealy, and I can't remember Shealy's first name, but he was letting a guy named Shealy plant it and there was other parts to that bottom, too. Shealy was planting it all. When I first bought it, Shealy called me and he was rather upset. He said, "You're not going to throw me out, are you?" And I said, "No, absolutely. You know, I want to keep it down, I don't want it to grow up." I had another one that was being farmed right then that surrounded where the cabin was and I let that grow up and it looks like a forest now and it hasn't been planted for 35 or 40 years, but it was a total field at that point.
Q: You mean where your river cabin is?

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

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

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

Q: Okay. So the way it got started is he approached you about—

A: Buying the land.

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

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

Q: Okay. Did anything in the meantime happen?

A: As what?

Q: Relating to it. I mean negotiation-wise, for example.

A: Wasn't any negotiations about it.

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

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

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

Q: Improvements?

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

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

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

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

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

A: A backhoe.

Q: A backhoe.

A: From Sunbelt Rental.

Q: Okay. That will be green.

A: And some guy operating the thing for him.

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

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

Q: The backhoe?

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

and cleaned out behind one of my buildings with it.

Q: Okay. Which was okay with Randy?

A: Well, he told me I could use it.

Q: Sure. Okay. Did the other gentleman you mentioned, did he do any work on your property?

A: Well, everything that was done was done on my property, obviously.

Q: Other than the—I didn't state that very well. Other than that area where the barn and pasture were going.

A: With the tractor?

Q: Yes.

A: I don't think so.

Q: With the backhoe, I mean.

A: With the backhoe. I don't think so. He worked the road over all the way down, but that was part of the, you know, that evolved between me and Randy. Randy asked could he work that road over and I said yes.

Q: Okay.

A: I did the work behind the building with the tractor. I don't think James ever did anything for me with the tractor, that I can remember.

Q: How long had you and Randy been neighbors at that point in time?

A: I don't remember. I'm thinking he bought that house sometime around 2000, but I, in my files and notes I have copies of the

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

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

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

Q: Okay. Had you ever—

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

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

for you? Which is okay—

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

Q: Okay. Did he spray around your shed, your shop?

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

stuck up there one night and he called me and wanted to know if we could bring a charger up or something and get her out. He loaned me a truck to go pick up a race car one time. I took his truck, when he was having some kind of attack and having to take Coumadin, down to get the front brakes worked on.

Q: Okay, normal neighborly type things that people do for one another?

A: That's the way I saw it, yeah.

Q: Did you ever do any legal work for him?

A: It depends on what you consider legal work. I definitely wrote a letter or two on his behalf, looked at some stuff for him. One time he was making an addition to his house and he wanted me to come up and look at it, he was unhappy about it, and he usually was unhappy with anybody that did any work for him, but I looked at it and he was going after the builder he had made some deal with because that builder was building things crooked or something and he'd come home and run the crew off for smoking marijuana, it strikes me, on the site and he got a big bill for it and he said he wasn't going to pay that bill, and, and I never really heard anything else about that until—I wondered what all happened to that, but I never heard anything else about it until I got a letter from an attorney that escapes my mind which one it was, over in Lexington and a copy of a release for Randy to sign, so I called Randy up and asked him about it and he said yeah, he said he had worked it out with his preacher and the other guy or

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

Q: Okay. So—

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

Q: When was that?

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

hadn't been run in probably a year or something like that.

Q: What year was it?

A: I don't remember.

Q: Did you all have a bill of sale or anything like that?

A: Just signed the title over to him.

Q: You didn't put anything on the title as far as—

A: No.

Q: —the contract terms?

A: No.

Q: Okay. So if we could go back to the legal work, the legal work that you may have done for him, review the lease?

A: Yeah.

Q: You wrote a letter. I guess that was a collection type letter?

A: No. I really did that for his wife. You're talking about the one on the flower boxes or floating flower boxes or something like that?

Q: I don't know.

A: I don't even know, I don't know either, to be honest with you, but it was something about floating flower boxes.

Q: You wrote it for either he or his wife, you wrote a letter of some type and you and I can't recall any of the details.

A: To her daddy or whatever. Her daddy and maybe her brother, I can't remember.

Q: And then there was something where he consulted with you about some house construction, where he kicked a contractor out

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

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

Q: All right, do you hold yourself out as being a real estate lawyer?
A: Absolutely.
Q: I was looking at the, at the—
A: I'm a closing lawyer.
Q: All right. —the lease in this case.
A: Very simple, very straight forward, written to protect me and so that there wouldn't be any legalese involved in the thing.
Q: Okay. I'm not trying to be at all insulting, please don't take it that way.
A: You've already said what you said about it, but go ahead.
Q: But having said that, I've never seen a lease drafted by a lawyer with so many errors in it. What's, what's, can you explain it?
A: I don't know what errors you're talking about.
Q: Do you know what a lessor is?
A: Are they typographical type errors?
Q: Do you know how to spell the word lessor?
A: Probably. How is it spelled there?
Q: The wrong way.
A: How is that?
Q: L-e-a-s-s-o-r.
A: Yeah, that obviously would be wrong. Does that bother you?
Q: Well—

MR. MOORE: No, no, no, no, no, you answer his question.

Q: What bothers me is that there are so many problems, and you

may not agree, and that's your right.

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

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

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

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

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

Q: All right.

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

Q: I understand.

A: —and create a formal lease on it.

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

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

A: Well—

Q: What is it? I'm trying to—

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

Q: Okay.

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

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

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

Q: Okay.

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

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

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

Q: Okay.

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

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

because I'm—

A: I think you can read it and understand it.

Q: Well, would you agree with me that, you know, that reasonable people could disagree as to this—

A: No, I think reasonable people—

Q: If I could finish.

A: Certainly.

Q: —that one person might read this as being five years comma renewable thereafter, but there isn't a comma, five years comma renewable thereafter as a month to month lease, and someone else may read it five years renewable comma thereafter as a month to month lease? Couldn't reasonable people look at that different ways?

A: I don't think there's any comma there and I don't believe there's any disagreement. But you can put it before all the reasonable people you want to and they'll interpret it just like it's intended to be interpreted.

Q: All right. Okay, going down to number six, and I'm assuming this is just a typo, it says, and I'm reading, quote: "Turned over to the lessor," and again, lessor is spelled wrong but I don't know if that's significant for what we're talking about, "at the end of this lease I good condition." Is that suppose to be in good condition? It just has a capital I.

A: Yes, that's what it means.

Q: That's suppose to be in?

A: Right.
Q: Okay. The next one says: "The Efland Family shall maintain equal rights to the premises during the term of the lease." Did you know that Randy was going to build a barn and have pasture for horses?
A: I certainly knew he was going to have a pasture for horses, and you might notice in there that it says that we would be able to keep horses in there, too, if we wanted to.
Q: I do. I'm going to lead into that.
A: Okay.
Q: Okay, the reason I say that—
A: I say I knew that. Now as far as the barn, no, at that point I really didn't understand what he was going to build. I thought he was going to have a shed.
Q: Okay. The reason I'm asking this is because it says that and, you know, I told you I like to be pretty straight up and tell you what my thinking is. I'd suggest to you that that isn't very well written, but you have to maybe look at the intent of the parties, which is the Efland Family shall maintain equal rights to the premises during the terms of the lease. With the understanding that, that this was going to, this bottom land if you will, was going to be used for horses, what does the word equal rights, what did that mean to you? Did it mean for the use of a horse or could you run a race track down there, or what—
A: I think equal rights speaks for itself, and what it says is what it

means.
Q: Okay. Well, what did it mean to you?
A: That we had equal rights down there. As a matter of fact, we even required Randy to put a fence down near the river, a gate down near the river so we can still access the river through the pasture.
Q: I understand that, but when it says equal rights, does that mean for the use of horses or could you use it for a race track, could you use it for—
A: I would assume equal rights means whatever people think equal rights do, but I would also think that in reasonableness people knew we were going to keep horses in there—
Q: Okay.
A: —we might keep a horse in there and that we did other things down there. I'd also point out to you that Randy had this thing for over a month to examine. I assume he ran it by you. Were you his lawyer then? If you were, I would assume you read it.
Q: Well, I wasn't, but I'm not—
A: Okay.
Q: —I'm not the witness here. There are, when we use the word equal rights, there could be uses that would be inconsistent with having horses, such as a race track, a repair shop, or—
A: I would think that's true.
Q: So was it your anticipation if you all wanted to walk around out there, wanted to have horses down there, that that's what it meant

by equal rights?

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

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

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

Q: Okay.

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

Q: I did note that.

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

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

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

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

Q: But did you ever ride four wheelers, or—

A: Absolutely.

Q: —did children ride four wheelers in the pasture where the horses were?

A: Not when they were in it, but absolutely, golf carts. Matter of fact, his golf cart, too. At times our golf cart and his mother's golf cart were out there at the same time.

Q: Okay. Do you have a four wheeler?

A: Absolutely.

Q: What kind is it?

A: It's a Yamaha 250 cc.

Q: Okay, so it's different from a golf cart.

A: That's absolutely right. We have that and a golf cart.

Q: Okay. Do your son's friends have four wheelers?

A: Absolutely. Everybody out there seems to.

Q: Did they ride in the pasture with your son on four wheelers?

A: To my knowledge, nobody's four wheeler was in the pasture. Of course, I can't speak for ever and ever, but nobody's four wheeler

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

Q: Okay.

A: For the entire time.

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

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

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

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

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

Q: Was it powered with gasoline or was it—

A: No, it was like household batteries.

Q: Okay. How about a little race car?

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

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

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

Q: Do you still have them?

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

Q: I understand.

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

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

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

Q: You've got race cars?

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

define noise.

Q: Okay.

MR. TRUSLOW: I'm Doug Truslow.

MR. THOMPSON: I'm Barry Thompson.

MR. TRUSLOW: Nice to see you.

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

A: No, I'm fine.

Q: All right, well then, okay, we were talking about having a radio controlled, gasoline powered race car.

A: Yeah, you asked if they were noisy.

Q: And you and I were talking I think when Barry came in that that's a relative term. Some people think a Harley is noisy, some people think it's music; some people think race cars are noisy, some people think it's music. Is that more or less correct?

A: That's essentially right.

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

A: No.

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

A: No.

Q: Now the gasoline powered, remote controlled race car, was it ever run in the pasture where the horses were, to your knowledge?

A: No.

Q: Why do you say that?

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

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

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

A: Yes, it is.

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

A: They were in the barn.

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

A: No, I never said that.

Q: All right, what did you say?

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

Q: Who is they?

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

Q: All right.

A: They're in their mid-twenties.

Q: Okay. You said that this, if I understood you correctly, that this gasoline powered, remote controlled car was in the shop for a year?

A: No, but I think it was broken for about a year, my son would know that better than I, and it was in the shop a long time, a shop over in Lexington.

Q: Where was it?

A: It's across from Addy Dodge, but I don't remember the name of the little shop. It didn't seem like they could ever get it running. It was there a considerable amount of time and I paid for it to be fixed. I went over there with him one time about it.

Q: Okay. What medium did you use to pay for it? Did you use a credit card, cash, check?

A: For what?

Q: To pay for the repairs.

A: No, I just gave Danny cash I reckon. I don't really know, but I'm sure, I'm assuming I gave him cash.

Q: Did he pick it up or did you pick it up?

A: I don't really remember. It strikes me that I went—I went there one time. I think it was, I think he had carried it, got it back and it wouldn't run and we went back again and I went with him, and then eventually he got it back, but again, you'd probably have to ask him those questions because I don't remember.

Q: Okay. What I was trying to do is get a time frame of when this, when this gasoline powered, remote controlled car would have

been—

A: I think you'd have to ask him.

Q: Okay. Well, I don't know that I want to ask a child—

A: He's not a child.

Q: He's 17?

A: He's 17 now. He'll be 18 in a couple of months.

Q: All right.

A: And he will be a witness anyway. If you'd like to ask him, I'd suggest you do it.

Q: All right. Paragraph seven of the lease says that: "The Efland Family shall maintain equal rights to the premises during the term of the lease." And paragraph twelve says: "No accompanied guest or third parties shall be allowed on the premises by the lessee." Lessee is spelled wrong again, but that's not significant for the purposes of this.

A: That's correct. That was Randy.

Q: Well, my question is this. It talks about equal rights. Does that mean that you, that you could have, allow people on the premises where the horses and the barn were without you or one of your family members being present?

A: I assume it did.

Q: So that if you wanted to allow anybody in the neighborhood—

A: He knew up-front that all the neighbors used all of that area down there.

Q: So if I can finish my question. Is it correct that if you wanted to

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

MR. THOMPSON: Object to the form.

Answer the question.

A: Basically yes.

Q: All right.

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

Q: Okay.

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

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

A: No.

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

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

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

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

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

A: Talbert is not a smoker.

Q: And there was another one.

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

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

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

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

A: Mike Suchey?

Q: Suchey, Mike Suchey.

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

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

with horses—

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

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

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

Q: Okay.

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

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

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

Q: Okay.

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

grandfather clause.

Q: Okay, so you—

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

Q: Well, what I was trying to figure out, whether you had a, I'm going to call it a residential well or was it an agriculture well.

A: It's a deep well.

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

A: I don't know, when it was put in in the 70s, it was put in by a well company and I assume it was put in with all the correct credentials.

Q: The county doesn't care.

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

Q: All right, I'm saying it's a question. I assume the county doesn't care, there's no big deal and we can, that's the end of that subject?

A: I never heard a word about it.

Q: Okay.

A: Other than somebody made one of these little anonymous complaints—

Q: Okay.

A: —and the guy that came out from the county led me to believe it was a neighbor of mine in a log house but he couldn't name who, and we talked about it and I showed him how it was done, and he said, "Well, that's probably grand fathered.

Q: Okay.

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

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

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

Q: Okay.

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

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

Q: Did you sign a permit?

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

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

signed the building permit to allow the—

A: I signed a building permit, yes.

Q: —for the barn to be built?

A: And classified it to be a barn with a well.

Q: Okay. And that answers that about the well. A septic tank—

A: Is that all you have to have for a well? I didn't know if that was true or not.

Q: Well, actually, there are a couple other things, but I—

A: I thought there was. I read in the paper about some laws about the wells, but I don't know what's involved in getting a well, but I was never asked beyond that to do anything.

Q: I do, but I'm not under, I'm not being deposed.

A: I understand.

Q: A septic tank, was there ever a septic tank put in?

A: Yeah, and I asked specifically about that because I was a little upset about that one. I went down there and the barn was built in kind of an L-shape and there was a big hole being dug in the ground and some kind of plastic half-moon thing being put in, and I hadn't been down there in a day or two, hadn't seen that thing, and I started asking about it, and I don't remember who was there but they explained to me it was something called an experimental system, which evidently is just a word they use to describe it because it's evidently allowed to be put in a lot of places, and I asked specifically was there a permit to put that thing in and the fellow putting it in told me no, but it didn't make

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

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

Q: Pills?

A: Yeah, these concrete—

Q: Piers?

A: —footings.

Q: Okay.

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

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

Q: Okay.
A: So the thing is pretty much a bogus structure the way it's built. We hadn't done anything, I don't really know where you stand on something like that. Probably nowhere, the county probably doesn't care anymore, but that's my guess.
Q: Do you have, you mentioned getting or reviewing documents with the county. Do you have those documents?
A: Yeah, they're—
Q: Have they been produced?
A: I have no idea. You'd have to ask my attorneys.
Q: Okay. Where are those records? You say they're in—Do you have a file on this?
A: No, everything was given to Jake Moore.
Q: Okay, so you don't have anything else?
A: I have nothing.
Q: Okay. I don't believe I have those, but we can deal with those on another occasion.
A: I'm sure he can find them.
Q: I don't think I have them yet. All right, so—
A: They're also a public record, I'd add. You can go down and get them real easy.
Q: It sounded to me like, from what you said, that you were, on a pretty regular basis, that you were down there where the barn and the pasture were since you had a vested interest in the property?
A: Absolutely.

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

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

Q: Why is that?

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

Q: Okay.

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

got to be.

Q: All right.

A: Which was not contemplated to be in the bottom land that was the leased property.

Q: Okay. Just to put a cap on this and then I can move on, you and Randy entered into a lease. Then Randy started or either did it or had people come fix up the area where the pasture would be and constructed the barn where it is and you were seeing it, not every day but almost every day?

A: Regularly.

Q: And you were involved if there was something that you saw that you didn't like, you'd tell Randy about it and you all would work it out?

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

Q: What were you doing?

A: Various and sundry things, whatever, whatever I could to help him. You know, I put the temporary power structure in on the thing.

Q: Okay. All right, I don't know how else to ask it but to say it like this. What went south? What problems did you have?

A: Well, the problems started right to begin with. The problems started with chaining the road down to my shop, and then the problem started with his complaining about the people going down there constantly.

Q: Okay.

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

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

A: What went south—

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

A: What went south, pure and simple—

Q: —where they were involved in a lawsuit.

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

don't live like that and nobody is sending a deputy out to my house during Thanksgiving dinner period. End of the story.

Q: All right, I'm having—

A: That ended it right there.

Q: Okay. And I appreciate you telling me that, but there's, I've still got a little bit of disconnect and I don't know whether you did. You said that, and I'm not trying to make light of this. I understand what you're saying and I can tell you're upset. I was asking you what went south and you said, I said what you got to the point where two neighbors were fighting and you said when the deputy came to my house.

A: That's true.

Q: All right. Fill me in. I mean, I'm missing some details. How did the deputy come to your house, what happened, what was the problem?

A: The deputy knocked on the door. Well, we were having Thanksgiving dinner and the phone rang. We have a policy at my house that one of the kids answers the phone, and if we're eating, we tell them we're eating, have to discuss it later, or whatever. We don't interfere.

Q: Okay.

A: Okay, so my daughter, who was home from college—I didn't even remember it until just now that she was home from college. Well, it was Thanksgiving, so that would have made sense that she would have been there, but she answered the phone and it

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

torn up anything or harassed any horses. I said, "If you're talking about down there at the barn, I own it, we have the right to do what we want. End of story."

Q: Okay.

A: And he left.

Q: Okay.

A: That was pretty much it. I had just, you know, a lot of this other stuff had just kind of been bugging me, but that was it.

Q: All right.

A: Nobody was going to do that.

Q: Okay.

A: And he was told we were eating.

Q: Okay. Now—

A: That's the end of the story.

Q: Okay. Now you've connected the dots for me and I understand where you're coming from. I didn't understand all of it until that, what you were saying. Let me ask you, there's nothing wrong with it, but were you drinking at the time?

A: Absolutely not.

Q: Do you drink?

A: Occasionally. Not very much.

Q: Okay. Your testimony is you had not been drinking that night?

A: No. Now maybe we had wine with dinner, I don't know that. Sometimes we drink—

Q: Well, wine is drinking. I mean, do you drink that?

A: You're right.
Q: Okay.
A: Maybe we had wine with dinner, I can't tell you whether we did or not.
Q: I've had clients in the past that said man, I wasn't drinking, all I had was beer.
A: I understand where you're coming from—
Q: Okay.
A: —and I'm going to say that maybe we had wine for dinner, I don't remember.
Q: Okay.
A: But appreciably drinking, no.
Q: I don't mean, I don't mean—
A: If we had had wine for dinner, that's what it would have been.
Q: I don't mean were you drunk. I asking you had you been drinking some alcoholic beverage.
A: I don't get drunk, but if—I don't actually drink very much. But if we did, it was wine at dinner.
Q: All right.
A: My daughter and son were underage; they would not have been drinking anything, even the wine, if we had had wine.
Q: I understand.
A: And I don't know; sometimes we have wine.
Q: Okay. Did you and the deputy have harsh words—
A: No.

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

something about cameras. Well, I don't think the camera showed anything. If they did, show me. Evidently you can't. But we wondered what in the world could have possibly shown up, so we looked to see where the cameras were, and when you go down there, the only thing I can figure that he might have got upset about is when you go down there you cross the creek and you go beside the barn and through the gate and out into the pasture, and the horses had some little port holes or something to look out. The horses were real friendly, the horses liked my son a lot and immediately came to him regardless of what he was on. His mother had worked all that out. In any case—

Q: His mother, how—

A: Randy's mother had worked with Danny a lot on the horses.

Q: Okay.

A: So, in any case, when we crossed that thing, I said, "Now show me exactly, show me---

Q: Crossed the thing, what is the thing?

A: The culvert.

Q: Culvert?

A: Yes, the culvert for the creek.

Q: All right.

A: When we crossed it, I said, "Show me and Steve Griffey exactly what happened." Well, the track was there, you know, because he had been shoveling manure out the sides of the stalls, so there was manure there, and he says well Ross and Thad—Now I'm

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

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

A: Had one four wheeler.

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

A: No, sir.

Q: All right. Explain it to me.

A: You know good and well that that wasn't so.
Q: Explain it to me.
A: I have explained it to you three times.
Q: Well, I'm not understanding what you're saying.
A: Well, I think you need to listen. There was never a four wheeler that day, a four wheeler or a radio controlled car in that pasture with any horses. Period, end of the story. They were in the barn where they lived. They were almost always in the barn.
Q: The horses were in the barn?
A: That's correct.
Q: Where were the race, where was the race car and where was the four wheeler?
A: There was no race car.
Q: Well, what was it?
A: A radio controlled little four wheeler.
Q: All right, the radio controlled four wheeler.
A: Right.
Q: And that's the gasoline powered one, right?
A: That's correct.
Q: Was it ever in the pasture?
A: Yes.
Q: Was the four wheeler in the pasture?
A: Yes.
Q: Okay, now I understand.
A: You should.

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

either permit it or not permit it?

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

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

A: No.

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

A: I never told him to do it.

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

A: When are you talking about exactly?

Q: At any point in time.

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

Q: Okay, since before Randy left?

A: Before Randy left?

Q: Yeah.

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

Q: Right.

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

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

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

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

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

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

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

Q: You have a front end loader?

A: Yeah.

Q: Okay.

A: That wasn't going to be there.

Q: Where do you keep that?

A: Down there.

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

(WENT OFF RECORD.)

(BACK ON RECORD.)

DIRECT EXAMINATION CONTINUED BY MR. TRUSLOW:

Q: You wrote a letter on December the 2nd, 2003 to Randy Mills indicating that this, quote, "This is your official notice that you are in breach of your Lease Agreement." The second paragraph says: "You have thirty days to vacate the premises, after which I will apply to Courts for an Order of Eviction." On what basis were you going to try to have him evicted?

A: On denying us equal use of the property down there.

Q: And how was he denying you equal access?

A: I've explained all that to you.

Q: All right, explain it to me so I'll understand, or explain it again.

A: You'll have to ask specifically.

Q: I did. What specifically did he do that was in breach of the Lease Agreement?

A: Denied us equal use. That's—

Q: And how did he deny you equal access? How did he do it?

A: He tried to keep us from using it.

Q: You're saying that what he did was asked the police to come talk to you?

A: That's correct.

MR. THOMPSON: Object to the form.

Q: What else did he do besides ask the police to talk to you?

A: I have no idea; you'd have to ask him.

Q: Well, I'm asking you.

A: I understand that, but I don't know.

Q: You don't know?

A: You'd have to ask him.
Q: So the---
A: I wrote the letter; that's the way interpreted it.
Q: Okay. So all you've said so far is that the way you contend that he breached the lease was by having the police officer come talk to you or attempt to talk to you about the horses being harassed?
A: That's what you're saying; I don't know.
Q: What do you say?
A: I'm saying the police officer came to my house during Thanksgiving dinner about us doing things we were entitled to do in our field.
Q: And what did the officer do to you?
A: It doesn't make much difference.
Q: What did the officer do to you, is what I asked?
A: He interrupted my dinner. Do you understand that?
Q: Okay, I do understand that. Is that all that happened?
A: He interrupted my—
Q: You're saying that you all—
A: And Randy also interrupted my dinner—
Q: If I can finish. If I can finish.

MR. THOMPSON: You all need to let each other finish.

Q: Well, if he'll answer the question. You've said that Randy is the basis for you saying that Randy breached the lease was because he interrupted your dinner?

A: That's part of it, yeah.
Q: All right, what is the rest of it?
A: A police officer came to my house.
Q: What's the rest of it?
A: I answered it.
MR. THOMPSON: Object to form.
Q: Is there anything else?
A: I answered your question.
Q: Is there anything else?
MR. THOMPSON: Object to the form.
Q: That calls for a yes or a no.
A: I don't know, I'd have to think about it. Let me read my letter.
Q: All right.
A: Are you submitting that letter?
Q: You're the one that wrote it.
A: I understand I wrote it. Are you submitting it into evidence here? Do you have a question?
Q: I asked a question and you asked to see the document. You can answer my question now. Go ahead.
A: What's your question?
Q: My question was, is there anything else, other than what you've said?
A: Obviously there was a lot of bad blood between us, but I think this makes it perfectly clear and answers your question.
Q: So there's nothing else?

A: I said Lease Agreement (copy attached). More specifically, my family has equal rights to the premises and your harassment during our Thanksgiving dinner was unacceptable.

Q: My question is, is there anything else that you based or rely upon in claiming there was a breach of your lease, other than what you've said? Anything else.

A: I put my reasons right in the letter.

Q: It's a simple question. Is there anything else?

A: I don't know of anything else. I put it right there.

Q: Okay. Did you get a, did you receive the original of this letter, and this is dated December the 10th. I think what I'm going to do is probably keep these.

A: Yes.

Q: All right.

MR. THOMPSON: For the record, can you identify—

MR. TRUSLOW: Pardon me?

MR. THOMPSON: Can you identify what this is?

MR. TRUSLOW: Yes, I did. I said did you receive this letter dated December, or the original of this letter dated December 10, 2003 from Randy Mills, and he said yes. And what I'll do is, to make it easy, I'll mark these. I'm probably going to keep these but we can have copies. The December 2nd, 2003 letter that he said he

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

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

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

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

MR. TRUSLOW: Sure.

(WENT OFF RECORD.)

(BACK ON RECORD.)

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

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

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

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

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

DIRECT EXAMINATION CONTINUED BY

MR. TRUSLOW:

Q: I'm going to show you what's already marked as Exhibits 3, 4, 5 and 6 and ask you if these are copies of correspondence that took place between you and Mr. Mills?

A: Yes, all of those, correct, correspondence.

Q: Okay. Did he ever write quote "little anonymous letters of harassment against you, your clients, and your friends."

A; I believe he did.

Q: Who did he write those to?

A: He wrote one while I was representing Mike Suchey to—Well, he left it on some neighbors' doorsteps to try to interfere with a house sale deal. I feel like from my investigation he wrote it, let's put it that way.

Q: What did the letter say?

A: Basically pointed out—Jake has a copy of it; I don't mind you having it. I don't remember exactly, but it was trying to, the gist of it was trying to queer a deal on Mike Suchey's house sale.

Q: Okay. This may seem like a disconnect but it's not. About the time you had the discussion with Randy subsequent to that Thanksgiving visit you had from the police, somewhere around that time, did you ever have, did you ever sell any real estate of significance? I'm thinking there might have been a Koger or Kroger.

A: I was part owner in a limited liability company that owned the land, six acres of the land on the deal at the corner of Kennerly

and Broad River where Publix went into and I sold that land.
Q: The Publix?
A: Right.
Q: Okay. What was your percentage of ownership?
A: Fifty per cent.
Q: Okay. Did you ever indicate to Randy that you made a million dollars off of the deal?
A: Sure didn't.
Q: Did you ever indicate that you had made any money off of that?
A: Randy and I talked about a lot of things and we talked repeatedly about that place up there over the three years that we knew each other and that that was going on, and I imagine he knew the entire deal.
Q: Okay.
A: It would have been my feeling that he would have.
Q: Why? Why would he have known the entire deal?
A: Because we talked about things like that.
Q: Okay.
A: He told me things about him and he knew that I owned that land up there.
Q: Okay. There's nothing wrong with that. I'm just trying to—
A: I understand.
Q: —find out some things.
A: I understand.
Q: Did you ever indicate to Randy that you had sold that land where

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

Q: Can you explain that to me in terms that I will understand? I'm not a real estate lawyer but—

A: Yes.

Q: —I think I understand what the deal is, but if you can explain it to me, I'd appreciate it.

A: You want me to explain it to you?

Q: What your claim is, what the dispute is.

A: Which driveway exactly are you talking about?

Q: Whichever one you've sued him over. There's a claim of a continuing trespass, I'm trying to figure out what it is.

A: I gave an easement to the people that built his house, a very specific easement. I think I sent you a copy of it, as a matter of fact. An easement for access to that house over my property and for the entrance to that house to be at a certain place and for the, for me to have the rights to move that easement under certain conditions if I wanted to.

Q: All right.

A: You have to ask me a question. That was the easement.

Q: I was asking you to explain what the controversy was, what your contention is, what did Randy do?

A: I don't have any contention. Randy came in and cut another driveway someplace he did not have an easement.

Q: Who drew the easement?

A: I forget his name, but it's an attorney over in Lexington going up the hill on US 1 towards the new courthouse.

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

ingress?

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

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

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

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

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

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

A: That is correct.

Q: —where the driveway is.

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

Q: Yes.

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

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

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

Q: Okay.

A: He has an easement.

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

(WENT OFF RECORD.)

(BACK ON RECORD.)

DIRECT EXAMINATION CONTINUED BY MR. TRUSLOW:

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

A: Uh-huh.

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

A: That's correct.

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

A: That's correct.

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

A: Yes.

Q: All right.

A: He may want to read this.

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

in the future. Any such relocation shall be to Richland County standards and deeded to Richland County." Have you deeded, do you intend to deed over to Richland County the easement?

A: I have on some property but not on this property.

Q: Is it your intent to do that?

A: No.

Q: Okay. Now it says that "The easement is granted here and shall be perpetual and shall run with the land, the benefit thereof accruing to Jerry L. Johnson and Sharon Johnson, their heirs, successors and assigns."

A: That's correct.

Q: And Mr. Mills is their assigned or successor?

A: That's correct.

Q: Okay. I don't, I don't see, in looking at the easement, where it is. Is it along this strip here where it says Thomas Efland here, now or formerly Efland, and then this is, what I'm pointing to I think is the Johnsons' property. Does the easement run from corner to corner?

A: It runs on the existing dirt road.

Q: All right.

A: Approximately twenty feet in width.

Q: All right. So does that allow them access to their property?

A: If it doesn't, they're in trouble, aren't they?

Q: Could be.

A: You really want me to read it to you? I mean, you've read it,

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

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

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

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

A: It looks to me like it is.

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

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

Q: Okay. When was that cut in?

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

Q: 2003?

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

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

Q: Okay. Well, when did he—

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

drive to his house. I told him he didn't have that right one day when he and I were arguing and he told me he was going to do it if he wanted to do it and there was nothing I could do about it.

Q: Okay, so he went ahead and finished putting it in, is that right?

A: Yeah.

Q: And you didn't make, couldn't see fit to make a claim at that time?

A: Well, all of this, it depends on what you consider claim at that time, and I told him I didn't want it there, told you I didn't want it there. As far as the legal claim, I think I've already told you that I had decided not to start this action, but you guys decided to start it.

Q: Have you and I ever talked besides just introducing ourselves at a—

A: I don't think so, other than letters.

Q: Okay. The reason I was asking is you were talking about us talking and actually—

A: I said I told you, and that meant all inclusive. That could be letters or anyway under the sun.

Q: Okay.

A: But communications.

Q: Okay, all right. I just wanted to make clear that any communications that you and I have had were by letter.

A: That's correct.

Q: Or on the record in court? Is that correct?

A: I assume, if you call mediation court.
Q: No, not mediation. Do you remember appearing before a judge in court?
A: Oh, yeah.
Q: That's all I was referring to. Okay, appreciate it.
A: No problem.

MR. THOMPSON: I have no questions.

FURTHER THE DEPONENT SAITH NOT AT 5 P.M.

STATE OF SOUTH CAROLINA) NOTARY CERTIFICATION
COUNTY OF LEXINGTON)

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

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

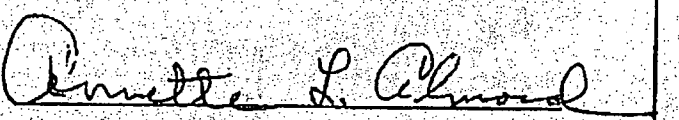
I further certify that I recorded this testimony on tape and by stenomask, that the tapes were reduced to typewriting by me personally and that the foregoing transcript containing pages One (1) through One Hundred Eleven (111) is a true, accurate and complete transcript of the testimony given to the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

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

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

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

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



Annette L. Almond
Notary Public for South Carolina
My Commission Expires: 6/12/2013

West Columbia, S. C.
July 6, 2006

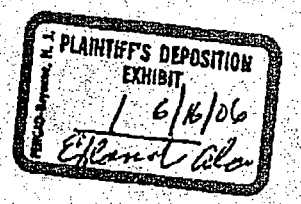
Thomas D. Efland, Jr.
ATTORNEY AT LAW
7715 Suite A St. Andrews Road
Irmo, South Carolina

803-781-1420

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

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.

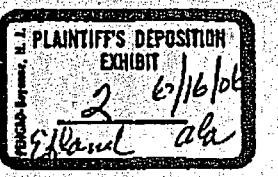
You previously stated that you had made improvements in a manner so that they could be removed. Please present a plan for such a removal to included what you wish to remove within 10 days hereof. I have no interest in horses so I will work with you reasonably in allowing some removal if timely presented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

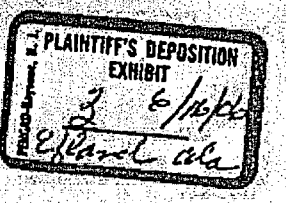
Without making an exhaustive list of items I will take, I would say that I will not lay waste to the property and I will certainly leave it in better shape than it was in before I began construction. I plan to take the well pump (leaving the piping and the plumbing), the outside lights and surveillance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

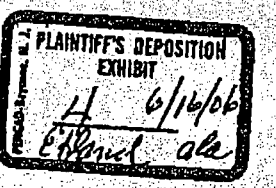
Sincerely,

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:

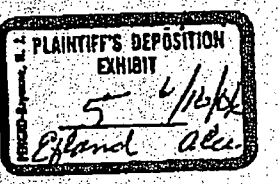
I am writing to follow up on your call regarding mediation.

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,

Randy Mills



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

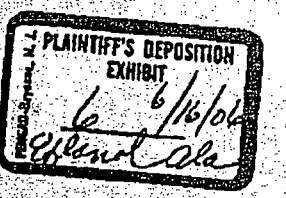
Thomas D. Efland, Jr.
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7715 Suite A St. Andrews Road
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803-781-1420

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

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,
Tom Efland
By Janet Efland
Thomas D. Efland, Jr.
Attorney at Law

TDE/jhe
Enc
cc Judge Dennis

EXHIBIT F

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

1. 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

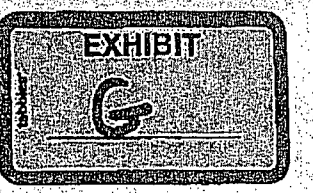
encompass any and all monies spent by the Plaintiff to house and care for his horses, and not just for improvements. For another, there is the real question of whether it was reasonable, given the parameters of the Lease Agreement, the 5-year term, and the right of first refusal which was a part of the 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
RANDY MILLS PLAINTIFF(S)	)	CASE NO. 2008-CP-40-00876
VS.	)	**TRANSCRIPT OF JUDGMENT**
THOMAS D. EFLAND, JR. 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.

Jeanette W. McBride
Clerk of Court of Richland County

Date: 3/21/16

SCCA/250 (06/2015)

EXHIBIT 4

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Randy Mills,
☐ Plaintiff

v.

Thomas D. Efland, Jr.,
☒ Defendant

C/A #2008-CP-40-00876

MOTION INFORMATION FORM AND COVER SHEET

check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney	name, S.C. Bar no. and address of defendant's attorney
Douglas N. Truslow	S. Jahue Moore S.C. Bar No. 4063
P.O. Box 1465	P. O. Box 5709
Columbia, SC 29202	West Columbia, SC 29171
telephone: (803) 256-6276 fax: (803) 256-7659	telephone: (803) 796-9160 fax: (803) 791-8410
e-mail: other:	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: Motion to Remand
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 — July 20, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Randy Mills,	)	C.A. No.: 2008-CP-40-00876
Plaintiff,	)	
vs.	)	**NOTICE OF MOTION TO REMAND**
Thomas D. Efland, Jr.,	)	
Defendant.	)	

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. Jahue 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



FORM 4

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

JUDGMENT IN A CIV

CASE NUMBER: 2008CP4000876

Randy Mills — PLAINTIFF(S)

Thomas D. Efland Jr. — 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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)

2015 DEC 15 PM 3:28
RICHLAND COUNTY
CLERK OF COURT
FILED
JEANETTE W. McBRIDE
C.P. & G.S.

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 _____ Judge Code 2161 Date 12-15-15

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 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 Jeanette W. McBride

SCANNED

SCRCP Form 4C (10/2011)

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,	
vs.	
THOMAS D. EFLAND, JR.,	
Defendant.	

ORDER

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

THIS MATTER COMES BEFORE THE COURT pursuant to 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.

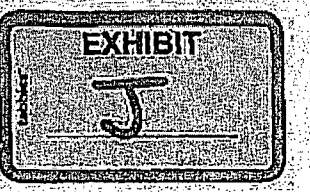
Now, therefore, Defendant's Motion to Remand is DENIED.

AND IT IS SO ORDERED.

~~[illegible]~~ DeAndrea Benjamin
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina
12-14, 2015

SCANNED



STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEA

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:

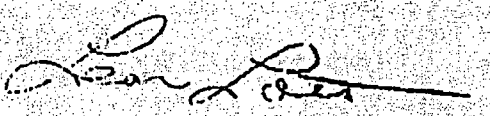
TMS #R04400-01-26
150 Tiger Paw Lane

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)

IN THE COURT OF COMMON PLEAS

NOTICE OF LEVY

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

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:

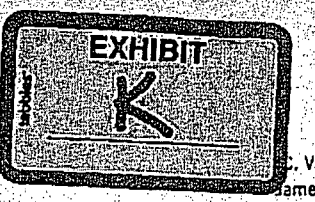
TMS# R04400-01-26
150 TIGER PAW LANE

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[1]
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley[1]
Shella 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)

Douglas A. Truslow
(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

[1]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,	)	**CERTIFICATE OF SERVICE**
	)	
Vs.	)	
	)	
Randy L. Mills and Richland County,	)	
	)	
Defendants.	)	
	)	

The undersigned certifies that she, on October 18, 2016, caused to be served a copy of the **Answer and Counterclaim,** on all parties in this matter by regular U.S. mail delivery by depositing all in the United States 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
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202

Beth Cogan

October 18, 2016 — Beth Cogan, Paralegal

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Tom Efland, Plaintiff, vs. Randy L. Mills and Richland County, Defendants.	)	C/A. No. 2016-CP-40-05336 **ANSWER**

RICHLAND COUNTY FILED
2016 OCT 10 PM 12:42
JEANNETTE W. WALKER
C.C.P. & G.S.

Defendant Richland County ("Richland County), by and through its undersigned counsel, makes this Answer to Plaintiff's Complaint and states as follows:

FOR A FIRST DEFENSE

Each and every allegation of Plaintiff's Complaint not herein specifically admitted, modified, qualified, or otherwise responded to by Richland County is hereby denied. Richland County answers each allegation set forth in the Complaint as follows:

1. Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Complaint and therefore, denies the allegations and demands strict proof thereof.

2. No response is required to Paragraph 2 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

3. Responding to Paragraph 3 of the Complaint, Richland County admits that Tiger Paw Lane is a road located in Richland County, South Carolina.

4. Paragraph 4 of the Complaint is admitted.

5. Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 5 of the Complaint and therefore, denies same and demands strict proof thereof.

6. No response is required to Paragraph 6 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

7. No response is required to Paragraph 7 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

8. Paragraph 8 of the Complaint is a conclusion of law and/or prayer for relief to which no response is required. To the extent a response is required, Richland County asserts that Plaintiff is not entitled any form of relief whatsoever as to Richland County and therefore denies the allegation.

9. Responding to Paragraph 9 of the Complaint, Richland County states that the allegation is vague and ambiguous and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent further response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

10. Responding to Paragraph 10 of the Complaint, Richland County restates and incorporates by this reference its response to Paragraph 9 of the Complaint.

11. No response is required to Paragraph 11 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

12. No response is required to Paragraph 12 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

13. Responding to Paragraph 13 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

14. Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 14 of the Complaint and therefore, denies the allegations and demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

15. Responding to Paragraph 15 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof

thereof. To the extent further response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

16. Responding to Paragraph 16 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

17. Responding to Paragraph 17 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, the allegations contain conclusions of law and/or prayers for relief to which no response is required.

18. Paragraph 18 of the Complaint contains conclusions of law and/or prayers for relief to which no response is required. Responding further, Richland County denies that Plaintiff is entitled to any form of relief whatsoever as to Richland County. Responding further, to the extent any rights of Richland County are at issue or to the extent any allegations of

wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof.

19. No response is required to Paragraph 19 of the Complaint. To the extent a response is required, Richland County hereby incorporates by this reference its preceding answers set forth herein above.

20. No response is required to Paragraph 20 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

21. Responding to Paragraph 21 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

22. Responding to Paragraph 22 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, Richland County is without sufficient knowledge and information to form a

belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

23. Responding to Paragraph 23 of the Complaint, Richland County states that the allegation is vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof.

24. Paragraph 24 of the Complaint is a conclusion of law to which no response is required. To the extent a response is required, Richland County denies any allegations of wrongdoing, if any there be, directed at Richland County and demands strict proof thereof.

25. Paragraph 25 of the Complaint is a conclusion of law to which no response is required. To the extent a response is required Richland County states that the allegations are vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. Responding further, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof.

26. Paragraph 26 of the Complaint is a conclusion of law and/or prayer for relief to which no response is required. To the extent a response is required Richland County states that

the allegations are vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof. Responding further, Richland County asserts that Plaintiff is not entitled to any form of relief whatsoever as to Richland County and therefore denies the allegations.

27. No response is required to Paragraph 27 of the Complaint. To the extent a response is required, Richland County hereby incorporates by this reference its preceding answers set forth herein above.

28. Paragraph 28 of the Complaint is a conclusion of law to which no response is required. To the extent a response is required Richland County states that the allegations are vague and ambiguous, as it uses the generic term Defendant when there is more than one Defendant and therefore, Richland County denies the allegation and demands strict proof thereof. To the extent any allegations of wrongdoing, if any there be, are directed at Richland County, the allegations are denied and Richland County demands strict proof thereof.

29. No response is required to Paragraph 29 of the Complaint. To the extent a response is required, Richland County is without sufficient knowledge and information to form a belief as to the truth or falsity of the allegations and therefore, denies same and demands strict proof thereof. Responding further, the allegations contain a conclusion of law to which no response is required.

30. Paragraph 30 of the Complaint is a conclusion of law and/or prayer for relief to which no response is required. To the extent a response is required, Richland County asserts that Plaintiff is not entitled to any form of relief whatsoever as to Richland County and therefore

denies the allegations. Responding further, Richland County denies any allegations of wrongdoing, if any there be, directed at Richland County and demands strict proof thereof.

31. No response is required to Paragraph 31 of the Complaint. To the extent a response is required, Richland County hereby incorporates by this reference its preceding answers set forth herein above.

32. No response is required to Paragraph 32 of the Complaint. Responding further, the allegations are conclusions of law to which no response is required. To the extent a response is required, Richland County denies any allegations of wrongdoing, if any there be, directed at Richland County and demands strict proof thereof.

33. No response is required to Paragraph 33 of the Complaint. Responding further, the allegations are conclusions of law and/or prayers for relief to which no response is required. To the extent a response is required, Richland County denies any allegations of wrongdoing, if any there be, directed at Richland County and demand strict proof thereof, and further denies that Plaintiff is entitled to any form of relief or damages whatsoever as to Richland County.

34. The remaining allegations in the Complaint are conclusions of law and/or prayers for relief to which no response is required. To the extent a response is required, Richland County denies any allegations of wrongdoing, if any there be, directed at Richland County and demands strict proof thereof, and further denies that Plaintiff is entitled to any form of relief or damages whatsoever as to Richland County.

FOR A SECOND DEFENSE
(Failure to State a Claim)

35. Plaintiff's Complaint fails to state a claim upon which relief may be granted as to Richland County.

FOR A THIRD DEFENSE
(Advisory Opinion)

36. As the Complaint is wholly devoid of any allegations of wrongdoing, or any other conduct for that matter, as to Richland County, it merely seeks an impermissible advisory opinion as to Richland County relating to a purported private easement road on or near Tiger Paw Lane in Richland County, South Carolina.

FOR A FOURTH DEFENSE
(No Justiciable Controversy)

37. As the Complaint is wholly devoid of any allegations of wrongdoing, or any other conduct for that matter, as to Richland County, it fails to set forth a justiciable controversy as to Richland County.

FOR A FIFTH DEFENSE
(Misjoinder of Claims)

38. To the extent the Complaint can be construed as stating a claim against Richland County, any such claim is separate and distinct from Plaintiff's claims against Defendant Randy L. Mills and thus, improperly joined to or united with this Complaint.

FOR A SIXTH DEFENSE
(Misjoinder of Party)

39. Richland County is an improper party to a private dispute between Plaintiff and Defendant Randy L. Mills related to a purported private easement road between Plaintiff (purported easement grantor) and Defendant Randy L. Mills (purported easement grantee).

WHEREFORE, having fully answered the Complaint, Richland County prays that the Complaint will be dismissed with prejudice as to Richland County, that Richland County be awarded all costs and expenses that arise in defending this action, including reasonable attorneys' fees, and for such other further relief as the Court may deem just and proper.

Respectfully submitted,

Mitchell Willoughby, Esquire
Elizabeth Zeck, Esquire
Andrew J. D'Antoni, Esquire
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416
(803) 252-3300

Attorneys for County of Richland

October 5, 2016
Columbia, South Carolina

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.:

SUMMONS

RICHLAND COUNTY
FILED
2016 SEP -1 AM 10:23
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE-NAMED;

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this matter, a copy of which is herewith served up on you, and to serve a copy of your ANSWER to said Complaint upon the subscriber at his office. 1700 Sunset Boulevard, P.O. Box 5709, West Columbia, South Carolina, 29171, within THIRTY (30) days from the service thereof, exclusive of the day of such service; and if you fail to answer the COMPLAINT within the time aforesaid, judgement by default will be rendered against you for the relief demanded in the Complaint.

MOORE TAYLOR LAW FIRM, P.A.

By: _____
S. Jahue Moore
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
August 29, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

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

C.A. No.:

COMPLAINT
(Jury Trial Requested)

RICHLAND COUNTY FILED
2016 SEP -1 AM 10:23
JEANNETTE W. McBRIDE C.C.P. & G.S.

The Plaintiff above-named complaining of the Defendants herein alleges that:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of Richland County, South Carolina.

2. The Defendant Randy L. Mills is a resident and citizen of Richland County, South Carolina.

3. The property which is the subject of this action is located in Richland County, South Carolina.

4. Richland County, South Carolina is a political subdivision of the state of South Carolina.

5. The Plaintiff is the owner of a large tract or land located on Tiger Paul Lane in Richland County, South Carolina.

6. The Defendant Mills owns a parcel of real estate which adjoins the Plaintiff's property.

7. Mills has an easement for ingress and egress across the Plaintiff's property.

8. This is an action for declaratory relief.

9. The easement road is not a public road and does not belong to Richland County, South Carolina.

10. The easement as a defined location and a defined terminus.

11. The Defendant Mills has regularly exceeded the scope of the easement and continues to trespass upon the Plaintiff's property.

12. The easement which is owned by Mills is for ingress and egress only. This court should issue its order declaring the scope of the easement and declaring it may be used only for ingress and egress.

13. The Defendant has created a new driveway over property belonging to the Plaintiff. Plaintiff is entitled to an order of this court that he is entitled to remove the driveway and to fence it off.

14. The property on either side of the driveway belongs to the Plaintiff. From time to time Plaintiff parks cars and other vehicles along the shoulder of the easement. Plaintiff is entitled to a declaration of this court that he has a right to park along the easement so long as he leaves it accessible for ingress and egress.

15. Plaintiff is entitled to erect a gate for security over the easement road so long as he provide the Defendant a key so that the Defendant will have access to his property.

16. The Defendant has without permits grated and clear property and has redirected water onto the Plaintiff's property. Plaintiff is entitled to an order of this court declaring that the clearing has been illegal and ordering the Defendant to reestablish the pre-clearing drainage.

17. Defendant has wrongfully removed certain vegetation from the Plaintiff's property. This court should declare that the removal of this vegetation has been wrongful and should order the Defendant to return the property to the condition it was before the modifications were made.

18. This court should issue its declaratory judgement declaring the rights of the parties one to another; declaring the road to not be a public roadway; declaring the scope of the easement; and issue an appropriate injunction on a permanent basis establishing the rights of the parties.

FOR A SECOND CAUSE OF ACTION

19. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

20. The Defendant Mills has created a continuing trespass onto the Plaintiff's property by directing water illegally onto the property.

21. Defendant has trespass in that he has made modifications to his property which is diverted the ordinary flow of the water. These diversion of water have been done without the necessary permits or permission of the county.

22. Defendant has regularly directed leaves, trash and other debris onto the Plaintiff's property and continues to do so.

23. The Defendant has come onto the Plaintiff's property and has destroyed certain vegetation and done other work which was not authorized.

24. The conduct complained of herein amounts to a trespass.

25. As a direct and proximate result of the aforementioned trespass by the Defendant, the Plaintiff has been denied the benefit and use of his property; the property has been devalued; the Plaintiff has had to spend money in order to correct the deficiencies created by the trespass; the Plaintiff's property has been damaged; and the Plaintiff has been otherwise damaged all to his damage both actual and punitive.

26. Plaintiff is entitled to judgement against the Defendant for actual and punitive damages and for an appropriate injunction ordering that the continuing trespass cease.

FOR A THIRD CAUSE OF ACTION

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

28. By modifying the property and by channeling water, the Defendant has created a nuisance.

29. The nuisance continues in that the Defendant Mills continues to direct trash, leaves and other debris onto the Plaintiff's property.

30. As a direct and approximate result of the aforementioned nuisance, the Plaintiff has sustained the damages as set forth above and Plaintiff is entitled to a permanent injunction abating the nuisance.

FOR A FOURTH CAUSE OF ACTION

31. Plaintiff hereby reasserts and realleges each and every allegation set forth above as fully as if set forth verbatim.

32. Mills has been negligent and reckless in that he has made modifications on the property without permission; has trespass onto the Plaintiff's property; has made modifications and clearing without appropriate permits; has illegally diverted the flow of the water onto the Plaintiff's property; and has done other acts in derogation of the Plaintiff's rights without appropriate permits or permissions.

33. As a direct and approximate result of the aforementioned acts of negligence and recklessness, the Plaintiff has sustained the damages as set forth above and Plaintiff is entitled to judgement against the Defendant Mills for actual and punitive damages.

WHEREFORE, Plaintiff prays for an order of this court declaring the rights of the parties one to another in regard to the easement; for an order of this court declaring the rights of the parties

one to another in regard to the allegations set forth herein; for appropriate injunctive relief; for actual damages; for punitive damages; and for such other and further relief as this court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

By: _____

S. Jahue Moore
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR PLAINTIFF

West Columbia, South Carolina
August 29, 2016

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**

RICHLAND COUNTY
FILED
2009 FEB 19 PM 12:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

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

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.

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 Compliant, 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	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
RANDY MILLS,	)	
	)	
Plaintiff,	)	**SUMMONS**
	)	
vs.	)	
	)	
THOMAS D. EFLAND, JR.,	)	
	)	
Defendant.	)	

2008 FEB -5 PM 12:37
BARBARA A. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY
FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber, at his office at 914 Richland Street, Suite B102, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

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

Columbia, South Carolina
2/5, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
RANDY MILLS,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	(Jury-Trial)
vs.	)	
	)	
THOMAS D. EFLAND, JR.,	)	
	)	
Defendant.	)	
	)	

2008 FEB -5 PM 12:37
BARBARA A. SCOTT
C.C.C. & G.S.
RICHLAND COUNTY

The Plaintiff complaining of the Defendant above named alleges:

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

1. Plaintiff is a citizen and resident of Richland County, South Carolina.

2. Defendant is a citizen and resident of Richland County, South Carolina.

3. This Court has jurisdiction over this matter and the parties herein.

4. Plaintiff and Defendant are neighbors and Defendant owns approximately twenty (20) acres of undeveloped land in the vicinity of Plaintiff's and Defendant's respective homes.

5. Over a number of years Defendant, who is an attorney, performed legal services for Plaintiff that included, but was not limited to providing business advice, performing collections work and assisting with real estate and probate related matters, and Plaintiff considered Defendant to be his attorney.

6. In late 2001 or early 2002, Plaintiff discussed with Defendant the purchase of a portion of Defendant's undeveloped land to be used to board Plaintiff's horses. Defendant agreed to sell Plaintiff the land, subject first to a lease that Defendant would prepare. Defendant made clear that Plaintiff would be given an option to purchase the land and that Defendant would take care of all necessary legal

requirements and documents since he claimed to be an attorney who specialized in the type of legal service that would need to be provided.

Thereafter, Defendant drafted a document (attached hereto as Exhibit 1) which Plaintiff and Defendant signed, and Defendant represented to Plaintiff that he had taken care of all necessary legal documents and requirements needed to fully protect the parties. In reliance on Defendant's representation, and expecting to honor the lease and to exercise the option to purchase, Plaintiff spent considerable sums of money to improve Defendant's land, including erecting a barn, fencing and pasture and making other valuable improvements to the land. Upon Plaintiff transforming the land from a briar choked and often inaccessible and mosquito laden marsh to a well maintained, grassed pasture and barn, Defendant made it clear to Plaintiff in the late summer and/or early fall of 2003 that he (Defendant) had perpetuated a fraud and scam upon Plaintiff in order to induce Plaintiff to improve Defendant's property, that he had no intent to allow Plaintiff to have the quiet, peaceful use of the land leased (and to be sold) and that he intended to harass Plaintiff and his horses so that Plaintiff would be required to move from the property. Defendant then set about an unreasonable pattern, both directly and indirectly, of abusing and intimidating Plaintiff and his horses, including but not limited to blocking Plaintiff's access to the property, chasing the horses through the pasture with a "four-wheeler" and gasoline powered radio controlled race car, throwing old auto parts into the pasture, using extreme profanity, throwing lit cigarettes into the barn area, threatening to sue and/or to have Plaintiff arrested for trespass and otherwise harassing Plaintiff and his horses. As a direct and proximate result, Plaintiff was forced to leave the leased land and improvements and board his horses elsewhere at great expense.

7. Plaintiff alleges that at all times herein, Defendant, as Plaintiff's attorney and otherwise, had a fiduciary duty to act in good faith and with fair dealings toward

Plaintiff; that Plaintiff trusted Defendant and relied on the special attorney-client relationship between them; that Defendant breached his duty to Plaintiff and that Plaintiff has been injured as a proximate result in the sum of $75,000.00. Further, Plaintiff alleges that Defendants' acts were so egregious and outrageous as to entitle Plaintiff to punitive damages in such a sum as a jury finds to be just and proper.

FOR A SECOND CAUSE OF ACTION
(Fraud)

8. Each and every allegation herein is repeated as if verbatim.

9. Defendant represented to Plaintiff that he (Defendant), as Plaintiff's attorney would ensure that Plaintiff had a proper lease with an option to purchase and that Plaintiff would have the quiet enjoyment of the leased premesis that is the subject of this lawsuit; that Defendant's claim was false, material, known to be false or in reckless disregard for the truth; that Plaintiff relied on the truth of Defendant's representations and was otherwise ignorant and unaware of the falsity of Defendant's untrue claims; that Plaintiff had a right to rely on Defendant's representations and that he was damaged as a consequent and proximate cause of Defendant's misconduct, for which he seeks actual and punitive damages in a sum in excess of $75,000.00.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

10. Each and every allegation herein is repeated as if verbatim.

11. Defendant made false representations to Plaintiff that he would, as Plaintiff's attorney, fully protect him and that Plaintiff would be allowed to lease and buy the property that Plaintiff improved; that Defendant had a pecuniary interest in making the false representations set forth herein; that Defendant owed a duty of

care to see that he communicated truthful information to Plaintiff; that Defendant breached his duty by failing to exercise due care; that Plaintiff justifiably relied on Defendant's false representations and Plaintiff has suffered losses as a proximate result as set forth herein for which he seeks actual and punitive damages based on Defendant's neglect and grossly negligent and improper conduct.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

12. Each and every allegation herein is repeated as if verbatim.

13. As an alternate cause of action, Plaintiff would show that Plaintiff and Defendant entered into a contract for the lease of property, as set forth in the attached "lease" that was negotiated, drafted, and described by Defendant.

14. That after entering into the lease and after Plaintiff made substantial improvements to Defendant's land, Defendant breached the agreement, such that Plaintiff was forced to vacate the object of the contract and suffered general and special damages that have included the value of the improvements made to Defendant's property and the cost to stable and house his horses elsewhere, for which Plaintiff seeks actual damages.

FOR A FIFTH CAUSE OF ACTION
(Unjust Enrichment)

15. Each and every allegation herein is repeated as if verbatim.

16. As a second alternate cause of action, Plaintiff would show that in good faith he provided valuable services and made valuable improvements to Defendant's property and Defendant has accepted, used and enjoyed those benefits and Defendant now has the exclusive use and enjoyment of those benefits.

17. Plaintiff provided services and benefits to and for Defendant under such circumstances as reasonably notified Defendant that Plaintiff expected to in turn realize a benefit from Defendant.

18. The reasonable value of the services, improvements and benefits to Defendant are $75,000.00 and Plaintiff is entitled to judgment against Defendant in this amount.

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays for judgment against the Defendant in an amount in excess of jurisdictional limits of the Court, for punitive damages, for the costs of this action, and for such other and further relief as the Court may find proper.

DOUGLAS N. TRUSLOW
Attorney for Plaintiff
P.O. Box 1465
Columbia, South Carolina 29202
(803) 256-6276
Fax: (803) 256-7659

Columbia, South Carolina

2/5, 2008

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.	)	
	)	

RICHLAND COUNTY
FILED
2016 OCT 21 PM 1:50
JEANETTE W. MCBRIDE
C.C.P. & G.S.

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

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

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Tom Efland, Plaintiff, vs. Randy L. Mills and Richland County, Defendants.	)	C/A. No. 2016-CP-40-05336 **NOTICE OF MOTION AND MOTION TO DISMISS**

RICHLAND CO.
FILED
2016 OCT 10 PM 12:42
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: PLAINTIFF TOM EFLAND AND HIS ATTORNEY OF RECORD, S. JAHUE MOORE

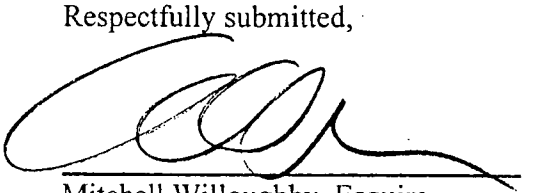
PLEASE TAKE NOTICE that Defendant Richland County ("Richland County"), through counsel, will move before the presiding judge of the Fifth Judicial Circuit at the Richland County Courthouse, 1701 Main Street, Columbia, SC 29201 on the tenth (10) day after service hereof, or as soon thereafter as counsel may be heard, for an order dismissing this action, with prejudice, as to Defendant Richland County pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action as to Richland County. Further, as the Complaint is devoid of any allegations of wrongdoing, or any other conduct for that matter, as to Richland County, it fails to raise a justiciable controversy or merely seeks an advisory opinion as to Richland County, and thus, should be dismissed, with prejudice.

Alternatively, Richland County moves to dismiss this action, with prejudice, as to Richland County pursuant to Rules 20 and/or 21 of the South Carolina Rules of Civil Procedure because Richland County is an improper party to a private dispute between Plaintiff and Defendant Randy L. Mills relating to a purported private easement road between Plaintiff (purported easement grantor) and Defendant Randy L. Mills (purported easement grantee).

Alternatively, to the extent the Complaint states facts sufficient to constitute a cause of action as to Richland County (and Richland County vigorously asserts that it does not), any such allegations against Richland County are separate and distinct from any claims against Defendant Randy L. Mills and thus, improperly joined or united under this Complaint and should be severed pursuant to Rules 20 and/or 21 of the South Carolina Rules of Civil Procedure.

This Motion is based upon the Summons and Complaint, applicable statutory and case law, any memorandum of law and/or public documents available to the Court and referenced by Richland County at or before the hearing, and any other matters as the Court may permit to be presented at any hearing held on this Motion or following any such hearing.

Respectfully submitted,



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Attorneys for County of Richland

October 5, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Tom Efland,	)	C.A. No.: 2016-CP-40-05336
Plaintiff,	)	
vs.	)	**MEMORANDUM**
Randy L. Mills and Richland County,	)	
Defendants.	)	

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: _____ / for

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ATTORNEY FOR THE PLAINTIFF

West Columbia, South Carolina
January 18, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2016-CP-40-05336
	)	
Tom Efland,	)	
	)	**Plaintiff's Reply Memorandum:**
Plaintiff,	)	**MOTION FOR JUDGMENT ON THE**
	)	**PLEADINGS AS TO PLAINTIFF'S CLAIMS**
Vs.	)	
	)	
Randy L. Mills and Richland County,	)	
	)	
Defendants.	)	
	)	

In reply to the memorandum submitted by counsel for plaintiff Tom Efland, Mills continues to urge the court to grant judgment on the pleadings, and would show:

1. At the hearing in this matter, Plaintiff Eflund acknowledged that the issues presented in this lawsuit are the same issues that he raised in his counterclaims in the prior, 2008 action. He argues that this case presents a novel issue of what should be done when an arbitrator fails to decide issues that were before him.
2. Plaintiff asserts that the arbitrator did not decide the counterclaims. While Defendant Mills disagrees with that, Plaintiff did not file for relief in a timely fashion. Judge Benjamin has already ruled that Plaintiff waited too long to seek the relief he now seeks in this new action.
3. The South Carolina Arbitration Act provides a specific procedure for the relief that Plaintiff is now seeking. Pursuant to S.C. Code Ann. Section 15-48-100, there are multiple methods to have an arbitrator revisit, modify or amend an award. *See also* Sections 15-48-120, 130 and 140. However, the statues provides time limits within which this relief must be sought.

4. According to the order of Judge Benjamin dated December 14, 2015 (in Case No. 2008-C-40-000876) the arbitrator's award was issued on June 23, 2015. Mr. Eflund (defendant in that matter, plaintiff in this matter) filed a Motion to Remand on July 20, 2015. (Order of Judge Benjamin attached to Defendant's Answer and Counterclaim as Exhibit I). Judge Benjamin ruled that Eflund (defendant in that matter, plaintiff in this matter) "has been untimely. There is no jurisdiction for the Court to grant the relief the Defendant seeks." *Id*
5. Judge Benjamin's order was not appealed. It is the law of the case. If Judge Benjamin was wrong, and the motion by Eflund seeking to remand the matter to the arbitrator was timely, Eflund (defendant in that matter, plaintiff in this matter) was obligated to seek reconsideration of Judge Benjamin's order and then appeal it. He did neither.
6. Instead, Eflund (defendant in that matter, plaintiff in this matter) paid the judgment awarded to the Defendant Mills (who was the plaintiff in that action) and the judgment was satisfied.
7. Almost a year after Judge Benjamin's order, this action was filed for the now acknowledged purpose of asking to adjudicate earlier counterclaims that Eflund asserts were not decided by the arbitrator. His opportunity to seek that relief is long passed. This action asks this court to disagree with Judge Benjamin and allow relief to Eflund that Judge Benjamin has already said he is not entitled to. It's too late. These cases are over.

8. At the hearing in this matter, Eflund argued that this Court must decide where the property lines are between these parties. None of the actions that have previously been filed sought that relief, and this action does not seek that relief either.

9. Eflund's memorandum argues for a remand to the arbitrator. The matter heard by the Court was Defendant Mills' Motion for Judgment on the Pleadings. In his memo, by asking for remand (without filing a motion seeking that relief), Eflund is acknowledging again that he is simply asking for the same relief that Judge Benjamin already denied him. If he disagreed, he had remedies. He did not pursue them.

Eflund makes an interesting argument that the arbitrator did not decide certain issues and there has to be some relief for that[1]. There is relief for that. Eflund simply didn't pursue it. Issue preclusion prevents him from attempting to litigate the matters in a brand new lawsuit.

Desa Ballard

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Attorney for Defendant Mills

January 18, 2017

[1] The arbitrator said that the defendant Eflund had not carried his burden of proof. The only matters on which Eflund had a burden of proof was the counterclaims, so it is somewhat disingenuous to argue that the counterclaims were not addressed when they were, in fact, ruled upon. If Eflund disagreed with the arbitrator, his remedies should have been pursued then, not now.

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

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-05336

Tom Efland ..... Appellant,

vs.

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

NOTICE OF APPEAL

Tom Efland, appeals the Order of the Honorable L. Casey Manning, dated April 14, 2017. Appellant, Tom Efland, received written notice of entry of this Order on April 17, 2017.

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ATTORNEYS FOR THE RESPONDENTS

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) No. 2016 CP 40 05336

TOM EFLAND)
)
Plaintiff)
)
versus) TRANSCRIPT OF RECORD
)
)
RANDY L. MILLS AND)
RICHLAND COUNTY)
)
Defendants)

Columbia, South Carolina

January 5, 2017

B E F O R E :

HONORABLE L. CASEY MANNING, Judge Presiding

A P P E A R A N C E S :

For the Plaintiff: S. JAHUE MOORE, Esq.

For the Defendants: DESA BALLARD, Esq.

MITCHELL WILLOUGHBY, Esq.

Reporter Present: CRYSTAL HOLMES

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S. C. 29485

(The within matter came before the Court for hearing on January 5, 2017)

MS. BALLARD: This is my motion for judgment on the pleadings.

THE COURT: What kind of motion, 12 B Six?

MS. BALLARD: Twelve C.

THE COURT: Twelve C. All right.

MS. BALLARD: My motion for judgment on the pleadings, Your Honor.

MR. WILLOUGHBY: Richland County has a motion to dismiss, Your Honor, in this matter.

THE COURT: And Mr. Moore represents the Plaintiff?

MR. MOORE: Yes, sir.

THE COURT: Who wants to go first?

MS. BALLARD: I am happy to, Your Honor. I represent Randy Mills, one of the two Defendants, in this case.

I am handing up to Your Honor a copy of our insert with exhibits, and you will notice I have incorporated a number of exhibits into our insert so that, for the purpose of having them looked at on a judgment on the pleadings, we have made that a part of our insert.

THE COURT: All right.

MS. BALLARD: These parties have litigated twice. The first action was brought in 2005 and the second action was brought in 2008. I have attached the pleadings.

This is not a summary judgment motion but a motion for judgment on the pleadings, Your Honor.

The 2008 action was brought by my client against Mr. Efland, and Mr. Efland counterclaimed against my client for things related to vegetation on real estate. They are joint property owners. For diverting water on different dates, a number of different dates.

The parties agreed to arbitrate the matter and it was arbitrated by, I believe, Mr. Todd, and he awarded judgment in my client's favor in an amount of Sixty Thousand Dollars.

In essence what he ruled was that -- well, the arbitration decision is attached -- I'm sorry -- it is Exhibit F.

He ruled that my client had made improvements on the property that had been actually leased to him by Mr. Efland.

MR. MOORE: If I could . .

THE COURT: You'll have your time. Continue.

MS. BALLARD: Thank you, Your Honor.

Mr. Todd ruled in favor of Mr. Mills and awarded damages of Sixty Thousand Dollars, essentially because of improvements that my client had made to some property that had been leased to him.

It was a lease with option to buy and there was

litigation that the parties had violated the lease, and Mr. Todd ruled that my client had not violated the lease and that my client's breach claimed by Mr. Efland had not been proven by the preponderance of the evidence.

He awarded my client Sixty Thousand Dollars for improvements that my client had made to the property. The property had been returned to Mr. Efland so that he had had the benefit of the improvements.

That judgment by the arbitrator was in June of 2015. The judgment of Sixty Thousand Dollars was paid in July of 2016, and in September of 2016 this law suit was filed.

This law suit essentially alleges all of the same counterclaims or all the same allegations -- the counterclaims related to the 2008 action which had been adjudicated and which had been ruled to be without error by Mr. Todd.

He specifically ruled in the last portion of his arbitration ruling said that Plaintiff's Breach -- Mr. Mills' breach has not been proven by a preponderance of the evidence.

So clearly he decided the counterclaims, and after he decided the case Mr. Moore filed a motion which was heard by Judge Benjamin and said, wait a minute, Your Honor, the arbitrator didn't decide the counterclaims, and Judge Benjamin issued an Order and that was in December of 2015,

which is Exhibit 5, in which he said basically, I'm sorry; it's too late for you to raise those issues.

Specifically it said, having consented to the binding arbitration there is no justice for which you before this Court -- even if Defendant, Mr. Efland, had different claims the Defendant has been untimely. There is no jurisdiction randomly the Defendant seeks.

So instead of doing whatever, he went and he filed a brand new lawsuit, so one of the things I included in my insert was Mr. Efland's deposition from 2008.

Starting about page 23 and going on from there you can see, based upon Mr. Efland's testimony, that the items he is complaining about -- all of those things were in the previous case on which a ruling was made.

All of those things were litigated. All of those things are done, and the only new thing is the fact that he does allege that my client has allowed leaves to blow from his property onto Mr. Efland's property -- blowing leaves.

THE COURT: Leaves?

MS. BALLARD: Yes, leaves. The wind brought the leaves and that is the only new thing he's got, so I move for judgment on the pleadings based on our position that these issues could have been raised or were raised and adjudicated.

If you look at the new Complaint it actually talks about the 2002 agreement. He talks about harrassment that occurred in -- I'm sorry. I don't find the date. He talks anyway about redirecting water over his property and all of that which was litigated in 2008.

He actually doesn't give a date so I think perhaps he is trying to suggest, oh, yes,I have a new thing to report in this brand new case.

It was decided that he had to pay my client. My client received money, and, guess what? My client had the right to sell his property until this lawsuit shows up instantly, making my client's property . . .

THE COURT: So suit was filed?

MS. BALLARD: Yes, sir.

THE COURT: And then what?

MS. BALLARD: Of course, it makes it very hard to sell a piece of property with a lawsuit filed. My motion is based on the issues of collateral estoppel, everything previously clearly litigated.

Once litigated, there is no case. Thank you, Your Honor.

THE COURT: Mr. Moore.

MR. MOORE: Basically, Your Honor, here's what happened. We wound up in litigation before this Court, and there were two basic issues raised.

One had to do with one piece of property and another had to do with an adjoining piece of property.

The piece of property that the arbitration actually dealt with was the construction of a barn. That issue regarding the construction of a barn has been resolved by an arbitration.

The pleadings contained issues related to the barn but it also had to do with the fact that Ms. Ballard's client has constructed a road, a driveway, on the property of Mr. Efland, and we counterclaimed.

We agree that the civil matters of Mr. Efland were in fact resolved by his arbitration decision.

MS. BALLARD: Mr. Todd.

MR. MOORE: I'm sorry, by Mr. Todd's decision.

Then what happened was that Mr. Todd didn't rule and he didn't rule and he didn't rule and he didn't rule. He would refer to it from time to time awhile he sat on it. He continued to tell us that he was going to rule; that he was going to give a ruling, and then he brought us over to his office and he basically said my notes aren't that great and I'm sorry but I am not remembering it all, and can you all re-enact what happened.

We tried to but we couldn't, so the issue of the ruling was that his ruling only applied to the issues related to the barn.

He issued an award for some Sixty Thousand Dollars. There were some improvements that Mr. Mills had made in building a barn.

THE COURT: You say some Sixty and she said . .

MR. MOORE: It was a Sixty Thousand Dollar award, and what Mr. Efland asked then with regard to the barn was to get a warranty of about fifty percent of what Mr. Mills had got so it split the thing in half, but he neglected to rule on the other issues related to the other right of way, the public road or private road on somebody else's property. None of that was ruled upon.

So I basically told him -- I said, hey, Walt, you did not rule on half of the case, and he said let me look at it again. Then he called me back and said, you're right; I didn't realize I was supposed to give a trial on those other issues, or maybe if I did I just forgot it.

So I said, well, how about re-open the arbitration and rule on the rest of it? Well, I don't think I got jurisdiction to do that. If you can get someone to tell me I can re-open it and rule on the other side of the case which I did not rule on -- so I figured the best way to re-open was to speak with Ms. Ballard, at which time she said, no, no. The arbitration went on a long time and he basically did what he did; I'm not going to re-open the arbitration.

She said basically if you've got something else to

talk about that didn't get resolved then bring it.

So I went back to my office and the only thing I knew to do was to basically bring back before the Court that issue which was never decided.

I've never sent something to an arbitrator before that was simply never ruled on. I've never had an issue before that was not ruled on by the arbitrator.

The reason why -- to be really truthful, the reason Walt didn't rule on all the issues and never decided them was he forgot, but I've got to find some way of bringing the issues back up or somebody gets burned.

We have a situation where Mr. Mills has constructed a driveway on Mr. Efland's property. There is a property dispute. There is a land-line dispute.

We also have a situation where Mr. Mills has basically gone in and made some modifications on the property of Mr. Efland that he has proved before belongs to him.

He has cut trees, graded some areas that should not have been graded.

Now, those issues were never ruled on, were never decided, although they were brought out. What I would respectfully submit we have is a very unusual question of law -- what do you do? What could we do when an arbitrator is told to make a decision on something and then does not?

What should actually happen in this case is that now

that we know what Judge Benjamin said when he issued his Order, the matter should be sent back to the arbitrator with instructions to rule, or if he won't -- and I was struck that he cannot -- it's been four or five years now we've been actually trying to conclude this case, but it isn't over.

I don't think the arbitrator has any actual memory at this point of what the testimony was in the case. I think we are dealing here with a case worth pressing. I think that certainly there is nothing to be gained when an arbitration or a Circuit Court Order does not actually dispose of the issues which are contained in the lawsuit.

We made a mistake of consenting to arbitration to try our case and when the arbitrator didn't decide the issues that it was insisted he decide.

On the other hand, I have learned a long time ago if a Judge says something that generally the one who begins to shout is the one that ultimately winds up losing in the final decision.

THE COURT: Oh, I wouldn't say that, Mr. Moore.

(Brief discussion between counsel and the Court not audible on the record)

MR. MOORE: This is a situation where there has been no decision on the case, and that is the matter before the Court.

I would have no problem at all sending the matter back to Walt to re-hear the testimony on the issues. I have no problem at all proceeding in a non-jury fashion. The case simply needs to be heard.

The problem we have is this. With there being no disposition -- with there being no disposition, the matter of where these property lines lie has not been decided.

So if Mr. Mills sells this property we are going back to square one in regard to, okay, you sold this but you don't have a right to use this property. We -- I guess as there is no decision, nobody has a way to resolve it. We think we know because the plats were all given to Mr. Todd to resolve the issue, but he didn't decide it. So do they do not come to a resolution? Can they sell it and then we come back in litigation against their buyer who is using a property he doesn't own?

Are we going to go around and around and around at a point in time? There has to be a right for this controversy to be resolved.

If the Court looks at the Court Orders in this case and the Arbitration Order in this case, you will know that no land line is ever given in regard to where the property is.

On the second piece of property, the problem is they try to make it sound like it is one case and not two.

There were two cases. The first case is how much did we owe and that was decided. The Judge gave them fifty percent. Okay.

But the other issue is where is the property line and what have you done that you didn't have a right to do on property that didn't belong to you.

That wasn't decided, Your Honor.

THE COURT: All right. Ms. Ballard.

MS. BALLARD: Thank you, Your Honor.

I have to disagree with Mr. Moore on two things, not surprisingly.

The arbitrator, Mr. Todd, simply did rule on the counterclaims. As I said before, the very last paragraph of his Order, which is Exhibit F to our Answer, said the Plaintiff's breach has not been proven. Those were the counterclaims that were asserted by Mr. Efland against my client.

They have not been proven by a preponderance of the evidence. The lease agreement which Mr. Efland claimed my client had violated by cutting the road and doing all that stuff was not violated by the actions of the Plaintiff. My client was wrongfully evicted and that is why Mr. Efland owed my client money.

Judge Benjamin did not say . .

THE COURT: In the matter under consideration that

was not . .

MS. BALLARD: She said . .

(Counsel and the Court speaking at the same time)

THE COURT: . . was not done.

MS. BALLARD: It's over. It is absolutely over. The last point I want to make is that the 2005 case, the 2008 case, and this case did not ask for a determination of the property lines. That's a brand new question.

If he wants to file that lawsuit, go right ahead. It has not been determined, but none of these cases asked the question. None of these cases decided that question.

Judge Todd, Walt Todd, decided the issues that are raised. They just don't like the answer, so they want to try again.

Thank you very much, Your Honor.

THE COURT: Any reply to that, Mr. Moore?

MR. MOORE: Your Honor, the term that there was not a breach which was basically alleged. They say there was no breach and say, oh, that meets the counterclaim -- that's not the breach we're talking about. That is a breach of contract.

The issue is regarding another piece of property and that was never decided.

THE COURT: I have not found -- I don't know what she decided. I'll take all of that into account.

MR. MOORE: Thank you, Your Honor.

THE COURT: Mr. Willoughby.

MR. WILLOUGHBY: Just briefly, Your Honor.

On behalf of Richland County, I am here on a Motion to Dismiss.

As Your Honor gathered from the oral arguments of counsel, there is a long standing dispute between these two neighbors, Mr. Efland and Mr. Mills.

What isn't going on, Your Honor, is any involvement of Richland County in these allegations. I guess Richland County may have been involved in prior suits but we have just been named a party in this suit.

Your Honor, I'd like to pass up our Motion in this notebook, Your Honor, which just has the plans and . .

THE COURT: Go ahead.

MR. WILLOUGHBY: Your Honor, I would also like to pass up the drafted Order we have in this matter.

THE COURT: Sure. Have you seen this Order, Mr. Moore?

MR. MOORE: I have not seen a draft of it, no, sir.

THE COURT: Let Mr. Moore look at it.

(Brief pause)

MS. BALLARD: Your Honor, we sent a copy of our draft Order to Mr. Moore and to you. We did not send this one but we don't have any objection to it.

THE COURT: All right. Yes, sir.

MR. WILLOUGHBY: As I mentioned, Your Honor, this is a long-standing dispute between two neighboring property owners.

If Your Honor turns to the notebook we have to the Complaint, on tab one you can see in the Complaint that Richland County is mentioned two times.

Once in paragraph four where it identifies the counties and subdivision, and the other time in paragraph nine where it states the road is not a public road and does not belong to Richland County.

Your Honor, we would submit that paragraph nine alone does not rise to any level to state any cause of action as . .

THE COURT: Well, it says these are two private citizens.

MR. WILLOUGHBY: Correct, Your Honor.

Your Honor, to the extent that the Complaint is seeking somewhat of a declaratory judgment against Richland County as to the road, Your Honor, our Supreme Court has made clear and there have been cases that declaratory judgment or to invoke the Court's jurisdiction in the declaratory judgment action there has to be an actual controversy between the party seeking declaratory judgment and the defendant.

The Court has also found that where an actual controversy is -- that's the case of -- if Your Honor would turn in the proposed Order to the case of Power v. Adair. What an actual controversy is for purposes of a declaratory judgment action is a definite assertion of legal rights, a positive legal duty with respect thereto which is denied by the adverse party.

Your Honor, I would submit that there is nothing in the Complaint that satisfies the elements of an actual controversy between Mr. Efland and Richland County.

For those reasons, Your Honor, I think it is appropriate to dismiss under 12 B six.

It is also appropriate to dismiss for failure to articulate a justiciable actual controversy between County and Mr. Efland.

If Your Honor has any questions I'll be happy to . .

THE COURT: Mr. Moore, anything to add?

(Discussion between counsel and the Court off the record)

MR. MOORE: Yes, sir, Your Honor.

The problem we have is that Richland County has come out about this road that if the parties on the other side agree that this road is not a public roadway we are happy to take a stipulation as to that. Our position, the government's position, is that we are under the impression that

Richland County is planning for this to be a public roadway. They came out and paved it.

Our position is it is not. We say it's not and apparently they take the position that it is. It sounds to me like a controversy. One person says yes and the other person says no.

It certainly sounds like a controversy, and they -- I know the law says the county cannot do work on private property so they go out and pave the thing, and Mr. Mills is now taking a position that it's something that he has a right to basically use which is not within the scope of an easement.

So as long as Mr. Mills kept the agreement that it was not a public road we are there, but I don't think Mr. Mills will agree to that. I'm not sure what the County's position is.

We simply are asking for a declaration that whatever they've done on that road has not turned it into a public roadway.

THE COURT: If the road has been paved, wouldn't that in fact be an improvement to the property?

MR. MOORE: Yes, sir, but also it would be actually as I understand the law on public dedication -- if the roadway is opened and then they go and doesn't act it amounts to acquiescence and it accepts a dedication of the property

and that would entitle the roadway to become a public road.

THE COURT: All right.

MR. MOORE: Our position is that we never wanted it public. They came in and paved it and their paving it is not something we consented to.

We want to make sure that everybody understands our position . .

THE COURT: You want to say this is a private road.

MR. WILLOUGHBY: Your Honor, none of this was alleged in the Complaint. The Complaint had to do with the long-standing dispute between Mr. Mills and Mr. Efland.

Further, Your Honor, the County does have a public right-of-way on a portion of Tiger Paw Lane.

If you turn to tab four you will see the project plan which includes paving, and if you go to the fourth page, Your Honor, you'll see track four which is actually Mr. Efland's property. In the lower right hand corner, track five, Mr. Mills' property.

You will see if you follow it that the property line along track four -- that is where the paving stopped. You can see where it says new construction Tiger Paw Lane and that's the property line of Mr. Efland.

If you turn to track five, Your Honor, you can see where the pavement ends and the dirt road begins, and to my knowledge -- you can see that for sale sign which is

proposed Order in.

I will take a look at all of it and give you my decision.

---- END OF REQUESTED TRANSCRIPT OF RECORD -----

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepard to the best of my ability from the records of Crystal Holmes, having been heard in the Court of Common Pleas for Richland County, South Carolina, on January 5. 2017.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the case.

August 14, 2017

Harriet P Bennett

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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

Tom Efland ..... Appellant,

vs.

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

CERTIFICATION OF COUNSEL

I certify that, pursuant to Rule 210(g) SCACR the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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January 19, 2018

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JAN 25 2018
SC Court of Appeals