

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

RECEIVED
FEB 28 2018
SC Court of Appeals

Stow Away Storage, LLC and
MSC MTP, LLC,

Appellants,

v.

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

Respondents.

RECORD ON APPEAL
VOLUME I

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The South Carolina Court of Appeals

Stow Away Storage, LLC, Respondent,

v.

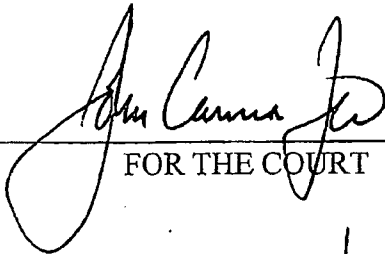
George W. Sisson, 4.0 LLC, The Sisson Foundation
Limited Partnership, Sweetgrass Hardware, Inc. and
Timarand, Inc., Defendants,

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

Appellate Case No. 2014-000155

ORDER

Respondent has filed a motion to remand because the trial court did not expressly determine there was no just reason for delay or expressly direct an entry of judgment, pursuant to Rule 54(b), SCRCP. Initially, despite being interlocutory, the underlying order is immediately appealable. *See* S.C. Code Ann. § 14-3-330(4) (Supp. 2013) (noting the appellate court has appellate jurisdiction over "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction . . ."); *c.f. Williams v. Nw. Sec. Life Ins. Co.*, 307 S.C. 462, 463-64, 415 S.E.2d 809, 810 (1992) (finding an order immediately appealable pursuant to subsection 14-4-330(4) when it in effect refused an injunction). Thus, because the "[l]ack of Rule 54(b) certification . . . does not preclude immediate appeal of an order which is directly appealable under [section 14-3-330]," Respondent's motion is denied.



FOR THE COURT

FILED

3/28/14

Columbia, South Carolina

cc:

George Hamlin O'Kelley, III, Esquire

G. Dana Sinkler, Esquire

Maria Kiehling Brees, Esquire

The South Carolina Court of Appeals

Stow Away Storage, LLC, Respondent,

v.

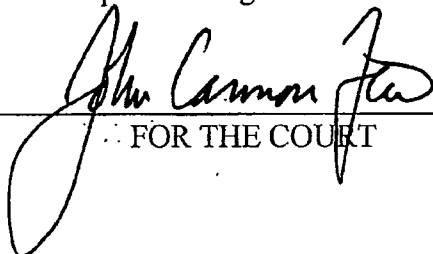
George W. Sisson, 4.0 LLC, The Sisson Foundation
Limited Partnership, Sweetgrass Hardware, Inc. and
Timarand, Inc., Defendants,

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

Appellate Case No. 2014-000155

ORDER

The request to add MSC MTP, LLC as a respondent is granted.



FOR THE COURT

Columbia, South Carolina

cc:

George Hamlin O'Kelley, III, Esquire
G. Dana Sinkler, Esquire
Maria Kiehling Brees, Esquire

FILED

9/24/14

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Stow Away Storage, LLC, and MSC MTP, LLC,
Respondents,

v.

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

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

Appellate Case No. 2014-000155

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-014
Heard October 15, 2015 – Filed January 13, 2016

AFFIRMED

George Hamlin O'Kelley, III, Buist Byars & Taylor,
LLC, of Mount Pleasant, for Appellants.

G. Dana Sinkler, Gibbs & Holmes, of Wadmalaw Island,
for Respondent.

PER CURIAM: George W. Sisson, 4.0 LLC, the Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. appeal the trial court's granting of an injunction to Stow Away Storage, LLC. We affirm the order on appeal pursuant to Rule 220(b), SCACR, and the authorities listed below, and remand for further proceedings. *See Rhett v. Gray*, 401 S.C. 478, 489, 736 S.E.2d 873, 879 (Ct. App. 2012) (stating "the determination of the scope of [an] easement is a question in equity" and this court "may find facts in accordance with its views of the preponderance of the evidence"); *Rhett*, 401 S.C. at 490, 736 S.E.2d at 879 ("A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." (quoting *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001))); *Binkley*, 348 S.C. at 67, 558 S.E.2d at 906-07 (providing a court must determine the extent of an easement by examining the language of the easement); *Binkley*, 348 S.C. at 67, 558 S.E.2d at 907 ("Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in [the] plain, ordinary, and popular sense." (alteration in original)); *Rhett*, 401 S.C. at 493, 736 S.E.2d at 881 ("[T]he owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden." (alteration in original)); *Rhett*, 401 S.C. at 494, 736 S.E.2d at 881 ("If an easement is appurtenant to a particular parcel of land, any extension thereof to other parcels is a misuse of the easement.").

AFFIRMED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 02, 2016

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Stow Away Storage, LLC v. George W. Sisson
Lower Court Case No. 2011CP1002444
Appellate Case No. 2014-000155

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: George Hamlin O'Kelley, III, Esquire
G. Dana Sinkler, Esquire

ROA 006

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STOW AWAY STORAGE, LLC,

Plaintiff,

v.

GEORGE W. SISSON, 4.0 LLC, THE
SISSON FOUNDATION LIMITED
PARTNERSHIP, SWEETGRASS
HARDWARE, INC. AND TIMARAND,
INC.

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2011-CP-10-2444

ORDER OF DEFAULT
AND JUDGMENT

2011 AUG 16 PM 4:24
JULIE J. ARMSTRONG
CLERK OF COURT

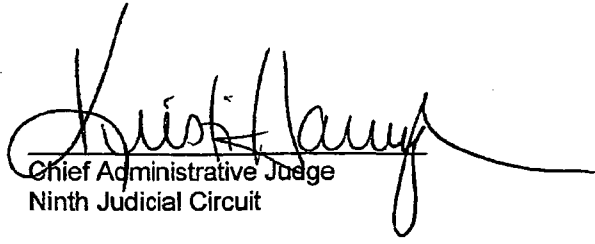
FILED

This is an action for Declaratory Judgment, Permanent Injunction, Damages for Tortious Interference with a Contract and Equitable Indemnity, including attorneys' fees and costs. It appearing unto this Court, as evidenced by the Affidavit of Default and Motion for Judgment of G. Dana Sinkler filed on August ____, 2011, that Defendant Timarand, Inc. was duly and properly served with a copy of the Summons and Complaint on May 31, 2011, as is further shown by the Affidavit of Service of G. Dana Sinkler; that a responsive pleading was due on June 30, 2011, and that no answer or other responsive pleading was made by or on behalf of the said Defendant. Based on the foregoing, this Court finds the Defendant Timarand, Inc. in default.

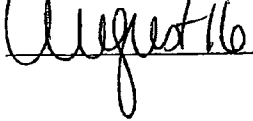
Based on the foregoing, and for good cause shown, it is therefore,

ORDERED, ADJUDGED, AND DECREED that Plaintiff is granted a judgment against Defendant Timarand, Inc. adjudging that it has no rights, as owner of the property leased to Sweetgrass, to use the easement granted by Plaintiff to the Defendant Sisson for any purpose.

AND IT IS SO ORDERED.


Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

 August 16, 2011

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-2444

Stow Away Storage, LLC

George W. Sisson, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIEBL, 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: Defendant Timarand, Inc.'s Motion to Reconsider Pursuant to Rule 59(e), SCRPC and Motion to Lift Default Judgment Pursuant to Rule 60(b), SCRPC is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

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 (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge

2151

Judge Code

Date

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 _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-2444

Stow Away Storage, LLC

George W. Sisson, 4.0 LLC, The Sisson Foundation

Limited Partnership, Sweetgrass Hardware, Inc., and
Timarand, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant;
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court for a hearing on January 22, 2013 on Defendant Timarand, Inc.'s Motion to Reconsider Pursuant to Rule 59(e), SCRPC and Motion to Lift Default Judgment Pursuant to Rule 60(b), SCRPC. Upon hearing the arguments of counsel and reviewing the documents submitted to the Court, Defendant Timarand, Inc.'s Motion is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

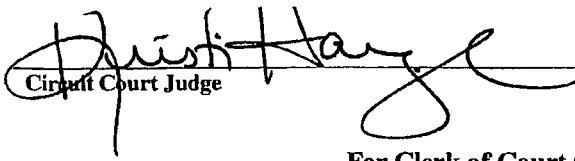
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N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

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

2151
Judge Code

1/22/13
Date

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 _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Rolayne Volpe

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-2444

Stow Away Storage LLC
PLAINTIFF(S)

George W Sisson, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff	☐ Defendant
	or	
	☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 42(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE):**
☐ 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: Plaintiff's Motion for Injunction and Partial Summary Judgment was denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

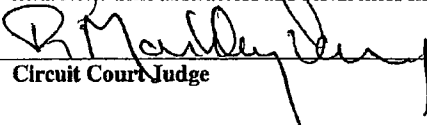
INFORMATION FOR THE JUDGMENT INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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


Circuit Court Judge

2060
Judge Code

2/21/13
Date

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 _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STOW AWAY STORAGE, LLC,)

Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

ORDER

FILED
2013 NOV 25 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY 2

This case concerns an Access Easement granted by the Plaintiff, Stow Away Storage, LLC (Stow Away) to the Defendant, George W. Sisson (Sisson), on October 17, 2000, involving property on Highway 17 at its intersection with Porcher Drive in and near Mt. Pleasant, South Carolina. In exchange for the Access Easement, Sisson agreed to abandon the pre-existing access to his property.

Subsequently, on January 3, 2007, the Defendant Sweetgrass entered into a 20 year lease of a parcel adjacent to Sisson's property, owned by Defendant Timarand. When Sweetgrass finished the renovation and enlargement of a commercial building on the property and opened it for business as a hardware store, Sweetgrass allowed its customers to use Sisson's pre-existing access for ingress to and egress from the store, notwithstanding Sisson's agreement to abandon it. The South Carolina Department of Transportation (SCDOT) eventually shut off the pre-existing access, whereupon the customers began using the easement granted by Stow Away to Sisson. After challenge by Stow Away, Sweetgrass secured a License Agreement from Timarand and, despite language in the License prohibiting it, granted its customers the right to continue use of

Stow Away's easement. Suit was filed by Stow Away on April 12, 2011, seeking damages including attorney's fees and costs and a permanent injunction.

The property owned by Stow Away is identified as Parcel 024 on a Charleston County tax map attached to this Order as Exhibit 1. The property initially owned by Sisson and subsequently by Defendants 4.0 LLC and the Sisson Foundation Limited Partnership, (hereinafter Sisson's Property) is designated on the tax map as Parcels 026 and 034. The property leased by the Defendant Sweetgrass from the Defendant, Timarand is identified on the tax map as Parcel 27. Timarand was made a party to Stow Away's Complaint, but was adjudged in default by Judge Harrington on August 16, 2011, and a Motion to Reconsider by Counsel for the Defendant was heard and denied by Judge Harrington on January 25, 2013.



The case came before me for trial on August 14, 2013, and the legal and equitable issues were bifurcated by the Court from the issues of damages and injunctive relief. At the outset, counsel for the Defendants stipulated that the allegations of Paragraphs 1-29 of Stow Away's Complaint were admitted and constitute the facts upon which the case should be considered. Counsel for both parties and the Court also agreed that the Easement conveyed by Stow Away to Sisson was an Easement Appurtenant.

The Facts

1. Stow Away Storage, LLC (hereinafter "Stow Away") is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Stow Away is the owner of two adjoining tracts of land on the north side of U.S. Highway 17 North, aggregating 8.82 acres of land and described as follows:

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M.

Seabrook, Jr., Inc. dated May 17, 1989, entitled 'Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina.' Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND



ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled 'Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina' by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

3. Defendant George W. Sisson (hereinafter "Sisson") is a resident of Charleston County and a prior owner of the property hereinafter described in paragraph

4. Sisson, in his individual capacity, signed the Access Easement and Abandonment of Encroachment Permit hereinafter referenced in paragraph 14.

4. Defendant 4.0 LLC is a South Carolina Limited Liability Company, created by Sisson, its sole member, which owns a 99% interest in a 5.862 acre tract of land abutting the property of the Plaintiff on the east and described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, shown and designated as Tract 4A, 255.357 sq. ft. 5.862 acres, as shown on a plat entitled 'A Subdivision Plat of Tract 4 containing 17.828 acres', prepared by John T. Byrnes, II, R.L.S., dated July 6, 1995, and recorded at the Charleston County RMC Office in Plat Book EA, at page 742; said tract having such actual size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

Subject to all easements and restriction of record.

The said property was conveyed to 4.0 LLC by its sole member, George W. Sisson, by deed dated December 31, 2002 and recorded in the RMC Office for Charleston County in Book V431 at page 450.



5. Defendant The Sisson Foundation Limited Partnership (hereinafter "Sisson Foundation") is a South Carolina Limited Partnership, created by Sisson, which owns a 1% interest in the 5.862 acre tract of land abutting the property of Plaintiff on the east as described in paragraph 4 above. Sisson Foundation acquired said property by deed of Double G. Foundation LLC, dated April 29, 2003, and recorded in the RMC Office for Charleston County in Book A447 at page 99. Double G. Foundation, LLC was created by Sisson, who is its sole member. It acquired the property by deed of its sole member, Sisson, dated December 31, 2002, and recorded in the RMC Office for Charleston County in Book V431 at page 453. Sisson Foundation is a necessary party to these proceedings by virtue of its ownership of a 1% interest in the property described in paragraph 4.

6. Sweetgrass Hardware, Inc. (hereinafter "Sweetgrass") is a corporation organized and existing under the laws of the State of South Carolina, holding a leasehold interest in property east of the 5.862 acre tract owned by Defendant 4.0 LLC and Sisson Foundation, and operating a hardware store thereon. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139.

TMS#: 598-00-00-027

7. Timarand, Inc. (hereinafter "Timarand") is the owner of the tract of land described in paragraph 6 above and the landlord of the Defendant Sweetgrass. As owner of said tract, Timarand is a necessary party to these proceedings.

8. On July 13, 1999, Stow Away, by its managing member, filed with the South Carolina Department of Highways and Public Transportation (hereinafter "SCDHPT") an Application for Encroachment Permit requesting access to drive to the parcel described in paragraph 2. The access was from U.S. Highway 17 (hereinafter "Hwy. 17") opposite the Porcher Bluff Road intersection with Hwy. 17 and was to be 24' wide with a 30' radius on the south side and a 40' radius on the north side.

9. In the course of negotiations with SCDHPT, its name changed to the South Carolina Department of Transportation (hereinafter "SCDOT").

10. In response to Stow Away's application for an encroachment permit, SCDOT ultimately agreed to the encroachment permit requested and required Sisson, then the owner of the property now held by Defendants 4.0 LLC and Sisson Foundation, to abandon the access previously used by him for ingress to and egress from Hwy. 17.

11. On March 21, 2000, E.L. Pooser, III, the managing member of Stow Away, wrote a letter to Mr. Sisson offering him an easement across Stow Away's property to and from Hwy. 17 in exchange for his abandonment of his original access.

12. Included with the letter was a draft of the easement offered.

13. Sisson "Acknowledged and Agreed" to the offer and the abandonment of his original access by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1)

14. On October 17, 2000, the ACCESS EASEMENT AND ABANDONMENT OF ENCROACHMENT PERMIT was signed by both E.L. Pooser, III, as Managing Member of Stow Away, and George W. Sisson a/k/a George W. Sissons. The document was subsequently recorded in the RMC Office for Charleston County on November 16, 2000 in Book U358, page 109. (Exhibit 2)

15. Following several telephone conversations with Stow Away's member, Bert Pooser, on September 27, 2006, Tim Askins, the sole shareholder of Timarand, had his wife fax a sketch to Pooser, depicting a proposed extension of the Access Easement previously provided to Sisson which would have allowed access over Stow Away's Access Easement to Timarand's property, which he subsequently leased to Sweetgrass. (See Exhibit 3) Pooser never agreed to the proposed extension.

16. On January 3, 2007, the Defendant Timarand and the Defendant Sweetgrass entered into a lease of the property described below, pursuant to the provisions of which Timarand leased the property to Sweetgrass for a term of ten (10) years with an option to extend the term for two additional five (5) year periods. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

(See Memorandum of Lease, Exhibit 4)

17. The deed and plat by which Timarand acquired the property leased to Sweetgrass provided access to Hwy. 17 North only to the east of Sisson's property as shown on plat recorded in the RMC Office for Charleston County in Plat Book CD at page 139 and plat recorded in the RMC Office for Charleston County in Plat Book EA at page 742. (Exhibits 5 and 6)

18. Shortly after Sweetgrass leased the property from Timarand, it renovated and enlarged a commercial building on the property for use as a retail hardware store.

19. In the course of preparing its leased property for use as a hardware store, large trees and shrubbery blocking access to Sisson's property were removed and Sweetgrass constructed a gate on its west property line, thereby providing access to its property from the access to Hwy. 17 that Sisson had agreed with Stow Away to abandon.



20. Upon completion of renovations and opening of the store, customers of Sweetgrass, with the permission of Sisson, began using the old easement to Sisson's property which he had agreed to abandon under the terms of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000. Indeed, Sisson and/or Sweetgrass paved the old easement on April 19, 2009, to facilitate its use, notwithstanding Sisson's contractual agreement to abandon it.

21. Despite the SCDOT's objection, Sweetgrass and its customers continued to use the access Sisson had agreed to abandon to reach the hardware store. (See Letter from Richard L. Turner, P.E., Resident Maintenance Engineer dated July 21, 2008 attached as Exhibit 7)

22. Shortly thereafter, the SCDOT erected barriers to prohibit further use of the access Sisson had agreed to abandon; thereby limiting access to both Stow Away's

property and Sisson's property and extinguishing the access of the customers of Sweetgrass.

23. Thereupon, Sweetgrass and its customers began using the access constructed by Stow Away on its property to access Sweetgrass' hardware store.

24. By letter dated August 20, 2008, counsel for Stow Away wrote Sweetgrass' President demanding that he notify his customers to cease using Stow Away's access to reach Sweetgrass' store. (See letter attached as Exhibit 8)

25. This demand was met by a written response from Sweetgrass' attorney, dated November 10, 2008, advising that: "Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (See letter attached as Exhibit 9)



26. Counsel for Stow Away then sent an email to Sweetgrass' attorney asking him to email him a copy of the document by which Sweetgrass Hardware, Inc. had become "a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (Exhibit 10)

27. It developed that, in point of fact, Sweetgrass did not hold any written lawful assignment, but counsel for Sweetgrass then proceeded to obtain a License Agreement from 4.0 LLC to Sweetgrass dated November 13, 2008 (three days after counsel had advised that Sweetgrass was already a "lawful assignee of Mr. Sissons [sic]."). (See License Agreement attached as Exhibit 11)

28. The License Agreement, by its terms and according to law, was and is personal to Sweetgrass and "may not be sold, transferred, assigned or given to any third party." (License Agreement ¶ 10)

29. Nonetheless, both Sisson, individually and as sole member of 4.0 LLC, and Sweetgrass have persisted in asserting that the License Agreement allows Sweetgrass to assign to its customers the use of Stow Away's Easement and have

refused to relent in their insistence that Sweetgrass' customers have the right to use Stow Away's Easement and have threatened that "any further attempt by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business." (See letter from Sweetgrass' counsel, Exhibit 12, and letter from George Sisson, Exhibit 13)

Conclusions of Law

Plaintiff argues that because Defendant Sweetgrass merely obtained a License Agreement to use the easement from Defendant Sission, by law and by express provisions in the License Agreement, Sweetgrass is prohibited from assigning those rights to any third party, including the customers of Sweetgrass.



The assignment of [one's rights in land] conveys an interest in the land. An assignment is a conveyance of the lessee's entire interest in the demised premises without retaining any reversionary interest in the leasehold. See, Neal v. Craig Brown, Inc., 86 N.C.App. 157, 356 S.E.2d 912 (1987). . . . In contrast, a license to be on the premises for an agreed purpose is a contractual right *personal to the licensee*. See, Bunn v. Offutt, 216 Va. 681, 222 S.E.2d 522 (1976). A license does not vest in the licensee any estate or interest in the land. See, Hill v. Smith, 51 N.C.App. 670, 277 S.E.2d 542, review denied, 303 N.C. 543, 281 S.E.2d 392 (1981). It conveys only the temporary privilege of being on the land for some agreed purpose. See, Henson v. Airways Service, Inc., 220 Ga. 44, 136 S.E.2d 747 (1964).

Hilton Head Air Serv., Inc. v. Beaufort Cnty., 308 S.C. 450, 456-57, 418 S.E.2d 849, 853 (Ct. App. 1992) (emphasis added). It is well settled law in South Carolina that licenses are personal to the licensee. Id. Therefore, the law prohibits assignments of licenses because of a license's very nature. Furthermore, as stated in Paragraph 28 of this Order, the License granted by Sisson to Sweetgrass expressly prohibits any assignments of the License Agreement. Therefore, by virtue of the laws regarding licenses and the License Agreement, Sweetgrass may not assign the benefits of the License to a third party. However, the Court is not entirely persuaded that the License granted to Sweetgrass does not encompass the customers of Sweetgrass as licensees,

which would in effect eliminate the Court's finding of an assignment of the License to a third party. If the License does implicitly include Sweetgrass' customers as licensees, the Court must then determine whether the License Agreement in itself materially increases the burden on the dominant estate.

gn
"In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed." Rhett v. Gray, 401 S.C. 478, 491 (Ct App. 2012). Furthermore, "[t]he language of an easement determines its extent. . . . [The] court must construe unambiguous language in the grant of an easement according to the terms the parties have used. . . . The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." Plott v. Justin Enterprises, 374 S.C. 504, 513-14 (Ct App. 2007). "In South Carolina, an owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden." Rhett, 401 S.C. at 493.

The Access Easement and Abandonment of Encroachment Permit (hereinafter the "Easement Agreement") states in part, "Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sisson's Property'. . . for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17. . . . The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property." Based on the

evidence presented to the Court regarding the substantial increase in vehicular traffic using the easement as a result of the License Agreement, the Court finds that by allowing the customers of Defendant Sweetgrass to use the easement for access to Defendant's store and the post office facility, Defendants have materially increased the burden on the servient estate; thus, expanding the dominant estate and materially increasing the scope of the easement.



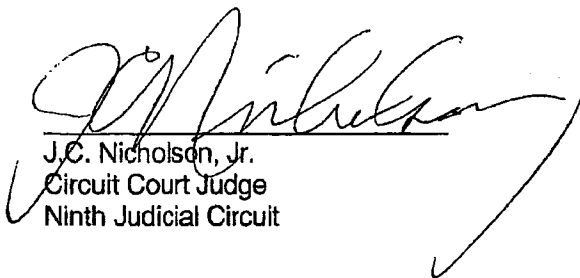
It is the Defendants' position that the language in the Easement Agreement which states that the assignment "shall not be deemed to be an unlawful increase or burden upon the Grantor's property . . ." evidences that the Easement Agreement contemplated a material change in the scope of the easement. However, in reading the Easement Agreement as a whole, as required by South Carolina precedent, the Court finds that this language refers specifically to the assignment of the rights held by the dominant estate holder and does not address a change in the scope of the easement. The Court further finds that in order for there to be a finding that the Easement Agreement contemplates the material increase in the scope of the Easement and the burden on the servient estate by the dominant estate holder, there must be specific language indicating such, and none exists.

In conclusion, the Court finds that even if the language of the License Agreement implicitly includes the customers of Sweetgrass as licensees, the increased volume of vehicular traffic as a result of the License materially increased the scope of the easement and the burden on the servient estate, thus, expanding the dominate estate in violation of the Easement Agreement between Plaintiff and Defendant Sisson and the law of South Carolina.

Therefore, the Court finds in favor of the Plaintiff and grants the Plaintiff the right to shut off traffic entering and/ or crossing the easement for the purpose of entering the Defendant Sweetgrass' property by whatever means that are reasonably necessary.

This does not give the Plaintiff the right to limit Defendant Sisson's use of the easement as provided for in the Easement Agreement. Whatever means the Plaintiff uses to block traffic crossing the easement and entering Defendant Sweetgrass' property must remain on Plaintiff's property and may not go farther than the property line of Defendant Sisson's easement. The Defendants are restrained from interfering with Plaintiff's efforts to shut off such traffic.

IT IS SO ORDERED!


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

Charleston, South Carolina

11/22, 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-2444

Stow Away Storage, LLC,

George W. Sisson, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOXES):**
☐ 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: The Court **DENIES** Defendant George W. Sisson, et al.'s Motion to Reconsider filed on December 6, 2013.

ORDER INFORMATION

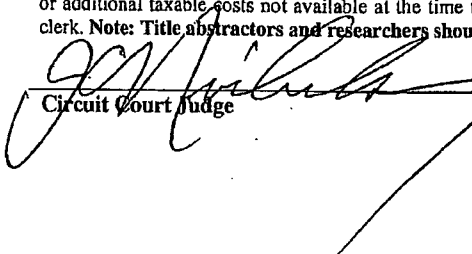
This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

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


Circuit Court Judge

2117
Judge Code

12/19/13
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

G. Dana Sinkler, Bar No. _____

Address:

P.O. Box 1254

Charleston, SC 29402

Phone: (843) 577-0660 Fax (843) 577-6843

E-mail: dsinkler@warren-sinkler.com Other:

Defendant's Attorney:

Maria Kiehling Brees, Bar No. 76799

Address:

652 Coleman Boulevard, Suite 200

Mt. Pleasant, SC 29464

Phone: (843) 856-4488 Fax (843) 856-0613

E-mail: maria.kiehling@buistbyars.com Other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Reconsider Pursuant to Rule 59(e) SCRCP

Estimated Time Needed: 20 minutes

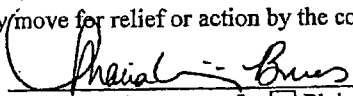
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

December 4, 2013

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.⁰⁰**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-10-2444

**NOTICE OF MOTION AND MOTION
TO RECONSIDER PURSUANT TO
RULE 59(e) SCRPC**

TO: THE HONORABLE J.C. NICHOLSON, JR.
PRESIDING JUDGE, NINTH CIRCUIT
AND
G. DANA SINKLER, ESQ.
ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. will move before the Honorable J.C. Nicholson, Jr., Presiding Judge for the Ninth Circuit, within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order reversing the Court's Order dated November 22, 2013, and received on December 3, 2013, by counsel for the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. This Motion is based upon the Court's ruling in favor of the Plaintiff as to the ineffectiveness of the Defendant Sisson's assignment of its rights in the easement to the Defendant Sweetgrass by a license agreement and the South Carolina law regarding interpretation of an easement. The Court further grants the Plaintiff the right to shut off traffic entering and/or crossing the easement for the purpose of entering the Defendant Sweetgrass'

{00410862.DOC}

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

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

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

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

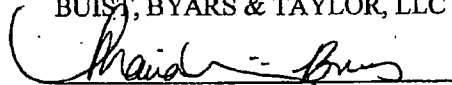
"...the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all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

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

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

Please be present to defend if so minded.

BUIST, BYARS & TAYLOR, LLC



G. Hamlin O'Kelley, III

S.C. Bar No. 15491

Maria Kiehling Brees

S.C. Bar No. 76799

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Attorneys for the Defendants

Mt. Pleasant, South Carolina

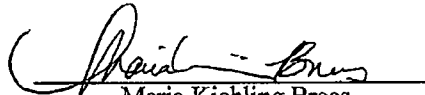
12/4, 2013

CERTIFICATE OF SERVICE

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

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

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


Maria Kiehling Brees

Motion to Reconsider



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

December 4, 2013

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

Via U.S. Mail

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

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

Dear Ms. Armstrong:

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

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

Yours very truly,

Maria Kiehling Brees

Enclosures

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

12/6/13

{00410892.DOC}

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC

George W. Sisson, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Order modifies this Court's Order filed on December 11, 2013. The Court inadvertently checked the box saying the Order ended the case. It was scrivener's error and the Order did not end the case.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

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 (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2117
Judge Code

Date

SCRPC Form 4C

ROA 035

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC

George W. Sisson, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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- ☐ **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: Defendant is to produce a monetary amount, if any, that has been received for use of the easement. A damages hearing is to be scheduled in September of 2016.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

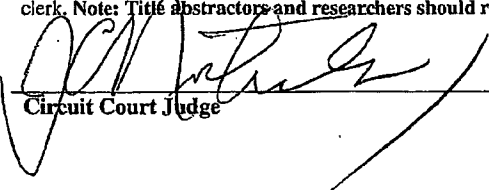
Additional Information for the Clerk : _____

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 (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2117
Judge Code

6/17/16
Date

SCRCP Form 4C

ROA 036

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC

George W. Sisson, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Quash filed on 8/4/16 is **denied**. Depositions must be complete and affidavits must be submitted to the Court within 90 days of this Order or a ruling will be issued without the information collected.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

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 (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2117
Judge Code

11/10/16
Date

SCRPC Form 4C

ROA 037

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC
PLAINTIFF(S)

George W. Sisson, et al.
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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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 :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stow Away Storage, LLC	George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,	\$20,382.41
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2117

Judge Code

Date

3/27/17

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stow Away Storage, LLC)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10-2444

ORDER ON DAMAGES

FILED
2017 APR 14 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER CAME BEFORE THE COURT on November 9, 2016, following a remittitur of the matter from the Court of Appeals, for a hearing of the remainder of the case regarding any potential damages to be awarded to Plaintiff for actual damages, for Plaintiff's demand for punitive damages, for Plaintiff's demand for attorneys' fees, and for Defendants' Motion to Quash a deposition notice. The Court filed an Order on November 10, 2016 as to the Motion to Quash. The Court also gave Plaintiff ninety (90) days to submit any further information to the Court as to damages.

Upon oral arguments and review of the memoranda, the evidence presented at the damages hearing, and the further items provided to the Court from Plaintiff, the Court will award actual damages in the amount of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars for the installation of a gate and construction and landscaping costs during the time in which the Court finds that Defendants were burdening the easement at issue. The Court denies the request for attorneys' fees and punitive damages.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

g e n

This case came before this Court for trial on August 14, 2013, regarding the interpretation of that certain Access Easement (the "Easement") granted by the Plaintiff Stow Away Storage to the Defendant George W. Sisson on October 17, 2000 (Order, Nov. 25, 2013). At that trial, this Court bifurcated the issues to determine if the Easement has been in any way unduly burdened by Defendants, including Sweetgrass Hardware, Inc., due to persons accessing its business by way of the Easement from Highway 17. (*Id.*) The Court left open any issue of damages for a later hearing. (*Id.*) Sweetgrass Hardware obtained a License Agreement (the "License Agreement") in 2008 to use the Easement from Defendant 4.0 LLC as signed by Defendant George Sisson. (*Id.*) This Court ruled that there had been an increase in the Easement even though the language of the Easement specifically stated that any assignment "shall not be deemed an unlawful increase or burden on [Stow Away's] property." (*Id.*) The Court ordered that there was a material increase on the servient estate, that Plaintiff had the right to deny access of traffic entering the Easement from Highway 17, that Defendant Sisson could use the Easement, and that Defendants were restrained from interfering with any ability to shut off traffic. (*Id.*)

Nowhere in this Court's Order was there any finding of breach of contract accompanied by any fraudulent act as Plaintiff now claims in seeking to have this Court award punitive damages and attorneys' fees. (*Id.*)

Defendants appealed this Court's Order. (Unpublished Op. No. 2016-UP-014). The South Carolina Court of Appeals affirmed this Court's Order by way of its Unpublished Opinion dated January 13, 2016. (*Id.*) In that Unpublished Opinion, the Court of Appeals made numerous citations to the case of *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (2012).

After the case was remitted, Plaintiff served Notices of Deposition on April 1, 2016, for Sweetgrass Hardware, Inc., and George Sisson. Defendants moved to quash those notices on April 5, 2016. This Court granted the Motion to Quash and ordered that Defendant produce a monetary amount received for the use of the Easement. (Order, June 17, 2016). On July 14, 2016, Defendants responded with their Reply to the Court's Order and advised there was no money exchanged for the use of the Easement. At the November 9, 2016 hearing, the Court gave Plaintiff ninety (90) days to submit any further information to the Court as to damages. On January 23, 2017, Plaintiff provided the Court with an Appraisal Report prepared by Raymond L. Murphy that asserts Plaintiff's contention that rent should have been paid by Defendants for their use of the easement. The Report is attached to this Order as *Court's Exhibit 1*.

DAMAGES

 Plaintiff has requested actual damages, punitive damages, and attorneys' fees. Plaintiff's Itemized List of Damages is attached as *Court's Exhibit 2*.

1. Actual Damages

Plaintiff is entitled to actual damages for the construction and landscaping costs and gate installation in the amount of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars. That amount represents the actual damages and cost to halt the crossing of the easement by the Defendants during the time at issue. No other awardable damages have been shown as a result of Defendant's actions.

On January 23, 2017, Plaintiff provided the Court with an Appraisal Report and a letter asserting that monthly rent should have been paid by Defendants for use of the easement amounting to Thirteen Thousand One Hundred and Twenty-Four Dollars (\$13,124.00). (See *Court's Exhibit 1*). No money was exchanged for use of the easement. (See Defendant's July 18th

Reply attached as *Court's Exhibit 3*). Plaintiff cannot retroactively collect rent for sixty-eight (68) months according to a Report of what could have hypothetically been collected at the time.

2. Punitive Damages

PM
This Court finds there has been no willful, wanton or outrageous conduct that would justify the award of punitive damages in this case. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). Defendants were acting under the terms of the easement and the License Agreement. Regardless of whether or not the license turned out to be valid, they believed it was. There are no findings of breach of contract by any fraudulent act as referenced by the Plaintiff in its Brief to this Court. (Order, November 25, 2013). Without any finding of willful, wanton, or reckless conduct by this Court, there can be no award of punitive damages. *Id.* There was no evidence presented or ruled upon by this Court to warrant any punitive damage award as there must be at least a finding of recklessness or some wanton conduct to warrant such an award. *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet*, 324 S.C. 149, 478 S.E.2d 57 (1996). Here, the Defendants were acting on their interpretation of the easement and the License Agreement without any willful, wanton, or reckless actions on their part.

3. Attorneys' Fees and Equitable Indemnity

Plaintiff has requested Ninety-Seven Thousand Six Hundred and Ninety-Two 30/100 Dollars (\$97,692.30) and counting in attorneys' fees. (Court's Exhibit 2). Generally, attorneys' fees in South Carolina are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296 (1989). In the case cited extensively by the Plaintiff in support of its position that it is entitled to attorneys' fees, *Town of Winnsboro v. Wideman-Singleton, Inc.*, 307 S.C. 128, 414 S.E.2d 118 (1992), the Court allowed a party to recovery attorneys' fees and costs expended in defending the negligence of another when the other

party negligently performed on its contract, which led to having to defend an action brought by a third party. *Id.* That case arose in the context of negligence with a claim for equitable indemnification due to the acts of another party. *Id.* The case of *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971) relied upon in the *Town of Winnsboro* case also arose in the context of negligence where an owner recovered costs for a contractor who set fire to a building. *Id.* Neither the *Town of Winnsboro* case nor the *Addy* case arose from the interpretation of the use of an easement or other contract.

gm There is no right to attorneys' fees in a case interpreting an easement. In *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (2013), landowners brought an action against their neighbor to enforce rights in an easement. The trial court found that the Rhetts were not entitled to attorneys' fees due to Mr. Gray's having placed them in a position to bring suit. *Id.* at 497, 736 S.E.2d at 883. This is the same situation. The Court of Appeals specifically analyzed both the *Town of Winnsboro* and *Addy* cases in *Rhett v. Gray*, *id.* The Court of Appeals went through a lengthy discussion of indemnity creating the right to seek attorneys' fees which must arise from a special relationship between the parties. *Id.* 401 S.C. at 498-499; 736 S.E.2d at 873. The Court of Appeals determined that in an easement dispute, such cases are distinguishable from those arising out of implied indemnity, and, subsequently, upheld the denial of attorneys' fees. *Id.* This case, too, arises out of an easement dispute with no claims or causes of action for implied indemnity. The special relationship needed between parties for indemnity to apply is not present in this case. Arguably, allowing a Plaintiff to recover attorneys' fees in a case such as this one would open the door for all prevailing parties to assert they were forced to bring or defend a lawsuit and are entitled to attorneys' fees. Accordingly, any claim for attorneys' fees in this case should be denied.

THEREFORE, IT IS ORDERED that the Plaintiff has an award and judgment for actual

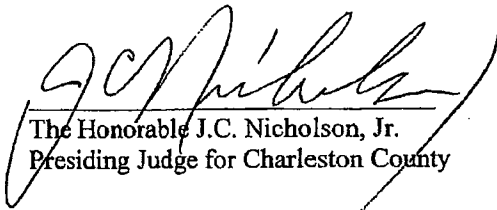
damages in the sum of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars for the installation of a gate, construction, and landscaping costs during the time in which the Plaintiff claims the Defendants improperly burdened the easement; and it is further

ORDERED that the Plaintiff's claims for punitive damages are denied as there was no evidence of any willful, wanton or reckless conduct on the part of the Defendants who were acting under their interpretation of the terms of the easement and their interpretation of the terms of the License Agreement which they thought was a valid contract authorizing their crossing the easement; and it is further

ORDERED, that the Plaintiff is not entitled to an award of attorneys' fees as equitable indemnity is inapplicable to the facts and circumstances giving rise to this matter and there is no contract or statute that would authorize any award of attorneys' fees in favor of the Plaintiff.

IT IS SO ORDERED!

Charleston, South Carolina
March 22, 2017



The Honorable J.C. Nicholson, Jr.
Presiding Judge for Charleston County



G. Dana Sinkler
2180 Rosebank Plantation Road
Wadmalaw Island, SC 29487

January 23, 2017

The Honorable J. C. Nicholson
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: *Stow Away Storage LLC v. George W. Sisson, et. al*
2011-CP-10-2444

Dear Judge Nicholson,

In an Order, filed November 10, 2016, Your Honor granted the Plaintiff ninety days in which to submit further evidence of its damages in the above referenced matter.

Enclosed, please find an Appraisal Report, prepared by Raymond L. Murphy, MAI, SRA, AI-GRS, for the Plaintiff. Mr. Murphy's qualifications may be found at pages 39-42 of his report. In his report, Mr. Murphy assesses the rental value of the easement, for the period which is the subject of this law suit. It is Mr. Murphy's conclusion that the estimated monthly rent for the use of the easement would be \$193.00/month, multiplied by 68 months, which equals \$13,124.00. It is the Plaintiff's contention that amount should have been paid to it by the Defendants for their unauthorized use of the easement.

I appreciate your consideration of the enclosed report, which I have already provided to Hamlin O'Kelley, counsel for the Defendants.

Yours respectfully,

A handwritten signature in cursive script, appearing to be "Dana", written in black ink.

G. Dana Sinkler

cc: G. Hamlin O'Kelley, III, Esquire



Appraisal Report

ACCESS EASEMENT

Situated on an 8.82-Acre Site
TMS# 598-00-00-024
2988 N. Hwy 17, Mt. Pleasant
Charleston County, South Carolina



Estimate of Damages

From:

June 1, 2008 to January 23, 2014

Prepared for:

G. Dana Sinkler, Esq.
Attorney for the Plaintiff
Gibbs and Holmes PC
171 Church St., Suite 110
Charleston, SC 29401

Prepared by:

Raymond L. Murphy, MAI, SRA, AI-GRS
Murphy, Hays & Associates, LLC
924 Rutledge Ave.
Charleston, SC 29403



Real Estate Appraisers -- Consultants

8.82-Acre Tract
2998 N. US Hwy 17
Town of Mt. Pleasant,
Charleston County, SC

January 6, 2016

G. Dana Sinkler, Esq.
Gibbs and Holmes PC
171 Church St., Suite 110
Charleston, SC 29401

Re: Appraisal of damages to an 8.82-acre tract located on the north side of US Hwy 17 N. in Mt. Pleasant from 6/1/2008 to 1/23/2014 (68 months) as the result of an adjacent property owner's tenant and sub-tenant using an 10/17/2000 access easement of Stow Away Storage, LLC to George Sisson over the subject property without permission.

Dear Mr. Sinkler:

At your request, I have prepared a retrospective Appraisal Report of the above-referenced 8.82-acre tract and the damages to the property from 6/1/2008 to 1/23/2014 as a result of a neighboring property owner's tenant and sub-tenant using an access easement over the subject property without permission of the land owner during this period. It should be noted that this case has been tried with the subject property owner, Stow Away Storage, LLC receiving a favorable verdict, and I was retained by the plaintiff's attorney to estimate the damages to the above referenced property. The effective date of value is 1/23/2014. The property was inspected on December 14 and December 17, 2016.

The subject of this appraisal is an 8.82-acre tract located on the north side of US Hwy 17 N. at Winnowing Way in Mt. Pleasant. The property is just north of Brickyard Plantation, a mixed use upscale development located at N. Hwy 17's junction with SC Hwy 41. The property also adjoins the 240-unit Gregorie Ferry Landing Apartments on Winnowing Way to the NW. The street address of the subject property is 2988 N. Hwy 17, and it is identified on the Charleston County Tax Assessor's map 598-00-00 as parcel 024. Location maps with the subject identified are located on the following pages.

The subject site is identified as TMS# 580-00-00-016 and 598-00-00-024 (now 598-00-00-024) on a plat prepared by Thomas & Hutton Engineering Co. on November 22, 1999, and according to the plat, the site contains 8.82 acres, including 7.33 acres of highland. This plat is recorded in the RMC Office for Charleston County in Plat Book ED, page 788, and a copy of the plat is located in the Site Description section of this report.

The subject property is improved as a self-storage warehouse facility formerly known as Stow Away Storage and now operating as Morningstar Storage. Because the aforementioned access easement has no effect on the improvements, only the subject site will be considered in this report.



Real Estate Appraisers -- Consultants

8.82-Acre Tract
2998 N. US Hwy 17
Town of Mt. Pleasant,
Charleston County, SC

The subject easement was created as per an October 17, 2000 Access Easement and Abandonment of Encroachment Permit agreement between Stow Away Storage, LLC (grantor) and George Sisson (grantee), an adjacent property owner (598-00-00-027). This agreement is recorded in the RMC Office for Charleston County in Deed Book U358, page 109. A sketch of the easement with no dimensions was hand-drawn on a portion of what appears to be a drawing prepared by the SCDOT, and this drawing is recorded as an exhibit with the above referenced agreement. The exact size of the easement is unknown; however, for the purpose of this report, I have drawn the approximate easement configuration as I see it on a sketch software program, and according to the program, the easement contains approximately 8,066 SF. It appears that 977 SF of the easement could be situated on the adjacent property to the SW; however, I have been assured by the client that 100.0 percent of the easement is situated on the subject site.

I developed my analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of my client as I understand them.

Stow Away Storage, LLC and their agents are the clients in this assignment, and they are the sole intended users of this appraisal report. The litigation between Stow Away Storage, LLC and George W. Sisson, et al over the use of the easement by Sisson's tenant and sub-tenant has resulted in a favorable verdict for the Plaintiff, and the intended use of this report is to estimate the damages to the subject property as a result of the verdict.

I assume that the subject site contains no potentially hazardous materials as defined by the Department of Health and Environmental Control. This determination is beyond the scope of my professional services, and an environmental audit would be required to ascertain this to be true. If any of my assumptions are determined to be incorrect by subsequent analysis, my opinion of value could be affected.

I certify that to the best of my knowledge and belief, the statements and opinions contained in this report are full, true and correct. I certify that I have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation is contingent upon the value estimate.

This appraisal assignment was not made nor the appraisal rendered on the basis of a requested minimum valuation, specific valuation or an amount that would result in the approval of a loan. I have not performed any appraisal services for this property within the three years prior to this assignment.



Real Estate Appraisers – Consultants

8.82-Acre Tract
2998 N. US Hwy 17
Town of Mt. Pleasant,
Charleston County, SC

The data, analyses and methodology used to form my opinions of value are contained within the attached report. Thank you for this assignment. Should you have any questions, please contact me.

Sincerely,

Raymond L. Murphy, MAI, SRA, AI-GRS
SC Certified General Real Estate Appraiser No. CG241
NC Certified General Real Estate Appraiser No. A1813

COPYRIGHT 2017
MURPHY, HAYS & ASSOCIATES, LLC.

INTRODUCTION

Identification of Subject Property

The subject of this appraisal is a commercial tract located on the north side of N. Hwy 17 at Winnowing Way in Mt. Pleasant. The property is just north of the Brickyard Plantation PUD and SC Hwy 41. The street address of the subject property is 2988 N. Hwy 17, and it is identified on the Charleston County Tax Assessor's map 598-00-00 as parcel 024. Location maps with the subject identified are located on the following pages.

The subject site is identified as TMS# 580-00-00-016 and 598-00-00-024 (now 598-00-00-024) on a plat prepared by Thomas & Hutton Engineering Co. on November 22, 1999, and according to the plat, the site contains 8.82 acres, including 7.33 acres or approximately 319,295 SF of highland. This plat is recorded in the RMC Office for Charleston County in Plat Book ED, page 788, and a copy of the plat is located in the Site Description section of this report.

The subject property is improved as a self-storage warehouse facility formerly known as Stow Away Storage and now operating as Morningstar Storage. Because the aforementioned access easement has no effect on the improvements, only the subject site will be considered in this report.

The easement being appraised was created as per an October 17, 2000 Access Easement and Abandonment of Encroachment Permit agreement between Stow Away Storage, LLC (grantor) and George Sisson (grantee), an adjacent property owner (598-00-00-034). This agreement is recorded in the RMC Office for Charleston County in Deed Book U358, page 109. A sketch of the easement with no dimensions was hand-drawn on a portion of what appears to be a drawing prepared by the SCDOT. This drawing was recorded as an exhibit with the above referenced agreement, and a copy of the drawing is located in the Easement Evaluation section of this report.



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The exact size of the easement is unknown. For the purpose of this report, I have drawn the approximate easement configuration as I see it on a sketch software program, and according to the program, the easement contains approximately 8,066 SF. It appears that 977 SF could be situated on Mr. Sisson's property; however, I have been assured by the client's attorney that 100 percent of the easement is situated on the subject site.

Legal Description

The following legal description of the subject property was copied from the most recent deed (Deed 0385-727) of Stow Away Storage, LLC to MSC MMTP, LLC.

ALL that certain piece, parcel or lot of land, situate, lying and being in the Parish of Christ Church, County of Charleston, State of SC, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc., dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina, in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, Three Hundred Eight and 36/100 (308.36') feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, Six Hundred Sixty-Six and 29/100 (666.29') feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, Four Hundred Thirteen and 87/100 (413.87') feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, Six Hundred Twenty-Nine and 08/100 (629.08') feet, more or less.

AND:

ALL that piece, parcel or tract of land, situate, lying and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landlord Owen, Jr., RLS, S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

BEING THE SAME premises heretofore conveyed to Stow Away Storage, LLC by deed of Buffalo Creek Land Company, LLC, dated June 22, 1999, and recorded June 23, 1999 in the Office of the Register of Deeds for Charleston County in Deed Book Z-328 at page 662.

TAX MAP NUMBER: 598-00-00-024



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Summary of Salient Facts

Location:	NS of N. Hwy 17, Mt. Pleasant, Charleston County, SC
Assessor's Parcel Number:	598-00-00-024
Legal Description:	Previously cited
Client/Intended User:	Stow Away Storage, LLC and their attorney, G. Dana Sinkler, Esq.
Intended Use:	Estimate damages to subject property as the result of the adjacent property owner's tenant and sub-tenant using the access easement without the landowner's permission between 8/1/2008 and 1/23/2014.
Date of Inspection:	December 14 and 17, 2016
Date of Report:	January 6, 2017
Effective Date of Value:	1/23/2014
Property Rights Appraised:	Fee Simple
Extraordinary Assumptions:	Site contains no potentially hazardous materials
Hypothetical Conditions:	None
Use of Real Estate:	
As of the Date of Value:	Self-Storage Facility
As of the Date of this Report:	Same
Highest and Best Use:	
As Vacant:	Service commercial and warehouse development - a self-storage facility would be one of these uses
As Improved:	N/A
History of the Property:	According to Charleston County records, the subject property is owned by MSC MTP, LLC. The property was purchased from Stow Away Storage, LLC on 1/23/2014 at \$5,000,000 (Deed 0385-727). Stow Away Storage, LLC had purchased the subject property as a vacant site from Buffalo Creek Land Company, LLC on 6/22/1999 at \$450,000 or \$61,392/acre of high land.

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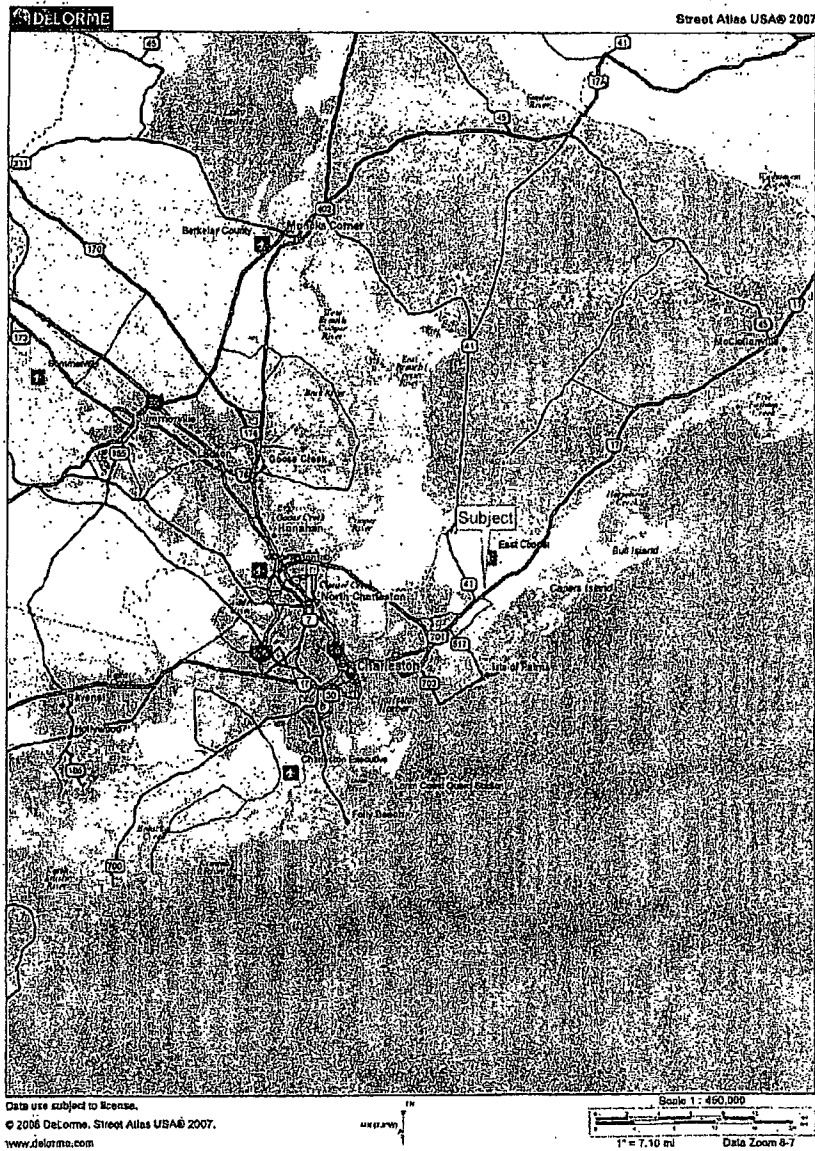
Murphy, Hays & Associates, LLC



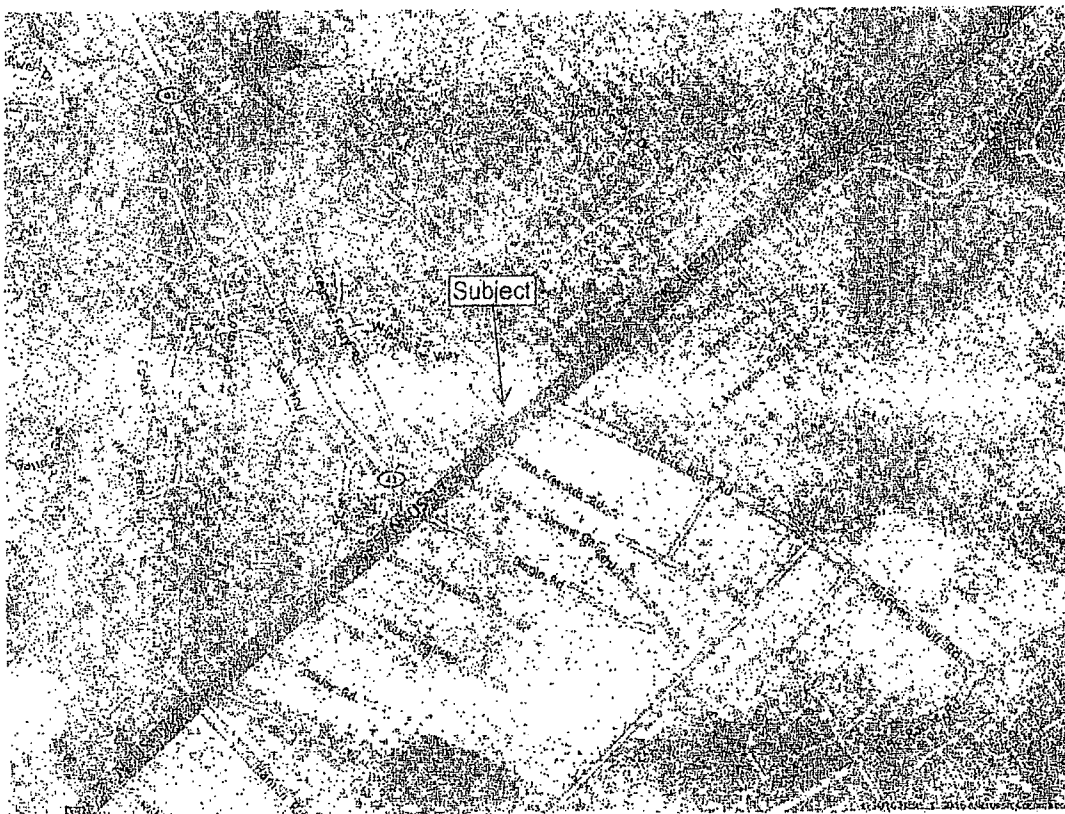
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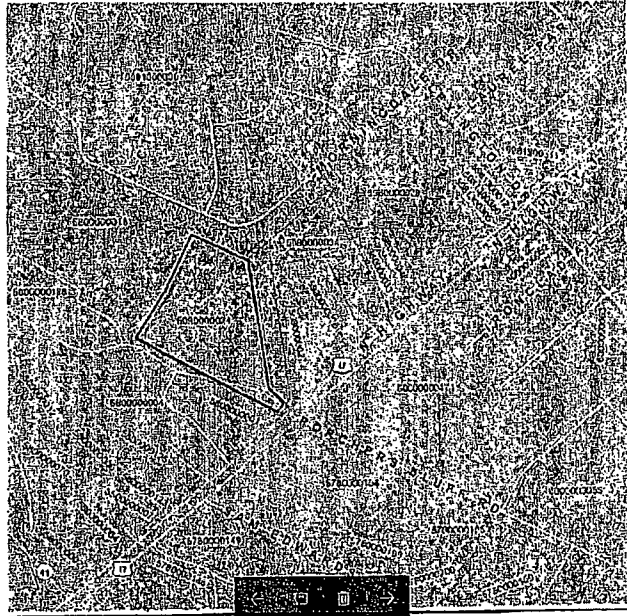
Regional Map



Neighborhood Map



Tax Assessor's Map



Aerial Photograph





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Purpose, Function and Intended Users of Appraisal

This is a retrospective appraisal. The purpose of this appraisal is to estimate the damages to the subject property from 6/1/2008 to 1/23/2014 as a result of George Sisson's tenant and sub-tenant using Sisson's existing access easement over the property of Stow Away Storage, LLC without the permission of the land owner during that period. It should be noted that this case has been tried with the Plaintiff receiving a favorable verdict. I was retained by the plaintiff's attorney to estimate the damages to the subject property accumulated from 6/1/2008, the approximate date that George Sisson's tenant and sub-tenant began using the 10/8/2000 easement of Stow Away Storage, LLC to George W. Sisson, to 1/23/2014, the date that Stow Away sold the subject property to MSC MTP, LLC. The property was inspected on December 14 and December 17, 2016, and the effective date of value is January 23, 2014.

In the case of the subject property, the damages are equivalent to the sum total of the approximate annual rent for the easement from 6/1/2008 to 1/23/2014 (68 months). In order to estimate the fee simple value of the easement, it is first necessary to estimate the fee simple market value of the subject site. Market Value is defined as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from the seller to the buyer under conditions whereby:

- 1) buyer and seller are typically motivated.*
- 2) both parties are well informed or well advised, and acting in what they consider their own best interests;*
- 3) a reasonable time is allowed for exposure in the open market;*
- 4) payment is made in cash in United States dollars or in terms of financial arrangements comparable thereto; and*
- 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.¹*

I consider the clients to be Stow Away Storage, LLC (plaintiff) and their legal representative, G. Dana Sinkler, Esq. with the Gibbs and Holmes Law firm. It is my understanding that this report will be used by the clients in negotiating damages to the subject property with the defendant, George W. Sisson, et al resulting from a successful civil suit against the defendant. I am not responsible for the unauthorized use of this appraisal report by a third party.

¹Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, (2015-2016 Ed)



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PROPERTY RIGHTS APPRAISED

The property rights appraised are those of fee simple ownership. According to the Dictionary of Real Estate Appraisal, fee simple is defined as:

Absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power and taxation.

There are no leasehold interests to be considered in this analysis. A 100-foot wide transmission and natural gas line easement runs along the subject site's east property line. The transmission and natural gas easement is not considered to be adverse. The subject property also has no known encroachments that would adversely affect value.

Statement of Ownership/History

According to Charleston County records, the subject property is owned by MSC MTP, LLC. The property was purchased from Stow Away Storage, LLC on 1/23/2014 at \$5,000,000 (Deed O385-727). Stow Away Storage, LLC had purchased the subject property as a vacant site from Buffalo Creek Land Company, LLC on 6/22/1999 at \$450,000 or \$61,392/acre of high land.

The subject site has approximately 60 feet of frontage on N. Hwy 17 at its SE corner, and until the Winnowing right-of-way was improved to N Hwy 17 from Gregorie Ferry Road, this area was the only access to the subject site from N. Hwy 17. A brief summary of the easement history is located in the Site Valuation section of this report.

Effective Dates of Appraisal

This effective date of this appraisal is 1/23/2014.

Use as of the Effective Date and Date of Report

As of the effective date of the appraisal, the subject property was improved and being operated as a self-storage facility known as Stow Away Storage. The property was sold on 1/23/2014, and it is currently being operated as a self-storage facility known as Morningstar Storage.

Extraordinary Assumptions

I assume that the subject site requires no environmental cleanup.

Hypothetical Conditions

None



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LIMITING CONDITIONS

This appraisal report is subject to the following conditions and assumptions:

1. No responsibility is assumed for matters of a legal nature affecting the property appraised or the title thereto, nor is any opinion rendered as to the title, which is assumed to be good and marketable.
2. All existing liens and encumbrances have been disregarded unless otherwise stated, and the property is appraised as though free and clear. Management and ownership are assumed to be in competent hands.
3. Any sketch in the report may show approximate dimensions and is included to assist the reader in visualizing the property. The appraiser has not made a survey of the property.
4. The appraiser is not required to give testimony in court because of having made this appraisal report, unless previous arrangements have been made.
5. Value distributions, as outlined in this report, serve as a basis for distribution of total valuation and should not be quoted separately.
6. The appraiser assumes there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. No responsibility is assumed for such conditions, or for the engineering studies that might be required to discover such factors.
7. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources deemed to be reliable and believed to be true and correct. However, no responsibility for accuracy of such items can be assumed by the appraiser.
8. Disclosure of the contents of this appraisal report is governed by the Bylaws and Regulations of the Appraisal Institute.
9. Neither all or any part of the contents of this report (including conclusions as to value, the identity of the appraiser or appraisal firm, reference to the Appraisal Institute or to the MAI or SRA designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without the prior consent and approval of the appraiser.
10. Any proposed or incomplete improvements included in this report are assumed to be satisfactorily completed within a reasonable length of time and in accordance with the plans and specifications submitted and in a workmanlike manner.



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11. It is assumed that all national, state, county and city laws, ordinances and restrictions have been complied with.
12. No consideration has been given to minerals or to mineral rights unless otherwise indicated. No soil analysis or soil boring tests have been made unless otherwise specifically stated. Observations as to soil type are based on general observations and should not be construed as technically correct, unless otherwise indicated.
13. Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. However, the appraiser is not qualified to detect such substances. The presence of such substances as asbestos, urea-formaldehyde foam insulation and/or radon gas or other such potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there are no such materials on or in the property that would cause a loss in value. No responsibility is assumed for such conditions, or for the expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.
14. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible noncompliance with the requirements of ADA in estimating the value of the property.
15. The consideration indicated by the deeds of all comparable sales are reflective of the actual dollar amount of the transaction, unless otherwise noted.
16. This report assumes that there are no zoning violations or restrictions existing in the subject, and no encroachments, unless otherwise noted. This report assumes that there are no zoning violations or restrictions existing in the subject, and no encroachments, unless otherwise noted. Furthermore, we make no guarantees as to whether or not zoning would allow the existing improvements (or similar improvements) to be rebuilt in the event they are partially or entirely damaged/destroyed.
17. Should the appraiser be required to appear or give testimony in any court, regulatory, or other proceeding, this service is not included in the fee for this appraisal. Furthermore, any conference or preparation for any such proceeding is also not included in the fee for this appraisal. If any appraiser, partner, or employee of Murphy, Hays & Associates, LLC is required to testify or appear at any trial, deposition, or other proceeding about any element of this assignment, the client shall compensate the appraiser for the time spent for preparation and/or appearing/testifying. The fee shall be based upon the appraisers current hourly rate plus reimbursement of expenses.

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18. The value opinions in this report are based on the dates of value set forth in this appraisal. I am not responsible for any physical or economic factors that occur at a later date, which may affect the opinions stated in the report. Any projections, forecasts, or operating estimates in this report are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.
19. Any information, opinions, or estimates obtained from sources outside of this office are deemed reliable, and the appraiser does not assume liability for them.
20. I do not warrant any matters of expertise that would require specialized investigation or knowledge not typically employed by real estate appraisers, including but not limited to legal, survey, structural, environmental, pest control, mechanical, etc.
21. The client has sole discretion of the distribution of this report; however, no third parties may rely upon the contents of this appraisal unless stated as intended user in this report. The client shall not distribute portions, or partial copies of the appraisal report to any third parties.
22. Unless noted in this report, this appraisal assumes the subject is not located in an area where mandatory flood insurance is required. Furthermore, I make no guarantee regarding the presence of non-tidal wetlands on the property, as I am not a licensed surveyors and not qualified to make this determination.
23. I inspected the land and improvements as outlined in this appraisal. I have not observed subsoil conditions or hidden structural components within any of the improvements. Any damage noted during the inspection has been reported as a matter of information; however, no guarantee as to the amount and extent of the damage is implied. Heating, cooling, ventilation, electrical, plumbing, and other mechanical systems are assumed to be commensurate with the condition of the balance of the improvements unless otherwise stated.
24. This appraisal does not guarantee compliance with zoning, building codes, or life safety code requirements of the governing jurisdictions.
25. This appraisal is based on the land and building improvements only. I have not considered any furnishings, trade fixtures, equipment, or subsurface rights, unless specifically stated in the report.
26. When included in the appraisal, insurable value estimates are developed consistent with industry practices. However, the actual local and regional construction costs may vary significantly from our estimate and the specific exclusions and non-insurable items related to individual insurance policies may also vary. For this reason, we recommend the client obtain estimates of insurable value from professionals experienced in establishing insurance coverage. Our estimate of insurable value should not be used to determine the amount of insurance coverage required for the subject improvements, and I make no warranties regarding the accuracy of this estimate.



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CERTIFICATION

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report, and have no personal interest or bias with respect to the parties involved.
4. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
9. I, Raymond L. Murphy, has made an inspection of the site that is the subject of this report.
10. No one provided significant real property appraisal assistance to the person signing this certification.
11. The reported analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

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Murphy, Hays & Associates, LLC



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12. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

13. As of the date of this report, I, Raymond L. Murphy have completed the continuing education program for Designated Members of the Appraisal Institute.

14. As of January 23, 2014, the damages incurred by the subject property owner during the period from 6/1/2008 to 1/23/2014 are estimated at \$13,124.

A handwritten signature in cursive script that reads 'Raymond L. Murphy'.

Raymond L. Murphy, MAI, SRA, AI-GRS
SC Certified General Real Estate Appraiser No. CG 241
NC Certified Real Estate Appraiser No. A1813

Scope of Work

The purpose of this appraisal is to estimate the market value of the aforementioned easement and the accumulated market rent for the easement from 6/1/2008 to 1/23/2014.

Identification of Subject Property

The subject was legally identified by Charleston County records including the recorded deed and plat. The property was physically identified through an inspection of the site and the improvements, and the property was further identified from a Charleston County GIS aerial photo.

Economic characteristics were identified through the Charleston Trident Chamber of Commerce, a Community Profile by the SC Dept. of Employment & Workforce, Census data, and a comparison to properties with similar locational and physical characteristics.

Type of Analysis Performed

As discussed, the subject improvements were not damaged during the period discussed above; therefore, they will not be considered in this report. The subject property is being appraised as vacant land, and the Site Valuation was estimated using techniques practiced in the Sales Comparison Approach. There was sufficient data for this analysis, and this method should provide a reliable indication of value for the subject site and the easement.

Data Sources

Data used in this report was obtained from office files, local real estate brokers, developers, appraisers, property managers, grantors, grantees, and courthouse records. My research consisted of several interviews with market participants familiar with the subject neighborhood and property type. Property taxes and zoning were verified by Charleston County and Town of Mt. Pleasant officials.



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Report Type

This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2b. The report type and Scope of Work were discussed with the client prior to the acceptance of this assignment.

TOWN AND NEIGHBORHOOD DATA

Mount Pleasant is a bedroom community located east of the City of Charleston across Charleston Harbor and the Wando and Cooper Rivers. Mount Pleasant is bounded on three sides by water and, as a result, has an elongated geography. Because of the rapid growth that this suburban area has received, the distance from one end of town to the other has quickly become substantial. To provide commercial services that the population demands, there has developed a system of hubs. These commercial hubs provide proximate services to nearby residents and help keep traffic off the length and breadth of Highway 17.

According to the 2010 census, the population in Mt. Pleasant is 67,843, which represents a 42.5 percent increase from the year 2000. Much of the lower portion of Mt. Pleasant, below Highway 41, is virtually built out. The areas of emphasis for future growth are along Highway 41 and north along Highway 17.

US Highway 17 north traverses the State in a north/south direction and connects The Grand Strand (Myrtle Beach) and Georgetown to the north and Beaufort/Hilton Head to the south. It is the major Highway running through Mount Pleasant and is the primary access to the northern end of the Town (immediate area). Highway 41 traverses the state in a north/south direction and provides an alternate means of access to Moncks Corner, the Berkeley County seat, and the Cainhoy/Daniel Island Community.

Traffic congestion has been a major controversy in Mount Pleasant, and the Town has taken an active role in initiating and funding several significant road projects over the past several years and more are planned. In fact Town Council has recently passed a tax and fee increase, which monies will be dedicated to new infrastructure construction.

Mount Pleasant experienced explosive residential growth for several years; however, like the rest of the Tri-County Area, the area experienced a slowdown in all sectors of the real estate market following the economic decline. Over the past two years, activity in the residential market has increased significantly, and new construction is once again booming in the area. Commercial activity has also increased with a decline in overall vacancies and an increase in rental rates recognized. However, rates are still not back to the peak level of 2006-07.



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The property appraised is located on the north side US Hwy 17 N. at Winnowing Way, approximately one mile north of SC Hwy 41 and several miles north of the Isle of Palms Connector and Town Centre, the marquis shopping center in Mt. Pleasant.

Immediate Neighborhood

The subject is located just off US Hwy 17 N. between the Isle of Palms Connector and SC Highway 41. This is one of the fastest growing areas in the Charleston region, and it has experienced significant growth in the past decade. The traffic count along this stretch of Highway 17 is approximately 29,600 to 36,200 vehicles per day.

The subject property is just north of SC Hwy 41 and the entrance to Brickyard Plantation, a large master planned community situated on 513 acres including 100 acres of land dedicated to protected lakes, forests, wetlands, and numerous amenities including two swimming pools, lighted tennis courts, pedestrian paths, fitness center, and a boat landing. The development consists of approximately 850 homes.

The immediate area consists of a wide variety of commercial uses along the highway including numerous gas stations, retail stores, restaurants, and service commercial uses. Just south of the subject property is Charleston National Country Club and the Market at Oakland, a large shopping center anchored by Wal-Mart and Kohl's. Other tenants in the center include McDonalds, Chick-Fil-A, Wells Fargo, Firestone, GNC, Anytime Fitness, etc. Other restaurants in the center include La Hacienda, Wasabi, Jersey Mike's Subs, East Bay Deli, and Wild Wings. A site to the northeast of the Market at Oakland was recently planned for a 104,800 SF shopping center known as the Shoppes at Oakland; however, this plan has been abandoned. At this time, there are preliminary plans to develop the site with a couple outparcels and a big box retailer.

Conclusion

Mount Pleasant is the beneficiary of immigration of young professionals and retirees, businesses are locating in the area and unemployment is below state and national levels. The fundamental demographics are sound, and the area is experiencing significant growth at this time. The subject property is well positioned within Mt. Pleasant to benefit from this growth, and the outlook for the subject neighborhood is positive.



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SITE DESCRIPTION

GENERAL DATA

Address: 2988 Hwy 17 N., Mt. Pleasant SC
TMS #: 598-00-00-024
Plat Reference: Plat Book ED-788 (Charleston County RMC Office)
Adjacent Uses: Commercial

SITE DATA

Size: 8.82 Acres – 7.33 Acres High
Access: 60.14 feet on and reasonable access from N. Hwy 17
Visibility: Average from N. Hwy 17
Shape/Utility: Irregular shape and good utility
Topography: Generally level with N. Hwy 17 and fully developed

FLOOD ZONE:

Flood Map Panel: FIRM Panel 45019C0535J dated 11/17/2004
Flood Zone: Zone X
Flood Zone Description: Minimally hazardous flood zone typical of properties in the area - flood insurance not required

SITE IMPROVEMENTS

Utilities: All utilities available.
On-Site Improvements: Self-storage facility

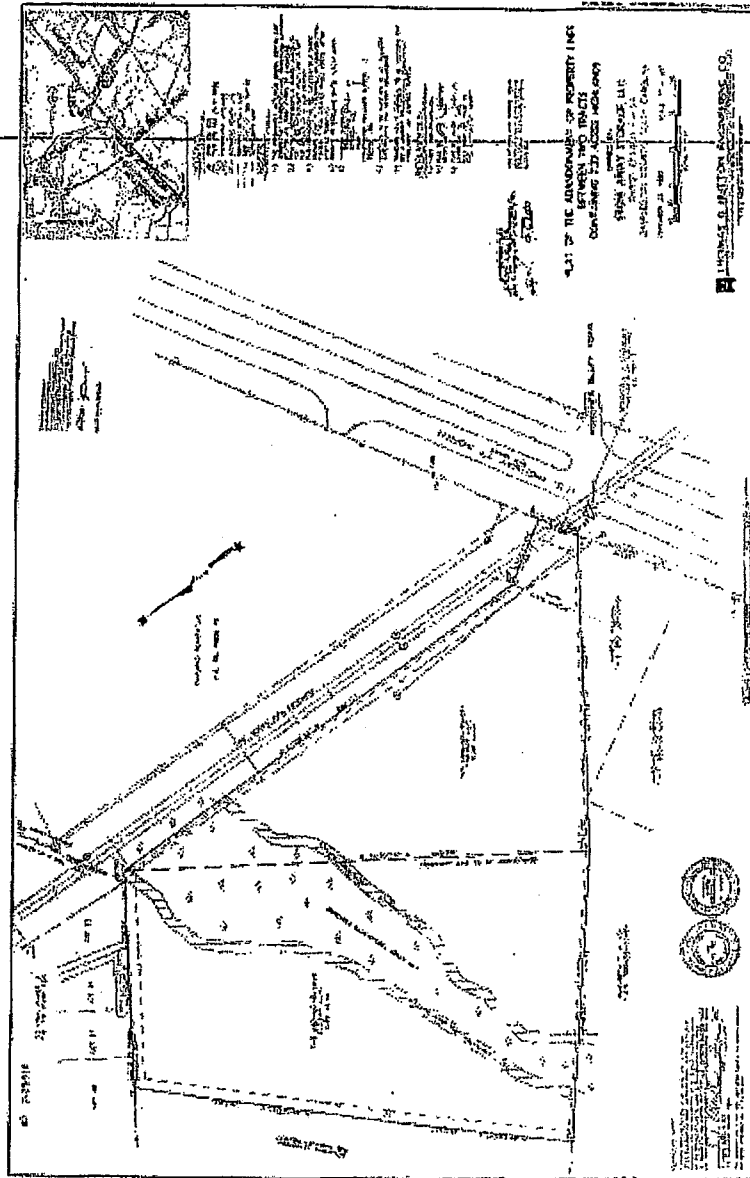
OTHER SITE DATA:

Easements/Encroachments: No known encroachments, 100-foot wide transmission and natural gas line easement along site's east property line

Soils: No soil study for the subject site available - soils are assumed to be suitable for development typical of the neighborhood.

Wetlands: 1.49 Acres of freshwater wetlands bisect subject site from NE to SW as per plat ED-788.

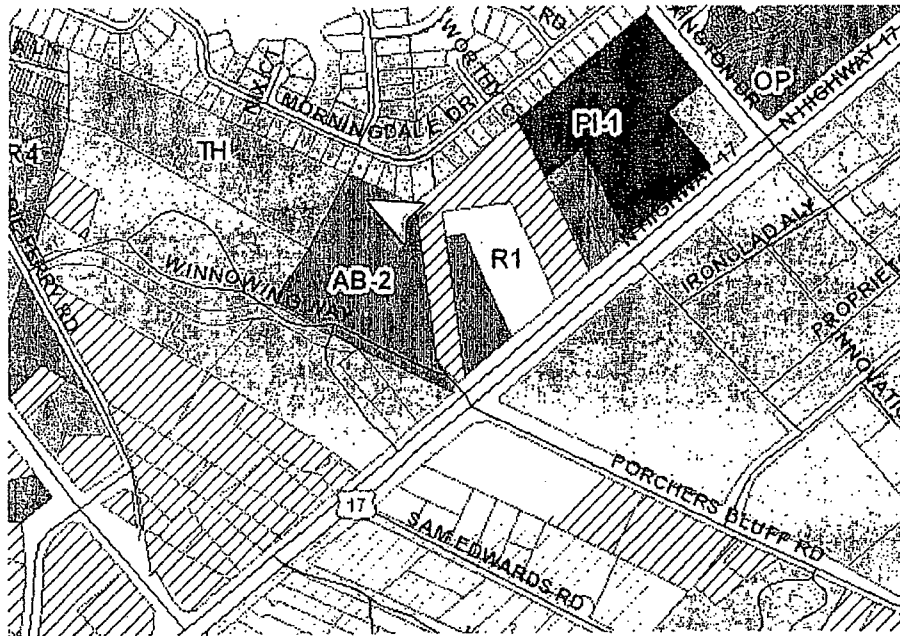
Environmental Conditions: No environmental audit of the subject site provided - assumed that no adverse environmental conditions or hazardous substances are present.



ZONING

The subject property is zoned AB-2, Areawide Business, by the Town of Mt. Pleasant. It is the intent of this section that the AB-2 District be utilized to encourage an economically healthy environment for high-impact commercial uses that need a location adjacent to arterial roads, and to reduce traffic and parking congestion by providing locations for operations that provide transportation-related goods and services. The regulations that apply within this district are designed to protect residential neighborhoods from encroachment and impact of commercial uses by providing locations for commercial operations that may have adverse impacts on the quality of residential areas.

AB-2 zoning allows a wide range of commercial uses for the subject site, including its current use as a self-storage facility.





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ASSESSMENT/PROPERTY TAXES

Real estate in Charleston County is intended to be appraised at 100 percent of its market value. From time to time as need dictates, countywide equalization programs are instituted to insure these values are at current levels. Charleston County completed a reassessment program in 2014 with figures effective for 2015. The next assessment will take place in 2019 with figures effective in 2020. Any property other than owner occupied, single-family residences and land in agricultural use is assessed at a ratio of 6.00 percent of market value. This assessed value is then multiplied by the millage rate to determine the base tax amount.

2016 Taxes, TMS# 598-00-00-024 – 8.82 acres (7.73 acres high)

The ad valorem market value of the subject property is \$8,300,000, including \$1,318,700 for the land and \$6,981,300 for the improvements; however, the capped value is \$7,600,000. The property is taxed at a 6.0 percent assessment ratio rounded to the nearest \$10 or \$456,000. The subject property is located in Charleston County Tax District 21 (Town of Mt. Pleasant and Charleston County), and the 2016 millage rate for this district is 0.2371. The 2016 local option sales tax credit factor for District 21 is 0.00124. The table below breaks down the 2016 tax information for the subject property. The 2016 taxes for the subject property have not been paid.

Tax Map Number	598-00-00-024
MA Appraised Value	\$8,300,000
Capped Value	\$7,600,000
Taxable Value	\$7,600,000
2016 Taxes Before Sales Tax Credit	\$108,117
Deduct LOST Credits	-\$9,424
2016 Taxes	\$98,693.60

Tax Reform Act of 2006

South Carolina Act 388, commonly referred to as the point of sale statute, was passed in 2006 to change the manner in which real estate was revalued for property tax purposes. Under the point of sale statute, real estate is to be revalued either (i) pursuant to a countywide reassessment program, which was limited to increases of 15.0 percent over a five year period, or (ii) anytime there is an "assessable transfer of interest." An assessable transfer of interest generally includes any sale of the property. Because property will be revalued to its current market value (which is generally based on the purchase price) upon an assessable transfer of interest, there could be significant increases in property taxes during times of rising property values. The potential increase in property taxes in the year following a sale should be considered and accounted for prior to a sale.



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Under the 2011 amendment to Act 388, property assessed at the 6.0 percent assessment ratio, which generally is either commercial property or non-owner occupied residential property, will be able to exclude up to 25.0 percent of the value of the property when revalued upon an assessable transfer of interest. This exemption cannot be used to reduce the value of the property below its current value in the assessor's records. This amendment applies to any property assessed at 6.0 percent sold after 2010. The exemption must be applied for before January 30 of the year following the ATI.

HIGHEST AND BEST USE

The four basic principles of supply and demand, substitution, balance and conformity are considered to be the basic tools of analyzing the relationship between economic trends and an appraisal. Market forces create market value. For this reason, the analysis of Highest and Best Use is very important. When the purpose of an appraisal is to estimate market value, a Highest and Best Use analysis identifies the most profitable, competitive use to which a property can be used. The definition of Highest and Best Use according to The Dictionary of Real Estate Appraisal (5th Edition, page 93) is:

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. Alternatively, the probable use of land or improved property-specific with respect to the user and timing of the use-that is adequately supported and results in the highest present value.

The two types of Highest and Best Use analysis of a property are as though vacant and as improved. Highest and Best Use as though vacant assumes that a site is vacant or can be made vacant economically. Highest and Best Use as improved should evaluate the best use of a property that can be made considering the improvements in place.

The first step is a review of the Highest and Best Use Analysis for the subject site as if vacant and available for development. The subject improvements are not being considered in this report; therefore, a Highest and Best Use Analysis as improved is not applicable.

Highest and Best Use As Though Vacant

Legally Permissible

The subject site is zoned AB-2, Areawide Business, by the Town of Mt. Pleasant, and this zoning allows a wide variety of commercial uses for the site.



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Physically Possible

The subject site is an 8.82-acre (7.73 acres high) parcel with good utility and 60.14 feet of frontage on N Hwy 17. The site is located in a minimally hazardous flood zone typical of the area, and it has all public utilities available. I assume that no adverse soil or environmental conditions are present. The subject site's high land appears to be physically suitable for development in all respects.

Financially Feasibility

The subject site is approved for commercial development. The site is most suitable for service commercial, a wholesale use or perhaps a business park, and these uses are fairly common along N. Hwy 17. The vast majority of the buildings along Hwy 17 N. are owner occupied. Nevertheless, it is reasonable to conclude that the uses described above would be financially feasible for the subject site.

Maximally Productive Use

The subject site's configuration is typical of those often purchased for self-storage, a use that does not necessarily require a great deal of exposure to a heavy volume of traffic to be successful. A typical self-storage site is mostly rear land and only requires a small amount of paved road frontage for a sign on a traffic artery. The fact that both the subject self-storage facility and the nearby Sweetgrass Hardware are operating successfully with limited visibility from N. Hwy 17 supports this conclusion. In my opinion, the site's current use for self-storage is the most productive use of the site.

Conclusion

The highest and best use of the subject site as though vacant is service commercial or warehouse, and a self-storage facility would be one of these uses.

Summary of the Valuation Techniques Used

The Site Valuation was performed using techniques practiced in the Sales Comparison Approach. This approach is based on the premise that a buyer would pay no more to purchase a specific site than the cost of buying a site with the same quality, utility, and perceived benefits of occupancy. It is based on the principles of supply and demand, balance, substitution and externalities. The Cost and Income Capitalization approaches are not applicable, and they have not been used in this report for this reason.



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SITE VALUATION – 1/23/2014

The value of the subject site is estimated using the Sales Comparison Approach, which is based on a comparison of recent sales of similar sites to the subject site. These sales should be as similar to the subject as possible to make comparisons credible.

A survey of sales activity on US Hwy 17 N. near the subject property resulted in several closed sales. On the following page is a map with the subject and the location of the comparable land sales identified. Following the location map are data sheets detailing each sale, followed by comparisons of each to the subject site. The units of comparison most commonly used when appraising vacant commercial sites are price/front foot, price/acre, and price/square foot (SF). The market indicates that price/acre of high land is the most reliable in this case.

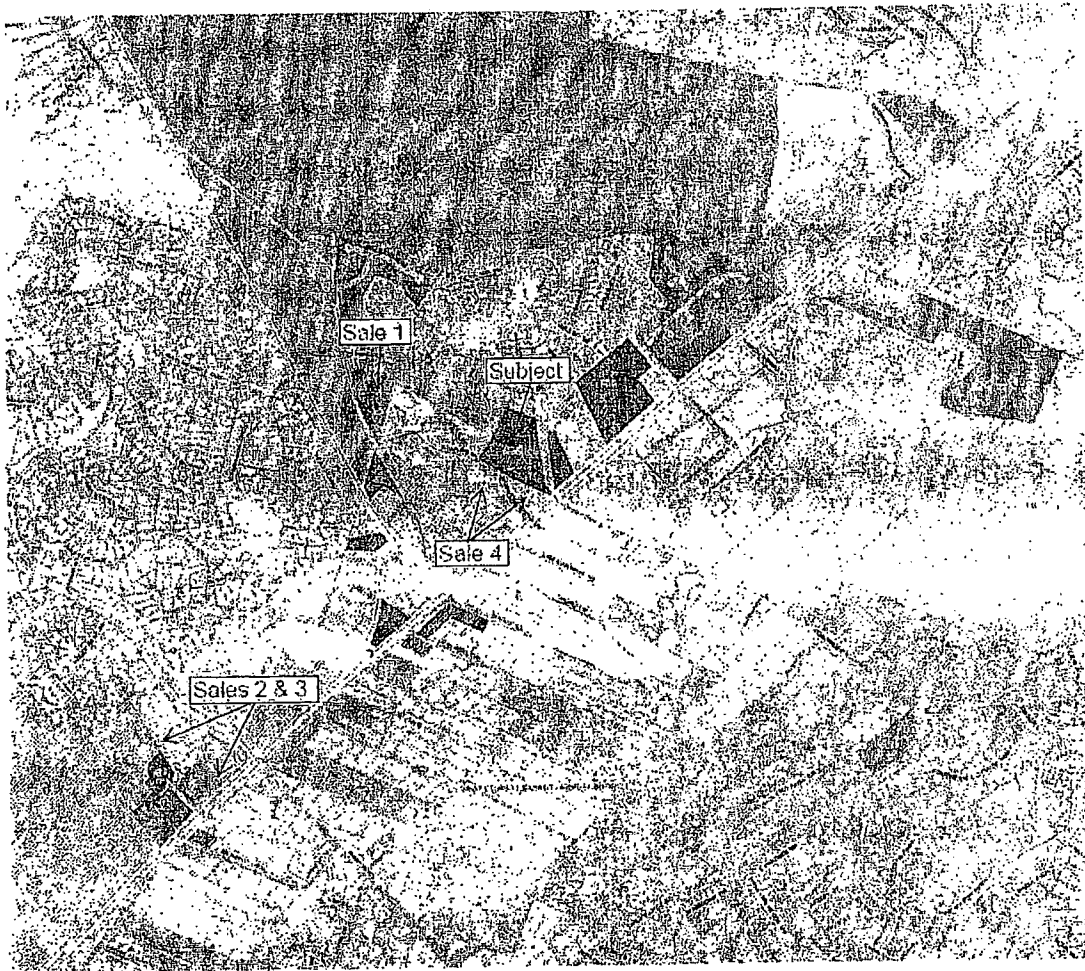
Sometime in early 2000, Stow Away Storage, LLC (subject property owner at the time) applied to the SCDOT for an encroachment permit from N. Hwy 17 to the subject site for development of a self-storage warehouse facility. The permit was granted; however, George W. Sisson (adjoining property owner-TMS# 598-00-00-027) was required to abandon the access used by him for ingress and egress from N. Hwy 17. As a result of a written request from Stow Away to Sisson offering him access across Stow Away's property in exchange for Sisson abandoning his access as required by SCDOT, both parties signed an Access Easement and Abandonment of Encroachment Permit agreement dated 10/17/2000. This document dated 10/27/2000 is recorded in the Charleston County RMC Office in Deed Book U358, page 109.

Sometime around 10/2006, the neighboring Sisson tract was leased to Timarand, Inc. To my knowledge, this lease is not recorded in the RMC Office for Charleston County. On January 3, 2007, Timarand, Inc. subleased the tract to Royal Sweetgrass Hardware (Sweetgrass) for a 10-year term with an option to renew the lease for two additional 5-year terms, and Sweetgrass renovated a commercial building on the site for use as a hardware store. Sweetgrass also cleared and gated the access that Sisson had previously agreed to abandon, and with Sisson's permission, permitted its customers to access the hardware store over the supposedly abandoned easement. SCDOT objected, and shortly after July 1, 2008, they erected a barrier blocking the previously abandoned Sisson and Sweetgrass access easement from N. Hwy 17. As a result, with Sisson's permission and without Stow Away's permission, Sweetgrass and its customers began using Stow Away's access from N. Hwy 17. For this reason, I have selected 6/1/2008 as a reasonable starting point for estimating damages to the subject property.

Stow Away Storage, LLC sold the subject property to MCS MTP, LLC on 1/23/2014, and I have selected this date as the conclusion of the damage estimate. Please note that the subject site contains 7.33 acres or approximately 319,295 SF of high land, and the easement contains 8,066 SF. The fee simple value of the easement is estimated at 8,066 SF multiplied by the value of the fee simple value of the subject site on a per/SF basis.

SITE VALUATION AS OF 1/23/2014

A survey of sales activity in the subject and competing neighborhoods yielded several land sales considered to be comparable to the subject site. Four closed sales have been chosen in this report for comparison with the subject site. A location map with the subject and the comparable sales identified is located below. Following the location map are data sheets detailing each sale. The unit of comparison most commonly used when appraising large tracts is price/acre of high land.



COMPARABLE LAND SALE 1

LOCATION:	1251 Gregorie Ferry Road, Town of Mt. Pleasant, Charleston County, SC
DESCRIPTION:	Parcel D - Plat EL 595
TMS:	580-00-00-021
GRANTOR:	1251 Gregorie Ferry Road, LLC
GRANTEE:	Beazer Homes Corp.
DATE:	November 15, 2012
REFERENCE:	Deed 0292-427
SALE PRICE:	\$437,800
LAND AREA:	4.5 Acres – 3.49 Acres High
INDICATION:	\$97,289/Acre Gross, \$125,444/Acre High
ZONING:	R-4, Residential (Town of Mt. Pleasant)
UTILITIES:	Public water & sewer

Comments:

This parcel is located on the east side of Gregorie Ferry Road off SC Hwy 41 in the Town of Mt. Pleasant. The tract contains 4.5 acres including 3.49 acres of high land. The parcel has 807.49 feet of frontage on Gregorie Ferry Road. The wetlands are concentrated along the site's north property line. This tract abuts the 240-unit Gregorie Ferry Landing Apartments tract. 1251 Gregorie Ferry Road, LLC purchased the property from Southcoast Community Bank at \$325,000 on 5/18/2012 (Deed 0253-138). At the time, the vast majority of the site was zoned AB-2, Areawide Business, in the Town of Mt. Pleasant, and the northeast corner of the site was zoned RTH in Charleston County. Subsequent to purchasing the site, 1251 Gregorie Ferry Road, LLC down-zoned the property to R-4, got the Town of Mt. Pleasant's approval for 18 residential lots on the tract, and sold the tract to Beazer Homes Corporation (Deed 0292-427) for \$437,800 on 11/15/2012. The subdivision is known as Enclave at Gregorie Ferry. Information confirmed by Dan Henderson, listing agent and Freddie St. Laurent, seller.





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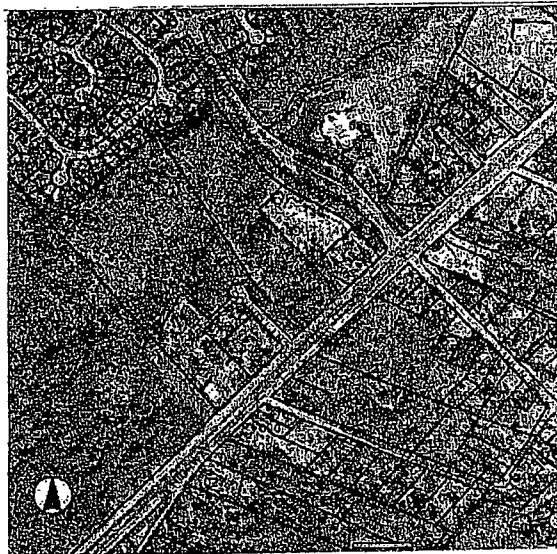
8.82-Acre Tract
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COMPARABLE SALE 2

LOCATION:	2700 US Hwy 17 N., Town of Mt. Pleasant, Charleston County, SC
DESCRIPTION:	Commercial site
TMS:	580-00-00-056
GRANTOR:	Carealliance Health Services
GRANTEE:	Buck Investments
DATE:	April 5, 2013
REFERENCE:	Deed 0322-101, Plat DC-115
SALE PRICE:	\$1,050,000
LAND AREA:	2.43 Acres
INDICATION:	\$432,099/Acre
ZONING:	AB, Areawide Business (Town of Mt. Pleasant)
UTILITIES:	Public water & sewer

Comments:

This 2.43-acre site is located on the west side of US Hwy 17 N. just south of Brickyard Parkway. The site is an out-parcel of Brickyard Falls Shopping Center. There is a median break and dedicated turn lanes on US Hwy 17 N for McConnell Lane. The site is situated between First Citizens Bank and BB&T and has 297 feet on US Hwy 17 N. The tract was listed at \$1,900,000 at the time of sale. Information confirmed by Charlie Carmody, listing broker.

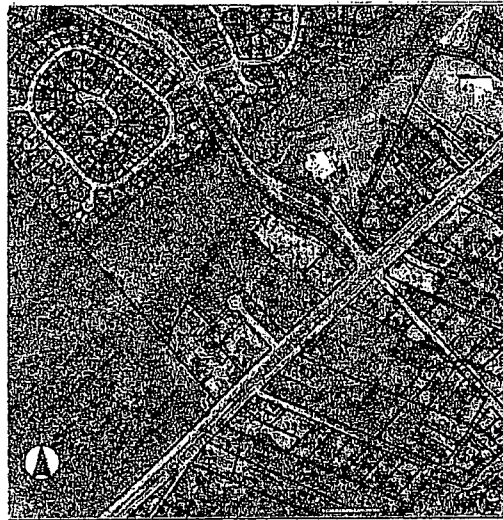


COMPARABLE LAND SALE 3

LOCATION:	2700 Hwy 17 N., Town of Mt. Pleasant, Charleston County, SC
DESCRIPTION:	Tract 2 – Plat EJ-642
TMS:	580-00-00-133
GRANTOR:	SCB&T
GRANTEE:	Buck Investments, Ltd.
DATE:	April 29, 2014
REFERENCE:	Deed 0401-786
SALE PRICE:	\$815,000
LAND AREA:	7.21 Acres Gross – 4.44 Acres High
INDICATION:	\$113,037/Acre Gross, \$183,559/Acre High
ZONING:	PUD (Town of Mt. Pleasant)
UTILITIES:	Public water & sewer

Comments:

This is a rear acreage tract in the Oliver's Crossing retail development at Brickyard Plantation. The site is accessed from Brickyard Falls SS by an access easement from US Hwy 17 N. via McConnell Lane. The site has an insignificant amount of frontage on US Hwy 17 N. Oliver's Crossing has a First Citizens Bank, a Carrabbas restaurant, a T-Mobile store and several medical office buildings. There is a median break and dedicated turn lanes on US Hwy 17 N. for McConnell Lane. The wetlands are concentrated at the rear of the site. SCB&T acquired the property for \$10 from Oliver's Crossing I, LLC, et al, by a Deed in Lieu of Foreclosure, and the principal balance on the mortgage at the time of sale was \$1,416,873.72. Oliver's Crossing I, LLC, et al had purchased the tract from Ireland Charleston, LTD for \$1,800,000 or \$405,405/acre high on 4/12/2006 (Deed T579-345).



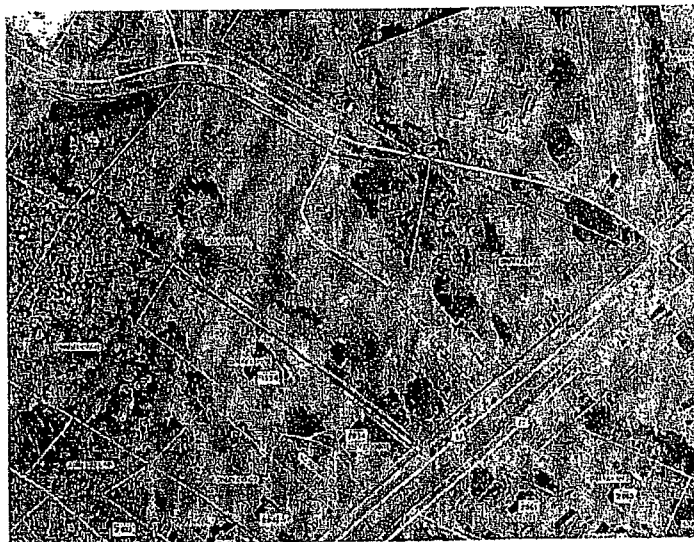
COMPARABLE LAND SALE 4

LOCATION:	2978 N Hwy 17, Town of Mt. Pleasant, Charleston County, SC
DESCRIPTION:	Vacant Commercial
TVS:	580-00-001 & 004
GRANTOR:	See Below
GRANTEE:	Sunoco, Inc.
DATE:	December 16 & 17, 2013
REFERENCE:	Decds 0382-13 & 0380-406
SALE PRICE:	\$3,000,000
LAND AREA:	7.65 Acres Gross, 5.16 Acres High
INDICATION:	\$392,157/Gross Acre, \$581,395/Acre High
ZONING:	AB-2, Area-wide Business (Town of Mt. Pleasant)
UTILITIES:	Public water & sewer

Comments:

This is an assemblage of two contiguous parcels totaling approximately 7.65 acres including 5.16 acres of high land. The site was purchased for development of a convenience store. The site has an estimated 534 feet on N. Hwy 17. Sunoco, Inc. assembled the two parcels on December 16 and 17, 2013 as follows:

TVS#	Gross Acres	Acres High	N. Hwy 17	Plat	Grantee	Consideration	Deed
001	1.91	1.00	Incl.	L16-0064	Alethea W. Manigault	\$850,000	0832-013
004	5.68	4.16	Incl.	L16-0064	TD Bank	\$2,150,000	R565-398
Two Parcels	8.10	5.55	534 FF			\$3,000,000	





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RECAP OF LAND SALES					
SALE	DATE	SALE PRICE	ACRE SIZE HIGH	N. HWY 17 FRONTAGE	PRICE/ACRE HIGH
1	11/15/2012	\$437,800	3.49	None	\$125,444
2	4/5/2013	\$1,050,000	2.43	297 FF	\$432,099
3	4/29/2014	\$815,000	4.44	Insignificant	\$183,559
4	12/16/2013	\$3,000,000	5.16	534 FF	\$581,395

Discussion of Adjustments

Prior to adjustments, the four comparable land sales indicate a price/acre range from \$125,444 to \$581,395. No adjustments are required for property rights conveyed, financing and conditions of sale. The next adjustment is for changes in market conditions or time. The real estate market in the Charleston MSA, both residential and commercial, had been weak since at least mid 2007, and the largest decreases in price occurred after the financial crisis in late 2008. The real estate market remained flat for the next several years, and it began to grow during the period from late 2011 to approximately 2014. It should be noted that the effective date of value is 1/23/2014. Sales 1, 2 and 4 are fairly recent; therefore, no time adjustments are appropriate for these sales. Sale 3 occurred approximately four months after the effective date of value; however, it would be inappropriate not to consider it.

Physical characteristics to be adjusted for are general location, size, zoning, N. Hwy 17 exposure and corner influence. The subject site contains 7.73 acres of high land and approximately 60 feet of frontage on N. Hwy 17. The unimproved right-of-way for Winnowing Way meanders along the subject site's SW property line and joins the completed portion of this right-of-way to the west. This Winnowing Way right-of-way will be improved and completed from N. Hwy 17 to Gregorie Ferry Road by 2015, making the subject site easily accessible from SC Hwy 41, Gregorie Ferry Road and the 240 unit Gregorie Ferry Landing Apartments on Winnowing Way. This intersection has a traffic light. The subject's highland is cleared and fully developed with a self-storage facility.

General Location

The subject site is located between N. Hwy 17's intersections with SC Hwy 41 and the entrance to Park West, and all four of these sales have the same general location.

Size

The market indicates that smaller tracts sell for a greater price/acre as compared to a larger tract when all other factors are equal. For this reason, smaller tracts are adjusted downward when compared to a larger subject site. The opposite is true for larger tracts. All four sales are smaller than the subject site, and they are adjusted downward 10.0 percent for this reason.



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Zoning

The subject site is zoned AB-2, Areawide Business by the Town of Mt. Pleasant., and all four sales are equal to the subject site in this respect.

Hwy Frontage and Exposure

The subject site has approximately 60 feet of frontage on N. Hwy 17 and reasonable access and exposure. The completion of the Winnowing Way to N. Hwy 17 is also seen as a positive for the subject site. Sale 1 is located on Gregorie Ferry Road with no exposure or frontage on N. Hwy 17 or SC Hwy 41. Sale 1 is inferior to the subject site in terms of highway frontage and exposure, and it is adjusted upward 75.0 percent for this reason. Sale 2 is situated just south of the entrance to Brickyard Plantation Parkway. It is situated between two banks, and it has 272 feet on and good access from N. Hwy 17. Sale 2 is superior to the subject site in terms of highway exposure and frontage, and it is adjusted downward 50.0 percent for this reason. Sale 3 has insignificant frontage on N Hwy 17. Sale 3, however, is an undeveloped portion of Oliver's Crossing shopping center on Brickyard Parkway, and it has good frontage on that street. Sale 3 is inferior to the subject site in terms of highway frontage and exposure, and it is adjusted upward 20.0 percent for this reason. Sale 4 is situated across Winnowing Way from the subject site. Sale 4, however, has approximately 530 feet on N. Hwy 17 and substantial frontage on Winnowing Way. Sale 4 will also benefit from the completion of Winnowing Way to N. Hwy 17. Sale 4 is substantially superior to the subject site in terms of highway frontage and exposure, and it is adjusted downward 50.0 percent for this reason.

Corner Influence

Sales 1-3 are not located on a corner. Sale 4 is located on the corner of N. Hwy 17 and Winnowing Way, and it is adjusted downward 20.0 percent for this reason. The sales are adjusted in the chart on the following page.



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LAND/COMPARABLES ADJUSTMENT CHART				
	Sale No. 1	Sale No. 2	Sale No. 3	Sale No. 4
DATE	11/15/12	04/05/13	04/29/14	12/16/13
SALE PRICE	\$437,800	\$1,050,000	\$815,000	\$3,000,000
ACRE SIZE/HIGH	3.490	2.430	4.440	5.160
SALE PRICE/AC/HIGH	\$125,444	\$432,099	\$183,559	\$581,395
TIME ADJ.	1.0000	1.0000	1.0000	1.0000
TIME ADJ. SP/AC/HIGH	\$125,444	\$432,099	\$183,559	\$581,395
ADJUSTMENTS				
GEN. LOCATION	1.00	1.00	1.00	1.00
SIZE	0.90	0.90	0.90	0.90
ZONING	1.00	1.00	1.00	1.00
HIGHWAY RE/EXPOSURE	1.75	0.50	1.20	0.50
CORNER	1.00	1.00	1.00	0.80
COMPOSITE ADJ.	1.58	0.45	1.08	0.36
ADJUSTED SP/AC/HIGH	\$197,574	\$194,445	\$198,244	\$209,302

After adjustments, the four comparable land sales indicate a price/acre of high land range for the subject site from \$194,445 to \$209,302, and this range is fairly tight. A reasonable estimate of value for the subject site is concluded at \$200,000/acre of high land or \$1,546,000 rounded to \$1,550,000 (7.73 acres high x \$200,000/acre high = \$1,546,000).

SITE VALUE ESTIMATE
AS OF 1/23/2004
\$1,546,000

Exposure and Marketing Periods

Exposure time is the time that a property would have been offered for sale prior to the effective date of the appraisal. Marketing period is the time that it would take to sell a property subsequent to the effective date of the appraisal. An analysis of listing and sales activity of similar properties in the subject market indicates a reasonable marketing time of 12 months or longer. The exposure time is also estimated at 12 months or longer.



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EASEMENT VALUATION AS OF 1/23/2014

The fee simple value of the subject site has been estimated at \$200,000/acre or \$4.59/SF of high land. The easement is estimated to contain 8,066 SF of high land; therefore, the fee simple value of the easement is concluded at \$37,023. By using the subject access easement without the subject property owner's permission, however, the adjacent property owner and its tenant have assumed access rights in the easement that were deemed to be improper by the court. It is my understanding that the subject property owner was never denied access to his property.

Property Rights

The SE corner of subject site has approximately 60 feet of frontage on N. Hwy 17 with an encroachment permit from SCDOT for ingress and egress to the site from N. Hwy 17, and the subject property owner uses this area for access to his site from N. Hwy 17. Prior to granting Sisson an estimated 8,066 SF perpetual easement across the subject site's SE corner to access his site, the subject property owner still had fee simple ownership of this area. When Sisson was granted the access easement over the subject site's SE corner, the property owner in effect lost all rights in the easement area other than access, including the right to gate it for security purposes.

Summary and Conclusion

The access easement is located on the subject site's southeast corner that fronts on N. Hwy 17. There are no buffers or building setbacks applicable to the easement; however, the southeast corner is not the typical building area of the site. The easement does not sever the subject site in any fashion, and it should have no effect on any other portion of the site. For this reason, there are no damages to the remainder of the subject site as a result of the subject access easement.

During the 68-month period that the easement was adversely used by Sisson's tenant and sub-tenant (6/1/2008-1/23/2014), the property owner still retained his right of ingress and egress within the easement. Considering this, the market value of the access easement to Sisson is estimated at 50.0 percent of the fee simple value of the subject site. This calculation is shown below.

Fee Simple Value Estimate					
Easement	8,066 SF	X	\$4.59/SF	=	\$37,023
Estimated Easement Value				X	50%
Total					\$18,511

ESTIMATED VALUE OF EASEMENT \$18,511

The damages to the subject site are based on 68 months or five years and 8 months of lost rent from 6/1/2008 to 1/23/2014 for 100.0 percent of the value of the easement.



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Landowners typically require a 10.0-15.0 percent annual return on the market value of the leased premises as rent (est. 12.5%); therefore, the lost rent for 12 months is estimated at \$2,314 ($\$118,511 \times 0.125 = \$2,314$ rent/year) or \$193/month, and the calculation is shown below.

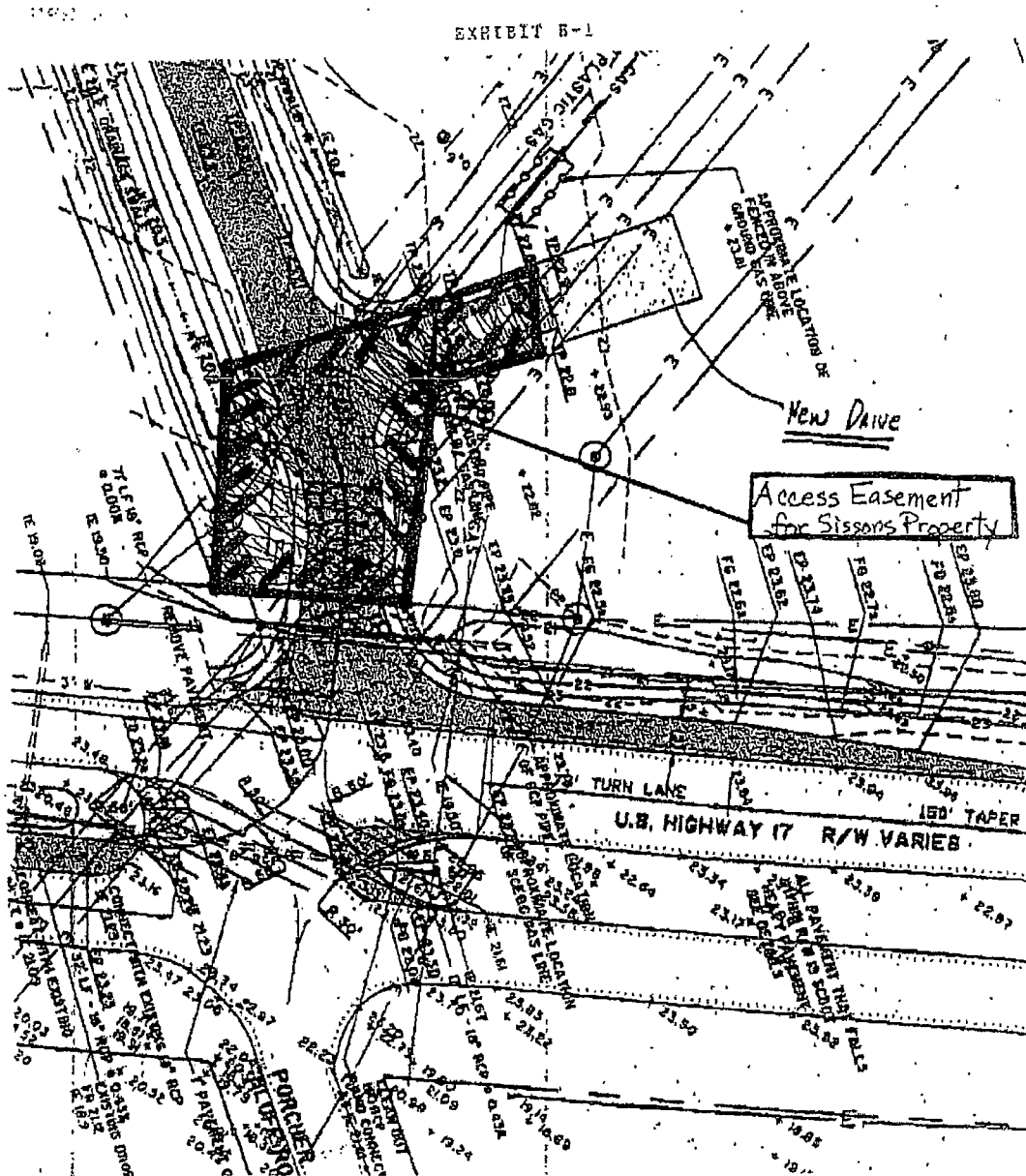
Fee Simple Value Estimate			
Easement	8,066 SF	x	\$4.59/SF
			= \$37,023
Estimated Easement Value (50%)			X 0.50
Total			\$18,511
12.5% Annual Rent			X 0.125
Annual Rent			\$2,314
Monthly Rent			\$193.00

ESTIMATED MONTHLY RENT FOR EASEMENT
\$193.00

Total damages

The total damages to the subject property are calculated at \$193.00/month lost rent multiplied by 68 months or \$13,124.

ESTIMATED TOTAL DAMAGES
\$13,124





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ADDENDA

Qualifications
License



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APPRAISER'S QUALIFICATIONS

Raymond L. Murphy, MAI, SRA, AI-GRS

BIOGRAPHY

I am a principal partner in Murphy Hays & Associates, LLC (formerly R. L. Murphy & Associates, Inc.), a commercial real estate appraisal firm created in Charleston, SC in 2015. I began my appraisal career in 1986, received my SRA designation from the Appraisal Institute in 1989, received my MAI designation in 1993, received my AI-GRS designation in 2016, formed R. L. Murphy & Associates, Inc. in 1996 and formed Murphy Hays & Associates, LLC in 2015. I am a Certified General Appraiser licensed in SC and NC.

PRIMARY SERVICE AREAS

Charleston County, SC
Dorchester County, SC
Berkeley County, SC
Beaufort County, SC
Jasper County, SC

SECONDARY SERVICE AREAS

Georgetown County, SC
Horry County, SC
Allendale County, SC
Barnwell County, SC
Hampton County, SC
Colleton County

EDUCATION

I am a graduate of the University of South Carolina with a BA degree. The courses and seminars I have attended since 1986 are too numerous to list; however, I have taken the "Yellow Book" course from the Appraisal Institute allowing me to work for the Federal Government. It should be noted that the Appraisal Institute requires at least 100 hours of CE and attendance at one of several advanced courses every five years, and I certify that I have completed the requirements under the continuing education program of the Appraisal Institute.



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PROFESSIONAL AFFILIATIONS

Appraisal Institute - South Carolina Chapter

- Board of Directors - 2010
- Chapter President - 2009
- Chapter 1st Vice President - 2008
- Chapter 2nd Vice President - 2007
- Chapter Treasurer - 2006
- Chapter Secretary - 2005
- Past Chairman - Budget & Finance Committee
- Chairman - Budget & Finance Committee - 2011
- Chairman - Nominating Committee - 2010
- Member - Budget & Finance Committee - 2010
- Past Chairman - Education Committee
- Past Chairman - Membership Development & Retention Committee
- Past Chairman - Public Relations Committee

Appraisal Institute - Region IX

- SC Chapter Representative - 2006-2008
- Nominating Committee Member - 2006-2008
- Nominating Committee Member - 2011

- Member, Charleston Trident Association of Realtors
- Member, Charleston Trident Multiple Listing Service
- Former Member, Charleston County Board of Assessment Appeals

COMMERCIAL, INDUSTRIAL, LAND & SPECIAL USE PROPERTIES

Commercial

- Office Buildings
- Apartment Complexes
- Medical Facilities
- Shopping Centers
- Multi-Unit Condo and Townhouse Developments

Industrial

- Warehouses, office/warehouses and office/warehouse flex buildings
- Manufacturing Buildings
- Processing Plants

Land

- Commercial and Industrial Sites
- Recreational and Commercial Timber Tracts
- Multi-Lot Residential Subdivisions

Special Use

- Public and Private School Facilities
- Churches & Marinas



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Clients

Ameris Bank (Beaufort, SC)
BB&T
CBC National Bank
Colony Bank
First Citizens Bank of South Carolina
Regions Bank
TD Bank
The Heritage Bank, Savannah, GA
The National Audubon Society
Tidelands Bank (Charleston & Myrtle Beach, SC)
The National Bank of South Carolina
Savannah Bank, Savannah, GA
South Carolina Electric and Gas Company (SCE&G)
Southcoast Community Bank, Mt. Pleasant, SC
SunTrust Bank
Tidelands Bank, Mt. Pleasant, SC
University of SC Beaufort
Wachovia Bank

UTILITY EASEMENTS

Areas Covered by Past Assignments in SC

Charleston County, SC
Dorchester County, SC
Horry County, SC
Marion County, SC
Beaufort County, SC
Jasper County, SC

Clients

Commissioners of Public Works for the City of Charleston (now Charleston Water System)
South Carolina Electric & Gas Company (SCE&G)
Dorchester County Public Works
Beaufort-Jasper Water & Sewer Authority (BJSWA).

I was also selected by CPW to appraise all of the properties associated with the underground sewer tunnel replacement project on the Charleston Peninsula in the early 2000s.



Real Estate Appraisers – Consultants

8.82-Acre Tract
2998 N. US Hwy 17
Town of Mt. Pleasant,
Charleston County, SC

CONSERVATION EASEMENTS

Counties Covered by Past Assignments in SC

Charleston County, SC
Georgetown County, SC
Colleton County, SC
Beaufort County, SC
Hampton County, SC

Clients

Aiken County, SC
Trust for Public Land
Beaufort County Open Land Trust
Lord Berkeley Conservation Trust.
National Audubon Society
Lowcountry Open Land Trust
SC Battleground Preservation Trust

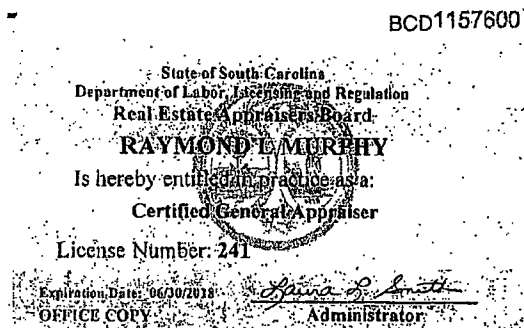
I am an approved appraiser for the SC Conservation Bank.

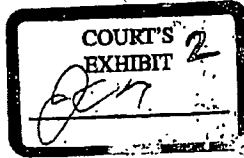
EXPERT TESTIMONY

I have testified in the State of South Carolina Circuit and Family courts.

MISSION STATEMENT

My mission is to always conduct myself in a professional manner and according to Code of Professional Ethics of the Appraisal Foundation and the Appraisal Institute. I believe in being thorough and diligent in my research, and my appraisal reports will be made in conformity with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation and the Appraisal Institute. The reports will also comply with FIRREA of 1989 Title XI, Public Law, and FDIC: 12 CFR part 323. All data relevant to the subject property collected as a result of an assignment will be confidential and will be released to a third party only with permission of the client.





STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stow Away Storage, LLC)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10-2444

ITEMIZED LIST OF DAMAGES

EXPENSE SUMMARY:

9/19/07	Removed rope and posts in parking lot and installed concrete curb	\$2,000.00
10/9/07	Trespassing signage at entrance. Signs, posts, hardware, and labor	568.21
Sept.-Nov. 2007	Installation of concrete landscape boxes on both sides of driveway entrance. Materials and labor	1,890.32
1/4/08	Curb along bushes at left of parking lot and along front entrance at concrete landscape boxes	1,826.00
6/26/08	Removal of swing gate support post on right curve at driveway entrance in preparation for increase in radius.	60.00
7/7/08	Removal of rope and posts at curve in preparation for bollard post installation and increase in radius	112.50
8/22/08-11/25/08	Installation of 3 bollard posts at right side of entrance. Materials and labor	1,034.81
September 2008	Contracted James White Construction to increase radius in asphalt turning right in driveway after entering	2,700.00

November 2008	Installed Swing Gate at curve on right of entrance	8,412.49
5/8/09	Signage for entering and exiting traffic driving through Stowaway property at curve shared with Sisson at entrance. Signage, hardware, and posts	352.54
9/18/09	Speed bump at curve shared with Sisson at entrance on right as entering	1,425.54
	(Total landscaping and construction expenses)	\$20,382.41
2008- 10/2016	Attorney's fees (ongoing)	\$97,692.30
2008-2014	Value of the "good and valuable consideration" paid by Sweetgrass for the License Agreement that purported to allow entrance by its customers over Stow Away's property, including but not limited to any rent paid for that use	Cannot be determined without first taking depositions of Defendants or by expert testimony

Carolina Xtreme Concrete Design LLC

1150 Hungry Neck Blvd St C 314
Mt.Pleasant, SC 29464

Invoice

Date	Invoice #
9/19/2007	1226

Bill To
Stow Away Storage 2988 US Highway 17 N Mt Pleasant, SC 29466 PH 843-849-8110

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			9/19/2007			
Quantity	Item Code	Description			Price Each	Amount
	Curb & Gutter	Curb & Gutter 64', 12" x6" x 4", cut out asphalt, 3000 PSI, Broom Finish, Out-of-state sale, exempt from sales tax			2,000.00 0.00%	2,000.00T 0.00
					PAID CENO DATE 1424 9-19-07	
					Total	\$2,000.00

ROA 090

R.P. CUSTOM SIGNS
1145-D Hwy. 41
Mount Pleasant, SC 29466
(843) 881-0462

Oct 9/07

Stowaway Storage
c/o ALLISON

6 - 18" x 24" s/r vinyl/.080
reflective Alum Signs
⑨ 50.00 ea

total due
\$ 300.00

GUY C. LEE BUILDING MATERIALS

GUY C LEE *****MT PLEASANT

P.O. Box 1796
Mt Pleasant, SC 29465

TEL: (843) 884-3111

FAX: (843) 881-1111

Page 1

Cash Invoice

Invoice # 0501038

SPECIAL:

INSTR:

TIME: 11:07:4

SHIP: 10/08/02

INVOICE: 10/08/02

DUE DATE: 10/08/02

SALESMAN: STEVE NIMS

NUMBER: 406 ACCTS/P: 406

ORDERED BY:

SOLD CASH SALES

TO:

SHIP CASH SALES

TO:

CUSTOMER NO.:

THS Afternoon Please!

JOB:

CUSTOMER P.O.:

PUR:

SHIP VIA:

QTY.	UNIT	ITEM NUMBER	DESCRIPTION	PRICE	C	EXTENS
8.00	EA	800RMIX	80# READY-MIX CONCRETE	61.25	1	122.
12.00	EA	125LAG	LAG GALV 1/2 X 5	4.78	1	38.
1.00	EA	AZEK	AZEK GLUE 8 OZ	0.63	1	7.
				11.43	1	11.

PULLED BY: AH

CHECKED BY: Kell

DELIVERED BY: AH

Check #1421:
Total Applied:

193.21
193.21

FREIGHT

TAXABLE TOTAL

NONTAXABLE TOTAL

SALES TOTAL

MISC. + FRGT

SALES TAX

TOTAL

TERMS: ALL CHARGES ARE DUE AND PAYABLE IN ACCORDANCE WITH THE ABOVE DUE DATE. ANY AMOUNT NOT PAID BY THIS DATE IS CONSIDERED PAST DUE AND WILL HAVE THE MAXIMUM LEGAL INTEREST APPLIED TO THE ACCOUNT.

Liberty Landscaping
P.O. Box 1468
Mt. Pleasant, SC 29465

687611

CUSTOMER'S ORDER NO.		DEPARTMENT		DATE	
NAME		ADDRESS		10-29-01	
Stowaway		Storage			
CITY, STATE, ZIP					
SOLD BY		DATE	S.C.D.	CHARGE	CN ACCT
ADJSE FETD		PAID OUT			
QUANTITY	DESCRIPTION	PRICE	AMOUNT		
1	[REDACTED]				
2	[REDACTED]				
3	[REDACTED]				
4	[REDACTED]				
5	[REDACTED]				
6	10/9/01 install posts & hang				
7	signs 2 1/2 hrs	30 ⁰⁰ hr	75 ⁰⁰		
8					
9					
10					
11					
12					
13	MAKE PAYABLE TO:				
14	JOHN VILLAFRANCA				
15					
16					
17					
18					
19					
20					
RECEIVED BY					

Edwards
5805

KEEP THIS SLIP FOR REFERENCE

Box 1400
Mt. Pleasant, SC 29465

Box 1400
Mt. Pleasant, SC 29465

CUSTOMER'S ORDER NO.		DEPARTMENT	DATE
NAME <i>Stowaway</i>		<i>Storage</i>	<i>10-29-07</i>
ADDRESS			
CITY, STATE, ZIP			
Front bed around sign			
SOLD BY: _____ CASH: _____ C.O.D. _____ CHARGE _____ ON ACCT. _____ DISCOUNT _____			
QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	9-13-07 Hardscape (front bed)		
2			
3	3 1/2 hrs	60.00/hr	210.00
4	9-13-07 Hardscape 4 hrs	60.00/hr	240.00
5	1 1/2 cu yds topsoil	*24.00/cu yd	36.00
6	1 1/2 cu yds mulch	*23.00/cu yd	34.50
7			
8	9-27-07 Hardscape 7 hrs	60.00/hr	420.00
9			
10	9-28-07 Hardscape 2 hrs	60.00/hr	120.00
11	1 cu yd topsoil		24.00
12			
13			*1084.50
14			
15	MAKE PAYABLE TO:		
16	JOHN VILLAFRANCA		
17			
18			
19			
20			
RECEIVED BY			*1084.50

Edwards
5805

KEEP THIS SLIP FOR REFERENCE

ROA 094

TOMER'S ORDER NO.		DEPARTMENT		DATE 12/6/07	
Stowaway Storage					
RESS 1st bed					
STATE, ZIP					
QTY	UNIT	DESCRIPTION	PRICE	AMOUNT	TOTAL
8	cu yds	topsoil	24.00	192.00	
			36.00		
8	80 lb bags	concrete	5.25	42.00	
16	80 lb bags	concrete	6.44	116.80	
5	60 lb bags	mortar	5.82	29.10	
1	gal	Shearwin Williams paint		32.86	
6	7"	cement blades	11.80	29.10	
				286.19	
Liberty Lumber Company P.O. Box 1400 151 Pleasant, SC 29645					
Total				\$	286.19
RECEIVED BY					

5805

CUSTOMER'S ORDER NO.		DEPARTMENT		DATE 12/6/07	
NAME Stowaway storage					
ADDRESS 2nd bed					
STATE, ZIP					
QTY	UNIT	DESCRIPTION	PRICE	AMOUNT	TOTAL
1	8	cu yds topsoil	24.00	192.00	
2					
3	1 cu	yds mulch	23.00	34.50	
4					
5	16	80 lb bags cement	6.44	103.04	
6					
7	13	60 lb bags mortar	5.82	76.31	
8					
9	42	cement choker blocks	2.99	112.98	
10				519.16	
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
Total				\$	519.16
RECEIVED BY					

5805

ROA 095

Concrete Works & Concrete Design LLC

1501 Highway 17
 Mt Pleasant, SC 29466

Estimate #

Date	Estimate #
1/4/2008	1161

Name / Address
Stow Away Storage Highway #17 Mt Pleasant SC 29466 C/O:Allison

Project

Item	Description	Qty	Rate		Total
Curb & Gutter	Curb & Gutter 6"x6"x12" Curb is 77' long same style as previous job main gate right side.	77	22.00		1,694.00T
cost adjustment	added 6' more curb and gutter then estimated 83' total	6	22.00		132.00T
				Subtotal	\$1,826.00
				Sales Tax (0.0%)	\$0.00
				Total	\$1,826.00

Phone #	Fax #
843-209-6557	843-971-1144

CUSTOMER'S ORDER NO.		DEPARTMENT	DATE 7/10/68
NAME Stowaway Storage			
ADDRESS			
CITY, STATE, ZIP			
1	[REDACTED]		
2	[REDACTED]		
3	[REDACTED]		
4	[REDACTED]		
5	[REDACTED]		
6	[REDACTED]		
7	6-26	Remove gate post	60.00
8	[REDACTED]		
9	[REDACTED]		
10	[REDACTED]		
11	7-7-68	Remove front posts	
12	(1.30 hrs 3 men)		75.00
13	[REDACTED]		112.50
14	[REDACTED]		
15	[REDACTED]		
16	[REDACTED]		
17	#172.50		
18	[REDACTED]		
19	[REDACTED]		
20	[REDACTED]		

SEE ENDS

5605

THIS IS ONLY FOR INFORMATION



Sales Order

Palmetto State Steel Corporation
483-B Long Point Rd
Mount Pleasant, SC 29464 USA
Phone: (843)971-8802

Number: SO08H1851
Date: 8/19/2008

Customer: walkin
Job:
Salesperson:

walk in/ No Account USA	walk in/ No Account Pick up Mount Pleasant, SC 29464 USA

Wild Bill	Our Truck	F.O.B. Our Yard	Net 10
Description	Quantity	Price / Unit	Amount
6 Sched 40 x 8-0 Pipe	1 EA	200.000 /EA	200.00

354.75

Subtotal	200.00
Freight	0.00
1% 2.00 SC-Tran .5% 1.00 Sales Tax	15.00
Total	215.00



Sales Order

Palmetto State Steel Corporation
483-B Long Point Rd
Mount Pleasant, SC 29464 USA
Phone: (843)971-8802

Number: SO08K2107
Date: 11/24/2008

Customer: walkin
Job:
Salesperson:

walk in/ No Account
USA

walk in/ No Account
Stowaway Storage
849.8110
Mount Pleasant, SC 29464 USA

Stowaway	Our Truck	F.O.B. Our Yard	Net 10
Misc-Ea	6" Sch 40 Bollard 8-0	2EA	165.000 /EA 330.00

Subtotal	330.00
Freight	0.00
1% 3.30 SC-Tran .5% 1.65 Sales Tax	24.75
Total Balance	354.75

STOW AWAY STORAGE LLC

OPERATING ACCOUNT
P O BOX 21427 803-772-2629
COLUMBIA, SC 29221-1427

1497

67-66/632

DATE _____

TO THE
ORDER OF _____

\$

_____ DOLLARS



⑈00001497⑈ ⑆053200666⑆220320741001⑈

STOW AWAY STORAGE LLC OPERATING ACCOUNT

DATE	DESCRIPTION	AMOUNT
	70.0821.02	442.30
	Installed Bollard	
	[REDACTED]	



LOWE'S HOME CENTERS, INC.
1104 MARKET CENTER BLVD.
MOUNT PLEASANT, SC 29465
(843)881-5757

-SALE-

SALES #: S0539JH3 1166106 08-19-08

10365 CONCRETE MIX 80# QUIKRET 21.30 G
6 8 3.55

282325 12 OZ GRAY PRIMER SPRAY 3.44 G

282324 12 OZ WHITE PRIMER SPRAY 3.44 G

21967 18 OZ PRO YELLOW STRAINING 4.97 G

59169 #12 X1 #2PT FLO-SEAL 5.97 G

SUBTOTAL:

7.59

TAX:

INVOICE 68253 TOTAL:

BALANCE DUE:

CHECK:

0539 TERMINAL: 68 08/19/08 14:30:10

OF ITEMS PURCHASED: 17

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S
RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE MGR: TODD FRIDDLE

WE HAVE THE LOWEST PRICES, GUARANTEED!
IF YOU FIND A LOWER PRICE, WE WILL
BEAT IT BY 10%. SEE STORE FOR DETAILS

*Bollard Post
Supplies*
#42.05

Safety paint +
paint supplies for
bollard posts
\$20.26



LOVE'S HOME CENTERS, INC.
1104 MARKET CENTER BLVD.
MOUNT PLEASANT, SC 29465
(843) 881-5757

-SALE-

SALES #: S0539AN2 1194064 11-25-08

[REDACTED]
2 @ 7.47

[REDACTED]
3 @ 3.88

166000 QT PRO SAFETY YELLOW RUST 8.37
106084 12 PK FOAM BRUSH SET LGS 2.88

[REDACTED]
2 @ 3.97

[REDACTED]
2 @ 2.94

[REDACTED]
2 @ 10.74
71094 7/64" COBALT DRILL BIT 2.68

[REDACTED]
59183 #10 X 1 1/2 #3PT HEX WSHR 4.92

SUBTOTAL: [REDACTED]
TAX: [REDACTED]
INVOICE 68221 TOTAL: [REDACTED] 7.59

BALANCE DUE: [REDACTED]

CHECK: [REDACTED]

0539 TERMINAL: 68 11/25/08 10:46:37

OF ITEMS PURCHASED: 20
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S
RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE MGR: TODD FRIDDLE

WE HAVE THE LOWEST PRICES. GUARANTEED!
TO SEE IF YOU CAN FIND A LOWER PRICE, WE'LL

STOW AWAY STORAGE LLC

OPERATING ACCOUNT
CORPORATE OFFICE - P O BOX 21427
COLUMBIA, SC 29221-1427
LOCAL - (843) 649-8110

1512

67-85/532

DATE 11/11/00

Y
TO THE
ORDER OF

\$

DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
SUMTER, SC 29150

⑈00001512⑈ ⑆053200666⑆220320741001⑈

STOW AWAY STORAGE LLC OPERATING ACCOUNT

DATE	DESCRIPTION	AMOUNT
	Asphalt job near sign; can't find invoice of III authorities. 80.0824.00	2,700.00



FENCE COMPANY
OF CHALATON

P. O. Box 2045
Mt. Pleasant, SC 29465-2045

Invoice

Date	Invoice #
11/24/2008	8279

Stowaway Storage
2988 Hwy 17N
Mt. Pleasant, SC 29464

Attention:

			P.O. Number	Terms	Due Date
				Due on receipt	11/24/2008
Date	Item	Description	Balance Due		Amount
November, 2008	CCL	Commercial Chain Link - install customer supplied gate			300.00
			Total		\$300.00

Phone # 843-797-5362

Fax # 843-554-5065

Web Site: aaafencechas.com

E-mail: aaafence@bellsouth.net

R.P. CUSTOM SIGNS
1145-D Hwy. 41
Mount Pleasant, SC 29466
(843) 881-0462

DATE May 8/09

CUSTOMER'S ORDER NO.

NAME STOWAWAY STORAGE

ADDRESS c/o ALISON

CITY, STATE, ZIP

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RETD	PAID OUT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1			
2	18" x 24" 5/8 vinyl / .080 Ret Plenum		
3	SIGNS "PRIVATE DRIVE"		116.00
4	58.00 ea.		
5	2 12" x 18" 5/8 vinyl / .080 Ret Plenum		76.00
6	SIGNS "ALL OTHERS / Trees"		
7	38.00 ea.		
8	~~1 24" x 36" 5/8 vinyl / .080 Ret Plenum~~		~~58.00~~
9			
10			
11	TOTAL		248.00
12			
13			
14			192.00
15			
16			
17			
18			
19			
20			

THANKS

RECEIVED BY

5805

Invoice

1150 Hungry Neck Blvd St C 314
Mt.Pleasant, SC 29464

Date	Invoice #
9/18/2009	1416

Bill To
Stow Away Storage Highway #17 Mt Pleasant SC 29466 C/O:Allison

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
			9/18/2009			
Quantity	Item Code	Description			Price Each	Amount
	cost adjustment	47' of speed bumps as design drawing provided by Allison. speed bumps, all mounting hardware and epoxy are provided, includes shipping & handling and labor Out-of-state sale, exempt from sales tax			1,425.54 0.00%	1,425.54T 0.00
All work is complete!					Total	\$1,425.54

Guardian Fence Suppliers

1103 Pasture Lane • Columbia, South Carolina 29201
(803) 254-0460 • (800) 845-2526 • FAX (803) 256-1047

September 30, 2008

Bert Pooser III
Stow Away Storage
2988 Highway 17 North
Mt. Pleasant, South Carolina 29466

Re: Quote for Barrier Gate Operator.

Dear Bert,

We are pleased to quote you furnished and installed for gateposts, gate fabrication, gate operator and accessories, which reflect the following specifications:

Gate Posts: Two (2) 6 5/8" x 7' Round Schedule 40 Wt. gateposts.

Gate: Weld horizontal supports to existing 2" framed Barrier Gate on site.
2 each.

Gate Operator: One (1) FAAC Model 415 Electro Mechanical 115 VAC Bi-Parting
Swing Gate Operator.
See attached cut sheet.

Access: Eight (8) FAAC 1418 Transmitters

Surge Protection: One (1) High Voltage Surge Protector for Operator.
One (1) Low Voltage Surge Protector for Accessories.
Two (2) Ground Rod Systems.

Safety: Operator is UL 325 Compliant.
One (1) Set of Photo Safety Beams. Stops gate if beam is broken.
Two (2) Vehicle Safety Loops & Loop Detector. Stops gate if vehicle is on the
embedded loop.

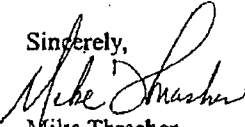
Power Source: 115 VAC Electrical Power to be installed by Guardian Fence Suppliers
from Owners sign. (Approximately 30')

Warranty: Two (2) Year Warranty on Operator.
One (1) Year Warranty on Accessories.
One (1) Year Warranty on Workmanship.
No Warranty on Lightning.

Guardian Fence Suppliers is a FAAC Stocking Distributor and Service Maintenance Center. Guardian Fence Suppliers services all of its installations. Service Maintenance contracts are available.

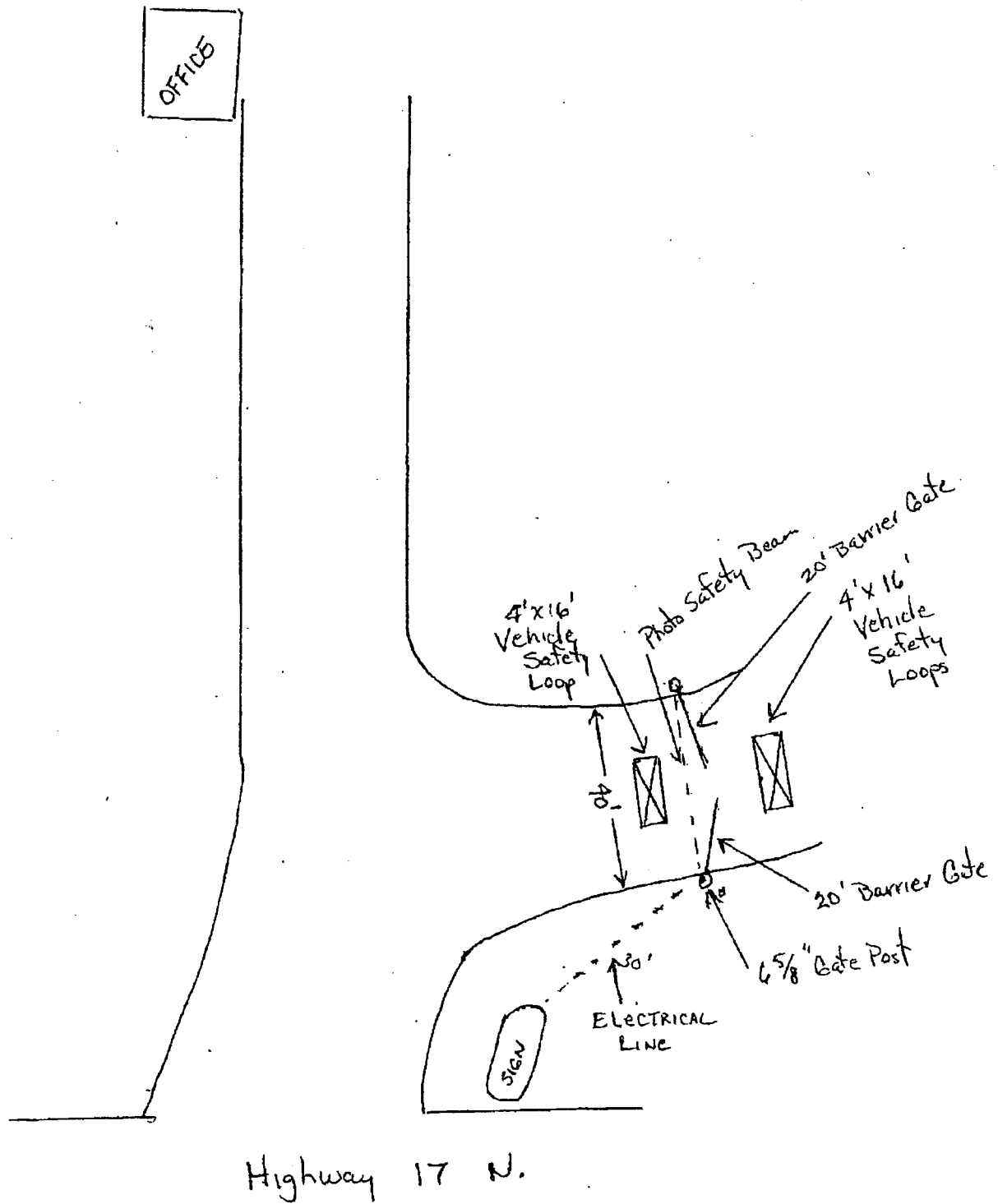
Total Price Installed.....\$8,412.49

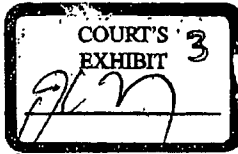
Thank you for the opportunity for working with you on this project.
Please contact me if you have any questions.

Sincerely,

Mike Thrasher
Guardian Fence Suppliers

Accepted _____ Date _____

STOW AWAY STORAGE





STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

) IN THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2011-CP-10-2444

**THE DEFENDANTS GEORGE W.
SISSON, 4.0 LLC, THE SISSON
FOUNDATION LIMITED
PARTNERSHIP, AND SWEETGRASS
HARDWARE, INC.'S REPLY TO THE
ORDER OF JUNE 21, 2016**

BY 2

JULIE J. ARMSTRONG
CLERK OF COURT

2016 JUL 18 PM 1:39

FILED

TO: G. DANA SINKLER, ESQ.
ATTORNEY FOR PLAINTIFF

The Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, Sweetgrass Hardware, Inc., (hereinafter the "Defendants") by and through its undersigned counsel submit the following reply to the Order of the Honorable J.C. Nicholson, Jr., dated June 21, 2016

REPLY

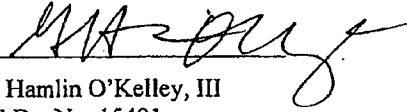
1. There were no monies exchanged for the use of the Access Easement and Abandonment of Encroachment Permit by and between Stow Aware Storage, LLC, and George Sissons a/k/a George W. Sissons and any of the Defendants.

{00802027.DOC}

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina

July 14, 2016

By: 

G. Hamlin O'Kelley, III

SC Bar No. 15491

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Hamlin.okelley@buistbyars.com

{00802027.DOC}

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC and MSC MTP, LLC
PLAINTIFF(S)

George W. Sisson, et al
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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(f), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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: Plaintiff's Motion to Reconsider filed on 4/21/17 is respectfully denied without a rehearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

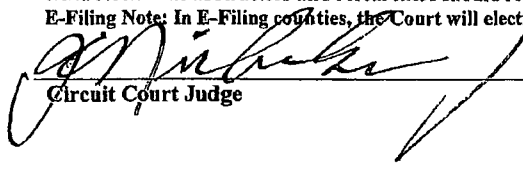
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117

Judge Code

5/4/17
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STOW AWAY STORAGE, LLC

Plaintiff(s)

vs.

GEORGE W. SISSON, ET AL.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 10- 2444

(Please Print)

Submitted By: G. Dana Sinkler

Address: WARREN & SINKLER, LLP

Post Office Box 1254, Charleston, SC 29402

SC Bar #: 5138

Telephone #: 843-577-0660

Fax #: 843-577-6843

Other:

E-mail: dsinkler@warren-sinkler.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

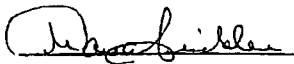
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20____-CP-_____ ☒ Other (299) Tortious Interference with Contract Against Sweetgrass Hardware, Inc.	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☒ Other (499) Declaratory Judgment, Injunction and Equitable Indemnity - All Defendants Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	☐ Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	
☐ Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: 

Date: April 4, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)

Plaintiff,)

vs.)

GEORGE W. SISSON,
4.0 LLC, THE SISSON
FOUNDATION LIMITED
PARTNERSHIP,
SWEETGRASS HARDWARE,
INC. AND TIMARAND, INC.,)

Defendants.)

SUMMONS
(NONJURY)

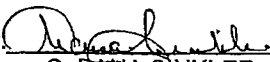
BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2011 APR -4 PM 1:31

FILED

TO THE DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscribers, at their offices located at 171 Church Street, Suite 340, Post Office Box 1254, Charleston, South Carolina 29402, 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, Plaintiff will apply to the Court for the relief demanded in the Complaint.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina
April 4, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)

Plaintiff,)

vs.)

GEORGE W. SISSON,
4.0 LLC, THE SISSON
FOUNDATION LIMITED
PARTNERSHIP,
SWEETGRASS HARDWARE,
INC. AND TIMARAND, INC.,)

Defendants.)

COMPLAINT
(NONJURY)

2011 APR-4 PM 1:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

The Plaintiff above named, complaining of the Defendants above named, alleges
and says:

IDENTIFICATION OF PARTIES

1. Stow Away Storage, LLC (hereinafter "Stow Away") is a limited liability
company organized and existing under the laws of the State of South Carolina.
2. Stow Away is the owner of two adjoining tracts of land on the north side of
U.S. Highway 17 North, aggregating 8.82 acres of land and described as follows:

ALL that certain piece, parcel, or lot of land, situate,
lying, and being in the Parish of Christ Church, County of
Charleston, South Carolina, measuring and containing 5.36
acres, more or less, shown on a Plat made by E.M.
Seabrook, Jr., Inc. dated May 17, 1989, entitled 'Lands of
Mary C. Seabrook, Yough Hall Plantation, Christ Church
Parish, Charleston County, South Carolina.' Said Plat is
recorded in the RMC Office for Charleston County, South
Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the
North on lands now or formerly of Salah Hibri, a/k/a Salah

Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled 'Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina' by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

3. Defendant George W. Sisson (hereinafter "Sisson") is a resident of Charleston County and a prior owner of the property hereinafter described in paragraph

4. Sisson, in his individual capacity, signed the Access Easement and Abandonment of Encroachment Permit hereinafter referenced in paragraph 14.

4. Defendant 4.0 LLC is a South Carolina Limited Liability Company, created by Sisson, its sole member, which owns a 99% interest in a 5.862 acre tract of land abutting the property of the Plaintiff on the east and described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, shown and designated as Tract 4A, 255,357 sq. ft. 5.862 acres, as shown on a plat entitled 'A Subdivision Plat of Tract 4 containing 17.828 acres', prepared by John T. Byrnes, II, R.L.S., dated July 6, 1995, and recorded at the Charleston County RMC Office in Plat Book EA, at page 742; said tract having such actual size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

Subject to all easements and restriction of record.

The said property was conveyed to 4.0 LLC by its sole member, George W. Sisson, by deed dated December 31, 2002 and recorded in the RMC Office for Charleston County in Book V431 at page 450.

5. Defendant The Sisson Foundation Limited Partnership (hereinafter "Sisson Foundation") is a South Carolina Limited Partnership, created by Sisson, which owns a 1% interest in the 5.862 acre tract of land abutting the property of Plaintiff on the east as described in paragraph 4 above. Sisson Foundation acquired said property by deed of Double G. Foundation LLC, dated April 29, 2003, and recorded in the RMC Office for Charleston County in Book A447 at page 99. Double G Foundation LLC was created by Sisson, who is its sole member. It acquired the property by deed of its sole member, Sisson, dated December 31, 2002, and recorded in the RMC Office for Charleston County in Book V431 at page 453. Sisson Foundation is a necessary party to these proceedings by virtue of its ownership of a 1% interest in the property described in paragraph 4.

6. Sweetgrass Hardware, Inc. (hereinafter "Sweetgrass") is a corporation organized and existing under the laws of the State of South Carolina, holding a

leasehold interest in property east of the 5.862 acre tract owned by Defendant 4.0 LLC and Sisson Foundation, and operating a hardware store thereon. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

7. Timarand, Inc. (hereinafter "Timarand") is the owner of the tract of land described in paragraph 6 above and the landlord of the Defendant Sweetgrass. As owner of said tract, Timarand is a necessary party to these proceedings.

FACTS ON WHICH THIS ACTION IS BASED

8. On July 13, 1999, Stow Away, by its managing member, filed with the South Carolina Department of Highways and Public Transportation (hereinafter "SCDHPT") an Application for Encroachment Permit requesting access to drive to the parcel described in paragraph 2. The access was from U.S. Highway 17 (hereinafter "Hwy. 17") opposite the Porcher Bluff Road intersection with Hwy. 17 and was to be 24' wide with a 30' radius on the south side and a 40' radius on the north side.

9. In the course of negotiations with SCDHPT, its name changed to the South Carolina Department of Transportation (hereinafter "SCDOT").

10. In response to Stow Away's application for an encroachment permit, SCDOT ultimately agreed to the encroachment permit requested and required Sisson, then the owner of the property now held by Defendants 4.0 LLC and Sisson Foundation, to abandon the access previously used by him for ingress to and egress from Hwy. 17.

11. On March 21, 2000, E.L. Pooser, III, the managing member of Stow Away, wrote a letter to Mr. Sisson offering him an easement across Stow Away's property to and from Hwy. 17 in exchange for his abandonment of his original access.

12. Included with the letter was a draft of the easement offered.

13. Sisson "Acknowledged and Agreed" to the offer and the abandonment of his original access by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1)

14. On October 17, 2000, the ACCESS EASEMENT AND ABANDONMENT OF ENCROACHMENT PERMIT was signed by both E.L. Pooser, III, as Managing Member of Stow Away, and George W. Sisson a/k/a George W. Sissons. The document was subsequently recorded in the RMC Office for Charleston County on November 16, 2000 in Book U358, page 109. (Exhibit 2)

15. Following several telephone conversations with Stow Away's member, Bert Pooser, on September 27, 2006, Tim Askins, the sole shareholder of Timarand, had his wife fax a sketch to Pooser, depicting a proposed extension of the Access Easement previously provided to Sisson which would have allowed access over Stow Away's Access Easement to Timarand's property, which he subsequently leased to Sweetgrass. (See Exhibit 3) Pooser never agreed to the proposed extension.

16. On January 3, 2007, the Defendant Timarand and the Defendant Sweetgrass entered into a lease of the property described below, pursuant to the provisions of which Timarand leased the property to Sweetgrass for a term of 10 years with an option to extend the term for two additional 5 year periods. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

(See Memorandum of Lease, Exhibit 4)

17. The deed and plat by which Timarand acquired the property leased to Sweetgrass provided access to U.S. Highway 17 North only to the east of Sisson's property as shown on plat recorded in the RMC Office for Charleston County in Plat Book CD at page 139 and plat recorded in the RMC Office for Charleston County in Plat Book EA at page 742. (Exhibits 5 and 6)

18. Shortly after Sweetgrass leased the property from Timarand, it renovated and enlarged a commercial building on the property for use as a retail hardware store.

19. In the course of preparing its leased property for use as a hardware store, large trees and shrubbery blocking access to Sisson's property were removed and Sweetgrass constructed a gate on its west property line, thereby providing access to its

property from the access to Hwy. 17 that Sisson had agreed with Stow Away to abandon.

20. Upon completion of renovations and opening of the store, customers of Sweetgrass, with the permission of Sisson, began using the old easement to Sisson's property which he had agreed to abandon under the terms of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000. Indeed, Sisson and/or Sweetgrass paved the old easement on April 19, 2009 to facilitate its use, notwithstanding Sisson's contractual agreement to abandon it.

21. Despite the SCDOT's objection, Sweetgrass and its customers continued to use the access Sisson had agreed to abandon to reach the hardware store. (See Letter from Richard L. Turner, P.E., Resident Maintenance Engineer dated July 21, 2008 attached as Exhibit 7)

22. Shortly thereafter, the SCDOT erected barriers to prohibit further use of the access Sisson had agreed to abandon, thereby limiting access to both Stow Away's property and Sisson's property and extinguishing the access of the customers of Sweetgrass.

23. Thereupon, Sweetgrass and its customers began using the access constructed by Stow Away on its property to access Sweetgrass' hardware store.

24. By letter dated August 20, 2008, counsel for Stow Away wrote Sweetgrass' President demanding that he notify his customers to cease using Stow Away's access to reach Sweetgrass' store. (See letter attached as Exhibit 8)

25. This demand was met by a written response from Sweetgrass' attorney, dated November 10, 2008, advising that: "Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (See letter attached as Exhibit 9)

26. Counsel for Stow Away then sent an email to Sweetgrass' attorney asking him to email him a copy of the document by which Sweetgrass Hardware, Inc. had become "a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (Exhibit 10)

27. It developed that, in point of fact, Sweetgrass did not hold any written lawful assignment, but counsel for Sweetgrass then proceeded to obtain a License Agreement from 4.0 LLC to Sweetgrass dated November 13, 2008 (3 days after counsel had advised that Sweetgrass was already a "lawful assignee of Mr. Sissons [sic].") (See License Agreement attached as Exhibit 11)

28. The License Agreement, by its terms and according to law, was and is personal to Sweetgrass and "may not be sold, transferred, assigned or given to any third party." (License Agreement ¶ 10)

29. Nonetheless, both Sisson, individually and as sole member of 4.0 LLC,, and Sweetgrass have persisted in asserting that the License Agreement allows Sweetgrass to assign to its customers the use of Stow Away's Easement and have refused to relent in their insistence that Sweetgrass' customers have the right to use Stow Away's Easement and have threatened that "any further attempt by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and

damages for any lost business." (See letter from Sweetgrass' counsel, Exhibit 12, and letter from George Sisson, Exhibit 13)

30. The law is well settled that the dominant tenant of an easement appurtenant cannot assign or convey a right to use such easement to an owner of property beyond the boundary of the dominant estate.

31. By their action, Sisson, 4.0 LLC and Sweetgrass have placed Stow Away in such relationship with Sweetgrass and its customers as makes it necessary for Stow Away to incur expenses, including but not limited to, legal expenses and costs to protect its interests, and the costs and expenses that Stow Away has already incurred and will occur in this litigation are the legal consequences of their actions.

FOR A FIRST CAUSE OF ACTION AGAINST SISSON,
4.0 LLC, SISSON FOUNDATION, SWEETGRASS AND TIMARAND
(Declaratory Judgment and Permanent Injunction)

32. Each and every allegation set forth above is fully incorporated herein.

33. The actions of Sisson, individually and through 4.0 LLC and Sisson Foundation, and Sweetgrass and its customers, in attempting to obtain for Sweetgrass and its customers, the unfettered right to the use of the easement across Stow Away's property by granting Sweetgrass a license to use the easement, violates the law of easements which proscribes the attempted expansion of the easement by the dominant tenant (Sisson, 4.0 LLC, Sisson Foundation) to Sweetgrass and its customers who are privy to a leasehold interest in property situate beyond the boundary of the servient estate. Additionally the License, by its terms, and by law, is personal to Sweetgrass and unassignable. Stow Away is therefore entitled to a permanent injunction enjoining those

parties from further use of Stow Away's easement and allowing Stow Away to take the necessary action to prevent the continued use of the easement, including, but not limited to, the installation of remote controlled gated access for Sisson, 4.0 LLC and Sisson Foundation and their invitees, to the exclusion of Sweetgrass and its customers. As landlord of Sweetgrass and owner of the leased property, Timarand is a necessary party to these proceedings to the extent that it sanctions the actions of Sweetgrass and Sisson and claims any interest in Stow Away's easement to Sisson.

FOR A SECOND CAUSE OF ACTION AGAINST
THE DEFENDANT SWEETGRASS
(Tortious Interference with Contract)

34. Each and every allegation set forth above is fully incorporated herein.

35. Sweetgrass, with knowledge of the contract existing between Sisson and Stow Away pursuant to the terms of the Access Easement and Abandonment of Encroachment Permit (Exhibit 2), first asserted, through its counsel, that it was "a lawful assignee of Mr. Sissons [sic] and therefore entitled to the full benefit of the Easement." (See Exhibit 9)

36. When requested by counsel for Stow Away to provide a copy of the document establishing Sweetgrass' entitlement to the full benefit of the Easement, counsel for Sweetgrass then acquired and produced a License Agreement (See Exhibit 11), which by law and by its terms is not assignable. Nonetheless, Sweetgrass persisted in assigning to its customers the right to use the Stow Away Easement and threatened Stow Away with legal action for injunctive relief and damages if it should interfere with the access of Sweetgrass or its customers. (See Exhibits 12 and 13)

37. The actions of Sweetgrass were willful and unjustified and constitute tortious intentional and reckless interference with the contractual rights of Stow Away pursuant to Access Easement and Abandonment of Encroachment Permit (Exhibit 2) existing between Stow Away and Sisson, 4.0 LLC and Sisson Foundation, and have damaged Stow Away by subjecting its property to voluminous traffic without legal authority, causing it to gate its access and incur expenses in trying to prevent the unauthorized use of its easement and in necessitating the expenditure of substantial sums for legal fees, costs and expenses to protect its property interests and respond to the threats of Sweetgrass.

38. By virtue of its willful and unjustified conduct, Sweetgrass is liable to Stow Away for actual and punitive damages.

FOR A THIRD CAUSE OF ACTION AGAINST SISSON,
4.0 LLC AND SISSON FOUNDATION
(Equitable Indemnity)

39. Each and every allegation set forth above is fully incorporated herein.

40. The actions of Sisson individually and through 4.0 LLC and Sisson Foundation are in breach of the contract between Stow Away and Sisson and have placed Stow Away in such relationship with Sweetgrass and its customers as makes it necessary for Stow Away to incur expenses, including, but not limited to, attorney's fees and costs to protect its interests and enjoin Sweetgrass and its customers, and the costs and expenses that Stow Away has already incurred and will continue to incur in pursuing this action to enjoin the violation of its property rights are the legal consequence of their actions.

Wherefore, Stow Away prays for the following relief:

1. A judgment declaring the Easement granted to Sisson to be an easement appurtenant granted for the purpose of providing Sisson the right of ingress and egress to and from his property for the benefit of Sisson and his property;
2. A judgment declaring that, as holder of an easement appurtenant to his property (the dominant estate), neither Sisson nor 4.0 LLC nor Sisson Foundation have any right to expand the easement to property beyond the boundary of the dominant estate.
3. A judgment declaring that, under the terms of the License granted by Sisson and 4.0 LLC to Sweetgrass, and the law of Licenses, any right that Sweetgrass has to use Stow Away's Easement is not assignable.
4. A permanent Injunction, enjoining Sisson, 4.0 LLC, Sisson Foundation, Sweetgrass and Timarand from allowing Sweetgrass or its customers or employees to use Stow Away's access easement to Hwy. 17 and allowing Stow Away to limit access to its easement by gated access operable only by suitable remote control devices which shall not be made available to Sweetgrass or its customers.
5. A judgment holding that, by ignoring Stow Away's protestations against the use of its easement by Sweetgrass and its customers and entering into a License Agreement with Sweetgrass intended for their use of Stow Away's easement, Sisson and 4.0 LLC and Sisson Foundation have violated the terms of the Access Easement And Abandonment of Encroachment Permit and the terms of the License.

6. A judgment against Sweetgrass for actual and punitive damages for insisting on the right of its company and customers to utilized Stow Away's easement to Sisson to gain access to its hardware store, and violating Stow Away's rights under the Access Easement and causing Stow Away to incur damages, including the costs and expenses of gating its access, in an effort to stop Sweetgrass' customers from using its property and incurring attorney's fees and costs in attempting to protect its interests.

7. A judgment awarding it Equitable Indemnity and judgment against Sisson, 4.0 LLC, Sisson Foundation and Sweetgrass for all attorney's fees, costs and expenses incurred in protecting its rights under the terms of the Access Easement and Abandonment of Encroachment Permit.

8. A judgment against Sweetgrass for actual and punitive damages for its tortious interference with the contractual terms of its Access Easement with Sisson.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Defendant

Charleston, South Carolina

April 4, 2011

STOW AWAY STORAGE, LLC
One Surrey Court
Columbia, South Carolina 29212

March 21, 2000

Mr. George Sissons
Charleston, South Carolina

RE: Access Easement

Dear Mr. Sissons:

As we discussed I enclose a form of Easement Agreement to be given by Stow Away Storage, LLC. The easement would give you a perpetual right to utilize Stow Away's driveway, at no cost and expense, to access U.S. Highway 17. The preliminary plans for our driveway and the location of the drive easement for you are attached to the easement. As these plans are finalized a complete definitive description of the easement will be attached to the easement and it will be recorded.

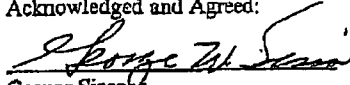
In connection with our granting the drive easement, you will be abandoning and terminating your drive cut on Highway 17. The easement has appropriate language for this purpose in it, as well.

If you are agreeable to terminating and abandoning your drive cut in exchange for the easement to be granted by us as described in the easement document, please acknowledge the same by signing a copy of this letter where indicated below and returning it to me at your earliest convenience. Should you have any questions, please do not hesitate to contact me.

Best regards,

E. L. Pooser, III

Acknowledged and Agreed:


George Sissons
Dated: 3-27-00

BK U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)
)
)

ACCESS EASEMENT
AND
ABANDONMENT OF
ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons* (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

NPCCOL1426908.1-EA-(JAS) 025284-00000

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

NPCOL1428583.1-EA-(JAB) 028294-00000

BK U358PG111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: *E.L. Pooser, III*

Name: E.L. Pooser, III

Title: Member

Michael J. Pauland
WITNESS NO. 1

Maria G. Davis
WITNESS NO. 2

GRANTEE:

George W. Sissons
George Sissons

*aka George W. Sissons

Christi L. Orr
WITNESS NO. 1

Adam Baker
WITNESS NO. 2

NP0011420609.1-BA-(JAS) 025294-00000

HK U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by E.L. Pooser, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Wesley J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2000

Tammy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2007

NPCOL1429582.1-EA-(IAS) 026394-00000

BK U358PG113

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sissons*, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Cristi M. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Angela Baker Jenkins (LS)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

NPCOL1420500.1-EA-(JAS) 025204-00000

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION:

Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

NPCOL1420569.1-EA-(JAS) 022264-00000

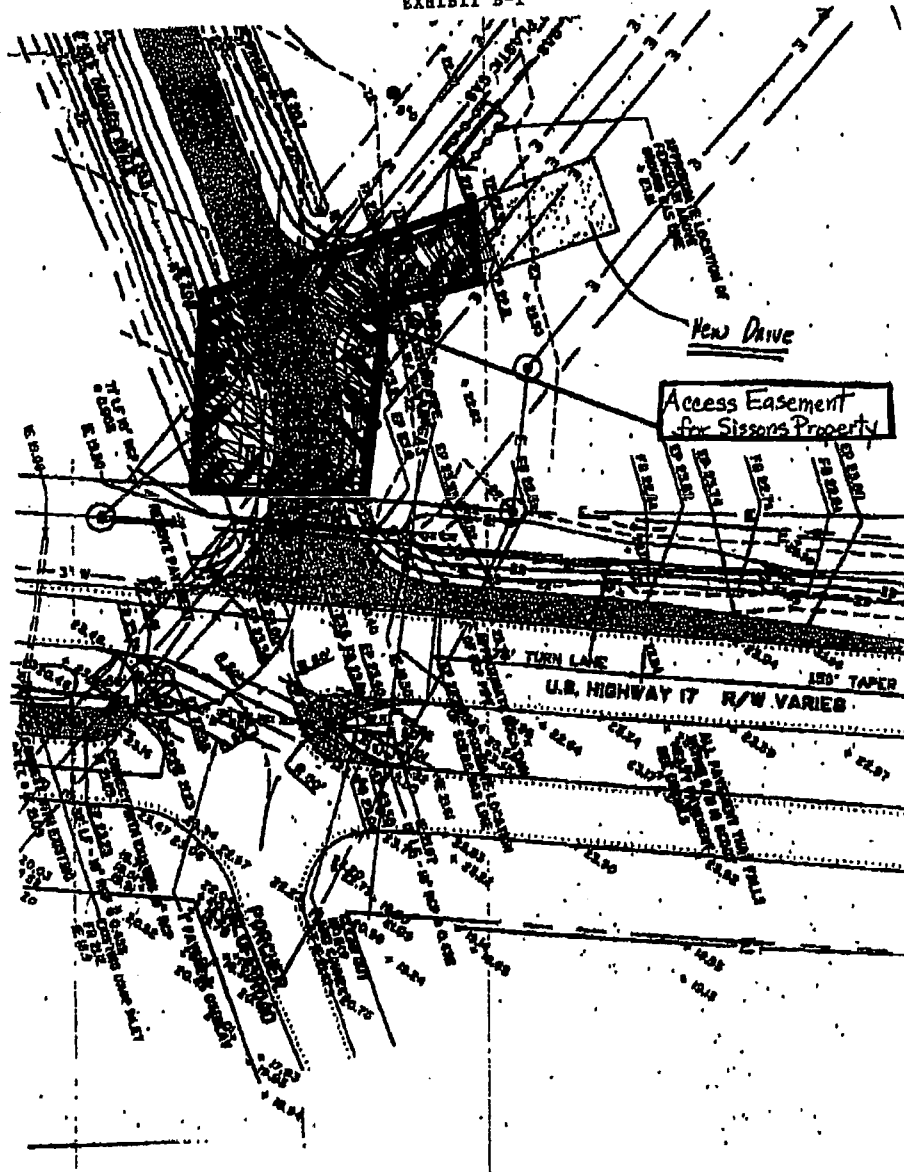
EX U358P6115

EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for
Sissons Property" and further depicted by hashmarks on the attached sketch labeled Exhibit B-1.

NPCOL1429509.1-EA-(JAS) 028294-00000

EXHIBIT B-1



Naxsen Pruet Jacobs

→ Pollard

P.O. Drawer 2426

Coln, SC 29202-9732

✓
L

(8)

EX P U358PG117

FILED

U 358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

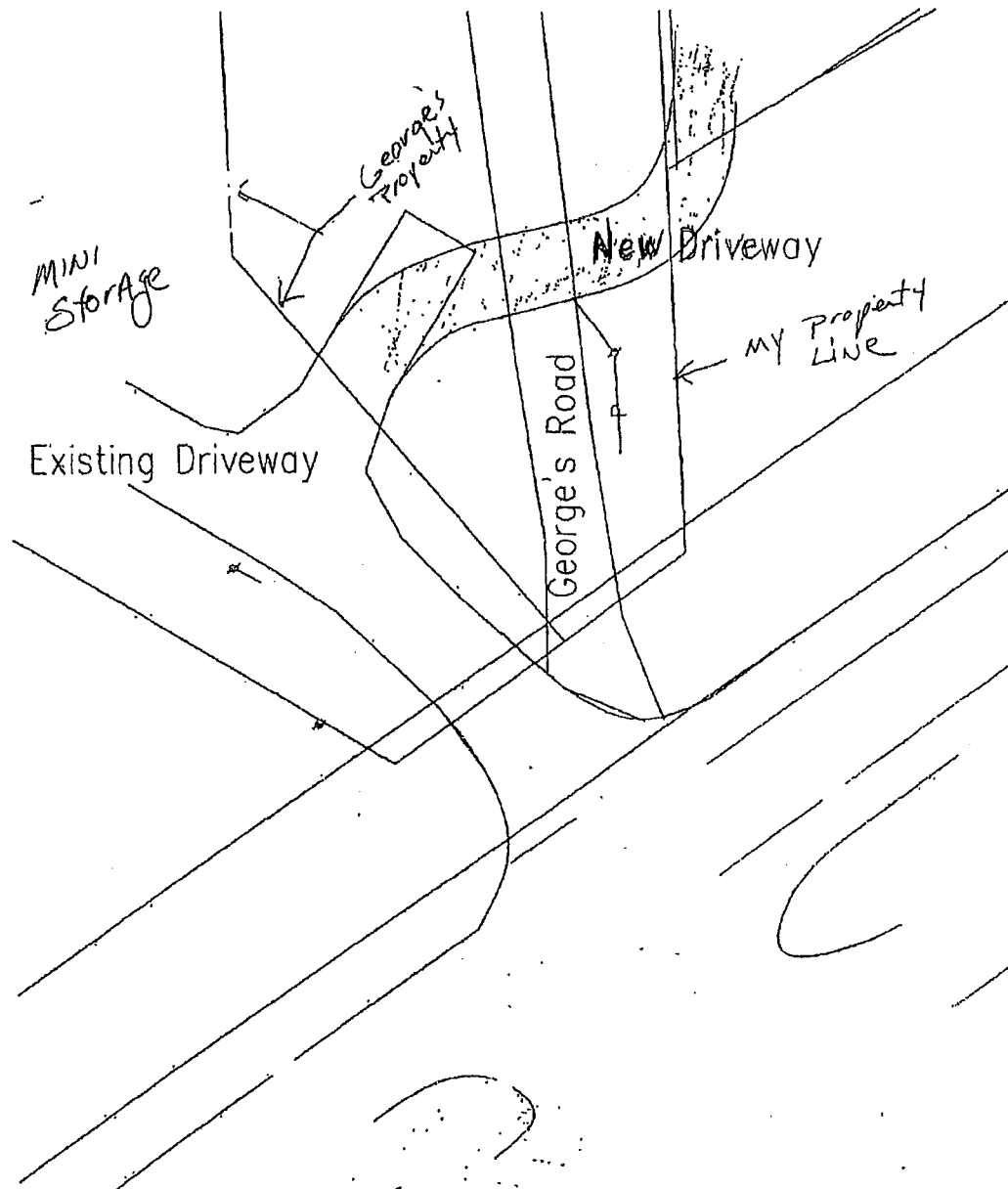
14.00B

Sep 27 06 05:10p

Karen Askins

8438818753

p.1



Att: Bert P. III

From: Tim Askins

BK R 632PG231

SWEETGRASS

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON } MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into this 12th day of July, 2007 by and between Timarand, Inc. (hereinafter referred to as "Landlord") and Sweetgrass Hardware, Inc. (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, on or about the 3rd day of January, 2007, Landlord entered into a Lease with Tenant for the lease of all that real property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

WHEREAS, the Landlord and Tenant desire to execute the within Memorandum of Lease for the purpose of placing on public record the identity of the Landlord and Tenant and the term of the lease.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the undersigned, for valuable consideration, hereby declare that Landlord has entered into a Lease whereby Tenant agrees to lease and continue to lease all that real property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. The initial term of this Lease is ten (10) years ending December 31, 2016. The Lease provides for up to two (2) separate consecutive renewal terms of five (5) years each.

Inquiries may be made as follows:

Landlord: Timarand, Inc.
1620 Home Farm Road
Mt. Pleasant, SC 29464

Tenant: Sweetgrass Hardware, Inc.
3008 North Hwy 17
Mt. Pleasant, SC 29464

BK R 632PG232

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 12 day of
July, 2007.

WITNESSES:

Elizabeth P. Martin
Elizabeth P. Martin

LANDLORD: Timarand, Inc.

By: *David R. Dixon*
David R. Dixon
Its: Vice-President

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

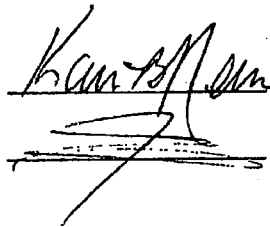
The within instrument was acknowledged before me by Timarand, Inc..

SWORN to before me this
12 day of July, 2007

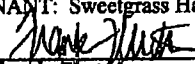
Elizabeth P. Martin
Notary Public for South Carolina
My commission expires: 2/1/09

BK R 632PG233

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this 12 day of July, 2007.



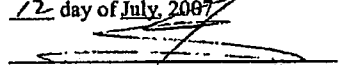
TENANT: Sweetgrass Hardware, Inc.

By: 
Frank Fletcher
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The within instrument was acknowledged before me by Sweetgrass Hardware, Inc..

SWORN to before me this
12 day of July, 2007


Notary Public for South Carolina
My commission expires: 11-7-11

BK R 632PG234

EXHIBIT A

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139.

TMS#: 598-00-00-027

Sweetgrass lease

72

8K R 632PG235

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

July 17, 2007

10:23:32 AM

8K R 632PG231

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Dodds & Hennessy, L.L.P.

Attorneys at Law

P.O. Box 298

Charleston

SC 29402

Number of Pages:

5

DESCRIPTION

AMOUNT

DESCRIPTION	AMOUNT
MISC MEMO	\$ 10.00
Postage	

TOTAL

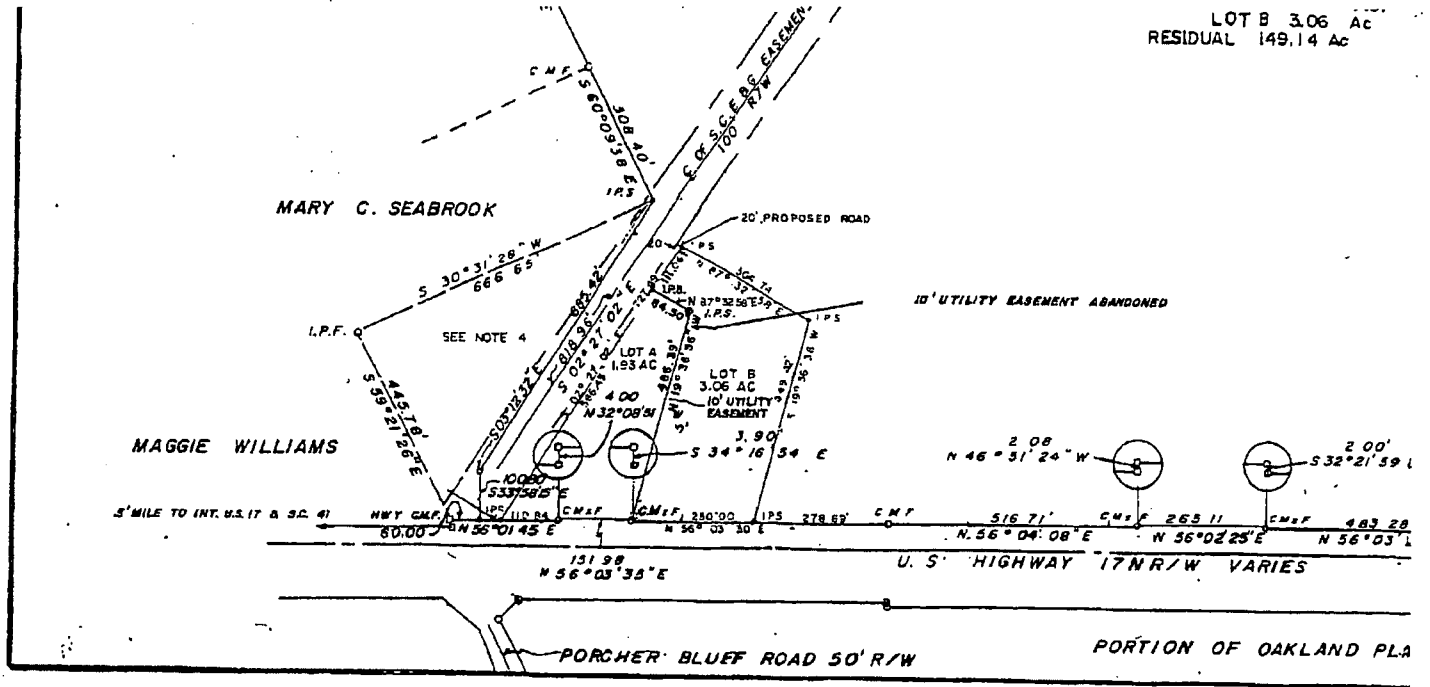
\$ 10.00

DRAWER:

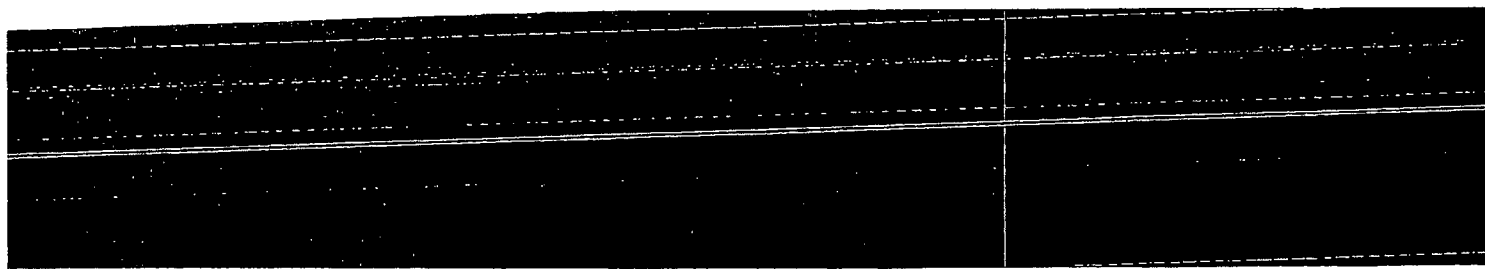
A - BJA

DO NOT STAMP BELOW THIS LINE

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

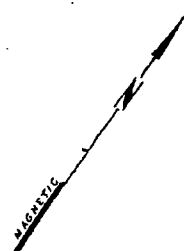


ROA 148



3

EXHIBIT

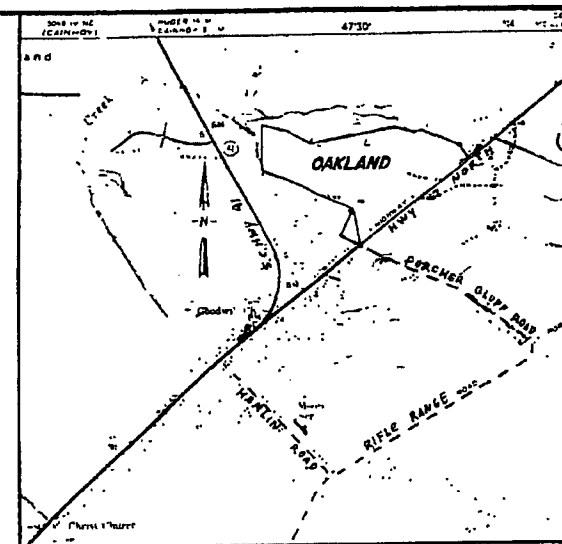


JR

BY THE RECORDING OF THIS PLAT, WE HEREBY
ABANDONED THE 10' UTILITY EASEMENT AS
SHOWN ON PREVIOUSLY RECORDED DOCUMENTS.

Salah Hibri

SALAH HIBRI



LOCATION MAP
NOT TO SCALE

REFERENCES 1. TMS 598-00-00-16

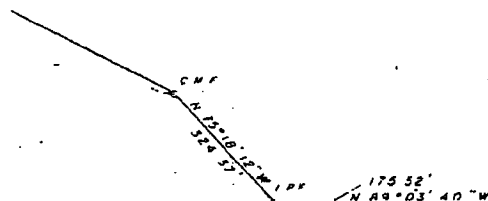
2. S.C. HIGHWAY DOCKET HQ 10-758, SHEET 13

3. PLAT BY JAMES L. OWEN, JR. ENTITLED
"PLAT SHOWING A PORTION OF OAKLAND
PLANTATION OWNED BY FERDINAND GREGGIE
SITUATED IN CHRIST CHURCH PARISH,
CHARLESTON COUNTY, S.C." DATED APRIL 8, 1984

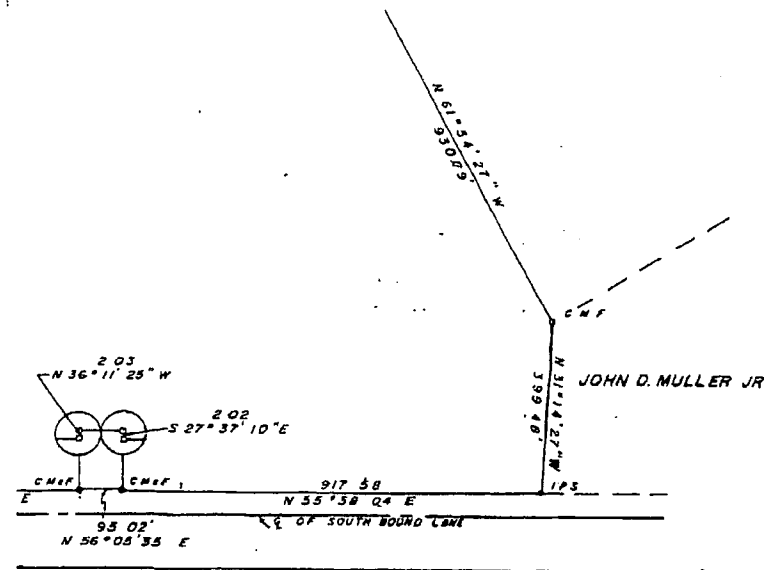
4. APPROVED PLAT BY CHAS CO PLANNING BOARD
(18/20) PLAT BY JAMES L. OWENS, JR.
TITLED "SUBDIVISION PLAT SHOWING A PORTION
OF OAKLAND PLANTATION OWNED BY OAKLAND
ASSOCIATES, A SOUTH CAROLINA LIMITED PARTNERSHIP,
SITUATED IN CHRIST CHURCH PARISH, CHARLESTON
CNT, S.C." DATED MAY 23, 1985. APPLICATION # 11105

THESE LOTS ARE A SUSAN
HEALTH DEPARTMENT STAY
FOR A MODIFIED CONVEY
SUB-SURFACE DISPOSAL BY

LEGEND 1 IRON PIPE FOUND - I.P.F.



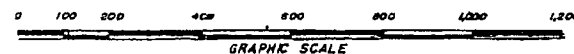
ROA 149



**SUBDIVISION PLAT SHOWING A PORTION OF
OAKLAND PLANTATION OWNED BY SALAH HIBRI, SITUATED
SITUATED IN CHRIST CHURCH PARISH, CHARLESTON
COUNTY, SOUTH CAROLINA**

SCALE: 1" = 200'

FEBRUARY 22, 1989



I, JAMES L. OWEN, JR., a Registered Surveyor of the State of South Carolina, hereby certify that I have surveyed the property shown herein, that this plat shows the true dimensions of the property, that all necessary markers have been installed and the precision is 1/34,000. AREA DETERMINED BY GMD

James L. Owen Jr.

BENCHMARK SURVEYING
JAMES L. OWEN, JR. S.C. REG. NO. 7624
2319 PORTSIDE WAY
CHARLESTON, S.C. 29407
PHONE (803) 763-5804 BEEPER 720-0398

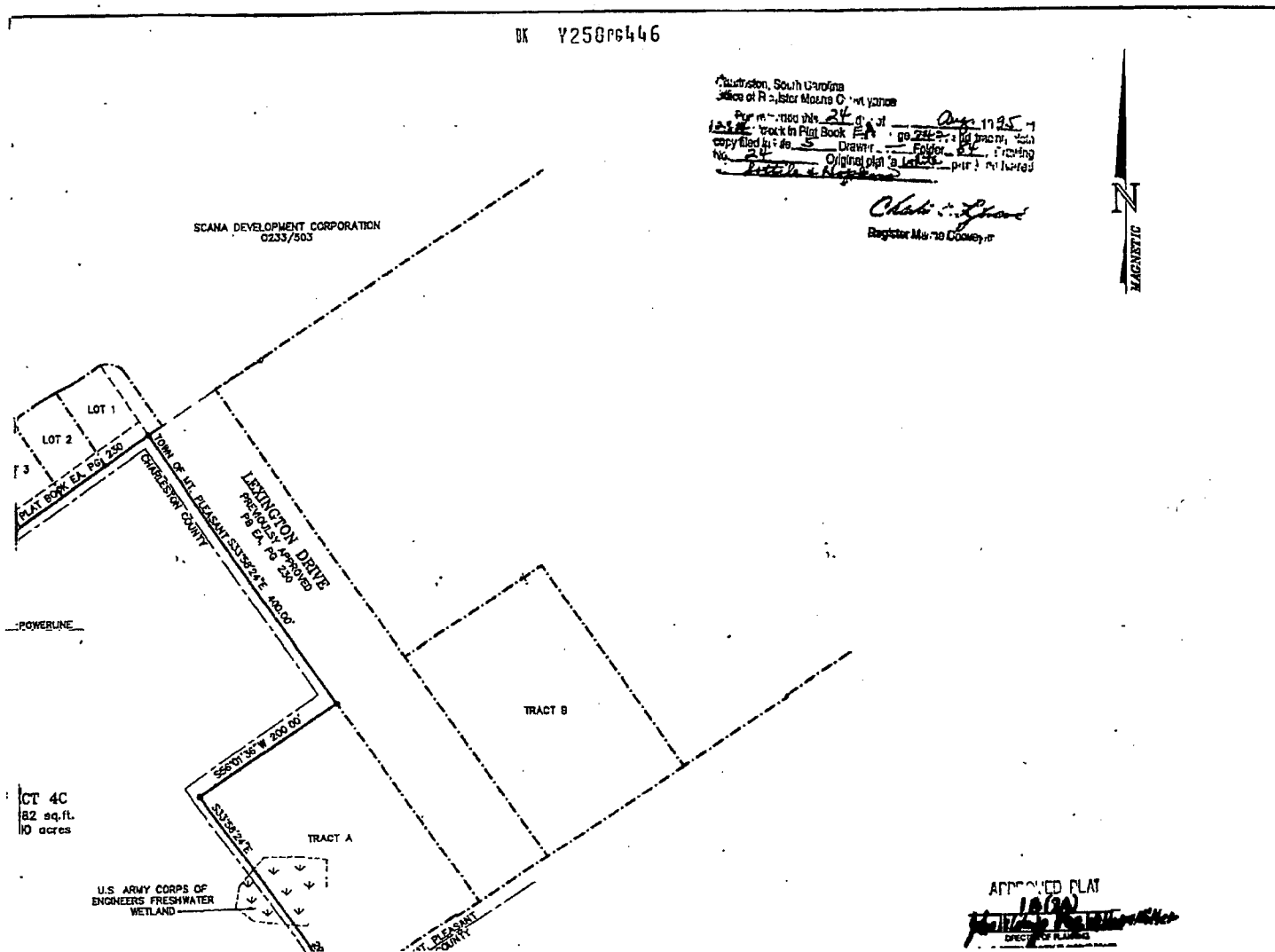


TATION

CD 139

A

ROA 152



NO.	DATE	DESCRIPTION	BY
1	9/10/95	ADD WETLANDS, LABEL TRACTS	

Southeastern Surveying, Inc.
 147 Wappoo Creek Drive - Suite 102
 Charleston, South Carolina 29412
 (803) 796-9330 FAX: 795-2007

418.96'

TO McCELLANVILLE

LINE	DIRECTION	DISTANCE
L1	N59°52'13"W	12.58
L2	S56°01'51"W	53.66
L3	S34°30'04"E	1.87

THESE LOTS ~~ARE~~ **NOT** HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM ONLY.

- NOTES:
1. ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY OF THIS PLAT IS FOR DESCRIPTIVE PURPOSES ONLY.
 2. AREA DETERMINED BY D.M.D. METHOD.
 3. THE PUBLIC RECORDS REFERENCED ON THIS PLAT ARE ONLY THOSE USED FOR THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY. THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH.
 4. THE FRESHWATER WETLANDS DEPICTED ON THIS PLAT ARE UNDER THE JURISDICTION OF THE U.S. ARMY CORPS OF ENGINEERS AND ARE SUBJECT TO ITS PERMITTING AUTHORITY.

REFERENCE

AT BOOK	PAGE
105	139
86	111
138	34
8	

ID BOOK	PAGE
16	62

S #598-00-00-029

HIGHWAY DEPT. DOCKET #10.758
IED 6/28/76

LEGEND

CONCRETE MONUMENT, OLD
IN PIPE, OLD
2" REBAR, NEW
WER POLE
ERHEAD POWER LINE
ARMY CORPS OF
GINEERS FRESHWATER WETLANDS



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

John T. Byrnes
JOHN T. BYRNES II S.C. REG. NO. 16115

A SUBDIVISION PLAT OF
TRACT 4
CONTAINING 17.828 ACRES
OWNED BY SALAH HIBRI
LOCATED IN CHRIST CHURCH PARISH
CHARLESTON COUNTY, SOUTH CAROLINA

DATE: 7-6-95
DRAWN: CAC
CHECK: MSB
JOB: 95120
DWG: 5120.DWG
SHEET: 1 OF 1

ROA 153

A

EA 742



South Carolina
Department of Transportation

July 21, 2008

Mr. John Royall
Royall Hardware
3008 N Highway 17
Mount Pleasant, SC 29466

RE: Gated Access Point

Dear Mr. Royall:

The location of an unpermitted paved access point that your business currently utilizes is dangerous to the travelling public given its close proximity to US-17 and its location within a signalized intersection. Therefore this access is being removed as required by the SCDOT. We are asking that you close the access point some of your patrons are currently using near the signalized intersection and utilize only the US-17 driveway as access to your business. The owner of the Stow Away Storage facility, which has the only permitted access point at this signalized intersection, will not allow access from his driveway. Please discontinue the use of this referenced drive.

If you have any more questions or need additional information, please do not hesitate to call me at (843) 740 - 1655 ext. 501.

Respectfully,

Richard L. Turner, P.E.
Resident Maintenance Engineer

Charleston Maintenance
2401 Maintenance Way
North Charleston, South Carolina 29405

Phone: (843) 740-1655
Fax: (843) 740-1549

AN EQUAL OPPORTUNITY
AFFIRMATIVE ACTION EMPLOYER

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1284

CHARLESTON, S.C. 29402

(843) 577-0660

LAW@WARREN-SINKLER.COM

Writer's Email: dsinkler@warren-sinkler.com

G. DANA SINKLER
JOHN H. WARREN, III
SCOTT Y. BARNES (SC & DC)
MARK S. SHARPE
ASHLEY DANTZLER WRIGHT
ALYSON C. CAMPBELL

FACSIMILE
(843) 577-6843

August 20, 2008

Mr. Frank Fletcher
Sweetgrass Hardware, Inc.
3008 N. Highway 17
Mt. Pleasant, SC 29466

Dear Mr. Fletcher:

I have been retained by Mr. E.L. Pooser, Jr., Managing Member of Stow Away Storage, LLC ("Stow Away") to represent Stow Away in connection with Sweetgrass Hardware, Inc.'s ("Sweetgrass") use of the permitted access granted by the South Carolina Department of Transportation ("SCDOT") on the west side of U.S. Highway 17 opposite the Porcher Bluff Road intersection with Hwy. 17.

On July 13, 1999, Mr. Pooser executed and forwarded to the SCDOT an Application for Encroachment Permit seeking its approval of a 24' drive with a 30' radius on the south side and a 40' radius on the north side providing access for ingress to and egress from a tract of land purchased by Stow Away from Buffalo Creek Land Company, LLC by deed dated June 22, 1998 and recorded in the RMC office for Charleston County in Book 2328 at page 662. The Application was approved by the SCDOT on March 29, 2000 on condition that the Dirt Driveway on the north side adjacent to Stow Away's property shall be removed.

At the time, and now, the "Dirt Driveway" was and is owned by George W. Sissons who owned a parcel of land north of the intersection which was accessed by the Driveway. As a condition of the Encroachment Permit granted Stow Away, Stow Away was required by SCDOT to enter into an Access Easement and Abandonment of Encroachment Permit granting Mr. Sissons access to his property. In exchange, Mr. Sissons, as Grantee, agreed to "abandon and terminate any rights Grantee may have to access U.S. Highway by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement."

In April of this year, someone caused the "Dirt Driveway" to be paved and it is presently being used to accommodate customers of Sweetgrass by providing them ingress and egress to the hardware store in violation of Mr. Sissons' agreement with Stow Away.

WARREN & SINKLER, L.L.P.

Mr. Frank Fletcher
August 20, 2008
Page 2

By letter dated July 21, 2008, Richard L. Turner, P.E., Resident Maintenance Engineer with the SCDOT, sent Mr. John Royall a letter advising that the location of the unpermitted paved access that your business is presently using is dangerous to the traveling public and will be removed. The letter also advised Mr. Royall that Stow Away, which has the only permitted access point at this signalized intersection, will not allow access from its driveway, and he was asked to discontinue the use of the unpermitted driveway.

This letter is to advise you that unless you immediately discontinue the use of the unpermitted driveway and close your access to it, Stow Away will institute an action against Sweetgrass for injunctive relief and all costs and expenses associated therewith.

Yours very truly,

WARREN & SINKLER, LLP



G. Dana Sinkler

GDS/jd



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

November 10, 2008

GRAY B. TAYLOR
ATTORNEY AT LAW
gray.taylor@buistbyars.com

Via facsimile and U.S. Mail

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
171 Church Street, Suite 340
Charleston, South Carolina 29401

Re: Stow Away Storage, LLC
Client File No.: 2008100189

Dear Mr. Sinkler,

I represent Sweetgrass Hardware, Inc., and am responding to your letter of August 20, 2008. I have visited the site, and reviewed the recorded easement by and between Stow Away Storage, LLC and George Sissons, which was recorded in the Charleston County RMC Office in Book U358, page 109, on November 16, 2000 (the "Easement").

Under the express terms of the Easement, your client granted George Sissons, and his successors and assigns, rights in the real property depicted in Exhibit B-1 of the Easement. Moreover, the Easement states that the "assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or the Grantee". Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons, and therefore entitled to the full benefit of the Easement.

On several recent occasions representatives of the Charleston County Sheriff's Department have visited my client and demanded that the gate between their parking lot and the access easement be closed. When pressed as to the reason, my client was informed that every time he opened the gate, the manager of Stow Away Storage called the Sheriff's Department and complained, taking them away from other police business. Therefore, the officer's deducted that opening the gate constituted a "public nuisance", as it resulted in phone calls to their office. I find this logic somewhat creative, but nonetheless flawed, and will take this issue up separately with the Sheriff's Department.

In response to your letter, our position is that Sweetgrass Hardware, Inc. and its patrons have a legal right to utilize the area subject to the Easement, and intend to do so. Any further

{00121273.DOC 2}

652 Coleman Blvd., Suite 200 • Mount Pleasant, SC 29464 • Tel (843)856-1488 Fax (843)856-0618

Nov. 10. 2008 1:13PM

Buist, Byars, Pearce & Taylor, LLC

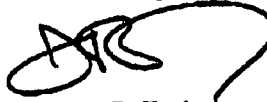
NOV. 13 2008 1:13 PM

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

attempts by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business.

Please feel free to contact me with any further questions or comments as to this matter.
With kindest regards, I remain

Yours very truly,



Gray B. Taylor

Enclosure

cc: Mr. Frank Fletcher (via email)

{00121273.DOC 2}

U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ACCESS EASEMENT
AND
ABANDONMENT OF
ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2008, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

WPCCL1:00000.1-2A(1A6) 00004-00000

U358PG110

Abandonment/Repossession Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall enable all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, his successors and assigns, forever.

HP00(1)A358PG1-1A-01A01 000004-00000

88 U358PG111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: [Signature]

Name: R.L. Foster, III

Title: Member

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

GRANTEE:

[Signature]
George Sissons

*aka George W. Sissons

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

NPCC1433196.1-BA-4(A8) 022884-00000

EX U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that
s/he saw the within-named Stow Away Storage, LLC by E.L. Foster, III, its Member, sign, seal,
and as its act and deed, deliver the within-written instrument for the uses and purposes therein
mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the
execution thereof.

Michelle J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2008

Tammy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires 2-1-2011

NPCCOL-010700-1-0A-(1A) 010204-00000

EX U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

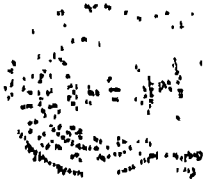
PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sissons, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Curtis H. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2008

Robert Robert Perkins (LS)
Notary Public for South Carolina
My Commission Expires 12-12-2008



NOTARY PUBLIC - SOUTH CAROLINA

BK U358PG114

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hilbi, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marous O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 5.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Show Away Storage, LLC and recorded in the Office of the Register of Meane Conveyances for Charleston County in Deed Book Z328 at page 662.

HPCCL 0427989.5-01-(1A) 026104-00000

EX U358PG115

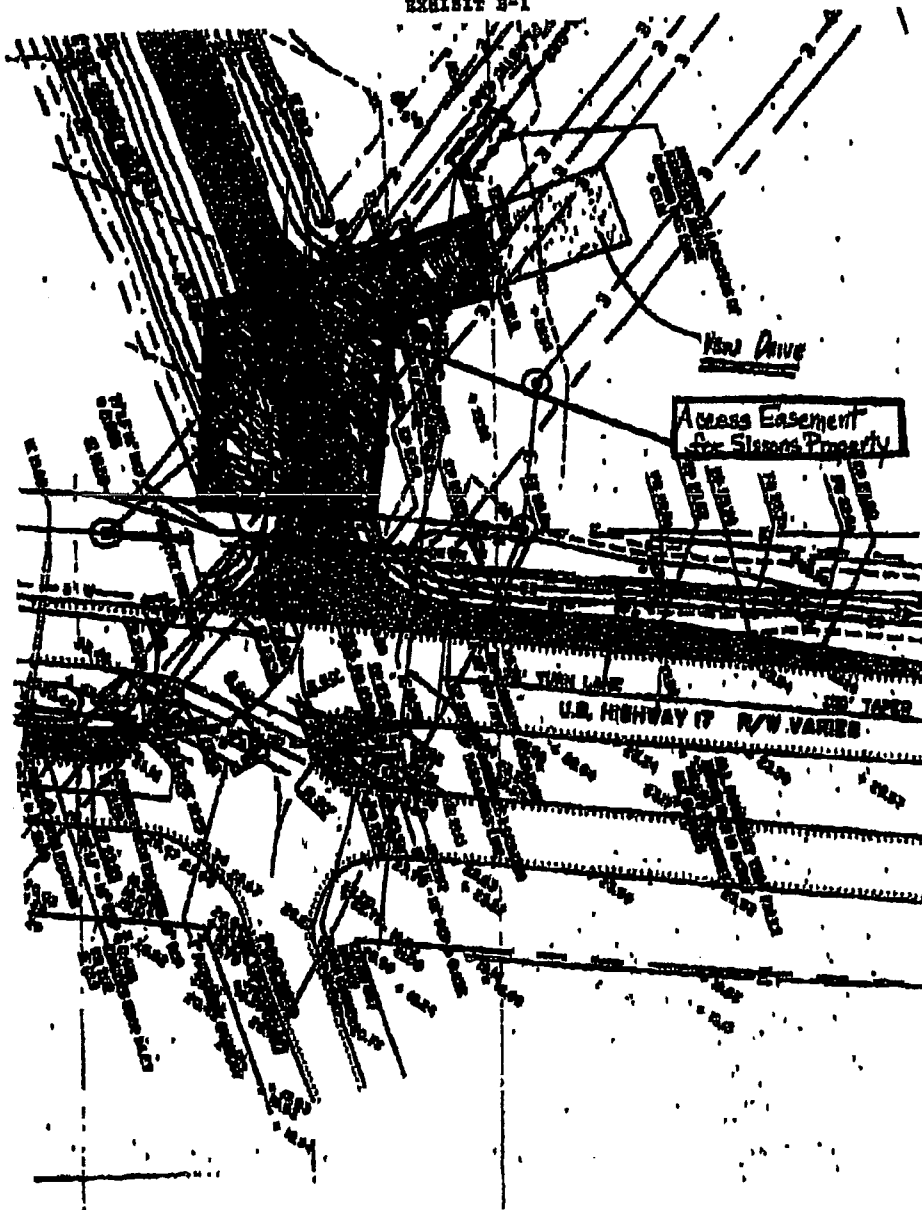
EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for
Sisena Property" and further depicted by landmarks on the attached sketch labeled Exhibit B-1.

MP0011-00000-1-00-0000 0000000000

DE U358PG116

EXHIBIT B-1



Nelson Pruet Jacobson

→ Pollard

P. O. Drawer 2426

Cole, SC 29202-9732

TS
2

(9)

U358PG117

FILED

U358-109

2008 NOV 16 PM 2:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.005

Dana Sinkler/W_and_S
11/12/2008 11:00 AM

To gray.taylor@buistbyars.com
cc
bcc bpooser3@imichotels.com
Subject Stow Away Storage-Sweetgrass Hardware,Inc.

Mr. Taylor- Please send me by email a copy of the document by which Sweetgrass Hardware,Inc.has become "a lawful assignee of Mr. Sissons,and therefor entitled to the full benefit of the Easement".I tried to access it on the internet but,apparently,it is not recorded. Thanks, Dana Sinkler

G. Dana Sinkler
Warren & Sinkler, LLP
171 Church Street, Suite 340
Charleston, South Carolina 29401
(843) 577-0660
Fax (843) 577-6843
dsinkler@warren-sinkler.com

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After recording please return to:
 Gray B. Taylor, Esq.
 Buist, Byars & Taylor, LLC
 652 Coleman Boulevard, Suite 200
 Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensor. Licensee acknowledges that Licensor may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensor is under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4. Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensor shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensor upon the motion of the Licensor for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensor AC (initial here)

Licensee JB (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensor and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensor shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensor under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi I. On

CRISTI I ON

4.0 LLC

George W. Sissons

BY: George W. Sissons

Its: Member

SWEETGRASS HARDWARE, INC.

Dana Lynn Fletcher

Dana Lynn Fletcher

Frank R. Fletcher

By: Frank R. Fletcher

Its: PRESIDENT



EXHIBIT A
(Licensee's Property)

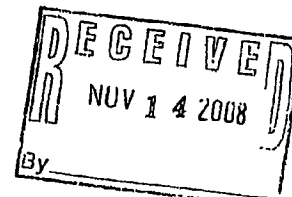
ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027

{00121607.DOC}

4

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW



November 10, 2008

GRAY B. TAYLOR
ATTORNEY AT LAW
gray.taylor@buistbyars.com

Via facsimile and U.S. Mail

G. Dana Sinkler, Esq.
Warren & Sinkler, LLP
171 Church Street, Suite 340
Charleston, South Carolina 29401

Re: Stow Away Storage, LLC
Client File No.: 2008100189

Dear Mr. Sinkler,

I represent Sweetgrass Hardware, Inc., and am responding to your letter of August 20, 2008. I have visited the site, and reviewed the recorded easement by and between Stow Away Storage, LLC and George Sissons, which was recorded in the Charleston County RMC Office in Book U358, page 109, on November 16, 2000 (the "Easement").

Under the express terms of the Easement, your client granted George Sissons, and his successors and assigns, rights in the real property depicted in Exhibit B-1 of the Easement. Moreover, the Easement states that the "assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or the Grantee". Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons, and therefore entitled to the full benefit of the Easement.

On several recent occasions representatives of the Charleston County Sheriff's Department have visited my client and demanded that the gate between their parking lot and the access easement be closed. When pressed as to the reason, my client was informed that every time he opened the gate, the manager of Stow Away Storage called the Sheriff's Department and complained, taking them away from other police business. Therefore, the officer's deducted that opening the gate constituted a "public nuisance", as it resulted in phone calls to their office. I find this logic somewhat creative, but nonetheless flawed, and will take this issue up separately with the Sheriff's Department.

In response to your letter, our position is that Sweetgrass Hardware, Inc. and its patrons have a legal right to utilize the area subject to the Easement, and intend to do so. Any further

(0012)273.DOC-2)

652 Coleman Blvd., Suite 200 • Mount Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

attempts by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business.

Please feel free to contact me with any further questions or comments as to this matter.
With kindest regards, I remain

Yours very truly,



Gray B. Taylor

Enclosure

cc: Mr. Frank Fletcher (via email)

[00121273.DOC 2]



Sisson SCALE
AND EQUIPMENT COMPANY, INC.

INDUSTRIAL and RETAIL
WEIGHING SYSTEMS



May 26, 2009

Mr. E. L. Pooser, Jr., President & CEO
IMC Hotels
P.O. Box 21427
Columbia, SC 29221-1427

Dear Bert:

I have reviewed your letters of April 24th and May 6th and discussed them extensively with Frank Fletcher, owner of Sweetgrass Hardware. Subsequently, we have had meetings with our attorneys and Mt. Pleasant Town Administration officials. While your attorney may feel confident about the legal issue being in your favor, our attorneys and Mt. Pleasant officials seem to feel confident that our interpretation of my rights under this "Non-Exclusive Easement" are absolutely defensible. Bert, I guess we can continue to pay attorneys and go back and forth as to whom is right, or we can meet to discuss a possible solution.

As I have stated on numerous occasions, the construction of a dedicated and protected turn signal on a public highway has created this situation that we are all now living with. However, I see nothing that I, or Sweetgrass Hardware can do to eliminate the public from interpreting this intersection as public access. Even if I agreed to abandon my easement, which I remind you, I accepted in order for you to even get permission to have your access, you would do nothing but "trap" motorists in your driveway, which was exactly what was happening when the gate was closed. You keep stating safety issues: having your employee block traffic on Highway 17 and forcing vehicles to back out of your driveway rather than allowing them to turn around or exit through my property seems more like a lawsuit waiting to happen than anything else that might occur. We have witnessed this happening when the gate was closed.

Closing the access gate to Sweetgrass Hardware solves nothing, as motorists will simply navigate around the building as was the case for over ten years.

Bert, I have no intention of abandoning my rightful "Non-Exclusive Easement" and access to my property. I think we have to sit down and possibly ask for a meeting with the DOT and Mt. Pleasant Road Department to determine how they propose to correct this issue with the HWY 17 IOP-Wando Six Lane Project which is underway. That project has to have an impact on this intersection and I believe they can help craft a solution that might reconcile your concerns. To accomplish this, we have to sit down and talk about this rationally.

I am copying Frank Fletcher and I think he needs to be part of this discussion. We are happy to make ourselves available at your convenience either here in Mt. Pleasant or in Columbia.

Sincerely,

George W. Sisson
Owner

C: Frank Fletcher, Sweetgrass Hardware

3018 Highway 17 North
Mt. Pleasant, SC 29466

123 Prosperity Drive
Savannah, GA 31408

PH: 843-884-2896
FX: 843-881-1563

PH: 912-966-2144
FX: 912-966-2380



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

) CASE NO. 2011-CP-10-2444

) ANSWER AND COUNTERCLAIM OF
) THE DEFENDANTS GEORGE W.
) SISSON, 4.0 LLC, THE SISSON
) FOUNDATION LIMITED PARTNERSHIP
) AND SWEETGRASS HARDWARE, INC.

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINTIFF

FILED
2011 MAY -2 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., (collectively hereinafter the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff Stow Away Storage, LLC ("hereinafter the "Plaintiff") and as and for their Counterclaim allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or otherwise qualified herein is hereby deemed denied and the Defendants demand strict proof thereof.
2. The Defendants admit the allegations of Paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Plaintiff's Complaint.
3. The Defendants are without sufficient information to form a belief as to the allegations of Paragraphs 8 and 9 of the Plaintiff's Complaint, and, therefore, deny same and demand strict proof thereof.

4. The Defendants admit only so much of Paragraph 10 of the Plaintiff's Complaint that alleges the SCDOT requested that the Defendants abandon a previously existing point of access to U.S. Highway 17. The Defendants are without sufficient information to form a belief as to the remaining allegations of said Paragraph, and, therefore, deny same and demand strict proof thereof.

5. The Defendants admit only so much of Paragraphs 11, 12, 13 and 14 that allege to quote from the documents referenced thereon. The Defendants deny the remaining allegations of said Paragraphs and demand strict proof thereof.

6. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 15 of the Plaintiff's Complaint, and, therefore, deny same and demand strict proof thereof.

7. The Defendants admit only so much of Paragraph 16 of the Plaintiff's Complaint that allege to quote from a Memorandum of Lease referenced therein. To the extent the allegations of said Paragraph in any way differ from that Memorandum of Lease, the Defendants deny same and demand strict proof thereof.

8. The Defendants are not required to answer the allegations of Paragraph 17 of the Plaintiff's Complaint as the allegations of said Paragraph constitute legal conclusions. To the extent an answer is warranted, the Defendants deny same and demand strict proof thereof.

9. The Defendants admit the allegations of Paragraph 18 of the Plaintiff's Complaint.

10. The Defendants deny the allegations of Paragraph 19 of the Plaintiff's Complaint.

11. The Defendants deny the allegations of Paragraphs 20, 21, 22, and 23 of the Plaintiff's Complaint and demand strict proof thereof.

12. The Defendants admit only so much of Paragraph 24 of the Plaintiff's Complaint that allege a letter was written by counsel for Stow Away. To the extent the allegations of said Paragraph in any way differ from that letter, the Defendants deny same and demand strict proof thereof.

13. The Defendants admit the allegations of Paragraph 25 of the Plaintiff's Complaint.

14. The Defendants admit only so much of Paragraph 26 of the Plaintiff's Complaint that allege an email was written by counsel for Stow Away. To the extent the allegations of said Paragraph in any way differ from that email, the Defendants deny same and demand strict proof thereof.

15. The Defendants deny the allegations of Paragraph 27 of the Plaintiff's Complaint.

16. The Defendants admit only so much of Paragraph 28 of the Plaintiff's Complaint that allege to quote from the License Agreement referenced therein. To the extent the allegations of said Paragraph in any way differ from that License Agreement, the Defendants deny same and demand strict proof thereof.

17. The Defendants admit the allegations of Paragraph 29 of the Plaintiff's Complaint and would allege and show that the Plaintiff has interfered with the contractual obligations by and between the Defendants and has been notified by the Defendants, the SCDOT, the Town of Mt. Pleasant and the County of Charleston to cease and desist its attempts to interfere with the access to the property in question and described in the Plaintiff's Complaint.

18. The Defendants are not required to answer the allegations of Paragraph 30 of the Plaintiff's Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted, the Defendants deny same and demand strict proof thereof.

19. Answering Paragraph 32 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

20. The Defendants deny the allegations of Paragraph 33 of the Plaintiff's Complaint and demand strict proof thereof.

21. Answering Paragraph 34 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

22. The Defendants admit the allegations of Paragraph 35 of the Plaintiff's Complaint and would allege and show that Sweetgrass is a lawful assignee as described therein.

23. The Defendants deny the allegations of Paragraph 36 of the Plaintiff's Complaint that allege Sweetgrass is not a lawful assignee as described therein and demand strict proof thereof.

The Defendants admit the remaining allegations of said Paragraph.

24. The Defendants deny the allegations of Paragraphs 37 and 38 of the Plaintiff's Complaint and demand strict proof thereof.

25. Answering Paragraph 39 of the Plaintiff's Complaint, the Defendants deny same and demand strict proof thereof.

26. The Defendants deny the allegations of Paragraph 40 of the Plaintiff's Complaint and demand strict proof thereof.

**FOR A FURTHER ANSWER
AND AFFIRMATIVE DEFENSE**

27. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, therefore, should be dismissed pursuant to Rule 12(b)(6) SCRCPP.

**FOR A FURTHER ANSWER
AND SECOND AFFIRMATIVE DEFENSE**

28. The Defendants would allege and show that the Plaintiff's claims, if any, and none of which are admitted, are barred by the applicable statutes of limitation and/or repose.

**FOR A FURTHER ANSWER
AND THIRD AFFIRMATIVE DEFENSE**

29. The Defendants would allege and show that the Plaintiff's claims, if any, and none of which are admitted, are barred by the doctrines of waiver, estoppels and laches in that the Plaintiff failed to do anything to protect its alleged interest as set forth in its Complaint from the time of the original dispute between these parties and the filing of the Complaint.

**FOR A FURTHER ANSWER
AND FOURTH AFFIRMATIVE DEFENSE**

30. The Defendants would allege and show that the Plaintiff's claims, if any, and none of which are admitted are barred by the Plaintiff's inequitable actions regarding the access to the property, including, but not limited to, blocking of the easement, gating of the easement, harassing the users of the easement, and calling both the Town of Mt. Pleasant police officers and Charleston County sheriff's deputies in bogus attempts to prevent the lawful use of the easement.

**FOR A FURTHER ANSWER
AND FIFTH AFFIRMATIVE DEFENSE**

31. The Defendants would allege and show that the Plaintiff's claims, if any, and none of which are admitted are barred by the Plaintiff's illegal actions in interfering with the easement described in the Plaintiff's Complaint.

**FOR A FURTHER ANSWER
AND SIXTH AFFIRMATIVE DEFENSE**

32. The Defendants would allege and show that the Plaintiff's claims, if any, and none of which are admitted, do not give rise to punitive damages and any award of punitive damages would be in violation of both the United States Constitution and the South Carolina Constitution of 1895.

**FOR A FURTHER ANSWER
AND SEVENTH AFFIRMATIVE DEFENSE**

33. The Defendants would allege and show that the Plaintiff is not entitled to any attorneys' fees or costs in this action as there is no contract or statute asserted which would allow for the recoupment of attorneys' fees or costs.

**FOR A FURTHER ANSWER
AND BY WAY OF A COUNTERCLAIM**

34. The Defendants repeat and reallege Paragraphs 1 through 33 above as though repeated herein verbatim.

35. The Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., are parties to various real estate transactions, easement agreements, licensing agreements and other deeds as referenced in Plaintiff's Complaint.

36. The Plaintiff Stow Away Storage, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner certain real estate as described in the Plaintiff's Complaint.

37. On October 17, 2000, the Plaintiff granted an easement to George Sissons [sic], his heirs and assigns forever, a non-exclusive perpetual easement over its property as described therein so that Mr. Sisson could access his property for the purposes of "access, ingress and egress by any and all pedestrian and passenger and deliver vehicular means" between Mr. Sisson's property and U.S. Highway 17. (the "Access Easement")

38. The Access Easement contained no restrictions and was to be perpetual so as to run with the title of the property of the Plaintiff and of Mr. Sisson. (Access Easement).

39. The grant of easement in the Access Easement was "assignable and divisible" under its very terms and shall entitle "all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden" upon the Plaintiff or Mr. Sisson's property. (Access Easement).

40. The Defendant Sweetgrass leased property from the Defendant Timarand, Inc.,

41. Sweetgrass Hardware, Inc., 4.0 LLC, and Mr. Sisson agreed that Sweetgrass would be allowed to use the Access Easement to access Highway 17 via the valid and enforceable Access Easement.

42. Mr. Sisson and 4.0 LLC assigned their rights in the Access Easement to Sweetgrass Hardware, Inc.

43. On November 13, 2008, 4.0 LLC and Sweetgrass Hardware, Inc., memorialized their agreement that Sweetgrass Hardware, Inc., would be allowed to use the non-exclusive, perpetual Access Easement by way of a License Agreement. (the "License Agreement")

45. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by the Defendants.

46. The Plaintiff has contacted the South Carolina Department of Transportation, Charleston County and the Town of Mount Pleasant in bogus attempts to prevent the Defendants from using the easement.

47. The Plaintiff constructed a gate in a further attempt to block the easement and a gate remains in place on the property.

48. The Plaintiff has attempted to dissuade the use of the easement by posting signs and markers advising that the easement is private property.

49. The Plaintiff has attempted to use the South Carolina Department of Transportation as well as law enforcement personnel from both the Charleston County Sheriff's Office and the Town of Mount Pleasant's Police Department in an to block the easement, to arrest those using the easement for trespass, and to intimidate the Defendants from using the lawfully granted easement.

50. Such actions constitute the tortious s interference with the contract in the form of the easement by and between the Plaintiff and the Defendant Sisson and the tortious interference with the Defendants in the form of the License Agreement between 4.0 LLC and Sweetgrass Hardware, Inc.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment pursuant to S.C. Code Ann. §§15-53-10 et seq.)

51. The Defendants repeat and reallege Paragraphs 1 through 50 above as though repeated herein verbatim.

52. A real, substantial and justiciable controversy exists by and between the Defendants and the Plaintiff regarding the use of the Access Easement.

53. The Defendants bring this cause of action pursuant to S.C. Code Ann. §§15-53-10, et seq., to have this Court determine their rights under the terms of the Access Easement.

54. The Access Easement is a non-exclusive, assignable easement as demonstrated by the grant of the Access Easement attached to the Plaintiff's Complaint.

55. The Defendants would request that this Court determine their rights under the terms and conditions of the Access Easement and rule that the valid, enforceable, lawful Access Easement

is properly assigned to Sweetgrass Hardware, Inc., and is properly enforceable by and between the Defendants and the Plaintiff.

56. The Defendants would further request that this Court determine that the Plaintiff has no right to interfere with the use of the Access Easement by the Defendants in any way.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

57. The Defendants repeat and reallege Paragraphs 1 through 56 as though repeated herein verbatim.

58. The Access Agreement constitutes a valid and enforceable contract by and between the Plaintiff and the Defendants, their assigns, or assignees.

55. The Plaintiff has breached the terms and conditions of the Access Agreement without legal excuse by blocking the easement and by failing and refusing to comply with the terms of the Agreement.

56. Such a breach by the Plaintiff has directly and proximately caused damage to the Defendants in amounts to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relations)

57. The Defendants repeat and reallege Paragraphs 1 through 56 above as though repeated herein verbatim.

58. Having had knowledge, both actual and constructive, of the Access Agreement and License Agreement, the Plaintiff has pursued a course of conduct attempting to shut down and obstruct the easement and sue of same described in the Access Agreement and the License Agreement.

59. Such course of conduct is in violation of the contractual rights of the Defendants as set forth in the Access Agreement and the License Agreement and is in violation of any and all duties owed to the Defendants by the Plaintiff.

60. Such interference by the Plaintiff has directly and proximately caused damage to the Defendants in amounts to be proven at trial.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth their Counterclaims, these Defendants pray that this Court enter its Order as follows:

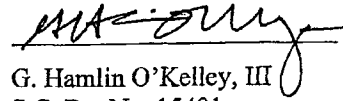
1. Dismissing the Plaintiff's Complaint;
2. Awarding a judgment in these Defendants' favor regarding the use of the Access Agreement;
3. Declaring the Defendants' rights to use the Access Agreement as set forth under their terms and conditions;
4. Awarding a judgment in these Defendants' favor for actual damages in amounts to be prove at that trial of this case;
5. Awarding the Defendants their reasonable attorneys' fees and costs;
6. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina

April 29, 2011

By:



G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

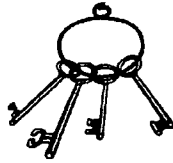
CERTIFICATE OF MAILING

I hereby certify that on April 29, 2011, a copy of the foregoing was mailed, postage prepaid, to all counsel of record in this matter, as follows.

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

G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III

FILED
2011 MAY -2 PM 1:38
JULIE J. ARISTARNO
CLERK OF COURT



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

April 29, 2011

MARIA E. KIEHLING
LEGAL ASSISTANT
maria.kiehling@buistbyars.com

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Answer and Counterclaim of the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership and Sweetgrass Hardware, Inc. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

By copy of this letter, I am serving the same upon G. Dana Sinkler, Esq., counsel for the Plaintiff. Should you have any questions or concerns, please do not hesitate to give me a call. With kind regards, I remain

Yours very truly,

Maria E. Kiehling

Enclosures
cc: (w/ encls) G. Dana Sinkler, Esq.

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843) 856-4488 Fax (843) 856-0613
www.buistbyars.com

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)
Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

REPLY TO COUNTERCLAIM

FILED
2011 MAY 31 PM 1:11
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff Stow Away Storage, LLC, answering the counterclaim of the Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., states as follows:

1. Stow Away denies each and every allegation of said counterclaim not hereinafter expressly admitted.

2. Answering the allegations of paragraph 35, to the extent that the Defendants asserting this counterclaim are referring to paragraphs 1 through 6 of Stow Away's complaint, Stow Away admits that the Defendants are parties to various real estate transactions described therein. To the extent that they seek to establish any other transactions besides those described in paragraphs 1 through 6 of Stow Away's answer, it denies the same.

3. Stow Away admits the allegations of paragraph 36.

4. Stow Away admits the allegations of paragraph 37.

5. Answering the allegations of paragraph 38, Stow Away denies that the Access Easement contains no restrictions, but admits that it was to be perpetual so as to run with the title to the property of Plaintiff and Mr. Sisson in accordance with the Access Easement and Abandonment of Encroachment Permit, but its purposes were for access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

6. Answering the allegations of paragraph 39, Stow Away admits that the Access Easement was "assignable and divisible" as it relates to the dominant estate which was the property of Mr. Sisson described in paragraph 4 of Stow Away's complaint. However, the Access Easement was not and is not divisible and assignable to the owner of any property or interest therein beyond the confines of the dominant estate.

7. Stow Away admits the allegations of paragraph 40.

8. Stow Away admits the allegations of paragraph 41, but avers that such agreement was illegal and in breach of the terms of the Access Easement and constitutes tortious interference by Sweetgrass with the contractual rights of Stow Away.

9. Stow Away denies the allegations of paragraphs 42, 43, 45 (there is no 44), and 46.

10. Stow Away admits the allegations of paragraphs 47 and 48.

11. Answering the allegations of paragraph 49, Stow Away avers that it has attempted to prevent the use of the easement by Sweetgrass and its customers or invitees, as it has every right to do as owner of the servient estate, and failing in that attempt has brought this suit to enforce its rights against the Defendants.

12. Stow Away denies the allegations of paragraph 50.

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment pursuant to S.C. Code Ann. §§ 15-53-10 et seq.)

13. Stow Away repeats and realleges paragraphs 1 through 12 of its reply above as though repeated herein verbatim.

14. Answering the allegations of paragraph 52, Stow Away avers that the Defendants have created a substantial controversy by asserting rights to Stow Away's easement that they are not entitled to. By virtue of that, they have forced Stow Away to institute this action to protect its rights and incur substantial expenses to do so.

15. Stow Away denies the allegations of paragraph 53.

16. Answering the allegations of paragraph 54, Stow Away avers that the terms of the Access Easement speak for themselves as set forth in Exhibit 2 to Stow Away's complaint and do not provide any right to expand the burden of the servient estate beyond the confines of the dominant estate for which the Access Easement was granted.

17. Answering the allegations of paragraphs 55 and 56, Stow Away avers that Defendants are not entitled to any such relief and, to the contrary, Stow Away is entitled to judgment against the Defendants for all of the relief sought under its complaint.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Contract)

18. Stow Away repeats and realleges paragraphs 1 through 17 of its reply above as though repeated herein verbatim.

19. Stow Away denies the allegations of paragraphs 58, 55 and 56 (which are improperly numbered).

AS TO THE THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relations)

20. Stow Away repeats and realleges paragraphs 1 through 19 of its reply above as though repeated herein verbatim.

21. Stow Away does not understand the allegations of the paragraph designated as paragraph 58 (again improperly numbered), but denies the same any way.

22. Stow Away denies the allegations of paragraphs 59 and 60, which also appear to be improperly numbered but seem to constitute the remainder of the counterclaim.

Wherefore Stow Away prays that the counterclaim be dismissed and that it have judgment on its complaint for all of the relief requested.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

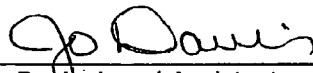
By 
G. DANA SINKLER
Attorney for Plaintiff

Charleston, South Carolina
May 27, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of May, 2011, I served the foregoing Reply to Counterclaim on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Jo Davis, Legal Assistant

FILED
2011 MAY 31 PM 1:11
JULIE J. ARMSTRONG
CLERK OF COURT

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1254

CHARLESTON, S.C. 29402

(843) 577-0660

WWW.WARREN-SINKLER.COM

Writer's Email: jdavis@warren-sinkler.com

G. DANA SINKLER
JOHN H. WARREN, III
SCOTT Y. BARNES (SC & DC)
MARK S. SHARPE
ASHLEY DANTZLER WRIGHT
JACLYNN BOWER GOINGS
CAMERON SEMMES STOLL (SC & NY)
LAURA W. MOORE

FACSIMILE
(843) 577-6843

May 27, 2011

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

Re: Stow Away Storage, LLC v. George W. Sisson, et al.
2011-CP-10-2444

Dear Ms. Armstrong:

Please file the enclosed Reply to Counterclaim in the captioned matter and return our stamped copy in the envelope provided.

Yours very truly,

WARREN & SINKLER, LLP



Jo Davis
Assistant to G. Dana Sinkler

/jd
Enclosures
cc: G. Hamlin O'Kelly, III, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Stow Away Storage, LLC,
☒ Plaintiff

v.

George W. Sisson, et al.
☐ Defendant

check box above indicating submitting party)

CASE NO.

2011-CP-10-2444

**MOTION INFORMATION FORM
AND COVER SHEET**

name, S.C. Bar no. and address of plaintiff's attorney

G. Dana Sinkler, SC Bar #5138

Warren & Sinkler, LLP

Post Office Box 1254

Charleston, SC 29402

telephone: 843-577-0660 fax: 843-577-6843

e-mail: dsinkler@warren-sinkler.com other:

name, S.C. Bar no. and address of defendant's attorney

telephone:

fax:

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)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted

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 (1/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STOW AWAY STORAGE, LLC,

Plaintiff,

v.

GEORGE W. SISSON, 4.0 LLC, THE
SISSON FOUNDATION LIMITED
PARTNERSHIP, SWEETGRASS
HARDWARE, INC. AND TIMARAND,
INC.

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2011-CP-10-2444

**AFFIDAVIT OF DEFAULT
AND MOTION FOR JUDGMENT**

FILED
2011 AUG 11 AM 3:39
JULIE L. HARRIS
CLERK OF COURT
BY _____

Personally appeared before me G. Dana Sinkler, who being duly sworn, deposes
and says as follows:

1. That he is the attorney for the Plaintiff in the within matter.
2. That this is an action for Declaratory Judgment, Permanent Injunction,
Damages for Tortious Interference with a Contract and Equitable Indemnity, including
attorneys' fees and costs.
3. That the Summons and Complaint were filed with this Court on April 4,
2011.
4. That on May 31, 2011, Defendant Timarand, Inc. was served with the
Summons and Complaint in this action by delivering it to the Registered Agent for
Timarand, Inc. by Process Server, as shown by the Affidavit of Service attached hereto
as Exhibit A.

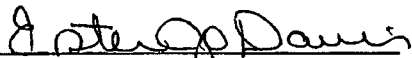
5. That as of the date hereof, more than thirty days after the deadline for responsive pleadings, the undersigned has not been served with any motion, answer, or other responsive pleading by or on behalf of Defendant Timarand, Inc..

6. That as a result of the foregoing, Plaintiff is entitled to an order of default and judgment against Defendant Timarand, Inc. adjudging that it has no rights, as owner of the property leased to Sweetgrass, to use the easement granted by Plaintiff to the Defendant Sisson for any purpose.

FURTHER THE AFFIANT SAYETH NOT.


G. Dana Sinkler

SWORN to and subscribed before me this
9th day of August, 2011.


Notary Public for South Carolina
My Commission Expires: 6-20-17

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number 2011-CP-10-2444

Plaintiff

STOW AWAY STORAGE, LLC

vs

Defendant

GEORGE W. SISSON, 4.0 LLC, THE SISSON FOUNDATION LIMITED
 PARTNERSHIP, SWEETGRASS HARDWARD, INC. AND TIMARAND,
 INC.

For

G Dana Sinkler, Esq
 WARREN & SINKLER, LLP
 171 Church Street, Ste 340
 P O Box 1254
 Charleston, SC 29402

Received by PROCESS SERVICE, INC to be served on TIMARAND, INC., 1620 Home Farm Road, Pleasant, SC 29464

I, John R Gamble, being duly sworn, depose and say that on the 31st day of May, 2011 at 10 05 am, I

served the within named Corporation by delivering a true copy of the CIVIL ACTION COVERSHEET, SUMMONS, COMPLAINT AND EXHIBITS A THROUGH 13 with the date and hour of service endorsed thereon by me to JOHN "CHIP" MOLONY CPA as REGISTERED AGENT for TIMARAND, INC., at the address listed for the Registered Agent of 126 Wappoo Creek Drive, Charleston, SC 29412, and informed said person of the contents therein

I am over eighteen and have no interest in the above action

Subscribed and Sworn to before me on the 1st day of
 June, 2011 by the affiant who is personally known to
 me

Jonathan A. Sinkler
 NOTARY PUBLIC

Commission Expires

05-14-20

John R. Gamble
 John R. Gamble
 PROCESS SERVER

PROCESS SERVICE, INC.
 P.O. Box 20097
 Charleston, SC 29413
 (843) 577-2355

Our Job Serial Number 2011001281

FILED
 2011 JUN -9 PM 12:58
 JULIE J. ARMSTRONG
 CLERK OF COURT

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

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CHARLESTON, S.C. 29402

(843) 577-0660

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Writer's Email: jdavis@warren-sinkler.com

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(843) 577-6543

G. DANA SINKLER
JOHN H. WARREN, III
SCOTT Y. BARNES (SC & DC)
MARK S. SHARPE
ASHLEY DANTZLER WRIGHT
JACLYNN BOWER GOINGS
CAMERON SEMMES STOLL (SC & NY)
LAURA W. MOORE

August 9, 2011

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

Re: Stow Away Storage, LLC v. George W. Sisson et al.
2011-CP-10-2444

Dear Ms. Armstrong:

Please file the enclosed Affidavit of Default and Motion for Judgment in the captioned matter and return our stamped copy in the envelope provided. I am including the motion form and the \$25.00 filing fee. I am also enclosing a proposed Order of Default and Judgment, which I would appreciate your getting to the Administrative Judge, and returning a signed and filed copy in the envelope provided.

Yours very truly,

WARREN & SINKLER, LLP



Jo Davis
Assistant to G. Dana Sinkler

/jd
Enclosure

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2011-CP-10-2444
)
)
)

Stow Away Storage, LLC,
Plaintiff,

) ANSWER AND COUNTERCLAIM OF
) THE DEFENDANT TIMARAND, INC.
)
)
)
)

vs.

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

Defendants.

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINTIFF

FILED
2011 AUG 18 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant Timarand, Inc., (hereinafter the "Defendant") by and through its undersigned counsel, answering the Complaint of the Plaintiff Stow Away Storage, LLC ("hereinafter the "Plaintiff") and as and for its Counterclaim allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or otherwise qualified herein is hereby deemed denied and the Defendants demand strict proof thereof.
2. The Defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Plaintiff's Complaint.
3. The Defendant is without sufficient information to form a belief as to the allegations of Paragraphs 8 and 9 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.
4. The Defendant admits only so much of Paragraph 10 of the Plaintiff's Complaint that alleges the SCDOT requested that the Defendants abandon a previously existing point of access

to U.S. Highway 17. The Defendant is without sufficient information to form a belief as to the remaining allegations of said Paragraph, and, therefore, denies same and demands strict proof thereof.

5. The Defendant admits only so much of Paragraphs 11, 12, 13 and 14 of the Plaintiff's Complaint that allege to quote from the documents referenced therein. The Defendant denies the remaining allegations of said Paragraph and demands strict proof thereof.

6. The Defendant admits only so much of Paragraph 15 of the Plaintiff's Complaint that allege to quote from the documents referenced therein. The Defendant is without sufficient information to form a belief as to the remaining allegations of said Paragraph and demands strict proof thereof.

7. The Defendant admits only so much of Paragraph 16 of the Plaintiff's Complaint that alleges to quote from a Memorandum of Lease referenced therein. To the extent the allegations of said Paragraph in any way differ from that Memorandum of Lease, the Defendant denies same and demands strict proof thereof.

8. The Defendant is not required to answer the allegations of Paragraph 17 of the Plaintiff's Complaint as the allegations of said Paragraph constitute legal conclusions. To the extent an answer is warranted, the Defendant denies same and demands strict proof thereof.

9. The Defendant admits the allegations of Paragraph 18 of the Plaintiff's Complaint.

10. The Defendant denies the allegations of Paragraph 19 of the Plaintiff's Complaint and demands strict proof thereof.

11. The Defendants denies the allegations of Paragraphs 20, 21, 22, and 23 of the Plaintiff's Complaint and demands strict proof thereof.

12. The Defendant admits only so much of Paragraph 24 of the Plaintiff's Complaint that allege a letter was written by counsel for Stow Away. To the extent the allegations of said Paragraph in any way differ from that letter, the Defendant denies same and demands strict proof thereof.

13. The Defendant admits the allegations of Paragraph 25 of the Plaintiff's Complaint.

14. The Defendant admits only so much of Paragraph 26 of the Plaintiff's Complaint that alleges an email was written by counsel for Stow Away. To the extent the allegations of said Paragraph in any way differ from that email, the Defendant denies same and demands strict proof thereof.

15. The Defendant denies the allegations of Paragraph 27 of the Plaintiff's Complaint.

16. The Defendant admits only so much of Paragraph 28 of the Plaintiff's Complaint that alleges to quote from the License Agreement referenced therein. To the extent the allegations of said Paragraph in any way differ from that License Agreement, the Defendant denies same and demands strict proof thereof.

17. The Defendant admits the allegations of Paragraph 29 of the Plaintiff's Complaint and would allege and show that the Plaintiff has interfered with the contractual obligations by and between the Defendants and has been notified by the Defendants, the SCDOT, the Town of Mt. Pleasant and the County of Charleston to cease and desist its attempts to interfere with the access to the property in question and described in the Plaintiff's Complaint.

18. The Defendant is not required to answer the allegations of Paragraph 30 of the Plaintiff's Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted, the Defendant denies same and demands strict proof thereof.

19. Answering Paragraph 32 of the Plaintiff's Complaint, the Defendant repeats and realleges Paragraphs 1 through 18 above as though repeated herein.

20. The Defendant denies the allegations of Paragraph 33 of the Plaintiff's Complaint and demand strict proof thereof.

21. Answering Paragraph 34 of the Plaintiff's Complaint, the Defendant repeats and realleges Paragraphs 1 through 20 above as though repeated herein verbatim.

22. The Defendant admits the allegations of Paragraph 35 of the Plaintiff's Complaint and would allege and show that Sweetgrass is a lawful assignee as described therein.

23. The Defendant denies the allegations of Paragraph 36 of the Plaintiff's Complaint that allege Sweetgrass is not a lawful assignee as described therein and demands strict proof thereof. The Defendant admits the remaining allegations of said Paragraph.

24. The Defendant denies the allegations of Paragraphs 37 and 38 of the Plaintiff's Complaint and demand strict proof thereof.

25. Answering Paragraph 39 of the Plaintiff's Complaint, the Defendant denies same and demands strict proof thereof.

26. The Defendant denies the allegations of Paragraph 40 of the Plaintiff's Complaint and demands strict proof thereof.

**FOR A FURTHER ANSWER
AND AFFIRMATIVE DEFENSE**

27. The Defendant would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, therefore, should be dismissed pursuant to Rule 12(b)(6) SCRPC.

**FOR A FURTHER ANSWER
AND SECOND AFFIRMATIVE DEFENSE**

28. The Defendant would allege and show that the Plaintiff's claims, if any, and none of which are admitted, are barred by the applicable statutes of limitation and/or repose.

**FOR A FURTHER ANSWER
AND THIRD AFFIRMATIVE DEFENSE**

29. The Defendant would allege and show that the Plaintiff's claims, if any, and none of which are admitted, are barred by the doctrines of waiver, estoppels and laches in that the Plaintiff failed to do anything to protect its alleged interest as set forth in its Complaint from the time of the original dispute between these parties and the filing of the Complaint.

**FOR A FURTHER ANSWER
AND FOURTH AFFIRMATIVE DEFENSE**

30. The Defendant would allege and show that the Plaintiff's claims, if any, and none of which are admitted are barred by the Plaintiff's inequitable actions regarding the access to the property, including, but not limited to, blocking of the easement, gating of the easement, harassing the users of the easement, and calling both the Town of Mt. Pleasant police officers and Charleston County sheriff's deputies in bogus attempts to prevent the lawful use of the easement.

**FOR A FURTHER ANSWER
AND FIFTH AFFIRMATIVE DEFENSE**

31. The Defendant would allege and show that the Plaintiff's claims, if any, and none of which are admitted are barred by the Plaintiff's illegal actions in interfering with the easement described in the Plaintiff's Complaint.

**FOR A FURTHER ANSWER
AND SIXTH AFFIRMATIVE DEFENSE**

32. The Defendant would allege and show that the Plaintiff's claims, if any, and none of which are admitted, do not give rise to punitive damages and any award of punitive damages would be in violation of both the United States Constitution and the South Carolina Constitution of 1895.

**FOR A FURTHER ANSWER
AND SEVENTH AFFIRMATIVE DEFENSE**

33. The Defendant would allege and show that the Plaintiff is not entitled to any attorneys' fees or costs in this action as there is no contract or statute asserted which would allow for the recoupment of attorneys' fees or costs.

**FOR A FURTHER ANSWER
AND BY WAY OF A COUNTERCLAIM**

34. The Defendant repeats and realleges Paragraphs 1 through 33 above as though repeated herein verbatim.

35. The Defendants Timarand, Inc., is a party to various real estate transactions, easement agreements, licensing agreements and other deeds as referenced in Plaintiff's Complaint.

36. The Plaintiff Stow Away Storage, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and is the owner certain real estate as described in the Plaintiff's Complaint.

37. On October 17, 2000, the Plaintiff granted an easement to George Sissons [sic], his heirs and assigns forever, a non-exclusive perpetual easement over its property as described therein so that Mr. Sisson could access his property for the purposes of "access, ingress and egress by any

and all pedestrian and passenger and deliver vehicular means" between Mr. Sisson's property and U.S. Highway 17. (the "Access Easement")

38. The Access Easement contained no restrictions and was to be perpetual so as to run with the title of the property of the Plaintiff and of Mr. Sisson. (Access Easement).

39. The grant of easement in the Access Easement was "assignable and divisible" under its very terms and shall entitle "all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden" upon the Plaintiff or Mr. Sisson's property. (Access Easement).

40. The Defendant Sweetgrass leased property from the Defendant Timarand, Inc., and Timarand, Inc., has served as the landlord for Sweetgrass at all times relevant hereto.

41. Sweetgrass Hardware, Inc., 4.0 LLC, and Mr. Sisson agreed that Sweetgrass would be allowed to use the Access Easement to access Highway 17 via the valid and enforceable Access Easement.

42. Mr. Sisson and 4.0 LLC assigned their rights in the Access Easement to Sweetgrass Hardware, Inc.

43. On November 13, 2008, 4.0 LLC and Sweetgrass Hardware, Inc., memorialized their agreement that Sweetgrass Hardware, Inc., would be allowed to use the non-exclusive, perpetual Access Easement by way of a License Agreement. (the "License Agreement")

45. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by the Defendants.

46. The Plaintiff has contacted the South Carolina Department of Transportation, Charleston County and the Town of Mount Pleasant in bogus attempts to prevent the Defendants from using the easement.

47. The Plaintiff constructed a gate in a further attempt to block the easement and a gate remains in place on the property.

48. The Plaintiff has attempted to dissuade the use of the easement by posting signs and markers advising that the easement is private property.

49. The Plaintiff has attempted to use the South Carolina Department of Transportation as well as law enforcement personnel from both the Charleston County Sheriff's Office and the Town of Mount Pleasant's Police Department in an to block the easement, to arrest those using the easement for trespass, and to intimidate the Defendants from using the lawfully granted easement.

50. Such actions constitute the tortious s interference with the contract in the form of the easement by and between the Plaintiff and the Defendant Sisson and the tortious interference with the Defendants in the form of the License Agreement between 4.0 LLC and Sweetgrass Hardware, Inc.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment pursuant to S.C. Code Ann. §§15-53-10 et seq.)

51. The Defendant repeats and realleges Paragraphs 1 through 50 above as though repeated herein verbatim.

52. A real, substantial and justiciable controversy exists by and between the Defendants and the Plaintiff regarding the use of the Access Easement.

53. The Defendant brings this cause of action pursuant to S.C. Code Ann. §§15-53-10, et seq., to have this Court determine the rights under the terms of the Access Easement.

54. The Access Easement is a non-exclusive, assignable easement as demonstrated by the grant of the Access Easement attached to the Plaintiff's Complaint.

55. The Defendant would request that this Court determine its rights under the terms and conditions of the Access Easement and rule that the valid, enforceable, lawful Access Easement is properly assigned to Sweetgrass Hardware, Inc., and is properly enforceable by and between all the Defendants and the Plaintiff.

56. The Defendant would further request that this Court determine that the Plaintiff has no right to interfere with the use of the Access Easement by the Defendants in any way.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

57. The Defendant repeats and realleges Paragraphs 1 through 56 as though repeated herein verbatim.

58. The Access Agreement constitutes a valid and enforceable contract by and between the Plaintiff and the Defendants, their assigns, or assignees.

55. The Plaintiff has breached the terms and conditions of the Access Agreement without legal excuse by blocking the easement and by failing and refusing to comply with the terms of the Agreement.

56. Such a breach by the Plaintiff has directly and proximately caused damage to the Defendants in amounts to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Tortious Interference with Contractual Relations)

57. The Defendant repeats and realleges Paragraphs 1 through 56 above as though repeated herein verbatim.

58. Having had knowledge, both actual and constructive, of the Access Agreement and License Agreement, the Plaintiff has pursued a course of conduct attempting to shut down and obstruct the easement and sue of same described in the Access Agreement and the License Agreement.

59. Such course of conduct is in violation of the contractual rights of the Defendants as set forth in the Access Agreement and the License Agreement and is in violation of any and all duties owed to the Defendants by the Plaintiff.

60. Such interference by the Plaintiff has directly and proximately caused damage to the Defendants in amounts to be proven at trial.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth their Counterclaims, these Defendant prays that this Court enter its Order as follows:

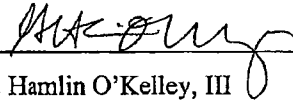
1. Dismissing the Plaintiff's Complaint;
2. Awarding a judgment in these Defendants' favor regarding the use of the Access Agreement;
3. Declaring the Defendants' rights to use the Access Agreement as set forth under their terms and conditions;
4. Awarding a judgment in these Defendants' favor for actual damages in amounts to be prove at that trial of this case;
5. Awarding the Defendants their reasonable attorneys' fees and costs;

6. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina

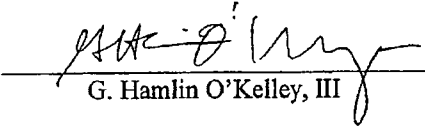
Aug. 16, 2011

By: 
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

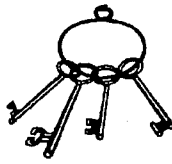
CERTIFICATE OF MAILING

I hereby certify that on Aug 16, 2011, a copy of the foregoing was mailed, postage prepaid, to all counsel of record in this matter, as follows.

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


G. Hamlin O'Kelley, III

FILED
2011 AUG 18 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

August 16, 2011

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

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Answer and Counterclaim of the Defendant Timarand, Inc. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

By copy of this letter, I am serving the same upon G. Dana Sinkler, Esq., counsel for the Plaintiff. Should you have any questions or concerns, please do not hesitate to give me a call. With kind regards, I remain

Yours very truly,

Maria E. Kiehling

Enclosures
cc: (w/ encls) G. Dana Sinkler, Esq.

{00239622.DOC}

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843) 856-4488 Fax (843) 856-0613
www.buistbyars.com

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC,
Plaintiff,
vs.

NOTICE OF MOTION AND MOTION TO
RECONSIDER PURSUANT TO RULE
59(e) SCRCP AND MOTION TO LIFT
DEFAULT JUDGMENT PURSUANT TO
RULE 60(b) SCRCP

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

FILED
2011 SEP - 1 PM 2:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: G. DANA SINKLER, ESQ.
WARREN & SINKLER, LLP
ATTORNEYS FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that pursuant to Rules 59(e) and 60(b) of the South Carolina Rules of Civil Procedure, the Defendant Timarand, Inc., will move before the Presiding Judge for the Ninth Judicial Circuit, within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order voiding the Court's Order Granting a Default Judgment in the above-referenced matter. This Motion is based upon the lack of notice to Defendant Timarand, Inc. of service upon its registered agent, as will be demonstrated at the hearing of this matter.

The Defendant is a domestic corporation in the State of South Carolina. John W. Molony, who signed for the Summons and Complaint as Registered Agent for Timarand, Inc., did not notify the officers of Timarand, Inc. of the service effectuated upon him on May 31, 2011 by process server. Mr. Molony's failure to notify Timarand, Inc.'s officers of the service directly resulted in Timarand, Inc.'s default under the May 31, 2011 service. Pursuant to an Affidavit of

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

vs.

George W. Sisson, et al.

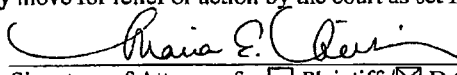
Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: P.O. Box 1254 Charleston, SC 29402 Phone: F ax _____ E-mail: Oth er: _____		Defendant's Attorney: Maria E. Klehling, Bar No. 76799 Address: 652 Coleman Blvd., Ste. 200 Mt. Pleasant, SC 29464 Phone: (843) 856-4488 Fax(843) 856-0613 E-mail: Oth er: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Notice of Motion and Motion to Reconsider and Motion to Lift Default Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/ ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		August 31, 2011 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, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

Timothy Askins attached hereto as Exhibit "A" and incorporated herein, Timarand, Inc.'s officers were unaware of the service upon Mr. Molony and have never received a copy of the filed pleadings served upon Mr. Molony by the Plaintiff. For these reasons, the Defendant requests that the Default Judgment be lifted to allow the Defendant Timarand, Inc. to file an Answer, and defend the case.

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

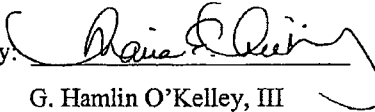
Pursuant to Rule 11 SCRPC, counsel certifies that consultation would serve no useful purpose.

Please be present to defend if so minded.

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina

Aug. 31, 2011

By: 

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Maria E. Kiehling
S.C. Bar No. 76799
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

11-CP-10-2444

I hereby certify that on Aug. 31, 2011, a copy of the foregoing was mailed, postage prepaid, to all counsel of record in this matter, as follows.

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


Maria E. Kiehling

FILED
2011 SEP -1 PM 2:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT “A”

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Stow Away Storage, LLC,
Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2011-CP-10-2444

AFFIDAVIT OF TIMOTHY ASKINS

PERSONALLY appeared before me Timothy Askins, who, being duly sworn, deposes
and states as follows:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge and not upon any information or belief.
2. I am an officer of Timarand, Inc., a South Carolina domestic corporation.
3. Timarand, Inc. is a named Defendant in the above-referenced matter.
4. John W. Molony is the Registered Agent for Timarand, Inc.
5. Mr. Molony was served with the Summons and Complaint in the above-referenced matter by process server on May 31, 2011.
6. Mr. Molony, as Registered Agent, provided no notice to any officers of Timarand, Inc. as to the service.
7. As of the date of the within Affidavit, Mr. Molony has not contacted any officer of Timarand, Inc. nor forwarded a copy of the service documents.
8. I have also not been served with the Summons and Complaint in the above-referenced matter.

{00240203.DOC}

9. Mr. Molony's failure to notify me of the service upon Timarand, Inc. resulted in Timarand, Inc.'s inability to answer Plaintiff's Summons and Complaint within thirty (30) days of service.

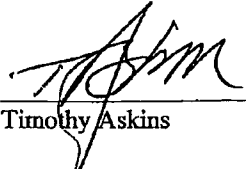
10. Timarand, Inc. should not be held in default based upon Mr. Molony's failure to notify Timarand, Inc. of service.

[SIGNATURES ON THE FOLLOWING PAGE]

{00240203.DOC}

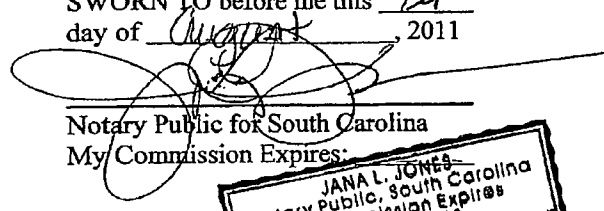
FURTHER THE AFFIANT SAYETH NOT.

Charleston, SC
August 29, 2011

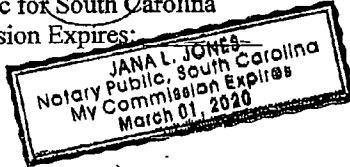


Timothy Askins

SWORN TO before me this 29th
day of August, 2011



Notary Public for South Carolina
My Commission Expires:



{00240203.DOC}

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Stow Away Storage, LLC,
☒ Plaintiff

CASE NO.

v.

2011-CP-10-2444

George W. Sisson, et al.
☐ Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party)

name, S.C. Bar no. and address of plaintiff's attorney
G. Dana Sinkler, SC Bar #5138
Warren & Sinkler, LLP
Post Office Box 1254
Charleston, SC 29402
telephone: 843-577-0660 fax: 843-577-6843
e-mail: dsinkler@warren-sinkler.com other:

name, S.C. Bar no. and address of defendant's attorney
G. Hamlin O'Kelley, III, SC Bar #15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
telephone: 843-856-4488 fax:
e-mail: Hamlin.okelley@buistbyars.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I AND III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II AND III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: For Temporary Injunction and for Partial Summary Judgment and Permanent Injunction
Estimated Time Needed: 1 Hour Court Reporter Needed: YES NO

SECTION II: Motion Type

- ☐ Written motion attached
☐ Form Motion –

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted

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, SCRPC)
☐ 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 (1/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)
Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

MOTION FOR TEMPORARY INJUNCTION
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND PERMANENT INJUNCTION

FILED
2011 OCT 25 PM 12:52
CLERK OF COURT
JULIE J. ARMSTRONG

The Plaintiff, Stow Away Storage, LLC (Stow Away), does hereby move for a Temporary Injunction, pursuant to the provisions of SCRPC 65, enjoining the Defendants from continuing to allow the customers and employees of Defendant Sweetgrass Hardware, Inc. (Sweetgrass), to utilize a private easement appurtenant for ingress and egress heretofore granted to the Defendant George W. Sisson (Sisson). The easement granted to Sisson was for access to property owned by him and identified by description attached to the Easement Agreement as Exhibit A (the dominant estate). (See Plat attached as Exhibit A)

Thereafter Sisson, through a wholly owned LLC, granted a License to Sweetgrass Hardware, Inc., the lessee of an adjoining tract of land on which it operated a hardware store. (See Plat recorded in Book EA at page 742 attached to Plaintiff's Complaint as Exhibit 6) The property leased by Sweetgrass is not a part of the dominant estate and is

not owned by Sisson or either of his entities, Defendants 4.0 LLC or The Sisson Foundation Limited Partnership.

The License granted to Sweetgrass, by its very terms under ¶10, provides:

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any Third Party.

So too, under South Carolina Law “. . . a license to be on the premises for an agreed purpose is a contractual right personal to the licensee.” (citing precedent) (emphasis added). “A license does not vest in the licensee any estate or interest in the land. (citing authority) It conveys only the temporary privilege of being on the land for some agreed purpose.” Hilton Head Air Serv. v. Beaufort Cty., 308 S.C. 450, 418 S.E.2d 849 (S.C. App. 1992).

Notwithstanding the above, the Defendants have persisted in their contention that, by virtue of the License, the customers and employees of Sweetgrass have a right to the unfettered use of the easement and have even counterclaimed against Stow Away asserting their right to damages for tortious interference with the Access Agreement between Stow Away and Sisson, to which Sweetgrass is not a party, and tortious interference with the License granted by Sisson/4.0 LLC to Sweetgrass, and asserting their right to damages for any interference by Stow Away. (See Exhibit 12 to Plaintiff's Complaint and Defendants' Counterclaim against Plaintiff).

By expanding the dominant estate to include access to Sweetgrass and its customers and employees, the Defendants have illegally vastly increased the burden on

the servient estate by subjecting it to constant traffic of the Sweetgrass customers and employees.

In an effort to prevent the continuous trespass on its servient estate by Sweetgrass and the customers and employees of Sweetgrass, Stow Away has gated the access to Sisson's dominant estate and on occasions has denied access to the Sweetgrass customers and/or employees. On October 4, 2012, one such customer struck and injured Stow Away's manager with her car and fled the scene of the accident. The continuous violation of Stow Away's rights has created a dangerous situation for which a temporary injunction is necessary to prevent further incidents and injuries.

Summary Judgment as to Stow Away's Claims
for a Permanent Injunction, Actual and Punitive
Damages and Attorney's Fees and Costs

Stow Away does further move for a permanent injunction forbidding Sweetgrass and its customers and employees and Sisson or his entities from any further use of Stow Away's easement to access Sweetgrass' leased property. Specifically, Stow Away requests the following:

1. A judgment declaring the Easement granted to Sisson to be an easement appurtenant granted for the purpose of providing Sisson the right of ingress and egress to and from his property for the benefit of Sisson and his property;
2. A judgment declaring that, as holder of an easement appurtenant to his property (the dominant estate), neither Sisson nor 4.0 LLC nor Sisson Foundation have any right to expand the easement to property beyond the boundary of the dominant estate.

3. A judgment declaring that, under the terms of the License granted by Sisson and 4.0 LLC to Sweetgrass, and the law of Licenses, any right that Sweetgrass has to use Stow Away's Easement is not assignable to customers and employees of Sweetgrass.

4. A permanent Injunction declaring the License between Sisson and/or his LLCs and Sweetgrass, void and unenforceable and enjoining Sisson, 4.0 LLC, Sisson Foundation, Sweetgrass and Timarand from allowing Sweetgrass or its customers or employees to use Stow Away's access easement to Hwy. 17 and allowing Stow Away to limit access to its easement by gated access operable only by suitable remote control devices which shall not be made available to Sweetgrass or its customers.

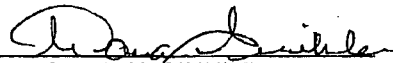
5. A judgment holding that, by ignoring Stow Away's protestations against the use of its easement by Sweetgrass and its customers and entering into a License Agreement with Sweetgrass intended for their use of Stow Away's easement, Sisson and 4.0 LLC and Sisson Foundation have violated the terms of the Access Easement And Abandonment of Encroachment Permit and the terms of the License.

6. A judgment against Sweetgrass for actual and punitive damages for insisting on the right of its company and customers to utilize Stow Away's easement to Sisson to gain access to its hardware store, and violating Stow Away's rights under the Access Easement and causing Stow Away to incur damages, including the costs and expenses of gating its access, in an effort to stop Sweetgrass' customers from using its property and incurring attorney's fees and costs in attempting to protect its interests.

7. A judgment awarding it Equitable Indemnity and judgment against Sisson, 4.0 LLC, Sisson Foundation and Sweetgrass for all attorney's fees, costs and expenses incurred in protecting its rights under the terms of the Access Easement and Abandonment of Encroachment Permit.

8. A judgment against Sweetgrass for actual and punitive damages for its tortious interference with the contractual terms of Stow Away's Access Easement with Sisson.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

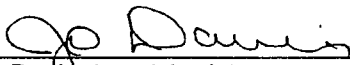
Charleston, South Carolina

October 25, 2012

CERTIFICATE OF SERVICE

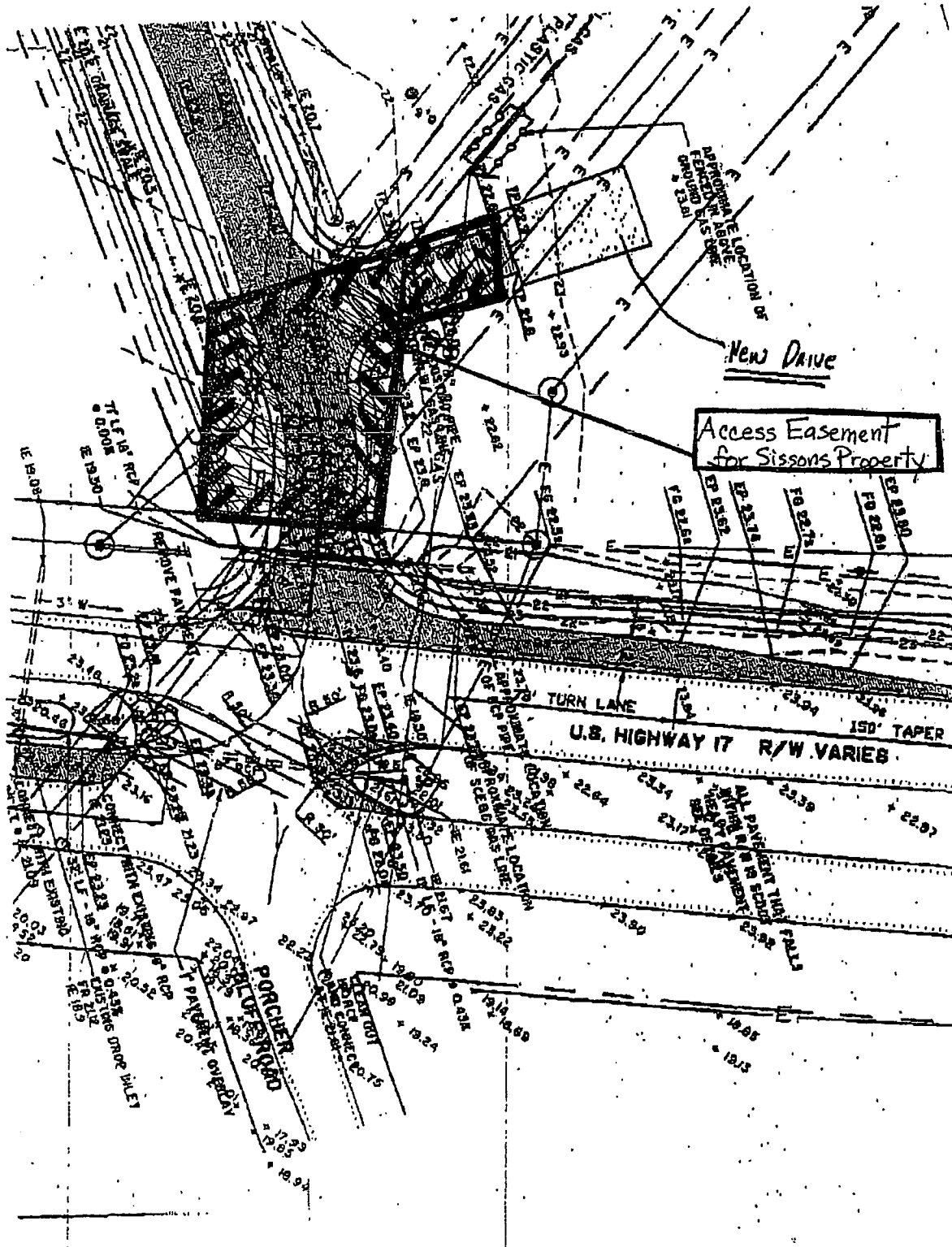
I hereby certify that on this 25th day of October, 2012, I served the foregoing Motion for Temporary Injunction and Motion for Partial Summary Judgment and Permanent Injunction on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelley, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464



Jo Davis, Legal Assistant

FILED
2012 OCT 25 PM 12:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)
Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

MEMORANDUM IN OPPOSITION TO
TIMARAND, INC.'S MOTION TO
RECONSIDER PURSUANT TO RULE 59(e)
SCRCP AND MOTION TO LIFT DEFAULT
JUDGMENT PURSUANT TO RULE 60(b)
SCRCP

FILED
2013 JAN -8 PM 2:09
J. ARMSTRONG
CLERK OF COURT

On motion of the Plaintiff, this Court previously issued an Order of Default and Judgment as to the Defendant Timarand, Inc. on August 16, 2011. Counsel for the Defendant thereafter moved to reconsider pursuant to SCRCP 59(e) and to lift the default pursuant to SCRCP 60(b).

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default under 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party'. Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's

entry of default." Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 681 S.E.2d 885, 888, 889. (S.C. 2009). (Attached)

In Sundown, the Supreme Court rejected the petitioner's argument that it should be granted relief because its insurance agent failed to answer the complaint stating that "the law is clear that an attorney or insurance company's misconduct is imputable to the client." (681 S.E.2d 889) In this case, Timarand argues that, notwithstanding the fact that the duly appointed agent for service of process was properly served, it should be entitled to relief because the agent failed to advise its principal that it had been served. Such a holding would eviscerate the provisions of SCRCP 4(d)(3) which specifically provides that: "Service shall be made as follows: (d)(3) upon a corporation . . . by delivering a copy of the summons and complaint . . . to any agent authorized by appointment or by law . . . to receive service of process." § 15-9-210 specifically provides that:

(a) A domestic business . . . corporation's registered agent is the agent of the corporation for service of any process . . . required or permitted by law to be served, and the service is binding upon the corporation."

The Supreme Court held, in Roche v. Young Bros. Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897, 899 (1995):

Rule 4, SCRCP serves at least two purposes. It conveys personal jurisdiction on the court and assures the defendant of reasonable notice of the actions. We have never required exacting compliance with the rules to effect service of process. (citing cases) Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

Service on a corporation may be made by hand delivering a copy of the summons and complaint . . . to an

authorized agent of the corporation. Rule 4(d)(3) SCRPC. . . .
(456 S.E.2d 899).

* * *

. . . under Rule 4(d)(8) the defendant, not the plaintiff, must
prove that the receipt was signed by an unauthorized person.
The plaintiff need only show compliance with the rules.

When the civil rules on service are followed, there is a
presumption of proper service. (456 S.E.2d 900)

And in Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 721 S.E.2d 430 (S.C.
2012), the Supreme Court held: "Once the plaintiff has demonstrated compliance with the
rules, the defendant can rebut an inference that service was effected only by showing that
the return receipt was signed by an unauthorized person. (721 S.E.2d 434) Rule 4(d)(8),
SCRPC." (Emphasis added)

In the instant case, there is no contention that service was effected on an
unauthorized person. Service on the duly appointed and authorized agent for the service
of process is conceded. The agent's negligence in failing to notify Timarand is imputed to
the client just as the negligence of an insurance agent or attorney is imputed to the client
in Sundown, supra.

Even if the "good cause" standard established in Rule 55(c) were applicable, which
it is not, the Defendant cannot show "good cause" by virtue of the fact that the owner and
President of the company, Timothy Askins, steadfastly attempted to avoid service of
process as attested by the Affidavit of John Kearse of Process Service, Inc., who
contacted Mr. Askins' son and Mr. Askins, by cellphone, and alerted him to the efforts
being made to serve him as President of the corporation. (Affidavit of John Kearse

attached) His evasion of service resulted in expenses to the Plaintiff, including attorney's fees, in excess of \$3,000.00 (See affidavit of counsel for Plaintiff attached).

On the basis of the foregoing, Timarand's motion must be denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER
SC Bar # 5138

Attorney for Plaintiff

Charleston, South Carolina

January 8, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2013, I served the foregoing Memorandum in Opposition to Timarand, Inc.'s Motion to Reconsider Pursuant to Rule 59(e) SCRPC and Motion to Lift Default Judgment Pursuant to Rule 60(b) SCRPC, with attachments, on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelley, III, Esquire
Maria E. Kiehling, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Jo Davis, Legal Assistant

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JULIE J. ARMSTRONG
CLERK OF COURT

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Citation: **681 S.E.2d 885**

*383 S.C. 601, *; 681 S.E.2d 885, **;
2009 S.C. LEXIS 362, ****

Sundown Operating Company, Inc., a South Carolina Corporation; Sunrise Coin Company, Inc., a South Carolina Corporation; and High Noon Properties, Inc., a South Carolina Corporation; Respondents, v. Intedge Industries, Inc., a New Jersey Corporation; Quickie Food Stores of North Myrtle Beach, Inc., d/b/a Hardwick's Bar & Restaurant Supplies, a South Carolina Corporation; BFPE International, Inc., f/k/a Atlantic Fire Systems, Inc., a Maryland Corporation; Wormald Fire Systems, Inc., f/k/a Ansul Fire Systems, Inc., a Delaware Corporation; and Ansul Incorporated, a Delaware Corporation, Defendants, of whom BFPE International, Inc., f/k/a Atlantic Fire Systems, Inc., a Maryland Corporation is, Petitioner.

Opinion No. 26700

SUPREME COURT OF SOUTH CAROLINA

383 S.C. 601; 681 S.E.2d 885; 2009 S.C. LEXIS 362

February 5, 2009, Heard
August 17, 2009, Filed

PRIOR HISTORY: [*1]**

Appeal from Horry County. Steven H. John, Circuit Court Judge. J. Stanton Cross, Jr., Circuit Court Judge.

DISPOSITION: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner service provider requested a writ of certiorari to review a judgment from the court of appeals (South Carolina), which affirmed an order from a trial court granting and refusing to set aside a default judgment against the provider and which awarded damages to respondent restaurant owner in the owner's action alleging negligence and breach of contract.

OVERVIEW: The provider had a service contract with the owner to install, maintain, inspect, and service the restaurant's fire extinguishing and suppression systems. A fire burned down the restaurant. The owner alleged that the provider was negligent and breached their contract. The court rejected the provider's argument that it should be granted relief from the entry of default because it should not be held responsible for the negligence of its insurance agent in failing to answer the complaint because an attorney or insurance company's misconduct was imputable to the provider as the client. The court held that the provider shared the responsibility for the entry of default with its insurance agent. The provider did

not forward the summons and complaint to the insurance agent until nearly two weeks after initially notifying the agent of the lawsuit and several days after the time to answer expired. Finally, even if the court were to assume that the provider showed good cause as to why a second summons and complaint was not answered in a timely manner, the entry of default had to be affirmed because the provider failed to show good cause why a first summons and complaint went unanswered.

OUTCOME: The court granted the request for a writ of certiorari as to the issue of the default judgment and affirmed the judgment of the court of appeals.

CORE TERMS: entry of default, good cause, insurance agent, summons, default judgment, default, clerk's, granting relief, restaurant's, imputable, lawsuit, actual damages, vice-president, breach of contract, referred to collectively, filed suit, time to file, sound discretion, evidentiary support, meritorious defense, excusable neglect, discovered evidence, misrepresentation, master-in-equity, inadvertence, enlargement, heightened, misconduct, vacation, rigorous

LEXISNEXIS® HEADNOTES

 Hide

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion 

HN1  The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. More Like This Headnote | *Shepardize: Restrict By Headnote*

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

HN2  The standard for granting relief under S.C. R. Civ. P. 60(b) is more rigorous than under S.C. R. Civ. P. 55(c), and an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment. More Like This Headnote | *Shepardize: Restrict By Headnote*

Civil Procedure > Pretrial Judgments > Default > Entry of Default Judgments 

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

HN3  S.C. R. Civ. P. 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere good cause. S.C. R. Civ. P. 55(c). This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. A motion under Rule 55(c) is

addressed to the sound discretion of the trial court. More Like This Headnote |
Shepardize: Restrict By Headnote

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

HN4 Once a default judgment has been entered, a party seeking to be relieved must do so under S.C. R. Civ. P. 60(b). The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the good cause standard established in S.C. R. Civ. P. 55(c). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. S.C. R. Civ. P. 60(b). The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default. More Like This Headnote | Shepardize: Restrict By Headnote

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

HN5 It is often observed that the criteria for obtaining relief from judgment under S.C. R. Civ. P. 60(b), mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, are relevant in determining whether good cause has been shown under S.C. R. Civ. P. 55(c). However, this language invites trial courts to apply a heightened standard to Rule 55(c) motions. The Rule 60(b) factors are indeed relevant to a Rule 55(c) analysis, but only inasmuch as proof of any one of these factors is sufficient to show good cause. No trial court should ever find good cause lacking based solely on the absence of a Rule 60(b) factor. More Like This Headnote | Shepardize: Restrict By Headnote

Civil Procedure > Pretrial Judgments > Default > Relief From Default 

HN6 An attorney or insurance company's misconduct is imputable to the client. Although the presence of other factors, in the totality of the circumstances, may amount to a showing of good cause, a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent. More Like This Headnote

COUNSEL: Eugene Matthews , of Richardson, Plowden & Robinson, of Columbia, and Michael S. Hopewell , of Turner, Padgett, Graham & Laney, of Florence, for Petitioner.

Daniel F. Blanchard, III , of Rosen, Rosen and Hagood, of Charleston, Peter F. Asmer, Jr. , of Cozen O'Connor, of Charlotte, and Susan C. Rosen , of Rosen Law Firm, of Charleston, for Respondents.

JUDGES: CHIEF JUSTICE TOAL , WALLER , PLEICONES , JJ., and Acting Justices R. Knox McMahon and E. C. Burnett, III , concur.

OPINION BY: TOAL 

OPINION

[*604] [886] ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

CHIEF JUSTICE TOAL : This action for negligence and breach of contract arises out of a fire

that burned down a restaurant and pub owned by Respondents Sundown Operating Company, Inc. ("Sundown"), Sunrise Coin Company, Inc. ("Sunrise"), and High Noon Properties, Inc. ("High Noon") (hereinafter referred to collectively as "Respondents"). Respondents filed suit against Defendant BFPE International, Inc. ("Petitioner") and four other defendants (hereinafter referred to collectively as "Defendants"). The trial court granted a default judgment against Petitioner, and following a *****2** damages hearing, the master-in-equity awarded damages to Respondents. Both parties appealed. The court of appeals affirmed the trial court. *Sundown Operating Co. v. Intedge Indus., Inc.*, Op. No. 2007-UP-091 (S.C. Ct. App. filed Feb. 23, 2007). We granted in part Petitioner's request for a writ of certiorari to review that opinion.

FACTUAL/PROCEDURAL BACKGROUND

On September 16, 1998, Respondents' restaurant and pub burned down. On August 24, 2001, Respondents filed suit against Defendants, alleging that an electric fryer had malfunctioned and ignited a quantity of frying oil. Respondents had a service contract *****887** with Petitioner to install, maintain, inspect, and service the restaurant's fire extinguishing and suppression systems. Respondents asserted claims for negligence and breach of contract against Petitioner, on the grounds that Petitioner failed to properly maintain and inspect the fire suppression system.

Petitioner is incorporated in Maryland and has various business locations in Maryland, Virginia, North Carolina, and South Carolina. At the time of the lawsuit, Petitioner did not *****605** have a registered agent listed with the South Carolina Secretary of State.

On August 27, 2001, Respondents *****3** mailed copies of the summons and complaint to Donald R. Leonard, who was Petitioner's registered agent in Maryland and North Carolina at the time, at two separate addresses in Myrtle Beach and Rocky Mount, North Carolina. In Myrtle Beach, Petitioner's manager, Randy Adams, received the package and was advised by the mail carrier that he could sign for Leonard, who was absent. Adams signed Leonard's name to the receipt, which was dated and returned to Respondents on August 28, 2001. In Rocky Mount, Leonard himself signed the return receipt on September 4, 2001.

On September 5, 2001, Leonard gave the summons and complaint to the general manager of Petitioner's Clayton, North Carolina office, who then forwarded the papers to Petitioner's vice-president. On or about September 14, 2001, Petitioner's vice-president notified Petitioner's insurance agent of the lawsuit. On October 1, 2001, the vice-president forwarded the summons and complaint to the insurance agent. On October 2, 2001, the insurance agent telephoned Respondents' counsel to request an extension of time to file an answer to the complaint. Respondents' counsel informed the agent that he had already moved for an entry of default *****4** based upon the August 28, 2001 service date. On October 2, 2001, the Horry County Clerk of Court filed the entry of default.

On October 18, 2001, Petitioner filed a motion to set aside default and permit enlargement of time. On October 29, 2001, Respondents filed a motion for a default judgment. On December 10, 2001, Respondents moved for, and the Horry County Clerk of Court filed, a second entry of default based upon the September 4, 2001 service date.

On March 18, 2002, the trial court conducted a hearing and found that Petitioner had shown good cause to set aside the entry of default and permit an enlargement of time to file an answer and instructed the company to submit a proposed order. The trial court based its ruling in part on the recent court of appeals decision in *Pilgrim v. Miller*, 2002 S.C. App. LEXIS 4, 2002 WL 44112 (S.C. Ct. App. Jan. 14, 2002) (*Pilgrim I*). The next day, Respondents' counsel requested that the trial court delay its *****606** formal order in light of the Court of Appeals' decision to rehear *Pilgrim I*. The trial court agreed. On June 17, 2002, the court of appeals reversed its original opinion in *Pilgrim I*. ¹ *Pilgrim v. Miller*, 350 S.C. 637, 567 S.E.2d 527 (Ct. App. 2002) (*Pilgrim II*).

FOOTNOTES

¹ Although *****5** the *Pilgrim II* opinion was vacated by this Court on April 25, 2003, the court of appeals in the instant case observed that the portions relied upon by the trial judge are "still good law." See *Bage v. Southeastern Roofing Co.*, S.C. Sup. Ct. Order dated July 23, 2009 (Shearouse Adv. Sh. No. 33 at 82) (discussing vacation of *Pilgrim II* opinion).

On July 18, 2002, the trial court again heard Petitioner's motion to set aside the entry of default. The trial court issued an order finding the August 28, 2001 service date to be invalid, but held that Petitioner was not entitled to set aside the entry of default with regard to the September 4, 2001 service date.

The case was then referred to the master-in-equity for a hearing to assess damages. The master entered judgment in the amount of: \$ 273,336.00 in actual damages to Sunrise; \$ 394,848.38 in actual damages to Sundown; and \$ 524,800.70 in actual damages to High Noon. The master denied Respondents' requests for prejudgment interest.

The parties filed cross-appeals. The court of appeals held that Respondents were properly denied prejudgment interest; that both the August 28, 2001 and September 4, 2001 service dates were valid; and that the *****6** trial court did not err in failing to set aside the entry of default. Both parties filed petitions ****888** for a writ of certiorari with this Court. We denied Respondents' petition and granted in part Petitioner's petition. Petitioner presents the following question for our review:

Did the court of appeals err in failing to set aside the entry of default?

STANDARD OF REVIEW

HN1 The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. **[*607]** *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997).

LAW/ANALYSIS

Petitioner contends that it has shown good cause under the minimal standard *****7** required by Rule 55(c), SCRCP, and that the trial court and the court of appeals erred in applying a heightened standard to conclude that the company was not entitled to set aside the entry of default. Although we have some concerns about the lower courts' conflation of the Rule 60(b) and Rule 55(c) standards, we do not believe Petitioner meets even the most minimal showing of good cause, and is therefore not entitled to relief from the entry of default.

I. Differentiating the Standards for Relief Under Rule 55(c) and Rule 60(b)

We must acknowledge at the outset that there has been some recent confusion in the case law regarding the application of the standards for relief set forth in Rule 55(c) and Rule 60(b). We take this opportunity to reassert the basic legal premise that **HN2** the standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default

may be set aside for reasons that would be insufficient to relieve a party from a default judgment.

HN3 Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The *****8** standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the *****608** timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E. 2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

HN4 Once a default judgment has been entered, a party seeking to be relieved must *****9** do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default *****889** once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.

HN5 It is often observed, as the court of appeals held in the present case, that the criteria for obtaining relief from judgment under Rule 60(b) -- mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation -- are relevant in determining whether good cause has been shown under Rule 55(c), SCRCP. See *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378-79 (Ct. App. 1993) (holding that, "as a *****10** practical matter," the 60(b) factors are relevant under both rules). However, we caution that this language invites trial courts to apply a heightened standard to Rule 55(c) motions. The Rule 60(b) factors are indeed relevant to a Rule 55(c) analysis, but only inasmuch as proof of any one of these factors is sufficient to show "good cause." No trial court should ever find good cause lacking based solely on the absence of a Rule 60(b) factor.

[*609] II. The Merits of Petitioner's Appeal

Petitioner argues that the trial judge should have set aside the entry of default because the company showed "good cause" by asserting its insurance agent was negligent for failing to answer the complaint and because (1) it promptly moved for relief; (2) it has a meritorious defense; and (3) Respondents would suffer no prejudice if the court set aside the entry of default. We disagree.

Initially, we reject Petitioner's argument that it should be granted relief from the entry of default because it should not be held responsible for the negligence of its insurance agent in failing to answer the complaint. This argument is without merit, as the law is clear that **HN6** an attorney or insurance company's misconduct is imputable *****11** to the client. See *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987) (recognizing that negligence of an

attorney or insurance company is imputable to a defaulting litigant). Although the presence of other factors, in the totality of the circumstances, may amount to a showing of "good cause," a defendant may not be relieved from the entry of default *solely* because it relied to its detriment on a negligent insurance agent. See *Ricks*, 293 S.C. 372, 360 S.E.2d 535 (holding that good cause was shown in the totality of circumstances involving misplaced reliance on insurance agent).

In this case, Petitioner shares the responsibility for the entry of default with its insurance agent. Petitioner did not forward the summons and complaint to the insurance agent until approximately two weeks after initially notifying the agent of the lawsuit and several days after the time to answer expired. Furthermore, Petitioner's "good cause" argument is based entirely upon the September 4, 2001 service date. [***12] Petitioner has put forth no explanation with regard to the fate of the summons and complaint served on Randy Adams on August 28, 2001. As the court of appeals correctly held, this service was proper pursuant to *Roche v. Young Bros., Inc.* of [*610] *Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).² Even if we were to assume that Petitioner showed good cause as to why the summons and complaint that arrived in Rocky Mount was not answered in a timely manner, we must nevertheless affirm the entry of default because Petitioner has failed to show good cause as to why the summons and complaint that arrived in Myrtle Beach went unanswered.

FOOTNOTES

² We declined to grant certiorari as to this particular question.

CONCLUSION

For the reasons stated herein, we affirm the opinion of the court of appeals.

WALLER v. PLEICONES v. JJ., and Acting Justices R. Knox McMahon and E. C. Burnett, III v. concur.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-10-2444

AFFIDAVIT OF GEORGE W. SISSON

FILED
2013 FEB -7 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY appeared before me George W. Sisson, who, being duly sworn, deposes
and states as follows:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge and not upon any information or belief.
2. I am a Defendant in the within referenced lawsuit.
3. I am the sole member of 4.0, LLC, a South Carolina limited liability company.
4. I am the General Partner of The Sisson Foundation Limited Partnership.
5. 4.0, LLC and The Sisson Foundation Limited Partnership own a 5.862 acre tract of land abutting the property of the Plaintiff.
6. On October 17, 2000, I entered into an Access Easement and Abandonment of Encroachment Permit (the "Access Easement") with the Plaintiff granting me a non-exclusive and perpetual easement.
7. The Access Easement was recorded in Book U358 at Page 109 in the Office of the Register Mesne Conveyance for Charleston County, South Carolina and is attached hereto as Exhibit "A".

{00311157.DOC}

8. This document granted the Grant of Access Easement to me and my successors and assigns, forever.
9. The Access Easement contains no restriction on assigning the Grant of Easement.
10. The Access Easement is only limited in nature and scope, in that the use of the Access Easement "...shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property."
11. The Access Easement is "...for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between the Grantee's property and U.S. Highway 17."
12. The Access Easement "...shall be perpetual and runt[sic] with title to the Grantor's Property and the Grantee, respectively."
13. The Defendant Timarand, Inc. currently leases a parcel abutting the subject property to Sweetgrass Hardware, Inc.
14. I assigned my rights in the Access Easement to Sweetgrass Hardware, Inc. by way of a License Agreement, a copy of which is attached hereto as Exhibit "B".
15. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by Sweetgrass Hardware, Inc. and the other Defendants.
16. The Plaintiff constructed a gate in a further attempt to block the Access Easement, and the gate remains in place on the property.
17. The assignment of the Access Easement to Sweetgrass Hardware, Inc. does not create an unlawful increase or burden upon the Grantor's property.

18. The Plaintiff admitted that they entered into the Access Easement with me in their Responses to Requests for Admission dated June 7, 2011. A copy of their Responses to Requests for Admission is attached hereto as Exhibit "C".

19. The Plaintiff further admitted in their Responses to Requests for Admission dated June 7, 2011 that the Access Easement is an Easement Appurtenant and that the rights granted run with the title to the Grantor's and the Grantee's property.

FURTHER THE AFFIANT SAYETH NOT.

Hampden, Massachusetts
February 6, 2013

George W. Sisson
George W. Sisson

SWORN TO before me this 6th
day of February, 2013

Richard L. Zabielski
Notary Public for the Commonwealth of Massachusetts
My Commission Expires: _____

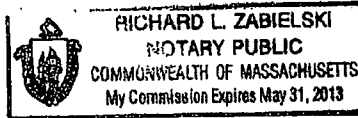


EXHIBIT “A”

U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

} ACCESS EASEMENT
AND
ABANDONMENT OF
ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sisson (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sisson Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

HP001-172826, 9-EA-(JAS) 020204-00000

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

NPCL142333.1-24-1143) 02324-0000

U358P6111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America,

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: [Signature]

Name: E.L. Fonger, III

Title: Member

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

GRANTEE:

[Signature]
George Sleson

*aka George W. Sleson

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

NP-COL-142322-1-54-(1A8) 025204-00000

EX U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by H.L. Pomeroy, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Wesley J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2000

Tommy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-18-2007

NPCC1.1\030202.1-0A-4\AS\020204-00000

U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sizons, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Curtis J. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Walter R. K. K. K. (LS)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

17-001-1-2000-1-E4-(15) 022004-0000

EXHIBIT A
(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BB, Page 79, reference to which is made for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Means Conveyances for Charleston County in Deed Book Z328 at page 662.

HP-CCL-1425302-1-2A (JMD) 02/20/14 02:00

U358PG115

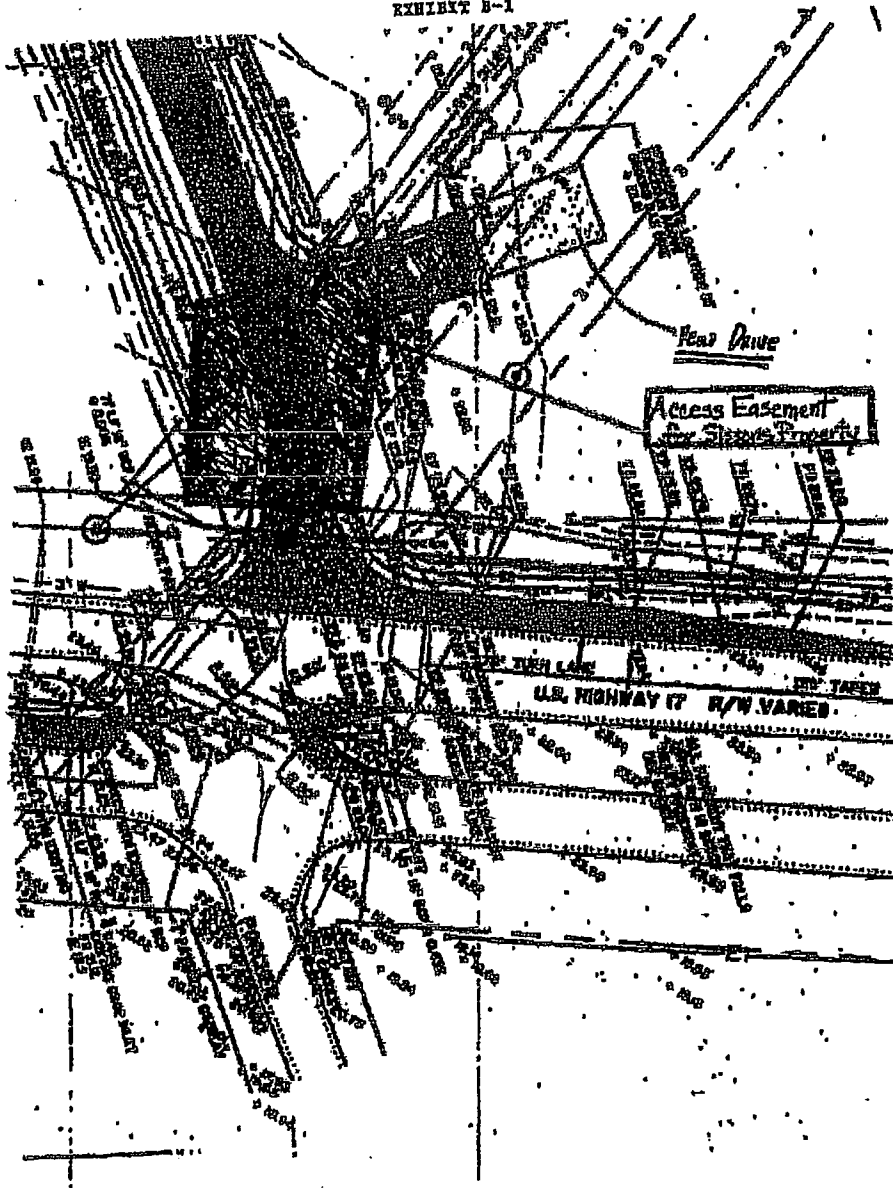
EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for Siasona Property" and further depicted by hachemarks on the attached sketch labeled Exhibit B-1.

NPCOL1428689.1-5A(JAS) 022094-00000

U3586116

EXHIBIT B-1



Nelson Pruet Jacobs

→ Pollard

P. O. Drawer 2426

Colo, SL 29202-9732

✓
2

(es)

REF U358PG117

FILED

U358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.006

EXHIBIT "B"

After recording please return to:
Gray B. Taylor, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) **LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property"), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensor. Licensee acknowledges that Licensor may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensor is under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4. Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensor shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensor upon the motion of the Licensor for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensor RL (initial here)

Licensee JB (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensor and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensor shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensor under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi I. On

CRISTI I ON

4.0 LLC

George W. Sissons

BY: George W. Sissons

Its: Member

SWEETGRASS HARDWARE, INC.

Dana Lynn Fletcher

Dana Lynn Fletcher

Frank R. Fletcher

By: Frank R. Fletcher

Its: PRESIDENT



EXHIBIT A
(Licensee's Property)

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027

EXHIBIT “C”

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,	)	
Plaintiff,	)	
vs.	)	PLAINTIFF'S RESPONSES TO
GEORGE W. SISSON,	)	DEFENDANTS' REQUESTS FOR
4.0 LLC, THE SISSON	)	ADMISSION
FOUNDATION LIMITED	)	
PARTNERSHIP,	)	
SWEETGRASS HARDWARE,	)	
INC. AND TIMARAND, INC.,	)	
Defendants.	)	

To: G. Hamlin O'Kelley, III, Attorney for Defendants

Pursuant to SCRCP 36, Plaintiff responds to the First Requests for Admission of Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of an Access Easement and Abandonment of Encroachment Permit by and between Stow Aware [sic] Storage, LLC, and George Sissons a/k/a George w. Sissons.

RESPONSE: Admit.

2. Admit that the document attached hereto as Exhibit "A" was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston County.

RESPONSE: Admitted that the first page of the document "attached hereto as Exhibit 'A' was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston." The entire instrument was recorded at pages 109 through 117.

3. Admit that the Plaintiff Stow Away Storage, LLC, is named as the "Grantor" in that document attached hereto as Exhibit "A".

RESPONSE: Admit.

4. Admit that George Sissons a/k/a George W. Sissons is named as the "Grantee" in that document attached hereto as Exhibit "A".

RESPONSE: Admitted that "George W. Sissons*" is named as the Grantee in the first paragraph of the document, however, the execution page, which is recorded at page 111, is signed George W. Sisson, which is the Grantee's proper name, and the asterisk is explained by "aka George W. Sissons."

5. Admit that the Plaintiff Stow Away Storage, LLC, granted the following Grant of Access Easement as set forth in Exhibit "A":

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sissons Property' and more particularly described on Exhibit B attached hereto (The "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger delivery vehicular means between Grantee's property and U.S. Highway 17.

RESPONSE: Admitted, however, the Grant contains the additional language as follows:

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

6. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement to George Sissons a/k/a George W. Sissons and his successors and assigns, forever.

RESPONSE: Admitted that that language is part of the Grant of Access Easement and that the purposes for which the easement was granted set forth in the Grant of Access Easement establish that the easement granted is an Easement Appurtenant to the property of Sisson, which is described in the complaint at paragraph 4.

7. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement so that the rights granted and agreed to therein "shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively."

RESPONSE: Admitted that that language is in the second page of the Access Easement, which is Record page 110, except that the word "run" should be "run."

8. Admit that the document attached hereto as Exhibit "A" contains no restriction on assigning the Grant of Easement as

RESPONSE: Paragraph 8 is not a complete sentence and counsel for Plaintiff is not sure of the intent of the question and therefore denies the same.

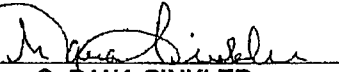
9. Admit that the document attached hereto as Exhibit "A" is assignable.

RESPONSE: Denied.

10. Admit that assignment of Grantee's rights in the document attached hereto as Exhibit "A" shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee as applicable.

RESPONSE: As worded, paragraph 10 is denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

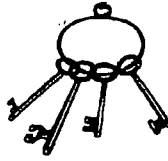
Charleston, South Carolina
June 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2011, I served the foregoing Plaintiff's Responses to Defendants' First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Jo Davis, Legal Assistant



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

February 7, 2013

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

Via Hand Delivery

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Affidavit of George W. Sisson. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

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

Yours very truly,

Maria E. Kiehling

Enclosures
cc: (w/ encls) G. Dana Sinkler, Esq.

{00312179.DOC}

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-10-2444

AFFIDAVIT OF FRANK R. FLETCHER

FILED
2013 FEB - 6 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

PERSONALLY appeared before me Frank R. Fletcher, who, being duly sworn, deposes
and states as follows:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge and not upon any information or belief.
2. I am a Defendant in the within referenced lawsuit.
3. I am the owner of Sweetgrass Hardware, Inc.
4. I lease the 1.93 acre tract of land abutting the property of the Plaintiff from the Defendant Timarand, Inc.
5. I operate a hardware store out of the space leased from the Defendant Timarand, Inc.
6. I entered into a License Agreement with 4.0, LLC for the assignment of 4.0, LLC's rights in the Access Easement and Abandonment of Encroachment Permit. A copy of the License Agreement is attached hereto as Exhibit "A".
7. The License Agreement assigned 4.0, LLC's rights in the Access Easement with the Plaintiff dated October 17, 2000.

{00311373.DOC}

7. The Access Easement was recorded in Book U358 at Page 109 in the Office of the Register Mesne Conveyance for Charleston County, South Carolina and a copy is attached hereto as Exhibit "B".
8. The Access Easement contains no restriction on assigning the Grant of Easement.
9. The Access Easement is only limited in nature and scope, in that the use of the Access Easement "...shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property."
10. The Access Easement is "...for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between the Grantee's property and U.S. Highway 17."
11. The Access Easement "...shall be perpetual and runt[sic] with title to the Grantor's Property and the Grantee, respectively."
12. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by employees and patrons of Sweetgrass Hardware.
13. The Plaintiff constructed a gate in a further attempt to block the Access Easement, and the gate remains in place on the property.
14. The assignment of the Access Easement to Sweetgrass Hardware, Inc. does not create an unlawful increase or burden upon the Grantor's property.
15. The Plaintiff admitted that they entered into the Access Easement with the Defendant George W. Sisson in their Responses to Requests for Admission dated June 7, 2011. A copy of their Responses to Requests for Admission is attached hereto as Exhibit "C".

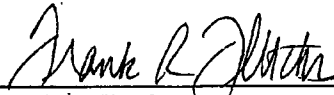
16. The Plaintiff further admitted in their Responses to Requests for Admission dated June 7, 2011 that the Access Easement is an Easement Appurtenant and that the rights granted run with the title to the Grantor's and the Grantee's property.

17. The Plaintiff's actions to block the Access Easement to me, my employees and patrons constitutes tortious interference with the contract in the form of the License Agreement by and between 4.0, LLC and Sweetgrass Hardware, Inc.

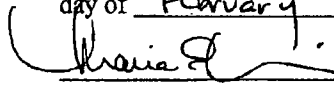
FURTHER THE AFFIANT SAYETH NOT.

Mt. Pleasant, South Carolina

2/6, 2013


Frank R. Fletcher

SWORN TO before me this 6th
day of February, 2013



Notary Public for South Carolina

My Commission Expires: 2/7/15



EXHIBIT “A”

After recording please return to:

Gray B. Taylor, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property"), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensor. Licensee acknowledges that Licensor may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensor is under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4.

Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensor shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensor upon the motion of the Licensor for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensor *RL* (initial here)

Licensee *JD* (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensor and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensor shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensor under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi E. On

CRISTI E ON

4.0 LLC

George W. Sissons

BY: George W. Sissons

Its: Member

SWEETGRASS HARDWARE, INC.

Dana Lynn Fletcher

Dana Lynn Fletcher

Frank R. Fletcher

By: Frank R. Fletcher

Its: PRESIDENT



EXHIBIT A
(Licensee's Property)

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027

EXHIBIT "B"

BK U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

} ACCESS EASEMENT
AND
} ABANDONMENT OF
} ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

NP COL 1428200, 1-24 (JAS) 02/28/04-00000

Abandonment of Easement Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

NP001,1432821-BA (1/15) 023284-00000

K U358PG111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: [Signature]

Name: B.L. Foster, III

Title: Member

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

GRANTEE:

[Signature]
George Sissom

aka George F. Sissom

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

RPCC11/23393.1-27-11A8) 023234-00000

EX U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that
s/he knew the within-named Stow Away Storage, LLC by E.L. Pooner, III, its Member, sign, seal,
and as its act and deed, deliver the within-written instrument for the uses and purposes therein
mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the
execution thereof.

Mable J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2008

Tommy S. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2009

N:\CCCL\NOTES\003.1-2A-41A8\023264-00000

U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Sissons, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Craig H. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Mark R. Jenkins (R.S.)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

NP001528580-1-014 (1/5) 01222440000

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by R.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, s/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BB, Page 79, reference to which is made for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Means Conveyances for Charleston County in Deed Book Z328 at page 662.

FILED IN DEED BOOK 1-2A (200) 000284-00000

U358PG115

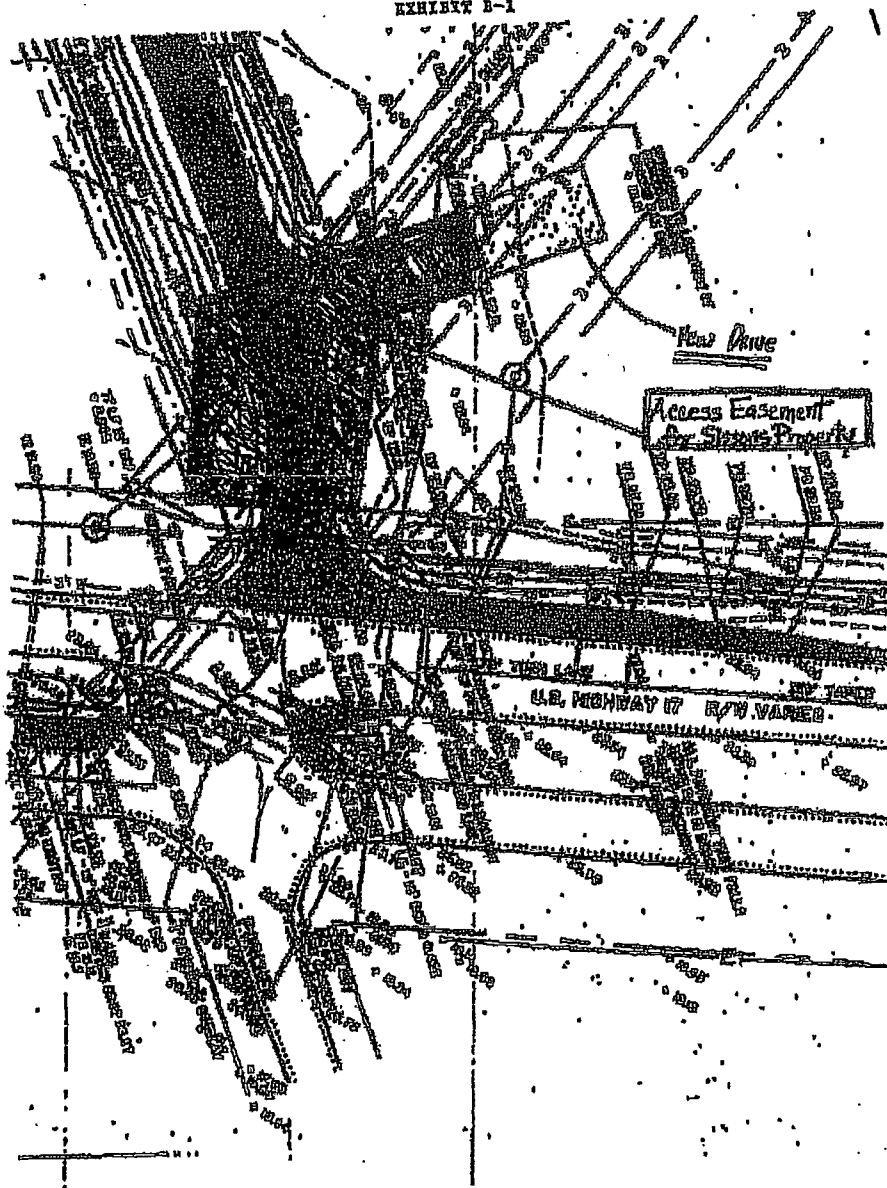
EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for
Sissons Property" and further depicted by hashmarks on the attached sketch labeled Exhibit B-1.

NPCC1422800.1-EN-11AS1 022294-01000

U358PG116

EXHIBIT B-1



Nassen Fruit Jacobs
Pollard

P. O. Drawer 2426
Cala, IL 62602-9732

TP
L

U358PG117

FILED

14.006

U358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

EXHIBIT "C"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,	)	
Plaintiff,	)	
vs.	)	PLAINTIFF'S RESPONSES TO
GEORGE W. SISSON,	)	DEFENDANTS' REQUESTS FOR
4.0 LLC, THE SISSON	)	ADMISSION
FOUNDATION LIMITED	)	
PARTNERSHIP,	)	
SWEETGRASS HARDWARE,	)	
INC. AND TIMARAND, INC.,	)	
Defendants.	)	

To: G. Hamlin O'Kelley, III, Attorney for Defendants

Pursuant to SCRCP 36, Plaintiff responds to the First Requests for Admission of Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of an Access Easement and Abandonment of Encroachment Permit by and between Stow Aware [sic] Storage, LLC, and George Sissons a/k/a George w. Sissons.

RESPONSE: Admit.

2. Admit that the document attached hereto as Exhibit "A" was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston County.

RESPONSE: Admitted that the first page of the document "attached hereto as Exhibit 'A' was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston." The entire instrument was recorded at pages 109 through 117.

3. Admit that the Plaintiff Stow Away Storage, LLC, is named as the "Grantor" in that document attached hereto as Exhibit "A".

RESPONSE: Admit.

4. Admit that George Sissons a/k/a George W. Sissons is named as the "Grantee" in that document attached hereto as Exhibit "A".

RESPONSE: Admitted that "George W. Sissons*" is named as the Grantee in the first paragraph of the document, however, the execution page, which is recorded at page 111, is signed George W. Sisson, which is the Grantee's proper name, and the asterisk is explained by "aka George W. Sissons."

5. Admit that the Plaintiff Stow Away Storage, LLC, granted the following Grant of Access Easement as set forth in Exhibit "A":

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sissons Property' and more particularly described on Exhibit B attached hereto (The "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger delivery vehicular means between Grantee's property and U.S. Highway 17.

RESPONSE: Admitted, however, the Grant contains the additional language as follows:

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

6. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement to George Sissons a/k/a George W. Sissons and his successors and assigns, forever.

RESPONSE: Admitted that that language is part of the Grant of Access Easement and that the purposes for which the easement was granted set forth in the Grant of Access Easement establish that the easement granted is an Easement Appurtenant to the property of Sisson, which is described in the complaint at paragraph 4.

7. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement so that the rights granted and agreed to therein "shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively."

RESPONSE: Admitted that that language is in the second page of the Access Easement, which is Record page 110, except that the word "run" should be "run."

8. Admit that the document attached hereto as Exhibit "A" contains no restriction on assigning the Grant of Easement as

RESPONSE: Paragraph 8 is not a complete sentence and counsel for Plaintiff is not sure of the intent of the question and therefore denies the same.

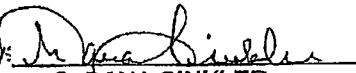
9. Admit that the document attached hereto as Exhibit "A" is assignable.

RESPONSE: Denied.

10. Admit that assignment of Grantee's rights in the document attached hereto as Exhibit "A" shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee as applicable.

RESPONSE: As worded, paragraph 10 is denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

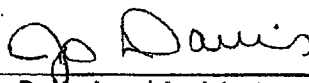
Attorney for Plaintiff

Charleston, South Carolina
June 7, 2011

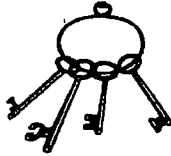
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2011, I served the foregoing Plaintiff's Responses to Defendants' First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464



Jo Davis, Legal Assistant



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

December 13, 2012

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

Via Hand Delivery

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Affidavit of Frank R. Fletcher. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

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

Yours very truly,

Maria E. Kiehling

Enclosures

cc: (w/ encls) G. Dana Sinkler, Esq. .

{00311817.DOC}

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

ROA 290

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STOW AWAY STORAGE, LLC,)
Plaintiff,)
vs.)
GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10,244

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY
INJUNCTION AND MOTION FOR PARTIAL
SUMMARY JUDGMENT AND PERMANENT
INJUNCTION

FILED
2013 FEB - 7 PM 12:33
JULIE J. ARMSTRONG
CLERK OF COURT

Background

This case concerns an Access Easement given by the Plaintiff Stow Away to the Defendant Sisson on October 17, 2000, involving property on Hwy. 17 at its intersection with Porcher Drive in or near Mt. Pleasant.

In an effort to clarify the situation giving rise to this lawsuit, counsel is attaching to this memorandum, as Exhibit 1, a copy of the Charleston County tax map which shows the relationship of the properties owned or leased by the parties to this action.

The property owned by the Plaintiff Stow Away is identified on the tax map as parcel 024. The parcels owned by the Defendant Sisson and his LLCs are identified on the tax map as parcels 026 and 034. The property leased by the Defendant Sweetgrass from the Defendant Timarand, Inc. is identified on the tax map as parcel 027.

At the time that Stow Away granted the Access Easement to Sisson, it had developed a self-storage facility on parcel 024. Sisson had developed, on parcel 026, a

facility for assembling large scales used by cargo trucks to determine the weight of their shipment. Sisson also owned a 5.862 acre tract designated as parcel 034. Timarand was the owner of parcel 027 which it subsequently leased to Defendant Sweetgrass on January 3, 2007. Thereafter Sweetgrass renovated and enlarged a building on parcel 027 to accommodate a hardware store. (See Affidavit of E.L. "Bert" Pooser, III, Exhibit 2)

In July of 1999, Stow Away filed with the South Carolina Department of Highways and Public Transportation (later SCDOT), an Application for Encroachment Permit requesting access to its property from Hwy. 17. In the course of negotiations, SCDOT granted Stow Away's request on condition that Stow Away obtain from Sisson his agreement to abandon his existing access to Hwy. 17. Stow Away, on March 21, 2000, offered Sisson an easement across its property in exchange for the abandonment of his original access. Sisson "acknowledged and agreed" to the offer and the abandonment by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1 to Complaint)

On October 17, 2000, the Access Easement and Abandonment of Encroachment Permit was signed by both Stow Away, by its member E.L. Pooser, III, and George W. Sisson a/k/a George W. Sissons. (Exhibit 2 to Complaint)

Some 6 years later, on September 27, 2006, Tim Askins, President of Timarand, Inc., owner of parcel 027, made an effort to obtain the use of Stow Away's easement, but Stow Away would not agree to it. (See Affidavit of Pooser, Exhibit 2)

Subsequently, after Sweetgrass had renovated and constructed a hardware store on parcel 027, it built a gate on its property and cleared trees to allow its use of the access which Sisson had agreed to abandon and, with Sisson's consent, allowed its

customers to use that access. Subsequently, after protest by the SCDOT to Sweetgrass (Exhibit 7 to Complaint) the SCDOT, in September of 2009, blocked the access. (See Affidavit of Pooser, Exhibit 2)

Thereafter Sweetgrass asserted the right to and, with Sisson's consent, allowed its customers to use the easement over Stow Away's property which had been given to Sisson.

Stow Away had counsel write Frank R. Fletcher, the owner of Sweetgrass, and demand that it cease use of the easement. (Exhibit 8 to Complaint) This was met by a letter from Sweetgrass' counsel to counsel for Stow Away insisting on Sweetgrass' rights to use the easement and stating that it was "a lawful assignee of Mr. Sissons (sic)." (Exhibit 9 to Complaint) When requested by Stow Away's counsel to provide a copy of such assignment (Exhibit 10 to Complaint), it developed that there was no written assignment, but three days later, counsel for Sweetgrass sent a License Agreement which, notwithstanding its terms, was asserted by both Sweetgrass and Sisson to constitute authorization for Sweetgrass and its customers to continue the use of Stow Away's easement for its customers. (Exhibit 11 to Complaint and Exhibit A to Affidavit of Pooser).

After many efforts by Stow Away to make Sweetgrass close its gate and cease the use of Stow Away's easement, this action was commenced.

Nature of the Easement

The case of Sandy Island Corporation v. Ragsdale, 143 S.E.2d 803 (S.C. 1965) is instructive in determining the nature of the Easement established by the Access Agreement between Stow Away and Sisson.

In that case, Sandy Island Corporation purchased from Williams Furniture Corporation, a portion of Sandy Island containing some 8,000 acres, by deed dated July 24, 1964. There was specifically excepted from the conveyance 4 tracts of land included within the boundaries of the original tract, one of which was a conveyance to T.S. Ragsdale, on August 15, 1961, of a tract containing 185 acres more or less. Included in the conveyance by Williams Furniture to Sandy Island Corporation was the easement and right-of-way which had been reserved in its deed to Ragsdale. The easement and right-of-way so reserved provided that Williams Furniture reserved unto itself, its successors and assigns, a permanent perpetual easement and right-of-way over a certain road, together with an easement and right-of-way over 5 acres of high land on the edge of the Pee Dee River. It provided that the easement and right-of-way was to be for purposes of ingress and egress to the Pee Dee River and thence, by barge or boat, to Sandy Island and the said 5 acres of high land was to be used for loading logs and forest products coming off of Sandy Island from the river back out to the old River Road. Ragsdale, contending that the reserved easement and right-of-way in the deed from Williams Furniture to him was an easement in gross and not assignable or transferrable to Sandy Island Corporation, blocked the access to the old River Road. Williams Furniture sued for an injunction and Ragsdale demurred.

Judge Ness, then a Circuit Judge, overruled the demurrer and Ragsdale appealed. Justice Moss, in writing the Supreme Court's unanimous opinion affirming Judge Ness' ruling, made several important holdings. First he noted that: "One of the ways of creating an easement is by an express written grant. A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the

creation of the easement, to an express grant of the easement by the grantee of the lands." 17A Am.Jur., Easement, Sections 18 and 31, pages 631 and 641.

Second, he held: "An easement is either 'appurtenant' or 'in gross'. An appendant or appurtenant easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof. It attaches to, and passes with, the dominant tenement as an appurtenance thereof. An easement, or right-of-way, in gross is a mere personal privilege to the owner of the land and incapable of transfer by him, and is not, therefore assignable or inheritable." (citing cases).

His third holding was: "In construing a deed it is elementary that the cardinal rule of construction is to ascertain and effectuate the intention of the parties, unless the intention contravenes some well settled rule of law or public policy. (citing cases) The intention of the parties here must be determined by a fair interpretation of the grant or reserve creating the easement."

Armed with these precepts, Justice Moss then held:

Considering all the provisions of the reservation set forth in the deed of Williams Furniture Corporation to the appellant, as to the nature of the easement created, we find that the parties thereto clearly intended that Williams Furniture Corporation, its successors and assigns, was to have a perpetual easement and right-of-way over the road commencing at the old 'River Road' and running to the Great Pee Dee River, with an easement and right-of-way over 5 acres of high land abutting on the said river. The easement and right-of-way over the aforesaid road is expressly stated to be for the purposes of ingress and egress to the said river so that its property on Sandy Island could be reached by barge or boat from said point on the river. It further appears that it was the intention of the parties that the 5 acres of high land was to be used for loading and decking logs and forest products which would be brought from Sandy Island by

barge to such point and that the said logs and forest products so brought from Sandy Island were to be transported from the said 5 acres of high land out to the old 'River Road'. It was further the intention of the parties that the said road could be used jointly by Williams Furniture Corporation, its successors and assigns, and by the appellant here, his heirs and assigns, with Williams Furniture Corporation maintaining the said road in a passable condition when being used by it for the moving of logs and forest products over the same.

In conclusion, the Court said:

It is our conclusion that the reservation made in the deed of Williams Furniture Corporation to the appellant created an easement in gross of a commercial character and the fact that the instrument creating such easement reserved the rights in question to Williams Furniture Corporation and 'its successors and assigns' indicated an intention to attach the attribute of assignability to the easement. It follows that Williams Furniture Corporation had the legal right to assign such easement to the respondent.

Law of Easements

It can be argued on the basis of Sandy Island Corporation that the easement created by the Access Agreement, as drafted, was either an easement appurtenant or an easement in gross or an easement in gross of a commercial character. However, irrespective of how it might be classified, the easement created by Stow Away and Sisson cannot be assigned or conveyed to a stranger which is the owner of property beyond the confines of the dominate estate.

The Courts of South Carolina have long held that the owner of the dominant estate cannot materially increase the burden of the servient estate or impose thereon a new and additional burden. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973). "Although, to the extent of the easement, the rights of the

easement owner are paramount to those of the landowner, the easement owner's rights are not absolute but are limited, so the owner of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more." (Id)

The South Carolina Appellate Courts do not appear to have had occasion to enforce the rule above where a dominant tenant has attempted to extend an easement beyond the confines of the servient estate, until the recent decision of the Court of Appeals in Rhett v. Gray, Opinion No. 5066, filed December 19, 2012. (Attached as Exhibit 3)

In that case, the Court held: "As a general rule, an easement appurtenant to one parcel of land may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts to which the easement is not pertinent." *Brown v. Voss*, 105 Wn.2d 366, 715 P.2d 514, 517 (Wash. 1986) (citing *Heritage Standard Bank & Trust Co. v. Trs. of Schs.*, 84 Ill. App. 3d 653, 405 N.W.2d 1196, 40 Ill. Dec. 104 (Ill. App. Ct. 1980); *Kanefsky v. Dratch Const. Co.*, 376 Pa. 188, 101 A.2d 923 (Pa. 1954); *S.S. Kresge Co. of Mich. v. Winkelman Realty Co.*, 260 Wis. 372, 50 N.W.2d 920 (Wis. 1952); 28 C.J.S. Easements § 92, at 772-73 (1941)).

The Court also cited, with apparent approval, the case of McCammon v. Meredith, 830 S.W. 2d 577, 580 (Tenn. Ct. App. 1991) wherein the Tennessee Court of Appeals held:

A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land, whether adjoining or distinct tracts, to which the right is not attached. In other words, an easement appurtenant to a dominate tenement can be used only

for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purposes unconnected with the enjoyment of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication.

Adams v. Winnett, 25 Tenn. App. 276, 156 SW.2d 353, 357 (Tenn. Ct. App. 1941) (quotation marks omitted).

See also Restatement of the Law, Third, Property (Servitudes) § 4.11

The Court of Appeals then went on to allow the lower court's extension of the easement to one small tract, which it found did not materially increase the burden on the servient estate, but affirmed the denial of extension of the easement to another contiguous tract which was intended for development. The holding on the decision as to the small tract is the subject of a Petition for Rehearing, while the holding as to the larger tract has not been contested and remains the law of the case.

In this case, we do not even have a dominant tenant who is attempting to extend his easement to other property owned by him. We have a dominant tenant who is attempting to extend his easement to a stranger who acquired a leasehold interest in property contiguous to the easement, on January 3, 2007, more than 6 years after the easement was granted. There is simply no law to support this attempt. First, Sweetgrass was not in existence and was not a party to the Access Easement when it was granted. Second, there is no language in the easement that can be construed to authorize such an attempt. And third, the attempt was made by a License which was personal to Sweetgrass, Inc. and not assignable.

Sweetgrass has counterclaimed against Stow Away for breach of contract and tortious interference with its license from 4.0 LLC.

It is clear from a reading of the Access Easement that the parties intended to provide for an easement that would run with the title to the Grantor's and Grantee's properties and to any division of their properties which might occur, but it is equally clear that there is no intention expressed that would support the extension of the easement to the property owned by the defendant Timarand or the defendant Sweetgrass, who are not parties to the Access Easement and whose property is not part of the dominant estate. Furthermore, Sweetgrass did not even obtain its lease of Timarand's property until January 3, 2007, before its hardware store had been constructed. "Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff." Bob Hammond Const. Co., Inc. v. Banks Const. Co., 440 S.E.2d 890, 891. The "contract" between Sweetgrass and 4.0 LLC is not enforceable and cannot support an action for tortious interference.

Additionally, the Access Easement specifically provides that: "The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment and operation of the Grantor or its property." In this case, Sisson individually and through his LLC's, has dramatically increased the burden on the servient estate of Stow Away by an enormous increase of traffic which, at times, makes it impossible for its own customers to access their storage facilities. Prior to the

usurpation of Stow Away's easement, traffic consisted only to 5-10 trucks per day.
(Affidavit of Pooser, Exhibit 2)

Damages

The actions of Sisson, in refusing to abandon his original access to Highway 17 immediately upon obtaining access from Stow Away to his own property and in paving or permitting Sweetgrass to pave and use his original access for its customers until such access was barricaded by the SCDOT, constituted an immediate breach of the terms of the Abandonment of Encroachment Permit which provided: "Grantee does hereby agree to abandon and terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the access Easement." The subsequent actions of Sisson individually and through his LLCs to verbally grant Sweetgrass and its customers access to Stow Away's easement and then, upon request of counsel for Stow Away to discontinue the use, granting a license to Sweetgrass which, despite its terms, was considered by Sisson individually and through his LLC, and Sweetgrass, as authority to continue using Stow Away's easement, constitute a breach of the Access Agreement and continuous acts of trespass necessitating Stow Away's efforts to gate the access and this legal action to enjoin Sweetgrass, and entitling Stow Away to damages against all of the Defendants and attorney's fees against Sisson and Sisson's LLC for Equitable Indemnity for costs and attorney's fees under the Supreme Court's Decision of Town of Winnsboro v. Wideman-Singleton, 414 S.E.2d 118, 121 (S.C. 1992) which expressly held:

The very nature of equitable indemnification is that a contract for indemnity is unnecessary. Recovery is allowed when as a result of the defendant's breach of contract or tortious activity the plaintiff is required to either defend itself

or bring an action against a third party. 22 Am.Jur.2d Damages, § 618 (1988). The attorney's fees and costs must be the natural and necessary consequence of the defendant's act. Id. See also restatement (Second) of Torts, § 914(2)

For the purposes of this case, the Court of Appeals' decision in Rhett, supra, conclusively establishes that the extension of the easement granted by Stow Away to Sisson, by Sisson through his LLC granting Sweetgrass a mere License to use the easement, violated the law of South Carolina and must be set aside and enjoined. As attested by the affidavit of Mr. Pooser attached, the resulting traffic generated by this action has vastly increased the burden on the servient estate, so much so, that on many occasions, the traffic has backed up out to Hwy. 17 and prevented Stow Away's customers from access to their storage units. There is absolutely no precedent for the expansion of the easement to include an owner of an interest in property who was not even in existence at the time that the easement was granted and is unrelated to the owner of the dominant estate (See License, Exhibit 11 to Complaint). And, aside from the question of the law related to extension of easements beyond the confines of the dominant estate, by the very terms of the License and the law of Licenses: "This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party." (License, Exhibit 11 to Complaint)

Conclusion

Based on the foregoing, it is respectfully submitted that the Court should grant the relief requested by Plaintiff's motion and allow an additional hearing to consider the issue of damages and attorney's fees.

Respectfully submitted,

WARREN & SINKLER, LLP

By: 
G. Dana Sinkler, SC Bar #5138
Post Office Box 1254
Charleston, SC 29402
(843)577-0660
dsinkler@warren-sinkler.com

Charleston, SC

February 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2013, I served the foregoing Memorandum in Support of Plaintiff's Motion for Temporary Injunction and Motion for Partial Summary Judgment and Permanent Injunction, with attachments, on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

Maria E. Kiehling, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464



Jo Davis, Legal Assistant

FILED
2013 FEB -7 PM 12:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT "1"

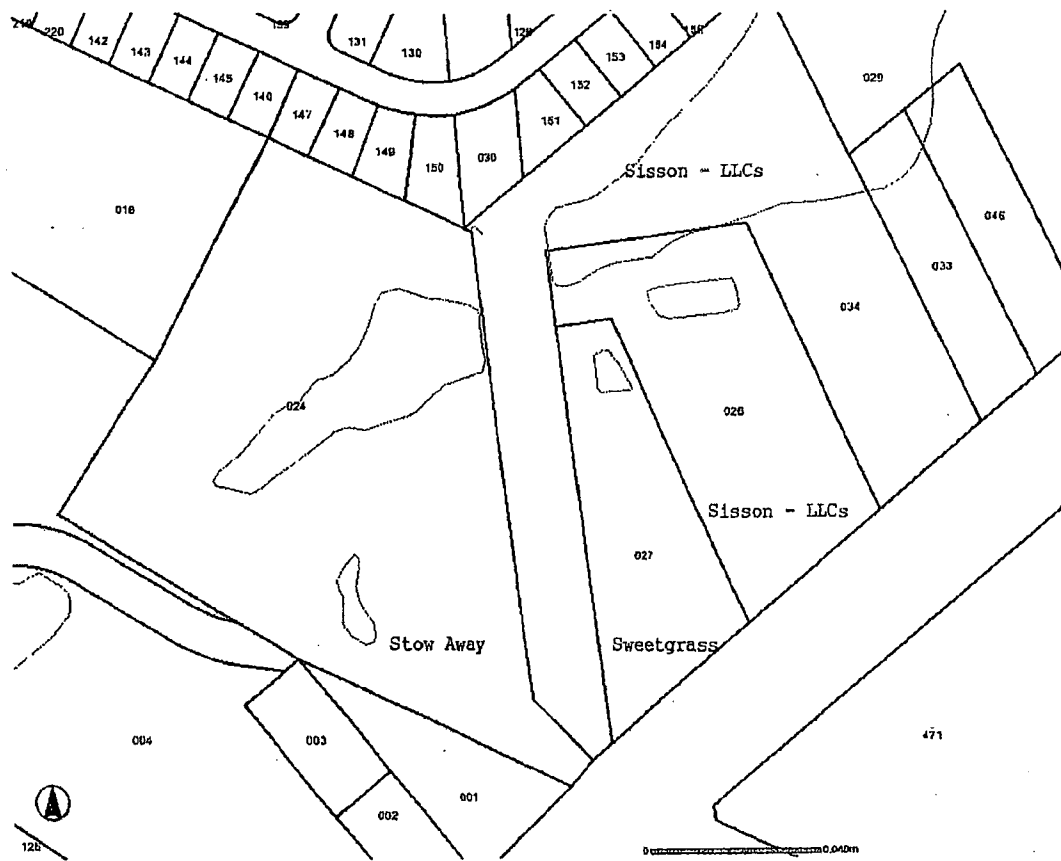


EXHIBIT "2"

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,)	
Plaintiff,)	
vs.)	AFFIDAVIT OF E.L. "BERT" POOSER, III
GEORGE W. SISSON,)	
4.0 LLC, THE SISSON)	
FOUNDATION LIMITED)	
PARTNERSHIP,)	
SWEETGRASS HARDWARE,)	
INC. AND TIMARAND, INC.,)	
Defendants.)	

Personally appeared before me, E.L. "Bert" Pooser, III, and being duly sworn,
deposes and says:

1. He is a member of the Plaintiff, Stow Away Storage, LLC, a member managed LLC (hereinafter "Stow Away"). The LLC has one other member, E.L. "Bert" Pooser, Jr., his father.

2. On July 13, 1999, Stow Away, by its member, the affiant, filed with the South Carolina Department of Highways and Public Transportation (hereinafter "SCDHPT") an Application for Encroachment Permit requesting access to drive to the parcel described in paragraph 2 of the complaint. (Stow Away's property is used as a rental self-storage facility. The access was from U.S. Highway 17 (hereinafter "Hwy. 17") opposite the Porcher Bluff Road intersection with Hwy. 17 and was to be 24' wide with a 30' radius on the south side and a 40' radius on the north side.

3. In the course of negotiations with SCDHPT, its name changed to the South Carolina Department of Transportation (hereinafter "SCDOT").

4. In response to Stow Away's application for an encroachment permit, SCDOT ultimately agreed to issuance of the permit requested on condition that the defendant Sisson, then the owner of the property now held by Defendants 4.0 LLC, 3018, LLC and Sisson Foundation, abandon the access previously used by him for ingress to and egress from Hwy. 17.

5. On March 21, 2000, the affiant, as a member of Stow Away, wrote a letter to Mr. Sisson offering him an easement across Stow Away's property to and from Hwy. 17 in exchange for his abandonment of his original access.

6. Included with the letter was a draft of the easement offered.

7. Sisson "Acknowledged and Agreed" to the offer and the abandonment of his original access by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1 to Complaint)

8. On October 17, 2000, the ACCESS EASEMENT AND ABANDONMENT OF ENCROACHMENT PERMIT was signed by both E.L. Pooser, III, as a member of Stow Away, and George W. Sisson a/k/a George W. Sissons. The document was subsequently recorded in the RMC Office for Charleston County on November 16, 2000 in Book U358, page 109. (Exhibit 2 to Complaint)

9. Following several telephone conversations with affiant on September 27, 2006, Tim Askins, the sole shareholder of Timarand, Inc., had his wife fax a sketch to affiant, depicting a proposed extension of the Access Easement previously provided to

Sisson which would have allowed access over Stow Away's Access Easement to Timarand's property, which was subsequently leased to Sweetgrass. (See Exhibit 3 to Complaint) Affiant never agreed to the proposed extension.

10. On January 3, 2007, the Defendant Timarand and the Defendant Sweetgrass entered into a lease of the property described below, pursuant to the provisions of which Timarand leased the property to Sweetgrass for a term of 10 years with an option to extend the term for two additional 5 year periods. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

(See Memorandum of Lease, Exhibit 4 to Complaint)

11. The deed and plat by which Timarand acquired the property leased to Sweetgrass provided access to U.S. Highway 17 North only to the east of Sisson's property as shown on plat recorded in the RMC Office for Charleston County in Plat Book CD at page 139 and plat recorded in the RMC Office for Charleston County in Plat Book EA at page 742. (Exhibits 5 and 6 to Complaint)

12. Shortly after Sweetgrass leased the property from Timarand, it renovated and enlarged a commercial building on the property for use as a retail hardware store.

13. In the course of preparing its leased property for use as a hardware store, large trees and shrubbery blocking access to part of Sisson's property were removed and Sweetgrass constructed a gate on its west property line, thereby providing access to its property from the access to Hwy. 17 that Sisson had agreed with Stow Away to abandon.

14. Upon completion of renovations and opening of the store, customers of Sweetgrass, with the permission of Sisson, began using the old easement to Sisson's property which he had agreed to abandon under the terms of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000. Indeed, Sisson and/or Sweetgrass paved the old easement on April 19, 2009 to facilitate its use, notwithstanding Sisson's contractual agreement to abandon it.

15. Despite the SCDOT's objection, Sweetgrass and its customers continued to use the access Sisson had agreed to abandon to reach the hardware store. (See Letter from Richard L. Turner, P.E., Resident Maintenance Engineer dated July 21, 2008 attached as Exhibit 7 to Complaint)

16. By letter dated August 20, 2008, counsel for Stow Away wrote Sweetgrass' President demanding that he notify his customers to cease using the access Sisson had agreed to abandon to reach Sweetgrass' store. (See letter attached as Exhibit 8 to Complaint)

17. This demand was met by a written response from Sweetgrass' attorney, dated November 10, 2008, advising that: "Sweetgrass Hardware, Inc. is a lawful

assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement.”
(See letter attached as Exhibit 9 to Complaint)

18. It developed that, in point of fact, Sweetgrass did not hold any written lawful assignment, but counsel for Sweetgrass then proceeded to obtain a License Agreement from 4.0 LLC to Sweetgrass dated November 13, 2008 (3 days after counsel had advised that Sweetgrass was already a “lawful assignee of Mr. Sissons [sic].”) (See License Agreement attached as Exhibit 11 to Complaint)

19. Counsel for Stow Away then sent an email to Sweetgrass’ attorney asking him to email him a copy of the document by which Sweetgrass Hardware, Inc. had become “a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement.” (Exhibit 10 to Complaint)

20. Finally, around September of 2009, the SCDOT blocked the access which Sisson had agreed to abandon and prevented Sweetgrass’ customers from using that access.

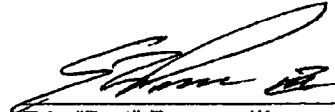
21. Thereupon, Sweetgrass and its customers began using the access constructed by Stow Away on its property and the easement granted to Sisson to access Sweetgrass’ hardware store.

22. In an effort to stop Sweetgrass’ customers from utilizing the easement, Stow Away constructed a gate at the point of access and attempted to deter customers of Sweetgrass, but met with threats from SCDOT that the traffic congestion was creating a dangerous situation.

23. Nonetheless, both Sisson, individually and as sole member of 4.0 LLC, and 3018 LLC, and as sole partner of The Sisson Foundation Limited Partnership, and Sweetgrass have persisted in asserting that the License Agreement allows Sweetgrass to assign to its customers the use of Stow Away's Easement and have refused to relent in their insistence that Sweetgrass' customers have the right to use Stow Away's Easement and have threatened that "any further attempt by Stow Away Storage, LLC to interfere with this right will result in action for injunctive relief, and damages for any lost business." (See letter from Sweetgrass' counsel, Exhibit 12 to Complaint, and letter from George Sisson, Exhibit 13 to Complaint, and Letters from E.L. "Bert" Pooser, Jr. to Sisson dated April 24, 2009 and May 6, 2009, and Letter from Sisson to Mr. Pooser date May 1, 2009 attached as Exhibit A) This lawsuit was filed on April 4, 2011.

24. After the Sweetgrass Hardware store opened, the burden on Stow Away's servient estate increased by 200% to 300%. Sisson, individually and through his LLCs and partnership, was operating a scale company, assembling truck scales, and the most traffic that business contributed to Stow Away's storage facility was 5 to 10 vehicles per day. Sweetgrass, on the other hand, generated 200 to 300 vehicles each day and frequently backed up traffic all the way out to Hwy. 17, preventing Stow Away's customers from access to their storage units.

Further affiant sayeth not.


E.L. "Bert" Pooser, III

Sworn to before me this 5th day
of February, 2013.

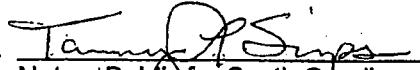

Notary Public for South Carolina
My Commission Expires:
2-2-2019

EXHIBIT "A"



PROPERTIES

FLORIDA

Amelia Island/Fernandina Beach
• Hampton Inn

GEORGIA

Jekyll Island
• Quality Inn & Suites

NORTH CAROLINA

Morganton
• Hampton Inn

SOUTH CAROLINA

Columbia
• Inn at USC

Columbia/Lexington
• Wingate by Wyndham

Charleston/N. Charleston
• Wingate by Wyndham

Georgetown
• Hampton Inn
• Quality Inn & Suites

Pawleys Island/Litchfield
• Hampton Inn

Myrtle Beach
• Comfort Suites
• Suburban Extended Stay Hotel

TENNESSEE

Kingsport
• Hampton Inn

Bristol
• Hampton Inn

Johnson City
• Comfort Suites

April 24, 2009

Mr. George W. Sisson
Sisson Scale
3018 N. Highway 17
Mount Pleasant, SC 29466-9315

Dear George:

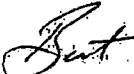
I write to you as businessman to businessman. Many meetings and discussions with various people have taken place regarding the issue about whether or not you can provide Sweetgrass Hardware, Inc. and its customers ingress and egress to the store over the easement I provided you in October of 2000. My lawyer has assured me with all the confidence in the world that this matter can be corrected in my favor through litigation. He believes that to be true through several different strong legal arguments.

As I have told you before, I do not want to sue you or anyone else if that can be avoided. Whether or not you can assign rights granted by our easement with you to anyone other than a purchaser of your property is a key issue. Our attorney is very sure that you cannot.

It seems, however, that we are now at an impasse, but with your cooperation, we would have a much better chance to resolve this dispute without a lawsuit. Please consider this request as quickly as possible. Otherwise, the lawsuit will be filed.

Sincerely,

IMC HOTELS


E. L. "Bea" Pooser, Jr.
President & C.E.O.

ELP:ts

INTERSTATE MANAGEMENT AND INVESTMENT CORPORATION

"Proving Southern Hospitality Still Exists"

One Surrey Court • P.O. Box 21427 • Columbia, SC 29221-1427 • (803) 772-2629 • (803) 750-8478 Fax • www.imchotels.com



Sisson SCALE
AND EQUIPMENT COMPANY, INC.

INDUSTRIAL and RETAIL
WEIGHING SYSTEMS



May 1, 2009

E. L. Pooser, Jr.
IMIC Hotels
P.O. Box 21427
Columbia, SC 29221-1427

Dear Bert:

In am in receipt of your letter dated April 24, 2009. Now I am confused. I thought your dad and I were in agreement with the entrance to the property.

Please have your dad call me so we can discuss it again.

Thank you.

George W. Sisson
Scale and Equipment Co. Inc.

3018 Highway 17 North
Mt. Pleasant, SC 29466

PH: 843-884-2896
FX: 843-881-1583

123 Prosperity Drive
Savannah, GA 31408

PH: 912-966-2114
FX: 912-966-2380





PROPERTIES

FLORIDA

Amelia Island/Fernandina Beach
• Hampton Inn

GEORGIA

Jekyll Island
• Quality Inn & Suites

NORTH CAROLINA

Morganton
• Hampton Inn

SOUTH CAROLINA

Columbia
• Inn at USC

Georgetown
• Hampton Inn
• Quality Inn & Suites

Pawleys Island/Citichfield
• Hampton Inn

Myrtle Beach
• Comfort Suites
• Suburban Extended Stay Hotel

Spartanburg
• Campus Place Extended Stay

Lexington/Columbia
• Wingate by Wyndham

Charleston/N. Charleston
• Wingate by Wyndham

TENNESSEE

Kingsport
• Hampton Inn

Bristol
• Hampton Inn

Johnson City
• Comfort Suites

Nashville
• Wingate by Wyndham Airport

May 6, 2009

Sent USPS Certified Return Receipt
Receipt #70081830000065189635

Mr. George W. Sisson
Sisson Scale
3018 N. Highway 17
Mount Pleasant, SC 29466-9315

Dear George:

I had second thoughts after calling you today and decided the smart thing to do is put this in writing because of the confusion on your part regarding our last meeting in Mount Pleasant on March 19, 2009.

I wrote the letter to you on April 24, not Bert III, and you should remember that under no circumstances did I agree for Royall Hardware to continue using the driveway as they were at that time. We hired what I consider to be one of the most reputable law firms in Charleston and, after spending over \$11,000 in legal fees, they advised me you have absolutely no authority to transfer an easement granted to Sisson Scale to a third party for their use of our driveway. Bert III and I both got the interpretation from our meeting that we needed to provide you with legal documentation to substantiate closing the driveway. We have legal documentation that will stand up in court. Therefore, I trust you will instruct Royall Hardware Store that you cannot allow them access to this easement that you and I share, and you are thereby notifying them to cease use of this easement for their use.

Sincerely,

IMIC HOTELS

E. L. "Bert" Pooser, Jr.
President & C.E.O.

ELP:ts

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EXHIBIT "3"

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2012 S.C. App. LEXIS 375, *

William M. **Rhett** and Nancy R. **Rhett**, Appellants/Respondents, v. Jonathan H. **Gray**,
Respondent/Appellant.

Opinion No. 5066

COURT OF APPEALS OF SOUTH CAROLINA

2012 S.C. App. LEXIS 375

April 26, 2012, Heard
December 19, 2012, Filed**NOTICE:**THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.**PRIOR HISTORY: [*1]**

Appeal From Beaufort County. Marvin H. Dukes, III, Master-in-Equity.

DISPOSITION: AFFIRMED IN PART AND REVERSED IN PART.**CASE SUMMARY****OVERVIEW:** A master in equity erred in determining landowners had abandoned a thirty-foot easement across a neighbor's property because when the parties swapped property, they no longer owned the part of the easement on their own property but each was entitled to the easement across the other's new property, and the landowners still needed the easement on the neighbor's new property to access their property.**OUTCOME:** Judgment reversed.**CORE TERMS:** easement, acre, appurtenant, tract, abandoned, attorney's fees, parcel, deed, plat, gate, injunction, enjoyment, quotation marks omitted, abandonment, servient, misuse, heir, appurtenant easement, breach of contract, conveyed, remainder, injunctive relief, adjoining, defending, indemnity, surveyor, dirt, attorney fees, tract of land, right of way

LEXISNEXIS® HEADNOTES **Hide**Civil Procedure > Equity > General Overview Civil Procedure > Trials > Bench Trials Civil Procedure > Appeals > Standards of Review > General Overview Evidence > Procedural Considerations > Burdens of Proof > General Overview Real Property Law > Limited Use Rights > Easements > Creation > General Overview 

HN1  The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury. In a law case tried by the judge without a jury, an appellate court reviews for errors of law and reviews factual findings only for evidence which reasonably supports the court's findings. However, the determination of the scope of the easement is a question in equity. On appeal in an action in equity, the appellate court may find facts in accordance with its views of the preponderance of the evidence. Thus, an appellate court may reverse a factual finding by the trial court in such cases when the appellant satisfies the appellate court the finding is against the greater weight of the evidence. This broad scope of review does not require the appellate court to disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. Furthermore, the appellant is not relieved of the burden of convincing the appellate court the trial court committed error in its findings. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Creation > General Overview 

HN2  An easement is a right to use the land of another for a specific purpose. This right of way may arise by grant, from necessity, by prescription, or by implication by prior use. A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Creation > Express Easements 

HN3  A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Termination of Easements 

HN4  Termination of an easement by abandonment is a factual question in an action at law. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Termination of Easements 

HN5  An easement may be lost by abandonment and in determining such question the intention of the owner to abandon is the primary inquiry. The intention to abandon need not appear by express declaration, but may be inferred from all of the facts and circumstances of the case. It may be inferred from the acts and conduct of the owner and the nature and situation of the property, where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either a present intent to relinquish the easement, or purpose inconsistent with its further existence. More Like This Headnote

Evidence > Procedural Considerations > Burdens of Proof > Clear & Convincing Proof 

Real Property Law > Limited Use Rights > Easements > Termination of Easements 

HN6  The burden of proof is upon the party asserting abandonment of an easement to show the abandonment by clear and unequivocal evidence. Mere nonuse of an easement created by deed will not amount to an abandonment. More Like This Headnote

Real Property Law > Deeds > Construction & Interpretation 

HN7  In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

Real Property Law > Limited Use Rights > Easements > Easements In Gross 

HN8  Determining whether an easement is in gross or appurtenant is a question in equity because it involves the extent of a grant of an easement. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Creation > Express Easements 

Real Property Law > Limited Use Rights > Easements > Easements In Gross 

HN9  The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it. Easements in gross are not favored by the courts, and an easement will never be presumed as personal when it may fairly be construed as appurtenant to some other estate. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

Real Property Law > Limited Use Rights > Easements > Creation > Express Easements 

Real Property Law > Limited Use Rights > Easements > Easements In Gross 

HN10  The character of an express easement is determined by the nature of the right and the intention of the parties creating it. An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

HN11  A right of way appurtenant cannot be granted, unless it is essentially necessary to the enjoyment of the land to which it appertains. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > General Overview 

HN12  The owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden. Although to the extent of the easement, the rights of the easement owner are paramount to those of the landowner, the easement owner's rights are not absolute but are limited, so the owners of the easement and the servient tenement may have reasonable enjoyment. The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

HN13  As a general rule, an easement appurtenant to one parcel of land may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts, to which the easement is not appurtenant. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

HN14  If an easement is appurtenant to a particular parcel of land, any extension thereof to other parcels is a misuse of the easement. More Like This Headnote

Civil Procedure > Remedies > Injunctions > General Overview 

Real Property Law > Limited Use Rights > Easements > General Overview 

HN15  In the context of an easement, certain fundamental principles applicable to a request for an injunction must be considered: (1) The proceeding is equitable and addressed to the sound discretion of the trial court; (2) The trial court is vested with a broad discretionary power to shape and fashion injunctive relief to fit the particular facts, circumstances, and equities of the case before it. Appellate courts give great weight to the trial court's exercise of that discretion; and (3) One of the essential criteria for injunctive relief is actual and substantial injury sustained by the person seeking the injunction. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

Real Property Law > Limited Use Rights > Easements > Creation > General Overview 

HN16  Enlarging an easement to include adjoining tracts increases the burden. A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land, whether adjoining or distinct tracts, to which the right is not attached. In other words, an easement appurtenant to a dominant tenement can be used only for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication. More Like This Headnote

Civil Procedure > Remedies > Injunctions > General Overview 

Real Property Law > Limited Use Rights > Easements > Appurtenant Easements 

Real Property Law > Limited Use Rights > Easements > Creation > Easement by Prescription 

HN17  The reason for the rule preventing an easement for the benefit of a particular piece of land from being extended to other tracts of land is to prevent an increase of the burden upon the servient estate. However, when the reason does not exist, the rule does not apply. Thus, when the burden on the easement has materially decreased or not increased, the easement holder may use the easement to access an adjoining property. When the additional burden is relatively trifling, the user will not be enjoined; and that, where the owner of a right of way appurtenant to a certain tract uses it for the period of prescription as appurtenant also to another tract, he gains a prescriptive right to such enlarged use. [More Like This Headnote](#)

Civil Procedure > Remedies > Injunctions > General Overview 

Real Property Law > Limited Use Rights > Easements > General Overview 

HN18  In South Carolina, an owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden. However, other states have determined that expanding the use of an easement to property that is not appurtenant is not worthy of an injunction in situations in which the expanded use does not increase the burden. South Carolina has not expressed such a principle, but in those cases the decisions were trusted to the trial court's judgment to weigh the particular facts. [More Like This Headnote](#)

Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > General Overview 

HN19  Generally, attorney's fees are not recoverable unless authorized by contract or statute. [More Like This Headnote](#)

Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > General Overview 

Contracts Law > Breach > General Overview 

Torts > Damages > Costs & Attorney Fees > General Overview 

Torts > Procedure > Multiple Defendants > Indemnity > General Overview 

HN20  Where the wrongful act of a defendant has involved the plaintiff in litigation with others or placed him in such relation with others as makes it necessary to incur expense to protect his interest, such costs and expenses, including attorneys' fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages. In order to recover attorneys' fees under this principle, the plaintiff must show: (1) that the plaintiff had become involved in a legal dispute either because of a breach of contract by the defendant or because of defendant's tortious conduct; (2) that the dispute was with a third party-not with the defendant; and (3) that the plaintiff incurred attorneys' fees connected with that dispute. If the attorneys' fees were incurred as a result of a breach of contract between plaintiff and defendant, the defendant will be deemed to have contemplated that his breach might cause plaintiff to seek legal services in his dispute with the third party. [More Like This Headnote](#)

Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Reasonable Fees 

Contracts Law > Contract Conditions & Provisions > Indemnity 

Torts > Damages > Costs & Attorney Fees > General Overview 

Torts > Procedure > Multiple Defendants > Indemnity > General Overview 

HN21  In actions of indemnity, brought where the duty to indemnify is either implied by law or arises under a contract, reasonable attorney fees incurred in resisting the claim indemnified against may be recovered as part of the damages and expenses. More Like This Headnote

Civil Procedure > Remedies > Costs & Attorney Fees > Attorney Expenses & Fees > Reasonable Fees 

Contracts Law > Contract Conditions & Provisions > Indemnity 

Torts > Damages > Costs & Attorney Fees > General Overview 

Torts > Procedure > Multiple Defendants > Indemnity > General Overview 

HN22  In actions of indemnity, brought where the duty to indemnify is either implied by law or arises under contract, and no personal fault of the indemnitee has joined in causing the injury, reasonable attorneys' fees incurred in resisting the claim indemnified against may be recovered as part of the damages and expenses. More Like This Headnote

Torts > Procedure > Multiple Defendants > Indemnity > General Overview 

HN23  In order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established. A sufficient relationship exists for indemnification when the at-fault party's negligence or breach of contract is directed at the non-faulting party and the non-faulting party incurs attorney fees and costs in defending itself against the other's conduct. More Like This Headnote

Real Property Law > Limited Use Rights > Easements > General Overview 

HN24  In the strictest sense in South Carolina, a landowner's use of an otherwise valid easement not technically appurtenant to the land he or she attempts to use it for constitutes misuse. However, other states have affirmed a trial court's findings it was not a misuse when the burden is not substantially increased. More Like This Headnote

COUNSEL: Charles E. Carpenter, Jr., and Carmen V. Ganjehsani, both of Columbia; H. Fred Kuhn, Jr., of Beaufort, for Appellants/Respondents.

Harold A. Boney, Jr., of Beaufort; James B. Richardson, Jr., of Columbia, for Respondent/Appellant.

JUDGES: KONDUROS, J. GEATHERS, J., concurs. PIEPER , J., concurring in part and dissenting in part.

OPINION BY: KONDUROS

OPINION

KONDUROS, J.: This is an appeal arising out of claims by William M. and Nancy R. Rhett (collectively the Rhetts) to two easements on Jonathan H. Gray's property. The Rhetts appeal the master-in-equity's finding that one of the easements was abandoned. They also appeal the master's not allowing them to use the other easement to access all of their property. They further appeal the master's denial of their request for attorney's fees. Gray appeals the master's finding the Rhetts could use the other easement to access part of their property to which it is not appurtenant. We affirm in part and reverse in part.

FACTS/PROCEDURAL HISTORY

In March 1981, the Rhetts purchased one acre of land located in Beaufort County from the heirs of Tarquin Smalls. The deed contained [*2] no reference to any easement. This property was bounded on the west and south by twenty acres¹ William's mother owned and on the north and east by property owned by heirs of Tarquin. The Rhetts built their principal residence on the property and accessed the property through William's mother's property, via Conch Point Lane, a private driveway extending from Trotters Loop. In December 1981, the Rhetts bought a second acre from Tarquin's heirs, which surrounded their previously purchased acre. This conveyance also did not involve any easements.

FOOTNOTES

¹ At the time, this tract was believed to be eighteen acres but was later determined to be twenty acres.

In 1982, Veronica Washington Smalls, an heir of Tarquin, received a tract from the Tarquin Smalls property containing 5.97 acres, which was adjacent to the Rhetts' property. The property deeded to Veronica did not contain an express easement but the plat referred to in the deed contained a fifty-foot access easement along the property owned by another of Tarquin's heirs, which had a terminus on Veronica's property. Veronica divided her tract into two parts; she conveyed a 1.25-acre piece to Yancey O'Kelley and the remaining 4.12 acres² to the [*3] Rhetts, which was adjacent to their current property. The fifty-foot easement abutted the 1.25-acre tract but not the 4.12-acre tract. The Rhetts accessed their 4.12 acres the same way they accessed their other two acres. In 1984, the Rhetts purchased the 1.25-acre tract from O'Kelley. The deed conveyed "all of the right, title and interest in the easement for ingress and egress as shown on said plat."

FOOTNOTES

² This adds up to 5.37, not 5.97, but no one disputes that the property was split into only these two pieces.

Thelma Owens Smalls obtained one-acre tract of land from Nathan Smalls, an heir of Tarquin, in 1986. In 1987, Nathan conveyed an express easement that was thirty feet wide, extending from Trotters Loop across his land to Thelma's land. The Rhetts purchased the one-acre tract of land from Thelma. The deed conveyed "all of the rights in the existing fifty (50') foot and thirty (30') foot easement extending from the county road as shown on the above referenced plat." The Rhetts then sold 0.85 acres of that property to Gene Meador, retaining the 0.15-acre portion south of the slough³ for themselves that included the easement.

FOOTNOTES

³ A slough is "[a]n arm of a river, separate from the main [*4] channel" or "[a] bog; a

place filled with deep mud." Black's Law Dictionary 1515 (9th ed. 2009).

In 1988, Nathan sold a 4.95-acre tract, which was encumbered by both easements, to R. Milledge Morris, IV. Morris sold an abandoned house on his property to the Rhetts, which they moved to the 4.12 acres they had purchased from Veronica. The Rhetts restored the house and refer to it as the cottage.⁴ In 1992, Gray bought the 4.95-acre tract⁵ and an additional 0.95 acre tract from Morris. The plat showed both easements encumbering Gray's property. William and Gray decided to purchase the 0.85-acre tract William had previously sold to Meador. William swapped his half interest in the property with Gray in exchange for the part of Gray's property southeast of the ditch and south of the slough. The Rhetts' surveyor, David S. Youmans, prepared a plat showing the swap. The plat shows the thirty-foot easement on the portion to be owned by Gray and states "EASEMENT TO BE ABANDONED" on the portion of the property the Rhetts acquired. William testified the portion of the easement on Gray's property was abandoned because Gray did not need the easement because his property was next to the road.

FOOTNOTES

⁴ Currently, [*5] the Rhetts' adult son lives in the cottage.

⁵ The deed listed the property as 5.06 acres, determined from a survey.

In 1994, Gray placed on his property a mobile home, where he and his family lived. In 1997, Gray moved into a home built on his property. Around 1997 or 1998, Gray put a wire pasture fence on part of his property in which to keep his farm animals. Also in 1997, Gray separated a portion of his property for his parents and they built a house there in 1998. Gray's mother continued to reside there after Gray's father passed away in 1999.

In 2000 Gray put a farm gate at Trotter's Loop, at the easement area, and secured it with a lock. In 2005, Gray replaced the farm gate with a wrought iron gate, which he also kept locked. In March 2007, Gray placed a load of fill dirt in the easement area as well as some hay bales. In May 2007, the Rhetts bought William's mother's eighteen-acre tract. The Rhetts considered developing the property at that time but later decided to sell it instead. In December 2007, the Rhetts' attorney sent Gray a letter requesting that he remove the gate and dirt piles.

On March 31, 2008, the Rhetts filed a complaint against Gray, alleging Gray had "unreasonably [*6] interfered with [their] full and free use and enjoyment of [the thirty-foot and fifty-foot easements] by placement of obstructions upon the easement, including but not limited to a gate, and a mound of dirt." The Rhetts sought an injunction against Gray, "barring and prohibiting [Gray] from closing, obstructing, or interfering in whole or in part with [the Rhetts'] full and free use of the entire easement, and ordering and compelling [Gray] to forthwith remove all obstructions and barriers placed by [Gray] with the confines of the easements." The Rhetts further sought damages, actual and punitive, as well as attorney's fees incurred by them in connection with the enforcement of their easement rights.

On June 10, 2008, Gray filed an answer denying the allegations of the Rhetts' complaint and asserting affirmative defenses. On June 19, 2008, the Rhetts filed a motion for a temporary injunction. On July 10, 2008, Gray filed an amended answer and counterclaim, denying the allegations of the complaint and seeking a declaratory judgment that the easements were abandoned in the 1992 land swap. Gray further contended that even if the easements were not abandoned, his gating of the easements [*7] was not an unreasonable interference with the Rhetts' rights. Gray also alleged the Rhetts' claims for damages were barred by the statute of limitations. Gray asserted estoppel and laches as defenses. Additionally, Gray contended the Rhetts intended to use the easements as a subdivision road for the development of their

property, including acreage to which the easements were not appurtenant. Gray sought a declaratory judgment that the Rhetts' intended use of development would constitute an unintended, unreasonable, and unlawful burden on his property. Gray further sought an injunction prohibiting the Rhetts from using the easements for access to any of their land other than the pieces to which it was originally appurtenant and from constructing a subdivision road over Gray's property.

The case was referred to a master by consent order. Following the trial, the master issued an order finding (1) the thirty-foot easement was appurtenant to the one-acre Thelma parcel and was abandoned; (2) the fifty-foot easement was an implied easement appurtenant to the 1.25-acre O'Kelley parcel and was not abandoned; (3) the Rhetts may only use the fifty-foot easement to access the 5.97-acre parcel, [*8] which included the 1.25 acres that was appurtenant, and are enjoined from using it to access the remainder of their property; (4) Gray's gate at the entrance to the fifty-foot easement is necessary for Gray's preservation and use of his property and is located, maintained, and constructed to not interfere with the Rhetts' right to use the easement; (5) Gray may keep the gate locked as long as he provides the Rhetts a key or other means to open the gate when they desire; and (6) Gray shall remove the dirt pile, the hay bales, and board fence enclosing his horse paddock. The master denied the Rhetts' claim for attorney's fees. Both Gray and the Rhetts moved the master to reconsider. The trial court denied both motions. This appeal followed.

STANDARD OF REVIEW

HN1 "The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) (citation and quotation marks omitted). "In a law case tried by the judge without a jury, this court reviews for errors of law and reviews factual findings only for evidence which reasonably supports [*9] the court's findings." *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998).

"However, the determination of the scope of the easement is a question in equity." *Hardy*, 369 S.C. at 165, 631 S.E.2d at 541. On appeal in an action in equity, the appellate court may find facts in accordance with its views of the preponderance of the evidence. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). Thus, this court may reverse a factual finding by the trial court in such cases when the appellant satisfies us the finding is against the greater weight of the evidence. *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004). This broad scope of review does not require the appellate court to disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). Furthermore, the appellant is not relieved of the burden of convincing this court the trial court committed error in its findings. *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

LAW/ANALYSIS

I. The Rhetts' Appeal

A. Abandoned [*10] Easement

The Rhetts contend the master erred in finding the thirty-foot easement was abandoned because (1) when they obtained ownership to the land through which the easement ran, their ownership rights became fee simple absolute; (2) the plat prepared by the their surveyor unambiguously shows they only intended to abandon the easement because it ceased to exist because of merger on the Rhetts' property but it was not abandoned as to Gray's property; and (3) the plat is ambiguous as to whether the surveyor's language meant only a portion or all of the easement was meant to be abandoned and parol evidence should have been admitted to

determine the Intent. We agree the master erred in finding the easement abandoned.

HN2 ¶ An easement is a right to use the land of another for a specific purpose. *Steele v. Williams*, 204 S.C. 124, 132, 28 S.E.2d 644, 647 (1944). This right of way may arise by grant,⁶ from necessity, by prescription, or by implication by prior use. *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006); *Steele*, 204 S.C. at 132, 28 S.E.2d at 647-48. "A grant **[*11]** of an easement is to be construed in accordance with the rules applied to deeds and other written instruments." *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (quotation marks omitted).

FOOTNOTES

⁶ **HN3** ¶ "A reservation of an easement in a deed by which lands are conveyed is equivalent, for the purpose of the creation of the easement, to an express grant of the easement by the grantee of the lands." *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965).

HN4 ¶ "[T]ermination of an easement by abandonment is a factual question in an action at law. . . ." *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (Ct. App. 1998).

HN5 ¶ "[A]n easement may be lost by abandonment and in determining such question the intention of the owner to abandon is the primary inquiry. The intention to abandon need not appear by express declaration, but may be inferred from all of the facts and circumstances of the case. It may be inferred from the acts and conduct of the owner and the nature and situation of the property, where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either **[*12]** a present intent to relinquish the easement, or purpose inconsistent with its further existence.

Carolina Land Co. v. Bland, 265 S.C. 98, 109, 217 S.E.2d 16, 21 (1975). **HN6** ¶ The burden of proof is upon the party asserting abandonment to show the abandonment by clear and unequivocal evidence. *Id.* Mere nonuse of an easement created by deed will not amount to an abandonment. *Witt v. Poole*, 182 S.C. 110, 115, 188 S.E. 496, 498 (1936).

HN7 ¶ In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed.

Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 582-83 (2009) (hereinafter *Windham II*) (citations and quotation marks omitted), *aff'g Windham v. Riddle*, 370 S.C. 415, 418, 635 S.E.2d 558, 559 (Ct. App. 2006) (hereinafter *Windham I*).

When the Rhettts and Gray swapped property, they no longer owned the part of the easement on their own property but each would have been **[*13]** entitled to the easement across the other's new property barring them abandoning the easement. However, Gray had no reason for an easement on the Rhettts' new property because he no longer needed to cross the Rhettts' property. In contrast, the Rhettts still needed the easement on Gray's new property to access their property. Youmans, the Rhettts' surveyor, testified the Rhettts did not intend for the easement to remain on their new property but did intend to continue using the easement on Gray's new property. Further, Gray and his wife testified the Rhettts occasionally used both easements and when Gray placed a locked gate across the easement, had inquired about being

able to use his key from time to time and in case of an emergency. As the party asserting the easement was abandoned, Gray had the burden to provide clear and unequivocal evidence the Rhetts abandoned the easement. The plat states the easement is abandoned only on the portion showing the Rhetts' new property, not the entire easement. Accordingly, we find the master erred in finding the thirty-foot easement was abandoned.

B. Fifty-Foot Easement Appurtenant

The Rhetts assert the master erred in finding the fifty-foot easement [*14] was only appurtenant to the 1.25-acre piece and not the 4.12-acre piece. We disagree.

HN8 Determining whether an easement is in gross or appurtenant is a question in equity because it involves the extent of a grant of an easement. *Windham I*, 370 S.C. at 418, 635 S.E.2d at 559; see also *Heritage Fed. Sav. & Loan Ass'n v. Eagle Lake & Golf Condo.*, 318 S.C. 535, 539, 458 S.E.2d 561, 564 (Ct. App. 1995) ("The interpretation of a deed is an equitable matter.").

HN9 "The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." *Plott v. Justin Enters.*, 374 S.C. 504, 514, 649 S.E.2d 92, 96 (Ct. App. 2007) (quotation marks omitted). "[E]asements in gross are not favored by the courts, and an easement will never be presumed as personal when it may fairly be construed as appurtenant to some other estate." *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994) (citing 25 Am. Jur. 2d Easements & Licenses § 13 (1966)).

HN10 The character of an express easement is determined by the nature of the right and the intention of the parties creating it. An easement in gross is [*15] a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted.

Windham II, 381 S.C. at 201-02, 672 S.E.2d at 583 (citations and quotation marks omitted).

In *Windham II*, the court noted that because the party claiming an appurtenant easement had other irrigation options, whether an appurtenant easement was essentially necessary to the enjoyment of the property was questionable. *Id.* at 204, 672 S.E.2d at 584 (citing *Kershaw v. Burns*, 91 S.C. 129, 133, 74 S.E. 378, 379 (1912) ("The principle is well settled that **HN11** a right of way appurtenant cannot be granted, unless it is essentially necessary to the enjoyment of the land to [*16] which it appertains."); *Ballington v. Paxton*, 327 S.C. 372, 380, 488 S.E.2d 882, 887 (Ct. App. 1997) ("An appurtenant or appurtenant easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof.")).

The master correctly found the easement was only appurtenant to the 1.25 acres and not to the 4.12 acres. Although Veronica's property contained an easement for her entire 5.97 acres, when she granted 4.12 acres of it to the Rhetts, that grant did not contain an easement. However, the 1.25 acres she granted to O'Kelley did contain an easement. Once the Rhetts acquired the 1.25 acres, this did not resurrect the easement for the entire tract. Therefore, we affirm the master's decision that the fifty-foot easement was only appurtenant to the 1.25-acre tract.

C. Access to All Twenty-Eight Acres from Easements

The Rhetts argue the master erred in issuing an injunction that they can only use the easements to access the 5.97 acres of their property and not the entire twenty-eight acres when their use of them to enter the remainder of their property will not increase the burden on Gray's estate. [*17] We disagree.

HN12 "[T]he owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden." *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973) (quoting 25 Am. Jur. 2d Easements and Licenses § 72 at 478). Although to the extent of the easement, the rights of the easement owner are paramount to those of the landowner, the easement owner's rights are not absolute but are limited, so the owners of the easement and the servient tenement may have reasonable enjoyment. *Id.* (citation omitted). The owner of an easement has all rights incident or necessary to its proper enjoyment, but nothing more. *Id.*

HN13 "As a general rule, an easement appurtenant to one parcel of land may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts, to which the easement is not appurtenant." *Brown v. Voss*, 105 Wn.2d 366, 715 P.2d 514, 517 (Wash. 1986) (citing *Heritage Standard Bank & Trust Co. v. Trs. of Schs.*, 84 Ill. App.3d 653, 405 N.E.2d 1196, 40 Ill. Dec. 104 (Ill. App. Ct. 1980); *Kanefsky v. Dratch Const. Co.*, 376 Pa. 188, 101 A.2d 923 (Pa. 1954); *S.S. Kresge Co. of Mich. v. Winkelman Realty Co.*, 260 Wis. 372, 50 N.W.2d 920 (Wis. 1952); [*18] 28 C.J.S. Easements § 92, at 772-73 (1941)).

HN14 "If an easement is appurtenant to a particular parcel of land, any extension thereof to other parcels is a misuse of the easement." *Id.* (citing *Wetmore v. Ladies of Loretto, Wheaton*, 73 Ill. App. 2d 454, 220 N.E.2d 491 (Ill. App. Ct. 1966); *Robertson v. Robertson*, 214 Va. 76, 197 S.E.2d 183 (Va. 1973); *Penn Bowling Rec. Ctr., Inc. v. Hot Shoppes, Inc.*, 179 F.2d 64, 86 U.S. App. D.C. 58 (D.C. Cir. 1949)). "As noted by one court in a factually similar case, '[I]n this context this classic rule of property law is directed to the rights of the respective parties rather than the actual burden on the servitude.'" *Id.* (quoting *Nat'l Lead Co. v. Kanawha Block Co.*, 288 F. Supp. 357, 364 (S.D. W. Va. 1968), *aff'd*, 409 F.2d 1309 (4th Cir. 1969)). The Washington Supreme Court noted:

Under the express language of the 1952 grant, plaintiffs only have rights in the use of the easement for the benefit of parcel B. Although, as plaintiffs contend, their planned use of the easement to gain access to a single family residence located partially on parcel B and partially on parcel C is perhaps no more than technical misuse of the easement, we conclude that it is misuse nonetheless.

Id. The court qualified that statement, [*19] determining:

[I]t does not follow from this conclusion alone that defendants are entitled to injunctive relief. . . . **HN15** "Some fundamental principles applicable to a request for an injunction must be considered. (1) The proceeding is equitable and addressed to the sound discretion of the trial court. (2) The trial court is vested with a broad discretionary power to shape and fashion injunctive relief to fit the particular facts, circumstances, and equities of the case before it. Appellate courts give great weight to the trial court's exercise of that discretion. (3) One of the essential criteria for injunctive relief is actual and substantial injury sustained by the person seeking the injunction.

Id. at 517.

The trial court found as facts, upon substantial evidence, that plaintiffs have acted reasonably in the development of their property, that there is and was no damage to the defendants from plaintiffs' use of the easement; that there was no increase in the volume of travel on the easement, that there was no increase in the burden on the servient estate, that defendants sat by for more than a year while plaintiffs expended more than \$11,000 on their project, and that defendants' counterclaim [*20] was an effort to gain "leverage" against plaintiffs' claim. In addition, the court found from the evidence that plaintiffs would suffer considerable hardship if the injunction were granted whereas no appreciable hardship or damages would flow to defendants from its denial. Finally, the court limited plaintiffs' use of the combined parcels solely to the same purpose for which the original parcel was used—i.e., for a single family residence.

Neither this court nor the Court of Appeals may substitute its effort to make findings of fact for those supported findings of the trial court. Therefore, the only valid issue is whether, under these established facts, as a matter of law, the trial court abused its discretion in denying defendants' request for injunctive relief. Based upon the equities of the case, as found by the trial court, we are persuaded that the trial court acted within its discretion.

Id. at 518 (citations omitted).

HN16 ↗ Enlarging an easement to include adjoining tracts increases the burden. *McCammon v. Meredith*, 830 S.W.2d 577, 580 (Tenn. Ct. App. 1991).

A fundamental principle is that an easement for the benefit of a particular piece of land cannot be enlarged and extended to other [*21] parcels of land, whether adjoining or distinct tracts, to which the right is not attached. In other words, an easement appurtenant to a dominant tenement can be used only for the purposes of that tenement; it is not a personal right, and cannot be used, even by the dominant owner, for any purpose unconnected with the enjoyment of his estate. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication.

Adams v. Winnett, 25 Tenn. App. 276, 156 S.W.2d 353, 357 (Tenn. Ct. App. 1941) (quotation marks omitted).

HN17 ↗ The reason for the rule preventing an easement for the benefit of a particular piece of land from being extended to other tracts of land "is to prevent an increase of the burden upon the servient estate." Id.; see also *Ogle v. Trotter*, 495 S.W.2d 558, 565-66 (Tenn. Ct. App. 1973). However, when the reason does not exist, the rule does not apply. *Ogle*, 495 S.W.2d at 566. Thus, when the burden on the easement has materially decreased or not increased, the easement holder may use the easement to access an adjoining property. Id. When "the additional burden is relatively trifling, [*22] the user will not be enjoined; and that, where the owner of a right of way appurtenant to a certain tract uses it for the period of prescription as appurtenant also to another tract, he gains a prescriptive right to such enlarged use." Id. (quotation marks omitted); see also *Carbone v. Vigliotti*, 222 Conn. 216, 610 A.2d 565, 569 (Conn. 1992) ("[W]hen no significant change has occurred in the use of the easement from that contemplated when it was created, . . . the mere addition of other land to the dominant estate does not constitute an overburden or misuse of the easement.").

Most of the case law provided by the Rhett's starts with the same principles that South Carolina jurisprudence expresses: **HN18** ↗ an owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden. However, other states have determined that expanding the use of an easement to property that is not

appurtenant is not worthy of an injunction in situations in which the expanded use does not increase the burden. South Carolina has not expressed such a principle, but in those cases the decisions were trusted to the trial court's judgment to weigh the particular facts. Here, the [*23] master allowed the Rhetts to use the easement for one tract it found was not appurtenant, the 4.12-acre tract, (discussed below in Gray's appeal) and did not allow them to use it for the rest of their twenty-eight acres. The 5.97 acres contained one house, the cottage where their son lives, while the house where they live is located on the remainder of their twenty-eight acres. Thus, it would have increased the usage by one household containing two people. Accordingly, the master did not err in failing to allow the Rhetts to access their property other than the 5.97 acres with the easement.

D. Attorney's Fees

The Rhetts contend the master erred in finding they were not entitled to attorney's fees although Gray placed them in the position of having to bring the lawsuit. We disagree.

HN19 Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989). In *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 307 S.C. 128, 131, 414 S.E.2d 118, 120 (1992), the court allowed a party to recover attorney's fees and costs expended in defending the negligence of another party when the other party negligently [*24] performed its contract with the first party and because of that negligence and breach of contract directed toward the first party, the first party was forced to defend an action brought by a third party.

In *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971), the court found

the [e]ssors seek to recover from the contractor the attorneys' fees incurred by them in defending themselves against the claim asserted by the tenants. The weight of authority sustains their right of recovery, either on the theory of an implied contract to indemnify, or because they were put to the necessity of defending themselves against the lessees' claim by the tortious conduct of the contractor, or by his breach of contract.

The court noted:

"It is generally held that **HN20** where the wrongful act of the defendant has involved the plaintiff in litigation with others or placed him in such relation with others as makes it necessary to incur expense to protect his interest, such costs and expenses, including attorneys' fees, should be treated as the legal consequences of the original wrongful act and may be recovered as damages. In order to recover attorneys' fees under this principle, the plaintiff must show: [*25] (1) that the plaintiff had become involved in a legal dispute either because of a breach of contract by the defendant or because of defendant's tortious conduct; (2) that the dispute was with a third party-not with the defendant; and (3) that the plaintiff incurred attorneys' fees connected with that dispute. If the attorneys' fees were incurred as a result of a breach of contract between plaintiff and defendant, the defendant will be deemed to have contemplated that his breach might cause plaintiff to seek legal services in his dispute with the third party."

HN21 "In actions of indemnity, brought where the duty to indemnify is either implied by law or arises under a contract, reasonable attorney fees incurred in resisting the claim indemnified against may be recovered as part of the damages and expenses."

Id. at 33, 183 S.E.2d at 709-10 (quoting 22 Am. Jur. 2d Damages § 166 at 235-36).

HN22 "[I]n actions of indemnity, brought where the duty to indemnify is either implied by law or arises under contract, and no personal fault of the indemnitee has joined in causing the injury, reasonable attorneys' fees incurred in resisting the claim indemnified against may be recovered as part of the damages [*26] and expenses." Id. at 34, 183 S.E.2d at 710.

HN23 "In order to sustain a claim for equitable indemnity, the existence of some special relationship between the parties must be established." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). "[A] sufficient relationship exists [for indemnification] when the at-fault party's negligence or breach of contract is directed at the non-faulting party and the non-faulting party incurs attorney fees and costs in defending itself against the other's conduct." *Winnsboro*, 307 S.C. at 132, 414 S.E.2d at 121.

The cases the Rhett's cite are distinguishable from the present situation because they are all cases of implied indemnity. The current case is not such a case. Accordingly, the master did not err in denying the Rhett's request for attorney's fees.

II. Gray's Appeal

Gray asserts the master erred in finding the fifty-foot easement could be used to access the 4.12-acre tract to which it is not appurtenant. We disagree.

As discussed above regarding the master's not allowing the Rhett's to access the remainder of their twenty-eight acres, South Carolina has not directly addressed this issue. **HN24** In the strictest sense, a landowner's [*27] use of an otherwise valid easement not technically appurtenant to the land he or she attempts to use it for constitutes misuse. However, other states have affirmed the trial court's findings it was not a misuse when the burden is not substantially increased. Here, although the easement is only appurtenant to the 1.25-acre tract, it was originally granted to the entire 5.97 acre-tract. Also, it does not seem to impose that much greater of a burden on Gray. Accordingly, we affirm the master's decision to allow the Rhett's to access the additional 4.12 acres.

CONCLUSION

We reverse the master's finding that the thirty-foot easement was abandoned. Additionally, we affirm the master's determination that only the 1.25-acre tract was appurtenant to the fifty-foot easement. Moreover, we affirm the master's decision to allow the Rhett's to use the fifty-foot easement to access 5.97 acres of their property but not the remainder of the twenty-eight acres. Further, we affirm the master's determination that the Rhett's were not entitled to attorney's fees. Accordingly, the master's decision is

AFFIRMED IN PART AND REVERSED IN PART.

GEATHERS, J., concurs.

CONCUR BY: PIEPER ▾ (In Part)

DISSENT BY: PIEPER ▾ (In Part)

DISSENT

PIEPER ▾, J., concurring [*28] in part and dissenting in part.

I respectfully dissent with the majority's decision to hold the master erred in finding that one of

the easements was abandoned. Based upon our standard of review, I would affirm the master's determination of abandonment of the easement, as I would find evidence does exist in the record to support that determination. See *Judy v. Kennedy*, 398 S.C. 471, 478, 728 S.E.2d 484, 487 (Ct. App. 2012) (providing the "termination of an easement by abandonment is a factual question in an action at law"); *Eldridge v. Eldridge*, 398 S.C. 113, 118, 728 S.E.2d 24, 26 (2012) ("In an action at law tried by a master, an appellate court will affirm the master's factual findings if there is any evidence in the record which reasonably supports them."). I concur with the majority's decision to affirm the remaining issues on appeal.

Source: **Legal > / . . . / > SC State Cases, Combined** [4]

Terms: **name(rhett and gray)** (Suggest Terms for My Search)

View: Full

Date/Time: Friday, January 25, 2013 - 1:51 PM EST

In

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STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Stow Away Storage, LLC

Plaintiff,

vs.

George W. Sisson, et al.

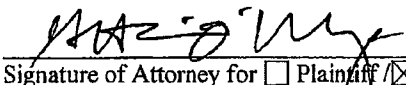
Defendant.

IN THE COURT OF COMMON PLEAS

Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: P.O. Box 1254 Charleston, SC 29402 Phone: (843) 577-0660 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: G. Hamlin O'Kelley, III, Bar No. 15491 Address: 652 Coleman Boulevard, Suite 200 Mt. Pleasant, SC 29464 Phone: (843) 856-4488 Fax (843) 856-0613 E-mail: hamlin.okelley@buistbyars.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant August 1, 2013 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ 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: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-10-2444

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

FILED
2013 AUG -2 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE ABOVE-NAMED PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants George W. Sisson, 4.0, LLC, the Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., (hereinafter the "Defendants"), by and through their undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before The Honorable J.C. Nicholson, Jr., Presiding Judge for Charleston County for an order granting the Defendants judgment as a matter of law pursuant to Rule 56(c) SCRPC against the Plaintiff, Stow Away Storage, LLC.

This Motion is based upon the failure of the Plaintiff's claims in establishing any material fact and any evidence from which this Court could rule in its favor regarding its allegation that the assignment of the Grant of Access Easement by the Defendant, Sweetgrass Hardware, Inc. to the Defendant, George W. Sisson is improper. A copy of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in Book U358 at Page 109 in the RMC Office for Charleston County is attached hereto as Exhibit "A" and incorporated herein by reference. This Motion is further based upon the Plaintiff's Responses to

{00366064.DOC}

the Defendants' Requests for Admission dated June 7, 2011. A copy of said Responses is attached hereto as Exhibit "B" and incorporated herein by reference. This Motion is further based on the Affidavits filed on February 6, 2013 and February 7, 2013 of Frank R. Fletcher and George W. Sisson, a copy of which are attached hereto as Exhibits "C" and "D" respectively and incorporated herein by reference.

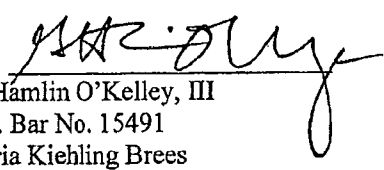
Pursuant to Rule 11 SCRPC, counsel certifies that there is no duty of consultation connected with the filing of this motion.

Please be present to defend if so minded.

Mt. Pleasant, South Carolina

BUIST, BYARS & TAYLOR, LLC

Aug. 1, 2013

By: 

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

Maria Kiehling Brees

S.C. Bar No. 76799

652 Coleman Boulevard, Suite 200

Mt. Pleasant, SC 29464

Phone: (843) 856-4488

Fax: (843) 856-0613

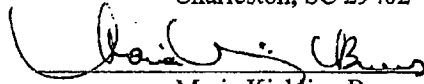
Attorneys for the Defendants George W. Sisson, 4.0, LLC,
The Sisson Foundation Limited Partnership, Sweetgrass
Hardware, Inc., and Timarand, Inc.

CERTIFICATE OF SERVICE

11-CP-10-2444

I hereby certify that I have this 1st day of August, 2013, mailed a true and accurate copy of the foregoing Defendants' Motion for Summary Judgment through the United States Postal Service, postage prepaid, addressed as follows:

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



Maria Kiehl Brees

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 AUG -2 PM 4:00

FILED

EXHIBIT "A"

U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ACCESS EASEMENT
AND
ABANDONMENT OF
ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sisson (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sisson Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

KPCOL1431N01.4-2A-4AS)022204-0000

U358PG110

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

HP001-142502-1-EA-(1A5) 028224-00000

RE - U358P6111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Basement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By

Name: E.L. Foster, III
Title: Member

Nicholas J. Ballard
WITNESS NO. 1

Alexis A. Davis
WITNESS NO. 2

GRANTEE:

George W. Slusons
George Slusons

*aka George W. Slusons

Cristi L. Orr
WITNESS NO. 1

Debra L. Baker
WITNESS NO. 2

NP COL 142535R (1-BA) (45) 022224-00000

EX U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by R.L. Pooser, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witnesses who signed above as Witness No. 2, witnessed the execution thereof.

Meile J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2000

Tammy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2009

NYCCL-142565-1-1A-(JAB) 02020-1-0000

EX U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named George Slesona, sign, seal, and as his act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Cristina L. Du
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Wayne R. Perkins (LS)
Notary Public for South Carolina
My Commission Expires: 12-12-2006

HP/CDL1425500.1-2A-(1A3)020204-00000

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by R.M. Seabrook, Jr., Esq. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, w/o/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.23 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book 2328 at page 662.

UK U358P6115

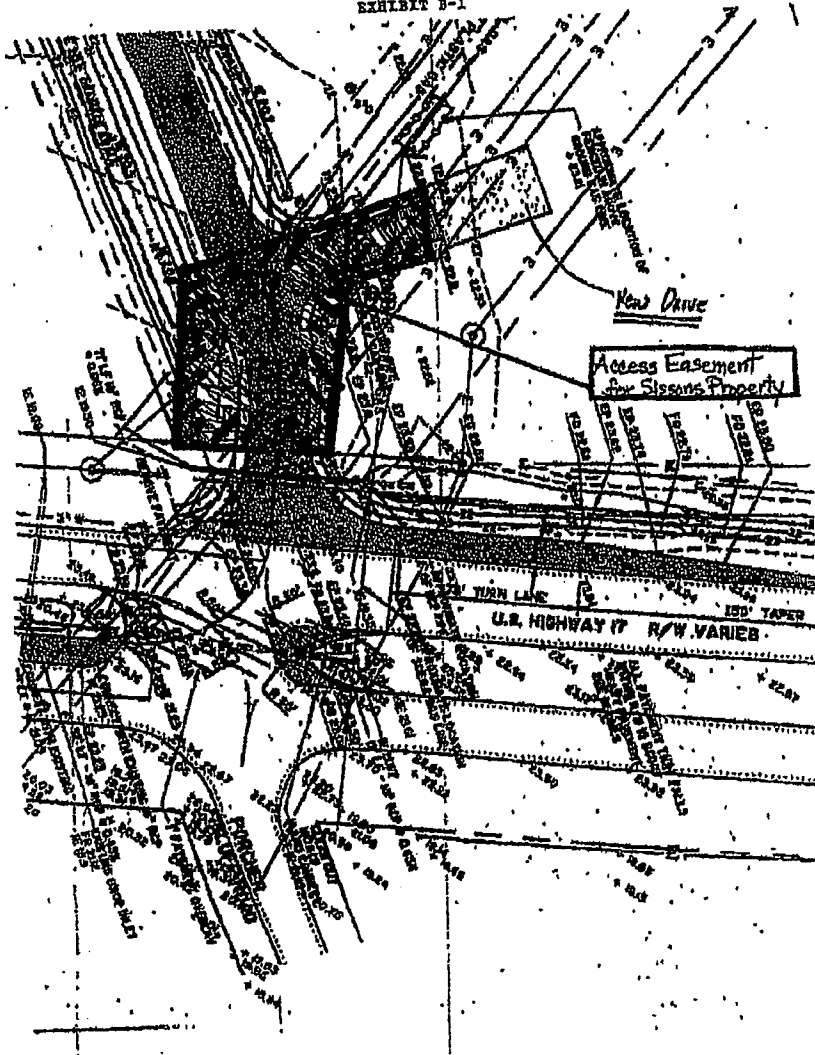
EXHIBIT B

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for Sissone Property" and further depicted by hashmarks on the attached sketch labeled Exhibit B-1.

NPCCLTASSEB1-5A(1A) 022204-00000

U358PG116

EXHIBIT B-1



Nelson Pruet Jacobs

→ Pollard

P. O. Drawer 2424

Cole, SC 29202-9732

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2

(2)

REF U358PC117

FILED

22358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.003

EXHIBIT "B"

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1254

CHARLESTON, S.C. 29402

(843) 577-0660

WWW.WARREN-SINKLER.COM

G. DANA SINKLER
JOHN H. WARREN, III
SCOTT Y. BARNES (SC & DC)
MARK S. SHARPE
ASHLEY DANTZLER WRIGHT
JACLYNN BOWER GOINGS
CAMERON SEMMES STOLL (SC & NY)
LAURA W. MOORE

FACSIMILE
(843) 577-6843

Writer's Email: jdavis@warren-sinkler.com

June 7, 2011

G. Hamlin O'Kelley, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Re: Stow Away Storage, LLC v. George W. Sisson, et al.

Dear Mr. O'Kelley:

I am enclosing herewith Plaintiff's Responses to Defendants' Requests for Admission in the captioned matter.

Yours very truly,

WARREN & SINKLER, LLP



Jo Davis

Assistant to G. Dana Sinkler

/jd
Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,	)	
Plaintiff,	)	
vs.	)	PLAINTIFF'S RESPONSES TO
GEORGE W. SISSON,	)	DEFENDANTS' REQUESTS FOR
4.0 LLC, THE SISSON	)	ADMISSION
FOUNDATION LIMITED	)	
PARTNERSHIP,	)	
SWEETGRASS HARDWARE,	)	
INC. AND TIMARAND, INC.,	)	
Defendants.	)	

To: G. Hamlin O'Kelley, III, Attorney for Defendants

Pursuant to SCRCP 36, Plaintiff responds to the First Requests for Admission of Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of an Access Easement and Abandonment of Encroachment Permit by and between Stow Aware [sic] Storage, LLC, and George Sissons a/k/a George w. Sissons.

RESPONSE: Admit.

2. Admit that the document attached hereto as Exhibit "A" was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston County.

RESPONSE: Admitted that the first page of the document "attached hereto as Exhibit 'A' was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston." The entire instrument was recorded at pages 109 through 117.

3. Admit that the Plaintiff Stow Away Storage, LLC, is named as the "Grantor" in that document attached hereto as Exhibit "A".

RESPONSE: Admit.

4. Admit that George Sissons a/k/a George W. Sissons is named as the "Grantee" in that document attached hereto as Exhibit "A".

RESPONSE: Admitted that "George W. Sissons*" is named as the Grantee in the first paragraph of the document, however, the execution page, which is recorded at page 111, is signed George W. Sisson, which is the Grantee's proper name, and the asterisk is explained by "aka George W. Sissons."

5. Admit that the Plaintiff Stow Away Storage, LLC, granted the following Grant of Access Easement as set forth in Exhibit "A":

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sissons Property' and more particularly described on Exhibit B attached hereto (The "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger delivery vehicular means between Grantee's property and U.S. Highway 17.

RESPONSE: Admitted, however, the Grant contains the additional language as follows:

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

6. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement to George Sissons a/k/a George W. Sissons and his successors and assigns, forever.

RESPONSE: Admitted that that language is part of the Grant of Access Easement and that the purposes for which the easement was granted set forth in the Grant of Access Easement establish that the easement granted is an Easement Appurtenant to the property of Sisson, which is described in the complaint at paragraph 4.

7. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement so that the rights granted and agreed to therein "shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively."

RESPONSE: Admitted that that language is in the second page of the Access Easement, which is Record page 110, except that the word "run" should be "run."

8. Admit that the document attached hereto as Exhibit "A" contains no restriction on assigning the Grant of Easement as

RESPONSE: Paragraph 8 is not a complete sentence and counsel for Plaintiff is not sure of the intent of the question and therefore denies the same.

9. Admit that the document attached hereto as Exhibit "A" is assignable.

RESPONSE: Denied.

10. Admit that assignment of Grantee's rights in the document attached hereto as Exhibit "A" shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee as applicable.

RESPONSE: As worded, paragraph 10 is denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina
June 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2011, I served the foregoing Plaintiff's Responses to Defendants' First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464



Jo Davis, Legal Assistant

EXHIBIT "C"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-10-2444

AFFIDAVIT OF FRANK R. FLETCHER

FILED
2013 FEB -6 PM 4:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

PERSONALLY appeared before me Frank R. Fletcher, who, being duly sworn, deposes
and states as follows:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge and not upon any information or belief.
2. I am a Defendant in the within referenced lawsuit.
3. I am the owner of Sweetgrass Hardware, Inc.
4. I lease the 1.93 acre tract of land abutting the property of the Plaintiff from the Defendant Timarand, Inc.
5. I operate a hardware store out of the space leased from the Defendant Timarand, Inc.
6. I entered into a License Agreement with 4.0, LLC for the assignment of 4.0, LLC's rights in the Access Easement and Abandonment of Encroachment Permit. A copy of the License Agreement is attached hereto as Exhibit "A".
7. The License Agreement assigned 4.0, LLC's rights in the Access Easement with the Plaintiff dated October 17, 2000.

{00311373.DOC}

1

7. The Access Easement was recorded in Book U358 at Page 109 in the Office of the Register Mesne Conveyance for Charleston County, South Carolina and a copy is attached hereto as Exhibit "B".
8. The Access Easement contains no restriction on assigning the Grant of Easement.
9. The Access Easement is only limited in nature and scope, in that the use of the Access Easement "...shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property."
10. The Access Easement is "...for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between the Grantee's property and U.S. Highway 17."
11. The Access Easement "...shall be perpetual and run[*sic*] with title to the Grantor's Property and the Grantee, respectively."
12. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by employees and patrons of Sweetgrass Hardware.
13. The Plaintiff constructed a gate in a further attempt to block the Access Easement, and the gate remains in place on the property.
14. The assignment of the Access Easement to Sweetgrass Hardware, Inc. does not create an unlawful increase or burden upon the Grantor's property.
15. The Plaintiff admitted that they entered into the Access Easement with the Defendant George W. Sisson in their Responses to Requests for Admission dated June 7, 2011. A copy of their Responses to Requests for Admission is attached hereto as Exhibit "C".

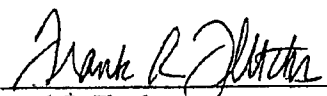
{00311373.DOC}

16. The Plaintiff further admitted in their Responses to Requests for Admission dated June 7, 2011 that the Access Easement is an Easement Appurtenant and that the rights granted run with the title to the Grantor's and the Grantee's property.

17. The Plaintiff's actions to block the Access Easement to me, my employees and patrons constitutes tortious interference with the contract in the form of the License Agreement by and between 4.0, LLC and Sweetgrass Hardware, Inc.

FURTHER THE AFFIANT SAYETH NOT.

Mt. Pleasant, South Carolina
2/6, 2013


Frank R. Fletcher

SWORN TO before me this 6th
day of February, 2013

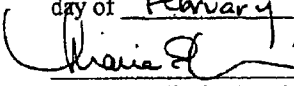

Notary Public for South Carolina
My Commission Expires: 2/7/15



EXHIBIT "A"

After recording please return to:
Gray B. Taylor, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property"), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

{00121607.DOC}

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3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensor. Licensee acknowledges that Licensor may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensor is under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4.

Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensor shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensor upon the motion of the Licensor for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensor *AL* (initial here)

Licensee *JD* (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensor and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensor shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensor under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi I. Orr

CRISTI I ORR

4.0 LLC

George W. Sissons

BY: George W. Sissons
Its: Member

SWEETGRASS HARDWARE, INC.

Dana Lynn Fletcher

Dana Lynn Fletcher

Frank R. Fletcher

By: Frank R. Fletcher
Its: PRESIDENT

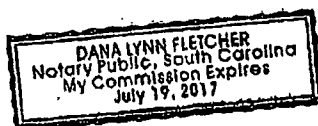


EXHIBIT A
(Licensee's Property)

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027

{00121607.DOC}

4

EXHIBIT "B"

U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) ACCESS EASEMENT
) AND
) ABANDONMENT OF
) ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sisson (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sisson Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

NP0011472000, 1-24 (JAS) 000004-00000

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

GP-COI-142202X-1-B4-14-07 025204-00009

U358P6111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: [Signature]

Name: B.L. Popper, III

Title: Member

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

GRANTEE:

[Signature]
George S. Sisson

aka George P. Sisson

[Signature]
WITNESS NO. 1

[Signature]
WITNESS NO. 2

HP-001-190280-1-01-1100-10000000

U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he knew the within-named Stow Away Storage, LLC by E.L. Foster, III, its Member, sign, seal, and on its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Michael J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2000

Tom A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2009

SPC0010000001-BA-4100 022004-00000

EX U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that
s/he saw the within-named George Sissons, sign, seal, and as his act and deed, deliver the
within-written instrument for the uses and purposes therein mentioned, and that s/he with the other
witness who signed above as Witness No. 2, witnessed the execution thereof.

Curtis A. Orr
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Orpha Rakes Watkins (LS)
Notary Public for South Carolina
My Commission Expires 12-12-2006

NOTARY PUBLIC (4-24/05) 025004-00000

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, n/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marina O. Ankerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabronk, 629.02 feet, more or less.

TMS: S80-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., R.L.S.S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BB, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Blow Away Storage, LLC, and recorded in the Office of the Register of Means Conveyances for Charleston County in Deed Book Z328 at page 662.

U358PG 115

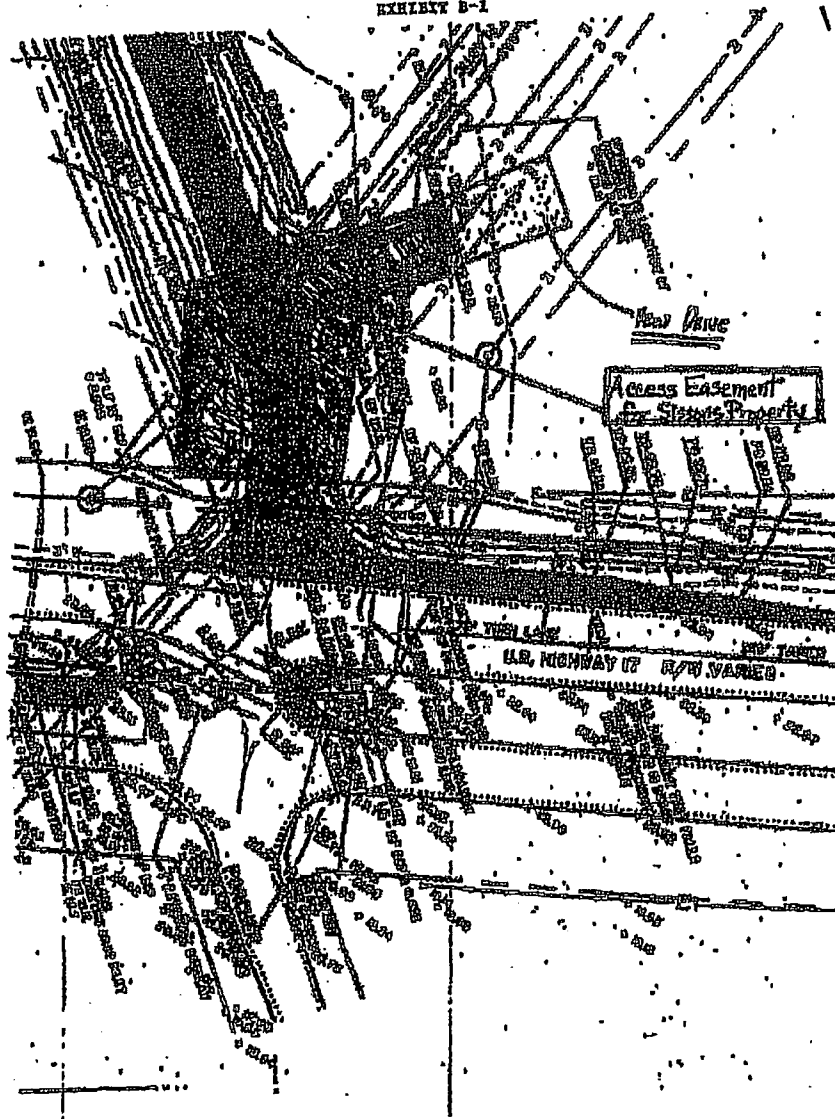
EXHIBIT 18

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for Sisone's Property" and further depicted by boundaries on the attached sketch labeled Exhibit B-1.

REPORT 1: A24-ML-1-52 (1A2) 12-23-04-0000

U358PG186

EXHIBIT B-1



Nelson Pruet Jacobs.

→ Pollard

P. O. Drawer 2426

Colo, IL 79202-9732

15
2

(S)

REF U358PG117

14.006

FILED

U358-109

2000 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SO

EXHIBIT "C"

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,)	
Plaintiff,)	
vs.)	PLAINTIFF'S RESPONSES TO
GEORGE W. SISSON,)	DEFENDANTS' REQUESTS FOR
4.0 LLC, THE SISSON)	ADMISSION
FOUNDATION LIMITED)	
PARTNERSHIP,)	
SWEETGRASS HARDWARE,)	
INC. AND TIMARAND, INC.,)	
Defendants.)	

To: G. Hamlin O'Kelley, III, Attorney for Defendants

Pursuant to SCRCP 36, Plaintiff responds to the First Requests for Admission of Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of an Access Easement and Abandonment of Encroachment Permit by and between Stow Aware [sic] Storage, LLC, and George Sissons a/k/a George w. Sissons.

RESPONSE: Admit.

2. Admit that the document attached hereto as Exhibit "A" was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston County.

RESPONSE: Admitted that the first page of the document "attached hereto as Exhibit 'A' was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston." The entire instrument was recorded at pages 109 through 117.

3. Admit that the Plaintiff Stow Away Storage, LLC, is named as the "Grantor" in that document attached hereto as Exhibit "A".

RESPONSE: Admit.

4. Admit that George Sissons a/k/a George W. Sissons is named as the "Grantee" in that document attached hereto as Exhibit "A".

RESPONSE: Admitted that "George W. Sissons*" is named as the Grantee in the first paragraph of the document, however, the execution page, which is recorded at page 111, is signed George W. Sisson, which is the Grantee's proper name, and the asterisk is explained by "aka George W. Sissons."

5. Admit that the Plaintiff Stow Away Storage, LLC, granted the following Grant of Access Easement as set forth in Exhibit "A":

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sissons Property' and more particularly described on Exhibit B attached hereto (The "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger delivery vehicular means between Grantee's property and U.S. Highway 17.

RESPONSE: Admitted, however, the Grant contains the additional language as follows:

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

6. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement to George Sissons a/k/a George W. Sissons and his successors and assigns, forever.

RESPONSE: Admitted that that language is part of the Grant of Access Easement and that the purposes for which the easement was granted set forth in the Grant of Access Easement establish that the easement granted is an Easement Appurtenant to the property of Sisson, which is described in the complaint at paragraph 4.

7. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement so that the rights granted and agreed to therein "shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively."

RESPONSE: Admitted that that language is in the second page of the Access Easement, which is Record page 110, except that the word "run" should be "run."

8. Admit that the document attached hereto as Exhibit "A" contains no restriction on assigning the Grant of Easement as

RESPONSE: Paragraph 8 is not a complete sentence and counsel for Plaintiff is not sure of the intent of the question and therefore denies the same.

9. Admit that the document attached hereto as Exhibit "A" is assignable.

RESPONSE: Denied.

10. Admit that assignment of Grantee's rights in the document attached hereto as Exhibit "A" shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee as applicable.

RESPONSE: As worded, paragraph 10 is denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

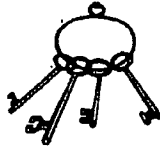
Charleston, South Carolina
June 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2011, I served the foregoing Plaintiff's Responses to Defendants' First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Jo Davis, Legal Assistant



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

December 13, 2012

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

Via Hand Delivery

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Affidavit of Frank R. Fletcher. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

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

Yours very truly,

Maria E. Kiehling

Enclosures

cc: (w/ encls) G. Dana Sinkler, Esq.

{00311817.DOC}

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

EXHIBIT "D"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-10-2444

AFFIDAVIT OF GEORGE W. SISSON

2013 FEB -7 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

PERSONALLY appeared before me George W. Sisson, who, being duly sworn, deposes
and states as follows:

1. I am over the age of twenty-one years, and I make this Affidavit on my own personal knowledge and not upon any information or belief.
2. I am a Defendant in the within referenced lawsuit.
3. I am the sole member of 4.0, LLC, a South Carolina limited liability company.
4. I am the General Partner of The Sisson Foundation Limited Partnership.
5. 4.0, LLC and The Sisson Foundation Limited Partnership own a 5.862 acre tract of land abutting the property of the Plaintiff.
6. On October 17, 2000, I entered into an Access Easement and Abandonment of Encroachment Permit (the "Access Easement") with the Plaintiff granting me a non-exclusive and perpetual easement.
7. The Access Easement was recorded in Book U358 at Page 109 in the Office of the Register Mesne Conveyance for Charleston County, South Carolina and is attached hereto as Exhibit "A".

{00311157.DOC}

8. This document granted the Grant of Access Easement to me and my successors and assigns, forever.
9. The Access Easement contains no restriction on assigning the Grant of Easement.
10. The Access Easement is only limited in nature and scope, in that the use of the Access Easement "...shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property."
11. The Access Easement is "...for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between the Grantee's property and U.S. Highway 17."
12. The Access Easement "...shall be perpetual and runt[sic] with title to the Grantor's Property and the Grantee, respectively."
13. The Defendant Timarand, Inc. currently leases a parcel abutting the subject property to Sweetgrass Hardware, Inc.
14. I assigned my rights in the Access Easement to Sweetgrass Hardware, Inc. by way of a License Agreement, a copy of which is attached hereto as Exhibit "B".
15. From 2008 to the present, the Plaintiff by and through its members, employees, representatives and agents, without cause of legal basis, have attempted to block the use of the Access Easement by Sweetgrass Hardware, Inc. and the other Defendants.
16. The Plaintiff constructed a gate in a further attempt to block the Access Easement, and the gate remains in place on the property.
17. The assignment of the Access Easement to Sweetgrass Hardware, Inc. does not create an unlawful increase or burden upon the Grantor's property.

{00311157.DOC}

18. The Plaintiff admitted that they entered into the Access Easement with me in their Responses to Requests for Admission dated June 7, 2011. A copy of their Responses to Requests for Admission is attached hereto as Exhibit "C".

19. The Plaintiff further admitted in their Responses to Requests for Admission dated June 7, 2011 that the Access Easement is an Easement Appurtenant and that the rights granted run with the title to the Grantor's and the Grantee's property.

FURTHER THE AFFIANT SAYETH NOT.

Hausden, Massachusetts
February 6, 2013

George W. Sisson
George W. Sisson

SWORN TO before me this 6th
day of February, 2013

Richard L. Zabielski
Notary Public for the Commonwealth of Massachusetts
My Commission Expires: _____

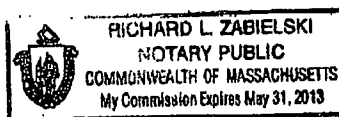


EXHIBIT "A"

U358PG109

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) ACCESS EASEMENT
) AND
) ABANDONMENT OF
) ENCROACHMENT PERMIT

THIS EASEMENT AGREEMENT (this "Agreement") is made and executed to be effective as of the 17th day of October, 2000, by and between STOW AWAY STORAGE, LLC, a South Carolina limited liability company (hereinafter referred to as the "Grantor"), and George Sissons (hereinafter referred to as the "Grantee").

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as "Access Easement for Sissons Property" and more particularly described on Exhibit B attached hereto (the "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17.

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

NP001072550, 1-24-00 025254-00000

Abandonment of Encroachment Permit. Grantee does hereby agree to abandon and terminate any rights Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is specifically understood and agreed by Grantee that the grant of the Access Easement shall terminate any rights Grantee may have to access Grantee's property from U.S. Highway 17 by any means other than the Access Easement.

It is intended that the terms, conditions, easements, and rights granted and agreed to herein shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively. It is further intended that the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all parties to enjoy the benefits hereby granted and shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee, as applicable. This Agreement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantor and Grantee, or their respective successors and/or assigns. If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity or effect of the remaining provisions of this Agreement, all of which shall continue in effect as if such invalid provision had not been included herein. All provisions of this Agreement, including the benefits and burdens, run with the Grantor's property and are binding upon and inure to the heirs, assigns, successors, and personal representatives of the parties hereto, as applicable.

TO HAVE AND TO HOLD, subject to all encumbrances, easements, rights-of-way, restrictions, and agreements of record as of the date hereof, all and singular the rights, easements, and agreements before mentioned unto the Grantor and Grantee, its successors and assigns, forever.

HP001.642625.1-2A-4117 02224-00000

U358P5111

AND, the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said Access Easement unto the said Grantee, its successors and assigns, against itself, its successors and assigns, lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 17 day of October, in the year Two Thousand, A.D. and in the Two Hundred and Twenty-Fourth year of the Sovereignty and Independence of the United States of America.

IN THE PRESENCE OF:

GRANTOR:

STOW AWAY STORAGE, LLC

(SEAL)

By: [Signature]
Name: E.L. Ponger, III
Title: Member

[Signature]
WITNESS NO. 1
[Signature]
WITNESS NO. 2

GRANTEE:

[Signature]
George W. Simpson
aka George W. Simpson

[Signature]
WITNESS NO. 1
[Signature]
WITNESS NO. 2

NPCCOL1430000.1-04-(1A8) 000004-00000

EX U358PG112

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that s/he saw the within-named Stow Away Storage, LLC by R.L. Foster, III, its Member, sign, seal, and as its act and deed, deliver the within-written instrument for the uses and purposes therein mentioned, and that s/he with the other witness who signed above as Witness No. 2, witnessed the execution thereof.

Wesley J. Rowland
WITNESS NO. 1

SWORN TO BEFORE ME THIS
17 day of October, 2000

Tammy A. Simpson (LS)
Notary Public for South Carolina
My Commission Expires: 2-16-2009

FP0001-00000001-0001 (JAS) 00004-0000

EX U358PG113

STATE OF SOUTH CAROLINA
COUNTY OF _____

PROBATE

PERSONALLY APPEARED before me the undersigned Witness No. 1 and made oath that
s/he saw the within-named George Sizemore, sign, seal, and as his act and deed, deliver the
within-written instrument for the uses and purposes therein mentioned, and that s/he with the other
witness who signed above as Witness No. 2, witnessed the execution thereof.

Cassie L. Ann
WITNESS NO. 1

SWORN TO BEFORE ME THIS
30 day of October, 2000

Debra L. Perkins (L.S.)
Notary Public for South Carolina
My Commission Expires 12-12-2006

HP-COLL-42359.1-EN-(4/5) 02/10/4-00000

EXHIBIT A

(Legal Description)

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M. Seabrook, Jr., Inc. dated May 17, 1989, entitled "Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina." Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 656.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND

ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled "Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina" by James Landford Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BB, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Means Conveyances for Charleston County in Deed Book Z328 at page 662.

NP001-140382-1-01 (JMS) 00004-0000

U358PG115

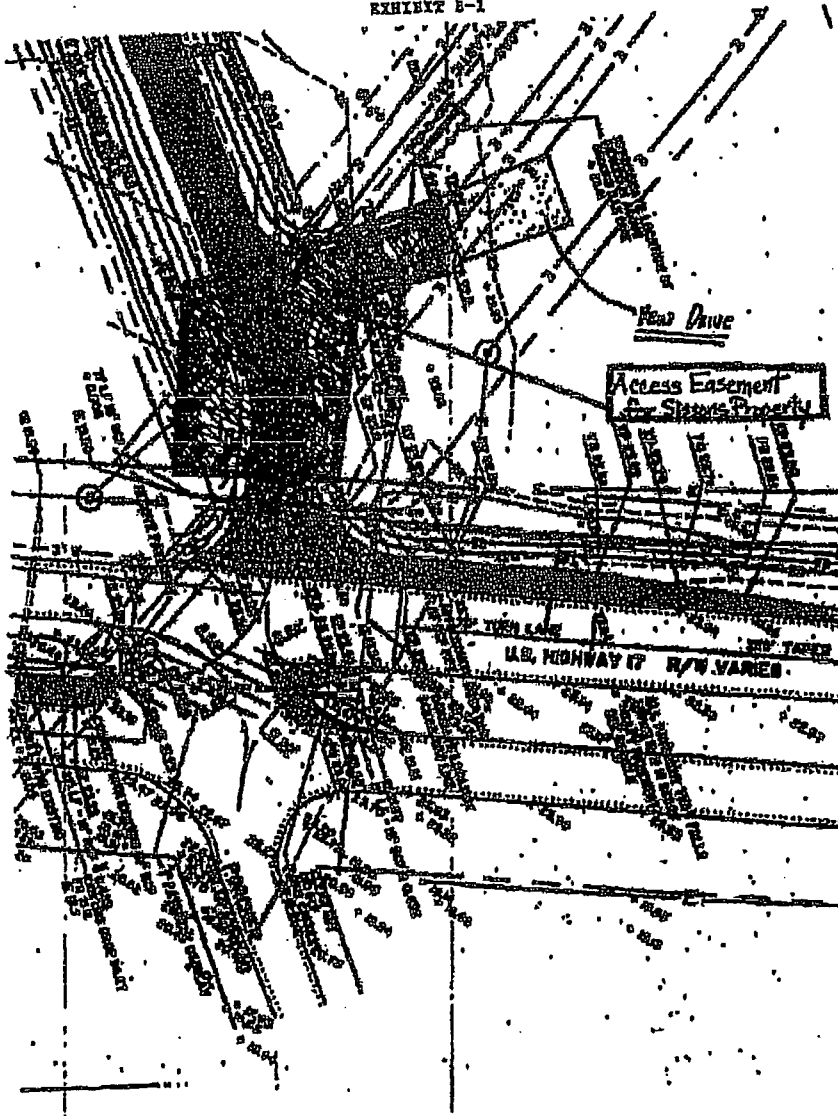
EXHIBIT

All that certain piece, parcel, or lot of land designated and labeled as "Access Easement for
Sissons Property" and further depicted by hatchmarks on the attached sketch labeled Exhibit B-1.

HPDCL-1234567-EM (1/2) 1234567890

U358PG116

EXHIBIT B-1



Nelson Pruet Jacobs
→ Pollard

P. O. Drawer 2426
Cole, SC 29202-9732

12

(S)

REF U358PG117

FILED

U358-109

2003 NOV 16 PM 12:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

14.006

EXHIBIT "B"

After recording please return to:
Gray B. Taylor, Esq.
Bulst, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mount Pleasant, South Carolina 29464

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 13th day of November, 2008, by and between 4.0 LLC ("Licensor"), and Sweetgrass Hardware, Inc., (the "Licensee").

WHEREAS, the Licensor is the holder of certain non-exclusive rights under that certain Access Easement and Abandonment of Encroachment Permit dated October 17, 2000 and recorded in the Charleston County RMC Office at Book U358 at Page 109 (the "Easement Agreement"), which grants to the Licensor a non-exclusive and perpetual easement over, one and through that certain portion of Stow Away Storage, LLC's ("Stow Away") property as described in the Easement Agreement (the "Easement"); and

WHEREAS, the Licensor desires to authorize Licensee to use the Easement for ingress and egress access from Highway 17 to Licensee's property, as described on the attached Exhibit "A" (Licensee's Property"), and to grant an exclusive license to the Licensee for the same; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Licensor and Licensee hereby agree as follows:

1. License for Use of Property. Licensor hereby grants to Licensee, for so long as Licensee leases the Licensee's Property, an exclusive license for ingress and egress access from Highway 17 to Licensee's Property.
2. Limitations on Use. The foregoing license shall be subject to:
 - a. The right of Licensor to adopt and amend reasonable rules and regulations pertaining to the use of the Easement, including, without limitation, rules establishing hours and vehicle or other limitations.
 - b. The right of Licensor to temporarily rescind this license for limited periods of time for the convenience of the Licensor.
 - c. Maintenance Responsibility. Licensee shall not have any maintenance responsibility for the Easement, but shall immediately repair any damage resulting from Licensee's exercise of this license.

{00121607.DOC}

1

3. Extension. This license may NOT be extended or renewed except with the express written permission of the Licensor. Licensee acknowledges that Licensor may refuse to extend this license beyond the initial term for any or no reason. Licensee also acknowledges that the Licensor is under no obligation to extend this License and that unless an extension is agreed to in writing, this License ends upon the conveyance of Licensee's Property to a third party.

4. Enforcement. Licensee stipulates and agrees that it shall be bound by the terms of this license, and that it has entered into this license agreement voluntarily, of its own free will, and for good and valuable consideration. Licensee further states that it has had ample opportunity to consult with legal counsel regarding this license agreement, and has substantially participated in the drafting of this license agreement, such that it shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same.

a. The venue and jurisdiction for any dispute arising out of this license agreement shall be the Charleston County Court of Common Pleas. All parties hereto agree to waive any right they may have to demand a trial by jury.

b. Licensee further agrees that, in the event of its breach of the license agreement, Licensor shall be entitled to a temporary injunction restraining Licensee from continued use of the license and from any operations in violation of the license terms contained herein, and that the temporary injunction shall be issued without requirement for a bond. Such temporary injunction is agreed to by the Licensee in favor of the Licensor upon the motion of the Licensor for a temporary injunction made to the Charleston County Court of Common Pleas.

c. Licensee further agrees that, in its defense of any action brought to enforce the terms of this license agreement or the Covenants, it shall not raise any defense that the terms of the license agreement or the Covenants violate public policy, constitute an unfair restraint of trade, an unfair trade practice, or any substantially similar statutory or common law defense.

Licensor RE (initial here) Licensee RE (initial here)

5. Amendment. This license may be amended only in writing by an instrument signed on behalf of the Licensor and Licensee.

6. Severability. Whenever possible, each provision of this license shall be interpreted in such manner as to be effective and valid, but if the application of any non-essential provisions to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any other provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this agreement are declared to be severable.

7. Notices. Any notices provided for in this license shall be in writing and shall be delivered to the primary business address of each party.

8. Termination. If Licensee fails to perform any of its obligations herein contained, in whole or in part, or violates any condition or obligation of the license, Licensor shall have the right, but not the obligation, to cancel this license upon ten (10) days written notice to Licensee.

9. No transfer of ownership. The use being made of the Easement by reason of this license is strictly permissive, not adverse, and it is agreed among the parties that the same shall in no instance ripen into an interest adverse to the interests of the Licensor under the Easement Agreement, or ripen into a permanent right by or for any reason whatsoever, including without limitation the passage of time or the continued use by Licensee beyond the term of this license.

10. Assignment. This license is personal to Licensee and may not be sold, transferred, assigned or given to any third party. The sale or assignment of a majority interest in the Licensee entities shall constitute an assignment for the purposes of this provision and shall constitute a violation of this License.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the date first written above.

WITNESS:

Cristi I. On

CRISTI I ON

Dana Lynn Fletcher

Dana Lynn Fletcher

4.0 LLC

George W. Sissons
BY: George W. Sissons
Its: Member

SWEETGRASS HARDWARE, INC.

Frank R. Fletcher
By: Frank R. Fletcher
Its: PRESIDENT



EXHIBIT A
(Licensee's Property)

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a "Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina" prepared by James L. Owen, Jr., dated February 22, 1989 and recorded on July 15, 1991, at the Charleston County RMC Office in Plat Book CD at Page 139.

TMS No. 598-00-00-027

EXHIBIT "C"

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CIVIL ACTION NO.: 2011-CP-10-2444
STOW AWAY STORAGE, LLC,)	
Plaintiff,)	
vs.)	PLAINTIFF'S RESPONSES TO
GEORGE W. SISSON,)	DEFENDANTS' REQUESTS FOR
4.0 LLC, THE SISSON)	ADMISSION
FOUNDATION LIMITED)	
PARTNERSHIP,)	
SWEETGRASS HARDWARE,)	
INC. AND TIMARAND, INC.,)	
Defendants.)	

To: G. Hamlin O'Kelley, III, Attorney for Defendants

Pursuant to SCRCP 36, Plaintiff responds to the First Requests for Admission of Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. as follows:

1. Admit that the document attached hereto as Exhibit "A" is a true and accurate copy of an Access Easement and Abandonment of Encroachment Permit by and between Stow Aware [sic] Storage, LLC, and George Sissons a/k/a George w. Sissons.

RESPONSE: Admit.

2. Admit that the document attached hereto as Exhibit "A" was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston County.

RESPONSE: Admitted that the first page of the document "attached hereto as Exhibit 'A' was recorded in Book U358 at Page 109 in the Office of the RMC for Charleston." The entire instrument was recorded at pages 109 through 117.

3. Admit that the Plaintiff Stow Away Storage, LLC, is named as the "Grantor" in that document attached hereto as Exhibit "A".

RESPONSE: Admit.

4. Admit that George Sissons a/k/a George W. Sissons is named as the "Grantee" in that document attached hereto as Exhibit "A".

RESPONSE: Admitted that "George W. Sissons*" is named as the Grantee in the first paragraph of the document, however, the execution page, which is recorded at page 111, is signed George W. Sisson, which is the Grantee's proper name, and the asterisk is explained by "aka George W. Sissons."

5. Admit that the Plaintiff Stow Away Storage, LLC, granted the following Grant of Access Easement as set forth in Exhibit "A":

Grant of Access Easement. Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sissons Property' and more particularly described on Exhibit B attached hereto (The "Access Easement"), for purposes of access, ingress, and egress by any and all pedestrian and passenger delivery vehicular means between Grantee's property and U.S. Highway 17.

RESPONSE: Admitted, however, the Grant contains the additional language as follows:

The Access Easement herein granted is to run through property owned by the Grantor, situate, lying, and being as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property.

Grantor shall be responsible for maintaining the Access Easement at Grantor's sole cost and expense.

6. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement to George Sissons a/k/a George W. Sissons and his successors and assigns, forever.

RESPONSE: Admitted that that language is part of the Grant of Access Easement and that the purposes for which the easement was granted set forth in the Grant of Access Easement establish that the easement granted is an Easement Appurtenant to the property of Sisson, which is described in the complaint at paragraph 4.

7. Admit that the document attached hereto as Exhibit "A" granted the Grant of Access Easement so that the rights granted and agreed to therein "shall be perpetual and shall run with title to the Grantor's Property and the Grantee, respectively."

RESPONSE: Admitted that that language is in the second page of the Access Easement, which is Record page 110, except that the word "run" should be "run."

8. Admit that the document attached hereto as Exhibit "A" contains no restriction on assigning the Grant of Easement as

RESPONSE: Paragraph 8 is not a complete sentence and counsel for Plaintiff is not sure of the intent of the question and therefore denies the same.

9. Admit that the document attached hereto as Exhibit "A" is assignable.

RESPONSE: Denied.

10. Admit that assignment of Grantee's rights in the document attached hereto as Exhibit "A" shall not be deemed to be an unlawful increase or burden upon the Grantor's property or Grantee as applicable.

RESPONSE: As worded, paragraph 10 is denied.

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

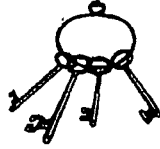
Charleston, South Carolina
June 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2011, I served the foregoing Plaintiff's Responses to Defendants' First Requests for Admission on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelly, III, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Jo Davis, Legal Assistant



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

February 7, 2013

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

Via Hand Delivery

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

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

Dear Ms. Armstrong:

Enclosed for filing in the above referenced matter please find the original and one (1) copy of an Affidavit of George W. Sisson. Kindly file the original and return the file-stamped copy to me in the enclosed envelope.

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

Yours very truly,

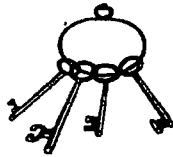
Maria E. Kiehling

Enclosures

cc: (w/ encls) G. Dana Sinkler, Esq.

{00312179.DOC}

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com



BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

August 1, 2013

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

Via Overnight Delivery

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

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

Dear Ms. Armstrong:

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

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

Yours very truly,

Maria Kiehling Brees

Enclosures

cc: (w/ encls) G. Dana Sinkler, Esq.

{00366106.DOC}

652 Coleman Blvd., Suite 200 • Mt. Pleasant, SC 29464 • Tel (843)856-4488 Fax (843)856-0613
www.buistbyars.com

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stow Away Storage, LLC,)

Plaintiff,)

vs.)

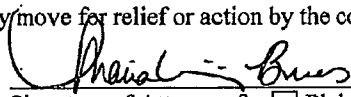
George W. Sisson, 4.0, LLC, The Sisson
Foundation Limited Partnership, Sweetgrass
Hardware, Inc., and Timarand, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: P.O. Box 1254 Charleston, SC 29402 Phone: (843) 577-0660 Fax (843) 577-6843 E-mail: dsinkler@warren-sinkler.com Other: _____		Defendant's Attorney: Maria Kiehling Brees, Bar No. 76799 Address: 652 Coleman Boulevard, Suite 200 Mt. Pleasant, SC 29464 Phone: (843) 856-4488 Fax (843) 856-0613 E-mail: maria.kiehling@buistbyars.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Notice of Motion and Motion to Reconsider Pursuant to Rule 59(e) SCRCP Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 4, 2013 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ 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: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-10-2444

**NOTICE OF MOTION AND MOTION
TO RECONSIDER PURSUANT TO
RULE 59(e) SCRPC**

TO: THE HONORABLE J.C. NICHOLSON, JR.
PRESIDING JUDGE, NINTH CIRCUIT
AND
G. DANA SINKLER, ESQ.
ATTORNEY FOR THE PLAINTIFFS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 DEC -6 PM 2:52

FILED

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. will move before the Honorable J.C. Nicholson, Jr., Presiding Judge for the Ninth Circuit, within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order reversing the Court's Order dated November 22, 2013, and received on December 3, 2013, by counsel for the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. This Motion is based upon the Court's ruling in favor of the Plaintiff as to the ineffectiveness of the Defendant Sisson's assignment of its rights in the easement to the Defendant Sweetgrass by a license agreement and the South Carolina law regarding interpretation of an easement. The Court further grants the Plaintiff the right to shut off traffic entering and/or crossing the easement for the purpose of entering the Defendant Sweetgrass'

{00410862.DOC}

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

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

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

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

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

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

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

Please be present to defend if so minded.

BUIST, BYARS & TAYLOR, LLC



G. Hamlin O'Kelley, III

S.C. Bar No. 15491

Maria Kiehling Brees

S.C. Bar No. 76799

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

Attorneys for the Defendants

Mt. Pleasant, South Carolina

12/4, 2013

CERTIFICATE OF SERVICE

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

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

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



Maria Kiehling Brees

FILED
2013 DEC -6 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

December 4, 2013

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

Via U.S. Mail

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

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

Dear Ms. Armstrong:

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

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

Yours very truly,



Maria Kiehling Brees

Enclosures

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

{00410892.DOC}

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Stow Away Storage, LLC,
☒ Plaintiff

CASE NO.

v.

2011-CP-10-2444

George W. Sisson, et al.
☐ Defendant

**MOTION INFORMATION FORM
AND COVER SHEET**

check box above indicating submitting party)

name, S.C. Bar no. and address of plaintiff's attorney
G. Dana Sinkler, SC Bar #5138
Warren & Sinkler, LLP
Post Office Box 1254
Charleston, SC 29402
telephone: 843-577-0660 fax: 843-577-6843
e-mail: dsinkler@warren-sinkler.com other:

name, S.C. Bar no. and address of defendant's attorney
G. Hamlin O'Kelley, III, SC Bar #15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
telephone: 843-856-4488 fax:
e-mail: Hamlin.okelley@buistbyars.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

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

12/6/13
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ 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 (1/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

STOW AWAY STORAGE, LLC,)
Plaintiff,)

vs.)

GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

MOTION FOR STAY OF DEFENDANTS'
SCRCP RULE 59(e) MOTION UNTIL
THE COURT HAS RULED ON THE ISSUE
OF DAMAGES

FILED
2013 DEC -6 PM 12:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This case was bifurcated in accordance with the provisions of SCRCP Rule 54(b) with the issue of liability and injunctive relief being tried first and the issue of damages reserved for a subsequent hearing. The Plaintiff accordingly moves this court to issue a stay of the Defendants' SCRCP Rule 59(e) Motion until the issue of damages is resolved.

Respectfully Submitted,

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER

Attorney for Plaintiff

Charleston, South Carolina

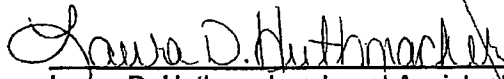
December 6, 2013

11-2444

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2013, I served the foregoing Motion for Stay of Defendants' SCRCP Rule 59(e) Motion Until the Court Has Ruled On The Issue of Damages on all counsel of record by mailing a copy of the same, postage prepaid, addressed as follows:

G. Hamlin O'Kelley, III, Esquire
Maria E. Kiehling, Esquire
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464



Laura D. Huthmacher, Legal Assistant

FILED
2013 DEC -6 PM 12:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

FILED
2014 JAN 15 PM 3:37
JULIE J. ARMS, CLERK OF COURT

Stow Away Storage, LLC,.....Respondent

vs.

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

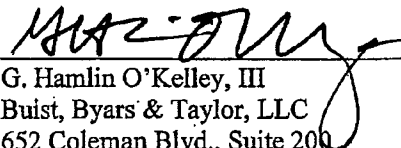
of Whom

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

NOTICE OF APPEAL

The Defendants/Appellants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, and Sweetgrass Hardware, Inc., appeal the Orders of the Honorable J.C. Nicholson,
Jr. Granting Judgment in Favor of the Plaintiff dated November 22, 2013, and the Order Denying
Motion to Reconsider dated December 11, 2013, and received by counsel on December 17, 2013.

January 14, 2014


G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
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(843) 856-4488
Hamlin.okelley@buistbyars.com

Other counsel of Record:

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

FILED

2014 JAN 15 PM 3:37

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

Stow Away Storage, LLC,.....Respondent

vs.

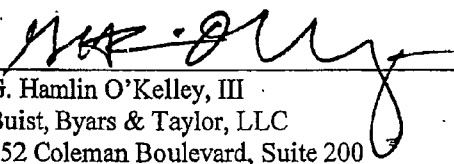
George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,

of Whom

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

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal has been served upon G. Dana Sinkler, counsel for the Respondent at P.O. Box 1254, Charleston, South Carolina, 29402, by United States Mail, first class, postage prepaid on the 14th day of January, 2014.


G. Hamlin O'Kelley, III
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652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
STOW AWAY STORAGE, LLC,)
Plaintiff,)
vs.)
GEORGE W. SISSON,)
4.0 LLC, THE SISSON)
FOUNDATION LIMITED)
PARTNERSHIP,)
SWEETGRASS HARDWARE,)
INC. AND TIMARAND, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-10-2444

ORDER

FILED
2013 NOV 25 PM 4:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY 2

This case concerns an Access Easement granted by the Plaintiff, Stow Away Storage, LLC (Stow Away) to the Defendant, George W. Sisson (Sisson), on October 17, 2000, involving property on Highway 17 at its intersection with Porcher Drive in and near Mt. Pleasant, South Carolina. In exchange for the Access Easement, Sisson agreed to abandon the pre-existing access to his property.

Subsequently, on January 3, 2007, the Defendant Sweetgrass entered into a 20 year lease of a parcel adjacent to Sisson's property, owned by Defendant Timarand. When Sweetgrass finished the renovation and enlargement of a commercial building on the property and opened it for business as a hardware store, Sweetgrass allowed its customers to use Sisson's pre-existing access for ingress to and egress from the store, notwithstanding Sisson's agreement to abandon it. The South Carolina Department of Transportation (SCDOT) eventually shut off the pre-existing access, whereupon the customers began using the easement granted by Stow Away to Sisson. After challenge by Stow Away, Sweetgrass secured a License Agreement from Timarand and, despite language in the License prohibiting it, granted its customers the right to continue use of

Stow Away's easement. Suit was filed by Stow Away on April 12, 2011, seeking damages including attorney's fees and costs and a permanent injunction.

The property owned by Stow Away is identified as Parcel 024 on a Charleston County tax map attached to this Order as Exhibit 1. The property initially owned by Sisson and subsequently by Defendants 4.0 LLC and the Sisson Foundation Limited Partnership, (hereinafter Sisson's Property) is designated on the tax map as Parcels 026 and 034. The property leased by the Defendant Sweetgrass from the Defendant, Timarand is identified on the tax map as Parcel 27. Timarand was made a party to Stow Away's Complaint, but was adjudged in default by Judge Harrington on August 16, 2011, and a Motion to Reconsider by Counsel for the Defendant was heard and denied by Judge Harrington on January 25, 2013.



The case came before me for trial on August 14, 2013, and the legal and equitable issues were bifurcated by the Court from the issues of damages and injunctive relief. At the outset, counsel for the Defendants stipulated that the allegations of Paragraphs 1-29 of Stow Away's Complaint were admitted and constitute the facts upon which the case should be considered. Counsel for both parties and the Court also agreed that the Easement conveyed by Stow Away to Sisson was an Easement Appurtenant.

The Facts

1. Stow Away Storage, LLC (hereinafter "Stow Away") is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Stow Away is the owner of two adjoining tracts of land on the north side of U.S. Highway 17 North, aggregating 8.82 acres of land and described as follows:

ALL that certain piece, parcel, or lot of land, situate, lying, and being in the Parish of Christ Church, County of Charleston, South Carolina, measuring and containing 5.36 acres, more or less, shown on a Plat made by E.M.

Seabrook, Jr., Inc. dated May 17, 1989, entitled 'Lands of Mary C. Seabrook, Yough Hall Plantation, Christ Church Parish, Charleston County, South Carolina.' Said Plat is recorded in the RMC Office for Charleston County, South Carolina in Deed Book G-189, at Page 263.

BUTTING, BOUNDING, and MEASURING, on the North on lands now or formerly of Salah Hibri, a/k/a Salah Ahmed, 308.36 feet, more or less; on the East on lands now or formerly of Marcus O. Ackerman and Constance S. Berg, 666.29 feet, more or less; on the South on lands now or formerly of Elizabeth O. Wilson, 413.87 feet, more or less; on the West on lands now or formerly of Benjamin Seabrook, 629.08 feet, more or less.

TMS: 580-00-00-024

AND



ALL that piece, parcel or tract of land, situate, lying, and being in Christ Church Parish, County of Charleston, State of South Carolina, containing 3.481 acres, more or less, as shown on that certain plat entitled 'Subdivision Plat Showing a Portion of Oakland Plantation owned by Oakland Associates, A South Carolina Limited Partnership, situate in Christ Church Parish, Charleston County, South Carolina' by James Landlord Owen, Jr., RLS S.C. Reg. No. 7624, dated May 22, 1985, and recorded in the RMC Office for Charleston County in Plat Book BE, Page 79, reference to which is craved for a more full and complete description.

TMS: 598-00-00-024

DERIVATION: Deed of Buffalo Creek Land Company, LLC to Stow Away Storage, LLC and recorded in the Office of the Register of Mesne Conveyances for Charleston County in Deed Book Z328 at page 662.

3. Defendant George W. Sisson (hereinafter "Sisson") is a resident of Charleston County and a prior owner of the property hereinafter described in paragraph

4. Sisson, in his individual capacity, signed the Access Easement and Abandonment of Encroachment Permit hereinafter referenced in paragraph 14.

4. Defendant 4.0 LLC is a South Carolina Limited Liability Company, created by Sisson, its sole member, which owns a 99% interest in a 5.862 acre tract of land abutting the property of the Plaintiff on the east and described as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, shown and designated as Tract 4A, 255.357 sq. ft. 5.862 acres, as shown on a plat entitled 'A Subdivision Plat of Tract 4 containing 17.828 acres', prepared by John T. Byrnes, II, R.L.S., dated July 6, 1995, and recorded at the Charleston County RMC Office in Plat Book EA, at page 742; said tract having such actual size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

Subject to all easements and restriction of record.

The said property was conveyed to 4.0 LLC by its sole member, George W. Sisson, by deed dated December 31, 2002 and recorded in the RMC Office for Charleston County in Book V431 at page 450.

5. Defendant The Sisson Foundation Limited Partnership (hereinafter "Sisson Foundation") is a South Carolina Limited Partnership, created by Sisson, which owns a 1% interest in the 5.862 acre tract of land abutting the property of Plaintiff on the east as described in paragraph 4 above. Sisson Foundation acquired said property by deed of Double G. Foundation LLC, dated April 29, 2003, and recorded in the RMC Office for Charleston County in Book A447 at page 99. Double G. Foundation, LLC was created by Sisson, who is its sole member. It acquired the property by deed of its sole member, Sisson, dated December 31, 2002, and recorded in the RMC Office for Charleston County in Book V431 at page 453. Sisson Foundation is a necessary party to these proceedings by virtue of its ownership of a 1% interest in the property described in paragraph 4.

6. Sweetgrass Hardware, Inc. (hereinafter "Sweetgrass") is a corporation organized and existing under the laws of the State of South Carolina, holding a leasehold interest in property east of the 5.862 acre tract owned by Defendant 4.0 LLC and Sisson Foundation, and operating a hardware store thereon. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139..

TMS#: 598-00-00-027

7. Timarand, Inc. (hereinafter "Timarand") is the owner of the tract of land described in paragraph 6 above and the landlord of the Defendant Sweetgrass. As owner of said tract, Timarand is a necessary party to these proceedings.

8. On July 13, 1999, Stow Away, by its managing member, filed with the South Carolina Department of Highways and Public Transportation (hereinafter "SCDHPT") an Application for Encroachment Permit requesting access to drive to the parcel described in paragraph 2. The access was from U.S. Highway 17 (hereinafter "Hwy. 17") opposite the Porcher Bluff Road intersection with Hwy. 17 and was to be 24' wide with a 30' radius on the south side and a 40' radius on the north side.

9. In the course of negotiations with SCDHPT, its name changed to the South Carolina Department of Transportation (hereinafter "SCDOT").

10. In response to Stow Away's application for an encroachment permit, SCDOT ultimately agreed to the encroachment permit requested and required Sisson, then the owner of the property now held by Defendants 4.0 LLC and Sisson Foundation, to abandon the access previously used by him for ingress to and egress from Hwy. 17.

11. On March 21, 2000, E.L. Pooser, III, the managing member of Stow Away, wrote a letter to Mr. Sisson offering him an easement across Stow Away's property to and from Hwy. 17 in exchange for his abandonment of his original access.

12. Included with the letter was a draft of the easement offered.

13. Sisson "Acknowledged and Agreed" to the offer and the abandonment of his original access by signing and returning a copy of the letter on March 27, 2000. (Exhibit 1)

14. On October 17, 2000, the ACCESS EASEMENT AND ABANDONMENT OF ENCROACHMENT PERMIT was signed by both E.L. Pooser, III, as Managing Member of Stow Away, and George W. Sisson a/k/a George W. Sissons. The document was subsequently recorded in the RMC Office for Charleston County on November 16, 2000 in Book U358, page 109. (Exhibit 2)

15. Following several telephone conversations with Stow Away's member, Bert Pooser, on September 27, 2006, Tim Askins, the sole shareholder of Timarand, had his wife fax a sketch to Pooser, depicting a proposed extension of the Access Easement previously provided to Sisson which would have allowed access over Stow Away's Access Easement to Timarand's property, which he subsequently leased to Sweetgrass. (See Exhibit 3) Pooser never agreed to the proposed extension.

16. On January 3, 2007, the Defendant Timarand and the Defendant Sweetgrass entered into a lease of the property described below, pursuant to the provisions of which Timarand leased the property to Sweetgrass for a term of ten (10) years with an option to extend the term for two additional five (5) year periods. The property is described as follows:

ALL that certain piece, parcel, lot or tract of land located in Christ Church Parish, Charleston County, containing 1.93 acres, more or less, as shown and designated as Lot A on a 'Subdivision Plat showing a portion of Oakland Plantation owned by Salah Hibri, situated in Christ Church Parish, Charleston County, South Carolina' prepared by James L. Owen, Jr., dated February 22, 1989, and recorded on February 22, 1989, and recorded on July 15, 1991, at the Charleston County R.M.C. Office in Plat Book CD, at Page 139

TMS#: 598-00-00-027

(See Memorandum of Lease, Exhibit 4)

17. The deed and plat by which Timarand acquired the property leased to Sweetgrass provided access to Hwy. 17 North only to the east of Sisson's property as shown on plat recorded in the RMC Office for Charleston County in Plat Book CD at page 139 and plat recorded in the RMC Office for Charleston County in Plat Book EA at page 742. (Exhibits 5 and 6)

18. Shortly after Sweetgrass leased the property from Timarand, it renovated and enlarged a commercial building on the property for use as a retail hardware store.

19. In the course of preparing its leased property for use as a hardware store, large trees and shrubbery blocking access to Sisson's property were removed and Sweetgrass constructed a gate on its west property line, thereby providing access to its property from the access to Hwy. 17 that Sisson had agreed with Stow Away to abandon.

20. Upon completion of renovations and opening of the store, customers of Sweetgrass, with the permission of Sisson, began using the old easement to Sisson's property which he had agreed to abandon under the terms of the Access Easement and Abandonment of Encroachment Permit dated October 17, 2000. Indeed, Sisson and/or Sweetgrass paved the old easement on April 19, 2009, to facilitate its use, notwithstanding Sisson's contractual agreement to abandon it.

21. Despite the SCDOT's objection, Sweetgrass and its customers continued to use the access Sisson had agreed to abandon to reach the hardware store. (See Letter from Richard L. Turner, P.E., Resident Maintenance Engineer dated July 21, 2008 attached as Exhibit 7)

22. Shortly thereafter, the SCDOT erected barriers to prohibit further use of the access Sisson had agreed to abandon; thereby limiting access to both Stow Away's

property and Sisson's property and extinguishing the access of the customers of Sweetgrass.

23. Thereupon, Sweetgrass and its customers began using the access constructed by Stow Away on its property to access Sweetgrass' hardware store.

24. By letter dated August 20, 2008, counsel for Stow Away wrote Sweetgrass' President demanding that he notify his customers to cease using Stow Away's access to reach Sweetgrass' store. (See letter attached as Exhibit 8)

25. This demand was met by a written response from Sweetgrass' attorney, dated November 10, 2008, advising that: "Sweetgrass Hardware, Inc. is a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (See letter attached as Exhibit 9)



26. Counsel for Stow Away then sent an email to Sweetgrass' attorney asking him to email him a copy of the document by which Sweetgrass Hardware, Inc. had become "a lawful assignee of Mr. Sissons [sic], and therefore entitled to the full benefit of the Easement." (Exhibit 10)

27. It developed that, in point of fact, Sweetgrass did not hold any written lawful assignment, but counsel for Sweetgrass then proceeded to obtain a License Agreement from 4.0 LLC to Sweetgrass dated November 13, 2008 (three days after counsel had advised that Sweetgrass was already a "lawful assignee of Mr. Sissons [sic]."). (See License Agreement attached as Exhibit 11)

28. The License Agreement, by its terms and according to law, was and is personal to Sweetgrass and "may not be sold, transferred, assigned or given to any third party." (License Agreement ¶ 10)

29. Nonetheless, both Sisson, individually and as sole member of 4.0 LLC, and Sweetgrass have persisted in asserting that the License Agreement allows Sweetgrass to assign to its customers the use of Stow Away's Easement and have

refused to relent in their insistence that Sweetgrass' customers have the right to use Stow Away's Easement and have threatened that "any further attempt by Stow Away Storage, LLC to interfere with this right will result in action for Injunctive relief, and damages for any lost business." (See letter from Sweetgrass' counsel, Exhibit 12, and letter from George Sisson, Exhibit 13)

Conclusions of Law

Plaintiff argues that because Defendant Sweetgrass merely obtained a License Agreement to use the easement from Defendant Sisson, by law and by express provisions in the License Agreement, Sweetgrass is prohibited from assigning those rights to any third party, including the customers of Sweetgrass.



The assignment of [one's rights in land] conveys an interest in the land. An assignment is a conveyance of the lessee's entire interest in the demised premises without retaining any reversionary interest in the leasehold. See, Neal v. Craig Brown, Inc., 86 N.C.App. 157, 356 S.E.2d 912 (1987). . . . In contrast, a license to be on the premises for an agreed purpose is a contractual right *personal to the licensee*. See, Bunn v. Offutt, 216 Va. 681, 222 S.E.2d 522 (1976). A license does not vest in the licensee any estate or interest in the land. See, Hill v. Smith, 51 N.C.App. 670, 277 S.E.2d 542, review denied, 303 N.C. 543, 281 S.E.2d 392 (1981). It conveys only the temporary privilege of being on the land for some agreed purpose. See, Henson v. Airways Service, Inc., 220 Ga. 44, 136 S.E.2d 747 (1964).

Hilton Head Air Serv., Inc. v. Beaufort Cnty., 308 S.C. 450, 456-57, 418 S.E.2d 849, 853 (Ct. App. 1992) (emphasis added). It is well settled law in South Carolina that licenses are personal to the licensee. Id. Therefore, the law prohibits assignments of licenses because of a license's very nature. Furthermore, as stated in Paragraph 28 of this Order, the License granted by Sisson to Sweetgrass expressly prohibits any assignments of the License Agreement. Therefore, by virtue of the laws regarding licenses and the License Agreement, Sweetgrass may not assign the benefits of the License to a third party. However, the Court is not entirely persuaded that the License granted to Sweetgrass does not encompass the customers of Sweetgrass as licensees,

which would in effect eliminate the Court's finding of an assignment of the License to a third party. If the License does implicitly include Sweetgrass' customers as licensees, the Court must then determine whether the License Agreement in itself materially increases the burden on the dominant estate.

gn
"In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed." Rhett v. Gray, 401 S.C. 478, 491 (Ct App. 2012). Furthermore, "[t]he language of an easement determines its extent. . . . [The] court must construe unambiguous language in the grant of an easement according to the terms the parties have used. . . . The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it." Plott v. Justin Enterprises, 374 S.C. 504, 513-14 (Ct App. 2007). "In South Carolina, an owner of an easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden." Rhett, 401 S.C. at 493.

The Access Easement and Abandonment of Encroachment Permit (hereinafter the "Easement Agreement") states in part, "Grantor does hereby grant and convey unto the Grantee, his successors and assigns, forever, a non-exclusive and perpetual easement over, on, and through that certain portion of Grantor's property designated and delineated as 'Access Easement for Sisson's Property'. . . for purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17. . . . The Access Easement and all rights granted in favor of Grantee herein are limited in nature and scope, such that the use of the Access Easement by Grantee shall not materially adversely affect the use, enjoyment, and operation of the Grantor or its property." Based on the

evidence presented to the Court regarding the substantial increase in vehicular traffic using the easement as a result of the License Agreement, the Court finds that by allowing the customers of Defendant Sweetgrass to use the easement for access to Defendant's store and the post office facility, Defendants have materially increased the burden on the servient estate; thus, expanding the dominant estate and materially increasing the scope of the easement.



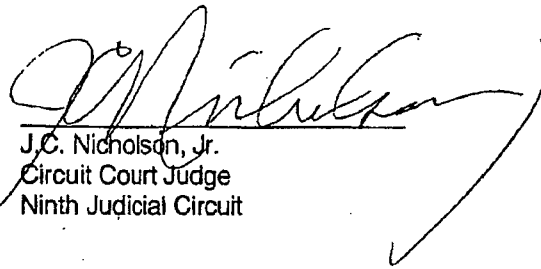
It is the Defendants' position that the language in the Easement Agreement which states that the assignment "shall not be deemed to be an unlawful increase or burden upon the Grantor's property . . ." evidences that the Easement Agreement contemplated a material change in the scope of the easement. However, in reading the Easement Agreement as a whole, as required by South Carolina precedent, the Court finds that this language refers specifically to the assignment of the rights held by the dominant estate holder and does not address a change in the scope of the easement. The Court further finds that in order for there to be a finding that the Easement Agreement contemplates the material increase in the scope of the Easement and the burden on the servient estate by the dominant estate holder, there must be specific language indicating such, and none exists.

In conclusion, the Court finds that even if the language of the License Agreement implicitly includes the customers of Sweetgrass as licensees, the increased volume of vehicular traffic as a result of the License materially increased the scope of the easement and the burden on the servient estate, thus, expanding the dominate estate in violation of the Easement Agreement between Plaintiff and Defendant Sisson and the law of South Carolina.

Therefore, the Court finds in favor of the Plaintiff and grants the Plaintiff the right to shut off traffic entering and/ or crossing the easement for the purpose of entering the Defendant Sweetgrass' property by whatever means that are reasonably necessary.

This does not give the Plaintiff the right to limit Defendant Sisson's use of the easement as provided for in the Easement Agreement. Whatever means the Plaintiff uses to block traffic crossing the easement and entering Defendant Sweetgrass' property must remain on Plaintiff's property and may not go farther than the property line of Defendant Sisson's easement. The Defendants are restrained from interfering with Plaintiff's efforts to shut off such traffic.

IT IS SO ORDERED!


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

Charleston, South Carolina

11/22, 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-2444

Stow Away Storage, LLC,

George W. Sisson, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court **DENIES** Defendant George W. Sisson, et al.'s Motion to Reconsider filed on December 6, 2013.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

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

Circuit Court Judge

2117
Judge Code

Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

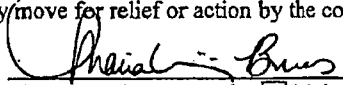
George W. Sisson, 4.0, LLC, The Sisson
Foundation Limited Partnership, Sweetgrass
Hardware, Inc., and Timarand, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: P.O. Box 1254 Charleston, SC 29402 Phone: (843) 577-0660 Fax (843) 577-6843 E-mail: dsinkler@warren-sinkler.com Other: _____	Defendant's Attorney: Maria Kiehling Brees, Bar No. 76799 Address: 652 Coleman Boulevard, Suite 200 Mt. Pleasant, SC 29464 Phone: (843) 856-4488 Fax (843) 856-0613 E-mail: maria.kiehling@buistbyars.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Notice of Motion and Motion to Reconsider Pursuant to Rule 59(e) SCRCF Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant December 4, 2013 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-10-2444

**NOTICE OF MOTION AND MOTION
TO RECONSIDER PURSUANT TO
RULE 59(e) SCRPC**

TO: THE HONORABLE J.C. NICHOLSON, JR.
PRESIDING JUDGE, NINTH CIRCUIT
AND
G. DANA SINKLER, ESQ.
ATTORNEY FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. will move before the Honorable J.C. Nicholson, Jr., Presiding Judge for the Ninth Circuit, within ten (10) days after service hereof, or as soon thereafter as counsel may be heard, for an Order reversing the Court's Order dated November 22, 2013, and received on December 3, 2013, by counsel for the Defendants George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. This Motion is based upon the Court's ruling in favor of the Plaintiff as to the ineffectiveness of the Defendant Sisson's assignment of its rights in the easement to the Defendant Sweetgrass by a license agreement and the South Carolina law regarding interpretation of an easement. The Court further grants the Plaintiff the right to shut off traffic entering and/or crossing the easement for the purpose of entering the Defendant Sweetgrass'

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

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

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

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

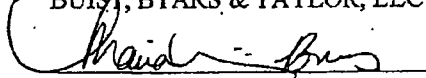
"...the easements and rights herein granted and agreed to herein are, whether determined to be appurtenant or in gross, perpetual, assignable and divisible and that the division of the Grantor's property by ownership or lease or the assignment of Grantee's rights under this Agreement, shall entitle all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

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

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

Please be present to defend if so minded.

BUIST, BYARS & TAYLOR, LLC



G. Hamlin O'Kelley, III
S.C. Bar No. 15491

Maria Kiehling Brees
S.C. Bar No. 76799

652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Defendants

Mt. Pleasant, South Carolina
12/4, 2013

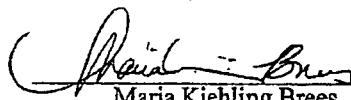
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CERTIFICATE OF SERVICE

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

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

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


Maria Kiehling Brees

Motion to Reconsider

**BUIST
BYARS &
TAYLOR** LLC
ATTORNEYS AT LAW

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

December 4, 2013

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

Via U.S. Mail

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

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

Dear Ms. Armstrong:

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

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

Yours very truly,



Maria Kiehling Brees

Enclosures

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

12/10/13

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January 14, 2014

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
hamlin.okelley@buistbyars.com

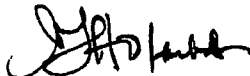
Ms. Ruth Mott
P.O. Box 2012
Goose Creek, SC 29445

Re: Stow Away Storage, LLC v. George W. Sisson, 4.0, LLC, The Sisson
Foundation Limited Partnership, Sweetgrass Hardward, Inc., and Timarand,
Inc.
Case No. 2011-CP-10-2444
File No.: 2011040021

Dear Ms. Mott:

On August 14, 2013, there was a hearing in the above-referenced matter before the Honorable J.C. Nicholson, Jr. in Charleston County. You served as the Court Reporter. I request that you please provide me with a transcript of the proceedings. Please transcribe the entire record of the proceedings from that day and forward the same to me at our offices in Mt. Pleasant. We agree to pay the per page charge for the transcript as provided by Rule 607, SCACR. By copy of this letter, I am serving a copy of this request upon the Clerk of the Court of Appeals, opposing counsel and S.C. Court Administration. Should you have any questions, please feel free to contact me. With kindest regards, I remain

Yours very truly,



G. Hamlin O'Kelley, III

GHO/mkb

cc: The Honorable Jenny Abbott Kitchings
S.C. Court Administration
G. Dana Sinkler, Esq.

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January 14, 2014

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
hamlin.okelley@buistbyars.com

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Stow Away Storage, LLC v. George W. Sisson, 4.0, LLC, The Sisson
Foundation Limited Partnership, Sweetgrass Hardware, Inc., and Timarand,
Inc.
Case No. 2011-CP-10-2444
Our File No. 2011040021

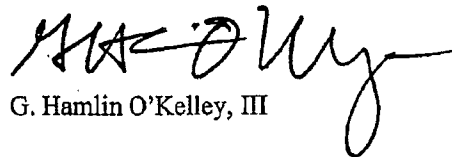
Dear Ms. Kitchings:

Please find enclosed for filing in the above-referenced matter an original and one (1) copy of a Notice of Appeal. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents;
2. A copy of the Orders which are to be challenged on appeal;
3. Our firm's filing fee of \$100.00; and
4. A copy of the request for the transcripts of the underlying proceedings.

Please file the originals and return the file-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving same upon G. Dana Sinkler, Esq., counsel for the Respondent and the Honorable Julie J. Armstrong, Clerk of Court for Charleston County. Should you have any questions, please feel free to contact me. With kind regards, I am

Yours very truly,



G. Hamlin O'Kelley, III

Enclosures

cc. (w/enc.) The Honorable Julie J. Armstrong ✓
G. Dana Sinkler, Esq.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

FILED
2011 JAN 22 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT

Stow Away Storage, LLC,.....Respondent

vs.

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

of Whom

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

MOTION TO REMAND

The Respondent, Stow Away Storage, Inc., does hereby move this Honorable Court for an Order remanding the captioned case to The Honorable J.C. Nicholson, Jr., for the purpose of allowing Judge Nicholson to conduct a hearing and rule on the issues of damages and attorney's fees which were bifurcated at the hearing in this matter held on August 14, 2013.

SCRCP Rule 54 (b) specifically provides:

When more than one claim for relief is presented in an action...the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(Emphasis Added)

Judge Nicholson did not make such "express determination" or "express direction" and his Order adjudicating liability and injunctive relief is not final until the issue of damages can be heard and adjudicated.

On the basis of SCRPC 54 (b), it is respectfully submitted that this matter should be remanded to Judge Nicholson to allow him to hear and adjudicate the remaining claims of the Plaintiffs.

Respectfully Submitted,

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER
Attorney for Respondent

Charleston, South Carolina

January 21, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

FILED
2014 JAN 22 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT

Stow Away Storage, LLC, ... Respondent
vs.

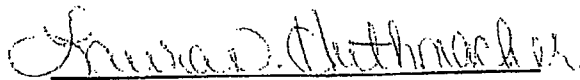
George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,

of Whom

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

PROOF OF SERVICE

The undersigned hereby certified that a true copy of the Motion to Remand has been served upon G. Hamlin O'Kelley, III and Maria E. Kiehling, counsel for the Appellants at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, SC 29464, by United States mail, first class, postage prepaid on the 21st day of January, 2014.



Laura D. Huthmacher, Assistant
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402
(843) 577-0660
lhuthmacher@warren-sinkler.com

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1284

CHARLESTON, S.C. 29402

(843) 577-0660

WWW.WARREN-SINKLER.COM

G. DANA SINKLER - OF COUNSEL
JOHN H. WARREN, III
CAMERON SEMMES STOLL (SC & NY)

FACSIMILE
(843) 577-6843

writer's email: lhuthmacher@warren-sinkler.com

January 21, 2014

The Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

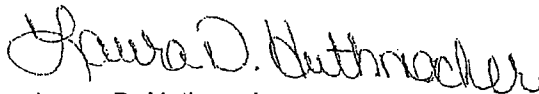
Dear Ms. Kitchings:

Enclosed please find an original Motion to Remand and Proof of Service along with (7) copies of each and a check in the amount of \$25.00 which represents the filing fee.

Please file the original and return to me a copy in the self-addressed stamped envelope.

Yours respectfully,

WARREN & SINKLER, LLP



Laura D. Huthmacher
Assistant to G. Dana Sinkler

GDS/ldh
Enclosures

cc: G. Hamlin O'Kelley, III, Esquire (with enclosures)
Maria E. Kiehling, Esquire (with enclosures)
✓The Honorable Julie J. Armstrong (with enclosures)
The Honorable J.C. Nicholson, Jr. (with enclosures)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

RECEIVED
FEB 04 2014
SC Court of Appeals

Stow Away Storage, LLC,.....Respondent,

v.

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

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

APPELLANTS' RETURN TO
RESPONDENT'S MOTION TO REMAND

Pursuant to Rule 240(e) SCACR, the Appellants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. submit this Return to the Respondent's Motion to Remand dated January 21, 2014.

For the reasons stated herein, the Appellants object to the Respondent's Motion to Remand and would request that the relief requested by the Respondent be denied.

The determination by Judge Nicholson is immediately appealable as it is a "final order affecting a substantial right..." of the parties. Kriti Ripley, LLC and Ashley River Props. II, LLC

v. Emerald Investments, LLC and Stuart Longman, 404 S.C. 367, 378, 746 S.E.2d 26, 32 (2013) (where a final foreclosure order was a final judgment on the merits). Judge Nicholson's Order finds in favor of the Respondent in that the License Agreement between Sweetgrass and Sisson was ineffective, thus granting the Respondent the right to shut off traffic entering and/or crossing the easement. The lawsuit is based on Sweetgrass' use of the easement. Both Judge Nicholson's Order entered on November 22, 2013 and the Order Denying the Defendants' Motion to Reconsider entered on December 11, 2013 deny Sweetgrass the use of the easement.

A final judgment is an order that "...dispose[s] of the whole subject-matter or" is a "...termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined." Id., 404 S.C. at 379, 746 S.E.2d at 32 (2013). Judge Nicholson made an "express determination" in that he immediately denied Sweetgrass the right to use the easement. The rights of the parties have been determined. The issues of damages and attorney's fees do not affect the merits of the case and do not form the whole or part of the outlined causes of action. See Ex parte Capital U-Drive-It, Inc. v. Rhett Alexander Beaver, 369 S.C. 1, 630 S.E.2d 464 (2006).

On the basis of SCRCP 54(b), it is respectfully submitted that the Respondent's Motion to Remand be denied as there are no remaining claims for adjudication.

January 31, 2014
Mt. Pleasant, South Carolina

Respectfully submitted,



Maria Kiehling Brees
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
maria.brees@buistbyars.com

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-2444

FEB 04 2014

Stow Away Storage, LLC,

George W. Sisson, et al.,

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court DENIES Defendant George W. Sisson, et al.'s Motion to Reconsider filed on December 6, 2013.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge

2117
Judge Code

Date

12/19/13

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

Stow Away Storage, LLC,.....Respondent,

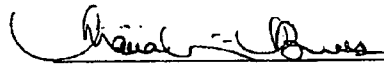
v.

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

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

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the Appellants' Return to the Respondent's Motion to Remand has been served upon G. Dana Sinkler, counsel for the Respondent at P.O. Box 1254, Charleston, South Carolina, 29402, by United States Mail, first class, postage prepaid on the 31st day of January, 2014.



Maria Kiehling Brees
Buist, Byars & Taylor, LLC
652 Coleman Boulevard, Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
maria.brees@buistbyars.com

January 31, 2014

MARIA KIEHLING BREES
ATTORNEY AT LAW
maria.brees@buistbyars.com

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: Stow Away Storage, LLC v. George W. Sisson, et al.
Case No. 2011-CP-10-2444
Ct. App. No. 2014-000155
Our File No. 2011040021

Dear Ms. Kitchings:

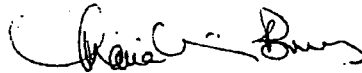
Please find enclosed for filing in the above-referenced matter the following:

1. An original and seven (7) copies of the Appellants' Return to Respondent's Motion to Remand;
2. An original and one (1) copy of a Proof of Service for the same.

Please file the originals and return the file-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving the same upon G. Dana Sinkler, Esq., counsel for the Respondent.

Should you have any questions, please feel free to contact me. With kind regards, I am

Yours very truly,



Maria Kiehling Brees

Enclosures
cc. (w/enc.) G. Dana Sinkler, Esq.

RECEIVED

FEB 04 2014

SC Court of Appeals

(00427003.DOC)

ROA 453

**BUIST
BYARS &
TAYLOR** LLC
ATTORNEYS AT LAW
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464



RECEIVED
FEB 04 2011
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

FILED
2014 FEB -5 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY *[Signature]*

Stow Away Storage, LLC,.....Respondent
vs.

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

of Whom

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

REPLY TO APPELLANTS' RETURN

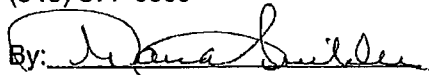
The Appellants, in their Return to Respondent's Motion to Remand, ignore Judge Nicholson's Statement, at page 2 of his Order that "the legal and equitable issues were bifurcated by the Court from the issues of damages and injunctive relief". That statement makes it clear that he intended to hear the remaining issues at a subsequent hearing. Furthermore, they ignore the provisions of SCRCP 54 (b), which specifically provides that in the absence of "an express determination that there is no just reason for delay" and "upon an express direction for the entry of judgment", "any order or other

form of decision, however designated, which adjudicates fewer than all the claims... shall not terminate the action as to any of the claims..."

As previously stated, Judge Nicholson did not expressly determine there was no reason to delay nor did he expressly direct the entry of judgment. Therefore, his Order adjudicating liability and injunctive relief is not final until the remaining issues are heard and adjudicated.

Respectfully Submitted,

WARREN & SINKLER, L.L.P.
Post Office Box 1254
Charleston, SC 29402
(843) 577-0660

By: 
G. DANA SINKLER
Attorney for Respondent

Charleston, South Carolina

February 4, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2011-CP-10-2444

FILED
2014 FEB -5 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Stow Away Storage, LLC,.....Respondent
vs.

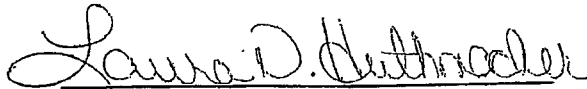
George W. Sisson, 4.0, LLC, The Sisson Foundation Limited
Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,.....Defendants

of Whom

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

PROOF OF SERVICE

The undersigned hereby certified that a true copy of the Reply to Appellants' Return has been served upon G. Hamlin O'Kelley, III and Maria E. Kiehling, counsel for the Appellants at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, SC 29464, by United States mail, first class, postage prepaid on the 4th day of February, 2014.



Laura D. Huthmacher, Assistant
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, SC 29402
(843) 577-0660
lhuthmacher@warren-sinkler.com

WARREN & SINKLER, L.L.P.

ATTORNEYS AT LAW

SUITE 340

171 CHURCH STREET

POST OFFICE BOX 1254

CHARLESTON, S.C. 29402

(843) 577-0660

WWW.WARREN-SINKLER.COM

G. DANA SINKLER - OF COUNSEL
JOHN H. WARREN, III
CAMERON SEMMES STOLL (SC & NY)

FACSIMILE
(843) 577-6843

writer's email: lhuthmacher@warren-sinkler.com

February 4, 2014

The Honorable Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

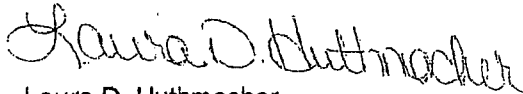
Dear Ms. Kitchings:

Enclosed please find an original Reply to Appellants' Return and Proof of Service along with (7) copies of each.

Please file the original and return to me a copy in the self-addressed stamped envelope.

Yours respectfully,

WARREN & SINKLER, LLP



Laura D. Huthmacher
Assistant to G. Dana Sinkler

GDS/ldh
Enclosures

cc: G. Hamlin O'Kelley, III, Esquire (with enclosures)
Maria E. Kiehling, Esquire (with enclosures)
The Honorable Julie J. Armstrong (with enclosures)
The Honorable J.C. Nicholson, Jr. (with enclosures)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Stow Away Storage, LLC

Plaintiff,

vs.

George W. Sisson, 4.0., LLC et al.,

Defendant.

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2444

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: 2180 Rosebank Plantation Road, Wadmalaw, SC 29487 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: G. Hamlin O'Kelley, III, Bar No. 15491 Address: 652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464 Phone: 843.856.4488 Fax 843.491.5143 E-mail: hamlin.okelley@buistbyars.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Quash Depositions Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: April 5, 2016	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ 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: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stow Away Storage, LLC)

Plaintiff,)

vs.)

George W. Sisson, 4.0, LLC,)

The Sisson Foundation Limited Partnership,)

Sweetgrass Hardware, Inc., and)

Timarand, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10-2444

MOTION TO QUASH DEPOSITIONS

FILED
2016 APR 11 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

TO: G. DANA SINKLER, ESQ.
ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership and Sweetgrass Hardware, Inc. (hereinafter referred to as "Defendants"), by and through their undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before the Presiding Judge of the Ninth Judicial Circuit for an order quashing Plaintiff's amended notices of deposition dated April 1, 2016 on the grounds that it is irrelevant and will not lead to admissible discovery. This motion is further based upon the prior Order of the Honorable J.C. Nicholson, Jr., and the South Carolina Court of Appeals which effectively end this matter.

Pursuant to Rule 11 SCRPC, counsel certifies that consultation regarding the subject matter of this motion would serve no useful purpose.

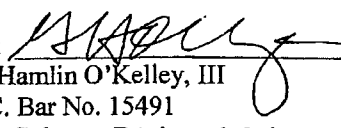
Please be present to defend if so minded.

{00753283.DOCX}

Mount Pleasant, South Carolina

April 5, 2016

BUIST, BYARS & TAYLOR, LLC

By: 

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Boulevard, Suite 200

Mount Pleasant, South Carolina 29464

(843) 856-4488

hamlin.okelley@buistbyars.com

*Attorney for the Defendants George W. Sisson, 4.0, LLC,
The Sisson Foundation Limited Partnership and
Sweetgrass Hardware, Inc.*

{00753283.DOCX}

2011-CP-10-2444

CERTIFICATE OF MAILING

I hereby certify that on April 5, 2016, a copy of the foregoing was mailed, via overnight delivery, prepaid, to all counsel of record in this matter, as follows.

G. Dana Sinkler, Esq.
2180 Rosebank Plantation Road
Wadmalaw Island, SC 29487
Attorney for Plaintiff Stow Away Storage, LLC



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

FILED
2016 APR 11 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

{00753283.DOCX}



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

April 5, 2016

AMANDA C. TAYLOR
PARALEGAL
Amanda.taylor@buistbyars.com

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

Re: Stow Away Storage, LLC, et al. v. George W. Sisson, et al.
C/A No. 2011-CP-10-2444
Our File No. 1001.0001

Dear Ms. Armstrong:

Enclosed please find an original and one (1) copy of the Motion to to Quash Depositions in the above-referenced matter.

Kindly file the original and return the file-stamped copy to us in the return envelope provided. Should you have any question, please feel free to contact our office at your convenience.

Sincerely,

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures

cc. (w/ Encl.):
G. Dana Sinkler, Esq.

{00664239.DOC}

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2011-CP-10-2444

Stow Away Storage, LLC,

Plaintiff,

vs.

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

Defendants.

**THE DEFENDANTS GEORGE W.
SISSON, 4.0 LLC, THE SISSON
FOUNDATION LIMITED
PARTNERSHIP, AND SWEETGRASS
HARDWARE, INC.'S REPLY TO THE
ORDER OF JUNE 21, 2016**

2016 JUL 18 PM 1:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY 2

FILED

TO: G. DANA SINKLER, ESQ.
ATTORNEY FOR PLAINTIFF

The Defendants George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, Sweetgrass Hardware, Inc., (hereinafter the "Defendants") by and through its undersigned counsel submit the following reply to the Order of the Honorable J.C. Nicholson, Jr., dated June 21, 2016

REPLY

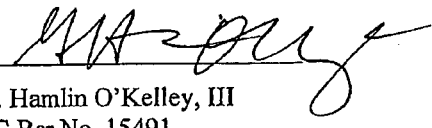
1. There were no monies exchanged for the use of the Access Easement and Abandonment of Encroachment Permit by and between Stow Aware Storage, LLC, and George Sissons a/k/a George W. Sissons and any of the Defendants.

{00802027.DOC}

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina

July 14, 2016

By: 

G. Hamlin O'Kelley, III
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

{00802027.DOC}

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

COUNTY OF Charleston)

CASE NO.: 2011-CP-10-2444

Stow Away Storage, LLC)

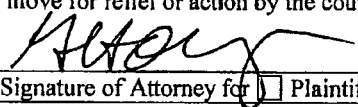
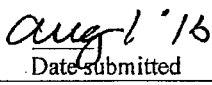
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

George W. Sisson, 4.0., LLC et al.,)

Defendant.)

Plaintiff's Attorney: G. Dana Sinkler, Bar No. _____ Address: 2180 Rosebank Plantation Road, Wadmalaw, SC 29487 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: G. Hamlin O'Kelley, III, Bar No. 15491 Address: 652 Coleman Blvd., Suite 200, Mt. Pleasant, SC 29464 Phone: 843.856.4488 Fax 843.491.5143 E-mail: hamlin.okelley@buistbyars.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Quash Amended Notice of Deposition Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ _____ ☐ 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: _____	

{00753347.DOCX}

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

{00753347.DOCX}

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Stow Away Storage, LLC)

Plaintiff,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2011-CP-10-2444

**MOTION TO QUASH AMENDED
NOTICES OF DEPOSITIONS**

FILED
2016 AUG 24 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT

**TO: G. DANA SINKLER, ESQ.
ATTORNEY FOR THE PLAINTIFF**

YOU WILL PLEASE TAKE NOTICE that the Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership and Sweetgrass Hardware, Inc. (hereinafter referred to as "Defendants"), by and through their undersigned counsel, will move on the tenth (10th) day after service hereof or as soon as counsel may be heard before the Presiding Judge of the Ninth Judicial Circuit for an order quashing Plaintiff's amended notices of depositions dated July 28, 2016 on the grounds that they are irrelevant and will not lead to admissible discovery. This motion is further based upon the prior Order of the Honorable J.C. Nicholson, Jr. quashing prior deposition notices.

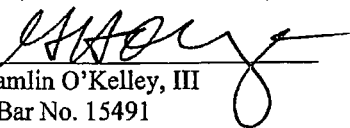
Pursuant to Rule 11 SCRPC, counsel certifies that consultation regarding the subject matter of this motion would serve no useful purpose.

Please be present to defend if so minded.

Mount Pleasant, South Carolina

August 11, 2016

BUIST, BYARS & TAYLOR, LLC

By: 

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Boulevard, Suite 200

Mount Pleasant, South Carolina 29464

(843) 856-4488

hamlin.okelley@buistbyars.com

*Attorney for the Defendants George W. Sisson, 4.0, LLC,
The Sisson Foundation Limited Partnership and
Sweetgrass Hardware, Inc.*

2016 CR-10-2444

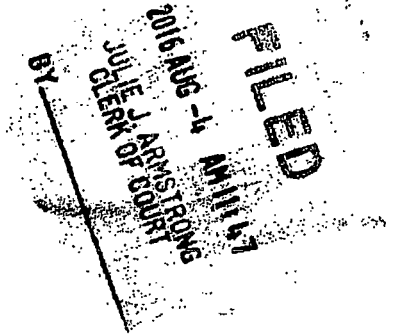
CERTIFICATE OF MAILING

I hereby certify that on August 1, 2016, a copy of the foregoing was mailed to all counsel of record in this matter, as follows:

G. Dana Sinkler, Esq.
2180 Rosebank Plantation Road
Wadmalaw Island, SC 29487
Attorney for Plaintiff Stow Away Storage, LLC



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III





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

August 1, 2016

AMANDA C. TAYLOR
PARALEGAL
Amanda.taylor@buistbyars.com

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

Re: Stow Away Storage, LLC, et al. v. George W. Sisson, et al.
C/A No. 2011-CP-10-2444
Our File No. 1001.0001

Dear Ms. Armstrong:

Enclosed please find an original and one (1) copy of the Motion to Quash Amended Notices of Depositions in the above-referenced matter.

Kindly file the originals and return the file-stamped copies to us in the return envelope provided. Should you have any question, please feel free to contact our office at your convenience.

Sincerely,

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures

cc. (w/ Encl.):
G. Dana Sinkler, Esq.

{00810205.DOC}