

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

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 III

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 ORIGINAL

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT

STOW AWAY STORAGE, LLC)

vs.)

2011-CP-10-02444

GEORGE W. SISSON, ET AL.)

August 14, 2013
Charleston, South Carolina

B E F O R E:

HONORABLE J. C. NICHOLSON, JR.

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1 (Defendant's Exhibits 1-2 premarked for identification.)
2 THE COURT: Let me see, Mr. Sinkler.
3 MR. SINKLER: Yes, sir.
4 THE COURT: I've been reading your complaint, and I
5 didn't want to tear your complaint apart because it's
6 stapled. These two plats that you've got, do you have copies
7 of those, or do you want me to pull the complaint apart and
8 take these out? It's hard to see them because they're folded
9 up.
10 MR. SINKLER: I have copies of them back at the office,
11 and I can certainly bring them.
12 THE COURT: Can you share those with me? I'll have to
13 tear this complaint up and re-staple it.
14 Mr. O'Kelley, have you got copies of them?
15 MR. O'KELLEY: Your Honor, I've got copies of big plats
16 if that --
17 MR. SINKLER: That's a plat of the property.
18 THE COURT: I assume this is the same thing you're
19 looking at, Mr. O'Kelley.
20 MR. O'KELLEY: Let me look, Your Honor, but I've got a
21 copy of the plat showing the abandonment of the lines and
22 showing where the easement is, but let me make sure it's the
23 same one attached to the complaint, Your Honor.
24 THE COURT: I'll tell you what, I'll take it apart and
25 just staple it back together.

1 MR. O'KELLEY: Your Honor, this is plat book CD page 139
2 that I think will help show the area right in here.

3 THE COURT: This is the same thing that's attached to
4 the complaint?

5 MR. O'KELLEY: I think so, Your Honor.

6 MR. SINKLER: I have EA-742, which also shows the
7 property if I may offer that, Your Honor. That may be
8 attached also.

9 THE COURT: Let me just ask you all a couple questions
10 before we get started. Looking at the complaint, it appears
11 that the issue is whether they can expand the easement
12 granted by Stow Away granted to Sisson, and when I say
13 Sisson, I'm talking about Timarand and the foundation and
14 George Sisson, whether that can be expanded to be to the use
15 of Sweetgrass as the leaseholder. Is that basically the
16 issue?

17 MR. SINKLER: Yes, sir.

18 MR. O'KELLEY: And, Your Honor, whether or not, I think,
19 there can be an assignment.

20 THE COURT: It will be assigned, right.

21 MR. O'KELLEY: Yes, sir.

22 THE COURT: Now, depending upon that legal issue, then
23 plaintiff may be -- if the plaintiff is correct, then he may
24 be entitled to some damages, looking at his cause of action.
25 I believe they were -- let me see, are you moving forward on

1 all three?

2 MR. SINKLER: Yes.

3 THE COURT: And then, Mr. O'Kelley, you've got basically
4 the same thing, asking for monetary damages. We've got to
5 address that legally, give my opinion, before we even get to
6 the damage issue, so what I would propose is sort of doing a
7 little bifurcation of this issue, address the legal issue,
8 get a decision made, and then we can proceed with the damages
9 with the respective parties if there are damages.

10 MR. SINKLER: That makes all the sense in the world,
11 Your Honor.

12 THE COURT: Now, reading your action and reading your
13 complaint, apparently there's no dispute as to what happens
14 in interpretation of the lease itself -- I mean, excuse me,
15 not the lease, the easement, and what you all have been
16 referring to I believe as the -- Mr. O'Kelley, you referred
17 to it as --

18 MR. O'KELLEY: There's a license agreement.

19 THE COURT: -- the license agreement, right, the
20 interpretation on those two documents, is that correct?

21 MR. O'KELLEY: I think we don't even need to get to the
22 license agreement, Your Honor. I think the legal question is
23 just about the easement itself.

24 THE COURT: Mr. Sinkler, do you agree?

25 MR. SINKLER: Yes, sir. The easement is granted to

1 Timarand, which is not part of the dominant estate.

2 THE COURT: Let me ask you this: I'm a little bit
3 confused in reading the complaints and the attachments, Mr.
4 Sinkler, your position is the expansion is by allowing
5 Sweetgrass customers to use that easement, is that correct,
6 it did not geographically expand it; is that correct?

7 MR. O'KELLEY: That's correct.

8 THE COURT: It's a use expansion; is that correct?

9 MR. SINKLER: Yes, sir.

10 THE COURT: They're not taking more land than what was
11 originally given to them in the easement; is that correct?

12 MR. SINKLER: Well, Timarand is not part of the dominant
13 estate. We gave an easement to Mr. Sisson just for his
14 property.

15 THE COURT: But that was his property going back into, I
16 guess, the portion of Oakland Plantation, is that what you're
17 telling me?

18 MR. SINKLER: Yes, sir.

19 THE COURT: And this easement runs through the middle of
20 it, correct?

21 MR. SINKLER: The easement runs through the middle of a
22 100-foot South Carolina Electric & Gas lease.

23 THE COURT: What I'm confused about is the language in
24 the complaint and the answer about the city redesigning that
25 intersection, people having trouble getting in and out and

1 where this gate was. I couldn't figure out geographically
2 where all that was located.

3 MR. O'KELLEY: Your Honor, by way of background, most of
4 the facts, Your Honor, we agree on. And, especially, since
5 this is really truly a legal issue for Your Honor about
6 whether the easement allows the assignment or not, but where
7 the easement is, Your Honor, Porcher's Bluff Road, where it
8 is on 17, if it were to go straight across Highway 17, this
9 easement would look like an extension of Porcher's Bluff
10 Road.

11 THE COURT: Extension of what?

12 MR. O'KELLEY: Porcher's Bluff Road, Your Honor.

13 THE COURT: That's the road that comes out from the
14 circle back on Rifle Range --

15 MR. O'KELLEY: Correct, Your Honor. At the bottom of
16 plat book CD --

17 THE COURT: -- on the left-hand side, and straight
18 across the road is what we're talking about.

19 MR. O'KELLEY: Yes, sir, exactly, and Stow Away's
20 facility is there straight back. Sweetgrass Hardware, Your
21 Honor, is sort of at 11:00.

22 THE COURT: So the easement we're talking about is the
23 only way to get in and out of Sweetgrass Hardware, is that
24 correct, off of 17?

25 MR. SINKLER: No, sir. Sweetgrass Hardware has an

1 access at another point.

2 THE COURT: That's what I wasn't clear on. Show me on
3 this plat where the access is, additional access with
4 Sweetgrass might be.

5 MR. SINKLER: I have a photo that might help, Your
6 Honor, that shows it. It's an aerial that might show.

7 THE COURT: Where's Sweetgrass?

8 MR. SINKLER: Right here.

9 THE COURT: Here's Sweetgrass right here.

10 MR. SINKLER: And then it has access there.

11 THE COURT: Looking at this plat here, this is the
12 easement we're talking about. Is Sweetgrass on the Timarand
13 tract or on the Sisson tract?

14 MR. O'KELLEY: Correct.

15 MR. SINKLER: I know it's on the Timarand tract.

16 MR. O'KELLEY: It's Timarand and Sisson. It's on both.

17 THE COURT: Where's the other access point --

18 MR. O'KELLEY: The other access point, Your Honor --

19 THE COURT: -- on this map. I know that's not
20 necessarily your legal question, but I was just confused on
21 that.

22 MR. O'KELLEY: Correct, it's right, not to be too
23 precise, but kind of in here, Your Honor.

24 THE COURT: This area.

25 MR. O'KELLEY: Yes, sir, a little further up 17, right

1 about here.

2 THE COURT: So if this is the intersection, it's further
3 up this way.

4 MR. O'KELLEY: Correct. You can almost see it right
5 here, Your Honor.

6 THE COURT: And where is the hardware store?

7 MR. O'KELLEY: Right here.

8 THE COURT: Right here?

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: So there's an access here?

11 MR. O'KELLEY: There's an access here, and there's Stow
12 Away, and then they come through here too.

13 THE COURT: So they can come in this way or they can go
14 in that way.

15 MR. O'KELLEY: Correct.

16 THE COURT: But if you're coming north on 17, you can't
17 make a left in there because of the buffer --

18 MR. O'KELLEY: That's correct.

19 THE COURT: -- cement, whatever you want to call it,
20 that they put in when they widened the road.

21 MR. O'KELLEY: The median or whatever, yes, sir.

22 THE COURT: That's the problem all up and down 17 since
23 they widened it.

24 MR. O'KELLEY: Yes, sir.

25 THE COURT: That clears it up. I just didn't understand

1 that. As far as the legal issues are concerned --

2 MR. O'KELLEY: And, Your Honor, one more thing on
3 background. Mr. Sinkler filed a motion for summary judgment
4 that was heard in February and denied. I just filed a new
5 one because of the legal issue, and so I don't --

6 THE COURT: I'm not going to do it by summary judgment.
7 I'm going to do it by bifurcating the trial. I'm going to
8 deal with the legal issue first and then deal with the
9 damages on whoever is correct in the legal issue.

10 MR. O'KELLEY: Yes, sir.

11 THE COURT: If you want me to just summarily deny your
12 summary judgment motion for the record, I will.

13 MR. O'KELLEY: I don't think we need it, Your Honor.
14 That makes sense. I just wanted to clarify that for my
15 purposes. Thank you.

16 THE COURT: How do you all want to address the legal
17 issues to the Court? Do you all want to offer some
18 stipulation of facts or -- in other words, I need some
19 factual basis on the record to back up the legal decision.
20 How do you all want to present that, by testimony, or do you
21 want to agree to the facts and put certain documents into
22 evidence and based on both those documents and your legal
23 arguments I'll make a decision?

24 MR. SINKLER: I think we can agree to the facts.

25 THE COURT: I mean, really it's just -- it's really an

1 issue of interpreting the lease if you all put the lease into
2 evidence.

3 MR. SINKLER: Not the lease.

4 MR. O'KELLEY: The easement.

5 THE COURT: I'm sorry. I keep saying lease. Easement,
6 excuse me, I'm sorry.

7 MR. O'KELLEY: And, Your Honor, there's no dispute as to
8 almost 150 percent of these facts. I've never seen it that
9 everyone goes, this is what happened, everyone agrees.

10 THE COURT: Can you all stipulate to some facts and then
11 let's put the easement into evidence and I'll listen to your
12 legal arguments on whether it can be expanded or assigned.

13 MR. O'KELLEY: Your Honor, what I would be willing to
14 do, if this is okay with Mr. Sinkler, we could take the facts
15 in the complaint.

16 THE COURT: You basically agreed with everything in your
17 answer except the conclusion. You said it could be assigned.

18 MR. O'KELLEY: That's correct, Your Honor.

19 THE COURT: You really didn't dispute any of the facts.

20 MR. O'KELLEY: That's correct. So I would either say we
21 take -- I'm just trying to figure out which paragraphs we
22 need to go through.. Really I would say paragraphs 1
23 through --

24 MR. SINKLER: You're on the complaint now?

25 MR. O'KELLEY: Yes, sir. 1 through 28 of the complaint

1 we would all agree are the facts. 29 has kind of got some
2 assertions in it that I don't all agree with. 30 is a
3 conclusion of law that I think -- I think is a conclusion of
4 law, and 31 is one of their allegations about that we caused
5 them expenses and damages, so if it's fine with Mr. Sinkler,
6 I'd say the facts are paragraphs 1 through 28 of the
7 complaint.

8 THE COURT: Mr. Sinkler, are those sufficient facts the
9 Court can make a decision on in the interpretation of the
10 easement?

11 MR. SINKLER: I never thought of it that way. May I
12 look?

13 THE COURT: Yes, sir. I'm not meaning to come in here
14 and throw you all a curve. I just think this is a logical
15 way to proceed.

16 MR. SINKLER: I think it's a very logical way to do it.
17 He says he'll agree to 1 through 28?

18 THE COURT: Yes, sir.

19 MR. O'KELLEY: As the facts.

20 THE COURT: As the facts.

21 MR. O'KELLEY: For His Honor to rule on. And
22 additionally, Your Honor --

23 THE COURT: Mr. O'Kelley, you represent all the
24 defendants including Sweetgrass, correct?

25 MR. O'KELLEY: Yes, sir.

1 MR. SINKLER: And I meant to say, Sweetgrass was in
2 default --

3 MR. O'KELLEY: Timarand was in default, Your Honor.

4 MR. SINKLER: Timarand, excuse me, I'm sorry.
5 Sweetgrass is not in default. Timarand is in default and
6 been adjudged not to have any rights to the --

7 MR. O'KELLEY: And we agree to that, Your Honor.
8 Timarand is not a party to the easement.

9 THE COURT: Is there any reason they're not a party?
10 Sweetgrass is not located on any of the Timarand property
11 or --

12 MR. SINKLER: It is. It's just that Mr. Askins is in
13 default, Your Honor, and has been adjudged in default by not
14 answering or responding.

15 MR. O'KELLEY: They're included because the lease for
16 Sweetgrass is on Timarand's property.

17 THE COURT: Okay.

18 MR. O'KELLEY: If that makes sense.

19 THE COURT: All right. Mr. Sinkler, look and see if the
20 facts in paragraphs 1 through 28 of your complaint is
21 sufficient for the Court to make a legal decision on
22 interpretation of the lease, whether assignment of that lease
23 is proper or the use or expansion of the use of the lease is
24 proper.

25 MR. SINKLER: He's already admitted 29 too in his

1 answers, so it should go through 29.

2 MR. O'KELLEY: We only admit it in part, Your Honor.

3 THE COURT: Well, I mean, my question is is 29 necessary
4 for me to make a decision? That's all I need.

5 MR. O'KELLEY: We can go through 29, Your Honor, that's
6 fine.

7 THE COURT: I'm not trying to short-circuit any issue
8 you all have on damages.

9 MR. O'KELLEY: No, sir, but 29 I think relates to the
10 license agreement, and I think we're just really going to
11 have to look at the four corners of the easement.

12 THE COURT: If the license agreement is valid, the
13 easement, you can assign it, if it's not, the license
14 agreement's null and void.

15 MR. O'KELLEY: There you go.

16 THE COURT: I mean, it's a moot issue.

17 MR. O'KELLEY: Yes, sir. And, Your Honor, just to make
18 your life also a little bit easier, I've already premarked
19 the easement, which we all agree to, and the license
20 agreement, if that's okay to have those in.

21 THE COURT: You've marked those what?

22 MR. O'KELLEY: Defendant's 1 and 2.

23 MR. SINKLER: I have pictures if it would help the
24 Court, more aerial photos. I don't know whether they'll help
25 you or not.

1 THE COURT: You've pretty well shown me here on this
2 aerial photo. Is this the building here? Do you want to
3 mark that as Plaintiff's Exhibit 1?

4 MR. SINKLER: Yes, sir, that would be fine.

5 THE COURT: -- this aerial photo? I'll mark anything
6 you want, Mr. Sinkler, I'm not trying to short-circuit that.

7 MR. SINKLER: That would be fine.

8 THE COURT: And I'll mark these two plats Plaintiff's 2
9 and 3, okay, Mr. Sinkler?

10 MR. SINKLER: I assume, if he admits 1 through 29, that
11 would include the exhibits referred to in those paragraphs.

12 THE COURT: Well, I'm going to admit these two plats
13 that were attached to your complaint as Plaintiff's 2 and 3.

14 MR. SINKLER: That's fine.

15 THE COURT: Plaintiff's 2 and 3, which were attached to
16 your complaint.

17 (Plaintiff's Exhibits 1-3 marked for identification.)

18 MR. O'KELLEY: And, Your Honor, I have no problem -- we
19 have no problems with the exhibits to the complaint if they
20 want to put those in.

21 THE COURT: What other exhibits do you want to attach?

22 MR. SINKLER: In 1 through 29 there are exhibits
23 attached.

24 THE COURT: Most of your exhibits I was looking at go
25 towards the damage issues. We can get to those later. I'm

1 not trying to exclude them. I just -- I don't know how all
2 of the exhibits are necessary to the decision I've got to
3 make in front of me now. I'm not going to say you can't
4 admit them.

5 MR. SINKLER: No, I just want them to be included so I
6 don't have to introduce them again later on.

7 THE COURT: Well, I don't think they're necessary for
8 the decision I've got to make concerning interpretation of
9 the lease, and then if we get into the damage issue, you can
10 introduce them at an appropriate time unless you think
11 they're necessary.

12 MR. SINKLER: I don't think they're necessary. I
13 think --

14 THE COURT: How do you want to proceed? Do you all have
15 any cases that substantiate, either one of you, your
16 position, or am I going to have my law clerk do some
17 research?

18 MR. O'KELLEY: Your Honor, I'd be happy to hand them up
19 if Your Honor would like.

20 THE COURT: I would love to see the cases if you have
21 them, and I'll listen to your arguments. Do you all need
22 some time to sort of refocus where you're going? I'll be
23 happy to give you 10 or 15 minutes to sort of refocus because
24 I came in here and dropped this on you.

25 MR. SINKLER: I have a memorandum in support of my

1 motion for summary judgment which completely states our case.

2 THE COURT: Okay. I didn't read your memorandum, but
3 I'll pull it out of the file.

4 MR. SINKLER: Well, until December of this past year
5 there was no case in South Carolina on this issue, and at
6 that time the Court of Appeals came down with a decision
7 which I think is dispositive of the question.

8 THE COURT: Do you have a copy of that case?

9 MR. SINKLER: It's attached to my memorandum, sir. I
10 can give you another one.

11 THE COURT: Here's the memorandum in support of
12 plaintiff's motion for temporary injunction, is that what
13 you're talking about?

14 MR. SINKLER: Yes.

15 MR. O'KELLEY: Your Honor, he's talking about the Rhett
16 case --

17 MR. SINKLER: Rhett versus Gray. I'll give you a copy
18 of it.

19 MR. O'KELLEY: -- which we think is highly
20 distinguishable because in that case --

21 THE COURT: Just hand up your cases. I'll let you all
22 make your arguments. I don't know the answer. You all are
23 going to have to educate me.

24 MR. O'KELLEY: I've got two, Your Honor, Plott versus
25 Justin Enterprises, which just for the record is 649 S.E. 2d

1 92, and then Hill versus Carolina Power and Light, which is a
2 1943 case, which is still good, 28 S.E. 2d 545.

3 THE COURT: The Rhett versus Gray case is Court of
4 Appeals, 736 Southeast 2d 873. What were those other cases?

5 MR. SINKLER: I've got copies. I know that one. I just
6 wanted to get the other two citations.

7 THE COURT: Oh, the other two? We've got Hill versus
8 Carolina Power and Light, that is Southeast 2nd, 28 Southeast
9 2d 545. That's a 1943 case. And we've got Plott versus
10 Justin Enterprises, which is an '07 case, and that is 649
11 Southeast 2d 92. What I'm going to do is take a short break
12 and let you all get your legal oral arguments together, and
13 I'll come back and listen to you. I'll be back after I get
14 through reading these three cases, okay, and that will give
15 you all time to sort of refocus on where we're going.

16 MR. SINKLER: Thank you.

17 THE COURT: Mr. O'Kelley, have you submitted any memos?

18 MR. O'KELLEY: No, sir, Your Honor, just our motion, but
19 I've got a copy if you'd like it, but it's got the easement
20 and affidavits from my clients.

21 THE COURT: That's okay. Thank you.

22 MR. O'KELLEY: Yes, sir.

23 (Recess held.)

24 THE COURT: Is the plaintiff ready to proceed?

25 MR. SINKLER: Yes.

1 THE COURT: Defense ready?

2 MR. O'KELLEY: Yes, Your Honor.

3 THE COURT: Okay. Who wants to go first?

4 MR. SINKLER: I guess the plaintiff will go first, Your
5 Honor.

6 THE COURT: Let me see, Defendant's Exhibit No. 1 is the
7 easement itself, right?

8 MR. O'KELLEY: That's correct, Your Honor, and 2 is the
9 license agreement.

10 THE COURT: I didn't read the easement. What language
11 do you allege is the right to assign?

12 MR. O'KELLEY: Your Honor, on the front of the easement
13 at the very beginning where there's the underlying grant of
14 access easement.

15 THE COURT: Grant of access.

16 MR. O'KELLEY: Yes, sir, it says grantor does hereby
17 grant and convey unto the grantee, his successors and assigns
18 forever, so that's one place that we are going not just to
19 Mr. Sisson but to his successors and assigns. And then more
20 importantly, Your Honor, and this gets to the crux of our
21 client's argument, if you turn to the second page which was
22 filed in both U-358 at page 110.

23 THE COURT: I'm sorry, where now?

24 MR. O'KELLEY: The second page, Your Honor.

25 THE COURT: Okay.

1 MR. O'KELLEY: There's a large paragraph that begins, it
2 is intended, it's the first -- it's the second paragraph on
3 that page.

4 THE COURT: Right.

5 MR. O'KELLEY: The second sentence begins, and this is
6 what gives us the right, Your Honor, it is further
7 intended --

8 THE COURT: Let me find it. Hold on.

9 MR. O'KELLEY: Yes, sir.

10 THE COURT: It's further intended, I'm with you.

11 MR. O'KELLEY: -- that the easements and rights herein
12 granted and agreed to herein are, whether determined to be
13 appurtenant or in gross, perpetual, assignable and divisible
14 and that the division of the granted property by ownership
15 release or the assignment of grantee's rights under this
16 agreement shall entitle all parties to enjoy the benefits
17 hereby granted and shall not be deemed to be an unlawful
18 increase or burden upon the grantor's property or the grantee
19 as applicable. And, Your Honor, relying on the Plott case
20 and the Carolina case, and even the Rhett versus Gray case
21 that Mr. Sinkler cites, the general rule of course is that
22 the character in the expressed easement is determined by the
23 nature of the right and the intention of the parties creating
24 it, and this was always intended to be a perpetual easement,
25 contemplates assignment on the first page stating it's the

1 grantees, successors and assigns. It also contemplates
2 assignment in that there is a four-line sentence that states,
3 if it is assigned it won't be a burden --

4 THE COURT: Okay. Let me listen to Mr. Sinkler, and
5 then I'll listen to you, okay?

6 MR. O'KELLEY: Yes, sir.

7 THE COURT: Mr. Sinkler?

8 MR. SINKLER: Your Honor, the language that is used in
9 this easement is typical language to create an easement
10 appurtenant to the property, but whether it's an easement
11 appurtenant, easement in gross, easement in gross of a
12 commercial nature --

13 THE COURT: Do you think it's an easement appurtenant or
14 do you think it's an easement --

15 MR. SINKLER: I think it's an easement appurtenant.

16 THE COURT: I don't think there's any question about
17 that. I don't think it's an easement in gross, just looking
18 at the plat.

19 MR. SINKLER: That's my feeling.

20 THE COURT: The defense agrees with that.

21 MR. O'KELLEY: Correct, Your Honor.

22 MR. SINKLER: So that's done. So what you have then is
23 a servient estate, that would be Mr. Pooser, granting the
24 easement to a dominant estate, and you determine the dominant
25 estate by looking at the easement and seeing that what it

(1) 1 does is grants access to Mr. Sisson's property, and I've got
2 even a bigger plat here. I think you have this plat.

3 THE COURT: We've got it, yes, sir.

4 MR. SINKLER: So it gives from his property to Highway
5 17, so that's the dominant estate. It doesn't say anything
6 about Mr. Askins' property, which is Timarand. It has
7 nothing whatsoever in this easement that indicates that they
8 contemplated extending the easement beyond the dominant
9 estate, and Timarand didn't even -- the hardware store wasn't
10 even created until seven years after this easement was
11 created. This easement was done in around 2000 or 2002, I
12 think. The easement was in 2000. It was signed by both
13 parties October 17th, 2000. Timarand finished, I think, or
14 Sweetgrass finished --

15 THE COURT: Who owned the property -- who owned the
16 Timarand property at the time the easements were granted?

17 MR. SINKLER: Mr. Askins, or Timarand, Inc. I think they
18 called it.

19 THE COURT: Okay.

20 MR. SINKLER: It had nothing to do with Mr. Sisson.

21 THE COURT: Okay.

22 MR. SINKLER: And so Mr. Sisson had property identified
23 in EA-742. Timarand, you'll see, is a tract that's located
24 on there as Timarand, Inc. X-209/316, and there's nothing in
25 this easement that would --

1 THE COURT: So your position is, by allowing access off
2 of 17 onto the easement and then going to the Timarand
3 property, across the Timarand property, creates the burden
4 on, I guess, the servient estate, expanding to another piece
5 of property, is that your position?

6 MR. SINKLER: That's precisely it, and we have an auto
7 count done in April and July which indicate that in a 12-hour
8 total it was 732 passes by automobiles on this property,
9 676 --

10 THE COURT: I'm sorry, what now, how many?

11 MR. SINKLER: 732 vehicles on one day.

12 THE COURT: When was this?

13 MR. SINKLER: Wednesday, April 20th, '13.

14 THE COURT: The 20th of this year?

15 MR. SINKLER: Yes. And then on July 13th of '13 there
16 was 676 passes of vehicles across this.

17 THE COURT: Do you have that in an affidavit form, or do
18 you have to offer that by testimony, or will you stipulate to
19 that count?

20 MR. O'KELLEY: No, sir, because I don't know who did it.
21 All I got was a summary sheet.

22 THE COURT: We may get some testimony on that in a
23 minute. I think that's important to the issue on whether it
24 materially overburdens the servient estate.

25 MR. SINKLER: Your Honor, when I started with this case,

(1) 1 the cases, the Gray case or the Rhett versus Gray had not
2 been decided, but I researched, and my memorandum will show
3 other authorities, the memo in support of our motion for
4 summary judgment, and I can find no cases that permit an
5 extension to a stranger, which is what this is. I think
6 Rhett versus Gray establishes that even if it were Mr.
7 Sisson's property, it could not -- you could not extend to it
8 unless it's just a small piece, as they say, did not increase
9 the burden, but we've got a dramatic increase of the burden
10 here and have had it for over three years. And I can find no
11 authorities in any jurisdiction that differ from the holding
12 in Rhett versus Gray, and I predict that its allowance of the
13 extension of the easement talked about there is going to be
14 reversed by the Supreme Court because I don't think they will
15 hold that. It's not right now -- right now the property --

16 THE COURT: You think what case is going to be reversed
17 by the Supreme Court? I'm sorry.

18 MR. SINKLER: The portion of the Rhett versus Gray that
19 was being -- they asked for reconsideration on that which was
20 denied by the Court of Appeals.

21 THE COURT: Which portion were they challenging now on
22 the motion?

23 MR. SINKLER: Extension of the easement to a contiguous
24 tract, to the one point something acre tract. There was
25 another four point something acres.

1 THE COURT: Right. They affirmed the master on that.

2 MR. SINKLER: They did that because they said they
3 didn't see any extension or any increase in burden. Now it
4 turns out, I talked to the lawyer yesterday, it's a Harold
5 Boney down in Beaufort --

6 THE COURT: Well, you know, for now I've got to go with
7 what Court of Appeals says. If the Supreme Court reverses
8 it, they'll just have to reverse it. I don't know. Right
9 now, as far as I'm concerned, that's an appellate case for
10 this Court to follow.

11 MR. SINKLER: That's absolutely true, and there are no
12 cases that will allow it to a stranger. If Mr. Sisson were
13 to buy it, he wouldn't have a right to extend it,
14 particularly given, you know, the increase in burden, so
15 either way I think they have no right to do it.

16 THE COURT: Well, let me just ask you, what do you think
17 the character of the easement was?

18 MR. SINKLER: I think it's an easement appurtenant.

19 THE COURT: But what do you think the character -- what
20 was the intention of the parties as far as the nature of the
21 easement, the use of the easement?

22 MR. SINKLER: Oh, to make it divisible in the dominant
23 estate. A portion of the dominant estate could be divided
24 and sold, and you wouldn't even have to say the easement goes
25 with it, it would go with it.

1 THE COURT: So you think --

2 MR. SINKLER: That's the nature of it.

3 THE COURT: -- what's before the Court concerns the
4 easement riding with the land upon sale.

5 MR. SINKLER: Mr. Sisson could convey a portion of his
6 property, and the person buying that portion of his
7 property --

8 THE COURT: It would go with that deed --

9 MR. SINKLER: -- the dominant estate, and the person
10 buying that would automatically have a right to it. That's
11 the nature of an easement appurtenant.

12 THE COURT: Right.

13 MR. SINKLER: It follows the conveyance of the dominant
14 estate or a piece of the dominant estate, but it doesn't go
15 beyond the confines of the dominant estate because the
16 dominant estate and the activity going on there establishes
17 what the burden is, and the authorities won't allow it to go
18 beyond that because they assumed that that would increase the
19 burden.

20 THE COURT: Okay.

21 MR. SINKLER: That's what most of the cases hold.

22 THE COURT: Why do you think -- what was the intention
23 of the parties in granting the easement from your
24 perspective?

25 MR. SINKLER: To let Mr. Sisson -- for Mr. Sisson to

1 have access and for, if he conveyed a portion of his property
2 or all of his property, for the person buying it to acquire
3 the same easement, which he would as a matter of law.

4 THE COURT: So you're saying -- make sure I understand
5 what you're saying, you're saying, referring to I guess, what
6 is this, Plaintiff's Exhibit No. 3, pretty well maps out the
7 area. No. 3 you're saying is access to this 154.13 acres?

8 MR. SINKLER: No, no, he didn't own that.

9 THE COURT: Okay.

10 MR. SINKLER: It's access to this.

11 THE COURT: Referring to Plaintiff's Exhibit No. 2, it's
12 access to where now?

13 MR. SINKLER: Right here, that's Timarand.

14 THE COURT: Okay.

15 MR. SINKLER: The access is from here, this way, over
16 here.

17 THE COURT: To give access to this property behind
18 Timarand.

19 MR. O'KELLEY: That's correct.

20 THE COURT: Behind George Sisson.

21 MR. SINKLER: Right.

22 THE COURT: I guess, looking at the map, to the north of
23 Timarand, to give access to Sisson north of Timarand.

24 MR. SINKLER: Yes.

25 THE COURT: You think that was the intention of the

1 parties.

2 MR. SINKLER: Yes, sir. I don't think there's a
3 question about that.

4 THE COURT: Okay. Looking at the agreement itself the
5 cases, Mr. Sinkler, what do you think is the nature of the
6 easement? What's the purpose of the easement? Is it just a
7 personal use, commercial or what do you think? In other
8 words, why do they need access to that northern portion of
9 land when -- do you have access off of 17? You had frontage
10 on 17.

11 MR. SINKLER: Mr. Sisson?

12 THE COURT: Yes.

13 MR. SINKLER: It's to provide him access to any portion
14 of his property that he chose to go to, and if he sold any
15 portion of his property, he could go to that, but it was not
16 to go to property that Sisson did not own or he owned
17 elsewhere that's not part of the dominant estate. The
18 dominant estate determines the extent of the easement.

19 THE COURT: Okay. Anything else you want to tell me?

20 MR. SINKLER: No, sir.

21 THE COURT: Okay. Mr. O'Kelley?

22 MR. O'KELLEY: Thank you, Your Honor, may it please the
23 Court. If I may, Your Honor, you asked about an intent, and
24 by way of background, and this is agreed to in the facts in
25 the case that we've all stipulated to, the South Carolina

1 Department of Transportation required the abandonment of an
2 encroachment permit, which is why this easement is called
3 access easement and abandonment of encroachment permit, so
4 the intent, Your Honor, was to comply with DOT's requirement
5 that there was an old encroachment permit that Mr. Sisson
6 had, and when Stow Away developed its property, they applied
7 to DOT to get access and DOT said, fine, we'll have access
8 for you, but you have to give Mr. Sisson this easement. So
9 this was required by folks in Columbia, so that was the
10 intent of this easement, Your Honor.

11 THE COURT: Give me a little factual background on how
12 that occurred.

13 MR. O'KELLEY: Yes, sir, and if you look -- it's
14 outlined in the complaint, Your Honor. In 1999 Stow Away
15 filed with the then highway department an application for an
16 encroachment requesting access to drive to his parcel. The
17 access was through Highway 17 right across from Porcher's
18 Bluff Road, which is where the easement is today. In the
19 negotiations with the highway department, they changed their
20 name to DOT, and in response DOT agreed to the permit and
21 requested and required that Mr. Sisson be given an easement
22 because he had to abandon an old access that he had for
23 getting from his property to 17, so DOT's thinking was, well,
24 we'll give Mr. Pooser's crowd access to 17, they can connect
25 in at 17 where they are, but Mr. Sisson had an old way to get

(1) 1 to 17, so you all have to protect Mr. Sisson and give him an
2 easement.

3 THE COURT: Does the old way show on this map?

4 MR. O'KELLEY: One second.

5 (Brief pause.)

6 MR. O'KELLEY: Your Honor, according to Mr. Sisson where
7 he accessed it was parallel to where the road is today.

8 THE COURT: It's parallel.

9 MR. O'KELLEY: Yes, sir, it's not the same because when
10 they developed it, they put in the new road.

11 THE COURT: So it was parallel to that.

12 MR. O'KELLEY: And ran along the side --

(1) 13 THE COURT: DOT was saying Mr. Sisson was encroaching on
14 their right of way.

15 MR. O'KELLEY: Mr. Sisson had an old encroachment permit
16 from DOT, and DOT said, we'll give you one, Stow Away
17 Storage, but you've got to give Mr. Sisson an easement so he
18 can still get to and from his property, so that was the
19 intent.

20 THE COURT: Okay.

21 MR. O'KELLEY: And, Your Honor, again, I have to go back
22 to the Plott versus Justin Enterprises case, and I think,
23 Your Honor, we're stuck with the language that is in the
24 easement itself.

(1) 25 THE COURT: Well, I agree with you as far as determining

1 intents of the parties and the nature of the easement, but at
2 the same time, let me just ask you this, do you agree that if
3 the Court says the assignment is -- the easement is
4 assignable, doesn't the Court still have to look as to
5 whether that assignment changes the nature of the easement?

6 MR. O'KELLEY: Normally, yes, Your Honor, but there's an
7 out to that, and that's in the language of the easement
8 itself.

9 THE COURT: Tell me where that language would be that
10 would prevent change of the nature. In other words, South
11 Carolina says a material change. Other states say
12 substantial change. South Carolina says material changes,
13 and generally that's an issue for the fact finder.

14 MR. O'KELLEY: Yes, sir, and I had a case --

15 THE COURT: And they all say that, so if you're making a
16 material change, even by the assignment, then I think that
17 material change can be prevented, even if it was assignable.

18 MR. O'KELLEY: I think you're correct, Your Honor,
19 except for the language that is in this easement itself.

20 THE COURT: Tell me what language you're referring to.

21 MR. O'KELLEY: Yes, sir, it's the language I cited to
22 you earlier, on page 2, the large paragraph, the second
23 sentence that begins, it is further intended, and if you go
24 through that, and you will see, Your Honor, that an
25 assignment -- about half way through it says, assignment of

1 grantee's rights under this agreement shall, not is, shall
2 entitle all parties to enjoy the benefits hereby granted and
3 shall not be deemed to be an unlawful increase or burden upon
4 the grantor's property or grantee as applicable. And, Your
5 Honor, that's the key because we can't materially increase
6 the burden on the servient estate. That has been the law
7 forever. The 1973 Clemson case. We know that. But when the
8 parties actually contract together and come together and say,
9 if you assign it, we'll agree in October of 2000 that that
10 will not be an increase, a burden, and they use the term,
11 Your Honor, an unlawful increase or burden upon the grantor's
12 property or grantee as applicable. And without any
13 restriction in the grant of an easement, and this is that
14 Hill case I presented to you, then the easement is
15 assignable, and it won't be an additional burden.

16 They contemplated it in 2000, Your Honor, when this was
17 drafted. Nexsen Pruet drafted this easement, as you can see
18 from the last page of it. It was done in Columbia. Mr.
19 Pooser lives in Columbia. His lawyers drafted this, and they
20 specifically made an exception for the argument that
21 Mr. Sinkler's making today that an assignment would
22 materially unlawfully burden the servient estate. They
23 contemplated it, they thought about it, they contracted for
24 it, and then eight years later they say, wait a minute, we
25 want a do-over, and then they sue over it in 2011. So, Your

1 Honor, to answer your question, you're absolutely correct,
2 you can't --

3 THE COURT: If you go back, I mean, it says assignment
4 of grantee's rights, so let's go back and talk about, what
5 rights does a grantee have under the lease.

6 MR. O'KELLEY: The easement, Your Honor.

7 THE COURT: So what rights did the assignee have under
8 this lease? Did he have the right to take a private access
9 and turn it into commercial because that's what he's done.

10 MR. O'KELLEY: It was always commercial, Your Honor.

11 THE COURT: Was it always commercial?

12 MR. O'KELLEY: Yes, sir, because Mr. Sisson has always
13 had his truck scale business located there prior to Stow Away
14 Storage.

15 THE COURT: How many trucks were coming and going?
16 Maybe 25, 30, 50, versus 700-something a day.

17 MR. O'KELLEY: Those are cars, Your Honor.

18 THE COURT: I understand, but I'm just talking about
19 increasing the burden. What was the grantee's right?

20 MR. O'KELLEY: Yes, sir, it was not exclusive, and this
21 is the first page of the easement, Your Honor, where that
22 line says grant of access easement, it's nonexclusive, it's
23 perpetual, it goes to the successors and assigns, and then
24 this is the key, for purposes of access, ingress and egress
25 by any and all pedestrian and passenger and delivery

1 vehicular means.

2 THE COURT: Where are you reading at?

3 MR. O'KELLEY: Yes, sir, I'll show it to you. On the
4 first page, Your Honor, where it says grant of easement, and
5 then the last sentence of that paragraph.

6 THE COURT: Okay. For purposes of access, ingress and
7 egress by any and all pedestrian, passenger, delivery
8 vehicles made between grantee's property and US Highway 17.
9 It says grantee's property, between grantee's property, not
10 between 17 and someone else's property.

11 MR. O'KELLEY: Right, Your Honor, but we're going
12 between the grantee's property -- this is different from the
13 Rhett case. We're not expanding it. This is from the
14 grantee's property to 17. That's what we're talking about.
15 So this is exactly what was contemplated.

16 THE COURT: I thought we were coming off of the
17 easement, turning into -- across Timarand's property into
18 where the building's located.

19 MR. O'KELLEY: Timarand's got access right there on 17,
20 Your Honor.

21 THE COURT: Right.

22 MR. O'KELLEY: And they connect right there through the
23 easement onto Timarand.

24 THE COURT: How's the traffic getting into that
25 direction, how are they getting into the hardware store? Are

1 they going across Timarand's property, or are they going
2 across the north side of the Sisson property?

3 MR. O'KELLEY: They come across both, Your Honor, but
4 they come across the Sisson property where the easement goes.

5 THE COURT: Initially, up at the north end, right?

6 MR. O'KELLEY: Yes, sir.

7 THE COURT: So you're coming in that easement and
8 passing the Timarand property, going to I guess the north
9 side and turning into the hardware store in that direction;
10 is that correct?

11 MR. O'KELLEY: Yes, sir.

12 THE COURT: What's on the Timarand property, anything?

13 MR. O'KELLEY: The hardware store is leased Timarand
14 property.

15 THE COURT: All right.

16 MR. O'KELLEY: It says any and all pedestrian,
17 passenger --

18 THE COURT: I mean, how is that the grantee? It says
19 grantee's use, and the grantee could use pedestrians, trucks,
20 etc. How can he expand it to adjoining property owners,
21 i.e., the hardware store.

22 MR. O'KELLEY: He hasn't, Your Honor. He's assigned his
23 use of it to Mr. Fletcher's company.

24 THE COURT: I understand, but why isn't that materially
25 increasing the use of that easement?

1 MR. O'KELLEY: It's not, Your Honor, it's not materially
2 increasing it because in the grant of easement they say you
3 can assign it and an assignment won't increase it.

4 THE COURT: Well, said the assignment won't increase it.

5 MR. O'KELLEY: Yes, sir. That's what the four corners
6 of the easement state.

7 THE COURT: Right.

8 MR. O'KELLEY: And I think we're stuck with that, and
9 that's the key under all our case law. It's a contract. We
10 determined the intent. We looked at it the way contracts are
11 looked at, and we looked at it the way our Supreme Court
12 tells us we have to look at it. The general rule is we've
13 got to determine the nature and the rights and the intention
14 of the parties when they created it, and the intent was that
15 it be assignable -- the intent was that any and all
16 pedestrian -- and that's the key, any and all. They didn't
17 limit it to saying just trucks going to your business, but
18 any and all pedestrian and passenger delivery means between
19 Mr. Sisson's property and US 17, and that's what's being used
20 here, Your Honor.

21 And, Your Honor, just to give you a little bit of a
22 background, the folks at Stow Away put up a gate, and they've
23 tried to close that gate many times, and the Town of Mount
24 Pleasant and South Carolina DOT told them, you've got to
25 leave that gate open for the access to Mr. Sisson's property.

1 And so if we've got two other governmental entities that say
2 you've got to leave it open, I think it's clear that everyone
3 intended that it be assignable and that it be open and that
4 everyone be able to get to the property through Mr. Sisson's
5 property. And we've got a way to resolve it today, Your
6 Honor. If Mr. Sisson becomes an owner of Sweetgrass
7 Hardware, then that's another way to get around this
8 property. We haven't done that because we've always
9 contended it's assignable, but if he becomes a part owner of
10 Sweetgrass, then there's another way to bootstrap it and get
11 us there.

12 But, Your Honor, again, it's clear under the terms of
13 the easement they're not expanding it to additional property.
14 They're using it to the Sisson property, and that's why we
15 think it's distinguishable from the Rhett versus Gray case
16 Mr. Sinkler has just cited, especially when in that case they
17 transferred -- tried to transfer a non-appurtenant easement
18 that wasn't meant to run with the land, which we've got the
19 appurtenant easement here which makes it different and makes
20 the cases distinguishable.

21 And just for the record, Your Honor, the easement that
22 was being transferred was from one Nancy O'Kelley, who's my
23 mother, who used to own the property that the Rhett's were
24 complaining about. I read that case when it came out because
25 my mother's name was in it, and I thought about it, whether

1 or not it applied to this case. And again, Your Honor, I
2 think it is distinguishable because it's not an appurtenant
3 easement, property's far apart, and that's what the Rhetts
4 were trying to say they should be able to expand their issue
5 to, and Judge Dukes disagreed with that, and Court of Appeals
6 agreed with Judge Dukes.

7 So that's our argument, Your Honor, about the easement,
8 especially when you have to look at the grant of the easement
9 and the way it's done. And, again, I go back to the fact
10 that they contemplated assignment, they contemplated that an
11 assignment, no matter what happened, would not be deemed an
12 unlawful increase of burden upon the grantor's property, and
13 that's the key, Your Honor.

14 THE COURT: Okay. Mr. Sinkler?

15 MR. SINKLER: Your Honor, in my memorandum in support of
16 my motion for summary judgment, page 7, I quote some of the
17 language that's in the --

18 THE COURT: Page 7 of your memo?

19 MR. SINKLER: Page 7 of my memo.

20 THE COURT: Okay.

21 MR. SINKLER: It says, a fundamental principal is that
22 an easement for the benefit of a particular piece of land
23 cannot be enlarged -- this is the Tennessee case cited with
24 approval by the Court -- and extended to other parcels of
25 land, whether adjoining or distinct tracts, to which the

1 right is not attached. In other words, an easement
2 appurtenant to a dominant tenant can be used only for the
3 purpose of that tenant. It is not a personal right and
4 cannot be used even by the dominant owner for any purposes
5 unconnected with the enjoyment of his estate. The purpose of
6 this rule is to prevent an increase of the burden upon the
7 servient estate, and it applies whether the easement is
8 created by grant, preservation, prescription or implication,
9 so that -- and you'll find that to be the general rule. What
10 you have to do is determine what was the dominant estate.
11 The dominant estate was the land owned by Mr. Sisson. What
12 was the servient estate? It was the portion of the property
13 owned by Mr. Pooser. They're the only parties. We're not
14 talking about parties being Timarand. I suggest to you that
15 if Mr. Sisson bought Timarand, under the law of the state he
16 could not -- he could not extend the easement to that because
17 what all he's got is -- his estate doesn't include Timarand's
18 property so -- and I guess if you've dealt in these easements
19 as long as I have, I know it's difficult, but I think if you
20 track the language out of that decision, they've got every
21 case that establishes --

22 THE COURT: Well, I mean, some of the old cases
23 basically say, it's what I had asked earlier, to determine
24 the character of the easements determined by the intention of
25 the parties and the nature of the easement. You've got to

1 look at the four corners to determine the intention of the
2 parties. You don't think the intention of the parties was to
3 allow assignment under the language that Mr. O'Kelley's
4 referred the Court to? I'm not trying to pass judgment. I'm
5 just asking, do you think the language where it says, is
6 further intended that the easement rights herein granted
7 agreed to determined by -- let me find the other page, let me
8 see, first page, it says for purposes of egress/ingress by
9 all pedestrians, but it very clearly says they have the right
10 to assign it and that shall not be deemed to be an unlawful
11 increase or burden upon the grantor's property. That's the
12 language in the easement.

13 MR. SINKLER: Exactly.

14 THE COURT: Doesn't the Court first have to make an
15 interpretation of what that language means as far as the
16 intent of the parties?

17 MR. SINKLER: No, because --

18 THE COURT: That's what those other cases say.

19 MR. SINKLER: -- the first thing you do in dealing with
20 an easement appurtenant is determine --

21 THE COURT: The Rhett case even says you've got to
22 determine the intent of the parties.

23 MR. SINKLER: I know, with reference to the dominant
24 estate. You can't go beyond the dominant estate. That's
25 what these cases hold. Everything relates -- and you don't

1 have to say that, you don't have to put that in writing.

2 THE COURT: I think you're probably right, but you don't
3 think you can contract that away in the language of your
4 easement?

5 MR. SINKLER: You'd have to do it very specifically if
6 you did. There's no way that it certainly -- there's nothing
7 to indicate that it goes beyond the dominant estate. It says
8 from the property owned by Mr. Sisson to 17, that's what it
9 says. It doesn't say from Timarand to 17. It doesn't say
10 anything that would indicate that it meant from Timarand to
11 17.

12 THE COURT: Okay. Anything else?

13 MR. SINKLER: I just, I think I would ask that you read
14 the memorandum, and it contains all the authority that now
15 exists in South Carolina. There is no other authority. It's
16 true Mr. Sisson can divide the dominant estate, and that's
17 why that language is in there. He can divide the dominant
18 estate, and the person to whom he divides and sells part of
19 the dominant estate could have a right to that easement, but
20 he cannot -- he cannot himself go beyond the confines of the
21 dominant estate, nor can anybody else.

22 THE COURT: Well, I know you all are a lot more familiar
23 with this than I am, but I guess Mr. Sisson's property --
24 does the hardware store sit on the Timarand property or the
25 Sisson property and the Timarand property or just the

1 Timarand property?

2 MR. O'KELLEY: Just on the Timarand, Your Honor.

3 THE COURT: Just the Timarand, doesn't encroach on the
4 Sisson property.

5 MR. O'KELLEY: That's correct.

6 THE COURT: So it's only Timarand property.

7 MR. O'KELLEY: That's correct, and the easement runs of
8 course along the one side of the Timarand property and to get
9 to the back, what I call the back, where it shows the US Army
10 Corps wetlands.

11 THE COURT: So, Mr. O'Kelley, your position then is that
12 even the assignment, and it can't be an increase, gives them
13 the right to increase the dominant estate is what you're
14 saying; basically increase the dominant estate if you give an
15 access to Timarand property.

16 MR. O'KELLEY: Timarand has access all along that side
17 of the easement, Your Honor, by virtue of the fact it's right
18 there along the easement. Anyone can turn off of that
19 property into --

20 THE COURT: But they've got to go across the easement to
21 get there.

22 MR. O'KELLEY: Correct, Your Honor.

23 THE COURT: There's no way you can sit there -- I don't
24 think you can sit there and argue whether that increases the
25 dominant estate. Whether the parties intended that, that's a

1 different story.

2 MR. O'KELLEY: Again, Your Honor, I don't know that it
3 does increase the dominant estate.

4 THE COURT: Well, if you turn off of 17 into the
5 easement, that's on the plaintiff's property, right?

6 MR. O'KELLEY: Correct.

7 THE COURT: So you've got to turn into that easement and
8 get on the plaintiff's property before you get into Timarand
9 property, right?

10 MR. O'KELLEY: Unless you go right off directly off 17,
11 but yes, you're correct, Your Honor.

12 THE COURT: So, I mean, how is that not increasing the
13 dominant estate by allowing the Timarand property owners to
14 share that easement, i.e., for the customers or the
15 employees?

16 MR. O'KELLEY: Because that easement would always be
17 there, Your Honor. People would always be able to go to the
18 Sisson property.

19 THE COURT: But the easement's not there for the
20 Timarand property. It's there for the Sisson property.

21 MR. O'KELLEY: That is correct, Your Honor, and the
22 parties contemplated the fact that if --

23 THE COURT: That's what I just asked you, did you think
24 the parties contemplated increasing the dominant estate,
25 that's what I asked you, and you said it hadn't been

1 increased.

2 MR. O'KELLEY: The answer to your question is, yes, sir,
3 and they did contemplate it in the plain language of the four
4 corners of the easement that we just went over.

5 THE COURT: Okay. All right.

6 MR. O'KELLEY: And that's the key, Your Honor. And Your
7 Honor asked the question that the old cases that were cited
8 in the Rhett case do say we have to look at the intent of the
9 parties and the language of the easement.

10 THE COURT: It says that.

11 MR. O'KELLEY: Yes, sir, and I just wanted to verify --

12 THE COURT: There again, I still think, even if you say
13 the intent of the parties was to increase the dominant
14 estate, then I still think you have to look at factually does
15 that change the nature of the easement, does that assignment
16 change the nature of the easement. I think that's a factual
17 finding that the fact finder has to determine. Now, your
18 position is it hasn't changed the nature, right?

19 MR. O'KELLEY: That's correct, Your Honor.

20 THE COURT: Mr. Sinkler's position is it has by the
21 increase in the vehicular traffic, and when he told me that,
22 I don't have that before the Court by affidavit or sworn
23 testimony, so I'm going to let Mr. Sinkler call a witness so
24 that evidence is sworn to, and you can cross-examine
25 concerning that count. Mr. Sinkler, can you do that, please,

1 sir?

2 MR. SINKLER: I will do that. May I just --

3 THE COURT: Do you want to reply to him?

4 MR. SINKLER: Yes, just one --

5 THE COURT: Yes, sir, please do. I wasn't trying to cut

6 you off.

7 MR. SINKLER: Just another provision in the easement

8 itself. At the bottom of the first page of the easement --

9 THE COURT: Bottom of the first page?

10 MR. SINKLER: Yes. It says the access easement and all

11 rights granted in favor of the grantee herein are limited in

12 nature and scope, and the use of the access easement by the

13 grantee shall not materially adversely affect the use,

14 enjoyment, operation of the grantor's property. So you've

15 got that in there as well.

16 THE COURT: Well, I don't know if it has materially

17 affected the use of his property. I can't address that. I'm

18 going to let you call a witness and address that issue.

19 MR. SINKLER: All right.

20 THE COURT: Whoever did the vehicular count.

21 MR. SINKLER: Allison Walshe.

22 THE COURT: Okay. Want to come around and be sworn,

23 please, ma'am.

24 Mr. O'Kelley, if you want to offer witnesses in rebuttal

25 to this, please feel free to do that.

1 MR. O'KELLEY: Yes, Your Honor.

2 ALLISON WALSH,

3 having been first duly sworn, was examined and testified as
4 follows:

5 DIRECT EXAMINATION BY MR. SINKLER:

6 Q. Ms. Walshe, what is your position at Stow Away Storage?

7 A. I'm the general manager.

8 Q. And how long have you held that position?

9 A. Nine and a half years.

10 Q. And what is your job with them?

11 A. Everything. I rent storage units, boat parking spots,
12 maintenance, just anything it takes to run the business.

13 Q. Are you familiar with the amount of burden on the
14 estate --

15 A. Yes, sir.

16 Q. -- when you first conveyed the easement to Mr. Sisson as
17 opposed to after the hardware store was created?

18 A. Yes, sir.

19 Q. Tell us what the burden was in terms of the vehicular
20 traffic that used the easement during that period of time.

21 A. Do you want --

22 Q. Before the hardware store back there.

23 A. When I first started at Stow Away it was -- basically
24 there was no traffic light there, and it was a dirt road and
25 our driveway that kind of came to a V to 17, and the DOT had

1 not barricaded that dirt road off yet. There was no traffic
2 light there that was continuing to be used, but there was a
3 treeline going down the opposite side of the dirt road which
4 is Mr. Sisson's easement. I didn't know that at the time. I
5 wasn't very familiar with the easement agreement or any of
6 that, you know, language, but there was a treeline and there
7 was a small landscaping type business that occupied the
8 building that was there before the hardware store was there,
9 and then there was an auto repair shop behind that, and Mr.
10 Sisson's property was on the other side. At that time I
11 didn't know really that Mr. Sisson owned the dirt road that
12 goes along the utility line.

13 Q. Tell us what the traffic was like that came along before
14 the hardware store began.

15 A. I would see Mr. Sisson's big trucks that have his logo
16 on them pull in off of 17 and take the dirt road around to
17 the back side to access his business, and I think the owners
18 of the little landscaping business used it to park their cars
19 in the back of the business they were running.

20 Q. Was it a problem for your business?

21 A. No, sir.

22 Q. When was your business created, and tell the Court what
23 your business is.

24 A. It's a self-storage facility. They opened in January of
25 2001, and I started there in January of 2004, so I wasn't

1 there for the first three years.

2 Q. All right. Now, when did you first begin having any
3 trouble with the hardware store?

4 A. When they opened, the first traffic started before they
5 put their second access on Mr. Sisson's dirt road. Before
6 they put that up it didn't take long for, I guess, the
7 general public to realize that if they turned in the newly
8 acquired traffic light where Stow Away's driveway meets the
9 road, that if they went down the dirt road, they could have a
10 traffic light to come through to go down that way around the
11 back side of the hardware store to get to it to, in my
12 opinion, to avoid having to do a U-turn at Ivy Hall and come
13 back around.

14 MR. O'KELLEY: Your Honor, I'm going to object to her
15 opinion.

16 THE COURT: It's obvious there's a concrete median
17 there, you have to make a U-turn. Objection overruled.

18 MR. O'KELLEY: Thank you, Your Honor.

19 Q. Now, was the area they were using at that time, was that
20 part of the easement that was supposed to be abandoned by Mr.
21 Sisson?

22 A. Yes.

23 Q. So they were continuing to use that even after the
24 access was available?

25 A. Yes. It was a five-point intersection and a four-way

1 traffic light, basically.

2 Q. And how long were they able to continue doing that?

3 A. Until the DOT barricaded it. I'm not sure of the
4 timeline of that. A year or so.

5 Q. I think that's in the -- probably in the stipulation,
6 given the allegations of the complaint.

7 All right. After the DOT barricaded that, what did the
8 customers do?

9 A. They just started using our driveway, Stow Away's
10 driveway.

11 Q. Was it your easement?

12 A. Pardon me?

13 Q. Was it the easement that you had granted to Mr. Sisson?

14 A. They would cross through -- crossing the Stow Away's
15 driveway, take a right, cross over Mr. Sisson's dirt road and
16 go through the second gate that was ultimately opened on the
17 dirt road.

18 Q. When was that gate opened?

19 A. I honestly don't know the date. It wasn't too terribly
20 long after the business opened, after the hardware store
21 opened.

22 Q. Did the traffic increase at that time?

23 A. It did.

24 Q. To what extent?

25 A. Well, it's been building up over time. I couldn't tell

1 you what it was in the beginning, but it was immediate, and I
2 expressed my concerns about it to Mr. Pooser, my employer,
3 and my concern was that one of our customers or myself or my
4 part-time employee were going to be in a car wreck because of
5 the traffic increase coming out of the hardware store,
6 crossing through the driveway and blocking the driveway. You
7 know, I was concerned for safety of our customers, of the
8 general public, of myself and my employee, and it's just been
9 increasing ever since.

10 Q. How did it affect your customers?

11 A. Well, a lot of our customers trailer things in is one.
12 Sometimes they come in two or three behind each other, that's
13 another. But if traffic is extending out from the -- from
14 Mr. Sisson's road across Stow Away's property up to the
15 light, it blocks access to Stow Away's property, and I've
16 seen some of our customers that were trailering a boat, for
17 example, the boat is sticking out on Highway 17, their
18 vehicle is inside the driveway, and they can't go any further
19 into the driveway because it's blocked by traffic from the
20 hardware store.

21 Q. Did you make an attempt to stop the customers of the
22 hardware store from using the access easement over your
23 property?

24 A. I did.

25 Q. And what did you do?

- 1 A. Well, I filed a letter with a woman at DOT. It went
2 unanswered. I believe she did respond ultimately to Mr.
3 Pooser. And then I installed a swing gate, a farm gate, I
4 call it a swing gate, but it connects in the middle, and we
5 put a lock on it, and we sent Mr. Sisson keys so that he
6 would have access to that gate.
- 7 Q. And did that, gating that access, then create more
8 traffic?
- 9 A. No. Their customers that had become accustomed to
10 coming in that way would, you know, come in and turn around
11 in the driveway and leave and go back down 17 and go in on
12 their, I guess, permitted access on 17.
- 13 Q. Did that change at some point?
- 14 A. Yes. The DOT required us to open the gate back up.
- 15 Q. Why did they do that?
- 16 A. I can only speculate on that. I'm not real sure.
- 17 Q. Was traffic backing up into the highway?
- 18 A. Not to my knowledge.
- 19 Q. Did you ever do a traffic count on the vehicle access
20 for the Stow Away's property?
- 21 A. Yes.
- 22 Q. How did you do that? What sort of equipment do you
23 have?
- 24 A. We used our surveillance cameras and video. It's
25 standard equipment for every storage facility. They all have

1 them. And we have a camera dedicated to the entrance at
2 Highway 17, and I took video footage off of that and burned
3 it to a disc and used the necessary software to view it and
4 went through each day and counted cars.

5 Q. Did you give me a copy of that disc to give to counsel
6 for the defendant and to give to the Court?

7 A. Yes, sir, I hand delivered it to you.

8 Q. Is this a copy of that disc?

9 A. Yes, sir, it is.

10 MR. SINKLER: I'm going to offer that in evidence, Your
11 Honor, in case the Court wants to view it.

12 THE COURT: I don't particularly want to view it. Do
13 you have an objection to marking it?

14 MR. O'KELLEY: No, sir.

15 (Plaintiff's Exhibit No. 4 marked for identification.)

16 Q. And then did you prepare this? I'm not sure what you
17 call it. It's a document that indicates what the pictures
18 show, is that what it is?

19 A. Yes. It's an hourly count of the vehicle traffic from
20 what I think is open to close of the hardware store hours, 7
21 a.m. to 7 p.m.

22 Q. Over what period of time did you do that?

23 A. I picked two random days, Wednesday, April 20th and
24 Saturday, July 13th.

25 Q. And what did you conclude?

1 A. On Wednesday, April 20th I counted 732 cars turning into
2 the hardware store, and on Saturday, July 13th, I counted 676
3 cars turning in and out of the hardware store. Let me
4 correct the first one too, it's turning in and out.

5 Q. What do you call that document you're reading from?

6 A. A traffic study.

7 MR. SINKLER: Okay. I'd like to offer that in evidence,
8 Your Honor.

9 (Plaintiff's Exhibit 5 marked for identification.)

10 Q. Was the traffic you observed on those two days any
11 different than the traffic you had observed for a long period
12 of time?

13 A. No, it is not, other than the fact that it just
14 continues to increase as people become aware of the shortcut.

15 Q. What is the nature of the business that's operated by
16 the Timarand property?

17 A. It's a retail hardware store.

18 Q. And does it have any other business associated with it?

19 A. They have a satellite post office inside it.

20 Q. A post office?

21 A. Mm-hmm.

22 Q. When was that brought in?

23 A. I'm not sure.

24 Q. Did that increase the traffic?

25 A. Yes.

1 Q. To what extent?

2 A. Exponentially.

3 Q. Meaning?

4 A. I could not give you a finite number. Specific times of
5 day it's really, really bad.

6 MR. SINKLER: Okay.

7 THE COURT: Any objection?

8 MR. O'KELLEY: Yes, Your Honor, I do object. Ms.

9 Walshe -- there's no foundation for this. She's not a

10 traffic engineer. She hasn't said where the cars are going
11 to or from.

12 THE COURT: I think she said they were cars turning into
13 the hardware.

14 MR. O'KELLEY: But if you look at the actual video, all
15 you see are cars turning on. You don't know whether they're
16 going to Stow Away Storage, you don't know whether they're
17 going to turn around, you don't know if they're lost.
18 There's no way to tell from that count where those cars are
19 going or from the video.

20 THE COURT: I understand. That goes to the weight.
21 What's your legal objection? I understand your argument goes
22 to the weight and sufficiency of the evidence, but what's
23 your legal objection? She's identified it. She said she
24 counted them. She took two random days off of the disc and
25 counted the cars. What's your legal objection to the

1 admissibility of Plaintiff's Exhibit No. 5?

2 MR. O'KELLEY: It's hearsay, Your Honor. It's an out of
3 court statement offered to prove the truth of the matter
4 asserted therein.

5 THE COURT: She just testified to it.

6 MR. O'KELLEY: She testified to it, but it's still
7 hearsay, Your Honor.

8 THE COURT: Okay. Overruled. I'm going to admit
9 Plaintiff's Exhibit No. 5 with objection. Okay. Go ahead.

10 Q. Did you yourself determine the number of cars?

11 A. Yes.

12 Q. And you did that from the disc that I've just given the
13 Court?

14 A. Yes.

15 Q. But only on two days. How long does the disc continue,
16 for what period of time? Was it just for two days that you
17 did?

18 A. I just did the two days. It's a very large data file,
19 so I just did the two days.

20 Q. And how could you tell whether the vehicles were going
21 to the hardware store or coming from the hardware store?

22 A. Because the video, the way the camera's positioned, it
23 actually shows the straightaway that comes into -- up to my
24 office, and it also shows the right, the hard right that the
25 driveway takes across the dirt road, shows a portion of that

1 curve, and it shows the cars clearly turning right and not
2 coming forward at Stow Away's driveway. And I do see
3 turnaround traffic sometimes, but you'll see the same car
4 immediately, zip, zip, they're in, they're out. The ones
5 that I counted, as it says at the top of the document I
6 created, did not include turnaround traffic or Mr. Sisson's
7 vehicles, his lettered vehicles.

8 MR. SINKLER: Would you answer any questions that the
9 defendants have, please.

10 THE WITNESS: Sure.

11 CROSS-EXAMINATION BY MR. O'KELLEY:

12 Q. Ms. Walshe, you weren't around for the actual drafting
13 or the creation of the easement we're here about today, were
14 you?

15 A. No, I was not.

16 Q. And that was done in 2000, and your testimony is you
17 started working in '04; is that correct?

18 A. I don't know when the easement was drafted, but I
19 started working in January of 2004.

20 Q. I'll show you a copy of it, and the date is 17 October
21 2000.

22 A. Okay.

23 Q. You weren't a party to any of the negotiations with the
24 South Carolina Department of Transportation, were you?

25 A. Pardon me?

1 Q. Were you a party to any of the negotiations between the

2 South Carolina Department of Transportation, Stow Away

3 Storage and George Sisson?

4 A. In the drafting of the easement?

5 Q. Correct.

6 A. No.

7 Q. I didn't think so. You have attempted to close the gate

8 on Mr. Sisson's easement several times, correct?

9 A. Yes.

10 Q. And every time you close that gate, the Department of

11 Transportation or the Town of Mount Pleasant tell you to open

12 that gate; isn't that correct?

13 A. The Department of Transportation, never the Town of

14 Mount Pleasant.

15 Q. You've called the police on various people using the

16 easement, haven't you, ma'am?

17 A. Yes.

18 Q. And when you call the police, they issue police reports;

19 isn't that correct?

20 A. They've never given me one.

21 Q. All right. I've got a copy of police reports we got

22 from the Town of Mount Pleasant that state that you claim

23 someone hit and -- did a hit and run on you on the property

24 one day. Do you remember that incident?

25 A. That is correct.

1 Q. And that someone, an unknown man told you to calm down
2 and basically back away and leave the easement alone. Do you
3 remember that?

4 A. I do not.

5 Q. I'll be happy to show you a copy of the police report.

6 A. An unknown man?

7 Q. It says the unknown male stated he could not open the
8 gate, only the owner could approve that, and a lady named Ms.
9 Stair asked if the complainant Walshe was the owner, and the
10 unknown male stated no and that you were the business
11 manager.

12 You've actively tried to shut down this easement
13 yourself, haven't you, Ms. Walshe?

14 A. I've not tried to shut down the easement. I've tried to
15 stop the traffic chaos to the hardware store and out.

16 Q. Do you have any traffic counts that were done prior to
17 Sweetgrass opening up?

18 A. I do not.

19 Q. Why not?

20 A. I couldn't have foreseen this coming.

21 Q. How can you say that the traffic has increased
22 exponentially if you don't have a baseline?

23 A. I may not have done a traffic count, but I am a
24 firsthand witness, and I am testifying that it was a handful
25 of vehicles a day.

- 1 Q. Do you remember testifying a few minutes ago the traffic
2 has increased exponentially?
- 3 A. Mm-hmm.
- 4 Q. Is that a yes?
- 5 A. Yes.
- 6 Q. We need a yes or no for the court reporter.
- 7 A. Yes.
- 8 Q. But yet you have no baseline and you have four or five
9 days of traffic counts; is that correct?
- 10 A. I have two days.
- 11 MR. O'KELLEY: Two days. I'm sorry.
- 12 Your Honor, may I borrow this for just a minute?
- 13 THE COURT: Yes, sir.
- 14 MR. O'KELLEY: Thank you.
- 15 Q. You've got two days, and you've got various times,
16 correct?
- 17 A. It's by hour because that's the way our video records.
- 18 Q. When you've closed the gates, have you seen people
19 trying to back out into Highway 17?
- 20 A. Have I seen people back out into Highway 17?
- 21 Q. I'll ask it another way. When the gate's been closed,
22 has that created problems with people trying to get back onto
23 Highway 17?
- 24 A. Not to my knowledge.
- 25 Q. You mentioned a little while ago that South Carolina

1 Department of Transportation has told you all to open the
2 gate, correct?

3 A. Yes.

4 Q. Are you aware of correspondence from June of 2009 to Mr.
5 Pooser and Mr. Sisson from DOT advising that the gate had to
6 stay open?

7 A. Yes.

8 Q. And yet you're still in this Court today, even though
9 DOT requires it, saying that easement should be shut down.

10 A. Excuse me?

11 Q. You all are here in this Court today seeking what,
12 ma'am?

13 A. You'll have to ask that of the owner.

14 Q. All right. But you're testifying as to the traffic
15 counts, that they've increased exponentially.

16 A. Yes.

17 Q. That it's created a problem for you all and your
18 business; is that correct?

19 A. It has created a traffic problem for Stow Away Storage.

20 Q. Has anyone said to you, ma'am, we can't get to our
21 storage unit because of this easement?

22 A. I have had customers tell me that they can't get in the
23 driveway because of the blocked up traffic coming from the
24 hardware store, yes.

25 Q. So people have said, I can't get to my unit because of

1 this easement?

2 A. I can't get to Stow Away Storage because of the traffic.

3 Q. And how many customers has that been, ma'am?

4 A. I haven't done that study.

5 MR. O'KELLEY: That's all I have.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION BY MR. SINKLER:

8 Q. Let me just hand you two photographs and see if you can
9 identify those.

10 A. Yes, sir.

11 Q. Let's start with one -- let me ask you, are those
12 photographs that you're familiar with?

13 A. Yes, sir. I took them with my cell phone. One is dated
14 9/12 of 2011, the other is dated 9/13 of 2012.

15 MR. SINKLER: All right. Let me get them identified
16 first. I'm going to offer those in evidence.

17 (Plaintiff's Exhibits 6 and 7 marked for
18 identification.)

19 Q. First I'll hand you the one dated September 12th, '11
20 Plaintiff's Exhibit 6, and tell us what that shows.

21 A. It's from 4:54 p.m., and it's a photograph from the view
22 of from my office looking towards Highway 17, and it shows
23 the traffic backed up to include a mail truck completely
24 blocking Stow Away Storage's driveway for anyone who wanted
25 to enter Stowaway Storage.

1 Q. Let me show you Exhibit 7. Tell us what that shows.

2 A. It shows a line of vehicles, again, the same view, a
3 little more zoned in, of the traffic draped across the
4 driveway leaving the hardware store and a car entering
5 towards the hardware store at 9:00 a.m.

6 THE COURT: Any objection?

7 MR. O'KELLEY: I just would like to see them.

8 THE COURT: I'll let you see if you have any objection.

9 MR. O'KELLEY: No, sir.

10 THE COURT: That's Plaintiff's 6 and 7 admitted without
11 objection, is that correct, Mr. O'Kelley?

12 MR. O'KELLEY: Yes, Your Honor.

13 MR. SINKLER: I have nothing further, Your Honor.

14 RE-CROSS-EXAMINATION BY MR. O'KELLEY:

15 Q. Ms. Walshe, when was the traffic light put in by DOT?

16 A. In July of the year that the hardware store opened. The
17 hardware store opened in September, I believe. I'm not sure
18 what year.

19 Q. But my client didn't put the traffic light in and you
20 didn't put the traffic light in?

21 A. No, he did not and no, we did not.

22 Q. DOT put that traffic light in, correct?

23 A. I'm not sure if it's DOT, the town, the county. I'm not
24 sure.

25 Q. In other words, it you wasn't you all and it wasn't my

1 client.

2 A. That is correct.

3 Q. Thank you.

4 A. Your client being Mr. Sisson?

5 Q. Mr. Sisson, and I also represent Sweetgrass Hardware and

6 some other folks. But, in other words, you have no control

7 over the traffic light, correct?

8 A. That is correct.

9 MR. O'KELLEY: Thank you, ma'am.

10 EXAMINATION BY THE COURT:

11 Q. Ms. Walshe, so I'll understand, looking at Plaintiff's

12 Exhibit -- this picture, that's looking back from your

13 property?

14 A. Yes, sir. My office is right where that car is and

15 that's our parking lot, that's our parking lot where the car

16 is.

17 Q. And this is the road that goes back, talking about the

18 easement, this is the road of the easement?

19 A. No, sir. That's our driveway. Where you see the cars

20 going towards the left, that crosses over Mr. Sisson's dirt

21 road.

22 Q. It goes into the Timarand property or the hardware

23 store?

24 A. It goes to Mr. Sisson's dirt road, and then on the

25 opposite side of the dirt road, which the dirt road -- I call

1 it the dirt road -- the dirt road is Mr. Sisson's property.

2 On the opposite side of the dirt is the hardware store.

3 Q. Then this is just another shot of the cars going in and
4 out of the entrance to the hardware store?

5 A. Correct.

6 Q. There was some testimony about a fence. Is that the
7 fence in this picture, referring to Plaintiff's Exhibit No.
8 7?

9 A. Fence?

10 Q. The gate I mean.

11 A. May I look at it again?

12 Q. Yes, ma'am. Is that the gate that you had shut or
13 installed?

14 A. You can barely see it at the end. It's completely open
15 and it's tied off so that it won't swing shut at that point
16 in both of those pictures.

17 Q. That gate stops the traffic going from the driveway into
18 the hardware store?

19 A. It would if we closed it.

20 THE COURT: I just wanted to make sure I understood what
21 the pictures were showing. Anybody have any questions
22 pursuant to the questions I had? I just didn't understand
23 the geographics of the pictures.

24 MR. O'KELLEY: Just briefly.

25 FURTHER EXAMINATION BY MR. O'KELLEY:

1 Q. That's the gate that it's your understanding the DOT has
2 required you all to keep open, correct?

3 A. Correct.

4 THE COURT: Is this gate on whose property?

5 MR. O'KELLEY: Your Honor, it's my understanding that it
6 is on the property of the servient estate, on Stow Away's
7 property.

8 THE COURT: It's not on DOT right of way.

9 MR. O'KELLEY: It might be part of the larger
10 encroachment permit, Your Honor.

11 THE WITNESS: It is on Stow Away's property.

12 MR. O'KELLEY: It's Stow Away's property but I think
13 DOT --

14 THE COURT: So it's on Stow Away's property.

15 MR. O'KELLEY: Correct, Your Honor.

16 THE COURT: It's on the easement, I guess, for lack of a
17 better --

18 MR. O'KELLEY: That's my understanding, Your Honor.

19 THE COURT: So on the servient property.

20 MR. O'KELLEY: Servient estate, yes.

21 THE COURT: Okay. Mr. Sinkler, any questions you would
22 like to ask based on the questions the Court asked?

23 MR. SINKLER: No, Your Honor.

24 THE COURT: Okay. You may step down. Thank you so very
25 much.

1 Do you have any other witnesses you would like to call
2 concerning the, I guess the nature of the easement, the
3 change in that nature if there was any change?

4 MR. SINKLER: Is this just to talk about the increased
5 burden or --

6 THE COURT: Yes, sir. I mean, the way I read the case
7 is I think the Court has to first of all find out the intent
8 of the parties, does the easement allow the assignment, and
9 even if assignment's allowed, I think the Court has to make a
10 factual finding whether the nature of this easement has been
11 changed.

12 MR. SINKLER: Mr. Pooser was involved in the
13 negotiations. I'll have him come up.

14 THE COURT: The negotiation on what?

15 MR. SINKLER: Of the easement.

16 THE COURT: That's fine. I'm going to give you whatever
17 opportunity you want to offer testimony in rebuttal, okay?
18 I'm not trying to close you out.

19 MR. O'KELLEY: No, Your Honor, but I don't know that we
20 need testimony about the negotiations since we all agree the
21 easement states what it states.

22 THE COURT: I tend to agree. I think the document
23 speaks for itself.

24 MR. O'KELLEY: Okay. That's fine.

25 THE COURT: The document's pretty clear. If you want to

1 offer some testimony about how it's affected his estate, I'll
2 be happy to hear that.

3 MR. SINKLER: Mr. Pooser lives in Columbia, so he's not
4 there as often as Ms. Walshe. She knows much more about it
5 than he does.

6 THE COURT: Okay. Do you have any other witnesses
7 concerning that particular issue?

8 MR. SINKLER: No, sir.

9 THE COURT: Mr. O'Kelley, do you want to offer witnesses
10 on that issue?

11 MR. O'KELLEY: I would like to, Your Honor. First I
12 would call Mr. George Sisson to the stand.

13 THE COURT: Okay.

14 GEORGE SISSON,
15 having been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION BY MR. O'KELLEY:

18 Q. Mr. Sisson, you've been in the courtroom with us today,
19 have you not?

20 A. Yes, I have.

21 Q. Okay. And you own this easement that we're here about
22 today, correct? In other words, you have the right to go
23 across the Stow Away property.

24 A. Correct.

25 Q. All right. Tell the Judge about what you observed about

1 your trucks going to and from your property once you had the
2 easement and other people, the landscaping company you've
3 heard about today and other folks going to and from 17 to
4 your property.

5 A. We have not anticipated any problem, any changes. This
6 has not been a conflict to us. We have good in and good out.
7 We bought this for easement property for just what it is. We
8 had to get approval from South Carolina Electric & Gas. It's
9 strictly easement property. It's for utility work.

10 THE COURT: What's South Carolina Electric & Gas have to
11 do with it?

12 THE WITNESS: They've got their power lines through
13 there and they've got their gas lines through there.

14 THE COURT: They have an easement too?

15 THE WITNESS: Yes, sir.

16 MR. O'KELLEY: Yes, sir, Your Honor.

17 THE COURT: Alongside of the road?

18 MR. O'KELLEY: Along the road, yes.

19 THE WITNESS: I had to get permission from South
20 Carolina Electric & Gas to buy this property.

21 Q. And Mr. Sisson, we're also here today because you
22 assigned your easement rights. Tell the Court about that,
23 how that came to be.

24 MR. O'KELLEY: And, Your Honor, may I have Exhibit 2,
25 Defendant's 2, which is the license agreement?

1 Q. Mr. Sisson, specifically, I want to ask you how you came
2 to enter this license agreement.

3 A. Mr. Pooser came to me and asked me about an easement,
4 that he wanted to put a storage place there.

5 THE COURT: I don't want to go into his intention on the
6 easement.

7 MR. O'KELLEY: No, sir, and I think Mr. Sisson isn't --
8 we're speaking the same language but not understanding each
9 other.

10 THE COURT: Right. Please get him straight.

11 Q. Mr. Sisson, you assigned your easement rights to the
12 hardware store, to Mr. Fletcher's crowd?

13 A. Yes, sir.

14 Q. You did that according to this agreement in November of
15 2008, correct?

16 A. Yes.

17 Q. Tell the Court about the traffic that you've observed,
18 you've seen, going to and from that property since that
19 license agreement.

20 A. Well, there's been more increase in traffic.

21 Q. And has there been more increase in traffic on Highway
22 17 as well?

23 A. Going into Highway 17, yes.

24 Q. In fact, you've owned that property, your property, for
25 a long time, correct?

1 A. Correct.

2 Q. And you've seen traffic explode exponentially all over
3 Mount Pleasant, correct?

4 A. Correct.

5 Q. When you transferred your easement rights to Stow
6 Away's, you understood that was allowed, correct?

7 A. Correct.

8 MR. SINKLER: Your Honor, he's leading the witness.

9 THE COURT: I'll let him lead, okay? You can put up
10 your witness and lead too, okay? We don't have a jury here.
11 I know what's leading and what's not, okay?

12 MR. O'KELLEY: Thank you, Your Honor.

13 Q. It's my understanding the traffic has increased. That's
14 your understanding, correct?

15 A. Yes.

16 Q. Is that because of anything you've done, Mr. Sisson?

17 A. I don't think so.

18 MR. O'KELLEY: Thank you. Please answer any
19 questions --

20 THE COURT: Cross-examination. Do you have any
21 questions, Mr. Sinkler?

22 CROSS-EXAMINATION BY MR. SINKLER:

23 Q. You don't doubt that there's been an increase of
24 automobile traffic since you gave an easement to them to use
25 Mr. Pooser's easement?

- 1 A. No, I said there had been an increase.
- 2 Q. Okay.
- 3 A. But it has not caused a problem for me.
- 4 Q. For you.
- 5 A. I have seen no problem. I have seen no more problem
- 6 than any other intersection.
- 7 Q. But the traffic has increased.
- 8 A. By all means, yes.
- 9 MR. SINKLER: I don't have anything further.
- 10 THE COURT: Okay. Any redirect?
- 11 MR. O'KELLEY: That's all, Your Honor.
- 12 THE COURT: Mr. Sisson, you may step down. Thank you.
- 13 very much.
- 14 MR. O'KELLEY: Your Honor at this time we call Frank
- 15 Fletcher to the stand. By way of background, he is the
- 16 hardware store owner.
- 17 FRANK FLETCHER,
- 18 having been first duly sworn, was examined and testified as
- 19 follows:
- 20 DIRECT EXAMINATION BY MR. O'KELLEY:
- 21 Q. Mr. Fletcher, you own Sweetgrass Hardware, do you not?
- 22 A. Yes, I do.
- 23 Q. And you got a license agreement to use the easement
- 24 we're here about today, correct?
- 25 A. Yes.

1 Q. Tell the Court -- and you got that agreement in 2008 but
2 the store opened in 2006?

3 A. 2007.

4 Q. 2007. And tell the Court what you've seen about traffic
5 going to and from your property, excuse me, to and from the
6 hardware store since you opened. Has that traffic increased?

7 A. It has increased just based on the maturity of the
8 business in terms of shopping patterns of customers getting
9 familiar with our location.

10 Q. And there's another way to get to your property,
11 correct, a little bit further north on 17?

12 A. Right, correct. There is a primary entrance that runs
13 along the property line between the Timarand property, which
14 we lease, and Mr. Sisson's property. There is a general
15 access off of 17 to us, would be on the north side of our
16 property.

17 Q. And do you recall when the traffic light was put in that
18 looks basically like an extension of Porcher's Bluff Road?

19 A. The traffic light's actually been reworked a couple
20 times. When we opened the hardware store, there was a
21 traffic light there without a protected turn lane or turn
22 signal into the subject easement. I believe in 2008 or early
23 2009 DOT reworked the intersection in advance of the widening
24 of Highway 17 and put a protected turn lane in with a
25 protected turn signal.

1 Q. And you've been there when the folks from Stow Away have
2 tried to close the gate, correct?

3 A. Yes, I have.

4 Q. And is it your understanding that DOT has told them that
5 the gate has to remain open?

6 A. Yes, that's my understanding.

7 Q. Have you or your customers been approached by anyone
8 from Stow Away regarding the easement?

9 THE COURT: Let me ask you a question, what does DOT
10 have to do with it? This is on private property.

11 MR. O'KELLEY: I think it has everything to do with it,
12 Your Honor because DOT --

13 THE COURT: They're not a party to this.

14 MR. O'KELLEY: Correct, Your Honor.

15 THE COURT: That's why I asked the question was that
16 gate on DOT's right of way. If it's not on their right of
17 way, what do they have to do with this?

18 MR. O'KELLEY: They required the overall easement, Your
19 Honor. They required the easement in the first place. They
20 required it because Mr. Sisson had an old encroachment
21 permit.

22 THE COURT: But what's that have to do with what we're
23 here for today because unless you're going to make them a
24 party and interplead them, I don't think they have anything
25 to do with this.

1 MR. O'KELLEY: I think they do, Your Honor, because DOT
2 has told these folks several times you can't close the gate
3 because they're the one that required the easement.

4 THE COURT: That's fine and if I decide that they can
5 close the gate, I'll order that and order DOT to acknowledge
6 it, unless you want to bring them into this because you think
7 they have a vested interest in this, because the intersection
8 changed, that's my concern.

9 MR. O'KELLEY: Correct.

10 THE COURT: And I'm not saying that's what I'm going to
11 do. My difficulty, if I go along with the plaintiff's
12 position, how are we going to stop the traffic from coming in
13 there, and the only way I know to do that is to close the
14 gate.

15 MR. O'KELLEY: And then DOT may revoke the encroachment
16 permit that Stow Away has, so I didn't think about them being
17 a party in this case.

18 THE COURT: The problem I have is we may have to bring
19 them into this to see what their position is.

20 MR. O'KELLEY: We very well may, Your Honor, based on
21 some of the things we've heard today.

22 THE COURT: I'm not saying I'm going to rule that way,
23 but I see that as a potential problem because even if I say
24 it's an expansion of the dominant estate, you can't do that
25 under the agreement. Now I've got the problem, how are we

1 going to stop the traffic from going onto the easement into
2 the hardware store.

3 MR. O'KELLEY: Correct, Your Honor.

4 THE COURT: Only thing I can do is tell them to put up a
5 fence or close the gate. If you think DOT's got a problem
6 with that, then we need to get them involved in this lawsuit.

7 MR. O'KELLEY: We may, Your Honor, because DOT was the
8 one who said we've got to do it this way to begin with.

9 THE COURT: Well, see, at this point I really don't care
10 what DOT wants. Do you understand? Now, if that's your
11 position, that DOT's going to enforce this and take away the
12 encroachment, because I'm not sure they can legally do that,
13 we need to bring them in, somebody needs to interplead them.

14 MR. O'KELLEY: We might, Your Honor, need to third-party
15 them at this point because they do have an interest. They've
16 told Mr. Pooser and Mr. Sisson consistently, you've got to
17 leave this access open.

18 THE COURT: I understand that because it was interfering
19 apparently -- did they put a left turn lane going north on 17
20 to turn into that right of way?

21 MR. O'KELLEY: Correct.

22 THE COURT: They actually put in a dedicated turn lane?

23 MR. O'KELLEY: There's a dedicated turn out lane, I'm
24 sorry, not turn in but turn out. There's a left-hand signal,
25 but there's not like a dedicated cut over.

1 THE COURT: There's a dedicated turnover going north to
2 turn into the plaintiff property?

3 THE WITNESS: Yes, sir, and an advanced light.

4 MR. O'KELLEY: Yes, sir, there is, and an advanced
5 light.

6 THE COURT: And what now?

7 BY MR. O'KELLEY:

8 Q. Mr. Fletcher, tell the Court about where the lane is.

9 A. Coming north on Highway 17 at the Porcher's Bluff
10 intersection there is a protected left turn with a protected
11 left turn arrow into the easement driveway.

12 Q. And Mr. Fletcher, let me show you what I think we'll
13 mark as 3 and 4.

14 (Defendant's Exhibits 3 and 4 marked for
15 identification.)

16 Q. Mr. Fletcher, I've just marked some exhibits 3 and 4.
17 The bottom one is 3 and the top one is 4. What does 3 show,
18 sir?

19 A. 3 is a photograph from the primary entrance going into
20 Sisson Scale and Sweetgrass Hardware down south Highway 17
21 showing the right turn line going into the requested
22 easement.

23 Q. And there are two copies of that, correct, Mr. Fletcher,
24 or three?

25 A. Three copies.

1 Q. Three copies of that. And then there's another set of
2 photographs behind that Exhibit 4. What does that show?

3 A. That is a photo on the back side of the Stow Away
4 Storage property showing the termination of the proposed
5 Porcher's Bluff extension that will connect to the
6 intersection according to the published Town of Mount
7 Pleasant highway plans.

8 Q. And that's your understanding that the town is going to
9 try and continue Porcher's Bluff Road across the highway,
10 correct?

11 A. Correct.

12 MR. SINKLER: Your Honor, I move to strike that. That's
13 pure hearsay.

14 THE COURT: I'll sustain the objection.

15 MR. O'KELLEY: Thank you, Your Honor.

16 Q. Mr. Fletcher, did you take these pictures?

17 A. Yes, I did.

18 Q. Do they fairly and accurately represent the conditions
19 on the day you took them?

20 A. Yes, sir.

21 MR. O'KELLEY: I'd like to move those in, Your Honor.

22 THE COURT: Any objection?

23 MR. SINKLER: No objection, Your Honor.

24 THE COURT: That's Defendant's what now?

25 MR. O'KELLEY: I think it's 3 and 4, Your Honor.

1 THE COURT: They're pictures?

2 MR. O'KELLEY: Yes, Your Honor, and inadvertently it's
3 the same picture more than once, but I just have extra
4 copies.

5 Q. Mr. Fletcher, folks from Stow Away Storage --

6 THE COURT: It's a dedicated lane turning right into
7 that easement, correct, not left?

8 MR. O'KELLEY: Correct, Your Honor.

9 THE COURT: What is this -- it was hard to listen to
10 without seeing what he was testifying to. What is this?

11 MR. O'KELLEY: Mr. Fletcher said that that was, what his
12 understanding was, the back of the Stow Away's property where
13 he thinks there's going to be an extension of Porcher's Bluff
14 Road.

15 THE COURT: Extension of what now?

16 MR. O'KELLEY: Porcher's Bluff Road.

17 THE COURT: Somebody will have to have a little
18 condemnation before we get to that point.

19 MR. O'KELLEY: I think so, Your Honor.

20 Q. Mr. Fletcher, just so the Court understands, there are
21 dedicated turn lanes in both directions, are there not?

22 A. Correct. Northbound has a protected arrowed light.

23 Q. It's an arrowed light that you can turn left into the
24 easement, correct?

25 A. Correct.

1 Q. And that light was put up by DOT to the best of your
2 knowledge, correct?

3 A. To my knowledge.

4 MR. O'KELLEY: Thank you, Mr. Fletcher. That's all I've
5 got.

6 THE COURT: All right. Let's have cross-examination.

7 MR. SINKLER: Is the license in evidence?

8 MR. O'KELLEY: It is, Your Honor.

9 THE COURT: It's exhibit number --

10 MR. O'KELLEY: Defendant's 2.

11 CROSS-EXAMINATION BY MR. SINKLER:

12 Q. Mr. Fletcher, is this a copy of the license agreement
13 that you obtained from Stow Away?

14 A. Yes, sir.

15 Q. Excuse me, I'm sorry, the license that you obtained from
16 Mr. Sisson.

17 A. Yes, sir.

18 Q. I'm sorry. Mr. Sisson's, LLC, I think it was at that
19 point.

20 A. Correct.

21 Q. Would you look at the third page, Item 10, it says,
22 assignment, this license is personal to licensee -- the
23 licensee is your company, right?

24 A. Correct.

25 Q. And what is your company?

- 1 A. Sweetgrass Ace Hardware.
- 2 Q. -- (continuing) and may not be sold, transferred,
3 assigned or given to any third party. The sale or assignment
4 of a majority interest in the licensee entities shall
5 constitute an assignment for the purpose of this provision
6 and shall constitute a violation of the license. Is that the
7 language?
- 8 A. Yes, sir.
- 9 Q. Now, what in that assignment gives you the right to give
10 your customers the right to use the road, use the easement?
- 11 A. I don't think -- it's just saying that I can't assign
12 it, I can't sell or transfer the license.
- 13 Q. To any third party, correct?
- 14 A. Sold, transferred, assigned to a third party.
- 15 Q. The rights under the license.
- 16 A. That's what it states.
- 17 MR. SINKLER: Okay. I think that's all I have of this
18 witness. I'd like to put Mr. Pooser up in response.
- 19 THE COURT: I'm not sure Mr. O'Kelley's through. Is
20 this your last witness?
- 21 MR. O'KELLEY: That's it, Your Honor. We're finished
22 with Mr. Fletcher.
- 23 THE COURT: You may step down. Thank you.
- 24 Are you going to put up rebuttal testimony?
- 25 MR. SINKLER: Yes, sir, Mr. Pooser, on the issue of

1 these photographs.

2 THE COURT: That's fine. You may call him.

3 BERT POOSER,

4 having been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION BY MR. SINKLER:

7 Q. Bert, what is your position with Stow Away's?

8 A. I'm one of the partners in it and own it.

9 Q. Who is the other partner?

10 A. My father, E. L. Pooser, Jr.

11 Q. So the two of you are the sole partners of the LLC that
12 operates as Stow Away?

13 A. Yes.

14 Q. Now, the pictures that have been introduced by Mr.
15 Fletcher, I guess I'll hand you a copy, tell the Court what
16 Defendant's Exhibit No. 4 represents. There are two pictures
17 there.

18 A. No. 4 is a driveway in a private development behind us
19 of an apartment complex and, you know, it was a termination
20 of a road or a drive that they put in there when they were
21 trying to subdivide and do some other development in there.
22 That's what that is. That's a private development.

23 Q. Have you received any sort of condemnation notice?

24 A. I've received nothing, no letters, nothing from any
25 town, county or anything regarding the road.

1 Q. Now, Exhibit 3, there are three of those. Tell us what
2 that shows.

3 A. That's showing the, I'm going to call it the decel lane,
4 showing the decel lane heading southbound on 17 from when the
5 road was widened, you know, the Mount Pleasant widening
6 project with 17. But when I built the facility, in order for
7 me to get my encroachment permit, I had to construct a north
8 and southbound decel lane, which in fact helped Mr. Sisson
9 with his trucks on 17 as part of that encroachment permit
10 because we would make a northbound turn into the existing
11 dirt road that he had, his trucks would have to stop on 17
12 and be half on 17, half in the island to cross over. When I
13 constructed this, and we both met and talked about the
14 encroachment permit by us, this was one thing that DOT
15 requested, and they requested it for our facility as well
16 because we had boats with trailers and landscape businesses
17 all that projected for our business. So we did install the
18 north and southbound lanes before 17 was widened. And this
19 picture in fact shows where our lanes were then reconstructed
20 by the DOT when they widened it and had to push them out
21 further, but that's what this picture is.

22 Q. But you constructed the decel lanes at your expense?

23 A. Yes, at our expense, north and southbound.

24 Q. You had that constructed by a private company?

25 A. Yes, by a private company.

1 Q. What did that cost you?

2 A. I think it's anywhere from 175 to \$200,000.

3 Q. That was a condition --

4 A. Because it had to be up to DOT standards.

5 THE COURT: I'm sorry, you said what now?

6 THE WITNESS: It was about \$175,000 to construct those
7 decel lanes when I built the project, and they had to be
8 built and constructed to DOT regulations. But this
9 particular picture is the widening of the road. They
10 actually -- mine was removed and they widened the road and
11 added them back.

12 Q. About when was that, do you remember?

13 A. The widening of the road?

14 Q. Yes.

15 A. It's still going on out there right now, but as far as
16 being opened up, it was I'd say the last three years or so.
17 I think they put the final curb and sidewalk in in the last
18 year. But, you know, it's still going on.

19 MR. SINKLER: I don't have anything further, Your Honor.

20 THE COURT: Okay. Cross-examination?

21 MR. O'KELLEY: Just briefly, Your Honor.

22 THE COURT: Let me give you these extra pictures.

23 MR. O'KELLEY: Yes, sir.

24 THE COURT: I'm just going to keep the two you marked.

25 CROSS-EXAMINATION BY MR. O'KELLEY:

1 Q. Mr. Pooser, your day-to-day operations are in Columbia,
2 correct?

3 A. Yes.

4 Q. You're not on site at Stow Away Storage, that's Ms.
5 Walshe, correct?

6 A. I'm in Charleston on average three times a month.

7 Q. Three times a month. Okay. Do you recall receiving
8 correspondence and letters from DOT telling you all not to
9 gate the property, not to gate the easement?

10 A. To open it, yes, and I received the same notices to the
11 hardware store telling them to close their gate within days
12 of each letter from the DOT.

13 Q. You testified a few minutes ago that there are some
14 apartments back behind your property; is that right?

15 A. Yes, there's some apartments off of --

16 Q. Gregorie Ferry Road I think it is?

17 A. Yes, behind us.

18 Q. Gregorie Ferry runs behind, towards Highway 41, correct?

19 A. Yes, those apartments down off Highway 17.

20 Q. Do people try and get to those apartments on your
21 property, do you know?

22 A. Oh, absolutely not. They have a main -- they have a
23 massive sign out and everything and a place to turn in and
24 out of.

25 Q. But you've seen people turn around on your property and

1 go back out to 17, correct?

2 A. I mean, if they pull down the driveway and turn in by
3 mistake going somewhere, yes, naturally somebody's going to
4 turn around and leave if they went in the wrong place.

5 Q. Just briefly, was it you, Mr. Pooser, or E. L. Pooser,
6 Jr., who was in negotiations with Mr. Sisson over the
7 easement or both?

8 A. It was me.

9 MR. O'KELLEY: Okay. Thank you. That's all I have,
10 Your Honor.

11 THE COURT: Any redirect?

12 MR. SINKLER: Just one question in response to that.

13 REDIRECT EXAMINATION BY MR. SINKLER:

14 Q. Mr. Pooser, you gave an affidavit in support of our
15 motion for summary judgment in this case; is that correct?

16 A. Yes.

17 MR. SINKLER: That document, Your Honor, is attached to
18 our memorandum in support of the motion for summary judgment.

19 Q. Attached to your letter was a letter dated April 24th,
20 2009 from E. L. Bert Pooser, Jr. to Mr. Sisson. Let me show
21 you that letter.

22 A. Yes, I was present, I remember that.

23 THE COURT: Is that the May 6th letter you're referring
24 to?

25 MR. SINKLER: I'm referring to an April 24th --

- 1 THE COURT: April 24th.
- 2 MR. SINKLER: -- 2009 letter that's attached to his --
- 3 THE COURT: April 24th, okay. All right.
- 4 Q. And who is that that sent that letter to Mr. Sisson?
- 5 A. That's my father.
- 6 Q. Your father?
- 7 A. Mm-hmm.
- 8 Q. Okay. And what does that say?
- 9 A. This letter here?
- 10 Q. Yes, what was the intent of that letter?
- 11 A. The intent of the letter is to -- for us not to be in
- 12 the courtroom but to settle it but it was -- we had come to
- 13 an impasse because we couldn't -- you know, he didn't tell
- 14 them to shut their gate to keep them from crossing over the
- 15 property.
- 16 Q. But you didn't write that letter?
- 17 A. No. I was present, but my father wrote the letter.
- 18 MR. SINKLER: Okay. That's all I have, Your Honor.
- 19 THE COURT: Any cross-examination?
- 20 MR. O'KELLEY: No, sir.
- 21 THE COURT: You may step down. Thank you, very much.
- 22 Is there anything else from either party?
- 23 MR. SINKLER: No, thank you.
- 24 MR. O'KELLEY: I think you've heard it all, Your Honor.
- 25 THE COURT: All right. Let me go off the record for

(11) 1 just a second.

2 (Discussion off the record.)

3 (Matter concluded at 12:35 p.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

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1 I, the undersigned Ruth L. Mott, Official Court Reporter
2 for the Ninth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the Circuit Court for
7 Charleston County, South Carolina, on the 14th of
8 August, 2013.

9 I further certify that I am neither related to nor
10 counsel for any party to the cause pending or interested in
11 the events thereof.

12 February 20, 2014

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16 
17 Court Reporter
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THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-10-2444

STOW AWAY STORAGE, LLC

Plaintiff

VS.

GEORGE W. SISSON, et al

Defendants

TRANSCRIPT OF RECORD

November 9, 2016
Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

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

G. DANA SINKLER, ESQ.
AINSLEY TILLMAN, ESQ.
Attorneys for the Plaintiff

GEORGE HAMLIN O'KELLEY, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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PROCEEDINGS

THE COURT: Stow Away Storage versus Sisson. Is anybody here on that? Who is here representing who on this if they would state for the record, please?

MR. SINKLER: Dana Sinkler. I represent Stow Away Storage.

THE COURT: Thank you, Mr. Sinkler.

MS. TILLSMAN: And I'm Ainsley Tillman and I represent Stow Away Storage.

MR. O'KELLEY: Okay. Your Honor, Hamlin O'Kelley for the defendant.

THE COURT: Okay. For the record this is a case that I tried a couple of years ago I guess now.

MR. O'KELLEY: In August of 2013, Your Honor.

THE COURT: August of 2013; I guess it's been three years. There was a question of a right of way and I held that the right of way had been or the additional right of way that Sisson had given to -- I forgot; what's the name of the hardware company?

MR. O'KELLEY: Sweet Grass Hardware.

THE COURT: Sweet Grass Hardware was improper and that was appealed to the Court of Appeals and I was upheld in that case. It was remanded back because at the trial level I had bifurcated the liability issue from the damage issue and we're here today for the damage hearing.

1 Mr. Sinkler, I'll be glad to hear from you briefly
2 concerning your damages and I understand there is a
3 motion pending, I think a motion to suppress. I'll
4 address that at some point in time but I'm going to take
5 whatever testimony needs to be taken today on the damage
6 issue. And if there is any depositions that need to be
7 taken after I'll leave the record open for those
8 depositions. Do you understand Mr. Sinkler?

9 MR. SINKLER: Yes, sir.

10 THE COURT: Whatever testimony you want ---

11 MR. SINKLER: --- there is a motion to quash.

12 THE COURT: He's got a motion to quash the
13 deposition?

14 MR. SINKLER: That's right. And I want to address
15 that because we can't determine the extent of the damages
16 because we don't know ---

17 THE COURT: --- well what I'm saying -- I'll say it
18 again. Whatever you want to present today I'm going to
19 listen to. If I decide not to quash the depositions then
20 you can go take the deposition and submit it to me. I'll
21 leave the record open for anything else that you want to
22 present other than that deposition I'm going to take
23 today. Do you understand?

24 MR. SINKLER: Yes, sir.

25 THE COURT: I'll be glad to hear you in an opening

1 statement as to why you think you're entitled to damages
2 and I'll hear from Mr. O'Kelley.

3 MR. SINKLER: I'm going to ask my associate to do
4 the damages part. I was going to do the motion to quash.

5 THE COURT: Okay. That's fine. I'll be happy to
6 hear from her.

7 MS. TILLSMAN: Your Honor, there are essentially
8 three parties in this litigation. There is our client
9 Stow Away Storage and then there is George Sisson who has
10 several iterations, Four Point O, LLC and the Systems
11 Foundation Limited Partner. And then there is Sweet
12 Grass Hardware. And the relationship with the parties is
13 that our client Stow Away had a contract with Sisson that
14 Sisson would abandon access to Highway 17 in exchange for
15 the use of an easement across Stow Away's property.

16 What ultimately transpired is that Sweet Grass
17 leased a parcel that was sort of catty-cornered to Stow
18 Away and Sisson's parcels. And Sweet Grass wanted to
19 access for its customers who were coming on Highway 17
20 North. At some point they spoke with Mr. Sisson and
21 arranged that they would use the access that Mr. Sisson
22 had abandoned previously in exchange for its easement
23 across Stow Away's property. So when Sisson built --
24 when Sweet Grass built it's hardware store it built, it
25 landscaped and built a big Sweet Grass arch demonstrating

1 the intent that its customers should go from Highway 17
2 North onto their store property via the old or abandoned
3 access. And

4 THE COURT: --- I understand all that. One of the
5 reasons I ruled that it was an excessive use of an
6 easement at the time because of the additional traffic.
7 But equate that to damage for me. That's my problem,
8 okay and that's what I'm having trouble with. How have
9 you been monetarily damaged because I gave you injunctive
10 relief to stop that?

11 MS. TILLSMAN: That's correct.

12 THE COURT: So the problem I'm having with your
13 damage issue is you got injunctive relief if they want to
14 use it or if they don't want to use it that's up to them.
15 How can you be damaged since I have stopped the excess
16 traffic by the injunctive relief? So how has your client
17 been damaged?

18 MS. TILLSMAN: Well first off they went to great
19 expense to try and prevent those 200 or 300 cars a day
20 from crossing their property. So we have an itemized
21 list of actual damages which includes putting up a gate
22 and relandscaping the area around the easement because
23 customers of Sweet Grass were always driving over their
24 bushes. And Sweet Grass had big trucks that were
25 delivering goods to the hardware store and they would

1 cross the easement and just run over all of the
2 landscaping. So we have those actual damages which ---

3 THE COURT: --- okay.

4 MS. TILLSMAN: And then also we believe we are
5 entitled to ---

6 THE COURT: --- so you've got installation of a
7 gate and you've got the landscaping that was destroyed or
8 you had to put up additional landscaping. Do you have
9 any other actual damages?

10 MS. TILLSMAN: I've got an itemized list which was
11 attached to our brief that we submitted to the court.
12 And I also have receipts for all of that if you would
13 like those.

14 THE COURT: Okay. Do you have any other type of
15 actual damages from your position?

16 MS. TILLSMAN: That can be specifically quantified?
17 No.

18 THE COURT: Okay. Now what else do you think you
19 are entitled to from a damage standpoint?

20 MS. TILLSMAN: So I believe we are also as to Sweet
21 Grass entitled to punitive damages because Sweet Grass
22 was -- we have evidence in the record from the trial that
23 Sweet Grass was aware of the easement agreement between
24 Sisson and Stow Away.

25 THE COURT: Well Sisson gave them I forget -- what

1 did they give them? I'm sorry, I don't remember.

2 MR. O'KELLEY: That's quite all right, Your Honor.

3 It has been since August ---

4 THE COURT: --- Sisson gave them something in
5 writing.

6 MR. O'KELLEY: Yes, sir. They gave them a license
7 which ---

8 THE COURT: --- okay. So they gave them a license
9 and so they were operating on the license so how would
10 punitive -- I mean it wasn't an intentional violation
11 because they thought they had the right to operate
12 because of that license.

13 MS. TILLSMAN: Well they were ---

14 THE COURT: --- I know that I found that the
15 license was not proper but still why would that be
16 punitive?

17 MS. TILLSMAN: Because they were aware of the
18 easement agreement between Sweet Grass -- I'm sorry;
19 between Sisson and Stow Away. They were aware of that.
20 They spoke with our client numerous times and Mr. Sinkler
21 corresponded with their attorney and said we have an
22 easement agreement and it does not contemplate your
23 customers crossing our property. And the response from
24 counsel for Sweet Grass was well our cars are going to go
25 across there. You can go ahead and sue us to stop us if

1 you would like to. And that's attached in the complaint
2 that letter from counsel is I believe exhibit 9.

3 THE COURT: Okay. So you're asking for punitives.
4 What else are you asking for?

5 MS. TILLSMAN: We're also asking for attorney's
6 fees and that's as to the defendant Sisson and his many
7 iterations. The reason for our...

8 THE COURT: Since you just mentioned that let me
9 ask you a question. On your actual damages and your
10 punitives are you asking those against both defendants
11 joint and severable or are you breaking out anything
12 against one against the other?

13 MS. TILLSMAN: Well, I believe that our best
14 argument for punitive damages is against Sweet Grass
15 Hardware.

16 THE COURT: Okay.

17 MS. TILLSMAN: Because they were aware of our
18 easement agreement and they interfered with that
19 contract. It was tortious interference. We have a tort
20 claim against them and punitives damages maybe may arise
21 later.

22 THE COURT: Okay. Talk to me about the attorneys
23 fees.

24 MS. TILLSMAN: I'd be glad to talk to you about
25 attorneys fees. So we've claimed attorney's fees under a

1 theory of equitable indemnity. And the case law for
2 equitable indemnity suggests that in order to get
3 attorneys fees you need to have three parties; two who
4 are party to the contract, and in this case that would be
5 Sisson and Stow Away, and then you would need for one
6 party, and in this case it was Sisson, to breach the
7 contract and in breaching that contract to cause the non-
8 breaching party to have to sue a third party, a party who
9 is not a member of the contract.

10 And in this case Sisson breached his contract with
11 Stow Away by unduly burdening the easement in violation
12 of the easement agreement and going and allowing Sweet
13 Grass -- in fact he made a contract with Sweet Grass to
14 allow its customers to use property that he had no right
15 to contract away. He had no right to allow them to use
16 that easement. Stow Away attempted to resolve that and
17 was unsuccessful and ultimately had to sue Sweet Grass
18 and Sisson in order to defend its rights under the
19 easement agreement.

20 THE COURT: Okay. Did you have...

21 MS. TILLSMAN: Yes, I did submit a memo ---

22 THE COURT: --- I'd like to look at those cases on
23 the equitable indemnification. Do any of those cases on
24 equitable indemnification address attorney's fees?

25 MS. TILLSMAN: All of those cases on equitable

1 indemnification address attorney's fees.

2 THE COURT: Would you mind handing those up for me
3 please ma'am.

4 [Whereupon, the court confers with the law clerk]

5 THE COURT: She's got your memo but do you have the
6 cases themselves?

7 MS. TILLSMAN: Yes. I'm looking to see if I have
8 some that are not all marked up.

9 [Whereupon, Ms. Tillman reviews documents]

10 MS. TILLMAN: I believe we sent one to you at some
11 point. Our main cases are the Town of Winnsboro.

12 THE COURT: The town of -- they are all in your
13 brief, right?

14 MS. TILLMAN: They are all in our brief.

15 THE COURT: All right. She can pull them up
16 because they're in the brief.

17 MS. TILLMAN: And if you don't mind -- well, I know
18 that Mr. O'Kelley has got an argument ---

19 MR. O'KELLEY: --- Your Honor, I actually have the
20 Town of Winnsboro case that they have cited and I've also
21 got cases we've cited. I'll be happy to hand them up.

22 THE COURT: If you've got them I'd just like to
23 have them.

24 MR. O'KELLEY: I have them, Your Honor. I'm not
25 trying to step on anybody's toes ---

1 MS. TILLMAN: --- I appreciate that because mine
2 are all ---

3 THE COURT: --- all I'm going to do is run a copy
4 of them. If y'all have a copy I'd like to have them.

5 MR. O'KELLEY: These can be for you and Your Honor
6 this is the case that I will be arguing to you shortly.

7 [Whereupon, Mr. O'Kelley provides document to the
8 court]

9 THE COURT: Okay. All right.

10 MS. TILLMAN: And if Mr. O'Kelley would like to go
11 ahead and argue or I can ---

12 THE COURT: --- I find it difficult to read cases
13 and make notes on the computer. I still like the paper.

14 MS. TILLMAN: I like the paper too and that's my
15 problem is that my cases have notes on them ---

16 THE COURT: --- I still like to have the paper and
17 I can write notes on the paper. I can't do that on that
18 screen.

19 MR. O'KELLEY: I'm sorry Your Honor; I forgot to
20 give you this.

21 [Whereupon, Mr. O'Kelley provides documents to the
22 court]

23 THE COURT: I've either got to get a copy of paper
24 from you or run a copy myself. All right, go ahead. I
25 didn't mean to interrupt you.

1 MS. TILLMAN: No, that's all right. So in order to
2 get equitable -- there are three elements to get
3 attorney's fees under a theory of equitable indemnity and
4 I believe we meet all of those elements. And this is
5 from the case of Addy versus --

6 THE COURT REPORTER: Would you give it to me again?

7 MS. TILLMAN: Addy, A-D-D-Y versus Bolton. And the
8 three elements are first that the plaintiff has become
9 involved in a legal dispute either because of the breach
10 of contract by the defendant or because of the
11 defendant's tortious conduct. Two, that the dispute was
12 with a third party not with the defendant and three; that
13 the plaintiff incurred attorney's fees connected with
14 that dispute. I believe we meet all of those three
15 elements. Our claim for attorney's fees is against
16 Sisson.

17 THE COURT: Okay.

18 MS. TILLMAN: And I don't know that it matters what
19 the underlying cause of action is. I believe that Mr.
20 O'Kelley's argument is that because this is an easement
21 dispute that attorney's fees ---

22 THE COURT: --- I'll give you a chance to reply to
23 his argument. Anything else you want to say on your
24 argument?

25 [Whereupon, Ms. Tillman and Mr. Sinkler confer]

1 MS. TILLMAN: I do have an affidavit from Mr.
2 Sinkler that quantifies our attorney's fees.

3 THE COURT: Mr. O'Kelley, do you have a copy of the
4 affidavit?

5 MR. O'KELLEY: I've not seen anything about it or
6 heard anything about it until about two seconds ago, Your
7 Honor.

8 THE COURT: Do you have a copy you can give to Mr.
9 O'Kelley and for the court?

10 MS. TILLMAN: I do have a copy to give Mr.
11 O'Kelley.

12 THE COURT: If you want to hand me a copy you can
13 give him a copy.

14 [Whereupon, Ms. Tillman provides documents to the
15 court and to Mr. O'Kelley]

16 THE COURT: Thank you. Before I look at them do
17 these fees include the appeal?

18 MS. TILLMAN: Yes.

19 THE COURT: What's your position on whether the
20 appeal would be appropriate?

21 MS. TILLMAN: I believe the appeal would absolutely
22 be appropriate. It was Mr. Sisson that Sweet Grass to
23 appeal the case.

24 THE COURT: Okay. Anything else you want to tell
25 me before I listen to Mr. O'Kelley?

1 MS. TILLMAN: No, sir.

2 THE COURT: Thank you so very much. Mr. O'Kelley?

3 MR. O'KELLEY: Thank you, Your Honor. Yesterday,
4 Your Honor, I emailed to your clerk a copy of our brief.
5 But I have a hard copy for Your Honor.

6 [Whereupon, Mr. O'Kelley provides documents to the
7 court]

8 MR. O'KELLEY: Your Honor, I think your initial
9 question to Ms. Tillman was the most on point; where are
10 your damages. Your Honor granted the remedy they sought
11 by determining that this easement in your order from
12 November 25th of 2013 that the easement had been overly
13 burdened and that the plaintiff was allowed to put up a
14 gate and stop any traffic from coming onto the property.

15 What you found Your Honor was that the plaintiff did
16 not have a right to limit Mr. Sisson's use of the
17 easement and whatever means the plaintiff used to block
18 traffic from crossing the easement must remain on
19 plaintiff's property and my clients are restrained from
20 intervening with plaintiff's efforts in that regard.

21 That was the relief that they requested. There was
22 no election of remedies at the trial. They didn't say we
23 want damages. What they wanted, Your Honor was the
24 relief you gave them. Since that time the plaintiff has
25 actually sold the property for quite a hefty profit and

1 we don't ---

2 THE COURT: --- I understand that but I don't think
3 that has anything to do with the damage on this time in
4 question, okay.

5 MR. O'KELLEY: I understand, Your Honor.

6 THE COURT: I read your brief and you put that in
7 there and that's fine. But from my perspective I don't
8 think that has anything to do on whether they are
9 entitled to damages on this particular instance.

10 MR. O'KELLEY: And I don't think they are entitled
11 Your Honor to any damages; especially punitive damages
12 that they are now alleging. There was nothing in your
13 order anywhere Your Honor that found any willful or
14 wanton or reckless conduct.

15 And Your Honor the case law tells us specifically
16 that there must be a finding that there was some reckless
17 wanton conduct. And there has got to be an analysis
18 under the Gamble case, Gamble v Stevenson that would
19 warrant an award of some form of punitive damages to stop
20 similar conduct.

21 My clients thought there was an easement that as
22 Your Honor remembers the easement language said that you
23 could -- had language in it that said if it was assigned
24 it would be deemed to not be unduly burdensome and that's
25 what we were relying on to say that our clients hadn't

1 unduly burdened the easement. Your Honor disagreed with
2 us based on the testimony and evidence which we
3 understand but until the court ---

4 THE COURT: --- well I guess technically your
5 client Sisson was not overburdened but the license to the
6 hardware company was what I found was overburdened.

7 MR. O'KELLEY: Absolutely, Your Honor. And that
8 license until the court determined it my clients thought
9 it was fine and that they were able to proceed under it
10 because of the language in the easement that said it was
11 assignable and wouldn't be unduly burdened. So we don't
12 think there are any punitive damages because there was no
13 testimony of anyone acting willful---

14 THE COURT: --- let me ask you a question.

15 MR. O'KELLEY: Yes, sir.

16 THE COURT: Why wouldn't they be entitled to
17 whatever the gate cost and the landscaping and enforcing
18 the injunctive or at least implementing the injunctive
19 relief because that was probably necessary to implement
20 that. I know there is something in the order to that
21 effect but ---

22 MR. O'KELLEY: --- yes, sir. But what they are
23 talking about are damages from before this court made its
24 ruling. They put a gate up before there was a lawsuit.
25 You'll remember there was testimony that the town of

1 Mount Pleasant told them they had to leave the gate open
2 because people were turning off of Highway 17. They
3 attempted to close it. What they are seeking is damages
4 from prior to this court's ruling as to the determination
5 and interpretation of ---

6 THE COURT: --- why would that make any difference
7 if they were trying to stop the excess traffic? The
8 problem if I remember was the gate was blocking your
9 trucks from coming in to the scaling ---

10 MR. O'KELLEY: --- it was blocking the trucks and
11 also blocking people from turning into the hardware store
12 as well, Your Honor.

13 THE COURT: Right.

14 MR. O'KELLEY: We don't think they're entitled to
15 it because until this court made its ruling, Your Honor,
16 we thought we had every right to do what we were doing.
17 And that's why we said you're going to have to -- our
18 client said you're going to have to take us to court and
19 sue us because we think legally we are well within our
20 rights under the terms of the easement agreement that
21 says you may assign it and it's not going to unduly
22 burden the easement. The easement which the plaintiff
23 had to have because the DOT said to get to your property
24 Mr. Sisson has got to abandon his old easement; you've
25 got to give him a new one. This was all matters

1 controlled by the DOT and frankly controlled by the
2 plaintiffs so that they could use their property as they
3 saw fit in terms of entering into the easement agreement.
4 So we don't think they should be allowed to tax us the
5 damages that until this court made its ruling on the
6 legality of the license agreement we thought we were
7 entitled to use, Your Honor. Again, as I said before
8 there is absolutely no evidence of any punitive willful
9 or wanton conduct that would require something punitive.

10 And Your Honor getting to the attorney's fees
11 position as Your Honor knows under the case of Bloomberg
12 v Neilco [phonetic] which I've handed up to you there is
13 specific requirements for attorney's fees factors that
14 the court says have to be considered and that attorney's
15 fees are not recoverable unless authorized by contract or
16 statute. We don't have a contract or a statute here that
17 authorizes attorney's fees.

18 THE COURT: Well under equitable indemnification I
19 haven't read the cases ---

20 MR. O'KELLEY: --- yes sir, but ---

21 THE COURT: --- I'm assuming those cases say they
22 are entitled to attorney's fees which would be not
23 statutory but equitable.

24 MR. O'KELLEY: Equitable arising out of an
25 indemnification provision.

1 THE COURT: I understand ---

2 MR. O'KELLEY: --- but there ---

3 THE COURT: --- that's what they are alleging but
4 that's another way you can get attorney's fees.

5 MR. O'KELLEY: Except for the case of Rhett v Gray,
6 Your Honor. And in Rhett v Gray two folks in Beaufort
7 sued each other over an easement; the Rhetts and the
8 Grays. And you'll notice in that case they referenced
9 the O'Kelley property. At one point my mother actually
10 owned property right there and knew all about this
11 easement so I'm very familiar with the facts of the case.

12 The Rhett family attempted to get attorney's fees
13 under the exact same theory as the plaintiffs here; under
14 an equitable indemnification theory. The Court of
15 Appeals recognized that the Town of Winnsboro case which
16 the plaintiffs have cited. They recognized the Addy v
17 Bolton case which the plaintiffs have cited. They
18 recognized equitable indemnification is a way to get
19 around that requirement that there be a contract or a
20 statute.

21 And what the Court of Appeals ruled in that case is
22 that no, this is an easement, clearly distinguishable;
23 this is a matter of interpretation of an easement. This
24 is not a situation where someone had some tortious
25 conduct that exposed you to some form of negligence,

1 liability, or tort liability. This case is almost
2 exactly the same as Rhett v Gray. It involves the
3 interpretation of the easement. We frankly think that
4 the three elements of equitable indemnification aren't
5 met because they ended up suing the person with whom they
6 were in contract with so they can't get it against Mr.
7 Sisson because they were in contract with him via the
8 easement.

9 We also think they don't get it under Rhett v Gray
10 because what they asked this court to do was interpret an
11 easement. Rhett v Gray came out after this case was
12 decided but while it was on appeal. I think it is from
13 2013 as well, Your Honor or maybe 2014. I can tell you
14 exactly when it came out.

15 [Whereupon, Mr. O'Kelley reviews documents]

16 MR. O'KELLEY: It was 2012, Your Honor, I'm sorry;
17 before this case was decided. I think we brought up
18 Rhett v Gray to the court during some of the proceedings
19 in the case. But under Rhett v Gray Your Honor and under
20 general theories of equitable indemnification we don't
21 think they are entitled to attorney's fees at all.

22 THE COURT: Okay. Thank you so very much.

23 MR. O'KELLEY: Yes sir, Your Honor.

24 THE COURT: I'll be glad to hear you and anything
25 you want to tell me on rebuttal as to his argument ---

1 MR. O'KELLEY: --- and Your Honor I forgot one
2 brief thing. I haven't reviewed Mr. Sinkler's affidavit.
3 As I said I just got it. I don't know whether this
4 complies with ---

5 THE COURT: --- do what now?

6 MR. O'KELLEY: I haven't been able to review Mr.
7 Sinkler's affidavit.

8 THE COURT: We'll deal with that ---

9 MR. O'KELLEY: --- I just want to reserve any
10 objections ---

11 THE COURT: --- we'll deal with that in a minute.
12 We haven't even gotten to that point yet.

13 MR. O'KELLEY: Yes, sir. Thank you.

14 THE COURT: I'll be glad to hear you.

15 MS. TILLMAN: As Mr. O'Kelley says this case is
16 almost identical to Rhett v Gray. The difference is that
17 Rhett v Gray was a lawsuit between two parties; the
18 Rhetts and the Grays. And it was an easement dispute
19 between two parties; the Rhetts and the Grays.

20 The difference is that this is a dispute between
21 three parties. And the reason that our clients had to
22 sue anyone at all was because of the breach of contract
23 by Mr. Sisson that caused 200 to 300 cars a day to go
24 across an easement on property that belonged to Stow
25 Away. This breach of contract ultimately resulted in

1 MS. TILLMAN: Well ---

2 THE COURT: --- shouldn't that have been litigated
3 three years ago?

4 MS. TILLMAN: The issue is -- and in fact it was
5 because Your Honor ruled that there was a breach of
6 contract. And the equitable indemnification issue is
7 tied to the breach of contract. There doesn't -- I
8 believe the best way to put it is that when Your Honor
9 found that there was a breach of contract and that Sisson
10 and Sweet Grass's conduct was in violation of that
11 contract then that gives rise to our argument for
12 attorney's fees under equitable indemnification. In
13 other words it's not a contract right. It arises when
14 there has been a breach of contract. And Your Honor made
15 a ruling that there had been.

16 MR. O'KELLEY: Your Honor, in response to that?

17 THE COURT: Hold on just a second.

18 MR. O'KELLEY: Yes, sir.

19 MS. TILLMAN: And in addition to that we certainly
20 made a claim for it in our complaint and at the trial the
21 first I want to say it was 29 paragraphs of the complaint
22 were stipulated to by both parties. And there is ample
23 evidence in there of the conduct of the parties that
24 would give rise to our claim for equitable indemnity.

25 THE COURT: Okay. Thank you so very much. Mr.

1 O'Kelley you wanted to say something?

2 MR. O'KELLEY: Yes sir, if I may, Your Honor.

3 There have been no findings at the trial of any equitable
4 indemnification language in the contract. I've got a
5 copy of the transcript from the trial if Your Honor would
6 like to review it.

7 THE COURT: No, I don't want to review it.

8 MR. O'KELLEY: And I've also got the court's order
9 which says ---

10 THE COURT: --- I might review the order but I'm
11 not going to review the transcript.

12 MR. O'KELLEY: I understand, Your Honor. The order
13 is in the file but I've got a copy if you would like it.

14 THE COURT: You've got an extra copy of it?

15 MR. O'KELLEY: Yes, sir.

16 THE COURT: Okay.

17 [Whereupon, Mr. O'Kelley provides documents to the
18 court]

19 MR. O'KELLEY: There was no finding in that order
20 of breach of contract. In fact what Your Honor found in
21 the contract was that Mr. Sisson had a right to use his
22 easement as it was written. What Your Honor found was
23 that Stow Away you're not allowed to burden it anymore or
24 go across it. You didn't find breach of contract. You
25 didn't find that there was equitable indemnification that

1 was required at the time. And so Your Honor's question I
2 think was there has been no evidence of anything in the
3 easement language that would entitle them to some form of
4 equitable indemnification. But Your Honor this case is
5 exactly like Rhett v Gray. They sued ---

6 THE COURT: --- you don't need to argue that. I
7 understand your argument.

8 MR. O'KELLEY: Thank you, Your Honor.

9 THE COURT: Mr. O'Kelley they have some receipts
10 for this gate and some landscaping. Are you going to
11 require them to put up a witness to use that?

12 MR. O'KELLEY: Your Honor, I would like to look at
13 them. If Your Honor is inclined to kind of review
14 everything. I don't know that we need testimony ---

15 THE COURT: --- my inclination is let's go ahead
16 and mark them but if you want somebody to come up and
17 I.D. them and identify them we can do it. I assume they
18 got somebody here to do that.

19 MR. O'KELLEY: I'm sure that's what Mr. Pooser is
20 here for, Your Honor.

21 THE COURT: If you want to do that.

22 MR. O'KELLEY: I'd rather just look at them for a
23 minute and see what they are. That may shorten things.

24 THE COURT: Okay. While he is looking at those
25 what I'm going to do now if you want to call your client

1 I'll be happy for you to call your client on the issue of
2 damages.

3 [Whereupon, Ms. Tillman and Mr. O'Kelley confer]

4 MR. O'KELLEY: Your Honor, I can't really -- I've
5 looked at the documents. I can't stipulate to any of
6 them or admit to any of them ---

7 THE COURT: --- I'm not asking you to stipulate.
8 I'm just asking you ---

9 MR. O'KELLEY: --- it's fine if Your Honor wants to
10 receive them and take them as their evidence ---

11 THE COURT: --- that's all I'm asking is do you
12 want somebody to get up and authenticate the documents
13 because I'm going to let them into evidence.

14 MR. O'KELLEY: Yes, sir. I don't think we'll need
15 it, Your Honor.

16 THE COURT: I understand you don't but they do.

17 MR. O'KELLEY: No, I mean I think its fine for them
18 to come in without authentication and testimony ---

19 THE COURT: --- that's all I'm asking ---

20 MR. O'KELLEY: --- yes, sir.

21 THE COURT: I'm just asking are you going to make
22 them authenticate them.

23 MR. O'KELLEY: No, sir.

24 THE COURT: I'm not saying I'm going to award them.
25 I just need something to read figures.

1 MR. O'KELLEY: Yes, sir.

2 [Whereupon, plaintiff's exhibit number 1 is marked
3 by the court reporter]

4 THE COURT: Ms. Tillman, let me ask you a question
5 before we -- one question on your argument. And I
6 haven't looked at your cases but I will. My experience
7 on equitable indemnification has always been when the
8 defendant has been sued and then you come in and ask the
9 court to indemnify them. In this case you're the
10 plaintiff; you did the suing. Now your argument is you
11 were obligated to bring in a third party because that was
12 the person that was overburdening the easement.

13 MS. TILLMAN: Right.

14 THE COURT: Why would that -- why do you think it
15 should apply in that situation where all the cases is
16 when the defendant has been sued. And he said well from
17 an equitable standpoint they should indemnify me.

18 MS. TILLMAN: Correct. And it says that when --
19 the theory of equitable indemnification is that when the
20 contract and when the parties contracted it would have
21 been within their contemplation that if one party were to
22 breach the contract and cause the other non-breaching
23 party to have to sue a third person then those damages,
24 the damages of attorney's fees and other costs and
25 expenses of litigation, would have been within the

1 contemplation of the breaching party. And regardless of
2 whether that non-breaching party is sued or has to sue
3 they are defending their rights under the contract. And
4 that's how equitable indemnification works. It's not --
5 there wouldn't be any language in the contract for
6 attorney's fees. It would arise out of equity.

7 THE COURT: Okay. Mr. O'Kelley I'm looking at
8 plaintiff's exhibit number 1 which is itemized list of
9 damages and attached to that are invoices. You said
10 you're not going to have anybody authenticate these
11 documents but do you have any other objection to these
12 documents?

13 MR. O'KELLEY: No sir, Your Honor. The documents
14 are what they are. I don't have any objection to them.
15 As Your Honor said you're not making a ruling on them
16 right now but I have no objection to their coming in.

17 THE COURT: Okay. I'm going to admit plaintiff's
18 exhibit number 1 without objection, okay.

19 [Whereupon, plaintiff's exhibit number 1 is entered
20 into evidence by the court]

21 MR. O'KELLEY: Thank you, Your Honor.

22 THE COURT: Thank you. Now if you want to call
23 whatever witness you want to call on your damages issue
24 I'll be happy to hear you.

25

Stow Away Storage, LLC v George W. Sisson, et al
Damages Hearing/Motion to Quash
November 9, 2016

1 MR. SINKLER: I'll call Mr. Pooser.
2 [Whereupon, Mr. Pooser comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please have a seat.
6 THE COURT REPORTER: Could you tell me your name?
7 THE WITNESS: Ethbert Pooser.
8 THE COURT REPORTER: Edward?
9 THE WITNESS: Ethbert, E-T-H-B-E-R-T
10 THE COURT REPORTER: P-O-O?
11 THE WITNESS: S-E-R.
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1 ETHBERT POOSER,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SINKLER:

6 Q. Mr. Pooser, what is your connection with Stow Away
7 Storage?

8 A. An owner.

9 Q. And your father is other owner?

10 A. Yes.

11 Q. And were you -- did you experience problems that
12 resulted from Mr. Sisson abandoning his promise not to
13 abandon -- his promise to abandon the entrance to the
14 property back when the hardware store was completed?

15 A. Yes, I did.

16 Q. Tell the court what problems it raised for you and
17 your storage problem?

18 MR. O'KELLEY: Your Honor, I'm going to object to
19 the prior testimony that has already been given in this
20 court.

21 THE COURT: Overruled. Go ahead.

22 MR. O'KELLEY: Thank you, Your Honor.

23 A. You mean the amount of traffic? He didn't abandon
24 the -- when he didn't abandon the driveway when we agreed
25 to the easement and he didn't abandon his driveway it

1 presented a situation where my customers could be leaving
2 the parking and our driveway would cross paths. We were
3 both very fortunate that nobody ever got hurt out there.
4 We did have a couple of accidents out there but nobody
5 ever got hurt.

6 But what the problem was is they were crossing paths
7 at an interchange. When we built the facility and agreed
8 to abandon his driveway and use the easement we spent
9 75,000 dollars on two deceleration lanes for his trucks
10 primarily.

11 And what those lanes allowed him to do was
12 decelerate the truck, get out of the pattern of traffic,
13 cross over and go through the easement if you were
14 northbound. If you were southbound it would allow you to
15 get in the deceleration lane, come into our driveway and
16 go through the easement. But they didn't do it.

17 And over time we addressed the issue of a radius.
18 So we were trying to help him use the easement we
19 increased the size of the radius. But that was more and
20 turned into them coming back and paving the whole access
21 road and a road straight into the hardware.

22 So that opened the door up for more cars. And
23 finally when that happened and the pavement got there
24 there really wasn't an identification of who did all that
25 paving. But the DOT came out and finally put a cross-bar

1 up to block that cut-off road then forced the paved road
2 traffic through the easement.

3 Q. [Mr. Sinkler] Is that the road that ---

4 A. --- yes ---

5 Q. --- Mr. Sisson contracted with you to abandon?

6 A. Yes. And in doing all that we set up barricades, we
7 set up bollards; we had cars turning around. We never
8 took away the access from Sisson. When we put up a pipe
9 bollard type gate we left enough room for his trucks to
10 come to that gate. They had keys to that gate. That
11 gate was never left where they couldn't have access to
12 it. We had a key and they had a key.

13 We had a key box on our storage office in case that
14 the utility company ever needed to do that. They don't
15 ever -- the gate was electric. We had a key box for
16 that. But he was never denied access as they have said.
17 It was just not attractive -- we had customers who
18 couldn't get in because of traffic leaving the hardware
19 store you know in or out.

20 And we were just very fortunate we never had a
21 serious accident there. And I know that is why the DOT
22 finally reacted and took away that road from there. They
23 didn't just throw up a barricade; they actually cut the
24 ditch so they couldn't cut through there anymore.

25 Q. After that did the license given by Mr. Sisson cause

1 you problems?
2 A. Yes.
3 Q. What happened then?
4 A. We ended up here where we are today. I mean it
5 never stopped; the use, the access it never stopped.
6 Q. And I think it is probably in the pleadings but do
7 you remember when the Sweet Grass began their operation?
8 A. No, I would have to look back and see exactly but I
9 know that we were...
10 Q. I'm sure it's in the document.
11 A. Yes, it was 07 and 08 was when a lot of stuff
12 started happening. I've have to go back and look.
13 Q. Did they stop using it at any time before you sold
14 your property?
15 A. No.
16 Q. When did you sell your property?
17 A. I sold the property two years ago.
18 Q. Do you remember the date?
19 A. In December of '14.
20 THE COURT: You say December of '14?
21 A. I think it was '14. I need to look at a calendar to
22 see where we are.
23 Q. [Mr. Sinkler] It's in some documents you have. It
24 might be in the pleadings.
25 THE COURT: You got a calendar you could give or

1 your phone ---

2 A. --- is it all right for me to pull out my phone ---

3 THE COURT: --- pull out your phone and pull up a
4 calendar.

5 MR. O'KELLEY: Your Honor, if it helps I've got a
6 copy of the deed.

7 THE COURT: Okay. He's got a copy of the deed.
8 The deed will be sufficient.

9 [Whereupon, Mr. O'Kelley provides documents to the
10 court]

11 MR. O'KELLEY: And Your Honor I guess this would be
12 defendant's 1.

13 THE COURT: You want to mark it?

14 MR. O'KELLEY: Yes, sir.

15 THE COURT: As defendant's exhibit 1. Any
16 objection?

17 MR. SINKLER: None.

18 THE COURT: All right. Defendant's exhibit 1 will
19 be the deed. That will give the date.

20 [Whereupon, defendant's exhibit number 1 is marked
21 by the court reporter]

22 [Whereupon, defendant's exhibit number 1 is entered
23 into evidence by the court]

24 THE COURT: I think at that time his damage would
25 terminate.

1 MR. SINKLER: Sir?

2 THE COURT: His damage would terminate at that
3 time.

4 MR. SINKLER: Yes.

5 THE COURT: What's the date on the deed, Mr.
6 O'Kelley?

7 MR. O'KELLEY: Your Honor, the deed is dated
8 December 20th of 2014 -- 23rd; excuse me, of 2014 and it
9 was recorded January 24th. It says 2014 but it's
10 obviously 2015, Your Honor.

11 THE COURT: Okay. So the deed was signed on
12 December 23rd, '14?

13 MR. O'KELLEY: That's correct.

14 THE COURT: Thank you, sir.

15 Q. [Mr. Sinkler] Mr. Pooser, would you answer any
16 questions Mr. O'Kelley has at this time.

17 THE COURT: Mr. O'Kelley any questions?

18 MR. O'KELLEY: Just a couple, Your Honor.

19 THE COURT: Do you need this plaintiff's number 1?
20 I don't know if you got a copy but I'll be glad to share
21 it with you.

22 MR. O'KELLEY: Thank you, Your Honor. I did get a
23 copy.

24

25

1 CROSS-EXAMINATION

2 BY MR. O'KELLEY:

3 Q. Mr. Pooser, do you have exhibit number 1 in front of
4 you?

5 A. No.

6 Q. I'm sorry; I'll hand it to you. That's your exhibit
7 number 1.

8 [Whereupon, the witness is shown document]

9 Q. You've seen those documents before Mr. Pooser,
10 correct?

11 A. Yes. We closed in January 2014.

12 Q. I'm sorry, you closed in January of '14 but it's
13 dated December of 2014 -- 2013; I'm sorry. Is that
14 right?

15 A. No, sir. I mean we actually closed in '14.

16 Q. Correct. But the recording information on the back
17 also shows January of 2014, which would be hard to do if
18 you closed it...

19 A. If we closed it on January 23rd.

20 Q. December 23rd of '14. Do you see what I'm saying?

21 MR. O'KELLEY: I think there is a Scribner's error
22 somewhere in the recording information, Your Honor.

23 THE COURT: It doesn't matter. He signed the deed
24 on December 23rd. That's when the property transferred.
25 They didn't have to ever record it if they didn't want

1 to. But he lost the property at that time, okay.

2 A. We actually -- I remember we didn't ---

3 THE COURT: --- I mean if they didn't record it for
4 six months for my purpose it's immaterial ---

5 A. --- we didn't close on the property -- we didn't

6 sell the property though until January of 2014; not

7 December of '14. It was done in January of '14.

8 Q. [Mr. O'Kelley] Mr. Pooser, if you will turn with me
9 to exhibit number 1. It states that you have a rope and
10 post in the parking lot and installed concrete curb. Did
11 my clients cause you to remove rope and posts in the
12 parking lot and install a concrete curb?

13 A. Yes. All this was done was for the sole purpose of
14 keeping people out of the grass on the easement that was
15 provided and to direct the people through there.

16 Q. So the document that is here these are the total of
17 the damages you're claiming my clients caused exclusive
18 of the attorney's fees from September of 2007 to
19 September of 2009 is that correct?

20 A. Yes.

21 MR. O'KELLEY: Your Honor, that's all I have for
22 now. I would again renew my argument that these are ---

23 THE COURT: --- anything on redirect?

24 MR. SINKLER: No, sir.

25 THE COURT: You may step down; I'm sorry. Thank

1 you very much.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Do you have any other witnesses you
5 would like to call?

6 MS. TILLMAN: No, sir.

7 MR. SINKLER: No, Your Honor.

8 THE COURT: Okay.

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1 THE COURT: I understand there was an affidavit
2 that was presented to the court that there was no money
3 transferred between Sweet Water [sic] and Sisson as far
4 as obtaining the license is that correct?

5 MR. O'KELLEY: That's correct, Your Honor, back in
6 June when we were before you ---

7 THE COURT: --- do you have a copy of that and I'll
8 mark it as a court's exhibit? I think it was presented
9 through a memo or something.

10 MR. O'KELLEY: Your Honor, we filed it with the
11 court on -- let me find it, Your Honor.

12 [Whereupon, Mr. O'Kelley reviews documents]

13 THE COURT: Did you file it with the Clerk
14 downstairs?

15 MR. O'KELLEY: Yes, sir. We sent it July 14th in
16 response to Your Honor's ruling that says there were no
17 monies exchanged for the access easement abandonment.

18 [Whereupon, Mr. O'Kelley provides documents to the
19 court]

20 [Whereupon, the court reviews documents]

21 THE COURT: I'm going to mark this as defendant's
22 number 2?

23 MR. O'KELLEY: Yes, Your Honor.

24 THE COURT: I'm going to mark this as defendant's
25 number 2. There was no money exchanged between Sisson

1 and Sweet Grass for the license.

2 MR. SINKLER: No, Your Honor they didn't say for
3 the license. They said for the easement granted by Stow
4 Away to Sisson seven years before that.

5 THE COURT: I understand.

6 MR. SINKLER: So they did not do what you told them
7 to do and what they were supposed to find out what Sweet
8 Grass paid to Sisson; not ---

9 THE COURT: --- whose deposition ---

10 MR. SINKLER: --- they refused to do that so that's
11 what caused me all the trouble.

12 THE COURT: I understand. There is no monies
13 exchanged for the use of access easement abandonment of
14 an encroachment permit between Stow Away and George
15 Sisson, okay. That's what it says.

16 MR. SINKLER: That's not what we talked about at
17 the hearing and that's why I got a complete copy of the
18 hearing ---

19 THE COURT: --- that's fine. I'm still going to
20 mark it as defendant's exhibit number 2, okay.

21 [Whereupon, defendant's exhibit number 2 is marked
22 by the court reporter]

23 [Whereupon, defendant's exhibit number 2 is entered
24 into evidence by the court]

25 THE COURT: Now, you want to take the deposition of

1 who?

2 MR. SINKLER: Of Mr. Sisson and then Mr. Fletcher.

3 THE COURT: You want to take Mr. Sisson's
4 deposition?

5 MR. SINKLER: And Mr. Fletcher.

6 THE COURT: And he's with Sweet Grass?

7 MR. SINKLER: He's with Sweet Grass.

8 THE COURT: Why do you want to take them?

9 MR. SINKLER: I want to find out why they said for
10 other valuable consideration. And they won't tell me
11 what other valuable consideration was. And that's
12 important to damages.

13 THE COURT: How would that affect your damages?

14 MR. SINKLER: If Mr. Sisson was being paid money
15 all that money would belong to my client because he had
16 no right to have that easement.

17 THE COURT: So you don't know if there has been any
18 monies from Sweet Water [sic] to Sisson?

19 MR. SINKLER: I don't know if any monies have
20 passed -- if no money has passed then I want to hire an
21 expert to determine the value of the four years or
22 whatever it was that they operated with the easement and
23 what the value of that would be in terms of money for the
24 four years.

25 THE COURT: All right. You served a subpoena on

1 both parties or notice of deposition?

2 MR. SINKLER: I've done it twice.

3 THE COURT: Pardon?

4 MR. SINKLER: I've done it twice.

5 THE COURT: On both parties for notice of
6 deposition?

7 MR. SINKLER: Yes.

8 THE COURT: And that's his motion to quash?

9 MR. SINKLER: Yes.

10 THE COURT: Okay. I'll be glad to hear you on
11 your motion to quash. As I said at the beginning of the
12 trial if I decide to let him do -- I'll leave the record
13 open for these depositions. You heard what he said. His
14 position is that if there was money being transferred
15 from Sweet Water [sic] to your client it should have gone
16 to his client because he owns the property.

17 MR. O'KELLEY: I've heard that, Your Honor, but as
18 we pointed out we were here before you in June ---

19 THE COURT: --- I understand. But he's right when
20 he says it doesn't say what he's saying. Was there any
21 money transferred from Sweet Water [sic] to Sisson,
22 period?

23 MR. O'KELLEY: There was no money, none, zero, zip
24 between Sweet Grass and Sisson, Your Honor.

25 THE COURT: No money at all?

1 MR. O'KELLEY: No money; none. And Mr. Sinkler
2 says well I want to know what for other good and valuable
3 consideration is that language is almost always put into
4 every deed, Your Honor when it's a nominal fee. There
5 was no money, no stock ---

6 THE COURT: --- what does it say one dollar and
7 other valuable ---

8 MR. O'KELLEY: --- five dollars, love and
9 consideration; that type of thing. Five dollars and
10 other good and valuable consideration.

11 THE COURT: Now could you provide to the court an
12 affidavit to the effect from both parties that there was
13 no money ---

14 MR. O'KELLEY: --- I'll be happy to ---

15 THE COURT: --- under oath and I want you to swear
16 them.

17 MR. O'KELLEY: Yes, sir.

18 THE COURT: Under oath that there is no money that
19 transferred between the parties concerning this easement
20 at any time.

21 MR. O'KELLEY: I'll be happy to get those
22 affidavits, Your Honor.

23 THE COURT: Okay.

24 MR. O'KELLEY: Now how long -- when would Your
25 Honor like them?

1 THE COURT: I don't know. Let me hear from the
2 other side?

3 MR. SINKLER: We want to know what the other
4 valuable consideration was. You don't put that in
5 something if you don't mean it.

6 THE COURT: Well, I don't know but he'll get me the
7 affidavits from these parties saying there was no money
8 transferred. Now do you want to still depose them or do
9 you want to go with your expert?

10 MR. SINKLER: I want to go with the expert.

11 THE COURT: Do you want to depose either one of the
12 parties? I'm not trying to preclude you from doing it.
13 I'm trying to cut down your time involved in this ---

14 MR. SINKLER: --- but suppose they got stock in the
15 hardware store I'd want to know that.

16 THE COURT: Well, add that to your affidavit
17 please, sir.

18 MR. O'KELLEY: I'll be happy to, Your Honor.

19 THE COURT: No money, no stock, nothing of any
20 value other than...

21 MR. O'KELLEY: --- other than driving from A to B.

22 THE COURT: Right. I don't know either and I know
23 you don't and I'm trying to accommodate and I'm trying to
24 cut down on your time that you're going to further
25 involved in this case because we need to get it over

1 with.

2 MR. O'KELLEY: Your Honor, there is an ---

3 MR. SINKLER: --- I think we need to because ---

4 MR. O'KELLEY: --- Your Honor, there has been no
5 experts named in the case so if there is an expert that
6 is going to be named we need to do discovery on that as
7 well.

8 THE COURT: That's fine. If y'all want to do that,
9 that's fine. If y'all want to keep dragging it out have
10 at it.

11 MR. SINKLER: I'm in my 56th year and I don't know
12 how many more I'll be.

13 THE COURT: I understand. Do you want to depose
14 either party assuming we get these affidavits? If we
15 don't get these affidavits or they're not correct you can
16 depose them and I'll dismiss this quash, okay.

17 MR. SINKLER: No, sir. If they tell me they -- if
18 they swear under oath that that is the case then I'll
19 move to the ---

20 THE COURT: --- if you're not satisfied with the
21 affidavits and they don't say what I've asked them to say
22 I'll let you depose them, okay. Now you're going to get
23 an expert to testify as to what the value would be?

24 MR. SINKLER: Would be to the hardware store and
25 the post office to...

1 THE COURT: Do you have someone in mind?

2 MR. SINKLER: We tried to do it before this and we
3 couldn't find anybody that had time to do it ---

4 THE COURT: --- I understand. How much time do you
5 need to notify Mr. O'Kelley who that expert is so he may
6 depose him?

7 MS. TILLMAN: I believe we could probably find
8 someone who would be willing to do it in the next week.
9 But then it would take them ---

10 THE COURT: --- I'm not trying to hurry you. I'll
11 give you 10 days, 20 days; whatever you need.

12 MS. TILLMAN: We could name someone in 10 days and
13 then I believe it would take an additional amount of time
14 to ---

15 THE COURT: --- name someone within 10 days. Now
16 Mr. O'Kelley why can't you -- you want to do a discovery
17 deposition and he's going to do a de bene esse
18 deposition. Why can't you do them all at one time?

19 MR. O'KELLEY: We absolutely could do them all at
20 one time, Your Honor. I would just need to get the
21 report or any C.V of the expert and figure out -- and
22 then if we need to -- we might need to name an expert in
23 reply, Your Honor. I don't know; I don't know what this
24 expert is going to say. This is the first I've heard of
25 any expert was about 10 minutes ago in this courtroom.

1 THE COURT: Okay. Reveal his name and if y'all
2 can work out and let him do a little discovery deposition
3 -- can you do a discovery deposition the same day and
4 then do the de bene esse?

5 MR. O'KELLEY: I don't see why we couldn't ---

6 THE COURT: --- they don't call it the de bene esse
7 anymore.

8 MR. O'KELLEY: They don't, Your Honor.

9 THE COURT: Me and Mr. Sinkler knows what the de
10 bene esse is; nobody else may not.

11 MR. O'KELLEY: I think they could probably be done
12 at the same time, Your Honor. I don't see why they
13 wouldn't be able to.

14 THE COURT: Okay. And if you think you got to
15 reply to that I'll be happy to accommodate you. I'll
16 leave the record open for that.

17 MR. O'KELLEY: Yes, sir. It all depends on what
18 they produce so I don't know, Your Honor. And the
19 affidavits Your Honor I know Mr. Sisson travels for work
20 a lot so I think I'd need at least 10 days to get those
21 affidavits.

22 THE COURT: He does what?

23 MR. O'KELLEY: Travels for work all the time
24 because he goes around the country and helps people with
25 scales; Sisson Scales the name of his business. And he

1 helps other trucking companies calibrate scales all
2 around the country so that they don't mess up. But I
3 need some time for that I think.

4 THE COURT: Okay. That's fine. If you need more
5 than 10 days, that's fine. I'm not trying to hold that
6 to you. Just get it revealed as soon as you can and then
7 y'all schedule the deposition. After he does that if he
8 wants to get an expert I'll let him do it. And he'll
9 have to reveal it to y'all and if y'all want to go depose
10 him have at it, okay. Now do y'all think y'all can bring
11 all this to a conclusion within 90 days or 60 days?

12 MR. O'KELLEY: Lord, I hope so, Your Honor.

13 MS. TILLMAN: Sixty days might be a stretch based
14 on my conversation with possible experts but 90 days
15 absolutely.

16 THE COURT: So I'm just going to tell you I'm going
17 to issue a short order and all this deposing or whatever
18 it may be is going to be over in 30 days -- in 90 days.
19 If you haven't done it in 90 days I'm going to go ahead
20 and rule on what I have.

21 MR. O'KELLEY: Thank you, Your Honor.

22 THE COURT: Okay. Once you do your deposition of
23 your expert go ahead and send it to me. I can be looking
24 at it in the meantime, okay.

25 MS. TILLMAN: All right.

1 THE COURT: And if he does one I'll get it. But I
2 want to get this over in 90 days so I can go ahead and
3 make a decision and put this case to rest. If y'all want
4 to go back to Columbia have at it, okay.

5 MS. TILLMAN: All right. Thank you, Your Honor.

6 MR. O'KELLEY: Thank you, Your Honor.

7 THE COURT: Thank y'all so very much. I appreciate
8 y'all being here.

9 MS. TILLMAN: Thank you very much.

10 THE COURT: Mr. Sinkler, thank you so very much for
11 being here. I enjoyed seeing you again.

12 MR. SINKLER: Thank you, sir.

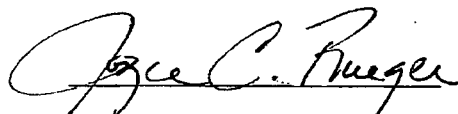
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 9th day of November, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 1, 2017



Joyce C. Rueger, CVR-M

Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 28 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

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

RECEIVED

FEB 28 2018

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

SC Court of Appeals

Stow Away Storage, LLC and
MSC MTP, LLC,

Appellants,

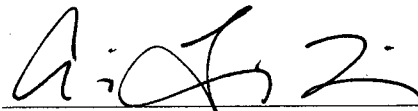
v.

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

Respondents.

**CERTIFICATION OF COUNSEL
PURSUANT TO RULE 210(g), SCACR**

I hereby certify that the *Record on Appeal* contains all material proposed to be included by the parties and not any other material.



Ainsley Fisher Tillman
Attorney for the Appellants