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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2014-001588

Carl Eugene Berry, ... Respondent,

v.

Jess T. Reichardt and Thomas H. Reichardt, ... Appellants.

RECORD ON APPEAL

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Phone: 803-648-9994
Attorney for Appellants

Other Counsel of Record:

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Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

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IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-41-91

Carl Eugene Berry, Jr.,

CLERK OF COURT
SALUDA CO. S.C.

Plaintiff,

CONSENT ORDER

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

INTRODUCTION

This action is pending in Saluda County. Plaintiff filed an Application and an Amended "Plaintiff's Application for a Rule to Vacate or Show Cause", on June 17, 2013, supported by an Affidavit and an Amended Affidavit filed on June 14, 2013. Thereafter, the Court scheduled a status conference in Chambers on July 2, 2013, with counsel for both Plaintiff and Defendants present. The Court then found that a Rule to Vacate or Show Cause hearing should be held in the Saluda County Courthouse at 9:00 a.m., on July 26, 2013. Counsel for both parties now indicate to the Court that, in lieu of the scheduled hearing, the parties have consented to an Order from this Court, which follows.

FINDINGS

The Court finds that the parties agree as follows:

1. That Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree to remove the existing fence that the Defendants have placed on the Property claimed by the Plaintiff in his Amended Complaint, with such removal being completed within ten (10) days of the date of this Order.
2. That Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree that the removal of the fence shall be noninvasive to the Property and the trees thereon.
3. That Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree that the removal of the fence shall be noninvasive to Crooked Creek and the course thereof.
4. That Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree after the removal of the fence is completed, not to access, travel to, trespass on, and enter upon the Property claimed by the Plaintiff in his Amended Complaint, or property owned by the Plaintiff.

5. That Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree that the removal process contemplated herein, does not include permission for the removal of any timber or wood products, by Defendants.

6. That the Plaintiff herein agrees that a Surveyor hired by Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, may have reasonable access to the Property claimed by the Plaintiff in his Amended Complaint, for the purposes of conducting a new survey thereof. Counsel for Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree to give the counsel for the Plaintiff twenty-four (24) hours advance notice of the Surveyor's visit. Jess T. Reichardt and Thomas H. Reichardt, the Defendants herein, agree that the survey shall be conducted in a manner that is noninvasive to the Property and trees.

7. That the parties hereto, intend that a material violation of this Consent Order shall be punishable by contempt.

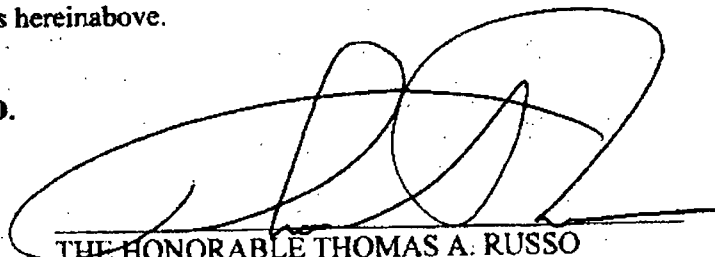
8. That the parties hereto, intend that the duties and obligations herein be self-executing without further involvement of the Court.

CONCLUSIONS OF LAW

Based on the Findings hereinabove, and the consent of the parties, the Court concludes that this Consent Order should be executed and issued, in the manner the parties have consented to above.

IT IS THEREFORE ORDERED, that the parties shall act in compliance with the duties and obligations, set forth in the Findings hereinabove.

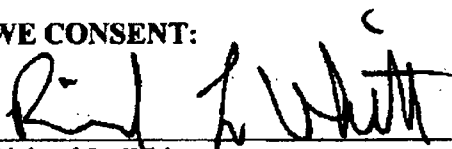
AND IT IS SO ORDERED.



THE HONORABLE THOMAS A. RUSSO
PRESIDING JUDGE, ELEVENTH JUDICIAL CIRCUIT

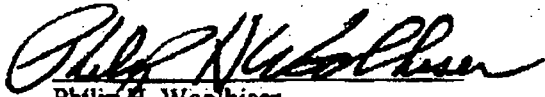
Lexington, South Carolina
July 29, 2013

WE CONSENT:

A handwritten signature in black ink, appearing to read "Richard L. Whitt", written over a horizontal line.

Richard L. Whitt
Jefferson D. Griffith
Counsel for Plaintiff,
After consultation with
and intending to bind the Plaintiff

WE CONSENT:

A handwritten signature in dark ink, appearing to read "Philip H. Woolhiser", written over a horizontal line.

Philip H. Woolhiser
Counsel for Defendants,
After consultation with
and intending to bind the Defendants

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

) IN THE CIRCUIT COURT FOR THE
) ELEVENTH JUDICIAL CIRCUIT
)

) Civil Action No.: 2013-CP-41-91
)

Carl Eugene Berry, Jr.,

) Plaintiff,
)

v.)

) **NOTICE OF ENTRY OF DEFAULT**
) (Rule 55(a) SCRCP)
)

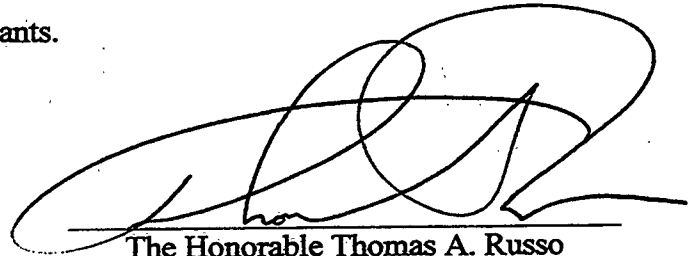
Jess T. Reichardt and Thomas H. Reichardt,

) Defendants.
)

It appears from the Affidavit of Counsel and the Pleadings in this matter, that the Plaintiff's Amended Complaint was properly served on Defendants' counsel and that no responsive pleading was filed by the Defendants. Plaintiff herein is therefore entitled, pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure, to an Entry of Default on Plaintiff's Amended Complaint against the Defendants.

THEREFORE, IT IS ORDERED, that the Plaintiff receive an Entry of Default as to Plaintiff's Amended Complaint against the Defendants.

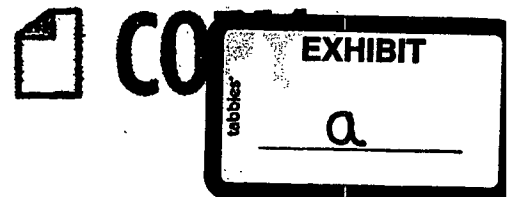
AND IT IS SO ORDERED.



The Honorable Thomas A. Russo

Saluda, South Carolina
August 28, 2013

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2013 SEP -6 PM 2:21
CLERK OF COURT
SALUDA CO. S.C.



STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-41-91

Carl Eugene Berry, Jr.,

Plaintiff,

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

**ORDER
DENYING DEFENDANTS'
MOTION TO SET ASIDE DEFAULT
(Setting Damages Hearing)**

INTRODUCTION

The above-captioned matter came before this Court upon the Defendants' Motion to Set Aside Default, filed pursuant to, Rule 55(c)(1) (*sic*) of the South Carolina Rules of Civil Procedure, ("SCRCPP"). The Motion was in response to the "Order for Judgment by Default", executed by the Honorable Thomas A. Russo, on September 26, 2013, and later filed with this Court on October 4, 2013. A Hearing was held before this Court on November 12, 2013, at 10:00 a.m. Attorney Richard L. Whitt, Esquire, and Jefferson D. Griffith, III, Esquire, appeared on behalf of Plaintiff, Carl Eugene Berry, Jr., (hereinafter as, "Mr. Berry"). Attorney Philip H. Woolhiser, Esquire appeared on behalf of the Defendants, Jess T. Reichardt and Thomas H. Reichardt, (hereinafter together as, "Reichardts"). Defendants filed Affidavits with the Court on the morning of this Hearing. In its decision, the Court took into consideration, the Affidavits and documents filed by the parties, the applicable Rule, the applicable case law presented by the Attorneys, the facts of this case and the argument of all counsel. For the reasons explained herein, the Court denies Defendants' Motion to Set Aside Default, as follows.

DISCUSSION
Motion to Set Aside Default

This Court denies Defendants' Motion to Set Aside Default. The threshold question for this Court is Defendants' lack of compliance with Rule 60(b), SCRCPP, because an "Order for Judgment by Default" was entered. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCPP" Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.d 94, (S.C. Ct. of App. 2011).

"A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief." Auto-Owners Ins. Co. v. Rhondes, 385 S.C. 83, 682 SE 2d 857 (Ct. of App. 2009); Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.d 94, (S.C. Ct. of App. 2011). Defendants did not meet their burden of presenting evidence to this Court entitling Defendants to the requested relief.

#1
WMB

"A court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. In determining whether a default judgment should be set aside under Rule 60(b)(1), "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *Tobias v. Rice*, 379 S.C. 357, 665 S.E.2d 216 (S.C. Ct. of App. 2008). Defendants failed to answer the Amended Complaint until some fifty-six days after the due date of the same. The Defendants failed to provide an adequate reason for their failure to act promptly, the Defendants failed to address the prejudice to the Plaintiff and the Defendants failed to set forth the existence of a meritorious defense, to Plaintiff's claims.

Plaintiff's counsel argued that Defendants did not provide a meritorious defense to the Court, because they do not have a meritorious defense to Plaintiff's claims. Specifically, Plaintiff argued that the principal question in this litigation was Defendants erroneous belief that Defendants "owned" acreage presently owned by the Plaintiff. In oral argument before this Court, Defendants' counsel admitted that Defendants owned around two acres, and the Defendants mistakenly entered upon Plaintiff's land believing that Defendants owned five acres of land. Plaintiff's counsel also argued that admissions were made by the Defendants, Defendants' counsel and Defendants' Surveyor, that were inconsistent with Defendants' claimed defense, to Plaintiff's claims.

FINDINGS OF FACT

Having carefully considered the Affidavits of Defendants, Rule 60(b), SCRCP, all evidence, exhibits, documents, case law and arguments presented at the Hearing of this case and taking into account the credibility and accuracy of the evidence, I make the following Findings of Fact:

1. This Court has carefully reviewed this matter, including the argument of counsel and the Court finds in its discretion that Defendants have failed to provide an adequate reason for their failure to act promptly, the Defendants failed to address the prejudice to the Plaintiff and the Defendants failed to set forth the existence of a meritorious defense to Plaintiff's claims.
2. Further, this Court having carefully reviewed this matter and inquired into Defendants' claims, finds that the September 26, 2013, "Order for Judgment by Default" of the Honorable Thomas A. Russo should be upheld.
3. As required by Judge Russo's Order, a hearing should be held to determine the damages against the Defendants.

#2
2/15

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

Defendants have failed to meet their burden under Rule 60(b), SCRCP, and applicable case law and Defendants are not entitled to set aside the default from Judge Russo's "Order for Judgment by Default", and Judge Russo's "Order for Judgment by Default" executed September 26, 2013, should be and hereby is, upheld.

NOW THEREFORE IT IS ORDERED, that the relief sought in Defendants' Motion to Set Aside Default is hereby denied. **The Clerk shall set this matter for a damages hearing** on an available date for such a hearing.

AND IT IS SO ORDERED.

, South Carolina
November 12, 2013



The Honorable William H. Seals, Jr.,
Circuit Court Judge
Eleventh Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

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2014 JUL 11

AM 10:58

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Carl Eugene Berry

Plaintiff,

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

Case No: 2013-CP-41-0091

**ORDER DENYING MOTION FOR
JUDGMENT ALTERATION**

This matter comes before the Court on Defendants' Motion to Reconsider this Court's June 18, 2014, order, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. After reviewing the ruling, this Court remains satisfied with its order and finds no basis to reconsider or amend. Therefore, Defendants' motion is DENIED.

IT IS SO ORDERED.



Letitia H. Verdin
Circuit Court Judge

July 8, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-41-91

Carl Eugene Berry, Jr.,

Plaintiff,

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

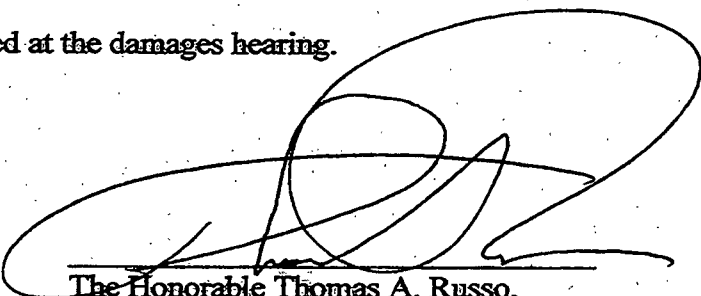
**ORDER
FOR
JUDGMENT BY DEFAULT**

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CLERK OF COURT
SALUDA COUNTY, S.C.

It having been made to appear to me that the Summons and Complaint and then the Complaint (First Amended) in the above-entitled action, were served on Defendants Jess T. Reichardt and Thomas H. Reichardt, within the cause of action, on June 26, 2013, and that no Answer was filed, until September 9, 2013, from the Defendants, to the Complaint (First Amended). This Court issued its Notice of Entry of Default, on August 28, 2013. Defendants have sought no relief from this Court, from that Notice of Entry of Default, dated August 28, 2013.

IT IS ORDERED, upon the Application of Richard L. Whitt and Jefferson D. Griffith, III, attorneys for Plaintiff, therefore, that the Plaintiff herein have judgment against the Defendants, in amounts to be determined at the damages hearing.

AND IT IS SO ORDERED.



The Honorable Thomas A. Russo,
CHIEF ADMINISTRATIVE JUDGE
ELEVENTH JUDICIAL CIRCUIT

Lexington South Carolina

September 26, 2013

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FILED
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)
2014 JUN 19 PM 12:03)

Carl Eugene Berry, CLERK OF COURT)
SALUDA CO. S.C.)
Plaintiff,)

v.)

Jess T. Reichardt and Thomas H. Reichardt,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2013-CP-41-0091

ORDER FOR JUDGMENT

This matter comes before the Court upon Plaintiff's motion for a damages hearing. The Defendants were found to be in default by order of the Court issued on September 26, 2013. The Defendants sought to be relieved from default pursuant to Rule 60(b), SCRPC, which the Court denied on November 17, 2013, citing the lack of an adequate reason for the failure to answer within 30 days and the lack of any meritorious defenses. The damages hearing was held on June 16, 2014. Present for the hearing were the Plaintiff and his counsel, Richard L. Whitt, as well as both Defendants and their counsel, Phil Woolhiser. For reasons set forth herein, this Court orders judgment be entered against the Defendants Jess T. Reichardt and Thomas H. Reichardt, jointly and severally, in the amount of Twenty-Five Thousand One Hundred Sixty-Three (\$25,163.00) dollars.

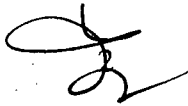
Factual Background

Although the facts alleged in the complaint are deemed admitted by virtue of the default by the Defendants, the court heard testimony from the Plaintiff which confirmed the matters giving rise to this action. This is a dispute over real property. According to the testimony and evidence,



the Plaintiff owns approximately 476 acres in Saluda County, for which he is in possession of plats depicting the property. There is a conservation easement with the Savannah River Land Trust on the Plaintiff's land, as well as many wildlife plots and areas designated for hunting. Defendant Jess T. Reichardt owns approximately 1.8 acres abutting Plaintiff's property, which this Defendant purchased without first obtaining a title search or having the property surveyed. The Plaintiff testified that both Defendants intentionally trespassed onto his land on several occasions, apparently believing Defendant Jess T. Reichardt owned close to 10 acres instead of the 1.8 acres he actually purchased.

After the first trespass, the parties met to discuss the property lines, at which time the Plaintiff showed the Defendants the plats depicting the boundary lines and the acreage each party actually owns. The Plaintiff testified, and the Defendants admit by virtue of default, that at this meeting, Defendant Jess T. Reichardt admitted to the Plaintiff that he did not have a plat for the property he claimed to own. After the meeting, which served to put the Defendants on actual notice of the boundary lines, the Defendants trespassed onto the Plaintiff's property and cut timber, in violation of South Carolina Code subsection §16-11-580(A)(1) (Supp. 2013). The Defendants also erected a fence and removed "No Trespass" signs the Plaintiff had personally installed. Plaintiff's counsel sent written notice of these intentional trespasses to the Defendants, which Defendants' counsel acknowledged, and Plaintiff's counsel notified both the Saluda County Sheriff's Department and the South Carolina Forestry Commission of the incidents. At the damages hearing, the Plaintiff called Kathryn Rauton, a real estate attorney, who testified she obtained a title search on Defendant Jess T. Reichardt's property and that the Defendants had actual, record notice of the boundary line between Jess Reichardt's and the Plaintiff's property at the time of the trespass and interference.



The Plaintiff testified to the effects of the Defendants' actions. He said the timber the Defendants cut was not timber he normally allowed to be cut because it is nut-bearing and instrumental in feeding wildlife on the land, and the cutting was not done in compliance with guidelines from the South Carolina Forestry Commission and the Savannah Land River Trust. The Plaintiff testified that a portion of his land is used as a hunt club, for which he did not charge dues but asked the members to help him with the upkeep of the property. As a result of the Defendants' trespass, the land is no longer suitable for hunting. The Plaintiff also testified that the fence the Defendants erected inhibited his ability to access a section of the land to plant food plots. The Plaintiff testified he has incurred \$4,193.90 in actual damages as a result of the Defendants' actions. Finally, the Plaintiff testified to the physical toll on him from the stress and worry caused by the Defendants' actions.

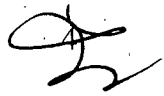
In addition to actual damages, the Plaintiff seeks punitive damages. Punitive damages serve to punish a wrongdoer and "to vindicate a private right" of the injured party. *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Such damages can only be awarded when the plaintiff proves by clear and convincing evidence the defendant's actions were willful, wanton, or in reckless disregard of some right of the plaintiff. *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct.App. 2004). "Violation of a statute does not constitute recklessness, willfulness, and wantonness per se, but is some evidence the defendant acted recklessly, willfully, and wantonly." *Id.* at 315, 594 S.E.2d at 875-76.

While there is not an exact formula for calculating punitive damages, our courts have set out numerous factors a trial court may consider, including (1) the character of the defendant's acts;



(2) the nature and extent of the harm to the plaintiff caused by the defendant; (3) the defendant's degree of culpability; (4) the appropriate punishment; (5) the duration of the defendant's conduct; (6) the defendant's awareness or concealment; (7) similar past conduct; (8) the likelihood an award of punitive damages would deter the defendant or others from similar conduct; (9) whether the award is reasonably related to the harm resulting from the conduct; and (10) the defendant's ability to pay. *Id.*; see also *Welch v. Epstein*, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct.App. 2000) ("The trial court is not required to make findings of fact for each factor to uphold a punitive damage award"). In this case, the evidence and testimony presented show the Defendants continued to trespass onto the Plaintiff's land after they were put on actual and record notice by the Plaintiff of the boundary line between the 1.8 acres of land rightfully owned by Defendant Jess T. Reichardt and the Plaintiff's land. The Defendants were aware they were trespassing onto the Plaintiff's land. The evidence and testimony presented show the Plaintiff was unable to use and enjoy certain parts of his land because of the Defendants' actions, and the Plaintiff suffered economic losses as a result. The Defendants cut timber on the Plaintiff's land in violation of South Carolina Code subsection §16-11-580(A)(1) (Supp. 2013). Finally, there is no evidence that any party other than the Defendants is responsible for the Plaintiff's damages.

This Court finds the Plaintiff proved by clear and convincing evidence that an award of punitive damages is appropriate in this case. Under the facts and circumstances, this Court finds an award of Twenty Thousand Nine-Hundred Sixty-Nine (\$20,969.00) dollars to be just and warranted as punitive damages.



THEREFORE, IT IS SO ORDERED judgment be entered against Defendants Jess T. Reichardt and Thomas H. Reichardt, jointly and severally, in the amount of Twenty-Five Thousand One Hundred Sixty-Three (\$25,163.00) dollars.

IT IS SO ORDERED.



Letitia H. Verdin
Circuit Court Judge

June 18, 2014



STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-41-91

Carl Eugene Berry, Jr.,

Plaintiff,

v.

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

**COMPLAINT:
(First Amended)**

- 1). Theft of Forest Products;
- 2). Conversion;
- 3). Eviction;
- 4). Interference and Obstruction
of Use of Property;
- 5). Trespass, (*Quare Clausum Fregit*);
- 6). Civil Trespass to Land After Notice;
- 7). Entry Upon Land; and
- 8). Civil Conspiracy.

Now Comes the Plaintiff, Carl Eugene Berry, Jr., (hereinafter as, "Mr. Berry"),
complaining of the Defendants Jess T. Reichardt and Thomas H. Reichardt, (hereinafter together
as, "Reichardts"), and amending his Complaint as follows:

PARTIES AND JURISDICTION

1. Plaintiff Mr. Berry is a citizen and resident of Saluda County, South Carolina.
2. Upon information and belief, Defendant Jess T. Reichardt is a citizen and resident
of Saluda County, South Carolina.
3. Upon information and belief, Defendant Thomas H. Reichardt is a citizen and
resident of Saluda County, South Carolina.
4. The property in dispute is located in Saluda County, South Carolina.
5. The records pertaining to this dispute are located in governmental offices in
Saluda County, South Carolina, including the Register of Deeds Office.
6. The acts complained about herein, occurred in Saluda County, South Carolina.
7. Therefore, venue and jurisdiction are proper in the Saluda County Court of
Common Pleas, for the Eleventh Judicial Circuit.

COURSE AND PATTERN OF DEALINGS

8. Paragraphs one through seven above, are re-alleged, as if set forth verbatim.
9. Plaintiff is the owner of 476 acres, more or less, as recorded in the Register of
Deeds' office for Saluda County, South Carolina, (hereinafter as, "Plaintiff's Property"). Plaintiff
is in possession of Plats, depicting his Property.

10. Defendant Jess T. Reichardt owns land which abuts Plaintiff's Property.

11. Defendant Jess T. Reichardt and Defendant Thomas H. Reichardt have, on several occasions, without legal right or justification, (i) cut forest products (timber), belonging to Plaintiff (ii) repeatedly, intentionally trespassed onto Plaintiff's Property (iii) Defendants trespass is continuing and (iv) as a direct result thereof, physically damaged the lands belonging to Plaintiff.

12. Defendants have unlawfully invaded Plaintiff's Property.

13. The Plaintiff alone, and those from whom the Plaintiff has inherited, have been in actual, hostile, exclusive and continuous possession of Plaintiff's Property for over 60 years, without complaint from the Defendants, or any other person or corporation.

14. There is no issue of title, only the unlawful and intentional invasion of the Plaintiff's Property by trespass.

15. As stated, Plaintiff acquired title to Plaintiff's Property sixty years before the Defendants began their acts of trespass. The *locus in quo*, has also been part of the Plaintiff's Property, for over sixty years.

16. Because of the Defendants' unlawful actions, the Plaintiff Mr. Berry is unable to access, use and enjoy his Property, and Defendants have interfered with Plaintiff Mr. Berry's peaceable possession thereof.

17. Defendant Jess T. Reichardt and Defendant Thomas H. Reichardt met and conspired together against the economic interests of Plaintiff Mr. Berry, intending as their primary purpose and object, to harm Plaintiff Mr. Berry. Defendants acted in furtherance of that conspiracy, by construction of a fence on Plaintiff's Property.

18. Plaintiff suffered damages because of Defendants' Civil Conspiracy, and Plaintiff suffered special damages including, loss of use and access to Plaintiff's Property, related to the civil conspiracy.

19. Shortly after the occasion of Defendants first acts of intentional trespass onto Plaintiff's Property, Plaintiff personally met with both Defendants, and reviewed Plaintiff's Plats with both Defendants showing Defendants that they were trespassing onto Plaintiff's Property. At that meeting, Defendant Jess T. Reichardt admitted to the Plaintiff, that he does not have a Plat for his property.

20. After that occasion, Plaintiff purchased a Plat showing the boundaries of Plaintiff's Property, upon which Defendants are intentionally trespassing.

21. Upon information and belief, Defendant Jess T. Reichardt's actual ownership of land abutting Plaintiff's Property, is less than two acres and Defendants are intentionally trespassing upon eight acres of Plaintiff's Property, more or less.

22. Therefore, Defendant Jess T. Reichardt is mistaken in his claim that he owns part of Plaintiff's Property, but Defendant Jess T. Reichardt's mistake of fact is no defense to this action.

23. Defendants' actions thereafter were with actual notice of their intentional trespass, and Defendants' actions thereafter were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights. Furthermore, there were numerous, "No Trespassing" signs placed on Plaintiff's Property.

24. On or about May 6, 2012, Defendants did, without legal permission from Plaintiff, intentionally come onto and trespass upon the Property of Plaintiff and cut forest products, (timber) belonging to Plaintiff, with the intent to permanently deprive the Plaintiff of the economic value of those forest products. Defendants' conversion was reckless with conscious indifference to Plaintiff's right and Defendants were negligent and the conversion was committed in such a manner or circumstance that an ordinary person would have been conscious of it as an invasion of another's rights.

25. Defendants were given oral notice of their intentional trespass, by the Plaintiff, and Defendants were given written notice of their intentional trespass, by Plaintiff's counsel, which notice was acknowledged by Defendants' counsel. The Saluda County Sheriff's Department and the South Carolina Forestry Commission were notified and both agencies made reports on the incident.

**FOR A FIRST CAUSE OF ACTION AGAINST
DEFENDANT, JESS T. REICHARDT**

(Theft of Forest Products)

(Violation of Section 16-11-580, S.C. Code Ann., (1976, as amended))

(Violation of Section 16-15-615, S.C. Code Ann., (1976, as amended))

26. Paragraphs one through twenty-five above, are re-alleged, as if set forth verbatim.
27. Defendant Jess T. Reichardt, knowingly and willfully cut forest products located on Plaintiff's Property, belonging to the Plaintiff, without Plaintiff's permission.
28. Defendant Jess T. Reichardt, acted with the aid of another person(s), with fraudulent intent.
29. Plaintiff was proximately damaged by Defendant Jess T. Reichardt's actions and Plaintiff is entitled to recover damages of three times the market value of the forest products.

**FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT**

(Conversion)

30. Paragraphs one through twenty-nine are re-alleged here as if set forth verbatim.
31. Defendant Jess T. Reichardt intentionally, improperly and without permission, trespassed upon Plaintiff's Property and converted timber thereon, to Defendant's personal use.
32. Defendant Jess T. Reichardt wrongfully cut and detained timber located on Plaintiff's Property, belonging to Plaintiff.
33. Defendant Jess T. Reichardt's actions are inconsistent with the Plaintiff's possession of his Property and subversive to Plaintiff's rights in his Property. Furthermore, Defendant Jess T. Reichardt interfered with Plaintiff's rights to his Property and caused a disturbance to Plaintiff's possession of his Property.
34. Defendant Jess T. Reichardt's refusal to honor the ownership of Plaintiff's Property came after Plaintiff's demand for Defendant Jess T. Reichardt to honor the ownership of Plaintiff's Property, and Defendant Jess T. Reichardt's refusal was without justification or excuse.
35. Defendant Jess T. Reichardt's conversion was reckless with conscious indifference to Plaintiff's rights and done with the knowledge of Plaintiff's rights in his Property and Plaintiff is thereby entitled to an enhancement of damages of interest and loss of use thereof, in the amount to be determined, plus Consequential Damages and costs of filing and serving this action of at least \$150.00, which damages are *inchoate* at the time of this filing.

36. Defendant Jess T. Reichardt's conversion was negligent and was committed in such a manner or circumstance that an ordinary person would have been conscious of it as an invasion of another's rights. If Defendant Jess T. Reichardt had exercised the slightest care, Defendant Jess T. Reichardt would have known that he was converting forest products (timber) located on Plaintiff's Property.

37. Plaintiff was damaged by Defendant Jess T. Reichardt in an amount to be determined.

38. Defendant Jess T. Reichardt exhibited malice, ill will, a conscious indifference to the rights of Plaintiff and a reckless disregard of Plaintiff's rights, and Plaintiff is entitled to receive punitive damages from Defendant Jess T. Reichardt.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT
(Eviction)

39. Paragraphs one through thirty-eight above, are re-alleged, as if set forth verbatim.

40. Defendant Jess T. Reichardt is presently invading Plaintiff's Property without legal authority to do so.

41. Defendant Jess T. Reichardt has no legal authority to invade the Plaintiff's Property, by dint of a fence preventing Plaintiff from accessing Plaintiff's Property.

42. Defendant Jess T. Reichardt was given written notice of his intentional trespass onto Plaintiff's Property, by way of correspondence from Plaintiff's counsel to Defendants' counsel, dated April 22, 2013, and that notice was acknowledged by Defendants' counsel by correspondence dated April 29, 2013, received by Plaintiff's counsel on April 29, 2013.

43. Plaintiff is entitled to have Defendant Jess T. Reichardt ejected/evicted from Plaintiff's Property, which Defendant Jess T. Reichardt is invading without a legal right to do so.

44. As a result, Plaintiff is entitled to an Order from this Court evicting Defendant Jess T. Reichardt from Plaintiff's Property.

45. Plaintiff was proximately damaged by Defendant Jess T. Reichardt's actions and Plaintiff is entitled to recover damages in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT
(Interference and Obstruction of use of Property)

46. Paragraphs one through forty-five are re-alleged here as if set forth verbatim.
47. As stated above, Plaintiff is the legal and record owner of the Property in dispute herein.
48. Plaintiff is entitled to the exclusive use and enjoyment of Plaintiff's Property.
49. Defendant Jess T. Reichardt's fence, located on the Property of the Plaintiff, interferes with Plaintiff's exclusive use and enjoyment of Plaintiff's Property.
50. Defendant Jess T. Reichardt's fence, on the Property of the Plaintiff, obstructs Plaintiff's exclusive use and enjoyment of Plaintiff's Property.
51. Plaintiff was proximately damaged by Defendant Jess T. Reichardt's actions and Plaintiff is entitled to recover damages in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT
(Trespass)
(*Quare Clausum Fregit*)

52. Paragraphs one through fifty-one are re-alleged here as if set forth verbatim.
53. Plaintiff is lawfully in possession of property described hereinabove.
54. Defendant Jess T. Reichardt consciously and intentionally invaded Plaintiff's Property without authorization, which invasion is continuing.
55. Defendant Jess T. Reichardt's actions deprived, and continues to deprive, Plaintiff from the exclusive enjoyment of Plaintiff's Property.
56. Defendant Jess T. Reichardt trespassed upon Plaintiff's Property, *inter alia*, by physical injury thereto.
57. Plaintiff suffered proximate damages because of Defendant Jess T. Reichardt's actions and Plaintiff Mr. Berry is entitled to recover an amount to be determined at trial.
58. Because, as outlined above, Defendant Jess T. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

FOR A SIXTH CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT
(Civil Trespass to Land After Notice)

59. Paragraphs one through fifty-eight are re-alleged here as if set forth verbatim.

60. Plaintiff's Property was posted with four or more, "No Trespassing" signs. Additionally, Plaintiff provided oral notice and written notice to Defendant Jess T. Reichardt, warning him not to trespass onto Plaintiff's Property.

61. Defendant Jess T. Reichardt consciously and intentionally invaded Plaintiff's Property without authorization, which invasion is continuing.

62. Defendant Jess T. Reichardt's actions deprived and continues to deprive Plaintiff from the exclusive enjoyment of Plaintiff's Property.

63. Defendant Jess T. Reichardt trespassed upon Plaintiff's Property by physical injury thereto.

64. Plaintiff suffered proximate damages because of Defendant Jess T. Reichardt's actions and Plaintiff Mr. Berry is entitled to recover an amount to be determined at trial.

65. Because, as outlined above, Defendant Jess T. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

FOR A SEVENTH CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT
(Entry upon Land)

66. Paragraphs one through sixty-five are re-alleged here as if set forth verbatim.

67. Pursuant to Rule 34(a)(2), South Carolina Rules of Civil Procedure, Plaintiff Mr. Berry is entitled to entry upon the lands of the Defendant, for the purpose of inspection and measuring, surveying and photographing the Defendant's property giving ingress and egress to Defendant's property, which abuts the Plaintiff's Property.

68. Therefore, for good cause shown, Plaintiff is entitled to an Order of this Court allowing entry upon Defendant Jess T. Reichardt's property, by Plaintiff and Plaintiff's agents.

FOR A EIGHTH CAUSE OF ACTION
AGAINST DEFENDANT, JESS T. REICHARDT

(Civil Conspiracy)

69. Paragraphs one through sixty-eight are re-alleged here as if set forth verbatim.

70. Defendant Jess T. Reichardt conspired with Defendant Thomas H. Reichardt, against the economic interests of the Plaintiff.

71. Defendant Jess T. Reichardt intended to harm the Plaintiff.

72. Defendants' conspiracy's primary purpose or object was to injure the Plaintiff.

73. Specifically, Defendant Jess T. Reichardt and Defendant Thomas H. Reichardt, *inter alia*, met with each other on one or more occasions, to plan the construction of a fence on Plaintiff's Property and thereby impede Plaintiff's use of Plaintiff's Property, as an act in furtherance of the conspiracy.

74. Plaintiff suffered special damages because of Defendants' Civil Conspiracy, and Plaintiff suffered special damages of loss of use and access to, Plaintiff's Property, related to the civil conspiracy.

75. Plaintiff is entitled to recover proximate damages in an amount to be determined at trial.

76. Because, as outlined above, Defendant Jess T. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

FOR A FIRST CAUSE OF ACTION AGAINST
DEFENDANT, THOMAS H. REICHARDT

(Theft of Forest Products)

(Violation of Section 16-11-580, S.C. Code Ann., (1976, as amended))

(Violation of Section 16-15-615, S.C. Code Ann., (1976, as amended))

77. Paragraphs one through seventy-six above, are re-alleged, as if set forth verbatim.

78. Defendant Thomas H. Reichardt, knowingly and willfully cut forest products located on Plaintiff's Property, belonging to the Plaintiff, without Plaintiff's permission.

79. Defendant Thomas H. Reichardt, acted with the aid of another person(s), with fraudulent intent.

80. Plaintiff was proximately damaged by Defendant Thomas H. Reichardt's actions and Plaintiff is entitled to recover damages of three times the market value of the forest products.

FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS H. REICHARDT

(Conversion)

81. Paragraphs one through eighty are re-alleged here as if set forth verbatim.

82. Defendant Thomas H. Reichardt intentionally, improperly and without permission, trespassed upon Plaintiff's Property and converted timber thereon, to Defendant's personal use.

83. Defendant Thomas H. Reichardt wrongfully cut and detained timber located on Plaintiff's Property, belonging to Plaintiff.

84. Defendant Thomas H. Reichardt's actions are inconsistent with the Plaintiff's possession of his Property and subversive to Plaintiff's rights in his Property. Furthermore, Defendant Thomas H. Reichardt interfered with Plaintiff's rights to his Property and caused a disturbance to Plaintiff's possession of his Property.

85. Defendant Thomas H. Reichardt's refusal to honor the ownership of Plaintiff's Property came after Plaintiff's demand for Defendant Thomas H. Reichardt to honor the ownership of Plaintiff's Property, and Defendant Thomas H. Reichardt's refusal was without justification or excuse.

86. Defendant Thomas H. Reichardt's conversion was reckless with conscious indifference to Plaintiff's rights and done with the knowledge of Plaintiff's rights in his Property and Plaintiff is thereby entitled to an enhancement of damages of interest and loss of use thereof, in the amount to be determined, plus Consequential Damages and costs of filing and serving this action of at least \$150.00, which damages are *inchoate* at the time of this filing.

87. Defendant Thomas H. Reichardt's conversion was negligent and was committed in such a manner or circumstance that an ordinary person would have been conscious of it as an invasion of another's rights. If Defendant Thomas H. Reichardt had exercised the slightest care, Defendant Thomas H. Reichardt would have known that he was converting forest products (timber) located on Plaintiff's Property.

88. Plaintiff was damaged by Defendant Thomas H. Reichardt in an amount to be determined.

89. Defendant Thomas H. Reichardt exhibited malice, ill will, a conscious indifference to the rights of Plaintiff and a reckless disregard of Plaintiff's rights, and Plaintiff is entitled to receive punitive damages from Defendant Thomas H. Reichardt.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS H. REICHARDT
(Interference and Obstruction of use of Property)

90. Paragraphs one through eighty-nine are re-alleged here as if set forth verbatim.
91. As stated above, Plaintiff is the legal and record owner of the Property in dispute herein.
92. Plaintiff is entitled to the exclusive use and enjoyment of Plaintiff's Property.
93. Defendant Thomas H. Reichardt's fence, located on the Property of the Plaintiff, interferes with Plaintiff's exclusive use and enjoyment of Plaintiff's Property.
94. Defendant Thomas H. Reichardt's fence, on the Property of the Plaintiff, obstructs Plaintiff's exclusive use and enjoyment of Plaintiff's Property.
95. Plaintiff was proximately damaged by Defendant Thomas H. Reichardt's actions and Plaintiff is entitled to recover damages in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS H. REICHARDT
(Trespass)
(*Quare Clausum Fregit*)

96. Paragraphs one through ninety-five are re-alleged here as if set forth verbatim.
97. Plaintiff is lawfully in possession of property described hereinabove.
98. Defendant Thomas H. Reichardt consciously and intentionally invaded Plaintiff's Property without authorization, which invasion is continuing.
99. Defendant Thomas H. Reichardt's actions deprived, and continues to deprive, Plaintiff from the exclusive enjoyment of Plaintiff's Property.
100. Defendant Thomas H. Reichardt trespassed upon Plaintiff's Property, *inter alia*, by physical injury thereto.
101. Plaintiff suffered proximate damages because of Defendant Thomas H. Reichardt's actions and Plaintiff Mr. Berry is entitled to recover an amount to be determined at trial.
102. Because, as outlined above, Defendant Thomas H. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS H. REICHARDT
(Civil Trespass to Land After Notice)

103. Paragraphs one through one hundred and two are re-alleged here as if set forth verbatim.

104. Plaintiff's Property was posted with four or more, "No Trespassing" signs. Additionally, Plaintiff provided oral notice and written notice to Defendant Thomas H. Reichardt, warning him not to trespass onto Plaintiff's Property.

105. Defendant Thomas H. Reichardt consciously and intentionally invaded Plaintiff's Property without authorization, which invasion is continuing.

106. Defendant Thomas H. Reichardt's actions deprived and continues to deprive Plaintiff from the exclusive enjoyment of Plaintiff's Property.

107. Defendant Thomas H. Reichardt trespassed upon Plaintiff's Property by physical injury thereto.

108. Plaintiff suffered proximate damages because of Defendant Thomas H. Reichardt's actions and Plaintiff Mr. Berry is entitled to recover an amount to be determined at trial.

109. Because, as outlined above, Defendant Thomas H. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

FOR A SIXTH CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS H. REICHARDT
(Civil Conspiracy)

110. Paragraphs one through one hundred and nine are re-alleged here as if set forth verbatim.

111. Defendant Thomas H. Reichardt conspired with Defendant Thomas H. Reichardt, against the economic interests of the Plaintiff.

112. Defendant Thomas H. Reichardt intended to harm the Plaintiff.

113. Defendants' conspiracy's primary purpose or object was to injure the Plaintiff.

114. Specifically, Defendant Thomas H. Reichardt and Defendant Jess T. Reichardt, *inter alia*, met with each other on one or more occasions, to plan the construction of a fence on Plaintiff's Property and thereby impede Plaintiff's use of Plaintiff's Property, as an act in furtherance of the conspiracy.

115. Plaintiff suffered special damages because of Defendants' Civil Conspiracy, and Plaintiff suffered special damages of loss of use and access to Plaintiff's Property, related to the civil conspiracy.

116. Plaintiff is entitled to recover proximate damages in an amount to be determined at trial.

117. Because, as outlined above, Defendant Thomas H. Reichardt actions were willful, wanton, reckless, malicious and without regard for Plaintiff's legal rights, Plaintiff is entitled to receive punitive damages in an amount to be determined by the Court.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff is entitled to actual, punitive and consequential damages and additional, special damages and a Judgment as follows:

FOR A FIRST CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages of three times the market value of the forest products.

FOR A SECOND CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages in an amount to be determined at trial and an Order from this Court evicting Defendant Jess T. Reichardt from Plaintiff's Property.

FOR A FOURTH CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A SIXTH CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A SEVENTH CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to an Order from this Court allowing entry upon Defendant Jess T. Reichardt property, by Plaintiff and Plaintiff's agents.

FOR A EIGHTH CAUSE OF ACTION against Defendant Jess T. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A FIRST CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages of three times the market value of the forest products.

FOR A SECOND CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

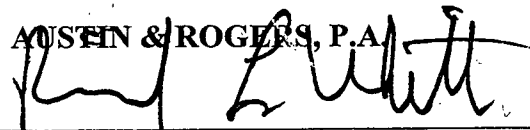
FOR A THIRD CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages in an amount to be determined at trial.

FOR A FOURTH CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A FIFTH CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

FOR A SIXTH CAUSE OF ACTION against Defendant Thomas H. Reichardt, Plaintiff is entitled to recover damages and punitive damages in an amount to be determined at trial.

AND FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT MAY DEEM JUST AND PROPER.

AUSTIN & ROGERS, P.A.


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Attorneys for Plaintiff

June 26, 2013
Columbia, South Carolina

1 default now, Your Honor, all of these, these are admitted
2 that that is what they did. It turned out in the end that
3 they owned 1.8 acres. They bought five acres on paper.
4 But, Your Honor, and this goes to punitive damages. They
5 didn't get a survey done. They didn't get a current title
6 search, they went onto this property blind and said, well
7 we bought five on paper because that is what it said. But
8 they co-opted 10.8 acres belonging to my client. And this
9 has been very stressful on him, it has been very expensive
10 for him and we have set forth his actual damages and
11 worth. And I think we have the damages, Your Honor,
12 behind tab 10 in my packet. We also set forth a basis for
13 punitive damages after tab 11, Your Honor. And we are
14 certainly seeking punitive damages, eight or nine times
15 our actual damages based on these actions. And as Your
16 Honor knows, there is a component to punitive which we put
17 behind tab 13, your actions are reprehensible. If you
18 look behind tab 13 we outline some of the reprehensible
19 actions that the defendants took. First of all, when they
20 first went on this property Mr. Berry, the plaintiff Mr.
21 Berry, kindly went out and got them and said, whoa, you
22 are on my property. He was very kind and took them over
23 to his house, sat down on his table and spread out on his
24 table documents showing them that they didn't own but a
25 little bit over 1.8 acres. They had actual knowledge now

1 that they were trespassing. He told them that they were
2 trespassing. And part of the reprehensible factors, Your
3 Honor, the defendants didn't have actual knowledge that
4 Mr. Berry is, he is an older gentleman who is retired. So
5 they knew or should have known, a reasonable person would
6 know that this would cause him stress and concern that
7 this happened. But even after he met with them and said,
8 you guys don't own five acres. You own less than two. It
9 was after the personal meetings in his dining room that
10 they put up the fence and took all of these actions, cut
11 down trees. Getting back to the damages, Your Honor, that
12 I mentioned earlier under 16-11-615, tab 9. Under the
13 law, if someone comes on your property and cuts down your
14 trees which these defendants have admittedly done, you are
15 entitled to treble your damages. So his damages on the
16 trees of \$750.90 and that is a component of our actual
17 damages behind tab 10. You should see a list there, Your
18 Honor. And if you look at these damages behind 10 which
19 we will certainly have them go through on the stand. The
20 first item was the item that I just mentioned, Your Honor,
21 \$750.00 dollars for the timber. He paid \$263.00 dollars
22 even though the defendants didn't get a title search done
23 or survey. He paid to have it done and this is Attorney,
24 Kathryn Rauton. She did a title search and that is her
25 expense of \$263.00 dollars. He paid the \$150.00 dollar

1 present a case, he has no role. So I would strongly
2 object to him having an opening statement when his role is
3 so limited.

4 THE COURT: The only thing I was going to allow him
5 to do was anything procedurally.

6 MR. WHITT: Yes, Your Honor.

7 MR. WOOLHISER: Your Honor, counsel has started to
8 present his case. He has given his side of it. We are
9 not giving our side. We are only going to be commenting
10 on the points that he was making.

11 MR. WHITT: Under the cases that we cited here under
12 tab 8, they don't have the opportunity to do that. He has
13 no opportunity to present a case.

14 THE COURT: I think he is correct. The only thing
15 you can do is object to the issue and evidence and
16 cross-examine witnesses. That is my understanding.

17 MR. WOOLHISER: Your Honor, if it is recognized that
18 everything that he has said is not in evidence yet.

19 THE COURT: Certainly. Okay.

20 KATHRYN RAUTON, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Whitt:

24 Q Ms. Rauton, will you state your name and business
25 address and your place of employment.

1 A My name is Kathryn Rauton, my business address is 125
2 East Church Street in Batesburg/Leesville. I am currently
3 employed by the Kennedy Law Firm.

4 Q And would you tell the Judge what you primarily do in
5 your legal practice?

6 A My general practice consists of real estate, mostly
7 closings and probate work.

8 THE COURT: Your Honor, Ms. Rauton earlier filed an
9 affidavit with this Court and there was a correction to be
10 made to her exhibit D.

11 Q Can you tell us about that, Ms. Rauton?

12 A Certainly. In my original affidavit, exhibit D, we
13 inadvertently attached an incorrect deed. I have now
14 provided the correct exhibit D which is the correct deed
15 into Mr. Berry for the portion in dispute.

16 MR. WOOLHISER: Your Honor.

17 THE COURT: Yes, sir.

18 MR. WOOLHISER: We would object to any affidavits at
19 this time. The affidavit has not been cross-examined at
20 this point.

21 THE COURT: I will allow you to certainly, to
22 cross-examine her fully on that affidavit.

23 Q Were you engaged by the plaintiff, Mr. Berry, to
24 conduct a title search on the Reichardt, defendants,
25 property and ownership on his property.

1 A For ownership purposes, yes sir.

2 Q And you completed both of those?

3 A Yes, sir.

4 Q As a result of your review, I want to ask you two
5 questions. In your professional opinion were the
6 Reichardt defendants on record notice of the correct
7 boundary between the plaintiff's, Berry's property and the
8 defendants, Jess T. Reichardt property as shown on the
9 deed and plat that were properly recorded in the Saluda
10 County records?

11 A Yes.

12 Q The second question is, in your professional opinion,
13 because the defendants had record notice of the proper
14 boundary, were the Reichardt defendants actions described
15 in Mr. Berry's amended complaint where he alleged that
16 they interfered and obstructed abuse of his property down
17 after the Reichardts had actually record notice of the
18 boundary between the plaintiff's property and their
19 property?

20 A Yes.

21 Q The affidavit, do you stand behind the contents of
22 that?

23 A Yes.

24 Q And that affidavit has been previously filed with the
25 Court.

1 A Yes.

2 MR. WHITT: We simply move to file that affidavit and
3 move it into evidence with the correction.

4 THE COURT: All right. I will hold off on to
5 admitting the affidavit, I will allow him to cross-examine
6 her on that then we will move forward after that. Yes,
7 sir.

8 CROSS-EXAMINATION

9 By Mr. Woolhiser:

10 Q Ms. Rauton, in your affidavit I believe you stated,
11 you base your position on the boundary on a 1934 plat, is
12 that correct?

13 A That's correct.

14 Q Have you received an opinion from any surveyors, is
15 this is your own opinion that you have studied this plat
16 and you know where the boundary is?

17 A That's correct.

18 Q Have you been in the field to study boundaries, did
19 you go to the site, do you know exactly where the boundary
20 is?

21 A I know where the boundary is based on the documents
22 of record.

23 Q You looked on the plat, as far as going into the
24 field you do not have that correlation. You just have a
25 piece of paper that says, this is a boundary. Is that

1 correct?

2 A That is correct. It is not our practice to visit the
3 site for purposes of determining a boundary.

4 Q And would you say, if you took that piece of paper
5 and walked out to the actual site could you tell exactly
6 where the boundary is?

7 A I am not a surveyor so I don't know that I can.

8 Q If you, we don't have the boundary in front of us but
9 if you, you and I have looked at that boundary. As you
10 see, the boundary has, it is not a straight line?

11 A It is a creek.

12 Q It is very, very crooked. And as you get close to
13 what is now called Spawn, (phonetic), Road which would be
14 one of the key boundaries, on your plat it seems to go
15 right straight across the road, does it not? If you look
16 at your plat.

17 A You are saying the creek goes straight across the
18 road?

19 Q Right.

20 A I will have to refer back to the plat to recall. I
21 don't recall it showing that the creek goes right across
22 the road.

23 Q Well, going to the next point, did you also analyze
24 the tax maps that would show the two properties?

25 A I may have looked at the tax maps. But my affidavit

1 is based on the record, the deeds of record. As we know
2 tax maps can differ greatly in accuracy, they are not
3 always accurate.

4 Q That's right. There has been a considerable
5 discrepancy between the tax map, I guess when you say
6 between the tax map and that 1934 plat that you used?

7 A And we base our determination on ownership on deeds
8 and plats that are recorded.

9 Q Which nobody, I think you would admit, nobody, if
10 they took the recorded plat and you walked out to the site
11 you would say, well, where am I.

12 A No.

13 Q You wouldn't say that?

14 A No, I would not, no.

15 Q What would you say. Would you be able to say, would
16 you be able to walk to a piece of ground and say, this is
17 the boundary based on your plat?

18 A I believe that a plat would help me. I am not a
19 surveyor, I can't determine metes and bounds. But I
20 believe the plat would help me accurately, it is pretty
21 clear that the creek is the boundary.

22 Q Well, let me tell you. That is based on 1934,
23 correct?

24 A Which is referenced in the deed of Mr. Berry.

25 Q This being 70 or 80 some years later. Is it possible

1 that that creek has changed locations in that length of
2 time?

3 A I would say in general that creeks do change
4 locations.

5 Q How would you know. You never went there.

6 MR. WHITT: Your Honor, please excuse me for
7 interrupting. I know it is cross-examination, Your Honor,
8 but none of these questions are on the subject of what
9 this witness has testified. She doesn't know physically
10 what is out there. She testified as to the record. Thank
11 you, Your Honor.

12 THE COURT: She has already testified she is not a
13 surveyor.

14 Q And in her affidavit, I think the affidavit is that
15 you knew exactly where the boundary is and that you were
16 sure that the defendants had crossed over that boundary?

17 A I don't believe that is what my affidavit says. My
18 affidavit says that there is record notice of the
19 boundary.

20 THE COURT: Record notice.

21 MR. WOOLHISER: Record notice.

22 THE COURT: Yes.

23 Q But can you say we cannot relate to record notice to
24 the actual in-field location?

25 A We are discussing record notice.

1 Q And was that, were you, you were, I believe you were
2 the attorney during the time of the cutting of the timber,
3 is that correct?

4 MR. WHITT: Your Honor, once again, I object, we are
5 going completely outside of direct testimony. It is not
6 fair to the witness and it is not appropriate, Your Honor.
7 The cutting of timber.

8 THE COURT: Where are you going with this question.

9 MR. WOOLHISER: I believe at one time, there were
10 trees that were cut down. And the person who is closest
11 to that was Ms. Rauton during that time.

12 Q You were the attorney when the trees were cut down
13 for Mr. Berry?

14 A I was not.

15 Q You did not write any letter, none of your letters
16 referred to the cutting of the trees?

17 A That is different than what you asked. Mr. Berry
18 approached me after the trees were cut.

19 Q Anything that has to do with the actual cutting the
20 trees you would be the one that would have the knowledge,
21 is that correct?

22 A I can't state that--

23 Q -- that is fine.

24 A That I would have, I briefly assisted Mr. Berry after
25 the trees were cut.

1 MR. WOOLHISER: At this time we have no further
2 questions.

3 THE COURT: Anything on redirect?

4 REDIRECT EXAMINATION

5 By Mr. Whitt:

6 Q Ms. Rauton, did anything that just transpired between
7 you and counsel change your response to my two questions
8 that were positive about the record notice that the
9 defendants had?

10 A No.

11 Q Thank you. That is all we have.

12 THE COURT: Thank you, Ma'am. And I will admit the
13 affidavit as an exhibit.

14 MR. WHITT: Thank you.

15 THE COURT: We will admit that as Plaintiff's exhibit
16 number 1.

17 (Whereupon, Plaintiff's Exhibit 1 was admitted into
18 evidence.)

19 THE COURT: Yes, sir.

20 MR. WHITT: If it please the Court we will call the
21 plaintiff, Mr. Carl E. Berry, Jr.

22 CARL E. BERRY, JR., being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 By Mr. Whitt:

1 Q Mr. Berry, will you state your name and address for
2 the Court.

3 A My name is Carl Eugene Berry, Jr. I live at 500
4 Samuel Padgett Road, Ridge Spring, South Carolina.

5 Q Mr. Berry, as part of the preparation for the hearing
6 and to support punitive damages, you were required to put
7 together a statement about the impact to you personally
8 and did you complete that statement?

9 A Yes, I did.

10 MR. WHITT: And, Your Honor, we have a short summary,
11 very short summary of the longer statement. Will the
12 Court allow him to read his statement into evidence?

13 THE COURT: I will allow him to read it subject to
14 certainly your full cross-examination of it.

15 MR. WOOLHISER: Can we have a copy of it.

16 THE COURT: Do you have a copy for defense counsel.

17 MR. WHITT: Yes.

18 THE COURT: Yes, sir.

19 Q Go ahead, Mr. Berry.

20 A The Reichardt defendants repeatedly trespassed upon
21 land which was passed down to me from my father and
22 mother.

23 MR. WOOLHISER: I don't have what you are reading.

24 MR. WHITT: It is a summary of that document, the
25 facts are contained in the longer document.

1 THE COURT: Well, do you have a copy of the summary.
2 I want him to be able to see that.

3 MR. WHITT: Sorry.

4 A Summary. The Reichardt defendants repeatedly
5 trespassed upon land which was passed down to me from my
6 father and mother where I presently have my residence.
7 The Reichardt defendants cut trees, tore down my no
8 trespassing signs, placed a fence on my property blocking
9 me from access to my land. The actions of the Reichardt
10 defendants have caused me a great deal of stress and worry
11 and caused me to spend a large sum of money for legal fees
12 which depleted my retirement accounts or funds. The land
13 that the Reichardt defendants trespassed upon is placed
14 under strick conservation easement and the illegal timber
15 cutting by the Reichardt defendants caused soil erosion in
16 Crooked Creek. The trespass upon my land and cutting the
17 timber on my land came out to I personally met both
18 Reichardt defendants and showed them documents which
19 indicated that they were trespassing. The Reichardt
20 defendants bought, bought less than two acres of land
21 without purchasing a title search and without purchasing a
22 current survey. Therefore the actions were reckless,
23 willful and wanton and with the complete disregard of my
24 rights. I am 73 years old and have health problems and
25 the proper actions of the Reichardt defendants have taken

1 a toll on both of my finances and my health. That
2 concludes the summary.

3 MR. WHITT: Your Honor, counsel has a copy of the
4 full statement. We would move to a longer document into
5 evidence now, Your Honor.

6 THE COURT: Any objection to that?

7 MR. WOOLHISER: This is the first time I have seen
8 this.

9 MR. WHITT: That is required under the case law, Your
10 Honor. We have been six months waiting on this hearing.
11 So certainly counsel could have read the facts. This is
12 our actual response to the factors.

13 THE COURT: Here is what I am going to do. You can
14 use that as a guide but for purposes of this hearing if
15 you will just go through that, if you will go through that
16 document briefly with the witness.

17 MR. WHITT: Well, I think I actually just misspoke.
18 I told you I was going to be disorganized today, Your
19 Honor. This is not the factors for punitive which I am
20 searching through documents here for. This is his
21 statement of how it impacted him personally. He has given
22 you a summary of it, Your Honor. And I certainly think he
23 is entitled to give the effects of him personally of the
24 matter. And counsel has a copy of it. So we would move
25 this into evidence, not as the factor compliance but it is

1 just his personal statement from case law, how it affected
2 him.

3 THE COURT: If you can go through and elicit
4 testimony from him about that. I think that is what we
5 need to do here.

6 MR. WHITT: Your Honor, can I approach the witness
7 and give him the longer statement.

8 THE COURT: Sure.

9 Q Mr. Berry, you wrote this statement yourself, it is
10 typed up by my office but you actually wrote it. And in
11 the beginning of the statement you tell us about the
12 importance of the land because of your family history.
13 Can you briefly tell the Judge about that.

14 A Yes, I can. It would be simpler just to read the
15 whole thing but I will tell her briefly. My family ran a
16 business in Batesburg/Leesville and my father was
17 originally from Saluda County and has owned land there
18 practically all of his life, first inherited a small 20
19 acres or so. But anyway, we have all worked very
20 diligently to obtain this land, it is a rather large
21 amount of land that we purchased that this court action is
22 concerned with, approximately 300 acres. But we did not
23 have, at the time, the money to purchase this land and a
24 friend as trustee which purchased this land for us. And
25 we, my father and I fenced in a good portion of this land

1 and we had cattle and peaches and a variety of things here
2 in order to obtain the land. We have added to that
3 because I personally have spent all of my life in this
4 particular area and I purchased additional land next to
5 this, the Mill Pond which was restored. And I moved from
6 Batesburg/Leesville. Well, we had a farm in town of about
7 30 acres out here when I retired in 1993. One of the
8 things that I tried to do, this land on a conservation
9 easement with the upper Savannah River area, land trust.
10 And also, well before that, this was placed under a
11 Westvaco management plan which managed both the forest
12 land and also the conservative issues of wildlife and so
13 forth. I maintain over 20 wildlife plots. And this
14 particular action is very devastating to me because these
15 trees are nut bearing trees. And I prohibit when selling
16 timber from cutting nut bearing trees because it is a
17 source of food for wildlife. We have a hunt club there
18 and these old friends of mine, it is completely
19 non-commercial, pay no dues, they help me maintain this.
20 I have two benefit funds, Saluda County Historical
21 Society. And this action has placed that side, the
22 northwest side of the property in such a mess until I
23 would not allow any, it decreases the revenue. Fencing in
24 the land delayed planting one of the food plots and so
25 forth. But basically this goes into more detail. Cutting

1 trees now, you want to stay within the guidelines. And
2 the guidelines basically for Westvaco and also South
3 Carolina Forestry Department is that you cut no trees
4 within 50 feet of a stream or a particular creek. Upper
5 Savannah River land trust enhances that to 100 feet.
6 These guidelines are set forth under the Federal Clean
7 Water Act. And this has really, this really stressed me.
8 When I confronted the Reichardts, both the father and son,
9 they had a generic deed which was the same deed passed
10 down from the original sale of the Annie Miller,
11 (phonetic), George Miller property. And the buyer did not
12 want that little piece of property on the other side of
13 the road. Mr. Ricky Waters, they had in their possession
14 eight by ten photo copy, a small portion, tax map 142. I
15 had a copy of the map and showed them my 1934 plat. I
16 showed them the tax map which the tax map is, it is large.
17 I pointed out the creek to them, five acres was more or
18 less what their deed calls for. On the northwest side of
19 the creek did not cross the creek and that is on record,
20 that is on record here. And then in order to answer such
21 things as that the creek moved and all that kind of stuff
22 I had it resurveyed by Todd Surveyors at a considerable
23 cost. I had them also to mark the area where the timber
24 was cut. I had them to survey the area that they fenced
25 in. This is recorded, I had a \$10.00 recording fee on

1 punitive damages so it is there available at the Clerk of
2 Court's office. I advised them to have a title search and
3 to have it surveyed and we could have settled this matter
4 real quickly if they had not started this mess that the
5 creek had moved. And later they ask at least three times,
6 they had it surveyed by Mr. Yonce from Johnston and I
7 talked with him. And he said that the 1.8 acres, for 5
8 acres, that they actually owned. And he gave them a plat
9 that the creek is the line. George Todd agreed the creek
10 is the line. On the Westbury Surveying Company in
11 Orangeburg, that originally surveyed the land for Ricky
12 Waters and so forth, have reference to using the 1934 plat
13 as a reference. The last surveyor that they had on the
14 property, I met with him down there. And the opposing
15 attorney and his client came up and this fellow was from
16 Jenkinsville. And he said in the conversation and it is
17 allotted somewhere in here that obviously the creek had
18 not moved since the trees--

19 MR. WOOLHISER: Your Honor, we would object to
20 anything, hearsay that anyone had told Mr. Berry.

21 MR. BERRY: You were there.

22 THE COURT: His objection is sustained so let's move
23 on from that point.

24 MR. WHITT: Just don't talk about what someone else
25 told you.

1 MR. BERRY: Okay. I will do that.

2 A But anyway, there is a reference here to his
3 statement there that morning. So it has been well over
4 two years and I suffer from congestive heart failure and
5 also something called variation in the esophagus which has
6 caused acid reflux. And this certainly has not helped my
7 situation here. And basically the only other thing is a
8 large sum of money that I have spent on this particular
9 case.

10 MR. WHITT: Your Honor, I think he has covered it.
11 We would move this into evidence now, Your Honor.

12 THE COURT: Any objection to that?

13 MR. WOOLHISER: The only objection I would have,
14 there is numerous things is, talking about what other
15 people have told him.

16 THE COURT: I am not going to allow it. I think we
17 have got the best evidence here in his testimony.

18 MR. WHITT: May it please the Court. We would now
19 talk to Mr. Berry about actual damages.

20 THE COURT: Yes, sir.

21 MR. WHITT: That is behind tab 10 and counsel has a
22 copy of this.

23 Q Go through the damages for the Judge and you can just
24 list what they are for her.

25 MR. WHITT: And, Your Honor, at the end we are going

1 to move this into evidence. We have verification of each
2 one of these for the record. Just briefly, you don't need
3 to talk about anything behind it. But just what your
4 damages are.

5 A The investigator for the South Carolina Forrest
6 Commission was summoned and he set--

7 Q Mr. Berry, don't give us background and what he said.
8 Just give us the damages amount and that you incurred.

9 A Okay. The value, the triple value of the timber cut
10 is \$750.90. The cost of title search by Ms. Rauton was
11 \$263.00. The court filing fee was \$150.00 dollars. The
12 payment to Saluda County Clerk for filing the plat was
13 \$10.00 dollars. George Todd survey that I mentioned was
14 \$1,750.00 dollars. The cost of reforestation, to replace
15 the white oak trees is \$1,200.00 dollars, twelve trees.
16 And one-hundred pounds of fescue seed to stabilize the
17 soil is \$70.00 dollars for the total amount of \$4,193.90.

18 MR. WHITT: Your Honor, we would move that statement
19 of damages into the record.

20 THE COURT: Anything you want to say in response?

21 MR. WOOLHISER: There we want to cross-examine.

22 THE COURT: I will allow that statement of damages
23 in. That would be plaintiff's number 2.

24 (Whereupon, Plaintiff's Exhibit 2 was admitted into
25 evidence.)

1 Q In your damages in seeking \$4,100.00 dollars and this
2 is a punitive damages case. Do you have an opinion on
3 what your punitive damages should be?

4 A Your Honor, I think eight to nine times punitive
5 damages would be there, no less than that.

6 Q In your packet and everyone's packet, the
7 reprehensible actions that go to punitive damages are
8 behind tab 13. Can you turn to that document. To
9 punitive damages, there is another component, the
10 reprehensible actions that has been set forth in your
11 packet. And, Mr. Berry, you have read those, you adopt
12 those as your own and ask the Court to consider these
13 factors?

14 A Yes, I have. And would like the Court to consider
15 the factors.

16 MR. WHITT: The next thing we have, Your Honor, is
17 behind tab 11. And that is just arguing for the Court.
18 Behind tab 12 is the factors that I mentioned earlier,
19 Your Honor. In order to ask the Court for punitive
20 damages we had to address the ten factors that are set
21 forth. Counsel has a copy of this. We have set forth
22 response to that and I would ask Mr. Berry once again,
23 have you previously had a chance to review these factors?

24 A I have read these and reviewed these and I agree with
25 them.

1 Q And would you like to adopt them and ask the Court to
2 consider them in the punitive?

3 A Your Honor, I would like for the Court to accept
4 these and adopt these punitive damages.

5 THE COURT: And I read through them it appears that
6 all the facts to support it have previously been testified
7 to. And I will take this akin to argument from counsel
8 rather than admitting it into evidence.

9 MR. WOOLHISER: And, Your Honor, this is a default
10 case and they still have to have proof to back these up.
11 And we have not heard that yet.

12 THE COURT: What my point is, as to each of these
13 factors supporting punitive damages, their opinion to
14 support punitive damages, there are certain facts put
15 forth. I am not admitting this into evidence but because
16 the facts have been previously testified to I am going to
17 take it just as I would argument of counsel. But not
18 admit it but I will certainly review it.

19 MR. WHITT: And the basis for these factors are in
20 documents that are either in the record or are going to be
21 put in the record today. Your Honor, may I approach the
22 witness.

23 THE COURT: Yes, certainly.

24 MR. WOOLHISER: Your Honor, this is a private
25 communication. Obviously there was a string of

1 communications. This is not, by itself does not stand
2 alone and it should not be discussed at this time.

3 MR. WHITT: Your Honor, can I give you a copy.

4 THE COURT: And I think it may be in this book. It
5 is, in fact.

6 MR. WOOLHISER: Your Honor, let me address that.
7 This document just didn't come floating in here today.
8 This is a document that was given to us in discovery from
9 counsel. If there was a privilege or an objection at that
10 time he should have generated a privilege law and filed
11 for protective order and not given us this document.
12 Having given us the document which is a very crucial
13 document, he can't now object to it being used because he
14 waived any objection when he didn't establish a privilege
15 law in secure of protective order.

16 THE COURT: Did this in fact come through discovery?
17 And are you offering this?

18 MR. WHITT: We are going to lay a foundation and
19 discuss it and we will move it into evidence. Like I
20 said, it was discoverable and they sent it to us and it is
21 very germane.

22 THE COURT: I will admit this only to show evidence,
23 so it is plaintiff's number 3 only as to show notice.

24 (Whereupon, Plaintiff's Exhibit 3 was admitted into
25 evidence.)

1 MR. WHITT: Your Honor, this shows that on September
2 17th, 2013 the defendants and defendants counsel had
3 actual notice that the, there was no basis for it. The
4 only thing we heard during this case, Your Honor, is that
5 we have 5 acres or we have 10.8 acres because the creek
6 boundary changed. That was their entire theory. They
7 hired several surveyors and none of them would actually
8 give him a survey. But here is a guy who says, there is
9 no need for me to go any further. He says, may I publish
10 it, Your Honor?

11 THE COURT: Sure.

12 MR. WHITT: I am without doubt that the present
13 location of the creek also being Mr. Reichardt's boundary
14 has not changed in any considerable period of time. He is
15 saying, there is no use for me to go any further. The
16 creek is the boundary, everybody admits it and it hasn't
17 changed. So now for punitive damages, Your Honor, you
18 have got beyond actual notice for Mr. Berry and all of the
19 other things that we alleged. They go and hire a guy and
20 pay him good money who says your boundary is that creek
21 and that boundary gives them 1.8 acres. So we would like
22 to move it into evidence.

23 THE COURT: Anything else for this witness?

24 MR. WHITT: Your Honor, may I have one moment?

25 THE COURT: Sure.

1 MR. WHITT: Your Honor, while this witness is on the
2 stand we have a number of documents that have been
3 consented to move into evidence. I think I need to do it
4 probably while he is on the stand in my case.

5 MR. WOOLHISER: Your Honor, I don't think we should
6 leave this letter at this time just hanging here.

7 THE COURT: Oh, I ruled on it. I admitted it only as
8 to notice. And I will allow it only as to notice. And I
9 admitted it as plaintiff's number 3.

10 MR. WOOLHISER: Your Honor, this evidence of notice
11 as of September of 2013. The offense that they are
12 complaining about took place a year before that.

13 THE COURT: And this is notice from that day forward.
14 And I appreciate you pointing that out. And you say you
15 have some documents?

16 MR. WHITT: I have some documents that aren't
17 controversial that counsel has consented to in writing.
18 And I guess he has a list of them but I will go through
19 them for the record, Your Honor. The documents that are
20 admitted by consent are, plaintiff's amended complaint,
21 plaintiff's first request to admit, plaintiff's second
22 request to admit, the order of the Court for default, the
23 order of the Court for judgment by default, the order
24 denying defendant's motion to set aside default, the
25 report from the investigator from the State on the

1 trebling of damages, the affidavit of the defendant, Jess
2 T. Reichardt, the defendants page, page four of the
3 defendants motion to amend and page four of defendants
4 answer, motions and counterclaims.

5 THE COURT: And, sir, you have had an opportunity to
6 review these documents?

7 MR. WOOLHISER: Those are just court documents.

8 THE COURT: Do you want to admit these as a group
9 exhibit. Plaintiff's number 4.

10 (Whereupon, Plaintiff's Exhibit 4 was admitted into
11 evidence.)

12 MR. WHITT: Your Honor, that is all we have and we
13 would like to make a closing statement if Your Honor will
14 permit it.

15 THE COURT: I am going to allow him to cross-examine
16 this witness.

17 MR. WHITT: Yes, of course, Your Honor.

18 CROSS-EXAMINATION

19 By Mr. Woolhiser:

20 Q Mr. Berry, just as, I guess to get a picture of the
21 stress and the problems that you have gone through. I
22 guess we could say first, you own 476 acres. Is that
23 correct?

24 A I own 476 acres in that tract.

25 Q And if you were sitting in your front yard can you

1 see this little small one or two acres that we are talking
2 about?

3 A It would be kind of difficult, this is approximately
4 two miles, a mile and a half across my property.

5 Q So this, we had a lot of discussions that Mr.
6 Reichardt really only has 1.8 acres. Have you ever, have
7 you ever made a survey, have you seen anything that says,
8 anything in evidence that that is the true acreage that
9 was actually purchased. Mr. Reichardt purchased by deed 5
10 acres. And I think a number of people keep talking about
11 1.8. What is that based on?

12 MR. WHITT: Your Honor, excuse me, I apologize for
13 counsel. Your Honor, the case is a default case. An
14 allegation was in our complaint that it is 1.8 acres.
15 That has been admitted, we are way past that. For the
16 purposes of this case between these two defendants, it is
17 1.8 acres.

18 MR. WOOLHISER: 1.8 is very crucial. And just
19 because it was by default which is a default on a
20 technicality, that doesn't mean that they get a free ride.

21 THE COURT: In fact, well in fact if it is in the
22 complaint, for purposes of my determining damages it is
23 admitted. It does in fact be admitted. If you will
24 proceed. But that 1.8 acres is admitted.

25 MR. WOOLHISER: But they have no proof of it, they

1 have never seen that.

2 MR. WHITT: I feel like for the record I must
3 respond. For the record, it doesn't matter as Your Honor
4 has already correctly pointed out, between these two
5 defendants there is 1.8 acres. We don't have to prove
6 anything, Your Honor.

7 MR. WOOLHISER: Moving on.

8 THE COURT: All right, thank you.

9 Q The property where the trees were cut down. Do you
10 know approximately the size of that acreage?

11 A Counsel, I paid Todd Survey \$1,700.00 and something
12 dollars. He surveyed the line, he surveyed the area cut
13 which was 5 acres. He surveyed also the area that is
14 fenced in which was 7.5 acres. That is all I can answer.
15 And it is recorded here at the Court House as such. And I
16 have it if you need to see it.

17 Q Mr. Berry, when did you hire that last survey, the
18 \$1,700.00 dollar survey?

19 A I have no idea. On Todd Survey, it has a date and
20 check there where I paid him.

21 Q Mr. Berry, wasn't it just several months ago?

22 A Look on the check and will tell you.

23 Q Was it approximately two or three months ago?

24 A Oh, no. This was before then.

25 Q July of 2013 is when you had the survey completed.

1 That is, I am just reading from your damages.

2 A Sir, I can't testify the date, I don't have before
3 me, there is a check there. I can only testify that,
4 could only testify that the survey took place before, I
5 wrote that check and paid very promptly. Probably within
6 a week of that.

7 Q So, Mr. Berry, when the trees were cut, what was that
8 date approximately?

9 A The date was, it was either May, it was over two
10 years ago. And I can't testify to the date. I had
11 surgery and I had a large number of stitches and I
12 couldn't drive. And I normally drive around but anyway
13 someone alerted me to that. And I went over and the
14 defendants were there on the property. So the only thing
15 I can tell you, as close as I can tell you is, it happened
16 in May. And the Department of, the South Carolina
17 Forestry Department estimated what the trees were worth.
18 Also I called the Sheriff of Saluda County and he was out
19 of town but I got him on his cell phone. And the
20 following Monday he went over to the property and they
21 were there along with the equipment from the logger and so
22 forth that they hired. And they were told not to trespass
23 and there is a report filed with the Saluda County
24 Sheriffs Department so we could find out that date if we
25 needed to.

1 Q Mr. Berry, would you say that the trees were cut at
2 least a year before you had this survey? Yes or no.

3 A Sir, I truthfully don't know how to answer that. I
4 assume from the date--

5 MR. WHITT: Excuse me, Mr. Berry. Your Honor, I
6 object once again, we are going into things that--

7 THE COURT: We are but let me. I think I see his
8 point that he is making. Let me just ask you this, sir.
9 You said, does anybody object to me asking this?

10 MR. WHITT: No, Your Honor.

11 THE COURT: You said you had surgery around the time
12 or at some point around the time that you think these
13 trees were cut. Do you think that is fair?

14 A Right.

15 THE COURT: And you had surgery about two years ago
16 in May, is that what you think?

17 A Right.

18 THE COURT: All right. So, you are saying it was
19 probably about two years ago, maybe just a little bit over
20 two years ago. Does that sound about right?

21 A If I understood, Your Honor, if I may.

22 THE COURT: Yes.

23 A If I understand his question, then the survey was
24 done about a year after I discovered--

25 THE COURT: And I think, that sounds about right. It

1 sounds like the survey was done a year ago and that the
2 trees were cut two years ago.

3 Q The point we are trying to make is that, at the time
4 the trees were cut down you did not feel like you had an
5 adequate survey? Why would you go get another survey a
6 year later, when what you had was perfectly fine?

7 A Because for this legal case we felt that it was
8 necessary to reestablish the line. Number two, establish
9 the acreage of the timber cut. And number three,
10 establish the acreage of the fence.

11 Q And this latest survey is not, we are just taking
12 your word with it as it occurred. It has not presented,
13 no one has seen this before?

14 A Sir, the evidence, the survey is recorded here in the
15 Saluda County Court House. I do not know personally
16 whether it was presented as evidence or not. But it is on
17 the record.

18 Q Let me ask you, on the cutting of the trees, was
19 there a report made by a forester. Did you see a report
20 that the forester gave, I believe you said he added up to
21 \$250.00 dollars.

22 MR. WHITT: Your Honor, I apologize to counsel. It
23 has already been consented into evidence that there is a
24 report from the forester and the value, they cut the
25 timber of \$750.90. So he is asking--

1 MR. WOOLHISER: That is not the question. We
2 appreciate you reading my line but that is not the
3 question.

4 MR. WHITT: Your Honor, if I can finish my objection.
5 He asked about was a report completed. It has been moved
6 into evidence. So, it was obviously completed.

7 THE COURT: Okay.

8 Q Okay. So on that report admitted into evidence, who
9 does it say cut the trees?

10 MR. WHITT: Your Honor, I apologize. It has been
11 alleged in our complaint who cut the trees. They are in
12 default, it is admitted who cut the trees.

13 THE COURT: Let me ask you, what is the relevance of
14 what the report said by the forestry person, who--

15 MR. WOOLHISER: The trees were cut by a logging
16 company.

17 THE COURT: And it says that in the report but it has
18 been admitted.

19 MR. WOOLHISER: This whole part of what these damages
20 of the trebled damage, that goes to the person who has cut
21 the trees. Logging companies are responsible.

22 MR. WHITT: Your Honor, there is no allegation
23 against a third party cutting the trees. In our complaint
24 we allege they did it and they went into default. As an
25 aside, Your Honor, before Judge Seals, counsel moved after

1 then, default was entered and affirmed to add third
2 parties and that was denied by Judge Seals. So there is
3 no such allegation. As for these parties who cut the
4 timber is the Reichardt defendants, Your Honor.

5 THE COURT: Who the report said, I am not going to
6 allow you to go into who this report says cut the trees.

7 MR. WOOLHISER: Well, Your Honor.--

8 THE COURT: I understand your objection to that.

9 MR. WOOLHISER: Because part of the complaint and the
10 plead for punitive damages. If they can show that there
11 was a violation of the statutory code then, that would be
12 one case where punitive damages would apply. Yet there
13 has been, the trees were not observed being cut by the
14 defendants. The report says they are not by the
15 defendants. There is, there has not been a violation.
16 The Sheriff was brought out, the sheriff did not pursue
17 any violations here.

18 THE COURT: Let's do it like this. That is so noted
19 for the record and the report is evidently already in.
20 And so we will do it like that.

21 MR. WOOLHISER: That is fine, Your Honor.

22 Q Going back again to these trees. At one point you
23 mentioned that you had completed a lot of reforestation
24 and you had planted pine trees. And that is in your
25 statement. You recall that statement?

1 A Yes, I do. We ran cattle on a large portion of this
2 land and then as we, my father and I both, I taught
3 school. As our duties increased the U.S. Government had a
4 reforestation conservation program and we planted all the
5 open land then with pine trees with the exception of the
6 hollows where the nut bearing trees were.

7 Q You mentioned in your statement that the cutting took
8 place with nut bearing trees, these are not pine trees,
9 right?

10 A Sir, if you, I don't have a copy of the South
11 Carolina Forestry report. I don't know, I would say that
12 at least ninety percent of those trees cut were nut
13 bearing trees.

14 Q Again, looking at the area of the trees that were
15 cut, is this essential for access, were there fences
16 around this area. How would Mr. Reichardt know that he
17 was actually trespassing?

18 A Because the creek is the line and he crossed the
19 creek.

20 Q And how would he know that?

21 A All he would have to do is come to the Court House
22 and look at my plat I showed him. And I am not sure but
23 that I did give him a copy of the plat.

24 Q Returning to this letter that was, came from Glenn
25 Associates, the one that is dated September of 2013. It

1 is saying that the creek hasn't changed in a considerable
2 time but that would indicate that the creek did perhaps
3 change at some point and time. Would that be a fair
4 interpretation?

5 A Sir, the only thing I can tell you is in my lifetime
6 and I am 73, the creek is at least six foot deep and all
7 the way down to a shell, shell rock bed layer. And the
8 trees that were not, down on the creek are probably
9 one-hundred or more years old. So that is the only answer
10 I can give you. I can't tell you beyond 73 years. That
11 is how old I am.

12 Q Even when the power line was put in--

13 MR. WHITT: Your Honor, he has answered the question.

14 THE COURT: I think we have canvased this enough for
15 purposes of a damages hearing.

16 Q On the matter of the no trespassing signs. Where
17 were those signs located?

18 A Sir, they were probably fifty no trespassing signs on
19 my place. One of the trespassing signs was located
20 approximately ten feet from the creek east or about half
21 way between the creek and where your client took my cable
22 down and put his gate.

23 Q Is that, are those signs still there?

24 A Yes sir, the sign is still there.

25 Q And when was that installed?

1 A That sign?

2 Q Yes.

3 A That sign was probably put there about three years
4 ago.

5 Q But there is no fence there, is that correct?

6 A No sir, your clients had to take the fence down.

7 Q Was it fenced in at the time they bought their
8 property?

9 A Sir, I had no fence on my property period.

10 Q The fence that you mentioned. This is the one that
11 Mr. Reichardt installed?

12 A Right.

13 Q You have never placed a fence to mark where your
14 boundary is?

15 A No.

16 Q The other thing, you mentioned, now that you have a
17 strict conservation easement. When was that put into
18 place?

19 A That conservation easement has been there for about
20 three years. The conservation easement was placed in
21 December of last year.

22 Q So this is considerably after the time of the cutting
23 and the start of this conflict?

24 A Yes.

25 Q Looking again at your damages, you reforested the

1 trees, it says for \$1,200.00 dollars?

2 A I have not reforested until this case is settled.

3 But paid for the trees and obtained the trees and they are
4 on hold until the fall. You don't plant trees basically
5 in the summer and so forth nor do you plant fescue grass
6 until October.

7 Q So your \$1,200.00 dollars is an estimate?

8 A No, sir. The \$1,200.00 dollars, I have actually paid
9 the \$1,200.00 dollars for the trees.

10 Q But they have not been inserted in the ground, is
11 that it?

12 A No, sir. They are held by the nursery.

13 Q Would you say that what you are planting, you are
14 saying twelve nut bearing trees, are these the same trees
15 that are laying on the ground right now?

16 A That is the same trees.

17 Q So you have twelve trees laying on the ground?

18 A Sir, if you went out there you would see about thirty
19 something trees laying on the ground. I don't know, I
20 don't actually know what the county is but if you look on
21 the South Carolina Forestry report they have the stumpage
22 size and everything else that you would need to know.

23 Q As to your, the damages that you are asking, is there
24 any relationship between the damages that took place, your
25 controversy with the defendants and your health.

1 conditions?

2 A Sir, I have no way of actually knowing that. I just
3 know that I have to be cognizance that I have health
4 issues and that I take medication for the same.

5 Q If we were going to describe the stress that was
6 caused by the Reichardts, the first thing that happened
7 was a cutting of thirty trees and those trees are still
8 laying on the ground. And number two, would be a fence of
9 barbed wire that was installed by Mr. Jess Reichardt. And
10 I believe, like in March, April, and that fence and it was
11 just a barbed wire and it was there for about one month
12 and they consented to take it down and it was removed.

13 Those--

14 MR. WHITT: Your Honor, I object to that, he is
15 misstating the record. The fence was placed upon the
16 plaintiff's land. Mr. Griffith and I went into court and
17 asked for a rule to show cause, the fence be removed.
18 That was granted by Judge Russo. They were required by
19 law to remove that fence. They missed the deadline for it
20 but eventually the fence was removed. They didn't consent
21 to remove anything. They received a rule to show cause
22 from the court to remove that fence.

23 MR. WOOLHISER: That is a misstatement. That was a
24 consent agreement, the removal of the fence.

25 MR. WHITT: I disagree, Your Honor.

1 THE COURT: Well, I am sure, if there is anything
2 related to it you think it would be in this file under
3 this case number?

4 MR. WHITT: We didn't dwell on the rule to show cause
5 to make them remove the fence, Your Honor. Because it was
6 over and done with. But I will tell you, Mr. Griffith and
7 I argued for a rule to show cause. Judge Russo ended it
8 at conference that day by saying, Mr. Woolhiser, I am
9 going to grant Mr. Whitt's request for a rule to show
10 cause. That is my memory.

11 Q Mr. Berry, we are just asking what you saw. When you
12 looked out of your house you knew that a fence had been
13 installed and it was there for one or two months. Why was
14 that such a cause of stress?

15 A Well, Your Honor, you know once you try to lead
16 someone down the right path and give them some advice, I
17 have been around and I have bought and sold land, about a
18 survey and so forth. And then they come on and mark off a
19 place and talk a fellow into cutting the timber. Just
20 cutting the timber itself was enough to be a stressful
21 situation. I am a trusted fellow. Then to come back and
22 fence in whatever, what he decided that he needed
23 certainly didn't do anything to lower my stress level. I
24 worried about things a lot and I keep them on my mind and
25 it affects my sleep, it affects my activity and so forth.

1 And, sir, I don't really know how to describe the
2 situation to you, it would be just like me coming and
3 putting a fence down half of your house and yard. And I
4 think you would get pretty upset. Also if you work for
5 something and help pay for itself you appreciate it than
6 if something is gifted to you. And I was not asked for a
7 gift from the defendant, just decided that he was going to
8 help himself to a little of my property.

9 Q That is all I have.

10 REDIRECT EXAMINATION

11 By Mr. Whitt:

12 Q You asked about no trespassing signs, isn't it true
13 that you had trespassing signs that were torn down and
14 thrown on the ground and then they were reinstalled with
15 the defendants on your property for you to no trespass?

16 A Yes, I had one. The name was struck out and changed.
17 It is just common practice that the members of the hunting
18 club and I place those no trespassing signs because I
19 carry, well, common sense, but also because my liability,
20 hunters insurance that I have to have to have the benefit
21 of hunting, allow the members to hunt requires that I
22 maintain posted signs on the property.

23 THE COURT: You can step down. Anything else.

24 MR. WHITT: I would like to make a brief closing.

25 THE COURT: Yes, sir.

1 MR. WHITT: Your Honor, this case, if there was ever
2 a punitive damages case in South Carolina and there is
3 plenty of them that has been reported, this is a punitive
4 damages case. And we would suggest that we, we have
5 actual damages of \$4,193.00 dollars and some odd cents.
6 We suggest that eight or nine times as the plaintiff
7 suggested would be appropriate punitive damages figure.
8 Counsel eluded to something that I mentioned to Your Honor
9 earlier. And that is that there was a violation of the
10 statute in this case. It is admitted by the defendants
11 because they are in default. We allege they violated the
12 statute and they did. I have given Your Honor a case that
13 says that if there is a violation of a statute we are at
14 punitive damages. If there had been a jury that would be
15 enough to get us before a jury for it. With Your Honor
16 hearing it it gets us to Your Honor. So this is a
17 punitive damages case because of the violation of statute.
18 And we certainly discussed the factors and the aggravating
19 factor, the reprehensible comment. But, Your Honor, this
20 case is exactly like, if Your Honor owns some land and I
21 decide I am to come onto your land and I am going to have
22 cookouts and build forest fires and I am going to tear
23 your signs down, I am going to put mine up. I am going to
24 put a gate up to block you from your own land and I am
25 just arbitrarily going to take 10.8 acres of your land.

1 urge you to grant him his actual damages and punitive
2 damages of a factor to what has been approved by the South
3 Carolina Supreme Court in the eight and nine times range.
4 I appreciate your time, Your Honor.

5 THE COURT: Thank you.

6 MR. WOOLHISER: Your Honor,--

7 MR. WHITT: Your Honor, again I object that he is
8 going to try to close because it is not permitted by the
9 case law.

10 THE COURT: I am going to allow him to just, just to
11 reiterate a couple of points.

12 MR. WOOLHISER: I think just addressing the
13 discrepancies and the lack of proof. This being a case
14 that, it was under default but still there has to be
15 enough evidence to show that a lot of these things that
16 they are asking exist. And in particular, if you look at
17 a punitive damage case and we were just looking at one of
18 the cases that has been in the finding, is Austin and that
19 is 358 SC 298. There is, again it goes to the eight
20 factors which haven't been proven in this case. But in
21 particular it shows that punitive damages could only be
22 awarded where the plaintiff proves by clear and convincing
23 evidence of the defendant's misconduct, is willful, wanton
24 and reckless. That has not been proven. There was no,
25 there was no plats and I think that Mr. Berry recognizes

1 that when he had to go just several months ago and obtain
2 his own plat where he is making a claim. Looking at the
3 tax maps, Mr. Reichardt had a basis for where he drew,
4 where he said his land is. Obviously he should have had
5 more than that. But when he bought five acres it was
6 based on these affairs and the tax assessors of Saluda
7 County. So he had a basis, he was not acting reckless,
8 wanton and willful. He made a mistake but that is not for
9 punitive damages. Going through their list of damages,
10 you can see that certainly anything that had to do with
11 legal cost, court cost, there is no contract here, there
12 is no basis for those type of damages. The \$1,200.00
13 dollars for reforestation, there is no evidence that that
14 really takes him back to where they were. That seems to
15 be a complete upgrade. The cost of the survey, that was
16 just to, that was something that Mr. Berry should have had
17 years and years ago. If that would have been on record we
18 wouldn't have had this kind of problem. So, and I think
19 just one other thing to say about the list of defendants.
20 We have Mr. Reichardt, Mr. Tom standing over here who is
21 51 years old. He is on one-hundred percent disability.
22 And when, and the ability of the defendant to pay punitive
23 damages comes into play. And when you look at what he had
24 to do in this case, the only thing that has been mentioned
25 in the evidence is that he went to one meeting with Mr.

1 Berry.

2 THE COURT: And I can't take into account, he is not
3 able to present any evidence today so I can't even take
4 into account that you are researching that he is on
5 disability. He is in default, he can't present any
6 evidence at this hearing. I understand your position but
7 unfortunatley that is the position.

8 MR. WOOLHISER: But I think for, that we have to
9 accept the fact that when you get in, when he started
10 asking for punitive damages it has to be clear, there is a
11 definite obligation for the plaintiff to prove the case.
12 You just can't rely on a default. He has to, he has to
13 present a case that backs up what he is saying. And the
14 ability of the defendants to pay punitive damages
15 certainly goes into being. One other observation of
16 punitive damages, there is definitely cases that say where
17 the attempt was made to use that type factor. Generally
18 that is struck down. The Court normally would say two to
19 three. So pulling the eight or nine out of the air is not
20 an acceptable practice used even if punitive damages did
21 apply which they do not in this case.

22 THE COURT: Thank you. I am going to take this
23 matter under advisement. I anticipate issuing a ruling
24 very shortly. Thank you.

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA)
)
COUNTY OF SALUDA)
)
Carl Eugene Berry, Jr.,)
)
Plaintiff,)
vs.)
)
Jess T. Reichardt and Thomas H. Reichardt,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH CIRCUIT

CIVIL ACTION NO: 2013-CP-41-091

NOTICE OF MOTION
and
MOTION TO AMEND

FILED
2013 OCT 15 PM 1:53
CLERK OF COURT
SALUDA CO. S.C.

TO: PLAINTIFF AND HIS ATTORNEYS, RICHARD L. WHITT AND JEFFERSON D. GRIFFITH:

INTRODUCTION

The Plaintiff brought this action for satisfaction originating in the perceived improper cutting of forest products from land belonging to the Plaintiff. The Defendant, Jess T. Reichardt, (hereafter, "Defendant, Reichardt") had purchased land advertised as 5-acres on April 10, 2012 for \$12,000.00. This land adjoined land owned by the Plaintiff. Defendant Reichardt believed he was within the boundary of his 5-acre purchase when he engaged Eugene Logging of Saluda, South Carolina to cut timber.

The Plaintiff ordered the logging operation to halt and by use of a 1933 Plat tried to demonstrate the true boundary between his property and that of Defendant Reichardt. There were a number of questions concerning the validity of the 1933 Plat. The fallen timber remains as it was cut and stacked, at the time the timber operation terminated.

Defendant Reichardt consulted with mapping and geology personnel in Columbia, South Carolina, but was unsuccessful in obtaining an on-site inspection, at least within the price confines of his limited means.

Finally, out of frustration with the lack of progress and the dearth of hard data, Defendant Reichardt devoted hours of personal research time, using the computer program "Google

Mapping”, to estimate the true boundary. Based upon his findings, he erected a fence of steel posts and barbed wire in August, 2013. Because of his inability to obtain a substantiated surveyor’s opinion on the disputed boundary, Defendant Reichardt removed the fence. Evidence offered at a September 4, 2013 Contempt Hearing satisfied this Court that Defendant Reichardt was not guilty of contempt. Defendant Reichardt admitted his fence installation was premature, and it was not his intention to unnecessarily disturb the Plaintiff.

Defendant Reichardt is working out of the Saluda area on a regular basis and has had considerable difficulty obtaining the support required to answer the myriad of replies requested by the Plaintiff and on the schedule expected by the Plaintiff.

On September 17, 2013, Defendant Reichardt was fortunate to have a site meeting with an expert surveyor, Mark Mills of Glenn Associates, based in Jenkinsville, South Carolina. The Plaintiff also attended the on-site meeting with Mr. Mills, and all parties received a first hand discourse on how a piece of property shown on the tax rolls as 5-acres, could actually be less the 2-acres. A surveyor of Mr. Mill’s well deserved reputation commands a sizable fee. However, the “in-the-field” consultation provided the input Defendant Reichardt needed to establish the existing creek location as the proper boundary between Defendant Reichardt’s and Plaintiff’s property.

Following the report of Mr. Mills, Defendant Reichardt has a search underway to locate “Eugene’s Logging”, the timber company that cut the timber on land now confirmed to belong to the Plaintiff. Contact has not been made with the logging company, since the timber cutting in May, 2012.

On September 9, 2013, Defendant Reichardt filed his “Answer responses” from the September 4, 2013 Certificate of Service that was filed with the Saluda County Clerk of Court. The Plaintiff rejected the filing due to “lateness”.

This Court signed an "Order for Judgment by Default" on September 26, 2013. In preparation for the Hearing of this Case, appearing as #26 on the Non-Jury Roster with a start date of November 12, 2013, there are a number of Motions to be made by Defendant Reichardt, including application of Rule 55 (1)(c): "For good cause shown the Court may set aside an entry of default".

NOTICE OF MOTIONS

PLEASE TAKE NOTICE that the Defendants, by and through their undersigned Counsel, will move before the Court of Common Pleas, Eleventh Judicial Circuit, Saluda County Court House, Saluda, South Carolina, on the 10th day from the date of this Notice, or as soon thereafter as Counsel can be heard, for an order pursuant to Rule 19 (a) and Rule 55 (c) of the SC Rules of Civil Procedure (hereinafter, "SCRCP"), adding an additional Defendant and setting aside an entry of default.

MOTION #1

Under SCRCP Rule 19 (a), a person can be added to an action, if in his absence complete relief can not be accorded among current parties.

The cutting of timber on land now agreed to belong to Plaintiff was performed by a person d/b/a Eugene Logging. It was the responsibility of Eugene Logging to determine that the timber cutting was with permission. Eugene Logging did knowingly and willfully cut trees from the Plaintiff's property as described in violation of Section 16-11-580 of the Code of Laws of the State of South Carolina, 1976, as amended. However, it is noted the trees were not removed. There is provision in law for the Plaintiff to be entitled to three times the market value of the timber cut. However, the application of Section 16-11-615 of the Code of Laws of the State of South Carolina, 1976, as amended, in the current case, must be decided by study of the facts surrounding the timber cutting.

The cut trees were not removed, primarily because of the Plaintiff's non-action. Therefore, the fair market value of the cut timber must be determined at trial. Also, the

fulfillment of the responsibility of Eugene Logging to determine the ownership of the timber prior to cutting, must be determined.

MOTION: Defendant Reichardt hereby moves for permission to join the present lawsuit as a Third Party Plaintiff and for permission to join Eugene Logging as a Third Part Defendant.

MOTION #2

Defendant Reichardt was unable to obtain reliable geological and historical data within the time constraints of SCRCF Rule 5. The primary issue in this Case, from the Defendants' viewpoint, was the location of the boundaries that would result in the 5-acres purchased. Plaintiff relied upon a 1934 Plat that was inaccurate and non-decisive. Defendant Reichardt desired that his replies be accurate, and not knowing the extent of his land holdings resulted in his lateness in responding to the summons and other requests from the Plaintiff. Decisions that interpret SCRCF Rule 6 have supported the concept that an Enlargement of Time to answer is within the sound discretion of the Trial Judge.

MOTION: Defendant Reichardt hereby moves for the Courts' acceptance of the following documents filed September 9, 2013:

Answers to First Amended Complaint, Motions and Counterclaims

Defendant's Responses to Plaintiffs First and Second Requests for Production

Responses to Plaintiffs First Set of Interrogatories

MOTION #3

Defendant Reichardt was delayed in providing answers as described in Motion #2 above. The delays in providing timely responses were excusable. Also, the delay did not cause extreme prejudice to the Plaintiff's Case. Plaintiff's property in the area of the lawsuit exceeds 470 acres. The actions of Defendant Reichardt only affected several acres of the Plaintiff's land – an area far removed from the Plaintiff's living accommodations.

The Plaintiff has filed numerous complaints in areas that include:

- Illegal cutting of timber and damage to land
- Trespassing and illegal occupancy of land
- Conspiracy
- Ejection/eviction
- Damage to property
- Punitive damages

Until receipt of the boundary placement conclusions from the expert surveyor, Mark Mills, on September 17, 2013, Defendant Reichardt had no adequate way to determine if he was trespassing, or if the Plaintiff was the guilty party. Plaintiff applied for application for Judgment by Default upon a lateness by the Defendants to answer by June 26, 2013. However, the Plaintiff has chosen to ignore the detailed Answers filed by the Defendant Reichardt on September 9, 2013. (The Plaintiff rejected the Answers – not the Court.)

MOTION: The Defendants hereby move for the Court to accept mitigating evidence and set aside the entry of default.

CONCLUSION

This Court should grant the Defendants the right to add a third party defendant and proceed to a Hearing based upon the answer and replies filed September 9, 2013 as would be amended by the Surveyor's report of on or about September 17, 2013.

RULE 11(a), SCRCP - ATTORNEY CERTIFICATION

Defendants Counsel has submitted answers and replies that were rejected by Plaintiff's Counsel. The Defendants' Counsel hereby certifies that consultation with the opposing Counsel would serve no useful purpose.



Philip H. Woolhiser
Attorney for Defendants
112 Trafalgar Street, SW
Aiken, South Carolina 29801
(803) 648-9994

October 10, 2013
Aiken, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Carl Eugene Berry,

Plaintiff,

vs.

Jess T. Reichardt and Thomas H. Reichardt
Defendants.

FILED

2014 JUN 27 PM 3:24

CLERK OF COURT
SALUDA CO. S.C.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-41-0091

NOTICE OF MOTION AND MOTION
FOR JUDGMENT ALTERATION
(Rule 59)

TO: RICHARD L. WHITT and JEFFERSON D. GRIFFITH, III, Attorneys for Plaintiff, CARL
EUGENE BERRY, Jr.

INTRODUCTION

Subsequent to a damages hearing held on June 16, 2014, on June 18, 2014, the Court ordered judgment to be entered against the Defendants, Jess T. Reichardt and Thomas H. Reichardt, jointly and severally, in the amount of Twenty-Five Thousand One Hundred Sixty-Three Dollars (\$25,163.00).

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Defendants, Jess T. Reichardt and Thomas H. Reichardt, will move before the Presiding Judge of the Eleventh Judicial Circuit, Saluda Center, Saluda, South Carolina, within ten (10) days of the date of this Notice, or as soon thereafter as counsel may be heard, for an Order altering the June 18, 2014 Order for Judgment, pursuant to Rule 59 (a), (b), (e), (f) and (g), of the South Carolina Rules of Civil Procedure (hereinafter, "SCRCP").

MOTION FOR JUDGMENT ALTERATION

The grounds for this Motion are as follows:

(i) although the Defendants have been ruled to be in default, the Plaintiff is required to provide sufficient evidence to support his claims, (ii) statements by the Defendants and the intentions of the Defendants are presented with no supporting evidence, (iii) the Plaintiff's witness, Attorney Rauton, based her testimony upon an obsolete 1934 plat that the Plaintiff replaced in July 2013, (iv) the valid evidence will not support the \$4,193.90 claim for actual damages, (v) the awarded punitive damages of \$20,969.00 exceeds the accepted punitive damages/actual damages ratio limit for due process, (vi) the trebled value of cut timber is not subject to additional punitive damages, (vii) there is no evidence of the affect of Defendants' action upon the Plaintiff's health and/or his access to his land or the use of his 476 acres, (viii) there is no evidence that the Defendants cut the Plaintiff's timber, and in fact, the Plaintiff's presented evidence states the timber was cut by others, (ix) statements by the Defendants' were improperly restricted, and (ix) there is no evidence that Defendant Thomas H. Reichardt participated in any of the acts that are the subject of this lawsuit.

CONCLUSION

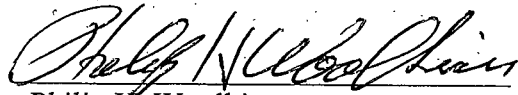
Defendant, Thomas H. Reichardt requests that the June 18, 2014 Judgment be altered so as to remove himself from the Judgment now entered against him.

Defendant, Jess T. Reichardt requests that the June 18, 2014 Judgment be altered by: i) reducing the actual damages of the Plaintiff to the amount supported by the evidence, ii) reducing the punitive damages to reflect the evidence supported by actual damages and to reflect the punitive/actual ratio of "4", or less, required by due process, and iii) proper consideration of the criteria established for punitive damage awards.

RULE 11(a) SCRPC - CERTIFICATION

Undersigned Counsel has not consulted with Counsel for the Plaintiff, as such would have served no useful purpose.

Respectfully submitted,



Philip H. Woolhiser
Attorney for Defendants
112 Trafalgar Street SW
Aiken, South Carolina 29801
(803) 648-9994
(803) 753-9018 (Fax)
woolhiser@bellsouth.net

June 27, 2014

COPY

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT

Carl Eugene Berry, Jr.,

Civil Action No.: 2013-CP-41-91

Plaintiff,

v.

**AFFIDAVIT OF
KATHRYN M. RAUTON**

Jess T. Reichardt and Thomas H. Reichardt,

Defendants.

Personally appeared before me Kathryn M. Rauton who on oath, deposes and says that she is over the age of twenty-one (21) years and makes this Affidavit based on her personal knowledge, Affiant is competent to testify as to the matters stated herein, and she hereby declares under the penalties of perjury, and states as follows:

1. My name is Kathryn M. Rauton and I am an Attorney at Law in good standing with the South Carolina Bar, employed with Kennedy Law Firm, LLC.

2. I am aware of, and have reviewed, Plaintiff's Notice of Motion and Motion for Partial Summary Judgment with Exhibits, and I believe that Plaintiff is entitled to Summary Judgment as to the Causes of Action set forth therein.

3. There are no material facts in dispute on the three Causes of Action set forth in Plaintiff's Motion. Defendants, were and are, on record notice of the correct boundary between Plaintiff's Property and Defendant Jess T. Reichardts' property, as shown on that Deed and Plat attached as Exhibit "B" and Exhibit "C" to the Motion, which are properly recorded in the Saluda County land records, and as shown on that Deed and Plat of Plaintiff's Property attached as Exhibit "D" and Exhibit "E", which are also properly recorded in the Saluda County land records.

4. I obtained a title search on the Defendant Jess T. Reichardt's property, relevant to the dispute herein, and I make the following statement based on my review of his title. My statement is based upon my expertise and experience in reviewing title to real estate.

5. Because Defendants had record notice, it is uncontroverted that, Defendants' actions described in Plaintiff's Amended Complaint filed herein, in interfering and obstructing with Plaintiff's use of Plaintiff's Property and trespassing upon Plaintiff's Property, were done after Defendants had actual, record notice of the boundary line between Plaintiff's Property and Defendant Jess T. Reichardt's property.

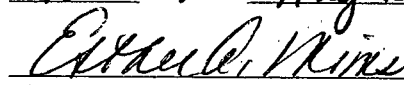
6. If testifying before the Court, I would so testify as above and my statements are true and correct.

7. Further deponent saith not.


Kathryn M. Rauton

SWORN TO AND SUBSCRIBED BEFORE ME THIS

12th day of August, 2013

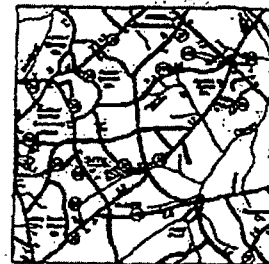

Notary Public for the State of South Carolina
My Commission Expires: 09-23-2015

RECORDED 99-3 2:22

CABINET A SLIDE

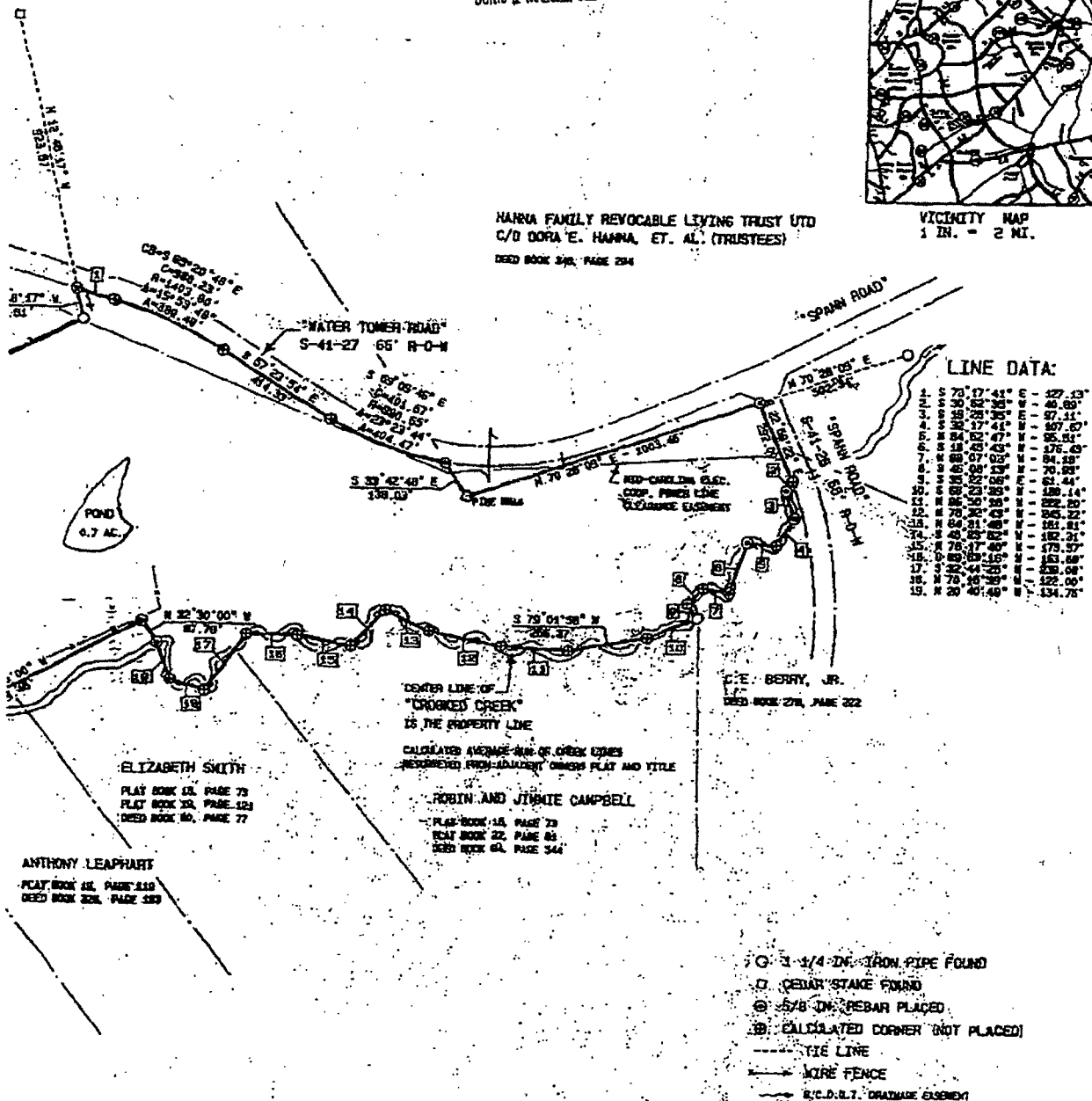
DORIS R. HOLMES, CLERK OF COURT

TRACT LOCATION



VICINITY MAP
1 IN. = 2 MI.

HANNA FAMILY REVOCABLE LIVING TRUST UTD
C/O DORA E. HANNA, ET. AL. (TRUSTEES)
DEED BOOK 240, PAGE 204



DATE :
MAY 17, 1999

CABINET A: Slide 55-14

SCALE 1 IN. = 300 FT.



- 3-1/4 IN. IRON PIPE FOUND
- CEDAR STAKE FOUND
- ⊙ 5/8 IN. REBAR PLACED
- ⊞ CALCULATED CORNER (NOT PLACED)
- TIE LINE
- WIRE FENCE
- R.C.D.B.T. DRAINAGE EASEMENT

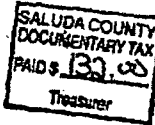
85

EXHIBIT

B

Part of 106cc

01634



FILED
CLERK OF COURT
SOUTH CAROLINA

99 JUN -3 PM 2:15

STATE \$312.00

TITLE TO REAL ESTATE

BOOK 445 PAGE 1
99-8788
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

KNOW ALL MEN BY THESE PRESENTS, THAT WOODLANDS, INC. (Seller) in the state aforesaid, for and in consideration of the sum of One Hundred Twenty Thousand & 00/100-----\$120,000.00----- Dollars, to it in hand paid at and before the sealing and delivery of these Presents, by Richard W. Waters and Mary C. Waters (Purchaser) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

RICHARD W. WATERS & MARY C. WATERS, THEIR HEIRS AND/OR ASSIGNS FOREVER:

All that certain piece, parcel or tract of land with any improvements thereon, situate lying and being in the County of Saluda, State of South Carolina, being more particularly shown as 92.808 Acres as shown on a plat prepared for Richard W. Waters and Mary C. Waters, by W. J. Westbury, dated May 17, 1999, and recorded in the Office of the RMC for Saluda County in Plat Book 429 at Page 138. Said tract having such shape and size as will be seen by reference to said plat, which plat is herein specifically incorporated by reference. Slide 55-H

This being a portion of the property heretofore conveyed to The Woodlands, Inc. By deed of Mack Flaie filed December 31, 1998 in Deed Book 429 at Page 138 in the Office of the RMC for Saluda County, SC.

GRANTEE ADDRESS: 642 Harley Taylor Rd.: Gilbert, SC 29054

TMS# prt of 141-00-00-014

PAID
JUN 03 1999
SALUDA COUNTY TREASURER
AMOUNT 10.00

186

EXHIBIT

C

\$21.00 State & \$11.55 Fed. Stamps

THE STATE OF SOUTH CAROLINA,

COUNTY OF SALUDA

KNOW ALL MEN BY THESE PRESENTS, That L. H. E. Quarles, as Trustee

in the State aforesaid for and for and in consideration of the sum of
Ten (\$10.00) Dollars and execution of purchase money mortgage of even date DOLLARS,
 to me in full payment of the sum of paid By: C. Eugene Berry

in the State aforesaid (H. E. Quarles, Jr., as Trustee) have granted, bargained, sold and released, and by these Presents do grant, bargain,
 sell and release, unto the said

C. Eugene Berry and unto his heirs and assigns forever the following described property, to wit:

All that piece, parcel or tract of land in Good Hope School District, Saluda County, S.C.,
 containing 319.45 acres being: Parcel A.B.D. and E of a plat of the Jim Grander place, made by
 H.E. Unger, Surveyor, dated Jan. 4, and 6, 1934, said plat being recorded in Plat Book 3, page 53
 in the office of the Clerk of Court, Saluda County, S.C. Said tracts or parcels of land being
 bounded Northeast by the Sarda's Church Road; North by the Jim Brown place and by Clouds Creek;
 West by Bettie Bauknight; Southeast by lands of Frank Ashill; Southwest by lands of Clarence
 Koon estate and Henry Black estate; Northwest by Henry Black estate, Spann Church road; W.C.
 Bodie estate and Crooked Creek.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident
 or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said
C. Eugene Berry and unto his

Heirs and Assigns forever.

AND I do hereby bind myself and my

Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said

C. Eugene Berry and unto his

Heirs and Assigns, against me and my Heirs and against every person whomsoever

lawfully claiming, or to claim the same, or any part thereof.

WITNESS my Hand and Seal, this 6th day of March in the year of our Lord one
 thousand nine hundred and Fifty-two and in the one hundred and 76th year of the Sovereignty and
 Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

Jeff D. Griffith

H. F. Padgett

H. E. Quarles, Jr., as Trustee

(L.S.)

(L.S.)

THE STATE OF SOUTH CAROLINA,

Saluda

County.

Personally appeared before me the undersigned

and made oath that he saw the within-named H. E. Quarles

sign, seal, and as his Act and Deed, deliver the within-written Deed, for the uses and purposes herein mentioned, and that he with
Jeff D. Griffith witnessed the execution thereof.

Sworn to before me, this 6th

day of March A.D. 19 52

Jeff D. Griffith

N. P. for S. C.

H. F. Padgett

THE STATE OF SOUTH CAROLINA,

County.

RENUNCIATION OF DOWER

I,

do hereby certify unto all whom it may concern, that Mrs.

the wife of the within-named

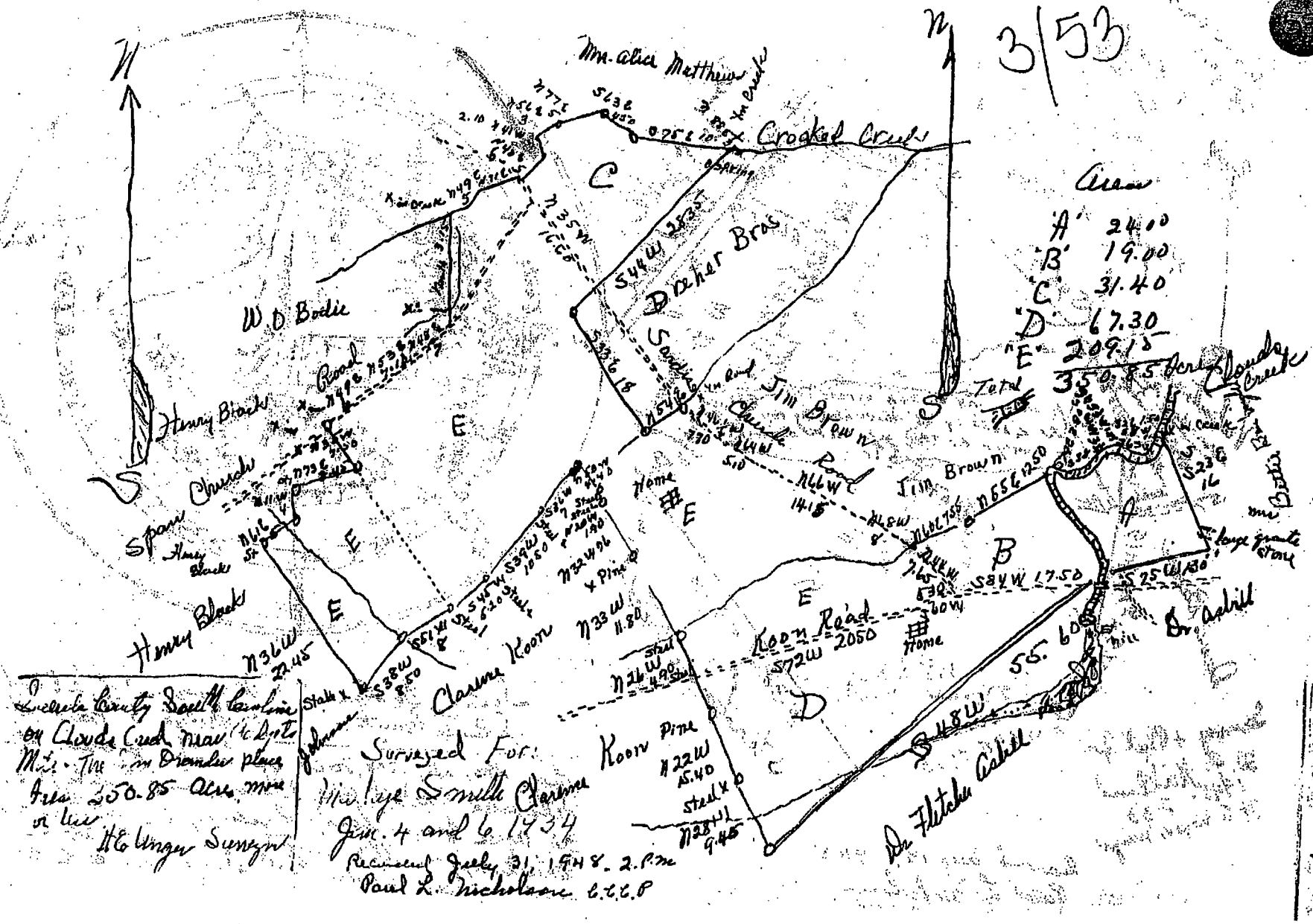
did this day appear before me, and upon being privately
 and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whom-
 soever, renounce, release and forever relinquish unto the within-named

Heirs and Assigns, all her interest and estate, and also all her right

and claim of dower, of, in, or to all and singular the premises within mentioned and released.

Given under my Hand and Seal, this _____ day of _____, Anno Domini 19 _____

3/53



"EXHIBIT E"



PO Box 21707
Columbia, SC 29221
(p) 803.896.8800
(f) 803.798.8097
www.trees.sc.gov

Henry E. (Gene) Kodama, State Forester

May 11, 2012

Mr. Carl E. Berry
500 Samuel Padgett Road
Ridge Spring, SC 29129

Dear Mr. Berry:

I performed a stump cruise on your property of the approximately 1 acre that was cut by Eugene Williams at the intersection of Spann and Crooked Creek Road. The total value of the timber that was cut is \$250.30. South Carolina 16-11-615 allows for triple the value of the timber which would be \$750.90. The table below shows how the value was determined. If you have any questions give me a call.

Pine Pulpwood

Dia./#trees	Cords	Cords/Ton	Tons	Price/Ton	Total Price
5" / 7	.203	2.675	.54	\$9.79	\$5.29

Hardwood Pulpwood

Dia./#trees	Cords	Cords/Ton	Tons	Price/Ton	Total Price
6" / 12	.54	2.90	1.56	\$6.33	\$9.87
8" / 8	.65	2.90	1.89	\$6.33	\$11.96
9" / 10	.99	2.90	2.87	\$6.33	\$18.17
10" / 7	1.04	2.90	3.02	\$6.33	\$19.12
12" / 8	1.66	2.90	4.81	\$6.33	\$30.45
				Total	\$89.57

Hardwood Sawtimber

Dia./#trees	MBF	MBF/Ton	Tons	Price/Ton	Total Price
14" / 3	.19	8.75	1.66	\$26.39	\$43.81
15" / 5	.39	8.75	3.41	\$26.39	\$89.99
16" / 1	.094	8.75	.82	\$26.39	\$21.64
				Total	\$155.44

Prices are from Forest2Market 1st Quarter 2012

Thomas E. Mills
Thomas E. Mills
Investigator
(803) 940-6416



Glenn Associates Surveying, Inc.
11547 State Highway 215 S
P.O. Box 12
Jenkinsville, South Carolina 29065
Tel: 803.345.5297
Fax: 803.345.0620
<http://www.glennassociates.com/>

September 17, 2013

Mr. Phillip Woolhiser
112 Trafalgar St. SW
Aiken, SC 29801-3744

Re: Reichart Property

Dear Mr. Woolhiser:

I enjoyed meeting with you this morning at Mr. Reichart's property. I believe that our conversation on site covered all the issues involving the creek location relative to the property boundary. For confirmation, I am without doubt that the present location of the creek, also being Mr. Reichart's boundary, has not changed in any considerable period of time. Therefore, it is not a factor in the area discrepancy relative to the area stated in his deed.

I am enclosing a copy of the highway plans for secondary Road 25 on which Mr. Reichart's property fronts. Also enclosed is a copy of the right of way deed from G.S. Miller who was the owner of the Reichart property in 1953. I have shaded the 100 foot sight area, which is a part of the highway right of way, in yellow both on the plan sheet and the notation in the right of way deed. Although it was not shown on the recent survey for Mr. Reichart, it does appear to cover a portion of his property, and he should be aware of the right of way location.

If I can be of further assistance in this or other matters, please feel free to contact me.

Best regards,

A handwritten signature in cursive script, appearing to read "Mark E. Mills".

Mark Mills

ACTUAL DAMAGES

- I. **\$750.90** – Trebled value of timber cut by Reichardt Defendants (see, May 11, 2012 Report of Thomas E. Mills, Investigator for the S.C. Forestry Commission, attached hereto as, Exhibit “A”).
- II. **\$263.00** – Cost of Title Search by Kathryn M. Rauton, Esquire, (see, Invoice dated August 5, 2013, from Kennedy Law Firm, LLC, attached hereto as, Exhibit “B”).
- III. **\$150.00** – Cost of Filing Fee for 2013-CP-41-91(see, receipt for filing fee, attached hereto as, Exhibit “C”).
- IV. **\$10.00** – Payment to Saluda County Clerk for payment of Plat, (see, receipt from Clerk, attached hereto as, Exhibit “D”).
- V. **\$1,750.00** - George Todd for Survey, (see, check, dated July 21, 2013, attached hereto as, Exhibit “E”).
- VI. **\$1,200.00** - Cost of reforestation: twelve nut-bearing white oak trees, or improved American Chestnut trees, (see, verification, attached hereto as, Exhibit “F”).
- VII. **\$70.00** - 100 lb. of fescue grass seed, (see, verification, attached hereto as, Exhibit “G”).

TOTAL: \$4,193.90

CERTIFICATE of COUNSEL

I hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Philip H. Woolhiser

SC Bar No.: 12466

112 Trafalgar Street, SW

Aiken, South Carolina 29801

Phone: 803-648-9994

Attorney for Appellants

RECEIVED

DEC 10 2014

SC Court of Appeals